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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Debra R. McCaslin, Circuit Court Judge

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Appellate Case No. 2022-000425

THE STATE, .....RESPONDENT

v.

VINCENT THOMAS SHIVERS, .....APPELLANT.

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**INITIAL BRIEF OF RESPONDENT**

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**APPELLANT'S STATEMENT OF ISSUES ON APPEAL**

Did the Trial Court err by denying Shiver's motion to suppress evidence gathered by law enforcement after Deputy Hale entered Shivers' fenced backyard without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance?

**COUNTER STATEMENT OF ISSUE ON APPEAL**

Did the trial judge properly deny Shivers' motion to suppress evidence obtained as a result of the warrantless entry into his residence by Deputy Hale because Deputy Hale's actions, including the warrantless entry into Shivers' residence, were all reasonably taken as the result of exigent circumstances. Specifically, his actions were taken pursuant to the emergency aid doctrine, which was initiated by the request for a welfare check on Shivers at his residence.

## STATEMENT OF THE CASE

Appellant, Vincent Thomas Shivers, III (Shivers), is confined in the South Carolina Department of Corrections (SCDC) as the result of his Lexington County convictions and sentence arising from the murder of his long-time girlfriend, Roselynn Cedeno. The Lexington County Grand Jury indicted him in December 2020 for murder (2020-GS-32-2491) and in May 2021 for possession of a firearm during the commission of a violent crime (2019-GS-32-2422). **R. \_\_\_ - \_\_\_**. He received a jury trial before the Honorable Debra R. McCaslin on March 21-25, and 28-29, 2022.

The jury convicted him of both charges (*3/29/22 Tr. 274-76*), and Judge McCaslin sentenced him to seventy-five years for murder and five years concurrent for the weapons offense, with credit for nine hundred thirty-six days of time served. *3/29/22 Tr. 294-96; R. \_\_\_ - \_\_\_* (sentencing sheets). Jack B. Swerling, Deborah B. Barbier, and Alissa L. Wilson represented him in the trial court. Eleventh Circuit Deputy Solicitor L. Suzanne Mayes and Assistant Solicitor LeAnna S. McMenammin prosecuted the case.

Shivers timely served and filed his notice of appeal. He filed an Initial Brief of Appellant on March 7, 2023, and Respondent submits this brief in response.

## STATEMENT OF FACTS

Viewed in the light most favorable to the prosecution, the direct and circumstantial evidence is that in September of 2019 Shivers and Roselynn Cedeno, the victim, were living in a Lexington County residence. They had lived together for roughly a decade.<sup>1</sup> Shivers worked at Camping World, while Roselynn was a homemaker. They did not have any children together. Roselynn's son, Tony Cedeno, testified that "[t]hey were very private people," who did not have parties or socialize with anyone except her family. *Tr. 476-79; 289-95.*

Tommy Cedeno, his wife and children, and his maternal grandparents all live on the same property in Beaufort, South Carolina. Roselynn left Beaufort and moved to Aiken when she started dating Shivers, and she was living with him in Lexington in September of 2019.<sup>2</sup> Shivers worked hard, and they lived "well above the median." Shivers drove a black F-150, while Roselynn drove a blue Accord. *Tr. 474-33; 503-04.*

On September 1, 2019, Hurricane Dorian, then a Category 5 hurricane, was projected to make landfall in Beaufort, and the Cedeno family expected the governor to issue a mandatory evacuation order. As a result, Tony and Roselynn exchanged calls and text messages that day. At 5:36 pm., she sent him a text asking about the hurricane, and he told her it was a Category 5. She replied that they could have her bedroom if they needed to evacuate. He then sent a text informing her that he was planning to stay in Beaufort to watch over the property, but that the rest of the family was coming to her home. The plan was for her to contact them on the morning of the 2<sup>nd</sup>, and they would leave between 7:00 and 8:00 am. *Tr. 479-88; 507-08; State's Exs. 27-28.*

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<sup>1</sup> They had previously lived in Aiken, South Carolina, and in Louisiana. *Tr. 477; 501.*

<sup>2</sup> They had only been in Lexington for about a month and a half. They had lived in Louisiana before moving to Lexington. *Tr. 503.*

Their last exchange on the 1<sup>st</sup> was his text message to her at 6:22 pm. On Monday the 2<sup>nd</sup>, Tony and both of his grandparents unsuccessfully tried to call Roselynn. As a result, he sent her a text at 10:20 am., asking her to call her mother. However, she did not reply. As a result, the Cedeno family stayed in Beaufort despite a mandatory evacuation order (for one day) because they did not have anywhere else to go. The Beaufort County Coroner and members of the Beaufort County Sheriff's Department subsequently told Tony of Roselynn's death. *Tr. 488-99; 508.*

Charles Watson testified that he worked with Shivers at the Columbia Camping World<sup>3</sup> and that Shivers was the business' finance manager. Shivers worked with Mr. Watson on Sunday, September 1, 2019 and left shortly after 5:00 pm. Camping World was open on Monday September 2<sup>nd</sup>, which was Labor Day. Shivers was scheduled to work Monday morning, but he did not show up that day. This caused concern, as the presence of the finance manager is very important to Camping World's daily operation. *Tr. 443-49.*

Mr. Watson testified that Shivers also did not show up on September 3<sup>rd</sup>, and that he never returned to Camping World. Shivers acted normally on the 1<sup>st</sup>. Also, he had not said that he was unhappy at home. He also had not mentioned taking a day off or a planned vacation in his conversations with Mr. Watson on the 1<sup>st</sup>. *Tr. 448-50; 452.*

Eric Weir testified that he was employed at the Columbia Camping World in September of 2019, and he confirmed that Shivers was the finance manager. The company's weekday hours were 8:30 am. 7:00 pm. Although Shivers was scheduled to work on September 2<sup>nd</sup>, he did not show up that morning. His coworkers were concerned because this was "very much out of his character. He was ... number one in the company for finance and ... he had a sharp reputation

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<sup>3</sup> Camping World is in Lexington County.

for being on time.” As the day wore on and he did not show, his coworkers’ concerns increased to the point that they started to “get worried for him.” *Tr. 453-55.*

Mr. Weir had worked with Shivers the preceding week and Shivers had not mentioned any plan to take Monday off or taking a vacation in the near future. Camping World’s general manager had unsuccessfully tried to contact him by phone several times and the sales manager, Chad Lively, asked Mr. Weir to drive by Shivers’ residence because Mr. Weir was familiar with the area and knew where Shivers lived. When Mr. Weir drove by the residence that morning, he did not “notice any lights on,” it did not appear that there was any activity in the house, and he did not see Shivers’ F-150. So, he kept driving. *455-58; 466-67.*

Shivers was likewise scheduled to work on September 3<sup>rd</sup> but, once again, he did not come in that morning. *Tr. 458-59.* According to Mr. Weir,

At this time, we were very concerned. I know he had a heart condition in the past and he had had a heart attack, so ... I was worried that he has possibly had a heart attack again. You know, that physically he could be in danger or something. So that morning I decided after speaking with my managers I rode over there. [I] [w]ent and knocked on the door, try to see if somebody would answer and [I] never heard anything.

*Tr. 459.*

Although Mr. Weir rang the doorbell, no one answered the door. The only sounds he heard were dogs barking. *Tr. 459.* On his way to the front door, he saw a blue sedan parked next to a retaining wall in the driveway, which he had not seen from the road because of a retaining wall. He did not see Shivers’ truck. So, he returned to work. At some point on the 3<sup>rd</sup>, he messaged Shivers on Facebook, asking “Hey bud you there[?]” However, Shivers did not reply to the message. Nor did Shivers ever return to work. *Tr. 459-65.*

Steve Smith was Camping World of Columbia’s general manager in September of 2019. Shivers had worked there for roughly six to eight months as the finance manager. In that

capacity, he signed contracts with all of the company's buyers and submitted financial matters to banks for the company. Weekday business hours were 9:00 am. to 7:00 pm. Shivers worked on Sunday September 1<sup>st</sup>, and he was scheduled to work on the 2<sup>nd</sup>, but did not come into work that morning. *Tr. 522-26; 550;554.*

If an employee wanted to take a day off or to go on vacation, he or she had to request Mr. Smith's approval of it either through the office payroll or an email. A vacation request required thirty days notice, and Shivers had not made either request. *Tr. 524-25.* Because Shivers did not show up, Mr. Smith made "[m]ultiple phone calls and text messages" to Shivers cell phone.<sup>4</sup> While Shivers had previously answered a call or replied to the text messages, all of the calls on the 2<sup>nd</sup> went straight to voicemail, and he did not respond to two texts. *Tr. 526-28; 536-37; 563.*

Nor did Shivers report to work on September 3<sup>rd</sup>. Since he had not come to work on Monday, Mr. Smith called him at 7:09 am. on the 3<sup>rd</sup>. Again, he made several more calls and sent texts to Shivers, but he never received any response. He also tried calling Roselynn at 10:21 am. and at 11:16 am. because Shivers had listed her name and number as an emergency contact and Mr. Smith knew that she lived with Shivers. He even left a voicemail on one call. At 10:23 am., he sent her a text in which he identified himself and said he was "trying to check on Vincent to make sure that he is okay." The text also asked for either her or Shivers to text or call Mr. Smith if Shivers was okay. However, Roselynn did not respond to either the calls or the text. *Tr. 528-29; 535-46.*

In addition to the unsuccessful calls and texts, Mr. Smith sent Eric Weir by Shivers' residence. That effort at making contact also failed. After all of these unsuccessful efforts to locate Shivers and concerned for Shivers' safety, Mr. Smith called the Lexington County

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<sup>4</sup> The first call was at 8:47 am. and the last call was at 7:52 pm. *Tr. 533-34.* The first text was sent at 8:47 am. and asked, "You okay buddy"? *Tr. 536.*

Sheriff's department and requested a welfare check. Mr. Smith went by Shivers' residence later that afternoon and informed officers that Shivers drove a blue or black F-150. *Tr. 548-49.*

Joshua Hale testified that he was a Lexington County Deputy Sheriff in September of 2019. In that capacity, he received a call for a welfare check at Shivers residence on Tuesday morning, September 3<sup>rd</sup>, because Shivers had not reported to work on the 1<sup>st</sup> or 2<sup>nd</sup>. Also, no one had been able to contact him or his girlfriend despite numerous calls. On his way to the residence, he telephoned the complainant, Steve Smith, to obtain more information. In this call, Mr. Smith "sounded very concerned." *Tr. 568-72; 176. See also Argument, infra.*

Deputy Hale arrived at Shivers' residence at 11:31 am. He went to the front door, and he both knocked and rang the doorbell several times, while announcing Lexington County Sheriff's Department each time. This went on for approximately ten minutes. Yet, there was no response "The only thing that I could hear was a dog barking and the sounds of it being loose inside the house near to that front door. Shivers' F-150 truck was not present. On his way to the front door, he saw the blue Honda Accord (*see State's Ex. 164*) parked in the driveway. Therefore, he went back to that car and requested a "records check" on the car's license plate. Dispatch advised that it belonged to Roselynn, who lived at that address. *Tr. 572-75.*

Next, he returned to the front door, where he knocked and rang the doorbell, to no avail. He then returned to his car and unsuccessfully tried to find Shivers on social media. He also checked and saw that a package in the mail had not been retrieved. The package was addressed to Roselynn and had a telephone number listed on it. Deputy Hale called that number four times but never got a response. *Tr. 575-78.*

So, he went back to the front door and tried to make contact but did not receive any response. He likewise looked into and knocked on the garage door and announced his presence.

Still, he did not get any response. Next, he went into the backyard and looked around. Not seeing anyone, he walked under the deck and saw a room with a light on and dogs running loose.<sup>5</sup> Also, a cell phone was on a vanity. Although he knocked on the door and announced his presence, no one responded. *Tr. 578-84*; State's Ex. 29.

At that point, Deputy Hale called his supervisor, Master Deputy Dustin Pollard, and told him of what had occurred thus far: including the conversations with Mr. Smith, his unsuccessful efforts to reach Shivers or Roselynn by phone, and that the dogs were loose in the house. As he continued to alert Master Deputy Pollard of his actions, he walked up onto the deck. The first thing he saw when he looked through a window was "what appeared to be a body" covered by bedding. While he was unsure if the person was alive or dead, he "determined that immediate aid needed to be rendered" to this person. Therefore, he knocked on the window and announced his presence but, again, there was no response. *Tr. 584-88*; State's Ex. 29.

The door leading into this room, which was determined to be the master bedroom, was unlocked. So, he entered it. While being careful not to provoke a large white dog that was loose in the room, he checked for any signs of life by tapping the body and repeatedly directing the person to "Get up!" He lifted the sheet covering the body and discovered that it was a woman, whose legs and feet were "extremely pale." He also saw dried blood. On the floor to his right, he saw six brass shell casings. *Tr. 588-92*; State's Ex. 29.

Even though he had found Roselynn, Deputy Hale was still concerned that Shivers may have been abducted or injured. And, he was concerned that a suspect may still be in the house. So, he did a protective sweep and found that no one else was in it. He then went back into the

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<sup>5</sup> By that point, he had activated his body camera, State's Ex. 29. See *Tr. 579-880*; *582*. It appeared that the dogs had urinated on the carpet. *Tr. 583*. Also, the dogs' food and water bowls were nearly empty. *Tr. 587*.

master bedroom before EMS and other officers arrived and saw firearms in the closet. In a second bedroom, the only thing disturbed was a mattress foam topper that had been shredded. Finally, he unlocked the deadbolt on the front door, so that EMS and other officers could enter the house. *Tr. 592- 600; 604; 623*; State’s Ex. 29.

Throughout Deputy Hale’s time at the house, he never saw any evidence of a forced entry or any other individual present. He remained on the scene and helped secure it, and he was present when a BOLO was issued for Shivers and his truck. *Tr. 604-05; 607*.

Capt. Jesse Lantz supervises the special operations unit of the Lexington County Sheriff Department's investigations division. By the time he arrived at Shivers’ residence on September 3<sup>rd</sup>, the CSI officers had begun searching the house pursuant to a search warrant.<sup>6</sup> Officers were able to identify Roselynn Cedeno as the victim, but they did not know where Shivers was. They were concerned for his safety because they were aware that he had not showed up at work for two days and thought he might also be a victim. *Tr. 625-28; 662; 661*.

As a result, they entered him as a missing person and included both a photograph of him and information about his F-150. They likewise issued a “press release” BOLO for local agencies on September 4<sup>th</sup>, and they did an “exigent circumstances” request through Verizon for his cell phone records that was followed up with a search warrant. “[T]owards the evening of the September 5<sup>th</sup>, we were ... notified that the Defendant [had earlier] crossed into Canada ... [at] what we were told was the Rainbow Bridge.” A task force officer, working with the assistance of the United States Marshalls Service, was able to get a video of Shivers crossing into Canada from Canadian authorities. *Tr. 628-35. See also Tr. 1087* (testimony of Sgt. Nicholas Burt).

After watching this video, the case changed from a missing person search to a homicide

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<sup>6</sup> The home remained secured from the time the warrant was obtained on the 3<sup>rd</sup> until officers had finished searching it on September 8<sup>th</sup>. *Tr. 660-62; 729*.

investigation with Shivers as a suspect because the video (State's Ex. 52) reflected that he was alone in his vehicle, there no signs of duress or threats to him, and he was smiling. A "traveler history" provided by the Canada Border Services Agency reflected that he had entered into Canada at 1:00 pm. on September 3<sup>rd</sup>. At that point, the Lexington Sheriff's Department began working with Canadian authorities to alert them that Shivers was in Canada. Lexington County was notified after 5:00 pm on September 5<sup>th</sup> that Shivers had been arrested at a Toronto airport, where he had a ticket to fly to London, England on Air Canada. *Tr. 635-43*. His American Express records that were obtained by a search warrant reflected that he had purchased the ticket at 3:34 pm. on September 4<sup>th</sup>. *Tr. 632, lines 14-16; 642*.

An arrest warrant charging Shivers with murder was obtained on the 5<sup>th</sup>. Shivers' American Express records also revealed that he had made a purchase at the Circle K/Shell gas station located at the corner of Lake Murray Bld. and St. Andrews Rd. in Irmo, South Carolina, at 8:04 am. on September 2<sup>nd</sup>. The store's surveillance video depicted him filling up his F-150 and then leaving. When he left, he was headed in the opposite direction from his home and in the direction of I-26 on St. Andrews Rd. *Tr. 643-53; 667*.

The Sheriff's Department obtained search warrant for the cell phone records of both Roselynn and Shivers. These records reflect that the last known communications between their phones was a text message Shivers sent to her at 5:22 pm. on September 1<sup>st</sup>, in which he said, "on my way." *Tr. 653-56; 668*. See also *Tr. 1104-05* (testimony of Sgt. Nicholas Burt). Capt. Lantz personally traced each unknown phone number on Roselynn's phone that did not have a name listed for it. He was able to identify both family members and Camping World employees and a call from animal control. This accounted for all of the calls on her phone not associated with a contact. *Tr. 657-59*.

On September 3<sup>rd</sup>, members of the Lexington County Sheriff's Department began searching Shivers' residence pursuant to a warrant. They were able to determine that there were no signs of forced entry. They watched Deputy Hale's body camera video and were aware of everything he touched in the house. Also, based on the presence of unpacked boxes, it appeared that Roselynn and Shivers had recently moved into the house. *Tr. 686-91; 696-700.*

Officers knew from watching Deputy Hale's body camera video that there were two dogs in the house and a parakeet or cockatiel. These animals were removed by animal control. Of greater significance, they found and seized seven fired brass cartridges with "HPR .45 auto" on the headstamp of each cartridge on the 3<sup>rd</sup>. *Tr. 700-06; State's Ex. 1.* They found one "projectile," or bullet, in a dresser. When they removed the bedding from Roselynn's body, they found two more bullets between her back and her camisole, and they found two more lying on the carpet under her body.<sup>7</sup> Officers then processed the rest of the house. *Tr. 707-14; 739; 759.*

In the other bedroom, officers found the torn-up mattress, but nothing else was out of place. All of the clothing in the second bedroom was for a woman. (The large white dog Deputy Hale encountered had access to this bedroom). On the other hand, all of the clothing and toiletries in the master bedroom were for a man, and the medication in the master bedroom had Shivers' name on it. Although there was "a litany of firearms and ammo," as well as large screen TVs, a laptop, checkbooks, and jewelry in the house, nothing was moved or rummaged. *Tr. 720-29; 781-82.*

Officers continued their search on the 4<sup>th</sup>. Officers found two empty suitcases and a suitcase with a partial box of HPR .45 ACP inside of it in the master bedroom. This ammunition was consistent with the shell casings that had been recovered. On one of the shelves in the master

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<sup>7</sup> One had to be removed from just inside a "wound canal." *Tr. 711.*

bedroom closet, they found and seized two magazines that were specific to a Springfield Armory XD .45 caliber but could be fired in any .45 caliber weapon. Each magazine had twelve HPR .45 auto cartridges in it, which was consistent with the fired cartridge cases seized the previous day. An empty box for a Springfield Armory XD .45 weapon was also found in the closet. However, they never found a Springfield Armory XD .45 pistol in the house. *Tr. 731; 740-44.*

When officers returned to the house on September 8<sup>th</sup>, they searched under the carpet where they had found Roselynn's body and found a seventh projectile underneath the carpet padding. *Tr. 745-46.* In the kitchen, they found broken glass on the floor that had been covered with a "white [tablecloth] or curtain" and a dustpan. On a counter, they found a white T-shirt with suspected blood on it. A blue "onesie" found in the master bedroom likewise had suspected blood on it. The T-shirt and the onesie were both size 3X, as was the male clothing found in the master bedroom. *Tr. 724-27; 752-54.*<sup>8</sup>

At some point, officers seized Roselynn's iPhone from the from downstairs. Her phone reflected missed calls from Roselynn's mother, her son, and from Steve Smith of Camping World. *Tr. 759-64.*<sup>9</sup> Further, officers found "multiple firearms of various calibers" in plain view in the master bedroom, and they found an empty box for a Kimber .45 caliber pistol in the study. *Tr. 777; 787; 828.*

Former SLED Agent Diego Nova was qualified, without objection, as an expert in cell phone extractions and forensic computer analysis. His final assignment at SLED was in the

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<sup>8</sup> Subsequent DNA testing revealed that the stains on these items were Shivers' blood. *Tr. 1191-94; 1204-05; 1224-38; 1244-49.* Further, Shivers' DNA was present on fingernail clippings from both of Roselyn's hands. *Tr. 1239-44.*

<sup>9</sup> Officers also found a calendar that had been in use with entries made through August but did not reflect any entries in September. *Tr. 1169-71.*

computer crimes unit, where he primarily did extractions on digital devices, such as cell phones and computers. He has been doing cell phone extractions and analysis using the Cellebrite UFED, which he testified is the “gold standard” for forensic extraction of digital information from cell phones, for over ten years. *Tr. 857-63; 870*. While working at SLED his forensic extraction reports were peer reviewed by another agent and then his lieutenant would review them before signing them. *Tr. 863-64*.

Using Cellebrite, Agent Nova was able to extract all of the call logs, which included SMS (text messages) and MMS (pictures), from Roselynn’s iPhone. He also had the call detail records for her phone that he obtained from Verizon.<sup>10</sup> These records reflected that Shivers sent her a text at 5:22 pm. on September 1<sup>st</sup> saying, “on my way.” These records also corroborated Tommy Cedeno’s testimony about his communications with Roselynn on September 1<sup>st</sup>, as well as his and other family members’ unsuccessful efforts to contact her beginning at 10:20:21 am. on the 2<sup>nd</sup> that did not receive a response. Further, the last digital activity was her contacting an online game at 6:42 pm. on the 1<sup>st</sup>. *Tr. 867-96*.

Similarly, the call detail logs did not reflect that she was sending or responding to any text messages on September 2<sup>nd</sup>. Also, there was no indication that she did any web searches or used any apps on the 2<sup>nd</sup>, and this would include information that she had deleted from her phone. A health app on her phone reflected eight steps on the 1<sup>st</sup> and none on the 2<sup>nd</sup>. Finally, there was no communication to or from Shivers on either September 2<sup>nd</sup> or 3<sup>rd</sup>. *Tr. 899-906*.

Officer Jesse Dean is from Toronto Ontario, Canada. He works in the fugitive squad of

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<sup>10</sup> An extraction report is “what’s in the phone, such as incoming and outgoing texts and calls. “[A] call detail record [or CDR] is what we get from ... [the service provider].” While someone is able to delete information from his or her phone, he or she cannot delete information in the service provider’s records. *Tr. 869-70*.

the Toronto Police Service, which is a task force comprised of Toronto police officers and two immigration officers. The fugitive squad investigates persons who are wanted in their home jurisdiction and have fled to the greater Toronto area, and Canadians who committed an offense abroad and are in the Toronto area. Officer Dean's involvement in this case began at 4:08 pm. on September 5<sup>th</sup>, 2019, when the United States Marshal Service requested his assistance in apprehending Shivers for the murder of his wife. He was informed that Shivers might be staying at the airport Marriott hotel.<sup>11</sup> *Tr. 985-88; 1001-02.*

Officer Dean and his team went to the Marriott, but they were told that Shivers had already checked out of the hotel and his black F-150 was not in the parking lot. They subsequently received information that "Shivers had purchased a \$1400 airline ticket [for a] flight on an Air Canada plane." Officer Dean and his team immediately went to the Pearson International Airport. They apparently learned along the way there that Shivers' flight was to London, England. So, they went to the gate for that flight and arrived there at 6:09 pm. Although there was a large crowd at the gate waiting to board the plane, one officer spotted Shivers and, after Officer Dean confirmed his identity, he was arrested without incident on the basis of a Canadian immigration warrant at 6:09 pm.<sup>12</sup> *Tr. 988-91; 1033. See State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (2003) (evidence of flight constitutes evidence of defendant's guilty knowledge and intent); *See also United States v. Kennard*, 472 F.3d 851, 855 (11<sup>th</sup> Cir. 2006) ("People, including jurors, realize that while '[t]he wicked flee when no man pursueth,' Proverbs 28:1(KJV), they really flee when law enforcement is looking for them. That is why evidence of

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<sup>11</sup> The information Officer Dean received also included Shivers' race, his name, his date of birth, a description of his height and weight, and a photograph of him. *Tr. 987.*

<sup>12</sup> The warrant was issued based on Shivers "being a danger to the public and ... being unlikely to appear for [an] administer's hearing." *Tr. 990.*

flight is admissible and probative”).

Officers advised him that he was being arrested under the Canadian warrant, and he was handcuffed and searched. Shivers did not say anything at that time. Officer Dean seized a cell phone and a set of keys from his person and his one piece of carry-on luggage. He was advised of his Canadian rights, which included being informed of the reason for the arrest, his right to speak to an attorney, and that his consulate would be notified if he wished. Four officers then took him to a transport van in the garage, so that he could be taken to a Canada Border Services Agency and processed on the arrest warrant. While the officers spoke to each other, no one spoke to Shivers. *Tr. 991-95; 1006-07.*

When the officers began talking about locating Shivers’ black F-150, he spontaneously volunteered its location in the garage. The officers then reached the transport van and Shivers was placed in the rear seat of it. *Tr. 995-97; 1046.* As Officer Dean was securing Shivers’ seatbelt, Shivers voluntarily told Officer Dean:

“[L]isten, be careful, there's two guns in the truck. One in the middle console, it's loaded and another in an old briefcase in the backseat also loaded. One's a Kimber .45 and one's an XT9. I was going to eat one in Niagara falls for what I'd done.”

*Tr. 997, lines 15-20.*<sup>13</sup>*See also Tr. 1013.*

Detective Constable Robert Frigon was another member of the Toronto Police Service’s fugitive squad involved in Shivers’ arrest. He testified that Toronto has a population of 4,000,000 or 5,000,000 people and that individuals can acquire flights to international destinations at Pearson International Airport. He corroborated Officer Dean’s testimony about Shivers’ arrest in virtually every detail, except that he did not hear the statement Shivers made after being placed

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<sup>13</sup> Officer Dean had not said anything to Shivers and the officers were not speaking to each other at the time. Also, Officer Dean did not threaten Shivers, promise him anything, or doing anything to try and elicit information from him. *Tr. 997-98.*

in the transport van. Once Detective Constable Frigon heard Shivers tell Officer Dean where the black F-150 was located, he and Officer Dean located the truck in the precise parking spot that Shivers had stated. *Tr. 1048-58; 1069-70.*

Detective Constable Frigon was also involved in the seizure of the F-150 and making sure that it was secure in the two different locations to which it was transported, until members of the Lexington County Sheriff's Department came and returned it to South Carolina. *Tr. 1059-64.*<sup>14</sup>

Sgt. Nicholas Burt was working in the Lexington County Sheriff Department's major crimes unit when the murder occurred. He had gone to Shivers' residence on September 3<sup>rd</sup>, 2019, and he corroborated that there was no sign of forced entry into the house. *Tr. 1082-87.* Sgt. Burt also obtained a phone number for Shivers and tried to call him at 4:47 pm. on the 3<sup>rd</sup>, but the call "went straight to voicemail." The Verizon records for Shivers' phone reflect this call. Both Shivers and his truck were entered into NCIC as missing. *Tr. 1087-89; 1096-98.*

In Sgt. Burt's review of the records obtained for Roselynn's phone, he did not see that she had any active Facebook, Instagram, Snapchat, or WhatsApp accounts. In his review of the records for Shivers' phone, the only active social media account was a Facebook account. The only information relevant to this case on his Facebook page was the message from Eric Wier trying to locate him on September 3<sup>rd</sup>. *Tr. 1106-07.*

Sgt. Burt and a deputy went to Toronto and brought Shivers' truck back to Lexington, where it was searched pursuant to a warrant by Burt and Inv. Cody Bryant. A Kimber .45 caliber pistol was recovered from a briefcase and a Springfield 9 mm pistol was recovered from the console. Neither of these was the murder weapon. Police never recovered the Springfield .45

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<sup>14</sup> He placed six seals on the vehicle. The seal for the truck's tailgate was later broken, but the seals securing the truck's cabin were undisturbed. *Tr. 1062-64.*

caliber pistol associated with the box seized from the master bedroom, even though that weapon was entered into NCIC. *Tr. 1107-15*. Nor did they find any clothing in the truck. *Tr. 1138; 1175-77; 1181; 1184*.

Sgt. Burt personally retrieved the video from the Circle K showing Shivers' purchase of gas there at 8:04 am. on the 2<sup>nd</sup>. Also, he was unable to find evidence of any other purchases in South Carolina after that one. *Tr. 1115-16*. However, Sgt. Burt was able to construct "a pretty good timeline" of Shivers' activities once he left the state, by using the records of his American Express account and evidence recovered from the truck. Those records showed that at 7:15 am. on September 3<sup>rd</sup>, he made an ATM withdrawal and a purchase in the store at a Circle K in Tully, New York. *Tr. 1117-19; State's Exs. 144-46* (video and records from Circle K).

At 11:02 am. on the 3<sup>rd</sup>, he also went to a Walmart in Williamsville, New York, and bought "a four pack of shirts; Pantene; men's socks; 300 count swabs[:] [a f]our [p]ack of boxers; a bath sheet... ; another four pack of shirts." and other items. The total for this cash purchase was \$ 97. 85. *Tr. 1120-21*. A receipt for this purchase (State's Ex. 189) was found in the F-150. *Tr. 1120-21*.

Less than an hour later, at 11:49 am., he withdrew \$ 3,500.00 in cash at a Bank of America in Williamsville. In addition to the receipt for the withdrawal (State's E. 181), Sgt. Burt observed the video for this transaction as well. Shivers crossed the border into Canada at 1:14 pm. on the 3<sup>rd</sup>.<sup>15</sup> *Tr. 1122-25*. Through the United States Marshalls Service, the Sheriff's Department also received several documents showing transactions that Shivers made in Canada. At 2:51 pm. on the 3<sup>rd</sup>, he checked into a Sheraton in Niagara Falls, Ontario, for two nights and paid for both nights. *Tr. 1126-29*.

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<sup>15</sup> Again, when officers saw the video of him crossing the border alone, the case shifted from a missing person investigation to a homicide investigation. *Tr. 1124-25*.

On the afternoon of the 4<sup>th</sup>, he bought a rolling piece of luggage, a tote, and two ID tags at a Samsonite store, even though he already had luggage at home. This was a cash transaction. That afternoon, he used his credit card to purchase fuel. At 3:34 pm., he booked a flight to London and a room at the airport Marriott Toronto through Expedia. He checked into the hotel at 6:36 pm. on the 4<sup>th</sup> and he ate both dinner there that night and lunch on the 5<sup>th</sup> at the hotel restaurant. He made a purchase totaling \$ 89.00 at a Toronto Walmart at 1:05 pm on the 5<sup>th</sup> and he purchased a meal at the Toronto Pearson International airport roughly an hour before his arrest there, while waiting to board a flight to London, England. *Tr. 1129-38.*

Sgt. Burt reviewed all surveillance videos for Shivers' various transactions if it was available, and he was alone in each video. *Tr. 1146.* Finally, Sgt. Burt reviewed Shivers' telephone records from Verizon covering late August up to September 5, 2019, including the content of any incoming and outgoing text messages. These records did not reflect any prior planning of a trip to London. *Tr. 1138-39.*

Dr. Thomas Beaver is the forensic pathologist who performed the autopsy on Roselynn's body. He determined that the cause of death was "multiple gunshot wounds" and that "the manner of death [was] homicide."*03/28 Tr. 6; 8-9.* He found that Roselynn had been shot seven times, there was a "graze wound" to her, and that there was evidence of a re-entry wound. At least three of the shots were fired by the shooter standing over her and shooting her in the back, while she lay face down and helpless on the floor. Three of the shots – including one going through the right lung, and two striking her heart - were fatal. *03/28 Tr. 25-39; 41.*

Dr. Beavers did not find evidence of any wounds to her hands, any defensive wounds, or anything suggesting that Roselynn had been in an altercation. Also, no stippling was present on her body. *03/28 Tr. 36-37; 40.* Further, in light of the presence of rigor mortis, liver mortis and

skin slippage (that occurs two or three days after death), as well as receiving information that she was alive on September 1<sup>st</sup>, Dr. Beavers opined that Roselynn had been dead between twelve and seventy-two hours when her body was found on September 3<sup>rd</sup>. This was consistent with the murder occurring in the evening or night of the 1<sup>st</sup>.<sup>16</sup> *03/28 Tr. 15-21;54-57.*

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<sup>16</sup> On cross-examination, Shivers sought to impeach Dr. Beavers' opinion as to the time of death by pointing out that the report he issued states that the time of death was 10:00 am. on September 2<sup>nd</sup>. Yet, Dr. Beavers adhered to his opinion as to the approximate time of death. He explained that the report was an electronic document and that he never saw that portion of the report, which was prepared by the Coroner Office, because it was not on the screen for his signature. *03/28 Tr. 47-53.*

Further, Lexington County Deputy Coroner Gray Gain testified that she responded to the crime scene on September 3<sup>rd</sup> and that she listed "presumed date and time of death ... based on my assessment of the scene and the individual." There was no scientific basis to the date and time that she listed. Rather, the date and time listed was based on the evidence that the first time the victim did not respond to an incoming call was at 10:15 am. on the 2<sup>nd</sup>. *03/28 Tr. 64-66.*

## 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 [the appellate court] review[s] 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, 633-34, 879 S.E.2d 762, 766 (2022).

## ARGUMENT

**The trial judge properly denied Shivers' motion to suppress evidence obtained as a result of the warrantless entry into his residence by Deputy Hale because Deputy Hale's actions, including the warrantless entry into Shivers' residence, were all reasonably taken as the result of exigent circumstances. Specifically, his actions were taken pursuant to the emergency aid doctrine, which was initiated by the request for a welfare check on Shivers at his residence.**

Notwithstanding Shivers' argument to the contrary, Respondent submits that the trial judge did not abuse her discretion in denying Shivers' motion to suppress because the record supports her finding that Deputy Hale's actions, including the warrantless entry into Shivers' residence, were all reasonably taken as the result of exigent circumstances. Specifically, his actions were taken pursuant to the emergency aid doctrine, which was initiated by the request for a welfare check on Shivers at his Lexington County residence.

### **A. The suppression hearing and the trial judge's ruling.**

Following jury selection, the trial judge heard Shivers' pretrial motion to suppress all evidence seized from his residence based on his claim that Deputy Joshua Hale exceeded the scope of his implied license to perform a welfare check at Shivers' residence by entering the backyard through a closed privacy fence without a warrant or an objectively reasonable basis for believing someone inside the home required emergency assistance. *See Tr. 68-157. See also R. \_\_\_-\_\_* (March 28, 2022 Motion to Suppress Search Of Home and Vehicle); *\_\_\_-\_\_* (State's Memorandum in Support of Exigent Entry and Subsequent Search Warrant).

The first witness, Steve Smith, testified that he was Camping World of Columbia's general manager in September of 2019. Shivers had worked there for roughly six or seven months as the finance manager, which was a position important to the company's day-to-day operation. Weekday business hours were 9:00 am. to 7:00 pm., and weekend hours were 12:00 p.m. to 5:00 pm. Shivers worked on Sunday September 1<sup>st</sup>, and he was scheduled to work on

Monday, the 2<sup>nd</sup>, but did not come into work that morning. He had not called in or asked for any time off, and he had not asked for vacation time. *Tr. 70-73; 87.*<sup>17</sup>

It was “very out of [Shivers’] character not to” come to work. *Tr. 79.* Because Shivers did not show up, Mr. Smith made “[m]ultiple” phone calls and text messages to Shivers cell phone,<sup>18</sup> but Shivers did not respond to any of his efforts to make contact and all calls went straight to voicemail. *Tr. 73-76.*

Shivers also did not report to work on September 3<sup>rd</sup>. Again, Mr. Smith made several calls and sent texts to Shivers, but Shivers never responded. Shivers had listed Roselyn’s name as an emergency contact, and she was his girlfriend. So, Mr. Smith called her twice on the 3<sup>rd</sup>. He left a voicemail on one call. He also sent her a text message in which he identified himself and said he was “trying to check on Vincent to make sure that he is okay.” The text also asked for either her or Shivers to text or call Mr. Smith if Shivers was okay. However, Roselynn did not respond to either the calls or the text. *Tr. 76-78; 85-87.*

In addition to the unsuccessful calls and texts, Mr. Smith sent co-worker Eric Weir by Shivers’ residence. That effort at making contact also failed. After all of these unsuccessful efforts to contact either Shivers or Roselynn, the emergency contact, Mr. Smith met with his management team. After that meeting, Mr. Smith called the Lexington County Sheriff’s Department and requested a welfare check around 11:00 am. Aside from the fact it was out of Shivers’ character to miss work, Mr. Smith was concerned for Shivers physical well-being

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<sup>17</sup> If an employee wanted to take a day off or to go on vacation, he or she had to request it either through the office payroll or an email. A vacation request required thirty days notice. *Tr. 73.* On cross-examination, Shivers established that he had a conversation with Mr. Smith about taking off work on Monday because he had on Sunday. However, he was told – consistent with office policy - that he had to work a half day beginning Monday morning. *Tr. 90.*

<sup>18</sup> The first call was at 9:47 am. *Tr. 92.* The first text asked, “You okay buddy”? Mr. Smith’s second text said, “Let me know something. Unlike your phone to be off.” *Tr. 83; State’s Ex. 13.*

because he was aware that Shivers previously had a heart attack. Later that afternoon, Mr. Smith went by Shivers' residence and informed officers that Shivers drove a blue or black F-150. *Tr. 78-81; 93.*

Eric Weir testified that he is the business development manager at the Columbia Camping World and that he was employed there in September of 2019. He confirmed that Shivers was the finance manager at that time. Mr. Weir explained that "we have to have a finance manager [to] run the dealership ... in order to finish a deal or get customers brought ...." (Sic). Although Shivers was scheduled to work on September 2<sup>nd</sup>, he did not show up that morning. He had not mentioned taking a holiday or going on planned vacation. Mr. Weir testified that "after a while we did get concerned. We had heard ... that he had a previous heart attack. As the day went on, it was very out of character for someone not show up especially in finance, so, yeah, we got concerned." *Tr. 97-99.*

Mr. Weir saw Mr. Smith unsuccessfully try to contact Shivers by phone several times. "At the end of the day," Shivers' co-workers were "very concerned" about where Shivers might be. So, Mr. Weir's sales manager asked him to drive by Shivers' residence because Mr. Weir was familiar with the area and Shivers had showed him on Zillow where Shivers lived. When Mr. Weir drove by the residence that evening, he did not "notice any lights on," it did not appear that there was any activity in the house, and he did not see Shivers' F-150. So, he kept driving. *99-102; 109.*

Shivers was likewise scheduled to work on September 3<sup>rd</sup> but, once again, he did not come in that morning. Mr. Weir and Shivers were "friends" on Facebook, and he sent Shivers a message in which he asked, "Hey bud you there?" *Tr. 102; 104-05.* Further, Mr. Weir testified that:

I drove over there a second time that day. Sales manager suggested that I just knock on the door to see if anybody would answer. I went and did so and nobody answered. .... When I walked up to the door, I noticed there was a [blue] sedan [State's Ex. 19] that was in the driveway[.]

*Tr. 103. See also Tr. 105-06.*<sup>19</sup> He did not see Shivers' truck. So, he returned to work. *Tr. 103; 111-12.*

Joshua Hale testified that he was a Lexington County Deputy Sheriff in September 2019. In that capacity, he received a call for a welfare check on Shivers at Shivers' residence, around 11:07 am. on Tuesday, September 3<sup>rd</sup>, because Shivers had not reported to work on the 1<sup>st</sup> or 2<sup>nd</sup>. Also, no one had been able to contact him or his girlfriend despite numerous calls. This was not a criminal investigation. Rather, the purpose is "[t]o check for the safety and wellbeing of the person ... who lives there." Welfare checks include "a wide range [of situations]. So anything from ... juveniles that have been missing or elderly people with any type of condition." On his way to the residence, he telephoned the complainant, Mr. Smith, to obtain more information. *Tr. 113-15.*

Deputy Hale also had information that Roselynn was Shivers' girlfriend and lived in the same residence. Deputy Hale learned that "Shivers had missed two days of work, and that was very unusual given the amount of time that he's been at work and he's never had an issue of being late or missing work. .... He had an important role as a finance manager, so the business was very important to what he did for that company." Deputy Hale was also informed that Roselynn did not have a job and should be at home, that Mr. Smith had been unable to contact Shivers either through phone calls or text messages, and that Mr. Mr. Smith had been unable to contact Roselynn. Deputy Hale testified that Mr. Smith "sounded very concerned," and had "requested a

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<sup>19</sup> The blue sedan could not be seen from the street because of the retaining wall. *Tr. 106.*

call back with the findings and the nature of the call as well.” Based on the information Deputy Hale had received, he felt that a welfare check was needed at Shivers’ residence. *Tr. 116-18; 143-44; 152.*

Deputy Hale arrived at Shivers’ residence at 11:31 am. He first called Mr. Smith, who confirmed that Shivers drove an F-150. Then, he went to the front door. On his way to the front door, he saw the blue Honda Accord (*see* State’s Ex. 164) parked in the driveway, which could not be seen from the road because of a retaining wall. He both knocked on the door and rang the doorbell several times, while announcing “Lexington County Sheriff’s Department” each time. He then waited in order to give anyone inside the residence an opportunity to respond. The only thing that he heard was a dog barking that was loose inside the house near the front door. The loose dog and the fact no one responded, despite the car in the driveway, struck him as unusual. He also saw either a FedEx or UPS package addressed to Roselynn Cedenó, with her telephone number on it. He called that telephone number several times, but she did not answer. He then checked the mailbox and saw mail in it. *Tr. 117-21; 140-42; 153.*

Next, he returned to the front door, where he knocked and rang the doorbell, to no avail. He likewise looked into and knocked on the garage door and announced his presence. He still did not get any response. He then returned to his car and tried to find Shivers and Roselynn on social media, but his attempt was unsuccessful. Further, he touched the hood of the Accord, and it did not appear that it had been driven recently. When he “ran the license plate” on the blue Accord, it “came back to Ms. Roselynn Cedenó.” *Tr. 121-23.*

He did not see Shivers’ F-150 in the driveway. However, this, alone did not dissuade him from pursuing the welfare check. *Tr. 123.* He explained that:

I knew that there could have been other circumstances, maybe a friend borrowed the truck, maybe a family member. It could have been parked in the back of the

residence. Just because it wasn't in the driveway it didn't mean that it wasn't at the residence or that Mr. Shivers was not at the residence as well.

*Tr. 123, lines 12-18.*

In all this took roughly twenty-five minutes. Because he felt that he had exhausted all efforts to contact any occupant at the front of the home, he went into the backyard to try and locate Shivers. He thought that this was “the next logical application” for the welfare check. Yet, he did not see anyone. Nor did he see Shivers’ truck. He then walked “to the bottom floor of the patio” and saw a room with a light on and a dog “running loose.” Also, a cell phone was on a vanity. He knocked on the door and announced his presence. However, no one responded. What he had seen to that point led him to believe that someone was at the residence and needed “serious help” but “couldn’t get to it.” *Tr. 123-25; 138-40.*

So, Deputy Hale called his supervisor, Master Deputy Dustin Pollard, and they remained in contact. He had activated his body camera, Court’s Ex. 15, when he went into the backyard, “to document my due diligence of being on the property and showing that I actively tried to protect that property and make contact with the owner in the case something was missed or not found and it didn’t come back on myself where they can see. [(Sic)] And more importantly that nobody was left without some kind of medical attention just from me not checking.” As he continued to alert Master Deputy Pollard of his actions, he walked up onto the deck, which led to a bedroom.<sup>20</sup> The first thing he saw when he looked through a window was “what appeared to a deceased person” covered by bedding. Although he unsure if the person was alive or dead, the person did not appear to be breathing. There was also a “fairly large dog” in the room. He knocked on the window, shined his flashlight into the room, and announced his presence, but

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<sup>20</sup> Master Deputy Dustin Pollard said that he was en route to the scene and that EMS was also coming, both for the person whom Deputy Hale had found and for anyone else who might need assistance. *Tr. 130.*

there was no response. *Tr. 126-27; 133-34; 149-50*; Court's Ex. 15.

The door leading into this room, later determined to be the master bedroom, was unlocked. So, he announced himself as a Lexington County Deputy and entered the room to determine whether the person was alive. While being careful not to provoke the dog that was loose in the room, he checked for any signs of life by tapping the body and repeatedly directing the person to "Get up!" He lifted the sheet covering the body and discovered that it was a woman. On the floor to his right, he saw several shell casings. *Tr. 127-28; 134-35*; Court's Ex. 15.

He then testified that:

I was very concerned that the subject of this welfare check was a male and he was still ... missing. And now that I have what appeared to be a female in the house, he could have been located anywhere in the house as well in a similar condition or maybe needed medical aid as well, so I needed to protect ... that scene as well as prevent any destruction of evidence because now it's a crime scene and as well as safeguard any suspects that may have remained in the house that may have tried to do harm to myself or if Mr. Shivers was still in the residence, they were actively trying to harm him, anybody else. And then my fellow deputies and EMS workers that were en route to the scene had to be protected for them to come in the house as well.

*Tr. 129, lines 1-16*; Court's Ex. 15. Finally, he unlocked the deadbolt on the front door, so that EMS and other officers could enter the house. *Tr. 131-33; 136-37*; Court's Ex. 15.

The State argued that Deputy Hale was operating under the community caretaking doctrine when he initially made the welfare check and that he only entered Shivers' residence after an exigent circumstance was presented, specifically, when he looked through the window and saw the body. *Tr. 154-55*. The State argued that:

This is exigent circumstances and a clear manifestation of exigent circumstances because he knows that there are two individuals who reside there or who are believed to reside there. He sees one person in immediate need of assistance and believes there may be a second person inside the residence as well as a potentially

a suspect once he's inside. He sees shell casings. He briefly exits. He calls for backup. He's aware EMS is also on the way and it is very, very brief and he then reenters with gun drawn.

**Tr. 155, line15 – 156, line 1.**

Shivers' counsel argued that Deputy Hale "went outside the scope of a welfare check by entering the backyard and going into that area of the curtilage of the house." **Tr. 157, lines 16-20.** Counsel observed that the United States Supreme Court had made clear in *Caniglia v. Strom*, 141 S.Ct. 1596 (2021), that it had never applied the community caretaking doctrine to justify warrantless entries into a person's residence, it had stressed the difference between vehicles and homes, and it "specifically declined to expand it to permit [warrantless] entry into homes." Here, Deputy Hale "entered the curtilage" that was "barriered off" and a "a private area." Counsel claimed that it was "legally the same as entering the home itself." **Tr. 167, line 1 -25.**

Counsel further argued that the emergency aid doctrine did not apply. While Shiver's "boss was concerned about him," Shivers was "a 50-year old man who didn't show up to work for approximately 26 hours" and did not answer his phone. Also, there had been a discussion about him taking off work on Monday because he had worked on Sunday. Although no one answered the door, his F-150 was not in the driveway. "... [I]n this day [and] age, people are pretty much tied to their cars. ...[H]is truck wasn't home. It was unlikely that he was home without his truck being there." So, Deputy Hale "went outside the scope of the welfare check." **Tr. 168, lines 1-16.**<sup>21</sup>

In reply, the State noted that Justice Kavanaugh's concurring opinion in *Caniglia* posited a hypothetical that supported Deputy Hale's actions in this case. Also, the State was not relying

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<sup>21</sup> Shivers also argued a motion to suppress evidence seized pursuant to the search warrant because of the length of the search (*see, e.g., Tr. 157-66; 171-72*), but he has not argued that issue as a basis for relief on appeal.

on the community caretaking doctrine to justify entry into Shivers' home. Rather, he was the front of the house for roughly twenty-five minutes and did not receive any response despite knocking on the door and ringing the doorbell, or to his phone calls. Deputy Hale was likewise aware that Shivers had not been to work for two days, which was very unusual, and that Mr. Smith had not been able to contact either Shivers or Roselynn. *Tr. 168, line 20 – 169, line 24.*

So, Deputy Hale went into the backyard “just to see if there’s anything back there that would shed more light on the wellness of Mr. Shivers.” Then, when he saw what appeared to be a body, he finally entered the residence. So, entry into the residence was justified under the exigent circumstances exception to the Fourth Amendment. Moreover, there was no search without a warrant. Instead, he only checked on the status of the person whom he saw and made sure that there was neither another person who needed aid nor a suspect in the residence. *Tr. 169, line 25 – 170, line 14.*

Counsel responded by arguing that Deputy Hale would not have seen the exigent circumstance if he had not exceeded the scope of the welfare check by going into the backyard. *Tr. 171, lines 7-16.*

The trial judge denied Shivers' motion to suppress before opening statements. She found that Deputy Hale “was operating under the Community Caretaking Doctrine.” She further found that:

I don't find anything about him looking into the window [was improper]. I think that's part of his normal every day when you go to go check on somebody, you're going to walk around their house. They don't report. Somebody called. I think there was testimony there was three people. I think one worker went twice, somebody else went once looking for him.

They were concerned. They called the officer. He goes. And then I think when he sees the body, he does not know whether this person is deceased, needs help or not. And on top of that, there's somebody else that lives in that house also. So he goes in. I'm going to find that entry. And it's a warrantless entry. It's under the

exigency exception allowable.

On top of that, I even watched his body cam. He goes in, he doesn't touch anything. He's not looking for anything. It's obvious that he's trying to secure the scene. And then he goes outside, calls and gets a warrant. I think I'm going to allow it.

*Tr. 411, line 23 – 412, line 21.* The trial judge later made clear that this had been a final ruling and that all evidence found in Shivers' residence was subject to the defense's objection to the search of his residence. *Tr. 1278, lines 7-17.*

## **B. Discussion.**

The Fourth Amendment provides, in part, that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. “[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant.” *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967). Yet, “because the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ the warrant requirement is subject to certain exceptions.” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). *See also State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)); *Frasier*, 437 S.C. at 638, 879 S.E.2d at 769 (“Warrantless searches are generally considered per se unreasonable unless they fall within a recognized exception under the Fourth Amendment”). “‘[T]he exigencies of the situation’ [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393-394 (1978). “Exigencies” exist when an officer would reasonably suspect that the conditions create a need to act “now or never” to protect an important public interest. *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973).

The United States Supreme Court has “generally applied the exigent-circumstances exception on a ‘case-by-case basis.’ .... The exception ‘requires a court to examine whether an emergency justified a warrantless search in each particular case. .... Or put more curtly, the exception is ‘case-specific.’ ” *Lange v. California*, 141 S.Ct. 2011, 2018 (2021) (citations omitted). Further, “whether an officer has ‘no time to secure a warrant’—depends upon facts on the ground. .... So the issue, we have thought, is most naturally considered by ‘look[ing] to the totality of circumstances’ confronting the officer as he decides to make a warrantless entry. ” *Id.* (citations omitted).

*Brigham City* identified one such exigency: “the need to assist persons who are seriously injured or threatened with such injury.” 547 U.S., at 403, 126 S.Ct. 1943. Thus, law enforcement officers “may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Ibid.* This “emergency aid exception” does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. *Id.*, at 404–405, 126 S.Ct. 1943. It requires only “an objectively reasonable basis for believing,” *id.*, at 406, 126 S.Ct. 1943, that “a person within [the house] is in need of immediate aid,” *Mincey, supra*, at 392 ....

*Brigham City* illustrates the application of this standard. There, police officers responded to a noise complaint in the early hours of the morning. “As they approached the house, they could hear from within an altercation occurring, some kind of fight.” 547 U.S., at 406, 126 S.Ct. 1943 (internal quotation marks omitted). Following the tumult to the back of the house whence it came, the officers saw juveniles drinking beer in the backyard and a fight unfolding in the kitchen. They watched through the window as a juvenile broke free from the adults restraining him and punched another adult in the face, who recoiled to the sink, spitting blood. *Ibid.* Under these circumstances, we found it “plainly reasonable” for the officers to enter the house and quell the violence, for they had “an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning.” *Ibid.*

*Michigan v. Fisher*, 558 U.S. 45, 47-8 (2009) (*per curiam*). See also *Herring*, 387 S.Ct. at 494, 692 S.E.2d at 210 (same) (citing *Brigham City*); *Mincey*, 437 U.S. at 392 (“The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent

an exigency or emergency”).<sup>22</sup>

The Court in *Fisher* reached the same result, rejecting the defendant’s claim that officers violated the Fourth Amendment by entering his residence without a warrant. The Court held that “[a] straightforward application of the emergency aid exception, as in *Brigham City*, dictate[d] that the officer's entry was reasonable.” *Id.* at 48. Like the officers in *Brigham City*, the police officers “were responding to a report of a disturbance” and, “when they arrived on the scene they encountered a tumultuous situation in the house.” Likewise, they “found signs of a recent injury, perhaps from a car accident, outside;” they could see “”violent behavior inside;” and they saw “Fisher screaming and throwing things.” *Id.*<sup>23</sup>

“[L]ocal police have multiple responsibilities, only one of which is the enforcement of criminal law.” Livingston, “Police, Community Caretaking, and the Fourth Amendment,” 1998 U. Chi. Leg. Forum 261, 261 (1998). Because the Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433 (1973), had described searches and seizures for non-law-enforcement purposes as

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<sup>22</sup> The emergency aid exception is mentioned in footnote 8 of Justice Few’s concurring opinion in the Supreme Court of South Carolina’s 2020 decision in *State v. Key*. See 431 S.C. 336, 353 n. 8, 848 S.E.2d 315, 323 n. 8 (2020).

<sup>23</sup> As the District Court observed in *Gonzalez v. Scaletta*, 2021 WL 4192065, at \*12 (N.D. Ill. Sept. 15, 2021):

The emergency aid doctrine reflects the realities of day-to-day, boots-on-the-ground police work. Police do more than investigate crimes. Members of the community call the police for all sorts of needs, and crime prevention and investigation is only part of their job. Sometimes, for example, there is a call for help when there is no crime. For that reason, ‘courts from the United States Supreme Court on down have long recognized the important role that police play in safeguarding individuals from dangers posed to themselves and others – a role that will, in appropriate circumstances, permit searches and seizures made without the judicial sanction of a warrant.’ ”

(quoting *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 551 (7<sup>th</sup> Cir. 2014)).

“community caretaking functions” that are “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,” *id.* at 441, many state and lower federal courts subsequently relied on a community caretaking rule as creating an exception to the warrant requirement. In *Caniglia*, the Court held that community caretaking doctrine, standing alone, did not create an exception to the Fourth Amendment warrant requirement for the search of a home. *Id.* at 1599-1600.<sup>24</sup>

Although *Caniglia* held that the community caretaking exception does not extend to warrantless searches and seizures in the home, 141 S.Ct. at 1598-99, the Court nevertheless confirmed “that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to ‘render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’ ” *Id.* at 1599 (quoting *Kentucky v. King*, 563 U.S. 452, 460 (2011)). Each of three separate concurring opinions also emphasized this point. *See id.* at 1600 (Roberts, C.J., concurring) (“A warrant to enter a home is not required ... when there is a ‘need to assist persons who are seriously injured or threatened with such injury.’ Nothing in today’s opinion is to the contrary, and I join it on that basis”) (citation omitted) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)); *id.* at 1601 (Alito, J., concurring) (stating that “[w]hile there is no overarching ‘community caretaking’ doctrine, it does not follow that all searches and seizures conducted for non-law-enforcement purposes must be developed in criminal cases analyzed under precisely the same Fourth Amendment rules developed in criminal cases,” and finding that the case before the Court “falls within one

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<sup>24</sup> Although the community caretaking and emergency aid exceptions “overlap conceptually, ... [they] are not the same” because “[t]he community caretaking doctrine requires a court to look at the *function* performed by a police officer, while the emergency exception requires an analysis of the *circumstances* to determine whether an emergency requiring immediate action existed. Thus, ... the doctrines have different ‘intellectual underpinning[s].’ ” *Hunsberger v. Wood*, 570 F.3d 546, 554 (4<sup>th</sup> Cir. 2009) (emphasis in original).

important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide”); *id.* at 1603-04 (Kavanaugh, J., concurring) (“[O]ne such recognized ‘exigency’ is the ‘need to assist persons who are seriously injured or threatened with such injury.’ The Fourth Amendment allows officers to enter a home if they have ‘an objectively reasonable basis for believing’ that such help is needed, and if the officers’ actions inside the home are reasonable under the circumstances”) (citation omitted) (quoting *Brigham City*, 547 U.S. at 403, 406).<sup>25</sup>

While the State in this case argued and the trial judge found that Deputy Hale’s welfare check was conducted as part of the community caretaking exception and the subsequent entry into the residence was based on an exigent circumstance, Respondent submits that the nomenclature used is unimportant and that all of his actions were justified under the emergency aid exception. As Justice Kavanaugh’s concurrence in *Caniglia* recognized, “this Fourth Amendment issue is more labeling than substance.” *Id.* at 1603 (Kavanaugh, J., concurring). Indeed, “ ‘the responsibility of police officers to search for missing persons ... and to aid the ill or injured has never been the subject of serious debate; nor has’ the ‘responsibility of police to provide services in an emergency.’ ” *Caniglia*, 141 S.Ct. at 1604 (Kavanaugh, J., concurring) (quoting *Livingston*, *supra*, at 302).

Thus, subsequent to *Caniglia*, many courts have continued to hold that the emergency aid doctrine provides an exception to the warrant requirement. See *State v. Abu Youm*, 988 N.W.2d 713, 720 (Iowa 2023) (“We conclude that *Caniglia* does not foreclose use of the emergency aid doctrine under the community caretaking exception to the warrant requirement under the Fourth

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<sup>25</sup> Further, it is important to note that neither the Supreme Court nor the First Circuit in *Caniglia* considered whether exigent circumstances justifying the warrantless entry existed because “respondents had forfeited the point.” *Id.* at 1599.

Amendment”); *State v. Torres*, 989 N.W.2d 121, 129 (Iowa 2023) (“In *Abu Youm*, 988 N.W.2d at —, we explain how exigent circumstances may continue to justify a warrantless entry into a home after *Caniglia*”); *State v. Samuolis*, 278 A.3d 1027, 1037 (Conn. 2022) (“Although the defendant asserts in his brief to this court that it is unclear, in the wake of *Caniglia*, whether warrantless entry is still permitted to assist someone who is injured or facing imminent injury, we find no such ambiguity in that decision. Other courts have continued to apply the emergency exception post-*Caniglia* ... and the defendant has identified no case in which a court deemed the emergency exception no longer valid”). *See also, e.g., Gaetjens v. Loves Park*, 4 F.4th 487, 492-93 (7<sup>th</sup> Cir. 2021), *cert. denied*, 142 S.Ct. 1675 (2022); *United States v. Sanders*, 4 F.4th 672, 677 (8<sup>th</sup> Cir. 2021), *cert. denied*, 142 S.Ct. 1161 (2022); *McCarthy v. Com.*, 864 S.E.2d 582-83 (2021); *State v. Guy*, 2023 WL 3144705, \*28-29 (Tenn. Cr.App., Apr. 28, 2023); *Gonzalez*, 2021 WL 4192065, at \*11-12.

Again, for the emergency aid exception to apply and justify warrantless entry into a defendant’s residence, police must have “an objectively reasonable basis” for believing that an occupant is “seriously injured or threatened with such injury.” *Brigham City*, 547 U.S. at 400, 403. *See also Fisher*, 558 U.S. at 48; *Mincey*, 437 U.S. at 392. Also, the scope of any search conducted by police once lawfully in the residence must be “strictly circumscribed by the exigencies which justify its initiation.” *Mincey*, 437 U.S. at 392. Applying this standard to the facts presented at the suppression hearing, it is clear that the trial judge did not abuse her discretion in denying Shivers’ motion to suppress because Deputy Hale was acting under the emergency aid exception to the warrant requirement at all times.

By the time Deputy Hale entered Shivers’ Lexington County residence, he knew that:

- He had been dispatched to conduct a welfare check of Shivers at the residence on September 3, 2019 because the general manager at Camping World, Steve

Smith, was “very concerned” for Shivers’ wellbeing;

- Shivers had not shown up for work at Columbia Camping World on either Monday, September 2<sup>nd</sup>, or Tuesday, September 3<sup>rd</sup>;
- it was very unusual and out of character for Shivers to miss work;
- Shivers’ job as finance manager was a very important (if not vital) role at the business;
- Shivers lived at the home with his girlfriend, Roselynn Cedeno;
- Roselynn did not have a job and should be at the residence;
- Mr. Smith had attempted to contact both Shivers and Roselynn by telephone and text message but had not received a response despite numerous calls;
- Mr. Smith had already sent another employee to Shivers’ home, but that employee did not have contact with anyone;
- When Deputy Hale arrived at the residence, Roselynn’s blue Accord was parked in the driveway and did not appear to have been recently driven;
- Shivers’ F-150 was not in the driveway;
- No one responded to his repeated knocking on the door or ringing of the doorbell, even though he could hear a dog running loose inside the residence;
- No one responded when he knocked on the garage door;
- There was mail in the mailbox and a package addressed to Roselynn was sitting outside and unopened;
- When he called the telephone number for Roselynn listed on the package several times, no one answered the calls;
- He could not find evidence of either Shivers or Roselynn on social media;
- Unable to get a response for roughly twenty-five minutes at the front of the house, he went into the backyard, to try and locate Shivers (and he activated his body camera);

- He did not see either Shivers or Shivers' truck;
- When he walked to the bottom floor of the patio, he saw a room with a light on;
- There was a dog "running loose" and a cell phone on a vanity in the room;
- Now in contact with his Master Deputy, he walked up onto the home's deck, which led to a bedroom;
- Looking through a window, he saw an apparently deceased person covered by bedding and a "fairly large dog" in the room;
- He knocked on the window, shined his flashlight into the room, and announced his presence, but the person did not respond; and
- The door leading into this room, later determined to be the master bedroom, was unlocked.

Only then did he identify himself as a Lexington County Deputy and enter the room to determine whether the person he saw was alive. After determining that this person was a deceased woman and seeing shell casings on the floor by her body, he did a protective sweep in order to determine whether Shivers was in the residence and in need of assistance, or whether there was a suspect in the residence. As reflected by the body cam video, Court's Ex. 15, he did not search for evidence, but merely secured the residence.

Respondent submits that the above facts provided Deputy Hale with "an objectively reasonable basis" for believing that an occupant was "seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 400, 403. *See also Mincey*, 437 U.S. at 392. "[R]easonableness 'must be judged from [the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight] and ... '[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving' ") (quoting *Graham*

*v. Connor*, 490 U.S. 386, 396-97 (1989). Or, as Chief Justice (then Judge) Burger wrote for the D.C. Circuit Court of Appeals in *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963): “[T]he business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response.” (emphasis added). See also *United States v. Washington*, 109 F.3d 459, 465 (8<sup>th</sup> Cir. 1997) (officers have substantial latitude in interpreting and drawing inferences from factual circumstances).<sup>26</sup>

Courts from several other jurisdictions have reached this conclusion when presented with analogous facts both before and after *Caniglia*. For instance, in *Guy*, the defendant was prosecuted for murdering his parents. The Tennessee Court of Criminal Appeals concluded, under the totality of the circumstances, that police had “ ‘an objectively reasonable basis’ for believing that the victims needed medical assistance or were otherwise in danger” where (1) Mrs. Guy failed to attend a pre-planned function that morning, without explanation, and her absence from work without calling was unusual; (2) “[m]ultiple attempts to contact the victims were unsuccessful;” (3) although neighbors saw a light on in the residence and the victims’ vehicles were in the driveway, no one came to the door when police knocked; (4) because Mrs. Guy worked, it was unusual for both vehicles to be in the driveway; (5) there was evidence suggesting that the front door lock had been altered; and (6) officers looking through the window of the front door could see groceries “lying on the floor” and “seemingly abandoned.” 2023 WL 3144705, at \*32. In *United States v. Giambro*, 2023 WL 3123001 (E.D. Me., Apr. 27, 2023), the

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<sup>26</sup> As the Court observed in *Samuolis*, “[t]here are numerous cases in which courts have recognized that ‘apparent death may turn out to be barely surviving life, still to be saved.’ ” *Samuolis*, 278 A.3d at 1041 n. 16 (also collecting cases).

defendant was prosecuted for the offense of a felon in possession of a weapon. Based on the record, the district court concluded that “exigent circumstances supported the officers' warrantless entry into Defendant's home,” where (1) the victim’s and defendant’s son had requested a welfare check on the victim and the son said his mother was missing and the defendant, his father, was acting strangely; (2) the defendant only gave the son “evasive and cryptic answers in response to the son’s questions about his mother's whereabouts but also indicated she had died without providing the location of her body;” (3) the defendant said the victim was dead but would not disclose location of body; and (4) police were aware that the defendant and the victim lived together at the residence, and the “officers had a reasonable basis to believe that they would locate her there.” 2023 WL 3123001, at \*4 & n. 20

In *Leibel v. California Dep't. of Corr. and Rehab.*, 2022 WL 18542401, \*15 (C.D. Cal., Dec. 16, 2022) (report and recommendation), *report and recommendation adopted*, 2023 WL 1447964 (C.D. Cal., Jan. 31, 2023), the petitioner sought habeas corpus relied based on his claim that his counsel was ineffective for not making a motion to suppress evidence found in the warrantless search of his residence, including the victim’s body. The Magistrate Judge, however, recommended denial of petitioner’s claim because any motion would be frivolous, since “[u]nder the totality of the circumstances, the officers had objectively reasonable grounds to believe an immediate need for their assistance existed” where (1) the victim suddenly stopped answering her phone after being in constant contact with her mother; (2) the victim’s mother called 911 and reported her missing, and her mother concerned for the victim’s welfare; (3) her mother had not spoken to the victim in several days although they normally spoke daily; (4) the victim had a cesarean three weeks earlier, requiring hospitalization; (5) the victim’s mother was caring for the victim’s baby; and (6) the mother tried calling the victim over forty times in two days and sent

instant message, but the victim did not respond. *Id.*

The defendant in *White v. State*, 2020 WL 1492801, \*8 (Md. Ct.Sp.App., Mar. 27, 2020) (unpublished) was convicted of murdering his parents and received two sentences of life without parole. On appeal, he challenge the warrantless search of his parents' residence, where he also lived. The Maryland Special Court of Criminal Appeals found that the officers' testimony "demonstrated that the officers had a reasonable caretaking basis for entering the house without a warrant," where (1) the officers were dispatched to conduct a welfare check on the defendant and his parents; (2) on arrival, they found two cars registered to the homeowners parked in the driveway and both hoods were cool to the touch; (3) there was no response to any of officers' knocks or "entreaties" and there was no response to a call from dispatch to the house; and (4) the officers were aware the family attorney had called 911 for a welfare check because the attorney was concerned that the family had missed previously scheduled appointment they had requested, although the family repeatedly called the attorney before, all calls stopped three days earlier, and they did not respond to the attorney's calls or emails. *Id.*

In *Gonzalez*, father and daughter plaintiffs sued the City of Chicago Illinois and more than a dozen police officers, based on the warrantless entry into and search of plaintiffs' residence by police officers shortly after receiving a 911 call for a wellness check on "a young woman who might harm herself." The plaintiffs claimed that the officers had violated the Fourth Amendment in doing so. 2021 WL 4192065, at \*1, 8. In granting summary judgment on the illegal entry claim, the district court found that "[t]he case at hand fits comfortably within the emergency aid doctrine. Officers Giuliani and Liberti received a call from the dispatcher to perform a well-being check. The situation was objectively serious, by any possible measure. The dispatcher reported that a girl was threatening suicide." *Id.* at \*13.

The district court further found that

It was objectively reasonable for both officers to enter the home, even if only one of the two calls mentioned suicide. The Fourth Amendment did not require the officers to apply a default rule in favor of the least-serious version of the calls. The officers did not need to whittle it down, treating the least-serious call like a lowest common denominator. There's no presumption in favor of the least-serious version of events.

*Id.* at \*14.

Following a bench trial, the defendant in *Samuolis* was convicted of murder, assault in the first degree by means of the discharge of a firearm, and attempt to commit assault in the first degree by means of the discharge of a firearm. On appeal, he only challenged his murder conviction, arguing that the trial court erroneously denied his motion to suppress evidence seized from his home (the dead body of his father, John Samuolis) “on the grounds that (1) the police officers’ warrantless entry into the Samuolis home was justified under the emergency [aid] exception to the warrant requirement of the fourth amendment to the United States constitution, or, alternatively, (2) the defendant's alleged actions in shooting at the officers upon their initial entry attenuated the taint from that unlawful initial entry and justified their subsequent reentries into the home.” 278 A.3d at 1029. The Connecticut Supreme Court held that that it would not “have been objectively reasonable for the officers to believe” that the defendant “needed emergency assistance.” *Id.* at 1037-38.

However, the Court upheld the warrantless entry into the residence, stating that: “although we share some of the defendant's concerns about shortcomings in the officers’ investigation prior to their entry into the home, we conclude that there was a reasonably objective basis for believing that an elderly occupant [the defendant’s father] was in need of immediate medical assistance.” The Court reasoned that (1) the father “had not been seen by any of his neighbors for at least one month, which was unusual enough that his absence was reported

to the police;” (2) the “family's only vehicle had not been moved since [the father] was last seen; (3) the father “did not respond to the officers’ knocks on the door or shouts into the open windows;” and (4) there was “an extraordinary infestation of flies amassing around the upper rear window” where the body was found; and (5) while the officers “thought, based on their experience, that the most likely explanation for this fly infestation was the presence of a dead body, they also left open the possibility that an occupant might be injured rather than dead.” The Court found that “[w]e cannot say that this supposition was unreasonable.” *Id.* at 1038-40.

Further, the plaintiff in *Gaetjens* bred cats in her home. She filed suit against the city and several local officials for the warrantless entry into her home and the seizure of her cats without a warrant, while she was (unbeknownst to the officers) in the hospital. *Gaetjens*, 4 F.4th at 490-91. On appeal, the Seventh Circuit found that the warrantless entry into her home “falls into the heartland of emergency-aid situations:” where it was not disputed that the officer knew that (1) plaintiff’s emergency contact person, Eads, and plaintiff’s doctor were unable to get in touch with plaintiff; (2) the doctor's office had called Eads because she was plaintiff’s emergency contact; (3) Eads was concerned that plaintiff was experiencing a medical emergency; and (4) plaintiff’s mail and garbage were piling up. *Id.* at 493. *See also Ocasio v. City of Canandaigua*, 513 F. Supp.3d 310, 320 (W.D.N.Y. 2021) (exigent circumstances were supported by the “inability to locate a missing and vulnerable individual to confirm their well-being despite a reasonable investigation and other attempts to reach them”); 3 W. LaFave, *Search and Seizure* (6<sup>th</sup> Ed. 2020) § 6.6(a), at 638–39 (entry into a home for the purpose of rendering emergency aid has been deemed reasonable in connection with a search for “an occupant reliably reported as

missing”) (emphasis added).<sup>27</sup>

His conduct in this case was not unreasonable simply because Shivers’ F-150 truck was not in the driveway, since it was objectively reasonable for an officer to conclude that other circumstances could account for the truck not being in the driveway: he may have parked it elsewhere, such as in the backyard, he may have loaned it to a family member or friend or, more importantly, someone may have stolen it in the course of burglarizing the home and harming the occupants.

Nor is there merit to Shivers’ contention that Deputy Hale’s entry into the fenced in backyard of the residence violated the Fourth Amendment because the backyard was part of the curtilage of his home under *United States v. Dunn*, 480 U.S. 294, 301 (1987). Regardless of whether the backyard was part of the curtilage, Shivers concedes that “Deputy Hale certainly had an implicit license to conduct a welfare check.” Although he asserts that this implicit license was limited to “knocking on the front door and looking around the front of Shivers’ home for signs that someone was inside,” Respondent submits that the emergency aid exception to the warrant

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<sup>27</sup> Indeed, with a few inconsequential differences, such as Shivers’ age and who requested the welfare check, the facts in this case are analogous to the following hypothetical scenario posited by Justice Kavanaugh’s concurrence in *Caniglia*:

Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.

Again, the officers have an “objectively reasonable basis” for believing that an occupant is “seriously injured or threatened with such injury.” *Brigham City*, 547 U.S. at 400, 403, 126 S.Ct. 1943. Among other possibilities, the elderly man may have fallen and hurt himself, a common cause of death or serious injury for older individuals. The Fourth Amendment does not prevent the officers from entering the home and checking on the man's well-being.

*Caniglia v. Strom*, 141 S.Ct. at 1605 (Kavanaugh, J., concurring).

requirement is broader than he suggests and that entry into the backyard was appropriate under the circumstances that Deputy Hale faced.

His argument in this regard is inconsistent with *Brigham City*, which upheld the warrantless search although the officers only saw the physical altercation after they had entered the backyard of the residence and looked through the window. *See Brigham City*, 547 U.S. at 400-01. His argument is likewise inconsistent with *White, supra*, where the first responding officer dispatched to conduct a welfare check saw two cars in the driveway of the residence, “but no one responded to his knocks on the front door.” The officer then “walked around the exterior of the house and discovered that a sliding glass door at the rear of the house was closed but unlocked.” Next, the officer “called for backup and waited by the door until two additional police officers... arrived. After announcing themselves as Howard County police and receiving no response, the three officers entered the house together.” *See White*, 2020 WL 1492801, at \*1. Again, the Court in *White* upheld denial of the defendant’s motion to suppress. *Id.* at \*8. *See also State v. Carlson*, 548 N.W.2d 138, 139 (Iowa 1996 (upholding forced, warrantless entry into home to search for a missing person who had been domestic abuse victim)).<sup>28</sup>

This argument also ignores that “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception,” only “ ‘an objectively reasonable basis for believing’ that medical assistance was needed, or persons were in danger.” *Fisher*, 558 U.S. at 49. As discussed, there was such an “an objectively reasonable basis” for Deputy Hale to believe that either Shivers or Roselynn may need medical assistance or may be in danger when he entered the backyard. So, Shivers’ argument must be rejected.

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<sup>28</sup> Respondent notes that the Court in *Guy* found it unnecessary to address whether the officers’ entry into the backyard was constitutional because it “conclude[ed] that the State established exigent circumstances justifying the officers’ entry into the residence notwithstanding the officers’ observations from the back door.” *See Guy*, 2023 WL 3144705, at \*29.

The manner of Deputy Hale’s entry into the residence was also reasonable. Even after spotting an individual whom he recognized was either dead or incapacitated, he did not enter the residence until after he had knocked on the window, shined his flashlight into the room, and announced his presence, but did not get any response. *See Brigham City*, 547 U.S. at 406. Similarly, his protective sweep of the residence, without conducting a search for evidence, was permissible under the Fourth Amendment. *See Herring*, 387 S.C. at 210, 692 S.E.2d at 495 (citing *Maryland v. Blue*, 494 U.S. 325, 337 (1990)).

Finally, even if this Court rejects the above argument, Respondent submits that the trial judge’s ruling must still be affirmed because officer would have inevitably discovered the evidence in Shivers’ residence. “[T]he inevitable discovery doctrine provides that illegally obtained information may nevertheless be admissible if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been discovered by lawful means.” *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019) (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984)). *See also State v. Moore*, 429 S.C. 465, 839 S.E.2d 882 (2020). While the State did not argue this point in the trial court, Rule 220(c), SCACR, allows this Court to affirm based on any ground appearing in the record and the facts adduced at trial demonstrate that the evidence in the residence would have ultimately been discovered because Roselynn’s concerned family members had been unsuccessful in their multiple attempts to contact her and either one of them would have presumably requested a welfare check at some point or would have gone to her Lexington County residence, found her body and notified law enforcement. So, the trial judge’s ruling should still be affirmed. *Id.*

**CONCLUSION**

For all of the foregoing reasons, this Court should affirm the judgment, and Shivers' convictions and sentence.

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