STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2013-000617

THE STATE,

RESPONDENT,

v.

TREVEE J. GETHERS,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUE ON APPEAL

Did the Court of Appeals err in affirming Petitioner's conviction for murder and the trial judge's failure to direct a verdict of acquittal where the evidence adduced at trial did not rise above mere suspicion because the circumstantial evidence suggested only that Petitioner was near the murder scene when the decedent was fatally shot?

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether Gethers' arguments challenging to the trial judge's denial of his directed verdict motion are preserved for this Court's review because he only made a general motion for a directed verdict at trial and he did not raise the arguments he now presents?

II. Whether the Court of Appeals correctly upheld the trial judge's ruling denying Gethers directed verdict motion because the State presented direct and substantial circumstantial evidence at trial that reasonably tended to prove that he murdered the victim, Robert Earl Robinson, or from which his guilt could be inferred?

ADDITIONAL SUSTAINING GROUND

III. Whether the Court of Appeals erred by failing to find that Gethers' argument was not properly before it on appeal because Gethers only made a general motion for a directed verdict at trial and he did not make any of the arguments at trial that have been subsequently made on appeal?

STATEMENT OF CASE

The Dorchester County Grand Jury indicted Petitioner, Trevee J. Gethers (Gethers), on December 3, 2007, for murder (2007-GS-18-1755), in connection with the shooting death of Robert Earl Robertson. **R. pp. 431-32**. On November 15-17, 2010, Gethers received a jury trial before the Honorable Diane Schafer Goodstein. The jury found him guilty of murder and Judge Goodstein sentenced him to forty-five years imprisonment. **R. pp. 425-26**.[1] Dorchester County Assistant Public Defender Sara Jane Rogers represented Gethers at trial. Senior Assistant Solicitor Harrison Bell, Jr., and Russell D. Hilton, of the First Circuit Solicitor's Office, prosecuted him. **R. p. 1**.

Gethers timely served and filed a notice of appeal. On October 24, 2012, the Court of Appeals affirmed his conviction and sentence in an unpublished opinion. *State v. Gethers*, 2012-UP-576 (Ct. App. filed Oct. 24, 2012), **App. pp. 1-2**. On November 6, 2012, Gethers filed a Petition for Rehearing. **App. pp. 3-7**. The Court of Appeals denied rehearing in an Order filed on February 22, 2013. **App. 8**.

Gethers thereafter filed a timely Petition for Writ of Certiorari. Respondent now makes its Return to Petition for Writ of Certiorari.

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[1]She also revoked four years of a probationary sentence on an unrelated gun charge.**R. p. 425**.

ARGUMENTS

I. Gethers' challenges to the trial judge's denial of his directed verdict motion are not preserved for this Court's review because he only made a general motion for a directed verdict at trial and he did not raise the arguments he now presents. Alternatively, the Court of Appeals correctly upheld the trial judge's ruling denying Gethers directed verdict motion because the State presented direct and substantial circumstantial evidence at trial that reasonably tended to prove that he murdered the victim, Robert Earl Robinson, or from which his guilt could be inferred.

Gethers maintains that the trial judge erroneously denied his motion for a directed verdict, claiming that "[a]t most, the evidence proved that appellant had a relationship with a young woman who had a relationship with the decedent." After discounting this co-defendant witness' statement implicating him as untrustworthy, he contends that the only evidence that connected him to the murder was his "telephone, found in the apartment complex, and phone calls between Ms. Kitt and appellant." **Brief of Appellant, p. 8**. Respondent submits that his challenge to the trial judge's trial judge's denial of his motion is not preserved for this Court's review because he only made a general motion for a directed verdict at trial and he did not raise the arguments he presents to this Court. Alternatively, the Court of Appeals correctly upheld the trial judge's ruling denying Gethers directed verdict motion because the State presented direct and substantial circumstantial evidence at trial that reasonably tended to prove that he murdered the victim, Robert Earl Robinson, or from which his guilt could be inferred.

A. Proceedings in the trial court.

1. The prosecution's evidence.

The direct and circumstantial evidence presented by the State was that the victim, Earl Robinson, lived in Walterboro, South Carolina in September 2007. On the night of September 17,

2007, the victim called his son, Marcus Brothers, "about 8:30 p.m." and he asked if Marcus had any money that he could borough. Marcus did have money and agreed to loan some to him. When the victim called again at 9:24 p.m., he said "he was going away" and needed cash. Marcus again agreed to loan money to him. **R. pp. 127-28; 284**.

A few minutes after 10:00 p.m., the two men met at a Horizon Gas Station near Marcus' residence and Marcus loaned $ 200.00 to his father.[2] The victim and Marcus engaged in some small talk and the victim purchased a fountain drink before leaving. Although the victim never told Marcus why he need the money, this was not unusual because the men often provided financial help to each other, when necessary. Also, Marcus and the victim's wife, Jestine Robinson, testified that Earl would often help out others who needed it. **R. pp. 128-33; 139; 284**.

Jestine Robinson testified that her husband told her on September 17th that he had to go somewhere. Because her SUV blocked his vehicle in their driveway, he took her 2001 Toyota Sequoia (*see* **State's Exhibit 4**), which he had washed the preceding Wednesday. Neither Mrs. Robinson nor Marcus knew Gethers or had seen him before court proceedings began in this case. Sometime after the murder, the coroner returned slightly over $ 199.00 to Mrs. Robinson. **R. pp. 132; 134-139**.

Within an hour after getting the loan from his son, the victim was murdered. Shortly before 11:00 p.m. on the night of September 17, 2007, Kimberly and Michael Ritchey were in the stairway leading to their upstairs apartment in a Dorchester County apartment complex (*see* **State's Exhibit 1**), and Michael was smoking a cigarette. They heard what sounded like two men yelling and

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[2] Their meeting was corroborated by the store's surveillance video (**State's Exhibit 30**), which was published to the jury. **R. pp. 129-30**. The victim had also called him again, at 10:02 p.m. **R. p. 302**.

screaming. Kimberly testified that the argument was about "money." This was not unusual in the apartment complex. So, Kimberly went back upstairs to check on their small children and Michael remained on the steps. **R. pp. 52-53; 56-57; 59-60; 63.**

While Kimberly was in the children's bedroom, which overlooks the parking lot, she heard at least one gunshot. She then went back outside. By this time, Michael Ritchey was at the bottom of the steps and headed toward the vehicle because it was still running. In fact, the vehicle almost struck him. He yelled at Kimberly to "[c]all the cops" and she did so. **R. pp. 53-54; 56-57.**

Michael Ritchey did not see anyone, but he heard the two people "yelling and screaming." After Kimberly went to check on the children, Michael heard a gunshot. He immediately ran down the steps and toward a car that had pulled out of a space in the parking lot and appeared to be trying to turn around. As Michael got the license tag number, the vehicle "jumped the curb into the grass and almost hit me because it backed out to the road and stopped in the middle of the road . . . with the motor running." **R. pp. 60-61.**

Michael walked over to the vehicle and put his hands on the glass in the rear of the vehicle to see if any children were in it, but he did not see any. Next, he walked up to the front door of the vehicle and saw someone "slumped over laying with their head against the passenger's seat." When Michael opened up the door to check on this person, he saw "blood everywhere and kind of freaked out." He did not see anyone running either in the direction of a nearby Bi-Lo or toward another apartment complex that is located a short distance away from his. **R. p. 62.** *See also* **State's Exhibit 1.**

Shanika Moon lived in the apartment directly below the Ritcheys in September 2007. On the night of September 17th, she looked out of her window saw two people in an SUV that was "closed,

parked forward." She could not identify either person in the vehicle and she could not hear any argument. She sat back down but soon heard "a 'pop-pop' noise." She looked back out and again saw the SUV. However, she did not call 911 because she often heard shots. **R. pp. 64-68**.

The Dorchester County Sheriff's Department received several 911 calls reporting the shooting, the first of which was received at 10:57 p.m. **R. p. 285, lines 14-21; p. 287, lines 19-20**. Then-Officer Willard Driggers happened to be in front of the apartment complex when the dispatcher sent out the call, and he arrived on the scene within a minute. He was quickly followed by then-Officer Christopher Freshman, who pulled in behind him. Both officers saw a white Toyota Sequoia SUV. The doors on the vehicle were closed, the windows were up and the vehicle's engine was "revving at high RPMS." There was no one else in the area. **R. pp. 68-70; 72; 74-76**.

Officer Driggers approached the SUV (see **State's Exhibit 2**) and he saw a person in the front seat, who was "slumped over." Wearing latex gloves, he opened the driver's door. There was blood on the seat and it did not appear that the person in the SUV (the victim) was breathing. Also, "the smoke from the gunpowder was still floating inside the vehicle." So, Officer Driggers reached in and turned off the ignition. The officers then secured the scene. **R. pp. 70-73; 75-76**.

Det. Earl Asbell, also with the Dorchester County Sheriff's Department, testified that he was the "lieutenant over the crime scene unit" at the time of the murder. With the assistance of another officer, he processed the crime scene at the apartment complex parking lot on September 17th. He explained that whenever there was a shooting, his unit collects "everything in the proximity," even if it is later determined that the item(s) collected are not involved in the crime. **R. pp. 78-80; 82-83**.

In this case, he first photographed the vehicle and everything around it. Next, he photographed the victim as seated in the vehicle, before removing the victim's wallet and obtaining

the victim's driver's license. He also photographed (*see* **State's Exhibit 3**) and seized the victim's cell phone. **R. pp. 78-80; 82-83.**

Then, he seized a .40 caliber shell casing off of the road, some 40 or 50 feet from the SUV, that was ultimately determined to be irrelevant because the victim was shot by either a .38 or .350 magnum bullet.[3] He also seized a Bluetooth and earpiece associated with it. The Bluetooth was still blinking, indicating that it was activated. *See* **State's Exhibits 23-25.** These were found in the road and near a path between the apartment complex where the shooting occurred and some nearby apartments. *See* **State's Exhibit 1.** Also, the Bluetooth "appeared to have been . . . either run over or it fell apart when it hit the road because the earpiece was separated from it." **R. pp. 84-86; 88-89; 121-23; 125.**

Det. Asbell had the SUV towed to the Sheriff's Department's garage and it was processed for fingerprints the following morning. In all, officers lifted thirty-four latent prints from the vehicle. He also photographed the latent prints that he found, and those lifts were submitted to the Charleston Police Department for analysis. **R. pp. 89-100; 248; 252-55.**

Det. John Garrison testified that he was the Dorchester County Sheriff' Department's lead investigator in this case. There was no suspect identified immediately after the murder. He spoke to the victim's family and subpoenaed the phone records for the victim's cell phone. Although the victim had called a number earlier on the day of September 17th, it was determined that the woman with whom he had spoken did not have any involvement in the case. However, there were a series of calls from and to a specific number on the night of the 17th, and it was discovered that the

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[3] Det. Asbell saw some cigarette butts that night but e did not seize them because they were located over forty feet from the SUV and "[e]verything took us in a different direction."**R. p. 84, lines 12-23; p. 117, line 17 - p. 118, line 10.** There is absolutely no evidence that these cigarette butts were relevant to this case.

telephone number was for a cell phone owned by a Maggie Reid. **R. pp. 185-89.**

Officers located Ms. Reid at her residence in nearby apartments and the records for her cell phone (**State's Exhibit 42**) were then obtained. They obtained information that the initial results of the fingerprint analysis from AFIS showed that Gethers' prints were on the SUV at roughly the same time that they obtained the cell phone records for Reid's phone. **R. p. 189; 191-92; 242-45; 254-55.**

Ms. Reid testified that she lived in the apartments near the crime scene in September 2007. Veronica K. and Veronica's mother lived in the apartment beneath her. Veronica was dating a man nicknamed "City" at the time. Veronica was with her mother when her mother picked up Reid from work at 4:15 p.m. on September 17th. Veronica borrowed Ms. Reid's phone on the way home and again later that evening. **R. pp. 236-40.**

During the night of September 17th, Ms. Reid had gone to the K.'s apartment to look for her phone but was told that Veronica was not home. At that time, Reid saw "City" sitting on the back of his car, talking to Veronica. Reid finally got the phone back the next morning. **R. pp. 240-41.**

After learning that Gethers' prints were on the SUV; that Veronica K. had used Reid's phone to call him numerous times; and that there was a close relationship between Gethers and Veronica, the Sheriff's Department obtained his cell phone records. **State's Exhibit 43.** Officers also executed search warrants at both Veronica's apartment and Gethers' residence on the morning of September 19th. Unfortunately, they did not find anything relevant to the case. Officers were also unable to locate either of the suspects. **R. pp. 192-93; 195-98.**

However, they spoke to Brandee Kiefer. They learned that Gethers had swapped cars with Kiefer and that he was driving her Kia. **R. pp. 197-98.** Keifer testified that she was romantically involved with Gethers in September 2007. When she got off from work on the night of Tuesday,

September 18th, Gethers had taken her Kia Spectra (*see* **State's Exhibit 31**) and had left his Lincoln for her to drive. **R. pp. 144-48**.

Keifer told detectives that she kept calling Gethers but he did not answer. Also, when she finally did speak to him, he told her that he would be back in three or four hours. However, he never returned. Also, she had to go to Virginia to pick up her car. Although she claimed that she did not remember telling detectives that "[w]hen I spoke to [Gethers], he said not to tell anyone . . . that they were in Virginia," she did not dispute that she said this. **R. pp. 148-51; 154**.

Det. Garrison obtained an arrest warrant for Gethers charging him with murder on the morning of September 19th. He entered the warrant information and information that Gethers may be driving Kiefer's Kia into the N.C.I.C. database. On September 20th, the Sheriff's Department was notified that the Kia had been found at a truck stop off of the interstate in New Kent, Virginia. No one was in the car and it had been vandalized. **R. pp. 195-99**.

On September 22nd, the Sheriff's Department received a telephone call from the New York City Police Department informing them that Veronica K. had been apprehended using a fake ID. Also, she was accompanied by a man using the ID of "Dante Hubbard." It was determined that the man was actually Gethers. Eventually, both suspects were returned to South Carolina. **R. p. 199**.

Detective Steve Morelli also assisted in the investigation. He testified that the phone records of Gethers' (**State's Exhibit 42**), Ms. Reid's (**State's Exhibit 43**), and the victim's cell phones showed the following:

- At 4:33 p.m., there was a call from Ms. Reid's cell phone to the victim's cell phone;
- At 4:34 p.m., there was a call from Ms. Reid's cell phone to Gethers' cell phone;

- Between 5:11 and 5:12 p.m., there were three calls from Ms. Reid's cell phone to Gethers' cell phone;
- At 6:55 p.m., Gethers' phone called Ms. Reid's phone;
- At 8:47, 8:48 and 8:55 p.m., there were calls from Ms. Reid's cell phone to Gethers' phone;
- At 8:57 p.m., there was a call from Ms. Reid's cell phone to the victim's cell phone;
- At 9:24 p.m, "[t]he victim called his son;"
- At 9:47 p.m., Ms. "Reid's phone called the victim's phone;"
- At 9:50 p.m., the victim dialed Ms. Reid's cell phone and, then Ms Reid's phone dialed the victim's cell phone;
- At 10:02 p.m., the victim called Ms. Reid's phone;
- At 10:04 p.m., "the victim contacted his son;"
- At 10:34 p.m., Ms. Reid's phone dialed the victim's phone;
- At 10:41 p.m., the victim called Ms Reid's phone;
- At 10:49 p.m. and at 10:51 p.m., Ms. Reid's phone dialed the victim's phone;
- At 10:56 p.m., Ms Reid's phone called Gethers' phone;
- At 10:57 p.m. and at 10:58 p.m., Ms. Reid's phone dialed the victim's phone;[4]
- After 10:58 p.m. on September 17th, Ms. Reid's phone did not call the victim's phone;
- At 11:40 p.m., Gethers' cell phone called Ms. Reid's phone;

R. pp. 283-88; State's Exhibits 42-43. There were also calls from the victim to Ms. Reid's phone on the 17th. **R. pp. 289-90**.

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[4] Again, the 911 calls began at 10:57 p.m. **R. p. 285**.

Although Veronica K. was Gethers' co-defendant, she was called as a prosecution witness.[5] She testified that she had lived at apartments near the crime scene and that she was fourteen years old in 2007. She also admitted that she knew the victim on September 17th 2007. He had initially been a family friend but he wanted to become romantically involved with her. She admitted that she spoke to the victim about bringing her some money on September 17th and that she was using the cell phone of Ms. Reid, a friend who lived upstairs from her, on the 17th. **R. pp. 155-58; 176.**

Veronica testified that she called the victim earlier that day and asked him for money. However, she was with her mother. The victim told her that he had money, but he did not want her mother to know he was going to give her money because he was planning on having sex with Veronica that night. He also told her to call him back later that night. In their numerous phone conversations, she told him to meet her at apartments where the murder occurred and to call her before he got there so that she would know when to leave her apartment. **R. pp. 157-58.**

Veronica claimed that she "never got a chance to give" the victim directions to the crime scene, but she stated that he did know how to find her apartment complex. She further claimed that she ultimately stopped calling the victim because she assumed that he had changed his mind about giving her money. Also, she admitted that she had talked to Gethers, a/k/a "City," about the victim on the 17th and that she had asked Gethers to pick up the money for her because she did not want to have sex with the victim. Gethers supposedly told her that "he was going to have to call me back because he wasn't sure if he was going to do that." **R. pp. 158-60.**

Veronica claimed that the victim drove a white Explorer. Although the victim did not know

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[5] The parties stipulated that "the State has entered into an agreement whereby Veronica [K.'s] charge of murder will remain under the jurisdiction of the Family Court provided Ms. [K.] testifies truthfully and cooperates in the prosecution of this defendant, Trevee Gethers." **R. p. 279.**

Gethers, she testified that her plan was to tell the victim that her mother would not let her out of the apartment and that she would send her "friend," Gethers, to pick up the money. **R. p. 160**. Unfortunately, she was not very truthful in her testimony from this point forward. First, she denied telling Gethers what the victim was driving or where to pick up the money from the victim. **R. pp. 160-61**.

Then, she denied telling the police several matters in a March 9, 2009 statement that she had given. (**State's Exhibit 33, R. pp. 429-30**). She only she admitted telling officers that the victim said he would bring her "the money, but he wasn't going to keep bringing [her] the money without getting some," and that "I knew we were running from something." **R. pp. 162-64**.

Veronica did admit that she and Gethers had gone to Virginia in Kiefer's Kia, and that they had left it somewhere. She likewise admitted that she and Gethers had taken a bus to New York; that she was using Tambora Ravenel's ID; that she learned that Gethers was using the ID of a Dante Hubbard; and that State's Exhibit 34 were the ID cards that they had used. She testified that Ravenel was her friend and that Hubbard was someone she knew. However, she claimed that she did not know Hubbard's address. While she admitted that Gethers' was a "[p]retty close friend" and that she did not "want to see anything happen to him," she denied that he was her boyfriend. Also, she claimed that she only used Ravenel's ID so that she could by cigarettes. **R. pp. 255-58; 266; 268-69**.

In light of Veronica K.'s responses concerning her statement to the Sheriff's Department, which was given in the presence of her attorney and after she had waiver her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) (*see* **R. pp. 201-02**), the State was permitted to introduce a redacted version of it, as **State's Exhibit 33**, and it was published to the jury through Det. Garrison.[6] In her

[6] The trial judge's ruling on this issue is at **R. pp. 202-07**.

statement, she said that:

> I called Mr. Earl for some money. He said he would bring the money, but he wasn't going to bring me money without getting some. He wanted some in the past, but I kept tricking him. I told him to go to the Haven Oaks because I didn't want my momma to know about Mr. Earl bringing me the money. Mr. Earl was bringing me more than $50.00 because I asked him for some money. He thought we were going to a motel. I told Trevee Gethers "City" to get the money because I didn't want to mess with Mr. Earl. I told Trevee that Mr. Earl was in a white Sequoia because that's what Mr. Earl told me he was driving. I didn't tell Trevee to shoot Mr. Earl, I just told Trevee to get the money. I didn't know Trevee shot Mr. Earl. . . . I called Trevee after [(sic)] to see if he got the money, and he said no. Trevee said that Mr. Earl wouldn't give him the money. I didn't see Trevee until the next day and he said we had to go because he got in some stuff. I knew we were running from something. We went to a lady's house In Virginia on the air base. We went to Dro mama's house. [(sic)] Dro and Tam followed us to Virginia. Then we took the bus to New York. I have gotten money from Mr. Earl before and that's how I knew I could call him for money.
>
> Question: Has Mr. Earl ever been to [the apartments where he was killed] before?
>
> Answer: Yes, he has brought me money there behind Bi-Lo, but I still had to give him directions.

State's Exhibit 33, R. pp. 429-30. *See also* **R. pp. 207-09**.[7]

Also, SLED Agent Ila Simmons, who was qualified as an expert in trace evidence and gunshot residue, testified that a gunshot residue test performed on the victims hands early in the morning after the murder (**R. pp. 87-88**) revealed the presence of metals on the palm and the back of his right hand that "could be associated with gunshot residue.[8] And on the palm of the left hand

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[7] Despite a diligent search, the murder weapon was not found. Nor did officers locate a shell casing for the bullet that killed the victim. **R. pp. 193-94**. However, a SLED expert in firearms analysis, testified that the bullet that killed the victim was "most consistent with bullets that we have found loaded into .38 special caliber and .357 magnum caliber cartridges," and that the crimping cannelure on the bullet suggested that the gun was a revolver, as opposed to a semi-automatic pistol. **R. pp. 299-02**.

[8] The parties stipulated that there was a complete chain of custody for the gunshot residue samples from the time of the collection until they were tested. **R. p. 278**.

there were also metals that were consistent with gunshot residue." Agent Simmons further opined that her findings were "most consistent with someone having or being in the vicinity of the weapon when it was discharged because the concentrations that we found are more consistent with being in front of a gun when it's discharged than handling or firing a gun." **R. pp. 313; 316-21**.

Officer Kalisha Gill, a forensic latent print examiner for the Charleston Police Department, testified that Det. Asbell submitted the latent prints that he had lifted from the Robinsons' SUV to her for analysis. When she ran these prints through A.F.I.S., she got a "hit." The prints "came back to the fingerprint card bearing the name [of] Trevee Gethers." **R. pp. 248-55**.

However, A.F.I.S. is only a tool used to narrow the list of potential suspects and a conclusive match can only be made after manual comparison of latent prints with known standards. So, she was provided a set of Gethers' major case prints (**State's Exhibit 40**), which she compared with the latent prints that had been submitted.[9] She also received known prints from Quintavious Dominique Davis, the victim, Veronica K., Michael Amos Ritchey, Jr., and Donsurvi Chisholm. However, she did not receive known prints of either Mrs. Robinson or Marcus Brothers. **R. pp. 255-56; 262-63**.

Using the locations to which Det. Asbell testified that he had lifted prints, State's Exhibit 26, and Officer Gill expert analysis, the State presented the following evidence regarding the latent prints found on the recently-washed SUV:

- **State's Exhibit 20** (latent lift number 10), which was taken from the passenger rear door in the center of the door, was Gethers' left palm;
- **State's Exhibit 22** (latent lift number 8), which was taken from "just above the pinstripes on the passenger's front door, was Gethers' left index finger;

[9] Javon Wright is employed at the Charleston County Detention Center. He testified that he took a set of Gethers' fingerprints and palm prints (**State's Exhibit 40**) when he booked Gethers, on May 11, 2007. **R. pp. 231-34**.

- **State's Exhibit 16** (latent lift number 3), which was taken from the door post on the passenger's side front door, was Gethers' left index finger;

- **State's Exhibit 18** (latent lift number 5), which was taken from the door post on the passenger side rear door, was Gethers' left middle finger and his left palm;

- **State's Exhibit 17** (latent lift number 4), which was taken from the passenger rear door to the center of the door, was Gethers' left thumb;

- **State's Exhibit 19** (latent lift number 11), which was also taken from the passenger rear door in the center of the door, was Gethers' left thumb;

- **State's Exhibit 12** (latent lift number 19), which was taken from the edge of the driver's door, was the left middle and left ring fingers of Michael Ritchey;

- **State's Exhibit 9** (latent lift number 22), which was taken from the glass of the driver's side rear window, was Michael Ritchey's right palm;

- **State's Exhibit 8** (latent lift number 21), which was taken from the rear driver's window close to the front door, was Michael Ritchey's left palm;

- **State's Exhibit 6** (latent lift number 23), which was taken from the diver's side quarter panel between the back door and the window, was the victim's right middle and right ring fingers;

- **State's Exhibit 11** (latent lift number 16), which was taken from the driver's side door to the left of center of the door, was the victim's left middle finger and Michael Ritchey's left palm;

- **State's Exhibit 14** (latent lift number 12), which was taken from the "rear passenger's side edge just above the pinstripe, was the victim's left middle and left ring fingers.

R. pp. 256-62. *See also* **R. pp. 90-101 (Testimony of Earl Asbell); State's Exhibit 26**.

Later in the investigation, a Buccal swab of Gethers' DNA was obtained pursuant to a search warrant.[10] **R. pp. 100-02**. Also, the Bluetooth headset was submitted to SLED's DNA laboratory for testing. SLED Agent Lilly Gallman, a forensic DNA analyst, testified that she was able to develop

[10] This was done on September 3, 2010. **R. pp. 101-02**.

a DNA profile off of the Bluetooth headset.[11] She was also able to determine that the profile "was a mixture of at least three individuals. The DNA profile of the major contributor to that particular mixture was from an unknown male individual." **R. pp. 325-29**.

Agent Gallman placed the profile into the Combined DNA Index System (CODAS), which is a DNA database, and this resulted in a "hit:" the DNA of the major contributor to the profile matched Gethers' DNA. Because so many samples are in the CODAS database, she followed protocol and requested a standard of Gethers' DNA to guard against possible error. She thereafter compared the standard obtained from Gethers (**State's Exhibit 48**) to the profile developed from the Bluetooth headset. When she did so, she found that "the major contributor in . . . the swabs that came from the Bluetooth headset[] matched the DNA profile of Trevee Gethers." Also, she opined that "'[t]he probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately one in 26 quadrillion." **R. pp. 329-33**.[12]

Dr. Erin Presnell, a forensic pathologist employed at the Medical University of South Carolina, performed the autopsy on the victim. Dr. Presnell explained that the victim had "one major injury." She described this injury as follows:

> He has a single gunshot wound. It actually enters in his right arm. It goes through his right arm just through the soft tissue, exits the right arm and goes into the right chest. It hits the right lung. It goes through the heart as well as the aorta, which is the main blood vessel taking blood to the rest of your body. It goes through the left lung and also hits the left rib and partially exits. So you actually have a hole in the skin where the bullet's exiting, where the bullet's still there and hanging on right there. So this is a partial exit gunshot wound.

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[11] The parties stipulated that there was a complete chain of custody for both the Buccal swabs and the Bluetooth headset. **R. pp. 278-79**.

[12] There are roughly 6.5 billion people on earth. **R. p. 334**.

R. pp. 216; 220-21.

Dr. Presnell testified that the bullet had traveled "pretty much straight across," but "slightly backwards on him a little bit." **R. p. 221.** She opined that her findings were consistent with the victim's right arm being either raised in a defensive posture or on the steering wheel when the shot was fired. Also, assuming the victim was seated in the driver's seat when shot, she opined that the shot came from the passenger side of the vehicle. She further opined that the gunshot wound was the cause of death; and she explained that, because the wound pierced the heart and aorta, "I can't imagine him being conscious over the seconds range" after the shooting. **R. pp. 227-31.**

The other "defining characteristic" of this wound was that the presence of "a fairly concentrated amount of stippling marks around the entrance wound to his arm." Based upon this finding, Dr. Presnell opined that it was "close-range gunshot wound" that had been fired "within a yard or less from him." Dr. Presnell recovered the bullet from the body. **R. pp. 221-23.**

2. The directed verdict motion and ruling.

At the close of the prosecution's case, Gethers moved for a directed verdict, but he did not make any argument in support of his motion. **R. p. 337, lines 10 - 12.** Without calling upon the State to respond, the trial judge denied his motion. She found that:

> it is not for the Court to weigh the evidence, that is for the jury. It's for the Court to determine whether or not there is evidence on each and every element, including any inferences reached, and of course from which the jury can reasonably determine guilt. And I find that there is evidence on each and every element from which the jury could reasonably determine guilt, and I would respectfully deny your motion.

R. p. 337, lines 13-22.

Prior to the defense's closing argument, Gethers renewed his directed verdict motion, and the trial judge again denied it. **R. p. 372, lines 21-25.**

B. Discussion.

The State initially submits that Gethers' argument is not properly before this Court on appeal because, as shown, counsel only made a general motion for a directed verdict, and it is settled that "a general directed verdict motion . . . does not preserve any issue for appeal." *State v. Sterling*, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) ("A general directed verdict motion, however, does not preserve any issue for appeal") (citing *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989)). Having failed to present his present arguments to the trial judge, they may not be raised on appeal because "[a] party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal." *Bailey*, 298 S.C. at 5, 377 S.E.2d at 584.[13]

Even assuming *arguendo* that the Court finds that his argument is not procedurally barred, the trial judge's ruling must be affirmed. In *Odems*, 395 S.C. at 586, 720 S.E.2d at 50, this Court set forth the applicable law governing the review of directed verdict motions in criminal cases:

> On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. *State v. Lollis*, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). However, if there is any direct or *substantial* circumstantial evidence

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[13] It does not appear that the Court of Appeals relied upon the procedural bar. *See* **App. p. 2**. As a result, Respondent as raised this procedural bar as an additional sustaining ground. Likewise, neither the Initial Brief of Appellant (**IBOA, pp. 5-9**), nor the Petition for Rehearing (**App. pp. 3-7**), presented the analysis of *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Lollis*, 343 S.C. 580,584, 541 S.E.2d 254,256 (2001), or *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), found at pp. 9-10 of the Petition for Writ of Certiorari, although *Mitchell* and *Lollis* were cited in the Initial Brief. Therefore, it would be improper for this Court to consider his arguments on certiorari. *See* Rule 208 (b)(1)(D), SCACR ("particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority");*Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281, 282 n. 3 (2003) (an issue must also be argued fully in the initial brief of appellant to be preserved for the Court's consideration); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (the failure to provide arguments or cite to authority in support of argument constitutes abandonment of issue on appeal); Rule 242(d)(2), SCACR (("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari ... ."); *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 516, 426 S.E.2d 304, 305 (1993) (declining to address issue not addressed by the court of appeals and not raised in petition for rehearing).

> reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 451–52 (1984).

(Emphasis in original). *See also State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011) (setting forth standard where State relies solely on circumstantial evidence).

Applying this standard to the case at bar, the trial judge's ruling must be affirmed because, notwithstanding Gethers' argument to the contrary, the State presented both direct and substantial circumstantial evidence reasonably tending to prove his guilt of murder. First, Mr. and Mrs. Ritchey heard two men arguing in the parking lot immediately before the shooting. Before Mr. Ritchey could reach the victim's still-running SUV, the assailant had fled. Likewise, the first officer on the scene arrived within moments of the dispatch for the shooting and he did not see anyone running, even though the smoke from the gunpowder was still in the cabin when he opened the SUV. However, a Bluetooth headset, which was still activated and had Gethers' DNA on it, was found between the area of the parking lot where the victim's car had been and the nearby apartments, where Gethers' co-defendant and girlfriend, Veronica K. lived.

Second, the phone records (*see* **State's Exhibits 42-43**) reflected the calls between Veronica K. and the victim, and between Veronica and Gethers. She called Gethers up until almost the time of the shooting. Also, although she made numerous calls to the victim's phone before the shooting, she did not call the victim after 10:58 p.m., which was only one minute after the 911 calls had been placed. Also, Ms. Reid testified that Veronica was dating Gethers at the time and that she saw Gethers talking to Veronica on the night of the 17th.

Third, Veronica K.'s statement, **State's Exhibit 33**, also clearly implicates Gethers in the

crime. In it, she admitted that she asked Gethers to get money from the victim and she told him what vehicle the victim was driving. She further indicates that he later told her that he did not get the money, which was corroborated by the testimony of the victim's wife that over $ 199.00 of the $ 200.00 the victim had borrowed from his son was returned to her.

Her statement also implicates Gethers in the murder, including evidence of flight from the jurisdiction and the use of a car that did not belong to Gethers and fake identification cards to elude capture. In the statement, she stated that "I didn't tell Trevee to shoot Mr. Earl, I just told Trevee to get the money. I didn't know Trevee shot Mr. Earl." Veronica also said that "I didn't see Trevee until the next day and he said we had to go because he got in some stuff. I knew we were running from something." **State's Exhibit 33, R. p. 429-30**.

The evidence of flight was corroborated by both Det. Garrison and Kiefer. Clearly, flight from prosecution is admissible as evidence of guilt in South Carolina. *State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (2003); *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct.App. 2003). Evidence of flight has been held to constitute evidence of defendant's guilty knowledge and intent. *Pagan, supra*; *see also State v. Thompson*, 278 S.C. 1, 292 S.E.2d 581 (1982) (finding that evidence of flight was admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension), *overruled on other grounds, State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Moreover and unlike the factual scenario in *Odems*, the totality of the circumstances in this case created an inference that Gethers had knowledge that law enforcement would look for him and Veronica in connection with the shooting. *Contra Odems*, 395 S.C. at 589-90, 720 S.E.2d at 52. *Accord Pagan, supra*; *State v. Beckham*, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999).

Further, testimony of prior inconsistent statements may be "used as substantive evidence

when the declarant testifies at trial and is subject to cross examination." *State v. Copeland*, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982); *see also In re Richard D.*, 388 S.C. 95, 100, 693 S.E.2d 447, 450 (Ct.App. 2010) ("Even if the family court had limited the admissibility of the statement, that does not negate the fact that consideration of the statement as substantive evidence in a directed verdict analysis would have been proper under *Copeland* and [*State v. Stokes*, 381 S.C. 390, 673 S.E.2d 434 (2009)]"); *State v. Smith*, 309 S.C. 442, 447–48, 424 S.E.2d 496, 499 (1992) (exclusion prior inconsistent statement of defendant's nephew constituted reversible error); *State v. Ferguson*, 300 S.C. 408, 411, 388 S.E.2d 642, 644 (1990) (exclusion of victim's prior inconsistent statement as substantive evidence was harmless error when other evidence was cumulative of statement); *State v. Crawford*, 362 S.C. 627, 634, 608 S.E.2d 886, 890 (Ct.App. 2005) (co-conspirator's later testimony did not obviate the efficacy of the first statement made closer in time to the event in question); *State v. Caulder*, 287 S.C. 507, 513, 339 S.E.2d 876, 880 (Ct.App. 1986) (trial court erroneously instructed jury to disregard witness's prior inconsistent statement for substantive purposes). Gethers' argument that Veronica K.'s statement was untrustworthy is contrary to well settled authority that, in reviewing an appeal from denial of a directed verdict motion, this Court must view the evidence in the light most favorable to the State." *E.g.*, *Lollis*, 343 S.C. at 583, 541 S.E.2d at 256; *Burdette*, 335 S.C. at 46, 515 S.E.2d at 531. His argument likewise ignores that "[i]n reviewing a motion for directed verdict, the trial judge is concerned with the existence of evidence, not with its weight." *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

Both Veronica's statement and her testimony reveal a crystal clear motive in this case: greed for the money that the victim was carrying and, inferably, the killing occurred when Gethers did not

get they money as he and Veronica had planned. Additionally, Respondent would note that Gethers' fingerprints and palm print from his left hand - and only his - were found on the passenger's side of the recently-washed white Toyota Sequoia SUV that was driven by the victim. Prints belonging to Mr. Ritchey were found elsewhere on the vehicle, and circumstantially corroborated his testimony. This was important because the pathologist opined that the victim was shot from the passenger's side of the car. There was also no evidence that the victim was armed.

Thus, this case is readily distinguishable from *Odems*, *Bostick* and *Lollis*, cases where the Court held that the State's evidence created only a mere suspicion of guilt. For instance, in *Odems*, the Court found that "[t]he State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him." *Odems*, 395 S.C. at 590-91, 720 S.E.2d at 51. Also, in *Bostick*, the State only presented evidence that "(1) investigators found personal items belonging to Polite, including a watch and two sets of car keys, in a burn pile located on the Bostick family property; (2) Bostick's shoes contained a pattern that matched gasoline, and gasoline was the accelerant used to start the house fire; (3) and investigators found blood on the clothes Bostick was wearing the day of the murder, but that evidence could not be matched to Polite's DNA." However, no motive was established. *See Odems*, 395 S.C. at 586-87, 720 S.E.2d at 50 (citing *Bostick*, 392 S.C. at 141–42, 708 S.E.2d at 778).

Here, however, there was an undeniable motive. Moreover, the direct and circumstantial evidence was such that " all of the circumstances proven [were] consistent with each other and taken together, point[ed] conclusively to the guilt of [Gethers] to the exclusion of every other reasonable

hypothesis." *Contra Odems*, 395 S.C. at 590, 720 S.E.2d at 52 .

II. The Court of Appeals erred by failing to find that Gethers' argument was not properly before it on appeal because Gethers only made a general motion for a directed verdict at trial and he did not make any of the arguments at trial that have been subsequently made on appeal. [Additional Sustaining Ground]

It does not appear that the Court of Appeals found that Gethers' argument was procedurally barred, although he did not make the same argument inthe trial court. **App. p. 2**. Therefore, as an additional sustaining ground, Respondent submits that the Court of Appeals erred by failing to find that Gethers' argument was not properly before it on appeal because Gethers only made a general motion for a directed verdict at trial and he did not make any of the arguments at trial that have been subsequently made on appeal.

As argued above, Gethers' argument was not properly before the Court of Appeals and is not properly before this Court on certiorari because, as shown, counsel only made a general motion for a directed verdict, and it is settled that "a general directed verdict motion . . . does not preserve any issue for appeal." *Sterling*, 396 S.C. at 612, 723 S.E.2d at 183 ("A general directed verdict motion, however, does not preserve any issue for appeal") (citing *Bailey, supra*). Having failed to present his present arguments to the trial judge, they may not be raised on appeal because "[a] party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal." *Bailey*, 298 S.C. at 5, 377 S.E.2d at 584. Therefore, certiorari must be denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny certiorari to review the judgment of the lower court and Gethers's conviction.

Respectfully submitted,

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July 12, 2013.

WES

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2013-000617

THE STATE,

RESPONDENT,

v.

TREVEE J. GETHERS,

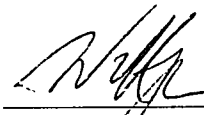
PETITIONER.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari and Certificate of Compliance on Petitioner by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, PO Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 12th day of July, 2013.



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STATE OF SOUTH CAROLINA
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THE STATE,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Return to Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 12th day of July, 2013.

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