RECEIVED
Sep 26 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael O. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANDRE JUNIOR COVINGTON,

APPELLANT.

Appellate Case No. 2022-000831

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit
(843) 479-6516
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge err in admitting the video deposition of a jailhouse snitch and allowing the State to publish the contents of a letter the snitch claimed he received from Appellant offering to make a witness disappear when the evidence did not meet an exception pursuant to Rule 404(b) and any possible probative value of the evidence was substantially outweighed by the danger of unfair prejudice?

II. In this murder case where the body was never recovered, did the trial judge err in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence of guilt?

STATEMENT OF THE CASE

Appellant was indicted for murder (2021-GS-13-461). (R. p. 579). A five day jury trial was held before the Honorable Michael G. Nettles on March 4 through March 8, 2022. Appellant was represented at trial by attorney Kyle Hobbs. The State was represented by Deputy Solicitor Kernard Redmond. At the conclusion of the trial, the jury found Appellant guilty and Judge Nettles sentenced Appellant to forty-five (45) years in prison. (R. p. 579). Appellant filed post-trial motions for a judgment of acquittal and for a new trial. A hearing was conducted on June 1, 2022, and Judge Nettles denied the motions at the conclusion of the hearing. (R. p. 588-99).

This appeal now follows.

STATEMENT OF FACTS

At approximately 9:00 pm on June 2, 2016, Terris Parsons (hereinafter "Victim") went out for cigarettes in his 2010 champagne colored Buick Lacrosse. His girlfriend with whom he had plans to marry, Latoya Broadie, had smoked his last cigarette so she handed him a 10 dollar bill and he left to go get more. (R. p. 108-110; p. 134). Surveillance footage showed that Victim did purchase those cigarettes. (R. p. 158). However, Victim never made it home that night. As surveillance evidence would later show, Victim's last known location was at Appellant's address. (R. p. 159; p. 231; p. 300-301). Despite considerable efforts by law enforcement, Victim's body has never been discovered, nor were there useful forensic discoveries. Despite Victim's close and numerous relationships with family and friends, his role as a father, his employment, and his financial plans, there is no evidence to suggest Victim is still alive.

The Development of the Case

When Victim did not return home June 2nd, Ms. Broadie grew worried and began a number of efforts to try and determine his whereabouts. This included obtaining a recent list of calls from

Victim's phone (which was linked to her account) and contacting those numbers the following day. (R. p. 116). One of those numbers belonged to Appellant. Ms. Broadie's made numerous calls to this phone with her own phone, but they went unanswered. When she tried the number while using her friend's phone, Appellant answered. Ms. Broadie had a short conversation with Appellant, but he would not answer Ms. Broadie's requests for information. Ms. Broadie ultimately contacted the police and filed a missing person's report. (R. p. 117-119; p. 153-155).

On June 4, 2019, as a result of Ms. Broadie efforts to acquire a recent contacts list, police requested Appellant come in for voluntary questioning. Appellant agreed and he drove himself to the police station. (R. p. 153-155). During the interview police also obtained consent to seize Appellant's phone. (R. p. 155; p. 174; p. 381). Appellant denied having any contact with Victim on the day of his disappearance. (St. Exhibit 80; R. p. 303). At the time, law enforcement officers did not have any evidence which contradicted this assertion and Appellant was permitted to leave. Law enforcement officers also interviewed Lillie Moore (Appellant's live-in girlfriend) and Robert Wilson.

However, further investigative efforts led to the acquisition of recordings from multiple surveillance cameras in the area. The surveillance footage demonstrated that once Victim left the Alco station with his cigarettes and candy, he proceeded to 4 Chapman Street – Appellant's home address. (R. p. 158-159; p. 164). Surveillance footage shows Victim's car reaching Appellant's residence at 9:18pm. (R. p. 340-341). This was the last known location for Victim, and in addition to the surveillance footage showing his arrival, there were also the direct communications between Victim and Appellant on the night of June 2nd. These communications include: 1) Appellant texted Victim at 7:22pm that he should be home at about 8:30; 2) Victim responded to Appellant at 7:23pm with a simple: "Okay"; 3) Appellant texted Victim at 8:58pm that he was home; and 4)

Victim responded again with an "okay" acknowledgment. (R. p. 339-340). After Victim's arrival, a 9:40pm text from Victim's phone was sent to Robert Wilson saying "I'm on my way", and Mr. Wilson responded by asking Victim where he was on his way to. This text was never responded to.[1] (R. p. 341; p. 343).

At 10:06pm, Victim's car is observed by the same surveillance cameras leaving Appellant's home. (R. p. 342-343). However, it was followed at a distance by Appellant's Blue Ford Mustang that possessed the unique identifiers of being a rag-top convertible with a decal sign on the side of the car. Multiple cameras tracked the two cars progress leaving away from the home. The cameras then caught the blue Ford Mustang returning back through town without the Buick at 11:34pm. (R. p. 344-345). In addition to this, Appellant placed a six second call from his phone to Victim's phone at 11:53pm. (R. p. 345). Additionally, at 11:55pm, Victim's phone received a text from Appellant stating that "If you don't want the puppy just say that. Don't have me waiting on you. Call me in the morning." (R. p. 349).

In the days that followed, law enforcement received a tip that someone had possibly spotted Victim's car in an abandoned carwash in Morven, North Carolina, a short drive up the road from Cheraw. This was investigated extensively, but they did not find the car at the carwash or anywhere else in the area. (R. p. 156).

On June 7th, with new knowledge gained from the surveillance footage, law enforcement sought to backtrack some of their previous efforts. They sought to reinterview Lillie Moore, and at that time she was not forthright in her responses. While her interview was ongoing, Appellant arrived at the station as well to ask what was taking so long with her interview. He was mirandized and questioned again as a result, and *again* asserted that he had not seen Victim on the night of

[1] Robert Wilson was investigated by police, but ruled out as a suspect.

June 2nd. Ultimately, both individuals were then charged with obstruction of justice and Appellant was later charged with kidnapping. (R. p. 446-447).

The Testimony of Lillie Moore

On June 25th, however, Ms. Lillie Moore contacted police, and in the presence of counsel provided police with a full explanation of the events she witnessed take place between June 2nd and June 3rd. She testified that she had never seen Victim and did not know Victim. However, on the night of June 2nd, between the hours of approximately 9pm and 10pm, Appellant asked her to follow him down Highway 52, and that he seemed reluctant to ask her to do so. (State's Ex. 81, at 11:31-11:33). Appellant explicitly asked her to leave both hers and his phone behind for the trip, however she did not obey the request and opted to simply turn off her phone, fearing she may need it for safety purposes. She followed him to Morven, heeding his instruction to not follow too closely, but instead at a distance enough to just keep his taillights in view. She was told that once they got down Highway 52, she was supposed to pick him up from the roadside when she sees him walking. (State's Ex. 81, at 11:34-11:36).

She explained that she was driving Appellant's blue Mustang, and that Appellant was not driving one of their personal cars; however, at the outset of following him she did not get a good look at the vehicle he was driving. That changed when she pulled up to the store in Morven, wherein she identified the car as being "crème" colored; she likewise identified Victim's Buick from the exhibits presented. She had never seen the car before that night. As she was pulling into the store parking lot and Appellant was pulling out, they spoke briefly and Appellant said that he would be ready for pick-up within the time it would take for her to turn around and get out of the parking lot. (State's Ex. 81, at 11:36 - 11:40).

However, Ms. Moore recognized that she was in need of gasoline, so she drove to nearest open gas station she could find and purchased gasoline. This happened to be back in Cheraw where they had originally left. Upon her return up Highway 52 she eventually encountered Appellant walking on the roadside, as she had been told to expect. Once Appellant was in the car he did not say anything, and they returned to the house. Ms. Moore testified that she was not aware of where Appellant had left the Buick that he had driven up to Morven. She asked what was going on, but Appellant did not respond. Once they returned Ms. Moore had to go back out to meet Appellant's sister in Cheraw who needed a ride. She was gone for 30 to 35 minutes and Appellant was not with her during that time. She also commented that upon her return, Appellant was in and out of the house that night, but she did not know for what purpose.[2] (State's Ex. 81, at 11:40 – 11:47). Ms. Moore also noted that Appellant had been operating a burn pile in the middle of the night that night. (R. p. 309; Ex. 81).

On June 3rd, the following morning, she overheard Appellant during a phone call with a woman and Appellant stated: "he didn't come; he didn't show up." On the evening of June 3rd, she and Appellant drove back to Morven in their Lexus for the purpose of moving the car he had driven there the night prior, but Appellant did not explain why. When they arrived, she saw that the car was parked in the back side of an abandoned carwash. Appellant got out, and assumingly had the key to crank the car, because he was able to do so with no apparent difficulty or delay. She then followed Appellant to Florence County where he parked the car behind what he called an abandoned house. They were there approximately five minutes, and Appellant then got in the car

[2] Ms. Moore also provided testimony that Appellant and another individual spent the next morning cleaning the yard and hauling what they had cleaned to the dump, and that later she was left at Appellant's mother's home while Appellant visited his brother elsewhere. (State's Ex. 81, at 11:47-11:50).

with her and they drove back to Cheraw. Appellant again refused to answer her question of what was going on. (State's Ex. 81, at 11:50 – 12:00).

When Ms. Moore reached out to law enforcement to provide a new statement, she also agreed to direct them to the car they had left in Florence. Though finding it presented a bit of difficulty, she was successful in leading the police to the car. Ms. Moore explained that she was fearful and did not tell law enforcement the information at first because of what might be going on in the situation with Appellant. At the time of her testimony, her charges remained pending and she had received no promises of leniency. (State's Ex. 81, at 12:03 – 12:07).

The Testimony of Fausten Romero

One further development would come in the case after Appellant was arrested. Fausten Romero testified that he was housed for a time at the Marlboro County Detention Center, and was pod-mates with Appellant. He had a cell right beside Appellant's and they communicated frequently. Mr. Romero testified that on one occasion Appellant slid him some papers and told him to read them. The first paper was Appellant's arrest warrant for Kidnapping; Appellant instructed him to read it and then hand it back. Mr. Romero complied. The second was a letter or note from Appellant that was redacted for trial and read into the record:

> First, let me tell you how I can help you in a major way. If they don't have any witnesses they don't have a case. You follow me. I can make that happen. Trust me. That can be done while you're out on bond for the State bonds for the State charge, which, you know, the charge will get dismissed because there is no one to take the stand against you. Are you still with me.
>
> Once again, I'm telling you that if I got out, there will be nobody to take the stand. I can make witnesses disappear. They wouldn't have a case because they have to be able to take the stand. Trust me. I want this paper back.

(State's Ex. 81, at 10:52 – 10:54; R. p. 462-463). Mr. Romero was presented with what was identified as State's Exhibit 1 and noted that it was the Kidnapping arrest warrant Appellant provided him. He then identified State's Exhibit 2 as the letter from Appellant.[3] Appellant told Mr. Romero that he would need the letter back. However, when Appellant later asked for the letter back, Mr. Romero lied that he had torn it up, flushed it, and claimed that he wanted no part in the matter. In truth, he kept the letter and attempted to send it to law enforcement in the hopes of aiding his own legal circumstances. However, ultimately any real help he hoped to gain was moot, as he had served nearly all of his sentence by the time of his testimony. In any case, a note was put in his file for consideration despite his coming release. (State's Ex. 81, at 10:55 – 10:59).

Mr. Romero was asked during his examination what meaning he took from Appellant's papers that were handed to him. He testified that: "When I read this part, that's whenever I realized about the kidnapping, the warrant you know – I felt like that the reason he wanted me to read the kidnapping charge was you know to let me know, that you know, this is what can be done [in his own case].". Mr. Romero testified that he did not know how to respond to that, and that Appellant was looking for $1000 to help with retaining a lawyer in return for his assistance. (State's Ex. 81, at 11:00 – 11:05). Mr. Romero reiterated that although Appellant never told him what he did, or admitted to guilt for his crime, he "felt like" in reading the warrant and the note together, "it was self-explanatory" that he was saying "this is my work, this is what I can do." Mr. Romero had no doubt that it was Appellant that handed the papers to him. (State's Ex. 81, at 11:07; at 11:18).

STANDARD OF REVIEW

The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion. *State v. Clasby*, 385 S.C.

[3] Though the exhibit was not entered into evidence due to its nature as a charging document.

148, 154, 682 S.E.2d 892, 895 (2009) "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. *State v. White*, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007)(citing *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 623 S.E.2d 373 (2005). To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. *Id.* (citing *Fields v. Regional Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

"When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight. When [an appellate court] reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the non-moving party, and if there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, refusal by the trial judge to direct a verdict is not error." *State v. Long*, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002)

ARGUMENT

I. The trial court did not err in admitting the testimony of Fausten Romero and the letter from Appellant regarding the offer to make a witnesses disappear.

To the extent the letter and testimony from Fausten Romero can even be considered 404(b) evidence, the trial court did not err in finding the evidence admissible as evidence of guilt.

However, the application of Rule 404(b) is unnecessary and represents a depreciative view of the evidence's value, as the letter and arrest warrant actually constitute circumstantial evidence of a confession by Appellant. As such, the evidence and testimony were properly admitted and Appellant's conviction and sentence should be affirmed.

"Under Rule 404(b), SCRE, evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *State v. Fletcher*, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008) (citing *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)). "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." *Id.* "Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." *Id.* (citing Rules 403 and 404(b), SCRE). "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *Id.* (citing *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364, cert. denied, 498 U.S. 881, 111 S.Ct. 227, 112 L.Ed.2d 182 (1990)).

The issue at hand arises via pretrial motions wherein Appellant objected to the admissibility of the evidence as being a prior bad act without an exemption under Rule 404(b) and *Lyle*. Appellant argued that the letter "does not reference anything about the case at hand" and that Victim "was not a witness in a case". He then argued that the disappearance of a witness and the disappearance of Victim are not a sufficient parallel, and that such is a "conjecture" of the State. He then argued that the letter would be an unduly prejudicial prior bad act tending to suggest a

decision on an emotional basis. (R. p. 74-77). In response, the Deputy Solicitor properly noted that the key element to this matter is not the letter (often referred to as a note), *but the warrant* and its indication that Victim "has not been seen since". In short, the solicitor argued that providing the warrant, in tandem with context of the letter, is an assertion by Appellant that he can make someone disappear. Therein, the evidence goes to establish multiple exceptions to the 404(b) prior bad acts evidence rule, including identity. (R. p. 77-79).

The trial court took the matter under advisement and ultimately found the evidence admissible. The court found that "the prejudicial value does not over – override the probative value with regard to this particular piece of evidence. And when you look at all the evidence, *and the fact that there was a warrant and the letter*, it's probative with regard to identity." (R. p. 210)(emphasis added). The video testimony of Fausten Romero was later published for the jury. (R. p. 461).

Depending on the inference that one wishes to take from the evidence, the ruling of the trial court to admit the video testimony and letter was correct for two reasons. First, as the issue was objected to on the grounds of violating 404(b), the court viewed the evidence in the light of 404(b) prior bad acts. In so doing, and to the extent that evidence can be viewed in the spectrum of 404(b) analysis, the letter constitutes an offer by Appellant of making someone disappear (in the case of Mr. Romero, a witness that would be vital to his case) in exchange for money.[4] That

[4] Appellant wants this court to focus upon the supposed disconnect of Appellant's "con" to the Victim's murder. But the connection is not the "con" itself, it is the use of his own warrant to make the disappearance of a witness seem achievable and to make what Appellant suggests is a "con" appear legitimate. Even more detrimental to Appellant's argument in this regard, is that he barely even mentions the accompanying warrant in his brief. As argued by the Deputy Solicitor, and identified by the trial court in its ruling, the warrant is the crucial part of this issue, and Appellant's failure to address and challenge the impact of the warrant on the nature of the evidence greatly diminishes the efficacy of his argument for error by the trial court.

may indeed be inadmissible, had the letter been the only thing handed to Mr. Romero that day. However, as the court explicitly mentions, this letter was accompanied by Appellant's arrest warrant, and the warrant creates the logical connection between Appellant's existing crime and his prior bad act of offering similar services of a future crime. The warrant serves as the *bona fides* for Appellant's offer. As such, the letter and accompanying arrest warrant go to the establishment of identity in Victim's murder as an exception under Rule 404(b). In short, Appellant's use of the warrant to make the offer appear legitimate, constitutes evidence identifying Appellant as the individual responsible for Victim's disappearance.

While that inference from the evidence is acceptable, and the ruling of the court is entirely proper in relation to the objection that was raised, it does a great injustice to the evidence that is being presented. Appellant's provision of the warrant in tandem with the letter does not just simply provide a *bona fides* for Appellant's offer and substantiate the letter as evidence of identity. Taken together, the provision of the warrant in connection with the letter offering services of making a witness disappear is circumstantial evidence of a *confession* of his guilt for Victim's fate. Appellant is, by fairly clear inference, using his own arrest warrant for the kidnapping of Victim Parsons as a résumé or work history demonstrating a crime he has already successfully committed. This is not a difficult conclusion to reach, as Mr. Romero testified specifically that this was the inference he took away from Appellant's offer as well. (State's Ex. 81, at 11:00 – 11:07). Admittedly, it is not an "overt" confession – which is why Mr. Romero also testified that Appellant did not explicitly confess to his charges. However, circumstantial evidence of a confession does occur, and the inference or inferences that need be made to deem words or conduct a confession is an issue rightfully put before the jury. See *State v. Rogers*, 405 S.C. 554, 564, 748 S.E.2d 265, 270 (Ct. App. 2013). At a bare minimum it constitutes evidence of consciousness of guilt, and "[a]s a

general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976). The evidence and testimony were admissible as circumstantial evidence of guilt for which the jury could have interpreted to be an outright confession or evidence of consciousness of guilt.

The distinction between how the evidence is used: a) as *bona fides* to legitimize his offer thereby establishing evidence of identity, versus b) strictly evidence of guilt by way of a circumstantial confession is not substantial. What is substantial, however, is that one focuses upon a prior bad act, and the other focuses upon the admission of guilt for the crime being tried. Even though it was capable of doing so, the evidence did not need to pass through the scrutiny of Rule 404(b) analysis. Appellant cannot seek to *rely* upon the warrant as proof of his own credentials while not also suggesting that he is in fact guilty of "disappearing" Victim by way of murdering him. The ruling of the trial court was acceptable, but the more blatant interpretation of the evidence renders it simply admissible evidence of guilt.

II. The trial court correctly denied Appellant's motion for directed verdict, as there was substantial circumstantial evidence tending to prove Appellant murdered Victim.

The fact that this is a "no body" case, does not detract from the substantial circumstantial evidence presented in this case that Appellant murdered Victim. The trial court correctly denied Appellant's motion for a directed verdict at trial, and the conviction and sentence should be affirmed.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001) (citing *State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001)). "If there is any direct evidence or

substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury." *Id.* Accordingly, a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *Id.* (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.*

The Supreme Court in *Weston* articulated that the lack of a recovered body does not necessarily prevent the satisfaction of the corpus delicti of a murder case. Where the sudden disappearance of the Victim is in contrast with the testimony establishing his pattern of life and relationships, so as to render voluntary disappearance an unlikely conclusion, the first element of the corpus delicti has been satisfied. Appellant has essentially conceded that the "pattern of life" testimony provided in the record is sufficient to satisfy the first element requiring the death of a human being.[5] (See Brief of Appellant, p. 13). Appellant contests the sufficiency of the evidence toward the second element –the criminal act of another causing death". However, Appellant's arguments fail to demonstrate error on the part of the trial court.

When the circumstantial evidence from the record is *appropriately* itemized, it establishes the following facts:

1. On June 2nd, a little after 9pm, Victim was alive and well while buying cigarettes and candy at the Alco station mere minutes before he pulled up to Appellant's home. (R. p. 158; p. 340);

[5] To the extent Appellant argues that he has not conceded the first element. Respondent would argue that the State presented more than sufficient "pattern of life" evidence to satisfy the standard. Victim was a loving and involved father, he was in the process of financing a home with Ms. Broadie, they had plans on getting married, he was starting a new job, and he was frequently communicative with multiple members of his family. All communications and interactions of any kind abruptly ended while he was located at Appellant's residence, and they have never resumed.

2. Surveillance footage demonstrated that after leaving the Alco station, Victim drove to Appellant's residence. (R. p. 158-159; p. 164; p. 340-341);
3. Victim and Appellant shared texts messages on the night of June 2nd that suggested Appellant expected a visit from Victim and confirmed that Appellant was home at the time Victim arrived. (R. p. 339-340);
4. Victim arrived at Appellant's home at 9:18pm by driving his Buick Lacrosse. (R. p. 340-341);
5. A 9:40pm text from Victim's phone was received by Robert Wilson stating: "Im on my way". Mr. Wilson responds: "to where?", and that text was never responded to. This exchange took place before any further movement is seen from Victim's vehicle. No further outgoing communications come from Victim's phone. (R. p. 341-343);
6. Video surveillance showed that Victim's car left Appellant's home nearly an hour after arriving, at 10:06pm, and was followed from behind by Appellant's blue Mustang. Ms. Moore's testimony demonstrated that Appellant was driving Victim's Buick to Morven for the purpose of abandoning it at the carwash. Ms. Moore testified that she was following the Buick at Appellant's reluctant instruction, that she was told to leave her phone at home, and that she never saw Victim that night. (R. p. 342-345);
7. Text message history showed that Appellant texted Victim, "If you don't want the puppy just say that. Don't have me waiting on you. Call me in the morning.", despite the evidence that Victim clearly arrived at Appellant's home that night. (R. p. 349);
8. Ms. Moore testified that after abandoning Victim's car in Morven, Appellant was picked up from the roadside and brought home by Ms. Moore in the Mustang, as was his plan. She further testified that he was home alone upon their return while she helped

his sister, and that after she returned, he was "in and out" a lot that night. She also testified that he was using a burn pile that night. (R. p. 309; State's Ex. 81).

9. In addition to Appellant's efforts to abandon Victim's car in nearby Morven, and his efforts to send what can reasonably be inferred as a fake text to Victim in an attempt to support his lie that Victim had not shown up at his house, SLED was also getting ping data showing that Victim's cellphone may have been in the Morven area of North Carolina. (R. p. 228);

10. Both Ms. Broadie's and Ms. Moore's testimony demonstrated that Ms. Broadie spoke with Appellant the following morning on June 3rd. (R. p. 117-119; p. 153-155; Ex. 81);

11. After receiving that phone call, Appellant had Ms. Moore drive up with him to Morven, collect Victim's car, crank it with a key, and drive it nearly 50 miles away into Florence County in order to park it tightly behind an abandoned house. Despite her requests, Appellant would not tell Ms. Moore what he was doing or why. (Ex. 81);

12. When questioned for the first time on June 4th by police regarding their missing person's case, the record evidence demonstrated that Appellant misled police when he denied seeing Victim on June 2nd. (R. p. 303; Ex. 80; et al.);

13. When questioned for the second time on June 7th by police regarding their missing person's case, the record demonstrated that Appellant again misled the police when he denied seeing Victim on June 2nd. (R. p. 306; p. 327-328; Ex. 80; et al.);

14. Ms. Moore voluntarily chose to cooperate with law enforcement and led them to Victim's hidden Buick in Florence, thereby corroborating the testimony she provided as to hers and Appellant's actions over the course of June 2nd and June 3rd. (Ex. 81; p. 314-317).

15. Once in prison, Appellant provided fellow inmate, Fausten Romero, with an offer to disappear a witness along with a copy of his arrest warrant for kidnapping of Victim. Such was provided as proof to Mr. Romero that he is capable of making people disappear and thereby constituted circumstantial evidence of a confession that he is guilty of Victim's murder. (Ex. 81).

All of this evidence strongly supports the conclusion that Victim was last alive at Appellant's residence, and the lies, secrecy, and efforts to dispose of evidence prove that his life was ended by the malicious criminal actions of Appellant. All of which is bolstered by the inferred confession stemming from Appellant's use of his own arrest warrant as credentials for his ability to make another inmate's witness disappear. The trial court was correct to deny Appellant's directed verdict motion as there is in fact substantial circumstantial evidence of guilt. (R. p. 490-498). As the court similarly noted during the post-trial motion hearings, "there was a bunch of it" and the court then summarized the case against Appellant, which included his various efforts of dishonesty in covering up Victim's disappearance. (R. p. 598).

In denying a directed verdict motion "[a] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). There was more than enough evidence available to present the case to the jury, and the jury returned a guilty verdict beyond a reasonable doubt. The ruling of the trial court was correct and Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

WILLIAM B. ROGERS
4th Circuit Solicitor
P.O. 594
Chesterfield, SC 29709
(843) 479-6516

By: *s/ W. Joseph Maye*
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 26, 2023

RECEIVED
Sep 26 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Michael O. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANDRE JUNIOR COVINGTON,

APPELLANT.

Appellate Case No. 2022-000831

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 26th day of September, 2023.

s/ W. Joseph Maye
W. JOSEPH MAYE
Assistant Attorney General

ATTORNEY FOR RESPONDENT