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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

The State of South Carolina, Respondent,

vs.

Tremaine Pierre Johnson, Appellant.

Appellate Case No. 2021-000701

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Evidence was sufficient for a reasonable juror to find Appellant guilty of murder beyond a reasonable doubt, and therefore, the trial court did not err in denying the motion for directed verdict.

STATEMENT OF THE CASE

The jury found Appellant Johnson guilty of murder following trial on June 14-17, 2021. The Honorable J. Derham Cole sentenced Johnson to life imprisonment for the murder charge. Johnson was jointly tried with his codefendant, Robert Tyrell Gentry, who the jury found guilty as charged for accessory before the fact and accessory after the fact to murder.

STATEMENT OF FACTS

Johnson killed the woman he impregnated, Brechue Ferrarri Wiles (Victim). She was excited upon learning she was pregnant on May 1. On the other hand, Johnson was not happy, as indicated by his abortion-related internet searches. Social media and cell phone records tracked his arguments with Victim, his motive to kill, his internet searches for modes of poisoning Victim, his contact with his codefendant who provided him the murder weapon, and his rendezvous with Victim at the park she would never leave. She was found in the water, her face was disfigured by animal activity feeding on flesh.

Louis Dischler took a morning walk in Duncan Park on May 11, 2018. He saw a shoe on the trail. Then its mate. Then he saw the body, face down by the shore of the pond. He started back towards his house because he did not have a cell phone, but saw a man on the trail, who called 911 after seeing for himself that there really was a body in the water. Dischler initially thought Victim was a child because of her small stature. R. pp. 120-23. Joann Littlejohn, Victim's great aunt, testified Victim weighed only about 80-90 pounds. R. p. 125.

Littlejohn testified Victim recently discovered she was pregnant – Victim was excited and so was her mother. R. p. 133. Littlejohn testified Victim and Fontae Wiles (Mother) were waiting in front of Littlejohn's house at about 8:00 p.m. on May 9. Victim and Mother wanted to show her an outfit Mother planned to wear for Littlejohn's sixtieth birthday party. Victim, engaged in a loud telephone conversation, sat on the hood of the car when Littlejohn arrived. Victim seemed anxious. She ended the phone call, and subsequently Victim asked Littlejohn to make her chicken quesadillas, a favorite meal. R. p. 127. Downstairs in the kitchen, Littlejohn heard a loud discussion between Mother and Victim, then Victim came downstairs, saying she was leaving to meet someone. Littlejohn did not even finished preparing the quesadillas Victim requested. Littlejohn rhetorically asked where she would go this time of night and added, "This is quite late for a young lady to go out this time of night." R. pp. 127-28. After going upstairs to ask Mother what was going on, Littlejohn ran out after Victim, but Victim drove away. R. p. 129.

Littlejohn testified Victim's mother called Victim twice, Littlejohn heard the second phone conversation on speaker phone. Mother implored Victim to come home, Victim said I am coming. Littlejohn heard a male voice in the background say, "Come on, we gotta go," shortly before Victim hung up. R. pp. 129-30. The next day Littlejohn helped Mother try to find Victim. R. pp. 130-32.

Fontae Wiles (Mother), testified after they arrived at the house and went inside, Victim received two phone calls for her to meet the caller at the park by the water. R. pp. 137-39. Specifically, Mother testified as follows:

Q: And where did you and Bree go?

A: Upstairs.

Q: And did Bree get a phone call?

A: Yeah.

Q: Was it unusual or what was – what was different about that call? Did she recognize the number or anything?

A: No. She didn't.

Q: Okay. But did she answer it?

A: Yes.

Q: And when she answered it, what was her reaction?

A: She was upset but she answered the telephone. She answered the phone, and he was telling her to meet . . . by the park, by the water.

Q: [A]fter that phone call did – did she get another phone call?

A: Yeah.

Q: And was it the same person?

A: Yeah.

Q: And where did – she decide to do after that second call?

A: Leave to go meet at the park by the water.

R. p. 137, line 18 – p. 138, line 13. Mother told Victim not to go, but Victim left. After Victim left the house, Mother called Victim twice, and testified that in the second phone call, she heard a male voice in the background. R. pp. 139-40.

The next day, when she did not receive her usual noontime phone call from Victim, her concerns rose further. She looked for Victim after work. She went to Johnson's house and spoke to his mother, who called Johnson. His mother's eyes got big as she spoke with Johnson. She put Johnson on speakerphone. He claimed to have not seen her since Tuesday, and Mother replied that was not true, she saw him Wednesday night. He stuttered in response and she told him she was

going to the sheriff's office. R. pp. 140-43. Mother was at the police station filing a missing person's report on May 11 when she learned her daughter's body was discovered. R. p. 144. Mother identified Victim's purse that was left in Victim's car. The car was left in the park's parking lot. R. p. 145; p. 151.

Officer William Joseph Tillinghast, the K-9 handler, testified his dog tracked from Victim's vehicle, to a set of car keys, to a shoe, and then within five yards of the body. R. pp. 158-60.

Supervising officers informed Officer Shane Michael Cloran of an unidentified female floating in Duncan Park Lake and he met investigators at the lake. R. p. 168, lines 7-13. He started with Victim's car, where he found a purse positively identified by Mother as Victim's. Officer Cloran followed the canine tracking team as it made its way to the deceased. Next, he flagged and photographed items of evidence along the trail, including two shoes, a set of keys, shell casings, and blood located by the shore. R. pp. 174-75. A TulAmmo 40 caliber casing lay near where one of the shoes was found. R. pp. 176-78. The deceased woman's tattoos matched the description the family provided to the officers. R. p. 185. During the autopsy, Victim was determined to be pregnant and the fetus was removed from the body. R. p. 186.

Law enforcement later searched Gentry's vehicle and found a box of 40 caliber TulAmmo and also a 40 caliber pistol magazine in the glove box. R. p. 230. In Gentry's house, law enforcement found a half empty box of the same ammunition and an empty box for a Smith and Wesson hand gun that showed the caliber of the hand gun and its serial number. R. p. 231; p. 234. A custodian from Academy Sports verified Gentry bought a Smith and Wesson 40 caliber pistol on March 20, 2017. R. pp. 380-81 p. 384. As shown below, messages between Johnson and Gentry, and firearms related searches by Gentry, provide evidence that Gentry provided Johnson the firearm

used to murder Victim, and Gentry provided assistance after the fact in attempting to hide the disposition of the weapon.

State's Exhibit 21, a summary of cell phone records, text messages, and internet searches collected in the case, provides a chronology of the progression of the disputes between Johnson and his victim, and the fatal outcome on the night of May 9, at the park, a mere nine days after Victim determined she was pregnant. The chronology in State's Exhibit 21 is discussed below:

May 1: Victim thinks she is pregnant, does not like Johnson's reaction.

On May 1, at around 5:00 a.m., Victim sent a text to Johnson telling him, "I calculated my period." R. p. 246. This led to a discussion in which Johnson said Victim could take a pregnancy test the next day. R. pp. 247-48. This also starts showing the disagreement brewing when Victim texts at 10:18, "Hey. I don't like how you've been acting towards me. I didn't do anything wrong, and I just feel since you treat me like a random bitch I don't feel a need for us to talk anymore." R. p. 248, lines 12-16. A series of texts between them led to Victim remonstrating, "By your actions. Your actions are making me feel unwanted and uncared for." R. p. 249, lines 17-19. Another text from Victim informs Johnson, "You're a good talker with no game. You only make time for who you want and I'm definitely not that person. I understand we both busy and everything, but I'm not going to sit here and let you ignore me like that." R. p. 250, lines 1-4.

May 2: Johnson wants Victim to have an abortion, Victim disagrees, Johnson researches the poisonous qualities of a harvestman (an arachnid known as a daddy long-legs).

It becomes clear Johnson and Victim carried diametrically opposed views of her pregnancy: At 12:36 p.m., Johnson searched "abortion clinic" on his phone, but obviously picking up a prior conversation, at 10:56 p.m. Victim texted, "What if your ma aborted you?" R. p. 251; p. 252, lines

16-19; State's Exhibit 21. He responded he just would not be here. She responded, at 11:00 p.m., "S.M.H. [shaking my head], there's no talking to you." R. pp. 252-53; State's Exhibit 21.

At 11:02 p.m. Johnson conducted an internet search: "Is the poisonous in a granddaddy long leg?" Johnson also responded to Victim's text: "That's the truth, and, no, it's you. S.M.H." R. p. 253, lines 3-14; State's Exhibit 21.

May 3: Johnson researches abortion methods, after Victim tells Johnson the due date for the baby, Johnson researches lethal poison for sale.

The next morning, May 3, Johnson undertook a new round of internet searches around 5:00 a.m.: "What can you take to get rid of a baby in your stomach?" R. p. 253, line 20-21. He searched for Mifeprex, an abortion pill, and examined whether it was for sale on EBay. R. p. 253, line 20 – p. 254, line 7; State's Exhibit 21.[1]

Victim attempted to call Johnson that morning, but the call did not go through. She texted at 11:43 a.m., "Just to give you info. I am a month and a week. The baby's due date is on or before or after Jan. 5th. Just felt like you need to know even if you don't care right now. Have a blessed day." R. p. 254, line 15-22.

Later in the evening, Johnson conducts the following searches: "Poison" "Types of poison." "Poison Ivy" "Poison that can kill you for sale." R. p. 255, lines 3-8. He then contacts Victim at 9:39 p.m., with an i-message that was just a question mark. She responds W.Y.D. [what are you doing?]. She follows up: "I actually want us to be able to sit down and talk about ways we can cope." R. p. 255, lines 9-25. A further exchange of communication suggests an attempt to reconcile,

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[1] Johnson was the father of the fetus. R. p. 361; p. 408. Johnson suggests in his brief he did not know he was the father. Obviously, his actions in the days leading up to Victim's death indicate he thought he was the father.

leading to Victim informing Johnson, "Not tomorrow though. It'll have to be Saturday." R. pp. 256-57.

May 5: Victim is excited about the baby, Johnson plays along.

The next day sees little contact between them, but on May 5, Victim sends a message, "What my mom bought for the baby" and a second message, "A diaper disposal pail." R. p. 257, lines 8-25. Johnson replies, "Hi. Okay. She ready" and Victim adds, "It's right. L.O.L. She excited. We going to Baby R Us today." R. p. 258, lines 1-7. Victim sent a picture of her stomach, commenting she had a "little pudge." R. p. 258, line 25 – p. 259, line 7.

May 8: Victim is anxious about telling Johnson's mother, but the visit ends with argument between Johnson and Victim, and Victim blocks Johnson's phone.

On May 8, Victim called Johnson, but it did not appear to go through, followed by a text message telling Johnson she is on her way home. Johnson responds he is home. They agree she should go over to his house, and she indicates she will be on her way there in half an hour. A few minutes later, Johnson tells Victim he is helping his mother with something. At 10:31 p.m., Victim advises she is outside. R. pp. 259-60.

At 10:46 p.m., Victim carries on a conversation with her cousin, telling her cousin she was scared to see "her." The cousin responds, "I know. But you can do it. She's a Christian mother." R. p. 260, line 23 – p. 261, line 5. Therefore, from the context, it appears she anticipated Johnson and Victim telling Johnson's mother the news of the pregnancy.

There is clearly an argument and the line of communication between Johnson and Victim concludes bitterly at 10:59 p.m. with Victim texting Johnson:

> You know what. Fuck you! I should have told you to your face. I'm not going to disrespect your mom like that. I don't need you in my

> child's life. Let me tell you one thing now. . . . [D]on't try to come back! You said what you said, ...

R. p. 261, lines 6-21. Victim's next text told Johnson he was blocked, and she actually blocked his number. R. p. 261, line 16 – p. 262, line 2. Johnson does not respond that night.

May 9: Johnson finds out Victim blocked Johnson and does not want him in the baby's life. Johnson sends an angry reply and contacts Gentry for the first time within the hour – they repeatedly communicate for the next couple of days. Johnson convinces Victim to unblock him, she goes to the park, his phone uses the same cell tower, she never leaves the park.

Johnson did not read Victim's last two messages until the next morning, but responded at 7:28 a.m., "Shut up. Ain't nobody outta the child's life. I didn't have nothing else to say." R. p. 262, lines 3-13.

After taking sufficient time to stew, Johnson contacted Gentry by Facebook Messenger at 8:17 a.m. This is the first time starting from April 5 that the records show Gentry and Johnson are in contact, but as will be shown, they repeatedly engaged in contact straddling both the time before and after Victim's death. Gentry responded with two messages, the second response to Johnson is as follows: "At work. ill [I'll] call u in bout 10 min den gank." R. p. 262, line 17 – p. 264, line 4; State's Exhibit 21 (p. 11) Reece explained "den gank" means gangster or gang. R. p. 264, lines 3-6. They carry on a one minute, twenty-five second conversation at 9:11 a.m. Gentry deleted the call from his phone. R. p. 264, lines 7-15; State's Exhibit 21 (p. 11).

Caprice Alo was Gentry's ex-girlfriend and mother of his child. She lived with Gentry and his mother at the time. Johnson came by the house on May 9 at about four or five p.m. Gentry met Johnson at Johnson's vehicle. Johnson was there for less than five minutes. R. pp. 372-75.

Gentry texts Johnson at 7:37 p.m., "Im in da city." Gentry deletes this text. R. p. 265, line 23 – p. 266, line 11; State's Exhibit 21, (bottom of p. 13). Gentry sends a message to Johnson at 8:08 p.m., "Just hmu (hit me up) wen u dun im playin wit my lil gurl." R. p. 266, line 19-25; State's Exhibit 21, (p. 14). Gentry deleted a subsequent video call. R. p. 267, lines 1-10. Cell phone records establish Gentry and Johnson's phones were using the same cell tower in the vicinity of the Hydrick Street address at 8:24 p.m. on May 9 and connecting with each other. R. p. 344; p. 591. At 8:36, Johnson sends a message, "Need to holler at you wya." R. p. 267, lines 14-17; State's Exhibit 21 (p. 14).

Johnson then calls Daniel Hines, who in turn calls Victim. The call connects for just shy of seven minutes. R. p. 267, line 18 – p. 268, line 4; State's Exhibit 21 (p. 14). **This results in Victim unblocking Johnson and calling him for a minute and a half conversation at 9:31 p.m.** R. p. 268, lines 5-13; State's Exhibit 21 (p. 14). During his interview with law enforcement, Johnson claimed that after the early morning text he sent on May 8, he did not have any further contact with Victim by phone because he was blocked, neglecting to mention he was subsequently unblocked and engaged in a phone conversation with Victim within the last hours of her life. State's Exhibit 25 (31:45-32:10). Victim's mother calls her at 9:49 p.m. for twelve seconds, followed by her second call to Victim at 9:59 p.m. lasting a minute and twenty-one seconds. R. p. 268, lines 5-18; State's Exhibit 21 (p. 14). This is the phone call from Mother begging Victim to come home.

At 10:17 p.m., Johnson texts Gentry, asking what he is doing, and Gentry responds, "None. I'm in the vil. What's up?" Gentry deletes this message. R. p. 268, line 23 – p. 269, line 11; State's Exhibit 21 (p. 14). Mother tries to call Victim twice at 11:23 and 11:24 p.m., then texts Victim asking her to call Mother. Mother tries a couple more times and sends an i-message asking her to

call. R. pp. 269-70: State's Exhibit 21 (p. 14). Meanwhile, Johnson tries to call Gentry at 11:45 p.m. R. p. 270; State's Exhibit 21 (p. 14). Sidney Dean calls Johnson at 11:48 p.m. and they speak for ten minutes. R. p. 271, lines 2-5; State's Exhibit 21 (p. 14). Dean testified at trial that when she spoke with Johnson, he was in a car and he seemed out of it during the conversation. R. pp. 368-69. The historical cell site analysis records show Johnson moving away from the vicinity of Duncan Park at this time. R. p. 594. According to the theory of the State's case, Johnson is leaving Victim behind, her body dumped in the water.

At 10:16 p.m. and later at 11:45 p.m., Johnson's phone is utilizing the same cell tower Victim is utilizing at 11:23, 11:25, and 11:27 p.m. R. pp. 345-46; p. 594. Victim's phone never leaves the area. R. p. 348. On the other hand, Johnson's phone is moving away from that cell tower to the next tower at 11:48 p.m., when Johnson spoke on the phone with Sidney Dean for about ten minutes and Dean testified he was driving during the phone call and seemed out of it. R. p. 271; pp. 368-69. A reasonable juror may infer it was because he just left the scene of murder. Nonetheless, Johnson told police the last time he saw Victim was Tuesday, not Wednesday as the cell tower records suggest. Johnson told law enforcement he was home all day except for a trip to the gym earlier in the day. R. p. 360; State's Exhibit 25 (23:00-24.15).

May 10: Johnson meets Gentry at work. Gentry researches both selling a gun and reporting a stolen gun. Johnson sends a message for Gentry to "do it today" and say it "happened two days ago."

The next morning, 7:17 a.m., Gentry tells Johnson he is going to work. R. p. 271. Then Gentry starts a series of searches: "It's cheaper than dirt." "Cheap guns." "Bulk ammo." "Guns, parts and accessories." and "Cheaper than dirt." Reese explained "Cheaper than Dirt" is a website

for purchasing weapons. Later, mid-morning, Johnson messages Gentry asking where he works. Gentry responds "A.F.L. in Duncan. What's up?" Johnson's response, "Nothing. Had something to ask you. I was gonna pull up on if you could step out for a second." Gentry deletes his response, "Shit what's up." Meanwhile, Johnson does an internet search for "afl in duncan." R. pp. 272-73; State's Exhibit 21 (pp. 14-15). Gentry also deleted the 11:31 a.m. message telling Johnson he is on break and Johnson deletes the sixteen second phone call from Johnson to Gentry at 11:45 a.m. R. p. 274. **At 12:41, Gentry started another series of firearm related searches, the first search was "Sell items cheaper than dirt."** Others are related to Smith and Wesson products. Another search is "my pistol was stolen." R. p. 274, line 21 – p. 275, line 23; State's Exhibit 21 (pp. 14-15) This leads to Gentry to undertake more searches, including one that indicates only eleven states require gun owners to report stolen weapons to police. R. pp. 275-276; State's Exhibit 21 (p. 15).

These last searches were around 2 p.m. At 2:56 p.m., still May 10, Johnson sends this message: **"Do it today, Fam! Happened two days ago."** The response a few minutes later from Gentry is "Iat." R. p. 276, lines 3-22; State's Exhibit 21 (p. 15). Gentry deletes that message, but a few minutes later he does another search, "Report firearm. Theft or loss. Alcohol, tobacco, firearms and explosives." R. p. 277, lines 2-5; State's Exhibit 21 (p. 15). Devin Teague, Gentry's coworker at A.F.L., testified on May 10, Gentry asked Teague how to report a gun missing. R. pp. 386-87.

Meanwhile, Johnson responds to an inquiry from Mother, telling her he has not seen Victim since two days ago. R. p. 277, lines 14-16. Shortly afterwards, Johnson searches whether it's legal for someone to record your phone conversation. He deletes this search. R. p. 277, lines 19-24. Johnson follows up with a search about whether someone can access his phone conversations and he also does a search for "man found in lake" at 5:21 p.m. R. p. 278; State's Exhibit 21 (p. 15).

Gentry messages Johnson at 7:49 p.m., "Bet we going to talk later long as you straight." Johnson responded, asking him if he worked tomorrow. When Gentry advises he only is working until noon, Johnson responds, "We'll get up" and Johnson responds "Bet." Gentry deletes these messages. R. pp. 278-79. Then Johnson sends a text to Victim at around 12:39 a.m. asking if she is okay. Victim does not respond. R. p. 279, lines 6-11. At the same time, he calls and speaks with Gentry for twenty-six seconds. R. p. 279, lines 14-20. They speak again for eighteen seconds at 1:17 a.m.; State's Exhibit 21 (p. 15).

May 11: Gentry does searches for stories on Victim's death at Duncan Park.

Gentry starts four searches at Goupstate, including photographs of the death investigation at Duncan Park. R. pp. 280-81; State's Exhibit 21 (p. 15-16). At 9:22 a.m., Gentry searches "woman's body found in Duncan Park Lake." R. p. 282. Another is "Located body found in Duncan Park Lake was pregnant woman." R. p. 283, lines 1-3.

The bullet and casing found at the murder scene were consistent with each other. The bullet was a 40 caliber bullet and the markings on the bullet was consistent with being fired by a Smith and Wesson pistol. Smith and Wesson was the only known manufacturer that would leave those markings on the 40 caliber bullet. R. pp. 391-97. DNA analysis determined that Victim's blood was on the keys found at the park. R. p. 409.

Dr. Wren, the forensic pathologist performed the autopsy on the Victim and noted Victim was in the water for a while and had animal activity on the body. Some facial features were destroyed by animal activity which left exposed bone and teeth. R. p. 421. Rigor mortis had not set in so Victim was not dead for longer than 48 hours. Dr. Wren observed two lacerations that were not pre-mortem and suggested they were incurred when the body was put in the lake. R. p. 422. Dr.

Wren noted that Victim's false, glittered nails were not splintered and it did not appear Victim was involved in a struggle with the shooter. R. p. 423. Because the lungs were well-aerated, Victim probably died quickly. R. pp. 425-26. Dr. Wren testified a gunshot wound through the right side of Victim's brain and possible powder residue was consistent with being shot in the back of the head. The gunshot was close range, but not a contact wound. R. pp. 430-31; pp. 434-35.

ARGUMENT

I.

Evidence was sufficient for a reasonable juror to find Appellant guilty of murder beyond a reasonable doubt and therefore, the trial court did not err in denying the motion for directed verdict.

Johnson argues the trial court erred in denying his motion for a directed verdict because the prosecution failed to show sufficient evidence he was involved in the murder. Ample evidence, including evidence of motive, existed for the trial court to send this case to the jury. Further, this issue is not preserved for review.

At the conclusion of evidence, Johnson's trial counsel made the following motion for directed verdict for the charge of murder:

> I would move for a directed verdict at this time. Your Honor, I do not believe the state has met its burden of proof regarding the charge of murder, and I would ask the Court to dismiss this action.

R. p. 447, lines 11-15. Trial counsel failed to argue which element of the crime trial counsel felt the prosecution failed to prove.

Merely moving for a directed verdict without stating any grounds is insufficient to preserve a directed verdict issue for review. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998) *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999). "In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review." Id. at 455, 503 S.E.2d at 221.

Additionally, evidence supported the verdict for murder. When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a

directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).[2] The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016).[3]

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Pearson, 415 S.C. at 471 n.2, 783 S.E.2d at 806 n.2 (quoting Jackson, at 319) (emphasis in the original).

Johnson claims the case was purely circumstantial. The United States Supreme Court made

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[2] Bennett overruled State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014), upon which Appellant relies on his brief. Br. of App. p. 13.

[3] Pearson overruled State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014), upon which Appellant relies on in his brief. Br. of. App. p. 13.

the following observation concerning circumstantial evidence:

> Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1954) *cited with approval in* Jackson, at 317 n.9.

Our Supreme Court articulated the following concerning the standard of review for purely circumstantial evidence cases:

> The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citations and internal quotations omitted)); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."). "The Supreme Court has consistently evaluated the circumstantial evidence in a case as a whole, not in isolation from other evidence." State v. Rogers, 405 S.C. 554, 571, 748 S.E.2d 265, 274 (Ct. App. 2013). Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." Id. at 567, 748 S.E.2d at 272; see also Tennant v. Peoria & P.U. Ry. Co., 321 U.S. 29, 35 (1944) ("It is not the function of a court to search the record for conflicting

circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable . . . . Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.").

Turning to the instant case, there seems little to Johnson's argument on appeal. The essence seems to be related in two separate sentences found in his brief: (1) "What the evidence did not show is any connection between appellant and the gun, or that he had any reason to kill her" and (2) "But additionally, the State did not show any connection between appellant and the murder weapon, or even that he was at the scene of the murder." Br. of App. p. 14.

Evidence of motive is clear – he did not want the baby and she was going to have it. The fact he is researching poison shows it was motive enough to compel him to murderous intent. Evidence of motive is powerful evidence helping establish identity. "[T]he prosecution is permitted to prove the accused's motive to identify the accused as the perpetrator of the charged crime." Mitchell v. State, 865 P.2d 591, 596-97 (Wyo. 1993). "While intent accompanies the actus reus, the motive comes into play before the actus reus. The motive is a cause, and the actus reus is the effect." Id. at 597 (quoting Edward J. Imwinkelried, Uncharged Misconduct Evidence (1992 & Supp. 1993)). "That the defendant had a motive for that particular crime increases the inference of the defendant's

identity. . . . It is ideal if the defendant is the only person with such a motive. . . . The courts assume that motive has strong probative value because a motive naturally leads to action." Id. (quoting Imwinkelried).

In the instant case, Johnson acted as if he thought he was the father, and he wanted the child aborted. He searched for poison that would kill someone. He fought with Victim as evidenced by the texts. The relationship turned acrimonious. He had a reason to kill her: not a sensible reason, but certainly an evil reason. A reasonable juror would find his motive clear, and his searches for poison point towards his criminal intent. State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012) ("[W]hether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct.").

For instance, in State v. Bratschi, 413 S.C. 97, 106, 775 S.E.2d 39, 44 (Ct. App. 2015), Bratschi argued the prosecution failed to show how, when, or where the victim was killed. The skeletal remains of the victim, Bratschi's husband Randy, were wrapped in a blue tarp in a shallow grave underneath victim's trailer. Id. at 105, 775 S.E.2d at 43-44. This Court observed, "The Florence County Sheriff's Office, crime scene investigators, and a forensic anthropologist were all unable to make a determination as to how, when, or where Randy had died." Id. at 105, 775 S.E.2d at 44.

The victim's car was found at a landing and was parked there over the Thanksgiving weekend. Bratschi's blood was found on the vehicle's steering wheel. Bratschi was seen walking on a road near the landing, and she asked for and received a ride to an area near Victim's trailer. Bratschi was seen at victim's trailer around the time of disappearance. The record was replete with

evidence of acrimony between Bratschi and her husband. Id.

In finding the trial court did not err in denying the motion for directed verdict, this Court noted, "[A] directed verdict is not required merely because the State cannot conclusively show the defendant was at the crime scene at the relevant time." State v. Bratschi, 413 S.C. 97, 107, 775 S.E.2d 39, 45 (Ct. App. 2015) (quoting State v. Rogers, 405 S.C. 554, 568, 748 S.E.2d 265, 273 (Ct. App. 2013)). This Court, in the Bratschi opinion, noted ample evidence of motive and quoted authority holding motive may be "a circumstance bearing on the accused as the perpetrator of the crime." Id. at 112-13, 775 S.E.2d at 47-48 (quoting State v. Thomas, 159 S.C. 76, 80-81, 156 S.E. 169, 171 (1930)). This Court listed the evidence supporting the verdict, and found it sufficient to deny the motion for directed verdict. Id. at 113-14, 775 S.E.2d at 48.

Likewise, in the instant case, cell phone tracking records showed Johnson in Victim's vicinity at Duncan Park despite Johnson claiming to be home. This was preceded immediately by Johnson speaking on the phone with Victim and Victim leaving hurriedly from her aunt's to meet someone at the park, late at night. Even if not conclusive, this was sufficient evidence alone to show Johnson was at the scene of the murder at the relevant time. Further, in Bratschi, the prosecution never could determine the victim's mode of death. In this case, the mode of death is clear, even if evidence is challenged as to how Johnson received a weapon. However, Johnson's uncharacteristic contact with Gentry the morning of the ninth on the heels of Johnson reading Victim's text blocking his phone, their continuing contact straddling the day of her murder and the day after, and Gentry's texts alternatively seeking to sell a firearm and to report a stolen firearm, combined with evidence Gentry owned a firearm and the kind of ammunition found at the scene of the crime, could lead a reasonable juror to infer Johnson received the weapon from Gentry and counted on Gentry to assist afterwards

(with Johnson's instructions to report that the weapon went missing the eighth). But of course, similar to Bratschi, conclusive evidence of possession of a weapon is unnecessary for the prosecution's case. Ample evidence supports the jury's verdict:

(1) Victim determined she was pregnant around May 1. She was excited about being pregnant as was her mother;

(2) Almost immediately, Johnson's relationship with Victim became acrimonious and the main point of contention is Johnson wanted Victim to get an abortion and Victim refused, establishing the motive for the killing;

(3) In addition to several searches concerning abortion, Johnson searches for means of poisoning, indicating the formation of murderous intent fresh on the heels of disagreement with Victim over the possibility of an abortion;

(4) Victim's visit to Johnson and his mother on May 8 ended negatively, with Victim telling Johnson she did not want him in the baby's life and Victim blocking Johnson's phone;

(5) Within an hour of Johnson replying to Victim's texted rejection from the night before, he contacts Gentry for the first time on May 9, and they send a series of messages and undertake calls that reflect them coordinating unspecified actions in the days straddling Victim's disappearance;

(6) Johnson stops at Gentry's residence, according to a witness at 4 or 5 p.m. on May 9, and both their phones are using the same cell tower later at 8:24 p.m. that evening. The latter seems to be the probable time Johnson received Gentry's Smith and Wesson pistol;

(7) On the evening of the 9th, Johnson calls Daniel Hines, who in turn calls Victim, and a seven minute conversation ensues. Afterwards, Victim unblocks her phone and engages in a phone conversation with Johnson's phone at 9:31 p.m. However, Johnson told law enforcement that he did

not have any more contact with Victim after she blocked his phone the previous night, withholding from law enforcement that he persuaded her to unblock her phone the night of the murder;

(8) Johnson's phone is using the same cell phone tower by Duncan Park at 10:16 p.m. and 11:45 p.m. (two phone calls to Gentry) that Victim's cell phone was using at 11:23, 11:25, and 11:27 p.m. This is despite Johnson claiming he was home at this time. Mother testified Victim left hurriedly that night to meet someone by the water and when she called Victim, there was a male voice heard in the call;

(9) An 11:48 p.m. phone call to Johnson confirms his cell phone is moving away from Duncan Park and the caller testifies Johnson was in his car and seemed out of it;

(10) The next morning, May 10, Gentry is engaged in gun-related searches and receives a message from Johnson that Johnson has a question for him – a question, a juror would notice, he does not want to put in a message;

(11) Gentry informed Johnson he was on break, they engaged in a sixteen second phone call, and an hour later, Gentry looks up selling items on a website for buying and selling firearms. He then engages in searches for reporting stolen firearms and asks a fellow employee how to report a stolen firearm;

(12) Johnson sends a message to Gentry saying, "Do it today, Fam! Happened two days ago." A reasonable juror could conclude, in conjunction with Gentry's research on reporting weapons, that Johnson wanted Gentry to report the gun stolen on May 8, the day before Victim was murdered;

(13) A few more contacts between Gentry and Johnson are cryptic, suggesting they will get together and talk, but only if Johnson is "straight." Contact between them dwindles precipitously at

this point, they no longer need to coordinate;

(14) On May 11, Victim's body was found in the lake at Duncan Park – her personal items were strewn along a path from her car left in the parking lot to the water and police dogs tracked from her car to the shore by where her body was discovered. She appears to have been shot, without a struggle, at the park and dragged in the water.

Based on this evidence, a reasonable juror could conclude that Johnson had motive and developed murderous intent because Victim was pregnant and he did not want to father a child. His sudden engagement with Gentry, owner of a Smith and Wesson .38 firearm, and Gentry's subsequent firearm related searches could lead a reasonable juror to conclude he received the firearm from Gentry. Viewing the temporal progression in which Johnson meets Gentry, convinces Victim to unblock her phone, and then moves into the same area based on cell phone tower data, then leaves the area that is Victim's final resting place, provides ample evidence for a reasonable juror to conclude he was the man meeting Victim by the water, where she met her death. Therefore, the trial court did not err in denying the motion for directed verdict.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

The State of South Carolina, Respondent,

vs.

Tremaine Pierre Johnson, Appellant.

Appellate Case No. 2021-000701

CERTIFICATE OF COUNSEL

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

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