

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

*On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2025-UP-018*

The State of South Carolina.....Respondent,

vs.

Tremaine Pierre Johnson.....Petitioner.

Appellate Case No. 2025-000531

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

Petitioner does not separately set out the question presented; however, Respondent relies on the argument heading in the petition for the question presented:

The trial court erred by not granting Johnson's motion for a directed verdict because the evidence adduced at trial was not sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim.

(Pet., at 13).

STATEMENT OF THE CASE

A. Trial Level:

Petitioner, Tremaine P. Johnson, was charged with the murder of Brechue Ferrarri Wiles (Victim); the woman who was carrying his child. The evidence at trial showed that Petitioner was not at all happy about the pregnancy, demonstrated by his poison and abortion-related internet searches. Records from social media and cell phone tracked his arguments with Victim, and also his contact with codefendant, Robert Tyrell Gentry, who provided the murder weapon. To carry out the murder, Petitioner arranged a meeting with Victim at a park. She was later found in a pond, her face disfigured by animal activity feeding on flesh. R. p. 421. She died from a gunshot to the back of the head, not a contact wound, but “pretty close.” R. pp. 431-435. DNA testing on the fetus recovered at autopsy indicated Petitioner was the father and excluded 99.99 percent of others; or stated differently, “[i]t is approximately 55, 000 times more likely to see these genetic results if Tremain Johnson is the true biological father than if a random man is the father. R. 408.

A jury trial was held June 14-17, 2021, and the jury convicted as charged. 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. Petitioner timely appealed.

B. Court of Appeals:

Petitioner, with the assistance of counsel, filed his final brief of appellant and reply in the South Carolina Court of Appeals on May 17, 2022. He raised one issue:

Whether the trial court erred by not granting Johnson’s motion for a directed verdict because the evidence adduced at trial was no sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim?

(FBOA, p. 2). The State filed its final brief on June 3, 2022.

On January 23, 2025, the Court of Appeals issued a published opinion affirming Petitioner's conviction. The Court of Appeals first resolved as follows:

We hold Johnson's argument that the trial court erred in denying his motion for a directed verdict was not preserved for appellate review because he did not articulate any specific grounds in his motion. *See State v. Sterling*, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) ("A general directed verdict motion ... does not preserve any issue for appeal."); *State v. Kennerly*, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) ("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."), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999); *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (alteration in original) (holding the defendant's motion for a directed verdict—"I think [the State has] failed to meet their burden of proof beyond a reasonable doubt"—was not preserved because it "stated no specific ground").

State v. Johnson, No. 2021-000701, 2025 WL 275511, at *1 (S.C. Ct. App. Jan. 23, 2025).

Expressing its "concern with preservation," the Court addressed the merits "out of an abundance of caution." *Id.* Based on a review of the record the Court of Appeals concluded:

The totality of the State's evidence allowed for a reasonable inference that Johnson killed the victim with malice aforethought. Johnson and the victim had been in a relationship, and upon learning of the victim's pregnancy, Johnson searched the internet for poison, an abortion clinic, and abortion medication. On the morning of the murder, Johnson learned the victim had blocked him from contacting her, responded to her angrily, and then contacted an acquaintance, his codefendant, whom he had not spoken to in at least a month. Additionally, the State presented a witness who saw the codefendant and Johnson together mere hours before the murder occurred. Further, the forensic firearms examiner opined the markings on the bullet found at the crime scene indicated it could only have been fired from a .40 caliber Smith & Wesson, the same type of gun codefendant owned; the codefendant's gun was never found. The State also presented evidence to support Johnson's presence at the crime scene: the victim's mother recalled that a man called the victim that night and told her to meet him by the water at

the park, where the victim's body was later found. Additionally, an expert in cell tower analysis stated Johnson and the victim were both in the vicinity of the crime scene on the night of the victim's disappearance. Further, the State provided evidence that in the days following the murder, Johnson worked with his codefendant to dispose of the murder weapon. The day after the murder, Johnson texted the codefendant to ask where he worked and to tell him that he needed to ask him "something." Johnson later sent him a message telling him to "do it today." The codefendant subsequently searched the internet for how to report firearms missing and asked his coworker how to report a stolen gun. Finally, Johnson's internet search history tended to show Johnson was aware of the victim's death prior to the discovery of the body. *See* S.C. Code Ann. § 16-3-10 (2015) (" 'Murder' is the killing of any person with malice aforethought, either express or implied."); *State v. Wilds*, 355 S.C. 269, 276, 584 S.E.2d 138, 141-42 (Ct. App. 2003) ("Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong."); *id.* at 277, 584 S.E.2d at 142 ("The use of a deadly weapon gives rise to a permissive inference of malice."); *State v. Burdette*, 427 S.C. 490, 503-04, 832 S.E.2d 575, 583 (2019) ("[W]hen ruling on a defendant's motion for [a] directed verdict on the ground the State failed to prove the element of malice, a trial court may take into account the fact that the deed was done with a deadly weapon."); *Rogers*, 405 S.C. at 567, 748 S.E.2d at 272 ("Circumstantial evidence ... gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury."); *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) ("[A]lthough the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.").

State v. Johnson, 275511, at *1.

Petitioner filed a petition for rehearing and challenged both the procedural bar and the ruling on the issue. The Court of Appeals denied the petition on February 19, 2025, and the petition in this Court was filed on March 27, 2025. This return follows.

ARGUMENT

Petitioner has failed to challenge the Court of Appeals' finding that his one direct appeal issue was procedurally barred from review. That holding is now the law of the case and bars relief. Thus, certiorari review of the barred issue is not warranted since no relief may be granted.

Petitioner has failed to show a case that warrants a grant of this Court's discretionary review, primarily because he fails to challenge the procedural bar found by the Court of Appeals.

A. Petitioner Has Not Appealed the Finding his Issue is Procedurally Barred

"A writ of certiorari is not a matter of right, but of sound judicial discretion." Rule 242(b), SCACR. In considering a petition to exercise discretionary review, this Court is generally guided by certain weighty factors such as whether there is a "novel question[] of law" at issue; or a dissenting opinion; or the decision is in "conflict with a prior decision of" this Court; or a petitioner shows that there are "substantial constitutional" questions "directly involved" or "a federal question is included and the decision by the Court of Appeal" runs contrary to precedent from the Supreme Court of the United States. *Id.* Petitioner cannot show any of these weighty considerations here. Respondent suggests another substantial consideration is at issue here : can the petitioner receive any relief? Here Petitioner cannot as he has failed to appeal the procedural bar to his issue.

"This Court will not issue advisory opinions on questions for which no meaningful relief can be granted." *Gainey v. Gainey*, 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983). "[S]hould the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case." *Dreher v. S.C. Dep't of Health & Env't Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015). "Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the

case.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) quoting *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)). Thus, “failure to appeal an alternative ground of the judgment below will result in affirmance.” *Sloan v. Dep’t of Transp.*, 365 S.C. 299, 307, 618 S.E.2d 876, 880 (2005). See also *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (“Failure to argue is an abandonment of the issue and precludes consideration on appeal.”). Simply, “[a]n unappealed ruling is the law of the case and requires affirmance.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) citing *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010)).

Here, Petitioner does not argue the procedural bar found by the Court of Appeals should be reconsidered. Therefore, the issue is an unappealed ruling which, in this case, is dispositive. Relief may not be granted on an unpreserved issue. Indeed, “[t]his Court ... has routinely held the plain error rule does not apply in South Carolina state courts.” *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) citing *Jackson v. Speed*, 326 S.C. 289, 306, 486 S.E.2d 750, 759 (1997)). Rather, a party must properly preserve an issue under our procedural rules to be afforded merits review on appeal. *Id.*

Further, the record shows that the Court of Appeals correctly found the issue was procedurally barred. “An objection must be made on a specific ground.” *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). “A general directed verdict motion, however, does not preserve any issue for appeal.” *State v. Sterling*, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012). The Court of Appeals expressly held the directed verdict issue presented “was not preserved for appeal because” Petitioner “did not articulate *any* specific grounds in his motion.” *Johnson, supra* (emphasis added). The records support the Court’s conclusion. 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, or what particular fact, was insufficiently shown. However, the analysis of the Court of Appeals' opinion on this point is not necessary. That Petitioner failed to preserve the issue is now law of the case. This Court should deny the petition because the issue is procedurally barred, and no relief may be granted.

B. Even If the Issue Was Procedurally Available, It Fails on the Merits

The Court of Appeals correctly reasoned that there was sufficient evidence to submit the case to the jury. Because the record fully and fairly supports that conclusion, even if the issue was available, it would fail to support relief.

“If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” *State v. Harris*, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015) quoting *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011)). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” *State v. Weston*, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006). “[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a

reasonable juror to find the defendant guilty beyond a reasonable doubt.” *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016).¹

The records established that Victim’s decomposing body was found in Duncan Park on May 11, 2018. Joann Littlejohn, Victim’s great aunt, testified Victim had only recently before her death 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 finish 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

¹ Petitioner relies on the Court of Appeals’ opinion in *Bennett*. (Pet., at 15). This Court reversed the Court of Appeals in *Bennett* finding the Court of Appeals incorrectly weighed the evidence. Petitioner invites that same error here. Simply, “although the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” *Bennett*, at 237, 781 S.E.2d at 354.

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. 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 Shane Michael Cloran went to Victim's car, where he found a purse positively identified by Mother as Victim's. He then 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 handgun that showed the caliber of the handgun 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.

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, 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 were 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; 434-35.

Though not necessary to prove, evidence of motive is clear – Petitioner did not want the baby and she was going to have it. A reasonable juror could find his motive clear, especially given Petitioner's searches for poison(s). *See generally 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.”). Moreover, “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). Circumstantial evidence on identification of the killer is acceptable. *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)). It is amply presented here.

The cell phone tracking records showed Johnson tracked him around 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. The mode of death is clear, even if evidence is challenged as to how Johnson received a weapon. 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).

Again, the record shows that ample evidence supports that the trial judge properly submitted the case to the jury, and also well-supports the jury's subsequent verdict. To sum up:

(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. Notably, viewing the temporal progression in which: Johnson meets Gentry; convinces Victim to unblock her phone; then moves into the same area based on cell phone tower data; and 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.

Consequently, for all these reasons, the trial court did not err in denying the motion for directed verdict. Petitioner's argument to the contrary is refuted by the record. However, this Court need not make another fact-intensive review of the evidence. Because Petitioner failed to challenge the procedural bar, no relief can be granted.

CONCLUSION

This Court should deny the petition for writ of certiorari.

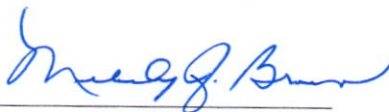
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² Present counsel for the State acknowledges the prior work in this matter by the late Senior Assistant Attorney General David Spencer. Much of his factual summary as presented in briefing in the Court of Appeals is utilized in this return.