

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2022-001213

THE STATE,RESPONDENT

v.

BRIAN JAMEL REDDING,APPELLANT.

PETITION FOR REHEARING

Respondent petitions this Court, pursuant to Rule 221(a), SCACR, for rehearing of its decision in the above-captioned matter reversing the trial court's denial of a motion for directed verdict. Respondent respectfully submits that this Court has misapprehended certain factual and legal matters in arriving at its holding.

ARGUMENT

Surviving a motion for a directed verdict is a low bar for the State to satisfy at trial and a high bar for the defendant arguing for reversal on appeal. *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004) ("The trial court has a duty to submit the case to the jury where the evidence is circumstantial if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced."); *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.") (emphasis added); *State v. Cherry*, 361 S.C. 588,

593, 606 S.E.2d 475, 478 (2004) (“When reviewing a denial of a directed verdict, this Court must view the evidence *and all reasonable inferences in the light most favorable to the state.*”) (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)) (emphasis added).

And while the application of the standard for directed verdict depends in part on whether the case is based on direct or circumstantial evidence, a motion for a directed verdict must be granted only “when the evidence *merely raises a suspicion* that the accused is guilty.” *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984) (emphasis added). Respectfully, this Court engaged in a severely flawed and reductive analysis of the evidence and all reasonable inferences *in the light most favorable to the State* in concluding that the State failed to present substantial circumstantial evidence. Additionally, this Court improperly weighed Appellant’s evidence against the State’s—thereby not giving the State’s evidence the benefit it deserves for purposes of directed verdict. And even assuming that the Court was permitted to weigh the State’s evidence against Appellant’s, Respondent contends that Appellant’s alibi defense was not “significant” as this Court concluded. Instead, it was doomed from the beginning by Appellant’s own expert testimony locking in a forensic timeline that only corroborated the State’s theory regarding a fabricated alibi, in addition to contradicting Appellant’s own self-serving testimony and biased alibi witnesses. Moreover, Appellant’s defense was compromised by other serious credibility concerns notwithstanding the forensic evidence working against him.

Thus, Respondent contends this Court should grant rehearing and affirm the trial court’s denial of Appellant’s motion(s) for directed verdict

I. This Court committed an error of law in engaging in a reductive analysis of the State’s evidence and thereby not applying the correct legal standard appropriate for reviewing the denial of a motion for directed verdict.

This Court seriously misapprehended the significance of specific aspects of the State’s case and otherwise isolated the significance of such evidence from the totality of the State’s case. The fact that the State’s case was a circumstantial one should not have been used against it. *See State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (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.”) (emphasis added).

First, Respondent contends that this Court severely misapprehended the significance of the gun evidence in this case. Multiple witnesses testified that they observed Appellant with a blue, turquoise, or teal gun at various points prior to Victim’s murder. (R. pp. 254, 263–264, 305–306). One of Victim’s sisters, Paige, specifically testified that she saw Appellant with this gun *a couple of days* prior to Victim’s death, squarely contradicting Appellant’s self-serving testimony that he *never* owned such a gun.¹ Paige also testified that she observed Victim with the same blue/turquoise gun at one point.² She described it as a “9,” ostensibly a 9mm handgun. Paige expressed further familiarity with this gun, noting that she even gave Appellant a grip for it. (R.

¹ This Court indicated in the opinion that Appellant stated he never owned a blue gun. This finding is not factually supported by the record. In fact, Appellant did not actually say he never owned such a gun. Instead, when asked by the solicitor if he never owned such a gun, he gave an evasive and suspicious response claiming “[t]here would have been one at the scene if I did.” (*See* R. pp. 742, 775).

² Another witness recalled seeing Victim holding a firearm on Snapchat videos but could not recall what the gun looked like. She also noted that she never saw Victim with a gun prior to her meeting Appellant and living with him. (*See* R. p. 293). Victim’s other sister, Desiree, recalled seeing a blue gun in another motel room Appellant and Victim were staying in about a month before her death. (R. pp. 236–237, 240).

pp. 324–327).³ The State’s firearm expert, Michelle Eichenmiller, testified that the single cartridge casing collected from the motel room’s floor and the bullet fragment collected at Victim’s autopsy were 9mm caliber that could *only have been fired by a handgun manufactured by SCCY* based on identifying characteristics imparted onto the shell casing (and recovered bullet fragment) that are unique to that brand. Eichenmiller further testified that SCCY manufactures 9mm handguns that come in a aqua/teal color, specifically their CPX models.⁴ (R. pp. 357–364).

The State’s main case agent, Katie McCallister, testified that she observed a discovered a video on Victim’s phone showing Appellant holding a blue/teal/turquoise gun. (R. pp. 381–383, 397). Finally, *the Victim’s DNA* was found on *the* single shell casing found at the scene—corroborating the theory that both Appellant and Victim used or otherwise had access to the gun, especially when combined with the fact there was no gun found on the scene and no evidence of suicide. (R. pp. 488–491). Absent suicide, there is no other reasonable explanation for how Victim’s DNA was on that shell casing.

In addition to the gun testimony, the State also elicited testimony noting that there were no signs of forced entry, a disturbance, or a struggle within the motel room and that Victim had the habit of locking the door and not opening up for strangers. Victim was found dead sitting upright on the motel bed with the covers over her legs. (R. pp. 165, 193–194, 306–307, 323; *see also* State’s Ex. 4 (Photo)). Thus, it was reasonable to presume that Appellant was the only person other than the motel owner with access to the motel room and was the last person to see Victim alive.

³ Paige also testified that the gun given in a bag by her boyfriend Dervon Jones (AKA “Popeye”) to a man named Matthew Hatchell across the fence from the Forest Motel to the Siesta Motel was a Taurus G2, not an SCCY firearm. The testimony clearly reflected that such a gun could not have been the murder weapon. (R. pp. 342–343, 363, 425–427, 440).

⁴ It appears an example of this type of firearm was presented at trial as a photograph in State’s Ex. 34. This exhibit, however, is not in the record on appeal.

Notably, when law enforcement arrived, they observed Appellant “making crying sounds” but that there were no tears on his face. (R. pp. 64, 123). One of Victim’s other sisters, Taylor, testified that she received a phone call from Victim’s Facebook that morning, but it was Appellant on the line. Appellant told Taylor that Victim was simply “unresponsive,” but refused to elaborate.⁵ After briefly getting off the line to call her husband, Taylor called back, whereupon Appellant proceeded to explain to Taylor what he was doing that morning, and then only telling Taylor that Victim had been shot in the head at the end of the call.⁶ (R. pp. 255–256).

Dr. Ellen Riemer, the forensic pathologist, opined that the single gunshot wound to Victim’s head was a contact wound between Victim’s eyes. (R. pp. 445–450). The various friend/family witnesses also painted a picture of a contentious, domineering, and exploitative dynamic between Appellant and Victim, with Appellant exerting significant control over Victim’s life and interactions with others. (R. pp. 236–237, 252–253, 289–292, 304–307, 323–324, 331–332). As noted in our brief, the contact wound indicating an execution-style killing, combined with the difficulties in the relationship was enough to establish malice in the absence of evidence of suicide.

Finally, investigators found Appellant at the scene wearing a different shirt than he did that morning, no blood or GSR on his hands despite Appellant admitting he touched Victim—and yet there was still blood/DNA on the motel room door and GSR on Appellant’s shorts. (R. pp. 159–163, 467–474, 486–496). Viewing all this evidence combined in a light most favorable to the State, the State presented substantial circumstantial evidence to warrant sending the case to the jury. This Court erred in holding otherwise.

⁵ “Unresponsive” seems to be a particularly evasive description of Victim’s condition given that she was clearly deceased with a gunshot wound to her forehead. (*See* State’s Ex. 4).

⁶ In closing argument, the solicitor noted that Appellant did something similar on the 911 call—first crying but then proceeding to explain everything he did that morning. (*See* R. pp. 779–780).

II. This Court committed an error of law in improperly weighing Appellant’s evidence against the State’s and in otherwise finding that Appellant presented “significant evidence of an alibi defense” when such a defense was severely compromised from the beginning and only further corroborated the State’s theory that the alibi was concocted after the murder

In the opinion, this Court acknowledged that under *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), in its adoption of the waiver rule, this Court may consider the evidence presented by the defense in addition to the State’s case-in-chief when assessing the propriety of the denial of directed verdict.⁷ Thus, acknowledging the evidence in Appellant’s case *itself* was not error. What Respondent contends is error, however, is how this Court improperly weighed such evidence in violation of the standard of review, and such weighing was also not factually supported by the record. Appellant’s alibi defense was not “significant” as described by this Court because it was doomed from the start by uncontroverted expert testimony locking in a forensic timeline that contradicted the alibi testimony that followed. Appellant’s own data expert testified that Appellant’s phone location data was consistent with being at or near the Forest Motel between 8:07 AM and 8:27 AM, at which point he left, and then shows him arriving back at the motel around 9:45 AM. The data extracted from Victim’s phone showed that the last recorded activity on Victim’s phone was at 8:09 AM and 8:12 AM.⁸ (R. pp. 573–574, 579–580).

⁷ As discussed further below, Respondent contends that properly applying the waiver rule in this case would further support a finding that denying directed verdict was proper given the weakness and internal contradictions of Appellant’s defense. *Cf. State v. Thompkins*, 220 S.C. 523, 526, 68 S.E.2d 465, 466 (1951) (“[I]n determining the sufficiency of the evidence to support the verdicts, we must consider the entire testimony, including that offered by appellants. . . . ‘We know of no reason why the defendant in a criminal court, who is not content to leave the [government’s] case where he finds it, should escape a just conviction simply because he has, unfortunately for himself, completed the proof of his own guilt.’”) (quoting *Commonwealth v. George*, 42 Pa. C.C. 643 (1914)).

⁸ Based on testimony elicited by the State regarding Appellant’s controlling behavior of Victim, the activity on Victim’s phone during this timeframe supports an inference of Appellant staging the scene to help fabricate his alibi—or alternatively that Victim was killed sometime after her last

If anything, this information only further corroborates the State’s theory that Appellant killed Victim sometime early that morning, left, returned back to the motel to fabricate his claim that he found Victim alive and well, cleaned himself up and changed his shirt, left, and returned approximately an hour later around 9:45 AM to place the 911 call and act like he just discovered Victim dead, in addition to thereafter placing calls to Victim’s family on *Victim’s phone*. (R. pp. 582–585).⁹ Furthermore, the location data of Appellant’s phones locks in a forensic timeline and thus raises credibility issues for Appellant’s other alibi witnesses when recounting their own timeline—credibility issues that *this* Court does not have the direct benefit of fully grasping *as the trial court and jury does*. See *State v. Tillman*, 433 S.C. 58, 64–65, 856 S.E.2d 168, 172 (Ct. App. 2021) (“[I]t was within the jury’s purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict Tillman.”) (citing *State v. Mealor*, 425 S.C. 625, 654, 825 S.E.2d 53, 69 (Ct. App. 2019)).

Appellant’s first alibi witness, Danielle Smith, testified that Appellant picked her up from her house off Simmonsville Road around “[m]aybe 8:30 or nine o’clock, something like that” despite being asked if she initially told law enforcement that Appellant arrived around 7:30 AM. She equivocated in her answer until she was shown a transcript. (R. pp. 619–620, 622–625). After being picked up, Smith testified that Appellant stopped at the motel so Appellant could pick up his wallet. Smith first testified that he was inside for “one or two minutes,” but then clarified that Appellant was inside for no more than five minutes. They then drove to Smith’s grandmother’s house in Pineland which took about 15 to 20 minutes in total. (R. pp. 626–629). Smith conceded

phone activity but before the conclusion of the 20 minute timeframe Appellant was back at the motel. Either way, these reasonable inferences support the State’s case, not Appellant’s.

⁹ The solicitor made a point of noting that Appellant told 911 he had returned to the motel to “get his wallet.” (R. pp. 617–618).

on cross-examination that she was cousins with Appellant and that she had memory issues after an accident. (R. pp. 630–632). Based on the testimony of Appellant’s own data expert, Smith’s claim that they stopped at the motel for only a couple of minutes is contradicted by the fact that Appellant’s phones were in the vicinity of the motel for approximately 20 minutes, not ‘only a minute or two’ or ‘less than five.’ (R. pp. 569–570).

Piavin Patel, the motel owner, testified he usually gets to work between 8:00 or 8:30 AM to begin cleaning the rooms yet did not specifically state when he arrived that morning. Patel further testified that he saw Appellant pull up in his car before going to his utility room for a “couple of hours” until he heard Appellant crying and went to his room. Patel could not remember what color shirt Appellant was wearing. On cross-examination, however, Patel testified that he was running late that morning and saw Appellant arrive around 9:45 AM when he had started cleaning. (R. pp. 597–602, 605–606). Thus, Patel’s testimony was vague at best, failed to contradict the State’s theory, or otherwise failed to disprove that Appellant had motive, means, and opportunity to kill Victim.

Appellant’s own testimony, however, was by far the most flawed and damaging to his own case.¹⁰ Appellant described that morning as follows. First, he left the motel early that morning and stopped at a gas station called Parker’s on the way to Beaufort to pick up his other girlfriend Ashley Dodson in order to take her to work. At the gas station, Appellant got under the vehicle to fix a piece of trim or cover that was dragging under the car. Then, he described picking up Ashley in

¹⁰ Respondent notes that Appellant also presented the testimony of his uncle and his mother not for the purpose of establishing alibi, but more so in an attempt to admit into evidence a Batman shirt alleged to have been worn by Appellant the morning of the murder. Notably, this shirt only happened to be discovered by Appellant’s mother at the start of trial almost two years after the murder. As such, given the clear authentication issues and probability of gamesmanship, the trial court sustained the State’s objection, and the shirt was not permitted to be entered into evidence. State investigators never found a Batman shirt. (*See* R. pp. 647–665).

Beaufort and driving her to McDonalds in Bluffton where she worked. Then, Appellant drove to Simmonsville Road to pick up his cousin Danielle, arriving there around 7:17 or 7:18 AM. (R. pp. 713–715, 718–722). After picking her up, Appellant stated that he returned to the hotel to pick up his cigarettes and wallet, also noting that he had left Victim some cigarettes, his gas was low, and that he left most of his money in the room. (R. p. 723). Upon arriving at the motel, Appellant testified that Victim was laying down but got up when he opened the door and that they “conversed for a little bit.” He also used the bathroom, got his cigarettes, his wallet, and told Victim they would figure out the rest of the day when he got back. Appellant stated this only lasted a “couple minutes.” (R. pp. 724–725, 729–730). Thereafter, he drove Danielle to Pineland and then to his uncle’s house, where he finished fixing the broken trim under his car. While at his uncle’s house, Appellant claims he changed from a Batman shirt to a red Adidas shirt. Appellant then stated he returned to the motel and found Victim dead. (R. pp. 725–731).¹¹ When asked on direct if he ever owned a gun, Appellant gave an equivocal response stating he did not really own a gun but had one in his possession a month before Victim’s death. He stated he sold it to his cousin for “a hundred bucks.” (R. pp. 739–740).

On cross-examination, the solicitor picked up on the topic of firearms, asking Appellant if he recalled telling SLED he sold his gun for \$900. He did not recall. Appellant also denied *anyone* seeing him with a blue gun and, when asked if he never had a blue gun, stated: “There would have been one at the scene if I did.” Next, the solicitor asked Appellant if he recalled his written statement to law enforcement that Victim was still asleep when he left her for the last time and whether he failed to mention having a conversation with Victim in this statement. Appellant was

¹¹ Notably, not one time did Appellant mention driving by Paige’s house that morning despite Paige testifying during the State’s case-in-chief that Appellant drove by her house around 8:00 AM that morning, honked, and said hi. (R. pp. 329–330).

also asked if he recalled telling law enforcement that he touched Victim and moved her head, as well as reenacting this moment. (R. pp. 741–745). Appellant explained that he was going to get gas only after picking up Victim again later despite him saying he needed to pick up his wallet before going to Pineland. (R. pp. 746–747). When asked about his relationship with Victim, Appellant admitted it was true that he hid his relationship with his other girlfriend Ashley from Victim until Victim looked through his phone and asked him about it. Appellant also acknowledged telling SLED that Victim was insecure about this other relationship. (R. p. 748–751). When asked why he never told SLED about fixing the dust cover and changing his shirt at his uncle’s house, Appellant stated he did not think it was necessary. (R. pp. 754–755). Finally, the solicitor pointed out that Appellant attempted to suggest on the 911 call that Victim’s sister Desiree may have been responsible based on an altercation they had a month prior. (R. pp. 758–760).

In sum, Appellant’s direct testimony contradicted his own forensic evidence that placed him at the motel for 20 minutes—and his evasive, dodgy, and contradicting responses on cross-examination only further undermined his own defense. Thus, assessing this evidence properly as a factual matter only supports the trial court’s conclusion that directed verdict was not warranted in this case. This Court erred not only in weighing this evidence against the State’s, but also as a factual matter in characterizing the evidence as supporting Appellant’s defense.

As a last point, Respondent contends that this Court relied too heavily on comparisons to decisions in other directed verdict cases rather than properly assessing the evidence in this case. At the end of the Supreme Court’s decision in *Bennett* affirming the trial court’s denial of directed verdict and thus reversing a contrary decision of this Court, the Supreme Court noted that while the defendant in that case argued the evidence was more tenuous than in *Arnold, supra*, and in *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), two other cases where the Supreme Court

reversed the denial of directed verdict, that it “recognize[d] in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; *therefore, the holdings in those cases are limited to their peculiar facts.*” 415 S.C. at 237, n.1, 781 S.E.2d at 354, n.1 (emphasis added). As such, Respondent contends that comparisons to other cases are only marginally helpful in applying the proper standard of review in this case.

Bennett’s other analysis is also instructive as to the issue Respondent raises regarding this Court’s improper assessment of Appellant’s defense. In *Bennett*, this Court had found that the evidence presented placed the defendant generally at the location where the crime occurred, but it disagreed with the State’s assertion that the evidence placed him at the scene of the crime. *Id.* at 236, 781 S.E.2d at 354. The Supreme Court noted the following regarding this flawed analysis in reversing the denial of directed verdict:

In our view, this discussion clearly indicates the court of appeals weighed the evidence and reversed based on *its conclusion that there was a plausible alternative theory inconsistent with Bennett’s guilt.* This is contrary to our jurisprudence and misapprehends the court’s role making this determination. As this Court clarified in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955), the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury. Within the jury’s inquiry, “it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.” *Id.* at 328, 89 S.E.2d at 926. However, when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.” *Id.* at 329, 89 S.E.2d at 926. Therefore, 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. This objective test is founded upon reasonableness.*

Id. (emphasis added).¹²

This Court was required to view the evidence in this case in the light most favorable to the State and failed to do so. *See Bennett; Harry, supra*. As such, Respondent respectfully asks this Court to properly assess the evidence in this case and find that there was significant, substantial circumstantial evidence to warrant sending this case to the jury. Appellant's convictions should stand on a well-supported guilty verdict.

¹² *See also State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 277 (2017) (“The excellent opinion of the court of appeals analyzed the evidence appropriately in light of the applicable standard of review. The dissent [*id.* at 301–305, 803 S.E.2d at 278–80] cites the proper standard of review, *but rejects it in application, preferring instead to recast the evidence in a light favorable to Petitioner.*”) (emphasis added).

CONCLUSION

WHEREFORE, Respondent asks this Court to grant rehearing and to affirm the trial court's denial of Appellant's motions for directed verdict.

Respectfully submitted,

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Columbia, South Carolina
July 13, 2026

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Jul 13 2026

SC Court of Appeals

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Notice of Appearance and Petition for Rehearing, along with Certificate of Service has been forwarded to Petitioner's counsel, Lara M. Caudy, Esquire via email today, July 13, 2026 to lcaudy@sccid.sc.gov and to her assistant smcinnis@sccid.sc.gov .

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

This 13 day of July 2026.

s/P. Sanders Linker
P. Sanders Linker
Assistant Attorney General

RECEIVED

Jul 13 2026

SC Court of Appeals

From: [Brittany Kilgore](#)
To: lcaudy@sccid.sc.gov; smcinnis@sccid.sc.gov
Cc: [Sanders Linker](#)
Subject: Redding - Notice of Appearance and Petition of Rehearing
Date: Monday, July 13, 2026 12:29:00 PM
Attachments: [Notice of Appearance - Redding .pdf](#)
[image001.png](#)
[Petition for Rehearing - Redding, Brian.pdf](#)

Counsel, please find attached, the State's Notice of Appearance and Petition for Rehearing in the above reference appeal. These will be electronically filed with the South Carolina Court of Appeals on today's date,

Thank you,



Brittany Kilgore

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