

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

SC COURT OF APPEALS

THE STATE,

Respondent,

v.

KENNETH ANDREW LYNCH,

Appellant.

Appellate Case No. 2012-212547

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. The trial judge erred in failing to direct a verdict of acquittal in Appellant's favor concerning two counts of murder and grand larceny because the prosecution failed to present substantial circumstantial evidence tending to prove Appellant's guilt.
- II. The trial court's refusal to use an instruction explaining how to use circumstantial evidence during his deliberations and evaluation of the evidence as fact-finder violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the instruction used failed to clarify how to evaluate circumstantial evidence.
- III. In violation of the Fourth Amendment to the United States Constitution and Article One, Section Ten of the South Carolina Constitution, the trial judge erred in failing to suppress evidence seized in connection with Appellant's arrest, including all of the items found in his luggage, Appellant's statements, Appellant's fingerprints, and Appellant's extradition, where the arrest warrant issued was not supported by probable cause due to the officer's omission of vital information, which placed the scenario in an entirely different light.

STATEMENT OF THE CASE

On the night of June 10th, 2006, Portia Washington and Angelica Livingston were murdered in Lexington County, and Washington's automobile was stolen. (R. 1793-94). Appellant Kenneth Lynch was arrested on June 18, 2006 on the international border between the State of Washington and Canada, eventually returned to South Carolina, and charged with the grand larceny of Washington's automobile and eventually for the murders of Washington and Livingston. (R. 523-541, 1576-1586, 936, 1590-91). On August 11, 2008, the Lexington County grand jury indicted Lynch for Washington and Livingston's murders. (Indictments 2008-GS-32-2652, 2653). Lynch had already been indicted for the grand larceny of Washington's auto, i.e. grand larceny of property having a value greater than \$5,000 (2007-GS-32-525). The State sought the death penalty for the murders. Lynch was represented on the charges by Bill McGuire, Benjamin Stitely, and Eric Drylie, Esquires. (R. 75). Lynch proceeded to a *bench trial* before Circuit Court Judge Eugene C. Griffith, Jr., on April 16, 2012. (R. 75).¹ At the conclusion of the guilt phase, Judge Griffith found Lynch guilty of both murders and grand larceny greater than five thousand dollars (\$5,000). (R. 1793-94). At the conclusion of the penalty phase on May 8, 2012, in a written sentencing order, Judge Griffith found the State proved the existence of two (2) statutory aggravating circumstances.² Judge Griffith sentenced Lynch to two (2) terms of life imprisonment, which he ordered to run consecutive to each other, and to the ten (10) year sentence he imposed for grand larceny. (5/2012 Tr., R. 1797-1801; Sentencing Order). Judge Griffith denied Lynch's motion for a new trial. This appeal followed.

¹ The case was prosecuted by Solicitor Donald Meyers, Deputy Solicitor Rick Hubbard, and Assistant Solicitor Shawn Graham. (R. 75).

² (1) Lynch murdered two persons by one course of conduct, and (2) he murdered a child under the age of eleven (11) years old. See S.C. Code Ann. Section 16-3-20(C)(a).

RESPONDENT'S STATEMENT OF FACTS

Portia Washington ("Portia") and her granddaughter, seven (7) year old Angelica Livingston ("Angelica"), were murdered in the late hours of June 10th, 2006. Their bodies were never recovered. However, Angelica's blood, which included her D.N.A., was found in several places in the apartment where appellant Kenneth Lynch ("Lynch") lived with the victims, including in Lynch's bedroom. Lynch resided with the victims at Park Place Apartments in West Columbia, located in Lexington County.³

Portia, the adult victim, was a fifty-four (54) year old mother of two (2) and grandmother of four (4) children at the time of her murder. She was employed at Bob Bennett Ford on Greystone Blvd. in Columbia, where she had served as the custodian since 2000. Portia was the legal guardian of her only granddaughter, Angelica, who lived with her. Except for a brief period of time Portia was married to her first husband, who was in the military, Portia had lived in the Columbia, S.C. area her entire life. In fact, Portia and her first husband separated and divorced because Portia wanted to return home to the Columbia area to be close to her family. Portia and her family were very close, and Portia did not like to travel.⁴

The physical evidence *and* the testimony at trial of friends, family, and co-workers established that Portia's life revolved around her family, friends, job, and church. Portia's life was centered on her granddaughter, Angelica. Portia also had two (2) grandsons that she loved, and a brand new baby grandson, Mason, who had recently been born.⁵ She visited them regularly. Family, friends, and co-workers testified if Portia was going to leave the Columbia

3 (R. 98-228, 230-355, 1348-1444, 1446-58, 1473-90, 1496-1528, 1528-63, 1564-1661, 1679-80, 1793-94).

4 (R. 98-228, 230-355, 806-823, 1662-65, 1678, 1682-83).

5 Portia was actually supposed to keep her new baby grandson the day she disappeared; however, Portia's daughter in law decided not to drop the baby off on her way from Fountain Inn to Orangeburg County.

area, she would have informed them. Portia did not tell any of her family, friends, or co-workers that she was leaving the area. All of Portia's activities stopped and her life ended on the night of June-10, 2006. So did Angelica's.⁶

Portia had only learned how to drive around the year 2003. She was not comfortable driving on the interstate. In fact, she would avoid driving on the interstate if she could. As a result, Portia rarely traveled outside the Columbia area, and the only vacation outside this state which she took prior to her disappearance was to Florida with a church group, which traveled to their destination by bus. The farthest Portia had personally driven was to her son's wedding in Bowman, S.C., and that was with Portia's mother in the car with her. Portia was a homebody.⁷

Portia had purchased a brand new car, a Ford Focus, through her work, approximately one (1) year before her disappearance and murder. A co-worker loaned her the money for the down payment, and employees at Bob Bennett assisted her with obtaining financing for the vehicle. Portia was the only person listed on the vehicle's title as the owner. Portia was making regular monthly payments on the new car. Portia loved her new car and was very possessive of it, because it was the only brand new car she had ever owned. Portia owned no other vehicles.⁸

Portia loved her job at Bob Bennett Ford. She was well liked and respected by her supervisors and co-employees. Portia had a small closet space where she kept her cleaning supplies and also personal items such as pictures of Angelica and her other family members. Portia was not in any danger of losing her job at the time of her disappearance.⁹

6 (R. 98-117, 159-178, 191-228, 230-261, 761-779, 780-806, 806-823, 823-831, 930-34, 1662-66, 1678-1692, 1683-1692).

7 (R. 98-117, 191-202, 230-261, 806-823, 823-831, 1570, 1678-79, 1682-83).

8 (R. 98-117, 159-177, 191-202, 261-314, 761-779, 780-806, 806-823, 823-831, 898-908, 1663-64, 1681).

9 (R. 98-117, 159-177, 261-314, 761-779, 780-792, 793-805, 823-831, 1663-64, 1681).

Portia and appellant Lynch were formerly involved in a romantic relationship, which was ending at the time of Portia and Angelica's disappearance and murders. However, Lynch was still residing in the same apartment with Portia and Angelica up to the date of the victims' disappearance and murders. Lynch was supposed to move out in July or August. Instead, on June 18, 2006, Lynch was captured alone trying to cross the international border into Canada.¹⁰

Relatives, friends, and co-workers of Portia established the relationship between Portia and Lynch had gone sour. Several months before her disappearance and murder, a co-worker had given Portia \$650 for Portia to move out of the residence she was sharing with Lynch and into a new apartment, the one she was living in at the time of her disappearance and murder. Family, friends, and co-workers also established over the course of the relationship with Lynch, Portia's happy demeanor had become increasingly sad, anxious, and depressed. Based on what Portia had shared with them about the relationship with Lynch, several family members and friends had advised Portia to end the relationship with Lynch and to get away from him. Portia had confided in one (1) friend she was also concerned about Angelica living in the same apartment as Lynch. One friend also testified that shortly before her disappearance, Portia related she was afraid of Lynch, and the friend advised her to report to her supervisor the problems in the relationship in hopes the supervisor could do something about the situation, because Lynch also worked at Bob Bennett Ford. The testimony at trial established Portia wanted out of the relationship with Lynch.¹¹

Toward the end of March, 2006, Portia moved to a new apartment, M-7, Park Place Apartments on Comanche Road, in West Columbia in Lexington County. Unknown to the friend

10 (R. 98-117, 191-218, 159-177, 315-355, 1576-78, 1662-1671, 1589, 1676-1692).

11 (R. 98-128; 132-158, 159-177, 191-228, 261-314, 761-779, 806-823, 823-31, 1568, 1662-76, 1679-81, 1691-92).

who had loaned Portia the \$650, Lynch also moved into this apartment with Portia and Angelica. Lynch had himself placed on the lease as Portia's "spouse," though they were not married. Portia still wanted out of the relationship with Lynch and to be on her own with Angelica.¹²

While Portia had allowed Lynch to use her car to drop Angelica off at Portia's mother's home [for daycare] in the past, and Portia allowed Lynch to drive her [Portia] home from work, Portia did not want Lynch driving her new car anymore. A few days before her disappearance and murder, Portia went to her mother's home and gave her mother the spare key to Portia's new car. Portia informed her mother she was giving her the key because she did not want Lynch driving her car anymore. Another friend, who called Portia a few days before her disappearance and murder, testified she could hear Lynch in the background during the phone conversation, and Lynch was fussing and cursing at Portia because Portia would not let Lynch use her car.¹³

On Friday evening, June 9, 2006, the night before the victims' murders, Portia was at a friend's home and related to the friend, she, Portia, was in dread of returning to the apartment she shared with Lynch, and the witness offered to let Portia and Angelica stay with her, rather than the two (2) victims returning to their apartment. Unfortunately, Portia declined the offer.¹⁴

On Saturday morning, June 10, 2006, Portia withdrew \$75.00 from her savings account. She and Angelica drove to an aunt's home, where Portia gave her aunt \$75.00 to buy her [Portia] a pants suit in Sumter, S.C. The aunt then left with others to go shopping. Portia and Angelica then went to a scheduled hair appointment on North Main Street in Columbia in Portia's car.¹⁵

While Angelica was getting her hair done, Portia left to run some errands. When she

12 (R. 261-314, 1589, 1662-1671, 1679-80, 1120, 1691).

13 (R. 159-177, 1672-73, 1675, 898-908, 1681).

14 (R. 98-130).

15 (R. 131-157, 230-261, 711-12).

returned, the hair dresser, Shyla Harris, was still working on Angelica's hair. Shyla ordered lunch for herself and Portia and Angelica. Portia became concerned that the hair appointment/lunch was taking too long. The hair dresser testified Portia appeared apprehensive, afraid, and in a hurry when lunch was late and related that to the hair dresser. The hair dresser also testified that Portia's appearance and demeanor had changed over the relationship with Lynch. She became more nervous and anxious toward the end of her relationship with Lynch. Portia had informed the hair dresser of her problems in the relationship with Lynch, and Shyla Harris had advised Portia to leave Lynch. On June 10th, Portia and Angelica left when Shyla Harris finished Angelica's hair around 1:30 p.m. Shyla Harris testified Portia and Angelica had a standing hair appointment with her every two (2) weeks. After June 10, 2006, Shyla never saw or heard from Portia or Angelica again.¹⁶

Portia and Angelica drove from the hair dresser's shop back at Portia's aunt's residence on Saturday afternoon, June 10th. Portia's aunt gave Portia the pant suit she had bought for her in Sumter. It was wrapped in clear plastic like clothes from the dry cleaners. Portia and Angelica then left together in Portia's new car. Portia's aunt never saw Portia or Angelica again.¹⁷

On the same day, Saturday, June 10, 2006, at approximately 4:30 p.m. in the afternoon, Carla Perry, Portia's next door neighbor, saw Portia and Angelica unloading what looked like laundry or dry cleaning from Portia's car at apartment M-7 Park Place Apartments. Ms. Perry **also testified Lynch was present at this time on Saturday afternoon, June 10, 2006, near the car, with Portia and Angelica.** Ms. Perry saw Angelica again a little later in the afternoon or

16 (R. 131-157).

17 (R. 230-261).

evening in her bathing suit. Angelica was soaking wet and had been playing in the apartment complex swimming pool. Carla Perry never saw Portia, Angelica, or Lynch again after Saturday afternoon/evening, June 10, 2006.¹⁸

At 4:53 p.m., Portia's mother, Sallie Jones, called Portia on her cell phone and spoke with her. Telephone records substantiated this call. This was the last time Portia's mother ever spoke to Portia. Portia's mother never saw Angelica or Portia again.¹⁹

At 6:17 p.m., on that same Saturday, June 10th, a check was written on Lynch's checking account at BiLo Store #442 in Columbia, S.C. The check was in the amount of \$22.89. There were also three (3) withdrawals from Lynch's savings account at an ATM near Dutch Square on that Saturday afternoon, June 10th, of approximately \$20.00 each.²⁰

On the same date, Saturday, June 10, 2006, Lela Green, a close friend of Portia, called Portia and spoke to her at 9:26 p.m. This phone call was also substantiated by telephone records. Portia was alive and well at that time, and Lela expected Portia to call her back on Sunday, and if not, she would see her on Wednesday, when Portia was supposed to help Lela get her car fixed at Bob Bennett Ford. Lela testified that during the phone conversation on Saturday night Portia was cooking for dinner the following day, which was Portia's habit, and Portia was laying out Angelica's clothes for church the following day. After this call ended, Lela Green never saw or heard from Portia again. Lela never saw Angelica again. Lela's phone calls to Portia went unanswered starting on Sunday, June 11, 2006.²¹

18 (R. 178-190).

19 (R. 191-228, 693, 806-823).

20 (R. 1196-1211).

21 (R. 159-177, 691, 806-823).

Around 10:00 to 10:30 p.m. that same Saturday night, June 10, 2006, Portia's neighbor, Carla Perry, was outside in the breezeway with friends. The breezeway is located between Ms. Perry's apartment and the apartment shared by Lynch, Portia, and Angelica. Ms. Perry noticed Portia's car, the new Ford Focus, was gone. Additionally, Portia's plants were outside the apartment, and the lights were off in Portia's apartment. The following morning, Portia's car was still gone, and Portia's plants were still outside, which was very unusual, because Portia always took her plants in before going to bed on Saturday nights.²²

On Sunday, June 11, 2006, Portia did not call anyone on her cellphone. Friends and family who tried to reach her were unable to reach her by phone. (R. 159-177, 191-213, 230-261, 688-698, 761-779, 806-823, 930-34).²³

At 8:02 p.m., that Sunday evening, June 11, 2006, Lynch made two (2) withdrawals from his checking account at an ATM machine on Knox Abbot Drive in Cayce, S.C. [the Columbia

22 (R. 178-190).

23 Portia's family and friends have not seen or heard from her since her disappearance on June 10th, 2006. She has not called or written any of her family or friends. She has not attended her church where she was a regular member. (R. 930-36). Angelica has not been heard from or seen since her disappearance on June 10th either. Angelica subsequently did not appear for a summer church camp in early July. Prior to Portia's disappearance and murder, Portia had already paid for Angelica to attend the church camp. (R. 717). Even though she was enrolled to begin school in the fall, Angelica did not appear for the start of 3rd grade and has not appeared since. No other school district in the United States or outside the United States has requested her school transcripts. (R. 918-929, 1587-88). Furthermore, Portia has not applied for a driver's license in any other state under her birth name or her former married names. (R. 914-17). Portia did not pay her car insurance again after June 10, 2006, and her driver's license was suspended as a result. (R. 909-913). A credit check determined Portia has no addresses listed outside the State of South Carolina, and no one has run a credit check on her. (R. 699-708). Portia also left over two hundred \$200.00 remaining in her checking account. (R. 709-19, 1587). Portia did not return to her doctor for her scheduled doctor's visit, nor did she call to cancel the visit. (R. 875-884). Angelica never returned to the Sterling Sharpe Pediatric Center where she was a patient and was receiving medication for attention deficit disorder. (R. 885-892). No one has ever requested their medical records. (R. 875-891, 885-892). There was no activity on Portia's checking account after June 8, 2006, except for the automatic draft for the new car payment. There was no activity on her savings account after June 10, 2006. (R. 709-719). There was no activity on her cell phone after June 10, 2006. (R. 688-698). Portia made all of the payments on her new car up until the last automatic draft on June 12, 2006. After that payment, no further payments were made, and Portia's new car was eventually repossessed. The value of the car was in excess of five thousand dollars (\$5,000). (R. 898-908).

area]. The withdrawals were for \$200 and \$20 respectively.²⁴

The following day, Monday, June 12, 2006, Portia did not appear for work at Bob Bennett Ford, which was unusual. Portia did not notify her employers she was ill, taking leave, or quitting her job. According to employees of Bob Bennett Ford, Portia always notified work if she was going to be absent for any reason. In fact, the last thing Portia told a co-worker upon leaving work Friday, June 9, 2006, before her disappearance and murder, was that she would see the co-worker on Monday. Additionally, Portia did not pick up her paycheck on Friday, June 17, 2013, even though she was in need of money to pay all of her bills. Portia never returned to work, and she never contacted Bob Bennett Ford after June 10, 2006. All of Portia's personal items, including photographs of Angelica and others she kept in her personal workspace, remained where she had left them on Friday, June 9, 2013, her last day of work.²⁵

Lynch, did not appear for work at Bob Bennett Ford on Monday June 12, 2006 either. Lynch provided no notice that he was quitting his job. Nor did Lynch call in sick or request vacation time. Lynch also did not pick up his paycheck on Friday, June 17, 2006. Instead of appearing for work on Monday, Lynch had fled from South Carolina, even though no one else knew at that time a crime had been committed in the apartment he shared with the victims.²⁶

The same Monday that Lynch was supposed to appear for work, Lynch checked into a Motel 6 in Vicksburg, Mississippi where he falsely listed his home address as being in Florida. He also falsely listed the street address of his home as an address at which he and Portia had lived before she moved to Park Place Apartments. He paid cash for the motel room. Lynch

24 (R. 1196-1204).

25 (R. 214, 744-761, 761-779, 780-792, 793-806, 1587).

26 (R. 744-761, 780-792, 1161-62, 1587).

indicated he would be staying in the motel alone. Lynch left Vicksburg, Mississippi the following day June 13, 2006 after staying overnight at the Motel 6.²⁷

Employees and friends who knew Portia became concerned when she did not appear for work and notified Portia's family. The family was already concerned because they had not heard from Portia since Saturday, June 10th. Portia's mother went to the police station and filed a missing persons report. Fellow employees, friends, and family went to her apartment complex and had the apartment manager go into her apartment for a welfare check. The manager of Park Place Apartments testified that in the past when Portia was going to be away for any period of time she would notify the Apartment Complex so they could pick up her mail. Portia had not notified the Apartment Complex that she was leaving or going out of town.²⁸

When the Apartment Complex Manager went to the apartment, it was locked. She entered the apartment with the use of pass key. No one was in the apartment, and Portia's new automobile, which she had purchased from Bob Bennett, was missing from the complex parking lot. The manager did not notice any blood in the apartment.²⁹

Subsequently, an *automatic draft* on Portia's bank account paid the next car payment; however, Portia made no further payments on the brand new car, which she loved. Angelica did not appear for a church camp the first week of July, which Portia had already paid for.³⁰

Portia owned a cell phone she purchased with her aunt's assistance. Before her disappearance and murder, Portia regularly called friends and family throughout each day. After

27 (R. 720, 722-25, 1579-1581, see generally 720-744).

28 (R. 213-15, 315-355).

29 (R. 315-355, 1163-64).

30 (R. 709-720, 1691, 930-34).

June 10, Portia did not call any of her friends or relatives on her cell phone as she had habitually done in the past. All calls to friends and family stopped on June 10th at 9:36 p.m. Nor did she return the numerous phone calls that were made to her by friends, family, and co-workers.³¹

When the management of Park Place Apartments in West Columbia and police entered the apartment formerly shared by Portia, Angelica, and Lynch, to check on their status, they found all of the furniture still in the apartment. Again, the door was locked, and the apartment manager used a pass key to enter the apartment. Portia's CPAP machine, which she needed to sleep because of diagnosed sleep apnea, was also still in the apartment. Toiletries and prescription medicine were still present in the bathroom. A fresh steak was marinating in the refrigerator, and there was other food that had been recently prepared. In Angelica's room, a child's Sunday dress and shoes were laid out on the child's bed. All of Angelica's toys remained in her bedroom, including her favorite stuffed bear, which she would normally take with her when she visited relatives. Several kitchen chairs were stacked on the kitchen table, and it appeared the kitchen and dining room floor, which was linoleum, had recently been mopped. The carpet had also been vacuumed. Based on personal items found in the apartment, including clothes in the closets, and prescribed medications, there was no indication the occupants had gone on a planned vacation or trip.³²

When forensic experts processed the apartment formerly shared by Lynch and the two (2) victims [Portia and Angelica], they discovered human blood located in several places in the apartment.³³ Eventually, it was determined the blood contained the DNA of Angelica.³⁴ A blood

31 (R. 806-823, 688-698, 159-177, 191-228, 230-261, 98-228, 230-355, 1662-1676).

32 (R. 315-355, 875-884, 1158-1193, 1662-69, 1120).

33 Police re-entered the apartment with a search warrant. (R. 1599).

spatter expert testified Angelica's blood was deposited on the underside of a recliner chair found sitting upright in the master bedroom, and the chair would had to have been overturned when some of Angelica's blood was spattered on the underneath portion of the recliner. Blood spatter was also found on an object sitting on the floor. The spatter was caused by someone striking the child with medium velocity force, such as with a fist or a blunt object. The victim would had to have been at least as high as the chair when some of the spatter occurred, and low to the floor when some of the other spatter occurred. Blood was also found on the carpet, which had soaked through the carpet to the floor underneath. There was significant bloodletting or pooling of blood. Blood was also found on a sheet or blanket, and in a smear on a bedroom door caused by a hand covered in blood touching the door. Blood was also found on a bedroom sink. Blood was also found in a bathroom sink. Almost all of the blood contained at least some of Angelica's blood (D.N.A.). There were some blood stains that contained Angelica's DNA and an unknown male's DNA. This DNA was not of sufficient quantity to identify it specifically to Lynch, but Lynch could not be excluded. It was also clear that someone had previously attempted, unsuccessfully, to clean up much of the blood.³⁵

On Wednesday, June 13, 2006, around 11:55 a.m., Lynch withdrew \$420 dollars from his checking account at a Citizens National Bank in *Waskom, Texas*. This left only 8 cents in his checking account. On the same day, at 12:43 p.m., Lynch entered a Family Dollar Store in *Texas*

34 The blood was determined to be Angelica's because DNA testing showed the blood belonged to a biological daughter of Theresa Brown, Angelica's mother and Portia's daughter. (R. 216-17, 220-21, 1348-1445, 1458-1527, 1528, 1529-1564, 1589, 1677). At the time of Angelica's murder, her mother, Theresa Brown, had only one (1) daughter, Angelica. (R. 1589, 1663, 1677).

35 (R. 1348-1445, 1458-1528, 1529-1564).

and purchased Mouthwash, T-Shirts, a razor, shaving cream, and hair gel, i.e. toiletries.³⁶

On Thursday, June 14, 2006, Lynch was stopped for speeding by a Texas Highway Patrolman outside *El Paso, Texas* and given a traffic citation. At the time, Lynch was alone and driving *the victim Portia Washington's brand new Ford Focus*. Lynch told the Texas Highway Patrolman that he was on his way to Arizona to pick up his wife, the owner of the car. Lynch was not married to Portia. While there was no one in the car with Lynch at the time he was stopped for speeding, a child restraint seat was seen in the back seat of the car. The location where Lynch was stopped, in West Texas, was just a few miles from the Mexican Border.³⁷

Also on Thursday, June 14, Lynch checked into a Motel 6 in Eloy, Arizona. He paid cash for this room as well. Unlike the Motel 6 in Vicksburg, Mississippi, this Motel 6 was corporate owned and required Lynch to provide a picture I.D. The address listed on the motel receipt for this Motel 6, was not Florida, but the address contained on Lynch's South Carolina driver's license. Lynch listed the vehicle he was traveling in as a 1989 brown Ford. Portia's vehicle which Lynch was actually traveling in was a 2005 tan Ford Focus. Lynch checked out of the Eloy, Arizona Motel 6 on Friday, June 15, 2006. [A forensic handwriting expert testified the signature on both the Vicksburg and Eloy motel receipts was Lynch's handwriting.]³⁸

On June 17, 2006, Lynch made his way to Seattle, Washington, where he purchased a one-way bus ticket for a trip to Vancouver, Canada. Lynch paid cash for the bus ticket.³⁹

When Lynch attempted to cross the international border into Canada, he was denied entry by Canadian Border Patrol Agents and told to return to the U.S. Border Patrol/Customs Office

36 (R. 1196-1204).

37 (R. 661-679, 1581-82).

38 (R. 1149-1158, 720-744, 116-61).

39 (R. 390-91, 1876-78).

and fill out appropriate paperwork. Once, there, United States Border Patrol/Customs agents, by running a computer check, discovered Lynch was wanted as a missing person from West Columbia, S.C. West Columbia police were notified, and they notified the Border Patrol agents Lynch was a suspect in a double murder case. Border patrol agents seized Lynch's bags, searched them, and held Lynch. They also faxed to West Columbia police a copy of Lynch's bus ticket to Canada and motel receipts contained in his luggage. The Border patrol agents notified West Columbia they had Lynch, and the West Columbia police in turn notified Border patrol agents a warrant had been issued for Lynch's arrest for the grand larceny of Portia's vehicle. The warrant was faxed to the Border patrol agents. A Whatcom County, Washington deputy sheriff was dispatched who arrested Lynch and transported him to a jail there in Washington.⁴⁰

While being transported to a Washington state jail, Lynch began asking questions about the larceny charge. He denied he had been in the victim Portia Washington's vehicle. He stated he had traveled to the west coast with a friend in a newer model Cadillac. Lynch refused to say who the friend was. Lynch claimed that when he had gotten to Portland, Oregon, he had *taken a bus* to Seattle and was then trying to travel to Vancouver by bus when he was stopped at the International Border. Lynch indicated he was going to Vancouver to see "bears," which struck the deputy who transported him as unusual because Vancouver is a large metropolitan area, and any bears are located further north. Lynch did mention he had once lived with a woman named Portia Washington and her granddaughter, but he decided to leave for a while to see Canada. Lynch stated he quit his job a few days previously and was going to go back home after he had seen Canada. When Lynch was booked at the Whatcom jail, he gave his home address as *No. 7-*

40 (R. 356-411, 437-448, 449-463, 506-541, 1576-78).

M, Park Place Apartments, Apache Road, West Cayce, S.C., 29033. When Lynch was booked, he had no cash on his person and only some loose change was in his luggage.⁴¹

On June 19, 2009, FBI Special Agent Brenda Wilson and Detective Glen Hutchings of Washington State interviewed Lynch in Washington State. Lynch again gave his home address as Apartment 7-M, Park Place Apartments, West Cayce, South Carolina, 29033. Lynch said he quit his job at Bob Bennett Ford on Friday, June 9, 2006. He stated he was going to attend a 15-day truck driving school, "Warner Truck Driving," in Newberry, S.C. Lynch claimed *he did not know whose car he was supposed to have taken*. He claimed he had gone across the country with friends, that they had driven him, and he had stayed at their houses and gone up to Portland, Oregon, and then caught a bus from Portland to Seattle, and then a bus from Seattle and was trying to get into Canada. Lynch refused to identify the friends. Lynch stated that he and Portia Washington were boyfriend/girlfriend approximately two (2) years prior, but about a year prior, they had become more like roommates. He stated Portia also worked at Bob Bennett Ford. He stated **the last time he saw Portia was on Friday, June 9, 2006**, when he quit his job at Bob Bennett Ford. Lynch stated that he told Portia on the ride home from work that he had quit his job and that he wasn't going to be coming back to work on Monday. **Lynch denied he had driven Portia's vehicle anywhere outside of South Carolina**. He claimed he caught a ride on Friday night June 9, 2006 to Georgia, and then left Georgia and traveled west.⁴²

Only when confronted with the fact he had been stopped for speeding in Portia's car in Texas, did Lynch admit he did have possession of Portia's car and had driven it outside of South Carolina. He claimed Portia could not make the payments on the car, which was not true, and

41 (R. 437-449; 524-541).

42 (R. 590-644, 1583-85).

she had given it to him. He also claimed Portia was in over her head at work with her job, and she was about to lose her job, which was also false. When told the victims were missing, Lynch admitted it would be very unusual for Portia to leave the Columbia area without telling anyone she was leaving or where she was going. Lynch queried the investigators whether police had searched his apartment yet. Lynch continued to claim he left Columbia on Friday night, June 9, 2006, not Sunday June 11, 2006. He denied he was in the Columbia, S.C. area after June 9, 2006. Lynch eventually admitted he did not have permission to take Portia's car.⁴³

Police eventually searched the parking lot of the bus station in Seattle, Washington, where Lynch had purchased his one-way bus ticket to Canada. There, police found Portia's brand new car abandoned in a metered parking space. Pursuant to a search warrant obtained there, Lynch's D.N.A. was found on the steering wheel, and his fingerprints were found on the outside of Portia's new car, on the hood of the trunk. When Seattle police found the abandoned Ford Focus, the car had been stripped of any identification. The license plate or tag had been removed from the car. All identifying paperwork had been removed from the glove box. The only way police could identify the vehicle and who owned it was by reference to the vehicle's VIN number. The car was described as being clean inside, like a rental car.⁴⁴

Lynch's carry-on bags were returned to South Carolina by West Columbia Detective Matt Edwards. Once here, police obtained two (2) separate search warrants for the bags he was arrested with at the Canadian border and which were seized by Border Patrol/Customs agents. These are the same bags Lynch signed over to Washington State authorities during the interview with the FBI and the Washington State detective. At the time of his arrest on the Canadian

43 (R. 590-644).

44 (R. 645-659, 682-87, 837-874, 1131-1149, 1576-78, 1583).

border, Lynch had in his possession *Portia's* car keys which contained a key consistent with the key that would have opened Apartment M-7, Park Place Apts. Lynch also had his own set of keys including keys consistent with the key to open the lock of Apartment M-7, Park Place Apts., and a key consistent with the key to open the apartment mailbox.⁴⁵

ARGUMENT I.

Lynch's argument the trial court erred in not directing a verdict because the State failed to prove the victims were murdered is not preserved for appellate review, and his apparent argument the State failed to prove venue is not preserved for appellate review, and, regardless, the trial court did not err in denying the motion(s) for a directed verdict made at the close of State's case and at the close of Lynch's case.

What Occurred Below

At the close of the State's case, Lynch moved for a directed verdict. Judge Griffith denied the motion for a directed verdict. (R. 1699-1713, 1714). Lynch renewed his original motion for a directed verdict at the close of his case; and Judge Griffith denied the same. (R. 1751-52). Lynch now argues Judge Griffith erred in denying his motion(s) for a directed verdict on all charges. (BOA). There is no merit to this ground.

The Unpreserved Issues

Lynch now argues on appeal that the State failed to prove the victims were murdered. Lynch conceded below the State had proved *the corpus delicti* of the murders, i.e. the victims Portia and Angelica are dead and they were murdered by criminal means. (R. 1711, ll. 11-13).⁴⁶ Lynch's argument in his brief the State failed to prove Portia and Angelica were murdered is not preserved for appellate review. Lynch cannot argue one basis below for a directed verdict and

⁴⁵ (R. 1681-82, 1026, 1088-92, State's Ex. 24, State's Ex. 84, 1093-1108, 1114-16, 1121-31, 1681-82, 1005-1075).

⁴⁶ What Lynch argued below in his directed verdict motion was that there was no evidence that Lynch committed the murders, other than some evidence of flight, and evidence of false statements about whether he had permission to use Portia's automobile. (R. 1711).

then a different basis on appeal. Roberts v. State, Shearhouse Advance Sheets, Opinion No. 5223 (Ct. App. 2014), *not yet released for publication*; State v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012); State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) State v. Frieburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (1998). Lynch completely abandoned this issue. (R. 1711). This portion of this appellate ground must be dismissed.⁴⁷ Regardless, there is no merit to any directed verdict issue Lynch raises in his appellate brief.

Standard of Review / Directed Verdict
(Appellate)

A defendant may only appeal from a trial judge's denial of a motion for a directed verdict of acquittal where there is a total failure of competent evidence tending to establish the charge laid in the indictment, and absent an error of law, the ruling must stand. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).⁴⁸ In reviewing a denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Cope, 405 S.C. 317, 748 S.E.2d 194 (2013); State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). This Court views the evidence *and* all reasonable inferences in the light most favorable to the State. State v. Lemire, 406 S.C. 558, 753 S.E.2d 247 (Ct. App. 2013), *citing* State v. Weston, 367 S.C. 279,

⁴⁷ Lynch also appears to argue on appeal that the State failed to prove the crimes were committed in Lexington County, i.e. lack of proof of venue. [See Brief of Appellant] This argument is also not preserved for appellate review. An objection by the defense, that the State had not proved venue, must be first made in a motion to direct a verdict for the accused. State v. McCain, 118 S.C. 26, 110 S.E. 70 (1921); State v. Daniel, 83 S.C. 310, 65 S.E. 236 (1909). Lynch did not argue this issue as a basis for his motion(s) for a directed verdict below at the close of the State's case or the close of his case. (R. 1699-1713; 1714; 1751-52). As a result, this issue is not preserved for appellate review. Roberts; Sterling; Jennings; Frieburger; Adams. This appellate ground must be dismissed.

⁴⁸ See also State v. Tyner, 258 S.E. 2d 559 (1979); State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978).

292, 625 S.E.2d 641, 648 (2006).⁴⁹ If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, this Court must find the trial court properly submitted the case to the fact finder. State v. Rogers 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013), *citing* State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). This Court considers only the existence or non-existence of evidence, not witness credibility, in reviewing the denial of a directed verdict. Rogers *supra*, n. 5, 748 S.E.2d 265, n. 5.⁵⁰ Our courts have repeatedly held, where the evidence is circumstantial, the evidence will be considered as a whole, not in isolation, in determining whether there was sufficient evidence to submit the case to the fact finder. Rogers *supra*.⁵¹ If the State has presented any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court's decision to submit the case to the fact finder. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013).⁵² "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." State v. Stanley, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005).

Trial Court's Standard

When ruling on a directed verdict motion, the trial court is concerned with the existence

⁴⁹ See also State v. Palmer, 2014 WL 551581 (Ct. App. 2014).

⁵⁰ See State v. Cherry, 348 S.C. 281, 286, 559 S.E.2d 297, 299 (Ct. App. 2001)(en banc), *aff'd in result*, 361 S.C. at 594, 606 S.E.2d at 478; State v. Scott, 330 S.C. 125, 131, n. 4, 497 S.E.2d 735, 738, n. 4 (Ct. App. 1998).

⁵¹ See State v. Frazier, 386 S.C. 526, 532-33, 689 S.E.2d 610,613-14 (2010)(viewing circumstantial evidence "collectively" and "as a whole" to hold directed verdict properly denied); Cherry, 361 S.C. at 595, 606 S.E.2d at 478 (finding circumstantial evidence, when combined, was sufficient to for the fact finder to infer guilt); State v. Buckmon, 347 S.C. 316, 323-24, 555 S.E.2d 402, 405-06 (2001).

⁵² Furthermore, when the defendant offers proof in his case in chief, the appellate court is to consider all of the evidence in ruling on whether a directed verdict motion at the close of the defendant's case was properly denied. See Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting* State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996); *Cf.* State v. Thompkins, 220 S.C. 523, 68 S.E.2d 465 (1951)(citation omitted).

or nonexistence of evidence, not its weight. Cope, 405 S.C. 317, 748 S.E.2d 194; Cherry, 361 S.C. at 593, 606 S.E.2d at 477-78.⁵³ A trial court should grant the directed verdict motion when the evidence merely raises a suspicion the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. On the other hand, “a trial judge is not required to find that evidence infers guilt to the exclusion of any other reasonable hypothesis.” Hepburn, 406 S.C. 416, 753 S.E.2d 402.⁵⁴ The trial judge is required to deny the motion for a directed verdict and submit the case to the fact finder if there is any direct evidence or any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, quoting State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126, 127 (2000).⁵⁵

The Lack of Merit of Lynch’s Argument

The State more than satisfied the standard to overcome the motion(s) for a directed verdict on the two (2) murder charges and the charge of grand larceny. Judge Griffith appropriately denied the motion(s) for a directed verdict.

It is not necessary for the State to produce the body or bodies of the victim(s) to prove murder, when the defendant has secreted, destroyed, or hidden the bodies. State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987). Nor is the State required to prove the exact cause of death in such a situation. See Brown v. State, 307 S.C. 465, 415 S.E.2d 811 (1992)(body found but

⁵³ See also State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); see Rule 19(a), SCRCrP.

⁵⁴ See Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis removed).

⁵⁵ If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the case must be submitted to the fact finder. Freiburger, 366 S.C. at 136, 620 S.E.2d at 743; Weston, 367 S.C. at 292, 625 S.E.2d at 648.

condition made determination of cause of death impossible).⁵⁶ The State may prove the victim(s)' murder(s) by showing the victim(s)' personal habits and relationships as circumstantial evidence from which an inference could be drawn that the victim(s)' sudden disappearance was the result of death by a criminal act. Owens, *supra*.⁵⁷ As the Court stated in Owens:

The circumstantial evidence surrounding [victim's] sudden disappearance, considered with the unlikelihood of his voluntary departure as shown by his personal habits and relationships, is sufficient to establish the *corpus delicti* of murder or that the victim is dead by the criminal act of another. *See State v. Streights*, 263 S.C. 127, 208 S.E.2d 43 (1974).

293 S.C. at 168; 359 S.E.2d 275; Weston, 367 S.C. at 293, 625 S.E.2d at 648. *See also Saltz*, 346 S.C. at 137-38, 551 S.E.2d at 253. The evidence in this case is exactly the same.

In order to overcome a motion for a directed verdict there must have been evidence in the record establishing the victims were murdered and appellant was the person who murdered them. The State introduced more than sufficient evidence proving both that the victims were murdered and appellant Lynch was the person who murdered them.

The victims Portia Washington and Angelica Livingston disappeared on the night of June 10, 2006. Portia regularly talked with her family members and friends in person and by phone. After the night of June 10, 2006, there was no further contact by her with family and friends, which was out of the ordinary and suspicious given her regular habits and lifestyle.⁵⁸ Portia

⁵⁶ *See State v. Howard*, 295 S.C. 462, 466, 369 S.E.2d 132, 134 (1988) ("The body was partially decomposed and the exact cause of death could not be determined."). *See State v. Saltz*, 346 S.C. 114, 137-38, 551 S.E.2d 240, 253 (2001) ("[C]ircumstantial evidence may be sufficient to establish the *corpus delicti* of murder even though the cause of death cannot be determined.").

⁵⁷ *Citing State v. Head*, 79 N.C. 1, 338 S.E.2d 908 (Ct. App. 1986); Epperly v. Commonwealth, 224 Va. 214, 294 S.E.2d 882 (1982).

⁵⁸ *See State v. Hester*, 137 S.C. 145, 134 S.E. 885 (1926) (evidence of habit of victim admissible to prove fact in issue); State v. Hart, 94 S.C. 214, 77 S.E. 862 (1913) (similar).

never visited her three (3) grandsons again, including a newborn infant grandson. Family members, co-workers, and friends testified if Portia was going to leave town she would have notified them of the same, and she did not. She did not appear for work on Monday, did not contact her work and inform them she would not be able to make it to work, which was not her normal habit, and did not even pick up her check at work even though she needed money to pay her bills. Further, she failed to appear at planned meetings with others without making any contact with those individuals. There was no further activity on her cell phone, and no personal activity on her bank account, which contained money, after the day of her disappearance. Further, she was never seen by anyone after the date of her disappearance, and she was not in the company of appellant Lynch when he was arrested on the Canadian border. Furthermore, Portia's only means of transportation, her new car, was in the possession of appellant Lynch. Finally, Portia's belongings, including her CPAP machine that she needed to sleep, her clothing, and her prescription medication, were still in her apartment, and personal items remained in her work space at Bob Bennett Ford. The testimony at trial firmly established Portia Washington's activities and her life ceased on the night of June 10, 2006, and she was murdered.

Angelica was not seen or heard from again either after the afternoon of June 10, 2007. She did not appear for church, and she did not appear for a church camp that Portia had already paid for. Further, Angelica's blood was found in her home in various places, including medium velocity blood spatter under a chair in the master bedroom, which revealed she had been criminally assaulted. Furthermore, Angelica never appeared again for her scheduled hair appointment, never appeared for the start of school, and never appeared at her doctor's office where she was being treated for attention deficit disorder. No school, whether inside the United

States or outside this country, has ever requested her school records. And, no one has requested her medical records from her treating physician.

Based on the evidence presented at trial, there is no question Portia Washington and Angelica Livingston were murdered. Owens, *supra*. Lynch conceded below the State had proved *the corpus delicti* of the murders. (R. 1711, ll. 11-13).⁵⁹ The victims are dead, and they were killed by criminal means. Id.

Lynch also appears to argue in his brief that the State failed to prove the victims were murdered in Lexington County. There is no merit to this argument.⁶⁰ As the evidence showed, and as conceded by Lynch at the end of the case, the State proved the victims were murdered and they were murdered in Lexington County.⁶¹

⁵⁹ What Lynch argued below in his directed verdict motion was that there was no evidence that Lynch committed the murders, other than some evidence of flight. (R. 1711).

⁶⁰ A criminal defendant is entitled to a directed verdict when the prosecution fails to prove the offense was committed in the county alleged in the indictment. State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992); State v. McCoy, 98 S.C. 133, 82 S.E.2d 280 (1914). Although an accused has the right to be tried in the county where the offense is committed, this right is not jurisdictional. Evans, *supra*. For the purpose of establishing venue in a criminal prosecution, it is not necessary that the county in which the crime was committed be proved affirmatively if there is sufficient evidence from which it can be inferred. State v. McCleod, 303 S.C. 420, 402 S.E.2d 175 (1991); State v. Wharton, 263 S.C. 437, 211 S.E.2d 211 (1975); State v. Henderson, 285 S.C. 320, 329 S.E.2d 448 (Ct. App. 1985). Venue, like jurisdiction, need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient. Wray v. State, 288 S.C. 474, 343 S.E.2d 617 (1986). For example, in a murder prosecution, venue can be inferred that the crime was committed in the county based on where the body was found. State v. Williams, 321 S.C. 327, 468 S.E.2d 626 (1996). Even where a body is not recovered, venue may be established in a murder prosecution by the facts and circumstances of the case. Where some facts material to the offense, and requisite to its consummation occur in more than one county, venue is proper in either county. Venue in a murder case is established where the victim's body was never found where there was evidence of a violent struggle in the victim's home. State v. Owens, 293 S.C. 161, 359 S.E.2d 257 (1987). Further, where the victim was last seen alive in Lexington County with the defendant and blood stained items were found at the defendant's workplace consistent with the victim's blood, but the body was found in Lee County, venue was proper in either county. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996); McCleod, *supra* (where victim's body was found in Beaufort, but there was a sign of a struggle at her residence in Colleton County, venue was proper in either county).

⁶¹ The victims were last seen alive together with Lynch beside the apartment Lynch shared with the victims in Lexington County on June 10, 2006. Angelica was seen shortly thereafter after having played in the apartment pool but returning to the same apartment, M-7 Park Place Apartments. Portia was alive at 9:26 p.m., on June 10, 2006, and Portia was laying out Angelica's clothes for church the following morning and preparing food for Sunday dinner. When police searched the apartment several days later, Angelica's Sunday clothes and shoes were laid out

Lynch also contends the State did not produce sufficient evidence that it was he who committed the murders. Lynch is wrong.

The evidence at trial showed that the victim Portia and appellant Lynch had previously been in a romantic relationship that had turned bad. And, the relationship was ending. The victim wanted to get away from Lynch, but he followed her to her new apartment, where he had himself placed on the lease as her "spouse." The two (2) were never married.

Portia had confided in others that she was afraid of Lynch; she confided in one (1) person she was concerned about Angelica living in the same apartment as Lynch, and witnesses described Portia as being in fear of Lynch during the last days before her disappearance and murder, including the day of her disappearance. One witness, who spoke with Portia in person on Friday night, the night before her disappearance and murder, related that based on her conversation with Portia, Portia was in dread of returning to the apartment she shared with Lynch, and the witness offered to let Portia and Angelica stay with her at her home, rather than them returning to the apartment Portia shared with Lynch.

Similarly, on Saturday, June 10, 2006, the day of Portia's disappearance and murder, Portia was nervous, and indicated to her hair dresser she was nervous and apprehensive that lunch was taking too long. This indicated not only her fear of Lynch, but also that he was still

on Angelica's bed and prepared food was found in the kitchen. Portia's car was last seen parked at Portia's apartment, M-7 Park Place Apartments on the afternoon of June 10, 2006. Portia's car was gone from the apartment at approximately 10:30 p.m. that night and the lights were off in her apartment. Portia's plants were outside her apartment and remained outside the following morning. Her car was not seen again until Lynch was stopped in the car in Texas several days later alone. Portia disappeared from apartment M-7 Park Place Apartments in Lexington County. The forensic evidence shows the minor child was criminally assaulted in Lynch's bedroom in Apartment M-7, Park Place Apartments in Lexington County, and there was significant blood-letting according to the State's experts. Further, whoever committed the crimes attempted to clean up the crime scene. Angelica also disappeared from Apartment M-7, Park Place Apartments. Neither victim was heard from or seen after the night of June 10, 2006. The victims' bodies were never recovered. Venue was firmly established in Lexington County.

present in the Columbia area and at the apartment they shared on June 10, 2006. Portia had previously shared with the hair dresser her problems in her relationship with Lynch, and the hair dresser advised Portia to leave Lynch. The hair dresser also testified over the course of Portia's relationship with Lynch, Portia became more nervous and anxious and did not talk as much. Portia drove her car to the hair dresser's on June 10th, and left there in her car with Angelica about 1:30 p.m. on Saturday afternoon.

Lynch was *the last person seen with the victims together on Saturday afternoon*, the date of their disappearance and murder, **June 10, 2006**. The two (2) victims, Portia and Angelica, were seen unloading laundry/dry cleaning from Portia's car's trunk that Saturday afternoon, and Lynch was there present with the victims next to the apartment they shared together. The victim's brand new car was also present there with Lynch, Portia, and Angelica. Lynch later falsely told police he had left the Columbia area on *Friday, June 9, 2006*, traveled to Georgia, and had not returned. However, an eyewitness placed Lynch there at the apartment with the victims on Saturday afternoon, June 10, 2006, and Lynch's bank account records show a check was written on his account on Saturday afternoon, several withdrawals were made on Saturday afternoon from Lynch's account, and on Sunday afternoon, Lynch withdrew \$220 dollars from his checking account at an ATM machine in the Columbia area. State v. Williams, 303 S.C. 274, 400 S.E.2d 131(1991) (affirming denial of directed verdict where victim was employed by and last seen with the defendant and victim's decomposed body was found 7 ½ months later).

Further, Lynch later admitted he left South Carolina in Portia's car, but falsely claimed it was on Friday, June 9, 2006, after Portia had *allegedly* given it to him. However, the State's evidence at trial showed the car did not leave the apartment complex until Saturday, June 10,

2006, the day of the victims' murders, not *Friday night* as Lynch claimed. And, the State's evidence showed Lynch did not leave the Columbia area until at least Sunday night, the day after the victims' disappearance and murder.

When family and friends responded to the apartment looking for Portia and Angelica, the door to the apartment Lynch shared with the victims was locked, and the manager to the apartment complex had to unlock Lynch's apartment door with a pass key to get in and check on the victims' well-being. Lynch was later found in possession of two (2) sets of keys, one set was Portia's, and both sets of keys contained keys consistent with the locks on the door of Apartment M-7, Park Place Apartments. When the manager searched the apartment, nothing was missing from the apartment, except the occupants, Lynch, Portia, and Angelica. Furniture was there; clothes were there, prescription medications were there, and toiletries were there. However, the manager testified the apartment looked staged, and someone had cleaned the apartment immaculately. The apartment manager did not notice any blood. The linoleum floors had been mopped and the carpet had been vacuumed. When Lynch was arrested, he admitted the only clothes he took with him when he left the apartment were the clothes he had on his back, indicating he had hurriedly fled from the apartment. He bought another pair of clothes in Seattle, Washington, at a consignment store. A receipt shows he bought toiletries in Texas.

Subsequently, forensic experts, who examined *the apartment Lynch shared with Portia and Angelica*, found human blood and medium velocity blood spatter. Some of this human blood belonged to the child victim Angelica as confirmed by DNA analysis, and the blood spatter showed she had been criminally assaulted with an object consistent with a fist or blunt object. The assault took place in Lynch's bedroom. There was also evidence whoever committed

the assault washed up after committing the assault and also cleaned up the apartment, including mopping the kitchen floor, vacuuming the carpet, and attempting to clean or cover-up the blood. Rubber cleaning gloves were found in the bedroom. Some of the blood deposited in the apartment also soaked through the carpet to the padding and floor underneath, indicating a significant amount of blood-letting. Furthermore, the person who committed the murders had placed the reclining chair upright before leaving the apartment. And, the person who washed up was male, consistent with Lynch. Lynch, being the only person who shared the apartment with the victims, had a motive to attempt to clean up the scene, even though it was unsuccessful.

The evidence showed the day following the victims' disappearance and murder, Sunday, June 11, 2006, Lynch was still in the Columbia area and withdrew money from his bank account at an ATM, in Cayce, and fled the State of South Carolina. At that time, no one, including police, were aware Portia and her granddaughter Angelica had been murdered or that Lynch had committed a criminal act. However, Lynch fled from the State of South Carolina when no one was pursuing him showing consciousness of guilt. He fled driving the victim's new Ford Focus, Portia's only means of transportation. A vehicle Portia had specifically instructed her mother she did not want Lynch driving.⁶²

Lynch then failed to appear at work on Monday morning. Lynch did not call in to work and notify them he was going to be absent or that he was resigning his job. Lynch failed to pick up his paycheck from work on Friday even though he needed the money. He did not contact Bob

62 "[A]ttempts to run away have always been regarded as some evidence of guilty knowledge and intent." State v. Grant, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980); State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999) (evidence of flight has been held to constitute evidence of guilty knowledge and intent); State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) ("flight... is at least some evidence of guilt"); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension).

Bennett Ford and provide a forwarding address or provide any information where he was located or where he could be found.

Lynch appeared shortly thereafter in Vicksburg, Mississippi, and paid [untraceable] cash for a motel room and *falsely* listed his home address as *Florida* on the motel registration, when his actual address was Apartment M-7, Park Place Apartments, West Columbia, the location where Angelica was criminally assaulted and the location from which Portia disappeared. Lynch also gave a false street address, a former address at which he and Portia had resided together, not the address at which he was actually living and from which the victims disappeared.

Lynch then appeared even further west in Texas buying toiletries at a store. He was then pulled over for speeding near the Mexican border. Lynch was alone and *in the victim Portia Washington's new car*. A child's restraint seat was in the back seat of Portia's car. Lynch also withdrew and cleaned out the remaining cash in his bank account while in Texas.

Lynch then appeared at a motel in Arizona where he again paid cash for the room. However, this time, he was forced to list his South Carolina address off of his driver's license.

Lynch then fled even further west to Seattle Washington, and purchased a *one way* ticket to Vancouver, Canada with untraceable cash. Lynch did not take a bus from Portland, Oregon to Seattle, Washington as he initially told police, but drove Portia's car from Arizona to Seattle. Lynch made this false statement in an attempt to stop police from finding the vehicle at the Seattle bus station. Police found the vehicle anyway, and it contained Lynch's DNA on the steering wheel and his fingerprints on the trunk. The vehicle also contained evidence Lynch had attempted to conceal from authorities, the owner of the vehicle.

Before leaving on the bus in Seattle, Lynch abandoned the victim's new Ford Focus in

the parking lot of the bus station, and removed the identifying license plate from the car and any identifying paperwork from the glove box. Beckham, *supra* (attempted destruction of evidence is regarded as relevant incriminating circumstance). Lynch had also removed the child restraint seat from the car and discarded it before arriving at the bus station or before he left the car abandoned there.

Lynch then attempted to cross the international border into Canada by bus and would have continued to flee except for the fact he was stopped by Canadian and U.S. Border Patrol/Customs agents. “[A]ttempts to run away have always been regarded as some evidence of guilty knowledge and intent.” Grant, 275 S.C. at 407, 272 S.E.2d at 171; Beckham, (evidence of flight has been held to constitute evidence of guilty knowledge and intent); Ballenger, 322 S.C. at 200, 470 S.E.2d at 854 (“flight... is at least some evidence of guilt”); Thompson, (flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension).

At the time of his arrest on the Canadian Border, Lynch claimed he was going to Canada on a vacation type trip. However, Lynch had no money, other than a bag with some loose change in it. Lynch then made several false statements to authorities at the border and in Washington State, including that he had not had possession of the victim’s car and that he had traveled to the Northwest with friends in a Cadillac. He also falsely stated he had stayed at friends’ residences during his trip across the United States, when in fact he had stayed at motels alone paying for the rooms in untraceable cash. Lynch intentionally concealed he had taken Portia’s automobile from South Carolina and stayed by himself at several hotels as he fled west across the country. Lynch made these false statements because he knew he had stolen Portia’s car, and his theft of Portia’s car would link him directly back to his apartment and the murders of Portia and Angelica.

Lynch also falsely told police he had left West Columbia and the State of South Carolina on Friday night, June 9, 2006, with a friend, when in fact he did not leave the Columbia area or South Carolina until at least Sunday, June 11, 2006, the day after Portia and Angelica were murdered. Lynch lied about when he left the Columbia area, because he knew the victims were murdered on Saturday night, June 10, 2006. And, the only reason he would know that was that he was the person who murdered them.⁶³

Only when confronted with the fact police knew he had been stopped in Texas for speeding and could prove he was driving Portia's new car, did Lynch admit he took Portia's car and drove across the entire United States and almost to Canada. Lynch then falsely claimed Portia gave him the car, because she was in over her head at work and could not make the payments on the car. Portia was not in over her head at work and had made all of the payments on the new car. Lynch eventually admitted he did not have permission to take Portia's car.

When arrested, Lynch had possession of the victim's car keys, and keys consistent with the lock that was on the apartment he shared with Portia and Angelica, M-7, Park Place Apartments, the same apartment where Angelica was brutally assaulted, the same apartment from which Portia disappeared.

When Lynch reached Seattle, he did not continue on to Canada with the victim's car, but abandoned the car, stripped it of all identification, and purchased a one-way bus ticket, again with untraceable cash, to Vancouver, British Columbia. Beckham (attempted destruction of evidence is regarded as relevant incriminating circumstance); State v. Wells, 162 S.C. 509, 161

⁶³ Lynch also falsely told authorities he quit Bob Bennett Ford because he planned on attending a truck driving school. That truck driving school did not exist. (R. 1584-85). Lynch made this false statement to give an innocent explanation for not reporting to work, rather than admit he had not appeared for work because he was fleeing because he committed the murders.

S.E. 177 (1931)(similar). *See also* State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)(where defendant was being tried for several crimes including grand larceny, fact that defendant was arrested on unrelated crime a month later was admissible where he had in his possession fruits of the crime (grand larceny) and his blood was found on the stolen property to establish identity and reason police obtained custody of stolen property). This act of abandoning Portia's car and stripping it, indicated Lynch did not flee across the United States to steal Portia's car alone, but to escape from the United States because of another more heinous act he had committed, the murders of Portia and Angelica.

The evidence taken as a whole established Lynch murdered the victims, and therefore it was Lynch who disposed of the victims' bodies. State v. Al Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003)(Concealment of the body of a person is a circumstance which tends to show guilt and should go to the jury to weigh the evidence.); State v. Ridgely, 251 S.C. 556, 164 S.E.2d 439 (1968); State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946); 2 A.L.R. 1227; *Wigmore on Evidence*, 2d Ed., Secs. 32, 172, 267, 272 and 276.64 As stated in Al-Almin: "[t]hese facts, especially Al-Amin's apparent attempt to conceal the body and his flight from the scene, constitute substantial circumstantial evidence presented by the State to warrant submission of the case to the jury." Al Amin, 353 S.C. at 413.

The testimony and evidence at trial established Portia was the sole owner of her new car. The testimony and evidence at trial established that on the day of Portia and Angelica's

64 "The action of the appellant in concealing the body of his wife so as to divert suspicion from himself, was a relevant circumstance tending to show guilt, and it was for the jury to estimate its weight, and it was for the jury to determine whether his explanation and the motive he assigned were truthful or otherwise." Epes, 209 S.E.2d at 265. *See* 40A Am Jur.2d *Homicide* section 462 (1999) (concealment or attempted destruction of body of murder victim is regarded as incriminating circumstance..., an inference of guilt may be drawn therefrom).

disappearance and murder, Lynch was no longer allowed to use Portia's car. In fact, Portia had given her mother the spare key and specifically instructed her she did not want Lynch driving her car anymore. Another witness overheard Lynch fussing and cursing at Portia just days before her disappearance and murder because Portia would not let Lynch use the car. Portia's car was only approximately one (1) year old and its value was in excess of \$5,000. Lynch denied he had been in Portia's car when first questioned and denied he had taken the car outside of South Carolina. However, Lynch was stopped in Texas alone in Portia's new car. Lynch falsely told the officer who stopped him in Texas that he was going to Arizona to pick up his "wife," the owner of the car. Portia and Lynch were not married, and Portia was already dead. And, Lynch abandoned the car at the bus station in Seattle and stripped it of what identification he could strip from the car so it and he could not be traced. When confronted with the fact he had been stopped in Texas alone in Portia's car, only then did Lynch admit he had driven Portia's car outside the State of South Carolina, but Lynch falsely claimed Portia had given him the car because she was in over her head at work and could not make the payments on the car, both of which were false. Lynch finally admitted he did not have permission to take Portia's car.

Viewing the evidence as a whole, there was more than substantial circumstantial evidence Lynch was the person who murdered Portia Washington and Angelica Livingston, and there was direct and substantial circumstantial evidence Lynch stole Portia's automobile. As a result, Judge Griffith did not err in denying the motion(s) for a directed verdict made at the close of the State's case and at the close of Lynch's case. This appellate ground must be dismissed.

ARGUMENT II.

The trial judge did not err in its consideration of the appropriate law in reaching its verdicts.

At the close of the guilt phase, Lynch sought for Judge Griffith (the fact finder) to follow the law of circumstantial evidence as set forth in State v. Edwards, 298 S.C. 272, 275-76, 379 S.E.2d 888, 889 (1989). Judge Griffith stated he would follow the law of circumstantial evidence, as he was required to do, as handed down by the South Carolina Supreme Court in its precedent. (Tr. 2055-59). Lynch now argues Judge Griffith incorrectly considered the law of circumstantial evidence in reaching his verdict of guilty of each count of murder and grand larceny. There is absolutely no merit to this ground. As Judge Griffith pointed out during the discussion of this request, this was a bench trial, and he was not instructing a jury, who had no knowledge of the law, what the law was. He was the fact finder, a Circuit Judge, who knows the law. See Ray v. State, 310 S.C. 431, 437, 427 S.E.2d 171, 174-75 (1993)(judges are presumed to know the law).⁶⁵ Further, Judge Griffith ruled he would follow the law of circumstantial evidence as handed down by the South Carolina Supreme Court. See generally State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)(trial judge is only required to charge the current and correct law of South Carolina); State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998)(a judge is not required to charge an incorrect statement of the law). Further, the argument Lynch is making has no merit. In State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004), our Supreme Court held the

⁶⁵ See also Woodford v. Visciotti, 537 U.S. 19, 24 (2002)(*per curiam*)("[T]he Court of Appeals' readiness to attribute error is inconsistent with the presumption that state courts know and follow the law"); Parker v. Duggar, 498 U.S. 308, 314-16 (1991); Walton v. Arizona, 497 U.S. 639, 653 (1990)("trial judges are presumed to know the law"), *overruled on other grounds*, Ring v. Arizona, 536 U.S. 584 (2002); Lavellee v. Delle Rose, 410 U.S. 690, 694-95, 93 S.Ct. 1203 (1973)(*per curiam*).

instruction on direct and circumstantial evidence approved in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997), is the sole instruction to be given. That instruction is not what Lynch asked Judge Griffith to follow. Lynch wanted the old Edwards charge on circumstantial evidence, which was not the law. Subsequent to this trial, in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the Court rejected a challenge similar to the one raised here. Id.; *See also* Holland v. United States, 348 U.S. 121 (1954)(finding the language requested here is confusing). As a result, this appellate ground has absolutely no merit and must be dismissed.

ARGUMENT III.

The trial judge did not err in denying the various motions to suppress.

Lynch alleges Judge Griffith erred in failing to suppress evidence seized in connection with his arrest and extradition including all of the items found in his luggage, his statements to law enforcement, his major case prints matched to his fingerprints on the trunk of the victim's car, and other items. He alleges the arrest warrant was not supported by probable cause to arrest due to an officer's omission of information when presenting the arrest warrant to the magistrate, i.e. a Franks v. Delaware, 438 U.S. 154, 171-72 (1978), issue. He is wrong for several reasons.

What Occurred Below

Prior to the bench trial beginning, Lynch made motions to suppress certain evidence including physical evidence and statements made by Lynch. Lynch alleged police did not have probable cause to search his person and luggage at the Canadian Border and fax copies of what was seized from him to the West Columbia Police Department. Lynch also alleged the arrest warrant for which Lynch was detained at the Canadian Border did not contain sufficient probable cause because it omitted alleged exculpatory material. As a result, he alleged all evidence

thereafter should be suppressed. (Tr. 51).⁶⁶

The suppression issues were first taken up when the State called Border Patrol Agent Nathan Breese. (R. 356-forward). Breese established Lynch had crossed into Canada on June 18th, been denied entry because of an outstanding warrant from New York, and was attempting to re-enter the United States through the Border Patrol Office. When Lynch's identity was checked by computer, he was found to be a missing person from West Columbia, S.C. He was immediately taken into custody and his bags were searched without a warrant pursuant to the agents' border search authority. (R. 386-395).⁶⁷ Lynch moved to suppress what the agents found in his luggage at the border and faxed to West Columbia. After lengthy argument, Judge Griffith found the search was reasonable and lawful under the border search exception to the warrant requirement. The items forwarded to West Columbia via fax machine were therefore admitted in evidence. (R. 431-32).

The Court next moved to Lynch's contention any evidence seized from Lynch post-arrest (i.e. service of the grand larceny warrant and the transfer of custody to Whatcom County). (R. 432-forward). Deputy Courtney Pollinder testified he received a call to transport Lynch pursuant to a warrant from the Customs facility about 3:30 a.m. He served Lynch with the grand larceny warrant after arriving at the border crossing, and being given the warrant by the border agents.

⁶⁶ The Court and the parties agreed, since this was a bench trial, to handle these motions immediately before the State sought to introduce the items of evidence Lynch sought suppressed. (R. 52-54, 95-96).

⁶⁷ Items found in the bag such as motel receipts and Lynch's bus ticket from Seattle to Vancouver were faxed to the West Columbia Police by Agent Breese. (R. 395, 409). Keys were also found in Lynch's bags. (R. 390-91). No cash was found in the bags. (R. 397). The Border Patrol agent contacted West Columbia and spoke with Investigator Bayne, who informed the agent that Lynch may have been involved in a double homicide in Lexington County. (R. 405). At approximately 3:10 a.m., agents confirmed with West Columbia police there was an arrest warrant for Lynch for grand larceny for the theft of Portia Washington's automobile. (R. 395). A copy of the warrant was faxed to the Border Patrol Agents. The Border Patrol Agents contacted the Whatcom County, Washington's Sheriff's Office. When the Whatcom Sheriff's Office deputy arrived at the border, he served the warrant on Lynch and custody was transferred to the Sheriff's Office who transported Lynch to jail. (R. 406-07).

The warrant was for grand larceny greater than \$5,000 from South Carolina.⁶⁸ Pollinder was also handed Lynch's two (2) bags that had already been searched by the border agents. He took them into his custody as well. He then transported Lynch to the Whatcom County Jail, and placed Lynch's bags in evidence at the Sheriff's Office. (R. 437-448). On the way to the jail, without being questioned, Lynch began talking and made several incriminating statements. (R. 437-448; 524-541).

Detective Matt Edwards of the West Columbia Police Department then testified. He was the agent who actually went and procured the arrest warrant for grand larceny.⁶⁹ Edwards obtained the arrest warrant on June 18, 2006. In addition to the sworn affidavit, Edwards supplemented the sworn affidavit with sworn oral testimony. (R. 452-53).⁷⁰ Edwards obtained the warrant late during the night of June 18, 2006, around 5:00 a.m. but his records actually reflected the warrant was issued at 6:30 a.m. eastern standard time (E.S.T.). (R. 454). The magistrate signed the warrant. He then drove the warrant back to the police department, and investigator Bayne had it entered into NCIC or faxed to the authorities in Washington State. (R. p. 454). Washington State is three (3) hours behind South Carolina. (R. 462-63).⁷¹

68 He read Lynch his Miranda rights. Lynch stated he understood his rights. He was not under the influence of any substance and was rational and carrying on a normal conversation. He was not promised anything or threatened in any way.

69 He was not the lead agent on the case. He was lieutenant over investigations at that time. Courtney Bayne was the case detective. Edwards assisted in the investigation. The investigation was a collective effort between approximately ten (10) investigators. The information contained in the arrest warrant affidavit came from several different sources.

70 Edwards informed the magistrate police knew the vehicle in question belonged to Portia Washington and Portia alone. This was verified through DMV records. Police knew through the investigation and talking to co-workers of Portia and her family that Lynch would not have been allowed to take the vehicle at any time. That was the general understanding amongst everyone police had talked to. Lynch was stopped in Texas in the vehicle. Lynch told the highway patrolman in Texas that he was going to pick up his wife in the vehicle. And, police knew Lynch did not have a wife at the time, so that was a lie that was being told to the trooper out in Texas at the time. Finally, Lynch showed up at the Canadian border in Washington alone, so he did not pick up a wife or anyone else.

71 Detective Edwards testified he did not inform the magistrate that Lynch had been allowed to use the car in the

After extensive argument on the issue, Judge Griffith held even with the omitted information, that Lynch and the victim were in a troubled relationship, the arrest warrant still was supported by probable cause. (R. 463-505). As a result, he denied any motion to suppress based on the allegation that the arrest warrant was without sufficient probable cause.

The Lack of Merit of Lynch's Argument

First, evidence was seized from Lynch's luggage at the international border during a lawful border search, regardless of the validity of any arrest warrant. Second, the affidavit and the sworn testimony supplementing the arrest warrant affidavit constituted sufficient probable cause to issue the warrant, and even if the alleged exculpatory information that Lynch alleges had been included, the warrant still contained sufficient probable cause to justify issuance of the arrest warrant for grand larceny. Further, police obtained Lynch's consent to seize and search his luggage. Further, police in West Columbia obtained valid search warrants to search Lynch's luggage once the luggage was in their possession. Regardless, the evidence against Lynch was overwhelming without reference to the evidence obtained or seized from Lynch or Lynch's luggage after the lawful border search; therefore the admission of this evidence was harmless.

Standard of Review

The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of

past to drop off Angelica at her grandmothers, because he had never talked to the grandmother, and this information was not shared with him during any of the investigation. (R. 456-57). He shared with the magistrate the information that he was aware of, that co-workers and friends had informed police Lynch would not have been allowed to take the vehicle. (R. 456-57). He did not share with the magistrate that Lynch and Portia were listed on an apartment lease as husband and wife, because he had not seen any such document. (R. 457-500). He did not share with the magistrate Lynch and Portia had lived together. (R. 457). He did not tell the magistrate this was the only car of Lynch and Portia, because the investigators believed Lynch owned several cars because several cars were registered to him according to Driver's Registration Records. (R. 501).

discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). The standard of review of Fourth Amendment search and seizure issues on appeal is limited to determining whether any evidence supports the trial court's finding, with the appellate court only being able to reverse the finding of a trial judge where there is clear error. State v. Missouri, 352 S.C. 121, 572 S.E.2d 467 (Ct. App. 2002); State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).

The Initial Search at the International Border was Lawful

Lynch argues the fruits of the search of his luggage at the Canadian Border should be suppressed. Lynch is wrong. The United States Supreme Court has repeatedly held that searches made at the international border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing the border, are reasonable simply by virtue of the fact that they occur at the border. United States v. Flores-Montano, 54 U.S. 149, 124 S.Ct. 1582 (2004); United States v. Ramsey, 431 U.S. 606 (1977); United States v. De Hernandez, 473 U.S. 531, 105 S.Ct. 3304 (1985). In fact, Lynch conceded below that the search of his bags at the border by the Border Patrol Agent was lawful. (R. 426, II. 12-15). Instead, he argues the transmittal of the contents of his luggage to the West Columbia Police Department by fax was unlawful. There is no merit to this issue. The contents of the luggage were in the lawful custody of the Border Patrol after the lawful border search. Flores-Montano, *supra*; Ramsey, *supra*; De Hernandez, *supra*. The agents could fax copies of those items to West Columbia police.⁷² The evidence seized from the luggage, which included Lynch's birth

⁷² Further, the agents found upon an NCIC check that Lynch, who had been rejected by Canada, was a missing

certificate, Motel 6 receipts, a set of keys, and his bus ticket from Seattle to Canada, did not have to be suppressed, or any other evidence found and seized by the border patrol agents. Flores-Montano; Ramsey; De Hernandez. As a result, Judge Griffith did not err in refusing to suppress the items seized from Lynch's bags by Border Patrol agents including those faxed to the West Columbia police.

There is no merit to Lynch's argument regarding the arrest warrant

Lynch relies on Franks v. Delaware; however, Franks addressed an act of commission in which false information had been included in the warrant affidavit. That did not occur here. The Franks test also applies to acts of omission in which exculpatory material is left out of the affidavit. State v. Missouri, 337 S.C. 548, 554, 524 S.E.2d 394, 397 (1999). However, to be entitled to a Franks hearing for an alleged omission, the challenger must make a preliminary showing that the information in question was omitted with the intent to make, or in reckless disregard of whether it made, the affidavit misleading to the issuing judge. There will be no Franks violation if the affidavit, including the omitted data, still contains sufficient information to establish probable cause. Id. (footnote omitted). Entitlement to a Franks hearing is a matter of law subject to *de novo* review. United States v. Tate, 524 F.3d 449, 455 (4th Cir. 2008).

While omission may not be per se immune from inquiry, the affirmative inclusion of false information in an affidavit is more likely to present a question of impermissible official conduct than a failure to include a matter that might be construed as exculpatory. This latter situation potentially opens officers to endless conjecture about investigative leads, fragments of information, or other matter that might, if included have redounded to defendant's benefit. The potential of endless rounds of Franks hearings to contest facially sufficient warrants is readily apparent.

United States v. Colkey, 899 F.2d 297, 301 (4th Cir. 1990)(citations omitted). "Inferring bad

person, and subsequently were informed he was a suspect in a double homicide in South Carolina.

motives from an officer's omission of information "collapses into a single inquiry the two elements —'intentionality' and materiality'—which Franks states are independently necessary." Id. A party attempting to demonstrate information was intentionally or recklessly omitted from an affidavit bears a heavy burden of proof. Tate, 524 F3d at 454. "[M]ere [] neglig[en]ce in ...recording the facts relevant to a probable-cause determination' is not enough." Colkey, 899 F.2d 301 (*quoting* Franks, 438 U.S. at 170). In this case, Lynch offered no evidence Officer Edwards omitted information with the intent to mislead the magistrate. In fact, Judge Griffith specifically found: "...Judge Reinhart, considering what was presented to him, acted properly, and I don't think the detective omitted the relationship to conceal the fact." (R. 491, ll. 18-21). The facts elicited during the *in camera* hearing show police were in the middle of a missing person/homicide investigation. The arrest warrant was obtained by one of the members of a large investigation team late at night/early in the morning. The affidavit was prepared by Detective Edwards based on the information he was aware of from the investigation, and the warrant was then driven to the magistrate for presentation at a location in Peak, S.C. (R. 449-463). "Colkey makes clear the Fourth Circuit's disdain for the notation that bad motive can be inferred from the materiality of the omitted information." Horton v. City of Columbia, ___ S.C. ___, ___ S.E.2d ___, 2014 WL 775441 (Ct. App. 2014) *not yet released for publication*.

The Fourth Circuit has clearly set a very high standard for establishing entitlement to a Franks hearing. Id. Therefore, we agree with the circuit court that Horton did not establish her entitlement to a Franks hearing. Officer Tyler's affidavit and the arrest warrants are therefore reviewed without the inclusions of Smith's statements and provide probable cause for Horton's arrest. Consequently, her arrest was lawful,....

Horton, *supra*. Lynch was not even entitled to a Franks hearing, and has not made a sufficient

showing to include his alleged exculpatory evidence.

Further, the arrest warrant along with the sworn supplemental testimony to the magistrate supplies ample probable cause for the issuance of the warrant for grand larceny of Portia Washington's automobile. Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 155, 317 S.E.2d 746 (1984).⁷³ Probable cause is a flexible, common-sense standard. Texas v. Brown, 460 U.S. 730 (1983). Probable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules. Maryland v. Pringle, 540 U.S. 366 (2003); Illinois v Gates, 462 U.S. 213 (1983). The probable cause standard is incapable of precise definition or quantification into percentages, because it deals with probabilities and depends on the totality of the circumstances. Pringle, 540 U.S. 366; Gates, 462 U.S. 213. In dealing with determinations of probable cause, as the very term implies, a just determination must deal with **probabilities**, which are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Brinegar v. United States, 338 U.S. 160, 169 (1949); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995). Probable cause “does not demand any showing that such a belief be correct or more likely true than false.” State v. Bowie, 360 S.C. 210, 600 S.E.2d 112 (Ct. App. 2004), *quoting* Brown, 460 U.S. at 742. The substance of all definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be seized. Ybarra v. Illinois, 444 U.S. 85 (1979).⁷⁴ As the U.S. Supreme Court

⁷³ See also State v. Peters, 271 S.C. 498, 248 S.E.2d 475 (1978); State v. Williams, 262 S.C. 186, 203 S.E.2d 436 (1974).

⁷⁴ When determining the constitutional validity of an arrest, a court must consider whether, at the moment the arrest was made, the officer had probable cause to make it, i.e. whether at that moment the facts and circumstances within the officer's knowledge, and of which he had reasonably trustworthy information, was sufficient to warrant a

recognized in Gates, and as here, affidavits are normally drafted by non-lawyers in the midst and haste of a criminal investigation, in light of which technical requirements of elaborate specificity once exacted under common law pleading have no proper place. See United States v. Ventresca, 380 U.S. 102 (1965); Bowie, *supra* (“Affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion.”), *citing Sullivan*, *supra*; Dupree, 354 S.C. at 683, 583 S.E.2d at 441. Affidavits must be judged on the facts presented, not the precise wording used. State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981).

The arrest warrant affidavit in the present case states as follows:

Personally appeared before the affiant [W.M. Edwards] being duly sworn deposes and says that defendant [Kenneth Andrew Lynch] did in this count and state on [June 10, 2006] violate the criminal laws of the State of South Carolina (or ordinance of the [municipality] of West Columbia in the following particulars: Description of Offense: Grand Larceny \$5,000 or More -16-13-30(B)(2)I further state that there is probable cause to believe that he defendant named above Did commit the crime set forth and that probable cause is based on the following facts: In that on or about June 14th, 2006, at 200 N. 12th Street, in the city of West Columbia, County and State aforesaid, Portia Washington and Angelica Livingston were reported Missing to the West Columbia Police Department. They had not been seen by anyone since June 10, 2006. On June 14th, 2006 Kenneth Andrew Lynch, was ticketed in El Paso, Texas, while driving alone in a 2005 Ford Focus (VIN Number 1FAFP34N25W228072) valued at \$12,000.00 which is registered to Portia Washington. On June 18, 2006, Kenneth Andrew Lynch was stopped while trying to cross the USA/Canadian Border on a bus. The whereabouts of the vehicle are unknown. Investigators with the West Columbia Police Department believe that Kenneth Andrew Lynch did take, steal, and carry away the vehicle depriving the owner of its use and value. All of which constitutes the crime of grand larceny more than \$5,0000.00 and is in violation of

prudent man in believing that the suspect had committed a criminal offense. Pringle, *supra*; Beck v. Ohio, 379 U.S. 89 (1964); State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974); State v. Pruitt, 260 S.C. 396, 196 S.E.2d 107 (1973); State v. Blasingame, 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999). Stated another more familiar way, whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal at the time of the arrest. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979); State v. Moultrie, 316 S.C. 457, 451 S.E.2d 34 (Ct. App. 1994).

the South Carolina Code of Laws of 1976 as Amended. Case Number 0612335.

(Court's Ex. 24, Arrest Warrant J-030721). The arrest warrant affidavit was executed by Detective Edwards. Edwards also supplemented the affidavit with the following sworn testimony:

It was reiterated that we knew the vehicle belonged to Portia, and Portia alone, through DMV. We knew through investigation and talking to his co-worker - - his and her co-workers, Portia's co-workers, talking to the family, that Mr. Lynch would have not been allowed to take the vehicle at any time. And, that was a general understanding amongst everybody we talked to. We knew that he was stopped in Texas, which I believe, that's -

Q: It is in there.

A: --specifically listed.

What I also told the judge about is that he -- what he told the judge [sic][trooper] he was doing, which was going to pick his wife up in Arizona.

Number one, we knew that he didn't have a wife at the time, so that was a lie that was being told to the trooper that was out there.

Number two, we knew that he showed her - I guess, lastly, we knew that he show --you know, showed up in Washington alone, so he didn't -

Q: Okay.

A: --pick up a wife or anyone.

(R. 452-54). (See also R. 455-462). A warrant affidavit may be supplemented by sworn oral testimony before the magistrate.⁷⁵

Based on the affidavit and sworn supplemental testimony, the issuing magistrate knew the victims Portia Washington and Angelica Livingston disappeared on June 10, 2006; they had not been seen by anyone since June 10, 2006. Portia was the owner of a Ford Focus automobile titled solely in her name. According to family members and co-workers police had spoken to during the investigation, appellant Lynch did not have permission or authority to drive the vehicle at any time, and certainly not to take it to Texas. Lynch was stopped and ticketed in El

75 S.C. Code Ann. Section 22-3-710; Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006); State v. Crane, 296 S.C. 336, 338, 372 S.E.2d 587, 588 (1988); State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975); Gist v. Berkeley County Sheriff's Dept., 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999).

Paso, Texas alone driving the vehicle registered to Portia. And, Lynch falsely told the trooper who stopped him that he was going to pick up his wife, and Lynch had no wife. Further, Lynch then showed up at the Canadian border alone, trying to cross into Canada on a bus. And, the vehicle could not be found. Finally, Portia's vehicle was valued in excess of five thousand dollars (\$5,000). (Court's Ex. 2, R. 452-462). As a result, the affidavit and sworn supplemental testimony supported **probable cause, i.e. there was reasonable grounds to believe** that Lynch stole the victim's new car, which constituted the crime of grand larceny. State v. Parker, 351 S.C. 567, 571 S.E.2d 288 (2002); State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002).

Further, as Judge Griffith correctly pointed out below, Lynch would not be entitled to include the alleged exculpatory information in the affidavit as he interprets it, but the information that would be included in the affidavit for a Franks analysis would be the alleged exculpatory information in possession of law enforcement at the time that they sought the arrest warrant.⁷⁶ (R. 459-60, 488, 491). What law enforcement knew and the record shows was that Lynch and Portia Washington had been in a romantic relationship, but the relationship had turned sour and was ending. Lynch was supposed to be moving out of the residence; the two were no longer romantically involved. Portia was afraid of Lynch and afraid of Angelica living with Lynch. Lynch and Portia were breaking up, and Lynch was not allowed to use Portia's vehicle, and

⁷⁶ In his brief, Lynch refers to testimony of witnesses at trial that during their relationship Portia had allowed Lynch to drive the car on occasion, for example to drop Angelica off at her grandmother's for daycare or to drive Portia home from work. This testimony was developed *during the trial* itself. Detective Edwards testified this information was not provided to police during the investigation before he presented the affidavit to the magistrate. Family, friends, and co-workers had informed police before Detective Edwards presented the affidavit for the arrest warrant that Lynch would not have been allowed to take or drive the car. (R. 453, 456-57). Further, Lynch fails to mention the testimony developed at trial that shortly before Portia's disappearance and murder, Portia gave her mother the spare key to her car and informed her mother she did not want Lynch driving her car anymore. And, Lynch fails to mention the testimony developed at trial that several days before Portia's disappearance and murder another witness heard Lynch fussing and cursing at Portia because she would not let him use her car.

Lynch should not be in Portia's vehicle or using Portia's vehicle.⁷⁷ Franks. As a result, even including the actual alleged exculpatory information in the arrest warrant affidavit, there was still probable cause that Lynch had committed the offense of grand larceny. Franks. As a result, there is no merit to this ground. Lynch is not entitled to have any evidence, including the contents of his luggage or his incriminating statements, suppressed on this basis. Id. The contents of Lynch's luggage were discovered pursuant to a lawful search incident to arrest. West Columbia police faxed the arrest warrant for grand larceny to the Border Patrol/Customs agents, and Lynch was served with the warrant and taken into custody by Whatcom County, Washington police. United States v. Edwards, 415 U.S. 800 (1974); Illinois v. Lafayette, 462 U.S. 640 (1983); State v. Muquit, 381 S.C. 114, 671 S.E.2d 643 (Ct. App. 2009)(items in defendant's belongings when arrested can be seized without a warrant and used in evidence at trial). As a result, Judge Griffith did not err in refusing to suppress the contents of Lynch's luggage.⁷⁸

Further, Lynch's statements to the Whatcom County Deputy on the way to the Washington State jail were admissible because Lynch was not being questioned by the Deputy at

⁷⁷ Even including the alleged exculpatory information developed *during the trial*, which police did not know about at the time they sought the arrest warrant, the warrant would still contain probable cause that Lynch had stolen Portia's new car. Lynch and Portia's relationship had turned bad and was ending. Portia wanted out of the relationship and wanted Lynch out of her life. While Portia had let Lynch drive her car selectively in the past, however, shortly before she disappeared she gave her mother the spare key to her auto and informed her she no longer wanted Lynch driving her car, and another witness overheard Lynch fussing and cursing at the victim because she would not let him use her car. And, several other witnesses testified Lynch would not have been allowed to use Portia's car.

⁷⁸ Further, the contents of Lynch's luggage would have been inevitably discovered pursuant to a consent search. When Lynch was questioned by the FBI agent and the Washington Detective, he consented to the search of his luggage, and he signed over all of his property to Washington authorities. (R. 629-30). They had the lawful right to search and inventory all of the belongings in Lynch's luggage. Finally, the contents of Lynch's luggage would have been inevitably discovered because the bags were lawfully seized by the Border Patrol agents, handed over to Whatcom County, signed over by Lynch, and returned to West Columbia police by Detective Edwards, whereupon West Columbia police obtained two (2) separate search warrants for Lynch's luggage. (R. 936-951, 960-1064, Court's Ex. 32). As a result, the contents of Lynch's bags were lawfully obtained pursuant to proper *search warrant(s)* issued by a neutral and detached magistrate. Judge Griffith did not err in refusing to suppress the contents of Lynch's luggage. And, officers in West Columbia relied in good faith on those *warrants* in searching Lynch's luggage originally seized at the Canadian Border. United States v. Leon, 469 U.S. 897, 918 (1984).

that time and Lynch completely and independently volunteered those statements. See United States v. Seidman, 156 F.3d 542 (4th Cir. 1998). Furthermore, Lynch's statements to the FBI Agent and Washington Detective were admissible because Lynch's arrest was not illegal but based on a warrant supported by sufficient probable cause. Finally, Lynch's major case prints were also admissible because they were obtained pursuant to a lawful arrest. Further, Lynch's major case prints were obtained pursuant to a Schmerber Order issued by Judge Griffith. There was no objection to the admission of those major case prints in evidence at Lynch's trial. (R. 1064-68). Therefore, Lynch's motion to suppress his fingerprints received after extradition is either not preserved or irrelevant.⁷⁹

The Exclusionary Rule Should Not Apply

Even if this Court determines Judge Griffith erred, the exclusionary rule should not apply. Davis v. United States, 131 S.Ct. 2419 (2011).⁸⁰ Under the circumstances of this case,

⁷⁹ And, Lynch's DNA was obtained pursuant to a Schmerber Order of Judge Griffith. There was no objection to the admission of his buccal DNA sample when admitted for identification purposes. (R. 1070-75). And, Lynch is not raising any issue with regard to the Schmerber Order on appeal.

⁸⁰ The Court fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the 4th Amendment. Id. at 2423. "Exclusion is not a 'personal constitutional right,' nor is it designed to 'redress the injury' occasioned by an unconstitutional search." Id. at 2426. "The rule's sole purpose, [the Supreme Court] has repeatedly held, is to deter future Fourth Amendment violations." Id. This Court and our state Supreme Court have recognized the same principle. "[T]he exclusionary rule was not designed to apply to every violation of the Fourth Amendment." State v. Jenkins, 398 S.C. 215, 229, 727 S.E.2d 761 (Ct. App. 2012); See State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 ("Suppression is appropriate in only a few situations. . ."); State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471 473 (1987) ("Exclusion of evidence is not the only means available to insure that warrants are properly issued."), citing State v. Sachs 264 S.C. 541, 556, 216 S.E.2d 501, 509 (1975). In Sachs our Supreme Court observed "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where deterrence is subserved." 264 S.C. at 566, 216 S.E.2d at 514. Because "[e]xclusion exacts a heavy toll on both the judicial system and society at large," the U.S. Supreme Court and our state Supreme Court have stated "the deterrence benefits of suppression must outweigh its heavy costs" for the exclusion to be deemed appropriate. Davis, at 2427; State v. Brown, 401 S.C. 82, 736 S.E.2d 263 (2012). "Real deterrent value is a 'necessary condition for exclusion,' but it is not 'a sufficient' one." Davis, at 2427, citing Hudson v. Michigan, 547 U.S. 586, 596, (2006). United States v. Herring, 555 U.S. 135,140, (2009) citing Leon, 468 U.S. at 923, n. 24. Police practices trigger the harsh sanction of

exclusion would not further the purposes of the exclusionary rule, and suppression is not proper. Id.⁸¹ The conduct of the investigators here did not violate Lynch's 4th Amendment rights deliberately, recklessly, or with gross negligence. Herring. Nor has Lynch shown this case involves any "recurring or systematic negligence" on the part of law enforcement. Id. In fact, exclusion would only punish the victims' family. *See Id.* (no evidence county investigators committed misconduct where they relied on neighboring counties database showing outstanding warrant existed in arresting and searching defendant and search would not be suppressed).⁸²

Harmless Error

Further, even assuming *arguendo* Judge Griffith somehow erred, it was harmless given the overwhelming evidence of Lynch's guilt apart from the contested evidence.⁸³ In making a determination regarding harmless error, this Court will look at **the entire record**. State v. Miller, 367 S.C. 329, 626 S.E.2d 328 (2006). This Court will not set aside a conviction for an insubstantial error not affecting the result when **guilt is conclusively proven by competent**

exclusion only when they are deliberate enough to yield meaningful deterrence, and culpable enough to be worth the price paid by the justice system. Davis; Herring, 555 U.S. at 144. The conduct of the officers here was neither of these things.

81 State v. Harvin, 343 S.C. 190, 194, 547 S.E.2d 497, 500 (2001)(recognizing the main purpose of the exclusionary rule is deterrence of police misconduct). *See* Gates, 462 U.S. 213 (affidavits are drafted by non-lawyers in the midst and haste of a criminal investigation).

82 Further, under the facts of this case, suppression of the evidence would make no sense where there is no evidence of police misconduct. Judge Griffith specifically found Detective Edwards did not intentionally mislead or hide Lynch's previous relationship to the victim from the magistrate, and Edwards did not have any information from the investigation that Lynch was authorized to use Portia's car from June 10, 2006 through June 14, 2006, but quite the opposite. Border patrol agents initially searched Lynch's bags pursuant to a lawful border search. And, police thereafter waited until they had lawful search warrants from a neutral and detached magistrate before searching Lynch's luggage. *See* Illinois v. McArthur, 531 U.S. 326 (2001). The application of the exclusionary rule would make no sense under the facts of this case. Davis, *supra*; Brown, *supra*. The evidence seized from Lynch's luggage by West Columbia police should not be excluded. Id.

83 State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006).

evidence, such that no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). The evidence against Lynch was overwhelming. His guilt was conclusively proven, and no other rational conclusion could have been reached, independent of the challengeable evidence.⁸⁴ Even removing the evidence seized or obtained *after the lawful border search*, including Lynch's statements, the evidence of his guilt is still overwhelming.⁸⁵

84 Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002).

85 Lynch resided with the two (2) victims in apartment M-7 Park Place Apartments up until the date of their disappearance and death. Lynch was the last person seen with the victims before their disappearance and murders. He was seen with them the afternoon of their disappearance and murder, June 10th, outside apartment M-7 Park Place Apartments. Lynch had previously had himself placed on the lease as Portia's spouse, even though the two (2) were never married. The evidence established prior to that Saturday night, June 10th, Lynch and Portia's romantic relationship was disintegrating. Portia was afraid of Lynch; she wanted him out of her apartment and life; and friends, relatives and co-workers had urged her to get away from him and even report what he was doing to her to the management at which she and Lynch worked. The following morning, Sunday morning, June 11th, Portia did not call or contact anyone, as was her regular habit. From June 10th forward, Portia and Angelica disappeared from the face of the earth. Portia's car was also missing beginning June 10th, and the following day, Sunday, June 11th. Even though Lynch was still in town on Sunday, Lynch did not report either Portia or Angelica missing. Instead, he withdrew a large amount of cash from his checking account at an ATM in Cayce. Instead of reporting for work on Monday, Lynch fled South Carolina, in Portia's automobile, a vehicle Portia had specifically instructed her mother not to allow Lynch to drive, and she did not want him driving. Lynch fled South Carolina in Portia's automobile before police or anyone else knew a crime had been committed in the apartment he shared with the victims. Lynch never reported the criminal assault on Angelica which took place in his bedroom. When Lynch arrived in Vicksburg, Mississippi, he falsely gave his home address as the State of Florida, checked into the motel alone, and paid for the room with untraceable cash. Lynch then continued to flee westward across the country and withdrew all of the remaining cash from his checking account while in Texas, i.e. emptying his checking account, and was stopped by a highway patrolman for speeding in Portia's new car near the Mexican Border. Lynch was alone and falsely told the highway patrolman there he was going to pick up his wife, the owner of the car, in Arizona. Portia Washington was not his wife, and she was not in Arizona but had already been murdered. Lynch then checked in to another motel alone, in Arizona, but this time was required to list his home address from his driver's license, which was correctly South Carolina. He again paid with untraceable cash. The following day, he left the motel and continued his flight across the country to Seattle, Washington, where he purchased a one way bus ticket out of the country. Before leaving, Lynch removed any identifying marks from Portia's stolen car, including the license plate and all paperwork from the glove box. Lynch continued his flight by trying to leave the country on a Greyhound bus, but was stopped by Canadian authorities. When he returned to the U.S. Customs Office, he was lawfully searched and his one way bus ticket to Vancouver and his motel receipts were found in his luggage. No cash however was located. When Portia did not appear for work and continued to be missing, it was her family and co-workers who reported her missing, not Lynch, and it was her family and co-workers who went to check on her whereabouts and welfare. When the manager of the apartment complex entered the apartment Lynch shared with the two (2) victims using a pass key, she found the linoleum and carpet had been cleaned. When police subsequently searched the residence more carefully, with a warrant, they discovered Angelica's blood underneath a reclining chair in the bedroom, and Angelica's blood intermingled with blood from a male contributor on two (2) different sinks. Lynch could not be excluded as the male contributor. Police also found medium velocity blood spatter containing Angelica's DNA indicating she had been criminally assaulted within the apartment. The spatter was found

Even assuming *arguendo*, error in the admission of evidence, the admission was harmless. Fulminante; Franklin; Miller; Kelley. The evidence against Lynch was overwhelming. Guilt was conclusively proven, and no other rational conclusion could have been reached. Even removing the evidence seized or obtained *after the lawful border search*, including Lynch's statements, the evidence of Lynch's guilt is still overwhelming. Haselden; Braxton; Blackburn.

Lynch's Prosecution and Conviction is Not Barred

Lynch also argues in his brief that his prosecution and conviction is barred because his extradition was improper. There is no merit to this argument. State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958); State v. Waitus, 226 S.C. 44, 83 S.E.2d 629 (1954).⁸⁶ The exclusionary rule, when it is applied, only applies to evidence seized in violation of the Fourth Amendment, and does not apply to the person. United States Crews, 445 U.S. 463, 474 ("Respondent is not

underneath the bedroom recliner, and would had to have been deposited when the recliner was overturned, not upright as police found it. Someone had also tried to clean up the blood in the apartment. It was Lynch, the other occupant of the apartment, who fled from South Carolina before anyone knew Portia or Angelica had been murdered. Lynch's DNA was found on the steering wheel of Portia's abandoned car in Seattle. Lynch does not challenge the search of the apartment (crime scene) on appeal. It was searched with a search warrant. Further, Lynch had abandoned the apartment taking all personal identification paperwork with him. Portia's car was searched by Washington police after obtaining a lawful search warrant. Further, Lynch had abandoned the car at the bus terminal. Lynch does not contest the search of Portia's car on appeal.

⁸⁶ As previously set forth, there is no merit to Lynch's argument the arrest warrant was not sufficiently supported by probable cause. Further, even assuming *arguendo* it was not, it would not bar his prosecution and conviction for murder and grand larceny. Lynch was indicted by the Lexington County grand jury for two (2) counts of murder and grand larceny, a separate finding of probable cause. State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Willing, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958)(when the initial process which is used to effect an arrest has been improperly issued, such impropriety or irregularity may be cured by an indictment by a grand jury having proper jurisdiction). The indictments were what Lynch was tried on not the grand larceny warrant. Further, if a person is arrested out of state, and brought back in violation of extradition laws, it will not invalidate the subsequent prosecution of the defendant. State v. Waitus, 226 S.C. 44, 83 S.E.2d 629 (1954). This is consistent with views expressed by the U.S. Supreme Court in Frisbee v. Collins, 342 U.S. 519, 72 S.Ct. 509 (1952). See also Ker v. Illinois, 119 U.S. 436, 444, 7 S.Ct. 225 (1886). The principle rests on the sound basis due process of law is satisfied when one present in court is convicted of a crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional safeguards. Cf. Ramirez v. Indiana, 471 U.S. 147, 105 S.Ct. 1860 (1985)(per curiam). There is no merit to Lynch's argument. Mahon v. Justice, 127 U.S. 700, 8 S.Ct. 1204 (1888); Pettibone v. Nichols, 203 U.S. 192, 27 S.Ct. 148 (1906); Lascelles v. Georgia, 148 U.S. 537, 13 S.Ct. 687 (1893); Cook v. Hart, 146 U.S. 183, 13 S.Ct. 30 (1892); State v. Smith, 1 Baily 283 (S.C. 1829). See also 7 S.C. Dig. 409.

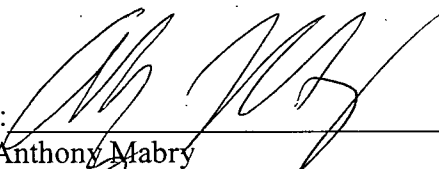
himself suppressible fruit, and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by police misconduct.”).

CONCLUSION

Based on the foregoing, Lynch’s convictions and sentences for the murders of Portia Washington and Angelica Livingston and the grand larceny of Portia Washington’s automobile must be affirmed and this appeal dismissed.

Respectfully submitted,

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June 19, 2014

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

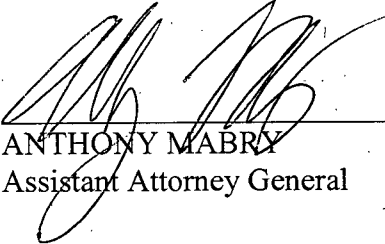
v.

KENNETH ANDREW LYNCH,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled A Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.



ANTHONY MABRY
Assistant Attorney General

June 19, 2014

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the InterAgency Mail to Susan B. Hackett, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 19th day of June, 2014.



ANTHONY MABRY
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