STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2014-UP-385 (S.C. Ct. App. filed Nov. 5, 2014)

THE STATE, RESPONDENT,

vs.

RALPH B. HAYES, PETITIONER.

Appellate Case No. 2015-000081

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

Did the Court of Appeals err in affirming the trial judge's denial of Petitioner's motion for directed verdict where the only evidence presented by the prosecution was that Petitioner allegedly confided in a stranger that he was distraught because he saw the deceased had been murdered in their apartment, but took no action to report the murder to the police?

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

Whether certiorari is appropriate where the appellate court properly applied the law in affirming the trial court's denial of Petitioner's motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Petitioner, including testimony that when Petitioner was asked what was so bad, he responded, "[B]ut you ain't never killed nobody."

RESPONDENT'S STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Petitioner, Ralph Hayes, in October 2011 for the murder of Jacquelyn Alexander and for the possession of a weapon during the commission of a violent crime. (R. pp. 287–88). On October 15, 2012, Petitioner's case was called to trial before the Honorable G. Edward Welmaker. (R. p. 1). Petitioner was represented by Caroline Horlbeck and Teal Johnson during the three-day trial. (R. p. 1). Assistant Solicitors Judy Munson and Wanda Adams represented the State. (R. p. 1). On October 17, 2012, the jury returned a verdict of guilty on both counts. (R. p. 281, lines 1–23). Judge Welmaker sentenced Petitioner to life imprisonment for murder and to five years for possession of a weapon. (R. p. 283, lines 11–17). Petitioner appealed.

On November 12, 2013, appellate counsel filed a Final Brief of Appellant, addressing the following issue:

> The trial judge erred in failing to grant Appellant's motion for directed verdict where the only evidence presented by the prosecution was that Appellant allegedly confided in a stranger that he was distraught because he saw the deceased had been murdered in their apartment, but took no action to report the murder to the police.

(Final Br. of Appellant, p. 3).

The State filed its final brief in response on November 7, 2013.

The South Carolina Court of Appeals heard argument on the issue on September 11, 2014. On November 5, 2014, the Court of Appeals issued an unpublished opinion affirming the ruling and conviction. (App. pp. 1–2). Petitioner filed a petition for rehearing on November 20, 2014. (App. pp. 3–14). The Court of Appeals denied the petition on December 17, 2014. (App. p. 15).

On January 13, 2015, Petitioner filed a Petition for Writ of Certiorari in this Court raising the following issue:

> Did the Court of Appeals err in affirming the trial judge's denial of Petitioner's motion for directed verdict where the only evidence presented by the prosecution was that Petitioner allegedly confided in a stranger that he was distraught because he saw the deceased had been murdered in their apartment, but took no action to report the murder to the police?

(Cert. Petition, p. 3).

This return follows.

RESPONDENT'S STATEMENT OF FACTS

Discovery of Victim's Body

On Saturday, June 13, 2009, Barbara McNeil went to check on her sister, Jacquelyn Alexander (Victim), at the apartment where Victim lived in Greenville, South Carolina. (R. p. 9, lines 1–17). McNeil had last spoken to Victim on Thursday, June 4, 2009. (R. p. 9, lines 13–19). McNeil arrived at the apartment around 4 o'clock in the afternoon. (R. p. 9, lines 20–23). McNeil knocked on the door, but she did not get an answer. (R. p. 9, line 24–p. 10, line 2). She tried the knob and found that the door was open, so she walked in. (R. p. 10, lines 2–3). Inside the apartment, McNeil called for her sister but received no answer. (R. p. 10, line 4). McNeil also tried calling Victim's phone, and though the phone was sitting on the table, it did not ring. (R. p. 10, lines 5–7; R. p. 12, lines 1–8). McNeil began to walk through the apartment. (R. p. 10, line 7).

As McNeil walked through the living room and the kitchen on the first floor of the apartment, she noticed that the living room set she had given her sister was intact. (R. p. 10, lines 8–12). McNeil also noticed that nothing in the apartment seemed disturbed. (R. p. 11, lines 17–25). All the while, McNeil continued calling for her sister, but no one answered. (R. p. 10, lines 12–13). McNeil then went upstairs to continue looking for Victim. (R. p. 10, lines 14–15). When McNeil got upstairs, she saw Victim in the "bathroom on the floor dead. [She] saw blood everywhere." (R. p. 10, lines 15–18).

McNeil was so upset by what she saw that she had a seizure and fell down the stairs. (R. p. 11, lines 4–7). She then called her father, who had trouble understanding what McNeil was trying to tell him but told her that he was coming over. (R. p. 10, lines 19–22). McNeil also tried to call the police, but they, too, had trouble understanding her,

and a neighbor had to take the phone from McNeil to tell the police to come to the apartment. (R. p. 10, lines 19–25).

Deputy Ashleigh Swanson with the Greenville County Sheriff's Office (GCSO) responded to Victim's apartment in Greenville County, South Carolina the night of June 13, 2009. (R. p. 77, lines 5–22). Swanson arrived on the scene just after 9 p.m. (R. p. 77, lines 18–19). Swanson was the first law enforcement officer on the scene, but she discovered that the fire department had already arrived and had gone inside the apartment. (R. p. 78, lines 7–19). EMS, who had also arrived, had not gone into the apartment. (R. p. 78, lines 14–16). When Swanson surveyed the scene, she did not see any signs of struggle. (R. p. 82, lines 15–19). Swanson went into the apartment and found Victim in the upstairs bathroom. (R. p. 79, lines 1–4). Victim was deceased. (R. p. 79, lines 5–6). Victim's clothing had been pulled down below her waist, such that she was partially naked. (R. p. 79, lines 5–7). Swanson noticed that there was blood on the ground and a strong, distinguishable odor coming from the area where Victim was found. (R. p. 79, lines 8–12). However, there was not much blood outside of the bathroom according to Swanson. (R. p. 82, lines 20–23).

Detective Christopher Miller with the homicide unit of the GCSO was the on-call investigator the night of June 13, 2009. (R. p. 211, line 6–p. 213, line 6). He went to Victim's apartment to oversee the scene that night. (R. p. 213, lines 7–23). When Miller initially assessed the scene, he was unable to tell if a crime had even been committed. (R. p. 213, line 24–p. 214, line 23). According to Miller, due to the state of decomposition of Victim's body, investigators could not tell if Victim had died from natural causes, from suicide, or from homicide. (R. p. 214, lines 8–15). As to the apartment, nothing was

disturbed either upstairs or downstairs. (R. p. 214, lines 16–23). Miller found the scene "puzzling." (R. p. 214, lines 16–23).

Miller changed his mind about what had happened at the apartment after Forensics Officer Jonathan Hamilton discovered one drop of suspected blood at the bottom of the stairs and one drop of suspected blood in the kitchen. (R. p. 214, line 24–p. 215, line 4). Hamilton tested the droplets and determined that both droplets were blood.[1] (R. p. 145, line 19–p. 146, line 16; R. p. 163, line 12–p. 164, line 20; R. p. 165, line 15–p. 166, line 12). Miller knew that those drops of blood could not have gotten to those locations by Victim because she was upstairs in the bathroom. (R. p. 215, lines 4–8). At that point, Miller decided to treat Victim's death as a homicide. (R. p. 215, lines 9–11). Hamilton discovered blood spatter in the downstairs bathroom attached to the kitchen. (R. p. 144, line 22–p. 145, line 16). The downstairs bathroom was directly under the upstairs bathroom where Victim's body was found. (R. p. 145, lines 8–12). The spatter found in the downstairs bathroom resulted from bodily fluids seeping through the exhaust fan on the ceiling of the downstairs bathroom and dripping onto the floor. (R. p. 145, line 8–16).

In the upstairs bathroom, Hamilton photographed Victim, who was found laying on her right side between the toilet and the bathtub. (R. p. 169, lines 9–14). Hamilton observed bodily fluids on the bathroom floor. (R. p. 169, lines 15–18). Hamilton found suspected blood on the toilet lid, on the side of the bathtub, and in different areas of the

[1] Both blood droplets were eventually found to match the female DNA taken from the shirt Victim was wearing when her body was discovered. (R. p. 202, line 16–p. 206, line 3).

bathroom. (R. p. 170, lines 2–21). However, there was no blood visible in the sink area, and everything seemed in order on top of the sink. (R. p. 169, line 19–p. 170, line 1).

In an attempt to collect evidence from "[a]nywhere that could be affected and touched by anyone that could be involved with the crime . . . [,]" Hamilton collected latent print evidence from the doors of the house, including the exterior and interior of the front storm door, the exterior and interior of the front door, and the exterior and interior of the back door. (R. p. 147, line 21–p. 148, line 10). Of the prints lifted from doors, only Victim's prints were identified. (R. p. 138, line 23–p. 139, line 3). Hamilton also processed the toilet tank lid, the toilet tank, the toilet seat, the bathtub, and other areas in the upstairs bathroom for latent prints. (R. p. 148, lines 5–14). Christopher Gary, a latent print examiner with the Greenville County Department of Public Safety in the Forensic Division, was able to identify the following prints from Petitioner on the exterior top of the upstairs toilet tank lid:[2] a left palm hypothenar[3] print (State's Ex. 52), a left palm thenar print (State's Ex. 54), and a left index finger print (State's Ex. 53). (R. p. 125, lines 11–19; R. p. 132, line 13–p. 133, line 19). Gary also identified a left palm interdigital print from Victim on the toilet tank lid. (R. p. 133, lines 20–23). Gary

[2] Though Gary initially testified that the prints were found on the toilet lid, he realized on cross-examination that the prints were taken from the toilet tank lid—specifically, State's Exhibit 52 was taken from the top left side of the toilet tank lid, and State's Exhibits 53 and 54 were taken from the more right portion of the toilet tank lid. (R. p. 135, line 1–p. 136, line 10).

[3] As explained by Gary, latent print examiners

> divide the palm up, to kind of break it down just a little bit, to different areas. You have three main areas of the palm. The top part is called the interdigital. The thumb side is called the thenar. And kind of the writer's palm that you'd put down, the fatty part of the palm is called the hypothenar.

(R. p. 132, line 21–p. 133, line 3).

identified a print found on the exterior top of the upstairs bathtub as a right palm hypothenar print of Petitioner. (R. p. 133, line 24–p. 134, line 2). None of the latent prints that Gary analyzed were made in blood. (R. p. 137, lines 1–3). Though Gary testified that there is no way to date a fingerprint, (R. p. 129, lines 6–11), he also testified that latent fingerprints are fragile and "can be easily wiped away or removed[,]" (R. p. 139, line 23–p. 140, line 6).

Dr. Michael Ward, the Chief Medical Examiner for Greenville County and an expert in the field of forensic pathology, conducted an autopsy of Victim on June 15, 2009. (R. p. 84, line 9–p. 87, line 11). During the external examination of the body, Dr. Ward found a total of twenty-eight separate and distinct stab wounds to Victim's body. (R. p. 88, lines 15–19). Those stab wounds included one to the left neck, four to the stomach region, and twenty-three to the left upper and left mid-back. (R. p. 88, lines 19–21). Dr. Ward did not find any defensive wounds on Victim's body. (R. p. 88, line 22–p. 89, line 12). During the internal examination of the body, Dr. Ward found the following:

> That there were stab wounds to the abdomen, which traumatized the left hemidiaphragm, which is the muscle that we use to breathe. And the stomach. There was trauma to the right hemidiaphragm, which, again, is the muscle that we use to breathe on the right side, and the lower lobe of the right lung. There was also a penetrating stab wound to the large intestine. Examination of the back revealed most of the stab wounds, most of the twenty-three stab wounds to the back to be superficial, in that they did not penetrate into the chest cavity. However, seven stab wounds did. Each of these seven stab wounds penetrated into the back part of the left lung causing trauma to that lung. So she had traumatic injuries to the left lung, seven; the lower lobe of the right lung, one; her stomach[;] the muscles that she used to breathe; and her large intestine.

(R. p. 90, line 12–p. 91, line 5). Dr. Ward opined that those injuries would have made it extremely difficult for Victim to breathe. (R. p. 91, lines 6–19). Additionally, blood would have been oozing from Victim's stab wounds, and she would also have had

extensive internal bleeding into her pleural cavities. (R. p. 91, lines 16–23; R. p. 96, line 9–p. 97, line 3). In Dr. Ward's opinion, the difficulty breathing and the extensive internal bleeding led to Victim's death. (R. p. 91, lines 16–23). A toxicological examination was performed on Victim's liver, and the breakdown product of cocaine was identified. (R. p. 91, line 24–p. 92, line 10). Dr. Ward did not perform any type of sexual assault examination on Victim because the moderate state of decomposition of Victim's body led Dr. Ward to believe that such an examination would likely have been fruitless. (R. p. 89, line 22–p. 90, line 11). Given the conditions in which Victim's body was found and the level of decomposition present, Dr. Ward testified that, in his opinion, Victim had been dead for three to five days. (R. p. 98, line 9–p. 99, line 22).

After learning that Victim had been stabbed, Miller sent Tyler Bucholtz, who worked with the crime scene unit, back to the crime scene to collect additional evidence. (R. p. 181, line 24–p. 182, line 15). Bucholtz collected knives from the kitchen.[4] (R. p. 182, line 10–p. 183, line 9; R. p. 188, lines 10–12). Bucholtz also discovered a knife laying on the pine straw just outside the front door. (R. p. 183, lines 1–22; R. p. 185, lines 13–22). Bucholtz swabbed the handle and blade of that knife to be tested for forensic evidence. (R. p. 186, line 6–p. 187, line 2). Bucholtz also performed a presumptive test for bodily fluids in the upstairs bathroom of the apartment. (R. p. 184, line 6–p. 186, line 5). That test was positive for blood. (R. p. 185, line 23–p. 186, line 5). Of the swabs taken from the handle and blade of the knife and from the left and right

[4] Hamilton tested the knives from the kitchen for blood when he processed the crime scene on the night of June 13, 2009, but the test was negative. (R. p. 146, line 17–p. 147, line 10). Hamilton left the knives in the kitchen because there was no evidentiary value. (R. p. 147, lines 6–10).

side of the sink, three of the samples did not have any DNA, and one of the samples had some DNA but not enough for analysis. (R. p. 206, line 18–p. 207, line 22).

Investigation

In accordance with his training, Miller decided to work Victim's homicide investigation "from the inside out," meaning that Miller began his investigation with the people who were closest to Victim. (R. p. 216, lines 12–16). Victim and Petitioner had been in a relationship for about five years before her death. (R. p. 12, lines 19–21). The two had lived together in Atlanta, but then Victim moved to Greenville, and Petitioner moved in with her. (R. p. 18, lines 2–11). Miller learned of the relationship but also learned that Petitioner had not been seen in a while. (R. p. 216, line 12–p. 217, line 4). Victim's family told Miller that Victim and Petitioner had an argument around the time Victim's family last heard from her and that Petitioner had been asked to leave as a result of that argument. (R. p. 236, lines 4–19).

As part of the investigation, police officers spoke to Victim's neighbors about what they had seen in the weeks before Victim's body was discovered. (R. p. 116, lines 13–18). One of Victim's neighbors, a woman named Jo Lynn Wood, told police that she had seen Petitioner coming in and out of Victim's apartment during the week that Victim's body was discovered. (R. p. 116, line 13–p. 117, line 23). The two times that Wood saw Petitioner, she was outside of her own apartment at dusk or at night talking on the phone. (R. p. 118, lines 17–22; R. p. 123, lines 8–15). Wood testified that she saw Petitioner exit Victim's apartment and proceed up the parking lot, past Wood's apartment. (R. p. 118, line 20–p. 119, line 13). Though Wood could not remember the

exact days that she had seen him, Wood was sure that the man she had seen was Petitioner. (R. p. 119, lines 17–23).

Wood also testified that she had last seen Victim at the apartment complex about a week and a half before Victim's body was found. (R. p. 115, lines 17–20). Wood recalled that Victim came to Wood's apartment at around 1:30 or 2 o'clock one morning and tried to sell Wood shampoo. (R. p. 115, lines 20–23). Another of Victim's neighbors, Anthony Murdaugh saw Victim in the early morning of Sunday, June 7, 2009. (R. p. 107, line 25–p. 109, line 21). That morning, when Murdaugh stepped outside to smoke, he saw that Victim was locked out of her apartment. (R. p. 108, lines 3–25). He never saw her again after that. (R. p. 109, lines 20–21).

Law enforcement officers canvassed Victim's neighborhood the Monday afternoon after her body was discovered and tried to find out if anyone knew of Petitioner's whereabouts. (R. p. 216, line 24–p. 217, line 3). No one had seen him. (R. p. 217, lines 3–4). Because Miller knew that Petitioner had been homeless in the past, he had officers go to homeless shelters and soup kitchens to try and find Petitioner. (R. p. 217, lines 4–10).

On Thursday, June 18, 2009, officers went to an area where a homeless man named Larry Dell White was going to sleep that night. (R. p. 55, lines 5–25). The officers showed Petitioner's picture to some of the men in the area and asked if anyone had information about Petitioner. (R. p. 56, lines 1–6). Because White was not from the area, he did not look at the picture.[5] (R. p. 56, line 1–p. 57, line 8). However, the next

[5] White was cross-examined at length about parts of a statement that he gave to police that make it sound like White saw Petitioner's picture before he spoke with the police on

day White overheard some men at a labor hall talking about a woman they knew who had been stabbed. (R. p. 33, line 19–p. 34, line 2; R. p. 58, line 18–p. 59, line 11). White realized that he had recently spoken to a man who had been dating that woman, and White decided to tell the police what he knew. (R. p. 33, line 25–p. 34, line 2; R. p. 59, lines 12–20). White asked an employee at the labor hall to call the police. (R. p. 59, line 21–p. 60, line 1). An officer responded to the call and took White to the police department. (R. p. 137, line 3–p. 35, line 8).

Once White got to the police department, he told Miller about a conversation he had had with a man about the woman's murder. (R. p. 35, line 9–p. 36, line 4). White told Miller that on the afternoon of June 9, 2009,[6] he had gone behind a labor hall to get out of the sun. (R. p. 25, lines 2–22). There, he saw a young man drinking a beer and crying. (R. p. 25, line 24–p. 26, line 3). The two began a conversation that lasted for about an hour. (R. p. 27, lines 13–24). The man told White that he had "fucked up bad, real bad." (R. p. 26, lines 1–3). In an attempt to cheer the man up, White told the man that everyone makes mistakes in their life—White admitted to the man that he had stolen his brother's check in the past. (R. p. 26, lines 4–8). White continued trying to console the man, but the man would not stop crying. (R. p. 26, lines 12–15). The man told White, "man, it's going to fuck my sister up when I tell her what I done . . . . I went in the house and found my girl dead, man. The dope boys cut my girl all up, pulled her

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June 19, 2009, but White was adamant at trial that he never saw Petitioner's picture before it was presented to him in a photo lineup. (R. p. 46, line 1–p. 52, line 15).

[6] White first testified that he had spoken to the man on a Sunday, but then he agreed that it could have been a Tuesday. (R. p. 25, lines 10–22). In the statement White gave to police on June 19, 2009, he stated that the conversation occurred on Tuesday, June 9, 2009. (R. p. 68, line 1–p. 69, line 2).

panties down to her ankles and put her in the bathtub." (R. p. 26, lines 15–20). White asked the man what he had done after that, and the man told White that he had run out of the house. (R. p. 26, lines 20–21). White asked why the man had not called the police. (R. p. 26, line 22). The man responded that police would think he did it because she was his girlfriend. (R. p. 26, lines 22–24).

White and the man sat outside, in broad daylight, face-to-face during the conversation. (R. p. 30, lines 6–21). According to White's testimony, the main things that he remembered from the conversation were that the man kept saying that he had fucked up badly and that the man could not stop crying. (R. p. 40, lines 6–10). "He kept saying, [']I fucked up. I fucked up bad.['] Then he said[, ']I'm going to kill myself.[']" (R. p. 27, lines 22–23). White told him not to do that. (R. p. 27, lines 23–24). The man informed White that he had bought a bus ticket[7] and was leaving that night to go see his sister in Kentucky[8] and to tell her what he had done. (R. p. 28, lines 2–14). Near the end of the conversation, White asked the man what could be so bad, and the man responded, "[']But you ain't never killed nobody.[']" (R. p. 40, lines 12–16; R. p. 42, line 23–p. 43, line 1). According to White, when the man said that, "the expression on his face, like, messed me up." (R. p. 43, lines 2–5). White responded, "[N]o, thank God, I haven't." (R. p. 43, line 5).

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[7] White saw the man's bus ticket but did not see the details on the ticket. (R. p. 27, line 25–p. 28, line 7).

[8] The man also mentioned during the conversation that he was from Newark, New Jersey. (R. 75, lines 12–14). Miller testified at trial that Petitioner had a sister who lived in Danville, Virginia and that Petitioner was from Newark, New Jersey. (R. p. 233, lines 12–15).

White saw the man later that day at a church where he went to get food. (R. p. 31, lines 14–18). White watched the man show the people at the church his bus ticket, and he saw them give the man a bag of food for his trip. (R. p. 31, lines 19–23). White also saw the people at the church pray for the man. (R. p. 31, line 21).

White did not immediately report to police about what the man had told him. (R. p. 54, lines 5–9). White explained at trial that, as a homeless man, he had problems of his own—like where he would sleep. (R. p. 35, lines 19–22). But when White heard the men at the labor hall talking about the woman who had been stabbed, he recalled the conversation, and he decided to contact the police because God "put it on [his] heart to do this . . . ." (R. p. 41, line 20–p. 42, line 9).

After White gave his statement to police,[9] Miller gave White a photo lineup and asked him to identify the man he had talked to that day behind the labor hall. (R. p. 220, line 6–p. 222, line 8). Petitioner's picture was one of the pictures in the photo lineup. (R. p. 220, lines 14–21). Almost immediately White identified Petitioner as the man he had spoken to. (R. p. 222, lines 9–12). White testified that he did not expect any sort of reward for his testimony—he talked to the police because "it was a Godly thing to do." (R. p. 61, lines 7–13).

After taking White's statement, the police followed up by canvassing some of the areas where White had seen Petitioner and where police believed Petitioner had been. (R. p. 232, line 5–p. 233, line 22). People at the labor hall could not remember seeing Petitioner. (R. p. 232, line 15–p. 233, line 2). Police learned that a bus had left from

[9] White's statement was read into the record during trial. (R. p. 67, line 24–p. 76, line 18). It substantially corresponds to the testimony he gave at trial about his conversation with Petitioner. (R. p. 67, line 24–p. 76, line 18).

Greenville the Tuesday before Victim's body was found. (R. p. 233, lines 3–15). Though they could not confirm that Petitioner had been on that bus, Miller noted that the bus had travelled from Greenville to Charlotte, then to Danville, Virginia, and then to Newark, New Jersey. (R. p. 233, lines 8–19). Police knew that Petitioner had a sister in Danville, Virginia. (R. p. 233, lines 12–15).

Though Victim's family saw Petitioner periodically during the five years that Victim and Petitioner were in a relationship, they did not hear from him after her death. (R. p. 12, line 22–p. 13, line 17; R. p. 21, lines 16–25). In September 2010, police picked Petitioner up from New York and brought him to South Carolina. (R. p. 5, line 19–p. 7, line 3).

ARGUMENT

The Court of Appeals did not err in affirming the trial court's denial of Petitioner's motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Petitioner, including testimony that when Petitioner was asked what was so bad, he responded, "[B]ut you ain't never killed nobody."

Court of Appeals Opinion

The Court of Appeals found, by *per curiam*, unpublished opinion, that the trial judge did not err in denying Petitioner's motion for a directed verdict. (App. pp. 1–2). The Court of Appeals affirmed the trial court based on the following authorities: *State v. Logan*, 405 S.C. 83, 97, 747 S.E.2d 444, 451 (2013) ("Unlike direct evidence, evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence."); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); *State v. Al-Amin*, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) ("Flight from prosecution is admissible as evidence of guilt."); *State v. Caulder*, 287 S.C. 507, 516, 339 S.E.2d 876, 882 (Ct. App. 1986) ("By incriminating response we refer to any response—whether inculpatory or exculpatory—that the *prosecution* may seek to introduce at trial." (citation and internal quotation marks omitted)).

Considerations Governing Review

A writ of certiorari is not a matter of right but of judicial discretion. Rule 242(b), SCACR. The following, while not binding, weigh in favor of granting the writ:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR. None of the above are true for this case, and, as such, the writ of certiorari should not be granted.

Relevant Facts

At Petitioner's trial the State was able to show that Victim died sometime between Monday, June 8, 2009 and Wednesday, June 10, 2009. The State presented an expert who testified that Victim's injuries included twenty-eight stab wounds to her upper body and neck and that Victim died as a result of those wounds. Respondent submits that the following evidence, which was presented to the jury, constitutes substantial circumstantial evidence that Petitioner is guilty of murdering Victim and of possessing a weapon during the commission of that violent crime:

- Victim and Petitioner were in a five-year relationship and lived together, but Petitioner had been asked to leave after the couple had an argument less than a week before Victim was murdered;
- the door to Victim's apartment was unlocked, and there were no signs of forced entry, and Victim's apartment was not disturbed;
- Victim was stabbed twenty-eight times;

- Victim's body was found wedged between the toilet and the bathtub, and Petitioner's palm prints were found in that bathroom on both the toilet tank lid and the bathtub;
- Petitioner was seen leaving Victim's apartment twice during the week before Victim's body was discovered;
- when Petitioner spoke to Larry Dell White about Victim's death, he was inconsolable and said that he had "fucked up bad, real bad" and that he wanted to kill himself;
- when asked by White what could be so bad, Petitioner responded, "But you ain't never killed nobody[;]"
- rather than reporting what he had seen to the police, Petitioner left town after he allegedly discovered Victim's body;
- Petitioner never contacted Victim's family before or after her funeral.

Viewing the facts and all reasonable inferences in the light most favorable to the State, the State did more than "raise[] a suspicion that the accused [was] guilty." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

> At the close of the State's case, defense counsel made the following motion:
>
> We have a motion for a directed verdict. Our position is that the State's case against Mr. Hayes consists only of circumstantial evidence. And the requirement is that there must be substantial circumstantial evidence that reasonably tends to prove Mr. Hayes' guilt. The evidence produced today just shows a mere suspicion of Mr. Hayes' guilt. We would ask that the court grant a directed verdict.

(R. p. 242, lines 10–17). In response, the State asserted that it had presented enough evidence from which the jury could convict Petitioner, and the State asked the court to

deny the motion. (R. p. 242, lines 19–25). The court denied defense counsel's motion, stating, "I must view all the evidence in the light most favorable to the non-moving party, and I find there is sufficient evidence, taking it as a whole, direct and circumstantial, for the jury to make a decision on this. I respectfully deny your motion . . . ." (R. p. 243, lines 1–6).

After the jury returned a verdict of guilty on both counts, defense counsel renewed their motion, and the court again denied the motion. (R. p. 282, lines 9–21).

In the Court of Appeals, Petitioner argued that the circumstantial evidence presented by the State did not constitute substantial circumstantial evidence. (Final Br. of Appellant, pp. 14–17). In particular, Petitioner argued that "White's testimony only established that Appellant knew about the murder and did not report it, not that he had any involvement in the death." (Final Br. of Appellant, p. 17). However, the Court of Appeals affirmed the trial court, citing opinions from this Court regarding circumstantial evidence and the directed verdict standard.

Discussion

In reviewing a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not with its weight. *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004) (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State. *Id.* (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id.* (citing *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)). "Unless there is a total failure of competent

evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004).

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict as there was substantial circumstantial evidence from which the jury could logically deduce Petitioner's guilt. In his petition, Petitioner cites to a number of this Court's cases where the Court found directed verdicts warranted based on the evidence that had been presented by the State. *See State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). For example, in *State v. Odems*, this Court found that "[t]he circumstantial evidence presented by the State proves only that: (1) when stopped by the sheriff's deputy, Petitioner was in the vehicle used by [his co-defendants] to leave the scene of the robbery; and that (2) following the stop, Petitioner fled along with [his co-defendants]." 395 S.C. at 591, 720 S.E.2d at 53. The Court found that evidence insufficient to support Odems's convictions for first degree burglary, grand larceny, criminal conspiracy, and malicious injury. *Id.* at 592, 720 S.E.2d at 53. In *State v. Bostick*, the victim was found bludgeoned in her house, which had been set ablaze. 392 S.C. at 136, 708 S.E.2d at 775. This Court recited the following evidence that had been presented against Bostick:

> (1) [victim's] car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant use for the house fire; and (4) while the DNA from the blood on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to [victim's] DNA.

392 S.C. at 142, 708 S.E.2d 774, 778. In finding that a directed verdict was appropriate, the Court noted there was no evidence linking Bostick to the crime scene or to the items found in the burn pile, nor was the weapon used to beat the victim ever introduced. *Id.* at 141, 708 S.E.2d at 778. Finally, though the State had theorized that the victim, who was treasurer for her church, was killed for the money she had at her home, the court pointed out that "no evidence was introduced concerning Bostick's knowledge that [the victim] may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday." *Id.* at 142, 708 S.E.2d at 778. Respondent submits that the evidence presented by the State in the instant case exceeds that presented in the cases referenced by Petitioner.

Petitioner argues that "[n]o physical evidence connected Petitioner to the crime. The prosecution established only that a connection existed between the deceased and Petitioner, but established no connection between Petitioner and the deceased's death." (Cert. Petition, p. 16). Respondent disagrees with Petitioner's contention and asserts that Petitioner's own words and actions after the murder, combined with other circumstantial evidence, established a connection between Petitioner and Victim's murder. For example, the State presented the testimony of Larry Dell White who had a long conversation with Petitioner after the murder. Though Petitioner told White that he found his girlfriend's body and that she had been stabbed by a drug dealer, Petitioner's later statements to White indicated that he was more culpable than his story suggested. In particular, when White asked Petitioner what could be so bad, Petitioner responded, "[B]ut you ain't never killed nobody." White testified to the jury that those were Petitioner's "exact words. . . ." (R. p. 40, lines 12–16). Petitioner now argues that he

"did not admit guilt to White or confess participation of any sort." (Cert. Petition, p. 16). Respondent agrees that Petitioner did not expressly confess to the murder; however, his statement "but you ain't never killed nobody" conflicts with the story he told White, and that statement could be construed as an inadvertent admission of guilt. If Petitioner had been telling the truth about finding his girlfriend "cut up" by the "dope man," then the appropriate response to White's question, "what could be so bad?" should have indicated that Petitioner had left Victim's body and had failed to call the police. The statement "but you ain't never killed nobody" implied that Petitioner committed the murder and did not merely witness the aftermath.

White's testimony about Petitioner's demeanor during their conversation is further circumstantial evidence that Petitioner committed the murder. White testified that Petitioner was inconsolable throughout their conversation and also that Petitioner told White that when he told his sister what he had done it would "fuck his sister up." (R. p. 28, lines 10–11). Petitioner also expressed during the conversation that he wanted to kill himself.[10] The jury could have inferred Petitioner's culpability from White's testimony about Petitioner's intense emotional response to his girlfriend's death. The State also presented evidence that Petitioner fled Greenville following the murder. In South

[10] South Carolina courts have only recently addressed whether evidence of attempted suicide is probative of the accused's guilt. *State v. Orozco*, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (2011) (recognizing the issue as one of first impression in South Carolina and concluding "that evidence of a suicide attempt is probative of a defendant's consciousness of guilt and is generally admissible for whatever value the jury decides to give it"), *cert. granted* (Oct. 17, 2012). However, other courts have admitted threats to commit suicide as evidence of guilt. *E.g.*, *Commonwealth v. Sanchez*, 610 A.2d 1020, 1028 (Pa. 1992) ("Evidence of actual attempts to commit suicide are uniformly admitted as evidence tending to show consciousness of guilt on the part of the defendant, and a similar inference can be drawn from a threat to commit suicide."); *People v. O'Neil*, 165 N.E.2d 319, 321 (Ill. 1960) ("[T]he threat of suicide, as does flight, tends to show a consciousness of guilt.").

Carolina, "[e]vidence of flight has been held to constitute evidence of defendant's guilty knowledge and intent." *State v. Crawford*, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005). Furthermore, though Petitioner had spent time with Victim's family during the five years that he and Victim were in a relationship, he failed to contact Victim's family after her death or to attend her funeral. Respondent submits that Petitioner's actions after the murder are further circumstantial evidence of guilt.

In addition to the evidence of Petitioner's words and actions following the murder, the State also presented evidence connecting Petitioner to the scene of the crime. The State presented latent print evidence establishing that Petitioner was in the bathroom where Victim's body was found. Indeed, Petitioner's palm prints were found on the bathtub and the toilet tank lid—the very fixtures between which Victim's decomposing body was wedged. The State also offered eyewitness testimony that Petitioner was at Victim's apartment twice during the week Victim was killed. Though Petitioner characterizes his presence at the apartment as not surprising because he lived there, at trial, the State presented evidence that Petitioner had been asked to leave that apartment days before Victim's murder.

The nature of Victim's injuries suggested that Victim may have had an intimate connection with her murderer. The jury heard testimony from Miller that

> twenty-eight stab wounds indicates that there was rage, anger when that act was committed. This was not just a, you know, stab them once or twice and then, you know, incapacitate someone, and then go through the house and look for goods. This was focused, twenty-eight times, and you sit and count twenty-eight stab wounds, that takes a long time to do. And that is a lot of anger and a lot of rage, which makes—focuses more on an intimate level.

(R. p. 223, lines 11–19). The state of Victim's apartment—the fact that there was no forced entry and the fact that nothing in the apartment had been disturbed—is also inconsistent with the murder resulting from a home invasion.

According to Petitioner, the State's closing argument, which included a reference to the "raw emotion" shown by Victim's sister and mother during their testimony and the display of Victim's photograph,[11] was "[v]ery telling of the . . . weak case" presented to the jury. (Cert. Petition, p. 16). Respondent disagrees. During closing argument, the State recounted the important evidence that had been presented through the testimony of the State's witnesses. While the State acknowledged the emotion the jury had witnessed from Victim's sister, who found Victim's decomposing body, and from Victim's mother, the breadth of the State's closing argument covered the evidence that connected Petitioner to Victim's murder. (*See* R. p. 244, line 16–p. 256, line 4).

Evidence of Petitioner's words and actions after the murder, combined with the physical evidence and eyewitness testimony connecting Petitioner to the scene of the crime, raised more than a suspicion that Petitioner was guilty. As such, the directed verdict motion should not have been granted. Petitioner's argument that the Court of Appeals erred in affirming the ruling must be rejected.

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[11] The only issue pending in this appeal is the issue of directed verdict. Petitioner has not challenged the display of Victim's photograph to the jury during closing argument. At trial, defense counsel objected to the photograph being shown to the jury and moved for a mistrial. (R. p. 255, line 7–p. 260, line 5). The court denied the motion for a mistrial, offered to give a curative instruction regarding the photo, and then gave the curative instruction. (R. p. 258, line 14–p. 260, line 20; R. p. 275, line 23–p. 276, line 5).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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February 13, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2014-UP-385 (S.C. Ct. App. filed Nov. 5, 2014)

THE STATE, RESPONDENT,

vs.

RALPH B. HAYES, PETITIONER.

Appellate Case No. 2015-000081

PROOF OF SERVICE

I, Kaycie S. Timmons, certify that I have served the *Return to Petition for Writ of Certiorari* on Petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record, Susan B. Hackett, at:

SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

This thirteenth day of February, 2015.

Kaycie S. Timmons

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ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

February 13, 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Ralph B. Hayes
Appeal from Greenville County
Appellate Case No. 2015-000081

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Respondent's Return to Petition for Writ of Certiorari, dated February 13, 2015, together with a Proof of Service in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Kaycie S. Timmons
Assistant Attorney General

KST/mv

Enclosures

cc: Susan B. Hackett, Appellate Defender
The Honorable Walker W. Wilkins, III, Thirteenth Circuit Solicitor
Court of Appeals
Trisha Allen, Victim Services