

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

KENNETH ANDREW LYNCH,

Petitioner.

Appellate Case No. 2015-001222

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. Supreme Court

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PETITIONER'S QUESTIONS PRESENTED

- I. Did the prosecution fail to present substantial circumstantial evidence of Petitioner's guilt.

- II. Did 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 violate Petitioner'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. Was the arrest warrant for grand larceny of a motor vehicle supported by probable cause, as required by the federal and state constitutions, where the affiant omitted vital information?

STATEMENT OF THE CASE

On June 10th, 2006, petitioner murdered Portia Washington and Angelica Livingston in Lexington County. Petitioner then stole Washington's car. (R. 1793-94). Petitioner was arrested on June 18, 2006 trying to enter Canada, was returned to South Carolina, and charged with the car theft and Washington and Livingston's murders. (R. 523-541, 1576-1586, 936, 1590-91). The Lexington County grand jury indicted Lynch for the murders and grand larceny. (2008-GS-32-2652, 2653; 2007-GS-32-525). The State sought the death penalty. Lynch proceeded to a *bench trial* before the Honorable Eugene C. Griffith, Jr., on April 16, 2012. (R. 75). At the guilt phase's conclusion, Lynch was found guilty as charged. (R. 1793-94). At the penalty phase's conclusion, Judge Griffith found 2 statutory aggravating circumstances proven.¹ He sentenced Lynch to 2 terms of life imprisonment, consecutive to each other and the 10 year sentence for grand larceny. (R. 1797-1801). Lynch appealed raising the 3 issues he raises here. The Court of Appeals affirmed. State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2013).

RESPONDENT'S STATEMENT OF FACTS

Portia Washington ("Portia") and her granddaughter, 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 was found in several places in the apartment petitioner Kenneth Lynch ("Lynch") shared with the victims, including in Lynch's bedroom.²

Portia was a 54 year old mother of 2 and grandmother of 4. She was employed at Bob Bennett Ford in Columbia, serving as 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 1st husband, who was in the military, Portia lived in the Columbia area her entire life. Portia's 1st marriage ended because she wanted to return home to be near her family. Portia

1 (1) Lynch murdered 2 persons by 1 course of conduct, and (2) he murdered a child under the age of 11.

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

and her family were close, and she did not like to travel.³ The physical evidence *and* the testimony of friends, family, and co-workers established Portia's life revolved around family, friends, job, and church and was centered on Angelica. Portia also had 3 grandsons she loved, 1 a brand new baby.⁴ She visited them regularly. Family, friends, and co-workers testified if Portia was going to leave the Columbia area, she would have informed them. She did not. All of Portia's and Angelica's activities stopped and their lives ended on the night of June 10, 2006.⁵

Portia had learned to drive around 2003. She was not comfortable driving on the interstate and would avoid it. She rarely traveled outside the Columbia area. The only vacation outside this state she took was to Florida with a church group by bus. The farthest she had driven was to her son's wedding in Bowman, with her mother in the car. Portia was a homebody.⁶

Portia had purchased a brand new car, a Ford Focus, through work, about 1 year before her murder. A co-worker loaned her the down payment, and employees at work assisted her with obtaining financing. Portia was the only person listed on the car's title as owner. Portia was making regular monthly payments on the car. Portia loved her car and was very possessive of it; it was the only new car she had ever owned. Portia owned no other vehicles.⁷

Portia loved her job at Bob Bennett. She was well liked and respected by her supervisors and co-employees. She had a small work space where she kept supplies and also personal items such as pictures of Angelica and other family members. Portia was not in any danger of losing her job at the time of her disappearance.⁸

Portia and Lynch were formerly involved in a romantic relationship, which was ending at the time of the victims' murders. However, Lynch was still residing in the same apartment with

3 (R. 98-228, 230-355, 806-23, 1662-65, 1678, 1682-83).

4 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.

5 (R. 98-117, 159-78, 191-228, 230-61, 761-79, 780-806, 806-31, 930-34, 1662-66, 1678-92, 1683-92).

6 (R. 98-117, 191-202, 230-61, 806-23, 823-31, 1570, 1678-79, 1682-83).

7 (R. 98-117, 159-77, 191-202, 261-314, 761-79, 780-806, 806-23, 823-31, 898-908, 1663-64, 1681).

8 (R. 98-117, 159-77, 261-314, 761-79, 780-92, 793-805, 823-31, 1663-64, 1681).

Portia and Angelica up to the date of their murders. Lynch was supposed to move out in July or August. Instead, on June 18, 2006, Lynch was captured alone trying to cross into Canada.⁹

Relatives, friends, and co-workers of Portia established the relationship between Portia and Lynch had gone sour. Several months before her murder, a co-worker had given Portia \$650 for Portia to move out of the home she was sharing with Lynch and into a new apartment, the one she was living in at the time of her murder. During 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, family and friends told Portia to end the relationship with Lynch and get away from him. Portia confided in 1 friend she was also concerned about Angelica living with Lynch. Shortly before her murder, Portia related to 1 friend she was afraid of Lynch, and the friend advised her to tell her supervisor the problems in the relationship in hopes he could do something about the situation. Lynch also worked at Bob Bennett. The testimony at trial established Portia wanted out of the relationship with Lynch.¹⁰

Toward the end of March, 2006, Portia moved to a new apartment, M-7, Park Place Apartments on Comanche Road, in West Columbia. Unknown to the friend 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.¹¹

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 car anymore. A few days before her murder, Portia gave her mother the spare key to the car. Portia informed her mother she was giving her the key because she did not want Lynch driving her car anymore. A friend, who called Portia a few days

9 (R. 98-117, 191-218, 159-77, 315-55, 1576-78, 1662-71, 1589, 1676-92).

10 (R. 98-128; 132-58, 159-77, 191-228, 261-314, 761-79, 806-23, 823-31, 1568, 1662-76, 1679-81, 1691-92).

11 (R. 261-314, 1589, 1662-71, 1679-80, 1120, 1691).

before her murder, testified she heard Lynch in the background during the phone conversation, and Lynch was fussing and cursing Portia because Portia would not let him use her car.¹²

On Friday evening, June 9, 2006, the night before the victims' murders, Portia was at a friend's home and stated she was in dread of returning to the apartment she shared with Lynch. The friend offered to let Portia and Angelica stay with her. Portia declined the offer.¹³

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 Portia a pants suit in Sumter. The aunt left with others to go shopping. Portia and Angelica went to a scheduled hair appointment on North Main Street in Columbia in Portia's car.¹⁴

While Angelica was getting her hair done, Portia ran some errands. When she returned, the hair dresser, Shyla Harris, was still working on Angelica's hair. Shyla ordered lunch for them. Portia became concerned the hair appointment/lunch was taking too long. Portia appeared apprehensive, afraid, and in a hurry when lunch was late and related that to Shyla.¹⁵ Portia and Angelica left when Shyla finished Angelica's hair around 1:30 p.m. Portia and Angelica had a standing hair appointment with Shyla every 2 weeks. After June 10, 2006, Shyla never saw or heard from Portia or Angelica again.¹⁶

Portia and Angelica drove from Shyla's shop back to Portia's aunt's. Portia's aunt gave Portia the pant suit she had bought for her. It was wrapped in clear plastic like dry cleaning. Portia and Angelica left together in Portia's car. The aunt never saw Portia or Angelica again.¹⁷

The same day, Saturday, June 10, 2006, at 4:30 p.m., Carla Perry, Portia's next door

12 (R. 159-77, 1672-73, 1675, 898-908, 1681).

13 (R. 98-130).

14 (R. 131-57, 230-61, 711-12).

15 Shyla also testified Portia's appearance and demeanor had changed over the relationship with Lynch, i.e. she became more nervous and anxious toward the end. Portia had informed Shyla of her problems in the relationship with Lynch, and Shyla had advised Portia to leave Lynch.

16 (R. 131-57).

17 (R. 230-61).

neighbor, saw Portia and Angelica unloading what looked like dry cleaning from Portia's car at M-7 Park Place Apts. Perry testified **Lynch was present at this time near the car, with Portia and Angelica**. Perry saw Angelica again a little later that day in her bathing suit. She soaking wet from playing in the complex pool. Perry never saw Portia, Angelica, or Lynch again.¹⁸

At 4:53 p.m., Portia's mother called Portia on her cell phone and spoke with her. Phone records proved this call. Portia's mother never spoke to Portia again. She 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 a BiLo in Columbia for \$22.89. There were also 3 withdrawals from Lynch's savings account at an ATM in Columbia on that Saturday afternoon of approximately \$20.00 each.²⁰

On the same day, Saturday, June 10th, Lela Green, Portia's close friend, called Portia and spoke to her at 9:26 p.m. Phone records proved this call. 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 to help her get her car fixed at Bob Bennett. During the phone call Portia was cooking dinner for the next day, which was her habit, and she was laying out Angelica's clothes for church on Sunday. After the call, Lela never saw or heard from Portia again. Lela never saw Angelica again. Lela's calls to Portia went unanswered starting Sunday, June 11, 2006.²¹

Around 10:00 to 10:30 p.m. the same Saturday night, June 10th, Portia's neighbor, Carla Perry, was outside in the breezeway with friends. The breezeway is between Perry's apartment and the one shared by Lynch, Portia, and Angelica. Perry noticed Portia's new car was gone; Portia's plants were outside, and the lights were off in Portia's apartment. The following morning, Portia's car was still gone and her plants were still outside, which was very unusual,

18 (R. 178-90).

19 (R. 191-228, 693, 806-23).

20 (R. 1196-1211).

21 (R. 159-77, 691, 806-23).

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. 159-77, 191-213, 230-61, 688-98, 761-79, 806-23, 930-34).²³

At 8:02 p.m., Sunday evening, June 11, 2006, Lynch made 2 withdrawals from his checking account at an ATM on Knox Abbot Drive in Cayce for \$200 and \$20 respectively.²⁴

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

Lynch, did not appear for work at Bob Bennett on Monday, June 12th either. Lynch

22 (R. 178-90).

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 or attended 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. She subsequently did not appear for a summer church camp in early July. Prior to her murder, Portia had already paid for Angelica to attend the 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 U.S. or outside the U.S. has requested her school transcripts. (R. 918-29, 1587-88). Further, Portia has not applied for a driver's license in any other state under her birth or former married names. (R. 914-17). Portia did not pay her car insurance again after June 10th, and her license was suspended as a result. (R. 909-13). A credit check determined Portia has no addresses listed outside of S.C., and no one has run a credit check on her. (R. 699-708). Portia also left over \$200 in her checking account. (R. 709-19, 1587). She did not return to her doctor for her scheduled visit, nor did she call to cancel. (R. 875-84). Angelica never returned to her doctor where she was a patient and was being treated for ADD. (R. 885-92). No one has ever requested their medical records. (R. 875-91, 885-92). 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. 709-19). There was no activity on her cell phone after June 10th. (R. 688-98). Portia made all of the payments on her car up until the last automatic draft on June 12th. After that, no further payments were made, and Portia's new car was repossessed. The value of the car was in excess of \$5,000. (R. 898-908).

24 (R. 1196-1204).

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

provided no notice he was quitting his job or sick or request vacation time. He also did not pick up his paycheck on Friday, June 17, 2006. Instead, Lynch had fled the state, 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, Lynch checked into a Motel 6 in Vicksburg, Miss. where he falsely listed his home address as Florida. He also falsely listed his home street address as an address where he and Portia had lived before she moved to Park Place Apts. He paid cash for the motel room and indicated he would be staying alone. Lynch left Vicksburg the following day June 13, 2006 after staying overnight at the Motel 6.²⁷

Employees and friends of Portia became concerned when she did not appear for work and notified her family who was already concerned because they had not heard from Portia since Saturday, June 10th. Portia's mother went to police and filed a missing persons report. Fellow employees, friends, and family went to her apartment and had the complex manager go into her apartment to check on her. In the past when Portia was going to be away for any period of time, she would notify the complex so they could pick up her mail. Portia had not notified the complex she was leaving or going out of town.²⁸ When the manager went to the apartment, it was locked. She entered with a pass key. No one was in the apartment, and Portia's new car was missing from the 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. Before her disappearance, Portia regularly called friends and family throughout each day. After June 10th, Portia did not call any of her friends or relatives on

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

27 (R. 720, 722-25, 1579-81, see generally 720-44).

28 (R. 213-15, 315-55).

29 (R. 315-55, 1163-64).

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

as she had habitually done in the past. All calls stopped on June 10th at 9:36 p.m. Nor did she return numerous phone calls made to her by friends, family, and co-workers.³¹

When Park Place management and police entered the apartment formerly shared by Portia, Angelica, and Lynch, to check on their status, they found all of the furniture still present. Again, the door was locked, and the manager used a pass key to enter. Portia's CPAP machine, which she needed to sleep because of sleep apnea, was also still there. Toiletries and prescription medicine were still 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 her bed. All of Angelica's toys remained in her bedroom, including her favorite stuffed bear she normally took with her when visiting relatives. Kitchen chairs were stacked on the kitchen table, and it appeared the kitchen and dining room linoleum floor had recently been mopped. The carpet had also been vacuumed. Based on personal items found in the apartment, including clothes 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 2 victims, they discovered human blood in several places.³³ The blood contained Angelica's DNA.³⁴ 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 underside. 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. Angelica would have been at least as high as the chair

31 (R. 806-23, 688-98, 159-177, 191-228, 230-61, 98-228, 230-355, 1662-76).

32 (R. 315-55, 875-84, 1158-93, 1662-69, 1120).

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

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, 1529-64, 1589, 1677). At the time of Angelica's murder, her mother, Theresa Brown, had only 1 daughter, Angelica. (R. 1589, 1663, 1677).

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 to the floor underneath. There was significant bloodletting or pooling of blood. Blood was also found on a sheet, 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 and in a bathroom sink. Almost all of the blood contained at least some of Angelica's blood (D.N.A.). There were blood stains containing 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 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 bank in *Waskom, Texas* leaving only 8 cents in the account. At 12:43 p.m., Lynch entered a Family Dollar Store in *Texas* 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 citation. At the time, Lynch was alone and driving *Portia's brand new Ford Focus*. Lynch told the Patrolman he was on his way to Arizona to pick up his wife, the owner of the car. Lynch was not married to Portia. A child restraint seat was in the back seat of the car. Lynch was ticketed just a few miles from the Mexican Border.³⁷

Also on June 14th, Lynch checked into a Motel 6 in Eloy, Arizona. He paid cash for the room. Unlike the Motel 6 in Vicksburg, this one was corporate owned and required Lynch provide a picture I.D. The address on this motel receipt was not Florida, but the one contained on Lynch's S.C. driver's license. Lynch listed the car he was driving as a 1989 brown Ford. Portia's car, which Lynch was in, was a 2005 tan Ford Focus. Lynch checked out of the next

35 (R. 1348-1445, 1458-1528, 1529-64).

36 (R. 1196-1204).

37 (R. 661-79, 1581-82).

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

While being transported, Lynch began asking questions about the larceny charge. He denied he had been in Portia's car. He stated he traveled to the west coast with a friend in a Cadillac but refused to say who the friend was. He claimed when he got to Portland, Oregon, he had *taken a bus* to Seattle and was trying to get to Vancouver by bus when he stopped at the border. He stated he was going to Vancouver to see "bears," which struck the deputy as unusual because Vancouver is a large city, and bears are located further north. Lynch mentioned he once lived with a Portia Washington and her granddaughter but decided to leave to see Canada. Lynch stated he quit his job a few days prior and was going to go home after seeing Canada. When Lynch was booked, he gave his address as *No. 7-M, Park Place Apartments, Apache*

38 (R. 1149-58, 720-44, 116-61).

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

40 (R. 356-411, 437-48, 449-63, 506-41, 1576-78).

Road, West Cayce, S.C., 29033. He had no cash on him and only loose change in his luggage.⁴¹

On June 19, 2006, FBI Agent Brenda Wilson and Detective Glen Hutchings of Washington interviewed Lynch there. Lynch again gave his address as Apt. 7-M, Park Place Apartments, West Cayce, S.C., 29033. He said he quit his job at Bob Bennett on Friday, June 9th and 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; they had driven, and he stayed *at their houses* and gone up to *Portland*, and then caught a bus to Seattle, and then a bus from there and was trying to get in Canada. He refused to identify the friends. Lynch stated he and Portia were boyfriend/girlfriend 2 years prior, but about a year prior, they became more like roommates. He stated **the last time he saw Portia was on Friday, June 9, 2006**, when he quit his job and told her on the ride home from work he had quit and wasn't coming back to work on Monday. **Lynch denied he had driven Portia's car anywhere outside South Carolina**. He claimed he caught a ride on Friday night, June 9th, to Georgia, and then left Georgia and traveled west.⁴²

Only when confronted with the fact he was stopped for speeding in Portia's car in Texas, did Lynch admit he had possession of Portia's car and had driven it outside South Carolina. He claimed Portia could not make the payments on the car, which was false, and she had given it to him. He also claimed Portia was about to lose her job, which was also false. When told the victims were missing, he admitted it would be very unusual for Portia to leave Columbia without telling anyone or where she was going. Lynch queried investigators whether police had searched his apartment yet. He continued to claim he left Columbia on Friday night, June 9th, not Sunday, the 11th. He denied he was in the Columbia area after the 9th. Lynch eventually admitted he did

41 (R. 437-49; 524-41).

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

not have permission to take Portia's car.⁴³

Police searched the parking lot of the bus station in Seattle where Lynch had purchased his 1-way ticket to Canada. There police found Portia's car abandoned in a metered parking space. Pursuant to a search warrant there, Lynch's D.N.A. was found on the steering wheel, and his fingerprints were found on the trunk. The car had been stripped of any identification. The tag had been removed and all paperwork had been removed from the glove box. Police identified the car and its owner by reference to the VIN number. The car was clean inside, like a rental car.⁴⁴

Lynch's carry-on bags were returned to South Carolina. Once here, police obtained 2 separate search warrants for the bags Lynch was arrested with at the border and seized by the Border Patrol. Lynch also signed over the bags to Washington authorities during the interview there. At the time of his arrest on the Canadian border, Lynch had in his possession *Portia's* car keys and his keys, both which contained a key consistent with one that would have opened Apt. M-7, Park Place Apts., and a key consistent with the key to open the apartment mailbox.⁴⁵

ARGUMENT I.

Lynch's argument Judge Griffith 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, Judge Griffith did not err in denying the motion(s) for a directed verdict made at the close of State's and 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. (R. 1699-1713, 1714). Lynch renewed his original motion for a directed verdict at the close of his case; and it was denied. (R. 1751-52). Lynch now argues Judge Griffith erred in denying his motion(s) for a directed verdict on all charges. There is no merit to this ground.

43 (R. 590-644).

44 (R. 645-59, 682-87, 837-74, 1131-49, 1576-78, 1583).

45 (R. 1681-82, 1026, 1088-92, State's Ex. 24, State's Ex. 84, 1093-1108, 1114-16, 1121-31, 1681-82, 1005-75).

The Unpreserved Issues

Lynch argues on appeal the State failed to prove the victims were murdered. (IBOA). Lynch conceded at trial the State had proved *the corpus delicti* of the murders, i.e. Portia and Angelica are dead and they were murdered by criminal means. (R. 1711, ll. 11-13).⁴⁶ This argument is not preserved for appellate review. Lynch cannot argue 1 basis below for a directed verdict and then a different basis on appeal. State v. Sterling, 396 S.C. 599, 723 S.E.2d 176 (2012). Lynch abandoned this issue. This ground must be dismissed.⁴⁷ Regardless, there is no merit to any directed verdict issue.

Standard of Review / Directed Verdict (Appellate)

A defendant may only appeal from a trial judge's denial of a motion for a directed verdict 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). 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). This Court views the evidence *and* all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 625 S.E.2d 64 (2006). If there is any direct evidence, or if there is substantial circumstantial evidence, reasonably tending 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, 720 S.E.2d 48 (2011).

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

⁴⁷ Lynch also appeared to argue on appeal the State failed to prove the crimes were committed in Lexington County, i.e. venue. [See IBOA] This argument is also not preserved for appellate review. State v. Sterling; Jennings. An objection by the defense the State had not proved venue must be first made in a motion to direct a verdict. 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 venue as a basis for his motion(s) for a directed verdict below. (R. 1699-1713; 1714; 1751-52).

This Court considers only the existence or non-existence of evidence, not credibility, in reviewing the denial of a directed verdict. Rogers. Our Courts have repeatedly held, where the evidence is circumstantial, it will be considered as a whole, not in isolation, in determining whether there was sufficient evidence to submit the case to the fact finder. State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010); Rogers. If the State has presented substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the decision to submit the case to the fact finder. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013).⁴⁸ The appellate court may reverse the denial of a directed verdict only if there is no evidence to support the judge's ruling. State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005).

Trial Court's Standard

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Cope, 405 S.C. 317, 748 S.E.2d 194. A trial court should grant the directed verdict 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. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). 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. 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 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).

The Lack of Merit of Lynch's Argument

⁴⁸ Further, when the defendant offers proof in his case, this Court is to consider all of the evidence in ruling on whether a directed verdict motion at the close of his 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).

The State more than satisfied the standard to overcome the motion(s) for a directed verdict on the 2 murder charges and grand larceny. Judge Griffith did not err.

It is not necessary for the State to produce bodies of the victims 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 condition made determination of cause of death impossible).⁴⁹ The State may prove the victims' murders by showing the victims' personal habits and relationships as circumstantial evidence from which an inference could be drawn the victims' sudden disappearance was the result of death by a criminal act. Owens, supra.⁵⁰ As this Court stated:

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).

Owens, 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 directed verdict motion 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 Lynch was the person who murdered them.

The victims Portia and Angelica disappeared on the night of June 10, 2006. Portia regularly talked with family and friends in person and by phone. After the night of June 10th,

⁴⁹ 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."); 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.").

⁵⁰ 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).

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.⁵¹ Portia never visited her 3 grandsons again, including a newborn grandson. Family members, co-workers, and friends testified if Portia was going to leave town she would have notified them. She did not. She did not appear for work on Monday, did not contact her work and inform them she would be out, which was not her normal habit, and did not pick up her check at work even though she needed it to pay her bills. She failed to appear at planned meetings with others without making any contact with them. There was no further activity on her cell phone, and no personal activity on her bank account, which contained money, after June 10th. She was never seen by anyone after June 10th, and she was not in the company of Lynch when he was arrested on the Canadian border. Portia's only means of transportation, her new car, was in the possession of Lynch. Finally, Portia's belongings, including her CPAP machine she needed to sleep, her clothing, and prescription medication were still in her apartment, and personal items remained in her work space. Angelica was not seen or heard from again after the afternoon of June 10, 2006. She did not appear for church and did not appear for a church camp Portia had already paid for. Her 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. Angelica never appeared again for her scheduled hair appointment, never appeared for the start of school, or at her doctor's office where she was being treated for ADD. No school inside or outside the United States has requested her school records. And, no one has requested her medical records. The testimony firmly established Portia's and Angelica's activities and lives ceased on the night of June 10, 2006, and they were murdered. Owens. Lynch conceded below the State proved *the corpus delicti* of the murders. (R. 1711). The victims are dead, and they were killed by criminal means.

⁵¹ 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).

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Id.

The State also proved the victims were murdered in Lexington County.⁵² The evidence showed, and Lynch conceded below, the State proved venue.⁵³

Lynch contends the State did not produce sufficient evidence it was he who committed the murders. Lynch is wrong. The evidence at trial showed Portia and 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 2 were never married.

Portia had confided in others she was afraid of Lynch; she confided in 1 person she was concerned about Angelica living in the same apartment as Lynch, and witnesses described Portia

52 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. For the purpose of establishing venue in a criminal case, it is not necessary 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 need not be affirmatively proved, and circumstantial evidence, though slight, is sufficient. Wray v. State, 288 S.C. 474, 343 S.E.2d 617 (1986). In a murder case, venue can be inferred 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 found, venue may be established by the facts and circumstances. Where some facts material to the offense, and requisite to its consummation occur in more than 1 county, venue is proper in either. Venue in a murder case is established where the body was never found where there was evidence of a violent struggle in the victim’s home. Owens. Where the victim was last seen alive in 1 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 another county, venue was proper in either county. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996); McCleod, (where victim’s body was found in Beaufort, but sign of a struggle at her residence in Colleton, venue was proper in either county).

53 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 Apts. 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 on her bed and prepared food was found in the kitchen. Portia’s car was last seen parked at her apartment on the afternoon of June 10th. 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 Apts. in Lexington County. The forensic evidence shows Angelica was criminally assaulted in Lynch’s bedroom in the same apartment, 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. Neither victim was heard from or seen after the night of June 10th. The victims’ bodies were never recovered. Venue was firmly established in Lexington County.

as being in fear of Lynch during the last days before her murder, including the day of her disappearance. One witness, who spoke with Portia in person the night before her murder, related Portia was in dread of returning to the apartment she shared with Lynch, and the witness offered to let the victims stay with her, rather than them returning to their apartment.

Similarly, on Saturday, June 10, 2006, the day of Portia's 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 present in the Columbia area and at the apartment they shared. 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 that 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 shop 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**. Portia and Angelica, were seen unloading dry cleaning from Portia's car Saturday afternoon, and Lynch was there present with the victims next to the apartment they shared together. The victim's new car was also present there with Lynch, Portia, and Angelica. Lynch later falsely told police he left the Columbia area on *Friday, June 9, 2006*, traveled to Georgia, and had not returned. However, an eyewitness placed Lynch 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 that afternoon, several withdrawals were made on that afternoon from Lynch's account, and on Sunday afternoon, Lynch withdrew \$220 dollars from his checking account at an ATM 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 complex manager had to unlock Lynch's apartment door with a pass key to get in and check on the victims. Lynch was later found in possession of 2 sets of keys, 1 set was Portia's, and both sets contained keys consistent with the lock on the door of Apt. M-7, Park Place Apts. When the manager searched the apartment, nothing was missing except the occupants, Lynch, Portia, and Angelica. Furniture, clothes, prescription medications, and toiletries were there. However, the manager testified the apartment looked staged, and someone had cleaned the apartment immaculately. She 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 on his back, indicating he had hurriedly fled from the apartment. He bought another pair of clothes in Seattle, at a consignment store, and 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 blood belonged to 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 in Lynch's bedroom. There was also evidence whoever committed the assault washed up after committing the assault and 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 soaked through the carpet to the padding and floor underneath, indicating a significant amount of blood-letting. Further, the person who committed the murders had placed the reclining chair upright before leaving. 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's murders, Sunday, June 11th, Lynch was still in the Columbia area and withdrew cash from his bank account at an ATM, in Cayce, and fled the State. At that time, no one, including police, was aware the victims had been murdered or Lynch had committed the acts. However, Lynch fled when no one was pursuing him showing consciousness of guilt. He fled driving Portia's new car, her only means of transport. A car Portia had specifically instructed her mother she did not want Lynch driving.⁵⁴

Lynch then failed to appear at work on Monday. He did not call in to work and notify them he was going to be absent or resigning. He failed to pick up his paycheck on Friday even though he needed the money. He did not contact work and provide a forwarding address or any information where he was located or where he could be found.

Lynch appeared shortly thereafter in Vicksburg, Miss., and paid [untraceable] cash for a motel room and *falsely* registered as from *Florida*, when his actual address was Apt. M-7, Park Place Apts., West Columbia, the location where Angelica was criminally assaulted and from which Portia disappeared. Lynch also gave a false street address, a former address where he resided with Portia, not the address where he lived and from which the victims disappeared.

54 "[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 constitutes 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 defendant sought to avoid apprehension).

Lynch then appeared even further west in Texas buying toiletries. 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 *1 way* ticket to Canada with untraceable cash. Lynch did not take a bus from Portland, Oregon to Seattle 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 car at the Seattle bus station. Police found the car anyway, and it contained Lynch's DNA and fingerprints. The car also contained evidence Lynch had attempted to conceal from authorities the car's owner's identity.⁵⁵

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 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 171.⁵⁶ At the time of his arrest on the Canadian Border, Lynch claimed he was going to Canada on a vacation. But, he had no money, other than some loose change. Lynch then made several false statements to authorities at the border and in Washington, including he had not had possession of the victim's car *and* he traveled to the Northwest with friends in a Cadillac. He also falsely stated he had stayed at

55 Before leaving on the bus in Seattle, Lynch abandoned the victim's new car in the parking lot of the bus station, and removed the identifying license plate and any identifying paperwork from the glove box. Beckham (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.

56 See also Beckham, (evidence of flight constitutes 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 shows guilty knowledge, intent, and that defendant sought to avoid apprehension).

friends' homes during his trip across the country, when in fact he had stayed at motels alone paying for them in untraceable cash. Lynch intentionally concealed he had taken Portia's car from South Carolina and stayed by himself at several hotels as he fled west. 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 South Carolina on Friday night, June 9, 2006, with a friend, when in fact he did not leave the Columbia area or this state until at least Sunday, June 11th, the day after the victims were murdered. Lynch lied about when he left the Columbia area, because he knew the victims were murdered on Saturday night, June 10th. And, the only reason he would know that was he was the person who murdered them.⁵⁷

Only when confronted with the fact police knew he had been stopped in Texas for speeding and could prove he was driving Portia's 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 about to lose her job and could not make the payments on the car. Portia was not about to lose her job 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, the same apartment where Angelica was brutally assaulted, and 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 1-way bus ticket, again with untraceable cash, to Vancouver. Beckham (attempted destruction of evidence is regarded as relevant incriminating circumstance); State v. Wells, 162 S.C. 509, 161 S.E. 177

⁵⁷ Lynch also falsely told authorities he quit Bob Bennett because he planned on attending a truck driving school. That 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 because he was fleeing because he committed the murders.

(1931)(similar).⁵⁸ This act of abandoning Portia's car and stripping it, indicated Lynch did not flee across the country to steal Portia's car alone, but to escape from this country 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 is a circumstance which tends to show guilt and should go to the jury to weigh the evidence.).⁵⁹ As stated in Al-Almin: "These 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." Id., 353 S.C. at 413.

Portia was the sole owner of her new car. The testimony and evidence established on the day of the victims' murders, 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. Another witness overheard Lynch fussing and cursing at Portia, just days before her murder, because Portia would not let Lynch use the car. Portia's car was about 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 this state. However, Lynch was stopped in Texas alone in Portia's new car. Lynch falsely told that highway patrolman he was going to Arizona to pick up his "wife," the car's owner. Portia and Lynch were not married, and Portia was already dead.

⁵⁸ 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).

⁵⁹ See also 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. "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).

And, Lynch abandoned the car at the bus station in Seattle and stripped it of what identification he could so it *and* he could not be traced. When confronted with the traffic ticket in Texas, only then did Lynch admit he had driven Portia's car outside South Carolina, but Lynch falsely claimed Portia had given him the car because she was about to be fired and could not make the payments on the car. 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. The petition must be denied.

ARGUMENT II.

The trial judge did not err in his consideration of the appropriate law.

At the close of the guilt phase, Lynch sought 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 this Court in its precedent. (R. 1752-56). Lynch now argues Judge Griffith incorrectly considered the law of circumstantial evidence in reaching his verdict of guilty on 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).⁶⁰ Further, Judge Griffith ruled

⁶⁰ 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,

he would follow the law of circumstantial evidence as handed down by this Court. See State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)(court is only required to charge the current and correct law); State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998)(court is not required to charge an incorrect statement of law). Further, Lynch's argument has no merit. In State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004), this Court held the 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 this one. Id.; See Holland v. United States, 348 U.S. 121 (1954)(finding the language requested here is confusing). As a result, this ground has no merit. The petition must be denied.

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 police, his major case prints matched to his prints on Portia's car trunk, 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

Pretrial, Lynch made motions to suppress certain evidence including physical evidence and statements made by Lynch. He 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 West

Columbia police. He also alleged the arrest warrant for which he 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.⁶¹

The suppression issues were first taken up when the State called Border Patrol Agent Nathan Breese. (R. 356-on). Breese established Lynch had crossed into Canada on June 18th, 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. He was taken into custody and his bags were searched pursuant to the agents' border search authority. (R. 386-95).⁶² Lynch moved to suppress what was found in his luggage at the border and faxed here. 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 were admissible. (R. 431-32).

The Court next moved to Lynch's contention any evidence seized from him post-arrest, i.e. service of the grand larceny warrant and transfer of custody to Whatcom County. (R. 432-on). 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. The warrant was for grand larceny > \$5,000 from South Carolina.⁶³ Pollinder was also handed

61 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).

62 Items found in the bag such as motel receipts and Lynch's bus ticket from Seattle to Vancouver were faxed to 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 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 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).

63 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.

Lynch's 2 bags that had already been searched by the border agents. He took them into his custody. 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 made several incriminating statements. (R. 437-448; 524-541).

Detective Matt Edwards of West Columbia Police then testified. He was the agent who actually went and procured the arrest warrant for grand larceny.⁶⁴ Edwards obtained the arrest warrant on June 18, 2006. In addition to the sworn affidavit, Edwards supplemented the affidavit with sworn oral testimony. (R. 452-53).⁶⁵ Edwards obtained the warrant late during the night of June 18th, around 5:00 a.m. but his records actually reflected the warrant was issued at 6:30 a.m. 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 authorities in Washington. (R. 454). Washington State is 3 hours behind South Carolina. (R. 462-63).⁶⁶

After 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 the arrest warrant was without sufficient probable cause.

64 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 about 10 investigators. The information contained in the arrest warrant affidavit came from several different sources.

65 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 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.

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

The Lack of Merit of Lynch's Argument

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

Standard of Review

Admissibility of evidence is a matter within the trial court's sound discretion, and its ruling will be disturbed only upon an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999). An abuse of discretion occurs when the trial court's conclusions 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 4th 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 trial judge where there is clear error. State v. Morris, 411 S.C. 571, 769 S.E.2d 854 (2015); State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013); *But see* State v. Kinlock, 410 S.C. 612, 767 S.E.2d 253 (2014).

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. He is wrong. The United States Supreme Court has repeatedly held 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 they occur at the border. United States v. Flores-Montano, 54 U.S. 149 (2004); United States v. Ramsey, 431 U.S. 606 (1977); United States v. De Hernandez, 473 U.S. 531 (1985). In fact, Lynch conceded below the search of his bags at the border by the Border Patrol Agent was lawful. (R. 426, ll. 12-15). Instead, he argues the transmittal of the contents of his bags to police here by fax was unlawful. There is no merit to this issue. The contents of the bags were in the lawful custody of the Border Patrol after the lawful border search. Flores-Montano; Ramsey; De Hernandez. The agents could fax copies of those items to police here.⁶⁷ Judge Griffith did not err in refusing to suppress the evidence seized from the bags, which included Lynch's birth certificate, Motel 6 receipts, a set of keys, and his bus ticket to Canada, or any other evidence found and seized by the Border agents whether faxed here or not. Id.

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

Lynch relies on Franks; 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 an affidavit. State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999). However, to be entitled to a Franks hearing for an alleged omission, the challenger must make a preliminary showing 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. 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

⁶⁷ Further, the agents found upon an NCIC check that Lynch, who had been rejected by Canada, was a missing person, and subsequently were informed he was a suspect in a double homicide in South Carolina.

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). “Inferring bad 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 F.3d 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 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 1 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. (R. 449-63). Colkey makes clear the Fourth Circuit’s disdain for the notion bad motive can be inferred from the materiality of the omitted information. That Court has clearly set a very high standard for establishing entitlement to a Franks hearing. Id. Lynch was not even entitled to a Franks hearing, and has not made a sufficient showing to include his alleged exculpatory evidence. United States v. Shorter, 328 F.2d 167, 170 (4th Cir. 2003)(defendant must also show the omitted material was necessary to the probable cause

finding, i.e., the omitted material was such its inclusion would have defeated probable cause).

Further, the affidavit along with the sworn supplemental testimony to the magistrate supplied ample probable cause for the issuance of the warrant for grand larceny of Portia's car. "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person under the circumstances to believe likewise." City of Spartanburg v. Wortman, 310 S.C. 1, 4, 425 S.E.2d 18, 20 (1992). The substance of all definitions of probable cause is a reasonable ground for belief of guilt, and the belief of guilt must be particularized with respect to the person to be seized. Ybarra v. Illinois, 444 U.S. 85 (1979).⁶⁸ As Gates recognized, and as here, affidavits are normally drafted by officers in the midst and haste of a criminal investigation; therefore, technical requirements of elaborate specificity once exacted under common law pleading have no proper place, and they should be viewed in a common sense and realistic fashion.⁶⁹ 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 this case stated 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

68 Probable cause does not mean absolute certainty. State v. Dean, 282 S.C. 155, 317 S.E.2d 746 (1984); 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). Probable cause is a flexible, common-sense standard. Texas v. Brown, 460 U.S. 730 (1983). 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.

69 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; Dupree, 354 S.C. at 683, 583 S.E.2d at 441.

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

(Court's Ex. 24, Arrest Warrant). The 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 R. 455-62).⁷⁰

Based on the affidavit and sworn supplemental testimony, the issuing magistrate knew the victims Portia and Angelica disappeared on June 10, 2006; they had not been seen by anyone since. 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, 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 Paso, Texas alone driving the vehicle registered to Portia. And, Lynch falsely told the trooper who stopped him he was going to pick up his wife, and

⁷⁰ A warrant affidavit may be supplemented by sworn oral testimony before the magistrate. 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)

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 car was valued in excess of \$5,000. (Court's Ex. 2, R. 452-62). As a result, the affidavit and sworn supplemental testimony supported **probable cause, i.e. there was reasonable grounds to believe** Lynch stole the victim's new car, which constituted the crime of grand larceny. See State v. Parker, 351 S.C. 567, 571 S.E.2d 288 (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 included in the affidavit for a Franks analysis would be the alleged exculpatory information in possession of police at the time they sought the arrest warrant.⁷¹ (R. 459-60, 488, 491). What police knew and the record shows was Lynch and Portia 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 2 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 Lynch should not be in Portia's vehicle or using Portia's vehicle.⁷² Franks. As a result, even including the actual alleged exculpatory information in the arrest warrant affidavit, there was still probable cause Lynch had committed the offense of grand

71 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 Edwards presented the affidavit that Lynch would not have been allowed to take or drive the car. (R. 453, 456-57). Further, Lynch fails to mention testimony developed at trial that shortly before Portia's murder, Portia gave her mother the spare key to her car and informed her mother she did not want Lynch driving her car; and, several days before Portia's murder another witness heard Lynch cursing Portia because she would not let him use her car.

72 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 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, 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.

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 bags or his incriminating statements, suppressed on this basis. Id. The contents of Lynch's bags were discovered pursuant to a lawful search incident to arrest. West Columbia police faxed the arrest warrant for grand larceny to the Border Patrol agents, and Lynch was served with the warrant and taken into custody by Whatcom County 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 bags.⁷³

Further, Lynch's statements to the Whatcom County deputy on the way to jail were admissible because Lynch was not being questioned by the deputy and Lynch completely and independently volunteered those statements. *See* United States v. Seidman, 156 F.3d 542 (4th Cir. 1998). Further, Lynch's statements to the FBI Agent and Detective were admissible because Lynch's arrest was not illegal but based on a warrant supported by probable cause. Finally, Lynch's major case prints were also admissible because they were obtained pursuant to a lawful arrest. And, Lynch's major case prints were obtained by a Schmerber Order of Judge Griffith. There was no objection to admission of those major case prints at trial. (R. 1064-68). Lynch's motion to suppress his fingerprints received after extradition is not preserved or irrelevant.⁷⁴

The Exclusionary Rule Should Not Apply

Even if this Court determines Judge Griffith erred, the exclusionary rule should not

⁷³ Further, the contents of Lynch's bags would have been inevitably discovered. When Lynch was questioned by the FBI agent and 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 bags. 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, whereupon police obtained 2 separate search warrants for Lynch's bags. (R. 936-51, 960-1064, Court's Ex. 32). And, police relied in good faith on those warrants in searching Lynch's bags originally seized at the Canadian Border. United States v. Leon, 469 U.S. 897, 918 (1984).

⁷⁴ 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.

apply. Davis v. United States, 131 S.Ct. 2419 (2011).⁷⁵ Under the circumstances of this case, exclusion would not further the purposes of the exclusionary rule, and suppression is not proper. Id.⁷⁶ 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 county's database showing outstanding warrant existed in arresting and searching defendant and search would not be suppressed).⁷⁷

Harmless Error

Further, even assuming *arguendo* Judge Griffith somehow erred, it was harmless given

75 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. Our appellate courts recognize 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 this 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 this Court have stated "the deterrence benefits of suppression must outweigh its heavy costs" for 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 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.

76 State v. Harvin, 343 S.C. 190, 194, 547 S.E.2d 497, 500 (2001)(main purpose of exclusionary rule is deterrence of police misconduct); Gates (affidavits are drafted by police in the midst and haste of a criminal investigation).

77 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 10th - June 14, 2006, but quite the opposite. Border patrol agents searched Lynch's bags pursuant to a lawful border search. And, police thereafter waited until they had lawful search warrants from a magistrate before searching Lynch's bags. *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 bags by West Columbia police should not be excluded. Id.

the overwhelming evidence of Lynch's guilt apart from the contested evidence.⁷⁸ 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 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.⁷⁹ Even removing the evidence seized or obtained *after the lawful border search*, including Lynch's statements, the evidence of his guilt is still overwhelming.⁸⁰

78 State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001).

79 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).

80 Lynch resided with the 2 victims in Apt. 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 M-7 Park Place Apts. Lynch had previously had himself placed on the lease as Portia's spouse, even though the 2 were never married. The evidence established prior to 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 management at which she and Lynch worked. The following morning, Sunday, 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, the 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 car, a vehicle Portia had specifically instructed her mother not to allow Lynch to drive, and she did not want him driving. Lynch fled in Portia's car 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, Miss., he falsely gave his home address as Florida, checked into the motel alone, and paid for the room with untraceable cash. Lynch then continued to flee westward across the country and emptied his checking account while in Texas, and was stopped by police for speeding in Portia's new car near the Mexican Border. Lynch was alone and falsely told the patrolman there he was going to pick up his wife, the car's owner, in Arizona. Portia was not his wife, and she was not in Arizona but had already been murdered. Lynch then checked into another motel alone, in Arizona, but 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, where he purchased a 1 way bus ticket out of the country. Before leaving, Lynch removed any identifying marks from Portia's stolen car, including the license tag and all paperwork from the glove box. Lynch continued his flight by trying to leave the country on a bus, but was stopped by Canadian authorities. When he returned to the U.S. Customs Office, he was lawfully searched and his bus ticket and his motel receipts were found in his bags. 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 apartment manager entered the apartment Lynch shared with the 2 victims using a pass key, she found the linoleum and carpet had been cleaned. When police searched the residence more carefully, with a warrant, they discovered Angelica's blood under a recliner in Lynch's

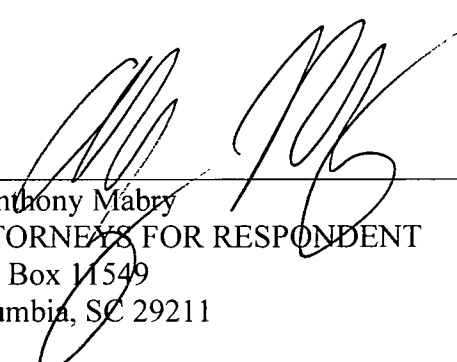
Even assuming *arguendo*, error in the admission of evidence, it was harmless. Fulminante; Franklin; Miller; Kelley. The evidence against Lynch was overwhelming. Guilt was conclusively proven, and no other rational conclusion could have been reached. Even removing the evidence seized or obtained *after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

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Assistant Attorney General

By: 

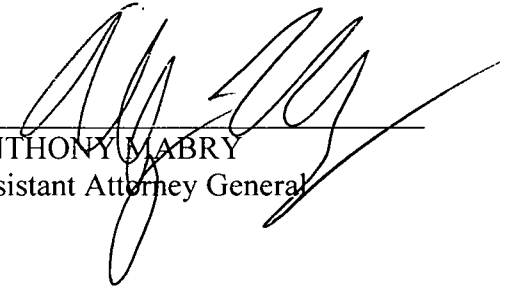
J. Anthony Mabry
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P.O. Box 11549
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July 6, 2015

bedroom, and Angelica's blood intermingled with blood from a male contributor on 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 in the apartment. The spatter was found under 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 this State 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 abandoned the car at the terminal. Lynch does not contest the search of Portia's car.

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served *Return to Petition for Writ of Certiorari* 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 6th day of July, 2015.



ANTHONY MABRY
Assistant Attorney General