

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Berkeley County
W. Jeffrey Young, Circuit Court Judge

THE STATE,

v.

JASON EDWARD KINLOCH,

RECEIVED
NOV 30 2015
Respondents
SC Court of Appeals

Appellant.

Appellate Case No. 2014-002332

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether the court erred by refusing to direct a verdict of acquittal where the state failed to present evidence of appellant's guilt beyond his extra-judicial statements, since a directed verdict was required under these circumstances?

II. Whether the court erred by admitting a shotgun seized from alleged accomplice Tiller when he was apprehended hiding in a closet at another location since his shotgun was irrelevant to appellant's guilt, and any relevance it had was substantially outweighed by its unduly prejudicial effect?

RESPONDENT'S STATEMENT OF THE CASE

A Berkeley County Grand Jury indicted appellant, Jason E. Kinloch, for murder, armed robbery, and criminal conspiracy. (Tr.p.9, lines 14-20, p.363, lines 9-15). Appellant proceeded to a jury trial on October 27, 2014 and was represented by James Falk, Esquire. (Tr.p.1). Matthew Ozment, Esquire and Mason West, Esquire of the Ninth Circuit Solicitor's Office represented the State. (Tr.p.1).

The jury found appellant guilty on October 29, 2014. (Tr.p.384, lines 17-25). The Honorable W. Jeffrey Young sentenced appellant to concurrent terms of thirty-five (35) years' imprisonment for murder, thirty (30) years' imprisonment for armed robbery, and five (5) years' imprisonment for criminal conspiracy. (Tr.p.399, lines 4-22). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

An SUV abandoned in the woods. The body of a man found dead inside. And the criminal conspiracy to commit an armed robbery at a Berkeley County home on September 9, 2012 that started it all. A jury found appellant guilty of murder, armed robbery, and conspiracy under the theory of accomplice liability.¹ (Tr.p.376, line 6-p.378, line 19; p.384, lines 17-25). In his opening statement, appellant's trial counsel conceded that appellant was at the home on the day of the shooting. (Tr.p.121, line 24).

Maurice Lincoln testified he called the victim, Robert Moultrie, his cousin, even though they were not related, because they grew up together in the same community. (Tr.p.175, lines 13-15). Lincoln stated he and Moultrie had gone to Berkeley County together two or three times prior to the shooting to visit a man named Christopher Tiller. (Tr.p.176, lines 9-20; p.178, lines 3-4). Lincoln testified Moultrie and Tiller were friends, and Moultrie had purchased cocaine from Tiller at least once. (Tr.p.178, line 23-p.179, line 13). Lincoln stated on the day of the shooting, Moultrie asked him if he wanted to go to Tiller's house for a party.² (Tr.p.179, lines 20-23). Lincoln did not go. (Tr.p.179, lines 24-25). Lincoln testified that was the last time he saw Moultrie. (Tr.p.180, lines 8-10).

Malcolm Kinloch (Malcolm) and appellant were distant cousins. (Tr.p.231, lines 14-15). Malcolm testified he had lived in the same house for about twenty years and he lived across the street from Tiller. (Tr.p.226, line 25-p.227, line 1; p.227, line 8). Malcolm stated he was outside

¹ Patrick Kinloch was the shooter. According to the internet records of the Berkeley County Clerk of Court, he pled guilty to murder and armed robbery and was sentenced to two concurrent terms of thirty (30) years' imprisonment.

² Tiller was also charged in connection with this case. According to the internet records of the Berkeley County Clerk of Court, Tiller pled guilty to accessory after the fact of a felony or murder and was sentenced to fifteen (15) years' imprisonment.

putting up a new mailbox on the day of the shooting when he saw a large SUV, either a Chevrolet Suburban or Tahoe, in Tiller's driveway, pulled up close to the house. (Tr.p.227, lines 12-23; p.229, lines 3-5; p.229, lines 15-17). Malcolm testified he saw four men come out of Tiller's house and one of them got into the SUV. (Tr.p.229, line 25-p.230, line 14). Malcolm stated he recognized appellant as the third man to walk out of the home, and who remained standing in the driveway, next to the SUV, testifying:

A: I thought it was [appellant].

Q: How do you know [appellant]?

A: He lives in the area. I don't know him that well. He's much younger than me. But I know his dad. I don't know his dad that well because he's older. And I don't know [appellant] too well, but I know of [appellant].

Q: Okay. And are you related to them in any way because y'all have the same last name?

A: Fifth, sixth cousins, something like that. I'm not sure.

Q: A lot of Kinlochs live out in that area?

A: Yeah. Yeah, pretty much. Yes, sir.

Q: Do you know where [appellant's] dad lives?

A: Yes, sir.

Q: Where does his dad live?

A: Maybe three or four house[s] down from me, on the other side of the street, on the same side of my house, maybe about three or four houses.

(Tr.p.231, lines 4-25; p.232, lines 8-9; p.232, lines 24-25). Malcolm stated he heard a man demand, "Where's the money?" and he thought it was appellant's voice. (Tr.p.230, lines 17-18; p.232, lines 4-12). Malcolm testified he heard a few seconds of yelling and then he heard a

gunshot. (Tr.p.233, lines 2-7). Malcolm stated, "I kind of froze and kept—I didn't want anybody to think I saw anything, so I continued doing what I was doing, which was putting in my mailbox." (Tr.p.233, lines 22-25). Malcolm testified he did not "want nothing to do with it." (Tr.p.234, lines 3-4). Malcolm stated he saw appellant and Tiller walking down the street in front of the house shortly after the gunshot and they waved to each other. (Tr.p.234, lines 19-24; p.237, lines 4-5). Malcolm testified someone moved the SUV about an hour after the shooting. (Tr.p.237, lines 19-25).

Malcolm admitted he was initially reluctant to talk to police about what he saw and heard because he did not "want any trouble." (Tr.p.238, lines 10-24). Moreover, a sergeant with the Berkeley County Sheriff's Office testified Malcolm was scared to come forward because he lived in a very tight community where "[e]verybody's kin to everybody." (Tr.p.283, line 25-p.284, line 10). Additionally, while Malcolm did not testify to whether Tiller was a drug dealer, Malcolm stated he saw "[q]uite a few people" visiting Tiller at all times during the day. (Tr.p.239, line 21-p.240, line 3).

A man driving home from work on September 11, 2012 spotted a large SUV parked in the trees at Francis Marion National Forest. (Tr.p.126, lines 5-10). Francis Kinloch³ (Francis) testified he thought the SUV belonged to his cousin, so he stopped to see if he needed any help. (Tr.p.126, lines 10-12). As Francis walked toward the SUV, he testified he looked in the window and saw someone "laying across the back seat." (Tr.p.126, lines 13-17). Francis testified he immediately called police.⁴ (Tr.p.126, lines 18-20). The first deputy who arrived on

³ It is not clear from the record if Francis is related to appellant. In his brief, appellant states Francis is a distant relative. (App.Br.p.5). However, Francis's testimony at trial was that he did not know appellant. (Tr.p.127, lines 8-9).

⁴ Another man also testified he saw the SUV abandoned in the woods. Juan Rodriguez worked

the scene testified he found the victim "slumped over in the fetal position in the back seat, behind the passenger's seat." (Tr.p.129, lines 16-19).

The victim had been shot once in the chest.⁵ (Tr.p.268, lines 3-17). Lieutenant Dean Kokinda collected evidence from the SUV. Kokinda testified he recovered a bullet from the floor of the back seat of the SUV. (Tr.p.149, lines 1-6; p.151, lines 18-20). The bullet was later determined to be "most consistent" with a .40 caliber Smith and Wesson bullet. (Tr.p.169, lines 4-9). Kokinda testified he collected DNA samples and fingerprints from various areas of the SUV, including the vehicle's door handles and steering wheel. (Tr.p.150, lines 10-11; p.158, lines 12-15). While the fingerprints and DNA did not match appellant, it became clear from the investigation, interviews, and evidence collected that appellant lived at Tiller's house and was there at the time of the shooting. (Tr.p.219, lines 13-16; p.220, lines 9-13; p.221, lines 14-16). Deputies collected personal items belonging to appellant from inside the home, including photographs that were hanging on the wall of a bedroom and appellant's driver's license, which was found in the dryer "mixed in with some drug paraphernalia and some drugs." (Tr.p.222, lines 9-11; p.223, lines 1-6; p.223, lines 20-22; p.224, lines 2-8). Additionally, after his arrest, appellant gave two statements to investigators with the Berkeley County Sheriff's Office in which he admitted being at the home at the time of the incident and participating in the robbery. (Tr.p.221, lines 16-19; p.222, lines 11-13).

At trial, the State introduced video and audio of the confessions made by appellant.

at a horse farm in the area and testified that he saw the SUV parked in the same spot on two different days. (Tr.p.136, lines 1-2; p.136, line 22-p.137, line 5; p.137, lines 13-14; p.138, lines 9-10). Rodriguez testified he thought the SUV belonged to hunters. (Tr.p.137, lines 17-18).

⁵ The pathologist who performed the autopsy testified to the location of the deadly wound. (Tr.p.268, lines 4-6). Appellant's brief initially states a bullet was removed from the victim's head, but later correctly states the victim was shot in the chest. (App.Br.p.5; p.7).

Appellant gave his first statement on September 19, 2012 and the second on October 24, 2012, and appellant did not ask to speak to an attorney prior to or during either statement. (Tr.p.245, lines 11-12; p.247, lines 4-8; p.247, lines 18-19; p.285, line 11; p.288, line 25-p.289, line 2).

Sergeant James Riser was the lead investigator on this case. He testified appellant was charged with murder, armed robbery, and conspiracy under the theory of "the hand of one is the hand of all" after appellant's confessions in which he admitted to being an active participant in the robbery of Robert Moultrie, which ultimately led to his death. (Tr.p.305, lines 1-6; p.305, lines 21-23). Riser testified appellant told investigators he helped plan the robbery and was standing on the sidewalk, "holding a shotgun, and yelling, 'Give it up. Give it up. Give the money up.'" (Tr.p.305, lines 11-19; p.306, line 23). Riser testified their investigation led them to believe Moultrie was at Tiller's house to buy drugs and the appellant and his co-conspirators knew Moultrie had about \$2,400 in cash with him, and discussed a plan to rob him. (Tr.p.292, line 7; p.298, lines 21-23; p.311, lines 4-8).

ARGUMENT

I.

The trial court did not abuse its discretion in denying appellant's motion for a directed verdict because the State presented sufficient evidence of appellant's guilt beyond his confessions to properly submit the case to the jury.

Relevant Facts:

As referenced above in Respondent's Statement of Facts, the charges at trial stemmed from the plan between at least three men to steal cash from Robert Moultrie on September 9, 2012. The State maintained appellant helped plan and actively participated in the armed robbery that ultimately led to Moultrie's murder and, while he was not the shooter, appellant was just as responsible for the death as the man who actually pulled the trigger because the shooting was a natural and probable consequence of the conspiracy to rob Moultrie. (Tr.p.116, line 4-p.117, line 20). The State presented evidence, testimony, and appellant's two confessions to connect him to the crime and demonstrate his participation in the conspiracy.

At the end of the State's case, appellant's trial counsel moved for a directed verdict. (Tr.p.308, lines 20-22). Counsel argued the State was required to provide corroborating evidence of appellant's involvement in the incident, other than his statements to investigators. (Tr.p.309, lines 7-12). Counsel maintained the State's only corroborating evidence was the testimony of Malcolm Kinloch (Malcolm) who provided "a half identification" of appellant and that was not enough to meet the State's burden of showing appellant helped plan the incident that led to Moultrie's death. (Tr.p.309, line 13-p.310, line 7).

The State argued Malcolm's testimony sufficiently corroborated appellant's statements to investigators to properly submit the case to the jury. (Tr.p.310, line 12-p.311, line 4). The State maintained the jury, not the court, was concerned with the weight of the evidence and testimony

it presented, and a directed verdict was inappropriate because there was sufficient evidence for the jury to find appellant participated in the crime. (Tr.p.310, lines 20-22; p.311, lines 4-16). The trial court agreed, ruling the State had met its burden and provided more than a "mere suspicion" that appellant had been involved in the deadly incident, and denied the motion for a directed verdict. (Tr.p.313, lines 6-11).

Discussion:

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt can be fairly and logically deduced, the case must go to the jury. *State v. Pittman*, 373 S.C. 527, 546, 647 S.E.2d 144, 153 (2007). When reviewing a denial of a directed verdict, an appellate court views the evidence in the light most favorable to the State. *State v. Frazier*, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). If there is **any evidence** that reasonably tends to prove the defendant's guilt, the appellate court must find the case was properly submitted to the jury. *Weston*, 367 S.C. at 293, 625 S.E.2d at 648.

It is well settled that the State must present to the jury more than a confession to reasonably establish a defendant's guilt. *State v. Blocker*, 205 S.C. 303, 303, 31 S.E.2d 908, 909 (1944). The State is required to provide additional proof sufficient to corroborate the confession. *State v. Williams*, 321 S.C. 381, 384, 468 S.E.2d 656, 657 (1996). If there is any evidence tending to establish the *corpus delicti*, then it is the duty of the trial court to pass that question on to the jury. *Id.* at 385, 468 S.E.2d at 658. In a murder case, the *corpus delicti* consists of two elements: the death of a human being, and the criminal act of another in causing the death.

Weston, 367 S.C. at 293, 625 S.E.2d at 648.

Appellant's contention that the only evidence the State offered of his guilt was his confessions is without merit. The case was properly submitted to the jury where the State offered sufficient evidence to corroborate appellant's statements to show that appellant was part of the conspiracy to rob Robert Moultrie and, therefore, ultimately responsible for his death. *See Weston*, 367 S.C. at 292, 625 S.E.2d at 648 (holding when ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight); *see also State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014) (stating the doctrine of accomplice liability arises from the theory that "the hand of one is the hand of all" and a person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by his co-conspirator incidental to the execution of the common design and purpose). Viewing the evidence in the light most favorable to the State, the testimony presented at trial reasonably tended to prove appellant's guilt. *See Frazier*, 386 S.C. at 531, 689 S.E.2d at 613 (holding when reviewing the denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State).

Malcolm Kinloch (Malcolm) testified he recognized appellant because they lived in the same neighborhood, they were related, and Malcolm knew appellant's father. (Tr.pp.226-27; pp.231-32). Moreover, Malcolm testified he recognized appellant specifically as the third man to walk out of Christopher Tiller's home and he recognized appellant's voice as the one who shouted, "Where's the money?" (Tr.pp.229-30; p.232). Such testimony is more than "vague," as appellant argues, and is sufficient to corroborate appellant's statements to investigators, in which he admitted to holding a shotgun and shouting "Give the money up" to the victim during the armed robbery. *See Williams*, 321 S.C. at 384; 468 S.E.2d at 657 (holding a confession alone is

insufficient to support a conviction, the State must also present corroborating evidence that reasonably tends to prove a defendant's guilt). Accordingly, because the State submitted testimony sufficient to corroborate appellant's statements to investigators and met the "any evidence" standard to submit the case to the jury, the trial court did not abuse its discretion in denying appellant's motion for a directed verdict.⁶

⁶ Appellant also appears to assert that trial counsel argued investigators "led" appellant into admitting details about the crime to fit their version of events by advising him it was in his best interest to tell them what they wanted to hear. (App.Br.p.9). Respondent respectfully submits this argument goes to the voluntariness of appellant's statements, which is not at issue in this appeal. *See* Rule 208(b)(1)(B), SCACR (the initial brief shall contain a statement of each issue presented for review); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (holding no point will be considered which is not set forth in the statement of issues on appeal). Regardless, the investigators who participated in the interviews testified at trial they did not threaten or coerce appellant, they did not make any promises to him and told him they could not, in fact, make any promises, and they advised him of his constitutional rights prior to the interviews. (Tr.pp.207-211; pp.245-247; pp.285-290). Furthermore, in response to a question from trial counsel during cross-examination, Sergeant James Riser, the lead investigator, specifically stated no one told appellant he would not be charged with murder if he gave a particular "statement one way." (Tr.pp.304-305). Accordingly, this argument is without merit.

II.

The trial court did not abuse its discretion in admitting a shotgun found with one of appellant's co-conspirators where the evidence was relevant and not unduly prejudicial, and any error in admitting it was harmless beyond a reasonable doubt.

Relevant Facts:

At trial, Sergeant James Riser testified about the arrest of Christopher Tiller on charges related to the case. Riser testified they arrested Tiller at his aunt's house on October 26, 2012. (Tr.p.294, lines 6-7; p.294, lines 12-13). Riser stated they approached the home and found all the windows and doors open, and they could hear a television on inside. (Tr.p.294, lines 18-25). Riser testified he and another deputy announced themselves and, when they did not receive an answer, they did a safety sweep of the house. (Tr.p.295, lines 1-8). Riser stated they entered an upstairs bedroom and found Tiller hiding in the closet with a twelve gauge shotgun by his side. (Tr.p.295, lines 9-18). During cross-examination, Riser admitted the shotgun was not loaded at the time of Tiller's arrest. (Tr.p.302, lines 4-7).

The State moved to introduce the shotgun into evidence. (Tr.p.295, line 23-p.296, line 15). Appellant's trial counsel objected, arguing the shotgun was unduly prejudicial and not relevant because it was found at a location other than the murder scene and found on a different date. (Tr.p.296, lines 17-24). The trial court called the attorneys aside for a bench conference, subsequently overruled counsel's objection, and admitted the shotgun. (Tr.p.296, line 25-p.297, line 5).

Discussion:

Generally, all relevant evidence is admissible. Rule 402, SCRE. Relevant evidence has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE.

However, some evidence, while relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

Rule 403, SCRE.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2011); *see also State v. Aleksey*, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000) (holding the trial court is given broad discretion in ruling on questions concerning the relevancy of evidence). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Tennant*, 394 S.C. 5, 12, 714 S.E.2d 297, 300-301 (2011). To warrant reversal based on wrongful admission of evidence, the appellant must prove error and probable prejudice—meaning there is a reasonable probability the wrongfully admitted evidence influenced the jury's verdict. *Byers*, 392 S.C. at 444, 710 S.E.2d at 58. Accordingly, alleged errors in admission of evidence are subject to a harmless error analysis. *See Arnold v. State*, 309 S.C. 157, 165-66, 420 S.E.2d 834, 838-39 (1992) (stating the harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained). To say that an error did not contribute to the verdict is not to say that the jury was totally unaware of it at trial. *Id.* at 166, 420 S.E.2d at 838. Rather, it is to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. *Id.* at 166, 420 S.E.2d at 839.

Appellant's contention that the trial court erred in admitting the shotgun because the evidence was not relevant and was unduly prejudicial is without merit. Appellant admitted to investigators he participated in the armed robbery by holding a **shotgun** and demanding money from the victim. (Tr.p.305, lines 11-19). The shotgun was relevant because it had a direct

bearing upon the facts of the armed robbery and appellant's presence at the crime scene, and tended to make more probable his participation in the crime. *See* Rule 401, SCRE (evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy). Moreover, while investigators conceded the victim was killed with a .40 caliber bullet and not a shotgun, admission of the shotgun at trial was not unduly prejudicial because, as noted above, appellant himself admitted he was holding a shotgun on the day of the murder. *See* Rule 403, SCRE (otherwise relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury). Accordingly, because the shotgun was relevant and not unduly prejudicial, the trial court did not abuse its discretion in admitting it into evidence over trial counsel's objection. *See Aleksey*, 343 S.C. at 35, 538 S.E.2d at 256 (holding the trial court has broad discretion in ruling on the admissibility of evidence and its decision will be reversed only if there is a clear abuse of discretion).

Regardless, even if the Court were to find the trial court abused its broad scope of discretion, any alleged error is harmless beyond a reasonable doubt. *See Byers*, 392 S.C. at 444, 710 S.E.2d at 58 (stating both error and probable prejudice must be shown to warrant reversal); *Arnold*, 309 S.C. at 165, 420 S.E.2d at 838 (stating alleged errors in admission of evidence are subject to a harmless error analysis). It is unlikely admitting the shotgun contributed to the jury's guilty verdict when an examination of the record shows the State also admitted and the jury considered: (1) two inculpatory statements from appellant in which he admitted to participating in the armed robbery and gave details of the crime; (2) testimony of investigators who interviewed appellant and his co-conspirators; (3) testimony from a neighbor who saw appellant near the victim's SUV shortly before the shooting and recognized appellant's voice demanding

money; and, (4) evidence collected that appellant lived at the home where the incident took place. *See id.* at 166, 420 S.E.2d at 839 (holding an error will be deemed harmless when the record reveals the error was unimportant in relation to everything else the jury considered). Accordingly, because admitting the shotgun into evidence did not contribute to the verdict, any alleged error in admitting it was harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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The Honorable W. Jeffrey Young, Circuit Court Judge

THE STATE,

Respondent,

v.

JASON EDWARD KINLOCH,

Appellant.

Appellate Case No. 2014-002332

PROOF OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 30th day of November, 2015.



SHERRIE BUTTERBAUGH

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ATTORNEYS FOR RESPONDENT.



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

NOV 30 2015

SC Court of Appeals

November 30, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Jason Edward Kinloch
Appeal from Berkeley County
Appellate Case No. 2014-002332

Dear Ms. Kitchings:

Enclosed for filing in your office is the original Initial Brief of Respondent, Designation of Matter and Certificate of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,


Sherrie Butterbaugh,
Assistant Attorney General

SB/dmd
Enclosures

cc: Robert M. Dudek, Esq. (w/two copies of encls.)
The Honorable Scarlett Wilson, Solicitor, 9th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Services (w/copy of encls.)