STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
The Honorable Doyet A. Earley, III, Circuit Court Judge

THE STATE,

Respondent,

v.

EDWARD PRIMO BONILLA,

Appellant.

Appellate Case No. 2016-001725

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DAVID M. PASCOE
Solicitor, First Judicial Circuit
140 N. Main St., Suite 102
Summerville, South Carolina 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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2. Whether the court erred by ruling that the Dorchester County search warrant for the Hyundai Sonata was not legal defective, and that fruits of the search of it were admissible, where the vehicle was seized in Charleston County, a jurisdiction violation of S.C. Code § 17-13-140, and the affidavit did not provide probable cause to search pursuant to the Fourth Amendment?

3. Whether the court erred by ruling that the Dorchester County search warrant for appellant's Ford work van was not legal defective, and that fruits of the search of the van were admissible, where the vehicle was seized in Charleston County, a jurisdiction violation of S.C. Code § 17-13-140, and the seizure for the van for processing in Dorchester County exceeded the scope of any consent given in Charleston County to search through the van?

4. Whether the court erred by refusing to grant the defense an in camera hearing on the qualifications of Investigator Jeff Scott to testify as a crime scene processing expert that the swabs he took from the automobile and the work van contained blood, since the court abdicated its gatekeeping function where appellant was entitled to a hearing on Scott's qualifications and the reliability of his opinion evidence?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Appellant gave his attorney a fully informed consent to disclose the location of the victim's body to law enforcement as strategy to support his claim of an accidental death where counsel fully advised him of the risks associated with revealing the body and Appellant admitted he was "on board" with the decision. Appellant's claims to the contrary are not credible.

2. Appellant had no expectation of privacy in his mother's car or his employer's van. Nonetheless, officers had probable cause to seize and search the vehicles located in a North Charleston rental car lot, notwithstanding any defects in the warrants issued in Dorchester County (Appellant's Issues II and III).

   2(a) Officers had probable cause to seize and search the Hyundai Sonata because Bonilla was the last person seen with the victim, Bonilla and the victim were seen in the Hyundai Sonata hours before her disappearance, Bonilla repeatedly lied to officers, Bonilla's mother lied to officers, and the car was located in an Enterprise Rent-A-Car lot.

   2(b) Officers obtained the consent of the owner to search and seize the Econoline van. Officers also had probable cause to seize the van because Bonilla was seen returning the van the day following the victim's disappearance, Bonilla was last seen with the victim, Bonilla lied about his employment, and stains in the van field tested positive for blood.

3. Appellant objected to the admission of crime scene photos, not the crime scene investigator's testimony about the results of the field tests or his qualifications to perform them, so the issue is unpreserved. Because Appellant did not object to the crime scene investigator's testimony, the photographs, though not objectionable, were merely cumulative (Appellant's Issue IV).

STATEMENT OF THE CASE

In December of 2015, a Dorchester County Grand Jury indicted Appellant, Edward Primo Bonilla, for murder. (R. p. 621.) Bonilla proceeded to a jury trial on August 8, 2016, before the Honorable Doyet A. Earley, III. (R. p. 1.) Russell D. Hilton, Esquire, and Mandy Wilkerson Kimmons, Esquire, represented Bonilla. Assistant Solicitors Donald Sorenson and Ryan Templeton represented the State. (R. p.1.)

The jury found Bonilla guilty of murder. (R. p. 616, line 23 – p. 617 line 3.) Judge Earley sentenced Bonilla to life imprisonment. (R. p. 620, lines 6-17.)

This appeal follows.

THE MURDER OF ASHLEY PEGRAM

Brandy Chance became concerned when her sister, Ashley Pegram, did not return home from an evening out with someone she met online in April of 2015. Ashley used a cell phone belonging to her mother, and on the night she disappeared, Ashley used that cell phone to text Edward Bonilla, whom she met on Meet Me and Kik. (R. p. 94, lines 13-19; p. 97, 15-23, p. 99, lines 15-24.) Brandy discovered her sister and Bonilla arranged a date that evening. (R. p. 100, line 25 – p. 106, line 10.) The texts indicated Bonilla picked Ashley up in her mother's driveway, and then the messages stopped for several hours. (R. p. 106, lines 6-10.) On April 4, 2015, Bonilla sent a message to Ashley's phone saying, "Hello. You still awake? Just making sure you made it home. Sorry I left you at the gas station but you were too drunk to handle." (R. p. 107, lines 2-15.)

Brandy tried to reach Bonilla on his cell phone, but he would not answer her calls or return her messages. (R. p. 108, line 4 – p. 109, line 13.) Brandy also used her mother's and her niece's phones to call Bonilla. Eventually, Bonilla returned a call to one of the phones, and Brandy asked him about her sister's disappearance. (R. p. 110, lines 1-20.) Bonilla told Brandy he left Ashley in front of a mobile home park on Old Dairy Road. (R. p. 110, lines 21-25.) Bonilla claimed he had no idea where Ashley was after he left her that night. (R. p. 111, lines 1-3.) Brandy asked Bonilla about the discrepancy between the message on Kik and where he told Brandy he left Ashley, and Bonilla said he was not familiar with the area. (R. p. 113, lines 4-10.) Brandy and her mother walked the road beside the mobile home park to look for any signs of her sister, but could not find anything. (R. p. 113, lines 15-20.)

Investigator David Harris questioned Bonilla about Ashley's disappearance, and Bonilla told Harris he took Ashley to a bonfire at his brother's house the evening of April 3, 2015.

Bonilla drove his mother's Hyundai Sonata. (R. p. 128, line 8 – p. 129, line 15.) Bonilla and Ashley arrived at the cookout at approximately 9:30 pm. (R. p. 129, line 18 – p. 130. line 16.) It was Bonilla's decision to leave the cookout. (R. p. 133, lines 3-10.) Bonilla told Harris that the second time Ashley got out of the car to relieve herself, he locked the doors and drove away. (R. p. 123, lines 14-20.) Bonilla said the two stopped at a gas station, drove up and down Hwy 78 for about thirty minutes, and then he left her on the side of the road around 2:00 am because Ashley was drinking and became combative. (R. p. 123, line 21 – p. 8; p. 124, lines 10-15.)

Robert Caudle employed Bonilla and his brother with his hardwood flooring business. (R. p. 151, line 1 – p. 152, line 6.) Cauble allowed his employees to occasionally drive their work vans to their homes if the work day finished late. (R. p. 152, lines 19-23.) Cauble owned a Chevrolet GMC van that was used by different workers, but for the most part at the time of the murder, Bonilla and his brother drove the van. (R. p. 153, lines 3-7.) Cauble also owned a Ford Econoline van that served as a "floater" in case one of the vans had mechanical trouble. (R. p. 154, lines 4-10.) On the morning of April 4, 2015, Cauble received a text at 4:50 am from Bonilla saying he was not feeling well and he would not be coming into work. (R. p. 155, line 22 – p. 156, line 7.) Bonilla also texted Cauble the following Monday and told him he was sick and would not come in to work. (R. p. 156, lines 11-21.)

On April 15, 2015, Cauble was contacted by Detective Martin, who asked Cauble if he could inspect any of the vans to which Bonilla had access. (R. p. 157, line 2 – p. 158, line 10.) Cauble agreed to meet Martin, but was unaware Bonilla used the van on the night of April 3, 2015. (R. p. 159, lines 5-14.) Coincidentally, Bonilla called Cauble just after Martin called and told Cauble he left his cell phone in one of the vans and needed access to it. (R. p. 158, lines 11-19.) When Cauble viewed the security footage from his business surveillance videos for April 3,

2015, he saw Bonilla leave the premises in one van and his brother leave the premises in a separate van, despite the fact that the men returned from the job site together in one GMC van. (R. p. 160, lines 2-19.) Bonilla's brother left work that night in the GMC; Bonilla drove the Ford Econoline. (R. p. 160, line 23 – p. 161, line 6.) The surveillance cameras showed Bonilla returned the Econoline van to Cauble Flooring on Saturday, April 4, 2015 at 10:55 pm. (R. p. 171, lines 3-17.) On the Cauble Flooring surveillance video, a small vehicle pulled in next to the van, then drove away after the van was parked. (R. p. 172, line 11 – p. 173, line 10.) Investigators would later discover Bonilla's mother, Denise Dover, had suspiciously rented a vehicle from Enterprise Rent-A-Car on April 4, 2015 at 11:01 am. (R. p. 148, line 1 – p. 149, line 23.)

Detective Martin and Bonilla arrived at Cauble Flooring at approximately the same time and Cauble heard Martin say to Bonilla, "You lied to me. You told me you didn't have a job." Bonilla told Martin he just started his job the week before. (R. p. 165, line 8 – p. 166, line 21.) Cauble told Bonilla he needed to tell the truth. (R. p. 166, lines 23-25.) Cauble also told Martin that although Bonilla typically worked out of the GMC van, on the night of April 3, Bonilla drove home the Econoline van, which was parked in the rear parking lot of Cauble's business. (R. p. 167, lines 1-16.) When Bonilla realized the deputies were searching the Econoline van, he appeared shaken. (R. p. 167, line 20 – p. 168, line.) Cauble said he consented to the search of the vans. (R. p. 168, lines 4-8.)

The officers processed the van for evidence at Cauble Flooring, and upon finding presumptively positive indicators of blood during the field tests, officers towed the van to the sheriff's department in Dorchester County to more thoroughly perform the search. (R. p. 413, lines 14-20.) Bonilla was arrested that evening. (R. p. 418, lines 22-24.) Detectives also located

the Hyundai Sonata at an Enterprise in North Charleston and found blood on the trunk of the vehicle. (R. p. 414, lines 10-14; p. 420, lines 7-11.)

Bonilla met with his attorney and elected to reveal the location of Ashley's body. After Bonilla provided a map of the area where he left the remains, Scott and other investigators, along with the assistance of cadaver dogs, found the body buried in a shallow grave. (R. p. 259, line 19 – p. 264, line 12.) Ashley was unclothed from the waist down. (R. p. 265, line 3.) DNA analysis of the blood found in the trunk of the Sonata confirmed the blood belonged to Ashley. (R. p. 357, lines 2-14.) DNA analysis of the blood on the floor and ceiling of the Ford Econoline van also confirmed the blood was Ashley's. (R. p. 357, line 23 – p. 427, line 25.)

The pathologist described the body as consistent with being buried for approximately five weeks. (R. p. 372, lines 5-20.) Only a few fragments of clothing were on the body, including a bra that appeared to have been torn near the front and a black tank top that was pulled up around the head. (R. p. 373, lines 2-6.) The victim was nude from the waist down, and had electrical tape around her right wrist. (R. p. 373, line 20 – p. 374, line 24.) The body was missing skin and the tissue was decomposed on the left wrist. (R. p. 376, lines 5-17.) The victim also had black electrical tape wrapped around her throat. (R. p. 376, line 21 – p. 377, line 2.) The victim also had a suspicious injury to the side of the head, and the tissue surrounding the buttocks and vagina was severely decomposed, suggesting a possible area of injury, as well. (R. p. 378, line 16 – p. 379, line 24.) There were fractures to both sides of the thyroid cartilage, commonly found in strangulation. (R. p. 382, lines 2-5.) The pathologist opined the cause of death was "homicidal violence," a specialized term when the victim undoubtedly died as a result of some violence, but because of the decomposition process, the precise violence causing death cannot be evaluated. (R. p. 387, lines 8-25.)

Bonilla's Claim of Accident

Bonilla attempted to explain his actions at trial. (R. p. 457, lines 11-12.) Bonilla said he and the victim left his brother's party and then stopped by Bonilla's house to leave some marijuana there because he "did not want to drive around with it." (R. p. 469, lines 13-17.) Bonilla then described his efforts to take Ashley back to her home to drop her off. According to his testimony, rather than refer to the map application he used to find her house earlier that evening, Bonilla followed the directions of an intoxicated and argumentative victim. (R. pp. 471 – 474.) At one point Ashley asked to use the bathroom at the Sonoco gas station and then later, after driving around some more to look for her house, Ashly asked Bonilla to pull over again so she could relieve herself. (R. p. 475, line 14 – p. 476, line 10.) Bonilla claimed he did not understand what was happening, so he decided to leave her by the side of the road. (R. p. 476, lines 15 – 21.) In attempting to leave Ashly, he claimed he accidentally backed into her with the Sonata. (R. p. 476, line 22 – p. 477, line 3.) When he got out of the car to check on her, she was angry and yelling at him, so he attempted to restrain her. (R. p. 477, line 4 – p. 480, line 8.) In his testimony, Bonilla repeatedly says the victim "died in his arms," but when pressed, he could not remember how he killed her. (R. p. 478, line 18; p. 478, line 24; p. 487, line 12 and line 14; p. 610, lines 2-17.)

Bonilla described putting Ashley's body in the trunk of the Sonata, then leaving the body on the side of the road somewhere down a dirt road off of Ashley Phosphate Road. (R. p. 482, line 20 – p. 483, line 6.) While he claimed to be in a state of shock, he then drove home and smoked marijuana, before deciding to take his work van to retrieve the body. (R. p. 483, lines 10 – 24.) Bonilla "for some reason" put Ashley's body back in the van and placed a bag over her head so he would not get blood in the van and taped it all round her head with electrical tape. (R.

p. 483, line 4 – p. 484, line 24.) Claiming he "wasn't functioning that night" and that he was not "in [his] clear mind," Bonilla admitted he sent a text to Ashley's phone asking about her wellbeing in an effort to "cover his tracks." (R. p. 485, line 19 – p. 486, line 18.) Bonilla drove the van around until he found a deserted road, pulled Ashley's body out of the van, hid the van inside a gate at a nearby business, and then dug a grave with a board he found in the van. (R. p. 488, line 18 – p. 489, line 11.) Bonilla dragged Ashley's body from the side of road to the grave, which is how he claims her pants fell off, where he covered her with dirt. (R. p. 489, line 5 – p. 491, line 8.) He discarded some of Ashley's belongings that would incriminate him, and then went home to sleep before picking up his girlfriend a few hours later. (R. p. 492, line 21 – p. 493, line 18; p. 494, line 1 – p. 495, line 9.) Later that Saturday, he returned the van to his work place in an effort to hide the truck and he lied to Ashley's family repeatedly out of "fear." (R. p. 551, lines 3-21.)

The jury found Bonilla guilty of murder. Judge Earley, noting the overwhelming evidence of Bonilla's guilt, sentenced Bonilla to life imprisonment. (R. p. 619, line 9 – p. 620, line 17.)

ARGUMENT

I. Appellant gave his attorney a fully informed consent to disclose the location of the victim's body to law enforcement as strategy to support his claim of an accidental death where counsel fully advised him of the risks associated with revealing the body and Appellant admitted he was "on board" with the decision. Appellant's claims to the contrary are not credible.

The crux of Bonilla's argument on appeal is he was not sufficiently informed of the "disastrous consequences that would follow if the autopsy results conflicted with what appellant said actually occurred early that morning." (IBOA at 17.) Put another way, Bonilla's attorney

should have predicted Bonilla was lying about what happened to Ashley and should have warned Bonilla what would happen if his lies were contradicted by the condition of the body. Perhaps Bonilla's attorney did warn him of those consequences; the record is not clear on the specifics of their discussion. What is clear, however, is that Leiendecker fully advised Bonilla of the risks associated with revealing the body, and Bonilla was "on board with it' when he drew a map to the remains for investigators.

Bonilla now wants to undo the revelation by claiming he was not fully informed when he consented to disclosure because his "roll of the dice" ended badly. With the benefit of hindsight, Bonilla regrets the disclosure because the remains were not as decomposed as he hoped they would be. Bonilla's hindsight, however, is not an appropriate consideration when determining whether he consented to the disclosure by his lawyer at the time. Moreover, at the pre-trial hearing, his attorney was careful not to disclose more information than necessary to protect Bonilla's confidence. After weighing the credibility of Leiendecker, who firmly believed Bonilla consented to the disclosure, and Bonilla, who conveniently forgot he consented despite his production of a map where the body could be found, the trial court properly found Leiendecker advised Bonilla of the consequences of the disclosure and Bonilla consented. The trial court did not abuse its discretion.

The Testimony on Bonilla's Informed Consent to Leiendecker

The trial judge held a hearing to determine whether public defender Mark Leiendecker had Bonilla's informed consent to disclose where the body of the victim was located pursuant to Rule 407, SCRPR, specifically Rule 1.6. (R. p. 4, line 18 – p. 5, line 7.) The parties agreed that if the trial court found Bonilla did give informed consent to Leiendecker, then they would stipulate Leiendecker's testimony. (R. p. 7, line 20 – p. 15, line 8.)

Leiendecker testified he was appointed to represent Bonilla just after he was charged with obstruction of justice in April of 2015. (R. p. 9, lines 4-15.) By May 8, 2015, Bonilla was charged with murder of Ashley Pegram. (R. p. 9, lines 10-19.) Leiendecker spoke to Bonilla several times about the benefits and risks of disclosing the location of the body to investigators. (R. p. 13, lines 16-23.) Bonilla never objected to the strategy, and he asked several questions during their discussions. (R. p. 14, lines 2-14.) Primarily, the benefit of revealing the location of the body was so that an autopsy could be performed on the remains. (R. p. 15, lines 4-10.) Leiendecker warned Bonilla that revealing the body would be conceding he was at the crime scene and possibly incriminating himself for future charges, such as desecration of human remains. (R. p. 16, lines 1-7.) Leiendecker said he fully informed Bonilla of his choices, and also advised him on his case. (R. p. 16, lines 8-16.)

Leiendecker arranged for Bonilla to be transported to the Dorchester County Sheriff's Office for the sole purpose of Bonilla's disclosure of the location of the body to the investigators. (R. p. 24, lines 5 – 23.) Leiendecker said he did not know the location of the body until Bonilla told him that day. (R. p. 11, lines 11-21.) Leiendecker met with his client before they talked to the investigators to confirm Bonilla did want to disclose the information as a matter of strategy for the defense. (R. p. 11, line 22 – p. 12, line 11.) Leiendecker specifically said he discussed all the potential benefits of disclosure as well as the harmful consequences, and the men weighed those before Bonilla made the decision to disclose. (R. p. 16, lines 16.) When questioned further by the court on his strategy, Leiendecker explained the benefit of an autopsy could help the case, but did not want to testify further about their discussions of strategy unless the court directed him to answer. (R. p. 15, lines 6-12.)

Using an iPad, Bonilla showed Leiendecker the approximate area where Ms. Pegram's remains could be found. (R. p. 12, lines 12-21.) After obtaining his client's consent, Leiendecker gave the information to Captain Phinney. (R. p. 12, lines 19-25.) Bonilla was not coerced or threatened into disclosing the information, nor was he impaired in any way. (R. p. 18, lines 7-11.) Leiendecker testified he never would have revealed Bonilla's disclosure of the body unless he was convinced Bonilla consented to the disclosure. (R. p. 19, lines 17-20.) Leiedecker said Bonilla "is a smart guy and he always had a lot of questions when we met and talked about stuff. And so, I remember having ... more than one occasion of discussion regarding this." (R. p. 14, lines 4-7.) When defense counsel asked Leiendecker whether they discussed any reasonable alternative measures that were available, Leiendecker responded that he recalled the discussion of strategy to reveal the information if it could benefit Bonilla's case "if that's what you're talking about. And there was no reasonable alternative to that purpose." (R. p. 14, lines 11-14.)

Bonilla claimed he discussed his case with Leiendecker over the secured telephone line from the jail. (R. p. 21, lines 22-25.) Bonilla said counsel made it clear to the officers he wanted to talk to his client on a private line that would not be recorded. (R. p. 12, line 16-21.) Bonilla claimed he told counsel what happened with the murder but was not aware counsel would talk to the detectives about their conversation and was surprised when counsel told him about the transport. (R. p. 22, lines 3-8; p. 23, lines 1-8.) Bonilla said they took him to an interview room, where he met with counsel. In that conversation, Bonilla told counsel generally where the body was located. (R. p. 24, lines 15-20.) Bonilla claimed counsel only advised him of the benefits of disclosing the body's location, not the ramifications. (R. p. 25, lines 1-8.) Bonilla also claimed he felt he could not back out of the agreement. (R. p. 25, lines 10-14.) When asked if he agreed with counsel's advice that disclosure was the best strategy, Bonilla said, "If I did agree with it, I was

not aware that that came out of my mouth." (R. p. 26, lines 5-6.) Although Bonilla claimed he was initially confused, he also testified that by the time of the conversation with counsel at the sheriff's department, he "was on board to do this." (R. p. 28, lines 1-3.) When the court inquired whether Bonilla was "on board with it when [Leiendecker] went in and told the Sheriff's office?" Bonilla said "Yes, sir." (R. p. 28, lines 4-6.) Significantly, Bonilla testified again that he agreed with the disclosure by the time counsel spoke to the officers and said counsel would have believed he had Bonilla's consent before he talked to the detectives. (R. p. 29, lines 7-15.)

The trial court found 1) Bonilla gave Leiendecker consent to disclose the location of the body, and 2) the consent was informed, given with the full legal guidance and explanation of the benefits and "potential harmful consequences of disclosure." (R. p. 31, lines 11-17.) The trial court further made a credibility finding of the witnesses. Judge Early found Leiendecker's testimony was "most credible" and the testimony of Bonilla "not as credible" because it was based on assumption and speculation. (R. p. 31, lines 17-20.) The court found the disclosure was not a violation of Rule 1.6, SCRPR. (R. p. 31, line 22-24.)

Leiendecker's Disclosure and the Rules of Professional Conduct

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001); *State v. Wood*, 362 S.C. 520, 608 S.E.2d 435 (Ct.App.2004). This court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000); *State v. Amerson*, 311 S.C. 316, 428 S.E.2d 871 (1993).

The permissible disclosure by an attorney of a client's confidence is governed by the South Carolina Rules of Professional Conduct. Rule 407, RPC 1.6, says, "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed

consent, the disclosure is impliedly authorized in order to carry out the representation ... ." "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." S.C. App. Ct. R. RULE 407 RPC 1.0(g).

The record clearly supports the trial court's finding Leiendecker communicated adequate information to Bonilla about the risks of disclosing the location of the body to the police, thereby admitting his involvement in the victim's death. Leiendecker said numerous times the men discussed the "strategy" involved in making such a disclosure, necessarily implying Leiendecker discussed the risk involved in making such a disclosure. In fact, Leiendecker specifically said there was no reasonable alternative to their course of action, given the evidence against Bonilla at the time he made the disclosure. (R. p. 14, lines 11-14.) Leiendecker limited his testimony to that sufficient to convince the trial court the consent was informed, but he was also careful not to disclose more than necessary about their discussions of strategy so as not to prejudice Bonilla further. (R. p. 15, lines 6-12.)

In contrast, Bonilla gave conflicting testimony about whether he felt pressured to consent to the disclosure, though he said he was "on board" with counsel's disclosure after their conversation at the sheriff's department. Clearly Bonilla must have consented to the disclosure because he drew on a map where the body should be located. Leiendecker could not have disclosed that information to the officers unless Bonilla chose to give it to him. Respondent submits there would be no other feasible explanation for why Bonilla would disclose the information with such precision to Leiendecker if he had not given his consent.

In his appeal, Bonilla argues the disclosure prejudiced him because the pathologist's testimony about the condition of the body revealed the victim was killed by "homicidal violence" and because the solicitor argued Bonilla lied to his former attorney about the manner of the victim's death. However, the Court should not consider whether Bonilla's decision to disclose the body was a poor one, with the hindsight of the conviction at trial. Instead, this Court must consider whether Bonilla, at the time of disclosure, believed he had a chance of talking his way out of a murder conviction by claiming accident if the body, buried in a shallow grave for five weeks in late Spring in South Carolina, was too decomposed to indicate otherwise. Given Bonilla's multiple attempts to conceal his culpability to the victim's family and to police, the idea that he would continue the deception with his attorney and sheriff's department is not so far-fetched. The trial court, which was better able to assess the credibility of the witnesses, found Bonilla was fully informed when he consented to the disclosure. This Court cannot find an abuse of discretion.

The Disclosure Was Harmless, Given the Remedy

Appellant does not argue a specific remedy for a violation of Rule 1.6 of Rule 407, SCRPR, and there is little case law on the matter. *McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003) does provide some insight into a claim of alleged improper disclosure by an attorney, but not in the context of a direct appeal. Bonilla argues *McClure* is inapplicable because the disclosure issue was examined in the context of an ineffective assistance of counsel claim presented in a habeas corpus action, which gives considerable deference to the findings of the state court. Bonilla is correct in that regard. However, *McClure* does illustrate the appropriate avenue for relief: Bonilla could present a claim of ineffective assistance of counsel in post-conviction relief for Leiendecker's disclosure of the body without Bonilla's informed consent. At

that point, when attorney-client privilege is waived, Leiendecker can testify fully before a PCR court on the nature of his conversation with Bonilla and whether Bonilla lied to him about the condition of the body when he buried the victim. Perhaps Bonilla told Leiendecker exactly what happened and Leiendecker advised him to disclose anyway. At the pre-trial motion, however, the specifics of the discussion were protected by Leiendecker's duty to maintain his client's confidences while defending a claim of misconduct under Rule 1.6 of the Rules on Professional Conduct.

The court declined to reach the remedy argument because it found Bonilla consented to the disclosure. However, this issue presented itself to the court as a motion to quash the subpoena and/or the testimony of Leiendecker. (R. p. 3, line 2 – p. 11, line 9.) Even if the trial court found Bonilla did not give informed consent when he authorized the disclosure, the requested remedy was that Leiendecker's testimony be stricken. A violation of a Rule of Professional Conduct reasonably results in a disciplinary action against the lawyer, or perhaps serves as the basis for an ineffective assistance of counsel claim, but it certainly would not justify a remedy as extreme as the suppression of all the evidence related to the discovery of the body. Even a Miranda violation does not compel such a drastic measure. *See United States v. Patane*, 542 U.S. 630, 639 (2004) (*Miranda* rule does not require that the statements [taken without complying with the rule] and their fruits be discarded as inherently tainted") Instead, the suppression of Leiendecker's testimony would practically only remove Bonilla's knowledge of the location of the body. Appellant would have a hard time proving prejudice when the jury could still consider the condition of the body – bound, nude from the waist down, and buried in a shallow grave – in conjunction with the victim's blood in Bonilla's cars, the fact he was the last person seen alive with the victim, the series of texts sent between the two, and the GPS cell phone records putting

Bonilla's car in several incriminating locations throughout the night. The State presented overwhelming evidence of Bonilla's guilt, even if the jury had not known he disclosed the location of the body to his attorney. Accordingly, any error in the trial court's finding of informed consent was harmless beyond a reasonable doubt.

II. Appellant had no expectation of privacy in his mother's car or his employer's van. Nonetheless, officers had probable cause to seize and search the vehicles located in North Charleston, notwithstanding any defects in the warrants issued in Dorchester County. (Appellant's Issues II and III).

Bonilla had no expectation of privacy in his mother's car, the Hyundai Sonata he drove the night he murdered Ashley Pegram. Bonilla offered no evidence of a subjective expectation of privacy in the car, and his mother's Fourth Amendment protection to her privacy in her vehicle does not transfer to Bonilla. Moreover, officers had probable cause to seize the Sonata in North Charleston because this was the last vehicle the victim was seen riding in on the night of her disappearance. The location of the car in a rental agency's lot perfectly illustrates why courts recognize an automobile exception to the warrant requirement because Bonilla and his mother appeared to be disposing of and concealing evidence. As a precaution, officers towed the car to Dorchester County and obtained a warrant from a Dorchester County magistrate before searching the vehicle extensively. The trial court, in refusing to suppress the evidence found as a result of the search, did not abuse his discretion.

The Hearings on the Search Warrant

Bonilla objected to the search of his mother's car, which was the vehicle he drove on the night of the murder. The Hyundai Sonata was recovered on Cross County Road in Charleston County. (R. p. 58, line 21 – p. 59, line 4.) The search warrant was issued by Judge Katrina Patton

in Dorchester County. (R. p. 59, lines 4-10.) Bonllia also argued the supporting affidavit to the search warrant did not provide the requisite probable cause to search the vehicle and contained incorrect information. In the affidavit, the time the victim was seen on surveillance video entering Bonilla's car was 1:12 am, when the video was actually time stamped at 12:12 am. (R. p. 61, lines 8-23.) The affiant claimed GPS records showed Bonilla was not in the area he claimed to be at the time of the video surveillance. (R. p. 62, lines 3-17.) The crux of the affidavit was that Bonilla was spotted on video at a gas station sometime after he claimed he dropped the victim off. (R. p. 62, lines 18-22.) Bonilla argued that because the information was not correct and should be redacted from the affidavit, the magistrate then lacked probably cause to issue the warrant. (R. p. 63, lines 2-8.)

The solicitor informed the trial court that at the time the officers found the car at an Enterprise rental car lot in Charleston County, they had been looking for the vehicle for a significant period of time because it was the vehicle in which the victim was seen on the gas station's surveillance video. Bonilla's mother gave them several inconsistent stories about where the Sonata was located. Detective Martin contacted the North Charleston Police Department and obtained permission to have the Sonata from the Enterprise to the Dorchester County Sheriff's Office. The officers then got a warrant in Dorchester County. (R. p. 63, line 13 - p. 65, line 7.)

Concerning the accuracy of the information in the warrant, the State argued that if the information regarding the timing of the victim at the gas station and the inconsistency in Bonilla's statements were removed, the affidavit still provided sufficient probably cause for the issuance of the warrant. (R. p. 65, line 19 – p. 66, line 16.) The solicitor argued the affidavit correctly noted the night of the murder, the victim was seen in the vehicle and then after that the GPS coordinates showed he was in the Summerville area, and Bonilla stopped cooperating with

the police. (R. p. 66, lines 20-25.) The State argued the time did not matter much, considering the Bonilla told police he dropped the victim off in a general location and was the last man seen with the victim, in the Hyundai. (R. p. 67, lines 9-21.) The court summarized the affidavit, without the incorrect information, as saying Bonilla picked up the victim in that particular car and he was the last person to be seen with her. (R. p. 68, lines 7-12.)

The court questioned where the car was located, and defense counsel informed Judge Early the car was located at an Enterprise Rent-A-Car lot in North Charleston. Bonilla's mother left the Sonata there when she rented another vehicle on Saturday of Ashley's disappearance. (R. p. 69, lines 10-16.) Bonilla claimed the Dorchester County Sheriff's Department had no authority to tow the car back to Dorchester from North Charleston. (R. p. 69, lines 16-23.) The trial court declined to rule on the issue at the moment and asked to hear the other pre-trial search warrant motion. (R. p. 72, lines 3-7.)

Bonilla next challenged the search of an Econoline van owned by Bonilla's employer, Robert Cauble. (R. p. 72, lines 12-19.) Cauble signed a consent form to search the van, which was located at his place of business in North Charleston. (R. p. 72, lines 16-22.) After field testing swabs in the van for blood, one of which was positive, the detectives sealed the van, towed it to Dorchester County, and then obtained a search warrant. (R. p. 73, lines 4-17.)

Bonilla argued the detectives exceeded the scope of the consent granted by Cauble when they stopped the search and seized the van. Bonilla claimed the consented search concluded after the field test for blood. Bonilla argued the seizure constituted a new search, which they did not have jurisdiction to do when they obtained the warrant from the Dorchester County magistrate. (R. p. 73, line 25 – p. 75, line 10.) The State argued the consent form signed by Cauble clearly authorized the officers to seize the property. (R. p. 75, lines 11 – 22.)

In ruling on both warrants, the trial court considered *State v. Weaver*, 374 S.C. 313, 649 S.E.2d 479 (2007) and found the warrants were valid because although they were towed from Charleston County, the cars were searched in Dorchester County pursuant to a lawful warrant. (R. p. 82, lines 18-20.) The court also found the automobile exception cited in *State v. Weaver* applied. Lastly, the supporting affidavit for the warrant to search the Sonata, when read to exclude the inaccurate information, indicated the victim was last seen in the car with the defendant. That information provided sufficient probable cause to search the car. (R. p. 83, lines 2-9.)

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial judge's ruling if there is any evidence to support the ruling. *State v. Missouri*, 361 S.C. 107, 603 S.E.2d 594 (2004). The appellate court will reverse only when there is clear error. *Id.*

Bonilla Had No Expectation of Privacy in the Sonata or the Econoline Van

The Fourth Amendment to the United States Constitution recognizes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Our state constitution also recognizes this right. *See* S.C.

Const. art. I, § 10 (containing language nearly identical to that in the Fourth Amendment). "[T]he ultimate measure of the constitutionality of a governmental search is 'reasonableness.' " *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). "Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant." *Id.* at 653. The touchstone of Fourth Amendment analysis is whether a person has a "constitutionally protected reasonable expectation of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967).

Bonilla is not entitled to Constitutional protection from any search or seize of vehicles in which he did not have a reasonable expectation of privacy. A defendant seeking to suppress evidence on Fourth Amendment grounds bears the burden of proving he had a reasonable expectation of privacy in the area searched or the item seized. *United States v. Rusher*, 966 F.2d 868 (4th Cir.1992); *see also Rawlings v. Kentucky*, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); *McKnight*, 291 S.C. 110, 115, 352 S.E.2d 471, 473 (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate he has a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search). To be entitled to Fourth Amendment protection, a defendant must demonstrate 1) that he personally has an expectation of privacy in the place searched, and 2) that his expectation is reasonable. *Minnesota v. Carter,* 525 U.S. 83, 88 (1998). "[C]apacity to claim the protection of the Fourth Amendment depends ... upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Rakas v. Ilinois*, 439 U.S. 128, 143 (1978). The criminal defendant retains the burden to establish that he is asserting his own Fourth Amendment rights, rather than vicariously asserting the rights of others; therefore, the defendant

bears the burden to demonstrate that he had an actual and reasonable expectation of privacy in the place illegally searched. *State v. Robinson*, 410 S.C. 519, 530, 765 S.E.2d 564, 570 (2014) (citing *Rakas*, 439 U.S. at 130 n. 1.)

Bonilla did not present testimony specifically concerning his expectation of privacy in either the Sonata or the Econoline, thereby failing to meet his burden of showing he had a reasonable expectation of privacy in either vehicle searched. However, this Court "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR 220; *see also I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000)("The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.") Here, the record supports the additional sustaining ground to support the trial court's ruling on the admissibility of the evidence from the vehicles.

The Hyundai Sonata belonged to his mother, which Bonilla acknowledges on appeal. (IBOA at 18.) And although Bonilla drove it on occasion, Bonilla later testified at trial, somewhat incredibly, that his mother took the car to Enterprise on Saturday morning because she used a rental car on days she had errands to run. (R. p. 497, lines 3-7.) Bonilla also testified Ashley became combative on the ride home because he did not want to smoke in his mother's car. (R. p. 473, lines 11-23.) It is clear from Bonilla's testimony he viewed the car as his mother's and had no subjective expectation of privacy. Bonilla cannot claim the Constitutional protections afforded to his mother. Notwithstanding the sufficiency of the warrant, which will be discussed *infra*, Bonilla cannot challenge the evidence obtained from the search and seizure of the car on the grounds his Fourth Amendment rights were violated.

Similarly, Bonilla's subjective and objective expectation of privacy in a van owned by his employer is even more remote. Bonilla and Cauble testified the vans belonged to Cauble Flooring and were used by all the employees for use at their jobs off site. (R. p. 152, lines 19-23.) While Bonilla and his brother typically drove the GMC van, the Ford Econoline van was the "floater," meaning it was shared by the employees and used if any of the other vans had mechanical issues or were otherwise engaged. (R. p. 153, line 3- p. 154, line 24.) Cauble said he was unaware Bonilla had driven the van the night of the murder. (R. p. 159, lines 5-14.) Bonilla had not driven the Econoline for work earlier that day. (R. p. 161, lines 2-8.) Thus, even if Bonilla had attempted to argue he had an expectation of privacy in a van he drove for his work, the privacy interest would more likely attach to the GMC van typically driven by Bonilla and his brother, not the Ford Econoline. Further, Bonilla specifically denied an interest in any van when he lied to Detective Martin about his employment because he knew the detectives would search the van he used to move Ashley's body across town. Bonilla had no subjective or objective expectation of privacy in the Econoline van belonging to his employer.

Bonilla asserted neither a property nor a possessory interest in the automobiles brought to Dorchester County and then searched. Bonilla failed to show he had any legitimate expectation of privacy in the trunk of the Hyuandai Sonata or the rear area of the Econoline van, and thus he is not entitled to challenge a search of those areas.

II(a). Officers had probable cause to seize and search the Hyundai Sonata because Bonilla was the last person seen with the victim, Bonilla and the victim were seen in the Hyundai Sonata hours before her disappearance, Bonilla repeatedly lied to officers, Bonilla's mother lied to officers, and the car was located in an Enterprise Rent-A-Car lot.

At the time the Hyundai Sonata was located in North Charleston, officers were already suspicious of Bonilla. The officers obtained the warrant on April 15, 2015. (R. p. 59, lines 4-6.) At that point, they knew Bonilla was the last person seen with the victim before her disappearance. Surveillance video from the Sonoco gas station showed Bonilla and the victim getting into the Sonata hours before her disappearance. (R. p. 61, lines 9-11.) Bonilla's cell phone records indicated he did not leave Ashley by the side of the road and then go home to his house to sleep, as he initially told police. (R. p. 43, line 6 – p. 48, line 4; p. 62, lines 3-17.) Bonilla also lied to officers about his employment with Cauble Flooring. (R. p. 48, lines 19-25; p. 50, lines 1-9.) Lastly, the Sonata was eventually located at an Enterprise Rent-A-Car in another county, after Bonilla's mother gave officers several inconsistent statements about the vehicle's location, suggesting Bonilla or his mother attempted to conceal the Sonata from law enforcement. (R. p. 63, lines 18-25.)

The solicitor acknowledged the information in the supporting affidavit contained incorrect information about the timing of the surveillance video and Bonilla's whereabouts; however, there is no suggestion in the record the officer purposefully misrepresented information to the magistrate. (R. p. 65, line 19 – p. 66, line 16.) An erroneous statement will only invalidate a search warrant if, after excising the erroneous statement, the remaining true statements are insufficient to establish probable cause. *See Terry v. State*, 668 So.2d 954, 958 (Fla.1996). Probable cause to search exists where the known facts and circumstances are sufficient to

warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place. The principal components of the determination of probable cause will be whether the events which occurred leading up to the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. *State v. Brown*, 389 S.C. 473, 482, 698 S.E.2d 811, 816 (Ct.App. 2010); *State v. Morris*, 395 S.C. 600, 609–10, 720 S.E.2d 468, 472 (Ct. App. 2011).

The trial court made no finding the officer intentionally misled the magistrate in his affidavit. The trial court properly considered the remaining evidence and found, even without the information on the timing of the surveillance video, officers had probable cause to seize the automobile from the Enterprise in North Charleston. As the court also recognized, pursuant to the automobile exception, if there is probable cause to search a vehicle, a warrant is not necessary so long as the search is based on facts that would justify the issuance of a warrant. *Maryland v. Dyson*, 527 U.S. 465 (1999).

The automobile exception to the search warrant requirement is based on: (1) the ready mobility of automobiles and the potential that evidence may be lost or destroyed before a warrant is obtained and (2) the lessened expectation of privacy in motor vehicles which are subject to government regulation. *State v. Cox*, 290 S.C. 489, 351 S.E.2d 570 (1986). The automobile exception does not contain a separate exigency requirement. *Maryland v. Dyson*, supra. If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more. *Pennsylvania v. Labron*, 518 U.S. 938 (1996).

In the instant case, it was reasonably prudent for officers to believe evidence of a crime would be found in the Sonata. Investigators knew Bonilla was the last person seen with the

victim as late as midnight on the night she disappeared. The victim was also seen getting into the car the police sought to search. Bonilla made several inconsistent and not credible statements about where he left Ashley when he dropped her off on the aide of the road. (R. p. 67, lines 9-21.) Significantly relevant to the automobile exception, the officers found the car at an Enterprise Rent-A-Car lot, which certainly gives rise to a reasonable inference that Bonilla and his mother were trying to conceal evidence. Therefore, upon finding the Sonata, the officers had probable cause to seize the car at that time. In an effort to protect the integrity of the investigation, they chose to impound the vehicle in Dorchester County and obtain a warrant from a Dorchester County magistrate. The trial court, in finding the officers committed no Fourth Amendment violation and denying Bonilla's motion to suppress the evidence found in the Sonata, did not abuse its discretion.

II(b). Officers obtained the consent of the owner to search and seize the Econoline van. Officers also had probable cause to seize the van because Bonilla was seen returning the van the day following the victim's disappearance, Bonilla was last seen with the victim, Bonilla lied about his employment, and stains in the van field tested positive for blood.

The record clearly reflects Bonilla had no ownership or control of the Econoline van. Robert Cauble was Bonilla's employer and the owner of Cauble Flooring. (R. p. 49, lines 1-20.) Cauble owned several vans for his business, which he would allow his employees to drive home only on occasion. (R. p. 152, lines 19-23.) Detective Martin called Cauble to discuss Bonilla's employment and to ask Cauble if he could look at the vans Bonilla used. (R. p. 157, line 3 – p. 158, line 7.) As the owner of the vans, Cauble consented, signing a release indicating he agreed to the search and possible seizure of the property. (R. p. 168, lines 4-8; 628.)

Bonilla's argument that the warrant obtained from Dorchester County somehow invalidated Cauble's consent and violated Bonilla's Fourth Amendment rights is nonsensical. As discussed earlier, Bonilla had no expectation of privacy in a van owned by his employer and used by all the employees as a floater van when needed. Even so, officers obtained Cauble's consent before searching the van at Cauble Flooring, and then taking the van to Dorchester County where it could be more thoroughly searched and documented. After obtaining Cauble's consent, the officers did not need probable cause to search and seize the van without a warrant pursuant to the automobile exception, but probable cause certainly existed at this point. Bonilla, who was last seen with the victim, lied about his employment. Bonilla was also seen on Cauble's surveillance video taking the van home the night of the murder and then suspiciously returning it later Saturday night, after telling his employer he was too sick to work that day. Further, when officers performed a field test for blood on some of the stains in the back of the vans, the swabs tested presumptively positive for blood. At that point, it was reasonably prudent for officers to believe evidence of a crime would be found in the Econoline driven by Bonilla on the night of Ashley's disappearance. Given Bonilla's attempts to conceal his employment with Cauble and Bonilla's after-hours access to the Cauble Flooring van fleet, it was even more practical for the officers to seize the van to preserve any evidence that might be van and move it to the sheriff's impound lot in Dorchester County. To err on the side of caution, officers then obtained a search warrant to perform the more exhaustive search of the van.

The officers went above and beyond that necessary to preserve the integrity of their investigation. Bonilla, who is not entitled to Fourth Amendment protection in Cauble's van, cannot argue the evidence found in the van should be suppressed simply because a magistrate in

Dorchester County issued the warrant rather than a Charleston County magistrate. The trial court did not abuse its discretion in refusing to suppress the evidence found in the Econoline van.

III. Appellant objected to the admission of crime scene photos, not the crime scene investigator's testimony about the results of the field tests or his qualifications to perform them, so the issue is unpreserved. Because Appellant did not object to the crime scene investigator's testimony, the photographs, though not objectionable, were merely cumulative (Appellant's Issue IV).

Bonilla did not request an *in camera* hearing on the qualifications of Investigator Jeff Scott or on the reliability of the field tests performed on the vehicles. Instead, Bonilla objected only to the introduction of photographs depicting the field tests results. Bonilla made no objection to Scott's testimony of his findings or on his qualifications. This issue is not preserved for review.

Bonilla'a Objections at Trial

Prior to the introduction of several photographs of the back of the van, Appellant objected to the specific photos that illustrated the "opinion" testimony of Detective Jeff Scott, who he presumed would testify the field tests for blood in the back of the van were positive. (R. p. 193, lines 7-12.) Appellant said Scott would give his opinion testimony, based on an experiment from a field test in the van. (R. p. 193, lines 14-16.) Appellant claimed the testimony was more prejudicial than probative. (R. p. 193, lines 22-23.) The trial court attempted to clarify the basis of Appellant's objection during the following exchange:

> MR. HILTON: I don't have a general list. It's so many pictures. And the issue is that I presume Jeff Scott, the crime scene detective, is going to get up here and testify that this was the van, this was swabs taken from – these were swabs taken from the van. And that certain of these swabs are going to test positive for blood. And he's saying that some of them don't test positive for blood. And the issue is he's giving his opinion testimony, would be giving his opinion testimony, based on an experiment essentially that he's done from a field test in the van. And I don't

think that in this particular case where you have got another substance that looks strikingly like blood that he can get up and testify, in his opinion, based on some field test that this is blood, this is not blood, this is blood, this is not blood. And then presumably say it's Ashley Pegram blood. I think that's more prejudicial than probative.

THE COURT: Well, I doubt he's gonna say it's Ashley Pegram's blood. He's not qualified to do that.

MR. HILTON: Well, that's certainly going to be the inference of his testimony. And I agree, they're going to have to connect that through the DNA, but that will ultimately be proved. And, ultimately, they're going to say that all of this blood is Ashley Pegram's when the only thing we have is some field test. And I don't think that he's -- that Detective Scott, without an evidentiary hearing on the scientific reliability of his evidence, is going to be able to say with any degree of scientific certainty that this is even blood.

THE COURT: I don't know what he's going to say.

MR. HILTON: Well, that would be our objection, Your Honor.

THE COURT: You're objecting to the pictures, the photographs?

MR. HILTON: Yes, sir.

(R. p. 193, line 7 – p. 194, line 16.) The court reserved ruling on the admissibility of the photos until Scott testified. (R. p. 194, lines 17-22, p. 195, lines 7-9.)

Scott's Testimony

Investigator Jeff Scott testified he had been employed with the Dorchester County Sherriff's Department since 2015, and worked for the Colleton County Sherriff's Office before that. (R. p. 196, line 5 – p. 197, line 6.) Scott worked as a crime scene investigator in both counties since 2006. (R. p. 197, lines 12-23.) Scott has received numerous instances of on the job training, as well as attended several classes at the Criminal justice Academy on blood stain analysis, homicide investigation classes, and photography classes. (R. p. 197, line 21 – p. 198, line 5.) Scott described how he became involved with Bonilla's case, after Detective Martin

asked him to investigate the Ford Econoline van at Cauble Flooring. (R. p. 198, line 15 – p. 199, line 25.)

When the State offered the photographs of the van into evidence, Appellant objected to the admission, claiming the photo offered "a scientific test without proper foundation." (R. p. 200, lines 5-14.) The court overruled the objection, saying "He hasn't offered anything, a scientific test or anything else." (R. p. 200, lines 15-16.) The solicitor then asked Scott to explain how he processed the van. (R. p. 201, lines 19-20.) Scott described the work-related equipment and floor staining products found in the back of the van. (R. p. 202, line 14 – p. 203, line 3.) The solicitor then went on to ask Scott whether a field test existed to determine whether a stain at a crime scene was blood, and Scott described their use of O-Tolidine reagent, which is used as an indicator of blood. (R. p. 203, lines 4-22.) Scott then explained that if a sample tests presumptively positive for blood, the stain is sent to SLED for further DNA testing. (R. p. 203, line 23 – p. 204, line 2.) Scott said he tested four suspected stains in the Ford van, and one of the four tested presumptively positive for blood. (R. p. 205, line 22 – p. 208, line 20.) Scott testified that after the fourth stain reacted positively for blood, the investigators stopped processing the van and secured the vehicle for transport to Dorchester County where they could perform more tests. (R. p. 208, line 21 – p. 209, line 3.) Scott said the investigators looked inside the GMC van and found no apparent blood stains, but they did remove a cell phone from the center console of the van. (R. p. 210, lines 1-16.) At no point during this portion of Scott's testimony did Appellant object to the description of the testing for blood or to Scott's results. (R. pp. 205-213.)

Scott testified he was later asked to process a Hyundai Sonata. (R. p. 213, lines 3-9.) Again, when the State attempted to introduce photographs of the Sonata and the vehicle's processing, Appellant again objected, on "the basis of introduction of essentially a scientific test

without any sort of hearing on whether it was proper or not." (R. p. 213, line 6 – p. 214, line 12.) Bonilla again made it clear he objected to the photograph of the test results, not Scott's testimony about the results:

> MR. HILTON: Your Honor, specifically with regard to all of the exhibits except State's 25 that would be subject to the previous objection that I made.
>
> THE COURT: State's 25?
>
> MR. HILTON: With regard to State's 25, I would object to that one on a similar basis.

(R. p. 214, lines 3-8.) Again, the court allowed the admission of all but one photograph, electing to rule on that photograph after the State developed more testimony. (R. p. 214, lines 14-19.)

Investigators found blood stains in the trunk of the Sonata. (R. p. 217, line 2 – p. 218, line 7.) Scott said they repeated the O-Tolidine field test and then performed a more specialized test called a hexagon test. (R. p. 218, lines 14-17.) Scott described the hexagon test, and then the State offered the photograph of the results of the hexagon test on the stain from the trunk. (R. p. 220, lines 4-9.) Appellant again objected to the photo on the "basis of no foundation. *State versus Council*." (R. p. 220, lines 10-11.) The solicitor asked more foundational questions about the use of the hexagon test and the court allowed the photograph over Appellant's objection. (R. p. 220, line 15 – p. 222, line 1.)

Scott found presumptive blood stains on numerous items in the back of the van and on the floor of the van after the items were removed. (R. pp. 229-232.) Appellant again objected to the introduction of photographs showing the result of a third test called the leucocrystal violet test, which detects a pattern of suspected blood stains by first spraying a liquid and then

illuminating the area with a special light. (R. p. 251, line 1 – p. 254, line 3.) The trial court again overruled Bonilla's objection. (R. p. 254, lines 1-3.)

This Issue is Not Preserved

The reliability of Scott's testimony concerning the reliability of the field tests he performed is not preserved for review. Whether Scott was sufficiently qualified to perform those tests is not preserved for review. Appellant claims defense counsel objected to Scott's offer of opinion scientific evidence without an evidentiary hearing (IBOA at 30), but that was not the basis of the objection.

"An issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review." *State v. Nichols*, 325 S.C. 111, 120–21, 481 S.E.2d 118, 123 (1997). "Where an objection and the ground therefore is not stated in the record, there is no basis for appellate review." *State v. Morris*, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct.App.1991). A contemporaneous objection is required to preserve issues for direct appellate review. *State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999).

What Bonilla actually objected to was the admission of the photographs showing the results of the field tests. During Scott's testimony about the results of the O-Tolidine test, Appellant failed to offer a contemporaneous objection to the testimony on his findings. By the time the State sought to introduce photos of the swabs indicating a presumptively positive test result, Scott had already testified three of the swabs tested negatively and one tested presumptively positive for blood. (R. pp. 205-213.)

Appellant never challenged Scott's qualifications to inform the jury of the field tests for blood. However, Scott testified about his extensive experience. Scott worked at the Dorchester County criminal investigations division for approximately 1.5 years until he transferred to the

crime scene division. (R. p. 196, lines 15-19.) Before he worked for Dorchester County, Scott worked for the Colleton County Sheriff's Office for many years as a criminal investigator. (R. p. 197, lines 1-20.) Scott had numerous instances of on the job training and had taken several classes at the Criminal justice Academy. (R. p. 197, line 21 – p. 259, line 5.) Scott went on to describe in detail how he photographed and documented the vehicles. (R. p. 201, line 21 – p. 202, line 6.) Scott also explained the O-Tolidine blood reagent kit, and how stains that tested presumptive positive for blood would be sent to SLED for DNA analysis. (R. p. 203, line 13 – p. 204, line 6.) Scott then testified about numerous stains that did not test positive for blood. (R. p. 205, line 22 – p. 207, line 21.) Despite the Scott's extensive experience as a crime scene investigator, the State need not have qualified Scott as an expert because Scott did not testify as an expert offering an opinion. Instead, Scott testified as a fact witness for the State when he described how he processed the scene, as well as the tests he performed.

While a challenge to the reliability of evidence generally goes to weight and not admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). If the proffered testimony is scientific in nature, then the circuit court must determine its reliability per the factors set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). Under *Council*, the court must consider the following: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Id.* at 19, 515 S.E.2d at 517. Because Appellant did not properly object to the admissibility of the testimony about the O-Tolidine, hexagon, and

leucocrystal violet, the trial court did not rule upon whether each of these tests satisfied the *Council* factors for admissibility.

Even if the Court were to find the trial court erred in allowing the testimony about the field tests to be admitted without an evidentiary hearing, any error in its omission is harmless beyond a reasonable doubt. The swabs that tested presumptively positive for blood were sent to SLED for DNA analysis. Forensic Scientist Paul Meeh of SLED testified the DNA found in the back of the van and the trunk of the Sonata belonged to Ashley Pegram. (R. pp. 346- 360.) Of course, Bonilla also described how he put Ashley's body in the Sonata's trunk and then moved it to the van. (R. pp. 479 – 484.) Given the State's overwhelming direct and circumstantial evidence against Bonilla, he cannot claim the failure to make a finding of reliability about the field tests in any way prejudiced him.

CONCLUSION:THE TRIAL COURT COMMITTED NO ERROR

Appellant clearly consented to the disclosure of the victim's body through his attorney as strategy to support his claim of an accidental death. Appellant was not entitled to challenge the search of the vehicles because he had no reasonable expectation of privacy in either his mother's car or his employer's van. Even so, officers had probable cause to seize the vehicles and then search the car and van at the Sheriff's Department in Dorchester County pursuant to a warrant issued by a Dorchester County magistrate. Finally, the photographs of the field tests for blood offered no opinion testimony, merely the results of chemical reagent testing. The admission of the pictures, in addition to the testimony of Investigator Scott offered without objection, was proper.

The record before this Court supports the trial court's findings on all issues. The judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
No. 5758

MELODY J. BROWN
Senior Assistant Deputy Attorney General
No. 14244

SUSANNAH R. COLE
Assistant Attorney General
No. 68383

DAVID M. PASCOE
Solicitor, First Judicial Circuit

BY: _____
SUSANNAH R. COLE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

January 3, 2018.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
The Honorable Doyet A. Earley, III, Circuit Court Judge

THE STATE,

Respondent,

v.

EDWARD PRIMO BONILLA,

Appellant.

Appellate Case No. 2016-001725

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

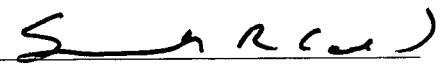
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
No. 5758

MELODY J. BROWN
Senior Assistant Deputy Attorney General
No. 14244

SUSANNAH R. COLE
Assistant Attorney General
No. 68383

DAVID M. PASCOE
Solicitor, First Judicial Circuit

BY: 

SUSANNAH R. COLE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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