ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Perry Buckner, Circuit Court Judge

Appellate Case No. 2009-139266

STATE OF SOUTH CAROLINA,

Respondent,

v.

ANDRE T. RICHARDSON,

Appellant

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

ISAAC McDUFFIE STONE, III
Solicitor, 14th Judicial Circuit

Post Office Box 1880
Bluffton, SC 29910
843-470-3725

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Perry Buckner, Circuit Court Judge

Appellate Case No. 2009-139266

STATE OF SOUTH CAROLINA,

Respondent,

v.

ANDRE T. RICHARDSON,

Appellant

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

ISAAC McDUFFIE STONE, III
Solicitor, 14th Judicial Circuit

Post Office Box 1880
Bluffton, SC 29910
843-470-3725

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FEDERAL CASES

STATE CASES

COURT'S STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in denying Richardson's motion for a directed verdict on his murder charge in light of State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, Op. No. 27084 (S.C. Ct. filed Dec. 28, 2011) (Shearhouse Adv. Sh. No. 46 at 87)?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Andre T. Richardson, II, was indicted at the June 26, 2009 term of the Court of General Sessions for Colleton County for financial identity fraud and murder. The charges arose from the October 27, 2008 murder of Frederick Steward. ROA 455-58. On September 1, 2009, the indictments were called to trial before the Honorable Perry M. Buckner, presiding judge. The Appellant was present and represented by Harris S. Beach, Public Defender of the 14th Circuit. The prosecution was handled by Sean P. Thornton of the Fourteenth Circuit Solicitor's Office. On September 2, 2009, the jury found Appellant guilty on both indictments. ROA 440. The Appellant was sentenced by Judge Buckner to terms of thirty-five (35) years imprisonment for murder and five (5) years, concurrent, for financial identity fraud. ROA 451, ll. 7-15.

The Appellant made a timely appeal. The Appellant is represented by Robert M. Dudek of the S.C. Commission on Indigent Defense, Division of Appellate Defense. On January 6, 2011, counsel made a Final Anders Brief of Appellant and Petition to be Relieved as Counsel. A pro se brief was filed by the Appellant. On February 1, 2012 the South Carolina Court of Appeals issued an order denying the petition to be relieved as counsel and directed the parties to brief the following issue:

> Did the circuit court err in denying Richardson's motion for a directed verdict on his murder charge in light of State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, Op. No. 27084 (S.C. Sup. Ct. filed Dec. 28, 2011) (Shearhouse Adv. Sh. No. 46 at 87)?

State v. Richardson, Order (S.C. Ct. App. February 1, 2012). The Appellant made his "Brief of Appellant" on June 1, 2012. This briefing follows.

ARGUMENT

The Circuit court properly denied a motion for directed verdict on murder where substantial circumstantial evidence existed including the Appellant's inconsistent and fantastical statements and his own actions after the murder.

This is a case about the murder of 80 year old Freddie Steward by his grandson, Andre Richardson, on October 27, 2008. Although based upon circumstantial evidence, taking it in the light most favorable to the prosecution it ultimately reveals a conclusion that Richardson shot his grandfather ten times and dumped him on the side of a road, then left him there and coldly went and got a haircut, feigning ignorance of the event for almost four months. At that point in February 2009, Richardson sought out law enforcement and in an interview of almost four hours proceeded to give a new fantastical story about how he and his grandfather abducted from their home by four (4) masked Ninja-like marauders, drove them out to a highway, pull his grandfather out of Appellant's vehicle and shot him ten (10) times.[1] Respondent submits that viewing the record as whole, the trial judge properly denied the motion.

Relating implausible, conflicting tales to the jury can be rationally viewed as further circumstantial evidence indicating guilt. U.S. v. Burgos, 94 F.3d 849, 867 -868 (4th Cir. 1996). See, e.g., Wright v. West, 505 U.S. 277, at 295-96, 112 S.Ct. 2482 at 2492 (1992) (explaining

---

[1] See State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. Among other considerations is the credibility of the witnesses, including that of the appellant himself."). Also U.S. v. Williams, 390 F.3d 1319 (11th Cir. 2004)(a statement by a defendant if disbelieved by a jury may be considered as substantive evidence of guilt, citing U.S. v. Brown, 53 F.3d 312, 314 (11th Cir. 1995). "By substantive' we mean evidence adduced for the purpose of proving a fact in issue as opposed to evidence given for the purpose of discrediting a witness(i.e., showing that he is unworthy of belief), or of corroborating his testimony.").

that a defendant's contradictory, vague, and evasive answers contribute to a finding of guilt); United States v. Johnson, 64 F.3d 1120, 1128 (8th Cir.1995) (observing that lying to law enforcement agents contributes to a finding of guilt), cert. denied, 516 U.S. 1139, 116 S.Ct. 971, 133 L.Ed.2d 891 (1996); United States v. Stanley, 24 F.3d 1314, 1321 (11th Cir.1994) (noting that conflicting statements and implausible stories are indicia of guilt and enter the calculus for sustaining conspiracy convictions); United States v. Casilla, 20 F.3d 600, 606 (5th Cir.) (explaining that trial testimony that is inconsistent with various statements made to customs officials, especially when accompanied by other circumstantial evidence, gives rise to a reasonable inference that a defendant participated in a narcotics conspiracy and attempted to conceal his participation), cert. denied, 513 U.S. 892, 115 S.Ct. 240, 130 L.Ed.2d 163 (1994); United States v. Solis, 841 F.2d 307, 310 (9th Cir.1988) (stating that "making up an implausible cover story" is a circumstance contributing to a finding of guilt in connection with a drug conspiracy).

Indeed, in United States v. Bennett, 848 F.2d 1134, 1139 (11th Cir.1988), the Eleventh Circuit recognized "that a defendant's implausible explanation may constitute positive evidence in support of a jury verdict," and noted that such a finding was particularly apropos because the defendants' "explanation of their activities was dubious, if not wholly incredible." Observing that juries take account of incredible tales, Bennett explained that "[a] reasonable jury might well disbelieve the explanation and conclude that the [defendants] were lying in an attempt to cover up illegal activities." Id. A defendant's credibility is a material consideration in establishing guilt, and if a defendant "take[s] the stand ... and denies the charges and the jury thinks he's a liar, this becomes evidence of guilt to add to the other evidence." United States v. Zafiro, 945 F.2d 881,

888 (7th Cir.1991), aff'd, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993). As the Wright Court explained, "[i]n evaluating [the defendant's] testimony ... the jury was entitled to discount [the defendant's] credibility ... [a]nd if the jury did disbelieve [the defendant], it was further entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt." Wright, 505 U.S. at 296, 112 S.Ct. at 2492. Preposterous as Richardson's February statement may seem, the jury could have believed it, but obviously the jury did not. Determining credibility of witnesses and resolving conflicting testimony falls within the province of the factfinder, not the reviewing court. See U.S. v. Burgos, 94 F.3d 849, 867 -868 (4th Cir. 1996).

STANDARD OF REVIEW

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006).[2] "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury." Id. at 292–93, 625 S.E.2d at 648. The trial court may not consider the weight of the evidence. Id. at 292, 625 S.E.2d at 648. However, "when the [circumstantial] evidence presented merely raises a suspicion of guilt," the trial court should direct a verdict in favor of the accused. State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011) (citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)).

---

[2]See also Holland v. United States, 348 U.S. 121, 140 (1954) ("Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.")

A mere suspicion is a belief that is inspired by "facts or circumstances which do not amount to proof." State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). Accord State v. Gilliland, 2012 WL 5935618, 3 (S.C.App.,November 28, 2012). [3]

Respondents would note that most important, a statement by a defendant, if disbelieved by the jury, may be considered as substantive evidence of the defendant's guilt. U.S. v. Brown, 53 F.3d 312, 314 (11th Cir. 1995); U.S. v. Kendrick, 682 F.3d 974 (11th Cir. 2012) (. "See, e.g., United States v. Allison, 908 F.2d 1531, 1535 (11th Cir.1990); United States v. Howard, 895 F.2d 722, 724–25 (11th Cir.1990); United States v. Bennett, 848 F.2d 1134, 1139 (11th Cir.1988); United States v. Eley, 723 F.2d 1522, 1525 (11th Cir.1984). "By "substantive evidence" we mean evidence "adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (i.e, showing that he is unworthy of belief), or of corroborating his testimony." See Black's Law Dictionary 1429 (6th ed. 1990). To be more specific, we [the 11th Circuit] have said that, when a defendant chooses to testify, he runs the risk that if disbelieved "the jury might conclude the opposite of his testimony is true." Atkins

---

[3]A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

v. Singletary, 965 F.2d 952, 961 n. 7 (11th Cir.1992); accord United States v. Sharif, 893 F.2d 1212, 1214 (11th Cir.1990)." U.S. v. Brown, 53 F.3d 312, 314 (11th Cir. 1995). The jury could also properly consider appellant's false exculpatory statements upon his arrest as substantive evidence of his guilty intent. See, e.g., United States v. Eley, 723 F.2d 1522, 1525 (11th Cir.1984).

How The Directed Verdict Issue was Raised

After the State completed its case in chief, the defense moved for a directed verdict of acquittal on both the murder charge and the financial identity fraud. ROA 366-68. Pertinent to the murder charge, defense counsel Beach argued that the State had not shown a prima facie case against Richardson. He asserted that "they have no gun" and no evidence that he committed the crime, but rested upon an alternative theory on the elements of circumstantial evidence. Particularly, he claimed the State had no motive and nothing to show Richardson's participation in the crime. ROA 367.

Deputy Solicitor Thornton urged denial of the motions. As to the financial transaction card fraud, he pointed out that Ms. Stanley indicated that a payment was made after his death and after October 27, 2008 in a telephonic transaction. ROA 366, ll. 7-13. He said that knowledge of an account number and routing number would be necessary to accomplish it. See ROA 361, ll. 15-25. As to how the Appellant would be tied into that transaction, the prosecution noted that Appellant had told Allen Inabinett that he had used the account after his grandfather's death to Ford Motor Credit. ROA 368, ll. 17-24, citing State Exhibit 16 and ROA 340, ll. 1-6.

Concerning the murder charge, Solicitor Thornton stated that the Appellant had placed himself and his car at the scene which matched the evidence by eyewitnesses who saw Mr.

Steward and saw a car similar to his in the vicinity. ROA 370, l. 22 - p. 371, l. 1.

Solicitor Thornton also, in noting it was a circumstantial evidence case, noted "the outrageous statement that he makes about other people involved." ROA 371, ll. 2-6. See R. 307-315. He argued that the only thing Richardson did not admit to is pulling the trigger. He notes the belated story told to law enforcement [on February 27, 2009] months after lying to law enforcement and puts himself at the scene with the circumstantial evidence was sufficient even though there was no eyewitness testimony. ROA. 371.

Judge Buckner denied the motion for a directed verdict. ROA 371, l. 22- p. 372, l. 14; p. 379, ll. 18-19.[4]

ANALYSIS

In his argument before this Court , the Appellant essentially argues that the State's Case was solely based upon the fact that Appellant was not forthcoming about the mysteriously alleged violent kidnapping[5] contrasted against his four months of an exculpatory claim that he was home in bed at the time of the crime. Brief of Appellant, p. 14-15. He further speculates that people are fearful of giving police "a statement that places them in an area where a crime was committed for fear of being implicated in the crime, not believed." Is, p. 15. Richardson asserts

---

[4] The defense renewed the directed verdict motions after the guilty verdict. ROA 449, ll. 4-22.

[5] See, e.g., State v. Cook, 204 S.C. 295, 300, 28 S.E.2d 842, 844 (1944) ("'Uncontradicted evidence is not, however, necessarily binding on the court or a jury, but may be disbelieved where it is contrary to natural or physical laws, opposed to common knowledge, inherently improbable, inconsistent with circumstances in evidence, or somewhat contradictory in itself, especially where the witness is a party or interested, or where, in the very nature of things, it is impossible to secure opposing testimony.' " (citations omitted)).

this evidence only raises a suspicion that he killed his grandfather. Respondent submits that Appellant's spider web of lies was pierced by the combination of fact witnesses and the evident inconsistencies in his statements and placed him as the true perpetrator of his grandfather's brutal death.

The Appellant extensively summarizes a series of opinions from the South Carolina appellate court's concerning the "substantial circumstantial evidence." What is evident from those cases is the stark difference with the full record in Richardson's case which is beyond proof of a mere suspicion.

The Cases Concerning Circumstantial Evidence.

The courts have previously assessed its earlier opinions in addressing the substantial circumstantial evidence issue. These assessments are persuasive in revealing the difference between those cases are Richardson's guilt.[6]

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the State accused Bostick of killing his neighbor, Polite, and burning down her home. The State presented the following evidence against Bostick: (1) investigators found personal items belonging to Polite, including a

---

[6] See State v. Bostick, 392 S.C. 134, 136-137, 708 S.E.2d 774, 775 (2011) (identifying no facts suggesting Bostick attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Arnold, 361 S.C. 386, 388-389, 605 S.E.2d 529, 530-531 (2004) (identifying no facts suggesting Arnold attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Lollis, 343 S.C. 580, 581-583, 541 S.E.2d 254, 255 (2001) (identifying no facts suggesting Lollis attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Mitchell, 341 S.C. 406, 408, 535 S.E.2d 126, 126-127 (2000) (identifying no facts suggesting Mitchell attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime); State v. Schrock , 283 S.C. 129, 130-132, 322 S.E.2d 450, 451 (1984) (identifying no facts suggesting Schrock attempted to flee from officers, evade detection, or obtain assistance from another in covering up the crime). Thus, these cases are wholly distinguishable from the situation presented in Richardson's case.

watch and two sets of car keys, in a burn pile located on the Bostick family property; (2) Bostick's shoes contained a pattern that matched gasoline, and gasoline was the accelerant used to start the house fire; (3) and investigators found blood on the clothes Bostick was wearing the day of the murder, but that evidence could not be matched to Polite's DNA. Id. at 141–42, 708 S.E.2d at 778. However, the State never introduced a motive or a murder weapon into evidence. Id. Thus, "the evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime." Id. at 142, 708 S.E.2d at 778. See State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

In State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984), the sheriff's department responded to the report of a fire at the home of Mr. and Mrs. Strickland. Schrock, 283 S.C. at 130, 322 S.E.2d at 451. Mr. Strickland's body was found amid the remains of the burned home, and Mrs. Strickland's body was floating in a small pond 200 feet from the residence. Id. at 131, 322 S.E.2d at 451. Cigarette butts, an empty oil can, and a rolled-up newspaper were found on the premises. Id. Between the house and the garage, a footprint was found and photographed, and a plaster cast was made. Id. Schrock was eventually indicted and tried for the murders. Id. at 130, 322 S.E.2d at 451. The evidence against Schrock produced at trial was exclusively circumstantial. **Nothing placed Schrock at the scene of the crime, and experts could not definitively testify that the footprint was made by shoes belonging to Schrock.** Id. at 132, 322 S.E.2d at 452. Additionally, while witnesses could testify that Schrock was wearing tennis shoes the afternoon before the fire and the next morning, they could not place him less than three or four miles away from the Strickland home, and the shoes presented as evidence were not identified by any witness who had seen Schrock wearing tennis shoes. Id.

Although Schrock admitted to smoking the same Marlboro brand cigarettes located at the scene, tests run by the FBI did not indicate that Schrock had smoked the butts found. Id. at 131–32, 322 S.E.2d at 451. This Court found that the State had not been able to muster substantial circumstantial evidence warranting submission of the case to the jury; therefore, a directed verdict in favor of Schrock should have been granted by the circuit court. Id. at 134, 322 S.E.2d at 453. See State v. Bostick, supra.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the victim, Jennings Cox, was shot, and his body was found off a dirt road in Colleton County. 361 S.C. at 388, 605 S.E.2d at 530. On the last day Cox was seen alive, he borrowed a friend's BMW Z3 to go to a dentist's appointment. Id. at 388, 605 S.E.2d at 530. Evidence showed he withdrew money from an ATM on that day, but he was not seen again until his body was discovered. Id. The car driven by Cox was found in a parking lot in Johnson City, Tennessee, and one of the State's witness testified that Arnold called him from his father's home phone ten miles from where the car was found. Id. at 389, 605 S.E.2d at 530. While no blood was found in the car, the car had some unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the center console. Id. The court of appeals found there was no substantial evidence to submit the case to the jury and held a directed verdict of acquittal should have been granted. Id. at 390, 605 S.E.2d at 531.

The Supreme Court concluded that Arnold's fingerprint on the lid established only that he was in the borrowed BMW on the same day Cox was last seen alive. Id. Additionally, **there was no evidence that Arnold was at the scene of the crime**, which presumably was in Colleton County. Id. Even though both Arnold and the BMW were found in Tennessee, we held the

evidence only raised a suspicion of guilt and was not sufficient to show that Arnold killed Cox. Id. See State v. Bostick, supra.

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), the victim's home was burglarized and two guns were stolen. Mitchell, 341 S.C. at 408, 535 S.E.2d at 127. Mitchell had been a guest at the home on several occasions. Id. The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. Id. The fingerprint was the only evidence linking Mitchell to the burglary. Id. at 409, 535 S.E.2d 126. After first commenting that the evidence presented was entirely circumstantial, the Court determined "the fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary." Id. The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. Id. See State v. Bostick, supra.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), the Court reversed a murder conviction when the State's case was purely circumstantial and the evidence was insufficient to establish the defendant's presence at the scene of the crime at the time of the murder. In Martin, the supreme court found the trial court erred in failing to grant the defendant's motion for directed verdict because there was a total lack of evidence, either direct or circumstantial, linking the defendants to the murder. In that case, the State was unable to establish a time of death of the victim, lacked any witnesses identifying the defendants at the scene of the crime at the time of the murder, and had no evidence of the defendants being in the victim's apartment any time after the victim was last seen. Although the State presented evidence that a car resembling the one in

the possession of the defendant was at the victim's apartment complex the night of the murder, there was no evidence that this car was actually the car in the defendant's possession. In reversing the conviction, the Court concluded, "[l]ike the footprints in Schrock, the possibility that it was the same car, without any other evidence placing the defendants at the scene, is not enough evidence to place [the defendant] inside the Victim's apartment." Id. at 603, 533 S.E.2d at 575.

Except in cases where the crime is alleged to be procured or caused indirectly, the Court has stated that "[b]y bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act." Schrock, 283 S.C. at 133, 322 S.E.2d at 452.

More recently, in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Court again revisited the "substantial circumstantial evidence issue." In Odems, the Court concluded that a directed verdict should have been granted in a burglary case. A witness noticed a brown car she did not recognize turning into her cousin's driveway. She telephoned law enforcement while she continued to watch the car from her own vehicle parked across the street from the house. The witness observed two men knocking on the door of her cousin's house, and later observed one of the men place something in the car's trunk. She then unsuccessfully attempted to follow the car once it departed. Approximately ninety minutes after the witness notified police, a nearby sheriff's deputy spotted a brown Cadillac. The sheriff's deputy pulled the car over, and ordered the driver out of the car. The driver, Derrick Dawkins, exited the car, as he spoke to two men located inside the car, Odems and Frederick Bell. Dawkins testified at trial that he told Odems that his license had been suspended, and that shortly thereafter "everybody ran."

A short time later Odems knocked at the door of Donna Beane. Odems informed Beane that he

needed a ride. Beane did not know Odems, but allowed him to use her telephone to call for a ride. Odems did not call for a ride, but told Beane that if police arrived she should inform them that he was her boyfriend. Beane claimed that Odems told her "he was with somebody that didn't have a driver's license or that had a suspended driver's license and that the person had gotten pulled over and that he didn't want to get in any trouble." Beane refused Odems's request just as police officers arrived. Police took Odems into custody as well as Dawkins and Bell who were found hiding in Beane's backyard. A police search of the Cadillac recovered several items identified as stolen from the victim's home, including a camcorder, a money jar containing between $300 and $400, a camera, three watches, and a gun. The estimated total value of the stolen items was over $1,000.

In Odems, the State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Odems in the getaway car with the burglars and the stolen goods; (2) Odems fled from law enforcement; and (3) Odems asked an uninvolved person to lie for him. The Supreme Court concluded that even when viewed in the light most favorable to the State, the circumstantial evidence presented did not reasonably tend to prove Odems guilt. The Court noted that the sole eyewitness in Odems' case described only two men at the scene. A forensic investigator testified that she collected twelve sets of fingerprints in the car and from the stolen goods. These sets included prints from both Dawkins and Bell, but not Odems. Dawkins testified during the State's case-in-chief and explained how Petitioner ended up in the car with the stolen goods even though he did not participate in the burglary. The Court found that the State's key circumstantial evidence: (1) Petitioner's location in the getaway car a relatively short time after the robbery; (2)

Petitioner's flight from law enforcement; and (3) Petitioner's attempt to enlist the assistance of an uninvolved individual, do not point to his guilt for the crimes charged to the exclusion of every other reasonable hypothesis-namely, the notion that he did in fact join Dawkins at a gas station following the crime. In his brief before this Court, the Appellant emphasizes that in Odems, the a factor was that the co-defendants did not implicate Odems and that the Court relied upon abandoned instruction on circumstantial evidence ". . . all of the circumstances proven be consistent with each other and point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." Odems, 395 S.C. 582, 590-91, 720 S.E. 2d 48, 52-53 (2011). However, as noted in the Court's standard of review it still recognized that the Court must still view the evidence in the light most favorable to the State. Here, we submit that the evidence was sufficient.

The Evidence Against the Petitioner

The Appellant left his grandfather by the side of the road and left to get a haircut and feign ignorance about the circumstances of his grandfather's death. It has been said that every case is unique. The death of Freddie Steward reveals how each case can be unpredictable and unique. The case also reveals how in making assessments jurors and judges alike must consider the entirety of the evidence. On appeal, courts reasonably are constrained to view the evidence in determining sufficiency of the evidence and the inferences in the light most favorable to the state, rather than attempt to cherry-pick inconsistencies in the evidence. To do otherwise would force the reviewing court to make improvident assessments, favoring evidence which the jury necessarily rejected in its determination. The assessment by the Appellant in this case to attempt to gain credibility to a wholly rejected Ninja marauder theory shows the fallacy of this claim.

As reasonable reading of the record constrained by the appropriate standard of review leads to the conclusion that Appellant shot his grandfather 10 times on October 27, 2008 and left him on the side of the road in rural Colleton County, South Carolina. Although the reason why he killed his grandfather is not clear, this factor does not preclude acceptance of the jury's verdict since motive is not an element of murder, but admittedly a proof of motive enhances a conclusion of guilt.

The record reveals that *Jerrol Lingard* on October 27, 2008 was driving down Bethel Road and noticed a light colored car parked on the side of the road with the emergency flashers on. There was a man lying on the ground behind the car. Lingard stopped and called 911. Other individuals driving by the scene also stopped, including a postal worker. Lingard saw cartridges scattered on the ground. Mr. Lingard left then later returned and gave a statement. Lingard went to Bishop Howard's brother's house and told him what happened and asked him to go over to Emma Steward's house and let them know. He called "Jerome" and also Gerwon Lingard to tell them Mr. Steward was murdered and where it happened, learning who he was after the postal worker had stopped. Lingard confirmed that when he initially stopped he was the only person at the scene. ROA 157-162.

Postal Worker Aaron Virden testified that he stopped by Lingard's truck and inquired what was wrong. ROA 164-166. He noticed that a silver car parked by the side of the road with a man lying on the road. He recognized Mr. Lingard's truck on the right side and Mr. Steward's car on the left side. ROA 164, ll. 10-24. Another woman pulled up behind them. Virden walked over to the victim, saw the blood on the body and at least 3 shells over on the ground behind his body. He recognized Steward's body. Virden encouraged the Lingard who had stopped to leave because

he had children with him. ROA 165. Virden stayed after the deputy sheriff arrived, was searched and gave a statement. ROA 165-166. He recalled that he phoned his supervisor around 12:30 that he could not continue his route. ROA 167. He stated that the victim's car was pointed toward the Low Country Highway and the driver's side door was open and the trunk was open. ROA 167-168.

Sergeant Craig Stivender of the Colleton County Sheriff Department responded and stated he found the victim on the ground beside the vehicle. He stated that emergency flashers were on the victim's vehicle which was on the right side of the road with the trunk open. ROA 170, 172. He spoke with Virden at the scene who advised him about Lingard who had left the scene. He saw no sign of life with the victim. He saw three shell casings . He stated that he had received the call around 12:30 and it took him 20 minutes to arrive. ROA 172. He stated that he did not find any gun at the scene. ROA 172.[7]

EMT Brian Eadon testified he was called to the scene at approximately 5 minutes to 1 p.m. ROA. 179. When he arrived there were no signs of life. ROA. 180. He observed shell casings around the victim. He later returned to spray the blood off the roadway. ROA. 179-182. Similarly, *Colleton County Rescue worker David Drawdy* arrived and found the victim not breathing and having no pulse. ROA. 182-84. He also saw casings and the trunk open. ROA. 185. His partner, *Joseph Holmes*, who arrived with him testified similarly. ROA. 188-190. He did not see a gun and the only other person there was the mail carrier. ROA. 190.

The coroner, *Richard Harvey*, certified the victim was dead at 1:40 p.m. He had the body

---

[7]Former Colleton County Deputy Sheriff Theron Grant testified that he also arrived at the scene. He stated he arrived at 1:09 PM and helped secure the crime scene. ROA 178. ROA 175-178.

transferred to MUSC for a forensic autopsy. He did not see a gun. ROA. 192-94.

Angela Stallings, formerly of the Sheriff's Office testified that she processed scene and collected evidence with Investigator Carter. She stated she did not find gun, but found shell casings which were collected by Allen Inabinett. She stated that she spoke to nearby residents that did not recall anything unusual. ROA 197-200.

Stallings stated that the car would have been facing towards Lowcountry Highway away from Walterboro. She stated that if you were supposedly going to a bank in Walterboro, you would not be headed in that direction and would be driving away from Walterboro. ROA 200. She stated that Low Country Highway, also known as Highway 21 could still get to Walterboro if you would go toward Highway 63 -64. ROA 200.

Detective Jodi Taylor of the Sheriff's Office testified that he responded to incident on Bethel Rd. Detective Took statement from defendant at the scene which was State Exhibit 2. ROA 204-205. Richardson was He was not a suspect at the time and he voluntarily agreed to talk. He reviewed it and signed it.

In this initial statement, Richardson stated that he woke up at 10 am and that his grandfather was not home at that time. ROA 207-208. He stated that he came home around 11:30 am with some plastic bags. He stated that he left the house at 11:45 to go see his cousin, but ended up not meeting him and he went to get a haircut in Hodges instead. He was there for 30 to 40 minutes and then he received a call from his cousin Myeshia who told him what had happened to his grandfather. ROA 207, l. 12-20. He stated that he then tried to call his mother, but could not and that he picked her up. He stated that his sister called and told him where his grandfather was and they went to the scene. ROA 207-208.

Detective Taylor stated that he asked the Appellant for a statement for purpose of establishing timeline of victim's whereabouts. ROA 209. The defendant filled out top portion of form and asked Ms. Taylor to write it. He did not at any time admit to harming his grandfather. ROA 209-210.

Detective Jeff Scott testified that he processed the victim's Ford Focus vehicle and described the bullet that came from the rear passenger seat. ROA 213-214.

Det. Scott also described his discussion with the Appellant. On October 29, 2008. ROA 216-217. In this second statement, he gave a similar version. ROA 217-218. He stated that when he turned around after his cousin could not meet him, that he did not pas any vehicles. ROA 218. He stated that he stopped and got gas , then went to the One Stop, a job service, and then went to the barber shop where he was at until Myeshia called 40 minutes later. ROA 218. He described his conversation with her as being asked as to why would someone wasn't to kill your Uncle Freddie and she corrected him that it was his grandfather. ROA 218, l. 1-11. He stated that he had to call Myeshia back to get directions to the location. ROA 218, l. 8-15. State Exhibit 6.

Det. Scott stated that he received another statement from the Appellant on February 20, 2009, some 4 months later. ROA 221. State Exhibit 7. He stated that this statement was basically the same thing relayed on October 29. ROA 222, l. 20-21.

Det. Scott stated that the Appellant made a third statement to him four days later on February 24, 2009. State Exhibit 8. Scott stated that he advised the Appellant that he thought his earlier versions were false. ROA 225. He stated that he discussed cell phone call made the morning his grandfather was killed. ROA 224-226. Richardson stated in his first statement that he was at his residence at which time he called his residence from his cell phone. ROA 225, l.

19-24. He was confronted with the fact that he was claiming that he was calling his house with his cell phone while he was at the house. ROA 226. He provided an explanation but did not change his story substantially. ROA 226-227.

Det. Scott stated that as a result of the Appellant's statements that he was supposed to meet up with his cousin that day he went to speak with his cousin. And obtained a statement from him. ROA 227-228. He also stated that there was a search for the murder weapon, including the use of a Department of Natural Resources dive team, but they were unable to locate a weapon. ROA 228. Scott testified that he found a bullet in the back of the seat of the rear passenger seat that did not come from inside the vehicle. ROA 230-231.

The Appellant's cousin, *Roger Akeem Shider* testified that he gave a statement to Det. Scott on October 29 wholly conflicting with the Appellant's earlier versions. He stated that he told Det. Scott he woke up at 7, cranked up his grandmother's car, went back to sleep and woke up again at 12 or 1, went to PeeDee's to get part for his car and went to New York Wire to see if he could get his job back. ROA 239. He further stated he later got a phone call from Andre ("Dre") telling him that his grandfather was killed and Andre told him he got a call from Myeshia Yates that somebody shot his grandfather. ROA 239, l. 13-23. Shider testified that Richardson never came to his house. Shider clarified that Richardson called after 1:00. Shider denied that Richardson had called him before that telling him that he was going to pick him up. ROA 240, l. 9-21. On cross-examination, Shider denied that he spoke with Richardson that morning. ROA 241, l. 5-12. He admitted that he talks to Richardson a lot, they were close. He stated that he had probably talked to Richardson the day before. He stated that he was supposed to go to PeeDee's to get a part for the car and they were going to go to Beaufort that day but they did not go. He

stated that they had been talking about that for several days. ROA 242-43.

Kevin Nettles, who lives on the corner of Bethel and Red Root Road, gave a statement on Oct. 27th, 2008. ROA 245. He testified that he was waiting on ride for the logger woods, but the logging truck didn't come because it was rainy that day. Id. He stated that about 10:30 or 11, he went to cut grass. At that time he declared that he kept hearing a loud car race up and down the road, a Mustang, white or cream-colored looking.[A car similar to the Appellant's]. Nettles stated that he saw it approximately four or five times. Id. He stated that car had loud pipes and dark windows. ROA 246. He stated it went up and down Red Root and a short distance on Bethel.

He stated that he was in the yard while his son was on the lawnmower. ROA 247. He saw the car go up and down the road four or five times. Nettles stated that he could not see the driver, because the car had tinted windows. ROA 247.

Similarly, Ricky Breland, who lives on Bethel Rd, also gave statement on October 27th, 2008. He testified that he saw a Mustang on the road five or six times that morning, driving "real slow" and "where it went it wasn't gone very long, it was right back." ROA 249. He remembered car as white with stripes down it and blacked out rims, a Ford Mustang. ROA 249-250. He stated that his attention was drawn to it because as he was getting ready to cut the grass shortly after 9:00, and it came back by several times, driving really slowly, looked like it was "looking for something" and he thought it might want to stop and talk to him. ROA 250 . He confirmed that he could not see the driver. He stated that this was in the morning around 9 am. [Appellant's statements had stated he was in bed until 10 and did not leave until around noon]. Id

Breland stated it occurred shortly after 9:00 in the morning. Usually cuts the grass

between 9:30 - 11:00 and believes the car was going back and forth the entire time, about 20 to 30 minutes apart. ROA 251-252. He stated he saw it four or five times in hour and a half it takes to cut the grass. ROA 251-252.

Tyrone Kinard testified that he gave statement on Oct. 31, 2008. ROA 253. He stated that he was driving a trunk and logging on Red Root Rd. less than half a mile from Bethel Rd. ROA 253-254. At about 11:30, he was standing outside the highway and a white mustang with black stripes went down and came back several times, maybe 15 to 20 minutes between the times. ROA 254-255. Kinard stated that shortly after that, maybe on its last trip down, Mr. Steward, the victim, came by shortly after, maybe around quarter to twelve. ROA 254. Kinard stated that Steward was in a silver Ford. ROA 255. Kinard testified that he could see inside the car, saw it was Mr. Freddie, and he was by himself. He stated that he was close enough to see that there were not a bunch of people in the car. ROA 255-256. He stated that he was standing there right by the white line in the roadway. ROA 256. He stated that this was maybe 10 minutes after the white car went down the last time. He stated that Steward only went by the one time. ROA 256. He did not recall whether he saw the white car come back. However, he was firm that he saw Steward at about a quarter til 12. ROA 257.

On cross-examination, Kinard stated that he was standing there while the truck was getting loaded. ROA 257-58. He testified that he did not speak to Mr. Steward that day but he does know him. He stated he noticed the car because he was watching the road. He said Steward was heading way from his house and he was driving slow. ROA 258. He said it could have been a little earlier than 11:45, maybe 11:30. Kinard said he left the area shortly after the car came through. He stated he did not hear any gun shots because they were on a logging job and would

not have heard anything anyway. ROA 258-259.

The barber, John Yates testified that he works at Hodges' Barber and Beauty. He stated that he gave a statement on October 27th, 2008. He testified that he received a call from Richardson about 12:43 saying he was coming to get a haircut. ROA 261-262. [Note witnesses had indicated the crime had occurred before 12:30]. Yates testified that Richardson got there about 1:00 and left about 1:40. ROA 261-62. Yates states Richardson always calls to make an appointment for a haircut. Id. He stated while he was there he got a phone call and he said he had to leave, that his cousin Myeshia called him and told him someone killed his grandfather. ROA 262. Yates stated that Richardson came back a little later that day and told him what happened, and described that he was "real upset." ROA 262-263. Yates stated that he didn't say he knew anything about it, just that his grandfather was shot. Yates stated that when he called at 12:40 and made the appointment, everything sounded normal when he told him that he was coming to get his hair cut. ROA 263.

On cross-examination, Yates stated that the Appellant seemed visibly upset after he got the call from his cousin. ROA 264-65. After the call, Yates stated that he was finishing him up and Appellant then left. Id. He stated that Appellant came back maybe two or three hours later with family and was still upset. ROA 265. Yates stated that he asked him if he had something to do with it and Richardson said he had no part in it. ROA 265. On re-direct he confirmed that he was not upset when he called him at 11:40. ROA 265. The defense questioned Yates on whether the call could have been earlier, but Yates stated it could not have been much earlier and not 11 or 10 o'clock. ROA 266.

The Appellant's cousin Myeshia Yeats testified next. ROA 268-269. She stated that she

received phone call on October 27th from Mr. Lingard informing her that Mr. Steward had been killed. ROA 286. She stated that she called Richardson and informed him. ROA 268. On cross-examination, she stated that she doesn't remember the exact time she called Mr. Richardson, but that she knows it was after 12. ROA 269. She stated that she did not have his mom's number in her phone but did have Richardson's, so she called him because he was his grandfather. ROA 269. She stated that she is not close to Andre and denied seeing him with money. She said that Mr. Steward was a great uncle to her and that they lived in the same neighborhood. She stated that she was at work when the incident happened. ROA 270. Her boyfriend's name is Kenneth Manigo. ROA 270-271.

The issue concerning the murder weapon evolved from the testimony of another cousin, Bobby Varn. ROA 273-281. Varn testified that he owned a 9 mm. pistol that was stolen. ROA 272-273. He reported it stolen more than a year ago, on or about December of 2007. ROA 273, l. 1-14. he stated he made a report with Officer Walker the day of the theft. Id. He stated that gun was stolen at New York Wire, his workplace. ROA 274. He state that he worked first shift there and Richardson worked third shift at the time. ROA 274. He stated that a window was broken on his vehicle, it would only go up a certain way and that made it easier to get into his car. ROA 274. He testified that the gun was stolen from the car inside the middle glove box. ROA 275. The gun came with shell casings to show that it works. Varn stated that he still had the test fire casing and turned it over to Det. Inabinett. ROA 275. Varn confirmed that his own work records showed that on the date of Oct 27th, 2008, he was working from 8 until 4. ROA 276, l. 1-23.

On cross-examination, Varn stated that he has been a good friend with Richardson for a long time. ROA 279. He stated that he had checked for his gun before he went to work . He said

that morning, it was there, but when he got off work, it wasn't there, so he called the police. ROA 278-79. He stated that when he found the gun was missing, the window was down a "little crack" ROA 279. He stated that the window was off track and can be pushed down. ROA 279. He denied ever seeing the Appellant with his gun and never asked him if he stole it from him. ROA 280-81. He noted that the security cameras did not point to the area that he was parked. ROA 281. He testified that he worked from 8 - 4 and Andre's shift was from 12 - 8. Varn stated that a couple months prior to the incident, he remembers Richardson sitting on the bed counting money, between ten and thirteen thousand dollars. ROA 281-82. He stated that it was Richardson's money, not his. ROA 282-83. Varn stated that his brother, Andre Varn, was also in the room with them. ROA 283.

Deputy Thomas Walker of Colleton County Sheriff's Department testified that he went to New York Wire in reference to Bobby Varn's stolen handgun. In December 2007. ROA 284-285. He stated that he did not check for fingerprints on the vehicle because Varn told him that he went inside his vehicle and checked for his gun already in the spots He stated that Varn told him that he thought someone had a broken window that came down easily on the drivers side. ROA 288-289.

Detective Allen Inabinett of the Colleton County Sheriff's Office testified about a series of matters surrounding the case. He stated that he took over most of the crime scene processing when he arrived. ROA 287-88. He identifies shell casings from scene, logged them into evidence locker and they were later submitted to SLED by Det. Carter. ROA 290-91. He also received casing from Bobby Varn, logged it, and submitted it to SLED for comparison. Id. He also identifies personal effects from autopsy of victim. He stated he attended autopsy. The majority of

affects are clothing with also a wristwatch and some paper currency, approximately $139 in cash as well as a wallet.[8] ROA 293-95.

Lt. Inabinett stated that he spoke to Richardson on two different occasions. Initially, he spoke with him on Oct. 28th. ROA 302-305. Appellant was not in custody at the time. He stated the interview began on the night of the 27th around 11:45 and it progressed until after midnight, into the 28th. He stated that Richardson gave statement with similar comments mentioned by other detectives. ROA 305. He stated to Inabinett about waking up, trying to make contact with his cousin, going to Walterboro to have his hair cut. He testified that during a later part of interview, was asked if he would consent to GSR [gun shot residue test] test and he refused. ROA 305-06. He stated that Richardson was asked about a consent search of his vehicle, and he also refused that. ROA 306.

The Abduction Version

Lt. Inabinett then described the second statement he was involved in February. He identified an inmate request form from Richardson after the date of his arrest, on February 27th, 2009. ROA 307. He testified that the request stated, " I need to talk to Jeff Scott, ASAP." Inabinett stated that Jeff Scott was out of town so Det. Inabinett brought him over to Colleton County Sheriff's Dept. Annex and conducted an interview. ROA 307-308. After the Miranda Rights Form was signed by Richardson, the interview was recorded and lasted approximately three hours and forty-five minutes. ROA 307-10.

---

[8]Lt. Inabinett identified a white, short sleeved T-Shirt belonging to Mr. Steward, as well as a blue and red, white-striped long-sleeved, button down shirt. Has a gunshot hole. Also a sweater cap and pair of boots. He stated that the wallet was in the center console of the vehicle. The wristwatch and cash were removed by pathologist from Mr. Steward at autopsy. ROA 296-297.

During this interview, Appellant asserted a completely new version of the events that lead to his grandfather's death. Richardson stated during the interview he was awakened in his bedroom by an individual dressed in all black: black gloves, black mask tucked inside of his shirt. The individual placed his hand over his mouth and he had a revolver-type weapon pointed at his head. Appellant stated he was then directed to get out of his bed and move into the living room where he saw his grandfather. There were two other gentlemen dressed identically in all black with an overall jumpsuit, black gloves, black mask. He could not tell their race, but Richardson stated "they sounded like they were white guys trying to act black" ROA 311, l. 19-312, l. 14.

Richardson stated the individuals asked Steward for money or where the money was at. Steward declined to give them money. The individuals had the gun pointed at Richardson demanded keys. Richardson stated he gave the keys to the individual and he left in Richardson's Mustang, which is white with a black racing stripe, loud pipes, and a spoiler. ROA 312, l. 19-25. The defendant stated for approximately 20 minutes, the individual was gone in the Mustang. When he returned, he told them they were going to take a ride, and they left for the BB&T Bank in Walterboro, and the defendant and his grandfather were escorted to the victim's silver Ford Focus. ROA 312, l. 15- p. 313, l. 5.

Richardson further asserted that Mr. Steward was the driver, the subject in black was a passenger, the Appellant was a back seat passenger, and a second subject in black was also a backseat passenger. Richardson stated they left the third subject in black at the victim's house. They then traveled to Red Root Rd, made a right and turned onto Bethel Rd. Appellant stated that they were supposed to go to BB&T in Walterboro to withdraw money from Richardson's

personal account. Appellant stated that while traveling, the subject kept demanding the victim relinquish his money, which he said "I'm not" and quoted scripture from the Bible about their conduct. ROA 313, l. 8- 313, l. 25.

Richardson stated after they turned onto Bethel Rd, they pulled over and the individual in the front seat made the victim exit the vehicle and the second individual also exited the vehicle, leaving the defendant in the back seat. ROA 314, l. 1–6. Both individuals in black escorted the victim to the trunk of his vehicle. Richardson, still in the car, overheard an altercation. He later stated he heard several gun shots, but never left the car. ROA 314, l. 1-13.

Appellant stated that he then heard a car pull up, Appellant's white Mustang, being driven by the third subject left at the residence. He overheard the subject mention what happened or what went wrong. A fourth car pulled up, a dark vehicle driven by a fourth subject that never exited but stayed inside the car. The other three replied to the driver who asked the same question, "What happened? What went wrong" and said "The old man didn't want to cooperate." They then got into the dark colored car and one individual told Richardson that this is what happens when you don't cooperate and if you tell anyone what happened I'll harm you, your sister, and your mom. They then fled in the dark vehicle towards Lowcountry Highway. ROA 314, l. 14 - p. 315, l. 8. After they left, Richardson exited, got in his vehicle, and left and went to Walterboro to get a haircut. ROA 315, l. 8-11.

Inabinett stated that this was the first time he had given this story. ROA 315, l. 21-25. The vehicle was not headed in the direction of Walterboro, they would have been taking them further out into the country, more towards the Ruffin area. ROA 316-17.

Inabinett emphasized that according to his statement, Richardson's vehicle was brought to

the scene after the gunshots went off and left for him to drive away in. ROA 317. He confirmed that according to Appellant , after they left, Richardson got into his vehicle and went to Walterboro to get a haircut. ROA 317 - 318.

Inabinett also confirmed that according to any of the other witnesses, Richardson had never mentioned this story to anyone else prior to Feb. 27th. When asked why he had not mentioned this before in the four months, he stated he was scared and shaken up and he worried about the safety of his mother. ROA 318, l. 17-23. He confirmed that Appellant stated they were going to rob his grandfather, but $139 in cash was found on his grandfather at the autopsy. ROA 319.

He also declared that after the incident, the Appellant admitted that he paid his car insurance and car note with his grandfather's personal bank account. ROA 319, l. 10- 320, l. 21.

On cross-examination, concerning the GSR test refusal, Inabinett stated that the GSR test was refused at about 11:45 the night of Oct. 27th 2008, and shooting occurred between 12:30 and 12:50 pm that afternoon. GSR dissipates after about six hours, which Det. Inabinett told the defendant, but Det. Inabinett stated that he was still willing to try and take the GSR kit from the Appellant. ROA 328-329.

He opined that Appellant was coherent at time of interview. He was calm and normal at the beginning and eventually began to shed some tears and get emotional during the latter part of the interview. ROA 330-331. Inabinett stated that Richardson never admitted to shooting or harming his grandfather. ROA 331. It took some time for him to give his statement. It started out as "normal, bland conversation" then eventually he disclosed his version of events.

At the time of the incident, the victim, the defendant, and Mr. Steward's daughter and her

two youngest sons lived in the house. Appellant stated to Richardson that they were the only ones besides the three intruders that were home at the time. ROA 331. According to Richardson's statement, the individual who woke him up demanded his keys and then left for approximately 20 minutes or so. ROA 333. The other two gunmen stayed in the home and occasionally demanded money from the victim, but Mr. Steward refused. Id.

Det. Inabinett spoke during the conversation of the $13,000 Richardson had, but it was a separate discussion apart from the robbery. ROA 333. Asked if they searched the house or if there was an incident with a safe, but Det. Inabinett does not recall. It would be on the recorded tape if it happened during the interview. Id.

According to Richardson, once the individual in the Appellant's Mustang returned, the two subjects inside the home said "Let's take a ride. We're going to the bank" which was the BB&T in Walterboro. ROA 334. Inabinett stated that Appellant did not specify what made them pull over, but that Mr. Steward repeatedly refused to give them money before they pulled over on the side of the road. ROA 336-337. According to Appellant, after stopping, the subject that was in the front exited and made Mr. Steward exit. He stated that the masked man in the back also exited and took Mr. Steward to the rear of the vehicle and the trunk was up. The appellant was not clear of how the trunk got up. ROA 336-337. The appellant was the only one in the vehicle and Mr. Inabinett believes he had his cell phone with him. ROA 338.

On cross-examination, Inabinett reiterated that after the shots, Richardson claimed to hear his Mustang pull up and the third gunman ask "what happened" or "What went wrong?" Then, a fourth gunman pulled up in a dark colored vehicle and asked a very similar statement. ROA 339-339. The subjects then entered the dark vehicle and told the defendant "This is what happens

when you don't cooperate." From Richardson's statement, he never exited the grey Ford until all four left. Then, he exited, got into his Mustang, and went to get a haircut. ROA 338-339.

Inabinett confirmed that payment was made out of Mr. Steward's account after his death was a telephone transaction where he had to give the account routing number. ROA 340. The defendant was in possession of the routing number of the victim after his death. Safe Auto and Ford Motor Credit Company had a voice recording of the Appellant giving the routing number and approving the authorization of payment. ROA 340.

On re-direct examination, Inabinett presented the following points:

- Richardson may have mentioned the gunmen were wearing football eye makeup around their eyes to conceal their race during the interview. ROA 344-345.
- The car was facing the direction of Lowcountry Highway, going towards the country toward Ruffin area. ROA 345, l. 10-16.
- He didn't explain why he called his home phone from his cell phone if he was at the house, just that it was one of the normal things he would do. ROA 345, l. 17-21.
- Richardson claimed once the individuals left, he got in his car and went to the barbershop, and did not mention stopping to check on his grandfather. ROA 346, l. 11-16.

On re-cross, Inabinett confirmed that you can get to Walterboro going the direction the car was going but it is not the most direct route. He opined that it would put you about 25 miles out of the way. ROA 346, l. 11-16.

Defense also stipulated as to the chain of custody being complete on State's Exhibits Ten

and Eleven as well as that both casings, State's Ten and Eleven, were fired by the same weapon, one being from the incident and the other being from the pistol of Bobby Varn that had been stolen the prior year at the joint workplace of Appellant and Varn. ROA 350, l. 1-24, p. 353, l. 5-19.

The forensic pathologist, Dr. Susan Presnell performed autopsy on October 28th, 2008 of Freddie Steward. She opined that victim had ten gunshot wounds to his body. ROA 355-356. Two of them were on his left arm and the left hand, both were superficial. These did not go through much but top tissue of skin. She determine that eight (8) gunshot wounds were to the torso. Of the eight, there is one above the collar bone, one in the middle of the right chest. ROA 356-357. The remaining six of the eight wounds are across the back, from the right shoulder down to the left backside. Id.

She opined that the eight bullets did a lot of criss-crossing. ROA 357 The bullets managed to go through both right and left lungs and heart multiple times as well as the aorta multiple times. She opined they went through liver, spleen, pancreas, intestines, multiple ribs, backbone, and collarbone, as well as the scapula. The victim suffered a lot of internal bleeding. ROA 357. She tracked individual paths as much as she could. Dr. Presnell opined that the official cause of death is multiple gunshot wounds to his torso. ROA 357-358. She opined that death deemed a homicide. ROA 358.

Renee Stanley, an employee at B.B. and T Bank testified that she knows Freddie Steward and saw him on the morning of Oct 27th when he came to the bank to make a transaction. ROA 360-61. She stated that there was another transaction that occurred by telephonic draft taken from the account of Mr. Steward after the 27th. ROA 361-362. She stated that a person would need to

provide the routing number and account number to take the money out of the account. ROA 361-62. She said that the account was a joint account between Mr. Freddie Steward and Mr. Michael Steward. She stated that Andre Richardson was not on the account and was not a signatory on the account. There was nothing in the records to indicate he had permission to use the account. ROA 362.

On cross-examination, she stated that payment was made to Ford Motor Credit. She does not know who owns the vehicle for which the payment was made or if it was made in the past. ROA 363. Mr. Steward did not make a complaint that anyone was taking money out of his account. ROA 363-364. Request was submitted by Ford Motor Credit Company. They gave the routing number and gave the account number for the account of Mr. Freddie Steward. Doesn't know who the owner of the automobile is. ROA 366-367.

There is substantial circumstantial evidence to support a Murder Conviction.

In the Appellant's video statement concerning the masked Ninja abduction of himself and his grandfather certain salient facts are presented:

- The Appellant puts himself at the crime scene during the abduction.
- The Appellant places himself in the victim's vehicle at the location of the killing.
- The Appellant places his own vehicle at the crime scene.
- The Appellant places himself at the place and time of his grandfather's killing.
- The Appellant drives his car away from the death scene to his barber where he calmly gets his haircut with full knowledge that his grandfather is laying by the road shot numerous times.

The only question raised by the fantastical version is whether the Appellant killed his grandfather

or did the 4 masked men not revealed by him to anyone for four months do it.

What is intriguing is the reasonable inference that Freddie Steward drove himself to his death scene on Bethel Road. The evidence is that Steward was seen by Tyrone Kinard driving toward that location around 11:30 less than ½ mile from Bethel Road. No one was seen in the vehicle by Kinard who had a clear view of the victim's car as he was standing on the roadway. More particularly, a car full of masked Ninja men was not seen within the vehicle along with Appellant as Appellant's version would necessarily suggest. A clear view destroying the Appellant's attempt to avoid responsibility.

Independent witnesses also undermined both false theories of innocence by Appellant. Contrary to the Appellant's versions that he had not left the home until 11:45, a vehicle strikingly similar to his - white Mustang, black racing strip with spoilers and tinted windows, was viewed running back and forth multiple times on Bethel Road early that morning. The Appellant's protestations that he was not in that area with that vehicle were defeated by the testimony of Kevin Nettles and Ricky Breland. ROA 243 - 251. There failure to specifically identify Appellant as the driver was reasonably reflected because of the tinted windows they could not identify anyone. Tyrone Kinard saw the Mustang drive back and forth around 11:30 and shortly after the Mustang's last trip saw the grandfather by himself drive by between 11:30 and 11:45 by himself driving away from his house slowly. ROA 257-258. His web of lies again pierced by the circumstantial evidence. Contrary to his assertions, he was not "home in bed."

Further evidence is the cell phone call. There was evidence and an admission by the Appellant that he made a call to house - where his grandfather lived - from his cell phone. Yet it was his claim that he was at home in bed - the same place he made the call to. Was this evidence

that he was calling his grandfather to lead to his traveling to his death scene on Bethel Road? Not conclusively. However, it is another odd fact to the Appellant's version where again the facts catch up to the lies by his unreasonable behavior.

He had an ongoing false claim throughout his earlier versions that he was headed to meet his cousin Roger Akeem Shider. However, contrary to the claim, Shider conclusively testified that the Appellant never called him that morning to meet as he suggested prior to the February statement. ROA 242. He stated that he had discussed doing it. Further, the Appellant's apparent expectation as to what Shider would be doing that date were undermined because Shider, in fact, did not go to PeeDee's that date as they had discussed he would do and was not on the road there rather than being able to meet with Appellant. It was not until after the death had been discovered that Shider talked with Appellant. Again, his web of lies failing by the facts leading to an inference of a cover-up and guilt.

What is more probative of his guilt is that in the numerous statements he gave police is plain evidence that he was a prevaricator. He claimed until February that he did not know anything about his grandfather's death until he received the call from his cousin, Myeshia Yates at 1:40 while he was at the barber shop. He claimed in his versions that he was home asleep until 10 and then watched TV for 1 ½ hours until his grandfather came home at 11:30 and that he let around 11:45 to meet his cousin. However, there is no mention of Ninja abductors in any of these initial statements. However, not only is it false because his grandfather was seen on the road headed toward Bethel Road at that time, his claim that he left his grandfather at home to meet with Shider is also false since Shider was not there to be met because they had no communication to do so. Other than getting a haircut and receipt of the telephone call, the

Appellant points to nothing in the pre-Ninja statements that was true or corroborated.

The bizarre Ninja story is unbelievable based upon the salient evidence which undermines it from witnesses seeing the Mustang and the victim's alone in his vehicle. At the outset is the far-fetched theory that the masked men would kidnap both of them, leaving Appellant in the vehicle while they shot grandfather ten times out side the vehicle, then have the Appellant's own vehicle brought and left there with keys for the Appellant to drive it away. It is further fanciful that there was some threat about telling that would put a cone of silence on the Appellant until February. What would cause him to be silent from these factors - he could not identify the perpetrators because they were wearing all black and masked. [9] The fact that his grandfather had been brutally murdered with 10 shots fired into his body was already known by that time.

Another problem with the Ninja theory is that the vehicle was headed away from the bank in Walterboro not towards it. ROA 200-201, 345-46. It is fanciful that they would drive 25 miles out the way to get to a bank to get grandfather's money. ROA 346, l. 11-16. The car was headed in the wrong direction. Evidence was presented by Renee Stanley of BB and T Bank that the grandfather had been in the bank that date. As the State argued, the victim - who Appellant claimed was driving - knew the way to the bank. ROA 360. Again, the witness who saw the victim around 11:30 saw him alone and headed away from Walterboro and he was visible through clear glass windows after he had previously seen the Mustang drive by and not come

---

[9]The Appellant's counsel in his appeal asserts that the delay in the version was his fear as a minority that he would be implicated in the crime. Brief of Appellant, p. 15. However, the Appellant gave as his reason for non-disclosure of the masked marauders that he was scared and shaken up because he had never been kidnapped before and feared for his mother. ROA 317, l. 21-24.

back. ROA 256.

Concerning the claim of the marauders intent to rob them, the victim was found with $139 dollars on his person at the autopsy. It defeats the assertion of the abduction for money when money is left on the supposed victim and a car is brought up to the scene after the shooting to allow the survivor-eyewitness to drive away. Appellant stated that they brought his car. Yet in his February statement, he stated that the grandfather was driving his car with two of the marauders in the vehicle with him and that they were being trailed by the robbers vehicle. He then states that another of the marauders drives the Appellant's vehicle to the scene after that shooting and then leaves it for Appellant to drive off. This is simply implausible.

The missing murder weapon does not undermine substantial circumstantial evidence. His co-worker and cousin Bobby Varn had the murder weapon stolen from his car at their worksite in December 2007. Although the owner never saw Appellant with his gun after it was stolen, [ROA 280-81], Varn acknowledged that they worked different shifts and that they were real close friends. ROA 281. In particular, their friendship was close enough that a couple months prior to the murder, he was counting between $10,000 and $13,000 that Appellant had at his house. ROA 282. It is not disputed that Varn's gun was the gun used to killed the victim based upon the stipulation at trial. ROA 353.

Here, the circumstantial evidence reasonably lines up to guilt. These factors are:

- white Mustang
- blacked out rims
- tinted windows.
- statement puts himself at crime scene.

- statement puts himself driving away from crime scene in his Mustang.
- statement admits knowledge of his grandfather's death before it is reported.
- implausible and delayed claim that he was also abducted by 4 masked marauders.
- implausible that he would be left in the victim's car as eyewitness after they shot victim 10 times.
- unbelievable that he would drive from the death scene and calmly get a haircut and create an attempt at a fictional alibi, knowing his grandfather was lying alongside the road, not calling 911, or going to the police or even to a relative concerning the abduction.
- bizarre that he would have the particular conversation he had with Meyshia Yates concerning his grandfather's death and then finish his haircut and maintain his silence about the abductors.
- the gun used had been stolen from a close-friend and cousin at their joint workplace during Varn's shift which began after Appellant completed his shift.
- the appellant refused to be tested for gunshot residue on his hands on the night of the incident.[10]

---

[10]In the Brief of Appellant, p. 10, he claims that the GSR test that was offered was a sham because it was more than 6 hours since the murder. However, this was not a "sham." Detective Inabinett stated that he still would have tried to make an effort to try the GSR kit. ROA 305-306, 328-329. However, there are cases where GSR residue have been determined not to stay on hands after 6 to 8 hours because it dissipates, but some protocols have allowed up to 12 hours. See State v. Page, 28 So.3d 442, 448 (La.App. 5 Cir.,2009). Nevertheless, it does not preclude the possibility that GSR may be found in a greater time frame - even more that the request that was made of the Appellant. See State v. Delk, 2008 WL 5333757, 1 (Minn.App.) (Minn.App.,2008) (evidence of gunshot residue found and admitted where approximately 29 hours after the shooting, the police swabbed Delk's hands to test for gunshot residue).

- Appellant acted normal when he was getting his haircut, yet acted upset after Myeshia called about his grandfather's death.[11]
- Oddly when the barber asked at that time if he had any part in the death, Appellant stated he had no part in it rather than revealing his abduction claim. ROA 264.

The Appellant ignores that his attempts in creating lies are themselves further circumstantial evidence indicating guilt. Burgos, supra. It was convincingly presented at trial that none of his versions spoke the truth. The fact of his falsehoods can be used as substantive evidence of guilt. Contrary to the claim of Appellant in his brief, it is not merely that the Appellant's statements were inconsistent theories, it is the fact that the inconsistencies addressed the knowledge of the crime and his whereabouts. This dichotomy in his falsehoods contrasted with his actions after the crime - the feigned normalcy then surprise at the revelation of depth at the barbershop. Here, unlike Schrock , the Appellant tied himself to the crime scene. Similarly, unlike Martin, the Appellant admitted that his white Mustang was at the crime scene. Here, unlike Bostick, while no murder weapon or motive was placed into evidence, there was evidence of a murder weapon that was connected to a close friend of the Appellant who had he had worked with at the place when the gun was stolen. While this weapon evidence not conclusive of guilt, it was not excluding him either, yet the state's case did not rest on this factor. Unlike

---

[11]In his Brief of Appellant, he claims that this is supportive of innocence. Brief of Appellant, p. 8. Yet, he ignores the fact that under his marauder theory, he was already ware of his grandfather's death and these acts were all part of an act to cover-up his knowledge of his grandfather's death. Similarly, his reliance that Appellant's crying four months later as he relayed facts about the abduction (ROA 309-310) is wholly inconsistent with his normal calm demeanor within an hour after the claimed abduction while at the barbershop. ROA 261-264.

Arnold where there was no evidence that he was at the scene of the crime, Appellant's own statement placed him at the crime scene at the time of death. The evidence was more than the mere shoeprint, fingerprint which was in Schrock, Arnold and Mitchell concerning being at the crime scene. It was the actual placement there by the Appellant's own words.

This is more than the mere suspicion concerns of Odems. The state's case against Appellant disputed his fanciful Ninja version, unmasking it as a feeble lie against the weight of the State's contrary evidence about the factual underpinning of his version by neutral witnesses. In addition, the evidence of false versions given before the development of the state's case cast his attempted cover-up of his role as additional substantive evidence of guilt. Although the Court minimize the attempt by Odems to persuade a person to lie on his behalf as substantial evidence, the Appellant's web of lies through the implausible and contradicted versions are more powerful that Odems brief encounter. Appellant's actions were miscalculated to draw attention away from him, but by their implicit falsehoods by lack of corroboration, they must be viewed as additional evidence of guilt. Unlike Odems, no witness corroborated his version or testified that they saw the marauders or other with the victim. To the contrary, the Mustang and silver Ford Focus with the victim were the limits of the witnesses attention. It was not the mere inconsistency in the statements that amounted to guilt, but their implausibility in light of the other evidence. The evidence taken together points exclusively to Appellant to the exclusion of every other **reasonable** hypothesis. The trial court properly denied the motion for a directed verdict.

CONCLUSION

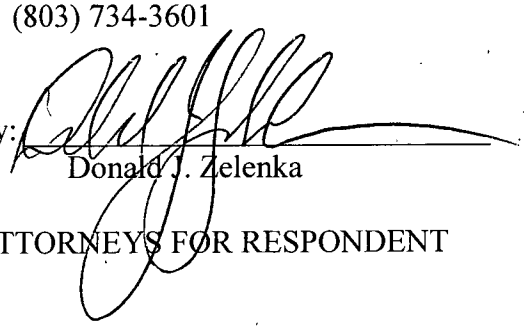
For the aforementioned reasons, the State respectfully asks this court to affirm the ruling of the trial court as well as Appellant's underlying convictions.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

By: 
Donald J. Zelenka

November 30, 2012

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the ***Brief of Respondent*** in the foregoing action by depositing copies in the InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 30th day of November, 2012.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

By: _____
Donald J. Zelenka

November 30, 2012

ATTORNEYS FOR RESPONDENT