

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RALPH B. HAYES,

APPELLANT,

Appellate Case No. 2012-213261.

---

**FINAL BRIEF OF RESPONDENT**

---

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

KAYCIE S. TIMMONS  
Assistant Attorney General  
SC Bar No. 100237

South Carolina Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
(803) 734-3030

W. WALTER WILKINS  
Solicitor

ATTORNEY(S) FOR RESPONDENT

RECEIVED  
NOV 07 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RALPH B. HAYES,

APPELLANT,

Appellate Case No. 2012-213261.

---

**FINAL BRIEF OF RESPONDENT**

---

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

KAYCIE S. TIMMONS  
Assistant Attorney General  
SC Bar No. 100237

South Carolina Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
(803) 734-3030

W. WALTER WILKINS  
Solicitor

ATTORNEY(S) FOR RESPONDENT

## TABLE OF CONTENTS

|  |    |
|--|----|
| TABLE OF CONTENTS.....   | i  |
| TABLE OF AUTHORITIES .....   | ii |
| APPELLANT’S STATEMENT OF ISSUE ON APPEAL .....   | 1  |
| RESPONDENT’S COUNTER STATEMENT OF ISSUE ON APPEAL .....  | 1  |
| RESPONDENT’S STATEMENT OF THE CASE .....   | 2  |
| RESPONDENT’S STATEMENT OF FACTS.....   | 3  |
| Discovery of Victim’s Body .....   | 3  |
| Investigation.....   | 8  |
| ARGUMENT.....  | 13 |
| The trial court, viewing the facts and all reasonable inferences in the light most favorable to the State, did not err in denying Appellant’s motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Appellant, including testimony that when Appellant was asked what was so bad, he responded, “[B]ut you ain’t never killed nobody.” ..... | 13 |
| Introduction.....  | 13 |
| Standard of Review.....  | 14 |
| How the Issue Was Raised at Trial .....  | 15 |
| Analysis.....  | 15 |
| CONCLUSION.....  | 20 |

## TABLE OF AUTHORITIES

### State Cases

|  |            |
|--|------------|
| <i>Commonwealth v. Sanchez</i> , 610 A.2d 1020 (Pa. 1992).....               | 18         |
| <i>People v. O'Neil</i> , 165 N.E.2d 319 (Ill. 1960).....                    | 18         |
| <i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004).....            | 14         |
| <i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011).....           | 15, 16     |
| <i>State v. Burdette</i> , 335 S.C. 34, 515 S.E.2d 525 (1999).....           | 14         |
| <i>State v. Crawford</i> , 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005)..... | 18         |
| <i>State v. Curtis</i> , 356 S.C. 622, 591 S.E.2d 600 (2004).....            | 14         |
| <i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001).....            | 15         |
| <i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....          | 14, 15     |
| <i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011).....              | 14, 15, 16 |
| <i>State v. Orozco</i> , 392 S.C. 212, 708 S.E.2d 227 (2011).....            | 17         |
| <i>State v. Pinckney</i> , 339 S.C. 346, 529 S.E.2d 526 (2000).....          | 14         |

### **APPELLANT'S STATEMENT OF ISSUE ON APPEAL**

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

### **RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL**

Whether the trial court, viewing the facts and all reasonable inferences in the light most favorable to the State, erred in denying Appellant's motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Appellant, including testimony that when Appellant was asked what was so bad, he responded, "[B]ut you ain't never killed nobody."

## **RESPONDENT'S STATEMENT OF THE CASE**

A Greenville County Grand Jury indicted Appellant, Ralph Hayes, in October 2011 for the murder of Jacquelyn Alexander and for the possession of a weapon during the commission of a violent crime. Indictment Number 2011-GS-23-7681. On October 15, 2012, Appellant's case was called to trial before the Honorable G. Edward Welmaker. Transcript 1. Appellant was represented by Caroline Horlbeck and Teal Johnson during the three-day trial. R. 1. Assistant Solicitors Judy Munson and Wanda Adams represented the State. R. 1. On October 17, 2012, the jury returned a verdict of guilty on both counts. R. 281, ll. 1 – 23. Judge Welmaker sentenced Appellant to life imprisonment for murder and to five years for possession of a weapon. R. 283, ll. 11 – 17. Thereafter, on October 29, 2012, Appellant filed a timely Notice of Appeal.

## RESPONDENT'S STATEMENT OF FACTS

### Discovery of Victim's Body

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

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

McNeil was so upset by what she saw that she had a seizure and fell down the stairs. R. 11, ll. 4 – 7. She then called her father, who had trouble understanding what McNeil was trying to tell him but told her that he was coming over. R. 10, ll. 19 – 22. McNeil also tried to call the police, but they, too, had trouble understanding her, and a neighbor had to take the phone from McNeil to tell the police to come to the apartment. R. 10, ll. 19 – 25.

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

Detective Christopher Miller with the homicide unit of the GCSO was the on-call investigator the night of June 13, 2009. R. 211, l. 6 – 213, l. 6. He went to Victim's apartment to oversee the scene that night. R. 213, ll. 7 – 23. When Miller initially assessed the scene, he was unable to tell if a crime had even been committed. R. 213, l. 24 – 214, l. 23. According to Miller, due to the state of decomposition of Victim's body, investigators could not tell if Victim had died from natural causes, from suicide, or from homicide. R. 214, ll. 8 – 15. As to the apartment, nothing was disturbed either upstairs or downstairs. R. 214, ll. 16 – 23. Miller found the scene "puzzling." R. 214, ll. 16 – 23.

Miller changed his mind about what had happened at the apartment after Forensics Officer Jonathan Hamilton discovered one drop of suspected blood at the bottom of the stairs and

one drop of suspected blood in the kitchen. R. 214, l. 24 – 215, l. 4. Hamilton tested the droplets and determined that both droplets were blood.<sup>1</sup> R. 145, l. 19 – 146, l. 16; 163, l. – 164, l. 20; 165, l. 15 – 166, l. 12. Miller knew that those drops of blood could not have gotten to those locations by Victim because she was upstairs in the bathroom. R. 215, ll. 4 – 8. At that point, Miller decided to treat Victim’s death as a homicide. R. 2151, ll. 9 – 11.

Hamilton discovered blood spatter in the downstairs bathroom attached to the kitchen. R. 144, l. 22 – 145, l. 16. The downstairs bathroom was directly under the upstairs bathroom where Victim’s body was found. R. 145, ll. 8 – 12. The spatter found in the downstairs bathroom resulted from bodily fluids seeping through the exhaust fan on the ceiling of the downstairs bathroom and dripping onto the floor. R. 145, ll. 8 – 16.

In the upstairs bathroom, Hamilton photographed Victim, who was found laying on her right side between the toilet and the bathtub. R. 169, ll. 9 – 14. Hamilton observed bodily fluids on the bathroom floor. R. 169, ll. 15 – 18. Hamilton found suspected blood on the toilet lid, on the side of the bathtub, and in different areas of the bathroom. R. 170, ll. 2 – 21. However, there was no blood visible in the sink area, and everything seemed in order on top of the sink. R. 169, l. 19 – 170, l. 1.

In an attempt to collect evidence from “[a]nywhere that could be affected and touched by anyone that could be involved with the crime . . . [,]” Hamilton collected latent print evidence from the doors of the house, including the exterior and interior of the front storm door, the exterior and interior of the front door, and the exterior and interior of the back door. R. 147, l. 21 – 148, l. 10. Of the prints lifted from doors, only Victim’s prints were identified. R. 138, l. 23 – 139, l. 3. Hamilton also processed the toilet tank lid, the toilet tank, the toilet seat, the bathtub,

---

<sup>1</sup> Both blood droplets were eventually found to match the female DNA taken from the shirt Victim was wearing when her body was discovered. R. 202, l. 16 – 206, l. 3.

and other areas in the upstairs bathroom for latent prints. R. 148, ll. 5 – 14. Christopher Gary, a latent print examiner with the Greenville County Department of Public Safety in the Forensic Division, was able to identify the following prints from Appellant on the exterior top of the upstairs toilet tank lid:<sup>2</sup> a left palm hypothenar<sup>3</sup> print (State’s Ex. 52), a left palm thenar print (State’s Ex. 54), and a left index finger print (State’s Ex. 53). R. 125, ll. 11 – 19; R. 132, l. 13 – 133, l. 19. Gary also identified a left palm interdigital print from Victim on the toilet tank lid. R. 133, ll. 20 – 23. Gary identified a print found on the exterior top of the upstairs bathtub as a right palm hypothenar print of Appellant. R. 133, l. 24 – 134, l. 2. None of the latent prints that Gary analyzed were made in blood. R. 137, ll. 1 – 3. Though Gary testified that there is no way to date a fingerprint, R. 129, ll. 6 – 11, he also testified that latent fingerprints are fragile and “can be easily wiped away or removed[.]” R. 139, l. 23 – 140, l. 6.

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

---

<sup>2</sup> Though Gary initially testified that the prints were found on the toilet lid, he realized on cross-examination that the prints were taken from the toilet tank lid—specifically, State’s Exhibit 52 was taken from the top left side of the toilet tank lid, and State’s Exhibits 53 and 54 were taken from the more right portion of the toilet tank lid. R. 135, l. 1 – 136, l. 10.

<sup>3</sup> As explained by Gary, latent print examiners divide the palm up, to kind of break it down just a little bit, to different areas. You have three main areas of the palm. The top part is called the interdigital. The thumb side is called the thenar. And kind of the writer’s palm that you’d put down, the fatty part of the palm is called the hypothenar. R. 132, l. 21 – 133, l. 3.

R. 88, l. 22 – 89, l. 12. During the internal examination of the body, Dr. Ward found the following:

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

R. 90, l. 12 – 91, l. 5. Dr. Ward opined that those injuries would have made it extremely difficult for Victim to breathe. R. 91, ll. 6 – 19. Additionally, blood would have been oozing from Victim's stab wounds, and she would also have had extensive internal bleeding into her pleural cavities. R. 91, ll. 16 – 23; R. 96, ll. 9 – 97, l. 3. In Dr. Ward's opinion, the difficulty breathing and the extensive internal bleeding led to Victim's death. R. 91, ll. 16 – 23. A toxicological examination was performed on Victim's liver, and the breakdown product of cocaine was identified. R. 91, l. 24 – 92, l. 10. Dr. Ward did not perform any type of sexual assault examination on Victim because the moderate state of decomposition of Victim's body led Dr. Ward to believe that such an examination would likely have been fruitless. R. 89, l. 22 – 90, l. 11. Given the conditions in which Victim's body was found and the level of decomposition present, Dr. Ward testified that, in his opinion, Victim had been dead for three to five days. R. 98, l. 9 – 99, l. 22.

After learning that Victim had been stabbed, Miller sent Tyler Bucholtz, who worked with the crime scene unit, back to the crime scene to collect additional evidence. R. 181, l. 24 –

182, l. 15. Bucholtz collected knives from the kitchen.<sup>4</sup> R. 182, l. 10 – 183, l. 9; 188, ll. 10 – 12. Bucholtz also discovered a knife laying on the pine straw just outside the front door. R. 183, ll. 1 – 22; 185, ll. 13 – 22. Bucholtz swabbed the handle and blade of that knife to be tested for forensic evidence. R. 186, l. 6 – 187, l. 2. Bucholtz also performed a presumptive test for bodily fluids in the upstairs bathroom of the apartment. R. 184, l. 6 – 186, l. 5. That test was positive for blood. R. 185, l. 23 – 186, l. 5. Of the swabs taken from the handle and blade of the knife and from the left and right side of the sink, three of the samples did not have any DNA, and one of the samples had some DNA but not enough for analysis. R. 206, l. 18 – 207, l. 22.

### Investigation

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

As part of the investigation, police officers spoke to Victim's neighbors about what they had seen in the weeks before Victim's body was discovered. R. 116, ll. 13 – 18. One of

---

<sup>4</sup> Hamilton tested the knives from the kitchen for blood when he processed the crime scene on the night of June 13, 2009, but the test was negative. R. 146, l. 17 – 147, l. 10. Hamilton left the knives in the kitchen because there was no evidentiary value. R. 147, ll. 6 – 10.

Victim's neighbors, a woman named Jo Lynn Wood, told police that she had seen Appellant coming in and out of Victim's apartment during the week that Victim's body was discovered. R. 116, l. 13 – 117, l. 23. The two times that Wood saw Appellant, she was outside of her own apartment at dusk or at night talking on the phone. R. 118, ll. 17 – 22; 123, ll. 8 – 15. Wood testified that she saw Appellant exit Victim's apartment and proceed up the parking lot, past Wood's apartment. R. 118, l. 20 – 119, l. 13. Though Wood could not remember the exact days that she had seen him, Wood was sure that the man she had seen was Appellant. R. 119, ll. 17 – 23.

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

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

On Thursday, June 18, 2009, officers went to an area where a homeless man named Larry Dell White was going to sleep that night. R. 55, ll. 5 – 25. The officers showed Appellant's picture to some of the men in the area and asked if anyone had information about Appellant. R.

56, ll. 1 – 6. Because White was not from the area, he did not look at the picture.<sup>5</sup> R. 56, l. 1 – 57, l. 8. However, the next day White overheard some men at a labor hall talking about a woman they knew who had been stabbed. R. 33, l. 19 – 34, l. 2; 58, l. 18 – 59, l. 11. White realized that he had recently spoken to a man who had been dating that woman, and White decided to tell the police what he knew. R. 33, l. 25 – 34, l. 2; 59, ll. 12 – 20. White asked an employee at the labor hall to call the police. R. 59, l. 21 – 60, l. 1. An officer responded to the call and took White to the police department. R. 137, ll. 3 – 35, l. 8.

Once White got to the police department, he told Miller about a conversation he had had with a man about the woman’s murder. R. 35, l. 9 – 36, l. 4. White told Miller that on the afternoon of June 9, 2009,<sup>6</sup> he had gone behind a labor hall to get out of the sun. R. 25, ll. 2 – 22. There, he saw a young man drinking a beer and crying. R. 25, l. 24 – 26, l. 3. The two began a conversation that lasted for about an hour. R. 27, ll. 13 – 24. The man told White that he had “fucked up bad, real bad.” R. 26, ll. 1 – 3. In an attempt to cheer the man up, White told the man that everyone makes mistakes in their life—White admitted to the man that he had stolen his brother’s check in the past. R. 26, ll. 4 – 8. White continued trying to console the man, but the man would not stop crying. R. 26, ll. 12 – 15. The man told White, “man, it’s going to fuck my sister up when I tell her what I done . . . . I went in the house and found my girl dead, man. The dope boys cut my girl all up, pulled her panties down to her ankles and put her in the bathtub.” R. 26, ll. 15 – 20. White asked the man what he had done after that, and the

---

<sup>5</sup> White was cross-examined at length about parts of a statement that he gave to police that make it sound like White saw Appellant’s picture before he spoke with the police on June 19, 2009, but White was adamant at trial that he never saw Appellant’s picture before it was presented to him in a photo lineup. R. 46, l. 1 – 52, l. 15.

<sup>6</sup> White first testified that he had spoken to the man on a Sunday, but then he agreed that it could have been a Tuesday. R. 25, ll. 10 – 22. In the statement White gave to police on June 19, 2009, he stated that the conversation occurred on Tuesday, June 9, 2009. R. 68, l. 1 – 69, l. 2.

man told White that he had run out of the house. R. 26, ll. 20 – 21. White asked why the man had not called the police. R. 26, l. 22. The man responded that police would think he did it because she was his girlfriend. R. 26, ll. 22 – 24.

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

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

White did not immediately report to police about what the man had told him. R. 54, ll. 5 – 9. White explained at trial that, as a homeless man, he had problems of his own—like where he would sleep. R. 35, ll. 19 – 22. But when White heard the men at the labor hall talking about

---

<sup>7</sup> White saw the man’s bus ticket but did not see the details on the ticket. R. 27, l. 25 – 28, l. 7.

<sup>8</sup> The man also mentioned during the conversation that he was from Newark, New Jersey. R. 75, ll. 12 – 14. Miller testified at trial that Appellant had a sister who lived in Danville, Virginia and that Appellant was from Newark, New Jersey. R. 233, ll. 12 – 15.

the woman who had been stabbed, he recalled the conversation, and he decided to contact the police because God “put it on [his] heart to do this . . . .” R. 41, l. 20 – 42, l. 9.

After White gave his statement to police,<sup>9</sup> Miller gave White a photo lineup and asked him to identify the man he had talked to that day behind the labor hall. R. 220, l. 6 – 222, l. 8. Appellant’s picture was one of the pictures in the photo lineup. R. 220, ll. 14 – 21. Almost immediately White identified Appellant as the man he had spoken to. R. 222, ll. 9 – 12. White testified that he did not expect any sort of reward for his testimony—he talked to the police because “it was a Godly thing to do.” R. 61, ll. 7 – 13.

After taking White’s statement, the police followed up by canvassing some of the areas where White had seen Appellant and where police believed Appellant had been. R. 232, l. 5 – 233, l. 22. People at the labor hall could not remember seeing Appellant. R. 232, l. 15 – 233, l. 2. Police learned that a bus had left from Greenville the Tuesday before Victim’s body was found. R. 233, ll. 3 – 15. Though they could not confirm that Appellant had been on that bus, Miller noted that the bus had travelled from Greenville to Charlotte, then to Danville, Virginia, and then to Newark, New Jersey. R. 233, ll. 8 – 19. Police knew that Appellant had a sister in Danville, Virginia. R. 233, ll. 12 – 15.

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

---

<sup>9</sup> White’s statement was read into the record during trial. R. 67, l. 24 – 76, l. 18. It substantially corresponds to the testimony he gave at trial about his conversation with Appellant. R. 67, l. 24 – 76, l. 18.

## ARGUMENT

The trial court, viewing the facts and all reasonable inferences in the light most favorable to the State, did not err in denying Appellant's motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Appellant, including testimony that when Appellant was asked what was so bad, he responded, "[B]ut you ain't never killed nobody."

### Introduction

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

- Victim and Appellant were in a five-year relationship and lived together, but Appellant had been asked to leave after the couple had an argument less than a week before Victim was murdered;
- the door to Victim's apartment was unlocked, and there were no signs of forced entry, and Victim's apartment was not disturbed;
- Victim was stabbed twenty-eight times;
- Victim's body was found wedged between the toilet and the bathtub, and Appellant's palm prints were found in that bathroom on both the toilet tank lid and the bathtub;
- Appellant was seen leaving Victim's apartment twice during the week before Victim's body was discovered;

- when Appellant spoke to Larry Dell White about Victim's death, he was inconsolable and said that he had "fucked up bad, real bad" and that he wanted to kill himself;
- when asked by White what could be so bad, Appellant responded, "But you ain't never killed nobody[;]"
- rather than reporting what he had seen to the police, Appellant left town after he allegedly discovered Victim's body;
- Appellant never contacted Victim's family before or after her funeral.

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

#### Standard of Review

In reviewing a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not with its weight. *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004) (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State. *Id.* (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id.* (citing *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004).

### How the Issue Was Raised at Trial

At the close of the State's case, defense counsel made the following motion:

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

R. 242, ll. 10 – 17. In response, the State asserted that it had presented enough evidence from which the jury could convict Appellant, and the State asked the court to deny the motion. R. 242, ll. 19 – 25. The court denied defense counsel's motion, stating, "I must view all the evidence in the light most favorable to the non-moving party, and I find there is sufficient evidence, taking it as a whole, direct and circumstantial, for the jury to make a decision on this. I respectfully deny your motion . . . ." R. 243, ll. 1 – 6.

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

### Analysis

In his brief, Appellant cites a number of South Carolina Supreme Court cases where the court found directed verdicts warranted based on the evidence that had been presented by the State. *See State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). For example, in *State v. Odems*, the court found that "[t]he circumstantial evidence presented by the State proves only that: (1) when stopped by the sheriff's deputy, Petitioner was in the vehicle used by [his co-defendants] to leave the scene of the robbery; and that (2) following the stop, Petitioner fled along with [his co-defendants]." 395

S.C. at 591, 720 S.E.2d at 53. The court found that evidence insufficient to support Odems's convictions for first degree burglary, grand larceny, criminal conspiracy, and malicious injury. *Id.* at 592, 720 S.E.2d at 53. In *State v. Bostick*, the victim was found bludgeoned in her house, which had been set ablaze. 392 S.C. at 136, 708 S.E.2d at 775. The court recited the following evidence that had been presented against Bostick:

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

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

Appellant argues that "[n]o physical evidence connected Appellant to the crime. The prosecution established only that a connection existed between the deceased and Appellant, but established no connection between Appellant and the deceased's death." Initial Br. of Appellant p. 16. Respondent disagrees with Appellant's contention and asserts that Appellant's own words and actions after the murder, combined with other circumstantial evidence, established a connection between Appellant and Victim's murder.

As to the connection between Appellant and Victim's murder, the State established such a connection through evidence of Appellant's own words and actions after the murder, which the State presented through the testimony of Larry Dell White. Though Appellant told White that he found his girlfriend's body and that she had been stabbed by a drug dealer, Appellant's later statements to White indicated that he was more culpable than his story suggested. In particular, when White asked Appellant what could be so bad, Appellant responded, "[B]ut you ain't never killed nobody." White testified to the jury that those were Appellant's "exact words. . . ." R. 40, ll. 12 – 16. In his brief, Appellant argues that he "did not admit guilt to White or confess participation of any sort." IBOA p. 17. Respondent agrees that Appellant did not expressly confess to the murder; however, his statement "but you ain't never killed nobody" conflicts with the story he told White, and that statement could be construed as an inadvertent admission of guilt. If Appellant had been telling the truth about finding his girlfriend "cut up" by the "dope man," then the appropriate response to White's question, "what could be so bad?" should have indicated that Appellant had left Victim's body and had failed to call the police. The statement "but you ain't never killed nobody" implied that Appellant committed the murder and did not merely witness the aftermath.

White's testimony about Appellant's demeanor during their conversation is further circumstantial evidence that Appellant committed the murder. White testified that Appellant was inconsolable throughout their conversation and also that Appellant told White that when he told his sister what he had done it would "fuck his sister up." R. 28, ll. 10 – 11. Appellant also expressed during the conversation that he wanted to kill himself.<sup>10</sup> The jury could have inferred

---

<sup>10</sup> The South Carolina Court of Appeals has only recently addressed whether evidence of attempted suicide is probative of the accused's guilt. *State v. Orozco*, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (2011) (recognizing the issue as one of first impression in South Carolina and

Appellant's culpability from White's testimony about Appellant's intense emotional response to his girlfriend's death. The State also presented evidence that Appellant fled Greenville following the murder. In South Carolina, "[e]vidence of flight has been held to constitute evidence of defendant's guilty knowledge and intent." *State v. Crawford*, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005). Furthermore, though Appellant had spent time with Victim's family during the five years that he and Victim were in a relationship, he failed to contact Victim's family after her death or to attend her funeral. Respondent submits that Appellant's actions after the murder are further circumstantial evidence of guilt.

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

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

---

concluding "that evidence of a suicide attempt is probative of a defendant's consciousness of guilt and is generally admissible for whatever value the jury decides to give it"), *cert. granted* (Oct. 17, 2012). Other courts have admitted threats to commit suicide as evidence of guilt. *E.g.*, *Commonwealth v. Sanchez*, 610 A.2d 1020, 1028 (Pa. 1992) ("Evidence of actual attempts to commit suicide are uniformly admitted as evidence tending to show consciousness of guilt on the part of the defendant, and a similar inference can be drawn from a threat to commit suicide."); *People v. O'Neil*, 165 N.E.2d 319, 321 (Ill. 1960) ("[T]he threat of suicide, as does flight, tends to show a consciousness of guilt.").

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

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

According to Appellant, the State’s closing argument, which included a reference to the “raw emotion” shown by Victim’s sister and mother during their testimony and the display of Victim’s photograph,<sup>11</sup> was “[v]ery telling of the . . . weak case” presented to the jury. IBOA p. 17. Respondent disagrees. During closing argument, the State recounted the important evidence that had been presented through the testimony of the State’s witnesses. While the State acknowledged the emotion the jury had witnessed from Victim’s sister, who found Victim’s decomposing body, and from Victim’s mother, the breadth of the State’s closing argument covered the evidence that connected Appellant to Victim’s murder. *See* R. 244, l. 16 – 256, l. 4.

Evidence of Appellant’s words and actions after the murder, combined with the physical evidence and eyewitness testimony connecting Appellant to the scene of the crime, raises more than a suspicion that Appellant is guilty. As such, Respondent asks that this Court affirm the trial court’s denial of the motion for directed verdict.

---

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

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,


ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

KAYCIE S. TIMMONS  
Assistant Attorney General

W. WALTER WILKINS  
Solicitor

BY:   
KAYCIE S. TIMMONS  
SC Bar No. 100237

South Carolina Office of Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
(803) 734-0265

ATTORNEY(S) FOR RESPONDENT

November 7, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RALPH B. HAYES,

APPELLANT,

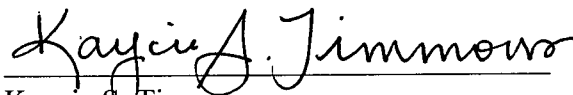
Appellate Case No. 2012-213261.

---

CERTIFICATE OF COMPLIANCE

---

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



Kaycie S. Timmons  
Assistant Attorney General  
S.C. Bar No. 100237

Office of the Attorney General  
Post Office Box 11549  
Columbia, S.C. 29211-1549  
(803) 734-0265

ATTORNEY(S) FOR RESPONDENT

November 7, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RALPH B. HAYES,

APPELLANT,

Appellate Case No. 2012-213261.

---

**PROOF OF SERVICE**

---

I, Kaycie S. Timmons, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record Susan B. Hackett at:

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

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

This seventh day of November, 2013.

**RECEIVED**

NOV 07 2013

**SC Court of Appeals**

*Kaycie S. Timmons*

Kaycie S. Timmons  
Assistant Attorney General  
SC Bar No. 100237



ALAN WILSON  
ATTORNEY GENERAL

November 7, 2013

RECEIVED  
NOV 07 2013  
SC Court of Appeals

Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

Re: The State v. Ralph B. Hayes  
Appellate Case No. 2012-213261

Dear Ms. Kitchings,

Enclosed please find the original and nine (9) copies of the *Final Brief of Respondent*, dated November 7, 2013, along with proof of service, in the above-referenced case.

By copy of this letter, I am serving opposing counsel with same. Thank you for your consideration in this matter.

Sincerely,

Kaycie S. Timmons  
Assistant Attorney General

KST/mv  
Enclosure

cc: Susan B. Hackett, Esq., Appellate Defender  
The Honorable William W. Wilkins, III, Solicitor, 13<sup>th</sup> Circuit  
Sandi Wofford, Victim Services