

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Abbeville County

The Honorable Frank R. Addy, Jr., Circuit Court Judge

**RECEIVED**

**JUN 14 2019**

**SC Court of Appeals**

THE STATE,

Respondent,

v.

CHARLES TILLMAN,

Appellant.

Appellate Case No. 2018-000495

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**INITIAL BRIEF OF RESPONDENT**

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ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY  
Assistant Attorney General  
S.C. Bar No. 103131

P.O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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## APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err by denying Charles Tillman's motion for the court to identify the standard of review it applied when considering Mr. Tillman's motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than an "scintilla" or "modicum" of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of "substantial circumstantial evidence" employed by our state's appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) affirmed by *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?
  
- II. Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?
  
- III. Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body— State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141 —when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?
  
- IV. Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduced evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?
  
- V. Did the trial judge err by denying Charles Tillman's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?
  
- VI. Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

**RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL**

- I. Did the trial judge adequately identify and apply the proper analysis in dismissing Appellant's directed verdict motion?
- II. Did the State, during its case-in-chief, present sufficient evidence to overcome the Appellant's motion for a directed verdict?
- III. Was the trial judge within his discretion to deny Appellant's motion and admit State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—as those photos were relevant to prove Appellant committed the murder?
- IV. Did the Court Properly Denied Appellant's Mistrial Motion Because Appellant Was Not Prejudiced By The Testimony Given By Agent Barton?
- V. Did the trial judge properly deny Appellant's request to under the jury on circumstantial evidence set forth in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989), as this case is no longer good law?
- VI. Should this Court decline to consider a new trial based on the cumulative error doctrine?

### STATEMENT OF THE CASE

Timiya Massey (“Appellant”) was indicted by the Abbeville County grand jury on the charge of murder, attempted murder and possession of a weapon during a violent crime. (Tr. p. 11, ll. 12-17). At trial, Appellant was represented by Charles Grose, Esq. Assistant Solicitors Yates Brown, Esq., and Micah Black, Esq., prosecuted the case on behalf of the Eleventh Circuit Solicitor’s Office. (Tr. p. 1). Appellant was tried before the Honorable Frank R. Addy, Jr., January 22th, through January 26th, 2018. (Tr. p. 1). At the conclusion of the trial the jury found Appellant guilty as indicted. (Tr. p. 699, ll. 12-23). Following the conviction, Judge Addy sentenced Appellant to life in prison. (Tr. p. 714, ll. 9-14). Appellant then filed a timely Notice of Appeal. Trial Counsel, Charles Grose Esq., submitted Appellant’s Initial Brief on December 31, 2018. This Brief of Respondent follows.

## RESPONDENT'S STATEMENT OF THE FACTS

In the evening of November 8, 2016, 9-1-1 received a call from Charles Tillman ("Appellant"), claiming he had come home from work to find his live-in girlfriend dead. Deputy Evan McCurry, with the Abbeville County Sheriff's Department, was the first to respond to the scene. There, he discovered the bloodied body of Christie Stutler lying dead on the bed in the master bedroom. Tr. p. 146, l. 24 – 150, l. 14.

A later autopsy revealed that the victim's death resulted from a single gunshot to the head. Tr. p. 300, ll. 19-23. It was further discovered that the victim had also suffered a physical beating and had cigarette burns to her hand and buttocks. She also had an additional gunshot wound to her leg. Tr. p. 294, l. 7 – p. 300, l. 18. The pathologist noted that some of the bruising he observed was of a remote nature. Tr. p. 297, ll. 3-16; p. 304, l. 22 – p. 305, l. 8. The forensic pathologist opined that the victim's death occurred sometime between 11:00 PM, November 7 and 11:00 AM, November 8. Tr. p. 302, ll. 11-14. The Pathologist also collected fingernail clippings from the victim that were forwarded to the State Crime Lab. Tr. p. 293, ll. 8-15. A later analysis there revealed the presence of Appellant's DNA under the victim's fingernail specimen. However, the DNA expert did concede at trial that paternal male relatives of Appellant could not be excluded as contributors to the specimen. Tr. p. 513, l. 7 – p. 514, l. 22.

During a canvas of the murder scene, Investigators discovered .22 bullets, a bullet hole in the trailer, and a single .22 caliber shell casing under the mattress where the victim's body was located. Tr. p. 219, l. 12 – p. 221, l. 9; p. 313, ll. 18-25. In addition, Investigators located a single .22 projectile lodged in the wall of Appellant's trailer. Tr. p. 194, ll. 3-25. Investigators eventually discovered the murder weapon, a .22 caliber rifle, hidden in a junked car near Appellant's trailer. Tr. p. 307, l. 21 – p. 309, l. 9. An analysis conducted by experts at the State Crime Lab confirmed it was the murder weapon and further revealed the presence of DNA from

the victim. Analysis also found DNA attributable to Appellant, however, the expert from the State Crime Lab again acknowledged that Appellant's paternal male relatives could not be excluded. Tr. p. 433, l. 21 – p. 434, l. 18; p. 504, l. 25 – p. 512, l. 2). There was also DNA from a separate unidentified male. Tr. p. 504, l. 19 – 511, l. 4. Investigators also swabbed Appellant's shirt for presence of gunshot residue (GSR). Those specimens were also sent to the State Crime Lab, where experts discovered a single particle of GSR present. Tr. p. p. 560, l. 23 - 561, l. 25

Throughout the investigation, Appellant maintained he was innocent. He was adamant that the victim had committed suicide, despite the fact that no weapon was found at the immediate scene. Tr. p. 182, ll. 18-24; SLED Interview: 12:00. Appellant gave several unusual and inconsistent statements during interviews with Law Enforcement. First, during the interview Appellant denied owning a gun and provided elusive answers to the investigators' questions about the .22 caliber bullets found in Appellant's trailer. State's Exhibit 124—16:13. Appellant also informed Law Enforcement that the victim was "speaking" with him after the murder. Tr. p. 404, ll.14-21. Appellant further acknowledged to that the victim had had several affairs with other men and that she wouldn't "do right by him." Tr. p. 410, ll. 4-18; State's Exhibit 124—28:25; 55:18. Lastly, Appellant mentioned a deer camera that he claimed was aimed at his house so he could watch who was coming and going. After Law Enforcement failed to locate it, Appellant changed his story that he had put it up afterwards. Tr. p. 320, ll. 9-22. However, Investigator Hines, with the Abbeville County Sheriff's Office, testified that there would have been no opportunity to put a camera up after the murder. Tr. p. 321, l. 21 – p. 322, l. 4. The relevant portions of these interviews were played for the jury during Appellant's trial.

During Appellant's trial, Appellant's mother testified that she had gone to Appellant's trailer, after Appellant had left for work, to see if the victim wanted to come with her to the

laundry mat. Appellant's mother alleged she had driven to the front and yelled outside for the victim. Appellant's mother further alleged that she saw a shadow and heard the victim respond to her from inside, but was not sure what she had said. They left without the victim. Tr. pp. 156, l. 24 - 158, l. 8. Appellant's mother admitted at trial that she did not inform Law Enforcement of this throughout the investigation. Tr. p. 158, ll. 9-16.

During the trial, the jury received testimony from Sheriff's investigator Sheri Ashley regarding to the 9-1-1 call made by Appellant. Investigator Ashley testified that during the 9-1-1 call Appellant's mother can be heard saying that Appellant had a gun. Tr. p. 189, l. 2 – p. 192, l. 6. During the 9-1-1 call that was played for the jury during Appellant's trial, Appellant tells his mother, while he is on the phone with 9-1-1 dispatch, that the victim shot herself. He also tells his mother that he could not find the gun. Appellant's mother responds that she thought he had a gun over at his trailer. Appellant instantly responded that he did not have a gun. State's Exhibit 1: 911 Call CD—4:32. Appellant's mother later admitted to Law Enforcement that she did mention something about a gun during the call, but claimed she could not recall why. Tr. p. 189, ll. 2-15; 228, ll. 2-13. Appellant also presented testimony from his friend and coworker, J.C. Boggs, and from his cousin, Walter Tillman. Both men testified that they picked Appellant up from his trailer at 8:30 AM on November 8, to go to a job site. Tr. p. 591, l. 2 – p. 593, l. 2; p. 601, ll. 1-21. They further testified that Appellant acted normal that day. Tr. p. 594, ll. 4-11; p. 602, ll. 5-8. Appellant's brother, Willie Tillman, also testified. He alleged that he walked over to Appellant's trailer earlier that morning prior to J.C. Bogg's arrival. He stated that he did not enter the trailer but did have a conversation with Appellant from outside. He further alleged that he heard Appellant engage in a conversation with the victim during this period. Tr. p. 606, l. 21 – p. 611, l. 5; p. 616, ll. 15-23. He did confess that he neither entered the trailer nor saw the victim.

Tr. p. 613, ll. 7-8; p. 617, ll. 5-8. He also conceded at trial that he neglected to inform Law Enforcement of this during the investigation. Tr. p. 620, l. 24 – p. 622, l. 17.

## ARGUMENT

### I. The Trial Judge Identified And Applied The Proper Analysis In Dismissing Appellant's Directed Verdict Motion.

#### *How the Issue Arose at Trial*

After the closing of the State's case, Defense Counsel moved for a directed verdict motion. In doing so, Defense Counsel noted:

You're going to charge direct and circumstantial evidence. And, of course, you know, there's direct evidence that proves a homicide and direct evidence for which a jury could concluded that somebody murdered Christie. The issue in this trial is the identity of the person who did that. And in this case the State's entire case on that is circumstantial evidence. And so, when we get into circumstantial evidence we get into an area that quite frankly has gotten a little bit confused in the appellate opinions because -- I don't have the cites, but you could go and pull up opinions that say, you know, the directed verdict standard that Your Honor is supposed to consider is whether there's any substantial circumstantial evidence. And in some of those opinions the word "any" will be italicized. And in other opinions the word "substantial" will be italicized. Then of course you have the whole *Jackson vs. Virginia* issue where the US Supreme Court has said a scintilla of evidence is not enough to submit a case to the jury.

[ . . . ]

So I guess one of the things that I'm going to ask you to do as part of your ruling on this is what our appellate courts have not done a very good job of, which is articulating exactly, you know, what the standard is that you're applying to your motion, given that there is the emphasis sometimes on "any" and emphasis sometimes on "substantial". I obviously believe that the emphasis should be on the substantial portion of it.

Tr. p. 575, l. 22 – p. 577, l. 20.

The trial judge respectfully conceded that "the Court's have been less than specific on what exactly substantial circumstantial evidence means." Tr. p. 583, ll. 1-2. Nevertheless, the trial judge concluded,

*As a practical matter though, this Court's not so much concerned with the theoretical niceties of what, quote, "substantial" or, quote, "any" means. I'm more concerned with the actual practical application of facts through the*

*law.* In this particular case I would agree with what the Solicitor was kind of alluding to a few moments ago. In isolation any one of the bits of circumstantial evidence, as with the others, would probably warrant the Court granting a directed verdict. If we were dealing with only a single particle of GSR found on the Defendant's sleeve without the other evidence, then certainly there would not be enough to go to the jury. Maybe even a particle plus the DNA found on the gun. Perhaps that would be insufficient to send to the jury. Perhaps a particle, the fact that she had the Defendant's DNA under her fingertips, and the DNA on the gun that belonged to the Defendant, those in isolation without other evidence might be insufficient to send it to the jury. But the Court has had the opportunity to, and the jury has had the opportunity to review the videos of the Defendant. And again, this is a case where the parties have stipulated that this was, in fact, a homicide. This is not a suicide. Someone killed Ms. Stutler. The Defendant has given several statements. He has been consistent in his belief that this was a suicide. But part of the State's theory of this case is that that belief was inherently unreasonable because no gun was discovered by Ms. Stutler. There were contradictions in the videos that were taken of the Defendant and the audio that was taken of him. There are contradictions, and there are credibility issues in what the Defendant said. The jury is ultimately the judge of credibility of witnesses. And by his statements to law enforcement, by the tapes that have been played for jury, the 911 tape, etcetera, I think that credibility is squarely an issue in this case. So we're dealing with one of those mixes of circumstantial evidence and direct evidence in the sense that the jury is entitled to pass upon the reasonableness of the Defendant's explanation, the credibility of what he is saying to the investigators, and the other circumstances involved in this case. The Defendant's point that there was a period of time where Ms. Stutler could have been killed is valid. That's accurate. But it does not -- it does not necessarily mean that the Court has to dismiss this case at this particular stage.

***So the Court will conclude that there is substantial circumstantial evidence and direct evidence in which the Court -- or from which the jury could conclude that the Defendant is the one who took the life of Ms. Stutler, and that will be the Court's ruling.*** The Court will deny the Defendant's motions for a directed verdict. And, of course, the Defense having renewed all prior motions, including the motion for a mistrial and objections, the same rulings shall stand with regard to those.

Tr. p. 583, l. 17 -- 585, l. 18 (emphasis added).

Defense Counsel quickly responded:

The only -- the concern that I have was with the part of your ruling where you said that you don't have to be concerned with what the any substantial circumstantial evidence means. I don't know that you can apply the law to the facts without knowing what that means. And I would just respectfully ask for your definition for the record in case our Court -- Appellate Courts are having to look at this. And I realize I'm putting you in a difficult spot because of the opinions out

there, but I also feel like the law has probably gotten a little unclear on some of this because we don't have these conversations at this stage of the trial on the record.

Tr. p. 585, l. 19 – p. 586, l. 5.

The Trial Judge again conceded the confusing nature of the circumstantial evidence standard of review, but inevitably held:

I think that if this case were solely -- again, if this case were solely a circumstantial evidence case, if there weren't credibility issues involved in this, if the Defendant had never given a statement to the authorities or if his statements perhaps made a little bit more sense in light of the evidence, the other evidence that exists, then maybe your point would be a little bit better taken. ***I take substantial circumstantial evidence, when you're dealing with just a purely circumstantial evidence case, to mean exactly what the Courts have articulated it in the past. So that will be my ruling.***

Tr. p. 586, ll. 10-21 (emphasis added).

### ***Standard of Review***

“In criminal cases, this Court will review errors of law only.” *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “This Court is bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (citing *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)).

### ***Analysis***

As Appellant aptly notes in his initial brief, there has historically been a level of confusion in applying the “substantial circumstantial” analysis first set forth in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984). See, e.g. *State v. Land*, 419 S.C. 191, 198, 797 S.E.2d 48, 52 (Ct. App. 2016); *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). For this reason, our Supreme Court in 2016, issued the *State v. Bennett* opinion for the express purpose of

“clarify[ing] the framework of a court’s inquiry in determining whether substantial circumstantial evidence exists to require the denial of a directed verdict.” 415 S.C. 232, 235, 781 S.E.2d 352, 354 (2016). In the *Bennett* opinion the court cites to the analysis set forth in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955)

Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

*Bennett*, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (citing *Littlejohn*, 228 S.C. 324, 89 S.E.2d 924). The Court then concludes *Bennett* opinion with the proper analysis trial courts are to apply in directed verdict motions:

Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

*Id.* 415 S.C. at 237, 781 S.E.2d at 354.

The Court further refined the *Bennett* analysis in *State v. Greene*. 423 S.C. 263, 814 S.E.2d 496 (2018). There the Court, citing to *Bennett*, noted “when reviewing the denial of a directed verdict the Court must not weigh the evidence but must view it in the light most favorable to the State, for the Court is concerned only with the existence or nonexistence of evidence.” *Id.*, 423 S.C. at 267, 814 S.E.2d at 498.

The opinion in *State v. Bennett* did not overrule prior jurisprudence in regards to the “substantial circumstantial evidence” analysis. Instead it defined the term “substantial.” See *Bennett*, 415 S.C. at 235, 781 S.E.2d at 353 (“We agree the court of appeals applied an incorrect standard in its analysis and take this opportunity to clarify the framework of a court’s inquiry in

determining whether *substantial circumstantial evidence exists* to require the denial of a directed verdict.”) (emphasis added).

Appellant alleges that the trial judge erred in denying his motion to identify the standard of review it applied in denying Appellant’s directed verdict motion. Specifically, Appellant states that he requested the judge apply the “substantial circumstantial evidence” standard applied in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984). As noted above, *Schrock* is not the principal authority since *State v. Bennett*. Moreover, the record clearly supports that the judge identified the correct analysis. In the denial of the directed verdict, the trial judge twice stated that he found substantial circumstantial evidence to permit the jury to rule. Tr. p. 583, l. 17 – p. 586, ll. 10-21. While Appellant takes issue with the trial courts comment that it was “not so much concerned with the theoretical niceties of what, quote, ‘substantial’ or, quote, ‘any’ means,” the court correctly states immediately after, “I’m more concerned with the actual practical application of facts through the law.” This was correct response in light of *Bennett*, which does not require a specific analysis in regards to “substantial” or “any.” Instead, it requires the trial court a practical determination of “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty.” *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. The Trial Court’s ruling in denying the directed verdict motion reflects this reasoned analysis. See Tr. p. 583, l. 21 – p. 584, l. 13. For this reason, the trial court did not commit error as it clearly articulated the correct test in denying Appellant’s motion for a directed verdict.

**II. The Prosecution, During Its Case-In-Chief, Presented Sufficient Evidence To Overcome The Defense’s Motion For A Directed Verdict.**

***Standard of Review***

“On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.” *State v. Bennett*, 415 S.C. 232,

235–36, 781 S.E.2d 352, 353–54 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). “The Court’s review is limited to considering the existence or nonexistence of evidence, not its weight.” *Id.* (citing *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478–79 (2004)). “When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof.” *Id.* 415 S.C. at 236, 781 S.E.2d at 354. However, “[u]nless 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. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011).

### *Analysis*

Appellant argues the trial court erred in denying his motion for a directed verdict because the State failed to present substantial circumstantial evidence which reasonably tended to prove his guilt. However, the record in the present case supports the trial judge’s denial of Appellant’s directed verdict motion because the State presented substantial circumstantial evidence supporting Appellant’s guilt.

“Circumstantial evidence [. . .] is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred.” *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (citing *State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004)). “Circumstantial evidence is ‘based on inference and not on personal knowledge or observation,’ *Black’s Law Dictionary* 636 (9th ed.2009), and establishes ‘collateral facts from which the main fact may be inferred.’” *Id.* (citing *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n. 1 (2001)).

In *State v. Bennett*, the Supreme Court of South Carolina reversed the Court of Appeals finding that the trial erred in denying the Appellant's motion of a direct verdict. *Bennett*, 415 S.C. at 234, 781 S.E.2d at 353. The weight of supporting evidence encountered in *Bennett* is similar to the present case. In *Bennett*, Law Enforcement responded to an alarm at a Spartanburg community center. Law Enforcement discovered a shattered window with the door next to it ajar. Next, officers found a mounted television which showed signs of tampering. From it, they were able to lift a fingerprint that matched to the appellant. In addition, Law Enforcement discovered two blood droplets in a nearby office which also matched the appellant. Bennett was indicted for larceny, burglary and malicious injury to property. During trial, the director of the community center testified that Bennett was a frequent visitor, but that she would monitor him when he was there. *Id.*, 415 S.C. at 234-35, 781 S.E.2d at 353.

At the close of the State's case, the appellant moved for a directed verdict which was denied by the trial court after finding that there existed *substantial circumstantial evidence* from which the jury could infer guilt. Bennett was ultimately convicted. However, the Court of Appeals found error in the trial court's denial of the directed verdict motion and reversed. In doing so, the Court of Appeals held:

[W]e cannot say it would be unexpected to find Bennett's DNA in the computer room and his fingerprint in the community room. Though the exact locations of the DNA and fingerprint evidence do raise a suspicion of his guilt, the evidence simply does not rise above suspicion. The evidence undoubtedly placed Bennett at the location where a crime ultimately occurred; however, it is undisputed that Bennett was a frequent visitor to the location prior to the crime, and we disagree with the State's assertion that the evidence placed Bennett at the scene of the crime.

*Bennett*, 415 S.C. at 236, 781 S.E.2d at 354 (citing *State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014)).

In reversing the Court of Appeals, our Supreme Court held:

In our view, this discussion clearly indicates the court of appeals weighed the evidence and reversed based on its conclusion that there was a plausible alternative theory inconsistent with Bennett's guilt. This is contrary to our jurisprudence and misapprehends the court's role making this determination. As this Court clarified in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955), the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury. Within the jury's inquiry, "it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." *Id.* at 328, 89 S.E.2d at 926. However, when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury 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." *Id.* at 329, 89 S.E.2d at 926. Therefore, although the jury must consider alternative hypotheses, ***the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.*** This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

The evidence introduced by the State in this case was sufficient to withstand Bennett's motion for directed verdict. Forensic evidence placed Bennett within the Center and, more specifically, at the two places where the crimes had occurred.

*Bennett*, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (emphasis added).

Similar to *Bennett*, the State presented sufficient evidence to overcome Appellant's directed verdict motion. At the conclusion of the State's case, the following supporting evidence had been presented:

1. A 911 call from Appellant in which his mother can be heard referencing Appellant's gun, and Appellant's rapid response that he did not own a gun (Tr. p. 189, l. 2 – p. 192, l. 6; State's Exhibit 1: 911 Call CD—4:32);
2. The .22 caliber rifle used to murder the victim found hidden in an abandoned vehicle near Appellant's trailer (Tr. p. 308, l. 1 – p. 312, l. 14; p. 433, l. 21 – p. 434, l. 18);

3. Attributable DNA found on the murder weapon (Tr. p. 504, l. 25 – p. 512, l. 2)<sup>1</sup>;
4. Attributable DNA found under the victim's fingernail (Tr. p. 513, l. 7 – p. 514, l. 22); and
5. Trace gunshot residue on Appellant's shirt (Tr. p. p. 560, l. 23 - 561, l. 25).

The State also presented the recorded Law Enforcement interviews with Appellant, which highlighted several inconsistencies and illustrations of motive. First, during the interview Appellant denied owning a gun and provided elusive answers to the investigators' questions about the .22 caliber bullets found in Appellant's trailer. State's Exhibit 124—16:13. Second, Appellant casually told Law Enforcement that he had a deer camera installed outside the trailer so that he could watch people coming and going. However, once investigators noted that they could use this camera to determine the murder suspect, Appellant changed his story and claimed that he has installed it after the murder. Tr. p. 320, ll. 9-22; p. 321, l. 21 – p. 322, l. 4. Lastly, Appellant noted during the interview various examples of infidelity by victim, and stated that she "didn't do right by him." Tr. p. 410, ll. 4-18; State's Exhibit 124—28:25; 55:18.

Moreover, the timeline established at trial limits the period that a third-party could have murdered the victim. The forensic pathologist gave a time of death between 11:00 PM and 11:00 AM. Tr. p. 302, ll. 11-14. Also, Appellant told law enforcement during the interviews that only he and the victim were at the trailer prior to him leaving for work the morning of the murder. State's Exhibit 124—2:03:32. Appellant's cousin and co-worker testified that they picked up Appellant from his trailer at 8:30 AM to drive to a worksite. Tr. p. 591, l. 2 – p. 593, l. 2; p. 601, ll. 1-21. This leaves a narrow period of only two and a half hours for someone to arrive at the trailer, violently beat the victim, and shoot her through the head. Interestingly, no evidence was presented at trial that would have supported a break-in or robbery.

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<sup>1</sup> The DNA expert from the State Crime Lab testified that he could not exclude Appellant's paternal male relatives as contributors to the DNA found on the .22 rifle used to kill the victim or the victim's fingernail specimen. Tr. p. 510, ll. 16-24; p. 514, ll. 5-22.

Lastly, in addition to the above circumstantial evidence, direct evidence was presented during the State's case-in-chief. *See State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) ("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.") (emphasis added). Appellant's mother was the third witness called by the State. During her testimony, she alleged that she witnessed the victim alive after Appellant had departed for work. Because the testimony of Appellant's mother, if believed, directly exculpates her son as the murder, it constituted direct evidence. *See State v. Nesmith*, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) ("Direct evidence is testimony, which if believed, tends directly to prove a fact in issue."); *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 248-49 n. 1 (2001) ("Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption."). Accordingly, once Appellant's mother's testimony was admitted, her credibility became a prime issue that required a jury determination.<sup>2</sup> For this reason, the trial court correctly held that it was "dealing with one of those mixes of circumstantial evidence and direct evidence in the sense that the jury is entitled to pass upon the reasonableness of the Defendant's explanation, the credibility of what he is saying to the investigators, and the other circumstances involved in this case." Tr. p. 584, l. 24 – p. 585, l. 5; *see State v. Needs*, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) ("After the trial court properly has determined a witness is competent,

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<sup>2</sup> Appellant, notes in his initial brief, "in a light most favorable to the State; the evidence presented at trial established that Ms. Stutler was alive at 8:30-9:00 a.m. on November 8<sup>th</sup> when Charles Tillman left for work with J.C. Boggs and Walt Tillman." Appellant undoubtedly is referring to his mother testimony in which she alleges she heard the victim answer her from outside the trailer after Appellant departed for work. However, the State's intent in introducing the 9-1-1 call was to impeach the credibility of Appellant's mother. Despite, having stated during the call that Appellant possessed a gun, the mother feigned ignorance when confronted by Law Enforcement. Therefore, *in a light most favorable to the State*, her testimony regarding the victim cannot be given the assurance of credibility that Appellant asserts.

the resolution of the credibility of the witness is within the province of the jury.”). Additionally, insofar as the charged crime required the State to prove Appellant possessed malice aforethought as required under S.C. Code Ann. § 16-3-10, the stipulation to murder constituted direct evidence of the offense charged. *See United States v. Escalera*, 536 F. App'x 27, 33 (2d Cir. 2013) (holding that appellant’s stipulation to possession of methamphetamine constituted direct evidence of conspiracy).

Despite the warnings set forth in *State v. Bennett*, Appellant would have had the trial court weigh the evidence. However, *Bennett* held that the reviewing court is only concerned with the existence or nonexistence of evidence. *Bennett*, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354; *see State v. Larmand*, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) (“[O]ur duty is not to weigh the plausibility of the parties’ competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer [the defendant]’s guilt.”). This Court should refrain from Appellant’s invitation to act as a thirteenth juror and usurp the jury’s role in weighing the evidence. *See United States v. Ashley*, 606 F.3d 135, 141 (4<sup>th</sup> Cir. 2010) (internal citation omitted) (“Though a jury may not convict on the basis of ‘rank speculation,’ it is entitled to deduce and to infer. . . . Our system of lay juries is designed to allow jurors to draw upon common experience and to rely upon reasonable intuitions, and it is not the province of an appellate court to undermine these virtues by picking apart a properly instructed verdict.”).

**III. The Trial Judge Was Within His Discretion To Admit Photos Of The Deceased Victim Because Those Photos Relevant To Prove The Circumstances Of The Murder.**

*How the Issue Arose at Trial*

Prior to opening statements, the State sought to admit photos taken at the scene of the

crime. Tr. p. 53, ll. 6-15; *see* State's Exhibit Numbers 2-123. Appellant objected to several photos portraying the deceased victim. The trial court then reviewed and admitted several photos of the victim, but excluded several that were taken during the autopsy. Tr. p. 59, l. 5 – p. 75, l. 10. Appellant then reasserted an objection on the basis of relevance. In doing so, he elected to stipulate that the victim's death resulted from murder. Tr. p. 75, l. 11 - 77, l. 5. The State then took issue to any potential evidential limitations that would result from the stipulation. Tr. p. 77, l. 23 – 79, l. 5. The following day, prior to opening, the trial again reviewed the photos. Tr. p. 107, l. 25 – p. 108, l. 3. Defense Counsel again objected to “any pictures that show [the victim's] body.” Tr. p. 108, ll. 4-5. Despite Appellant's objection, the court admitted several photos which displayed the victim's deceased body. State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141

### *Standard of Review*

“The admission of evidence in a criminal prosecution is within the trial judge's discretion and will not be disturbed on appeal unless an abuse is shown.” *State v. Spodnick*, 292 S.C. 68, 69, 354 S.E.2d 904, 905 (1987) (*citing State v. Moultrie*, 283 S.C. 352, 322 S.E.2d 663 (1984)). “A conviction will not be reversed for non prejudicial error in the admission of evidence.” *Id.* (*citing State v. Knight*, 258 S.C. 452, 189 S.E.2d 1 (1972)).

### *Analysis*

Appellant argues that trial court erred in admitting the photos of the victim's deceased body. Specifically, Appellant argues that the photo were irrelevant under SCRE, Rule 401, because of the stipulation that the victim was in fact murdered. Nevertheless, despite this stipulation, the photos were relevant to prove Appellant committed the murder.

Despite the stipulation, the burden still rested on the State to prove that Appellant

unlawfully killed the victim with malice aforethought. In recognition of this burden, the South Carolina Supreme Court held in *State v. Johnson* that “the State has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation.” 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000) (citing Am.Jur.2d Stipulations § 17, at 557 (1974)). The Court further articulated that “there is no abuse of discretion if the offered photograph serves to corroborate testimony.” *Id*; see also *Imbler v. Pachtman*, 424 U.S. 409, 426, 96 S.Ct. 984, 993, 47 L.Ed.2d 128 (1976) (“Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence.”)

In the law enforcement interviews presented at trial, Appellant was adamant that the victim had committed suicide. Furthermore, when questioned about extensive bruising found on the victim's body, Appellant claimed that he never laid a hand on the victim. See State's Exhibit 124: First Interview—25:10; 1:15:00. During trial, the State presented testimony from forensic pathologist, Dr. Brett Woodard. Dr. Woodard testified that the victim died as a result of a gunshot wound to the head. In addition, Dr. Woodard testified that during the autopsy of the victim, he encountered extensive bruising and abrasions. It was his expert opinion that several of the bruises he encountered were of a remote nature, i.e. they had occurred days prior. The State then offered various photos of the bruising. Tr. p. 294, l. 10 – 300, l. 23. As noted, the burden of proof remained on the state. Therefore, the photos of the deceased were relevant to show that the victim was brutally murdered. More importantly, these photos were also relevant to the State's theory that the victim had been subjected to extended abuse at the hands of Appellant, and that Appellant further lied to cover up his involvement.

Appellant also argues that the photos were prejudicial under SCRE, Rule 403. Despite

this argument, our courts have consistently held that “[a]dmitting photographs which serve to corroborate testimony is not an abuse of discretion. “*State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (citing *State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999)). Furthermore, “[t]he mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.” *State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (quoting *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958)). The photos presented were carefully vetted by the trial court under SCRE, Rule 403 prior to their admission. Moreover, each photo was used for the purpose of corroborating testimony of the State’s witness’s regarding the condition of the victim’s body. *See State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim’s body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim’s mouth). For these reasons, the trial court did not err in admitting them.

**IV. The Court Properly Denied Charles Tillman's Mistrial Motion Because Appellant Was Not Prejudiced By The Testimony Given By Agent Barton**

*How the Issue Arose at Trial*

During Appellant’s trial, the State called SLED Agent Bo Barton. Tr. p. 460, l. 3-4. The State began examination by asking Agent about his law enforcement career. Tr. p. 460, ll. 5-6. Agent Barton responded that he had been in law enforcement thirty years, received his undergraduate degree from Wofford College, a master degree from Charleston Southern University, and that he currently was the lieutenant in charge of SLED’s behavioral science unit.

Tr. p. 460, ll. 7-21. The State then inquired into Agent Barton's participation in Appellant's case. Agent Barton testified that he had received a call from Abbeville County Sheriff's Department requesting the assistance of a criminal profiler. Tr. p. 461, ll. 14-17. Defense Counsel then requested a sidebar which was held off the record. Tr. p. 461, ll. Immediately after, the judge indicated that Defense Counsel's objection was sustained and instructed the State to move on with its questioning. Tr. p. 461, ll. 22-23. The State then asked Agent Barton about his interview with Appellant. Tr. p. 462, l. 25. Agent Barton responded that the interview took place twenty-one days after the victim's murder. Tr. p. 462, ll. 1-10. Agent Barton then began to briefly describe the interview. Tr. p. 464, l. 7 – p. 465, l. 6. Barton then transitioned into the substance of his interview with Appellant. Agent Barton stated the following:

My point to talk to Mr. Tillman was to try to understand a better understanding of what he believed happened that day, what actually happened that day, events leading, state of mind of the victim, that kind of thing. So we began talking and I was going to give -- I gave him three separate options as to the possible likelihood after my review of the case file --

Tr. p. 465, ll. 10-16.

Defense Counsel then immediately responded that he had matter of law. Tr. p. 465, ll. 17-23. Once the jury had retired from the courtroom, Defense Counsel placed on the record the substance of his previous sidebar. He indicated that the witness had not been admitted as an expert, and furthermore, that criminal profiling was a considered to be a junk science. Defense Counsel further ventured that the witness was about to give an opinion regarding his interview with Appellant. Tr. p. 465, l. 25 – 466, l. 22. Defense Counsel then moved for a mistrial. Tr. p. 466, l. 23 – p. 467, l. 4.

The State offered the following response:

Judge, we were -- and just to respond to that. We were attempting to -- you mentioned the word video fatigue yesterday and they've, essentially, been

looking at videos for a day and a half at this point. We were trying to cut those out and just jump straight to what they talked about, but Mr. Grose didn't allow us to get to that point. We're more than happy to play the video. It's about an hour. Since I'm not going to be allowed to ask questions without objections, we'll just hit play.

[. . .]

Judge, I wasn't planning on asking him for opinions at all and—

[. . .]

like I said, we can hit play. We cannot change what he's the lieutenant over this division of SLED. We can't change his job title. I'm sorry, Judge.

Tr. p. 467, l. 5 – p. 468, l. 14

The Trial Court then conceded to the following:

All right. Here's where I am. Mr. Grose, first of all, is accurate concerning the conversation that we had at the sidebar. It sounded as if the State was about to qualify, or attempt to qualify, or elicit testimony that would indicate that Mr. Barton is an expert in criminal profiling. That is not a recognized -- so far as I'm aware of, unless the State can point me to authority to the contrary, that is not a recognized area of expertise in South Carolina under 702. The best thing, at this particular point in time, to do in my opinion is if -- I mean, the best evidence rule is the interview itself. The audio of the interview. The question that the Court has is, what kind of instruction should I give? I don't believe, Mr. Grose, necessarily, that they crossed the line in terms of necessitating a mistrial. But I am understanding and appreciate your position and the fact that maybe they didn't cross the line, but it appears, at least to me, that perhaps inadvertently they were moving in that direction. And I understand the Solicitor's desire to summarize and avoid a one hour audio taping played for the jury. But the manner in which the testimony was being presented, although I think it was an innocent mistake on the part of the State, the manner in which it was starting to come out when Mr. Grose objected certainly seems to lend itself to the very thing Mr. Grose is complaining about. So how do I unring the bell. I understand, Mr. Grose, you're going to say I can't. But, assuming that the Court is not thinking that this -- that the character of this testimony is so egregious as to warrant a mistrial, which is basically how I'm ruling, is there any statement that you would like for the Court to make for the trial jury in an effort to ameliorate whatever problems have been caused by the statements he just elicited?

Tr. p. 468, l. 15 – p. 469, l. 22.

Defense Counsel continued to move for a mistrial for the reasons stated above. Instead of

granting Defense Counsel's request, the trial court agreed to issue a curative statement to the jury. Tr. p. 469, l. 23 – p. 472, l. 6. After discussion between both parties, the court provided the following instruction upon their return.

Ladies and gentlemen of the jury, thank you for your continued attention and your continued patience and I wanted -- before we proceed further, I want to clear up any misconceptions that perhaps you harbor concerning Mr. Barton and his current testimony. I want you to understand, ladies and gentlemen, previously today and yesterday we had a number of individuals testify as expert witnesses. I explained that when somebody is qualified as an expert, they are allowed to give opinion testimony. They cannot testify about something -- or they can testify about something they observed, but they can also testify about their opinions.

In this case, ladies and gentlemen, Mr. Barton's background, his job history, that kind of thing, that was alluded to in certain testimony. But please, understand that Mr. Barton is not an expert in any field that's recognized in the law. Criminal profiling is not a recognized science. It is not an area of expertise that's appropriate for an expert opinion or expert testimony, and Mr. Barton is not, in any way, shape, or form, an expert in any sort of science or in any sort of recognized field that would warrant qualifying him as an expert in that field. And to the extent that that impression may have been given to you, I want to dispel that immediately. And please, understand this is -- this witness' testimony is limited to something that he observed, something he heard, something he saw, smelled, tasted, felt, et cetera, and is not in any way, shape, or form opinion or expert testimony in any way. The way that we're going to move forward is I'm going to allow the State to simply play the interview that this witness conducted of the Defendant. I'm told it lasts about an hour and -- about an hour and 10 minutes, hour and five minutes, somewhere in there. So what we're going to do is play about 45 minutes of it, and then take our lunch break, and we'll play the remaining 20, 25 minutes immediately after we return from lunch and continue with any additional testimony from Mr. Barton.

So, at this point in time, Solicitor, if you'll simply play the audio of the interview. This is not a video interview. It's audio only. And same rules as before. If you have trouble hearing it, just raise your hand and we'll try and adjust the speakers appropriately. Okay? You may continue. Mr. Barton, if you want to step down, you might be more comfortable somewhere else.

Tr. p. 472, l. 7 – p. 478, l. 1.

The Trial Court then proceeded to play the audio recording the Agent Barton's interview with Appellant. *See* SLED Interview.

### *Standard of Review*

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Significantly, a decision as to whether to grant or deny a motion for mistrial rests within the sound discretion of the trial judge, and a trial judge's ruling in regard to a mistrial motion will not be disturbed on appeal absent a prejudicial abuse of discretion. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000); see *State v. Coaxum*, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014) (“[T]o receive a new trial, the defendant must show a prejudicial abuse of discretion.”); *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) (“A mistrial should not be granted unless absolutely necessary. Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice.”) (citations omitted). An abuse of discretion occurs where the trial court's conclusions lack evidentiary support or are controlled by an error of law. *State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

### *Analysis*

Appellant maintains the trial court erred in failing to grant his motion for a mistrial after the testimony offered by SLED Agent Bo Barton. Even if error, the single comment regarding the interview was harmless, or at most minimally prejudiced Appellant, and certainly did not warrant the extreme remedy of a mistrial.

A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice. *Harris*, 340 S.C. at 63, 530 S.E.2d at 628; *State v. Ward*, 374 S.C. 606, 612, 649 S.E.2d 145, 148 (Ct. App. 2007). “A mistrial should only be granted in cases of manifest necessity and with the greatest caution for

very plain and obvious reasons.” *Patterson*, 337 S.C. at 227, 522 S.E.2d at 851 (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989); *State v. Kirby*, 269 S.C. 25, 236 S.E.2d 33 (1977) (holding that the granting of a mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes)). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. *State v. Edwards*, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing *State v. Stanley*, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005)). “The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way.” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011).

The incident in question did not inject such prejudice into the proceeding as to warrant the extreme measure of a mistrial. The witness simply stated his position with State Law Enforcement Division, and began discussing the substance of comments he made during his interview with Appellant.<sup>3</sup> See Tr. p. 465, ll. 10-16. Immediately after, Defense Counsel indicated he had a motion and made his motion for a mistrial. See Tr. p. 465, ll. 17-23. The State’s strategy in examining Agent Barton was clarified during hearing that took place after. The State indicated that it was seeking to limit the jury’s exposure to additional recorded interviews. Further, the State affirmed that it was not intending to elicit opinion testimony from Agent Barton. See Tr. p. 473, ll. 14-25.

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<sup>3</sup> The three separate options referenced by Agent Barton was made apparent to the jury when the interview record was played. Tr. p. 477, l. 20 – p. 478, l. 5. During the interview Agent Barton discussed with Appellant what the evidence suggested; that either someone (1) murder the victim, (2) was attempting to prevent the victim from shooting herself and the gun went off during the struggle, or (3) arrived after the victim’s suicide and hid the gun to cover it up. SLED Interview: 25:00.

Given the reality of the situation, it will remain unknown where the testimony would have progressed. However, the Trial Court correctly concluded that any prejudice to Appellant by the comment was minimal and did not warrant a mistrial. Agent Barton's testimony to the jury was extremely limited. Furthermore, he did not express an opinion, but simply introduced the substance of his interview with Appellant. Lastly, the Trial Court went even further by issuing a thorough curative instruction to the jury regarding the testimony of Agent Barton. *See State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct.App.2005) ("Generally, a curative instruction is deemed to have cured any alleged error."); *see also State v. Johnson*, 334 S.C. 78, 90, 512 S.E.2d 795, 801 (1999) (Finding that the extensive curative instruction given by the trial judge cured any possible prejudice caused by the brief mention of an offer of a polygraph examination). As a result, the jury could not have been swayed by the simple comment. The trial court did not abuse its discretion in denying the motion for a mistrial because any prejudice resulting from Agent Barton's comment was minimal and did not rise to the grievous level necessitating the extreme measure of a mistrial.

**V. The Trial Judge Properly Denied Appellant's Request To Charge The Jury On Circumstantial Evidence As Set Forth In *State v. Edwards*, As This Case Is No Longer Good Law.**

*How the Issue Arose at Trial*

At the conclusion of the case, the parties participated in an on-the-record charge conference. Appellant moved for a circumstantial evidence charge articulated in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989); specifically, that:

[E]very circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create

a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Tr. p. 627, l. 17 – p. 628, l. 19.

### *Standard of Review*

“The law to be charged must be determined from the evidence presented at trial.” *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). “In order to amount to reversible error, the failure to give a requested charge must be both erroneous and prejudicial.” *Id.* (citing *State v. Patterson*, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct.App.2006).

### *Analysis*

Appellant argument has no merit. In *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004), our Supreme Court held the instruction on direct and circumstantial evidence approved in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), is the sole instruction to be given. That instruction is not what Appellant asked the Trial Court to follow. Appellant wanted the old *Edwards* charge on circumstantial evidence, which was not the law. Subsequent to this trial, in *State v. Lynch*, this Court rejected a challenge similar to the one raised here. 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). This Court held:

The trial court did not err in refusing to issue Lynch's requested jury charge.

[. . .]

[W]e believe Lynch's argument is without merit because his requested circumstantial charge was based on the “reasonable hypothesis” language from *Edwards*, which the supreme court found unnecessary in *Logan*. See *Logan*, 405 S.C. at 99, 747 S.E.2d at 452; *Jenkins*, 408 S.C. at 572–73, 759 S.E.2d at 766 (“Our supreme court has excluded the ‘reasonable hypothesis’

language from the circumstantial evidence instruction now required by *Logan*, recognizing that this language is unnecessary.”). Therefore, the trial court did not commit reversible error in refusing Lynch's requested charge. *See State v. Drayton*, 411 S.C. 533, 769 S.E.2d 254 (App.2015) (Shearouse Adv. Sh. No. 5 at 48, 51) (finding no reversible error in trial court's failure to include the *Edwards* “reasonable hypothesis” language in its circumstantial evidence jury charge when the trial court's instruction “as a whole, properly conveyed the applicable law”).

*Lynch*, 412 S.C. at 178, 771 S.E.2d at 357–58; *see State v. Grippon*, 327 S.C. 79, 83–84, 489 S.E.2d 462, 463–64 (1997) (finding a circumstantial evidence jury instruction including “reasonable hypothesis” language unnecessary); *State v. Cherry*, 361 S.C. 588, 600–02, 606 S.E.2d 475, 481–82 (holding the *Grippon* charge as the exclusive charge for circumstantial evidence cases). The charge issued by the Trial Court was correct under the prevailing law. As a result, this appellate ground has absolutely no merit and must be dismissed.

#### **VI. This Court Should Decline To Grant Appellant Relief Based On The Cumulative Error Doctrine.**

Appellant contends this Court should grant a new trial based on the cumulative error doctrine due the alleged prejudices that resulted from the trial courts admission of the crime scene photos and the testimony of Agent Barton. However, Appellant never raised the cumulative error doctrine to the trial court. He never raised it during trial or even in a post-trial motion after trial, and as a result, the issue is not preserved for review on appeal. *See Charles Tillman Motion for New Trial; State v. Beekman*, 405 S.C. 225, 236, 746 S.E.2d 483, 489 (Ct. App. 2013) (finding cumulative error doctrine must be raised to and ruled upon by the trial court in order to be addressed on appeal). Appellant seems to be asking this court to completely ignore longstanding preservation and waiver rules, and instead address this issue as plain error. South Carolina has rejected the plain error doctrine and this Court should not entertain it under the

guise of the cumulative error doctrine. *See e.g., State v. Torrence*, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991) (eliminating *in favorem vitae* review in death penalty cases and holding: “A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.”).

Further, there was not cumulative error in this case. Appellant has failed to show error by the trial court. Alternatively, any prejudice resulting from the testimony of the Agent Barton was not such that this Court should use the cumulative error doctrine as a means of circumventing the preservation or waiver rules.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the appeal be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY  
Assistant Attorney General  
S.C. Bar No. 103131

By:   
Samuel M. Bailey

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

ATTORNEYS FOR RESPONDENT

June 14, 2019

STATE OF SOUTH CAROLINA  
In the Court of Appeals

\_\_\_\_\_  
Appeal from Abbeville County

The Honorable Frank R. Addy, Jr., Circuit Court Judge JUN 14 2019

**RECEIVED**  
**SC Court of Appeals**

THE STATE,

Respondent,

v.

CHARLES TILLMAN,

Appellant.

Appellate Case No. 2018-000495

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**PROOF OF SERVICE**  
\_\_\_\_\_

I, Samuel M. Bailey, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, and addressed to his attorney of record: E. Charles Grose, Esq., The Grose Law Firm, LLC, 404 Main Street, Greenwood, South Carolina 29646.

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

This 14<sup>th</sup> day of June, 2019.

  
SAMUEL M. BAILEY

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

June 14, 2019

**RECEIVED**

JUN 14 2019

SC Court of Appeals

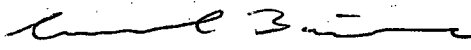
The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: *The State v. Charles Tillman*  
Appeal from Abbeville County  
Appellate Case No. 2018-000495

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

  
Samuel M. Bailey  
Assistant Attorney General

SMB/dmd  
Enclosures

cc: E. Charles Grose, Esq. (w/two copies of encls.)  
The Honorable David Stumbo, Solicitor 8<sup>th</sup> Judicial Circuit (w/copy of encls.)  
Trisha Allen, Victim Advocacy Division (w/copy of encls.)