STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

The State, Respondent,

v.

Leonard Goodwin, Appellant.

Appellate Case No. 2011-193507

INITIAL BRIEF OF RESPONDENT

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I. Whether the trial court reversibly erred by failing to include language in the jury instruction regarding circumstantial evidence indicating that "the State must exclude all other reasonable hypotheses when it relies upon circumstantial evidence," thereby leaving the jury confused regarding the legal relation of circumstantial evidence to the determination of guilt?

II. Whether the trial court reversibly erred by failing to grant a directed verdict where the evidence of the alleged offense against Appellant was circumstantial, and only rose to the level of "mere speculation" rather than "substantial circumstantial evidence."

III. Whether the trial court reversibly erred by failing to suppress two autopsy photographs graphically depicting maggot infested remains that had decomposed more than four days?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by denying Applicant's request to charge the *Edwards* "reasonable hypothesis" language in the circumstantial evidence charge where the Supreme Court of South Carolina has found the *Edwards* language to be confusing and directed that it should not be charged.

II.

Whether the trial court erred in denying Appellant's motion for a directed verdict where the State presented direct evidence that demonstrated Appellant was the last individual known to be with victim just before victim disappeared; that Appellant and victim had prior difficulties and that Appellant did not want victim in his home; that Appellant was in a heated argument with victim just before victim disappeared; that Appellant fled the jurisdiction when victim's body was going to be discovered due to the odor in the home; failed to contact his wife of seventeen years, and when he returned to the state and was stopped by officers, Appellant attempted to evade the officer, and gave incorrect identification information before he eventually acknowledged that he was the man the officer was looking for, and that he knew he was wanted for murder; and, presented additional evidence from which the jury could reasonably infer that Appellant killed victim in the kitchen area of the home by means of shooting him in the head; that he secreted victim's body in the crawlspace beneath the home Appellant shared with victim's mother; covered the body with lime and/or odor reducing agents to mask the smell of decay; and left the body to decompose. Appellant was not entitled to a directed verdict as this evidence, if believed by the jury, would support a finding that Appellant unlawfully killed his stepson with malice aforethought.

III.

Whether the trial court abused its discretion in admitting two autopsy photographs when those photographs were clinical in nature and demonstrated both the differing cycles of insects which informed her opinion on the variables present regarding time of death, and the marring of other characteristics from advanced decomposition.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted appellant, Leonard Goodwin, in January 2010 for murder. (R. p. *). A jury trial was held May 31, 2011 through June 3, 2011, before the Honorable Kristi L. Harrington. Public Defenders Cassandra Winslow and Beattie Butler represented appellant. The jury convicted as charged. (Vol. 4, Tr. p. 97, line 22 - p. 98, line 1). Judge Harrington imposed a life sentence. (Vol. 4, Tr. p. 111, line 25 – p. 112, line 8). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of the murder of his stepson. The victim in this case was last seen alive on April 3, 2006. He disappeared from the home he shared with his mother and stepfather, after an argument with his stepfather. His body was found twenty-four days later, on April 27, 2006, when officers responded to a call from victim's mother reporting a strong odor in the home. (Vol. 2, Tr. p. 55, line 9 – p.61, line 5). Victim's body had been placed in a remote area in the home's crawlspace and covered with lime. (Vol. 2, Tr. p. 57, line 1– p. 60, line 20; Vol. 2, Tr. p. 156, lines 1-20; Vol. 2, Tr. p. 259, line 1 – p. 260, line 7). Appellant fled the jurisdiction immediately before the body was recovered, and after the victim's mother called the police about the odor. (Vol 1, Tr. 178, line 15 – p. 179, line 23). When he returned and was stopped by an officer, he initially tried to evade the officer, and gave false identification information, before admitting his name, and the fact that he was wanted for murder. (Vol. 3, Tr. p. 36, line 5 – p. 42, line 14). The forensic pathologist, though noting extensive decomposition of the remains, was able to determine that death was caused by a gunshot wound to the head. (Vol. 2, Tr. p. 230, lines 13-14). The pathologist did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day period after death to time of discovery and autopsy. (Vol. 2, Tr. p. 230, line 24 – p. 231, line 1). The following evidence in support of Appellant's guilt was presented at trial:

Latarshia Washington, the mother of victim's children, last saw victim on April 3, 2006. (Vol. 1, Tr. p. 107, lines 2-24). She saw him at approximately 6:00 pm at the home he shared with his mother, and his mother's husband, Appellant. Appellant was in the home with victim. Ms. Washington visited with victim, and victim walked her to her car.

He took time to play with one of his children. Ms. Washington "hugged him... kissed him" then left. (Vol. 1, Tr. p. 110, line 5 – p. 111, line 23). At that time, victim was wearing "[a] white tee-shirt, a reversible black-and-white" shorts, and jewelry including "two necklaces," a cross and a "dollar sign and chain on it." (Vol. 1, Tr. p. 112, lines 1-9). Ms. Washington testified that she last spoke to victim later that same day, at approximately 8:30 or 9:00 pm. Victim said he heard Appellant threaten to "whip someone's a**" earlier that day, and she encouraged victim to let it go. She then heard someone pickup on an extension. Victim also heard the intrusion, asked Ms. Washington to hold on, and demanded the person get off the phone. Ms. Washington "heard the word no." Victim stated he was "talking to his family," and an argument ensued with Appellant responding to victim, "bullsh**, bullsh**." (Vol. 1, Tr. p. 112, line 21 – p. 114, line 23). Ms. Washington testified "the last thing [she] heard was, I will put you on ice." (Vol. 1, Tr. p. 114, lines 23-25). Victim then came back to the phone, Ms. Washington "heard a crash, like glass breaking... [a]nd the phone went dead." (Vol. 114, line 25 – p. 115, line 9). She feared "something [had] happened," and immediately tried to phone victim again. She called "at least six times before someone picked up," and that someone was Appellant. Appellant told Ms. Washington victim "jumped in the car going to Russellville looking for weed." (Vol. 1, Tr. p. 115, line 10-p. 116, line 9). She noted that Appellant was "breathing hard" when he answered. (Vol. 1, Tr. p. 119, line 22 – p. 20, line 2). She asked what the loud noise was that she heard, "and he said it was he bumped the coffee table." Appellant then said "he had a pot on the stove," and ended the call. (Vol. 116, lines 18-22). Ms. Washington was alarmed and called victim's cousins, Jessie Owens and Michael Phillips. Ms. Washington and Mr. Owens went to victim's

home a little over an hour after the phone incident. (Vol. 118, lines 4-13). They met Appellant on a bicycle outside the home. He again states victim went to Russellville. Ms. Washington notes that she observed "specs of blood at the bottom of [Appellant's] tee-shirt" around "[t]he bottom stomach area." (Vol. 1, Tr. p. 117, line 11 – p. 119, line 21). Ms. Washington and Mr. Owens, later joined by Mr. Phillips, then began to wait outside the home. Ms. Washington saw Appellant go back into the home. (Vol. 1, Tr. p. 120, line 9 – p. 121, line 11). She then flagged an office and asked for help. (Vol. 1, Tr. p. 121, lines 15-22). Approximately "twenty-five or thirty minutes" later, somewhere around 11:15 pm that night, the officer came back to investigate the area. She recalled victim's mother had returned at that time. Appellant was inside the home and said "what's going on, there's nothing going on" and went to victim's bedroom with the officer. The officer found nothing to raise suspicion at that time. (Vol. 1, Tr. p. 122, line 2 – p. 123, line 10). Ms. Washington filed a missing person's report on April 10, 2006. (Vol. 1, Tr. p. 123, lines 11-15). She testified that, to her knowledge, victim did not have any known enemies, or knew of anyone who held a grudge against him; that he was not a drug dealer or a violent person, nor was he "associated with those sort of people." (Vol. 1, Tr. p. 130, line 21 – p. 131, line 7).

Mr. Owens testified similarly as to Ms. Washington contacting him, and the two looking for victim. He confirmed that he, too saw, stains on Appellant's shirt. He further testified that he had attempted to call victim's house after Ms. Washington contacted him, but received no answer. He waiting with Ms. Washington outside the home for hours, but never saw victim again. Mr. Owens testified that he was never in contact with victim that

evening, even though he and victim had planned to go to a party that night. (Vol. 1, Tr. p. 145, line 9 – p. 149, line 25).

In addition to Ms. Washington's testimony, and Mr. Owens' testimony, Mr. Phillips testified not only that he never saw victim again, but also that he had worked with victim. The victim worked on April 3, 2006, but failed to show up for work on April 4, 2006 -- the day after the argument with Appellant. In fact, victim never showed up for work thereafter, though he was known as responsible, and had not had a history of failing to go to work. (Vol. 1, Tr. p. 156, line 3 – p. 162, line 11). He confirmed that he, Ms. Washington, and Mr. Owens stayed outside the home for hours on the night of April 3, 2006, waiting for victim, and never saw him. (Vol. 1, Tr. p. 159, line 14 – p. 161, line 6).

Victim's mother, Mary Ann Robinson, testified that she, her husband (Appellant), and victim shared a home at the time of her son's disappearance. She testified that her son had moved in with her and Appellant in 2005. Appellant did not like victim, did not like victim having people over at the house, and did not want victim in the house. Ms. Robinson testified that the two argued, but had never had a physical altercation. (Vol. 1, Tr. p. 167, line 19 – p. 173, line 4). Ms. Robinson testified after speaking with Ms. Washington and Mr. Owens outside the home when she returned from work on April 3, 2006, Ms. Robinson went into the home. Appellant was in the home watching TV. No one else was in the home. Because she had expected to find her son in his room, she decided to call the police. She noted a smell of bleach from a bathroom, however, she was the one who normally did the cleaning in the home. (Vol. 1, Tr. p. 174, line 1 – p. 177, line 7).

Officer Arthur D. Armstead of the North Charleston Police Department testified that he was the officer Ms. Washington flagged down while he was on patrol that evening. He recalled Ms. Washington was "shaken up." He investigated having been advised "someone was involved in an argument and there was possibly a killing." He spoke with Appellant. Appellant admitted an argument with victim, then stated victim "had left with a female." He inspected the house be found "nothing out of the ordinary" at that time and left the residence. (Vol. 2, Tr. p. 41, line 21-p. 46, line 23).

Ms. Robinson, similarly to Ms. Washington, testified that she never heard from her son after that night though the two shared a close relationship. (Vol. 1, Tr. p. 177, lines 8-13; p. 177, line 21 – p. 178, line 5). Then, on April 27, 2006, she began to notice an odor. She spoke to Appellant about the odor, and "he pointed at the back of the yard and said it was a dead cat." (Vol 1, Tr. p. 178, lines 15-18). Ms. Robinson resolved to call the police. When asked if she told Appellant she was calling the police, she testified, "I think I did. I'm not sure. But when I – when the policeman came, he wasn't there," though he had been cutting grass at the next door residence. (Vol 1, Tr. 178, line 15 – p. 179, line 6). She did not see her husband again until trial. (Vol. 1,Tr. p. 179, lines 7-9; p. 179, lines 20-23). In fact, she never heard from Appellant, her husband of seventeen years, during that time – no letters, no phone calls, and he failed to attend victim's funeral. (Vol. 1, Tr. p. 179, lines 7-19).

Officer Rayford Davis, also of the North Charleston Police Department, testified that he was dispatched to the home on April 27, 2006, upon Ms. Robinson's call reporting her "concern[] that her son was missing and that there was a bad odor in her house." (Vol. 2, Tr. p. 54, line 16 – p.55, line 19). He was instantly struck with "a very

strong odor of something decomposing" as he entered the home. Officer Davis recognized the odor was from a body. He found nothing in the home, but "could tell that it was underneath the house toward the back." (Vol. 2, Tr. p. 56, lines 2- 23). He entered the crawlspace from the back. At first, Officer Davis saw nothing. Upon entering the crawlspace and looking behind a concrete wall, he found the victim's remains. (Vol. 2, Tr. p. 57, line 1 – p. 60, line 14). The body was located at the farthest possible distance from the entrance. (Vol. 2, Tr. p. 156, lines 1-20). The body was clearly decomposing. "[A] roll of screen... had been placed over the body, covering up most of it and there was a lot of white powder that had been sprinkled. I was on the body, it was on the screen, and around in that area." There was also a small amount of what appeared to be household debris next to the body. (Vol. 2, Tr. p. 60, lines 5-20).

Other officers from the North Charleston Police Department arrived to conduct a thorough investigation of the home. Officer Angela Bunker conducted initial forensic testing. Socks found inside a garbage dumpster tested presumptively positive for blood. (Vol. 2, Tr. p. 72, line 2 – p. 73, line 13). Using a chemical agent to raise blood stains not otherwise visible, Officer Bunker found indications of blood spatter on the kitchen door, on the side that opens into the home, and on the back outside steps from the kitchen. The spatter on the door was located approximately half way down the door. (Vol. 2, Tr. p. 76, line 5 – p. 81, line 1). (See also State's Exhibits 19 and 21). In the yard, Officer Bunker also noted there were bags of lime under a tarp with lawn mowers and gas cans. (Vol. 2, Tr. p. 85, lines 5 – 24). (See also State's Exhibit 41).

Officer Scott Wyatt testified that doorknob on the back door also tested positive for blood. (Vol. 2, Tr. p. 116, line 22 – p. 120, line 13).

Officer Robert Coker testified there were tubs also located in the back yard, near the lawn equipment that belonged to Appellant and where Appellant kept his tools. Those tubs contained both Febreeze and Odor Ban -- items used to suppress or mask odors. (Vol. 2, Tr. p. 138, line 22 – p. 141, line 11; Vol. 1, Tr. p. 181, lines 6-13; State's Exhibits 38, 39, and 40).

Officer Al Hallman testified that along with other debris near the body, a liquor bottle was located near the body. (Vol. 2, Tr. p. 157, lines 7-16). Officer Hallman testified that he located a part of the back door where a bullet had passed through. (Vol. 2, Tr. p. 174, line 4- p. 177, line 15). (See also State's Exhibits 46 and 47). The damage to the door indicated the bullet was likely either from a .22 or a .25 caliber weapon. (Vol. 2, Tr. p.181, line 18 – p. 185, line 5). Officer Hallman also assisted in the removal of the remains. He testified that removal was difficult because "the level of decomp that the body was in." (Vol. 2, Tr. p. 192, line 15- p. 193, lines 9-16). Officer Hallman testified that, after the body was cleaned for autopsy, his view of the skull wound indicated "possible" gun powder stippling, but he was not sure. (Vol. 2, Tr. p. 169, lines 2-18). Officer Hall tried to retrieve the black shorts on the remains, but, "due to the level of decomp and the level of biohazardous infectious possibilities," he was unable to preserve the shorts and boxers. (Vol. 2, Tr. p. 166, lines 2-5; p. 196, lines 13-22). Officer Hall retrieved, however, the "a gold-rope necklace that was found on the victim; a gold-link bracelet that was found on the victim; [and] projectile fragments from autopsy." (Vol. 2, Tr. p. 166, lines 5-7). Ms. Washington testified that the clothes and jewelry items, which had been photographed for presentation in the State's case, were the items victim was wearing on April 3, 2006 – the last time Ms. Washington saw the victim and shortly

before the argument with Appellant. (Vol. 1, Tr. p. 128, line 21 – p. 130, line 20). The bullet fragment was analyzed by Kenneth Whitler, a firearms expert from SLED. Mr. Whitler testified "it's a metal fragment that either could be a piece of lead or it could be a projectile." (Vol. 3, Tr. p. 74, lines 14-16). He opined, "[b]ased on the remaining weight of it, it could be anything from a .22 rim-fired bullet to a piece of a bullet from a larger caliber." (Vol. 3, Tr. p. 74, line 16 – p. 75, line 10).

William Palmer, an employee of the local True Value hardware store, testified that Appellant bought lime "once or twice a week" for "probably like six months." Mr. Palmer noted that lime can be used to "hold down odor," and it is a common lawn care product. (Vol 2, Tr. p. 105, lines 14-25; p. 108, lines 2-23). A sample of the "white powder" covering the body was tested and found consistent with commercial lime. (Vol. 2, Tr. p. 259, line 1 – p. 260, line 7).

One of the bottles recovered from the crawlspace next to the body was a "Gordon's" gin bottle. (Vol. 3, Tr. p. 53, lines 19-24). Ms. Robinson testified that Appellant drank both gin and vodka. (Vol. 1, Tr. p. 173, lines 5-19). Katie Urka, a forensic DNA analyst from SLED, testified that DNA sample from the bottle matched the sample from Appellant, and "[t]he probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in nine hundred and ninety million." (Vol. 3, Tr. p. 96, lines 4-24).

A sample of bone morrow was retrieved from autopsy to develop a profile for victim. (See Vol. 2, Tr. p. 166, lines 7-9). David McClure, also of the DNA department in SLED, testified that he compared the DNA profile from victim's sample to samples from the socks recovered, and swabs from the back door. He testified the profiles

matched, and "[t]he probability of selecting an unrelated individual at random from the population having a profile that would have matched these evidence items is approximately one in 2.6 quadrillion." (Vol. 4, Tr. p. 18, line 1 – p. 19, line 22).

Forensic pathologist Dr. Cynthia A. Schandl performed the autopsy on April 27, 2006. (Vol. 2, Tr. p. 205, lines 21-24). Dr. Schandl testified that victim suffered a gunshot wound to the right side of the head. (Vol. 2, Tr. p. 223, line 17- p. 224, line 5). The doctor was able to recover the bullet fragment from the wound. (Vol. 2, Tr. p. 225, lines 21-22). Dr. Schandl did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (Vol. 2, Tr. p. 230, line 24 – p. 231, line 1).

Officer Andrew Glover testified that on September 6, 2009, he received a tip that Appellant was back in the jurisdiction. Officer Glover went to the location reported and found a man matching Appellant's description. The man, upon seeing Officer Glover, initially tried to evade the officer, and the officer gave chase. Officer Glover eventually overtook the suspect, stop him, and asked for information. Appellant stated he had been in New Jersey for year, and initially gave false identification information before admitting his name, and the fact that he was wanted for murder. (Vol. 3, Tr. p. 35, line 16 - p. 42, line 14).

The defendant exercised his right not to testify or present a defense. After each side presented closing arguments and the judge gave a full charge on the law -- and after almost two hours of deliberations, (see Vol. 4, Tr. p. 96, line 15 – p. 97, line 10) -- the jury convicted on the above evidence. (Vol. 4, Tr. p. 97, line 22 – p. 98, line 5).

ARGUMENT

I.

The trial court did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing. The trial court properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error.

Relevant Facts:

Applicant submitted the following request to charge:

> Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and ... all of the circumstances so proven [must] be consistent with each other and taken together, point conclusively [*** 10] to the guilt 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 guilty of the accused, the proof has failed.

(R. p. [Court's Exhibit 4]) (errors in original).

Applicant cited to "State v. Edwards, 298 S.C. 272 at 275, 379 S.E.2d at 889 (ci[ting] State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)" in support of his request. (R. p. * , n. 1 [Court Exhibit 4]).

At the charge conference, Applicant requested permission to argue against precedent in arguing that the requested charge was appropriate. (Vol. 4, Tr. p. 38, lines 19-18). Applicant argued that a charge that excluded the "reasonable hypothesis" language in favor of language indicating that "the law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, [or requires] a greater degree of certainty required of circumstantial evidence than of direct evidence," would be incorrect in light of subsequent cases where the "reasonable

hypothesis" language was referenced in evaluation of directed verdict issues. (Vol. 4, Tr. p. 39, line 9 – p. 40, p. 22). The State argued the standard charge was sufficient, and the requested "hypothesis" language does not "accurately state[] how to view circumstantial evidence." (Vol. 4, Tr. p. 41, lines 17-19). The trial judge distinguished evaluation by a trial judge of "substantial circumstantial evidence" in evaluating the defense's motion for a directed verdict from requested charge language for the jury, and resolved to charge the jury with the approved of language in *State v. Grippon*. (Vol. 4, Tr. p. 45, line 12 – p. 46, line 18). The trial judge thereafter instructed the jury using the *Grippon* charge:

> There are two types of evidence generally presented during trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not convinced that the State has proven each element of the charge beyond a reasonable doubt, you must find the defendant not guilty

(Vol. 4, Tr. p. 85, line 21 – p. 86, line 12).[1] Appellant renewed his objection after the charge. (Vol. 4, Tr. p. 95, lines 7-13).

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[1] *See State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997). The language almost precisely follows the approved instruction in *Grippon*:

> There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you

On appeal, Appellant complains that "the trial court's instruction left the jury without any guidance or enlightenment regarding the traditional circumstantial evidence charge (particularly the 'reasonable hypothesis' language); thus the jury was without guidance or enlightenment on the relationship between circumstantial evidence and the determination of guilt." (FBOA, p. 16). He posits that the Supreme Court of South Carolina's reference to the "reasonable hypothesis" language in recent directed verdict cases signals an "eros[sion]" of conclusion that the reasonable doubt standard gives adequate instruction in circumstantial evidence cases. (FBOA, p. 13). [2]

Discussion:

"[T]he trial court is required to charge only the current and correct law of South Carolina." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011), *quoting Sheppard v. State,* 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). In *State v. Cherry*, 361 S.C. 588, 601-602, 606 S.E.2d 475, 482 (2004), the Supreme Court of South Carolina held "that the recommended language in *Grippon* is the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction." The jury here was so charged.[3] (Vol. 4, Tr. p. 84, line 24 – p. 86, line 12). There is no error.

> are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

327 S.C. at 83-84, 489 S.E.2d at 464.

[2] A similar challenge to the State's present circumstantial evidence charge is pending (as of the initial briefing in this case) in the Supreme Court of South Carolina in *State v. Clarence Logan, Jr.*, Appellate Case No. 2011-194406.

[3] Appellant contest the reasonable doubt charge. Respondent notes the charge tracks the reasonable doubt charge approved in *State v. Darby*, 324 S.C. 114,115-116 477 S.E.2d 710, 710-711 (1996).

Appellant's argument that the "underpinnings of Grippon and Cherry are being eroded *sub silentio* by the Supreme Court" is not supported by the cases upon which he relies. Appellant's conclusion is based upon comments in post-*Cherry* Supreme Court addressing directed verdict issues – most specifically *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), and *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012). (See FBOA, pp. 13-14). Two distinguishing features demonstrate the fatal flaws in his logic.

First, Petitioner is comparing apples and oranges. The evaluation of evidence for a directed verdict motion is not the same as the jury's evaluation of evidence in determining whether the State had met its burden of proof beyond a reasonable doubt. Our Supreme Court has, in fact, specifically stated that these are two separate, distinct inquiries:

> When the state relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. *State v. Mitchell,* 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. *Id.* at 409, 535 S.E.2d at 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Lollis,* 343 S.C. 580, 541 S.E.2d 254 (2001). However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.** *State v. Ballenger,* 322 S.C. 196, 470 S.E.2d 851 (1996); *State v. Edwards, supra.*
>
> In *Edwards, supra,* we rejected the contention that in ruling on a directed verdict motion, the trial judge must grant a directed verdict unless the circumstantial evidence pointed conclusively to the defendant's guilt, to the exclusion of every other reasonable hypothesis. Instead, we held it is the trial judge's "duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." 298 S.C. at 275, 379 S.E.2d at 889, *citing State v. Littlejohn,* 228 S.C. 324, 89 S.E.2d 924 (1955) (emphasis in original).

State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis in original). *See also State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 453 (1984) ("The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court.").

Thus, Appellant's attempt to show the beginnings of momentum to revisit *Cherry* actually demonstrates more momentum toward defining "substantial circumstantial evidence," which, to date, remains less than clearly defined in our state cases.

In short, the questions in *Bostick* and *Odems* were questions regarding the presence or absence of sufficient evidence to send the case to the jury, not the sufficiency or clarity of a jury charge to guide a determination of proof beyond a reasonable doubt. Indeed, in *Odems*, though the Court makes reference to the helpfulness of the "traditional circumstantial evidence charge" in *linking* the chain of circumstantial evidence, the Court goes no further. *See Odems,* 395 S.C. at 590, 720 S.E.2d at 52 ("Despite the Court's abandonment of the use of this particular definition as a jury charge in *State v. Cherry*, the definition illustrates the lack of evidence against Petitioner."). *See also State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) ("Although in State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) the Court abandoned this charge and held that it may confuse the jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless illustrates the lack of evidence against Petitioners."). There is not even that reference in *Bostick. Bostick* squarely considered the sufficiency of the evidence from review of "cases from our jurisprudence *analyzing the proof necessary in cases with circumstantial evidence.*" 392 S.C. at 139, 708 S.E.2d at 774. The cases reviewed were cases involving sufficiency of

the evidence, not a charge to the jury. *Bostick*, 392 S.C. at 139-141, 708 S.E.2d at 777-778. There is no mention whatsoever of *Edward, Grippon,* or *Cherry* – and for plain and obvious reasons – *Bostick* was not a jury charge case.

Second, the Court in *Cherry* specifically considered and found that the language in the *Edwards* charge would be confusing to a jury. Prior to that time, the Court had not specifically disapproved the language as an alternate to the *Grippon* charge. *Grippon*, 327 S.C. at 82, 489 S.E.2d at 463 ("we never rejected the 'reasonable hypothesis' phrase or found this phrase shifted the burden of proof. .. Therefore, the trial judge was not required to delete the 'reasonable hypothesis' phrase from the requested charge."). But upon detailed reconsideration, the Supreme Court found, as had the United States Supreme Court before them, that "the reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not. *State v. Cherry*, 361 S.C. at 601-602, 606 S.E.2d at 482. *See also Holland v. United States*, 348 U.S. 121, 139-140 (1954) (when considering complaint that the trial judge failed to charge "that were the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt," the Court concluded that "the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect").[4] Thus, after *Cherry*, the *Edwards* charge was deemed not just disfavored, but improper.

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[4] Applicant's citation to *Hampton v. State of Indiana*, 961 N.E.2d 480 (Ind. 2012) merely proves the point made by the Supreme Court in Holland that some jurisdictions allow differing charges, but it does not address the Supreme Court's conclusion that the

But our courts are not without ability to instruct on direct evidence and circumstantial evidence. Our Court still allows the *Grippon* charge in explanation of circumstantial evidence, and a charge on reasonable doubt is also given to fully present the relevant legal structure to a jury. *Cherry, supra. See also Odems*, 395 S.C. at 590, 720 S.E.2d at 52 n. 4 ("the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. ... The definition does not, however, change the standard for evaluating evidence: every circumstance must be proved beyond a reasonable doubt."). However, to specifically instruct separately on differing treatment for circumstantial evidence compared to direct evidence – indeed indicating a separate test for circumstantial evidence and requiring the jury to parse the evidence into legal categories and attempting to apply a differing test which may seem to them something different that reasonable doubt -- remains "confusing and incorrect." *Holland, supra*, *Cherry, supra.*

In sum, the trial judge gave the jury the current and correct charge on circumstantial evidence as determined by our Supreme Court. There is no error.

"better rule" is not to include such language. Further, in *Hampton*, the Supreme Court of Indiana found no error by appellate counsel in failing to raise the absence of such a charge in the direct appeal due to uncertainty in state precedent as to the availability of the charge in certain circumstances. 961 N.E.2d at 495. Further still, *Hampton* essentially requires, unlike our state, a recognition that the evidence be treated different: "... there is a qualitative difference between direct and circumstantial evidence with respect to the degree of reliability and certainty they provide as proof of guilt." 961 N.E.2d at 486. The state court also noted the difficulties in correctly expressing the additional guidance and reformulated the state preferred language, including declining to include language referencing proof of guilt. *Id* at 491. In short, the proposed charge in *Indiana* does not mirror the *Edwards* charge at issue here. There is little persuasive value in Applicant's reference to *Hampton*.

II.

The trial court did not err in denying the motion for a directed verdict where the State presented direct evidence that demonstrated Appellant was the last individual known to be with victim just before victim disappeared; that Appellant and victim had prior difficulties and that Appellant did not want victim in his home; that Appellant was in a heated argument with victim just before victim disappeared; that Appellant fled the jurisdiction when victim's body was going to be discovered due to the odor in the home; failed to contact his wife of seventeen years, and when he returned to the state and was stopped by officers, Appellant attempted to evade the officer, and gave incorrect identification information before he eventually acknowledged that he was the man the officer was looking for, and that he knew he was wanted for murder; and, presented additional evidence from which the jury could reasonably infer that Appellant killed victim in the kitchen area of the home by means of shooting him in the head; that he secreted victim's body in the crawlspace beneath the home Appellant shared with victim's mother; covered the body with lime and/or odor reducing agents to mask the smell of decay; and left the body to decompose. Appellant was not entitled to a directed verdict as this evidence, if believed by the jury, would support a finding that Appellant unlawfully killed his stepson with malice aforethought.

Relevant Facts:

Applicant moved for a directed verdict of acquittal at the close of the state's case, and argued, while the evidence was sufficient to show a killing had occurred, the evidence was insufficient to allow "the jury to conclude that Leonard Goodwin is the murder." (Vol. 4, Tr. p. 29, line 25 – p. 30, line 6). The State pointed out specific evidence, both direct and circumstantial, in support Appellant's guilt:

> ... there's direct evidence of his guilty in the testimony of Latarshia Washington, who says she overhears an argument, she overhears a loud noise, she's obviously distraught. She goes over to the house, she sees blood on the defendant's shirt, blood spatter which matches the spatter on the back door, waist-high specks of blood.
>
> You have testimony from Mary Ann Robinson, the defendant's wife, who says, you know, she asked him what the smell is, he says it's a dead cat. Evidence of circumstantial evidence of him covering up the crime.
>
> You have crime scene go to his house, find lime in his - - under a tarp with his tools, lime which is compared through SLED from a sample

taken from the body, which matches identically to the lime found under his tarp.

You have his flight, the fact that he doesn't contact his wife for seventeen years – for three years, from the day the body is found. You have - - when Officer Glover attempts to arrest him, you have him fleeing, using a false ID card. Living under another person's name.

You have other circumstantial evidence around the house, including chemicals used to mask the odor, Odor Ban, Febreeze, other cleaning agents commonly used to mask the odor which would have been caused from the decomposition of the body.

And you have the liquor bottle that's found underneath the house, a matter of feet from where the body was located, with the defendant's DNA on it. You have a pair of socks with the victim's blood on it, found in a house trash can ... twenty-four days after the crime, with the victim's blood on it.

Your Honor, there's a multitude of circumstantial evidence, all of which points toward Mr. Goodwin's guilt.

(Vol. 4, Tr. p. 30, line 23 – p. 32, line 12).

The trial judge, noting she was to be concerning only with the existence of evidence and not its weight, found there was not a failure to present competent evidence that, if believed, would support all the elements of murder. (Vol. 4, Tr. p. 33, lines 2-9). The trial judge specifically relied upon the following evidence, viewed in the light most favorable to the State, in denying the motion:

There was testimony by Ms. Washington that she overhears the argument between the defendant and victim and a loud noise. The defendant indicated that the smell was from a dead cat. There was testimony that on more than one occasion, over a period of approximately six months, that there was a purchase of lime. There was lime under the tar that - - in a bag next to the defendant's yard items. There was lime on the body of the victim. There was testimony of the evidence of flight when he left for New York [sic] and when he was approached. There was testimony concerning that there were chemicals used to mask the odor. There was bleach, a bleach smell, immediately after the argument between - - that Ms. Washington testified to, as well as testimony of Febreeze. There is testimony of a liquor bottle under the house, with the defendant's

DNA, in proximity to the body. That there was more than one witness that testified as to the overwhelming odor under the house.

(Vol. 4, Tr. p. 33, line 10 – p. 34, line 6).

Appellant complains on appeal that Washington's testimony was not direct evidence of the actual murder, and the only evidence of the actual murder was circumstantial. (FBOA, p. 19). Further, he argues that the circumstantial evidence was not "substantial" and the case should not have been submitted to the jury. (FBOA, p. 23).

Discussion:

A defendant is only entitled to a directed verdict of acquittal if the State fails to offer proof of the offense charged, or its proof merely raises a suspicion of guilt. *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001).

When reviewing the trial judge's denial of a motion for a directed verdict, the appellate court will view the evidence in the light most favorable to the State. *Id. See also State v. Frazier*, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). "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." *State v. Freiburger*, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005). *See also State v. Weston,* 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); *State v. Zeigler*, 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct. App. 2005), *cert. denied* (Jan. 31, 2007). Conversely, "[t]he trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty." *Frazier*, 386 S.C. at 531, 689 S.E.2d at 613. "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." *State v. Stanley*, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005).

In this case, the trial judge carefully evaluated both the direct and substantial circumstantial evidence presented against Appellant. This was not a case lacking in solid evidence pointing to guilt. Indeed, in this appeal, it takes Appellant five (5) pages of argument on the multiple points of evidence to attempt to show an insubstantial case. (See FBOA, pp. 19-23). Appellant's arguments as to the circumstantial evidence, however, lack persuasion as he essentially utilizes an incorrect view of the evidence -- he treats the circumstantial evidence as separate, isolating the various pieces of circumstantial evidence to evaluate its worth; however, circumstantial evidence gains its strength from its combination. *See State v. Frazier*, 386 S.C. at 531-532, 689 S.E.2d 613 (reviewing circumstantial evidence of guilt: "This evidence, *when viewed collectively*, presented a jury question as to Frazier's guilt.") (emphasis added); *State v. Cherry*, 361 S.C. 588, 595, 606 S.E.2d 475, 478 (2004) (relying on "combination of factors" to find evidence "sufficient for the jury to infer an intent to distribute"); *State v. Grippon*, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997)(recommended charge includes the following explanation: "Circumstantial evidence is proof *of a chain of facts and circumstances* indicating the existence of a fact.") (emphasis added). At any rate, the trial judge was not concerned with weight, but the presence of evidence. *Frazier*, *supra.* There is no absence of evidence here.

Latarshia Washington, the mother of victim's children, last saw victim on April 3, 2006. (Vol. 1, Tr. p. 107, lines 2-24). The victim was still in the same clothes, and had the same jewelry on, when his remains were discovered twenty-four days later. (Vol. 1, Tr. p. 128, line 21 – p. 130, line 20).

Ms. Washington, while on the phone with victim, heard the argument between Appellant and victim and heard a loud noise. Ms. Washington testified she could heard Appellant's voice, and "the last thing [she] heard was, I will put you on ice." (Vol. 1, Tr. p. 114, lines 23-25). This threat alone was direct evidence of intent sufficient to show malice aforethought as clear statements of intent by the defendant will support a finding malice aforethought. For example, in *State v. Fields*, 264 S.C. 260, 267-268, 214 S.E.2d 320, 322 (1975), the state supreme court reviewed whether there was evidence of malice in the record to support the conviction and summarily found evidence of malice in the appellant's statement to "the deceased, 'I'm going to kill you, god damn it.'" *Id. See also* 40 C.J.S. *Homicide* § 45 (2012 Update) ("Malice is express when admitted or asserted, or shown by positive and direct evidence"). But the record here has even more evidence.

After the threat, victim then came back to the phone, then Ms. Washington "heard a crash, like glass breaking... [a]nd the phone went dead." (Vol.1, Tr. p. 114, line 25 – p. 115, line 9). She immediately tried to phone victim again, called "at least six times before someone picked up," and that someone was Appellant. Appellant told Ms. Washington victim "jumped in the car going to Russellville looking for weed." (Vol. 1, Tr. p. 115, line 10-p. 116, line 9). She noted that Appellant was "breathing hard" when he answered. (Vol. 1, Tr. p. 119, line 22 – p. 20, line 2). She asked what the loud noise was that she heard, "and he said it was he bumped the coffee table." Appellant then ended the call. (Vol. 116, lines 18-22).

Ms. Washington then went to victim's home a little over an hour after the phone incident. (Vol. 118, lines 4-13). She saw Appellant outside the home, and Ms. Washington observed "specs of blood at the bottom of [Appellant's] tee-shirt" around

"[t]he bottom stomach area." (Vol. 1, Tr. p. 117, line 11 – p. 119, line 21). She also testified that, to her knowledge, victim did not have any known enemies, or knew of anyone who held a grudge against him; that he was not a drug dealer or a violent person, nor was he "associated with those sort of people." (Vol. 1, Tr. p. 130, line 21 – p. 131, line 7).

Mr. Owens also confirmed that he, too saw, stains on Appellant's shirt. He further testified that he had attempted to call victim's house after Ms. Washington contacted him, but received no answer. He waiting with Ms. Washington outside the home for hours, but never saw victim again. Mr. Owens testified that he was never in contact with victim that evening, even though he and victim had planned to go to a party that night. (Vol. 1, Tr. p. 145, line 9 – p. 149, line 25).

In addition to Ms. Washington's testimony, and Mr. Owens' testimony, Mr. Phillips testified not only that he never saw victim again, but also that he had worked with victim. The victim worked on April 3, 2006, but failed to show up for work on April 4, 2006 -- the day after the argument with Appellant. In fact, victim never showed up for work thereafter, though he was known as responsible, and had not had a history of failing to go to work. (Vol. 1, Tr. p. 156, line 3 – p. 162, line 11). He confirmed that he, Ms. Washington, and Mr. Owens stayed outside the home for hours on the night of April 3, 2006, waiting for victim, and never saw him. (Vol. 1, Tr. p. 159, line 14 – p. 161, line 6).

Victim's mother, Mary Ann Robinson, testified that she, her husband (Appellant), and victim shared a home at the time of her son's disappearance. She testified Appellant did not like victim, did not like victim having people over at the house, and did not want

victim in the house. Ms. Robinson testified that the two argued. (Vol. 1, Tr. p. 167, line 19 – p. 173, line 4). Ms. Robinson testified after speaking with Ms. Washington and Mr. Owens outside the home when she returned from work on April 3, 2006, Appellant was the only person in the home. She noted a smell of bleach. (Vol. 1m Tr. p. 174, line 1 – p. 177, line 7). Ms. Robinson, similarly to Ms. Washington, testified that she never heard from her son after that night though the two shared a close relationship. (Vol. 1, Tr. p. 177, lines 8-13; p. 177, line 21 – p. 178, line 5). Then, on April 27, 2006, she began to notice an odor. She spoke to Appellant about the odor, and "he pointed at the back of the yard and said it was a dead cat." (Vol 1, Tr. p. 178, lines 15-18). Ms. Robinson resolved to call the police. When asked if she told Appellant she was calling the police, she testified, "I think I did. I'm not sure. But when I – when the policeman came, he wasn't there," though he had been cutting grass at the next door residence. (Vol 1, Tr. 178, line 15 – p. 179, line 6). She did not see or hear from her husband again until trial. (Vol. 1,Tr. p. 179, lines 7-23).

Investigating officers found body in the crawlspace behind a concrete wall, he found the victim's remains, where the body could not be seen from simply looking into the crawlspace. (Vol. 2, Tr. p. 57, line 1 – p. 60, line 14; p. 156, lines 1-20). The body had been covered with lime. (Vol. 2, Tr. p. 60, lines 5-20). A gin bottle was located near the body. (Vol. 2, Tr. p. 157, lines 7-16; Vol. 3, Tr. p. 53, lines 19-24). Ms. Robinson testified that Appellant drank both gin and vodka. (Vol. 1, Tr. p. 173, lines 5-19). Katie Urka, a forensic DNA analyst from SLED, testified that DNA sample from the bottle matched the sample from Appellant, and "[t]he probability of randomly selecting an

unrelated individual having a DNA profile matching this item is approximately one in nine hundred and ninety million." (Vol. 3, Tr. p. 96, lines 4-24).

Officers found indications of blood spatter on the kitchen door, on the side that opens into the home, and on the back outside steps from the kitchen. The spatter on the door was located approximately half way down the door, or at waist height, which matched the stain area on Appellant's shirt. (Vol. 2, Tr. p. 76, line 5 – p. 81, line 1; Vol. 1, Tr. p. 119, lines 15-21). (See also State's Exhibits 19 and 21).

Further, officers found a part of the back door where a bullet had passed through. (Vol. 2, Tr. p. 174, line 4- -. 177, line 15). (See also State's Exhibits 46 and 47). The damage to the door indicated the bullet was likely either from a .22 or a .25 caliber weapon. (Vol. 2, Tr. p.181, line 18 – p. 185, line 5). The bullet fragment was analyzed by Kenneth Whitler, a firearms expert from SLED. Mr. Whitler testified "it's a metal fragment that either could be a piece of lead or it could be a projectile." (Vol. 3, Tr. p. 74, lines 14-16). He opined, "[b]ased on the remaining weight of it, it could be anything from a .22 rim-fired bullet to a piece of a bullet from a larger caliber." (Vol. 3, Tr. p. 74, line 16 – p. 75, line 10).

Officers also found bags of lime under a tarp with lawn mowers and gas cans. (Vol. 2, Tr. p. 85, lines 5 – 24). Officers also found tubs near the lawn equipment that belonged to Appellant and where Appellant kept his tools. Those tubs contained both Febreeze and Odor Ban -- items used to suppress or mask odors. (Vol. 2, Tr. p. 138, line 22 – p. 141, line 11; Vol. 1, Tr. p. 181, lines 6-13; State's Exhibits 38, 39, and 40). William Palmer, an employee of the local True Value hardware store, testified that Appellant bought lime "once or twice a week" for "probably like six months," again,

indicating, in the light most favorable to the state, a long planned murder. Mr. Palmer noted that lime can be used to "hold down odor," and it is a common lawn care product. (Vol 2, Tr. p. 105, lines 14-25; p. 108, lines 2-23). A sample of the "white powder" covering the body was tested and found consistent with commercial lime. (Vol. 2, Tr. p. 259, line 1 – p. 260, line 7).

David McClure, also of the DNA department in SLED, testified that he compared the DNA profile from victim's sample to samples from the socks recovered from the residential dumpster, and swabs from the back door. He testified the profiles matched, and "[t]he probability of selecting an unrelated individual at random from the population having a profile that would have matched these evidence items is approximately one in 2.6 quadrillion." (Vol. 4, Tr. p. 18, line 1 – p. 19, line 22).

Forensic pathologist Dr. Cynthia A. Schandl testified that the cause of death was a gunshot wound to the right side of the head. (Vol. 2, Tr. p. 223, line 17- p. 224, line 5; p. 230, lines 13-14). Though Dr. Schandl did not express an exact opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (Vol. 2, Tr. p. 230, line 24 – p. 231, line 1).

Further still, when Appellant returned to the jurisdiction, he attempted to evade capture and gave false information to the officer before admitted he was wanted for murder. (Vol. 3, Tr. p. 35, line 16 - p. 42, line 14).

In sum, the evidence well supports that Appellant, with malice which was expressed and clear, killed victim. This is especially so when the evidence, both direct and circumstantial, is viewed in the light most favorable to the State, as it must be viewed in evaluating a defendant's motion for a directed verdict. *Frazier, supra.* Thus, the

record demonstrates that the State presented ample evidence to submit the case to the jury. The trial judge properly denied the defense motion, and her ruling should be affirmed.

III.

The trial court did not abuse its discretion in admitting two autopsy photographs that depicted both the decomposition of the remains and the multiple sizes of maggots indicating several egg laying cycles had occurred when the photographs were supported of the testimony indicating more than four days had passed since death.

Relevant Facts:

The victim's body was not found until April 27, 2006, when officers responded to a call from victim's mother reporting a strong odor in the home after the victim's disappearance. (Vol. 2, Tr. p. 55, line 9 – p.61, line 5). As noted above, evidence support that Appellant was last seen alive on April 3, 2006 – twenty-four (24) days earlier. (See Vol. 1, Tr. p. 107, lines 2-24; p. 145, line 9 – p. 149, line 25; p. 156, line 3 – p. 162, line 11; p. 177, lines 8-13; p. 177, line 21 – p. 178, line 5).

Forensic pathologist Dr. Cynthia A. Schandl performed the autopsy on April 27, 2006. (Vol. 2, Tr. p. 205, lines 21-24). Dr. Schandl describe remains as reflecting "obvious changes consistent with some decomposition." (Vol. 2, Tr. p. 207, lines 17-19). (See also Vol. 2, Tr. 208, lines 2-3, describing "moderate decomposition"). In her report, Dr. Schandl recorded "indeterminate age and race" due to the decomposition. (Vol. 2, Tr. p. 208, lines 6-19).

During her testimony, Dr. Schandl identified two photographs from autopsy that the State offered as State's Exhibits 52 and 54. The trial court admitted the photographs over an objection, that was later put on the record in full. (Vol. 2, Tr. p. 210, lines 2-19). The doctor described State's Exhibit 54 as showing a somewhat distant shot of the body covered with white powder. She could not describe the facial detail at all from the photograph, but referred to her report for changes consistent with decomposition,

including skin discoloration, softening of tissue, and loosening of teeth. (Vol. 2, Tr. p. 211, line 10 – p. 212, line 2). The doctor next explained State's Exhibit 52 as follows:

> So we're closer up to the body now. The head is here. This is the left should and the chest. And you're starting to see how it's very difficult to discern any facial features. It's difficult to tell, again, race, those sorts of things, as decomposition is progressing.

(Vol. 2, Tr. p. 212, lines 8-12).

The doctor also noted the insect activity demonstrated, and testified:

> ...one of the things that we need to attempt to address is when we have somebody who's in a state of some decomposition or breakdown of the tissues is how long has it been since they died. And it's a very difficult question to answer and there are many, many variables.
>
> One of the things that we can look at is the insect activity on the body. If there is just one size of maggot, that suggests that there's just been on - - basically one session of fly egg-laying. So one generation. And if there are maggots of multiple sizes, then that suggests that there's been some turnover and maggots - - that flies have laid eggs at more than one occasion.
>
> In this case there were multiple sizes of maggots, suggestive of a longer time period where flies had laid eggs in succession over time. But it's certainly not specific for a length of time between death and where we are now.

(Vol. 2, Tr. p. 213, lines 6-23).

The doctor further testified that the lack of fluid in the eyes can be used in determining time of death. A basic standard is the fluid dissipates inn four days, but cannot give an idea of how much longer. Doctor Schandl explained:

> ...as a person decomposes, the fluid in their eye actually begins to dissipate until there isn't any vitreous fluid left. And that was the case here. That gives us a very general idea that it was probably more than four days. Which, again, doesn't tell us how much more than four days it was, but sometime after that.

So, again, our estimate of when the individual died is very inexact but we have a couple of guidelines to know that its more than four days, certainly.

(Vol. 2, Tr. p. 214, lines 10-18).

Dr. Schandl also testified that rigor mortis and livor mortis could be used to determine the length of time after death, but not in this case. The rigor motis "had long passed," and the liver mortis, determined by discoloration, could not be seen on the instant body because of advanced decomposition. (Vol. 2, Tr. p. 220, line 13 – p. 221, line 23). The doctor also noted that the brain had become liquid that also "takes time" after death, though environment may play a part in the process. (Vol. 2, Tr. p. 229, lines 18-24).

As to injury, Dr. Schandl testified that victim suffered a gunshot wound to the right side of the head. (Vol. 2, Tr. p. 223, line 17- p. 224, line 5). The doctor was able to recover the bullet fragment from the wound. (Vol. 2, Tr. p. 225, lines 21-22). But, again, the decomposition made determination of possible stippling from some discoloration impossible. (Vol. 2, Tr. p. 226, line 16 – p. 227, line 15). Dr. Schandl opined the gunshot wound was the cause of death. (Vol. 2, Tr. p. 230, lines 13-14). The doctor did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (Vol. 2, Tr. p. 230, line 24 – p. 231, line 1).

After the evening break in the trial, Appellant placed his full objection on the record:

...Those photographs depict the body of the victim not at the crime scene but either at autopsy or just prior to autopsy. They don't make any material issue of fact any more or less likely true.

I was - - actually thought that the testimony from the doctor supported my position because she almost refused to use the pictures in

> any part of her testimony. When the questions were put to her what does this photograph depict, she would say, well, I can't really tell you; I can look at my report and describe it to you.
>
> So she didn't even use the photographs. So they didn't assist her testimony. To the extent that they did, they're far more prejudicial than probative. I don't think that I've ever had photographs come into a murder trial where they were parasitic maggots on the body. And it's disturbing and unsettling and it shouldn't come into evidence and I would at this time not only renew my objection but in light of her testimony that she didn't rely on or use them, move that they be taken out of evidence.

(Vol. 2, Tr. p. 265, line 25 – p. 266, line 20).

The trial judge found:

> All right. I believe that fully articulates your argument.
>
> I disagree. I did not find that they were more prejudicial. There was extensive testimony that she used larva and the stages of the larva to identify the time - - or the stages of death, four days or more. So note your exception.

(Vol. 2, Tr. p. 266, line 21 – p. 267, line 2).

On appeal, Appellant complains the ruling on relevance is incorrect as "Dr. Schandl's ultimate finding that the time of death was more than four days was based upon the lack of fluid in the eyes of [victim's] remains, not the presence of maggots." (FBOA, p. 26). Further, he complains "the photographs were not needed to prove the elements of murder" as the "gunshot wound to the head was established by Dr. Schandyl through the use of her autopsy report." (FBOA, p. 27). Lastly, he complains the photographs "served to create an unfair prejudice against" him due to "close-up imagery" of the "severe maggot infestation." (FBOA, p. 27).

Discussion:

"The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling

will not be disturbed on appeal." *Peterson v. National R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005); *Gambell v. Int'l. Paper Realty Corp.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996).[1] To warrant reversal, an appellant "must show both the error of the ruling and resulting prejudice." *Recco Paper & Label Co. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994); *State v. Hamilton*, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). *See also State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting Alexander*, 303 S.C. at 377, 401 S.E.2d at 149. However, "'[i]f the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.'" *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010), *quoting Nance*, 320 S.C.

[1] All relevant evidence is admissible. Rule 402, SCRE.

at 508, 466 S.E.2d at 353. *See also State v. Salley*, 398 S.C. 160, 169, 727 S.E.2d 740, 744 (2012) (photograph of child "substantiated [forensic pathologist] Dr. [Joel] Sexton's testimony that the child's sickle cell trait was not outwardly apparent" thus "had a purpose independent of arousing sympathy, and was properly admitted").

At issue here are two photographs from the autopsy. The body is shown in a clinical setting, on an autopsy table, and appears to be face down.[5] (State's Exhibits 52 and 54). The autopsy photographs depict the advanced decomposition of the victim's body which, in turn, supports the pathologist's observations and demonstrates the difficulties in relying on visual observations, giving understanding to the doctor's hesitancy in describing features. Further, State's Exhibit 52 depicts the multiple sizes of maggots which indicates several egg laying cycles had occurred which, in turn, supports her testimony that the presence of such indicated more than four days had passed since death. There were discrete and necessary reasons to submit the two photographs. In sum, because "the offered photograph[s] serve[d] to corroborate [the pathologist's] testimony, it [was] not an abuse of discretion to admit it.'" *Torres*, 390 S.C. at 623, 703 S.E.2d at 229; *Nance*, 320 S.C. at 508, 466 S.E.2d at 353. *See also Todd*, 290 S.C. at 214, 349 S.E.2d at 340 (black and white photograph of the victim's right upper chest with the breast exposed showing the location of the bullet wound was admissible to corroborate pathologist's testimony regarding location of wound, and did not prejudice defendant,

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[5] In fact, Appellant did not object to a photograph of the body shown in the crawlspace. (Vol. 2, Tr. p. 61, line 1 – p. 63, line 1; State's Exhibit 29). Further, the record shows that State did not offer all photographs available in this case, and appeared to be open to discussion with defense counsel. The record demonstrates that the State withdrew at least one contested photograph (though the record is not clear what kind of photograph it was) upon defense counsel's objection. (See Vol. 2, Tr. p. 9, lines 1-6). However, State's Exhibit 5 was marked and not admitted. That photograph was of the victim's forearm and showed a tattoo. (State's Exhibit 5).

since there was explicit testimony that victim's blouse and brassiere had been removed by medical personnel when they arrived at scene in order to administer medical assistance); *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, despite claim that, because victim's body was found in woods 46 days after crime was committed, weather or local fauna could have altered crime scene during that period; photographs corroborated other 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); *State v. Martucci*, 380 S.C. 232, 249-51, 669 S.E.2d 598, 607-08 (Ct.App. 2008) (autopsy photographs of child's internal organs and other injuries admissible in prosecution for homicide by child abuse, where they were introduced to corroborate testimony of doctor who performed autopsy regarding various injuries inflicted on child, various stages of healing or freshness, and the internal trauma which caused child's death; photographs were relevant to prove that child was abused and abuse caused his death, that abuse manifested an extreme indifference to human life, and that severity of bruises and resulting trauma were inconsistent with accidental injury or play; and photographs were not introduced with the intent to inflame, elicit sympathy of, or prejudice the jury); *State v. Edwards*, 10 S.E.2d 587, 588 (1940) ("In our opinion the trial Judge did not abuse his discretion in admitting the photograph [depicting head, torso, neck wound, decomposition and maggots] as being relevant, nor can we attach any importance, in view of the facts of this case, to the contention that the photograph prejudiced the jury against the defendant. Everything

depicted by the photograph was, subsequent to its introduction, testified to in detail by the witnesses.").

Further, Appellant's argument that the doctor did not rely on the insect infestation in considering time of death "as more than four days" is not accurate. (See FBOA, p. 26). The doctor clearly testified there were multiple factors to consider in evaluating the length of time that had passed. These included the insect infestation, among other physical manifestations. (See, for example, Vol. 2, Tr. p. 213, lines 6-23; p. 214, lines 10-18; p. 220, line 13 – p. 221, line 23; p. 229, lines 18-24). Moreover, the doctor did not specifically opine on a number of days, but opined that the indications did not exclude a lapse of twenty-four days. (Vol. 2, Tr. p. 230, line 24 – p. 231, line 1).

There is no merit to the argument that "the photographs were not needed to prove the elements of murder" or that one of the matters proved were not contested *by him*. (See FBOA, p. 27). This is not the appropriate inquiry. Rather, the proper question for determining relevance was whether this photograph had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "[A] defendant cannot dictate the manner in which the prosecution tries its case by stipulating to certain facts or by not challenging an element of the offense" and "the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." *See Estelle v. McGuire*, 502 U.S. 62, 69 (1991); *Mathews v. United States*, 485 U.S. 58, 64-65 (1988).[6]

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[6] As the Court noted in *Old Chief v. United States*, 519 U.S. 172, 189-190 (1997), "the accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away rests on good sense. A syllogism is not a story, and a naked proposition in a courtroom may be no match for the robust evidence that would be used to prove

Further, unlike the photographs in *State v. Collins*, 398 S.C. 197, 201-14, 727 S.E.2d 751, 754-60 (Ct.App. 2012), the photographs at issue here were not "calculated to arouse the sympathy or prejudice of the jury." Though perhaps unsettling to one not familiar with death and decay, the photographs are not gruesome by virtue of blood, gore, or gapping wounds. In fact, due to extensive decomposition, the customary features one would expect to see on a body are not clearly visible; rather, the photographs actually show little human detail – the very point the forensic pathologist made in testimony. (See Vol. 2, Tr. p. 212, lines 8-12). At any rate, the photographs well demonstrate and corroborate the forensic pathologist's testimony which is especially probative since time of death established through forensic means was important in connecting the evidence. Thus, the trial court did not err in finding the photographs relevant and admissible.

Further still, only two photographs were introduced to corroborate her testimony, as opposed to the numerous photographs admitted in *Collins* and other cases where this Court or the Supreme Court have held that there was an abuse of discretion in the admission of photographs. *See, for example, Collins*, 398 S.C. at 208, 727 S.E.2d at 757 (referencing seven photographs of a partially eaten ten year old victim: "It is difficult to look at each photo, and the combined effect of all seven is disturbing."); *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (at least four photographs introduced of graphic, but autopsy-related, damage to remains, *i.e.* "victim's scalp pulled

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it. People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best."

away from her skull" and "surgically opened vaginal cavity exposing a large amount of seminal fluid"); *State v. Waitus*, 224 S.C. 12, 27, 77 S.E.2d 256, 263 (1953) ("four pictures of deceased taken in the boiler room of the parish house before the body was removed" should have been excluded because injuries, "the condition of the clothes," and the fact "her rings had been removed and placed on the index finger," were "fully established both by uncontradicted medical and lay testimony" thus "were calculated to inflame and arouse the passions of the jury and their introduction was wholly unnecessary to establish the facts claimed").[7] Further, due, in part, to the advance decay, the photographs "did not have 'the overwhelming capacity to lure the jury into declaring guilt on the emotional basis of sympathy for the [victim] and horror at the sight of the [victim's] body,' as did the numerous photographs of the child victim, including a photograph of his partial eaten face, that this Court found unduly prejudicial in *Collins*. 398 S.C. at 210, 727 S.E.2d at 758.

Finally, any error in the introduction of these photographs must be viewed as non-prejudicial and harmless beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). At worst, the photographs were

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[7] Respondent again notes that even though Appellant relies on this case in making his argument, (see FBOA, p. 27), he did not object to the photograph of the remains in the crawlspace under the house. Footnote 5, *supra*. (See also Vol. 2, Tr. p. 61, line 1 – p. 63, line 1; State's Exhibit 29).

cumulative to the other evidence concerning the crime scene (especially State's Exhibit 29, the body in the crawlspace) and the condition of the victim's body (especially the extensive use of lime, the clothing consistent with the clothing worn the last day Ms. Washington saw victim alive, and the advanced decay suggesting more than four days had passed since death). *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587, 588 -589 (1942) ("The photographs, it is true, were only corroborative of the spoken word, and proved to be unnecessary in this particular case, but they were no more than harmless surplusage. They showed material conditions which existed, and were not inflammable fuel to be consumed by the minds of the jurors, nor do we think that they were calculated to arouse the prejudices of the jury."). *See also State v. Haselden,* 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (evidence "merely cumulative, insubstantial" did not affect the result of trial and considered harmless). Moreover, there was overwhelming evidence of Watson's guilt – especially the concise timeframe between violent argument with Appellant and disappearance; the victim's body recovered with the same clothes and jewelry victim was seen wearing the day of the disappearance, and immediately before the altercation with Appellant; victim's body hidden under Appellant's residence with a bottle with Appellant's DNA next to the body in a remote area away from the crawlspace entrance; lime on the victim's body consistent with lime purchase by Appellant; Appellant's odor agents also with bags of lime in his work materials for lawn care; Appellant's deflective suggestion that the odor in the house was from a dead cat in the yard; and, Appellant's flight from the jurisdiction when the body was about to be discovered due to the strong smell of decay. This detailed,

competent evidence well supports the jury's verdict such that the admission of photographs, if considered error, could only be harmless on this record. *Bailey, supra.*

However, the record supports the basis for the trial judge's ruling admitting the photographs over Applicant's objection. Her ruling should not be disturbed on appeal.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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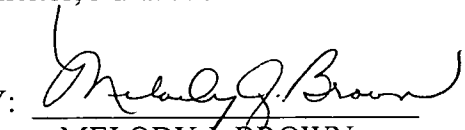
BY: 
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April 3, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

The State, Respondent,

v.

Leonard Goodwin, Appellant.

Appellate Case No. 2011-193507

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following be included in the Record on Appeal:

(1) Trial Transcript, Vol. 1, pages:
107-131;
145-149;
156-162;
167-179;

(2) Trial Transcript, Vol. 2, pages:
9;
41-46;
54-63;
72-73;
76-81;
85;
105;
108;
116-120;
138-141;
156-157;
166;
169;
174-177;

181-185;
192-193;
196;
205-231;
230-231;
259-260;
265-267;

(3) Trial Transcript, Vol. 3, pages:
35-42;
53;
74-75;
96;

(4) Trial Transcript, Vol. 4, pages:
18-19;
29-34;
38-46;
85-86;
95-98;
111-112;

(5) State's Exhibits:
5;
19;
21;
29;
38;
39;
40;
41;
52;
54;

(6) Court Exhibit 4;

(7) Indictment.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this designation contains no matter which is irrelevant to this appeal.

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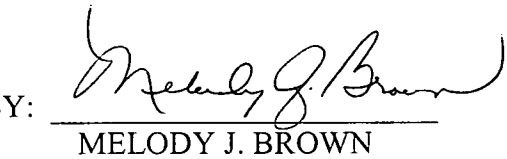
BY: 
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PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Initial Brief of Respondent* and *Designation of Matter* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Breen Richard Stevens, Appellate Defender
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This 3rd day of April, 2013.

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