

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Jun 30 2021

APPEAL FROM ABBEVILLE COUNTY
Frank R. Addy, Jr., Circuit Court Judge

S.C. SUPREME COURT

S.C. Ct. App. Op. No. 5805 (Filed February 17, 2021)
Appellate Case No. 2021-000466

THE STATE,RESPONDENT

v.

CHARLES TILLMAN, PETITIONER.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
[CORRECTED]**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No: 14244

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

PETITIONER’S QUESTIONS PRESENTED..... 2

RESPONDENT’S COUNTER STATEMENT OF QUESTIONS PRESENTED..... 2

STATEMENT OF THE CASE..... 3

RESPONDENT’S STATEMENT OF FACTS..... 5

STANDARD OF REVIEW..... 8

ARGUMENT..... 9

 I. The Court of Appeals did not err in finding the trial judge properly denied Tillman’s directed verdict motion as the State presented substantial evidence that, if believed, would support the elements of murder and identity of Tillman as the murder. [Petitioner’s 1 and 2]..... 9

 II. The Court of Appeals did not err in applying the appropriate deferential standard of review to determine the trial judge did not abuse his discretion in admitting crime scene photographs when the record supports the photographs were relevant and the trial judge carefully reviewed and limited those photographs. 16

 III. The Court of Appeals did not err in its summary dismissal of Tillman’s argument that the trial judge erred in denying Tillman’s motion for mistrial when the trial court did not actually receive “criminal profile” evidence and the trial judge gave a detailed and exhaustive cautionary instruction sufficient to cure any possible prejudice..... 19

 IV. Tillman is not entitled to the application of cumulative error review because he fails to show any errors to accumulate..... 21

CONCLUSION..... 22

PETITIONER'S QUESTIONS PRESENTED

- I. Did the Court of Appeals err by affirming the trial court's failure to identify the standard of review and defining the meaning of "substantial circumstantial evidence," 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 a "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 26 (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 Court of Appeals err by affirming the trial court's denial of Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?
- III. Did the Court of Appeals err by affirming the trial court's denial of 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 Court of Appeals err by affirming the trial court's denial of 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.]. Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

RESPONDENT'S COUNTER STATEMENT OF QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in affirming the denial of Tillman's motion for directed verdict when "[t]aken cumulatively and in the light most favorable to the State, the evidence" was "sufficient to withstand directed verdict," regardless of the fact that Tillman could still challenge the weight of the evidence during trial? [Petitioner's 1 and 2].
- II. Whether the Court of Appeals applied the appropriate deferential standard of review to determine the trial judge did not abuse his discretion in limiting then admitting relevant photographs of the victim's body when the condition of the body was relevant and witnesses explained and corroborated their observations by way of the photographs.
- III. Whether the Court of Appeals erred in summarily dismissing Tillman's argument that the trial judge erred in denying Tillman's motion for mistrial when the court did not actually receive "criminal profile" evidence and the trial judge have detailed and exhaustive cautionary instruction sufficient to cure any possible prejudice.
- IV. Whether Tillman is entitled to the application of cumulative error review when he fails to show any errors to accumulate.

STATEMENT OF THE CASE

An Abbeville grand jury true-billed two indictments in October 2017 charging Petitioner, Charles Tillman, for the murder of Christie Stutler, and for possession of a weapon during the commission of a violent crime. (App. 130-33). A jury trial was held January 22-26, 2018, before the Honorable Frank R. Addy, Jr. (App. p. 145). E. Charles Grose, Esq., represented Tillman. (App. p. 145). The jury convicted as charged. (App. p. 828). Judge Addy sentenced Tillman to life imprisonment. (App. p. 843). Tillman filed a timely motion for a new trial on February 5, 2018, (App. pp. 136-43), which Judge Addy denied by order dated March 8, 2018, filed March 13, 2018 (App. pp. 124-26). Tillman timely appealed.

Trial counsel continued to represent Tillman on appeal, and, on November 12, 2019, filed a Final Brief of Appellant in the South Carolina Court of Appeals, raising six issues:

Question 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 a ‘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)?

Question 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?

Question 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?

Question IV

Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduce evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?

Question 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)?

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

(App. p. 29).

After completion of the briefing process, the Court of Appeals heard oral argument on November 4, 2020, then subsequently issued a published opinion on February 17, 2021 affirming the conviction and sentence. The Court of Appeals found the trial judge did not commit any error on the issues presented in Questions 1 through 5; and, as to Question 6, found no errors that could be accumulated for a cumulative error analysis. (App. pp. 1-8). *See also State v. Tillman*, 433 S.C. 58, 66–67, 856 S.E.2d 168, 173 (Ct. App. 2021). Tillman filed a petition for rehearing *en banc* on March 4, 2021, (App. pp. 12-20), which the Court of Appeals denied on April 5, 2021, (App. p. 9).

On March 4, 2021, Petitioner filed a petition for certiorari review in this Court. This return follows.

STATEMENT OF FACTS

Tillman called 911 on November 8, 2016, claiming he had come home from work and found his live-in girlfriend, Christie Stutler, dead. He reported the death as a suicide. (App. p. 269, lines 5-7; App. p. 262, line 25 – p. 263, line 12). Responding law enforcement found Ms. Stutler on the bed in the master bedroom. She was unresponsive, face-down, one arm “hanging off the bed and her face was almost even with the edge of the bed,” and there was “blood running down the side of the mattress.” (App. p. 271, line 3 – p. 273, line 6). The first responding officer noticed there was no gun by or anywhere around the victim. (App. p. 273, lines 10-11). Autopsy results revealed that Ms. Stutler died from a gunshot to the head inflicted sometime between approximately 11:00 PM November 7th and 11:00 AM on the 8th. (App. p. 422, lines 21-22; p. 423, lines 7-20). The wound was inconsistent with suicide. (App. p. 423, lines 2-4). The shot to the head was “a tight contact wound, meaning the gun was placed against the head at the time it was discharged.” (App. p. 417, lines 4-6). But those were not the only wounds. She had also been shot in “her right lower leg” and “had multiple bruises and scrapes of the skin, abrasions on her body consistent with blunt trauma, and she had burn injuries, at least one of them, characteristic of a cigarette burn.” (App. p. 414, lines 3-7). As to the multiple bruises, the forensic pathologist who performed the autopsy, Dr. Brett Woodard, testified that they were “both of a recent and a remote nature,” meaning both older than 18 hours and less than 18 hours. (App. p. 419, lines 3-7). He also testified he observed “some bruises, which suggested fingertips being pressed against the body in an effort to manipulate, control or hold the body,” and “scratches on the body which were consistent with another individual’s ... fingers losing contact with the body and the nails scratching the victim,” and “burn injuries” to the buttocks presenting a “shape” that “is classic for a cigarette tip burn.” (App. p. 419, line 10- p. 420, line 3). He also observed a “tram bruise,

meaning the bruising makes two lines” that “can occur with a broad or rectangular blunt trauma.” (App. p. 420, lines 9-16). These various injuries were presented in photographs to support and explain the shapes, locations and kinds of wounds. (See App. pp. 419, line 17 – p. 421, line 16). One of the bruises in particular revealed it was inflicted by an “object with “some element of an oval shape to it.” (App. p. 421, lines 12-16). Dr. Woodard opined that the general shape matched that of “any long rifle,” which is type of the weapon found to be the murder weapon. (App. p. 422, lines 13-18). The murder weapon was located in a vehicle near the home, close to the lawn mower Tillman professed to be “working on prior to going to work.” (App. p. 429, line 21 – p. 430, line 6). Analysis of fingernail clippings collect at autopsy revealed the possible presence of Tillman’s DNA. (App. p. 643, lines 9-22, “profile developed ... matches the Y-STR profile of Charles Tillman” with “probability of randomly selecting an unrelated individual having a Y-STR profile matching this item is approximately 1 in 600” with paternal male relatives ... not... excluded as the contributor”). Investigators at the scene discovered .22 bullets, a bullet hole in the trailer, and a single .22 caliber shell casing under the mattress. (App. p. 341, line 11-p. 343, line 9). In addition, investigators located a single .22 projectile lodged in the wall of Tillman’s trailer. (App. p. 316, lines 18-25). Samples from swabs of the .22 caliber rifle recovered from the junked car near Tillman’s trailer produced a “partial Y-STR profile” match to the “Y-STR profile of Charles Tillman,” with “[t]he probability of randomly selecting an unrelated male individual” with that profile as “one in 8, 6000,” male relatives not excluded. (App. p. 639, lines 13-22). Investigators also swabbed Tillman’s shirt for presence of gunshot residue (GSR), and testing results showed a single particle of GSR present. (App. p. 689, line 23 - 690, line 25).

Tillman gave several statements during interviews with law enforcement. Of note, Tillman initially denied owning a gun and gave evasive answers to questions about the .22 caliber bullets

found in his trailer, (see State’s Exhibit 124 at 16:13); and, at one point, asserted that the victim had had several affairs with other men and that “he would have to go back and get her.” (App. 532, lines 4-23). The Court of Appeals summarized several of his relevant assertions:

During interviews with police, Tillman consistently stated Victim was alive when he left for work that morning. However, his responses to pertinent questions were evasive. Tillman never acknowledged the presence of a gun in the trailer or mentioned having access to a gun until confronted by police after the murder weapon was found. He could not account for the last time he might have held the gun; he could not remember when he might have last accessed the junk car, nor could he explain why his mother would have mentioned a gun on the 911 call. He explained he *assumed* Victim had committed suicide by shooting herself because she had talked about doing so before.

(App. pp. 2-3) (emphasis in original).

During trial, Tillman’s mother testified that on the day the victim was murdered, she had gone by the trailer to see if the victim wanted to go with her to do laundry. After arriving at the home, she testified that she saw a shadow and heard the victim respond to her from inside, though she was not sure what was said. She left without further interaction. (App. p. 278, line 24 – p. 280, line 8). She admitted she did not inform law enforcement of this during the investigation, acknowledging “it may have been” important, but maintaining she was not asked. (App. p. 280, lines 11-16). During the 911 call, Tillman’s mother can be heard referencing a gun, though she would later deny that to investigators and became “upset ... distraught.” (See App. p. 311, line 2-. p. 312, line 17). The call was played for the jury. (See App. p. 266, lines 2-3; State’s Exhibit 1).

Tillman also presented testimony from his friend and coworker, J.C. Boggs, and from his cousin, Walter Tillman. Both men testified that they picked Tillman up from his trailer at 8:30 AM on November 8, to go to a job site. (App. p. 721, line 7 – 22; App. p. 730, lines 7-19). Each testified that Tillman acted normal that day. (App. p. 723, lines 4-11; App. p. 731, lines 5-8). Tillman’s brother, Willie Tillman, testified that he had walked over to Tillman’s trailer earlier that

morning prior to J.C. Bogg’s arrival, spoke to Tillman outside, and, though he did not see the victim, he testified he heard Tillman engage in a conversation with the victim. (App. p. 738, line 4 – p. 741, line 21).

As noted above, the jury found, beyond a reasonable doubt, that Tillman was the individual who murdered Christie Stutler.

STANDARD OF REVIEW

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242 (b), SCACR. General reasons for granting a petition include to review a Court of Appeals decision that: (1) reflects a novel question of law; (2) included a dissent; (3) conflicts with this Court’s precedent; (4) addressed a substantial constitutional right; or (5) decided a matter of federal law in a way that conflicts with federal precedent. *Id.* The foregoing list is not exclusive, and this Court may exercise its discretion in the absence of these facts.

Appellate Review - Generally

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court’s factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001).

Appellate Review – Motion for Directed Verdict Ruling

The appellate court “must affirm the trial court’s decision to submit the case to the jury if there is any direct or substantial circumstantial evidence reasonably tending to prove the defendant’s guilt.” *State v. Prather*, 429 S.C. 583, 608, 840 S.E.2d 551, 564 (2020) (citing *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)). The appellate “must reverse if the

evidence only gives rise to a mere suspicion of the defendant's guilt." *Id.*, (citing *Hernandez*, 382 S.C. at 625, 677 S.E.2d at 605).

Appellate Review – Evidentiary Issues

"The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011) (quoting *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)).

ARGUMENT

The Court of Appeals correctly applied established law to the facts of this case. There is no special reason for review. Indeed, there is no error to review. Essentially, for the most part, Tillman is simply seeking additional review of the same facts on the same law. Tillman does ask this Court to define "substantial circumstantial evidence" for the trial court, (Pet. at 13), and to recognize error and apply the "cumulative error doctrine" in his case, (Pet. at 24). However, this Court has already given guidance to the trial courts on the evaluation of the evidence at the directed verdict stage. Similarly, this Court has already established that where there is no error to accumulate, the cumulative error doctrine is not applicable. In short, Tillman has failed to show any "special or important reasons" for review by this Court. The petition should be denied.

I. The Court of Appeals did not err in finding the trial judge properly denied Tillman's directed verdict motion as the State presented substantial evidence that, if believed, would support the elements of murder and identity of Tillman as the murderer. [Petitioner's 1 and 2].

Tillman argues "both the trial judge and the Court of Appeals erred by not defining "substantial circumstantial evidence," (Pet. at 11), and finding that Tillman's directed verdict motion was properly denied, (Pet. at 16-17). Tillman cannot show error on this record.

Treatment at Trial:

At trial, Judge Addy declined defense counsel's request to define "substantial

circumstances” beyond that contained in this Court’s precedent. While the trial judge noted case law tended to be “less than specific on what exactly substantial circumstantial evidence means,” (App. p. 712, lines 1-2), the judge correctly reasoned that his duty was not to further define this Court’s opinions, but to apply the test as given:

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.

(App. p. 712, lines 17-21).

Immediately thereafter, Judge Addy engaged in careful consideration of the facts, acknowledging, as this Court in other cases, that the strength of circumstantial evidence lies in its combination, but also finding *both* direct and circumstantial evidence:

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. ...

(App. p. 712, line 21 – p. 714, line 15) (emphasis added).

Thought not expressly on the record, the trial judge noted, at the close of all evidence, that Tillman “renewed” his prior motions and that the court made the “[s]ame rulings as before.” (App. 755, lines 1-2).

Treatment in the Court of Appeals:

The Court of Appeals first correctly set out the standard of review:

“On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State.” *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). “The [c]ourt’s review is limited to considering the existence or nonexistence of evidence, not its weight.” *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

(App. p. 4).

The Court of Appeals then carefully reviewed the evidence presented at trial to determine if there was substantial circumstantial evidence that, if believed, would support all the elements of murder. (App. pp. 4-5). The Court of Appeals summarily rejected Tillman’s argument that the trial judge erred in failing to define how it would determine “substantial circumstantial evidence” in ruling on the motion, finding it to be without merit:

As to the trial court’s failure to define the standard of review it applied in evaluating Tillman’s motion for directed verdict, the trial court found there was substantial circumstantial evidence Tillman committed the crimes of which he was accused. *See State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004) (“The trial court has a duty to submit the case to the jury where the evidence is circumstantial if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.”).

(App. p. 7).

In the petition for rehearing, Tillman again pressed that the trial court erred in failing to define the test and failing to grant the motion for directed verdict. (App. pp. 13-15).

Discussion:

Tillman does not address the trial judge's conclusion that the case contained direct evidence as well as circumstantial evidence.¹ Rather, he relies upon certain pieces of circumstantial evidence and his own evidence of (incomplete) alibi to argue that the evidence was not sufficient to go to the jury. (See Pet. at 16-17). The piecemeal approach is contrary to this Court's precedent.

The Court of Appeals appropriately set out and considered that “ ‘[c]ircumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury.’ ” (App. p. 4, citing *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013)). Notably the *Rogers* phrasing rested upon this Court's precedent in *State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010) (“evidence, when viewed collectively, presented a jury question”), and *State v. Cherry*, 361 S.C. 588, 595, 606 S.E.2d 475, 478 (2004) (“this

¹ The trial judge did not specify the direct evidence, but generally referenced it. Respondent notes that the direct evidence referenced could be Tillman's own stipulation to murder, (*see generally State v. Pichardo*, 367 S.C. 84, 94, 623 S.E.2d 840, 846 (Ct. App. 2005) (“A stipulation is an agreement, admission or concession made in judicial proceedings”) – indeed, Tillman agreed there was direct evidence of murder, see App. p. 704, lines 23 – p. 705, line 1 – with the circumstantial evidence showing identity, or perhaps DNA which the analyst testified “matched” to Tillman's profile. At any rate, the portion of the trial court's ruling resting on direct evidence was not appealed; thus, right or wrong, it should be considered the law of the case. *See, e.g., State v. Williams*, 427 S.C. 148, 157, 829 S.E.2d 702, 706 (2019).

combination of factors is sufficient”).² The Court of Appeals then conducted review of the totality of the evidence:

Multiple pieces of circumstantial evidence, when put together, create more than mere suspicion Tillman killed Victim. DNA consistent with Tillman's was found on the murder weapon and Victim's fingernail clippings. One particle of GSR was found on the right sleeve of Tillman's shirt. Tillman was with Victim from 11:00 p.m. until approximately 9:00 a.m., and her time of death was determined to be between 11:00 p.m. and 11:00 a.m. Victim had recent and remote bruising on her body and cigarette burns although Tillman told police he never physically harmed her. Tillman indicated Victim had shot herself during his 911 call even though the cause of death was not evident based on the position of Victim's body when discovered. The murder weapon was found hidden in a car on the Bell Road property in which Tillman and Victim apparently stored clothing and other items. Tillman never mentioned the gun to police until after it was found and could not give any timeframe for when he might have last touched the gun or the car in which it was discovered. The bullets that killed Victim matched a cache of bullets found in Tillman's trailer. At trial, Tillman's mother admitted that during the 911 call, she could be heard asking Tillman about having a gun at the trailer. [FN 2]. She initially denied mentioning a gun on the recording but later admitted it, telling police "she had been wondering to herself why she would say that." Tillman's mother testified at trial that she had called out to Victim about going to the laundromat with her the morning of the murder after Tillman had left for work. Tillman's mother stated Victim said something she could not understand, and she saw a shadow move near the door. Tillman's mother did not initially report this to police.

Taken cumulatively and in the light most favorable to the State, the evidence described above is sufficient to withstand directed verdict. As the trial court noted, taken in isolation, the evidence may only have raised a suspicion of Tillman's guilt. However, when put together and coupled with Tillman's inconsistent and implausible statements to police, the threshold required to withstand directed verdict was met. ...

[FN 2] At trial, Tillman's mother specifically denied asking Tillman whether he had a gun at the trailer *the previous day*. While the contents of the 911 tape are not always clear, Tillman's mother can be heard saying "yesterday" during her query to Tillman. She also denied having further conversation with Tillman during the call although a muffled conversation can be heard in the background on the recording.

(App. pp. 4-5).

² Further still, the Court of Appeals relied upon this Court's cautioning that that "suspicion" is not enough, which again rests on this Court's precedent illustrating the correct test. (App. p. 4).

Discussion:

The Court of Appeals correctly resisted the idea that because Tillman could challenge the weight of these factors did not prevent the State from reaching “the threshold required” to submit to the jury. (App. pp. 5-6). Here, Tillman continues to argue how the facts ought to be viewed, but cannot show that the facts do not exist, and, critically, these facts are not in tension with each other but link together demonstrating strong evidence of guilt. *See State v. Rogers, supra*. The Court of Appeals noted this Court’s opinion in *State v. Bennett* calls for case specific review. (App. p. 6). That is correct and the analysis in *Bennett* is instructive here.

In *Bennett*, this Court reviewed the trial court’s finding that the State had produced “substantial circumstantial evidence.” The Court of Appeals found error in the trial court’s denial of the directed verdict motion and reversed, explaining:

[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)). But, in reversing the Court of Appeals, this Court reasoned:

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).³

Similar to *Bennett*, the State here presented sufficient evidence to overcome the directed verdict motion. Not the least of this evidence is the murder weapon in an abandoned vehicle near the trailer (App. p. 430, line 7 – p. 431, line 16); DNA that did not exclude Tillman on the weapon and under the victim’s fingernails, (App. p. 639, lines 13-22; App. p. 643, lines 9-22); and the particle of GSR on Tillman’s shirt. (App. p. 689, line 23 - 690, line 25). Adding to the growing list are Tillman’s vague statements and his assertions that the victim wronged him in the relationship. (App. 532, lines 4-23). Rather than recognize the evidence would be ample to allow a “reasonable juror to find the defendant guilty beyond a reasonable doubt,” *id.*, Tillman would have the trial court and the appellate courts weigh the evidence. That is a bridge too far. The Court of Appeals properly applied this Court’s precedent and guidance, as did the trial judge. Tillman fails to show

³ Tillman has criticized the State’s reliance on *Bennett*. (See App. pp. 105-06 (Final Reply Brief)). However, this Court has expressly found that *Bennett* reflects the Court’s guidance “to resolve the apparent confusion over the appropriate standard governing whether the State has presented sufficient evidence to overcome a motion for a directed verdict.” *State v. Pearson*, 415 S.C. 463, 472–73, 783 S.E.2d 802, 807 (2016). In *Pearson*, this Court again noted the separation “between the analysis of a court considering circumstantial evidence when ruling on a directed verdict motion and that performed by the jury.” *Id.*, 415 S.C. at 473, 783 S.E.2d at 807. This Court also once again emphasized that “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.*

error in reasoning or flawed application of law either by the trial judge or the Court of Appeals. There is no error to correct. Tillman's petition should be denied.

II. The Court of Appeals did not err in applying the appropriate deferential standard of review to determine the trial judge did not abuse his discretion in admitting relevant crime scene photographs when the record also supports the trial judge carefully reviewed and limited those photographs.

Tillman objected to crime scene and autopsy photographs showing the victim. At trial, he argued against admission of autopsy photographs and essentially any photograph showing the conditions and wounds on Ms. Stutler's body. The trial court considered both the defense's stipulation that it was murder, (see App. p. 198, lines 19-22), and the State's position that "she was battered and beaten and then murdered," (see App. p. 200, line 23 – p. 201, line 1). The record shows the trial court carefully considered the offered photographs, and instructed steps be taken to reduce potential unfair prejudice, such as using black and white photographs, (App. p. 202, lines 9-13), and selective admissibility of only the necessary photographs, (App. p. 182, line 25 – p. 183, line 21). Tillman asserted that he was "not contesting the injuries or the manner - - cause and manner of death." (App. p. 199, lines 4-5). He maintained that the photographs were irrelevant in these circumstances and objected to "any pictures that show [the victim's] body." (App. p. 230, lines 4-5).

In his petition to this Court, Tillman again raises the question of relevance. (See Pet. at 19-20). He also argues that the evidence was not so overwhelming as to render admission of the irrelevant photographs harmless. (Pet. at 19-20). However, there was no abuse of discretion in admitting the photographs as they were relevant and not unfairly prejudicial.

Treatment in the Court of Appeals:

The trial court held a lengthy pretrial hearing to determine which photographs would be admitted. Even though the manner of death was admitted, the photographs were very relevant to establish what Tillman saw upon arriving at the scene and whether that scene would support his having characterized the incident

as a suicide. *See State v. Hawes*, 423 S.C. 118, 130-31, 813 S.E.2d 513, 519-20 (Ct. App. 2018) (affirming the admission of photographs including the victim's body, which reflected the crime scene); *see also State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370 (1995) (affirming the admission of photographs corroborating witnesses' testimonies regarding the discovery of the crime scene). Additionally, the autopsy photographs were used to show bruising and cigarette burns, which would have been consistent with Tillman and Victim having had physical altercations in the past, something Tillman denied.

The photographs were probative on the two points just discussed, and the trial court took measured steps to minimize their prejudicial impact. It ordered the State to cover the Victim's face in one photograph and to reproduce several of the photographs in black and white to lessen their graphic nature. We conclude the trial court did not abuse its discretion in admitting the disputed photographs as they were relevant to matters in controversy, were highly probative, and were not unduly prejudicial.

(App. pp. 6-7).

Tillman also asked the Court of Appeals to reconsider his arguments on this matter in his petition for rehearing *en banc*. (App. p. 16).

Discussion:

“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). Despite the stipulation of a murder, the burden still rested on the State to prove that Tillman unlawfully killed the victim with malice aforethought. In recognition of this established heavy burden, this Court has reasoned 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.” *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000) (citing Am.Jur.2d Stipulations § 17, at 557 (1974)).

Further, the definition of relevance is broad. “Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” *State v. Cartwright*, 425 S.C. 81, 90, 819 S.E.2d 756, 760 (2018) (citing Rule 401, SCORE); *see also State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991) (“Evidence is relevant if it tends to

establish or make more or less probable some matter in issue upon which it directly or indirectly bears.”). It is not limited to the satisfaction of elements of the charged crime, but more broadly “matter.”

Tillman repeats to this Court that he stipulated that Ms. Stutler was murdered, but the State has not proven a case against Tillman until it proves beyond a reasonable doubt not just the elements of the crime, but the identify of Tillman as murderer. *See State v. Schrock*, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (“By bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act.”).

The Court of Appeals specifically noted the value of seeing the crime scene to have the necessary evidence to assess the believability of Tillman’s statement that he thought “suicide” upon seeing the victim. (App. p. 6). Further, evidence of bruising and burns also went to the believability of Tillman’s statement that he had never abused the victim. 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. Photographs were used in the explanations for his observation and opinions. (See, for example, App. pp. 419, line 17 – p. 421, line 16, State’s 137, 138, 37, 48, 50). Further, an investigator, Alton Davis, used the photograph to aid in explanation of this descriptions of the scene that Tillman had discovered and reported as a suicide. (See, for example, App. p. 337, line 20 – p. 340, line 8, State’s 48, 49, 50, 56).

To be sure, the photographs were not only evidence of murder, but were also relevant to the State’s theory that the victim had been subjected to extended abuse at Tillman’s hands. They were relevant to determine if Tillman lied to cover up his abuse of the victim and his guilt. The evidence

reasonably and logically pointed to guilt, but it did not do so unfairly. *See generally Imbler v. Pachtman*, 424 U.S. 409, 426 (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.”). Thus, there is no error in the Court of Appeals’ opinion for this Court to correct.

Further, though the Court of Appeals keyed in on evidence supporting what Tillman saw at the scene and the prior abuse, (App. p. 6), it should also be noted that Tillman also admits that forensic pathologist Dr. Brett Woodard used those photographs in presenting his opinion drawn from the autopsy. (Pet. at 19). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *Nance*, 320 S.C. at 508, 466 S.E.2d at 353 (citing *State v. Todd*, 290 S.C. 212, 349 S.E.2d 339 (1986)). These photographs, as referenced by Dr. Woodard – photographs limited and carefully considered by the trial judge – were alternatively admissible for corroborating the pathologist’s testimony. This would also be true of other witnesses who similarly explained and/or supported their testimony with the photographs.

Again, the trial judge did not abuse his discretion in admitting the relevant and highly probative photographs. Tillman is due no relief.

III. The Court of Appeals did not err in its summary dismissal of Tillman’s argument that the trial judge erred in denying Tillman’s motion for mistrial when the trial court did not actually receive “criminal profile” evidence and the trial judge gave a detailed and exhaustive cautionary instruction sufficient to cure any possible prejudice.

Tillman objected to testimony regarding Agent’s Barton interaction with Tillman in one of his statement interviews, arguing that the agent was prohibited from testifying as an “an expert in criminal profiling.” (App. p. 587, line 3 – p. 588, line 7). Tillman moved for a mistrial on the basis that Agent Barton could not testify as to criminal profiling as “it is not a science. This is a junk

science.” (App. p. 588, lines 23-24).

The major flaw factually in his argument is that Agent Barton did not testify to criminal profiling, was not offered as an expert in profiling, and was not qualified as an expert in profiling. The potential danger Tillman relies upon never materialized into real error. Even so, the trial judge gave an expansive curative to ensure there was no possible danger of unfair prejudice. Consequently, the Court of Appeals resolved:

... we reject Tillman’s argument the trial court erred in denying his motion for mistrial after the State asked State Law Enforcement Division Agent Bo Barton questions about his experience as a criminal profiler. The trial court’s curative instruction was lengthy and unequivocal in dispelling any notion that it had qualified Agent Barton as an expert in any legally legitimate scientific field. *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.”).

(App. p. 7).

In his petition for rehearing, Tillman argued that the curative was ineffective because the court could not “unring the bell.” (App. p. 17). He asserted the opinion reflects the panel “implicitly” determined “the prosecution solicited inadmissible testimony.” (App. p. 17). The opinion simply does not have that finding. Further, the record shows no improper “criminal profile” evidence was “solicited” and presented to the jury.

The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.” *State v. Kelsey*, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) (citing 75B Am.Jur.2d Trial § 1706 at 491 (1992)). “Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error.” *State v. Herring*, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009).

Agent Barton’s testimony to the jury was extremely limited. He did not express an opinion,

but simply introduced the substance of his interview with Appellant.⁴ (See App. p. 587, lines 3-19). He was neither offered nor qualified as an expert. The State essentially offered his live testimony to shorten playing a lengthy video of the interview. (See App. p. 589, lines 5-13).

The trial judge reasoned: “The witness testified that he began talking with the Defendant. Clearly, that would be reflected on the audio. He gave him three different options, that would be reflected on the audio. I don’t believe that we’re perhaps as close to the line,” defense counsel, “as you believe we are.” (App. p. 594, lines 9-14).

Further, the trial judge noted the video would be played, and the witness was testifying to a conversation, not as an expert. (App. p. 594, line 14 – p. 595, line 3).

Further still, the trial judge carefully instructed the jury to avoid the jury making a speculative and incorrect inference that the witness was testifying as an expert. (App. p. 595, lines 3-7). The judge instructed that Agent Barton’s “background” and “job history” did not mean that he was testifying as an expert, and stated plainly that “[c]riminal profiling is not a recognized science.” (See App. p. 598, line 20- p. 599, line 10).

In these circumstances, there could be no finding of an abuse of discretion resulting in prejudice to the defendant. *See State v. Johnson*, 334 S.C. 78, 90, 512 S.E.2d 795, 801 (1999) (extensive curative instruction given by the trial judge cured any possible prejudice caused by the brief mention of an offer of a polygraph examination); *see also Kelsey*, 331 S.C. at 69, 502 S.E.2d at 73 (“decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion.”). The record supports no error in the

⁴ The three separate options referenced by Agent Barton was made apparent to the jury when the interview record was played. (App. p. 599, line 20 – p. 600, line 5). During the interview Agent Barton discussed with Tillman 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.

Court of Appeals' denying relief. Tillman has failed to show otherwise.

IV. Tillman is not entitled to the application of cumulative error review because he fails to show any errors to accumulate.

Tillman asserts this Court should apply cumulative error analysis. (Pet. at 24). The Court of Appeals rejected the application of cumulative error for lack of error to consider:

... Because we find the issues raised by Tillman were properly decided by the trial court, his cumulative error argument is unavailing. *See State v. Thompson*, 420 S.C. 386, 404, 803 S.E.2d 44, 53 (Ct. App. 2017) (“Because we have found no errors in regard to the other issues [the appellant] raised on appeal and [the appellant] does not point to any other errors made by the trial court, [his cumulative error argument] is without merit.”).

(App. pp. 7-8).

The logic is sound. There is nothing to accumulate. *See State v. Durant*, 430 S.C. 98, 111 n. 6, 844 S.E.2d 49, 55 n. 6 (2020) (“because the trial court did not commit any reversible errors, we reject Durant’s contention that a new trial is warranted”). Moreover, this Court has cautioned that cumulative error is not simply showing multiple errors to receive relief; rather, a defendant must show that he was denied “his right to a fair trial.” *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (“Respondent must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial.”).

Lastly, Respondent offers as an additional sustaining ground, that the issue is not preserved for review. Though not mentioned in the Court of Appeals opinion, Respondent asserted same in its Final Brief. (See App. p. 96). Respondent asserts again that this issue is not preserved where it was “never argued ... to the trial court.” *Durant, supra*.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny Tillman’s petition for writ of certiorari.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

s/Melody J. Brown

BY: _____
MELODY J. BROWN
SC Bar No. 14244
ATTORNEYS FOR RESPONDENT

June 23, 2021
Corrected June 30, 2021
Columbia, South Carolina.