IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-KA-01371-COA

CHARLES EUGENE BOWMAN **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	11/23/2020
TRIAL JUDGE:	HON. PRENTISS GREENE HARRELL
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	HERBERT H. KLEIN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALLISON ELIZABETH HORNE
DISTRICT ATTORNEY:	HALDON J. KITTRELL
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 11/01/2022
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., GREENLEE AND McCARTY, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. Following a jury trial in Marion County Circuit Court,[1] Charles Bowman was convicted of second-degree murder and tampering with evidence based upon the death of his wife, Kathleen Bowman, whose burned remains were found on the Bowmans' property in rural Pearl River County. The trial court sentenced Bowman to forty years for the second-degree murder conviction, with ten years suspended and thirty years to serve in the custody of the Mississippi Department of Corrections (MDOC), and ten years of post-release supervision. Regarding the tampering-with-evidence conviction, the trial court sentenced

[1] The trial court granted the defense's motion to transfer the venue for trial from the Pearl River County Circuit Court to the Marion County Circuit Court.

Bowman to serve ten years in the custody of the MDOC, with that sentence ordered to run consecutively to the sentence for the second-degree murder conviction.

¶2. On appeal, Bowman asserts that the trial court erred (1) in allowing the chief deputy medical examiner to testify about her final report determining the victim's manner and cause of death when the autopsy and an initial report[2] had been prepared by a medical examiner who was no longer at the Mississippi Crime Laboratory; (2) in denying Bowman's motions to suppress evidence collected in Mississippi and Utah; (3) in allowing evidence of flight and then giving a flight instruction to the jury; (4) in giving "confusing" jury instructions regarding the standard of proof in this circumstantial evidence case; and (5) in denying his motion for a new trial or judgment notwithstanding the verdict because the verdicts were against the overwhelming weight of the evidence, or the evidence was insufficient to support the verdicts. For the reasons addressed below, we affirm Bowman's convictions and sentences.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

¶3. In September 2019, a Pearl River County grand jury indicted Charles Eugene Bowman for the first-degree murder of his wife, Kathleen Bowman, under Mississippi Code Annotated section 97-3-19(1)(a) (Supp. 2017), and for tampering with evidence under Mississippi Code Annotation section 97-9-125 (Supp. 2017) for the burning and removal of her remains.

[2] The record reflects that this initial report was unsigned and identified in the State crime lab's computer software as a "Preliminary Anatomic Diagnosis."

Bowman pleaded not guilty and proceeded to trial.

¶4. Early in the proceedings, Bowman filed a motion to transfer venue, which the trial court granted and transferred the venue for trial to Marion County. A number of pretrial motions were filed and will be summarized here and discussed in more detail below because they relate to issues Bowman raises on appeal. In December 2019, the defense moved to suppress evidence gathered by law enforcement in Mississippi and Utah. The trial court denied Bowman's motion with respect to the Mississippi evidence except for a videotaped jail interview of Bowman; Bowman's motion to suppress the Utah evidence was denied in full. In July 2020, the State moved for authority to present the testimony of medical examiner Dr. Staci Turner, who prepared the "Final Report of External Postmortem Examination" in this case. The defense objected to the motion and filed its own motion in limine to prevent Dr. Turner from testifying. The trial court granted the State's motion. About a month before the October 2020 trial, the defense moved to exclude references to "flight evidence" and to preclude the giving of any flight jury instruction. At that time, the trial court held its ruling in abeyance. The trial court later denied Bowman's motion, ruling that the State could refer to flight evidence and that the jury would be instructed accordingly.

¶5. The State presented twenty-two witnesses at trial, including several of Kathleen's family members (daughter Kirby Silas, son Patrick Held, and eldest brother Gerald Fabre); law enforcement involved in the welfare checks on Kathleen, the case investigation, the manhunt for Bowman and subsequent arrest in Utah, and the processing of evidence

recovered in Mississippi and Utah; witnesses who had encounters with Bowman in Mississippi and Utah during the relevant time period; and a number of experts. Bowman testified in his own defense. He presented no other witnesses.

I. The State's Case

¶6. Kathleen and Bowman married in 2003 and moved to 68 Owl Hoot Road in Pearl River County in 2005. Kathleen's family members testified that throughout their relationship, although Kathleen was in poor health (suffering from arthritis, blood clots, depression at times, and obesity), Bowman never held a job "on any consistent basis and so the financial burden was on Kathleen, and Kathleen felt it a lot." Bowman and Kathleen's relationship was "rocky," they often fought, and, according to Gerald (her brother), Kathleen was isolated and "a lot of it [(her isolation)] had to do with [Bowman]." Gerald testified that between 2005 and 2009 Kathleen was prescribed and was taking "a considerable amount apparently of opioids" due to the chronic pain she was suffering from several surgeries. In 2009, Kathleen asked for his help to move her to Lafayette, Louisiana, to move in with their mother because she was leaving Bowman. And she did leave Bowman. While Kathleen was living with her mother in Lafayette, she "weaned herself off . . . the excessive medications that she had been taking, and began to be her old self," but "much to [Gerald's] dismay," Kathleen then moved back to Pearl River County with Bowman.

¶7. The Bowmans' home at Owl Hoot Road was in disrepair and the couple was planning to build a new house on the property. Kathleen had injured her knee while working at

Lockheed Martin and was supposed to get a workers' compensation settlement in the spring of 2018, and, according to Gerald, Bowman claimed that he would soon be receiving money from a trust fund. With Kathleen's workers' compensation settlement and Bowman's trust fund, the couple planned to finance the new house.

¶8. On Mother's Day 2018, Bowman dropped Kathleen off at a family gathering at Gerald's home. Kathleen spent the day with her family and, by all accounts, Kathleen was happy. She was excitedly talking about her plans for the new house and how she would decorate it. But Gerald also testified that Kathleen confided in him that she was upset with Bowman and had given him an ultimatum on the Friday before he dropped her off on that Mother's Day. She told him that if he did not show proof of the trust fund, she would no longer tolerate the "façade," and their relationship would be over. Kathleen planned to give Bowman until Tuesday of the following week to produce the proof.[3] That Mother's Day weekend was the last time Kathleen's family saw her alive.

¶9. Kirby, Gerald, and Kathleen's son Patrick all testified that for several weeks, they texted Kathleen as they normally did, but they received delayed or unusual responses back from Kathleen. They could not get Kathleen on the phone, and she would not return their

[3] Chief Investigator Ogden also testified that in the course of his investigation, he talked to Kathleen's son Patrick. He said that Kathleen told him she was tired of being without financial support from Bowman and was planning on giving him an ultimatum on the Tuesday after Mother's Day 2018. This led Chief Investigator Ogden to research the Bowmans' financial records. The bank accounts he reviewed showed that only Kathleen was depositing money into them.

calls. Toward the end of June, Patrick was planning a birthday party for his daughter and invited Kathleen (the child's grandmother) to attend. He received no response. The next day, he received a strange text message from Kathleen's phone that she was too busy to come. He tried to call Kathleen several times without success. At that point, the family members talked to each other about what was happening, and they knew then that something was wrong.

¶10. On June 27, 2018, Kirby contacted the Pearl River County Sheriff's Office for a welfare check on Kathleen. Deputy[4] Jerry Fleming drove to the Bowman home. Bowman was in the front yard. He told Deputy Fleming that Kathleen was not at home but was on the coast. Deputy Fleming tried to call Kathleen but could not reach her.

¶11. Later that night, Deputy Fleming received a call from someone who identified herself as Kathleen Bowman. Deputy Fleming explained that her children were worried about her and asked her some identifying questions. He asked the woman for Kathleen's height, weight, eye color, driver's license number, and social security number. The woman hesitated for several seconds with every question but answered every question correctly except for the social security number. Deputy Fleming was unconvinced that he had spoken to Kathleen, so he sent two deputies to Kathleen and Bowman's house to make contact with her (the second welfare check).

[4] Unless otherwise indicated, all references are to the rank held at the relevant time. period.

¶12. Deputy Jeremy Quave of the Pearl River County Sheriff's Office testified that around 10:00 pm, he drove to Owl Hoot Road for another welfare check on Kathleen. Deputy Quave knocked on the front door, and no one answered. He glanced inside a white Nissan parked outside, and no one was in the car. He knocked on the back door of the house and still received no answer. He could hear a dog barking inside. He left.

¶13. Late that evening, a man named Antwanne Brazley called the Bay St Louis Police Department, reporting that he had been approached by an older white man in the parking lot of the Economy Inn in Bay St. Louis. Brazley testified at trial, and he said that the man was seeking a female to "do something sketchy for him." The man explained that he needed a woman who was "white or really sound[ed] white" to call the Pearl River Police Department and pose as his wife because her children had reported her missing. Brazley testified that he was with his girlfriend Alexandria Stevens at the motel and told the man that Alexandria could help. Alexandria testified at trial and said that Bowman asked her to call the police and pretend to be Kathleen. He had Kathleen's "ID" and gave Alexandria all of Kathleen's personal information. He also gave Alexandria a cell phone to use to make the call and sixty dollars.

¶14. As they (Bowman and Alexandria) were making the call, Brazley stepped outside where Bowman's car was parked next to his own. He noticed that there was blood all over the front passenger seat of the man's vehicle. Brazley said, "There was a white towel on the passenger's seat and a blue towel wrapped around the head part of the seat. I reached in

there, and I moved the towel, and the seat had nothing but blood everywhere; just nothing but blood."

¶15. When Bowman finished with the phone call, Brazley confronted him. Brazley testified, "I'm like you killed your wife, and he was like, no, it's just animal blood. It's animal blood. I'm like man you killed your wife, . . . [but] [t]he only thing he kept saying was it's animal blood; dog." According to Brazley, Bowman kept saying, "It's a dog. It was a dog. It was a dog. It was a dog. He just kept repeating himself. We stood there for about a good three or four minutes going back and forth on it was a dog." Later Brazley drove to a gas station and called the police about what he had seen. He spoke to someone named James Sanchez who came to the gas station to collect Brazley's information. Brazley had taken a photo of Bowman's car tag and gave the information to Sanchez.

¶16. Officer James Sanchez with the Bay St. Louis Police Department testified about responding to the call made by Brazley. Brazley seemed scared and told Officer Sanchez that he had been approached by a man looking for a white woman to make a phone call for him. The front seat of the man's car appeared to be soaked in blood and covered in towels also soaked in blood. Officer Sanchez testified that he ran the tag number from the photo Brazley had given him. Brazley had also given him an envelope on which Brazley had written the name Kathleen Bowman and a birth date. The vehicle registration came back as registered to Kathleen and Charles Bowman. Officer Sanchez then had dispatch contact the Pearl River County Sheriff's Office with this information. Deputy Quave of the Pearl River County

Sheriff's Office testified that this call came in about 1:00 a.m. and prompted a third welfare check for Kathleen. Deputy Quave went back to Owl Hoot Road, but no one answered the door. The white Nissan that was there earlier in the night was gone.

¶17. Around 5:00 a.m., Chief Investigator Marc Ogden of the Pearl River County Sheriff's Office obtained a search warrant for the property on Owl Hoot Road. Deputy Fleming helped with the search and looked inside a shed. There, he found a metal bucket containing what appeared to be human bones and a woman's ring.[5] Kirby testified that the ring belonged to Kathleen and that she never went anywhere without it. Chief Investigator Ogden stopped the search upon this discovery and contacted the coroner and the Mississippi Bureau of Investigations[6] to help process the scene. They then searched a burn pit on the property and found more human bones and a medical stent. The remains were confirmed to be those of Kathleen.

¶18. A manhunt for Bowman began. Chief Investigator Ogden testified that a car-tag reader showed that Bowman's white Nissan was heading west in Baton Rouge. He contacted the United States Marshals Service for help. Brittany Dean, the acting supervisor of the violent fugitive apprehension strike team of the United States Marshall's Service, testified that she was advised on July 12, 2018, that Bowman's car was at a campground in Bear Lake,

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[5] Heather Estorffe, a latent print examiner with the Mississippi Forensics Laboratory, testified that there were no latent prints on the metal bucket.

[6] Agent Terrance Packer, a crime scene analyst with the Mississippi Bureau of Investigation, testified at trial. He identified and described the photographs he took at the scene.

Utah. A team went there to arrest Bowman. Agent Dean testified that when Bowman saw them, he said, "[I]t's not what you think. I just committed a small felony." They took Bowman into custody. His car, a tent, and multiple weapons were found and secured.

¶19. The county in which Bowman was found was Rich County, Utah. Dale Stacy, the Sheriff of Rich County, Utah, testified that Bowman's car was secured and transported to the garage at the Rich County Sheriff's Office in Utah, where it was locked and monitored. Officer Nicholas Jenson of the Davis County Sheriff's Office testified that he drove to Rich County and processed the outside of Bowman's vehicle. He then followed the vehicle as it was towed to Davis County for further processing because the Davis County Sheriff's Office had better resources than Rich County.

¶20. Chief Investigator Ogden, who had been contacted when Bowman was located, went to Utah and worked with the Davis County Sheriff's Office and the local police department there. He watched as the vehicle was processed. In the vehicle, among other things, were various knives and guns.[7] Parts of the interior of the car were saturated with blood. Officer Jenson took photographs of the inside of the car. The front passenger area was saturated in blood. DNA analyst George Shiro with Scales Laboratory testified that he compared the swabs of blood taken from Bowman's car to the DNA of Kathleen's mother Geraldine Fabre and determined that Geraldine was the mother of the person whose blood was in the car with

[7] Estorffe, the latent print examiner expert, testified that she was not asked to examine any weapons for latent prints.

a probability of 99.992 percent. The parties stipulated that the remains found at the Bowman property were those of Kathleen Bowman.

¶21. A bullet was found lodged in the driver's seat of the car. Chief Investigator Ogden testified about a series of photographs taken of the inside of Bowman's car. Several photographs depicted a tear in the driver's side seat and the hole where the bullet had entered the seat. He explained that given the height of the bullet hole in the side part of the driver's seat and the angle of the bullet hole,"would have to be on the other side of the car . . . to make that hole while shooting." The person would have to be standing on the passenger side of the car with the door open.

¶22. Ogden was asked about this testimony in cross-examination. Defense counsel asked whether it was "possible" that the bullet angle could be caused by a bullet traveling from a person in the passenger seat putting a gun to the right side of their head and shooting. Ogden responded, "Possible, but not probable." He explained that "[i]n my training and experience, knowing and working a whole lot of suicides, that there is no hole in the seat she's sitting in like she shot herself." No specific ballistics test were done.

¶23. Deputy Medical Examiner Investigator Albert Lee testified that he went to the Bowman property and found a burn pile about fifty yards from the house. The remains found in the bucket looked like remains that had been cremated but not yet ground. Lee testified that as deputy coroner he was there (at Owl Hoot Road) in his official capacity to determine the cause and manner of death and, ultimately, to prepare the death certificate. To do this,

Lee explained, he generally talks to "eyewitnesses that will be on the scene; we talk to family members that are close or present; we look at the scenes to see if there any notes . . . left behind of someone; or [something] written . . . down; or [if anything was] left . . . that might indicate what happened." He confirmed that he did that in this case.

¶24. He prepared Kathleen's death certificate and explained that he determined that Kathleen's "cause of death" was "cardiopulmonary arrest," which is typically the final event that happens. He further explained that, as shown on the death certificate, the cause of death was "due to homicide." He reached this conclusion "[b]ased on the physical evidence [he got from the Sheriff's office] . . . and the burning of the body." Although Lee acknowledged during cross-examination that based on the information he had he could not eliminate the possibility of suicide or accidental death, he also confirmed he had received no information whatsoever that would indicate suicide, as follows:

> Q. Did you receive from any source, whatever, any indication that the cause or due to or consequence of Kathleen's death was suicide?
>
> A. No, sir.
>
> Q. Nothing?
>
> A. No, sir.

Lee also confirmed that based upon his forty-seven years of experience, he had never seen a person who was cremated post-suicide (by non-legal means), but that it was common for murder victims to be cremated or disposed of in other ways.

¶25. Dr. Staci Turner, Deputy Chief Medical Examiner for Mississippi employed by the

Mississippi Crime Laboratory, prepared the final post-mortem examination report.[8] She concluded that the "investigative evidence [was] consistent with foul play," determined that Kathleen's manner of death was homicide, and her cause of death was homicidal violence. To avoid repetition, further details of Dr. Turner's testimony and findings are discussed below.

¶26. The State rested. The defense moved for a directed verdict, which the trial court denied.

II. The Defense's Case

¶27. Bowman testified in his own defense. He testified that he met Kathleen online in the middle of 2000. In November of 2001, she flew to Utah so that they could meet in person for the first time. He visited her over Thanksgiving in Lacombe, Louisiana, where Kathleen was living at the time, and eventually, where they decided to live together there. They married on January 18, 2003, and had been married for fifteen years at the time of her death.

¶28. Bowman obtained his real estate license and made a few home sales, and at some point he received a small inheritance ("about $10,000"). During cross-examination, Bowman acknowledged that in essence Kathleen was the sole source of income in their marriage, adding "[b]y agreement." He testified that Kathleen knew he was the beneficiary of a trust,

[8] Dr. Turner testified over Bowman's objection. Bowman asserted that allowing her to testify was improper because Dr. Brent Davis, who was no longer with the Mississippi Crime Laboratory, had done the initial examination and prepared an initial report. Bowman has raised this issue on appeal and we address it in detail later.

but even at the time of trial he did not know the value of the trust.

¶29. Bowman also testified that Kathleen had a history of depression and a number of other medical issues. He was her primary caregiver. She was taking pain medication as well as antidepressants like Wellbutrin and Lexapro.

¶30. In November 2005, they moved to Pearl River County. Bowman testified that they separated in 2009 or 2010. Kathleen went to live with her mother in Lacombe, Louisiana, while Charles stayed in Pearl River County. After approximately nine months[9] Kathleen moved back to Pearl River County to live with Bowman and to be near family. At some point, Kathleen and Bowman decided to build a new home and met with a draftsman in April 2018.

¶31. In June 2018, Bowman and Kathleen went to the Capital One Bank on Gause Boulevard (US-190) in Slidell, Louisiana. Bowman testified that he wanted to discuss options for financing the new house. As he was stepping out of the car to enter the bank, he realized he had his gun in a holster. Because the bank prohibited firearms, he decided to not take it inside. According to Bowman, he walked around the car to the passenger side of the car where Kathleen was sitting, "opened the car door, kneeled down on the balls of my feet[,] and squatted down low so I could take my gun out of my holster without all the guys on [the] boulevard . . . watching [him]." Bowman then testified:

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[9] Kirby testified that her mother "moved out shortly after [the 2009 incident]. . . . I was pregnant with her first grandchild, and she was really excited about that, so . . . shortly after he was born, she wanted to be close so she came back."

> I take my gun out of the holster. I hand it to her, but first grip first, and I said just put this on the passenger seat. And while I'm talking, she's taking it out of my hand. I said be careful, you know, it's locked and loaded. I always carry it ready to fire, and she took the gun, she brought it up about like this, and said "what do you think? I'm stupid?" And bang, the worse thing that ever happened to my life just happened. She shot herself in the head.

¶32. According to Bowman, he then moved the gun from her hand, "check[ed] her pulse, and she was gone." Bowman drove away. He did not call the police or the sheriff's department or the parish's sheriff's department. He testified that he had "two thoughts": "[F]irst I was thinking—oh, sh*t; oh, sh*t; oh, sh*t; but I was also thinking . . . how . . . am I going to tell Kathleen's mother she shot herself" because her mother was a devout Catholic. When Bowman got back home, he "rolled up the windows of the car [and] shut the doors." The next morning, he "cremated [Kathleen] . . . in a funeral fire that [he] built" per Kathleen's wishes. After the fire had cooled the next morning, he gathered Kathleen's remains, put her wedding ring on top, and put them in a metal bucket in the shed "to mak[e] sure [Kathleen's mother] had something to bury."

¶33. Bowman testified that "[a]bout two weeks" after he cremated Kathleen, Deputy Fleming came to his house. He lied to him about Kathleen's whereabouts because he "hadn't quite come to the realization that I needed to deal with this in a better way." He went to Bay St. Louis and had Alexandria make the call to Deputy Fleming pretending to be Kathleen. He then returned home.

¶34. Bowman testified that at that point, "I knew it was a matter of time before [the police] were coming back. I figured the police would be back the next morning if not sooner. . . .

I wanted a little more time to think through what I needed to do." So Bowman left Mississippi. He testified that he "ended up in Utah. I'm not sure that's where I was headed when I left, but it seem like good place to go."

¶35. Bowman was arrested by the United States Marshall's Service on July 12. He told them that he had only committed a small felony. According to Bowman, he was talking about cremating Kathleen's remains.

¶36. On cross-examination, Bowman admitted he lied to Deputy Fleming; he (Bowman) had Alexandria lie for him; and he lied to Brazley about the source of the blood in his car. Bowman testified that he had dogs, goats, and a cat. He admitted that when he left Mississippi for Utah, he left these animals behind without arranging for anyone to take care of them. And Bowman admitted that he left for Utah after the police started performing welfare checks for Kathleen because he "anticipated" that the police were coming.

¶37. After Bowman finished testifying, the defense rested. The State confirmed that it had no rebuttal witnesses and finally rested.

¶38. The jury was instructed on first-degree murder, second-degree murder, and manslaughter, as well as tampering with evidence. As further addressed below, the State submitted a flight instruction, which the court gave to the jury. After deliberation, the jury convicted Bowman of the lesser included offense of second-degree murder with respect to Count I and tampering with evidence (Count II). The trial court sentenced Bowman to forty years for Count I, with ten years suspended and thirty years to serve in the custody of the

MDOC, and ten years of post-release supervision. Regarding Count II, the trial court sentenced Bowman to serve ten years in the custody of the MDOC, with that sentence ordered to run consecutively to the sentence for Count I. The trial court also ordered Bowman to pay a $25,000 fine and court costs. Bowman moved for a new trial or, in the alternative, judgment notwithstanding the verdict, which the trial court denied. Bowman appealed.

DISCUSSION[10]

I. Allowing the Testimony of the State Medical Examiner Dr. Staci Turner

¶39. Bowman asserts that the trial court erred in allowing Dr. Turner to testify about Kathleen's cause of death and manner of death over his Confrontation Clause[11] objections. As detailed below, we find Bowman's assertions on this point without merit.

¶40. The Mississippi Supreme Court has recognized that "when the testifying witness is a court-accepted expert in the relevant field who participated in the analysis in some capacity, . . . then the testifying witness's testimony does not violate a defendant's Sixth Amendment rights." *Debrow v. State*, 972 So. 2d 550, 554 (¶14) (Miss. 2007) (quoting *McGowen v. State*, 859 So. 2d 320, 339 (¶68) (Miss. 2003)). Whether an expert has sufficiently

[10] The applicable standards of review for the issues addressed are discussed in context.

[11] The United States Constitution and the Mississippi Constitution guarantee a defendant in a criminal prosecution the right to confront the witnesses against him. U.S. Const. amend. VI; Miss. Const. art. 3, § 26.

participated in the analysis to satisfy a defendant's right to confrontation is determined by two questions set forth by the supreme court in *Jenkins v. State*, 102 So. 3d 1063, 1067 (¶13) (Miss. 2012), as follows:

> First, we ask whether the witness has "intimate knowledge" of the particular report, even if the witness was not the primary analyst or did not perform the analysis firsthand. Second, we ask whether the witness was "actively involved in the production" of the report at issue. We require a witness to be knowledgeable about both the underlying analysis and the report itself to satisfy the protections of the Confrontation Clause.

(Citations omitted). As we detail below, we find that the *Jenkins* test is met here. Dr. Turner prepared the report at issue. She plainly had "intimate knowledge" of her report and participated in its preparation.

¶41. Bowman asserts that under *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), Dr. Turner's testimony was that of a "surrogate expert" and should not have been admitted because Dr. Brent Davis, who was no longer with the Mississippi Crime Laboratory, had done the initial examination of Kathleen's remains. Bowman's argument fails because the conduct prohibited in *Bullcoming* is not present in this case.

¶42. The United States Supreme Court in *Bullcoming* examined the issue whether "the Confrontation Clause permit[s] the prosecution to introduce a forensic laboratory report containing a testimonial certification . . . through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification." *Id.* at 657. Although the Supreme Court held that such evidence was inadmissible under *that* scenario, *id.* at 658, these circumstances are not present

here. Rather, Dr. Turner gave her own independent expert opinion based upon her final report about the manner and cause of Kathleen's death. This does not constitute a Confrontation Cause violation.

¶43. Indeed, our supreme court just recently held that where the state medical examiner "gave his own independent expert opinion about the cause of [the victim's] death . . . there was no Confrontation Clause violation" in allowing him to testify although the autopsy was performed by the prior state medical examiner who was no longer employed by the state crime lab. *Clark v. State*, 343 So. 3d 943, 997 (¶254) (Miss. 2022). The supreme court found no *Bullcoming* violation under these circumstances, *id.* at 996-97 (¶253), quoting Justice Maxwell's special concurrence in *Christian v. State*, 207 So. 3d 1207, 1225 (¶88) (Miss. 2016), joined by Chief Justice Waller, Presiding Justice Randolph, and Justices Lamar, Coleman, and Beam, in which Justice Maxwell recognized that *Bullcoming* does not "categorically prohibit an expert pathologist from giving her independent opinion about the cause of death because she did not perform the autopsy."

¶44. Dr. Turner *independently* concluded that the "investigative evidence [was] consistent with foul play," and determined that Kathleen's manner of death was "homicide," and her cause of death was "homicidal violence." She testified that Dr. Davis was the original examining physician and was no longer with the Mississippi Crime Laboratory. He made his preliminary diagnoses in an unsigned draft report in which he concluded that the manner of death was "homicide" and that Kathleen's cause of death was "undetermined."

¶45. As Dr. Turner explained, a preliminary report is customarily prepared upon an initial examination and is identified in the State crime lab's computer software as a "Preliminary Anatomic Diagnosis," which is what occurred in this case. Dr. Turner testified, "He did not complete a final examination. I did."

¶46. In preparing her final report, Dr. Turner testified that she reached her diagnoses through "[t]he case file review that I did, including the [forensic] anthropology report and the dental report, Dr. Davis'[s] preliminary diagnos[es], the photographs of the remains, the photographs of the car, and the police report." She further explained that although Dr. Davis examined Katherine's remains, which she (Dr. Turner) did not have the opportunity to do, Dr. Davis did not have the June 2020 report prepared by forensic anthropologist Dr. Anastasia Holobinko who also had examined Katherine's burned remains.[12] Dr. Turner took Dr. Holobinko's findings into account in preparing her final report, and she reviewed the photographs of Kathleen's remains.

¶47. The record contains ample evidence demonstrating Dr. Turner's knowledge about the preliminary postmortem report, other reports, and the case materials. This information

[12] Dr. Holobinko's forensic anthropology report was admitted into evidence. She examined Katherine's remains, finding that "[a] high degree of modification due to thermal damage was observed in many of the skeletal fragments. Since the fragments could not be physically or graphically reconstructed, a strict inventory of the skeletal elements was not performed." She noted that the "[s]ex, stature, and ancestry could not be estimated based on the condition of the cranial and postcranial remains examined during the anthropological analysis[,] . . . [and] [n]o modifications consistent with non-thermal related perimortem traumatic injury could be distinguished."

supports her final, independent report that she authored and certified, attesting that "[t]he facts stated herein are correct to the best of my knowledge and belief." Consistent with requirements delineated in *Jenkins* and *Conners*, Dr. Turner plainly had a sufficient degree of involvement in preparing her own report to satisfy the Confrontation Clause concerns in this case. *Clark*, 343 So. 3d 943, 996-97 (¶¶253-54); *Christian*, 207 So. 3d at 1225 (¶88). For the above-stated reasons, we find that this assignment of error is not persuasive.[13]

II. Denial of the Motions to Suppress the Mississippi and Utah Evidence

¶48. Bowman asserts that the trial court erred when it denied his motions to suppress the evidence seized in the search of his property on Owl Hoot Road (the Mississippi evidence), and the evidence seized in the search of his vehicle in Utah. He asserts that the underlying search warrants for these seizures lacked probable cause and that an illegal trespass gave rise to the search warrants. We find these assertions do not warrant reversal for the reasons addressed below.

A. Probable Cause

[13] Certainly Bowman was free to subpoena Dr. Davis to testify, but we do not find that the State was obligated to call Dr. Davis as a witness as Bowman appears to suggest, citing *Melendez-Diaz v. Mass.*, 557 U.S. 305 (2009). Although the United States Supreme Court recognized in *Melendez-Diaz* that a defendant's power to subpoena an expert "is no substitute for the right of confrontation," *id.* at 324, it made this observation in the context where the prosecutor had offered into evidence several affidavits reporting the results of forensic analysis without any testifying witness at all. *Id.* at 307-09. That is not the situation here; Dr. Turner testified about her own report and findings—not Dr. Davis's diagnoses. The Supreme Court's holding in *Melendez-Diaz* has no application in this case.

¶49. The supreme court has set forth the proper standard of review for a probable cause challenge as follows: "In reviewing a magistrate's finding of probable cause, this Court does not make a de novo determination of probable cause, but only determines if there was a substantial basis for the magistrate's determination of probable cause." *Roach v. State*, 7 So. 3d 911, 917 (¶12) (Miss. 2009) (quoting *Petti v. State*, 666 So. 2d 754, 757-58 (Miss. 1995)). "In making this determination, this Court looks both to the facts and circumstances set forth in the affidavit for search warrant and as well, the sworn oral testimony presented to the issuing magistrate." *Sutton v. State*, 238 So. 3d 1150, 1155 (¶13) (Miss. 2018) (internal quotation marks omitted).

¶50. "Similar to the Fourth Amendment to the United States Constitution, article 3, section 23 of the Mississippi Constitution dictates that the government is prohibited from searching a citizen's home unless it first obtains a search warrant after demonstrating probable cause." *Roebuck v. State*, 915 So. 2d 1132, 1137 (¶13) (Miss. Ct. App. 2005); *see* U.S. Const. amend. IV; Miss. Const. art. 3, § 23. In this regard, "[t]he information necessary to establish probable cause must be information reasonably leading an officer to believe that, then and there, contraband or evidence material to a criminal investigation would be found." *Sutton*, 238 So. 3d at 1155 (¶13) (internal quotation marks omitted). "A demonstration of probable cause is sufficient where facts and circumstances, of which an officer has reasonably trustworthy information, should justify a man of average caution to believe that a crime has been committed and that a particular person committed it." *Roebuck*, 915 So. 2d at 1137

(¶13) (citing *Petti*, 666 So. 2d at 757).

¶51. Bowman asserts that "the information underlying the warrants[14] was insufficient to support a finding that a crime had probably been committed and that evidence of said crime could probably be found at the Bowman's property." We disagree. Based on the applicable standard of review and the principles set forth above, we find that the magistrate judge in this case was furnished with sufficient information to support probable cause for the search warrants issued in this case.

¶52. The underlying facts and circumstances contained in the supporting affidavits for the search warrants were:

> On June 27, 2018, the Pearl River County Sheriff's Office received a request from the daughter of Ms. Kathleen Bowman to conduct a welfare check on her person at 68 Owl Hoot Road, Perkinston, Mississippi. Upon the arrival of the responding deputy he was advised by Mr. Charles Bowman, husband to Kathleen, that she was not at home at the time but was currently on the coast. The daughter further advised that she had received a text message from her mother's phone that morning but that her mother does not typically send text messages. Another attempt to make contact with Kathleen Bowman was attempted at 2230 hours on June 27, 2018[,] where Bowman[']s vehicle was observed parked at the rear of the residence.
>
> On June 28, 2018, the Pearl River County Sheriff's Office received notification from the Bay St. Louis Police Department at approximately 0100 hours that [an] officer was out with a Mr. Antwanne Brazley at the Economy Inn in the jurisdiction of Hancock County. Brazley advised that he observed a vehicle at approximately 2045 hours in the parking lot with blood covering

[14] Three search warrants were issued in this case. The first and second were identical and were for the searches of Bowman's property on Owl Hoot Road. The third search warrant was for the search of Bowman's car in Utah and was identical to the first and second search warrants but added that Bowman had been arrested.

> the front seat of the vehicle. Brazley further stated that there was a box located in the back seat that covered the entire . . . back seat. Brazley also was asked by the driver of the vehicle if he knew any females that needed help if they could make some phone calls for him. Brazley was able to get the tag on the vehicle as MS Tag . . . DBD2745 which is registered to Charles and Kathleen Bowman. This is believed to be the same vehicle that was observed to be parked at the residence at 2230 hours on June 27, 2018.[15]

¶53. Investigator Jed Flynt of the Pearl River County Sheriff's Office testified at the hearing on Bowman's motions to suppress. He prepared the supporting affidavit based upon information that Chief Investigator Ogden had told him. He also learned (prior to going before the magistrate judge to obtain the search warrant) that on the same night that Bowman was asking about a "female" to make "some phone calls for him," Investigator Fleming had received a phone call from a female purporting to be Kathleen. Investigator Flynt testified that he presented the written search warrant to the magistrate judge and orally testified under oath about the call Investigator Fleming had received. Based on this information, the magistrate judge determined that probable cause existed. The trial court agreed and denied Bowman's motions to suppress.

¶54. Based on the written affidavit and the information Investigator Flynt told the magistrate judge at the probable cause hearing, we find that there existed "a substantial basis for the magistrate's determination of probable cause." *Roach*, 7 So. 3d at 917 (¶12). The

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[15] The supporting affidavit for the Utah search warrant had the following paragraph added: "Mr. Bowman was found on July 12, 2018, in Rich County[,] Utah. Mr. Bowman was then placed into custody by the U.S. Marshals service. The vehicle was seized and transported to the Kaysville Police Department In Kaysville[,] Utah, where the vehicle was placed into a secure garage."

written underlying facts and circumstances showed that Kathleen's daughter was concerned about her mother and had received a text message from her that was not typical of her mother. Two attempts had been made by officers to make contact with Kathleen, but both were unsuccessful. The same night, Bowman went to a motel to find a "female" to make "some phone calls for him." A witness at the motel saw that the front seat of Bowman's car was covered in blood. The oral testimony presented was that the same evening an officer received a phone call from a woman claiming to be Kathleen. We find that this information, taken as a whole, would "justify a man of average caution to believe that a crime has been committed and that a particular person [(Bowman)] committed it." *Roebuck*, 915 So. 2d at 1137 (¶13). Accordingly, we find that Bowman's lack-of-probable-cause assertions are not persuasive.

B. Illegal Trespass

¶55. Bowman asserts that the search warrants were based on information obtained from illegal entries onto his property because there was a "no trespassing" sign. We find this assertion is without merit under the applicable Mississippi law. In *Mitchell v. State*, 792 So. 2d 192 (Miss. 2001), for example, the police were searching for a missing person, as in this case, and went to the defendant's property without the defendant's permission to go on the property. *Id.* at 205 (¶53). One of the officers came across the defendant on the property and told him they just wanted to ask him some questions. *Id.* The defendant fled. *Id.* Again like the officers here, the officers in *Mitchell* went only to "area[s] of common use" on the

property, including the driveway and the back door. *Id.* at 206 (¶57). Citing *Waldrop v. State*, 544 So. 2d 834, 838 (Miss. 1989), the supreme court held that "a claim of trespass cannot be made regarding areas that are typically used by visitors." *Id.* at (¶56).

¶56. As explained in *Waldrop*, "[i]t is not objectionable for an officer to come upon that part of the property which has been open to public common use." *Waldrop*, 544 So. 2d at 838 (quoting 1 W. Lafave, *Search and Seizure*, § 2.3, at 318 (1978)). Continuing, the supreme court observed that "[t]he route which any visitor to a residence would use is not private in the Fourth Amendment sense, and thus if police take that route for the purpose of making a general inquiry or for some other legitimate reason, they are free to keep their eyes open." *Id.* Summarizing this principle, the supreme court observed, "[t]hus, when the police come on to private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places visitors could be expected to go (*e.g.*, walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment." *Id.*

¶57. In the case before us, the officers drove on the driveway to enter the property, and went to the front door and back door of Bowman's home—areas of "common use." *Id.*; *Mitchell*, 792 So. 2d at 206 (¶¶56-57). Based on the supreme court's decisions in *Mitchell* and *Waldrop*, we find no "illegal trespass." Because the information supporting the search warrants was not obtained illegally, we find that the trial court did not err in denying Bowman's motions to suppress on this basis.

C. The Utah Evidence and the "Fruit of the Poisonous Tree" Doctrine

¶58. With respect to the Utah evidence, Bowman asserts that the same facts supporting the searches of the Mississippi property were also insufficient to support the search of his vehicle in Utah and, in any event, the evidence obtained through the search warrant for Bowman's car in Utah should have been suppressed as "fruit of the poisonous tree inasmuch as the initial Mississippi warrant was invalid." The "fruit of the poisonous tree" doctrine "prohibits introduction into evidence of tangible materials seized during an unlawful search." *Marshall v. State*, 584 So. 2d 437, 438 (Miss. 1991). However, as discussed above, the searches in this case were lawful. Specifically, we find that the search warrants for both the Mississippi and Utah searches were issued based upon a sufficient showing of probable cause, and the search warrants were not based on information illegally obtained by trespass. We therefore find that Bowman's "fruit of the poisonous tree" assertion with respect to the Utah evidence is without merit.

III. Evidence of Flight and the Giving of a Flight Instruction

¶59. Prior to trial, Bowman moved to exclude reference to flight evidence, including the giving of any flight jury instruction. The trial court reserved ruling at that time. The trial court later entered an order denying Bowman's flight-evidence motion in limine and ruling that the State could refer to flight evidence and that the jury would be instructed accordingly. Bowman asserts that the trial court erred in doing so. We find this assignment of error without merit for the reasons and under the principles addressed below.

¶60. The trial court instructed the jury as follows:

> "Flight" is a circumstance from which guilty knowledge and fear may be inferred. If you believe from the evidence in this case beyond a reasonable doubt that the defendant, Charles Eugene Bowman, did flee or go into hiding, such flight or hiding is to be considered in connection with all other evidence in this case. You will determine from all the facts whether such flight or hiding was from a conscious sense of guilt or whether it was caused by other things and give it such weight as you think it is entitled to in determining the guilt or innocence of the defendant, Charles Eugene Bowman.

"Jury instructions are generally within the discretion of the trial court, and the settled standard of review is abuse of discretion." *Robinson v. State*, 324 So. 3d 1137, 1143 (¶19) (Miss. Ct. App. 2021).

¶61. In general, "evidence of flight is admissible as evidence of consciousness of guilt." *States v. State*, 88 So. 3d 749, 758 (¶36) (Miss. 2012) (internal quotation marks omitted). With respect to allowing a flight instruction, such an instruction "may be given if 'that flight is unexplained and somehow probative of guilt or guilty knowledge.'" *Anderson v. State*, 185 So. 3d 966, 970 (¶10) (Miss. 2015) (quoting *Reynolds v. State*, 658 So. 2d 852, 856 (Miss. 1995)). In this regard, "[p]robative is defined as tending or serving to prove . . . . Therefore, unexplained flight need only tend to prove guilt or guilty knowledge to satisfy the *Reynolds* probative requirement." *Id.* (internal quotation marks omitted).

¶62. Bowman does not assert that evidence of his flight lacked probative value. Indeed, we find no abuse of discretion in the trial court's determining flight evidence was probative and admissible here under the facts of this case. As the supreme court recognized in *Anderson*, "[a] trial judge is in the best position to determine whether the flight had probative

value, sufficient to send the issue to the jury, based on the evidence adduced at trial." *Id.* at 970-71 (¶13).

¶63. Bowman, however, asserts that his decision to leave Mississippi was not "unexplained," and thus a flight instruction should not have been given. According to Bowman, he "ended up in Utah" because he "wanted some peace, some serenity, some aloneness." He said he "wanted a little more time to think through what I needed to do," ostensibly to figure out how he would tell Kathleen's mother that she committed suicide.

¶64. We find relevant, however, that even by Bowman's own account, he remained at the home on Owl Hoot Road for at least two weeks after Kathleen's death. He admitted at trial that he left Mississippi for Utah because he "anticipated" that "the police were coming." The evidence shows that only after the police came to his residence asking about Kathleen's whereabouts did Bowman leave for Utah. He left abruptly; he admitted that he left without arranging for the care of his dogs, goats, and cat.

¶65. The supreme court has found similar contradicted explanations "legally insufficient" to support reversal based upon the giving of a flight instruction. We likewise find no abuse of discretion in the trial court's giving a flight instruction in this case. *See Drummer v. State*, 167 So. 3d 1180, 1187 (¶29) (Miss. 2015) (finding no error in giving a flight instruction where the defendant's "proffered explanation that he fled to avoid a ticket for running a stop sign was not legally sufficient in light of the facts"); *Evans v. State*, 579 So. 2d 1246, 1248-49 (Miss. 1991) (finding no error in giving a flight instruction where the defendant's

uncorroborated excuse that he fled due to confusion and fear was contradicted by the testimony of another witness); *Brock v. State*, 530 So. 2d 146, 153 (Miss. 1988) (finding no error in giving a flight instruction where the defendant's "explanation is contradicted and has no support outside his own testimony"). Bowman's "explanation" is contradicted by his own actions (fleeing only after the police made their welfare checks on Kathleen) and his own admission that he left Mississippi because he "anticipated" the police would be returning.[16] Under these circumstances, we find that Bowman's flight-evidence-and-instruction assignment of error is without merit.

IV. Circumstantial Evidence Jury Instructions

¶66. The parties agreed and the trial court likewise acknowledged that this is a circumstantial evidence case. Bowman's trial preceded *Nevels v. State*, 325 So. 3d 627 (Miss. 2021), the case in which the supreme court eliminated the use of a special instruction addressing the burden of proof in circumstantial evidence cases. *Id.* at 630 (¶10) ("[W]e finally put to rest the errant notion that there are two different burdens of proof in criminal cases—one for direct evidence cases and another for purely circumstantial cases."). Thus, Bowman offered, and the trial court gave, four general jury instructions setting forth the circumstantial evidence burden of proof. Bowman asserts, however, that the trial court

[16] Bowman cites *Kuebler v. State*, 204 So. 3d 1220 (Miss. 2016), for the general proposition that "a defendant's flight has been explained if the trial judge simply is 'aware of an explanation' for the flight, other than consciousness of guilt." *Id.* at 1226 (¶14). But in Bowman's case, the issue is the *plausibility* of his explanation—a factor addressed in the cases we cite above and that we find applicable here.

abused its discretion by refusing to also include the circumstantial evidence language in other instructions addressing the State's burden of proof, including the elements jury instruction and the form of the verdict. According to Bowman, this rendered the jury instructions impermissibly "confusing." We disagree. We find no abuse of discretion in the trial court's refusing the defense's request as to these additional jury instructions. Reading the jury instructions in their entirety, the jury was properly instructed in this case.

¶67. Our recent decision in *Pope v. State*, 330 So. 3d 409 (Miss. Ct. App. 2021), *reh'g denied* (Oct. 19, 2021), is on point. In *Pope*, "the trial court granted two circumstantial-evidence instructions for the defense," *id.* at 422 (¶56), but refused the defendant's request to include the circumstantial evidence language in the elements instruction, "concluding the circumstantial nature of the proof was covered in the other given instructions." *Id.* at 423 (¶56). This Court found that when reading the jury instructions together as a whole, "the jury was properly instructed . . . [and further found] that the trial court did not abuse its discretion in denying an altered elements instruction because the two circumstantial-evidence instructions fairly instructed the jury as to the law." *Id.* at (¶57). As in *Pope*, we find that reading the jury instructions as a whole in this case, the jury was properly instructed. We further find no abuse of discretion in the trial court's denying the defense's request to insert the circumstantial evidence language in the elements instruction or other instructions "because the [four] circumstantial-evidence instructions fairly instructed the jury as to the law." *Id.* We therefore find that Bowman's assignment of error on this point is not

persuasive.

V. Weight of the Evidence, Sufficiency of the Evidence, and the *Weathersby* Rule

¶68. Bowman asserts that his convictions are against the weight of the evidence or that there was insufficient evidence to support them because Dr. Turner testified that she could not rule out suicide and "that this was after [Dr. Davis] concluded that the cause of [Kathleen's] death could not be determined." Bowman further asserts that "[g]iven that there were no witnesses and the circumstantial evidence was just as consistent with [his] theory of the case as it was with the prosecution's [case]," his convictions should be "vacated."

A. Weight of the Evidence

¶69. "When reviewing a challenge to the weight of the evidence, the Court will disturb a jury verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Jones v. State*, 154 So. 3d 872, 880 (¶24) (Miss. 2014) (internal quotation mark omitted). In this regard, "we review the evidence in the light most favorable to the verdict . . . and review the trial court's denial of a motion for a new trial under an abuse-of-discretion standard." *Wayne v. State*, 337 So. 3d 704, 715 (¶39) (Miss. Ct. App. 2022). "When evidence or testimony conflicts, the jury is the sole judge of the weight and worth of evidence and witness credibility." *Williams v. State*, 285 So. 3d 156, 160 (¶17) (Miss. 2019). We find that Bowman's weight-of-the-evidence challenge is not persuasive.

¶70. Applying the proper standard of review as addressed above, we find that Dr. Turner's

testimony that suicide was "possible" and that Dr. Davis's preliminary diagnosis in an unsigned draft report that Kathleen's cause of death was "undetermined," considered along with the other evidence presented, do not render Bowman's convictions contrary to the overwhelming weight of the evidence.

¶71. In her final report, Dr. Turner independently determined that the "investigative evidence [was] consistent with foul play," Kathleen's manner of death was "homicide," and her cause of death was "homicidal violence." Indeed, Dr. Davis also determined that Kathleen's "manner of death" was "homicide" in his preliminary report. Dr. Turner explained to the jury that there are specific categories that are considered in determining the manner of death, namely, "[h]omicide, suicide, accident, natural, and undetermined." The record in this case reflects that both Dr. Turner and Dr. Davis found that the manner of death was homicide—not suicide.

¶72. And although Dr. Turner acknowledged during cross-examination that suicide could have been "possible," she also testified that she did "not believe it [was] probable" in this case. She testified that in her nineteen years of experience she had "never had a burn body in a clandestine situation like [this case] that was anything other than a homicide." Dr. Turner also confirmed that her final diagnosis and opinion as to the manner of death being homicide was rendered to a reasonable degree of medical certainty. For further clarification, Dr. Turner was asked, "So it's not a possibility or even a probability. It's to a reasonable degree of medical certainty?" She answered, "Yes." Dr. Turner also confirmed that in her

analysis, she had not been provided, nor was she aware of any information that to her, as a forensic pathologist, would suggest suicide in this case. *Id*.

¶73. Likewise, although Deputy Medical Examiner Investigator Lee (the deputy coroner who prepared Kathleen's death certificate) acknowledged during cross-examination that based on the information he had, he could not eliminate the possibility of suicide or accidental death, he also confirmed he had received no information whatsoever that would indicate suicide. Lee further confirmed that based upon his forty-seven years of experience, he had never seen a post-*suicide* body that was cremated by non-legal means. In contrast, in Lee's experience, it was common for murder victims to be illegally cremated or disposed of in other ways.

¶74. Additionally, the jury heard Chief Investigator Ogden testify that based on the angle of the tear in the driver's side seat and the hole where the bullet had entered the seat, "a person would have to be on the other side of the car . . . to make that hole while shooting." When asked on cross-examination whether it was "possible" that the bullet angle could have been caused by the suicide circumstances as described by Bowman, Ogden responded, "Possible, but not probable." He explained that based upon his "training and experience, knowing and working a whole lot of suicides," he saw no bullet hole in the driver's seat that would indicate Kathleen shot herself.

¶75. Further, the proof in this case showed that Kathleen and Bowman had a "rocky" relationship. Kathleen had given an ultimatum to Bowman that would end their relationship,

which was to go into effect shortly after Kathleen's family last saw her alive. Bowman lied to Deputy Fleming about Kathleen's whereabout during a welfare check. Then Bowman went to a motel and asked Alexandria Stevens to call the police while pretending to be Kathleen. Antwanne Brazley saw that Bowman's car was covered in blood, and Bowman told him it was animal blood. It was not. The blood was Kathleen's. Bowman admitted that he left for Utah after the police started performing welfare checks for Kathleen because he "anticipated" that they would return. Kathleen's burned remains were found in a burn pit and a bucket in a shed on Bowman's property after the execution of the search warrant. Bowman admitted to burning her body and placing her bones there, along with her wedding ring.

¶76. "[I]t is the sole province of the jury to either believe [Bowman's] version of the events . . . or the testimonies of the State's witnesses and other evidence presented." *Wayne*, 337 So. 3d at 715 (¶40). In this case, the jury apparently rejected Bowman's version of events and convicted him of second-degree murder and tampering with evidence. "Taking the evidence that supports the jury's verdict as true and reviewing it in the light most favorable to the verdict, we find that allowing the verdict to stand would not sanction an 'unconscionable injustice.'" *Schlegel v. State*, 303 So. 3d 30, 51 (Miss. Ct. App. 2020) (quoting *Little v. State*, 233 So. 3d 288, 292 (¶21) (Miss. 2017)), *cert. denied*, 302 So. 3d 647 (Miss. 2020). We find that Bowman's weight-of-the-evidence assignment of error is without merit.

B. Sufficiency of the Evidence and the *Weathersby* Rule

¶77. Bowman cites *Weathersby v. State*, 165 Miss. 207, 147 So. 481 (1933), in support of his assertion that his convictions should be "vacated" because they are unsupported by sufficient proof. In *Weathersby*, the supreme court recognized a rule in Mississippi "that where the defendant or the defendant's witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness . . . or by the physical facts or by the facts of common knowledge." *Clark v. State*, 315 So. 3d 987, 998 (¶28) (Miss. 2021) (quoting *Weathersby*, 147 So. at 482)), *cert. denied*, 142 S. Ct. 466 (2021).

¶78. Since *Weathersby* was decided, the supreme court has further explained that "*Weathersby* is nothing more than a particularized version of our general standards according to which courts must decide whether in a criminal prosecution the accused is entitled to a judgment of acquittal as a matter of law." *Owens v. State*, 269 So. 3d 1280, 1286-87 (¶22) (Miss. Ct. App. 2018) (quoting *McQuarters v. State*, 45 So. 3d 643, 650 (¶19) (Miss. 2010)). In this regard, "when considering a motion for directed verdict, all evidence introduced by the State must be accepted as true, together with all reasonable inferences therefrom. If there is sufficient evidence to support a guilty verdict, the motion for directed verdict must be overruled." *Id.*

¶79. In this case, we find that the State presented more than sufficient evidence to convict Bowman of second-degree murder and tampering with evidence. As detailed above, Dr. Turner testified that she did not believe death by suicide was probable. In her opinion, to a

reasonable degree of medical certainty, Kathleen's manner of death was homicide; her cause of death was "homicidal violence." Neither Dr. Turner, Deputy Medical Examiner Investigator Lee, nor Chief Investigator Ogden saw any evidence or were given any information that would suggest suicide in this case. This, combined with the other evidence detailed above, is sufficient to support the convictions against Bowman. Although most of the evidence supporting Bowman's convictions was circumstantial, this "does not mean the evidence is insufficient." *Moore v. State*, 300 So. 3d 1092, 1098 (¶18) (Miss. Ct. App. 2020) (quoting *Walton v. State*, 642 So. 2d 930, 932 (Miss. 1994)).

¶80. We do not find that the *Weathersby* rule applies here. Indeed, "[t]he supreme court has acknowledged that 'it is a rare case that meets all of the requirements of the *Weathersby* rule.'" *Owens*, 269 So. 3d at 1287 (¶23) (quoting *McQuarters*, 45 So. 3d at 650 (¶ 21)). Particularly relevant here, the supreme court has clarified that "*Weathersby* does not require the State to offer evidence excluding the defendant's theory from the realm of possibility; rather, the State must offer evidence that substantially contradicts the material particulars of the defendant's version of the incident." *Booker v. State*, 64 So. 3d 965, 974 (¶30) (Miss. 2011)).

¶81. In *Booker*, the defendant was convicted of manslaughter after an altercation with his neighbor, White, who died of the injuries Booker inflicted. *Booker*, 64 So. 3d at 968-69 (¶¶9-12). Applying the above-stated clarification, the supreme court examined the expert testimony of a pathologist who "testified for the prosecution that, while White 'possibly'

could have received such a beating and then walked to the [ATV he was riding], that this was very unlikely." *Id.* at 975 (¶33). The supreme court then determined, "[T]his expert testimony, admissible under our rules of evidence, substantially contradicted Booker's version of the incident and created a question for the jury to resolve." *Id.* at 975-76 (¶33) (footnotes omitted); *see Clark v. State*, 315 So. 3d at 999 (¶30) (finding that *Weathersby* did not apply where the defendant's "alternative causes for [the victim's] death were substantially contradicted by the [prosecution's] expert witness testimony").

¶82. Here, as in *Booker*, while Dr. Turner admitted on cross-examination that suicide was "possible," she explained that she did "not believe it [was] probable" in this case; in her nineteen years of experience she had "never had a burn body in a clandestine situation like [this case] that was anything other than a homicide." And, as detailed above, Dr. Turner confirmed that her final diagnosis and opinion as to manner of death being homicide was rendered to a reasonable degree of medical certainty. "[T]his expert testimony, admissible under our rules of evidence, substantially contradicted [Bowman's] version of the incident and created a question for the jury to resolve." *Booker*, 64 So. 3d at 975-76 (¶33).

¶83. We also find Bowman's *Weathersby* argument without merit because "*Weathersby* does not automatically apply when the defendant is the only eyewitness. Rather, the supreme court has held that *Weathersby* has no application where the defendant's version is patently unreasonable . . . ." *Jones v. State*, 154 So. 3d 872, 878 (¶17) (Miss. 2014); *see Lynch v. State*, 877 So. 2d 1254, 1280 (¶83) (Miss. 2004) (finding *Weathersby* inapplicable where the

defendant's theory of what happened was "completely unreasonable").

¶84. We find that Bowman's version of events in this case was plainly unreasonable. Bowman claims that Kathleen shot herself in the head in the Slidell Capitol One Bank parking lot during business hours. He "[c]hecked her pulse" and, according to Bowman, "she was gone." He then drove home. He did not call the police or emergency personnel. Bowman testified that "[i]t was a warm day," yet when he got home, he left Kathleen's body in the car, "rolled up the windows of the car, shut the doors, you know, to make sure it was tight." Bowman burned Kathleen's body the next morning. According to Bowman, Kathleen wished to be cremated. But that she intended for Bowman to be the one to actually do it strains credulity. We find that Bowman's explanation of what happened to Kathleen, on the whole, is "completely unreasonable." *Lynch*, 877 So. 2d at 1280 (¶83). Accordingly, *Weathersby* does not apply for this additional reason. In short, the "issue as to whether to believe or not believe the defendant's testimony of how the slaying occurred, and to either convict or acquit[,]" belonged to the jury. *Barfield v. State*, 22 So. 3d 1175, 1185 (¶33) (Miss. 2009) (quoting *Johnson v. State*, 987 So. 2d 420, 425 (¶11) (Miss. 2008)). We find that this assignment of error does not warrant reversal.

¶85. **AFFIRMED.**

BARNES, C.J., WILSON, P.J., GREENLEE, WESTBROOKS, McDONALD AND LAWRENCE, JJ., CONCUR. McCARTY AND EMFINGER, JJ., CONCUR IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. SMITH, J., NOT PARTICIPATING.