

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Robert Frank Addy, Jr. Circuit Court Judge

RECEIVED
JUN 17 2013

Appellate Case No: 2011-187128

SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

vs.

RICHARD BRANDON LEWIS,

Appellant.

REPLY TO RETURN TO PETITION FOR REHEARING

Respondent, making reply to Appellant's Return to the State's Petition for Rehearing would show unto this Court as follows:

I.

Respondent simply and unequivocally responds that, at a minimum, and as previously argued, Appellant's act of repeatedly withholding information when asked and providing false information about the victim's injuries, medical condition, and medical history were affirmative overt acts taken by Appellant which advanced the crime which was ongoing at the time. The failure to provide adequate health is an action separate supporting the conviction of homicide by child abuse which is separate from or in addition to the infliction of injury. The evidence taken in the light most favorable to the State reflects that Appellant heard the mother stomp into the

victim's room and shake the victim until she stopped crying. He delayed some fifteen (15) minutes before checking on the victim after hearing the altercation. The victim was found unresponsive in her crib and obviously was in desperate need of medical assistance, including resuscitation. There was testimony revealing that there might have been an attempt to cover up evidence of the injury. A towel with blood was found at the scene and appeared to have been used to clean the victim or the area. Appellant affirmatively withheld information about the injuries and what he knew when asked critical questions by responders, medical care providers, and others. Appellant also provided false information about not knowing how the victim was injured or that the victim had even sustained an injury. The correct information was crucial to the victim's health care and treatment and ultimately led to her death. Appellant admitted that he understood the importance of providing the information at the time. Appellant advanced the crime of homicide by child abuse by failing to relay information and offering false information about the child's injuries and medical condition resulting in an initial treatment for an allergic reaction rather than the medical treatment needed for the injury sustained, including resuscitation to deliver needed oxygen to the victim's brain. The criminal acts committed by Appellant extended to the time medical treatment was or should have been provided. Appellant was more than a by-stander but actively participated in advancing this crime, including the false words spoken and support provided to protect the mother while medical care was sought and provided for the victim. This evidence was sufficient to withstand a directed verdict motion.

II.

Additionally, as previously advanced by Respondent, Appellant was convicted of the **statutory** offense of aiding and abetting homicide by child abuse. Our legislature provided for criminal liability for this statutory offense by **act or omission** by any person, to include the

principal and the aider and abettor. See S.C. Code Ann. section 16-3-85. The statute specifically provides for criminal responsibility for one who inflicts injury **or allows injury to be inflicted**, both the principal and aider and abettor. S.C. Code Ann. section 16-3-85(B)(2)(a). The common law advanced by Appellant and relied upon by this Court is not applicable. Our legislature made it clear that one may not stand by and allow a child to be killed. For policy reasons, South Carolina law defines aiding and abetting homicide by child abuse in this manner because it is the legislature's intent is to protect innocent and helpless children from this crime that frequently occurs in secret. Criminal liability through omission by an aider and abettor is necessarily created by S.C. Code Ann section 16-3-85. This Court recognized as much in State v. Smith, 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004). This Court defined "aid and abet" in Smith as comprehending "all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance, if necessary." Smith at 491, 597 S.C.2d at 894. In Smith, this Court dealt with the same issue of a boyfriend of the victim's mother challenging his conviction for aiding and abetting homicide by child abuse. Smith argued that his mere presence at the scene was insufficient to prove his guilt as the principal or an aider and abettor to homicide by child abuse. This Court repeatedly relied upon the provisions of the statute respecting "omission" and "allows to be inflicted" to affirm Smith's conviction for aiding and abetting. This Court held that the mother and the boyfriend were the only two persons with the victim when the injuries occurred and "the injury to [the victim] was severe and would cause immediate neurological problems which would have been fairly obvious to [the mother] and [boyfriend]." Id. at 491, S.E.2d at 894. There was no evidence of an overt act committed by Smith. This Court concluded that there was sufficient circumstantial evidence to support a conviction for aiding and abetting homicide by child abuse by way of either omission or allowing physical

injury to be inflicted resulting in the child's death. Similar to Smith, Appellant was constructively present, heard the injuries being inflicted, was in a position to aid and prevent the injuries but failed to act and was in a position to thereafter secure immediate and proper health care for the victim to prevent her death but did not. As in Smith, Appellant aided and abetted by omission or failing to prevent the injuries.

Rather, he aided and abetted his co-defendant, the mother, through affirmative acts as argued above as well as omission. The distinctions this Court draws between Smith and the facts of this case are not dispositive. As stressed by Respondent, this was not a crime of silence. It is clear in this case that Appellant, while not personally present in the victim's room when the injuries were inflicted, was constructively present. See State v. Chavis, 277 S.C. 521, 290 S.E.2d 412 (1982). Appellant admitted that he heard the injuries being inflicted, allowed the mother's attacks on the victim to continue until the victim stopped crying and did nothing. He allowed the injuries to be inflicted and this evidence alone was sufficient to withstand the motion for directed verdict. An overt act was not necessary under the provisions of the statute or in this Court's decision in Smith. However, Appellant thereafter engaged in actions to cover up the physical injuries through silence and false statements in the face of probing questions for medical treatment purposes and thereby also caused harm to the child by preventing the prompt and appropriate medical care that she desperately needed to avoid death. Appellant also admitted these acts following the infliction of injuries on the victim and admitted that he did so to aid and protect the mother.

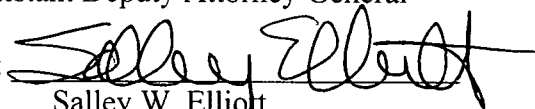
WHEREFORE, the State moves this Court to rehear the matter and affirm the conviction.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 17, 2013

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PROOF OF SERVICE

I, Angela Bennett certify that I have served the Reply to Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, C. Rauch Wise, Esquire, 305 Main Street, Greenwood, South Carolina 29646.

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

This 17th day of June, 2013.



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