

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
William Jeffrey Young, Circuit Court Judge

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JUN 19 2013

SC Court of Appeals

Opinion No. 2013-UP-110 (S.C. Ct. App. filed 3/13/2013)

09-GS-40-03175.

THE STATE,

RESPONDENT,

V.

DEMETRIUS GOODWIN,

PETITIONER

APPELLATE CASE NO. 2011-193927

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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INDEX

INDEX.....	1
CERTIFICATE OF COUNSEL.....	2
QUESTION PRESENTED.....	3
STATEMENT OF THE CASE.....	4
QUESTION.....	5
CONCLUSION.....	12

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 4/18/2013.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the trial court's denial of appellant's motion for a directed verdict when the state failed to prove he acted with extreme indifference when his baby became seriously ill and he panicked and hugged her so severely that she died.

STATEMENT OF THE CASE

On April 15, 2009, the Richland County Grand Jury indicted Demetrius Goodwin on the charge of homicide by child abuse. On March 15 – 18, 2011, Goodwin proceeded to trial before the Honorable W. Jeffrey Young and a jury. He was represented by Kris Hines, Nicole Singletary, and Tracy Pinnock. The state was represented by Kathryn “Luck” Campbell, Joanna McDuffie, and Carter Potts. The jury returned a verdict of guilty as indicted. Judge Young sentenced Goodwin to twenty-five years. Goodwin’s attorney filed a Post-Trial Motion for a New Trial or Reconsideration of the Sentence. A hearing was held before Judge Young on May 9, 2011. On June 13, 2011, Judge Young issued an order denying the motions. Goodwin’s attorney filed a notice of appeal. The Court of Appeals affirmed Goodwin’s conviction and sentence on March 13, 2013. State v. Goodwin, 2013-UP-110 (Ct. App. filed March 13, 2-13). App. 1-2. Appellate counsel filed a petition for rehearing which the Court of Appeals denied on April 18, 2013. App. 13. This petition for a writ of certiorari follows.

QUESTION

The Court of Appeals erred in affirming the trial court's denial of appellant's motion for a directed verdict when the state failed to prove he acted with extreme indifference when his baby became seriously ill and he panicked and hugged her so severely that she died.

On February 6, 2009, Demetrius Goodwin entered the emergency room at Palmetto Baptist carrying his twenty-three month old baby girl who was not breathing. The nurse who took the baby said the father was in a panic. There was no sign of life in the child. R. 15, ll. 13 – 25; R. 16, ll. 1 – 25; R. 17, l. 1 – 25. Demetrius told the nurse that the child fell down stairs the night before, and seemed fine at first. Then she had one episode of brown vomiting that night. The next morning the child had another episode of brown vomiting and seemed whiny, but was walking around. R. 18, ll. 1 – 25; R. 19, ll. 1 – 25.

The emergency room doctor, Dr. Mercier, said a team worked on the child for thirty minutes but could not revive her. There was never any sign of life. He did observe signs of trauma to the chest wall, but he saw no signs of the brown vomit. R. 7, ll. 1 – 25; R. 8, ll. 1 – 23; R. 9, ll. 1 – 22; R. 10, ll. 3 – 25; R. 11, ll. 1 – 25; R. 12, ll. 1 – 25; R. 13, ll. 1 – 25; R. 14, ll. 16 – 24.

Marquis Carter lived across the street from Goodwin, and he had two small children. On February 5, 2009, Goodwin and his daughter went to Carter's house to watch his children while Carter ran an errand. When Carter returned, Goodwin told him his daughter fell down the stairs. Carter said she looked fine. R. 20, ll. 1 – 25; R. 21, ll. 1 – 25; R. 22, ll. 1 – 20.

The next day, February 6, 2009, Goodwin asked Carter if he could take his daughter to the doctor because she was not breathing right. Goodwin returned to his apartment. Then he came rushing out and told Carter they had to rush because the child was not breathing. When Carter ran into the apartment and saw the child, he said she did not respond and had "yellow stuff" coming

from her nose. He told Goodwin to call an ambulance. Then Carter decided not to wait for the ambulance, and they rushed the child to the hospital. R. 22, ll. 21 – 25; R. 23, ll. 1 – 25; R. 24, ll. 1 – 22. Carter said Goodwin broke down in tears when they got to the hospital. R. 24, ll. 18 – 24; R. 25, ll. 1 – 9.

On April 2, 2009, the pathologist who performed the autopsy, Dr. Bradley Marcus, told the solicitor and law enforcement that the fall was not the cause of death of the child. He said the cause of death was asphyxia due to chest compression. R. 61, ll. 7 – 25; R. 62, ll. 17 – 25; R. 70, ll. 19 – 25; R. 26, ll. 8 – 25; R. 27, ll. 1- 19.

Dr. Marcus explained that two ribs of the child were fractured at the spine in the back. This was significant because a child's ribs were difficult to break and were usually indicative of child abuse. R. 63, 2- 25; R. 64, ll. 1 – R. 65, ll. 25. He found blunt trauma to the back of the head which resulted in facial and forehead contusions, and blunt trauma to the chest and abdomen. However, her death was caused by the child's chest being compressed so hard that she could not move her chest so her lungs could fill with oxygen, and she suffocated within one to one and a half minutes. R. 66, ll. 14 – R. 72, ll. 12.

Investigator Rob Martin of the Sheriff's Department met with Goodwin on April 13, 2009 to discuss the pathologist's report. R. 43, ll. 1 – 25; R. 46, ll. 1 – 25; R. 48, ll. 1 – 16; R. 49, ll. 25. Goodwin was told of the pathologist findings, that the fall did not cause the child's death. Goodwin then gave a statement to Investigator Martin where Goodwin said on the morning of February 6, the child did not have an appetite. He heard her wheezing and picked her up. She gave a cry so he held her tight and then put her on the bed. He said he hugged her "real tight" and her breathing got worse. He said that he did not do it on purpose and he did not mean it. That was when he got Carter.

R. 52, ll. 1 – 25; R. 53, ll. 1 – 25; R. 54, ll. 1 – 25; R. 55, ll. 1 – 25; R. 56, ll. 1 – 25; R. 57, ll. 1 – 25; State's Exhibit 2 (ROA p. 229).

Investigator Martin said that Goodwin said several times that he had killed his daughter. Goodwin was emotional and crying. He told the child's mother, Shayla Matthews, that he had killed his daughter with this hard hug. R. 58, ll. 1 – 21.

On April 15, 2009, the child's mother and grandparents and Goodwin met with the coroner, Gary Watts, Investigator Martin, and the pathologist, Dr. Marcus at the request of the mother who wanted to know the results of the autopsy. R. 28, ll. 1 – 25. When Dr. Marcus told the family that the fall did not cause the child's death but that it was asphyxiation due to some type of squeezing, Goodwin asked Coroner Watts to speak with him in private. R. 29, ll. 1 – 25; R. 30, ll. 1 – 25.

Goodwin told him that he realized he had killed his baby when he squeezed her in a hug for a minute or two. Coroner Watts said Goodwin was emotional and crying. R. 31, ll. 1 – 25; R. 32, ll. 1 – 12. Coroner Watts then got investigator Martin who took a written statement from Goodwin. R. 32, ll. 13 – 25. Goodwin said he did not mean to harm the child, and he was a good father. He was crying and was upset. R. 32, ll. 22 – 25; R. 33, ll. 1 – 7; State's Exhibit 4 (ROA p 234).

At the close of the state's case, defense counsel moved for a directed verdict on the basis that the state had not proved all of the elements of homicide by child abuse because the state did not prove that Goodwin had the mental state of "extreme indifference" as required by the statute. Counsel cited the case of State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002), which held that extreme indifference needed to prove homicide by child abuse was a "mental state akin to intent characterized by a deliberate act culminating in death." R. 82, ll. 1 – 25; R. 83, ll. 1 – 10. Counsel argued:

In South Carolina, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created or failed to exercise ordinary or due care.

R. 83, ll. 11 – 18.

The state argued that the testimony was that Goodwin picked up his daughter and squeezed her so hard for one to two minutes that her ribs were cracked and she went limp in his arms. The judge denied the directed verdict motion. R. 84, ll. 1 – 25.

Goodwin did not testify, but the defense called their own expert, Dr. Stan Kessler. R. 87, ll. 10 – 25; R. 88, ll. 1 – 25; R. 91, ll. 1 – 25; R. 92, ll. 1 – 25. After extensive testimony, Dr. Kessler concluded that the fractured ribs did not cause the child's death. R. 88 – R. 178, ll. 14. He stated:

The cause of death in this case is Waterhouse-Friderichsen syndrome or adrenal shock due to hemorrhagic disruption of the adrenal and dissolution of the adrenal by Gram-positive bacteria, diplococcus pneumonia, causing all of the changes we see.

R. 142, ll. 5 – 16.

At the close of the state's reply testimony, defense counsel renewed all motions and objections including their directed verdict motion. The judge denied their motion. R. 184, ll. 4 – 25; R. 185, ll. 1 – 6.

During his charge to the jury, the judge instructed the jury on extreme indifference. R. 187, ll. 14 – 25; R. 188, ll. 1 – 25. The jury, during their deliberations, sent a note asking the judge to explain extreme indifference to human life. R. 189, ll. 1 – 25; R. 190, ll. 1 – 2. The judge read the charge again on extreme indifference. R. 190, ll. 8 – 25; R. 191, ll. 1 – 25; R. 192, ll. 1 – 10.

The jury returned their verdict and Goodwin was sentenced to twenty-five years. R. 193, ll. 4 – 25; R. 194, ll. 18 – 25; R. 195, ll. 1 – R. 196, ll. 7.

At the May 9, 2011 hearing on defense counsel's motion for a new trial or reconsideration of the sentence, defense counsel argued that new trial should be granted based on the directed verdict motion because the state did not prove that Goodwin acted with extreme indifference. Counsel argued that the solicitor stated in her closing that this was not intentional. May 9, 2011 R. 205 ll. 1 – 25; May 9, 2011 R. 203 ll. 6 – R. 207, ll. 25; March 14, 2011 R. 186, ll. 7 – 15.

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

A directed verdict motion should be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

South Carolina Code Sect. 16-3-85 provides:

(A) A person is guilty of homicide by child abuse if the person:

(1) Causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life.

In State v. Jarrell, *supra*, the Court of Appeals defined extreme indifference as a mental state akin to intent characterized by a deliberate act culminating in death.

The court went on to say that in this state, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created or failed to exercise ordinary or due care.

In State v. Jarrell, *supra*, the Court affirmed the trial court's denial of Jarrell's directed verdict motion finding that Jarrell acted with extreme indifference because she knew when she left home the morning of the incident that her child would be killed. She did not protect her child as she had helped plan the child's murder.

Goodwin's case is distinguished because he did not plan any harm to his child, and he did not leave her in a situation where he knew there was a risk of harm to her. He hugged his daughter when he saw that she was sick. He sought help when he saw she had trouble breathing.

The Supreme Court cited the case of State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994), where they held that recklessness is one level of criminal intent, as are knowledge and negligence. The Court wrote that under Jefferies, "intentional" connotes a higher sense of awareness than mere recklessness.

The Court of Appeals focused on "extreme indifference" and held that Goodwin acted with extreme indifference. The Court relied on State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003) where the Supreme Court found that the mother's using cocaine while she was pregnant was acting with extreme indifference because it was common knowledge that use of cocaine is potentially fatal. App. 2. This is distinguished from Goodwin's case because it is not common knowledge that hugging a baby will kill them. Goodwin was scared and panicked and probably was not aware of his own strength. Hugging a baby is not illegal while use of cocaine is breaking the law.

The Court also relied on State v. Jarrell, *supra*, which was also distinguished from Goodwin's case. App. 2. The mother in Jarrell knew when she left home that morning that the father was planning to kill the baby. That was extreme indifference.

In Price v. State, 284 S.W.3d 462, 466 (Ark. 2008), the Supreme Court of Arkansas wrote that "extreme indifference" requires actions that evidence a mental state on the part of the accused to engage in some life-threatening activity against the victim.

The state did not present sufficient evidence that Goodwin acted with extreme indifference. Goodwin's statements indicated: "I did not do it on purpose;" "I did not mean it;" "I was concerned about her;" "I was scared at the way she was reacting and gave her a hug to get a response." The witnesses which included Carter, Coroner Watts, Investigator Martin, and the nurse all testified that Goodwin was upset, crying, emotional, and upset about his daughter.

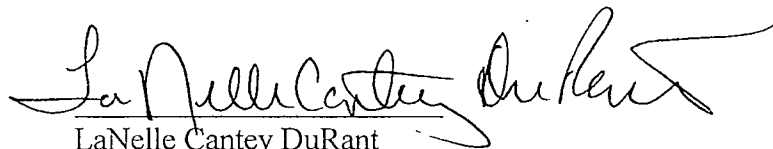
The trial judge's charge on extreme indifference was inconsistent as he charged that indifference was the failure to exercise ordinary or due care. Then he charged that extreme indifference was deliberate conduct which was willful. Extreme indifference is not the same as lack of due care or negligence as negligence is a less culpable *mens rea* than extreme indifference.

The trial court should have granted the directed verdict motion because there was no evidence that Goodwin acted with extreme indifference. The state did not present substantial evidence that Goodwin acted with extreme indifference.

CONCLUSION

Based on the above, certiorari should be granted and the conviction and sentence reversed, and the case remanded for the entry of a directed verdict of acquittal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", with a long, sweeping flourish extending to the right.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 19th day of June, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
William Jeffrey Young, Circuit Court Judge

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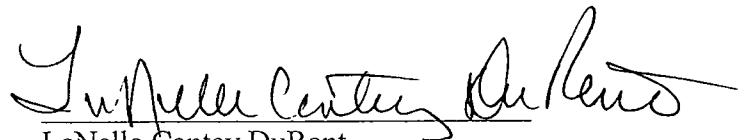
DEMETRIUS GOODWIN,

PETITIONER

APPELLATE CASE NO. 2011-193927

CERTIFICATE OF SERVICE


I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Jennifer Ellis Roberts, Esquire, and the S.C. Court of Appeals this 19th day of June, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of June, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 6, 2013.