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May 14 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Appellate Case No. 2023-000544

The Honorable Eugene C. Griffith, Circuit Court Judge

Kareem Lamell Wallace,

Appellant,

vs.

The State of South Carolina,

Appellee.

FINAL BRIEF OF APPELLANT

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II. Whether the Trial Court Erred in Denying Mr. Wallace's Motion for Directed Verdict on the Unlawful Neglect Charge.

STATEMENT OF THE CASE

Kareem Wallace was indicted for great bodily injury to a child and unlawful neglect toward a child. *See* indictments. He proceeded to a jury trial on March 29–30, 2023, before the Honorable Eugene C. Griffith, Jr. ROA 91. The Court declared a mistrial on the great bodily injury charge based on a deadlocked jury, but the jury found him guilty of unlawful neglect. ROA 415, 421. Judge Griffith sentenced him to six years' incarceration and suspended on the service of two, plus thirty months of probation. ROA 436. Mr. Wallace filed a timely notice of appeal.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). "[T]the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958). An abuse of that discretion occurs where the trial court's conclusions are based on unsupported factual conclusions or controlled by an error of law. *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

Relevant Facts

On August 28, 2018, Angel Prince woke up Mr. Wallace, handed him their three-month-old baby, K.W., and told him she was leaving to take her twelve-year-old daughter to school. ROA 149. The school was only ten-to-fifteen minutes away and when she got back, Mr. Wallace asked her what was wrong with K.W.'s arm. ROA 150. Ms. Prince also observed that K.W. was not moving her left arm the way she did her other appendages, so she brought K.W. to the emergency room at The Regional Medical Center (TRMC) in Orangeburg. ROA 152. Mr. Wallace had to attend a Kindergarten screening with his four-year-old but met them at the hospital later. ROA 173. They took x-rays of her left arm at TRMC, but eventually sent K.W. with Ms. Prince to the Children's Hospital at Richland Memorial Hospital[1] in Columbia. ROA 154. Mr. Wallace had to go to work and was unable to accompany them. ROA 174.

At Richland Memorial they took more x-rays and determined K.W. had a fracture in her left humerus, a fracture on the left side of her collarbone, and two fractures in her knee. ROA 203, 213, 219, 223, 225. K.W. was at Richland Memorial for two days and was then taken into protective custody by the Department of Social Services (DSS) after it was reported that her injuries were nonaccidental. ROA 158, 257.

Sergeant Lakesha Gillard of the Orangeburg County Sheriff's office was assigned to the case, and accompanied DSS to Columbia to take K.W. to emergency protective custody, but did not see K.W. ROA 246, 257, 260. Mr. Wallace was ultimately charged with unlawful neglect and

[1] It is now Prisma Richland Memorial. ROA 270.

great bodily injury to a child. *See* Indictments. He proceeded to a jury trial on March 29–30, 2023, before the Honorable Eugene C. Griffith, Jr. ROA 91.

At trial, Ms. Prince testified that on August 28, 2018, she went to pick up Mr. Wallace from Bimbo's Bakery, where they both worked, around 5:00 or 6:00 a.m. when he finished his shift. ROA 137, 160. At the time, they had only one car because the other one was in the shop. ROA 161. She could not recall whether she had left her twelve-year-old at home alone with K.W. or whether she brought them with her to pick up Mr. Wallace. ROA 164, 176, 183. Bimbo's was about fifteen minutes away from the house. ROA 161. Mr. Wallace went to sleep on the couch until Ms. Prince was leaving to take her older daughter to school, between 7:00 and 7:45 a.m. ROA 148-149.

Ms. Prince testified that she woke Mr. Wallace up, told him she was leaving K.W. with him. ROA 149. She could not remember if she put K.W. in the bouncer for him, or if she gave her to him, but recalled K.W. smiling at her father and him smiling back. ROA 149. School was ten-to-fifteen minutes away, so Ms. Prince stated she returned home around 8:00 a.m. ROA 150. She said when she returned home, Mr. Wallace was holding K.W. as she cried, and asked Ms. Prince what was wrong with K.W.'s arm. ROA 150-151. Ms. Prince responded there was nothing wrong but took K.W. and laid her on the bed and noticed she was not moving her left arm but was moving the other arm and both legs. ROA 151. Immediately after that, she took K.W. to TRMC. ROA 152. She stated that K.W. was a "little crybaby" and although she was crying hard when Ms. Prince came home and when she was x-rayed, at the hospital she was not crying much. ROA 173, 182. Ms. Prince further testified that she was with K.W. for the entire two days she was in the hospital in Columbia and never saw a bruise on her. ROA 171-172.

Finally, Ms. Prince testified Mr. Wallace was a nice father, noting he was caring and that he "ma[d]e sure [K.W. was] well taken care of." ROA 175. Ms. Price twice noted that Mr. Wallace was very patient and a good father. ROA 175.

Dr. Matthew Marcus also testified as an expert in pediatric radiology. ROA 193, 198. Although he had not seen K.W. in person, he had reviewed several of her x-rays taken between August 28, 2018, and November 6, 2018. ROA 198, 239. He first discussed several x-rays depicting K.W.'s left arm around the elbow joint that had been taken August 28, 2018. The images showed a fracture of the lateral condyle of her left humerus. ROA 203. Dr. Marcus testified that with nonambulatory children like K.W., the injury was attributable to twisting or shaking. ROA 212. He noted that the injury was acute and showed no signs of healing. ROA 205. Dr. Marcus also discussed an image of K.W.'s left clavicle, which also showed an acute fracture. ROA 214. He noted a nonambulatory child might sustain this type of injury from a blow to the clavicle or some compressive force. ROA 215. He could not attribute the injuries to a single source. ROA 217. Dr. Marcus also clarified that by identifying the fractures on the arm and clavicle acute, and therefore recent, the injury could have occurred several days to a week before the x-rays were taken. ROA 238.

Dr. Marcus also reviewed x-rays of K.W.'s lower extremities and identified corner fractures on the left femur and tibia. ROA 219, 221, 223. He stated that it was difficult to give a timeframe for these types of injuries because they have variable healing and can sometimes take a while until they are totally healed. ROA 220.

Sergeant Gillard also testified that during her investigation, she learned a child had sustained serious injuries that were discovered after she had been in the care of her father. ROA

246. She stated she conducted interviews with Ms. Prince and Mr. Wallace and the State played the video of that interview. ROA 248-249. She described how Mr. Wallace informed her that he had gotten off of work around 5:30 or 6:00 a.m. and when Ms. Prince woke him up because she was leaving, he took K.W. in the bedroom and laid down for a few minutes. ROA 252. He indicated that prior to Ms. Prince leaving, he did not notice any signs of injury. ROA 253. He told her he may have fallen asleep for fifteen minutes and then heard the baby crying. ROA 253. Mr. Wallace then told her he picked K.W. up by the arm while he was lying down and brought her to the kitchen to get her a bottle. ROA 253, 256. He stated he may have made a mistake picking her up by her arm. ROA 254. Sergeant Gillard further testified medical providers informed her the injuries were nonaccidental and she therefore arrested Mr. Wallace. ROA 255. She noted that she never saw K.W. during the investigation. ROA 260.

In deciding to arrest Mr. Wallace, Sergeant Gillard testified she isolated the timeframe of when her injuries would have occurred to the time between Ms. Prince leaving K.W. with Mr. Wallace to when she returned. ROA 255. She testified that she was never informed that the injuries could have occurred several days or even a week prior to August 28, 2018. ROA 261. For that reason, she never investigated anyone else who had contact with K.W., including anyone else who provided childcare. ROA 261, 262. She was just told a child would immediately respond to this type of injury. ROA 262.

Stephanie Schaller, a nurse practitioner, was qualified as an expert in child abuse and maltreatment of children also testified. ROA 268. She stated she was called to the hospital to see K.W. based on concerns that she had suffered nonaccidental trauma. ROA 270. Nurse Schaller testified when she arrived at the hospital, she spoke with Ms. Prince and K.W.'s grandmother, who

was holding K.W. at the time. ROA 272–273. She then physically examined K.W. and noted that her arm was limp, and she had a bruise on her chest, though she could not get a photograph of it. ROA 275. She did not notice any swelling during her physical exam. ROA 275.

Nurse Schaller also discussed the x-rays that had been introduced during Dr. Marcus's testimony. As to the fractured clavicle, she indicated that could be caused by accidentally dropping the child, a direct blow to the clavicle, or a twisting or jerking of the arm with such force as to also break the clavicle. ROA 280. In discussing the fractured humerus, she noted it could have been a twisting force that hyperextended the arm. ROA 282. She testified that the arm would likely be tender, and they would cry out when it was being manipulated, but it could have happened in the week prior to August 28, 2018. ROA 284, 291. The corner fractures, she said, could be caused by a rotational or pulling force, and those may not be symptomatic so it would be more difficult to realize something is wrong. ROA 284, 285. Nurse Schaller also discussed the bruise she observed and noted it would have to be from some direct blow to the child's chest, but admitted that it is impossible to date a bruise on a living person. ROA 285, 293.

When asked whether she could pinpoint a single source of injury, Nurse Schaller stated a single fall could not have produced all the fractures and the bruise. ROA 286. She indicated the arm and clavicle fractures, and the bruise could have been caused by multiple drops, but not the corner fractures. ROA 287. Those would have been caused by some rotational shaking or jerking. ROA 287. She admitted that the injuries could have been caused by vigorous shaking, but K.W. did not suffer from brain bleeds or bleeds in the eye reflecting abusive head trauma, or shaken baby syndrome. ROA 287-288.

At the close of the State's case, the defense moved for a directed verdict. ROA 301. The trial court denied the motion, noting evidence of an injury and that Mr. Wallace was "in close proximity at the time of the alleged incident." ROA 301-302.

Ms. Eleanor Wallace, Mr. Wallace's mother, testified for the defense. ROA 307. She indicated she went to TRMC as well as Richland Memorial with Ms. Prince. ROA 308. Ms. Wallace stated she and Ms. Prince took turns holding K.W. until around midnight when she left. ROA 310-311. She noted Ms. Prince would hold K.W. tightly to her chest, against her pendant necklace. ROA 311-312, 213-214. While she was at the hospital, K.W. was whimpering, not yelling, although it depended on if her arm was moved. ROA 314.

After the trial court's colloquy, Mr. Wallace indicated he planned to testify. ROA 317. However, after a brief break off the record, Mr. Wallace indicated he no longer wished to testify, and the defense rested. ROA 318, 321. At this point, the State moved to prevent the defense from arguing in closing that Ms. Prince may have left K.W. at home alone with her twelve-year-old when she went to pick up Mr. Wallace from work on August 28, 2018. ROA 322. Specifically, the State argued it had intended to impeach his testimony that the children might not have been in the car with testimony from a prior family court hearing where he expressly testified that the children were in the car when Ms. Prince picked him up from work. ROA 322. The State argued that since it no longer had a chance to cross-examine Mr. Wallace, it would be improper to allow the defense to argue otherwise when Mr. Wallace knew that it was false. ROA 325. The trial court disagreed, noting that Ms. Prince's recollection is her recollection, so discussing it is not a false statement even if Mr. Wallace may remember the event differently. ROA 325. Despite this ruling, Mr.

Wallace changed his mind and decided to testify. ROA 327. The State did not object to reopening the case. ROA 327.

Mr. Wallace testified that on August 28, 2018, he worked a twelve-hour shift, from 5:00 p.m. to 5:00 a.m. at Bimbo Bakery. ROA 331. He had covered another shift for someone on vacation, and then worked his own shift. ROA 331. The person who worked the next shift was running late, so he had to leave Ms. Prince waiting ten to fifteen minutes before meeting her to go home. ROA 333–334. He stated that when he got home, he went to sleep on the couch because he did not like sleeping with the baby in the bed. ROA 331-332. Defense counsel asked about Mr. Wallace's testimony at the family court proceeding on July 9, 2019, regarding whether Ms. Prince had the children in the car when she went to pick him up. ROA 339. Mr. Wallace explained that he had misrepresented the fact that both children were in the car with him to help Ms. Prince and hopefully keep K.W. out of the foster care system. ROA 340. He clarified that the children had not actually been in the car but were at home alone while Ms. Prince was picking him up. ROA 340.

Mr. Wallace again explained he had gone directly to the couch to sleep once he returned home and was awakened around 7:30 a.m. when Ms. Prince was leaving. ROA 342. He brought K.W. with him to the bedroom and laid her down while he watched television. ROA 344. Mr. Wallace testified that K.W. began to cry about ten minutes later and he picked her up to take her to the kitchen to feed her, which is when he noticed something was wrong with her arm. ROA 344. He was just examining her when Ms. Prince came home, and he asked her what happened to K.W.'s arm. ROA 344. Ms. Prince had replied nothing was happened to her but took K.W. back to the bedroom and came back several minutes later. ROA 345–346. At that point she stated she

would go to the hospital and Mr. Wallace joined her there after he went to a kindergarten screening in Columbia for his four-year-old. ROA 346.

After closing arguments and the jury charge, the jury began deliberations. ROA 302. After roughly two-and-a-half hours of deliberation, the jury informed the Court it had had reached a verdict on one charge but were not able to come to a verdict on the other one. ROA 408. The Court brought the jurors into the courtroom and after the foreman assured the Court of his belief that they were at an impasse and further discussion would be fruitless, the Court gave the jury an *Allen*[2] charge and sent them back to deliberate. ROA 411–413. Forty minutes later, the jury informed the Court it was still deadlocked, and the Court brought them back in to the courtroom. ROA 414. It marked the great bodily harm charge as deadlocked, and the clerk read the unlawful neglect verdict as guilty. ROA 414-415. The defense requested a polling of the jury, at which point a juror indicated that was no longer his verdict. ROA 415, 417, 418. The Court clarified with the juror that he had changed his vote, and a discussion was held off the record. ROA 418. The Court then gave a truncated version of an *Allen* charge and sent them back to deliberate. ROA 418. After the jury left the courtroom, the defense put on the record the motion for a mistrial it had lodged off the record on the unlawful neglect charge. ROA 418–419. The defense reiterated the Court should have declared a mistrial on both charges, and the Court noted giving the "very slim *Allen* charge" it gave in response to the juror's changed verdict was its ruling. ROA 420. The jury returned thirty minutes later with a unanimous verdict of guilty on the unlawful neglect charge. ROA 421.

[2] *Allen v. United States*, 164 U.S. 492 (1896).

During mitigation, the trial court informed the parties the jury had disclosed the vote on the great bodily injury charge that resulted in a mistrial was a vote of 11-1 in favor of acquittal. ROA 424. The trial court concluded based on what it heard, and Mr. Wallace's limited prior record, a sentence on the upper end of the sentencing range was not necessary. ROA 436. Accordingly, it sentenced Mr. Wallace to six years' incarceration suspended on service of two years followed by thirty months' probation. ROA 436. This appeal followed.

ARGUMENT

I. The Trial Court Erred in Denying Mr. Wallace's Motion for a Mistrial on the Unlawful Neglect Charge.

After the jury returned a deadlocked verdict on the great bodily injury charge, a juror expressed he had changed his mind at polling as to his guilty verdict on the unlawful neglect charge. The trial court erred in failing to grant a mistrial on that indictment and instead giving a second *Allen* charge and requiring the jury deliberate further.

"The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627–28 (2000). "A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons." *State v. Wasson*, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989). "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

Although the grant of a mistrial should not be undertaken incautiously, the circumstances of this case necessitated that result, and it was an error of law for the Court to refuse the motion. "If a jury, following additional deliberations in the wake of an *Allen* charge, remains deadlocked, section 14-7-1330 of the South Carolina Code of Laws is triggered." *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004). The situation here illustrates the evils sought to be addressed by Section 14-7-1330 of the South Carolina Code, which prohibits sending a deadlocked jury back to deliberate for a second time absent its consent, and "is intended 'to prevent forced verdicts, and to prevent undue severity of jury service.'" *State v. Barnes*, 402 S.C. 135, 139, 739 S.E.2d 629, 631 (2013) (quoting *State v. Freely*, 105 S.C. 243, 89 S.E. 643 (1916)). Of course, the trial court explained in his ruling that he viewed the events as two separate *Allen* charges addressed to distinct causes, the effect to the jury was the same. It had for a second time indicated it could not agree to a verdict, the Court instructed it to deliberate further. The trial court did not ask the foreman for his agreement to continue deliberations—which it *did* ask for after the initial *Allen* charge. The concern in these situations is not nuance of law, but of the more human consideration of whether coercion played a role in the rendering of the verdict. *Lowenfield v. Phelps*, 484 U.S. 231, 241 (1988) ("Any criminal defendant . . . being tried by a jury is entitled to the uncoerced verdict of that body."); *see* U.S. Const. amends. VI & XIV; S.C. Const. art. I, § 14.

This situation resulted in a forced verdict. The fact that the trial court already accepted a deadlocked verdict only heightened that threat. By sending the jury back on the other charge, it suggested to the jury that it *should* or even *must* be able to reach a verdict on the unlawful neglect charge. Intimating that there is sufficient evidence from which the jury can find a verdict

approaches an unconstitutional comment on the facts. S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *State v. Ates*, 297 S.C. 316, 317–18, 377 S.E.2d 98, 99 (1989) ("In the course of criminal trials in South Carolina, the judge must refrain from all comment which tends to indicate his opinion on the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, or the facts in controversy."). In the least, it erroneously implied that the trial court was not willing to accept a mistrial on that charge. The irredeemable prejudice was amplified further considering that the charge the great bodily injury was eleven-to-one not guilty and the one the trial court sent them back a third time to discuss was eleven-to-one guilty. The jury already knew that a deadlock indicated he could be tried again, and the trial court granted a mistrial on the near-acquittal charge only.

And this was not cured, but exacerbated by second mini-Allen charge, which amplified the coercive effect of sending the jury back to deliberate more. It was at this point inescapable that the charge would target the now-known holdout. The jury was about to go home, and then it had to go back and deliberate about the case longer because of one dissenter. Although the trial court briefly mentioned not "abandon[ing] anyone's individual decision," it told the jury to "see if [it] can resolve this nonunanimous verdict" and sent them back to deliberate. ROA 418. The only way they could return with the trial court's desired result was for that single individual to abandon his not guilty vote. The circumstances here inevitably weigh toward a coercive *Allen* charge by the sheer fact it was given.[3]

[3] Derived from *Tucker v. Catoe*, 346 S.C. 483, 552 S.E.2d 712 (2001) (per curiam), the Court employs a multi-factor inquiry to determine whether an *Allen* charge is unconstitutionally coercive:

(1) Does the charge speak specifically to the minority juror(s)?

Although the Court has in some instances affirmed convictions where a juror expressed hesitation at polling and the judge sent the jurors back to deliberate, those instances involved some equivocation by the juror. It made sense to allow the juror to go back and discuss the verdict to clarify their thoughts. *State v. Roper*, 274 S.C. 14, 20–21, 260 S.E.2d 705, 708 (1979) (finding trial court was not coercive in asking jury to return to deliberation after a juror equivocated in her answers and expressed her doubts about the verdict at polling); *State v. Kelly*, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007) (affirming trial court's denial of mistrial or *Allen* charge where "the juror stated she was not comfortable and ultimately not in agreement with the verdicts" and the trial court asked the jury to return to deliberations). Here the juror was unequivocal in his question from the court that guilty was no longer his verdict. ROA 418. Moreover, none of those cases involved an instance where the trial court permitted the jury to deadlock on one charge and then not the other.

Given the circumstances, the reasons for the grant of a mistrial were plain and obvious, and it was an error of law to require further deliberation. There is simply no assurance that this was a fair trial that ended in just judgment.

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(2) Does the charge include any language such as "You have got to reach a decision in this case"?

(3) Is there an inquiry into the jury's numerical division, which is generally coercive?

(4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?

Workman v. State, 412 S.C. 128, 130–31, 771 S.E.2d 636, 638 (2015) (per curiam). The charge inevitably spoke to the minority juror and the trial court, as well as everyone involved, knew the numerical division. Furthermore, the jury deliberated only thirty-minutes before returning with a unanimous verdict, which suggests coercion.

Respectfully, Wallace asks this Court grant him a new trial.

II. The Trial Court Erred in Denying Mr. Wallace's Motion for Directed Verdict on the Unlawful Neglect Charge.

The trial court erred in failing to grant directed verdict on Mr. Wallace's charges. The evidence presented fails to offer proof amounting to anything more than suspicion.

"On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003). A case should only be submitted to the jury "if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "[W]here the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

Here, the State failed to adduce *substantial* circumstantial evidence from which a reasonable juror could find Mr. Wallace guilty beyond a reasonable doubt. Construing the evidence in the light most favorable to the State, the evidence was that K.W. suffered several injuries, two of which occurred within the week prior to August 28, 2018, and two that were not amenable to precision in timing. Mr. Wallace was the last person alone with her before her mother took her to the hospital. This evidence fails to amount to proof. It is rife with reason to doubt, and no

reasonable juror could find him guilty within that standard. The only reason the State can point to as to why it *must* have been Mr. Wallace, was that K.W. would have immediately reacted, but nothing indicates that her crying when she was taken to the hospital was her immediate reaction. Her mother testified K.W. stopped crying at the hospital, but started up again when they were x-raying her arm. ROA 182. The timeframe within which K.W. could have been injured was *days* for the acute injuries and possibly more for the femur injuries. Simply demonstrating that it could have been a defendant is not proof beyond suspicion. *See generally State v. Hepburn*, 406 S.C. 416, 440, 753 S.E.2d 402, 415 (2013) ("While undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that Appellant harmed the victim.").

It bears closing with the obvious quandary. In cases involving allegations of child abuse, adduction of substantial circumstantial evidence is an especially challenging burden for the State. *See State v. Hepburn*, 406 S.C. 416, 442, 753 S.E.2d 402, 415 (2013) ("Homicide by child abuse cases are difficult to prove because often the only witnesses are the perpetrators of the crime."). This circumstance can, at times, produce the devastating outcome that *no one* is held accountable for the injury or even death of a child because the State is unable to meet its burden.[4] Yet the balm

[4] The companion cases of co-defendants Ashley Hepburn and Brandon Lewis, who were both charged with homicide by child abuse and aiding and abetting homicide by child abuse after the death of Hepburn's sixteen-month-old, yielded such a result. *Hepburn*; *State v. Lewis*, 403 S.C. 345, 743 S.E.2d 124 (Ct. App. 2013), *certiorari dismissed as improvidently granted by State v. Lewis*, 411 S.C. 647, 770 S.E.2d 398 (2015). After being jointly tried before a jury, Hepburn was acquitted on the charge of aiding and abetting homicide by child abuse but convicted of homicide by child abuse, and Lewis was convicted of aiding and abetting homicide by child abuse but acquitted of homicide by child abuse. On appeal, both convictions were reversed on the ground that the State failed to present sufficient evidence to send the charge to the jury, and directed verdict should have been granted. *Hepburn*, 406 S.C. at 442, 753 S.E.2d at 416; *Lewis*, 403 S.C. at 357, 743 S.E.2d at 130.

cannot be the vitiating of the weighty burden that remains the constitutional safeguard in our criminal prosecutions. The State failed to present evidence to satisfy its ultimate burden of proof and a directed verdict should have been granted.

Respectfully, Wallace requests this Court grant him a new trial.

CONCLUSION

Based on the foregoing, the trial court erred in denying the motion for mistrial on the unlawful conduct charge. Moreover, the trial court erred in denying Mr. Wallace's motion for directed verdict and on that basis, he asks that this Court reverse his conviction.

Respectfully submitted,

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May 13, 2024.