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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
General Sessions Court
Heath P. Taylor, Circuit Court Judge

Case Nos.
2023-GS-32-02925A
2023-GS-32-02926
2023-GS-32-01737
Appellate Case No.
2024-001522

The State of South Carolina,

Respondent,

v.

Shanya McKnight,

Appellant.

AMENDED INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant, Shayna McKnight, was indicted by the Lexington County grand jury on charges of infliction of great bodily injury upon a child, and two counts of unlawful conduct towards a child. R. pp ___[Indictments]. She was tried before a jury on August 5th through 8th, 2024, in the Lexington County General Sessions Court, with Judge Heath Taylor presiding. Tr. p. 6. The jury returned a verdict of guilt with respect to all counts. Tr. pp. 525-6. At sentencing, Judge Taylor sentenced Appellant to 12 years on the count of infliction of great bodily injury upon a child, and five years each on the unlawful neglect counts to run concurrent. R.p, __[Sentencing sheets]; Tr. p. 544. This appeal follows.

STATEMENT OF THE FACTS

The charges stem from events that occurred on March 11, 2022, at Windsor Academy, which is a daycare facility in Lexington, South Carolina. Minor Child 1 and Minor Child 2 were two infants who attended Windsor Academy. Minor Child 1's left tibia was fractured on the day in question.

The mother of Minor Child 1, Erika Garcia, testified that on the morning of March 11, 2022, she dropped her daughter off at Windsor Academy as usual. Tr. p. 161. The Appellant, Shayna McKnight, was in charge of the infant classroom in which Minor Child 1 was placed. Tr. p. 163.

Ms. Garcia testified that at 7:45 am, when she dropped off Minor Child 1, she seemed "normal" and at that point in time she was able to crawl, stand up, and take steps while holding on to something. Tr. p. 164.

Around 10:30-11:00 a.m. that morning, Ms. Garcia received a call from Bess, the daycare director, telling her Minor Child 1 was not putting weight on her leg. Tr. p. 169. Ms. Garcia left work around 12:30 p.m. to pick up her daughter. When she got to the daycare, she witnessed her daughter crying, not drinking her bottle, and unable to move her arms and legs. Tr. pp. 171-172. Ms. Garcia took Minor Child 1 to Lexington Urgent Care where she received a cast on her left leg.

Dr. Elizabeth Renwick testified that she was working at Lexington Urgent Care on March 11, 2022. Tr. p. 290. Dr. Renwick's diagnosis of Minor Child 1 was

a displaced spiral fracture of the shaft of the left tibia. Tr. p. 293. Dr. Renwick testified that a spiral fracture is caused by "a twisting, rotational force." Tr. pp. 294-5.

Dr. Renwick applied a splint to the lower leg to stabilize the fracture after doing an x-ray. Minor Child 1 was transferred to Prisma Health to be evaluated by a pediatric specialist because there was suspicion of child abuse. Tr. pp. 295-6.

According to Dr. Renwick's testimony, Prisma Health applied a non-walking cast to keep the leg in the proper position. This cast is not designed to bear weight and is kept on for weeks while the bone heals. During the time the cast is on, Dr. Renwick testified that the child would not crawl normally or learn to walk. Tr. pp. 296-297.

The State played Dr. Renwick various videos showing different actions Appellant took with Minor Child 1. Dr. Renwick commented on these videos, including the way Minor Child 1 was lifted, as it put excessive force on the upper extremities potentially causing radial head subluxation, or bruising. Tr. p. 300.

Dr. Renwick testified regarding swaddling stating that "[s]waddling is when you wrap a blanket tightly around an infant to keep their arms in control, in one place." Tr. p. 302. Dr. Renwick testified that you only swaddle an infant until two months old; before they can turn over by themselves. Once they can roll over, there is a risk for suffocation or sudden infant death syndrome. Tr. p. 303.

Dr. Renwick also testified that too much bouncing can cause shaken baby syndrome, face swaddling is not medically safe, and that full body weight born by the ankles poses a risk for injury and fracture. Tr. pp. 303-306.

The State played Dr. Renwick videos of Minor Child 2, showing various actions taken by the Appellant with Minor Child 2, including swaddling him and placing him on his stomach to sleep and Appellant lifting him by one arm. Dr. Renwick testified that children less than 12 months should be placed on their backs to sleep, and not swaddled and placed on their stomachs, as they would be unable to lift up or roll over if they needed air. She testified that to place a child on its stomach to sleep was considered "unsafe sleep." She further testified that it was too much force on a child to lift him by the arms. Tr. pp. 314-317.

On cross-examination, Dr. Renwick testified that a non-displaced fracture does not have to be reset, and the average cast time is six to eight weeks. Tr. p. 322. Dr. Renwick testified that Minor Child 1 healed appropriately, and her treatment was not unusual. She further testified that she did not see any injuries to either child caused by swaddling, and that the guidelines regarding when to swaddle are "general." Tr. pp. 324-326.

Dr. Renwick agreed with Appellant that once a child was walking this type of fracture was common. After watching a video in which another daycare worker changed Minor Child 1's diaper, Dr. Renwick admitted that it was possible that the

worker's abdomen was pressing on the leg, and that the leg could turn. She further admitted that the fracture could have become more displaced by the actions of the other daycare worker. Tr. pp. 330-335.

Appellant raised the issue of Minor Child 1 being lowered into the crib by one leg with Dr. Renwick. She admitted that she did not know where Appellant's right hand was, and if she was holding the baby with two hands, one on the leg and the other underneath the chest, it would change her opinion about the leg and the manner in which it was fractured. Tr. pp. 336-339.

Dr. Renwick also admitted that she does not know when the fracture happened. Just that there was a spiral fracture. Tr. pp. 338-339.

United States Secret Service Agent Michael Phipps testified on behalf of the State as an expert in the field of digital evidence and digital evidence extractions. Phipps examined the DVR surveillance system seized from Windsor Academy. Tr. pp. 193-286.

The State showed video surveillance through Agent Phipps regarding the various activities that day at the daycare. Specifically, the State focused on the Appellant and her interactions with Minor Child 1. Tr. pp. 193-255.

The State played video showing Minor Child 1 being picked up by one arm by Appellant, Minor Child 1's head being pushed down by Appellant, Appellant face

swaddling Minor Child 1, and lowering Minor Child 1 into the crib by her ankles. Tr. pp. 212-221.

Through cross-examination, Agent Phipps testified the Appellant did use two hands when putting Minor Child 1 into the crib. "I'm saying the left hand was supporting the child in some way, the upper body, and then the right hand was supporting the leg." Tr. p. 277. Agent Phipps also states Appellant placed Minor Child 1 in the crib; she did not drop her into the crib. Tr. p. 277. The statements of Agent Phipps, acknowledging that Appellant did use two hands to lower the child into the crib, call Dr. Renwick's testimony into question, as she testified that if Appellant had used two hands, her opinion would change regarding the leg and the manner in which it was fractured.

Donna Bonner-Reed testified on behalf of the State. Tr. pp. 345-371. Ms. Bonner-Reed was also working in the infant room at Windsor Academy on the day in question. Tr. p. 345. She testified that she "heard Shayna say, I heard a pop. Did you hear a pop?" While Ms. Bonner-Reed and Appellant were looking at the child's leg, she stated further "I flipped her over by her leg. I heard a pop." Tr. pp. 351-352.

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT THE AMENDMENT TO THE INDICTMENT FOR INFLICTION OF GREAT BODILY INJURY UPON A CHILD DID NOT CHANGE THE NATURE OF THE OFFENSE AND IN FAILING TO GRANT THE APPELLANT A CONTINUANCE.

On July 20, 2023, the State presented the case before a Grand Jury, which indicted Shayna McKnight for the charges of Infliction of Great Bodily Injury upon a Child, and Unlawful Neglect of a Child for Minor Child 2. On June 3, 2024, the State presented the case before a Grand Jury, which indicted the appellant for the charge of Unlawful Neglect of a Child for Minor Child 1. The indictment for Infliction of Great Bodily Injury upon a Child stated:

> Shayna Nicole McKnight did in Lexington County, South Caolina on or upon March 11th, 2022, **knowingly, willfully**, and unlawfully inflict great bodily injury upon a child resulting in bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement or protracted loss or impairment or impairment of function of any bodily member or organ, to-wit: Did commit an act of physical assault, force or abuse upon [Minor Child 1], being a child, an infant less than one year of age, resulting in the fracture of the left leg (tibula) and resulting in protracted impairment of the bodily member as a result of aforesaid injury in violation of Code 16-3-95(A) of the Code of Laws of South Carolina, 1976 amended.

R. pp. ___[Indictments], Tr. pp. 118-119. (Emphasis added).

The morning of August 5, 2024, the State reconvened the Grand Jury to amend the indictment to remove the words "knowingly" and "willfully." R. pp. ___[Amended Indictment]. The Appellant objected to the removal of this language,

stating that it caused a surprise, as the change to the indictment removed the issue of intent from the charge. Tr. p. 119. The objection was made by trial counsel prior to the jury being sworn, which is procedurally proper. Tr. pp. 118-121, S.C. Code §17-19-90; *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005).

The Court permitted the amendment pursuant to S.C. Code 17-19-100, which permits an amendment to an indictment if it does not change the nature of the offense. The Court stated, "I don't think deleting willfully changes the nature of the offense." Tr. p. 121.

The Supreme Court of South Carolina issued the opinion in *State v. Dent* on July 16, 2025. The following is the very first sentence in the opinion:

> Indictments matter. In criminal trials where the weight of the government comes to bear against an individual citizen, indictments are a foundational part of that citizen's constitutional right to due process; they put the citizen on formal notice of the charges against him **and the theories the government intends to present at trial to show the citizen violated the law, thereby allowing the citizen to prepare a defense.** (Emphasis added).

Opinion No. 28289, Sup. Ct. Filed July 16, 2025.

The indictment is a notice document which puts "the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgement to pronounce if the defendant is convicted." *State v. Means*, 383 S.C. 640, 646, 681 S.E.2d 1, 6-7 (2009), *quoting Evans v. State*,

363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). The indictment is also formal notice of the theories the government intends to present at trial, so the defendant can prepare a defense, as referenced in *Dent*.

An indictment may be amended if it does not change the nature of the offense; if the amended change is a lesser included offense of the original crime charged in the indictment; or if the defendant waives presentment to a grand jury and pleads guilty. *Means*, 383 S.C. at 646, 681 S.E.2d at 7, *see State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993). Courts have historically permitted amendments under §17-19-100 to correct a range of errors of form, including inserting the omitted name of a law enforcement agent serving as a witness (*State v. Batson*, 261 S.C. 128, 198 S.E.2d 517 (1973)); swapping out the named owner of stolen property with the name of the actual owner (*State v. Sweat*, 221 S.C. 270, 70 S.E.2d 234 (1952)); correcting the name of the listed victim (*State v. Jones*, 211 S.C. 319, 45 S.E.2d 29 (1947), *State v. McGill*, 191 S.C. 1, 3 S.E.2d 257 (1939)); and changing defective times and dates listed in the indictments (*State v. Richey*, 88 S.C. 239, 70 S.E. 729 (1911), *State v. May*, 45 S.C. 509, 23 S.E. 513 (1896), *Carrier v. State*, 895 S.E.2d 679 (S.C. 2023)).

Courts have not permitted amendments to the indictment when the amendment changes the nature of the offense, including reversing a conviction for possession with intent to distribute marijuana within the proximity of a school

because substituting a school for the church named in the original indictment was not a scrivener's error, but changed the nature of the offense charged (*State v. Lynch*, 344 S.C. 635, 641, 545 S.E.2d 511, 514 (2001); reversing conviction where trial court allowed aggravating circumstances on a first-degree burglary indictment to be changed from entering at night to causing physical injury (*State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), *Clair v. State*, 324 S.C. 144, 478 S.E.2d 54 (1996)); and affirming grant of post-conviction relief where defendant was indicted for trafficking in cocaine weighing more than 100 grams but less than 200 grams, and defense counsel consented to an amendment to an amount more than 200 grams (*Hopkins v. State*, 317 S.C. 7, 10, 451 S.E.2d 389 (1994)).

The sufficiency of an indictment is examined objectively, from a reasonable person standard, and not from the subjective viewpoint of a particular defendant. In South Carolina, an indictment "shall be deemed and judge sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided." S.C. Code Ann. § 17-19-20; *Means*, 367 S.C. at 383-384, 626 S.E.2d at 354.

"In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all of the surrounding circumstances…" *Id.*, *quoting Gentry*, 363 S.C. at 103, 610 S.E.2d at 500). "All the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment." *Id., see State v. Gunn*, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993); *State v. Evans*, 216 S.C. 328, 57 S.E.2d 756 (1950).

In the case at bar, removing the words "knowingly" and "willfully" from the indictment changes the elements of the offense. It eliminates intent on the part of the Appellant, which the State would have to prove beyond a reasonable doubt. The Appellant and her trial counsel prepared the case for trial based upon the original indictment, which was brought before a Grand Jury almost a year prior to the trial, which stated that Appellant did "…knowingly, willfully, and unlawfully inflict great bodily injury upon a child resulting in bodily injury…." When the State removed the intent language, the nature of the offense changed from an offense in which the State had to prove intent to an offense in which the State did not have to prove intent on the part of the Appellant in order for her to be found guilty.

The addition of the words knowingly and willfully into the language of the indictment does not charge the crime substantially in the language of the statute, as is required by S.C. Code Ann. § 17-19-20 and *Means*. 367 S.C. at 383-384, 626

S.E.2d at 354. The language of the statute, S.C. Code Ann. §16-3-95, does not include the words knowingly and willfully, and the addition of these words into the indictment was not just a superfluous error.

By including the words knowingly and willfully, the State introduced an intent element into the indictment. When the Court allowed the State to amend the indictment to remove that language, the Court changed the elements of the offense that the Appellant had been put on notice of, which was a critical change.

The original indictment facially charged a complete offense; however, when the State amended it the morning before trial and then presented evidence to convict the Appellant under a different theory than originally alleged in the indictment, the conviction of Appellant violated her due process rights.

The State used this information to its advantage, which prejudiced the Appellant. The State argued in closing:

> But first and foremost, let me make clear that under the law of this state, she doesn't have to premeditate or plan out I'm going to break Minor Child 1's leg because I'm tired of Minor Child 1 crying and I'm just going to break her leg. That is not the law, that she has to plan it that she has to premeditate it, or anything else.
>
> Under the law, intent is inferred from the circumstances of her actions. Whether or not she intended that to be the final result, whether or not she intended to use that much force is not the law. The law is did she carry out acts of aggression knowing as she carried out these acts of aggression what she's doing.

Tr. p. 480.

This charge shows the importance of the intent language, and how the Appellant was severely prejudiced by the removal of the words knowingly and willfully from her indictment on the morning of her trial. The State no longer had to prove she meant to break the leg.

In *State v. Ledford*, the defendant was charged with infliction of great bodily injury upon a child. 422 S.C. 244, 810 S.E.2d 868 (2018). The indictment stated Ledford "willfully and unlawfully inflict[ed] great bodily injury upon a child." *Id.*, 422 S.C. at 247, 810 S.E.2d at 869. After the conclusion of the evidence, Ledford requested that the trial court use the following jury charge:

> It is unlawful to inflict great bodily injury upon a child. To violate this statute the [S]tate is required to prove that [Ledford] acted wil[l]fully. To act wil[l]fully, the [S]tate is required to prove that [Ledford] knew his act would inflict great bodily injury upon a child. It is not sufficient that the [S]tate prove that he acted negligently, grossly negligent[ly] or reckless[ly] in his action. Such actions are not wil[l]ful as alleged in the indictment.

Id.

Ledford requested that the term "willfully" be included in the jury charge because the indictment alleged he "willfully" inflicted great bodily harm upon a child. The State objected, but the trial court allowed the jury charge with the exception of the last sentence. The State filed an immediate notice of appeal arguing that the inclusion of the jury charge heightened its burden of proof. The Supreme Court ultimately ruled that it was not an immediately appealable issue. *Id*.

The trial court in *Ledford* allowed the defendant to include a jury charge instructing that the jurors must find he acted with intent in committing the crime, even though the statute does not require intent. The court allowed him to do so because the indictment alleged he acted willfully, and the indictment is the document which puts the defendant on notice regarding the charges that he or she has to answer.

If the language in the indictment differs from the language in the statute under which the defendant is being charged, then the indictment is insufficient as it does not clearly advise the defendant of the elements of the offense, nor does it allow preparation of a viable defense. As the Supreme Court opined in *Dent,* "[t]he law does not mandate perfection in the drafting of indictments, but it does require fair notice of the charge against the accused." *State v. Dent*, Sup. Ct. (Opinion No. 28289), p. 11. Here, the indictment contained intent elements that were not part of the statute itself. Using the indictment as the notice document, the Appellant prepared her case based upon the belief that in order for a conviction on the great bodily injury charge, she had to have knowingly and willfully inflicted the great bodily injury on the child. When the intent language was removed the morning of trial, the Appellant was rightfully surprised and not only objected to the amended indictment but also requested a continuance so that counsel would have time to re-prepare the case based on the removal of the intent language. The trial court denied counsel's request, which was prejudicial to the Appellant and her preparation of her

case, and violated her right to due process under the United States and South Carolina Constitutions. T. p. 118-121.

II. THE TRIAL COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT AS THE STATE FAILED TO PROVE ALL THE ELEMENTS OF INFLICTION OF GREAT BODILY INJURY UPON A CHILD.

In order to obtain a conviction for the crime of infliction of great bodily injury upon a child, the State must prove the elements of the charge beyond a reasonable doubt.

S.C. Code Ann. § 16-3-95(A) states "[I]t is unlawful to inflict great bodily injury upon a child.... Subsection (C) defines great bodily injury as "bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

Protracted means lasting a long time or made to last longer than necessary; drawn out or lengthened in time, extended in duration. *Cambridge Dictionary*, https://dictionary.cambridge.org/dictionary/english/protracted, *Dictionary.com*, https://www.dictionary.com/browse/protracted.

Appellant moved for a directed verdict arguing that the State failed to cover the necessary elements of count one – the State failed to show that the injury suffered by the child created a substantial risk of death, caused serious or permanent

disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Tr. pp. 459-60.

The State presented no evidence regarding the tibula fracture that offered the injury created a substantial risk of death or caused serious or permanent disfigurement. The evidence that the State did offer in regard to the injury failed to show a protracted loss or impairment of the function of the leg, as the fracture was non-displaced and the bone did not have to be reset. Additionally, the defense argued that it was a normal 6-week cast, and not an injury rising to the level of a twenty-year sentence. Tr. p. 461.

III. THE TRIAL COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT AS TO THE INDICTMENT FOR UNLAWFUL CONDUCT AGAINST A CHILD – MINOR CHILD 2

The indictment alleges that Appellant "did place a minor child at unreasonable risk of harm, being Minor Child 2, an infant less than one year of age, by unsafe sleeping practices and/or forced restraint, immobility, and leaving the child unattended for an extended period of time." R.____p. [Indictment].

In South Carolina, a defendant must be convicted of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict. *State v. Dent*, Sup. Ct. (Opinion No. 28289), p. 6, *citing Bailey v. State,* 392 S.C. 422, 433-34, 709 S.E.2d 671, 677 (2011).

Further, the allegations presented by the State in reference to Appellant's unlawful conduct to Minor Child 2 include swaddling him and placing him on his stomach to sleep and lifting him up by the arm. Tr. pp. 313-317. The indictment does not charge that Appellant improperly lifted him up by the arm. R.___p. [Indictment].

Appellant moved for a directed verdict on both indictments charging unlawful conduct towards a child stating the State failed to meet its burden of proving the Appellant placed a child at an unreasonable risk of harm affecting the child's life, physical or mental health or safety, and that she has not done any unlawful or malicious bodily harm to either child. Tr. p. 461-462.

The State responded that the statute is broad and cited witness Dr. Renwick who testified regarding bruising to Minor Child 1 and that various actions Appellant took with Minor Child 1 were consistent with bruising. The State further responded regarding the "face swaddling" of Minor Child 1. The State at no time raised any argument to show the evidence presented placed Minor Child 2 in an unreasonable risk of harm. Tr. pp. 462-464. The trial judge denied Appellant's directed verdict motion at the close of the State's case. Tr. pp. 461-64. After the verdict was read, Appellant was given ten days to file a written motion. Tr. pp. 544-45. A written motion was filed on August 19, 2024. R. pp. ___ [Motion for Acquittal or in the Alternative Motion for a New Trial]. The motion was denied on September 9, 2024.

R. pp. ___ [Order Denying Motion for Acquittal or in the Alternative Motion for a New Trial].

The State failed to present circumstantial evidence of Appellant's guilt on this charge. The South Carolina Supreme Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *see State v. Rothschild*, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2000). Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50.

Every circumstance relied upon by the State must be proven beyond a reasonable doubt and point conclusively to the guilty of the accused to the exclusion of every other reasonable hypothesis. *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) *abrogated by State v. Cherry*, 361 S.C. 588, 595-606, 606 S.E.2d 475, 478-82 (2004).

The inclusion of evidence regarding lifting Minor Child 2 by his arm was a material variance from the indictment, and a directed verdict should have been granted.

Further, the conduct alleged towards Minor Child 2 does not rise to a criminal level, nor does it meet the substantial circumstantial evidence standard even if it is

considered criminal. The solicitor cited no authority for the prospect that swaddling a child and laying them on their stomach, and/or lifting a child by the arm are criminal acts in this State. Further, there was no injury to the child, nor any testimony that these acts placed the child at unreasonable risk of harm. The doctor's testimony that these acts COULD cause injury is not persuasive, as many normal actions (driving a car, walking down the street, etc.) could cause injury.

IV. THE TRIAL COURT ERRED IN CHARGING THE JURY ON PROXIMATE CAUSE

The State requested a charge on proximate cause, to which the Appellant objected as she was the sole person charged and the charge itself is very confusing to a jury. T. pp. 474-77. The Court committed reversible error in giving the proximate cause charge.

The Court charged the following:

> When a person inflicts an injury on another person, you must be convinced beyond a reasonable doubt that the Defendant's actions were the proximate cause of the victim's injuries. Proximate cause is the direct cause. It is the immediate cause. It's that cause without injury to the victim would not have resulted. There must be a chain of causation from the Defendant's actions until the time of victim's injury.
>
> Proximate cause does not necessarily mean that is [sic] occurred immediately prior to the injury. There may be more than one proximate cause. The acts of two or more persons may combine together to be a proximate cause of the injury of a person. The Defendant's act may be regarded as the proximate cause if it is a contributing cause of the injury of the victim. The fact that other causes also contribute to the injury of the victim does not relieve the Defendant from responsibility. The

> Defendant's act need not be the sole cause of the injury, but must be a proximate cause contributing to the injury. The negligence on the part of someone else would not relieve the Defendant from criminal responsibility if the actions of the Defendant were the proximate cause of the injury.

Tr. pp. 520-21.

Under the theory of proximate cause, the law recognizes that "the acts of two or more persons may combine and concur together as an efficient or proximate cause of the *death* of a person." *State v. Dantonio*, 376 S.C. 594, 608-9, 658 S.E.2d 337, 345 (2008), *quoting State v. Burton*, 302 S.C. 494, 496, 397 S.E.2d 90, 91 (1990). (Emphasis added).

A trial court is required to charge only the current and correct law of South Carolina. *Dantonio*, 376 S.C. at 607-8, 658 S.E.2d, at 344; *see also State v. Rayfield*, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004); *State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005); *State v. Brown*, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). A jury charge is deemed correct when the charge, read as a whole, adequately covers the applicable law. *Keaton v. Greenville Hosp. Sys.*, 334 S.C. 488, 495-96, 514 S.E.2d 570, 574 (1999); *see also Rayfield*, 369 S.C. at 119, 631 S.E.2d at 251; *Sheppard*, 357 S.C. at 665, 594 S.E.2d at 473; *State v. Patterson*, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006), *cert. denied* May 3, 2007; *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 462 (Ct. App. 2003).

There is no precedent to change the language of the charge to substitute the word death for injury. By changing the language of the charge, the Court lowered the State's burden of proof. It no longer had to prove that Appellant was guilty beyond a reasonable doubt, but only had to prove that Appellant in some way contributed to the cause of the injury, which is appropriate in a tort context, but not in a criminal matter.

Proximate cause in a criminal matter is used in homicide cases, where a defendant's actions directly lead to a victim's death. The prosecution must prove that the defendant's actions were the proximate (or direct) cause of the death.

Courts rely on the substantial factor test, as well as the "but for" text – but in a civil, or tort, setting to establish proximate cause. There is no precedent for a criminal court relying on either of these tests, and in a criminal setting the State must prove the defendant's guilt beyond a reasonable doubt, not by the percentage to which they contributed to the injury.

The case law regarding proximate cause in a criminal court all involves homicide, and whether the defendant's actions to the victim were the proximate cause of victim's eventual death. *See State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999); *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994); *State v. Brown*, 205 S.C. 514, 32 S.E.2d 825 (1945); *State v. Dantonio*, 376 S.C. 594, 658 S.E.2d 337 (2008).

V. THE CUMULATIVE EFFECT OF THE TRIAL COURT'S ERRORS WAS SO PREJUDICIAL THAT THE APPELLANT WAS DENIED A FAIR TRIAL

If this Court finds error in any of the issues addressed above but further finds no error sufficiently prejudicial, standing alone, to warrant reversal, it should review the cumulative effect of these errors and find they were so prejudicial as to deny Appellant the fairness required by due process. *See* U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct. App. 2000) (finding cumulative effect of improper comments in closing argument and erroneous exclusion of evidence warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error with respect to a jury charge); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995) (reversing conviction based on combined effect of court's limitation of cross-examination and court's improper comments interjected during the trial).

The cumulative error doctrine requires reversal when multiple errors, which may be found harmless in isolation, in combination prevent the Appellant from receiving a fair trial and affect the outcome of her trial. These errors viewed together so tainted these proceedings that they denied Appellant a fair trial. The Court should reverse and grant Appellant a new trial.

CONCLUSION

For all the reasons set out above, this Court should reverse Appellant's convictions and remand for a new trial.

Respectfully submitted,

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This 7th day of August, 2025.

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Heath P. Taylor, Circuit Court Judge

Case No. 2024-001522

State of South Carolina,

Respondent,

v.

Shayna Nicole McKnight,

Appellant.

PROOF OF SERVICE

I certify that I have served the Amended Initial Brief of Appellant on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on August 7, 2025, addressed to Respondent's attorney of record, Mark R. Farthing, Post Office Box 11549, Columbia, South Carolina, 29211.

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