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Feb 12 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Cherokee County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2024-002185

THE STATE,

RESPONDENT

v.

DAVID EUGENE BAYNARD

APPELLANT

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENTS OF ISSUES ON APPEAL

1. Did the trial court err in failing to grant a directed verdict that appellant "inflicted" great bodily injury under S.C. Code Ann. §16-3-95 when the state failed to produce any evidence of an affirmative act by appellant, rather than severe neglect that caused the bodily injury admittedly suffered by H.B.?

2. Whether the trial court erred in failing to grant a directed verdict on the charge of murder when the state voluntarily assumed the burden of establishing appellant's specific intent to murder by alleging appellant willfully murdered H.B. and then failed to produce any evidence that appellant acted willfully and with malice aforethought in causing H.B. death?

RESPONDENTS' COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the court err in not granting a directed verdict on behalf of the Appellant after the Appellant inflicted great bodily injury because the Appellant allowed the victim to lay in her urine and feces for over two months directly causing a substantial risk of death?
2. Did the trial court err in the denial of a directed verdict on behalf of the Appellant when the evidence revealed that the Appellant had a total disregard for the human life of the victim by allowing her to lie in her urine and feces for over two months, thereby, making him guilty of murder? Is the fact that the indictment states "willful" a factual element and whether or not it was proven by the State should be determined by the jury and not the trial judge?

STATEMENT OF THE CASE

On May 2, 2022, David Eugene Baynard (Appellant) was indicted by the Cherokee County Grand Jury for the offense of murder. (R. p. 478-479). Later on, March 25, 2024, Appellant was indicted for the crimes of unlawful neglect towards a child (R. p. 474-475) and child abuse with great bodily injury (R. p. 476-477).

On October 28, 2024, Appellant appeared before the Honorable R. Keith Kelly for a trial for the above referenced offenses. He was tried simultaneously along with his wife Bobby Jo Baynard (Bobby Jo) and his son Edward Baynard (Edward). Appellant was represented by his counsel Tracy and Russ Racine. Bobby Jo was represented by Robin File, and Edward was represented by Eva Waszak, Michael Morin, and Abigail Gowdy. Representing the State of South Carolina was Seventh Circuit Solicitor Barry Barnette and Assistant Solicitor Jennifer Jordan.

Once the State rested their case Appellant's attorneys moved for a directed verdict for murder and child abuse with great bodily injury. After hearing arguments by both sides, the trial judge denied the motion for a directed verdict. The trial court expressed that it is not the court's job to determine the weight of the evidence only its existence and the court must view the evidence in the light most favorable to the non-moving party. (R. p. 382 l. 16-18)

After four days of testimony a jury of his peers found Appellant guilty of murder (R. p. 454 l. 21-24), unlawful conduct toward a child (R. p. 454 l. 25 – p. 455 l. 3), and infliction of great bodily injury to a child. (R. p. 455 l. 5-8). Following the reading of the verdicts, Appellant appeared before the trial judge for sentencing. For the offense of murder, the trial judge sentenced Appellant to a period of incarceration for the remainder of his natural life. (R. p. 470 l. 17-19). For great bodily injury to a child Appellant was sentenced to a twenty-year period of incarceration to be

served consecutively. (R. p. 470 l. 20-21), and for the unlawful conduct to a child a ten-year period of incarceration also to be served consecutively. (R. p. 470 l. 22-23).

While serving his sentence, Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The initial brief from the Respondent follows.

STATEMENT OF FACTS

On April 11, 2022, Appellant brought the victim into Spartanburg Regional Hospital Emergency Room. The victim was his 14-year-old daughter who was suffering from cerebral palsy, chronic lung disease and seizure disorder. (R. p. 313 l. 6-9). The victim was nonverbal and totally dependent on care; she also had a feeding tube because she could not eat orally. (R. p. 313 l. 13-16). When Appellant brought her to nurse Amy Vinesett, the victim had blood on her back and was unresponsive. (R. p. 71 l. 7-11). Nurse Vinesett touched the victim's hand, and it was cold to the touch, her skin was also blue and gray. (R. p. 71 l. 12-15) At that time Nurse Vinesett thought the victim was already deceased. (R. p. 71 l. 22-23).

They brought the victim into the emergency room where she was examined by emergency room doctor Ryan Rider. At that time the victim was listless and lifeless. Dr. Rider tried methods of CPR to jump start her heart. (R. p. 81 l. 19-22). Dr. Rider observed that the victim's lower extremities had almost a total lack of skin, there was only red flesh. (R. p. 82 l. 10-12). There was also bruising all over her body. (R. p. 83 l. 1-2). Dr. Rider also determined that the victim was deceased when she arrived at the emergency room. (R. p. 83 l. 10-11).

During the trial Deputy Brian Burrell Crime Scene Investigator for the Cherokee County Sheriff's Department testified. Deputy Burrell obtained a search warrant for Appellant's residence. At that time Deputy Burrell, along with the Cherokee County Coroner Dennis Fowler and other Deputies, searched Appellant's residence and took photographs. They testified that the house was

in an unlivable condition. Both Coroner Fowler and Detective Burrell testified to the condition of the house when they arrived. Deputy Burrell stated that when they arrived there was the smell of dogs and trash. (R. p. 139 l. 2-3). At one time they thought a dog ran out in front of the house, but it was a large rat. (R. p. 139 l. 9-12). When they got into the house, they could smell an ammonia-like smell of old dog and cat urine, as well as dog feces. (R. p. 139 l. 22-24). Trash was knee deep in some areas and waist deep in other portions of the house. (R. p. 141 l. 12-13). There were insects jumping on them to the point they had to go back to the car and get Tyvek suits. (R. p. 141 l. 17-24).

When they got to the master bedroom, they found four to five cats, most with only one eye. All these cats were in poor condition. This is where they found the strongest smell of ammonia in the entire house. (R. p. 147 l. 15-24). In the bedroom there was a crib with “puppy pads,” pads used to potty train puppies. There were layers and layers of these pads, with a different kind of smell. These had the smell of human feces and urine. (R. p. 151 l. 16-23). The crib also had oxygen tubes and IV tubes covered with bugs and roaches. (R. p. 154 l. 2-5). Deputies also found out that Appellant was the homeowner. (R. p. 159 l. 11-12).

During the trial forensic pathologist Dr. Kelly Rose testified. Prior to her testimony all parties stipulated to Dr. Rose’s qualifications, and she was found qualified as an expert in the field of forensic pathology (R. p. 242 l. 5-8). Dr. Rose performed the autopsy on the victim. (R. p. 242 l. 21-23).

During her testimony Dr. Rose stated that the victim looked like she was dropped in acid from her buttock to her toes. The victim’s skin was raw, and red there were areas that looked like her skin had almost appeared to have dissolved. (R. p. 245 l. 2-6). Dr. Rose stated that urine and feces are very irritating to the skin. She determined that you get these kinds of marks when

someone is exposed to urine and feces chronically. (R. p. 245 l. 7-11). The victim's teeth were in terrible shape, and the victim could not take care of them herself. Her teeth were rotten. (R. p. 245 l. 14-17). The victim had so much earwax that it was doubtful that the victim had heard anything for a long time. (R. p. 245 l. 18-19). She found cuts in the victim's scalp that appeared to have been made with scissors. There was no vital reaction to those cuts, so the victim had been cut after she died. (R. p. 246 l. 4-7).

Dr. Rose testified that the victim's bottom was red and swollen. She had horrific pneumonia in both lungs and she was obviously septic. (R. p. 246 l. 14-16). Bacteria had gotten into the victim's blood and settled into her lungs, and she also had a urinary tract infection. (R. p. 246 l. 16-18). Dr. Rose determined that the victim had been sitting around in her urine and feces for so long that it had gained access to her bladder, then her bloodstream and settled into her lungs. (R. p. 246 l. 18-21).

Dr. Rose thought that the victim had not bathed or had a change of clothes or bedding replaced for a very long time. (R. p. 250 l. 11-13). In her opinion the conditions were going on for at least eight weeks. (R. p. 285 l. 21-24). The number of open wounds is what led to sepsis. (Tr. p. 304 l. 10-13). Dr. Rose testified that she had done numerous autopsies on elderly people that sat around in their urine and feces, but she had never seen it to this degree. (R. p. 252 l. 5-8).

Dr. Rose also found signs of roach activity which revealed that the neglect and filth and abuse lasted for weeks. (R. p. 253 l. 21 – p. 254 l. 5). The victim had a urinary tract infection that led to sepsis. (R. p. 255 l. 7-10).

Dr. Rose thought that the victim was in pain and suffering for weeks before she died. (R. p. 285 l. 18-20). Dr. Rose found that the victim sat in her own urine and feces with open sores on her

legs and the bacteria gained access to her blood, traveled to her lungs, and caused the pneumonia which sat in her lungs and developed there for weeks. (R. p. 286 l. 21-25).

In Dr. Rose's opinion this surpassed neglect. This is what you would call malice or a very hardened heart to let the victim suffer like that. (R. p. 287 l. 24 – p. 288 l. 2). Dr. Rose thought that it would have been better for the victim if they just shot her in head. Because the victim suffered tremendously before she died. (R. p. 288 l. 9-11). In her opinion this was a show of wantonness or reckless disregard for a human life, and she testified that it would be putting it mildly. (R. p. 288 l. 19-22).

In Dr. Rose's opinion the victim's death was caused by a complication of acute chronic medical neglect. The victim was allowed to suffer which led to her death. And all of this could have been prevented. The manner of death was homicide, the cause of death was murder. (R. p. 288 l. 24 – p. 289 l. 8).

In Dr. Rose's opinion the Appellant should have been able to tell that the victim was acutely sick and that the victim was terminally sick. (R. p. 292 l. 6-8). Appellant should have been able to tell when the victim had pneumonia, because it is a very grave illness. (R. p. 292 l. 11-12).

- 1. The court did not err in not granting a directed verdict that the Appellant inflicted great bodily injury because the Appellant allowed the victim to lay in her urine and feces for over two months directly causing a substantial risk of death, serious or permanent disfigurement, or a protracted loss of impairment of the function of any bodily member or organ.**

Relevant Facts

At the conclusion of the state's case the Appellant made a motion for a directed verdict regarding the charge of infliction or allowing infliction of great bodily injury upon a child. Their argument was that the State failed to prove that the Appellant inflicted any bodily harm on the victim.

At the conclusion of the motion the trial court took a brief recess to research this matter and consider the arguments from both sides. At the conclusion of this recess the trial court made the following determination. For the infliction, the trial court stated that the definition he found was, “to force someone to experience something very unpleasant or to cause something very unpleasant to be endured and also to cause something unpleasant to be endured.” (R. p. 382 l. 11-14). The trial judge finally decided that the court does not weigh the evidence, that is for the jury to decide. (R. p. 382 l. 16-17). The trial court followed the law, that the court must view the evidence in the light most favorable to the non-moving party. (R. p. 382 l. 17-18). Because of this the trial judge decided to deny the motion for a directed verdict. (R. p. 382 l. 19-21).

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When ruling on a motion for a directed verdict the trial court is concerned with the existence or nonexistence of evidence not its weight. *State v. Morgan*, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). On appeal from the trial court of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. *State v. Lindsey*, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court, “views the evidence and reasonable inferences in the light most favorable to the state.” *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim*, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). The trial court’s decision will not be disturbed on appeal, absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court’s order is

controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016).

Discussion

In his argument for a directed verdict, counsel for the Appellant argued that there are three elements to Section 16-3-95 of the South Carolina Code of laws. The Appellant argued that the three elements are first, inflicting, second, great bodily injury and the third, is on a child. (R. p. 348 l. 3-6) The Appellant stated that they concede the second and third elements, however, they have an issue with the first element and that is inflicting. (R. p. 348 l. 7-10). The Respondent argues that the trial court made the correct decision by denying a directed verdict. There was sufficient evidence that revealed that care was actively withheld and there was infliction of a great bodily injury.

Websters dictionary defines infliction as the act of inflicting. And inflicting is defined as to cause (something unpleasant) to be endured. "Inflict" *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary>. Accessed 14 Dec. 2025. There was sufficient evidence that revealed the Appellant was living in the house while care was not given to the victim for months. There is no evidence that he did not know she was incapacitated. There was evidence that Appellant was the one that took her to the hospital after she was deceased. Appellant's refusal to do anything to assist, call 911, or take the victim for care or aid should be considered an intentional infliction of great bodily injury to a child.

There was testimony that the Baynards got their son Edward to be the victim's personal care aid, and with that, Edward would be paid a salary by Axxcess Home Care. (R. p. 165 l. 4-13; p. 182 l. 19 – p. 185 l. 7). Even though they were given a list of providers they still decided to

choose their own son. (R. p. 208 l. 10-13). During this time, Edward was paid twenty-thousand seven hundred eighty-eight dollars (\$20, 788.00) for caregiving he was supposed to be giving to the victim. (R. p. 301 l. 20-25). The entire family accepted that money and the Appellant never notified Axxess Home Care that the victim was not being properly taken care of. Appellant had to know that Edward was being paid by Axxess because he took Edward there after the victim died to get his last paycheck. (R. p. 188 l. 9). However, when the child was dying, Appellant did nothing to save her, that is the infliction of great bodily injury by not doing anything to save this child.

During the testimony of the emergency room nurse, Amy Vinesett, she testified that while talking to Appellant, he showed no emotion towards his dead child. (R. p. 73 l. 1-2). During the testimony of Dr. Rose, she stated that the victim died from either a urinary tract infection or pneumonia due to having numerous infections from lying in her urine and feces for over two months. The victim's death could have been prevented if the Appellant had just made an effort to keep her clean and when she was sick, taken her to the doctor. During her testimony Dr. Rose explained the victim's death was from complication of acute chronic medical neglect. The victim was also allowed to suffer prior to her death, all of which could have been prevented. (R. p. 288 l. 24 – p. 289 l. 4).

The inaction by the Appellant in the lack of care he failed to give to his daughter by having allowed her to lay in her feces and urine until she died was the infliction that this statute allows.

The ruling by the trial judge was correct. In a directed verdict motion the court cannot be concerned with the weight of evidence, they only must be concerned with its existence. The South Carolina rules of Criminal Procedure specifically state:

On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove

the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

Rule 19, SCRCrimP.

If evidence of guilt exists, whether it is direct or circumstantial and that evidence is properly presented and allowed into evidence by the trial court, the determination of the jury as to innocence or guilt should not be taken away. The trial court made the correct decision in denying Appellant a directed verdict on this matter since there was sufficient evidence for the jury to make the final determination.

The trial judge is not responsible for making a decision as to the weight of evidence that was presented, the jury is to judge the questions of fact not the court. So, the decision of the trial judge in denying Appellant his motion for directed verdict was not done in error. This decision should be upheld.

- 2. The trial court did not err in the denial of a directed verdict on behalf of the Appellant when the evidence revealed that the Appellant had a total disregard for the human life of the victim by allowing her to lie in her urine and feces for over two months thereby making him guilty of murder. The fact the indictment states willful is a factual element and whether or not it was proven by the State should be determined by the jury and not the court.**

Relevant Facts

At the end of the State's case, Appellant's counsel moved for a directed verdict for the offense of murder. Appellant argued that since the indictment stated that the act should be willful the State must prove that there was a willful intent to kill. The Appellant argued that this case was more like homicide by child abuse than murder, further, the State did not present any evidence that Appellant intentionally with specific intent caused the death of the victim.

The State argued correctly that murder is a general intent crime. The Appellant willfully allowed the victim to deteriorate to the point of death. There was plenty of evidence revealing general intent. (R. p. 364 l. 11-13). At the end of the arguments the trial court decided:

“As to the murder charge, this court, again, does not weigh the evidence but views the evidence in the light most favorable to the state, which is the nonmoving party, and this court finds that there is sufficient evidence and denies...the directed verdict motion.” (R. p. 382 l. 25 – p. 383 l. 5).

During jury instructions the trial court defined implied malice as, “is when circumstances demonstrate a wanton or reckless disregard for a human life.” (R. p. 413 l. 8-9).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When ruling on a motion for a directed verdict the trial court is concerned with the existence or nonexistence of evidence not its weight. *Morgan*, 352 S.C. at 364, 574 S.E.2d at 205 (Ct. App. 2002). On appeal from the trial court of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. *Lindsey*, 355 S.C. at 20, 583 S.E.2d at 742 (2003). When reviewing a motion for a directed verdict or judgment notwithstanding the verdict, the appellate court applies the same standard as the circuit court. Accordingly, “in deciding a motion for direct verdict the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party.” *Hennes v. Shaw*, 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012), quoting, *Minter v. GOCT, Inc.*, 322 S.C. 525, 527, 472 S.E.2d 67, 69 (Ct. App. 1996). Malice may be inferred from conduct showing a total disregard for human life. *State v. Campbell*, 443 S.C. 182, 904 S.E.2d 441 (2024). Malice has been frequently, substantially defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse. *State v. Leach*, 282 S.C. 178, 180, 318 S.E.2d 267, 268 (1984).

Discussion

Within their brief the Appellant argues that the mention of “willful” intent in the indictment means that the Appellant had to willfully have a specific intent to murder. Pursuant to South Carolina law, murder is a general intent crime. There is no element of murder to reveal that there must be a specific intent to kill in order to be convicted of murder. The reason for this is that under the murder statute, murder is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10 (1976). Appellant argues that the more proper offense would be homicide by child abuse. However, the court knows that this does not apply due to the fact the victim was over the age of 11. This also does not apply because the State proved that the intentional lack of care given to the victim for months goes beyond neglect and goes into a total disregard for human life, which is considered implied malice. The Respondent argues that the willful element placed in the indictment was a factual element; therefore, something that must be decided by the jury and not by the court through a motion on directed verdict. The Respondent also submits that there was sufficient evidence presented that the Appellant had a total disregard for a human life, which is considered implied malice. The State raised sufficient evidence to prove murder, the decision of the trial court to deny the motion for a directed verdict should be upheld.

In *State v. Mouzon*, the South Carolina Supreme Court defined malice as an essential element for murder. In *Mouzon*, the Supreme Court decided,

Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-76 (1957).

It was clear from the evidence that the Appellant lived in the house with his other family members, each with the identical total disregard for human life. Anyone of them could have cared for the

victim or when she was sick, taken her to the doctor. However, each one of them, including the Appellant, allowed this child to lie in her feces and urine for at least two months knowing that she could not properly take care of herself due to her physical ailments. As the South Carolina Supreme Court defined malice in *State v. Heyward*,

“It is a wicked condition of the heart. It is a wicked purpose. It is a performed purpose to do a wrongful act, without sufficient legal provocation; and in this case it would be an indication to do a wrongful act which resulted in death of this man without sufficient legal provocation, or just excuse or legal excuse. In its proper sense the term “malice” conveys the meaning of hatred, ill-will or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.”

State v. Heyward, 197 S.C. 371, 15 S.E.2d 669, 671 (1941), quoting, *State v. Gallman*, 79 S.C. 229, 60 S.E. 682, 686 (1908).

It is clear that the malicious act was not an action but the lack of action. The fact is that they allowed that child to lay in her feces and urine to the point that her skin was melting off her body. She had sores, roach and other insect bites and a urinary tract infection so severe that the infection went to her lungs causing pneumonia. The sores on her body and the lack of skin caused infection that caused sepsis. Any of these ailments could have been easily avoided with proper hygiene administered to the victim. The Appellant knew the victim did not have the physical capabilities to perform these tasks herself. The Appellant could have also taken the victim to the doctor once these ailments presented themselves in order to have a doctor administer the proper medication in order to cure the victim of these curable ailments prior to them getting to the point of causing death.

During the trial, it was discovered that this family was getting paid by Axxcess Home Care for supposedly allowing the Appellant's son Edward to administer care to the victim. It is obvious by the lack of care and attention administered to the victim that they were just collecting this money without doing the job that they were getting paid to do. This victim was just a means of making money and nothing else.

Dr. Marcia Parra, who was found qualified as an expert in pediatric medicine, also testified. (R. p. 312 l. 4-9). Dr. Parra was the victim's pediatrician. (R. p. 312 l. 11-13). Dr. Parra testified that she last saw the victim for an appointment on January 11, 2021. At that time the victim did not have all of these injuries. (R. p. 323 l. 10-12). Her office scheduled appointments on August 31, 2021, September 4, 2021, September 8, 2021, October 8, 2021, December 27, 2021, January 24, 2022, and February 22, 2022. (R. p. 325 l. 12-25; p. 326 l. 1-4). The victim was brought into the hospital deceased on April 11, 2022. (R. p. 69 l. 22-24). This abuse continued for at least fifteen months. Dr. Rose testified that the victim was lying in her feces and urine for at least two months. That defines a total disregard for a human life, especially your own daughter. The jury should have been allowed to decide whether or not this should be considered murder, with the evidence presented by the State.

The Appellant argues that the indictment states that the actions of the Appellant "willfully" murdered the victim. If the state did not prove that the Appellant willfully caused the death of the victim, that was for a jury to determine not the trial judge. This is because the trial judge must look at the existence of evidence and not its weight. In *State v. Gentry* the South Carolina Supreme Court outlined two remedies regarding elements that have been placed within indictments, *Gentry* states,

The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When

that indictment is presented, that accusation is made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or waiving them he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter – when found guilty of the crime charged, to be permitted to go back to the former and inquire as to the manner and means by which the charge was presented.

State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005).

The Appellant states that within the indictment the State revealed the word “willful.” In the Appellant’s opinion that means the State was obligated to prove that the actions of the Appellant were with a willful intent to kill. That is a question of fact for a jury to decide, not a question of law that must be decided by the court. The court is not obligated to grant a motion for a directed verdict if the correct elements are placed within the indictment. It is the obligation of the State to prove these elements beyond a reasonable doubt to a jury. If there is the existence of any evidence that leads to the proof of the elements within the indictment, a motion for a directed verdict must be subject to dismissal. This is due to the fact under South Carolina law the court in a directed verdict decision must look at the existence of evidence and not its weight. The court must also look at the evidence most favorable to the non-moving party, which is the State.

Evidence presented shows there was a terrible lack of care by the Appellant that led to the death of the victim. If this was a willful act of murder that must be determined by the jury and not the court. The State argued that these actions were a willful disregard for a human life which is implied malice, considered murder pursuant to South Carolina law. The willful non-action of the Appellant to care for the victim, and not to take her the doctor when she was obviously sick, led to her death. It is up to the jury to decide if the State has proven all the elements found within the indictment. The denial of the directed verdict was lawful and should be upheld by this court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

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February 12, 2026
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