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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID EUGENE BAYNARD,

APPELLANT

APPELLATE CASE NO. 2024-002185

FINAL BRIEF OF APPELLANT

GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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I.

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II.

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.'s death?

STATEMENT OF THE CASE

Appellant was indicted by a Cherokee County grand jury following the death of his child, H.B. The state charged appellant with unlawful conduct towards a child in violation of S.C. Code Ann. §63-5-70, child abuse inflicting great bodily injury in violation of S.C. Code Ann §16-3-95, and murder. R. 474-479. Appellant's spouse, Bobbie Jo Baynard, and adult son, Edward Baynard, were charged with the same offenses. R. 15, l. 25 - 17, l. 4. The defendants were tried together before the Honorable R. Keith Kelly and a jury from October 28 – 31, 2024. R. 1. Barry Barnette and Jennifer Jordan prosecuted the case with Tracy Racine and Russ Racine appearing on behalf of appellant. R. 2. Robin File represented co-defendant Bobbie Baynard and Michael Morin, Abigail Gowdy, and Eva Waszak appeared on behalf of co-defendant Edward Baynard. R. 2.

The jury retuned a guilty verdict on all charges against each defendant. R. 454, l. 7 – 512, l. 23. The trial court sentenced appellant to ten years for unlawful conduct towards a child, twenty years incarceration for child abuse inflicting great bodily injury, and a life sentence for murder. R. 480-485.

This appeal follows.

STANDARD OF REVIEW

This Court reviews the denial of a directed verdict motion in a criminal case under the any evidence standard of review. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015). "When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (*citing* State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

ARGUMENT

I. The trial court erred 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.

A. Relevant facts.

Appellant was indicted for two offenses that related to maltreatment of his minor daughter. Appellant conceded guilt as to the neglect of a child charge under S.C. Code Ann. § 63-5-70 (2008).[1] R. 59, ll. 20 – 23. Appellant contested liability infliction of great bodily injury on his child. That charge required the state establish:

> A) *It is unlawful to inflict great bodily injury* upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.
> (B) It is unlawful for a child's parent or guardian, person with whom the child's parent or guardian is cohabitating, or any other person responsible for a child's welfare as defined in Section 63-7-20 knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than five years.
> (C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which

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[1] (A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to:
(1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;
(2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or
(3) wilfully abandon the child.
(B) A person who violates subsection (A) is guilty of a felony and for each offense, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

> causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
> (D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in loco parentis in a manner which does not cause great bodily injury upon a child.
> (E) This section does not apply to traffic accidents unless the accident was caused by the driver's reckless disregard for the safety of others.

S.C. Code Ann. § 16-3-95 (2000) (emphasis added).

During trial, the state's case focused on the deplorable living conditions of the Baynard home along with the severe neglect H.B. suffered prior to death. The pathologist determined that H.B. developed a UTI which led to sepsis and pneumonia. R. 291, ll. 2 – 4. A contributing cause of the infection was the skin degradation on H.B.'s back and lower extremities. R. 281, l. 13 – 282, l. 13. The pathologist opined that cause of death was "complication of acute and chronic medical neglect and, by that, that encompassed all the findings that were -- she was allowed to suffer which that led to her death." R. 288, l. 24 – 289, l. 2. Again, the neglect was undisputed. The only question was does severe medical neglect that results in great bodily injury and death satisfy the inflict element of the crime charged?

B. The directed verdict motion.

At the close of the state's case, counsel for appellant made a directed verdict motion on the basis that "inflict" under the statute required an affirmative action (rather than criminal neglect) and the state failed to present any evidence of any physical action by appellant that caused the bodily injuries to H.B.:

> The issue we have is with the first element, inflicting.
>
> Your Honor, if you flip to Page 2? This is a definition of the term inflict.

> Your Honor, the definition says to impose, to impose, and to deal. Each one of those definitions are an action verb.
>
> The importance of that, Your Honor, is the action verb connotates a level of knowledge related to the term inflict.

R. 348, ll. 9 – 18.

In denying the directed verdict motion, the trial court did not impart the same narrow definition of "inflict" argued by appellant.

> Counsel further contends that inflict is affirmative or overt act such as a strike or a blow under number three definition in what he presided provided to the court. But counsel reads his own definition to narrow it.
>
> Under, under the definition that was provided to the court, number two -- number one is impose as something that must be borne or suffered, to inflict punishment.
>
> Number two is to impose anything unwelcomed and this court managed to pull two other definitions, 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, which is also matched up with counsel's definition.
>
> This court does not weigh the evidence. That is for the jury to decide. This Court must view the evidence in the light most favorable to the nonmoving party, here the State, and if there is any evidence supporting the indictment, must deny the motion and send the matter to the trier of fact.
>
> Here, the court finds there is some evidence and hereby denies the motion for directed verdict as to David Baynard, Bobby Jo Baynard, and Edward Baynard.

R. 382, ll. 2 – 24.

C. Discussion of trial court's error.

Liability under this charge required the state to prove appellant "inflicted" great bodily injury (a physical harm element).[2] As appellant conceded a "great bodily injury" was present, the issue before this Court centers on the meaning of the term "inflict" as used in S.C. Code Ann. § 16-3-95 (2000). If neglect (or gross neglect), an act of omission, would support a finding of infliction, then this argument fails. However, if the Legislature's use of inflict creates an affirmative act (an act of commission), then the trial court erred in refusing to direct a verdict in favor of appellant on this charge.

South Carolina courts have yet to specifically address the statutory meaning of this term. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) "However, penal statutes will be strictly construed against the state." State v. Elwell, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013).

The "inflict" requirement here means something more than criminal neglect. When our legislature has criminalized "causing" a particular result, the *actus reus* has been determined to be any action that is the "proximate cause" of the end result. Our Supreme Court, in indictments charging homicide by child abuse, have noted the importance between the distinction of an act of commission rather than omission. In Bailey v. State, 392 S.C. 422, 436, 709 S.E.2d 671, 678

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[2] A physical harm element must be present that presents 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.

(2011), our Supreme Court granted a new trial following a conviction under the homicide by child abuse statute. The Bailey Court noted:

> A careful review of the jury's questions and the ensuing discussion with the judge reveals that the jury focused on the terms of the indictment and recognized the alternative elements in the homicide by child abuse statute, i.e., an "act" versus an "omission." The foreman of the jury then stated the jury found "no evidence" that Bailey struck the Victim. Based on this statement and the reference to the last line of the indictment, it is evident the jury was inquiring as to whether a finding of "neglect" on the part of Bailey was sufficient for a conviction under the statute.

Id., 392 S.C. at 436, 709 S.E.2d at 678.

The Bailey Court noted that the indictment was more specific than the statutory language, alleging the defendant:

> "inflicted upon [Victim] physical injuries to his abdomen resulting in exsanguination and consequently the death of the child." By its express terms, the indictment alleged that Bailey's "act" resulted in Victim's death. Significantly, it did not allege that Victim's death was the result of an "omission" on the part of Bailey.

Id., 392 S.C. at 435, 709 S.E.2d at 678. This holding endorses a narrow reading of the term "inflict" to require some overt physical act rather than acts of omission.

Further guidance can be found in other authorities for the meaning of the term "inflict" when used in criminal statutes, such as the Federal statute prohibiting assaulting officers:

> (a) In general.--Whoever--
> (1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or
> (2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service, shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit

> another felony, be fined under this title or imprisoned not more than 8 years, or both.
> (b) Enhanced penalty.--Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) *or inflicts bodily injury*, shall be fined under this title or imprisoned not more than 20 years, or both.
> (c) Extraterritorial jurisdiction.--There is extraterritorial jurisdiction over the conduct prohibited by this section.

18 U.S.C.A. § 111 (West) (emphasis added).

Several Federal Circuit Courts have reviewed the meaning of the term inflict and found the word has a narrow, active component. As the Sixth Circuit Court of Appeals noted:

> Inflict normally refers to direct physical causation of physical harm: "inflicted heavy losses on the enemy; a storm that inflicted widespread damage." American Heritage Dictionary 926 (3d ed. 1992). (When one departs from this sense of inflict—"the speaker inflicted a long and boring speech upon the audience"—the irony is usually intended.) This meaning holds almost anywhere one looks: the thermal and barometric conditions giving rise to a storm, for example, do not inflict widespread damage; the storm does. Othello dies from a wound that he inflicts upon himself, even though Iago proximately caused him to do it. Field Marshal Montgomery blundered by ordering his paratroopers to take "a bridge too far" at Arnem, but he did not inflict the heavy losses that followed; the Germans did. And neither did General Eisenhower inflict the injuries that his men suffered on D–Day.

United States v. Zabawa, 719 F.3d 555, 560 (6th Cir. 2013). This narrow interpretation of the word "inflict" is widely followed. *See* Gray v. United States, 980 F.3d 264 (2d Cir. 2020) (holding infliction of bodily injury requires a physical force); United States v. Jackson, 310 F.3d 554, 557 (7th Cir. 2002)("Doubtless 'inflict' is more restrictive than 'cause'; if Jackson had not resisted, but Scott had tripped on his untied shoelaces while walking over to apply handcuffs, it would not make sense to say that Jackson had 'inflicted' an injury. But the actual injury occurred

while Scott was grappling with Jackson, who applied force directly to Scott's person. This satisfies the normal understanding of 'inflict.'").

This requirement, that inflict carries a physical element, can be seen in the Legislation creating homicide by child abuse.

> B) For purposes of this section, the following definitions apply:
> (1) "child abuse or neglect" means an act or omission by any person which causes harm to the child's physical health or welfare;
> (2) "harm" to a child's health or welfare occurs when a person:
> (a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;
> (b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or
> (c) abandons the child resulting in the child's death.

S.C. Code Ann. § 16-3-85 (2000).

Homicide by child abuse thus covers an *actus reus* that involves a concrete physical act that inflicts harm under S.C. Code Ann. § 16-3-85(B)((2)(a) as well as an *actus reus* that covers acts of omission under S.C. Code Ann. § 16-3-85(B)((2)(b). The Legislature has defined "inflict" as requiring a physical action component that is simply not present in this case. As dictated by Bailey and supported by other courts, "inflict" carries a physical component. The trial court erred in failing to grant a directed verdict since the state offered no evidence appellant "inflicted" the great bodily injury suffered by H.B.

II. 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.'s death.

A. Relevant facts.

In its indictment, the state charged that appellant murdered H.B. "feloniously, willfully, and with malice aforethought". R. 479. However, the state failed to present any evidence of an affirmative act committed by appellant. The state did produce substantial evidence of neglect, both in terms of the Baynard living conditions and the lack of care provided to H.B. As noted, appellant conceded guilt related to neglect charges.

B. The directed verdict motion.

Appellant's counsel argued that the state had transformed the charge into a specific intent crime and had presented no evidence of that specific intent during trial.

> Your Honor, what they're saying is in order to be willful, it's got to be voluntarily or -- and intelligently -- intentionally done. In this particular case, Your Honor, again, the State does not have any evidence that David Baynard voluntarily, intentionally, or with specific intent caused the death of [H.B.]. In contrast, what they have is evidence of neglect.

R. 360, ll. 17 – 23.

Counsel for appellant acknowledged a criminal homicide could have been established on the state's evidence (involuntary manslaughter), but the state had elected to charge murder:

> There's no intent. There's no willfulness. The conditions resulted in her death. That's involuntary manslaughter.
>
> Your Honor, they didn't charge involuntary manslaughter but they should have. With respect to the indictment on murder, because the State can not prove the elements, we are entitled to a directed verdict.

R. 362, ll. 2 – 8.

The trial court denied the motion:

> 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 there is sufficient evidence and denies the domestic, I'm sorry, the, the, the directed verdict motion.

R. 382, l. 25 – 383, l. 5.

C. Discussion on trial court's error.

In South Carolina, murder is a general intent crime. *See* State v. Geter, 445 S.C. 139, 912 S.E.2d 255 (2025) (discussing the distinction between attempted murder, a specific intent crime, and murder, a general intent crime). However, by adding the phrase "willfully" the state altered the intent element on its own volition.

"[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." Bailey v. State, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011); *see also* State v. Smith, 406 S.C. 215, 219–20, 750 S.E.2d 612, 614 (2013) ("Because the section (A)(2) offense is not a lesser-included offense of section (A)(1), an indictment expressly charging only a section (A)(1) offense does not provide notice of a section (A)(2) charge.").

The state indicted appellant on the theory that he willfully murdered H.B., and was required to present evidence supporting that portion of the indictment. Under South Carolina law:

> A willful act is defined as one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done;

> that is to say, with bad purpose either to disobey or disregard the law.

State v. Sowell, 370 S.C. 330, 336, 635 S.E.2d 81, 83 (2006).

As such, the state transformed the case from a general intent crime to a specific intent crime. The state was required to present evidence that appellant specifically intended to murder H.B with malice aforethought. Since the state failed to introduce any evidence of appellant's *mens rea*, let alone his specific intent to murder, the trial court erred in failing to direct a verdict of acquittal.

A more viable charge in the present circumstances would likely have been homicide by child abuse, but as noted by the solicitor, H.B. was outside the age restriction contained in S.C. Code Ann. § 16-3-85 (A)(1)(2000).[3] That statute allows for criminal liability for one who "causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85 (2000). This statute has been interpreted to cover "extreme indifference based on *omission in extraordinary circumstances*." Rivers v. State, 446 S.C. 1, 13, 916 S.E.2d 335, 342 (2025) (emphasis added). Certainly, the state's theory of extreme indifference due to the living conditions and failure to seek medical attention and provide adequate care would have equated to an "omission in extraordinary circumstances" to support a conviction for homicide by child abuse under S.C. Code Ann. § 16-3-85 (2000). Here, however, the state indicted appellant for murder and, by its own doing, alleged a specific intent to murder H.B. with malice aforethought, it was required to prove both malice and specific intent.

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[3] Currently, there are bills from both the House of Representative and the Senate to amend S.C. Code Ann. § 16-3-85 (A)(1) to change the age from 11 to 18 years old. *See* South Carolina General Assembly, 126th Session, 2025-2026, Hose Bill 3394 and Senate Bill 405.

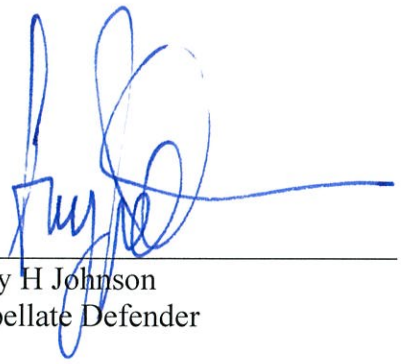
As stated in Argument I, *supra*, the state's evidence against appellant centered around neglect and omissions, not affirmative acts to harm H.B. Under South Carolina law, involuntary manslaughter is:

> (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others.

State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007). The death of H.B. was unintentional as opposed to committed with malice aforethought as the state failed to present any evidence to the contrary. While the nature and extent of the neglect directed at H.B. was criminal, and appellant conceded guilt as to that neglect, the state presented no evidence supporting a finding that appellant "willfully" murdered H.B. with malice aforethought.

CONCLUSION

Based upon the foregoing arguments, appellant's convictions for murder and child abuse causing great bodily injury should be reversed.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of February, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 12, 2026.

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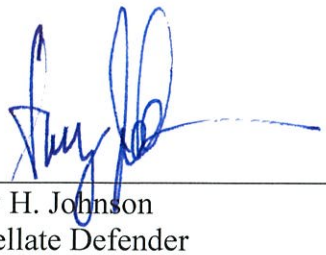

Gary H. Johnson
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589