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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, Jr., Circuit Court Judge

Kareem Lamell Wallace,
Appellant,

vs.

The State of South Carolina,
Appellee.

Unpublished Opinion No. 2026-UP-239 (filed May 20, 2026)

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Kareem Lamell Wallace respectfully petitions this Court for rehearing of its unpublished opinion filed May 20, 2026 (Op. No. 2026-UP-239), which affirmed his conviction for unlawful neglect of a child. Rehearing is warranted because the opinion misapprehends material facts in the record and overlooks an argument of law, each bearing directly on the conclusions drawn in the opinion. Appellant respectfully and briefly directs the Court to the following points supposed to have been overlooked or misapprehended.

I. The opinion misapprehends the record concerning the polled juror and overlooks the coercive effect of the trial court's disparate treatment of the two charges.

In affirming the denial of a mistrial, the Court found the second *Allen* charge was not unconstitutionally coercive, relying in part on its finding that "the juror in question was not a hold

out but had changed their verdict during polling." On that basis, the Court invoked *State v. Roper* for the principle that a juror's "equivocal, ambiguous, inconsistent, or evasive" answers, later cured by "clear and unequivocal assent," do not render a verdict coerced. 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979).

Respectfully, the record contains no such equivocation. When the jury was polled on the unlawful neglect charge, the juror stated without qualification that guilty was no longer his verdict. Tr. 327–28. He did not hesitate or give ambiguous answers; he unequivocally repudiated the announced verdict. Because *Roper*'s curative rationale applies only where an equivocating juror later clarifies his assent, the Court's reliance on *Roper* rests on a misapprehension of what the juror actually said.

That misapprehension also controlled the Court's analysis of the fourth *Tucker* factor—whether the jury returned a verdict shortly after the *Allen* charge. The Court found the post-charge deliberation reasonable because the juror "was not a hold out." But once the juror unequivocally disavowed the guilty verdict at polling, he was the lone dissenter on an 11–1 division, and the "very slim" second *Allen* charge that immediately followed necessarily spoke to him. His reversal approximately thirty minutes later, Tr. 331, is precisely the swift, post-charge verdict that weighs in favor of coercion.[1] *See Tucker v. Catoe*, 346 S.C. 483, 494, 552 S.E.2d 712, 718 (2001). The Court discounted that factor only by treating the juror as a non-holdout—a premise the record does not support.

The opinion also does not address a distinct argument central to Appellant's mistrial claim: that the trial court's disparate treatment of the two charges was itself coercive. The court accepted

[1] To be clear, the jury only deliberated for **19 minutes** not 30. ROA 420.

a deadlock and declared a mistrial on the great bodily injury charge—later disclosed to have been an 11–1 vote in favor of acquittal, Tr. 334—yet sent the jury back to deliberate further on the unlawful neglect charge after polling revealed an 11–1 division the other way. Appellant argued that doing so signaled to the jury that, unlike the companion charge, the neglect charge had to end in a verdict—a circumstance directly relevant to whether the charge was coercive "in its context and under all the circumstances." *Tucker*, 346 S.C. at 491, 552 S.E.2d at 716. The opinion does not reach this argument.

II. The opinion does not address Appellant's argument under S.C. Code Ann. § 14-7-1330.

Appellant also argued that S.C. Code Ann. § 14-7-1330 independently required a mistrial on the unlawful neglect charge. The statute permits a trial court to send a deadlocked jury back for further deliberation, but provides:

> When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence . . . and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

S.C. Code Ann. § 14-7-1330. Appellant argued that when polling revealed the jury had not unanimously agreed on the neglect charge, the jury had in substance returned without an agreed verdict; the trial court then sent it back yet again—through the "very slim" *Allen* charge—without obtaining its consent, even though the court had asked the foreperson whether further deliberation would be fruitful before giving the first *Allen* charge. Tr. 321, 328. The opinion does not mention § 14-7-1330 or address this argument. Because the statute furnished an independent basis for the relief Appellant sought, it appears to have been overlooked, and rehearing should be granted so the Court may address it.

III. The opinion misapprehends the expert testimony on the timing of the victim's injuries.

In affirming the denial of a directed verdict, the Court stated that "multiple experts testified that due to the nature of Victim's injuries, the injuries were recent and were the result of child abuse." The record, however, does not establish that the injuries were inflicted during the brief period the victim was alone with Mr. Wallace.

Dr. Marcus testified that, although the arm and clavicle fractures were acute, they could have occurred several days to a week before the August 28 x-rays, Tr. 148, and that the corner fractures of the femur and tibia exhibited variable healing and were difficult to date, Tr. 130. Nurse Schaller likewise testified that the humerus fracture could have occurred in the week before August 28, Tr. 194, 201, and that corner fractures "may not be symptomatic," Tr. 194–95. The investigating officer testified she was never told the injuries could predate that morning and, for that reason, never investigated anyone else who had contact with the child. Tr. 171–72.

By describing this testimony as establishing "recent" injuries, the opinion misapprehends the only evidence bearing on timing, which described a window of days to a week—not the roughly twenty-to-thirty-minute period the victim was alone with Mr. Wallace, Tr. 60. On this record, the evidence that Mr. Wallace was the last adult with the child before her injuries were discovered raised, at most, a suspicion of guilt rather than the substantial circumstantial evidence necessary to submit the charge to the jury. *See State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). Appellant respectfully requests rehearing so the Court may consider the timing testimony the opinion appears to have misapprehended.

CONCLUSION

For the foregoing reasons, Appellant Kareem Lamell Wallace respectfully requests that the Court grant rehearing and, upon rehearing, reverse the denial of his motion for a mistrial and remand for a new trial on the unlawful neglect charge, or, in the alternative, reverse the denial of his motion for a directed verdict and vacate that conviction.

Respectfully submitted,

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June 1, 2026.

CERTIFICATE OF SERVICE

Counsel hereby certifies she has served a copy of this on Ambree Muller of the SC Attorney General's Office at AmbreeMuller@scag.gov on this date, June 1, 2026.

/s/ Elizabeth Franklin-Best

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