

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 30 2026

S.C. SUPREME COURT

Certiorari to York County

Eugene C. Griffith, Jr., Circuit Court Judge

QUENTIN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000646

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

KERSEY A. REYNOLDS
Appellate Defender

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

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
ISSUE PRESENTED	1
STATEMENT	2
ARGUMENT	
The PCR court erred in finding trial counsel was not deficient in failing to request a jury instruction on the law of accident when (1) evidence and trial counsel's arguments to the jury supported such a charge and (2) absent the charge, the jury was barred from determining whether Petitioner proved his defense theory, and the jury was misled to equate any culpable act with an act manifesting "extreme indifference to human life."	6
Introduction	6
Discussion	7
CONCLUSION	16

ISSUE PRESENTED

Whether the PCR court erred in finding trial counsel was not ineffective for failing to request a jury charge on legal accident when (1) evidence and trial counsel's arguments to the jury supported such a charge and (2) absent the charge, the jury was barred from determining whether Petitioner proved his defense theory, and the jury was misled to equate any culpable act with an act manifesting "extreme indifference to human life?"

STATEMENT

On April 17, 2014, a York County grand jury indicted Petitioner for homicide by child abuse. App. 789. On March 16-19, 2015, Petitioner's case was tried before Judge J. D. Cole, Sr., and a jury. App. 1. Kevin S. Brackett and W. William Thompson, Sr., represented the State, and David Cook represented Petitioner. App. 1.

Trial

At trial, the State posited a theory that Petitioner caused the death of his infant daughter (Minor) by inflicting "shaken baby" injuries on her sometime during the early morning hours of January 23, 2014. In contrast, trial counsel characterized Minor's death as a "terrible accident" in his opening statement and emphasized that Petitioner had "adamantly maintained his innocence." App. 70, ll. 14-15. Testimony showed that shortly before 7:00 A.M., paramedics responded to a 911 call involving an "unconscious child not breathing." App. 77, l. 22 – 78, l. 18. Petitioner guided the paramedics to the scene and explained Minor had fallen from the bed before he discovered she was not breathing. App. 83, l. 20 – 84, l. 3.

The jury viewed a video recorded by law enforcement in which Petitioner reenacted the circumstances of Minor's fall using a doll. App. 222, l. 12-19; 223, l. 20; 228, ll. 4-9; 229, 17-19. State's Exhibit # 52 (CD-RHPD video/reenactment @ [redacted] Wright Street, Rock Hill South Carolina (Scene Incident.)) (on file with this Court). In the video, Petitioner demonstrated that Minor was sleeping on her side at the end of Petitioner's bed, with a blanket rolled into a makeshift guardrail, when he got up to make her a bottle. He indicated that when he returned with the bottle, he saw the bed was empty and realized Minor had fallen into a narrow gap between the bed and the wall. Petitioner quickly retrieved Minor and comforted her, then noticed she was struggling to hold up her head, so he laid her back down on her side so he could watch her. After a few minutes,

he saw Minor was not responding or breathing normally and immediately sought help. Petitioner also stated in the video that he believed Minor must have hit her head on the bed frame or the edge of a safe underneath the bed when she fell. State's Exhibit # 52 (CD-RHPD video/reenactment @ [redacted] Wright Street, Rock Hill South Carolina (Scene Incident.)) (on file with this Court).

The State relied solely upon the testimony of its expert forensic pathologist, Dr. Craig Hart, to show that Petitioner caused Minor's injuries. Dr. Hart stated that before he performed Minor's autopsy, he reviewed a "whole[-]body radiograph" from which he determined there was "no evidence of . . . [a] long[-]standing pattern of abuse or anything like that." App. 134, l. 23; App. 135, ll. 12-14. While the jury viewed a series of images from Minor's autopsy, Dr. Hart explained that the images depicted injuries including micro-fractures in the torso, a fractured collarbone, bruising, and brain injuries. App. 120-131; App. 135, l. 5; App. 146, ll. 17-21. Regarding the brain injuries, Dr. Hart testified that a "dramatic area of hemorrhage" underneath a "linear" forehead bruise denoted the site of an impact injury. He attributed the impact injury to an "acceleration[-]deceleration" motion that caused additional hemorrhaging and swelling in other areas of Minor's brain. App. 161, ll. 3-11; App. 164, ll. 10-14; App. 164, l. 25 – 165, l. 2; App. 179, ll. 15-19. Dr. Hart explained that the hemorrhaging and swelling ultimately "cut off some of the vital functions" located at the brain stem. App. 165, ll. 9-23. Critically, the impact injury associated with Minor's loss of vital functions was the only injury Dr. Hart identified as fatal. App. 174, ll. 10-14. Moreover, Dr. Hart indicated the type of hemorrhaging present in Minor's case was *not* exclusively consistent with child abuse anecdotes; rather, it commonly resulted from blunt force injuries sustained in car accidents and serious falls. App. 146, ll. 22-25; App. 162, ll. 9-14.

Initially, when asked if Minor's injuries were consistent with a fall from the bed, Dr. Hart responded in the negative and stated Minor would likely have been "wedged in" between the bed and the wall upon falling. App. 181, ll. 4-18. Shortly thereafter, he admitted (1) impact against the bed frame or the safe during the fall could have explained bruising, and (2) Minor displayed "compression" injuries. App. 182, ll. 5-8; App. 185, ll. 7-8. Nevertheless, Dr. Hart ultimately attributed Minor's injuries to "shaken baby with impact" and opined to the jury that her cause of death was "blunt-force trauma to the head and thorax that was not accident," but rather "abuse." App. 182, l. 16 – 183, l. 1; App. 184, ll. 4-6, 14-15. However, when asked on cross-examination whether the linear bruise could have come from the bedframe, Dr. Hart replied that it "could have come from anything." App. 193, l. 20.

Petitioner's testimony about Minor's fall and the subsequent decline in her condition was largely consistent with his statements from the reenactment video. App. 478, l. 7 – 483, l. 14. He detailed to the jury that when he returned with Minor's bottle and saw the empty bed, he heard Minor crying and "ran and jumped" on the bed to retrieve her from the opposite side. App. 479, l. 24 – 480, l. 5. In closing, trial counsel reiterated that Minor's death did not involve extreme indifference and did not equate to a crime, but was instead a "terrible accident." App. 537, ll. 17-23; App. 538, ll. 11-13. Yet, despite having formulated Petitioner's entire defense upon an accident theory, trial counsel failed to request a jury charge on the law of accident.

The jury convicted Petitioner as indicted. App. 604, ll. 16-18. Judge Cole sentenced Petitioner to forty-five years' imprisonment with credit for time served. App. 611, ll. 6-13; App. 796. The court of appeals dismissed Petitioner's direct appeal on November 23, 2016, and sent remittitur on December 12, 2016. App. 631; App. 633.

Post-conviction relief proceedings

On July 6, 2017, Petitioner filed an initial application for post-conviction relief (PCR) and an attached amendment alleging trial counsel was ineffective on grounds including failure to request an accident charge. App. 635-642. The State filed a return. App. 643-648. On April 17, 2023, Judge Eugene Griffith, Jr. presided over an evidentiary hearing on the initial application where Michael Brown represented Petitioner and Zachary Jones represented the State. App. 649.

On September 5, 2023, Judge Griffith filed an order denying Petitioner's initial PCR application. App. 742-755. Regarding the issue of trial counsel's failure to request an accident charge, Judge Griffith found trial counsel had "clear[ly]" argued to the jury "that [Minor's] injuries resulted from the fall combined with the accidental moving of the bed when [Petitioner] jumped on it." App. 751. However, Judge Griffith determined (1) the law of accident did "not fit the law or the facts of [Petitioner's] case," (2) an accident charge was potentially misleading as to the culpability element requisite to a conviction, and (3) Petitioner was not prejudiced by the omission of an accident charge because trial counsel "vigorously" argued that Minor's death was an accident in the "colloquial" sense. App. 751-753.

PCR counsel Brown failed to appeal Judge Griffith's order. On May 30, 2025, Petitioner filed a second PCR application seeking belated review of his initial application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 756-763. Chelsey Marto represented Petitioner in his second PCR application. App. 780. On February 16, 2026, the State filed a return requesting an evidentiary hearing on Petitioner's second PCR application. App. 781-788. On March 5, 2026, Judge Thomas Rode filed a consent order granting belated review of Petitioner's initial PCR application pursuant to Austin. App. 789-793. This petition follows.

ARGUMENT

The PCR court erred in finding trial counsel was not ineffective for failing to request a jury charge on legal accident when (1) evidence and trial counsel's arguments to the jury supported such a charge and (2) absent the charge, the jury was barred from determining whether Petitioner proved his defense theory, and the jury was misled to equate any culpable act with an act manifesting "extreme indifference to human life."

Introduction

The PCR court's legal conclusions reflected cumulative misinterpretations of the law. First, the PCR court relied upon contradictory findings in determining trial counsel was not deficient on the basis that an accident charge "d[id] not fit the law or facts of [Petitioner's] case." App. 753. Although it acknowledged that South Carolina authority included a "general" accident charge that aligned with the facts of Petitioner's case, it adduced a reference to the use of a weapon within another previously used charge to show the law of accident was "obviously inapplicable" in Petitioner's case. App. 751-752. Further, the PCR court explicitly noted that accident requires the absence of negligence; whereas homicide by child abuse "requires 'extreme indifference to human life,' which is a more culpable mental state than negligence." App. 752. However, without identifying any authority requiring a uniform mens rea element among separate jury charges, the PCR court determined an accident charge would "misstate the requisite mental state for homicide by child abuse." App. 753. Inexplicably, it then reasoned that because a finding of negligence would preclude accident, an accident charge would mislead the jury in Petitioner's case to believe the State needed to establish only negligence—instead of extreme indifference—to satisfy the culpability element of homicide by child abuse. App. 753. Curiously, the PCR court articulated this thread within its deficiency analysis rather than its prejudice analysis.

Second, the PCR court's finding as to prejudice was unsupported by any legal principle. Rather, in a single sentence, the PCR court found Petitioner failed to show prejudice because despite the omission of an accident charge, trial counsel "still . . . vigorously argue[d] that [Minor's] death was an accident according to the colloquial meaning of the word." App. 753. It offered no explanation as to how the jury could have reached the material issue of legal accident when presented only with trial counsel's "colloquial" arguments and a charge on homicide by child abuse.

Discussion

The PCR court erred in finding trial counsel's failure to request an accident charge was not ineffective when such failure was deficient and prejudiced the verdict against Petitioner. In PCR cases, the appellate court will uphold the PCR court's factual findings "if there is evidence in the record to support them." Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). It reviews questions of law "de novo, with no deference" to the PCR court. Id. at 180-181, 810 S.E.2d at 839. "The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel." Rivers v. State, 446 S.C. 1, 10, 916 S.E.2d 335, 340 (2025).

In order to establish a claim for ineffectiveness of trial counsel, a PCR applicant must show (1) "counsel's representation fell below an objective standard of reasonableness" under prevailing professional norms, and was thus deficient; and (2) counsel's deficiency prejudiced the applicant's case such that but for the deficiency, there exists a reasonable probability the outcome of trial would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 690, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). "In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed 'in its entirety and

not in isolation.” Gibbs v. State, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (quoting Battle v. State, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009)).

“A judge must charge the jury on material issues raised by the evidence.’ Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005), abrogated on other grounds by Smalls, 422 S.C. 174. “The standard for submission of charges to the jury is ‘any substantial evidence.’” State v. Cutro, 365 S.C. 366, 375, 618 S.E.2d 890, 894 (2005) (quoting State v. Johnson, 334 S.C. 78, 84, 512 S.E.2d 795, 798 (1999)). “Whether there is any evidence to support each element [of a requested charge] is a question of law.” State v. Williams, 427 S.C. 246, 249, 830 S.E.2d 904, 906 (2019). “The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.” State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Generally, in homicide cases, a standard accident charge provides that “no criminal responsibility attaches . . . [i]f it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence.” State v. Stoots, 445 S.C. 127, 135-36, 912 S.E.2d 248, 253 (2025). Additionally, “[t]he trial court must tailor its jury instruction on the law of accident depending on the crime charged and the specific facts and circumstances of the case.” Id. at 138, 912 S.E.2d at 254; see id. at 139, 912 S.E.2d at 254 (explaining the trial court should charge the law of accident “in a manner that actually addresses the issues at stake in the individual case”); see also State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002) (“The substance of the law must be charged to the jury, not particular verbiage.”). In Tisdale v. State, our supreme court determined that evidence supporting an accident theory warranted an accident charge even when additional evidence was inconsistent with the theory. See 378 S.C. 122, 124-126, 662 S.E.2d 410, 411-413 (2008) (reviewing trial testimony and physical evidence attributed to show

varying degrees of culpability, and finding the evidence warranted an accident charge in addition to charges on murder, voluntary and involuntary manslaughter, and self-defense).

“A person is guilty of homicide by child abuse if the person . . . causes the death of a child . . . 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(A)(1) (2015). “In proving extreme indifference, the State . . . must show the ‘defendant performed a deliberate act that he or she knew would create a risk of death to the child.’” Rivers v. State, 446 S.C. 1, 13, 916 S.E.2d 335, 342 (2025) (quoting State v. Phillips, 411 S.C. 124, 135, 767 S.E.2d 444, 449 (Ct. App. 2014), aff’d as modified, 416 S.C. 184, 785 S.E.2d 448 (2016)).

A. Deficiency

Several misapprehensions regarding the law of accident undermine the PCR court’s finding that trial counsel’s failure to request an accident charge was not deficient. An accident charge was compatible with both the facts and the law before the jury, and provided a basis for acquittal. No objectively reasonable basis exists to justify the omission of the charge.

1. Evidence and arguments presented at trial warranted an accident charge tailored to the facts of Petitioner’s case.

At Petitioner’s trial, contents from the reconstruction video and testimony from both Petitioner and Dr. Hart showed Minor’s death could have been an accident fitting the elements of the charge. Petitioner explained he did not harm Minor but had in fact taken precautions against her fall and sought help as soon as he realized her condition had declined. App. 478, l. 7 – 483, l. 14. State's Exhibit # 52 (CD-RHPD video/reenactment @ [redacted] Wright Street, Rock Hill South Carolina (Scene Incident.)) (on file with this Court). Despite the inconsistencies within Dr. Hart’s testimony, both he and Petitioner indicated Minor’s fatal injury could have resulted from (1) impact against the bed frame or the safe during her fall, while Petitioner was preparing her bottle; or (2) impact against

the bed frame after the fall, when Minor was wedged between the bed and the wall and Petitioner jumped on the bed to retrieve her. App. 162, ll. 9-14; App. 182, ll. 5-8; App. 193, l. 20; App. 478, l. 7 – 483, l. 14. State's Exhibit # 52 (CD-RHPD video/reenactment @ [redacted] Wright Street, Rock Hill South Carolina (Scene Incident.)) (on file with this Court). Such evidence established a material issue of whether Petitioner unintentionally caused Minor's death while acting lawfully and not in negligence. See Stoots, 445 S.C. at 135-36, 912 S.E.2d at 253 (explaining that a standard accident charge in a homicide case provides “no criminal responsibility attaches . . . [i]f it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence”). Therefore, the question of whether Petitioner was negligent was for the jury to decide. Moreover, as the PCR court observed, trial counsel “clear[ly]” argued to the jury that Minor's death resulted from a ‘terrible accident—’ *not* abuse manifesting extreme indifference to human life. See § 16-3-85(A)(1) (requiring evidence showing “circumstances manifesting an extreme indifference to human life” to support a conviction for homicide by child abuse). App. 70, l. 14; App. 72, ll. 6-12; App. 537, ll. 19-22; App. 538, ll. 11-13; App. 751.

Further, insofar as the PCR court interpreted a reference to the use of a weapon within a previously given charge to show that the facts in Petitioner's case did not support an accident charge, it failed to recognize the requirement of tailoring the charge. See Stoots, 445 S.C. at 138-39, 912 S.E.2d at 254 (explaining the trial court must tailor a standard accident charge according to the specific indictment and facts before the jury “in a manner that actually addresses the issues at stake in the individual case”); see also Burkhart, 350 S.C. at 261, 565 S.E.2d at 303 (“The substance of the law must be charged to the jury, not particular verbiage.”). Given the requirement, a factual variation between Petitioner's accident theory and a completely unrelated accident theory does not support finding that an accident charge was inapplicable in Petitioner's case. Nor does any evidence

contradicting Petitioner’s accident theory demonstrate that the charge was inapplicable. See Tisdale, 378 S.C. at 124-126, 662 S.E.2d at 411-413 (indicating an accident charge supported by evidence may be warranted even when additional evidence is inconsistent with accident). Rather, because evidence before the jury supported the law of accident, Petitioner was entitled to an accident charge tailored to the circumstances of his case. Id.; see Dempsey, 363 S.C. at 370, 610 S.E.2d at 815 (“A judge must charge the jury on material issues raised by the evidence.”); Cutro, 365 S.C. at 375, 618 S.E.2d at 894 (acknowledging the “any evidence” standard applied to jury charges); Santiago, 370 S.C. at 159, 634 S.E.2d at 26 (“The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.”).

2. *A proper accident charge would not have misled the jury.*

According to the PCR court’s finding, if the jury found Petitioner failed to show he was not negligent, it would then infer that whatever evidence of culpability precluded a finding against negligence also satisfied the State’s burden to prove extreme indifference. This reasoning is illogical. Necessarily, charges on accident and homicide by child abuse would be separate, clearly delineating to the jury that the issue of negligence was only relevant to accident and had no bearing on homicide by child abuse. See State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (“[J]urors are presumed to follow the law as instructed to them.”). Juries have consistently been charged on accident alongside murder—and other homicide offenses—without fear that the accident charge could lessen the State’s burden to prove malice or any other applicable mens rea. See, e.g., State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014); State v. Owens, 427 S.C. 325, 831 S.E.2d 126 (2019); State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). Moreover, the threshold for extreme indifference to human life is several intervals higher than the threshold for mere negligence. See State v. McKnight, 352 S.C. 635, 644-45, 576 S.E.2d 168, 173 (2003) (reiterating that “indifference in the

context of criminal statutes” evokes conscious disregard for “risk which a person's conduct has created”);¹ *id.* (specifying that “in the context of homicide by abuse statutes, *extreme* indifference is a mental state akin to intent characterized by a deliberate act culminating in death” (emphasis added) (quoting *Jarrell*, 350 S.C. at 98, 564 S.E.2d at 367)); *see also Rivers*, 446 S.C. at 13, 916 S.E.2d at 342 (“In proving *extreme* indifference, the State . . . must show the ‘defendant performed a *deliberate act that he or she knew would create a risk of death* to the child.’” (emphasis added) (quoting *Phillips*, 411 S.C. at 135, 767 S.E.2d at 449)). App. 753.

Even if the jury found accident was precluded because Petitioner acted in negligence, such a finding would not determine the separate issue of whether he acted with extreme indifference to human life. Likewise, even if the jury found accident was precluded because Petitioner committed an intentional act, such a finding would not determine the separate issue of whether Petitioner committed an intentional act that he knew would create a risk of death. *Compare Stoots*, 445 S.C. at 135-36, 912 S.E.2d at 253 (explaining that accident occurs only when the act was unintentional and the defendant was not acting in negligence) *with Rivers*, 446 S.C. at 13, 916 S.E.2d at 342 (recognizing that extreme indifference requires evidence showing “the ‘defendant performed a deliberate act that he or she knew would create a risk of death’” (quoting *Phillips*, 411 S.C. at 135, 767 S.E.2d at 449)). Therefore, an accident charge posed no risk of misleading the jury. Further,

¹ Contrary to language in the PCR court’s order, our supreme court did not rule on any relative similarities among mens rea standards in *McKnight*. Rather, it addressed whether evidence of extreme indifference to human life was sufficient to withstand a motion for a directed verdict against homicide by child abuse. 352 S.C. at 644-46, 576 S.E.2d at 172-73. The court compared extreme indifference to human life with the elevated culpability standards applicable in reckless homicides to illustrate its ruling that evidence showing McKnight knowingly endangered the life of her unborn child was sufficient to create a jury question as to “whether she acted with extreme indifference to her [unborn] child’s life.” *Id.* This ruling does not signal that any similarity or distinction among mens rea elements defined in relation to separate *jury charges* may mislead a jury.

even if such risk did exist, it should inform a prejudice analysis, not a deficiency analysis. See Ard, 372 S.C. at 331, 642 S.E.2d at 596 (indicating that prejudice depends upon whether the absence of a given deficiency may have led to a different trial outcome).

Overall, the PCR court erred in finding that an accident charge was incompatible with the law and the facts at Petitioner's trial. See Dempsey, 363 S.C. at 370, 610 S.E.2d at 815 ("A judge must charge the jury on material issues raised by the evidence."); Cutro, 365 S.C. at 375, 618 S.E.2d at 894 (identifying the "any evidence" standard governing submission of jury charges); Stoots, 445 S.C. at 139, 912 S.E.2d at 254 (explaining the trial court must charge the law of accident "in a manner that actually addresses the issues at stake in the individual case").

3. *Trial counsel was deficient for failing to request an accident charge when Petitioner was entitled to the charge.*

At the PCR hearing, Petitioner alleged trial counsel was deficient for failing to request an accident charge despite presenting an accident theory to the jury. App. 655, ll. 10-14; App. 658 l. 21 – 659 l. 18. Significantly, trial counsel did not even address his failure to request the charge.

As described above, the PCR court's ruling that trial counsel was not deficient in failing to request an accident charge is unsupported by the record or the applicable law. Trial counsel failed to articulate any reasonable explanation for failing to request an accident charge when Petitioner was entitled to the charge and relied upon an accident theory throughout trial. See Strickland, 466 U.S. at 687-88, 690, 694 (identifying deficiency where counsel's representation falls short of "an objective standard of reasonableness"). A request for an accident charge should have been the culmination of the defense strategy. Accordingly, the PCR court erred in finding trial counsel's failure to request an accident charge was not deficient.

B. Prejudice

Contrary to the PCR court’s findings, the *omission* of an accident charge in fact prejudiced the verdict against Petitioner. First, the omission rendered the jury unable to consider Petitioner’s legal defense. Unlike the legal definition of “accident,” the “colloquial meaning of the word” does not contain fixed elements and does not foreclose criminal responsibility. Consequently, a “colloquial” accident theory—no matter how “vigorously” argued—did not enable the jury in Petitioner’s case to make relevant factual determinations beyond whether evidence supported the elements of homicide by child abuse. See State v. Weatherall, 431 S.C. 485, 498, 848 S.E.2d 338, 345 (Ct. App. 2020) (indicating jury consideration is facilitated by charges on the law governing the case). App. 753. However, a charge on the *law* of accident would have allowed the jury to determine whether evidence supported the elements of legal accident so as to preclude homicide by child abuse. As discussed above, Petitioner was entitled to a charge on legal accident based upon the evidence presented at trial. See Dempsey, 363 S.C. at 370, 610 S.E.2d at 815 (requiring jury consideration of “material issues raised by the evidence”). Because trial counsel failed to request the charge, the jury could not meaningfully consider whether evidence of accident precluded a guilty verdict.²

² Such prejudice is compounded by the State’s reliance upon a shaken baby syndrome (SBS) theory to establish guilt. Well before Petitioner’s 2015 trial, many medical experts disavowed SBS upon recognizing “inadequate scientific evidence to come to a firm conclusion on most aspects of causation, diagnosis, . . . or any other matters pertaining to SBS.” Deborah Tuerkheimer, *The Next Innocence Project: Shaken Baby Syndrome and the Criminal Courts*, 87 WASH. U.L.REV. 1, 12-13 (2009) (quoting Mark Donohoe, *Evidence-Based Medicine and Shaken Baby Syndrome: Part I: Literature Review, 1966–1998*, 24 AM. J. FORENSIC MED. & PATHOLOGY 239, 239 (2003)). The omission of an accident charge enhanced the risk of the jury conflating unreliable, self-fulfilling evidence of SBS with evidence of homicide by child abuse. See id. at 13, 32 (describing the circular reasoning underlying SBS-based homicide convictions).

Second, the omission of an accident charge hindered the jury's understanding of the extraordinary level of culpability required to prove homicide by child abuse. See Gibbs, 403 S.C. at 495, 744 S.E.2d at 176 (indicating jury charges must be considered in full and not in isolation when evaluating prejudice). The charge on homicide by child abuse invited the jury to impute extreme indifference to human life to any act it deemed *generally* culpable simply because the act resulted in death. See, e.g., State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002) (“[I]n the context of homicide by abuse statutes, extreme indifference is a mental state akin to intent *characterized by a deliberate act culminating in death.*” (emphasis added)). Had the jury been charged on accident, an attendant definition of mere negligence would have stood in contrast with the definition of extreme indifference to human life. Relative comparison between the two definitions would have clarified to the jury that—even in a homicide case—a culpable act does not necessarily manifest extreme indifference to human life. Compare Stoots, 445 S.C. at 135-36, 912 S.E.2d at 253 (explaining that accident requires the absence of negligence) with Rivers, 446 S.C. at 13, 916 S.E.2d at 342 (explaining that homicide by child abuse requires extreme indifference shown by evidence that “the ‘defendant performed a *deliberate act* that he or she *knew* would create a risk of death’” (emphasis added) (quoting Phillips, 411 S.C. at 135, 767 S.E.2d at 449)). Therefore, but for the omission of an accident charge, the jury may have easily declined to convict Petitioner of homicide by child abuse upon finding either (1) that Minor’s death was a legal accident, or (2) that Petitioner was blameworthy for Minor’s death but did not act with extreme indifference to human life. See Strickland, 466 U.S. at 694 (identifying prejudice where, absent the deficiency, a different trial outcome was reasonably probable). Consequently, the PCR court erred in finding Petitioner was not prejudiced by trial counsel’s failure to request an accident charge. Accordingly, trial

counsel's ineffective failure to request an accident charge warrants a new trial to allow Petitioner to receive effective assistance from counsel.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this court reverse his conviction and remand his case for a new trial.


Kersey A. Reynolds
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of September, 2026.