

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 13 2014

Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-203707

SC Court of Appeals

The State,

Respondent,

vs.

Robert Palmer and Julia Gorman,

Appellants.

PETITION FOR REHEARING

On February 12, 2014, this Court properly affirmed the Appellants' convictions and sentences for homicide by child abuse and unlawful conduct toward a child, but incorrectly reversed their convictions for aiding and abetting homicide by child abuse. State v. Palmer and Gorman, Op. No. 5198 (S.C.Ct. App. Filed February 12, 2014). This Court misapprehended or overlooked the relevant facts in this case and applied an incorrect standard of review by viewing the evidence in the light favorable to the defendants instead of to the State. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the trial court properly denied the Appellants' motions for directed verdict, and affirm their convictions and sentences for aiding and abetting homicide by child abuse.

“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. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when

the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences **in the light most favorable to the State.** State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004) (emphasis added). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id.

Gorman Conviction

This Court erred in viewing the facts not in the light most favorable to the State but instead in the light most favorable to Gorman. This Court relied on the fact the parties were apart at various times and on Dr. Abel’s testimony that a person may not have realized the injuries if they did not see the abuse occur. This Court erred in viewing the evidence in the light most favorable to Gorman instead of the light most favorable to the State.

First, there is no doubt the toddler died as a result of injuries inflicted upon him by either Palmer or Gorman. The parties were together during the time immediately after Gorman arrived home and both admitted entering the child’s room at that time. During this time, just as in State v. Smith, 359 S.C. 481, 491, 597 S.E.2d 888, 894 (Ct. App. 2004), the evidence supports a finding Palmer committed the abuse with Gorman present in the room. She would have known of the abuse and of the injuries and allowed them to be inflicted without inflicting them herself.

Further, there is circumstantial evidence, if believed by the jury, that Palmer committed the homicide by child abuse during the time Gorman was at work. Additionally, Dr. Roberts testified a person with the type of injury sustained by the

toddler would be **immediately and severely symptomatic**. She said the child would lose consciousness, **have altered breathing**, seizures, and would not be able to move or have other normal functions. She indicated the symptoms would have been seen by someone looking in on the toddler. (R.410; 418-419). Taking these facts in the light most favorable to the State, Gorman knew the child had been abused when she arrived home at 4:30 and viewed the child. She did nothing to assist the child or render aid for the child and assisted Palmer in neglecting the child's physical health or welfare.

Additionally, Gorman attempted to cover up any abuse inflicted upon the child by either accusing her daughter of causing the abuse before the child was brought to her and Palmer or by blaming the injuries on the dog knocking the child over. Accordingly, this Court should grant the Petition for Rehearing as to Gorman's conviction and affirm the trial court's denial of her motion for directed verdict.

Palmer's Conviction

Additionally, this Court viewed the evidence in the light most favorable to Palmer and not the State in determining the State failed to present substantial circumstantial evidence Palmer was guilty of aiding and abetting the homicide by child abuse. As in Smith, and as discussed above, there is no doubt the toddler died as a result of injuries inflicted upon him by either Palmer or Gorman. The testimony by Dr. Abel indicated the injuries to the child likely happened three or so hours before the child presented to the ER with his injuries. (R.530-531). The evidence indicated the parties were together at the time they checked on the child which occurred around 4:30, just a couple hours before 911 was called. Dr. Robert's testimony indicates the injuries would have been immediately noticeable and the child would have been **immediately symptomatic** so

there is no way Palmer would not know of the abuse being committed by Gorman during this time. It was several hours later before 911 was called to obtain any medical treatment for the child. As a result, there is substantial circumstantial evidence to support the trial court's decision to deny Palmer's motion for a directed verdict on the aiding and abetting homicide by child abuse charge. This Court should grant the Petition for Rehearing and affirm the trial court's decision.

CONCLUSION

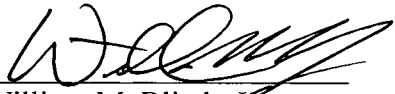
For all of the foregoing reasons, the State requests the panel grant the Petition for Rehearing, find the trial court properly denied the Appellants' motions for directed verdict on aiding and abetting homicide by child abuse, and affirm Appellants' convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY:


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ATTORNEYS FOR RESPONDENT

March 13, 2014

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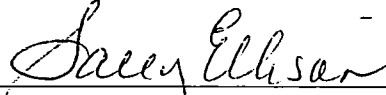
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Petition for Rehearing by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 13th day of March, 2014.


SALLY ELLISON
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ALAN WILSON
ATTORNEY GENERAL

March 13, 2014

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Robert Palmer and Julia Gorman,
Consolidated Appellate Case No. 2011-203707

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

cc: Robert M. Pachak, Esquire (copy enclosed)
Susan B. Hackett, Esquire (copy enclosed)
Victim's Services (copy enclosed)

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