

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Laurens County  
Court of General Sessions  
Honorable Frank R. Addy, Jr., Circuit Court Judge

**RECEIVED**

MAY 02 2014

Appellate Case No. 2013-001571

**S.C. Supreme Court**

STATE OF SOUTH CAROLINA,

Petitioner,

v.

RICHARD BRANDON LEWIS,

Respondent.

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**BRIEF OF PETITIONER**

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ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 1871

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

DAVID M. STUMDO  
Solicitor, Eighth Judicial Circuit

P.O. Box 516  
Greenwood, SC 29648  
(864) 942-8800

ATTORNEYS FOR PETITIONER

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## ISSUE PRESENTED

Did the Court of Appeals err in determining that an overt act is a prerequisite to the statutory offense of aiding and abetting homicide by child abuse, in determining the State failed to establish the requisite intent and in reversing the trial court's denial of the motion for directed verdict when, upon a proper analysis, the record contains substantial circumstantial evidence reasonably tending to prove the guilt of the accused?

## STATEMENT OF THE CASE

Respondent Richard Brandon Lewis was indicted for homicide by child abuse (10-GS-30-1930) and aiding and abetting homicide by child abuse (10-GS-30-1929). He was jointly tried with co-defendant Ashley N. Hepburn on February 22, 2011 – March 3, 2011, before the Honorable Frank R. Addy, Jr., and a jury. On March 3, 2011, Respondent Lewis was found guilty of aiding and abetting homicide by child abuse. <sup>1</sup> (App. p. 1196). Respondent Lewis was sentenced to imprisonment for a term of ten (10) years suspended upon the service of seven years.

Respondent Lewis appealed and, after full briefing and oral argument, the South Carolina Court of Appeals reversed the conviction and sentence. State v. Lewis, 403 S.C. 345, 743 S.E.2d 124 (2013). The State submitted a timely Petition for Rehearing. Respondent Lewis made Return to the Petition for Rehearing and the State submitted a Reply. The South Carolina Court of Appeals denied rehearing by order dated June 20, 2013. The State filed and served a Petition for Writ of Certiorari and Respondent Lewis submitted a Return to Petition for Writ of Certiorari. By Order dated October 4, 2013, this Court granted the Petition for Writ of Certiorari. This Brief of Petitioner follows.

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<sup>1</sup> Hepburn was also charged with homicide by child abuse and aiding and abetting homicide by child abuse. She was found guilty of homicide by child abuse and was sentenced to imprisonment for a period of forty-five (45) years. Her conviction was reversed by this Court on appeal. State v. Ashley Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013)

## ARGUMENT

**The Court of Appeals erred in determining that an overt act is a prerequisite to the statutory offense of aiding and abetting homicide by child abuse, in determining the State failed to establish the requisite intent and in reversing the trial court's denial of the motion for directed verdict when, upon a proper analysis, the record contains substantial circumstantial evidence reasonably tending to prove the guilt of the accused?**

Respondent Lewis was charged, along with his co-defendant Ashley Hepburn, with homicide by child abuse and aiding and abetting homicide by child abuse. After a jury trial, Lewis was convicted of aiding and abetting homicide by child abuse and Hepburn was convicted of homicide by child abuse.<sup>2</sup> At trial, Respondent Lewis moved for a directed verdict of acquittal at the close of the State's case and at the conclusion of all evidence arguing there was no evidence he and Hepburn worked together, concocted a story, or that he assisted Hepburn in injuring the victim in any manner to support the charge of aiding and abetting homicide by child abuse. (App. 566-568; 1096-1097). The State responded with argument that aiding and abetting homicide by child abuse includes acts or omissions and that Lewis concealed crucial information preventing the victim from receiving appropriate medical treatment within the critical time frame resulting in the victim's death. (App. 568-570; 572-576; 1097). The trial court denied the motions. (App. 577-578; 1098).

On appeal to the Court of Appeals, Lewis argued the trial court erred in refusing to direct a verdict in his favor because the State failed to establish that he took any affirmative action to aid Hepburn in causing the victim's death and that he cannot be guilty of aiding and abetting by omission. Lewis argued, alternatively, that the State failed to prove he knowingly committed an

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<sup>2</sup> Ashley Hepburn's conviction was subsequently reversed on appeal.

act of omission. In its opinion reversing the trial court's denial of the directed verdict motion, the Court of Appeals concluded Lewis could not be liable as an aider or abettor based upon a failure to act and that there was no evidence to support the conviction because the State failed to present evidence of an overt act and failed to establish that Lewis knowingly aided and abetted. State v. Lewis, 403 S.C. 345, 743 S.E.2d 124 (2013).

The State respectfully submits that the Court of Appeals committed errors of law when ruling that the statutory offense of aiding and abetting homicide by child abuse can only be established by proof of an overt act as opposed to omission and in its ruling that the record failed to establish the requisite mental state for aiding and abetting homicide by child abuse. The errors of law led to misapplication of the evidence in this case and an incorrect decision. The State submits that the record contains evidence reasonably tending to prove that Lewis knew Hepburn was angry and lashing out physically against others earlier in the evening and was frustrated with the victim's teething. The record reflects that Lewis heard and felt Hepburn angrily stomp into the victim's room and heard the infliction of injury and abuse by Hepburn. Based upon his earlier interaction with Hepburn, Lewis did nothing to intervene. Lewis knew the victim was being shaken and, by omission, allowed physical injury to be inflicted upon the child victim. The evidence also establishes that Lewis failed to immediately respond to the victim when he knew she had been violently shaken by Hepburn but allowed her to languish in her crib for thirty-five (35) minutes before taking any action to check on her as he otherwise frequently did or to summon assistance or medical care for her when timely medical intervention was crucial to the victim's survival. The record also establishes that there was an attempt to clean the victim's blood to cover up the infliction of injury. Moreover, and after eventually finding the victim lifeless and unresponsive Lewis, through overt act as well as omission, joined with Hepburn to

intentionally conceal information about what transpired and about the victim's medical history and status. By omission and overt act Lewis joined with Hepburn to affirmatively mislead medical care responders and providers when information was requested, thereby preventing the victim from receiving timely and adequate medical care. Lewis and Hepburn were described as collected and united in their story. Lewis' testimony confirms this fact. Lewis also acknowledged that he was aware the victim was injured and in need of medical care. However, he chose to protect Hepburn. The victim ultimately died as a result of the injury and failure to receive timely, appropriate health care.

The State submits that the record, viewed in the light most favorable to the State and disregarding the legal error committed by the Court of Appeals, reveals substantial circumstantial evidence reasonably tending to prove Lewis' guilt of aiding and abetting homicide by child abuse or from which guilt may be fairly and logically deduced. The trial judge properly denied Lewis' motion for directed verdict. The decision of the Court of Appeals must be reversed and the trial judge's ruling affirmed.

#### Trial Testimony

During marital difficulty, co-defendant Ashley Hepburn, her son and her infant daughter (victim) were living at her mother's home when the victim was heinously injured -- the day of October 12, 2009 and early morning of October 13, 2009. (ROA. pp. 300-306; p. 321; pp. 606-633; p. 651; pp. 843-846). Lewis was seeing Hepburn regularly. Lewis recalled an afternoon difficulty with Hepburn on October 12 starting with pillow play, Lewis calling Hepburn a bitch, and Hepburn slapping Lewis in the face. Lewis described Hepburn's attitude that day as "stressed." Hepburn had anticipated but not gotten a job she needed and did not get much sleep the night before. Lewis left about 5:00 PM. He returned about 8:30 when Hepburn's mother and

her boyfriend David Crumley were asleep and after Hepburn requested his assistance with the children. (ROA. pp. 94-104; pp. 111-112;126; pp. 843-855; p. 892-893). They had another difficulty around 10:00 PM when Hepburn's son accidentally hit Lewis in the face and refused to follow Hepburn's directive to tell Lewis that he [the son] was sorry. Lewis told Hepburn, in substance, that if her son "didn't listen to her now he wasn't ever going to listen to her." Later, her son did not want to brush his teeth. Hepburn "yanked him up by the arm" - which Lewis had never seen by Hepburn - and spanked him in the bathroom. Lewis could hear Hepburn popping him at least four or five times from another room. The spanking made the son cry "pretty hard" and made Lewis "avoid" Hepburn. Lewis felt responsible for Hepburn's "whipping" her son by saying something to Hepburn earlier. Lewis entertained himself with television in the living room; after football, he asked whether Hepburn wanted to watch the movie "Congo" - she did not. This was about 11:00. Hepburn was in her room in bed with her son. The victim was in her crib in her bedroom across the hall from Hepburn. The victim's room also shared an adjoining wall with the living room where Lewis sat. (ROA. pp. 856-861; p. 896-897; 906). Lewis checked on the victim through her cracked door. He looked in, and she popped up her head. He knew that she was fine. Later, at 12:45 AM, he heard her cry; she was teething. Lewis heard Hepburn stomp into the victim's room, and he actually felt her footsteps. The victim cried and then cried louder. Lewis heard "short pauses in between her cry and it just, it sounded to [Lewis] like she could have been shaken."<sup>1</sup> Then the crying stopped. Hepburn left the victim's room and went back to her own room. Lewis thought that Hepburn was "agitated" and waited about ten minutes before asking Hepburn whether she wanted some food. She did not. Despite what he

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<sup>1</sup> On cross examination Lewis again described the crying, "I just remember hearing breaks in her voice and pauses and it just sounds different than the way she would normally cry." (ROA. p. 957, lines 3-12).

heard and knowing the sounds were not routine, Lewis checked on Hepburn but not the victim. (App. 911; 940; 956 - 960). Lewis ate, used the bathroom, and got ready for bed. He checked on the victim at 1:20 AM and saw she was in a strange position in the crib - face down with her head against the bars. She was limp, barely breathing, and her mouth was bleeding. Lewis ran, carrying the victim to Hepburn, and thought it odd that Hepburn did not immediately check on her child. They awakened Hepburn's mother and her mother's boyfriend called EMS at 1:30 AM. (ROA. pp. 27-31; pp. 861-867; pp. 906-914; 940; 966).

Lewis acknowledged he was questioned about "shaken baby" at Greenwood Hospital. Later, after riding with officers to Laurens, making a statement (State's Exhibit No. 30; ROA p.903) on October 13, at 6:42 AM, and talking to his grandmother, Lewis admitted in a second statement (Defense Exhibit No. 2), at 11:56 AM on October 13, 2009, that he had heard crying as though the victim were being shaken. (ROA. pp. 872-876; p. 903; pp. 909-912; SROA pp. 2-3; p.991; pp. 997-998). Lewis also said he loved Hepburn; he did not tell the truth since he did not want to believe that she could hurt the victim and did not want to get her into trouble. (ROA. pp. 916-917). He admitted that he did not report what he heard occur between the victim and Hepburn because he was protecting Hepburn from being accused of child abuse. (ROA 874). Looking back on hearing the stomping footsteps, he knew that [Hepburn] shook the victim. (ROA. p. 913, line 25-p.914). He also admitted his attempt to communicate with Hepburn by cell phone before being interviewed by officers. (ROA p.915).

Lewis thought that when an officer (Plaxico) came to the house on September 14, 2009, he might be arrested, and he fled. (ROA. p. 538; p. 916). The day after the victim died, Lewis was treated in Laurens and then at a VA hospital for an attempted suicide. (ROA. pp. 918-919).

EMS dispatcher Thompson received a 911 call at approximately 1:30 A.M. on October 13,

2009, reporting that the 16 month old victim was breathing but unresponsive. Lewis was present in the room when the 911 call was made and could be heard in the background along with Hepburn. (ROA p. 31-32; 107). Lewis only provided information about finding the victim in her crib and the victim's condition when she was found. (ROA p. 31 - 33).

EMS paramedic Calvin Duckett testified that he responded to the scene at approximately 1:40 AM and, upon questioning the adult occupants of the home, was told the victim was breathing and had a pulse but was unresponsive. Duckett requested a medical history and asked about allergies. Duckett was told the victim was normal when put to bed but was later inexplicably found unresponsive. Lewis was present during this exchange about the victim's condition and request for information about the victim's history of injuries or illnesses for treatment purposes. Lewis stood silent while the responders were informed the victim was normal when put to bed and was inexplicably found to be unresponsive without cause when Lewis later checked on her. The inquiry was obviously being made by the emergency medical responders to determine the cause of the victim's condition in order to provide appropriate health care and treatment. Duckett administered Benadryl believing the victim might be suffering from a possible allergic reaction. The victim was transported to the hospital in Greenwood and arrived there around 2:00 AM. (ROA pp. 38 - 44). Hospital Chaplain Brown spoke with Hepburn and Lewis at the hospital. Brown confirmed that Lewis spoke first and was the "talker" about the victim. Lewis reported in Hepburn's presence that he was the only person awake and found the victim unresponsive in her crib when he checked on her after watching television. Brown characterized Hepburn and Lewis as "collected, and united on the "story." (ROA p. 149 - 150).

#### Medical Trial Testimony

The treating emergency room physician Dr. Michelle Curry testified that the victim

arrived at Self Regional Hospital in Greenwood at about 2:00 AM on October 13, 2009. Curry found the sixteen month old victim limp and unresponsive with shallow and weak respiration but a good pulse and blood pressure. She described the victim as critically ill. The emergency medical responders had initially considered an allergic reaction and administered Benadryl. She spoke with EMS personnel and learned EMS received very little information about the child other than no history of falls, trauma or illness was reported. Dr. Curry's examination revealed a tongue laceration and bruises to the abdomen, upper and lower back, shoulder, legs, head, forehead, jawline and chin (probably inflicted over days) and retinal hemorrhages consistent with non-accidental trauma. After discovery of the retinal hemorrhages, a CAT scan was conducted which demonstrated a life threatening subdural hematoma containing enough blood to push the victim's brain across to the opposite side of the skull. (ROA. pp. 52-59; p. 63; p. 87). The doctor thought that the injury had occurred shortly after the child's most recent meal and when she was in her usual state of health. (ROA. p. 63). The unresponsiveness and limpness would have affected the victim either immediately or within two hours of the initial injury. (ROA. p. 79, lines 5-14). Dr. Curry protected the victims airway with an intubation procedure that involves placing a tube down into the victim's lungs to breathe for her and create maximum oxygen intake. (ROA p. 57).

Dr. Curry told Hepburn that her child had suffered non-accidental trauma and repeatedly questioned Hepburn and Lewis. Neither one offered an explanation for the child's injuries such as a significant fall or significant injury such as a motor vehicle accident - although Dr. Curry remembered Hepburn's "repeatedly saying how could this happen and kind of questioning what had happened." (ROA. pp. 60-62; p. 65;67,lines 17 – 19; p. 684, lines 13-22). In the face of the doctor's finding, the family – including Hepburn and Lewis - offered the benign scenario of a

normal child in her crib by about 10:30 PM and Lewis' subsequently and inexplicably finding her limp and unresponsive. (ROA. pp. 60-67; p. 78). Dr. Curry spoke with Lewis separately but Hepburn entered the room during the exchange. (ROA p. 67). Lewis specifically informed Dr. Curry that he was watching television while everyone else in the home slept and that he simply found the victim unresponsive when he checked on her. Neither Lewis nor Hepburn offered an explanation for the victim's condition despite repeated inquiry. (ROA p. 65) In the face of Dr. Curry's findings of non-accidental trauma and despite repeated questioning of Lewis and Hepburn, Lewis confirmed the account that Hepburn put the victim to bed at 10:30, that the Hepburn then went to bed, and that the victim was a little fussy but was otherwise normal at that time. They also affirmed that Lewis checked on the victim at 1:30 A.M. after watching television and found the victim limp and unresponsive and EMS was contacted. (ROA p. 83).

The record reflects that Lewis failed to report to Dr. Curry, the emergency medical responders, or other medical treatment providers that he was aware the mother was agitated because she did not get an anticipated job, that she reacted angrily and physically against Lewis and her other child earlier in the evening, that he heard and felt the mother stomp angrily into the victim's bedroom in response to the victim's whimpering, that the victim began to cry louder and harder after Hepburn entered the room, or that this was followed by loud, broken cries from the victim as though the victim was being shaken. ( ROA. 872-76; 903; 909-12; 991; 944- 948; 997 - 998; SROA 2-3; 991).

Pediatrician Robert Seigler saw the victim in the Greenville Memorial Pediatric Intensive Care Unit about 6:00 AM on October 13, 2009. When admitted, the victim was on life support. Dr. Seigler found acute subdural and retinal bleeding and severe brain injury which, in the absence of another explanation, indicated non-accidental traumatic brain injury consistent with

child abuse. (ROA. pp. 169-172; pp. 177-178). The doctor observed twenty-eight bruises, including bruises to the abdomen, under the angle of the jaw, and clavicle that were atypical locations for accidental bruises. As well as fingernail or bite marks. (ROA. p. 180; pp. 189-192). The victim's symptoms would have been virtually immediate to her severe injury and were inconsistent with a child who appeared normal. (ROA. p. 195, line 18 - p. 196, line 5). CAT scans taken over a period of time to determine whether brain swelling was occurring revealed progressively greater swelling to the victim's brain which was ultimately cutting off the blood supply to the victim's brain. (ROA pp. 174 - 77). Dr. Seigler testified that while bleeding from the brain injury was bad, it was the swelling of the brain that was a matter of greater concern. (ROA p. 174-77). Dr. Seigler's opinion that swelling of the brain arises from an injury to the brain **coupled with** a lack of adequate oxygen to the brain over a period of time. (ROA. p.177 - 78). Seigler explained that children with brain injuries of the type suffered by the victim often do not receive immediate resuscitation. (ROA p. 178). Dr. Seigler testified that the lack of resuscitation **near the time of the injury** causes the child to experience difficulty breathing leading to a reduction in the oxygen level in the brain and resulting in brain damage. (ROA p. 178) He described the condition as one involving the injury **combined with the lack of immediate resuscitation**. (ROA p. 176) In an effort to treat the brain injury, Seigler placed the victim on a breathing machine, administered blood pressure and anti-seizure medication, and used cooling blankets to protect the victim's brain. (ROA p. 196). However, his efforts were not successful. Seigler stated that the only medical history provided was that the victim was fine when put to bed but was later inexplicably found with the symptoms described. (ROA p. 197).

Forensic pediatrician Dr. Mary-Fran Crosswell evaluated the victim on October 13, 2009. She found significant brain injury including bleeding within the skull and between the two lobes

of the brain and significant swelling pushing aside normal brain structures. Her findings were most consistent with abusive head trauma and multiple bruising including fingernail marks and chin bruises. The significant forces that had been applied to the brain and, as part of that, the eyes were consistent with a fall from several stories, more than a story high. (ROA. p. 204; p. 207; p. 209; p. 213, line 18 - p. 214, line 8). Hpeburn reported to Crosswell that the victim became fussy, she applied orajel and put her to back to bed.

Pediatric ophthalmologist Dr. Anthony Johnson examined the victim on October 14 and found retinal hemorrhages “too numerous to count in both eyes” that were consistent with injury from severe shaking. Accidental injuries to children from being ejected from a car or a fall from even a ten story building did not result in such extensive retinal hemorrhage. (ROA. pp. 244-245; p. 248, line 16 - p. 249, line 2; p. 253, lines 1-17). The victim’s extensive injuries would have been immediate and very obvious to an observer. (ROA. p. 252, lines 1-14).

Dr. Michael Ward performed the autopsy October 19, 2009. In light of the child’s history, the injuries were consistent with non-accidental head injury, child abuse, and would have been almost immediately apparent. (ROA. p. 355; pp. 359-361; pp. 372-373). There were three distinct areas of impact to the skull, and there could have been more. (ROA. pp. 375-378). The head injuries were the cause of the victim’s death, and her death was a homicide. (ROA. p. 363).

The record also includes the testimony from all of the medical treatment providers establishing that the trauma from the victim’s head injury was so severe that the victim would have exhibited symptoms immediately after the injury and would not appear normal. (ROA pp. 79; 195-96; 211; 251-52; 355; 359-361; 372-373).

#### Applicable Law

A defendant is entitled to a directed verdict when the State fails to produce evidence of

the offense charged. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted). “Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.” State v. Mann, 560 S.E.2d 776, 781 (N.C. 2002). “Substantial evidence” is evidence that is existing and real, not just seeming or imaginary. State v. McAvoy, 417 S.E.2d 489 (N.C. 1992). For review of an agency's decision under the APA, “substantial evidence” is evidence that, in context of the whole record, a reasonable mind would accept to support the agency's action. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

Pursuant to S.C. Code section 16-3-85 (A) (2003):

(A) A person is guilty of homicide by child abuse if the person:

- (1) causes the death of a child under the age of eleven while committing child abuse or neglect, and death occurs under circumstances manifesting an extreme indifference to human life; or
- (2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven.

“Child abuse or neglect” is defined for purposes of section 16-3-85(A)(1) and (A)(2) as “an act **or omission** by any person which causes harm to the child’s physical health or welfare.” S.C. Code section 16-3-85(B). “Harm” to a child’s health or welfare” for purposes of 16-3-85 (A)(1) and (A)(2) occurs in pertinent part “when a person (a) inflicts **or allows to be inflicted** upon the

child physical injury . . . or (b) fails to supply the child with adequate . . . health care, and the failure to do so causes a physical injury or condition resulting in death.” Id.

### Discussion

This Court has determined that the clear language of S.C. Code section 16-3-85 as set forth above “unambiguously signals the General Assembly’s intent to codify two distinct crimes – homicide by child abuse as a principal pursuant to (A)(1) and homicide by child abuse by aiding and abetting pursuant to section (A)(2), each with distinct elements and sentencing ranges.” State v. Smith, 406 S.C. 215, 750 S.E.2d 612 (2013). Our General Assembly provided for criminal liability for the statutory offenses of homicide by child abuse and aiding and abetting homicide by child abuse for **acts or omission** by any person, to include the principal and the aider and abettor. See S.C. Code Ann. Section 16-3-85. The statute specifically provides for criminal responsibility, inter alia, for **any person** who inflicts injury upon a child, **who allows injury to be inflicted or who fails to provide health care for a child and the failure to do so causes physical injury or condition resulting in death**, both as to the principal and aider and abettor. S.C. Code Ann. Section 16-3-85(B). While Lewis may argue that the acts he committed make him guilty **only** under the statutory provision of section 16-3-85 (A)(1), he is incorrect. The statutory definitions provided by our legislature make it clear that Lewis’ acts and omissions are also proscribed conduct for section 16-3-85 (A)(2). Our General Assembly characterized both as homicide by child abuse. The distinction provided between (A)(1) and (A)(2) pertains to accountability as assessed by punishment.

The common law theory advanced by Lewis and relied upon by the Court of Appeals is not applicable to the statutory offense provided in (A)(2). State v. Smith, 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004). This Court has specifically opined that the common law principles

of accomplice liability do not apply in the context of the homicide by child abuse statute. State v. Smith, 406 S.C. at 215, 750 S.E. 2d at 612; see also State v. New Mexico, 265 P.3d 705 (N.M. 2011) (stating that by prohibiting both causing and permitting child abuse and in providing for more severe sentences for causing abuse, the legislature intended to provide flexibility in assessing culpability and greater punishment for the more reprehensible action). Accordingly, the analysis of the Court of Appeals is flawed in that it is driven by misapplication of the law. The State submits that upon a proper review, this Court will agree that the record, viewed in the light most favorable to the State, reveals substantial circumstantial evidence reasonably tending to prove Lewis' guilt of aiding and abetting homicide by child abuse or from which guilt may be fairly and logically deduced.

It is uncontested that the cause of the victim's death was non-accidental traumatic brain injury consistent with child abuse and severe shaking. The victim had at least three distinct areas of impact to the skull. Her symptoms would have been immediate and obvious. Testimony presented at trial indicates CAT scans taken over a period of time showed progressively greater swelling to the victim's brain which was ultimately cutting off the blood supply to the victim's brain..(ROA pp. 174 - 76). The record reflects that, while bleeding from the brain injury was bad, it was the swelling of the brain that was a matter of greater concern. (ROA p. 174-76). The record also reflects medical testimony that swelling of the brain arises from an injury to the brain **coupled with** a lack of adequate oxygen to the brain over a period of time. (ROA p.176). Medical experts explained that when children receive brain injuries **of the type suffered by the victim**, they often do not receive immediate resuscitation and that it is the lack of resuscitation **near the time of the injury** that causes the child to experience difficulty breathing leading to a reduction in the oxygen level in the brain, resulting in swelling and brain damage. (ROA p.

176). The condition was described as one involving the injury **combined with the lack of immediate resuscitation**. (ROA, p. 176).

The evidence also establishes that Appellant was aware the victim's mother was angry about a number of events that occurred earlier that day and reacted in an uncharacteristically physical and violent manner toward Appellant and the other child in the home. He was also aware the victim was teething and fussy and that the mother's patience with the victim was wearing thin. Appellant, who was sitting in a room adjoining the victim heard the mother stomp into the victim's bedroom in response to the victim's cries in such an angry manner that he could feel the vibration from the footsteps. This was not an injury committed in silence. Appellant heard the victim being shaken and injured and allowed the injury to be inflicted. Appellant then did not immediately respond to the aid of the victim but allowed her to languish in her crib for a period of time when health care was crucial, despite what he heard transpire. Appellant also acknowledged that he failed to tell the emergency medical responders as well as the medical providers what happened even though the injuries the victim suffered were obvious and severe. Appellant knew the victim was gravely ill and despite his acknowledgment that it was important for the medical care providers to have information about the victim's history for treatment purposes, he concealed the critical information necessary for appropriate health care treatment. Joining with Hepburn, Appellant affirmatively misled everyone during the critical time when resuscitation could have been provided to the victim and did so with the intent to protect the mother from being charged with the crime. The victim died as a result of the injury and lack of timely resuscitation. In addition to the infliction of injury, Appellant and Hepburn were interlocked from the beginning in covering up the truth about what occurred to the victim thereby thwarting efforts to provide the victim with adequate and timely medical treatment,

advancing the crime, and ultimately causing the victim's death.

With regard to the determination by the Court of Appeals that the State failed to present evidence of the requisite mental state for the charge, the State submits that, consistent with the dissent to the Court of Appeals decision in this case, it has been recognized that the State will rarely have direct proof of intent but is, necessarily, permitted to rely on facts and circumstances from which intent must be inferred. See State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001). The State submits that evidence in the record satisfies the "knowing" *mens rea* for the offense. The evidence in this case established that, despite what he knew about Hepburn's agitation, anger and physical violence earlier that evening and despite feeling the angry footsteps and altercation in the victim's room, Lewis knowingly chose to do nothing; rather he allowed Hepburn to inflict physical injury. His decision was likely driven by his earlier interaction with Hepburn. Despite what he heard and knew, Lewis did not thereafter promptly respond to the victim but waited a considerable period of time before checking on her. He did nothing to summon health care immediately after hearing the victim being shaken. Despite what he heard and knew and despite finding the obviously critically injured victim, Lewis did not timely tell the truth about what happened because he was in love with Hepburn and was trying to protect her. (ROA pp. 902 - 917). Instead, he joined with Hepburn in affirmatively hiding the truth even though he knew that it was important for medical personnel to know what happened to the victim for treatment purposes. (ROA 902 - 919). There is also evidence of attempts to clean the victim's blood. (ROA pp. 508; 416-428; 517-529). Lewis, with Hepburn, intentionally thwarted access to critical information about Hepburn's actions to enable emergency medical responders and medical treatment providers to deliver appropriate health care. (ROA. 149-150). He admitted he did all of this to protect Hepburn. He clearly knew what happened and knowingly

decided to join with and protect Hepburn. The circumstantial evidence presented at trial was sufficient to establish that Lewis committed acts and omissions knowingly. The State also submits that the Court of Appeals improperly rejected evidence of Lewis' flight and suicide. Both matters were tied to the crime and were proper for consideration as evidence of consciousness of guilt. State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011); State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004).

The trial court properly denied the motion for directed verdict and the decision of the Court of Appeals must be reversed.

**CONCLUSION**

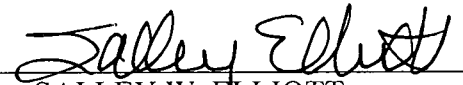
Based on the foregoing, the State respectfully submits that the opinion of the Court of Appeals must be reversed and the ruling of the trial court denying Lewis' motion for directed verdict affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

DAVID M. STUMBO  
Eighth Judicial Circuit

BY:   
SALLEY W. ELLIOTT  
S.C. Bar No. 1871

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR PETITIONER

May 2, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Laurens County  
Court of General Sessions  
Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2013-001571

STATE OF SOUTH CAROLINA,

Petitioner,

v.

RICHARD BRANDON LEWIS,

Respondent.

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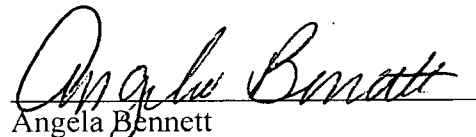
**PROOF OF SERVICE**

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I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Brief of Petitioner*, dated May 2, 2014, on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

C. Rauch Wise, Esquire  
305 Main Street  
Greenwood, SC 29646

I further certified that all parties required by Rule to be served have been served.  
This 2<sup>nd</sup>, day of May, 2014.

  
Angela Bennett  
Administrative Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3727