STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal From Horry County
Hon. Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case Number 2014-001008

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Opinion No. 5198 (S.C. Ct. App. Filed February 12, 2014)

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The State,

Petitioner/Respondent,

v.

Julia Gorman,

Respondent/Petitioner.

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**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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ATTORNEYS FOR
PETITIONER/RESPONDENT

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## CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on March 13, 2014. The Petition for Rehearing was denied by Order filed April 7, 2014.

## STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals err in finding Gorman was entitled to a directed verdict on the charge of aiding and abetting homicide by child abuse pursuant to section 16-3-85(A)(2) of the South Carolina Code?

## STATEMENT OF THE CASE

### Procedural History

Gorman and her co-defendant Robert Palmer were indicted for homicide by child abuse, aiding and abetting homicide by child abuse, and unlawful conduct toward a child. On October 31, 2011, the Honorable Larry B. Hyman conducted a hearing on Gorman's motion to sever and to determine the admissibility of the Gorman's statement. The Court denied the motion and found the statement admissible.

The parties proceeded to trial from November 14-18, 2011. Both Gorman and Palmer were convicted as indicted. Both were sentenced to thirty-five years for homicide by child abuse, twenty years for aiding and abetting, and ten years for unlawful conduct.

Both parties appealed. The Court of Appeals consolidated the appeals at oral argument, which was held on October 9, 2013. On February 12, 2014, the majority of the Court of Appeals' panel issued its opinion affirming the convictions for homicide by child abuse and unlawful conduct, but reversing the convictions for aiding and abetting. The Honorable Daniel Pieper concurred in the reversal of the aiding and abetting convictions but dissented and would have reversed the other convictions. See State v. Palmer and Gorman, Op. No. 5198 (S.C. Ct. App. Filed February 12, 2014).

The State filed a petition for rehearing from the reversal of the aiding and abetting charges and Gorman filed a petition for rehearing from the affirmance of the other charges. The Court of Appeals denied both petitions for rehearing on April 7, 2014.

This petition for writ of certiorari follows.

**Factual Background**

Appellant and her co-defendant were indicted for homicide by child abuse for inflicting fatal injuries to the seventeen-month-old grandson of Appellant. Appellant and her co-defendant lived together for approximately four years. They came into custody of the child after the child's mother had to leave him with them in order to attend to business out of town prior to reuniting with the child's father. (T.206-211; R. 250-255).

Appellant's daughter also indicated her mother did not handle stress well and would let things bottle up. Her daughter testified Appellant would go into a fit of rage once the anger was "uncorked." (T.246-247; R. 290-291).

Prior to the mother leaving, the child was taken to the doctor due to ant bites and congestion from allergies. He was given medication and was scheduled to return later for immunizations. (T.205-207; R. 249-251). The treating doctor indicated the toddler looked normal at the time of the examination and treatment. (T.269-270; R. 313-314).

On July 14, Lt. Rainbolt with the Horry County Fire and Rescue arrived as a result of the 911 call from Appellant. (T.300-301; R. 332-333). He testified Appellant's co-defendant was holding the child on the couch when he arrived and he could tell the child was in grave condition. (T.302-303; R. 334-335). The child was given over to Erica Rosenthal a paramedic that arrived. Rosenthal testified the child had a right sided gaze and appeared to be having a seizure. (T.318; R. 350). Appellant told Rosenthal the victim had been whiny and lethargic since the any bites. Memorably to Rosenthal, Appellant also told her the Appellant had "raised several children in her lifetime and never seen such a bad one." (T.321-322; R. 353-354).

The emergency room nurse and the doctor who saw the toddler both testified his condition was critical. (T.329; Supp.R.1). The nurse indicated Appellant seemed "very anxious, pacing back and forth in front of the bed, seemed very upset." She also testified when the victim would have a seizure Appellant's co-defendant wanted to approach the bed to hold the child's hand and talk to him to get him settled down. Appellant did not do the same at first, but only later on. (T.332; Supp.R.4). They both indicated he was posturing due to the head trauma. A CAT scan was done and revealed skull fractures and bleeding in the brain. Dr. Cacace testified it would have to be "tremendous force to the skull" to cause the type of injury seen in the toddler. (T.358; R. 365). He testified the injury was not accidental. (T.362; R. 369). The victim was transferred by helicopter to MUSC for more specialized care. (T.362-363; R. 369-370).

Dr. Roberts, a neuro-radiologist with the Medical University of South Carolina (MUSC), testified the toddler suffered blood around the brain, severe swelling of the brain, loss of the gray-white differentiation which indicated dead brain tissue, and severe fractures. (T.406; R. 397). She testified both sides of the skull were fractured by severe traumatic force. (T.409-410; R. 400-401). She indicated the fractures were caused by a force similar to falling out of a three story window or being involved in a motor vehicle accident. (T.416-417; R.407-408). She indicated the toddler was in a condition from which she would expect no meaningful recovery. (T.411; R. 402).

Dr. Roberts also testified the injury was acute, or very recent. She testified as a result of the injury, the toddler would have lost the ability to function normally. (T.413-415; R. 404-406). She 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. (T.419; R. 410). She testified the injuries could only have occurred the day the child presented to the emergency room. (T.420-421; 434-435; R. 411-412; 425-426). She testified she would expect symptoms of the injury to be seen, and, if the child was sleeping normally around 4:30 when checked on, then she expected the injuries occurred after that time. (T.427-428; R. 418-419).

Dr. Abel, the Director of the Violence Intervention and Prevention Division in the pediatric department of MUSC, testified she was called in to examine the toddler. She testified she took some background history from Appellant and Appellant's co-defendant. She testified she examined the child and his CT scans. Dr. Abel testified the fractures of the child's skull were similar to a cracked pot and indicated it appeared to be caused by severe forceful impact against a hard surface. She testified the blows were to both sides of the head. Dr. Abel indicated the degree of force used was "massive." (T.516; R. 490). Dr. Abel also testified to bruising on the child, including several suspicious bruises in locations it would be unlikely the toddler accidentally received the bruise. (T.519-522; R. 493-496). Dr. Abel testified anyone seeing the force being applied to the child would "perceive this was tremendous force." (T.534; R. 508).

As part of the background, Dr. Abel testified Appellant indicated the victim had severe developmental problems and behavioral problems. Appellant described a child to her that could only say one word, was clingy and whiny, and wanted to be held all the time. Dr. Abel testified the detailed pediatrician notes from when the child was in the custody of its mother indicated otherwise. She testified at nine months the child was saying multiple words and that his development was normal. (T.534-535; R. 508-509).

Dr. Abel testified the injury to the child occurred sometime the day he was presented to the emergency room. (T.553-554; R. 527-528). She also testified the injury had to occur after people looked at the child and believed him to look normal. (T.554; R. 528). Dr. Abel testified based on the information provided by Appellant and her co-defendant about the child napping and appearing normal, the injury occurred within three hours of the victim being taken to the hospital. (T.556-557; R. 530-531).

Marsha Bessant, a friend of Appellant and Appellant's co-defendant testified Appellant was very stressed over financial issues. She also testified Appellant would not remove her co-defendant from the checking account even though he was spending the money she earned and would be out at night instead of home when Appellant cooked. (T.583-585; R. 538-540). In jail, Appellant asked for pictures of her co-defendant and seemed only concerned with how her co-defendant was doing. (T.593-594; R.548-549).

Yvette Brown, an investigator with DSS, interviewed Appellant after viewing the victim at MUSC. She testified Gorman told her the child was "cranky, he looked underweight, undernourished, and that his head had a squishy feel to it like it didn't have bone structure." (T.513; R. 487). She thought the comment seemed a little "odd."

Detective Troxell interviewed and took a statement from both Appellant and Appellant's co-defendant. Appellant's co-defendant indicated Appellant woke up about 4:45 am and left for work in the early morning. (Oct T. 62; R. 34). Appellant's co-defendant indicated he woke the child up about 9:30 am and fed him. He testified he fed him lunch about noon, and then put him down for a nap about 3:30pm. (Oct T. 63-64; R. 35-36). He stated Appellant arrived home at about 4:15 pm and they both went to the edge of the door to check on the victim who was still down from his nap. (Oct T.64-65;

R. 36-37). They ate dinner before waking up the toddler. Appellant went into the room and found him having a seizure. (Oct T.65-66; R.37-38).

Appellant also gave a statement to Detective Troxell on July 18. She initially began discussing the days after the child was taken to the hospital along with some family background and history. (Oct T. 104-107; R. 76-79). She was then read her Miranda rights by Detective Troxell. (Oct T.117-119; State's Exhibit 67; R. 89-91; 887). After reading Appellant her Miranda rights, the officers questioned her regarding the events leading up to the injuries sustained by the victim.

Appellant stated she got up about 4:30-4:45 am and checked on the victim as she left. She stated he was sleeping. (Oct T. 119; R. 91). She arrived home between 4:00 and 4:30pm and checked on the minor victim. (Oct T. 120; R. 92). He appeared to be sleeping. (Oct. T. 120-121; T.737-739; R. 92-93; 810-812). She explained they then ate dinner, and after dinner, her co-defendant took the dog out while she went into the toddler's room to wake him up. (Oct. T. 121; R. 93). It was then she found him making strange noises with saliva running from his mouth. (Oct. T. 121; R.93).

Appellant was asked directly: "So Sometime between, something happened between four and six-fifteen, didn't it, because when you went in at six-fifteen he was salivating, okay?" Appellant responded: "Because, you know, when we checked on him and everything, well I checked on him even after four and he was fine so, so anywhere between dinner time, you know, as we were eating dinner until by six, whatever time I called 911." (Oct. T. 121; T. 739-740; R. 93; 666-667). She acknowledged only her and her co-defendant cared for the minor victim in the days leading up to his death. (Oct T.130; T.748; R. 102; 675). Detective Trexell noted the only tears he saw from

Appellant during her statement were when he mentioned the possibility of going to jail. (Oct T.131; 137; T. 750; 755; R. 103; 109; 677; 685).

When questioned about the possibility of shaking the child out of frustration, Appellant stated: "I don't think hard, I don't believe I - -." (Oct. T. 163; T.781; R. 135; 708). She stated at one point: "I don't know if I shook him hard, I don't know, I don't." She later stated: "If, if I shook him I swear to you I don't believe I shook him hard, you know. I don't think I have that much, I don't know." (Oct T.171; T.789; R. 143; 716). Both Appellant and her co-defendant claimed ignorance of what happened to the child.

The victim died on July 16, after his mother and father decided to donate his organs. Dr. Schandl, a forensic pathologist with MUSC, testified the toddler had fractures on both sides of his skull. She testified the cause of death was inflicted blunt head trauma. (T.487; R. 461). She testified the manner of death was homicide. (T.488; R. 462). Prior to his death, the victim's parents had him baptized. Appellant's daughter begged Appellant to attend, but Appellant said she had other things to do. (T.160-162; R. 204-206).

## ARGUMENT

**I. Did the Court of Appeals err in finding Gorman was entitled to a directed verdict on the charge of aiding and abetting homicide by child abuse pursuant to section 16-3-85(A)(2) of the South Carolina Code?**

The Court of Appeals erred in finding Gorman was entitled to a directed verdict on the charge of aiding and abetting homicide by child abuse. The Court utilized an incorrect standard in making the determination by not viewing the facts in the light most favorable to the State. Upon viewing all facts and expert opinions in the light most favorable to the State, there is evidence to support the trial court's decision to deny directed verdict and this Court should grant the petition for writ of certiorari to reverse the decision of the Court of Appeals.

"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). "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. 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).

In relevant part, section 16-3-85 of the South Carolina Code provides:

> (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 the 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.
>
> (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. . . .

The Court of Appeals erred in viewing the facts not in the light most favorable to the State, but instead, in the light most favorable to Gorman. The 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. Other evidence in the record indicated the parties were together when the abuse may have occurred and Dr. Roberts specifically testified the victim would be immediately and noticeably symptomatic. The 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. 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 and approximately three hours before the child was presented to the ER. 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 and doing nothing to stop the harm from occurring. She would have known of the abuse and of the injuries and allowed them to be inflicted without inflicting them herself. Additionally, she failed to render aid to the victim for approximately two hours when 911 was called.

The Court of Appeals relies on this Court's discussion of Smith in State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) in an attempt to distinguish this case from Smith. The Court of Appeals explained:

> As it relates to aiding and abetting, the key facts in Smith were that the defendants were never separated during the time the medical evidence proved the injuries occurred, and "the medical testimony indicated that the victim['s] ... symptoms would have been severe and immediate, and importantly, obvious to both Smith and the victim's mother very soon after the injuries were inflicted."

State v. Palmer and Gorman, Op. 5198 (S.C. Ct. App. Filed Feb 12, 2014) (citing Hepburn, 406 S.C. at 441-442, 753 S.E.2d at 415-416). However, instead of distinguishing this case from Smith, the facts detailed above show this case is remarkably similar to Smith. The two co-defendants were together after 4:30 during the time in which Dr. Abel indicated the abuse may have occurred. The parties agreed the child was

fine at 4:30 when checked on and so any abuse then occurred while they were together. Given the severity of the injuries and the medical testimony it is clear one co-defendant would have known of the abuse by the other. Further, in light of Gorman's subsequent attempt to cover up the abuse, there is certainly more similarity to Smith than differences and the Court of Appeals erred in viewing the evidence in the light most favorable to Gorman in an attempt to create the distinguishing characteristics of the case.

In the alternative, there is circumstantial evidence that Palmer committed the homicide by child abuse during the time Gorman was at work. Importantly, Appellant testified at approximately 4:30 when she arrived home, the toddler was sleeping normally and she heard him breathing fine. (T.984; 994; R. 856; 866). Dr. Roberts, however, testified she would expect symptoms of the injury to be seen. (T.427-428; R. 418-419). 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. Given her frustration with finances and having to keep the child, as well as her quick temper testified to by various people, she decided to do nothing to assist the child or render aid for the child and assisted Palmer in neglecting the child's physical health or welfare, thereby aiding or abetting Palmer's homicide by child abuse.

Finally, the evidence demonstrated Gorman attempted to cover up any abuse. The medical evidence in this case indicated the injury to the child was not accidental and was so significant either adult in this case would have known it happened. Dr. Cacace testified it would have to be "tremendous force to the skull" to cause the type of injury seen in the toddler. (T.358; R. 365). He testified the injury was not accidental. (T.362; R. 369). Dr. Roberts testified both sides of the toddler's skull were fractured by severe traumatic force. (T.409-410; R. 400-401). She indicated the fractures were caused by a force similar to falling out of a three story window or being involved in a motor vehicle accident.

The doctors all testified the injuries had to occur the day the child was taken to the hospital. As a result, Appellant's attempts to explain the injuries by blaming the dog for knocking the child down, or the fact the child's head felt "squishy" to Appellant when the child arrived with his mom are unavailing. Further, none of the events would explain the significant trauma experienced by the toddler leading to his death.

Accordingly, this Court should grant the Petition for Writ of Certiorari as to the Court of Appeals' reversal of Gorman's conviction for aiding and abetting homicide by child abuse and affirm the trial court's denial of her motion for directed verdict.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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Assistant Attorney General
S.C. Bar No. 15608

BY: _____
William M. Blitch, Jr.

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ATTORNEYS FOR
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June 5, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals
Appeal From Horry County
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Appellate Case Number 2014-001008

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Opinion No. 5198 (S.C. Ct. App. Filed February 12, 2014)

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The State,

Petitioner/Respondent,

v.

Julia Gorman,

Respondent/Petitioner.

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**PROOF OF SERVICE**

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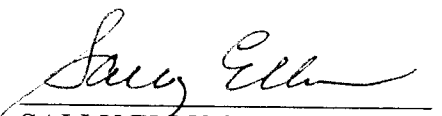
I, Sally Ellison, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals and Appendix by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 5th day of June, 2014.



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June 5, 2014

**HAND-DELIVERED**
The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
1231 Gervais Street
Columbia, S. C. 29211

Re: State v. Julia Gorman
Appellate Case Number 2014-001008

Dear Mr. Shearouse:

Enclosed please find six copies of the Petition for Writ of Certiorari and two copies of the Appendix, along with Proof of Service, in the above-referenced case.

Thank you for your attention to this matter.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

Enclosures

cc: The Honorable Jenny A. Kitchings (one copy of Petition enclosed)
Susan B Hackett, Esquire (two copies of Petition and Appendix enclosed)
Victim Services (one copy of Petition enclosed)

ALAN WILSON
ATTORNEY GENERAL



June 5, 2014

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

Re: State v. Julia Gorman
Appellate Case Tracking No. 2014-001008

Dear Ms. Hackett

I am enclosing two (2) copies of the Petition for Writ of Certiorari to the Court of Appeals and the Appendix in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

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

cc: Honorable Daniel E. Shearouse (original and six enclosed)
Honorable Jenny A. Kitchings (Petition only)
Victim Services (enclosure)