

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Larry B. Hyman, Jr., Circuit Court Judge

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Opinion No. 5198 (S.C. Ct. App. filed 2/12/2014) **S.C. Supreme Court**
10-GS-26-2196

THE STATE,

RESPONDENT/PETITIONER,

V.

ROBERT PALMER,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2014-000954

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

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STATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals correctly held that Palmer 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 when the State failed to present any substantial evidence beyond a reasonable doubt of aiding and abetting by Palmer?

STATEMENT OF THE CASE

Palmer adopts respondent/petitioner's procedural history of this case. The facts of the case are set forth in detail in Palmer's final brief at pages 6 – 17.

ARGUMENT

The Court of Appeals correctly held that Palmer was entitled to a directed verdict on the charge of aiding and abetting homicide by child abuse pursuant to S.C. Code § 16-3-85(A)(2) because the State failed to present any substantial evidence beyond a reasonable doubt of aiding and abetting by Palmer.

The assistant solicitor's theory of this case was that she did not know who committed the homicide by child abuse so she was prosecuting both parties. (R. p. 23, line 22 – p. 25, line 9; R. p. 34, line 25 – p. 35, line 9). One would think that the State would have a higher burden of proof than that. If the State did not know who committed the crime, how do they meet their burden of proving aiding and abetting by anybody? They did not.¹

Unlike State v. Smith, 359 S.C. 481, 597 S.E.2d 894 (Ct.App. 2004), there was no evidence that Palmer was in the victim's room when Gorman committed the abuse. There was no evidence he knew of the abuse and failed to render aid. The Court of Appeals' reliance on this Court's discussion of Smith in State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), correctly distinguishes this case from Smith. The Court of Appeals wrote:

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 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.” *Hepburn*, 406 S.C. at 441, 753 S.E.2d at 415 (quoting and citing *Smith*, 359 S.C. at 491-92, 597 S.E.2d At 894). Here, Palmer and Gorman were separated for periods of time in which the injury could have occurred, and Dr. Abel testified that the injuries may not have been apparent to someone who did not see them inflicted. Thus, we find this case distinguishable from *Smith*.

State v. Palmer, 408 S.C. at ___, 758 S.E.2d at 204.

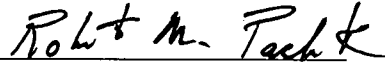
¹ Even at sentencing, the trial court remarked, “whoever did it, struck the blow, knew very well what you were doing....” (R. p. 990, lines 23 – 24).

It was Gorman who called Palmer after he got back from walking the dog. When he saw the victim, he immediately told her to call 9-1-1. It was Palmer who held the victim until emergency medical personnel got there. It was Palmer, not Gorman, who was the first one at the victim's bedside at Conway Medical. There simply is no evidence that Palmer was involved in aiding and abetting.

CONCLUSION

The State's writ should be denied.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER/RESPONDENT.

This 17th day of July, 2014

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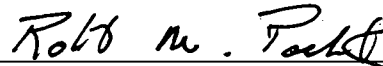
ROBERT PALMER,

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CERTIFICATE OF SERVICE

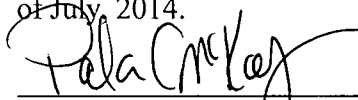
I certify that a true copy of the return to petition for writ of certiorari to the Court of Appeals in this case have been served on William M. Blicht, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and the South Carolina Court of Appeals, this 17th day of July, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER/RESPONDENT

SWORN TO BEFORE ME this 17th day
of July, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022