THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2013-001083

THE STATE, Respondent,

v.

DEMETRIUS GOODWIN, Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict when sufficient evidence was presented establishing Petitioner acted with extreme indifference, thereby satisfying that element of homicide by child abuse.

STATEMENT OF THE CASE

Procedural History

A Richland County Grand Jury indicted Petitioner for homicide by child abuse. (R. p. 236-37.) On March 13-18, 2011, Petitioner proceeded to trial before a jury. Kris Hines, Tracy Pinnock, and Nicole Singletary represented Petitioner, and Kathryn Luck Campbell, Joanna McDuffie, and Carter Potts represented the State. The jury found Petitioner guilty, and the Honorable W. Jeffrey Young sentenced Petitioner to twenty-five years' imprisonment. (R. p.193, p.196.) Petitioner filed a motion for a new trial and a motion to reconsider the sentence. The trial court held a hearing on May 9, 2011, and Judge Young issued an order denying the motions on June 13, 2011. A timely notice of appeal was served and filed.

On March 13, 2013, the South Carolina Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. See State v. Goodwin, Op. No. 2013-UP-110 (S.C. Ct. App. filed March 13, 2013). Petitioner's request for rehearing was denied on April 18, 2013. Petitioner then filed a Petition for Writ of Certiorari in the Supreme Court, and the petition was granted on June 11, 2014.

Factual Background

On February 6, 2009, Petitioner asked his cousin to take him and his 23-month-old daughter (Victim) to the hospital because she was not breathing. (R. p.8 lines 3-9; R. p.16 lines 2-11; R. p.23 lines 3-11.) A team of medical professionals attempted to revive Victim, but she was pronounced dead after approximately thirty minutes of resuscitation measures. (R. p.9 lines 7-13; R. p.13 lines 12-14.) Dr. Bradley Marcus performed an autopsy and ruled the death a homicide based on some unexplained rib fractures. (R. p.67

lines 1-5.) Dr. Matthew Marcus, a radiologist, confirmed the rib fractures with x-rays and determined squeezing could have caused the fractures. (R. p.73 lines 1-2; R. p.75 lines 1-13.) He further determined that CPR could not have caused the fractures because one of them was posterior and with CPR injuries, only anterior rib fractures would occur. (R. p.74 lines 4-7; R. p.76 lines 23-25; R. p.77 lines 1-8.)

On February 7, 2009, Investigators Joshua Mauldin and John Baker of the Richland County Sheriff's Department contacted Petitioner and Shayla Matthews, Victim's mother. (R. p.35 lines 19-24.). Investigator Mauldin interviewed Petitioner, who gave a statement. (R. p.36 lines 15-16; R. p.37 lines 18-23.) In the statement, Petitioner reported that on February 5, 2009, he heard Victim and his cousin's children playing on the stairs at his cousin's house, heard a thud, and saw Victim lying flat at the bottom of the stairs.[1] (R. p.38 lines 2-10.) He claimed she cried and then got back up and was jumping, playing, and laughing. (R. p.38 lines 20-24.) When they got home, Petitioner reported Victim vomited twice. (R. p.39 lines 16-17.) He also told Investigator Mauldin he noticed marks on Victim's forehead and chest when he bathed her that night and a mark on her back the next day. (R. p.40 lines 9-12.) Petitioner then claimed he woke up at 11:45 a.m. on February 6, 2009, and heard Victim wheezing. (R. p.40 lines 20-21.) He explained in his statement:

> I went to go pick her up. She gave a small cry and looked like she was hurting. Her body seemed limp. I put her on the bed in her mother's room. I saw that her breathing was getting slower. I tried to do some CPR. We don't have a phone in the house and I don't have a cell phone. When I

[1] Investigators obtained the services of the Assessment Resource Center to attempt to interview the four-year-old child who was playing with Victim when the alleged fall would have happened, but he was unable to respond to questioning. (R. p.44 lines 19-21; R. p.45 lines 7-20.)

> was doing CPR I noticed green mucus coming out of her nose. When I was doing mouth to mouth, I saw a yellowish substance on her mouth. I turned her on her side so it could run out. I ran outside to go to my cousin's house. I saw him outside. I told him that something was wrong with [Victim] and that he needed to call 911. I ran back in to the house and saw that she had gotten worse. I came back outside and called my cousin to the house. He came over and tried to wake her by calling her name. We decided that it would take too long for an ambulance to get here so we got in his car, drove to the hospital.

(R. p.40 lines 22-25; R. p.41 lines 1-13.) When asked to describe Victim's condition on the way to the hospital, Petitioner said she was lifeless and he knew she was gone. (R. p.42 lines 1-4.)

On April 2, 2009, the coroner's office, the solicitor's office, and the sheriff's office held a meeting. (R. p.26 lines 8-25; R. p.34 lines 18-23.) At the meeting, Dr. Bradley Marcus went over his findings, pointing out they were in line with an asphyxiation death, not a fall. (R. p.27 lines 3-19.) As a result of the meeting, Investigator Robert Martin determined it was necessary to re-interview Petitioner. (R. p.46 lines 7-15.) After attempting to contact Petitioner at his home on two occasions, Investigator Martin left a phone message with Shayla Matthews. (R. p.47 lines 4-24.)

On April 13, 2009, Petitioner went to the sheriff's department. (R. p.49 lines 2-4.) He gave a statement after he was advised of his rights. (R. p.50 lines 20-25; R. p.51 lines 14-16.) In the statement, Petitioner claimed to hear Victim wheezing when he woke up on February 6, 2009. (R. p.54 lines 21-22.) He explained he ran to her, saw she was not responding, picked her up, held her tight, and put her on the bed and ran to his cousin's home. (R. p.54 lines 22-25.) Petitioner reported he went back to his home and started CPR. (R. p.55 lines 1-2.) When asked by the investigator if he hugged Victim

tightly to hurt her on purpose, Petitioner explained, "I picked her up and she cried a little. She didn't hug me back like she normally does. I hugged her really tight. It got worse after I hugged her. I didn't do it on purpose. I swear that I didn't mean it." (R. p.55 lines 5-13.) Next, Investigator Martin asked if the hug knocked the air out of her. (R. p.55 lines 14-15.) Petitioner answered, "Yeah. She started making a hiccupping sound like she couldn't breathe. That's when I laid her down to get Terrell."[2] (R. p.55 lines 16-18.) When asked if he thought he could have squeezed Victim hard enough to break her ribs, Petitioner replied, "Yes, I was so scared." (R. p.56 lines 13-15.) Petitioner also admitted in his statement to Investigator Martin that the day before she died he grabbed Victim's face for swearing and spanked her legs for spitting on people. (R. p.55 lines 19-23; R. p.56 lines 24-25.) When Investigator Martin asked Petitioner why he did not mention hugging Victim when Investigator Mauldin interviewed him the day of the incident, Petitioner stated, "I didn't want anyone to think that I had killed her." (R. p.55 lines 24-25; R. p.56 line 1.)

Victim's family soon after requested a meeting with the coroner, and it was held on April 15, 2009. (R. p.28 lines 2-15.) During that meeting, the family was told the death was not caused by a fall but by some type of asphyxiation or squeezing. (R. p.29 lines 10-20.) After the explanation, Petitioner asked to speak to Coroner Gary Watts alone. (R. p.30 lines 11-12.) Petitioner told Watts he realized that when he squeezed his daughter in a hug for a minute or two, he had killed her. (R. p.31 lines 2-4.) Coroner

[2] Terrell seems to be a nickname for Marquis Carter, Appellant's cousin who drove Victim and Appellant to the hospital. Additionally, although Appellant refers to him as his cousin, Carter testified he only knew Appellant about a year. (R. p.21 lines 2-3.)

Watts told Petitioner to explain what had happened to Investigator Martin. (R. p.32 lines 15-19.) Petitioner gave another statement to Investigator Martin, which stated in part:

> Question: When you hugged [Victim] very hard, did that cause her death?
>
> Answer: Yes, but it was unintentional—I'm sorry. But it wasn't intentional. I was scared at the time and I didn't have a ride or a way to make contact. I just wanted to hug her for comfort.

(R. p.59 lines 21-25; R. p.60 line 1.) In his statement, Petitioner estimated the hug lasted two minutes. (R. p.60 lines 21-24.) Subsequently, Petitioner was charged with homicide by child abuse.. (R. p.236-237)

At trial, Dr. Mark Phillip Mercier testified Victim was basically lifeless when she was brought to the hospital with no breathing, no spontaneous respirations, and non-reactive pupils. (R. p.8 lines 17-21.) Dr. Mercier further testified that once a person has died, her pupils no longer respond to light. (R. p.8 lines 24-25.) Dr. Mercier explained that Victim never showed signs of life. (R. p.10 lines 4-6.)

Zemulous Dozier, an investigator with the Richland County Coroner's Office, testified Petitioner told him Victim fell down some stairs on February 5, 2009, and she vomited and had loose bowels that day. (R. p.4 lines 4-23.) The following day, the morning of February 6, Petitioner reported Victim was wheezing and green matter flowed from her nose. (R. p.5 lines 7-15.) Dozier testified Petitioner told him at that point he called 911 but cancelled the call and went to his cousin's house for help instead. (R. p.5 lines 16-20.) Dozier attempted to confirm the 911 call and discovered no record of the call existed. (R. p.5 lines 21-25; R. p.6 lines 1-3.)

Dr. Bradley Marcus, the pathologist who performed the autopsy, testified he ruled the death a homicide based on some unexplained rib fractures he found. (R. p.67 lines 1-5.) He determined the death was caused by asphyxia due to chest compression from squeezing and testified it would take approximately one to one and a half minutes to compress a child's chest so that she could no longer breathe. (R. p.69 lines 19-22; R. p.70 lines 1-5.) He further testified it takes an extremely large amount of force to cause compression asphyxia. (R. p.68 lines 23-25; R. p.69 line 1.) Additionally, he testified the death could not have been caused by Victim's alleged fall down the stairs the day before her death and that he could not even say the fall happened because the injuries on Victim were inconsistent with that type of fall. (R. p.70 lines 22-25; R. p.71 lines 6-25.)

Dr. Matthew Marcus, the radiologist, testified he confirmed the rib fractures with x-rays and determined squeezing could have caused the fractures. (R. p.73 lines 1-2; R. p.75 lines 1-13.) He further testified that CPR could not have caused the fractures because one of them was posterior and with CPR injuries, only anterior rib fractures would occur. (R. p.74 lines 4-7; R. p.76 lines 23-25; R. p.77 lines 1-8.) After examining the brain and the histological slides, Dr. Jacob Vandersteenhoven, a pathologist, testified no disease was present in the brain or eyes and no signs of cerebral edema existed. (R. p.78 lines 14-15; R. p.79 lines 2-8; R. p.79 lines 9-20; R. p.80 lines 12-14.) Dr. Vandersteenhoven agreed that asphyxia was the cause of death. (R. p.81 lines 15-17.)

Marquis Carter, Petitioner's cousin, testified that when he got back from the store on February 5, 2009, Petitioner told him Victim had fallen down the stairs. (R. p.22 lines 7-10.) According to Carter, Victim was not crying and seemed to be playing normally with his children. (R. p.22 lines 15-20.)

After the State rested, Petitioner moved for a directed verdict, first arguing the State had not met the element of homicide by child abuse that requires a showing that the death occurred under circumstances manifesting an extreme indifference to human life. (R. p.83 lines 1-6.) Petitioner argued under State v. Jarrell[3] that extreme indifference is the mental state akin to intent characterized by a deliberate act culminating in death and that the testimony had not met that element. (R. p.83 lines 7-18.) The State argued the testimony showed Petitioner picked up Victim and squeezed her hard for one to two minutes, admittedly hard enough to crack her ribs, and that testimony was sufficient to submit the case to the jury. (R. p.84 lines 4-12.) Secondly, Petitioner argued the State's case was based solely on circumstantial evidence. (R. p.85 lines 4-7.) The trial court denied the motion on both bases. (R. p.84 lines 24-25; R. p.86 lines 4-7.) As to the first argument, the trial court found that, based on the evidence presented on the fractures and the statement as to what caused the fractures, the jury would be able to consider that to be a deliberate act that would be indifferent or reckless to human life. (R. p.84 lines 18-22.)

Petitioner called Dr. Stan Kessler to testify that, based on his review of the autopsy and slides, Victim died of Waterhouse-Friderichsen Syndrome. (R. p.107 lines 14-15; R. 112 lines 12-13; R. p.142 lines 10-16; R. p.177 line 25; R. p.178 lines 1-5.)

In reply, the State called Dr. Olga Rosa, who testified Victim did not die of Waterhouse-Friderichsen Syndrome based on her review of the autopsy, Victim's medical records, and the statements pertaining to Victim's condition before her death. (R. p.179 lines 1-15; R. p.183 lines 13-15.) Dr. Rosa opined that had Victim actually had the disease, she would have shown signs of fever, lethargy, and purple marks on her skin.

[3] 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002).

(R. p.180 lines 1-13; R. p.182 lines 17-21.) Dr. Rosa pointed out children with this disease deteriorate over a period of time and would not be playing one morning and then die later the same day. (R. p.181 lines 12-17.)

At the end of all the evidence, Petitioner renewed his motion for a directed verdict, and the trial court again denied it. (R. p.184 lines 19-25; R. p.185 lines 4-5.) After the jury began deliberating, it asked the trial court to explain extreme indifference to human life, and the trial court re-instructed the jury on that section of the jury charges. (R. p.189 lines 13-17; R. p.190 21-25; R. p.191 lines 1-25; R. p.192 lines 1-7.) Ultimately, the jury found Petitioner guilty, and the trial court sentenced him to twenty-five years' imprisonment. (R. p.193 lines 14-20; R. p.196 lines 1-2.)

Petitioner filed a motion for a new trial and a motion to reconsider the sentence. The trial court held a hearing on both motions on May 9, 2011. Among other things, Petitioner argued he was entitled to a new trial because the trial court denied his motion for a directed verdict. (R. p.214 lines 18-22.) Specifically, he argued the State did not show the element of extreme indifference. (R. p.215 lines 20-25.) He also argued that because the jury asked to hear the law on extreme indifference again, it must have been confused about that element of the law. (R. p.215 lines 2-6.) The trial court took the matter under advisement and denied the motions in an order dated June 13, 2011.

Petitioner filed an appeal with the Court of Appeals, alleging the trial court erred in denying his motion for directed verdict. However, the Court of Appeals disagreed and unanimously affirmed the trial court's denial of directed verdict.

ARGUMENT

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict because sufficient evidence was presented establishing Petitioner acted with extreme indifference, thereby satisfying that element of homicide by child abuse.

Petitioner argued to the Court of Appeals that the trial court erred in denying the motion for a directed verdict because there was insufficient evidence he showed extreme indifference to human life. However, the evidence showed Petitioner intentionally squeezed Victim in a hard "hug" for approximately two minutes, thereby asphyxiating her and causing her death. This evidence was sufficient to demonstrate extreme indifference, and the Court of Appeals properly affirmed the trial court's denial of the motion for a directed verdict.

"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). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Id. at 292-93, 625 S.E.2d at 648. If the State presents any evidence which reasonably tends to prove the defendant's guilt or from which his guilt could be fairly and logically deduced, the trial court must send the case to the jury. State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003); State v. Jarrell, 350 S.C. 90, 97, 564 S.E.2d 362, 366 (Ct. App. 2002). The appellate court may reverse the trial court's denial of a motion for a directed verdict only if there is **no** evidence to

support the trial court's ruling. State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003) (emphasis added).

Here, the State charged Petitioner with homicide by child abuse. A person is guilty of homicide by child abuse if the person "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 . . . ." S.C. Code Ann. § 16-3-85(A)(1) (2003). "For purposes of the [homicide by child abuse] statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting Jarrell, 350 S.C. at 98, 564 S.E.2d at 367). Our courts have equated it more to the reckless disregard of reckless homicide cases. William Shepard McAninch et al., The Criminal Law of South Carolina 96 (5th ed. 2007). Recklessness is:

> something more than mere negligence or carelessness which indicates inadvertence, which is the failure to exercise due care, sometimes called ordinary care, which means such care as a person of ordinary reason and prudence would exercise under the same circumstances. Recklessness denotes a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.

McAninch et al., *supra* at 196 (quoting State v. Tucker, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979)). See also Jarrell, 350 S.C. at 98, 564 S.E. 2d at 367 ("In this state, indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care.").

Petitioner argues the State did not prove intent simply because he said he did not mean to kill Victim. However, an actual intent to kill is not what is required under South Carolina's recognized definition of extreme indifference. If the Legislature had wanted to require that type of intent, it could have written the statute more like the murder statute, which requires malice aforethought. "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). "Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. It is the doing of a wrongful act intentionally and without just cause or excuse." Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002). It is noteworthy that in regard to the homicide by child abuse statute, South Carolina Jurisprudence specifically states, "Proof of malice aforethought is not required." 23 S.C. Jur. Homicide § 29 (1994).

Petitioner confuses the intent required for extreme indifference with the intent required for malice. Extreme indifference only requires the actor has the intent to do a deliberate act, and that act culminates in death. Nothing in the definition of extreme indifference indicates the act itself must be wrongful or done with the intent to cause harm. On the other hand, malice requires the actor to have wrongful intent to injure another. Thus, in this case of homicide by child abuse, Petitioner's admission that he deliberately picked up Victim and squeezed her in a "really tight hug" for two minutes is sufficient to show the intent required for extreme indifference and to send the case to the jury. (R. p.55 lines 5-13; R. p.60 lines 21-24.) The "really tight hug" was the deliberate act that caused the death.

In State v. McKnight, this Court affirmed the denial of McKnight's motion for a directed verdict on the issue of extreme indifference. 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003). McKnight was charged with homicide by child abuse after taking cocaine while she was pregnant and giving birth to a stillborn baby. Id. at 641-42, 576 S.E.2d at 171. "Given the fact that it is public knowledge that usage of cocaine is potentially fatal, [the court found] the fact that McKnight took cocaine knowing she was pregnant was sufficient evidence to submit to the jury on whether she acted with extreme indifference to her child's life." Id. at 646, 576 S.E.2d at 174. McKnight did not have to intend to kill her unborn child by taking cocaine; she recklessly disregarded the risk her conduct created. That act culminated in the death of her baby and was sufficient to satisfy the intent required under the homicide by child abuse statute.

Petitioner argues this case is distinguishable from McKnight because "it is not common knowledge that hugging a baby will kill them." (Pet. Br. 11.) However, it is reasonable to believe that it is common knowledge that squeezing a child tightly until she goes limp could be potentially fatal. The fact that hugging is a legal activity while cocaine use is illegal is of no moment. For example, it is common knowledge that drug overdoses can be fatal, whether the drug is legal or illegal. See Commonwealth v. Walker, 812 N.E.2d 262, 271 n.17 (Mass. 2004) ("A person of ordinary intelligence would be aware that there are varying risks associated with all prescription medications. It is a matter of both common knowledge and common sense that a prescription is required to obtain certain medications precisely because they contain drugs that are not safe except when administered and supervised by a physician or other properly licensed practitioner."); see also Borg-Warner Corp. v. Flores, 232 S.W.3d 765, 770 (Tex. 2007)

("One of toxicology's central tenets is that 'the dose makes the poison.' This notion was first attributed to sixteenth century philosopher-physician Paracelsus, who stated that '[a]ll substances are poisonous – there is none which is not; the dose differentiates poison from a remedy.'" (citations omitted and brackets in original)). Regardless of any intent to harm Victim, Petitioner recklessly disregarded the risk his conduct created and, thus, had the requisite intent to satisfy the extreme indifference element of the homicide by child abuse statute when he deliberately squeezed Victim tightly for an extended period of time and she died as a result.

Petitioner also argues this case is distinguishable from Jarrell because Jarrell helped plan the child's death, clearly demonstrating extreme indifference. However, the Court in Jarrell separated her actions into two distinct events: planning the child's murder and leaving home on the day of the murder. 350 S.C. at 98-99, 564 S.E. 2d at 367. While the Court found the planning supported Jarrell's conviction of accessory before the fact of murder, it focused on the events of the day of the baby's death when considering extreme indifference under the homicide by child abuse statute, finding:

> Jarrell's affirmative act of leaving her home on the day of the murder operates as a separate and distinct event from the planning of the murder. When she left home, Jarrell created a grave risk of death to her child, evidencing her extreme indifference to his life. . . . Her failure to protect her child is concrete evidence of her indifference towards his life.

Id. Petitioner asserts that "[t]he mother helped plan the death of the child. That was extreme indifference." (Pet. Br. 11.) However, this assertion misconstrues the holding of the Court. The focus was on her indifference to the child's life in leaving, not on the planning. Here, Petitioner showed extreme indifference by squeezing his child for two

minutes until she went limp, thereby asphyxiating her. The similarity is in "the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care." Id. at 98, 564 S.E. 2d at 367.

Victim died of asphyxia from squeezing or chest compression. (R. p.29 lines 10-20; R. p.69 lines 19-22; R. p.70 lines 1-5.) The State proved through Petitioner's statements that he gave Victim a really tight, hard "hug" that lasted approximately two minutes. (R. p.60 lines 21-24.) Testimony also showed the squeezing caused two of Victim's ribs to fracture. (R. p.73 lines 1-2; R. p.75 lines 1-13.) The medical experts testified the fractured ribs could not have been caused by CPR because one rib was fractured posteriorly rather than anteriorly. (R. p.74 lines 4-7; R. p.76 lines 23-25; R. p.77 lines 1-8.) Dr. Bradley Marcus ruled Victim's death a homicide. (R. p.67 lines 1-5.) He testified it takes an extremely large amount of force to cause compression asphyxia. (R. p.68 lines 23-25; R. p.69 line 1.) He further testified the death could not have been caused by Victim's alleged fall down the stairs the day before her death. (R. p.70 lines 22-25; R. p.71 lines 6-25.) Moreover, Petitioner's cousin testified Victim seemed fine when he got back from the store on February 5, 2009, she was not crying, and she was playing normally with his own children after the alleged fall. (R. p.22 lines 15-20.)

The evidence shows Petitioner gave inconsistent statements about what happened and initially attempted to cover up the fact that he squeezed Victim. When Petitioner first spoke to Investigator Dozier of the coroner's office, he reported he called 911 when he first noticed Victim was wheezing but cancelled the call and ran to his cousin's home instead. (R. p.5 lines 16-20.) However, no record of this alleged 911 call exists. (R. p.5 lines 21-25; R. p.6 lines 1-3.) Moreover, Petitioner told Investigator Mauldin he had no

phone in the home and no cell phone and he had to ask his cousin to call 911. (R. p.40 lines 22-25; R. p.41 lines 1-13.) In his statement to Investigator Martin, Petitioner also told him he had no way to make contact. (R. p.59 lines 21-25; R. p.60 line 1.) Additionally, no witnesses could corroborate that Victim fell down the stairs the day before she died. Petitioner himself reported he did not see the fall but noticed her lying at the bottom of the stairs crying. (R. p.38 lines 2-10.) Investigator Martin attempted to interview the four-year-old child who was playing with Victim when the fall would have happened, but he was unable to respond to questioning. (R. p.44 lines 19-21; R. p.45 lines 7-20.) Dr. Bradley Marcus testified Victim's injuries were inconsistent with a fall down stairs. (R. p.70 lines 22-25; R. p.71 lines 6-25.) Petitioner also admitted in his statement to Investigator Martin that the day before Victim died, he grabbed her face for swearing and spanked her on her legs because she was spitting on people. (R. p.55 lines 19-23; R. p.56 lines 24-25.) When asked by Investigator Martin why Petitioner did not mention hugging Victim when Investigator Mauldin interviewed him on the day of the incident, Petitioner stated, "I didn't want anyone to think that I had killed her." (R. p.55 lines 24-25; R. p.56 line 1.) This omission suggests Petitioner was conscious of his guilt. See State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.").

The State's theory was that Petitioner deliberately squeezed Victim's chest until she went limp. Petitioner's own statements show he deliberately picked up Victim when she was wheezing and "hugged" her tightly for approximately two minutes. Furthermore, he admitted he squeezed her hard enough to have broken her ribs. (R. p.56 lines 13-15.)

Although he may not have intended his act to culminate in Victim's death, viewing the evidence in the light most favorable to the State, the State established Petitioner committed a deliberate act and the child died as a result of that act. That is sufficient to satisfy the extreme indifference element of the offense. The charge of homicide by child abuse was, therefore, properly submitted to the jury. The weight or credibility of the evidence was properly left for the jury as the fact-finders, and not the trial court, at the directed verdict stage. Thus, ample evidence supported the trial court's denial of the motion for a directed verdict.

The Court of Appeals affirmed the trial court's denial of Petitioner's motion for directed verdict, relying on State v. McKnight and State v. Jarrell in finding sufficient evidence existed to allow the jury to determine whether he acted with extreme indifference. Petitioner cites Price v. State, 284 S.W.3d 462, 466 (Ark. 2008), for the proposition that extreme indifference requires actions that evidence a mental state on the part of the accused to engage in some life-threatening activity against the victim. However, the Supreme Court of Arkansas carefully clarified that "evidence of an actual intent to kill is not required to establish circumstances manifesting extreme indifference to the value of human life." Price, 284 S.W.3d at 468. Furthermore, "The question of the intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon." State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). "The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances." Id. "Intent is seldom susceptible to proof by direct

evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." Id.

The State submits the Court of Appeals was correct in determining the State provided sufficient evidence to demonstrate extreme indifference to human life, under both the current South Carolina definition—"a mental state akin to intent characterized by a deliberate act culminating in death[,]" McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting Jarrell, 350 S.C. at 98, 564 S.E.2d at 367)—and the Arkansas standard defined in Price that the accused must engage in some life-threatening activity. Under either standard, squeezing a child tightly for approximately two minutes until she goes limp, thereby asphyxiating her, demonstrates extreme indifference to human life.

Petitioner cites State v. Hepburn[4] for the proposition that the trial court should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. However, this case can be distinguished from Hepburn because the facts are vastly different. In Hepburn, there were two people who could have killed the victim. The State's evidence established the victim was acting normally when Hepburn put her to bed, that Hepburn was asleep when the victim sustained her injuries, and that Hepburn was only awoken after the other adult found the victim unresponsive in her crib. 406 S.C. at 415-16, 753 S.E.2d at 442. Accordingly, this Court found "no evidence that [Hepburn] herself was aware of the victim's injuries, let alone caused them." Id. at 416, 753 S.E.2d at 442.

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[4] 406 S.C. 416, 753 S.E.2d 402 (2013).

Hepburn has no bearing on this case because here there is no doubt Appellant is the person who committed the act the State alleged caused Victim's death. Petitioner himself described exactly what he did to Victim, including admitting he squeezed her hard enough to have broken her ribs. (R. p.56 lines 13-15.) Furthermore, Petitioner told Coroner Watts he realized that after he squeezed his daughter in a "hug" for a minute or two, he had killed her. (R. p.31 lines 2-4.) Finally, he chose to omit this crucial fact in his first conversation with the police, demonstrating a guilty conscience. The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court be affirmed.

Respectfully submitted,

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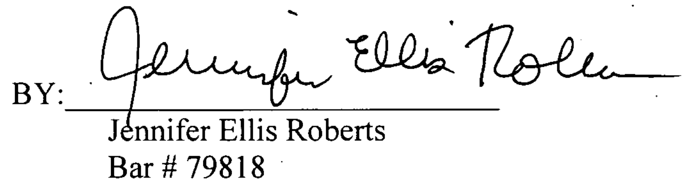
BY: 
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July 30, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2013-001083

THE STATE, Respondent,

v.

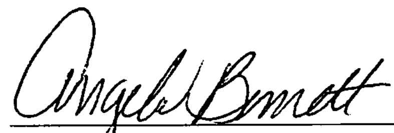
DEMETRIUS GOODWIN, Petitioner.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Brief of Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, 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 30th day of July, 2014.



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