STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197

THE STATE, ...RESPONDENT

v.

SHAWN PATRICK WHITE, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court properly deny Appellant's motions for directed verdict when the evidence, viewed in the light most favorable to the State, reveals substantial circumstantial evidence reasonably tending to prove Appellant's guilt of homicide by child abuse when Appellant was the only adult with Victim when the fatal injuries occurred, when other children in the home were locked in their bedroom by Appellant but heard him injuring Victim, and when Appellant tried to cover up his deadly actions by shifting blame to his brother and a six-year old child?

STATEMENT OF THE CASE

Appellant was indicted at the July 2013, term of the grand jury for Abbeville County for Homicide by Child Abuse (2013-GS-01-0244). Appellant proceeded to trial by jury on January 7 through January 9, 2014, pursuant to which Appellant was found guilty as charged. He was sentenced by the Honorable Donald B. Hocker to imprisonment for forty years. Appellant filed a notice of appeal and subsequently submitted a Brief. This Brief of Respondent follows.

ARGUMENT

The trial court properly denied Appellant's motions for directed verdict when the evidence, viewed in the light most favorable to the State, reveals substantial circumstantial evidence reasonably tending to prove Appellant's guilt of homicide by child abuse when Appellant was the only adult with Victim when the fatal injuries occurred, when two other children in the home were locked in their bedroom by Appellant but heard him injuring Victim, and when Appellant tried to cover up his deadly actions by shifting blame to his brother and a six-year old child.

This appeal arises from Appellant's jury trial and conviction of homicide by child abuse. Appellant argues on appeal that the trial court erred in denying the motions for directed verdict he made at the close of the State's case and after resting the case for the defense. Appellant argued to the trial court that the motions must be granted because the State failed to present substantial circumstantial evidence of his guilt of the charge, and the evidence against him merely raised a suspicion of his guilt. (Tr. pp. 447- 464; 487). The motions were denied. (Tr. 471- 475). Appellant argues on appeal that the trial court erred in denying his motions for directed verdict contending the State's evidence was insufficient because it established only that he was present with Victim during a portion of the time frame during which Victim's injuries could have occurred. The State disagrees and submits Appellant's argument is without merit.

Victim in this case was a 10-month-old female who was rushed to the hospital by medical care responders on August 8, 2012. (Tr. 209-20). Victim died on August 11, 2012, as a result of nonaccidental head trauma and resulting fatal damage to the brain. (Tr. 230; 345). At the time of her injuries Victim lived in Calhoun Falls with her mother, Melody LaBounty, her three sisters, Child C, Child I, and Child R, ages six, four, and three, and Appellant, who was not the father of the children or romantically involved with

LaBounty at the time. (Tr. 209-10; 245; 290). Appellant lived with LaBounty and her daughters from January 1, 2012 and until this incident occurred. (Tr. p. 210; 235). Appellant served as the caregiver for the children when LaBounty worked at night and once when she went out of town. (Tr. pp. 161-62; 213; 218). The house they lived in had two bedrooms. LaBounty slept in one bedroom, the three older girls slept in another bedroom, Victim slept in a Pack n' Play in the living room, and Appellant slept on a couch in the living room. (Tr. p. 164; 218; 221; 239).

Injuries

The evidence presented at trial reveals that Victim's mother, Melody LaBounty (hereinafter "LaBounty") called 911 at 10:53 a.m. on August 8, 2012. (Tr. 94; 96; 225). The responding officers arrived at Victim's home within seconds of the call and found LaBounty distraught and Victim unresponsive. (Tr. 96-101; 106; 227) EMS also arrived within minutes of the call and found Victim on her back on the couch unresponsive and not breathing. (Tr. 110). Victim's eyes were dilated and fixed, consistent with a neurological problem. (Tr. 110-13; 227). EMS initiated "rescue breathing" and transported Victim and LaBounty to the emergency room in Greenwood where a trauma team waited. (Tr. 111-12). Victim arrived at the hospital within forty-five minutes of the 911 call. (Tr. 110-14).

The emergency room physician at the hospital in Greenwood, Dr. Richard Brooksbank, began treating Victim at approximately 11:40 a.m. on August 8, 2012. (Tr. 263-69). He found Victim acutely and critically ill. Victim was unresponsive to all stimuli, was not breathing on her own, and her pupils were non-reactive. (Tr. 269). A CAT scan revealed blood in Victim's brain with bleeding that was so severe it resulted in

a midline shift or displacement of one hemisphere of Victim's brain and suppression of her ability to breath. (Tr. 273 -74). The scan also revealed evidence of acute blood that had been present for the past several hours to a day as well as evidence of chronic blood which had been there for days to weeks from a previous injury. (Tr. 273-74; 280). He also stated the more profound, acute blood could have been present from minutes to twelve to twenty-four hours but declined to provide a more specific time frame, indicating the neurosurgeon who later treated Victim would be better equipped to provide that information. (Tr. 281 -82). The initial diagnosis was intracerebral hemorrhage likely caused by nonaccidental trauma and respiratory failure secondary to that injury. (Tr. 275). He did not find evidence of a skull fracture but observed splotchy areas on Victim's extremities. (Tr. 276). Victim was thereafter transferred to Greenville for more acute care. (Tr. 277).

Pediatric neurosurgeon Christopher Troup saw Victim after she was airlifted to the hospital in Greenville on August 8, 2012. (342-43). Victim was on the borderline of being brain dead when she was examined by Dr. Troup. (Tr. 347). His review of the CAT scan taken in Greenwood revealed a blood clot with an acute – or fresh – component and a second component that appeared older. (Tr. 347). He observed different ages of blood in the clot. (Tr. 348). Most of half of Victim's brain was swollen and appeared dead. (Tr. 347). Dr. Troup also indicated that the acute bleeding on the CAT scan could have occurred minutes to hours and sometimes up to a day out and that the older blood occurred days to weeks out. (Tr. 348). Victim underwent decompressive craniotomy surgery and removal of the blood clot and a portion of the temporal lobe as her only chance of survival. Dr. Troup was uncertain that what he observed on the CAT

scan and during his examination of Victim was compatible with life. (Tr. 347; 355). Another CAT scan was taken at the hospital in Greenville on August 9, the day following surgery. The second scan showed a progression of the injury and damage. (Tr. 351 -54; 359 - 62). Dr. Troup did not observe a skull fracture but opined that the injury suffered by Victim would have taken a tremendous amount of violent force in order to cause the amount of shift to one side of the brain, the swelling, and the areas of dead brain he found. (Tr. 361-63; 378). He noted that there was no pulse or blood in Victim's brain meaning there was no blood circulating to that hemisphere at all. The clots and serum found in Victim's brain would take hours – probably within twelve to twenty-four hour window - of having no blood flow to the vessel in order for the chunks of segmented clots he found to form in the artery. (Tr. 364). Dr. Troup opined that the window was "more than a few hours, but not a full day kind of ---window-ish." (Tr. 365). He consulted with other neurosurgeons, radiologists, and intensive care physicians and determined that Victim's injury "was not something that happened immediately prior to being presented to the hospital in Greenwood." (Tr. 379). The amount of brain shift and change, the darkness, and early infarction took at least several hours to evolve and the number of serum and clot reactions Troup found in Victim's artery would take a "good while" to form. (Tr. 397). He opined that the trauma occurred more than two to three hours but less than twenty-four to thirty-six hours before Victim was brought to the hospital in Greenwood. (Tr. 379; 382-84). Dr. Troup opined that the injury found was "very, very consistent with a nonaccidental shake and shake, slam type of mechanism" and nonaccidental trauma. (Tr. 368; 373; 382). By slam, Troup explained that he meant the Victim's body "being held and the head slammed" on anything -- from a pillow to a

hard surface—that would cause the brain to slosh from rapid acceleration and deceleration. (Tr. 369-371). He also opined that a six-year old child would not have the "brute force" to cause the acceleration-deceleration required to produce Victim's injuries. (Tr. 371). He further opined that Victim's fall from the porch of her home would not have caused the injuries she suffered and would not have produced the large amount of acute blood found in Victim's brain. (Tr. 372). Troup opined the injuries suffered by Victim would have rendered her incapable of playing and would have caused Victim to be profoundly symptomatic. (Tr. 373).

Child abuse pediatrician Nancy Henderson examined Victim as a member of Victim's treatment team in Greenville and concurred in the diagnosis of "nonaccidental inflicted head trauma" caused by "an incredible amount of force." (Tr. 388-391; 396-97; 400). She agreed that a six year old child or a fall from the porch of Victim's home could not cause the injuries observed in Victim. (Tr. 401-02). Dr. Henderson indicated that, with the type of injuries observed, Victim would have acted very, very ill, just like [Victim] did when she presented to the emergency room." (Tr. 402). She would not have been well for a few days and then become suddenly ill. (Tr. 402). In addition to discussing Victim's brain injury, Dr. Henderson noted open abrasions with sores on Victim's left arm, sores under her fingernails, a bruise on each side of the labia in Victim's genital area, and evenly spaced injuries to the right leg. (Tr. 395-96). She did not find trauma to the vaginal or rectal areas. (Tr. 403).

Pediatric ophthalmologist Anthony Johnson also examined Victim at the hospital in Greenville around 4:30 p.m. on August 9, 2012, and found Victim's eyes were filled with blood which extended to the periphery with hemorrhages in all layers of the retinas,

all of which was caused by inflicted nonaccidental, severe acceleration – deceleration forces. (Tr. 436-441).

Pathologist Brett Woodard performed the autopsy on Victim after her death on August 11, 2012. The autopsy revealed blunt trauma injury with associated bruises to the back of the skull and neck, abrasions from force perpendicular to the skin, and bruises on the right and left sides of Victim's back. (Tr. 406 – 10). The Victim also suffered retinal hemorrhages, detachment of a portion of the retina, and hematoma around the optic nerve. (Tr. 411). He further found an acute subdural hematoma and severe swelling that pushed the brain down toward the spinal cord causing herniation and death of the mid-brain and brain stem as well as infarct death of the structures of the brain. (Tr. 410-11). He opined that the cause of Victim's injury was "[n]onaccidental trauma that had a significant quantity of kinetic energy and resulted in a sudden stopping of the child or the child being projected against some surface that bruised the back of the child." (Tr. 411-12). He described the kinetic energy required as something greater than an unrestrained person in a car accident travelling at the speed greater than forty-five miles per hour. (Tr. 412). He agreed that a child six years old could not cause the injury without some "sling-shotting mechanism" and that the injury would not have been caused by a fall from Victim's porch. (Tr. 412-13). He opined that after the injury observed, Victim would have been non-functional, unable to eat, and unable to interact with siblings. (Tr. 413-14). The cause of Victim's death was blunt force trauma resulting in a lethal head injury. (Tr. 415).

SLED was called in to investigate. (Tr. 200-03; 285; 313). Agent Hallman found Victim in the Pediatric Intensive Care Unit unresponsive and with a head injury,

abrasions on her arm and bruises on her legs, discoloration and possible bruising on her back as well as small wounds to the leg. (Tr. 132-135). She documented the injuries with photographs and also photographed Victim's home. Further, she measured the steps leading to the front porch of Victim's home and collected articles for testing by agents in other departments at SLED. She observed a door lock on the outside of the bedroom used by Victim's sisters. (Tr. 139 -43). She described certain areas of the home as being in disarray with piles of clothing and toys as well as bugs and roaches in the house and in the Pack 'n Play where Victim slept. (Tr. 145-48). She found adequate food in the house. (Tr. 128). She also observed but did not collect white pills which were later identified by LaBounty as natural teething pills in a cup near the Pack 'n Play. (Tr. 144-45). LaBounty testified the teething pills were in a cup on the top shelf of a desk. (Tr. 246).

Events Leading to Victim's Injuries

LaBounty traveled to visit a friend in North Carolina from Sunday afternoon on July 29 until lunch time on Tuesday, July 31, 2012. LaBounty left Victim in Appellant's care but took the three older girls to her mother to care for in her absence. (Tr. pp. 212-13; 235; 291). However, one day later, LaBounty's mother returned the three older girls to the home with Appellant because she was unable to care for them. (Tr. 212-13; 291). Appellant indicated in a statement to law enforcement officers that on July 30, 2012, while LaBounty was out of town, his brother accidently knocked Victim off the front porch to the bottom step. (Tr. 213-15; 235-36; 291). The fall from the porch caused Victim to skin her nose and hit her head, leaving a knot on her head. (Tr. p 291). Appellant said Victim appeared fine and stopped crying after he picked her up. (Tr. 291). Appellant told LaBounty about the fall when she came home the next day. (Tr. p. 213-15). LaBounty indicated that Victim was learning to walk so she easily could have fallen

from the porch. (Tr. p. 215). The fall occurred nine days before Victim was found unresponsive on August 8, 2012.

LaBounty recounted that Victim vomited for the "next few days" after the fall from the porch but was fine on the third day and kept food down. (Tr. 216; 236). In his statement to the police Appellant said that Victim threw up on July 30, "vomited for like 4 more days, stopped for two, then vomited again for another day. (Tr. 292). Appellant also claimed to have stayed by Victim's side the entire time she was ill. (Tr. 216, 296). LaBounty did not take Victim to the doctor at that time because she thought the symptoms were related to Victim's teething; instead, LaBounty treated Victim with natural teething tablets. (Tr. p. 216-17; 237).

On Tuesday, August 7, 2012, the night in question, Appellant arrived home from work around 6:00 p.m. while LaBounty was feeding Victim who felt better at this point. (Tr. 237; 256; 292). Appellant showered, ate and was available to watch the girls by the time LaBounty left for work at Pop A Top Sports Bar in Abbeville around 7:00 or 7:30 p.m. (Tr. 212; 219; 292). La Bounty was at home with the girls earlier that day while Appellant worked. (Tr. 237). Appellant said Victim was feeling better and all of the girls played well together all night, allowing for a later bedtime than usual. Appellant allowed the girls to play until 10:00 p.m., two hours past their bed time. (Tr. 219; 292). Appellant said he put the three older girls in their room for bed at 10:00 p.m. and then put Victim on her back in the Pack n' Play even though Victim preferred to sleep on her stomach. (Tr. 292-93; 296). The door to the older girls' bedroom locked from the outside. (Tr. 221). Appellant told officers that he then put on a movie and believed he dozed off around 10:30 p.m. and slept until 6:30 a.m. the next morning when LaBounty woke him up for

work. (292-293;295; 221). He said he covered Victim again with a blanket when he left for work. (Tr. 293; 300).

Child C testified that the night before Victim went to the hospital, Appellant was the only person at home with them while LaBounty worked, and that she, Victim and her other sisters were having fun playing that night. (Tr. 162-63). Child C confirmed that Appellant allowed them to stay up later than usual before telling them to go to bed. (Tr. 163). She, Child I, and Child R went into their bedroom leaving Victim in the living room with Appellant. (Tr. 164). During that night while Appellant was with them, Child C testified that she heard banging coming from the living room followed by Victim crying. (Tr. 165-66). Child C demonstrated the banging noise she heard in court and described it as banging coming from the floor of the home. She agreed the sound was "boom, boom, boom." (Tr. 165-66; 176). She could not get out of the bedroom because the door was locked from the outside. She did not hear Victim cry again. (Tr. 154-65; 176). Child C stated that Appellant was in the house with them at the time and that Appellant and Victim were in the living room. (Tr. 165). Child C testified that LaBounty did not hurt Victim the next morning and that LaBounty was not with Victim when Child C heard the banging. (Tr. 167).

Child I recalled going to sleep in her bedroom that night with Child C and Child R and that Appellant and Victim were in the living room. (Tr. 188). She also heard a banging sound in the night after Child C woke her up. (Tr. 189-90). Child I stated that LaBounty was at work at the time and Appellant was babysitting. (Tr. 190-91). She testified that her bedroom door was locked and she could not get out of the room. (Tr. 190). Child I did not see LaBounty hurt Victim the next morning. (Tr. 191).

In his oral statement to officers, Appellant volunteered that the LaBounty's children were "spoiled brats." (Tr. 296). Appellant admitted that only he and the girls were with Victim the night the injuries occurred. Appellant also volunteered that he put Victim in the Pack n'Play that night and "everything went to s__ after that. You don't think about shaking a baby to see if it is okay." (Tr. 295). He also indicated that he had not spoken to LaBounty after contacting her when first responders were at the home and volunteered, "I guess they think it happened that night. But [Victim] didn't hit her head on the Pack n' Play." (Tr. 293; 296 ; 299-300). He also volunteered to officers that LaBounty would never hurt her children. (Tr. 296; 299-300). In his statement to officers, Appellant reported that Child C is jealous of Victim. (Tr. 293).

LaBounty arrived home from work around 2:00 a.m. on August 8, 2012. She admitted to drinking and smoking marijuana and giving a friend a ride home before arriving at her house. (Tr. p. 219; 238). LaBounty found the girls' bedroom door partially open and she could see Victim on her back in the Pack n' Play by the street light shining through the window. (Tr. 220; 239; 250; 257). She stated Victim was covered with a blanket, appeared to be sleeping, and was making a snoring sound on while lying on her back. LaBounty indicated Appellant was sleeping on the couch. (Tr. 220; 221-22; 245; 258-59). When she inquired about Victim, Appellant informed her Victim seemed fine and played with her sisters until 10:00 p.m., though according to his conversation with officers, he slept the whole night and didn't mention this conversation. (Tr. 222; 257; 309). LaBounty napped on the other couch in the living where Appellant also slept and Child R joined her there. However, LaBounty and Child R moved to LaBounty's bed around 3:00 a.m. to 4:00 a.m. after Child R wet the couch. (Tr. 223; 230-40; 251; 259).

Approximately one hour later, Child I joined them in LaBounty's bed. (Tr. 223). LaBounty got up at 6:30 a.m. to wake Appellant up for work. (223; 251-52; 259; 296). Victim was still asleep at that time even though she usually wakes up around 6:00 a.m. – 7:00 a.m. for a bottle before returning to sleep until about 10:00 a.m. (Tr. 255-56; see also 305). LaBounty testified that Victim had difficulty sleeping the previous several nights and wanted to let her sleep. (Tr. 222). After waking up Appellant, LaBounty went back to sleep and did not see or hear Appellant leave for work. (Tr. 233; 259).

Child C came to LaBounty's bed around 8:00 a.m. and they all got out of bed between 8:30 and 9:00 a.m. (Tr. 223-24; 240).Victim was on her side when LaBounty got up and remained sleeping while Victim's sisters dressed. (Tr. 224; 242; 245). La Bounty had not heard a sound from Victim since she came home from work. (Tr. 252). LaBounty took the two middle girls across the street to Dollar General to buy breakfast, leaving Child C and Victim at home. (Tr. 166-67; 224; 242). Child C testified that she went back and forth from the window to the Pack n' Play while LaBounty and her sisters were gone and that's when she noticed Victim had red marks all over her. (Tr. p. 173; 166-67; 258). Child C testified that Victim did not move or make any noises that morning and after the banging and crying Child C heard the night before. (Tr. 166-67; 176). She also started that she did not see or hear LaBounty do anything to Victim that morning. (Tr. 167).

Child I also noticed the red marks on Victim the next morning as well. (Tr. 190). LaBounty did not notice the marks the night before because it was dark, nor did she notice in the morning, though she said she touched Victim that morning "to make sure

she wasn't cold or hot." (Tr. p. 225; 227; 250-51; 258). When LaBounty got up that morning, Victim appeared to be sleeping and was under a blanket. (Tr. 253).

Upon coming home from the store, LaBounty fed the older girls cereal then put their coloring table out on the porch so they could play and not wake up Victim, who was still sleeping. (Tr. p. 224; 243-45).The door to the porch was open and LaBounty could see the girls. (Tr. 226; 245; 247). LaBounty testified that she let Victim to sleep because Victim had slept only a little the previous nights and had been up late the night before. (Tr. 224-45; 241). Later, LaBounty noticed "it looked like [Victim] was waking up. Like her eye was opening. So I went to go pick her up, and that's when she was limp." (Tr. p. 225-26). This occurred at about 10:45 a.m. (Tr. p. 244). LaBounty tried to open Victim's eyes and was unable to do so. She stated that Victim was breathing but only "very, very lightly." (Tr. 225). LaBounty called 911 and was instructed to place Victim on the couch. When LaBounty complied with the instructions, she saw red splotches on Victim's arms. LaBounty stated that the red splotches were not present on Victim when she left for work the night before. (Tr. 227). LaBounty stated that Victim was alert and playful the night before when she left for work. (Tr. 228). LaBounty testified that Appellant was the only adult in the home while she worked that night and was the only adult present when she came home from work. (Tr. 231-33; 257; 336). LaBounty denied physically assaulting and abusing Victim. (Tr. 230).

Applicable Law and Analysis

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).

However, the trial court must submit the case to the jury if there is "any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (2002). 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). The appellate court may reverse the trial court's denial of a directed verdict motion only if there is no evidence to support the trial court's ruling. State v. Lindsey, 355 S.C. 15, 583 S.E.2d 740 (2003). Circumstantial evidence has been defined as "proof from a chain of facts and circumstances from which the existence of a separate fact may be inferred." State v. Phillips, 411 S.C. 124, 135, 767 S.E.2d 444, 449 (Ct. App. 2014). "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).

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;

"Child abuse or neglect" is defined for purposes of section 16-3-85(A) (1) 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.

Based upon the expert medical testimony, it is uncontested that Victim's death was the result of injuries inflicted from nonaccidental, blunt force head trauma. (Tr. 230; 273-75; 345; 368; 373; 382; 388-91; 396-97; 400 - 01; 414-15; 439). Specifically, the injuries were inflicted from a nonaccidental shake and a shake, slam. (Tr. 368; 373; 382; 369-371; 411-12; 436-44). Expert medical testimony directly refuted any suggestion that the fatal injuries were caused by Victim's minor sister or a fall from the porch nine days earlier. (Tr. 371-72; 412-13). Expert medical testimony taken in the light most favorable to the State suggested that the injuries in question occurred "more than a few hours but not a full day" before the Victim arrived at the hospital and the first CAT scan was administered. (Tr. 273-74; 365; see also 348; 364; 379). However, this time frame was thereafter more specifically delineated by uncontested expert medical testimony indicating Victim would have not have been normal and would not have been able to eat or play but would have been nonfunctional after the fatal injuries were inflicted. (Tr. 373-74; 402; 413-14). Appellant and Victim's sisters indicated Victim was happy, eating,

interacting normally and playing with her sisters up to 10:00 p.m. on August 7, 2012. This evidence substantially limits the time when the injury could have occurred to some point after 10:00 p.m. on August 7th and within approximately thirteen hours before Victim was presented to medical care providers in Greenwood. This time frame is consistent with the medical testimony respecting the probable time the injury occurred. Dr. Troup testified that had the injury occurred more than one day prior to coming to the hospital, Victim would not have been normal leading up to admission and, "that some of the findings deeper in the brain stem on the other side would have looked worse by then." (Tr. 383, lines 22-25).

Victim became nonfunctional after she was left alone with Appellant at 10:00 p.m. Victim was inexplicably placed on her back by Appellant in the Pack n' Play despite the fact that Appellant knew Victim preferred to sleep on her stomach. Appellant covered Victim with a blanket at some point that night and Victim was still on her back and covered with a blanket when LaBounty came home despite Victim's preference to sleep on her stomach. Appellant also ensured that Victim was covered with a blanket when he left the home the next morning likely to hide the bruises on the back of Victim's head, back of her neck, and left and right areas of her back from slam injuries which were later discovered by medical experts. The blanket also hid the marks and injuries on Victim's legs and arms. Victim did not awaken as she normally did for a bottle at 6:30 a.m. and did not wake up later at the normal time. In fact, Victim never woke up. The sound LaBounty heard from the Victim when she came home from work was likely Victim struggling to breath and not snoring. Medical testimony reveals "a person may be unable to discern whether [a] child was sleeping or unconscious if the person was not aware [ ]

head trauma had occurred." State v. Palmer, 408 S.C. 218, 226, 758 S.E.2d 195, 199-200 (2014).

The evidence reflects that substantial, violent force was required to inflict the fatal injuries. (Tr. 361-63; 378). Appellant was the only adult alone with Victim when the children ended their play at 10:00 p.m. on August 7, 2012, until LaBounty came home at 2:00 a.m. on August 8, 2012. At some point after 10:00 p.m. and before LaBounty came home, Victim's two sisters heard loud noises described as "bang, bang, bang" on the floor coming from the living room where only Appellant and Victim were located. Appellant was the only adult in the home at the time. Child C heard Victim cry in connection with the banging. Victim's sisters were locked in their bedroom by Appellant at the time and could not get out. The evidence establishes that Victim suffered a "slam" injury and had bruises on the back of her head, the back of her neck, and the left and right areas of her back consistent with being slammed on the floor or other surface. Victim also had red splotches on her body that were not there when LaBounty left for work on August 7 or that the sisters noticed that night before bed. Victim also had a pattern of injuries on her legs and bruises on her arm and under her nails.

In statements to a SLED agent, Appellant volunteered that the LaBounty's children were "spoiled brats," and admitted that only he and the girls were with Victim the night the injuries occurred. Appellant also volunteered that he put Victim in the Pack n'Play that night and "everything went to s__ after that. You don't think about shaking a baby to see if it is okay." (Tr. 295). He also volunteered, "I guess they think it happened that night. But [Victim] didn't hit her head on the Pack n' Play." (Tr. 293; 296 ; 299-300). These statements and Appellant's acts of accusing his brother and Victim's six

year old sister of perpetrating the fatal injuries constitute evidence of Appellant's consciousness of guilt. State v. McDowell, 266 S.C. 508, 224 S.E.2d 89 (1976) (stating that any act, conduct, or statement by Appellant is admissible as evidence of consciousness of guilt).

Moreover, LaBounty was never alone with Victim after Victim was last seen eating, playing and interacting normally. Upon arriving home from work, LaBounty napped on a couch in the living room with Appellant and, later, Child R. LaBounty moved with Child R to the bed in her bedroom where she was ultimately joined by all of her children. After LaBounty and the children got out of her bed, LaBounty was in the presence of Victim's sisters all morning, including when the door was open to the porch of the small home while the older girls colored. Victim's sisters testified that they did not hear or see LaBounty injure Victim the morning Victim went to the hospital. Appellant conceded to law enforcement officers that LaBounty would never harm her children.

The evidence that Victim's fatal injuries were the result of nonaccidental blunt force trauma resulting in a lethal head injury is uncontroverted. The circumstantial evidence presented also established that Victim was fatally injured after 10:00 p.m. on August 7 when she was in Appellant's care and more than a few hours before she was rushed to the hospital. The evidence conclusively established that Appellant as the last person to see Victim functioning normally, and Victim would not have appeared normal at all after suffering the injuries, though she could appear sleeping to someone who did not know she was injured. The circumstantial evidence presented also established Appellant was the only adult with Victim when the injuries occurred, that the other children in the home were locked in their bedroom by Appellant but heard him injuring

Victim. Victim was not normal thereafter. LaBounty, the only other adult, was never alone with Victim after 10:00 p.m. on August 7, the last time Victim was seen playing, interacting and eating. Moreover, the evidence reflects Appellant's guilty efforts to cover his deadly actions by shifting blame to his brother and a six-year old child. The evidence presented in this case easily shows that Appellant inflicted the injuries.

This Court decided in Smith, merely being with the child during estimated time of injury constituted substantial circumstantial evidence to withstand an appeal the denial of a directed verdict motion. See State v. Smith, 359 S.C. 481, 490-92, 597 S.E.2d 888, 893-94 (Ct. App. 2004) (case involving codefendants charged with homicide by child abuse when twenty-month old child died from abusive head trauma during a weekend getaway in which both codefendants were with the child the entire weekend). Likewise, this court affirmed the denial of a direct verdict motion in Palmer when the State presented evidence of multiple scenarios in which either or both co-defendants could have inflicted the abusive head trauma in the time period established by medical witnesses. Palmer, 408 S.C. 218, 227-232, 758 S.E.2d 195, 201-203 (Ct. App. 2014) (case involving death by abusive head trauma of a seventeen-month old custody of codefendants) (certiorari granted September 24, 2014).

Moreover, to the extent Appellant contends the directed verdict motions should have been granted because the State failed to establish Appellant's motive, the argument is misplaced. Motive is not an essential element of the offense charged and need not be shown. State v. Sweat, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004); State v. Thrailkill, 73 S.C. 314, 53 S.E. 482 (1906); see also State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998). Nevertheless, the issues respecting motive, explanation for the

chronic blood found in Victim's brain, or evidence of Appellant's mental state are not properly before this Court on appeal because none of these argument were presented as grounds for directed verdict and were not ruled upon by the trial court. Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 4921 S.E.2d 571 (1997); see also Connolly v. People's Life Ins. Co. of South Carolina, 299 S.C. 348, 384 S.E.2d 738 (1989). Additionally, Appellant's statement that LaBounty's children were "spoiled brats" and the fact that Victim was teething, fussy, and not sleeping are more than sufficient. The medical testimony reflects that the injuries causing the acute blood were the fatal injuries and would have caused Victim to be immediately symptomatic.

This case is clearly distinguishable from Hepburn where two adults were in the home at the time the injuries were inflicted and were jointly tried for the offenses. The evidence in this case does more than raise a suspicion of the identity of the person who inflicted Victim's fatal injuries; instead it establishes that no one other than Appellant is guilty. Also, contrary to Appellant's claim, the trial court merely recited the evidence presented at trial and did not weigh it. It is Appellant who asks this Court to improperly weigh the evidence by pointing out inconsistencies in testimony. The credibility of a witness and weight to be accorded evidence are matters for the jury and not the trial court when ruling on a directed verdict motion or for this Court when reviewing the trial court's ruling.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Attorney General

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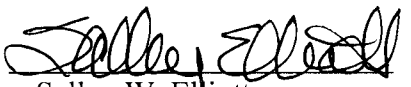
Solicitor, Eighth Judicial Circuit

BY: 
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Columbia, South Carolina
March 23, 2015

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197

THE STATE,.....RESPONDENT

v.

SHAWN PATRICK WHITE, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter* , both dated March 23, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 23rd, day of March, 2015.

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Re: The State v. Shawn Patrick White
Appellate Case No. 2014-000197

Dear Counsel:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No. 1871

SWE/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services