

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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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S.C. Supreme Court

State v. Palmer and Gorman, 408 S.C. 218, 758 S.E.2d 195 (Ct. App. 2014)

The State,

Respondent/Petitioner,

v.

Julia Gorman,

Petitioner/Respondent.

PETITION FOR REHEARING

On July 29, 2015, this Court correctly affirmed Julia Gorman’s convictions and sentences for homicide by child abuse and unlawful conduct towards a child, but also found the trial court erred in failing to grant her motion for a directed verdict regarding the charge of aiding and abetting homicide by child abuse. In making its ruling this Court overlooked the legislative intent in interpreting the aiding and abetting homicide by child abuse statute. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the State presented substantial circumstantial evidence sufficient to warrant sending the aiding and abetting child abuse charge to the jury, and affirm all of Gorman’s convictions and sentences.

This Court overlooked the obvious intent of the legislature in its misinterpretation of the aiding and abetting homicide by child abuse statute. A person is guilty of homicide by child abuse if the person “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.” S.C. Code Ann. § 16-3-85(A)(2) (2003). “Child abuse or neglect” is defined for purposes of section 16-3-85(A)(1) and (A)(2) as “an act or **omission** by any person which causes harm to the child’s physical health or welfare.” S.C. Code section 16-3-85(B). “Harm” to a child’s health or welfare” for purposes of 16-3-85 (A)(1) and (A)(2) occurs in pertinent part “when a person (a) inflicts **or allows to be inflicted** upon the child physical injury . . . or (b) fails to supply the child with adequate . . . health care, and the failure to do so causes a physical injury or condition resulting in death.” Id.

This Court previously determined the clear language of S.C. Code section 16-3-85 “unambiguously signals the General Assembly’s intent to codify two distinct crimes – homicide by child abuse as a principal pursuant to (A)(1) and homicide by child abuse by aiding and abetting pursuant to section (A)(2), each with distinct elements and sentencing ranges.” State v. Smith, 406 S.C. 215, 750 S.E.2d 612 (2013). The statute specifically provides for criminal responsibility, *inter alia*, for **any person** who inflicts injury upon a child, **who allows injury to be inflicted, or who fails to provide health care for a child, and the failure to do so causes physical injury or condition resulting in death**, both as to the principal **and** aider and abettor. The distinction between (A)(1) [the principal committing homicide by child abuse] and (A)(2) [the aider and abettor to homicide by child abuse] pertains to accountability as assessed by punishment.

This Court specifically opined the common law principles of accomplice liability do not apply in the context of the homicide by child abuse statute. State v. Smith, 406 S.C. at 215, 750 S.E. 2d at 612; see also State v. New Mexico, 265 P.3d 705 (N.M. 2011)

(stating that by prohibiting both causing and permitting child abuse and in providing for more severe sentences for causing abuse, the legislature intended to provide flexibility in assessing culpability and greater punishment for the more reprehensible action). The State presented evidence, which taken in the light most favorable to the State as it relates to the aiding and abetting homicide by child abuse charge, demonstrated Palmer committed the heinous acts against the child victim and Gorman failed to seek medical attention when she should have known it was necessary. The facts and circumstances are described in the State's Brief of Petitioner and the State asks this Court to consider those facts in light of the proper interpretation of the statute which would allow a conviction to stand for aiding and abetting homicide by child abuse when a party fails to act.

Further, public policy supports a reading of the statute which penalizes someone for failing to stop an act of homicide by child abuse when the party has the ability to prevent the abuse. South Carolina's policy has always been to protect and safeguard the welfare of our children. See, State v. Murrell, 302 S.C. 77, 393 S.E.2d 919 (1990); State v. Cooper, 291 S.C. 351, 353 S.E.2d 451 (1987); Mr. T v. Ms. T, 378 S.C. 127, 138, 662 S.E.2d 413, 419 (Ct. App. 2008) ("Public policy suggests that 'South Carolina, as *parens patriae*, protects and safeguards the welfare of its children.'") (quoting Harris v. Harris, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992)); see also, State v. Cagle, 111 S.C. 548, 552, 96 S.E. 291, 292 (1918) ("The state is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare.").

Failure to provide consequences when someone can stop abuse, and does not, will have a detrimental effect on the welfare of the children of this state. A person will be

able to know someone is crushing the skull of a toddler, but can sit idly by as it happens without any repercussions. Certainly, this is not the legislature's intended outcome when it passed section 16-3-85(A)(2).

Evidence in the record, when viewed in the light most favorable to the State and as detailed in the State's Brief of Petitioner, clearly supports the trial court's determination Gorman's motion for a directed verdict as to the charge of aiding and abetting homicide by child abuse should be denied. If Palmer committed the crime of homicide by child abuse, then taking the facts in the light most favorable to the State, Dr. Roberts indicated the child would have been immediately and obviously symptomatic so the failure by Gorman to obtain medical care from 4:30 pm when she arrived home until the EMS was called around 6:15 would constitute aiding and abetting the abuse perpetrated by Palmer. Gorman's own statements, coupled with the medical testimony of Dr. Roberts, indicates she knew or should have known about Palmer's infliction of the fatal injuries to the child, and she did absolutely nothing to mitigate the effects. Then she actively tried to cover for Palmer by deflecting attention to the dog, her own daughter, or other implausible scenarios.

Based on all the above, this Court should grant the petition for rehearing, reverse the Court of Appeals' finding the trial court erred in denying Gorman's motion for a directed verdict as to aiding and abetting homicide by child abuse, and ultimately affirm all three of Gorman's convictions and sentences.

CONCLUSION

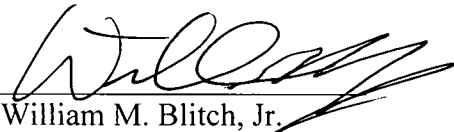
For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court properly denied all motions for a directed verdict by Gorman, and affirm Gorman's convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY:



William M. Blich, Jr.
S.C. Bar No. 15608
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR
PETITIONER/RESPONDENT

August 13, 2015

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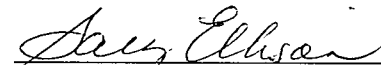
Respondent/Petitioner.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of August, 2015.



SALLY ELLISON
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727