

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

DEC 08 2015

SC Court of Appeals

Appellate Case No. 2012-001203
General Sessions Case Nos. 2013-GS-40-06520 & 2013-GS-40-06521

The State of South Carolina,Respondent,

v.

Robert Antonio Guinyard,Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in denying Antonio's motion for directed verdict where the State presented no direct evidence of his guilt and the circumstantial evidence presented against him was not "substantial?"
- II. Did the trial court err in allowing the State to enter into evidence shocking photos that had little probative value relative to their danger of unfair prejudice?

STATEMENT OF THE CASE

On October 16, 2013, the Richland County Grand Jury issued two indictments against Robert Antonio Guinyard ("Antonio"). The first indictment charged Antonio with homicide by child abuse against his minor son ("Victim") in violation of S.C. Code Ann. § 16-3-85(A)(1) (R. v. 3 p. 1339). The second indictment charged Antonio with unlawful conduct towards a child against Victim in violation of S.C. Code Ann. § 63-5-70. (R. v. 3 p. 1341). Antonio—along with Victim's mother, Courtney Thompson ("Courtney"), who had been indicted on the same charges—was tried on May 19-28, 2014, before The Honorable Robert E. Hood. The jury found both Antonio and Courtney guilty as charged. (R. v. 3 p. 1267, l. 18 – p. 1268, l. 21). The trial court sentenced Antonio to life without parole on the charge of homicide by child abuse and to ten years concurrent on the charge of unlawful conduct towards a child. (R. v. 3 p. 1282, l. 24 – p. 1283, l. 3; R. v. 3 pp. 1345 & 1346). This appeal followed.

STATEMENT OF THE FACTS

Victim was the first of five children born to Antonio and Courtney (R. v. 3 p. 1002, l. 19 – p. 1003, l. 1; R. v. 3 p. 1092, l. 21 – p. 1093, l. 5). He was born in 2009 and died on July 1, 2013. (R. v. 2 p. 709, l. 13-16). The cause of death, as determined by the Richland County Coroner's Office, was "[e]xtensive soft tissue hemorrhage and bleeding

... due to multiple acute and healing blunt force injuries due to non-accidental trauma.” (R. v. 2 p. 747, l. 1-5).

On the afternoon of July 1, 2013, Courtney arrived home from the hospital with her and Antonio’s fifth child, having given birth the prior morning. (R. v. 2 p. 822, l. 19-23). Antonio helped Courtney bring her belongings inside, paid her cab driver, and spent some time playing with his new baby. (R. v. 3 p. 1038, l. 23 – p. 1039, l. 11; R. v. 3 p. 1040, l. 14-17). Later that evening, he began cooking dinner for himself, Courtney, and Victim. (R. v. 3 p. 1041, l. 12-21). While cooking, he heard a “boom” which prompted him to stop cooking, turn off the stove, and go investigate. (R. v. 3 p. 1043, l. 24 – p. 1044, l. 4). As he was walking down the hall, Courtney approached him holding Victim in her arms like a baby. (R. v. 3 p. 1044, l. 5-19). Antonio was shocked and did not know what to do. (R. v. 3 p. 1044, l. 19-23). Courtney called 911 and administered CPR on Victim pursuant to the dispatcher’s instructions. (R. v. 3 p. 1044, l. 24 – p. 1045, l. 18). Upon hearing an ambulance siren, Antonio panicked, picked up his newborn child, and hid in a closet. (R. v. 3 p. 1045, l. 24 – p. 1046, l. 8). He was afraid that Victim’s accident might prompt law enforcement to take the baby. (R. v. 3 p. 1068, l. 18-25). Victim passed away at approximately 6:15 pm. (R. v. 2 p. 791, l. 8-12). Later that evening, Antonio and Courtney agreed to be transported to Richland County Sheriff’s Department headquarters for questioning. (R. v. 2 p. 804, l. 21 – p. 805, l. 5). Antonio denied doing anything to hurt his children. (R. v. 2 p. 811, l. 17-20; R. v. 3 p. 1288). Approximately three months later, the grand jury indicted Antonio for homicide by child abuse and unlawful conduct towards a child. (R. v. 3 pp. 1339 & 1341).

At the joint trial of Antonio and Courtney, the State presented nearly 40 witnesses, none of whom gave any direct evidence incriminating Antonio in Victim’s

death. Rather, the State's case consisted entirely of circumstantial evidence. For example, Sergeant Stan Richards and Investigators Robert Oates, Kristen Polis, and Holly Wagner—all of the Richland County Sheriff's Department—testified regarding their observation of reddish brown stains on various surfaces and articles in Antonio's home. (R. v. 1 p. 71, l. 8 – p. 72, l. 2; R. v. 1 p. 362, l. 23 – p. 363, l. 2; R. v. 1 p. 419, l. 21 – p. 420, l. 2; R. v. 2 p. 523, l. 5-18). Rachel Grant, a DNA analyst with the sheriff's department, testified that some of the stains were Victim's blood, some were Antonio's blood, and others were inconclusive. (R. v. 2 p. 649, l. 4 – p. 668, l. 6). However, neither these witnesses nor any others could competently testify as to how or when the blood came to be on those surfaces and articles.

The State also presented evidence from Dr. Olga Rosa, a child abuse pediatrician with the University of South Carolina School of Medicine, and Dr. Amy Durso, a forensic pathologist with Professional Pathology Services who performed Victim's autopsy, regarding serious injuries Victim sustained leading up to and ultimately causing his death. (R. v. 1 p. 473, l. 13 – p. 475, l. 22; R. v. 2 p. 712, l. 22 – p. 719, l. 8). Their testimony—not to mention the photos they reference—is admittedly heartrending. Yet neither Dr. Rosa, Dr. Durso, nor any other witness testified regarding precisely how Victim's injuries were inflicted or, more critically to this case, by whom.

After the State rested, counsel for Antonio moved for a directed verdict on the grounds that the State failed to meet its burden of introducing either direct or “substantial” circumstantial evidence of Antonio's guilt. (R. v. 2 p. 929, l. 1 – p. 935, l. 17). However, the trial court denied the motion, ruling that the State had introduced sufficient evidence for the case to be submitted to the jury. (R. v. 2 p. 935, l. 18-25). After resting and again after the close of all evidence, counsel for Antonio renewed his

motion for directed verdict, but the trial court denied the motion on the grounds previously stated. (R. v. 3 p. 1087, l. 8-11; R. v. 3 p. 1163, l. 8-16; R. v. 3 p. 1264, l. 18 – p. 1265, l. 5; R. v. 3 p. 1275, l. 9-14).

ARGUMENTS

I. THE TRIAL COURT ERRED WHEN IT DENIED ANTONIO'S MOTION FOR DIRECTED VERDICT BECAUSE THE STATE PRESENTED NO DIRECT EVIDENCE OF HIS GUILT AND THE CIRCUMSTANTIAL EVIDENCE PRESENTED AGAINST HIM WAS NOT "SUBSTANTIAL."

"On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment." Rule 19, SCRCrimP. Pursuant to this rule, it has long been settled that "[a] defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). Evidence sufficient to survive a motion for directed verdict has been defined as "direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict[.]" State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984).

A. Either direct evidence or "substantial" circumstantial evidence of Antonio's guilt was required.

The primary charge against Antonio was homicide by child abuse, which S.C. Code Ann. § 16-3-85(A)(1) defines as causing "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." "Child abuse or

neglect” is statutorily defined as “an act or omission by any person which causes harm to the child's physical health or welfare,” while this Court has defined “extreme indifference” as “a mental state akin to intent characterized by a deliberate act culminating in death.” S.C. Code Ann. § 16-3-85(B)(1); State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002).

Antonio was also charged with unlawful conduct towards a child. That offense is defined as:

- (1) plac[ing] the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;
- (2) do[ing] or caus[ing] to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or
- (3) wilfully abandon[ing] the child.

S.C. Code Ann. § 63-5-70(A).

It is indisputable that the State presented no direct evidence that Antonio is guilty of either offense. “Direct evidence is based on personal knowledge or observation and ..., *if true*, proves a fact without inference or presumption.” State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (citation and quotations omitted) (ellipsis and italics in original). No witness testified based on personal knowledge or observation of Antonio's culpability for Victim's injuries or death. Rather, the State relied exclusively on circumstantial evidence.

As opposed to direct evidence, which requires no inference, circumstantial evidence “is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred.” Id. It is based on inference rather than personal knowledge or observation and “establishes collateral facts from which the main fact may

be inferred.” Id. (citations and quotations omitted). If the State relies solely on circumstantial evidence to prove a defendant’s guilt, that evidence must be “substantial.” See Pinckney, 339 S.C. at 349, 529 S.E.2d at 527. If the evidence “merely raises a suspicion that the accused is guilty,” a directed verdict should be granted because “suspicion” “implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Cherry, 361 S.C. at 594, 606 S.E.2d at 478.

The Supreme Court has recently issued three opinions elucidating the meaning of “substantial circumstantial evidence.” Analysis of those cases demonstrates that the State failed to present such evidence against Antonio.

(i) State v. Bostick indicates that “mere suspicion” is insufficient.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the defendant was found guilty of murder based on four pieces of circumstantial evidence:

(1) [The victim’s] car keys, calculator, and other items from her home were found in the [defendant’s] family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and [the defendant’s] mother did not use those accelerants when she burned things in the pile; (3) [the defendant] had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on [the defendant’s] jeans excluded about ninety-nine percent of the population, the blood could not be matched to [the victim’s] DNA.

Id. at 141-42, 708 S.E.2d at 778. The Supreme Court reversed the trial court’s denial of the defendant’s motion for directed verdict, finding that even when analyzing the State’s evidence in a favorable light, the evidence “raised, at most, a mere suspicion that [the defendant] committed this crime.” Id. at 142, 708 S.E.2d at 778.

(ii) *State v. Odems* indicates that circumstantial evidence must “reasonably tend” to prove guilt.

In *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011), the defendant was found guilty of first degree burglary, grand larceny, criminal conspiracy, and malicious injury based on three pieces of circumstantial evidence:

- (1) the fact that less than ninety minutes after the burglary, police located [the defendant] in the getaway car with the burglars and the stolen goods;
- (2) [the defendant] fled from law enforcement; and (3) [the defendant] asked an uninvolved person to lie for him.

Id. at 588, 720 S.E.2d at 51. The Supreme Court reversed the defendant’s convictions, holding that “[t]he circumstantial evidence presented by the State does not reasonably tend to prove [the defendant’s] guilt, and fails this Court’s well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury.” *Id.* at 592, 720 S.E.2d at 53.

(iii) *State v. Hepburn* indicates that presence at the scene is not enough.

In *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), the defendant was found guilty of homicide by child abuse based primarily on three pieces of circumstantial evidence: (1) at the time of the victim’s death, the defendant’s life circumstances were poor and she was frustrated by her failure to secure employment, her living situation, and her parental responsibilities; (2) according to the testimony of medical professionals, the victim’s injuries were severe; and (3) the co-defendant testified that he heard the defendant shaking the victim. *Id.* at 440, 753 S.E.2d at 414-15. Relying on *Bostick*, *Odems*, and the principle that “[t]he State has the burden of proving identity beyond a reasonable doubt,” *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013), the Supreme Court directed a verdict of acquittal. The court found it particularly notable that

while the defendant was “undoubtedly present at the scene, the only inference that can be drawn from the State’s case is that one of the two co-defendants inflicted the victim’s injuries, but not that *Appellant* [i.e. the defendant] harmed the victim.” Hepburn, 406 S.C. at 440, 753 S.E.2d at 415 (emphasis in original).

B. The State’s circumstantial evidence against Antonio was not “substantial.”

As in Bostick, Odems, and Hepburn, the State relied solely on circumstantial evidence to prove its case against Antonio. However, the circumstantial evidence it presented was not “substantial” in that it raised a “mere suspicion” of guilt, did not “reasonably tend” to prove guilty, and established little more than that Antonio was present at the scene of Victim’s death. Though the State undoubtedly established that Victim had sustained numerous severe injuries and that Antonio was in the house when Victim died, it presented no evidence tending to show that Antonio—as opposed to Courtney or even someone else—inflicted Victim’s injuries. It certainly did not show that Antonio did anything to cause Victim’s death—much less a “deliberate act culminating in death,” Jarrell, 350 S.C. at 98, 564 S.E.2d at 367—between the specific dates of June 15, 2013, and July 1, 2013, as alleged in the bill of indictment for homicide by child abuse. (R. v. 3 p. 1339). See, e.g., State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (“In South Carolina, it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.”).

At most, the State’s evidence established that both Antonio and Courtney had an opportunity to harm Victim. However, if the only inference that could be drawn from the evidence was that either Antonio or Courtney inflicted Victim’s injuries, Antonio was

entitled to a directed verdict. See, e.g., Hepburn, 406 S.C. at 440, 753 S.E.2d at 415 (reversing the trial court's refusal to direct a verdict of acquittal where "the only inference that [could] be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that *Appellant* [i.e. the defendant] harmed the victim") (emphasis in original). Accordingly, the trial court's denial of Antonio's motion for direct verdict was error.

II. THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO ENTER INTO EVIDENCE SHOCKING PHOTOS THAT HAD LITTLE PROBATIVE VALUE RELATIVE TO THEIR DANGER OF UNFAIR PREJUDICE.

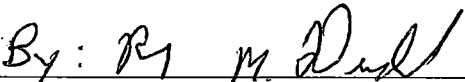
Through Investigator Robert Oates of the Richland County Sheriff's Department, the State introduced numerous photographs of Victim's deceased body on the day of his death. (R. v. 1 p. 353, l. 9 – p. 354, l. 19; State's Ex. 13, 15, 16, 17, 18, 19, 75, 80, 81, 83, 84, 85, 130, 136, 137, 138, 139, 144, 146 & 147). Counsel for both Antonio and Courtney objected to the introduction of the photos, arguing pursuant to Rule 403, SCRE, that they should have been excluded because any probative value they may have had was substantially outweighed by the danger of unfair prejudice, but were overruled by the trial court. (R. v. 1 p. 293, l. 16 – p. 299, l. 14). Through Dr. Amy Durso of Professional Pathology Services, the State also introduced several gruesome photographs taken during Victim's autopsy. (R. v. 2 p. 713, l. 24 – p. 714, l. 6; R. v. 2 p. 715, l. 23 – p. 716, l. 4; R. v. 2 p. 717, l. 1-10; R. v. 2 p. 723, l. 3-11; State's Ex. 225, 227, 228, 229, 230 & 231). Counsel objected to these photos on the same grounds, as they were cumulative of Dr. Durso's testimony and had a substantial danger of unfairly prejudicing the jury. (R. v. 2 p. 684, l. 14 – p. 685, l. 22; R. v. 2 p. 695, l. 24 – p. 696, l. 24). The trial court

nevertheless allowed their introduction over the defenses' objections. (R. v. 2 p. 687, l. 24 – p. 688, l. 2; R. v. 2 p. 699, l. 7-12).

The crime scene and autopsy photos showed a cold, lifeless four-year-old child and, in the case of the autopsy photos, depicted Victim's body being cut into pieces. Yet Victim's death was not a contested issue. See, e.g., State v. Cherry, 348 S.C. 281, 298, 559 S.E.2d 297, 305 (Ct. App. 2001) (noting that evidence is probative if it "tends to prove or disprove an element of the case") (citations and quotations omitted). Accordingly, the photos could not have done anything except inflame the passions of the jury and should have been excluded. The trial court erred when it allowed their admission. See, e.g., State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) ("Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.").

CONCLUSION

For the reasons set forth herein, the trial court erred when it denied Antonio's motion for directed verdict and when it allowed the admission of shocking photos of Victim's body that had little or no probative value. Accordingly, this Court should reverse Antonio's conviction.

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CERTIFICATE OF COUNSEL

The undersigned attorneys hereby certify that the enclosed **APPELLANT'S FINAL BRIEF** and **APPELLANT'S FINAL REPLY BRIEF** comply with Rule 211(b), SCACR.

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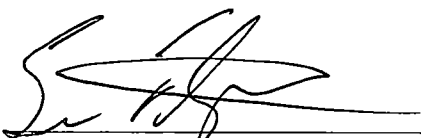
PROOF OF SERVICE

I, the undersigned, do hereby state that I have on December 8, 2015, served a copy of **APPELLANT'S FINAL BRIEF** and **APPELLANT'S FINAL REPLY BRIEF** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

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Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 8th day of December, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.