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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

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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 REPLY BRIEF**

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December 8, 2015

Attorneys for Appellant

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## ARGUMENTS

### I. THE STATE'S BRIEF DOES NOT POINT TO SUFFICIENT DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF ANTONIO'S GUILT.

The State's Brief contains a lengthy recitation of the evidence presented at trial, but it does not point to sufficient direct or substantial circumstantial evidence that *Antonio* harmed Victim or that *Antonio's* actions caused Victim's death. In that respect, this case is strikingly similar to State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013).

In Hepburn, as in this case, two co-defendants were each charged with homicide by child abuse and unlawful conduct towards a child, tried jointly, and convicted on both charges. However, the Supreme Court reversed Hepburn's convictions because "the State did not present substantial evidence that *Appellant* [i.e. Hepburn] killed the victim." Id. at 440, 743 S.E.2d at 415 (emphasis added). The court found that even though Hepburn was 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* harmed the victim." Id. (emphasis in original).

Though the State undoubtedly established that Victim sustained numerous severe injuries and that Antonio was present at the scene of Victim's death, it failed to present direct or substantial circumstantial evidence that *Antonio*—as opposed to Courtney or some other person—inflicted fatal injuries on Victim between 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.”).

Just like in Hepburn, “the only inference that can be drawn from the State’s case is that one of the two co-defendants [i.e. Antonio or Courtney] inflicted the victim’s injuries, but not that [Antonio] harmed the victim.” 406 S.C. at 440, 743 S.E.2d at 415. That inference was insufficient to submit the case to the jury, and Antonio was entitled to a directed verdict. See, e.g., id. (“[W]e reverse the trial court’s refusal to direct a verdict of acquittal because the State did not put forward sufficient direct or substantial circumstantial evidence of Appellant’s guilt.”).

**II. ANTONIO’S MOTION FOR DIRECTED VERDICT WAS RENEWED THREE TIMES AFTER THE CLOSE OF THE STATE’S CASE IN REBUTTAL.**

The State asserts that Antonio’s motion for directed verdict “was not renewed at the end of the State’s case in rebuttal.” (Resp. Br. at 35). In fact, the motion was renewed three times after the State’s rebuttal.

Upon the conclusion of the State’s case in rebuttal, the trial court dismissed the jury. (Tr. p. 1681, l. 18 – R. v. 3 p. 1163, l. 6). The court then asked if Antonio’s counsel had anything further. (R. v. 3 p. 1163, l. 7). Antonio’s counsel responded that he was renewing “all prior motions and objections.” (R. v. 3 p. 1163, l. 8-9). Courtney’s counsel did the same. (R. v. 3 p. 1163, l. 11-13). The court indicated that his rulings were “the same as before based on the reasoning that I previously provided.” (R. v. 3 p. 1163, l. 14-16).

After the jury was charged, Courtney’s counsel again renewed all of her previous motions and objections. (R. v. 3 p. 1264, l. 18-20). Antonio’s counsel did the same. (R.

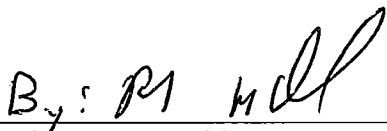
v. 3 p. 1265, l. 2). Again, the court indicated that his rulings were “the same based upon my previous explanation.” (R. v. 3 p. 1265, l. 3-5).

Finally, after the verdicts were read, Courtney’s counsel once again renewed all her previous motions and objections. (R. v. 3 p. 1273, l. 24-25). The trial court asked if Antonio’s counsel joined in those motions, and Antonio’s counsel indicated that he did so join. (R. v. 3 p. 1274, l. 21-23). He further stated that he would like to “renew all other motions and objections previously made during the trial.” (R. v. 3 p. 1275, l. 9-11). The court indicated yet again that “all previous motions are the same and my rulings and explanation [sic] are the same.” (R. v. 3 p. 1275, l. 12-14).

Because Antonio moved for a directed verdict of acquittal at the close of the State’s case and renewed his motion (a) at the close of the State’s case in rebuttal; (b) after the jury was charged; and (c) after the verdicts were read, he has sufficiently preserved the motion—and the propriety of its denial—for review by this Court.

### CONCLUSION

For the reasons set forth herein as well as in Appellant’s Final Brief, this Court should reverse Antonio’s conviction.

  
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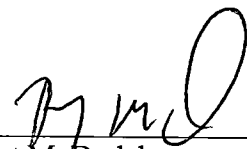
v.

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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:

Amie L. Clifford, Esquire  
Special Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211



Robert M. Dudek  
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me  
this 8<sup>th</sup> day of December, 2015.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.