THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197
Opinion No. 2016-UP-394

The State,.....Respondent,

v.

Shawn Patrick White,.....Appellant.

APPELLANT'S PETITION FOR REHEARING

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ARGUMENT FOR REHEARING

Pursuant to Rules 221(a) and 240, SCACR, Appellant Shawn Patrick White petitions this Court for rehearing of the Court's decision in *State v. Shawn Patrick White*, 2016-UP-394 (S.C. Ct. App. filed Aug. 3, 2016).[1] Appellant submits that the Court misapprehended the law or overlooked the evidence when it affirmed the trial court's denial of Appellant's motion for a directed verdict. Appellant respectfully requests the Court reconsider its decision for the following reasons:

I. The Court should reconsider its decision because White's presence alone with the victim during a portion of the time frame in which her acute injury occurred does not rise to the level of substantial circumstantial evidence of guilt. *See State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) ("[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."). The evidence, when viewed in a light most favorable to the State, establishes that victim acted normally after the time frame in which White was alone with her. LaBounty testified she noticed nothing wrong with victim when she came home, saw victim's face, and even heard her snoring, which was normal for victim. (R. pp. 185, 190-91, 197-98). White's presence with the victim during part of the time in which her acute injury occurred, and evidence showing she acted normally after this time period, does not amount to substantial circumstantial evidence.

[1] The Rule 220-style of the unpublished opinion makes it difficult to determine the exact bases for the Court's ruling as it consists of only string citations and does not address any specific evidence upon which the Court relied in reaching its decision.

II. The Court should reconsider its decision because the testimony of Child C and Child I raised merely a suspicion of guilt and does not amount to proof. *See State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) ("The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." (internal quotation marks omitted)). The State presented only circumstantial evidence in this case. The State conceded that the closest it comes to presenting substantial circumstantial evidence is the testimony of Child C and Child I. (R. pp. 396 ln. 24 – 397 ln. 2). However, that testimony, at best, is that the children heard a banging noise and then crying. This is not substantial circumstantial evidence that White was the source of the noise or harmed victim. "[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). There is no evidence as to what contact caused victim's injuries, only that it could have been a soft surface, such as a pillow, or a hard surface. (R. pp. 309). The investigating SLED officer testified that not a single person interviewed had any knowledge of Appellant harming victim. (R. p. 277-78).

III. The Court should reconsider its decision because it does not address Appellant's argument that the State failed to produce substantial circumstantial evidence that he acted with "an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1); (Br. of App. pp. 20-22). "For purposes of this statute, 'extreme indifference' has been characterized as a mental state akin to intent characterized by a deliberate act culminating in death." *State v. Phillips*, Op. No. 27607 (S.C. Sup. Ct. filed April 20, 2016) (Shearouse

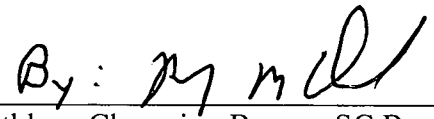
Adv. Sh. No. 16 at 20, 27), 2016 S.C. Lexis 260 (internal quotation marks omitted). In this case, there is not substantial circumstantial evidence to allow a jury to conclude that Appellant acted with extreme indifference. To the contrary, victim's mother stated Appellant was "great" with her four children. (R. p. 189 lns. 11-13). Further, the State presented no evidence to explain the cause of the older, chronic blood in victim's brain. *Cf. Phillips*, Op. No. 27607 at 28 (finding evidence of extreme indifference where it was undisputed that an overdose of medicine belonging to the defendant caused the child's death and there was "no question that Child was in the care and custody of Phillips and her son at the time of the lethal dose"). The State failed to present any evidence that Appellant acted with an extreme indifference to human life, as required in this case.

IV. The Court should reconsider its decision because it does not address Appellant's argument that the trial court improperly weighed the evidence. (Br. of App. pp. 22-25). The Opinion merely cites to a case stating the general proposition that the trial court is concerned with the existence or nonexistence of evidence, rather than its weight, but contains no analysis as to whether the trial court in this case improperly weighed the evidence. Rule 19(a), SCRCrimP ("In ruling on the [directed verdict] motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight."). Appellant maintains that the trial court improperly weighed the evidence, including its interpretation of certain evidence as an attempted cover-up and a reference to the word "shake" by Appellant as evidence that he shook victim to harm her, and the weight it afforded to LaBounty's testimony that she did not harm the victim. (R. pp. 405-407).

CONCLUSION

For the reasons stated above, the Court should grant this Petition, withdraw its prior opinion, and issue a new opinion reversing the trial court's decision and Appellant's conviction.

Respectfully submitted,

By: 

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THE STATE,

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Shawn Patrick White, #358364, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 31st day of August, 2016.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 31st day of August, 2016.

(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.