

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

THE STATE,

RESPONDENT

V.

COURTNEY SHANTE THOMPSON,

APPELLANT

APPELLATE CASE NO. 2014-001198

Appeal From Richland County
Robert E. Hood, Circuit Court Judge

Opinion No. 5485

Heard March 8, 2017 – Filed May 11, 2017

PETITION FOR REHEARING

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On May 11, 2017, this Court affirmed Appellant's (and Co-Appellant Father's) conviction for Homicide by Child Abuse [HCA] and Unlawful Conduct Towards a Child, in a published opinion, The State v. Courtney Shante Thompson and The State v. Robert Antonio Guinyard. Op. No. 5485 (S.C. Ct. App., filed May 11, 2017). Pursuant to Rule 221 (a), SCACR, Appellant respectfully petitions for rehearing on the issue of the trial court's denial of her directed verdict motions and the trial court's denial of her motion to exclude photographs of the Victim's body taken at the crime scene and during his autopsy. Appellant believes the points discussed below may have been overlooked or misapprehended.

I. DIRECTED VERDICT MOTIONS

Appellant respectfully asserts that this Court should reconsider the trial court's denial of her motion for directed verdict on the charges of Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child.

There is a well-settled standard for directed verdicts when the State's case is based not on direct, but on circumstantial evidence. If the State relies exclusively on circumstantial evidence to prove guilt, that evidence must be "substantial" to justify denying the motion. State v. Odems, 395 S.C. at 586, 720 S.E.2d at 50 (2011). (See also State v. Cherry, 361 S.C. 588, 593, 606 S.E.2 475, 478(2000), the Court ruled that, "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged."; and in State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App 2013), the court defines, "direct" evidence, "Direct evidence is based on personal knowledge or observation and if true, proves a fact without inference or presumption"). And in one of the supreme court's more

recent decisions, the Court ruled, "While 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* harmed the victim. Thus, we 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." State v. Hepburn, 406 S.C. 416, 440, 763 S.E.2d, 402, 424 (2013).

The relevant statutes are:

Homicide by Child Abuse- S.C. Code Ann § 16-3-85(B)(1)

(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 the death occurs under circumstances manifesting an extreme indifference to human life;
or

(2) 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.

(B) For purposes of this section, the following definitions apply:

(1) "child abuse or neglect" means an act or omission by any person which causes harm to the child's physical health or welfare;

(2) "harm" to a child's health or welfare occurs when a person:

(a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;

(b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or

(c) abandons the child resulting in the child's death.

and

Unlawful Conduct Towards a Child- S.C. Code Ann § 63-5-70(A)

A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to:

(1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;

(2) do or cause 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 the child.

In its opinion affirming the lower court's conviction of Appellant, this Court reasoned regarding evidence that was presented at the lower court:

In the light most favorable to the State, Appellants' custody of Victim during these two months and the previous history of Appellants' abuse of Victim implicate both Mother and Father; a juror could reasonably infer that either parent inflicted the fatal abuse while the other parent was aware of the abuse and acquiesced in it. See § 16-3-85(B)(1) & (2)(a) (defining "child abuse or neglect" as "an act *or omission* by any person which causes harm to the child's physical health or welfare" and "'harm' to a child's health or welfare" as "inflict[ing] *or allow[ing]* to be *inflicted* upon the child physical injury, including injuries sustained as a result of excessive corporal punishment" (emphasis added)).

Appellant respectfully asserts this honorable Court may have overlooked or misapprehended circumstantial evidence the State presented, in ruling that, "a juror could reasonably infer that either parent inflicted the fatal abuse while the other parent was aware of the abuse and acquiesced in it."

(emphasis added). State v. Courtney Shante Thompson, published Opinion No. 5485, p. 12. Appellant further asserts that the evidence viewed in light most favorable to the State, the State did not present substantial circumstantial evidence prove the *Appellant* inflicted the fatal abuse upon the Victim.

Our Supreme Court has ruled that guilt remains *individual* and *personal* and is not a matter of mass application. (emphasis added), (State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 81 (1993)). Similarly, the Supreme Court ruled in State v. Hepburn, State v. Hepburn, 406 S.C. 416, 440, 763 S.E.2d, 402, 424 (2013), “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. Thus, we 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” (emphasis in the original opinion). Appellant maintains the State has failed to prove that **she** inflicted the harm that caused the Victim's death, or that she “acquiesced” in it. On the contrary, Appellant recalls her interaction with her son and her efforts to get him medical attention:

He was crunched up and his body was stiff. His butt was up in the air[,] and he was [kind of] on his head... He was biting his lip hard.... When I popped his lip out from his teeth to keep him from biting it off[,] he went flat on me. He just dropped.... He was not responding.... I picked [Victim] up like he was a baby and took him to the front room (living room). Blood was coming from his lip. I had blood on my hand and went to my room to get my phone off the floor. *I called 911. They told me how to do CPR. I did what he told me....* (emphasis added)
State v. Courtney Shante Thompson, Opinion No. 5485, p.3.

Appellant asserts she alone did all she could do to save her son and did not administer the harm that caused her child's death. She further states the trial court erred in denying her motion for a directed verdict at the close of the State's case-in-chief and again at the close of all of the evidence in that the State failed to present any direct or substantial circumstantial evidence to prove that *she* harmed her son and *her* actions led to the death of her son. She contends the trial court's ruling should be reversed.

I. PHOTOGRAPHS

Appellant respectfully asserts that this Court may have misapprehended Rule 403, SCRE as it pertains to photographs that should have been excluded from evidence because any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice.

The relevant section of Rule 403 of the South Carolina Rules of Evidence states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence,"

Appellant asserts that just the sheer number of photographs (over 240) the State moved the trial court to admit into evidence served only to delay the proceedings, were a waste of time and a needless presentation of cumulative evidence. More importantly, Appellant asserts the photographs' minute probative

value substantially outweighs the danger of unfair prejudice and are calculated to arouse the sympathies and the prejudices of the jury.

When the State sought to introduce photographs of the Victim in his home, unclothed, lifeless, and with his genitals exposed, and the gruesome autopsy photographs depicting the Victim's body sliced into parts, Counsel objected to their admission on the grounds that any probative value of the crime scene and gory autopsy photos was far outweighed by the danger of unfair prejudice and needless presentation of cumulative evidence. However, the Court overruled Counsel's objection and the photographs were shown to the jurors. (R. 293:21-300:10; 353:9-354:1; 684:20--685:19; 687:14-688:2; 695:24-696:16; 713:24-714:6; 715:23-716:4; 717:1-10, 23-25; 723:3-11). Additionally, when the State published some of the autopsy photographs to the jurors, one of the jurors was so overcome with emotion that the juror ducked down below the barrier in the courtroom and covered her eyes. Counsel moved the court for a mistrial on the grounds that the juror's actions had a high probability of having a negative effect on the other jurors and the entire jury was tainted. The court added, "*...I actually moved, for the record, to the back of the jury box specifically to watch that juror and see what she was doing or what she was not doing...Her head was down at times, but I mean, the jurors are not required to stare at every single thing that either side picks up or puts up in front of them.*" (R. 752:12-753:8)

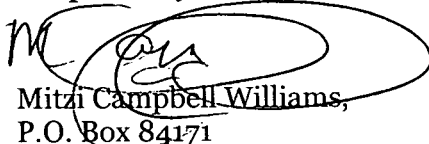
In response to the photographs the State sought to admit into evidence, the trial court commented:

THE COURT: Okay. All right. Everybody stop talking. 232, 233, 237, 238, 239, 234, 246, 235, 236, 243, and 244 are all out. Those are the most disgusting photos I've ever seen in my entire life. I mean no disrespect to Dr. Durso. She was doing her job by documenting that and taking that, and understanding what the body has, but when I saw those photos for the first time, I was in complete and total shock, and I mean, I remember the very first case I ever worked on was a small child who had been beaten with a drop cord. I mean, I've seen enough disgusting crime scene photos in my life where most of them do not have much affect on me, and those photos are all just --- they're overwhelming,... (R. 697:22- 699:12)

It is with deference to this Court that Appellant asserts the trial court did not exclude all of the photographs that he thought were, "disgusting" because there were hundreds of them. Appellant contends that any probative value of the graphic crime scene and autopsy photographs was far outweighed by the danger of unfair prejudice and needless presentation of cumulative evidence, and should have been excluded by the trial court. Appellant requests that this Court exclude the photographs.

WHEREFORE, in addition to the arguments raised in the Final Brief of Appellant and during oral argument, Appellant respectfully requests that this Court reconsider this matter, vacate the opinion and reverse Appellant's convictions.

Respectfully Submitted,



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Courtney Shante Thompson

June 2, 2017

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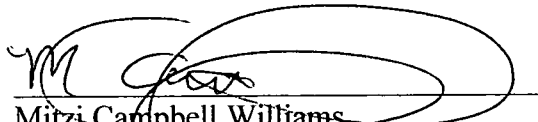
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Aimie L. Clifford, Esquire, P.O. Box 5010, Columbia, South Carolina, 29250-5010; Courtney Shante Thompson; Matthew G. Gerrald, Esquire, 1613 Main Street (29201). P.O. Box 8448, Columbia, South Carolina, 29202; Robert M. Dudek, Esquire, P.O. box 11589, Columbia, South Carolina, 29211; Courtney Shante Thompson Camille Graham Correctional Institute, Resident 00360154, 4450 Broad River Road, Columbia, South Carolina, 29210-4096, this 2nd day of June, 2017.


Mitzi Campbell Williams
Attorney for Appellant
Courtney Shante' Thompson

This 2nd day of June, 2017

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SC Court of Appeals

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June 2, 2017

The Honorable Jenny Abbott Kitchings
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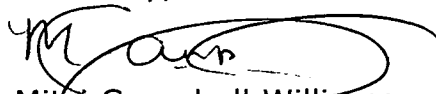
RE: The State v. Courtney Shante Thompson
Appellate Case No.: 2014-001198

Dear Ms. Kitchings:

Enclosed with this letter please find the original and seven (7) copies of a Petition for Rehearing in the above-referenced case. Please file the original and six (6) copies and return a docketed copy to my assistant.

Thank you for your attention to this matter.

Sincerely,


Mitzi Campbell Williams,
Attorney for Appellant

MCW

Enclosures

Cc: Amie I Clifford, Esquire
Matthew Gerrard, Esquire
Robert M. Dudek, Esquire
Courtney Shante Thompson, Appellant