STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Honorable Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2016-000843

THE STATE, ...RESPONDENT,

v.

THEIA DARION MCARDLE, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3922

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29649
(864) 942-8800

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motions for directed verdict when the evidence, viewed in the light most favorable to the State, reveals direct evidence and substantial circumstantial evidence reasonably tending to prove Appellant's guilt of homicide by child abuse.

STATEMENT OF THE CASE

On April 2, 2015, the Newberry County Grand Jury indicted Appellant on the charge of Homicide by Child Abuse (HCA) (2015-GS-36-0133). On April 4–8, 2016, Appellant proceeded to a jury trial before the Honorable Frank R. Addy, Jr. Charles Verner, Esquire, represented Appellant; Solicitor David Stumbo, Esquire, and Assistant Solicitor Taylor Daniel, Esquire, represented the State. The jury found Appellant guilty as charged and the trial judge sentenced her to thirty years' imprisonment.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

At 1:35 a.m. on December 30, 2014, Richard Bowman walked into the Newberry County Memorial Hospital Emergency Room (ER) carrying Victim. Victim was unresponsive, not breathing, and leaking brown vomit from his nose and mouth. Medical staff grabbed Victim and attempted resuscitation in a nearby room. Moments later, Appellant walked into the ER. Lisa Frick, the ER's on-duty registration clerk, attempted to collect information about the incident from Appellant and Bowman. Appellant claimed Bowman was Victim's biological father. Bowman disputed the claim which led to a verbal altercation between the two. Appellant eventually conceded the point, but claimed Bowman was "the only father [Victim's] ever had." Appellant also provided Frick with an incorrect address and claimed she did not possess a photo ID or Victim's Medicaid card because her purse had been stolen. (Tr.p.110, line 9 –Tr.p.121, line 2).

Meanwhile, Dr. Duncan Holaday, an emergency physician at the hospital, began treatment on Victim. Immediately, Dr. Holaday knew Victim's condition was dire after observing: (1) Victim was not breathing; (2) he did not have a pulse or neurological activity; (3) his skin was cold to the touch and discolored; and (4) the vomit around his nose and mount had dried and congealed. Dr. Holaday and the nurses in the room attempted to restart Victim's breathing but found large amounts of brown, congealed material obstructing his airway. Dr. Holaday knew his chances of resuscitating Victim at this point were "nearly zero," but continued emergency treatment for approximately thirty minutes until he finally pronounced Victim dead at 2:06 a.m. After informing Appellant of Victim's death, he went back and reviewed Victim's body and noticed severe bruising around his abdomen, genitals, and his head. Dr. Holaday

concluded Victim's injuries were likely the result of "non-accidental," blunt force trauma. (Tr.p.150, line 12–Tr.p.162, line 9).

Shortly after Victim's death, deputy coroner John Pollard arrived at the hospital. Dr. Holaday and the head nurse briefed Pollard on Victim's apparent injuries. After viewing Victim's body himself, he determined Victim's death was likely the result of criminal behavior and notified law enforcement of the situation. He also separated Appellant and Bowman for future police questioning. After SLED arrived and took pictures of Victim's injuries, he took the body to Dr. Janice Ross for an autopsy. (Tr.p.135, line 4–Tr.p.140, line 25).

Later, in an investigation of Appellant, Bowman, and Victim's home, officers found vomit stains on Victim's tee shirts and a pillow in his bed. Forensic analysis of the items identified the DNA in the stains as Appellant's. (Tr.p.255, line 1–Tr.p.261, line 25; Tr.p.856, line 10–Tr.p.858, line 16; State's Exhibit 150; State's Exhibit 152).

Medical Testimony

Dr. Holaday testified he believed Victim had been dead before arriving at the ER that night, but he was unsure of exactly how long Victim had been beyond resuscitation. However, based on his review of the autopsy report and his own recollection of that night, he estimated Victim had succumbed to his injuries less than two hours before his arrival because rigor mortis/stiffness had not yet occurred in Victim's body. Dr. Holaday further testified he believed Victim's head injury was likely the result of abuse and it did not occur immediately before death: he explained the bleeding on Victim's brain, a subdural hemorrhage[1], occurred over some period of time, possibly as a result of multiple head injuries, and once the build-up put enough pressure on the brain Victim's respiration processes would have slowly shut down over an additional

[1] At trial, Dr. Ross explained a subdural hemorrhage involves bleeding in the subdural space, an area located between the membrane covering the brane and the skull. Once the blood pools, it is classified as a subdural hematoma. (Tr.p.805, line 23–Tr.p.806, line 8).

period of time. (Tr.p.154, line 8–Tr.p.155, line 25; Tr.p.162, line 25–Tr.p.167, line 15; Tr.p.179, lines 7–9; Tr.p.183, line 18–Tr.p.184, line 25; Tr.p.188, line 13–Tr.p.192, line 9).

Dr. Holaday also discussed Appellant's other injuries. According to Dr. Holaday, the bruises, including the one on Victim's forehead, were readily observable and incurred some period of time before Victim was brought to the hospital. Additionally, the autopsy had discovered Victim had extensive internal injuries, a ruptured small intestine, which Holaday opined would have killed Victim within days. (Tr.p.159, line 21–Tr.p.161, line 23; Tr.p.173, line 22–Tr.p.179, line 23).

Dr. Janet Ross also testified at trial and described the numerous injuries she found during Victim's autopsy. She agreed with Dr. Holaday's assessment that Victim experienced bleeding in his brain area which created pressure and ultimately led to the cessation of his respiratory functions. She added that Victim also experienced cerebral edema, in which the brain itself swells in reaction to blunt force trauma as well as the subdural hemorrhage. She was unable to determine how long the subdural hemorrhage and been pooling in Victim's brain area, noting she could not determine with certainty how long before the Victim's death he suffered the blow which caused the bleeding, but that the pooling blood reached critical levels up to an hour before Victim's death. Similarly, she could not determine whether the fatal head trauma occurred before or after the remainder of Victim's injuries. She also claimed Dr. Holaday's calculation of Victim's death as occurring up to two hours before his arrival at the hospital could have been correct, but rigor mortis is inexact and factors such as sleep may extend the process of rigor mortis by hours. (Tr.p.805, line 8–Tr.p.808, line 20; Tr.p.810, lines 16–24; Tr.p.812, line 15–Tr.p.814, line 10; Tr.p.818, line 2–Tr.p.819, line 2; Tr.p.824, line 17–Tr.p.826, line 4; Tr.p.838, lines 7–16).

The only metric Dr. Ross could use to roughly determine Victim's time of death or time of injury was the fact he had food in his stomach, which indicated he suffered an injury sufficient to stop digestion within an hour of eating. She explained a head injury or a traumatic injury in the abdomen could both cause this effect and there was no way to tell whether the head injuries, internal organ injuries, or some combination thereof caused the cessation of digestion. However, she admitted the abdominal injury was probably the sole or primary cause of the cessation of Victim's digestive functions based on the speed at which they shut down. Thus, it was possible the head trauma occurred earlier in the day than the blow which ruptured the small intestine. She opined Victim could have been healthy enough to eat at least as early as 5:00 p.m. Additionally, Dr. Ross agreed Victim's severe stomach injury would have killed him within one or two days. (Tr.p.808, line 20–Tr.p.810, line 3; Tr.p.814, lines 11–25; Tr.p.821, line 2–Tr.p.822, line 3; Tr.p.829, lines 4–23; Tr.p.839, line 8–Tr.p.841, line 20).

Dr. Ross noted Appellant's subdural hemorrhaging could have been caused by a single or multiple blows and the bruising on the exterior of Victim's head indicated the locations of the blow(s) which killed him, and Victim could have been injured over a period ranging from minutes to numerous hours. (Tr.p.822, line 13–Tr.p.823, line 19).

Dr. Ellen Riemer, a forensic pathologist with the Medical University of South Carolina, testified for the defense. She agreed Victim's death resulted from the blunt force injuries to the head and noted Victim had at least three to four "impacts" in that area, of which any single or combination of blows may have contributed to the sum total of bleeding on the brain. She also concurred with the earlier testimony claiming: (1) Victim's bruises indicated injuries that occurred in the same general timeframe, but specified this timeframe could have been between zero and thirty-six hours of his death; (2) the injury to Victim's small intestine would have killed

him within a matter of days; (3) the subdural hematoma could have built up over several hours and would have killed Victim within an hour after forming by causing his physiological functions to slowly shut down over that period; and (4) she could not definitively determine the time at which Victim died. (Tr.p.941, line 6–Tr.p.951, line 6; Tr.p.957, line 4–Tr.p.960, line 18; Tr.p.968, lines 10–22; Tr.p.990, line 24–Tr.p.992, line 24).

Dr. Riemer claimed Victim's various injuries occurred in the same timeframe, which she further defined as "a series of hours." She concluded the final head injury likely occurred after dinner because Victim would not have ate while under the effects of the head injury, but admitted the stomach injury may have caused the cessation of digestion. She also conceded Victim may have suffered his injuries before eating dinner, which could have led to a loss of appetite or vomiting afterwards. (Tr.p.952, line 4–Tr.p.956, line 19; Tr.p.970, line 4–Tr.p.971, line 20; Tr.p.972, line 8–Tr.p.974, line 4; Tr.p.979, line 6–Tr.p.981, line 18).

Bowman's Testimony

Bowman testified as a State's witness. He met Appellant in March 2013, after he was discharged from the military. Within weeks they began dating and moved in together. On or around November 8, 2014, Bowman, Appellant, and Victim moved from Ashville, North Carolina to Enoree, South Carolina. By the time they arrived in South Carolina, Appellant through prostitution, became the sole breadwinner for the family. The three lived in a trailer, with Bowman and Appellant sharing a bedroom and Victim sleeping on an inflatable mattress in the living room. The other bedroom was given to various cats Appellant brought into the home. (Tr.p.420, line 15–Tr.p.429, line 17).

Bowman claimed Appellant routinely hit Victim as a form of corporal punishment and recalled numerous instances of such that in the days leading up to Victim's death. On the

morning of December 27, Appellant hit Victim on the back of the head several times because he put his shoes on incorrectly, with one of the blows causing Victim to fall and hit his head on a coffee table. Later, she punched him in the chest when he had difficulty buckling his seatbelt and punched him again when he made a comment about Appellant being a prostitute. On December 28, Appellant hit Victim in the chest because he shot her with a toy gun while she was asleep. She hit him yet again because he played too roughly with another child at a local McDonald's. That night, Appellant punched Victim in the genitals after he mimicked Bowman taunting Appellant and grabbing his own genitals. (Tr.p.431, line 14–Tr.p.440, line 24).

Bowman further recalled several instances of abuse which occurred on December 29. Appellant struck Victim for the first time that day with a punch to his chest when he woke her up. Later that morning, Victim bit Appellant and in response she spanked him and bit him back. Around lunchtime, Appellant punched Victim in the stomach several times after he knocked a laptop computer off a coffee table. One of the blows caused Victim to fall to the ground and hit his head. That afternoon, while in the car, Appellant struck Victim again over frustration with his inability to properly dress himself, spanking him and "popp[ing]" him on the back of the head several times. She punched his chest twice later that evening, sometime before dinner, when he repeated comments made by Appellant while she was on the phone. (Tr.p.442, line 16–Tr.p.447, line 15; Tr.p.449, line 7–Tr.p.450, line 18; Tr.p.657, line 1–Tr.p.658, line 8; Tr.p.670, line 13–Tr.p.671, line 10; Tr.p.674, line 17–Tr.p.675, line 12).

Later that night, Victim was unable to finish his dinner. After a few bites of food, he vomited. Victim appeared very ill and unable to "communicate anything at the time." Appellant witnessed Victim get sick. Bowman gave Victim a bath to clean the vomit on him and noticed the bruising on his testicles. He informed Appellant of the bruising but she was dismissive of the

injury. Victim defecated in the bathtub and Appellant told Bowman to spank him. Bowman did, and Victim hit his head on the side of the tub. Bowman claimed Victim's head did not hit the tub hard. After the bath, Bowman put Victim to bed on the air mattress and fell asleep in his room. Appellant went to Spartanburg to meet with a client. After Appellant got home, she asked Bowman to accompany her on her next call due to her lack of familiarity with Newberry and the client. Victim, who woke when Appellant returned home, was brought along for the trip. He was upset, tired, and unable to speak clearly. Appellant struck him two additional times after placing him in his carseat. The trio left for Newberry sometime after 11:00 p.m. Throughout the drive, Victim was "whining," but fell asleep when they neared their destination. After Appellant exited the car for her appointment, Victim and Bowman fell asleep. Bowman woke up at one point and noticed Victim was not snoring. He shook him, and Victim mumbled a response. Bowman went back to sleep until Appellant returned, at which point he informed her he thought Victim might have sleep apnea. They tried to wake Victim, but he was unresponsive. They noticed "brown stuff" coming out of his nose and mouth and took him to the local hospital. (Tr.p.447, line 16–Tr.p.449, line 6; Tr.p.451, line 1– Trp.467, line 23; Tr.p.665, lines 16–22).

Appellant's Testimony and Statements

Appellant testified she had never seen Bowman strike or physically harm Victim, but had seen Bowman use "harsh [] words" with him. She also explained Bowman and Victim had their own bathroom on the other side of the house. She was not aware of Victim's bathing habits and claimed Bowman bathed Victim. (Tr.p.1002, line 5–Tr.p.1003, line 4; Tr.p.1011, line 16–Tr.p.1013, line 1).

Appellant's description of December 29th differed in several respects from Bowman's. That morning, she woke up around 9:00 a.m. and called internet providers in an attempt to obtain

internet service for the trailer. She woke up and made breakfast for Victim. Later that morning, she went to a Family Dollar store in Laurens, South Carolina to obtain a prepaid Visa card so she could pay for various things, including internet installation, in the coming weeks. She, Victim, and Bowman spent the rest of the morning watching movies. After lunch, Appellant and Bowman argued over finances, an argument which lasted most of the afternoon and crescendoed with Appellant telling him she no longer loved him. She did not tell Bowman of her plans to leave him, for fear he would damage property in an explosive rage. (Tr.p.1003, line 5–1004, line 2; Tr.p.1006, line 21–Tr.p.1015, line 23)

Victim helped Appellant prepare dinner, with meal prep beginning around 6:30 p.m. Appellant, Victim, and Bowman began eating around 7:30 p.m. Appellant left to get gas around 8:00 p.m., returned briefly around 8:30 p.m. to drop off a stray cat she obtained and immediately left again for an appointment with a prostitution client in Spartanburg. She stayed with the client at least an hour, and returned home sometime before 11:19 p.m. When she entered the trailer, she saw Victim asleep in his bed. She found Bowman asleep in their bed, and demanded he accompany her to her next call because it involved a client and location with which she was unfamiliar. While she freshened up, she ordered Bowman to put Victim in his carseat. She left for her appointment around 11:41 p.m. and arrived at the home in Newberry sometime around 12:30 a.m. Throughout the car ride, Appellant heard Victim snoring and making other "sleep sounds." After finishing her appointment, Appellant returned to the car. Appellant's testimony regarding the events from this point onward mirrors Bowman's. Although she admitted she paid little attention to Victim after her return from Spartanburg, she claimed she did not see any bruising or other indications Victim was injured until she finished her appointment with Holmes, which was sometime around 1:00 a.m. (Tr.p.1016, line 4–Tr.p.1049, line 24).

However, Appellant's testimony differed in several respects to the statements she made in the hours after Victim's death. Immediately after Victim was pronounced dead, Appellant called her mother, Patrice McArdle ("Patrice") and told her she and Bowman were at home when Bowman had found Victim unconscious in his bed and that they believed he had aspirated on his own vomit and died of asphyxiation. (Tr.p.697, line 6–Tr.p.698, line 17; Tr.p.702, lines 1–13; Tr.p.703, line 3–Tr.p.704, line 2).

Several hours after her phone call to her mother, Appellant met with Detective Allison Moore of the Newberry Police Department and SLED Agent Kellie Williams and provided written and oral statements regarding the events leading up to Victim's death. Notably, Appellant told the officers: (1) Bowman was "always kind" to Victim and treated him "no different than his own [child]"; (2) she loved Bowman; (3) Appellant's first prostitution call of the day occurred near dusk, around 5:00 p.m., after which she returned home and made dinner with Victim's help; (4) prior to her Newberry prostitution call, she was only away from Victim and her home for approximately an hour and a half to two hours that day; (5) Appellant, Bowman, and Victim ate around 8:30 p.m.; (6) Victim ate most of his dinner that night; (6) Victim could use the restroom on his own, but she and Bowman would help Victim wipe himself afterwards; (7) she had helped Victim pull down his training diaper and use the bathroom that day; (8) there was "[n]o way in hell" the bruising observed by Detective Moore represented every one of Victim's injuries; (9) the only time Victim could have received his injuries was on December 27, three days before his death, when Appellant, Bowman, and Victim visited Patrice and Victim fell while skating; (10) Appellant had no knowledge of any of Victim's bruises; and (11) Victim often used her bathroom. (Tr.p.300, line 14–Tr.p.304, line 9; Tr.p.309, line 11; Tr.p.310, line 16–Tr.p.339, line 3; Tr.p.386, line 9–Tr.p.397, line 3; Tr.p.401, line 2–Tr.p.402,

line 15; Tr.p.697, line 6–Tr.p.698, line 17; Tr.p.702, lines 1–13; Tr.p.703, line 3–Tr.p.704, line 2).

ARGUMENT

The trial court properly denied Appellant's motions for directed verdict when the evidence, viewed in the light most favorable to the State, reveals direct evidence and substantial circumstantial evidence reasonably tending to prove Appellant's guilt of homicide by child abuse.

Appellant argues the trial judge erred in failing to direct a verdict of acquittal in Appellant's favor because the State failed to present any direct or substantial circumstantial evidence Appellant was guilty of the charged crime. The State disagrees. The State provided both direct and substantial circumstantial evidence of Appellant's guilt through Bowman's testimony and Appellant's statements to Patrice and law enforcement in the hours after Victim's death.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

In relevant part, section 16-3-85 of the South Carolina Code provides:

(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; . . . .

(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. . . .

S.C. Code Ann. § 16-3-85 (2015).

In State v. Smith, 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004), two codefendants were convicted of homicide by child abuse and aiding and abetting that offense when a twenty-month-old child died from abusive head trauma which occurred during a weekend getaway in which both codefendants, the victim's mother and her boyfriend, Smith, were with the child the entire weekend. Id. at 490–92, 597 S.E.2d at 893–94. On appeal, Smith argued he was entitled to a directed verdict on his charges because the State's circumstantial evidence showed, at best, only his mere presence at the crime scene. Id. at 490, 597 S.E.2d at 893. This Court disagreed, finding: (1) the evidence showed the two defendants were with the child during the period in which she suffered her fatal injuries; (2) the victim suffered more than one blow to the head with sufficient force to fracture her skull; (3) the physical symptoms corresponding to Victim's severe injuries would have been obvious; and (4) there was evidence of a probable cover-up. Id. at 491–92, 597 S.E.2d at 894.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), involved a similar situation in which the codefendants, a mother and her boyfriend, were convicted of homicide by child abuse in the death of the mother's daughter. Id. at 418, 753 S.E.2d at 403. Distinguishing the case from Smith, the Supreme Court of South Carolina found the trial judge erred in failing to grant

the defendant's motion for a directed verdict because "every piece of the State's evidence"[2] established: (1) Hepburn was asleep at the time the victim sustained her injuries; (2) Hepburn was only awoken when the codefendant retrieved the unresponsive child from her crib; and (3) the victim appeared normal when Hepburn put the victim to sleep and went to sleep herself. Id. at 442, 753 S.E.2d at 415–16. These facts, considered in tandem with the undisputed medical testimony which indicated the victim would not have appeared "normal" within a short period of suffering her injuries, meant there was no circumstantial evidence Hepburn caused, or was even aware of, the victim's injures. Id.

Similarly, in State v. Palmer, 413 S.C. 410, 776 S.E.2d 558 (2015) the Supreme Court found this Court erred in affirming Palmer's conviction for homicide by child abuse. The State's circumstantial evidence narrowed the window in which the victim, codefendant Julia Gorman's seventeen-month-old grandson, to between 4:00 p.m. and 6:05 p.m. on the day in question. Id. at 420, 776 S.E.2d at 563. The State's evidence placed both defendants at home during the period but did not indicate they were together "at all relevant times" or that Palmer was alone with victim after 3:30 p.m. Id. Moreover, the victim's injuries, severe head trauma including skull fractures and brain swelling, were such that a layperson might not be able to distinguish between the child's symptoms and the behavior of a sleeping child. Id. Accordingly there was "no evidence" justifying the denial of Palmer's motion for a directed verdict. Id.

However, the court found the Court of Appeals properly affirmed the denial of Gorman's directed verdict motion. Id. The Court noted the State's evidence placed Gorman alone with the

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[2] Notably, there was some evidence of Hepburn's guilt. Her codefendant, Lewis, testified in his own defense at trial. His statements implicated Hepburn as the guilty party. Relying on Cephus v. United States, 324 F.2d 893 (D.C.Cir. 1963), the court found Lewis's testimony could not be considered when ruling on the directed verdict motion because Lewis, who testified not as a State's witness but as a codefendant in the trial, was not subject to the control of either Hepburn or the State. The court extended this exclusion to Appellant's testimony because it was used to rebut Lewis's testimony, not to challenge the State's evidence, and because it "add[ed] nothing" to the State's case. Id. at 430–38, 753 S.E.2d at 409–13.

victim at 4:00 p.m. and 6:00 p.m., and the medical evidence indicated the victim suffered his injuries during one of those two visits. Id. Further, Gorman admitted she mistreated the victim by spanking, shaking, and overdosing him and numerous witnesses testified to her "unusual affect and statement's" following the child's injury. Id.

The instant case is distinguishable from Smith, Hepburn, and Palmer in one critical way: here, the State was able to present direct evidence of Appellant's guilt. Bowman testified Appellant hit Victim several times during the day, including several stomach punches around lunchtime which caused Victim to fall and hit his head and several blows to Victim's head in the car that afternoon. Bowman also saw Appellant strike Victim twice before dinner and another two times after she placed him in his car seat for the Newberry trip, sometime after 11:00 p.m. that night.

Contrary to Appellant's description of the expert medical testimony, the three experts did not claim the earliest time of death of Victim was 10:35 p.m. Rather, they testified: (1) they could not determine the exact time of death, which could have occurred some period of time before Victim ever reached the hospital; (2) Victim suffered multiple blows to the head, over a brief period or possibly stretched over the course of numerous hours, and any one of those blows or combination thereof could have caused the injuries which ultimately killed him; (3) the subdural hematoma did not form instantly, but pooled over some period of time, and after forming could have taken an additional period of time, minutes to hours, to cause the cessation of Victim's respiration processes; and (4) Victim's vomiting, whether caused by the head injuries or the ruptured small intestine or the combination thereof, took place around dinner time, as evidenced by the presence of undigested food. Dr. Ross opined Victim could have been healthy enough to eat dinner as early as 5:00 p.m. Thus, the medical evidence indicated some or all of

Victim's head injuries may have occurred throughout the day of December 29, 2014. This open timeframe is wholly consistent with the abuse witnessed by Bowman.

Moreover, even without Bowman's testimony, Appellant's statements to her mother and law enforcement in the hours after Victim's death provided circumstantial evidence of her guilt.

In the instant case, Appellant told Patrice she and Bowman were at home when they discovered Victim unconscious in his bed, covered in his own vomit. This indicates that Appellant was around Victim at the time he received at least some of his substantial injuries, ones serious enough to stop his ability to digest food, and was aware of his condition before she and Bowman took Victim to Newberry. Moreover, in her statements to law enforcement Appellant claimed she made her first prostitution call around 5:00 p.m., which only lasted an hour and a half. She then returned home and made dinner with Victim's help while Bowman was in another room. Appellant was present when Victim ate dinner and did not leave the home until she made her late night trip to Newberry with Bowman and Victim in tow. Similar to Smith and Palmer, the circumstantial evidence establishes Appellant was with Victim during the period in which Victim received his final, fatal injury.

As established by Smith, Hepburn, and Palmer, evidence that a defendant was alone with a homicide by child abuse victim during the period the child sustained the fatal injury is enough evidence to justify the denial of a motion for a directed verdict. Here, the State provided both direct and circumstantial evidence of Appellant's guilt. Accordingly, the trial judge did not err in refusing to grant Appellant's motion for a directed verdict.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY:

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

ATTORNEYS FOR RESPONDENT

June 14, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

JUN 14 2017

SC Court of Appeals

Appellate Case No. 2016-000843

THE STATE, ...RESPONDENT,

v.

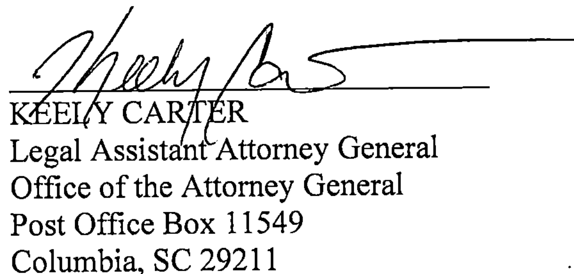
THEIA DARION MCARDLE, ...APPELLANT.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

John H. Strom, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 14th day of June, 2017.



KEELY CARTER
Legal Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
JUN 14 2017
SC Court of Appeals

June 14, 2017

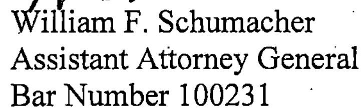
John H. Strom, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Theia Darion McArdle – Appellate Case No. 2016-000843

Dear Mr. Strom:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,



William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/kc
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services