

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

JUN 09 2017

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

SC Court of Appeals

The Honorable Robert E. Hood, Circuit Court Judge

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 PETITION FOR REHEARING**

Appellant Robert Antonio Guinyard, through his undersigned counsel and pursuant to Rules 221(a) and 240, SCACR, hereby respectfully petitions the Court for rehearing of this matter. The grounds for this petition are that the consolidation of Appellant's appeal with the appeal of Courtney Thompson (Appellate Case No. 2012-001198) was prejudicial and that his appeal should be reconsidered independently and solely on its own merits. This petition is supported by the memorandum of law filed herewith and such other law, argument, and policy as the Court may find applicable.

*Matthew G. Gerrald*

---

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Robert M. Dudek  
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Attorneys for Appellant

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The State of South Carolina,..... Respondent,

v.

Robert Antonio Guinyard,..... Appellant.

**MEMORANDUM IN SUPPORT OF  
APPELLANT'S PETITION FOR REHEARING**

Appellant Robert Antonio Guinyard ("Antonio"), through his undersigned counsel and pursuant to Rule 240(c)(2), SCACR, submits the following Memorandum in Support of his Petition for Rehearing:

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 16, 2013, the Richland County Grand Jury issued two indictments against 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.

During the briefing period, Respondent's counsel approached the undersigned about the possibility of consolidating Antonio's appeal with Courtney's appeal (Appellate Case No. 2012-001198). See E-mail from Amie Clifford to Matthew Gerrald and Robert Dudek dated June 24, 2015 (attached hereto as Exhibit A). The undersigned responded, in pertinent part, as follows:

After considering the issue, I cannot agree to consolidate. My client's interests are not aligned with Ms. Thompson's as they both blamed the other at trial. I also do not wish to share argument time with Ms. Thompson's counsel. While it would be convenient for Appellate Defense to print only one copy of the record, Bob and I agree that such administrative convenience does not, in our view, outweigh the competing considerations.

E-mail from Matthew Gerrald to Amie Clifford and Robert Dudek dated June 30, 2015 at 11:42 AM (attached hereto as Exhibit B). Respondent's counsel subsequently clarified that she was "*only requesting consolidation for purposes of the Record on Appeal, not for briefing or argument*" (emphasis in original). E-mail from Amie Clifford to Matthew Gerrald and Robert Dudek dated June 30, 2015 at 11:47 AM (attached hereto as Exhibit C). In light of that clarification, the undersigned indicated he would not object to

Respondent's request. See E-mail from Matthew Gerrald to Amie Clifford and Robert Dudek dated June 30, 2015 at 11:51 AM (attached hereto as Exhibit D).

Respondent subsequently filed and served its Motion to Consolidate and Supplement Designations of Matter to be Included in Record on Appeal (the "Motion to Consolidate") on July 1, 2015, in which it "move[d] this Court to consolidate these appeals . . . for the limited purpose of preparing a single appellate record[.]" Motion to Consolidate at 1. Respondent further indicated that "[c]onsolidation of these cases for appeal *for the limited purpose of creating and filing a single appellate record . . . will not prejudice the parties[.]*" Id. at 3 (emphasis in original). Finally, Respondent indicated that it "recognizes that *it is not desirable to consolidate the cases for oral argument because the appellants do not necessarily share the same interests.*" Id. (emphasis added).

On August 19, 2015, this Court entered an Order resolving a number of motions, including the Motion to Consolidate, which stated: "Respondent's motion to consolidate this case with State v. Courtney Thompson (2014-001198) for the purpose of allowing the compilation of a single record on appeal has been granted."

Antonio's appeal and Courtney's appeal were subsequently set for separate oral arguments on March 8, 2017. However, on March 1, 2017, the Clerk of Court notified the parties that, "[a]fter careful consideration, the panel would like to consolidate 2014-001203 State v. Robert Antonio Guinyard and 2014-00198 State v. Courtney S. Thompson *solely for the purpose of oral argument*, beginning at 10:40 am in Courtroom 2 on March 8, 2017" (emphasis added). E-mail from Jenny Abbott Kitchings to counsel and their staff dated March 1, 2017 (attached hereto as Exhibit E). Accordingly, the Court heard joint oral arguments on March 8, 2017.

On May 11, 2017, this Court issued a single opinion affirming both Antonio's and Courtney's convictions. State v. Thompson, Op. No. 5485 (S.C. Ct. App. filed May 11, 2017) (Shearouse Adv. Sh. No. 19 at 46). The opinion's first footnote indicated, without explanation, that the Court had consolidated Antonio's appeal with Courtney's appeal.

Antonio now respectfully petitions the Court for rehearing on the grounds that the consolidation of his appeal with Courtney's appeal was prejudicial and that his appeal should be reconsidered separately from and independently of Courtney's appeal.

### ARGUMENT

In South Carolina, "guilt . . . remains individual and personal . . . [and] is not a matter of mass application." State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 81 (1993) (ellipses and brackets in original) (quoting Kotteakos v. United States, 328 U.S. 750, 772 (1946)). Thus, where two defendants are tried jointly (as they were in this case), the State must prove each defendant's individual guilt, not merely that one of the two defendants must be guilty. See, e.g., State v. Hepburn, 406 S.C. 416, 440, 753 S.E.2d 402, 415 (2013) (reversing a conviction for homicide by child abuse because "the only inference that c[ould] 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?") (emphasis in original). Yet the Court's opinion appears to repeat Respondent's mistake of lumping Antonio and Courtney together. The opinion contains no fewer than 49 references to the "Appellants" and, as exemplified by the excerpts quoted below (which are not exhaustive), it fails to distinguish between Antonio and Courtney in many of its recitations of the evidence and many of its key conclusions.

- “Here, the evidence and all reasonable inferences, viewed in the light most favorable to the State, show (1) *Appellants*’ custody of Victim and *their* failure to seek medical treatment for him during the last two weeks of his life, when it was obvious he needed treatment, caused Victim’s death and (2) his death occurred under circumstances manifesting [*Appellants*]’ extreme indifference to human life.” Shearouse Adv. Sh. No. 19 at 56 (citations and quotation marks omitted) (emphasis added) (brackets in original).
- “Further, given the severity of Victim’s symptoms and the history of *Appellants*’ animosity toward Victim, a juror could reasonably infer that *Appellants*’ failure to seek medical treatment for Victim was more than mere neglect but rather a deliberate choice, i.e., a deliberate act.” *Id.* at 57 (citations and quotation marks omitted) (emphasis added).
- “The record also includes evidence of *Appellants* inflicting, or allowing the infliction of, physical harm on Victim resulting in his death as well as additional evidence of *Appellants*’ extreme indifference.” *Id.* (emphasis added).
- “[T]he State’s predominant focus in the present appeal has been on the medical testimony and the testimony of family members who witnessed *Appellants*’ abuse of Victim.” *Id.* at 59-60 (emphasis added).
- “Based on the foregoing, we find the State’s evidence sufficient to allow a reasonable juror to find [*Appellants*] guilty [of HCA] beyond a reasonable doubt.” *Id.* at 60 (citations and quotation marks omitted) (emphasis added) (brackets in original).
- “The evidence supporting the HCA indictments also supports the indictments for unlawful conduct: *Appellants*’ complicity in Victim’s beatings during the last two months of his life and *their* failure to seek medical treatment for him during the last two weeks of his life placed him at unreasonable risk of harm affecting not only his physical and mental health but also his life.” *Id.* at 61 (citations and quotation marks omitted) (emphasis added).
- “We find the foregoing evidence more than sufficient to show *Appellants* neglected Victim’s needs, placing him at unreasonable risk of harm affecting his health, and maliciously inflicted bodily harm on Victim so that his health and life were endangered.” *Id.* at 62 (citations and quotation marks omitted) (emphasis added).

The possibility that his fate would become intertwined with Courtney's was precisely the reason Antonio opposed consolidation of Appellants' appeals for any reason other than the limited purpose of preparing a single appellate record. Even Respondent acknowledged that it was not desirable to consolidate the cases for any other purpose "because the appellants do not necessarily share the same interests." Motion to Consolidate at 3. It appears those concerns may have been prescient.

### CONCLUSION

The key question presented in this case is not whether the State presented sufficient evidence that one of the "Appellants" is guilty of the charged crimes, but whether it presented sufficient evidence that *Antonio* is guilty. By consolidating the Appellants' appeals and blurring crucial distinctions between Antonio and Courtney, the Court has not adequately addressed that question. Accordingly, and for the reasons stated herein, Antonio submits that consolidation of his appeal with Courtney's appeal was prejudicial to him and respectfully requests that the Court reconsider this matter independently and solely on its own merits.



---

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Post Office Box 11589  
Columbia, SC 29211  
(803) 734-1330

Attorneys for Appellant

**Matthew G. Gerrald**

---

**From:** Clifford, Amie <aclifford@cpc.sc.gov>  
**Sent:** Wednesday, June 24, 2015 11:37 AM  
**To:** Matthew G. Gerrald; rdudek@sccid.sc.gov  
**Subject:** State v. Robert Guinyard

Matthew and Rob,

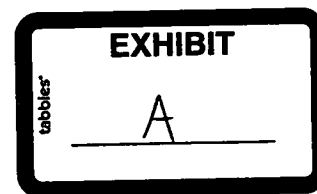
Just wanted to let you know that I am going to ask for a 5-day extension to finish the brief (it is due tomorrow).

What do you think about consolidating the appeals of your client and Courtney Thompson? Since both are challenging the denial of a directed verdict motion and an evidentiary issue, most of the appellate record is coming in in both cases. It just seems to make sense to only print it once (Appellate Defense doesn't need to spend money to print it twice and I'm sure the Court would appreciate the consolidation so that 1 panel can get both cases), but include what is all 3 DOMs. Unless you have some strong objection, I will file a motion when I file the brief next week.

Thanks,

Amie

*Amie L. Clifford*  
*Education Coordinator*  
*South Carolina Commission on Prosecution Coordination*  
*Wade Hampton Building, Suite B-03*  
*1200 Senate Street*  
*Post Office Box 11561*  
*Columbia, South Carolina 29211-1561*  
*(803) 832-8275*  
*FAX: (803) 343-0766*  
*[aclifford@cpc.sc.gov](mailto:aclifford@cpc.sc.gov)*



**Matthew G. Gerrald**

---

**From:** Matthew G. Gerrald  
**Sent:** Tuesday, June 30, 2015 11:42 AM  
**To:** Clifford, Amie  
**Cc:** rdudek@sccid.sc.gov  
**Subject:** RE: State v. Robert Guinyard

Amie:

I apologize for my delay in responding about the consolidation question. I was out of the office most of last week. After considering the issue, I cannot agree to consolidate. My client's interests are not aligned with Ms. Thompson's as they both blamed the other at trial. I also do not wish to share argument time with Ms. Thompson's counsel. While it would be convenient for Appellate Defense to print only one copy of the record, Bob and I agree that such administrative convenience does not, in our view, outweigh the competing considerations.

Thanks,  
Matt

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**From:** Clifford, Amie [aclifford@cpc.sc.gov]  
**Sent:** Wednesday, June 24, 2015 11:36 AM  
**To:** Matthew G. Gerrald; rdudek@sccid.sc.gov  
**Subject:** State v. Robert Guinyard

Matthew and Rob,

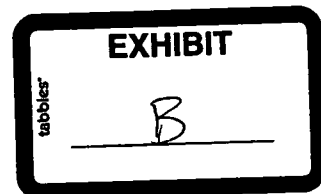
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Obviously, you guys can oppose the motion, but in its limited form I do not understand – based on your comments below – why you would.

Thanks,

Amie

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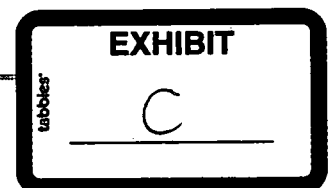
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**Subject:** RE: State v. Robert Guinyard

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**Matthew G. Gerrald**

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**From:** Matthew G. Gerrald  
**Sent:** Tuesday, June 30, 2015 11:51 AM  
**To:** Clifford, Amie  
**Cc:** rdudek@sccid.sc.gov  
**Subject:** RE: State v. Robert Guinyard

Amie:

I did not understand that the proposed consolidation was solely for the limited purpose of the record on appeal. If the cases will not be consolidated for any other purpose (including briefing or argument), then I will not object.

Thanks,  
Matt

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**From:** Clifford, Amie [aclifford@cpc.sc.gov]  
**Sent:** Tuesday, June 30, 2015 11:46 AM  
**To:** Matthew G. Gerrald  
**Cc:** rdudek@sccid.sc.gov  
**Subject:** RE: State v. Robert Guinyard

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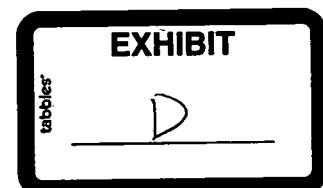
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**Sent:** Tuesday, June 30, 2015 11:42 AM  
**To:** Clifford, Amie



Cc: [rdudek@sccid.sc.gov](mailto:rdudek@sccid.sc.gov)

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**Matthew G. Gerrald**

---

**From:** Kitchings, Jenny <jkitchings@sccourts.org>  
**Sent:** Wednesday, March 01, 2017 8:39 AM  
**To:** Matthew G. Gerrald; mitziwilliamslaw@outlook.com; aclifford@cpc.sc.gov  
**Cc:** Renee Downs; mitzi4448@hotmail.com; cliff4law@yahoo.com; dspencer@scag.gov; Robert M. Dudek  
**Subject:** 2014-001203 State v. Guinyard and 2014-001198 State v. Thompson

Dear Counsel:

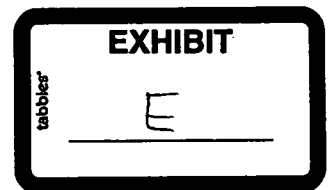
Good morning! After careful consideration, the panel would like to consolidate 2014-001203 State v. Robert Antonio Guinyard and 2014-001198 State v. Courtney S. Thompson solely for the purpose of oral argument, beginning at 10:40 am in Courtroom 2 on March 8, 2017. The time limits will be amended as follows:

Appellant Guinyard	10 minutes
Appellant Thompson	10 minutes
The State	15 minutes
Appellant Guinyard in reply	5 minutes
Appellant Thompson in reply	5 minutes

Please respond to this email to confirm receipt. Thank you.

**Jenny Abbott Kitchings**  
*Clerk of Court*  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
Ph: (803) 734-1891  
Fax: (803) 734-1839  
[jkitchings@sccourts.org](mailto:jkitchings@sccourts.org)

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APPEAL FROM RICHLAND COUNTY  
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The Honorable Robert E. Hood, Circuit Court Judge JUN 09 2017

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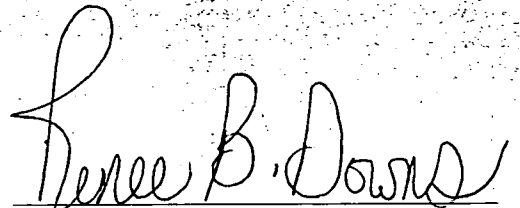
v.

Robert Antonio Guinyard,..... Appellant.

**PROOF OF SERVICE**

I, the undersigned, do hereby state that I have on June 9, 2017, served copies of **APPELLANT'S PETITION FOR REHEARING** and **MEMORANDUM IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING** 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



Renee B. Downs  
Barnes, Alford, Stork & Johnson, LLP  
1613 Main Street (29201)  
Post Office Box 8448  
Columbia, SC 29202  
(803) 799-1111