THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable Robin B. Stilwell, Thirteenth Circuit Court Judge

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Appellate Case No. 2017-001609

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The State of South Carolina, Respondent

v.

Matthew Steven Pillon, Appellant.

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# APPELLANT'S INITIAL BRIEF

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II. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION TO RECONSIDER HIS SENTENCE WHERE APPELLANT RECEIVED FOURTEEN (14) YEARS AND HIS CO-DEFENDANT RECEIVED FIVE (5) YEARS?

## STATEMENT OF THE FACTS

On June 7, 2013, Emergency Medical Services (EMS) were called to a mobile home in Pickens County. There, they found an injured child along with the child's mother, Angel Marie Atkins, Appellant, Matthew Steven Pillon, and other members of Ms. Atkins's family. Appellant was Ms. Atkins's boyfriend at the time but not the biological father of the child, and he lived in a back room of the Atkins family's mobile home with Ms. Atkins and her child. EMS transported the child to the hospital and alerted police of the child's injuries.

On September 24, 2013, Appellant and Ms. Atkins were indicted with unlawful neglect of a child and assault and battery of a high and aggravated nature. On August 23, 2016, the State added the charge of child abuse with great bodily injury. Appellant proceeded to trial before the Honorable Robin B. Stilwell in Pickens County from August 29-31, 2016. Ms. Atkins failed to appear for trial. The jury found Appellant guilty of all three charges. Appellant received ten (10) years for the assault and battery of a high and aggravated nature charge, ten (10) years for the unlawful neglect of a child charge, and fourteen (14) years for the child abuse with great bodily harm. All sentences were to run concurrently. Ms. Atkins was later apprehended and pled guilty to unlawful neglect of a child before the Honorable Letitia H. Verdin on May 25, 2017. The State dropped her other charges in exchange for the plea. She received a five (5) year sentence. Appellant timely amended his motion for reconsideration of his sentence in light of Ms. Atkins's sentence, which the trial court denied on June 15, 2017. (See Matthew Steven Pillon's Amended Motion for Reconsideration; see Court's Order Denying Motion to Reconsider). This appeal followed.

## STANDARD OF REVIEW

When the State fails to produce any direct or substantial circumstantial evidence that a defendant committed a particular crime, the defendant is entitled to a directed verdict. *State v. Rothschild*, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). "When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State," *State v. Lee-Grigg*, 374 S.C. 388, 399, 649 S.E.2d 41, 47 (Ct. App. 2007), and a case is properly submitted to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (citing *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)). However, when the State's evidence merely raises a suspicion of a defendant's guilt, the trial court should grant a directed verdict in the defendant's favor. *Lee-Grigg* at 418, 649 S.E.2d at 57. "Suspicion" is defined as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* An appellate court may reverse the trial court's denial of a directed verdict motion if there is no evidence to support the court's ruling. *Id.*

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual

conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

The appellate court's task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948). "The reasonableness of any given sentence will largely depend upon the specific facts of each case and the district court's consideration and application of the § 3553(a) factors to those facts." *U.S. v. Hampton,* 441 F.3d 284, 287 (4th Cir. 2006) (referring to sentencing factors outlined in 18 U.S.C.A. § 3553(a) (2012)).

## ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE STATE DID NOT PRODUCE ANY DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF APPELLANT'S GUILT.

A defendant is entitled to a directed verdict motion when the State fails to produce any direct or substantial circumstantial evidence proving guilt, *Rothschild* at 243, 569 S.E.2d at 348, and when the State's evidence merely shows a defendant's behavior to be suspicious, *Lee-Grigg* at 418, 649 S.E.2d at 57. Here, the State produced no direct or substantial circumstantial evidence that Appellant harmed the child, and its other evidence, such as it was, merely shows Appellant's behavior as suspicious at best. Denying Appellant's motion for a directed verdict under these circumstances was a fundamental miscarriage of justice.

Although the State sufficiently proved that the child was injured in this case, there was no direct or substantial circumstantial evidence that Appellant ever did anything wrong. At trial, no direct evidence was presented at all. Significantly, none of the State's witnesses ever testified that Appellant harmed the child or even came close to harming the child. Even assuming the State's best circumstantial evidence to be true for the purposes of argument, the State's proof amounted to the fact that Appellant lived in a back room of the mobile home with Ms. Atkins and the child (Trial Record, pg. 76, line 16 – pg. 77, line 6); Appellant tried to help Ms. Atkins take care of her son (T. R., pg. 51, lines 11 – 18); Appellant was frustrated that he could not calm the child around 10:30 PM on the night of June 6, 2017 (T.R., pg. 81, line 16 – pg. 82, line 19) and; the child was injured at some point during the night of June 6, 2013 while Appellant was in the room sleeping. These facts by themselves are insubstantial evidence because they only go to show that Appellant

was nearby when this incident occurred, not that he was a willing actor as both assault and battery of a high and aggravated nature (ABHAN) and child abuse with great bodily injury require. S.C. Code Ann. § 16-3-600; S.C. Code Ann. § 65-3-70. To survive a directed verdict motion for both ABHAN and child abuse with great bodily injury, the State must show that Appellant caused some direct act of violence on the child. None of the State's witnesses' testimony comes close to establishing that Appellant harmed the child, and the other facts listed above are insufficient to prove Appellant committed any act of violence. S.C. Code Ann. § 16-3-600; S.C. Code Ann. § 65-3-70.

Not only did the State fail to produce any circumstantial evidence showing that Appellant had ever harmed the child or had a propensity to be abusive, the majority of the evidence pointed to the contrary. Even though Appellant was not the biological father of the child, he adopted the child as his own, moved in with Ms. Atkins to help her during her pregnancy at the cost of his job (T.R. pg. 245, lines 4 – 20), and went to every medical appointment for the child (T.R. pg. 250, lines 8 – 17). Appellant was greatly concerned about the child's welfare especially when the child was coughing up blood and mucus during the days leading up to the incident. (T.R. pg. 271, line 5 – pg. 273, line 1). Appellant constantly called his mother during the six days prior to the incident asking her advice on how he should properly care for the child. (T.R. pg. 324, line 12 – pg. 325, line 20). Appellant said he was "freaking out" because of the child's condition and cried during his conversations with his mother because he felt so helpless watching the child struggle. (T.R. pg. 271, lines 15 – 25). Contrary to the State's assertions that Appellant did not care about the child, these facts demonstrate that Appellant cared deeply about the child and diligently looked out for the child's best interests.

Even assuming the truthfulness of the State's best evidence, the testimony of Ms. Tammy Atkins, Ms. Angel Atkins's mother, that Appellant made statements in frustration towards herself, Angel, and the child at 10:30 PM, this testimony does not establish that Appellant harmed the child later on the morning of June 7, 2013. At best, this testimony merely raises a suspicion of Appellant's further conduct the night of June 6, 2013. Appellant testified that he was asleep from 5:30 AM to 10:00 AM the morning of June 7, 2013. Appellant had never taken oxycodone before and was "knocked out" from the time he helped Ms. Atkins calm the crying child down around 5:30 AM until Ms. Atkins awakened him at 10:00 AM to take the child to the hospital. (T.R. pg. 278, line 6 – pg. 279, line 10). During the four-and-a-half-hour interval Appellant was unconscious, Ms. Atkins was in sole custody of the child.

Significantly, Ms. Atkins fled rather than standing trial, indicating that she had some measure of a guilty conscience. By contrast, Appellant cooperated with the authorities, stood trial, and steadfastly asserted his innocence. The State proved the child was injured but failed to raise more than a suspicion of Appellant's actions. No witness testified that Appellant did anything wrong or ever came close to harming the child. Additionally, no other facts indicated Appellant caused those injuries as opposed to Ms. Atkins. Due to the State's failure to present any evidence that Appellant harmed the child and the strong evidence that Appellant cared deeply for the child and had no inclination to harm him, the trial court's denial of Appellant's motion for a directed verdict results a fundamental miscarriage of justice.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO RECONSIDER APPELLANT'S SENTENCE WHERE APPELLANT RECEIVED FOURTEEN (14) YEARS AND HIS CO-DEFENDANT RECEIVED FIVE (5) YEARS.

Although the court is not required to recognize federal law, 18 U.S.C. § 3553(a) lists the factors that should be considered when imposing a sentence. According to § 3553(a)(6), the court shall consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" when determining the sentence to be imposed. 18 U.S.C. § 3553(a)(6) (2012). The Sentencing Guidelines for the United States Courts state that the court shall "consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole" when determining the application of the Sentencing Guidelines. 18 U.S.C.S. § 1B1.1(c).

When enacting the Sentencing Reform Act of 1984 Congress sought to obtain "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. U.S.S.G., Ch. ONE, Pt. A, Subpt. 1(3), 18 U.S.C. The government has a strong interest in reducing sentence disparities to ensure an even-handed administration of justice, and this interest should be reflected in state criminal proceedings as well.

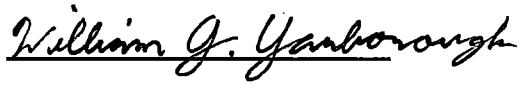
Here, a cursory comparison of Appellant's sentence with that of his would-be co-defendant Ms. Atkins reveals that there is a wide disparity between the sentences. The charges were identical and related to the same behavior and events. Appellant received concurrent sentences of ten (10) years for the assault and battery of a high and aggravated nature charge, ten (10) years for the unlawful neglect of a child charge, and fourteen (14) years for the child abuse with great bodily harm. (See Matthew Steven Pillon Sentencing Sheets). By contrast, Ms. Atkins received five (5) years for pleading guilty to unlawful

neglect of a child and the State dropped her other charges. (See Angel Marie Atkins Sentencing Sheets). The inequity of this result is further shown when Appellant submitted himself willingly to the judicial system and complied with the entire process without any incidents while Ms. Atkins absconded from the trial and had to be apprehended by law enforcement.

The State may seek to argue that Ms. Atkins took a plea deal and thus cannot be compared to Appellant, but this argument is without merit. The charges were identical; the circumstances and behavior were the same. The only difference between the Appellant and Ms. Atkins is that Appellant respected the law and stood trial while Ms. Atkins fled. Ms. Atkins should not be rewarded for fleeing by receiving a sentence almost three times lower than Appellant's nor should Appellant be punished for going to trial. Though doubtless unintentional, by refusing to reconsider Appellant's sentence, the trial court erred by rewarding one defendant's bad behavior while punishing Appellant for standing trial. This disparity results in a fundamental miscarriage of justice. Thus, the trial court abused its discretion by refusing to reconsider Appellant's sentence.

## CONCLUSION

The trial court erred in denying Appellant's motion for a directed verdict since the State failed to produce any direct or substantial circumstantial evidence that did not merely raise a suspicion. Additionally, the court erred in refusing to reconsider Appellant's sentence since Appellant's co-defendant, Ms. Atkins, received a substantially lower sentence even after her bad behavior. As a result, the rulings of the trial court should be reversed.



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August 3, 2017

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# AFFIDAVIT OF SERVICE

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I, William K. Hubbard , certify on this date, August 3, 2017, I served the Appellant's Initial Brief and Designation of Matter in this action, dated August 3, 2017, on Alan Wilson; J. Benjamin Aplin; Doug Richardson; Brandi Hinton; and Harold P. Welborn by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

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Respectfully submitted,

William K. Hubbard

William K. Hubbard
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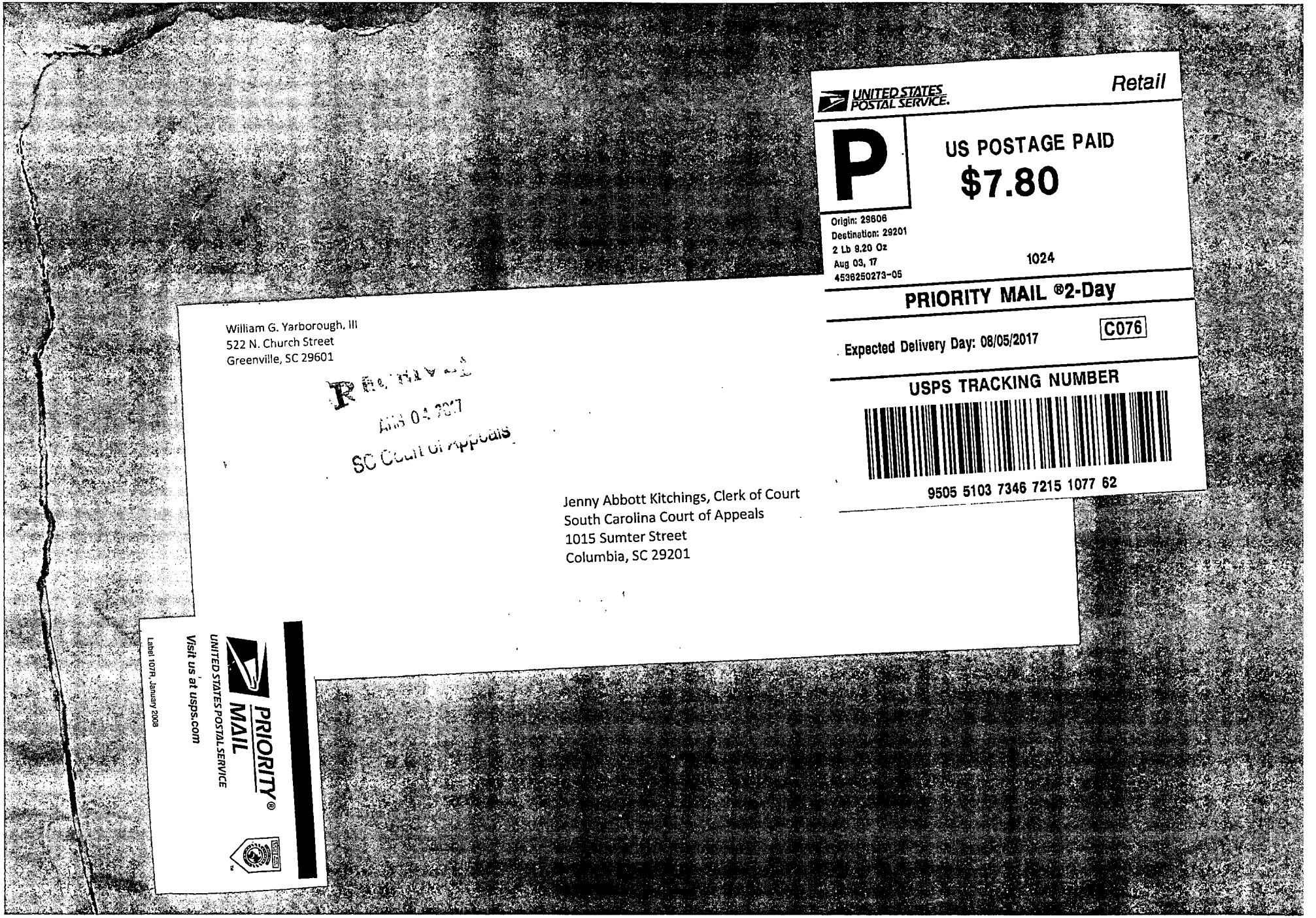

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