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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-001883
General Sessions Case Nos. 2013-GS-40-06520 & 2013-GS-40-06521

The State of South Carolina,Respondent,

v.

Robert Antonio Guinyard,Petitioner.

PETITION FOR WRIT OF CERTIORARI

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September 29, 2017

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was filed on June 9, 2017 and finally ruled on by the Court of Appeals on August 16, 2017.

QUESTIONS PRESENTED

- I. Did the trial court err in denying Petitioner's motion for directed verdict where Respondent presented no direct evidence of his guilt and the circumstantial evidence presented against him was not "substantial?"
- II. Did the trial court err in allowing Respondent to enter into evidence shocking photos that had little probative value relative to their danger of unfair prejudice?
- III. Did the Court of Appeals err in consolidating Petitioner's appeal with the appeal of Courtney Shante Thompson where such consolidation was prejudicial to Petitioner?

STATEMENT OF THE CASE

The deceased victim (referred to herein as "Victim") was the first of five children born to Petitioner Robert Antonio Guinyard ("Antonio") and his girlfriend, Courtney Shante Thompson ("Courtney") (R. v. 3 p. 1002, l. 19 – p. 1003, l. 1; R. v. 3 p. 1092, l. 21 – p. 1093, l. 5). Victim was born in 2009 and died on July 1, 2013. (R. v. 2 p. 709, l. 13-16). The cause of death, as determined by the Richland County Coroner's Office, was "[e]xtensive soft tissue hemorrhage and bleeding . . . due to multiple acute and healing blunt force injuries due to non-accidental trauma." (R. v. 2 p. 747, l. 1-5).

On the afternoon of July 1, 2013, Courtney arrived home from the hospital with her and Antonio's fifth child, having given birth the prior morning. (R. v. 2 p. 822, l. 19-23).

Antonio helped Courtney bring her belongings inside, paid her cab driver, and spent some time playing with his new baby. (R. v. 3 p. 1038, l. 23 – p. 1039, l. 11; R. v. 3 p. 1040, l. 14-17). Later that evening, he began cooking dinner for himself, Courtney, and Victim. (R. v. 3 p. 1041, l. 12-21). While cooking, he heard a “boom” which prompted him to stop cooking, turn off the stove, and go investigate. (R. v. 3 p. 1043, l. 24 – p. 1044, l. 4). As he was walking down the hall, Courtney approached him holding Victim in her arms like a baby. (R. v. 3 p. 1044, l. 5-19). Antonio was shocked and did not know what to do. (R. v. 3 p. 1044, l. 19-23). Courtney called 911 and administered CPR on Victim pursuant to the dispatcher’s instructions. (R. v. 3 p. 1044, l. 24 – p. 1045, l. 18). Upon hearing an ambulance siren, Antonio panicked, picked up his newborn child, and hid in a closet. (R. v. 3 p. 1045, l. 24 – p. 1046, l. 8). He was afraid that Victim’s accident might prompt law enforcement to take the baby. (R. v. 3 p. 1068, l. 18-25). Victim passed away at approximately 6:15 pm. (R. v. 2 p. 791, l. 8-12). Later that evening, Antonio and Courtney agreed to be transported to Richland County Sheriff’s Department headquarters for questioning. (R. v. 2 p. 804, l. 21 – p. 805, l. 5). Antonio denied doing anything to hurt his children. (R. v. 2 p. 811, l. 17-20; R. v. 3 p. 1288).

Approximately three months later, 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 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). Together with Courtney, who had been indicted on the same charges, Antonio was tried on May 19-28, 2014, before The Honorable Robert E. Hood.

At the joint trial of Antonio and Courtney, Respondent presented nearly 40 witnesses, none of whom gave any direct evidence incriminating Antonio in Victim's death. Rather, Respondent's case consisted entirely of circumstantial evidence. For example, Sergeant Stan Richards and Investigators Robert Oates, Kristen Polis, and Holly Wagner—all of the Richland County Sheriff's Department—testified regarding their observation of reddish brown stains on various surfaces and articles in Antonio's home. (R. v. 1 p. 71, l. 8 – p. 72, l. 2; R. v. 1 p. 362, l. 23 – p. 363, l. 2; R. v. 1 p. 419, l. 21 – p. 420, l. 2; R. v. 2 p. 523, l. 5-18). Rachel Grant, a DNA analyst with the sheriff's department, testified that some of the stains were Victim's blood, some were Antonio's blood, and others were inconclusive. (R. v. 2 p. 649, l. 4 – p. 668, l. 6). However, neither these witnesses nor any others could competently testify as to how or when the blood came to be on those surfaces and articles.

Respondent also presented evidence from Dr. Olga Rosa, a child abuse pediatrician with the University of South Carolina School of Medicine, and Dr. Amy Durso, a forensic pathologist with Professional Pathology Services who performed Victim's autopsy, regarding serious injuries Victim sustained leading up to and ultimately causing his death. (R. v. 1 p. 473, l. 13 – p. 475, l. 22; R. v. 2 p. 712, l. 22 – p. 719, l. 8). Their testimony—not to mention the photos they reference—is admittedly heartrending. Yet neither Dr. Rosa, Dr. Durso, nor any other witness testified regarding precisely how Victim's injuries were inflicted or, more critically to this case, by whom.

After Respondent rested, counsel for Antonio moved for a directed verdict on the grounds that Respondent had failed to meet its burden of introducing either direct or "substantial" circumstantial evidence of Antonio's guilt. (R. v. 2 p. 929, l. 1 – p. 935, l. 17). However, the trial court denied the motion, ruling that Respondent had introduced

sufficient evidence for the case to be submitted to the jury. (R. v. 2 p. 935, l. 18-25). After resting and again after the close of all evidence, counsel for Antonio renewed his motion for directed verdict, but the trial court denied the motion on the grounds previously stated. (R. v. 3 p. 1087, l. 8-11; R. v. 3 p. 1163, l. 8-16; R. v. 3 p. 1264, l. 18 – p. 1265, l. 5; R. v. 3 p. 1275, l. 9-14).

The jury ultimately 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 before the Court of Appeals, Respondent's counsel approached the undersigned about the possibility of consolidating Antonio's appeal with Courtney's appeal. See E-mail from Amie Clifford to Matthew Gerrald and Robert Dudek dated June 24, 2015 (attached to Petition for Rehearing as Exhibit A). Antonio's counsel 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 to Petition for Rehearing 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

to Petition for Rehearing as Exhibit C). In light of that clarification, Antonio's counsel 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 to Petition for Rehearing 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.

On August 19, 2015, the Court of Appeals 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 the Court of Appeals 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 to Petition for Rehearing as Exhibit E). Accordingly, the court heard joint oral arguments on March 8, 2017.

On May 11, 2017, the Court of Appeals issued a single opinion affirming both Antonio's and Courtney's convictions. State v. Thompson, 420 S.C. 192, 802 S.E.2d 623 (Ct. App. 2017). The opinion's first footnote indicated, without explanation, that the court had consolidated Antonio's appeal with Courtney's.

ARGUMENTS

I. THE TRIAL COURT ERRED WHEN IT DENIED ANTONIO'S MOTION FOR DIRECTED VERDICT BECAUSE RESPONDENT PRESENTED NO DIRECT EVIDENCE OF HIS GUILT AND THE CIRCUMSTANTIAL EVIDENCE PRESENTED AGAINST HIM WAS NOT "SUBSTANTIAL."

"On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment." Rule 19, SCRCrimP. Pursuant to this rule, it has long been settled that "[a] defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). Evidence sufficient to survive a motion for directed verdict has been defined as "direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict[.]" State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984).

- A. Either direct evidence or “substantial” circumstantial evidence of Antonio’s guilt was required.

The primary charge against Antonio was homicide by child abuse, which S.C. Code Ann. § 16-3-85(A)(1) defines as causing “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.” “Child abuse or neglect” is statutorily defined as “an act or omission by any person which causes harm to the child's physical health or welfare,” while “extreme indifference” has been defined as “a mental state akin to intent characterized by a deliberate act culminating in death.” S.C. Code Ann. § 16-3-85(B)(1); State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002).

Antonio was also charged with unlawful conduct towards a child. That offense is defined as:

- (1) plac[ing] the child at unreasonable risk of harm affecting the child’s life, physical or mental health, or safety;
- (2) do[ing] or caus[ing] 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[ing] the child.

S.C. Code Ann. § 63-5-70(A).

It is indisputable that Respondent presented no direct evidence that Antonio is guilty of either offense. “Direct evidence is based on personal knowledge or observation and ..., *if true*, proves a fact without inference or presumption.” State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (citation and quotation marks omitted) (ellipsis and italics in original). No witness testified based on personal knowledge or

observation of Antonio's culpability for Victim's injuries or death. Rather, Respondent relied exclusively on circumstantial evidence.

As opposed to direct evidence, which requires no inference, circumstantial evidence "is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." Id. It is based on inference rather than personal knowledge or observation and "establishes collateral facts from which the main fact may be inferred." Id. (citations and quotation marks omitted). If the State relies solely on circumstantial evidence to prove a defendant's guilt, that evidence must be "substantial." See Pinckney, 339 S.C. at 349, 529 S.E.2d at 527. If the evidence "merely raises a suspicion that the accused is guilty," a directed verdict should be granted because "suspicion" "implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Cherry, 361 S.C. at 594, 606 S.E.2d at 478.

This Court has recently issued three opinions elucidating the meaning of "substantial circumstantial evidence." Analysis of those cases demonstrates that Respondent failed to present such evidence against Antonio.

(i) State v. Bostick indicates that "mere suspicion" is insufficient.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the defendant was found guilty of murder based on four pieces of circumstantial evidence:

(1) [The victim's] car keys, calculator, and other items from her home were found in the [defendant's] family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and [the defendant's] mother did not use those accelerants when she burned things in the pile; (3) [the defendant] had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on [the defendant's] jeans excluded about ninety-nine percent of the population, the blood could not be matched to [the victim's] DNA.

Id. at 141-42, 708 S.E.2d at 778. This Court reversed the trial court's denial of the defendant's motion for directed verdict, finding that even when analyzing the State's evidence in a favorable light, the evidence "raised, at most, a mere suspicion that [the defendant] committed this crime." Id. at 142, 708 S.E.2d at 778.

(ii) State v. Odems indicates that circumstantial evidence must "reasonably tend" to prove guilt.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the defendant was found guilty of first degree burglary, grand larceny, criminal conspiracy, and malicious injury based on three pieces of circumstantial evidence:

- (1) the fact that less than ninety minutes after the burglary, police located [the defendant] in the getaway car with the burglars and the stolen goods;
- (2) [the defendant] fled from law enforcement; and (3) [the defendant] asked an uninvolved person to lie for him.

Id. at 588, 720 S.E.2d at 51. This Court reversed the defendant's convictions, holding that "[t]he circumstantial evidence presented by the State does not reasonably tend to prove [the defendant's] guilt, and fails this Court's well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury." Id. at 592, 720 S.E.2d at 53.

(iii) State v. Hepburn indicates that presence at the scene is not enough.

In State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), the defendant was found guilty of homicide by child abuse based primarily on three pieces of circumstantial evidence: (1) at the time of the victim's death, the defendant's life circumstances were poor and she was she frustrated by her failure to secure employment, her living situation, and her parental responsibilities; (2) according to the testimony of medical professionals, the victim's injuries were severe; and (3) the co-defendant testified that he heard the defendant shaking the victim. Id. at 440, 753 S.E.2d at 414-15. Relying on Bostick, Odems, and the

principle that “[t]he State has the burden of proving identity beyond a reasonable doubt,” Gibbs v. State, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013), this Court directed a verdict of acquittal. The Court found it particularly notable that while the defendant was “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* [i.e. the defendant] harmed the victim.” Hepburn, 406 S.C. at 440, 753 S.E.2d at 415 (emphasis in original).

B. Respondent’s circumstantial evidence against Antonio was not “substantial.”

As in Bostick, Odems, and Hepburn, Respondent relied solely on circumstantial evidence to prove its case against Antonio. However, the circumstantial evidence it presented was not “substantial” in that it raised a “mere suspicion” of guilt, did not “reasonably tend” to prove guilty, and established little more than that Antonio was present at the scene of Victim’s death. Though Respondent undoubtedly established that Victim had sustained numerous severe injuries and that Antonio was in the house when Victim died, it presented no evidence tending to show that Antonio harmed Victim or that Antonio’s actions caused Victim’s death—much less a “deliberate act culminating in death,” Jarrell, 350 S.C. at 98, 564 S.E.2d at 367—between the specific dates of June 15, 2013, and July 1, 2013, as alleged in the bill of indictment for homicide by child abuse. (R. v. 3 p. 1339). See, e.g., State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (“In South Carolina, it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.”).

At most, the State's evidence established that both Antonio and Courtney had an opportunity to harm Victim. However, if the only inference that could be drawn from the evidence was that either Antonio or Courtney inflicted Victim's injuries, Antonio was entitled to a directed verdict. In that respect, this case is strikingly similar to Hepburn. In that case, as in this case, two co-defendants were each charged with homicide by child abuse and unlawful conduct towards a child, tried jointly, and convicted on both charges. However, this Court reversed Hepburn's convictions because "the State did not present substantial evidence that *Appellant* [i.e. Hepburn] killed the victim." Hepburn, 406 S.C. at 440; 753 S.E.2d at 415 (emphasis added). The Court found that even though Hepburn was 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." Id. (emphasis in original).

In this case, Respondent failed to present direct or substantial circumstantial evidence that *Antonio*—as opposed to Courtney or some other person—inflicted fatal injuries on Victim between June 15, 2013, and July 1, 2013. As in Hepburn, "the only inference that can be drawn from [Respondent's] case is that one of the two co-defendants [i.e. Antonio or Courtney] inflicted the victim's injuries, but not that [Antonio] harmed the victim." Id. That inference was insufficient to submit the case to the jury, and Antonio was entitled to a directed verdict. See, e.g., id. ("[W]e 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."). The trial court's denial of Antonio's motion for directed verdict—and the Court of Appeals' affirmance of that denial—conflicts with a binding decision of this Court and was error.

II. THE TRIAL COURT ERRED WHEN IT ALLOWED RESPONDENT TO ENTER INTO EVIDENCE SHOCKING PHOTOS THAT HAD LITTLE PROBATIVE VALUE RELATIVE TO THEIR DANGER OF UNFAIR PREJUDICE.

Through Investigator Robert Oates of the Richland County Sheriff's Department, Respondent introduced numerous photographs of Victim's deceased body on the day of his death. (R. v. 1 p. 353, l. 9 – p. 354, l. 19; State's Ex. 13, 15, 16, 17, 18, 19, 75, 80, 81, 83, 84, 85, 130, 136, 137, 138, 139, 144, 146 & 147). Counsel for both Antonio and Courtney objected to the introduction of the photos, arguing pursuant to Rule 403, SCRE, that they should have been excluded because any probative value they may have had was substantially outweighed by the danger of unfair prejudice, but were overruled by the trial court. (R. v. 1 p. 293, l. 16 – p. 299, l. 14). Through Dr. Amy Durso of Professional Pathology Services, Respondent also introduced several gruesome photographs taken during Victim's autopsy. (R. v. 2 p. 713, l. 24 – p. 714, l. 6; R. v. 2 p. 715, l. 23 – p. 716, l. 4; R. v. 2 p. 717, l. 1-10; R. v. 2 p. 723, l. 3-11; State's Ex. 225, 227, 228, 229, 230 & 231). Counsel objected to these photos on the same grounds, as they were cumulative of Dr. Durso's testimony and had a substantial danger of unfairly prejudicing the jury. (R. v. 2 p. 684, l. 14 – p. 685, l. 22; R. v. 2 p. 695, l. 24 – p. 696, l. 24). The trial court nevertheless allowed their introduction over the defenses' objections. (R. v. 2 p. 687, l. 24 – p. 688, l. 2; R. v. 2 p. 699, l. 7-12).

The crime scene and autopsy photos showed a cold, lifeless, and severely injured four-year-old child. Yet Victim's death was not a contested issue. See, e.g., State v. Cherry, 348 S.C. 281, 298, 559 S.E.2d 297, 305 (Ct. App. 2001) (noting that evidence is probative if it "tends to prove or disprove an element of the case") (citations and quotation marks omitted). Accordingly, the photos could not have done anything except inflame the

passions of the jury and should have been excluded. The trial court erred when it allowed their admission, and the Court of Appeals erred when it affirmed the trial court's ruling. See, e.g., State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) ("Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions.").

III. THE COURT OF APPEALS ERRED IN CONSOLIDATING ANTONIO'S APPEAL WITH COURTNEY'S WHERE SUCH CONSOLIDATION WAS PREJUDICIAL TO ANTONIO.

In South Carolina, "guilt . . . remains individual and personal . . . [and] is not a matter of mass application." Gunn, 313 S.C. at 134, 437 S.E.2d at 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., Hepburn, 406 S.C. at 440, 753 S.E.2d at 415 (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 of Appeals' 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.” 802 S.E.2d at 630 (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.* (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.* at 631 (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 632 (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.* (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 633 (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.* (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 their respective 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.

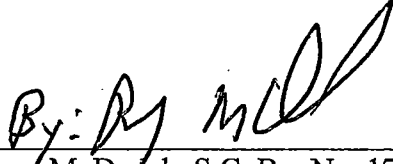
By consolidating Antonio's appeal with Courtney's, the Court of Appeals blurred crucial distinctions between the parties. The key question presented in this case is not whether Respondent presented sufficient evidence that one of the "Appellants" is guilty of the charged crimes, but whether it presented sufficient evidence that *Antonio* is guilty. As such, Antonio was entitled to have his appeal considered independently and solely on its own merits, and it was error for the Court of Appeals to deny him such consideration.

CONCLUSION

The trial court's denial—and the Court of Appeals' affirmance of that denial—of Antonio's motion for directed verdict conflicts with a binding decision of this Court and was error. Moreover, the trial court and the Court of Appeals erred in allowing the admission at trial of shocking photos of Victim's body that had little or no probative value. Finally, the Court of Appeals erred in consolidating Antonio's appeal with Courtney's, a decision which was manifestly prejudicial to Antonio. Accordingly, this Court should grant certiorari and reverse Antonio's conviction or, in the alternative, remand the case to the Court of Appeals for independent reconsideration.

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Attorneys for Appellant

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 29 2017

SC Court of Appeals

Certiorari to Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

Opinion No. 5485 (S.C. Ct. App. filed May 11, 2017)
13-GS-40-6520-6521

THE STATE,

RESPONDENT,

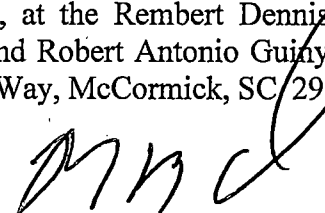
V.

ROBERT ANTONIO GUINYARD,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Amie L. Clifford, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Robert Antonio Guinyard, #360127, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 29th day of September, 2017.




Robert M. Dudek
Chief Appellate Defender

Matthew M. Gerrald
Barnes, Alford, Stork & Johnson, LLP

ATTORNEYS FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of September, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 29, 2017

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SEP 29 2017

SC Court of Appeals

Amie L. Clifford, Esquire
Special Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. Robert Antonio Guinyard

Dear Ms. Clifford: ^{AM}

Enclosed are two copies of the Petition for Writ of Certiorari and the Appendix in the above case that I have filed with the South Carolina Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/sf

Enclosures

cc: Court of Appeals