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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
Court of General Sessions

The Honorable Robert E. Hood., Circuit Court Judge

APPELLATE CASE NO. 2014-001198
General Sessions Case Nos.: 2013GS4006515, 2013GS4006522

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

COURTNEY SHANTE THOMPSON,

APPELLANT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN DENYING COURTNEY'S MOTION FOR A DIRECTED VERDICT IN VERDICT IN THAT THE STATE FAILED TO PRESENT SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE?

- II. DID THE TRIAL COURT ERR IN DENYING COURTNEY'S MOTION TO EXCLUDE GRAPHIC PHOTOGRAPHS OF THE CHILD WHICH WERE CALCULATED TO AROUSE THE SYMPATHIES AND PREJUDICES OF THE JURY?

STATEMENT OF THE CASE

On July 2, 2013, the Appellant, Courtney Shante Thompson, and the co-defendant, Robert Antonio Guinyard, Sr. (Antonio), were arrested and charged with Unlawful Conduct Towards a Child and Homicide by Child Abuse in the death of their four year old child (Child) (R. 1327). Several months later, on October 16, 2013, the Richland County Grand Jury issued two true-billed indictments against Courtney: 1-Homicide by Child Abuse, 2013GS4006515 (R. 1335) and 2-Unlawful Conduct Towards a Child, 2013GS4006522 (R. 1336) Courtney and Antonio, with their separate Counsel, were jointly tried May 19-28, 2014 before a jury and the Honorable Robert E. Hood, in the Richland County Court of General Sessions (R. 4:25-5:11). The jurors returned a verdict of guilty on both counts contained in the indictment for both Courtney and Antonio (R. 1267). And on May 28, 2014, the Honorable Robert E. Hood sentenced Courtney to the State Department of Corrections for life without parole on the charge of Homicide by Child Abuse, and ten years on the charge of Unlawful Conduct Towards a Child, to run consecutively. (R. 1283). Antonio was sentenced accordingly; however, his sentence is to run concurrently (R. 1282).

Courtney filed a timely appeal to the South Carolina Court of Appeals.

STATEMENT OF THE FACTS

It was in the very early morning hours of June 29, 2013, when Courtney Shante' Thompson (Courtney) was taken by ambulance to Richland Memorial Hospital (R. 1096.) to give birth to the newest addition to her family. Baby A was born 4:17 a.m. to Courtney and Robert Antonio Guinyard, Sr. (Antonio) (R. 822). While Courtney was in the hospital for several days, she left the children, Girl M, Girl Mi, Girl Z and the Victim (Child) in the care of their father, Antonio (R. 1097). Prior to Courtney's departure to the hospital, she made arrangements for family and friends to pick up the girls from the house. On June 29, 2013, Angela Metze picked up the last child, Girl Mi. Though Angela did not tell Antonio what time she would come by the house to pick up Girl Mi, when she arrived Antonio was already outside with Girl Mi and all Angela did was to open the [car] door for Girl Mi. Angela did not see the Child that day. The Child was then home alone with his father until Courtney was discharged from the hospital (R. 593:10-596:13; 1097:14-21).

While Courtney was in the hospital though, she said Antonio called her and allowed her to speak to the Child. This is Courtney's testimony: "Antonio called me and he said, "Baby, this [f*****] boy wants to talk to you," and I told him that I was in pain. Can he call me back later. He said, "No, no, just talk to this [f*****] boy." I got on the phone with my baby then. He asked where I was at. I told him I was in the hospital, and he said, "Mama, can you come and get me." I said, "No son. I just had a baby. I can't come right now." I asked him why. I asked him why, what's wrong. He said my daddy won't stop hitting me with the stick." (R. 1098:14- 1099:8). Courtney said she then spoke with Antonio and asked him why was he hitting the

Child, and Antonio responded that the Child was lying, and the Child was urinating all over the house and in his clothes. (R. 1097:19-23; 1098:1-3). Courtney is discharged from the hospital the same day and goes home to the Child (R. 1098:7-14).

While Courtney is preparing to leave the hospital, Antonio leaves four-year-old Child home alone and walks to the store to, "pull some money off of the card." He purchased some beer and cigarettes and walked back to the house. He drank the beer and fell asleep in the bed (R. 1037:3- 1038:7).

Courtney arrived home (104 Beaver Brook Road, Columbia, SC) from Richland Memorial Hospital (Palmetto Health- Richland) in a Blue Ribbon Taxi on July 1, 2013 (R. 782:17-783:8; 878:20-22). The taxi cab driver honked the horn, but Antonio did not immediately come out of the house. Courtney either got out of the cab with the baby and knocked on the door (7-1-2013, Courtney's Statement, R 1100:10-1101:12) or the taxi cab driver blew the horn again and Antonio came out of the house, got the baby and then returned to the cab to get Courtney's other belongings (Tr. 1100:24-1101:6).

Something had happened or was happening in the home. Courtney's recall of the events leading up to her 911 call for Child differs in her original statements to law enforcement (7-1, 2-2013, Courtney's Statement, R. 1285) and her in-court testimony (R. 1090:20-1113:16). She explains that she made the differing statements to protect the kids' father, Antonio; she tried to protect him from what she saw. (R. 1111:19-1113:1). She went on to give the account of what happened when she entered her home. Antonio took the baby and she asked him the whereabouts of the Child.

Antonio only responded that he was asleep. Courtney walked through the house and found the Child in the back room lying on the floor, where he sleeps because his father said he cannot sleep in a bed because he wets the bed (R. 1035:24-1036:13). When Courtney opened the door to the room the stench of urine engulfed her. Her eyes turned to the floor, and to her horror, she saw the Child lying on the floor in a puddle of urine, naked (R. 1101:10- 1102:8). Courtney went over to the Child and gently shook him, but he did not respond. She shook him again, and he looked up at her and said, "Mama." Courtney then tried to get him to stand up, but he fell back down to the floor, and she asked Antonio why was he lying in a puddle of piss. Courtney then said Antonio turned on the light to the room that she and the Child were in and said, "This boy done pissed," yanked the Child up by his arms, took him into the bedroom she and Antonio shared, and grabbed a white pole and beat the Child with it (R. 1103:17-1104:6). Courtney told Antonio to stop or she was going to call the police (R. 1104:7-15). She then said she and the Child were trying to clean up the urine from the floor, but it would not come out. Courtney then said the Child said he wanted to lie down and he was not, "acting right," but Antonio then made the Child go in the kitchen and hold his hands up. Courtney then went to take a shower. (R. 1104:17-1106:23). As she was going to the shower, Antonio called her. The Child asked her if he could lie down. Courtney told him to go to her bedroom and lie down, but the Child "passed out" and hit his head on the corner of the door. (R. 1107:11- 1108:7) She picked him up and he went limp in her arms. She rushed the Child to the front room, sat down with him in her lap and called 911. Antonio was nowhere in sight. (R. 1108:10-1109:4). While Courtney was on the phone with the 911 Operator, the

Operator was instructing her on how to perform CPR on the Child, but Antonio was not there to help her.

The Emergency Medical Services paramedics arrived at the house about 6:15 in the evening. Courtney opened the door for them. The paramedic saw a small male child lying on the floor in the living room. The Child was unresponsive. He did not have a pulse. He was not breathing. (R. 41:13- 44:6). Based upon his own testimony, during this traumatic event, the Child's father hid in the closet with the newborn baby. (R. 1045:24- 1046:8). Though the Child had been pronounced dead, his father remained hidden in the closet (R. 200:17- 201:1; 1085:6-21). The child's cause of death was determined to be extensive soft tissue hemorrhage due to multiple acute and healing blunt force injuries due to non-accidental trauma (R. 746:1-2)

Courtney and Antonio were transported to the Richland County Sheriff's Department for questioning (R. 804:21-24) where Courtney gave her initial statement to law enforcement (R. 820:21-24; R 1285). She was released to return home and on July 2, 2013, she was instructed to return to the Richland County Sheriff's Department Headquarters for more questioning. She complied. She and Antonio were arrested on charges of Unlawful Conduct Towards a Child, and Homicide by Child Abuse (R 1327- 1328). Several months later, on October 16, 2013, the Richland County Grand Jury issued two true-billed indictments against Courtney: 1-Homicide by Child Abuse, 2013GS4006515 (R. 1335) and 2-Unlawful Conduct Towards a Child, 2013GS4006522 (R. 1336).

ARGUMENT

I. DID THE TRIAL COURT ERR IN DENYING COURTNEY'S MOTION FOR A DIRECTED VERDICT IN THAT THE STATE FAILED TO PRESENT SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE?

Courtney argues that The Trial Court erred in denying her motion for a directed verdict at the close of the State's case-in-chief and again at the close of all of the evidence in that the State failed to present any direct or substantial circumstantial evidence to prove that she harmed the Child.

There is a well-settled standard for directed verdicts when the State's case is based not on direct, but on circumstantial evidence. If the State relies exclusively on circumstantial evidence to prove guilt, that evidence must be "substantial" to justify denying the motion. State v. Odems, 395 S.C. at 586, 720 S.E.2d at 50 (2011). (See also State v. Cherry, 361 S.C. 588, 593, 606 S.E.2 475, 478(2000), the Court ruled that, "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged."; and in State v. Rogers, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App 2013); the court defines, "direct" evidence, "Direct evidence is based on personal knowledge or observation and if true, proves a fact without inference or presumption"). And in one of the supreme court's more recent decisions, the Court ruled, "While undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that *Appellant* harmed the victim. Thus, we reverse the trial court's refusal to direct a verdict of acquittal because the State did not put forward

sufficient direct or substantial circumstantial evidence of Appellant's guilt." State v. Hepburn, 406 S.C. 416, 440, 763 S.E.2d, 402, 424 (2013).

On July 2, 2013, the Appellant, Courtney Shante Thompson, and the co-defendant, Robert Antonio Guinyard, Sr. (Antonio), were arrested and charged with Unlawful Conduct Towards a Child and Homicide by Child Abuse in the death of their four year old child, RG (Child) (R. 1327). Several months later, on October 16, 2013, the Richland County Grand Jury issued two true-billed indictments against Courtney: 1-Homicide by Child Abuse, 2013GS4006515 and 2-Unlawful Conduct Towards a Child, 2013GS4006522 (R.1336-1337).

The relevant statutes are:

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

(A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; or

(2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven.

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

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

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

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

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

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

and

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

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

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

(2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or

(3) wilfully abandon the child.

Courtney and Antonio, with their separate Counsel, were jointly tried May 19-28, 2014 before a jury and the Honorable Robert E. Hood, in the Richland County Court of General Sessions (R. 4:25-5:11). The jurors returned a verdict of guilty on both counts contained in the indictment for both Courtney and Antonio (R. 1267:18-1271:17).

This case bears striking similarities to the State v. Hepburn, Id., case in that the codefendants were tried jointly; they were both charged with unlawful conduct towards a child and homicide by child abuse; both codefendants had the opportunity to be alone with the Child victim; Appellant Hepburn, as did Courtney, put up a defense to refute the testimony of the codefendant; and Appellant Hepburn's contention was, as is Courtney's, the State has failed to prove that **she** inflicted the harm that caused the Child's death. (see also State v. Bostick, 392 S.C. 134, 708 S.E.2d 774(2011) The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Therefore, we find the circuit court erred in failing to direct a verdict in favor of Bostick; State v.

Odems, Id at 141, The circumstantial evidence presented by the State does not reasonably tend to prove Petitioner's guilt, and fails this Court's well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury. Thus, we reverse the court of appeals' decision affirming Petitioner's 2005 convictions.; State v. Lane, 406 S.C. 118, 122 (2013), 749 S.E.2d 165, 169 (2013)- The State's case against Lane consisted solely of circumstantial evidence...Viewing the foregoing evidence in the light most favorable to the State, we find the State did not present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary. At most, the evidence the State presented raises only a mere suspicion that Lane committed the crime. Accordingly, we find the trial court erred by failing to grant Lane's directed verdict motion;

In this case, Courtney argues that the State relies primarily upon the following evidence: (1) Courtney's initial statement that places she and the codefendant, Antonio, as the only persons with the child when the Child died (R 1313); (2) Codefendant Antonio's statement that places he and Courtney as the only persons at their home when the Child dies (R.1288); (3) Courtney's revised statement to law enforcement that implicates Antonio in the death of their child (R 1313); (4) a video reenactment of Courtney explaining how the Child may have fallen and injured himself, and placing she and Antonio as the only persons at the home when the Child died (R. 380:10-389:10); Testimony from Courtney's sister, Crystal, that approximately *a year* prior to the Child's death, she saw Courtney hit the Child with a belt, cord or her hand. Though certainly excessive, a single act of spanking a child with a belt does not rise to the level of extreme indifference to human life (R. 119:13-

120:15; 112:1-24); (6) Testimony from Dr. Olga Rosa, a child abuse pediatrician with the University of South Carolina School of Medicine revealed that the Child had been abused over a period of time, but in her opinion, could not confirm how the injuries occurred or by whom (R. 448:16-499:11); (7) Dr. Amy Durso, a forensic pathologist with Professional Pathology Services determined the Child's cause of death, but not how he died or who may have caused his death. (R 704:10-754:25); and (8) There is testimony by the lead investigator, Travis Holdorf, and others that there was blood strewn about the house and even on a white stick or pole. But there is no direct evidence or substantial circumstantial evidence from the State of the length of time that blood had been on the wall and door, what were the facts and circumstances surrounding the stains or whether or not the stains were a result of accident or incident. (R. 71:8-72:2; 362:20-365:15; 522:14-523:18).

In light of the foregoing facts and case law comparisons, Courtney contends that the Trial Court erred in denying her motion for a directed verdict at the close of the State's case-in-chief and again at the close of all of the evidence in that the State failed to present any direct or substantial circumstantial evidence to prove that *she* harmed the Child and *her* actions led to the death of the Child. She asks that this Honorable Court reverse her conviction.

II. DID THE TRIAL COURT ERR IN DENYING COURTNEY'S MOTION TO EXCLUDE GRAPHIC PHOTOGRAPHS OF THE CHILD WHICH WERE CALCULATED TO AROUSE THE SYMPATHIES AND PREJUDICES OF THE JURY?

Courtney argues that the Trial Court erred in denying her motion to exclude graphic and shocking photographs which were calculated to arouse the sympathies and prejudices of the jury in violation of precedential law and Rule 403 of the South Carolina Rules of Evidence.

Courtney contends that the case of State v. Middleton, 288 S.C. 21, 339 S.E.2d 692 (1986) is on point in comparison to the facts of her case. In Middleton, Id., the court analyzes Middleton's argument on appeal and rules:

Next, appellant argues the lower court erred in admitting color autopsy photographs of one of the victims. Three depicted the victim's scalp pulled away from her skull. One showed her surgically opened vaginal cavity exposing a large amount of seminal fluid. Before the photographs were introduced, appellant offered to stipulate to any facts shown by the photographs; however, the solicitor refused to accept any stipulations.

The State argues the photographs were properly admitted to (a) corroborate forensic testimony; (b) show the violence of the murders; and (c) corroborate statements made by appellant. Middleton, on the other hand, contends the photos contained no disputed information, and could have been proved by other testimony. The State candidly admits the photographs were not essential to the prosecution... Although photographs may be used to corroborate other evidence, *See State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587 (1942), it is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial. *State v. Edwards*, 194 S.C. 410, 10 S.E.2d 587 (1940). Appellant's counsel offered to stipulate to any relevant information contained in the photographs, and it is clear the information was not really at issue. Furthermore, the testimony of the forensic pathologist negated any arguable evidentiary value of the photographs. The prejudice created by the photographs clearly outweighed any evidentiary value. *See State v. Waitis*, 224 S.C. 12, 77 S.E.2d 256 (1953); *See also State v. Edwards*.... Reversed and remanded.

Courtney's facts are similar. When the State sought to introduce photographs of the Child in his home, unclothed, lifeless, and with his genitals exposed, and the gruesome autopsy photographs depicting the Child's body sliced into parts, Counsel objected to their admission on the grounds that any probative value of the crime scene and gory autopsy photos was far outweighed by the danger of unfair prejudice and needless presentation of cumulative evidence. However, the Court overruled Counsel's objection and the photographs were shown to the jurors. (R. 293:21-300:10; 353:9-354:1; 684:20--685:19; 687:14-688:2; 695:24-696:16; 713:24-714:6; 715:23-716:4; 717:1-10, 23-25; 723:3-11). Additionally, when the State published some of the autopsy photographs to the jurors, one of the jurors was so overcome with emotion that the juror ducked down below the barrier in the courtroom and covered her eyes. Counsel moved the court for a mistrial on the grounds that the juror's actions had a high probability of having a negative effect on the other jurors and the entire jury was tainted. The court added,

...I actually moved, for the record, to the back of the jury box specifically to watch that juror and see what she was doing or what she was not doing...Her head was down at times, but I mean, the jurors are not required to stare at every single thing that either side picks up or puts up in front of them." (R. 752:12-753:8)

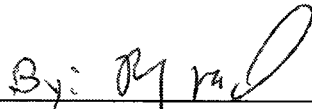
The Court denied Counsel's motion for a mistrial (R. 751:7-754:1). Finally, when the State introduced photographs to the Court and Counsel for a ruling from the Court on admissibility, the Court made this comment on the general nature of the photographs,

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

Based upon the foregoing and Rule 403 of the South Carolina Rules of Evidence which states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," Courtney contends that any probative value of the graphic crime scene and autopsy photographs was far outweighed by the danger of unfair prejudice and needless presentation of cumulative evidence, and should have been excluded by the trial court. Courtney requests that this Court reverse her conviction.

CONCLUSION

For the reasons set forth above, the trial court erred when it denied Courtney's motion for a directed at the close of the State's case and at the close of all of the evidence. The trial court also erred when it denied Courtney's motion to exclude graphic photographs which had no probative value and their only purpose was to inflame the emotions of the jury. Therefore, this Honorable Court should reverse Courtney's conviction on each charge.

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THE STATE OF SOUTH CAROLINA,
RESPONDENT,

V.

COURTNEY SHANTE THOMPSON,
APPELLANT.

CERTIFICATE OF COUNSEL

Counsel for appellant certifies that this Final Brief of Appellant contains no material which is irrelevant to this appeal, and complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


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December 8, 2015
Lexington, South Carolina

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IN THE COURT OF APPEALS

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Robert E. Hood, Circuit Court Judge

THE STATE,

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APPELLANT

APPELLATE CASE NO. 2014-001198

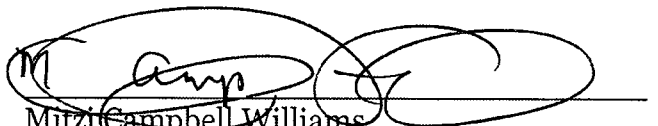
Consolidated Case For Record On Appeal:
State v. Robert Guinyard, Sr.,
Appellate Case No.: 2012-001203

**FINAL BRIEF OF APPELLANT
CERTIFICATE OF SERVICE**

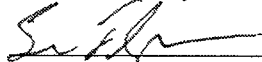
I certify that a true copy of the Final Brief of Appellant in the above-referenced case has been served upon

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this 8th day of December, 2015.


Mitzi Campbell Williams,
Attorney for Appellant Courtney S. Thompson

SUBSCRIBED AND SWORN TO before me
This 8th day of December, 2015



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