

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari Richland County
Robert E. Hood, Circuit Court Judge

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OCT 03 2017

Opinion No. 2017-P-5485 (S.C. Ct. App Filed May 11, 2017) SC Court of Appeals
13-GS-40-06515, 06522

THE STATE,

RESPONDENT,

V.

COURTNEY SHANTE THOMPSON,

PETITIONER

Consolidated Case For Record On Appeal:
STATE v. ROBERT GINYARD, Sr.,
2012-001203 (S.C. Ct. App Filed May 11, 2017)

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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INDEX

INDEX	i
CERTIFICATE OF COUNSEL	1
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
ARGUMENTS	4
CONCLUSION	10

CERTIFICATE OF COUNSEL

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

QUESTIONS PRESENTED

I. DIRECTED VERDICT MOTIONS

Did the Court of Appeals err in affirming the conviction of Petitioner, Courtney Shante Thompson,¹ for Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child, when the trial court denied Courtney's motion for a directed verdict, though the State failed to present substantial circumstantial evidence of *Petitioner's* guilt?

II. PHOTOGRAPHS

Did the Court of Appeals err in affirming the trial court's admission into evidence graphic photographs of the Victim which were calculated to arouse the sympathies and prejudices of the jury, and any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice?

¹ Courtney and the Victim's father, Robert Antonio Guinyard (Antonio), were tried jointly and convicted of Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child.

STATEMENT OF THE CASE

On October 16, 2013, the Richland County Grand Jury issued two true-billed indictments against the Petitioner: 1-Homicide by Child Abuse, 2013GS4006515 (R. 1335) and 2-Unlawful Conduct Towards a Child, 2013GS4006522 (R. 1336) Petitioner and the Victim's father, Robert Antonio Guniyard, 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 the Petitioner and Robert Antonio Guinyard (R. 1267). And on May 28, 2014, the Honorable Robert E. Hood sentenced Petitioner 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). Robert Antonio Guinyard was sentenced accordingly; however, his sentence is to run concurrently (R. 1282).

Petitioner filed a timely appeal to the South Carolina Court of Appeals, and the direct appeal was perfected.

On March 8, 2017, a three judge panel of the Court of Appeals heard oral arguments. On May 11, 2017, the Court of Appeals affirmed Petitioner's convictions. State v. Thompson, Op. No. 5485 (S.C. Ct. App Filed May 11, 2017). Petitioner filed a Petition for Rehearing and on August 16, 2017, the Court of Appeals denied the Petition for Rehearing. This Petition for Writ of Certiorari follows.

ARGUMENTS

I. DIRECTED VERDICT MOTIONS

Did the Court of Appeals err in affirming the conviction of Petitioner, Courtney Shante Thompson (Courtney),² for Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child, when the trial court denied Courtney's motion for a directed verdict though the State failed to present substantial circumstantial evidence of Courtney's guilt?

In her Petition for Rehearing, the Petitioner respectfully urged the Court of Appeals to reconsider the trial court's denial of her motion for directed verdict on the charges of Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child.

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:

² Courtney and the Victim's father, Robert Antonio Guinyard (Antonio), were tried jointly and convicted of Homicide by Child Abuse [HCA] and Unlawful Conduct Toward a Child.

(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 Toward 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.

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").

Petitioner respectfully asserts that the Court of Appeals may have overlooked or misapprehended circumstantial evidence the State presented at the trial court level, in ruling that, “a juror could reasonably infer that *either parent* inflicted the fatal abuse while the other parent was aware of the abuse and acquiesced in it.” (emphasis added). State v. Courtney Shante Thompson, published Opinion No. 5485, p. 12. Petitioner further asserts that the evidence viewed in light most favorable to the State, the State did not present substantial circumstantial evidence to prove the *Petitioner* inflicted the fatal abuse upon the Victim.

In the present case, the Petitioner asserts that the Court of Appeals engaged in a “collective analysis” of sorts to determine whether or not the State presented substantial circumstantial evidence to defeat Petitioners’ directed verdict motions. Our Supreme Court has ruled that guilt remains *individual* and *personal* and is not a matter of mass application. (emphasis added), (State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 81 (1993)). Similarly, the Supreme Court ruled in State v. Hepburn, State v. Hepburn, 406 S.C. 416, 440, 763 S.E.2d, 402, 424 (2013), “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” *id.* at 418 (emphasis in the original opinion).

Petitioner maintains the State has failed to present substantial circumstantial evidence that **she** inflicted the harm that caused the Victim’s death, or that she “acquiesced” in it. On the contrary, Petitioner recalls her interaction with her son and her efforts to get him medical attention:

He was crunched up and his body was stiff. His butt was up in the air[,] and he was [kind of] on his head... He was biting his lip hard.... When I popped his lip out from his teeth to keep him from biting it off[,] he went flat on me. He just dropped.... He was not responding.... I picked [Victim] up like he was a baby and took him to the front room (living room). Blood was coming from his lip. I had blood on my hand and went to my room to get my phone off the floor. *I called 911. They told me how to do CPR. I did what he told me....* (emphasis added)
State v. Courtney Shante Thompson, Opinion No. 5485, p.3.

Petitioner asserts she alone did all she could do to save her son and did not administer the harm that caused her child's death. She further states 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 her son and *her* actions led to the death of her son.

II. PHOTOGRAPHS

Did the Court of Appeals err in affirming the trial court's admission into evidence graphic photographs of the Victim which were calculated to arouse the sympathies and prejudices of the jury, and any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice?

Petitioner respectfully asserts that the Court of Appeals may have misapprehended Rule 403, SCRE as it pertains to photographs that should have been excluded from evidence because any probative value the photographs may have had was substantially outweighed by the danger of unfair prejudice. The relevant section of Rule 403 of the South Carolina Rules of Evidence 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."

Petitioner contends that just the sheer number of photographs (over 240) the State moved the trial court to admit into evidence served only to delay the proceedings, were a waste of time and a needless presentation of cumulative evidence. More importantly, Petitioner asserts the photographs' minute probative value substantially outweighs the danger of unfair prejudice and were calculated to arouse the sympathies and the prejudices of the jury.

When the State sought to introduce photographs of the Victim in his home, unclothed, lifeless, and with his genitals exposed, and the gruesome autopsy photographs depicting the Victim'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)

In response to the photographs the State sought to admit into evidence, the trial court commented:

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)

Petitioner stresses that the trial court did not exclude all of the photographs that he thought were, "disgusting" because there were hundreds of them. Appellant 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.

CONCLUSION

Petitioner respectfully requests this Court grant the Petition for Writ of Certiorari and order full briefing on the questions presented.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mitzi Campbell Williams", is written over a horizontal line. The signature is stylized and somewhat cursive.

Mitzi Campbell Williams

ATTORNEY FOR PETITIONER

This 3rd day of October, 2017

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

THE STATE RESPONDENT

V.

COURTNEY SHANTE THOMPSON PETITIONER

APPELLATE CASE NO. 2014-001198

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STATE v. ROBERT GINYARD, Sr.,
2012-001203 (S.C. Ct. App Filed May 11, 2017)


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PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on each party of record by depositing a copy of it in the United States Mail, postage prepaid, on October 3, 2017 addressed to each party:

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