THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable Robert E. Hood, Circuit Court Judge

Opinion No. 5485 (S.C. Ct. App. filed May 11, 2017)

Appellate Case No. 2017-001893

The State of South Carolina,

Respondent,

v.

Courtney Shante Thompson,

Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

ALAN MCCRORY WILSON
Attorney General

AMIE L. CLIFFORD
Special Assistant Attorney General
aclifford@cpc.sc.gov
S.C. Bar No. 1285

S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
OT Wallace Building
Charleston, South Carolina 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

Other Counsel of Record:

MITZI CAMPBELL WILLIAMS

P.O. Box 84171
Lexington, South Carolina 29073
(803) 629-0041

ROBERT M. DUDEK
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1330

ATTORNEYS FOR CO-DEFENDANT

QUESTIONS PRESENTED

I. Did the Court of Appeals err in upholding the trial court's denial of Petitioner's motions for directed verdict when the State presented substantial direct and circumstantial evidence of Petitioner's guilt on both homicide by child abuse and unlawful conduct toward a child?

II. Did the Court of Appeals err in upholding the trial court's admission of photographs (State's Exhibits 13, 15 through 19, 75, 80 through 85, 130, 136 through 139, 144, 146, 147, 225, and 227 through 231) when they were highly probative to the issues of whether Victim was abused or neglected, whether the abuse or neglect was the caused his death, and whether his condition would have been apparent, and their probative value substantially outweighed the danger of unfair prejudice?

STATEMENT OF THE CASE

Procedural History

Petitioner was indicted for the offenses of homicide by child abuse (Indictment 2013-GS-40-06520) and unlawful conduct toward a child (Indictment 2013-GS-40-06521). She pled not guilty and was tried with her Co-Defendant, Robert Antonio Guinyard, before a jury in Richland County on May 19 – 28, 2014. At the conclusion of the trial, the jury found Petitioner and Co-Defendant guilty as charged. The trial court thereafter sentenced Petitioner to a sentence of life imprisonment without parole on the homicide by child abuse conviction and a consecutive ten-year term of incarceration of the conviction for unlawful conduct toward a child. The trial court also ordered Petitioner to be placed on the Central Registry of Child Abuse and Neglect.

Petitioner appealed to the South Carolina Court of Appeals, and that Court affirmed her convictions and sentences. The Court of Appeals denied Petitioner's petition for Rehearing and she served and filed her Petition for a Writ of Certiorari with this Court on October 3, 2017.

Statement of Facts

Because Petitioner has not challenged the factual summary included in the opinion of the Court of Appeals and because of the page limitation for this Return, the State incorporates the facts as set out in the "Statement of Facts" contained in the Final Brief of Respondent filed in the South Carolina Court of Appeals and included in the Appendix. Respondent will only set out certain evidence presented at the trial for purposes of highlighting it.

VICTIM'S CONDITION FROM BIRTH THROUGH APRIL 6, 2012

After spending all but the first two months of his life in foster care, Victim was returned to his parents, Petitioner and Co-Defendant, on April 6, 2012 – just 12 days shy of his third birthday. (ROA p. 111, line 9 – p. 112, line 6; p. 150, lines 4-7; p. 243, lines 8-13; p. 461, lines 6-14; p. 468, lines 22-25; p. 585, lines 9-19.) At that time, he was a happy, healthy little boy.[1] (ROA p. 589, line 19 – p. 590, line 6.)

STATE'S EVIDENCE AS TO CONDUCT OF PETITIONER AND HER CO-DEFENDANT

A. April 6, 2012 until Approximately 60 Hours before Victim's Death

After Victim was returned in April 2012, several members of Petitioner's family or extended family saw or witnessed Petitioner beat Victim. One of Petitioner's sisters, Crystal Thompson, saw Petitioner beat or hit Victim with a clothes hanger, coat hanger, drop cord, cable

[1] While in foster care, Victim had regular pediatric check-ups. At 15-months, he was where he should have chronologically been in his development. (ROA p. 562, line 15 – p. 563, line 6.) A brain M.R.I. done when he was 18 months old showed that the structure and the anatomy of his brain were fine. He was "big, chunky, and healthy" – above the 97% percentile for everything on all of the growth charts. And, as a result of recommended speech therapy and a little bit of occupational or physical therapy, by March 26, 2012, Victim was talking in two or three word sentences, socialized, and toilet trained. He was on par with his peers and had reached his potential for his age. (ROA p. 174, lines 16-23; p. 462, line 6 – 463, lines 7-11; p. 466, line 1 – p. 467, line 15.) A genetic consult revealed no metabolic or medical cause that would affect his development. Victim was not autistic. (ROA p. 465, lines 2-25.)

cord, her hand, fists, and her knees. (ROA p. 111, line 24 – p. 114, line 9; p. 134, line 16 – p. 135, line 1; p. 136, line 9 – p. 137, line 7; p. 138, line 21 – p. 144, line 13; p. 148, line 9 – p. 150, line 3; p. 244, lines 3-5.) Maria Thompson, another sister of Petitioner, heard Petitioner "spanking, you know, beat[ing]" Victim sometime around Easter in 2013[2] because he had urinated on the floor. (ROA p. 245, line 9 – p. 246, line 9.) Natalie, another of Petitioner's sisters, saw Petitioner hit Victim with a belt, a shoe, and a hanger. (ROA p. 258, lines 12-13; p. 259, line 1 – p. 261, line 12; p. 262, lines 14-16.) Gladys Thompson, Petitioner's mother, observed that Victim was not treated as nicely as his sisters were treated.[3] (ROA p. 326, line 16 – p. 327, line 11.) She saw Petitioner hit Victim with a cable cord once, and she saw her punch him with her fist once. (ROA p. 329, lines 2-9.)

Gladys Thompson also observed that Victim was not fed and given water or something to drink on a regular basis (ROA p. 332, lines 13-16), and was once told by Petitioner that Victim had drunk out of a toilet. (ROA p. 333, lines 5-7.) Victim would sometimes eat of trashcans. On occasion, Natalie or her fiancé, Charles Robinson, would sneak or try to sneak him something; if Petitioner caught them, she would become angry. Natalie never saw Co-Defendant try to give food or water to Victim when he was hungry or thirsty.[4] (ROA p. 273, lines 2-18.)

Sometime around the end of May or first of June 2013, Natalie went shopping with Co-Defendant and Petitioner. When Co-Defendant left the van to check on Petitioner at the second

---

[2] In 2013, Easter Sunday was observed on Sunday, March 31, 2013. (*http://www.timeanddate.com/holidays/us/easter-sunday.*)

[3] At trial, Ms. Thompson testified she remembered telling Investigator Wagner that animals should not have been treated the way Victim was treated, and that if Victim spilled anything, he would be slapped hard with an open hand by Petitioner. (ROA p. 328, lines 17-24.)

[4] Natalie testified about one occasion when Co-Defendant and Petitioner argued over how many pieces of pizza Victim could eat, with Co-Defendant finally agreeing with Petitioner that Victim would only have one slice while the other children had three. (ROA p. 279, line 4 – p. 280, line 5.)

shop they visited, Natalie heard a "drinking noise" and, for the first time, realized that Victim was sitting in the cargo area of the mini-van. He was drinking a soda that Natalie had bought at the grocery store. He asked her if she had anything to eat. She gave him some chips.[5] (ROA p. 270, line 6 – p. 272, line 20; p. 276, lines 14-24.) Victim was only able to eat about half of the bag before Co-Defendant and Petitioner returned to the van. He threw the bag to Natalie, who put it under the seat to hide it from Co-Defendant and Petitioner. She found it, however, and became angry with Natalie. (ROA p. 272, line 20 – p. 273, line 1; p. 278, line 18 – p. 279, line 3.)

Several members of Petitioner's family or extended family and two doctors personally observed injuries to Victim or saw photos of injuries to him, and were concerned enough to try to get help for him. On September 11, 2012 – five months after his return to his parents – Victim was seen by Dr. Monica McCutcheon, a board certified pediatrician, for his three-year-old well child visit. (ROA p. 169, lines 4-8; p. 170, line 18 – p. 171, line 13; p. 172, lines 8-15; p. 469, lines 3-21.) She found Victim to be a well nourished child. Although his speech was a little difficult to understand, he answered questions and seemed developmentally appropriate. Dr. McCutcheon did not see that Victim demonstrated any of the signs of autism. (ROA p. 173, line 15 – p. 174, line 2; p. 178, line 25 – p. 179, line 2; p. 180, lines 8-17.) Dr. McCutcheon determined that Victim had regressed – *i.e.*, he had lost things that he had accomplished such as his speech, ability to engage in symbolic play, and recall of his name, age, sex or gender – and she made several referrals for Victim. (ROA p. 176, lines 1-10; p. 470, line 2 – p. 471, line 16.) After Victim left her office, Dr.

[5] Natalie testified at trial that, on this day, Co-Defendant's mouth was really messed up – "his mouth was real, real dry as if he was dehydrated. His lips were cracked up. They were bloody. The top lip was all pussie [sic]. I had asked about it, but [Petitioner] told me that it was something he picked up and ate and it was something wrong. The doctor said it was because of something he ate off the ground or something that she had cream for it." (ROA p. 272, lines 5-11.) Natalie never saw the cream and never saw Petitioner apply any cream. (ROA p. 272, lines 12-15.)

McCutcheon placed a call to the DSS case worker because of her concern over his parents' lack of knowledge and follow up on medical care. (ROA p. 176, line 1 – p. 178, line 9; p. 472, lines 4-7.) Victim was never seen by any of the referrals and not seen again by Dr. McCutcheon's practice or any other doctor prior to his death. (ROA p. 176, lines 11-23; p. 177, lines 13-18; p. 472, lines 10-21.)

By the spring of 2013, Angela Metze, the grandmother of one of Victim's sisters, noticed that Victim had changed. He had lost a significant amount of weight, he was not active, he would not talk when told to do so, and he was withdrawn. (ROA p. 586, line 16 – p. 587, line 10; p. 580, lines 7-25.) Sometime in February 2013, Ms. Metze received some photographs of Victim showing bruises, scars, and marks from beatings on his back. She contacted DSS several times. (ROA p. 589, line 18 – p. 590, line 5.) Ms. Metze offered to help with Victim, but they never let her do so and, to her knowledge, Victim never went with anyone else. He always stayed with them. (ROA p. 603, lines 17-25.)

On the same day around Easter in 2013 that she heard Petitioner spanking/beating Victim, Maria also observed that Victim was limping and he had bruises on his back. (ROA p. 247, line 19 – p. 248, line 13.) Maria called DSS several times about Victim's condition. (ROA p. 249, line 25 – p. 251, line 21.) Natalie also called the police and DSS several times on both Co-Defendant and Petitioner. When DSS told her that she needed proof of his condition, Natalie took photographs[6] of Victim his face to show who he was and his body to show bruises. (ROA p. 261, line 16 – p. 263, line 23; p. 264, lines 20-22; p. 281, line 24 – p. 282, line 5.)

On April 5, 2013, Ms. Metze went to the Five Points Pediatric Group and talked to Dr.

---

[6] The photographs were admitted into evidence without objection as States Exhibits 215 through 222.

Kiersten Lofton, who had never seen Victim. Ms. Metze told Dr. Lofton that she was concerned that Victim was being abused and she showed Dr. Lofton photos on her phone, taken approximately one month earlier, that showed Victim's back. Ms. Metze wanted Dr. Lofton's help in reporting to police or DSS that Victim was being abused. (ROA p. 307, lines 14-18; p. 309, line 19 – p. 312, line 20; p. 590, lines 5-10.) Dr. Lofton was concerned by the photographs of Victim's lower to mid back area. She observed what appeared to be patterned markings on Victim's back, indicating to her that the markings were caused by Victim having been struck with something that left a pattern, rather than resulting from a rash or infection. (ROA p. 312, line 21 – p. 313, line 10.) Dr. Lofton reported her observations and opinion to DSS that day and asked them to follow up. (ROA p. 313, line 11 – p. 314, line 7.) Later that same day, Dr. Lofton was contacted by the police department and told that Victim had a skin condition. (ROA p. 314, lines 8-23.) Dr. Lofton, who had considered and rejected the possibility that the markings were the result of a skin condition, followed up with DSS. She told them that she had reviewed Victim's records from her clinic and the clinic that had previously seen Victim, and she had found no documentation of a skin condition. She also told DSS that they needed to look into possible medical neglect because her clinic's records indicated that there had been no follow up on the earlier referrals made for Victim's possible urology and developmental issues. (ROA p. 314, line 24 – p. 316, line 15.)

Also in May or June, Petitioner spoke to Ms. Metze over the telephone. She talked about being overwhelmed with bills, life not treating her fairly, and Victim defecating on himself. Ms. Metze suggested she take Victim to counseling or back to DSS. (ROA p. 590, line 20 – p. 591, line 11.) Petitioner told Ms. Metze that she was going to get Co-Defendant's mother to take him. (ROA p. 592, lines 16-24.) On occasions prior to July 1, 2013, Petitioner made statements about Victim going back to DSS, killing Victim or Victim being killed. (ROA p. 274, lines 11-15; p.

275, lines 8-14.)

B. Conduct of Co-Defendant and Petitioner beginning Approximately 59 Hours Prior to Victim's Death

Petitioner went into labor at some time during the early morning hours of Saturday, June 29, 2013. From the hospital later that morning, she called and arranged to have two of her daughters picked up from the house and taken care of by someone other than Co-Defendant. Kimberly Gooden picked up Petitioner's one-year-old daughter from Petitioner's and Co-Defendant's home. She did not see Victim. (ROA p. 555, line 5 – p. 557, line 4.) Ms. Metze, who already had Petitioner's two-year-old daughter, agreed to go pick up Petitioner's her three-year-old daughter. When she drove up to their home, Co-Defendant was outside with the girl. Ms. Metze did not see Victim that day and, in fact, had not seen him since around Easter. (ROA p. 593, line 10 – p. 595, line 23; p. 609, line 22 – p. 610, line 3.)

Petitioner's newest child was born in the early morning hours of Sunday, June 30. At 1:06 p.m. on July 1, Petitioner and her new baby were discharged from the hospital and, using her cellphone, she called for a taxi at 1:06 p.m. to take her home. (ROA p. 780, line 22 – p. 783, line 8; p. 784, lines 11-19; p. 836, lines 3-10; p. 878, line 20 – p. 879, line 24; State's Exhibits 2A and 250-A.)

Throughout the afternoon after she arrived home, Petitioner made and received telephone calls. (State's Exhibit 250A at ROA p. 1299.) -At 5:05 p.m., she received a call from Crystal and talked to her for a little over two minutes. (ROA p. 878, line 20 – p. 880, line 15; State's Exhibit 2A; State's Exhibit 250A at ROA p. 1299.) During their telephone conversation, Petitioner told Crystal that Victim had gotten a cracker out of the bag she had brought home from the hospital and was trying to eat it. Crystal heard Petitioner tell Co-Defendant to go see what Victim was doing. (ROA p. 117, line 1 – p. 119, line17.) Petitioner said she going to take a shower and they

hung up. The phone then "dialed back" or "butt dialed" Crystal. When Crystal answered, the phone line was open and she could hear Victim getting beat and screaming for help. She heard him say, "Lord, help me." She also heard Petitioner tell him to "hush," and then heard Petitioner and Co-Defendant talking, with Petitioner telling Co-Defendant to hold his legs and Co-Defendant later saying that Victim was not moving. The phone then went dead. (ROA p. 119, line 21 – p. 122, line 8; p. 125, lines 23-25; p. 153, lines 7-10.)

At 5:07 p.m., almost as soon as the call with Crystal ended, Petitioner called Nicole and spoke for 20 seconds. After that call, Petitioner conducted five Google searches on her cellphone on what to do if a child has a seizure. There were numerous calls made after that, but a 911 call was not made to almost an hour later. (ROA p. 878, line 20 – p. 883, line 3; State's Exhibit 2A; State's Exhibit 250A at ROA p. 1300.)

At 6:12 p.m., Petitioner called 911 and reported that Victim had fallen and was having problems breathing. (ROA p. 882, lines 16-20.) Esther Curran, an EMT with Richland County EMS, and her partner were dispatched at approximately 6:14 or 6:15 p.m. to the home and arrived in less than five minutes. (ROA p. 40, line 2 – p. 42, line 6; p. 416, lines 14-19.) The screen door was locked and the house was silent. After a few more knocks, a woman opened the door. (ROA p. 42, lines 7-19; p. 51, lines 20-22.)

When the door opened, EMT Curran saw four-year-old Victim laying face up on the floor just inside the living room. He was not wearing a shirt or socks – just jeans, which had a stain like children have when they have wet themselves. (ROA p. 42, lines 20-24; p. 46, line 22 – p. 47, line 2; p. 65, lines 4-5; p. 110, line 20 – p. 111, line 13; p. 171, lines 4-9.) EMT Curran was not told anyone had performed CPR on the boy and she saw no one doing so. Without turning him over, EMT Curran saw a small cut to the Victim's lip and "Raccoon like" bruising around both eyes,

which indicated to her the injuries had happened at some earlier time. He was still, cold to the touch, not breathing, without a pulse, and his hands, soles, and his feet were "gray, like a dusky color" indicating that he had been dead for some period of time. (ROA p. 42, line 25 – p. 44, line 8; p. 45, line 18 – p. 46, line 21; p. 47, lines 3-21.) EMT Curran only saw Victim's mother, Petitioner, in the house. The EMTs questioned her about the Victim's health history, and about what had happened. Petitioner, who was very agitated, said that, while she was in the shower, Victim was playing and had jumped off the dresser, hit his head, and had a seizure. She said he was autistic, and that, when she got out of the shower, she found him unresponsive. Petitioner, who did not appear to EMT Curran to be wet, did not indicate when this had happened. (ROA p. 48, line 1 – p. 49, line 25; p. 50, lines 10-24.)

The EMTs notified law enforcement that a child was dead. (ROA p. 48, lines 1-12.) Apparently at about that same time – sometime between 6:15 and 6:30 p.m. – Fire Department personnel arrived. (ROA p. 48, lines 1-12; p. 54, line 14 – p. 55, line 4; p. 59, lines 7-10.) Firefighter Peter Biviano saw Petitioner, who did not appear to be wet; she was visibly upset, screaming, and asking them to save her child. (ROA p. 55, lines 5-10; p. 58, lines 21-25; p. 59, lines 14-19.) Neighbors indicated to one of the firefighters that a boyfriend and newborn child should be in the house; because they did not see and could not find them, Firefighter Biviano called his dispatcher and requested that the Richland County Sheriff's Office respond quicker. (ROA p. 55, line 11 – p. 56, line 14; p. 57, line 18 – p. 58, line 3.)

At that point, Firefighter Biviano noticed a change in Petitioner's demeanor. (ROA p. 57, lines 1-6.) "She immediately just went blank. It was like nothing had happened. She wasn't upset anymore. There was no crying, no screaming. She was out front on the front steps and she got on the phone and was having a conversation with somebody on the phone, just a normal

conversation." (ROA p. 56, lines 18-25.)

When Master Deputy Shaw arrived and walked into the house, he heard Petitioner yell out, "SIDS." (ROA p. 229, lines 17-25.) Petitioner yelled at and spoke loudly enough to be heard by officers who were present. She said that other officers would not help her son and that he was not dead. She also made statements about having been in the shower when she heard a noise; she said came out and found Victim lying on the floor biting his lip.[7] She said she dialed 911 and tried to follow directions to administer CPR. She was talking loudly to anyone who would listen.[8] (ROA p. 199, lines 15-17; p. 221, lines 13-23; p. 228, line 13 – 16; p. 235, line 18 – p. 237, line 8; p. 240, lines 4-7; p. 240, line 18 – p. 241, line 2.)

Co-Defendant was found holding the baby a baby on the steps outside the back door. (ROA p. 200, line 19 – p. 201, line 1; p. 225, line 23 – p. 226, line 19; p. 232, line 18 – p. 233, line 5.) When discovered, Co-Defendant said nothing – he did not ask about Victim and he did not respond when asked what was he doing. He was escorted through the house and out the front door. He did not appear upset and did not ask for help. Co-Defendant walked to the sidewalk in front of the house near the steps on which Petitioner was sitting. (ROA p. 57, line 7 – p. 58, line 14; p. 191,

---

[7] Petitioner presented several different versions of what happened – she told the first responders and the police in her first statement that she had been taking a shower when she heard a loud noise and subsequently found Victim on the floor in his room near a dresser (State's Exhibit 2-A at ROA pp. 1285-1287); in her second statement, she then said that he was on the floor when she got home and when she was in the shower she heard him crying like he was in pain and getting hit (State's Exhibit 2-A at ROA pp. 1285-1287); and when she testified at trial, she said she never made it into the shower and that Victim passed out after being made to stand up with his hands up by Co-Defendant and hit his head on the corner of the door. (ROA p. 1106, line 3 – p. 1108, line10).

[8] Corporal Wilder observed that Petitioner was making crying noises, but there were no tears. (ROA p. 199, lines 13-23.) Deputy Shaw said that Petitioner was not crying, but she was yelling about getting help for Victim. (ROA p. 221, lines 13-23.) Sergeant McLendon, who did not notice if she was wet, said that Petitioner was sobbing, but explained later that "it was no tears or nothing. It was like she was trying to, you know, make it look like something that wasn't there." (ROA p. 237, lines 6-8; p. 236, lines 8-10; p, 240, lines 8-10.)

lines 1-8; p. 193, lines 20-22; p. 200, line 19 – p. 201, line 1; p. 226, line 20 – 227, line 17; p. 233, lines 2-16; p. 237, lines 22 – p. 238, line 12; p. 241, lines 3-6.)

Examinations of items, cuttings, and swabs taken from the home revealed that Victim's blood was on various surfaces in the home, including living room, hallway, and bedroom walls; hallway carpet; on and around a light switch in one bedroom; a white rod; and a pipe. (ROA p. 70, line 22 – p. 72, line 7; p. 74, line 4 – p. 77, line 15; p. 76, line 15 – p. 78, line 1; p. 376, lines 12-23; p. 649, line 8 – p. 651, line 19; p. 651, line 20 – p. 656, line 17; p. 659, line 1 – p. 660, line 13; p. 661, line 10 – p. 663, line 6; State's Exhibits 18, 19, 64, 65, 67, 68, 69, 71, and 72.) The stains on the hallway wall and living room wall were of a linear pattern, indicating that they were castoff from some object that was swung, while the others were round or elliptical, indicating spatter. (ROA p. 71, line 15 – p. 73, line 6; p. 75, lines 3-15; p. 76, line 24 – p. 77, line 1.) The age of or how long the blood had been present was not able to be determined. (ROA p. 92, line 21 – p. 93, line 12.)

On July 5, Investigators Holdorf and Wagner accompanied Co-Defendant's mother to the house at her request so that she could retrieve some clothes. (ROA p. 524, lines 2-12.) Mrs. Guinyard went to the back bedroom and was pulling things out of the closet when she was overcome with emotion. She turned around and handed Investigator Holdorf a little gray and white or blue and white striped child's shirt, with reddish brown stains all over it, that she had found going through the pile of clothes in the closet. (ROA p. 524, line 16 – p. 525, line 25; p. 526, lines 17 – p. 527, line 4.) Investigator Holdorf delivered the shirt and a pair of red shoes, from the house to Investigator Lee. That evidence, which had to be placed in a drying cabinet because it was wet – were two red shoes and a gray striped shirt, both of which had reddish brown stains on them. Investigator Lee photographed them. Subsequent testing on the shoes and shirt established that the

stains were blood and that the DNA matched that of Victim (ROA p. 401, line 10 – p. 407, line 4; p. 527, lines 5-10; p. 661, line 10 – 663, line 19; State's Exhibits 112 through 129.)

Sometime after Victim died, Petitioner spoke to her cousin, Latoya Anderson, and told her that Victim had been possessed, that they had been tired of him, and that she had starved him for eight days by not giving him either food or water. Petitioner told her they were relieved when Victim died. (ROA p. 673, line 7 – p. 674, line 25.)

Petitioner, who changed her statement to police twice, was also recorded on a call from the jail in which she gave a third version of events leading up to Victim's death. (State's Exhibits 2A, 6A, and 254.) She and Co-Defendant were also overhead in the Courthouse talking one day. Appellant told her to do what he said and everything would be okay. She said that there were other women at the jail who had killed their children and their attorneys had gotten them off. (ROA p. 691, line 9 – p. 693, line 13.)

EVIDENCE PRESENTED AS TO THE VICTIM'S CAUSE OF DEATH

Victim died on July 1, 2013. Dr. Amy Durso, a forensic pathologist, performed the autopsy of Victim and Dr. Olga Rosa reviewed the pathology report and photographs of Victim taken after his death. (ROA p. 448, line 16 – p. 449, line 14; p. 453, line 8 – p. 455, line 16; p. 704, lines17-21; p. 709, lines 10-18.) Their examinations revealed the following external injuries to Victim:

- on his head: a scar on his nose, a scar on his forehead, both eyes had orbital contusions (black eyes), a small abrasion under his left eye, lacerations to his lips, and quite a few injuries to the inside of his lip;
- to his torso: a small crusted abrasion (state of healing), scarring over the right hip, and dark discoloration over his right hip;
- on his arms: five scars, two small superficial abrasions around his elbow, a small abrasion on the back of his shoulder that appeared to be healing, a deep puncture wound, and a sharp force injury (which was starting to heal even though it did not appear to have had any

medical intervention);

- on his back and buttocks: a lot of discoloration, superficial abrasions along the buttocks, scars, a healing bite mark (the measurements of which match up with a teenager or adult), abrasion on the right hip, discoloration of the right hip and lower buttock; and
- on his legs: few little abrasions on back of upper legs, and one knee was "really, really" swollen.

(ROA p. 472, line 22 – p. 474, line 4; p. 481, line 24 – p. 484, line 25; p. 487, line 10 – p. 489, lines 16; p. 496, line 21 – p. 497, line 11; p. 712, line 22 – p. 725, line 2; State's Exhibits 31, 130, 144, 225, 227-231, 255, and 256.) During Dr. Durso's internal examination of Victim, she discovered the following injuries:

- his thyroid was really pale indicating significant blood loss;
- two fractured ribs: the left lateral ninth rib fracture was dated between 10 days and six weeks and was healing, but would have been "pretty painful" when coughing, sneezing or taking a deep breath, and the right posterior tenth rib fracture was dated to have been suffered within 24 hours of death;
    - injuries of this type are the result of blunt force injuries that do not generally break or puncture the skin, either the body striking a hard, flat surface or a hard, flat surface striking the body;
- a fracture to his left humerus, the left upper arm bone, which was actually a healing fracture under an acute hemorrhage indicating a site of repeated injury;
    - the healing fracture was dated to be one to two weeks old, the acute hemorrhage overlying the fracture was dated to have occurred within 24 hours of death;
    - this injury could have been caused by any hard impact to the bone or by someone yanking the arm;
    - this injury would have been extremely painful and Victim would not have been able to use the arm in any meaningful way;
- injuries to his head and brain, including
    - four areas of impact of bruising to the head, which were inconsistent with a fall from a dresser, but consistent with multiple blunt impact trauma inflicted by either hitting

Victim with an object multiple times or by hitting Victim up against something multiple times;

- subdural hemorrhage over the left side of the brain, which was dated to be between three and seven days prior to death[9], and consistent with blunt force trauma rather than a fall from any height or any natural cause;
  - this injury would have resulted in obvious symptoms of a brain injury, including lethargy, nausea, pain, seizures, abnormal movements of a limb, and maybe loss of consciousness; and

- injuries to the back of his body, including
  - extensive bleeding and hemorrhage of different ages;
    - much of blood loss was in the lower back and buttocks, with hemorrhage two and half inches deep in the left buttocks that could not have been caused by spanking, but by a hard object hitting the child;
    - hemorrhage to the back of the legs and arms;
  - some of the bruising was dark and bright red indicating it was probably less than 18-24 hours old, but there was just as much bruising that was older;
  - Dr. Durso testified that she had never seen a child with this many areas of bruising this severe; and
  - the blood loss from all of the bruising – old and new – contributed to the blood loss so that he was no longer able to circulate enough blood to provide oxygen to his brain to maintain his body's vital functions.

(ROA p. 474, line 5 – p. 481, line 23; p. 490, line 21 – p. 494, line 11; p. 496, lines 14-20; p. 726, lines 1-17; p. 728, line 1 – p. 744, line 1; State's Exhibits 240-242.) Dr. Durso concluded that Victim was repeatedly and consistently beaten, and those beating caused him to lose so much blood from his circulatory system into his soft tissue that his body ceased being able to function. (ROA p. 744, lines 2-21.) Both doctors stated that Victim would have been in excruciating pain; even

[9] Dr. Durso, who conducted the autopsy testified that the brain injuries were sustained five to seven days prior to Victim's death. (ROA p. 740, lines 2-19). Dr. Rosa testified that the brain injuries were sustained three to seven days prior to Victim's death. (ROA p. 490, line 21 – P. 492, line 14.)

just trying to sit down would have been painful. His pain would have been noticeable. (ROA p. 488, line 18 – p. 489, line 22; p. 494, lines 12-18; p. 744, line 22 – p. 745, line 13.)

Dr. Rosa testified that Victim did not appear to be in the same physical condition at the time of his death as when he left his foster home – he had no soft tissue on this chest and his rib cage was clearly visible; his arms were also thin. His condition could have been consistent with a lack of proper nutrition. (ROA p. 495, line 2 – p. 496, line 13.) Dr. Rosa testified that, even without seeing all of the bruising, scars, and injuries, it would have been obvious in the days leading up to Victim's death that something was wrong and he needed treatment. (ROA p. 498, line 13 – p. 499, line 6.)

Dr. Durso determined the cause of Victim's death to be extensive soft tissue hemorrhage and bleeding due to multiple acute and healing blunt force injuries due to non-accidental trauma, *i.e.*, persistent and repeated abuse. (ROA p. 747, lines 1-8.) Drs. Durso and Rosa concluded the injuries suffered by Victim were not the result of spanking or falling, but were all intentionally inflicted injuries or child abuse. (ROA p. 485, lines 3-8; p. 497, lines 22-24; p. 727, lines 18-25; p. 745, lines 14-23.) Injuries sustained on the last day of his life would not have killed Victim, but it was the cumulative effect of all the injuries he had sustained from abuse over the last two months that caused his death. (ROA p. 485, line 9 – p. 487, line 9; p. 494, lines 19-21; p. 497, line 22 – p. 499, line 6; p. 745, line 23 – p. 746, line19.) Had Victim received medical treatment, he would have survived. (ROA p. p. 501, lines 5-10; 746, lines 20-25.)

Argument I

The Court of Appeals Properly Upheld the Trial Court's Denial of Petitioner's Motions for Directed Verdict because the State presented substantial evidence, both direct and circumstantial, of Petitioner's Guilt. (Question I)

On appeal, Petitioner does not assert that the Court of Appeals misinterpreted or misapplied the law governing a trial court's ruling on a directed verdict motion or the standard of review to be used by the appellate court. Instead, she argues the Court of Appeals erred in finding that the State presented substantial circumstantial evidence of her guilt.

Respondent strongly disagrees. Because the State presented substantial evidence, **both** direct[10] **and** circumstantial, of Petitioner's guilt of both charges against him, the Court of Appeals properly upheld the trial court's denial of his motions for directed verdict.

In reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the State, and it is to be concerned only with the existence or nonexistence of evidence, not its weight. *State v. Hepburn*, 466 S.C. 416, 753 S.E.2d 402 (2013); *State v. Phillips*, 411 S.C. 124, 132, 767 S.E.2d 444, 448 (Ct. App. 2014); *State v. Smith*, 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004); *State v. Jarrell*, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, the appellate court must find the case was properly submitted to the jury. *Id.*; *State v. Pinckney,* 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000).

Petitioner was indicted and tried on two charges: homicide by child abuse, under S.C. Code Section 16-3-85(A)(1), covering the time period of June 15, 2013, through July 1, 2013, and unlawful conduct toward a child, under Section 63-5-70(A) covering the time period of April 18,

---

[10] The direct evidence presented at Petitioner's trial included the photographs of Victim's body showing his physical condition at the time of death, the medical evidence of Victim's injuries and the causes thereof, and testimony as to the cause of Victim's death. *See Ryals v. State*, 193 Ga. App. 68, 387 S.E.2d 33, 34 (Ct. App. 1989) (medical evidence as to injuries and opinion that they resulted from "obvious child abuse" is direct evidence); *Gibbons v. State*, 86 Ga. App. 468, 71 S.E.2d 663 (Ct. App. 1952) (evidence as to injuries received in collision that caused victim's death was direct evidence).

2009, through July 1, 2013. Looking first to the homicide charge, it is defined as follows.

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

Section 16-3-85(A). In the context of South Carolina's homicide by abuse statutes, extreme indifference is a mental state akin to intent characterized by a deliberate act culminating in death. *State v. Jarrell*, 350 S.C. at 98, 564 S.E.2d at 367. Looking to the statutory definition of "child abuse or neglect" and "harm," it is clear the statute criminalizes both the infliction of abuse and the failure to protect a child from abuse that results in the death of the child while exhibiting an extreme indifference to the child's life.

The direct[11] and circumstantial evidence presented during the State's case, as set out briefly in the Statement of the Case herein and more completely in both the Final Brief of Respondent filed in the Court of Appeals (which is included in the Appendix and incorporated by reference)

---

[11] The State disagrees with Petitioner's assertions that there was no direct evidence of her guilt presented by the State. In addition to the evidence of Drs. Durso and Rosa as to the cause of death and physical and medical condition of Victim and photographs of Victim showing his external injuries and his emaciated state, the State presented the testimony of Petitioner's sister, Crystal Chapman, about hearing, over the telephone on the afternoon of July 1, Victim being beat and Petitioner tell Co-Defendant to hold Victim's legs followed by Co-Defendant saying the Victim was not moving (ROA. p. 119, line 21 – p. 123, line 8; p. 125, lines 23-25).

and the opinion of the Court of Appeals, establishes that Victim suffered repeated and persistent child abuse, with injuries dating from 24 hours to two months before his death. The chronic abuse inflicted upon Victim over the last two months of his life included a blunt force trauma injury to his brain that occurred sometime between June 24 and June 28 (before Petitioner went to the hospital to have her baby during the early morning hours of the 29th). No single injury Victim suffered – including any inflicted on the day Victim died – would have by itself resulted in his death. Instead, his death was the result of the cumulative effect of all the injuries he sustained over the last two months of his life. The testimony of Drs. Durso and Rosa, as well as the photographs of Victim taken of his body after he died, clearly establish that it would have been obvious to Petitioner in the weeks before Victim's death – long before she went to the hospital to have her baby and even after she arrived home from the hospital – that something was wrong and Victim needed medical assistance. Yet Petitioner took no steps to obtain medical treatment for Victim.

Moreover, the State presented direct and substantial circumstantial evidence that Victim's death occurred under circumstances demonstrating an extreme indifference to Victim's death. Petitioner was Victim's mother and had assumed that role and responsibility. As recognized by the Court of Appeals in *State v. Jarrell*, 350 S.C. 90, 99, 564 S.E.2d 362, 367 (Ct. App. 2002), parents have a specific and undelegable duty to serve the best interests of their children, including making every effort not to knowingly place their children in harm's way, and the failure to carry out this duty demonstrates extreme indifference to the life of those children. The evidence establishes that Petitioner placed Victim in danger by inflicting injuries upon him and/or allowing Co-Defendant to do so. Moreover, the evidence clearly established Petitioner's failure to obtain medical assistance for Victim despite the readily apparent extent and severity of Victim's injuries. Here, there is substantial evidence that Petitioner acted with extreme indifference to the life of

Victim. The Court of Appeals properly upheld the trial court's denial of Petitioner's motions for directed verdict on the homicide by child abuse indictment. *State v. Smith*, *supra*; *State v. Jarrell*, *supra.*

Petitioner relies heavily on this Court's opinion in another homicide by child abuse case, *State v. Hepburn*, *supra*, but that case is fundamentally different from this case. *Hepburn* involved the infliction of fatal injuries in a single incident that occurred while Hepburn was asleep and, at the time Hepburn was awakened, the victim's injuries would not have been apparent. In *Hepburn*, the Court distinguished yet another homicide by child abuse case, *State v. Smith,* 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004), in which the Court of Appeals had upheld the denial of a directed verdict motion. In *Smith*, the victim's injuries were inflicted on one day, the two co-defendants maintained that they were together, and the symptoms of the victim's injuries would have been immediately apparent. While Petitioner's case is factually closer to *Smith* than to *Hepburn*, it is drastically different than both of these cases and other homicide by child abuse cases addressed by this Court because Victim's death was the result of a culmination of injuries sustained over a long period of time, during which Victim was with both Petitioner and Co-Defendant, and during which the injuries and/or symptoms of those injuries would have been readily apparent.

Petitioner was also tried on an indictment for unlawful conduct toward a child, which is defined as

> (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.

Section 63-5-70 defines "Person responsible for a child's welfare" to include the child's parent or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child.

As summarized in the Statement of Facts herein and in the State's Final Brief of Respondent filed in the Court of Appeals, as well as in the Court of Appeals' Opinion, the evidence presented by the State substantially and overwhelmingly proved Petitioner's guilt of this charge as well. Victim was subjected to chronic child abuse and neglect almost from the moment he was returned to Petitioner and Co-Defendant on April 6, 2012 through the day of his death. Petitioner was Victim's mother and was responsible for his welfare. Yes, she placed Victim at unreasonable risk of harm to his health, safety and life during that entire time by either by physically assaulting him, not protecting him from assault by Co-Defendant, by not ensuring that he had sufficient food and drink[12], and by not ensuring that he received medical attention. The Court of Appeals properly upheld the trial court's denial of Petitioner's motions for directed verdict. *State v. Williams*, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013); *State v. Jarrell, supra.*

Argument II

The Court of Appeals Properly Upheld the Admission of State's Exhibits 13, 15 through 19, 75, 80 through 85, 130, 136 through 139, 144, 146, 147, 225, and 227 through 231

[12] In addition to the testimony of Petitioner's family members about Victim being hungry and not being fed and the testimony of Dr. Rosa about Victim's malnourished state at the time of his death, Petitioner testified that for an eight-day period she restricted Victim's diet to only water on the first four days and only water and bread for the second four days. (ROA p. 1095, line 11 - p. 1096, line 2; p. 1115, lines8-10). She also testified that, shortly after Victim was returned, she beat him with a cable cord because he urinated and defecated on himself despite her putting him in time out and making him sit on the toilet for two hours a day. (ROA p. 1092, line 5 – p. 1096, line 7). Petitioner claimed that the marks that the photos taken by her sister captured on February 21, 2013, were from her beating him back in the Spring of 2012. (ROA p. 1114, line 1 – p. 1115, line 2.)

because they were highly probative to the issues of whether Victim was abused or neglected, whether the abuse or neglect caused his death, and whether his condition would have been apparent, and their probative value substantially outweighed the danger of unfair prejudice. (Question II)

Without identifying in her Petition the specific State's Exhibits she is referring to, Petitioner argues in her Petition that the Court of Appeals erred in upholding the admission of "graphic" photographs, which were calculated to arouse the sympathies and prejudices of the jury and whose probative value was substantially outweighed by the danger of unfair prejudice.

Respondent strongly disagrees with Petitioner's assertion of error and assumes that Petitioner is challenging the photographs admitted as State's Exhibits 13, 15 through 19, 75, 80 through 85, 130, 136 through 139, 144, 146, 147, 225, and 227 through 231 that were addressed in the Court of Appeals' opinion. The photographs were of the victim's body prior to the autopsy showing the injuries, bruising, discoloration, marks, swelling, and lack of any fatty tissue on his chest; all appear to have been taken while he lay on the carpeted home of his floor or on a blanket or sheet.

It is well settled that the relevance, materiality, and admissibility of photographs are left to the sound discretion of the trial court. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." *State v. Nance,* 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). Even though relevant, evidence is to be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. The balance of the danger of unfair prejudice against the probative value must be based on the entire record, and will turn on the facts of each case. *State v. Collins*, 409 S.C. at 534, 763 S.E.2d at 27-28; *State v. Lyles,* 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct.

App. 2008). As noted by our Supreme Court in *State v. Collins*, *supra*,

> Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder. As one court has astutely observed, it is the duty of courts and juries to examine the evidence in even the most unpleasant of circumstance[.]

Id., 409 S.C. at 535, 763 S.E.2d at 28. Just because photographs are gruesome – especially where they mirror the "unfortunate reality" of the case – they are not inadmissible. *Id.*

A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed by an appellate court only in exceptional circumstances. *State v. Collins*, 409 S.C. at 534, 763 S.E.2d at 28; *State v. Adams,* 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). On review, an appellate court is to review the trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. *Id.*

Here none of the photographs were gory or gruesome. The only blood seen on the body is on the lips. They all depict the condition and appearance of Victim's body at the time of his death. The photographs were probative because they established it would have been impossible for Petitioner not to have been aware of the injuries. The challenged photographs were also probative because they corroborated the testimony of State's witnesses, including the forensic pathologist and child abuse pediatrician, as well as some of the family members and first responders, regarding Victim's appearance and visible injuries. It was important for the jury to see the condition of Victim's body at the time of his death and the nature and location of Victim's injuries in order to understand the witnesses' testimony as to his condition and the intentional nature of the infliction of the injuries, and to make a decision whether a parent, even if not inflicting the injuries her or himself, could have been ignorant of them. As in *State v. Gray*, 408 S.C. 601, 609, 759 S.E.2d 160,

164 (Ct. App. 2014), the photographs here contain no gory anatomical details and there was very little blood, and thus, they, posed little, if any, danger of unfair prejudice. Moreover, even if graphic, they were necessary to the jury's understanding of the testimony at trial. As in *State v. Holder*, 382 S.C. 278, 676 S.E.2d 690 (2009), and *State v. Jarrell, supra*, the facts of this case were very graphic and there is nothing to suggest that the admission of the challenged photographs had an undue tendency to suggest a decision on an improper basis. Because the challenged photographs had high probative value and little danger of unfair prejudice, the Court of Appeals properly upheld the trial court's admission of them.[13] See also *State v. Salley*, 398 S.C. 160, 727 S.E.2d 740 (2012 (professional photograph of victim taken when she was alive because it substantiated pathologist's testimony that her sickle cell trait was not outwardly apparent) *State v. Dial*, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013 (no error in admission of autopsy photographs which corroborated pathologist's testimony that victim's injuries were inconsistent with accidental injury). The Court of Appeals properly upheld the admission of the photographs.

CONCLUSION

The State asks this Court to deny Petitioner's Petition for a Writ of Certiorari to the Court of Appeals based on the reasons set forth above and any other supported by the appellate record and law; and for any other and further relief as this Court deems appropriate.

Respectfully submitted,

ALAN MCCRORY WILSON

---

[13] Petitioner has failed to present any authority for the proposition that the display of a victim's genitals in a photograph renders the photograph inflammatory or unduly prejudicial. Victim's genitals were visible in State's Exhibit 226 (as was the right hip of Victim showing the discoloration and bruising). However, as the Court of Appeals noted, that particular photo does not appear to have been introduced at trial.

As noted by the Court of Appeals, State's Exhibit 230, which is a photograph of the front of Victim's body from below his hip to mid-calf showing the swelling present, was cropped before admission so that Victim's penis was not visible.

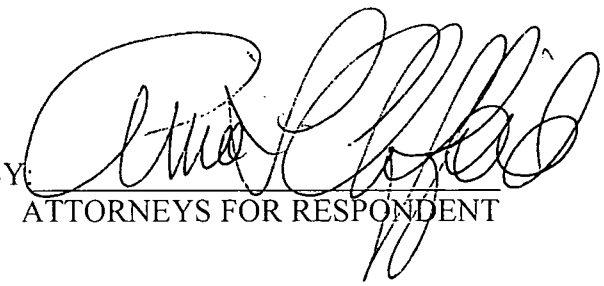
Attorney General

AMIE L. CLIFFORD
Special Assistant Attorney General
aclifford@cpc.sc.gov

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

Post Office Box 192
Columbia, South Carolina 29201
(803) 576-1800



BY: _____
ATTORNEYS FOR RESPONDENT

November 2, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Richland County
Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No: 2017-001893

THE STATE.

Respondent,

vs.

COURTNEY SHANTE THOMPSON,

Petitioner.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to her attorneys of record,

Mitzi C. Williams, Esquire
P.O. Box 84171
Lexington, South Carolina 29063-8889

Robert M. Dudek, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 2nd day of November, 2017.

Anne Mueller

Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727