STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSHUA WARREN HOPKINS,

APPELLANT

APPELLATE CASE NO 2016-002129

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to direct a verdict of acquittal on the charge of aiding and abetting homicide by child abuse where the evidence presented by the state was that Appellant was the principal, not an aider or abettor?

STATEMENT OF THE CASE

On June 1, 2015, a Lexington County grand jury indicated Appellant for homicide by child abuse as a principal under S.C. Code Ann. § 16-3-85(A)(1)(B)(1). R. 827-828. On September *, 2016, a Lexington County grand jury indicted Appellant for aiding and abetting homicide by child abuse pursuant to S.C. Code Ann. § 16-3-85(A)(2)(B)(2). R. 830-831. The state, represented by Suzanne Mayes and Micah Caskey, called the case for trial before the Honorable R. Knox McMahon and a jury on October 3-7, 2016. R. 1. Robert Williams represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 713, ll. 14-25. Judge McMahon sentenced Appellant to life imprisonment without the possibility of parole on the principal offense and to twenty years' imprisonment on the aiding and abetting offense. R. 726, ll. 9-18; R. 335; R. 338. He ordered the sentences to be served concurrently. R. 726, l. 18; R. 335; R. 338.

On October 13, 2016, Appellant served his notice of appeal. This brief follows.

STATEMENT OF FACTS

On November 11, 2013, Sabrina Haynes took her two-year old son, Minor, to the hospital. R. 224, ll. 3-10; R. 253, ll. 14-19; R. 536, ll. 2-4. Minor had fever, nasal congestion, and eye pain. R. 224, ll. 14-17. Due to a large bruise to the anterior chest wall, the doctor ordered an x-ray. R. 225, ll. 10-17.

On November 13, 2013, two individuals contacted the Department of Social Services (DSS) to report their suspicions that the deceased was being physically abused. R. 534, ll. 3-9. Unfortunately, DSS did not investigate the complaints. R. 534, ll. 9-10.

Appellant went to work at McDonald's at 5:00 p.m. on November 26, 2013. R. 285, l. 11 – R. 287, l. 12. He got off at 12:30 a.m. on November 27. R. 285, l. 11 – R. 287, l. 12. When he arrived home to Haynes and Minor, they ate some food that Appellant had brought home with him from work. R. 287, l. 23 – R. 288, l. 10. While walking down the stairs, Minor slipped down the steps on his rear end. R. 288, ll. 2-4. Although Minor tried to eat, he was unable to keep any of the food or drink down. R. 288, ll. 10-16.

Between 5:30 a.m. and 6 a.m., on November 27, 2013, Haynes left for work at McDonald's. R. 266, ll. 1-6. Appellant and Minor continued sleeping until sometime later in the morning. R. 267, l. 13; R. 290, ll. 3-12. Due to Minor soiling himself during the night, Appellant cleaned him and ran a bath for him. R. 267, ll. 13-15. Appellant went downstairs to heat some food for them. R. 267, ll. 15-16. When Appellant returned upstairs to Minor, he found Minor "on his hands and knees facing towards the door gasping, making a moaning and groaning noise." R. 267, ll. 16-19; R. 291, ll. 1-5. Appellant attempted to assist Minor by tapping on his chest and blowing into his mouth. R. 268, ll. 14-16. Appellant called Haynes at work to seek advice on how to best care for Minor. R. 292, ll. 3-6.

At 9:30 a.m., Appellant called 911 because Minor was unresponsive. R. 89, ll. 13-25; R. 292, l. 12. The first EMS unit arrived at 9:42 a.m. R. 90, ll. 20-23; R. 109, ll. 20-21. Appellant met the EMT at the door with Minor in his arms. R. 110, ll. 15-21. Minor was wearing pajamas. R. 111, ll. 19-22. Minor had no heartbeat. R. 114, ll. 5-11; R. 116, ll. 7-19. The EMT began CPR. R. 114, l. 12 – R. 115, l. 21. Additionally, the EMT drilled a hole in Minor's knee to administer drugs using an intraosseous infusion. R. 117, l. 3 – R. 118, l. 1. Next, the EMT attempted to intubate Minor. R. 119, l. 4 – R. 120, l. 3. He was unsuccessful after two attempts. R. 120, ll. 4-6; R. 121, ll. 1-12. However, his supervisor was able to successfully intubate Minor in the ambulance. R. 125, l. 25; R. 159, ll. 15-17. The EMT claimed Minor's mouth was hard to open. R. 120, l. 13; R. 120, ll. 20-25. In retrospect, the EMT decided the stiffness of the jaw was "rigor." R. 125, ll. 17-20; R. 126, ll. 17-20. While the supervising EMT was intubating Minor, the original EMT declared Minor was dead. R. 125, l. 16. The EMTs transported Minor to the emergency room, arriving at 10:16 a.m. R. 127, ll. 1-10. Neither the original EMT nor the supervising EMT noticed any trauma to Minor. R. 137, ll. 9-16; R. 169, ll. 3-12.

A firefighter arrived at the scene to assist the emergency medical personnel with driving the ambulance. R. 175, ll. 1-11; R. 176, ll. 7-12. Minor's mother, Sabrina Haynes, arrived, and the firefighter placed her in the passenger seat of the ambulance to accompany Minor to the hospital. R. 184, ll. 3-13. While en route to the hospital, Sabrina was "either texting people or talking to them" on her phone. R. 185, ll. 20-21.

An emergency room physician pronounced Minor dead at 10:38 a.m. R. 211, ll. 13-15. According to the doctor, Minor's temperature was 89 degrees at 10:20 a.m. R. 210, l. 25 – R. 211, l. 2. The doctor noticed some bruising and abrasions on Minor's buttocks and extremities. R. 213, l. 25 – R. 214, l. 8. However, he made no determination regarding the bruising on the

buttocks and Minor's death. R. 227, ll. 19-22. The doctor explained the bruising was "dark purple," which "[t]ypically" indicates the injury that caused the bruise occurred a "few day" prior. R. 228, ll. 1-10.

The pathologist performed the autopsy on Minor on November 28, 2013. R. 563, ll. 15-16. He noted there were extensive areas of bruising mostly on the buttocks extending onto the sides of the hips. R. 566, l. 25 – R. 567, l. 2. He found "some associated skin slippage and erosion, minor blistering of the skin," and some bruises on his arms and hands. R. 567, ll. 2-6. The doctor concluded the injuries were from "abuse, physical trauma, and multiple episodes of that." R. 567, ll. 12-16. He found "unequivocal signs of chronic, recent, and even acute severe soft tissue trauma to the buttocks and adjacent tissue regions." R. 567, ll. 20-22. The pathologist was familiar with fat emboli syndrome, but he did consider that as causing Minor's death because the syndrome is associated with fractures and Minor did not have a fracture. R. 591, ll. 7-14.

Not satisfied with the opinion of the pathologist who performed the autopsy, the police sought a consultation with a different pathologist – Dr. James Fulcher. R. 602, ll. 2-4. Fulcher explained that a SLED agent told him about the case. R. 603, l. 24. He had not "seen anything," "not "a single photo." R. 603, ll. 24-25. He only knew there were contusions on the buttocks. R. 603, l. 25 – R. 604, l. 1. He consulted with his partner who said the case sounded like "a pretty easy win" because "[t]hose kids always die of fat embolism syndrome." R. 604, ll. 2-5. According to Fulcher, he "got the slides, looked at them, looked at the report; 30 seconds later [they] had the diagnosis." R. 604, ll. 6-8. Fulcher explained he "actually did get raw tissue, actually six tissue pieces of this child and [] actually did special studies on those to verify" his conclusions. R. 604, ll. 8-11. Regarding those findings, Fulcher told the jury:

> So what we find in fat embolism syndrome is times when, particularly children, suffer severe trauma to the soft tissue, the fat in their buttocks gets damaged and those small globules of fat embolize or move through the damaged blood vessels, the inferior vena cava into the heart and the vessels keep getting bigger.
>
> So this little bubble of fat in the big vessel, it's just cruising right along. It goes to the right side of the heart. It then gets pumped towards the lungs. And that's when very bad things happen because in the lungs, the vessels start getting smaller again and all of a sudden this little globule of fat starts plugging up the vascular of the lungs. So these small bubbles of fat are plugging up the lungs and obviously if your lungs aren't working, you're not breathing, you're not exchanging gas, you'll die from that.
>
> So in microscopic examination of this child's lungs, we have enumerable, too many to be counted microscopic globules of fat blocking his blood vessels and of course, that precludes breathing.

R. 604, l. 12 – R. 605, l. 7. The symptoms associated with fat embolism syndrome are rapid decompensation due to the rush of fat into the lungs causing "sudden onset, shortness of breath." R. 605, ll. 8-16. "The people are usually unconscious within minutes." R. 605, ll. 16-17.

Fulcher found "both acute and chronic injuries" to Minor's buttocks. R. 605, ll. 23-25. He opined that Minor died from fat embolization syndrome, which was a "direct result from the trauma to his buttocks which was a direct result, it was inflicted by another individual." R. 606, ll. 7-13. In an effort to determine when Minor died, Fulcher explained that generally, the body cools slightly quicker than one degree per hour after death. R. 606, ll. 14-22. Based upon the stiffness of Minor's jaw per the EMS workers, Fulcher estimated Minor had been dead an hour and a half prior to the arrival of the ambulance. R. 607, l. 17 – R.608, l. 4. Finally, Fulcher opined that Minor suffered injuries "minutes to an hour prior to demise." R. 617, ll. 15-19.

ARGUMENT

The trial judge erred in failing to direct a verdict of acquittal on the charge of aiding and abetting homicide by child abuse where the evidence presented by the state was that Appellant was the principal, not an aider or abettor.

Relevant facts

At the conclusion of the state's presentation, Appellant moved for a directed verdict on both charges. R. 631, ll. 5-11. Defense counsel relied upon State v. Palmer & Gorman, 413 S.C. 410, 776 S.E.2d 558 (2015), to support his argument. R. 654, l. 23- R. 655, l. 19. In response, the state argued "the jury could ultimately elect between these two charges." R. 633, ll. 20-23. The state explained the indictment alleged Appellant "did knowingly aid and abet another person, being Sabrina Haynes, to commit child abuse or neglect." R. 633, ll. 23-25. According to the state, there was "testimony" that Appellant "would have knowingly been aware of the child's condition and failed to seek help. Whether the child was injured by his own actions or the actions of another." R. 634, ll. 6-7.

The state's theory was "that the fatal injury happened minutes to hour - - minutes to an hour from the time of death and that would have occurred during the onset of symptoms, which is between 6:01 a.m. and 9:30 a.m. when the child was alone in the defendant's care." R. 634, ll. 11-16. When the judge queried how Appellant could "aid and abet himself," in light of the state's theory placing Appellant as the sole person with the deceased when the injuries occurred, the state agreed Appellant could not aid and abet himself. R. 635, ll. 6-11. However, the state changed tactics at this point.

According to the state, there was "some evidence" brought out by the defense "to suggest that the injuries could be older than minutes to an hour." R. 635, ll. 12-15. Specifically, the state

pointed to defense counsel's questioning of Dr. Spalding during which he said the injuries could have occurred twenty-four hours prior to death. R. 635, ll. 12-18. Thus, the state argued, there was "some evidence" "to suggest to the jury that he may have aided and abetted another person who was committing the injuries to the child." R. 635, ll. 18-21.

Judge McMahon explained he was struggling to find the evidence of aiding and abetting. R. 636, ll. 12-13. In response, the state changed tactics again. The state argued that if the jury believed the defense theory that someone else inflicted the injuries prior to 5:30 am and that Appellant was unaware of those injuries, "there is still evidence on the record that he saw the child unclothed, would have seen the child's injuries, failed to act, and the failed to call 9-1-1 for medical aid." R. 637, ll. 1-7. It was the state's position that Appellant violated "the health-care provision" of the statute by failing to take any action until after the child was already dead, "which would, in effect, be aiding and abetting the actions of Sabrina Haynes; arguably in an effort to conceal the child's abuse." R. 637, ll. 10-12. Additionally, the state wanted to rely upon Appellant dressing the deceased as "an act to conceal the child's abuse" and to show Appellant's "knowledge of these injuries as the factor that prevented him from seeking help as he should have." R. 637, ll. 13-19. In light of Appellant telling the police the deceased fell down the steps the night before his death, which may account for his injuries, the state argued "that is a false history or certainly an inconsistent history to explain the injuries which would also indicate that he is to some degree aiding and abetting the concealment of the child's abuse." R. 638, ll. 19-23.

The jury concluded that "this would be a matter for the jury to elect between the two charges, not that the jury could necessarily find the defendant guilty of both charges." R. 639, ll. 14-17; R. 639, ll. 19-20. When the judge interjected that case law would permit a defendant to

be found guilty of both, the state explained that "under the facts of this case," "an instruction to elect would be proper" "because of the unique facts of this case where Ms. Haynes is absent from the child's care in the final ... four hours of the child's life." R. 640, l. 1-5.

The judge denied the motion for directed verdict concerning the principal charge, but took the matter under advisement regarding the aiding and abetting offense, explaining he wanted to undertake additional study of the topic. R. 642, ll. 18-25.

The following day, October 7, 2017, Judge McMahon denied the motion for directed verdict as to the aiding and abetting charge. R. 653, ll. 3-6. According to the judge "the testimony is such that, at least for a significant amount of time it puts the injuries, the child abuse injuries were inflicted that lead to the fat embolism that led to the death of a child, that the defendant and the codefendant were present together" and that "those injuries were such, if inflicted by the codefendant, the defendant should have been aware of those injuries." R. 653, ll. 6-14. The judge relied on the testimony that Appellant changed the diapers and saw blood in the diaper, that he assisted the deceased in getting undressed and into the tub and "should have seen those injuries very apparent on the child." R. 653, ll. 15-21. Using the testimony of the EMS personnel that rigor mortis had set into the deceased's neck area, the judge found evidence to support a theory that "there was a delay or a failure to call 9-1-1." R. 654, ll. 13-17.

In its closing argument, the state argued that "[s]omething happened in that bathroom that ended [Minor]'s life." R. 662, ll. 7-8. Relying upon Fulcher's testimony, and the evidence that Minor had a bloody diaper on when he arrived at the hospital, the solicitor argued the "final event," the "final traumatic event that led to [Minor]'s demise within minutes to an hour" "just happened." R. 662, ll. 9-12; R. 664, ll. 10-17. Emphasizing "[m]inutes to an hour," which was

the solicitor's theme, the solicitor pointed out that Appellant "was the only one person in that time frame" with Minor. R. 664, ll. 16-19.

The solicitor told the jury that it was "inconceivable for a crime of this nature to happen anywhere in this country but near Lexington County, it can't be tolerated." R. 671, ll. 9-12. She continued, "Let this be the last time that a child dies under these circumstances, this be the last time a child dies in his care. This must be the last time. It is too late to save [Minor], but it's not too late for Lexington. It's never too late." R. 671, ll. 13-17. According to the solicitor, there was "undeniable truth and proof" that Appellant "beat that child repeatedly until that final event that morning and he tried so desperately to cover up, as [Minor] tried so desperately to fight for his own life." R. 671, ll. 17-21.

Discussion

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely

raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963). The prosecution must prove the identity of the defendant as the person who committed the charged crime beyond a reasonable doubt. Gibbs v. State, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013).

Critically, the prosecution has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes. State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984)(explaining that"[b]y bringing the case, the state assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act"). When a case is built wholly on circumstantial evidence, if the state fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). Thus, the prosecution must present any direct or substantial circumstantial evidence of the identity of the perpetrator of a crime in order to survive a directed verdict motion.

The homicide by child abuse statute includes a principal portion and an aiding and abetting provision. Specifically, the statute provides:

> 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.

S.C. Code Ann. § 16-3-85(A). Thus, concerning the aiding and abetting charge, the prosecution was required to prove (1) Appellant knowingly aided and abetted another person in committing child abuse or neglect regarding minor, (2) minor died as a result of the abuse or neglect, and (3) minor was under the age of eleven.

In State v. Smith, 359 S.C. 481, 491, 597 S.E.2d 888, 894 (Ct. App. 2004), the Court of Appeals affirmed the convictions of homicide by child abuse and aiding and abetting child abuse where the evidence indicated the injury to the child occurred during a time period when Smith and his co-defendant, Celeste Durant, were the only two persons who could have possibly caused the injury. Smith and Durant took the child to the beach on July 14, 2000. The next day, the two took the child to the emergency room because she began acting strangely. Id. at 483, 597 S.E.2d at 889. The scan revealed an old skull fracture, but no recent trauma. The doctor believed she had a viral infection. Id. at 484, 597 S.E.2d at 890.

The child's condition did not improve, and the following afternoon, Durant found blood coming from her mouth. The child was transported to the hospital where a second scan revealed significant bleeding in the child's brain and swelling of the brain. Id. at 485, 597 S.E.2d at 890. The doctor testified that the difference in the two scans helped determine when the injury occurred – within several hours of the first scan. Id. at 485, 597 S.E.2d at 891-892. The evidence presented was that Durant was with the child the entire time on the day when the injury occurred, and Smith's statement indicated he was with Durant the entire time on that day. Therefore, the evidence presented was that both Smith and Durant were with the child when the injury was inflicted. Id. at 491, 597 S.E. 2d at 893.

Another doctor testified it would take tremendous force to cause the area at the back of the head to fracture because of its thickness, that there was no way the child or her sister could

have caused the injury, and there was evidence the child had been shaken. Id. at 486, 597 S.E.2d at 891. Police investigation revealed bed linens were missing from the room where the group stayed while at the beach. Id. at 487, 597 S.E.2d at 891-892.

The Court of Appeals reversed a trial court's failure to grant a directed verdict on the aiding and abetting portion of the homicide by child abuse statute. State v. Lewis, 403 S.C. 345, 743 S.E.2d 124 (Ct. App. 2013). The Court of Appeals defined "aid and abet" as "'assist[ing] or facilitate[ing] the commission of a crime or ... promot[ing] its accomplishment.'" Id. at 354, 743 S.E.2d at 128 (quoting Black's Law Dictionary 81 (9th ed. 2009)). Explaining clearly established law concerning aiding and abetting, the Court of Appeals stated that "[i]n order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." Id. at 354, 743 S.E.2d at 129 (internal citations omitted). The prosecution failed to present any evidence that Lewis witnessed his girlfriend's infant daughter, who later died. The fact that Lewis witnessed his girlfriend spank her son earlier in the night was insufficient to show Lewis knew his girlfriend was going to abuse her infant daughter later. Id. at 355-356, 743 S.E.2d at 129.

Further, the Court of Appeals held that "an overt act is required to be held liable for aiding and abetting, which necessarily excludes the possibility of being held liable for a failure to act." Id. at 356, 743 S.E.2d at 130. Thus, even if Lewis knew a crime was occurring, his failure to act was insufficient as evidence of aiding and abetting. Id. Additionally, the Court of Appeals noted the requisite mental state for aiding and abetting was knowingly per the statute. Thus, the state was required to prove Lewis knew he was aiding and abetting child abuse or neglect. Id. The evidence failed to demonstrate Lewis knew of his girlfriend abusing her infant daughter because Lewis and his girlfriend were apart when the incident occurred, and as soon as Lewis

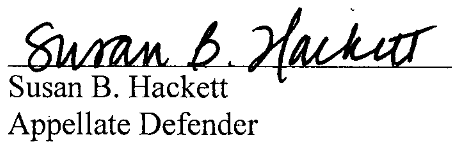
found the daughter in an odd condition, he sought medical help. Id. at 356-357, 743 S.E.2d at 130.

In State v. Palmer & Gorman, 413 S.C. 410, 413, 776 S.E.2d 558, 559 (2015), the "only contested issues" were "the identity of the individual who harmed the victim and whether the other individual was aware of the abuse." After finding there was evidence to support Gorman's conviction as a principal for homicide by child abuse, the Supreme Court held there was "no evidence other than rank speculation" that Gorman and Palmer "actually entered the victim's bedroom around 4:30 pm where one abused him in the presence of the other, who thus aided and abetted the perpetrator by failing to seek medical help." Id. at 422, 776 S.E.2d at 564. Additionally, the Court noted there was "no evidence that more prompt treatment would have mitigated the victim's injuries and thus," the Court did not "perceive potential liability for the non-abuse even if he or she were aware of the abuse." Id. The Court concluded that "even were there evidence that Palmer had hurt the victim during the day while alone, there [was] no evidence that any delay in seeking medical attention by Gorman caused the victim harm beyond that inflicted by the perpetrator." Id. The Court then reversed the trial court's denial of directed verdict motions on the charges of aiding and abetting homicide by child abuse by Gorman and Palmer. Id. at 423, 776 S.E.2d at 564.

According to the state's evidence and argument the fatal injuries were inflicted when Minor was alone with Appellant. The state repeatedly contended the fatal injuries occurred "in that bathroom" in the final "minutes to an hour" when Appellant was the only adult with Minor. Based on this evidence, Appellant could not have engaged in aiding and abetting of another to cause the fatal injuries or in failing to render aid. The judge erred in failing to direct a verdict of acquittal on this charge based on the state's evidence that Appellant was the principal.

CONCLUSION

Appellant respectfully requests this Court direct a verdict of acquittal in his favor on the charge of aiding and abetting homicide by child abuse.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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R. Knox McMahon, Circuit Court Judge

THE STATE,

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V.

JOSHUA WARREN HOPKINS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Warren Hopkins states:

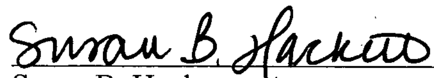
1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before Judge R. Knox McMahon, which was held on October 3-7, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Joshua Warren Hopkins.

Respectfully Submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

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THE STATE,

RESPONDENT,

V.

JOSHUA WARREN HOPKINS,

APPELLANT

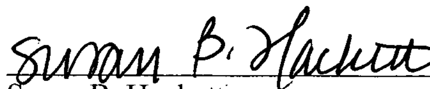
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Entire trial transcript;
(2) State's Exhibit #63 (audio interview);
(3) State's Exhibit #64 (video reenactment);
(4) State's Exhibit #67 (statement);
(5) Court's Exhibit #1 (jury question);
(6) True-billed indictments: 2015-GS-32-1395; 2016-GS-32-2515; and
(7) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 7, 2017



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(803) 734-1330
ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and 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."

November 7, 2017

Susan B. Hackett
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Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

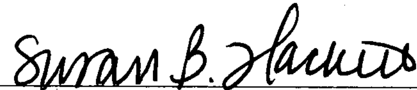
V.

JOSHUA WARREN HOPKINS,

APPELLANT

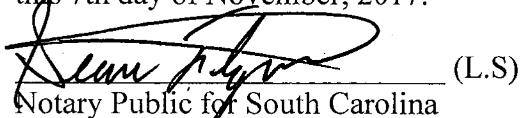
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joshua Warren Hopkins, #361473, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of November, 2017.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of November, 2017.



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