

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Spartanburg County
Paul M. Burch, Circuit Court Judge

RECEIVED

DEC 27 2014

S.C. SUPREME COURT

—————
DAVID ANTHONY TYRE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001141

—————
APPENDIX
—————

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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INDICTMENTS611

Jury charge

1 some matter to me if you'll write it on a piece of paper,
2 give it to the bailiff, he'll provide it to me and I'll
3 respond accordingly.

4 I don't know if we have smokers on the jury, but if we
5 do you can smoke during deliberations, but you cannot smoke
6 in the jury room. So you have to go outside to accomplish
7 that purpose.

8 If anybody needs to smoke, let the bailiff know.
9 They'll take you outside to accomplish that. You are
10 however instructed that the deliberations have to stop.
11 They may only resume when all 12 jurors are in the jury
12 room so that all may participate. So if a juror is absent

13 for some purpose the deliberations have to stop. They may
14 only resume when all 12 are present.

15 Your lunches have been ordered. They may be here now.
16 I'm not sure. But as you go back you can -- when your
17 lunch comes you can eat while you deliberate, you can stop
18 and eat and then resume deliberations, whatever you want to
19 do about that. I'll leave that up to you.

20 I think that covers everything. If it doesn't I'll
21 bring you back in a few minutes to provide you any
22 additional instruction or explanation that I need to.

23 So right now I'll ask you to please go to your jury
24 room. Do not begin deliberations until I send you word to
25 do so. I'll address some matters with the lawyers.

Jury charge

1 If I need to bring you back, I will. If I don't need
2 to bring you back, then I'll send word by way of the
3 bailiff that you can begin your deliberations. In that
4 event he'll bring all of the exhibits which have been
5 introduced.

6 And to you, Madam Forelady, he'll also bring the
7 indictments which serve as the verdict forms.

8 So please retire but await my instruction as to when
9 to begin.

10 (Whereupon, the jury retired to deliberate at
11 12:55 p.m.)

12 THE COURT: Are there any exceptions taken to the
13 instruction or requests for additions to the instruction by
14 the state?

15 MR. GOWDY: No objections; no exception.

16 THE COURT: By the defendant?

17 MR. CAMPBELL: None, Your Honor.

18 THE COURT: Let me ask y'all to verify all of the
19 exhibits before they go back, please.

20 (Pause.)

21 THE COURT: All right. All of the exhibits have been
22 verified?

23 MR. BARNETTE: Yes, sir.

24 MS. CRICK: Yes, sir.

25 THE COURT: All right. Send them back and tell the

Verdict

1 jury to begin their deliberations and notify us when they
2 have concluded.

3 We will be at ease while the jury is deliberating.
4 (Whereupon, a recess was taken.)

5 THE COURT: All right. I understand the jury has
6 reached a decision. Are we ready to receive it?

7 MR. GOWDY: Yes, sir, Your Honor.

8 MR. CAMPBELL: Yes, Your Honor.

9 THE COURT: Okay. Bring them in.
10 (Whereupon, the jury returned to the courtroom at
11 3:05 p.m.)

12 THE COURT: Madam forelady, have you and your fellow
13 jurors reached a unanimous decision as it relates to each
14 of the indictments?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: And have you indicated those decisions on
17 the back of the indictments as requested?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Did you sign your name and date it?

20 THE FOREPERSON: Yes, sir.

21 THE COURT: If you will, please hand those up by way
22 the bailiff.

23 You may publish the verdicts.

24 THE CLERK: State of South Carolina, County of
25 Spartanburg, Court of General Sessions, Indictment No.

Verdict

1 2009-GS-42-4509 and Indictment No. 2009-GS-42-4508, the
2 State vs. David Tyre.

3 The first indictment for abuse to inflict great bodily
4 injury upon a child, guilty. Signed by the foreperson,
5 Michelle Smith, today's date, 10/13 of 2010.

6 Indictment 2009-GS-42-4508, indictment for homicide by
7 child abuse or neglect, the jury finds guilty. Signed
8 again by Michelle Smith today's date 10/13/2010.

9 Ladies and gentlemen of the jury, is this your verdict
10 and still your verdict? If so, please raise your right
11 hand.

12 (Whereupon, all jurors responded in the affirmative.)

13 THE CLERK: So say you all.

14 THE COURT: Does the defendant wish to have the jury
15 polled?

16 MR. BRANNON: Yes, Your Honor.

17 THE COURT: Poll the jury please, ma'am.

18 THE CLERK: Ladies and gentlemen of the jury, as I
19 call your name and your jury number, I'll ask a question.
20 That question is is this your verdict and still your
21 verdict. Once I call your name, if you would, just please
22 answer yes or no.

23 Rudolph Harper, Juror No. 60.

24 THE JUROR: Yes, it is.

25 THE CLERK: Juror No. 131, Michelle Smith.

Verdict

1 THE JUROR: Yes, it is.
2 THE CLERK: Juror No. 158, Kenneth Woodward.
3 THE JUROR: Yes, it is.
4 THE CLERK: Juror No. 109, Michael O'Shields.
5 THE JUROR: Yes, it is.
6 THE CLERK: Juror No. 65, Thomas Huesman.
7 THE JUROR: Yes, it is.
8 THE CLERK: Juror No. 84, Kimberly Leming.
9 THE JUROR: Yes, it is.
10 THE CLERK: Juror No. 51, Mark Goodrich.
11 THE JUROR: Yes, ma'am, it is.
12 THE CLERK: Juror No. 25, Cody Clark.
13 THE JUROR: Yes, ma'am.
14 THE CLERK: Juror No. 151, James Walsh.
15 THE JUROR: Yes, ma'am.
16 THE CLERK: Juror No. 17, Pashaun Burgess.
17 THE JUROR: Yes, it is.
18 THE CLERK: Juror No. 23, Sherri Cook -- Cheek. I'm
19 sorry.
20 THE JUROR: Yes, it is.
21 THE CLERK: And Juror No. 46, Virginia Gasswint.
22 THE JUROR: Yes, it is.
23 THE CLERK: The jury has been polled.
24 THE COURT: All right. Any other matters that need to
25 be addressed with the jury present?

Sentence

1 MR. GOWDY: Not from the state, Your Honor.

2 MR. CAMPBELL: None from the defense, Your Honor.

3 (Whereupon, the trial jury was excused.)

4 THE COURT: All right. Anything further on behalf of
5 the state prior to the imposition of sentence?

6 MR. GOWDY: Your Honor, could I have just one more
7 moment to talk to Minor father?

8 THE COURT: Okay.

9 (Pause.)

10 MR. GOWDY: Your Honor, I have spoken with Minor
11 grandparents and Minor parents.

12 Her mother testified. Her father has been present
13 consistently throughout the trial. And they have nothing
14 to add given the fact that Your Honor has presided over the
15 trial and is well aware of all of the facts. They would
16 just rest on your judgment with respect to sentencing.

17 THE COURT: Okay. Mr. Campbell.

18 MR. CAMPBELL: Yes, Your Honor.

19 At this time I would renew all previous motions in
20 this case and preserve for the record, and also move for a
21 new trial based on the great weight of the evidence, or the
22 verdict does not conform to the great weight of the
23 evidence, Your Honor.

24 THE COURT: All right. That motion is denied.

25 MR. CAMPBELL: Your Honor, Tony Tyre is a young man.

Sentence

1 He's lost his father at the age of 12. He helped take
2 care of his mother since then.

3 He went to EMT school, went to school to become a
4 fireman. Was a decorated fireman, decorated EMT.

5 Your Honor, he says that he didn't mean to cause these
6 injuries. He's expressed his sorriness and his regret.

7 And, Your Honor, we ask that you be as lenient as possible,
8 Your Honor.

9 THE COURT: All right. Mr. Tyre, do you have anything
10 you'd like to add to what your lawyer has told me?

11 THE DEFENDANT: I -- I just want to express my deep
12 sorrow to her family for -- to Minor family for the hurt

13 that I know that they've had to undergo and put up with for
14 this past year or so. And I wish -- sorry. That's all I
15 have. I wish I could give them more than that, but it's
16 all I have to give them. And I hope that maybe now that
17 they can start healing and getting better and drawing
18 closer as a family. That's it, sir.

19 THE COURT: Okay. All right. On Indictment
20 2009-4509, that's the indictment for infliction of great
21 bodily injury, wherein you have been found guilty by the
22 jury for that offense, Sentence of the Court is you, David
23 Anthony Tyre, be confined to the South Carolina Department
24 of Corrections for a period of 20 years.

25 Indictment 2009-4508, an indictment for homicide by

Sentence

1 child abuse, wherein you have been found guilty by the jury
2 of that offense, Sentence of the Court is you, David
3 Anthony Tyre, be confined to the South Carolina Department
4 of Corrections for the period of your natural life.

5 Mr. Tyre, you have a right to appeal the verdict of
6 the jury and the Sentence of the Court. You must file any
7 notice of your intention to appeal those decisions within
8 ten days of today's date. Discuss that with your lawyers.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate

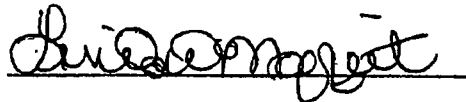
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th, 11th, 12th and 13th days of October 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 18, 2010



Linda D. Moffitt
Circuit Court Reporter

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

David Tyre, Appellant.

Appellate Case No. 2010-177286

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2013-UP-286
Heard June 5, 2013 – Filed June 26, 2013

AFFIRMED

Appellate Defenders Breen Richard Stevens and Carmen
Vaughn Ganjehsani, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

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CLERK OF COURT
SPARTANBURG COUNTY
2014 JUL 29 PM 2:56
M. HOPE BLACKLEY

v

The South Carolina Court of Appeals

The State, Respondent,

v.

Keith Letmon, Appellant.

Appellate Case No. 2012-213672

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2011GS4205626

ORDER

Pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, it is ordered that the Clerk of Court for Spartanburg County release:

State's Exhibit #1 (Photo Lineup), State's Exhibit #2A (Photographs), and State's Exhibit #4A (Photographs)

to be transported to this Court by the South Carolina Attorney General's Office, for consideration in the above referenced matter.

FOR THE COURT

BY V. Clarice Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Alan McCrory Wilson, Esquire
M. Hope Blackley

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M. HOPE BLACKLEY

FILED

PER CURIAM: Appellant David Tyre seeks review of his convictions for homicide by child abuse and infliction of great bodily injury upon a child. Appellant challenges the trial court's denial of his motion to sever the charges as well as the denial of his motion for a directed verdict on the charge of infliction of great bodily injury upon a child. We affirm.

1. As to Appellant's motion to sever the charges, the trial court did not abuse its discretion in denying the motion. *See State v. Caldwell*, 378 S.C. 268, 277, 662 S.E.2d 474, 479 (Ct. App. 2008) ("A motion for severance is addressed to the sound discretion of the trial court and the court[']s ruling will not be disturbed on appeal absent an abuse of that discretion." (citation omitted)); *id.* at 277-78, 662 S.E.2d at 479 ("Criminal charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced." (citation omitted)); *id.* ("Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant[']s substantive rights would not be prejudiced." (citations omitted)).

Here, the two charges, i.e., homicide by child abuse and infliction of great bodily injury upon a child, are of the same general nature. Further, the trial court properly ruled that the two alleged offenses arose out of a single chain of circumstances because they were connected events. These events involved the same victim at the same location, and Appellant was the only adult present during both incidents. Moreover, in an attempt to perpetuate his false claim that Victim's arm fracture resulted from her rolling out of her bed, Appellant himself connected the arm fracture incident with the head trauma incident. Appellant asked the physician treating Victim's head trauma if the trauma could have resulted from her rolling out of a bed.

Appellant argues that his rights were unfairly prejudiced because evidence of the first incident resulting in Victim's arm fracture would have been excluded as improper propensity evidence in a separate trial for the second incident resulting in Victim's death. We disagree. At trial, Appellant contested the "extreme indifference" element of homicide by child abuse,¹ which is "a mental state akin to

¹ Section 16-3-85 of the South Carolina Code (2003) provides, in pertinent part, that a person is guilty of homicide by child abuse if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the

intent characterized by a deliberate act culminating in death." *State v. Jarrell*, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002).

Evidence of other crimes, wrongs, or acts is admissible under Rule 404(b), SCRE to show intent. Appellant's infliction of Victim's arm fracture was relevant to Appellant's intent during his commission of the acts resulting in Victim's death. Additionally, Appellant's false claim about the cause of Victim's fracture, and his perpetuation of this falsity after Victim arrived at the emergency room with head trauma, was relevant to Appellant's intent during both incidents. See Rule 401, SCRE (defining "relevant evidence" as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"); cf. *State v. Martucci*, 380 S.C. 232, 252-53, 669 S.E.2d 598, 609 (Ct. App. 2008) (holding that the defendant's prior abuse of the victim and his attempt to conceal the abuse was admissible as proof of intent and the absence of accident with respect to the charge of homicide by child abuse).

Further, we reject Appellant's implication that the State was required to prove the intent element of infliction of great bodily injury upon a child *before* the two charges could be tried together. "[I]n determining joinder, the trial judge need not find clear and convincing evidence of the charges." *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005). "In the context of the joinder of charges for a jury trial, . . . procedural safeguards are already in place that eliminate the need for preliminary fact-finding by the trial judge." *Id.* at 375, 618 S.E.2d at 894.²

Finally, much of the evidence produced at trial pertained to both charges. The same family members were involved in both incidents and the same police detective took Appellant's statement covering both incidents. Further, Dr. Sahhar's recitation of Victim's medical history had relevance to both incidents, as it indicated Victim had been treated at the same emergency room for both the

death occurs under circumstances manifesting an extreme indifference to human life.

² Moreover, "[t]he defendant may argue unfair prejudice *if*, after the State's case, the trial judge determines that a directed verdict should be granted." *Cutro*, 365 S.C. at 375, 618 S.E.2d at 894 (emphasis added). "*If* the trial judge finds there is no substantial evidence to submit any one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder." *Id.* (emphasis added).

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 M. HOPE BLANCHET
 CLERK OF COURT
 SPARTANBURG COUNTY

fracture and the head trauma. Notably, Dr. Sahhar stated that Victim had no diseases of the bones that would cause them to fracture easily.

Based on the foregoing, the trial court acted well within its discretion in denying Appellant's motion to sever the charges.

2. As to the directed verdict motion, the trial court properly denied the motion. See *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (holding that in evaluating a directed verdict motion, the court must view the evidence in the light most favorable to the State); *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002) (holding that this court may reverse the trial court's denial of a directed verdict motion only if there is no evidence to support the trial court's ruling); *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.").

Appellant argues there existed no evidence that Victim's arm fracture caused protracted loss or impairment of the arm's functioning.³ We disagree. The physician who performed Victim's autopsy, Dr. John Wrenn, testified that he found a healing contusion on Victim's right arm with an underlying fracture of her humerus. Dr. Wrenn also stated that x-rays had been taken of Victim's right arm, which showed a fracture below the shoulder but above the elbow. Further, one of Victim's nurses testified that Victim's treating physician ultimately had to bind her right arm against her midsection with an ace bandage to keep the arm immobilized for the purpose of letting it heal.

In the light most favorable to the State, all of this evidence, taken together, was sufficient to prove that the fracture Appellant inflicted on Victim caused protracted impairment of the right arm's functioning. See *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (holding that in reviewing a ruling on a directed verdict motion, this court must view the evidence in the light most favorable to the State). Therefore, this fracture fell within the definition of "great bodily injury" in section 16-3-95 of the South Carolina Code (2003). Appellant's argument that Victim was still able to

³ Section 16-3-95 of the South Carolina Code (2003) provides that it is unlawful to inflict great bodily injury upon a child. Subsection (C) of the statute defines "great bodily injury" as bodily injury that creates "a substantial risk of death or which causes serious or permanent disfigurement, or *protracted loss or impairment of the function of any bodily member or organ.*" (emphasis added).

move the right arm and "could escape from her bandage on her own" is based on the premise that keeping the arm immobilized to allow for healing was unnecessary. Such a premise is unreasonable and is not supported by the record.

Based on the foregoing, the trial court properly submitted the charge of inflicting great bodily injury upon a child to the jury.

AFFIRMED.

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

2009-4508

The Supreme Court of South Carolina

The State, Respondent,

v.

David Tyre, Petitioner.

Appellate Case No. 2013-001955

Lower Court Case Nos. 2009-GS-42-04508 and 2009-GS-42-04509

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JUL 11 12:28
CLERK

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *State v. Tyre*, Op. No. 2013-UP-286 (S.C. Ct. App. filed June 26, 2013). The petition is denied.


CJ.
FOR THE COURT

Columbia, South Carolina

July 11, 2014

cc:

The Honorable Jenny Abbot Kitchings

The Honorable M. Hope Blackley

William M. Blich, Jr., Esquire

Carmen Vaughn Ganjehsani, Esquire

SC04508



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 25, 2014

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Tyre, David *M114675 M114674*
Lower Court Case No. 2009GS4204508, 2009GS4204509
Appellate Case No. 2010-177286

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Breen Richard Stevens, Esquire
William M. Blicht, Jr., Esquire
Carmen Vaughn Ganjehsani, Esquire
Benjamin John Tripp, Esquire

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SPARTANBURG COUNTY
2014 JUL 29 PM 2:56
M. HOPE BLACKLEY

SCANNED

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

David Anthony Tyre 343149)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-42-0321

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County, General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS-42-4508-Homicide by Child Abuse
 - (b) 09-GS-42-4509-Abuse to inflict great bodily injury on a child
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 13, 2010- Natural Life
 - (b) October 13, 2010- 20 years

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CLERK OF COURT
REVISOR 1/2003

- (c)
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii.
 - iii.
 - (b) the result in each such Court to which you appealed:
 - i. Upheld Conviction
 - ii.
 - iii.
 - (c) the date of each such result:
 - i. June 26, 2013
 - ii.
 - iii.
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii.
 - iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a)
- (b)
- (c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

REVISED 3/2003
 M. JEFFREY
 JEFFREY

- iv. _____
- (d) the date of each such disposition:
 - i. July 11, 2014
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. None
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Please see attached
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

M. J. ...
 ...
 ...

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. Please see attached
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. Please see attached
 - iii. _____

19. State clearly the relief you seek in filing this application:

Sentence Reduction

20. Are you now under sentence from any other court that you have not challenged?

No

2003 JUN 25 11:11
M. HOPE CANNON
ALEY
Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Spartanburg)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Tyre Dewitt

SWORN to and subscribed before me this 18th
day of December, 2014.

Nancy C. [Signature] (L.S.)
Notary Public

My Commission Expires: 1-23-2022

2014 JAN 23 11:11 AM
M. HOPE STANLEY
Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David Tyre David Tyre
Applicant

SWORN or affirmed to and subscribed before me this
18th day of December, 2014.

Nancy C. Merchant
Notary Public

My Commission Expires: 1-23-2027

Revised 3/2003
M. HOPE ALLEN
NOTARY PUBLIC

11-(a): Applicant contends he was denied the right of effective assistance of counsel in violation of the South Carolina Constitution, Article 1, §§ 3 and 4 and the United States Constitution Fourteenth and Sixth Amendment. Applicant was denied the right to Due Process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, violation of equal protection of the law guaranteed by the Fourteenth Amendment, and violation of the right to effective assistance of counsel protection by the Sixth Amendment. Counsel failed to obtain a psychological exam, given a history of mental illness, and treatment, and no history of previous violent acts. After receiving a court order at a Bond Hearing for a psychological evaluation the applicant received an exam from a Spartanburg Regional Medical Center nurse and put on suicide watch. Applicant raises questions of Constitutional magnitude in the areas of due process, equal protection, and cruel and unusual punishment.

16-(a): The grounds set forth in 10 have not been set forth in any other proceeding because the applicant has been in the appellate process. The grounds set forth in 10 were not presented in trial.

2019 JAN 26 11:11:11
M. HOPE CLANCY

18-(a) i. Shawn Campbell

104 N. Daniel Morgan Avenue
Suite 201
Spartanburg, S.C. 29306

ii. Doug Brannon

128 Magnolia Street
Spartanburg, S.C. 29306

iii. Breen Richard Stevens

South Carolina Commission
On Indigent Defense
Division of Appellate Defense
1330 Lady Street Suite 401
Columbia, S.C. 29201-3332

iv. Carmen V. Ganjehsani

South Carolina Commission
On Indigent Defense
Division of Appellate Defense
1330 Lady Street Suite 401
Columbia, S.C. 29201-3332

18-(b) i. Arraignment, Trial and Sentencing

ii. Arraignment, Trial and Sentencing

iii. Appeal

iv. Appeal and Writ of Certiorari

REC'D JAN 26 11:11
M. HOPKINS/STANLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
	)	2015-CP-42-0321
David Anthony Tyre, #343149,)	
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed January 25, 2015, would respectfully show this Court:

I.

David Anthony Tyre (“the Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2009 term of the Spartanburg County Grand Jury for homicide by child abuse (2009-GS-42-4508) and infliction of great bodily injury upon a child (2009-GS-42-4509). Doug Brannon and Shawn M. Campbell represented the Applicant. The Applicant was tried October 11–13, 2010, before the Honorable J. Derham Cole and a jury. The jury found the Applicant guilty of both charges as indicted, and Judge Cole sentenced Applicant to concurrent terms of life imprisonment for homicide by child abuse and 20 years for infliction of great bodily injury upon a child.

A timely Notice of Appeal was filed on Applicant’s behalf. Breen Richard Stevens and Carmen Vaughn Ganjehsani perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant’s convictions and sentences in an unpublished opinion. State v. David Tyre, 2013-UP-286 (Filed June 26, 2013). The Applicant filed a petition for writ of certiorari to the South

Carolina Supreme Court. The Supreme Court denied Applicant's petition in an order dated July 11, 2014. The Remittitur was returned on July 25, 2014.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, specifically:
 - a. "Counsel failed to obtain a psychological exam, given a history of mental illness and treatment and no history of previous violent acts";

III.

In a PCR action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117–18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not expressly admitted, qualified or explained herein is denied.

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

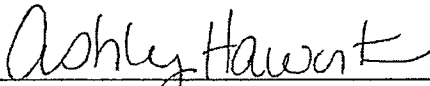
August 14th, 2015.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
)	
DAVID ANTHONY TYRE, #343149	)	2015-CP-42-0321
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 14TH day of August, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
David Anthony Tyre, #343149,	)	Case No.: 2015-CP-42-0321
)	
Applicant,	)	AMENDED RETURN
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Amended Return to the application for post-conviction relief (PCR) filed January 25, 2015, would respectfully show this Court:

I.

David Anthony Tyre (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the August 2009 term of the Spartanburg County Grand Jury for homicide by child abuse (2009-GS-42-4508) and infliction of great bodily injury upon a child (2009-GS-42-4509). Doug Brannon and Shawn M. Campbell represented him. Applicant was tried October 11–13, 2010, before the Honorable J. Derham Cole and a jury. The jury found him guilty of both charges as indicted. Judge Cole sentenced him to concurrent terms of life imprisonment for homicide by child abuse and twenty years for infliction of great bodily injury upon a child.

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Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, specifically:
 - a. "Counsel failed to obtain a psychological exam, given a history of mental illness and treatment and no history of previous violent acts";

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and

then must also show the deficiency resulted in prejudice.” Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014).

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent.¹ See Rule 15(a), SCRPC.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained herein is denied.

VI.

WHEREFORE, having made its Amended Return, Respondent requests that Applicant provide Respondent with any additional claims he wishes to litigate in an evidentiary hearing well in advance of the hearing. Respondent further requests an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

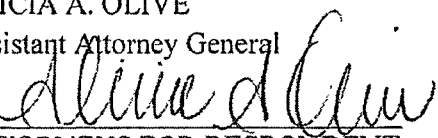
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 22nd, 2016.

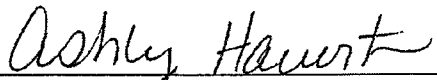
¹ Applicant's PCR attorney has been notified this hearing is expected to take place during the week of September 19, 2016. Therefore, Respondent requests Applicant provide any new or additional claims to Respondent no later than thirty days from the date of service of this Return.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
)	
	)	2015-CP-42-0321
DAVID ANTHONY TYRE, #343149,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 22nd day of July, 2016.



 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
 4 DAVID ANTHONY TYRE,) TRANSCRIPT
 5 APPLICANT,) OF
 6 vs.) RECORD
 7 STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.) 2015-CP-42-0321

9
 10 September 20th, 2016
 11 Spartanburg, South Carolina

12
 13 B E F O R E :
 14 THE HONORABLE PAUL M. BURCH, Judge.

15
 16 A P P E A R A N C E S :
 17 J. BRANDT RUCKER
 18 ESQ.
 Attorney for the Applicant
 19 JOHANNA VALENZUELA
 20 ASSISTANT ATTORNEY GENERAL
 Attorney for the State

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 Seventh Judicial Circuit

25

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P R O C E E D I N G S

1

2

3 THE COURT: You ready?

4 MS. VALENZUELA: Yes, Your Honor.

5 Do you want me to go through the procedural history of
6 the case and then lay out the---

7 THE COURT: Please.

8 MS. VALENZUELA: Your Honor, this is the case of David
9 Anthony Tyre, T-Y-R-E, versus the State of South Carolina.
10 Case Number 2015-CP-42-0321.11 The Applicant made his -- filed his PCR application in
12 January 25th, 2015, and we responded with a return. We
13 also amended our return, Your Honor, and asked for a more
14 definite statement.15 The Applicant is presently still confined in the
16 Department of Corrections and this is pursuant to orders of
17 commitment by the Spartanburg County Clerk of Court after he
18 was indicted by the August 2009 term of the Spartanburg
19 County Grand Jury for homicide by child abuse and infliction
20 of great bodily injury upon a child.21 Doug Brannon and Sean Campbell represented him at the
22 trial. He was tried in October 11th of 2010 before the
23 Honorable Derham Cole and a jury. The jury found him guilty
24 on both charges as indicted, and then Judge Cole sentenced
25 him to concurrent terms of life imprisonment for homicide by

1 child abuse and 20 years for infliction of great bodily
2 injury upon a child. A timely notice of appeal was filed in
3 this case and it went before the Court of Appeals, which
4 affirmed the Applicant's convictions and sentences in an
5 unpublished opinion. That is part of the judge's packet
6 that's been handed up to you Your Honor.

7 Petition of Cert was filed with the South Carolina
8 Supreme Court where the Supreme Court denied that petition
9 and remittitur was returned on July 25th of 2014. Part of
10 the records that you have before you are the clerk records,
11 also the trial transcript, and the appellate records in this
12 case.

13 The application has only made one allegation, Your
14 Honor, and I've confirmed with counsel that that's -- the
15 allegation will be moving forward, which is that counsel
16 failed to obtain a psychological exam given a history of
17 mental illness and treatment and no history of previous
18 violent acts, and the Applicant is represented by Brandt
19 Rucker who is present in the courtroom.

20 MR. RUCKER: Your Honor, we're ready.

21 THE COURT: All right.

22 MR. RUCKER: I call my client to the stand, Tony Tyre.

23 THE COURT: If you'd come around and be sworn please.

24 DAVID TYRE, being first duly
25 sworn, testified as follows:

David Tyre - Direct examination
By Mr. Rucker

1 DIRECT EXAMINATION

2 BY MR. RUCKER:

3 Q Tony, just to clarify, you heard the Attorney General's
4 citation of what your current sentence is.

5 what are you sentenced for and what time are you doing?

6 A I'm sentenced for homicide by abuse, child abuse,
7 excuse me, and I don't know the technical term. Felony
8 child abuse for---

9 Q okay.

10 A ---for -- the time is life for the first and 20 for the
11 second.

12 Q okay. And what, what is your claim against Sean --
13 first of all, who was your attorney for jury trial?

14 A Sean Campbell.

15 Q was he a public defender or was he retained by you?

16 A Retained by my family.

17 Q Okay. And do you know how much they paid him?

18 A I want to say ten thousand---

19 Q Okay.

20 A ---dollars I believe.

21 Q Okay. How long after you were arrested were you
22 retained -- did you retain him?

23 A I believe almost immediately because he was already
24 representing me on another matter.

25 Q And what was the other matter he was representing you

David Tyre - Direct examination
By Mr. Rucker

1 on?

2 A It was a DUI.

3 Q Okay. And had you had experience with Mr. Campbell
4 before?

5 A No, sir.

6 Q Did you---

7 A Prior to the DUI?

8 Q Right.

9 A No.

10 Q Did you --- were you also represented by Doug Brannon in
11 this case?

12 A Yes, sir.

13 Q What was his representation again for?

14 A I believe he was just assisting. Had just the, the --
15 help out, for lack of a better word.

16 Q All right. How long before your trial were you -- did
17 you retain Sean Campbell?

18 A At least a year.

19 Q And how many times did y'all meet during that time?

20 A Maybe three or four. I, I -- it's been -- I can't be
21 definite. Three or four maybe.

22 Q Okay. And, and, during those meetings, were you on
23 bond, on bond or were you in the jail still?

24 A Yes to both. There was a -- I was bonded out and then
25 I -- the -- my bond was violated and then I -- my subsequent

David Tyre - Direct examination
By Mr. Rucker

1 meetings were there in the county jail.

2 Q Okay. Did you go over the -- first of all, do you know
3 what discovery is in a criminal case?

4 A That's what they tell us they have or --?

5 Q And who is they?

6 A Oh, I'm sorry. Solicitor's Office.

7 Q Okay. Is -- did you go over that evidence with Sean
8 Campbell?

9 A Not in depth, no.

10 Q Okay. What did he tell you about the evidence?

11 A To be honest, I can't really remember.

12 Q Okay. What -- were you ever offered a plea deal in
13 this case---

14 A No, sir.

15 Q ---to be---

16 A No, sir.

17 Q Do you know if Sean Campbell or Doug Brannon tried to
18 get a plea for you?

19 A No, sir, not that I'm aware of.

20 Q Okay. What was your strategy going forward in the
21 case?

22 A My understanding was it was gonna be experts on experts
23 was the -- what I first was told. My understanding was the
24 strategy was going to be arguing the injuries that were
25 inflicted and whether or not they -- I could of done it or

David Tyre - Direct examination
By Mr. Rucker

1 if there were some other mechanism.

2 Q All right. Did you plan to testify -- did y'all talk
3 about you testifying in the case?

4 A Yes, sir.

5 Q Did you, in fact, testify?

6 A Yes, sir.

7 Q Did he prepare you to testify?

8 Did he go over what was probably gonna be asked by the
9 solicitor's office?

10 A Not that I recall. Maybe a little bit before the --
11 before I went up on the stand.

12 Q Okay. What did he tell you about testifying?

13 Did he think it was in your best interest?

14 A If I remember the discussion correctly, it was
15 basically, if you testify, then they can -- they'll cross.

16 Q Okay.

17 A And that if you -- you know, you don't have to but --.

18 Q Did he talk about your mental state at the time this
19 crime occurred with you?

20 A There was a discussion at one point. I don't -- it was
21 just a brief in passing where it was said I'm not concerned
22 about your, what's the word I'm looking for, to be able to
23 stand trial mentally. I don't know what the term is exactly
24 but he wasn't concerned about my competence, competence, to
25 stand trial.

David Tyre - Direct examination
By Mr. Rucker

1 Q Okay. What was he concerned about?

2 A That -- like I said, that was a brief -- just a brief
3 passing. I said something about -- I believe I said
4 something about eval and there was a I'm not worried about
5 you being able to stand trial and that was that.

6 Q All right. When you say an eval, what do you mean by
7 eval?

8 A Go see a psychiatrist and talk to him.

9 Q All right. Did you tell Sean that you had been treated
10 for mental illness before?

11 A Not then. Later on, once my bond had been violated,
12 which was like a year before my trial.

13 Q Okay. So, before your trial though you told him about
14 it.

15 what was your mental health history at that point?

16 A I'd been diagnosed with depression probably in my early
17 twenties.

18 Q Okay. And did you tell Sean about all these issues
19 with mental health that you had?

20 A I can't honestly answer that. I don't -- not in depth,
21 no, but I did talk about the fact that I had been treated by
22 a doctor and we -- and I even gave the doctor's name.

23 Q To your knowledge, did he contact that doctor?

24 A I believe, yes.

25 Q All right. What was your mental health issue?

David Tyre - Direct examination
By Mr. Rucker

1 A As I said, I, I was diagnosed with depression. I had
2 been seeing a doctor, Doctor Wells, prior.

3 Q Okay.

4 A I don't know how long prior.

5 Q Well, describe, describe your mental health history
6 though before that diagnosis.

7 A Depression, sullenness, moodiness, and inability to
8 deal with small frustrations. It would -- sometimes I would
9 blow up out of proportion over some of the smallest things
10 because small issues would build. I wouldn't communicate
11 what my problems were.

12 Q Did you recall when that started or do you recall?

13 A It probably started shortly after my father died.

14 Q And how old were you when he passed away?

15 A Twelve.

16 Q Okay. Did you seek counseling at that point?

17 A No, sir.

18 Q To your knowledge, did your mom or teachers try to get
19 you counseling?

20 A No, sir.

21 Q To your knowledge, did they know that there was
22 anything wrong with you?

23 A No, sir.

24 Q Okay. Do you think that had a long term effect on your
25 mental state?

David Tyre - Direct examination
By Mr. Rucker

1 A Looking back now, absolutely. Yes, sir.

2 Q All right. Between the time you were 12 and -- when,
3 when did you finally get some counseling?

4 A Like I said, my early, early twenties. I -- 20, 21, I
5 can't remember the exact --.

6 Q Okay. So, at that point, were you given any kind of
7 medications?

8 A They started me off on -- I want to say Zoloft but I
9 can't, I can't remember the exact medicine.

10 Q On the medicines you were taking at that time, did you
11 have adverse reactions to it?

12 A One of the medicines they were giving me use to make me
13 dizzy and I had to switch.

14 Q Okay. At some point did you stop taking the
15 medication?

16 A Yes, sir.

17 Q And when was that roughly?

18 A Probably around oh, 2007, 2008, somewhere around in
19 there.

20 Q At the time of the alleged crime, were you medicated or
21 not medicated?

22 A No, sir, I was not medicated.

23 Q All right. Did you talk to Sean Campbell about these
24 issues with the medications and, and you not taking the
25 medications?

David Tyre - Direct examination
By Mr. Rucker

1 A I can't -- I don't remember if -- exactly if I did or
2 didn't.

3 Q Okay. Did you ever speak with -- did he ever mention
4 to you that there may be a possible separate charge that
5 they could charge the jury with because of your mental
6 state?

7 A No, sir.

8 Q Did y'all -- when, when you would actually talk to him,
9 what would y'all actually talk about?

10 A Basically dates. This is what, you know, we're, we're
11 going to hearing on this. This is what's going on with, you
12 know, this hearing or maybe -- a lot of it dealt with bond
13 hearing, trying to get out. At one point he talked about
14 well, wells was out. Doctor wells, the doctor I had been
15 seeing, because he was full.

16 Q Okay.

17 A He had -- he couldn't -- he wouldn't accept any more
18 patients.

19 Q To your knowledge, did Sean Campbell ever have a
20 conversation with Doctor wells?

21 A I, I don't know. I'm, I'm assuming he did if he said
22 wells wasn't accepting any more patients. I --.

23 Q Why were y'all talking about evaluations at that point?

24 A At that point, I had been in Spartanburg County Jail.
25 My bond had been violated and -- because of some

David Tyre - Direct examination
By Mr. Rucker

1 threatening, threatening harm to myself, comments I had made
2 to other people, and the judge had ordered an eval for me,
3 an evaluation, psychological eval, and then he would revisit
4 the bond issue.

5 Q And did that psychological evaluation ever happen?

6 A I went to Spartanburg Regional only after I had
7 requested help at Spartanburg County Jail. I told them I
8 need, I need help and then I went to Spartanburg Regional.
9 I saw the regular ER, ER doctor, and then I saw what's
10 called the psych liaison, which is not a psychiatrist. A
11 doctor -- just a nurse.

12 Q Did you ever see a psychiatrist during this time?

13 A No, sir.

14 Q Did there come a point where Sean mentioned to you
15 there may be an expert that y'all could talk to
16 out-of-state?

17 A That -- yes, sir, that did come up.

18 Q Do you recall who that was?

19 A I didn't get -- I don't remember the name. I do --
20 it's like Minnesota I think is where he came from.

21 Q And what happened with that evaluation?

22 A That was an evidence type thing regarding the injuries
23 to the, the victim and my understanding was my family
24 couldn't afford it because it was room and board, paying for
25 his fees and whatnot, and we couldn't afford it.

David Tyre - Direct examination
By Mr. Rucker

1 Q Did -- there -- was there no out-of-state psychiatrist
2 that y'all talked to?

3 A Not that I'm aware of, no, sir.

4 Q Why do you believe Sean Campbell should have asked for
5 a psychological evaluation for you?

6 A Well, based on what the judge ordered. The judge
7 ordered a psychological evaluation and the fact that here I
8 am at 30 years old, never have committed a crime like this,
9 and now I did. And based on the fact that the month I was
10 out on bond I dropped 30 pounds and was making threatening
11 comments, you know, sideways comments about my, my safety
12 and whatnot. And I, I believe the comment -- Sean made the
13 comment to the solicitor cause we went to my DUI hearing or
14 my trial for my DUI and he made the comment to the solicitor
15 about he didn't think I would make it to December.

16 Q Did you have these kind of suicidal issues before all
17 this happened?

18 A Yes, sir, I, I'd made comments to various ones
19 side-handedly.

20 Q Had you ever acted on that?

21 A Not acted but I, I played out some scenarios and I've
22 done some, done some -- acted short. I will say that.

23 Q Okay. Now, well, now's the -- give us some details
24 please for the judge.

25 A I was living on my own at, at one point and was dealing

David Tyre - Direct examination
By Mr. Rucker

1 with some serious -- I was going through a bad depression
2 phase and I had actually tied a rope I had around the door
3 knob and hung it over my door just to see what it would be
4 like. They was another episode where I was in Augusta with
5 my family -- visiting family. We were at a special event.
6 I was in a hotel room and I was looking up wondering if a
7 sprinkler head could hold my weight. Those are two specific
8 instances I could think of.

9 Q When were those -- around how old were you?

10 A Well, the, the first incident I mentioned when I was
11 living on my own, that had to be around 2007 or 2008 cause I
12 was living on my own and I, I was supporting myself.

13 Q Okay. Did you give a confession in this case or a
14 statement to the police in this case I should say?

15 A Yes, sir.

16 Q Okay. Did -- was that after or before Sean Campbell
17 represented you?

18 A That was before he was retained as my attorney for this
19 issue, yes, sir.

20 Q Do you believe your depression led you to give the
21 statement you gave, gave to the police?

22 A Yeah. Yes, sir, I, I would, I would, I would say that.

23 Q And why would that have led to -- you to giving a
24 statement to the police?

25 A Just the guilty conscious and the -- I, I -- just the

David Tyre - Direct examination
By Mr. Rucker

1 not caring. I mean I, I wish I could answer. I don't, I
2 don't know why it would. They just -- that's the way I felt
3 so guilty about what happened and everything I guess.

4 Q Did you give a statement to the police that you
5 believed you shook the victim too hard?

6 A Yes, sir.

7 Q All right. Did you talk to the -- Sean Campbell about
8 that and why you said that and kind of the circumstances
9 going around the child's death?

10 A Did I -- yes, sir, I explained to him, you know, my, my
11 version, yes, sir.

12 Q Do, do you believe the depression that you had, the
13 untreated depression, affected your actions that day?

14 A Yes, sir.

15 Q All right. Did Sean Campbell ever talk to you about
16 doing any research trying to find if there was a defense or
17 at least a way to reduce the charge?

18 A No, sir.

19 Q To your knowledge, did -- was there a jury charge given
20 about any kind of lesser included based on your mental
21 state?

22 A Based on -- if I remember reading what I read in the,
23 in my transcript, the jury charge was strictly the homicide
24 by child abuse and the felony. That was it.

25 Q Do you believe, if you would of been evaluated, as that

David Tyre - Direct examination
By Mr. Rucker

1 previous judge ordered and as Mr. Campbell knew he was
2 suppose to do---

3 MS. VALENZUELA: Objection. Speculation.

4 MR. RUCKER: This goes to the heart of the matter. I
5 mean this is what the PCR is about. It's his belief that if
6 you would of---

7 THE COURT: His belief. Not someone else.

8 MR. RUCKER: Yes, sir.

9 THE COURT: Overruled.

10 Go ahead.

11 Q Do you believe that would of affected the outcome of
12 the case?

13 A Yes, sir.

14 Q And why do you believe that?

15 A Because I feel that I could of been able to receive at
16 least a little bit of mercy from the Court. I, I, I would
17 of pled guilty instead of put myself, my family, and, more
18 importantly, the victim's family through all that ordeal.

19 Q Did you talk to Sean Campbell about a guilty plea where
20 you would just simply throw yourself on the mercy of the
21 Court?

22 A No, sir.

23 Q Did he tell you that was an option?

24 A No, sir.

25 Q Did he have any witnesses prepared for the sentencing

David Tyre - Direct examination
By Mr. Rucker

1 portion of the case to talk about your mental state?

2 A No, sir, not that I'm aware of.

3 Q Okay. What is it that you want -- do you understand
4 what a PCR judge can do in this case?

5 A If I understand it correctly, it is, if he feels if it
6 is deemed that I was not represented properly, the sentence
7 would be overturned and then I would have to basically go
8 through the whole process again.

9 Q Is that what you're asking him to do, to remand it
10 back, to start over?

11 A Yes, sir.

12 Q All right. Are there any other issues you want to talk
13 to the judge about that we haven't discussed?

14 A No, sir, none that I can think of.

15 MR. RUCKER: No further questions, Your Honor.

16 THE COURT: Your witness.

17 MS. VALENZUELA: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. VALENZUELA:

20 Q Okay. Mr. Tyre, so today, in Court, you're admitting
21 that you, that you did cause purposeful injury to the child
22 that led to her death?

23 A Yes, I, I could say that, yes, ma'am.

24 Q And you're telling us that you caused this purposeful
25 injury to the ten year old child because of your depression?

David Tyre - Cross-examination
by Ms. Valenzuela

1 A As a by-product from my depression, yes, ma'am.

2 Q And talk to us a little bit about how your depression
3 played into you lying about how the child broke her arm
4 approximately two weeks before you killed her?

5 A That's just simple fear, ma'am. It just -- I was
6 scared to death.

7 Q Okay. So, your depression didn't cause you to lie to
8 everybody about how you broke the child's arm?

9 That was just fear that caused you to lie about
10 breaking the child's arm?

11 A I was scared, yes, ma'am.

12 Q Okay. Now, talk to us about how your depression led
13 you to lie to the doctors who were providing emergency care
14 for the child after you had hit her in the head or caused
15 her head to, to hit against something hard enough for her to
16 die.

17 When they were trying to provide life serving -- life
18 services to her, how did your depression cause you to lie to
19 them?

20 A Well, at that time, time, ma'am, I didn't think what I
21 had done had caused the injury. I didn't learn that till
22 later.

23 Q That's not what you testified to at trial though,
24 right?

25 A I would have to look at my transcript again, ma'am. I

David Tyre - Cross-examination
by Ms. Valenzuela

1 can't tell you.

2 Q Okay. But -- and so the Court has the transcript and
3 you did testify at trial?

4 A Yes, ma'am.

5 MS. VALENZUELA: Okay. So, turning to Page 403 and
6 404, Your Honor, and I think opposing counsel has a copy of
7 the transcript as well.

8 Mr. Tyre, do you remember explaining to the jury, when
9 asked, that you told the doctors -- you did not tell the
10 doctors the true reason why the victim was in such physical
11 distress. Instead, you asked if a fall could of caused it
12 knowing a fall didn't happen because you "wanted to stay
13 with the story that you had told?"

14 A Is it possible for me to look at the transcript?

15 I can't answer it from memory.

16 Q Uh-huh. (Affirmative).

17 Can he look at your copy?

18 MR. RUCKER: Okay.

19 MS. VALENZUELA: I don't think I have an extra one.

20 Let me see.

21 Your Honor, may I approach the witness?

22 THE COURT: You can.

23 Q Can you read that?

24 A Yes, ma'am.

25 Q Okay. Mr. Tyre, did I open that up to Page 403 to 404?

David Tyre - Cross-examination
by Ms. Valenzuela

1 A Yes, ma'am.

2 Q And then -- so, on 403, at Line 21, it says, the
3 question, and then, on July 5th, when there was a team of
4 healthcare providers trying to save her life, you asked what
5 and you answered if a fall could of caused it.

6 And then you're asked fall, Mr. Tyre, and you said I
7 was staying with a story that I had told.

8 why were you staying with that story, Mr. Tyre?

9 Cause I said I was afraid and ashamed of what happened,
10 and, as I said yesterday, sometimes, not sometimes, often
11 times, when you lie, you get locked into it.

12 A Okay.

13 Q So, your testimony then was that you lied to the
14 doctors who were trying to save the little girl's life
15 because you needed to stick with the story that you had
16 told?

17 A Okay. I, I agree with that reading over it now and
18 refreshing my memory.

19 Q Okay. And what part of your depression led you not to
20 want to accept responsibility during the jury trial as
21 you're doing today?

22 A Well, again, it deals with the guilt. I was guilt -- I
23 was afraid. I was guilty. I felt guilty and that's all,
24 that's all I can answer, ma'am. I, I can't, I can't be any
25 plainer than that.

David Tyre - Cross-examination
by Ms. Valenzuela

1 Q Okay. Now, talk to me a little bit about your work,
2 history.

3 You worked up through the, that time that you killed
4 the child, correct?

5 A Yes, ma'am.

6 Q And where did you work?

7 A I worked for an ambulance company, American Trans Med.
8 I was also a full or part-time volunteer firefighter and
9 part-time worker at Hill Top Fire District.

10 Q And did you win any awards while you were working?

11 A Yes, ma'am.

12 Q Tell us about them.

13 A There was a Life Safety Award, several Chief's Awards,
14 Firefighter of the Year. Just various awards through the,
15 through the department -- local department awards.

16 Q So, your depression that you were battling with still
17 allowed you to be, not only competent at work, but excel at
18 work to the point of winning awards?

19 A Well, I wouldn't say necessarily excel considering we
20 were a small department, but, sure, I was functional.

21 Q Now, you testified at the trial several -- there were
22 several different points where the judge can see that --
23 your testimony, correct?

24 You testified during the Jackson v. Denno hearing
25 before the trial started, which was to determine the

David Tyre - Cross-examination
by Ms. Valenzuela

1 voluntariness of your statement?

2 A Yes.

3 Q Yes.

4 And, and, in fact, you also testified before the Court
5 about your decision to, to testify before the jury, correct?

6 A Oh, yes. Yes.

7 Q You remember the Court going over your Fifth Amendment
8 rights and, and making sure that you had had that discussion
9 with your attorney and you indicated that you had talked
10 about it with your attorney?

11 A Yes. Yes, ma'am.

12 Q And that you did, after having that discussion,
13 understood the ramifications and still wished to proceed to
14 testify before the jury?

15 A Yes, ma'am.

16 Q Okay. And then you actually took the stand and
17 proceeded to talk in front of the jury?

18 A Right.

19 Q And then, again, you talked to the Court at your
20 sentencing?

21 A Yes.

22 Q Now, when you were being asked by the judge -- advised
23 of your Fifth Amendment rights, you didn't inform the judge
24 that you hadn't had any time to talk with your counsel about
25 testifying?

David Tyre - Cross-examination
by Ms. Valenzuela

1 A That's correct.

2 Q In fact, you indicated that you had had -- you had
3 spoke to your counsel as much as you needed to in order to
4 make that decision?

5 A I don't know if I said those words. Again, I'd need to
6 see the transcript.

7 Q Okay. Now, you said that you, you started your
8 depression from the age of 12, correct?

9 A No, ma'am, I said that those -- that's when the issues
10 that started it. I would -- really wasn't diagnosed and
11 treated -- started treating for it until I was 20, 21.

12 Q Okay. So, did you have depression before being
13 diagnosed with it or did you only start having depression
14 once you were diagnosed?

15 A I was dealing with the issues before I was diagnosed.

16 Q Okay. And so, leading through that time before you
17 were diagnosed and then after being diagnosed, how many
18 other people did you physically attack or try to kill?

19 A None that -- none that could tell. I mean nobody.

20 Q Okay. Well, you're not limited by those who can tell.
21 Tell us the stories about other people who you tried to
22 physically attack or kill.

23 A Well nobody.

24 Q I'm sorry?

25 A No one.

David Tyre - Cross-examination
by Ms. Valenzuela

1 Q No one.

2 Okay. And whose choice was it to stop taking the
3 medication that you said was making you dizzy at the time
4 that you killed the ten year old?

5 A No, ma'am, that wasn't, that wasn't the case. That
6 medication, I was under a doctor's care on that medication
7 and that was several years prior and it was changed with the
8 doctor's direction.

9 Q Okay. So, I had here that you had said that you were
10 not medicated at the time of the crime but that's incorrect?

11 A No, that is -- that is correct. I was not medicated.

12 Q Okay. So, what caused you to stop taking your
13 medication?

14 A Basically it's a couple of factors. The first factor
15 being I didn't have the insurance to pay for it.

16 Q And you were employed during this time?

17 A Yes, ma'am.

18 Q And how did you seek help knowing that you weren't
19 taking the medication to treat yourself?

20 A I didn't seek help.

21 Q Talk to me a little bit about this out-of-state expert
22 in Minnesota.

23 what was that expert hired to do for you again?

24 A He wasn't hired to do anything. It was just -- I don't
25 know what he, what his exact field. He was some sort of --

David Tyre - Cross-examination
by Ms. Valenzuela

1 I want to say forensic pathologist. I don't know what he
2 did but he was never hired.

3 Q Okay. And it wasn't to look at you. It was to look at
4 the extent of the victim's injuries?

5 A That was my understanding, yes.

6 Q And that would of factored into the strategy of trying
7 to, to set one expert against the other so what could of
8 caused the victim, a ten year olds injuries?

9 A Yeah, I guess. I guess that was the strategy.

10 Q Okay. Now, you have the transcript in front of you.
11 Can you point to -- we, we covered how you talked at
12 pretrial, how you talked during the Fifth Amendment
13 advisement, you talked to the jury both on direct and cross,
14 and then at sentencing.

15 Can you point out to us where you told the jury or the
16 Court about your depression?

17 A I didn't tell them about my depression to the best of
18 my knowledge.

19 Q Can you tell us where you told the Court about how you
20 had struggled with issues related to depression since the
21 age of 12?

22 A I can't do that either.

23 Q Can you tell us about where you told the judge about
24 the times that you had considered suicide in terms of
25 hanging a rope on the door, doorknob or on the sprinkler or

David Tyre - Cross-examination
by Ms. Valenzuela

1 looking at a sprinkler head and considering it?

2 A No, I didn't tell them that either.

3 Q okay. And when you were talking to law enforcement and
4 you gave a confession to them about swinging the ten year
5 old child, who had a broken arm, and who suffered, suffered
6 from cerebral palsy, swinging her by her ankles over the
7 ground, when you were talking to them about that, when did
8 you tell them about your issues with depression?

9 A I didn't tell them.

10 Q Now, at your sentencing when you talked to the judge,
11 did you see that as your moment to explain to the judge any
12 information so that he could show you some mercy since he
13 was in charge of sentencing you after the jury found you
14 guilty?

15 A No, ma'am, I didn't. I didn't see that as any kind of
16 opportunity for anything.

17 Q Okay. Can you turn to Page 506?

18 A Yes, ma'am.

19 Q Oh, I'm sorry. I'll do it. Sorry. I forget.

20 It is okay, Your Honor, that I approached?

21 THE COURT: Yes.

22 Q Mr. Tyre, did I change that page to Page 500 to 506?

23 A 506, yes.

24 Q And do you see, at 506, where you say to the Court or
25 where the Court asks you if there's anything you'd like to

David Tyre - Cross-examination
by Ms. Valenzuela

1 add, and you say that you want to express your deep sorrow,
2 that you're sorry, that you wish you could give the family
3 more than that, that you hope they can start healing?

4 A Yes, ma'am.

5 Q Okay. And why did you say that to the judge?

6 A Because I did feel sorry for what happened and I'm
7 sorry for -- I was sorry and am still sorry, pardon me, for
8 what happened and I was just hoping that they could put it
9 behind them.

10 Q Okay. And were you stopped from saying anything more
11 at that point from the -- to the judge?

12 A No, ma'am.

13 Q Why didn't you tell the judge about your depression?

14 A Well, to be honest, at the time, it, it was a world
15 wind and that just didn't come to my mind.

16 Q But since this sentencing, you've had plenty of time to
17 think about different things that you would like to add?

18 One of those being the depression that you didn't
19 mention throughout the investigation or the trial?

20 A I wouldn't say I would like to add it. No, it was --
21 as I've dealt with mental health professionals and so forth
22 with the Department of Corrections, I've had time to think
23 about the why it happened and, and so forth. But to add it,
24 I wouldn't say it that way, no.

25 Q Did your depression ever affect your ability to hold a

David Tyre - Cross-examination
by Ms. Valenzuela

1 permanent job?

2 A I would say yes.

3 Q Okay. But it didn't affect your ability to stay
4 employed leading up to the trial?

5 You explained that you had been employed by several
6 different agencies as an EMT, correct?

7 A Correct.

8 Q So for at least the several years before you killed
9 her, you were able to stay employed?

10 A Correct.

11 Q How did your DUI get resolved?

12 A Oh, guilty verdict.

13 Q Oh, so, you went to trial on that one as well?

14 A Yes.

15 Q And, and your -- you, you claim that you never had a
16 discussion with your counsel about being able to accept
17 responsibility?

18 Plead guilty.

19 A Oh, no.

20 Q Okay. But you would have pled guilty is what you're
21 telling the Court?

22 with no offer on the table, you would have pled guilty?

23 A Yes, I believe so.

24 MS. VALENZUELA: Your Honor, just a moment.

25 (Pause.)

Hazel Tyre - Direct examination
by Mr. Rucker

1 MS. VALENZUELA: Nothing further, Your Honor.

2 MR. RUCKER: No further questions, Your Honor.

3 THE COURT: You may step down. Thank you.

4 THE WITNESS: Yes, sir.

5 MR. RUCKER: Your Honor, we have two more witnesses.

6 I call Hazel Tyre to the stand.

7 HAZEL TYRE, being first duly
8 sworn, testified as follows:

9 MR. RUCKER: May it please the Court?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. RUCKER:

13 Q Ms. Tyre, how are you -- what's your relationship with
14 Tony Tyre, my client?

15 A I'm his mother.

16 Q Okay. And you heard him previously talk about his
17 depression.

18 Did you know about his depression?

19 A Not, not until -- I think like '95, 19 -- when we go to
20 a trip to Utah and up there he was -- he kept to himself.

21 He was, at times in the morning, unfriendly and I talked to
22 the friends that we went to visit. I explained his behavior
23 to the friend and---

24 Q AS---

25 A ---right off she said that sounds like depression.

Hazel Tyre - Direct examination
by Mr. Rucker

1 MS. VALENZUELA: Objection. Hearsay.

2 A And that's the first I've heard---

3 MS. VALENZUELA: Objection. Hearsay.

4 Q As a result of that conversation, did you start looking
5 at his behavior?

6 A I'm sorry. I don't hear well. I'm so sorry.

7 Q As a result of that conversation, did you start looking
8 at his mental state?

9 A We -- she made an appointment with her doctor the next
10 day and we took him there to that doctor and he put him on
11 wellbutrin.

12 Q All right. And that is the medication that Tony
13 testified to earlier?

14 A Right. And when we got back home, I took him to a
15 doctor in Spartanburg and he just continued giving him the
16 wellbutrin.

17 Q When he started that medication, how old was he?

18 A He just finished high school. So, I think maybe 18.

19 Q Do you believe, looking back, that he had depression
20 before then?

21 A I do now. I, I knew something was wrong but I didn't
22 know what. I never dealt with depression before. I did not
23 know any symptoms and I just didn't know how to deal with
24 it.

25 Q Did, did his father pass away early?

Hazel Tyre - Direct examination
by Mr. Rucker

1 A Yes, his father died when he was 12 years old.

2 Q Okay. How did that affect Tony?

3 A Very badly.

4 Q Did you see a change in his behavior once his father
5 got sick and died?

6 A I did.

7 Q And what was that change in behavior?

8 A He would be withdrawn, going to his room, stay -- he
9 would talk to other people about his father but he didn't,
10 he never talked to me and I found out that was because he
11 was really trying to protect me.

12 Q Was he close with his father?

13 A As close as he could be for, for a small child. His
14 father got sick when Tony was eight years old, but before
15 that, they, they were very close. But then, after he got
16 sick, then he was in the hospital so much, so many times it,
17 it was almost like the children didn't have either parent.

18 Q Now, during that time, looking back, after you
19 discovered he had depression, did you see him do rash things
20 or odd things?

21 A I'm sorry. I didn't quite understand.

22 Q Did -- during the time after you found out he had
23 depression, did, going back over his life, did you -- do you
24 recall now times that he acted rationally or oddly?

25 A I do now.

Hazel Tyre - Direct examination
by Mr. Rucker

1 Q All right. And can you describe some of those times
2 for the judge?

3 A At times he would get -- he would be irritable to me
4 for no apparent reason. He never was mean to me or anything
5 like that but, like I said, he would be -- he would stay in
6 his room. He would be quiet. Didn't talk to me. Every now
7 and then he would get irritable. Very irritable.

8 Q Did you later learn of suicide attempts or, or at least
9 discussion of suicide by Tony?

10 A I didn't get quite all that. I'm so sorry.

11 Q Did you ever hear -- did you learn of suicide attempts
12 by Tony?

13 A I didn't know anything about those.

14 Q Okay. Did you hear about that today?

15 A I, I, I heard some of it.

16 Q Okay. Did, did he, after his father passed away, did
17 it affect his school work?

18 A I, I think it did.

19 Q Would -- was there a time that you know of where, in
20 visiting a newborn, his cousin, did he actually put a gun in
21 his own mouth?

22 MS. VALENZUELA: Objection. She's already answered,
23 answered that she didn't know anything about the suicide
24 attempts, Your Honor.

25 A This---

Hazel Tyre - Direct examination
by Mr. Rucker

1 MR. RUCKER: Well, I'm not calling it a suicide
2 attempt. I'm calling it rash behavior.

3 A I---

4 THE COURT: All right.

5 A Yes, he, he did it jokingly but it was upsetting to his
6 sister and brother-in-law.

7 Q Okay. When you went and talked with Tony about these
8 issues, do you believe he was getting the care he should get
9 as far as his depression?

10 A No, I don't because the doctor that we took him to
11 here, to my knowledge, never probed into Tony's mind, into
12 his thinking. He just continued leaving him on the
13 wellbutrin and that medication just, more or less, you might
14 say, took the edge off. But as far as really treating him,
15 he, he didn't pursue it, the doctor didn't pursue, didn't
16 really try to find out what all -- what was really wrong.

17 Q Now, do you know Sean Campbell --

18 A Yes.

19 Q -- the attorney?

20 Have you had conversations with Sean Campbell?

21 A Only during the situation.

22 Q Okay.

23 A Not since.

24 Q Did you hire him?

25 A No, I didn't.

Hazel Tyre - Direct examination
by Mr. Rucker

1 Q Who hired him to represent Tony?

2 A Tony's grandparents.

3 Q Okay. Well, did Sean ever talk to you about the
4 depression issue?

5 A No, the only thing he -- that I can ever remember,
6 remember being said was so -- a doctor from up north or
7 somewhere. But as far as actually the illness, I don't
8 remember.

9 Q Did Sean Campbell ever discuss with y'all about getting
10 a local psychiatrist to see Tony?

11 A No, sir.

12 Q Okay. Is there anything else you want to add about
13 Tony's mental health?

14 A I, I -- right now, I just can't think. There's other
15 things that took place. I found a -- I'm sorry.

16 Q Take your time.

17 A I found a hangman's noose under his bed.

18 Q How old was he when you found that?

19 A He was, he was a lot older but I don't know the age.
20 But the reason about that particular thing at the fire
21 department, they were taught to make different types of
22 knots for rescuing but I asked him. I said well, have you
23 ever thought about using it and he said yes. Something to
24 that effect.

25 Q Is it fair to say he was bad off mentally for a while?

Hazel Tyre - Direct examination
by Mr. Rucker

1 A I would -- if I had only known, I'd of done something
2 but I didn't know.

3 MR. RUCKER: No further questions, Your Honor.

4 MS. VALENZUELA: No questions.

5 THE COURT: You may step down. Thank you.

6 THE WITNESS: Thank you.

7 MR. RUCKER: Your Honor, we have an additional witness
8 outside. I'm gonna go --

9 MS. VALENZUELA: May I get the transcript off the
10 witness bench?

11 THE COURT: Sure.

12 (Pause.)

13 MR. RUCKER: Your Honor, call Terry Lacowski.

14 THE COURT: Come up and be sworn please.

15 TERRY LACOWSKI, being first duly
16 sworn, testified as follows:

17 THE COURT: All right. Have a seat.

18 MR. RUCKER: May it please the Court?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. RUCKER:

22 Q Terry, how do you know my client, Tony Tyre?

23 A He was a co-worker at Hill Top Fire Department.

24 Q Were you also an EMT there?

25 A I'm not an EMT. First responder.

Terry Lacowski - Direct examination
by Mr. Rucker

- 1 Q Okay. First responder.
2 How long did you know him?
3 A About three years.
4 Q Did y'all work closely together?
5 A Yes.
6 Q Were y'all friends also?
7 A Yes.
8 Q Did you see problems that his -- first of all, did you
9 know of him having any mental health issues?
10 A He suffered some depression.
11 Q And did you see that affect just the way he was?
12 A Not necessarily work wise but withdrawn. You could see
13 him, at certain issues, when things would bother him, you
14 could see him just get withdrawn and not really want to talk
15 about it.
16 Q Do you know who Sean Campbell is?
17 A A little bit.
18 Q All right. Do you know -- describe for the Court who
19 he is.
20 A Okay. Now I'm thinking of someone else.
21 Q Was he the attorney for Tony during the trial?
22 A Oh, yes, yes. Sorry.
23 Q And were you present during the trial?
24 A Yes.
25 Q Did Sean Campbell ever talk to you about Tony's mental

Terry Lacowski - Direct examination
by Mr. Rucker

1 state or work conditions?

2 A No.

3 Q To, to your knowledge, did he ever talk to anybody at
4 the fire department, that you know of, about Tony's mental
5 state?

6 A No.

7 MR. RUCKER: All right. No further questions.

8 CROSS-EXAMINATION

9 BY MS. VALENZUELA:

10 Q Ms. Lacowski?

11 A Yes.

12 Q Am I saying that right?

13 A Lacowski.

14 Q Lacowski.

15 Ms. Lacowski, you said that you were present during the
16 trial and that you knew who the Applicant's attorney was?

17 A Yes.

18 Q And did you ever approach him to talk to him about how
19 you were concerned about the Applicant being withdrawn?

20 A No.

21 Q Okay. Did the occurrences of the Applicant being
22 withdrawn cause you great concern?

23 A Well, as a friend, you worry about your friends, yes.

24 Q Did it cause you enough concern to want to talk to his
25 attorney about it?

Terry Lacowski - Cross-examination
by Ms. Valenzuela

1 A No.

2 MS. VALENZUELA: No further questions.

3 THE COURT: Any further questions?

4 MR. RUCKER: No further questions, Your Honor.

5 THE COURT: Thank you. You may step down.

6 MR. RUCKER: Those are all our witnesses, Your Honor.

7 MS. VALENZUELA: Your Honor, may it please the Court.
8 We call Doug Brannon to the stand.

9 THE COURT: Come up and be sworn please.

10 DOUG BRANNON, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. VALENZUELA:

14 Q Mr. Brannon, can you state your full name for the
15 record?

16 A Norman Douglas Brannon.

17 Q Thank you, Mr. Brannon.

18 And can you please tell the Court how you came to be
19 involved in the Applicant's trial?

20 A Mr. Campbell asked me to assist him as second chair in
21 this trial.

22 Q And who is Mr. Campbell in relation to this case?

23 A Sean Campbell was the lead defense attorney in this
24 matter and we had been friends for a number of years
25 preceding this trial.

Doug Brannon - Direct examination
by Ms. Valenzuela

1 Q Okay. And so, when did you come into the
2 representation in terms of timeline for when the trial
3 started?

4 A Can't be specific but I would say it was between three
5 months and a month and a half before the trial.

6 Q And in that three months to a month and a half before
7 the trial, did you have an opportunity to meet with the
8 Applicant?

9 A I know that we met -- Sean and I both met with him
10 twice at the detention center in the month or so leading up
11 to the trial. And then we were with him extensively the day
12 before the -- two or three days before the trial, the day
13 before the trial, and then, obviously, each evening during
14 the trial.

15 Q And when you spoke with the Applicant, was he able
16 to -- did he appear to understand the charges that he was
17 facing?

18 A Certainly thought he did, yes.

19 Q Yes.

20 And did you have any concerns about his understanding
21 of the charges he was facing?

22 A None at all.

23 Q Okay. Did he understand the process that he was going
24 through in terms of did he understand what a trial was?

25 A He led me to -- I believed that he did.

Doug Brannon - Direct examination
by Ms. Valenzuela

1 Q Okay. And what is it that led you to believe that he
2 understood what a trial was?

3 A I mean we talked about who would testify, who the
4 players in the trial would be, the prosecutor, Sean and I,
5 the -- we talked about the jury selection process and, and,
6 you know, potentially who we would like on our jury and who
7 we would not like. Not individuals but types of people. He
8 take -- he took part in those conversations. When there
9 were questions, he answered them. He asked us what appeared
10 to be competent questions.

11 Q Did you have any concern about his ability to
12 understand the actual trial process?

13 A At that time I did not.

14 Q Okay. Did he ever raise to you or actually from, from
15 what he shared with you about how the child came to, to be
16 dead, what was your strategy based on what he told you?

17 A It was an accident.

18 Q What was an accident?

19 A Her death.

20 Q And so, the way that he described his behavior and his
21 interactions with a ten year old is that he accidentally
22 caused her to fall and hit her head?

23 A He played with this child all the time, according to
24 him, that, often times, it would be what I would describe
25 as, as a kind of rough play but she laughed or she appeared

Doug Brannon - Direct examination
by Ms. Valenzuela

1 to be happy when they did whatever it was that they were
2 doing. I mean this incident or the specific incident, not
3 the broken arm, but the incident that caused her death, he
4 was allegedly swinging her like a helicopter by her ankles,
5 and that she was expressing happiness or joy as it was
6 taking place.

7 Q Did he ever suggest to you that he was angry or
8 frustrated or unable to control his emotions with the child
9 and that's why he had physically hurt her?

10 A No, in fact, today is the first time I ever heard him
11 admit that he killed the child.

12 Q Did he ever indicate to you that he had a problem
13 controlling his temper?

14 A Not to me.

15 Q Okay. Did he ever talk to you about his medications?

16 A Not to me. I think the more appropriate answer would
17 be not during the conversations that I had with him while
18 Mr. Campbell was present because I, I never met with him --
19 there was only one time that I was with him alone, and that
20 was before a pretrial motion hearing that Sean didn't come
21 to. So, during none of the conversations with Mr. Campbell
22 and I did he discuss depression or prior medications and not
23 during that single incident where I was alone with him did
24 he discuss those issues.

25 Q Okay. Please answer any questions of opposing counsel.

Doug Brannon - Direct examination
by Ms. Valenzuela

1 MR. RUCKER: May it please the Court?

2 CROSS-EXAMINATION

3 BY MR. RUCKER:

4 Q Did y'all discuss mens rea that's necessary for child
5 abuse by homicide?

6 A I believe we did and, and, and it -- we tried to make
7 that point in the trial that there was never, never any
8 intent proven by the State. I mean we, we talked about that
9 in our trial prep meetings and then obviously we tried to
10 bring that out in the trial.

11 Q well, let's be honest here.

12 what, what were -- what did you think the odds of y'all
13 actually winning the trial was gonna be?

14 A well, I don't know how to answer that question, Brandt.
15 I mean, as I said, he, he told Sean and I that he loved this
16 child, that he cared about this child, that all he wanted to
17 do was spend time with this child and the child's mother,
18 that, that he was playing with the child and never intended
19 to cause her harm.

20 Q You have no reason to believe it wasn't an accident, do
21 you?

22 A I, I didn't -- in fact, Sean and I said we thought,
23 until we walked into the courtroom today and heard his
24 testimony, that he was innocent.

25 Q But did he testify he willfully did it or did he

Doug Brannon - Direct examination
by Ms. Valenzuela

1 testify that---

2 A He did not---

3 Q ---depression and that caused what happened to happen?

4 A And, and I'm sorry. I did read the transcript but I
5 don't remember him testifying that he had depression. I
6 remember that he was playing with the child and, and
7 accidentally this happened.

8 Q I'm talking about today.

9 A Today. Yeah. Yeah.

10 Q Did he -- I just want to clarify. You're saying he
11 testified he killed the child, which implies murdered the
12 child.

13 Is that what you believed he testified to today?

14 A Today I heard him take responsibility, responsibility
15 for the -- for causing the death.

16 Q Okay.

17 A Always, in the past, it was this was an accident.

18 Q Okay. Now, as far as the accident, when you prepared
19 that defense, did y'all look into his mental state?

20 A I did not.

21 Q Do you know if Sean Campbell did?

22 A I can't answer for Sean.

23 Q Were you -- in any conversations you had with him, did
24 he tell you he was looking in some sort of mitigation or
25 defense based emotionally or mental health problems?

Doug Brannon - Direct examination
by Ms. Valenzuela

1 A He did not.

2 Q All right. Were you aware that a judge, I believe a
3 circuit court judge, ordered him to be evaluated?

4 A I'm not aware of that and, and the first time I've ever
5 heard of that was in, in this courtroom today.

6 Q When you're second chair and when you were working with
7 him, did you have access to the full file or did you just
8 have part of the file which you were gonna take care of?

9 A I'm sure that, that the truthful answer is that I had
10 access to the entire file. I could of seen anything that I
11 asked for but it became clear that I was gonna question
12 certain witnesses and Mr. Campbell was gonna question the
13 other witnesses. And so, I stuck primarily to those, the,
14 the discovery materials related to those witnesses.

15 Q All right. So, there's no reason for you to get into
16 the mental state because Sean was the quarterback of this
17 and you were doing your specific part?

18 A Sean was lead counsel and I was controlling or dealing
19 with certain aspects of the trial.

20 Q All right. And how many times do you think you had
21 conversations with Tony Tyre?

22 A I, I believe it was four leading up to the trial and
23 then four or more the day before and then during the trial.

24 Q To your knowledge, was any offer ever made?

25 A No, no offer was ever made.

Doug Brannon - Direct examination
by Ms. Valenzuela

1 Q Did you talk to Sean Campbell about pleading guilty and
2 then providing mitigation evidence to try to get a more
3 lenient sentence?

4 A We never had that conversation because this was an
5 accident.

6 Q Well, that's what I'm getting at though. You testified
7 before in other hearings that you're looking at the odds of
8 being convicted or the likelihood of being convicted, right?

9 A You're looking at that, correct, but there was never an
10 offer made and no, we never had a conversation about
11 approaching the solicitor and saying hey, we'll plead guilty
12 straight up. We didn't -- that conversation wasn't had.

13 Q Did you ever talk to them about a plea for something
14 less?

15 A I'm sure that Mr. Campbell asked for an offer but none
16 was forthcoming.

17 Q Who was in charge of the jury charges during this
18 trial, you or Sean Campbell?

19 A We talked about them together. I can't tell you that
20 I -- either of us was in charge but we did talk about them
21 collectively.

22 Q Did you discuss voluntary manslaughter or involuntary
23 manslaughter?

24 A We did, yes.

25 Q Did you do case law and research to see if that was

Doug Brannon - Direct examination
by Ms. Valenzuela

1 available?

2 A We had case law in our file, yes.

3 Q All right. And Tony did testify in this case, didn't
4 he?

5 A He did.

6 Q And he testified to the circumstances that arose to or,
7 or came about with the death of his child, right?

8 A Correct.

9 Q why did you not ask for an voluntary or involuntary
10 manslaughter charge?

11 A Brandt, I can't answer that question.

12 Q was that because y'all didn't look at it or you just
13 gave up on it?

14 A I don't have an answer to your question. I can't say
15 it's one or the other.

16 Q Do you think it would of been appropriate, under the
17 circumstances, because he was claiming that he may of caused
18 it to happen but it was an accident?

19 A I'm certain, given the length of time between now and
20 the trial, that if it had been appropriate, during the
21 trial, to request the charge, if we believed that we had
22 elicited testimony to support an additional charge, we would
23 of requested it.

24 Q Do you believe his testimony was insufficient for an
25 involuntary manslaughter/voluntary manslaughter charge?

Doug Brannon - Direct examination
by Ms. Valenzuela

1 A Can't answer that question today. I could of answered
2 it then. I'm sorry.

3 Q You're saying you just don't remember?

4 A That's correct.

5 Q But if you will review the transcript now, do you
6 believe you may of done something wrong and could of gotten
7 that in front of the jury?

8 MS. VALENZUELA: Your Honor, I'm gonna object because
9 this has nothing to do with the allegation that's before the
10 Court. The allegation that, when we started out, was very
11 fairly limited to the psychiatric issues and not a jury
12 charge based on the theory of this being an accident in the
13 case.

14 MR. RUCKER: I've asked -- I'm sorry. I've asked
15 questions about this and she has too. We're litigating it
16 right now. This does go back to the mental state though.
17 He said that he, he and Sean Campbell talked about this
18 involuntary/voluntary manslaughter potential charges and
19 that would play directly based on the mental issues with my
20 client.

21 THE COURT: well, once he testified that it was an
22 accident, I don't follow your reasoning why you're pursuing
23 this but --.

24 MR. RUCKER: I, I understand.

25 THE COURT: Go ahead. Go ahead.

Doug Brannon - Direct examination
by Ms. Valenzuela

1 MR. RUCKER: Okay. And I'm -- did you try, in your
2 experience as a defense attorney, if you think there's a
3 chance that you're just not gonna win, you look for a lesser
4 included or an alternative charge to the present to the
5 jury?

6 A Well, I mean that's not, that's not a good question. I
7 mean you, you have to base your charges or your, or your,
8 your thought process about your charges on the defense that
9 you're setting up. This, this was an -- this, according to
10 my client at that time, this was an accident. There was no
11 intent to cause this, this child physical injury at all.
12 And so, but, again, I, I can't recall, almost seven years
13 ago, what our thoughts were the day that we were asked by
14 Judge Cole to request specific charges.

15 Q All right. No further questions.

16 MS. VALENZUELA: Your Honor, just briefly, redirect.

17 REDIRECT EXAMINATION

18 BY MS. VALENZUELA:

19 Q You made a directed verdict motion based on the fact
20 that there was lack of intent and that issue was also raised
21 up on appeal?

22 A Correct.

23 Q Thank you.

24 THE COURT: Anything else?

25 MR. RUCKER: No further questions.

Sean Campbell - Direct examination
by Ms. Valenzuela

1 THE COURT: You may step down.

2 THE WITNESS: May I be excused, Your Honor?

3 MR. RUCKER: No objection.

4 THE COURT: Okay.

5 THE WITNESS: Thank you.

6 THE COURT: The witness is excused.

7 MS. VALENZUELA: Your Honor, the -- we would now call
8 Sean Campbell to the stand.

9 THE COURT: Come around and be sworn please.

10 SEAN CAMPBELL, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. VALENZUELA:

14 Q Sean, how long -- how many times did you meet with the
15 Applicant leading up to the trial in this case?

16 A That was six or seven years ago. I can tell you it was
17 probably well over ten times or more, and I met with the
18 family probably twice or three times.

19 Q Okay. And in a meeting -- let's start with just your
20 meetings with the Applicant.

21 In meeting with the Applicant, did you ever have any
22 concern as to his mental competency and let's just focus on
23 one at a time, his mental competency as, as to being able to
24 stand trial?

25 A Never.

Sean Campbell - Direct examination
by Ms. Valenzuela

1 Q Okay. And how about his mental competency as it would
2 of related to something that would of caused him to kill
3 this ten year old?

4 A In regards to killing the ten year old, never because,
5 from the very beginning, he stated that this was an accident
6 that happened after he swung her around by her ankles, just
7 like he had the other children and that she was happy.
8 Until to 2:15 today I had always thought that this was an
9 accident and, and that he did not do this on purpose.

10 Q From the time you represented him, you're saying his
11 story never changed in terms of it only being an accident,
12 that, that she hit her head hard enough to die?

13 A Never.

14 Q Okay. There's been a little bit of a discussion with
15 some of our witnesses about a Minnesota expert.

16 A That's correct. At one point we looked into an expert
17 in Minnesota who specialized in Shaken Baby Syndrome. After
18 we sent her all the medical records and everything and after
19 discussing the case with her, we deemed that she would not
20 be a useful witness to us.

21 Q She would not be useful because she -- her, her
22 testimony would not be able to support that this was an
23 accident?

24 A Her -- I can only tell you that she told us that she
25 would not be a useful witness to us.

Sean Campbell - Direct examination
by Ms. Valenzuela

1 Q But she had nothing to do in terms of competency?

2 A Nothing at all.

3 Q Now, we talked a little bit about your meetings with
4 the Applicant and the story that he told you, and then you
5 saying that he never had any concerns, either way, as to
6 mental competency. Talk to me about your meetings with the
7 family.

8 Did the family ever raise any concerns about his mental
9 competency or his depression?

10 A The mom brought up, Ms. Tyre, Hazel, brought up the
11 depression and, of course, it played a factor in when his
12 bond was revoked for that incident but, you know, other than
13 that, there was never any conversation about, you know,
14 acting strange or fits of violence or anything like that.

15 Q Did you talk to the Applicant, leading up to the trial,
16 about the strategy and, and your and -- actually let me back
17 up a step.

18 what was your strategy going into trial?

19 what were you hoping to convince the jury of?

20 A This was an accident. I mean plain and simple. Even
21 the mother of the child believed this was an accident up
22 until trial. Tony was steadfast that this was an accident,
23 that it was an instance of, you know, child, child play
24 where he was playing with the, playing with Mia, swung her
25 around by her ankles, and, essentially, I guess, playing

Sean Campbell - Direct examination
by Ms. Valenzuela

1 helicopter with her and that she was laughing during that.

2 Q And did you discuss your strategy with the Applicant
3 going into the trial?

4 Did -- was he aware that this is the---

5 A Absolutely. I mean we had the same strategy from the
6 very beginning.

7 Q Okay. Did he never raise any concerns or suggest
8 something different to do with this strategy?

9 A Never. There was never any indication whatsoever that
10 he intentionally did anything to this child until today.

11 Q There's also been some talk about whether there were
12 any offers in this case.

13 what was the history in terms of your interaction with
14 the solicitor's Office on their position in this case?

15 A I'm, I'm sure I asked either Barry or Trey if there was
16 any offers forthcoming but this was, I believe, Trey's last
17 trial before he ran for House of Representatives. There was
18 no offer coming.

19 Q Can you tell me a little bit about, just very briefly,
20 about the, cause I think we've kind of been a little bit
21 over all the place and this is a very large transcript for
22 the Court, very briefly, the allegations in this case, the
23 facts surrounding or the, the evidence that was presented by
24 the state as to -- related to the ten year old victim in
25 this case?

Sean Campbell - Direct examination
by Ms. Valenzuela

1 A It is -- it's somewhat difficult, and I'll be honest
2 with you, like I said, six years ago, so, I'm going by
3 memory here, that a few weeks prior to the incident with Mia
4 where she hit her head, there was incidents where she had
5 broken her arm at which Tony did not tell the truth about
6 that incident, about how that happened, until later it came
7 out where he did tell the truth, and then, three weeks
8 later, as he informed -- as he told the story to us, he was
9 playing with Mia, swinging her around by her ankles, and set
10 her down. Approximately, sometime later, he said she just
11 didn't seem right. I believe he called the mother and, you
12 know, there was like well, just, you know, be patient, check
13 on her, and then, you know, she just wasn't right and I
14 believe, at that point, he even called the fire department
15 or one of his friends at the EMT and was like something's
16 not right. He called the EMT himself at that point and then
17 had them come check on her and, from there, that's when
18 emergency response got involved.

19 Q Okay. And so, after EMT responds, and they're the ones
20 who called 9-1-1?

21 A That's correct.

22 Q Okay. And was, was there -- there was a statement in
23 this case by your client?

24 A Yes, Tony actually called me from the hospital while
25 Mia was still alive saying that, and I believe he was, he

Sean Campbell - Direct examination
by Ms. Valenzuela

1 was either telling me that DSS was wanting to talk to him or
2 the police, and, like I said, it's been a long time ago, I
3 can't remember which one it was, and I remember telling him
4 specifically don't give a statement to the police without
5 counsel, don't do it at all, and I think, either the day or
6 two days later, I was informed that he had actually talked
7 to the police.

8 Q And then, then just so that we don't get hung up on a,
9 on a side issue, you weren't technically representing the
10 Applicant on these charges at the time that he called you to
11 ask you for this advice?

12 A No, I was representing, representing him on a DUI. He
13 had not officially hired me. He hadn't even been arrested
14 yet.

15 MS. VALENZUELA: Okay. Your Honor, may I just have a
16 brief moment?

17 THE COURT: (Nods affirmatively.)

18 (Pause.)

19 Q Now, some of the facts that you were dealing with,
20 aside from the broken arm that he lied about and then not
21 being forthcoming about how he had swung her by her ankles
22 until he was confronted after, after he realized the extent
23 of her injuries, were there other -- was there other
24 testimony presented by the State about the Applicant trying
25 to, to intentionally piss the victim off?

Sean Campbell - Direct examination
by Ms. Valenzuela

1 And, and, Your Honor, I'm sorry that I used that
2 language. It was language that came out of the transcript
3 and that --.

4 A There was but -- and Tony and I had talked about that.
5 It was -- he would pick with her and play with her. It was
6 not something where he -- and I'm going by his -- what he
7 had told me. It was not something where he was like, you
8 know, trying to make her like mad. He was just playing with
9 her, picking at her like you do little children as just
10 messing with them.

11 Q And he was able to explain that when he testified
12 before the jury as to his relationship with, with the victim
13 and with the other people?

14 A Yes, I thought Tony did an excellent job during his,
15 his examination. I thought came across well real.

16 Q When you were having the discussion about his decision
17 to testify, did you have any concern about his decision to
18 testify being illogical or extremely harmful to his case?

19 A Never. Matter of fact, I mean I, I thought his
20 examination went really well. I think it was easy to follow
21 and it made sense, it was an accident, the way Tony told it
22 and it made sense from the very beginning.

23 Q Okay. Please answer any questions opposing counsel has
24 for you.

25 MR. RUCKER: May it please the Court.

Sean Campbell - Cross-examination
by Mr. Rucker

1 CROSS-EXAMINATION

2 BY MR. RUCKER:

3 Q Sean, did you ever have that psychological evaluation
4 done or tried to get, get it done based on the judge's
5 order?

6 A Brandt, I'm gonna be honest with you. I can't remember
7 the result of that. I know we tried to get him evaluated
8 because we were trying to get him out of jail, to be honest
9 with you, but, to be honest with you, that was six or seven
10 years ago and I just can't remember.

11 Q There's no reason to believe, strategically, you
12 avoided it because of the outcome of the evaluation?

13 A No. No, I mean absolutely not. I mean I was, I was
14 not concerned about his mental health in regards to it
15 hurting or helping the case. The only -- the reason I was
16 concerned about his mental health was to get him out of jail
17 on bond.

18 Q Okay. Did you, you -- Ms. Hazel Tyre did tell you
19 about his depression issues?

20 A Yes, the -- when we were talking about the bond issue,
21 absolutely she talked about it.

22 Q Did you speak with my client about that issue?

23 A About his depression?

24 Q About depression.

25 A I'm sure it came up, Brandt, but I can't testify one

Sean Campbell - Cross-examination
by Mr. Rucker

1 way or the other.

2 Q Did you look into finding a local psychiatrist that you
3 could talk about the circumstances and see if depression
4 would play into this?

5 A Depression was never a role in this because this was an
6 accident from the very beginning. There's no reason for me
7 to assume that him being depressed would have a role in
8 this.

9 Q Well, accident's a complicated word, isn't it?
10 It can be a complicated word?

11 Fair enough?

12 A I mean I guess. I don't know what you mean by that.

13 Q I'm, I'm trying to skip ahead but if you -- have you
14 talked to anybody about depression issues and how it affects
15 judgment?

16 A Not personally.

17 Q Do you under -- do you know -- have you talked to
18 anybody, any, any psychiatrist or anybody in this case, that
19 tells -- that told you depression can affect your judgment
20 in how far you should go with something?

21 A Not in regards to this case.

22 Q Did you talk to Tony about whether it -- he was
23 swinging her around and just misjudged how far she was from
24 the ground?

25 A No, it was just all our testimony was that he, you

Sean Campbell - Cross-examination
by Mr. Rucker

1 know, swung her by her ankles like a helicopter like he had
2 the other children and that she was laughing and having a
3 good time.

4 Q Did his, his testimony about swinging around match what
5 the autopsy said?

6 A I, I don't think it disagreed.

7 Q All right. What about the, the people that testified
8 on, the experts that testified, did they say it could have
9 occurred because of the swinging around of the child?

10 A Yes, I believe so.

11 Q So, did you explore any kind of mitigation based on the
12 depression that my client suffered and you believed he
13 suffered?

14 A When you say mitigation, do you mean sentencing?

15 Q In sentencing or not in the, not in the trial part.
16 I'm gonna get back to that but in sentencing.

17 A No, nothing at all.

18 Q I mean the actual mitigation's pretty short.
19 You'd agree with that, right?

20 A Yes.

21 Q Did you present -- try to present his mom to the judge
22 to kind of tell what had gone on in his life?

23 A No, we focused on the fact that this was an accident
24 from the very beginning. The judge was present during the
25 entire trial. He was there for the entire testimony. I

Sean Campbell - Cross-examination
by Mr. Rucker

1 mean the sentence was gonna be what it was gonna be at that
2 point.

3 Q Now that you know -- now that you've heard testimony
4 today and looking back on it, do you think you could of done
5 a different defense to come up with a better result based on
6 his mental state?

7 A well, if he would of told me from the beginning that he
8 had actually killed Mia, then that's a possibility, but --
9 and, like I said, until today, this was an accident.

10 Q well, did he describe it as an intentional killing
11 today or was it a, a form of accident?

12 A I believe the way he -- I certainly interpreted the way
13 he testified that it was an intentional killing.

14 Q Did you discuss with Doug Brannon potential jury
15 charges?

16 A I'm sure -- yes.

17 Q Did y'all go over involuntary/voluntary manslaughter as
18 basically a retreat route in this case in case the jury
19 didn't believe him?

20 A We talked about it but because our defense was
21 accident, it was -- we didn't feel like it was appropriate
22 and nor would it be given.

23 Q Did you ever approach the solicitor's office with a
24 plea offer in an attempt to see if they would even think
25 about a plea in this case?

Sean Campbell - Cross-examination
by Mr. Rucker

1 A No plea offer was available.

2 Q Okay. Did you talk to my client about potentially
3 throwing himself on the mercy of the Court and trying to get
4 a lesser sentence based on that?

5 A No, I did not.

6 MR. RUCKER: All right. No further questions.

7 MS. VALENZUELA: Nothing further.

8 THE COURT: Thank you, sir. You may step down.

9 MS. VALENZUELA: Your Honor, do you want short
10 argument?

11 I don't know -- do you want to hear from the plaintiff
12 or us first?

13 THE COURT: Be glad to hear from you if you'd like to.
14 Otherwise, whatever your choice is.

15 MS. VALENZUELA: Your Honor -- Your Honor, just very
16 briefly.

17 There's been no testimony here that laid down the
18 relationship between depression and how it links to judgment
19 that would of changed the result in this case. Although
20 their cross-examination testimony that tried to suggest that
21 there was some, something there, there was no testimony,
22 expert testimony, on that.

23 Additionally, that Applicant -- the testimony that was
24 presented to the Court was that it was very -- that there
25 was incidents where he was withdrawn but not incidents where

1 he would have taken a ten year old disabled child with a
2 broken arm and hit her, her head so hard that she would of
3 died in the emergency room or -- and he also admitted that
4 depression did not cause him to lie or make up different
5 stories throughout the point.

6 we don't think he's carried his burden and we would ask
7 you to deny this PCR application.

8 MR. RUCKER: We're simply asking you to review the
9 entire file based on our arguments today on -- that's what
10 we --.

11 THE COURT: I'll do it under advisement. I'd like
12 proposed orders in 30 days.

13 MR. RUCKER: Thank you, Your Honor.

14 MS. VALENZUELA: Thank you.

15

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17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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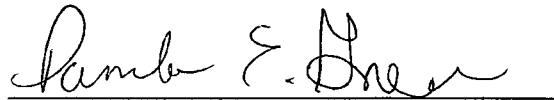
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 20th day of September, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 24th, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
David Anthony Tyre,	)	C.A. No. 2015-CP-42-0321
S.C.D.C. No. 343149,)	
Applicant,)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 25, 2015. Respondent made its return on or about August 14, 2015, and amended return on or about July 22, 2016. An evidentiary hearing was held on September 20, 2016, at the Spartanburg County Courthouse. Applicant was present and represented by J. Brandt Rucker, Esq., and Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; Applicant's mother, Hazel Tyre; Applicant's former co-worker, Terrie Laskowski; and Applicant's trial counsel, N. Douglas Brannon, Esquire, and Shawn M. Campbell, Esquire, testified at the hearing. The Court had before it Applicant's trial transcript, the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, Applicant's appellate records, and the Amended Return

PROCEDURAL HISTORY

David Anthony Tyre ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk

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of Court. He was indicted at the August 2009 term of the Spartanburg County Grand Jury for homicide by child abuse (2009-GS-42-4508) and infliction of great bodily injury upon a child (2009-GS-42-4509). Doug Brannon and Shawn M. Campbell represented him. Applicant was tried October 11-13, 2010, before the Honorable J. Derham Cole and a jury. The jury found him guilty of both charges as indicted. Judge Cole sentenced him to concurrent terms of life imprisonment for homicide by child abuse and twenty years for infliction of great bodily injury upon a child.

A timely Notice of Appeal was filed on Applicant's behalf. Breen Richard Stevens and Carmen Vaughn Ganjehsani perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. David Tyre, 2013-UP-286 (Filed June 26, 2013). Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court. The Supreme Court denied Applicant's petition in an order dated July 11, 2014. The Remittitur was returned on July 25, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of the Testimony

Applicant testified that he retained his counsel Shawn Graham almost immediately because Mr. Graham was already representing him in an unrelated driving under the influence

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charge. Applicant stated he hired Doug Brannon closer to the trial date to assist Shawn Graham. According to Applicant, the strategy going in to trial was to challenge how the victim's injuries were inflicted. Applicant stated his counsel were not concerned about his competency to stand trial. Applicant claims that after his bond hearing, when the judge ordered him to be evaluated, he spoke with his counsel about treatment. Applicant admits he went to Spartanburg Regional and began the process of seeing a psychiatric liaison, but says he never met with a psychologist.

Applicant claims he was diagnosed with depression in his early twenties and was seeing "Dr. Wells" for sullenness, moodiness, depression, and inability to deal with anger. Applicant claims he did not receive treatment for a long time as a child because his family did not know about his issues. According to Applicant, he took Zoloft for a while but stopped taking it because it made him dizzy and he had insurance problems. Applicant further claims he was suicidal from the period of 2007 to 2008 and on at least two occasions took initial steps to try and commit suicide.

Applicant argues his counsel's failure to have him evaluated affected the outcome because he "could have gotten some mercy," and he would have pleaded guilty.

On cross-examination, Applicant admitted he intentionally caused the injuries that led to the victim's death. This was opposite to what he testified to under oath before the jury:

- Q. Tony, did you intentionally cause any harm to [Victim]?
 A. No, sir, I did not.
 Q. Did you intentionally shake [Victim] to harm her?
 A. No, sir.
 Q. Did you shake her with malice?
 A. No sir, I was never angry with [Victim] for anything.
 Q. Did you shake her because you were frustrated with her?
 A. No, sir. There's nothing to be frustrated about.
 Q. Did you intentionally cause her head injury?

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A. No, sir. I didn't intentionally mean to do anything to her.

(Trial Tr. p. 393, ll. 8-19.)

When asked how his depression caused him to lie about how he had broken the victim's arm about a week before he killed her, he stated he was scared. When asked why he lied to the doctors providing emergency care to the victim for injuries that eventually led to her death, Applicant stated his depression affected him. On this point, he was impeached with his testimony at trial where he testified under oath that he lied to the doctors because he "was staying with the story that [he] told" because he "was afraid and ashamed of what had happened Oftentimes when you lie you get locked into it." (Trial Tr. p. 404, ll. 1-5.) When questioned about his work history at the time he committed this crime, Applicant testified that he was employed and doing well enough to win awards for the work he was doing.

Applicant's mother also testified at the hearing. According to Ms. Tyre, her son was on Wellbutrin in high school, but he eventually stopped taking that. She claimed she had observed some changes in her son's behavior, such as him being withdrawn and that he would sometimes be irritable for no reason. His mother also admitted that Applicant did not really discuss his depression with her and there was no discussion about seeing a local psychiatrist.

Applicant's former co-worker testified that she had been friends with Applicant for about three years and she believed he suffered from depression because he could sometimes be withdrawn. She never spoke to his attorney about her observations. On cross-examination, Ms. Leskowski admitted that what she observed in Applicant's behavior did not cause her enough concern to cause her to talk to his attorney about it.

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Applicant's trial counsel, Doug Brannon, testified that he met with Applicant a few times prior to trial and then interacted with him often throughout the trial. Mr. Brannon did not know a circuit judge had ordered an evaluation for Applicant. Mr. Brannon explained that he had no concerns with Applicant understanding the charges he was facing, understanding the trial process, and understanding jury selection. Mr. Brannon observed Applicant to take part in his defense by asking questions and answering questions appropriately. According to Mr. Brannon, Applicant always claimed the injuries to the victim were cause accidentally and Applicant's testimony at the PCR hearing was the first time Mr. Brannon was hearing Applicant accept responsibility for causing the victim's death. A plea was not discussed because Applicant had always claimed this was an accident and not intentional.

Applicant's other trial counsel, Shawn Campbell, also testified. Mr. Campbell explained he had met with Applicant and family at least ten times prior to trial. In his interactions with Applicant, Mr. Campbell had never had any concerns about Applicant's mental status to stand trial or his mental status at the time Applicant caused the victim's injuries. Applicant never changed his story to Mr. Campbell that this was an accident. Mr. Campbell stated that he was aware a judge had ordered an evaluation, but he understood that evaluation to be linked to Applicant being released early from bond. He could not remember the result, but he did know he tried to get Applicant evaluated to get him out of jail on bond. Mr. Campbell said he was not concerned about the evaluation hurting or helping the case and was only trying to get Applicant out of jail. He stated he was not concerned because depression did not have a hole what Applicant did; Applicant had always and only claimed that this was an accident. Mr. Campbell

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said that had Applicant admitted he had killed the victim, they may have tried a different defense, but Applicant never said that until the PCR hearing.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel due to his trial counsel's alleged failure "to obtain a psychological exam, given a history of mental illness and treatment and no history of violent acts."

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992))). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategies, such

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conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address the allegation of ineffective assistance of counsel:

Alleged failure to obtain a mental evaluation

“Due process prohibits the conviction of a person who is mentally incompetent.” McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992)). A criminal defendant is competent to stand trial if “the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him.” Jeter, 308 S.C. at 230, 417 S.E.2d at 596. “The purpose of requiring a defendant to be competent is ‘to ensure that he has the capacity to understand the proceedings and to assist counsel.’” State v. Kelly, 331 S.C. 132, 148–49, 502 S.E.2d 99, 108 (1998) (citing Godinez v. Moran, 509 U.S. 389, 402, 113 S.Ct. 2680, 2688, 125 L.Ed.2d 321, 329 (1993)); see also, Bell v. Evatt, 72 F.3d 421 (4th Cir.1995), *cert. denied*, 518 U.S. 1009, 116 S.Ct. 2533, 135 L.Ed.2d 1056 (1996) (finding the trial judge only had to ensure the defendant had the capacity to understand, the capacity to assist, and the capacity to communicate with his counsel, not that the defendant was acting in accordance with his capacity).

An applicant challenging his competency must prove this allegation by a preponderance of the evidence. Jeter, 308 S.C. at 230, 417 S.E.2d at 596. An applicant claiming the trial counsel was ineffective in failing to pursue this defense “must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been

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developed.” Jeter, 308 S.C at 233–34, 417 S.E.2d at 594. The applicant must show that he was “unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong.” Id.

Here, Applicant presented no testimony or evidence of insanity or of his inability to consult with his lawyers with a reasonable degree of rational understanding. The only testimony presented in support of his allegation was that he would occasionally be withdrawn and had struggled with depression. Applicant presented no medical records and no testimony of an expert qualified to determine if Applicant was competent to stand trial or if he was unable to understand his actions at the time he killed the victim. Applicant’s counsel both stated they did not have any trouble communicating with him, and a review of Applicant’s testimony and presentations to the Court in his trial transcript show that Applicant had the ability to “consult with his lawyer with a reasonable degree of rational understanding.” McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843. The trial transcript shows that Applicant testified in his defense to the Court at pre-trial, prior to testifying he engaged in a set of questions with the Court to cover his Fifth Amendment rights, he testified during the trial to the Court and the jury, and he addressed the Court during his sentencing. (Trial Tr. pp. 54-63, pp. 334-336, pp. 336-422, p. 506.) No concerns were raised or noted by the Court in the transcript, and a review of the transcript indicates an engaged, well-spoken Applicant. Applicant’s story to the jury remained consistent throughout; he never claimed any mental concerns or inability to control his anger, instead he maintained a consistent storyline that he had been playing with the child and she had slightly bumped her head, and she must have hit her head harder than he first understood. (Trial Tr. p. 371, l. 20 – p. 374, l. 15.)

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Applicant was able to answer questions of the state, the court, and his own attorneys throughout the trial clearly and appropriately. See, id. (“During his trial testimony, [McLaughlin] answered his counsel’s questions, and those of the prosecution, clearly and appropriately.”).

Applicant has failed to meet his burden of proof on this issue. His trial counsel were not ineffective, and Applicant has not shown any prejudice. This allegation lacks merit and is dismissed.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

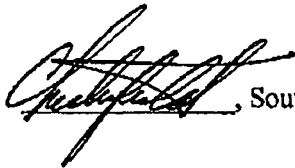
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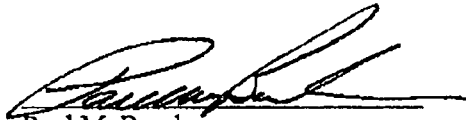
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IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 2nd day of November, 2016.

 South Carolina.


Paul M. Burch
Presiding Judge
Seventh Judicial Circuit

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WITNESSES

J. J. [Signature]

REPORT FILED

Spartanburg County Sheriff's Department

3. CARD PULLED

4. INDEXED

5. CHECKED FINGERPRINTS

6. CHECKED SOCIAL SECURITY

7. FINGERPRINTS TAKEN IN THE COURT CLERK'S OFFICE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

M114675

ACTION OF GRAND JURY

[Signature]

Foreperson of Grand Jury

Date: 8-30-09

VERDICT

Guilty

Michelle H. Smith

Foreperson of Petit Jury

Date: 10/13/10

DOCKET NO. -

09-GS-42-4508

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

THE STATE
vs.

David Tyre

Indictment for
HOMICIDE BY CHILD ABUSE
OR NEGLECT

SC Code: 16-3-85 (A) (1)
CDR Code: 2356
Class F

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SPARTANBURG COUNTY

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MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

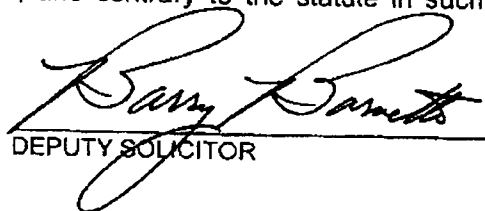
AUG 26 2009

At a Court of General Sessions, convened on _____ the
 Grand Jurors of Spartanburg County present upon their oath:

HOMICIDE BY CHILD ABUSE OR NEGLECT

That David Tyre did in Spartanburg County on or about July 5, 2009, cause the death of [REDACTED] VICTIM [REDACTED], a child under the age of eleven, while committing child abuse or neglect, and the death of [REDACTED] VICTI [REDACTED] occurred under circumstances manifesting an extreme indifference to human life, in violation of §16-3-85 (A) (1) of the *SOUTH CAROLINA CODE OF LAWS*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR

SENTENCE MADE WITNESSES
 1. REPORT ENDED **Computer**
 Spartanburg County Sheriff's Office
 4. INDEXED
 5. CHECKED WARRANTS
 6. CHECKED SIGNATURE
 7. ASSESSMENT AND **Computer**
 LINE CARD MADE
 TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

M114674

ACTION OF GRAND JURY

[Signature]
 Foreperson of Grand Jury
 Date: 8-20-09

VERDICT

Guilty

[Signature]
 Foreperson of Petit Jury
 Date: 10/13/0

DOCKET NO.

09-GS-42-4509

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

THE STATE
 vs.

David Tyre

Indictment for

ABUSE/TO INFLICT GREAT BODILY
 INJURY UPON A CHILD

SC Code: 63-5-95

CDR Code: 2766

Class FEL-C

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 SPARTANBURG COUNTY

2009 AUG 28 AM 10:28

MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUNE 20 2009 , the
 Grand Jurors of Spartanburg County present upon their oath:

ABUSE/TO INFLICT GREAT BODILY INJURY UPON A CHILD

That David Tyre did in Spartanburg County on or about June 22, 2009, inflicted and/or through neglect caused great bodily injury to VICTIM, a child under the age of eleven (11), while committing child abuse or neglect, in violation of Section 16-3-95 (A) of the *SOUTH CAROLINA CODE OF LAWS, (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR