

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 26 2018

S.C. SUPREME COURT

The State, Respondent,

v.

Stephanie Irene Greene, Appellant

Appellate Case N^o 2014-000764

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

Opinion N^o 27802
Heard February 15, 2018 - Filed May 23, 2018

Reply to Return to Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Stephanie Irene Greene respectfully submits this Reply to the Return to the Petition for Rehearing filed by the State:

1. The State incorrectly argues that Stephanie Greene ignores the difference “between use of morphine for acute treatment versus extended long-term use of slow release morphine at higher doses.” Return of State at 6, 7. Ms. Greene does not ignore these differences. The State ignores these differences as they produced no expert testimony as to the differences if any. To assume there is a difference is to speculate. Simply dismissing this lack of testimony by saying it is unethical to conduct such research ignores the fact that as the burden is on the state to prove its case, the State has to offer some type of expert testimony establish this principle. Lack of

proof is simply not proof.

2. The State argues that evidence in the record that Ms. Greene had “consumed 78 30 mg MS Contin pills in the last twenty-four days of Alexis life.” Return of State at 7. The State then conducted a very simply mathematical calculation to show this was 2,340 mg of Morphine. This was a calculation that any reasonable juror could conduct. But such a calculation is not proof the reading from the child came from breast milk. The average juror does not have common knowledge that taking 2,340 mg of morphine over a twenty-four day period can cause a mother to give her child through breast milk a reading of .52 mg per liter or any other reading. “The law is realistic when it fashions rules of evidence for use in the search for truth. The cause of death may be established in a prosecution for unlawful homicide without the use of expert medical testimony where the facts in evidence are such that every person of average intelligence would know from his own experience or knowledge that the wound was mortal in character.” *State v. Minton*, 234 N.C. 716, 721, 68 S.E.2d 844, 848 (1952). The facts in evidence here are not such that the average jury could even guess as to whether a mother can give a lethal dose of morphine to a child through breast milk.

3. The State ignores that the testimony of the synergistic effect of the drugs is a theory with no proof. Mr. Wren did testify as to his theory of synergistic effect, but he had no proof to support this theory and all a jury could do was speculate. Such speculation is not sufficient proof to sustain the conviction. In describing the theory in the Return of the State uses words should as “may create,” “could have,” and “can have.” Return of State at 2. The State ignored that at no time did any expert ever say “to a reasonable degree of medical certainty those drugs combined together came through breast milk and caused the death of the child.” They never even said it is

more likely than not the drug levels came through breast milk.

4. The issue in this case is that did the morphine that killed the child come through breast milk. The State in the Return deflects from that issue argues "The bottom line morphine levels were sufficiently high for the jury to find Alexis's death was the result of Greene's illicit morphine consumption." Return of State at 3. Under this broad theory the jury could have concluded the child received the morphine through Ms. Greene negligent or grossly negligent use of her morphine. To argue there are "no contrary theories" is to lessen or ignore the obligation of the state to prove with competent evidence the one theory they elected to use. Ms. Greene has no obligation to prove a contrary theory. This is especially true when the State has not proven its one theory.

6. The State in the Return argues that a child can receive .52 mg per liter through breast milk. Dr. Steven Karsch testified the highest level he had seen was 84 nanograms. Rec. on App. at 490, ll 23-24. This is the equivalent of ,084 mg per liter, considerably less than in this case.

5. In the Return of the State they simply did not respond to the fact that the trial judge limited the State's theory to a single schedule II drug.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Original Petition this Court should rehear this matter and reverse the homicide by child abuse conviction of Stephanie Greene.

June 20, 2018



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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on June 20, 2018, she did deposit in the United States Mail with proper postage affixed thereto, one copy of the Reply to Return to the Petition for Rehearing in the above case addressed to David Spencer, S.C. Attorney General Office, P.O. Box 11549, Columbia, SC 29211.

Sworn to and Subscribed

before me this 20th day

of June, 2018.

[Signature]
Notary Public for South Carolina

My Commission Expires: 12/1/2019

Sandy Traynham