

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2012-212630

THE STATE,RESPONDENT

v.

JAMIE EDWARD MORRIS,APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion for a directed verdict where the State presented substantial evidence from which the jury could fairly and logically find Appellant guilty of homicide by child abuse by aiding and abetting Donna Lynn Phillips to commit child abuse or neglect resulting in the death of a child under the age of eleven.

STATEMENT OF THE CASE

Appellant (Morris) was indicted at the December 16, 2008 term of the grand jury for Pickens County for homicide by child abuse, aiding and abetting (2008-GS-39-2053).¹ He was represented by John W. DeJong of the Thirteenth Circuit Public Defender's Office. The State was represented by W. Douglas Richardson, Jr., and Jenny L. Barwick, of the Thirteenth Circuit Solicitor's Office. On July 23-27, 2012, Morris and two co-defendants, Donna Lynn Phillips (Phillips) and Latasha Diane Honeycutt (Honeycutt), proceeded to a joint trial by jury pursuant to which Phillips was found guilty of homicide by child abuse, Honeycutt was acquitted, and Morris was found guilty of homicide by child abuse - aiding and abetting. He was sentenced by the Honorable D. Garrison Hill to twelve (12) years' imprisonment suspended upon the service of eight (8) years' imprisonment and two (2) years' probation. Morris timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

¹ Two other individuals, Donna Lynn Phillips and Latasha Diane Honeycutt, were indicted for homicide by child abuse in relation to the same death.

STATEMENT OF FACTS

At the start of trial the solicitor made an opening statement outlining the evidence the jury would hear from the State and the State's basic theory of the case. The solicitor explained that on Friday, March 14, 2008, the twenty-one month old victim was given by Honeycutt, his mother to Morris, his father, for the weekend. The victim remained in the care and custody of Morris and Morris's mother Phillips until he was returned to Honeycutt on the evening of Sunday, March 16, 2008. On Monday, March 17, 2008, at approximately 11:15 a.m. a 911 call was made from Honeycutt's residence indicating the victim was not breathing. When emergency medical services (EMS) personnel arrived at the scene the victim did not have a heartbeat. He was transported to the hospital but ultimately was pronounced brain dead and removed from life support as a result of being given a lethal dose of opiates. (R.p.2, line 16-p.7, line 20). The State proceeded to present testimony and other evidence in support of this theory of the case.

The State

On Monday, March 17, 2008, Patience Johnson, a South Carolina Department of Social Services (DSS) intake investigator, received a report in regard to trauma suffered by the victim and began an investigation. Johnson went to Greenville Memorial Hospital and talked to law enforcement officers and the victim's family members. Two days before, on Saturday, March 15, 2008, Morris left a voicemail message at the DSS office indicating he needed a Medicaid card because the victim was sick. (R.p.19, line 14-p.26, line 7).

Dr. John Richard Yelton, the victim's pediatrician, saw the victim for one well visit and four minor sick visits in 2007 and 2008. He said the victim was a normal, healthy, twelve to twenty-one month old who was developing well with no indications of distress. (R.p.35, line 17-p.38, line 8). Dr. Yelton testified hydrocodone is dangerous to a small child. He said the medication Tussionex includes hydrocodone, and that because of the dangers he does not prescribe Tussionex for children. (R.p.46, line 9-p.47, line 22).

Rhonda Whittaker, a communications specialist in the Pickens County 911 dispatch center, described the emergency call that was received from Honeycutt's residence at approximately 11:15 a.m. on March 17, 2008. She said the EMS workers and law enforcement officers who were dispatched to the scene arrived at 11:25 a.m. and 11:35 a.m. respectively. (R.p.48, line 8-p.51, line 14). Upon arrival, EMS paramedic Julie Sailors discovered the victim on the floor just inside a bedroom, all alone, cold, not breathing, and with no pulse. Her partner scooped the victim from the floor and carried him to the ambulance to be transported to Baptist Easley Hospital, while Sailors briefly questioned Honeycutt in an effort to get information about the victim's condition. (R.p.58, line 2-p.65, line 14).

Kathy Purdessy, an emergency room (ER) nurse at Baptist Easley Hospital who served as the victim's primary nurse, described his condition upon his arrival. The victim was in cardiac arrest with no pulse, but the ER team was able to establish a pulse and a heart rate before he was transported by helicopter to Greenville Memorial Hospital. Purdessy took a urine sample from the victim and sent it to the lab and the urine came back positive for opiates. (R.p.90, line 16-p.100, line 3). She said the victim was not given any opiates at Baptist Easley Hospital during his ER treatment. Purdessy noted

hydrocodone is an opiate. (R.p.110, lines 12-17; p.114, lines 9-12). Dr. Stacy Garmon, a local pediatrician, was called to assist in the ER. He noticed a red rash that looked like bed sores on the victim's bottom. Dr. Garmon could not say what caused the rash but it is typically caused by pressure on the skin from a lack of movement over a period of time. (R.p.115, line 2-p.120, line 1).

Rita Burgess, a detective with the Pickens County Sheriff's Office (PCSO) began investigating the circumstances surrounding the victim's injuries shortly after he arrived at the ER. She interviewed Honeycutt at Baptist Easley Hospital and later interviewed Phillips and Morris at Greenville Memorial Hospital, taking oral statements from each of the three co-defendants. She subsequently interviewed each co-defendant in her office, taking oral and written statements. (R.p.132, line 24-p.163, line 8). In his initial oral statement Morris said the victim had been fine all weekend until 3:00 p.m. Sunday when he started crying and acting ill. Morris said that at around 4:00 p.m. the victim started breathing funny and began wheezing and coughing, and that his jaw was shaking. Morris claimed the only medication he gave the victim was one dropper-full of Equate brand infant Tylenol. (R.p.157, line 1-p.158, line 10). On April 4, 2008, Burgess interviewed Morris at the PCSO. In his second oral statement Morris described the victim's troubled breathing as sounding like pneumonia, but maintained the victim was fine Friday and Saturday, and only started acting ill and crying between 3:00 p.m. and 3:30 p.m. Sunday. Morris said the victim was crying and acting sleepy, was "fighting sleep" and was rubbing his face into Morris's shirt. Morris again mentioned giving the victim a dose of Equate Tylenol. (R.p.158, line 11-p.161, line 1).

Ultimately Morris gave a written statement. In that statement Morris provided additional details about how he, Phillips, and the victim spent the weekend, but otherwise repeated the story about the victim first acting sick at 3:30 p.m. Sunday and Morris giving him Equate brand infant Tylenol. He also said that as he and Phillips drove the victim to Honeycutt's house Sunday afternoon, the victim was breathing badly, like he was congested. Morris said he got upset about the breathing and when they arrived at Honeycutt's house he gave the victim's Medicaid card to Honeycutt and told her to get him to the doctor. He said he told Honeycutt the victim should see a doctor very soon because his breathing sounded bad. (R.p.161, line 2-p.163, line 8). In addition to taking statements, Burgess received a bottle of Equate brand Tylenol which had been delivered by Phillips to Sergeant Kristy Leopard at the PCSO detention center. Burgess turned the bottle over to the PCSO evidence division. (R.p.163, line 10-p.164, line 18).

After the incident, Sergeant J.T. Albrecht of the PCSO went to Phillips' residence to pick up a bottle of Tussionex from Phillips. He placed the bottle in the PCSO evidence room. (R.p.198, line 24-p.200, line 14).

Lieutenant Tony Robinson of the PCSO went to Honeycutt's house the afternoon the victim was taken to the ER. He took photos of the scene, retrieved a sippy cup from the refrigerator, and retrieved a bottle of Tylenol infant drops and an empty amoxicillin bottle from the house. Robinson sent these items to the state law enforcement division (SLED) for testing. (R.p.203, line 21-p.210, line 4). Robinson later retrieved the Tussionex bottle from the PCSO evidence room and checked it for fingerprints; however, he found no prints. Next he delivered the Tussionex bottle to Jeff Hollifield at Micro Analytical for testing, who returned the bottle to Robinson after the analysis was

complete. Robinson testified the Tussionex was from a CVS pharmacy and was prescribed to Donna Phillips. Robinson described the label on the Tussionex bottle as including language stating it is: “federal law that prescribed medications are only for the person they’re prescribed to.” (R.p.210, line 14-p.213, line 7).

Jeffrey Morris Hollifield, a chemist and the owner of a private chemical laboratory in Mauldin called Micro Analytical, was qualified as an expert in chemistry. He conducted routine general screening tests on the liquid in the Tussionex bottle. The tests detected two drug substances in the bottle, hydrocodone and chlorpheniramine, which were consistent with two active ingredients one would expect to find in Tussionex. (R.p.232, line 10-p.241, line 22). The original prescription was for 60 milliliters or 12 teaspoons. Hollifield measured 18.401 milliliters or 3.68 teaspoons still in the bottle, which means 41.6 milliliters or 8.32 teaspoons was missing.

Sergeant Kristy Leopard of the PCSO was supervising the Pickens County Detention Center on March 23, 2008, when Phillips dropped off a bottle of medication for Detective Burgess. She sealed the bottle in an envelope and delivered it to Burgess’ office. (R.p.247, line 18-p.250, line 15). SLED forensic toxicologist Jennifer Michelle Gardner Brown tested the Tylenol bottle and the sippy cup from Honeycutt’s residence and the Equate brand Tylenol bottle that had been delivered to Leopard by Phillips. The two medicine bottles tested positive for acetaminophen³ and no drugs were found in the sippy cup. (R.p.252, line 21-p.255, line 14).

³ Acetaminophen is the active ingredient in Tylenol and generic versions of Tylenol.

William Gassman, a medical laboratory scientist working at Baptist Easley Hospital on March 17, 2008, received the urine sample collected from the victim in the ER. It tested positive for opiates and negative for everything else, and the results were transmitted to the ER doctors at 12:14 p.m. Some of the urine was reserved in the refrigerator and was later given to Pickens County Coroner James Mahanes. (R.p.257, line 3-p.261, line 5). Coroner Mahanes collected the urine sample from Baptist Easley Hospital and the victim's blood sample from Greenville Memorial Hospital and delivered them to the Medical Examiner's (ME's) Office in Greenville. (R.p.265, line 7-p.270, line 12). On cross-examination Mahanes testified that in his opinion the victim died from an overdose of hydrocodone that came from [Phillips'] home, in the form of Tussionex. (R.p.274, line 19-p.275, line 19).

Michelle Henry, Honeycutt's neighbor, talked to Honeycutt about the victim's behavior the day Morris and Phillips brought the victim home. Honeycutt told Henry the victim was sleeping a lot, that she had trouble waking him up, and that he seemed too drowsy to stand. (R.p.278, line 5-p.280, line 1).

Charlie Michael Lark, an investigative consultant working with the PCSO, discussed the victim's death with Morris on May 29, 2008. Morris said the only medication he gave the victim was the Equate brand Tylenol on Sunday afternoon, and that he gave the victim two droppers full. He told Lark that Phillips had a prescription for cough medicine, and that she kept hydrocodone in her purse, but he did not see Phillips give the victim any medication over the weekend. Morris said he and Phillips were together the entire weekend, from Friday afternoon to Sunday afternoon. He said Phillips kept her Tussionex medication in a "pumpkin" in her closet and that he had a hard time

reaching where it was kept. Morris told Lark that Phillips got the pumpkin down on two occasions when the victim was in the room but he didn't see the victim get any of the medications that were in the pumpkin, even though the victim was playing with the bottles. Morris said they all went to his sister's house Sunday afternoon, but that he and Phillips were with the victim the entire time. (R.p.290, line 20-p.294, line 12). On cross-examination Lark acknowledged Morris never said he and Phillips were actually in eyesight of each other the entire weekend. (R.p.296, line 8-p.297, line 8).

Dr. Michael Eugene Ward, Chief ME for Greenville County explained he was familiar with standard procedures at Greenville Memorial Hospital, and that the victim's blood was drawn on March 17, 2008, after he was transported from Baptist Easley Hospital. Dr. Ward said Deputy Chief ME, Dr. Christiansen, received both the blood sample and the urine sample from Coroner Mahanes and then packaged and mailed them to AIT Laboratories for testing. (R.p.314, line 20-p.319, line 8).

Robert R. Foery, a consultant in forensic toxicology who worked at AIT Laboratories in 2008, was qualified as expert in forensic toxicology. He was the final certifying scientist at AIT, which meant he certified any lab results before they were communicated to the medical examiner, hospital, attorneys, or whoever requested the testing. Foery testified the analysis of the victim's urine unequivocally revealed the opiate hydrocodone, its primary metabolite oxycodone, and chlorpheniramine. The blood sample confirmed the presence of hydrocodone. He testified hydrocodone and chlorpheniramine are found in the pharmaceutical preparation called Tussionex. Foery explained that the Tussionex in Phillips' prescription was a liquid suspension time-release medication, meaning it is not all absorbed at once into the stomach and is instead

absorbed over a period of time to extend the effectiveness and decrease the required frequency of dosing. (R.p.321, line 12-p.333, line 12).

Foery testified the concentration of hydrocodone in the victim's blood was found to be 102 nanograms per milliliter. The therapeutic range for an adult would be 10 to 40 nanograms per milliliter, so this was quite a high dose even for an adult, and particularly high for a child. (R.p.334, lines 1-13). He testified that in his opinion, to a reasonable degree of scientific certainty, the drug was given to the victim sometime on Sunday, March 16, 2008. Forey testified that based on the half-life of the drug, the first dose was given sometime between midnight on Sunday up until the victim was found, or more specifically, approximately 24 to 36 hours before the victim's blood was drawn.⁴ Forey testified that based on the victim's behavior Sunday, it could well have been a repetitive dose. He said that Lortab contains hydrocodone and acetaminophen, and since there was no acetaminophen in the victim's blood or urine, Lortab could not have been ingested by the child. (R.p.335, line 25-p.338, line 1). On cross-examination Foery testified there was a toxic level of hydrocodone in the victim but not a single toxic dose. He said in his opinion, to a reasonable degree of scientific certainty, more than one dose of Tussionex was given to the victim and that the concentration was two-and-a-half to five times higher than it should be for a therapeutic dose given to an adult. (R.p.350, line 18-p.352, line 2).

Chief ME Ward was re-called to the stand and was qualified as an expert in anatomic and forensic pathology. Although Dr. Christiansen performed the autopsy and

⁴ Dr. Ward testified the blood was drawn sometime after the victim's 12:30 p.m. admission to Greenville Memorial Hospital, within a few hours, but was not sure of the exact time. (R.p.320, lines 18-23). However Forey later testified the blood was drawn at approximately 2:00 p.m. on the afternoon the victim was admitted to the hospital [Monday, March 17, 2008]. (R.p.362, lines 2-4). Thus, Forey's testimony places the initial administration of Tussionex at sometime between 2:00 a.m. and 2:00 p.m. on Sunday, March 16, 2008.

completed the report, Dr. Ward was permitted to review the report and offer his opinion about the findings. (R.p.365, line 3-p.379, line 11). Dr. Ward testified the victim died as a result of a hydrocodone overdose. He noted a lesion on the victim's lower back just above the natal cleft. Microscopic testing revealed it was a pressure ulcer similar to what is seen in comatose patients who lie in one position for a prolonged time without movement. Dr. Ward noted a fairly large amount of knot-like stool in the victim's large intestine, which is consistent with a period of constipation, and that constipation is a known complication of taking narcotics. Dr. Ward said the constipation indicated the victim was subject to multiple doses rather than a single dose of narcotic exposure. (R.p.379, line 13-p.382, line 15). Ward explained the overdose of hydrocodone would have suppressed the victim's central nervous system to the degree that he would not have the usual respiratory drive. Not being able to unconsciously breathe, carbon dioxide would build up in the victim's blood, dropping his PH balance, leading to irritability, confusion, sleepiness, and lethargy until the victim passed out and became comatose. Dr. Ward testified that if the victim has been given medical treatment Sunday night before he was put to bed, he would have lived. (R.p.382, line 20-p.384, line 4).

At the conclusion of the State's case Morris moved for a directed verdict arguing "there is no evidence that the State has presented which would show that [Appellant] aided and abetted in homicide by child abuse." He argued the State had only shown mere presence, but no proof that Morris in any way conspired with, aided, or abetted Phillips. Morris further argued that even if Phillips gave The victim her Tussionex, there was no evidence Morris had knowledge of her actions, so he would not have known The victim needed medical treatment. (R.p.399, line 19-p.401, line 6). The trial judge found "there

is direct and substantial circumstantial evidence reasonably tending to prove the crime, including the crime of aiding and abetting” and denied the motion. (R.p.402, lines 16-25).

Appellant: Jamie Edward Morris

Morris testified in his own defense. He said he and Phillips picked the victim up from Honeycutt on Friday March 14, 2008, at 1:30 p.m. and kept him until 7:30 p.m. Sunday. Morris testified he gave the victim two droppers full of Tylenol around 2:30 or 3:00 Sunday afternoon and had no knowledge of anyone else giving the victim medication over the weekend. He claimed he never saw the victim get any Tussionex and he never gave the victim any Tussionex. Morris testified that to his knowledge Phillips also did not give the victim any Tussionex. (R.p.444, line 12-p.452, line 11). Morris acknowledged giving Honeycutt the Medicaid card and asking her to take the victim to the doctor, and claimed he did not take the victim himself because he didn't think the symptoms were severe enough to go right away. (R.p.459, line 3-p.460, line 6).

Morris testified he was familiar with the pumpkin where Phillips kept her Tussionex and her other medications. He said he got the pumpkin down for Phillips that weekend and that he frequently got it down for her because it was so high up, and he is taller than his mother. Morris testified he believed Phillips took some Tussionex during the weekend. He testified that although he and his mother were not under each other's feet 24 hours a day, he was with the victim the whole time. (R.p.461, line 24-p.462, line 25). On cross-examination Morris repeated he was with the victim the entire weekend and testified the victim followed him around everywhere he went. (R.p.467, lines 11-20). Morris testified the victim slept right beside him on the couch and he would know if

something was happening to the victim during the night. He said he did not leave the victim alone at all during the weekend and was with the victim the whole time. Morris testified he was even the one who normally changed the victim's diapers because the victim wouldn't let anyone else take care of him. (R.p.475, lines 15-p.478, line 19). Morris insisted the victim was with him the entire weekend until he was dropped off Sunday evening and that the victim never left his sight for a second. Even when Morris went to the bathroom the victim would follow him in to watch, and would try to use the bathroom himself. (R.p.488, lines 4-16).

Co-Defendant: Donna Lynn Phillips

Laura Phillips, Phillips' daughter and Morris's younger sister, testified on Phillips' behalf. Laura testified she was eleven years old the weekend the victim came to visit, and that although they may not have been in the same room all the time, she, Morris, Phillips and the victim were together the whole weekend. Laura said the victim seemed fine and alert all weekend until Sunday afternoon when they brought him back to Honeycutt's house. She said the victim may have been crying and coughing some, but otherwise seemed like a normal kid. (R.p.505, line 15-p.509, line 9). On cross-examination she admitted giving a prior written statement that they were worried about the victim when they dropped him off Sunday because of his cough and congestion. (R.p.515, lines 2-8). Laura said she never saw anybody give the victim any medicine over the weekend. (R.p.523, line 24-p.524, line 6).

Phillips then testified in her own defense. She was initially held in contempt for violating the trial judge's instruction not to mention the ten months the victim spent in foster care prior to the incident; however, she was allowed to continue her testimony.

(R.p.527, line 12-p.529, line 24). Phillips testified the victim was fine when they picked him up from Honeycutt's house Friday. They noticed a little runny nose Friday night, but he woke up Saturday morning like clockwork. Phillips said that on Saturday when she had the pumpkin down from the closet to take her medicine the victim grabbed at the bottles so she took them from his hand. She said did not give the victim any medication and would never give a child medication that wasn't prescribed for him. Phillips testified the victim could not have gotten into the pumpkin himself because it was on a top shelf in her closet, and he was never left alone. She claimed she and Morris had their eyesight on the victim the whole weekend saying: "We had an evil eye on him, the evil eye."

(R.p.530, line 11-p.545, line 5). Phillips testified she did not give the victim any medications or any kind from her house. She insisted she did not give any of her Tussionex to the victim and that Morris would not have given it to him either. (R.p.558, lines 17-21; p.563, line 2-p.564, line 5; p.569, lines 14-16). On cross-examination Phillips testified the victim slept with Morris on the couch that weekend. (R.p.570, lines 9-17). She was subsequently held in contempt a second time for intentionally and willfully violating the trial court's order and was not permitted to testify any further. (R.p.564, line 24-p.595, line 8).

Co-Defendant: Latasha Diane Honeycutt

Sherry Price, Honeycutt's aunt, testified Honeycutt was upset and shaking when Price saw her at the hospital with the victim and that while Honeycutt does not get emotional in front of strangers she is very emotional in front of family members.

(R.p.597, line 5-p.598, line 20). Kayla Roper, Honeycutt's boyfriend Brandon's sister, testified she saw Honeycutt just after the victim was taken away by EMS and Honeycutt

was shaking and in a state of shock. (R.p.599, line 15-p.601, line 2). She further testified that later that day while she was in the hospital waiting room she overheard Phillips say to Morris that Phillips had given the victim some cough medicine over the weekend and “surely to God that’s not what is wrong.” (R.p.606, lines 9-23).

Next Brandon Roper, Honeycutt’s boyfriend, testified on her behalf. He explained he met Honeycutt through Morris when Honeycutt and Morris were together. Brandon said he had known Honeycutt for seven or eight years and they eventually started dating after she broke up with Morris, and the breakup occurred because Morris was abusive to Honeycutt. (R.p.613, line 17-p.616, line 8). Brandon testified the victim was fine when he was picked up by Morris and Phillips Friday but shortly after he returned Sunday he was crying and having trouble standing. He said he remembered Honeycutt getting up during the night Sunday night/Monday morning to check on the victim and their younger daughter Ava, and then he woke Monday morning to Honeycutt screaming when she discovered the victim nonresponsive. (R.p.618, line 8-p.629, line 23). Brandon described his efforts to resuscitate the victim, the call to 911, and the arrival of EMS, as well as his actions to notify Morris and Phillips after he drove Honeycutt to the hospital. He testified that when he told Phillips about the victim, Phillips asked: “Is he dead?” Then as she was running out the front door she screamed: “[Morris is] going to blame me. [Morris is] going to blame me. [Morris is] going to blame me.” (R.p.629, line 24-p.637, line 14). Later, at the hospital a nurse came in and whispered that they had found opiates in the victim’s system. Brandon said he looked at Phillips and asked: “What? Opiates?” Thirty seconds later, Phillips grabbed Morris by the arm and dragged him out the back door of the hospital. (R.p.640, lines 4-16). On

cross-examination Brandon explained that when he said the victim had trouble standing Sunday evening, he meant the victim was fussy and did not want to stand, not that he could not physically stand. (R.p.655, lines 1-11). On re-direct Brandon testified he and Honeycutt did not have any Tussionex in their house, he did not give the victim any medication, and he did not see Honeycutt give the victim and medication. (R.p.673, line 15-p.675, line 2).

Finally, Honeycutt testified in her own defense. She said that when the victim was returned by Morris and Phillips Sunday he was crying, pitching a fit, and not wanting to stand up, but she saw no signs or symptoms to make her worry about his health. Honeycutt testified that after putting the victim to bed, she got up three or four times during the night to check on the baby, and that each time she also checked on the victim. She said once, in the early evening, he was sleeping on his side and sounded a little congested so she turned him onto his back but otherwise did not touch him during the night. Honeycutt testified Monday morning at around 8:00 a.m. she quietly and carefully changed the victim's diaper so as not to wake him, and went back to sleep. She said when she later got up and ready for work and went to wake the victim at about 11:00 a.m. he didn't respond and she realized something was wrong. (R.p.676, line 1-p.693, line 23). Honeycutt testified she did not give the victim any medication, that she would do everything she could to help her son, and did not know he was in distress and needed medical attention before she found him and screamed for help. (R.p.704, lines 2-12). On cross-examination Honeycutt testified the victim seemed OK at 8:00 a.m. Monday and that he was warm and breathing normal. (R.p.716, line 18-p.718, line 23; p.727, lines 5-9).

Motions, Closing Arguments, Jury Charge and Verdict

After all three co-defendants rested, Morris renewed his motion for a directed verdict “on the same arguments previously made.” The trial judge denied the motion. (R.p.732, line 18-p.733, line 24). In closing, Morris argued in part that the jury should not find him guilty beyond a reasonable doubt of aiding and abetting because there was no proof he had knowledge that anyone had given the victim hydrocodone. (R.p.750, line 7-p.752, line 5). The solicitor briefly described the law to be applied by the jury and then restated the State’s theory of the case. In regard to Morris the solicitor focused on the testimony that the victim was with Morris the entire weekend which was proof he had to have knowledge of anything that happened to the victim. The solicitor also noted the expert testimony that the Tussionex was given in repetitive doses in the 24 to 36 hours before the victim’s blood was drawn. (R.p.755, line 20-p.779, line 10).

Thereafter, the trial judge charged the jury on the applicable law. The judge instructed the jury on the respective roles of judge and jury, including the jury’s duty to find the facts by weighing and evaluating the evidence. The trial judge charged direct and circumstantial evidence, the jury’s duty to determine credibility of witnesses, the law of expert witness testimony, the burden of proof, the presumption of innocence, and reasonable doubt. (R.p.779, line 11-p.789, line 2). The trial court charged the general law of homicide by child abuse in regard to Phillips and Honeycutt, and then gave an additional charge in regard to Morris on aiding and abetting homicide by child abuse.

The trial court charged as follows:

In order to prove this offense against [Appellant], the State must prove beyond a reasonable doubt that [Appellant] knowingly and intentionally aided and abetted another person to commit child abuse or neglect that resulted in the death of a child under the age of eleven.

To “aid” means to knowingly help, to promote the course or accomplishment of, give support to or give assistance to. To “abet” means to knowingly encourage or appear to favor or support.

Now, Ladies and Gentlemen, mere presence at the scene of a crime is not sufficient to prove someone guilty of the crime. A defendant’s presence where a crime is being committed, or mere association with persons who commit the crime, does not make a defendant an accomplice or an aider and abettor of the person committing the crime. The burden is on the State to prove every element of the crime charged. If you find after viewing the evidence that the State has only proven that the defendant was merely present at the scene and that they have not proven beyond a reasonable doubt that there was any other participation in the crime, then you must find the defendant not guilty. The law is that proof of being at the scene of a crime is not sufficient to find someone guilty of that crime.

(R.p.793, line 2-p.794, line 7).

After beginning deliberations, the jury sent out a note asking the trial court to again define aiding and abetting homicide by child abuse. The trial judge re-charged the language of the statute, and the legal definitions of “aid” and “abet.” (R.p.798, line 9-p.799, line 23). At the conclusion of trial the jury convicted Phillips of homicide by child abuse and Morris of aiding and abetting homicide by child abuse. Honeycutt was found not guilty. (R.p.801, lines 2-18). Morris moved for a new trial on grounds that the “evidence in this case does not substantiate the death of a child.” The motion was denied. (R.p.802, lines 2-7; p.804, lines 7-14). The trial court sentenced Morris to twelve (12) years’ imprisonment suspended to eight (8) years’ imprisonment and two (2) years’ probation. (R.p.805, lines 5-9).

ARGUMENT

The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial evidence from which the jury could fairly and logically find Appellant guilty of homicide by child abuse by aiding and abetting Donna Lynn Phillips to commit child abuse or neglect resulting in the death of a child under the age of eleven.

Morris argues the trial court erred in denying his motion for a directed verdict of acquittal on the aiding and abetting charge because the State failed to present any substantial evidence beyond a reasonable doubt that he aided and abetted in homicide by child abuse. Morris contends there was no testimony he was with Phillips and the victim the entire time the opiates could have been ingested. He further contends the State did not prove Morris knew Phillips had given Tussionex to the victim, and that without such knowledge Morris could not have allowed it, or be held responsible for failing to get medical treatment afterwards. Morris argues the State was improperly using the civil negligence concept of "res ipsa loquitur" as its theory of the case. The State disagrees and submits Morris's arguments are without merit.

Phillips now stands convicted of committing homicide by child abuse or neglect for causing the death of the twenty-one month old victim by giving him excessive amounts of opiates in the form of prescription Tussionex, an adult cough medication prescribed to Phillips, and by then failing to get the victim medical treatment after administering the Tussionex. Direct evidence from the trial shows Morris was with the victim when Phillips administered the Tussionex and therefore had to know it was being administered. This knowledge constitutes circumstantial evidence that he either participated in giving the medicine or simply allowed it to be given by Phillips. Under either scenario, Morris failed to seek medical treatment for the victim after the Tussionex

was ingested. Thus, evidence was introduced that Morris knowingly aided and abetted Phillips' abuse and neglect, and when combined with the other circumstantial evidence presented at trial, provided substantial proof of Morris's knowledge of the abuse and neglect, and of his acts to aid and abet Phillips. The trial judge properly considered the existence of evidence as opposed to its weight in denying Morris's motion for a directed verdict and in submitting the case to the jury. Morris's conviction and sentence should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-478 (2004). Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish

the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Law/Analysis

Pursuant to the South Carolina Code: "A person is guilty of homicide by child abuse if the person . . . knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven." S.C. Code Ann. § 16-3-85(A)(2) (2003). "Child abuse or neglect" is defined as "an act or omission by any person which causes harm to the child's physical health or welfare." S.C. Code Ann. § 16-3-85(B)(1) (2003). Further, the statute provides that "harm to a child's physical health or welfare" occurs when a person "inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment." S.C. Code Ann. § 16-3-85(B)(2) (2003).

"To aid and abet in South Carolina, one must '[help], assist, or facilitate the commission of [the] crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite [the] commission [of the crime].'" State v. Claypoole, 371 S.C. 473, 479 n.3, 639 S.E.2d 466, 469 n.3 (Ct. App. 2008) (quoting State v. Smith, 359 S.C. 481, 491, 597 S.E.2d 888, 894 (Ct. App. 2004)). It comprehends all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. Smith 359 S.C. at 491, 597 S.E.2d at 894. In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. State v. Mattison, 388 S.C. 469, 480, 697

S.E.2d 578, 584 (2010) (quoting State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)). Thus, mere presence at the scene is not sufficient to establish guilt as an aider or abettor. Id. However, presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal. Id.

The theory of the State's case was that Morris was guilty of committing homicide by child abuse because, as set forth in Section 16-3-85(A) of the South Carolina Code, he aided and abetted Phillips to commit "child abuse or neglect." Specifically, the State intended to prove:

That JAMIE EDWARD MORRIS did in Pickens County, on or about, and/or between the dates of March 14, 2008 and March 17, 2008, knowingly aid and abet DONNA LYNN PHILLIPS to commit child abuse or neglect to [The victim], a child under the age of eleven years causing the death of said child, by allowing and/or having knowledge of the said child's ingestion of excessive amounts of opiates and/or the failure to get the said child medical treatment. This is in violation of § 16-3-0085(A)(2) of the South Carolina Code of Laws (1976) as amended.

(Indictment 2008-GS-39-2053; R.p.2-p.7; R.p.755-p.779).

Contrary to Morris's assertions, the evidence presented at his trial did more than merely raise a suspicion of guilt. Instead, the State presented substantial evidence to support a finding that Morris aided and abetted Phillips both in her administering adult prescription Tussionex to the victim, and in her failing to get the victim medical help after the Tussionex had been administered. Dr. John Richard Yelton testified that in the months before the victim died he was a normal, healthy, twelve to twenty-one month old who was developing well with no indications of distress. In stark contrast, ER nurse Kathy Purdessy testified the victim was in cardiac arrest with no pulse when he arrived

for emergency treatment on March 17, 2008. Laboratory scientist William Gassman testified that shortly after arriving in the ER the victim's urine tested positive for opiates.

Greenville County ME Ward testified the victim died as a result of a hydrocodone overdose.⁵ He explained the overdose suppressed the victim's central nervous system leading to irritability, confusion, sleepiness, lethargy, coma, and eventual death. The lesion on the victim's lower back indicated he was lying in one position for a prolonged time without movement, and constipation indicated the victim was subject to multiple doses of hydrocodone rather than a single dose. Dr. Ward testified that if the victim had been given medical treatment Sunday night before he was put to bed, he would have lived.

Expert forensic toxicologist Robert R. Foery testified the victim's urine unequivocally revealed the presence of the opiate hydrocodone, its primary metabolite oxymorphone, and the drug chlorpheniramine. The victim's blood confirmed the presence of hydrocodone. Forey explained hydrocodone and chlorpheniramine are found in the pharmaceutical preparation called Tussionex. He testified the concentration of hydrocodone in the victim's blood was 102 nanograms per milliliter, two-and-a-half to five times higher than the normal therapeutic range for an adult of 10 to 40 nanograms per milliliter. Forey testified that in his opinion, to a reasonable degree of scientific certainty, the Tussionex was first given to the victim sometime between 2:00 a.m. and 2:00 p.m. on Sunday, March 16, 2008, and that more than one dose of Tussionex was administered.

⁵ Coroner James Mahanes also gave an opinion that the victim died from an overdose of hydrocodone that came from [Phillips'] home, in the form of Tussionex:

A partially empty bottle labeled as Phillips' prescription Tussionex was removed from her residence. Chemistry expert Jeffrey Morris Hollifield tested the liquid in the bottle and detected hydrocodone and chlorpheniramine, the two active ingredients in Tussionex. Two medicine bottles removed from Honeycutt's residence tested positive only for acetaminophen, and no drugs were found in the victim's partially empty sippy cup that was removed from Honeycutt's refrigerator.

There was no dispute the victim was in the care and custody of Morris and Phillips from Friday afternoon, March 14, 2008, through Sunday evening, March 16, 2008. Prior to trial Morris told investigative consultant Charlie Michael Lark that he and Phillips were with the victim the entire weekend. When Morris testified in his own defense, he repeated the claim that he was with the victim the whole time from Friday March 14, 2008, at 1:30 p.m. until 7:30 p.m. Sunday. Morris said the victim slept right beside him on the couch and followed him around everywhere he went. He said he did not leave the victim alone at all during the weekend and was with the victim the whole time including when he changed the victim's diapers. Morris insisted the victim was with him the entire weekend until he was dropped off Sunday evening and that the victim never left his sight for a second. Even when Morris went to the bathroom the victim would follow him in to watch, and would try to use the bathroom himself.⁶ Phillips also testified and said she and Morris had their eyes on the victim all weekend. She confirmed the victim slept on the couch with Morris.

⁶ To the extent Morris asserts the testimony presented in his defense should not be considered in reviewing the denial of his directed verdict motion, the State submits a reviewing court must consider all the evidence presented during trial and not just the evidence presented by the State. *See State v. Harry*, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996) ("When the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the state's evidence alone.").

Phillips has been found guilty of homicide by child abuse for giving the victim Tussionex, which led to his death. Since the first dose of Tussionex was given Sunday, March 16, 2008, between 2:00 a.m. and 2:00 p.m., and since Morris was admittedly with the victim every second of that time frame, there was substantial evidence he knew of Phillips' actions and either actively participated or witnessed Phillips administering the Tussionex. Indeed, Morris's testimony alone provided direct evidence that he had knowledge of Phillips' abuse and neglect of the victim. It shows that Morris assisted, facilitated, helped in advancing, or encouraged Phillips in her commission of that abuse and neglect.

Morris' testimony also provided direct evidence of an overt act by which he aided and abetted Phillips' child abuse and neglect. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (finding an overt act is required to be held liable for aiding and abetting). Morris testified he was familiar with the pumpkin where Phillips kept her Tussionex and her other medications. He said he got the pumpkin down for Phillips that weekend and that he frequently got it down for her because it was so high up, and he is taller than his mother. When coupled with Morris' knowledge that Phillips was giving the victim Tussionex and the expert testimony that the victim was given multiple doses of Tussionex, Morris' act of helping Phillips get the Tussionex from the closet constituted an overt act of aiding and abetting.

The evidence that Morris knew the victim was given Tussionex also demonstrated he aided and abetted Phillips in failing to seek medical attention. Morris gave the Medicaid card to Honeycutt and told her to take the victim to the doctor, which provides circumstantial evidence of his Morris' guilty knowledge. However his failure to disclose

the nature of the victim's condition in relation to the request is also evidence of a deliberate omission in an effort to assist Phillips to abuse and neglect the victim by not seeking medical assistance.

Other substantial circumstantial evidence presented at trial also supported the trial judge's decision. Sherry Price testified she heard Phillips talking to Morris about giving the victim cough medicine over the weekend. Brandon Roper testified Phillips grabbed Morris by the arm and dragged him out the back door of the hospital within thirty seconds of hearing a nurse say they had found opiates in the victim's system. Morris' statements to detective Burgess and consultant Lark were inconsistent in certain details, like how much Equate brand Tylenol he allegedly gave to the victim. This evidence suggests Morris knew Phillips gave the victim the Tussionex and was trying to cover for her or himself, all of which provided circumstantial evidence he aided and abetted in the underlying abuse and neglect.

In conclusion, viewing the evidence in a light most favorable to the State, the evidence clearly established issues requiring jury resolution. The evidence adequately demonstrated Morris's participation, encouragement, persuasion, or other assistance given to Phillips in her administration of Tussionex to the victim. Likewise it adequately demonstrated his participation, encouragement, persuasion, or other assistance given to Phillips in her failure to get medical assistance for the victim rather than leaving him at Honeycutt's house. The State submits the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of

such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury.”). The trial judge committed no error in denying the directed verdict motion, and Morris’ conviction should be affirmed.

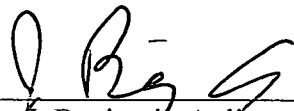
CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
August 12, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2012-212630

THE STATE,RESPONDENT

v.

JAMIE EDWARD MORRIS,APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated August 12, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served.
This 12th, day of August, 2013.



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