

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari - PCR  
APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Robert M. Young, Sr., Circuit Court Judge

\_\_\_\_\_  
Appellate Case № 2019-000119  
\_\_\_\_\_

Roger A. Williams, #303509 ..... Petitioner,

vs.

The State ..... Respondent.

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PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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## Statement of Issues Presented

Question I: Did the Post Conviction Relief Court err in failing to find that trial counsel was ineffective when trial counsel failed to object to the testimony of Grace Trotman when she testified that Roger Williams did not believe in Jesus or God?

Question II: Did the Post Conviction Relief judge err in failing to find that trial counsel was ineffective in failing to object to a statement by Grace Trotman that Roger Williams was prejudiced against white people?

Question III: Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective in failing to ask for a directed verdict on the act of omission in failing to call an ambulance on the day of the incident as the testimony establishes that the child was deceased at the time the call was made to Roger Williams and, therefore, the failure to render aid did not cause the death of the minor child?

Question IV: Did the Post Conviction Relief Judge err in failing to hold that trial counsel was ineffective in failing to move to quash the indictment due to the indictment being vague and therefore in violation of the Due Process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America?

Question V: Did the Post Conviction Relief Judge err in failing to hold trial counsel was ineffective in failing to preserve for appellate review the refusal of the trial judge to admit the video statement of Grace Trotman when the video statement contradicted her trial testimony?

Question VI: Did the Post Conviction Relief Judge err in failing to hold that trial counsel was ineffective in failing to object to the testimony by Grace Trotman and others as to Roger Williams abusing her and the picture of Ms. Trotman that purports to show the abuse?

Question VII: Did the Post Conviction Relief Judge err in failing to find the cumulative errors deprived Roger Williams of a fair trial?

## Statement of the Case

### *Procedural History*

Roger Williams was tried before a jury from October 8 to October 11, 2012. Mr. Williams initially filed an appeal, but the appeal was withdrawn on October 24, 2014, as he believed no properly preserved issue had merit. He subsequently filed a Post Conviction Relief Petition on August 27, 2015, which was amended on May 21, 2018.

A Post Conviction Relief Hearing was held on May 23, 2018. By Order dated November 26, 2018, Judge Roger Young denied the application. Mr. Williams timely filed a Rule 59 Motion to Alter or Amend the Order. Judge Young denied this Motion on January 8, 2019. Mr. Williams filed his Notice of Appeal on January 25, 2019.

### *Factual History*

The record shows that on June 7, 2010, Grace Trotman, the girlfriend of Mr. Williams, phoned him at his place of employment and told him that his son was not breathing. App. at 230, l 12 to 231, l 13. Mr. Williams did not have transportation home and had to call for a ride home. When he arrived, Grace was outside of the house with her other child. His son was in the house deceased. App. at 232, l 20 to 233, l 10. Mr. Williams told Grace not to call 911 or the police. App. at 230, l 23 to 231, l 3. Upon seeing that his son was in fact dead, Mr. Williams did not call an ambulance or police, but instead entered upon a diabolical scheme to hide the death of his son. The basic plan was to place the remains of his son in a plastic barrel and cover him with concrete. App. at 235, ll 3-17. He then proceeded to lie to the mother of their child as to the whereabouts of their son. The ruse continued until July of 2012, when a plan was made to pretend his son was kidnaped while at the battery in Charleston. App. at 248, ll 11-22; 253, ll 13 to 254, l 20. Upon

being questioned about the incident, Grace Trotman eventually told the police what had happened. App. at 257, 17 to 259, 1 12. As a result, the current charges were brought against Ms. Trotman and Mr. Williams.

The medical testimony at trial established that the child had a previous head injury. The precise cause of this head injury was never clearly established. The testimony was also that the child suffered a seizure on the Friday before the his death on Monday but appeared to have recovered from it. App. at 489 ll 6-17. Notwithstanding the argument that there were “multiple seizures,” the Friday seizure and the Monday seizure were the only clearly reported seizures. The medical testimony was the cause of death was brain injury.

Grace Trotman testified against Mr. Williams at trial. She testified Mr. Williams had struck the child but never clearly identified Mr. Williams as having struck his son in the head. She did testify that Mr. Williams struck his son in the chest and his son fell down and hit his head. Mr. Williams, in his interview, denied ever hitting his son in the head. He stated he only struck his son in the chest or perhaps the back. App. at 1388, ll 14-19. On the day of his son’s death, Ms. Trotman told the police in a video recorded statement that she struck the boy aside the head, his head then hit the wall and afterwards he appeared to have a seizure. He subsequently stopped breathing and she called Mr. Williams. Applicant’s Exhibit 5.

#### *Post Conviction Relief Hearing*

Mr. Williams has contended his trial counsel was ineffective in failing to object to several statements and the introduction of several pieces of evidence. He also contends trial counsel should have asked for a directed verdict on the charge of failing to render aid by not calling an ambulance. At the least, trial counsel should have eliminated the failure to call 911 on the day of

the incident as a means of committing the crime as the evidence established that the child was deceased at the time Ms. Trotman called Mr. Williams. Mr. Williams further contends that trial counsel should have moved to quash the indictment because it failed to inform Mr. Williams exactly what act of omission would have been sufficient to sustain the conviction of homicide by child abuse. The factual details of these allegations will be discussed separately.

## Argument

### Question I

**Did the Post Conviction Relief Court err in failing to find that trial counsel was ineffective when trial counsel failed to object to the testimony of Grace Trotman when she testified that Roger Williams did not believe in Jesus or God?**

Rule 610 of the South Carolina Rules of Evidence provides “Evidence of the belief or opinions of a witness on matters of religion is not admissible for the purposes of showing by reason of their nature the witness’ credibility is impaired or enhance.” While this Rule applies on its face to a “witness” it would also obviously apply, if not more so, to any attempt to attack the credibility or character of a defendant for a lack of religious beliefs. Simply put, religious beliefs have no place in a courtroom, unless it is an important factor in the trial. The religious beliefs of Mr. Williams were not a factor in the case.

In the trial of this case, the State asked Grace Trotman about the minor child liking to sing. The State asked:

- Q. What kind of child was [minor victim]?
- A. Very happy. He liked to sing, he always - -
- Q. What would he sing?
- A. Church songs he learned in school.
- Q. Do you know if Roger had an opinion that he expressed to you about those songs?
- A. Yes, he didn’t let him sing the songs.
- Q. Why not?
- A. Because he was like - - he wanted to - - he didn’t believe in God. I mean, he didn’t believe in Jesus and so he didn’t want his son singing songs like that.
- Q. How did he get [minor victim] to stop singing the songs?
- A. Eventually he stopped on his own.
- App. at 201, 1 16 to , 202, 1 6.

At the Post Conviction Relief hearing, Ann Williams, the Assistant Solicitor prosecuting

this case, testified that the purpose of the question was to establish motive as to “why Mr. Williams would beat a two year old like this and several things came out through Grace Trotman.” App. at 1429, ll 17-19. The problem with that theory is that Ms. Trotman never testified that Mr. Williams struck his child because he was singing religious songs.

The issue of whether Mr. Williams was religious or not religious was not an issue in the trial. Whether Mr. Williams was religious or not religious did not make Mr. Williams more likely than not to inflict injuries upon his minor son. The testimony was not admissible under Rule 401 of the South Carolina Rules of Evidence and was specifically prohibited under Rule 610. No objection was raised by trial counsel to this testimony. South Carolina is known to be part of the “Bible Belt.” To tell a jury a defendant does not believe in Jesus is very prejudicial. Only in 1976 did our Supreme Court declare that a belief in God was no longer required to be a witness. *State v. Green*, 267 S.C. 599, 230 S.E.2d 618 (1976). South Carolina has no reported cases involving the interpretation of Rule 610.

Other States have taken a clear position that references to religion or religious beliefs to impeach a witness or defendant are not proper. As one Court said, “With limited exceptions not relevant here, any attempt to discredit or otherwise penalize a witness because of his religious beliefs or for the exercise of his right to affirm the truth of his testimony is improper, because those factors are irrelevant to the issue of credibility.” *People v. Wood*, 66 N.Y.2d 374, 378, 488 N.E.2d 86, 88 (1985). In *People v. Hall*, 391 Mich. 175, 215 N.W.2d 166 (1974) the Michigan Supreme Court reversed the conviction after the prosecutor improperly asked a question about religious beliefs. This was true even though trial counsel raised no objection to the question. The Court said, “Our statute clearly states that an accused is entitled to be tried and convicted

without the question of his religious opinions ever being put in front of the judge or jury for their consideration. Whether the defendant hesitates or unhesitatingly responds negatively or positively, or if he should quite properly refuse to respond, he still cannot avoid the risk of stimulating an offensively prejudicial reaction in some quarter of the jury.” *Id* at 182, 215 N.W.2d at 171 The Michigan Statute provided “No person may be deemed incompetent as a witness, in any court, matter or proceeding, on account of his opinions on the subject of religion. No witness may be questioned in relation to his opinions on religion, either before or after he is sworn.” M.C.L.A. 600.1436. The statute carries the same import as Rule 610 of the South Carolina Rules of Evidence.

In *State v. Thomas*, 130 Ariz. 432, 636 P.2d 1214(1981) the Arizona Supreme Court, again with no proper objection at trial, reversed the conviction of the defendant because the State asked the minor child in a criminal sexual conduct case questions that elicited answers that the minor child was a very religious person. The Court stated, “We believe that strict adherence to these proscriptions becomes even more compelling in the context of a criminal proceeding, where the question of guilt or innocence is balanced upon the credibility of the prosecuting witness. Thus, there can be no question that error occurred when the various religious references were made during the course of appellant’s trial. Can it be said, however, that this unobjected-to error was so serious that it deprived appellant of a fair trial?” *Id.* at 436, 636 P.2d at 1218. In reversing the case the Court concluded, “We, therefore, conclude that admission of these religious references constituted fundamental error requiring reversal and a new trial.” *Id.* at 437, 636 P.2d at 1219.

Likewise, Mr. Williams was entitled to have his case tried without the jury hearing

testimony that he did not believe in Jesus or God. Such testimony was not relevant. It added nothing to the trial, except to prejudice Mr. Williams in the eyes and minds of the jurors. This Court should grant Mr. Williams a new trial because of the improper references to his lack of religious beliefs in violation of Rule 601. As noted in the discussion below on a related issue, trial counsel never articulated a valid trial strategy for not objecting to the improper reference to the lack of religious belief. As to trial strategy, this Court has said, “Counsel's failure to object because he did not want to confuse or upset the jury does not constitute valid strategy.” *Dawkins v. State*, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001) overruled on other grounds *Thompson v. State*, 423 S.C. 235, 814 S.E.2d 487 (2018). The Post Conviction Relief judge erred in failing to find trial counsel was ineffective on this issue and erred in failing to find prejudice.

## Question II

**Did the Post Conviction Relief judge err in failing to find that trial counsel was ineffective in failing to object to a statement by Grace Trotman that Roger Williams was prejudiced against white people?**

Shortly after the improper remark about his religious beliefs discussed above, the State elicited testimony from Ms. Trotman that Mr. Williams was racially prejudiced against whites. The testimony was as follows:

- Q. Did he go to school when he lived with y'all?  
A. No, ma'am.  
Q. Did Roger tell you what he thought about the school?  
A. He didn't want him to go to school. He felt like he was going to teach him what he needed to know. He didn't want white people to teach his kids.  
Q. He didn't want white people to teach his kids?  
A. Yes.  
App. at 202, ll 10 - 21.

At the Post Conviction Relief hearing Ann Williams, the assistant solicitor prosecuting

this case, testified that the purpose of the racial comment was “to establish that he wouldn’t even let the kids go to school, and I think what Mr. Falk was trying to establish is that they were poor.” App. at 1430, 125 to 1431, 13. Again, establishing the fact Mr. Williams did not want his child to be taught by white people was more prejudicial than probative.

Whether the child was going to school during the summer he was with Mr. Williams was not relevant to the issues at trial. And the fact that Mr. Williams did not want “white people to teach his kids” was completely not relevant to any of the issues at trial and prejudicial to Mr. Williams. Again, trial counsel made no objection to the testimony. The Statement was nothing more than an appeal to racial prejudice. The appeal to racial prejudice in a criminal trial has led to much litigation. See, ANNOT., *Prosecutor’s appeal in criminal case to racial, national, or religious prejudice as ground for mistrial, new trial, or vacation of sentence - modern cases*, 70 A.L.R.4th 664 (1989). In *State v. Bell*, 263 S.C. 239, 209 S.E.2d 890 (1974), while not held to be reversible error, an appeal to racial prejudice has been held to be improper, but any error was cured by a timely objection and a curative instruction to the jury. Neither of these occurred in this case.

The American Bar Association has established principles that prohibit a prosecutor from appealing to racial or religious prejudices in any arguments. ABA STANDARDS FOR CRIMINAL JUSTICE: THE PROSECUTION FUNCTION, Standard 3-5(c). The same principles should apply to questions asked by a prosecutor. The question here elicited an answer that appealed to the racial prejudices of the jury. In *State v. Rogan*, 91 Hawai’i 405, 984 P.2d 1231 (1999), the Hawaii Supreme Court discusses this issue and collects numerous cases across the nation that condemn appeals to racial prejudice. In *Rogan* the reversible error was a

comment made in closing arguments that the defendant was a “black, military guy” and the case was “every mother’s nightmare.” The Court ruled that such statements were “an improper emotional appeal that could foreseeably have inflamed the jury.” *Id.* at 414, 984 P.2d at 1240.

The statement had no relevance to this case. It could only have served to prejudice the jury against Mr. Williams. The State never attempted to justify the statement as having some relevance. Even if the statement had some minor relevance to the case, obviously its prejudice greatly outweighed any probative value. The issue in the case was whether Mr. Williams physically abused his child or failed to render aid. Whether the child at age two was attending school was simply of no importance. Trial counsel should have made an objection and asked for a mistrial when this statement was made. His failure to do so was obviously prejudicial to Mr. Williams.

At the Post Conviction Relief hearing, Mr. Falk was honest enough to admit he did not know his trial theory was not to object to keep from calling attention to the incident. As he testified, “I can’t tell you that was my theory, but if that happened today, that would be my theory, and I’m assuming that’s what happened then.” App. at 1346, 125 to 1347, 12; 1348, 11 2-4. The South Carolina Supreme Court has said, “Thus, trial counsel could not testify he had an articulable trial strategy in not objecting. The presumption of adequate representation based on a valid trial strategy disappears when trial counsel acknowledged there was no trial strategy in mind when he failed to object to the improper hearsay and bolstering testimony.” *Smith v. State*, 386 S.C. 562, 568, 689 S.E.2d 629, 633 (2010). The Court of Appeals has held “Counsel’s strategy will be reviewed under ‘an objective standard of reasonableness.’” *Brown v. State*, 375 S.C. 464, 481, 652 S.E.2d 765, 774 (Ct. App. 2007). As noted in the discussion above, this

Court held in *Dawkins* the failure to object to prejudicial testimony to keep from upsetting a jury is not a valid trial strategy. In his Rule 59 motion, Mr. Williams called to the attention of the PCR Court that trial counsel did not testify he had a trial strategy of not objecting. Without comment on this issue, the PCR judge summarily affirmed its prior order.

What objective standard of reasonableness would permit any reasonable trial counsel not to object to two such clearly prejudicial comments? With no objection, the issue cannot even be reviewed on appeal. This was not some fleeting, ambiguous comment. This was a very clear statement that Mr. Williams was prejudiced against white people.

The South Carolina Supreme Court said in *Sanchez v. State*, 351 S.C. 270, 276, 569 S.E.2d 363, 365–66 (2002). “Counsel’s reason for not objecting was that he wanted the jury to hear the testimony because it illustrated the victim's vague statements regarding the alleged assault. Because the officer's testimony regarding the dolls corroborated the victim's testimony at trial, counsel’s strategy was not reasonable given the prejudicial effect this testimony had on Sanchez.” In the present case, not objecting to a prejudicial statement that should have resulted in a mistrial is likewise not a reasonable trial strategy. A trial strategy based upon an assumption is not a clearly articulated trial strategy. The Post Conviction Relief judge erred in failing to find trial counsel was ineffective in not objecting. The comment was prejudicial to Mr. Williams.

### Question III

**Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective in failing to ask for a directed verdict on the act of omission in failing to call an ambulance on the day of the incident as the testimony establishes that the child was deceased at the time the call was made to Roger Williams and, therefore, the failure to**

### **render aid did not cause the death of the minor child?**

The State had several theories in this case as to how Mr. Williams could be guilty of the crime of homicide by child abuse.<sup>1</sup> The theories are: (1) Mr. Williams actually struck his child, (2) Mr. Williams allowed Ms. Trotman to strike his child, (3) Mr. Williams failed to call an ambulance on the day of the incident and, therefore, failed to render medical aid, and lastly, (4) otherwise failed to render medical aid to his child. Arguably there is evidence to support each theory, except the failure to render aid on the day of the call by Ms. Trotman. The record establishes that Ms. Trotman told Mr. Williams' employer and testified that the child had stopped breathing on the day of the incident. As the evidence established that Ms. Trotman said the child was not breathing on the day of the incident, failure to render aid on that day could not be a basis for the charges against Mr. Williams.

The PCR judge erroneously stated, "There is no such requirement that trial counsel raise all potentially meritorious issues in arguing for a directed verdict. Here, Counsel made his strongest argument for a directed verdict at trial - that there was no medical evidence linking Applicant to Victim's death." App. at 1361, ll 16- 20, 1362, ll 1-20 As the testimony was that the minor child was deceased at the time of the call, failing to call an ambulance would not have made Mr. Williams guilty of failing to render aid. This is not a case of arguing all theories, but arguing one that would have required the trial judge to direct a verdict on one means of proving the crime. And on the one the State claimed Mr. Williams had "confessed."

During the closing arguments, the State urged that the jury convict Mr. Williams based

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<sup>1</sup> Unfortunately, and as will be discussed subsequently, all the theories were jumbled in one count of one indictment.

upon his failure to call an ambulance on the day of the incident. On numerous occasions, the State in its closing argument made references to the failure of Mr. Williams to call the ambulance. App. at 668, l 25 to 669, l 7; ll 21-22; 675, l 22 to 676, l 2; 678, ll 13-18; 688, ll 17-18; 690, l 12 to 693, l 1; 694, ll 17-18. The State made numerous references to Mr. Williams not calling an ambulance on the day of the incident for one particular reason - it was the easiest allegation to prove. As the State noted in their closing about what Mr. Williams said, "We didn't call the ambulance, that's what makes us both guilty." App. at 668, l 25 to 669, l 7. Had the judge directed a verdict on the issue of not calling the ambulance on the day of the incident or had the jury simply been instructed that if the child were deceased when it was reported to Mr. Williams, the jury could not convict him for his failure to call the ambulance, the jury would not have been able to convict on the failure to call the ambulance as urged by the State.

South Carolina has no reported cases involving the presenting of alternative theories of conviction when one of the alternative theories is not sufficient to convict. The United States Supreme Court has addressed this issue on a federal level in *Griffin v. United States*, 502 U.S. 46 (1991). *Griffin* held that as a matter of federal due process a conviction based on one of two alternative theories is sufficient, even if the evidence is not sufficient as to one of the theories. The case has not been uniformly followed by many states. In *State v. Jones*, 96 Hawai'i 161, 29 P.3d 351 (2001), the State of Hawaii collected and analyzed cases from across the country and refused to follow the *Griffin* case. In *Jones*, the Court stated the issue as, "[I]n an alternative means case where it is impossible to tell which alternative the jury's verdict is based upon, does due process require that each of the alternative means presented to the jury be supported by legally sufficient evidence?" *Id.* at 178, 29 P.3d at 368. In reversing the conviction, the court

said, “We are not convinced by the reasoning of the Supreme Court in *Griffin* that the jury will necessarily reject a theory unsupported by legally sufficient evidence, particularly where there is some evidence adduced and considerable argument presented to the jury.” *Id.* at 181, 29 P.3d at 371. The same principle applies to this case. The State spent considerable argument urging the jury to convict Mr. Williams of failing to call the ambulance on the day of the incident when the child was already deceased. Under these circumstances, the crime of homicide by child abuse by failing to render aid could not have legally occurred. At the PCR hearing the prosecutor for the State agreed that homicide by child abuse by failing to render medical aid could not have occurred if the child were deceased. App. at 1436, ll 15-19.

This case does not involve alternative means of committing an act that is a crime, but alternative acts that are separate crimes and that occurred at different times. An overt act, such as actually striking the child is a very different act from an act of omission in permitting the child to be struck and different still from the act of omission of failing to render aid. Any separate act relied upon by the State to convict the defendant must be established beyond a reasonable doubt. Some jurors are not entitled to believe one act and others another act to achieve unanimity. The concept of alternative means and alternative acts is discussed at length by Justice Carol A. Beier, of the Kansas Supreme Court, in her law review article, Carol A. Beier, *Lurching Toward the Light: Alternative Means and Multiple Acts Law in Kansas*, 44 WASHBURN LAW JOURNAL 275 (2005).

In this case, the proof as to Mr. Williams failing to render aid on the day of the incident was not proof sufficient to sustain a conviction. If the jury relied upon that theory to prove the State’s case, then the proof has failed. As noted above, the State urged the jury to convict on that

ground. The record established that the proof as to when the child died is not proven by the closing argument of the state. The assistant solicitor argued, “I don’t know if anyone knows when this child died.” App. at 675, 1 21 - 22. If the State admits they do not know when the child died, then the State admits there is no proof beyond a reasonable doubt the child was alive when Grace Trotman called Mr. Williams at work. The State has the obligation to prove the child was alive at the time of the call. It is an element of the crime the State must prove beyond a reasonable doubt. At the best, the testimony is speculative and speculative testimony does not satisfy the standard of *Jackson v. Virginia*, 443 U.S. 307 (1979).

Trial counsel should have requested a directed verdict on the State’s theory that failing to call the ambulance on the day of the incident was a basis for conviction. At the very least, trial counsel should have requested a charge requiring the jury to find beyond a reasonable doubt that the minor child was alive when the call was made in order to convict Mr. Williams. The failure to request such a charge prejudiced Mr. Williams. Under the facts of, and argument in, this case, the jury could have convicted Mr. Williams of failing to render aid to a child who was deceased. This is not a crime under the statute. This was the precise ground urged by the State in their closing argument.

A defendant in a criminal case is entitled to a unanimous jury verdict. As the Fifth Circuit has said, “The unanimity rule thus requires jurors to be in substantial agreement as to just what a defendant did as a step preliminary to determining whether the defendant is guilty of the crime charged. Requiring the vote of twelve jurors to convict a defendant does little to insure that his right to a unanimous verdict is protected unless this prerequisite of jury consensus as to the defendant’s course of action is also required.” *United States v. Gipson*, 553 F.2d 453, 457–58

(5th Cir. 1977). In the present case, the jury had to unanimously agree that the minor child was alive in order to convict Mr. Williams of failing to render aid as urged by the State. If the jurors failed to consider this fact in their deliberations, then the conviction of Mr. Williams has to be reversed. As no specific jury charge was given on this issue, there is nothing in this record to establish the jury did in fact consider the issue of whether the child was deceased when the call was made from Ms. Trotman. The State encouraged the jury to convict on a legally insufficient ground. The law requires that the jury be instructed that they must all agree the child was alive at the time of the call if the verdict on this issue is to be sustained.

Obviously Mr. Williams was prejudiced by the failure of his trial counsel to request such a charge. The jury cannot be permitted to convict on a ground that is not factually possible.

#### **Question IV**

**Did the Post Conviction Relief Judge err in failing to hold that trial counsel was ineffective in failing to move to quash the indictment due to the indictment being vague and therefore in violation of the Due Process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America?**

This issue is closely tied to the issue previously discussed. Had trial counsel made a motion to quash the indictment, many of the problems, if not all, in the previously discussed issue would have been resolved. The South Carolina Supreme Court in *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) said the indictment is a notice document. As such, all objections to the indictment must be made before a jury is sworn. The indictment must still be a notice of more than the fact that a defendant is accused of violating a certain statute. The indictment must

state the underlying facts that make up that crime. As the court said in *Gentry*, the indictment must be sufficiently clear for “the defendant to know what he is called upon to answer.” *Id.* at 102, 610 S.E.2d at 500. As the indictment in this case simply alleges that Mr. Williams committed the crime of homicide by child abuse through either an act of omission or commission, Mr. Williams was not informed of the nature of his charges.

The testimony at the PCR hearing shows that trial counsel was defending one case and the State was urging the jury to convict on another. As Mr. Falk testified:

As I said, I thought the theory of the case was that he was the one that caused the repeated abuse and - - it was my impression that everything else was more going to cover up that, that all the other actions, not calling 911, more a matter of covering up.  
App. at 1376, ll 9 - 13. *See also* App. at 1366, ll 10 - 23

Based upon the citations of the closing argument of the State stated in Question III above, while the State urged in part that Mr. Williams beat his child, they also strongly urged the jury to convict Mr. Williams based upon his failure to call 911 on the day of the incident. Had a simple motion to quash been made, Mr. Falk would have known the exact theory of the State. As mentioned previously, the State had four theories to convict Mr. Williams and these four theories were jumbled into a one count indictment. The theories were: 1. Mr. Williams actually inflicted the injuries on his child causing the child’s death. 2. Mr. Williams allowed Ms. Trotman to inflict injuries on his child that caused the death of his child. 3. Mr. Williams failed to render medical aid to his child by not calling the ambulance on the Friday before the Monday incident. 4. Mr. Williams failed to render medical aid by failing to call 911 on the Monday incident when his child died. These are four separate and distinct acts that occurred at different times.

Had the Court granted the motion to quash, and the State issued a proper four count indictment, then Mr. Falk, and Mr. Williams, would have clearly understood that Mr. Williams actually inflicting the injuries was only one of four means by which the State had elected to convict Mr. Williams. A guilty verdict on one or more of the counts would have told an appellate court what unanimous facts the jury found to sustain the conviction. If the jury convicted on a count for which the evidence was not sufficient, a reviewing court could have easily corrected that error. A proper indictment would have prevented Mr. Falk from trying a case different from the one the State was trying.

In *State v. Couch*, 54 S.C. 286, 32 S.E. 408 (1899) the South Carolina Supreme Court held an indictment defective because it did not contain the name of the person to whom the defendant sold the illegal liquor. The Court said, “It is the office of an indictment to fully disclose to the accused the nature and cause of the accusation. Any indictment which fails to fully disclose the offense to the accused is defective.” *Id.* at \_\_\_, 32 S.E. at 408. The *Couch* decision was interpreting the same constitutional provision that is found today in Article I, § 14 of the Constitution of the State of South Carolina, which provides that a criminal defendant has the right “to be fully informed of the nature and cause of the accusation . . . .” In the present case the indictment simply did not fully inform Mr. Williams of the nature and cause of the accusation. In *State v. Gunn*, 313 S.C. 124, 437 S.E.2d 75 (1993), the Supreme Court held a vague indictment was saved because under the state grand jury procedure, the defendant could review the testimony before the grand jury. No such testimony is available in this case.

In *DeVaughn v. State*, 749 S.W.2d 62 (Tx. Ct. Cr. App. 1988) the Court held an indictment defective which did not allege from whom the items were stolen when the robbery

was part of a burglary indictment. The Court said, “A motion to quash should be granted only where the language concerning the defendant's conduct is so vague or indefinite as to deny the defendant effective notice of the acts he allegedly committed.” In this case the allegations against Mr. Williams gives him no notice as to what act or omission he committed to cause him to be charged with a crime. The indictment vaguely refers to “failing by act or omission to supply [minor child] with adequate health care causing harm resulting in his death.” App. at 742. Failing to call 911 is not even mentioned.

The United States Supreme Court in *United States v. Cruikshank*, 92 U.S. 542, 558 (1875) held, “It is an elementary principle of criminal pleading, that, where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but it must state the species,-it must descend to particulars.” This quote was cited with approval in *Russell v. United States*, 369 U.S. 749 (1962). *Russell* was decided after the passage in 1946 of Rule 7(c), of the Federal Rules of Criminal Procedures. Rule 7(c) eliminated technical errors in indictments. Thus, the United States Supreme Court has said that even in the era of modern pleadings in criminal cases, generic terms are not sufficient in an indictment.

Had the indictment been quashed and a new indictment had fully informed Mr. Falk and Mr. Williams as to the State's theory, Mr. Falk would have been better prepared to defend the case. He would have known that three of the four theories against Mr. Williams were acts of omission and not commission. If the Court were to determine the numerous conferences and discovery presented in this case were sufficient to inform Mr. Falk of the nature of the State's theory, then trial counsel was ineffective in failing to recognize this and mount a defense,

especially on the issue of failure to call 911 on the day the child died. The Post Conviction Relief Court erred in failing to hold trial counsel was ineffective in failing to move to quash the indictment. Mr. Williams should be granted a new trial as trial counsel was ineffective in failing to ask the trial court to quash the indictment.

### **Question V**

**Did the Post Conviction Relief Judge err in failing to hold trial counsel was ineffective in failing to preserve for appellate review the refusal of the trial judge to admit the video statement of Grace Trotman when the video statement contradicted her trial testimony?**

At the trial of this case, Grace Trotman tried to minimize the manner in which she treated the minor child on the morning of his death. In trial testimony describing the events of the morning she stated:

Q. Now, what happened that morning when you got up?

A. I am not sure if the kids was up before me or if I was up before them, but we were all up. [Minor daughter] and [minor child] were playing, I was breast feeding and [minor child] and [minor daughter] started fighting. So I told them to stop. They didn't listen. So once I got finished breastfeeding my son, I got up and popped [minor daughter] on her arm and then I popped [minor child] on his arm and told them to stop.

Q. What happened when you popped [minor child]?

A. He fell to his bottom, lost balance and hit his head on the wall.  
App. at 224, l 15 to 225, l 3.

During the cross-examination of Ms. Trotman, Mr. Falk attempted to have her admit that she struck the minor child rather hard on his head. App. at 297, ll 15 - 25. During that cross-examination Mr. Trotman denied hitting the minor child with any great force. He requested permission to show the witness the video tape of her interview. App. at 300, ll 1-3. The record

shows that an off the record discussion was held and the request to show the jury the video tape to impeach Ms. Trotman was never discussed again. What was said “off the record” is not known. The record shows that the trial judge never viewed the video to verify what Mr. Falk was saying.

The video taped interview of Ms. Trotman shows a lot more than a mere hitting on the arm and the child falling down and then hitting the wall. The moment Ms. Trotman admits to hitting the minor child, she demonstrated her striking him with enough force that his head hit the wall before he fell down. She becomes very emotional as she describes how she struck the minor child. The video tape is a confession of her striking the child in the head with enough force to cause his head to hit the wall and the resulting injuries. And the front part of his head hit the wall which is the location of the injury found by the medical experts. This video would have buttressed the defense of Mr. Williams that he did not cause the injury.

This video was impeachment material. Mr. Falk failed preserve the record on the refusal of the trial judge to admit the video. Mr. Falk admitted at the PCR hearing that he thought the demonstration in the video would have helped his case. App. at 1350, ll 3 - 8. He admitted he was seeking to introduce the video as a prior inconsistent statement. App. at 1353, ll 2 - 4. The video tape is in fact a prior inconsistent statement. The trial court should have permitted Mr. Falk to introduce it. Had the issue been preserved, there would have been a legal basis to reverse the conviction. Mr. Williams was prejudiced by his failure to preserve this issue.

In ruling against Mr. Williams on this issue, the PCR judge said “Because Trotman never denied making the statements and never denied hitting the Victim, the video would have been inadmissible as extrinsic evidence of a prior inconsistent statement.” App. at 1521. This finding

ignores the basis upon which the trial counsel sought to admit the video. Trial counsel sought to demonstrate that on the morning the minor child died, Ms. Trotman had stuck the child on his head causing his head to hit the wall at approximately the same position the bruising was reported. Such a blow was inconsistent with the trial testimony of Ms. Trotman. At the PCR hearing, reference was made to location of the striking movement at 45 minutes and 10 seconds. App. at 1368 19. Trial counsel had also made reference to the video in his opening statement. App. at 1368, ll 12-20. Had trial counsel properly preserved this issue, an appellate court would have reviewed the video and reversed the conviction of Mr. Williams on his direct appeal.

#### **Question VI**

**Did the Post Conviction Relief Judge err in failing to hold that trial counsel was ineffective in failing to object to the testimony by Grace Trotman and others as to Roger Williams abusing her and the picture of Ms. Trotman that purports to show the abuse?**

Trial counsel filed a pre-trial Motion to discover if the State had any evidence they were seeking to admit under Rule 404b of the South Carolina Rules of Evidence. App. at 812. He never received a formal response to this request. At trial, the State did seek to introduce evidence of other bad acts by Mr. Williams. They introduced evidence through Grace Trotman and others that Mr. Williams allegedly beat Ms. Trotman. They even introduced a picture of Ms. Trotman where she appears to have been battered. The State in closing argument capitalized on this evidence. The Assistant Solicitor argued “Y’all saw how he treats Grace. How he treats all these women.” App. at 665, ll 6-7. The testimony concerning any alleged abuse against Ms. Trotman was not admissible. In *State v. Rivers*, 273 S.C. 75, 254 S.E.2d 299 (1979) the South Carolina

Supreme Court held evidence of the husband's sexual activities with his former wife were not admissible in the charge involving another woman. In *State v. Parker*, 315 S.C. 230, 234, 433 S.E.2d 831, 833 (1993) the Court did not reverse the conviction but noted the other assault was not admissible. The Court said "In the case at bar, the evidence of the prior bad acts submitted by the State was of a general similarity to the beating death of Gwin. In viewing the record, it is difficult to narrow the similarities or draw a real connection between the incidents." The same rule applies here. Mr. Williams was not on trial for criminal domestic violence concerning Grace Trotman. Whether he ever assaulted her is not relevant to the question of whether he assaulted his son or permitted Grace Trotman to assault his son or failed to render medical aid.

Mr. Williams was prejudiced by the admission of this evidence. He was portrayed as a bad man who beat up his girlfriend. The State even introduced a picture of her that was taken weeks after they separated. No evidence exists that Mr. Williams inflicted any injuries shown in the mug shot. At the sentencing of Ms. Trotman, the attorney for Ms. Trotman pointed out to the judge that Ms. Trotman "had two black eyes and her hair was pulled out." Supp. App. at 28, ll 18 - 19. To this comment, the sentencing judge said, "I noticed that." Id., l 20. If the sentencing judge noticed it, then surely the jury noticed it. The State in closing argument called the picture to the attention of the jury. It was not relevant to the issues at hand. If a person beats his girlfriend, then it is much easier to accept that he beat his child. This is the precise reason this evidence is not admissible. As the South Carolina Supreme Court said in *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923):

Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect

is to predispose the mind of the juror to believe the prisoner guilty, and thus effectually to strip him of the presumption of innocence. It “compels the defendant to meet charges of which the indictment gives him no information, confuses him in his defense, raises a variety of issues, and thus diverts the attention of the jury from the one immediately before it.”

This is exactly why the alleged abuse against Ms. Trotman was not admissible in this case and an objection should have been raised.

### **Question VII**

**Did the Post Conviction Relief Judge err in failing to find the cumulative errors deprived Roger Williams of a fair trial?**

The South Carolina appellate courts have never squarely addressed the issue of cumulative error in the context of a Post Conviction Relief Petition. But the court has discussed the concept of cumulative error. The South Carolina Supreme Court has said cumulative error “provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial.” *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see, State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000) *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor’s improper argument and improperly excluded evidence warranted reversal).

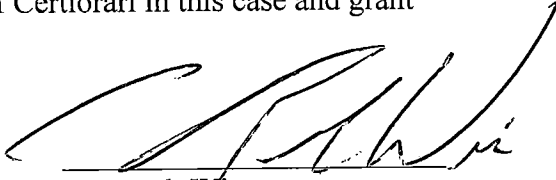
In this case, the Court should consider the cumulative affect of the State introducing evidence, with no probative value, that Mr. Williams is a racist who does not believe in Jesus. With a jury that is majority white, being tried in the Bible Belt, the statements combined together are the most highly prejudicial statements that could be made about any defendant. When these

two statements are then further combined with the improper testimony that Mr. Williams is an abuser of women, the prejudice circle is complete and the fate of Mr. Williams is sealed. Instead of objectively looking at the true evidence, the jury is urged to look at a man who is against the core beliefs of most people in the community. The combined prejudicial affect of these three items in particular is simply an improper attempt to portray to the jury that Mr. Williams is a bad man. They all improperly attack his character and therefore should be considered in combination and cumulatively.

### CONCLUSION

This brief has not defended the actions of Roger Williams that he admitted before trial and at the Post Conviction Relief hearing. No judge in South Carolina would give concurrent sentences to his crimes of accessory after the fact to child abuse and discretion of human remains, the two crimes which he clearly admitted he committed. Under the horrendous facts of this case, this Court has to decide if the errors of trial counsel aided the jury in convicting Roger Williams of the charges of which he asserts he is innocent. After a review of the facts and the law in this case, this Court should grant the Petition for Writ of Certiorari in this case and grant Roger Williams a new trial.

April 17<sup>th</sup>, 2019



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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APR 19 2019

S.C. SUPREME COURT

Certiorari - PCR  
APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Robert M. Young, Sr., Circuit Court Judge

Appellate Case No 2019-000119

Roger A. Williams, #303509 ..... Petitioner,

vs.

The State ..... Respondent

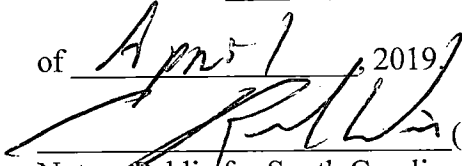
AFFIDAVIT OF SERVICE

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 April 17, 2019, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petition for Writ of Certiorari, Appendix, and Supplemental Appendix in the above case addressed to Kelly Oppenheimer, SC Attorney General Office, P.O. Box 11549, Columbia, SC 29211.

SWORN to and Subscribed

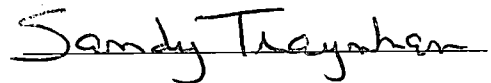
before me this 17<sup>th</sup> day

of April, 2019

 (L.S.)

Notary Public for South Carolina

My Commission expires: 12/17/2019



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S.C. SUPREME COURT

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April 17, 2019

Daniel E. Shearouse, Clerk  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

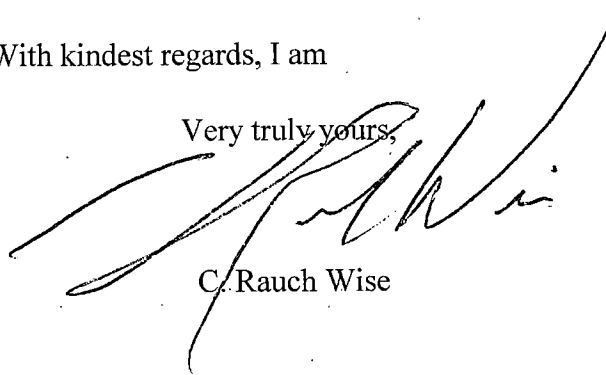
Re: Roger A. Williams vs. State of South Carolina, Appellate Case No. 2019-000119

Dear Mr. Shearouse:

I am enclosing herewith for filing the original and six copies of the Petition for Writ of Certiorari, one (1) unbound and one (1) bound copy of the Appendix and Supplemental Appendix together with the original Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt  
Enclosure

cc Kelly Oppenheimer