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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas
Roger M. Young Sr., Circuit Court Judge

Appellate Case No. 2019-000119

ROGER A. WILLIAMS, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUES PRESENTED

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II. Did the PCR Court properly find that counsel was not ineffective for failing to object to a statement by Grace Trotman that Roger Williams was prejudiced against white people where counsel had a strategy for not doing so and where it was only mentioned once by a witness?

III. Did the PCR judge properly find that counsel was not ineffective for failing to ask for a directed verdict on the issue of whether Petitioner failed to render medical aid where the State presented evidence supporting the issue and a directed verdict was not likely to be granted?

IV. Did the PCR judge properly find that counsel was not ineffective for failing to move to quash the indictment where the charge was stated with sufficient specificity and certainty, Petitioner was apprised of the charges against him and the elements of each charged offense?

V. Did the PCR judge properly find that trial counsel was not ineffective in failing to preserve for appellate review the refusal of the trial judge to admit the video statement of Grace Trotman where the video was inadmissible extrinsic evidence of a prior inconsistent statement?

VI. Did the PCR court properly find that counsel was not ineffective for failing to object to the introduction of Grace Trotman's mugshot where counsel had a valid trial strategy for not objecting and where the evidence was admissible under a *ges restae* theory?

VII. Did the PCR court properly find the alleged cumulative errors did not deprive Petitioner of a fair trial as cumulative error is not a recognized ground for relief in South Carolina?

STATEMENT OF THE CASE

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 Williams initially filed an appeal, but the appeal was withdrawn on October 24, 2014, as he believed no properly preserved issue had merit.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, 201 8, 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.

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a PCR court's findings of fact and will uphold them if there is **any** evidence in the record to support them. *Smalls*, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Id.* Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

RELEVANT FACTS

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, 112 to 231, 113. 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, 1 20 to 233, 110. Mr. Williams told Grace not to call 911 or the police. App. at 230, 123 to 23 1, 13. 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, 11 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, 11 1 1-22; 253, 11 13 to 254, 120.

Upon being questioned about the incident, Grace Trotman eventually told the police what had happened. App. at 257, 1 7 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 his death on Monday but appeared to have recovered from it. App. at 489 11 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, 11 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.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Petitioner testified on his own behalf and presented the testimony of James K. Falk, Esquire (hereinafter "Counsel"). Respondent also presented the testimony of Assistant Solicitor Anne M. Williams.

Counsel testified he never made a motion to quash the indictment and did not see a reason to do so. He elaborated the indictment alleged Petitioner caused the death of Victim while committed child abuse or neglect, and the death occurred in circumstances manifesting extreme indifference to human life. He further elaborated the indictment did not specifically allege exactly what Petitioner did, and it did not indicate Petitioner did not call an ambulance. Counsel also testified the indictment did not specifically state Petitioner permitted Trotman to beat up Victim nor that Petitioner delivered any blows to Victim. He testified the indictment is merely a notice document. Counsel further testified by the time he got this case, he was on notice of what the State expected to prove at trial because of the extensive amount of discovery. He explained based on the discovery, he believed the State would attempt to prove Petitioner inflicted the injuries to Victim, rather than an act of omission. He further explained based on the discovery, he had no

question as to with what Petitioner was charged. He testified he did not know whether or not the indictment gave notice the State would allege Petitioner's failure to call 911 was part of their theory of the case. Counsel testified from the indictment he knew Petitioner was charged with homicide by child abuse. He further testified changing the indictment would not have changed the outcome at trial.

He also testified at some point, they made the decision for Petitioner to plead to desecration of human remains. He explained the strategy in this was to attempt to keep out a lot of the really bad photographs because they would not be relevant to the charges on which Petitioner proceeded to trial. He further explained though they would not have been relevant to the homicide by child abuse charge, they would have been relevant to the desecration of human remains charge. Counsel also elaborated there was no dispute regarding the desecration charge.

Counsel testified testimony arose at trial alleging Petitioner was not a Christian. He further testified there was testimony at trial Petitioner did not permit Victim to sing songs, but Counsel did not know to what songs the State was referring. He testified Petitioner did not like it when Victim sang these church songs, which would have been a reason for Petitioner not to like Victim. After reviewing the transcript, Counsel testified the songs referred to were church songs Victim had learned at school. He elaborated from the testimony Petitioner did not want Victim singing these songs because he did not believe in God, the conclusion could be drawn Petitioner's religious beliefs were being raised at trial. He explained this was the only time during the entire trial in which there was any reference to Petitioner's belief in God. Counsel explained it would have been one of those things where the more it was mentioned, the worse it was. He also testified this statement was not elicited to show Petitioner did not believe in God, but rather to provide another reason as to why Petitioner would abuse Victim.

Counsel also testified testimony was elicited at trial Petitioner did not want Victim to be taught by white people. He further testified up until Trotman made this statement, there had been indication Petitioner was prejudiced against white people. He elaborated he did not object to this statement for the same reason he did not object to the testimony regarding Petitioner's religious beliefs.

Petitioner testified the statement as to his religious beliefs was irrelevant and false. He explained this prejudiced his case because anybody who did believe in God would look at him differently afterwards. He testified the statement he did not want white people teaching Victim was false and prejudiced his case, because eight white jurors served on his jury. Petitioner further testified Counsel should have objected.

Petitioner testified he popped Victim in the chest, but did not hit him in the back. He further testified he would discipline his children when they got out of line. He elaborated he would hit his children in the chest as "a formal way that [he] would pop [Victim]." He further elaborated he disciplined Victim once, and he would never admit to repeatedly abusing Victim. He further testified he loved the fact Victim sang songs, and he would sing them with him.

He further testified he was not at home when Victim stopped breathing, so he does not know what happened. He explained he knows what Trotman told him. He also testified Trotman did not testify at trial Victim fell and hit his head that morning. He elaborated during Trotman's transcript[1], she stated she popped Victim in his arm, Victim fell to the floor, then hit the back of his head. He further elaborated this was completely different from what Trotman stated in the video. He also testified at one point Trotman testified Victim hit his head, but later she referenced Victim hit the back of his head. Petitioner testified Trotman called him after Victim fell and he

[1] It is unclear to which proceeding Applicant was referring.

began seizing, while Petitioner was at work. He elaborated Trotman told him Victim was not breathing. He further elaborated he told Trotman not to call law enforcement, but he was not preventing her from receiving medical aid. Petitioner further testified he told Trotman to go to a neighbor to receive help.

He testified he and Trotman devised a plan for Trotman to go to the Battery and make a false police report Victim had been kidnapped. He elaborated he came up with that plan, and Trotman followed along with it. He further testified after Trotman led law enforcement to Victim's body, they came to interview him again. He explained law enforcement officers confronted him with the death of Victim because they had just found his body. He further explained in his first interview he insisted Victim was still alive and had been kidnapped. Petitioner testified Victim's body was found in the woods in Orangeburg County in a cement-filled trashcan. He elaborated Victim had been there for about one month, and his body was decomposed. He further elaborated he had a hand in the state of Victim's body, and he pled guilty to desecration of the body.

Petitioner then rested, and Respondent presented the testimony Assistant Solicitor Anne Williams. Assistant Solicitor Williams testified she has been an assistant solicitor for ten years in South Carolina and also was a deputy prosecutor for ten years in Arkansas. She testified she and Assistant Solicitor Herring-Lash tried Petitioner's case.

She testified the State's theory of the case was Petitioner and Trotman lived in a home with their two children, and Victim would come to visit every other weekend. She elaborated sometimes Victim would stay a little longer; and during this time, Petitioner was trying to man Victim up. She further elaborated when Victim would return to his mother, he would often have bruises all over his body and different excuses were given for those bruises. Assistant Solicitor Williams also testified they learned through investigation and interviews that Petitioner was

unhappy with certain things about Victim, and would constantly hit him. She explained Petitioner would hit Victim in the chest, and Victim would fall back and hit his head. She further explained Petitioner hit Victim in the head, and Victim was constantly hitting his head and reinjuring his brain. She testified Victim was having multiple seizures because of this, and Trotman, who witnessed the seizures, described them. She further testified this was corroborated some of the things Victim's mother stated as well. She testified the medical expert indicated the re-injury of the brain was similar to a concussion injury in football. Assistant Solicitor Williams testified there was not just one blow which killed Victim, but rather it was a series of blows over and over again. She also testified each time Trotman observed these blows, she never reported it, and neither Trotman nor Petitioner would help Victim. She elaborated they never got any medical attention for Victim, and the accumulation of the blows killed him. She further elaborated there was an admission on both Trotman's and Petitioner's part each time, not just after the final blow.

She further testified the goal in her closing argument was to explain the statute to the jury and connect the dots with the evidence which was presented at trial. She explained there was ample testimony both from Petitioner and Trotman, that Petitioner repeatedly hit Victim, causing the death of Victim. She further explained, however, they argued the omission, not just the failure to call 911 after the final blow but by the fact they never got medical attention for Victim each time he was hit. She testified the State was not alleging Petitioner merely failed to call 911 once. She further testified in closing, they tried to highlight the fact Trotman was beaten down in the relationship and did not have the ability to stand up to Petitioner. She also testified her closing argument was based on the fact all of the evidence overlapped—Petitioner's statement, eyewitness statements, medical testimony, and the video of Petitioner buying concrete. She testified she did argue Petitioner's own words—that neither he nor Trotman called the ambulance—were powerful,

but it was a long closing argument. She elaborated this statement by Petitioner made both Petitioner and Trotman guilty, and she was arguing there was an omission throughout the duration of this abuse. She also testified the crime of homicide by child abuse cannot be committed if the child is already dead, but she did not believe Victim was already dead.

Assistant Solicitor Williams also testified several things were elicited through Trotman in establishing Petitioner's motive. She explained Petitioner did not like the fact Victim acted like a girl and was constantly singing songs about Jesus. She further explained Petitioner would become enraged when Victim would sing these songs and hit Victim, and Victim eventually stopped signing these songs. She elaborated she was unaware why these songs enraged Petitioner, and she did not recall Trotman telling her prior to trial Petitioner did not believe in God.

She testified in the line of testimony in which Trotman indicated Petitioner did not want Victim taught by white people, they were attempting establish Petitioner would not let the children go to school. She explained Counsel was attempting to establish Petitioner was poor, and there was no money for school. She further explained the purpose of this line of testimony was not to elicit that Petitioner did not want white people teaching Victim.

ARGUMENT

Question I

The PCR Court properly found that trial counsel was not ineffective for failing to object to the testimony of Grace Trotman when she testified that Roger Williams did not believe in Jesus or God where counsel had a strategy for not doing so and where it was only mentioned once by a witness.

Petitioner alleges Counsel was ineffective for failing to object to statement made regarding Petitioner's religious beliefs. Specifically, Petitioner alleges Counsel was ineffective for failing

to object when Trotman stated: "Because [Petitioner] was like -- he wanted to -- he didn't believe in God. I mean he didn't believe in Jesus so he didn't want his son singing songs like that." Tr. 201-02. Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). At the evidentiary hearing, Counsel testified he did not want to object to this comment for fear of highlighting it in the minds of the jurors. He elaborated he feared had he objected to it, the worse the comment would seem.

Petitioner has also failed to show how the introduction of this testimony was prejudicial and potentially changed the outcome of the proceeding. This was the only time during the course of the trial Petitioner's religious beliefs, or lack thereof, were mentioned. Trotman did not mention it again after this one instance, no other witnesses were asked about Petitioner's religious beliefs, and the State did not argue this point during its closing argument. Moreover, there was ample evidence from which the jury could have, and did indeed, convict Petitioner. In particular, witnesses testified to the bruises they observed on Victim's body after he had spent time with Petitioner and also testified to the change in Victim's demeanor. In addition, Petitioner's co-defendant testified to the beatings she observed Petitioner give Victim. It is unlikely such an

innocuous comment regarding Petitioner's religious beliefs would have affected the outcome of the trial.

Petitioner argues that Rule 610 of the South Carolina Rules of Evidence precludes this testimony from being admissible. However, Rule 610 explicitly refers the beliefs and opinions on religion of a witness, not the defendant. Rule 610 states: "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 enhanced." A plain reading of the rule shows that it has no bearing on the situation at hand. Here, the testimony elicited was not pertaining to the testifying witness and was not prompted in an effort to either bolster or impair the credibility of the witness. The testimony was elicited from the witness in an effort to explain why the defendant may have abused the victim, not in an effort to bolster or impair the credibility of the testifying witness. The cases cited by Petitioner all rely on the same fallacy and pertain to cases in which the religious testimony pertained to the beliefs of the testifying witness. Petitioner has failed to cite to any case law showing how the testimony of the witness in this case was improper.

Question II

The PCR Court properly found that trial counsel was not ineffective for failing to object to a statement by Grace Trotman that Roger Williams was prejudiced against white people where counsel had a strategy for not doing so and where it was only mentioned once by a witness.

Petitioner alleges Counsel was ineffective for failing to object to testimony regarding his racial prejudices. Petitioner specifically alleges Counsel should have objected when Trotman testified: "[Petitioner] didn't want [Victim] to go to school. He felt like he was going to teach him when he needed to know. He didn't want white people to teach his kids." Tr. 202. Trial

counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Similar to the comments outlined above, Counsel testified he did not want to object to this line of testimony because he did not want to highlight it in the minds of the jury.

Petitioner has failed to show how the introduction of this testimony was prejudicial and would have changed the outcome of the proceeding. This was the only time in which Petitioner's "racial prejudices" were mentioned throughout the entire trial. Additionally, the strength of the evidence against Petitioner in comparison to this innocuous comment was strong. Several witnesses testified to the change in demeanor in Victim after he had been staying with Petitioner. Furthermore, Petitioner's co-defendant testified to the prolonged abuse Victim suffered at the hands of Petitioner. Even if Counsel had objected to this comment, it is unlikely the result of the proceeding would have been different. Also, the comments relating to defendant's racial prejudice did not relate to the race of anyone involved in the case. The testimony of the witness was that defendant had a bias against white people, however, the victim in this case was also African-American. Testimony relating to the defendant's racial bias could potentially be seen as prejudicial if the victim in the case had been white, however, that is not the case. Petitioner has

failed to show how a one-off comment by a witness was prejudicial and would have changed the outcome of the trial where the evidence against the defendant was extensive and horrific.

Petitioner cites to the American Bar Association Standards for Criminal Justice in arguing that the questions from the prosecutor were improper. First, Petitioner has not raised the issue of prosecutorial misconduct on appeal, so framing this issue as such is facially invalid. However, the American Bar Association standards are not relevant to the facts of this case. The standards cited by Petitioner speak directly to appealing to racial or religious prejudices in any arguments, which is not what happened in this case. The solicitor in this case simply asked a question to which the answer included a comment on the defendant's potential racial prejudice, the testimony was not mentioned in the solicitor's closing argument. Therefore, Petitioner has failed to show deficiency or prejudice as it relates to this issue.

Question III

The PCR judge properly found that counsel was not ineffective for failing to ask for a directed verdict on the issue of whether Petitioner failed to render medical aid where the State presented evidence supporting the issue and a directed verdict was not likely to be granted.

When a person causes the death of a child while committing child abuse or neglect, and the death occurs under circumstance manifesting an extreme indifference to human life, or when a 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, that person is guilty of homicide by child abuse. S.C. Code Ann. § 16-3-85(A). "'Child abuse or neglect' means 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). Furthermore, harm to the child occurs when a person: (1) inflicts, or allows to be inflicted, upon the child a physical injury; (2) fails to supply the child with adequate food, clothing, shelter, or

medical aid, thereby causing physical injury or a condition resulting in death; or (3) abandons the child, which results in the child's death. S.C. Code Ann. § 16-3-85(B)(2). At trial, the State contended Petitioner not only repeatedly abused Victim but also failed to seek medical attention for Victim *each time* a blow was dealt or Victim suffered a seizure. The State further contended Petitioner failed to render medical aid on the date of Victim's death, as Trotman called Petitioner for assistance and he instructed her not to call 911. After the close of the State's case-in-chief, Counsel made a directed verdict motion based on the lack of evidence tying Petitioner to the death of Victim. *See* Tr. 557-59. He further argued there was a lack of medical proof as to the cause of death and Petitioner's relationship to that cause of death. Tr. 558-59. Here, Counsel made his strongest argument for a directed verdict at trial—that there was no medical evidence linking Petitioner to Victim's death.

Petitioner contends that counsel was deficient for failing to move for a directed verdict on this issue because testimony establishes that the child was deceased at the time the call was made to Petitioner, therefore, the failure to render aid did not cause the death of the minor child. Petitioner's interpretation of the testimony and the State's theory of the case does not comport with the testimony of the solicitor at the PCR hearing. Petitioner contends that the only evidence relating to the omission in rendering medical aid was the failure to call an ambulance the day of the incident, however, the State presented medical testimony and argued in closing that the failure to render medical aid extended to the prior abuse that ultimately lead to the child's death. The State also pointed out in closing that Petitioner admitted that he didn't call the ambulance and that makes him guilty. Even if the State was unable to prove that the child was alive at the time the call was made, the jury could have convicted Petitioner on the omission for failing to render medical aid as a result of the other incidents of serious physical abuse. The failure to call

the ambulance the day of the incident was not the sole evidence relied upon by the State to prove the omission by Petitioner.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. *State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Ladner*, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007). Even if Counsel had moved for a directed verdict on the issue of whether Petitioner failed to render medical aid, the testimony presented at trial indicated Trotman called Petitioner, while he was at work, to inform him Victim had stopped breathing. Tr. 230-32, 306. Petitioner instructed her not to call 911, but he would return home. Tr. 231-32, 262, 306-07. An hour later, Petitioner returned and responded: "That boy dead." Tr. 233. Based on the above presented testimony, it is unlikely a directed verdict on this issue would have been successful, therefore, Petitioner has failed to show any prejudice resulting from counsel's failure to move for a directed verdict on this specific issue.

Question IV

The PCR judge properly found that trial counsel was not ineffective for failing to move to quash the indictment where the charge was stated with sufficient specificity and certainty, Petitioner was apprised of the charges against him and the elements of each charged offense.

Petitioner alleges Counsel was ineffective for failing to quash the indictments for homicide by child abuse on the grounds that the indictment was vague and did not specify the

theory upon which the State would proceed at trial. Indictments are not jurisdictional in nature but are merely notice documents. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). When judging the sufficiency of an indictment, the court must determine "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." *Id.* at 102-03, 610 S.E.2d at 500 (citing *State v. Wilkes*, 353 S.C. 462, 578 S.E.2d 717 (2003)). "An indictment passes legal muster if it 'charges the crime substantially in the language of the . . . statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.'" *State v. Reddick*, 348 S.C. 631, 635, 560S.E.2d 441, 443 (Ct. App. 2002) (quoting S.C. Code Ann. § 17-19-20 (1985)). Moreover, "whether the indictment could be more definite or certain is irrelevant." *Id.* at 103, 610 S.E.2d at 500.

The indictment stated with sufficient certainty and particularity Petitioner was charged with homicide by child abuse. Moreover, the indictments clearly apprised Petitioner of the elements of each charged offense. In particular, the indictment for homicide by child abuse charged: "That [Petitioner] did in Berkeley County on or between the dates of 5-20-10 and 6-07-10 cause the death of a child under the age of eleven while committing child abuse or neglect; and the death occurred under circumstances manifesting an extreme indifferent to human life." 2010-GS-08-1519. The indictment further alleged: "To Wit: inflicting, or allowing to be inflicted by act or omission, harm on [Victim] . . . causing his death; and/or failing by act or omission to supply [Victim] with adequate health care causing harm resulting in his death." *Id.* This is precisely the same language as that of section 16-3-85 of the South Carolina Code, which

states in pertinent part: "A person is guilty of homicide by child abuse if the person: causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1).

Notwithstanding the indictment itself, counsel testified at the PCR hearing that he was aware that the State was going to attempt to show that Petitioner failed to call the ambulance in an attempt to cover up the abuse. Counsel also testified that he was well aware of the State's alternative theories of the case through the discovery, his own investigation, and his meetings with the solicitors. Petitioner argues that the indictment was improperly vague as to the actual acts or omission committed by Petitioner. However, the indictment specifically referred to Petitioner failing by act or omission to supply minor child with adequate health care causing harm resulting in death. The indictment in this case provided enough specificity and certainty for a court to know what judgement to pronounce, the defendant was on notice as to what he was called upon to answer, and Petitioner was apprised of the elements of the charged offenses. Petitioner has failed to show deficiency on the part of counsel or any prejudice resulting from the failure to move to quash the indictment.

Question V

The PCR judge properly found that trial counsel was not ineffective in failing to preserve for appellate review the refusal of the trial judge to admit the video statement of Grace Trotman where the video was inadmissible extrinsic evidence of a prior inconsistent statement.

Petitioner alleges Counsel was ineffective for failing to properly cross-examine his co-defendant, Grace Trotman. Petitioner contends Counsel was ineffective for failing to introduce Trotman's videotaped interview with law enforcement. "Extrinsic evidence of a prior

inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement." Rule 613(b), SCRE. If a witness does not admit to making the statement, then extrinsic evidence of the statement is admissible. *Id.* However, if the witness admits to the statement, extrinsic evidence of that statement is inadmissible. *Id.* Here, Trotman never denied giving statements to law enforcement and admitted she was aware those statements were recorded. Tr. 283. Moreover, Trotman admitted to popping Victim in the arm "kinda hard" and further admitted Victim fell back and hit his head on the wall after she hit him. Tr. 298-99, 304. She further admitted she demonstrated these actions, both by her and Victim, in her interview. Tr. 299-300. Trotman even went so far as demonstrating the manner in which she hit Victim before the jury. Because Trotman never denied making the statements and never denied hitting Victim, the video would have been inadmissible as extrinsic evidence of a prior inconsistent statement. In addition to eliciting the above testimony from Trotman during cross-examination, Counsel attempted to introduce the video of Trotman's interview at trial several times. *See* Tr. 294, 300. The trial court, however, was unwilling to admit the video, as Trotman had already admitted she was guilty of everything that happened on the day of Victim's death. Tr. 309.

Petitioner argues that the video tape should have been admitted by the trial court as being a prior inconsistent statement for the purposes of impeachment and that the PCR court ignored the basis upon which trial counsel sought to admit the video in its ruling. As previously stated, Trotman admitted to striking the child and causing the child's head to hit the wall. The testimony was also supplemented by Trotman demonstrating on the stand the manner in which she struck the child. Petitioner appears to argue that counsel attempted to introduce the video tape as

extrinsic evidence of a prior inconsistent statement, which is precisely what the PCR court ruled would have been inadmissible. Petitioner has failed to show how he was prejudiced by counsel failing to preserve this issue for appeal where the video tape was inadmissible for the purpose offered, the witness essentially testified to the same set of facts as was in the video, and the witness made the same demonstration in the courtroom as was made in the video. Therefore, Petitioner has failed to show either deficiency or prejudice as it relates to this allegation.

Question VI

The PCR court properly found that trial counsel was not ineffective for failing to object to the introduction of Grace Trotman's mugshot where counsel had a valid trial strategy for not objecting and where the evidence was admissible under a *ges restae* theory.

First, Petitioner contends the introduction of such a photograph inserted evidence of a different abuse, for which Petitioner was not on trial, and was improper character evidence under Rule 404(b), SCRE. However, such evidence may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." *Id.* "Under the res gestae theory, 'evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred.'" *State v. Dennis*, 402 S.C. 627, 635, 742 S.E.2d 21, 25 (Ct. App. 2013) (quoting *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005)).

Here, even if the mugshot of Trotman was introduced as evidence of other bad acts, it would likely have been admissible as necessary for the jury to consider in order to understand the context and circumstances in which the crime occurred. The abuse suffered by Trotman at the hands of Petitioner directly contributed the series of events leading to the child's death and was

interconnected with the abuse of the victim it was necessary for a full understanding of the offense. However, counsel testified at the evidentiary hearing that he thought that the picture was a typically bad mugshot and never drew the conclusion that the photograph showed evidence of domestic violence.

Second, trial counsel enumerated a valid trial strategy for failing to object to the introduction of Grace Trotman's mugshot. Trial counsel testified that he did not object to the introduction of the mugshot because it was helpful to the defense's theory of the case, that Trotman was the person who actually abused the victim and directly caused the death. Trial counsel testified that showing Trotman was a criminal with a mugshot only served to enhance that theory to the jury. As stated previously, where counsel articulates a valid strategic reason for his actions, counsel's performance should not be found to be ineffective. Here, counsel clearly articulated a valid trial strategy for not objecting to the introduction of the mugshot. Therefore, Petitioner has failed to show deficiency on the part of counsel or any resulting prejudice as it relates to this allegation.

Question VII

The PCR court properly found the alleged cumulative errors did not deprive Petitioner of a fair trial as cumulative error is not a recognized ground for relief in South Carolina.

Petitioner argues, essentially, the cumulative effect of all trial counsel's errors prejudiced him to the extent he is entitled to a new trial. This argument is without merit, as not only did trial counsel not commit any errors, but this Court has never recognized the cumulative-error doctrine as a basis for PCR. *See, e.g.*, *Simpson v. State*, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (recognizing that "[w]hether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina" and holding that

"[b]ecause the PCR court found that only one of Simpson's allegations had merit, there was no need to conduct a cumulative-error analysis"); *Green v. State*, 351 S.C. 184, 197, 569 S.E.2d 318, 324-25 (2002) ("Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.").

Many other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative-error analysis of the prejudice prong of *Strickland* is inappropriate, and the correct analysis focusses upon each individual allegation of ineffective assistance. *Fisher v. Angelone*, 163 F.3d 835, 852-53 (4th Cir. 1998); *Wainwright v. Lockhart*, 80 F.3d 1226 (8th Cir. 1996); *Jones v. Sotts*, 59 F.3d 143, 147 (10th Cir. 1995). As the Fourth Circuit Court of Appeals explained in *Fisher v. Angelone*:

> Fisher argues that the cumulative effect of his trial counsel's individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel's actions could be considered constitutional error. . . it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of the Fourth Circuit individually to assess claims under Strickland v. Washington. . . . To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. In so holding, we are in agreement with the majority of our sister circuits that have considered the issue.

Id. (citations omitted). *See also, Mueller v. Angelone*, 181 F.3d 557, 586 n.22 (4th Cir. 1999) ("Petitioner also urges us to consider the cumulative effect of his ineffective assistance of counsel claims rather than whether each claim, considered alone, establishes a constitutional violation. This argument is squarely foreclosed by our recent decision in *Fisher*, 163 F.3d [...at] 852-53 [...]"). The Fourth Circuit further explained, "legitimate cumulative-error analysis evaluates only the effect of matters actually determined to be constitutional error, not the cumulative effect of all of counsel's actions deemed deficient." *Fischer*, 163 F.3d at 852 n. 9.

In this case, none of the actions Petitioner alleges were error were found to be so by the post-conviction court, nor did the post-conviction court find Petitioner was prejudiced by any of the alleged errors. As a result, a cumulative-error analysis would be inappropriate on these facts under any interpretation of the doctrine. This Court should therefore deny the Petition, and the post-conviction court's findings should be affirmed.

CONCLUSION

For all the foregoing reasons, the State requests this Court deny the petition for a writ of certiorari and affirm the PCR court's dismissal of the Petitioner's application for relief. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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Attorney General

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August 16, 2019

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas
Roger M. Young Sr., Circuit Court Judge

Appellate Case No. 2019-000119

ROGER WILLIAMS, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by placing one copy in the United States Mail, addressed to:

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

This 7th day of August, 2019.

Benjamin Limbaugh

Benjamin H. Limbaugh, AAG
Attorney for Respondent

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
AUG 21 2019
S.C. SUPREME COURT

August 16, 2019

The Honorable Daniel E. Shearouse
Clerk of Court — SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Roger Williams v. State of South Carolina
Appellate Case No.: 2019-000119

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the **Return to Petition for Writ of Certiorari** in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

Benjamin H. Limbaugh
Assistant Attorney General
S.C. Bar # 103334

BHL/jj
Enclosures

cc: C. Rauch Wise, Esquire
Victim Advocacy Division