

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

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Appellate Case № 2019-000119

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

vs.

The State ..... Respondent.

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REPLY BRIEF

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## 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?**

Had trial counsel objected to the comment about Mr. Williams lack of a belief in God or Jesus, the trial judge would have been required to sustain the objection. Respondent argues that the testimony money would have been admissible to show why Mr. Williams abused his child. Br. of Resp. at 12. This is contrary to the testimony in the case. Ms. Trotman testified the minor child stopped singing the religious songs on his own. She stated:

Q. How did he get [minor victim] to stop singing the songs?

A. Eventually he stopped on his own.

App. at 202, ll 4-6.

No other purpose was served by the testimony except to show that Mr. Williams was not a religious person. No testimony exists that she the minor child was beaten because he sang religious songs. As noted in the opening brief, the fear of upsetting a jury is not a a valid trial strategy. *See, Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001). If it were so, then a defense lawyer could sit moot for an entire trial and justify by saying he did not want to appear to be an obstructionist to the jury.

The Respondent further argued that trial counsel “[E]laborated he feared had he objected to it, the worse the comment would seem.” Br. of Resp. at 13. Such a statement ignores that had an objection been raised, and a mistrial not declared, the jury would have been told in a curative instruction that they could not consider that fact in their deliberations. This was would have greatly lessened the harm from the improper comment. Failure to object and request a mistrial or

a curative instruction, is hardly a valid trial strategy.

## 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?**

As noted in the opening brief, trial counsel never testified that at the time of the trial he did not object because he did not want to bring attention to the comment. While respondent made an argument that the reference to religion had some basis in fact for its admissibility, such is not true for the comment about Mr. Williams being racially prejudiced. Here the Respondent argues, “Also, the comments relating to the defendant’s racial prejudice did not relate to the race of anyone involved in the case.” Br. of Resp. at 15. The point apparently missed by the Respondent is that such a racial comment would place Mr. Williams in a negative light to the jury, regardless of the race of the juror. The ability of any defendant to prove prejudice from improperly admitted evidence is difficult. As the South Carolina Court of Appeals has stated, “Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)(internal citations omitted). Mr. Williams cites to the American Bar Association Standards for Criminal Justice, not to establish prosecutorial misconduct, but to show the basis upon which defense counsel should have objected. Here, the two comments provided the jury with a basis for deciding the case based upon an improper basis. This was improper.

The mere fact the question was asked is prejudicial to Mr. Williams. If once is not

enough to establish prejudice, how many times would a prosecutor need to ask about racial prejudice or a lack of belief in God or Jesus for the comment to be prejudicial?

### **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 Respondent in its brief concedes that the child was deceased at the time the call was made by Grace Trotman. Br. of Resp. at 6. Mr. Williams concedes that homicide by child abuse can be committed through act of omissions and commissions. The point raised by Mr. Williams on this issue is that a specific means of committing the homicide by child abuse was urged by the state - Mr. Williams and Ms. Trotman failed to call 911 on the day of the incident. Mr Williams also concedes that on the other issues there is evidence, if believed, to submit the case to the jury for failure to render medical aid on other occasions. What the Respondent does not argue against in its brief is that one particular means of committing homicide by child abuse could not have occurred, and that one is the failure to call 911 on the day of the incident.

As noted in the opening brief, this one specific ground is one the State argued in its closing argument that, based upon the statement of Mr. Williams, made the State's argument the easiest to prove. Contrary to the argument of the Respondent in its brief, a request for a directed verdict as to the failure to call 911 on the day of the incident would have been successful as the evidence show the child was deceased at the time of the call. Certainly any possible proof that

the child was alive does not meet the standard established in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)(“Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”)(emphasis in original). To deny relief on this ground would be sustain a verdict which the record establishes had no basis in fact as to a means of committing the crime.

#### 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?**

Both the State and Mr. Williams agree that after *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) the indictment is a notice document. The disagreement lies in deciding the question of “Notice of what?” The indictment has to mean more than notice of the fact that a defendant committed the crime of homicide by child abuse. If that were all, an indictment could fail to inform a defendant of exactly what he or she did or failed to do to cause the death of a child. A defendant would be unprepared to defend the case simply because the defendant would not know the theory of the State in prosecuting the case.

When an indictment is so vague that the State can argue a ground of which there is not sufficient proof and permits the jury to convict on that ground, then the indictment is vague. As such the indictment denies a defendant due process of law. An indictment that commingles acts

of commission or omission is vague. *State v. Jarreau*, 563 S.W.3d 477, 484 (Tex. App. 2018)(“If the Legislature has defined the act or omission and provided alternative manner and means of commission, the indictment is adequate only if it alleges the specific manner and means of commission the State intends to rely on at trial.”); *People v. Corbalis*, 178 N.Y. 516, 521, 71 N.E. 106, 108 (1904). When the indictment simply places in a single count a phrase that includes both acts of omission and commission, the indictment is vague.

### 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?**

Contrary to the position of the State, the issue here is not whether Grace Trotman testified she struck the minor child on the arm or that she demonstrated how she struck the child. The point, as stated in the opening brief, is the video shows a difference in force as to how she struck the minor child. The video shows her reaction when she finally admitted to striking the minor child. All Mr. Williams expected of his counsel is for him to preserve for appellate review the failure of the introduction of the video interview. Obviously trial counsel failed to preserve this for appellate review. When trial counsel fails to preserve for appellate review the introduction of evidence, trial counsel is ineffective.

The State has argued, “Petitioner has failed to show 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 in the video, and the witness made the

same demonstration in the courtroom as was made in the video.” Br. of Resp. at 22. The prejudice in this case is simply seen in the video where she forcefully struck the minor child. In the video, she demonstrates that the head of the minor child struck the wall first. The failure of the jury to see this demonstration was prejudicial to Mr. Williams. If all the video did was confirm the courtroom testimony of Ms. Trotman, the State should have had no objection.

### **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?**

The issue raised here is substantially more than the simple mug shot of Grace Trotman being introduced. Ms. Trotman and others were permitted to testify that Mr. Williams had committed the crime of criminal domestic violence against Ms. Trotman. Contrary to the argument of the State in its brief, this was not about “res gestae.” Br. of Resp. at 22. Ms. Trotman never testified that Mr. Williams beat her and the minor child at the same time. The testimony about criminal domestic violence was simply a violation of Rule 404b of the South Carolina Rules of Evidence.

The State has further argued, “The abuse suffered by Ms. 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.” Br. of Resp. at 22-23. No such testimony exists in this case. At no time did Ms. Trotman testify she and the child were abused at the same time. The allegations of criminal domestic violence by Ms. Trotman are at App. 195, 121 to 196, 15. This was before the minor

child came to live with them. The state was permitted to introduce such evidence through a third party. App. at 423, ll 18-24. These allegations of criminal domestic violence have no relationship the alleged abuse. The fact that the State was able to introduce evidence of alleged abuse, made it much easier for the jury to accept that he abused his child. As noted previously, this testimony was prejudicial because it enable the jury to convict Mr. Williams based upon improper facts.

### **Question VII**

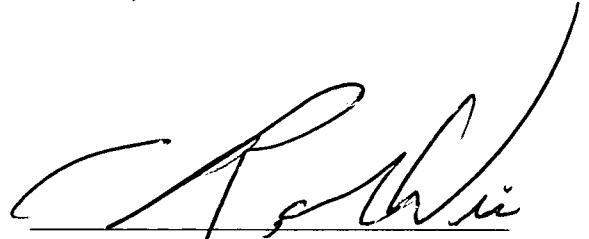
**Did the Post Conviction Relief Judge err in failing to find the cumulative errors deprived Roger Williams of a fair trial?**

Mr. Williams acknowledges that in order to apply any cumulative error analysis, the Court must first find error by trial counsel. However, when to errors by trial counsel are very similar, then this Court should consider a cumulative error analysis. This analysis should apply to the issues involving the comments about race and religion. As the Alabama Supreme Court has said “In determining the question before the court, we do not think that each of the above statements must be analyzed separately to see whether or not, if standing alone, it would create an ineradicable bias or prejudice. We think, on the contrary, that these various statements should be considered together to determine whether or not, in their cumulative effect, they created a prejudicial atmosphere.” *Blue v. State*, 246. The two errors taken together did create a prejudicial atmosphere.

## CONCLUSION

Fore the forgoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, this Court should grant the Petition for Writ of Certiorari, reversed the Order of the lower court, and remand this matter for a new trial.

September 3, 2019



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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Petitioner in the above entitled case. That on September 3, 2019, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Reply Brief in the above case addressed to Benjamin H. Limbaugh, SC Attorney General Office, P.O. Box 11549, Columbia, SC 29211.

SWORN to and Subscribed

Sandy Traynham

before me this 3 day

of September, 2019.

[Signature] (L.S.)

Notary Public for South Carolina

My Commission expires: 10/7/2015