STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID L. STEADMAN,

APPELLANT

APPELLATE CASE NO 2020-000336

FINAL BRIEF OF APPELLANT

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1.

Whether the trial judge erred in failing to grant Appellant's motion for a mistrial where the state's lead investigator testified that Minor had brittle bones and had previously broken both legs after the judge ruled such testimony inadmissible and the unfair prejudice which resulted could not be cured with a curative instruction?

2.

Whether the trial judge erred in failing to grant Appellant's motion for a mistrial where the assistant solicitor argued in closing that the jury had a "noble opportunity" to "strike back against injustice" which was improper closing argument and the unfair prejudice could not be cured with a curative instruction?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County grand jury for homicide by child abuse.[1] R. 616-617. Appellant's jury trial was held before the Honorable Eugene C. Griffith, Jr. and a jury from February 10 – 14, 2020. R. 1. Appellant was represented by Aimee Zmroczek. R. 1. The state was represented by Laura Mayes and Robert McNair. R. 1.

The jury found Appellant guilty as charged. R. 606, ll. 17 – 21. The judge sentenced Appellant to twenty-years imprisonment. R. 613, l. 24 – 614, l. 3.

This appeal follows.

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1 Appellant's wife was also charged as a co-defendant and as of the date of this filing, her case is still pending in the Circuit Court.

STANDARD OF REVIEW

"The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id.

"An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012).

STAEMENT OF FACTS

On July 31, 2017 at 9:05 p.m., 911 dispatch received a call from a female caller who stated her four-year-old daughter was not breathing. The dispatcher advised the caller to perform CPR on the child and remained on the phone until the first responders arrived. R. 36, l. 8 – 39, l. 21; State's Exhibit 5 (911 call recording on file with this Court). Ryan McKinney with the Lexington County Fire Department arrived on the scene at 9:14 p.m. and stated that he found Minor laying on her back with nobody performing CPR on her. R. 45, ll. 1 – 25.

McKinney observed that Minor's abdomen was "abnormally" distended and that she was not breathing and had no signs of life. R. 48, l. 16 – 49, l. 25. McKinney also observed vomit on Minor's mouth, so he cleared her airway and began CPR. R. 50, ll. 1 – 14. McKinney noted that Minor's body was "unusually cold." R. 60, ll. 2 – 22. McKinney rode in the back of the ambulance with Minor while EMS transported her to the hospital. He continued to perform CPR on her until they arrived at the hospital. R. 52, l. 15 – 53, l. 17.

Minor's autopsy revealed that she died from "asphyxia . . . due to aspiration of gastric contents due to the immobility of the patient due to . . . tape over the mouth." R. 289, l. 19 – 290, l. 1. The forensic pathologist could not determine how long the tape had been over Minor's mouth or the exact time of her death. R. 290, ll. 2 – 21. The pathologist also testified that the reason Minor's abdomen was distended was because "[w]hen a person dies, the bacteria inside the intestines are still alive and they . . . produce gas." R. 459, ll. 10 – 25.

Scott Zylstra, who was a detective at the Lexington County Sheriff's Department, responded to the scene on the night of Minor's death. R. 76, l. 3 – 77, l. 8. Zylstra recalled that when he arrived, he spoke with Appellant who was identified as Minor's father and asked

Appellant what happened.[2] R. 77, ll. 10 – 13. According to Zylstra, Appellant was "crying and very distraught and kept saying . . . 'I should have done more.'" R. 79, l. 20 – 80, l. 1.

Appellant told Zylstra that he arrived home from work between 6:30 and 7:00 p.m. and Minor and her brothers were already in bed. Appellant said that Minor told him she was thirsty, and he gave her a glass of water. Appellant further stated that he did not observe anything unusual with Minor. Appellant said that he then sat down to watch television when he heard his wife scream and he went to see what was wrong. R. 80, ll. 2 – 19. Appellant told Zylstra that he began CPR on Minor which caused her to vomit and he ran next door to get relatives and then continued CPR until first responders arrived.[3] R. 82, ll. 6 – 13.

Minor's brothers, Minor 2 and Minor 3 were also present at the scene when Minor died.[4] April Sykes with SLED conducted a forensic interview of Minor 2 on August 7, 2017 and contacted the Lexington Sheriff's Department to share the information she obtained from Minor 2. R. 120, l. 8 – 123, l. 9; Defense Exhibit 6 (Forensic interview of Minor 2 on file with this Court). In response to the information relayed by Minor 2, the Sheriff's Department executed a second search warrant on Appellant's house to search for tape that Minor 2 had described in his forensic interview.[5] R. 125, l. 17 – 126, l. 22.

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2 Appellant was interviewed by law enforcement several different times over the following two weeks but was not arrested until August 15, 2017 – approximately two weeks after Minor's death.

3 Appellant also gave a written statement to a different officer the day after Minor's death that was largely consistent with his statement to Zylstra. R. 194, l. 7 – 196, l. 21; R. 618-619. Appellant later added to this statement that he and his wife washed Minor off in the shower because she was throwing up. R. 198, ll. 1 – 23.

4 Minor 2 was older than Minor. Minor 3 was younger than Minor.

5 This search occurred on August 10, 2017. R. 126, ll. 4 – 9.

While officers were conducting their search, Appellant arrived at the home and was questioned about the tape that Minor 2 referred to. Appellant allegedly told law enforcement at that time that his wife had used tape to tie Minor to the bed on the night of her death. R. 126, l. 23 – 127, l. 25. Upon hearing this information, Miles Rawl with the Sheriff's Department advised Appellant of his Miranda[6] rights which Appellant waived.

According to Rawl, Appellant stated that when he arrived home from work on the night of Minor's death, his wife seemed aggravated because their children had been fighting and Minor was hitting Minor 2 with a lightsaber. R. 129, ll. 14 – 25. Appellant told Rawl that when he went to Minor's room to check on her, he found her taped to the bed. R. 130, ll. 1 – 8. Rawl recalled his interview with Appellant:

> [Appellant] stated that [Minor] had vomit on her chest and she was breathing very slow and heavy. He stated that her . . . pupils were dilated and her stomach was really big. He stated that he pulled the tape off immediately, carried her to the bathroom thinking she may have to throw up more. He stated that both he and [his wife] were able to squeeze [Minor's] stomach to get more vomit out. He describes [Minor] as lifeless but breathing very slow and heavy.

R. 130, ll. 10 – 20. According to Rawl, Appellant then stated that he and his wife tried to wash Minor off, and Minor was unresponsive. Appellant and his wife got into an argument and Appellant went to go watch Netflix on his phone.[7] R. 130, l. 24 – 131, l. 6; R. 626-629.

During the second search of Appellant's home, law enforcement found tape on the side railings of Minor's bed. R. 147, ll. 2 – 17. Officers also found pieces of tape in a trash can "that could have been over top of [Minor's] mouth." R. 148, l. 17 – 149, l. 6. Douglas Novak, an

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6 Miranda v. Arizona, 384 U.S. 436 (1966).

7 Appellant gave another written statement on the day that he was arrested – August 15, 2017 – which was largely consistent with the statement he gave to Rawl. R. 203, l. 23 – 205, l. 25; R. 620-625. Appellant's wife was arrested five days earlier. R. 212, ll. 5 – 11.

investigator who interviewed Appellant's wife, stated that Appellant's wife admitted to him that she had put tape over Minor's mouth between 5:00 and 6:00 p.m. R. 170, ll. 11 – 20. Investigator Joseph Andaloro, who was the lead investigator in this case, also admitted that it was Appellant's wife who put tape over Minor's mouth and that he had no evidence to dispute that fact. R. 220, ll. 8 – 19.

Appellant testified in his defense. He recalled that when he got home from work on the night of Minor's death, his wife was watching television and seemed aggravated. R. 490, ll. 2 – 10. Appellant's wife told him that she was aggravated because their children had been fighting and that Minor was "being mean to the boys and they were hitting each other with the lightsabers." R. 490, ll. 11 – 24. Appellant's wife then told him that the children were in their beds sleeping and that "she had taped [Minor] to the bed." R. 492, ll. 8 – 13. Appellant immediately went to Minor's bedroom and found that both of her wrists were taped to the headboard of her bed but denied ever seeing tape over Minor's mouth. R. 492, ll. 13 – 19. Appellant also recalled that Minor had vomit on her chin, neck and chest. R. 493, ll. 1 – 4. Appellant maintained that Minor was already dead at that point and that he had lied to the police when he told them Minor was still alive. R. 494, ll. 6 – 13.

Appellant carried Minor to the shower so he could wash her off but his wife began arguing with him and refusing to answer how long Minor had been tied to the bed, so he left the bathroom to tend to their youngest child, Minor 3, who was crying. R. 495, l. 9 – 497, l. 8. Appellant recalled:

> I picked [Minor 3] up. As I picked him up, I didn't want to put him back down, I was scared. I didn't know what my sons had witnessed that day. I don't know what else my daughter had went through that day. I picked [Minor 3] up and brought him to the couch. I pick up my phone and the first thing I do – I hit Netlix and immediately it comes up on Netflix, it automatically loaded on

> my phone, was a show that had like dinosaur thing called Ultimate Beastmaster on the front. [Minor 3] did click on it and we decided to watch that and he calmed down and stopped crying laying on my chest. I did not . . . want to let go of holding him. I didn't properly think.

R. 497, ll. 8 – 19. Appellant testified that he regretted not calling 911 immediately but that his daughter was already dead. R. 498, ll. 2 – 6.

ARGUMENT

1.

The trial judge erred in failing to grant Appellant's motion for a mistrial because the state's lead investigator testified that Minor had brittle bones and had previously broken both legs after the judge ruled such testimony inadmissible and the unfair prejudice which resulted could not be cured with a curative instruction.

Relevant Facts

During a pretrial hearing, defense counsel requested that the state put on the record any prior bad acts it was intending to elicit during Appellant's trial. R. 19, ll. 1 – 9. The assistant solicitor responded that she was not intending to introduce any evidence regarding Minor's prior injuries including her two broken legs. The assistant solicitor acknowledged that case law prohibited the introduction of such evidence citing to State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007). R. 19, l. 15 – 20, l. 5.

The state's lead investigator, Joseph Andaloro, was asked on direct examination if Appellant had given him any information regarding Minor's "medical history." R. 182, ll. 8 – 9. Andaloro answered:

> [Appellant] advised me that [Minor] was born at twenty-four weeks as a premature baby, weighing in at one pound eight ounces. [Minor] spent the first five months of her life in the hospital. [Minor] has brittle bones and has broken both of her legs at different times. [Minor] had a G-tube.

R. 182, ll. 10 – 15. Defense counsel stated she had a matter of law and the jury was excused. R. 182, ll. 16 – 22.

Counsel requested a mistrial. R. 182, l. 23 – 183, l. 6. The assistant solicitor argued that the harm could be cured because there was no allegation that Appellant caused the broken leg,

only that Minor had broken her legs. R. 183, ll. 7 – 10. Counsel responded that it was irrelevant who broke Minor's legs:

> If they have information that [Minor] broke both of her legs or that both of her legs were broken in mom's care solely, then they'll say [Appellant] . . . knew that she was [going to] come home and kill [Minor] or [Appellant] knew that she was dangerous . . . or [Appellant] was recklessly endangering [Minor's] life by leaving this child with her.

R. 183, ll. 11 – 18. The solicitor argued that "in conjunction with the brittle bones comment . . . it doesn't indicate . . . foul play." R. 183, ll. 21 – 25. Defense counsel argued that the comment was incredibly prejudicial because "all [the jury] need[s] is one reason . . . to find [Appellant] guilty of some medical neglect." R. 186, ll. 10 – 24.

The judge denied counsel's request for a mistrial and stated he would give a curative instruction. Counsel maintained her objection. R. 187, ll. 9 – 19. When the jury returned to the court room, the judge gave the following instruction:

> Y'all's issue to decide questions of fact to answer are what happened on the day of July 31st as a result of whatever happened that day. Prior medical history is really not relevant, there was some mention of that, but y'all's focus is on the events of July 31st and since.
>
> All right. Your objection is noted for the record. We'll continue on.

R. 190, ll. 1 – 10.

Discussion

"The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "A mistrial should only be granted when absolutely necessary, and a defendant must show both

error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585–86, 698 S.E.2d 862, 865 (Ct. App. 2010).

"Insubstantial errors that do not impact the result of a case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447–48, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Harris, 382 S.C. at 117, 674 S.E.2d at 537.

Here, the solicitor agreed that evidence of Minor's broken legs was inadmissible pursuant to State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007). R. 19, l. 15 – 87, l. 5. However, the solicitor still asked its lead investigator on direct examination about Minor's "medical history," which elicited the response that Minor had "brittle bones" and had previously broken both of her legs. This testimony could have led the jury to believe Appellant had previously injured or neglected Minor and therefore render a decision on an improper basis. See State v. Spears, 403 S.C. 247, 258, 742 S.E.2d 878, 884 (Ct. App. 2013) (noting that a jury could have determined defendant was guilty on improper basis by relying on evidence that defendant in murder case had previously shot the victim one month earlier in a different altercation).

In Northcutt, the defendant was on trial for beating his infant daughter to death while in a "fit of rage." Id. at 213, 641 S.E.2d at 876. The Supreme Court held that the trial judge erred in allowing the state to introduce evidence that the minor victim had broken her leg ten weeks prior to her death while the defendant was removing her from her car seat. Id. at 218, 641 S.E.2d at 879. The victim was treated for her broken leg at the hospital and the Court noted that the existence of such an injury in a child is considered a "red flag" for child abuse but the treating physician did not refer the matter to DSS. Id. at 219, 641 S.E.2d at 879. The state argued at trial

that the injury was relevant to show the defendant's character and his relationship with the victim. The defense countered that the jury would likely interpret the injury as child abuse even though it was "an accident that could have happened to anybody." Id.

The Northcutt Court held that the "trial judge abused his discretion in admitting evidence of the prior injury because it unfairly prejudiced [the defendant]." Id. The Court concluded that the jury was likely to misperceive the prior injury based on the defendant's subsequent conduct which led to the murder charge. Id. The Court further found that evidence of the prior injury was unfairly prejudicial because "[t]he baby's prior injury was, under all accounts, an accident." Id.; see also State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997) (holding that evidence of victim's prior injuries and defendant's alleged "rough treatment" of the victim was not admissible in homicide by child abuse prosecution, where the state failed to prove that the defendant had inflicted the prior injuries and the "rough treatment" was not sufficiently similar to show a common scheme or plan).

Likewise, in State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008), the Supreme Court held that it was reversible error to allow a witness to testify to alleged prior allegations of mistreatment of a nine-month-old minor victim in a homicide by child abuse case. In Fletcher, one of the defendant's co-workers testified that one month prior to the victim's death, he observed the victim sitting in a walker in the attic "pouring down sweat" while the defendant was at home. The co-worker further testified that "two or three weeks" prior to that incident, he observed the victim handcuffed by his feet to the defendant's bed. Id. at 21-22, 664 S.E.2d at 481-82.

The Fletcher Court found that the state failed to present clear and convincing evidence that the defendant was the person who put the victim in the attic or who handcuffed the victim to

the bed. Id. at 24, 664 S.E.2d at 483. The Court also noted the lack of evidence regarding who inflicted the victim's fatal injuries – the defendant or the victim's mother. The Court concluded that "the only function of [the co-worker's] testimony in this case was to demonstrate [the defendant's] bad character." Id. at 25-26, 664 S.E.2d at 484.

In this case, there was no indication as to whether Minor's broken legs were the result of an accident or intentional conduct. However, the state plainly acknowledged throughout the trial that it's theory of the case was that Appellant was guilty for his negligent failure to contact medical help as soon as he realized Minor was taped to the bed. The state agreed throughout the trial that it was Appellant's wife, not Appellant, who put tape on Minor's mouth and taped her to the bed which ultimately caused Minor's death.

Considering the state's theory of the case – that Appellant was guilty for his failure to seek medical help – it was extremely prejudicial for the jury to hear that Minor had previously broken *both of her legs*. This was very likely to be misconstrued by the jury as evidence that Appellant had *at least* been neglectful towards Minor in the past, if not outright intentionally violent. Furthermore, the evidence had very little, if any, probative value because there was no time frame given as to when Minor's legs were broken or what caused those injuries. The testimony regarding Minor's prior medical history had no bearing on Appellant's guilt and the state should not have elicited such testimony by explicitly asking the lead investigator about Minor's medical history.

The trial judge erred in denying defense counsel's motion for a mistrial because the testimony that Minor had previously broken both of her legs was extremely prejudicial to Appellant. Homicide by child abuse cases are exceptionally emotional cases if for no other reason than the helplessness of the victim and the unimaginable reality that certain parents inflict

such harm on their own children. Here, the jury was likely searching for any reason to find Appellant guilty of neglecting Minor's medical needs and the lead investigator's testimony that she had previously broken her legs was likely to be construed by the jury in an impermissible way. Appellant's conviction should be reversed. See State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008); State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007).

2.

The trial judge erred in failing to grant Appellant's motion for a mistrial because the assistant solicitor argued in closing that the jury had a "noble opportunity" to "strike back against injustice" which was improper closing argument and the unfair prejudice could not be cured with a curative instruction.

Relevant Facts

At the end of the state's reply closing argument, the assistant solicitor stated: "You have before you the most noble of opportunities. The chance to strike back against injustice and deliver a verdict . . ." R. 577, ll. 2 – 4. Defense counsel objected and the judge stated he believed "that was an improper comment." R. 577, ll. 5 – 6. The solicitor then ended her closing by telling the jury that the "correct verdict" was guilty. R. 577, ll. 8 – 13. The judge then told the jury: "[T]he lawyers' arguments are just arguments and summaries and that's their job, to advocate. Y'all are [going to] evaluate the evidence, the testimony, exhibits . . . and so my instruction will be to that end . . ." R. 577, ll. 15 – 25.

After the jury was excused, defense counsel moved for a mistrial based on the solicitor's comments. Counsel argued that this was a highly emotional case and it was improper to tell the jury it was their chance to "strike back." Counsel maintained that a curative instruction would not be sufficient to remove the harm. R. 578, l. 9 – 579, l. 5. The trial judge disagreed, ruling that his instruction was sufficient and denied counsel's motion for a mistrial. R. 579, l. 20 – 580, l. 5.

Discussion

"A review of a solicitor's closing argument is based upon the standard of whether his comments so infected the trial with unfairness as to make the resulting conviction a denial of due

process." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "A solicitor's closing argument must not appeal to the personal biases of the jurors." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). Furthermore, "the argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." Id. "To find whether the assistant solicitor's comments in closing argument violated the defendant's due process rights, [the Court] must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial." Fortune v. State, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

Here, the prosecutor's comments to the jury in closing arguments were highly inflammatory. They served no purpose other than to arouse the passions of the jury in a case which was already wrought with emotion. The assistant solicitor's comment that the jury had a "noble opportunity" to "strike back" conveyed a vengeful message that the jurors ought to seek retribution against Appellant for Minor's death. See State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007) (reversing the defendant's death sentence due to the solicitor draping a black shroud over the victim's crib and conducting a "staged funeral procession" in his closing argument along with making several inflammatory remarks).

Appellant's case is similar to what the Supreme Court dealt with in Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010). In Vasquez, the prosecutor referred to the defendant, who jurors knew was a Muslim, as a "domestic terrorist" and compared the defendant's actions to the September 11th attacks against the United States. Id. at 452, 698 S.E.2d at 563. Vasquez's trial counsel failed to object to these comments, and he sought post-conviction relief. The Vasquez

Court determined that trial counsel was ineffective for failing to object to the solicitor's comments:

> Because there was no legal or evidentiary support for the solicitor's use of the term "domestic terrorist," the comments invoked circumstances outside of the record. Furthermore, by verbally drawing a direct correlation between [the defendant's] acts and the events of September 11th, the solicitor appealed to the jurors' sense of passion and prejudice involving anti-Muslim sentiment.

Id. at 463, 698 S.E.2d at 569.

Throughout Appellant's trial there were numerous references to the fact that his wife had placed tape over their daughter's mouth, which caused her death. Such a cruel act will inherently heighten a juror's emotions. It is difficult to imagine a person who would not have at least *some* desire to "strike back" against a person who caused the death of a helpless four-year-old girl. However, it was not the jury's "noble opportunity" to seek retribution against Appellant, but rather to determine whether the state had proven its case beyond a reasonable doubt.

In Fortune v. State, 428 S.C. 545, 547, 837 S.E.2d 37, 38 (2019), the Supreme Court held that the solicitor engaged in prosecutorial misconduct by making improper comments in his closing argument that it was his job to "present the truth." The solicitor in Fortune, told the jury that he was bound by South Carolina law to dismiss a case if he determined that the accused person was innocent but that he could not dismiss a case if he believed the accused was guilty. Id. at 550-51, 837 S.E.2d at 40. The solicitor then contrasted his role with defense counsel's by saying that his role was to "show the truth" and that defense counsel's role was to "manipulate the truth," and "confuse jurors." Id.

The Fortune Court found that the solicitor's comments were "absolutely inexcusable." Id. at 551-52, 837 S.E.2d at 41. The Court reasoned that that the solicitor giving his personal

opinion "inject[ed] an arbitrary factor into jury deliberations" and could lead a juror to "rely on the opinion of others instead of exercising his independent judgment as to the facts." Id. at 554, 837 S.E.2d at 42. See also State v. Thomas, 287 S.C. 411, 412-13, 339 S.E.2d 129, 129 (1986) (holding that the solicitor's improper comments in closing argument that the defendant's case "had already been examined by a magistrate and a grand jury, and a preliminary hearing had been held" was reversible error); State v. Woomer, 277 S.C. 170, 175, 284 S.E.2d 357, 359 (1981) (reversing defendant's death sentence because, in part, the solicitor improperly argued to the jury that "he had himself already made the same decision that he was now asking them to make"); State v. Linder, 276 S.C. 304, 312-13, 278 S.E.2d 335, 339-340 (1981) (admonishing prosecutors to limit their comments in closing arguments to the record and its reasonable inferences).

In its most simplistic form, the jury in this case was tasked with determining whether Minor died before or after Appellant arrived home from work. As the state conceded, if Minor was dead before Appellant got home, he could not be found guilty of homicide by child abuse. That was because the state's sole theory of Appellant's guilt was that Minor was alive when he got home and in need of urgent medical help and Appellant failed to seek such help. By suggesting to the jury that they had an opportunity to strike back was extremely prejudicial and was not cured by the trial judge's curative instruction. Therefore, Appellant's conviction should be reversed. See Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010).

CONCLUSION

By reason of the foregoing arguments, Appellant's convictions should be reversed, and this case remanded to the Lexington County Court of General Sessions for a new trial.

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Appellate Defender

ATTORNEY FOR APPELLANT

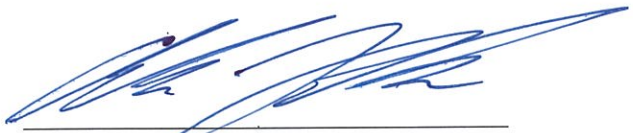
This 15th day of June, 2021.

RECEIVED
Jun 15 2021
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 15, 2021



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