

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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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.

APPENDIX
VOLUME IV

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ATTORNEY FOR RESPONDENT

ATTORNEY FOR PETITIONER

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)). Furthermore,

“when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the settling of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context . . . And where evidence is admissible to provide this full presentation of the offense, (t)here is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.”

Id. at 635-36, 742 S.E.2d at 26 (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980); *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996)). A “‘jury is entitled to know the ‘setting’ of a case. It cannot be expected to make its decision in a void without knowledge of the time, place and circumstances of the acts which form the basis of the charge.’” *Id.* at 636, 742 S.E.2d at 26 (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980); *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996)). *See also State v. McGee*, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014) (finding the trial court did not abuse its discretion in allowing evidence of a theft of a truck as part of the res gestae of the crime when there was a sufficient nexus between the theft and the murder, evidence of the truck was circumstantially intimately connected and explanatory of the crime, and the evidence of the theft of the truck was needed to show the story of the attack on the victim).

Here, the abuse suffered by Trotman at the hands of Applicant was necessary to show why Trotman too would fail to provide Victim with any aid, medical or otherwise. Because Trotman was so afraid of Applicant, she first called Applicant when Victim stopped breathing, rather than 911. This further served to explain why Trotman failed to provide Victim with medical aid any of the other instances in which she witnessed Applicant abusing Victim or Victim seizing. Because the abuse suffered by Trotman was interconnected with and explanatory of Victim's own abuse and eventual death, the evidence of this abuse was necessary for a full presentation of the offense under the res gestae theory.

In addition, 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). Counsel testified he was not concerned with the introduction of the booking photograph because his theory of the case was Trotman was the one who actually abused Victim, thereby causing his death. Therefore, showing she was a criminal only served to enhance this theory. Based on all the foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice therefrom. Accordingly, this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to the introduction of a
photograph of Victim*

Applicant alleges Counsel was ineffective for failing to object to a photograph of Victim, which was introduced at trial. In particular, Applicant contends because the photograph was taken sometime prior to Victim's death and showed a knot on Victim's head and a bruise under his eye, Counsel should have objected.

First, evidence of prior child abuse or neglect of a child victim is admissible to show the defendant's intent and absence of mistake or accident at the time of the child victim's death. *State v. Martucci*, 380 S.C. 232, 254, 669 S.E.2d 598, 610 (Ct. App. 2008). Indeed, when the prior abuse or neglect is so close in time to the infliction of the fatal injuries, the evidence is relevant and probative to demonstrate the defendant intended to hurt the child victim. *Id.* at 254, 669 S.E.2d at 609-10. Here, the photograph clearly depicted the manner in which Applicant would return Victim to his mother—with knots and bruises on his body. Additionally, the abuse inflicted upon Victim shortly after he began staying with Applicant, which was also a short period of time prior to Victim's death. Because the infliction of the injuries depicted in the photograph were so close in time to the fatal injuries, the introduction of the photograph was necessary to prove Applicant intended to hurt Victim.

Moreover, evidence of prior abuse or neglect is relevant to establish the defendant as the individual who fatally abused the child victim. *Id.* at 254, 669 S.E.2d at 610. Indeed, “[t]he fact that [the defendant] exhibited such cruelty and abuse toward Child within a relatively short period of time prior to his death circumstantially identified [the defendant] as Child’s killer.” *Id.* (citing *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)). After visiting with Applicant, Victim would return to his mother with bruises on his body. Clearly the photograph

which depicted this prior abuse was necessary to establish Applicant was the individual who had fatally abused Victim.

Furthermore, evidence of prior abuse or neglect "establishe[s] a pattern of continuous abuse or neglect necessary to prove homicide by child abuse and clearly support[s] the existence of a common scheme or plan." *Id.* When such evidence is presented to establish a common scheme or plan, "a close degree of similarity between the prior bad act and the crime for which the defendant is on trial is necessary." *Id.* at 255, 669 S.E.2d at 610 (citing *State v. Hough*, 325 S.C. 88, 95, 480 S.E.2d 77, 80 (1997)). The evidence is admissible if it is of "such a close similarity to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh the prejudicial effect." *Id.* (citing *State v. Raffaldt*, 318 S.C. 110, 114, 456 S.E.2d 390, 392 (1995)). When the prior bad acts are directed towards the same victim and are similar in nature, those prior bad acts are admissible as a common plan or scheme. *Id.* (citing *State v. Weaverling*, 337 S.C. 460, 471, 523S.E.2d 787, 792-93 (Ct. App. 1999)). Here, Applicant would repeatedly abuse Victim. He would hit Victim in the chest or back with such force that Victim would fall back and hit his head. This prolonged period of abuse led to Victim's death, and the medical evidence revealed Victim suffered from axonal damage in the brain due to repeated head injuries. The injuries to Victim's head and face in the photograph were clearly similar to the abuse which caused Victim's death. Therefore, the photograph was necessary to establish a common plan or scheme of repeated abuse of Victim by Applicant.

Finally, evidence of prior child abuse or neglect is relevant to show a complete, whole story relating to the charge of homicide by child abuse. *Id.* at 258, 669 S.E.2d at 612. Such evidence "provides the context in which the crime occurred and demonstrates the culminating impact" on the child victim. *Id.* Moreover, the prior abuse is necessary to establish the

defendant's state of mind and whether or not he manifested an extreme indifference to the value of human life. *Id.* Here, the abuse Applicant bestowed upon Victim occurred in the months leading up to Victim's death. A photograph depicting this abuse was necessary to establish the full context of the abuse—that it was repeated rather than one fatal blow. Under the *res gestae* theory, the evidence of the prior abuse suffered by Victim was admissible.

For all the foregoing reasons, this Court finds Applicant has wholly failed to establish Counsel was deficient. Similarly, because the photograph would have been admissible under all of the theories outlined above, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to quash the indictment

Applicant 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

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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.

Here, the indictment stated with sufficient certainty and particularity Applicant was charged with homicide by child abuse. Moreover, the indictments clearly apprised Applicant of the elements of each charged offense. In particular, the indictment for homicide by child abuse charged: “That [Applicant] 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 indifference 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). As the indictment specifically enumerated the offense with which Applicant was charged and described in relevant detail the crime substantially in the language of the statute prohibiting the crime, this Court finds this allegation must be denied and dismissed with prejudice.

Notwithstanding the sufficiency of this indictment, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice. In particular, Counsel testified he was thoroughly aware of the crime with which Applicant was charged and



the evidence the State was going to present at trial, particularly in light of the numerous times he met with the solicitors to review the case. He elaborated based on his review of the evidence, he was aware on which theory the State would proceed. From this, both Applicant and Counsel were clearly aware of each offense with which Applicant was charged, the particular elements of each offense, and the evidence against Applicant. Therefore, this Court finds Applicant has failed to meet his burden, and this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to statements made
regarding Applicant's religious beliefs*

Applicant alleges Counsel was ineffective for failing to object to a statement made regarding Applicant's religious beliefs. Specifically, Applicant alleges Counsel was ineffective for failing to object when Trotman stated: "Because [Applicant] 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. Accordingly, this Court finds Counsel employed a valid strategic decision in not objecting to this comment. This Court further finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. This was the only time during the course of the trial Applicant's religious beliefs, or lack thereof, were mentioned. Trotman did not mention it again after this one instance, no other witnesses were asked about Applicant'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 Applicant. In particular, witnesses testified to the bruises they observed on Victim's body after he had spent time with Applicant and also testified to the change in Victim's demeanor. In addition, Applicant's co-defendant testified to the beatings she observed Applicant give Victim. It is unlikely such an innocuous comment regarding Applicant's religious beliefs would have affected the outcome of the trial. Accordingly, Applicant has wholly failed to establish any prejudice from this comment. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to comments regarding Applicant's racial prejudices

Applicant alleges Counsel was ineffective for failing to object to testimony regarding his racial prejudices. Applicant specifically alleges Counsel should have objected when Trotman testified: "[Applicant] 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. This Court finds Counsel employed a valid trial strategy in not objecting to this comment; and, therefore, Applicant has failed to show any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. This was the only time in which Applicant’s “racial prejudices” were mentioned throughout the entire trial. Additionally, the strength of the evidence against Applicant in comparison to this innocuous comment was strong. Several witnesses testified to the change in demeanor in Victim after he had been staying with Applicant. Furthermore, Applicant’s co-defendant testified to the prolonged abuse Victim suffered at the hands of Applicant. Even if Counsel had objected to this comment, it is unlikely the result of the proceeding would have been different. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure to object to the admissibility of Applicant’s videotaped statement

Applicant alleges Counsel was ineffective for failing to object to the admissibility of his videotaped interview with law enforcement. Specifically, Applicant contends Counsel should

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have objected to the admissibility of this video, not on *Miranda*⁴ grounds, but rather on the grounds that law enforcement officers repeatedly told Applicant during the interview they knew he was lying. “[M]isrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible.” *State v. Von Dohlen*, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996) (citing *Frazier v. Cupp*, 394 U.S. 731 (1969); *State v. Rabon*, 275 S.C. 459, 272 S.E.2d 634 (1980)). When such misrepresentations occur, the relevant inquiry is “whether the defendant’s will was ‘overborne.’” *Id.* A defendant’s will is not overborne merely because he is led to believe law enforcement’s knowledge of his guilt is greater than it actually is. *Ledbetter v. Edwards*, 35 F.3d 1062, 1069 (6th Cir. 1994). Here, after hearing Applicant’s initial story about Victim, law enforcement officers confronted him with the fact they knew Victim was dead, as they had found his body. In particular, the officers informed Applicant they knew he was lying because they found Victim’s body. Applicant then told law enforcement officers another story. There is no indication Applicant’s statement was not voluntarily given. Applicant was clearly advised of his rights and voluntarily waived those rights to talk with law enforcement. *See* Tr. 177-78, 549-50. Indeed, Applicant concedes Counsel should not have challenged the videotaped interview based on *Miranda*. Therefore, despite the fact law enforcement officers told Applicant they knew he was lying, Applicant’s will was not overborne when he gave this statement. This Court finds Applicant has failed to establish any deficiency on the part of Counsel. This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Even if Counsel objected to the introduction of this statement, it is unlikely the trial court would have suppressed it, particularly in light of the voluntary waiver of Applicant’s rights. Based on the foregoing, this allegation must be denied and dismissed with prejudice.

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).



Cumulative Error

Applicant alleges the cumulative effect of Counsel's alleged errors constitutes ineffective assistance of counsel. "Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina." *Green v. State*, 351 S.C. 184, 197, 569 S.E.2d 318, 324 (2002); *see also Lorenzen*, 376 S.C. at 535 n. 3, 657 S.E.2d at 779 n.3. Moreover, the Fourth Circuit has held that "ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively" and, therefore, does not recognize a cumulative error analysis. *Fisher v. Angelone*, 163 F.3d 835, 852 (4th Cir. 1998). This Court finds a cumulative error analysis would be inappropriate and therefore finds that this allegation must be denied and dismissed with prejudice.

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CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

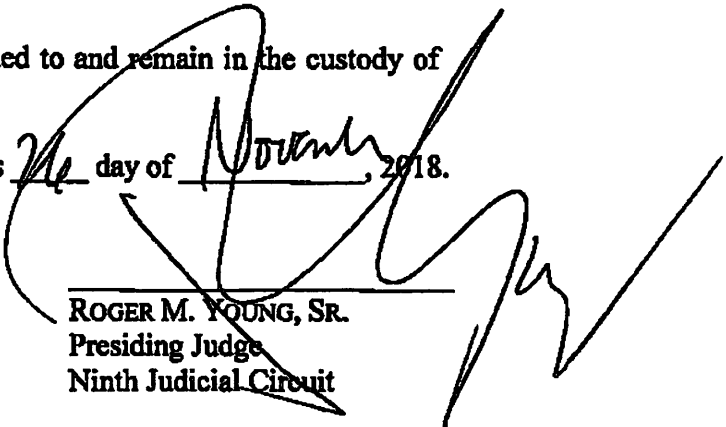
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 26 day of November, 2018.


_____, South Carolina



ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKLEY)

IN THE COURT OF COMMON PLEAS

Roger A. Williams, № 303509)
)
Applicant,)
)
-vs-)
)
State of South Carolina,)
)
Respondent.)

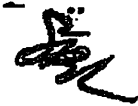
2015-CP-08-2034

Motion Pursuant to Rule 59

MARY E. GEORGIN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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FILED



Pursuant to Rule 59 of the South Carolina of Civil Procedure, Roger A. Williams hereby moves this Court to alter or amend the judgment issued in this matter in the following particulars:

1. On page 7 of the Order, the Court, through error, found that Grace Troutman testified that the victim in this case was breathing when she called Roger Williams at his place of employment. The record establishes that she said the child was not breathing.

2. On page 14 of the Order, the Court erred in concluding that trial counsel adopted as a trial strategy that he did not want to highlight the comment about Mr. Williams' lack of a belief in God or Jesus. The error in this conclusion was that the trial counsel testified as follows at the Post Conviction Relief hearing concerning this issue, "I can't tell you that was my theory, but if that happened today, that would be my theory, and I am assuming that's what happened then." May 23, 2018 hearing at 16, 125 to 17, 117. The error in this finding is a trial strategy developed several years later is not a trial strategy at the time of trial. The Order should be altered or amended to reflect his testimony.



3. On page 14 of the Order, the Court erred in concluding that trial counsel adopted as a trial strategy that he did not want to highlight the comment about Mr. Williams' prejudice against white people. The error in this conclusion was that the trial counsel testified at the Post Conviction Relief hearing concerning this issue, "I can't tell you that was my theory, but if that happened today, that would be my theory, and I am assuming that's what happened then." May 23, 2018 hearing at 16, l 25 to 17, l 17. The error in this finding is a trial strategy developed several years later is not a trial strategy at the time of trial. The Order should be altered or amended to reflect his testimony.

4. The Court further should alter or amend the Order in reference to 3 and 4 above to explain how failing to object to two very prejudicial statements allegedly made by Mr. Williams could a valid trial strategy, even if it were his strategy.

5. On page 31 of the Order, the Court erred in concluding the video statement of Ms. Troutman was not admissible because Ms. Troutman "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." The Order should be altered or amended to reflect that while she admits hitting the minor child in the video and in her testimony, the manner of striking the minor child in the video is different and more extreme than what was demonstrated in the courtroom.

6. On page 31 of the Order, the Court erred in finding "The trial court, however, was unwilling to admit the video, as Troutman had already admitted she was guilty of everything that happened on the day of the Victim's death. The order should be altered or amended to delete this statement as while the trial judge made the comment, such a statement is not relevant to whether the video was admissible to impeach Ms. Troutman who was attempting to minimizing her role

in forcefully hitting the minor child on the day in question.

7. On page 32-33 of the Order, the Court said concerning the motion 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." This finding should be altered or amended to reflect that both the trial counsel and prosecuting attorney agreed that if the child were deceased at the time of the call to the Applicant, then he could not be guilty of homicide by child abuse for his failure to render aid as argued by the State in its closing argument. Had such an argument for directed verdict motion been made, or as suggested at the Post Conviction Relief hearing and in the Brief of Mr. Williams submitted in this matter, a simple charge to the jury that they could not convict him of failing to render aid on the day of the incident if the child was deceased when the call was made, the jury easily could have reached a different verdict. At the least, the Order should be amended to reflect that trial counsel should have requested a jury charge and that Mr. Williams was prejudiced by his failure to do so.

8. On page 36 of the Order, the Court concluded concerning the introduction of the mug shot of the co-defendant and the evidence of an alleged abuse of the co-defendant by Mr. Williams, "Because the abuse suffered by Troutman was interconnected with and explanatory of Victim's own abuse and eventual death, the evidence of this abuse was necessary for a full presentation of the offense under the res gestae theory." This should be altered or amended to reflect that any alleged abuse of Ms. Troutman was not part of any res gestae as the record contains no evidence that Mr. Williams abused Ms. Troutman and his son at the same time or during the same brief time interval to qualify as being part of the res gestae. The Order should further be altered or amended to reflect that any such alleged abuse of Ms. Troutman was more

prejudicial than probative of the guilt of Mr. Williams. If Ms. Troutman were abused, that fact does not mean that Mr. Williams abused his child.

9. On page 36 of the Order, the Court found concerning the introduction of the mug shot of Ms. Troutman, the co-defendant, "Therefore, showing she was a criminal only served to enhance this theory." This finding should be eliminated as the applicant's contention is that the mug shot was prejudicial because it showed evidence of abuse. This was established by the closing argument of the State making reference to the mug shot. Rec. on App. at 665, ll 4-9. The fact that Ms. Troutman entered a plea in this matter meant that she was a criminal and a mug shot was not needed to establish that fact.

10. On page 37 of the Order, the Court found concerning the introduction of the picture of the minor child with bruises, "Moreover, evidence of prior abuse or neglect is relevant to establish the defendant as the individual who fatally abused the child victim." The Order should be altered or amended to reflect that the picture was not admissible under *State v. Pierce*, 326 S.C. 176, 485 S.E.2d 913 (1997) as there was no clear and convincing evidence that Mr. Williams inflicted the alleged injuries to his child as reflected in the picture.

11. On pages 39-41 of the Order, the Court found trial counsel was not ineffective for his failure to move to quash the indictment. This portion should be altered or amended to reflect that the failure to move to quash the indictment resulted in the fact that the State was permitted to urge the jury to convict Mr. Williams on a ground for which the State has conceded was factually impossible - the failure to render aid when the child was in fact deceased. The Court erred in finding Mr. Williams was not prejudiced in failing to move to quash the indictment. The record is undisputed that the indictment permitted the jury to convict on the failure of Mr. Williams to

call an ambulance on the day of the incident. The record is also clear that the State failed to prove that the minor child was alive when the call was made on the day of the incident as the state admitted in their closing "I don't know if anyone knows when this child died." Rec. at 675, 1 21-22. At the most whether the child was alive at the time of the call is a matter of pure speculation. A jury is not permitted to convict on speculation.

12. On page 41 of the Order, the Court found "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." As noted in 2 above, trial Counsel actually said "I can't tell you that was my theory, but if that happened today, that would be my theory, and I am assuming that's what happened then." May 23, 2018 hearing at 16, 1 25 to 17, 1 17. The Order should be altered or amended to reflect the correct statement of counsel.

13. On page 42 of the Order the Court found "Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. This was the only time during the course of the trial Applicant's religious beliefs, or lack thereof, were mentioned." The Court erred in failing to find even a single comment about Mr. Williams alleged lack of religious belief is in fact prejudicial. The Order should be altered or amended to reflect that even a single comment about the lack of a defendant's religious belief is prejudicial. If the Court were not to so hold, then the State could elicit this answer only once at any trial and simply say it was harmless.

14. On page 43 of the Order the Court found "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." As noted in 3 above, trial Counsel actually said "I can't tell

you that was my theory, but if that happened today, that would be my theory, and I am assuming that's what happened then." May 23, 2018 hearing at 16, l 25 to 17, l 17. The Order should be altered or amended to reflect the correct statement of counsel.

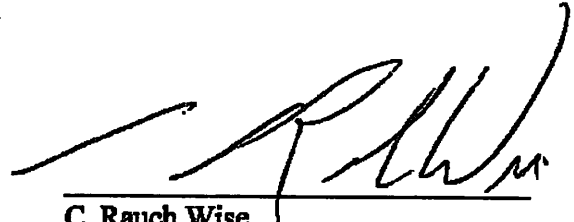
15. On page 43 of the Order, the Court said "Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. This was the only time in which Applicant's 'racial prejudices' were mentioned throughout the entire trial." The Court erred in failing to find even a single comment about Mr. Williams alleged racial prejudice is in fact prejudicial. The Order should be altered or amended to reflect that even a single comment about the lack of a defendant's religious belief is prejudicial. If the Court were not to so hold, then the State could elicit this answer only once at any trial and simply say it was harmless.

15. On page 45 of the Order, the Court declines to conduct a cumulative error analysis. While Mr. Williams continues to believe a cumulative error analysis is appropriate, this Court should alter or amend the Order to conduct, at the very least, a cumulative error analysis on the issues involving the attack upon his religious beliefs and the attack upon his racial prejudice. The two trial errors are so closely intertwined that they should not be considered separately. The cumulative effect of the prejudice to Mr. Williams from the two errors combined, greatly exceed the prejudice of either of the two errors individually.

Conclusion

For the foregoing reasons, Roger Williams respectfully request that this Court issue an Order granting the Motion to Alter or Amend the decision and issue an order grant the relief requested by Mr. Williams.

December 21, 2018



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(864) 229-5010
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S. C. Bar № 06188


Attorney for Roger A. Williams

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Roger A. Williams, #303509,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-08-2034

RETURN TO APPLICANT'S
 "MOTION PURSUANT TO RULE 59"

18 DEC 31 PM 1:18
 MARY B. GROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.


Respondent, by and through undersigned counsel, making its Return to Applicant's
 "Motion Pursuant to Rule 59," would respectfully show unto this Court:

I.

Roger A. Williams (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its September 2010 term, the Berkeley County Grand Jury indicted Applicant for homicide by child abuse (2010-GS-08-1519) and unlawful conduct towards a child (2010-GS-08-1521). Thereafter, during its November 2010 term, the Berkeley County Grand Jury indicted Applicant for destruction or desecration of human remains (2010-GS-08-1876). James K. Falk, Esquire, represented Applicant on these charges. Assistant Solicitor Anne M. Williams and Assistant Solicitor Deborah Herring-Lash, both of the Ninth Circuit Solicitor's Office, prosecuted the case. On September 18, 2012, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty as indicted to desecration of human remains. Judge Dennis accepted the plea and deferred sentencing. Subsequently, Applicant proceeded to a jury trial on the remaining charges before Judge Dennis on October 8-11, 2012. Following deliberations, the jury convicted



Applicant as indicted. Judge Dennis sentenced him to a term of imprisonment of life without the possibility of parole for homicide by child abuse, ten years for desecration of human remains, and ten years for unlawful neglect of a child. The sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Susan B. Hackett, of the South Carolina Commission on Indigent Defense, Office of Appellate Defense, perfected an appeal on Applicant's behalf. Following briefing, the South Carolina Court of Appeals issued a written order on October 24, 2014, indicating Applicant wished to withdraw his appeal and, therefore, dismissing the appeal. The Remittitur was issued on November 19, 2014.

II.

On August 27, 2015, Applicant filed an application for post-conviction relief. In this application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistant [sic] of trial counsel; [and]
 - a. Failure to object to prosecutorial misconduct; [and]
 - b. Failure to impeach State's witness Grace Trotman.
2. Prosecutorial Misconduct.
 - a. Giglio vs. U.S. violations.

Respondent made its return on June 2, 2016, requesting an evidentiary hearing be held. Subsequently, Applicant, through his counsel, filed an amendment to the application for post-conviction relief on May 21, 2018. In this amendment, Applicant raised the following additional claims:

1. Trial Counsel was ineffective in cross examining co-defendant;"
 - a. Trial Counsel failed to properly cross examine the co-defendant as to her video taped statement where she admitted to striking [Victim] and this should have been shown to the jury.
2. Trial counsel failed to properly ask for a directed verdict;
 - a. Trial counsel failed to ask for a directed verdict on the issue

- of whether [Applicant] failed to render medical aid which resulted in the death of [Victim].
3. Trial counsel failed to request jury instruction on the jury agreeing on means of death;
 - a. Trial counsel failed to ask for an instruction that the jury had to unanimously agree as to the means of causing the death of [Victim].
 4. Trial counsel failed to require the state to elect as to their theory of the case;
 - a. Trial counsel failed to require the State to elect as to which theory they were going to the jury on as the state argued several different means by which the alleged crime could have been committed.
 5. Trial counsel failed to object to the mug shot of co-defendant being introduced;
 - a. Trial counsel erred in allowing the mug shot of the co-defendant to be introduced showing she had bruises that were old and could not have been inflicted by the applicant. The State used the picture as evidence of abuse by the applicant and in their closing argument. Tr. At 665. Trial Counsel also failed to object to testimony from the co-defendant that [Applicant] had abused her. The testimony violated Rule 404b.
 6. Trial counsel failed to object to the expert of the state using hearsay testimony to form her opinion;
 - a. Trial counsel failed to object to the expert for the state relying upon the out of court statements of witnesses and thus deprived [Applicant] of [his] right to confront the witnesses against [him] in violation of Crawford v. Washington, 541 U.S. 36 (2004).
 7. Trial counsel failed to properly cross examine the expert for the state;
 - a. The trial counsel failed to object or question the expert for the state about the expert relying upon the false statement made by the co-defendant in her confession.
 8. Trial counsel failed to object to picture of [Victim] being introduced;
 - a. Trial counsel failed to object to the picture of [Victim] showing some bruises when the evidence established that [Applicant] was never accused of striking [Victim] in the face.
 9. Trial counsel failed to properly cross examine the expert for the state;

- a. Trial counsel failed to question the validity of the opinion of the expert when the testimony of the expert was based upon inconsistent facts as to the number of seizures and the timing of the seizures and as to the timing of the alleged abuse.
10. Trial counsel failed to move to quash the indictment;
 - a. Trial counsel failed to move to quash the indictment as the facts alleged there were so vague that the jury could have convicted [Applicant] for failing to render aid while [he] was at work and by contending that [he] failed to prevent the co-defendant from inflicting injuries while [he] was at work.
 11. Trial counsel failed to object to an improper charge as to aiding and abetting homicide by child abuse being a lesser-included of homicide by child abuse;
 - a. Trial counsel failed to object to the judge charging that aiding and abetting homicide by child abuse is a lesser included offense of homicide by child abuse.
 12. Trial counsel failed to object to statements about [Applicant's] religious beliefs; [and]
 - a. Trial counsel failed to object to the testimony as to [Applicant's] religious beliefs or lack of religious beliefs as to a belief in God. On pages 198 to 199 the co-defendant was permitted to testify as to my lackof [sic] a belief in God. Such testimony violates Rule 610 of the South Carolina Rules of Evidence.
 13. Trial counsel failed to object to the appeal to racial prejudice through the testimony of co-defendant.
 - a. Without objection, the state was permitted to elicit testimony from [his] co-defendant that [Applicant] was racially prejudiced. This testimony was not relevant to any issue at trial. This is found on page 199 of the transcript.

A hearing into the matter was convened at the Charleston County Courthouse on AMay 23, 2018, before the Honorable Roger M Young, Sr. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent. At the hearing Applicant proceeded forward on the following allegations of ineffective assistance of counsel:

1. Failure to properly cross-examine the co-defendant as to her videotaped statement;
2. Failure to move for a directed verdict on the issue of whether Applicant failed to render medical aid, which resulted in Victim's death;
3. Failure to require the State to elect which theory it would proceed forward on at trial;
4. Failure to object to the introduction of Applicant's co-defendant's mug shot;
5. Failure to object to the introduction of a picture of Victim;
6. Failure to quash the indictment;
7. Failure to object to statements regarding Applicant's religious beliefs
8. Failure to object to statement regarding Applicant's racial prejudices; and
9. Failure to object to the admissibility of the videotaped interview of Applicant by law enforcement in which law enforcement repeatedly told Applicant they knew he was lying.

After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on November 26, 2018, denying and dismissing the application with prejudice. Said order was filed with the Berkeley County Clerk of Court on December 13, 2018.

Subsequently, on December 21, 2018, Applicant, through his counsel, submitted a "Motion Pursuant to Rule 59." Respondent received a copy of said motion on December 21, 2018. This Return follows.

III.

In his "Motion Pursuant to Rule 59," Applicant asserts this Court found "through error" Grace Trotman testified Victim was breathing when she called Applicant at his place of employment. Applicant further asserts the record indicates Trotman said the child was not breathing. Applicant next contends this Court erred in concluding trial counsel adopted a trial

strategy in not wanting to highlight comments made at trial about Applicant's lack of religious belief and Applicant's prejudices towards white people. Applicant further contends trial counsel failed to explain his reason behind not objecting to these statements. In addition, Applicant alleges a single mention of these statements was prejudicial to him. Applicant asserts this Court erred in concluding Trotman's video statement was inadmissible because Trotman never denied making the statements nor denied hitting Victim. He explains "while [Trotman] admits hitting [Victim] in the video and in her testimony, the manner of striking [Victim] is different and more extreme than what was demonstrated in the courtroom." Applicant further asserts trial counsel was ineffective in failing to make a motion for a directed verdict based on Applicant's alleged failure to render medical aid. He alleges "had such an argument for directed verdict motion be made . . . the jury easily could have reached a different verdict." Applicant asserts Trotman's mug shot should not have been admitted under the res gestae theory, "as the record contains no evidence that [Applicant] abused [Trotman] and [Victim] at the same time or during the same brief time interval to qualify as being part of the res gestae." Applicant further asserts any abuse suffered by Trotman was more prejudicial than probative of guilt. He next contends Victim's picture was inadmissible under *State v. Pierce*, 326 S.C. 176, 485 S.E.2d 913 (1997), "as there was no clear and convincing evidence [Applicant] inflicted the alleged injuries to [Victim] as reflected in the picture." Applicant further contends trial counsel's failure to quash the indictment "resulted in the fact that the State was permitted to urge the jury to convict [Applicant] on a ground for which the State has conceded was factually impossible – the failure to render aid when the child was in fact deceased." He alleges such failure "permitted the jury to convict on the failure of [Applicant] to call an ambulance on the day of the incident." He further

alleges the State failed to prove Victim was alive when the call was made on the day of the incident. Finally, Applicant asserts this Court should "at the very least, a cumulative error analysis on the issues involving the attack upon his religious beliefs and the attack upon his religious beliefs and the attack upon his racial prejudice." Applicant explains "the two trial errors are so closely intertwined that they should not be considered separately."

Respondent submits this Court's order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits this Court fully ruled on all issues properly presented through Applicant's post-conviction relief application, amendment thereto, and those which were raised at the evidentiary hearing. Applicant's "Motion Pursuant to Rule 59" should be denied. As each properly raised allegation was addressed fully in the order, Respondent submits Applicant's assertions are without merit. Indeed, Applicant's motion is replete with arguments presented during or after the evidentiary hearing, which this Court took into consideration when making its ruling.

IV.

WHEREFORE, having made its Return to the motion, Respondent requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

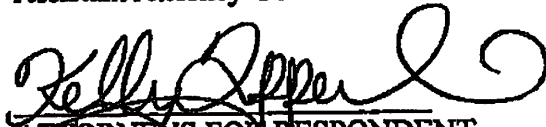
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

BY:



~~ATTORNEYS FOR RESPONDENT~~
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

December 27, 2018.

possibility of parole for homicide by child abuse, ten years for desecration of human remains, and ten years for unlawful neglect of a child. The sentences were to run concurrently.

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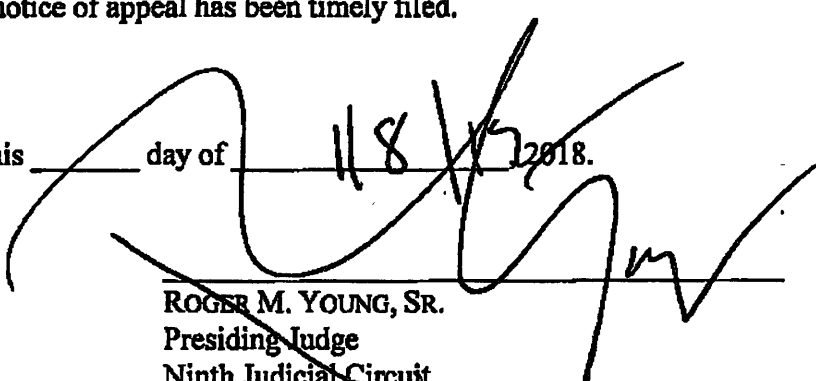
Subsequently, on December 21, 2018, Applicant, through his counsel, submitted a "Motion Pursuant to Rule 59." Respondent submitted its return on or about December 27, 2018.

III.


This Court finds its order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court further finds its order of dismissal addresses and disposes of all allegations raised. Having carefully reviewed the entire record in this matter and arguments presented both during and after the evidentiary hearing, this Court finds there is no basis for altering or amending its prior ruling.¹ Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous order of dismissal.

This Court notes if Applicant desires to secure appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this _____ day of 11/8/18, 2018.



ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit


_____, South Carolina

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. *See* Rule 59(f), SCRCP.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert M. Young, Sr., Circuit Court Judge

Case № 2015-CP-0802034

Roger A. Williams, #303509 Appellant,

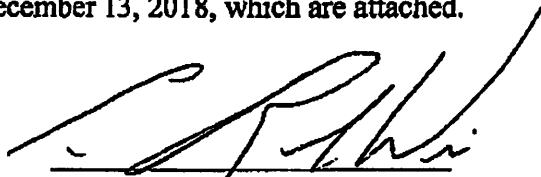
vs.

The State Respondent

NOTICE OF INTENT TO APPEAL

Roger A. Williams appeals the Order of the Honorable Robert M. Young filed on January 16, 2019, and the Order of Dismissal filed on December 13, 2018, which are attached.

January 25th, 2019



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Attorney at Law
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(864) 229-5010

Attorney for Appellant

OTHER COUNSEL OF RECORD

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