To Whom It May Concerned

I Brenda Lee Prioleau Sumpter, I am sending attachment papers of my concerns of my daughter Jakeera Monay Winston and grand-daughters Jataya and Janiya Winston of Mr. Wesley Smith. Please I urge you once again to look into this matter for the Love of my grand-daughters, Mr. Smith should not be around any chidren and I will not Rest until Mr. Smith is Legal Separated from my daughter Jakeera and grand-daughters Jataya and Janiya Winston. Thanking You In Advance Again

Brenda Lee Prioleau Sumpter

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March 27, 2015

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Court orders new trial in Horry County man's conviction in 4-month-old daughter's death

By Tonya Root

troot@thesunnews.comOctober 30, 2013

Wesley Smith

The state's Supreme Court remanded the case of a 33-year-old Horry County man, who was convicted in the 2004 death of his 4-month-old baby, and ordered a new trial, according to the opinion published Wednesday.

Wesley Smith, who is serving a 20-year prison sentence at MacDougall Correctional Institution in Ridgeville, appealed his case to the Supreme Court after the state's Court of Appeals affirmed his conviction in 2011.

Smith was convicted in April 2008 and sentenced to 20 years in prison for homicide by child abuse in what prosecutors said was aiding in the Valentine's Day 2004 death of his daughter, Ebony Smith.

During his trial, Wesley Smith denied hurting his daughter, but admitted to giving her "cough medicine."

Ebony Smith's mother, Charlene Dandridge, pleaded guilty to failing to provide medical attention for her daughter and was sentenced to five years in prison for neglect that ended with the child's death.

Ebony died on Valentine's Day in 2004 after she suffered 17 rib fractures and ingested four times the recommended adult dose of cold medication, officials said.

Dandridge's charge stemmed from a leg fracture the child suffered two months before her death. Prosecutors said Dandridge knew Ebony had been abused by Smith but failed to take the baby to the doctor for two weeks after the fracture.

Wesley Smith is eligible to be released on Feb. 10, 2021, according to the state Department of Corrections website.

In their writ of certiorari to the Court of Appeals, Supreme Court justices wrote that they reverse the lower court's decision and remand for a new trial, if prosecutors desire a retrial.

Smith filed the appeal saying the lower court "erred by applying common law principles of accomplice liability to affirm his conviction for a statutory offense for which he was not indicted," justices wrote.

In their February 2011 ruling, the Court of Appeals justices wrote that Circuit Court Judge Edward Cottingham "acted within his discretion in admitting evidence of Ebony's broken femur and did not err in allowing the state to proceed under the aiding and abetting section of the homicide by child abuse statute. Regarding the other issues, Smith's claim that the trial judge erred in excluding evidence of bias fails because the judge did not exclude the evidence. Smith's argument that the judge erred in excluding evidence of his borderline intelligence is not preserved for our review."

At the end of Smith's trial, Cottingham gave him the maximum sentence allowed by law and also told Smith if he had been found guilty of the original charge, he would have sentenced Smith to life in prison.

Contact TONYA ROOT at 444-1723 or follow her at Twitter.com/tonyaroot.

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Appeals court affirms ruling in Myrtle Beach man's case regarding daughter's death

By Tonya Root

troot@thesunnews.comFebruary 2, 2011

The state's Court of Appeals affirmed a Circuit Court judge's decision to admit evidence in a Myrtle Beach man's 2008 trial on charges related to the death of his 4-month-old daughter.

Justices released their opinion Monday in the case of Wesley Smith, who was convicted in April 2008 and sentenced to 20 years in prison for aiding and abetting Ebony Smith's death. The 30-year-old had faced a charge of homicide by child abuse, and during the trial denied hurting his daughter four years earlier.

In their ruling, the Court of Appeals justices wrote that Circuit Court Judge Edward Cottingham "acted within his discretion in admitting evidence of Ebony's broken femur and did not err in allowing the state to proceed under the aiding and abetting section of the homicide by child abuse statute. Regarding the other issues, Smith's claim that the trial judge erred in excluding evidence of bias fails because the judge did not exclude the evidence. Smith's argument that the judge erred in excluding evidence of his borderline intelligence is not preserved for our review."

At the end of Smith's trial, Cottingham gave him the maximum sentence allowed by law and also told Smith if he had been found guilty of the original charge, he would have sentenced Smith to life in prison.

Smith is eligible for release in 2022, according to the state Department of Corrections website.

Ebony Smith's mother, Charlene Dandridge pleaded guilty to failing to provide medical attention for her daughter and was sentenced to five years in prison for neglect that ended with the child's death.

Ebony died on Valentine's Day in 2004 after she suffered 17 rib fractures and ingested four times the recommended adult dose of cold medication, officials said.

Dandridge's charge stemmed from a leg fracture the child suffered two months before her death. Prosecutors said Dandridge knew Ebony had been abused by Smith but failed to take the baby to the doctor for two weeks after the fracture.

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Today's Circulars

JUSTICE KITTREDGE: We granted a petition for writ of certiorari to review the court of appeals' affirmance of Petitioner's conviction for aiding and abetting homicide by child abuse. *State v. Smith*, 391 S.C. 353, 705 S.E.2d 491 (Ct. App. 2011). Petitioner contends that the court of appeals erred by applying common law principles of accomplice liability to affirm his conviction for a statutory offense for which he was not indicted. We reverse the court of appeals and remand for a new trial.

I.

Petitioner was the father of the minor child (Victim) who died as a result of child abuse on February 14, 2004. Victim lived only 130 days. Petitioner and the Victim's mother, Charlene Dandridge, were Victim's caretakers. The two contributing causes of death were blunt-force trauma to the chest and pseudoephedrine toxicity. An autopsy revealed seventeen rib fractures, some of which occurred several weeks prior to death and some that occurred in the forty-eight hours immediately prior to death. The autopsy also revealed that, on the day she died, Victim had been given approximately four times the adult dosage of pseudoephedrine.[1]

Petitioner was indicted for homicide by child abuse limited to section 16-3-85(A)(1),[2] as follows:

> That WESLEY SMITH did in Horry County, on or about February 14, 2004, cause the death of [Victim], a four (4) month old child, while committing child abuse or neglect, and the child's death occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-3-85(A)(1), S.C. Code of Laws, 1976, as amended.

The trial court, on its own initiative, instructed the jury on both South Carolina Code section 16-3-85(A)(1) (section (A)(1)), homicide by child abuse as a principal, and South Carolina Code section 16-3-85(A)(2) (section (A)(2)), homicide by child abuse by aiding and abetting. The trial court indicated that it believed that section (A)(2) was a lesser-included offense of section (A)(1), or

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[1] Petitioner admitted to giving the Victim "cough medicine" on the day of her death.

[2] Conversely, Dandridge was not indicted pursuant to section 16-3-85(A)(1); she pled guilty to unlawful conduct towards a child.

Smith, 391 S.C. at 365, 705 S.E.2d at 497–98 (quoting *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000)) (internal citations and quotations omitted). This was error.

The common law principles of accomplice liability, as applied by the court of appeals, do not apply in the context of the homicide by child abuse statute. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

> (A) A person is guilty of homicide by child abuse if the person:
>
> (1) 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; or
>
> (2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven.

S.C. Code § 16-3-85(A) (2003).

We find the language of section 16-3-85 unambiguously signals the General Assembly's intent to codify two distinct crimes—homicide by child abuse as a principal pursuant to section (A)(1) and homicide by child abuse by aiding and abetting pursuant to section (A)(2), each with distinct elements and sentencing ranges.[6] Because the section (A)(2) offense is not a lesser-included offense of

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[6] An indicted offense necessarily includes all lesser-included offenses, which may properly (if supported by the evidence) be presented to the jury. *See State v. Drayton*, 293 S.C. 417, 428, 361 S.E.2d 329, 335 (1987) ("A trial judge is required to charge the jury on a lesser included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed."). Section (A)(2), however, is not a lesser-included offense of section (A)(1). Where, as here, the General Assembly provides separate offenses in the same statutory scheme, only the indicted offense should be submitted to the jury. The unindicted section (A)(2) charge to the jury was error and constituted a material variance from

alternatively, that section (A)(2) was merely another means to convict a criminal defendant of the same underlying crime of homicide by child abuse but would lead to a lesser sentence.[3] Petitioner's trial counsel objected to the jury instruction on section (A)(2) because he was not put on notice of the section (A)(2) offense.[4] The jury subsequently found Petitioner guilty of violating the unindicted section (A)(2) offense without reaching the indicted section (A)(1) charge.[5]

II.

The court of appeals declined to address the grounds relied on by the trial court but affirmed Petitioner's conviction on what it believed was an alternative sustaining ground, stating:

> It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. Thus, the indictment charging [Petitioner] with homicide by child abuse as a principal was effective to put him on notice that the State may request to proceed on aiding and abetting homicide by child abuse as well.

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[3] A defendant convicted of violating section (A)(1) may be imprisoned for twenty years to life, while a defendant convicted of violating section (A)(2) must be imprisoned for between ten and twenty years. S.C. Code § 16-3-85(C) (2003).

[4] It was the State's theory that Petitioner was the sole caretaker of Victim during the relevant time period, and hence the indictment was limited to section (A)(1). After Petitioner's counsel objected to the trial court's consideration of a jury charge on the section (A)(2) offense, the trial court inquired of the State: "[W]hat says the State on that issue? The indictment specifically says (A)(1)." The assistant solicitor responded with his own question, "my question to the Court is . . . there any evidence, any evidence that would tend to give the jury the ability to convict [Petitioner] of the lesser-included offense[?]" On certiorari to this Court, the State only haltingly defends section (A)(2) as a lesser-included offense of section (A)(1), referring to section (A)(2) as "a sort of 'lesser offense' of (A)(1) because it provides for a lesser penalty." (Resp't's Br. 10).

[5] The verdict form contained four possible verdicts: Guilty as to the section (A)(1) charge; Not Guilty as to the section (A)(1) charge; Guilty as to the section (A)(2) charge; and Not Guilty as to the section (A)(2) charge. The jury found Petitioner guilty of the section (A)(2) charge but made no finding on the charge under section (A)(1).