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IN THE SUPREME COURT OF ARKANSAS

MAURICIO ALEJANDRO TORRES

APPELLANT

VS.

CASE NO. CR-17-89

STATE OF ARKANSAS

APPELLEE

PETITION FOR REHEARING

Comes now appellee, by and through counsel, Leslie Rutledge, Attorney General, Vada Berger, Senior Assistant Attorney General, and Rebecca Kane, Assistant Attorney General, and, for its petition for rehearing, states:

I.

On the morning of March 29, 2015, while the Torres family was on a camping trip in Missouri, appellant raped his six-year-old son, Isaiah, by inserting a stick in his rectum and forcing him to do squats. (A. 2661, 2751-52, 2861; R. 845, 951-52, 1099-1100) Appellant raped Isaiah, whose autopsy revealed that he was the victim of chronic child abuse, as punishment for eating a piece of his sister's birthday cake without permission. (A. 2751-52, 2895; R. 951-52, 1157) The stick pierced Isaiah's rectum, and, after the family returned to its home in Arkansas, he died that night from a bacterial infection in his abdominal cavity stemming from his ruptured rectum, with multiple blunt-force injuries over his

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entire body as a significant contributing factor. (A. 2476, 2895; R. 614-15, 1157)

The prosecuting attorney for the Nineteenth Judicial District West charged appellant with capital murder in connection with Isaiah's death. (Addendum 5-7; R. 405-07) The amended information alleged two alternate theories for the murder – that Isaiah's death was caused in the course of and in furtherance of rape and that, as a person under the age of 14, his death was knowingly caused by a person over the age of 18, both under circumstances manifesting extreme indifference to the value of human life. (Addendum 6; R. 406) A jury subsequently returned a general verdict finding appellant guilty of capital murder for Isaiah's death. (Addendum 25; R. 516)

In an opinion issued on April 18, 2019, this Court reversed that conviction, holding that the circuit court did not have jurisdiction to convict appellant of capital felony murder with rape as the predicate felony because the rape occurred in Missouri, and, thus, the general verdict finding him guilty of capital murder was tainted. *Torres v. State*, 2019 Ark. 101, at 9-15. The Court committed an error of law when concluding that Arkansas lacked jurisdiction to prosecute appellant for capital felony murder with rape as the predicate felony. Consequently, the Court should grant rehearing, consider all of appellant's claims for reversal, and affirm. *See Ark. S. Ct. R. 2-3(g)(2018)*. This petition is filed in the good-faith belief that the Court committed an error of law and not for the purpose of delay. *See Ark. S.*

Ct. R. 2-3(a)(2018).

II.

The Court erred in its analysis of how Ark. Code Ann. § 5-1-104 (Repl. 2013), concerning the “[t]erritorial applicability[]” of the Arkansas Criminal Code, applies to this case. That statutory provision provides, in relevant part, as follows:

(a) *A person may be convicted under a law of this state of an offense committed by his or her own or another person’s conduct for which he or she is legally accountable if:*

(1) Either the conduct or a result that is an element *of the offense* occurs within this state;

...

(b) *When the offense is homicide*, either the death of the victim or the physical contact causing death constitutes a “result” within the meaning of subdivision (a)(1) of this section.

(Emphasis added.) Appellant was charged with, and convicted of, capital murder. Thus, the “offense” that is subject to analysis under this statutory provision in this case is capital murder, not rape, as appellant never was *convicted* of rape, much less charged with that offense, notwithstanding that rape was an element of the capital-murder charge. The offense of *conviction* is the focus of § 5-1-104. In its opinion, however, the Court analyzed the § 5-1-104 issue as though the offense of conviction was rape. *Torres*, 2019 Ark. 101, at 10-11. That was an error of law that this Court should correct on rehearing.

Had the Court correctly applied § 5-1-104 to the facts of this case, it should

have held that Arkansas had jurisdiction to convict appellant of capital murder with rape as the predicate felony, even though the rape occurred in Missouri. Isaiah died in Arkansas. (A. 2485; R. 626-27) Thus, a result that is an element of capital felony murder with rape as a predicate felony – death – occurred in Arkansas. *See* Ark. Code Ann. § 5-10-101(a)(1)(A)(ii) & (a)(1)(B)(Repl. 2013)(criminalizing causing the death of a person in the course of and in furtherance of rape under circumstances manifesting extreme indifference to the value of human life). Because Isaiah’s death occurred in Arkansas and the offense charged, capital murder, was a homicide offense, Arkansas had jurisdiction to prosecute that offense pursuant to the plain language of Ark. Code Ann. § 5-1-104(a)(1) & (b).

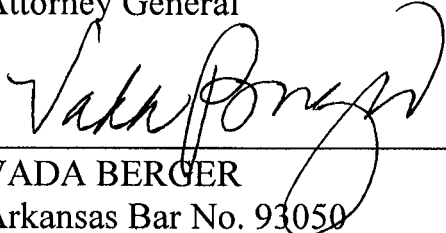
This result not only is in accordance with the plain language of § 5-1-104, but also comports with the intent of the legislature, which undoubtedly enacted the provision to authorize prosecution in Arkansas when “the act causing death and the death . . . occur at different geographical locations. The provision permits a homicide prosecution in Arkansas if either the death or the contact causing the death occurs within the State.” Original Commentary to Ark. Code Ann. § 5-1-104 (Repl. 1995)(cited in State’s letter of supplemental authorities sent to Court on Feb. 22, 2019). The legislature did not intend to allow a homicide to go unpunished by Arkansas authorities when a death occurs here, even if the act which precipitated it occurred in another state.

Nothing in *Cousins v. State*, 202 Ark. 500, 151 S.W.2d 658 (1941), upon which the Court relied, *Torres*, 2019 Ark. 101, at 12-13, dictates a contrary result. In *Cousins*, 202 Ark. at 503, 151 S.W.2d at 660, the Court indicated its agreement with the proposition that, “if a crime is defined so as to include some of the consequences of an act, as well as the act itself, the crime is generally regarded as having been committed where the consequences occur . . . and . . . is punishable as if the act were committed within the state.” That language is wholly consonant with the State’s position that, because Isaiah died in his home state of Arkansas, his murder properly was prosecuted in Arkansas. The Court’s emphasis upon rape when citing this language from *Cousins*, see *Torres*, 2019 Ark. 101, at 13, is mistaken, as the State already has explained, because the State did not seek to punish appellant for the rape of Isaiah, only for his murder. The Court should grant rehearing and hold, consistently with the plain language of § 5-1-101, that Arkansas had jurisdiction to prosecute appellant for the murder of his six-year-old son.

WHEREFORE, the State respectfully requests that its petition for rehearing be granted and that appellant’s convictions and sentence be affirmed in all respects.

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CERTIFICATE OF SERVICE

I, Vada Berger, certify that on May 6, 2019, the foregoing document has been mailed, by United States Postal Service, postage prepaid to:

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