

STATE OF SOUTH CAROLINA

RECEIVED

IN THE SUPREME COURT

JUN 19 2013

Appeal from Richland County S.C. Supreme Court

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS GOODWIN,

PETITIONER

APPELLATE CASE NO. 2011-193927

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JENNIFER ELLIS ROBERTS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
OPINION 2013-UP-110 FROM THE COURT OF APPEALS (filed March 13, 2013)	1
PETITION FOR REHEARING	3
ORDER FROM THE COURT OF APPEALS (filed April 18, 2013)	13

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Demetrius Goodwin, Appellant.

Appellate Case No. 2011-193927

Appeal From Richland County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2013-UP-110
Heard February 5, 2013 – Filed March 13, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Demetrius Goodwin appeals his conviction of homicide by child abuse. He contends the trial court erred in denying his motion for a directed verdict because the State did not prove he acted with extreme indifference. We

affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990) (noting that when reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 (holding an appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused); S.C. Code Ann. § 16-3-85(A) (2003) ("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"); *State v. Jarrell*, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002) ("Extreme indifference is in the nature of a culpable mental state and therefore is akin to intent." (ellipsis and quotation marks omitted)); *id.* ("In this state, indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care."); *McKnight v. State*, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) ("For purposes of the [homicide by child abuse] statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" (quoting *Jarrell*, 350 S.C. at 98, 564 S.E.2d at 367)); *State v. McKnight*, 352 S.C. 635, 646, 576 S.E.2d 168, 173 (2003) (finding a defendant's taking cocaine knowing she was pregnant was sufficient evidence to submit to a jury on whether she acted with extreme indifference to her child's life because it is public knowledge usage of cocaine is potentially fatal).

AFFIRMED.

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DEMETRIUS GOODWIN,

APPELLANT

APPELLATE CASE NO. 2011-193927

Appeal from Richland County

William Jeffrey Young, Circuit Court Judge

Opinion No. 2013-UP-110

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence for homicide by child abuse on March 13, 2013. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Goodwin argued on appeal that the trial court erred in denying appellant's motion for a directed verdict when the state failed to prove he acted with extreme indifference when his baby became seriously ill and he panicked and hugged her so severely that she died.

The Court of Appeals affirmed the trial court by holding that for “purposes of the homicide by child abuse statute, extreme indifference has been defined as a mental state akin to intent characterized by a deliberate act culminating in death.” The Court also wrote that “in this state, indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person’s conduct has created, or a failure to exercise ordinary due care.” Citing State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002).

ISSUE: On February 6, 2009, Demetrius Goodwin entered the emergency room at Palmetto Baptist carrying his twenty-three month old baby girl who was not breathing. The nurse who took the baby said the father was in a panic. There was no sign of life in the child. R. 15, ll. 13 – 25; R. 16, ll. 1 – 25; R. 17, l. 1 – 25. Demetrius told the nurse that the child fell down stairs the night before, and seemed fine at first. Then she had one episode of brown vomiting that night. The next morning the child had another episode of brown vomiting and seemed whiny, but was walking around. R. 18, ll. 1 – 25; R. 19, ll. 1 – 25.

The emergency room doctor, Dr. Mercier, said a team worked on the child for thirty minutes but could not revive her. There was never any sign of life. He did observe signs of trauma to the chest wall, but he saw no signs of the brown vomit. R. 7, ll. 1 – 25; R. 8, ll. 1 – 23; R. 9, ll. 1 – 22; R. 10, ll. 3 – 25; R. 11, ll. 1 – 25; R. 12, ll. 1 – 25; R. 13, ll. 1 – 25; R. 14, ll. 16 – 24.

Marquis Carter lived across the street from Goodwin, and he had two small children. On February 5, 2009, Goodwin and his daughter went to Carter’s house to watch his children while Carter ran an errand. When Carter returned, Goodwin told him his daughter fell down the stairs. Carter said she looked fine. R. 20, ll. 1 – 25; R. 21, ll. 1 – 25; R. 22, ll. 1 – 20.

The next day, February 6, 2009, Goodwin asked Carter if he could take his daughter to the doctor because she was not breathing right. Goodwin returned to his apartment. Then he came

rushing out and told Carter they had to rush because the child was not breathing. When Carter ran into the apartment and saw the child, he said she did not respond and had "yellow stuff" coming from her nose. He told Goodwin to call an ambulance. Then Carter decided not to wait for the ambulance, and they rushed the child to the hospital. R. 22, ll. 21 – 25; R. 23, ll. 1 – 25; R. 24, ll. 1 – 22. Carter said Goodwin broke down in tears when they got to the hospital. R. 24, ll. 18 – 24; R. 25, ll. 1 – 9.

On April 2, 2009, the pathologist who performed the autopsy, Dr. Bradley Marcus, told the solicitor and law enforcement that the fall was not the cause of death of the child. He said the cause of death was asphyxia due to chest compression. R. 61, ll. 7 – 25; R. 62, ll. 17 – 25; R. 70, ll. 19 – 25; R. 26, ll. 8 – 25; R. 27, ll. 1 – 19.

Dr. Marcus explained that two ribs of the child were fractured at the spine in the back. This was significant because a child's ribs were difficult to break and were usually indicative of child abuse. R. 63, 2- 25; R. 64, ll. 1 – R. 65, ll. 25. He found blunt trauma to the back of the head which resulted in facial and forehead contusions, and blunt trauma to the chest and abdomen. However, her death was caused by the child's chest being compressed so hard that she could not move her chest so her lungs could fill with oxygen, and she suffocated within one to one and a half minutes. R. 66, ll. 14 – R. 72, ll. 12.

Investigator Rob Martin of the Sheriff's Department met with Goodwin on April 13, 2009 to discuss the pathologist's report. R. 43, ll. 1 – 25; R. 46, ll. 1 – 25; R. 48, ll. 1 – 16; R. 49, ll. 25. Goodwin was told of the pathologist findings, that the fall did not cause the child's death. Goodwin then gave a statement to Investigator Martin where Goodwin said on the morning of February 6, the child did not have an appetite. He heard her wheezing and picked her up. She gave a cry so he held her tight and then put her on the bed. He said he hugged her "real tight" and her breathing got

worse. He said that he did not do it on purpose and he did not mean it. That was when he got Carter. R. 52, ll. 1 – 25; R. 53, ll. 1 – 25; R. 54, ll. 1 – 25; R. 55, ll. 1 – 25; R. 56, ll. 1 – 25; R. 57, ll. 1 – 25; State's Exhibit 2 (ROA p. 229).

Investigator Martin said that Goodwin said several times that he had killed his daughter. Goodwin was emotional and crying. He told the child's mother, Shayla Matthews, that he had killed his daughter with this hard hug. R. 58, ll. 1 – 21.

On April 15, 2009, the child's mother and grandparents and Goodwin met with the coroner, Gary Watts, Investigator Martin, and the pathologist, Dr. Marcus at the request of the mother who wanted to know the results of the autopsy. R. 28, ll. 1 – 25. When Dr. Marcus told the family that the fall did not cause the child's death but that it was asphyxiation due to some type of squeezing, Goodwin asked Coroner Watts to speak with him in private. R. 29, ll. 1 – 25; R. 30, ll. 1 – 25.

Goodwin told him that he realized he had killed his baby when he squeezed her in a hug for a minute or two. Coroner Watts said Goodwin was emotional and crying. R. 31, ll. 1 – 25; R. 32, ll. 1 – 12. Coroner Watts then got investigator Martin who took a written statement from Goodwin. R. 32, ll. 13 – 25. Goodwin said he did not mean to harm the child, and he was a good father. He was crying and was upset. R. 32, ll. 22 – 25; R. 33, ll. 1 – 7; State's Exhibit 4 (ROA p 234).

At the close of the state's case, defense counsel moved for a directed verdict on the basis that the state had not proved all of the elements of homicide by child abuse because the state did not prove that Goodwin had the mental state of "extreme indifference" as required by the statute. Counsel cited the case of State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002), which held that extreme indifference needed to prove homicide by child abuse was a "mental state akin to intent characterized by a deliberate act culminating in death." R. 82, ll. 1 – 25; R. 83, ll. 1 – 10. Counsel argued:

In South Carolina, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created or failed to exercise ordinary or due care.

R. 83, ll. 11 – 18.

The state argued that the testimony was that Goodwin picked up his daughter and squeezed her so hard for one to two minutes that her ribs were cracked and she went limp in his arms. The judge denied the directed verdict motion. R. 84, ll. 1 – 25.

Goodwin did not testify, but the defense called their own expert, Dr. Stan Kessler. R. 87, ll. 10 – 25; R. 88, ll. 1 – 25; R. 91, ll. 1 – 25; R. 92, ll. 1 – 25. After extensive testimony, Dr. Kessler concluded that the fractured ribs did not cause the child's death. R. 88 – R. 178, ll. 14. He stated:

The cause of death in this case is Waterhouse-Friderichsen syndrome or adrenal shock due to hemorrhagic disruption of the adrenal and dissolution of the adrenal by Gram-positive bacteria, diplococcus pneumonia, causing all of the changes we see.

R. 142, ll. 5 – 16.

At the close of the state's reply testimony, defense counsel renewed all motions and objections including their directed verdict motion. The judge denied their motion. R. 184, ll. 4 – 25; R. 185, ll. 1 – 6.

During his charge to the jury, the judge instructed the jury on extreme indifference. R. 187, ll. 14 – 25; R. 188, ll. 1 – 25. The jury, during their deliberations, sent a note asking the judge to explain extreme indifference to human life. R. 189, ll. 1 – 25; R. 190, ll. 1 – 2. The judge read the charge again on extreme indifference. R. 190, ll. 8 – 25; R. 191, ll. 1 – 25; R. 192, ll. 1 – 10.

The jury returned their verdict and Goodwin was sentenced to twenty-five years. R. 193, ll. 4 – 25; R. 194, ll. 18 – 25; R. 195, ll. 1 – R. 196, ll. 7.

At the May 9, 2011 hearing on defense counsel's motion for a new trial or reconsideration of the sentence, defense counsel argued that new trial should be granted based on the directed verdict motion because the state did not prove that Goodwin acted with extreme indifference. Counsel argued that the solicitor stated in her closing that this was not intentional. May 9, 2011 R. 205 ll. 1 – 25; May 9, 2011 R. 203 ll. 6 – R. 207, ll. 25; March 14, 2011 R. 186, ll. 7 – 15.

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

A directed verdict motion should be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

South Carolina Code Sect. 16-3-85 provides:

(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.

In State v. Jarrell, *supra*, the Court of Appeals defined extreme indifference as a mental state akin to intent characterized by a deliberate act culminating in death.

The court went on to say that in this state, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created or failed to exercise ordinary or due care.

In State v. Jarrell, *supra*, the Court affirmed the trial court's denial of Jarrell's directed verdict motion finding that Jarrell acted with extreme indifference because she knew when she left home the morning of the incident that her child would be killed. She did not protect her child as she had helped plan the child's murder.

Goodwin's case is distinguished because he did not plan any harm to his child, and he did not leave her in a situation where he knew there was a risk of harm to her. He hugged his daughter when he saw that she was sick. He sought help when he saw she had trouble breathing.

In State v. Sterling, 723 S.E.2d 176 (2012), the Supreme Court held that knowledge or intent that his conduct violated the securities law is not required to convict a defendant of securities fraud, but the state must present evidence that the defendant made statements or committed acts in a severely reckless manner such that he knew presented a danger of misleading an investor.

In State v. Sterling, *Id.*, the Supreme Court wrote:

What is at issue here is not whether Sterling acted intentionally, but whether his mental state met the *mens rea* standard we created in Morris, that is, did he know, or was it so obvious that he must have known, that the information he disseminated presented a danger of misleading buyers or sellers.

The Supreme Court wrote that they were within their authority to determine the level of intent required for a violation of the securities statute because the legislature did not specify any *mens rea*.

The Supreme Court cited the case of State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994), where they held that recklessness is one level of criminal intent, as are knowledge and negligence.

The Court wrote that under Jefferies, "intentional" connotes a higher sense of awareness than mere recklessness.

The Court of Appeals focused on "extreme indifference" and held that Goodwin acted with extreme indifference. The Court relied on State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003) where the Supreme Court found that the mother's using cocaine while she was pregnant was acting with extreme indifference because it was common knowledge that use of cocaine is potentially fatal. This is distinguished from Goodwin's case because it is not common knowledge that hugging a baby will kill them. Goodwin was scared and panicked and probably was not aware of his own strength. Hugging a baby is not illegal while use of cocaine is breaking the law.

The Court also relied on State v. Jarrell, *supra*, which was also distinguished from Goodwin's case. The mother in Jarrell knew when she left home that morning that the father was planning to kill the baby. That was extreme indifference.

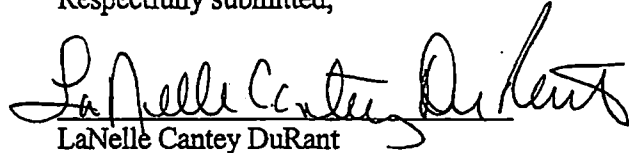
The state did not present sufficient evidence that Goodwin acted with extreme indifference. Goodwin's statements indicated: "I did not do it on purpose;" "I did not mean it;" "I was concerned about her;" "I was scared at the way she was reacting and gave her a hug to get a response." The witnesses which included Carter, Coroner Watts, Investigator Martin, and the nurse all testified that Goodwin was upset, crying, emotional, and upset about his daughter.

The trial judge's charge on extreme indifference was inconsistent as he charged that indifference was the failure to exercise ordinary or due care. Then he charged that extreme indifference was deliberate conduct which was willful. Extreme indifference is not the same as lack of due care or negligence as negligence is a less culpable *mens rea* than extreme indifference.

The trial court should have granted the directed verdict motion because there was no evidence that Goodwin acted with extreme indifference.

WHEREFORE, we respectfully request the Court of Appeals to reconsider its decision.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 27th day of March, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

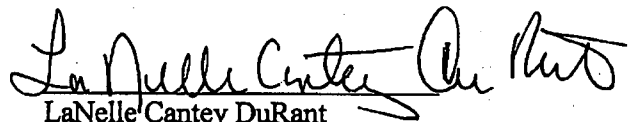
DEMETRIUS GOODWIN,

APPELLANT

APPELLATE CASE NO. 2011-193927

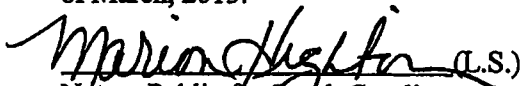
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Mr. Demetrius Goodwin, #345308 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of March, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 27th day
of March, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Demetrius Goodwin, Appellant.

Appellate Case No. 2011-193927

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Luff J.
H. B. W. J.
U. Ke J.

Columbia, South Carolina

RECEIVED

APR 18 2013

cc:

LaNelle Cantey DuRant
 Jennifer Ellis Roberts

RECORDS & COMMUNICATIONS
 APPELLATE DIVISION

FILED

18 April 2013

RECEIVED

JUN 19 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS GOODWIN,

APPELLANT

APPELLATE CASE NO. 2011-193927

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEX	i, ii
TRIAL TRANSCRIPT (MARCH 14-18, 2011)	1
TESTIMONY	
ZEMULOUS DOZIER	
Direct Examination by Ms. McDuffie.....	4
MARK PHILLIP MERCIER	
Direct Examination by Ms. Campbell.....	7
Cross Examination by Mr. Hines	14
JOY BLIND	
Direct Examination by Ms. Campbell.....	15
MARQUIS CARTER	
Direct Examination by Mr. Potts.....	20
GARY WATTS	
Direct Examination by Ms. Campbell.....	26
Cross Examination by Ms. Singletary	34
JOSHUA MAULDIN	
Direct Examination by Ms. McDuffie.....	35
ROBERT MARTIN	
Direct Examination by Ms. Campbell.....	43
BRADLEY J. MARCUS	
Direct Examination by Ms. McDuffie.....	61
MATTHEW A. MARCUS	
Direct Examination by Ms. Campbell.....	73
JACOB VANDERSTEENHOVERN	
Direct Examination by Ms. Campbell.....	78
Cross Examination by Ms. Hines	80
Redirect Examination by Ms. Campbell	81
Recross Examination by Ms. Campbell.....	81
MOTION FOR DIRECTED VERDICT BY MS. SINGLETARY.....	82

STANTON COLEMAN KESSLER	
Direct Examination by Ms. Hines	87
Examination by Ms. Hines (in camera).....	95
Examination by Ms. Campbell (in camera)	98
Direct Examination by Ms. Hines (continued)	106
Cross Examination by Ms. Campbell.....	147
Redirect Examination by Ms. Hines	177
OLGA ROSA	
Direct Examination by Ms. Campbell.....	179
CLOSING ARGUMENT BY MS. CAMPBELL.....	186
CLOSING ARGUMENT BY MS. HINES	186
CHARGE ON THE LAW	187
VERDICT	193
SENTENCING	196
POST-TRIAL MOTION FOR A NEW TRIAL	197
POST TRIAL HEARING TRANSCRIPT (MAY 9, 2011).....	201
ORDER DENYING MOTION FOR NEW TRIAL AND MOTION TO RECONSIDER (JUNE 1, 2011).....	218
STATE’S EXHIBIT #1	222
STATE’S EXHIBIT #2	229
STATE’S EXHIBIT #3	233
STATE’S EXHIBIT #4	234
INDICTMENT	236
CERTIFICATE OF COUNSEL.....	238

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND

CIRCUIT COURT
2009-GS-40-03175

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 DEMETRIUS GOODWIN,
6 Defendant.

7
8 HEARD ON MONDAY, MARCH 14, 2011,
9 TUESDAY, MARCH 15, 2011,
10 WEDNESDAY, MARCH 16, 2011,
11 THURSDAY, MARCH 17, 2011,
&
FRIDAY, MARCH 18, 2011

12 BEFORE:

13 THE HONORABLE W. JEFFREY YOUNG
14
15 AND A JURY

16 APPEARANCES:

17 Counsel on behalf of the State:
18 Kathryn "Luck" Campbell, Esq.
19 Joanna A. McDuffie, Esq.
Carter Potts, Esq.

20 Counsel on behalf of the Defendant:
21 Kris Hines, Esq.
22 Nicole Singletary, Esq.
23 Tracy Pinnock, Esq.

24 Cheri L. Young, RPR
Official Court Reporter
P O Box 1154
25 Aiken, SC 29802-1154

EXAMINATION INDEX

JACKSON V. DENNO:

ROBERT MARTIN

DIRECT BY MS. CAMPBELL 62

CROSS BY MS. PINNOCK 75

GARY WATTS

DIRECT BY MS. SINGLETARY 83

CROSS BY MS. CAMPBELL 91

ZEMULOUS DOZIER

DIRECT BY MS. SINGLETARY 93

TRIAL - BY THE STATE:

ZEMULOUS DOZIER

DIRECT BY MS. McDUFFIE 136

CROSS BY MS. SINGLETARY 149

REDIRECT BY MS. McDUFFIE 158

MARK PHILLIP MERCIER

DIRECT BY MS. CAMPBELL 160

CROSS BY MS. HINES 174

JOY BLIND

DIRECT BY MS. CAMPBELL 183

CROSS BY MS. HINES 190

REDIRECT BY MS. CAMPBELL 193

RAY LIVINGSTON

DIRECT BY MR. POTTS 194

CROSS BY MS. SINGLETARY 200

MARQUIS CARTER

DIRECT BY MR. POTTS 203

CROSS BY MS. PINNOCK 210

GARY WATTS

DIRECT BY MS. CAMPBELL 217

CROSS BY MS. SINGLETARY 230

REDIRECT BY MS. CAMPBELL 238

RECROSS BY MS. SINGLETARY 239

KRISTIN POLLIS

DIRECT BY MS. McDUFFIE 240

CROSS BY MS. SINGLETARY 247

REDIRECT BY MS. McDUFFIE 253

1 TRIAL - BY THE STATE (CONTINUED):

2 RACHEL GRANT

3 DIRECT BY MS. CAMPBELL 258

4 CROSS BY MS. SINGLETARY 266

5 REDIRECT BY MS. CAMPBELL 267

6 JOSHUA MAULDIN

7 DIRECT BY MS. McDUFFIE 268

8 CROSS BY MS. PINNOCK 291

9 REDIRECT BY MS. McDUFFIE 312

10 ROBERT MARTIN

11 DIRECT BY MS. CAMPBELL 314

12 CROSS BY MS. PINNOCK 347

13 REDIRECT BY MS. CAMPBELL 373

14 RECROSS BY MS. PINNOCK 376

15 BRADLEY J. MARCUS

16 DIRECT BY MS. McDUFFIE 388

17 CROSS BY MS. HINES 433

18 REDIRECT BY MS. McDUFFIE 494

19 MATTHEW A. MARCUS

20 DIRECT BY CAMPBELL 498

21 CROSS BY MS. HINES 516

22 REDIRECT BY MS. CAMPBELL 518

23 JACOB VANDERSTEENHOVEN

24 DIRECT BY MS. CAMPBELL 519

25 CROSS BY MS. HINES 528

REDIRECT BY MS. CAMPBELL 537

RECROSS BY MS. HINES 537

DOZIER - DIRECT

1 Q. Could you refer to your notes for the date that he
2 reported to you that the child fell down the stairs?

3 A. He advised, actually it was on 2-5 of 2009.

4 Q. And approximately what time did he tell you she fell
5 down the stairs on February the 5th of 2009?

6 A. That was 20:00 hours.

7 Q. And after she fell down the stairs, what did he advise
8 you happened after that?

9 A. He said that he was home alone with the kids and they,
10 like I say, they were playing tug of war and he eventually
11 left and took the child home.

12 Q. And did he tell you that there was any abnormal
13 behavior that night or did he put her to bed? What did he
14 tell you?

15 MS. SINGLETARY: Objection, Your Honor.
16 Leading.

17 THE COURT: Rephrase your question.

18 BY MS. McDUFFIE:

19 Q. Please tell the jury what he told you.

20 A. He stated he took the child home, gave her a bath,
21 something to eat. He monitored her for the remaining of
22 the night. And he stated that Demetria vomited with --
23 and had loose bowels with symptoms of tarriness.

24 Q. And at some point did he tell what you he did after
25 that?

DOZIER - DIRECT

1 A. That was -- basically he went and took her and put her
2 to bed.

3 Q. And the next morning, did he come in contact with her
4 again?

5 A. He did.

6 Q. And please tell the jury what he told you what
7 happened on February the 6th of 2009.

8 A. He told me that when he had returned home -- of
9 course, he worked at UPS and he worked from 3:30 a.m. He
10 returned approximately 8:30. He was advised -- the mother
11 was, advised that the daughter was sleeping during the
12 course of the night. Mr. Goodwin got Demetria up and
13 checked on her. Demetria was just -- and he discovered
14 that she was wheezing and had some form of green matter
15 flowing from her nose.

16 Q. And did he tell you that he did anything after he
17 noticed that?

18 A. He said he called 9-1-1 but he cancelled the call and
19 went closer, to a friend's house and tried to get some
20 assistance.

21 Q. And did you try to confirm with 9-1-1 whether or not a
22 call had been placed?

23 A. I did.

24 Q. And were you able to find out whether or not a call
25 had been placed?

DOZIER - DIRECT

1 A. They said they did not receive a call.

2 Q. 9-1-1 did not receive a call that day?

3 A. That day, from that residence.

4 Q. And he did tell you that he did call 9-1-1?

5 A. Yes.

6 Q. And that was inconsistent with what 9-1-1 told you?

7 A. Yes.

8 Q. And after you spoke with him at Palmetto Health

9 Baptist Emergency Room, where did you go? Or, what did
10 you do?

11 A. I contacted Dr. Marcus once I saw there was some form
12 of bruising to the body, to the head. I asked Dr. Marcus
13 to step down just to give his analysis of the bruising.

14 Q. I'm sorry to interrupt you. Who is Dr. Marcus?

15 A. Dr. Marcus is a pathologist for, that works for the
16 Richland County Coroner's Office as a medical examiner.

17 Q. And Dr. Marcus sat down and observed the child's body?

18 A. Yes, he did.

19 Q. And at some point in time, was an autopsy performed by
20 Dr. Marcus?

21 A. The autopsy was done the following day by Dr. Marcus.

22 Q. And were you present when that autopsy was performed?

23 A. No, I wasn't.

24 Q. And as part of your responsibilities as a deputy
25 coroner, did you respond to Windmill Court where this

MERCIER - DIRECT

1 BY MS. CAMPBELL:

2 Q. Doctor, for the record, you're an emergency room
3 doctor. That's what you do?

4 A. Emergency medicine. Yes, ma'am.

5 Q. And I want to turn your attention back to February the
6 6th of 2009, were you working that day?

7 A. Yes, I was, ma'am.

8 Q. And where were you working that day?

9 A. Palmetto Health Baptist.

10 Q. The Baptist Hospital?

11 A. Yes, ma'am.

12 Q. And in your practice, approximately how many doctors
13 are there in your group?

14 A. There are 25. We're expanding right now currently,
15 so.

16 Q. As part of your practice, do you go to different
17 hospitals?

18 A. No, I do exclusively Baptist.

19 Q. So you're exclusively at Baptist?

20 A. Yes, ma'am.

21 Q. And Baptist has an emergency room?

22 A. Yes.

23 Q. On that date, were you working in the emergency room?

24 A. Yes, ma'am.

25 Q. And approximately what shift were you working that

MERCIER - DIRECT

1 day; do you recall?

2 A. I do not recall.

3 Q. Did you come in contact with a 23-month-old child that
4 presented in the emergency room around 12:25 p.m. that
5 afternoon?

6 A. Yes, ma'am.

7 Q. And I believe that was a Demetria Goodwin. She was
8 later identified as Demetria Goodwin?

9 A. Yes, ma'am.

10 Q. And tell this jury how you came in contact with her.

11 A. I was walking down the hall. One of the nurses had a
12 child in her arms and said, I need a doctor in the room
13 immediately. And I believe we went to trauma room two.

14 And that's how I first came in contact with the
15 patient.

16 Q. Okay. And once you came in contact with Demetria
17 Goodwin, how did she present? What was her condition when
18 you first came in contact with her?

19 A. Basically lifeless. No breathing. No spontaneous
20 respirations whatsoever. Dilated pupils which were fixed,
21 not reactive.

22 Q. What does that mean when you say dilated pupils,
23 fixed, not reactive?

24 A. Once a person has died you no longer have pupillary
25 response to light. Response to your eyes won't do

MERCIER - DIRECT

1 Then you want to establish IV access so that you can
2 give some potential life-saving drugs such as Adrenalin
3 and then perform CPR.

4 This is all really occurring relatively
5 simultaneously. And that's how I started the
6 resuscitation.

7 Q. Were you the only one doing all these different things
8 or were there different people out there working on her?

9 A. It was a team effort, pretty much.

10 Q. Team effort of you as the lead doctor, I believe?

11 A. That's correct.

12 Q. And then nurses and other people assisting?

13 A. Primarily nurses in this case.

14 Q. So those were the initial things you did when the
15 child presented in an effort to save her life?

16 A. Correct.

17 Q. Did you continue to try to work on her?

18 A. Yes, ma'am.

19 Q. And you're performing CPR at this point?

20 A. Through the entire thing. You really want to minimize
21 CPR to an absolute -- any interruptions to an absolute
22 minimum, so you're continually performing CPR.

23 Q. There's the breathing bag you talked about. And you
24 were able to get IV access?

25 A. A special type of IV called an intraosseous. We place

MERCIER - DIRECT

1 leg?

2 A. Yes, ma'am.

3 Q. And you're trying to administer these different drugs
4 to save her life. At any point did, she ever show any
5 signs of life?

6 A. Never.

7 Q. As part of your treatment, do you also look for any
8 kind of signs of trauma?

9 A. You do. You do a survey as you're doing
10 resuscitation. Once again, it's simultaneous.

11 Q. And again this is all quick and stuff, but you just
12 want to see obvious signs?

13 A. Uh-huh.

14 Q. But, say, a small bruise is something you could miss
15 but you would see any obvious signs?

16 A. Correct.

17 Q. Did you note any obvious signs of trauma to this child
18 as you were working on her?

19 A. I did..

20 Q. And where was that?

21 A. To the chest wall.

22 Q. As part of your treatment, is it also important for
23 you to get what's called the history of what may have
24 happened to the child that day?

25 A. It's essential.

MERCIER - DIRECT

1 Q. And in this case, was a history provided to you?

2 A. It was provided to me, yes.

3 Q. And what was the history provided to you as to what
4 had happened to the child that day?

5 A. There was -- in -- the history was such that there
6 was, the child was fighting over a toy the previous night
7 and apparently there was some sort of a fight between the
8 children over the toy, and somebody just described it as a
9 brown type of vomitus.

10 The child subsequently seemed fine. And the other
11 history provided was that the child she described as
12 being, quote, whiny the day of presentation, and then
13 seemed to have wheezing when there was breathing and then
14 subsequently what I was told was the father went to the
15 cousin's house to get help and upon return the child
16 wasn't breathing.

17 Q. Did they mention that the child was covered in
18 anything when they returned?

19 A. Yes, a brown-type material, brown-red, I believe.

20 Q. A brown what?

21 A. Material.

22 Q. Brown or red material?

23 A. Uh-huh.

24 Q. And was there any evidence of that when you were
25 examining the child or when you were treating this child

MERCIER - DIRECT

1 actually?

2 A. No.

3 Q. There was no evidence of any kind of vomit or anything
4 on her?

5 A. No, ma'am.

6 Q. And in fact, did you actually -- what's an OG tube?

7 A. It's called oral-gastric tube. It's a tube you place
8 through the mouth into the stomach. What it does is it
9 allows you the opportunity to directly aspirate or take
10 out contents of the stomach so you can see what they look
11 like, in fact.

12 Q. And did you do that in this case?

13 A. I did.

14 Q. Why did you do that to her?

15 A. Because of the history.

16 Q. And that she might be covered in some type of vomit?

17 A. Right.

18 Q. And what were the results when you did that tube?

19 A. There was no blood or any vomitus, no blood.

20 Q. Nothing that matched the description --

21 A. No, ma'am.

22 Q. -- of what had been provided to you? Did you continue
23 with CPR on this child?

24 A. Yes, ma'am.

25 Q. And did you eventually, despite your efforts,

MERCIER - DIRECT

1 pronounce the child dead?

2 A. Yes, ma'am.

3 Q. And what time was that, approximately?

4 A. I would have to look at the notes to tell you. I
5 would have dictated it.

6 Q. I just -- you got a copy of your notes?

7 A. I do have a copy. I didn't know if I was supposed to
8 bring it up here or not.

9 Q. Okay. Just refer to the second paragraph.

10 A. Uh-huh. You want me to read it?

11 Q. Just use it to refresh your memory.

12 A. I do. After approximately 30 minutes of performing
13 CPR and other resuscitative measures I've spoken of, I
14 pronounced the child dead at 12:55 hours.

15 Q. As part of your duties also, do you also take the
16 temperature of the child?

17 A. Yes, ma'am.

18 Q. And do you recall, would you refresh your memory as
19 far as what this child's temperature was,

20 A. It was 97.3, I think.

21 Q. Is that below or at the level of where it should be?

22 A. It's slightly below.

23 Q. Once you pronounced the child dead after working on
24 her for, I believe, about 30 minutes --

25 A. Correct.

MERCIER - CROSS

1 Q. -- did you make contact with the family?

2 A. I did.

3 Q. And did you relate to them what had happened, that the
4 child could not be saved?

5 A. Yes, ma'am.

6 Q. You never had any direct contact or spoke directly to
7 the family members yourself other than condolences after
8 the child --

9 A. That is my recollection.

10 Q. And you did everything you could to save this child's
11 life?

12 A. I feel that's true.

13 MS. CAMPBELL: Thank you, sir.

14 THE COURT: Cross-examination?

15 MS. HINES: Yes, Your Honor. Thank you.

16 CROSS-EXAMINATION

17 BY MS. HINES:

18 Q. I just have a few questions, Doctor.

19 A. Yes, ma'am.

20 Q. Now, you testified that you, that CPR was performed
21 throughout this, while -- in the 30 minutes that your team
22 was working on Demetria Goodwin, CPR was performed
23 throughout?

24 A. Yes, ma'am.

25 Q. Were you actually the one performing the CPR or was it

BLIND - DIRECT

1 THE COURT: Okay. Any objection from the
2 defense --

3 MS. HINES: No objection.

4 THE COURT: -- to the doctor being excused?

5 MS. HINES: No objection, Your Honor.

6 THE COURT: Thank you, Doctor. You're excused.

7 THE WITNESS: Thank you, sir.

8 MS. CAMPBELL: State would call Joy Blind.

9 JOY BLIND, having been duly sworn, was examined
10 and testified as follows:

11 THE CLERK: Have a seat on the witness box.
12 State your name for the record, please.

13 THE WITNESS: My name is Joy Blind (pronounced
14 Blend). Spelled like blind, B-L-I-N-D.

15 DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q. Ms. Blind, where are you employed?

18 A. At Palmetto Health Baptist.

19 Q. What do you do there?

20 A. I'm an emergency room nurse.

21 Q. What do your duties include as an emergency room
22 nurse?

23 A. I work with patients and, initially when patients come
24 into the ER one of my responsibilities is to triage them,
25 also take care of them as doctors make orders, function as

BLIND - DIRECT

1 a charge nurse.

2 Q. I want to turn your attention specifically back to
3 February the 6th of 2009. Were you working that
4 afternoon?

5 A. I was.

6 Q. And around 12:25, can you tell this jury how you first
7 came in contact with Demetria Goodwin?

8 A. I remember the ER door opening and a father standing
9 there or a man was standing there with a baby that was
10 lifeless. And he said he was not -- she was not
11 breathing.

12 Q. Okay. And in your observations, did you see any signs
13 of life when she first presented to you right there at the
14 ER?

15 A. I did not.

16 Q. At that point what if anything did you do?

17 A. I took the baby in my arms and ran back to the back of
18 the ER and asked for an ER physician and looked for a room
19 because we were completely full.

20 Q. Uh-huh. Were you able to get a trauma room in order
21 to get this child the necessary treatment?

22 A. We were. We went to trauma room two.

23 Q. And who was the doctor that actually responded and
24 helped you with this child?

25 A. Dr. Mercier.

BLIND - DIRECT

1 Q. Who just testified?

2 A. That's correct.

3 Q. And when you picked up this child, were there any
4 signs of life as you were carrying her down the hall into
5 the trauma room, laying her on the bed or anything like
6 that?

7 A. There was none.

8 Q. And in fact how did she present as far as feel and
9 things of that nature?

10 A. She was pale, lifeless, limp. Just no signs. No
11 breathing.

12 Q. No breathing whatsoever?

13 A. No.

14 Q. And during the course of this, did Dr. Mercier come in
15 and basically direct what everyone was doing that day?

16 A. He did. He met me in the hallway and directed to the
17 room, number two

18 Q. Once you got into the room, did you participate in the
19 treatment of this child?

20 A. I did.

21 Q. And what was your role that day, ma'am?

22 A. Multiple. I initially laid the baby on the bed and
23 tried to find an IV which, it was one of the things that

24 we do. And Dr. Mercier also was helping direct what all
25 we did. And I also was assisting in putting the heart

BLIND - DIRECT

1 Q. And are these notes that were taken in this case?

2 A. They are.

3 Q. And do those accurately reflect what this child's
4 father related to you, the nurse, or to you and other
5 nurses, I think, actually on that day?

6 A. It is.

7 Q. And what did he tell you had happened?

8 A. He told us that the child had been in a fight with
9 another child and had fallen down stairs.

10 Q. And did he indicate when that had occurred?

11 A. The night before.

12 Q. Okay. What else did he indicate about how the child
13 was acting the night before?

14 A. That, you know, she seemed fine and then that she had
15 one episode of brown vomit the night before.

16 Q. The night before?

17 A. Yes, ma'am.

18 Q. But other than that he indicated she seemed fine?

19 A. The night before. Yes.

20 Q. Did he indicate how the child was that morning?

21 A. He did.

22 Q. And what did he tell you?

23 A. He said that she was whiny and that she had had
24 another episode of brown vomit but that she was walking
25 around, she was fine.

BLIND - DIRECT

1 Q. Okay. She was walking around fine?

2 A. That's correct.

3 Q. Then he indicated she was whiny?

4 A. Kind of all in the same, the same time he was telling
5 us all.

6 Q. And that she was wheezing at that point?

7 A. I don't remember wheezing. I just remember --

8 Q. That she was fine that?

9 A. -- that she was fine.

10 Q. But whiny?

11 A. But whiny, and walking around.

12 Q. What else did he tell you about what happened that
13 morning?

14 A. That is all I remember.

15 Q. Did he ever indicate how they had gotten to the
16 hospital?

17 A. He did.

18 Q. And what did he tell you about how they got to the
19 hospital?

20 A. Actually -- I don't know that he actually said that,
21 he told me. I remember asking him because I didn't know
22 who he was --

23 Q. Uh-huh.

24 A. -- that brought the child in.

25 Q. Yes.

CARTER - DIRECT

1 THE WITNESS: Marquis (Pronounced Markee)

2 Carter.

3 DIRECT EXAMINATION

4 BY MR. POTTS:

5 Q. Mr. Carter, where do you currently work?

6 A. Wal-Mart.

7 Q. What do you do there?

8 A. Tire and lube.

9 Q. Do you currently do anything else?

10 A. Going to school.

11 Q. What do you go to school for?

12 A. Business management.

13 Q. Business management. And where are you going to
14 school?

15 A. Midland Tech.

16 Q. Okay. How old are you?

17 A. Twenty-four.

18 Q. Twenty-four?

19 A. Uh-huh.

20 Q. Now, do you remember back in February of '09 where you
21 lived?

22 A. Carriage House.

23 Q. Is that near 348 Windmill Court?

24 A. Yeah. That's Carriage House.

25 Q. How close were you to the Defendant's residence?

CARTER - DIRECT

1 A. Maybe right across the street.

2 Q. How long did you know him?

3 A. Maybe about a year.

4 Q. Okay. Do you remember the events of February 5th,

5 2009?

6 A. Yeah.

7 Q. Can you tell me briefly what happened that evening?

8 A. Okay. Demetrius -- I was outside working on my truck.

9 Q. Now, sorry to interrupt. I don't mean to interrupt
10 you. If I may refresh your memory. The day before,
11 February 5th?

12 A. Okay.

13 Q. Can you tell me what happened that day?

14 A. Yeah. I had walked across the street and asked
15 Demetrius could he come to my house to watch my kids so I
16 could go to the store.

17 Q. How many kids do you have?

18 A. Two.

19 Q. How old are they?

20 A. At the time they were, I believe, four and one.

21 Q. Are they boys? Girls?

22 A. Yeah, boys.

23 Q. Both boys?

24 A. Uh-huh.

25 Q. So you have a very busy household?

CARTER - DIRECT

1 A. Yeah.

2 Q. Okay. Sorry. Continue. You walked over across the
3 street to talk to him?

4 A. To tell Demetrius -- to ask Demetrius could he watch
5 my kids for me while I go to the store.

6 Q. Okay.

7 A. So he said yeah. He came over. I went to the store.
8 I was at the store maybe 15 minutes because I walked. So
9 when I came back, that's when he told me that NeNe had
10 fell down the stairs.

11 Q. Now what caused him to tell you that?

12 A. Because my son was playing on the stairs and I told
13 him to stop, stop playing around the stairs. So that's
14 when he was, like, yeah because NeNe fell down the stairs.

15 Q. What did you observe about NeNe?

16 A. Nothing. She was playing. She was all right.

17 Q. She wasn't crying?

18 A. No.

19 Q. She was playing with your children?

20 A. Uh-huh.

21 Q. Okay. Now, what about the next day? Tell us what you
22 remember about February 6th.

23 A. Okay. I was outside putting speakers in my mother's
24 truck.

25 Q. What kind of car was it?

CARTER - DIRECT

1 A. A Grand Vitara, Suzuki.

2 Q. And you share it with your mother?

3 A. Yeah. So, Demetrius came out the door and he was,
4 like, can you, could you take me and NeNe to the doctor.

5 Q. Just kind of like that?

6 A. Yeah. I asked why. And he was like, she's not
7 breathing right. So, I was like, okay. He was, like, you
8 can wait until you finish.

9 So I said okay. So he walked back in. Maybe five
10 minute later he came back out. He was like, rush, rush
11 she's not breathing. She's not breathing.

12 So I ran in there. And when I ran in there it was --
13 she was laid out on the bed. Was like yellow stuff coming
14 out her nose. So that's when I shook her and called her
15 name NeNe, NeNe. I told him to call the ambulance.

16 So we waited for the ambulance maybe like five
17 minutes. I said, grab her because we gone.

18 Q. Now you told Mr. Goodwin to call the ambulance?

19 A. Yes.

20 Q. Okay.

21 A. Yeah.

22 Q. And you -- and who decided that it was taking too long
23 for the ambulance to get there?

24 A. I did.

25 Q. So you decided that. Okay. What did you do at that

CARTER - DIRECT

1 point?

2 A. I told him to grab her and we ran to the truck. And
3 we ran to the truck, I just speeded out of Carriage
4 House. And when we was on the road that goes out of
5 Carriage House I saw the ambulance pass us.

6 Q. Uh-huh.

7 A. And we tried to flag the ambulance down but it didn't
8 stop so we kept going.

9 Q. So you saw the ambulance coming?

10 A. Uh-huh.

11 Q. You tried to flag it down?

12 A. Uh-huh.

13 Q. Did you turn around and go back to your house?

14 A. No.

15 Q. Okay. And then you went to Baptist Medical Center;
16 correct?

17 A. Yes, sir.

18 Q. And what happened when you got there?

19 A. I parked. The way I parked, I parked with the exit in
20 the exit -- or the emergency room. So we jumped out the
21 car. Ran in. And that's when we seen the nurse. He was
22 yelling.

23 And the nurse came and grabbed NeNe out his arms. And
24 he just broke down crying. And after he broke down
25 crying, that's when the nurse told me I had to move my

CARTER - DIRECT

1 truck.

2 Q. And so, what did you do?

3 A. I turned around and moved my truck.

4 Q. Okay. Did you leave at that time?

5 A. No, I came back in.

6 Q. Okay. What did you do when you came back in?

7 A. It was like a little room on the side and that's when
8 I seen Demetrius and he was just like, she gone, she
9 gone. He broke down.

10 Q. Was this in the chapel?

11 A. No. This was in another little side room.

12 Q. Okay. Now, did you have an opportunity to see
13 Mr. Goodwin's girlfriend that evening, that day?

14 A. Yeah. She came. She came maybe five, 10 minutes
15 after.

16 Q. Okay. Beg the Court's indulgence for one second.

17 THE COURT: Yes.

18 (Pause.)

19 BY MR. POTTS:

20 Q. Do you remember Demetrius telling you how many stairs
21 that Demetria fell down?

22 A. Not really.

23 MR. POTTS: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MR. POTTS:

WATTS - DIRECT

1 to make sure you've got all the facts.

2 A. Absolutely.

3 Q. And that was done in this case?

4 A. Yes, ma'am.

5 Q. During the course of that investigation there's still
6 contact maintained with the family; is that correct?

7 A. Correct.

8 Q. I want to turn your attention to April the 2nd of
9 2009. Did you attend a meeting in this courthouse, I
10 believe, about this case?

11 A. I have some -- may I pull my notes from that?

12 Q. Sure. If you have notes.

13 A. Yeah I have a copy of the notes I think you have.

14 Yes. There was a meeting held actually on the fourth
15 floor, one of the solicitor's offices in reference to this
16 case.

17 Q. Okay. And were a number of different people present
18 at that meeting --

19 A. I have --

20 Q. -- including yourself?

21 A. -- Deputy Solicitor McDuffie, Captain Smith from the
22 Richland County Sheriff's Department, Captain Lydell from
23 the State Law Enforcement Division, Investigator Martin,
24 Investigator Faust, Agent Bocco from SLED and
25 Dr. Marcus.

WATTS - DIRECT

1 Q. What was the purpose of that meeting as far as what
2 you all were trying to review and assess?

3 A. This meeting was an opportunity for Dr. Marcus to go
4 over the physical findings from the autopsy with the
5 investigators that had been involved in this case.

6 Q. And at that point did you become aware or was your
7 office made aware of what Demetrius Goodwin initially said
8 about this child falling down some steps the day before?

9 A. That was actually, I believe, what he explained to
10 Investigator Dozier at the hospital at the time of the
11 initial incident; that the child had fallen at a
12 neighbor's house while they were playing. I want to say
13 it was the day before he said the child had fallen.

14 Q. And in that meeting, were there any determinations as
15 to whether or not that was consistent or inconsistent with
16 the pathologist's findings?

17 A. Dr. Marcus's findings were totally inconsistent with
18 that. His findings were in line with an asphyxiation
19 death, not a fall.

20 Q. Let me ask you this: Is your job as a coroner to try
21 to make someone look guilty?

22 A. Oh, no, ma'am.

23 Q. What's your job as the coroner?

24 A. We are charged by law with determining the cause and
25 manner of death and that's determined through information

WATTS - DIRECT

1 and talk to the father again and, I guess the father and
2 mother again. And on the 14th of April, I believe it was
3 Investigator Martin called and stated that the family
4 wanted to meet with us.

5 We -- specifically Dr. Marcus and go over the physical
6 evidence as far as the injuries were concerned to the
7 child. And that meeting was set up in my office for the
8 15th of April.

9 Q. And whenever a family requests that of you, do you try
10 to accommodate them?

11 A. That's very common for us to do that, yes.

12 Q. And was it done in this case?

13 A. Yes.

14 Q. And when was the meeting set up for?

15 A. The 15th. The next day.

16 Q. As far as the victim's family members, who all
17 attended as far as their family members; do you recall?
18 Is it reflected?

19 A. I don't recall. I have some of the names in the
20 notes. I want to say the father and mother of the victim,
21 the grandmother.

22 Q. Uh-huh.

23 A. Ms. Matthews and also I believe the grandfather,
24 Dr. Marcus, Zem Dozier, and Investigator Martin and
25 myself.

WATTS - DIRECT

1 Q. And, again, the purpose of that meeting was to address
2 their questions?

3 A. To address their questions concerning what had
4 happened to their child.

5 Q. How did the meeting -- or where did the meeting take
6 place? I'm sorry.

7 A. The meeting took place at our office on Taylor Street.

8 Q. And tell the jury what, basically how the meeting
9 progressed.

10 A. We met in the conference room. Dr. Marcus explained
11 to the family basically that the injuries that caused the
12 death of the child could not have occurred with the fall
13 down the steps that had been talked about prior to that.

14 The meeting went on for maybe 10 or 15, 20 minutes.
15 It was a discussion about that, but Dr. Marcus was
16 basically letting them know that it could not have
17 occurred that way, that something else happened. And I
18 think he even looked -- told them that it was some type of
19 asphyxiation or squeezing that would have caused the
20 injuries.

21 MS. SINGLETARY: Objection, Your Honor. Hearsay.

22 THE COURT: Sustained.

23 THE WITNESS: Dr. Marcus went over --

24 THE COURT: The jury will strike that.

25 BY MS. CAMPBELL:.

WATTS - DIRECT

1 Q. Don't go into what Dr. Marcus said, but --

2 A. Okay. The injuries were inconsistent with the manner
3 that they had stated it happened. Do you want me to
4 continue?

5 Q. No. Let me stop you right there. This was on April
6 the 15th of 2009; is that correct?

7 A. Correct.

8 Q. And after this discussion had been ongoing for a
9 period of time, were you approached by one of the family
10 members specifically?

11 A. The father of the baby asked if he could speak to me
12 alone.

13 Q. And is he present here in the courtroom?

14 A. Yes.

15 Q. And can you point him out for the jury?

16 A. He's this gentleman sitting at the table.

17 Q. Next to his two, three attorneys?

18 A. Yes.

19 MS. CAMPBELL: Your Honor, let the record reflect
20 that he identified the defendant.

21 THE COURT: The record will so reflect.

22 BY MS. CAMPBELL:

23 Q. At that point, what happened when he approached you?

24 A. At that point Mr. Goodwin and I went back to my office
25 which is, you know, several offices down from the

WATTS - DIRECT

1 conference room. He was emotional. He was starting to
2 cry some. He stated that he realized that what he had
3 done had killed the baby, that he had squeezed the baby in
4 a hug for a minute or two.

5 MS. SINGLETARY: Objection, Your Honor.

6 THE COURT: What's your objection?

7 MS. SINGLETARY: We would like to renew our
8 pretrial motion against the statement, Your Honor.

9 THE COURT: Objection is noted. Overruled.
10 Proceed.

11 MS. CAMPBELL: Thank you, Your Honor.

12 BY MS. CAMPBELL:

13 Q. You can go ahead.

14 A. And when he placed the baby back down that the baby
15 was not breathing.

16 Q. So he acknowledged to you that he had squeezed the
17 baby in a manner that caused the death?

18 A. Yes.

19 Q. Was this the first face-to-face conversation you had
20 had with this man about what happened to the child?

21 A. I think as it related to the actual circumstances of
22 that, yes. I didn't see him at the hospital that day.

23 I'm not sure if we had met once before but this is the
24 first time we had actually talked about the injuries.

25 Q. When he talked about how he hugged the child, did he

WATTS - DIRECT

1 demonstrate that to you in any way?

2 A. Yes.

3 Q. How did that occur, sir?

4 A. Actually when he told me that, there's a doll in my
5 office that I gave him, that he showed me what happened
6 with the doll.

7 Q. How did he indicate he had held the child and squeezed
8 her?

9 A. Just with both hands, squeezing the child.

10 Q. And how long did he say that had occurred when he
11 talked to you?

12 A. He said a minute or two.

13 Q. Once he conveyed that bit of information to you, what
14 did you do?

15 A. At that point in time I told him that I was going to
16 get Investigator Martin from the sheriff's office who was
17 in the conference room. I went and got Investigator
18 Martin. I came back and I told Mr. Goodwin that he needed
19 to explain to the sheriff's department what had happened.
20 And Investigator Martin took him to another office and
21 actually took a statement from him.

22 Q. In that same statement, did he also indicate to you
23 that he didn't mean to harm the child?

24 A. Yeah. When he was talking to me he said he didn't
25 mean to harm the child, that he didn't want people to

WATTS - DIRECT

1 think bad of him, that he was a good father, that he
2 didn't mean to do it. I mean, he was emotional. He was
3 crying. It was obvious that he was upset.

4 Q. Once he acknowledged to you what he had done that had
5 caused the child's death, you turned him over to
6 Investigator Martin, I believe?

7 A. Yes.

8 Q. Why did you do that?

9 A. Well, that's not our job. I mean, we're not in -- we
10 don't do that. We don't take statements as it relates to
11 anything involving a potential crime or anything like
12 that.

13 Q. And at that point that you turned him over to
14 Investigator Martin, was he willing to talk to
15 Investigator Martin as far as you knew?

16 A. Yes, he was. We were still in my office. All this
17 took place at the coroner's office.

18 Q. Ultimately as the coroner in this county, is it your
19 duty to also make sure the death certificate is proper and
20 the cause of death is listed on the death certificate?

21 A. In certain cases.

22 Q. And did you do that?

23 A. Our office did. I don't know if I personally signed
24 it or not but I'm sure our office did.

25 Q. I'm going to show you the death certificate in this

WATTS - CROSS

1 Q. And you all at this time are discussing the cause of
2 death of NeNe?

3 A. That's correct.

4 Q. And isn't it true that at the conclusion of that
5 meeting it was the understanding that someone needed to
6 re-interview the father, my client, Mr. Goodwin?

7 A. I think it was determined, which was the reason for
8 the meeting was that the sheriff's office would have a
9 clear understanding as to the cause of death for the
10 child. I think that was accomplished by Dr. Marcus being
11 in that meeting and explaining it to the different law
12 enforcement agencies and the solicitor's office that was
13 there.

14 At that point in time I think it was agreed that they
15 were going to go back and talk to the father again because
16 his initial statement did not match up to the injuries of
17 the child.

18 Q. Okay. Again, we're on April the 2nd. At this point
19 no one from your office has contacted my client or his
20 family to tell him the cause of death of the child?

21 A. That would be correct.

22 Q. But, the coroner's office, the solicitor's office, as
23 well as the sheriff's office, is meeting. And at that
24 point y'all know what the cause of death is?

25 A. It's still under investigation. At that point in

MAULDIN - DIRECT

1 you may have a suspect in custody that may need to be
2 spoken to by an investigator.

3 Q. On February the 7th, 2009, did you become involved in
4 this case?

5 A. I did, yes.

6 Q. Please tell the jury how you became involved in this
7 case on February the 7th, 2009.

8 A. I was notified that there was a death involving a
9 two-year old and that there may have been some suspicious
10 circumstances, at which time I did respond to 330 I
11 believe 330-F. Windmill Court.

12 Q. Is that in Richland County?

13 A. It is.

14 Q. What was your purpose of responding to Windmill Court
15 on February the 7th, 2009?

16 A. In an attempt to make contact with any potential
17 witnesses to include the parents of the decedent and to
18 take any preliminary statements at that time.

19 Q. Did you come in contact with Demetrius Goodwin, the
20 father of the child, and Shayla Matthews, the mother of
21 the child on February the 7th of 2009?

22 A. Yes, I did.

23 Q. Was anyone else present with you on the 7th?

24 A. Investigator John Baker was present as well.

25 Q. And why was there two investigators? Or, why did you

MAULDIN - DIRECT

1 have Investigator Baker go out with you?

2 A. Investigator Baker was actually out prior to my
3 arrival. The purpose is we had several people we needed
4 to talk to including Mr. Carter, Mr. Goodwin and
5 Ms. Matthews.

6 Q. And when you are interviewing people in any case, do
7 you usually interview them together or do you have them
8 separate to interview them?

9 A. No. We would separate people before any interview.

10 Q. And why is that done?

11 A. For the purposes of making sure that one person's
12 statements don't affect the other person's statements.

13 Q. Okay. And is that what was done in this case?

14 A. Yes.

15 Q. On February 7th of 2009, whom did you speak with?

16 A. I spoke with Demetrius Goodwin.

17 Q. Do you recall where you spoke with him?

18 A. I -- he spoke with me in my vehicle which was parked
19 just outside of his apartment.

20 Q. Is your vehicle a marked patrol unit?

21 A. It is not.

22 Q. Please tell the jury what kind of vehicle you drive.

23 A. At that time it was an unmarked Ford Explorer.

24 Q. And was that a sheriff's department vehicle?

25 A. Yes, it was.

MAULDIN - DIRECT

1 Q. And why did you speak with him in your vehicle?

2 A. Ms. Matthews was inside the house and Investigator

3 Baker was speaking to her at that location. As I

4 understand it they were at that time trying to set up

5 funeral arrangements for the daughter. I did not want to

6 remove them from that area, from the general vicinity.

7 And Mr. Goodwin agreed to accompany me to my vehicle just

8 outside the residence to speak.

9 Q. And was he under arrest at this time?

10 A. Oh, absolutely not.

11 Q. Did you read him his Miranda rights?

12 A. No, no.

13 Q. Why not?

14 A. He wasn't a suspect in any way in his daughter's

15 death. At that time my goal was just to, as I said, speak

16 to any potential witnesses, the last parties that would

17 see the decedent alive.

18 Q. And did he in fact give you a written statement?

19 A. He did, yes.

20 Q. I'm going to show you what's been marked as State's

21 Exhibit One. Do you recognize that document?

22 A. Yes. I believe this is the handwritten statement I

23 took from Mr. Goodwin at that time.

24 Q. On February the 7th of 2009?

25 A. Yes.

MAULDIN - DIRECT

1 February the 5th, 2009.

2 The response, Mr. Goodwin: I was over at my cousin's
3 house with my daughter, Demetria. She was playing with my
4 cousin's two kids. I heard them playing on the stairs. I
5 went around the corner and saw the three of them standing
6 on the stairs and then told them to go back into the
7 room. The four-year old went right up. I saw Demetria
8 and the youngest one going up the stairs. I went back
9 around the corner and I heard thuds. I ran to the bottom
10 of the stairs and saw her lying flat. Her right arm was
11 under her. She started to pick herself up off the floor.
12 She started crying. I picked her up.

13 My following question: Did you see any visible
14 injuries when you picked her up.

15 Mr. Goodwin's response: Not immediately. I noticed
16 them when I got to the house when I gave her a bath.

17 Q. If you'd continue on to the second page, please?

18 A. Following question: How did Demetria act after she
19 had fallen.

20 Mr. Goodwin's response: She cried for a little bit.
21 I checked her out. I asked her if she was okay. She
22 said, okay. I told the boys they needed to play
23 downstairs. She jumped up and started playing. She was
24 following them around the house and laughing.

25 My next question: How long did you remain at your

MAULDIN - DIRECT

1 cousin's house after Demetria fell.

2 Mr. Goodwin's response: I waited for about 10 minutes
3 for him to come back. I probably stayed for about 30 to
4 35 minutes.

5 My following question: Did you tell Mark that
6 Demetria had fallen.

7 His answer: I told him when we got back to the
8 house -- or when he got back to the house.

9 My question: How long had it been before you noticed
10 that something was wrong with Demetria.

11 Mr. Goodwin's response: When I got back to the house
12 I sat her down and went to the bathroom. When I came out
13 I saw her throwing up.

14 My following question: How many times did she throw
15 up.

16 His response: She threw up and then stopped for a
17 second then a little bit more came out.

18 Q. I'll stop you right there.

19 A. Yes.

20 Q. He's describing the events of what day?

21 A. I believe this would be the 5th. February 5th, 2009.

22 Q. So the day before the death of the child?

23 A. Yes.

24 Q. And he's saying that she threw up on February the 5th?

25 A. Yes.

MAULDIN - DIRECT

1 Q. Please continue.

2 A. My question: Aside from throwing up did you notice
3 anything else was wrong.

4 His response: Not really. I put her in the bath
5 after that. She splashed around a little bit. It was
6 around nine o'clock p.m. and I put her to bed after that.

7 My next question: Did you notice any marks on
8 Demetria when you bathed her.

9 His response: She had a red mark on her forehead and
10 a red mark on her chest. I didn't see much until the next
11 day when I noticed that she was showing marks on her back,
12 too. The marks on her head and chest had gotten darker.

13 My next question: When did you notice that Demetria
14 was sick the next day.

15 His response: I went to work at three o'clock a.m.
16 and got back at eight o'clock a.m. She was still in the
17 crib asleep. I picked her up and sat her on the bed with
18 me. I gave her some juice and she drank the juice. She
19 was acting like she wanted to go back to sleep. So I put
20 her back in the crib. I laid down and tried to nap. I
21 woke up sometime around 11:45 a.m. I heard her wheezing.
22 I went to go pick her up. She gave a small cry and looked
23 like she was hurting. Her body seemed limp. I put her on
24 the bed in her mother's room. I saw that her breathing
25 was getting slower. I tried to do some CPR. We don't

MAULDIN - DIRECT

1 have a phone in the house and I don't have a cell phone.
2 When I was doing CPR I noticed green mucus coming out of
3 her nose. When I was doing mouth to mouth, I saw a
4 yellowish substance on her mouth. I turned her on her
5 side so it could run out. I ran outside to go to my
6 cousin's house. I saw him outside. I told him that
7 something was wrong with Demetria and that he needed to
8 call 9-1-1. I ran back into the house and saw that she
9 had gotten worse. I came back outside and called my
10 cousin to the house. He came over and tried to wake her
11 by calling her name. We decided that it would take too
12 long for an ambulance to get here so we got in his car,
13 drove to the hospital.

14 Q. Let me stop you right there. Does he ever say that on
15 February the 6th of 2009, she was vomiting?

16 A. No.

17 Q. What does he say he saw coming out of her nose?

18 A. A yellowish, I believe, just mucus or greenish
19 substance.

20 Q. He never says that he saw her vomiting on February the
21 6th of 2009?

22 A. No.

23 Q. Please continue.

24 A. What is your cousin's name.

25 His response: Marquis Carter.

MAULDIN - DIRECT

1 My question: Can you describe Demetria's condition
2 while she was in the car.

3 His response: To be honest, she was lifeless. I know
4 she was already gone by then.

5 My initial question -- or my next question: Why did
6 you wait to take her to the hospital.

7 His answer: That wasn't the first time she had fallen
8 and hurt herself. We always took her right away and there
9 was nothing wrong with her. She seemed to be okay after
10 she fell.

11 My next question: Did anyone else see her fall.

12 His response: No, just me and Marquis's kids. I
13 didn't see the actual fall though.

14 My question: Was Shayla at the house when you went to
15 work.

16 His question: Yes -- or his response: Yes.

17 My question: Did she say anything to you about
18 Demetria acting funny.

19 His response: No, I told her what happened and she
20 asked me if she was all right.

21 My question: Was Shayla there when you noticed that
22 Demetria was having trouble breathing.

23 His response: No, she was out running errands.

24 My question: Is there anything else that you would
25 like to tell me.

MARTIN - DIRECT

1 THE CLERK: Have a seat in the witness box.

2 State your name for the record, please.

3 THE WITNESS: Rob Martin.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q. Investigator Martin, where are you employed?

7 A. I'm with the Richland County Sheriff's Department.

8 Q. What do you do there?

9 A. Currently I'm assigned as the supervisor of the cold
10 case homicide unit.

11 Q. I'm going to turn your attention back to February of
12 2009. Were you working at the sheriff's department then?

13 A. I did.

14 Q. How many years experience in law enforcement do you
15 have?

16 A. I'm going on 15 years.

17 Q. Fifteen years?

18 A. Yeah.

19 Q. What unit were you working with back in February of
20 '09?

21 A. I was with the special victims unit.

22 Q. And as part of your duties with the special victims
23 unit, did you also participate in the investigation of
24 suspicious deaths involving children?

25 A. That is correct.

MARTIN - DIRECT

1 Q. And a statement taken from him as well?

2 A. Yes.

3 Q. And during the course of your coming up to speed on
4 this investigation, did you become aware that Demetrius
5 Goodwin had referred to this child having suffered a fall
6 the night before?

7 A. Yes.

8 Q. And did that information come from anyone but
9 Demetrius Goodwin?

10 A. No, it comes from him.

11 Q. And did you make any attempts after becoming involved
12 in this case to try to get any other witnesses that may
13 have seen that fall interviewed?

14 A. Yes.

15 Q. And who actually was in the home, according to
16 Mr. Goodwin, at the time this fall down six or seven
17 stairs took place?

18 A. There were two small children. One was, I believe,
19 one years old and the other one was four, from memory. We
20 tried to get the four-year old interviewed at the
21 Assessment Resource Center.

22 Q. And I believe that young man's name is Isaiah Wages?

23 A. That's correct.

24 Q. And his father would be Mark Carter who has already
25 testified here today?

MARTIN - DIRECT

1 about that fall when asked about the circumstances
2 surrounding his daughter's death?

3 A. Demetrius Goodwin.

4 Q. Were you able to actually set up an interview for
5 Isaiah Wages at the ARC or the Assessment Resource Center?

6 A. Yes.

7 Q. Were they able to get any information from that
8 interview pertaining to this fall or what he may have
9 witnessed?

10 A. He didn't have the social skills or the ability to
11 express himself in the interview.

12 Q. And for a four-year old, is that unusual?

13 A. No. It depends a lot on different home styles,
14 whatever kind of programs they've got him in. It really
15 depends on different family's interactions. It's not
16 uncommon.

17 Q. So he was not able to give you any information
18 corroborating or any information about what had taken
19 place that evening?

20 A. He didn't have it.

21 Q. And, again, this was set up some, I guess, it's over a
22 month after it actually took place?

23 A. Yeah, they had lost the initial or it was lost in the
24 fax at the Assessment Resource Center. And we had to
25 resubmit the document again to get them to evaluate it.

MARTIN - DIRECT

1 Q. So on April the 2nd when you convened in this
2 courthouse to meet and talk about the case, that was a
3 specific meeting with Dr. Marcus, I believe?

4 A. Yes.

5 Q. And what was the purpose of that meeting, sir?

6 A. To get him to go through his report with us.

7 Q. As a result of the information, and you can't say what
8 he said specifically because that's hearsay, but as a
9 result of that meeting, did y'all then have a plan as to
10 follow up on your investigation?

11 A. Yes. We --

12 Q. Go ahead.

13 A. We felt it was necessary to re-interview the father
14 who was the last person who saw the child alive, and go
15 through the last hours of that child's life.

16 Q. And those hours right up until the child's life, not
17 the night before, were those significant based on your
18 conversation with Dr. Marcus, Bradley Marcus?

19 A. Yes.

20 Q. And in fact, the information he was able to convey to
21 you, the events that caused this child's death, the trauma
22 would have occurred close in time to the child's death?

23 A. Yes.

24 Q. On April the 6th of 2009, did you go back to the
25 Windmill Apartment Complex?

MARTIN - DIRECT

1 A. Yes.

2 Q. Or apartment complex on Windmill Court, I guess.

3 A. I did.

4 Q. And what were you trying to do that day?

5 A. Make contact with Demetrius Goodwin.

6 Q. Did you leave anything there at the residence?

7 A. I did. I left a business card in the doorway. I also
8 went to the property manager to see if they were still
9 residing there, if they had seen them lately. And they
10 had saw them leaving earlier that day in a Cadillac.

11 Q. In a Cadillac?

12 A. That's what was described to me.

13 Q. Two days later on August the 8th, did you return to
14 their residence at Windmill Court?

15 A. That's correct.

16 Q. And what was the purpose of going there that day?

17 A. Again, trying to get in touch with Demetrius Goodwin.

18 Q. Were you able to make contact with him that day?

19 A. No.

20 Q. No one was home?

21 A. No one home and --

22 Q. What did you do as a result of that?

23 A. I had a contact number for Shayla Matthews and I
24 called her cell phone and left a message.

25 Q. On April the 10th, did you receive a phone call from

MARTIN - DIRECT

1 Shayla Matthews?

2 A. I did.

3 Q. And what information did you convey to her during that
4 phone call?

5 A. We wanted to speak to Demetrius. We also set up an
6 appointment for Demetrius to come to the sheriff's
7 department on Monday the 13th, which would be April the
8 13th, at nine o'clock in the morning.

9 Q. At that point, did you explain to Ms. Matthews about
10 the case was still under review, was being reviewed by the
11 coroner's office and the pathologist?

12 A. That's correct.

13 Q. And you actually made contact with Demetrius later
14 that day and set up the appointment with him?

15 A. That's correct.

16 Q. And Monday, April the 13th, did you actually --

17 MS. PINNOCK: Objection. Leading.

18 THE COURT: Rephrase your question. What was the
19 leading nature of it? Why is it leading? She's asking
20 him open-ended questions.

21 MS. PINNOCK: Your Honor, she's reading through
22 the notes and making her statements that the investigator
23 is agreeing on and elaborating on.

24 THE COURT: Overruled. You may ask open-ended
25 questions.

MARTIN - DIRECT

1 MS. CAMPBELL: Thank you, Your Honor.

2 Q. Did you make contact with the Defendant, Demetrius
3 Goodwin, on April the 13th?

4 A. Yes.

5 Q. What time were they supposed to be there?

6 A. They were supposed to be there at nine o'clock. They
7 had contacted the sheriff's department at approximately
8 9:30 and asked to reschedule for 10:30.

9 Q. And did they show up that day?

10 A. They did. At about, approximately 10 o'clock they
11 came to the front desk. And they contacted me and let me
12 know that they -- they didn't particularly but the desk
13 contacted me and let me know they had arrived.

14 Q. And what was the purpose of having them come down and
15 talk to you on that day?

16 A. Wanting to discuss, again, the last hours of Demetria
17 Goodwin's life.

18 Q. At that point had you been able to review his prior
19 statements?

20 A. I had.

21 Q. When you made contact with him at the sheriff's
22 department, where did you take him in order to talk to him
23 that day?

24 A. He was brought to Lieutenant McDonald's office. It's
25 an office on the second floor.

MARTIN - DIRECT

1 Q. Uh-huh.

2 A. In the CID bullpen area of the sheriff's department.

3 Q. Okay. And this is actually an enclosed office?

4 A. It is. Got a glass window.

5 Q. And who all was present that day when you were
6 interviewing him?

7 A. Myself and Josh Mauldin.

8 Q. This is going to be on April the 13th, I believe; is
9 that correct?

10 A. That's correct.

11 Q. You and Investigator Mauldin?

12 A. That's right.

13 Q. And prior to taking -- well, let me ask you this: Was
14 he in custody at this point?

15 A. No, he was not.

16 Q. Were there any arrest warrants for him?

17 A. No, there were not.

18 Q. And were you going to arrest him that day?

19 A. No.

20 Q. And when you spoke to him prior to taking any
21 statements from him, was he advised of his rights?

22 A. He was.

23 Q. Why?

24 A. Abundance of cause. We didn't know what he was going
25 to say.

MARTIN - DIRECT

1 drink. We asked him a couple of times and he declined.

2 Q. Once he had been advised of his rights, did he
3 indicate whether or not he understood what his rights
4 were?

5 A. He did.

6 Q. And did he indicate whether or not he was willing to
7 talk to you?

8 A. He did.

9 Q. And in your investigative skills, was he talking to
10 you voluntarily that day?

11 A. He was.

12 Q. And who actually did the questioning that day?

13 A. I did the questioning.

14 Q. I'm going to show you State's Exhibit Number Two. Do
15 you recognize that document?

16 A. This is the statement we took that day.

17 Q. And who actually advised him of his rights that day?

18 A. Investigator Mauldin advised him.

19 Q. And you were present for that?

20 A. I was.

21 Q. And then you actually -- prior to actually reducing
22 the statement into writing, did y'all talk about anything,
23 the general events first?

24 A. We did. We kind of discussed that day with Demetrius.

25 Q. Then after that you reduced it into a written form?

MARTIN - DIRECT

1 this statement at this point?

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 BY MS. CAMPBELL:

5 Q. If you could go just through it with the jury just how
6 it was asked and answered.

7 A. All right. It starts off, the statement of Demetrius
8 Antoine Goodwin, 139 Millis Road, Columbia, South Carolina
9 29061. Phone numbers are Area Code 803-695-9365, 803-
10 397-5498.

11 It says, made at Columbia, South Carolina, this 13th
12 day of April 2009 at 1200 hours in the presence of
13 Investigator Rob Martin, myself, and Investigator JC
14 Mauldin of the Richland County Sheriff's Department--

15 THE COURT: If you'd slow down.

16 THE WITNESS: I'm sorry, ma'am.

17 BY MS. CAMPBELL:

18 Q. And if you can talk a little bit louder, please, too.
19 Thank you.

20 A. I'm sorry, ma'am.

21 It says: I, Demetrius Goodwin, understand that I have
22 the right to remain silent. Anything I say can be used
23 against me in court. I have the right to talk to a lawyer
24 for advice before you ask me any questions and to have a
25 lawyer with me during any questioning. If I cannot afford

MARTIN - DIRECT

1 a lawyer, one will be appointed for me before any
2 questioning if I wish.

3 If I decide to answer questions now without a lawyer
4 present I still have the right to stop answering at any
5 time. I also have the right to stop answering at any time
6 until I talk to a lawyer.

7 Q. Let me stop you right there. At any time did he tell
8 you he didn't want to talk to you during the taking of
9 this statement?

10 A. No, he was cooperative.

11 Q. And at any time did he ask for a lawyer?

12 A. He did not.

13 Q. Okay. Continue.

14 A. It says: Do make the following statement. And then
15 we have a question, it says Martin, so he's asking the
16 questions and then A. for answer and it says Goodwin.

17 Question: Can you describe for me what happened on
18 the morning of February 5th, 2009.

19 Answer: I got home from work and woke Demetria up. I
20 got her something to eat. We watched TV for a little
21 while. Her mom was asleep. After she went to work, I
22 went over to Terrell's house. She played with the kids.
23 Terrell left and I went to the store to get cigarettes.

24 That's when the incident happened. She got up and was
25 fine. We went back home and I ran a bath for her. That's

MARTIN - DIRECT

1 when she started throwing up.

2 Q. Okay. Let me stop you for a minute. You talked about
3 this beforehand. When he said, that's when the incident
4 happened, what incident is he referring to?

5 A. Falling down the stairs.

6 Q. Falling down the stairs?

7 A. Yes.

8 Q. Okay. Continue.

9 A. I put her in the bath and that's when I saw bruises
10 like the one on her head and the one -- again, it says on
11 her head. I believe it was meant to be chest but it says
12 head.

13 I touched them and it didn't really bother her. I put
14 her down on the couch for a little while. Then I put her
15 to bed. I tried to feed her but she didn't have an
16 appetite. I went to work a little while later. When I
17 got home, I woke her up.

18 She still didn't have an appetite. She watched TV for
19 a little while. We put her down again. I went to take a
20 nap. That's when Shayla said that she had to take her
21 grandmother on an errand. I woke up and heard her
22 wheezing. I ran in there and saw that she wasn't
23 responding. I picked her up and she gave a cry. I held
24 her tight and then I laid her on the bed and ran out the
25 door.

MARTIN - DIRECT

1 I called for Terrell. That's when I ran back in the
2 house and started CPR. I ran outside and got Terrell. He
3 came in the house. Her breathing was real slow. That's
4 when we got in the car.

5 Question: Earlier you told me that you hugged her
6 tightly. Did you do this to hurt Demetria on purpose.

7 I woke up and heard her wheezing. I went into the
8 room and she was laying on her side, wheezing. I put my
9 finger in her hand and she didn't grab it. I picked her
10 up and she cried a little. She didn't hug me back like
11 she normally does. I hugged her really tight. It got
12 worse after I hugged her. I didn't do it on purpose. I
13 swear that I didn't mean it.

14 When you gave her that hard hug, did it knock the air
15 out of her.

16 Answer: Yeah. She started making a hiccuping sound
17 like she couldn't breathe. That's when I laid her down to
18 get Terrell.

19 Did you ever grab her face. Yes, the day before I
20 grabbed her because she was swearing.

21 Q. Because she was, what?

22 A. Swearing.

23 Q. Swearing?

24 A. Why didn't you mention the hug to Investigator Mauldin
25 when he interviewed you on the day of the incident.

MARTIN - DIRECT

1 I didn't want anyone to think that I had killed her.

2 (Pause.)

3 Was everything else that you told Investigator Mauldin
4 about the day before true.

5 Yes.

6 When she woke you up, was it because she was acting
7 bad.

8 No, I heard her wheezing.

9 When you picked her up did you feel or hear anything
10 pop.

11 No, I just wasn't in that mind frame. I just was -- I
12 was just scared.

13 Do you think you could have squeezed her hard enough
14 to break her ribs.

15 Yes, I was so scared.

16 How long did you hug Demetria.

17 It was for a little while. It could have been for
18 about two minutes.

19 At any point did you place your hand or other object
20 over Demetria's face.

21 No.

22 Can you think of anything that I didn't ask you that
23 may be important.

24 I can go back the day before, I spanked her on her
25 legs for spitting on people and I grabbed her face for

MARTIN - DIRECT

1 using profane language.

2 What time did you go to sleep on the 6th of February

3 Around nine.

4 How long had you been asleep when you were awoke by

5 NeNe -- Demetria.

6 Maybe an hour or so.

7 When you awoke how were you feeling.

8 I was concerned about her.

9 When Demetria woke you up, were you angry, upset or
10 frustrated.

11 No I was worried about -- I'm sorry. No I was worried
12 when I heard her.

13 Why did you give her the hug.

14 I was scared the way she was reacting and gave her a
15 hug to get a response.

16 Do you promise that everything you have told us today
17 has been true and correct.

18 And his answer was yes and he signed each page.

19 Q. During the course of talking to him and as noted in
20 your follow up, did he ever make any comments about what
21 he had done to his daughter?

22 A. I'm sorry. Could you ask that again, please?

23 Q. During the course of when you were talking to him

24 before and during the written statement, did he ever state
25 on more than one occasion about what he had done to his

MARTIN - DIRECT

1 daughter?

2 A. He did. He said it several times, that he had killed
3 his daughter. He said, I killed my daughter, I killed my
4 daughter. And he was crying. He was emotional. He
5 was -- it was an admission.

6 Q. It was an admission?

7 A. Yes.

8 Q. After he signed off on the statement and you provided
9 him a copy of it, did he make any requests to you
10 concerning Shayla?

11 A. Yeah. He wanted to be able to talk to Shayla and tell
12 her what he had done.

13 Q. And at that point, did you comply with his wishes?

14 A. We did.

15 Q. And what did you do?

16 A. We got Shayla, went to another conference room, a
17 small conference room. Shayla was brought up, her and
18 Trell and myself and I believe Josh Mauldin was there
19 while they discussed what we had just talked about.

20 Q. And what did he tell them?

21 A. That he had killed his daughter by this hard hug.

22 Q. At that point, was he allowed to leave the sheriff's
23 department?

24 A. He was.

25 Q. Was that so you could confer further with other

MARTIN - DIRECT

1 BY MS. CAMPBELL:

2 Q. Again, at the top of that page, without going through
3 it again, does it got the same advice of rights form as
4 did the previous statement?

5 A. It does. It has the same header.

6 Q. And then down there it says who's doing the
7 questioning?

8 A. It does. It says questions -- or Q equals
9 investigator RE Martin which is myself. And then A,
10 answer, is Demetrius Goodwin. And then it goes into
11 question and answer format.

12 MS. CAMPBELL: Your Honor, permission to
13 publish?

14 THE COURT: Permission granted.

15 (Pause.)

16 BY MS. CAMPBELL:

17 Q. Thank you.

18 A. Question: Did you want to add something to your
19 statement that you gave on April 13th, 2009.

20 Answer: Yes.

21 Question: When you hugged Demetria Goodwin very hard,
22 did that cause her death?

23 Answer: Yes, but it was unintentional -- I'm sorry.

24 But it wasn't intentional. I was scared at the time and I
25 didn't have a ride or a way to make contact. I just

MARTIN - DIRECT

1 wanted to hug her for comfort.

2 Question: Was there any life insurance on Demetria.

3 Answer: Yes, just to pay off the funeral.

4 Question: Who had the policy.

5 Answer: I did, through UPS. It was a family plan.

6 Question: Did you know that when you were squeezing
7 her that she was not breathing?

8 Answer: No, sir.

9 Question: When did you realize that she wasn't
10 breathing after the hug.

11 Answer: After the CPR my friend came over.

12 Question: Is there anything else you'd like to add to
13 the statement.

14 Answer: I really loved her and I tried to be the best
15 father I could be. I never intended to cause her harm.

16 Question: Is everything in this statement the truth.

17 Answer: Yes. And he initialed his yes.

18 Q. In that he refers to the hug that he told you about on
19 the 13th?

20 A. Correct.

21 Q. How long did he indicate to you that the hug lasted?

22 A. Two minutes.

23 Q. And that was his estimate?

24 A. Yes.

25 Q. That day, was the Defendant allowed to leave?

B MARCUS - DIRECT

1 Honor, the State would call Dr. Bradley Marcus.

2 THE COURT: Dr. Marcus, come forward, please.

3 BRADLEY J. MARCUS, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Have a seat in the witness box.

6 State your name for the record, please.

7 THE WITNESS: My name is Dr. Bradley J. Marcus,
8 M-A-R-C-U-S.

9 DIRECT EXAMINATION

10 BY MS. McDUFFIE:

11 Q. Dr. Marcus, would you please tell the jury a little
12 about your educational background and training in the
13 field of pathology and also forensic pathology?

14 A. Yes. I'm a physician. I'm a medical doctor. I
15 graduated from medical school in 2001 and then from there
16 I went on to a residency training at the Medical
17 University of South Carolina in Charleston. I spent six
18 years there studying pathology, in particular anatomical
19 pathology, clinical pathology. And in addition I did some
20 fellowships which is additional training in forensic
21 pathology and in cytopathology.

22 Q. And are you a board certified forensic pathologist?

23 A. Yes.

24 Q. And please explain to the jury what board
25 certification means and what it is.

B MARCUS - DIRECT

1 pronounced dead. And what happens is the coroner does a
2 little bit of a scene investigation and then makes a
3 decision whether or not an autopsy is going to be
4 requested.

5 And so then when he makes that decision, he calls me
6 and we schedule the autopsy. Usually it occurs on the
7 weekend. Well, the way it works -- the way it works is if
8 I'm in the hospital and he has an autopsy to be performed,
9 I do the autopsy.

10 But once I clean the table and clean the autopsy room
11 that day, we tend to then follow -- do the case the next
12 day just because I don't want to waste money with the
13 staff cleaning the room over and over again. But in
14 general it works pretty good. I normally come in in the
15 morning and start my cases around, on the weekends at
16 seven a.m. And on the weekdays around 9:30 a.m.

17 Q. On February the 6th of 2009, did you happen to respond
18 to the Palmetto Health Baptist Emergency Room?

19 A. Yes.

20 Q. And why did you respond to the emergency room? was
21 that typical?

22 A. No. I was in my office at Palmetto Richland and
23 Deputy Cal Carter and Zem Dozier called me and said that
24 there was a 23-month-old deceased infant was in the
25 emergency room there. And it was a Friday afternoon. I

B MARCUS - DIRECT

1 get it from the heart, but then we start the autopsy.

2 Q. And how do you -- where do you start in an autopsy?

3 Where did you start with Demetria Goodwin?

4 A. Okay. Most all autopsies start exactly the same.

5 What we do is we make an incision along the chest and open

6 everything up and then remove the rib cage. And we start

7 looking at her, her internal organs. I look at them, what

8 they look like inside. And then they are individually

9 removed from the body and I examine all those organs in

10 detail.

11 Q. And when you removed Demetria's rib cage, did you

12 notice anything of significance?

13 A. Yes. When I -- after I removed her heart and removed

14 her lungs and then in addition then we removed her liver

15 and everything else, all her internal organs in here, and

16 went around on the inside of her body and then wiped down

17 all, everything we saw, wiped it down just to clean up the

18 area, got some blood out of the chest cavities from the

19 dissection itself.

20 And I noticed two areas of hemorrhage on the rib

21 cage. I noticed two areas of hemorrhage.

22 Q. And please describe to the jury what an area of

23 hemorrhage is and what hemorrhage is.

24 A. What I saw was ribs look like ribs, you know, that you

25 see coming, you know, in the store. They look like ribs.

B MARCUS - DIRECT

1 But around the bones you can see the bones. You can see
2 them.

3 But around the bones on the ribs are two ribs I
4 noticed that there was fresh blood around two of the
5 ribs. And so that caught my attention right away. I
6 looked at them. That shouldn't be there.

7 So I immediately looked at those ribs and I saw, and I
8 checked my X-rays. And, again, I did not see any
9 fractures on them, but I looked at the ribs more and
10 clearly there was some sort of traumatic injury to these
11 ribs.

12 Q. So is that what is depicted in State's Exhibit Five
13 and Six, what you observed on February the 7th of 2009, on
14 Demetria Goodwin's --

15 A. Yes.

16 Q. -- rib cage?

17 A. Yes.

18 MS. McDUFFIE: Your Honor, at this time we would
19 offer State's Exhibit Five and Six into evidence.

20 MS. HINES: May I see them?

21 MS. McDUFFIE: (Hands photographs to defense
22 counsel).

23 MS. HINES: Subject to my prior objection, Your
24 Honor.

25 THE COURT: Very well.

B MARCUS - DIRECT

1 Q. Why were they indicative to you of child abuse?

2 MS. HINES: Objection, Your Honor. Same
3 objection.

4 THE COURT: I think he can testify to that.
5 Overruled on that.

6 MS. HINES: Thank you.

7 THE WITNESS: Rib fractures are very rare in a
8 child. And when they do occur, one thing that comes to
9 mind is child abuse.

10 BY MS. McDUFFIE:

11 Q. And, Dr. Marcus --

12 MS. HINES: Objection, Your Honor. May we
13 approach?

14 THE COURT: Yes. Sure.

15 (Off-the-record discussion.)

16 THE COURT: Objection is overruled. You may
17 proceed.

18 BY MS. McDUFFIE:

19 Q. Dr. Marcus, did you -- or what did you do after you
20 noticed these rib fractures and after you did an external
21 examination of the body?

22 A. I removed those rib fractures and had them re-X-rayed.

23 Q. And why was that done?

24 A. Because I wanted to document to make sure that what I
25 was seeing was real. And so I had them re-X-rayed in two

B MARCUS - DIRECT

1 would they potentially be significant?

2 A. Retinal hemorrhages, again, are associated with child
3 abuse. You see them in child abuse cases. So I wanted to
4 document that. So I removed the eyes and then I fixed
5 them and then I cut them about a week later and examined
6 the eyes under the microscope also.

7 Q. And did you find any evidence of retinal hemorrhaging?

8 A. No.

9 Q. And please tell the jury how you further performed
10 this autopsy.

11 A. Then from that point onward, I -- well, after the
12 autopsy was over, I gave my findings to Coroner Gary
13 Watts.

14 Q. And what were your findings at this point?

15 A. My findings were -- okay. I have in my final, you
16 know, diagnosis here, she had some blunt trauma to the
17 head. Okay. Blunt trauma to the head which is a forceful
18 injury to the head which results in some forehead and
19 facial contusions, forehead and facial. She had this
20 confluent scalp hemorrhage up here. There was no evidence
21 of epidural, subdural, subarachnoid hemorrhage or cerebral
22 injury of the brain per se. No injuries to that. There
23 were no skull fractures.

24 In addition I had done a posterior neck dissection, in
25 the back of the neck, splayed back all the muscles to make

B MARCUS - DIRECT

1 A. I wrote the cause of death as homicidal violence of
2 undetermined etiology.

3 Q. And what does that mean?

4 A. I think in my opinion this was, this is a homicide
5 because of the rib fractures. They were unexplained.

6 Q. And did you also look and see if there was some other
7 explanation for this child's death, some form of natural
8 disease or a natural way that this child died --

9 A. Right.

10 Q. -- and it not be a homicide?

11 A. Yeah. Everything. I examined her medical records. I
12 examined all the slides. And I had no other cause of
13 death regarding this child.

14 Q. And please tell the jury what are some things that you
15 ruled out in terms of what could have contributed to this
16 child's death?

17 A. The child didn't have pneumonia at all. Again, no
18 brain injuries, had no heart defects. There was no
19 evidence of myocarditis present. There was no evidence of
20 fat embolism syndrome. Sometimes you can get filled with
21 fat that goes into the bloodstream. There was some
22 evidence of a few fat emboli but they weren't
23 significant. They didn't bring about her death. They
24 were very minor.

25 And you see that. I've seen that in 60 or 70 percent

B MARCUS - DIRECT

1 believe the rib fractures occurred with some sort of
2 asphyxia that occurred with the child.

3 Q. And what is asphyxia?

4 A. Asphyxia is the lack of oxygen to your tissues.

5 Q. And is it something we commonly call suffocation?

6 A. Yes.

7 Q. And how did the rib fractures contribute to the
8 asphyxia or did the asphyxia contribute to the rib
9 fractures?

10 A. I believe that what -- I believe that the child was
11 squeezed to the point where it couldn't breathe. And
12 that's called compression asphyxia, just like the same
13 thing as if a car falls on you and you can't breathe.

14 Q. How does that work? How does compression asphyxia in
15 this case work?

16 A. When you can't move your chest, you can't inflate your
17 lungs with oxygen. And without any oxygen you can't live.

18 Q. And how long would it take for someone to die of
19 compression asphyxia?

20 A. I would say, in my opinion, at least a minute holding,
21 at least a minute with compression asphyxia could bring
22 about unconsciousness.

23 Q. And what type of force would be needed? A slight
24 force? A lot of force would be needed to cause
25 compression asphyxia?

B MARCUS - DIRECT

1 A. An extremely large amount of force.

2 Q. And while the chest is being compressed in this
3 compression asphyxia, what could Demetria Goodwin, what
4 would she have been doing during this time?

5 A. Initially I believe that she would have struggled.
6 Would have struggled, you know, with that last bit of
7 oxygen because that would be a natural tendency, to
8 struggle, if you can't breathe. But at some point, you
9 know, after 30 seconds, after 45 seconds, you will run out
10 of oxygen, your brain will have no oxygen and you will go
11 unconscious.

12 Q. And after the point in which Demetria Goodwin would
13 have gone unconscious, would the compression asphyxia have
14 continued?

15 A. In my opinion, yes.

16 Q. And approximately how long would it then take for
17 there not to be any life left in Demetria Goodwin?

18 A. Another 30 seconds, possibly.

19 Q. So between a minute and a minute 30 seconds is how
20 long it would have taken to compress this child's chest so
21 that it could no longer breathe?

22 A. Yes, in my opinion.

23 Q. And would this have been a quick death?

24 A. Yes.

25 Q. And based on law enforcement's investigation and the

B MARCUS - DIRECT

1 information provided to you, and to a reasonable degree of
2 medical certainty, what is the cause of death that you
3 determined for Demetria Goodwin?

4 A. I put her cause of death as asphyxia due to chest
5 compression.

6 Q. Beg the Court's indulgence. (Pause.)

7 And did you also look at other factors such as the
8 child's toxicology?

9 A. Yes.

10 Q. And what was that? What -- did that play any role in
11 your cause of death?

12 A. No.

13 Q. Was there any --

14 A. Nothing in her tox. That was negative was my
15 understanding.

16 Q. So the child would have been, in your opinion,
17 conscious and aware when her chest was being compressed?

18 A. Yes.

19 Q. Again, your cause of death to a reasonable degree of
20 medical certainty is, what, Doctor?

21 A. It's asphyxia due to chest compression.

22 Q. And there's been some testimony about a fall down a
23 flight of stairs or a number of stairs the day before.

24 Did that in any way contribute to this child's death?

25 A. No.

B MARCUS - DIRECT

1 Q. And please tell the jury why.

2 A. In my opinion, the child was alive, the following
3 day. The child was alive, and in my opinion if you have
4 chest compression that will bring about the demise of her
5 life, that you can't breathe.

6 The fall down the stairs, I can't say that even
7 happened, in my opinion. I can't, you know, I can't say
8 that.

9 Q. And --

10 A. In my opinion, it has nothing to do with the final act
11 of her life, the final what happened in her life.

12 Q. Your opinion is that it was the act that occurred in
13 those final hours or minutes in her life is what caused
14 her death?

15 A. Yes.

16 Q. And the head injuries that you described in State's
17 Exhibit Number 25, are these consistent with a fall down
18 some stairs?

19 A. I don't believe they are. They look too severe to
20 me. In my opinion, they look very, very severe.

21 Q. And why is that?

22 A. They just -- it was a lot of hemorrhage. You know,
23 when you fall down steps, I believe it was six or seven
24 steps, I believe you might have a contusion here and
25 there, but nothing that severe, in my opinion.

B MARCUS - CROSS

1 Q. And that injury you contribute to what, Doctor?

2 A. I contribute it to some sort of blunt trauma to her
3 head here.

4 Q. And in the child that's 23 months old and with a fall
5 down stairs, is that where you would expect to find
6 injuries?

7 A. No. I would expect to find injury maybe on the legs.
8 How she fell, I don't know how she fell. Did she fall on
9 something? I don't know.

10 Q. And, Doctor, again your cause of death for Demetria
11 Goodwin is, what?

12 A. It's asphyxia due to chest compression.

13 MS. McDUFFIE: Beg the Court's indulgence.

14 (Pause.)

15 No further questions for this witness at this
16 time.

17 THE COURT: Thank you. Ms. Hines, cross-
18 examination?

19 MS. HINES: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. HINES:

22 Q. Good morning again, Dr. Marcus.

23 A. Good morning.

24 Q. How are you?

25 A. Good.

M MARCUS - DIRECT

1 separate images of those ribs, there was evidence of acute
2 fractures.

3 Q. And are rib fractures significant when considering
4 whether or not child abuse has occurred?

5 A. Certainly, yes.

6 Q. And why is that, sir?

7 A. Well, rib fractures statistically are the most common
8 bone fractures in battered or abused children.

9 MS. HINES: Objection, Your Honor.

10 THE COURT: What's the basis of your objection?

11 MS. HINES: He's beyond his field of expertise,
12 Your Honor.

13 THE COURT: Let me see the attorneys up here.

14 (Off-the-record discussion.)

15 THE COURT: Objection. Sustained, pending
16 foundation.

17 MS. CAMPBELL: Yes, sir.

18 BY MS. CAMPBELL:

19 Q. As part of being a pediatric radiologist, are you
20 asked to make assessments as to the cause or what may have
21 caused a bone break or a fracture?

22 A. Yes. As a radiologist in general with regard to any
23 injuries of the skeletal system or the musculoskeletal
24 system, we're always interested in trying to figure out
25 what the mechanism of injury is, A, to explain it and, B,

M MARCUS - DIRECT

1 bones.

2 Q. And in this case, what were your observations when you
3 observed the breaks on those two ribs?

4 A. Well, my observation was that one of the fractured
5 ribs was fractured posteriorly.

6 Q. That's in the back?

7 A. In the back. One of the fractured ribs was fractured
8 more laterally or anterior laterally.

9 Q. And where these fractures occurred in the back, are in
10 this area?

11 A. Uh-huh.

12 Q. And which ribs were they?

13 A. Well, I wasn't able to identify -- there's numbering
14 of ribs obviously, all ribs.

15 Q. Okay.

16 A. So as I described in my report that I generated, the
17 posterior fracture would correspond to the left tempered
18 fracture that was described in the postmortem report.

19 Q. Yes, sir.

20 A. And the more lateral fracture would correspond to the
21 sixth, right sixth rib fracture which was described in the
22 postmortem report.

23 Q. And is that significant to you as a pediatric
24 radiologist?

25 A. Yes.

M MARCUS - DIRECT

1 Q. What kind of trauma or injury would cause this, in the
2 back?

3 A. There's really two major ways of getting posterior rib
4 fracture. One of them is by getting a major, major blow
5 or trauma to the back. Very often that will be associated
6 with a number of ribs that will fracture or ribs that can
7 get fractured in separate places. But in infants and very
8 young children, there is a mechanism of squeezing that can
9 occur of the thorax. So it's a compressive force on the
10 ribs, but it's not solely a compressive force as if
11 someone just pressed on your chest. It's a compressive
12 force that's more of a squeezing mechanism, front to back
13 or posterior to anterior.

14 Q. And, say, if someone had taken a child and squeezed
15 them, like you said, front to back --

16 A. Uh-huh.

17 Q. -- is that necessarily going to cause any kind of
18 bruising on the side or anything of that nature? How is
19 that?

20 MS. HINES: Objection, Your Honor.

21 THE COURT: What's your objection?

22 MS. HINES: This would be out of his realm.

23 THE COURT: Overruled. Overruled.

24 THE WITNESS: If there were a direct trauma to
25 the chest anywhere. For example, we -- I see a lot of

M MARCUS - DIRECT

1 posterior rib fracture.

2 Q. And, Doctor, prior to this you were telling me
3 something about it almost has a lever effect when the
4 squeezing is done?

5 A. Yes.

6 Q. Explain that to the jury.

7 A. There's been a lot of stuff written about this in
8 medical literature. Paul Kleinman has written a lot about
9 it. He's a pediatric radiologist who's an expert on
10 pediatric radiology. There's been work done at the Armed
11 Forces institute of Pathology.

12 And, yeah, it's believed to be a mechanism which
13 there's a bone along the spine that when the rib gets
14 squeezed, the rib actually gets levered against that
15 bone. And that sort of provides the lever for fracturing
16 the bone.

17 Q. And was that consistent with what you found in this
18 case?

19 A. Yes.

20 Q. We've also heard or there's been mention about CPR was
21 done on this child.

22 A. Uh-huh.

23 Q. Would CPR have caused the breaks in this child in the
24 posterior, in the back of this child?

25 A. I'm not aware of any description of posterior rib

M MARCUS - DIRECT

1 fractures in a child post CPR. There are -- in the
2 literature there are rare examples of CPR causing
3 fractures. Those fractures are very anterior and they're
4 very, very rare. And they tend to occur in close
5 proximity to the sternum, but not, certainly nothing
6 posterior.

7 Q. So when you say anterior, that's in the front?

8 A. Yes.

9 Q. So if CPR had caused the rib fractures -- and there's
10 been some testimony about children having, their ribs are
11 more flexible?

12 A. Yeah.

13 Q. And that's why you're talking about the type of force
14 that caused the fracture would be significant?

15 A. Certainly, yes.

16 Q. And in this case, if CPR had been performed even
17 incorrectly on this child you would expect to find, and
18 all the literature supports this, breaks where in the
19 ribs?

20 A. Anteriorly by the sternum.

21 Q. Anterior means front?

22 A. Anterior is in the front. The sternum is the
23 breastbone. Very close to the breastbone.

24 Q. I want to show you what's been marked as State's
25 Exhibit Number Five and Six. Have you had an opportunity

VANDERSTEENHOVEN - DIRECT

DIRECT EXAMINATION (CONTINUED)

BY MS. CAMPBELL:

Q. Doctor, as part of your practice there are many people in your practice with different specialties; is that correct?

A. That's correct.

Q. And is it unusual in your practice for certain other doctors to consult with you to confirm their findings?

A. That's how we practice; that's correct.

Q. And specifically as in this case, did you consult with Dr. Marcus or did he actually consult with you, I mean?

A. Dr. Marcus asked me to look at this case, yes.

Q. And what specifically were you reviewing in this case?

A. I examined the brain grossly or looking at it visually and then also looked at the histologic sections.

Q. And when you say histologic sections, for us non-medical people, what does that mean?

A. These, again, are basically when we look at an organ and the brain in this particular case, we select different areas that we want to examine under a microscope. And typically it's just, take a little cube, maybe a one-centimeter cube and fix that in the process. We make a glass slide with a very thin layer of tissue on it which is then stained and we can look at that under a light microscope or a laser microscope.

VANDERSTEENHOVEN - DIRECT

1 infection to microscopic tumors.

2 Q. And when you reviewed the slides in this case, I
3 believe there were a number of them that were testified
4 to, did you find any indications of any type of disease
5 that could have caused or contributed to this child's
6 death?

7 A. No. I found no gross or histologic abnormalities in
8 this particular brain.

9 Q. And I believe -- did you examine the eyes in this
10 case?

11 A. Yes, I did. At least I saw the sections.

12 Q. And there's been some questions about that there was
13 no retinal hemorrhage or petechial hemorrhages or ocular
14 damage; is that correct?

15 A. There was no evidence of retinal hemorrhage; that's
16 correct.

17 Q. Okay. And did you find anything in your examination
18 of the eyes that could have caused or contributed to this
19 child's death?

20 A. Nothing in the eyes, no.

21 Q. What else, if anything, did you review in this case?

22 A. Very, very quickly went through some of the other
23 standard sections that Dr. Marcus had in the same tray,
24 just going through the rest of the case.

25 Q. And without going through each of them separately,

VANDERSTEENHOVEN - CROSS

1 Q. And in the brain, you didn't see anything abnormal?

2 A. That's correct.

3 Q. Correct? Okay. And the things that you're looking
4 for are very small; correct?

5 A. They can be. Yes.

6 Q. Can be very small. And, I mean, but if there was
7 something in the brain that would have contributed to her
8 death, it would have been visible; right?

9 A. That was the intent of taking that many sections to
10 determine. Nothing was observed grossly, look for it
11 microscopically.

12 Q. Okay. And, again, you saw no sign of cerebral edema
13 or swelling?

14 A. That's correct.

15 Q. When you looked microscopically. Did you see any dead
16 brain cells?

17 A. No.

18 Q. No dead brain cells?

19 A. No. We looked for that very specifically. Many of
20 the sections that we take we look for areas that are more
21 vulnerable to low blood flow or hypo perfusion or anoxia
22 and there was no evidence of anoxic or ischemic change to
23 any of the neurons.

24 Q. Anoxic, what does that mean?

25 A. Without oxygen.

VANDERSTEENHOVEN - RECROSS

1 Q. Without oxygen. So there was no evidence of lack of
2 oxygen in the brain?

3 A. No. Not microscopically. That's correct.

4 Q. So microscopically you did not see any evidence of a
5 lack of oxygen in the brain?

6 A. That's correct.

7 MS. HINES: I have no further questions. Thank
8 you.

9 THE COURT: Any redirect?

10 MS. CAMPBELL: Just a question or two.

11 REDIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q. And, Doctor, as far as what she just asked you about
14 microscopically or whatever she just said about no oxygen
15 in the brain or something. Were your findings consistent
16 with asphyxia as found in this case?

17 A. Yes, they were.

18 Q. Nothing about your examination of the brain and/or any
19 other slides caused you to do anything but agree with
20 Dr. Marcus in this case?

21 A. That's correct.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Any recross?

24 MS. HINES: Yes. Briefly.

25 RECROSS-EXAMINATION

1 MS. CAMPBELL: Your Honor, the State would rest.

2 THE COURT: All right. Ladies and gentlemen,
3 this is a good time for to us take a break. I'm going to
4 send you back to the jury room with the reminder that
5 you're not to discuss anything about the case amongst
6 yourselves. Thank you.

7 (Jury exits courtroom at 2:55 p.m.)

8 THE COURT: All right. Are there any motions
9 from the defense?

10 MS. SINGLETARY: Yes, Your Honor.

11 THE COURT: All right.

12 MS. SINGLETARY: At this time, the State -- the
13 defense would actually move for a motion for directed
14 verdict in our favor.

15 Your Honor, our motion is actually based on two
16 arguments. Our first argument would be, Your Honor, even
17 if, looking at the evidence in the light most favorable to
18 the State, they have not met each and every element of the
19 crime of homicide by child abuse.

20 The elements that need to be met is: Causes the
21 death of a child under 11 -- clearly the child here is
22 under the age of 11 -- while committing child abuse or
23 neglect. It would be our argument that they have not met
24 that burden -- well, they have not met that element of the
25 actual statute, Your Honor.

1 In addition, the last thing that the State would
2 actually have to prove is that the death occurred under
3 circumstances manifesting an extreme indifference to human
4 life.

5 Your Honor, it would be our argument that they
6 have not met that element of homicide by child abuse.

7 Your Honor, in State V. Jarrell, the Court stated
8 that as it relates to the extreme indifference, the mental
9 state akin to intent characterized by deliberate act
10 culminating into death.

11 In South Carolina the indifference in the context
12 of criminal statutes has been compared to the conscious
13 act of disregarding a risk which a person's conduct has
14 created or a failure to exercise ordinary or due care.

15 And, Your Honor, in this case based on the
16 testimony that we have gotten from the State witnesses
17 thus far, they certainly haven't met that element in this
18 case.

19 Your Honor, additionally --

20 THE COURT: Well, let's deal with that one first.

21 MS. SINGLETARY: Okay.

22 THE COURT: Let's deal with that one.

23 MS. SINGLETARY: I'm sorry, Your Honor.

24 THE COURT: State?

25 MS. McDUFFIE: Respectfully, Your Honor, taking

1 the evidence in the light most favorable to the State,
2 there has been evidence presented on all elements of the
3 offense.

4 Dealing with her argument on the extreme
5 indifference to human life, Your Honor, the testimony
6 before the jury is that this Defendant picked up his
7 daughter, he squeezed her hard for one to two minutes,
8 admittedly hard enough, he said, for it to crack her
9 ribs. He continued to do that until the child went limp
10 in his arms, Your Honor.

11 And we believe that that is sufficient to submit
12 the case to the jury on homicide by child abuse.

13 THE COURT: I'll give you the last argument.

14 MS. SINGLETARY: No, Your Honor. We just stand
15 by our initial argument.

16 THE COURT: All right. Again, motion for
17 directed verdict is taken in the light most favorable to
18 the non-moving party. And I think that the evidence
19 presented, the jury would be able to, based upon the
20 fractures, the statement as to what caused the fractures,
21 and that they could consider that to be a deliberate act
22 that would be indifferent or reckless to human life.

23 And, therefore, I will leave that to the jury at
24 this point in time, and deny your motion for a directed
25 verdict.

1 All right. Thank you.

2 MS. SINGLETARY: Thank you, Your Honor

3 THE COURT: Next motion.

4 MS. SINGLETARY: The next argument for the
5 directed verdict, Your Honor, would be that the State's
6 case is solely based on circumstantial evidence. There is
7 no substantial evidence in this case against my client.

8 Your Honor, the evidence that the State has
9 presented doesn't rise to the level of substantial
10 evidence. If you look at State V. Edwards or if you look
11 at State V. Beckman or State V. Arnold, Your Honor, in
12 these cases -- and in State V. Arnold it was actually a
13 case where an individual was actually charged with
14 murder. There was merely conjecture. There was merely
15 circumstantial evidence that actually placed him near the
16 scene at the time of the actual incident.

17 Your Honor, that's the same thing we have here.
18 We have that there is some time line that something
19 occurred and that my client was there.

20 Your Honor, I don't think that --

21 THE COURT: But doesn't your client's statement
22 tend to go against what you're telling me now?

23 MS. SINGLETARY: Well, Your Honor -- and it would
24 be our argument that this statement isn't a confession as
25 the State alludes that it is.

1 a mere suspicion of guilt. And that's not enough to go to
2 the jury on.

3 THE COURT: All right. I tend to disagree.

4 I think there is substantial circumstantial
5 evidence. There is also direct evidence. And, therefore,
6 I'm going to deny your motion for directed verdict based
7 upon that.

8 Any other motions?

9 MS. SINGLETARY: Your Honor, at this time we
10 would actually like to renew all our pretrial motions and
11 all our motions made during the State's case in chief.

12 THE COURT: And my rulings remain the same.

13 MS. SINGLETARY: Yes, Your Honor.

14 THE COURT: Does your client intend to testify?
15 Let me go ahead and go through the questions with him.

16 MS. SINGLETARY: Yes.

17 THE COURT: Please stand. Place the Defendant
18 under oath.

19 THE DEFENDANT: (Complies.)

20 (Defendant placed under oath.)

21 THE COURT: All right. Mr. Goodwin, at this time
22 I'm going to explain to you certain of your rights.

23 If you do not understand everything that I'm
24 telling you, please let me know. And if you want me to
25 explain anything further, I'll be happy to do so.

KESSLER - DIRECT

1 evidence prior to making a final decision. So if we could
2 just defer this.

3 THE COURT: He is welcome to do so. He may have
4 overnight if he wishes.

5 MS. HINES: Thank you, Your Honor.

6 THE COURT: All right. Thank you. Let's bring
7 our jury back in.

8 (Jury enters courtroom at 3:35 p.m.)

9 THE BAILIFF: Jury's seated, Your Honor.

10 THE COURT: Thank you. Defense may call its
11 first witness.

12 MS. HINES: The defense calls Dr. Stan Kessler.

13 THE COURT: Dr. Kessler, come forward and be
14 sworn.

15 STANTON COLEMAN KESSLER, having been duly sworn,
16 was examined and testified as follows:

17 THE CLERK: Have a seat in the witness box.
18 State your name for the record.

19 THE WITNESS: My name is Stanton Coleman Kessler,
20 MD.

21 MS. HINES: Okay. May it please the Court.

22 THE COURT: You may proceed.

23 MS. HINES: Thank you.

24 DIRECT EXAMINATION

25 BY MS. HINES:

KESSLER - DIRECT

1 Q. Dr. Kessler, where did you go to medical school?

2 A. I went to medical school at the University of
3 Maryland.

4 Q. And what year did you graduate?

5 A. I graduated in '65, 1965, with a degree in
6 microbiology.

7 Q. Oh. Medical school?

8 A. I'm sorry. I'm sorry. That's the University of
9 Maryland, also. Graduated in 1969.

10 Q. And you were saying you graduated with your bachelor's
11 degree in 1965?

12 A. Yes.

13 Q. And took your -- medical school, you graduated in
14 1969?

15 A. Correct.

16 Q. Okay. And what did you do in the summers when you
17 were in medical school?

18 A. When I was in medical school, since I was a
19 microbiology major and I was a member of the honorary
20 society in microbiology, I worked for the USDA Beltsville
21 doing epidemiological research on food poisoning and
22 bacteria, working on the Watts turkey roll epidemic of
23 that year and some other epidemics. I did that for two
24 years.

25 Q. Okay. And did you then do internships?

KESSLER - DIRECT

1 A. Yes. After I -- well, I went to -- then I went to
2 medical school.

3 Q. Okay. Right.

4 A. And my summers in my medical school, I also worked in
5 the Department of Infectious Disease doing research, at
6 this time on salmonella and other bacteria species.

7 Q. Okay.

8 A. I did an internship in Saint Lukes Hospital, that's
9 Saint Lukes, really, in San Francisco, California, and to
10 do my training in forensic medicine, I went to the
11 University of Colorado in Denver, Colorado, where I
12 trained in anatomic pathology.

13 And then I did surgical pathology at Saint Barnabas
14 Medical Center in Livingston, New Jersey. And I trained
15 in forensic pathology at Jackson Memorial Hospital at the
16 Dade County Medical Examiner's Office in Miami, Florida.

17 Q. Okay. And when you were at the Dade County Medical
18 Examiner's Office, what did you do?

19 A. I was a fellow in forensic medicine.

20 Q. And, where did you spend most of your professional
21 career, Doctor?

22 A. Most of my professional career was spent at the Office
23 of the Chief Medical Examiner, Harvard University Medical
24 Schools, and Boston University Medical Schools. I was
25 there for 15 years until I retired early because of a

KESSLER - DIRECT

1 heart defect. And I was in Boston until '01, and came
2 down South and found the easier life, so to speak.

3 Q. Right. And did you also work at -- where did you work
4 when you came to Columbia?

5 A. I worked at the office of the chief -- well, the
6 Medical Examiners, Palmetto Richland Health. I was on the
7 staff there from '05 to '07, the end of '08 actually. And
8 then I worked part-time also there as a quality assurance
9 officer when I stopped doing autopsies there.

10 And then in the summer of '07, I left to become -- my
11 friend was sick in Alaska. I went up there to help him
12 out. And the day after I got there he died. And I had to
13 take over his job as the chief medical examiner, first as
14 acting chief, then I became the chief and waited and
15 waited and waited for a contract which never came, so I
16 was there a total of six months and came back and stayed
17 here to work.

18 Q. And what do you do now?

19 A. I teach at the medical school. I have a private
20 practice of forensic medicine and I consult to various
21 organizations. I lecture and basically am semi-retired.

22 Q. How many autopsies have you done?

23 A. I have been -- I've signed off on over 12,000. That
24 means I participated in them. I've personally done 6,000
25 on my own, but at any one time since I was director of the

KESSLER - DIRECT

1 fellowship training program, I think you heard what that
2 was, in forensic medicine for both Harvard and BU at the
3 Office of the Chief Medical Examiner in Boston, I would
4 run through three fellows of my own.

5 And at any time we had six residents of pathology
6 rotating in the office. So in my 15 years there, I had a
7 total of about 300, 320 fellows in residence come through
8 my office who I trained in forensic medicine.

9 Q. Okay. So you ran that training program?

10 A. Yes. I was the director of training, fellowship,
11 whatever.

12 Q. Are you board certified?

13 A. Yes, I am.

14 Q. In what?

15 A. Anatomic and forensic pathology.

16 Q. Okay. And you've done a number of publications;
17 haven't you?

18 A. Yes.

19 Q. How many, approximately, have you done?

20 A. Oh, 58ish, something. They're publications and
21 they're jurored presentations. That means you send in an
22 abstract of your article you want to present to your peers
23 and they either say they like it or they don't. And then
24 you can present it at a national conference and that's
25 published in their yearly abstract of that conference.

KESSLER - DIRECT

1 Q. And you have about 58 of those?

2 A. About.

3 Q. Publications and these presentations?

4 A. Yes.

5 Q. Okay. When you were in training, -- Your Honor, at
6 this time, I would like to move to admit Dr. Kessler as an
7 expert.

8 MS. CAMPBELL: No questions at this time, Your
9 Honor.

10 THE COURT: Any objection to him being deemed an
11 expert --

12 MS. HINES: In anatomical and forensic pathology.

13 THE COURT: -- in anatomical and forensic
14 pathology?

15 MS. CAMPBELL: No, sir.. We have no objection --
16 no questions, no objections.

17 THE COURT: Thank you.

18 Ladies and gentlemen, as we've done on several
19 other occasions, I've explained to you that he is now, I'm
20 deeming him to be qualified as an expert in anatomical and
21 forensic pathology. The weight that you determine that
22 should be given to his testimony is solely up to you as
23 the jurors.

24 You may proceed with your questioning.

25 MS. HINES: Thank you, Your Honor.

KESSLER - DIRECT

1 BY MS. HINES:

2 Q. When you were in training, Doctor, did you do any
3 special studies?

4 A. Yes. I was the autopsy coordinator for a grant at
5 Johns Hopkins Hospital under Eugene Nagle, Department of
6 Anesthesia, where we looked at 750 extra autopsies that
7 normally wouldn't have come to the office, over two years,
8 and we looked at autopsy complications of CPR.

9 Q. Okay.

10 A. That was published initially in emergency medicine
11 right after that and then a larger study was continued
12 after I had left and that was published in just 1987.

13 Q. Okay.

14 A. Also when I was there, I did a review of a 20-year
15 study of meningococccemia from the files of the medical
16 examiner's office where we looked at 50 cases of
17 meningitis and it was, we did what we call a brown bag
18 study. It was a research study. You looked at slides.
19 You reviewed the autopsies. You reviewed the histories.
20 You're trying to correlate whether the people were sick,
21 whether they weren't sick, and what you saw at autopsy.

22 And that was presented at the American Academy of
23 Forensic Science in '77. And that was a very interesting
24 study.

25 Q. Okay. And you testified that you -- you testified

KESSLER - DIRECT

1 that you ran a training program of fellows and you trained
2 fellows in pathology?

3 A. Correct.

4 Q. When you trained the fellows in pathology, did you
5 have to tell them to take photographs prior to opening the
6 body?

7 A. Always. In fact, one of our expenses was used to buy
8 new cameras, first non digital and then obviously we moved
9 to digital.

10 Q. Okay.

11 A. As was bought for me when I was in my training
12 program. And we always took them to the scene. So
13 whenever we would go to the scene, we'd always take body
14 photos.

15 Q. And you reviewed the autopsy in this case?

16 A. Yes.

17 MS. HINES: Your Honor, may we approach?

18 THE COURT: You may.

19 (Off-the-record discussion.)

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, we need to take up an issue of law. So I'm
22 going to dismiss you to the jury room at this point.
23 Thank you.

24 (Jury exits courtroom at 3:35 p.m.)

25 THE COURT: All right. Yes, ma'am. You want to

KESSLER - EXAMINATION IN CAMERA

1 state that on the record?

2 MS. HINES: Yes, Your Honor. We had a pretrial
3 motion pursuant to 404-B. The State indicated that they
4 were going to proceed under State versus Slocumb to admit
5 that -- evidence that we objected to under 404-B of
6 prior --

7 THE COURT: This would be the other incidents
8 that occurred at the hospital or her going to the hospital
9 when no finding of wrongdoing was made; is that correct?

10 MS. HINES: That is correct.

11 THE COURT: All right.

12 MS. HINES: Dr. Kessler just said that he
13 reviewed the autopsy in this case. I think that before we
14 proceed we would need to find out the basis for his
15 opinion, the underlying basis for his opinion and the
16 extent to which he relied on anything.

17 THE COURT: All right. You may proceed with your
18 questioning at this time.

19 MS. HINES: Thank you, Your Honor.

20 EXAMINATION - IN CAMERA

21 BY MS. HINES:

22 Q. Dr. Kessler, you reviewed the autopsy in this case?

23 A. Yes, I did.

24 Q. What else did you review in this case?

25 A. I reviewed the histology slides.

KESSLER - EXAMINATION IN CAMERA

1 Q. Okay. And, when you reviewed the histology slides,
2 did you want to review anything else?

3 A. Yes.

4 Q. What was that?

5 A. I had special stains of certain portions of the brain,
6 of the adrenals, and other tissues, a lot of different
7 tissues' stains, histology slides, and that's what I
8 reviewed.

9 Q. And did you review any medical records?

10 A. Not -- only the final terminal emergency room when the
11 little girl had her CPR. Other than that I didn't review
12 anything else.

13 Q. Okay. So you did review the medical records from
14 February 6, 2009?

15 A. The terminal CPR.

16 Q. And did you rely on those records?

17 A. I based -- I relied on the autopsy -- I used them to
18 find out what happened, but in reality I relied on the
19 autopsy report, the slides and the special stains for
20 determining the cause and manner of death.

21 Q. Okay. And when you say you relied on the autopsy
22 report, did you rely on the cause of death that was
23 determined by Dr. Marcus?

24 A. Not at all.

25 Q. Did you rely on what he -- that -- what he found the

KESSLER - EXAMINATION IN CAMERA

1 cause of death due to?

2 A. I did not rely on that at all. I don't agree with it.

3 Q. And there's a section in the autopsy which says,
4 contributory. On the first page. Did you rely on that?

5 A. No.

6 Q. Did you rely -- where he says, three previous
7 emergency room visits due to head trauma, did you rely on
8 that at all --

9 A. Not at all.

10 Q. -- what he contributed to his cause of death?

11 A. Not at all. Not in this case.

12 Q. Okay. And did you, under clinical summary where it
13 says -- the second paragraph. Do you have that autopsy
14 report in front of you?

15 A. Okay. I didn't rely on that at all.

16 Q. Okay. What did you rely on?

17 A. I basically relied on the fact that she was, according
18 to the coroner, the first paragraph, she had resuscitative
19 efforts and when she passed and where she passed, and the
20 aggressive CPR that she had.

21 Q. Okay. And you relied on those slides?

22 A. Slides.

23 Q. And the descriptions that are in this autopsy report?

24 A. I agree with a few, very few of the descriptions in
25 the autopsy report. I will restate those. Most of them I

KESSLER - FURTHER EXAMINATION IN CAMERA

1 don't agree with at all.

2 Q. Okay. But the, but the -- in the body of the report
3 where Dr. Marcus lays out what he saw --

4 A. That's fine.

5 Q. -- that all, you did look at all of that?

6 A. Yes. That's fine.

7 MS. HINES: Okay. I have no further questions at
8 this point.

9 THE COURT: Ms. Campbell?

10 MS. CAMPBELL: May it please the Court, Your
11 Honor. Your Honor, may I approach?

12 THE COURT: You may.

13 MS. CAMPBELL: This is just a copy of the autopsy
14 report.

15 FURTHER EXAMINATION - IN CAMERA

16 BY MS. CAMPBELL:

17 Q. Doctor, you concede that you received the autopsy
18 report in this case?

19 A. Yes.

20 Q. And that you used that report in making your analysis?

21 A. Correct.

22 Q. And you are a forensic pathologist?

23 A. I am.

24 Q. And part of -- the important part of a forensic
25 pathologist is to get the medical history of the person

KESSLER - FURTHER EXAMINATION IN CAMERA

1 you're examining?

2 A. Occasionally. There are certain circumstances. I
3 think you've heard that term before today. But the
4 circumstances in this were so obviously different that I
5 needed to investigate that further.

6 And if my investigation of those circumstances did not
7 prove to be futile, I would have asked to look at the
8 entire report which I didn't in this case.

9 Q. So your testimony is here today, sir, that you did not
10 review any of the medical history of this child?

11 A. That is correct, other than the Baptist terminal
12 event.

13 Q. And your testimony here today is you just skipped over
14 certain parts that you thought -- as far as reviewing the
15 entire report?

16 A. I didn't skip over the parts I thought were important
17 as a forensic pathologist. There are so many glaring
18 things here that I thought needed to be reevaluated,
19 that's what I did.

20 Q. Okay. And as far as the cause of death and the
21 contributing cause of death, you may disagree but you did
22 review those items?

23 A. I looked at them, but I don't agree with them.

24 Q. You don't agree with them but you did review them?

25 A. Correct.

KESSLER - FURTHER EXAMINATION IN CAMERA

1 MS. CAMPBELL: Your Honor, at this time under
2 State versus Slocumb basically this was when the expert in
3 the case who reviewed the records which included stuff
4 that the State admitted was not admissible under 404-B,
5 but the Court relied on Rule 703, 705 and 403 to find the
6 evidence admissible.

7 He may be required to disclose underlying facts
8 and data on cross-examination. I don't know how I can
9 cross-examine this person when he chooses to disagree with
10 the cause but he won't say that he reviewed the, part of
11 the contributing cause is the three prior visits as well
12 as the entire medical history on this child.

13 I don't know how the State can be limited to
14 cross-examining him when he is going to get up here and
15 say he doesn't agree with anything that Dr. Marcus did and
16 the reasons for that, and we can't fully evaluate, well,
17 did you consider this like he did, or did you consider
18 this like he did.

19 That would just simply limit us to not being able
20 to do any kind of cross-examination on him and just
21 bolster his opinions over the doctors who had more
22 information.

23 THE COURT: But you don't believe that the
24 prejudicial effect of the three prior hospital visits
25 would outweigh any probative value on that? I mean,

1 because these three other instances were all, there were
2 no findings of wrongdoing.

3 MS. CAMPBELL: And, Your Honor, in Slocumb
4 specifically, those were just other specific acts of
5 sexual abnormality. They involved no charges, no
6 findings, no referrals to DSS or anything like that in
7 Slocumb.

8 So we're talking about the same type of testimony
9 because the expert was provided that information and
10 reviewed it. And he has the absolute right to disagree
11 with it all day long, but that is part of the reason that
12 the doctor was able to come to the conclusions he did.

13 And I think we have the right to cross-examine
14 him. And that is the same analysis that was done in
15 Slocumb and upheld.

16 THE COURT: All right.

17 MS. HINES: If I may?

18 THE COURT: Yes, ma'am.

19 MS. HINES: In Slocumb -- and we disagree with
20 the State's reading of Slocumb. First of all, Slocumb
21 referred to -- well, it analyzes Rule 703 in conjunction
22 with 705. 705 says an expert may be required to disclose
23 underlying facts and data that they base their opinion on.

24 Dr. Kessler did testify that he did not base his
25 opinion on those portions. The two lines specifically

1 are -- that we object to, deal with the three prior
2 incidents. He did not base his decision on that. He --
3 in this situation, I think the State, the State is just
4 trying to back door inadmissible evidence in. I do
5 believe that it is more prejudicial than probative because
6 there were no underlying -- there were no findings of
7 abuse in those situations.

8 And if I could go into more detail about those
9 situations. One, I did talk about the roll off the bed in
10 pre-trial that happened when NeNe was approximately six
11 weeks old. And DSS did investigate that and found that to
12 be unfounded.

13 The other incident, she fell, hit her bottom
14 three teeth at 15 months old, and her teeth were loose.
15 She was taken to the emergency room. She was taken to
16 the -- she was -- they were told that she fell into a
17 table and she had loose teeth.

18 The doctors didn't suspect child abuse, didn't
19 make any indication that they suspected child abuse.
20 There's absolutely no indication of who was with her.
21 There's no indication of anything. I mean, it's a 15
22 month old and in fact they didn't even do anything. They
23 said they will firm up on their own.

24 The next incident that we're talking about is an
25 incident that happened when she was 17 months old. Both

1 parents took her to the hospital. The records indicate
2 that they were told that she fell into furniture. There
3 was a superficial half-inch laceration to the back of her
4 head. Bleeding was controlled by the time she got to the
5 hospital though they did put one stitch in it.

6 There's no indication that the Defendant was even
7 present when that incident happened. This was a 17 month
8 old that fell into -- the only evidence we have is that
9 it, a 17 month old fell into a piece of furniture and got
10 a half-inch cut, laceration, to the back of the head.

11 I mean, I think that in this situation the
12 probative value of this -- and by admitting this -- and
13 Dr. Kessler did not review the medical records on these as
14 he testified on direct examination. I think just to tell
15 the jury at this point that there are three prior head
16 injuries and head trauma is disingenuous and not -- and I
17 think it's more prejudicial. There's no probative value
18 here. I think it is more prejudicial than it is
19 probative. I think it's highly prejudicial.

20 Also I think that it has a tendency to confuse
21 the jury, to mislead the jury. The way that it's
22 described in the autopsy report that Dr. Kessler did
23 review, it's described as head trauma. I think that's
24 misleading to the jury.

25 I don't think that this should be admitted. I

1 don't think this should be admitted pursuant to 705
2 because Dr. Kessler did not rely on that.

3 In Slocumb there was an indication in the second
4 portion where an expert got an MRI, a report was sent with
5 it. He testified that he didn't rely on the report, that
6 he was capable of reading the MRI himself. And the Court
7 held that that could not be -- he could not be cross-
8 examined on that.

9 In addition to that, I think the 403 analysis in
10 this -- I think that that -- that the prejudicial effect
11 -- the probative value is substantially outweighed by the
12 prejudicial effect here, not only prejudicial effect,
13 confusion of the issues and misleading the jury. I think
14 all three of those.

15 THE COURT: All right. Thank you. Anything
16 further?

17 MS. CAMPBELL: Yes, Your Honor. Just --
18 basically she just admitted in her argument that he
19 reviewed this and relied on it. How can he say he
20 disagrees with his findings without saying he's reviewed
21 the basis of his findings?

22 THE COURT: Well --

23 MS. CAMPBELL: And, Your Honor --

24 THE COURT: -- I think he said he didn't review
25 the basis of the prior visits to the hospital.

1 I tell you, I think in this situation that the
2 indication of three visits to the hospital that were minor
3 incidents, the prejudicial effect in this situation in
4 this type of case would outweigh any probative value, and
5 therefore, I am going to deny the State the ability to
6 cross-examine him on the three prior incidents of going to
7 the hospital.

8 He says he did not rely on those in any way and
9 therefore that is my ruling, and I will grant your motion.

10 MS. HINES: Thank you, Your Honor.

11 MS. CAMPBELL: Your Honor, in that same vein so I
12 can be sure, though, his testimony was that he hasn't
13 reviewed any of the medical records --

14 THE COURT: No, ma'am. He said he only reviewed
15 the medical records --

16 MS. CAMPBELL: From the final visit.

17 THE COURT: -- from the final visit.

18 MS. CAMPBELL: So he never reviewed any of her
19 pediatric records which of course were --

20 THE COURT: He did not rely on those, and any
21 witnesses.

22 MS. CAMPBELL: So I can cross-examine him as to
23 the pediatric records because those don't involve hospital
24 visits, because it's basic forensic --

25 THE COURT: Yeah. I mean, I think that would be

KESSLER - DIRECT

1 okay. He's reviewing her pediatric records, but I'm not
2 going to let you cross-examine him concerning three visits
3 to the hospital for a minor one-stitch laceration or
4 anything like that.

5 MS. HINES: Okay. And, Your Honor, I don't think
6 that he reviewed her pediatric records.

7 MS. CAMPBELL: He didn't. That's my point.

8 THE COURT: And you can ask him: Did you review
9 her pediatric records? And he's going to tell you no.
10 And then you can leave it at that. I mean, that's all you
11 can do at that point.

12 MS. HINES: Thank you, Your Honor.

13 THE COURT: All right. Let's bring the jury back
14 in.

15 (Jury enters courtroom at 3:50 p.m.)

16 THE BAILIFF: Jury seated, Your Honor.

17 THE COURT: All right. Thank you. You may
18 proceed, counsel.

19 MS. HINES: Thank you, Your Honor.

20 DIRECT EXAMINATION (CONTINUED)

21 BY MS. HINES:

22 Q. Okay. Dr. Kessler, you reviewed this case?

23 A. Yes.

24 Q. Right?

25 A. What I said I reviewed, yes.

KESSLER - DIRECT

1 Q. And you were hired by the defense team to review this
2 case?

3 A. That is correct.

4 Q. Okay. And as part of what you do in private practice
5 you -- do you frequently testify in criminal cases?

6 A. Yes, both for defense and for the solicitor or
7 prosecution.

8 Q. Okay. In your career, how many times have you
9 testified?

10 A. About, a little over 300.

11 Q. Okay. And how many of those were -- how many of those
12 cases were you testifying for the defense?

13 A. The defendant? About 15.

14 Q. Okay. And, so you reviewed the autopsy in this case?

15 A. Yes.

16 Q. All right. And when you reviewed the autopsy report
17 in this case, what did you -- did something stand out?

18 A. Yes.

19 Q. What was that?

20 A. On the first page under number two, under blunt
21 trauma, D, periadrenal gland hemorrhage. If I may quote a
22 reference that I published in the Fourth Edition of Spitz
23 and Fisher, page 394: Adrenal hemorrhage is never trauma
24 unless it's massive.

25 I've seen adrenal hemorrhage in train crashes,

KESSLER - DIRECT

1 airplane crashes, but it's so well protected. When you
2 have adrenal hemorrhage, you must rule out infection. And
3 what infection am I talking about that we as medical
4 examiners take on the role as a public health officer?
5 And in Alaska I was the public health officer and the
6 medical examiner.

7 About one-third of periadrenal hemorrhage is related
8 to Neisseria meningococcus, the meningitis, the bad one,
9 the one that's horribly infectious. So from the get-go in
10 this case, this case should have been -- when you open a
11 body -- this is what I used to teach my residents, all 300
12 and some and fellows that rotated through,
13 you -- especially in a child more than an adult -- you
14 open the abdominal cavity first. The adrenals are tucked
15 way up in there, under the liver, above the kidneys.

16 If you see periadrenal hemorrhage or edema, stop.
17 Close it up. We have bases of 10-percent bleach. Bleach
18 your hands. You're wearing gloves, obviously, and those
19 other things.

20 And then you go ahead and you take a needle and you go
21 into the base of the brain. It's a sternal tap. and you
22 pull out the fluid and you send it to the lab for
23 immunological tests that comes back within two hours. If
24 it's not meningitis, the bad one, meningococcemia, you're
25 safe.

KESSLER - DIRECT

1 If in fact it was meningococcemia, anybody who had any
2 contact with that child would have to be Rye clear. I had
3 a resident not do it and I wound up turning yellow. It's
4 a drug you have to take. The public health people come in
5 and take over the case. So everyone was put at risk
6 initially.

7 Now in this case, it wasn't that. We lucked out. We
8 had a culture sitting there that was taken at Baptist
9 Hospital. We had pure fresh blood when the baby went in
10 there.

11 Q. Okay. Now when you say that you had a culture --

12 A. Well, we had a culture-in-waiting, so to speak.

13 Q. Was there any -- okay. When you say that we had a
14 culture --

15 A. Yes. We had the potential of having a blood culture.

16 Q. Okay. Was a blood culture done to your knowledge in
17 this case?

18 A. No, no.

19 Q. Okay. When you take a blood culture, do you want to -
20 - what, what kind of blood do you want to use?

21 A. I want to use admission blood.

22 Q. Okay.

23 A. Because that's the closest to the real-life situation
24 that we have. Obviously you can take postmortem blood the
25 next day. It's fraught with things overgrowing, but if

KESSLER - DIRECT

1 you have a pure culture of a pathogen then that works,
2 too. And you take heart blood.

3 But we had blood drawn at Baptist that supposedly
4 somebody was new there. I heard it testified to today.
5 And no one took that blood and sent it for culture, or if
6 you don't do that, then you're supposed to go ahead and
7 perform that autopsy that minute. When you have symptoms
8 of nausea, vomiting, collapse or a fall downstairs, yellow
9 mucus and pus coming out of the nose, those are infectious
10 disease things.

11 And we as public health officers got to rule something
12 out. You want a culture cooking. You want to get that
13 autopsy moving. You don't send everybody home if you've
14 cleaned up. You do that autopsy. If it's two in the
15 morning you do that autopsy, because everybody is at risk
16 if it's meningitis.

17 And that wasn't ever done in this case.

18 Q. Okay. And that is the first thing that you taught
19 your fellows about adrenal hemorrhage?

20 A. That's correct. And it's substantiated in the
21 textbooks.

22 Q. So when you saw the autopsy on the first page, and I
23 think Dr. Marcus testified earlier, periadrenal
24 hemorrhage, that raised your concern?

25 A. Yes.

KESSLER - DIRECT

1 Q. What did you want to do when you saw that?

2 A. First I then turned to the description that he had of
3 the adrenals which, by the way, should be weighed. And he
4 didn't weigh them in this case. They get big and heavy
5 and boggy. Usually they weigh about three grams, but we
6 don't have the weight.

7 So the cortical surfaces of the kidneys he talks
8 about. Then he says, um, do-do-do -- let me go on and
9 find it here.

10 Talk about the kidneys. I'm somehow losing the place
11 here. I just have so much material in here. All right.

12 Q. It's --

13 A. Okay. I'm sorry. I'm having trouble finding it,
14 that's all. My glasses are fogged.

15 Q. I believe it's the last page, after the slides.

16 A. Excuse me?

17 Q. After the slides.

18 A. After the slides. Oh. That's why I'm not seeing it.
19 I don't -- I don't have that page in this one. It's in --
20 can you show it to me, please? It's not in this report
21 that I have. It was in my other report that I have at
22 home.

23 Q. Yes.

24 A. Thank you. Okay. Adrenal glands. The adrenal glands
25 demonstrate hemorrhage surrounding the periadipose tissue.

KESSLER - DIRECT

1 Q. And what does that mean to you, Doctor?

2 A. There's a reason that the adrenals, both adrenals, not
3 one adrenal, are a bag of blood. They're hemorrhagic.
4 And you have to rule out bacteria. Certain viruses can do
5 it. Rarely fungi can do it, if they infect the aorta, but
6 you have to rule out a bad thing here that someone can
7 catch.

8 So you need to evaluate this very carefully. And in
9 this instance, it really wasn't done.

10 Q. And when you saw that, what did you want to do?

11 A. I wanted to see the slides personally.

12 Q. Okay. And did you review the slides in this case?

13 A. Yes, I did.

14 Q. And when you reviewed the slides in this case, did
15 you -- what did you do?

16 A. Well, I reviewed all the slides of the case, all the
17 body slides. The tissue was extremely limited. We had
18 a very little bit of tissue to look at, but from what I
19 looked at, I found evidence of prior lung problems.

20 Dr. Marcus actually says there is --

21 Q. Doctor, if I could stop you.

22 A. Sure.

23 Q. You wanted to look at the slides?

24 A. Yes.

25 Q. When you got the slides, did you take photographs of

KESSLER - DIRECT

1 the slides?

2 A. Yes, I did.

3 Q. Okay. And I'm going to show you what's been marked as
4 Defense Exhibits Number Two through 15.

5 A. Okay.

6 Q. Do you recognize those photographs?

7 A. These are the photographs that I took at the medical
8 school in the basement and made copies for court.

9 Q. Okay. And these photographs were taken from the
10 slides that you received in this case?

11 A. Correct.

12 Q. The re-cuts from Dr. Marcus?

13 A. That is correct.

14 MS. HINES: Your Honor, at this time I would move
15 to have these admitted into evidence.

16 THE COURT: Any objection from the State?

17 MS. CAMPBELL: No, sir.

18 THE COURT: All right. Without objection,
19 Defense Exhibits Two through 15 are admitted.

20 (Thereupon, Defendant's Exhibits Nos. 2 through
21 15, photographs, were received into evidence.)

22 BY MS. HINES:

23 Q. And did you request any special stains to be done?

24 A. After I reviewed the slides, I wanted to look further
25 because I saw evidence of infection here --

KESSLER - DIRECT

1 Q. Okay.

2 A. -- in a focal area of the brain, two focal areas of
3 the brain, in the lungs, in the adrenals. So I asked for
4 special stains to be done on these. They're called Gram
5 stains. Tissue Gram stains.

6 And certain organisms, bacteria, will stay either
7 Gram-positive, blue, or Gram-negative, red. And you can
8 look to see what's going on there. So I ordered those.

9 Q. Okay. And when you reviewed those, did you take
10 photographs, some photographs of what you saw there?

11 A. Yes.

12 Q. Would you please review what's been marked as
13 Defendant's Exhibits Numbers 16 through 19? Are those the
14 photographs you took from the Gram stains?

15 A. Yes, they are. Those are photographs of the adrenal.

16 MS. HINES: Okay. Your Honor, at this time I
17 would move to have these admitted into evidence.

18 THE COURT: Any objection?

19 MS. CAMPBELL: No, sir.

20 THE COURT: Without objection, Defense Exhibits
21 16 through 19 are admitted into evidence.

22 MS. HINES: Okay.

23 (Thereupon, Defendant's Exhibits Nos. 16 through
24 19, photographs, were received into evidence.)

25 BY MS. HINES:

KESSLER - DIRECT

1 Q. And we'll just go through them here. All right.
2 Doctor, first of all, I'm going to show you this
3 photograph.

4 A. Okay.

5 Q. What is that a photograph of?

6 THE COURT: Refer to it by exhibit number.

7 THE WITNESS: Two.

8 MS. HINES: Defense Exhibit Number Two.

9 THE COURT: All right.

10 THE WITNESS: I have done many cases of asphyxia
11 by suffocation in children. I have published two articles
12 in those. And have numerous children that have been
13 playing in pipes when sand collapses on them, burying them
14 up to their neck. I have numerous children that have been
15 rolled over by their parents in bed.

16 These are all mechanisms of suffocation. And
17 there are very specific findings in these, suffocation-by-
18 chest compression, that we didn't have in this case.

19 And one of the things you find in these brains is
20 anoxic change. And that is, that in the cerebellum the
21 Purkinje cells, these pretty little cells that are
22 pristine, as Dr. Vandersteenhoven said, lined up. They're
23 beautiful. They're normal.

24 When you have asphyxia enough to kill a child or
25 an adult, it usually takes four minutes of uninterrupted

KESSLER - DIRECT

1 chest compression where you can't breathe and another four
2 minutes where they can be resuscitated back but would be a
3 vegetable. That's if it's total chest compression.
4 That's the minimum time. It may be eight minutes.

5 Then these cells disappear. They get red and
6 they disappear.

7 These cells are beautiful. There's nothing wrong
8 with these cells. It totally goes against any diagnosis
9 of chest compression or asphyxial death by suffocation.

10 BY MS. HINES:

11 Q. And can you just point out which, where the Purkinje
12 cells are on here?

13 A. These little guys here that are sort of pink-red.
14 They look like they have little eyes in the center. And I
15 have a close-up of this, too.

16 Q. Yes. I'm going to hand you what's been marked as
17 Defense Exhibit Number Three. What is that?

18 A. This is a close-up of -- the cells in the center are
19 what we call granular cells of the cerebellum. They're
20 normally there. And these guys here that have tails and
21 have beautiful central nuclei, nucleoli, beautiful
22 cellular anatomy, are normal brain cells.

23 There's no effect of any anoxia at all as you would
24 see in suffocation.

25 Q. Okay.

KESSLER - DIRECT

1 A. It's not there.

2 Q. And this little mass in here, what is that?

3 A. That's the nucleus. And the dark mass in the center
4 is their controlling body of the nucleus. It's just
5 cellular parts. But usually when those cells begin to go,
6 that begins to break up into little tiny pieces, little
7 tiny black pieces. And we don't see any of those changes
8 at all.

9 And that happens extremely early. And I've seen
10 thousands of people dying from asphyxia from all different
11 causes. And you always have loss of these cells. It's
12 simply knowledge of forensic pathology. Everybody knows
13 about it. It's written in the textbooks.

14 Dr. Vandersteenhoven alluded to it. And it's well-known.

15 So that doesn't exist in this case.

16 MS. HINES: Could I have permission to publish
17 this to the jury, Your Honor?

18 THE COURT: Yes. This would be Defense Exhibit
19 Two and Three?

20 MS. HINES: Two and Three. Yes, sir.

21 (Pause.)

22 BY MS. HINES:

23 Q. Dr. Kessler, what are the signs of asphyxial death?
24 What are the things that you would look for?

25 A. Well, first of all, one of the first things you see --

KESSLER - DIRECT

1 and I think this was mentioned today. An asphyxia death
2 means that oxygen isn't getting to the brain. If you
3 compress somebody's chest, and the most common mechanism I
4 see in children of this age is somebody rolls over, either
5 they're overweight or they're drugged or they're on
6 alcohol or whatever, a parent usually, or a guardian, and
7 they roll on them.

8 The problem with asphyxia deaths is you can't -- if
9 you take a breath, you'll notice, put your hands on your
10 chest, your chest cage isn't moving much when you
11 breathe. What does all the breathing? And Dr. Bradley
12 (sic) said it today. The diaphragm's what pulls the air
13 in and out of the lungs.

14 So you have to compress the diaphragm. Holding
15 somebody like this (demonstrating) is not going to cause
16 it, but lying on them face down causes the diaphragm to be
17 squashed.

18 Very similar to when police will handcuff somebody and
19 put them face down if they're especially overweight
20 because then they have to pull that weight up, all their
21 weight, because they're lying face down in constraints.
22 And people die like that. I used to lecture to police,
23 don't do this because you'll get asphyxiated. And we had
24 a whole bunch of training in the state police when I was
25 in Massachusetts for that.

KESSLER - DIRECT

1 So first of all, you're not getting oxygen. What
2 happens when you don't get oxygen to the blood? It begins
3 to get blueish. Cyanotic. Cyan is a color. And all the
4 body tissues that you can see closely that represent
5 what's going on underneath the surface of the skin, like
6 the fingernails and the lips and inside the mouth, they
7 get blue, purple blue to blue. Cyanotic.

8 Q. Okay.

9 A. And it's a very obvious change.

10 Q. I'll stop you right there. Have you reviewed the
11 autopsy photographs in this case?

12 A. Yes, I have.

13 Q. And what's been marked as Defense Exhibit Number 20,
14 can you tell the jury what that is?

15 A. This is 20. This is a photograph of the decedent at
16 autopsy. And you'll notice that her lips are not blue.
17 They're pinkish. And her cheeks are pale and not blue,
18 not cyanotic.

19 There's no evidence of, any evidence of asphyxia here
20 at all in the face, as you would see -- and I have
21 pictures of kids that have died from asphyxial deaths from
22 rollovers. They're purple blue, almost to a T.

23 Q. Okay. And, Doctor, did you review Defense Exhibit
24 Number 21?

25 A. Yes, I did.

KESSLER - DIRECT

1 Q. And what is that?

2 A. This is a picture of the fingernails. Remember I said
3 the nail beds are very easy to see cyanotic changes? And
4 you can see the nail beds here are pale. They're not
5 blue. And the color is sort of neutral, like a tannish.
6 But they're not cyanotic. Cyanotic is almost a color a
7 little lighter than my shirt. It's that color blue. And
8 I don't see that here at all.

9 MS. HINES: Permission to publish these to the
10 jury, Your Honor?

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. HINES:

14 Q. Okay. In addition to cyanosis, Doctor, what else
15 would you expect to see in an asphyxial death?

16 A. In an asphyxial death because of chest compression,
17 what you're compressing mostly besides just the chest,
18 you're also compressing the venous return to the heart.

19 The blood is coming down from the brain and because
20 you're squeezing it tight, the heart can't take it like
21 it used to be able to. And that little blood begins to
22 back up. Blood is going up at about 11 pounds per,
23 pressure per square inch, and it's coming down at about
24 seven pounds.

25 So sooner or later what's gone up is going to come

KESSLER - DIRECT

1 down and start really swelling up. And that causes, what
2 I think one of the doctors here mentioned today, petechial
3 hemorrhages. So little tiny hemorrhages in the vessels.
4 The vessels rupture and you get little tiny petechiae in
5 your eyebrows, in the lips, in the buccal mucosa, the
6 inside of the cheeks, and in the face. And almost
7 everywhere above that compression mark. We see none of
8 that here. In fact, I even heard testimony that it didn't
9 exist.

10 Q. Okay. And so the petechial hemorrhage, again, would
11 be where?

12 A. You would see them anywhere the vessels are easily
13 seen near the surface. You could see them on the cheeks.
14 You can pull down the conjunctive and look there. You can
15 turn the lips over there and look there -- you can turn
16 the lips up and look inside the mouth. You can see them
17 in the neck.

18 But in general, you will have them somewhere. You may
19 not have tons of them, but you'll see them. That's what
20 you see in an asphyxial death by chest compression.

21 Q. Okay. And what about cerebral edema?

22 A. Cerebral edema is caused by the lack of oxygen to the
23 brain. And we always in our pathology reports note
24 whether it's cerebral edema or not. If you die an
25 asphyxiation death, 99 percent of the time you will have

KESSLER - DIRECT

1 cerebral edema.

2 Because you don't die fast. Usually it's a drug
3 overdose or what have you. And even a death where someone
4 has suffocated, it's not fast. And these people damage
5 their brain. And when the brain is damaged it swells.

6 We have no evidence of cerebral edema here.

7 Q. All right. So, based on -- are there any other
8 symptoms you would expect to see?

9 A. Yes.

10 Q. What are those?

11 A. Because the heart is pumping and the brain is
12 supposedly turned off now because it's not getting oxygen,
13 there's a center deep in the brain that makes us breathe.
14 I'm not going to go into the fancy name but it's in the
15 brain. And when you don't get oxygen to the brain, it
16 turns off but, like chickens, our heart still pumps.

17 So we're not breathing when we're dying from asphyxia
18 and our heart's still pumping. So it's pumping and
19 pumping and pumping. That blood's got to go somewhere.
20 It goes into the lungs. And in a typical asphyxia death,
21 the lungs are almost three times their normal weight. Her
22 normal weight for her height should be about 85 to 90
23 grams.

24 And I can't believe someone can get the exact weights
25 of both lungs because one lung has an extra lobe. So how

KESSLER - DIRECT

1 can somebody weigh the lungs and say it's 120 grams and
2 this is 120 grams, and one has 30 percent more tissue than
3 the other?

4 So I don't trust that weight at all, but that's my own
5 opinion.

6 So, we didn't see heavy lungs at all. We have
7 relatively -- the lungs are elevated a little bit.
8 They're a little bit congested because the kid is dying in
9 sepsis, septic shock. So you can see that in septic
10 shock. And they are a little bit congested, but that is
11 not an asphyxial death.

12 Q. Doctor, you just mentioned sepsis. What is sepsis?

13 A. Sepsis is bacteria that's gone into your bloodstream.

14 Q. And do we have any blood to review in this case?

15 A. No. Not at all.

16 Q. Okay.

17 A. However --

18 Q. Yes.

19 A. -- we have evidence of sepsis that Dr. Marcus saw and
20 reported as neutrophils or pus in the spleen. They're not
21 normally there.

22 Now, I don't agree that they're really neutrophils. I
23 think they're more red. I think they're more eosinophils,
24 but they're the same kind of cell. And when you see those
25 cells gathering in the spleen, it doesn't mean the

KESSLER - DIRECT

1 spleen's infected. It means the body's infected. And
2 that's a sign of sepsis.

3 When I see a bunch of inflammatory cells, early
4 neutrophils, polys, in the spleen, that's sepsis. He
5 diagnosed it but didn't carry it further. That should
6 have been the evidence that something was septic here and
7 something was wrong here.

8 I saw sections where three or four of these cells were
9 together. You rarely see more than one. And if you see
10 more than two or three clumps, then you have to worry
11 about sepsis.

12 And I saw that in this case but I agreed with --
13 that's one thing I agreed with Dr. Marcus on. There's
14 neutrophils in the spleen.

15 Q. Okay. And in your review of the slides, Doctor, you
16 did take these photographs. And I'm going to show you
17 what's been marked as Defendant's Exhibit Number Four and
18 Five.

19 A. Yes.

20 Q. What is that?

21 A. Now, these are sections of the lung tissue close up.
22 This is a breathing tube. Think of the lungs as an
23 inverted tree. And as the branches get smaller and
24 smaller and smaller, soon they're going to go to leaves.
25 And those leaves are the breathing sacs. And so that's

KESSLER - DIRECT

1 what we're seeing here.

2 We're making the cross sections drawing to a major
3 trunk and some of the limbs. And right around this major
4 trunk there's a bunch of cells. And those cells are like
5 a cart -- like, they have little fingers on them.

6 And their job is to take anything that's ingested and
7 those fingers move like this (indicating). And that's why
8 we have phlegm in the morning, cough up phlegm. Everybody
9 does that. That's bringing up the stuff that's in our
10 lungs. And if we have disorders of our cilia, it's not
11 good. Those little things are hairlike, they call them
12 cilia.

13 So here we have a picture of the cilia with, ciliated
14 cells, with a lot of inflammation around it and some
15 congestion. And if you look carefully at this, there is a
16 lot of -- these little blue things here. Those are not
17 normally there.

18 These are inflammatory cells right underneath the
19 mucosa. And the mucosa here, most of those ciliated cells
20 are pretty good, but every now and then some of them are
21 totally gone. And the cells actually have lymphocytes
22 going into them.

23 In my opinion, this is indicative of a lot of chronic
24 viral infection.

25 Dr. Marcus talks about cells having hemosiderin in the

KESSLER - DIRECT

1 lung. Hemosiderin in the lung can be from ingesting
2 blood. Most people don't do it. They're swallowing. But
3 we get a lot of hemosiderin in our lungs. If we have a
4 cough, we cough a lot, we can tear those little leaves.

5 And when we tear them, they bleed. And when they
6 bleed, cells come, macrophages, big eaters they're called,
7 and they grab those little bits of red cells and they eat
8 them and they turn into hemosiderin.

9 So somewhere in the past three to four weeks this
10 child has had an infection.

11 Now the problem I have with this case is we were
12 looking at less than, his section is -- a micron -- these
13 sections are three microns thick. A hair in cross-section
14 is 40 to 50 microns. So you can see how thin they are.
15 And he's putting a ton of stuff on one slide.

16 I noticed Dr. Vandersteenhoven's slides. He had a
17 huge slide with one big piece of tissue. We had pictures
18 of these slides, but they're little, tiny little muffins.
19 We have a very little sampling error. We're looking at
20 the pebbles, and sure, we're finding some things that are
21 existent but if I looked at all these slides, I have big
22 slides for every single -- lobe of the lung, I have five
23 lung slides. And so in this little bit alone, I can see
24 there's been chronic infection of the lung.

25 Q. Okay. I want to show you what's been marked as

KESSLER - DIRECT

1 Defendant's Exhibit Number Six and Seven. Is that another
2 area of infection?

3 A. Yes. And this is a little different. This is an
4 artery that's collapsed. And here's a bronchial, one of
5 those little trees, that have collapsed. And arteries are
6 just getting blood into there.

7 And here is this huge area of blue cells. What are
8 those little blue cells? Those are inflammatory cells.
9 Now if we go closer to those cells, and here's a close-up,
10 we have something here called a giant cell. And I'll
11 point it out. Notice how big it is. It's big and pale.
12 It's about 20 times the size of any other cell. That's a
13 giant cell.

14 And over here is an early what we call epithelial
15 cell. It's forming a granuloma. Those are seen in
16 chronic infections. It could be fungus. It could be
17 virus. It could be anything, but since we don't have
18 cultures and good sampling, we don't know what it was.

19 But it just shows this kid's been chronically sick
20 probably with the sniffles and coughs. And if we looked
21 at normal kids we may find this but for some reason I
22 think this infection along with pus coming out of her nose
23 tells me this kid's immune system has been compromised.

24 And she is set up now for a whopping infection.

25 And that's where we're going to go from here.

KESSLER - DIRECT

1 Q. Well, first I wanted to ask you: You did find these
2 areas of inflammation in the lungs. Is this what killed
3 her?

4 A. The areas of inflammation in the lung didn't kill
5 her. It tells us that she's been chronically ill. And I
6 think it's weakened her immune system so something else
7 that normally doesn't kill us comes along and knocks her
8 out.

9 MS. HINES: Okay. Permission to publish these to
10 the jury?

11 THE COURT: Permission granted.

12 (Pause.)

13 BY MS. HINES:

14 Q. Now, Doctor, I'm going to show you what's been marked
15 as Defendant's Exhibits Number Eight and Nine. What are
16 those?

17 A. These are sections of the brain. And exactly where
18 they are, I'll tell you in a second. These are in the mid
19 brain. And you can see normal brain here. And right
20 here, we all know what little blue cells are. There's an
21 area of inflammation. Shouldn't be there. And here's a
22 close-up of that section and you can see the lymphocytes
23 in that area.

24 Now, granted, if I took two more sections down on
25 this, I may cut through this completely. And this didn't

KESSLER - DIRECT

1 kill her, but it just shows something's going on. So,
2 somebody could have looked at the original slides and not
3 seen this.

4 We need something that's in every single slide that's
5 going to tell us something's going on. But this was
6 real. It's a tiny focus of infection, probably goes along
7 with a little viral infection that she has. Didn't kill
8 her but it's there and it's not normal.

9 Q. And what's a lymphocyte? You mentioned a lymphocyte.

10 A. You have white blood cells. You have polyies which
11 sort of go and give out -- they have a lot of little good
12 guys and bad, so to speak. And they spray bacteria with
13 them when they get close. And they can lyse bacteria.
14 Some cells, macrophages, can eat bacteria.

15 What a lot of cells like to do is, bacteria -- or,
16 against the cell wall, especially in a vessel, and a hunk
17 of something called fibrin, which is a protein that
18 circulates in our blood, can latch on and pit against that
19 bacteria and it makes it immobile and then that little
20 macrophage, the poly come up and kill it and they eat it
21 and they go on.

22 And sometimes if that's overwhelmed, some bacteria are
23 so smart they make anti-fibrins. Fibrinolysis, like
24 streptococcus. What does that mean? So whenever bacteria
25 comes up and slaps it with a hunk of fibrin, they break it

KESSLER - DIRECT

1 down. And sooner or later you can get a condition known
2 as disseminated intravascular coagulopathy where all the
3 clotting in the blood is messed and they don't clot.

4 Now we had a picture, I saw --

5 Q. Now --

6 A. I'm sorry. Go ahead.

7 Q. We're going to get there.

8 A. Okay.

9 Q. Permission to publish these?

10 THE COURT: Yes. Permission granted.

11 MS. HINES: Thank you.

12 (Pause.)

13 BY MS. HINES:

14 Q. And I'm going to show you what's been marked as
15 Defendant's Exhibits Number 10 through 13.

16 A. Okay.

17 Q. What is that?

18 A. This is very interesting. This is a section of the
19 pons. The pons is in the brain. And I have a picture
20 here of a vessel. And in that vessel you see something
21 that looks like a feather with a long tail.

22 And when I get closer to that, and I'll show you in a
23 minute, that came from somewhere in the body. Why does it
24 have a tail? Because blood has been flowing against it.
25 It's been hanging on, like you see in a stream. So that's

KESSLER - DIRECT

1 that chunk of infected bacteria and fibrin and macrophages
2 and red cells. It's landed in the middle of the brain in
3 an artery, big artery.

4 Did it kill the kid? Probably not, but it shouldn't
5 be there in a normal kid. And as we get closer we can see
6 this infection with red cells. Little blue cells we know
7 about. And this granular material here is fibrin. It's a
8 clot. Remember I said somehow you start clotting against
9 these bacteria and then it has this long tail?

10 This could have been attached to a heart valve which
11 were not dissected well in this case or sections were
12 taken of them, but it came from somewhere in the body in
13 the arterial side.

14 And if we get very close to this, and I keep getting
15 closer, you can see the clear material. That's fibrin.
16 And you can see the macrophages, lymphocytes and red
17 cells.

18 And the last picture is interesting. This is why I
19 had to use the special scope. It's very high powered.
20 You can see a big section of that fibrin and if you'll
21 notice this in the jury room, you'll see tiny little black
22 things in there or dark things. Probably bacteria.

23 Now the reason I couldn't stain for bacteria in this
24 because when we cut it again, we cut into the block --
25 this is a very small little piece -- it wasn't there. But

KESSLER - DIRECT

1 I have it here. So we didn't get a Gram stain of it, but
2 it's definitely there and you can see it.

3 That's abnormal. It tells me she's had an infection
4 going on and things aren't working too well. She's
5 clotting and infected clots coming off of something and
6 landing in her brain.

7 Q. Okay. Is this enough to kill her?

8 A. This is -- no, the piece of resistance is coming.

9 MS. HINES: Permission to publish?

10 THE COURT: Permission granted.

11 (Pause.)

12 BY MS. HINES:

13 Q. And I'm going to hand you what's been marked as
14 Defendant's Exhibit Number 14.

15 A. All right. This is another section of brain, a
16 different area, a separate artery, and another infected
17 frontus here. It looks like the other one. It's not as
18 dark.

19 So now we have two vessels in the brain with infected
20 thrombi in that, granted, if you cut this section and
21 looked at the original section, you could have missed it.

22 But I have it and that's all I need. So whether they
23 saw it or not, we have it here. And I have the slides
24 here that show this.

25 MS. HINES: Permission to publish this to the

KESSLER - DIRECT

1 jury?

2 THE COURT: Permission granted.

3 (Pause.)

4 BY MS. HINES:

5 Q. Now I'm going to show you what's been marked as
6 Defense Exhibit Number 15. What is this?

7 A. I'll tell you what it -- first of all, I'll show you
8 what this is. This is an organ. Okay. This is the
9 adrenal.

10 First I'm going to show you the periadrenal tissue.
11 That's all Dr. Bradley (sic.) said was hemorrhagic. This
12 red material here is the periadrenal tissue. That's
13 blood.

14 But guess what else? All this stuff, that red, I
15 actually thought it was congestion. I looked very closely
16 with a very powerful microscope. It's all blood cells and
17 the cells of the cortex in the medulla, mostly the cortex,
18 all the adrenal cells are dead. The adrenal is shot. It
19 is gone.

20 You do not make epinephrine or adrenaline. You do not
21 make corticosteroids which help you fight off infection.
22 You do not make primary steroids. So many different
23 things the adrenals make. You cannot live with (sic) your
24 adrenals.

25 This is what killed the child. It killed her in

KESSLER - DIRECT

1 hours. Her weakness, her vomiting, her nausea, her
2 symptoms were minimal, but sometimes you don't even get
3 that. I have articles where this is only diagnosed at
4 autopsy.

5 But bilateral adrenal hemorrhage is what we have here
6 without any real trauma over it.

7 MS. HINES: Permission to publish?

8 THE COURT: Permission granted.

9 (Pause.)

10 BY MS. HINES:

11 Q. When you saw this adrenal -- when you looked at the
12 slide on the adrenal, is that when you wanted the special
13 stains done?

14 A. Yes.

15 Q. And why did you want special stains done?

16 A. I wanted to know what that was. I mean, I know
17 there's some kind of bacteria in there causing it or it's
18 a virus.

19 Now, I did special stains of the lungs. And they were
20 not positive for any bacteria but it looked viral because
21 of the cells that were there.

22 Here we have macrophages eating adrenal tissue. And
23 on the special stains which are Gram stains now under high
24 magnification, I could see thousands upon thousands spread
25 out throughout the tissue of Gram-positive lancet-shape

KESSLER - DIRECT

1 diplococcus streptococci pneumoniae. What subspecies I
2 don't know.

3 It's a thing we carry in our nose occasionally. Most
4 adults are immune to it, but kids don't have good immunity
5 to it and kids can easily die from it. And it's now one
6 of the more common causes of death in bilateral adrenal
7 hemorrhage.

8 It used to be meningococcemia. It's not wildly
9 infectious. I wouldn't touch that material without masks
10 and gloves because I don't know how infectious it is, but
11 most of you probably are okay. If you have a weakened
12 immune system, you're in chemotherapy, you're on drugs
13 for, aspirin drugs, what have you, nonsteroidal anti-
14 inflammatories, you could get this very easily.

15 And it can live in your nasal sinus which is where I
16 think this lived because we have that picture of the
17 girl's nose with pus hanging out. I didn't publish that.
18 You've already published that.

19 So we have the pictures now showing the bacteria, what
20 killed her.

21 Q. Let me just give you the next exhibits, Numbers 16
22 through 19.

23 A. Okay.

24 Q. What is that?

25 A. These are -- first of all, there's a lot of dead

KESSLER - DIRECT

1 tissue here. The blue is collagen. The pale blue are
2 mostly red cells. These cells, you don't see them too
3 well, but these are dead adrenal cells. Everywhere.

4 And here you see these little dots here. If you look
5 carefully here, you'll see a poly. That's one of those
6 inflammatory cells and then there's another poly.

7 There's a macrophage. These are all inflammatory cells.

8 This is in the middle of the adrenal that supposedly
9 was trauma and it's full of bacteria. These little dots
10 are bacteria. Two little dots together, that's why it
11 used to be called diplococcus pneumonia.

12 Streptococcus pneumoniae is one of those organisms,
13 remember the flesh-eating bacteria? That's one of them.
14 Most of that is viridans and pyogenes, but it's that
15 species. They're nasty guys.

16 Now I have other slides here showing you closer up.
17 Here's more of the same. They're all over the place. If
18 this was postmortem growth of these organisms, they'd be
19 -- they would grow like a colony because they grow by
20 multiplication. You'd have a big huge dense mass.

21 Here we see them scattered throughout the entire dead
22 adrenal. That wasn't picked up at autopsy.

23 Q. And --

24 A. And here we have more of the same in macrophages
25 eating them. They're being destroyed by -- they're

KESSLER - DIRECT

1 overcome.

2 And the best slide of all and this, this can only
3 happen while you're alive. Those are macrophages eating
4 these diplococcus pneumonia or strep pneumoniae.

5 It's a Gram-positive organism that's caused her death
6 due to massive adrenal hemorrhage and sepsis and shock.

7 Ninety percent of these kids -- Charlie Brian is the
8 Chief of Infectious Disease and the Chief of Medicine at
9 Provident Hospital here. He's written a textbook on
10 infectious disease, Primary Treatment of Infectious
11 Diseases. I think it was printed in 2003. But he says
12 under the best of treatment if you diagnose this you're
13 more -- if you diagnose it and you're in a hospital, your
14 mortality rate is over 90 percent.

15 Q. And is there a name -- is there a name for what this
16 is?

17 A. Yes. This was first described around the turn of the
18 century. Last century, 2011 (sic), by two gentlemen by
19 the name of Waterhouse and Friderichsen and they called it
20 the Waterhouse-Friderichsen syndrome. It can be caused by
21 meningitis, echovirus, but most likely today it's going to
22 be one of these guys, like a strep pneumonia.

23 It can be caused by numerous different agents but the
24 key is you got to culture it and if you don't culture it
25 you can always get the blocks out and do PCR genetic

KESSLER - DIRECT

1 studies, but they're expensive.

2 The easiest thing to do is taking that blood when you
3 went to see the body at Baptist and cultured it. See what
4 you get. If it doesn't work, well you still do -- have
5 the slides.

6 Q. And, what are the symptoms of Waterhouse-Friderichsen
7 syndrome?

8 A. Well, funny you should ask but I don't think we
9 started -- we started out way back when when I said, when
10 I first went to the University of -- Jackson Memorial
11 Hospital in Miami where I trained in forensic medicine.

12 I did a ground paper study we called it, where I
13 looked at Waterhouse-Friderichsen syndrome which was
14 meningococccemia then. These were all meningococccemia in
15 1977 because that was the leader.

16 And I looked at 50 cases. And over half of those
17 cases you don't see meningitis. They die too fast. Most
18 of these kids were found at autopsy. And they're usually
19 under 15.

20 Some of them had sniffles. Occasionally they had
21 cough. Occasionally they had fever. A lot of them had
22 nausea and some had vomiting and some had diarrhea but you
23 could have nothing. It has to do with a weakened immune
24 system usually by a primary infection or some underlying
25 disease which knocks you out so that you succumb to it.

KESSLER - DIRECT

1 Waterhouse-Friderichsen syndrome.

2 Q. And, Dr. Kessler, what is your -- what did you
3 determine the cause of death to be in this case?

4 A. Shock. They go into shock. She has no ability to
5 maintain her blood volume at all. And usually when we
6 dictate autopsies, when I did, I always had my fellows in
7 residence discuss how much blood is in the great vessels.
8 You do an autopsy. You take the heart out. Either it's
9 filled with blood like most peoples' are, unless they have
10 heart disease or cancers or what have you, or if you bleed
11 to death because you got a gunshot wound, you don't find a
12 lot of blood in there because you bleed, you die from
13 shock.

14 There's no mention here of what the great vessels had
15 in them. Did they have any blood? Was it filled? Was it
16 a little bit? Was it a lot? It doesn't say anything
17 about that. So, I can't say.

18 The other thing I found interesting was there's a
19 gland in the body called the thymus gland. It's sort of
20 like a -- similar to a spleen. It sits in our neck. We
21 do not have a slide of the thymus gland and it's always
22 taken in all pediatric cases because the thymus gland is
23 this big gland, and it has a whole bunch of these little
24 inflammatory cells with sort of spaceships in the center,
25 we call them Haslips corpuscles, that guide those

KESSLER - DIRECT

1 inflammatory cells.

2 And if that stress, these guys are usually out here,
3 those little spaceships you have 20 to 30, they shrink
4 when they get next to each other. It's called
5 involution. And I can't tell you anything about
6 involution because Marcus didn't take a section of it nor
7 did he take a section of the trachea which is where you
8 see these infections sometimes.

9 So I've done this on what I was left with trying to
10 retrospect and put it all together. And I think we did,
11 but it would have been nice to know if this kid had other
12 pneumonias.

13 I don't think there's saved tissue here because we
14 could always go back and look at more lung sections and
15 see what was going on in the lungs, but they don't save
16 tissues anymore.

17 Q. Okay. Now, Doctor, in this case there was some
18 testimony as to rib fractures?

19 A. Yes.

20 Q. Have you done any research in rib fractures?

21 A. Yes. Every autopsy we did in that study by Johns
22 Hopkins where I had a grant to do it, we looked at rib
23 fractures and we looked at the lungs.

24 And what we did with the lungs is a special stain.
25 It's called oil red-O. Because fat dissolves when we fix

KESSLER - DIRECT

1 tissue in our normal processing, you've got to take a
2 frozen section and stain it with this oil stain that's red
3 and it shows up fat globs. We used to do them in all our
4 cases. We saw them all over the place.

5 The more recent the rib fractures, the more aggressive
6 the CPR, the more fat underlie we saw. Some cases we
7 didn't see any. But these fractures, the studies that are
8 done in rib fractures in kids are on kids under the age of
9 a year.

10 Beyond a year if this kid is basically dead, a lot of
11 what keeps the ribs elastic, and they're pretty elastic,
12 they can bend a lot without breaking which is truthful,
13 but think of those old water balloons that you would blow
14 up and fill with water and how sturdy that is.

15 Well think about all the blood that was inside that
16 rib no longer having any of that blood in it because she's
17 in shock. And because of that, those ribs snap like dry
18 twigs, much different than doing CPR on a live child who
19 has normal circulation in her ribs. This child didn't.

20 So those rib fractures, even though I've studied rib
21 fractures in the past, you can see them anywhere, but once
22 you're doing CPR on a dead child, and basically this child
23 was dead, I looked at the reports, you can get any kind of
24 fracture anywhere.

25 I don't think there's any meaning. If that fracture

KESSLER - DIRECT

1 would have come in and torn the pleura, if it was
2 displaced and it came in and cut the rib, it would have
3 caused exsanguination through a torn rib. That would be
4 significant. That didn't happen here.

5 Q. Doctor, in your opinion, did the rib fracture
6 contribute to Demetria's death?

7 A. Not at all.

8 Q. Okay.

9 A. Not at all.

10 Q. And. So, please tell the jury what your opinion is as
11 to cause of death in this case.

12 A. Okay. The cause of death in this case is Waterhouse-
13 Friderichsen syndrome or adrenal shock due to hemorrhagic
14 disruption of the adrenal and dissolution of the adrenal
15 by a Gram-positive bacteria, diplococcus pneumonia,
16 causing all of the changes we see.

17 And let me say one last thing. These little
18 diplococcus go throughout the body and go throughout
19 little vessels. Remember I said they were attached to
20 vessels and then fibrin will go in there and the white
21 cells will go in there and work on it and try to close
22 it? They make fibrinolysis, so we don't clot the way we
23 usually do. So we will have something. These conditions
24 usually have rashes, and in an African-American child it's
25 not easy to see a rash but often what people think are

KESSLER - DIRECT

1 bruises -- first of all, they're very friable tissue
2 because these things are already infected. Every vessel
3 in her body is infected.

4 If you touched this kid like you would be touching a
5 child for doing CPR, putting a tube in and putting her
6 neck up and putting an endotracheal tube in, you can cause
7 hemorrhages or purpura. It means purple, and under the
8 surface you can see it.

9 If you took a section of those tissues, you may even
10 see the organism in there but since one wasn't done -- I
11 always do because I can't identify it with my naked eye.
12 I have to take a section to see things. So anyway.

13 And just another thing to say in this case. I did
14 look at the scalp hemorrhage. Even though Dr. Marcus said
15 that he doesn't believe in anything having to do with
16 aging of wounds, he took a section but he didn't look at
17 it or he didn't write a report on it. I looked at it.
18 It's at least a day or two old. It's a clot that is, it's
19 infected. It's not badly infected. It's slowly healing,
20 but it's not a fresh clot. It's not today's clot. It's
21 about a day or two old, and I can't be more specific.

22 Q. Okay. And, Doctor, when you're talking about these
23 bacteria that push up against, the cells that push up
24 against the walls of the vessel, is there a name for that?

25 A. Well, it goes -- it's a very complex name. It's

KESSLER - DIRECT

1 called consumption coagulopathy or disseminated
2 intravascular coagulopathy.

3 What it basically means is the inflammatory process,
4 inflammation with a bacteria which is very close to the
5 cascade of clotting, it turns on the clotting mechanisms
6 to a point. We get micro clots that dissolve all the time
7 because these bacteria can dissolve clots. Fibrolysins.
8 Hemolysins.

9 These bacteria also have the ability to cause cells to
10 break apart. Strep has something called hyaluronidase.
11 Cell walls are glued together with, like, hyaluronic acid
12 and strep can actually cause these to break apart. So
13 vessels on their own can break apart.

14 Why the adrenals are more effective than anywhere else
15 in the body, I think if the child lived long enough
16 everything would be infected but the adrenals are an organ
17 that you can't live without for more than hours. If it
18 goes, you go.

19 And I think that's what happened here.

20 Q. And, Doctor, a lot of the medical lingo there, the
21 disseminated inter -- what was that one?

22 A. Intravascular coagulopathy.

23 Q. Disseminated -- that --

24 A. DIC.

25 Q. DIC -- that causes bleeding?

KESSLER - DIRECT

1 A. Yes.

2 Q. More than a normal healthy person would bleed?

3 A. Oh yeah, because your clotting elements are all used
4 up. First the clots are used by the bacteria that split
5 them across and you make more of these. And sooner or
6 later you can't keep up with the amount of clotting
7 material you need and this is what happens.

8 Now, there's tests for that. If the baby lived you
9 could have tested for that. If she was in the hospital
10 you would have seen certain elements of the blood that
11 would show that, but that's just one of the side effects
12 of this disease.

13 I mean, the clotting issue is real. I saw that scalp
14 lesion which was still losing blood after a day or two and
15 that should have been clotted and well fixed and it
16 wasn't.

17 Q. Okay. And so just once again, can you tell the jury
18 in your opinion was Demetria Goodwin suffering from
19 infection?

20 A. She suffered from an infection due to diplococcus
21 pneumonia. This is a natural disease that probably was
22 set up in her system because of a previous viral
23 infection. Most likely this was centered in her sinuses
24 as we've heard testimony that she blew out yellow mucus,
25 pus, from her nose. And we do have a picture showing pus

1 from her nose that Dr. Marcus showed you before.

2 And I think that's where the ni-ah-tus (phonetically)
3 is and it just took over her weakened immune system and
4 she died from that, catastrophically, rapidly and unhelp
5 -- she couldn't be helped no matter what. She was too far
6 gone.

7 This is a natural disease. No evidence of foul play.
8 No evidence of trauma.

9 Q. And just to clarify that last thing that you said. Is
10 there anything that anybody could have done here?

11 A. No, not at all.

12 MS. HINES: No further questions.

13 THE COURT: Thank you.

14 All right. Ladies and gentlemen, before we begin
15 our cross-examination, I'm going to give you a 10-minute
16 break or a 15-minute break and then we'll come back.

17 If any of you need to make a phone call to let
18 someone know we're going on late tonight, Bailiff, if you
19 could make that available. Some people might have baby
20 sitters or something.

21 Thank you. Please do not discuss anything about
22 the case at this time.

23 (Jury exits courtroom at 4:45 p.m.)

24 THE COURT: Doctor, for all practical purposes
25 you may get up and walk around, but you're still on the

KESSLER - CROSS

1 stand so you may not discuss the case with anybody.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Court's in recess until
4 five o'clock..

5 (Thereupon, at 4:46 p.m., a recess was taken,
6 following which the trial resumed:)

7 THE COURT: All right. Let's bring our jury in.

8 (Jury enters courtroom at five o'clock p.m.)

9 THE BAILIFF: Jury is seated, Your Honor.

10 THE COURT: Thank you. Ms. Campbell, cross-
11 examination.

12 MS. CAMPBELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. CAMPBELL:

15 Q. Doctor, you were hired by the defense in this case?

16 A. Yes, I was.

17 Q. And when did they hire you or contact you?

18 A. Oh, about six weeks ago.

19 Q. About six weeks ago. Would it be fair to say maybe
20 mid February, late February was the first time they talked
21 to you?

22 A. Possibly. Sure.

23 Q. And the first time that you requested any slides in
24 this case would have been toward the end of February; is
25 that correct?

KESSLER - CROSS

1 A. After I got involved with the case, yeah. I took it
2 home and I had a lot of other things I was doing.

3 Q. So the first time you became aware that this case even
4 existed was mid to late February of this year. So in the
5 last three, maybe four weeks?

6 A. Yeah.

7 Q. And you aren't doing this for free, are you, sir?

8 A. No, I'm not.

9 Q. And it's not part of your job like it's part of
10 Dr. Marcus's job, Dr. Vandersteenhoven, the other
11 Dr. Marcus, all of those people?

12 A. Not at all. I used to work for them, too.

13 Q. We'll get to that in a minute.

14 A. But I don't anymore. I work here.

15 Q. How much are you getting paid an hour?

16 A. I'm getting a total cap of six -- six-sixty for the
17 entire case. I put in over 35, 40 hours.

18 Q. You're getting how much?

19 A. \$6,600.

20 Q. And you put in 30 hours?

21 A. Forty.

22 Q. Forty. Excuse me.

23 A. Forty hours.

24 Q. And you've testified before in other cases in this
25 courthouse?

KESSLER - CROSS

1 A. Yes, I have. Numerous.

2 Q. In those cases you testified that you got paid like
3 \$500 an hour?

4 A. That is correct.

5 Q. And then subsequent to that you said that you got a
6 cap and then when you billed for it, it was more than
7 that?

8 A. I'm sorry?

9 Q. The total was more than what you admitted to in court?

10 A. I had gone over and sat in through an entire week's
11 worth of testimony that I didn't intend to do initially
12 and then I billed for that time. And I wasn't -- I didn't
13 collect for it because we didn't put in for it up front.
14 But an exact dollars-and-cents amount, I don't remember
15 those things.

16 Q. Do you remember if it was in excess of 10- \$15,000?

17 A. Never. Never. I've never billed for -- this state
18 more than, I'd say, 55- \$6,500.

19 Q. But it's your policy, you've told us before that you
20 don't testify unless somebody pays you?

21 A. I'm sorry?

22 Q. You don't testify unless somebody pays you?

23 A. I meet people and I don't testify unless I get paid to
24 testify. That's correct. That's my job. That's what
25 supports me.

KESSLER - CROSS

1 Q. And in the last four weeks you were able to, I
2 believe, review the pathologist's report?

3 A. The pathologist's report?

4 Q. Uh-huh.

5 A. You mean the slides?

6 Q. Did you not review his report like you testified?

7 A. I reviewed the report prior to that. The report has
8 been changed.

9 Q. You reviewed the slides; is that correct?

10 A. I reviewed the slides.

11 Q. And then you requested some additional slides and
12 those were provided to you?

13 A. That is correct.

14 Q. Did you ever review the pediatric records in this
15 case?

16 A. No.

17 Q. And do you remember testifying on that, on a prior
18 case that there's no way to come to a true conclusion in
19 pathology unless you review all the records?

20 A. I may have but the circumstances warrant evaluation of
21 each case as a unique case. When somebody comes in with a
22 gunshot wound and half his body is missing, it's obvious
23 what happened.

24 When somebody comes in with adrenal hemorrhage
25 bilateral, it's obvious where you got to go. You don't

KESSLER - CROSS

1 need to see all the records. If I didn't have that after
2 I reviewed all of the slides and the special stains, I
3 would have probably then asked for more records. But I
4 was able to determine the cause of death without needing
5 to do that.

6 Q. Even though this was a horribly botched autopsy by
7 your estimation?

8 A. Let's just put it this way: I wouldn't have done
9 things that way. Everybody does things their own way but
10 it's not the way I do things.

11 Q. But luckily for us you're able to come to this
12 determination despite all the deficiencies you've talked
13 about here today?

14 A. I don't understand what you mean by luckily for us.

15 Q. Were you able to come to all these conclusions despite
16 all the deficiencies you've testified to?

17 A. I was able to review what was left of the slides and
18 do special stains, fortunately there was tissue left, and
19 come to the conclusions I came to today based on the
20 slides and the special stains that I did.

21 Q. And when did you come to those conclusions, sir?

22 A. I came to those conclusions, probably, let's say it
23 was, like, Friday. I was working on this case Friday
24 morning.

25 Q. Friday morning?

KESSLER - CROSS

1 A. Friday morning. I was at the university where I
2 worked with some other people on this, and reviewed it,
3 and ran over and took some photographs.

4 Q. Okay.

5 A. And I didn't get the two people 'til, I think,
6 Monday. Could have been Saturday or Monday. I don't know
7 when.

8 Q. You didn't get what to the people, your report?

9 A. No. No report.

10 Q. Where is your report?

11 A. In my head. I didn't need to write a report. My
12 report are my photographs. It was obvious. This is not
13 something you need to sit and describe. It is so obvious
14 by looking at this you know what the cause of death is.
15 You can see the bacteria.

16 Q. You didn't write a report?

17 A. I didn't -- I wasn't asked to write a report. If I'm
18 asked to write a report, I write a report.

19 Q. And on Tuesday -- you've been here all day yesterday,
20 which I assume you're billing for; is that correct?

21 A. Correct.

22 Q. And all day today?

23 A. Correct.

24 Q. And at some point my co-counsel, Ms. McDuffie, came up
25 to ask you about what you thought about the case?

KESSLER - CROSS

1 A. That's correct.

2 Q. And you told her you wouldn't talk to her?

3 A. No. I said, you'll hear about it in court.

4 Q. Was there any --

5 A. That's why we're having a trial. That's why we're
6 having a trial, starting trial.

7 Q. Isn't it normal to issue a report as a medical doctor
8 or a forensic pathologist?

9 A. If I'm paid to issue a report and people want me to
10 issue a report, I will. In some cases I do and many cases
11 I don't.

12 Q. Well, you don't have anything to hide so there is no
13 reason you wouldn't tell her what your opinion was; is
14 there?

15 A. If people want a report, they request it. When I work
16 for you, if you wanted a report, you would request it. We
17 did cases together. And if you needed a special report, I
18 would have given you one.

19 Q. And let's talk about back when you used to work for
20 this group, who Dr. Vandersteenhoven and Dr. Marcus now
21 work for?

22 A. Correct.

23 Q. And you were employed by them from 2005 until, I
24 think, August of 2007?

25 A. Correct.

KESSLER - CROSS

1 Q. And you have a bias or prejudice towards them; don't
2 you?

3 A. Not at all, because when I left the group they hired
4 me in the hospital. I worked there as a quality insurance
5 officer for almost another year.

6 Q. You weren't --

7 A. I used to come down and have lunch with Jay. And I'd
8 meet with the people downstairs. Jay and Jeff and I were
9 very close. I'd eat in the doctors' cafeteria. I go
10 there still, so I don't see a problem.

11 Q. Why were you terminated?

12 A. I was not terminated. I was asked to not continue.

13 Gary and I didn't see eye to eye on a lot of things.

14 Gary's a nice guy, but we had a lot of differences of
15 opinion as sometimes happen when people get to be my age,
16 and it was felt better that we go ahead and not do it.

17 Also I had some medical problems. I think Ms. Benson
18 was there when I collapsed in the morgue one day. So I
19 needed to slow down. And I since then have had more stuff
20 done with my heart. I had a pacemaker put in, if you must
21 know. So it was better that I didn't continue working
22 that way and do autopsies.

23 Q. (Inaudible) subject to Dr. Catalano whose testimony is
24 that you were not terminated --

25 A. That's correct.

KESSLER - CROSS

1 Q. -- by Gary Watts?

2 A. No.

3 Q. It was by Dr. Catalano, the head of the group?

4 A. I was not terminated by Gary Watts but it was Gary's
5 recommendation that I not continue because I didn't think
6 that the cases were done the way I wanted them to be
7 done.

8 And Gary and Ed play cards together every Tuesday
9 night, which is fine. They have a gin -- a game, and
10 they're friends. And so, that's a relationship that they
11 have which is nice, but then Ed went out of his way to
12 make sure I worked in the hospital for almost another year
13 and a half for --

14 Q. Are you --

15 A. -- Dr --

16 Q. Excuse me. Are you telling this jury that you weren't
17 terminated because of deficiencies in your performance?

18 A. I didn't have any deficiencies in my performance.

19 Q. Do you remember Jane Howell with the coroner's office?

20 A. Yeah. That was one of the problems I had.

21 Q. And Jane Howell I think is here in the courtroom?

22 A. Yes.

23 Q. Can you stand up?

24 (Woman in courtroom stands.)

25 Do you remember -- and when you went to Alaska I

KESSLER - CROSS

1 believe you testified you worked on, was it public
2 safety? Safety procedures? That's important. And in
3 this case you've criticized Dr. Marcus because he could
4 have exposed people to this disease; is that correct?

5 A. I think I said that.

6 Q. When you --

7 A. We didn't know what the disease was. We had to
8 determine what it was.

9 Q. When she was in the morgue with you on that day and
10 you threw feces and blood on her --

11 A. That's a lie.

12 Q. -- was that part of protocol?

13 MS. HINES: Objection.

14 THE WITNESS: That's an outright lie.

15 THE COURT: What's your objection?

16 THE WITNESS: That's an outright lie.

17 THE COURT: Hold on.

18 MS. HINES: Pursuant to rule -- badgering the
19 witness.

20 MS. CAMPBELL: Bias.

21 THE COURT: Can show bias or prejudice.

22 Overruled.

23 MS. HINES: Thank you.

24 BY MS. CAMPBELL:

25 Q. You don't recall that?

KESSLER - CROSS

1 A. Didn't happen.

2 Q. Do you recall the day that you sprayed Kristine Benson
3 with the coroner's office with water from an exposed
4 valve?

5 A. Kristine Benson walked in front of me as I was
6 cleaning a table and she was in a full ape suit on a case
7 we had cleaned up, and she was upset about that but she
8 walked in front of me cleaning the morgue. And that's
9 what happens in the morgue. People get wet. She wasn't
10 infected and we'd already finished cleaning.

11 It's not my issue. It seemed like they didn't want me
12 around so they found these things to fabricate these
13 issues.

14 I used to complain because Ms. Taylor would do body
15 work and she would never take body weights. She would
16 never do body temperatures on the outside. Complained
17 about that. Was a case I reviewed for -- and I was just
18 aghast at her work. And I didn't like it. And I talked
19 to Gary about it and we just didn't get along with that.

20 Q. And just like you --

21 A. But she didn't do body temperatures which is important
22 to determine the time of death of a corpse, especially a
23 young woman that was in a car for 36 hours. She didn't
24 take a body temperature. It would have been important to
25 know what part of that time of that 36 hours that the

KESSLER - CROSS

1 woman was lying in there, the initial part or the last
2 part so --

3 Q. And who is Ms. Taylor?

4 A. Huh?

5 Q. Who is Ms. Taylor?

6 A. She was working for the office. Jane Taylor. That
7 was her name then. I don't know what her name is now.

8 Q. So, you were doing the right thing and they just got
9 in the way?

10 A. I didn't say that. Let's just say we had differences
11 of opinion and I didn't want to stay there any more. And
12 I talked to Ed about it and I left. And Ed found me
13 another job in the same hospital.

14 Q. You were terminated.

15 A. Ed found me another job in the same hospital.

16 Q. But you show no bias or prejudice towards these
17 people; that's your testimony?

18 A. As I said, I saw Jay today. We hadn't talked for a
19 while. Asked how Anne was, how the kids were. I see them
20 in the infectious disease conferences. I saw Zem. Zem
21 and I get along. We all get along.

22 I stay out of the way of Ms. Taylor, that's for sure,
23 but the other people there I get along fine with. I have
24 no prejudice. I've eaten lunch with them. I've eaten
25 lunch with Jeff Walsh who's the new chief of the

KESSLER - CROSS

1 department. I eat there often.

2 So I don't have an issue with them.

3 Q. Do you remember being here in the courthouse
4 yesterday?

5 A. Yes.

6 Q. Do you know who Zem Dozier is?

7 A. Yes.

8 Q. Do you remember mid-morning yesterday going to the
9 restroom and he was there and you having a conversation
10 with him?

11 A. No. I just said hi, how are you doing.

12 Q. Do you remember telling him you have cases for the
13 State, some cases for the defense, whichever side pays
14 you?

15 A. No, not at all.

16 Q. So Mr. Dozier would be making that up?

17 A. I don't know why.

18 Q. And that's Mr. Dozier right there; right?

19 A. That's Zem right there.

20 Q. And did you know at the time that one of the
21 investigators was in the bathroom?

22 A. No.

23 Q. And he heard it also?

24 A. I'm sure they did. This is -- it's obvious.

25 Q. What's obvious, sir?

KESSLER - CROSS

1 A. That they're colluding together to do this, but that's
2 fine. They can do it if they want.

3 Q. All of these people independent of each other are in
4 collusion against you?

5 A. Well, obviously they're scared of something or they're
6 trying to discredit me. I don't know what's going on. As
7 far as I'm concerned, I have no ill will towards them at
8 all. Life goes on.

9 Q. Life goes on?

10 A. Life goes on, Ms. Campbell.

11 Q. You talk about how this child suffered from, how did
12 you put it? Pneumococcus?

13 A. No.

14 Q. That was your testimony.

15 A. No, it wasn't.

16 Q. Okay. What is it now?

17 A. You can read it again. Streptococcus pneumoniae.

18 Q. Streptococcus pneumonia?

19 A. Dip -- the old name is diplococcus and now it's
20 streptococcus pneumoniae.

21 Q. And is that different from pneumococcus?

22 A. It's -- pneumococcus is sometimes a vernacular. Some
23 people can call it pneumococcus but it's one of the names
24 for it.

25 Q. If I were to tell you -- it's one of the names. Okay.

KESSLER - CROSS

1 We agree?

2 A. One of the names for it. People call it strep
3 pneumonia. Some older people like me call it diplococcus
4 because the little two triads, but it's all the same thing
5 and by DNA they decided it belongs in strep because it
6 also forms chains.

7 Q. Yes, sir. And in this case you've gone on and on
8 about whichever name you want to give it, pneumococcus --

9 A. No, not whichever name. It's diplococcus pneumoniae
10 or strep pneumonia. It's one of those nasty
11 streptococcus.

12 Q. Are you aware there's an immunization for that?

13 A. Yes, there is.

14 Q. And are you aware this child was immunized for that?

15 A. No.

16 Q. You didn't bother to review her records so that she
17 could not have suffered from this disease you just
18 testified to?

19 A. Don't need to, because 30 percent of the people that
20 are immunized can still get the disorder. The immunity
21 doesn't work too well -- the vaccine doesn't work too
22 well. That I do know.

23 Q. You also testified this child suffered from -- let me
24 go back. Sepsis?

25 A. Sepsis.

KESSLER - CROSS

1 Q. Chronic infection?

2 A. Yep.

3 Q. Her immune system was compromised. She had a viral
4 infection, clotting of the blood, infective bacteria in
5 the brain artery, another infected thrombus in another
6 part of the brain, her adrenal is shot or gone, bacterial
7 or viral in different phases. You testified to all those
8 phrases?

9 A. That's correct.

10 Q. And she wouldn't have any symptoms?

11 A. She had symptoms. She had symptoms.

12 Q. Did you look at her medical records?

13 A. I read his statement. She was vomiting. She probably
14 collapsed instead of fell down stairs. She had diarrhea.
15 She was weak. She had symptoms. It's more than most
16 people. She vomited a lot. That may be the only symptoms
17 you have. Meningeal or any of those things may or may not
18 be present. I've already stated that. You don't have to
19 have symptoms to have this disease. Okay? It's been said
20 about 10 times.

21 Q. Okay. Can I just ask you a couple more questions?

22 A. Sure.

23 Q. As far as this goes, the night before if I were to
24 tell you that other people saw her running around,
25 laughing, playing, non-symptomatic, that wouldn't affect

KESSLER - CROSS

1 you in any way?

2 A. You don't always have to appear ill to everybody, but
3 at the same token the people that saw her ill reported
4 it. Not everybody looks at kids the same way. When
5 they're your own kids, you may see things others don't
6 have but certainly pus coming out of her nose is not a
7 normal sign.

8 Q. You've never seen a child with a snotty nose?

9 A. I had three kids and they never had pus coming out of
10 their nose. There's a difference between mucus and
11 yellow-green pus. Yellow-green pus is not thick mucus.
12 It looks very different. What was described and what I
13 see in the autopsy photo is pus, and that's a little
14 different than mucus.

15 Q. And you're able to date the scalp hemorrhage, this
16 blunt-force trauma to the head, as being at least a day or
17 two old?

18 A. Day or two old. It's not the most accurate thing --

19 Q. Did you --

20 A. -- in the world but it's not fresh. Fresh hemorr --
21 can I finish? Fresh hemorrhage is purple-red blood
22 without any inflammatory component. This has inflammatory
23 components. It has neutrophils. It has some little, a
24 few macrophages. It may be even older than that.

25 The point is, it's not acute. It's not -- it's older

KESSLER - CROSS

1 than six hours. It's probably within a day or two at
2 most.

3 Q. So now it's older?

4 A. To be more specific, it's not a specific thing but
5 it's not the end of the world here. We're not talking
6 about -- acute hemorrhage is very different. This is not
7 acute.

8 Q. It's not the end of the world? A child had died.

9 A. This is not the end of the world. If we have to go
10 from this hour or is it that hour. I'm not talking -- I'm
11 talking about something very different here. The timing
12 of wounds is not the most accurate thing in the world.

13 Dr. Marcus doesn't even take sections or look at
14 them. He says he doesn't believe in it, but then he takes
15 it and he doesn't look at it. I agree it's not the most
16 accurate thing, but I can differentiate between something
17 that happens within six hours versus something that
18 happens in a day or two. And they're totally different.
19 So that's what I'm talking about.

20 Q. And that day or two just happens to coincide to
21 corroborate the Defendant whose defense lawyers hired you?

22 A. It's the science corroborated by me.

23 Q. Let's talk about rib fractures.

24 A. Uh-huh.

25 Q. Your testimony is that -- and I didn't understand your

KESSLER - CROSS

1 testimony. So maybe you need to tell me. The rib
2 fractures were caused maybe by the CPR, maybe by blunt
3 force trauma or, what?

4 A. It was caused from CPR. The amounts, initially I
5 think Dr. Marcus said there was just a few areas of fat
6 emboli but if you read his report, numerous areas of fat
7 emboli. That's vigorous CPR. That's vigorous CPR. And
8 that's what that is from. From nothing else.

9 Q. Okay. Now, Doctor, and you've referred to how you did
10 a study on rib fractures at some point. You're talking
11 about something at Johns Hopkins; is that correct?

12 A. Yeah.

13 Q. Are you familiar with the article Rib Fractures in 31
14 Abused Infants Postmortem Radiological Histopathological
15 Study?

16 A. It's an article I wrote with Kleinman years ago. I
17 basically gave them the cases.

18 Q. Uh-huh. And in the first line in this thing says, rib
19 fractures have a strong association with infant abuse.
20 They result in manual thoracic compression as well as
21 blunt injury.

22 A. Correct. What's the age group there, Ms. Campbell?

23 Q. The age group?

24 A. That you're talking about?

25 Q. It's going to be up to a year.

KESSLER - CROSS

1 A. That's right. All under one year of age. The ribs
2 change and get thick. What we're talking about in that
3 study, which I wasn't going to bring up, is when you grab
4 a child from behind and you got the ribs. The ribs insert
5 to the vertebral bodies and your fingers can actually snap
6 those areas with the vertebra, in the back.

7 But these are in very young children, under one year
8 of age. After one year of age the ribs get thicker and
9 they don't have the propensity to break like that, but we
10 found fractures all over the place.

11 Q. Doctor, do you recognize the American Academy of
12 Pediatrics?

13 A. Do I recognize it? I don't know what you mean.

14 Q. You don't know who the American Academy of Pediatrics
15 is?

16 A. They're a group of pediatricians who get together and
17 publish literature.

18 Q. Well, would you say that they're the leading one in
19 the nation?

20 A. Well, I only look at the forensic journals but I'm
21 sure they are a good, I'm not going to say they're a bible
22 or I'm not going to say they're the best.

23 Q. How about Child Abuse, Medical Diagnosis and

24 Management, Third Edition, American Academy of

25 Pediatrics? Would you say that that's a reputable source?

KESSLER - CROSS

1 A. Well, since I worked with Mr. Reese, Richard Reese,
2 Dr. Reese was at Tufts and we used to give him cases.
3 Some things I agreed with and some things I didn't. I
4 don't know if he's still there. That's Northeastern
5 Medical School in Boston.

6 Q. And some things you agreed with --

7 A. We used to review our child abuse cases and we started
8 using Dr. Kleinman and Dr. Newbower at Children's Hospital
9 over Dr. Reese because we did not like the work he was
10 giving us. So I do know who he is.

11 Q. So once again, another doctor who's just not very good
12 at what he does?

13 A. He's fine but we chose not to use him. We had a
14 limited budget and we worked with Dr. Kleinman. You know
15 why? Because he didn't charge us anything. He was part
16 of the state, too.

17 Q. Not like you.

18 A. And Dr. Reese charges a lot of money.

19 Q. Like you?

20 A. Not me.

21 Q. And in this -- some say this is one of the leading
22 things on child abuse of the nation and it's published by
23 the American Academy of Pediatrics which is a pretty
24 renown group. You'd agree?

25 A. I'm not going to agree to anything. I don't know. I

KESSLER - CROSS

1 don't know that literature. And I haven't worked with
2 Dr. Reese since 2001.

3 Q. In this it says rib fractures from abuse are
4 frequently multiple. Posterior and lateral locations for
5 the fracture are common features based on a suspected
6 mechanism of AP compression of the thorax. Then it goes
7 on.

8 A. Yes.

9 Q. However rib fractures from CPR are very unusual, only
10 three in 923 patients. In those cases of fractures
11 associated with CPR, all were noted to be anterior. What
12 does anterior mean?

13 A. In the front.

14 Q. Thus CPR is not an adequate explanation as a source
15 for most rib fractures and in particular the classic post-
16 lateral rib fractures often seen with child abuse.
17 They're just wrong?

18 A. I don't agree with them. I worked with Dr. Reese. I
19 worked with Dr. Kleinman. I liked Dr. Kleinman. We used
20 him to do our studies. Your own expert referred to
21 Dr. Kleinman.

22 Q. Uh-huh. And he agrees with Dr. Kleinman and other
23 doctors, unlike you.

24 A. Well, I have a choice now to read the material they
25 write and to determine who I want to use as an expert and

KESSLER - CROSS

1 what to believe and not to believe. I have a lot of
2 experience and I make my own choices, not what someone
3 tells me is something I should choose.

4 Q. And if they pay you, you'll come to court and testify?

5 A. I'm sorry?

6 Q. And whoever pays you, you'll come to court and
7 testify?

8 A. That is not true. A lot of cases I turn down because
9 I don't think they're good cases. And I don't go to court
10 and testify.

11 Q. And this --

12 A. I'd say I turn down more than half the cases I have.

13 Q. In this case the cause of death, you said, every
14 vessel in this body was infected. And you have gotten
15 there and blown up all these photographs; right?

16 A. Correct.

17 Q. And these infections were so prevalent that you saw it
18 in the lungs, in the brain tissue, in practically
19 everything you looked at, as you've testified before this
20 jury here today. There was infection after infection
21 after obvious sign of infection in all these pretty
22 pictures; right?

23 A. That's what sepsis is. It's in the bloodstream. The
24 blood goes throughout the whole body. If there's bacteria
25 in the blood, it's going to take it to the lungs, the

KESSLER - CROSS

1 liver, the spleen. We have evidence of this in the
2 spleen. We have evidence of this in the adrenals. I
3 didn't stain every single tissue, but there's old
4 infection in the lungs. I saw that. And sepsis is blood
5 infection and that's what we're talking about.

6 Q. And all these different doctors have reviewed it, the
7 emergency room doctors saw her, everyone saw it, the
8 pathologist, that's been reviewed by another pathologist,
9 and you are the only one that caught all this infection
10 that's just everywhere?

11 A. Thank God, Ms. Campbell. That's why we have a
12 democratic system in this country. Thank God. People
13 have independent minds to review things and have their own
14 opinions.

15 And sometimes you'll buck the establishment, but if
16 you do and you're right, then you win some. And sometimes
17 you don't, but the bottom line is you keep trying.

18 And in this case, this was a pretty obvious cause of
19 death. You may not like what I said, but I stick to my
20 report in my head, I stick to my slides, and in my opinion
21 it has not changed.

22 Q. And this child's death was caused by disease?

23 A. It was caused by disease and this was reviewed by
24 another pathologist who also agrees with me. If you like,
25 I can give you his report that he gave me. That it's

KESSLER - CROSS

1 not -- would you like to see it?

2 MS. CAMPBELL: Your Honor, we have a matter of
3 law to take up.

4 THE COURT: Very good. Ladies and gentlemen, I'm
5 going to send you back to the jury room for a few moments
6 while we take up a matter of law.

7 (Jury exits courtroom at 5:30 p.m.)

8 MS. CAMPBELL: May it please the Court, Your
9 Honor. We asked earlier if there were any reports in this
10 case. We have asked, and we filed reciprocal Rule Fives
11 in this case.

12 He testified under oath as to what he relied on.
13 It was never mentioned in any other reports from any other
14 pathologists or anything of that nature.

15 At this time we have not been provided with
16 this. He was going to hand me a piece of paper. I have
17 no idea what it is.

18 THE COURT: Okay.

19 MS. HINES: Your Honor, the report that he is
20 talking about is a letter from a pathologist that he
21 consulted with. As I read Rule Five, I have to turn over
22 all the reports that I intend, or experts that I intend to
23 use in my case in chief. I did not intend to call this
24 expert.

25 THE COURT: That's hearsay. He wouldn't be able

KESSLER - CROSS

1 to put it in anyway.

2 MS. HINES: Correct.

3 MS. CAMPBELL: I think we have a right to review
4 anything that he's relied on in making any decisions in
5 this case. Simply when asked, he didn't provide it.

6 THE COURT: I think you have that right. How
7 long do you need to look at it?

8 MS. CAMPBELL: If I could see it, I can probably
9 tell you.

10 THE COURT: All right.

11 THE WITNESS: By the way, I took this to him
12 because I have to use the microscope at the school. And
13 he was looking at it with me and he agreed with me. I
14 didn't say, what do you think --

15 THE COURT: Sir, just hand her the piece of
16 paper.

17 THE WITNESS: Okay. (Complies.)

18 MS. CAMPBELL: If I could just make a quick copy,
19 Your Honor, I think we could move on.

20 THE COURT: You may.

21 (Pause.)

22 THE COURT: Let me ask: Are there any other
23 documents that are going to be revealed that have not been
24 revealed to the other side?

25 MS. HINES: No.

KESSLER - CROSS

1 MS. McDUFFIE: Nothing on the State's side.

2 MS. CAMPBELL: Your Honor, at this point are
3 there any other -- we would just ask this witness while
4 the jury's out, are there any other reports or anything
5 else that he's relied on other than what he's testified
6 to?

7 THE WITNESS: I'm not relying on it. I know what
8 it is. I didn't use this to make a diagnosis. I have
9 made a diagnosis, and that was just so I could use the
10 microscope and take the pictures.

11 MS. CAMPBELL: So that's all. You didn't rely on
12 that?

13 THE WITNESS: No, because I really knew what it
14 was. I already knew what it was. It's not any different
15 than what I said.

16 THE COURT: All right. Let's bring our jury back
17 in.

18 MS. CAMPBELL: Thank you, Your Honor. I'm
19 sorry.

20 (Jury returns to courtroom at 5:33 p.m.)

21 THE COURT: Let me see the attorneys up here for
22 just one moment.

23 (Off-the-record discussion.)

24 THE BAILIFF: Jury's seated, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of

KESSLER - CROSS

1 the jury, you will strike the last statement made by the
2 Defendant -- excuse me, not Defendant, by the defense
3 witness. Thank you.

4 BY MS. CAMPBELL:

5 Q. Doctor, just to back up for a minute. Your basic
6 opinion of this pathologist's work is he did a horrible
7 job?

8 A. My basic opinion is the pathologist's work, he skipped
9 corners. He put people at risk by not doing the proper
10 job that he should have. And it wouldn't be what I'd do.
11 I'm not going to say he's horrible or use an adjective
12 like that. It's just not what I would do, and I'll leave
13 it at that.

14 Q. And despite that, though, you were able to determine
15 here in the week before trial what the true cause of death
16 is?

17 A. Fortunately, I was. And I was surprised that I was.

18 Q. And this child, even though she had fractures of the
19 ribs which are indicative of abuse a hundred percent of
20 the time where they are --

21 A. I'm not agreeing with you. You're just making a
22 statement.

23 Q. -- that she died from disease?

24 A. That is correct. This is disease you do not recover
25 from. In and of itself, it's almost -- when treated by

KESSLER - CROSS

1 Dr. Brian who is your local doctor here -- 90 percent
2 fatal.

3 Q. Okay. And do you remember testifying in a case
4 US versus Austin, last year?

5 A. That is a case in -- let's see. That was in
6 Georgetown.

7 Q. Washington, DC.

8 A. Billy Carnes, Sirocca (phonetically), minimally.

9 Q. And that child by the autopsy report suffered from
10 multiple blunt impact trauma including fractures of the
11 skull, contusions and lacerations of internal organs and
12 internal hemorrhage and fractures of the ribs; is that
13 true?

14 A. That's not something I can answer as a simple yes or
15 no.

16 Q. And in this case you did a report?

17 A. I can't answer it as a simple yes or no because the
18 medical examiner that did the autopsy was supposedly, to
19 be a boarded pathologist for 26 years. She operated under
20 the auspices of Marion Berry and flunked her boards twice
21 and didn't seem to know what she was doing. So that's the
22 background of what you're talking about.

23 Q. Yet another doctor that didn't know what they're
24 doing?

25 A. There are a lot of doctors that don't know what

KESSLER - CROSS

1 they're doing. Thank God that some people do.

2 Q. And despite the skull fracture, the depressed fracture
3 of the skull, the hemorrhaging, the marked cerebral edema,
4 the fractures of the rib, the contusions and lacerations
5 of the lung, the liver, mesentery, the spleen, kidneys,
6 the adrenal glands, you found that she died from chronic
7 heart disease?

8 A. Yes. Because there was no blood. When you fracture a
9 skull you have bleeding and blood. This is a child who
10 had a torn mesentery, a torn liver, a torn everything
11 under the sun. She had three line backers doing CPR for
12 almost an hour on her. And she had no blood in her
13 abdominal cavity except less than an ounce, half ounce.

14 So with that case in mind, yes, that kid had a very
15 bad disease. She had fibrosis of the heart and her
16 liver. She had G6PD deficiency which I think killed her.
17 But that's my opinion and people have their own opinions,
18 but I don't think she died from trauma.

19 Q. Because you testified that she had an enlarged heart
20 but you messed that up because you got her age wrong. Do
21 you remember that?

22 A. No, not at all. Not at all.

23 Q. And it was the CPR that caused the depressed fracture
24 of the skull, the cerebral edema, the fractures of the
25 ribs, the lacerations of the lung, the liver, the spleen,

KESSLER - REDIRECT

1 the kidneys and the adrenal glands?

2 A. They actually admitted when they ran the patient to
3 the hospital they whacked her head up against the door
4 frame.

5 Q. That did it?

6 A. That probably caused it, but she was basically dead
7 when that happened. That's why there was no bleeding. I
8 have never seen a depressed skull fracture without
9 cerebral edema and without bleeding. And the brain was
10 normal, so I don't know how that happens.

11 But that's only my opinion and everybody's entitled to
12 their opinion in a democracy. And that's why we have
13 courts, ma'am. And that's why I testify and somebody else
14 can testify to something else.

15 MS. CAMPBELL: I have nothing else.

16 THE COURT: Any redirect?

17 MS. HINES: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. HINES:

20 Q. Do you still have pending cases in the solicitor's
21 office?

22 A. Yes.

23 Q. With this circuit solicitor's office?

24 A. Yes.

25 Q. And what is the cause of death in this case?

1 A. This case?

2 Q. This case.

3 A. Waterhouse-Friderichsen syndrome, massive adrenal
4 hemorrhage and collapse due to streptococcal pneumonia,
5 infection.

6 MS. HINES: No further questions.

7 THE COURT: Thank you. Any recross based upon
8 her redirect?

9 MS. CAMPBELL: No, sir.

10 THE COURT: All right. Thank you. You may step
11 down. Anyone object to this witness being excused for the
12 balance of the trial?

13 MS. HINES: I don't object to that.

14 MS. CAMPBELL: No, sir.

15 THE COURT: Thank you, Doctor. All right.

16 Ladies and gentlemen, we've reached a good time to break
17 for the evening. I am going to send you home with, again,
18 cautioning you not to speak to anyone about this trial,
19 not to mention it to anyone or to discuss it or to read
20 any media that may be present tonight or tomorrow
21 morning.

22 So I'm going to say, go home and read a novel
23 that has nothing to do with what we're doing here and
24 don't watch TV tonight unless you watch the History
25 Channel or something.

OLGA - DIRECT

1 A. For this case I reviewed basically all the available
2 medical records for this child which include her newborn
3 records.

4 Q. Okay. Let me stop you right there. Reviewed her
5 newborn records?

6 A. Yes.

7 Q. As well as her pediatric records?

8 A. Pediatric care records.

9 Q. As well as the hospital records from this visit and
10 other records as well from the pathologist?

11 A. That is correct.

12 Q. And in addition to that, did you also review certain
13 statements from certain people as to the history of this
14 child and how she was acting the day and the day before?

15 A. That is correct.

16 Q. And is that important in your field to also review
17 those records?

18 A. Yes, because it provides me with a medical history.

19 Q. And that would include statements from the father as
20 well as the mother of this child?

21 A. That is correct.

22 Q. And just for the record. As far as you getting paid
23 personally here today, you don't receive any money, you
24 yourself, from my office or any other office; is that
25 correct?

OLGA - DIRECT

1 You know, fever is going to make their appearance, if
2 they're going to have fever they're going to feel kind of
3 cranky, you know, irritable, lethargic. And sometimes
4 we'll say, okay, it's viral, you know. He's not doing
5 good, not eating that well. Vomiting here and there.

6 You treat them but then suddenly it doesn't get any
7 better and they just collapse. It is fulminan. They
8 appear -- there's one characteristic skin finding which is
9 call purpura fulminan.

10 It's basically, purpura is a type of bleeding to the
11 skin. And it is an impressive bleeding. And it's
12 secondary to the fulminan infection that the child is
13 sustaining.

14 So the child that dies of Waterhouse-Friderichsen
15 syndrome -- sorry about the accent. It is, it is an
16 impressive, impressive illness and it shows signs and
17 symptoms. These kids don't look, you know, normal by the
18 time of their collapse.

19 Q. On --

20 THE COURT: Before you ask her, Dr. Rosa, I am
21 going to have to ask you. I'm from Sumter so I have a
22 hard accent, too.

23 THE WITNESS: I know.

24 THE COURT: But I'm going to ask that for the
25 sake of my court reporter, I'm going to have to ask that

OLGA - DIRECT

1 you slow down just a little bit.

2 THE WITNESS: I will.

3 BY MS. CAMPBELL:

4 Q. Doctor, the events you just described, how the
5 symptoms initially present as they develop and then they
6 ultimately culminate as this mottling of the skin or some
7 markings on the skin; is that correct?

8 A. Yes.

9 Q. And I just simplified everything.

10 A. That's perfect.

11 Q. That takes time?

12 A. It takes time. The kid --

13 Q. It doesn't happen that morning?

14 A. It doesn't happen that morning. The kid that is seen
15 early in the morning playing around in her room is just
16 not going to just bling bling around the room and then
17 suddenly after that just going to collapse and be dead.

18 Q. This would be a matter of days and/or weeks not a
19 matter of hours?

20 A. These -- well, the kids -- also the infection
21 develops, you know, during the first, the first -- once
22 the the infection comes alive on the child's body there
23 are going to be symptoms. As I said, there's going to be
24 fever. They're going to be looking puny. They're going
25 to be fussy. They're not going to be, you know, eating

OLGA - DIRECT

1 Q. Did you -- just review those so that the jury can't
2 see them. And did you review those and do those
3 illustrate different parts of this child's body, her skin?

4 A. Yes, I did review these once.

5 Q. And in those photographs, there's some actual cut
6 downs of the skin itself?

7 A. Yes. They are.

8 Q. And what's the purpose of those cut downs?

9 A. The cut downs are standard autopsy procedure work.

10 When you see bleeding or what it appears to be a bruise on
11 the skin of a child, you cut to see if it is true bleeding
12 for -- and if it's a bruise you will see bleeding on the
13 tissue underlying or beneath that bruise which is what you
14 see on this child.

15 Q. On this child, in different parts of her body?

16 A. That is correct.

17 Q. We won't show those to the jury because they're too
18 graphic. But in your review of that, the manifestation,
19 you said it goes with this Waterhouse-Friderichsen. Is it
20 purple marks? Am I --

21 A. Purpura fulminans.

22 Q. Is there any evidence of that in those photos?

23 A. No.

24 Q. Is there any evidence of that in this child?

25 A. No.

OLGA - DIRECT

1 placement of the fact that these ribs broke posteriorly?

2 A. Posteriorly. On the back.

3 Q. What does that indicate?

4 MS. SINGLETARY: Objection, Your Honor.

5 THE COURT: What's your objection?

6 MS. SINGLETARY: At this point the testimony
7 would be cumulative to the State's case in chief
8 testimony.

9 THE COURT: Let me see the attorneys up here.

10 (Off-the-record discussion.)

11 THE COURT: Counsel will proceed as directed.

12 BY MS. CAMPBELL:

13 Q. And do you in your review of the -- you've reviewed
14 the actual autopsy in this case?

15 A. Yes, I did.

16 Q. And in your review of that autopsy, do you concur with
17 the findings of the pathologist? Do you agree?

18 A. Yes, I do.

19 Q. Including his findings as to the rib fractures?

20 A. That's correct.

21 Q. And is that conclusion supported by your review of the
22 published material and the guidelines by all the known
23 bodies?

24 A. Yes, ma'am.

25 Q. Having reviewed everything in this case, Doctor, and

1 tomorrow morning.

2 END OF DAY: 12:25 P.M..

3 * ** *

4 ON FRIDAY, MARCH 18th, 2011, AT 9:40 A.M.:

5 THE COURT: We have had a charge conference. I
6 think we've got a charge that everyone agrees upon. State
7 have any other objections to the charge?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Defense have any objections?

10 MS. HINES: No, Your Honor.

11 THE COURT: All right. Thank you. Let's bring
12 our jury in.

13 THE BAILIFF: Yes, sir.

14 MS. HINES: Your Honor.

15 THE COURT: Hold on. Hold on.

16 MS. HINES: Your Honor, the defense at this time
17 would like to renew all of our motions and all of our
18 objections that we've made throughout the trial.

19 We would also like to renew our motion for a
20 directed verdict. We don't believe that based on the
21 evidence that's been presented this week that the State
22 has presented any direct evidence or substantial
23 circumstantial evidence and therefore we'd ask Your Honor
24 for a motion, for a directed verdict.

25 THE COURT: All right. Thank you.

1 MS. CAMPBELL: Your Honor, just for the record,
2 we will be opening on the law and then have the final
3 close as well.

4 THE COURT: I'm going to respectfully deny your
5 motion.

6 MS. HINES: Thank you.

7 THE COURT: Thank you. All right. Let's bring
8 them in.

9 (Jury enters courtroom at 9:45 a.m.)

10 THE BAILIFF: Your Honor, jurors present.

11 THE COURT: Thank you. Good morning, ladies and
12 gentlemen. I hope you had a nice evening. Surely was a
13 nice day yesterday. It's going to be an even nicer day
14 today.

15 I was told that one of the bailiffs -- we're
16 going to be one bailiff short, and I told him, I said I
17 didn't think it mattered as many times as y'all have
18 shepherded yourselves in and out. Y'all could probably do
19 it on your from this point forward.

20 So, ladies and gentlemen, all of the evidence has
21 been presented to you. Now is the time where the
22 attorneys will give you their closing arguments.

23 Is the State ready to proceed?

24 MS. CAMPBELL: State's ready, Your Honor.

25 THE COURT: Is the defense ready to proceed?

1 that he had caused this child's death. When finally
2 confronted on April 13th when told what you're telling us
3 doesn't add up, he admitted the truth. His version of the
4 truth about causing this child's death, his was almost
5 surreal. He even asked the officer if he could go tell
6 his girlfriend, who supports him, himself.

7 Homicide by child abuse. No one's saying that he
8 absolutely meant to kill this child. Was he just trying
9 to shut her up? Was he trying to get her to stop spitting
10 on him? Was he trying to get her to stop swearing these
11 words at 23 months that he talks about? Was he teaching
12 her a lesson?

13 All we have to prove is that he acted with a
14 reckless disregard to human life.

15 Thank you.

16 MS. CAMPBELL: Thank you, Your Honor.

17 THE COURT: Ms. Hines, for the defense?

18 MS. HINES: Thank you, Your Honor.

19 On February 6, 2009, Demetrius Goodwin woke up to
20 the sounds of his NeNe wheezing. He went to her crib.
21 She didn't look right. Something was wrong. He picked
22 her up as any parent would.

23 She gave a faint cry. She went limp. He's
24 looking at her. He's thinking what's wrong, NeNe, NeNe,
25 what's wrong. She's having trouble breathing. His mind's

1 You should consider an expert opinion received
2 into evidence in this case and, like any other evidence,
3 give it the weight that you think it deserves. If you
4 decide that the opinion of an expert witness is not based
5 on sufficient education and experience, or if you conclude
6 that the reason given in support of the opinions are not
7 sound or that the opinion is outweighed by other evidence,
8 you may disregard the opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than any other witness simply because the
11 witness is an expert. Further, you are not required to
12 accept an expert's opinion even though it is not
13 contradicted.

14 Now, ladies and gentlemen, the indictment in this
15 case charges the Defendant, Demetrius Goodwin, with the
16 crime of homicide by child abuse.

17 The State must prove beyond a reasonable doubt
18 that the Defendant caused the death of a child under the
19 age of 11 while committing child abuse or neglect.

20 Child abuse or neglect is an act or failure to
21 act which causes harm to a child's physical health or
22 welfare. Harm to a child's physical health or welfare
23 means that the Defendant either, one, inflicted or allowed
24 to be inflicted on the child physical injury or, two,
25 failed to supply the child with adequate food, clothing,

JUDGE'S CHARGE TO THE JURY

1 shelter or health care, and this failure caused a physical
2 injury or condition which caused death.

3 And the State must also prove beyond a reasonable
4 doubt that the death occurred under circumstances showing
5 an extreme indifference to human life. Extreme
6 indifference to human life is the nature of a culpable
7 mental state and therefore is akin to intent.

8 In this state, indifference in the context of
9 criminal statutes has been compared to the conscious act
10 of disregarding a risk which a person's conduct has
11 created or a failure to exercise ordinary or due care.

12 Otherwise stated, a person acts under circumstances
13 manifesting extreme indifference to the value of human
14 life when he engages in deliberate conduct which
15 culminates in the death of some person.

16 Conduct of the parent which evidences a settled,
17 characterized or may -- conduct of the parent which
18 evidences a settled purpose to forego parental duties may
19 fairly be characterized as willful because it manifests a
20 conscious indifference to the rights of a child to receive
21 support and consortium from the parent.

22 Ladies and gentlemen, there are two possible
23 verdicts which you may find in this case on the charge
24 under Indictment 2009-GS-40-3175 on the charge of homicide
25 by child abuse; not guilty or guilty.

QUESTION FROM THE JURY AND FURTHER CHARGE

1 THE COURT: All right. We are ready to proceed.
2 We've received three questions from the jury. Two of them
3 I can't do anything about. One of them I can.

4 The first one is: Can we get a transcript of the
5 trial? The obvious answer to that is, no.

6 I don't think you transcribed it yet; have you,
7 Cher? That's a no.

8 The second one is: What are all the possible
9 sentences for the crime? And I will tell the jury that's
10 not their concern. They are the finders of fact to
11 determine guilt or innocence. And that's not something
12 they need to concern themselves with.

13 The third question is: Explain extreme
14 indifference to human life. And what I anticipate that I
15 will do is I will recharge that section that we talked
16 about earlier in total as to what the charge is and what
17 it means. That's all we can do. Okay.

18 Any questions?

19 MS. McDUFFIE: Your Honor, if you just wait for
20 Ms. Campbell to get here before you bring the jury out.

21 THE COURT: Okay.

22 MS. HINES: Your Honor, if I could just add. In
23 light of the -- I would like to renew my motion to have
24 the jury charged on accident in light of the question.
25 Based on the argument that I made earlier, I think this is

QUESTION FROM THE JURY AND FURTHER CHARGE

1 an issue, and I do believe it should be charged.

2 THE COURT: All right. Noted. Denied.

3 MS. HINES: Thank you.

4 THE COURT: You are within your one minute.

5 MS. CAMPBELL: I'm sorry, Judge. I apologize.

6 THE COURT: All right. Let's bring our jury in.

7 (Jury enters courtroom at 1:50 p.m.)

8 THE BAILIFF: Your Honor, the jury is present.

9 THE COURT: All right. Thank you.

10 Mr. Foreman, I got your message. You had three
11 questions.

12 As to the first question: Can we get a
13 transcript of the trial? No, you cannot.

14 I just talked to the court reporter. The
15 transcript will be about 800 pages and she has not started
16 transcribing it yet. So it's simply not available.

17 As to the next question: What are all the
18 possible sentences for this crime? That is not of your
19 concern. You are the finders of fact. You are to
20 determine guilt or innocence. The sentencing is up to me.

21 Now, as to your other question: Explain extreme
22 indifference to human life. I will recharge you the same
23 thing I told you before as to a homicide by child abuse
24 under Section 16-3-85-A.

25 The indictment in this case charges the

1 Defendant, Demetrius Goodwin, with the crime of homicide
2 by child abuse.

3 The State must prove beyond a reasonable doubt
4 that the Defendant caused the death of a child under the
5 age of 11 while committing child abuse or neglect. Child
6 abuse or neglect is an act or failure to act which causes
7 harm to the child's physical health or welfare.

8 Harm to the child's physical health or welfare
9 means that the Defendant either inflicted or allowed to be
10 inflicted on the child physical injury or failed to supply
11 the child with adequate food -- adequate food, clothing,
12 shelter or health care and this failure caused a physical
13 injury or condition which caused death.

14 The State must also prove beyond a reasonable
15 doubt that the death occurred under circumstances showing
16 an extreme indifference to human life. Extreme
17 indifference is in the nature of a culpable mental state
18 and therefore is akin to intent.

19 In this state indifference in the context of
20 criminal statutes has been compared to the conscious act
21 of disregarding a risk which a person's conduct has
22 created or a failure to exercise ordinary or due care
23 otherwise stated.

24 A person acts under circumstances manifesting
25 extreme indifference to the value of human life when he

1 engages in the deliberate conduct which culminates in the
2 death of some person.

3 The conduct of a parent which evidences a settled
4 purpose to forego parental duties may fairly be
5 characterized as willful because it manifests a conscious
6 indifference to the rights of the child to receive support
7 and consortium from the parent.

8 All right. Ladies and gentlemen, I'm going to
9 send you back to your jury room with the instructions that
10 you will continue your deliberations. Thank you.

11 FOREPERSON OF THE JURY: Thank you.

12 (Jury exits courtroom at 1:55 p.m.)

13 THE COURT: All right. Court will be at ease.
14 Everyone can get back to their lunches or whatever.

15 MS. HINES: Thank you, Your Honor.

16 MS. McDUFFIE: Thank you.

17 (Deliberations resumed at 1:55 p.m. At
18 3:30 p.m., the trial resumed as follows:)

19 THE COURT: We have received notification that
20 the jury has reached a verdict. To the alternates, let me
21 tell you thank you for the job that you did. You may
22 think that you didn't get to go all the way because you
23 weren't part of the final decision-making party, but let
24 me tell you, you were very valuable here because if
25 something had happened to one of the other jurors or two

VERDICT OF THE JURY

1 to leave the courtroom before the verdict is read? All
2 right. Thank you. Bring the jury in.

3 (Jury enters courtroom at 3:37 p.m.)

4 THE BAILIFF: Your Honor, the jury is present.

5 THE COURT: Thank you. Mr. Foreman, I understand
6 the jury has reached a verdict?

7 FOREPERSON OF THE JURY: We have, Your Honor.

8 THE COURT: Is it unanimous?

9 FOREPERSON OF THE JURY: Yes, sir.

10 THE COURT: Please hand it to the bailiff.

11 FOREPERSON OF THE JURY: (Complies.)

12 THE COURT: All right. Please publish the
13 verdict.

14 THE CLERK: State of South Carolina versus
15 Demetrius Goodwin, Indictment Number 2009-GS-40-3175. As
16 to indictment number 2009-GS-40-3175 charging the
17 Defendant, Demetrius A. Goodwin, with the crime of
18 homicide by child abuse, we, the jury, unanimously find
19 the Defendant guilty. Signed by the foreperson, number
20 70, on March 18th, 2011.

21 Mr. Foreman, is this your verdict and the verdict
22 of the entire jury?

23 FOREPERSON OF THE JURY: Yes, it is.

24 THE CLERK: Thank you.

25 THE COURT: Does the State request polling of

SENTENCING

1 15-minute recess and then I'll sentence the Defendant at
2 that time.

3 MS. McDUFFIE: Nothing from the State, Your Honor.

4 THE COURT: Thank you. Court will be in recess
5 until four o'clock.

6 MS. HINES: If we could have a little bit more
7 time, Your Honor?

8 THE COURT: I'll give you to 4:30. Sentencing
9 will be at 4:30.

10 (Thereupon at 3:45 p.m., a break was taken.
11 The trial resumed at 4:30 p.m., as follows:)

12 THE COURT: Madam solicitor?

13 MS. McDUFFIE: Thank you, Your Honor. May it
14 please the Court. Standing before you is Demetrius
15 Goodwin with his attorneys, Kris Hines and Tracy Pinnock
16 of the public defender's office, and Nicole Singletary of
17 the private bar.

18 Your Honor, we are here for sentencing as the
19 jury has convicted Mr. Goodwin of homicide by child
20 abuse. The Defendant has no prior record.

21 THE COURT: All right. Ms. Hines?

22 MS. HINES: Thank you, Your Honor. May it please
23 the Court.

24 First of all, Your Honor, you heard the evidence
25 in this case.

SENTENCING

1 (Commotion erupts in courtroom.)

2 THE COURT: Remove him from the courtroom.

3 THE CLERK: Remove him from the courtroom. The
4 Judge said, remove him from the courtroom.

5 (Pause.)

6 THE COURT: That gentleman was just removed from
7 the courtroom. Anyone else acts out will be removed from
8 the courtroom and transported directly to the correctional
9 center.

10 Please proceed.

11 MS. HINES: Thank you, Your Honor.

12 Your Honor has heard all of the evidence in the
13 case. I don't feel a need to rehash that.

14 We do -- despite the jury's verdict, we still
15 strongly believe in Mr. Goodwin's innocence in this case.
16 I would ask Your Honor to consider suspending the
17 sentence.

18 This statute carries 20 to life, but under State
19 V. Thomas the Supreme Court ruled on this issue in regards
20 to a drug statute 44-53-445 in that the homicide by child
21 abuse statute, Your Honor, the term, the wording for that
22 is, but no less than a term of 20 years.

23 It's the same language that was used in the
24 proximity to a school statute, 44-53-445. And I do have a
25 copy of State V. Thomas here to hand to Your Honor.

SENTENCING

1 SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
2 PERIOD OF 25 YEARS. YOU WILL BE GIVEN CREDIT FOR TIME
3 SERVED. Good luck.

4 MS. McDUFFIE: Thank you, Your Honor.

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: Court is adjourned sine die.

7 END OF CASE: 4:50 P.M.

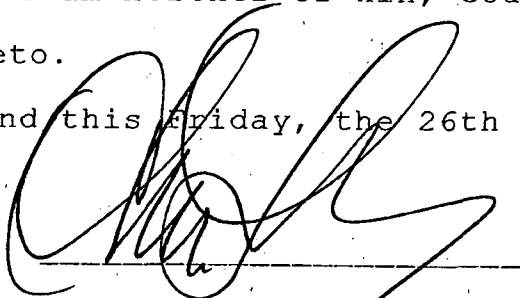
8 * * *

9 CERTIFICATE OF REPORTER

10 I, Cheri L. Young, Registered Professional Reporter,
11 and Official Court Reporter for the State of South
12 Carolina, do hereby certify that the foregoing transcript
13 of proceedings heard on Monday, March 13, 2011 through and
14 including Friday, March 18, 2011, in Columbia, South
15 Carolina, was reported by me using machine shorthand and
16 realtime computer-aided translation and is a true,
17 accurate and complete transcript of the proceedings had
18 and evidence introduced in the hearing of the matter.

19 I do further certify that I am neither of kin, counsel
20 nor interest to any party hereto.

21 I have hereunto set my hand this Friday, the 26th day
22 of August, 2011.

23
24 
25 Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
SESSIONS)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL

Indictment Number: 2009-GS-40-03175

The State of South Carolina,)

vs.)

Demetrius Antoine Goodwin,)
Defendant.)

POST-TRIAL
MOTION FOR NEW TRIAL

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 MAR 25 PM 2:27

RICHLAND COUNTY
FILED

The Defendant, Demetrius Goodwin, hereby moves for a new trial in the case of State v. Demetrius A. Goodwin.

Defendant's trial began on Monday, March 14, 2011 when a jury was selected and a pre-trial hearing held. The jury was sworn in on Tuesday, March 15, 2011. On this day, opening arguments were heard and the state presented its first full day of testimony, including testimony from ten (10) witnesses. During the pre-trial hearing on Monday, March 14, 2011 and again several times during testimony on Tuesday, March 15, 2011, defense counsel raised concerns about whether the state had fully complied with Rule 5 of the South Carolina Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963) and *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006). Each time the issue was raised, the state informed the Court that there was no additional material that had not been provided to the defendant.

At 5:45 p.m. on Tuesday, March 15, 2011, the state informed defense counsel of the existence of 130 audio-recorded phone calls the defendant had placed from the jail. The defendant had been on bond since February 22, 2010. These newly disclosed jail calls were recorded between April 21, 2009 and February 22, 2010.

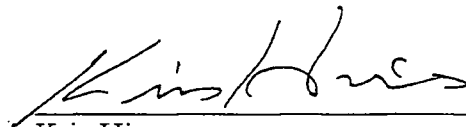
On Wednesday, March 16, 2011, defense counsel informed the court that these previously undisclosed phone calls had just been provided and again objected pursuant to Rule 5, *Brady* and *Riddle*. Defense counsel contended each of these jail calls could potentially last up to ten (10) minutes, so that the existence of potentially 1300 minutes worth of phone calls made by the defendant hindered defense counsel's ability to

adequately and meaningfully advise Mr. Goodwin about whether he should exercise his right to testify or not. While the court ruled that these phone calls would not be admissible, without an opportunity to review these calls defense counsel was still unable to effectively advise Mr. Goodwin about his right to testify, especially given the fact that if Mr. Goodwin were convicted and the case were later reversed on appeal or at post-conviction relief, at any re-trial, the state would then have the ability to use Mr. Goodwin's testimony in this trial and the jail calls against him. Furthermore, defense counsel had no way of knowing whether or not these calls contained exculpatory information. The state's tactic of providing this massive amount of evidence in the middle of trial effectively deprived the defendant of his right to testify and was therefore a violation of due process. Based on this, the defendant respectfully requests that the court grant a new trial to allow defense counsel an opportunity to review these jail calls and adequately and fully advise the defendant of his right to testify.

In addition, the defendant respectfully requests a new trial based on the Court's denial of the defendant's motion for a directed verdict. "If the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the case must go to the jury." *State v. Burdette*, 335 S.C. 34 (1999). However, this standard must be met as to each element of the crime. Under the homicide by child abuse statute, a person is guilty of homicide by child abuse if he 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. Extreme indifference is a mental state akin to intent, characterized by a deliberate act culminating in death. *State v. Jarrell*, 350 S.C. 90 (Ct. App., 2002), *State v. McKnight*,

352 S.C. 635 (2003).

In the present case, the court ruled that the defendant's statement was direct evidence and denied the defendant's motion for a directed verdict. However, there is nothing in any of the three statements by the defendant that would indicate that the defendant acted with extreme indifference. To the contrary, the defendant's statement repeatedly indicates that he "didn't do it on purpose," "didn't mean it," and that he was scared. The statement taken on April 13, 2009 indicates: "I was concerned about her;" "I was worried;" and "I was scared at the way she was reacting and gave her a hug to get a response." The defendant's statement of April 15, 2009 provides as follows: Question: "When you hugged Denetria Goodwin very hard did that cause her death?" Answer: "Yes but it wasn't intentional. I was scared at the time and I didn't have a ride or a way to make contact. I just wanted to hug her for comfort." Furthermore, the state did not present any direct evidence or substantial circumstantial evidence that Mr. Goodwin acted with extreme indifference. All witnesses testified that he was upset, emotional, crying and concerned about his daughter. Because the state did not produce any evidence that Mr. Goodwin acted with extreme indifference, the directed verdict motion should have been granted. The defendant now requests a new trial on this basis.



Kris Hines
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina
This 25 day of March, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2009-GS-40-03175

The State of South Carolina,)
)
)
)

CERTIFICATE OF SERVICE

vs.)
)
)
)

Demetrius Antoine Goodwin,)
Defendant.)

I certify that on this date I served a copy of the POST-TRIAL MOTION FOR NEW TRIAL on The State of South Carolina by delivering a copy to the State's attorney of record Luck Campbell to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with her clerk or other person of authority at said office.



Deborah Zaidman
 Paralegal
 Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 25TH day of March, 2011

2011 MAR 25 PM 2:27
 JEANETTE WOODBRIDGE
 C. C. P. & S. S.
 FILED
 RICHLAND COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) 2009-GS-40-03175

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 DEMETRIUS GOODWIN,)
)
 DEFENDANT.)
)
 _____)

MAY 9, 2011
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

A P P E A R A N C E S:

KATHRYN "LUCK" CAMPBELL, ESQUIRE, ASSISTANT SOLICITOR
 ATTORNEY FOR THE STATE

LAURA KRIS HINES, ESQUIRE
 NICOLE L. SINGLETARY, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR
 CIRCUIT COURT REPORTER

I N D E XWITNESS/DESCRIPTIONPAGE NO.

MOTION TO RECONSIDER SENTENCE	3
MOTION FOR NEW TRIAL	11
CERTIFICATE PAGE	17

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

NO EXHIBITS INTRODUCED.

1 THE COURT: This is post-trial motion, case of *State*
2 *of South Carolina vs. Demetrius Antoine Goodwin* under
3 indictment number 2009-GS-40-3175. Present and appearing
4 is Ms. Hines for the defense, and Ms. Campbell is present
5 for the solicitor.

6 All right, Ms. Hines, this is this your motion.

7 MS. HINES: Yes, Your Honor. I have a motion to
8 reconsider the sentence. I also filed a motion for a new
9 trial. I asked for a motion to reconsider the sentence.
10 we'll proceed with that.

11 Your Honor, we had made an argument earlier that this
12 statute, the sentencing under this statute would be
13 suspendable. We ask Your Honor to consider suspending it,
14 to reconsider the decision that you made based on the
15 argument that Your Honor has the power to suspend this.
16 Your Honor did sentence Mr. Goodwin to twenty-five years.
17 Ms. Singletary would like to present argument on this
18 issue.

19 THE COURT: All right, Ms. Singletary.

20 MS. SINGLETARY: Thank you, Your Honor. If it pleases
21 the court? Your Honor, pretty much as it relates to the
22 homicide by child abuse statute that was enacted back in
23 1992, it would be our argument homicide by child abuse,
24 even though we know that there's a special category of
25 victims, that this case and this statute, it has -- there

1 are no lesser included offenses, Your Honor. We have
2 lesser included offenses for murder. We have voluntary
3 murder. We have involuntary murder. But in this case,
4 homicide by child abuse, there is no lesser offense. And
5 we feel that it's actually the legislator, legislators who
6 actually omitted this, and this is a tragic omission that
7 there isn't a lesser included to homicide by child abuse,
8 Your Honor.

9 As I was stating earlier, there is almost no crime
10 that I can think of, criminal offense -- there are few that
11 have lesser includeds. But when we talk about the severity
12 of a case that's homicide by child abuse or the severity of
13 a murder case, at least with the murder statute if there is
14 adequate provocation, then the jury can actually be given
15 the lesser included of voluntary manslaughter. If it was
16 an accident or so forth, Your Honor, if ---

17 THE COURT: If I remember correctly, wasn't he offered
18 voluntary manslaughter as a plea before going to trial?

19 MS. HINES: There were no formal discussion. I think
20 the solicitor mentioned that in your chambers. That was
21 the first time it was mentioned.

22 THE COURT: Okay.

23 MS. SINGLETARY: Your Honor, but, I mean, our argument
24 is, is that there should be a lesser included offense to
25 homicide by child abuse. Your Honor, the ---

1 THE COURT: You may be absolutely right, but down the
2 street there's a big building with a copper top. That's
3 where you would change that.

4 MS. SINGLETARY: And we understand that, Your Honor,
5 but we would like to bring it to your attention as it
6 relates to a motion to actually reconsider the sentence in
7 this matter.

8 In the closing argument made by the prosecution, when
9 the prosecution actually inferred to the fact that they
10 weren't saying that it was intentional that Mr. Goodwin
11 actually inflicted the injuries, let's look at the statute
12 homicide by child abuse.

13 The actual intent that is needed is the intent that's
14 akin to extreme, manifestation of extreme indifference. It
15 would be our argument that nothing was actually shown by
16 the prosecution. And we understand that the jury has
17 already spoken, Your Honor. But that there was not a
18 manifestation of extreme difference.

19 It would be -- to go along with our argument as to why
20 there needs to be a lesser included, and again, Your Honor,
21 I know that you cannot come up with a lesser included for
22 this offense. That it would have to go through the
23 legislature. However, Your Honor, I think that this is a
24 issue that clearly needs to be handled. And that my client
25 should be given the benefit of the doubt.

1 Your Honor sat throughout the entire trial, Your
2 Honor, and the extreme indifference element of this
3 offense, I mean, was not made. I mean, it's evident to us
4 as we spoke to jury members afterwards. I mean, it's
5 evident, and to the fact that as it relates to the record
6 when the jury members came out with a question.

7 THE COURT: That is irrelevant; do not go there. Do
8 not argue what you said after the trial to the jurors.
9 They made their ruling, and that's where it stands. We're
10 not going to go post-trial interviewing the jurors in this.

11 MS. SINGLETARY: Your Honor, I beg the court's
12 indulgence. I was going to say I was talking about the
13 actual questions that the jury members sent out.

14 THE COURT: Oh, the questions.

15 MS. SINGLETARY: Yes. Okay.

16 THE COURT: Not your talking with them, okay.

17 MS. SINGLETARY: No, Your Honor. I'm actually
18 referring to the questions that the jurors sent out.

19 THE COURT: Right. I remember there was one specific
20 one that had to put shivers down your spine when they asked
21 how long could he get for this crime.

22 MS. SINGLETARY: Exactly, Your Honor, and in our
23 opinion, that the jury was actually thinking that that --
24 and this is us merely speculating. But when, when a jury
25 comes out, jury members come out with a question like that,

1 it's like they're looking for something else. And in this
2 case, they didn't have that something else, and that's what
3 our argument is here today. That, I mean, it's a
4 legislative tragedy that we don't have a lesser included
5 for homicide by child abuse.

6 But I think that it's evident from the record and the
7 questions that came back from the jury members that in this
8 case, if there was a lesser included offense, I would say
9 that the jury would have come back guilty on the lesser
10 included offense, but they had no other option, Your Honor.

11 THE COURT: But, you know, it also gave me a greater
12 leverage, or not leverage but scope of where I could --
13 rather than murder, which is thirty to life, this was
14 twenty to life. I think that may be where the legislature
15 reduced the amount of exposure that he had. And I could
16 have legitimately sentenced him to life.

17 MS. SINGLETARY: Your Honor, and I understand that.
18 And, Your Honor, one thing that I will note as it relates
19 to the ever, ever evolving changes in the law, the statute
20 homicide by child abuse. The legislature has actually
21 taken up the matter right now. They actually want to make
22 it for if someone is convicted of A(1), that it's life or,
23 or the death penalty can be seeked [sic] and the twenty
24 years is taken out. And with A(2), it's the twenty years
25 or the minimum ten years.

1 What I am simply saying is that this, because this is
2 a relatively law -- relatively new law, I would say because
3 it was enacted back in 1992 and since the time that it has
4 actually been enacted, it's been evolving. And still to
5 this day we have legislation that's pending that actually
6 changes the offenses. I know that both the sentencing for
7 individuals who's charged with that -- and I'm not saying
8 that that is a matter that actually reflects on my client
9 because we would want him to have the benefit of the old
10 law.

11 However, what I am saying is that the homicide by
12 child abuse statute is legislatively flawed to -- there
13 should be a lesser included, Your Honor. And that's why
14 we're standing in front of you here today asking on a
15 motion to reconsider the sentence.

16 I've seen, and I know Ms. Hines is actually going to
17 hit again on this. But, I mean, if you look at the
18 allegations made by the state, the state in essence at
19 trial said that a hug actually killed the twenty month --
20 twenty-three month-old child, Your Honor.

21 Now, if you look at all the prior case law that Ms.
22 Hines is going to go into detail about, I think that the
23 legislature, when they initially enacted this law, it
24 wasn't for these type of cases. It was for cases that had
25 horrific actual -- of showing of abuse and neglect, Your

1 Honor.

2 THE COURT: Death's pretty horrific in my opinion.

3 MS. SINGLETARY: Your Honor.

4 THE COURT: If somebody is killed, that's pretty
5 horrific. Don't you agree?

6 MS. SINGLETARY: Your Honor, I understand that when
7 someone is killed, that that is a ordeal. That is a
8 tragedy. However, there is a major difference between
9 someone actually, and I hate to sound crude, but there is a
10 major difference between someone giving someone a overdose
11 of sleeping pills to kill them versus someone such as a
12 case that was actually prosecuted in the Richland County
13 public -- I mean, solicitor's office where they're alleging
14 that a actual defendant smashed a child up against the wall
15 several times, and he gets fifteen years. But yet my
16 client does twenty-five years for a hug. So, I think that
17 there are major differences ---

18 THE COURT: That is you terming it a hug. I don't
19 think anyone else referred to it as simply a hug.

20 MS. SINGLETARY: Through the entire testimony, that's
21 what they said. All their medical investigators, all their
22 police officers, everyone said that it was a hug.

23 THE COURT: I think it was more of a constriction, not
24 a hug.

25 MS. SINGLETARY: And, and that ---

1 THE COURT: All right, I'll let Ms. Campbell speak.

2 MS. CAMPBELL: Your Honor, I'm not aware of anything
3 new that they've brought up today that you weren't able to
4 consider at sentencing.

5 As far as whether or not they liked the statute, it
6 has been in effect, by their own estimation, for nineteen
7 years. It has been challenged on numerous occasions.

8 As far as -- and you've already pointed out, Judge,
9 what I was going to bring up. That they've actually
10 lowered the level for murder twenty to life. They're
11 talking about, they're reconsidering the penalties now.
12 They're enhancing the penalties for what he was convicted
13 on, not lessening them.

14 I feel like that there's nothing new that they've
15 brought up as far as anything that you did not consider at
16 sentencing, Your Honor. You did have the benefit of
17 hearing the full trial and all the medical testimony, as
18 well as the investigative testimony. And I'm not aware of
19 anything different other than their dislike for this
20 statute, which I am not taking that away from them.
21 However, I do believe that your sentence was appropriate
22 within the facts that were presented to you. And you
23 considered that carefully prior to sentencing.

24 THE COURT: All right, on this issue, I'll take it
25 under advisement, and I'll notify you when I make my ruling

1 on that issue.

2 MS. CAMPBELL: Thank you, sir.

3 MS. HINES: Thank you, Your Honor.

4 MS. SINGLETARY: Thank you.

5 MS. HINES: We also have filed a motion for a new
6 trial.

7 THE COURT: Yes, ma'am.

8 MS. HINES: I briefed that, submitted that brief to
9 the court. I did not receive a written response from the
10 state. And if Your Honor would like for me to go into
11 that, or if you'd like to decide that on the brief?

12 THE COURT: I'm ready to proceed.

13 MS. HINES: Okay. Two reasons that we're asking for
14 a new trial in this case. One is that halfway through
15 the trial on Tuesday, on the Tuesday evening, I believe it
16 was Tuesday evening after a full day of testimony, we
17 received 130 jail calls. This influenced the decision, the
18 decision ---

19 THE COURT: And I excluded that ---

20 MS. HINES: If it ---

21 THE COURT: --- evidence.

22 MS. HINES: Yes, Your Honor. It was excluded. One of
23 the concerns that we had is whether we could adequately
24 advise Mr. Goodwin whether he could testify or not. Even
25 given the exclusion, whether it would be in some way able

1 to be used against him. We didn't have enough to ---

2 THE COURT: Well, these were his phone calls.

3 MS. HINES: Phone calls made between him and another
4 party. We don't, didn't know, had no time to find out
5 whether that contained potentially exculpatory information.
6 We believe that his rights were constricted because we
7 weren't able to make decisions, and we weren't able to
8 develop a trial strategy around whether he should testify
9 or not. We weren't able to make a decision. We were
10 basically going blind with no trial strategy at all at that
11 point, and ---

12 THE COURT: I mean, he couldn't have told you what was
13 on those phone calls?

14 MS. HINES: Well, we're talking ---

15 THE COURT: Because he made them.

16 MS. HINES: We're talking about potentially -- well,
17 1,300 minutes worth of calls, and I don't think that we
18 could have adequately gotten that information from Mr.
19 Goodwin. Given that we were in the middle of trial, again
20 we had no opportunity to develop any type of strategy for
21 how to deal with these calls.

22 THE COURT: All during your trial preparation, he
23 didn't tell you that he made about a 130 phone calls from
24 the jail?

25 MS. HINES: It did not come up, Your Honor.

1 THE COURT: I mean, he was -- he knew he had made
2 those phone calls, didn't he?

3 MS. HINES: It did not come up, Your Honor. For that
4 reason we think that, that his rights were constricted. He
5 was denied due process in his ability to testify, and his
6 ability for us to present a full and complete defense
7 because we did not have that information.

8 It was information that was in the state's custody the
9 entire time. It was in the state's custody from February
10 of 2010 up until trial. It was at the Alvin S. Glenn
11 Detention Center which is, you know, within the power of
12 the state to provide those, and they did not. That's the
13 first ground.

14 THE COURT: All right, let me let -- let's hear from
15 Ms. Campbell on that issue.

16 MS. HINES: Thank you.

17 MS. CAMPBELL: Your Honor, those were -- I think we
18 requested those during the trial. They were provided. We
19 stipulated, and Your Honor was correct in excluding them.
20 We were not able to use them for any purpose whatsoever.
21 The only way we could have been able to use them that could
22 affect their ability to put their client on the stand would
23 be impeachment. And specifically, we couldn't use them.
24 So, I don't know how that would have affected their trial
25 strategy because all that was excluded period. Was not to

1 be used. Impeachment, any other ---

2 THE COURT: Yeah. I think my ruling was it excluded
3 them for all purposes. They could not have impeached your
4 client.

5 MS. HINES: Yes. Yes, Your Honor. It also inhibited
6 our ability to develop a trial strategy as far as putting
7 up witnesses because we didn't know what the witnesses that
8 we would have put up might have said on those phone calls.

9 THE COURT: Let me get this straight. You -- I didn't
10 allow the evidence that you didn't know about to come in,
11 and that changed your trial strategy?

12 MS. HINES: It didn't change our trial strategy. We,
13 we began -- mid-trial we actually began proceeding with no
14 trial strategy in that situation because we did not have
15 the ability to listen to the calls. So, we were basically
16 flying blind at that point, Your Honor.

17 THE COURT: All right, next issue.

18 MS. HINES: Thank you, Your Honor. The next issue we
19 would ask Your Honor to revisit, the next issue in the
20 brief is the denial of the grant of -- the denial of
21 directed verdict, and this has to do with the mental state
22 of extreme indifference.

23 Under a directed verdict standard, each element has to
24 be shown; you have to have evidence of each element. The
25 extreme indifference is a mental state akin to intent,

1 characterized by a deliberate act culminating in death
2 under the standard. And I think that, based on the jury
3 question, that's the area that they had confusion with is
4 the law they were, they were confused about.

5 I believe, based on the questions that they asked,
6 they were confused about the law of extreme indifference.
7 And it was my error for not objecting to the definition of
8 extreme indifference at the time on the record.

9 THE COURT: I think at the time, I took it directly
10 out of the *Jewel* case. I mean, that was verbatim from a
11 Supreme Court case as to what the charge should be and what
12 they said it should be.

13 MS. HINES: It actually, actually the definition of
14 extreme indifference in the charge that you provided was,
15 was split in half, and language from other portion -- other
16 sections of the *Gerald* case was put into the middle of the
17 actual definition of extreme indifference. And it was my,
18 my error, and I had no strategy for this, but it was my
19 error for not objecting to that at the time.

20 I, I -- but I do believe that there was no evidence.
21 I think Your Honor said that the defendant's statement, Mr.
22 Goodwin's statement was direct evidence of the crime.
23 There was no direct evidence. There was no evidence in his
24 statement where he addressed extreme indifference. That
25 element, we would contend, was not, was not met, was not --

1 did not meet the standard. And so, based on that, we would
2 request, request a new trial in this matter.

3 THE COURT: Okay. Thank you.

4 Ms. Campbell.

5 MS. CAMPBELL: Your Honor, the medical testimony in
6 this case was overwhelming. That, coupled with his
7 statement and what he said he did. It's not unusual for
8 anyone in a murder case or otherwise to minimize what they
9 did, as he did in his statement.

10 However, the medical testimony I think was pretty
11 clear on what it would take to actually cause the injuries
12 to this child and ultimately cause her death. I believe
13 that's all you considered as far as directed verdict, and I
14 believe it was appropriate.

15 THE COURT: Those are your only two issues, weren't
16 they?

17 MS. HINES: Yes, Your Honor.

18 THE COURT: All right, I'll take this under
19 advisement. I'll give you my ruling by the end of the
20 week.

21 MS. CAMPBELL: Thank you, sir.

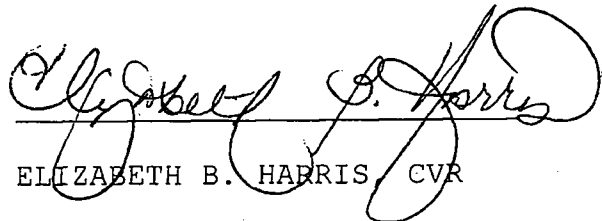
22 MS. HINES: Thank you, Your Honor.

23 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 9TH DAY OF MAY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

AUGUST 3RD, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

State of South Carolina,

v.

Demetrius Antoine Goodwin,
Defendant.

Indictment No: 2009-GS-40-03175

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 JUN 13 PM 2:47

RICHLAND COUNTY
FILED

This matter came before the Court pursuant to Defendant's Post Trial Motion for New Trial and Post Trial Motion to Reconsider Sentence filed on March 25, 2011. Present at the hearing were Kathryn Luck Campbell, Esquire, and Joanna McDuffie, Esquire representing the State; and Kris Hines, Esquire, and Nicole Singletary, Esquire representing Defendant, Demetrius Antoine Goodwin. Based on the reasons set forth herein, the Defendant's Motions are **DENIED**.

BACKGROUND

On March 14, 2011, the State called the above-captioned case to trial; in which, the Defendant was charged with Homicide by Child Abuse for an incident occurring on February 6, 2009. Present at the trial were Senior Assistant Solicitor Kathryn Luck Campbell, Assistant Solicitor Joanna McDuffie, and Assistant Solicitor Carter Potts, representing the State; Assistant Public Defender Kris Hines, Assistant Public Defender Tracy Pinnock, and Nicole Singletary, representing Defendant. The Defendant was convicted of Homicide by Child Abuse upon a trial



by jury and sentenced to a term of incarceration for twenty five (25) years. On March 25, 2011, Defendant filed his Motion for New Trial and Motion to Reconsider Sentence.

LEGAL ANALYSIS

A. DEFENDANT'S MOTION FOR NEW TRIAL

Pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure, a motion for new trial must be made within ten (10) days after the imposition of the sentence unless such motion is based on newly or after-discovered evidence. Rule 29, SCRPC. "The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). In his Motion for New Trial, Defendant argues that he is entitled to a new trial based on the following grounds: (1) the State's failure to timely disclose evidence deprived the defendant the right to testify and thus, violated Defendant's due process rights; and (2) the Court erred in denying the Defendant's Motion for a Directed Verdict.

As to Defendant's contention that the State failed to timely disclose the existence of jail phone calls and thus, deprived Defendant of his right to testify, this Court disagrees. Defendant argues that on March 15, 2011, the State informed defense counsel of the existence of audio recorded phone calls Defendant had placed from the jail between April 21, 2009, and February 22, 2010. Defense counsel argues that the timing of the disclosure of these calls made by Defendant hindered defense counsel's ability to adequately and meaningfully advise Mr. Goodwin about whether he should exercise his right to testify.

Importantly, the Court excluded the admission of this evidence, stating that the phone calls could not be used against the Defendant. Therefore, Defendant was not prejudiced in anyway. The Court also finds that defense had the ability and opportunity to adequately and

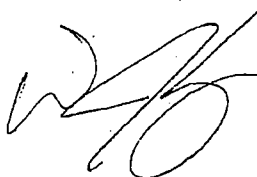


effectively advise Defendant regarding his right to testify and that Defendant's due process rights were not violated, especially since the Court ruled that this evidence was inadmissible.

As to Defendant's argument that defense counsel had no way of knowing whether these calls contained exculpatory information, the Court finds it to be without merit. The jail calls that are the subject of this motion are recorded phone calls made by the Defendant during the time he was incarcerated at the Alvin S. Glenn Detention Center. Defendant is a party to each call, and thus, defense counsel had access to any and all information discussed in each call, i.e. possible witnesses, information that would assist in the defense's investigation, etc.

Finally, Defendant requests a new trial based on the Court's denial of the Defendant's motion for a directed verdict. At the outset, the Court recognizes that a Motion for New Trial is the improper avenue to address this issue.

In ruling on a motion for directed verdict, the judge "shall consider only the existence or non-existence of evidence and not its weight." State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (citing Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005)). The trial judge should view the evidence in the light most favorable to the State and should "deny motion for directed verdict if there is any direct or substantial circumstantial evidence which reasonably tends to prove accused's guilt, or from which his guilt may be fairly and logically deduced." Id.; see also State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct.App.2004). Furthermore, "when a motion for a directed verdict is made in a criminal case in which the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." Id. (citing State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002); State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001)). A defendant is only



entitled to a "directed verdict when the State fails to produce evidence of the offense charged."

Cherry, 361 S.C. at 593, 606 S.E.2d at 478; Horton, 359 S.C. at 563, 598 S.E.2d at 284; State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct.App.2003). Based on the reasons set forth above, Defendant's Motion for New Trial is denied.

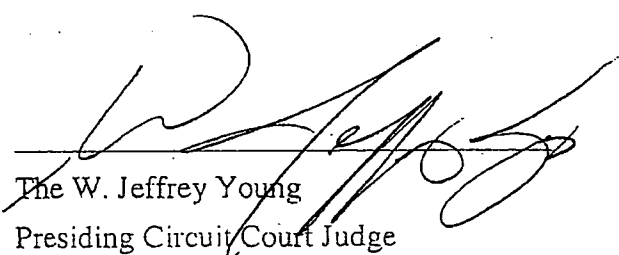
B. MOTION TO RECONSIDER SENTENCE

Defendant requests that the Court reconsider its sentence imposed in this matter. Under South Carolina law, a trial judge has the authority to alter, amend, or modify, a sentence imposed by him within the same term of court. State v. Smith, 276 S.C. 494, 497, 280 S.E.2d 200, 201 (1981). However, Defendant has failed to present any new or additional evidence that was not available to or considered by the trial judge except for a dislike of the law applicable in this matter. Therefore, the Court denies Defendant's Motion to Reconsider Sentence.

CONCLUSION

As set forth herein, Defendant's Motion for New Trial and Motion to Reconsider IS **DENIED** as to all grounds.

IT IS SO ORDERED.


The W. Jeffrey Young
Presiding Circuit Court Judge

June 1, 2011
Columbia, South Carolina
Sumter

RICHLAND COUNTY
FILED
2011 JUN 13 PM 12:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

222

STATE OF SOUTH CAROLINA)

S.S.

COUNTY OF RICHLAND

DATE: 02/07/2009

TIME: 17:35

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above-named county and state aforesaid, comes one DEMETRIUS GOODWIN

(Phone Day) (803) 361-9247

(Phone Night) (803) 695-9365

Who makes the following statement under oath to wit:

DEMETRIUS ANTOINE GOODWINQ: CAN YOU TELL ME WHAT HAPPENED AT 340 A WINDMILL CT. ON FEB 5TH 2009.

A: I WAS OVER AT MY COUSIN'S HOUSE WITH MY DAUGHTER DENETRIA. SHE WAS PLAYING WITH MY COUSIN'S TWO KIDS. I HEARD THEM PLAYING ON THE STAIRS. I WENT AROUND THE CORNER AND SAW THE THREE OF THEM STANDING ON THE STAIRS AND TOLD THEM TO GO BACK UP INTO THE ROOM. THE FOUR YEAR OLD WENT RIGHT UP. I SAW DENETRIA AND THE YOUNGEST ONE GOING UP THE STAIRS. I WENT BACK AROUND THE CORNER AND I HEARD THUDS. I RAN TO THE BOTTOM OF THE STAIRS AND SAW HER LYING FLAT. HER RIGHT ARM WAS UP UNDER HER. SHE STARTED TO PICK HERSELF UP OFF OF THE FLOOR. SHE STARTED CRYING. I PICKED HER UP.

Q: DID YOU SEE ANY VISIBLE INJURIES WHEN YOU PICKED HER UP?

A: NOT IMMEDIATELY... I NOTICED THEM WHEN I GOT TO THE HOUSE... WHEN I GAVE HER A BATH.

This statement was made in the presence of J.C. MAULDIN
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: *Demetrius Goodwin*

WITNESS: _____

WITNESS: _____

J. M.
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

Page 1 of 7 Pages.

STATE'S
EXHIBIT

DEAN T-11

STATEMENT OF

DEMETRIUS GOODWIN

(CONTINUED)

DATE: 02/07/09 TIME: 17:35

Q: HOW DID DEMETRIA ACT AFTER SHE HAD FALLEN?

A: SHE CRIED FOR A LITTLE BIT. I CHECKED HER OUT. I ASKED HER IF SHE WAS OK. SHE SAID "OK". I TOLD THE BOYS THAT THEY NEEDED TO PLAY DOWNSTAIRS. SHE JUMPED UP AND STARTED PLAYING. SHE WAS FOLLOWING THEM AROUND THE HOUSE LAUGHING.

Q: HOW LONG DID YOU REMAIN AT YOUR COUSIN'S HOUSE AFTER DEMETRIA FELL?

A: I WAITED FOR ABOUT 10 MINUTES FOR HIM TO COME BACK. I PROBABLY STAYED FOR ABOUT 30-35 MINUTES.

Q: DID YOU TELL MARK THAT DEMETRIA HAD FALLEN?

A: I TOLD HIM WHEN WE GOT BACK TO THE HOUSE.

Q: HOW LONG HAD IT BEEN BEFORE YOU NOTICED THAT SOMETHING WAS WRONG WITH DEMETRIA?

A: WHEN I GOT BACK TO THE HOUSE, I SAT HER DOWN AND WENT TO THE BATHROOM. WHEN I CAME OUT, I SAW HER THROWING UP.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward, or hope of reward of any kind.

WITNESS: _____

SIGNED: *Demetrius Goodwin*

WITNESS: _____

Page 2 of 7 Pages

This is to certify that I have read or have had read to me the foregoing statement consisting of _____ pages and a true copy has been given to me this _____ day of _____, 20____.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: *Demetrius Goodwin*

J. M. L.
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017

DEMETRIUS GOODWIN
(CONTINUED)

DATE: 02/07/2009TIME: 17:35Q: How Many Times Did She Throw Up?A: SHE THREW UP AND THEN STOPPED FOR A SECOND. THEN A LITTLE BIT MORE CAME OUT.Q: ASIDE FROM THROWING UP, DID YOU NOTICE THAT ANYTHING ELSE WAS WRONG?A: NOT REALLY. I PUT HER IN THE BATH AFTER THAT. SHE SPLASHED AROUND A LITTLE BIT. IT WAS AROUND 9:00 PM AND I PUT HER TO BED AFTER THAT.Q: DID YOU NOTICE ANY MARKS ON DENETRIA WHEN YOU BATHED HER?A: SHE HAD A RED MARK ON HER FOREHEAD AND A RED MARK IN HER CHEST.

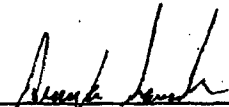
I DIDN'T SEE MUCH UNTIL THE NEXT DAY WHEN I NOTICED THAT SHE WAS
SHOWING MARKS ON HER BACK TOO. THE MARKS ON HER HEAD AND CHEST HAD
GOTTEN DARKER.

Q: WHEN DID YOU NOTICE THAT DENETRIA WAS SICK THE NEXT DAY?A: I WENT TO WORK AT 6:30 AM AND GOT BACK AT 8:00 AM. SHE WAS STILL IN THE

This statement was made in the presence of J.C. MAULDIN
of the Richland County Sheriff's Department.

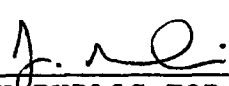
I make this statement of my own free will and accord, without
reward or intimidation. All of the above is the truth, the whole truth, and
nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: 

WITNESS: _____

WITNESS: _____


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

DEMETRIUS GOODWIN
(CONTINUED)

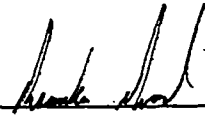
DATE: 02/07/2009 TIME: 17:35

CEIB ASLEEP. I PICKED HER UP AND SAT HER ON THE BED WITH ME. I GAVE HER SOME JUICE AND SHE DRANK HER JUICE. SHE WAS ACTING LIKE SHE WANTED TO GO BACK TO SLEEP SO I PUT HER BACK IN THE CEIB. I LAID DOWN AND TOOK A NAP. I WOKE UP SOMETIME AROUND 11:45 AM. I HEARD HER WHEEZING. I WENT TO GO PICK HER UP. SHE GAVE A SMALL CRY AND LOOKED LIKE SHE WAS HURTING. HER BODY SEEMED LIMP. I PUT HER ON THE BED IN HER MOTHER'S ROOM. I SAW THAT HER BREATHING WAS GETTING SLOWER. I TRIED TO DO SOME CPR. WE DON'T HAVE A PHONE IN THE HOUSE AND I DON'T HAVE A CELL PHONE. WHEN I WAS DOING CPR I NOTICED GREEN MUCUS COMING OUT OF HER NOSE. WHEN I WAS DOWN MOUTH TO MOUTH I SAW A YELLOWISH SUBSTANCE IN HER MOUTH. I TURNED HER ON HER SIDE SO THAT IT COULD COME OUT. I RAN OUTSIDE TO GO TO MY COUSIN'S HOUSE. I SAW HIM OUTSIDE. I TOLD HIM THAT SOMETHING WAS WRONG WITH DEMETRIA AND THAT HE NEEDED TO CALL 911. I RAN BACK INTO THE HOUSE AND SAW THAT SHE HAD GOTTEN WORSE. I CAME BACK OUTSIDE AND CALLED MY COUSIN TO THE HOUSE. HE CAME OVER AND TRIED

This statement was made in the presence of J.C. MAULDIN
of the Richland County Sheriff's Department.

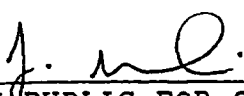
I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: 

WITNESS: _____

WITNESS: _____


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

DEMETRIUS GOODWIN
(CONTINUED)

DATE: 02/07/2009 TIME: 17:35

TO TAKE HER BY CALLING HER NAME. WE DECIDED THAT IT WOULD TAKE
TOO LONG FOR AN AMBULANCE TO GET HERE SO WE GOT IN HIS CAR AND
DROVE TO THE HOSPITAL.

Q: WHAT IS YOUR COUSIN'S NAME?

A: MARQUI CARTER

Q: CAN YOU DESCRIBE DEMETRIA'S CONDITION WHILE SHE WAS IN THE CAR?

A: TO BE HONEST SHE WAS LIFELESS. I KNOW SHE WAS ALREADY GONE BY THEN.

Q: WHY DID YOU WAIT TO TAKE HER TO THE HOSPITAL?

A: THAT WASN'T THE FIRST TIME THAT SHE'S FALLEN AND HURT HERSELF. WE
ALWAY TOOK HER RIGHT AWAY AND THERE WAS NOTHING WRONG WITH HER.
SHE SEEMED TO BE OK AFTER SHE FELL.

This statement was made in the presence of J.C. MAULDIN
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without
reward or intimidation. All of the above is the truth, the whole truth, and
nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: [Signature]

WITNESS: _____

WITNESS: _____

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

DEMETRIUS GOODWIN

(CONTINUED)

227

DATE: 02/07/2009TIME: 17:35

Q: DID ANYONE ELSE SEE HER FALL?

A: NO... JUST ME AND MARQUIS' KIDS. I DIDN'T SEE THE ACTUAL FALL
THOUGH.

Q: WAS SHAYLA AT THE HOUSE WHEN YOU WENT TO WORK?

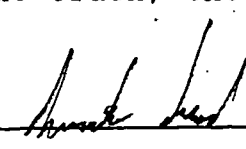
A: YEAH.

Q: DID SHE SAY ANYTHING TO YOU ABOUT DEMETRIA ACTING FUNNY?

A: NO... I TOLD HER ~~THE ACTUAL~~ WHAT HAD HAPPENED AND SHE ASKED ME
IF SHE WAS ALRIGHT.

Q: WAS SHAYLA THERE WHEN YOU NOTICED THAT DEMETRIA WAS HAVING TROUBLE BREATHING?

A: NO. SHE WAS OUT RUNNING ERRANDS

This statement was made in the presence of J.C. MAULDIN
of the Richland County Sheriff's Department.I make this statement of my own free will and accord, without
reward or intimidation. All of the above is the truth, the whole truth, and
nothing but the truth, so help me God.SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.SIGNED: 

WITNESS: _____

WITNESS: _____

J. m.
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

DEMETRIUS GOODWIN
(CONTINUED)

DATE: 02/07/09 TIME: 17:35

Q: IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO TELL ME?

A: NO

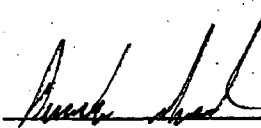
Q: DO YOU PROMISE THAT THE STATEMENT THAT YOU HAVE GIVEN ME HAS BEEN
AS TRUE AND CORRECT?

A: YES SIR.

This statement was made in the presence of J.C. Mawdsin
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without
reward or intimidation. All of the above is the truth, the whole truth, and
nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF FEB 2009.

SIGNED: 

WITNESS: _____

WITNESS: _____

J. M. E.
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 01/17/2017.

Page of Pages.

**STATE'S
EXHIBIT**

2

Statement of

Demetrius Antoine Goodwin
139 Millis Rd
Columbia, SC 29061
(803)695-9365
(803)397-5498

Made at

Columbia, South Carolina, this 13th day of April 2009, at 12:00 hours, in the presence of Inv. R. Martin and Inv. J.C. Mauldin of the Richland County Sheriff's Department.

I, Demetrius Goodwin, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q: Martin A: Goodwin

Q: Can you describe for me what happened on the morning of Feb. 5th, 2009.

A: I got home from work and woke Denetria up. I got her something to eat. We watched TV for a little while. Her mom was asleep. After she went to work I went over to Trell's house. She played with the kids. Trell left and went to the store to get cigarettes. That's when the incident happened. She got up and was fine. We went back home and I ran a bath for her that's when she started throwing up. I put her in the bath and that's when I saw bruises like the one on her head and the one on her head. I touched them and they didn't really bother her. I put her down on the couch for a little while and then I put her to

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: X [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of April, 2009.

Sworn to and subscribed before me
This 13 day of April, 2009

Signed X [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 01/17/2017.

bed. I tried to feed her but she didn't have an appetite. I went to work a little while later. When I got home I woke her up. She still didn't have an appetite. She watched TV for a little while. We put her down again I went to take a nap. That's when Shayla said that she had to take her Grandmother on an errand. I woke up and heard her wheezing. I ran in there and saw that she wasn't responding. I picked her up and she gave a faint cry. I held her tight. Then I laid her on the bed and ran out the door. I called for Trell. That's when I ran back into the house and started CPR. I ran outside and got Trell. He came in the house. Her breathing was real slow. That's when we got into the car.

Q: Earlier you told me that you hugged her tightly, did you do this to hurt Denetria on purpose.

A: I woke up and heard her wheezing. I went into the room and she was laying on her side wheezing. I put my finger in her hand and she didn't grab it. I picked her up and she cried a little. She didn't hug me back like she normally does. I hugged her really tight. It got worse after I hugged her. I didn't do it on purpose. I swear that I didn't mean it.

Q: When you gave her that hard hug, did it knock the air out of her?

A: Yeah. She started making a hiccupping sound like she couldn't breathe. That's when I laid her down and went to get Trell.

Q: Did you ever grab her face.

A: Yes. The day before I grabbed her because she was swearing?

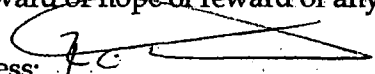
Q: Why didn't you mention the hug to Inv. Mauldin when he interviewed you on the day of the incident?

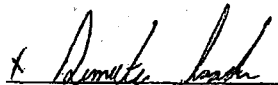
A: I didn't want anyone to think that I had killed her.

Q: Was everything else that you told Inv. Mauldin about the day before true?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

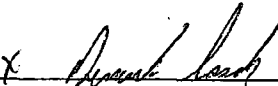
Signed: 

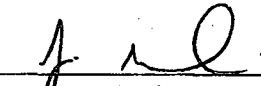
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of April, 2009.

Sworn to and subscribed before me

This 13 day of April, 2009

Signed 


Notary Public for South Carolina

My commission expires 01/17/2017.

Q: When she woke you up, was it because she was acting bad?

A: No. I heard her wheezing.

Q: When you picked her up, did you feel or hear anything pop?

A: No. I wasn't in that mind frame. I was just scared.

Q: Do you think that you could have squeezed her hard enough to break her ribs.

A: Yes. I was so scared.

Q: How long did you hug Denetria?

A: It was for a little while. I could have been for about two minutes?

Q: At any point did you place your hand or any other object over Denetria's face?

A: No.

Q: Can you think of anything that I didn't ask you that may be important?

A: I can go back to the day before. I spanked her on the legs for spitting on people and I grabbed her face for using profane language.

Q: What time did you go to sleep on the 6th of February?

A: Around 9 or 10 am.

Q: How long had you been asleep before you were awake by Denetria?

A: Maybe an hour or so.

Q: When you awoke how were you feeling?

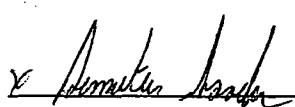
A: I was concerned about her.

Q: When Denetria woke you up, were you angry, upset, or frustrated?

A: No. I was worried when I heard her.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

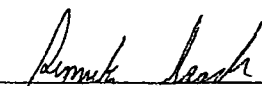
Signed: 

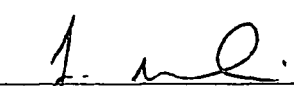
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of APRIL, 2009.

Sworn to and subscribed before me

This 13 day of APRIL, 2009

Signed 


Notary Public for South Carolina

My commission expires 01/17/2017.

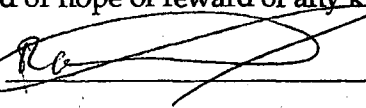
Q: Why did you give her the hug?

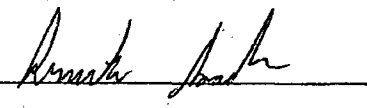
A: I was scared at the way she was reacting and gave her a hug to get a response.

Q: Do you promise that everything that you have told us today has been true and correct?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

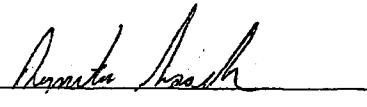
Signed: 

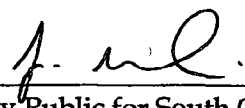
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of APRIL, 2009.

Sworn to and subscribed before me

This 13 day of APRIL, 2009

Signed: 


Notary Public for South Carolina

My commission expires 01/17/2017.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: DEMETRIUS A. Goodwin PLACE: 1725 Mylar St
 OFFICER (S): R.E. Martin
 DATE: 4/15/09 TIME: 1415h

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: X Demetrius Goodwin

WITNESS: _____

WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: X Demetrius Goodwin

WITNESS: _____

**STATE'S
EXHIBIT**

3

4

Statement of

Demetrius Antoine Goodwin
139 Millis Rd
Columbia, SC 29061

Made at

Columbia, South Carolina, this 15 day of April, 2009, at 1420 hours, in the presence of
Investigator R. E. Martin of the Richland County Sheriff's Department.

I, Demetrius A. Goodwin, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q: = Investigator R. E. Martin

A: = Demetrius A. Goodwin

Q: Did you want to add something to your statement that you gave on 04/13/2009?

A: Yes

Q: When you hugged Denetria Goodwin very hard did that cause her death?

A: Yes but it wasn't intentional. I was scared at the time and I didn't have a ride or a way to make contact. I just wanted to hug her for comfort.

Q: Was there any life insurance on Denetria?

A: yes just to pay off the funeral.

Q: Who had the policy?

A: I did through UPS. It was a family plan.

Q: Did you know that when you were squeezing her that she was not breathing?

A: no sir.

Q: When did you realize that she wasn't breathing after the hug?

A: After the CPR and my friend came over.

Q: is there anything else that you would like to add to this statement?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 15 day of April, 2009.

Sworn to and subscribed before me

This 15 day of April, 2009Signed: [Signature]

[Signature]
 Notary Public for South Carolina

My commission expires 4/12/19

A: I really loved her and I tried to be the best father I could be. I never intended to cause her harm.

Q: Is everything in this statement the truth?

A: yes. *OG*

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: *[Signature]*

Signed: *X [Signature]*

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 15 day of April, 2008.

Sworn to and subscribed before me
This 15 day of April, 2008

Signed: *X [Signature]*

[Signature]
Notary Public for South Carolina

My commission expires 9/21/2011

WITNESSES

(S) Capt. SMITH - RCSD

✓ Rob Martin - RCSD

DP ARREST WARRANT NUMBER
09113

ACTION OF GRAND JURY

TRUE BILL

Heaven Ramo
Foreperson of Grand Jury
Date: APR 16 2009

VERDICT

Foreperson of Petit Jury
Date:

236

DOCKET NO. 2009-GS-40-03175

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE
vs.

Demetrius Goodwin

Indictment for

HOMICIDE BY CHILD ABUSE

SC Code: 16-3-85(A)(1)(B)(1)

CDR Code: 2356

Class: EXM/FELONY(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on *April 15, 2009*, the Grand Jurors of Richland County present upon their oath:

HOMICIDE BY CHILD ABUSE

THAT Demetrius Goodwin DID IN RICHLAND COUNTY ON OR ABOUT February 6, 2009, CAUSE 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 IN VIOLATION OF S.C. CODE SECTION 16-3-85(A)(1)(B)(1).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



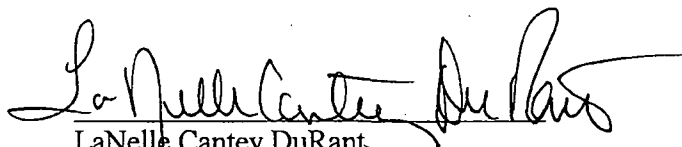
WARREN B. GIESE, SOLICITOR

**THIS PAGE INADVERTENTLY
LEFT BLANK**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 15th, 2012



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUN 19 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS GOODWIN,

APPELLANT

APPELLATE CASE NO. 2011-193927

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<u>State v. Hernandez</u> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	9
<u>State v. Arnold</u> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	9
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	9
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005).....	9
<u>State v. Jarrell</u> , 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002).....	8, 10
<u>State v. Jefferies</u> , 316 S.C. 13, 446 S.E.2d 427 (1994)	11
<u>State v. Latimore</u> , 397 S.C. 9, 723 S.E.2d 589 (2012)	9
<u>State v. McCoombs</u> , 368 S.C. 489, 629 S.E.2d 361 (2006)	9
<u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000)	9
<u>State v. Sterling</u> , 723 S.E.2d 176 (2012).....	10

Statutes

South Carolina Code Sect. 16-3-85	10
---	----

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion for a directed verdict when the state failed to prove he acted with extreme indifference when his baby became seriously ill and he panicked and hugged her so severely that she died?

STATEMENT OF THE CASE

On April 15, 2009, the Richland County Grand Jury indicted Demetrius Goodwin on the charge of homicide by child abuse. On March 15 – 18, 2011, Goodwin proceeded to trial before the Honorable W. Jeffrey Young and a jury. He was represented by Kris Hines, Nicole Singletary, and Tracy Pinnock. The state was represented by Kathryn “Luck” Campbell, Joanna McDuffie, and Carter Potts. The jury returned a verdict of guilty as indicted. Judge Young sentenced Goodwin to twenty-five years. Goodwin’s attorney filed a Post-Trial Motion for a New Trial or Reconsideration of the Sentence. A hearing was held before Judge Young on May 9, 2011. On June 13, 2011, Judge Young issued an order denying the motions. Goodwin’s attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying appellant's motion for a directed verdict when the state failed to prove he acted with extreme indifference when his baby became seriously ill and he panicked and hugged her so severely that she died.

On February 6, 2009, Demetrius Goodwin entered the emergency room at Palmetto Baptist carrying his twenty-three month old baby girl who was not breathing. The nurse who took the baby said the father was in a panic. There was no sign of life in the child. R. 15, ll. 13 – 25; R. 16, ll. 1 – 25; R. 17, l. 1 – 25. Demetrius told the nurse that the child fell down stairs the night before, and seemed fine at first. Then she had one episode of brown vomiting that night. The next morning the child had another episode of brown vomiting and seemed whiny, but was walking around. R. 18, ll. 1 – 25; R. 19, ll. 1 – 25.

The emergency room doctor, Dr. Mercier, said a team worked on the child for thirty minutes but could not revive her. There was never any sign of life. He did observe signs of trauma to the chest wall, but he saw no signs of the brown vomit. R. 7, ll. 1 – 25; R. 8, ll. 1 – 23; R. 9, ll. 1 – 22; R. 10, ll. 3 – 25; R. 11, ll. 1 – 25; R. 12, ll. 1 – 25; R. 13, ll. 1 – 25; R. 14, ll. 16 – 24.

Marquis Carter lived across the street from Goodwin, and he had two small children. On February 5, 2009, Goodwin and his daughter went to Carter's house to watch his children while Carter ran an errand. When Carter returned, Goodwin told him his daughter fell down the stairs. Carter said she looked fine. R. 20, ll. 1 – 25; R. 21, ll. 1 – 25; R. 22, ll. 1 – 20.

The next day, February 6, 2009, Goodwin asked Carter if he could take his daughter to the doctor because she was not breathing right. Goodwin returned to his apartment. Then

he came rushing out and told Carter they had to rush because the child was not breathing.

When Carter ran into the apartment and saw the child, he said she did not respond and had "yellow stuff" coming from her nose. He told Goodwin to call an ambulance. Then Carter decided not to wait for the ambulance, and they rushed the child to the hospital. R. 22, ll. 21 – 25; R. 23, ll. 1 – 25; R. 24, ll. 1 – 22. Carter said Goodwin broke down in tears when they got to the hospital. R. 24, ll. 18 – 24; R. 25, ll. 1 – 9.

On April 2, 2009, the pathologist who performed the autopsy, Dr. Bradley Marcus, told the solicitor and law enforcement that the fall was not the cause of death of the child. He said the cause of death was asphyxia due to chest compression. R. 61, ll. 7 – 25; R. 62, ll. 17 – 25; R. 70, ll. 19 – 25; R. 26, ll. 8 – 25; R. 27, ll. 1 – 19.

Dr. Marcus explained that two ribs of the child were fractured at the spine in the back. This was significant because a child's ribs were difficult to break and were usually indicative of child abuse. R. 63, 2- 25; R. 64, ll. 1 – R. 65, ll. 25. He found blunt trauma to the back of the head which resulted in facial and forehead contusions, and blunt trauma to the chest and abdomen. However, her death was caused by the child's chest being compressed so hard that she could not move her chest so her lungs could fill with oxygen, and she suffocated within one to one and a half minutes. R. 66, ll. 14 – R. 72, ll. 12.

Investigator Rob Martin of the Sheriff's Department met with Goodwin on April 13, 2009 to discuss the pathologist's report. R. 43, ll. 1 – 25; R. 46, ll. 1 – 25; R. 48, ll. 1 – 16; R. 49, ll. 25. Goodwin was told of the pathologist findings, that the fall did not cause the child's death. Goodwin then gave a statement to Investigator Martin where Goodwin said on the morning of February 6, the child did not have an appetite. He heard her wheezing and picked her up. She gave a cry so he held her tight and then put her on the bed.

He said he hugged her “real tight” and her breathing got worse. He said that he did not do it on purpose and he did not mean it. That was when he got Carter. R. 52, ll. 1 – 25; R. 53, ll. 1 – 25; R. 54, ll. 1 – 25; R. 55, ll. 1 – 25; R. 56, ll. 1 – 25; R. 57, ll. 1 – 25; State’s Exhibit 2 (ROA p. 229).

Investigator Martin said that Goodwin said several times that he had killed his daughter. Goodwin was emotional and crying. He told the child’s mother, Shayla Matthews, that he had killed his daughter with this hard hug. R. 58, ll. 1 – 21.

On April 15, 2009, the child’s mother and grandparents and Goodwin met with the coroner, Gary Watts, Investigator Martin, and the pathologist, Dr. Marcus at the request of the mother who wanted to know the results of the autopsy. R. 28, ll. 1 – 25. When Dr. Marcus told the family that the fall did not cause the child’s death but that it was asphyxiation due to some type of squeezing, Goodwin asked coroner Watts to speak with him in private. R. 29, ll. 1 – 25; R. 30, ll. 1 – 25.

Goodwin told him that he realized he had killed his baby when he squeezed her in a hug for a minute or two. Coroner Watts said Goodwin was emotional and crying. R. 31, ll. 1 – 25; R. 32, ll. 1 – 12. Coroner Watts then got investigator Martin who took a written statement from Goodwin. R. 32, ll. 13 – 25. Goodwin said he did not mean to harm the child, and he was a good father. He was crying and was upset. R. 32, ll. 22 – 25; R. 33, ll. 1 – 7; State’s Exhibit 4 (ROA p 234).

At the close of the state’s case, defense counsel moved for a directed verdict on the basis that the state had not proved all of the elements of homicide by child abuse because the state did not prove that Goodwin had the mental state of “extreme indifference” as required by the statute. Counsel cited the case of State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct.

App. 2002), which held that extreme indifference needed to prove homicide by child abuse was a “mental state akin to intent characterized by a deliberate act culminating in death.” R. 82, ll. 1 – 25; R. 83, ll. 1 – 10. Counsel argued:

In South Carolina, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person’s conduct has created or failed to exercise ordinary or due care.

R. 83, ll. 11 – 18.

The state argued that the testimony was that Goodwin picked up his daughter and squeezed her so hard for one to two minutes that her ribs were cracked and she went limp in his arms. The judge denied the directed verdict motion. R. 84, ll. 1 – 25.

Goodwin did not testify, but the defense called their own expert, Dr. Stan Kessler. R. 87, ll. 10 – 25; R. 88, ll. 1 – 25; R. 91, ll. 1 – 25; R. 92, ll. 1 – 25. After extensive testimony, Dr. Kessler concluded that the fractured ribs did not cause the child’s death. R. 88 – R. 178, ll. 14. He stated:

The cause of death in this case is Waterhouse-Friderichsen syndrome or adrenal shock due to hemorrhagic disruption of the adrenal and dissolution of the adrenal by a Gram-positive bacteria, diplococcus pneumonia, causing all of the changes we see.

R. 142, ll. 5 – 16.

At the close of the state’s reply testimony, defense counsel renewed all motions and objections including their directed verdict motion. The judge denied their motion. R. 184, ll. 4 – 25; R. 185, ll. 1 – 6.

During his charge to the jury, the judge instructed the jury on extreme indifference. R. 187, ll. 14 – 25; R. 188, ll. 1 – 25. The jury, during their deliberations, sent a note asking

the judge to explain extreme indifference to human life. R. 189, ll. 1 – 25; R. 190, ll. 1 – 2. The judge read the charge again on extreme indifference. R. 190, ll. 8 – 25; R. 191, ll. 1 – 25; R. 192, ll. 1 – 10.

The jury returned their verdict and Goodwin was sentenced to twenty-five years. R. 193, ll. 4 – 25; R. 194, ll. 18 – 25; R. 195, ll. 1 – R. 196, ll. 7.

At the May 9, 2011 hearing on defense counsel's motion for a new trial or reconsideration of the sentence, defense counsel argued that new trial should be granted based on the directed verdict motion because the state did not prove that Goodwin acted with extreme indifference. Counsel argued that the solicitor stated in her closing that this was not intentional. May 9, 2011 R. 205 ll. 1 – 25; May 9, 2011 R. 203 ll. 6 – R. 207, ll. 25; March 14, 2011 R. 186, ll. 7 – 15.

On appeal of a denial of a directed verdict of acquittal, the Supreme Court must look at the evidence in the light most favorable to the state. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id.; State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

A directed verdict motion should be granted if there is direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 723 S.E.2d 589 (2012). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006).

South Carolina Code Sect. 16-3-85 provides:

(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.

In State v. Jarrell, *supra*, the Court of Appeals defined extreme indifference as a mental state akin to intent characterized by a deliberate act culminating in death. The court went on to say that in this state, the indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created or failed to exercise ordinary or due care.

In State v. Jarrell, *supra*, the Court affirmed the trial court's denial of Jarrell's directed verdict motion finding that Jarrell acted with extreme indifference because she knew when she left home the morning of the incident that her child would be killed. She did not protect her child as she had helped plan the child's murder.

Goodwin's case is distinguished because he did not plan any harm to his child, and he did not leave her in a situation where he knew there was a risk of harm to her. He hugged his daughter when he saw that she was sick. He sought help when he saw she had trouble breathing.

In State v. Sterling, 723 S.E.2d 176 (2012), the Supreme Court held that knowledge or intent that his conduct violated the securities law is not required to convict a defendant of securities fraud, but the state must present evidence that the defendant made statements or committed acts in a severely reckless manner such that he knew presented a danger of misleading an investor.

In State v. Sterling, Id., the Supreme Court wrote:

What is at issue here is not whether Sterling acted intentionally, but whether his mental state met the *mens rea* standard we created in Morris, that is, did he know, or was it so obvious that he must have known, that the information he disseminated presented a danger of misleading buyers or sellers.

The Supreme Court wrote that they were within their authority to determine the level of intent required for a violation of the securities statute because the legislature did not specify any *mens rea*.

The Supreme Court cited the case of State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994), where they held that recklessness is one level of criminal intent, as are knowledge and negligence. The Court wrote that under Jefferies, intentional connotes a higher sense of awareness than mere recklessness.

The state did not present sufficient evidence that Goodwin acted with extreme indifference. Goodwin's statements indicated: "I did not do it on purpose;" "I did not mean it;" "I was concerned about her;" "I was scared at the way she was reacting and gave her a hug to get a response." The witnesses which included Carter, Coroner Watts, Investigator Martin, and the nurse all testified that Goodwin was upset, crying, emotional, and upset about his daughter.

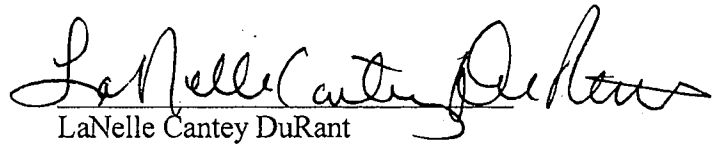
The trial judge's charge on extreme indifference was inconsistent as he charged that indifference was the failure to exercise ordinary or due care which. Then he charged that extreme indifference was deliberate conduct which was willful. Extreme indifference is not the same as lack of due care or negligence as negligence is a less culpable *mens rea* than extreme indifference.

The trial court should have granted the directed verdict motion because there was no evidence that Goodwin acted extreme indifference.

CONCLUSION

Based on the above, the conviction should be reversed, and the case remanded for the circuit court to grant the directed verdict.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written in a cursive style.

LaNelle Cantey DuRant
Appellate Defender

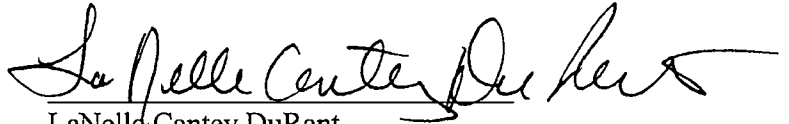
ATTORNEY FOR APPELLANT

This 24th day of October, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 24, 2012

A handwritten signature in black ink, reading "LaNelle Cantey DuRant", with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

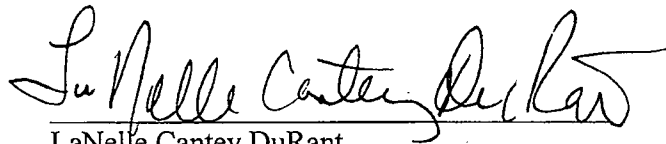
V.

DEMETRIUS GOODWIN,

APPELLANT

CERTIFICATE OF SERVICE

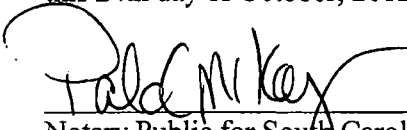
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of October, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of October, 2012.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 24, 2012

Julie Kate Keeney, Esquire
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Demetrius Goodwin

Dear Julie:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/pcm

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2011-193927

RECEIVED
JUN 19 2013
S.C. Supreme Court

THE STATE,

Respondent

v.

DEMETRIUS GOODWIN,

Appellant

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General
S.C. Bar No. 79818

Post Office Box 11549
Columbia, SC 29211 (803)
734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
ARGUMENT	
The trial court properly denied Appellant's motion for a directed verdict because sufficient evidence was presented establishing Appellant acted with extreme indifference, thereby satisfying that element of homicide by child abuse	11
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases:

<u>McKnight v. State</u> . 378 S.C. 33, 661 S.E.2d 354 (2008)	12
<u>State v. Jarrell</u> . 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002)	8,11,12
<u>State v. Kelsev</u> . 331 S.C. 50, 502 S.E.2d 63 (1998).....	11
<u>State v. Lindsev</u> . 355 S.C. 15, 583 S.E.2d 740 (2003)	11
<u>State v. McKnight</u> . 352 S.C. 635, 576 S.E.2d 168 (2003).....	11,13
<u>State v. Tucker</u> . 273 S.C. 736, 259 S.E.2d 414 (1979)).....	12
<u>Tate v. State</u> . 351 S.C. 418, 570 S.E.2d 522 (2002)	13

Other Authorities:

S.C. Code Ann. 16-3-10 (2003)	13
S.C. Code Ann. 16-3-85(A)(1) (2003)	12
23 S.C. Jur. <u>Homicide</u> § 29 (1994).....	13
William Shepard McAninch et al., <u>The Criminal Law of South Carolina</u> (5th ed. 2007).	12

STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for a directed verdict because sufficient evidence was presented establishing Appellant acted with extreme indifference, thereby satisfying that element of homicide by child abuse.

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant for homicide by child abuse. (ROA p. 236-237) On March 13-18, 2011, Appellant proceeded to trial before a jury. Kris Hines, Tracy Pinnock, and Nicole Singletary represented Appellant, and Kathryn Luck Campbell, Joanna McDuffie, and Carter Potts represented the State. The jury found Appellant guilty, and the Honorable W. Jeffrey Young sentenced Appellant to twenty-five years' imprisonment. (ROA. p. 193, p. 196.) Appellant filed a motion for a new trial and a motion to reconsider the sentence. The trial court held a hearing on May 9, 2011, and Judge Young issued an order denying the motions on June 13, 2011.

On June 14, 2011, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On February 6, 2009, Appellant asked his cousin to take him and his 23-month-old daughter (Victim) to the hospital because she was not breathing. (ROA. p.8 lines 3-9; ROA. p. 16 lines 2-11; ROA. p.23 lines 3-11.) A team of medical professionals attempted to revive Victim, but she was pronounced dead after approximately thirty minutes of unsuccessful resuscitation measures. (ROA. p.9 lines 7-13; ROA. p. 13 lines 12-14.) Dr. Bradley Marcus performed an autopsy and ruled the death a homicide based on some unexplained rib fractures. (ROA. p.67 lines 1-5.) Dr. Matthew Marcus, a radiologist, confirmed the rib fractures with x-rays and determined squeezing could have caused the fractures. (ROA. p.73 lines 1-2; ROA. p.75 lines 1-13.) He further determined that CPR could not have caused the fractures because one of them was posterior and with CPR injuries, only anterior rib fractures would occur. (ROA. p.74 lines 4-7; ROA. p.76 lines 23-25; ROA. p.77 lines 1-8.)

On February 7, 2009, Investigators Joshua Mauldin and John Baker, of the Richland County Sheriffs Department, contacted Appellant and Shay la Matthews, Victim's mother. (ROA. p.35 lines 19-24.) Investigator Mauldin interviewed Appellant, who gave a statement. (ROA. p.36 lines 15-16; ROA. p.37 lines 18-23.) In the statement, Appellant reported that on February 5, 2009, he heard Victim and his cousin's children playing on the stairs at his cousin's house, heard a thud, and saw Victim lying flat at the bottom of the stairs.¹ (ROA. p.38 lines 2-10.) He explained that she cried and then got back up and was jumping, playing, and laughing. (ROA. p.38 lines 20-24.)

¹ In order to ascertain what happened, investigators obtained the services of the Assessment Resource Center to attempt to interview the four-year-old child who was playing with Victim when the fall would have happened, but he was unable to respond to questioning. (ROA. p.44 lines 19-21; ROA. p.45 lines 7-20.)

When they got home, Appellant reported Victim vomited twice. (ROA. p.39 lines 16-17.) He also told Investigator Mauldin he noticed marks on Victim's forehead and chest when he bathed her that night and a mark on her back the next day. (ROA. p.40 lines 9-12.) Appellant then explained he woke up at 11:45 am on February 6, 2009, and heard Victim wheezing. (ROA. p.40 lines 20-21.) He explained in his statement:

I went to go pick her up. She gave a small cry and looked like she was hurting. Her body seemed limp. I put her on the bed in her mother's room. I saw that her breathing was getting slower. I tried to do some CPR. We don't have a phone in the house and I don't have a cell phone. When I was doing CPR I noticed green mucus coming out of her nose. When I was doing mouth to mouth, I saw a yellowish substance on her mouth. I turned her on her side so it could run out. I ran outside to go to my cousin's house. I saw him outside. I told him that something was wrong with [Victim] and that he needed to call 911. I ran back in to the house and saw that she had gotten worse. I came back outside and called my cousin to the house. He came over and tried to wake her by calling her name. We decided that it would take too long for an ambulance to get here so we got in his car, drove to the hospital.

(ROA. p.40 lines 22-25; ROA. p.41 lines 1-13.) When asked to describe Victim's condition on the way to the hospital, Appellant said she was lifeless and he knew she was gone. (ROA. p.42 lines 1-4.)

On April 2, 2009, the coroner's office, the solicitor's office, and the sheriffs office held a meeting. (ROA. p.26 lines 8-25; ROA. p.34 lines 18-23.) At the meeting, Dr. Bradley Marcus went over his findings, pointing out they were in line with an asphyxiation death, not a fall. (ROA. p.27 lines 3-19.) As a result of the meeting, Investigator Robert Martin determined it was necessary to re-interview Appellant. (ROA. p.46 lines 7-15.) After attempting to contact Appellant at his home on two

occasions, Investigator Martin left a phone message with Shayla Matthews. (ROA. p.47 lines 4-24.)

On April 13, 2009, Appellant went to the sheriffs department. (ROA. p.49 lines 2-4.) He gave a statement after he was advised of his rights. (ROA. p.50 lines 20-25; ROA. p.51 lines 14-16.) In the statement, Appellant claimed to hear Victim wheezing when he woke up on February 6, 2009. (ROA. p.54 lines 21-22.) He explained he ran to her, saw she was not responding, picked her up, held her tight, and put her on the bed and ran to his cousin's home. (ROA. p.54 lines 22-25.) Appellant reported he went back to his home and started CPR. (ROA. p.55 lines 1-2.) When asked by the investigator if he hugged Victim tightly to hurt her on purpose, Appellant explained, "I picked her up and she cried a little. She didn't hug me back like she normally does. I hugged her really tight. It got worse after I hugged her. I didn't do it on purpose. I swear that I didn't mean it." (ROA. p.55 lines 5-13.) Next, Investigator Martin asked if the hug knocked the air out of her. (ROA. p.55 lines 14-15.) Appellant answered, "Yeah. She started making a hiccupping sound like she couldn't breathe. That's when I laid her down to get Terrell."² (ROA. p.55 lines 16-18.) When asked if he thought he could have squeezed Victim hard enough to break her ribs, Appellant replied, "Yes, I was so scared." (ROA. p.56 lines 13-15.) Appellant also admitted in his statement to Investigator Martin that the day before she died he grabbed Victim's face for swearing and spanked her legs for spitting on people. (ROA. p.55 lines 19-23; ROA. p.56 lines 24-25.) When Investigator Martin asked Appellant why he did not mention hugging Victim when Investigator

² Terrell seems to be a nickname for Marquis Carter, Appellant's cousin who drove Victim and Appellant to the hospital. Additionally, although Appellant refers to him as his cousin, Carter's testimony is he only knew Appellant about a year. (ROA. p.21 lines 2-3.)

Mauldin interviewed him the day of the incident, Appellant stated, "I didn't want anyone to think that I had killed her." (ROA. p.55 lines 24-25; ROA. p.56 line 1.)

Victim's family soon after requested a meeting with the coroner, and it was held on April 15, 2009. (ROA. p.28 lines 2-15.) During that meeting, the family was told the death was not caused by a fall but by some type of asphyxiation or squeezing. (ROA. p.29 lines 10-20.) After the explanation, Appellant asked to speak to Coroner Gary Watts alone. (ROA. p.30 lines 11-12.) Appellant told Watts he realized that when he squeezed his daughter in a hug for a minute or two, he had killed her. (ROA. p.31 lines 2-4.) Coroner Watts told Appellant to explain what had happened to Investigator Martin. (ROA. p.32 lines 15-19.) Appellant gave another statement to Investigator Martin, which stated in part:

Question: When you hugged [Victim] very hard, did that cause her death?

Answer: Yes, but it was unintentional—I'm sorry. But it wasn't intentional. I was scared at the time and I didn't have a ride or a way to make contact. I just wanted to hug her for comfort.

(ROA. p.59 lines 21-25; ROA. p.60 line 1.) Appellant estimated the hug lasted two minutes. (ROA. p.60 lines 21-24.) Subsequently, Appellant was charged with homicide by child abuse. (ROA. p.236-237)

At trial, Dr. Mark Phillip Mercier testified Victim was basically lifeless when she was brought to the hospital with no breathing, no spontaneous respirations, and non-reactive pupils. (ROA. p.8 lines 17-21.) Dr. Mercier further testified that once a person has died, her pupils no longer respond to light. (ROA. p.8 lines 24-25.) Dr. Mercier explained that Victim never showed signs of life. (ROA. p. 10 lines 4-6.)

Zemulous Dozier, an investigator with the Richland County Coroner's Office, testified Appellant told him Victim fell down some stairs on February 5, 2009, and she vomited and had loose bowels that day. (ROA. p.4 lines 4-23.) The following day, the morning of February 6, Appellant reported Victim was wheezing and green matter flowed from her nose. (ROA. p.5 lines 7-15.) Dozier testified Appellant told him at that point he called 911 but cancelled the call and went to his cousin's house for help instead. (ROA. p.5 lines 16-20.) Dozier attempted to confirm the 911 call and discovered no record of the call existed. (ROA. p.5 lines 21-25; ROA. p.6 lines 1-3.)

Dr. Bradley Marcus, the pathologist who performed the autopsy, testified he ruled the death a homicide based on some unexplained rib fractures he found. (ROA. p.67 lines 1-5.) He determined the death was caused by asphyxia due to chest compression from squeezing and testified it would take approximately one to one and a half minutes to compress a child's chest so that she could no longer breathe. (ROA. p.69 lines 19-22; ROA. p.70 lines 1-5.) He further testified it takes an extremely large amount of force to cause compression asphyxia. (ROA. p.68 lines 23-25; ROA. p.69 line 1.) Additionally, he testified the death could not have been caused by Victim's alleged fall down the stairs the day before her death and that he could not even say the fall happened because the injuries on Victim were inconsistent with that type of fall. (ROA. p.70 lines 22-25; ROA. p.71 lines 6-25.)

Dr. Matthew Marcus, the radiologist, testified he confirmed the rib fractures with x-rays and determined squeezing could have caused the fractures. (ROA. p.73 lines 1-2; ROA. p.75 lines 1-13.) He further testified that CPR could not have caused the fractures because one of them was posterior and with CPR injuries, only anterior rib fractures would occur. (ROA. p.74 lines 4-7; ROA. p.76 lines 23-25; ROA. p.77 lines 1-8.) After

examining the brain and the histological slides, Dr. Jacob Vandersteenhoven, a pathologist, testified no disease was present in the brain or eyes and no signs of cerebral edema existed. (ROA. p.78 lines 14-15; ROA. p.79 lines 2-8; ROA. p.79 lines 9-20; ROA. p.80 lines 12-14.) Dr. Vandersteenhoven agreed that asphyxia was the cause of death. (ROA. p.81 lines 15-17.)

Marquis Carter, Appellant's cousin, testified that when he got back from the store on February 5, 2009, Appellant told him Victim had fallen down the stairs. (ROA. p.22 lines 7-10.) According to Carter, Victim was not crying and seemed to be playing normally with his children. (ROA. p.22 lines 15-20.)

After the State rested, Appellant moved for a directed verdict, first arguing the State had not met the element of homicide by child abuse that requires a showing that the death occurred under circumstances manifesting an extreme indifference to human life. (ROA. p.83 lines 1-6.) Appellant argued under State v. Jarrell³ that extreme indifference is the mental state akin to intent characterized by a deliberate act culminating in death and that the testimony had not met that element. (ROA. p.83 lines 7-18.) The State argued the testimony showed Appellant picked up Victim and squeezed her hard for one to two minutes, admittedly hard enough to crack her ribs, and that testimony was sufficient to submit the case to the jury. (ROA. p.84 lines 4-12.) Secondly, Appellant argued the State's case was based solely on circumstantial evidence. (ROA. p.85 lines 4-7.) The trial court denied the motion on both bases. (ROA. p.84 lines 24-25; ROA. p.86 lines 4-7.) As to the first argument, the trial court found that, based on the evidence presented on the fractures and the statement as to what caused the fractures, the jury

³ 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002).

would be able to consider that to be a deliberate act that would be indifferent or reckless to human life. (ROA. p.84 lines 18-22.)

Appellant called Dr. Stan Kessler to testify that, based on his review of the autopsy and slides, Victim died of Waterhouse-Friderichsen Syndrome. (ROA. p. 107 lines 14-15; ROA. 112 lines 12-13; ROA. p. 142 lines 10-16; ROA. p. 177 line 25; ROA. p. 178 lines 1-5.)

In reply, the State called Dr. Olga Rosa, who testified Victim did not die of Waterhouse-Friderichsen Syndrome based on her review of the autopsy, Victim's medical records, and the statements pertaining to Victim's condition before her death. (ROA. p.179 lines 1-15; ROA. p.183 lines 13-15.) Dr. Rosa opined that had Victim actually had the disease, she would have shown signs of fever, lethargy, and purple marks on her skin. (ROA. p.180 lines 1-13; ROA. p.182 lines 17-21.) Dr. Rosa pointed out children with this disease deteriorate over a period of time and would not be playing one morning and then die later the same day. (ROA. p. 181 lines 12-17.)

At the end of all the evidence, Appellant renewed his motion for a directed verdict, and the trial court denied it. (ROA. p. 184 lines 19-25; ROA. p. 185 lines 4-5.) After the jury began deliberating, it asked the trial court to explain extreme indifference to human life, and the trial court re-instructed the jury on that section of the jury charges. (ROA. p.189 lines 13-17; ROA. p.190 21-25; ROA. p.191 lines 1-25; ROA. p.192 lines 1-7.) Ultimately, the jury found Appellant guilty, and the trial court sentenced him to twenty-five years' imprisonment. (ROA. p. 193 lines 14-20; ROA. p. 196 lines 1-2.)

Appellant filed a motion for a new trial and a motion to reconsider the sentence. The trial court held a hearing on both motions on May 9, 2011. Among other things, Appellant argued he should be entitled to a new trial because the trial court denied his

motion for a directed verdict. (ROA. p.214 lines 18-22.) Specifically, he argued the State did not show the element of extreme indifference. (ROA. p.215 lines 20-25.) He also pointed out that because the jury asked to hear the law on extreme indifference again, it must have been confused about that element of the law. (ROA. p.215 lines 2-6.) The trial court took the matter under advisement and denied the motions in an order dated June 13,2011.

ARGUMENT

The trial court properly denied Appellant's motion for a directed verdict because sufficient evidence was presented establishing Appellant acted with extreme indifference, thereby satisfying that element of homicide by child abuse.

Appellant argues the trial court erred in denying the motion for a directed verdict because there was insufficient evidence he showed extreme indifference to human life. However, the evidence shows Appellant squeezed Victim in a hard hug for approximately two minutes, thereby asphyxiating her and causing her death. This evidence was sufficient to demonstrate extreme indifference, and the trial court correctly denied the motion for a directed verdict.

In reviewing the denial of a motion for a directed verdict, an appellate court must view the evidence in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, it must find the case was properly submitted to the jury. State v. Kelsev, 331 S.C. 50, 502 S.E.2d 63, 69 (1998). In ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight. *Id.* If the State presents any evidence which reasonably tends to prove the defendant's guilt or from which his guilt could be fairly and logically deduced, the trial court must send the case to the jury. State v. McKnight 352 S.C. 635, 576 S.E.2d 168, 173 (2003); State v. Jarrell 350 S.C. 90, 564 S.E.2d 362, 366 (Ct. App. 2002). The appellate court may reverse the trial court's denial of a motion for a directed verdict only if there is **no** evidence to support the trial court's ruling. State v. Lindsey, 355 S.C. 15, 583 S.E.2d 740, 742 (2003) (emphasis added).

Here, the State charged Appellant with homicide by child abuse. 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)(l) (2003). "For purposes of the [homicide by child abuse] statute, 'extreme indifference' has been defined as 'a mental state akin to intent characterized by a deliberate act culminating in death.'" McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting Jarrell, 350 S.C. at 98, 564 S.E.2d at 367). Our courts have equated it more to the reckless disregard of reckless homicide cases. William Shepard McAninch et al., The Criminal Law of South Carolina 96 (5th ed. 2007). Recklessness is:

something more than mere negligence or carelessness which indicates inadvertence, which is the failure to exercise due care, sometimes called ordinary care, which means such care as a person of ordinary reason and prudence would exercise under the same circumstances. Recklessness denotes a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.

McAninch et al., *supra* at 196 (quoting State v. Tucker, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979)). See also Jarrell, 350 S.C. at 98, 564 S.E. 2d at 367 ("In this state, indifference in the context of criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care.").

Appellant argues the State did not prove intent because he said he did not mean to kill Victim. However, this is not what is required under South Carolina's recognized definition of extreme indifference. If the legislature had wanted to require that type of

intent, it could have written the statute more like the murder statute, which requires malice aforethought. "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). "Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. It is the doing of a wrongful act intentionally and without just cause or excuse." Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002). In its section regarding the homicide by child abuse statute, South Carolina Jurisprudence specifically states, "Proof of malice aforethought is not required." 23 S.C. Jur. Homicide § 29 (1994). Appellant confuses the intent required for extreme indifference and the intent required for malice. Extreme indifference only requires the actor has the intent to do a deliberate act, and that act culminates in death. Nothing in the definition of extreme indifference indicates the act itself must be wrongful or done with the intent to cause harm. On the other hand, malice requires the actor to have wrongful intent to injure another. Thus, in this case of homicide by child abuse, Appellant's admission that he deliberately picked up Victim and hugged her "really tight" is sufficient to show the intent required for extreme indifference. The "really tight" hug was the deliberate act that caused the death.

In State v. McKnight, the supreme court affirmed the denial of McKnight's motion for a directed verdict on the issue of extreme indifference. 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003). McKnight was charged with homicide by child abuse after taking cocaine while she was pregnant and giving birth to a stillborn baby. *Id.* at 641-42, 576 S.E.2d at 171. "Given the fact that it is public knowledge that usage of cocaine is potentially fatal, [the court found] the fact that McKnight took cocaine knowing she was pregnant was sufficient evidence to submit to the jury on whether she acted with extreme indifference to her child's life." *Id.* at 646, 576 S.E.2d at 174. McKnight did not have to

intend to kill her unborn child by taking cocaine; she recklessly disregarded the risk her conduct created. That act culminated in the death of her baby and was sufficient to satisfy the intent required under the homicide by child abuse statute. In the case sub judice, it is reasonable to believe that it is public knowledge that squeezing a child tightly until she goes limp could be potentially fatal. Regardless of any intent to harm Victim, Appellant recklessly disregarded the risk his conduct created and, thus, had the requisite intent to satisfy the homicide by child abuse statute when he deliberately squeezed Victim tightly and she died as a result.

Victim died of asphyxia from squeezing or chest compression. The State proved through Appellant's statements that he gave Victim a really tight, hard hug that lasted approximately two minutes. Testimony also showed the squeezing caused two of Victim's ribs to fracture. The medical experts testified the fractured ribs could not have been caused by CPR because one rib was fractured posteriorly rather than anteriorly. Dr. Bradley Marcus ruled Victim's death a homicide. He testified the death could not have been caused by Victim's alleged fall down the stairs the day before her death. Moreover, Appellant's cousin testified Victim seemed fine when he got back from the store on February 5, 2009, she was not crying, and she was playing normally with his own children after the alleged fall.

The evidence shows Appellant gave inconsistent statements about what happened and initially attempted to cover up the fact that he squeezed Victim. When Appellant first spoke to Investigator Dozier of the coroner's office, he reported he called 911 when he first noticed Victim was wheezing but cancelled the call and ran to his cousin's home instead. However, no record of this alleged 911 call exists. Moreover, Appellant told Investigator Mauldin he had no phone in the home and no cell phone and he had to ask

his cousin to call 911. In his statement to Investigator Martin, Appellant also told him he had no way to make contact. Additionally, no witnesses could corroborate that Victim fell down the stairs the day before she died. Appellant himself reported he did not see the fall but noticed her lying at the bottom of the stairs crying. Investigator Martin attempted to interview the four-year-old child who was playing with Victim when the fall would have happened, but he was unable to respond to questioning. Dr. Bradley Marcus testified Victim's injuries were inconsistent with a fall down stairs. Appellant also admitted in his statement to Investigator Martin that the day before Victim died, he grabbed her face for swearing and spanked her on her legs because she was spitting on people. When asked by Investigator Martin why Appellant did not mention hugging Victim when Investigator Mauldin interviewed him on the day of the incident, Appellant stated, "I didn't want anyone to think that I had killed her."

Although Appellant's medical expert opined Victim died of Waterhouse-Friderichsen Syndrome, the State produced medical experts that contradicted this opinion and agreed with Dr. Bradley Marcus's findings of asphyxia by chest compression as the cause of death. Dr. Jacob Vandersteenhoven, a pathologist, examined the brain and the histological slides and testified no disease was present in the brain or eyes and no signs of cerebral edema existed. Moreover, Dr. Vandersteenhoven agreed that asphyxia was the cause of death. Additionally, Dr. Olga Rosa testified Victim did not die of Waterhouse-Friderichsen Syndrome based on her review of the autopsy, Victim's medical records, and the statements pertaining to Victim's condition before her death. Dr. Rosa opined that had Victim actually had the disease, she would have shown signs of fever, lethargy, and purple marks on her skin. Dr. Rosa pointed out children with this disease deteriorate over a period of time and would not just be playing one morning and then die the same

day. Dr. Rosa also agreed with the other medical experts that the cause of death was asphyxia by chest compression.

The State's theory was that Appellant deliberately squeezed Victim's chest until she went limp. Appellant's own statements show he deliberately picked up Victim when she was wheezing and hugged her tightly for approximately two minutes. Furthermore, he admitted he squeezed her hard enough to have broken her ribs. Although he may not have intended his act to culminate in Victim's death, viewing the evidence in the light most favorable to the State, the State established Appellant committed a deliberate act and the child died as a result of that act. That is sufficient to satisfy the extreme indifference element of the offense. The charge of homicide by child abuse was, therefore, properly submitted to the jury. The weight or credibility of the evidence was properly left for the jury as the fact-finders and not the trial court at the directed verdict stage. Thus, ample evidence supported the trial court's denial of the motion for a directed verdict. Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: C^AO^^
Jennifer Ellis Roberts
Bar #79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211 (803)
734-3727

ATTORNEYS FOR RESPONDENT

October 26, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable W. Jeffrey Young, Circuit Court Judge

Appellant Case No: 2011-193927

THE STATE,

Respondent, v. DEMETRIUS GOODWIN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies
with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Jennifer Ellis Roberts
Bar #79818

Office of the Attorney General Post
Office Box 11549 Columbia, SC
29211 (803) 734-3727

ATTORNEYS FOR RESPONDENT

October 26, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County Honorable
W. Jeffrey Young, Circuit Court Judge

Appellant Case No: 2011-193927

THE STATE,

Respondent,

v.

DEMETRIUS GOODWIN,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire S.C.
Commission on Indigent Defense Division
of Appellate Defense Post Office Box
11589 Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served
This 26th day of October, 2012



ANGELA BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211 (803)
734-3727