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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK ADAMS GAINES,

APPELLANT

APPELLATE CASE NO. 2022-000567

RECORD ON APPEAL

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1 In the Court of General Sessions of the
2 State of South Carolina, County of Oconee
3 10th Judicial Circuit
4

5 Case No.: 2018GS3700287

6 State of South Carolina,

7 Plaintiff(s),

8 vs.

Transcript of Record

9 Mack Adams Gaines,

10 Defendant(s).

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16 April 18-19, 2022

17 Walhalla, South Carolina

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22 BEFORE:

23 The Honorable R. Scott Sprouse

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JURY SELECTION

1 4-18-2022 PROCEEDINGS

2 THE CLERK: This is case number
3 2018GS3700287, the State of South Carolina versus Mack
4 Adams Gaines.

5 THE COURT: All right. Ladies and
6 gentlemen, this is a case in which Mr. Gaines is charged
7 on indictment 2018GS3700287 with abuse or neglect of a
8 vulnerable adult resulting in death. Mr. Gaines has
9 entered a plea of not guilty to that charge. And ladies
10 and gentlemen, the indictment is not evidence, it is
11 simply the charge by which the case is brought to court.
12 The State has the burden of proving the case against Mr.
13 Gaines beyond a reasonable doubt. And it'll be your
14 duty, if called to serve as a juror, to determine
15 whether or not the State has met its burden.

16 Now, I realize that I have just asked you
17 a number of questions, but I'm going to ask you some
18 more. I remind you that you are under oath. These
19 questions are not to pry into your private lives, but
20 just to ensure that both the State and the defendant
21 receive a fair and impartial jury to hear the facts of
22 this case.

23 So, first order of business, let me have
24 each attorney introduce themselves and their clients or
25 any parties that may be with them at the table during

JURY SELECTION

1 the trial of the case.

2 MR. ALDERMAN: Thank you, Your Honor.

3 May it please the Court. Ladies and gentlemen, my name
4 is Jason Alderman, I am the deputy solicitor for Oconee
5 County. I serve your elected tenth circuit solicitor,
6 Mr. David Wagner. And seated here with me is Brooke
7 Ennis, assistant solicitor.

8 MR. SMITH: Your Honor, may it please the
9 Court, my name is Fletcher Smith and I have the honor
10 and privilege of representing Mr. Mack Gaines who has
11 been charged in this case. I practice law primarily in
12 Greenville, Anderson, Oconee, the upstate. Thank you
13 very much.

14 THE COURT: Is there any member of the
15 jury panel related by blood or marriage or a close
16 personal -- or have a close personal or social
17 relationship with one of the attorneys or a party to
18 this case? If so, please stand.

19 (No response.)

20 THE COURT: There are none. Has any
21 member of the jury panel ever been represented by one of
22 these attorneys, a law firm that they may have been
23 involved with? Or had one of these attorneys or their
24 law firms represent someone against you in court? If
25 so, please stand.

JURY SELECTION

1 (No response.)

2 THE COURT: There are none. The
3 following is a list of potential witnesses that have
4 been provided by the parties. I am going to read these
5 names. Listen very carefully to these names. Dr. Brett
6 Woodard, Brandie Fant, Sergeant David McMahan, Dawn
7 King, Michael Corbin, Dr. Kevin Docyk, Dr. Vjendra
8 Singh, and Dr. Daniel Smith. Paul R. Thompson M.D.

9 Is any member of the jury panel related
10 by blood or marriage, or has a close personal or social
11 relationship with any of these potential witnesses? If
12 so, please stand.

13 Yes, ma'am, your number?

14 JUROR: 140.

15 THE COURT: 140.

16 JUROR: Dr. Daniel Smith is my director.

17 THE COURT: So you work with him?

18 JUROR: Yes.

19 THE COURT: Okay. Thank you, ma'am. I
20 am going to excuse you on this case. Just take your
21 seat. Number 140. Ma'am, you can keep your name tag.
22 Stay with us right now. You may have a seat.

23 Yes, sir.

24 JUROR: Forty-six.

25 THE COURT: Which witness do you know?

JURY SELECTION

1 JUROR: David McMahan. He is a good
2 friend of mine and I do a lot of work with him, you
3 know, in some of his other stuff other than law
4 enforcement. I have known him for many years.

5 THE COURT: So, Mr. Bryson, do you feel
6 that you could be fair and impartial if called to serve
7 in this case?

8 JUROR: I would say so, but it may be a
9 conflict of interest.

10 THE COURT: All right. Thank you, sir, I
11 am going to excuse you from this case. Keep your seat.
12 That is number 26. Anything further?

13 MR. SMITH: Nothing further from the
14 defense.

15 THE COURT: I'm asking the jury. But I
16 have more to go.

17 MR. SMITH: Okay.

18 THE COURT: Okay. Has any member of the
19 jury panel ever been treated by one of the doctors that
20 I just listed?

21 (No response.)

22 THE COURT: There are none. Now, has any
23 member of the jury panel seen anything on television,
24 heard anything on the radio, or on the Internet, social
25 media, or read any newspaper articles or any other media

JURY SELECTION

1 releases regarding the facts of this case? If so,
2 please stand.

3 Yes, ma'am, your number. Hold on a
4 minute, I am going to come forward.

5 JUROR: Yes, I read it in the paper.

6 THE COURT: What is your number?

7 JUROR: 104.

8 THE COURT: Ms. Longhill?

9 JUROR: Yes.

10 THE COURT: So, what did you hear?

11 JUROR: I read an article about this case
12 in the Journal.

13 THE COURT: Recent article?

14 JUROR: Yes.

15 THE COURT: Other than that, do you have
16 any knowledge about this case?

17 JUROR: No.

18 THE COURT: And having read that article,
19 do you feel that you could be fair and impartial if
20 called to serve?

21 JUROR: Yes, I do.

22 THE COURT: Okay, thank you, ma'am. You
23 may take your seat. All right. Any further?

24 (No response.)

25 THE COURT: Does any member of the jury

JURY SELECTION

1 panel have any other prior knowledge from any other
2 source about the facts of this case?

3 (No response.)

4 THE COURT: There are none. Has any
5 member of the jury panel family member or close personal
6 friend been prosecuted by the tenth circuit solicitor's
7 office?

8 (No response.)

9 THE COURT: There are none. Has any
10 member of the jury panel, family member, or close
11 personal friend been accused of or prosecuted for abuse
12 of or neglect of a vulnerable adult? If so, please
13 stand.

14 (No response.)

15 THE COURT: There are none. Does any
16 member of the jury panel know of any other reason why he
17 or she could not be fair and impartial if called to
18 serve as a juror in this case? If so, please stand.

19 (No response.)

20 THE COURT: There are none. Anything
21 further from the State?

22 MR. ALDERMAN: Nothing from the State,
23 Your Honor.

24 THE COURT: Anything from the defense?

25 MR. SMITH: Nothing from the defense,

JURY SELECTION

1 Your Honor.

2 THE COURT: All right. Madam clerk,
3 generate a list.

4 Ladies and gentlemen, what happens now --
5 show them the hopper. Get the hopper. I am going to
6 date myself. When I was a young lawyer we used to draw
7 names out of this thing. I tried my first case next
8 door in that old courthouse that is now falling down.
9 The clerk of court would pull the names out of the
10 hopper. Nowadays the computer does all of this for us.
11 So what is going to happen, Madam Clerk is going to
12 generate a list, the computer does it randomly, and we
13 are going to give the list to each side and let them
14 look at it for just a minute and we will take a short
15 break, and then we are going to have you come back in
16 and we will select the first jury.

17 Well, I misspoke, we are not going to
18 give the attorneys the list, that is silly. That is
19 civil court. I still have it on the brain.

20 (Pause.)

21 THE CLERK: As I call your name, please
22 come forward, turn at the bar and face the gallery.

23 165, Leo Simpson. What says the State?

24 MR. ALDERMAN: Please excuse the juror.

25 THE COURT: Sir, you have been excused

JURY SELECTION

1 from this case. You may be seated.

2 195, Abigail White. What says the

3 State?

4 MR. ALDERMAN: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. SMITH: Please excuse the juror.

7 THE CLERK: Ma'am, you have been excused

8 from this case. You may have a seat.

9 146, Cassie Ramey. What says the State?

10 MR. ALDERMAN: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. SMITH: Please excuse the juror from

13 this case.

14 THE CLERK: Ma'am, you have been excused.

15 You may have a seat.

16 31, Anthony Carroll. What says the

17 State?

18 MR. ALDERMAN: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SMITH: Swear the juror please.

21 THE CLERK: Sir, you may have a seat in

22 the jury box.

23 131, Evan Oliver. What says the State?

24 MR. ALDERMAN: Please present the juror.

25 THE CLERK: What says the defense?

JURY SELECTION

1 MR. SMITH: Excuse the gentleman from
2 this case, please.

3 THE CLERK: Sir, you have been excused
4 from this case. You may have a seat.

5 126, Suzanne Neal. What says the State?

6 MR. ALDERMAN: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. SMITH: Excuse the lady from this
9 case, please.

10 THE COURT: Ma'am you have been excused.
11 You may have a seat.

12 163, Kayla Sharpe. What says the State?

13 MR. ALDERMAN: Please excuse the juror.

14 THE CLERK: Ma'am, you have been excused
15 from this case. You may have a seat.

16 158, Michael Schulenburg. What says the
17 State?

18 MR. ALDERMAN: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SMITH: Swear the gentleman.

21 THE CLERK: Sir, you may have a seat in
22 the jury box.

23 84, Ronald Holbrooks. What says the
24 State?

25 MR. ALDERMAN: Please present the juror.

JURY SELECTION

1 THE CLERK: What says the defense?

2 MR. SMITH: Swear the gentleman.

3 THE CLERK: Sir, you may have a seat in

4 the jury box.

5 145, Ronald Priddy. What says the State?

6 MR. ALDERMAN: Please excuse the juror.

7 THE CLERK: Sir, you have been excused

8 from this case. You may have a seat.

9 JUROR: I love you.

10 THE CLERK: 135, Phillip Patterson. What

11 says the State?

12 MR. ALDERMAN: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SMITH: Swear the gentleman.

15 THE CLERK: Sir, you may have a seat in

16 the jury box.

17 182, Cindy Tecson. What says the State?

18 MR. ALDERMAN: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SMITH: Excuse the lady from this

21 case, please.

22 THE CLERK: Ma'am, you may be seated.

23 Thank you.

24 91, Michael Jones. What says the State?

25 MR. ALDERMAN: Please present the juror.

JURY SELECTION

1 THE CLERK: What says the defense?

2 MR. SMITH: Swear the gentleman.

3 THE CLERK: Sir, please have a seat in

4 the jury box.

5 108, Karen Mainous. Karen Mainous. I am

6 sorry.

7 MR. ALDERMAN: What is the number?

8 THE CLERK: 108, Karen Mainous. What

9 says the State?

10 MR. ALDERMAN: Please present the juror.

11 THE CLERK: What says the defense for

12 cause?

13 MR. SMITH: Swear the lady.

14 THE CLERK: Ma'am, please have a seat in

15 the jury box.

16 Number 9, Jason Beasley. What says the

17 State?

18 MR. ALDERMAN: Please present the juror.

19 THE CLERK: What says defense for cause?

20 MR. SMITH: Swear the gentleman.

21 THE CLERK: Please take a seat in the

22 jury box.

23 13, Douglas Black. What says the State?

24 MR. ALDERMAN: Please present the juror.

25 THE CLERK: What says the defense for

JURY SELECTION

1 cause?

2 MR. SMITH: Swear the gentleman.

3 THE CLERK: Please have a seat in the
4 jury box.

5 109, Kellie Marlatt. What says the
6 State?

7 MR. ALDERMAN: Please present the juror.

8 THE CLERK: What says the defense for
9 cause?

10 MR. SMITH: Swear the lady.

11 THE CLERK: Ma'am, please take a seat in
12 the jury box.

13 170, Donald Smith. What says the State?

14 MR. ALDERMAN: Please present the juror?

15 THE CLERK: What says the defense for
16 cause?

17 MR. SMITH: Swear the gentleman.

18 THE CLERK: Sir, please take a seat in
19 the jury box.

20 Number 6, Thomas Baker. What says the
21 State?

22 MR. ALDERMAN: Please excuse the juror.

23 THE CLERK: Sir, you have been excused
24 from this case. You may have a seat.

25 JUROR: Sorry?

JURY SELECTION

1 THE CLERK: You can have a seat.
2 81, John Herndon. What says the State?
3 MR. ALDERMAN: Please present the juror.
4 THE CLERK: What says the defense for
5 cause?
6 MR. SMITH: Swear the gentleman.
7 THE CLERK: Sir, please have a seat in
8 the jury box.
9 Number 28, Patricia Burgen. What says
10 the State?
11 MR. ALDERMAN: Please excuse the juror.
12 THE CLERK: Ma'am, you have been excused.
13 Please take a seat.
14 183, Paul Thibodeaux. What says the
15 State for cause?
16 MR. ALDERMAN: Please seat the juror.
17 THE CLERK: What says the defense for
18 cause?
19 MR. SMITH: Swear Mr. Thibodeaux.
20 THE CLERK: Sir, you may have a seat in
21 the jury box.
22 This is for our alternates. Alternate
23 Number One, 117, David Mcdevitt. What says the State?
24 MR. ALDERMAN: Please present the juror.
25 THE CLERK: What says the defense?

JURY SELECTION

1 MR. SMITH: Swear the gentleman.

2 THE CLERK: Sir, you may have a seat in
3 the jury box.

4 This is for second alternate. 49,
5 Melissa Dempsey. What says the State?

6 MR. ALDERMAN: Please present the juror
7 alternate.

8 THE CLERK: What says the defense?

9 MR. SMITH: Excuse the lady just for this
10 case.

11 THE CLERK: Ma'am, you have been excused.
12 You may have a seat.

13 179, Mahlon Stoltzfus. What says the
14 defense? What says the State? I am sorry.

15 MR. ALDERMAN: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. SMITH: Swear the gentleman.

18 THE CLERK: Sir, you may have a seat in
19 the jury box.

20 THE COURT: Okay. Are there any motions
21 or exceptions to the selection of the jury from the
22 State?

23 MR. ALDERMAN: No, Your Honor, none from
24 the State.

25 THE COURT: Are there any motions or

JURY SELECTION

1 exceptions to the selection of the jury from the
2 defense?

3 MR. SMITH: None from the defense, Your
4 Honor.

5 THE COURT: Okay. Madam clerk, would you
6 swear our jury.

7 THE CLERK: If you would, please stand
8 and raise your right-hand.

9 You shall well and truly try and true
10 deliverance make between the State of South Carolina and
11 the defendant whom you shall have in charge and true
12 verdict give according to law and evidence. I will?

13 (All stated, I will.)

14 THE CLERK: Please be seated.

15 THE COURT: Ladies and gentlemen in the
16 remainder of the pool, the first jury has been sworn.
17 So, that will end your service for today. The clerk of
18 court has a number that -- have y'all already given them
19 the number to call?

20 THE CLERK: Yes, sir. The letter that
21 you were given as you came in this morning, at the very
22 top it is highlighted. It is 718-1058.

23 THE COURT: Okay. Call that number after
24 6:00 tonight and it'll give you further instructions.
25 But that will be your contact number for this week.

OPENING COMMENTS BY THE COURT

1 Thank you for attendance this morning. All the rest of
2 you are excused for the day.

3 (Non-selected jury panel exits the
4 courtroom.)

5 THE COURT: I am the judge of law and you
6 are the judge of the facts. As the judge of the facts,
7 you will have the duty to evaluate the evidence that is
8 presented in the case. Evidence is sworn testimony from
9 the witnesses and any exhibits that are entered into
10 evidence. You and you alone determine the credibility
11 of witnesses and how much weight to give their
12 testimony.

13 Each attorney is going to have an
14 opportunity to give you an opening statement to outline
15 their positions and evidence that they will present to
16 support their claims. The attorneys will also have the
17 opportunity to make closing arguments to you at the end.
18 Just keep in mind that the statements of the attorneys
19 are not evidence, but merely tools to help you
20 understand their respective positions.

21 As I stated earlier, the State has the
22 burden of proof in this trial. It must prove beyond a
23 reasonable doubt that the defendant is guilty of the
24 offenses charged. If the State fails to meet that
25 burden, you must find the defendant not guilty. On the

OPENING COMMENTS BY THE COURT

1 other hand, if the State does prove its case beyond a
2 reasonable doubt, then you must find the defendant
3 guilty. The defendant is presumed innocent and has no
4 burden of proof in this trial.

5 I'm going to talk to you at length about
6 this at the end, but for now I'll give you a preliminary
7 definition. Reasonable doubt is a doubt that would
8 cause a reasonable person to hesitate to act.

9 Now, a few more preliminary things. This
10 is not an endurance contest. We will take breaks. We
11 are getting ready to take our first one. If you get in
12 distress and you need a break, your bailiff is here to
13 assist you. So, let the bailiff know if you get in
14 distress and we will do our best to try to accommodate
15 you. But like I said, we will take breaks as we go
16 along. I'm very aware that people have issues, back
17 problems, so forth, that they have to get up and stretch
18 their legs. So, you are not going to be required to sit
19 all afternoon. So, keep that in mind.

20 There are three things when you are out
21 of this courtroom that you are strictly prohibited from
22 doing. The first is independent investigation. In this
23 era of smart phones and Internet access it's very easy
24 for someone to attempt to research either the facts of
25 the case or the law of the case. You are specifically

OPENING COMMENTS BY THE COURT

1 prohibited from doing so.

2 Now, I am going to go ahead and head this
3 question off. Some judges allow note taking by jurors,
4 I do not. I take the traditional view. The reason for
5 that is some folks are good note takers and others are
6 not. Your deliberations at the end should not be a
7 contest between who takes good notes and who does not.
8 Also there are times in a case when the appearance or
9 what we call the demeanor of a witness will be
10 important, and if your head is buried in a note pad you
11 might miss something in the trial.

12 The second thing that you are prohibited
13 from doing is discussing the case with third parties.
14 When you leave this courtroom, if someone comes up to
15 talk to you about this case, you let the bailiffs know
16 and they will let me know and I will tend to that. That
17 is the reason I mentioned to you earlier that you have
18 this button on. It lets everybody that sees you know
19 that you are a juror. You run into these attorneys,
20 they are going to walk the other way. They are not
21 trying to be rude to you, they just know they can't have
22 any contact while you are a juror. So be sure to wear
23 that button.

24 The last thing that you are prohibited
25 from doing is deliberating amongst yourselves until I

OPENING COMMENTS BY THE COURT

1 tell you to do so at the end. Deliberation means when
2 you are back in the jury room or you are at lunch or
3 wherever, you as jurors are discussing the case. You
4 can talk about anything that you want to talk about as
5 jurors except this case. I will tell you when you can
6 start discussing this case in your deliberations at the
7 end.

8 Ladies and gentlemen, the reason for
9 these rules is that you should only base your decision
10 in this case on the evidence presented in the courtroom.
11 And also you should not make your decision prematurely
12 until all of the evidence is in.

13 Now a couple of things. There may come a
14 time in the trial where one attorney objects. They may
15 object to a question or a piece of evidence or have some
16 other issue, and I am going to have to make a ruling on
17 that. That should not be interpreted to mean that the
18 Court favors one side or the other. All I have to do is
19 ensure as the judge that each side receive a fair trial
20 in accordance with the law. So, that might happen, I
21 don't know. There may be times when we have an issue of
22 law we have to take up and we have you go to the jury
23 room. That is not to hide things from you. Again, it
24 is just to make sure that each side receives a fair
25 trial in accordance with the law.

OPENING COMMENTS BY THE COURT

1 Now we are going to take our first break.
2 We have some other issues that we have got to deal with.
3 So, your first order of business, you have one order of
4 business before lunch. I am going to send you to the
5 jury room and I want you to elect a foreperson. This
6 will be the presiding juror over your deliberations at
7 the end. This will also be the juror that communicates
8 with the Court if there are any problems, if there is
9 something that the Court needs to be made aware of. Any
10 communication by the jury to the Court should be in the
11 form of a written note signed by the foreperson.

12 So, Madam Bailiff, would you take our
13 jury to the jury room? And elect a foreperson and write
14 that person's name on a slip of paper and knock on the
15 door.

16 (Jury exits the courtroom.)

17 THE COURT: So, it is juror number 91.

18 (The jury enters courtroom at 11:11 a.m.)

19 *(Whereupon, Court's Exhibit No(s). 1*
20 *marked for identification and received in evidence.)*

21 THE COURT: They chose number 91 as the
22 foreperson.

23 All right. Ladies and gentlemen of the
24 jury, I have a note. Mr. Foreman, you will always sit
25 where you are seated right now. And the two alternates

MOTIONS HEARD BY THE COURT

1 will always be seated there. I'll excuse you now until
2 2:00. So be back in the jury room shortly before 2:00,
3 then the trial will commence. We have matters of law we
4 need to take up. So, I hope that everyone has a good
5 lunch and we will see you at 2:00.

6 Okay. Anything from the State before we
7 recess?

8 MR. ALDERMAN: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. SMITH: Nothing from the defense.

11 (The jury exits the courtroom.)

12 THE COURT: And, Mr. Alderman, the case
13 has been called for trial. Does the State have any
14 objection to Mr. Gaines' bond staying in effect during
15 the trial?

16 MR. ALDERMAN: No, Your Honor.

17 THE COURT: Okay. You are still under
18 bond. We will go to recess and we will do motions about
19 1:30.

20 MR. ALDERMAN: Thank you, Judge.

21 MR. SMITH: All right.

22 (Other cases were heard, followed by a
23 lunch recess.)

24 THE COURT: All right. Let's go on the
25 record. We are back on the record in State versus

MOTIONS HEARD BY THE COURT

1 Gaines. I have been informed by counsel that there's
2 two matters to be brought before the Court. A Jackson
3 v. Denno hearing and potentially a motion in limine
4 regarding photographs. Have the photographs been
5 resolved?

6 MR. SMITH: Not at this time, Your Honor.
7 They have been previously marked. I think we still have
8 them. Yes, the autopsy ones. He may have shown them to
9 me.

10 MR. ALDERMAN: I think that I have them
11 separated here by -- okay, these are from the hospital
12 at MTECH, and these are at autopsy.

13 MR. SMITH: This is when she was in the
14 hospital?

15 MR. ALDERMAN: Yes, that was in the
16 emergency room.

17 MR. SMITH: Okay. This is the autopsy
18 ones right here and these are the hospital ones?

19 MR. ALDERMAN: Correct.

20 MR. SMITH: Okay.

21 (Pause.)

22 MR. ALDERMAN: Any particular?

23 MR. SMITH: Your Honor, I think that the
24 pictures are okay.

25 THE COURT: What exhibits are those?

MOTIONS HEARD BY THE COURT

1 THE COURT REPORTER: One through 14 are
2 the pictures.

3 THE COURT: So admit State's 1 through
4 14? And, Mr. Smith, are you going to object to any of
5 those?

6 MR. SMITH: Some of them are just a
7 little redundant. Like Exhibit 10 and 11 looks like it
8 is the same thing. And 14. But the other ones, I think
9 that he can probably get in. But if he can pick one of
10 those out.

11 THE COURT: Okay. Mr. Alderman, can that
12 be resolved?

13 MR. ALDERMAN: Judge, I think we have
14 three pictures here that I believe Mr. Smith is
15 referring to as potentially redundant. If I could
16 remove State's 11 and keep 10 and 14 in. I think they
17 -- they show different things, and then one is a wider
18 view and shows the complete picture. And then one shows
19 something very specific on the side of her face. So
20 they are similar, but they are also importantly
21 different.

22 MR. SMITH: That is fine.

23 THE COURT: Okay. So, State's 1 through
24 10 and then 12 through 14 would be admitted without
25 objection.

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 MR. SMITH: Yes, sir.

2 MR. ALDERMAN: Yes, Your Honor.

3 THE COURT: Okay. So admitted.

4 *(Whereupon, State's Exhibit No(s). 1-10,*
5 *12-14 marked for identification and received in*
6 *evidence.)*

7 MR. ALDERMAN: Thank you, Judge. At this
8 time we would call Sergeant McMahan to the stand.
9 Sergeant retired.

10 Thereupon,

11 DAVID MCMAHAN

12 was called as a witness, having been first duly sworn, was
13 examined and testified outside of the presence of the jury,
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. ALDERMAN

17 Q. Sergeant McMahan, where did you work in
18 December of 2017?

19 A. I worked in investigations with Oconee County
20 Sheriff's Office.

21 Q. And are you presently retired from that
22 position?

23 A. Yes, sir, I am.

24 Q. When did you retire?

25 A. I retired in November of 2020.

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 Q. And how long did you work for the Sheriff's
2 Office?

3 A. Thirteen years.

4 Q. Did you spend your entire law enforcement
5 career there at the Sheriff's Office?

6 A. Yes, sir.

7 Q. Now, with regard to this particular case, did
8 you speak to the defendant, Mr. Gaines?

9 A. I did.

10 Q. And when you spoke to him, did you speak to
11 him about the circumstances that led up to him being
12 charged in this particular case?

13 A. Yes, sir.

14 Q. Did you advise him of his rights before you
15 began speaking with him?

16 A. Yes, sir, I did.

17 Q. And did you do so using a written form with
18 those rights listed?

19 A. Yes, sir, that's correct.

20 MR. ALDERMAN: Permission to approach the
21 witness, Your Honor?

22 BY MR. ALDERMAN

23 Q. Sergeant McMahan, I'm handing you what has
24 been previously marked for purposes of identification as
25 State's Exhibit 1. Can you tell us what that is?

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 A. This is a standard form that the Sheriff's
2 office uses to administer the Miranda rights to people
3 who we interview in order for them to fully understand
4 the Miranda rights and what their rights are.

5 Q. Was this the particular form that you used in
6 this case, or a copy of it?

7 A. Yes, sir.

8 Q. All right, And how is it that you recognize
9 it?

10 A. Well, of course I have used this so many times
11 in the past. And plus my signature is at the bottom
12 where I used it.

13 Q. All right. And Mr. Gaines' signature is on
14 there as well?

15 A. Yes, sir.

16 Q. All right. And were his initials on there as
17 well next to each of those rights as you advised them?

18 A. Yes, sir, it is a way to make sure that they
19 understood each line.

20 Q. Where did this take place?

21 A. At the Oconee County Sheriff's Office.

22 Q. And describe the room to us where this is
23 done.

24 A. The room is an interview room. We have four
25 interview rooms, which are separately petitioned off.

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 And we bring them in there to sit down where we can be
2 in private and talk about things.

3 Q. All right. Is that video recorded?

4 A. Yes, sir.

5 Q. All right. Now, was he -- was he offered
6 water or any other particular comforts he may have asked
7 for?

8 A. Yes, sir, a pretty common practice for me to
9 ask them if they want anything, need anything.

10 Q. Okay. Certainly not denied anything that he
11 might have asked for?

12 A. No, sir.

13 Q. Within reason?

14 A. No, sir.

15 Q. Okay. Was he handcuffed at the time that you
16 talked to him?

17 A. No, sir.

18 Q. Was he even in your custody at that point?

19 A. No, sir.

20 Q. All right. So, did you have an appointment to
21 meet him, or did he get there in the back of a police
22 car? How did he come to be there?

23 A. He come on his own accord up there.

24 Q. Okay. Was anyone else present in the room
25 when the two of you talked?

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 A. Just he and I.

2 Q. And what rights, specifically, if you could
3 read from that sheet, was he advised of?

4 A. "Before we ask you any questions, you must
5 understand your rights." He initialed that he
6 understood that.

7 "You have the right to remain silent." He
8 initialed that he understood that.

9 "Anything you say can be used against you
10 in court." He initialed that indicating he
11 understood it.

12 "You have the right to talk to a lawyer
13 for advice before we ask you any questions and have
14 them with you during questioning." He initialed
15 that that he understood it.

16 "If you can't afford a lawyer, one will be
17 appointed for you before any questions if you wish."
18 He initialed that he understood that.

19 "If you decide to answer questions without
20 a lawyer present, you will still have the right to
21 stop answering at any time." He initialed that that
22 he understood it.

23 "I have read the statement of my rights
24 and understand what my rights are. I'm willing to
25 make a statement and answer questions. I understand

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 and know what I'm doing. No promises or threats
2 have been made to me and no pressure or coercion of
3 any kind has been used against me." He initialed
4 that he understood that and then signed at the
5 bottom.

6 Q. Sir, you indicated that he initialed
7 indicating that he understood, but in your opinion, just
8 based on what you observed, did he appear to understand
9 what you were talking about?

10 A. Yes, he appeared to be with all of his
11 faculties, if you could say.

12 Q. Appeared to be intoxicated in any way that you
13 could tell?

14 A. No, sir.

15 Q. Appear to have any sort of mental infirmity
16 that might prevent him from understanding?

17 A. No, sir, he talked normal.

18 Q. Okay.

19 MR. ALDERMAN: Judge, at this time, at
20 least for this hearing, we move to admit the waiver of
21 rights.

22 THE COURT: You have marked as State's 1,
23 I know that it is for this hearing.

24 MR. ALDERMAN: Well, Judge, I actually --
25 I marked these specifically out of sequence for these

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 hearing. So, this is not something that we would seek
2 to admit necessarily in the trial. It has not been
3 premarked for that purpose.

4 THE COURT: All right. You just admitted
5 1 which is a photograph, so if you plan on using it
6 later.

7 MR. ALDERMAN: We will change the
8 numbers.

9 THE COURT: Okay. Any objection to that?

10 MR. SMITH: No, sir.

11 *(Whereupon, Pretrial State's Exhibit*

12 *No(s). H1 marked for identification and received in*
13 *evidence.)*

14 MR. ALDERMAN: We will keep these to the
15 side as separate.

16 BY MR. ALDERMAN

17 Q. You mentioned that this was video recorded; is
18 that right?

19 A. That's correct.

20 Q. I'll approach you with what has been marked as
21 State's 16. Can you take a look at that and tell me
22 what it is?

23 A. It is a DVD. It appears to be a DVD that --
24 yeah, I initialed it as the interview I recorded.

25 Q. Is that the interview that we spoke of

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 previously, when you spoke to Mr. Gaines about this
2 incident?

3 A. Yes, that's correct. Yes, sir.

4 Q. And you mentioned that your initials were on
5 that. At the time that you initialed that disc, did you
6 have the opportunity to review it in its entirety?

7 A. I did.

8 Q. All right. And did it appear to you that
9 anything had been changed, altered, manipulated in any
10 way?

11 A. No, sir.

12 Q. All right. Was that a true and correct copy
13 of your interview with Mr. Gaines that day at the
14 Sheriff's office?

15 A. Yes, sir, it is.

16 MR. ALDERMAN: And, Judge, we would seek
17 to admit this as State's 16 for use at trial.

18 MR. SMITH: I haven't seen it since we
19 did the, you know, the part that we are going to leave
20 out and stuff. I'm assuming it is the same.

21 MR. ALDERMAN: Judge, it is the interview
22 in its entirety that has been provided to Mr. Smith. We
23 have just agreed on certain redaction points.

24 THE COURT: So, Mr. Smith, as I
25 understand it you have no objection provided that the

PRETRIAL DIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 redacted portions are taken out?

2 MR. SMITH: That's correct, Your Honor.

3 THE COURT: Okay. Go ahead.

4 *(Whereupon, State's Exhibit No(s). 16*
5 *marked for identification and received in evidence.)*

6 BY MR. ALDERMAN

7 Q. After you had a chance to interview the
8 defendant in this case, did you ask him to write out a
9 statement for you?

10 A. Yes, sir.

11 Q. I'll approach and show you what has been
12 marked as State's Exhibit 2 (H2) for purposes of this
13 hearing. What is that document?

14 A. This is a voluntary statement form that the
15 Sheriff's Office uses to take written statements from
16 people who are interviewed.

17 Q. Who wrote that statement?

18 A. Mack Gaines.

19 Q. And how do you know?

20 A. I was present with my signature at the bottom
21 and his signature at the bottom as well.

22 Q. And when you look at that copy of the
23 statement today, does it appear that anything has been
24 changed, altered, manipulated in any way?

25 A. No, sir, it does not.

PRETRIAL CROSS EXAMINATION OF DAVID MCMAHAN BY MR.
SMITH

1 Q. Is that a true and correct copy of the
2 statement that Mr. Gaines gave in writing to you the day
3 you interviewed him?

4 A. Yes, sir.

5 MR. ALDERMAN: Again for the purposes of
6 this hearing, I move to admit that, Your Honor.

7 THE COURT: Okay. Mr. Smith?

8 MR. SMITH: No objection.

9 *(Whereupon, Pretrial State's Exhibit*
10 *No(s). H2 marked for identification and received in*
11 *evidence.)*

12 MR. ALDERMAN: Sergeant McMahan, if you
13 would please answer any questions Mr. Smith may have for
14 you.

15 THE WITNESS: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. SMITH

18 Q. Sergeant McMahan, he never said in his
19 statement anywhere that you are aware of -- you didn't
20 coerce him in any way, did you?

21 A. No, sir. No, sir.

22 Q. He didn't tell you that he was the caregiver
23 of her at any time, did he?

24 A. You know, Mr. Smith, I would have to review
25 again if you say that -- please tell me again what your

PRETRIAL MOTIONS

1 question was.

2 Q. Okay. To your knowledge, he was never her
3 caregiver, per se; is that correct?

4 A. Per se, I guess not. No, sir.

5 Q. All right.

6 MR. SMITH: And that is all of the
7 questions that I have.

8 THE COURT: Anything further from the
9 State?

10 MR. ALDERMAN: No, Your Honor.

11 THE COURT: Thank you, Sergeant, you may
12 step down.

13 THE WITNESS: Yes, sir.

14 THE COURT: Anything further on the
15 Jackson Denno?

16 MR. ALDERMAN: No, Your Honor.

17 MR. SMITH: We move that the statement be
18 thrown out, Your Honor, and we proceed to trial without
19 it.

20 THE COURT: Anything for the record as to
21 the objection by the defendant?

22 MR. ALDERMAN: Judge, we believe we have
23 established that the statement was freely and
24 voluntarily given without any coercion and there's been
25 no suggestion otherwise, and we ask that it be admitted.

PRETRIAL MOTIONS

1 THE COURT: After conducting the
2 in-camera hearing based on the standards set forth in
3 Jackson v. Denno and after hearing the testimony and
4 evidence presented, I find that the statement as given
5 to law enforcement and set forth in statement, Exhibits
6 H1 and H2, the written statement and also the video made
7 of it, was non-custodial. I find that the defendant had
8 not been charged or detained and voluntarily came to the
9 Sheriff's office for the interview. Nevertheless, his
10 Miranda rights were given to him. They were read on a
11 standardized form which he initialed various parts of
12 the Miranda rights. And considering the totality of the
13 circumstances, which include the location of the
14 interview, defendant's condition at the time, and was
15 offered as common practice, anything that he needed as
16 far as water. He was not handcuffed. It was a standard
17 interview room. There was no one else in the room. I
18 find that the statement was given knowingly and
19 intelligently in waiver of his Miranda Rights. And
20 considering all of these things, I find that the
21 statement and questions were voluntary and elicited for
22 these purposes.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: Anything else?

25 MR. ALDERMAN: Judge, I believe Mr. Smith

PRETRIAL MOTIONS

1 has another exhibit.

2 MR. SMITH: Some progress notes, Your
3 Honor. When the case first was, before he was -- about
4 a month ago, Mr. Stolarski and I were going to try the
5 case and we were going to stipulate to all of the
6 medical records. Because he had a lot more witnesses on
7 the list, so that kind of inured -- I didn't try to
8 subpoena those witnesses. And then when we talked about
9 introducing the medical records, I was thinking this was
10 going to be part of it as well. Because I wanted to
11 question them on the decisions they made to stop the
12 medical care and treatment of her at some point later on
13 during the process which put her in hospice. So, the
14 decisions that were made with the doctor. And there was
15 a statement in there that says that she actually
16 participated -- the decedent actually participated in
17 that discussion to terminate her health care. And that
18 is in these medical records right here.

19 MR. ALDERMAN: Judge, our concern is
20 simply about a written record of the treatment that is
21 being admitted without that particular doctor who wrote
22 that record there to testify about it. Essentially Dr.
23 A testifying as to Dr. B's notes would be a concern of
24 ours and we would object to that. And we have
25 stipulated to a number of others, but they are all tied

PRETRIAL MOTIONS

1 to individuals who will be subject to cross-examination
2 and can talk about what they did.

3 THE COURT: Did any of the doctors that
4 you are calling as a witness rely on these records?

5 MR. ALDERMAN: Judge, I would assume that
6 all of them would review the chart preceding their
7 involvement. I think that would be a fair assessment
8 and if perhaps they were qualified as experts they might
9 be able to.

10 THE COURT: I'll let that be developed.
11 You have got doctors being called. I don't know who
12 read or relied on what as far as history, so I'll
13 reserve that until a foundation is made.

14 MR. SMITH: Thank you, Your Honor. Yes,
15 sir. Could I just have it marked for identification?

16 THE COURT: Go ahead and have it marked.

17 *(Whereupon, Defendant's Exhibit No(s). 2*
18 *marked for identification.)*

19 THE COURT: All right. Anything from the
20 State before we bring our jury in?

21 MS. ENNIS: Nothing from the State, Your
22 Honor.

23 THE COURT: Anything from the defense
24 before we bring our jury in?

25 MR. SMITH: Nothing from the defense,

OPENING STATEMENT BY THE STATE

1 Your Honor.

2 THE COURT: Madam bailiff, would you get
3 our jury please?

4 (The jury enters the courtroom.)

5 THE COURT: Mr. Bailiff, ladies and
6 gentlemen of the jury, I hope everyone had a good lunch.
7 We are ready to proceed with opening statements. State
8 ready?

9 MS. ENNIS: Yes, Your Honor.

10 OPENING STATEMENT BY THE STATE

11 MS. ENNIS: Thank you, Your Honor. May
12 it please the Court. Sir.

13 MR. SMITH: Yes, ma'am.

14 MS. ENNIS: Members of the Jury, he
15 didn't care enough. You are here today because the
16 defendant, Mr. Mack Gaines, he didn't care enough. He
17 didn't care enough to call 911. He didn't care enough
18 to take her to the hospital. He didn't care enough to
19 give her a glass of water. But you will hear, he did
20 care. He cared enough to watch a football game. He
21 cared enough to go shopping. And he cared enough to
22 spend the day at work while his elderly mother lay on
23 the floor.

24 As you heard earlier, myself and Mr.
25 Alderman, we represent the State today in this case.

OPENING STATEMENT BY THE STATE

1 That means that we have a job to do today. And our job
2 is to prove beyond a reasonable doubt every element of
3 unlawful neglect of a vulnerable adult. Now, you don't
4 have to take my word for it today. You will know from
5 seeing all of the evidence and hearing all of the
6 witnesses testify today. But before we get to that,
7 let's talk about what you will see today. Members of
8 the jury, you will learn that on Friday December 15th,
9 2017, Alma Gaines, a 92 year old woman fell in the home
10 that she shared with her son, the defendant, Mr. Gaines.

11 Now, upon Mr. Gaines discovering that his
12 mother had fallen, well, he asked her if she needed to
13 go to the hospital, if she needed help. Ms. Gaines was
14 a strong woman. She said, No. However, Friday quickly
15 turned into Saturday afternoon. And Ms. Gaines, she was
16 still laying on the floor. Couldn't get up and she
17 couldn't roll over. She couldn't get herself a glass of
18 water.

19 Members of the jury, even though Mr.
20 Gaines cared for his mother, well, he didn't care
21 enough. Because on Saturday, you will learn that he
22 didn't help her up, he didn't roll her over, and he
23 didn't offer her a glass of water. You will hear that
24 Mr. Gaines went shopping. He watched a football game.
25 He left her on the floor.

OPENING STATEMENT BY THE STATE

1 Now soon Sunday came. And Ms. Gaines was
2 quickly getting worse. Now you will hear testimony
3 today that Sunday, Sunday was the last time she was
4 responsive, the last time she could talk to her son.

5 Now, Mr. Gaines, he didn't call 911 at
6 this point. He didn't take her to the hospital. You
7 won't hear that. He simply left her, his 92 year old
8 mother, on the floor. Monday, December 18th, you will
9 learn that Mr. Gaines woke up, he had went to work and
10 he came home. That night he brought a friend. And this
11 friend finally convinced the defendant to call 911, that
12 his mother wasn't okay.

13 Now at this point you are probably
14 wondering how Ms. Alma Gaines was able to make it
15 through the weekend. And you will hear today that her
16 doctors, they wondered the same thing. You will hear
17 about the condition, the reports of her injuries. And
18 you will hear from the team that cared for her.

19 First you will hear from Brandie Fant,
20 the 911 operator. And you will get to listen to that
21 911 call yourself. Did Mr. Gaines tell her how severe
22 his mother's injuries were? No. Did he mention she
23 hadn't had anything to eat or drink? No. Did he
24 mention that she had been on the floor of their home for
25 four days? No.

OPENING STATEMENT BY THE STATE

1 Next you will hear from Dawn King, the
2 responder that arrived to care for Ms. Gaines. Now she
3 will take the stand today and she will describe to you
4 what it was like when she arrived at that home. She
5 will explain the heat from multiple heaters in the small
6 room where Ms. Gaines was on the floor. She will
7 describe to you the smell from Ms. Gaines where she had
8 relieved herself and the sight of Ms. Gaines laying on
9 the floor stiff from not moving for multiple days.
10 Unresponsive, not speaking.

11 You will hear how the defendant informed
12 Ms. King that his mother, well, she didn't just fall.
13 No, this didn't just happen moments ago or a couple of
14 hours ago, that she fell Friday, that she hadn't moved
15 since. You will hear Ms. King call for some extra
16 assistance because she needed help to care for Ms.
17 Gaines. So, she called Michael Corbin. Now, Mr.
18 Corbin, who you will also hear from today, he is not
19 only a first responder, but he is also a medical
20 examiner. And you will hear how he arrived and found
21 Ms. Gaines on the floor with multiple layers of shirts
22 and blankets covering her top. No pants, no underwear.

23 You will hear how she was so close to one
24 of those heaters that he was surprised she didn't have
25 burns. And you will hear that when they finally rolled

OPENING STATEMENT BY THE STATE

1 Ms. Gaines over, the dents from the carpet stayed on her
2 face. Now, Ms. Gaines was quickly rushed to the
3 hospital and the police were called to the scene. Today
4 you will hear from Dr. Docyk and Dr. Singh, the doctors
5 at the hospital that cared for Ms. Gaines. And they
6 will explain to you just how bad her condition was. She
7 was not able to get up, she was not able to get water,
8 she was not able to care for herself. They will
9 describe the pressure sores she received from lying on
10 the ground, not moving for days. They will describe how
11 they affected her kidneys, her right leg, and eventually
12 caused her death.

13 Next you will hear from Dr. Smith. Now,
14 Dr. Smith is a physician that cared for Ms. Gaines at
15 the Cottingham Hospice Center. Now, you will hear talk
16 about her condition and the prognosis, and how she spent
17 the last days of her life. You will hear that the
18 condition of her leg slowly worsened, eventually turning
19 black.

20 You will also hear how Ms. Gaines, she
21 would open her eyes, and she was oriented to person.
22 She knows who she was and that she couldn't care for
23 herself. And you will also hear who visited Ms. Gaines
24 while she was in hospice, who cared for her. Finally
25 you will hear from David McMahan, the officer that

OPENING STATEMENT BY THE STATE

1 arrived on the scene and interviewed Mr. Gaines. Now
2 you will hear that the defendant, well, he did not not
3 care. He offered her a hotdog. He turned up the heat
4 when she said she was cold. All of these things sound
5 like he cared, but he didn't ask if she needed help.

6 Members of the jury, you will hear that
7 Mr. Gaines, he didn't care enough. Because he never
8 offered her help, never took her to the hospital. He
9 didn't call 911 until she had been on the floor for four
10 days. Four days.

11 And later you will hear from Dr. Woodard,
12 the physician that performed the autopsy on Ms. Gaines
13 when she passed on January 17th. Now he will explain
14 the progression of her injuries, how they slowly led to
15 her death. Members of the jury, today you will have the
16 job to determine if Mr. Mack Gaines is guilty of
17 unlawful neglect of a vulnerable adult. And at the end
18 of this trial, after you have heard all of the testimony
19 and received all of the evidence, the Honorable Judge
20 Sprouse will explain the law. And it will be up to you
21 to determine if Mr. Gaines cared enough.

22 The statute reads that a person must
23 knowingly and willfully abuse or neglect a vulnerable
24 adult to be guilty. So today you must determine, first,
25 was Ms. Gaines a vulnerable adult? Could she have cared

OPENING STATEMENT BY THE DEFENSE

1 for herself? Second, did the defendant become a
2 caregiver when he offered to take her to the hospital,
3 when he offered her food and turned up the heat? Third,
4 did the defendant care enough? Or did he leave her on
5 the floor? Thank you.

6 THE COURT: All right. Mr. Smith.

7 OPENING STATEMENT BY THE DEFENSE

8 MR. SMITH: Thank you, Your Honor. Mr.
9 foreman, ladies and gentlemen of the jury, my name is
10 Fletcher Smith and I have the distinct honor and
11 privilege to represent Mr. Mack Gaines in this case of
12 State versus Mack Gaines.

13 And as the noble prosecutor has told you,
14 he's been charged with abuse and neglect of a vulnerable
15 adult who happens to be his mother. And we make no
16 bones about it, these are some hard facts, but under the
17 South Carolina law, in looking at the technicalities of
18 the law as the Judge is going to read it, he would have
19 had to have been a caregiver, a caregiver.

20 He's never, ever been determined to be a
21 caregiver in the State of South Carolina as a family
22 member or as a son or relative whatsoever. Mrs. Gaines
23 had always made her own decisions. She drove her own
24 car. She drove herself to the doctors. Even drove him
25 to work for over eight years. And sometimes he would

OPENING STATEMENT BY THE DEFENSE

1 drive her to the doctor. But that doesn't make you a
2 caregiver any more than somebody who might be laying in
3 a bed with Covid and if you don't take them to the
4 hospital, I guess you could be charged with ignoring a
5 vulnerable adult not wearing a mask or something.

6 The fact of the matter is, she has a
7 right to make her own decisions. And she did according
8 to them. Even when she looked like this in the
9 hospital. She made her own decisions that she wanted to
10 terminate her own life. She wanted to terminate her
11 life in the hospital along with the doctors and her
12 so-called nieces.

13 We will present that evidence during the
14 course of this trial. We will also demand that the
15 autopsy reports be shown, and the autopsy pictures be
16 shown as well. But that is beside the point, because
17 that is designed to inflame you. The fact of the matter
18 is that Mr. Gaines not being a caregiver is not guilty
19 under the indictment. And why is that? We will prove
20 to you that though his mother fell, she had a right not
21 only to refuse him from calling EMS. That even if EMS
22 had come out, and they did, she could have refused to go
23 with them. You have the right to refuse medical care
24 and treatment on your own.

25 So they have got to prove what is in her

1 mind, not what is in his mind. What is in Mrs. Gaines'
2 mind. And we will prove to you because we have her
3 doctor on standby who has been her medical care doctor
4 for a long time, Dr. Paul Thompson of the Foot Hills.
5 He is going to testify that Mrs. Gaines was stubborn,
6 that she was a tough lady. She made her own decisions.
7 She drove her own car. She paid her own -- she owned
8 her own house.

9 As a matter of fact, a lot of the
10 property that he owned he transferred into his mother's
11 name, gave to his mother. So, there is no motive right
12 there that he was trying to get any money. And the
13 other thing too is, the doctor is going to testify that
14 she would take her medication sometimes and she would
15 tell them that she is not taking the medication. And it
16 is all in the medical records that we have already
17 introduced right here for your review. When Dr.
18 Thompson comes in, we are going to get him to testify.
19 About ten minutes ago, this noble person that we have as
20 a -- he is retired now -- law enforcement officer, I
21 asked him on the stand, I said, Was Mr. Gaines
22 technically a caregiver for Mrs. Gaines, this 92 year
23 old? And he testified under oath to tell the truth, and
24 he said, No.

25 And so the law is very clear. The law is

OPENING STATEMENT BY THE DEFENSE

1 very clear. That neglect under the act means the
2 failure or omission of a caregiver to provide the care
3 of goods and services necessary to maintain health or
4 safety of a vulnerable adult. Now, they can't prove
5 that she was a vulnerable adult on December the 14th,
6 can they? Based on her opening statement. Because they
7 say in their indictment all of this stuff happened on
8 December the 15th. So, let's say, let's go back,
9 December the 14th she is -- he is not a caregiver on
10 December the 14th, right. That is not in the
11 indictment. So he is not a caregiver on December 15th,
12 16th or 17th.

13 And so -- hold on, look, just to be frank
14 with you I think that it was stupid on his part and he
15 is -- you know, from a moral standpoint. But morality
16 and legality are two different things under the law. I
17 mean, most people with morality would say, Okay, mom is
18 sick, maybe I'll just have to jerk her up and put her in
19 the car and drive her away, no matter what she says.
20 But if the EMS people had done it, they could have
21 gotten charged with false arrest, false imprisonment,
22 violating somebody's right to be wherever they want to
23 be.

24 Police officers couldn't even take her
25 out of there because she hadn't committed a crime if she

OPENING STATEMENT BY THE DEFENSE

1 wants to refuse medical care and treatment. That is how
2 we operate in America. Now, the thing about it is --
3 so, if neglect is defined by whether or not a person is
4 a caregiver and a caregiver under the act says a person
5 who provides care to a vulnerable adult with or without
6 compensation, on a temporary or permanent or full-time
7 or part-time basis. Includes but is not limited to a
8 relative, household member, daycare personnel, adult
9 foster, home sponsor, personnel of a public or private
10 institution or facility. Well, if you haven't been
11 deemed that, you can't be that just because you are in
12 somebody's house.

13 And a vulnerable adult is anybody who is
14 over 18 years of age and has a physical or mental
15 condition. Well, we say, well, let's stipulate that at
16 least from the time that EMS gets up and says that she
17 was unconscious, she was -- she was impaired. Let's
18 stipulate to that. But that was the very day they say
19 he called. That was the very day this non-caregiver
20 called and had her transported to the hospital. And
21 then he went to see this noble person, this hero of ours
22 in this community, and voluntarily gave a statement
23 about what went on with his mom. Hi didn't lawyer up,
24 he went and told the officer that. That tape is going
25 to be played to you, along with the statement that he

OPENING STATEMENT BY THE DEFENSE

1 gave to the police about exactly what happened. He
2 didn't try to cover up anything.

3 And then, later on, she started
4 developing gangrene while she was in the hospital, and
5 sepsis while she was in the hospital. And then, almost
6 a month down the road, after she was getting all of
7 this, worse and worse, they asked the two nieces, and I
8 think that it is in the medical records that we have
9 shown, whether they could care for her. And they said,
10 No, we have been through this before with another
11 relative.

12 And they were asking about money, how
13 much does it cost to keep the 92 year old in a health
14 care facility. And so the doctor says -- and I showed
15 you these pictures -- the doctor said he got her, and
16 this is the way she looked, to say that she didn't want
17 any medical health care at the hospital. And she was
18 looking like that. And I wonder how she did her head up
19 and down to say, No, she didn't want anymore health care
20 at that hospital. And those were the actual health care
21 providers.

22 So she goes into hospice a month, almost
23 a month later, and she dies. And they accuse him of
24 neglect that results in her death. So members of the
25 jury, we are going to prove to you that at no time was

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 there any court that ordered him to be her health care
2 provider? No doctors say he was her health care
3 provider. There was no medical power of attorney ever
4 issued for him to be her health care provider. As a
5 matter of fact, she was the power of attorney over him.

6 There was no Social Security
7 Administration rules saying that he was the health care
8 provider. He didn't control her Social Security. She
9 controlled her own Social. She had her own bank
10 account. She controlled her own money. And he better
11 not touch it. So, we will say this, we will stipulate
12 this right from the start, there won't be anybody that
13 can testify, I believe now, and testify truthfully like
14 he did, that can say he was the health care provider.
15 Because they had no personal knowledge of that. They
16 didn't live with them. They didn't go to Dr. Thompson's
17 office with them on any occasion. And if they can't
18 prove that element, no matter how outrageous the facts
19 may be, then you will have a duty at the end of the case
20 to find him not guilty as charged. Thank you very much.

21 MS. ENNIS: Yes, Your Honor. The State
22 calls Brandie Fant to the stand.

23 Thereupon,

24 BRANDIE FANT

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. ENNIS

4 Q. Good afternoon, Ms. Fant. Where do you work?

5 A. Where do I work currently, or where did I
6 previously work?

7 Q. Where did you previously work?

8 A. Oconee Memorial Hospital.

9 Q. And where did do you work currently?

10 A. AnMed Health.

11 Q. At Oconee Memorial Hospital, what did you do
12 there?

13 A. I was the communication specialist.

14 Q. What does that mean?

15 A. We handled all of the phone calls on the
16 switchboard and medical 911 calls.

17 Q. How long have you worked there?

18 A. I believe that I worked there from 2015 to
19 2019.

20 Q. What kind of training did you need to do this
21 job?

22 A. That is a good question. We need to be
23 certified in public safety, telecommunications. And I
24 believe that was a three-month program. And on-the-job
25 training was about six months.

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 Q. Now, when you receive a call for medical
2 assistance, what do you do?

3 A. We ask if the patient is conscious and
4 breathing, what is the address, telephone number to
5 reach them at, and what is going on at the scene.

6 Q. After you gather all of that information, what
7 are your next steps?

8 A. Dispatching ambulance and the first
9 responders.

10 Q. Do you remember the call on December 18th,
11 2017?

12 A. I do.

13 Q. Who called?

14 A. Mack Gaines.

15 Q. Why was he calling you?

16 A. His mom had fallen and was on the floor and
17 needed help getting up.

18 Q. Now you said he stated that his mother fell,
19 did he say when she fell?

20 A. No.

21 Q. Did he say what her injuries were?

22 A. If I am recalling correctly, he said that she
23 was fine she just needed help getting up.

24 Q. And where was Ms. Gaines at this time?

25 A. On the floor in the home.

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 Q. Did Mr. Gaines at any point say if she was
2 talking or responsive?

3 A. I don't recall.

4 Q. What was your response to this call?

5 A. My response was, I thought that it was an
6 elderly lady that had fell and needed help getting up.

7 Q. What actions did you take then?

8 A. I dispatched an ambulance to help her get
9 situated.

10 Q. Is that your typical response when a woman
11 falls?

12 A. It is, if they are conscious and breathing,
13 yes.

14 Q. Now what is the response had those injuries
15 been worse, more severe?

16 A. We would dispatch first responders and
17 ambulance with lights and sirens.

18 Q. When did this call end?

19 A. I think that it was only about two minutes
20 long.

21 Q. Did you end the call or did Mr. Gaines hang
22 up?

23 A. I ended the call. I said if anything changed
24 to call us back.

25 Q. Okay.

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 MS. ENNIS: Your Honor, permission to
2 approach the witness with what has been premarked as
3 State's Exhibit 15?

4 THE COURT: Yes, ma'am.

5 BY MS. ENNIS

6 Q. Ms. Fant, do you recognize this?

7 A. Yes.

8 Q. How do you recognize it?

9 A. I was called in to listen to the 911 recording
10 and signed and dated it.

11 Q. And this is the disc that you signed and
12 dated?

13 A. That's correct.

14 Q. And are these calls recorded in the ordinary
15 course of business?

16 A. Yes, they are.

17 Q. And this is the call between yourself and Mr.
18 Gaines?

19 MR. SMITH: Your Honor, we stipulated
20 that it could come in, so they don't have to lay a
21 foundation, we are just going to hear it.

22 THE COURT: Okay. State's Exhibit No. 15
23 is admitted without objection.

24 MS. ENNIS: Thank you, Your Honor.

25 *(Whereupon, State's Exhibit No(s). 15*

DIRECT EXAMINATION BRANDIE FANT BY Ms. ENNIS

1 *marked for identification and received in evidence.)*

2 MS. ENNIS: Thank you, Your Honor.

3 Permission to play for the jury?

4 THE COURT: Yes, ma'am.

5 (Playing of the 911 call.)

6 BY MS. ENNIS

7 Q. Now Ms. Fant, at this point, what are you
8 doing?

9 A. Dispatching the ambulance.

10 (Conclusion of playing the 911 call.)

11 BY MS. ENNIS

12 Q. Ms. Fant, did -- at any point did Mr. Gaines
13 call back?

14 A. No.

15 Q. Now, why did you end the call at that point?

16 A. I gathered all of the pertinent information.
17 I didn't need any further.

18 Q. That pertinent information being?

19 A. The patient's condition, their name, the house
20 description, call back number.

21 MS. ENNIS: Thank you. No further
22 questions at this time. Please answer anything the
23 defense may have for you.

24 THE COURT: Mr. Smith.

25 MR. SMITH: Thank you, Your Honor. May

CROSS EXAMINATION OF BRANDIE FANT BY MR. SMITH

1 it please the Court.

2 CROSS EXAMINATION

3 BY MR. SMITH

4 Q. Now let me get this straight. Okay, it seems
5 like he called you and told you his mother fell, right?

6 A. Correct.

7 Q. Right. Also he said that he believed that she
8 was conscious; correct?

9 A. Correct.

10 Q. Just like me and you right now, correct?

11 A. Yes, sir.

12 Q. All right. And he believed that she hurt her
13 hip?

14 A. Correct.

15 Q. Correct. And elderly people of 92 years old,
16 they fall. Sometime if they break their hip they can't
17 recover, right?

18 A. Yes.

19 Q. All right. Now, you don't know whether or not
20 she broke her hip in this case, do you?

21 A. I do not.

22 Q. All right. Now, the fact is you don't know
23 whether or not Mr. Gaines was trained like you were
24 trained, correct?

25 A. Correct.

REDIRECT EXAMINATION OF BRANDIE FANT BY Ms. ENNIS

1 Q. You are kind of like a caregiver, aren't you?

2 A. I wouldn't say so.

3 Q. Oh, you are not a caregiver?

4 A. No.

5 Q. Okay. And you didn't know whether or not Mr.
6 Gaines was a caregiver either, did you?

7 A. No.

8 MR. SMITH: No further questions.

9 THE COURT: Any Redirect?

10 MS. ENNIS: Yes, Your Honor, briefly.

11 REDIRECT EXAMINATION

12 BY MS. ENNIS

13 Q. Were you able to speak to Ms. Alma Gaines at
14 all?

15 A. No.

16 Q. Was she able to tell you the extent of her
17 injuries?

18 A. No, because I didn't talk to her.

19 Q. And when you spoke to Mr. Mack Gaines, did he
20 say when she had fallen?

21 A. No.

22 Q. Did he say that she was talking?

23 A. No, he just said that she was conscious and
24 thought that she was hurt.

25 MS. ENNIS: Thank you, Your Honor. No

RECROSS EXAMINATION OF BRANDIE FANT BY MR. SMITH

1 further questions.

2 THE COURT: Any further of this witness?

3 MR. SMITH: Just one or two little
4 questions just to put a little bow on it, Your Honor.

5 RECROSS EXAMINATION

6 BY MR. SMITH

7 Q. You didn't ask him those questions, did you?
8 Any of those questions she just asked you. Whether or
9 not she was talking. You didn't ask Mr. Gaines that,
10 did you?

11 A. No. I asked if she was conscious and
12 breathing.

13 Q. That is it, right?

14 A. Correct.

15 MR. SMITH: No further questions.

16 THE COURT: Thank you, ma'am. You may
17 step down.

18 MS. ENNIS: Your Honor, may this witness
19 be excused?

20 THE COURT: Any objection?

21 MR. SMITH: No objection, Your Honor.

22 THE COURT: You are excused. Thank you,
23 ma'am.

24 MS. ENNIS: Your Honor, the State calls
25 Dawn King to the stand.

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 Thereupon,

2 DAWN KING

3 was called as a witness, having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ENNIS

7 Q. Good afternoon, Ms. King. Where do you work?

8 A. Oconee County Medical Center.

9 Q. And what do you do there?

10 A. I am an EMT basic.

11 Q. How long have you worked there?

12 A. It will be eight years in August.

13 Q. What kind of training did you have to become
14 an EMT?

15 A. You have to go through eight months of
16 schooling.

17 Q. What type of calls do you typically respond
18 to?

19 A. Medical transport where we are taking people
20 from one place to another. We also do minor injuries,
21 lift assists. We do a little bit of everything. Some
22 trauma cases. Just depending on what the situation is.

23 Q. And what happens when you receive that call
24 for help?

25 A. We, as far as -- I mean, we just head out

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 there and see what we need to do and take care of the
2 patient.

3 Q. Do you remember the call on December the 18th?

4 A. Yes, I do.

5 Q. What happened?

6 A. My partner and I, Lisa, we got the call from
7 dispatch for a fall with lift assist. So we headed out
8 there. Lisa was driving. I was the passenger. When we
9 got there we decided we didn't have a good parking spot
10 so I went ahead and grabbed our first-in bag, which has
11 the basics in it. And she was reparking the ambulance.

12 I went to go ahead and go into the house,
13 and as soon as I walked in I was hit immediately
14 with a blast of extreme heat and the smell. It was
15 very hot in there. I noticed that there was at
16 least two kerosene heaters on full blast. And the
17 patient was laying approximately ten to 15 feet away
18 from the door. She was laying on her right side.

19 There was newspapers and trash cluttering
20 the room that she was in. So I went to the patient,
21 and at that time I realized that she was
22 unconscious. So I went back outside, Lisa was
23 getting out of the truck. I said, call ALS, which
24 is advanced life support paramedics. I said, This
25 is beyond our, our case. So she did that.

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 And I went back into the house, and we
2 checked on her. And we tried to roll her a little
3 bit. She was kind of stiff. She was laying on her
4 right side with her knees just slightly bent. She
5 had a heavy jacket from the waist down. We removed
6 that.

7 There was nothing else on the lower part
8 of her body. Feces and urine were there. We went
9 to see about taking her blood pressure. She had on
10 seven, as far as I remember, it was seven long
11 sleeve shirts, whether they were sweaters,
12 sweatshirts, just regular long sleeve shirts. So me
13 and Lisa started cutting shirts in order to get
14 blood pressure. And we continued to cut shirts and
15 cut and cut. "How many are on here?"

16 Meanwhile she is not responding
17 whatsoever. When you kind of roll her over, it is
18 hard to explain but her face kind of like
19 normally -- it didn't move. She had saliva, it
20 looked like maybe just a little bit of vomit coming
21 out of her nose and her mouth. Some of it was dried
22 up there and on the floor. It was just -- it was
23 not a pretty sight. I mean, and she -- the whole
24 time we were working on her until paramedics got
25 there, we got our original blood pressure on her.

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 She was breathing but very shallow. She just -- she
2 never moved. She never made any sounds, nothing.

3 Q. When you assessed Ms. Gaines -- sorry for
4 interrupting you.

5 A. No, you are fine, go for it.

6 Q. What injuries did you find?

7 A. We did not notice any injuries at the time.
8 Mr. Gaines had said that she had fallen on Friday and
9 could not get up and that she did not want him to call
10 EMS at that time. Well, apparently she stayed on the
11 floor Friday, Saturday, and then he called Sunday
12 evening, which is when we got the call to go out for a
13 fall and lift assist up. When we got there, she was
14 completely unresponsive.

15 Q. So she wasn't talking or anything?

16 A. No. No sound whatsoever. Even when we were
17 moving her around we didn't even get moans or anything.

18 Q. Now you said you didn't notice any initial
19 injuries?

20 A. Correct.

21 Q. Did you later discover injuries?

22 A. As far as -- we did not, no, because of the
23 fact that, like I have said, we were basics. So we do
24 not do medicines, drugs, any of that sort, IVs, we do
25 not do those. Now, when ALS came in they basically got

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 her boarded, which means putting her on a backboard and
2 into the ambulance. As far as what they found, I do not
3 know.

4 Q. And what prompted you to call ALS?

5 A. Because she was unresponsive. Immediately, as
6 soon as I realized what the situation was and she was
7 unresponsive, I knew then that it was a much more
8 desperate case than what we were trained for.

9 Q. Who was at the home at this time?

10 A. I saw Mr. Gaines. He was -- he kind of stayed
11 in the room with us and moved around. And he answered
12 questions. We had questions. And he didn't hesitate to
13 say that she did fall on Friday when we started
14 questioning him. And he, like I said, he said she
15 didn't want EMS called. And he said that when she
16 stopped talking to him on Sunday is when he called.

17 I did not -- I do not know if there was
18 anybody else in the house or around. My focus was
19 mainly on the patient.

20 Q. And what happened after the paramedics
21 arrived; what did you do?

22 A. We helped get the patient loaded up and on the
23 stretcher and out to the ambulance.

24 Q. Was Ms. Gaines able to help with her care at
25 all?

DIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 A. No. She was completely unresponsive. Like I
2 said, no sounds, no nothing.

3 Q. Now you mentioned how her face didn't move,
4 could you explain that a little bit more for us?

5 A. It is rhabdomyolysis is what we call it.
6 Basically when a person lays on their right -- in a
7 specific position for a long period of time, the blood
8 kind of pools in that area. And it kind of gets like
9 flattening and it doesn't move really right away when
10 you like roll over, it kind of just stays the way it
11 was. So I mean it like stayed flat.

12 She just kind of stayed in the position,
13 when we did roll her over to put her on the
14 stretcher, we had to kind of help straighten her
15 legs out and stuff, because they just stayed that
16 way, stayed kind of folded up. And she was stiff
17 basically is the best way to put it is she was
18 stiff.

19 Q. Is that normal with a fall like this?

20 A. Not normal, no, it is not. A person that
21 normally would fall, we do them on a general case, they
22 have been on the floor two or three hours trying to get
23 to a phone or something of that sort, no, it is not
24 normal. They have to be literally laying there for
25 hours and hours to get to that point.

CROSS EXAMINATION OF DAWN KING BY MR. SMITH

1 Q. Was there any food or water close by that you
2 noticed?

3 A. Not that I noticed.

4 MS. ENNIS: Thank you. No further
5 questions at this time. Please answer anything the
6 defense may have for you.

7 THE COURT: Mr. Smith.

8 MR. SMITH: I appreciate it.

9 CROSS EXAMINATION

10 BY MR. SMITH

11 Q. So, let me just see if I can get this
12 straight. You come out there and you have been trained,
13 right?

14 A. Yes, sir.

15 Q. You are a trained health care provider?

16 A. Yes, sir.

17 Q. Right. And as a trained health care provider,
18 what kind of training did you receive so you could --
19 what is that big word you used?

20 A. Which one now?

21 Q. The one about the face.

22 A. Rhino-myosis?

23 Q. Yeah. I never heard of it. Okay. I don't
24 want to be a smart aleck, okay.

25 A. No, you are fine.

CROSS EXAMINATION OF DAWN KING BY MR. SMITH

1 Q. Okay. All right. Now the key is, you were
2 trained -- where were you trained at?

3 A. I was at Tri-County Technical College.

4 Q. All right. And how long did you train?

5 A. Eight months.

6 Q. Eight months. And they taught you what to
7 look for, and they actually taught you, basically, if
8 something was beyond your scope, that you could go out
9 and get somebody else to come in. And that is what you
10 did in this case, right?

11 A. That, and I learned through the job. Yes.

12 Q. And you learned through --

13 A. Yes.

14 Q. -- I mean, yeah. So you learned through the
15 job, your experience. How long have you been in this
16 job?

17 A. It will be eight -- I will be with Oconee for
18 eight years almost in August.

19 Q. Okay. You are one of our heros, okay. I
20 mean, you go out there and you help save people. And
21 I'm not taking anything away from that.

22 So do you know whether or not Mr. Gaines
23 had that kind of training?

24 A. No, I wouldn't expect that he did.

25 Q. Right. And he never told you that he was her

CROSS EXAMINATION OF DAWN KING BY MR. SMITH

1 health care provider, did he?

2 A. No, he did not.

3 Q. Okay. And you never discovered whether he was
4 her health care provider at all, either, did you?

5 A. He did say that he was helping take care of
6 her.

7 Q. Right. Helping take care of her. When he
8 called that day -- when did he start?

9 A. Well he told us that he was there on Friday
10 when she fell. And he said that she didn't want to go
11 to the hospital at that time.

12 Q. Okay. Now --

13 A. So he said that he had been there the entire
14 weekend giving her food and water, trying to take care
15 of her. And then when she stopped talking to him on
16 Sunday he called 911.

17 Q. All right.

18 A. But by that time she was already unconscious.

19 Q. All right. Now let me ask this question. You
20 go out to a scene as a health care provider that you
21 are, to someone's house who has fallen and they tell you
22 that they don't want to have any -- EMS pick them up and
23 take them away. Do they have a right to refuse your
24 services?

25 A. If they are -- we have to give them a little

CROSS EXAMINATION OF DAWN KING BY MR. SMITH

1 quiz, basically, a mental assessment to see where they
2 are at, as far as if they are competent in their own
3 care.

4 Q. Okay. I understand. Say they don't want to
5 answer any of your questions and they say, Get out of my
6 house, I don't want you here.

7 A. Well, then unfortunately we have to involve
8 the law.

9 Q. Okay. And if you involve the law, you don't
10 know whether or not the law can come in without a
11 warrant for the person that is arrested and take them
12 away, do you?

13 A. Well, we have to decide if the person is a
14 threat to themselves.

15 Q. All right. And so you would have to decide
16 that on your own. But you just couldn't swoop them away
17 and take them to the hospital, right?

18 A. Not off-hand, no.

19 Q. Right. And you don't know whether law
20 enforcement can do that, either, based on your
21 experience and training, either, do you?

22 A. No.

23 Q. All right. Isn't it law that if somebody is
24 suffering from Covid who is in the bed at their house
25 and they don't want to go to the hospital even though

CROSS EXAMINATION OF DAWN KING BY MR. SMITH

1 they may be dying of Covid, they don't have to go with
2 you, do they?

3 A. As long as they are mentally capable of
4 answering our questions, correct.

5 Q. If they don't want to wear a mask in their
6 house, they don't have to wear a mask in their house,
7 either, do they?

8 MS. ENNIS: Objection.

9 MR. SMITH: I am on cross-examination.
10 Thank you.

11 THE COURT: State your objection.

12 MS. ENNIS: Relevance.

13 THE COURT: Overruled.

14 MR. SMITH: Thank you, Your Honor.

15 BY MR. SMITH

16 Q. If a person wants to refuse wearing a mask,
17 that is their right to refuse to wear a mask, isn't it?

18 A. Correct.

19 Q. And the people who are staying in the house
20 with the same person that doesn't want to wear a mask or
21 the person who is suffering under Covid, they make the
22 decision whether or not they want to go to the hospital,
23 not the family members; correct?

24 A. Correct.

25 MR. SMITH: Thank you. And thank you for

REDIRECT EXAMINATION OF DAWN KING BY Ms. ENNIS

1 your service.

2 THE COURT: Any redirect?

3 MS. ENNIS: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. ENNIS

6 Q. When you arrived at the house, was Mr. Gaines
7 helping or assisting Ms. Gaines in any way?

8 A. No.

9 Q. Was Ms. Gaines able to refuse medical
10 treatment?

11 A. No. She, like I said, she was completely
12 unresponsive. She made no noises, no moans, no nothing.
13 As we were moving her we were talking to her, kind of
14 shaking her around, we got nothing. And this is not
15 something that you would see somebody that just recently
16 fell unless there's like head trauma or some kind of
17 major trauma, this is not the normal case. This person
18 you could tell had been out for quite a while. Like I
19 said, she did have dried saliva and mucus coming out of
20 her nose and her mouth. And it was, it was dry, it was
21 not something that was fresh. So it is not like -- you
22 could tell that she had been there for quite a while.
23 Whether she had been conscious -- she had a lot of feces
24 and stuff on her. I don't know at that time how long
25 she had been unconscious but . . .

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 MS. ENNIS: Thank you. No further
2 questions.

3 MR. SMITH: Just a little light question,
4 Your Honor.

5 RE CROSS EXAMINATION

6 BY MR. SMITH

7 Q. All right. Now you hit the point on the
8 thing. You know, my brain just sometimes forgets.

9 A. That's fine.

10 Q. All right. Now, we are on a different scale
11 when they are unconscious, aren't we?

12 A. Yeah.

13 Q. Because then you can pick them up and take
14 them to the hospital, right?

15 A. Yes.

16 Q. Right.

17 MR. SMITH: Thank you.

18 THE COURT: Thank you, ma'am. You may
19 step down.

20 MS. ENNIS: Your Honor, the State calls
21 Michael Corbin to the stand.

22 Thereupon,

23 MICHAEL CORBIN

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 DIRECT EXAMINATION

2 BY MS. ENNIS

3 Q. Good afternoon. Where do you work?

4 A. I am a paramedic with Prisma health care
5 Ambulance Service.

6 Q. And what do you do in that capacity?

7 A. I am a paramedic. I transport to safety the
8 gravely sick or injured, non-emergent or emergent
9 personnel to the hospital.

10 Q. What type of training did you have to become a
11 paramedic?

12 A. I have got basic emergency medical technician.
13 I don't know what the hours are, I don't recall, it's
14 been a while. But a year and a half of paramedic
15 training.

16 Q. How long have you been a paramedic?

17 A. This year will be 33 years.

18 Q. Do you have any other types of employment?

19 A. I do. I am actually the county medical
20 examiner in Macon County, North Carolina, which is the
21 equivalent to a coroner down here.

22 Q. Now, as a paramedic, what type of calls do you
23 usually respond to?

24 A. Anything from non-emergent transport, hospital
25 to hospital, and hospital to nursing home. And, of

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 course, traumatic injuries. Any time someone calls 911
2 we show up.

3 Q. What happens when you receive that call from
4 911?

5 A. We get in the truck, respond as safely and as
6 efficiently as possible. Arrive on scene, assess the
7 patient. And determine what care they need at that
8 point.

9 Q. Do you remember the call on December the 18th?

10 A. Vaguely.

11 Q. Now what happened?

12 A. We were the second unit called. The BLS truck
13 was there first. They realized that it was beyond their
14 scope due to the patient's condition, and we arrived and
15 assisted with the care at that point.

16 Q. Is that typical for you to be the second to
17 arrive?

18 A. It can be. Two-tier system sometimes will
19 send out a basic truck and if they need further
20 assistance they will call for the advanced life support.

21 Q. Now when you arrived to the house on December
22 18th, what happened?

23 A. I was met -- and I don't recall which one of
24 the basic crews briefed us on what was happening, but we
25 assisted with the care, got some history. Didn't really

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 take a whole lot of time because the basics had already
2 been started by that crew. I think we were on scene
3 about 12 minutes and then we were on our way to the
4 hospital with her.

5 Q. What did you observe in the house?

6 A. I recall a very strong urine smell in the
7 house. It's been a while. I don't really remember a
8 whole lot. I do recall the very strong urine smell and
9 her lying on the floor.

10 Q. Where in the house was she located? You
11 mentioned she was on the floor.

12 A. It was, to the best of my recollection, it is
13 like a little sunroom or an addition or something. I'm
14 not real sure, I don't really recall.

15 Q. Now what was Ms. Gaines' condition?

16 A. She was unresponsive. She had urine soaked
17 upper clothing. She was nude from the waist down. Had
18 fecal matter dried on her bottom. She had mucus and
19 saliva from her mouth and nose. And it was on the floor
20 and dried as well.

21 Q. Who else was in the home?

22 A. I don't recall who was in the home at the time
23 of my treatment.

24 Q. Now what did you observe about the room itself
25 that Ms. Gaines was located in?

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 A. I think it -- from the best that I can
2 remember, it was very, very warm. But again, you know,
3 I was concentrating on her and not really looking around
4 a whole lot. She was pretty sick.

5 Q. You say she was pretty sick, what type of
6 injuries did you discover?

7 A. I didn't see any injuries, traumatic type
8 injuries. Her face had the impression of the clothing
9 and maybe the carpet was on her face. It was kind of --
10 I don't want to say disfigured, but for lack of a better
11 term, flat with the floor. It was -- it was the shape
12 that she was -- whatever she was lying on, the clothing
13 or floor, it was imprinted in her face.

14 Q. Did those imprints go away or --

15 A. I don't think so, not when we moved her. I do
16 recall when we rolled her over onto her back, her arms
17 were almost like they were rigor-ed. It took some mild
18 manipulation to get her straight to even get the IV
19 started.

20 Q. You said that it took some manipulation to get
21 her arms to move. Was she able to move at all?

22 A. She had no purposeful movement in my care.

23 Q. Can you explain what "purposeful movement"
24 means?

25 A. She didn't pull away from us. She didn't pull

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 away from the IV when we stuck her with the needle to
2 get the IV started. She didn't, you know, grab. There
3 was no movement on her part.

4 Q. And when you rolled her over to assess her,
5 did you notice any sores or cuts?

6 A. She had, other than her face, her right leg.
7 Is it okay if I look at my notes? Is that okay, from
8 the call report that I wrote?

9 Q. That is fine.

10 A. Because I documented her right thigh had a
11 pressure sore with skin sloughing to the proximal side
12 mid-thigh.

13 Q. What is a pressure sore?

14 A. The outside of her thigh, the skin was
15 sloughing off on the right leg that was in contact with
16 the floor.

17 Q. Can you explain what that means a little bit?

18 A. It was like a blister that had had -- it
19 wasn't a blister, but it is the same, I guess, the same
20 concept. Contact with the floor and had the skin
21 breaking down and was coming off.

22 Q. And that occurred from just having the contact
23 to the floor?

24 A. Prolonged contact to the floor.

25 Q. Was it just the blister on her leg? Did you

DIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 notice anything else?

2 A. I did not at the time other than her face,
3 same side.

4 Q. Now you said that you were not sure if anyone
5 else was in the home. Did you see Mr. Gaines at all
6 while you were there?

7 A. He was outside. And I do recall getting out
8 of the ambulance after we loaded her up, there was
9 another female there. And I don't recall who it was. I
10 am sorry. And I did ask him, confirm with him that she
11 had been in the floor for three days -- well, since the
12 fall.

13 Q. I apologize for interrupting.

14 A. That is all right.

15 Q. At that point was law enforcement contacted?

16 A. On our way to the hospital I contacted our
17 dispatch and had them contact law enforcement and social
18 services.

19 Q. Okay. So after you assess Ms. Gaines and you
20 discovered those injuries, that sore, what did you do
21 next?

22 A. We just did our normal assessment. Her vital
23 signs were not terribly bad at all. We got an IV
24 started and got some fluids started back into her. On
25 the way to the hospital we did start a second IV. Got

CROSS EXAMINATION OF MICHAEL CORBIN BY MR. SMITH

1 the clothes out of the way and then transported her.

2 Q. Why did you start a second IV?

3 A. Protocol. Just in case she needed more, more
4 fluid, and just to save time at the hospital.

5 Q. Is that your normal assessment for a patient?

6 A. Yes.

7 Q. And at that point you did transport her to the
8 hospital?

9 A. We did.

10 Q. What happened when you arrived at the
11 hospital?

12 A. I gave my report to the nursing staff that was
13 there, like we always do, and the doctor.

14 Q. At any point was Ms. Gaines able to assist you
15 with her care?

16 A. None whatsoever.

17 MS. ENNIS: No further questions. Please
18 answer anything that the defense may have.

19 MR. SMITH: Thank you, Your Honor. May
20 it please the Court.

21 CROSS EXAMINATION

22 BY MR. SMITH

23 Q. Thank you for your service, okay. The thing
24 about it is, the reason why you have to contact law
25 enforcement like you did was you could get in trouble,

CROSS EXAMINATION OF MICHAEL CORBIN BY MR. SMITH

1 right?

2 A. I was being a patient advocate.

3 Q. Yes, I understand. But under the South
4 Carolina law as I read it, there is a certain duty for
5 you to report any suspected adult abuse; is that
6 correct?

7 A. Correct.

8 Q. All right. So this is going beyond -- I mean,
9 the law requires you to do it, doesn't it?

10 A. Yes, sir.

11 Q. All right. Otherwise you could get in
12 trouble, right?

13 A. Well, yes, sir.

14 Q. Okay. Now when you say that the vital signs
15 were not bad, that means her breathing?

16 A. Breathing.

17 Q. Right. Circulation?

18 A. She was circulating.

19 Q. That was okay?

20 A. Uh-huh. (Indicating affirmatively.)

21 Q. All right. Now, you are a trained health care
22 provider, correct?

23 A. Correct.

24 Q. You didn't know whether Mr. Gaines was, you
25 had never had contact with him, had you?

REDIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 A. Never met him before.

2 Q. Right. And you don't know what her condition
3 was on the 14th or the 15th or the 16th because you
4 wasn't there, right?

5 A. I wasn't, correct.

6 MR. SMITH: No further questions.

7 THE COURT: Anything further from this
8 witness?

9 MS. ENNIS: Yes, Your Honor, just
10 briefly.

11 REDIRECT EXAMINATION
12 BY MS. ENNIS

13 Q. Why did you contact law enforcement?

14 A. Again being a patient advocate, and I
15 suspected her being unresponsive in the floor for that
16 long needed to be further investigated.

17 Q. Is that something that you had seen before or
18 dealt with before?

19 A. Yes.

20 Q. Now, the defense attorney talked to you a lot
21 about Ms. Gaines' vitals; was she okay?

22 A. Her vital signs were not bad. I mean, again,
23 back to my report, that would be other than her level of
24 consciousness, they were within normal limits.

25 Q. What do you mean by her "level of

REDIRECT EXAMINATION OF MICHAEL CORBIN BY Ms. ENNIS

1 consciousness"?

2 A. She was unresponsive.

3 Q. So she wasn't talking?

4 A. She wasn't talking at all.

5 MS. ENNIS: Thank you. No further
6 questions, Your Honor.

7 MR. SMITH: May it please the Court.
8 Since you referred to those notes again, can I just take
9 a look at them please?

10 THE WITNESS: I guess that you can.

11 MR. SMITH: Thank you.

12 (Pause.)

13 MR. SMITH: Your Honor, that is it.
14 Thank you for your service. I appreciate you.

15 THE COURT: Thank you, sir. You may step
16 down.

17 MR. ALDERMAN: Judge, may it please the
18 Court. It may be a good opportunity for a short break.

19 THE COURT: Okay. Madam bailiff, would
20 you take the jury back for a ten-minute break?

21 (The jury exits the courtroom.)

22 (Brief recess.)

23 MR. ALDERMAN: Judge, may I approach?

24 THE COURT: Yes.

25 (Off-the-record discussion held.)

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 THE COURT: State, call your next
2 witness.

3 Thereupon,

4 KEVIN DOCYK, M.D.
5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ALDERMAN

9 Q. Dr. Docyk, if you would please introduce
10 yourself to the jury and just explain to them a bit
11 about where you work and what do you?

12 A. I am Dr. Docyk. Board certified in emergency
13 medicine. At the time I was working at Oconee Memorial
14 ER. I trained at Albany Medical Center in Upstate New
15 York. And worked a year at a trauma center in Tampa,
16 Florida, before coming to Oconee County. And worked out
17 of Oconee for about six years until now, and I am
18 currently working at Spartanburg Regional.

19 Q. How long have you been a physician in total?

20 A. Well, so I did residency for four years and
21 eight years of practicing outside of residency.

22 Q. When you say "outside of residency", you mean
23 after being certified?

24 A. As an attending physician, as a primary
25 physician.

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 Q. Okay. So, at the time, late December '17. you
2 just testified that you were an emergency room physician
3 at the Prisma System; is that right?

4 A. Yes.

5 Q. And can you explain a little bit about what an
6 emergency room physician does, say, versus any other
7 specialty you might have at a hospital?

8 A. Typically we treat like acute problems,
9 whether they come in walking in through the door or come
10 in by ambulance. A lot of times we have one on one
11 contact with the EMS providers, paramedics, dispatch.
12 And we see people typically with acute illnesses, but
13 may also see acute chronic problems as well. But in
14 this case this was an acute issue that came in by an
15 ambulance.

16 Q. So, in that capacity, did you have Alma Lee
17 Gaines as a patient in December of 2017?

18 A. Yes, that's correct.

19 Q. Can you just give us a rough overview of your
20 initial impression, what you saw when you treated her?

21 A. So, she was a ninety-two year old female when
22 she came in. Kind of unkempt. At the time she was
23 covered in numerous blankets, covered in stool and
24 urine. You could see she had numerous pressure sores to
25 her body. Specifically on her right side where she had

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 been laying on the right side of her face. Her upper
2 and lower extremities with lots of skin breakdown to the
3 right side in particular. The mouth was very dry. And
4 you could tell that she was just not in very good
5 condition when she came in the door.

6 Q. Would you have made notes to that effect, that
7 reflects that?

8 A. Yes, the medical record would kind of show the
9 same thing.

10 MR. ALDERMAN: Permission to approach,
11 Your Honor?

12 THE COURT: Yes, sir.

13 (Off-the-record discussion held.)

14 BY MR. ALDERMAN

15 Q. Dr. Docyk, I'll hand you what has been
16 previously marked as State's Exhibit 18 and ask you to
17 just take a look at that and tell me if you recognize
18 it.

19 A. Yes, so this is pretty much the documentation
20 from the ED note when a patient comes in initial
21 assessment, physical exam and initial diagnosis and labs
22 that were ordered.

23 MR. ALDERMAN: Judge, I believe that Mr.
24 Smith and the State has stipulated to the admissibility
25 of this particular item.

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 MR. SMITH: We did, Your Honor.

2 MR. ALDERMAN: So we move State's 18.

3 THE COURT: State's Exhibit No. 18 will
4 be admitted without objection.

5 MR. ALDERMAN: Thank you, Judge.

6 *(Whereupon, State's Exhibit No(s). 18*
7 *marked for identification and received in evidence.)*

8 BY MR. ALDERMAN

9 Q. So, if you could, I believe it is Page 2 to
10 your physical exam. You don't necessarily have to read
11 it word for word, but with that reference tell us
12 specifically what you observed with regard to the
13 injuries or other objections?

14 A. Kind of just some of the pertinent without
15 going over everything would be, you know, like I said,
16 when she came in she was extremely unkempt. She would
17 open her eyes and kind of localize the pain if she was
18 having some. But pretty much she was extremely unkempt
19 and nonverbal at the time. Had numerous pressure sores,
20 and redness to the right side of her face, her ear. And
21 like I said, the rest of her extremities I want to say
22 on the right side. Some skin breakdown to her right
23 thigh. They think she was nonverbal at the time, but
24 would open her eyes when you attempted to talk to her or
25 call her name. That is pretty much everything.

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 Like I said, she was covered in feces and
2 urine and just had the odor of that as well. And
3 also had the blankets on her.

4 Q. So after you have made these observations, do
5 you -- well, let me ask it this way: What do you do
6 then?

7 A. So, at this point, in the emergency department
8 everything kind of happens simultaneously. So you are
9 talking to her and asking her, and assessing her, trying
10 to figure out what you are going to do next in terms of
11 treating her and stabilizing her and checking her vital
12 signs and figuring out what labs you want to order, what
13 EKG you need to order on her as well, talking to the
14 nursing staff. Kind of directing them what to do in
15 terms of whether or not to place the IV, get blood work,
16 and having vital signs taken, putting her on a monitor.
17 And, again, communicating with EMS. So, this is kind of
18 all happening at the same time.

19 Q. So what particular tests did you order
20 specifically in this case?

21 A. Yeah, again looking at the chart, yeah so,
22 based on the chart here, it looks like kind of ordered
23 basic labs, chemistry panel and CBC blood cultures, you
24 are looking for enzymes looking at her heart. And
25 rhabdomyolysis, typically you check that if you think

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 that someone has been on the ground for a long period of
2 time or has trauma. And these are just some of the labs
3 that we ordered here in this.

4 I know that the documentation, it doesn't
5 show, but we also ordered images I think of her
6 lower extremities as well as a head and neck, just
7 to make sure that there wasn't any signs of a neck
8 fracture or a head bleed or any fractures to her
9 neck or pelvis or leg that she had been laying on.

10 Q. Did you find any fractures or any specific
11 orthopedic acute injuries?

12 A. That, I believe there were no acute orthopedic
13 injuries and head and neck were negative.

14 Q. So if you could take us -- I'm looking on
15 Page three of your diagnoses -- so, after you ordered
16 lab, images, done a physical exam, what is it that you
17 were able to diagnose?

18 A. So, the diagnosis documented adult neglect,
19 dehydration, elevated troponin, rhabdomyolysis, and
20 renal insufficiency and sepsis were all the diagnoses.

21 Q. If you could explain some of that to us. Some
22 of these terms are not familiar. The elevated troponin?

23 A. Yes, so elevated troponin is just a specific
24 lab test that could be elevated in someone who
25 potentially has a heart attack. It could also be

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 elevated in someone who has renal failure or if there is
2 trauma like rhabdomyolysis, sometimes that can also make
3 your troponin elevated.

4 So, that diagnosis could be a couple of
5 different reasons why it's elevated. But that is
6 why it was put in there. But it doesn't really have
7 a specific reason to be elevated unless you know
8 exactly what you are looking for. In this case it
9 was probably from rhabdomyolysis.

10 Q. And if you could explain that to us, what
11 exactly is rhabdomyolysis and if you could explain
12 non-traumatic, as it is noted here, versus traumatic?

13 A. Typically rhabdomyolysis would be associated
14 with like muscle breakdown. So if someone is typically
15 on the ground for a long time you start getting muscle
16 breakdown. You can also -- you hear about it a lot with
17 like sports/athletes training, working outside in the
18 heat, you hear of muscle breakdown and it just kind of
19 gets excreted through the kidneys. But you can have
20 renal failure and things like that. Typically the
21 non-traumatic or any setting, typically if you have a
22 trauma, like a crush injury, or a motor vehicle
23 accident, or a crush injury, it would be like a
24 traumatic rhabdomyolysis versus this. But there is no
25 history that suggests that there is a traumatic event

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 that happened. So that is why it's that.

2 Q. And renal insufficiency?

3 A. So typically renal insufficiency just, it
4 means kind of almost like there is a chronic renal
5 failure and acute renal failure. In this case acute
6 renal failure means that you have a change in your
7 kidney function that is happening rather abruptly for
8 whatever reason. Whether it can be dehydration, or
9 rhabdomyolysis are all reasons that you can have that as
10 well. So you kind of compare that based off of prior
11 laboratory data that someone may have had to kind of see
12 if this is a new change or if it is her baseline, things
13 like that. And there is also other lab indicators that
14 I was kind of telling you, like if this is new or old as
15 well.

16 Q. The dehydration and the rhabdomyolysis, if I
17 understand your testimony correct, either one or both of
18 those could have contributed to the renal insufficiency?

19 A. Yes, either by themselves or together could
20 result in renal insufficiency.

21 Q. Okay. Now, was Ms. Gaines able to give you
22 any history, any background, any information that might
23 help you treat her?

24 A. No, she was completely nonverbal, she was not
25 able to tell you anything.

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 Q. So she was unable, if she was nonverbal, to
2 write something down to communicate with you?

3 A. No. At the time she could not. She could not
4 barely move any of her extremities, let alone, you know,
5 hold a pen and write anything down or any other form of
6 communication.

7 Q. So if she can't collaborate with you, if she
8 doesn't have the capacity to tell you what she wants,
9 what do you do?

10 A. In the emergency setting, history either came
11 from the family or, from the situation, a lot of times
12 in that setting, we just -- it was typical to do what is
13 best for the patient to try to take care of them until
14 someone has some sort of form or indicator that this is
15 not what the patient would want, DNR, DNI, or if another
16 family member comes in and says the opposite of what we
17 would be doing outside of an acute emergency.

18 Q. Okay. So outside of the acute emergency, if a
19 patient was nonverbal, noncommunicative, just didn't
20 have the capacity to tell you what they want, would you
21 consult with family members?

22 A. We would consult with family members, but we
23 would also take care of her in that situation/setting.

24 Q. Now, if I understand what you do as an
25 emergency room physician, you were treating the acute

DIRECT EXAMINATION OF DR. KEVIN DOCYK BY ALDERMAN

1 injury, and then is it fair to say you move that patient
2 on to the next stop, whether it is home, or admitted to
3 the hospital?

4 A. Yes, so our primary thing in the emergency
5 department is kind of treating the acute, the acute
6 cause or whatever is presented in front of us,
7 stabilizing the patient, make sure that they are stable
8 enough to leave the emergency department, whether or not
9 that be discharged to home, or being admitted to the
10 hospital, or potentially being transported to another
11 outside facility, or kind of the ultimate disposition in
12 terms of what the patient needed, to go home or be
13 admitted to the hospital.

14 Q. So was Ms. Gaines admitted to the hospital or
15 released home?

16 A. No, she was admitted to the hospital service.

17 Q. And after she left your care, where did she
18 go?

19 A. I know that she stayed at Oconee Memorial. I
20 can't recall the exact floor she went to.

21 Q. I guess more in general what I am asking, is
22 there another particular specialty or group of doctors
23 that would typically take care of her?

24 A. For her, it would have been the hospitalists,
25 which is typically, at Oconee Memorial, the internal

CROSS EXAMINATION OF DR. KEVIN DOCYK BY MR. SMITH

1 medicine group.

2 Q. Okay.

3 MR. ALDERMAN: Doctor, that is all of the
4 questions that I have for you at the moment. If you
5 would please answer any that Mr. Smith may have.

6 CROSS EXAMINATION

7 BY MR. SMITH

8 Q. Doctor, how are you doing today?

9 A. Fine, sir. Yourself?

10 Q. I just have a few questions for you. When you
11 are admitted to the hospital, someone has to consent if
12 you are unresponsive, right?

13 A. If you are unresponsive?

14 Q. Say I am an unresponsive patient, I come in,
15 got family members, does somebody have to consent to
16 admit me into the hospital? Because I can't consent,
17 I'm unconscious.

18 A. Yes. If someone comes in and they are
19 unconscious, typically they don't have to consent to be
20 admitted.

21 Q. To clear that up. Now, let me go back to some
22 of your training, to become a health care -- you are a
23 health care provider, per se, aren't you?

24 A. Yes.

25 Q. And as a health care provider, per se, you

CROSS EXAMINATION OF DR. KEVIN DOCYK BY MR. SMITH

1 have had all of this training with regard to medical
2 care and treatment of patients who come into emergency
3 facilities, correct?

4 A. Yes.

5 Q. Okay. And on -- now, in your document -- do
6 you mind?

7 A. Yes.

8 Q. Thanks. Okay. Who gave you the information
9 that Mr. Gaines was the primary caregiver of his mother?

10 A. I --

11 Q. You put that in your medical report?

12 A. Yes. At this time it must have been him
13 because I had spoken to him and I had spoken to his
14 girlfriend at the time who was also present.

15 Q. Yeah, but he never told anybody he was her
16 caregiver?

17 A. There wouldn't be another reason for me to put
18 it in the chart unless someone told me that.

19 Q. Oh, I see. So, and then there were, in other
20 places of the -- because, you know, he was banned from
21 seeing his mother; you knew that, didn't you?

22 A. I did not know that.

23 Q. Okay. Well, did you know that he was arrested
24 after he spoke to Brother McMahan over here; did you
25 know that?

CROSS EXAMINATION OF DR. KEVIN DOCYK BY MR. SMITH

1 A. I didn't know that he was arrested.

2 Q. So, I'm just trying to figure out when he told
3 you that?

4 A. I cannot tell you that. All I know is that I
5 was trying to take care of Ms. Gaines.

6 Q. I understand. I'm not blaming you for
7 anything. I am just, just trying to get the time line
8 right. Now, but you will note that you had no personal
9 knowledge that Mr. Gaines was ever her primary health
10 care provider, correct?

11 A. Like I said, if it was in the chart after I
12 discussed it with him, he must have been the one who
13 told me.

14 Q. But you never saw him at the hospital, did
15 you?

16 A. I did see him at the hospital. I saw him and
17 his girlfriend showed up.

18 Q. Okay. And did you note what the girlfriend
19 said?

20 A. I did not.

21 Q. So you don't know which one of them told you
22 he was the primary health care giver; is that correct?

23 A. Not as of right now today, no, I cannot
24 recall.

25 Q. Now, did they discuss with you at the scene

REDIRECT EXAMINATION OF DR. KEVIN DOCYK BY MR.
ALDERMAN

1 that Ms. Gaines didn't want to be transported to the
2 hospital?

3 A. I know that he, the son, had mentioned that
4 she didn't want to come initially.

5 Q. Okay. Did she have the right to not come to
6 the hospital if she didn't want to?

7 A. Yes, if she didn't want to come to the
8 hospital, she has the right not to come to the hospital.

9 MR. SMITH: Nothing further.

10 / THE COURT: Anything further of this
11 witness?

12 MR. ALDERMAN: Yes, Judge.

13 REDIRECT EXAMINATION

14 BY MR. ALDERMAN

15 Q. You mentioned if she doesn't want to go to the
16 hospital she doesn't have to go to the hospital, and
17 that is true of anybody I assume; correct?

18 A. Yes.

19 Q. Anybody who has the capacity to make that
20 decision, would that be right?

21 A. Yes, that's correct.

22 Q. At the time you saw Ms. Gaines, did she have
23 the capacity to make any decisions for herself?

24 A. She did not.

25 Q. Suppose she was laying on the floor without

REDIRECT EXAMINATION OF DR. KEVIN DOCYK BY MR.
ALDERMAN

1 water for three/four days, would you expect dehydration
2 to impair her cognitive abilities over that time?

3 A. If it's bad enough it can.

4 Q. Let me ask you this way: How long in your
5 experience can a person in a 100 degree room with no
6 water survive at all, let alone survive and be
7 cognitively there?

8 A. Typically you would think, say, 24 hours, but
9 I have also seen people less time than that be confused,
10 altered, even in the matter of an hour or two, including
11 becoming so dehydrated they become confused.

12 Q. If you see someone in that situation, even if
13 they were verbal, even if they were conscious, if they
14 had impaired cognitive ability because of that, would
15 they have the capacity to make decisions about their
16 health care?

17 A. No, typically they would not. So if someone
18 comes in and they are confused or are unable to tell you
19 the benefits, they typically do not have the capacity to
20 make that decision.

21 Q. So is it fair to say that someone else has to
22 care for them?

23 A. If you are at home you mean?

24 Q. I mean if they are unable to care for
25 themselves, then presumably they would have to have

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 someone take care of them?

2 A. Typically, in this case, in this situation, if
3 she was at home and nonverbal, someone would have to
4 take care of her, you would hope.

5 MR. ALDERMAN: Thank you, Your Honor.

6 THE COURT: Anything further of this
7 witness?

8 MR. SMITH: No, sir.

9 THE COURT: Okay. Thank you, Doctor.
10 You can step down.

11 MR. ALDERMAN: Judge, at this time the
12 State would call Dr. Singh.

13 Thereupon,

14 VIJENDRA SINGH, M.D.

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE COURT: State your name for the
18 record.

19 THE WITNESS: My name is Dr. Vijendra
20 Singh.

21 DIRECT EXAMINATION

22 BY MR. ALDERMAN

23 Q. Dr. Singh, if you wouldn't mind, would you
24 pull that microphone closer or get closer to it? Dr.
25 Singh, if you would, please introduce yourself to the

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 jury and explain to them a little bit about where you
2 work and what you do?

3 A. My name is Vijendra Singh. I am an internal
4 medicine hospitalist. I completed medical school at St.
5 James School of Medicine in 2010. I did my residency in
6 internal medicine from Charleston Area Medical Center,
7 West Virginia Internal Medicine graduate in 2014. Since
8 then I have worked in South Carolina. And I was at
9 Baptist Easley working covering the hospital at night as
10 an internal medicine hospitalist. And 2017 onwards I
11 worked with Prisma Health Oconee, working as an internal
12 medicine hospitalist.

13 Q. So were you working in late December of 2017
14 in that capacity?

15 A. I was.

16 Q. And while you were working, did you encounter
17 an Alma Louise Gaines as a patient?

18 A. I did, yes, sir.

19 Q. And how did she come to be in your care?

20 A. So she was admitted from the emergency room to
21 the hospitalist service. And she was seen by one of my
22 partners, Dr. Davis, and brought into the hospital for
23 further care of kidney failure, dehydration, generalized
24 weakness, confusion, a urinary tract infection.

25 After that she was seen by one of my other

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 physicians, Dr. Baker. And on the 23rd of December
2 2017 is when I assumed to take care of Ms. Gaines.

3 *(Whereupon, State's Exhibit No(s). 17*
4 *marked for identification and received in evidence.)*

5 BY MR. ALDERMAN

6 Q. Okay. And could you tell us what, if
7 anything, you reviewed, as far as her prior care, before
8 she came to be in your care and how that reformed your
9 care going forward?

10 A. Before I resumed care, when we start I usually
11 go look at the notes that the other physician does and
12 see if there's anything significant. So that morning I
13 reviewed why she was admitted, what was the significant
14 labs or what was the plan moving forward with Ms.
15 Gaines.

16 Q. And why was she admitted, to your knowledge?

17 A. She was, based on the notes that I have, she
18 was found minimally responsive, very dehydrated, with
19 skin breakdowns at home. And I believe that someone
20 called because she was in that condition and brought to
21 the emergency room. And initial, based on notes that I
22 have, when she came in she was minimally responsive, not
23 able to provide much history. But she had the issue of
24 kidney failure, dehydrated, and had a urine infection.

25 Q. Could you explain kidney failure to us and

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 common causes?

2 A. Kidney failure basically means the main
3 function of the kidney is to clear out waste products
4 from the urine and one of the major ones is called
5 creatine, which is the muscle breakdown and carried to
6 the kidney. And also bilirubin, which is the breakdown
7 of protein by the liver.

8 So renal failure means the kidney is not
9 able to function and clear out the byproducts that
10 start to build up in the body which can lead to, you
11 know, a lot of problems, confusion, weakness,
12 nausea, things like that.

13 Q. Did you note any decubitus ulcers on her
14 person?

15 A. She did.

16 Q. And how might that impact kidney function?

17 A. Any time you have -- so based on the notes
18 from wound care, before I had seen her they had
19 mentioned multiple small streaks of the breakdown of the
20 skin. But she also had a big ulcer that was ten by five
21 centimeters on the right lateral part of the thigh. And
22 there was smaller ulcers that were on the sacrum, hip,
23 and an abrasion to the right face and chest.

24 Q. Okay. And again, how might that, if at all,
25 influence kidney function?

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 A. So again, kidney function can be if someone
2 has muscle breakdown. Muscle is a protein that the
3 kidney has to clear it out of the body. And once it
4 experiences a breakdown of the muscle, kidneys can get
5 clogged up and not able to clear and that causes damage
6 to the kidney.

7 Q. Tell me this, if a person is suffering from
8 rhabdomyolysis and their kidneys are trying to clear
9 these proteins, is that condition made worse by laying
10 on the floor versus, say, walking around?

11 A. It can.

12 Q. How so?

13 A. Because putting an amount of pressure on your
14 muscle on a certain part of body, not getting enough
15 hydration, not walking around impacting the circulation.

16 Q. Now, you mentioned that you reviewed these
17 documents and read the chart and got a sense of how she
18 came to be there and treatment going forward. Was this
19 all prior to you physically observing Ms. Gaines or
20 treating her physically?

21 A. Yes, sir.

22 Q. So take us to there, when you first lay eyes
23 on Ms. Gaines.

24 A. Okay. So I saw Ms. Gaines on the morning of
25 23rd December 2017. I got a call from the patient's

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 nurse, Ms. Gaines' nurse, Daphne. On her examination
2 she found that patient's right leg below the knee was
3 dusty blue in color.

4 I responded immediately and went to see
5 her within ten minutes. And on my exam I say the
6 same thing, that below the knee it was cold and the
7 color blue, no pulse present, and very painful in
8 moving the foot. Which is a sign of limb ischemia,
9 which is a medical term. Limb ischemia, that means
10 that one of the limbs has a chance of completely
11 cutting off blood circulation.

12 Q. All right. So you see her and you see that
13 her leg is cold and blue and doesn't have a pulse, what
14 do you do next?

15 A. First thing is I got an ultrasound or a doctor
16 to check for that. Manually there was no pulse and I
17 confirmed with the doctor that there was no pulse below
18 the knee. I started her on Heparin, which is a blood
19 thinner, because most of these occur because of clots
20 that can cut off blood circulation. And then once I did
21 that I got ahold of the vascular surgeon on call from
22 Greenville.

23 Q. And once you had consulted with the vascular
24 surgeon, what did they tell you?

25 A. Not a good prognosis. That she -- at that

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 point the main decision is to see if that is something
2 that we need to operate on right away or are the risks
3 of operating going to be higher. Discussing with the
4 vascular surgeon, with her age, dehydration, kidney
5 failure, overall ulcers not healing. The risk of
6 putting her through major surgery would be very high.
7 They didn't want to put her through surgery.

8 Q. So essentially, if I understand what you are
9 saying, you have a terrible choice of either surgery
10 that will almost certainly kill her, or no surgery which
11 will almost certainly kill her; is that accurate?

12 A. Yes.

13 Q. And you said they recommended against the
14 surgery?

15 A. They did.

16 Q. So what would have been the next step? What
17 was done for Ms. Gaines at this point?

18 A. The next step was I contacted the next of kin,
19 which was, I think, Ms. Cherry. I contacted her to tell
20 her what my finding was and what the vascular surgeon
21 told me. And I also asked her to come to the hospital
22 at bedside. So after I think 15 or 20 minutes Ms.
23 Cherry and more family came at bedside and I explained
24 to them what was going on. They asked me to get a
25 second opinion from hospital vascular surgery, so I made

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 a phone call to vascular. And I got the same thing,
2 very high risk surgery and they wanted to make her more
3 comfortable helping with the pain rather than surgery.

4 Q. So, when you say that you spoke with family
5 members, do you remember who these family members were?

6 A. I remember Ms. Cherry was the primary contact,
7 that I spoke with her on the phone and met with her, but
8 I think -- I'm not sure, I didn't actually document who
9 was there.

10 Q. Do you specifically recall consulting with Mr.
11 Gaines?

12 A. I don't.

13 Q. So you say the vascular surgeon recommended
14 against the surgery, weighing the pros and cons, but who
15 actually makes that call at the end of the day, in Ms.
16 Gaines' case?

17 A. In Ms. Gaines' case, so we give the option to
18 the patient or to the decision maker, next of kin, this
19 is the risk and the benefit of putting someone through a
20 procedure. And it is up to them if they want to go
21 through with the surgery and, you know, I would, I would
22 call the vascular surgeon and arrange for transfer. But
23 if the family is not in agreement with what I feel or
24 the vascular surgeon recommended . . .

25 Q. Okay. So ultimately, in this case, who made

DIRECT EXAMINATION OF DR. VIJENDRA SINGH BY ALDERMAN

1 the call to not do the surgery?

2 A. I think it was Ms. Cherry.

3 Q. And at any time when Ms. Gaines was in your
4 care, did she have the capacity to intelligently
5 communicate to you what she wanted?

6 A. No, sir, she never had the capacity.

7 Q. Right. So, once that decision is made, what
8 happens next?

9 A. The next step is going to be non-surgical
10 management. That would be pain management, and to make
11 sure that if there is a sign of infection that we
12 control that and keep her on a blood thinner like
13 Heparin. And, you know, follow along and see if the
14 blood is septic or get more infection, treating that and
15 make sure -- making them comfortable, the family, with
16 that and help the patient be comfortable.

17 Q. Can you explain to us what the Cottingham
18 House is?

19 A. Cottingham House is a hospice house where
20 people who are considered terminal and who are either
21 asymptomatic or the physician feels have less than six
22 months of life, we move them there so they can get more
23 hospice care and manage their symptoms of nausea,
24 insomnia, sleep.

25 Q. After leaving your care, Dr. Singh, is that

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 where Ms. Gaines went?

2 A. It was.

3 MR. ALDERMAN: Thank you. Please answer
4 any questions that Mr. Smith may have for you.

5 CROSS EXAMINATION

6 BY MR. SMITH

7 Q. Thank you, Dr. Singh, for being here today.
8 Those are documents that I had for identification that I
9 think the solicitor said was okay.

10 MR. ALDERMAN: Sure.

11 MR. SMITH: It is okay as long as I
12 wasn't pitting. So, Exhibit No. 2 for Defendant is
13 admitted, Your Honor.

14 THE COURT: Mr. Alderman, is that the
15 exhibit you stipulated?

16 MR. ALDERMAN: Yes, Judge.

17 THE COURT: So Defendant's Exhibit No. 2
18 is admitted without objection.

19 MR. SMITH: Thank you, Your Honor.

20 *(Whereupon, Defendant's Exhibit No(s). 2*
21 *marked for identification and received in evidence.)*

22 MR. SMITH: Thank you, Your Honor.

23 BY MR. SMITH

24 Q. So the long and short of it, Ms. Cherry is the
25 one that made the decision not to do the surgery to take

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 off the gangrene leg; is that correct?

2 A. I think that it was her decision, but not for
3 sure. Based on my decisions in documentation it was Ms.
4 Cherry.

5 Q. Okay, sir. Excuse me one second, I am sorry.
6 So many of these things.

7 (Pause.)

8 BY MR. SMITH

9 Q. Let me ask this while I'm looking for this
10 stuff, Doctor: Who was the health care provider that
11 acted -- was Ms. Cherry the health care provider at that
12 point?

13 A. Per documentation, she was next of kin.

14 Q. Next of kin, that is different than being the
15 health care provider; correct?

16 A. Yes, sir.

17 Q. That was not actually -- Ms. Gaines was not
18 actually her daughter -- that was not her daughter;
19 Cherry was not her daughter, right?

20 A. So based on my documentation, patient was
21 widower. No parents alive. And the son was not to be
22 contacted because he was involved in this. And at that
23 point it was niece and three other family members
24 documented as the nieces at her bedside.

25 Q. Do you mind if I take a look at your notes

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 real quick? Do you have any notes where all of you got
2 together and made the decision?

3 A. It should be documented. I can review my
4 notes.

5 Q. Yes, please.

6 MR. SMITH: Sorry, Your Honor, I did it.

7 (Pause.)

8 MR. SMITH: Okay. I think that I found
9 it finally. Summary of findings. May I approach the
10 witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. SMITH

13 Q. Dr. Singh, you see right here where it says,
14 There was time spent discussing patient. It says, Met
15 with patient's niece Cherry at the bedside with patient.
16 Patient's other niece joined teleconference. Time was
17 spent discussing plan of care, admission to hospice, all
18 of that.

19 All right. Family understood prognosis.
20 Niece stated, I have been through it, referring to
21 caring for another family member that had gangrene
22 related to Diabetes who ultimately died. She stated
23 that she watched her other family member go through
24 all of the medical treatment including amputation
25 and life support, but despite all of this did

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 believe that the patient would not want to go
2 through all of that. Correct?

3 A. Actually that is not with me, that is with Dr.
4 Rawdan.

5 Q. Okay. Now but Dr. Rawdan says that the
6 patient shook her head, she shook her head to indicate
7 no when asked if she wanted to continue with treatment
8 in the hospital; correct?

9 A. I cannot say, I was not present there.

10 Q. Okay. Well, this is what was confusing to me.
11 You and the emergency room doctors say this lady was
12 completely out of it and couldn't consent to nothing
13 because she is completely out of it, and then this one
14 said with a nod of the head she denied she wanted
15 further medical care and treatment; did you know that?

16 A. Like I said, I was not present there with that
17 patient and so I cannot comment on it. I did not
18 witness that.

19 Q. Okay. Now discuss when somebody comes into
20 the hospital to be admitted to the hospital, someone has
21 to consent to them being there, correct?

22 A. Yes.

23 Q. And y'all look at those consent documents to
24 make sure that people consent to the medical care and
25 treatment, correct?

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 A. Yes, sir.

2 Q. And even the next of kin has to sign for
3 somebody who is unresponsive, correct?

4 A. Yes.

5 Q. All right. Now I want to show you this. Mack
6 Gaines, to make sure that his mama got medical care and
7 treatment, came in and signed those consents on the
8 18th; is that correct?

9 MR. SMITH: And I will have these marked
10 for identification.

11 MR. ALDERMAN: Let me see.

12 (Pause.)

13 BY MR. SMITH

14 Q. All right. So on the 18th now he is claiming
15 that he is the caregiver on the 18th, right?

16 A. Again, I was not there.

17 MR. SMITH: I don't think he has any
18 problem with me putting it in, do you?

19 MR. ALDERMAN: No.

20 MR. SMITH: He says he don't.

21 THE COURT REPORTER: Defendant's Exhibit
22 3, three pages, Your Honor.

23 MR. ALDERMAN: Without objection.

24 THE COURT: So Defendant's Exhibit No. 3
25 admitted without objection.

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 *(Whereupon, Defendant's Exhibit No(s). 3*
2 *marked for identification and received in evidence.)*

3 BY MR. SMITH

4 Q. All right. There is his initials on that
5 document. And these are kind of like consent and
6 authorization; is that correct?

7 A. I don't know about that document, sir.

8 Q. All right. So let me just ask this question:
9 You don't know whether or not he was the primary
10 caregiver for her prior to the 18th of December, 2017,
11 do you?

12 A. No, sir.

13 Q. Right. As a matter of fact you have no
14 personal knowledge in that regard, correct?

15 A. That's correct.

16 Q. Right. And so when you come to the hospital
17 and they say, who is the next of kin, somebody can step
18 up and say at that point, I will be it; correct?

19 A. I don't work in the emergency room, I didn't
20 do --

21 Q. You have never been --

22 A. Plus I didn't provide care at that point, so I
23 would not, would not want to comment on that.

24 Q. Would not want to comment, okay. That is all
25 right. That is fair enough, you wouldn't want to

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 comment on it. Now if Ms. Cherry was not his (SIC) next
2 of kin and she was wasn't his (SIC) health care
3 provider, how could she consent if she didn't have a
4 medical power of attorney to say that her leg could be
5 cut off?

6 A. If you will give me a few minutes I will
7 review the notes from palliative medicine.

8 (Pause.)

9 A. Actually I don't have that documentation with
10 me right now.

11 Q. That is right. So somebody made a decision to
12 go on and let the woman die in hospice, right, that you
13 thought was next of kin?

14 A. That was based on the discussion with
15 palliative care and case management.

16 Q. Well, I mean, how do you vet these people? If
17 I just come in and say, Okay, I'm next of kin and I want
18 my aunt so-and-so's leg cut off?

19 MR. ALDERMAN: Objection, Your Honor. I
20 believe that the witness has answered that he was not
21 part of the palliative care team and doesn't have any
22 information or anything to do with how that decision was
23 made.

24 THE COURT: Rephrase the question.

25 MR. SMITH: Yes, Your Honor.

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 BY MR. SMITH

2 Q. Well, as I understood it -- and I don't want
3 to muddy up stuff, okay. Now, when he was asking and
4 you were talking about that hospice house, right, you
5 were talking about that old Cottingham place, wasn't
6 you? You remember he asked you a question and you said,
7 Yeah, we were all making this plan for her to go to
8 Cottingham. And old Cherry made that decision, too,
9 right? You told him.

10 A. Again, sir, I was not part of that decision.

11 Q. No, but you told him that on direct.

12 A. It was -- the discussion was made with the
13 palliative care team. And I am medical internist, so I
14 didn't get to take part in that discussion.

15 Q. Oh, okay. Now so the long and short of it,
16 you didn't know this lady for her whole 92 years, right?

17 A. No, sir.

18 Q. Right. And the fact of the matter is, you
19 didn't know her primary care doctor, Dr. Paul Thompson,
20 did you?

21 A. Not personally.

22 Q. Yeah. And the fact is, didn't she show some
23 improvement during the course -- her hospital course,
24 her stay in the hospital?

25 A. Can you tell me a little bit more like --

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 Q. I'm just asking questions. Did you know?

2 A. Her labs improved a little bit. Her
3 mentation-wise, not really.

4 Q. Beg your pardon?

5 A. Her mentation, meaning level of alertness, did
6 not really improve during my -- the time period when I
7 was there.

8 Q. How long were you there with her?

9 A. From the 23rd to the 27th.

10 MR. SMITH: Okay. That is all of the
11 questions that I have, Your Honor.

12 THE COURT: Any redirect?

13 MR. ALDERMAN: No, Judge.

14 THE COURT: Thank you, Dr. Singh. You
15 may step down.

16 MR. SMITH: May we approach?

17 THE COURT: Yes, sir.

18 (Off-the-record discussion held.)

19 THE COURT: Ladies and gentlemen, after
20 conferring with the attorneys, it appears that the next
21 witness that the State can call is a lengthy witness,
22 and I really don't like keeping jurors past normal
23 closing hours. I know that you have got lives that you
24 have to get back to. A lot of times people have
25 children to pick up, that kind of thing.

CROSS EXAMINATION OF DR. VIJENDRA SINGH BY MR. SMITH

1 So we will go ahead and break for the
2 day, and we will start back at 9:00 in the morning. So
3 be in the jury room by 10 minutes until 9:00 in the
4 morning. I hope that everyone has a good evening.

5 Just remember your instructions. Family
6 is going to come up to you and want you to tell them all
7 that has happened up here. Just tell them that the
8 Judge said you can't talk about it. Just remember your
9 instructions. Everyone have a good evening and we will
10 see you in the morning.

11 (The jury exits the courtroom.)

12 THE COURT: Anything from the State
13 before we go into recess?

14 MR. ALDERMAN: No, Your Honor.

15 THE COURT: Anything from the defendant?

16 MR. SMITH: Nothing from the defendant.

17 THE COURT: And I'll say for the record
18 that the State consented that Mr. Gaines' bond remains
19 in place.

20 You have to show up. If you fail to show
21 up the case will proceed in your absence. Make sure
22 that you come.

23 THE DEFENDANT: Oh, I'll be here.

24 (Trial recessed for the day.)

25 * * *

DIRECT EXAMINATION OF DR. DANIEL SMITH BY MS. ENNIS

1 4-19-2022 PROCEEDINGS

2 THE COURT: Anything from either party,
3 from either party before we bring our jury in?

4 MR. SMITH: Nothing from the defense.

5 MR. ALDERMAN: Nothing from the state,
6 Your Honor.

7 THE COURT: All right. Get our jury,
8 please.

9 (The jury enters the courtroom at 9:55
10 a.m.)

11 THE COURT: Good morning, ladies and
12 gentlemen. I hope that everyone had a good evening.
13 The State is ready to proceed. Call your first witness.

14 MS. ENNIS: Yes, Your Honor. The State
15 calls Dr. Smith to the stand.

16 THE CLERK: If you will come to the bar
17 to be sworn.

18 Thereupon,

19 DANIEL SMITH, M.D.
20 was called as a witness, having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ENNIS

24 Q. Good morning, Dr. Smith. Can you please
25 introduce yourself and tell us about what you do?

DIRECT EXAMINATION OF DR. DANIEL SMITH BY MS. ENNIS

1 A. Sure. I am Dr. Daniel Smith. I am a family
2 physician and a hospice empowered physician. I am
3 currently the medical director of Hospice of the Foot
4 Hills, and I have been that for about 19 years now.

5 Q. Do you remember December 27th?

6 A. I do not. I have to refer to notes in order
7 to know the details of any case.

8 Q. Okay. Do you remember Ms. Gaines being
9 brought in?

10 A. Faintly.

11 Q. Tell us about that.

12 A. What I remember, I had been called over, over
13 the holiday by Dr. Singh at the hospital. I serve as
14 palliative care consultant at the hospital in addition
15 to my hospice duties. And we had previously, as a team,
16 seen Ms. Gaines. And over the weekend she had had
17 further changes that resulted in a phone call and led to
18 my return to the hospital to actually see her in
19 consultation. That, in turn, led to hospice -- excuse
20 me, the admission to the Cottingham House on the
21 following day, on the 27th.

22 Q. When you say "further changes", what do you
23 mean?

24 A. The team had seen her before, during the week
25 prior, and at the time they were still seeking

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1 aggressive management of her condition. And apparently
2 the tests ended up showing an occluded right femoral
3 common artery, so basically a blockage in one of the
4 major arteries going to the leg. That, in turn, was
5 evaluated and referred to the surgeon who did not feel
6 that the patient would be able to survive the surgery or
7 that it would have meaningful benefit, as it would have
8 been a difficult recovery period.

9 Given that, the leg and the foot would be
10 considered non-viable, meaning that it is not going
11 to survive, which is life threatening. And that was
12 a circumstance that was changed from the original
13 diagnosis where we had rhabdomyolysis.

14 Q. I am sorry, what was that last thing?

15 A. Rhabdomyolysis, it is when the muscle breaks
16 down. Most commonly we see it with people that have
17 been on the ground or on the floor in a position for a
18 long period of time, at least muscle breakdown, and it
19 builds up in the system and can cause damage to the
20 kidneys. And we do also see it in people that are
21 significantly under-hydrated, and there are other
22 circumstances. Treatment typically is supported
23 primarily with fluids. And presumably I wasn't there
24 for the first part of the hospitalization, but they
25 would have intervened in that same method for her.

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1 Once the occlusion, the blockage was
2 found, they would have had to have changed tactics,
3 because that was a far more significant finding.

4 Q. And how did they change tactics?

5 A. They would have attempted to try to use blood
6 thinner medication and try to keep further clotting from
7 building up. Although that will not break up the clot
8 by itself. In turn they would have sought surgical
9 solution either in traditional surgery or interventional
10 radiology trying to re-open something through
11 canalization, or basically threading something through
12 there to try to open it up.

13 Q. You mentioned that Ms. Gaines wasn't a good
14 candidate for this surgery. Why not?

15 A. Age and condition at the time that she was
16 needing the procedure. This would be any time that you
17 have occlusion of an artery acutely, that is not easy on
18 any of us at any age, but with older ages, other
19 conditions, including the recent development that led to
20 the hospitalization, the concern would be that she would
21 not be able to tolerate the procedure itself. It would
22 have created a tremendous drain and stress on the body
23 that likely would have put her in the intensive care
24 unit following the procedure and would have been
25 challenging, to say the least, to get through. Because

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1 kidney function would have further worsened. And
2 unfortunately there is any number of complications that
3 can come about when people are that ill.

4 Q. Since Ms. Gaines was not a candidate for this
5 surgery, what then happened to her right leg?

6 A. Eventually it became non-viable, meaning the
7 tissue started dying and then did, in fact, die. That
8 leads to what we talk about as gangrene. And then the
9 area affected gets infected by the bacteria that is
10 living on all of us. When the tissue gets to the point
11 where it cannot protect the body, then all of the normal
12 things that we take for granted, including how fantastic
13 our skin is at protecting our body from bacteria, that
14 all breaks down.

15 So once the tissue then gets infected, the
16 resulting local infection begins to spread through
17 the tissue. It can certainly spread through the
18 lymphatics and blood vessels and begins to affect
19 other areas, so it basically begins to seed the rest
20 of the body from the origin and creates what we call
21 sepsis, which is infection that affects multiple
22 systems throughout the body and leads to damage or
23 dysfunction or even shutting down the systems.

24 This is very commonly fatal. In younger
25 individuals who do not get antibiotics, it is

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1 possible that their immune systems will power
2 through, but even in young healthy individuals it is
3 life threatening. In this circumstance where there
4 was no stopping the bacteria this was considered
5 uniformly fatal.

6 Q. So with her leg developing sepsis as you have
7 mentioned, what was her day-to-day care like regarding
8 the leg?

9 A. So when she came to us, she was minimally
10 responsive. And the concern was two-fold. One, this is
11 associated with pain, as any body tissue doesn't get
12 enough blood supply, among other things, that hurts.
13 So, we were needing to address that. In patients that
14 can't tell us directly of their pain, it manifests as
15 agitation, grimacing, restlessness in bed. So we had to
16 address those things. And hospice's goal is to try to
17 make the most of the day. We prefer to have quality of
18 life where you have reasonable or palatable control of
19 the symptoms, not perfect control.

20 And then we attempt to make sure that you
21 are generally awake enough to appreciate it, because
22 otherwise there is not really quality of life there
23 either. So the initial treatments were designed to
24 try to maximize that. Unfortunately, since she was
25 already so weak and confused and becoming minimally

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1 responsive, she quickly progressed to completely
2 unresponsive.

3 And then our care consisted of objectively
4 looking for signs of discomfort and continuing
5 routine care of the body, hygiene, cleaning,
6 turning, et cetera. And she required intermittent
7 medication throughout the remainder of her stay, but
8 typically did not require around the clock. Once we
9 got her symptoms under reasonable control, as the
10 disease took its natural course, one of the few
11 benefits, in a sense, is as she becomes less
12 responsive she also becomes less aware of the
13 discomfort or the difficulty associated with this.
14 And so, in a sense, the body naturally limits the
15 amount of pain and suffering that we have.

16 Q. Now, outside of the leg that we talked about,
17 what other injuries did she have when she arrived?

18 A. I couldn't comment without my notes.

19 Q. Okay. And you mentioned that she was
20 minimally responsive. Was she talking at all?

21 A. So, on my initial evaluation on the 26th in
22 the hospital, I labeled her as "pleasantly confused".
23 For me this means that she is able to respond, but she
24 is not able to communicate in such a way that I learned
25 much about either the circumstances or that she could

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1 comment on wishes, desires, et cetera. So she was able
2 to perhaps, say, acknowledge my presence. And if I
3 asked her if her name was Ms. Gaines she could have said
4 yes. I could have asked her how she felt, she could
5 have said fine or not fine. Most commonly people lose
6 focus and they quickly quit answering questions. But I
7 can't say they were unresponsive or not responsive, so I
8 used the term to describe at least that type of
9 communication.

10 By the time she arrived at the Cottingham
11 House the following day she had worsened and was
12 less responsive.

13 Q. When you say "worsened", what do you mean by
14 that?

15 A. I mean from a mental status standpoint, she
16 had progressed from being able to respond to not really
17 responding to my questions, even at that level.

18 Q. Was she able to assist you in her care at all?

19 A. No.

20 Q. During her time at hospice, did any of her
21 injuries heal; did they get better?

22 A. No.

23 Q. Did any of her injuries get worse?

24 A. Yes. So specifically the leg continued to
25 progress and developed more signs of acute infection.

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1 So, an ischemic leg is a leg or a foot without blood
2 supply can't survive. And as the tissue breaks down
3 it'll turn colors. But then as an infection becomes
4 more apparent, it cannot only be seen as progressing up
5 the leg, if you will, it will also create changes in the
6 skin and go from a dry, blackened appearance to more of
7 a blackened but wet.

8 Sometimes you will even see ulcerations
9 occur in that. And she had that progression during
10 that two to three weeks that she was with us.

11 Q. So with that progression, what was the
12 outcome?

13 A. She died.

14 Q. Was that the cause of her death, as far as you
15 could tell?

16 A. Yes.

17 Q. Now you mentioned something earlier that I
18 wanted to briefly go back to. You mentioned in her
19 day-to-day care the nurses would turn her body; why
20 would they do that?

21 A. So we have rules that are commonly found in
22 the hospital, facilities of trying to turn people every
23 two hours. Because if you stay on a particular side or
24 location or whatever is lying against the mattress or
25 any other surface, the pressure of the body is more than

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1 the pressure of the circulation, so essentially it cuts
2 off blood supply. So we naturally move, all of us do,
3 so we move in the chairs, we shift our weight. And
4 people that are healthy enough to be able to do this
5 aren't, most of the time, conscious of it. As people
6 get more debilitated, they are more ill, this phenomenon
7 of natural movement doesn't occur, and so they can lie
8 in places for a long period of time and simply break
9 down the tissue as a result.

10 When we talk about decubitus ulcers or bed
11 sores, that is really what we are talking about for
12 the most part, is that phenomenon. And so even in
13 hospice we are recognizing that one can always make
14 a bad situation worse and we certainly wouldn't want
15 her to -- or any other patient -- to develop
16 worsening complications, so we still try to rotate.

17 The difference for us is that we are not
18 always as adherent to the every two hours because
19 our patients are often in so much pain or
20 circumstance that we have only a limited amount of
21 positions that we can put them in. And so we still
22 rotate, but it may be on the two- to four-hour range
23 rather than a true two-hour like we try to achieve
24 in the hospital.

25 Q. Was Ms. Gaines able to reposition herself at

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1 all?

2 A. Not at all.

3 Q. Now while Ms. Gaines was in hospice, did she
4 have a lot of visitors?

5 A. Not to my knowledge. The hospice at the time
6 was open to everybody. It's been a little difficult
7 here lately, but at the time it was generally opened.
8 We are not there to police one way or the other. At the
9 times that I was there beyond the first day of
10 admission, I didn't record really talking to family or
11 seeing them. I did get word from the nursing staff
12 about some surprises halfway through the hospital, or
13 through the stay at Cottingham, that suggested that they
14 were surprised by the progression. That, in turn, would
15 indicate that they were there, but I never saw them.

16 Q. Did you consult with the family at all?

17 A. Initially. With the -- at the hospitalization
18 when we were trying to decide the best avenue or
19 approach, which may include going over to the hospice
20 house. And then immediately after her arrival over
21 there, as I was admitting her, we had a conversation
22 with the family. This, in turn, is mostly about
23 establishing or confirming the approach to care,
24 followed by trying to get a general understanding of
25 what the nuts and bolts and even the goals of care are.

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1 Most people do not understand uses of
2 Morphine, for instance, or Ativan, and we always
3 want to make it clear that we are not here to govern
4 a person's time, but rather to maximize the quality
5 of life or at least the comfort of the patient. So
6 we go over most of those things with every family,
7 at least to the limit that they want to hear about
8 it. Most of the time family members leave to me the
9 nuts and bolts, the doses, et cetera. And if they
10 have any parameters or any concerns, then I will
11 work within those parameters.

12 Q. Is that what happened in this case?

13 A. Yes.

14 Q. I would like to talk to you a little bit more
15 about Ms. Gaines' condition worsening. You did mention
16 the leg turning septic; how did that affect the rest of
17 her body?

18 A. So when we are technically talking about
19 sepsis, we really mean that it is more than one system.
20 So the leg was the source of what we would clinically
21 call sepsis, the source of infection. And so starting
22 with the occlusion that led to the tissue dying and then
23 finally becoming necrotic or dead and beginning to
24 decompose. The next step in that is that more and more
25 bacteria gets in there, it in turn seeds the upper leg,

1 and from there can affect other parts of the body as it
2 goes primarily through the blood stream. In that way
3 there is continuous spread up the leg.

13 Q. Could anything have prevented her death?

21 MS. ENNIS: Thank you, Dr. Smith. That
22 is all I have for now. Please answer anything that the
23 defense may have for you.

25 MR. SMITH: May it please the Court, Your

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 Honor.

2 CROSS EXAMINATION

3 BY MR. SMITH

4 Q. So I take it when you did a history and
5 physical, you said that her renal function did improve
6 at a certain point in your medical note?

7 A. I would have to see my note to --

8 Q. Okay. Is this your note right here?

9 A. Yes.

10 Q. All right. And so you did say that the renal
11 function, that means her kidneys, did improve; is that
12 correct?

13 A. This is what I was referring to with the
14 rhabdomyolysis initially. This is in the hospital.

15 Q. Right.

16 A. Not at the time that I saw her.

17 Q. Right. Okay. So if she wanted to get the
18 surgery, the patient wanted to get the surgery to
19 amputate above the knee, she could have done that;
20 couldn't she?

21 A. Not necessarily. So, first off, I don't know
22 how she was early in the hospitalization. But by the
23 time I met her, she would not have capacity for decision
24 making. Secondly, it has been long since understood
25 that a surgeon doesn't have to operate in a case in

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1 which he doesn't feel that it is useful or in fact may
2 bring about the death of a patient. And in this case
3 there seems to be a lot of evidence that that is what
4 the surgeon thought.

5 Q. All right. But you are not a surgeon so you
6 didn't make that decision?

7 A. Correct.

8 Q. Right. Now, let me ask this question also:
9 With regard to the decision process, you say that she
10 was confused and I think that Dr. Singh, when consulted,
11 he said that she had advanced dementia with multiple
12 ulcers and would benefit from palliative care. That is
13 just letting her die. She would benefit from palliative
14 care, which is just letting her die; is that a benefit?

15 A. Is that a question to me?

16 Q. Yes, sir.

17 A. Palliative medicine or palliative care is the
18 branch of medicine that focuses on quality of life. It
19 doesn't actually comment one way or the other on how
20 long a patient has, nor is it designed to influence
21 that. It is designed to make the most of life. So
22 palliative actually collaborates with regular medicine.

23 Q. Yes, sir.

24 A. Its origin most famously was with cancer
25 patients in which chemotherapy was very difficult to

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1 tolerate, and so we attempted to manage symptoms while
2 they are getting chemotherapy. So that is actually
3 collaborative, not seeking death.

4 Q. All right. Now also, I think, is this your
5 medical note right here where you said that, "She nodded
6 her head. The patient did participate in the
7 discussion, she shook her head to indicate no when asked
8 if she wanted to continue with treatment in the
9 hospital."

10 A. This is Dr. Rawdan's note.

11 Q. Okay.

12 A. Dr. Rawdan was a palliative care provider, my
13 partner at the time.

14 Q. All right. So you are saying that she's
15 confused and Dr. Singh is saying that she is confused,
16 so that would indicate to me that she couldn't
17 participate in any decisions about her health care; is
18 that correct?

19 A. When someone is confused they are not able to
20 make decisions of that kind of import.

21 Q. But that note says that she did make that
22 decision.

23 A. That particular phrase only says that she
24 responded, it doesn't say that she made the decision.

25 Q. Okay. It says -- this is what the note says,

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1 and you can correct. "She said, she stated that,
2 despite all of this, she did believe that the patient
3 would not want to go through it all. The patient did
4 participate in the discussion. She shook her head to
5 indicate no when asked if she wanted to continue
6 treatment in the hospital."

7 So, she did participate in the decisions
8 about whether or not she wanted to be in the
9 hospital or not, didn't she?

10 A. She participated, yes. But the decision
11 making at the time, though, was more on the part of the
12 family.

13 Q. She says -- okay. Well, there you go. The
14 family. When did the family have a medical power of
15 attorney to make decisions for her?

16 A. To my knowledge they did not.

17 Q. Right. And so, how can just any person who is
18 a family member can start making decisions on the health
19 care of somebody in the hospital, or in your case, with
20 the Cottingham or whatever, palliative care treatment
21 they want to receive?

22 A. Absent direction from the Court or another
23 legal body, the State has a hierarchy that is usually
24 thought of as next of kin and starts with patient's
25 spouse and then goes from there to the children or to

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1 the parents depending on the age. And from there to
2 siblings. And then from there on down to include other
3 family members. With the last phrase being an
4 interested party, as in like a neighbor if we cannot
5 find anybody. The law requires us to do due diligence
6 to try to name who the next of kin is. In a case where
7 there is multiple on the same level, then it is the
8 majority of those.

9 So if it's children, for instance, there's
10 three children, then that would be two out of three.
11 If there's ten children and we can only locate
12 seven, then that would be four out of the seven.
13 But again, it is a hierarchy that is published by
14 the State.

15 Q. Okay. Let's say that there is a hierarchy
16 based on your testimony of the State, but my question
17 is, if that is the case, then why was it necessary to
18 get her to say no to any further medical care and
19 treatment in the hospital. Since, according to that
20 note, she was in her right mind?

21 A. I would have to read Dr. Rawdan's note in
22 detail. But it is, if nothing else, reasonable and
23 always desirable to try to get the patient to
24 participate to the limit they can.

25 Q. Okay.

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1 A. We don't ever -- I don't walk into a room and
2 not greet a patient, even if they are not able to make a
3 decision. I'll still exchange and I will still ask them
4 about their symptoms. But that doesn't mean they
5 actually have the capacity to make a decision concerning
6 their care.

7 Q. Okay. So let me just get this straight. If
8 I'm laying up there in the hospital and I was in her
9 situation and I said, Yes, I want -- I was shaking my
10 head, yes, I want to continue with care, my family can
11 just overrule me and just send me onto your hospice
12 thing; is that what you are saying?

13 A. No, sir. You would have to have an evaluation
14 that determines whether or not you are capable. The law
15 requires three steps of that. One is being able to
16 receive the information that we are providing. The
17 second is that they can interpret and understand
18 implications in order to make an informed consent. And
19 third is that they can communicate that. And so we
20 actually have difficulty for different patients at all
21 of those levels.

22 To the limit that you can participate or
23 capable of participating, then we certainly want you
24 to. So in the scenario you provided it would first
25 have to be clear that you were not capable of making

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 a decision.

2 Q. Well, that doctor thought she was, because he
3 said she said that she didn't want any further --

4 A. I'm happy to go read the note, but I -- the
5 phrase that you pointed out did not say that.

6 Q. I am reading the phrases before it.

7 THE COURT: Mr. Smith, is this part of
8 Defendant's Exhibit No. 2?

9 MR. SMITH: Yes, sir, Defendant's Exhibit
10 No. 2, Your Honor. Thank you, Your Honor.

11 Q. Excuse me, Doctor. Let me see if we can find
12 it again. This is what it says to me. Now, you correct
13 me.

14 A. Uh-huh.

15 Q. All right. They said, She stated. And I
16 guess they are talking about Cherry who is a family
17 member. She stated that she watched her family member
18 go through all of the medical treatment, including
19 amputation and life support, but despite all of this she
20 did not believe the patient would not want to go through
21 all of that. The patient did participate in the
22 discussion. We are talking about Ms. Gaines, aren't we?

23 A. Yes, sir.

24 Q. All right. Did participate in the discussion.
25 She shook her head to indicate no when asked if she

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1 wanted to continue treatment in the hospital. Isn't
2 that what that says, sir?

3 A. Yes, sir.

4 Q. All right. So, she did participate in the
5 conversation with her family members, the doctor about
6 whether or not she wanted to continue on with treatment
7 in the hospital, correct?

8 A. Yes, sir.

9 Q. Okay. So there must have been those three
10 criteria that you talked about. One, an evaluation made
11 that she could participate in the discussion, correct?

12 A. Again, you start off with not participation,
13 participation doesn't have anything to do with capacity.
14 A child can participate in conversation, but it doesn't
15 mean that they have legal authority to make decisions.

16 Q. Well, the doctor must have thought that she
17 had the capacity to make the decision or he wouldn't
18 have asked her that question, correct?

19 A. No, sir, that is pretty standard to ask people
20 even if they lack capacity.

21 Q. All right. Well, there was no determination
22 made that she was -- that she lacked capacity at that
23 time, was there?

24 A. I could not tell you, sir.

25 Q. Well, you didn't see it in the note, did you?

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1 A. In this note?

2 Q. Yes, sir.

3 A. No, sir.

4 Q. All right. So now, at the time that you saw,
5 Mr. Gaines was not the healthcare provider of the
6 patient; is that correct? The health care provider. I
7 mean, caregiver. He was not a caregiver?

8 A. When I met the patient, the direction of care
9 was being managed by the niece, not by the son.

10 Q. Right. And you never spoke to the son,
11 correct?

12 A. No, sir.

13 Q. And you have never treated the lady, say, on
14 December -- for the whole 92 years that she was around,
15 I know that you are younger, but you had never treated
16 her, correct?

17 A. To my knowledge I had not met her before.

18 Q. Yes. And what is more is that the -- by Court
19 order, I think, because he was on bond, he couldn't
20 participate based on your medical note; correct?

21 A. That is what I'm understanding, yes.

22 Q. When were -- when was the decisions going to
23 be made whether or not she would be a good or poor
24 surgical candidate?

25 A. This happened to be over the Christmas

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1 holidays that this was occurring. I actually saw her on
2 the 26th. I don't recall if I was on call or not on
3 Christmas day. But I apparently talked with Dr. Singh
4 ahead of time according to my own notes --

5 Q. Yes, sir.

6 A. -- about the occlusion. Once it was found we
7 would have immediately, this is standard, been able to
8 try to ascertain the various options that the patient
9 would have in terms of treatment. Since that is not a
10 procedure that we could provide in Oconee County, we
11 would contact Greenville typically and confer with the
12 physicians over there that may be able to treat her.
13 All of that occurred after they found the occlusion and
14 prior to the conversation with me.

15 Q. All right. Because I think in your medical
16 note you say that the patient was treated medically at
17 Oconee. Unfortunately her progress -- her prognosis,
18 excuse me, despite use of anticoagulants was felt to be
19 a matter of a couple of weeks. The surgeon said that
20 the leg became non-viable within two weeks and gangrene
21 or sepsis would set in. Do you remember your note on
22 that?

23 A. I do remember reading that again. But if you
24 have it.

25 Q. Yes, sir.

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 MR. SMITH: Could I have this marked as
2 an exhibit for identification, please? Five pages of
3 history and physical marked as Defendant's 4.

4 MS. ENNIS: Your Honor, may I look at
5 that?

6 THE COURT: Okay. Let him mark it and
7 then you can look at it.

8 THE COURT REPORTER: Five pages of
9 history and physical marked as Defendant's 4.

10 THE COURT: Thank you.

11 MR. SMITH: Yes, ma'am.

12 *(Whereupon, Defendant's Exhibit No(s). 4*
13 *marked for identification.)*

14 BY MR. SMITH

15 Q. All right. Doctor, I'll show you what has
16 been marked as Defense Exhibit No. 4 for identification.
17 Can I get you to tell me, is that note yours?

18 A. Yes, sir.

19 Q. And what is that note, Doc?

20 A. This is a history and physical. And it would
21 have been from Cottingham House.

22 Q. All right.

23 MR. SMITH: Your Honor, may I approach
24 the witness to show him where I was -- this section.

25 THE COURT: Okay.

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 BY MR. SMITH

2 Q. You said, you said back when you saw her, the
3 tissue of the foot are already breaking down; is that
4 correct?

5 A. Yes, sir, that is what the note says.

6 Q. And then there was a D -- patient has DNR,
7 which is do not resuscitate?

8 A. Correct.

9 Q. And EMS DNR is signed, correct?

10 A. Correct.

11 Q. All right. And what I was asking down here is
12 when you said the renal function did improve.

13 A. Yes, sir.

14 Q. All right. So that meant her kidneys were
15 working pretty good at some point and then they
16 deteriorated?

17 A. Well, improvement means it got better than it
18 was. It doesn't say that they were functioning well.

19 Q. Okay.

20 A. We can look at labs and I am happy to.

21 Q. Yeah, I don't have labs. Okay. Then you
22 said, Unfortunately her progress, despite
23 anticoagulants, was felt to be a matter of a couple of
24 weeks. The surgeon said generally the leg became
25 non-viable within two weeks and gangrene with sepsis

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 would set in. Is that correct?

2 A. It is.

3 Q. All right. So if the surgery had been done
4 within two weeks, is it reasonable to assume that she
5 could have survived at that point?

6 A. It is possible.

7 Q. And so by continuing to wait on and on during
8 the month while the thing got gangrene, when you already
9 knew when she came into the hospital in the first place,
10 then that is an intervening circumstance which you
11 didn't foresee because you were not treating her early
12 on, correct?

13 A. I cannot comment on anything before I started,
14 because I was not treating her.

15 Q. And since you are not a surgeon, you couldn't
16 make the decision; correct?

17 A. Correct.

18 Q. You only started making surgical decisions
19 based -- at the part where you were getting ready to
20 send her to hospice, correct?

21 A. The decision to send her to hospice was the
22 only other option available if we could not operate.
23 So, the first decision was on whether or not surgery was
24 an option. After that decision was made, then hospice
25 was pursued as the only other way to care for her.

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 MR. SMITH: That is right. Thank you,
2 Doctor. Madam Court Reporter, I will give this back to
3 you.

4 THE COURT REPORTER: You can.

5 THE COURT: Are you admitting that into
6 evidence?

7 MR. SMITH: Yes, sir.

8 THE COURT: Any objection?

9 MS. ENNIS: No objection, Your Honor.

10 THE COURT: Okay. Defendant's
11 Exhibit No. 4 is admitted without objection.

12 *(Whereupon, Defendant's Exhibit No(s). 4*
13 *received in evidence.)*

14 BY MR. SMITH

15 Q. Just being a family member of somebody doesn't
16 necessarily mean that you are a caregiver, correct?

17 A. Correct.

18 Q. Correct. And some caregivers, when they are
19 family members, are actually trained on how to take care
20 of somebody who has dementia or Alzheimer's or any kind
21 of disease like that; is that correct?

22 A. Yes.

23 Q. If somebody is incapable of caring for
24 themselves, usually you have to train these people to
25 show them exactly how to help them, say they are

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 diabetic, or how to put the Insulin in and all of that
2 stuff; correct?

3 A. That, unfortunately, varies. If a patient is
4 not able to decide for themselves, it generally falls to
5 the family. In turn the family can seek that
6 information themselves or if home health is involved or
7 any of the rest of us and they request training, we are
8 happy to do so. If they show up in the office and we
9 have any indication that this is really going to be
10 complicated beyond the usual average understanding of a
11 non-medical professional, then we would offer training.

12 Q. All right. So, Doctor, so if a person is a
13 cancer patient, been getting chemo, staying at home,
14 they don't want to participate in hospice and -- do they
15 have the right to make a decision not to participate in
16 hospice and die at home?

17 A. As long as they are capable of making
18 decisions, they have that ability to decide.

19 Q. And a person has the right to make a decision
20 as to whether or not they want to go to the hospital in
21 the first place, don't they?

22 A. Yes, sir.

23 Q. The fact that I'm a relative in the household
24 doesn't necessarily mean that I am the caregiver of that
25 person, does it?

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 A. Not necessarily.

2 Q. Right. Otherwise, I mean, you would have them
3 indicting everyone with Covid nowadays because people
4 are there and people are laying in the bed with Covid
5 nowadays, right?

6 A. There are certainly a lot of family members
7 that are involved with loved ones who have Covid and
8 they are not necessarily caregivers.

9 Q. That is right. And the same thing with
10 cancer, correct?

11 A. Yes, sir.

12 Q. So, and I'm not going to ask you, you are
13 not -- you don't have any personal knowledge whatsoever
14 that Mr. Gaines was ever Ms. Louise Gaines' caregiver,
15 do you?

16 A. No, sir.

17 Q. Because caregiver has a legal, legal
18 implications; doesn't it?

19 A. It suggests that you are responsible for
20 someone else.

21 Q. That is right. And if you are responsible for
22 someone else and you don't take care of that person,
23 then you can end up like Mr. Gaines sitting over there
24 right now?

25 A. Perhaps so.

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 Q. Right. But if he's not the caregiver, then
2 he's not responsible; correct?

3 A. I'm not sure about that. I would say that we
4 are all at least somewhat responsible for each other.
5 And so if you are not paying complete attention to
6 something that happens, in our case, there are
7 negligence based on that, as I understand it.

8 Q. Okay. That is a civil case?

9 A. Perhaps so. I'm not a legal expert.

10 Q. Okay but -- all right. There is a difference
11 between a moral responsibility and a legal
12 responsibility, correct?

13 A. Often.

14 Q. Right. Now, so I'm asking you about the legal
15 responsibility, if you were a health care --
16 caregiver -- you are a caregiver, right?

17 A. Okay.

18 Q. Right. If you neglect somebody, then you
19 could end up over there with Mr. Gaines too, right?

20 A. Potentially.

21 Q. Right. But if you are not the caregiver, you
22 are not the doctor over somebody's -- just because you
23 passed down the hall doesn't mean that you are the
24 caregiver to that patient, that is somebody else's
25 patient; isn't it?

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 A. True.

2 Q. Right. So, if you are not the caregiver --
3 that is why we have different doctors' offices,
4 different patients go to different doctors' offices, it
5 doesn't mean that every doctor in town is the caregiver
6 of every patient that goes in somebody else's doctor's
7 office; correct?

8 A. True.

9 Q. So, here is the deal, if you are not the
10 caregiver, then you don't have a duty to that patient,
11 right?

12 MS. ENNIS: Objection.

13 THE COURT: Go ahead, state your
14 objection.

15 MS. ENNIS: Your Honor, this is beyond
16 the scope of Dr. Smith's knowledge of this case. He's
17 here to testify about what he saw while she was in
18 hospice and not the law or duty.

19 THE COURT: This calls for a legal
20 conclusion, I am going to sustain the objection.

21 MR. SMITH: Thank you, Your Honor.

22 BY MR. SMITH

23 Q. So, let me ask you this question: There are
24 certain obligations that caregivers have, correct?

25 A. I believe so.

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 Q. Right. And if you are not the caregiver of a
2 particular person such as Louise Gaines, then you have
3 no obligation towards that patient, do you?

4 A. I do not believe that it is ever that simple,
5 sir.

6 Q. I didn't ask you whether it was that simple.

7 A. Therefore I would have to answer, that is not
8 correct.

9 Q. Okay. I stand corrected then. So you are
10 saying that before she was assigned to you, to the
11 hospice house, you had an obligation to her; is that
12 what you are saying, sir?

13 A. Well, in this case, I actually really did
14 because I actually saw her in the hospital, so that was
15 before the hospice house.

16 Q. Did you have an obligation to her when she was
17 in her house, when the EMS was called?

18 A. No. No.

19 Q. So just the mere fact that you wasn't the one
20 that transported her to the EMS units, they were the
21 caregivers at that point, correct?

22 A. I would classify them as emergency personnel,
23 not caregivers, but they were caring for her at the
24 moment.

25 Q. Okay. So if you show up and you care for

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 somebody, that doesn't necessarily make you a caregiver,
2 correct?

3 A. Correct.

4 Q. All right.

5 MR. SMITH: Okay. I am going to show you
6 what I am going to mark for identification.

7 THE COURT: One page, daily progress
8 notes marked as Defendant's 5.

9 *(Whereupon, Defendant's Exhibit No(s). 5*
10 *marked for identification.)*

11 BY MR. SMITH

12 Q. Okay. I'll show you what has been marked as
13 Defendant's Exhibit No. 5. You said -- you can read
14 that note to the jury. Tell us what you said in your
15 notes.

16 A. Highlighted?

17 Q. Read the whole thing.

18 THE COURT: Well are you going to admit
19 it?

20 MR. SMITH: Yes, I admitted it, yes, sir.

21 THE COURT: Any objection?

22 MS. ENNIS: No, sir.

23 THE COURT: Defendant's No. 5 admitted
24 without objection.

25 *(Whereupon, Defendant's Exhibit No(s). 5*

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 *received in evidence.)*

2 MR. SMITH: Thank you.

3 A. So the note actually starts halfway through
4 the page because the way it is printed off, but it says,
5 Subjective: Patient is seen for follow-up for gangrene,
6 family is not present. History, patient is unable to
7 respond, nonresponsive. Nursing reports no new issues.
8 Continues to require occasional medication for symptom
9 control. They report breathing as rapid and shallow.
10 With assistance patient is not able to answer, is
11 unresponsive.

12 Objective: Patient does appear
13 comfortable. Assessment would have been right
14 common femoral artery thrombosis. Assessment and
15 plan: Actively dying, now exhibiting regimented
16 breathing with period of apnea. Suggests last hours
17 of life. Symptoms managed.

18 Next is gangrene due to peripheral
19 vascular disease.

20 Assessment and plan: As above. Symptoms
21 managed.

22 Three: Adult neglect. Assessment and
23 plan: I haven't seen the family since the first day
24 here. Patient actively dying and cause from my
25 standpoint would be sepsis from gangrene of the

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 right leg from occlusion of femoral artery. Though
2 it was not present at time of admission, the events
3 that brought her into the hospital likely set in
4 motion the thrombus. Given prior involvement of law
5 enforcement, referring to coroner upon death for
6 adjudication.

7 Q. Okay. Thank you. I'll show you these
8 pictures right here which have been marked as State's
9 Exhibit No. 9. Is that the patient that we are talking
10 about?

11 A. I believe so.

12 Q. Okay.

13 MR. SMITH: Your Honor, I would like to
14 publish these to the jury.

15 THE COURT: Okay. You can put it on the
16 screen there.

17 MR. SMITH: Okay. That is State's
18 Exhibit No. 12. And then State's Exhibit No. 10. And I
19 will ask a question.

20 BY MR. SMITH

21 Q. Doctor, this is what she looked like when you
22 saw her?

23 A. I don't actually recall her at that point.

24 Q. Okay. Well, that is fine. Here is another
25 one where they were making measurements. You didn't do

CROSS EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

- 1 these measurements, did you, Doctor?
- 2 A. No, sir.
- 3 Q. All right. Is this the kind of sore that you
- 4 are talking about?
- 5 A. Kind of what, I am sorry?
- 6 Q. I think that you called them pressure sores
- 7 and stuff like that.
- 8 A. Sores. Difficult to tell from there. It does
- 9 look like there is some skin breakdown along with the
- 10 darkened area.
- 11 Q. Okay. I'll show you another one. Right in
- 12 here, does that look like a pressure sore there?
- 13 A. It looks like there have been some pooling.
- 14 Most likely that is from a pressure area.
- 15 Q. Now when you talked about the gangrene area,
- 16 where was that gangrene area?
- 17 A. The right foot and leg.
- 18 Q. This one right here?
- 19 A. Yes, sir.
- 20 Q. I'll show you what has been marked and entered
- 21 into evidence as State's Exhibit No. 5 I think. Now
- 22 this is the right leg over here. We see that the
- 23 colorization of the leg has actually deepened to a dark
- 24 hue; is that correct?
- 25 A. Yes, sir.

REDIRECT EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 Q. And that shows that the gangrene has
2 progressed?

3 A. Yes, sir.

4 Q. Here is one of the foot right here. And
5 you -- it is remarkable that you can see that this is
6 different than that one; correct?

7 A. Yes, very different.

8 MR. SMITH: Thank you. Thank you, Your
9 Honor. All right.

10 Thank you for today. And I thank you for
11 the work and services you perform for this community.

12 THE WITNESS: Thank you.

13 THE COURT: Any redirect?

14 MS. ENNIS: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. ENNIS

17 Q. Dr. Smith, the defense showed you pictures of
18 the right leg progression; what did it look like when
19 you encountered the patient?

20 A. I can refer to the H&P if I could have them
21 back I could tell you.

22 Q. Would you like your notes to refresh your
23 memory?

24 A. Yes, ma'am, thank you.

25 MS. ENNIS: Your Honor, permission to

REDIRECT EXAMINATION OF DR. DANIEL SMITH BY MR.
SMITH

1 approach the witness with his notes?

2 THE COURT: Yes, ma'am.

3 A. So I originally saw her in the hospital on the
4 26th. And at that time the exam of the right lower
5 extremity: Lower leg, cold to touch with wrinkling, no
6 edema. Right distal thigh and left leg warm and
7 non-tender. Trace edema or swelling.

8 I think that you asked at the Cottingham
9 House when I admitted her, skin: Warm, dry to the
10 touch on torso and left leg. No rashes. And right
11 leg with discoloration at upper thigh that then
12 further darkens at the knee. Right distal thigh
13 with warmth that drops off in temp by knee. Foot is
14 cold. No pulse is detectable. Ulcerations noted on
15 right thigh as well, bandaged.

16 Q. What does that mean, that the skin is darkened
17 and there is no pulse detected?

18 A. So in this case we were talking about the
19 non-viability of the tissue, meaning it was -- had
20 already essentially died, the individual tissues. And
21 so the discoloration as a result of the gangrene that is
22 beginning to occur.

23 Q. At this point, was there any treatment that
24 could be done?

25 A. Amputation. A normal indication for

REDIRECT EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 gangrenous tissue. And that is a potential treatment.
2 Again, because of the circumstances, because of the
3 baseline condition, her age, the ability to survive the
4 amputation was very clearly in question. And the chance
5 of a complication related to that procedure quite high.

6 And then finally just because you cut off
7 the area that you can appreciate as gangrenous does
8 not mean there are other areas of tissue that are
9 non-viable, especially since the decision was made
10 not to amputate the leg.

11 Q. And who made the decision in this case to not
12 have the surgery?

13 A. I cannot tell you if the surgery was offered
14 despite the surgeon's reservations versus the family
15 decided not to pursue it based on the advice of the
16 surgeon.

17 Q. So after Ms. Gaines was then transferred to
18 your care at the hospice center, was the family
19 consulted then; or did you make those decision?

20 A. The family has verified for me that this is
21 the approach that we are going to take. That is --
22 technically they have made the decision, so I'm just
23 verifying the decision. It was not a new discussion.
24 The new discussion was really about the approach that we
25 would be taking at hospice related to symptom

REDIRECT EXAMINATION OF DR. DANIEL SMITH BY MR.
SMITH

1 management.

2 Q. And how did you manage her symptoms?

3 A. Medications are typically used for the various
4 symptoms that occurred. Most notably pain, anxiety,
5 agitation would be the three most important for Ms.
6 Gaines. And we, of course, would manage anything else
7 that came up. Common is nausea, vomiting, issues with
8 bowels, urinary obstruction and ability to urinate. We
9 manage all of those as they occur.

10 But in this case it was mostly about the
11 pain and agitation or anxiety that likely was being
12 manifested because of a combination of the original
13 pain and then the disease progression. Because it
14 certainly affects the processing of the mental
15 capability.

16 Q. And you mentioned Ms. Gaines' mental
17 capability while she was there. The time that it got to
18 that point where the leg had turned dark, was she able
19 to participate in that medical care and was she
20 responsive?

21 A. On the 27th when I admitted her to the
22 Cottingham House, I have that she was oriented to
23 person, she was not orientated to situation. Memory is
24 not intact. She was also having difficulty hearing
25 normal conversational voice.

REDIRECT EXAMINATION OF DR. DANIEL SMITH BY MR. SMITH

1 Q. Was she able to respond to you at all? You
2 mentioned oriented to person.

3 A. So that -- yes, she is able to respond at that
4 moment in time. In order to be verifying orientation,
5 we at least have to have some indication that the
6 patient is able to communicate that. Not necessarily
7 verbal, but it is a nod. For instance, if I were to
8 say, are you Ms. Gaines and she would nod yes, I would
9 take that as evidence that she at least recognized who
10 she was.

11 Q. Can you explain for us, what is oriented to
12 the situation I believe is what you called it?

13 A. That is a little more complicated. When we
14 talk about orientation, classically you are looking at
15 person, place, and time. Before orientation the
16 question was added years ago which was as to situation.
17 That is a far more complex issue. So person, place,
18 time. Simply who are you, where are you, and when is
19 it. The situation requires you to be able to understand
20 circumstances and to be able to interpret them.

21 Q. Was Ms. Gaines able to do this?

22 A. No.

23 MS. ENNIS: Thank you, Your Honor. No
24 further questions.

25 MR. SMITH: One clarification question.

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 THE COURT: Yes, sir.

2 RECROSS EXAMINATION

3 BY MR. SMITH

4 Q. When we were talking earlier on, the dealing
5 with the different relatives, we are talking about
6 making decisions with regard to hospice, right?

7 A. Medical care, yes, sir.

8 Q. Medical care. When you are already in the
9 hospital and we need to decide what we are going to do
10 with this patient?

11 A. Correct.

12 MR. SMITH: Thank you.

13 THE COURT: Anything further of this
14 witness?

15 MS. ENNIS: No, Your Honor. May he be
16 excused.

17 THE COURT: Any objection?

18 MR. SMITH: No objection, Your Honor.

19 THE COURT: Thank you, Dr. Smith, you are
20 excused.

21 MR. ALDERMAN: The State would call Dr.
22 David McMahan.

23 Thereupon,

24 DAVID MCMAHAN, M.D.

25 was called as a witness, having been first duly sworn, was

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ALDERMAN

4 Q. Can you give me your full name and spell your
5 last name?

6 A. David McMahan, M-C-M-A-H-A-N.

7 Q. Are you retired now?

8 A. Yes, sir, I am retired.

9 Q. Congratulations.

10 A. Thank you.

11 Q. And could you explain for the jury what your
12 last job was and then when you retired?

13 A. Yes, sir. I was employed by the Oconee County
14 Sheriff's Office as an investigator for 13 years. My
15 job duties were property crime investigations,
16 robberies, homicides, anything mostly felony cases I
17 worked.

18 Q. In that capacity, did you investigate the
19 death of Alma Gaines?

20 A. Yes, sir.

21 Q. How did you first come to be involved in that
22 case?

23 A. I was actually on call. We have rotation for
24 investigators to be on call. And I was called in the
25 evening-time from the dispatch at the Sheriff's Office

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 to go and investigate a possible neglect situation.

2 Q. And when you responded to the hospital, can
3 you tell us what you saw?

4 A. Yes. When I arrived at the hospital, of
5 course, I briefly talked with the nurses to see what
6 room Ms. Gaines was in and to get a brief update of what
7 I was looking at. Because, of course, at this time I
8 didn't know what I had. So I was directed to the room
9 where Ms. Gaines was in. And I saw her in the bed and
10 her condition. And the first thing that I try to do in
11 any situation, as doctors have testified in the past, is
12 to try to communicate with the patient. In this case,
13 the victim.

14 And I got real close to Ms. Gaines, to her
15 ear, hello, Ms. Gaines, my name is Sergeant McMahan,
16 I would like to speak to you. And there would be no
17 response whatsoever. And then, of course, I went to
18 the second line of communication, which was the
19 nurse there, to start asking questions. Has she
20 been responsive, said anything, indicated to you
21 what happened to her. The nurse indicated, no, she
22 had not, she had not been responsive at all. And at
23 that point I started observing the wound or injuries
24 on her body and started photographing those at that
25 point.

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 Q. Sergeant McMahan, with that I'll show you some
2 of these photographs that have been previously admitted
3 into evidence. And of course we just saw some of these,
4 but I'm hoping that you can give us just a little bit of
5 context. So, am I correct in understanding that you
6 took these pictures the day she was admitted to the
7 hospital?

8 A. Yes, sir.

9 Q. Okay. So, showing you State's 9, just tell us
10 a little bit about what you see there.

11 A. Yes, the overall picture I took of Ms. Gaines
12 was to show what I could see, the multiple wounds upon
13 her body. Which on her right hip, you will notice there
14 are two dark-colored injuries or wounds there. Also her
15 left knee, there is apparently a darkened area right
16 there where -- my belief is that the left knee was
17 laying over the right knee and there was a pressure
18 point there on the floor.

19 And then, of course, on down, on the right
20 foot you could notice that the right leg on down was
21 a different -- her skin color was different from the
22 left one.

23 Q. What information did you receive about how she
24 came to be in this situation?

25 A. As I was taking pictures and asking questions,

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 I then tried to reach out to whoever the next of kin
2 might be, which at the time was the son that lived in
3 the house, Mr. Gaines. And I started reaching out to
4 the local dispatch there at the hospital. Started
5 asking questions, what did Mr. Gaines, how did he come
6 to be calling 911, trying to find out more information
7 to find out exactly what, why these wounds occurred.

8 Q. Did you find that she had been left in the
9 floor for a period of time?

10 A. That's right, I found that she had been left
11 in the floor for a period -- at the time I didn't know
12 how long of a period, but it was obvious that she had
13 been there for a period of time.

14 Q. Let me show you State's 10. And if you would
15 just tell us what you were taking a picture of here,
16 what stood out to you that made you want to photograph
17 this?

18 A. What stood out to me was, when I started
19 photographing, was, if you will notice on her right
20 cheek all the way down to her chin there are impressions
21 in her skin and the impressions were of something that
22 she might have been laying on or the pressure on that
23 part of the body for a period of time. You can see
24 there are horizontal lines running from her cheek down
25 to her mouth all the way down through her chin.

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 Q. With that in mind I'll show you State's 12.

2 What is this?

3 A. That also, that caught my attention. You, as
4 you can see, the vertical lines from an impression where
5 she had been laying on something with that same type
6 impression mark. For example, carpet or anything that,
7 you know, that might would cause the same print.

8 Q. And to be clear, some time had gone by since
9 she was picked up off of the floor, brought to the
10 hospital, and you responded and took the pictures?

11 A. Yes, that's correct.

12 Q. Yet these were still there?

13 A. That's correct.

14 Q. You mentioned -- you mentioned that you tried
15 to reach out to next of kin. Who did you, if anyone,
16 did you actually speak to?

17 A. I made -- yes, sir, I made contact with the
18 defendant, Mr. Gaines.

19 Q. And did you have conversation with him by
20 phone?

21 A. I did, by phone.

22 Q. Okay. Did you have conversation with him
23 later in person?

24 A. I did.

25 Q. And when was that?

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 A. That would have been, I believe, the 19th,
2 which would have been the following Tuesday.

3 Q. All right. So, if I understand what you are
4 saying, she was admitted on Monday and you reach out to
5 the defendant, Mr. Gaines, and speak to him in person on
6 Tuesday, the next day?

7 A. Yes, sir, that's correct.

8 Q. Where did that interview take place?

9 A. That interview took place at the Sheriff's
10 Office in our investigation division department.

11 MR. ALDERMAN: Permission to approach the
12 witness, Judge?

13 THE COURT: Yes, sir.

14 BY MR. ALDERMAN

15 Q. Sergeant McMahan, if you will tell me what
16 this is marked as State's 16?

17 A. This is a DVD that we record our interviews on
18 in our interview room.

19 Q. Do you recognize this particular DVD?

20 A. I do. It is my own handwriting here where it
21 says the defendant's name, Mack Gaines. And also I have
22 initialed it where I have validated it as my DVD.

23 Q. Did you have the chance to review this
24 particular DVD before your testimony today?

25 A. Yes, sir.

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 Q. Had anything been altered, changed,
2 manipulated in any way that you could discern?

3 MR. SMITH: We said that it was admitted.

4 MR. ALDERMAN: Well, Judge, as I
5 understand it, we did it for the previous hearing. But
6 if it's without objection, we will roll through.

7 THE COURT: State's Exhibit No. 16 is
8 admitted without objection. Now, counsel approach.
9 (Off-the-record discussion held.)

10 *(Whereupon, State's Exhibit No(s). 16*
11 *marked for identification and received in evidence.)*

12 THE COURT: Okay. Ladies and gentlemen
13 of the jury, we are going to take a short break. Madam
14 Bailiff, would you take them to the jury room? And,
15 Sergeant, you are under oath, still on the witness stand
16 so you can't talk about your testimony to anyone while
17 we are taking a break.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Before we bring
20 our jury back in, Mr. Alderman, why don't you state for
21 the record the times that you and Mr. Smith have agreed
22 upon, and I'll hear from you.

23 MR. ALDERMAN: Yes, sir. The time stamps
24 958 to 1136. And then again from 1525 through 16
25 minutes and 58 seconds. Now those are the particular

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 areas that need to be redacted for prejudicial effect.
2 Beyond that there is some, I guess that you would say,
3 dead airtime and things of that nature that I believe we
4 have agreed to fast forward through as well.

5 THE COURT: 958 through 1136 and 1525
6 through 16 something will be redacted, and then fast
7 forward through the silent time while he's writing the
8 statement.

9 MR. SMITH: Yes, anything that mentions
10 his prior criminal history with being in prison or jail
11 is what we are trying to accomplish.

12 THE COURT: That is those two areas?

13 MR. SMITH: Yes, sir. I didn't get the
14 measurement, Your Honor, but as an officer of the Court
15 he measured it.

16 THE COURT: All right. So noted.
17 Anything before we bring the jury back in?

18 MR. ALDERMAN: Just waiting on cocounsel.

19 THE COURT: Okay.

20 THE CLERK: The jurors are having trouble
21 hearing.

22 (The jury enters the courtroom.)

23 THE COURT: Yes, sir.

24 BY MR. ALDERMAN

25 Q. I want to get us back up to speed after the

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 break. You mentioned that you had gone to the hospital
2 to investigate a case of potential abuse and neglect; is
3 that correct?

4 A. That's correct, yes.

5 Q. And you mentioned that you had spoken with the
6 defendant, the victim's son, Mr. Mack Gaines; is that
7 right?

8 A. That's correct.

9 Q. All right. And you said that you interviewed
10 him the next day?

11 A. That's correct, yes.

12 Q. All right. So when you interviewed him, did
13 he tell you when he found his mother in the floor?

14 A. Yes.

15 Q. All right. And when was that?

16 A. He stated that he went to work Friday, that
17 Friday morning. He come home from work that afternoon
18 and found his mother laying in the floor.

19 Q. And the call to 911 that brought her to the
20 hospital, when was that again?

21 A. That was on a -- the following Monday night.
22 So the weekend had passed through.

23 Q. All right. So Friday afternoon all the way to
24 Monday evening?

25 A. That's correct, Monday evening.

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 Q. Did he tell you what he was doing during this
2 period of time?

3 A. He did.

4 Q. What was that?

5 A. Friday night he said that his mother continued
6 to lay in the floor. He went to bed. The next morning,
7 which would have been Saturday morning, he said that he
8 gets up to go do his grocery shopping and also to do his
9 laundry. So he left, his mother was still on the floor.
10 He left to take care of his personal things, like I
11 said, the grocery shopping and doing his laundry.

12 I believe he said that he went and got him
13 some lunch and come back home at that point. It was
14 later on Saturday afternoon when he come back home.

15 Q. I believe -- then what did he do?

16 A. He said that he had a hotdog. And I believe
17 he asked his mother if she wanted a hotdog. And he said
18 that she said, No. And I believe he said he watched TV.
19 That was pretty much what he told me he was doing,
20 watching TV at that point.

21 Q. How about Monday morning?

22 A. Monday morning?

23 Q. Yes, sir.

24 A. He also went to work and come back. And his
25 girlfriend -- I believe he had described this lady as

DIRECT EXAMINATION OF DR. DAVID MCMAHAN BY ALDERMAN

1 his girlfriend. His girlfriend was there later on
2 Monday evening. And she was still on the floor at that
3 point, the mother.

4 Q. Did he mention that he was thinking about
5 calling for help at any point in time?

6 A. He -- Saturday he said that he was, asked her,
7 Do you want help getting up. And he said that she said,
8 No. So at that point was the only time that he
9 mentioned to me that he might have offered some type of
10 help.

11 Q. How about clothes, blanket, heat? This was in
12 December, correct?

13 A. It was in December, yes, it was wintertime.

14 Q. Did he mention anything about that?

15 A. He didn't mention anything about that, other
16 than he said that he cut the heat up. Said that she
17 mentioned that she was cold and there was a kerosene
18 heater in there and he turned it up on high.

19 Q. And this interview was recorded, correct?

20 A. That's correct.

21 MR. ALDERMAN: Judge, at this time we
22 would publish State's Exhibit 16 to the jury.

23 THE COURT: State's Exhibit 16 will be,
24 as redacted, admitted without objection.

25 MR. SMITH: That's correct, Your Honor.

DIRECT EXAMINATION OF DAVID MCMAHAN BY MR. ALDERMAN

1 MR. ALDERMAN: Yes, Judge, we have
2 certain redactions, so we will mute at certain points
3 but let the video play through from there.

4 THE COURT: All right.

5 (Video of interview played for the jury.)

6 MR. ALDERMAN: Judge, we will redact 1525
7 to 1658. If Mr. Smith has no problem I'll try to roll
8 the video ahead. It just takes a minute to reboot, but
9 just so we don't have to sit in silence for a few
10 minutes.

11 MR. SMITH: No objection.

12 THE COURT: So noted.

13 (Brief recess.)

14 (Video continued to play for the jury.)

15 BY MR. ALDERMAN

16 Q. At this point, Sergeant McMahan, did the
17 defendant give you a written statement?

18 A. Yes.

19 Q. I'll skip through that part. Did you speak
20 with him at all after he gave a written statement?

21 A. Yes, I did.

22 (Video continued to play for the jury.)

23 BY MR. ALDERMAN

24 Q. Sergeant McMahan, at this point, was the
25 defendant taken into custody?

CROSS EXAMINATION OF DAVID MCMAHAN BY MR. SMITH

1 A. Yes, he was.

2 Q. Let me touch on that last exchange that you
3 had with him there just to make sure that I heard it
4 correctly and everyone else did. The last thing you
5 said was, if I heard it right, "We can't get past the
6 fact that you left her in the floor for four days. You
7 know what that is, don't you?"

8 And what was his reply?

9 A. His reply was, "neglect".

10 MR. ALDERMAN: Thank you. Nothing
11 further at this time, Your Honor.

12 THE COURT: All right. Mr. Smith, your
13 witness.

14 MR. SMITH: Thank you.

15 CROSS EXAMINATION

16 BY MR. SMITH

17 Q. When we were doing the Jackson Denno
18 cross-examination I asked you if he was the caregiver
19 technically and you said, "No"; is that correct?

20 A. Yes, sir.

21 Q. All right. So the hospital wouldn't let him
22 see his mother; is that correct?

23 A. That's correct.

24 Q. All right. And I think that you had a
25 conversation with him the night before; is that correct?

CROSS EXAMINATION OF DAVID MCMAHAN BY MR. SMITH

1 A. Yes, sir, I did.

2 Q. And at that point he knew that you were
3 investigating him for neglect; is that correct?

4 A. When I had my first initial call with him, I
5 wanted to sit down with him that following -- that
6 Monday, so the first initial contact, no, I didn't
7 accuse him of neglect, no.

8 Q. Okay. And the reason why the hospital didn't
9 want to have him in there, because I think that someone
10 from law enforcement told them that they were
11 investigating for neglect?

12 A. That may have been a deputy that might have
13 said that, it is possible.

14 Q. I'm not accusing you or anything.

15 A. Oh, no, sir.

16 Q. I appreciate the service that you perform.
17 And I think in the arrest warrant you didn't say
18 anything in the arrest warrant where he was a caregiver
19 or anything, did you?

20 A. May I refer to the warrant just so that I can
21 give you a --

22 Q. Yes, let me see if I can find it.

23 MR. SMITH: All right. Let me just ask
24 you, the bond form that is marked as Defendant's
25 Exhibit 6 for identification also said -- actually, let

CROSS EXAMINATION OF DAVID MCMAHAN BY MR. SMITH

1 me have that marked, please, for identification.

2 *(Whereupon, Defendant's Exhibit No(s). 6*
3 *marked for identification and received in evidence.)*

4 THE COURT REPORTER: Acknowledgement by
5 defendant, one page, marked as Defendant's Exhibit 6.

6 MR. SMITH: Yes, ma'am.

7 BY MR. SMITH

8 Q. So the bond form, which has been marked as
9 Defendant's Exhibit 6 for identification, that is where
10 the Judge signed that he couldn't see his mama; is that
11 correct?

12 A. Forgive me while I read it.

13 Q. Yes, sir.

14 (Pause.)

15 A. Yes. Highlighted it says, "No contact with
16 victim for any reason whatsoever, including social media
17 and third-party. Do not visit victim at any facility,
18 hospital, nursing, et cetera." Yes, sir.

19 Q. All right. So, he was barred from seeing his
20 mother?

21 A. Yes, sir.

22 Q. Okay. And you don't know whether seeing his
23 mother would have been therapeutic to her at any point,
24 do you? I mean, I'm not a doctor, you are not a doctor
25 so . . .

REDIRECT EXAMINATION OF DAVID MCMAHAN BY MR.
ALDERMAN

1 A. Well, during the investigation, the more that
2 we started seeing what was going on and happening, I
3 believe that there was a decision made that it would be
4 best at that point not to let them see each other,
5 that's correct?

6 Q. All right. This is the warrant for your
7 recollection, see if this is it, based on my question?

8 (Pause.)

9 A. Okay, I have read the arrest warrant, sir,
10 now. Can you repeat?

11 Q. Maybe I misread it. I didn't see anything in
12 there about a caregiver, did you?

13 A. No, sir.

14 Q. All right.

15 MR. ALDERMAN: All right. Thank you very
16 much. That is all that I have.

17 THE COURT: Anything further for this
18 witness?

19 MR. ALDERMAN: Briefly, Judge.

20 REDIRECT EXAMINATION

21 BY MR. ALDERMAN

22 Q. I'm going to hand you that same warrant back,
23 Sergeant McMahan. Did you see anything there, as you
24 refresh your recollection, that says that the defendant
25 willfully neglected to provide care?

RE CROSS EXAMINATION OF DAVID MCMAHAN BY MR. SMITH

1 A. Yes, I see it, the first sentence there.

2 Q. Do you see anything in there about failing to
3 provide medical assistance or attention?

4 A. Yes. Also, could I clarify something?

5 Q. Please.

6 A. If you noticed in the video, when I spoke with
7 Mr. Gaines and asked him during the questioning, I asked
8 him about did he share groceries, did he share light
9 bill, and he said, Yes. And I believe in the video I
10 asked about a caregiver and he said that he was a
11 caregiver in the video.

12 Q. Do you see anything here that says anything
13 about a household member or their familial relationship?

14 A. Yes, the victim was also a member of the
15 house -- a member of the defendant's household and his
16 mother.

17 Q. Household and his mother?

18 A. Yes.

19 Q. Thank you, sir.

20 A. Yes.

21 MR. ALDERMAN: Nothing further, Judge.

22 THE COURT: Any recross?

23 MR. SMITH: Yes, sir.

24 RE CROSS EXAMINATION

25

RECROSS EXAMINATION OF DAVID MCMAHAN BY MR. SMITH

1 BY MR. SMITH

2 Q. I hate to replay it, but it sounds like when
3 you asked him that question about a caregiver he said,
4 No.

5 A. I'll be glad to review it, that would be
6 great. If I made a mistake then I will publicly
7 acknowledge it.

8 Q. That is fine. I'm not saying that you made a
9 mistake in this case, I was saying that you made a
10 mistake there.

11 A. My questioning was about the groceries, and
12 they were basically caring for each other in a sense.

13 Q. Oh, I see what you are saying.

14 A. Yes. And I believe I did ask him if he was a
15 caregiver.

16 Q. And he said, No, in the video that I saw.

17 A. Okay. I stand corrected if that is the case,
18 but I would love to hear it again if that is the case.

19 Q. Okay. I don't know how to play it.

20 THE COURT: But it is in evidence.

21 MR. SMITH: It is in evidence. Thank
22 you, Your Honor.

23 THE COURT: Anything further of this
24 witness?

25 MR. ALDERMAN: Nothing further from the

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 State.

2 THE COURT: Thank you. You may step
3 down.

4 THE WITNESS: Yes, sir.

5 MR. ALDERMAN: Judge, at this time the
6 State would call Dr. Woodard.

7 THE COURT: Let's take just a short
8 break. Madam Bailiff, would you take our jury to the
9 jury room?

10 (The jury exits the courtroom.)

11 THE COURT: Counsel approach.

12 (Off-the-record discussion held.)

13 THE COURT: Okay, let's take just a short
14 break.

15 (Brief recess.)

16 MR. ALDERMAN: The State calls Dr. Brett
17 Woodard.

18 Thereupon,

19 BRETT WOODARD, M.D.

20 was called as a witness, having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ALDERMAN

24 Q. Dr. Woodard, if you would, please introduce
25 yourself to the jury and tell us a little bit about what

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 you do for a living?

2 A. My name is Brett Houghton Woodard,
3 W-O-O-D-A-R-D. I practice in the field of pathology. I
4 have been with a group practice in Anderson, South
5 Carolina since 1982 after doing my training at Duke
6 University Medical Center and the North Carolina Medical
7 Examiner's Office. I'm board certified in anatomic
8 pathology, clinical pathology, forensic pathology, and
9 blood banking and transfusion medicine. Since '19 --
10 excuse me, since 2019 I have been solely doing forensic
11 pathology.

12 Q. Dr. Woodard, does the field of forensic
13 pathology involve performing autopsies?

14 A. That is one of the functions, yes.

15 Q. And how many autopsies would you say that you
16 have performed over the course of your career?

17 A. Thousands.

18 MR. ALDERMAN: Judge, at this time we
19 would move to have Dr. Woodard qualified as an expert in
20 the field of forensic pathology.

21 THE COURT: Any objection?

22 MR. SMITH: No objection, Your Honor.

23 THE COURT: The witness is deemed an
24 expert in forensic pathology without objection.

25

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 BY MR. ALDERMAN

2 Q. Dr. Woodard, could you explain for us the
3 purpose of performing an autopsy?

4 A. The purpose of performing an autopsy is to
5 determine the cause of death, the manner of death, and
6 the mechanism of death.

7 Q. All right. Is that what you did in the case
8 of Alma Louise Gaines?

9 A. That's correct.

10 Q. When was that autopsy performed?

11 A. I performed the autopsy on the 18th of January
12 of 2018.

13 Q. And before you performed the autopsy or did a
14 physical examination of Ms. Gaines, what preliminary
15 information did you receive about how she came to be
16 there?

17 A. In this particular case I received the medical
18 records, or copies thereof, that related to her
19 interaction with medical professionals and the emergency
20 medical services. I also received hearsay statements
21 from the coroner's office concerning statements about --
22 that were made by the people who were in the home with
23 her.

24 Q. For example?

25 A. The son and a female companion.

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 Q. Okay. And what was the, I guess, the nature
2 of the statements? What information did they give you
3 that related to what you did going forward?

4 A. The information I was given indicated that on
5 the 15th of December the deceased fell to the floor,
6 that she did not request any assistance from anyone that
7 was in the home. The only person in the home was her
8 stepson. And no food or water was supplied to her. And
9 she laid in that position on the floor.

10 On the 17th of December, the son's female
11 companion came to the house and she said that they
12 needed to call emergency services. Emergency
13 services were called and she was transported to
14 Ocone Memorial Hospital.

15 Q. So having received that preliminary
16 information, tell us, what do you, what do you do first
17 in the autopsy of Ms. Gaines?

18 A. We examine her in the condition that we
19 received her. In this particular case she was in a
20 hospital gown and an adult diaper. There were bandaged
21 wounds. We photographed all of that on site too. We
22 then removed the bandages so we could see what was
23 underneath the bandaged wounds. And then we evaluate
24 from the surface of the body what things might have
25 produced the changes we see on the surface of the body

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 before we begin to dissect or look underneath the
2 surface of the body.

3 Q. With that in mind, Dr. Woodard, I'll show you
4 what has been marked as State's 1, which has been
5 previously admitted. If we can maybe have a light back
6 on? Yes, I think it is a little easier. Dr. Woodard,
7 can you tell what you see here?

8 A. Yeah. If we look at -- as we look at the
9 screen underneath State Exhibit 1, that is the right
10 side, we see her right lower leg and we see that that
11 lower leg is purple black discoloration that extends
12 above the knee onto the medial aspect or the inner
13 aspect of the thigh. We also see on the outside of the
14 leg what looks like a black piece of cloth, which is a
15 bandage over a decubitus wound where the skin is broken
16 down. And we see a purplish discoloration around the
17 buttocks.

18 Q. State's 3, if you could tell us what you see
19 here?

20 A. Here she is lying on her back. You see the
21 bandage that we saw removed in the other picture. We
22 can more clearly see the differential between the left
23 leg and the right leg where the right leg is black and
24 discolored and swollen. On the inside aspect of the
25 left leg we see an ulcer, what we refer to as a

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 decubitus ulcer or a bandage was at one point.

2 Q. And State's 7?

3 A. Again, this is showing a contrast between her
4 right foot, which is black and swollen, and her left
5 foot which should be the relative normal appearance of
6 the skin of her leg.

7 Q. So, Doctor, those being the initial
8 superficial observations, what did you do from there?

9 A. We did -- started out, we also looked at other
10 aspects of the body that were decubiti along the edge of
11 the jaw bone. We refer to this as submental area of the
12 jaw. And over the right ear, where the ear cartilage is
13 immediately beneath the skin, and saw all the
14 devitalization that occurred along that right side.

15 We then did what we call a standard
16 autopsy. We opened the body, looked at the internal
17 organs. Took the organs out and did weighing and
18 dissection of the organs in order to determine what
19 their problems were. And removed the brain and its
20 coverings to see if there were any problems in that
21 area. And then we proceeded to dissect this lower
22 extremity to see what the underlying problems were
23 that led to this death of this leg.

24 Q. And during that dissection, either the body
25 broad, broadly, excuse me, or the leg itself, what did

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 you, what did you note that was remarkable?

2 A. We saw that the deceased was dehydrated. We
3 saw in the lower extremities, the veins had clotted.
4 Not just the outside veins on the surface of the leg,
5 but also the deep veins inside the leg. And then clots
6 had even formed in the arteries of the leg.

7 We saw that there were decubiti, level two
8 decubitus, meaning the skin was broken down and that
9 decubitus had moved into the soft tissues underneath
10 the skin. And we saw those on the ear, the jaw, the
11 medial side of the left leg, and the lateral side of
12 the right leg as you saw in the earlier pictures.
13 This confirmed that she had been in a sustained time
14 period lying on her left side with the weight of
15 gravity against her lower extremity. Her head and
16 jaw bone against the hard surfaces of a rug-ed or
17 other surface structures.

18 We saw death of her kidneys, with blood
19 clots forming in the kidneys and what we call
20 infarction or death to kidney, which would be
21 associated with what we refer to as a breakdown of
22 the coagulation system of the body. As well as
23 dehydration. When we dissected the leg we saw that
24 the muscle fibers were totally dead in the leg, just
25 like a heart attack but it was in the leg. And this

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 would have released chemicals which would have
2 caused defects in clotting and defects in the
3 function of kidney. We did not find a heart attack,
4 we didn't find a stroke, though her brain was
5 atrophic in character.

6 Q. What does that mean, atrophic in character?

7 A. It can be a change seen with age, but there
8 could be an element of Alzheimer's disease or other
9 forms of dementia.

10 Q. Dr. Woodard, help me understand, how does
11 laying in the floor for four days without moving,
12 without food or water or assistance of any kind, lead to
13 death a month later?

14 A. If she lays on the floor for a sustained time
15 period, this stops the capillary flow and ultimately the
16 vein side of blood flow. Just like when you nick
17 yourself shaving and you want to stop that area from
18 bleeding and you put your finger on it and you push for
19 a period of time, you are stopping the capillary flow
20 and you are allowing the initial stages of clotting to
21 occur in that little defect that you have produced in
22 the skin.

23 If you continued to keep that pressure on
24 that place that you nicked for multiple hours, even
25 a younger and healthier person than she was at this

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 age, you will eventually produce a little defect in
2 that skin that would mimic an early decubitus if you
3 could cause yourself to do it long enough.

4 Once the veins begin to clot the arteries
5 can't pump blood in because the capillaries are
6 closed, so the blood flow begins to slow. And
7 because the blood flow is slowing the muscle begins
8 to deteriorate, because the muscle deteriorating
9 causes the arteries to clot, and ultimately leads to
10 the death of that muscle.

11 The decubiti are caused by a similar
12 process though, for instance, the ear is a point
13 contact with the body curved being balanced between
14 underneath the jaw and the edge of the ear, the left
15 knee against the ground, just in the focal areas,
16 not the whole body weight upon it. This ultimately
17 leads to metabolic failure, ultimately leads to
18 coagulation disorders, and ultimately will result in
19 death.

20 The extremity was never corrected because
21 a decision was made based on her kidney function or
22 advanced age she was unlikely to tolerate the
23 necessary surgeries.

24 Q. So is it fair to say that laying in the floor
25 for four days is ultimately what caused her death a

DIRECT EXAMINATION OF DR. BRETT WOODARD BY ALDERMAN

1 month later?

2 A. It set the cascade in motion that ultimately
3 caused her death.

4 Q. Okay. Dr. Woodard what are -- what, in your
5 opinion, if she had fallen on the floor, she is laying
6 on a hard surface, there she is, someone finds her
7 there, what could have been done to help her?

8 A. Well obviously this is why communication
9 devices are often given to older people so they don't
10 lay on the floor for a sustained time period, someone
11 will come and assist them. But perhaps an older person
12 living alone a relative or friend comes and finds them
13 on the floor. The sooner they find them the less likely
14 this whole scenario is to develop. The longer it takes
15 the more likely it is to develop and ultimately lead to
16 loss of an extremity or death.

17 Q. Would it have helped her to pick her up and
18 put her in a chair?

19 A. Absolutely.

20 Q. Would it have helped to put a pillow under her
21 head and rolled her over on her back instead of just on
22 her side?

23 A. The -- she may have ended up with large
24 decubiti under those circumstances, just like some
25 people in assisted living will get, or some people in

CROSS EXAMINATION OF DR. BRETT WOODARD BY MR. SMITH

1 wheelchairs get, but it wouldn't have produced death of
2 that extremity.

3 Q. Ultimately, Dr. Woodard, what was the cause or
4 mechanism of Alma Gaines' death?

5 A. The death of the extremity and formation of
6 decubiti allow germs into the body, and ultimately she
7 developed pneumonia and organ failure.

8 Q. Dr. Woodard, what was the manner of death?

9 A. Homicide.

10 Q. Thank you.

11 MR. ALDERMAN: Nothing further at this
12 time, Judge.

13 THE COURT: Mr. Smith.

14 MR. SMITH: Yes, sir, Your Honor. I only
15 have a few questions.

16 CROSS EXAMINATION

17 BY MR. SMITH

18 Q. I appreciate that because I didn't know about
19 your education background, so I don't know all of that
20 stuff that you were talking about. But I understand
21 what you say is the cause of death, correct?

22 A. Yes.

23 Q. All right. Now, the -- you said that in your
24 history that you took in your notes, you got it from
25 hearsay?

CROSS EXAMINATION OF DR. BRETT WOODARD BY MR. SMITH

1 A. I got it from the coroner's office, I did not
2 hear it.

3 Q. Right. And you never talked to Mr. Gaines,
4 correct?

5 A. That's correct.

6 Q. And you never talked to his girlfriend,
7 whoever she was?

8 A. No. No, I don't. I don't know who she is.

9 Q. All right. So when you said somewhere in your
10 note that her adopted son was her caregiver, you don't
11 know that of your own personal knowledge?

12 A. No, I was just told that.

13 Q. Right. And then based on that you made a
14 determination that it was homicide because a caregiver
15 is supposed to do what they are supposed to do?

16 A. They are supposed to offer care.

17 Q. Right. So if she had been in the house by
18 herself and fallen, it wouldn't have been a homicide
19 case?

20 A. That's correct, it would have been an
21 accident.

22 Q. It would have been an accident, right. So if
23 there is no -- if she had fallen at the house by herself
24 and no caregiver, then there would be no homicide, there
25 would be no neglect, there would be no adult neglect

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
SMITH

1 under those circumstances; isn't that correct?

2 A. That's correct.

3 Q. Now, I appreciate your service, Doctor, and
4 thank you for what you have been doing for this
5 community for the number of years that you have been
6 practicing.

7 A. Thank you.

8 MR. SMITH: Have a good one.

9 THE WITNESS: You too.

10 THE COURT: Anything further from this
11 witness?

12 MR. ALDERMAN: Briefly, Judge.

13 REDIRECT EXAMINATION

14 BY MR. ALDERMAN

15 Q. The question was asked, if no one else was in
16 the home this would have been an accident instead of a
17 homicide; is that the question as you understood it?

18 A. That is how I understood it.

19 Q. All right. And was the information provided
20 to you that there was someone else in the home?

21 A. That is what was provided to me.

22 MR. ALDERMAN: Thank you.

23 MR. SMITH: I have just one question.

24 RECROSS EXAMINATION

25

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
SMITH

1 BY MR. SMITH

2 Q. Doctor, there are a lot of people who die at
3 home with other people in the home, right? Like if
4 somebody has cancer and they don't -- they decide, wait,
5 I don't want to go back to the hospital and take my
6 chemo and they die, that is not a homicide is it?

7 A. No, it's not.

8 Q. And the person could be in the home and they
9 could be as close as a husband or a wife in those
10 circumstances, couldn't they?

11 A. Yes.

12 MR. SMITH: Thank you. No further
13 questions.

14 THE COURT: Thank you, Doctor. You may
15 step down.

16 MR. ALDERMAN: Your Honor, at this time
17 the State rests.

18 THE COURT: All right. Madam Bailiff,
19 would you take our jury to the jury room, please?

20 (The jury exits the courtroom at 11:55
21 a.m.)

22 THE COURT: The State has rested. Are
23 there any motions?

24 MR. SMITH: Yes, Your Honor. May it
25 please the Court, may I be heard?

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
SMITH

1 THE COURT: Yes, sir.

2 MR. SMITH: Your Honor, at this time I
3 move for a directed verdict. I have already, previously
4 filed a memorandum with the Court, I think, the first
5 day of trial. I can give the Court a copy, I have
6 another copy.

7 THE COURT: Yes, sir, I have a copy of
8 it.

9 MR. SMITH: Okay. Basically, Judge,
10 Defendant Gaines has been charged by indictment with
11 abuse and neglect of a vulnerable adult resulting in the
12 death in violation of South Carolina 43-35-85(F). We
13 cite in the memorandum with the affidavit, the affidavit
14 was of the police officer who was identified today when
15 he testified. And we note in the affidavit there is
16 nothing in the affidavit that contends that he was a
17 caregiver.

18 The other thing too, Your Honor, is that
19 even in the indictment it doesn't mention anything about
20 him being a caregiver. So Gaines contends after his
21 mother fell he tried to help her, but she told him, and
22 insisted, that she did not want to be touched and that
23 she did not want him to pursue medical assistance.

24 Gaines honored his mother's wishes, but
25 when she became unconscious he called 911 for

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
SMITH

1 assistance. Gaines' mother was mentally competent and
2 fully aware of what happened to her when she instructed
3 Gaines not to touch her or call anyone.

4 And prior to her fall, Gaines' mother was
5 physically and mentally healthy and took care of herself
6 and, in fact, drove Gaines to work -- I say every day,
7 but on occasion. She was not in need of any assistance
8 and could fully and adequately provide for her own care
9 and protection.

10 The facts set forth in the State's
11 witnesses do not establish that the defendant was a
12 caregiver as defined by the Act defining what
13 constitutes a caregiver. Gaines is charged, as I have
14 said, under 43-35-85, and that provides, A person
15 knowingly and willfully abuses or neglects a vulnerable
16 adult resulting in death is guilty of a felony.
17 According to the affidavit for the indictment in support
18 of the arrest warrant, they allege that Gaines knowingly
19 and willfully neglected to provide her proper care.

20 Now, Your Honor, under the Act, neglect
21 is a failure or omission of a caregiver to provide the
22 care, goods, or services necessary to maintain the
23 health or safety of a vulnerable adult, including but
24 not limited to food, clothing, medicine, shelter,
25 supervision, and medical services. Thus, the cause of

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
SMITH

1 neglect is defined as a failure or omission of a
2 caregiver to provide the care for a vulnerable adult.

3 Only a caregiver as defined by the Act is
4 subject to the Act's criminal sanctions. It is only a
5 caregiver who has the duty to act as to be liable for
6 neglect under the Act. Whether we agree with that
7 legislative provision, it is the law. And caregiver
8 under the Act is defined as a person who provides care
9 to a vulnerable adult with or without compensation, on a
10 temporary or permanent or part or full-time basis, and
11 includes but is not limited to a relative, household
12 member, daycare personnel, adult foster home sponsor,
13 personnel of a public or private institution. And a
14 vulnerable adult is a person 18 years of age or older
15 who has a physical or mental condition which
16 substantially impairs the person from adequately
17 providing his or her own care or protection.

18 So, he did, on the 18th, and it is
19 undisputed, did request medical care and treatment for
20 his mother when he called 911. But she had a right,
21 according to the medical testimony from a number of
22 medical witnesses, to refuse medical treatment, to
23 refuse to go to the hospital, to refuse to have EMS come
24 out to the scene. That is her right.

25 He is being prosecuted for exercising his

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
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1 judgment in favor of his mother's wishes. I don't think
2 the State ever wanted to pass a law that would express
3 that kind of concern, otherwise everybody would be at
4 risk if someone got sick at their home. And, as I say,
5 caregiver is defined as a person who provides care to a
6 vulnerable adult. And as we have already pointed out,
7 he was not a caregiver. And a number of witnesses say
8 he was not a caregiver. And then when there was wiggle
9 room with regard to the emergency room doctor, but based
10 on the statements from the policeman, this honorable
11 policeman over here, Gaines was barred from coming to
12 the hospital to see his mother. So, where they got this
13 caregiver in the emergency room, I don't know. But he
14 was barred. Gaines even testified that, when he
15 testified on his statement, that he couldn't see her.
16 The officer confirmed that is a matter of procedure.
17 And then when I asked him he said, Probably his deputy
18 was the ones that told those folks over at the hospital
19 to bar him from seeing his own mother on the day she
20 went to the hospital.

21 So, that is no times was Gaines ever a
22 caregiver as defined under the Act. And the fact is,
23 the prosecution -- and they do a noble cause -- can't
24 punish him for being merely present or passive because
25 his mother -- he was following his mother's wishes,

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1 which he had a right and she had a right to do.

2 She had a right that superseded anybody
3 else's right to seek medical care and treatment. And at
4 that time there was no -- there has been no testimony
5 that she was incapacitated on the 14th or even the 15th
6 to make a judgment, or the 16th or 17th, or even the
7 18th, to make her own decisions. Except to the fact
8 when EMS came out and took her away, they said that she
9 was unconscious.

10 This is a tragic death of a mother of an
11 adoptive mother who was 92 years old. And I think that
12 common sense will tell you that your muscles are going
13 to deteriorate over time. And being 92 years old,
14 muscles do deteriorate.

15 Therefore, we don't believe that he can
16 be found guilty of that. And then, in all of that, the
17 willfully and knowingly, based on his statement to the
18 police, he tried to pick her up but she said, No, she
19 didn't want him to pick her up because she felt like she
20 was hurt. So he did not willfully or knowingly try to
21 hurt her. He doesn't have the education that any of
22 these, these other people have with regard to being a
23 health care expert or being like the doctor who just
24 testified.

25 The defendant -- the word "willfully"

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1 required that the defendant to have acted with knowledge
2 that his conduct was unlawful. He didn't think his
3 conduct was unlawful. And he didn't knowingly know
4 about the -- whether these ulcers were going to form on
5 his mother, there is no proof that he would have known
6 that except speculation.

7 But our strongest argument is that he was
8 not a caregiver. That is a principal element of their
9 case and they have not met that principal element. Even
10 if you find that she was a vulnerable adult that needed
11 assistance and all of that other stuff that comes in,
12 along with the pictures and the emotional part of it,
13 the fact that he was not a caregiver means that he is
14 not guilty as charged.

15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Smith. Me.
17 Alderman, response?

18 MR. ALDERMAN: Yes, Judge. As I
19 understand Mr. Smith's argument, as he restated it
20 again, essentially the heart of it is whether his client
21 was a caregiver. And, Judge, that is a question of
22 fact, and there are facts in evidence to lead the jury
23 to believe that he was, or at least have that decision
24 to make.

25 The Act provides the caregiver is a

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1 person who provides care to a vulnerable adult.
2 Certainly the facts have shown that when she was laying
3 in the floor and couldn't get up, couldn't provide for
4 herself, she would reasonably be determined to be a
5 vulnerable adult. The question becomes the caregiver,
6 and there is testimony in evidence that he gave care,
7 that he put a jacket over her, that he offered her food,
8 that he turned on the heat when she was cold. All of
9 this is reasonably understood to be care. Inadequate
10 care, maybe, in the end, but care nevertheless.

11 And, again, the Act goes on to point out
12 that these persons include but are not limited to a
13 relative or household member. Which he is both. So,
14 Judge, there are facts in evidence in dispute, and we
15 would say that this is simply a question for the jury.

16 MR. SMITH: You know, I'm thinking, you
17 know, he is one of the brightest guys I know. Well, why
18 is he indicted? Because if he was a caregiver, based on
19 his argument, he did provide care for her. He's saying,
20 well, he tried to provide personal care. Well, if that
21 is the case, then why is he indicted? The key component
22 is that he's not a caregiver as defined by the Act.

23 Now, whether he had a moral
24 responsibility, maybe so. A lot of us with moral
25 responsibility would take moral responsibility and do

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
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1 something different. But moral responsibility is
2 different than a legal responsibility. And at the
3 point, like the doctor was saying, he had no duty. Like
4 if somebody is dying in a house with cancer and they
5 decide they don't want to go to the hospital and they
6 pass out and you don't call, that is not homicide. That
7 person made a decision they did not want any further
8 medical care and treatment.

9 And I don't think we want to expand the
10 law to such an extent that people like Mr. Gaines should
11 be convicted of a crime. When the person whose right it
12 is to refuse medical care and treatment did so. Thank
13 you, Your Honor.

14 THE COURT: Counsel, y'all are both aware
15 that a ruling on a motion for directed verdict, the
16 Court is concerned with the existence or nonexistence of
17 evidence, not weight. To grant a directed verdict
18 motion the Court must first view the evidence in the
19 light most favorable to the State; and secondly, find
20 that the State has not produced any evidence, any direct
21 or circumstantial evidence, that reasonably tends to
22 prove the guilt of the accused.

23 Now, you each have correctly quoted the
24 statute. Caregiver is a term used in the statute. Now,
25 I would state that relative and household member are two

RECROSS EXAMINATION OF DR. BRETT WOODARD BY MR.
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1 specific categories which are stated in the statute.
2 There is no requirement in the statute that the -- that
3 a caregiver have to be a licensed health care
4 professional or someone designated by a Court to be a
5 caregiver. And it also uses the words "temporary or
6 permanent or full or part-time basis". Caregiver. Also
7 the term neglect. Also the term vulnerable adult are
8 all elements of the offense. And they are all elements
9 for which the State has a burden. The State has to
10 prove those beyond a reasonable doubt, each element of
11 the offense.

12 Now, in looking at what has been
13 presented, I find that the State has produced evidence
14 to establish each of the elements. Mr. Smith, your
15 arguments go toward the weight of that evidence rather
16 than the existence of that evidence. So I would note
17 for the record -- and this is not an exhaustive list,
18 but the State has produced evidence that the defendant
19 is a relative and household member, that they shared
20 groceries, the defendant signed documentation to allow
21 her to be admitted to the hospital. There was also
22 testimony and statement from the defendant that he made
23 up his mind that he was going to call EMS whether she
24 consented or not. Again, those are elements of fact.
25 Those are jury questions, whether that constitutes a

THE DEFENDANT GIVEN RIGHTS AS TO TESTIFYING

1 violation of statute.

2 There was also testimony about the
3 vulnerable adult issue. There's testimony on the record
4 that she was in pain, that he tried to sit her up but
5 she was in pain. There's evidence of lack of pants,
6 feces, and urine. There is evidence in the record.
7 Now, you may point toward the intent. What he intended
8 to do, that is a question of fact that the jury must
9 decide. I am going to charge them on that issue.

10 So I am going to deny your motion in that
11 there is evidence in the record and that is a jury
12 question in this case.

13 MR. SMITH: Thank you, Your Honor.

14 MR. ALDERMAN: Thank you, Judge.

15 THE COURT: Okay. So Mr. Gaines, would
16 you stand. Mr. Smith, you and Mr. Gaines stand. And,
17 Madam Clerk, would you put Mr. Gaines under oath?

18 Thereupon,

19 MACK ADAMS GAINES

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 THE COURT: Now, Mr. Gaines, at this time
23 I am going to explain to you some of your rights. If
24 you do not understand anything that I say, please let me
25 know and I will explain it in more detail. If you

THE DEFENDANT GIVEN RIGHTS AS TO TESTIFYING

1 answer the question, I'll assume you understood the
2 question. Do you understand?

3 THE DFEFENDANT: Yes.

4 THE COURT: We have reached the stage in
5 the trial where you may present your defense. You have
6 the right to claim the protections given to you by the
7 Fifth Amendment to the Constitution of the United
8 States. This amendment states in part, No person shall
9 be compelled in any criminal case to be a witness
10 against himself. This means that you cannot be required
11 to testify in this case.

12 On the other hand, you have the right to
13 testify on your own behalf should you choose to do so.
14 However, no one can make you testify. This is a
15 personal right, and no one can waive this right except
16 you. If you decide to testify, you will be subject to
17 the same rules that govern other witnesses. And you may
18 be examined or cross-examined on any relevant issue in
19 this case. In addition, if you have any convictions
20 involving dishonesty or false statement or for crimes
21 punishable by imprisonment for more than one year and
22 this Court determines that the probative value of
23 admitting this evidence outweighs its prejudicial effect
24 to you, the Solicitor will be able to introduce your
25 record to attack your credibility.

THE DEFENDANT GIVEN RIGHTS AS TO TESTIFYING

1 If you decide to testify, this decision
2 on your part must be freely, voluntarily, and
3 intelligently made, with the knowledge of the
4 protections given to you by the Fifth Amendment and the
5 consequences of your decision to testify. If you decide
6 not to testify, I will instruct the jurors that they
7 cannot give the fact that you did not testify any
8 conversation whatsoever and that there is to be
9 absolutely no prejudice to you because you did not
10 testify. It is left entirely up to you whether or not
11 to testify.

12 You may talk to your attorney, your
13 family, friends, or anyone else, but the final decision
14 will be left entirely up to you. Do you understand what
15 I have explained to you?

16 THE DFEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions
18 that you would like to ask your attorney at this point?

19 THE DFEFENDANT: No, sir.

20 THE COURT: Okay. We are going to take
21 just a short break, and Mr. Smith, I'll allow you to
22 confer with your client before he informs the Court of
23 his decision.

24 MR. SMITH: Yes, sir. Thank you.

25 THE COURT: Okay. We will just take a

THE DEFENDANT GIVEN RIGHTS AS TO TESTIFYING

1 short break.

2 (Short recess.)

3 THE COURT: Mr. Smith, do you need any
4 more time to talk to your client?

5 MR. SMITH: No, he's made his decision.

6 THE COURT: All right. Let's go back on
7 the record.

8 Mr. Gaines, what is your decision whether
9 or not to testify?

10 THE DFEFENDANT: I plead the fifth.

11 THE COURT: Yes, sir, okay. You can be
12 seated. Now, Mr. Smith, you have a witness?

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: Okay. Let's go ahead and get
15 Dr. Thompson.

16 MR. SMITH: Yes, sir.

17 THE COURT: All right. Let's go ahead
18 and do that and then we will break for lunch and argue
19 and charge after. Is that okay with you?

20 MR. SMITH: Yes, sir.

21 (The jury enters the courtroom at 12:15.)

22 THE COURT: The State has rested. The
23 defense can present any evidence that they wish to.

24 MR. SMITH: May it please the Court? At
25 this time we call Dr. Thompson, Dr. Paul Thompson.

DIRECT EXAMINATION OF DR. PAUL E. THOMPSON BY SMITH

1 Thereupon,

2 DR. PAUL E. THOMPSON, JR.

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 MR. SMITH: May it please the Court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. SMITH

9 Q. Would you state your name, please?

10 A. Paul E. Thompson, Jr.

11 Q. You know Dr. Woodard, y'all out there sitting
12 talking?

13 A. I just met him.

14 Q. Oh, you just met him?

15 A. Yeah. I just found out his first name a
16 second ago.

17 Q. Okay.

18 A. Yeah.

19 Q. Where do you live, Dr. Thompson?

20 A. I live in Seneca.

21 Q. How long have you lived in Seneca?

22 A. Since '93.

23 Q. Okay. And at some point you were employed
24 with Foot Hills Medical Clinic?

25 A. Yes, Foot Hills Community Health. And I'm

DIRECT EXAMINATION OF DR. PAUL E. THOMPSON BY SMITH

1 still under contract with them, yes.

2 Q. Okay. And in what capacity are you operating
3 in?

4 A. Physician.

5 Q. Okay. What is your specialty?

6 A. I am trained in internal medicine and
7 gastroenterology, but I work in internal medicine.

8 Q. Yes, sir. And did you have occasion to have
9 Ms. Louise Gaines as a patient?

10 A. Yes.

11 Q. And how long did you treat her, provide care
12 and treatment for her?

13 A. I would say 10 to -- 10 to 15 years.

14 Q. All right, sir. Do you know Mack Gaines?

15 A. Yes.

16 Q. And Ms. Cynthia Dupre?

17 A. Yes.

18 Q. Okay. And all of y'all go to church together?

19 A. Right, that is --

20 Q. Which church do y'all go to?

21 A. Ebenezer Baptist Church in Seneca.

22 Q. Okay. Did Ms. Louise Gaines attend church?

23 A. Not -- I didn't see her too often.

24 Q. Okay. And Mr. Gaines did?

25 A. Mr. Gaines, he attended church regularly.

DIRECT EXAMINATION OF DR. PAUL E. THOMPSON BY SMITH

1 Q. All right. What was her general condition
2 over the years, because she passed away at 92, but what
3 was her general condition, medical condition as you
4 observed? Do you have your notes with you?

5 A. Yes. Okay. Medically she was, you know, she
6 had some medical issues, but you know, she was pretty
7 stable, yeah.

8 Q. Okay. What kind of medical issues did she
9 have and what did you observe about her personality and
10 her stamina as an elderly person?

11 A. Well, her medical conditions include
12 hypothyroidism, which is low thyroid. Hyperlipidemia,
13 which is considered elevated cholesterol. She also had
14 hypertension, elevated blood pressure. And generalized
15 arthritis. Which is pretty -- that is pretty normal for
16 a person in their 90s. And her mental clarity was, you
17 know, mentally she was very clear.

18 Q. All right, sir. And I think in your notes, I
19 guess was she -- was she a very compliant patient?
20 Would she take her medication, or would she not take her
21 medication all of the time?

22 A. She did whatever she wanted to do. She was --
23 sometimes she was not compliant.

24 Q. All right. And what kind of problems can you
25 have if you have, I guess, hypertension, what could that

DIRECT EXAMINATION OF DR. PAUL E. THOMPSON BY SMITH

1 lead to?

2 A. Well, theoretically, it can lead to, it can
3 lead to a stroke, it can lead to a heart attack.
4 Depending on the level of hypertension, it can lead to
5 death.

6 *(Whereupon, Defendant's Exhibit No(s). 1*
7 *marked for identification and received in evidence.)*

8 BY MR. SMITH

9 Q. All right, sir. So when, based on your notes,
10 and they have been introduced into evidence under
11 Defendant's Exhibit No. 1, can you tell us when was the
12 last time that you made an assessment of her?

13 A. June 2017.

14 Q. Okay. And what do your notes indicate about
15 her medical condition at that time?

16 A. What I noticed was, overall she was in good
17 health, her health was good. And I had summarized my
18 talk with her by telling her -- I congratulated her on
19 her great health and her labs. And her mental clarity
20 was really, you know, good, above normal for her age.

21 Q. So she wasn't suffering from dementia or
22 Alzheimer's?

23 A. Oh, no, not -- no, she was remarkably mentally
24 clear.

25 Q. And I think you told her -- she come back in

DIRECT EXAMINATION OF DR. PAUL E. THOMPSON BY SMITH

1 -- were these six-month appointments or what?

2 A. Well I would tell her, usually when a person
3 is at a certain age, I tell them to come back every
4 three months. But she sort of came back when she got
5 ready. So with the elderly my door is always open. You
6 know, whenever they come back is okay with me. But, you
7 know, I prefer them to come back, you know -- really
8 wanted her to always come back in three months, but she
9 sort of came back when she got ready, because she was
10 very independent.

11 Q. So she was a pretty independent lady?

12 A. Extremely independent.

13 Q. Was she very positive in her talks to you?

14 A. Very, very, very positive.

15 Q. And demanding?

16 A. Well, she had to get her way, you know, so we
17 had to come -- we had to come to an agreement, even when
18 it come down to things like labs, you know, or things
19 like that. She sort of -- we had to come -- we had to
20 compromise.

21 Q. You had to have a come to Jesus moment from
22 time to time?

23 A. Yeah, many times.

24 Q. In other words, she was stubborn on occasion?

25 A. Yes, she was stubborn. She was very stubborn.

CROSS EXAMINATION OF DR. PAUL E. THOMPSON BY MR.
ALDERMAN

1 MR. SMITH: All right. Answer any
2 questions that the State has, please.

3 THE COURT: Any questions?

4 MR. ALDERMAN: Yes, Your Honor.

5 CROSS EXAMINATION

6 BY MR. ALDERMAN

7 Q. Doctor, you said she was, you said an
8 independent woman; is that correct?

9 A. Yes, very independent.

10 Q. Very determined, and stubborn, would you say?

11 A. There were times when she could get stubborn,
12 but she was independent.

13 Q. Okay. By "independent", did you mean that she
14 was the kind of person that could take care of herself?

15 A. She can take care of herself.

16 Q. Okay. So take care of herself. Drive her own
17 car?

18 A. I never seen her drive. I never seen her
19 drive. I mean, I -- I never seen her drive. She was --

20 Q. Well, based on your observation you would
21 expect her to be able to dress herself and make her own
22 food, daily life functions to take care of herself?

23 A. Well, I would expect her to be able to dress
24 herself. I mean, I can't make any comment as far as
25 cooking is concerned.

CROSS EXAMINATION OF DR. PAUL E. THOMPSON BY MR.
ALDERMAN

1 Q. Sure. Did you happen to see her on December
2 15th, 2017? Let me ask it a different way.

3 A. I mean, I --

4 Q. Did you see her the day she fell in her house
5 and laid on the floor?

6 A. No.

7 Q. Okay. You testified that you saw her June of
8 that year, is that right?

9 A. I believe that is based on my notes, yeah.

10 Q. Okay. So you wouldn't have any idea what was
11 going on in the house that day, would you?

12 A. No.

13 Q. Her condition at that time?

14 A. That's correct.

15 Q. If she was able to get up off of the floor and
16 dress herself, take herself to the bathroom, make her
17 own food, turn on the heat, do anything at all for
18 herself, right; you have no knowledge of that?

19 A. No, no, I wouldn't.

20 Q. Let me ask you this, hypothetically, Doctor:
21 You treated Ms. Gaines. You know Mack Gaines
22 personally. You go to church with him, correct?

23 A. I go to church with him, but that don't mean I
24 know -- I don't know him personally.

25 Q. But you would know him if you saw him on the

CROSS EXAMINATION OF DR. PAUL E. THOMPSON BY MR.
ALDERMAN

1 street?

2 A. Yes.

3 Q. And you knew who his mother was, right?

4 A. Oh, yeah.

5 Q. Because she was your patient.

6 A. Yes, she was my patient.

7 Q. Let me ask you this, Doctor: If Mack Gaines
8 had called you, had said, My mom fell down, she don't
9 want to go to the hospital, you are her doctor, will you
10 come do a house call, will you come help, would you have
11 done that?

12 A. Generally, generally we don't do that.

13 Q. Not to interrupt, but it may not be your
14 practice, but if someone asks you to do that, would you
15 help?

16 A. I would help the best way I can.

17 MR. ALDERMAN: Thank you.

18 THE COURT: Anything further from this
19 witness?

20 MR. SMITH: That is it. No other.

21 THE COURT: Thank you, Doctor. You can
22 step down.

23 THE WITNESS: Okay.

24 THE COURT: Mr. Smith, call your next
25 witness.

CROSS EXAMINATION OF DR. PAUL E. THOMPSON BY MR.
ALDERMAN

1 MR. SMITH: Defense rests, Your Honor.

2 THE COURT: Is there any reply testimony
3 from the State?

4 MR. ALDERMAN: No, Your Honor.

5 THE COURT: Okay.

6 MR. SMITH: Your Honor, may he be
7 excused?

8 MR. ALDERMAN: No objection, Judge.

9 THE COURT: Doctor, you are excused.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Okay, ladies and gentlemen,
12 that concludes the evidentiary stage of this trial. The
13 next stage will be closing arguments, and then I will
14 charge you on the law. So we are going to go ahead and
15 break for lunch right now. We will resume at 2:00. So
16 be back in the jury room shortly before 2:00. Hope
17 everyone has a good lunch.

18 (The jury exits the courtroom at 12:26
19 p.m.)

20 (Pause.)

21 THE COURT: Okay. Before we resume at
22 2:00, I want everyone to be here at 1:45 so we can go
23 over the proposed charges. And if you have any specific
24 charges that you would like me to consider, just get a
25 copy of that to my law clerk and we will talk about it

CHARGE CONFERENCE

1 before we resume.

2 MR. SMITH: Your Honor, may it please the
3 Court, I'm renewing my motion. I understand.

4 THE COURT: Yes, sir. So noted.

5 MR. SMITH: Thank you.

6 THE COURT: So noted. Okay, we will see
7 everyone about 1:45.

8 (Lunch recess.)

9 THE COURT: All right. Before we get our
10 jury I wanted to go over with you proposed charges. Now
11 since the defense put up evidence, the State will open
12 in full, the defense will then close in full, and then
13 the State would have an opportunity to reply. I have my
14 standard charges with my general charge on the
15 responsibility of the judge and jury. Direct and
16 circumstantial evidence. Credibility of witnesses.
17 Reasonable doubt. Presumption of innocence. Failure of
18 the defendant to testify. Criminal intent. I have got
19 a charge on the charge, arrest, and indictment not being
20 evidence. I also have a charge on the statement of the
21 defendant. A charge on expert witnesses. And then a
22 charge on their deliberations.

23 The case specific charges are in South
24 Carolina Code Section 43-35-85, which gives the
25 definitions. And I am going to charge that the State

CHARGE CONFERENCE

1 must prove beyond a reasonable doubt and then give them
2 the definitions of caregiver, vulnerable adult, and
3 neglect.

4 MR. ALDERMAN: Yes, sir, and abuse.

5 THE COURT: Because those are the
6 pertinent sections. Are there other specific charges
7 that either side would request?

8 MR. ALDERMAN: Not from the State, Your
9 Honor.

10 MR. SMITH: I request mere presence, Your
11 Honor.

12 THE COURT: Mere presence. That is
13 included -- let me just see. I have got it in -- I
14 have usually got that included in another charge. Let
15 me pull that out. Generally that is in a hand of one
16 hand of all charge, which y'all have both heard that.
17 But I'll charge mere presence.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: Okay. Anything else?

20 MR. ALDERMAN: Judge, to be clear, the
21 definitions that you were talking about, caregiver and
22 so on, are those from 43-35-10?

23 THE COURT: 43-35-10, right.

24 MR. ALDERMAN: Yes, sir.

25 THE COURT: Yes. Caregiver means a

CHARGE CONFERENCE

1 person that provides care to a vulnerable adult, with or
2 without compensation, on a temporary or permanent or
3 full-time -- full or part-time basis, and includes but
4 is not limited to a relative, household member, daycare
5 personnel, adult foster home sponsor, and personnel of a
6 public or private institution or facility.

7 And then vulnerable adult is defined as a
8 person 18 years of age or older who has a physical or
9 mental condition which substantially impairs the person
10 from adequately providing for his or her own care or
11 protection. This includes a person who is impaired in
12 the ability to adequately provide for the person's own
13 care or protection because of the infirmities of aging,
14 including but not limited to organic brain damage,
15 advanced age, and physical, mental, or emotional
16 dysfunction. A resident of a facility is a vulnerable
17 adult.

18 Neglect means the failure or omission of
19 a caregiver to provide the care, goods, or services
20 necessary to maintain the health or safety of a
21 vulnerable adult including but not limited to food,
22 clothing, medicine, shelter, supervision, and medical
23 services, and the failure or omission has caused or
24 presents a substantial risk of causing physical or
25 mental injury to the vulnerable adult.

CHARGE CONFERENCE

1 Noncompliance with regulatory standards
2 alone does not constitute neglect. Neglect includes the
3 inability of a vulnerable adult in absence of a
4 caretaker to provide for his or her own health or safety
5 which produces or could reasonably be expected to
6 produce serious physical or psychological harm or
7 substantial risk of death.

8 Those are the definitions provided by the
9 statute.

10 MR. ALDERMAN: Thank you, Judge.

11 THE COURT: Okay. And I have the verdict
12 form. It is a really simple, one-page verdict form.
13 We, the jury, unanimously find on indictment No.
14 2018GS37-287, that defendant Mack Adams Gaines is, one,
15 the first box, not guilty, or guilty of abuse and
16 neglect of a vulnerable adult resulting in death. Since
17 the State has the burden of proof I put not guilty first
18 on the page.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. SMITH: Yes, sir.

22 (Off-the-record discussion held.)

23 THE COURT: All right. If there is
24 nothing further, let's get our jury.

25 (The jury enters the courtroom.)

CLOSING ARGUMENT BY THE STATE

1 THE COURT: All right. Mr. Foreman,
2 ladies and gentlemen of the jury, I hope everyone had a
3 good lunch. We are ready to proceed. The next stage of
4 the trial will be closing arguments by the attorneys.
5 Is the State ready?

6 MR. ALDERMAN: We are ready, Your Honor.

7 THE COURT: Okay.

8 **CLOSING ARGUMENT BY THE STATE**

9 MR. ALDERMAN: Ladies and gentlemen, at
10 the beginning of this trial Mr. Smith told you that you
11 were going to hear some hard facts. I want to touch on
12 those facts as we begin here. He told you that you were
13 going to hear hard facts. He told you that Alma Louise
14 Gaines was a strong and independent woman. You heard
15 that from more witnesses than one; particularly, from
16 her doctor. But also from the other doctors that
17 treated her and talked about how she fought and how she
18 clung to life. She was a strong, independent woman. On
19 that Mr. Smith and I will agree entirely.

20 But these are hard facts, and on that we
21 will agree entirely. You heard about how she fell down
22 in her own home one day, at 92 years old, and she
23 couldn't get up. How she laid there from some time
24 Friday. We know from 3:30 on, probably some time
25 sooner, maybe first thing in the morning, we don't know,

CLOSING ARGUMENT BY THE STATE

1 but some time Friday she fell down and she couldn't
2 physically get back up. And you heard that she laid
3 there Friday, Saturday, all day Sunday, all day Monday,
4 into Monday evening.

5 You heard that while she laid there she
6 became dehydrated, as you would expect, with no food, no
7 water. That she had soiled herself repeatedly, that the
8 room stunk of urine and feces that was found dried on
9 her body. You heard about saliva and vomit, and for
10 lack of a better word, snot that was coming out of her
11 nose and mouth and had dried to the side of her face all
12 the way down to the floor right next to her face, as if
13 it was one continuous thing because she had not moved in
14 so long.

15 You heard about the sores that she
16 suffered on her body, on her skin from the pressure of
17 her body just laying on that hard surface, day after day
18 after day. You heard about how that destroyed her
19 muscles underneath of that skin, how that started to
20 occlude the veins in her leg. You heard about how that
21 set in motion her slow and painful death over the course
22 of a month.

23 Folks, those are -- those are hard facts,
24 I'll give you that. You heard from EMS that the room,
25 when they came in, was stifling hot. And you think

CLOSING ARGUMENT BY THE STATE

1 about her not having water over this period of time and
2 compounding it with the heat in the room, that there
3 were several kerosene heaters in this little sun room on
4 full blast. Now, those are hard facts, and on that Mr.
5 Smith and I, we will agree.

6 Then he told you that this case was
7 about, I believe the phrase that he used was technical
8 legal issues. He talked to you about what is right and
9 wrong and about what is moral and what is legal. And
10 essentially, and I'm paraphrasing, I'm sure that he will
11 have something to say about it, was telling you to
12 ignore right and wrong and let's just focus on these
13 technical, legal issues/technicalities.

14 Now, he's correct that we have certain
15 technical elements of crime that we have to prove to you
16 beyond a reasonable doubt. Beyond a reasonable doubt,
17 the Judge will talk to you about that, it is a squishy
18 term, if you will. There is no metric for it. You
19 don't know exactly when you have collected enough
20 evidence to cross that line. But at its most basic it
21 asks if you are firmly convinced of a fact. If you are
22 asked the question, are you firmly convinced that the
23 answer, when you apply your common sense and your life
24 experiences, are you convinced. That is it in a
25 nutshell. It really is that simple.

CLOSING ARGUMENT BY THE STATE

1 So with that in mind, let's talk about
2 these technical, legal issues, these technicalities.
3 The whole case essentially boils down to a handful of
4 questions that you have to answer as jurors. All right.
5 First and foremost, was Alma Louise Gaines a vulnerable
6 adult. You have heard a lot of talk about how
7 independent and strong she was, how she, I think the
8 doctor said she did what she wanted to do. Fair enough.
9 But I will tell you that unless you were born with a
10 physical or mental defect, a severe defect, that every
11 vulnerable adult became that at some point. Nobody
12 started there.

13 And Alma Louise Gaines, certainly lived
14 92 years on this earth without being that vulnerable
15 adult. I'll stipulate to that. She might have had
16 medical conditions. She certainly had advanced age.
17 But she was her own woman up until the point that she
18 hit that floor and she couldn't get back up.

19 Now, what is a vulnerable adult
20 technically? Vulnerable adult, we don't have to
21 speculate on a definition because the law gives that to
22 us. It is a person over the age of 18, which she
23 obviously was, who has a condition which substantially
24 impairs her from providing for her own care and
25 protection. This includes advanced age and physical

CLOSING ARGUMENT BY THE STATE

1 dysfunction. Ladies and gentlemen, she is 92 years old
2 and she cannot physically get off of the floor. She was
3 the very definition at that moment of a vulnerable
4 adult.

5 Considering the fact that the day before
6 this she could carry herself to the toilet if she wanted
7 to, she could put on her own pants, she could make her
8 own hotdog, and she could turn on her own heat when she
9 got cold. None of those things she could do that
10 weekend. Why? Because she had a physical condition
11 that prevented her from caring for herself. She was, by
12 definition, a vulnerable adult. That is the first
13 question.

14 The second question is whether Mack
15 Gaines, the defendant, was a caregiver in the meaning of
16 the law. And that is one that we are going to have to
17 fight about. But let me tell you this, folks, we don't
18 have to speculate about the definition there either.
19 The Judge will give it to you. I will give some of it
20 to you now. A caregiver means a person who provides
21 care to a vulnerable adult. Which I hope we can agree
22 she was. Including but not limited to, including mind
23 you, meaning this person is, including but not limited
24 to, a household member or relative. Ladies and
25 gentlemen, Mack Gaines, both a household member and

CLOSING ARGUMENT BY THE STATE

1 relative right there. Now, did he give any care as a
2 household member and relative? I would submit to you
3 that he did. When she got cold he turned on the heat.
4 Why did he turn on the heat? Because she couldn't as a
5 vulnerable adult physically do it herself, she was cold.
6 He cared for her by turning on the heat.

7 There was a jacket or blanket or
8 something thrown over her naked lower half. She didn't
9 get up and get that for herself, someone provided that
10 care, and that person was Mack Gaines. He was the
11 caregiver as a household member and relative in that
12 moment. He offered her food. Why did he offer her
13 food? She is a strong, independent woman who does what
14 she wants to do. He did it because in that moment she
15 couldn't do it for herself. He assumed the role of
16 caregiver by doing that.

17 You might say to yourself, that is not
18 much care. You are absolutely right. That is the whole
19 point. If he had provided adequate care we would not be
20 here, folks. Anytime that you have abuse and neglect of
21 a vulnerable adult that ends up in the courtroom is
22 because they gave pathetically little care, and that is
23 what happened in this case. Throwing a jacket over her
24 naked lower half and not wiping the feces off of her or
25 picking her up off of the floor, or turning the heat up

CLOSING ARGUMENT BY THE STATE

1 so high. God knows what it did in the progression of
2 her dehydration. It compounded all of the other issues
3 that the led to her death. It was poor care. Offering
4 her a hotdog. Just, Do you want a hotdog down there on
5 the floor. Not picking her up and putting her in a
6 chair, rolling her over, giving her a pillow, calling a
7 doctor for a house call.

8 That becomes the other issue. After you
9 establish that he was a caregiver, was the care
10 inadequate? That's the other question that you have to
11 answer. And I think that it's obvious, folks. It is
12 your decision to make based on the facts that you have
13 heard. You tell me if the care he gave was adequate
14 when you consider the condition that she was left in
15 when in his inadequate care for four days.

16 Now, for that care to be inadequate, for
17 it to be neglect, it has to be of such a character that
18 it could or it did cause some sort of harm. That it did
19 or could have caused harm. So, consider the harm that
20 was caused here. Consider the sores on her body.
21 Consider the dehydration. Consider the fact that, as
22 you heard from Dr. Woodard and the other doctors who
23 cared for her directly before her death, that those
24 injuries are what eventually caused her death. I think
25 Dr. Woodard said it best, that it started here and it

CLOSING ARGUMENT BY THE DEFENSE

1 ended here. That it started with her laying in the
2 floor for four days and it set in motion a thing that
3 couldn't be stopped that led to her death.

4 So, ladies and gentlemen, again, answer
5 those questions. Was she vulnerable? Did he give any
6 care, however inadequate, as a household member and
7 relative? And was that care so inadequate that it
8 caused harm to this woman, that eventually led to her
9 death. Answer those questions, ladies and gentlemen,
10 and if you can answer all of those in the affirmative,
11 then Mack Gaines is guilty of abuse and neglect of a
12 vulnerable adult resulting in death. Thank you.

13 MR. SMITH: Your Honor, may it please the
14 Court?

15 THE COURT: Yes, sir.

16 **CLOSING ARGUMENT BY THE DEFENSE**

17 MR. SMITH: Thank you. Mr. Foreman,
18 ladies and gentlemen of the jury, it now becomes my time
19 to discuss with you the law and the facts of this case.
20 And I made certain promises at the beginning of this
21 case that I was going to try this case fairly and truly
22 based upon the evidence that came from that witness
23 stand, and I think we kept that promise.

24 And the reason why he can't say much
25 about the caregiver, because all of his witnesses, the

CLOSING ARGUMENT BY THE DEFENSE

1 experts and the lay witness, including this officer,
2 said that Mr. Gaines was not a caregiver. Just because
3 you give somebody some water or offer some food.
4 Otherwise you could prosecute just about everybody who
5 has a senior citizen in their house, has a cancer victim
6 inside their house who says, I don't want any further
7 medical care and treatment, I'm not going to take the
8 chemotherapy anymore.

9 And if you do that and you expand to
10 that, then nobody is safe to make a decision whether or
11 not they want to quit medical care and treatment. Not
12 only in Oconee County, but anywhere in this state. That
13 is not the message we want to send out. The fact is,
14 Ms. Gaines had a right, had a right herself to say that
15 she did not want to go to the hospital. That was her
16 right.

17 He's not saying that she was mentally
18 incompetent. What he's saying is that she was
19 physically incompetent. But she was mentally competent.
20 And the thing that gets me about it is, they are all
21 over the place with regard to their facts and
22 circumstances in this case. Because we asked the
23 doctor, he said, Well -- Dr. Singh and, what was the
24 other doctor's name? Dr. Smith. They said, Well she
25 couldn't make any decisions even 20 days later. But

CLOSING ARGUMENT BY THE DEFENSE

1 another doctor wrote in his report that she nodded her
2 head and said that she didn't want any further medical
3 care and treatment from the hospital.

4 She decided that she didn't want any
5 further medical care and treatment. Mack Gaines didn't
6 say that. They wouldn't even allow him to come into the
7 hospital, so we know that he didn't have any discussion
8 with any of those doctors there. So, the long and the
9 short of it is, he hasn't proved one key element of his
10 case. And I respect him, but he hasn't proved an
11 element. He has got a hard case.

12 And the -- it looks bad, all right. I
13 agree. Four days, that looks bad. And it is an
14 emotional response that he's trying to get from you. I
15 understand that. But the fact that the law says that he
16 has to be a caregiver and every one of his witnesses
17 says that they don't believe that Mack Gaines was a
18 caregiver destroys his case, puts the nail in it.

19 Then he says, Technical elements. Well,
20 when you first sat here as jurors, this Judge told you,
21 you have got to go by technical elements. He doesn't
22 want you to go by that. He wants you to just march out
23 here without technical. Well, the Judge told you, the
24 Judge was the person who said, Look, I'm the judge of
25 the law, I am going to tell you what the law is. That

CLOSING ARGUMENT BY THE DEFENSE

1 is technical. Y'all are the judges of the facts. That
2 is technical. Y'all have got to do that, right? Y'all
3 swore an oath when you raised your hand up that y'all
4 are going to follow the American system of justice. Not
5 the prosecution's system of justice, but the American
6 system of justice. And, therefore, technicalities in
7 America mean something. We are not in Putin's Russia.
8 We are not anywhere like that.

9 We have got people who want to be just
10 like us. In Ukraine right now, they want to have the
11 same kind of system that we have. So just because
12 somebody charges you with something doesn't mean you are
13 guilty. The Judge is going to tell you that indictment
14 and that arrest warrant, they are not evidence. Those
15 are just charging papers. Otherwise you would just have
16 a show trial. They would give you the charging paper,
17 like they do in some of those countries, and you have to
18 prove your innocence. You would have to prove your
19 innocence because you would be presumed guilty from the
20 start of the trial.

21 But he doesn't want y'all to believe in
22 that technical element. But that is the technicalities
23 that our founding fathers, and in some cases, our
24 founding mothers, who don't get any credit, decided for
25 our country in 1776. And it is not hockey either. We

CLOSING ARGUMENT BY THE DEFENSE

1 have got the best system of justice in the world. And
2 it is because of people like you who are willing to
3 serve and people like one gentleman who served in the
4 United States military to make sure that we have the
5 best system of justice in the world.

6 Now, this man didn't commit any homicide
7 on his mother. He did not prove that he abused his
8 mother or threw her in the floor, or anything of that
9 nature. Did not beat her. And the doctor who actually
10 testified on her behalf said that she was a stubborn
11 woman, that she would take her medication when she
12 wanted to, and on occasion she didn't. Well, you can't
13 force people to take medication if they don't want to
14 take the medication. You have a right not to take your
15 medication. I mean, when is it in this country if I
16 demand that you wear a mask, you have to wear a mask.
17 You don't have to wear a mask if you don't want to wear
18 a mask. Some courts are actually catching up to that.

19 If you don't want to get further
20 chemotherapy, you don't have to get further
21 chemotherapy. If you don't want to go to the hospital
22 if you have got Covid, you don't have to go to the
23 hospital if you have got Covid. When do we get to, in
24 society, where we are going to prosecute everybody who
25 is in a household when they got somebody sick and who is

CLOSING ARGUMENT BY THE DEFENSE

1 refusing to go to the hospital? When have we gotten to
2 that point that that person who doesn't want to go to
3 the hospital has no right and no say?

4 Well, taking their evidence, because all
5 of those witnesses that they got up there, when the guy
6 said, Well, she shook her head no, that she didn't want
7 any further medical care and treatment and wanted to go
8 into hospice. On one hand they are saying, well, Mr.
9 Gaines didn't give her any medical care and treatment,
10 but this woman who they are saying has got this medical
11 problem and was out of it, she can make a decision
12 still. And the other thing, too, these so-called women
13 who were supposed to be their health care providers, not
14 a one of them are in this courtroom today. These
15 so-called women that were making the medical health care
16 decisions. Do you see Cherry in here? I don't see
17 Cherry in here.

18 Cherry didn't even come in here. Cherry
19 don't even care about whether that 92 year old woman
20 died. That man cared about his mother. And the
21 prosecution said, Well, he tried to do some things in
22 the house to help her, but she refused it. That is not
23 his fault.

24 Now, the other thing too is, 18 is a key
25 number, a key number. If you have got a child, whether

CLOSING ARGUMENT BY THE DEFENSE

1 they are a vulnerable child or a non-vulnerable child,
2 you have a responsibility to that child because they are
3 a child. But once you become an adult, you have
4 responsibility for yourself entirely. And that is why
5 the law says you have to be a caregiver. You have to be
6 a caregiver.

7 Now, what is a -- if you wanted to be a
8 caregiver, wouldn't you have to have the intent to be a
9 caregiver? Wouldn't you have to want to be a caregiver?
10 Wouldn't you have to have the knowledge that you are a
11 caregiver? They just imposed this standard on him
12 without his knowledge, and say, Well, he knowingly.
13 Well, he don't know. That is unfair.

14 Now, the Judge is going to say, Well, he
15 has to prove his case beyond beyond a reasonable doubt,
16 a doubt for which you can give a reason. And there are
17 a lot of doubts for which you can give a reason, because
18 that is the element that we can strike down on this
19 case. We are not questioning the cause of death, we are
20 not questioning the health care that she got in the
21 medical facility. But we are questioning, and we have
22 proved with each and every witness that came on that
23 stand, from the Brandie who testified, she said that she
24 wasn't even a caregiver, so she couldn't say that he was
25 a caregiver.

CLOSING ARGUMENT BY THE DEFENSE

1 The last doctor who testified said that
2 just because you are in the house with somebody doesn't
3 mean that you are a caregiver. That doctor was Dr.
4 Woodard, who was the autopsy doctor. And he said that
5 it wouldn't be a homicide if such a person did not
6 provide care to someone because they are not a
7 caregiver. How could it be a homicide? Let's go
8 through the logic. If a person is not a caregiver, and
9 I have to harp on that for my client, if the person is
10 not a caregiver, then he cannot be guilty of abusing or
11 neglecting a vulnerable adult. And if he's not guilty
12 of abusing a vulnerable adult, since there's no proof
13 that he did, then the indictment is false charging him
14 in the first place. Because he could not have committed
15 a crime at that point.

16 Now, the doctor said, Dr. Woodard said,
17 Now if you are the caregiver and you don't give proper
18 care and treatment, then you can. You would have to sit
19 right over there with him because you would be charged.
20 Now, the other thing that gets me is this, and then I'm
21 going to shut up, but -- because I had this long
22 recitation, but based on what he said, this is what it
23 says, "Met with the patient's niece, Cherry, at the
24 bedside with the patient, and the patient's other niece
25 joined us by Internet teleconference. Time was spent

CLOSING ARGUMENT BY THE DEFENSE

1 discussing plan of care, admission to hospice, option
2 for home versus hospice house. Family understood the
3 prognosis. And niece stated, I have been through it
4 all, referring to caring for another family member that
5 had gangrene related Diabetes and ultimately died. She
6 stated that she watched her family member go through all
7 of the medical treatment, including amputation and life
8 support, but despite all of this she did not believe
9 that the patient would want to go through all of that."

10 And then here is the key. Let's see if I
11 can expand that.

12 (Pause. Exhibit shown on the projection
13 screen to the jury.)

14 MR. SMITH: Despite, despite all of that,
15 patient would not want to participate and then -- let me
16 make sure that I'm reading it right. The patient did
17 participate, let me see if I can find that. The patient
18 did -- over there where my thumb is -- participates in
19 discussion. "She shook her head to indicate no when
20 asked if she wanted to continue with treatment in the
21 hospital."

22 Now, who is telling the truth here? That
23 is a hole in his case for which you can give a reason to
24 find him not guilty with. One group of doctors say one
25 thing, another group of doctors say another. And Ms.

CLOSING ARGUMENT BY THE DEFENSE

1 Cherry don't want to have nothing to do with it.
2 Because they say, in the same statement, "They did
3 express concern regarding payment and levels of care
4 were discussed. Cherry asked if they had a financial
5 stake in the hospice house. I informed her that I was a
6 GHS employee and had no further financial disclosure or
7 interest. Family, both nieces, are in agreement for
8 comfort measures an admission to hospice."

9 All right. Now, so we know they didn't
10 care. The other thing, too, is if they hadn't made a
11 decision earlier on, it seems to me she might have been
12 able to withstand the surgery to amputate her leg. But
13 by the time they got down to around that Christmastime,
14 when those two weeks passed based on the testimony,
15 amputation was out of the question. But that is still
16 not Mack Gaines' fault, because Mack Gaines is not
17 trained medically or any of that. Mack Gaines didn't
18 have a medical power of attorney to take care of his
19 mother.

20 I mean, usually, in this state, if you
21 want to tell the people how you want to be treated when
22 you are in the hospital, you get a medical power of
23 attorney so that people will be clear if you are not of
24 clear mind when you are in the hospital.

25 So, Members of the Jury, y'all have no

REPLY CLOSING ARGUMENT BY THE STATE

1 friends to reward, no enemies to punish, y'all are just
2 here as 14 good citizens to make a decision about his
3 life. He is here. He is a church-going man, has a
4 church-going girlfriend. He tried to do the best that
5 he thought in his mind. It might have been mistaken,
6 but he had no intent of neglecting his mother or abusing
7 his mother in that regard. And plus the law protects
8 him because he was not a caregiver. Thank you very much
9 for giving me your attention during the course of this
10 trial.

11 THE COURT: State reply?

12 **REPLY CLOSING ARGUMENT BY THE STATE**

13 MR. ALDERMAN: Yes, sir. Folks, I don't
14 know what her nodding her head in a hospital has to do
15 with anything that happened in that house. Not one
16 thing. This case is about what happened over those four
17 days and how that led to her death over a course of a
18 month. Now, Mr. Smith wants to make you believe that
19 these other family members who aren't here made some
20 decisions that prolonged her suffering or made it
21 impossible for her to get this life-saving surgery that
22 would have turned all of this around and somehow that
23 makes what Mack Gaines did not his fault.

24 And, folks, she was in the hospital on
25 the 18th. If I remember the records right, it was the

REPLY CLOSING ARGUMENT BY THE STATE

1 23rd or 24th when she had the consult with the vascular
2 surgeon, which is a whole lot less than two weeks. And
3 it still doesn't have the first thing to do with what
4 happened inside that house.

5 And we talked about some technicalities.
6 I hope that I didn't come off as sarcastic about that,
7 but technicalities do matter. Once again, Mr. Smith and
8 I agree on something. They do matter. But what is
9 right and wrong in this case also matters. And I don't
10 know how to put a finer point on it than, an
11 eight-year-old would have known to call for help. And I
12 don't know a person with half a heart that would have
13 sat there for four days and watch that happen to a dog,
14 let alone some mother. That is what happened.

15 MR. SMITH: Your Honor, I object to that
16 part, the dog remark.

17 THE COURT: Move on.

18 MR. ALDERMAN: Three questions, folks.
19 Was she vulnerable? When she laid in the floor, could
20 she have done anything for herself? She was covered in
21 her own feces and urine and couldn't feed herself or get
22 a glass of water, or get up out of the floor and keep
23 her legs and muscles from deteriorating and leading to
24 her death, was she fine?

25 Was he a household member or relative who

JURY CHARGE

1 gave any care, however slight? However ineffective.
2 Did he turn the heat on because she couldn't do it for
3 herself? He offer food because she couldn't get it for
4 herself? Did he ultimately, eventually, finally call
5 911? That is care. It is not nearly enough care. He
6 didn't care enough, that is clear. And did that cause
7 harm, and harm that ultimately led to her death? Folks,
8 I think that is obvious.

9 I want to take you back to what he said
10 to Sergeant McMahan when he asked him, You left her in
11 the floor for four days, you know what that is, don't
12 you. What did he say? He said one word, "neglect".
13 Out of his own mouth. Don't doubt if he knew it.
14 Ladies and gentlemen, answer those questions and you
15 will have a verdict.

JURY CHARGE

16
17 THE COURT: Okay. Ladies and gentlemen,
18 we have come to the point in the trial where I instruct
19 you on the law. My instructions will be somewhat
20 lengthy. They will be in three parts. First,
21 instructions on the general rules that define and
22 control the jury's duties. Second, instructions that
23 cite the rules of the law which you must apply, what the
24 State must prove to make its case.

25 And lastly some rules for your

JURY CHARGE

1 deliberations. The general rules begin with your duties
2 as jurors. It is your duty to find the facts from all
3 of the evidence of the case. To those facts you must
4 apply the law as I give it to you. You shall not be
5 concerned with what the law should be, but what it is.
6 And you must not be influenced by any personal likes, or
7 dislikes, opinions, prejudices, or undue sympathy. This
8 means you must decide the case solely on the evidence
9 before you in accordance with the law. The very thing
10 that you took an oath at the beginning of the trial to
11 do.

12 It is your responsibility, and yours
13 alone, to determine the facts of this case. I will
14 therefore charge you that if, during the course of this
15 trial or during this charge, you have been given or left
16 with the impression or feeling that I have a personal
17 feeling about the facts of this case or that I favor one
18 side or the other, I would specifically instruct you to
19 disregard that impression. Under our Constitution I am
20 not allowed to have an opinion as to the facts of the
21 case. You should not be influenced by any objections or
22 the Court's ruling. You and you alone are the judges of
23 the facts.

24 You determine the facts by evaluating or
25 weighing the evidence. What is evidence? Evidence is

JURY CHARGE

1 the sworn testimony from the witnesses and any exhibits
2 that have been entered into evidence. The statements by
3 the attorneys are not evidence. What they have said in
4 opening statements, in closing arguments, and at other
5 times is intended to help you interpret the evidence,
6 but it is not evidence.

7 There are two types of evidence which are
8 generally presented during a trial -- direct evidence
9 and circumstantial evidence. Direct evidence directly
10 proves the existence of a fact and does not require
11 deduction. Circumstantial evidence is proof of a chain
12 of facts and circumstances indicating the existence of a
13 fact. Crimes may be proven by circumstantial evidence.
14 The law makes no distinction between the weight or value
15 to be given to either direct or circumstantial evidence.

16 However, to the extent the State relies
17 on circumstantial evidence, all of the circumstances
18 must be consistent with one another, and when taken
19 together, point conclusively to the guilt of the accused
20 beyond a reasonable doubt. If the circumstances merely
21 portray the defendant's behavior as suspicious, then the
22 proof has failed. The State has the burden of proving
23 the defendant guilty beyond a reasonable doubt. The
24 burden rests with the State regardless of whether the
25 State relies on direct evidence, circumstantial

JURY CHARGE

1 evidence, or some combination of the two.

2 As the judges of the facts, you are the
3 sole judges of the credibility. That is the
4 believability of the witnesses who have testified in
5 this case. In determining their credibility you may
6 take into consideration many things, such as the
7 appearance and manner of the witness on the stand,
8 sometimes referred to as the demeanor of a witness.

9 Was the witness able to see, hear, or
10 know the things about which the witness testified? How
11 well was the witness able to recall and describe those
12 things? Did the witness have a cause or reason to be
13 biased or prejudiced in favor of the testimony he or she
14 gave? How reasonable was the witness's testimony,
15 considered in the light of all of the evidence in the
16 case? Was the witness's testimony contradicted by what
17 the witness had said or done at another time, or by the
18 testimony of other witnesses, or by other evidence?
19 These are some of the factors you may consider in
20 deciding whether to believe testimony.

21 As jurors you have the right to believe
22 all of the testimony of a witness or none of the
23 testimony of a witness. You have the right to believe a
24 portion of the testimony of a witness and discard the
25 rest. You may believe the testimony of one witness over

JURY CHARGE

1 many or many over the one. Most certainly you do not
2 determine the matter of credibility by simply counting
3 up the number of witnesses who may have testified on
4 behalf of the parties in the case.

5 What is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. Some of you may
8 have served as jurors in civil cases where you were told
9 that it is only necessary to prove that the fact is more
10 likely true than not true, such as by the greater weight
11 or preponderance of the evidence. In criminal cases the
12 State's proof must be more powerful than that, it must
13 be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof
15 that leaves you firmly convinced of the defendant's
16 guilt. There are very few things in this world that we
17 know with absolute certainty. And in criminal cases the
18 law does not require proof that overcomes every possible
19 doubt. If, based on your consideration of the evidence,
20 you are firmly convinced that the defendant is guilty of
21 the crime charged, then you must find the defendant
22 guilty. If, on the other hand, you think there is a
23 real possibility that the defendant is not guilty, you
24 must give the defendant the benefit of the doubt and
25 find him not guilty.

JURY CHARGE

1 A reasonable doubt may arise from the
2 evidence or from a lack of evidence. The defendant is
3 entitled to every reasonable doubt that may arise in a
4 case. If upon any issue of fact essential to a
5 conviction and a verdict of guilty of an offense, you
6 have any reasonable doubt as to how that issue should be
7 resolved, it is your duty to resolve that doubt in favor
8 of the defendant.

9 Suspicion, however strong, is not enough
10 to sustain a conviction. The evidence presented by the
11 State must be substantial evidence that tends to prove
12 the guilt of the defendant beyond a reasonable doubt.

13 The defendant has entered a plea of not
14 guilty to this indictment. And that plea puts the
15 burden on the State to prove the defendant guilty. A
16 person charged with committing a criminal offense is
17 never required to prove himself innocent.

18 I charge you that it is an important rule
19 of the law that a defendant in a criminal trial, no
20 matter what the seriousness of the charge may be, will
21 always be presumed to be innocent of the crime for which
22 the indictment was issued, unless guilt has been proven
23 by evidence satisfying you of that guilt beyond a
24 reasonable doubt.

25 The presumption of innocence does not end

JURY CHARGE

1 when you begin your deliberations, but it accompanies
2 the defendant throughout the trial until you reach a
3 verdict of guilt based on evidence satisfying you of
4 that guilt beyond a reasonable doubt.

5 Presumption of innocence is like a robe
6 of righteousness placed about the shoulders of the
7 defendant which remain with the defendant until it has
8 been stripped from the defendant by evidence satisfying
9 you of the defendant's guilt beyond a reasonable doubt.
10 Presumption of innocence is not a mere legal theory, it
11 is not just a legal phrase, it is a substantial right to
12 which every defendant is entitled unless you, the jury,
13 are satisfied from the evidence of the defendant's guilt
14 beyond a reasonable doubt.

15 I instruct you, and emphasize that the
16 fact that the defendant did not testify is not a factor
17 to be considered by you in any way in your deliberation
18 and in your considerations on the questions of guilt or
19 innocence. It must not be considered by you in any
20 manner whatsoever. A defendant has the Constitutional
21 right to remain silent. And the assertion of this right
22 must not be considered by you in your deliberations.

23 I repeat, under your oath you are to draw
24 no conclusion whatsoever from the fact that the
25 defendant in this case did not testify. The fact that

JURY CHARGE

1 this defendant did not testify should not even be
2 discussed in the jury room.

3 The burden of proof, as I have stated to
4 you, is on the State. The defendant is not required to
5 prove his innocence. The burden of proof remains on the
6 State to prove guilt beyond a reasonable doubt.

7 Ladies and gentlemen, normally a person
8 cannot testify and give opinion testimony. You heard
9 from an expert witness. They are permitted to give
10 their opinion in certain areas if the Court qualifies
11 them an expert in that area. That does not mean that
12 you are required to accept the opinion of the expert.
13 Like any other witness, you may place whatever weight on
14 that person's testimony that you, as the judge of the
15 facts, deem appropriate.

16 A statement alleged to have been made by
17 the defendant has been admitted into evidence in this
18 case. While the Court has determined that the statement
19 is admissible, I instruct you that you make the ultimate
20 decision of whether or not the defendant made the
21 statement. You make that decision. If the defendant
22 did make the statement, you must determine whether the
23 statement was made by the defendant voluntarily and of
24 his own freewill. That means that the statement was not
25 caused by pressure, force, fear, threats, coercion, or

JURY CHARGE

1 by intimidation, or by the hope or promise of leniency
2 or a reward of any kind.

3 In determining whether the statement was
4 voluntary, you should consider both the characteristics
5 of the defendant and the details of the questioning.
6 Some of the factors that you must consider are the age
7 of the defendant, the defendant's education or lack of
8 education, the defendant's mental ability or capacity,
9 the defendant's IQ or intelligence, the defendant's
10 background and environment, the place and length of
11 detention, the nature of the questioning, the advice or
12 lack thereof to the defendant of his Constitutional
13 rights, including but not limited to the right to remain
14 silent, that any statement could be used against him in
15 a court of law, the right to have a lawyer present, that
16 if he could not afford a lawyer a lawyer could be
17 appointed to represent him without any cost, or that he
18 can stop making a statement at any time.

19 You must carefully consider all of the
20 surrounding circumstances before you give any weight to
21 an alleged statement. The State has the burden of
22 proving beyond a reasonable doubt that the alleged
23 statement was voluntary. If you determine it was, you
24 may give the statement any further consideration that
25 you deem proper. You must decide what weight, if any,

JURY CHARGE

1 should be given to the alleged statement. If you
2 determine that the alleged statement was not a free and
3 voluntary statement, then you should not consider the
4 statement at all.

5 In order to establish criminal liability,
6 criminal intent is required. For example, a mental
7 state required to be proven by the State for a
8 particular crime might be purpose, intent, knowledge,
9 recklessness, or criminal negligence. Criminal intent
10 must be proven by the State beyond a reasonable doubt.
11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances
13 surrounding the situation.

14 There's no way that medical science can
15 dissect a person's brain and determine what the person
16 had in mind, so the law says that criminal intent may be
17 inferred from the circumstances shown to have existed.
18 This is how you make a determination of whether or not
19 the element requiring intent was present.

20 It is not necessary to establish intent
21 by direct and positive evidence. But intent may be
22 established by inference, in the same way as any other
23 fact, by taking into consideration the acts of the
24 parties and all of the facts and circumstances from the
25 case. Criminal intent is a mental state, a conscious

JURY CHARGE

1 wrongdoing. It is up to you to determine what the
2 defendant intended to do based on the circumstances
3 shown to have existed.

4 Criminal intent can arise from action or
5 a failure to act. It may arise from negligence,
6 recklessness, or an indifference to duty or to
7 consequences that is considered by the law to be
8 equivalent of criminal intent. The mere presence of a
9 defendant where a crime has occurred without other
10 evidence is insufficient proof that the defendant has
11 committed a crime. The evidence that an individual is
12 present at the time a crime is committed is not in and
13 of itself sufficient proof that the individual committed
14 a crime.

15 Ladies and gentlemen, the defendant is
16 charged with abuse or neglect of a vulnerable adult
17 resulting in death and is indicted for such. The
18 indictment charges the defendant. I remind you, the
19 fact that the defendant was arrested, charged, and
20 indicted in this case is not evidence in this case and
21 cannot be considered by you as evidence of guilt, nor
22 does it create any presumption or inference of guilt.
23 This document is simply the formal, written instrument
24 which contains the charge made against the defendant.
25 This is the formal document by which the case is brought

JURY CHARGE

1 to court.

2 The defendant is charged with abuse or
3 neglect of a vulnerable adult resulting in death. The
4 State must prove several things. First the State must
5 prove beyond a reasonable doubt that Alma Louise Gaines
6 was a vulnerable adult. A vulnerable adult is defined
7 as follows: A vulnerable adult is defined as a person
8 18 years of age or older who has a physical or mental
9 condition which substantially impairs the person from
10 adequately providing for his or her own care or
11 protection. This includes a person who is impaired in
12 the ability to adequately provide for the person's own
13 care or protection because of the infirmities of aging,
14 including but not limited to organic brain damage,
15 advanced age, and physical, mental, or emotional
16 dysfunction. A resident of a facility is a vulnerable
17 adult.

18 Second, the State must prove beyond a
19 reasonable doubt that the defendant was a caregiver.
20 Caregiver is defined as follows: A person who provides
21 care to a vulnerable adult, with or without
22 compensation, on a temporary or permanent or full or
23 part-time basis, and includes but is not limited to a
24 relative, household member, daycare personnel, adult
25 foster home sponsor, and personnel of a public or

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1 private institution or facility.

2 Third, the State must prove beyond a
3 reasonable doubt that the defendant was guilty of
4 neglect. Neglect is defined as follows: The failure or
5 omission of a caregiver to provide the care, goods, or
6 services necessary to maintain the health or safety of a
7 vulnerable adult, including but not limited to food,
8 clothing, medicine, shelter, supervision, and medical
9 services, and the failure or omission has caused or
10 presents a substantial risk of causing physical or
11 mental injury to the vulnerable adult.

12 Noncompliance with regulatory standards
13 alone does not constitute neglect. Neglect includes the
14 inability of a vulnerable adult in absence of a
15 caretaker to provide for his or her own health or safety
16 which produces or could reasonably be expected to
17 produce serious physical or psychological harm or
18 substantial risk of death. Those are the definitions
19 provided by the statute.

20 Lastly, the State must prove beyond a
21 reasonable doubt that the vulnerable adult died as a
22 result of the neglect. The State must prove all of
23 these elements beyond a reasonable doubt.

24 Ladies and gentlemen, we are almost to
25 the point where I send you to the jury room to begin

JURY CHARGE

1 your deliberations. This has been a long instruction on
2 the law, but I want to leave you with some final
3 thoughts. You were chosen as jurors in this case
4 because both sides believed that you could be fair and
5 impartial in deciding this case. I instruct you to make
6 use of your life experiences, your good common sense,
7 and your sense of logic and reason in evaluating the
8 evidence in this case.

9 You are not partisans or advocates for
10 either side. You have no friends to reward nor any
11 enemies to punish. You are the judges of the facts.
12 Your sole interest is to determine whether the State has
13 proven beyond a reasonable doubt that the defendant is
14 guilty of the offense charged. Be courteous with one
15 another, listen to the views of your fellow jurors.
16 Take the amount of time necessary for you to thoroughly
17 evaluate the evidence. This case is important to both
18 sides, as this is their day in court.

19 Mr. Foreman, I'm going to go over the
20 verdict form with you. It is a one-page verdict form,
21 and it reads, We the jury unanimously find on Indictment
22 Number 2018GS3700287, that the defendant, Mack Adams
23 Gaines, is: And it gives you two options. The first
24 blank says, Not guilty. Or, the second blank, guilty of
25 abuse or neglect of a vulnerable adult resulting in

JURY CHARGE

1 death.

2 When the jury has reached a unanimous
3 verdict, you will check the appropriate box, whichever
4 one that you decide. And then there is a space for you
5 to sign it as the foreman. You will date it and sign
6 it. The verdict has to be unanimous.

7 Now I am going to have you go to the jury
8 room right now. Do not begin your deliberations until I
9 send the verdict form back along with the exhibits. So,
10 Madam Bailiff, would you take them to the jury room?

11 (The jury exits the courtroom at 2:48
12 p.m.)

13 THE COURT: Okay. Any exception from the
14 State?

15 MR. ALDERMAN: None from the State.

16 THE COURT: Any exception from the
17 defense?

18 MR. SMITH: None, Your Honor.

19 THE COURT: Okay. I need the attorneys
20 to come forward, look at the exhibits and count all of
21 them and make sure that they are all there before we
22 send them back.

23 MR. SMITH: I have to go to the car. I
24 want to make sure that I didn't take Dr. Thompson's
25 exhibit with me. It was her medical record from the

JURY CHARGE

1 Foot Hills. So I'll run down quickly if that is okay,
2 Your Honor?

3 THE COURT: Yes, sir.

4 (Evidence accounted for by counsel and
5 taken to the jury. Jury deliberations begin.)

6 THE COURT: I appreciate the professional
7 manner in which counsel for each side presented their
8 case. It is always a joy to try cases when attorneys
9 get along and get through it --

10 MR. SMITH: We are just happy if we can
11 get out of Oconee County without handcuffs after leaving
12 a certain county.

13 MR. ALDERMAN: Just trying to set a tone,
14 Judge.

15 (Laughter.)

16 THE COURT: All right, guys. My two
17 alternates, all of our primary jurors made it to the
18 end, so your duty is over regarding this case. You are
19 welcome to stay if you want to see how it turns out. If
20 not, you are free to go but you will need to be back at
21 9:00 in the morning.

22 THE CLERK: Y'all don't look happy.

23 THE ALTERNATES: Nine o'clock tomorrow?

24 THE COURT: Nine o'clock. That is what
25 is going to be on the answering machine. Thank you for

JURY CHARGE

1 your service in this case. If you are leaving, we will
2 see you in the morning.

3 Okay, we will be in recess.

4 (Recess as deliberations proceed.)

5 THE COURT: They want to watch the video,
6 so we have to bring them back out here. Where is your
7 client?

8 MR. SMITH: He is outside. Do you want
9 me to bring him back in now?

10 THE COURT: Yes.

11 MR. SMITH: Okay.

12 (The jury enters the courtroom.)

13 THE COURT: Mr. Foreman, the bailiff told
14 me that you were having difficulty getting the CD to
15 play.

16 MR. FOREMAN: Yes, Your Honor, we could
17 not get it to work.

18 THE COURT: Well, the only practical way
19 to get it played for you is to just bring you back into
20 the courtroom. So I have got the attorneys back in and
21 I will direct the attorney to play that exhibit now. Do
22 you want to see the whole thing, or is there a specific
23 portion?

24 MR. FOREMAN: We wanted to see the
25 specific description/definition of caregiver, what is

JURY CHARGE

1 the legal --

2 THE COURT: The statement made in the
3 video?

4 MR. FOREMAN: Yes. Correct? Yes,
5 correct.

6 THE COURT: Can you or Mr. Smith identify
7 that specific portion?

8 MR. ALDERMAN: It was the second part.

9 MR. SMITH: I don't know. It was in the
10 initial beginning of the interview after Mr. Gaines came
11 in, I think.

12 THE COURT: Okay. Get it set up and we
13 will start. And let's just see if you can find it.

14 MR. ALDERMAN: Judge, I think that I have
15 it. If it works for you, I'll start it at the end of
16 the Miranda warning so that we have the conversation
17 leading up to that. It is just a couple of minutes.

18 THE COURT: Okay. Dim the lights,
19 please.

20 (Video being played for the jury.)

21 MR. FOREMAN: We have two questions. Two
22 definitions that we need. One is the definition of
23 criminal intent.

24 MR. ALDERMAN: In this case?

25 MR. FOREMAN: In this case. And the

JURY CHARGE

1 definition, once again, of caregiver.

2 THE COURT: All right. I will read you
3 the law on criminal intent again. It is general law of
4 South Carolina. And then I'll give you the definition
5 of caregiver.

6 Start with intent. In order to establish
7 criminal liability, criminal intent is required. For
8 example, the mental state required to be proven by the
9 State for a particular crime might be purpose, intent,
10 knowledge, recklessness or criminal negligence.
11 Criminal intent must be proven by the State beyond a
12 reasonable doubt.

13 Criminal intent is always a matter that
14 must be determined by the jury from the circumstances
15 surrounding the situation. There is no way to prove
16 intent to a mathematical certainty. There is no way
17 medical science can dissect a person's brain and
18 determine what that person had in mind, so the law says
19 that criminal intent may be inferred from the
20 circumstances shown to have existed. This is how you
21 make a determination of whether or not the element
22 requiring intent was present.

23 It is not necessary to establish intent
24 by direct and positive evidence, but intent may be
25 established by inference in the same way as any other

COLLOQUY

1 fact by taking into consideration the acts of the
2 parties and all the facts and circumstances of the case.
3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do based on the circumstances
6 shown to have existed.

7 Criminal intent can arise from action or
8 the failure to act. It may arise from negligence,
9 recklessness, or an indifference to duty or to
10 consequences that is considered by the law to be
11 equivalent of criminal intent.

12 Now, the definition of caregiver: A
13 person who provides care to a vulnerable adult with or
14 without compensation on a temporary or permanent or full
15 or part-time basis, and includes but is not limited to,
16 a relative, household member, daycare personnel, adult
17 foster home sponsor, and personnel of a public or
18 private institution or facility.

19 So with those I'll send you back to the
20 jury room and you may resume your deliberations.

21 (The jury exits the courtroom. Jury
22 deliberations continue.)

23 THE COURT: Anything from the State
24 before we go off of the record?

25 MR. ALDERMAN: No, Your Honor.

COLLOQUY

1 THE COURT: Anything from the defense?

2 MR. SMITH: Your Honor, I think that the
3 charges -- could I just make a, just to preserve the
4 record for him, I believe the state law is vague on the
5 caregiver issue. And criminal intent in this case would
6 be for an intentional act, not a neglect act. That is
7 all that I have got.

8 Because I think that part of the charge
9 was that intent can be inferred from a negligent act. I
10 think you said criminal negligence in the beginning of
11 the charge.

12 THE COURT: Are you -- I will pull out
13 the statute. I want to make sure that I understand your
14 argument.

15 MR. SMITH: I'm thinking that, I could be
16 wrong though, I'm thinking that the State is saying that
17 he intended the natural consequences of his act.

18 THE COURT: Well he is charged under
19 neglect. He is not charged with abuse.

20 MR. SMITH: I got you, okay.

21 THE COURT: Neglect is failure or
22 omission.

23 MR. SMITH: Okay.

24 THE COURT: I didn't charge the abuse
25 section because they are not alleging that he abused

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1 her.

2 MR. SMITH: Okay. Thank you, Your Honor.

3 THE COURT: All right. We will go back
4 into recess.

5 (Recess. Jury deliberations continue.)

6 THE COURT: Mr. Foreman, has the jury
7 reached a verdict?

8 MR. FOREMAN: We have.

9 THE COURT: Would you give that to the
10 bailiff, please, sir?

11 (Pause.)

12 THE CLERK: All right. On Indictment No.
13 2018GS3700287, We the jury unanimously find that the
14 defendant, Mack Adams Gaines, is guilty of abuse or
15 neglect of a vulnerable adult resulting in death.

16 Ladies and gentlemen of the jury, if this
17 is your verdict and remains your verdict, please raise
18 your right hand.

19 (Jury complies.)

20 THE CLERK: Let the record reflect all
21 members of the jury have verified their verdict.

22 THE COURT: Anything further from the
23 State before I dismiss the jury?

24 MR. ALDERMAN: No, Your Honor.

25 THE COURT: Anything further from the

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1 defendant?

2 MR. SMITH: Nothing further from the
3 defendant.

4 THE COURT: Thank you, gentlemen.

5 Ladies and gentlemen, that will conclude
6 your service for this case. Thank you for serving on
7 this jury. We will have the entire pool reporting in
8 the morning at 9:00. And that will be on the message
9 tonight, so I'll go ahead and tell you that everyone has
10 to be back at 9 tomorrow. Thank you. You are
11 dismissed, you may leave.

12 (The jury exits the courtroom.)

13 THE COURT: Did you have a moment to
14 confer with your client?

15 MR. SMITH: Yes, sir. And I was going to
16 state my motion.

17 THE COURT: Okay. Let's get this done.

18 MR. SMITH: Thank you, Your Honor.

19 (Pause.)

20 THE COURT: All right. Before we proceed
21 to sentencing, is there any motions?

22 MR. SMITH: Yes, sir, Your Honor. May it
23 please the Court. I move for judgment in lieu or a new
24 trial.

25 THE COURT: State your ground.

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1 MR. SMITH: Basically the same grounds
2 that I had in the memorandum, Your Honor, that I
3 submitted to the Court that expresses all of my grounds.

4 THE COURT: Yes, sir.

5 MR. SMITH: Is that okay, Your Honor?

6 THE COURT: Yes, that protects your
7 record. I'll deny your motion.

8 MR. SMITH: Thank you, Your Honor. Mr.
9 Gaines.

10 THE COURT: Okay. I heard the testimony
11 in the case, the facts of the case; is there anything
12 else that the State would like to present regarding
13 prior record, any input from any of the victim's family?
14 I realize that this is all a family situation.

15 MR. ALDERMAN: Judge, there is no other
16 victim's family here, save for the defendant himself.
17 Regarding prior record, the only matter of significance
18 is he was convicted of murder in 1981 and sentenced to
19 life. He is out on parole now after I believe serving
20 29 years and some change. Obviously a very significant
21 prior record if only that one charge it is as
22 significant as it can possibly be. And as we stand here
23 today he is again responsible for the death of a human
24 being. We would ask the Court to take that into
25 account.

VERDICT AND SENTENCING

1 THE COURT: Mr. Smith.

2 MR. SMITH: May it please the Court. Mr.
3 Gaines had turned his life around. I will give you some
4 background. E.C. Burnett who was the former Chief
5 Justice of the State Supreme Court had a lot of
6 confidence in Mr. Gaines. So he got involved with me to
7 get him out of prison about 12 years ago. And so
8 Justice E.C. Burnett and I went down to, I think that it
9 was Perry, and we argued before the parole board to get
10 him paroled. And the very person who fought for him all
11 of those years was his mom, who is Ms. Louise Gaines.

12 Once he got out, he's been an exemplary
13 person on parole. The people at the parole place over
14 here in Oconee County, they bragged on him because he,
15 he never did give them any trouble. As a matter of
16 fact, he would go to work like he, like they told him he
17 had to do, and because he couldn't miss work, when you
18 are on parole you have to do exactly what they say. And
19 being incarcerated 29 years, I think -- we couldn't
20 bring this up to the jury, because we believe that his
21 criminal record would outweigh this, but when you give
22 somebody an order, he follows orders. He was taught to
23 follow orders.

24 And he made a mistake in this case with
25 regard to his mother, based on the facts and

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1 circumstances. We would ask the Court -- I think he is
2 -- I mean, they haven't violated him on parole yet. We
3 have had one hearing, but this might violate him and he
4 might have to go back and serve a life sentence.

5 THE COURT: Thank you, Mr. Smith.

6 MR. SMITH: Yes, sir.

7 THE COURT: Mr. Gaines, is there anything
8 that you would like to tell me?

9 THE DEFENDANT: I would like to say this:
10 I wasn't trying to do nothing to my mama. I love my
11 mom. My mama has been there for me from the time that I
12 was six months old on up to when she died, she was still
13 there. And I would have did anything to have helped
14 her. I wouldn't hurt her and nobody else. I had enough
15 of that in my life that I wouldn't try to do nothing to
16 hurt nobody at all.

17 MR. SMITH: He is 62 years old right now,
18 Your Honor. And can I give one more? I know that you
19 are getting ready to do the sentencing. He almost died
20 himself about two years ago because he has significant
21 heart complications, and so he has a very non -- almost
22 a non-functioning heart, so he is in bad shape.

23 THE COURT: Well, this is a very, very
24 sad, sad case. This law is in place to try to protect
25 the most vulnerable adults. Vulnerable adults is a very

VERDICT AND SENTENCING

1 accurate description. And I know, I know based on what
2 was said and the testimony, that your mother was a very
3 strong woman, and she obviously lived a long life, but
4 also what I heard here was a woman who was really
5 helpless that -- she was in the floor.

6 And this is a very disturbing, disturbing
7 case.

8 THE DEFENDANT: Can I? I experienced my
9 heart attack about two, three years before this happened
10 to her. I didn't even know that I had a heart attack.
11 I had a quadruple bypass heart surgery, so I don't -- I
12 ain't trying to hurt nobody.

13 THE COURT: How many days time served
14 does he have?

15 MR. SMITH: I think that he got out a day
16 or two later, is that right officer?

17 OFFICER MCMAHAN: He was bonded out, but
18 I'm not sure.

19 MR. SMITH: Yes, I think that he bonded
20 out.

21 THE COURT: The next day?

22 MR. SMITH: Yes, sir.

23 THE COURT: Mr. Gaines, I am happy that
24 you had turned your life around some, and it sounds like
25 you had good people to help you, and you got out of jail

VERDICT AND SENTENCING

1 and you got a job, but then this messed it all up, just
2 messed it all up. And a great tragedy happened, so I
3 don't have any choice. You will be confined to the
4 Department of Corrections for a term of 20 years. Good
5 luck to you, sir.

6 MR. SMITH: Thank you, Your Honor.

7 (Trial concluded.)

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VERDICT AND SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF OCONEE:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 17th day of August, 2022.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 10th Circuit

(850) 893-6662

mmanley@sccourts.org

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FILED
BEVERLY H. STEPHENSON
CLERK OF COURT

2018 FEB 20 P 4: 21

ENTERED
AB
COMPUTER

WITNESSES

Oconee Co Sheriff's Dept.
David R. McMahon

[Signature]

ARREST WARRANT NUMBER

2018A3710400073

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

FEB 20 2018

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2018-GS-37- 00287

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

FEB 20 2018

, TERM

THE STATE

VS.

MACK ADAMS GAINES

INDICTMENT FOR

**ABUSE OR NEGLECT OF A
VULNERABLE ADULT – RESULTING IN
DEATH**

SC Code: § 43-35-0085(F)
CDR Code: 2659

BGL

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on FEB 20 2018, the
Grand Jurors of Oconee County present upon their oath:

ABUSE OR NEGLECT OF A VULNERABLE ADULT – RESULTING IN DEATH

The defendant, Mack Adams Gaines, did on or about December 15, 2017, in Oconee County, South Carolina, knowingly and willfully abuse and/or neglect Alma Louise Gaines, a vulnerable adult, resulting in the victim's death. The crime occurred at [REDACTED] Henderson Drive, Seneca, South Carolina. All in violation of 43-35-0085(F), *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BRIAN G. LIVINGSTON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE

VS.

MACK ADAMS GAINES

AKA:

Race: Black Sex: M Age: 62

DOB: SS#:

Address: Henderson Drive

City, State, Zip: Seneca, SC 29678

DL#* SID# SC00183877

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Abuse Or Neglect Of A Vulnerable Adult - Death Results

In violation of § 43-35-0085(F) of the S.C. Code of Laws, bearing CDR Code # 2659

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100529
Jason Alderman, Deputy
Solicitor

SC Bar #

Defendant

5165

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 20 days/months/years Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for ____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. ____ days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3700287

A/W#: 2018A3710400073

Date of Offense: 12/15/2017

S.C. Code §: 43-35-0085(F)

CDR Code #: 2659

SENTENCE SHEET

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

	\$	Beginning	\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of			
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Melissa C. Bowden
Court Reporter: Mona MaxleyPresiding Judge: [Signature]
Judge Code: #2152
Sentence Date: 4-19-22

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

May 02 2023

SC Court of Appeals


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 2nd day of May, 2023.

