

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Beaufort County  
Carmen T. Mullen, Circuit Court Judge

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**RECEIVED**

JUN 29 2011

Opinion No. 2011-UP-140 (S.C. Ct. App. filed 4/5/2011)  
07-GS-07-00927

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

PARIS AVERY,

PETITIONER.

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APPENDIX

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INDEX

|                                            |    |
|--------------------------------------------|----|
| INDEX .....                                | i  |
| COURT OF APPEALS OPINION .....             | 1  |
| PETITION FOR REHEARING .....               | 4  |
| ORDER DENYING PETITION FOR REHEARING ..... | 16 |

1

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

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State,

Respondent,

v.

Paris G. Avery,

Appellant.

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Appeal From Beaufort County  
Carmen T. Mullen, Circuit Court Judge

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Unpublished Opinion No. 2011-UP-140  
Submitted February 1, 2011 – Submitted April 5, 2011

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**AFFIRMED**

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Appellate Defender Elizabeth A. Franklin-Best, of  
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Assistant  
Deputy Attorney General Salley W. Elliott, and  
Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Issac McDuffie Stone, III, of Beaufort, for Respondent.

**PER CURIAM:** Paris G. Avery appeals her conviction for homicide by child abuse. On appeal, Avery contends the trial court erred in denying her motion for a directed verdict because the State failed to prove her conduct rose to the level of extreme indifference as required by the homicide by child abuse statute. We disagree.<sup>1</sup>

An individual is guilty of homicide by child abuse if that individual "causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. §16-3-85(A)(1) (2003). "[C]hild abuse or neglect' means an act or omission by any person which causes harm to the child's physical health or welfare." S.C. Code Ann. § 16-3-85(B)(1). The South Carolina Supreme Court has defined "extreme indifference" as "a mental state akin to intent characterized by a deliberate act culminating in death." McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (citation omitted).

First, the State produced evidence Avery caused the death of a child while committing child abuse. The State established (1) the concentration of Hydroxyzine in the child's body at the time of his death was approximately six times higher than the amount that would be expected if the medication were given therapeutically; (2) Hydroxyzine is "rapidly absorbed" and has a peak concentration in the blood within two to three hours after the medicine is given; (3) Avery was the only caretaker home with the child two to three hours before his death; (4) neither of the child's other two caretakers that day, the daycare worker and the babysitter, had access to the Hydroxyzine; and (5) the child died from the side effects of the "potentially lethal" dose of the drug.

Second, the State produced evidence the child died under circumstances manifesting an extreme indifference to human life. The State

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



established Avery committed the deliberate act of giving the child Hydroxyzine and the child died from the side-effects of a "potentially lethal" dose of Hydroxyzine. Although she may not have intended her act to culminate in the child's death, viewing the evidence in the light most favorable to the State, the State established Avery committed a deliberate act and the child died as a result of that act.

Accordingly, the evidence supported submitting the case to the jury.

**AFFIRMED.**

**FEW, C.J., THOMAS and KONDUROS, JJ., concur.**

AdC

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

PARIS AVERY,

APPELLANT

RECEIVED  
APR 20 2011  
SC OFFICE OF  
APPELLATE DEFENSE

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

Opinion No. 2011-UP-140

PETITION FOR REHEARING

RECEIVED  
APR 20 2011  
SC Court of Appeals

Counsel for Paris Avery respectfully asks this Court, pursuant to SCAR, Rule 221(a) to rehear her case and reverse her conviction. Appellant submits this Court has overlooked or misapprehended points necessary to the proper resolution of this case. Specifically, this Court committed an error of law when it found that the evidence adduced by the state during trial was sufficient to convict her of homicide by child abuse.

RELEVANT FACTS

Paris Avery is a young African American woman who was working at the Golden Corral in Beaufort when she left her children with a babysitter and co-worker, Angenetta Wright. Her youngest child, was 15 months old and suffered from a bad case of eczema. Later that night, while

in the custody of the babysitter, Child died of an overdose of the doctor prescribed medicine, hydroxyzine, used to treat his condition.

On that fatal day, Paris worked at the restaurant from 11:00am to 5:00pm. After her shift ended, she left to pick her children up from daycare. Later, Paris, Wright, and Paris's children went back to the Golden Corral for dinner at around 7:00pm. Wright then drove Paris and her children home from dinner; they lived close to one another. Wright saw Paris again shortly after 10:00pm. Paris needed to return to the Golden Corral to finish up some work, but had decided not to go. Wright went to Paris's house and talked her into going back to complete her duties at the restaurant. Wright then took Paris's children to her house. It was close to 11:00pm. An hour later, Paris returned to Wright's house, and her child had died. They called 911. ROA 1-9.

The State's theory of the case was that Paris used the doctor prescribed medication as a "chemical restraint" for her child, as opposed to its therapeutic use. The State claimed that Paris "would intentionally medicate her children so that they would go to sleep and she wouldn't have to deal with them. In this instance she did it too much and the medication that was used this time caused the child's death." ROA 4.

The evidence adduced at trial was not sufficient to convict Paris of homicide by child abuse. Her conduct simply did not rise to the level of "extreme indifference" to her child's well-being, and the State, with its illogical and speculative theory, failed to meet its burden.

The State attempted to introduce the testimony of two witnesses, Peggy Young and Sharon Williams, to buttress its claim that Paris was using medications to chemically restrain her children. The judge appropriately excluded the testimony, but it is relevant to this Court's analysis of Paris's insufficiency argument because Dr. Demi Garvin, the State's expert toxicologist, and progenitor of the State's theory of chemical restraint, testified that she never spoke to these two witnesses. ROA

151-154. She should have, because their testimony militated *against* a finding of "chemical restraint" in this case.

Young is the paternal grandmother of Child and the other children. ROA 11. Her son, Child's father, would come by "every now and then." ROA 18. She now has custody of the two surviving children, and she would like to keep them in her custody. ROA 20.

According to her testimony, Child lived with her during "all of his baby life." ROA 12. Young never observed Paris giving Child any medication at all, ROA 12, and she testified that she did not often observe them together. ROA 17. She claims that she did see Paris give the other children, four and five-year olds, ROA 11, Tylenol and Dimetab. ROA 13. In other words, she never observed Paris attempting to chemically restrain Child,—a significant fact inconsistent with the State's theory.

Williams worked with Paris at the Waffle House, a previous place of employment for Paris. She has known her for about 2 or 3 years. ROA 21. She testified that she observed Paris, on two occasions, give either Tylenol *or* Benadryl to Child because of his eczema. She claims she observed this approximately two months prior to the child's death.<sup>1</sup> ROA 24-25. Even though this witness claimed that he was not sick at the time, and that she thinks Paris was giving it to him to "make him go to sleep or calm down," ROA 23, she admitted that she and Child's grandfather took the child to the doctor and that the doctor prescribed the hydroxydine "because he said it had got so bad in his bloodstream, that was the only way it would get cured faster, with the liquid." ROA 30. Williams then admitted:

Q: So it was pretty bad, then, in other words?

---

<sup>1</sup> It is important to note that these two witness' testimonies fell well short of the what the solicitor, rather dramatically, told the judge their testimony would prove—that Paris would give her children "pretty much any over-the-counter prescription—nonprescription drug she could get her hands on that caused drowsiness." ROA 7.

A: Yes.

Q: And so the child was in a lot of pain; is that correct?

A: Yes.

Q: Okay. And had difficulty sleeping, and things of that nature; isn't that—

A: Yes.

Q: -- Correct?

(ROA page 31, lines 1-9).

Williams also added that it was Child's *grandfather* who picked the medication up from the pharmacy. Williams also administered the first dosages of the medication to Child, and *continued to give the child dosages when Paris was not home*. ROA 30. As to the last time Williams gave Child the medication, she testified that:

Q: When was the last time, before his death, that you gave him his prescribed medication?

A: Before his death? I took him like—he had went to the doctor the week before, which I think was on a Monday or Tuesday I took him. Probably that Wednesday or Thursday was the last time I gave him medicine.

Q: So it would be about a week before his death?

A: Yes.

ROA 32.

This testimony should have raised significant red flags for Demi Garvin, had she undertaken to speak to these witnesses, because it appears that this witness was giving the child dosages that Garvin attributed to Paris. Taken in conjunction with the testimony of Ryan Ranger, the pharmacist who filled this prescription, Williams's testimony was demonstrably false.

Ranger testified that the fatal prescription was filled on August 16, 2006 at 3:24 pm. ROA 172. The prescription stated that it had been refilled before, on June 7, 2006. ROA 176. There was no testimony offered to suggest that the prescription was otherwise refilled, and Garvin never testified that she predicated her findings on a belief that it was. As Garvin testified, there were 120 milliliters of medication in the prescription. Each accurate dosage amounting to 2.5 milliliters (1/2 tablespoon), there would have been 48 dosages in the bottle. If given every 6 hours, or 4 times daily, per the prescription, that would have amounted to 12 days worth of medication. The first prescription, then, assuming *appropriate* usage, would have likely run out around June 19, 2006. It appears the prescription was then filled two months later. Two and a half days after the prescription was refilled, the child received the fatal dosage.

From this, it is reasonable to conclude that Williams's statements that she had given the child medication a week earlier was inaccurate, since the earlier prescription would most likely have been exhausted at that point (and likely, much *earlier* if it had been used for purposes of restraint), and it is clear, from the testimony of the pharmacist, that the bottle had only recently been filled. If the bottle had been refilled on other occasions, the State never offered the testimony from their pharmacist, their toxicologist, their investigator, or any of their witnesses. Moreover, Williams testified that she is the one who took the child to the doctor in the first place. So, not only did Paris not pick up the fatal prescription from the pharmacy, she did not even secure this prescription from the child's doctor. These acts were undertaken by the absentee-father's father, and a co-worker. These facts would have been extremely relevant for determining whether Paris was using this medication for purposes of "chemical restraint" and whether her actions rose to the level of "extreme indifference" justifying a conviction for homicide by child abuse. The State did not provide any evidence that Paris was ever made aware of the toxic qualities of this medication, a

drug that Garvin termed one "of last resort" since Paris neither spoke to the pharmacist nor the doctor about the medication. The State failed to prove that Paris knew the medication was potentially toxic.

Additionally, another person, Williams, was giving the child dosages out of the prescription (per Williams's testimony). This undercuts completely the idea that Paris was using the medication as a "restraint," since it is undetermined how much Williams gave to Child versus the amount that Paris administered. Also, information that Williams was providing medication to the child serves to prove that there was a medical necessity for the medication.

These witness' testimonies militate against a finding of homicide by child abuse in this case, and the evidence tending to support the conviction should be analyzed in light of the available information that the State's expert toxicologist did not uncover in establishing her conclusion that Paris Avery committed child homicide by using this prescription medication to "chemically restrain" her child's actions.

The State's theory of this case, and why they argued this testimony was admissible as *Lyle* evidence is summed up rather histrionically, in the solicitor's argument during the *in limine* hearing:

[I]f you believe the State's case, Avery Paris—Paris Avery did not give the medication to her child so he would have a good night's sleep. She gave it to the child so she could do what she wanted to, so she didn't have to be a mother, so she didn't have to parent this kid, because she's indifferent to being a mother to these children, which is why she constantly medicates them to keep them asleep so they don't play, so they don't make noise. She's indifferent to their lives and their enjoyment of their lives. She puts them down. She keeps them asleep. That's why she does it. She does it for herself, not the child . . . It's not an accident. It's she's indifferent to her own children. She's not mothering them.

You heard from these two women that over the fifteen months of this child's life, she only cared for him by herself maybe the last two weeks of it. And we see how that ended. She has been indifferent to him since the day he was born, including the older brothers who she's been giving medication to. It shows a common scheme or plan.

ROA 50-52.

The solicitor's remarks highlight the improper quality of these witness's testimonies, and they were properly excluded from this trial.<sup>2</sup>

The State offered the testimony of Dr. Demi Garvin to prove their theory of chemical restraint. Garvin has a doctorate in Clinical Pharmacy from USC College of Pharmacy. She is a licensed pharmacist in the state, and board certified in forensic toxicology. ROA 121. She is the assistant laboratory director of forensic sciences for Richland County Sheriff's Department, and a consultant and owner of the Forensic Science Network, a private limited liability corporation. ROA 122. She has been qualified as an expert in excess of 200 times in the areas of clinical and forensic toxicology, and drug chemistry. ROA 123.

She became involved in this case through her association with the Forensic Science Network. ROA 124. The specimens involved in this case were collected at the autopsy and sent to a contract laboratory, National Medical Services, located in Willow Grove, Pennsylvania. ROA 124. After she received the results of the toxicology testing performed there, there was "communication between [her] with both the pathologist and the principle [sic] investigator in this case in order to obtain additional information in order to be able to make an appropriate interpretation . . . determining whether or not this death was, in fact, due to a toxic insult or a drug or poison-related situation." ROA 125.

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<sup>2</sup> The judge, however, ruled their testimonies would be admissible if Paris raised the defense of accident, even though the State clearly was attempting to introduce the testimony to impugn Paris's character and thus improperly. The judge said that she would declare a mistrial. ROA 153-155.



Analysis of the blood sample concluded that the victim's blood contained 300 nanograms per millimeter of hydroxyzine and hydroxyzine metabolites. ROA 125. Based on her discussions with the lead investigator and pathologist, she concluded that:

"[P]ostmortem hydroxyzine level was consistent with intoxication and overdose and I communicated to the pathologist that I felt it was in the absence of an anatomical cause of death, the principle [sic] cause of death, in this child."

ROA 125-126.

Further:

"The circumstances, history that was provided to me, as well as the postmortem concentration, essentially left me with the opinion that the death did not rise to the level of an overt, massive intoxication but rather did seem to fit the circumstances of what I referred to earlier as a chemical restraint or an attempt at sedation, given the postmortem concentration that we found."

ROA 128.

Her conclusion that Paris engaged in chemical restraint of her child then was predicated, per her testimony, on (1) her understanding of the "circumstances", (2) the "history" that was provided to her, and (3) the concentration of toxins in the child's system.<sup>3</sup>

During a preliminary hearing, outside of the presence of the jury, Garvin testified to the following relevant facts regarding the pharmaceutical itself:

Hydroxyzine is a generic name for a drug commonly known as Vistaril or Atarax. ROA 128. It is an antihistamine. In children, it is used to treat the itching associated with dermatological conditions, including eczema. ROA 128-129. Its side effects, even at therapeutic levels, include sedation and dry mouth. It can also cause pupil dilation, and other effects.

<sup>3</sup> Despite having received the background history of the victim from Officer Wilson, Garvin testified that she never received any information about Paris's purported use of "chemical restraint" against her other children. ROA 151-152.

Adverse effects increase with increasing dosages, and in an overdose situation, central nervous system depression would be expected. ROA 129. Conversely, some children might experience hyper-stimulation resulting in seizures at high levels. ROA 129.

Peak concentrations of the medication typically occur approximately 2 hours after the last dose, with effects that can last for six to eight hours. ROA 130. Regarding this particular drug, Garvin is only aware of one reported child fatality, that of a six year old in 2004. ROA 133. Garvin referred to this drug as one of "last resort" in the pediatric population "because it is associated with more adverse effects than some of the other first-generation antihistamines such as Benadryl." ROA 133-134. The drug is "toxic." ROA 134.

Garvin testified regarding making up a missed dose of the medication:

Q: Now, are you familiar with the information on the what happens if you miss a dose? Can you make up a dose, and things of that nature, on this particular drug?

A: That would speak to the information that a pharmacist such as myself would communicate to a caregiver. Yes, sir, I am.

Q: And I believe it says you can make up doses; isn't that correct?

A: Well, that's dependent on the time that has passed since the last missed dose. In an infant his young it would be my opinion, and my communication as a pharmacist to the individual administering the medication, that if the time has passed and it's time for the next dose to be given, that one should not double up on the dose but should rather just declare that a missed dose and medicate the individual or the child at the next—at the time of the next dose.

This medication, if you recall, was initially prescribed PRN, which means as needed, which is not the same as round-the-clock dosing such as we might give with an antibiotic to treat a bacterial infection. So there is no need to give the medication if there is no need. It's not to be given around the clock.<sup>4</sup>

Q: So in other words if there is a need, you take the drug?

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<sup>4</sup> The State failed to prove that information of this nature was ever communicated to Paris.

A: That's correct.

ROA 146-147.

Garvin again testified as to the bases of her conclusion that the death of the victim was the result of a homicidal act:

"But I did not—I did not feel that, under any circumstance, that this was—once I was provided information both from the pharmaceutical end, the toxicologic end, the medical end, as well as the investigative end, there was no time that I felt it was unintentional or accidental. Let me use those words synonymously."

ROA 142.

Garvin never reviewed the child's medical records. ROA 144.

The State's closing argument exposed the fundamental illogic of its case. The closing argument—the State's opportunity to "connect the dots" and make sense of all of the evidence—was riddled with speculative connections and false claims. The assistant solicitor said:

And remember what Angenetta said. When she saw him at 11:00pm, he was already limp. There may be a chance he was already gone. She even commented to Paris about his condition. Remember what she said? She said, what did you do to him? I think Paris told her something along the lines, oh, he was playing outside. Really? From 8:00 to 11:00pm outside?

ROA 261.

First of all, Wright never used the word "limp" but actually said he looked "really tired" and "wore out." ROA 6. Secondly, it was 11:00pm, a time at which generally children are tired. Also, Wright never testified that Paris told her the children were outside playing.

The State argued that the medicine was not for her child, but was for Paris. Paris had a babysitter for her children that night—if it were true that "[t]he medicine is not for that baby; it's for her," ROA 263, then it would follow that she would not be giving the child medicine at a time when the child is likely to be sleepy anyway, and when she had a babysitter for the child.

## LEGAL ANALYSIS

A person may be found guilty of homicide by child abuse if the person causes the death of a child under 11 while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life. S.C. Code Ann. §16-3-85 (2002). "Extreme indifference" is a mental state akin to intent characterized by a deliberate act culminating in death. McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008); State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). Paris's actions do not rise to that level. Paris gave her child a doctor prescribed medication for a condition that he had—eczema. The child died as a result of the medication that the State's expert herself called "a drug of last resort." Paris did not secure the drug from either the doctor or the pharmacist, and she was not the only person giving medication to the child during the relevant time frame. Two witnesses who the State proffered to show a course of conduct consistent with "chemical restraint" provided testimony that actually militated *against* that particular theory. And then the Solicitor, not content to argue the facts as they existed, repeatedly misstated the facts on important issues to secure her conviction. The trial court judge should have granted Paris's motion for a directed verdict. ROA 252-257. The evidence merely raised a suspicion that Paris was guilty of homicide by child abuse. State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001); State v. Martin, 340 S.C. 597 533 S.E.2d 572 (2000). The evidence presented at trial did not rise to the level to sustain a conviction for homicide by child abuse. This Court has committed an error of law by ruling that this evidence is sufficient to convict Paris Avery of homicide by child abuse. Her actions simply do not rise to the level of "extreme indifference." Respectfully, appellant asks this Court to grant her petition for rehearing and reverse her conviction.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Beaufort County  
Carmen T. Mullen, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

PARIS AVERY,

APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, this 20th day of April, 2011.

ELIZABETH A. FRANKLIN-BEST

Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day  
of April, 2011.

Carmen E. Cusack (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Paris G. Avery,

Appellant.

Judge Carmen T. Mullen  
Beaufort County  
Trial Court Case No. 2007-GS-07-00927

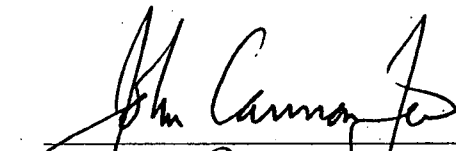
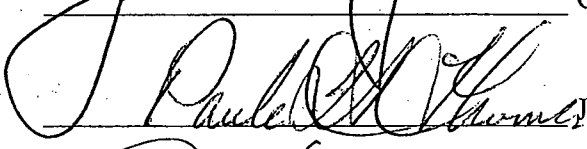
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## ORDER

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

IT IS SO ORDERED.

  
C.J.  
  
Paul D. Thomas, J.  
  
Clerk

Columbia, South Carolina

**FILED**

JUN 01 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

PARIS AVERY,

APPELLANT

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RECORD ON APPEAL

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INDEX

|                              |     |
|------------------------------|-----|
| INDEX.....                   | i   |
| TRIAL TRANSCRIPT.....        | 1   |
| INDICTMENT .....             | 290 |
| CERTIFICATE OF COUNSEL ..... | 292 |



1 THE CLERK OF COURT: I'm not sure, Judge. At  
2 least maybe ten minutes.

3 THE COURT: All right. Ladies and gentlemen,  
4 obviously you've heard my clerk Joni tell me that we're  
5 having a hard time pulling up the next list for the  
6 next case. We're going to go ahead and take about a  
7 ten-minute break. I will tell you that after we  
8 qualify this jury panel, we're going to send all the  
9 rest of you home. So y'all can plan on being home or  
10 at least going home for lunch. Okay?

11 So, again, ladies and gentlemen, I am going to  
12 go ahead and let you be at ease for about ten minutes,  
13 and we'll be back and Judge Cooper will pull the next  
14 jury panel. Again, I thank you.

15 [Whereupon, a recess is taken from 12:30 p.m. to  
16 2:20 p.m.]

17 MS. TANNER: A quick question, Your Honor,  
18 before we do pre-trial motions. Does sequestration  
19 apply before trial starts?

20 THE COURT: I think we need to, and certainly if  
21 we are going to put up any witnesses today, which I  
22 think there might be a potential of.

23 MS. TANNER: [Indicates negatively]

24 THE COURT: No?

25 MS. TANNER: I don't intend to put up witnesses,

1 but if -- we may have to.

2 THE COURT: Okay. Yes, Mr. Hood?

3 MR. HOOD: Well --

4 THE COURT: Let's go ahead and make our motion  
5 maybe to sequester witnesses. I think it's probably a  
6 good idea. I'm assuming that's what you would prefer.

7 MR. HOOD: Well, yes, Your Honor, I would.

8 THE COURT: Okay. Well, I'm going to go ahead  
9 and grant your motion to sequester the witnesses in the  
10 case. Solicitor, obviously you would know, as well as  
11 the defense attorney, what witnesses are here that you  
12 need to send out.

13 [Off the record momentarily]

14 - - - - -

15 PRETRIAL MOTIONS

16 THE COURT: Mr. Hood, whenever you are ready.  
17 We have pretrial motions?

18 MR. HOOD: There is, Your Honor. We discussed  
19 this earlier concerning the possible Lyle testimony. I  
20 think the State is intending to try to present some  
21 testimony regarding other acts by the defendant which  
22 they believe are somehow relevant.

23 THE COURT: Solicitor?

24 MS. TANNER: That's correct, Your Honor. The  
25 State intends to present several witnesses who have

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 observed, over the time that this child has been alive,  
2 the defendant providing her children with --

3 THE COURT: The other two children; correct?

4 MS. TANNER: There are three total: two still  
5 alive; and the victim in the case, who is deceased.

6 She would, on a regular basis, provide these  
7 children with over-the-counter medications such as  
8 Benadryl, Dimetab, Nyquil, Children's Tylenol,  
9 intentionally, to get them to go to sleep. And both  
10 witnesses use the terminology, it's time to go night-  
11 night. She would actually do it when they would get up  
12 from a --

13 THE COURT: When you say both witnesses, who are  
14 we talking about?

15 MS. TANNER: We have Sharon Williams and Peggy  
16 Young.

17 THE COURT: And who is Sharon Williams?

18 MS. TANNER: Sharon Williams is a very close  
19 family friend. She basically was involved in the  
20 raising of these children from the time of their birth.  
21 She's been a very close friend of the defendant and the  
22 paternal side of the family.

23 THE COURT: Okay. And then the other one?

24 MS. TANNER: Peggy Young is the paternal  
25 grandmother. The defendant and her children have lived

1 with both of these people at different times, and these  
2 women have both been involved in the care-giving and  
3 nurturing of the children. They've had access to,  
4 they've observed, Ms. Young's interaction with her  
5 children. They have individually each seen her  
6 participate in this type of behavior.

7 The State's case, Your Honor, is based on what  
8 the doctors will talk about is that what Ms. Young  
9 [sic] did is referred to as chemical restraint. What  
10 she would do is she would intentionally medicate her  
11 children so that they would go to sleep so that she  
12 wouldn't have to deal with them. In this instance she  
13 did it too much, and the medication that was used this  
14 time caused the child's death.

15 Under the theory of res gestae, these incidents  
16 where she prior -- prior to this, where she gave the  
17 children medicine, it goes to establish her state of  
18 mind because the State has to approve -- has to prove  
19 that there is a -- there was an extreme indifference to  
20 human life at the time this occurred. This evidence  
21 goes towards that. It shows that she was completely  
22 indifferent to the -- her children, she didn't want to  
23 deal with them, she would knock them out and put them  
24 to sleep so she wouldn't have to deal with them, and at  
25 the end that's what caused this child's death. She

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 gave him medication to put him to sleep so she wouldn't  
2 have to deal with him, but this time she gave him too  
3 much. That's the only difference in the other  
4 instances.

5 They are close in time. I believe the last time  
6 -- she had just moved out on her own within about a  
7 month to two weeks prior to this happening. Up until  
8 that, she had either lived with the Youngs or the  
9 Williams. And I believe Ms. Williams was the last one  
10 she lived with, and she can attest that about a month  
11 before she moved out is when -- was the last time she  
12 saw her do this.

13 Under Rule 404(b), I believe it actually  
14 satisfies several of the exceptions. It goes to  
15 motive. The motive in this case is that she wanted to  
16 put the children to sleep so she didn't have to deal  
17 with them. It also goes to identity. She is the  
18 perpetrator. She is the one who did this. She  
19 supplies the children with this medication for this  
20 purpose. It also --

21 THE COURT: Well, let's stop for a moment. I  
22 understand the motive.

23 Mr. Hood, is identity an issue in this case? Is  
24 there any question of whether or not she was the person  
25 that gave the medication to the child?

1 MR. HOOD: I don't even think she can prove  
2 that.

3 THE COURT: Okay. So it is an issue.

4 MS. TANNER: So it is an issue. He's either  
5 claiming someone else did it or my client didn't do it.  
6 Either way, identity is an issue about who actually  
7 gave the child the medication. The toxicology report  
8 will say the medication was in the child's system. So  
9 someone gave it to the child.

10 THE COURT: Okay.

11 MS. TANNER: Number three goes to intent.  
12 Clearly, the intent for giving this child the  
13 medication went way beyond any medicinal purpose or  
14 lawful purpose. It was to put the child to sleep so  
15 she didn't have to mess with him that day. So it goes  
16 to intent.

17 It also goes to common scheme or plan. Common  
18 scheme or plan for Paris Avery was to put her children  
19 to sleep. Middle of the day. They got up from a nap,  
20 she would put them back night-night.

21 Absence of mistake or accident: it also goes to  
22 that. These witnesses saw her intentionally give the  
23 children this medicine for that reason.

24 THE COURT: Now, when you say this medicine, it  
25 was my understanding in this case there was eczema

1 medicine, which is a separate prescription medicine, as  
2 opposed to the other -- I think you said Dimetab, I  
3 heard was one. What was the other?

4 MS. TANNER: Benadryl.

5 THE COURT: Benadryl.

6 MS. TANNER: Dimetab, Children's Nyquil,  
7 Children's Tylenol, pretty much any over-the-counter  
8 prescription -- nonprescription drug she could get her  
9 hands on that caused drowsiness.

10 THE COURT: Solicitor, do you have testimony  
11 from a pharmacologist or someone that's going to  
12 testify that this specific medication, this whatever  
13 this -- eczema medication actually has the same type of  
14 propensities to make a child sleepy?

15 MS. TANNER: It is on the bottle that it will  
16 cause drowsiness. It is in the printout, that she was  
17 given at the pharmacy, that it causes drowsiness. And  
18 the pharmacologist and the pathologist will testify  
19 that what this medication does is suppress your central  
20 nervous system, which initially causes drowsiness. But  
21 in this case, once there was too much, it actually  
22 suppressed the central nervous system so much that the  
23 child stopped breathing.

24 THE COURT: Okay. Anything further?

25 MS. TANNER: I believe that would be my

1 arguments. This is all relevant evidence. It is not  
2 prejudicial. It is close in time. It is clearly  
3 relevant to the theme of the case, to the elements of  
4 the case, that the State intends to prove. And we  
5 believe it is admissible.

6 THE COURT: Solicitor -- I'm sorry. Mr. Hood?

7 MR. HOOD: Judge, I'm not quite sure how giving  
8 the child too much Dimetab, too much Benadryl, these  
9 other over-the-counter drugs that we are talking about  
10 here, has any bearing on a prescription drug. What we  
11 are talking about is apples and oranges. Something  
12 that I can walk in and buy in a grocery store, or  
13 somewhere else, is not a prescription drug where you go  
14 to a pharmacists and -- or go to a doctor first and get  
15 a prescription, go to the pharmacy, and the pharmacist  
16 fills it.

17 Now, we've got a lot of general speculation here  
18 as to what these people are going to say. You know,  
19 are they going to say she gave him too much Tylenol.  
20 Well, who did she give the Tylenol to? Was it one of  
21 the children? all of the children? to this particular  
22 child? I mean, if we're talking about indiscriminate  
23 giving of drugs, what's the purpose in it? You know, I  
24 mean, other than to show character, obviously it's  
25 prejudicial. I mean, it's extremely prejudicial to



1 think that, you know, maybe she did this. But then if  
2 you look at it from a common-sense sort of scheme: you  
3 know, if one child has a cold, you give all three of  
4 the children a shot of the cold medication because one  
5 gives it to the other and gives it to the other.

6 You know, it's a little preventative  
7 maintenance, and things of that nature, that we talk  
8 about when we're talking about these off-the-counter,  
9 you know, nonprescription-type drugs. So we're mixing  
10 apples and oranges, and that's what bothers me, because  
11 one is a prescription drug and one is -- these other  
12 things we are talking about are nonprescription-type  
13 drugs. And who did she give the drugs to? I mean,  
14 that's, you know, quite important.

15 THE COURT: Solicitor, I would think, though,  
16 for me to be able to evaluate the testimony and  
17 determine whether or not it's being able to be proven  
18 by clear and convincing evidence, I would have to hear  
19 the testimony. Are you prepared to proffer your  
20 witnesses today?

21 MS. TANNER: Yes, ma'am.

22 THE COURT: Okay. Well, let's go ahead and do  
23 that, then, so we can hear the testimony and  
24 specifically what we are talking about.

25 MS. TANNER: Yes, ma'am.

1 THE COURT: Okay?

2 MS. TANNER: Your Honor, the State calls Peggy  
3 Young.

4 MR. HOOD: Judge, my client is in the courtroom.  
5 Can she come down?

6 THE COURT: Absolutely. Absolutely.

7 [Whereupon, Ms. Avery is seated at the defense  
8 table]

9 [Whereupon, Ms. Young enters the courtroom]

10 THE CLERK OF COURT: Would you place your hand  
11 on the Bible for me, please. Place your left hand --  
12 raise your right hand for me. Place your left hand,  
13 and raise your right hand. Thank you.

14 [Whereupon, Ms. Young is duly sworn by the clerk  
15 of court]

16 THE CLERK OF COURT: Please be seated.

17 [Whereupon, Ms. Young takes the witness stand]

18 THE CLERK OF COURT: State your name and spell  
19 it for the Court, please.

20 THE WITNESS: My name is Peggy -- my name is  
21 Peggy Young. P-E-G-G-Y Y-O-U-N-G.

22 THE COURT: Ma'am, you can go ahead and take a  
23 seat, if there's -- if there's a chair there.

24 MS. TANNER: Good afternoon, Ms. Young.  
25

- - -

PEGGY YOUNG,

Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. TANNER:

Q. Can you tell the Court how you know Paris Avery?

A. Through my son, Rotundo Young, Jr.

Q. And what is their relationship? Was their  
relationship.

A. Boyfriend and girlfriend.

Q. And did they have any children together?

A. Yes.

Q. How many?

A. Three.

Q. Could you give the Court their names, please.

A. Hunter, which is the oldest. He's five now.

Hunter Patrick [REDACTED] Miguel [REDACTED] Child

[REDACTED]

Q. How old is Miguel?

A. Miguel just turned four in March.

Q. And could you tell us about Child

A. He was a happy baby; so full of life.

Q. Is he still with you?

A. No.

Q. How old was he when he passed?

MIA PERRON, CCR, CVR-CM

-79-

1 A. Fifteen months.

2 Q. And at any time during his fifteen months, did  
3 he live with you?

4 A. Yes.

5 Q. And how many of those fifteen months would you  
6 say he lived with you?

7 A. Just about all of his baby life.

8 Q. You're a grandma, right, to Child

9 A. Yes.

10 Q. Now, during this time, what was your role in  
11 Child life?

12 A. I was his mom.

13 Q. Was Paris Avery living with you, as well?

14 A. Not at that time when I had all three of her  
15 kids.

16 Q. And was there any time when she did live you  
17 with her children?

18 A. Yes. With the two -- with Hunter and Miguel,  
19 when we used to be stationed here in Beaufort on Laurel  
20 Bay.

21 Q. And at any time during Child fifteen months,  
22 did you observe his mother give him medication?

23 A. No, I didn't. Not Child I didn't.

24 Q. How about the other children?

25 A. Yes, I did.

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 Q. What did you see them -- what were they given?

2 A. The two medicines were -- that she kept was  
3 Tylenol and Dimetab.

4 Q. And how would she use those medicines?

5 A. I would ask her would she use a syringe or would  
6 she use the cup. She didn't use either one. She would  
7 take the medicine, hold the kids' face like this here,  
8 back, take the medicine and pour it in their mouths.

9 Q. So not measuring it?

10 A. Not measuring it.

11 Q. And were the children sick when she did this?

12 A. No, they weren't.

13 Q. Did she tell you why she was giving them  
14 medicine, then?

15 A. So they can go night-night. Even just waking up  
16 from a nap, just go back night-night.

17 Q. And what time of day are we talking about?

18 A. Midday.

19 Q. And how did she -- well, what did you mean by  
20 night-night?

21 A. Oh, she -- that was her favorite thing she would  
22 tell them, let's go night-night. Everything was night-  
23 night. She didn't want them to play, to be kids, to just  
24 be interactive.

25 Q. Did you ever have a conversation with her about

1 that?

2 A. Yes, I did.

3 Q. What did you tell her?

4 A. Let them be kids; just leave them alone; you can  
5 go and do what you want to do; I'll get them; just let  
6 them be kids; let them be happy kids; let them rip and  
7 run; let them play.

8 Q. And did she do that?

9 A. No, she wouldn't.

10 Q. What would she do?

11 A. She would take the kids and go back in the  
12 bedroom.

13 Q. And did they go night-night?

14 A. She would have them in the bed, and she have the  
15 door closed. She had them laying in the bed, and she  
16 would be laying there by them.

17 Q. What about Child Did you ever see her  
18 interact with him?

19 A. Not that often, no, because she stayed -- she  
20 was here in Beaufort, and I moved away to Florida.

21 MS. TANNER: Thank you, Ms. Young. Please  
22 answer anything Mr. Hood has.

23

24

25

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

CROSS-EXAMINATION

BY MR. HOOD:

Q. Ms. Young, were you back there in that room there?

A. When?

Q. Before you came out here.

A. No, sir.

Q. Were all of you together? Were you and the solicitor and the other witnesses together back there in that room?

A. When?

Q. Just a few minutes ago.

A. Yes.

Q. And weren't you discussing the testimony amongst yourselves as to what you were going to say out here today?

A. Yes.

Q. Okay. So all of the other witnesses -- I guess your husband was there; is that correct?

A. Yes.

Q. Your son was there?

A. No.

Q. Okay. Was Ms. Williams there?

A. Yes.

Q. And was her son there?

MIA PERRON, CCR, CVR-CM

-83-

1 A. No.

2 Q. Who were the other people that were in the room  
3 there discussing this?

4 THE WITNESS: I must?

5 THE COURT: You need to answer the question,  
6 ma'am.

7 A. Me, my husband, Ms. Williams, Mr. Williams, and  
8 Ms. Snell [phonetic].

9 THE COURT: Ms. Who?

10 THE WITNESS: Snell [phonetic].

11 Q. [Mr. Hood] Okay. So you're back there with the  
12 solicitor discussing what each one of you are going to  
13 say; is that correct?

14 A. It wasn't what we were going to say, it was --

15 Q. Just answer the --

16 A. Okay.

17 Q. -- question yes or no.

18 You discussed what you were going to be saying,  
19 and the solicitor went over that with you; is that not  
20 correct?

21 A. No.

22 Q. Okay. So you said that you discussed your  
23 testimony amongst each other; isn't that true?

24 A. Not just now, sir, no.

25 Q. Back in that room back there, when the solicitor



1 was back there with you guys, you were discussing the  
2 testimony that you had to give out here today; isn't that  
3 correct?

4 A. She was asking us questions.

5 Q. Yes. And each one of you would give an answer;  
6 is that correct?

7 A. Yes, sir.

8 Q. Okay. Okay. So one fed off the other. Okay.  
9 All right.

10 MS. TANNER: Objection.

11 Q. [Mr. Hood] So you really had no --

12 MS. TANNER: Object.

13 THE COURT: Okay. Sustained. Go ahead. That's  
14 just -- obviously, that's for the record.

15 Q. [Mr. Hood] Okay. You had very limited contact  
16 with Child is that correct?

17 A. No, sir. I had Child ever since he was three  
18 months old.

19 Q. Well, wait a minute.

20 A. As far as her having him, I had very limited  
21 time with her and him together, with us together, yes.

22 Q. And why was she staying with you?

23 A. She didn't have Child at the time. She had  
24 Hunter and Miguel, her other two older kids.

25 Q. Why was she staying with you?

1 A. Because my husband went to Iraq.

2 Q. Okay. And where was your son living?

3 A. Wherever he wanted to.

4 Q. Wherever he wanted to.

5 So he didn't provide any support to the  
6 children; is that right?

7 A. Oh, yes, he did.

8 Q. Well, how did he do it?

9 A. He played the mother figure. He give them bath,  
10 he would feed them, he would clothe them.

11 Q. But I thought he wasn't there.

12 A. He came by every now and then.

13 Q. Every now and then. Okay.

14 A. Yes, sir.

15 Q. All right. And isn't it true that you were the  
16 one that suggested that the children be given Benadryl?

17 A. No, sir.

18 Q. Okay. Dimetab?

19 A. No, sir.

20 Q. Tylenol?

21 A. No, sir.

22 Q. So you did nothing to ever intervene in their  
23 health care; is that correct?

24 A. I would only give her advice.

25 Q. Well, did you give her advice about Benadryl?

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 A. No, I did not.

2 MR. HOOD: Okay. I don't have any further  
3 questions.

4 THE COURT: Solicitor?

5 REDIRECT EXAMINATION

6 BY MS. TANNER:

7 Q. Mr. Hood asked you about why the children were  
8 staying with you. Did you take those children from Paris,  
9 or did she give them to you?

10 A. The older kids?

11 Q. Yes, ma'am.

12 A. No, I did not take her kids from her.

13 Q. So why were they staying with you and not her?

14 A. She didn't have time for them.

15 Q. And didn't you say earlier you gave her advice  
16 about what she was doing with this night-night time,  
17 didn't you?

18 A. Yes, ma'am.

19 Q. And what was your advice about night-night?

20 A. Let them be kids; let them play; let them be  
21 boys; just let them have fun; let them grow.

22 MS. TANNER: Thank you. Your Honor, I have no  
23 further questions.

24 THE COURT: Mr. Hood?

25 MR. HOOD: I only have one question.

RECROSS-EXAMINATION

BY MR. HOOD:

Q. After this incident occurred back in October of 2006, you and your husband got custody of the children; isn't that correct? The two older ones.

A. Yes, sir.

Q. And you've had them ever since; isn't that correct?

A. Yes, sir.

Q. Okay. And you still want to keep the children; is that correct?

A. Only if I'm allowed to, sir.

MR. HOOD: Thank you.

THE COURT: Anything further, solicitor?

MS. TANNER: Nothing further, Your Honor.

THE COURT: All right. You may step down, ma'am.

[Whereupon, Ms. Young is excused and exits the courtroom]

MS. TANNER: Your Honor, the State calls Sharon Williams.

[Whereupon, Ms. Williams enters the courtroom]

THE CLERK OF COURT: Would you place your left hand on the Bible, and raise your right hand for me, please.

MIA PERRON, CCR, CVR-CM

-88-

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 [Whereupon, Ms. Williams is duly sworn by the  
2 clerk of court]

3 THE CLERK OF COURT: Please be seated.

4 [Whereupon, Ms. Williams takes the witness  
5 stand]

6 THE CLERK OF COURT: State your name and spell  
7 it for the Court, please.

8 THE WITNESS: My name is Sharon Williams.  
9 S-H-A-R-O-N W-I-L-L-I-A-M-S.

10 MS. TANNER: Good afternoon, Ms. Williams.

11 THE WITNESS: Good afternoon.

12 - - - - -

13 SHARON WILLIAMS,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MS. TANNER:

18 Q. Ms. Williams, do you know Paris Avery?

19 A. Yes.

20 Q. How do you know her?

21 A. Well, I met her by -- when she used to work --  
22 start working at the Waffle House, before she used to work  
23 at the Waffle House.

24 Q. And how long ago was that?

25 A. Oh, maybe two or three years ago.

MIA PERRON, CCR, CVR-CM

-89-

1 Q. And how would you characterize your relationship  
2 with Paris?

3 A. Well, when we first met her -- I met her through  
4 the two boys, the oldest two boys, Miguel and Hunter. The  
5 grandmama had dropped them off at the Waffle House. And  
6 she was working second shift at the time, and we took her  
7 to another girl that worked -- took the kids to another  
8 girl, that worked there, to babysit. And after that day,  
9 we just brought her into our family like our daughter.

10 Q. And did you meet -- get to know the youngest  
11 boy, Child

12 A. Yes.

13 Q. And how long did you know him?

14 A. Oh. I was there from day one when she had -- I  
15 was in the delivery room when she had him.

16 Q. And did you have a lot of contact with Child  
17 over his fifteen months?

18 A. Yes. More basically, if he wasn't in Florida,  
19 he was at our house.

20 Q. And did he live with you at any point?

21 A. Yes.

22 Q. And the time he lived with you, was Paris living  
23 there, as well?

24 A. Yes.

25 Q. And during that time, did you ever see Paris

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 MR. HOOD: Judge --

2 A. Yes.

3 THE COURT: Yes?

4 MR. HOOD: -- I'm going to allow leading  
5 questions, you know, just for the purposes of this  
6 hearing. Okay?

7 THE COURT: Okay.

8 All right. Solicitor --

9 MS. TANNER: I'm just trying to get to the point  
10 in this hearing instead of --

11 THE COURT: And I appreciate that, directing it  
12 to her, narrowing it to her. But after that, let's get  
13 her to the point and let's not lead. Okay?

14 MS. TANNER: Yes, sir. Yes, ma'am.

15 Q. [Ms. Tanner] All right. You said yes?

16 A. Yes.

17 Q. What did you see her give him?

18 A. I have seen her give him Tylenol or Benadryl.

19 Q. And was he sick at the time she gave him those  
20 medicines?

21 A. No.

22 Q. Do you know why, or did she tell you why, she  
23 was giving him those medicines?

24 A. Just to make him go to sleep or calm down.

25 Q. And did you make any comments to her when she

1 was doing that?

2 A. Yes. I told her --

3 Q. What did you say to her?

4 A. Let him -- he's a boy; let him play; let him run  
5 around; you know, he don't need to be -- it's not time for  
6 a nap; you know, just let him run around and be a baby.

7 Q. Does that mean she told you why she was doing  
8 it?

9 A. Just because -- because he had eczema and it had  
10 got to the point that, you know, he'd cry when it itched  
11 real bad or whatever, and I guess she couldn't take the  
12 noise or -- you know, and she just wanted him to go to  
13 sleep.

14 Q. How often did you see him do that?

15 A. I -- probably twice.

16 Q. And what kind of time period are we talking  
17 about?

18 A. The month and a half she was living with us.

19 THE COURT: I'm sorry. Did you say the month  
20 and a half she was living with you?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Is that what you said, ma'am?

23 Q. [Ms. Tanner] When was the last time you saw her  
24 do it?

25 A. Maybe two or three weeks before she moved out of



State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 our house.

2 Q. And how long was that before Child death?

3 A. Probably the end of June or the first of July.

4 Q. So maybe two months total?

5 A. Yeah.

6 Q. Did you ever see her give the other children  
7 medicine when they weren't sick?

8 A. Yes. She usually gave it -- basically gave it  
9 to them all at the same time.

10 Q. And what kind of medicines are we talking about?

11 A. The same. Tylenol, Benadryl.

12 Q. Any Dimetab?

13 A. I never seen her give them Dimetab.

14 Q. You saw Benadryl. And what --

15 A. And Tylenol.

16 Q. -- was the other one?

17 A. Tylenol.

18 Q. And once she gave them this medication, what  
19 would happen?

20 A. She would make them lay down and take a nap.

21 Q. And what time of day are we talking about?

22 A. Any time of day. Morning, noon, evening.

23 Q. And did you see how she gave it to them? Did  
24 she measure out little amounts or --

25 A. No. She just let them drink it out of the

1 bottle.

2 MS. TANNER: No further questions. Please  
3 answer anything Mr. Hood has.

4 THE COURT: Mr. Hood?

5 CROSS-EXAMINATION

6 BY MR. HOOD:

7 Q. Just prior to your testimony here, you were back  
8 there in that room right over there, weren't you, with the  
9 solicitor, the Youngs, and your husband; is that correct?

10 A. Yes.

11 Q. And you guys were in there discussing with the  
12 solicitor about your testimony; is that correct?

13 A. Yes.

14 Q. Yes. Okay. So in other words, Ms. Young sort  
15 of used the same words that you used. Did you first hear  
16 those words back there in the room with Ms. Young?

17 A. No.

18 Q. Now, I believe you were the one, or was it Ms.  
19 Young, that recommended the Benadryl to Paris Avery?

20 A. No. I never recommend it.

21 Q. Well, was it Ms. Young?

22 A. I don't know.

23 Q. You don't know.

24 Well, Ms. Young supposedly came and dropped the  
25 kids off at the Huddle House; is that correct?

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 A. Waffle House.

2 Q. Waffle House. Was that sort of unexpected?

3 A. No, because she had talked to Ms. Avery, and Ms.  
4 Avery told her to drop them off at the Waffle House.

5 Q. Okay. Okay. So grandmama drops them off.

6 Now, you indicated that she was there for about  
7 a month and a half; is that correct?

8 A. Where?

9 Q. Paris Avery, at your house.

10 A. Yes.

11 Q. Okay. And did you ever, ever see anything that  
12 would indicate to you that Paris Avery didn't love and  
13 care for her children?

14 A. No.

15 Q. And Paris Avery, did she have a husband?

16 A. No.

17 Q. Did he ever live with her?

18 A. She never had a husband.

19 Q. Well, did whoever the father of her children  
20 were ever live with them?

21 A. Yes.

22 Q. And where were they living together at?

23 A. When they was -- when they was at West View.

24 Q. And what happened to cause her to leave West  
25 View?

1 A. My understanding, she got evicted.

2 Q. Okay. And was she by herself at that point in  
3 time?

4 A. Yes.

5 Q. And what did this father of the children do as  
6 far as a job is concerned?

7 A. He wasn't working at the -- he had moved back to  
8 Florida with the kids, with his parents.

9 Q. Okay. And so he left Paris here with the  
10 children; isn't that correct?

11 A. No. He moved back to Florida with the kids at  
12 the time. The kids was in Florida at the time.

13 Q. Okay. This was sometime prior to them moving  
14 into the house with you; is --

15 A. Yes.

16 Q. -- that correct?

17 And so Paris had to go out and find a place to  
18 live in order to get her children back; isn't that  
19 correct?

20 A. I can't -- I don't know. I mean, I don't know  
21 why she got evicted or whatever. I know when she got  
22 evicted she talked to my husband to ask him could she move  
23 in with us for awhile until she get her own place, and he  
24 said yes.

25 Q. Okay. So she could get her own place.

1 And so the children eventually came back down to  
2 stay with her and with you; isn't that correct?

3 A. Yes.

4 Q. Okay. So she had all three of them there in the  
5 house with you for about a month and a half?

6 A. Yes.

7 Q. And then she finally found her own place; isn't  
8 that correct?

9 A. Yes.

10 Q. And she was working at the Golden Coral at that  
11 time; isn't --

12 A. Yes.

13 Q. -- that correct?

14 And the eczema, the skin -- what was it,  
15 exactly?

16 A. Eczema.

17 Q. Eczema that the child had.

18 You were actually the person that procured those  
19 drugs for the child, weren't you?

20 A. I was the one took her to the doctor, yes.

21 Q. And you actually went to the pharmacy and  
22 procured the drugs; isn't that correct?

23 A. I didn't pick up the medicine. The grandfather  
24 picked up the medicine and brought it to me.

25 Q. Okay. And brought it to you. And you actually

1 gave the medicine to the child?

2 A. I gave him the first doses, yes.

3 Q. Okay. And you also continued to give it dosages  
4 as long as Paris wasn't there to do it; isn't that  
5 correct?

6 A. Yes.

7 Q. Okay. And also other members of your family  
8 actually gave doses of the drug to the --

9 A. No.

10 Q. -- child; isn't that correct?

11 A. No.

12 Q. Well, did your husband?

13 A. My husband wasn't there at the time. My husband  
14 drive trucks.

15 Q. Well, was he gone for a month and a half?

16 A. At times, yes.

17 Q. Well, so he was gone the whole time that Paris  
18 Avery and the children were there?

19 A. He would come home like on weekends.

20 Q. Okay. Now, did you get any kind of ointment to  
21 go along with this particular skin problem?

22 A. When I took him to the doctor, no. The doctor  
23 had gave me just the liquid because he said it had got so  
24 bad in his bloodstream, that was the only way it would get  
25 cured faster, with the liquid.

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 Q. So it was pretty bad, then, in other words?  
2 A. Yes.  
3 Q. And so the child was in a lot of pain; is that  
4 correct?  
5 A. Yes.  
6 Q. Okay. And had difficulty sleeping, and things  
7 of that nature; isn't that --  
8 A. Yes.  
9 Q. -- correct?  
10 MR. HOOD: Okay. I think that's all I have,  
11 Your Honor.

REDIRECT EXAMINATION

12  
13 BY Ms. Tanner:  
14 Q. Ms. Williams, when Mr. Hood asked you if Paris  
15 cared for her children, you said yes; is that correct?  
16 A. Yes.  
17 Q. Why are you the one taking the child to the  
18 doctor?  
19 A. Because at the time, she wasn't there and he --  
20 Q. Is this something that popped up overnight?  
21 A. What you mean? The sickness or --  
22 Q. The eczema that you took him to the doctor for.  
23 A. No. He had it. He had been had it.  
24 Q. Had you talked to her about taking him to the  
25 doctor?

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1 A. No. She wasn't there at the time. He had got  
2 so bad, me and the grandfather decided, you know, somebody  
3 needed to take him to the doctor. So I took him.

4 Q. Had Paris ever taken the child to the doctor,  
5 that you're aware of?

6 A. I'm not sure.

7 Q. When was the last time, before his death, that  
8 you gave him his prescribed medicine?

9 A. Before his death? I took him like -- he had  
10 went to the doctor the week before, which I think was on a  
11 Monday or Tuesday I took him. Probably that Wednesday or  
12 Thursday was the last time I gave him medicine.

13 Q. So it would be about a week before his death?

14 A. Yes.

15 MS. TANNER: No further questions.

16 RECROSS-EXAMINATION

17 BY MR. HOOD:

18 Q. Paris Avery was at work when you took the child  
19 to get the medication; isn't that correct?

20 A. I'm not sure. I think she was -- she had left  
21 my house at the time, so I don't know where she was.

22 Q. And isn't it true that Paris Avery had to take  
23 the child to the emergency room for ingesting bleach?

24 A. Yes. That was probably like a month or two  
25 before.



State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 Q. And she took the child -- that was from your  
2 house; isn't that correct?

3 A. Yes.

4 Q. Okay. And she came, and, in fact, discovered  
5 that the child had the smell of bleach on his breath;  
6 isn't that correct?

7 A. I can't answer that, because I was on the road  
8 with my husband at the time.

9 Q. Okay. And she took the child to the emergency  
10 room and had the procedure done to sort of remove the  
11 bleach; isn't that correct?

12 A. I wasn't there. I can't answer that.

13 Q. You weren't there?

14 A. I was on the road.

15 Q. But you know about the bleach; isn't that  
16 correct? You know she took him to the emergency room;  
17 isn't that correct?

18 A. Yes.

19 Q. Okay. And you say you were on the road with  
20 your husband; is that correct?

21 A. Yes.

22 Q. How often did you go on the road with your  
23 husband?

24 A. Every so often.

25 MR. HOOD: Okay. Thank you.

1 THE COURT: Solicitor?

2 MS. TANNER: Nothing further, Your Honor.

3 THE COURT: You may step down, ma'am.

4 [Whereupon, Ms. Williams is excused and exits  
5 the courtroom]

6 THE COURT: Anything further, solicitor?

7 MS. TANNER: That will be all the witnesses we  
8 call in this particular matter, Your Honor.

9 THE COURT: Okay.

10 MR. HOOD: Well, Your Honor, I'm so speechless.

11 I mean, I have just heard these two witnesses testify.

12 They obviously sat together in a room with the

13 solicitor, just prior to this testimony, and went over

14 the testimony apparently that they were going to give

15 out here, at least one at the time. And one comes in

16 and mimics the other, using the same terminology and a

17 little bit of everything else.

18 But it's totally irrelevant. We're talking

19 about Tylenol and Dimetab, at least. You know,

20 Benadryl, maybe. You know, and I just don't see the

21 relevance of this, other than to show some kind of bad

22 character on the part of my client. There is

23 absolutely no relevance to this particular testimony,

24 based on what these witnesses have testified to. One

25 saw it happen twice in a month and a half. But it was

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 to the other children -- perhaps she gave them Dimetab  
2 or whatever the other drug was, Tylenol -- but that's  
3 it. That's all you have. And so where is the  
4 relevance to this prescription drug, which Paris Avery  
5 did not even procure, which this woman gave to her to  
6 actually administer?

7 And it appears as though she wasn't perhaps  
8 there that often, traveling with her husband during  
9 that month and a half period she's talking about.

10 And I just don't see the relevance of it at all,  
11 and I don't think it's admissible. The probative value  
12 of this particular testimony is far outweighed by any  
13 prejudice -- the prejudice that would result from  
14 allowing this testimony. I mean, this is --

15 And it appears as though that the testimony may  
16 be even tainted because of the collusion of the group  
17 together in discussing this matter just prior to this  
18 testimony. That's all I have to say.

19 THE COURT: Solicitor?

20 MS. TANNER: Well, first, I'm going to take  
21 offense to the word collusion with me meeting with my  
22 witnesses prior to any hearing. I have a right to meet  
23 with my witnesses. I haven't heard any allegation that  
24 anyone was told what to say or there was any coaching  
25 going on. So that is about as farfetched as it gets.

1 And as an officer of this Court, that is not what was  
2 going on, and I have to be offended by any suggestion  
3 that's what was going on in that room.

4 Those ladies both testified to two different  
5 things. In general, the testimony was the same in that  
6 Paris Avery routinely gave her children medication to  
7 put them to sleep, no matter what time of day it was,  
8 so she didn't have to deal with them. In general, they  
9 both said that. Now, what they saw was different, what  
10 words they used were different. She even used  
11 different medications. I believe one witness saw her  
12 use Tylenol and Dimetab. The other one said she saw  
13 Benadryl used.

14 So what is important about their testimony, what  
15 is relevant to this case, is the motive for giving the  
16 child the medication the day he died. The intent for  
17 giving the child the medicine the day he died is  
18 clearly established by these two women. Because she  
19 gave those children medication routinely to make them  
20 go night-night, to make them take a nap because she  
21 didn't want to listen to them, she didn't want to hear  
22 the noise, that goes -- also is a common scheme and  
23 plan on her part. If she doesn't feel like messing  
24 with them, she brings them out and gives them some  
25 medication. The fact that it's prescription versus

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 over-the-counter makes absolutely no difference to  
2 motive or intent. The fact that it wasn't an accident,  
3 the fact that she got her hands on something a little  
4 bit stronger this time is probably why we're here,  
5 because it actually ended up killing the child this  
6 time. But the fact that she did it with other  
7 medications, the intent is the same, the motive the  
8 same, the common scheme and plan is the same.

9 It goes to show her indifference to her  
10 children's lives. She's indifferent. She doesn't want  
11 to deal with them. She doesn't even want them to play.  
12 She just wants them to go night-night. And that is why  
13 Child [REDACTED] is dead. That's why we are trying this  
14 case.

15 This evidence is clearly admissible. It's not  
16 prejudicial. I passed up State vs. Fletcher. It  
17 actually evaluates both Rule 404(b) and res gestae in a  
18 homicide by child abuse case. The facts are not very  
19 similar, but the arguments and the analysis for the  
20 evidence clearly applies in this case. And in that  
21 case the court did uphold allowing that evidence in. I  
22 have provided defense counsel a copy, as well.

23 THE COURT: In State v. Fletcher, the incidents  
24 of prior abuse towards the child were, [a], specific to  
25 that child, were traceable specifically to that child

1 after death. It was evidence that they found directly  
2 afterwards by of course the mother to that child that  
3 was the victim.

4 And, Solicitor, you stated that you were going  
5 to have an expert testify tomorrow, and it's the theory  
6 of your case is that it's called chemical restraint,  
7 where you try to subdue a child or to make them go to  
8 sleep by giving them some type of drowsy or sleepy type  
9 of -- I don't know what you would call it.

10 MS. TANNER: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. TANNER: Your Honor, if I may --

13 THE COURT: Yes.

14 MS. TANNER: -- since you brought it up.

15 I know Fletcher is specific to injury to that  
16 child. But there is case law, it's mainly in child  
17 sex-abuse cases, where crimes against other children  
18 which are similar in time and manner are allowed in  
19 under a Lyle, as well.

20 THE COURT: Those are very specific acts,  
21 though. And in sexual abuse cases it has to do with  
22 specific types of touching and the way it goes about  
23 it. The problem is -- and my only concern is you have  
24 got two witnesses that have testified very generally.  
25 I believe Ms. Williams stated that she knew of two

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 incidences, within the time that the child was there,  
2 that she saw Child being given either Tylenol or  
3 Benadryl. And I don't think the first witness, Ms.  
4 Young, was that specific even. I don't think there was  
5 anything in general -- I mean, I'm sorry -- anything  
6 specific. I think it was just in general. Is that  
7 correct?

8 MS. TANNER: That's correct. The older two  
9 children, which were two and three years old at the  
10 time Child died -- Child was fifteen months. The  
11 older children actually lived with Ms. Young, and she  
12 saw Ms. Avery do it to those two children. Child was  
13 not living with them at the time. He wasn't born yet.

14 THE COURT: So she just saw it being done to the  
15 two older children?

16 MS. TANNER: Yes, ma'am. Because Child had  
17 not been born yet.

18 But, again, that goes to common scheme and plan  
19 of how she chemically restrains her children in order  
20 to not have to deal with them. Child came along, and  
21 she did exactly to him what she did to the other two.  
22 And Ms. Williams backs it up, because she saw her do it  
23 to Child when he lived with her. And she said she  
24 observed at least two instances, in a month, that she  
25 lived there. You know, that's just what she observed.

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 But she can only testify to what she observed, not what  
2 happens when she's not there.

3 THE COURT: Okay. I'll tell you what I'm going  
4 to do. I'm going to go ahead and reserve ruling, and I  
5 think we're just going to have to go ahead and see how  
6 this unfolds.

7 Mr. Hood, I'm concerned. If I don't allow it  
8 out, I don't see how you don't -- how you cross-exam  
9 without opening the door on this. I mean, I'm not sure  
10 it's possible.

11 I think what I'm going to have to do is probably  
12 hear the test of whatever the expert is that -- if it's  
13 appropriate, and if it does come in and testifies as to  
14 chemical restraint, to determine whether or not it is  
15 truly relevant.

16 MR. HOOD: Judge, I would --

17 THE COURT: Yes. Yes.

18 MR. HOOD: I have something I would like to say  
19 with respect to that.

20 You know, this pathologist, chemist, or whoever  
21 it is that's going to come in and testify, is only  
22 going to testify as to what they were told by the  
23 police, by the investigator who investigated the case,  
24 which is the same stuff that we are hearing here: she  
25 did this in the past, and here's what she did, and



State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 boom, boom, boom. The pathologist says, I agree it's  
2 chemical restraint. Well, how do they know that? You  
3 know, I mean, it's all hearsay that he's relying upon.  
4 Or she, maybe. I don't know which one of them -- I  
5 think it was Demi, actually. And Demi even went so far  
6 as to say this was an unintentional poisoning of the  
7 child. Unintentional poisoning. The chemical  
8 restraint came in as a result of the information  
9 provided by the State as to what this woman believed --  
10 what they believe this woman was doing to get the child  
11 to go to sleep, to rest, to be able to sleep, from  
12 crying or whatever it was doing when it was in pain  
13 concerning the itching, things of that nature.

14 That's what their testimony is. These people,  
15 they can't testify that it was, in fact, chemical  
16 restraint, without having this information that's  
17 provided by them, just like these two witnesses who got  
18 up there and provided this sort of information. And  
19 that's all they can testify to.

20 THE COURT: Solicitor?

21 MS. TANNER: Your Honor, the pathologist will  
22 say this child died of a tremendous overdose of his  
23 medication. That alone supports this charge. The  
24 investigation, the followup -- Demi Garvin communicated  
25 with the pathologist, Dr. Caplan. She is the

1 toxicologist. Pathologists frequently work with  
2 toxicologists to determine cause of death. Cause of  
3 death is the tremendous overdose that this child was  
4 given. But Demi Garvin, who is a pharmacist and who  
5 did the toxicology, was also, after that, given further  
6 information, after the investigation goes forward,  
7 about this information that it may be something that's  
8 been occurring over time.

9 And, yes, the chemical restraint involves all  
10 that information, but it -- it goes to the motive.  
11 We've got the crime. The further investigation  
12 develops the motive. The motive is the chemical  
13 restraint, which is all of this information put  
14 together. So it is an integral part of the motive  
15 under 404(b).

16 THE COURT: And, obviously, the motive is  
17 required to prove the element of indifference; is that  
18 correct?

19 MS. TANNER: That's correct.

20 THE COURT: Extreme indifference?

21 MS. TANNER: In order to prove indifference to  
22 human life, which is an element of homicide by child  
23 abuse. You know, that's what this is. That's how we  
24 showed the indifference to human life. She's  
25 constantly medicating her children, on purpose, to make

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1           them go to sleep. The fact is this time she used a  
2           more potent medicine than what she had been using in  
3           the past, and death occurred.

4           THE COURT: And you're going to have someone  
5           testify as to that: this is a more potent medicine;  
6           correct?

7           MS. TANNER: Demi Garvin can testify, as well as  
8           Dr. Caplan, about the potency of this medicine versus  
9           something like Benadryl that you get over the counter.  
10          I haven't asked that question specifically of them in  
11          my conversations with them, but they have used the word  
12          potent with regards to this medication in my  
13          conversations with them. But I never asked them to  
14          compare it to Benadryl.

15          THE COURT: Mr. Hood, is there something you  
16          wanted to say, sir?

17          MR. HOOD: Not necessarily. I think we'll get  
18          to that with maybe these pathologists or toxicologists.

19          THE COURT: All right. Respectfully, I think  
20          I'm going to have to hear what they have to say.

21          MS. TANNER: Your Honor, I'll --

22          THE COURT: I'm sorry. Yes?

23          MS. TANNER: Do you want me to have Dr. Garvin  
24          here to have an in-camera hearing? Actually, I had her  
25          much later in the day. Those others would have already

1       been testifying before her, so I need to get her here  
2       earlier than I expected.

3               THE COURT: I think we need to bring her  
4       earlier.

5               MS. TANNER: Okay. I'll do that.

6               THE COURT: Okay? And at this point, until I  
7       obviously rule on it, I don't want you to open up the  
8       door. I don't want you to open up the door, and  
9       certainly I don't want you to testify as to it. Okay.

10              MS. TANNER: What time would you like her to be  
11       here?

12              THE COURT: Bring her at 9:30, if you can.

13              MS. TANNER: She's coming from Columbia, so --

14              THE COURT: Okay. Anything further as far as  
15       pretrial motions in this case? Mr. Hood?

16              MR. HOOD: That's all they're going to try to  
17       present.

18              MS. TANNER: On that matter.

19              MR. HOOD: I would assume. I mean, I don't know  
20       what other matters they had that they plan on using  
21       some type of Lyle.

22              MS. TANNER: I don't understand. That was the  
23       Lyle information.

24              MR. HOOD: Okay. So that's all? Because you  
25       had mentioned there was something else.

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 MS. TANNER: I don't think so.

2 MR. HOOD: Okay.

3 THE COURT: I can't guess at what y'all are --

4 MR. HOOD: I'm just asking.

5 THE COURT: I don't know unless you tell me.

6 Okay.

7 All right, y'all. Well, I'll see you-all at

8 9:30 in the morning, then, and you'll have your

9 witness.

10 MS. TANNER: Yes, ma'am.

11 THE COURT: Additionally, y'all at lunchtime  
12 brought me some cases. Of course, none of it was on  
13 point. All it did was -- strictly your 404(b) and Lyle  
14 analysis, which we are all very familiar with.

15 MR. HOOD: I mean, actually, there are no direct  
16 cases on point, Your Honor. And I think when you get  
17 into -- you know, if you follow the basic Lyle issue,  
18 you're talking about nothing but sexual-type cases --

19 THE COURT: Right.

20 MR. HOOD: -- involving children, normally.

21 And, again, I think that you have to apply the  
22 same rule, though, with respect to this kind of  
23 testimony, because if it's general, like we're talking  
24 about here, then you've got to get into the specifics.

25 In other words, I'm talking about a prescription drug

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 as opposed to something, Tylenol. You know, I take  
2 ibuprofen, you know, every now and then. And depending  
3 upon whether I have a backache, you know, that's bad, I  
4 may take two or three of them. Not supposed to because  
5 it says take one a day, you know, or something like  
6 that. So that's the problem I have with this whole  
7 issue. We're talking about something that I get from a  
8 doctor that the doctor prescribes to me. And in this  
9 case, it wasn't even prescribed to her. Actually, some  
10 other person goes and gets this substance, gets it from  
11 the pharmacy and brings it home and says, here's what  
12 we do; take it; just -- you know, that's how it worked.

13 So dealing with different substances, and  
14 particularly where we're talking about apples and  
15 oranges, something that you cannot walk in there and  
16 buy, and something else that you can just walk in and  
17 pick up like a can of beer, that's what I'm concerned  
18 about. And I think that Lyle basically is one of those  
19 things that, you know, you're talking about a specific  
20 pattern, you know. You have the conduct, and it has to  
21 follow exactly in order to show pattern conduct, you  
22 know. And that's what we're talking about.

23 THE COURT: Mr. Hood, I'm not so concerned about  
24 the difference between Dimetab and Tylenol versus  
25 whatever this eczema medication is, which no one has

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 even told me is --

2 MR. HOOD: Yeah.

3 THE COURT: I'm not so much concerned about that  
4 difference. What I am more concerned about is under  
5 404(b) and a Lyle analysis, what we're looking at is  
6 specific acts, and they have to be similar and they  
7 have to be close in time. If we're doing a strict  
8 404(b) Lyle analysis -- and it can't be generalization.  
9 And obviously the whole point -- the whole point is to  
10 prevent being tarnished by character evidence of, it's  
11 likely that this is what they did in the past and this  
12 was a repeat. It's got to be something specific. And  
13 what I'm looking at is that in testimony we need clear  
14 and convincing evidence that this had occurred in the  
15 past. And that's what I'm looking at.

16 On the flip side of all that is I don't know how  
17 you prove extreme indifference to human life, unless  
18 you can show some type of motive, intent, or reason.  
19 So I'm not sure that while I understand the analysis  
20 really is a 404(b) analysis or a Lyle type analysis, I  
21 don't think it's exactly used analogous to you in these  
22 types of cases.

23 MR. HOOD: Well, I would agree with you that  
24 that's what I'm trying to say is, you know, we're  
25 dealing with apples and oranges when we're talking

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 about the two different types of substances. And Lyle  
2 basically has dealt strictly with sexual type matters.

3 THE COURT: But without showing this, I don't  
4 know how the State proves, you know, the intent portion  
5 of it and that requirement of the element of, you know,  
6 homicide by child abuse. I don't know how they -- any  
7 way to show -- how would it not be accidental in every  
8 situation, then?

9 MR. HOOD: Judge, it makes no difference whether  
10 it's accidental or not. Extreme indifference to life,  
11 basically, in my opinion, is you know there's a risk, a  
12 certain risk, that you take. And if you're willing to  
13 take that risk and it results in death, you've accepted  
14 it. You've accepted the fact that you knew, going into  
15 this, that this can cause death or serious bodily  
16 injury to the child. That's the risk that you take. I  
17 don't take that risk when I sit there and I say to  
18 myself, you know, what's the worse that could happen in  
19 this case? He goes to sleep; he has a good night's  
20 sleep; he sleeps better through the night; he's not  
21 itching and screaming and whatever. That's the risk.  
22 He sleeps.

23 You've got to have that mens rea or that  
24 criminal intent, that thing that you know what the  
25 risks are. And all these cases involving the -- you



State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 know, child abuse cases have all been something that we  
2 know what the risks are when we take it. You know,  
3 that's like the crack cocaine and the cocaine cases  
4 that we dealt with, you know, with in-gestation for the  
5 child, the newborn, the baby is inside, you know. And  
6 they knew what the risk was, because everybody knows  
7 crack cocaine kills. Cocaine can kill you. All of  
8 those things a person knows, and they're willing to  
9 accept that risk to the body inside of them that's  
10 living.

11 And it's the same situation here. We're talking  
12 about if, in fact, she is the one that gave the drug to  
13 the child -- we don't even know that. But let's just  
14 assume for the moment that she did. Why did she give  
15 it to the child? If, in fact, you believe the State's  
16 theory of the case, she did it so that the child would  
17 be able to sleep -- sleep -- that is the risk that's  
18 involved. Has nothing to do with harm to the child.  
19 Nobody ever, ever intended any harm to the child, not  
20 the doctor who prescribed the medication -- this  
21 medication has never killed before.

22 So, you know, you've got to have a little bit of  
23 a criminal mind there, you know: something to do harm,  
24 to do bad, and you know the risk. If you know that the  
25 risk potentially can cause this particular problem,

1 death or serious bodily injury, and you say, so what,  
2 I'm willing to take the risk, I'll give it to him  
3 anyway, that's what we are talking about in this case.  
4 And you know the risk. And here we're not talking  
5 about a risk of serious bodily injury or death, period.  
6 I mean, just it never happened. Nobody ever dreamed it  
7 was going to happen. Over a -- their theory is it's  
8 over a three-day period of time that -- we don't even  
9 know how long the drugs remain in the system. We don't  
10 know how long those drugs, you know, had been given.  
11 It could have happened over a three-day period of time,  
12 according to what we have in the evidence, anyway.

13 So that's my problem with the extreme  
14 indifference. And that's, you know --

15 THE COURT: Solicitor?

16 MS. TANNER: I'm not even exactly sure what  
17 we're arguing at this point. But extreme indifference  
18 to human life: if you believe the State's case, Avery  
19 Paris -- Paris Avery did not give the medication to her  
20 child so he would have a good night's sleep. She gave  
21 it to the child so she could do what she wanted to, so  
22 she didn't have to be a mother, so she didn't have to  
23 parent this kid, because she's indifferent to being a  
24 mother to these children, which is why she constantly  
25 medicates them to keep them asleep so they don't play,

State v. Avery  
Jury Trial - Volume 1 of 4  
May 19, 2008

1 so they don't make noise. She's indifferent to their  
2 lives and their enjoyment of their lives. She puts  
3 them down. She keeps them asleep. That's why she does  
4 it. She does it for herself, not the child.

5 So Mr. Hood's argument is clearly off what the  
6 State is saying. It's necessary -- even 404 aside, res  
7 gestae is an element of the crime to prove that she was  
8 indifferent to human life. This testimony, as short as  
9 it is, it goes to that. It goes directly to that. It  
10 goes to why she did what she did. It's not an  
11 accident. It's she's indifferent to her own children.  
12 She's not mothering them.

13 You heard from these two women that over the  
14 fifteen months of this child's life, she only cared for  
15 him by herself maybe the last two weeks of it. And we  
16 see how that ended. She has been indifferent to him  
17 since the day he was born, including the older brothers  
18 who she's been giving medication to. It shows a common  
19 scheme or plan.

20 THE COURT: The problem with what you just said,  
21 though, solicitor, is that's character evidence. I  
22 mean, that's what you're talking about is character  
23 evidence.

24 MS. TANNER: Not that she's indifferent to her  
25 children. Character evidence would -- if I had asked

1 one of these witnesses -- and I asked her, because Mr.  
2 Hood opened the door -- why did you have the children;  
3 did you take them, or did she give them to her. She  
4 signed them over. She signed a piece of paper that  
5 said, take my kids. That would be a little bit of  
6 character. She's given her kids away.

7 The indifference to her children is that she  
8 doesn't care about them: the indifference to the human  
9 life. She is willing to put them asleep, regardless of  
10 the side effects: grogginess, how he feels that day,  
11 how he feels the next day. That is indifferent to his  
12 life, and his quality of life, so that she doesn't have  
13 to parent. That's not character evidence. That's an  
14 element of the crime, which is indifference to his  
15 human life.

16 THE COURT: Okay.. Anything further?

17 MR. HOOD: I would just say that I don't think  
18 the evidence will ferret that out. But, anyway, we'll  
19 just keep on going.

20 THE COURT: All right.. Well, y'all, we'll be  
21 back, then, at 9:30 at this case tomorrow morning.

22 [JURY TRIAL ADJOURNS AT 3:24 P.M.]  
23  
24  
25

PROCEEDINGS

1  
2 THE COURT: Solicitor, I understand your witness  
3 is not available this morning; is that correct?

4 MS. TANNER: That's correct, Your Honor. Dr.  
5 Garvin is actually involved in three separate trials  
6 this week in some form or fashion. When I had spoke to  
7 her about the trial and the scheduling, I did tell her  
8 that she would be one of the last witnesses today. She  
9 was coming from Columbia, I was just trying to be  
10 convenient for everyone, so she planned to be here by  
11 1:00 or two o'clock today.

12 I finally -- I did get in touch with her last  
13 night about eight o'clock. She told me that based on  
14 our prior conversation, she had already made an  
15 appointment this morning in her office to prepare some  
16 documents for another trial and that she could not  
17 actually leave Columbia until about 9:30 or 10:00. I  
18 asked her if we could possibly call her on the phone  
19 and talk to her even if she's driving, on the cell  
20 phone, and she said that would be fine if that worked  
21 out. So we can get in touch with her by phone right  
22 now, but she will not actually be in the county until  
23 probably one o'clock.

24 THE COURT: All right. Let me tell you what I'm  
25 going to do. And I will put on the record that I did

MIA PERRON, CCR, CVR-CM

-6-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 extensive research on this last night and literally  
2 went through literally all over the country to see  
3 where people fall and where the courts are falling on  
4 this Rule 404(b) and Lyle. I can tell you it tends to  
5 be all over the board.

6 And I understand the recent case that you gave  
7 me, Solicitor, of Fletcher with the Court of Appeals.  
8 I can tell you that I don't think our case is directly  
9 on point. Right now what I'm going to do, based on  
10 your expert not being here -- and also because I  
11 haven't heard the testimony in this case -- I'm going  
12 to reserve a ruling on whether or not those two women's  
13 testimony can be given regarding the children being  
14 given over-the-counter cough medicine to put them  
15 asleep, or to subdue them in some way, until I have  
16 heard more evidence in the case.

17 As y'all know, Rule 404(b) is a rule of  
18 inclusion, not exclusion. And in going through and  
19 looking at all the background, permitting the  
20 introduction of other wrongs as evidence in a criminal  
21 case, as y'all know, is a very slippery slope.  
22 Obviously, it can't go to prove the character of the  
23 defendant or that she is in some way perhaps a bad  
24 mother as a result of that and somehow try to taint her  
25 to bring in -- or try to obtain a conviction on this,

MIA PERRON, CCR, CVR-CM

-7-

1 although I can see instances, based on the defense and  
2 what you do put up, Mr. Hood, where it could become an  
3 issue.

4 The case law that I'm seeing, and particularly  
5 in this case, I would look at the exceptions under  
6 404(b) of possibly intent. Although not so much  
7 intent, but maybe absence of mistake, as being a  
8 possibility, if that became a type of offense that --  
9 then we would look into these types of prior -- and I  
10 don't know what to call them. I guess they're prior  
11 wrongs. Because as it stands right now, I don't think  
12 they're necessarily evidence of prior child abuse, like  
13 you would clearly understand and see under Fletcher,  
14 where we've got broken ribs and contusions and, you  
15 know, handcuffing children to the bed. I mean, I think  
16 those are clear-cut.

17 Based on that, as of right now I'm not going to  
18 let it in. But as I said before, Mr. Hood, you can  
19 more than open the door on this and it truly may become  
20 an issue. And after I hear this doctor testify, it may  
21 be something that we hear about. But as of right now,  
22 you're not to mention it in opening statements. I  
23 don't want any testimony in regards to it. I think at  
24 the time that it's appropriate is when you have your  
25 doctor here or we get to that point. Solicitor, we can

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 certainly open it back up again for discussion. Also,  
2 it's going to be a lot based on what Mr. Hood does in  
3 his cross-examinations.

4 MS. TANNER: Your Honor, if I just may? Outside  
5 of 404(b), the State's position is that this testimony  
6 and reference to this testimony is part of this case.  
7 It is the abuse and neglect that occurred that  
8 eventually caused the death of this child. Because she  
9 intentionally kept these children asleep, it does go to  
10 the fact that she has indifference to the child's  
11 welfare.

12 Without being able to mention that in opening  
13 statements and explain exactly where this is going, and  
14 all of the other witnesses leading up to that, it  
15 substantially impairs the State's case in that that is  
16 the motive for the crime. It is the vehicle that gets  
17 it to death. It is an integral part of the case  
18 outside of 404(b). Even under res gestae, it is part  
19 of this crime. It is the abuse and neglect. Like in  
20 Fletcher, the abuse and neglect were broken bones. In  
21 this case the abuse and neglect, intentionally over-  
22 medicating a child to keep them suppressed, to keep  
23 them quiet, to keep him asleep, which eventually led to  
24 death.

25 THE COURT: The difference you have in this

MIA PERRON, CCR, CVR-CM

-9-



1 scenario, though, solicitor, is that we have a child  
2 that was taken to the doctor and it was prescribed this  
3 oral eczema medication. Because it was prescribed,  
4 directed to by a doctor -- we aren't trying to suppress  
5 or subdue a child who has nothing wrong with it. We've  
6 got a child presumably -- and all I can do is presume  
7 this because according to y'all's testimony yesterday,  
8 we have a child who went to the doctor, who did have a  
9 problem with eczema, who was prescribed medication,  
10 that I am going to assume -- I haven't heard it yet,  
11 and I'm assuming the testimony will come -- that it was  
12 an appropriate prescription and that it was necessary.

13 So while on these other cases there may be the  
14 allegation that she's trying to subdue children who are  
15 fine and have no problems to try to make them sleepy to  
16 go to sleep, it's not unreasonable when you have a  
17 child who is crying and colicky and upset and screaming  
18 because they are itching to give them medication that  
19 the doctor has prescribed.

20 So we don't have quite the same incident. I  
21 think you would have a much better argument if what was  
22 overdosed was just, as you said, cough medicine or  
23 something along those lines, whether it be prescription  
24 or not, that is being given as a result of nothing just  
25 because the mother, say, wants to go to sleep or the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 mother wants to not have to deal with the child versus  
2 a child who truly has a problem and they're trying to  
3 medicate that problem. Whether or not they over-  
4 medicate it or what they did, of course, is what's  
5 going to be the final issue for the jury. But I think  
6 there is a difference.

7 MS. TANNER: Well, the issue is that she's not  
8 using the medication for the purpose it was intended,  
9 just like she didn't use Benadryl, she didn't use  
10 Dimetab or Tylenol, for the purpose it was intended.  
11 She is using it to abuse her child.

12 THE COURT: Well, we don't know that, though,  
13 because I can tell you, I haven't heard any testimony  
14 yet whether or not this woman was even there. I mean,  
15 I actually went home, and as I was going through this  
16 over the hours last night, I don't even know if the  
17 woman was there when this child died. I can tell you  
18 that according to the newspaper articles, it appears  
19 she wasn't. But, of course, that could be wrong. But  
20 I haven't even heard what that testimony is yet. I  
21 don't know who even was at the home.

22 I also heard Ms. Williams, who was the woman who  
23 at some point the defendant had lived with, say that  
24 she gave one of the first dosages of the medication.  
25 Now, she said that and then it was clarified that it

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 was possibly a week before.

2 MS. TANNER: A month prior.

3 THE COURT: But that doesn't go to what I heard  
4 back in chambers when y'all talked about there first  
5 being a first prescription that wasn't filled and now  
6 this is -- or, I'm sorry -- that was filled and lost,  
7 and now a second prescription.

8 My problem, solicitor, is is that I don't have  
9 enough facts to rule on a motion in limine at this  
10 point. It may be that the facts are there that you can  
11 establish and you can show. If you can put this person  
12 there, if you can put this person has been giving all  
13 the dosages. But I haven't even heard that much yet,  
14 as far as the story is concerned.

15 And which is always why -- and I will tell you  
16 this. Judges are very hesitant to rule on motions in  
17 limine until they know how things unfold. Because I  
18 certainly wouldn't want to go ahead and exclude  
19 something that absolutely becomes relevant and that  
20 should be let in in a case. I won't know that until  
21 we've reached that. Just like I have no clue what his  
22 defense is going to be right now. And it may be  
23 something like identity. Well, if it comes to  
24 identity, he could certainly open the door as to this  
25 issue. If it's mistake or absence, yeah, absolutely it

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 could open the door for a Lyle exception. Even  
2 possibly intent.

3 The problem is is I don't know enough about the  
4 case yet, and it hasn't been presented. Until I do, I  
5 think you need to put up your case. I think you need  
6 to put up your investigators. I think you need to say,  
7 and show me, and tell me what happened, because, like I  
8 said, you know, unfortunately, as a judge, you know,  
9 y'all tell me the Friday before what you're going to  
10 try. I don't have the basis and the background, I  
11 don't have the -- I don't have your file. I haven't  
12 had the opportunity to look at it. I can hear it as it  
13 unfolds.

14 So that's how I can't rule on something until I  
15 know how it's going to unfold. It absolutely may be  
16 that by the time your first or second witness gets up  
17 there, solicitor, that I absolutely agree with you.  
18 But at this point, I can't tell you, because I don't  
19 know what it's going to show.

20 MS. TANNER: I'm just saying it's very difficult  
21 to present the case now, while avoiding that topic,  
22 because it is so intertwined in the case about her  
23 medicating these children, the cause of death, the  
24 witnesses who are there, family members, who -- how it  
25 was brought to light to investigators. All of that.

MIA PERRON, CCR, CVR-CM

-13-

1 The investigation that developed this into homicide by  
2 child abuse, it all points back to that information  
3 that now I can't comment on. So it's -- I don't even  
4 exactly know right now how I would even put up  
5 witnesses at this point and dance around that issue.

6 The first witness, maybe. The second witness is  
7 the investigator who establishes the case. And that  
8 goes into her interviews, her case history, all these  
9 things that these people told her, which she followed  
10 up with and followed up with the medical experts to see  
11 if this fit. So I can't even get past my second  
12 witness without this becoming an issue.

13 THE COURT: Well, solicitor, that means, then,  
14 you have a problem with your case.

15 My concern is this: you can't solely hang your  
16 hat. There has got to be something else to be able to  
17 put on your case. Because, you know, looking --

18 MS. TANNER: This is the case. This is the  
19 case. She intentionally gave her child this  
20 medication. The witnesses that will be brought up will  
21 say she is the only one that could have; she said she  
22 gave it to him that day. Now, she claims she gave him  
23 the appropriate dosage. But clearly the pathologist  
24 and the toxicologist are going to say there's no way,  
25 there was way over what should have been in this

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 child's system; she clearly over-medicated the child.

2 But as part of all of that, the investigation,  
3 that gets them to keep -- when officers first  
4 responded, what you've got is you've got an unexplained  
5 death. And to follow up on that investigation, they  
6 start looking at, well, was the child taking any  
7 medication that could have caused his death. She  
8 points them to the medicine bottle. They get the  
9 medicine bottle from her house. She's the only one  
10 that had been there. She medicated the children --

11 THE COURT: And she was there when the child  
12 died?

13 MS. TANNER: She medicated the child at her  
14 house. She was not going to go back to work that  
15 night. Her friend came --

16 THE COURT: Solicitor, was she at home when the  
17 child died? Who was taking care of the child when the  
18 child died? It was after midnight.

19 MS. TANNER: The child was medicated and taken  
20 to a babysitter's house and put directly to bed. An  
21 hour later, it was discovered dead. Whether it was  
22 dead when she dropped it off -- there is a possibility  
23 that the child was dead when she dropped him off, but  
24 we can't say for sure.

25 But the medication was not at the babysitter's

1 house. She didn't medicate the child. It was at the  
2 mother's house, and no one else was at that house with  
3 the medicine other than mother.

4 THE COURT: Solicitor, let me ask you this. Is  
5 it your toxicologist or your pharmacologist's opinion  
6 going to be that this medication was given repeatedly  
7 over time, over like a two- or three-day period? Or is  
8 it just one fatal dosage? Because I haven't heard any  
9 testimony even as to that. And I certainly haven't  
10 heard anyone give me the facts as to that. Is this  
11 something that it was just a continual, gradual take  
12 more? Or was it just one fatal dose?

13 MS. TANNER: She can only testify that at the  
14 time of death it was a tremendous fatal dose.

15 Now, medication, as you know, when you take it,  
16 it stays in your system. So to get the exact level of  
17 the final dose, she can't give that. She can give an  
18 approximate, because if he had been given as he was  
19 supposed to get it, there would have been a little bit  
20 in his system but it would have been a medically-  
21 accepted level. This was so far above the medically-  
22 accepted level that there had to have been a final  
23 lethal dose.

24 THE COURT: Okay. So your doctor will be able  
25 to testify that there was a final lethal dose given?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 MS. TANNER: Yes, ma'am.

2 THE COURT: Is that what you're saying?

3 MS. TANNER: Yes, ma'am.

4 THE COURT: Okay. It still just doesn't affect  
5 and doesn't change right now what you are able to  
6 testify to. As I asked you yesterday, I understand  
7 that your doctor is busy. Respectfully, she's not  
8 testifying at trial this morning; she's preparing for  
9 another trial. And I understand the constraints, and I  
10 understand how hard she is working, and I certainly  
11 respect it. But at this time, I'm not going to allow  
12 it until I hear something that opens the door that  
13 allows it to come in.

14 I mean, I just think we have a very slippery  
15 slope. And as you know, Lyle evidence -- and Lyle and  
16 Rule 404(b), while it allows for this, it is protected.  
17 I can tell you that looking and listening to the  
18 totality of the testimony from both the paternal  
19 grandmother and the neighbor who presumably -- was that  
20 the woman who was caring for the child when it expired  
21 or had expired? It was at her house that the baby was  
22 taken to?

23 MS. TANNER: Another neighbor. Not one of the  
24 two that testified.

25 THE COURT: Completely different person.



1 MS. TANNER: Yes, ma'am.

2 THE COURT: Okay. Anyway, obviously their  
3 testimony has to be by clear and convincing evidence as  
4 to these prior wrongs. Again, I don't know if we're  
5 prepared to go so far as to say that giving a child  
6 Benadryl, or something to make them sleep, is child  
7 abuse. Clearly it's improper. But whether or not it  
8 rises to a level of child abuse, I don't think we're  
9 here to make that assumption. I think that's for the  
10 jury to determine. However, at this time, you haven't  
11 given me enough to be able to let it go to them.

12 But like I said, I'm open to it. And certainly  
13 if you can -- if Mr. Hood opens the door, certainly,  
14 and if you can convince me either through your  
15 toxicologist or through your other witnesses that it's  
16 appropriate Lyle evidence, I'll more than consider it.

17 MS. TANNER: Well, when she gets here, if we  
18 could have the in-camera hearing. I'll call her right  
19 now and ask her to please get here as soon as possible.

20 I did talk to her last night about eight  
21 o'clock, finally, to find out if she could be here. In  
22 general, what her testimony would be with regards to  
23 this: obviously, there's going to be testimony about  
24 this particular drug. It's called hydroxyzine. It is  
25 a suppressant of the central nervous system. So there

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 will be testimony about that, clearly. Also --

2 THE COURT: Which is meant to stop the itching;  
3 correct?

4 MS. TANNER: Right.. It suppresses your central  
5 nervous system, which will prevent you from itching.  
6 However, if you get too much of it, there is an  
7 increased suppression of your central nervous system,  
8 obviously. And that's what happened in this case. His  
9 central nervous system was suppressed so much that he  
10 actually stopped breathing. So there will be testimony  
11 about that.

12 Then she will go into, you know, in her  
13 experience have you seen overdoses like this. Well,  
14 first her results, obviously, which would be the  
15 tremendous overdose level. Have you ever seen this in  
16 your experience in a child under the age of two. Her  
17 answer is going to be, yes, is what she tells me.  
18 She's seen it.

19 And then I would follow up with something along  
20 the lines of, well, in your experience, what is the  
21 cause of such an overdose in such a young child. And  
22 she tells me there are two types of causes, basically:  
23 accidental, and intentional. Accidental clearly is the  
24 child gets into the medicine cabinet and drinks it  
25 himself. The types of intentional are anything from

MIA PERRON, CCR, CVR-CM

-19-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 homicidal poisoning, where you are intentionally trying  
2 to kill your child, which is not what we're claiming in  
3 this case, or what she calls chemical restraint. And  
4 that is when an adult uses these types of medications  
5 to intentionally put the child in a state where he does  
6 not have to be cared for.

7 THE COURT: Well, chemical restraint is also a  
8 medically-accepted procedure that doctors will  
9 prescribe certain medications for aggressive adults or  
10 people that are -- have aggressive or behavioral  
11 problems. I mean, hydrocodone is used with a mixture  
12 of other things, as well. It's not just something that  
13 a parent does to try to restrain a child. It's  
14 something that medically someone can do if you have a  
15 child or an adult who has either behavioral problems  
16 or, you know, outbursts that are uncontrollable.

17 MS. TANNER: Right. That's --

18 THE COURT: I think what you're trying to do,  
19 though, with your doctor, it's -- it's a huge jump. I  
20 mean, obviously for her to be able to discuss intent,  
21 she is going to have to base it on what these other  
22 women say, is what I'm guessing -- is that correct --  
23 because that would be the only way she could come up  
24 with it.

25 MS. TANNER: Right. And then the follow-up to

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 that would be after describing what that is and what it  
2 means, based on her, you know, consultation with the  
3 pathologist, with the investigator, and the case  
4 history, you know, did she issue an opinion on what  
5 could have been the cause of this overdose. And  
6 clearly she can't say for sure, because she's not  
7 there, like any of us. But in her opinion it does fit,  
8 based on the case history and the medical evidence  
9 that's found in this case.

10 THE COURT: Okay. Mr. Hood, you can weigh in.

11 The problem is your burden of proof is beyond a  
12 reasonable doubt in this case. This is not a civil  
13 case.

14 MR. HOOD: Judge, I'm planning probably to  
15 object to this witness' testimony concerning all of  
16 this information that she gets from somebody about  
17 something. It's all hearsay, it's all -- again, this  
18 whole issue concerning these two ladies and what they  
19 claim to have seen, we're talking about parenting  
20 skills. Whether the child needs a nap and how the  
21 child gets the nap is up to the parent. They didn't  
22 like the fact that she wanted them to take naps during  
23 the daytime. That's a parenting issue. She makes the  
24 decision on when her child takes a nap.

25 If she wants -- and we're talking about little

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 children. We aren't talking about big kids here.  
2 We're talking about a one-and-a-half, a two-and-a-half,  
3 maybe, and at the most a three-and-a-half. And they're  
4 all in diapers, they all have their sippy cups, they  
5 all -- you know, and they all have time-outs; you know,  
6 I'm going to take my kids and I'm going to have them  
7 take a nap in the morning; I'm going to take my kids  
8 and I'm going to have them take a nap in the afternoon.  
9 That's a decision that the parent makes, not these  
10 people. They don't like what she did; well, let them  
11 be boys, let them run around and raise all the cane  
12 they want to. Well, that's her decision, not their  
13 decision.

14 So -- and how do they know they did not need  
15 whatever it was that she was giving them? How did they  
16 know? They don't know that, and there hasn't been any  
17 testimony that they knew anything about it. Did they  
18 ever report any of this as being abuse or anything of  
19 that nature? No.

20 So what we're talking about is this woman's  
21 decision to parent her children, if, in fact, she did  
22 what they claim. And that's not a decision for us here  
23 in the court, either. It's a decision for family  
24 court, maybe, but it's certainly not a decision for us  
25 to decide whether we're going to allow character

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 evidence to come in to support the State's shaky case,  
2 to begin with, and -- you know, this is the clue to  
3 what happened and so we're going to allow this type of  
4 evidence, character evidence, to come in, and not even  
5 know the basis for what happened there, why the kids  
6 were given Tylenol. Did they have a cold?

7 We know nothing about what this lady was talking  
8 about, other than the fact that she didn't like the way  
9 she was parenting the children. She didn't like the  
10 fact that she made them take naps. Well, she had a  
11 son, who was the father of all these children, and  
12 apparently he didn't show much interest in it at all.  
13 So maybe her parenting skills aren't as good as Paris'  
14 parenting skills.

15 So we're getting into an issue here where  
16 character evidence concerning parenting skills, where  
17 there is no documented evidence that the children were  
18 abused as a result of her parenting skills. And, you  
19 know, this has gotten totally out of hand. You talk  
20 about a slippery slope. This is terribly slippery, I  
21 mean, because we -- you know -- well, that's all I have  
22 to say about this issue.

23 THE COURT: All right. Well, Mr. Hood, what you  
24 made was obviously very much like a closing statement,  
25 and it definitely is argument.

1           What I have to look at in looking at the  
2           totality of it is we're talking about an alleged wrong.  
3           And in looking at an alleged wrong, we have the  
4           testimony of the grandmother, who didn't give any  
5           specific instances and basically just said she would  
6           use this medication for a night-night; was so general.  
7           And I can tell you that concerns me, to start with,  
8           that it's just a general statement of she did this on a  
9           regular basis. And I didn't even hear it directly from  
10          her that she actually did it to this specific child,  
11          this Child           as opposed to the older two boys. That  
12          concerns me that it is not specific. It is just a very  
13          general, broad-based.

14               And I can tell you, solicitor, much of her  
15               testimony did try to go to show that she was a bad  
16               parent. It had more of the sound and the ring of  
17               character evidence versus specific instances.

18               As to Ms. Williams, what we heard was that she  
19               saw the defendant do it two times during the month and  
20               a half that she was living with them, and that was  
21               about two months before the incident. So we're talking  
22               about two instances. And she wasn't even specific as  
23               to those two incidents, whether they were to the other  
24               two boys or if it was also to Child           as well. I  
25               mean, the problem is is that you're trying to just

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 paint a broad-stroke brush without something super  
2 specific.

3 You know, you and I both know that Lyle is used  
4 more so in cases of sexual abuse. And, of course, it  
5 now has come into play in these kind of cases. But I'm  
6 not convinced as of right now, based solely on their  
7 testimony, that it is reliable and that it comes in  
8 under a Rule 404(b) and Lyle exception.

9 But, again, I am not closing the door to you. I  
10 think Mr. Hood is going to have a very hard time  
11 putting up his case, or doing anything, without opening  
12 the door. But we're just going to have to wait until  
13 that point comes and to see exactly what it is he is or  
14 is not going to do, because, again, I don't know  
15 enough. Okay?

16 So with that said, you're not going to mention  
17 it in your opening statement, and your first witnesses,  
18 until we can have a better idea. Okay?

19 All right. Anything further before we bring the  
20 jury in this morning?

21 MR. HOOD: Judge, we do have the issue  
22 concerning the strike issue we discussed --

23 THE COURT: Let's go ahead and put that on the  
24 record, Mr. Hood.

25 MR. HOOD: Just to put it on the record: we



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE COURT: Thank you, Mr. Hood. Solicitor,  
2 call your first witness.

3 MS. TANNER: Your Honor, the State calls Joe  
4 Schaefer.

5 THE COURT: Mr. Schaefer, if you'll please come  
6 forward to be sworn, sir.

7 [Off the record momentarily]

8 [Whereupon, Mr. Schaefer enters the courtroom]

9 THE COURT: Mr. Schaefer, please come forward,  
10 sir, to be sworn.

11 THE CLERK OF COURT: Sir, would you place your  
12 left hand on the Bible and raise your right hand for  
13 me, sir.

14 [Whereupon, Mr. Schaefer is duly sworn by the  
15 clerk of court]

16 THE CLERK OF COURT: Please be seated, state  
17 your name and spell it for the Court, sir.

18 [Whereupon, Mr. Schaefer takes the witness  
19 stand]

20 THE WITNESS: My name is Joseph K. Schaefer.  
21 Last name is spelled S-C-H-A-E-F-E-R.

22 MS. TANNER: Good morning, Mr. Schaefer.

23 THE WITNESS: Good morning.

24 - - -

25 - - -

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 JOSEPH K. SCHAEFER,  
2 Having Been First Duly Sworn,  
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. TANNER:

6 Q. Where are you employed?

7 A. I am employed with Beaufort County Emergency  
8 Medical Services.

9 Q. And is there any training involved in your  
10 position?

11 A. Yes, there is.

12 Q. And what would that be?

13 A. We start out at basic EMTs, which is about five  
14 to six months training at the technical college here.  
15 Then we do about six months of road experience. And the  
16 next level would be intermediate training, which is about  
17 three or four months, along with some clinical hours and  
18 along with a paramedic, which is anywhere from twelve  
19 months to two years.

20 Q. And how long have you been doing that?

21 A. Twenty-two years.

22 Q. What is involved in your job? What would a  
23 normal day -- if there is a normal day -- would it be  
24 like?

25 A. Our normal day starts at eight o'clock and then

MIA PERRON, CCR, CVR-CM

-41-

1 ends quickly. But we start out checking our units, call  
2 our equipment off, and then stand ready to answer the  
3 calls when they come in, whatever. They get assigned to  
4 specific trucks for different areas.

5 Q. And what kind of calls do you get?

6 A. Anywhere from a broken toenail, to cardiac  
7 arrest, to gun-shot victims, to unconscious people, to  
8 sunburns. Just a variety of calls.

9 Q. You answer just about anything; is that correct?

10 A. You call, we haul.

11 Q. And what kind of services do you personally  
12 provide in your position?

13 A. My job is I'm in charge of the truck. I'm the  
14 lead paramedic. I make sure that the crew operates  
15 properly. I'm an advanced paramedic -- my job is to go  
16 above and beyond what the basic is taught to do -- with  
17 assessment, cardiac monitor, and the advanced cardiac  
18 life-support drugs, different other medications that I can  
19 administer throughout my job.

20 Q. So there are levels of emergency personnel?

21 A. Right. There's basic and intermediate and then  
22 paramedic, which is the advanced.

23 Q. And what distinguishes those levels?

24 A. The amount of training that you've had.

25 Q. And what level are you currently?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. I'm a paramedic.

2 Q. Is that the highest level?

3 A. That's the highest level.

4 Q. Now, were you working the evening of August 18th  
5 going into the early morning of August 19th, 2002?

6 A. Yes, I was.

7 Q. And were you called out to [REDACTED] [REDACTED]

8 Circle in the Burton area?

9 A. Yes, I was.

10 Q. Can you tell the jury what you find when you  
11 arrive and what kind of call you responded to?

12 A. We responded to a call of an unconscious child.  
13 Once we arrived at the scene, we came in. There was a lot  
14 of frantic people in there. Child was unconscious, not  
15 breathing, pulse was apneic, laying motionless.

16 Q. What does apneic mean?

17 A. Without respirations.

18 Q. Did you provide -- what type of examination do  
19 you perform when you arrive?

20 A. We do a quick assessment. We look for signs of  
21 life, as in the pulse and the respirations. We also check  
22 the pupils to see if they are fixed and dilated. We also  
23 check to see if the luster is gone from the eyes. And if  
24 the luster is gone, then this is usually twenty to thirty  
25 minutes that this has occurred and once that has occurred,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 then pretty much death has already happened.

2 Q. And what did you find in this child?

3 A. That there was no luster in the eyes. There  
4 wasn't any compatibility to life that we could work with  
5 and start an arrest sequence and try to revive this child  
6 back.

7 Q. And as you found him, was there any chance that  
8 you could save him?

9 A. No.

10 Q. Thank you. Please answer anything Mr. Hood has.

11 THE COURT: Mr. Hood?

12 MR. HOOD: Mr. Schaefer, I'll make it short.

13 CROSS-EXAMINATION

14 BY MR. HOOD:

15 Q. When you arrived on the scene, who were the  
16 people there in the house?

17 A. There were two women, and there were two more  
18 children on the floor.

19 Q. Okay. And what -- the child who had passed --

20 A. Yes, sir.

21 Q. -- where was the child located at when you came  
22 in?

23 A. We came in through the front door. And just to  
24 the right, there was a sofa. There was two other children  
25 on the floor in front of that. And the child was on the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 floor closest towards the door in front of the -- of the  
2 sofa.

3 Q. And were -- what were either of the females  
4 doing, if anything?

5 A. They were upset.

6 Q. Okay. And did either of the females have their  
7 hands on the child?

8 A. Not that I recall right off.

9 Q. Did you have any discussions with any of them as  
10 to anything they may have done to assist the child or  
11 anything of that nature?

12 A. I believe that I asked questions of how long the  
13 child had been this way, and basically that was it.

14 Q. Okay. Did you see any efforts of the child  
15 being given CPR or anything of that nature?

16 A. No.

17 Q. Okay. So you didn't see that when you came in?

18 A. No.

19 MR. HOOD: Okay. Thank you. No further  
20 questions.

21 THE COURT: Any redirect?

22 MS. TANNER: Just quickly.

23

24

25

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State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

REDIRECT EXAMINATION

BY MS. TANNER:

Q. Mr. Schaefer, what were the other two children doing who were in the home?

A. They were sleeping.

Q. This is the room where y'all are located?

A. Yes, ma'am.

MS. TANNER: Thank you. No further questions.

THE COURT: Anything further?

MR. HOOD: No.

THE COURT: All right. You may step down, Mr. Schaefer. Thank you, sir.

MS. TANNER: May this witness be excused, Your Honor?

THE COURT: Any objection, Mr. Hood?

MR. HOOD: No.

THE COURT: You may be excused, Mr. Schaefer. Thank you, sir.

[Whereupon, Mr. Schaefer is excused and exits the courtroom]

MS. TANNER: The State calls Sergeant Chris Wilson to the stand.

THE CLERK OF COURT: Would you place your left hand on the Bible and raise your right hand for me, please, ma'am.

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State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 [Whereupon, Ms. Wilson is duly sworn by the  
2 clerk of court]

3 THE CLERK OF COURT: Please be seated.

4 [Whereupon, Ms. Wilson takes the witness stand]

5 THE CLERK OF COURT: State your name and spell  
6 it for the Court, please.

7 THE WITNESS: Christine Wilson. C-H-R-I-S-T-I-  
8 N-E W-I-L-S-O-N.

9 MS. TANNER: Good afternoon, Sergeant Wilson.

10 - - - - -

11 CHRISTINE WILSON,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MS. TANNER:

16 Q. Where are you employed?

17 A. The Beaufort County Sheriff's Office.

18 Q. And how long have you worked there?

19 A. I have eighteen years of law enforcement  
20 experience. Part of it is with Beaufort County Sheriff's  
21 Office. Some of that is with the Port Royal Police  
22 Department.

23 Q. And what kind of training have you received in  
24 your law enforcement experience?

25 A. I've been to the basic criminal justice academy

MIA PERRON, CCR, CVR-CM

-47-



1 and several advanced schools since that time, primarily  
2 for latent fingerprint examination. But crime scene  
3 schools, interview and interrogation schools, auto-theft  
4 investigation school. Just a wide range of advanced  
5 schools.

6 Q. And what are your duties now at the sheriff's  
7 office?

8 A. I'm a criminal investigator.

9 Q. And what all does that involve?

10 A. That entails investigating anything from a  
11 simple forgery, to a murder, and everything in between.

12 Q. And were you working August 18th into the  
13 morning hours of August 19th, 2006?

14 A. Yes, I was.

15 Q. And were you called to a residence, [REDACTED]  
16 [REDACTED] Circle, in Burton?

17 A. I was.

18 Q. Is that residence in Beaufort County?

19 A. Yes, it is.

20 Q. What kind of call did you go out on on that  
21 evening?

22 A. I was the on-call investigator that evening, and  
23 I received a phone call to respond to an unexplained death  
24 of a young child at [REDACTED] [REDACTED] Circle.

25 Q. And did you respond to that residence?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. I did.

2 Q. And when you arrive, what do you find? Who's  
3 present?

4 A. Once I arrived, the coroner was present, several  
5 members -- friends and family of the deceased. The  
6 defendant was present, the person that lives at [REDACTED]  
7 [REDACTED] Circle was present, several other individuals  
8 were present.

9 Q. And were you able to identify the deceased  
10 child?

11 A. Yes, I was.

12 Q. And what was his name?

13 A. Child [REDACTED] [REDACTED].

14 Q. And were you able to determine in your  
15 information who his parents are?

16 A. Yes.

17 Q. And who would that be?

18 A. His mother is Paris Avery. His father was  
19 Rotundo Young, Jr.

20 Q. And was Paris Avery one of those present at the  
21 home when you arrived?

22 A. She was.

23 Q. Could you identify her if you were in the  
24 courtroom?

25 A. Yes.

1 Q. Do you see her today?

2 A. I do. She's sitting next to Mr. Hood at the  
3 defense table.

4 Q. How did you go about that evening, I guess  
5 looking into an unexplained death, at this point?

6 A. Upon my arrival there, it had not been  
7 ascertained at all what might have caused this child's  
8 death. It was more a fact-finding mission when I got  
9 there, just asking questions, obvious questions, as far as  
10 any trauma noted, none of which had been, medical history,  
11 that sort of thing. It was during that questioning that I  
12 learned of a skin condition that he had that required  
13 prescription medication.

14 Q. And who did you talk to about that?

15 A. Paris Avery.

16 Q. And what was your conversation with her  
17 regarding this medicine?

18 A. I asked her what the prescription was. I don't  
19 recall if she knew exactly what it was. But it was a  
20 medication that's -- a liquid that's ingested that  
21 relieves the itching. And I asked her if I could see the  
22 medication, and she said that it was at her house, which  
23 was five doors down the street.

24 Q. Was this like an apartment complex?

25 A. No. It's a subdivision with houses, and Ms.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Avery's house was five doors down from the incident  
2 location.

3 Q. So once she tells you the medicine is at her  
4 house, what do you do then?

5 A. I asked her if I could see it and she had  
6 indicated that it was okay for a family friend to go  
7 there, with a deputy, to retrieve the medication from her  
8 home.

9 Q. And do you know whether or not that happened?

10 A. Yes, it did.

11 Q. Do you know who actually went and retrieved the  
12 medication?

13 A. I do.

14 Q. And who was that?

15 A. That was Regina Mitchell and Deputy Adam  
16 Draissen.

17 Q. And how do you know they retrieved it?

18 A. Adam Draissen turned it over to me later.

19 MS. TANNER: May I approach the witness, Your  
20 Honor?

21 THE COURT: Yes, ma'am.

22 MS. TANNER: Let's mark this as State's 1.

23 [Whereupon, State's Exhibit Number 1 is marked  
24 by the court reporter]

25 [Whereupon, Ms. Tanner proffers exhibit to Mr.

MIA PERRON, CCR, CVR-CM

-51-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Hood]

2 MR. HOOD: No objection, Your Honor.

3 THE COURT: It's in evidence without objection.

4 [Whereupon, State's Exhibit Number 1 is admitted  
5 into evidence by the Court]

6 MS. TANNER: Thank you.

7 Q. [Ms. Tanner] Investigator Wilson, I ask you if  
8 you would look at State's Exhibit 1, which is now in  
9 evidence. Can you identify this bottle?

10 A. Yes.

11 Q. And what is it?

12 A. It is a bottle labeled -- it's K-Mart pharmacy  
13 labeled, prescribed to Child [REDACTED] [REDACTED] The contents  
14 is hydroxyzine HCL.

15 Q. And is this the bottle that was given to you by  
16 the deputy from Paris Avery's home?

17 A. Yes.

18 Q. Did you do anything with that bottle, or tamper  
19 with it in any way?

20 A. Not at all. I left it in the evidence bag, in  
21 which it was turned over to me, and that was it.

22 Q. And are evidence bags sealed in any way?

23 A. They are when they are turned over from person  
24 to person or turned into evidence. It's a zip-lock top,  
25 and it's turned in in that nature.

MIA PERRON, CCR, CVR-CM

-52-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. And is that -- what did you do with that  
2 particular item?

3 A. I turned it into evidence in the evidence bag.

4 Q. Did you have any further conversation with Ms.  
5 Paris Avery about this particular medication?

6 A. I did. At this point, as the on-scene  
7 investigator, we still had no idea what had caused this  
8 child's death. I had asked Paris Avery about the dosing  
9 of the medication, and she had indicated to me the dosages  
10 that she gave him that particular day on the 18th.

11 Q. What did she tell you about the doses she gave  
12 on the 18th?

13 A. The doses that she told me that she gave on the  
14 18th were -- she said that there were three doses per day.  
15 The first one she gave him at approximately nine o'clock  
16 in the morning; the second one, which she said she was  
17 supposed to give at two o'clock, she actually gave it  
18 about three o'clock that afternoon; and that the third  
19 dose was sometime after 8:00 p.m. that evening.

20 Q. All right. I have a piece of paper with the  
21 date. I'm going to write these down. So the morning --  
22 would you tell me that again, please.

23 A. The morning dose, the first dose of the day, was  
24 at approximately nine o'clock in the morning.

25 Q. And the second dose?

1 A. Approximately three o'clock in the afternoon.

2 Q. And the third?

3 A. Sometime after 8:00 p.m. Nothing more specific  
4 than that.

5 Q. Did she tell you anything about the amount of  
6 the dose she gave the child?

7 A. I asked her if she followed the labeling  
8 instructions, and she said to a T.

9 Q. And what are the labeling instructions on that  
10 bottle you were given?

11 A. The labeling -- the label instructions read take  
12 one-half teaspoonful by mouth every six hours as needed.

13 Q. Half a teaspoon?

14 A. One-half a teaspoon every six hours.

15 Q. Did you actually examine the bottle when it was  
16 brought back to you?

17 A. I did.

18 Q. And did you have a conversation with anyone  
19 about the bottle itself?

20 A. I did. And also had my own observations about  
21 the bottle.

22 Q. And what was that? What was that observation?

23 A. My observation was that we were now in the very  
24 early-morning hours of August the 19th of '06, shortly  
25 after midnight, and that the prescription had been filled

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 on August the 16th, two days earlier, and that it appeared  
2 that over half the bottle of medication was missing. And  
3 I thought that that indicated some type of a discrepancy  
4 in the dosage.

5 Q. Did your investigation end that night?

6 A. No, it did not.

7 Q. What else did you do to follow up on this?

8 A. The following day I spoke with Dr. Mike Caplan,  
9 the medical-examiner attending at the Medical University  
10 of South Carolina, regarding his findings at autopsy.  
11 After that, interviewed several people; received autopsy  
12 report from the Medical University; toxicology report from  
13 the toxicologist. That went on over a period of months.

14 Q. And at the conclusion of your investigation,  
15 what was your decision?

16 A. My decision that -- was that Paris Avery was the  
17 only person that could have given this child this  
18 medication. As it turned out, that was the cause of  
19 death, was acute hydroxyzine intoxication. My  
20 investigation revealed that she's the only person that  
21 could have given this child this medication, and as a  
22 result of that she was charged with homicide by child  
23 abuse.

24 Q. As part of your investigation, were you able to  
25 determine the age of Child [REDACTED] at the time of his



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 death?

2 A. Yes.

3 Q. How old was he?

4 A. Fifteen months.

5 MS. TANNER: Thank you, Investigator. Please  
6 answer anything defense counsel has.

7 CROSS-EXAMINATION

8 BY Mr. Hood:

9 Q. Now, Sergeant Wilson, you actually did a lot  
10 more, as far as gathering information, than what you have  
11 just stated here on the stand; isn't that correct?

12 A. That's correct.

13 Q. You verified and retrieved Paris Avery's work  
14 schedule for that particular day and the day before; isn't  
15 that correct?

16 A. That's correct.

17 Q. And you determined that she was working both of  
18 those days; isn't that correct?

19 A. I know that she definitely did work on the 18th  
20 and if my memory serves me correctly I believe the day  
21 before that, as well, which would have been the 17th.

22 Q. And you gathered those records from her place of  
23 employment --

24 A. I did.

25 Q. -- isn't that correct?

MIA PERRON, CCR, CVR-CM

-56-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 And what -- where was she working at?

2 A. She was working at the Golden Coral in Beaufort.

3 Q. Now, when you arrived at the scene, were you  
4 able to determine who had physical custody of the child  
5 prior to its discovery of not having any life?

6 A. Paris Avery dropped her child off at Angenetta  
7 Wright's residence, which was [REDACTED] Circle.

8 Q. And that occurred somewhere around 10:00,  
9 approximately; is that correct?

10 A. I believe it was around -- I believe it was  
11 closer to 11:00 p.m.

12 Q. Sometime -- okay. We'll just say --  
13 But how did the child get to this Angelina  
14 Wright's location?

15 A. Based on my interviews, Angenetta Wright went to  
16 Paris Avery's house with her car and picked Paris' three  
17 children up, and Paris, brought them back to her house  
18 five doors down the street, and Angenetta Wright babysat  
19 the three children while Paris Avery took Angenetta's car  
20 and went back to work.

21 Q. So Paris Avery had to return to work at the  
22 Golden Coral; is that correct?

23 A. That's correct.

24 Q. Okay. So she went back to work at the Golden  
25 Coral, came back an hour and a half or so later, and,

MIA PERRON, CCR, CVR-CM

-57-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 boom, discovered when she went in to retrieve the child  
2 that the child was not acting properly; is that correct?

3 A. That's correct.

4 Q. Now, Paris Avery -- when you were talking to  
5 her, she was obviously distraught; isn't that correct?

6 A. That's correct.

7 Q. To your knowledge, did she ever go to the  
8 hospital that particular night?

9 A. She did.

10 Q. And I think there were some problems with being  
11 distraught, and potential suicide; isn't that correct?

12 A. That was what was brought to my attention, yes.

13 Q. Okay. Okay. So you also went to -- and  
14 gathered documents concerning the medical history of the  
15 child; isn't that correct?

16 A. That's correct.

17 Q. So you gathered all the medical records and had  
18 those in your custody; is that correct?

19 A. I did, yes.

20 Q. Along with Paris Avery's time sheets, basically,  
21 timecards or whatever? Okay.

22 A. Right.

23 Q. Now, you also went to a daycare center; isn't  
24 that correct?

25 A. That's correct.

1 Q. And the child -- were you able to ascertain  
2 whether the child was in that daycare center, all three of  
3 them or two of them or one of them, on the 17th and the  
4 18th?

5 A. I did ascertain that -- Carolyn Ward from  
6 Carol's Daycare Center in Shell Point actually watched the  
7 children, all three children, for a total of two days on  
8 Thursday the 17th and Friday the 18th.

9 Q. Okay. So the child was in daycare, all three of  
10 them, on the 17th from -- did you actually look at the  
11 records of the daycare center?

12 A. No. I did not.

13 Q. Did you ever ask for copies of the records of  
14 the daycare center?

15 A. I did not.

16 Q. Now, do you have any children?

17 A. No, I don't.

18 Q. Well, at the daycare center did you ascertain  
19 who the person was that did the intake for Child and the  
20 three -- two other children?

21 A. Carolyn Ward was the only person I spoke to  
22 there.

23 Q. Uh-huh. And while you were there, did you make  
24 any observations as to other people who worked in that  
25 daycare center?

1 A. No. My conversation with Carolyn Ward was  
2 actually over the phone.

3 Q. Oh, okay. So you physically never went to the  
4 daycare center?

5 A. I did not.

6 Q. Okay. So you didn't examine their records, or  
7 anything of that nature, or get those records from the  
8 daycare center?

9 A. I did not.

10 Q. Now, did you go down and get the prescription  
11 records for the prescription that Child was taking?

12 A. I did not. But those records have since been  
13 acquired.

14 Q. Okay. Do you know who the doctor was that wrote  
15 that prescription?

16 A. I was told the night this happened who it was.

17 Q. Okay. But you didn't physically talk to that  
18 doctor --

19 A. No, I did not.

20 Q. -- or get any records from that doctor, or  
21 anything of that nature; is that correct?

22 A. No. I personally did not.

23 MR. HOOD: I think that's all I have. Thank  
24 you.

25 THE COURT: Redirect, solicitor?

1 MS. TANNER: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. TANNER:

4 Q. Was there anything in your investigation that  
5 suggested Child [REDACTED] death or his cause of death  
6 related in any way to his time at the daycare?

7 MR. HOOD: Objection, Your Honor. That's a  
8 terribly leading question. I mean, you know --

9 THE COURT: Okay. It's a yes or no question.  
10 You can ask it. Overruled.

11 A. Ask the question again, ma'am.

12 Q. [Ms. Tanner] In your investigation, was there  
13 any part of that that led you to believe or suggested that  
14 there was anything about his time at the daycare that  
15 related to his death?

16 A. None whatsoever.

17 MS. TANNER: No further questions.

18 MR. HOOD: I only have one question.

19 RECROSS-EXAMINATION

20 BY MR. HOOD:

21 Q. But you never went to the daycare center and  
22 interviewed anybody in the daycare center, did you?

23 A. No. I did not.

24 MR. HOOD: Thank you.

25 MS. TANNER: Nothing further.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE COURT: All right. You may step down,  
2 Investigator.  
3 [Whereupon, the witness is excused and exits the  
4 witness stand]  
5 MS. TANNER: The State calls Regina Mitchell.  
6 [Whereupon, Ms. Mitchell enters the courtroom]  
7 THE CLERK OF COURT: Place your left hand on the  
8 Bible, and raise your right hand for me, ma'am.  
9 [Whereupon, Ms. Mitchell is duly sworn by the  
10 clerk of court]  
11 THE CLERK OF COURT: Please be seated.  
12 [Whereupon, Ms. Mitchell takes the witness  
13 stand]  
14 THE CLERK OF COURT: State your name and spell  
15 it for the Court, please.  
16 THE WITNESS: My name is Regina Mitchell.  
17 MS. TANNER: Good afternoon, Ms. Mitchell.  
18 THE WITNESS: How are you doing?  
19 MS. TANNER: Fine.  
20  
21  
22  
23  
24 - - -  
25 - - -

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State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

REGINA MITCHELL,

Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. TANNER:

Q. Where were you living in August of 2006?

A. In Forest Fields subdivision, Lower Bridge  
Circle.

Q. And is that in Beaufort County?

A. Yes.

Q. Did you know anyone, or have any acquaintances,  
that lived at [REDACTED] Circle in Burton?

A. My cousin, Antonio Owens, and Angie. I was  
aware that they were living in there.

Q. And is Angie Angenetta Wright?

A. Yes.

Q. Now, I'm going to ask you about the night of  
August 18th, early-morning hours of August 19th. Can you  
tell me if anything unusual happened that night?

A. What happened, I was in bed, and my son came  
home and he alarmed me that something had happened because  
he had saw the police and the EMS to a particular house  
where my cousin lived. So when he alarmed me about it, of  
course I put some clothes on and went down to his house to  
see what was going on. And when I got there, Angie had

MIA PERRON, CCR, CVR-CM

-63-



1 informed me that it wasn't my cousin, nothing wasn't wrong  
2 with him, he was actually at work.

3 Q. Okay. So who else did you see while you were  
4 there?

5 A. I saw Angie, I saw the two little boys was lying  
6 on the floor, and I also saw the mother of the kids.

7 Q. Did you know Paris Avery before this night?

8 A. No, ma'am.

9 Q. Now, at any point this evening do you get  
10 involved somehow in anything that's going on?

11 A. Yes.

12 Q. All right. Explain that to us.

13 A. The way it went was I noticed that the two kids  
14 was lying on the floor, and I noticed that among all the  
15 commotion that was going on I realized that the kids, I  
16 mean, they wasn't aware of what was going on, they wasn't  
17 getting up to see what was going on, they were just  
18 sleepy.

19 So therefore one of the detectives had asked the  
20 girl mother, the little boy's mother, is it possible that  
21 we can go over to your house to see if we can find  
22 something to see what -- maybe we can find something to  
23 find out why the kids were sleepy and tired, or what was  
24 the cause of what had happened to the baby. And once the  
25 detective had asked if we had permission to go into her

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 house, she says, yes, you do have the permission to go  
2 over there.

3 So of course we went over there, and we started  
4 searching the house. And by me being a pharmacy  
5 technician for twenty-something years, of course I was  
6 looking for medicine bottles, whatever I could find to try  
7 to help out. And I don't remember if it was the detective  
8 that actually found the bottle that had the little bit of  
9 liquid in it, or if it was me. I don't remember at that  
10 time, it was so far -- you know, it was so long ago.

11 Q. Did you find something there?

12 A. Yes, we did find something.

13 Q. And what did you find?

14 A. We find a bottle of a liquid called Atarax.

15 Q. And what did you do with it when you found it?

16 A. The detective got it, put it in the bag, and we  
17 proceed to go back to Angie's house.

18 Q. And once you get there, do you talk to anyone  
19 else?

20 A. No. I just made --

21 Q. Did you --

22 A. -- aware to the detective that according to the  
23 amount that was in the bottle, and the date on the bottle,  
24 that bottle should have had more medication in that bottle  
25 if the direction was follow right.

1 Q. Okay. I'm going to show you --

2 MS. TANNER: If I may approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 Q. [Ms. Tanner] -- what is in evidence as State's  
5 Exhibit Number 1. Can you identify this?

6 A. Yes.

7 Q. And what is it? Is this the bottle you're  
8 talking about?

9 A. Yes.

10 Q. Okay. Now, you mentioned a minute ago that you  
11 have experience as a pharmacy tech?

12 A. Yes. Twenty-something years.

13 Q. What kind of training do you have?

14 A. I mean, I did ten-something years in retail,  
15 filling prescriptions. I did over ten-something years in  
16 the hospital. So I am very aware of what's going on when  
17 it comes down to medications.

18 Q. What about this other item besides the bottle?  
19 What is this?

20 A. That's a syringe. That is the syringe that you  
21 pull the liquid up and give the --

22 Q. And why is that used?

23 A. -- medication. I'm sorry?

24 Q. Why would that be used?

25 A. To measure it.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Now, in your experience in the pharmacy, is that  
2 something you would provide --

3 A. Yes. And --

4 Q. -- when filling this type of --

5 A. -- and if we don't have it to provide, we would  
6 tell them --

7 MR. HOOD: Your Honor, I'm going to --

8 A. -- where to --

9 THE COURT: Okay. Hold on a second.

10 MR. HOOD: I'm going to object to this, only  
11 because she wasn't the one that provided this  
12 prescription. And she doesn't know what was attached  
13 to the bottle, if anything, this measuring device or  
14 whatever. You know, we're just off on something that  
15 she can't testify to.

16 MS. TANNER: She's identifying this item that  
17 she located, retrieved, and turned over, which is now  
18 in evidence.

19 THE COURT: Okay. Solicitor, she can testify as  
20 to what she saw when she picked up the bottle and what  
21 was there.

22 Q. [Ms. Tanner] Was this syringe with this bottle  
23 when you found it?

24 A. Yes.

25 MS. TANNER: Thank you. I have no further

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 questions. Please answer anything Mr. Hood has.

2 MR. HOOD: I have no questions.

3 THE COURT: Okay. You may step down, ma'am.  
4 Thank you.

5 MS. TANNER: May the witness be excused, Your  
6 Honor?

7 THE COURT: Any objection, Mr. Hood?

8 MR. HOOD: No objection.

9 THE COURT: All right. Ma'am, you may step  
10 down.

11 THE WITNESS: Thank you.

12 [Whereupon, the witness is excused and exits the  
13 courtroom]

14 MS. TANNER: The State calls Angenetta Wright.

15 [Whereupon, Ms. Wright enters the courtroom]

16 THE CLERK OF COURT: Would you place your left  
17 hand on the Bible, and raise your right hand for me,  
18 please.

19 [Whereupon, Ms. Wright is duly sworn by the  
20 clerk of court]

21 THE CLERK OF COURT: Please be seated.

22 [Whereupon, Ms. Wright takes the witness stand]

23 THE CLERK OF COURT: State your name, and spell  
24 it for the Court, please.

25 THE WITNESS: Okay. First name and last name?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Angenetta Wright, A-N-G-E-N-E-T-T-A. Wright,  
2 W-R-I-G-H-T.

3 MS. TANNER: Good afternoon, Ms. Wright.

4 THE WITNESS: Hello.

5 - - - - -

6 ANGENETTA WRIGHT,

7 Having Been First Duly Sworn,

8 was Examined and Testified as Follows:

9 DIRECT EXAMINATION

10 BY Ms. Tanner:

11 Q. Ms. Wright, do you know Paris Avery?

12 A. Yes.

13 Q. And how do you know her?

14 A. From work.

15 Q. And where did you work?

16 A. Golden Corral.

17 Q. How long would you say you've known Ms. Avery?

18 A. About four to six month.

19 Q. Did you know Ms. Avery's children?

20 A. Yes.

21 Q. Could you tell the jury who her children were?

22 A. Hunter, Miguel, and Child

23 Q. And how did you know them?

24 A. Through her. I met them a month after her.

25 Q. Were you ever in contact with the children?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes.

2 Q. And what kind of contact did you have with them?

3 A. They stayed with me. They stayed at my house  
4 sometimes, and they stayed two houses down, so --

5 Q. Let me talk to you specifically about August  
6 18th, 2006. How did that day start for you? Did you work  
7 that day?

8 A. Yes.

9 Q. Did Paris work that day?

10 A. Yes.

11 Q. What hours did you work?

12 A. We worked from 11:00 to 5:00.

13 Q. You and Paris worked the entire shift together?  
14 11:00 to 5:00?

15 A. Yes.

16 Q. And when you got off at 5:00, did you see Paris  
17 after that?

18 A. Yes. She left with me.

19 Q. You left together?

20 A. Yes.

21 Q. Where did you go?

22 A. To the daycare center to pick her kids up.

23 Q. What time would you say you picked the children  
24 up from day care?

25 A. They had to be out at 6:00, and we had to rush

MIA PERRON, CCR, CVR-CM

-70-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 to get there, so it was close to 6:00, maybe a little  
2 after.

3 Q. Once you pick the children up, what do you do,  
4 where do you go?

5 A. Well, I had to take my boyfriend to work. We  
6 had a lot of running around to do. After all that, she  
7 wanted to take the kids out to eat, so we went to Golden  
8 Corral to eat.

9 Q. Went back, to where you worked, to eat?

10 A. Yes.

11 Q. What time would you say you got there?

12 A. I would say maybe a little after 7:00.

13 Q. And how long do you think you stayed there at  
14 Golden Corral?

15 A. About an hour.

16 Q. Was Child with you this time?

17 A. Yes.

18 Q. How was he acting?

19 A. Normal.

20 Q. Was he playing?

21 A. He was playing and laughing.

22 Q. When you leave Golden Corral, where do you go?

23 A. When I left Golden Corral I took her home,  
24 dropped her and the kids off, and I took my kids to  
25 Walterboro. I take my kids to Walterboro to my mother on



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 weekends.

2 Q. And when did you get back home?

3 A. I got home about around 8:30 to nine o'clock.

4 Q. Did you see Angenetta that night, the 18th?

5 A. Paris?

6 Q. I'm sorry. Paris.

7 A. I seen her a little after 10:00 when I went to  
8 her house to get her.

9 Q. And why did you go to her house at 10:00?

10 A. She was supposed to come to my house to get my  
11 vehicle to go back to work, to do some work that she had  
12 to do, and she never showed up.

13 Q. So when she didn't show up to get your car, what  
14 did you see?

15 A. I went to get her. I figured she was sleeping,  
16 so I went to wake her up.

17 Q. And did you wake her up?

18 A. Yes. I thought I did. She said she wasn't  
19 sleeping, but I thought she was sleeping.

20 Q. And what kind of conversation did you have with  
21 her?

22 A. I asked her what happened to her. She said she  
23 wasn't going. I talked her into going, because there was  
24 a punishment that she had to go do this. If she didn't do  
25 this, she would lose her job.

MIA PERRON, CCR, CVR-CM

-72-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. So once you talk her into going back to work,  
2 what happens next?

3 A. She decided that she was going to go. And I  
4 went to grab the baby, and she kind of stopped me. She  
5 was like -- she jumped. And I said, what's wrong. She  
6 said, oh, I'll get him; I don't want you to get him; I had  
7 a hard time putting him to sleep.

8 Q. Did you think that was unusual at all?

9 A. Yeah.

10 Q. Why?

11 A. Because I always get the baby. I'm always  
12 toting the baby.

13 Q. So when she stops you from doing that, what  
14 happens next?

15 A. I said, well, fine; I'll get one of the other  
16 kids; you get the baby. So I got one of the other kids,  
17 and she got the baby.

18 Q. And what did y'all do with them?

19 A. We brought them to my house. Brought them in  
20 the car and brought them to my house, which was two houses  
21 down.

22 Q. Did you actually put the children in the car?

23 A. I put one of them, the middle child, in the car.

24 Q. Was Child put in the car?

25 A. Yes.

1 Q. And who did that?

2 A. Her [sic] mother, Paris.

3 Q. Did you say anything to Paris in the car?

4 A. When we got in there, the way she put him in --  
5 she told me she didn't want me to wake him up. When she  
6 put him in, she kind of slammed him in the car seat. So I  
7 kind of looked back and I said, oh, he looks really tired;  
8 what did you do to him; he looks wore out. And she  
9 explained to me that he was playing, and he was tired.

10 Q. About what time was this when you see Child

11 A. Close to eleven o'clock.

12 Q. So about three hours after you left Golden  
13 Corral?

14 A. Yes.

15 Q. Once everybody is in the car, where do you go?

16 A. To my house two houses down.

17 Q. Everybody go in?

18 A. Yes.

19 Q. How did that happen?

20 A. I brought the child, that I brought out of the  
21 house, into the house. She brought the other two in the  
22 house. One walked. She hold one hand while they walk,  
23 and she brought the baby in. She brought them, and she  
24 put -- she was going to put them -- she put them on the  
25 floor. She put one on the floor. She was going to put

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 the baby on the floor. And I said, no, he's sleeping; put  
2 him in my bed; don't put him on the floor with them.  
3 Because they were awake.

4 Q. And you say the baby. Are we talking about  
5 Child

6 A. Yes.

7 Q. So does she take him to your bed?

8 A. Yes.

9 Q. At this point, have you held Child or touched  
10 him in any way?

11 A. No.

12 Q. Once she takes him to your bed, what happens  
13 then?

14 A. She left and went to work.

15 Q. Did you ever go in and pick up Child or hold  
16 him?

17 A. No.

18 Q. When did you see Paris Avery again?

19 A. An hour later she showed back up. She came back  
20 to my house.

21 Q. So around midnight?

22 A. Yes.

23 Q. When she comes in, what does she do?

24 A. When she came in, I was asleep. I didn't hear  
25 her come in. I heard her coming out of my bathroom. I

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 heard the door open. And when she came in, I looked at  
2 the clock and I said, what are you doing back so soon.  
3 Because she had to roll two pans of silverware. She said,  
4 I only rolled one; I didn't want to roll two. And I said,  
5 why. She said, I just didn't feel like it.

6 Q. Then what did she do?

7 A. She went in the room. Well, I said, well, let's  
8 -- okay, let's go; let's get these kids and let's go. She  
9 went in the room to get the baby. She came out. When she  
10 came out she said, what's wrong with my baby. I said,  
11 what you mean what's wrong with him. And she said, I  
12 can't wake him up. And I was kind of thinking, I was  
13 like, why you trying to wake him up. And she said, he  
14 won't move. So I said, bring him here. And she put him  
15 in my arms, and I looked at him. And she was slapping him  
16 on the face, and I was telling her to stop because I  
17 thought she was going to hurt him. She was like, he won't  
18 wake up. And when he didn't wake up, I went in the  
19 kitchen and got some water, put it in a cup and splashed  
20 it on his face, and he didn't move.

21 Q. What did he look like?

22 A. I remember asking her did he bruise his lips or  
23 something, because his lips was kind of bluish, a bluish  
24 color, and she said no.

25 Q. Once you figured out he wasn't waking up, what

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 did you do?

2 A. Called 911.

3 Q. Now, once you do that, are you involved anymore?

4 A. Yes. I talked to the person on -- she dialed  
5 the number. And she threw the phone, and I had to go get  
6 the phone. And I talked to them, and they gave me  
7 instructions on what to do. I performed CPR on him. They  
8 told me what to do. And I performed CPR and tried to keep  
9 her calm and everything all at the same time.

10 Q. Were you aware of any medical condition that  
11 Child had?

12 A. Yes. Eczema.

13 Q. And what did you think that was?

14 A. A skin disorder.

15 Q. Were you aware of any medication he might have  
16 been taking?

17 A. I know he was on medication.

18 Q. Do you know what he was on?

19 A. No.

20 Q. Had you ever given him any of his medicine?

21 A. No.

22 Q. Did she bring any medicine to you --

23 A. No.

24 Q. -- and tell you to give it to him?

25 A. No.

1 Q. Following EMS arriving, who else shows up at  
2 your house that night?

3 A. A friend of the family, a cousin of my  
4 boyfriend, she showed up.

5 Q. Was that Regina Mitchell?

6 A. Yes.

7 Q. Does she call you Angie?

8 A. Yes.

9 Q. All right. Who else?

10 A. The people that kept the kids. They called them  
11 the babysitter. They showed up.

12 Q. Did you talk to any law enforcement officers  
13 that night?

14 A. Yeah.

15 Q. Did you talk to Officer Chris Wilson?

16 A. Yes.

17 Q. Were you present when Paris was talking to Chris  
18 Wilson?

19 A. Yes.

20 Q. Did you hear what she was saying?

21 A. Yes.

22 Q. What did you think about what she was telling  
23 the investigator?

24 MR. HOOD: Your Honor, I'm going to object to  
25 that. That calls for mere speculation, on this

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 witness' part, about what she thought.

2 MS. TANNER: I'll rephrase.

3 MR. HOOD: What she heard --

4 THE COURT: You need to rephrase it. Thank you.

5 Sustained.

6 Q. [Ms. Tanner] What did you hear Paris Avery tell  
7 the investigator about what she had done that day?

8 A. About giving the child the medicine, she said  
9 she gave him some that morning, and two o'clock that  
10 evening, and then later that day.

11 Q. And why would that have gotten your attention?

12 A. Because we were at work at two o'clock in the  
13 evening. She couldn't have gave him any medicine then.

14 MS. TANNER: Ms. Wright, thank you. Please  
15 answer anything Mr. Hood has.

16 THE WITNESS: Okay.

17 THE COURT: Mr. Hood?

18 CROSS-EXAMINATION

19 BY Mr. Hood:

20 Q. Now, Ms. Wright, did you go with Paris Avery to  
21 deliver the kids to the daycare center?

22 A. Yes.

23 Q. And did you do that on the day of the 17th and  
24 the 18th?

25 A. I did it every day, so, yeah.

MIA PERRON, CCR, CVR-CM

-79-



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Two days.

2 And did you physically go inside of the daycare  
3 center?

4 A. No.

5 Q. So you never went inside at all?

6 A. No.

7 Q. Okay. Now, did -- Paris Avery, at the time she  
8 went to the daycare center with the children, did she  
9 carry anything for the children into the daycare center?

10 A. She carried their bags.

11 Q. Their bags? Do you know what were in those  
12 bags?

13 A. No.

14 Q. Okay. So you never saw anything come out of  
15 those bags? Sippy cups and things like that?

16 A. No.

17 Q. Well, the first day when you took her there on  
18 the 17th, did she come out with any list of instructions  
19 on things she was supposed to do, and things of that  
20 nature, to your knowledge?

21 A. Not to my knowledge.

22 Q. Okay. All right. Now, how many children do you  
23 have?

24 A. I have four.

25 Q. Four.

MIA PERRON, CCR, CVR-CM

-80-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 And on this particular day, the 18th, you went  
2 with Paris to the Golden Corral to eat; is that correct?

3 A. That's correct.

4 Q. Okay. So after you had finished eating, what --  
5 you dropped them off at their house; is that --

6 A. Yes.

7 Q. -- correct?

8 A. That's correct.

9 Q. And then you go to your house?

10 A. I went straight on to Walterboro.

11 Q. And why were you going to Walterboro?

12 A. That's where my parents live. And I work all  
13 weekend, so they take care of my kids on the weekend.

14 Q. Okay. Did you have a child with you that you  
15 were taking to Walterboro?

16 A. I had all four of my kids I was taking.

17 Q. Okay. So you had all four of your children --

18 A. Yes.

19 Q. -- that you were taking?

20 And how old are your children?

21 A. Sixteen, fourteen, five, and four.

22 Q. Okay. Now, you -- this was not the first time  
23 you had babysat for Paris' children; isn't that correct?

24 A. That's correct.

25 Q. So you had been babysitting for how long for

1 Paris?

2 A. When she had the kids, they were there with me,  
3 her and the kids. And I babysit sometimes when she would  
4 go to work.

5 Q. Okay. And so how long a period of time was she  
6 at your house with the children, then?

7 A. She was -- she would be there all day,  
8 sometimes.

9 Q. Okay. And you lived two houses down, and you  
10 guys just sort of went in and out of each other's house;  
11 is that correct?

12 A. That's correct.

13 Q. And your children had the same rights to go in  
14 and out of Paris' and, you know, her children to your  
15 place; is that correct?

16 A. In and out.

17 Q. Well, in and out of your house. Paris' kids  
18 were welcome there, and they could come --

19 A. Yes.

20 Q. -- anytime they wanted to --

21 A. Yes. That's right.

22 Q. -- and your children could come into Paris'  
23 house anytime they --

24 A. That's right.

25 Q. -- wanted to?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1                   Okay. And the drug that Child       was using,  
2 isn't it true that your daughter had the same drug  
3 prescribed to her for the same problem?

4           A.       No. None of my kids have eczema.

5           Q.       So you never gave Child       any of his medication  
6 at all?

7           A.       No.

8           Q.       Now, just prior to I guess Paris arriving that  
9 particular night --  
10                   it must have been the 19th by then; is that  
11 correct?

12          A.       Uh-huh.

13          Q.       -- didn't you call Paris and have her pick  
14 something up, or something of that nature, to bring to  
15 your house?

16          A.       No. Paris doesn't have a phone. She never had  
17 a phone, so I don't see how I could call her.

18          Q.       Well, she was working at the Golden Corral; is  
19 that correct?

20          A.       Yes. I was, too.

21          Q.       Okay. And they have phones at the Golden  
22 Corral?

23          A.       Yes. I was there with her.

24          Q.       Okay. And didn't you give a statement to law  
25 enforcement concerning what you did that particular night?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Uh-huh. I did.

2 Q. And didn't you tell them that you actually went  
3 and looked in on Child to make sure he was okay?

4 A. I went to the door.

5 Q. And you looked in, and you were satisfied that  
6 he was okay; isn't that correct?

7 A. Yes.

8 Q. Okay. Thank you.

9 THE COURT: Solicitor?

10 REDIRECT EXAMINATION

11 BY MS. TANNER:

12 Q. When you looked at him, what was he doing?

13 A. He was laying there with the cover up to his  
14 head. And he was all the way in the back of the bed. I  
15 was looking to see that he didn't roll off or he didn't  
16 get to the front of the bed. He was all the way in the  
17 back, so --

18 Q. And once you discovered Child condition,  
19 what did the other two children do, Miguel and Hunter?  
20 Were they still at your house?

21 A. Yes. They were --

22 Q. Where were they?

23 A. They were sleeping. They were right on the  
24 floor sleeping.

25 Q. And did they stay asleep during this?

MIA PERRON, CCR, CVR-CM

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes.

2 Q. Have any of your children ever been prescribed  
3 this drug hydroxyzine?

4 A. No.

5 Q. Have you ever seen a bottle of hydroxyzine?

6 A. No.

7 MS. TANNER: No further questions.

8 THE COURT: Recross?

9 MR. HOOD: I don't have any other questions.

10 THE COURT: All right. You may step down,  
11 ma'am.

12 MS. TANNER: Can this witness be excused, Your  
13 Honor?

14 THE COURT: Any objection, Mr. Hood?

15 MR. HOOD: I don't have any objection.

16 THE COURT: Okay. Ma'am, you may be excused.  
17 Thank you.

18 [Whereupon, the witness is excused and exits the  
19 courtroom]

20 THE COURT: Ladies and gentlemen of the jury, I  
21 think now is a good time to take a morning break. You  
22 can go back and refresh yourselves with some coffee. I  
23 ask you that you please leave the notes that you have  
24 in your seat when you leave.

25 Additionally, ladies and gentlemen, I'm going to

1 tell you this morning and each time that we part, you  
2 are not to begin discussing this case with each other.  
3 It's not appropriate to do so at this time because you  
4 have not heard all the evidence, you have not heard the  
5 arguments of the attorneys, nor my charge on the law.  
6 So it just simply would not be appropriate.

7 With that said, go get whatever you need. If  
8 there's anything you don't have back there that you  
9 need, please let Bob know and we'll make sure it's  
10 available for you. I appreciate it, y'all. We'll see  
11 you back here in just a few moments after a break.

12 [Whereupon, the jury exits the courtroom at  
13 11:42 a.m.]

14 THE BAILIFF: The jury has cleared, Your Honor.

15 THE COURT: All right. Is there anything we  
16 need to take up before we go ahead and take a break?

17 MS. TANNER: I believe Dr. Garvin should be  
18 here. We're very close. I will check to see. We  
19 might be able to handle that matter.

20 THE COURT: Okay.

21 MS. TANNER: And can I get an easel to put my  
22 board on?

23 THE COURT: Absolutely.

24 Solicitor, also, I would like to see the  
25 medicine bottle, please.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 MS. TANNER: Yes, ma'am.

2 THE COURT: If you'll pass that up for just a  
3 moment.

4 [Whereupon, Ms. Tanner proffers exhibit to the  
5 Court]

6 [Whereupon, the Court reviews exhibit]

7 THE COURT: All right. We are going to be at  
8 ease for a few moments.

9 [Whereupon, a recess is taken from 11:46 a.m. to  
10 12:06 p.m.]

11 THE COURT: All right. Solicitor, is your  
12 doctor here, and do you want to go ahead and proffer  
13 that?

14 MS. TANNER: Yes, Your Honor, she is here.

15 THE COURT: Okay. Let's go ahead and bring her.

16 MS. TANNER: The State calls Dr. Demi Garvin.

17 [Whereupon, Dr. Garvin enters the courtroom]

18 THE CLERK OF COURT: Would you place your left  
19 hand on the Bible, and raise your right hand for me,  
20 please, ma'am.

21 [Whereupon, Dr. Garvin is duly sworn by the  
22 clerk of court]

23 THE CLERK OF COURT: Please be seated.

24 [Whereupon, Dr. Garvin takes the witness stand]

25 THE CLERK OF COURT: State your name and spell



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 it for the Court, please, ma'am.

2 THE WITNESS: My name is Dr. Demetra, D-E-M-E-T-  
3 R-A, Garvin, G-A-R-V-I-N, and I commonly go by Demi,  
4 D-E-M-I.

5 MS. TANNER: Good afternoon, Dr. Garvin.

6 THE WITNESS: Good afternoon.

7 - - - - -

8 DEMI GARVIN, Ph.D.,

9 Having Been First Duly Sworn,  
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MS. TANNER:

13 Q. Dr. Garvin, could you tell us your educational  
14 background.

15 A. Yes. I have a bachelor of science in biology  
16 and chemistry from Furman University in Greenville, South  
17 Carolina, which I obtained in 1981. I have a doctorate in  
18 clinical pharmacy, otherwise known as the Pharm D degree,  
19 from the University of South Carolina College of Pharmacy,  
20 now known as the South Carolina College of Pharmacy  
21 located in Columbia, South Carolina. I am a registered  
22 pharmacist in the state of South Carolina, license number  
23 6799, and I'm also board certified in forensic toxicology.

24 Q. And what type of work do you do?

25 A. I have a number of job descriptions, actually.

MIA PERRON, CCR, CVR-CM

-88-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 The first is currently I am the assistant laboratory  
2 director of the forensic sciences for the Richland County  
3 Sheriff's Department located in Columbia, South Carolina.  
4 I am also trained and certified in drug chemistry, which  
5 is the analysis, as I refer to it, of pills, powders,  
6 potions, and paraphernalia associated with narcotics  
7 investigations, as well as death investigations. And I'm  
8 also a toxicologist. I write or perform written  
9 toxicology consults and direct toxicology testing for the  
10 sheriff's department when asked to do so. The -- as  
11 assistant laboratory director, I am over the DNA  
12 laboratory, the firearms laboratory, fire-debris  
13 laboratory, and drug-chemistry laboratory.

14 I am also a consultant and owner of the Forensic  
15 Science Network, which is a private limited liability  
16 corporation. We are engaged, my two partners and I, in  
17 forensic testing. We direct forensic toxicology testing  
18 for approximately seventy percent of the coroners in the  
19 state of South Carolina in cases where individuals may or  
20 may not be autopsied and their specimens are collected for  
21 toxicology testing. And we also provide continuing  
22 education training support, and we have a research and  
23 development component.

24 Q. And have you ever testified in court?

25 A. Yes. I have at all levels of the court, except

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 the international, in excess of 200 times.

2 Q. And have you been qualified as an expert during  
3 your testimony?

4 A. Yes. I've been qualified as an expert in the  
5 areas of clinical and forensic toxicology, as well as drug  
6 chemistry.

7 MS. TANNER: Your Honor, at this time the State  
8 moves to have Dr. Garvin qualified as an expert in  
9 forensic toxicology and --

10 Q. [Ms. Tanner] I'm sorry. What was the other?

11 A. Clinical and forensic toxicology, as well as  
12 drug chemistry.

13 MS. TANNER: Those items, Your Honor.

14 THE COURT: And you said, I'm sorry, drug  
15 chemistry? Is that --

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Mr. Hood?

18 MR. HOOD: Nothing, Your Honor.

19 THE COURT: Okay. Any objection? Do you want  
20 to -- no cross? No objection?

21 MR. HOOD: None. Thank you.

22 THE COURT: Okay. We'll go ahead and qualify  
23 you as an expert in the area of clinical and forensic  
24 toxicology, as well as drug chemistry. Is that  
25 correct?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE WITNESS: Yes, ma'am.

2 MS. TANNER: Thank you, Your Honor.

3 Now, at this point do you want to go through her  
4 entire testimony, or get to what is the basis of this  
5 pretrial motion?

6 THE COURT: I think we need to get to the basis  
7 of the pretrial motion.

8 MS. TANNER: Okay. I just wanted to make sure.

9 Q. [Ms. Tanner] Just to get out there: you worked  
10 on the case involving Child [REDACTED]

11 A. Yes. More specifically, as part of my  
12 employment or association with the Forensic Science  
13 Network, I was asked to oversee and direct the testing of  
14 biological specimens obtained from the decedent, Child  
15 [REDACTED] with regard to toxicology testing. The -- in  
16 this particular instance, the specimens, once they were  
17 collected at autopsy, were shipped to our contracted  
18 laboratory, which is known as National Medical Services,  
19 located in Willow Grove, Pennsylvania. We have a contract  
20 with them for the specific toxicology testing.

21 Once the specimens arrived, the specimens were  
22 tested with a panel that was directed, if you will, by  
23 myself, under the particular circumstances of this case,  
24 it being a pediatric death. And that included alcohols  
25 and therapeutic and abused drugs, which is a common broad

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 -- a broad spectrum or comprehensive toxicology panel that  
2 is performed to capture the majority of substances and  
3 their breakdown products that we see statistically across  
4 all deaths.

5           Once that occurred, there was communication by  
6 me with both the pathologist and the principle  
7 investigator in this case in order to obtain additional  
8 information in order to be able to make an appropriate  
9 interpretation on my part for the purposes of providing  
10 whether or not -- determining whether or not this death  
11 was, in fact, due to a toxic insult or a drug or poison-  
12 related situation.

13           Q.     And what were the toxicology results in this  
14 case?

15           A.     The blood sample taken from Mr. [REDACTED]  
16 contained -- was found to contain 300 nanograms per  
17 millimeter of hydroxyzine, otherwise known as Vistaril or  
18 Atarax, as well as hydroxyzine metabolites, which are the  
19 breakdown products of the parent compound. And there were  
20 no other end-lines of interest identified.

21           Q.     And what is your analysis of that level of  
22 hydroxyzine in the child's system?

23           A.     After conducting communication with, as I  
24 mentioned earlier, both the principle investigator and the  
25 pathologist in this case, it was my opinion that the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 postmortem hydroxyzine level was consistent with  
2 intoxication and overdose and I communicated to the  
3 pathologist that I felt it was in the absence of an  
4 anatomical cause of death, the principle cause of death,  
5 in this child.

6 Q. Now, in your experience, have you ever seen  
7 other overdoses in children under the age of two?

8 A. Many. Yes.

9 Q. And in your experience, what have you seen have  
10 been the causes of those overdoses?

11 A. Well, typically when a child less than two years  
12 old expires or dies and toxicology testing is performed  
13 wherein there are drugs identified that we, as  
14 toxicologist, are more importantly I believe are the cause  
15 of death, their -- the manner of death is equally  
16 important. In my experience I have found that such deaths  
17 run the gamut from accidental, which would be accidental  
18 on the part of the physician, accidental on the part of  
19 the care-giver, accidental on the part of the pharmacist  
20 or other treating health professional; could also be  
21 homicidal.

22 I've had in my years of experience, almost  
23 twenty-five now, a number of overt homicidal deaths from  
24 poisoning in infants, as well as what I refer to as a  
25 subset of homicidal poisoning or intentional poisoning in

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 an infant or a child, young child, where the care-giver or  
2 the individual administering the medication participates  
3 in what we refer to in toxicology circles as chemical  
4 restraint, where the individual does not set out to  
5 intentionally overdose the child but rather to sedate the  
6 child for purposes of perhaps not having to care for them  
7 or because they are busy with other activities, if you  
8 will.

9 Q. Based on your review of this case, your  
10 consultation with all the parties you mentioned, in your  
11 opinion do any of these types or causes of overdose fit  
12 what you've seen in this case?

13 A. The -- as I worked through the information that  
14 was provided to me by those individuals, I summarily ruled  
15 out that I felt this death was an accident, in the sense  
16 that there was nothing wrong with the choice of the drug  
17 or the particular indication in the child. The drug  
18 choice itself, there was nothing untoward about it; nor  
19 was there anything untoward about the dosing, both in  
20 terms of initial dose and frequency of dosing or the  
21 preparation itself; I also ruled out that there was an  
22 accident on the part of the pharmacist who dispensed the  
23 medication, so that was also ruled out; nor did there  
24 appear to be any problem at all with the dosing implement,  
25 which can frequently be a cause for accidental overdose in

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 young children. The dosing implement itself was  
2 appropriate under the circumstances.

3 Then I went on to address the -- clearly, I  
4 didn't feel the death was natural. So I then went on to  
5 look at the various aspects of a possible homicidal or  
6 intentional poisoning. The circumstances, history that  
7 was provided to me, as well as the postmortem  
8 concentration, essentially left me with the opinion that  
9 the death did not rise to a level of an overt, massive  
10 intoxication but rather did seem to fit the circumstances  
11 of what I referred to earlier as a chemical restraint or  
12 an attempt at sedation, given the postmortem concentration  
13 that we found.

14 Q. What kind of drug is hydroxyzine? How would  
15 someone use it if they were using it as a chemical  
16 restraint?

17 A. Hydroxyzine is the generic name for the drug.  
18 It's commonly known by its trade names Vistaril or Atarax.  
19 It is pharmacologically what we refer to as an H-1  
20 antihistamine or H-1 antagonist. Which in children, the  
21 pediatric population, it is commonly used, as it was in  
22 this case, to treat the itching associated with  
23 dermatologic conditions, atopic dermatitis, eczema, to try  
24 to provide some relief to the child in hopes that they  
25 won't scratch and possibly injure themselves or cause



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 additional problems from itching. It also has -- by  
2 virtue of its antihistamine-like effect, it can address  
3 some of the swelling and inflammation that also goes along  
4 with a dermatologic condition.

5 Its side effects, however, even in therapeutic  
6 doses, I might add, are primarily sedation, in addition to  
7 anticholinergic effects, which can be dry mouth, it can  
8 cause fever, it can cause pupil dilation, and some other  
9 effects. But its primary side effect is sedation, which  
10 means it can cause somnolence, lethargy, fatigue,  
11 noticeable somnolence or drowsiness. That effect, adverse  
12 effect, is increased with increasing doses to such an  
13 extent that in overdose the primary mechanism of death  
14 would be central nervous system depression, although there  
15 are some cases in which children have manifested symptoms  
16 of excitability to the point of having seizures. So there  
17 are a few children that can actually manifest the exact  
18 opposite of sedation, which is hyper stimulation. That  
19 has been reported.

20 Q. Doctor, can you tell us once this medication is  
21 induced or given to the child, how long does it take to  
22 take effect?

23 A. This preparation was available and given in  
24 liquid form as a syrup. Liquids, by their very nature  
25 pharmaceutically, are more rapidly absorbed than a capsule

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 or a tablet or even a suspension, which takes slightly  
2 longer to be absorbed. But it is well-absorbed from the  
3 stomach, whether on an empty stomach or with food. And  
4 typically the peak concentration in the blood is  
5 approximately two hours after the last dose, with effects  
6 that can last for six hours, six to eight hours, which is  
7 why it is typically dosed every six hours.

8 Q. Does that mean if it was a fatal dose, it would  
9 have taken that effect within two hours?

10 A. I would have expected to see both the absorption  
11 and the peak concentration in the blood, which is  
12 associated with the peak effect, to have occurred within  
13 two hours, yes.

14 Q. Now, going back to your chemical restraint  
15 discussion, would it affect your opinion if you had  
16 received information that this child's mother had, in the  
17 past, provided this child medications in order to get him  
18 to be sleepy or to calm down?

19 A. That is not an uncommon occurrence in chemical  
20 restraint situations. I do have experience or have seen  
21 instances where care-givers do this on a routine basis, if  
22 you will.

23 Q. And is that consistent with a chemical restraint  
24 diagnosis as far as the cause of death?

25 A. Well, I don't want to refer to it as a diagnosis

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 so much as a descriptor for a situation that falls under  
2 intentional overdosing, which is -- which is borne out of  
3 the history that speaks to it, again, to try to draw the  
4 nuance between intentional overt homicidal poisoning where  
5 the individual administering the administration has an  
6 agenda to kill the child for whatever purpose.

7 In this situation, the care-giver does not set  
8 out to kill the child but rather uses the medication  
9 inappropriately in excess for the purpose of restraining.  
10 It's a form of abuse, if you will. And so the care-giver  
11 or the individual administering the medication sets out to  
12 sedate or restrain the infant or the young child for some  
13 other purpose that they may have.

14 MS. TANNER: Thank you, Dr. Garvin. Please  
15 answer anything Mr. Hood has.

16 THE COURT: Mr. Hood?

17 CROSS-EXAMINATION

18 BY MR. HOOD:

19 Q. Dr. Garvin, prior to this incident involving  
20 this child, there had been no recorded deaths of this  
21 particular drug being the cause of the death; is that  
22 correct?

23 A. Could you be more specific, please?

24 Q. Well, hydroxyzine, this particular prescription  
25 that we have here -- are you familiar with the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 prescription?

2 A. Yes, I am.

3 Q. You were given the bottle and things of that  
4 nature?

5 A. Yes. I was given information from the bottle,  
6 as well as calculated the doses that were given as --  
7 based on the total volume that was initially dispensed, as  
8 well as what was remaining and then what was missing.  
9 Yes, sir.

10 Q. Okay. Did you actually examine the what was  
11 inside of the bottle left?

12 A. No, sir, I did not conduct an analysis of the  
13 contents of the bottle. No, sir.

14 Q. So you don't know what was in the bottle that we  
15 actually have here as evidence; is that correct?

16 A. Could you be more specific?

17 Q. Well, we have a prescribed medication. That  
18 medicine is in evidence, or is going to be in evidence  
19 here pretty soon, and that particular bottle is the bottle  
20 that the pharmacist filled, boom, the child took, and why  
21 we are here today. And what I'm asking is you did not  
22 examine the contents of that bottle; is that correct?

23 A. Analytically, no, sir, I did not.

24 Q. Okay. So you don't know what's in the bottle.  
25 Okay.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Next question. How many deaths have been  
2 recorded of children involved in this particular drug?

3 A. Well, in actuality, there is one case report in  
4 the literature of intoxication where the child did not  
5 succumb but because they -- medical intervention ensued.  
6 That was a thirteen-month-old child. That incident  
7 occurred in Columbia, South Carolina, and was published in  
8 the medical literature in 1981. That child, being  
9 thirteen months old, was of interest to me because, one,  
10 of the concentrate -- there was a concentration available;  
11 and, also, the child did exhibit symptoms of hyper-  
12 stimulation, which proceeded to seizures, but the child  
13 was saved.

14 And I did conduct a six-year retrospective  
15 analysis of the American Association of Poison Control  
16 Centers Test Report, which is the toxic exposure  
17 surveillance system report that comes out annually. I'm a  
18 former poison control consultant with the University of  
19 South Carolina College of Pharmacy, and, as such, I am  
20 aware of this publication and its utility. I did conduct  
21 a six-year retrospective analysis between the years of  
22 2000 and 2006, only because the 2007 report is not  
23 available yet, and there was a death involving hydroxyzine  
24 in a six-year-old in 2004.

25 You do -- I would want to make the statement

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 that this particular compound and its use in atopic  
2 dermatitis in a fifteen-month-old or in a child less than  
3 two would be a very, I won't use the word rare, but  
4 infrequent occasion. And so when we take the number of  
5 occasions where a physician would choose to use this  
6 medicine -- and it is a drug of last resort in the  
7 pediatric population for this condition because it is  
8 associated with more adverse effects than some of the  
9 other first-generation antihistamines such as Benadryl.  
10 We don't see it very often in the literature, but it is  
11 toxic. And in my opinion, the concentration here is  
12 sufficient to have caused death.

13 Q. Okay. So we're saying one; is that correct?

14 A. One reported. That's correct.

15 Q. One reported?

16 A. That's correct. That does not mean that one --  
17 more than one didn't happen.

18 Q. Yeah. Okay. Have you looked at the label on  
19 this bottle?

20 A. I have not physically looked at the label on the  
21 bottle, no, sir.

22 Q. Well, if I were to tell you that there is  
23 nothing on that label other than it simply states may  
24 cause dizziness, do you think that would be a sufficient  
25 warning for that particular substance?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1       A.       I think it -- as a pharmacist, I think that  
2       label says may cause dizziness or drowsiness. That's the  
3       common label that is put on the medication bottle at the  
4       time it is being dispensed, yes, sir. And I believe it  
5       may also say do not operate heavy machinery or drive a  
6       vehicle, which of course in this instance would not be an  
7       issue so that may not be present.

8       Q.       Right. And the -- let's talk about how long  
9       this drug actually stays in the system. Now, you  
10      indicated that there was a dose here, there was a level of  
11      I believe three-hundred nanograms, is that -- milliliters  
12      or nanograms? What did you say?

13      A.       Postmortem concentration is three-hundred  
14      nanograms per milliliter in the blood.

15      Q.       And you expected to see one hundred; isn't that  
16      correct?

17      A.       I don't believe I testified that I expected to  
18      see one hundred, sir.

19      Q.       Well, you signed a toxicology report, didn't  
20      you?

21      A.       Yes, sir, I did. I have it here.

22      Q.       Oh. You have it there?

23      A.       Yes, sir.

24      Q.       Well, what does it say there? Maybe I wrote it  
25      down wrong when I was copying your words.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. I don't have any reference, that I made,  
2 associated with a concentration of one hundred. I'm  
3 sorry. Not on my report.

4 Q. Well, maybe I ought to take a look at your  
5 report. Maybe you have a different one than the one I  
6 have.

7 [Whereupon, Mr. Hood reviews documents]

8 MR. HOOD: Let me just go ahead and just ask  
9 some more questions and I'll get back to this later.

10 THE COURT: Okay. Let me ask you: Mr. Hood, do  
11 you have any idea how long you're going to be? I'm  
12 wondering if it's not better for me to go ahead and  
13 send this jury to lunch, and we can continue this  
14 during our lunch hour.

15 MR. HOOD: I don't have but about -- it depends  
16 on the answers.

17 THE COURT: Of course. It always does.

18 Let's do this, Mr. Hood. Let me go ahead and  
19 I'm going to bring the jury back in and send them to  
20 lunch, so we can go ahead and take care of this over  
21 the rest of the lunch hour, so I'm not bringing them  
22 back here late.

23 Let's go ahead and do this: Dr. Garvin, if you  
24 don't mind, would you step down and just take a seat in  
25 the gallery just for a quick moment? And I'm going



1 bring you right back up. Okay? You can take anything  
2 you need, whatever you want, with you.

3 THE WITNESS: Can I leave this here?

4 THE COURT: Absolutely. You can do that, as  
5 well.

6 [Whereupon, the witness exits the witness stand  
7 and remains in the courtroom]

8 THE COURT: Let's bring them in.

9 [Whereupon, the jury enters the courtroom at  
10 12:40 p.m.]

11 THE COURT: Welcome back, ladies and gentlemen  
12 of the jury. At this time, what I am going to do is go  
13 ahead and send you to lunch. And the reasoning for  
14 this is that I have further matters of law to take up  
15 with the attorneys and rather than have you-all sit  
16 back there and wait on us, I think it's better if you  
17 all go refresh yourselves and get some lunch and come  
18 on back.

19 Respectfully, I'm going to ask that everyone be  
20 back promptly at 2:15, when we are going to continue  
21 the trial of this case. That will hopefully give me  
22 enough time to get through these matters with the  
23 attorneys, before you return, so you are not waiting on  
24 us.

25 Additionally, ladies and gentlemen, I will again

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 tell you, as we always part, you are not to discuss  
2 this case, not only with each other but with any  
3 friends or family or anyone you happen to meet or see  
4 on the street when you go to lunch. Additionally, you  
5 are not to do any of your own independent research,  
6 either by computer or any other means. What I  
7 respectfully ask, just go have a nice lunch and come  
8 back and be well-refreshed, where we'll begin again at  
9 2:15.

10 I wanted to further ask. I saw -- I have one  
11 juror who -- was it today, ma'am, that you needed to be  
12 home at a specific time?

13 THE JUROR: [Indicates]

14 THE COURT: What time do you need to leave here  
15 by to be home in time?

16 THE JUROR: 5:00.

17 THE COURT: You need to leave here by five  
18 o'clock?

19 THE JUROR: Yes.

20 THE COURT: Okay. That shouldn't be a problem.  
21 I will go ahead and let everybody know, then, that we  
22 will conclude today by five o'clock so you can go ahead  
23 as promised. So I don't want you concerned about that.  
24 All right?

25 So with that said, ladies and gentlemen, go have

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 a wonderful lunch. You will return and report back to  
2 your jury room at 2:15, promptly. And please everyone  
3 be on time. I can't start until every last one of you  
4 are here. Thank you. Again, leave your pads in your  
5 seats for the lunch hour.

6 [Whereupon, the jury exits the courtroom at  
7 12:43 p.m.]

8 THE BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Thank you.

10 All right. Dr. Garvin, please come on up and  
11 take the witness stand again. And I remind you, ma'am,  
12 that you are still under oath.

13 [Whereupon, the witness re-takes the witness  
14 stand]

15 THE COURT: All right. Mr. Hood?

16 DEMETRA GARVIN,

17 Having Been Previously Sworn,

18 was Examined and Testified as Follows:

19 CONTINUED CROSS-EXAMINATION

20 BY MR. HOOD:

21 Q. Maybe we can talk about your report. I sort of  
22 maybe did some interpreting of my own on your report.

23 And you indicated that there was three-hundred  
24 milligrams -- nanograms, rather, that were in the system;  
25 is that correct?

MIA PERRON, CCR, CVR-CM

-106-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. It's three-hundred nanograms per millimeter,  
2 sir, in the blood.

3 Q. Yes. Uh-huh.

4 A. Yes.

5 Q. And down below that you had a peak level, which  
6 is after a single dose, which is one-hundred nanograms or  
7 milliliters; is that correct?

8 A. No, sir. That's incorrect.

9 Q. Well, what does that peak level following a  
10 single hundred milligrams, what --

11 A. Yes.

12 Q. What does that mean?

13 A. Essentially, that's an example that's a  
14 benchmark. That's a peak level following one single  
15 hundred-milligram oral dose, which is not an uncommon  
16 capsule in an adult formulation of the drug, and that  
17 typically at peak level produces an eighty nanograms per  
18 milliliter blood concentration.

19 However, I would point out to you that this  
20 child was only receiving five milligrams per dose, and so  
21 I would not expect the peak concentration to be anywhere  
22 near eighty nanograms per mil.

23 Q. Okay. Let's go back to -- what organ in the  
24 body processes medications?

25 A. Well, there are multiple organs that can. But

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 the organ primarily responsible for this medication's  
2 metabolism is the liver.

3 Q. Okay. And the liver processes the medication  
4 and dispels it; is that correct?

5 A. It takes the compound and puts it into a form  
6 which makes it more amenable to excretion by the kidney.  
7 It undergoes transformation in the liver. It literally  
8 undergoes a chemical transformation so that the drug is  
9 more water soluble and can be excreted in the kidney,  
10 through the urine, and out the body.

11 Q. Okay. So basically, depending upon the liver,  
12 we determine how quickly the drug is removed from the  
13 body; is that correct?

14 A. The liver's chief responsibility is to break the  
15 drug down so that it can be eliminated, as I stated  
16 earlier, through the kidney. It does have an effect on  
17 how long the drug remains in the system.

18 And I did evaluate from the pathology report the  
19 condition of her [sic] liver, as it was described by Dr.  
20 Caplan in his report, and found there to be no indication  
21 that this child's liver was incapable of ridding the body  
22 of the drug properly.

23 MR. HOOD: Okay. I'm only going to ask you a  
24 couple more questions. I think I've reached where I  
25 want to go.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. [Mr. Hood] You indicated that you talked with  
2 Officer Chris Wilson, the investigator in the case; is  
3 that correct?

4 A. Yes, I did.

5 Q. And I believe you told her that this was an  
6 unintentional poisoning; isn't that correct?

7 A. No, sir, I did not tell her it was an  
8 unintentional poisoning.

9 Q. Well, if she had that in her report, would that  
10 be an error?

11 A. Well, I can't say how it found its way into her  
12 report. But I did not -- I did not feel that, under any  
13 circumstance, that this was -- once I was provided  
14 information both from the pharmaceutical end, the  
15 toxicologic end, the medical end, as well as the  
16 investigative end, there was no time that I felt it was  
17 unintentional or accidental. Let me use those words  
18 synonymously.

19 Q. So if that were in her report, she must have  
20 been in error; isn't that correct?

21 A. Well, I have not read her report, sir, so I  
22 can't comment on that.

23 Q. Well, on how many different occasions did you  
24 actually give an opinion as to this particular case?

25 A. Well, the first opinion that I gave was

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 reflected on the toxicology report itself. The second  
2 opinion I gave was communicated to at that time Sergeant  
3 Wilson, Chris Wilson, of the Beaufort County Sheriff's  
4 Department. And I also provided the same opinion to Dr.  
5 Bradley Marcus and Dr. Mike Caplan of MUSC pathology.

6 Q. So you're saying that this was an intentional  
7 poisoning of this child; is that correct?

8 A. As I described, what I would refer to in this  
9 instance as chemical restraint. Yes, sir.

10 Q. Well -- never mind.

11 Did you ever have in your possession and review  
12 the child's medical history?

13 A. Only insofar as it spoke to the primary  
14 indication for which the child was being prescribed this  
15 medication, and also its body weight.

16 Q. Who is primary whatever that you were talking  
17 about, and then body weight?

18 A. Well, I wanted to know the prescribing or the  
19 treating physician, what the indication was for the use of  
20 the drug and --

21 Q. Okay. So what you were trying to determine  
22 there was simply what disease the child had that he was  
23 taking the drug for; is that correct?

24 A. Yes, sir. What condition.

25 Q. But he didn't give you the medical history of

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 the child prior to him saying, take this drug?

2 A. No, sir. Some of that --

3 Q. Okay.

4 A. Some of that information was communicated to me  
5 through the pathology report. But, no, sir, I did not  
6 review any medical records.

7 Q. And what is bleach?

8 A. What is bleach?

9 Q. Yeah, bleach.

10 A. Sodium hypochlorite, chemically.

11 Q. Is it a toxin?

12 A. Yes, it can be.

13 Q. And what effect would bleach have on the liver?

14 A. On the liver?

15 Q. Uh-huh.

16 A. It would depend on the route of administration,  
17 sir.

18 Q. Well, could it cause damage to the liver?

19 A. It could, yes, sir.

20 Q. So if a baby of this fifteen months ingested  
21 bleach approximately a month or less before this incident  
22 occurred, would you want to know about that?

23 A. If there was evidence in the pathology report  
24 that suggested to me that the liver specifically had been  
25 damaged and there was evidence of that anatomically or



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 microscopically, then I would be asking the question what  
2 the source of that harm was, or injury, in order to be  
3 able to evaluate whether it would have had any effect on  
4 the hydroxyzine concentration that I saw postmortem. And  
5 there was no such evidence in the pathology report.

6 Q. All right. Now, tell me how long -- when were  
7 these drugs administered to the child?

8 A. The hydroxyzine, sir?

9 Q. Yeah.

10 A. I was provided information that the prescription  
11 for hydroxyzine was obtained on or about 3:30 p.m. on  
12 August the 16th of 2006. The child died at approximately  
13 12:30 a.m. on August the 19th or late in the late hours of  
14 August the 18th, if you will. Based on that information  
15 and the prescription directions, which were take one-half  
16 teaspoonful every six hours as needed, and the original  
17 dose -- volume, excuse me, dispensed of a hundred-and-  
18 twenty milliliters, I calculated by history liberally that  
19 if the mother -- or the care-giver, excuse me, had  
20 followed the directions appropriately according to the  
21 label, over that time period, I calculated liberally that  
22 ten doses would have been provided to the child.

23 That being said, the amount -- I determined or  
24 calculated that based on the original dispensing volume of  
25 one-hundred-twenty milliliters, the twenty-five

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 milliliters that represented the ten doses that I just  
2 testified to, that would have or should have resulted in a  
3 volume of ninety-five millimeters remaining in the bottle.  
4 However, there were only fifty-two millimeters remaining,  
5 as are reflected -- or as is reflected on the Beaufort  
6 County Sheriff's Department drug laboratory report issued  
7 by Renita Berry. That means that there are an extra  
8 forty-three milliliters, or some seventeen doses, that are  
9 unaccounted for in the bottle.

10 Q. So what you are saying is as an estimate,  
11 because you don't know exactly whether there are seventeen  
12 or whatever, but -- because you have a little spillage in  
13 there occasionally, and things of that nature; isn't that  
14 correct?

15 A. Yes, you can. Uh-huh.

16 Q. Okay. And so let's just say that what happened  
17 was somewhere over a two-day period of time the child got  
18 approximately seventeen doses than it should have gotten?  
19 Is that what you're saying?

20 A. That's certainly possible, yes, sir.

21 Q. Certainly possible. Okay. Okay.

22 Now, are you familiar with the information on  
23 the what happens if you miss a dose? Can you make up a  
24 dose, and things of that nature, on this particular drug?

25 A. That would speak to the information that a

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 pharmacist such as myself would communicate to a care-  
2 giver. Yes, sir, I am.

3 Q. And I believe it says you can make up doses;  
4 isn't that correct?

5 A. Well, that's dependant on the time that has  
6 passed since the last missed dose. In an infant this  
7 young it would be my opinion, and my communication as a  
8 pharmacist to the individual administering the medication,  
9 that if the time has passed and it's time for the next  
10 dose to be given, that one should not double up on the  
11 dose but should rather just declare that a missed dose and  
12 medicate the individual or the child at the next -- at the  
13 time of the next dose.

14 This medication, if you recall, was initially  
15 prescribed prn, which means as needed, which is not the  
16 same as round-the-clock dosing such as we might give with  
17 an antibiotic to treat a bacterial infection. So there is  
18 no need to give the medication if there is no need. It's  
19 not to be given around the clock.

20 Q. So in other words if there is a need, you take  
21 the drug?

22 A. That's correct.

23 Q. If the child is in pain, you give it the drug;  
24 is that correct?

25 A. It's not a pain medication, sir.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Well, I mean, obviously if your child is, you  
2 know, suffering pain, discomfort, or whatever from this  
3 particular thing, and it says take as needed, what does  
4 that mean to a person, a layman, a mother or a care-giver,  
5 or anybody else? What does it mean?

6 A. When it says -- when the label says take as  
7 needed, the care-giver would be instructed to provide the  
8 medication when they felt that the child, in this  
9 particular instance, was scratching, was unduly red or  
10 inflamed, perhaps at night at bedtime if children are  
11 prone to -- because children are prone to scratching at  
12 night, as are adults, in their sleep and they're not aware  
13 of it in instances such as that. But it does not need to  
14 be given, and should not be given, around the clock.

15 Q. Okay. That said, you made all of these  
16 statements. But every one of them has been what the  
17 pharmacist should have told the person who gets the drug;  
18 is that correct?

19 A. The pharmacist or the physician. Yes, sir.

20 MR. HOOD: Okay. I think I've finally exhausted  
21 myself. Thank you.

22 THE COURT: Okay. Any redirect, solicitor?

23 MS. TANNER: Just briefly.

24 - - -  
25 - - -

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

REDIRECT EXAMINATION

BY MS. TANNER:

Q. Doesn't the bottle itself say take every six hours as needed?

A. Yes.

Q. And if I told you that Investigator Wilson's report actually read, Dr. Garvin said that in her experience this appears to be a case of chemical restraint rather than intentional poisoning, does that sound more like your conversation with the investigator?

A. Yes, ma'am, it does.

Q. And that opinion that it is chemical restraint rather than an intentional poisoning, are you basing that on the amount in the bottle, the amount in the child's system, or everything in totality?

A. Everything in its totality.

Q. If I understood correctly, over the two-and-a-half days that this bottle was in the possession of the mother, twenty-seven doses were given or are missing from the bottle, and ten should have been missing. Am I stating that correctly?

THE WITNESS: Begging the Court's indulgence just one moment to let me review my notes.

[Whereupon the witness reviews documents]

A. If you will, there were, again, one-hundred-and-MIA PERRON, CCR, CVR-CM

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 twenty milliliters originally dispensed of the medication.  
2 I calculated, based on the information, the history that  
3 was provided to me by Sergeant Wilson, and what was on the  
4 label of the bottle, that as many as ten doses could have  
5 been given over the two-and-a-half, three-day period, if  
6 you will, for a total of twenty-five milliliters, a  
7 hundred and twenty minus twenty-five is ninety-five  
8 milliliters, which should have been remaining.

9 In other words, when the bottle was tested or  
10 evaluated and its contents measured, there should have  
11 been pretty close to ninety-five milliliters remaining in  
12 the bottle, which would reflect compliance or accuracy, if  
13 you will, with the dosing instructions on the label.  
14 However, only fifty-two milliliters remained in the bottle  
15 and fifty-two -- so an extra forty-three milliliters are  
16 missing. And that translates, based on the dosing regimen  
17 that was prescribed to this child -- forty-three  
18 milliliters is approximately seventeen doses -- slightly  
19 over seventeen doses of medication which cannot be  
20 accounted for.

21 Q. When you add that to the ten that should be  
22 accounted for, that's twenty-seven doses in two-and-a-half  
23 days?

24 A. That's correct.

25 Q. And on top of that --

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Potentially, yes, ma'am.

2 Q. -- you reviewed the levels in the child's body,  
3 which came out to three-hundred milliliters; is that  
4 correct?

5 A. Not three-hundred milliliters. Three hundred --  
6 that's a concentration. Three-hundred nanograms per  
7 milliliter.

8 Q. And that's what was in the child's body --

9 A. That's correct.

10 Q. -- at the time of death?

11 A. That's right.

12 MS. TANNER: Thank you. I have no further  
13 questions.

14 THE COURT: Mr. Hood?

15 MR. HOOD: I only have one question.

16 RECROSS-EXAMINATION

17 BY MR. HOOD:

18 Q. This other information that you relied upon was  
19 given to you by Investigator Wilson concerning the history  
20 of the child and the issues concerning use of other drugs  
21 as chemical restraint; is that correct?

22 A. Could you repeat the question, please? I'm  
23 sorry.

24 Q. You say you talked to Officer Wilson to get the  
25 background history on this particular child; is that

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 correct?

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

3 Q. And she gave you the information concerning the  
4 chemical restraint used in the past by this particular  
5 person; is that correct?

6 A. No, sir. Sergeant Wilson never communicated to  
7 me any information about the --

8 Q. Never?

9 A. No. No, sir. No, sir.

10 MR. HOOD: Okay. Thank you.

11 THE COURT: Doctor, just so I'm clear: your  
12 opinion that this was chemical restraint versus  
13 intentional poisoning is not a result of any other  
14 background information, it's specifically what you've  
15 stated here today; is that correct?

16 THE WITNESS: Yes, that is -- well, let me  
17 clarify. Everything, in its totality, associated with  
18 this case. And also my education, training and  
19 experience in other similar cases involving central  
20 nervous system -- central nervous system depressants  
21 used under similar circumstances.

22 THE COURT: Okay. Could I see the solicitor and  
23 Mr. Hood for just a moment.

24 Dr. Garvin, stay right there, if you don't mind.

25 [Whereupon, an off-the-record bench conference



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 is held]

2 THE COURT: All right. Ladies and gentlemen,  
3 we're going to go ahead and take a lunch break, because  
4 I know everyone else here needs to have a lunch break.  
5 I didn't forget y'all. So with that said, we're going  
6 to go ahead and break, and we will all return at 2:15  
7 where we'll continue the trial of this case. We're  
8 adjourned.

9 Dr. Garvin, you can step down. Thank you.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness is excused and exits the  
12 witness stand]

13 [Whereupon, a recess is taken from 1:06 p.m. to  
14 2:27 p.m.]

15 THE COURT: Solicitor, we had a meeting with  
16 both you and Mr. Hood back in chambers, first before  
17 lunch, and then y'all came and visited me again at the  
18 end of lunch. Again, before lunch you wanted to go  
19 ahead and put on the record what we discussed.

20 MS. TANNER: Yes, Your Honor. Our discussions  
21 were whether or not the State still intended to try and  
22 call the two witnesses, Sharon Williams and Peggy  
23 Young, for the purposes of the prior bad doings by the  
24 defendant. Based on our conversations in chamber, a  
25 review of the law, and other factors, including the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 factor that the defense does not intend to argue that  
2 this was an accident by the defendant -- based on that,  
3 the State will not call those witnesses.

4 THE COURT: Okay. Mr. Hood, is that correct?

5 MR. HOOD: That is correct.

6 THE COURT: All right. And just for the record  
7 and for everyone else's edification, testimony as to  
8 character is often, as I said before, a slippery slope  
9 based on you are not allowed, of course, according to  
10 our rules of evidence, to enter testimony on someone's  
11 character that tries to tarnish them in some way. And  
12 the goal is not to show that this person is a bad  
13 person, in this case a bad mother, or anything along  
14 those lines. It is to show whether or not this actual  
15 crime was committed, and it's not to dirty someone up  
16 with other things.

17 However, our rules of evidence allow for  
18 exceptions under Rule 494(b) and under the Lyle case  
19 basically allowing that if it is necessary to show  
20 things like intent, motive or absence of mistake. In  
21 this case the solicitor had argued there were a few  
22 things that possibly could be used to show intent or  
23 absence of mistake in this case. According to the  
24 defense attorney, he is not going to raise those as  
25 defenses; therefore, the solicitor has withdrawn her

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 intent to put up those types of witnesses. The idea is  
2 is that we want the clear case to go to the jury.

3 So with that said, Mr. Hood clearly understands  
4 that if he argues in his closing statement, or in any  
5 of his other testimony or in any other cross, absence  
6 of mistake or something along -- or mistake, I'm sorry,  
7 or something along those lines, that he will have  
8 opened up the door. At that point, it will be too  
9 late. Therefore, I have instructed him that if he were  
10 to do that, I will declare a mistrial. Just so we are  
11 all clear for the record. Is that correct?

12 MS. TANNER: That's correct.

13 Also, Your Honor, my understanding is the State  
14 is still allowed obviously, in its closing argument and  
15 through its medical witnesses, to argue the possibility  
16 that this was a chemical restraint case.

17 THE COURT: Well, Dr. Garvin is going to  
18 testify.

19 MS. TANNER: Right.

20 THE COURT: And I'm presuming, unless there are  
21 any objections -- and I'm sure when you call -- that we  
22 may get to that point, if necessary. My understanding  
23 is the basis for her opinion that this was chemical  
24 restraint is based on this incident, this singular  
25 incident, and not the other incidents that possibly

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 came first. So in other words, the, you know, prior  
2 supposed medication of the other children. So as far  
3 as we are concerned, that's going to be her testimony.  
4 If that is still the basis of her testimony and she  
5 doesn't open that floodgate, then we're still going  
6 forward with that. All right?

7 MS. TANNER: Yes, ma'am.

8 THE COURT: Mr. Hood, are we clear on that?

9 MR. HOOD: Yes, ma'am.

10 THE COURT: Okay. Just making sure.

11 All right. Anything else from y'all before I  
12 bring the jury back?

13 MS. TANNER: I don't believe so, Your Honor.  
14 Nothing from the State.

15 MR. HOOD: Nothing.

16 THE COURT: All right. I'm going to remind  
17 y'all we are going to run until probably about ten to  
18 5:00. I've got the one juror that I assured her she  
19 would get out the door by five o'clock so she could go  
20 home and be home before 6:00. So we're going to go  
21 ahead and do that. I understand she lives over on  
22 Hilton Head. So with that said, regardless of where we  
23 are, y'all, at ten minutes till, we're going to break.  
24 So plan your witnesses accordingly. Okay?

25 MS. TANNER: Yes, ma'am.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE COURT: All right. Anything further?

2 MS. TANNER: Nothing further.

3 MR. HOOD: Nothing, Your Honor.

4 THE COURT: All right. I appreciate it, y'all.

5 Go ahead and bring them in, Al.

6 THE BAILIFF: Jurors entering, Your Honor.

7 THE COURT: Thank you.

8 [Whereupon, the jury enters the courtroom at  
9 2:30 p.m.]

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: Thank you.

12 Welcome back, ladies and gentlemen of the jury.  
13 I trust y'all had a nice lunch.

14 Solicitor, if you will call your next witness,  
15 please.

16 MS. TANNER: Thank you, Your Honor. The State  
17 calls Carolyn Ward.

18 [Whereupon, Ms. Ward enters the courtroom]

19 THE COURT: Ms. Ward, ma'am, if you will please  
20 come forward to be sworn. Come on right up.

21 Go ahead and place your left hand on the Bible  
22 right there, and raise your right hand. Keep coming.

23 [Whereupon, Ms. Ward is duly sworn by the clerk  
24 of court]

25 THE CLERK OF COURT: Please be seated.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 [Whereupon, Ms. Ward takes the witness stand]

2 THE CLERK OF COURT: State your name, and spell  
3 it for the Court, please, ma'am.

4 THE WITNESS: Carolyn Ward. C-A-R-O-L-Y-N  
5 W-A-R-D.

6 MS. TANNER: Good afternoon, Ms. Ward.

7 THE WITNESS: Good afternoon.

8 - - - - -

9 CAROLYN WARD,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. TANNER:

14 Q. What kind of business do you run?

15 A. I run a child-care center.

16 Q. What's the name of that center?

17 A. Carol's Child Care.

18 Q. And how long have you done that?

19 A. About thirty-some years.

20 Q. And what kind of background or training do you  
21 have over the years?

22 A. Well, we have to have a little college, and we  
23 have to have twenty hours a year to run the center.

24 Q. And do you have any kind of special training in  
25 any kind of healthcare area?

MIA PERRON, CCR, CVR-CM

-125-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Special needs I do because myself, having a  
2 handicapped son, that's the reason why I started a  
3 daycare. Because it was very hard to find people to  
4 attend to special-needs children. So that's one of my  
5 specialties, and I still do care for special-need  
6 children.

7 Q. And have you received any schooling for any  
8 other areas?

9 A. Not really.

10 Q. Now, what are your hours of operation at your  
11 daycare?

12 A. I open at 6:30 and I close at 6:00 but sometime  
13 I'm in there at 4:00 and 5:00, and 7:00 to 8:00, and  
14 sometimes they're there overnight. Because the military  
15 don't have special hours.

16 Q. How many kids do you have in your daycare  
17 currently?

18 A. I'm licensed for thirty-three.

19 Q. Do you recall the [REDACTED] children staying at your  
20 daycare?

21 A. Yes, I do. I only had them there for a week.

22 Q. Do you recall the youngest, Child [REDACTED] [REDACTED]

23 A. Yes, I do.

24 Q. And how long did he stay with you?

25 A. Just a week.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. And do you recall if he stayed with you on  
2 Friday, August the 18th?

3 A. Yes, he did.

4 Q. And what was the last day that he stayed with  
5 you?

6 A. That Friday.

7 Q. Did you know the [REDACTED] children prior to them  
8 staying in your daycare?

9 A. They came to me about -- I think it was a couple  
10 of months before that Sharon and Joyce -- what's the  
11 mother's name -- brought them. And she needed a  
12 babysitter at the time. But something happened, and they  
13 didn't come back. And then I guess about two months later  
14 she came again, and that's when they started that week.

15 Q. Now, give us a little description about your day  
16 at your daycare. How does that run? What goes on in  
17 there?

18 A. Let's see. Ooh. Well, they come in early in  
19 the morning, and they have breakfast, and they have music  
20 time, they have -- they have outdoor play time. And they  
21 have nice, hot meals that I cook. And they have nap time,  
22 and they have snack time. And we just have a good time  
23 all day long. And I have the infant room and the toddler  
24 room and the preschool room, so we have lots of fun. I  
25 keep quite active.

MIA PERRON, CCR, CVR-CM

-127-



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. What are the age ranges of the children in your  
2 daycare?

3 A. From birth until.

4 Q. Now, if a child in your daycare has a particular  
5 medicine they're supposed to take, what are your -- what's  
6 your protocol for something like that?

7 A. It has to be -- first, the parent would have to  
8 sign a permission slip, in all daycares, basically, to  
9 administer medication, and it has to be a prescribed  
10 medication from the doctor.

11 Q. And do you recall if Child [REDACTED] was taking  
12 any medications while he was with you?

13 A. His mother said he was. And mainly he was  
14 taking medication for his eczema. And he did have some  
15 other medication, but I don't recall because we didn't  
16 have any medication that we had for the eczema.

17 Q. And this Friday, the last day that he was with  
18 you, did you administer to him any of his medication?

19 A. No, ma'am. He was in the infant room, and if  
20 any medication was given it would have been the one that  
21 worked the infant room. But the only medication that was  
22 administered that day, like I said, was for his emphysema  
23 [phonetic] or his rash.

24 Q. Now, was that something that's administered by  
25 mouth? Or is that a cream?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. No. That's a cream.

2 Q. So you're saying the only thing he was given at  
3 your daycare was a cream?

4 A. Yes, ma'am.

5 Q. Did his mother, Paris Avery, even leave with you  
6 the bottle of medication that day?

7 A. No, she didn't. No. Not that day, no.

8 Q. Do you recall how long he was with you that day?

9 A. He came in about 10:30. Usually, she has to be  
10 to work sometime around 11:00. So he got there about  
11 10:30, and she picked him up about 5:00.

12 MS. TANNER: Thank you, Ms. Ward. I have no  
13 further questions. Please answer anything from Mr.  
14 Hood.

15 THE COURT: Mr. Hood?

16 CROSS-EXAMINATION

17 BY MR. HOOD:

18 Q. Ms. Ward, you have thirty-three kids there?

19 A. Yes, sir.

20 Q. That's quite a group.

21 A. Well, I shut down one. I had one that had  
22 fifty-five, but I had -- I couldn't be in two places at  
23 one time.

24 Q. Do you have anybody else that helps you work  
25 there?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Oh, yes, sir. I've got to have a certain amount  
2 of people to the amount of age and the ratio of the  
3 children.

4 Q. Right.

5 A. Yes, sir.

6 Q. Right.

7 And you don't specifically do all of the intake  
8 for all of the children yourself, do you?

9 A. In what manner are you talking about?

10 Q. Well, I mean, when a child comes there in the  
11 morning, are you the one that takes all of them in?

12 A. I open up, sir.

13 Q. Well, that's not the question.

14 A. I open up, I sign them in. I'm a working boss.  
15 I'm not one that just come in and delegate. I work.

16 Q. Do you have a person that works for you by the  
17 name of Wanda?

18 A. I've had several Wandas. Which Wanda?

19 Q. Well, was there a Wanda working for you during  
20 this period of time when Ms. Avery's children were there?

21 A. Yes. Her name is Wanda Priester. Middleton is  
22 her maiden name.

23 Q. And what area did she work in?

24 A. She was my office manager.

25 Q. Office manager?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, sir.

2 Q. Okay. And as your office manager, what were her  
3 duties?

4 A. As the office manager, she would answer phones,  
5 and she would do payroll and records and so forth. But in  
6 a daycare you could be an office manager, but you fill in  
7 wherever you're needed, believe me.

8 Q. Wherever you're needed. I got you.

9 A. You go wherever you're needed.

10 Q. I got you. I got you.

11 A. Okay?

12 Q. Now, you say that the -- and there were three of  
13 these boys; is that correct?

14 A. Yes, sir.

15 Q. Okay. And they all three came to your daycare  
16 center for an entire week; is that correct?

17 A. Yes, sir.

18 Q. Okay. And you took them in every morning; is  
19 that correct?

20 A. Yes, sir.

21 Q. And you obviously got this cream to put on the  
22 child's rash; is that correct?

23 A. Yes, sir.

24 Q. Okay. And you're sure it was a cream; is that  
25 correct?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, sir.

2 Q. Okay. Now, that particular cream is a  
3 prescription drug because it has to be, doesn't it?

4 A. Yes, it does.

5 Q. So it would have to have come from a pharmacy;  
6 is that correct?

7 A. Yes, sir.

8 Q. Okay.

9 A. I do it all the time. I have several. And my  
10 daughter has it, too.

11 Q. Right.

12 Now, when somebody in your work staff gives a  
13 child some medication, do they fill out a little thing  
14 saying when they gave the medication to the child?

15 A. If it's an oral medication, yes, they do. They  
16 write down they gave it.

17 Q. And do they stamp it with a little black-and-  
18 white-looking little bear, something like that, or a  
19 little --

20 A. Sometimes.

21 Q. Sometimes. Sometimes. Okay.

22 Okay. And so every time a person is given  
23 drugs, this little sheet is filled out; is that correct?

24 A. Yes.

25 Q. And that little sheet they give to --

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

- 1 A. They put it in the parent's bag.
- 2 Q. They put it in the parent's bag.
- 3 A. Uh-huh.
- 4 Q. Okay. So every child that comes into the
- 5 daycare center basically --
- 6 A. Uh-huh.
- 7 Q. -- would be required to bring certain things;
- 8 isn't that correct?
- 9 A. Yes, sir.
- 10 Q. Okay. In other words, if I'm in a diaper -- I'm
- 11 not literally right now, but let's just say if I was -- I
- 12 would have to bring diapers; isn't that correct?
- 13 A. Yes, sir.
- 14 Q. And have to bring wipes?
- 15 A. Yes, sir.
- 16 Q. And sippy cups?
- 17 A. Yes, sir.
- 18 Q. Because we don't want to spread disease, do we?
- 19 A. No.
- 20 Q. Yeah. We want everybody drinking out of --
- 21 A. No.
- 22 Q. -- their own individual cups, taking their own
- 23 individual medication; is that correct?
- 24 A. They have to be labeled. Everything has to be
- 25 labeled, even sugar.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Right. And do you remember specifically these  
2 three boys?

3 A. Yes, sir.

4 Q. Were they pretty active boys?

5 A. No more than -- I've got some worse than that.  
6 But no more than normal.

7 Q. Okay. So like any other boys, they're running  
8 and falling and doing all kinds of things, hitting each  
9 other, and all that kind of stuff; isn't that correct?

10 A. Yes, sir.

11 Q. And nap time is a required time, isn't it?

12 A. It's a part. But everybody doesn't have to nap.  
13 They just rest.

14 Q. Uh-huh. But it's quiet time? It's --

15 A. Supposedly.

16 Q. Yeah. Yeah.

17 And that's sort of something that a child needs;  
18 is that correct?

19 A. Yes. To grow, yes. That's how our babies grow.  
20 They eat and sleep. Some do, and some don't.

21 Q. Now, the backpacks: when they leave at night,  
22 who puts together their backpacks?

23 A. They all have little cubbies, with their names  
24 on it, and whoever is in the classroom will pack their  
25 bags.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 And another thing, their medication, it can't be  
2 just in their backpack. Their medication has to be up in  
3 the lockbox, away from them. And then when they get ready  
4 to go home at night, they're put in their bags.

5 And we take -- have an area that we take their  
6 bags to. Like I said, most of them in certain rooms have  
7 cubbies, and others have shelf that are labeled with their  
8 names on them.

9 Q. And that's for liability purposes, isn't it?

10 A. Yes, sir.

11 Q. Because you don't want to give the wrong  
12 medication to the wrong child, do you?

13 A. No.

14 Q. Or the wrong amount, or anything of that nature?

15 A. No. They'll come for a pacifier, believe me, if  
16 they missing one.

17 Q. All right. Well, approximately how many people  
18 were working for you during that week period of time that  
19 the kids were there?

20 A. Let's see. There's two in the infant room, two  
21 in the toddler room, two in the preschool, the office  
22 manager, the cook, and myself.

23 Q. That's quite a staff.

24 A. I always be overstaffed. I don't like to be  
25 understaffed, because you cannot properly take care of a



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 child with the ratios that the state actually, to my  
2 knowledge, gives you.

3 Q. Right. And you don't want to make any mistakes;  
4 right?

5 A. No, sir.

6 Q. Okay. Now, do you know a detective by the name  
7 of Chris Wilson?

8 A. I don't know. I don't think so. I know a lot  
9 of people by face. Names, a lot of times --

10 Q. Well, did anybody from the sheriff's office call  
11 you about Child

12 A. No, sir.

13 MR. HOOD: Okay. I don't have any other  
14 questions. Thank you.

15 THE COURT: Solicitor?

16 REDIRECT EXAMINATION

17 BY MS. TANNER:

18 Q. Ms. Ward, at some point, were you interviewed?

19 A. Someone called me on the phone.

20 Q. Okay.

21 A. Uh-huh.

22 Q. Do you recall who that was?

23 A. No, ma'am, I don't.

24 Q. Okay. Now, August 18th, 2006, Child [REDACTED]  
25 medication was not even at your daycare; is that correct?

MIA PERRON, CCR, CVR-CM

-136-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, ma'am.

2 Q. So even if you wanted to give it to him, you  
3 couldn't?

4 A. No, ma'am.

5 MS. TANNER: Thank you. No further questions.

6 THE COURT: Mr. Hood?

7 MR. HOOD: I don't have any further questions,  
8 Your Honor.

9 THE COURT: Okay. Ms. Ward, you may step down,  
10 ma'am.

11 Any objection to her being excused?

12 MS. TANNER: Nothing from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. HOOD: Nothing, Your Honor.

15 THE COURT: Okay. Ms. Ward, you are excused,  
16 ma'am. Thank you.

17 [Whereupon, Ms. Ward is excused and exits the  
18 courtroom]

19 MS. TANNER: The State calls Ryan Ranger.

20 [Whereupon, Mr. Ranger enters the courtroom]

21 THE CLERK OF COURT: Would you place your left  
22 hand on the Bible, and raise your right hand for me,  
23 sir.

24 [Whereupon, Mr. Ranger is duly sworn by the  
25 clerk of court]

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE CLERK OF COURT: Please be seated. State  
2 your name, and spell it for the Court, please.

3 THE WITNESS: Ryan Ranger. R-Y-A-N R-A-N-G-E-R.

4 MS. TANNER: Good afternoon, Mr. Ranger.

5 THE WITNESS: Hello.

6 - - - - -

7 RYAN RANGER,

8 Having Been First Duly Sworn,  
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. TANNER:

12 Q. Where are you employed?

13 A. K-Mart pharmacy.

14 Q. And what is your job there?

15 A. Nationally certified technician.

16 Q. And what kind of training or educational  
17 background or experience do you have to have to do that  
18 job?

19 A. Well, to be nationally certified, you have to  
20 actually take a course and also take a nationally  
21 standardized test.

22 Q. And how long have you been doing this?

23 A. Going on five years.

24 Q. I'm going to ask you --

25 MS. TANNER: If I may approach the witness, Your

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Honor?

2 THE COURT: You may.

3 Q. [Ms. Tanner] -- if you can identify what's been  
4 entered in evidence as State's Exhibit Number 1.

5 A. Yes.

6 Q. All right. Hold that.

7 How can you identify that item?

8 A. This prescription has been dispensed from our  
9 K-Mart pharmacy.

10 Q. So that came from your pharmacy?

11 A. Yes.

12 Q. And based on that, can you tell me when it was  
13 filled or when it was --

14 A. Well, filled on 8/16/06.

15 Q. What does the label say about the prescription  
16 or the dosages that should be given?

17 A. Basically to take a half teaspoon every six  
18 hours as needed.

19 Q. Are there any warnings on that label?

20 A. Yes. May cause dizziness, may cause drowsiness,  
21 could -- alcohol could intensify its effect. It just says  
22 use caution when operating a car or dangerous machinery.

23 Q. Do you know what time that actual prescription  
24 was picked up from your pharmacy on August 16th?

25 A. At 3:24.

MIA PERRON, CCR, CVR-CM

-139-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Was that a.m. or p.m.?

2 A. P.m.

3 Q. Now, Mr. Ranger, as part of your employment with  
4 K-Mart pharmacy, are you familiar with the safeguards or  
5 the protocols you have in place when filling  
6 prescriptions?

7 A. Yes.

8 Q. And what do you do? When a prescription comes  
9 in, how is it handled in your pharmacy?

10 A. Well, basically you have a number of things that  
11 happen. First off, the clerk or a tech or the pharmacist  
12 can receive the prescription. Either the tech or the  
13 pharmacist will put it in the data, which is called data  
14 entry. From there it shoots a label out and either the  
15 pharmacist or the technician, or someone who is registered  
16 through the board, may be able to dispense or fill it.  
17 And the final check is the pharmacist will go and check it  
18 within the NDC number, which is the National Drug Code.  
19 Once they identify that the drug that is dispensed is the  
20 right drug in the bottle, he checks it off and give it to  
21 the clerk, and the clerk will follow it and then provide  
22 it.

23 Q. So more than one person will actually check to  
24 make sure it's done correctly?

25 A. Oh, give or take. Busy days, yes. Slow days,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 you know, the pharmacist may be in there by himself and,  
2 you know, he may do all the checks himself. But the  
3 pharmacist has the last check on medication.

4 Q. Okay. And as part of your system, do you print  
5 out any kind of label that goes with the medication  
6 regarding warnings or side effects or anything of that  
7 nature?

8 A. Yes. The prescription comes up with a patient  
9 education with this drug interactions, what to, you know,  
10 do in case of overdose, or anything of that nature. Just  
11 a list of everything that, you know, people would want to  
12 know for to taking -- for taking this medication.

13 Q. And who is that bottle, prescription, for?

14 A. Child [REDACTED]

15 Q. And what is the drug that's in the bottle?

16 A. Brand name Atarax, but it was substituted for --  
17 well, actually it was hydroxyzine, which was substituted  
18 for the Atarax.

19 MS. TANNER: If I may approach, Your Honor?

20 THE COURT: You may.

21 MS. TANNER: This will be State's Exhibit 2.

22 [Whereupon, State's Exhibit Number 2 is marked  
23 by the court reporter]

24 [Whereupon, Ms. Tanner proffers documents to Mr.  
25 Hood]

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 [Whereupon, Mr. Hood reviews documents]

2 MR. HOOD: No objection.

3 THE COURT: No objection?

4 MR. HOOD: None, Your Honor.

5 THE COURT: It is in evidence without objection.

6 [Whereupon, State's Exhibit Number 2 is admitted  
7 into evidence by the Court]

8 Q. [Ms. Tanner] Mr. Ranger, if you can identify  
9 what is State's Exhibit Number 2.

10 A. Yes.

11 Q. And what is that?

12 A. Basically what we have is the actual patient  
13 education that basically explains the common uses; and,  
14 you know, how to use this medication; the caution; and the  
15 possible side effects; and also additional information;  
16 and also the overdose, if suspected.

17 Q. And is this item provided when a prescription is  
18 filled at your pharmacy?

19 A. Yes.

20 MS. TANNER: Thank you, Mr. Ranger. Please  
21 answer anything defense counsel may have.

22 CROSS-EXAMINATION

23 BY MR. HOOD:

24 Q. Mr. Ranger, prior to this particular day, had  
25 you ever filled that prescription before?

MIA PERRON, CCR, CVR-CM

-142-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes.

2 Q. Okay. And when did you fill that prescription?

3 A. I don't have the -- I don't have the records  
4 that will state that. But it had been refilled before,  
5 because it says original on 6/7/06.

6 Q. 6/7/06?

7 A. Right.

8 Q. And who was the person who picked up those  
9 drugs?

10 A. I'm not sure.

11 Q. Well, who was the person that picked up the  
12 second set of drugs?

13 A. I'm not sure.

14 Q. So you don't know who picked up the drugs?

15 A. [No response]

16 Q. Who was the doctor that prescribed the drugs?

17 A. Dr. Ellenberger [phonetic].

18 Q. Okay. So who -- how do you know from the  
19 documents that you had there who got the drug, who picked  
20 it up?

21 A. I don't know.

22 MR. HOOD: I don't have anymore questions. Wait  
23 a minute. I do have another question, just in case.

24 Q. [Mr. Hood] This was a liquid form, the other  
25 prescription, also; is that correct?



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, sir.

2 Q. No -- I mean, the cream; is that correct?

3 A. No, sir.

4 Q. The cream requires a prescription, too, doesn't  
5 it?

6 A. Yes, sir.

7 Q. Okay. All right. But no cream was picked up?

8 A. I don't know.

9 Q. Well, based on that, is there any way for you to  
10 tell anything about who picked it up, when they picked it  
11 up, or anything of that nature? I mean, other than the  
12 time.

13 A. No, sir.

14 MR. HOOD: I don't have anymore questions.

15 MS. TANNER: No further questions.

16 THE COURT: All right.

17 MS. TANNER: May this witness be excused, Your  
18 Honor?

19 THE COURT: Any objection?

20 MR. HOOD: I don't have any objection.

21 THE COURT: Okay. Mr. Ranger, you may be  
22 excused, sir. Thank you.

23 [Whereupon, the witness is excused and exits the  
24 courtroom]

25 MS. TANNER: The State calls Sergeant Renita

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Berry.

2 [Whereupon, Ms. Berry enters the courtroom]

3 THE CLERK OF COURT: Would you place your left  
4 hand on the Bible, and raise your right hand for me,  
5 please, ma'am.

6 [Whereupon, Ms. Berry is duly sworn by the clerk  
7 of court]

8 THE CLERK OF COURT: Please be seated.

9 [Whereupon, Ms. Berry takes the witness stand]

10 THE CLERK OF COURT: State your name, and spell  
11 it for the Court, please.

12 THE WITNESS: [No response]

13 MS. TANNER: Good afternoon, Sergeant Berry.

14 THE WITNESS: Good afternoon.

15 - - - - -

16 RENITA BERRY,

17 Having Been First Duly Sworn,  
18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MS. TANNER:

21 Q. Where are you employed?

22 A. Beaufort County Sheriff's Office.

23 Q. And what is your position there?

24 A. I'm a forensic drug chemist.

25 Q. And what is your education and training for that

MIA PERRON, CCR, CVR-CM

-145-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 position?

2 A. I have a bachelor's of science in chemistry from  
3 the University of South Carolina. Once I graduated from  
4 college, I was first employed by South Carolina Department  
5 of Health and Environmental Control for four years as an  
6 analytical chemist. Once leaving there, I was then  
7 employed by South Carolina Law Enforcement Division,  
8 commonly known as SLED, and I was at SLED for almost three  
9 -- for almost four years, excuse me. And since that time,  
10 I've been here at Beaufort County for about six years.

11 Q. And what do you do at the sheriff's office?  
12 What exactly is your job description?

13 A. My primary job description is analyze any type  
14 of controlled substance, or suspected controlled  
15 substance, that is submitted into evidence. I analyze it  
16 to determine what that substance is. We find a weight or  
17 a quantity, and then provide testimony when necessary.

18 Q. And have you ever testified in court before?

19 A. Yes, I have.

20 Q. And have you been qualified as an expert in your  
21 field?

22 A. Yes, I have.

23 MS. TANNER: Your Honor, at this time the State  
24 moves to have Ms. Berry qualified as an expert in  
25 forensic chemistry.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 THE COURT: Any objection?

2 MR. HOOD: I have no objection.

3 THE COURT: All right. Ladies and gentlemen of  
4 the jury, normally a person cannot give an opinion --  
5 or give opinion testimony. Normally when a person  
6 testifies, they've got to testify as to what they  
7 either saw, heard, sensed, or smelled, or something of  
8 that nature. However, there is an exception when  
9 someone is qualified as an expert in a particular field  
10 because of their education or their experience. They  
11 are permitted to allow -- or permitted to give their  
12 opinion in that certain area if the Court qualifies  
13 them as such.

14 This witness in this case is going to be  
15 qualified in the area of forensic chemistry to give  
16 opinion testimony in that area. Now, that does not  
17 mean that you must accept the opinion but it's simply  
18 evidence for you to use, like any other evidence in  
19 this case, as you see fit.

20 MS. TANNER: Thank you, Your Honor. May I  
21 approach the witness, please?

22 THE COURT: You may.

23 Q. [Ms. Tanner] Staff Sergeant Berry, I'm going to  
24 show you what's been marked as State's Exhibit 1. Can you  
25 identify this item?

MIA PERRON, CCR, CVR-CM

-147-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, I can.

2 Q. And how are you able to identify that particular  
3 item?

4 A. If you look at the packet in this heat-sealed  
5 container, there are different areas on here where you see  
6 where my initials are located. There is what we call a  
7 lab number, that starts with an L; there is a case number  
8 on here; and then you'll find my initials.

9 Q. And why is something like that heat-sealed like  
10 that?

11 A. Once it's heat-sealed, then whenever I come to  
12 court I can look at it and I can say that it has not been  
13 tampered with. And since this has been heat-sealed, it  
14 has not been tampered with.

15 MS. TANNER: At this time, Your Honor, I would  
16 ask that Staff Sergeant Berry open the heat-sealed bag  
17 and remove the item.

18 THE COURT: Do you need to see it?

19 MR. HOOD: No. Thank you.

20 THE COURT: Okay.

21 [Whereupon, the witness complies]

22 Q. [Ms. Tanner] Sergeant Berry, did you perform  
23 any type of testing on this item of evidence?

24 A. No, I didn't perform a test on the item.

25 Q. All right. Did you do anything with this item?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, I did. I took the measurement of the  
2 remaining medicine in the bottle, just the measurement of  
3 it, the volume.

4 Q. Okay. Could you also open the second bag and  
5 remove those items.

6 [Whereupon, the witness complies]

7 Q. [Ms. Tanner] And could you publish to the jury  
8 these two items.

9 A. There are two items for evidence. The first was  
10 a syringe; and the second was the medicine bottle, the red  
11 medicine bottle, with the clear liquid inside.

12 Q. Could you tell the jury again exactly what you  
13 did with that item.

14 A. I simply determined the volume of the liquid  
15 remaining in the bottle.

16 Q. And what did you then do with that information?

17 A. I provided that information to the toxicologist.

18 Q. All right. And what did you discover about the  
19 amount remaining in the bottle? What was --

20 A. The remaining --

21 Q. -- the volume?

22 A. Okay. The remaining amount was fifty-two  
23 milliliters.

24 MS. TANNER: Thank you, Staff Sergeant Berry.

25 Please answer anything Mr. Hood has.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

CROSS-EXAMINATION

BY MR. HOOD:

Q. Sergeant Berry, how much of whatever that substance is that's in that bottle was in that bottle at the time that it was picked up at the pharmacy? Do you know?

A. Based on the information on the bottle, a hundred-and-twenty milliliters was inside of the bottle.

Q. But you don't know that for sure, do you?

A. No. Just based on what the bottle tells me.

Q. Yes. And you don't know what's in that bottle, do you?

A. I only took a volume of the liquid remaining.

Q. Okay. And it says on the back side of your report: the following items was received on 16 May of 2008. Is that right?

A. I received it a second time on that date, yes.

Q. And who is Sergeant R. Cooper?

A. Sergeant Cooper is the evidence custodian.

Q. Where did Cooper get it from?

A. She received it out of evidence, evidence storage.

Q. But you didn't receive the item until 16 May, 2008?

A. I initially received the item in September of

MIA PERRON, CCR, CVR-CM

-150-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 2006. I was asked to provide a volume at that time. I  
2 did it at that time and then I later, on the 16th of this  
3 month, did an official report.

4 Q. Okay. So you didn't do a report back whenever;  
5 is that correct?

6 A. No, I did not.

7 MR. HOOD: Okay. Thank you.

8 MS. TANNER: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. TANNER:

11 Q. Staff Sergeant Berry, your report, was that  
12 prepared in preparation for court?

13 A. Yes, it was.

14 Q. But your initial measurement, what was that done  
15 for?

16 A. I received a call, and I was asked to retrieve  
17 the evidence from -- receive this evidence from this  
18 evidence custodian, to take a volume so that the  
19 toxicologist wouldn't have to come here to -- come to  
20 Beaufort and take the volume. So I had simply took the  
21 volume, and I reported that volume to her.

22 Q. And who was that toxicologist you reported to?

23 A. Dr. Demi Garvin.

24 MS. TANNER: Thank you, ma'am. No further  
25 questions.

MIA PERRON, CCR, CVR-CM

-151-



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 MR. HOOD: I have nothing.

2 THE COURT: You may step down, Staff Sergeant.  
3 Thank you.

4 THE WITNESS: Thank you.

5 MS. TANNER: Thank you, Your Honor. May this  
6 witness be excused?

7 THE COURT: Any objection?

8 MR. HOOD: None.

9 THE COURT: You may be excused. Thank you.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness is excused and exits the  
12 courtroom]

13 MS. TANNER: The State calls Dr. Michael Caplan.

14 [Off the record momentarily]

15 [Whereupon, Dr. Caplan enters the courtroom]

16 THE CLERK OF COURT: Sir, would you place your  
17 left hand on the Bible, and raise your right hand for  
18 me, sir.

19 [Whereupon, Dr. Caplan is duly sworn by the  
20 clerk of court]

21 THE CLERK OF COURT: Please be seated.

22 [Whereupon, Dr. Caplan takes the witness stand]

23 THE CLERK OF COURT: State your name, and spell  
24 it for the Court, please.

25 THE WITNESS: My name is Michael Jeffrey Caplan.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Last name is spelled C-A-P-L-A-N.

2 MS. TANNER: Good afternoon, Dr. Caplan.

3 THE WITNESS: Good afternoon.

4 - - - - -

5 MICHAEL J. CAPLAN,

6 Having Been First Duly Sworn,

7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MS. TANNER:

10 Q. Where are you employed?

11 A. I'm employed at the Medical University of South  
12 Carolina.

13 Q. And what is your position there?

14 A. I'm a pathologist.

15 Q. What is a pathologist?

16 A. A pathologist is a doctor who specializes in  
17 studying the response or the reaction of the human body to  
18 disease. And that can include examining tissues or  
19 organs, such as a biopsy, that's done to make a diagnosis  
20 or it can involve examining organs on a deceased person,  
21 which would be an autopsy. It could also involve  
22 examining body fluids such as blood, urine, spinal fluid,  
23 also, to make diagnoses of various kinds of diseases.

24 Q. And what kind of education and training do you  
25 have to be a pathologist?

MIA PERRON, CCR, CVR-CM

-153-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1           A.       Well, I started with -- after high school, I  
2       went to undergraduate school at Michigan State University  
3       and obtained a degree in forensic science. Or  
4       criminalistics is another name. After that, I then went  
5       to the University of Connecticut. And by the way, I  
6       graduated from Michigan State University in 1983.  
7       Following that, I then went to the University of  
8       Connecticut School of Medicine, obtained an M.D., Doctor  
9       of Medicine degree, graduated in 1987. After that, I went  
10      to the University of Michigan and completed a five-year  
11      postgraduate or residency training in pathology. And that  
12      was from 1987 to 1992. After that, I then did a year in  
13      forensic pathology. And forensic pathology is a  
14      subspecialty which uses the methods of pathology, but  
15      there is dealing with issues regarding the law and public  
16      health and public safety. I completed that fellowship in  
17      the New York City office of the chief medical examiner in  
18      1983. And then I completed one more year of training from  
19      2003 to 2004, that was in pediatric pathology,  
20      specifically examining diseases of children, and also  
21      infants and unborn infants, fetuses, and that was at the  
22      Children's Hospital of Pittsburgh. And that's the extent  
23      of my education and training.

24           Q.       Have you ever testified in a court of law  
25      regarding your line of work?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, I have.

2 Q. And have you been qualified as an expert in  
3 forensic pathology?

4 A. Yes, I have.

5 MS. TANNER: Your Honor, at this time the State  
6 moves to have Dr. Michael Caplan declared an expert in  
7 the area of forensic pathology.

8 MR. HOOD: No objection.

9 THE COURT: All right.

10 Again, ladies and gentlemen of the jury, as I  
11 told you before, typically a person can't testify as to  
12 opinion. Normally when a person testifies, they must  
13 testify as to what they've seen, heard, tasted,  
14 smelled, or something in that nature. And, of course,  
15 we allow an exception in a case where someone is  
16 qualified because of their education and/or experience.

17 Ladies and gentlemen, we are going to go ahead  
18 and qualify Dr. Caplan in this case in the expertise --  
19 or qualify him in the area of forensic pathology to  
20 give opinion testimony in that area. Again, ladies and  
21 gentlemen, that does not mean that you must accept his  
22 opinion but it's evidence for you to use in any way you  
23 see fit.

24 MS. TANNER: Thank you, Your Honor.

25 Q. [Ms. Tanner] Dr. Caplan, did you perform an

MIA PERRON, CCR, CVR-CM

-155-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 autopsy on the body of Child [REDACTED] [REDACTED]

2 A. Yes, I did.

3 Q. And when did you do that?

4 A. I performed that autopsy on the 19th of August,  
5 2006.

6 Q. And give a general, I guess, description to the  
7 jury exactly what is involved in a forensic autopsy.

8 A. Absolutely. I guess I should start off by  
9 saying that an autopsy comes from the Greek which means to  
10 see with one own's eyes. And that's really what an  
11 autopsy is. You are seeing, with your own eyes, the parts  
12 of the body. And you are performing this postmortem  
13 examination in an attempt to determine why somebody died,  
14 the cause of death, as well as what other related factors,  
15 diseases or injuries or other processes, may have been  
16 going on.

17 An autopsy starts with an examination of the  
18 body from the outside, what we call the external  
19 examination. And that includes examination of any  
20 clothing. And the way that we document that is really by  
21 three means: one is by taking photographs. And, you  
22 know, nowadays that's pretty much done with digital  
23 photography. The second way is to take notes, and the  
24 third way is to make diagrams. And all of those support  
25 each other. And ultimately what we end up doing is

MIA PERRON, CCR, CVR-CM

-156-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 generating a report which summarizes those findings.

2 After photographing a decedent's body with any  
3 clothes that are on, then we remove the clothing and then  
4 again photograph the body. And then we do basically a  
5 head-to-toe examination, very similar to what you would do  
6 as a physical examination in a living person, looking for  
7 any distinctive findings: any scars, any tattoos, any  
8 particular injuries from the outside, bruises or scrapes,  
9 or a penetrating injury such as a gunshot wound. We also  
10 look for basic identifying features such as, you know, eye  
11 color, hair color, hair length, distinguishing features  
12 like that.

13 And after the external examination is done, then  
14 we perform what we call an internal examination. And the  
15 way we do that is we make a fairly -- a standard incision,  
16 usually a Y-shaped incision, that goes from the top of the  
17 shoulders down to the bottom of the chest and then down to  
18 the pubic bone. And then we reflect the skin and the soft  
19 tissues, we remove the rib cage, and that allows us to see  
20 all of the organs in the chest and the abdominal cavities.  
21 Again, we're doing the same thing. We're looking for  
22 evidence of disease or injuries in those organs.

23 We also examine the brain, and the way we do  
24 that is we make an incision in the scalp and reflect the  
25 scalp forward and backward. We remove the skullcap, with

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 a special saw for that purpose, and that exposes the  
2 coverings of the brain and the brain itself. And, again,  
3 we're looking for evidence of disease and/or injury.

4 And then finally we look at all the neck organs:  
5 the muscles in the neck, the larynx, the hyoid bone, which  
6 is the U-shaped bone that connects the larynx with the  
7 floor of the mouth. We do the same thing with that.

8 Occasionally, also, especially in young children  
9 and infants, we will also make incisions into the back and  
10 into the backs of the legs and the arms, to look for any  
11 evidence of bruising or contusions.

12 Another part of the autopsy is taking specimens,  
13 whether it be body fluids such as blood and urine, and  
14 solid tissue such as liver. We save that for purposes of  
15 additional studies, which would include toxicology,  
16 looking for any drugs or poisons in the body; for  
17 microbiology, looking for any evidence of infectious  
18 disease; and for any metabolic diseases that could have  
19 caused or contributed to the death. And that's especially  
20 important in a young child or infant, you know, who may  
21 not, you know, have -- where the signs and symptoms of  
22 those diseases may not be as obvious as they would be in  
23 an older person.

24 And so then after all that's done, you know,  
25 then the body is released, you know, to the funeral home

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 or -- if that person has been identified.

2 And then we take all that information and  
3 dictate a report, and then we add later the results of any  
4 additional studies: looking at tissues under the  
5 microscope, the toxicology results, and all the additional  
6 results, until we finally generate a final report which  
7 has all of our findings, as well as a statement of the  
8 opinion of the cause and manner of death.

9 And that's really the summary of what's involved  
10 in an autopsy.

11 Q. Now, Dr. Caplan, in the autopsy of Child  
12 [REDACTED] what were your anatomic findings of the internal  
13 exam?

14 A. On the internal examination, the main anatomic  
15 finding was a nonspecific finding. The organs were  
16 congested, meaning that they had -- were -- had lots of  
17 blood in them. Now, organs normally should have blood,  
18 and so this was, you know, really an extension of a normal  
19 finding. But specifically, some organs like the lungs,  
20 had even a little bit more blood and fluid than normal.  
21 So that was probably the main general finding.

22 There was also -- in addition to the fluid in  
23 the lungs, the other main finding was that the brain was  
24 swollen. Normally, the brain -- you know, to use an  
25 analogy, if you look at the surface of the brain, it



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 actually looks like a bunch of thick noodles, which we  
2 call gyri. And normally those gyri and the grooves  
3 between them, the sulci, are very easily -- you can tell  
4 them apart. When the brain starts to swell, those gyri  
5 start to flatten, and the grooves in between them become  
6 harder to see. And so that's one of the early signs that  
7 we see of a swollen brain.

8 So I would say congestion of the organs, and a  
9 swollen brain, with a -- and fluid in the lungs, some  
10 fluid in the lungs, were the main findings that I saw in  
11 the internal examination.

12 Q. And what would that tell you as a forensic  
13 pathologist, those two items found together?

14 A. Well, the -- you know, the congestion of the  
15 organs by itself is a nonspecific finding. But we usually  
16 -- we see that in situations where -- most often where  
17 there's been some kind of asphyxial death. And what I  
18 mean by that is when there's been some interruption with  
19 the flow of oxygen, and especially with breathing. And  
20 whereas with brain swelling, that can be due to a number  
21 of causes. That can be due to injury of the brain, that  
22 can be due to infection of the brain, but that can also be  
23 due to lack of oxygen to the brain. So the combination of  
24 both of those things we see most commonly with situations  
25 where there has been a lack of oxygen to the brain either

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 through some sort of mechanical interruption in the  
2 airway, or when there's been some kind of depression of  
3 the breathing system in the body.

4 Q. What did your -- what did your examination  
5 reveal about the other organs, say the kidneys, of Mr.

6

7 A. All of the other organs that Child [REDACTED]  
8 had were all really normally formed. There were no  
9 malformations. Other than being congested, all of them  
10 were really, you know, normal organs. And, you know,  
11 normal is always a relative term. But I will say that  
12 none of them had any evidence of disease or injury.

13 Q. What about the liver? Any damage or problems  
14 you saw with the liver?

15 A. No. The liver was dark brown. It was a normal  
16 color. The capsule was smooth and glistening. There was  
17 no exudate, no evidence of infection, on the surface. It  
18 had a normal consistency. It was firm. Microscopically,  
19 the liver cells were -- had lots of glycogen in them,  
20 which is normal in a young child. And specifically one of  
21 the things that we look for, as evidence of a metabolic  
22 disease, are little vesicles. And we call that  
23 microvasculicular fat. That's a clue that there may be a  
24 metabolic disease in the liver. And we did not see that.  
25 Also, there were no dead liver cells. You know, sometimes

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 if there has been injury to the liver we will see what we  
2 call necrosis, which is a fancy way of saying that cells  
3 are dying in a person that's living. And I did not see  
4 evidence of that.

5 Q. Did you find any natural causes for this baby's  
6 death?

7 A. No, I did not.

8 Q. You also mentioned a micro examination of  
9 various tissues. Did you perform that in this case?

10 A. Yes, I did.

11 Q. Did you find any abnormalities or problems that  
12 could have contributed to his death?

13 A. I found some abnormalities, but none, in my  
14 opinion, that contributed to his death.

15 Q. What did you find?

16 A. I did find -- one thing that I found that I did  
17 forget to mention: there were two small bruises to his  
18 body. There was one bruise on the left side of the top of  
19 the head. It was very small. It was probably three-  
20 quarters of an inch. Very thin. And that was a small  
21 bruise or a contusion. And when I looked at that under  
22 the microscope, that was fresh hemorrhage. It was fresh  
23 bleeding. So that would have been something, you know,  
24 that would have occurred anywhere from minutes to hours  
25 before death, as opposed -- not days or weeks.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 I also saw -- I also saw a small bruise on the  
2 left -- in the left buttock, in the soft tissues, the fat  
3 just beneath the skin. That was a little bit older. That  
4 had some evidence of healing, and that was more consistent  
5 with being several days. It could have been as much as a  
6 week old. But both of those were small areas.

7 Again, the one in the head was about three-  
8 quarters of an inch; the one in the buttock was anywhere  
9 from one-and-a-quarter to one-and-a-half inches. Both of  
10 those were small areas and in my opinion did not  
11 contribute to Child death.

12 Q. Did you also in this case review toxicology  
13 reports?

14 A. Yes, I did.

15 Q. And what were the results of that -- of that  
16 test?

17 A. We submitted blood, postmortem blood, for  
18 toxicology. And the results of that were -- the substance  
19 that was detected in the blood was hydroxyzine, at a  
20 concentration of three-hundred nanograms per milliliter.  
21 And also detected, but not quantitated, was it's  
22 metabolite or breakdown product, norhydroxyzine.

23 Q. What is hydroxyzine?

24 A. Hydroxyzine is a class of drugs that we call an  
25 antihistamine, and it's a particular type of antihistamine

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 which is made of different classes. And an antihistamine  
2 is basically a drug that's used to combat or to counteract  
3 the effects of histamine. We see -- probably the one  
4 that's most familiar that most people think about is  
5 Benadryl, or diphenhydramine, because that's an over-the-  
6 counter drug.

7 And it turns out that histamine is a very  
8 complicated molecule and has a number of different types  
9 of receptors to it in different cells in the body.  
10 Hydroxyzine, like diphenhydramine or like Benadryl, is  
11 what we call a class-one histamine blocker.

12 The histamine binds these type-one receptors.  
13 So -- and it has -- the effects that it has, to counteract  
14 the effects of histamine. Some of the things that  
15 histamine does is when it gets released, it causes -- can  
16 cause contraction of smooth muscles, such as in the  
17 airway; it can cause increase in leakiness of blood  
18 vessels; it can cause opening up of blood vessels, so that  
19 your blood pressure goes down; and it can also cause  
20 tremendous itching, by activating the nerve endings in the  
21 peripheral nerves.

22 And hydroxyzine, while it counteracts many of  
23 those effects of histamine, one of the most prominent or  
24 main effects is to counteract the itching at those  
25 peripheral nerve endings. And that's really probably its

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 main use in clinical medicine.

2 Q. How does it do that?

3 A. Well, it does that by specifically binding to  
4 the receptor where histamine binds. So in other words,  
5 histamine is in cells that we call mast cells, M-A-S-T,  
6 that are in tissues and also in cells that circulate in  
7 the body, that we call basophils. Okay? But what we are  
8 really concerned with here is with mast cells. So in the  
9 body, when a person has been sensitized, okay -- mainly  
10 what happens is with people that have allergies, okay, for  
11 example asthma or hay fever or hives or a runny nose,  
12 things like that where they have allergies or a family  
13 history, what happens is is that they make a certain kind  
14 of antibody, okay, called IGe.

15 Now, some antibodies you make to fight  
16 infection. IGe is a particular kind of antibody that is  
17 believed to play some role in parasites infection. But  
18 that's more of an issue with other countries, although we  
19 do see some parasites here. But what happens is is those  
20 IGe antibodies then bind to the mast cell. So then the --  
21 then the protein that caused the allergy in the first  
22 place, and those -- that can be pollen, that can be scales  
23 from animals, that we call dander, mites -- all different  
24 things can cause -- can be allergens, or at least cause  
25 the allergies.

MIA PERRON, CCR, CVR-CM

-165-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1           When those allergies are reintroduced, when  
2   somebody has mast cells and has those IGe molecules on the  
3   surface, when you reintroduce those allergens, then it's  
4   going to bind to those IGe antibodies and cross-line, and  
5   then it's going to set off an explosion where the  
6   histamine in the mast cells now gets released. And when  
7   that histamine gets released, then it causes all these  
8   effects: you know, the lowering of your blood pressure,  
9   the tightening of your airway, and the itchiness in your  
10  skin.

11           What hydroxyzine specifically does is it binds  
12  to the receptor of the histamine and blocks it so that  
13  histamine cannot bind to the receptor. And by blocking  
14  it, it prevents histamine from doing the things that it  
15  normally would do when it gets released. And that's the  
16  basis for the treatment in -- you know, in the kind of  
17  skin diseases that are used for hydroxyzine. And the skin  
18  diseases that we call that are atopic dermatitis. Or  
19  another name is eczema.

20       Q.       So in layman's terms, it keeps your body from  
21  itching?

22       A.       That's correct. That's exactly right. That's a  
23  much more succinct way of putting it. That's right. And  
24  the medical term we use is pruritus, which is really  
25  intense itching.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 But that's right. Hydroxyzine really is one of  
2 the most effective ways to keep your body from itching in  
3 people that have this condition of atopic dermatitis or  
4 eczema.

5 Q. Now, if a person takes a normal dose that's been  
6 prescribed by a doctor, are there any side effects?

7 A. Yes, there can be side effects. And those can  
8 vary with individuals. But, yes, there are known side  
9 effects, even at therapeutic doses.

10 Q. And could you give us the most common side  
11 effects?

12 A. Yeah. Probably the most -- some of the most  
13 common side effects are just dry mouth. Okay? And that  
14 has to do with what we call anticholinergic effects.  
15 That's -- there's -- it has some effects against a  
16 molecule called acetylphenocholine, which is a  
17 neurotransmitter. But dry mouth is one of the most common  
18 effects. And then the most common effect after that is  
19 sedation, okay, drowsiness, wanting to go to sleep,  
20 lethargy, somnolence. But sedation -- the dry mouth and  
21 the sedation are probably the two most common effects.

22 Q. Now, if a person or a child were given more than  
23 the recommended does, what is the effect on the body?

24 A. Well, again, that is not completely known,  
25 because different individuals can respond differently.



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 But we know generally that a couple of types of things can  
2 happen. One thing that may happen can be that --  
3 generally when we talk about too much, it's an extension  
4 of already what it does at normal doses, at therapeutic  
5 doses. So one of the things that can happen is that those  
6 sedative effects can be compounded or magnified, or that  
7 the effects like the dry mouth and the dry eyes can be  
8 magnified.

9 But the other thing that can sometimes happen --  
10 and this is where things get a little bit tricky to  
11 understand, myself included -- is that sometimes these  
12 anticholinergic effects can almost make it seem that they  
13 are doing the opposite. And what I mean by that is that  
14 sometimes these -- an overdose of these or too much of  
15 these medications can actually cause an excitement in the  
16 central nervous system. Your heart rate can sometimes go  
17 up. Sometimes you can actually become agitated, and  
18 sometimes you can even have seizure activity. Why some  
19 people have the excitement effects and why some people  
20 have more of the sedative effects is not completely known,  
21 but it is known that both of those kind of reactions can  
22 occur when doses are above, you know, what is prescribed.

23 Q. If a child were given six times the recommended  
24 dose, what would it do to the body?

25 A. Well, again, it could go either way. It could

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 go to a six-times magnification of the sedative effect  
2 that it would have, you know, from a normal dose so things  
3 like the sedating so some people would be, you know,  
4 significantly more drowsy, more somnolent, more lethargic.  
5 And then one of the potential effects could be that with  
6 sufficient depression of the central nervous system, that  
7 could interrupt the normal -- the normal orchestration of  
8 the normal breathing pattern that is set in the brain  
9 stem. So it could potentially interfere with normal  
10 breathing.

11 On the other hand, if it's an excitement effect,  
12 it could cause tremendous agitation or seizure activity,  
13 or it could cause an abnormal rhythm of the heart based on  
14 that. And, again, because every individual responds  
15 differently, it's difficult to predict when either of  
16 those extremes, you know, could occur.

17 Q. How long would it take from the time a liquid  
18 form of hydroxyzine is ingested for it to take effect or  
19 to peak?

20 A. Well, again, that depends a little bit on who  
21 you -- but as a general rule in children, the duration of  
22 action or the peak onset of action in hydroxyzine is  
23 fairly soon after the ingestion; somewhere between two and  
24 four hours, you know, you will see in the literature.  
25 Children, also, the -- the drug tends to have a little bit

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 of a shorter half-life. It hangs around a little bit less  
2 in the body than in adults. But as a general -- for  
3 children, it would be a couple of hours.

4 Q. So back to Child autopsy and toxicology  
5 results. You said -- what was the level of hydroxyzine in  
6 Child body?

7 A. In Child body, the level was three-hundred  
8 nanograms per milliliter.

9 Q. And can you tell us what would be a normal,  
10 expected therapeutic level in a child his age?

11 A. In a child his age, based on literature that's  
12 out there, a normal level would be less than fifty  
13 nanograms per milliliter.

14 Q. So you're talking about six times what you  
15 should have seen in his body?

16 A. That is correct.

17 Q. Now, taking that information and looking at your  
18 anatomic findings, the brain swelling and the pulmonary  
19 congestion, could you relate the two?

20 A. Yes. In my opinion, you could.

21 Q. All right. Can you explain how those relate to  
22 one another?

23 A. Yes. As I have mentioned in -- if the sedation  
24 effects get to a critical point or reach a critical point,  
25 one of the effects from central nervous system depression

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 could be interference or interruption with the normal  
2 breathing pattern. And if somebody stops breathing, then  
3 the flow of oxygen is going to -- is going to stop, and  
4 the flow of oxygen to critical organs is going to stop.  
5 And as I had mentioned earlier, the brain can swell from  
6 many causes. It can swell from, you know, mechanical  
7 injuries such as severe and significant trauma, from  
8 infection, but from -- but it can also swell when there's  
9 not enough oxygen being delivered to the brain. That is  
10 one of the responses of the brain to swelling.

11 So in my opinion here, that that -- that  
12 response of the brain to the lack of oxygen would be  
13 consistent with one of the possible responses of the body  
14 to an overdose of hydroxyzine.

15 As far as the pulmonary edema, what happens is  
16 when you stop breathing -- one of the things that  
17 breathing does is it decreases the pressure in the chest  
18 to allow blood from the veins to flow back into the heart.  
19 And when you stop breathing, you are no longer creating  
20 that nice, negative pressure to allow easy flow of blood  
21 back into the heart, and so one of the things that happens  
22 is is that blood pools in organs, especially in the lungs.  
23 And when blood pools in those vessels, it causes increased  
24 pressure in those small vessels, and sometimes it forces  
25 some fluid out. And that's why we see the congestion of

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 blood and sometimes that frothy fluid, because that's  
2 mixed with air being forced out into the airways.

3 So in my opinion, both of those findings, the  
4 fluid in the lungs, the congestion, and the brain  
5 swelling, could be explained by a lack of oxygen and  
6 interruption of normal breathing.

7 Q. And that is caused by what? What -- why did  
8 this child stop breathing?

9 A. In my opinion, in this case the child stopped  
10 breathing because an overdose of hydroxyzine resulted in a  
11 magnification of the sedative effects of this drug, which  
12 caused depression of the central nervous system, which  
13 ultimately caused respiratory depression, as the breathing  
14 centers were no longer being stimulated to breathe. That  
15 is my opinion of why he stopped breathing.

16 Q. Dr. Caplan, you mentioned earlier that there are  
17 two things at the end of your evaluation: your  
18 determination about a cause of death, and your  
19 determination about a manner of death. What is the  
20 difference in those two?

21 A. The difference is is that a cause of death  
22 specifically means that disease or injury which set in  
23 motion the sequence of events ending in death. And the  
24 manner of death is the circumstances in which the cause  
25 arose. So one is the actual disease or injury. That's

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 the cause. The manner is the circumstances underlying how  
2 the cause came to be about.

3 Q. And based on your evaluation, in your opinion  
4 what is Child [REDACTED] cause of death?

5 A. In my opinion, Child [REDACTED] cause of death  
6 was acute hydroxyzine intoxication complicating  
7 hydroxyzine treatment for atopic dermatitis or eczema.

8 Q. And in your opinion, what is Child [REDACTED]  
9 manner of death?

10 A. In my opinion, Child [REDACTED] manner of death  
11 is homicide.

12 Q. And why did you rule it a homicide?

13 A. The reason I ruled it homicide is homicide is  
14 defined as death at the hands of another person, and it is  
15 also as a result of a deliberate act. Homicide, the  
16 difference between -- as a forensic pathologist, when we  
17 say homicide we're not using -- we're not distinguishing  
18 between different kinds of murder or manslaughter.  
19 Homicide is just an administrative term that we use in  
20 medico-legal practice to state that death was at the hands  
21 of another person due to a deliberate act of another  
22 person. It does not in any way require an intent to kill  
23 that person. In order for me -- some other manners of  
24 death that would come into play here would be accident,  
25 but an accident would be a completely unintentional act

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 where there is no deliberate act. And in my opinion,  
2 there was a deliberate act here, and that's why I used  
3 homicide as a manner of death.

4 And I also did not use natural because natural,  
5 by definition, is death due exclusively a hundred percent  
6 to a disease process, and in my autopsy and in  
7 reconstructing the events, I did not find evidence for a  
8 natural disease process to cause Child death.

9 MS. TANNER: Thank you, Dr. Caplan. Please  
10 answer anything Mr. Hood has.

11 CROSS-EXAMINATION

12 BY MR. HOOD:

13 Q. Dr. Caplan, the report that you have prepared  
14 describes the child as a well-developed, well-nourished,  
15 no signs of any physical abuse. Isn't that correct?

16 A. I -- there's nothing that I say about -- I don't  
17 use the terms physical abuse. I do say, specifically,  
18 well-developed, well-nourished African-American male  
19 toddler.

20 Q. Yes. So you look at the exterior of the body  
21 and everything is fine, basically; is that correct?

22 A. Yes. I would essentially agree with that.  
23 There were some minor scars and some minor -- there was  
24 some -- there were some skin lesions, some skin changes.  
25 But, yeah, there were -- in terms of injuries on the body,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 there were only very minor injuries. There were some  
2 healing scrapes on the top of the lip, some very tiny  
3 scrapes where the neck meets the scalp, and some tiny,  
4 tiny ones on the front of the thigh. But, yes, I would  
5 essentially agree with that.

6 Q. Okay. Now, you indicated in your report also  
7 that the size of the liver in this case was five hundred  
8 ten grams, and you expected to see three seventy-eight?

9 A. Yes. And I -- that is correct. And that is  
10 based on -- that expected weight, that is based on a 1962  
11 table, based on 30,000 autopsies. And even in this day  
12 and age in all modern medicine, that is -- we lack growth  
13 charts and weight charts that really reflect modern times.  
14 Since that is the highest number of cases, and that's  
15 based on body length, that is the one that we use. So,  
16 yeah, based on that table, the liver is above that  
17 expected weight.

18 Q. Now, you indicated several times during the  
19 course of your testimony that it could have been the cause  
20 of death. In other words, possibly something else caused  
21 the death?

22 A. Oh. I don't remember saying that, sir.

23 Q. Well, I just remember you saying, from reading  
24 the literature, it could have been. You don't recall any  
25 of that?



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Well, that's not the question that you asked me,  
2 though.

3 Q. Yeah. Well, what I'm saying is you used the  
4 word "could have" several times during the course of your  
5 testimony. Are you saying that there are other causes  
6 that could have been the cause of death?

7 A. In this particular case, in my opinion the cause  
8 of death was acute hydroxyzine intoxication complicating  
9 hydroxyzine treatment for eczema. What I was saying could  
10 have been -- I was talking specifically there about the  
11 possible mechanisms of adverse reactions from increased  
12 doses of hydroxyzine. I was not talking about could have  
13 been the cause of death. Now, I will say that we don't  
14 know anything with absolute certainty. We are human  
15 beings. So that is my -- that is my best opinion, as a  
16 forensic pathologist. But in my opinion, no, that was the  
17 cause of death.

18 MR. HOOD: May I approach the witness, Your  
19 Honor?

20 THE COURT: Yes.

21 Q. [Mr. Hood] Doctor, when you look at this  
22 particular bottle and look at the label on the bottle, if  
23 you were an ordinary person -- rather than yourself, as a  
24 doctor -- what would you assume to be the risk, to you or  
25 to a person that you were giving it to, to be if you gave

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1     them too much?

2           A.     I'm not sure I can answer that question, because  
3     I'm -- if I was a person that had no medical knowledge of  
4     this, I wouldn't know how to answer that question.

5           Q.     Well, what would you expect to happen if you  
6     took too much of that, based on what's on that document  
7     there -- on the label?

8           A.     I can't answer that question, because I don't  
9     have a basis to answer that question.

10          Q.     Well, it says on there, may cause dizziness.

11          A.     Oh. I'm sorry. I didn't see that.

12          Q.     You didn't see that?

13          A.     I didn't see that.

14          Q.     Oh. Well, look at that again.

15          A.     I'm sorry.

16          Q.     It's in big --

17          A.     Oh. No. Actually, it says may cause --

18          Q.     It's in the big letters down at the bottom.

19          A.     No, it doesn't say may cause dizziness, sir. It  
20     says may cause drowsiness.

21          Q.     Well, drowsiness, dizziness.

22          A.     Well, those are two different things.

23          Q.     There are two things in there, though, aren't  
24     there?

25          A.     It says may cause -- I apologize. It says may

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 cause drowsiness up at the top -- you're right -- and may  
2 cause dizziness at the bottom. Okay. I apologize.

3 Q. Wow. Now we've got it.

4 A. And then it also says: alcohol could intensify  
5 this effect; use caution when operating a car or dangerous  
6 machinery. I apologize. I was looking at the white part  
7 of the label.

8 Q. I got you. Okay.

9 So it is easy to misunderstand these labels. Is  
10 that what you're telling me?

11 A. No, that's not what I was telling you. What I  
12 will tell you is my eyesight isn't too great.

13 Q. Well, we all have that problem sometimes.

14 Okay. What would this be for? Do you have any  
15 idea?

16 A. That is a ten-milliliter syringe. That could be  
17 due -- that could be for any number of possible things.

18 Q. Doctor, now that you are satisfied or could be  
19 satisfied that the death of this child was caused by this  
20 particular drug, what steps did you take to notify the  
21 drug administration of this particular death and this  
22 particular risk involved in the overdose of this  
23 particular drug?

24 A. Well, first of all, I would object to the use of  
25 satisfied. I'm never satisfied as to the cause of a

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 death. I mean, there's -- you know, and so I would say  
2 that to the best of my ability, that was the cause of  
3 death. I wouldn't use the term satisfied. And to answer  
4 the second part of your question, I did not take any  
5 specific steps to notify the Food and Drug Administration.  
6 Reports of hydroxyzine fatalities have appeared in the  
7 literature and the effects of hydroxyzine, as well as  
8 other H-1 histamine blockers of that type-one receptor,  
9 are documented in many books and articles on toxicology.

10 Q. Okay. Well, exactly how many deaths have been  
11 caused in children by this particular drug as an overdose?

12 A. I don't have a number for that. I don't know.

13 Q. Well, could you give me an educated guess?

14 A. I can't. I don't know.

15 Q. Well, after you discovered that this particular  
16 drug was the cause of this death -- and you say you didn't  
17 take any steps to notify the Drug Administration -- what  
18 steps did you take to notify the general public that there  
19 was an extra risk involved in taking this particular drug?

20 A. I would answer that question by the fact that we  
21 work here on a coroner system and so our -- I am -- my  
22 duty as a forensic pathologist is to as accurately and  
23 faithfully determine the cause and manner of death, and  
24 that is then -- report is then submitted to the coroner's  
25 office and then the coroner's office submits the official

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 cause and manner of death on a death certificate. That  
2 public function in this state is handled through the  
3 coroner system.

4 Q. And you get paid by the government; is that  
5 correct?

6 A. I don't know. I get paid by Medical University  
7 of South Carolina. You know, that's a state -- yes.

8 Q. And they have their contracts with the  
9 government; is that correct?

10 A. I guess so. I know very little about the inner  
11 workings of that.

12 Q. And does the University have any type of  
13 contracts, agreements, with pharmaceutical companies?

14 A. I don't know the answer to that.

15 MR. HOOD: Thanks.

16 MS. TANNER: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. TANNER:

19 Q. Dr. Caplan, aren't most drugs lethal at some  
20 point if you overdose on them?

21 A. Theoretically, any drug can be lethal in  
22 excessive doses.

23 Q. And you said the level in Child was three  
24 hundred --

25 A. Nanograms per milliliter.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Is that a toxic level for a fifteen-month-old  
2 baby?

3 MR. HOOD: Your Honor, we have already covered  
4 this ground once before. This is not new material, and  
5 I didn't cross-examine him on that particular issue at  
6 all. All we're doing is going over direct examination  
7 again, you know, for whatever purpose.

8 THE COURT: Okay. I'm going to go ahead -- I'm  
9 going to overrule your objection right now.

10 Go ahead and continue, solicitor.

11 Q. [Ms. Tanner] Is what you found in Child  
12 [REDACTED] body, was that a toxic level or a lethal level for  
13 a fifteen-month-old child?

14 A. In my opinion, yes, it was. It was toxic and a  
15 potentially lethal level, yes.

16 MS. TANNER: No further questions.

17 MR. HOOD: I have nothing else.

18 THE COURT: Okay. You may step down, Dr.  
19 Caplan.

20 MS. TANNER: Thank you, Your Honor. May this  
21 witness be excused?

22 MR. HOOD: No objection.

23 THE COURT: You are excused, Dr. Caplan. Thank  
24 you, sir.

25 [Whereupon, Dr. Caplan is excused and exits the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 courtroom]

2 MS. TANNER: May we approach briefly?

3 THE COURT: Sure.

4 [Whereupon, an off-the-record bench conference  
5 is held]

6 THE COURT: Ladies and gentlemen of the jury,  
7 it's my understanding that we just have one more  
8 witness for today. And, of course, I'm going to get  
9 you out of here by the promised hour.

10 So with that said, ladies and gentlemen, I send  
11 you back to your jury room. Again, you are not to  
12 begin discussing this case. It wouldn't be appropriate  
13 to do so. You haven't heard all the evidence, nor the  
14 arguments from the lawyers, or my charge on the law.  
15 Get whatever you need.

16 And we are going to run either as long as this  
17 witness goes, or until ten minutes to 5:00. So that's  
18 just to let y'all know scheduling purposes. Okay? So  
19 go ahead and go back, and we'll be with you shortly.  
20 Thank you.

21 [Whereupon, the jury exits the courtroom at  
22 3:46 p.m.]

23 THE BAILIFF: The jury is clear, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, we  
25 are going to be at ease for about five, ten minutes or

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 so. All right? Thank you.

2 [Whereupon, a recess is taken from 3:46 p.m. to  
3 4:10 p.m.]

4 THE COURT: All right. Is the State ready?

5 MS. TANNER: The State is ready, Your Honor.

6 THE COURT: Is the defense ready?

7 MR. HOOD: Ready, Your Honor.

8 THE COURT: All right. Just for scheduling  
9 purposes, I'm going to tell them to return tomorrow  
10 morning at ten o'clock -- is that okay -- once I let  
11 them go for the evening?

12 MS. TANNER: Yes, Your Honor.

13 THE COURT: Is that okay, Mr. Hood?

14 MR. HOOD: Yes.

15 MS. TANNER: I do need to tell the Court and  
16 defense counsel: I know we have a limited amount of  
17 time this afternoon. Dr. Garvin can't come back  
18 tomorrow, so --

19 THE COURT: We're going right now.

20 MS. TANNER: We're going to --

21 THE COURT: Okay. That's absolutely fine.  
22 Okay. Are you calling her next?

23 MS. TANNER: Yes, ma'am.

24 THE COURT: Do you have anyone after that, that  
25 if she doesn't take up the full --



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 MS. TANNER: No, ma'am.

2 THE COURT: -- forty-eight minutes? Okay.

3 Thank you.

4 Okay. Let's go ahead and bring them in.

5 [Off the record momentarily]

6 THE BAILIFF: Jurors entering, Your Honor.

7 THE COURT: Thank you.

8 [Whereupon, the jury enters the courtroom at  
9 4:11 p.m.]

10 THE COURT: Welcome back, ladies and gentlemen  
11 of the jury.

12 Solicitor, call your next witness.

13 MS. TANNER: Thank you. The State calls Dr.  
14 Demi Garvin.

15 THE COURT: Dr. Garvin, if you will please come  
16 forward to be sworn.

17 THE CLERK OF COURT: Place your left hand on the  
18 Bible, and raise your right hand for me, ma'am.

19 [Whereupon, Dr. Garvin is duly sworn by the  
20 clerk of court]

21 THE CLERK OF COURT: Please be seated.

22 [Whereupon, Dr. Garvin takes the witness stand]

23 THE CLERK OF COURT: State your name, and spell  
24 it for the Court, please.

25 THE WITNESS: My name is Demetra, D-E-M-E-T-R-A,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Garvin, G-A-R-V-I-N, and I'm commonly known as Demi,  
2 D-E-M-I.

3 MS. TANNER: Good afternoon, Dr. Garvin.

4 - - - - -

5 DEMETRA GARVIN,

6 Having Been First Duly Sworn,

7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MS. TANNER:

10 Q. Where do you work? What do you do?

11 A. I currently have several positions. The first  
12 one, if you will, is as assistant laboratory director of  
13 the forensic sciences for the Richland County Sheriff's  
14 Department in Columbia, South Carolina. As assistant  
15 laboratory director, I supervise the operations, daily  
16 operations, of the DNA laboratory, the drug analysis or  
17 drug identification laboratory, fire-debris analysis, and  
18 firearms and tool marks.

19 I am also a member of a consulting firm known as  
20 the Forensic Science Network. My two colleagues and I  
21 provide toxicology testing services, research and  
22 development. Excuse me. With regard to the toxicology  
23 services, we support approximately sixty-five to seventy-  
24 five percent of the coroners in the state of South  
25 Carolina. We facilitate, direct, interpret, and provide

MIA PERRON, CCR, CVR-CM

-185-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008.

1 consultation and court testimony in situations where  
2 toxicology specimens have been obtained either from an  
3 individual who was not autopsied, or from an individual  
4 who was autopsied, wherein a toxic insult or a toxic  
5 exposure may be one of the possibilities for the cause of  
6 death in that individual.

7 I'm also a professor, instructor, clinical  
8 preceptor, for the University of South Carolina College of  
9 Pharmacy, as well as department of chemistry. And I have  
10 a -- I am an inspector for the Department of Health and  
11 Human Services, under the Substance and Mental Health  
12 Services Administration, where I travel the country  
13 several times a year inspecting laboratories that are  
14 engaged in urine drug testing under the federal guidelines

15 Q. And what is your education to do all of these  
16 things?

17 A. I have a Bachelor of Science degree in biology  
18 and chemistry from Furman University, located in  
19 Greenville, South Carolina. I also have a doctorate in  
20 clinical pharmacy, otherwise known as a Pharm D degree,  
21 from the University of South Carolina, now known as the  
22 South Carolina College of Pharmacy, located in Columbia.  
23 I'm also a registered pharmacist in the state of South  
24 Carolina, and I'm board certified in forensic toxicology.

25 Q. And Dr. Garvin, have you ever testified in court

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 regarding forensic toxicology?

2 A. Yes, ma'am. In excess of two hundred times.

3 Q. Have you been declared an expert in this area?

4 A. Yes, I have.

5 MS. TANNER: Your Honor, at this time the State  
6 moves to have Dr. Garvin declared an expert in the  
7 field of forensic toxicology.

8 MR. HOOD: I have no objection.

9 THE COURT: Okay. Ladies and gentlemen, again,  
10 as I've told you before on the two other persons that  
11 we have qualified as experts, normally a person can't  
12 testify as to anything -- an opinion, unless they have  
13 heard, felt, smelled, anything along those lines.  
14 However, we do create an exception when someone is  
15 based -- or has education or experience to that end.

16 Dr. Garvin is going to be qualified in the area  
17 of forensic toxicology. Again, ladies and gentlemen,  
18 she is able to give opinion testimony in that area;  
19 however, that does not mean that you must accept the  
20 opinion. It's simply evidence for you to use in any  
21 way that you see fit.

22 MS. TANNER: Thank you.

23 Q. [Ms. Tanner] Dr. Garvin, were you involved in  
24 the -- or did you perform any work in your forensic  
25 toxicology lab regarding the case of Child [REDACTED]

MIA PERRON, CCR, CVR-CM

-187-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1           A.       Yes, ma'am. In the case of Child [REDACTED]  
2 I was involved in the direction that the toxicology  
3 testing took once the specimens were drawn and the test --  
4 the specimens were received by the laboratory, and I was  
5 also involved in the interpretation of the results once  
6 the testing was completed.

7           Q.       Can you tell the jury what the results in  
8 Child [REDACTED] toxicology tests revealed?

9           A.       There were -- there was a tube of blood from --  
10 collected at autopsy, which was sent for analysis to the  
11 laboratory and that specimen was subjected to a  
12 comprehensive toxicology testing panel, which included  
13 alcohols, therapeutic drugs, as well as drugs that are  
14 abused, to include illicit substances as well as over-the-  
15 counter medications. At the conclusion of that testing --

16                   Well, let me back up and say that the panel to  
17 which the blood specimen was subjected to consists of  
18 those items that I've just mentioned because those  
19 statistically represent the overwhelming number of  
20 compounds and their metabolites, or breakdown products,  
21 that we typically see in cases where the individual, be it  
22 a child or an adult, has been exposed to a drug. The  
23 panel contains some five-hundred-plus different compounds  
24 that we routinely see, statistically, across all cases  
25 that come into the laboratory. It would not include

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 esoteric substances that we see infrequently, for example,  
2 such as cyanide or perhaps even carbon monoxide, unless we  
3 know there was a fire involved.

4 In this particular instance, at the conclusion  
5 of the testing it was determined that the blood specimen  
6 taken from Mr. [REDACTED] contained three-hundred  
7 nanograms per milliliter of hydroxyzine and did not  
8 contain any other substances which were included in the  
9 testing panel.

10 Q. What is hydroxyzine?

11 A. Hydroxyzine is a medication that in both  
12 children and adults is available in the United States only  
13 by prescription. It belongs to a class of substances  
14 known as the antihistamines. Some of these drugs, as I  
15 mentioned, hydroxyzine being one available only by a  
16 prescription, are also available over-the-counter, such as  
17 diphenhydramine, commonly known as Benadryl,  
18 chlorpheniramine, commonly known as Chlor-Trimeton.  
19 These are medications that are readily available over the  
20 counter. As a group, as a pharmacologic class, they are  
21 used in a variety of medical conditions to include  
22 itching, response to itching; they are used in the  
23 treatment of middle-ear infections in children; they are  
24 used in asthma, upper respiratory tract infections, colds;  
25 they are also used in the treatment of atopic dermatitis,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 which has a component of itching, involved in children.  
2 So they have a variety of uses. They can also be used, by  
3 virtue of their ability to cause sedation, as a sedative  
4 prior to surgery, for example.

5 Q. Now, this level that you found in Child  
6 blood, is that a toxic level for someone his age?

7 A. After reviewing the history, the pathology  
8 report, the pharmaceutical information that was provided  
9 to me, as well as the toxicology report and the pertinent  
10 literature, it was my opinion that the postmortem level  
11 that was determined in the blood sample was indeed -- did  
12 indeed rise to the lethal concentration.

13 Q. Now, does that mean had Child gotten medical  
14 attention shortly after ingesting this amount, could he  
15 have survived?

16 A. Well, I would respond to that by saying that in  
17 cases that I reviewed in the literature and as I  
18 understand the drug's toxicity, medical intervention can  
19 result in a positive turnaround, if you will, or an  
20 appropriate positive therapeutic outcome. But it  
21 certainly depends on timing and the quality of medical  
22 intervention that occurs.

23 Q. How quickly does that drug affect a child's  
24 system once it's ingested?

25 A. Well, this medication was prescribed as a

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 liquid, which would be consistent with what one would  
2 expect in a thirteen -- excuse me -- fifteen-month-old  
3 child. It would be very difficult for a fifteen-month-old  
4 to take a capsule form of the drug. It's also available  
5 as a capsule. The liquid is very rapidly absorbed, and  
6 well-absorbed from the stomach, and the peak concentration  
7 in the blood is typically within two hours. So I would  
8 expect the peak blood level to occur within two, possibly  
9 three, hours after the medication is given.

10 Q. Now, we referred to this level of three hundred  
11 that was in his system has been described as lethal. What  
12 would be a normal therapeutic level, used for medicinal  
13 purposes, in a child who's fifteen months old? What would  
14 be expected?

15 A. Well, let me qualify by saying that one of the  
16 challenges in toxicology and in forensic science, when  
17 we're looking at postmortem levels in children, is that  
18 it's very rare and infrequent to find therapeutic, well-  
19 controlled studies that have been performed in these wee  
20 ones, if you will. And the reasons for that may be  
21 somewhat obvious. It's very difficult to find subjects  
22 who are fifteen months old, or less than two years old,  
23 whose parents or care-givers will allow them to  
24 participate in a study where they're going to be medicated  
25 and they're -- you know, the effects are going to be



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 monitored and then their blood is going to be drawn. So  
2 these studies really don't exist for a great number of  
3 medications.

4 This particular medication, that's very true.  
5 They certainly don't exist in children less than two years  
6 of age. It is, in fact, an infrequent occurrence to give  
7 this medication in children less than two years of age.  
8 It is routinely clinically considered a drug of last  
9 resort in the treatment of atopic dermatitis to treat the  
0 itching associated with it. It's when the other  
11 antihistamines haven't worked or don't work as well, an  
12 antihistamine such as Benadryl.

13 The studies, therefore -- since they are absent  
14 in children less than two, we look for are there any  
15 studies in older children that have been done. And, in  
16 fact, there was one study that I'm aware of that was  
17 conducted in children between the ages of six and eleven.  
18 Those children were given .7 milligrams per kilogram,  
19 which is more than what Child [REDACTED] was given on a  
20 dose level, dose-for-dose level, and those concentrations  
21 -- that concentration was approximately forty-seven  
22 nanograms per ml. So with a -- with an eight-and-a-half  
23 milligram dose -- and Child [REDACTED] was receiving a five-  
24 milligram dose -- the eight-and-a-half milligram dose  
25 produced approximately forty-seven nanograms per ml, on

State v. Avery  
Jury Trial -- Volume 2 of 4  
May 20, 2008

1 average, in the six-to-eleven age group.

2 Q. So the three hundred versus less than forty-  
3 seven, you're saying?

4 A. I'm sorry?

5 Q. So the thirty -- three hundred would be verses  
6 what should have been would be less than forty-seven?

7 A. Three hundred is more than forty-seven.

8 Q. Right. So I'm saying three hundred, what is in  
9 his system, versus what should have been in his system,  
10 would be about forty-seven or less than forty-seven --

11 A. I would --

12 Q. -- nanograms?

13 A. I would certainly have expected, given that he  
14 was receiving less than eight-and-a-half milligrams per  
15 dosage -- in fact, receiving five milligrams per dose --  
16 for his concentration to have been less than fifty  
17 nanograms per ml.

18 Q. Now, when conducting your examination, did you  
19 do any kind of calculation or examination regarding the  
20 actual prescription that he should have been taking?

21 A. When I initially received the toxicology report  
22 and set out to provide my consultation, or to interpret  
23 the results therein, one of the things that was of concern  
24 to me was how did the level come to be, or how did this  
25 concentration come about, since it was clearly, at the

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1     outset, markedly elevated with respect to what I expected  
2     to see in a child this age if the medication had been  
3     given properly and prescribed properly.

4             So the first thing I did was attempt to gain  
5     knowledge or information regarding the exact drug that was  
6     prescribed by the physician and its indication, why it was  
7     being used, to then ascertain what the dosage of the  
8     medication was, and the dosing interval; how many  
9     milligrams for each dose, and how frequently was the  
10    medication supposed to be given; what kind of dosing  
11    implement was supposed to be given; when the medication  
12    was supposed to be given; what type of dosing implement  
13    was being used.

14            In my experience over the years, the twenty-five  
15    years of practicing in forensic toxicology, I have been  
16    aware of numerous deaths in both adults and children where  
17    the dosing implement was inappropriate and the patient was  
18    -- or the individual was actually receiving too much  
19    medication because the implement being used or the tool  
20    being used to administer the medication was not proper for  
21    that medication. So that was of concern to me.

22            I sought to determine how much -- what part the  
23    pharmacy may have played in the concentration that was  
24    reported -- that is, how much medication was dispensed --  
25    and, again, was a dosing implement dispensed at that time.

MIA PERRON, CCR, CVR-CM

-194-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 In the short of it, all my answers, or all the answers  
2 that I received, led me to the conclusion that the drug  
3 was prescribed properly both in terms of drug of choice,  
4 dose, dosing interval for the child's age and weight, and  
5 the medical indication. In addition to that, the pharmacy  
6 properly filled the medication in giving the proper  
7 medication, as well as the total volume.

8 And I then at that point sought to determine how  
9 much medication -- if the bottle still remained, and how  
10 much medication was remaining in the bottle, in an effort  
11 to determine what we refer to in clinical pharmacy as  
12 patient compliance, or was there evidence that more  
13 medication was being given. And that could be  
14 demonstrated, in one way, by how much medication was  
15 remaining in the bottle at the time of the death.

16 Q. And what did you discover about the intended  
17 dosage of this medication?

18 A. Well, I also contacted or spoke with Sergeant  
19 Chris Wilson, of the Beaufort County Sheriff's Department,  
20 in an effort to gain some knowledge about how the  
21 individual or individuals who were responsible for  
22 medicating Mr. [REDACTED] [REDACTED] over what time period and how  
23 frequently they were dosing the medication. And initially  
24 I was provided information that the medication was  
25 retrieved from the pharmacy, where the medication had been

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 filled at approximately 3:30 p.m. on August the 16th.

2 That being said, I set out, to the basis of the  
3 way the drug was prescribed, to make the assumption that  
4 one or two doses would have been given on that day for  
5 purposes of being liberal in my calculations and not  
6 underestimating the amount of drug that could have been  
7 given.

8 So on August the 16th, I went with two doses  
9 that could have been given, if the medication was only  
10 supposed to be given as frequently as every six hours. On  
11 August the 17th, which was a full twenty-four-hour period,  
12 again, following the prescribing --

13 Q. Well, let me ask you first: how much should  
14 each dose have been?

15 A. According to the physician, the prescription  
16 called for one-half teaspoonful of medication every six  
17 hours as needed. One-half teaspoonful is the equivalent  
18 of 2.5 mls. One teaspoonful is five milliliters or five  
19 CCs. That's also commonly referred to in CCs. And so  
20 two-and-a-half mls would be half a teaspoonful. So one  
21 dose is represented by one-half teaspoonful, or two-and-a-  
22 half milliliters.

23 Q. Now, on August 17th?

24 A. On August 17th, again, following the prescribing  
25 as it was reflected on the medication label, I calculated

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 that the care-giver or care-givers could have given,  
2 administered, as many as four doses on that day.

3 Q. How many milliliters?

4 A. Again, four milliliters, times two and a half,  
5 would be ten milliliters for that day.

6 Q. August 18th?

7 A. On August 18th, again, I calculated a maximum of  
8 four doses, given that the time of death was estimated to  
9 me to be approximately 12:30 a.m. on August the 19th, or  
10 somewhere around midnight on August the 18th. So, again,  
11 four doses or ten milliliters.

12 Q. So your calculations are based on four doses on  
13 Friday, Thursday, and two on Wednesday; is that correct?

14 A. Yes. For a total of ten doses.

15 Q. So if it turned out that there was only possibly  
16 two doses on the 18th, your calculations would actually  
17 turn out to be fairly liberal?

18 A. Yes, ma'am.

19 Q. Now, based on your calculations using all doses  
20 that could have been given per the prescription, what did  
21 you come up with?

22 A. Well, I came up with that over that time period  
23 -- using ten doses, at two-and-a-half milliliters per  
24 dose, I calculated that twenty-five milliliters would have  
25 been given to the child over that time period over those

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 three days.

2 Q. And then you said you did some measurements on  
3 the amount remaining in the bottle?

4 A. Well, a hundred-and-twenty milliliters were  
5 initially dispensed at the time that the prescription was  
6 filled. And so I subtracted twenty-five milliliters from  
7 a hundred-and-twenty milliliters, leaving a total of  
8 ninety-five milliliters that should have been remaining in  
9 the bottle. So there should have been ninety-five  
10 milliliters remaining in the bottle at the time of death.

11 Q. Ninety-five?

12 A. Yes, ma'am.

13 Q. Now, you said should be remaining?

14 A. Correct.

15 Q. What was actually remaining?

16 A. Well, once I determined that there -- the bottle  
17 indeed was still available, I requested or suggested to  
18 Sergeant Wilson that the bottle, the contents of the  
19 bottle, be measured by the drug analysis laboratory at the  
20 Beaufort County Sheriff's Department. And I was provided  
21 information that indeed that was -- that service was  
22 performed, that analysis was performed, and that there  
23 were, in fact, fifty-two milliliters of medication  
24 remaining in the bottle.

25 Q. And what does that tell you?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Well, that then translated to forty-three  
2 milliliters being missing, and extra forty-three  
3 milliliters being missing, which calculates out to just at  
4 seventeen doses that are missing.

5 Q. Seventeen doses missing. Is this in addition to  
6 the ten that you say could have been given over the two-  
7 and-a-half day period?

8 A. Yes.

9 Q. So you're actually talking about twenty-seven  
10 doses from the original bottle?

11 A. Well, the -- there were ten doses that were  
12 theoretically given, but there's still another seventeen  
13 that cannot be accounted for.

14 MS. TANNER: Your Honor, if I may have the  
15 witness come down from the stand?

16 THE COURT: You may.

17 Q. [Ms. Tanner] Dr. Garvin, if you could, I would  
18 like for you to demonstrate for the jury what half a  
19 teaspoon looks like. What should a normal dose have  
20 looked like?

21 A. That's a half a teaspoonful. If you're -- I'm  
22 sorry. Excuse me. That's two-and-a-half milliliters,  
23 which would be the dose for each time the child would have  
24 been given the medication.

25 Q. So this is an appropriate dose possibly every



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 six hours --

2 A. That's correct.

3 Q. -- but no more than six hours?

4 A. That's correct.

5 Q. Now, Doctor, can you demonstrate to the jury  
6 what the missing amount looks like? Well, before you pour  
7 that in, let's pour this in to show what it would look  
8 like, as well. Add that to it.

9 A. That's the amount of medication that was missing  
10 from the bottle.

11 Q. While I've got you here, Doctor: this is part  
12 of State's Exhibit Number 1. You mentioned an appropriate  
13 dosing implement. Would that be considered an appropriate  
14 dosing implement?

15 A. Yes, ma'am, it would.

16 Q. Can you tell, by looking at the measurements on  
17 that, how many of those it would take to fill -- to remove  
18 the missing amount?

19 A. This is a dosing syringe that's typically used  
20 in pediatric patients, one, because it's measured for the  
21 smaller quantities that we typically associate with young  
22 children, infants, and toddlers; and, two, it's calibrated  
23 in one-half-teaspoon, one-teaspoon, one-and-a-half-  
24 teaspoon, and two-teaspoon measurements. It's also  
25 calibrated in milliliters, just as this volumetric

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 cylinder is. The appropriate dose for the hydroxyzine  
2 medication would have been to fill from the bottle up, to  
3 one-half teaspoonful line, which is to here. So that  
4 would have been the equivalent dose that was initially  
5 measured here in the volumetric.

6 In order to be able to consume this volume, this  
7 would require seventeen individual administrations of this  
8 dose that you see here.

9 Q. Thank you, Doctor.

10 Now, in your experience, Dr. Garvin, have you  
11 ever seen an overdose like this in a child?

12 A. Could you be more specific, please.

13 Q. Have you ever seen any children under the age of  
14 two overdose on a prescription drug?

15 A. Yes, ma'am. Numerous times.

16 Q. And in your experience, what have you found as a  
17 cause of this type of overdose?

18 A. Well, overdoses can occur for a number of  
19 different reasons. Certainly they can be by accident  
20 where, as I mentioned earlier, the wrong medication can be  
21 prescribed or dispensed or given, administered, by the  
22 care-giver or individual responsible for medicating the  
23 child. The dosing implement can be inappropriate. The  
24 range -- often people don't have access to or are not  
25 provided dosing implements, proper dosing implements such

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 as the dosing syringe there. and they are relegated to  
2 using household teaspoons, for example. Well, a household  
3 teaspoon can range in size, markedly. It's really quite  
4 amazing. And when you're trying to give less than a half-  
5 teaspoonful, particularity -- or one teaspoonful,  
6 particularly with a medication that has a narrow safety  
7 margin or a small safety margin, it can be -- it can  
8 result in a toxic exposure in the child.

9 In addition to that, there can be accidents  
10 involving multiple people medicating the child and not --  
11 one not realizing that the other one has. There can be  
12 lack of understanding in the way the medication should be  
13 given. There can be multiple medications with the same  
14 active ingredient being given. Those are all considered  
15 to be accidental overdoses, if you will, or some examples  
16 of accidental overdoses.

17 On the other hand, certainly an overdose would  
18 not be considered a natural death, so that -- I won't  
19 comment on that at all, because that doesn't occur.

20 But there is another manner of death, which is  
21 homicide, where there are a couple of occasions or a  
22 couple of instances where overdoses can occur. One of  
23 them is what I refer to, as what we in toxicology refer  
24 to, as the overt intentional poisoning or overdose where  
25 the individual responsible for medicating the child

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 purposefully, with some agenda -- it could be anger, it  
2 could be mental illness, any number of other reasons --  
3 sets out to willfully, purposefully, overdose the child  
4 for the purpose of killing the child. In my experience in  
5 twenty-five years I have been involved in a number of  
6 those cases, most notably for such reasons as insurance  
7 purposes or to seek retaliation against a spouse or a  
8 significant other, by example.

9 Another example of homicidal poisoning is  
10 wherein the care-giver or individual who is responsible  
11 for medicating the child engages in what we refer to as  
12 chemical restraint or when they capitalize on a  
13 medication's ability to cause drowsiness or sedation or  
14 somnolence in the child, most commonly, in my experience,  
15 for purposes of not wanting to care for the child for a  
16 particular period of time for some reason, or perhaps  
17 because the child represents a stressor, perhaps maybe  
18 unconsolable, maybe very sickly or ill, and the care-giver  
19 just cannot care for the child any longer or does not wish  
20 to, or perhaps does not want to care for the child because  
21 they have other duties or other reasons why they cannot.

22 Q. So you're describing chemical restraint as if a  
23 parent just didn't want to deal with a child that night,  
24 they would give them a medication known to make them  
25 drowsy? Is that fair?

MIA PERRON, CCR, CVR-CM

-203-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Yes, ma'am. That is an example, yes, ma'am.

2 Q. Now, in Child case, the levels in his body,  
3 the levels missing from his prescription, we're not  
4 talking about one extra dose, are we?

5 A. No, ma'am.

6 Q. We're not talking about two extra doses, are we?

7 A. No, ma'am.

8 Q. We're not talking about three extra doses, are  
9 we?

10 A. No.

11 Q. We're not talking about four extra doses, are  
12 we?

13 A. No, ma'am.

14 Q. Dr. Garvin, are we talking about five extra  
15 doses?

16 A. No.

17 Q. How about six times the doses he was supposed to  
18 receive that day?

19 A. The concentration is approximately sixfold  
20 higher than what I would have expected to see had he been  
21 receiving medication therapeutically.

2 Q. Now, Dr. Garvin, based on what you've seen and  
3 what you've analyzed in this case, in your opinion can you  
4 rule out chemical restraint as a cause for his death?

25 A. No.

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Q. Dr. Garvin, can you rule out an intentional  
2 homicide in Child [REDACTED] case?

3 A. No, ma'am.

4 Q. Can you rule out an accident?

5 A. I specifically attempted to gather every piece  
6 of information that I could to address the issue of  
7 accident and after looking at the case in its totality, I  
8 felt that there was no information that would support that  
9 this was an accident.

10 MS. TANNER: Thank you, Dr. Garvin. Please  
11 answer anything defense counsel has.

12 CROSS-EXAMINATION

13 BY MR. HOOD:

14 Q. Now, Dr. Garvin, you were interviewed by Chris  
15 Wilson; isn't that correct?

16 A. I'm sorry, sir?

17 Q. You were interviewed by Chris Wilson; isn't that  
18 correct?

19 A. I wouldn't -- I wouldn't characterize that as an  
20 interview, sir. We did discuss the case on at least two  
21 occasions that I'm aware of.

22 Q. And I believe you told Ms. Wilson that in your  
23 experience this appears to be a case of chemical  
24 restraint, rather than intentional poisoning; isn't that  
25 correct?

MIA PERRON, CCR, CVR-CM

-205-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. I recall that I said to her that either one was  
2 possible but that based on the history that was provided  
3 to me, it did seem to speak more to chemical restraint or  
4 excessive administration of the medication for purposes of  
5 sedation.

6 Q. But you made that statement; isn't that true?

7 A. Yes, sir. That's correct.

8 Q. And maybe I'm missing something, but I don't see  
9 all this other stuff you're talking about. But anyway,  
10 regardless of that, let's go back to the doctor who  
11 prescribed the medication in this case. And I think you  
12 said you spoke to him, didn't you?

13 A. No, sir. I've never spoken to him. I don't  
14 know who the doctor is.

15 Q. You don't know who the doctor is.

16 Do you know exactly what drug the doctor  
17 prescribed?

18 A. Yes, sir. Hydroxyzine.

19 Q. Isn't there different types of this particular  
20 drug?

21 A. No, sir. There's only one hydroxyzine.

22 Q. Well, doesn't it come in different names, or  
23 something of that nature, strengths, this, that, and the  
24 other?

25 A. It does come in -- well, for pediatric purposes,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 it only comes in one strength.

2 Q. Uh-huh.

3 A. And the adult formulation comes in three  
4 different strengths. And those are capsules.

5 Q. And so you examined this bottle; is that  
6 correct?

7 A. I did review it, yes, sir.

8 Q. When you say you reviewed it, how did you review  
9 it?

10 A. As a pharmacist would, by checking the label,  
11 checking the amount of medication that was remaining.

12 Q. Did you actually see this bottle?

13 A. Yes, sir.

14 Q. When did you see this bottle?

15 A. I saw the bottle today, this morning.

16 Q. Oh. Today?

17 A. Yes, sir.

18 Q. Have you ever examined the liquid inside of this  
19 bottle?

20 A. Could you be more specific?

21 Q. Have you ever, as a toxicologist, taken some of  
22 this liquid out of the bottle and examined it to determine  
23 exactly what drug it is?

24 A. No, sir.

25 Q. What -- well, let's go on a little further.



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

e the risks involved, to a layman who is reading  
abel, for taking too much of that stuff mean?

Well, the warning labels on the medication  
ie don't specifically address excessive

5 nistration. They only --

6 Q. What does it say are the risks involved in  
7 taking this drug?

8 A. May cause drowsiness, alcohol can intensify this  
9 effect, use caution when operating a car or dangerous  
10 machinery, and may cause dizziness.

11 Q. Okay. Okay. That depends upon whatever it is  
12 that's in there; is that correct?

13 A. Well, that specific medication does cause those  
14 side effects.

15 Q. Do you know how much was actually in this bottle  
16 when the pharmacist, if a pharmacist, turned this over to  
17 the person?

18 A. When it was dispensed it was dispensed, yes, per  
19 the label, one hundred and twenty milliliters.

20 Q. How do you know that?

21 A. It's on the label.

22 Q. Oh. It's on the label.

23 A. Correct.

24 Q. Oh, okay. The -- so you never contacted the  
25 doctor who prescribed this medication; is that correct?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. [Indicates affirmatively]

2 Q. And you said that a child under two years old --  
3 and fifteen months, let's say -- this was a drug of last  
4 resort; is that correct?

5 A. Yes. Typically, clinically we would expect to  
6 see use of other antihistamines in the treatment of atopic  
7 dermatitis first. Yes, sir.

8 Q. Yeah. And were there other drugs used before  
9 the doctor prescribed this?

10 A. It's my understanding Benadryl was, yes, sir.

11 Q. How do you know that?

12 A. That information was communicated to me, early  
13 on in the investigation, by Sergeant Wilson.

14 Q. So you never talked to the doctor?

15 A. That's correct.

16 Q. Did you examine any of the medical records of  
17 the child prior to making this determination?

18 A. No, sir, I did not.

19 Q. Would it -- well, what effect does bleach have  
20 on the liver, which processes these drugs?

21 A. Bleach, sir?

22 Q. Yes, bleach.

23 A. Well, exposure to bleach, depending on the route  
24 of administration, can be toxic to the liver.

25 Q. Yeah. And it can cause the liver to

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 malfunction?

2 A. In sufficient concentration, the liver and other  
3 organs, yes, sir.

4 Q. Yeah. And it could cause the substances  
5 reaching the liver not to pass through the liver as  
6 quickly as it normally would; is that correct?

7 A. No, sir, that's not exactly correct. If the  
8 liver had been damaged from some type of toxic injury,  
9 that could have an effect on other substances that were  
10 presented to the liver for metabolism. So there could be  
11 an effect, but it would depend on the extent of injury and  
12 it would also depend on the substance in question.

13 Q. Uh-huh. Now, you actually work for the  
14 sheriff's department, don't you?

15 A. That's one of my positions, yes, sir.

16 Q. And do you work for any pharmaceutical  
17 companies?

18 A. No, I don't work for any pharmaceutical  
19 companies.

20 Q. Well, you examine their labs; is that correct?

21 A. No. I inspect urine drug-testing laboratories,  
22 toxicology laboratories.

23 Q. Toxicology laboratories.

24 Now, this type of disease that this child had,  
25 do you know what it was?

MIA PERRON, CCR, CVR-CM

-210-

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. Atopic dermatitis. It's a dermatologic  
2 condition -- it's a -- that results in itching.

3 Q. And when would be the most important time for  
4 this child to have this medication?

5 A. Well, for dosing purposes it was dosed every six  
6 hours, as needed, which means -- it doesn't mean that it's  
7 supposed to be given around the clock. That -- those  
8 dosing instructions address two issues: one, the fact  
9 that no more than four doses should be given in a twenty-  
10 four-hour period. But the prn or as-needed part of the  
11 prescription means that if the care-giver doesn't feel  
12 that the child needs the medication, the child doesn't  
13 have to have it, unlike, say for example, an antibiotic  
14 being used to treat an infection, which certainly must be  
15 given around the clock in order to properly fight the  
16 infection.

17 Typically, with itching, especially in a child  
18 of this age, we are concerned about nocturnal itching, or  
19 itching when the child is asleep, for two reasons: one,  
20 it disturbs their sleep pattern, and so they don't get  
21 good rest; and, two, very often they can scratch  
22 themselves in the middle of the night while they are  
23 asleep, and they don't know it or they wake up from it,  
24 and that can just exacerbate or cause more problems.

25 Q. Now, where on this label does it say take more

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 than -- take no more than?

2 A. It doesn't say take no more than, it just says  
3 as needed; every six hours as needed.

4 Q. Yeah. So that really doesn't say don't take any  
5 more than half a teaspoon every six hours; is that  
6 correct?

7 A. Well, six into twenty-four, sir, goes four  
8 times. So that would be four times in a twenty-four-hour  
9 period.

10 Q. Well, maybe I'm misunderstanding. How long does  
11 that stuff stay in the system?

12 A. Well, the half-life of the drug, or the time it  
13 takes for one-half of the drug to clear the bloodstream,  
14 is approximately six to eight hours, which is why the dose  
15 of the medication every six hours, or sometimes every  
16 eight hours, because at about six hours the drug  
17 concentration drops to a sufficient extent in the blood  
18 that it's time to medicate again, if you will, with the  
19 next dose.

20 Q. How long had this child been taking this  
21 particular drug?

22 A. I don't know.

23 Q. Okay. So -- well, never mind.

24 Now, how many, by number, deaths have been  
25 caused with respect to an infant for an overdose of this

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 particular drug?

2 A. Well, sir, I can't tell you since the 1940s or  
3 '50s when this drug was first made available -- I believe  
4 it was the 1940s and '50s -- how many deaths have been  
5 caused, but I can tell you how many deaths have been  
6 reported that I'm aware of.

7 Q. How many deaths have been reported since the  
8 existence of the drug?

9 A. To my knowledge, in the literature there has  
10 been one death reported in a six-year-old in 2004.

11 Q. Okay. All right. Now, and that's -- okay.

12 Do you know how severe the disease was that the  
13 child had?

14 A. It apparently rose to the level for the use of  
15 hydroxyzine -- which, again, as I stated earlier, is not a  
16 first-line agent in the treatment of atopic dermatitis --  
17 so it would be inferred to me, as a clinician, that that  
18 was significant disease. But I do not know how it was  
19 characterized by the physician.

20 Q. All right. And not every person's liver  
21 processes drugs at the same rate; isn't that true?

22 A. That's true.

23 Q. So basically what we're saying is you're talking  
24 about averages and normal things and control this; isn't  
25 that correct?

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 A. I'm not sure I understand your question.

2 Q. Well, when I -- when you say that it's an hour  
3 when it reaches its peak, it may be longer than that;  
4 isn't that correct?

5 A. Actually, I believe I testified that it was two  
6 hours, possibly three hours.

7 Q. Well, I'm just saying, you know, you said two.  
8 But I'm just using one as the example. I mean, it could  
9 be three hours before it ever reaches its peak; isn't that  
10 correct?

11 A. It's possible. The average is two.

12 Q. It could be four hours; isn't that true?

13 A. Unlikely.

14 Q. But it's possible, isn't it?

15 A. It is possible.

16 Q. What happens if your liver is bigger than the  
17 average liver?

18 A. Well, sir, I was -- the pathology report was  
19 made available to me, and, as a toxicologist, there did  
20 not appear to be any anatomical or microscopic findings,  
21 as they were communicated on the autopsy report, that led  
22 me to believe that the liver was of sufficient disease  
23 that that had an -- would have had an impact on the  
24 postmortem concentration of hydroxyzine.

25 Q. Well, that's not what I'm asking you. Was this

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 finding of the liver of normal size?

2 A. It does appear that the liver was slightly  
3 larger than what would be expected for a child this size.

4 Q. Okay. Thank you.

5 Now, you didn't examine the child's medical  
6 records; correct?

7 A. That's correct.

8 Q. You did not talk to or speak to the attending  
9 physician; is that correct?

10 A. That's correct.

11 Q. You did not determine what the substance is  
12 that's in that little bottle; is that correct?

13 A. That's correct.

14 Q. And did you actually determine, from the  
15 pharmacist, who actually picked up these prescriptions?

16 A. No, sir, I did not.

17 Q. Did you actually talk to the pharmacist himself  
18 about what he prescribed?

19 A. Pharmacists aren't allowed to prescribe in the  
20 state of South Carolina.

21 Q. All right. You didn't talk to the doctor, so --  
22 but did you talk to the pharmacist about what he provided?

23 A. No, I did not.

24 Q. Okay. What steps did you take after the -- your  
25 determination that this child had died from an overdose of

MIA PERRON, CCR, CVR-CM

-215-



State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 this particular drug, to notify the Drug Administration or  
2 anybody as to the possible new risk of death from this  
3 particular drug?

4 A. Well, first of all, there is no need to contact  
5 the drug enforcement administration, because this is not a  
6 controlled substance. And second of all, because I felt  
7 that the drug was given in excessive concentration that is  
8 not in compliance with the way the drug had been  
9 prescribed and dispensed, there was no need to contact the  
10 FDA, the Food and Drug Administration, or the clinician,  
11 or anyone involved with the case, outside of law  
12 enforcement and pathology.

13 Q. And so you also took no steps to notify the  
14 public that there's a danger, a new risk, with respect to  
15 the use of this drug in an overdose case, is that -- you  
16 didn't do anything in that regard, either, did you?

17 A. No. There was no need to do that, sir. No.

18 Q. No. No need to do that.

19 A. The overdose is just an extension of the normal  
20 side effects of the medication.

21 Q. Right. Will you just show me on this label here  
22 where the side effect in any of this label says death or  
23 serious bodily injury? Show me one word in there that  
24 relates to death or serious bodily injury from overdose.

25 A. Well, it does have the primary side effects,

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 which are drowsiness and dizziness.

2 Q. That's correct.

3 A. And, normally, the pharmacist doesn't put  
4 possibility of death on medication when they dispense it.

5 Q. Are they afraid of notifying people of what the  
6 risk is of taking this particular drug? And if you follow  
7 those directions there, you know, you're taking a heck of  
8 a risk, aren't you?

9 A. Actually, the medication was prescribed  
10 properly, and there is no excessive risk when giving the  
11 medication under the conditions in which it was  
12 prescribed.

13 Q. So what you're saying is over a two-and-a-half  
14 day period -- well, let me ask you another question. You  
15 might know the answer to it. Are you aware that there was  
16 another prescription for that same drug, at the same  
17 pharmacy, just prior to this particular drug being  
18 provided?

19 A. I'm not sure I understand your question.

20 Q. Well, this is one prescription. Are you aware  
21 there was a previous prescription of the same drug and  
22 what the date of it was?

23 A. No, sir, I was not.

24 Q. Okay. So, basically, the information that you  
25 got concerning this matter is everything that Investigator

State v. Avery  
Jury Trial - Volume 2 of 4  
May 20, 2008

1 Wilson told you about the case; is that correct?

2 A. My discussions with Sergeant Wilson, as well as  
3 with the pathologist in the case, and the solicitor.

4 MR. HOOD: I have no further questions.

5 THE COURT: Solicitor, redirect?

6 MS. TANNER: Nothing further, Your Honor.

7 THE COURT: You may step down, Dr. Garvin.

8 Thank you.

9 THE WITNESS: Thank you.

10 MS. TANNER: May this witness be excused?

11 THE COURT: Any objection to --

12 MR. HOOD: I'm sorry?

13 THE COURT: Any objection to Dr. Garvin being  
14 excused?

15 MR. HOOD: Certainly not.

16 THE COURT: You are excused, Dr. Garvin.

17 THE WITNESS: Thank you.

18 [Whereupon, the witness is excused and exits the  
19 courtroom]

20 THE COURT: All right. It is the time that I  
21 told the jury that we would go ahead and break, ladies  
22 and gentlemen, so we're going to go ahead and conclude  
23 for the evening.

24 Could I just see the attorneys very quickly  
25 before I let them go.

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

PROCEEDINGS

1  
2 THE COURT: All right. Solicitor, for the  
3 record, are we going to go ahead and rest? Obviously,  
4 you can rest in front of the jury, as well, but let's  
5 go ahead and do that so we can follow with the  
6 appropriate motions and take care of that before the  
7 jury comes in.

8 MS. TANNER: Yes, ma'am. At this time, the  
9 State rests its case.

10 THE COURT: Thank you. All right. Any motions,  
11 Mr. Hood?

12 - - - - -  
13 MOTION FOR DIRECTED VERDICT

14 MR. HOOD: Your Honor, at this time we would  
15 make a motion for a directed verdict based on all of  
16 the evidence. I think that we have to go back now and  
17 sort of wipe our memory banks from other evidence,  
18 which we've heard prior to this actual trial of the  
19 case, which we have determined was not admissible, so  
20 therefore we would have to go with a blank sheet of  
21 everything.

22 The only matters that we've heard are the  
23 matters that have been presented here in court, And  
24 those matters, in my opinion, based upon everything  
25 that we have, simply fail to provide the jury with any

MIA PERRON, CCR, CVR-CM

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 evidence as to the mental state of mind required in  
2 this particular case, which is an extreme indifference  
3 to human life. There has been absolutely no evidence.  
4 We don't even know what's in the bottle. We have -- we  
5 don't have Paris Avery in custody of the child at the  
6 time of the death of the child. We have no one or no  
7 direct evidence saying that Paris Avery provided  
8 medication to the child.

9 The bottom line is in order to have any type of  
10 mens rea of the criminal intent involved in this case  
11 is, number one, you have to know the risks, extreme  
12 indifference to human life. Basically, we're saying, I  
13 know the risks, and I really don't care; I'm willing to  
14 take it. And that's basically what we have. But in  
15 this case, even if you believe that Paris Avery  
16 provided the drugs to the child, there is no warning  
17 anywhere to anybody that these drugs would do harm to  
18 this child, and certainly not cause death. And without  
19 that element being fulfilled, there is no case.

20 The risks, unfortunately, that the State has  
21 presented, is drowsiness or dizziness. That's it.  
22 That's it. That's all anyone could expect if, in fact,  
23 that's the drug, because that's the label that's on the  
24 drug. That's what puts people on notice. That's what,  
25 you know, tells you.

MIA PERRON, CCR, CVR-CM

-5-

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1           And we've heard the doctor talk about chemical  
2           restraint, one of the doctors did. The bottom line is  
3           chemical restraint is used on a daily basis by doctors,  
4           hospitals, care-givers, throughout the world probably.  
5           And what you do with a care-giver and the person who is  
6           doing the chemical restraint is done for -- not to harm  
7           the child, or not to harm the person. And it's not an  
8           indifference to human life, it's just to simply do  
9           several different things, perhaps: things like calm  
10          the person down, sedate the person, make the person's  
11          pain go away. Those are not indifferences to human  
12          life.

13                 And without more evidence other than the mere  
14                 giving of the drug, if, in fact, she did and if, in  
15                 fact, she gave it more than she should have, where is  
16                 the indifference to human life, extreme indifference to  
17                 human life? There isn't any. Absolutely none. You've  
18                 got to know the risks before you can say, so what. And  
19                 that's the problem with this case. That's been the  
20                 problem with this case ever since its inception.

21                 The doctor said herself, this is not -- this is  
22                 chemical restraint, rather than intentional poisoning.  
23                 That's the defense's position on the element concerning  
24                 extreme indifference to human life. And based on what  
25                 I know of the evidence that we have which has been

MIA PERRON, CCR, CVR-CM

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1       admissible in court, and the only evidence that that  
2       jury has to work with, that there's no way that they  
3       can rise to that level. There's no way, I mean,  
4       because there's absolutely no evidence in the record  
5       that would say that this was an extreme indifference to  
6       human life and she knew her risks and she was willing  
7       to take it. We're not even sure who gave the drugs to  
8       the child, based on the information that we have now in  
9       the record.

10       That's it.

11       THE COURT: Thank you, Mr. Hood. Solicitor?

12       MS. TANNER: Your Honor, there's no warning of  
13       death on a bottle of aspirin but, if you take enough of  
14       them, it will kill you. Doctors put dosage information  
15       on a bottle. That is the warning label. They don't do  
16       that as a suggestion. That is the warning: here is  
17       what you should take.

18       The fact that she OD'd her child six times a  
19       medically-accepted level at the time of death shows  
20       complete indifference. We're not talking about one or  
21       two extra teaspoons, we're not talking about one extra  
22       dose that she forgot she gave him earlier. This is a  
23       tremendous amount of a drug, with a clear prescription  
24       written on it: half a teaspoon every six hours.

25       With regards to who gave it to her [sic], the

MIA PERRON, CCR, CVR-CM

-7-

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 child was declared dead by 12:00 that evening,  
2 midnight. The doctors both testified that the peak of  
3 this medicine was two to three hours. She is the only  
4 person who was home alone with that child from 8:00 to  
5 11:00 p.m., which is when it would have been given to  
6 the child in order for it to peak and him have to have  
7 passed away by midnight.

8 The bottle was in her home. No one else ever  
9 had custody of it. The babysitter never saw it. He  
10 left her place by six o'clock. He would have been dead  
11 at Golden Coral while they were eating from 6:00 to  
12 8:00 if it had been given to him at the day care. And  
13 had Angenetta Wright given it to him before 8:00, he  
14 would have been dead at mama's house.

15 He had to have been given the medication between  
16 8:00 and 11:00 p.m. to have been dead by 12:00 p.m.  
17 She is the only one who had custody of him during that  
18 time. She's the only one that could have given it to  
19 him.

20 I mean, at this point, I just think there is  
21 plenty of evidence that can go to the jury to get past  
22 directed verdict, so I won't argue the entire case.

23 THE COURT: Okay. Respectfully, as y'all know,  
24 it is my duty to submit the case to the jury if there  
25 is any substantial evidence which reasonably tends to

MIA PERRON, CCR, CVR-CM

-8-



State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 prove the guilt of the accused or which -- from which  
2 their guilt can be fairly and logically deduced.

3 I think there is adequate testimony, Mr. Hood,  
4 where a jury could conclude Ms. Avery's guilt on this  
5 charge, and I Am going to let it go to the jury.

6 With that said, it's my understanding at this  
7 time --

8 You've gone over your client's rights with her;  
9 is that correct, Mr. Hood?

10 MR. HOOD: I have, Your Honor.

11 THE COURT: All right. Ms. Avery, if you would  
12 stand, please, and will you raise your right hand.

13 [Whereupon, Ms. Avery is duly sworn by the  
14 Court]

15 THE COURT: Thank you, ma'am.

16 At this time, what I'm going to do is explain to  
17 you some of your rights. If you don't understand  
18 anything that I say here right now, I want you to stop  
19 me and ask me to repeat it or rephrase it or say it in  
20 a different way. I also -- certainly if you have any  
21 questions for your attorney, we'll give you time to do  
22 that, as well. Okay?

23 MS. AVERY: Okay.

24 THE COURT: All right. Ma'am, we have reached  
25 the stage in your trial where you may present your

MIA PERRON, CCR, CVR-CM

-9-

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 discussing this case because you have not heard the  
2 arguments from the attorneys, as well as my charge on  
3 the law. So, again, do not begin discussing this case.  
4 We'll be back with you shortly. Thank you.

5 [Whereupon, the jury exits the courtroom at  
6 10:43 a.m.]

7 THE COURT: All right. Mr. Hood?

8 MR. HOOD: Your Honor, at this time I would  
9 renew my motion for a directed verdict, based on the  
10 same information provided earlier.

11 THE COURT: Thank you, Mr. Hood. Respectfully,  
12 I'm going to deny that motion based on the same  
13 grounds, as well, again.

14 Y'all, you want to take about ten minutes or so?  
15 Is that fine?

16 MR. HOOD: That's fine.

17 THE COURT: And I'll come back, and we'll go  
18 ahead and do our closing arguments. Okay? Thank you.

19 [Whereupon, a recess is taken from 10:44 a.m. to  
20 11:00 a.m.]

21 THE COURT: All right. Is the State ready?

22 MS. TANNER: The State is ready, Your Honor.

23 THE COURT: Is the defense ready?

24 MR. HOOD: Yes, Your Honor.

25 THE COURT: All right. For those of you that

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 THE COURT: Yes, ma'am.

2 MS. TANNER: Mr. Hood.

3 - - - - -

4 CLOSING ARGUMENT

5 MS. TANNER: Good morning, ladies and gentlemen.  
6 We're at the end of the trial. In most criminal  
7 trials, there are basically three things people want to  
8 know: they want to know the who, they want to know the  
9 how, and they want to know the why. So let's start  
10 with the how, because we all know how Child [REDACTED]  
11 died. He died of an overdose of hydroxyzine,  
12 medication that was prescribed to him by a doctor for  
13 eczema, for itching, of the skin.

14 We know that his toxicology said that his little  
15 body at the time of death contained over six times what  
16 should have been in his body from the medical purposes.  
17 We know the how was not an accident. An accident would  
18 be maybe one extra medical dose, maybe two at the  
19 worst. But not six. So we know the how. We know that  
20 Child died of an overdose.

21 So what about the who? Well, we know who: his  
22 mother, Paris Avery. Defense lawyer wants to ask  
23 people, well, who picked it up from the pharmacy, who  
24 picked up that bottle? Well, who is the child's  
25 mother. And whose house was the bottle found in? It

MIA PERRON, CCR, CVR-CM

-19-

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 was found in her house, found in Paris Avery's house,  
2 that's who.

3 Then the attorney wants to ask, well, who  
4 actually gave him that dose, then? Could it have been  
5 the daycare, someone at the daycare? Well, Paris Avery  
6 didn't even leave the bottle at the daycare. And we  
7 know that at 6:00 p.m. he left there happy and healthy,  
8 no problems, when he left the daycare at 6:00 p.m. on  
9 the day he dies. Well, perhaps it was the babysitter,  
10 Angenetta Wright. Could it have been her? Well, let's  
11 see. Between 7:00 and 8:00 p.m, they're at the Golden  
12 Coral eating dinner. She says he was playing and he  
13 was laughing. He was still fine with Angenetta and his  
14 mother at the Golden Coral.

15 I tell you this because the time line is  
16 important, because Child is pronounced dead at twelve  
17 o'clock. At midnight, he's gone. Both doctors, Dr.  
18 Caplan and Dr. Garvin, told you that this medication  
19 peaks. It hits its high point in your body in two to  
20 three hours. That means if he's dead at 12:00, he  
21 ingested it between 8:00 and 11:00. And we know  
22 between 8:00 and 11:00 he's home alone with his mother,  
23 Paris Avery. Angenetta doesn't see him again until  
24 11:00 p.m. From 8:00 to 11:00 he's only with Paris  
25 Avery.

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 And remember what Angenetta said. When she saw  
2 him at 11:00 p.m., he was already limp. There may be a  
3 chance that he was already gone. She even commented to  
4 Paris about his condition. Remember what she said?  
5 She said, what did you do to him. I think Paris told  
6 her something along the lines, oh, he was playing  
7 outside. Really? From 8:00 to 11:00 p.m. outside?

8 So we know the who. We know she gave him his  
9 medicine between 8:00 and 11:00, and he was gone by  
10 12:00. So let's get into the why. Everybody wants to  
11 know why. Why would a mother do this to a child? Dr.  
12 Garvin discussed two possibilities when you see an  
13 overdose in a child under the age of two. One is an  
14 intentional homicidal act, meaning to intentionally  
15 poison a child to end its life. The other was chemical  
16 restraint, an interesting term. It means that an adult  
17 intentionally puts a child in a condition so that she  
18 doesn't have to care for it. She doesn't have to  
19 bother with it. She's chemically restraining him, puts  
20 him to sleep. She puts that parenting on hold.

21 Now, remember on August 18th Angenetta testified  
22 that when she went back to Paris's at 11:00 p.m., she  
23 had to talk her into going back to work, which means  
24 Paris had decided she's in for the night. She's not  
25 planning to be bothered any further that evening. It's

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 already quiet in her house at 11:00 p.m.

2 I don't know if you caught this when the other  
3 witnesses were testifying, but the other two boys,  
4 Miguel and Hunter, were also quiet. They were asleep  
5 on the floor as paramedics and cops worked around them  
6 in the chaos of their baby brother's death. Think  
7 about the quiet. Odd weapon. But isn't it convenient  
8 that at the very top it says, may cause drowsiness?  
9 How perfect if what you're looking for is quiet. A  
10 great tool for chemical restraint. And her testimony  
11 actually makes it difficult to believe she even used  
12 that medication for its medical purpose.

13 The dates up here about doses, possibly four  
14 doses on the 18th, possibly four doses on the 17th,  
15 possibly two doses on the 16th when it was picked up,  
16 those are given to you by Dr. Garvin. If it was being  
17 used for its medical purpose, that's when the doses  
18 could have been given. But there's no indication it  
19 actually was given. That's just what could have  
20 happened if she was doing it correctly. And, in fact,  
21 we know for sure that this one was actually a lie. We  
22 know she didn't give him this dose on the 18th, because  
23 she was at work. So she even lied about a dose. We  
24 don't know if she gave him the medical dose or not.

25 In fact, while he's at the daycare, she doesn't

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 leave it there for him to get in the afternoon. When  
2 he's with the babysitter at night, she doesn't leave it  
3 with the babysitter in case he needs it at one of these  
4 places. She's not concerned about his itching, she's  
5 not concerned about his medical condition. She's  
6 saving it for home for her quiet time. The medicine is  
7 not for that baby; it's for her.

8 The attorney wanted to ask, well, why isn't  
9 there a label on here that warns you if you overdose  
10 your child, he's going to die. Well, isn't that why  
11 there is a prescription-dose explanation from a doctor?  
12 Isn't that why that's there? Are they just kidding  
13 when they put that on a bottle? Is it just a  
14 suggestion, or is that the warning? Here's what you  
15 can have: you can have half a teaspoon every six  
16 hours. If you take enough aspirin, that could kill  
17 you. Do you need that warning on your bottle?  
18 Seriously.

19 Other than the chemical restraint, Dr. Garvin  
20 did say there's another why. I told you at the  
21 beginning of this case that you don't have to find that  
22 she set out or intended to kill her child, at the time  
23 this happened, to find her guilty of homicide by child  
24 abuse. But you can't rule it out.

25 Look at the amount. Six times. Twenty-seven

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 doses missing from the bottle. No indication it was  
2 given for any medical purpose. Twenty-seven doses are  
3 missing. Three-hundred nanograms in his body at the  
4 time of death. That's after his body has already  
5 processed some of it. Do you need that much just to  
6 make him sleepy? A therapeutic dose, half a teaspoon,  
7 will make him drowsy. Wouldn't that have been enough?

8 Ladies and gentlemen, all of the testimony about  
9 toxicology, autopsies, tissue samples, please, don't  
10 lose sight. This case is about a fifteen-month-old  
11 baby boy, a boy who used to laugh and breathe and play,  
12 a boy whose life was robbed from him by his mother.

13 Paris Avery is guilty of homicide by child  
14 abuse. She showed complete extreme indifference to her  
15 child's health and welfare, and she caused his death.  
16 I ask you to return a verdict that speaks the truth.

17 THE COURT: Thank you, solicitor. Mr. Hood.

18 MR. HOOD: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 MR. HOOD: Thank you.  
21  
22  
23  
24  
25



CLOSING ARGUMENT

MR. HOOD: The death of the child was a tragedy, and the person who suffers the most as a result of that tragedy is obviously the mother, the person who gives birth to the child. It's even more of a tragedy that some year after the death of the child a mother is accused of actually killing the child. Now, that's a huge tragedy, because Paris Avery has had that holding over her head for quite some period of time. Not only the pain and suffering from having lost a child, but now the added misery of being accused of it. But that's the State's power. If you have a dead child, somebody will pay. Somebody will pay. And who's the most likely object? The mother is, the parent who has custody of the child, raising three children by herself.

Looking at the entire case -- because remember what I told you when we first started this: you are going to have to base this upon the testimony that you've heard from up here on the stand, and that's the only testimony that you can use in making the determination as to the guilt or innocence of Paris Avery. And what I'm going to do is basically walk you through the evidence.

Now, I heard some things here during the

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 solicitor's argument that makes it sound like now that  
2 they also want to accuse Paris of giving the other two  
3 children drugs, also, because they happened to sleep on  
4 the floor, you know, while something was going on. But  
5 that's the first I had heard of that, so, I mean --  
6 anyway.

7 Now, let's take a look at what we have here.  
8 This is supposedly the medication [indicates]. We have  
9 absolutely no clue what's in this bottle; absolutely  
10 none. If it is, in fact, the medication that we're  
11 talking about, what's the concentration of it? The  
12 only way you know that is go inside, get it out, test  
13 it, see what it is, what's the concentration of it.  
14 And this [indicates] is a huge bottle. We talked about  
15 the dosages and things of this nature. And all of you  
16 -- we're all adults. We've been giving medication to  
17 ourselves and given medication to our children. So  
18 it's nothing unusual. But a bottle like this, and  
19 you're saying over a two-and-a-half-day period of time.  
20 Well, I don't know. But I don't know what we started  
21 with, either.

22 Here are what I call the whys. Let's start with  
23 the doctor who prescribed this medication. Who is he?  
24 Why wasn't he called as a witness? The State knows who  
25 he is. The doctor could tell us why he prescribed this

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 medication, because you heard the doctor -- or one of  
2 the doctors say, that the State presented, that this  
3 was a drug of last resort for a child. So how severe?  
4 Obviously, this particular condition that the child had  
5 must have been extremely severe. But we don't know  
6 that. We would know that if the State had called him  
7 as a witness and he would be able to tell us what he  
8 ordered, as far as the medication is concerned.

9 Is this the medication that he ordered, or did  
10 he order something else? The State has the power.  
11 They charged Paris Avery. They dragged her in here,  
12 and they have the power to bring in the people to  
13 explain all of this to you. Because you're the ones  
14 now that have to make this decision. But they're going  
15 to leave you holding the bag: we're going to give you  
16 the limited amount of whatever -- we're going to give  
17 you like we gave the two doctors, the two experts that  
18 came in; we're going to give you what we want to give  
19 you, not everything that you need to make your  
20 decision.

21 Before I get into the rest of the whys, I'm  
22 going to tell you right up front Paris Avery did not  
23 testify here today, and I'll tell you why: because I  
24 advised her not to. I mean, she has a right not to  
25 testify. She could present evidence. She could take

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 the stand, and testify, and do all these other kinds of  
2 things. There's reasons for that. The most important  
3 reason is that Paris Avery was interviewed by law  
4 enforcement for a period of time. They took all kinds  
5 of statements. They chose to only introduce the ones  
6 they wanted to. But they introduced the one that said  
7 basically, listen, I didn't do anything to harm my  
8 child. At least we got that one. Okay? So that's all  
9 Paris Avery can tell you anyway. So the bottom line is  
10 I told her there ain't no need.

11 And, besides, if we put up evidence, guess what.  
12 I don't get to argue last. I don't get to rebut what  
13 they say, because I would have to argue first and then  
14 they could stand up and say that's all hogwash. It's a  
15 strategy, you know. But the strategy in the defense  
16 case is to make absolutely sure that you get in every  
17 bit of evidence that supports your case through the  
18 State's case, okay, such as what's in the bottle.  
19 That's the whole stretch here in this thing. But Paris  
20 Avery had already given them the statements. They have  
21 all this. They have all this information.

22 Another matter: let's go back to the whys, ifs,  
23 and whatever. We know the doctor wasn't called. We  
24 know they know who he is. But they chose not to call  
25 him because they're not sure what's in the bottle,

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1. either, I guess, because they never analyzed it.

2. Who took the child to the doctor? Who had the  
3. doctor prescribe this medication? They have that  
4. information. They didn't give it to you. Why? Who is  
5. that mysterious person that took this child to the  
6. doctor? Now, we know that Paris Avery was working. At  
7. least, that's what we gathered from a part of the  
8. investigation. So somebody else must have taken the  
9. child. And they know who it is. But they don't want  
10. you to know, because that's the person that got the  
11. information from the doctor, maybe, as to how to use  
12. this, how not to use this. That person gets the  
13. prescription.

14. Who actually picks up the prescription? Who is  
15. the person who goes to the pharmacist and says I want a  
16. prescription for this person and I'm willing to -- all  
17. of you use your common sense, now -- sign for it.  
18. Because this is a prescription. They have to keep  
19. records, track, of all these drugs. Okay? Does the  
20. State have the power to get that information? You bet  
21. you. Do they have it? Could they get it? Yes. Do  
22. they know who picked up that prescription? Yes. Did  
23. they give it to you? No. Why not? It just clouds the  
24. case up, see; makes it look like somebody else other  
25. than Paris actually went to the pharmacy, picked up the

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1       prescriptions.

2               And if they got anything -- like that little  
3       sheet of paper, you know, has some information on it.  
4       But maybe the pharmacist told them something, also,  
5       about the use of this medication. So we have now the  
6       person goes down and picks up the medication, brings it  
7       back. Who do they bring it to? They know. Did they  
8       tell you? No. It clouds the case.

9               Doctors: both of the doctors who testified here  
10       today, yesterday, why weren't they given the child's  
11       medical records? The State had them. What is it in  
12       those records that they didn't particularly like, that  
13       they didn't want these people to know about, such as  
14       the ingestion of bleach just prior to that -- other  
15       medical history that they have custody of, but they  
16       didn't see fit to give it to the doctors to show, boom,  
17       you might want to know about this before you give your  
18       diagnosis; you might want to know that this child  
19       ingested bleach, which is a toxin according to the  
20       toxicologist.

21               Most important about both of those people were  
22       simply the fact that they said, we don't have enough  
23       data on children to really tell you anything; these  
24       peaks and valleys and whatevers, and this and that and  
25       the other; we don't know, because there's been no

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 testing done. How many deaths have occurred as a  
2 result of this particular drug in a child under two?  
3 Well, the pathologist said, oh, lots of them; lots of  
4 them. Well, the toxicologist said, well, not exactly;  
5 I went back, and I checked and checked and checked, and  
6 I only found one, and that was in 2005.

7 I asked each one of those doctors the same  
8 question: what steps did you take to notify the public  
9 of the risk of giving too much of this medication to a  
10 child under the age of two? Oh, well, none. Why  
11 should the public know? Why should we know that the  
12 drug that we're taking might cause death? Wouldn't  
13 that slow down maybe the production of the drug,  
14 particularly the sale of the drug, because now people  
15 would be wondering, well, exactly what does this thing  
16 do; you know, what effect does it have on a child under  
17 two? We don't know.

18 Again, back to what the toxicologist said: we  
19 have no data on that; we go by case histories; we go by  
20 all this information, testing, that has been done for  
21 years and years and years on people. We know that  
22 people process drugs differently. How much of that  
23 drug is in his system at all times? They never said a  
24 word about that, did they? How much of it do you carry  
25 around with you on a daily basis if you're taking it on

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 a daily basis? None of those things.

2 We know that two and a half days, let's say --  
3 this drug, she said, could be in the system two and a  
4 half days. Well, again, I don't know how much was in  
5 it when we started. I don't know what the level was.  
6 I don't know whether it was right here or right there,  
7 you know, because we didn't have the pharmacist.

8 What happened to the pharmacist? Why wasn't he  
9 called as a witness? They know who he is. Did they  
10 give you that information? No. Maybe the pharmacist  
11 can tell us whether or not this is what the doctor  
12 prescribed. Maybe the pharmacist could tell us what  
13 the concentration is. Don't know that.

14 And, more importantly, they call this guy to  
15 come in and give you information, this tech, to give  
16 you information about what the pharmacist did or didn't  
17 do. He didn't even know who the person was that picked  
18 up the drugs. Who was it that the pharmacist talked  
19 to? They know, but they don't want you to know. And  
20 it wasn't Paris Avery.

21 What about the second prescription? Don't even  
22 know there was a second one. Well, who picked that up?  
23 No clue. When was it picked up? You know, again,  
24 you're getting the information that the State wants you  
25 to have, okay? Not all the information, just the



State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 information that targets Paris Avery, and only her.

2 One thing we know possibly for sure: Paris  
3 didn't even have a car. She's riding with the  
4 babysitter. What about the babysitter? You heard the  
5 testimony. She never even saw these drugs, has no clue  
6 what they were. You know, if I were the person who was  
7 in possession of a child, and had been for -- and,  
8 again, we go back to these memories that these people  
9 want to tell you, well, sometime between 10:00 -- and  
10 the time of death on the autopsy, it says 12:30. So  
11 10:00 and 12:30 is about two-and-a-half hours. But,  
12 anyway, was it 12:30? Was it ten o'clock, when she  
13 picked up the kids and took them to her house, which is  
14 two houses down? If we're concerned about this --  
15 because, again, the toxicologist, in her own words,  
16 said, we don't have enough data.

17 So why would Angelena [phonetic] Wright be  
18 concerned? Gee Whitakers, guys, she's a suspect. She  
19 has custody of this child for approximately two hours  
20 before it dies. How did it die? Why did it die? I'm  
21 going to say anything that I want to say to protect  
22 myself. Because, look, not me. Not me.

23 Daycare center: another prime example. There's  
24 liability written all over the top of the daycare  
25 center when you walk in it. You see it up there. It

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 says: we're worried. Drugs. Daycare centers are  
2 licensed. We know that. Okay? We know the lady who  
3 came in here and testified said she had thirty-three of  
4 them. Up to fifty-something at one time. But now it's  
5 about thirty-three per day or something of that nature.  
6 She says, I do all of the intake. But then she sort  
7 of changed it around a little bit and said, well, some  
8 of the -- you know, the other people do other things,  
9 you know, and things of that nature, you know, within  
10 the --

11 She has, by the way, a person who works for her  
12 by the name of Wanda. And she also has that little  
13 bear thing, you know, the black-and-white little bear,  
14 you know, that you fill out the medication and all that  
15 stuff. There are records on that. Guess what? There  
16 are records, because they're required to keep the  
17 records because of the state and licensing and things  
18 of that nature.

19 Do they get those records for you? No. Why  
20 not? Because it doesn't help them in prosecuting Paris  
21 Avery in proving that she did this bad thing and she  
22 knew at the time that she was doing a bad thing. Why  
23 didn't they get the woman from the daycare center to  
24 get the records, bring them in, let's see who really  
25 did the intake for those children? Not only that,

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 let's figure out how long they were there.

2 Now, the State's investigation indicates two  
3 days. They were there Thursday and Friday. That was  
4 the only two days. Well, Ms. Ward says all week. Oh,  
5 by the way, yeah, I did give some medication; yes,  
6 there was a medication given, but it was a cream of  
7 this same drug. Well, where is that prescription? Has  
8 anybody hopped up with one of those, you know? Why  
9 don't we have that information as to how many times  
10 they gave the drug per day, whether it was an oral drug  
11 or if it was a cream? We can't find it anywhere. But  
12 at least we would have the information as to when the  
13 children were there and what drugs actually were  
14 dispensed by the daycare center. They say, oh, no, we  
15 didn't do nothing; we didn't get any drugs on those  
16 days; you know, we got nothing. But the State says,  
17 wait a minute; Paris Avery could not have given those  
18 children -- that child his drugs that day because she  
19 was at work and they were at the daycare center.

20 Let's get the records. Why don't they have  
21 those records? Again, it does nothing for them in  
22 their prosecution of Paris Avery: we have focused in  
23 on one person and we're going to ride this thing to the  
24 very end, because somebody is going to pay.

25 The doctor who prescribed the medication, the

State v. Avery  
Jury Trial - Volume 3 of 4  
May 21, 2008

1 pharmacist who actually put the medication together,  
2 the person who took the child to the doctor, the person  
3 who picked up the medications, the people, various  
4 people, who may have given the drug to the child, none  
5 of those people in their wildest dreams believed that  
6 that drug, this medication, could do any harm to that  
7 child whatsoever. The most logical one would have been  
8 the doctor. But there isn't anything on this bottle  
9 that warns you of potential death or serious bodily  
10 harm from both of those.

11 As needed. What does that mean? Does that mean  
12 if the child is in tremendous pain, you can give it  
13 more? What exactly does that mean? This doesn't say  
14 do not exceed. It just says take as needed, every six  
15 hours, half a teaspoon.

16 So whoever -- we aren't sure. I mean, there is  
17 no way possible to be able to draw the conclusion that  
18 they want you to draw because, again, they are  
19 satisfied. They want nothing to do with anything that  
20 doesn't say Paris Avery. They don't want you to know  
21 all this other stuff, just like they didn't want the  
22 doctors to know the medical history of the child.

23 What did each one of them tell you? Each one of  
24 them told you the same thing: we made our decision as  
25 to what this was based upon the information supplied by

1 the State. What information did the State supply? I  
2 don't know. They know. You don't know; I don't know;  
3 and, unfortunately, neither one of the doctors knew all  
4 of the information. But you know some of it now. I  
5 mean, little bits of it comes out.

6 The doctor, the toxicologist, did not even know  
7 what substance was in this bottle. And I had -- I was  
8 shocked. I was really shocked when she told me, I  
9 don't know. Because they did not even analyze it. It  
10 could be cough syrup. It could be anything, for that  
11 matter. We have no clue what's in the bottle. And  
12 they want you to convict Paris Avery by finding that  
13 she exhibited an extreme indifference to human life.  
14 In other words, I'm willing to take the risk, to roll  
15 the dice, you know, if death occurs, or serious bodily  
16 injury; I don't care; so what. And if you can make  
17 that leap -- based on that evidence from that witness  
18 stand -- that the State has given you, I would be  
19 shocked that you can make that leap.

20 We're talking about an extreme indifference to  
21 human life: somebody who knows the risks involved, and  
22 I'm willing to take it. This tells you nothing of the  
23 risks involved, other than maybe drowsiness and  
24 dizziness. Again, we aren't talking about a bottle,  
25 that's that big [indicates], and half of it is gone in

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1 thirty seconds. We don't even know how long the  
2 substance was in the bottle and had been in the bottle.  
3 We know that they expected to find a hundred. They  
4 found three hundred. Well, but based on what? Well,  
5 we don't have enough data to be able to tell you,  
6 because we don't have enough information on children.  
7 So why don't you warn the public that this can cause  
8 death? Well, we don't need to know that. I've been  
9 taking Vitravene [phonetic] for a long period of time.  
10 Guess what? It don't do what it says it does.

11 Well, I mean, you know, how many medications,  
12 how many doctors, how many nurses, how many hospitals,  
13 chemically restrain patients on a daily basis? On a  
14 daily basis. Care-givers. Child is in excruciating  
15 pain: chemical restraint. A patient is out of  
16 control: chemical restraint. This is not something  
17 that's criminal. Under normal circumstances, every  
18 person is doing something to lend, assist, help, that  
19 particular person in its efforts to lead a better life,  
20 just like the child who itches in the middle of the  
21 night because he doesn't have enough medication and  
22 tears his arms up down into the -- you know, down to  
23 the bone.

24 So their theory -- and the doctor, she did throw  
25 in the other portion of it. She says, this is not --

1 after a little while. You know, it always takes a  
2 little while to pull it out of them. Anything that  
3 will help the defense, you know, with the State's  
4 witness, you've got to pull it out of them. And she  
5 says that this was not an intentional poisoning. Okay?  
6 Got that much out of her at least, you know.

7 So what you have to do, again, as I said, take  
8 that information from this things here, from that place  
9 right there [indicates].

10 I think that covered all the whys. Why don't  
11 they do this; why don't they do that. I want to go  
12 back to my original premise in this whole thing: an  
13 extreme indifference to human life. And, again, I will  
14 start with the doctor. Did the doctor know the risks  
15 that were involved? Did he prescribe the medication?  
16 Or was he acting in extreme indifference to human life  
17 because this is a drug, according to the other doctors,  
18 of last resort for a child of two? What about the  
19 pharmacist? Did he act with an extreme indifference to  
20 human life by providing that medication to this child  
21 without further warnings?

22 I could go on and on and on on each one of these  
23 people, but the bottom line is each and every person  
24 who came into contact with this child -- you do not  
25 have any information that would lead you to believe,

1 under any circumstances, that any one of those people  
2 wanted to do harm to that child. The ones who knew the  
3 risks, the real risks involved, or should have known,  
4 are the doctors and the pharmacist. These other people  
5 can't figure it out, because it ain't here. It ain't  
6 there --

7 I know this has been short, but it's been  
8 extremely serious. And this is not a simple matter,  
9 because this person's life is what we're talking about  
10 here. Paris Avery has been going through this for two  
11 years, not only the agony of losing a child but she has  
12 two others. And, you know, children play. They open  
13 bottles, they play with each other. Unfortunately,  
14 they get into taking medications that they shouldn't  
15 take: bleach, kerosene -- I think I tried some  
16 kerosene when I was a kid -- all these kinds of things.

17 Who: the child himself, the daycare, the  
18 babysitter, all these people, you know, had it  
19 available to them. So you have to make a decision.  
20 And based on all of this evidence that you've gotten  
21 from this -- from the State, it's impossible for you to  
22 find that Paris Avery is guilty of this crime. Thank  
23 you very much.

24 THE COURT: Thank you, Mr. Hood.

25 [Off the record momentarily]



1 MOTION FOR A NEW TRIAL

2 MR. HOOD: Your Honor?

3 THE COURT: Yes, sir?

4 MR. HOOD: At this time, first off, I would like  
5 to renew all of my motions and objections made  
6 previously during the course of this trial.

7 And at this time I would also make a motion for  
8 a new trial, based on the denial of my request for a  
9 directed verdict at the close of the State and its  
10 case.

11 THE COURT: All right, sir. Respectfully, I'm  
12 going to take a little bit of time before I rule on  
13 your motions. And, additionally, I would prefer to  
14 defer sentencing until tomorrow morning, if we can.  
15 But we'll go ahead and we'll do that as of right now.

16 And, solicitor, maybe you want to come back and  
17 talk to me about what is scheduled for the next couple  
18 of days so I know when we can put this in, and we'll go  
19 ahead and schedule it. Okay?

20 MS. TANNER: Yes, ma'am.

21 THE COURT: All right. Thank you, y'all.

22 [JURY TRIAL ADJOURNS AT 2:00 P.M.]  
23  
24  
25

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

PROCEEDINGS

1  
2 THE COURT: All right. Solicitor, I think our  
3 first thing up today is the sentencing for Ms. Avery;  
4 is that correct?

5 MS. TANNER: Yes, Your Honor. I believe we  
6 still have the defense motion still outstanding, and  
7 then the sentencing.

8 MOTION FOR NEW TRIAL

9 THE COURT: Mr. Hood?

10 MR. HOOD: I have the motion for the new trial,  
11 which I need to address.

12 THE COURT: Yes, sir.

13 MR. HOOD: Your Honor, at this time we would  
14 make a motion for a new trial.

15 I would also like to renew all of my objections  
16 and motions made during the course of this trial at  
17 this time, also.

18 And with respect to the motion for a new trial,  
19 it goes back to the denial of our motion for a directed  
20 verdict, which was denied after the State's case and  
21 denied after the defense case. And in that denial, we  
22 had argued that there was absolutely no evidence as to  
23 the element of the -- the second element of this  
24 particular offense, with respect to extreme  
25 indifference to human life. And I also made comments

MIA PERRON, CCR, CVR-CM

-4-

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 about the fact that there was no evidence of what was  
2 in the bottle that was used by Dr. Garvin, Demi Garvin,  
3 in her opinion. And it is my opinion that her opinion  
4 is completely without any foundation, unless she knows  
5 positively what the substance is in that bottle that's  
6 remaining.

7 If you recall, during the course of her  
8 testimony she used that bottle, and the amount that was  
9 in there, how much was supposed to be in there, this  
10 and that and the other, did all these wonderful things,  
11 and came up with the opinion that we're talking about,  
12 chemical restraint, which was the key to filling that  
13 particular element of the offense. If the foundation  
14 is completely flawed in her opinion, then that opinion  
15 is without any merit whatsoever, and therefore that  
16 element of the crime has not one iota of evidence in  
17 the record, and so therefore you should have directed a  
18 verdict at that time.

19 At this time, I'm making a motion for a new  
20 trial based on that very same issue. She could not,  
21 unless she knows what's the substance in the bottle,  
22 come up with all of these take every six hours a half a  
23 teaspoon, because we don't know what's in the bottle.  
24 Unless you know what's in the bottle, you can't be  
25 talking about, well, I would have expected to have seen

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 this much as opposed to that much, and then go to this  
2 and say, now, based on all of this, I think it's  
3 chemical restraint.

4 So there is absolutely no opinion, because there  
5 is absolutely no foundation for that opinion, without  
6 knowing what the substance in the bottle is. The  
7 bottle -- the substance was never analyzed inside of  
8 the bottle. She did not analyze it. I asked her on  
9 the stand, do you know what this stuff is in here, and  
10 she says no. Except for she said, well, it says on the  
11 bottle. Well, the bottle is half empty. Who knows  
12 what's in the bottle until it's analyzed?

13 THE COURT: Mr. Hood, we know what was found in  
14 the child's body, though, at the autopsy. We know that  
15 it was --

16 MR. HOOD: Does that --

17 THE COURT: -- was the substance, the same  
18 substance, as claimed in the bottle. And while it may  
19 not be direct evidence, it certainly is circumstantial  
20 evidence that it was found. That substance was found  
21 in the child's body.

22 MR. HOOD: Well, I can agree with you. But the  
23 fact is, in order for her to be able to make this  
24 opinion, give this opinion, she has to know what the  
25 substance is in the bottle in order to be able to give

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 a proper opinion. And without knowing what the  
2 substance is -- it could have been water. What happens  
3 if it's water, okay? What happens if it's cough syrup?

4 We don't know the concentration of that drug in  
5 the bottle. We don't know anything about whatever is  
6 in that bottle. And she gives an opinion based on what  
7 she believes but does not know is in that bottle, and  
8 that ain't good enough. She either -- she had to have  
9 known positively what was in that thing. She never  
10 analyzed the substance to determine that it was, in  
11 fact, what it said. Nobody else analyzed it. She  
12 didn't contact the pharmacist who issued the stuff.

13 She had no information at all, and did not know,  
14 what the substance was in that bottle when she gave  
15 that opinion. So the opinion is totally flawed. I  
16 mean, it's of no -- there is no foundation for that  
17 opinion. None.

18 THE COURT: Mr. Hood, you didn't object to it,  
19 though, at the time.

20 MR. HOOD: Well, you know, sometimes I get tied  
21 up and I don't object. And, you know, but I made the  
22 motion, and I made the motion to you on a directed  
23 verdict, based on that same information.

24 THE COURT: Right. But you didn't --

25 MR. HOOD: And stating also --

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 THE COURT: -- object to her testimony at the  
2 time, though.

3 MR. HOOD: Right.

4 And stating also in that motion that there was  
5 absolutely no evidence as to what the substance was in  
6 the bottle.

7 And on the issue of extreme indifference to  
8 human life, which I think is sufficient, maybe I didn't  
9 go into the same argument that I'm going into now --  
10 because I thought about this at three o'clock this  
11 morning -- but the bottom line is unless she knew  
12 positively what the substance was in that bottle, she  
13 could not have given an opinion. There is no  
14 foundation, absolutely none, for that opinion.

15 It also brings into suspect her opinion as to  
16 the other substances that she claims to have found in  
17 the body, and the amounts that she found in the body.  
18 Because if she didn't -- if she gave an opinion without  
19 knowing, then how good is her opinion on the other  
20 stuff she talks about?

21 And at that point, we would simply ask for a new  
22 trial.

23 THE COURT: Solicitor?

24 MS. TANNER: Your Honor, Dr. Garvin's opinion  
25 was based on the level of the drug in the child's body.

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 Her opinion, as a toxicologist, was that the cause of  
2 death was an overdose. Her testimony then went into in  
3 her experience, what do you see as a cause of overdose.  
4 And that's when she talked about chemical restraint.

5 There were two types of causes when you find an  
6 overdose in a child. One is an intentional homicidal  
7 giving of the medicine in the intent to kill the child  
8 with the medicine. The second would be the chemical  
9 restraint.

10 So her testimony is based on what is in the  
11 child's body. And that was analyzed, it was  
12 quantified, and qualified. So the testimony about the  
13 bottle and the contents missing, that is separate and  
14 aside. It was circumstantial evidence. It went along  
15 with the case. She gave some quantitative testimony  
16 about that information. But her opinion about the  
17 child's death and cause of death was based on the test  
18 results of what was in the child's body, not the  
19 bottle. So I don't -- that is a completely separate  
20 argument.

21 So we would stand that her opinion is valid, and  
22 it's based on the evidence, and we would ask that the  
23 jury's verdict stand.

24 THE COURT: Mr. Hood, anything further for the  
25 record, sir?

MIA PERRON, CCR, CVR-CM

-9-

State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 MR. HOOD: I think I've covered it all.

2 THE COURT: Okay. Thank you. Respectfully,  
3 sir, I am going to deny your motion for a new trial.

4 I think the jury paid careful attention. I  
5 think the way they weighed the evidence -- I think it  
6 was certainly adequate evidence that was given to  
7 convict her.

8 You stated that you believe that the State  
9 didn't prove the element of extreme indifference to  
10 human life. I believe the testimony of there being six  
11 times the concentration of what should be expected,  
12 under proper dosage of that medication, would go to  
13 show this extreme indifference to human life, and as  
14 such, I'm going to go ahead and let the jury's verdict  
15 stand.

16 MR. HOOD: Well, I would like to make one  
17 further comment.

18 THE COURT: Yes, sir.

19 MR. HOOD: The way that she determined what  
20 should have been in the bottle was from what was left  
21 in the bottle.

22 MS. TANNER: That's not true.

23 THE COURT: No. It was based on actually -- and  
24 I'm sorry, I don't mean to --

25 It was based on when the medication was picked



State v. Avery  
Jury Trial - Volume 4 of 4  
May 22, 2008

1 up, how much possible dosage could have been given, as  
2 was stated on the bottle. If it was every six hours  
3 from the time it was picked up, it was based on  
4 whatever that dosage was or should have been.

5 MS. TANNER: That's right. The six-times number  
6 comes from what is in the child's body. That three-  
7 hundred nanograms per milliliter is what is in the  
8 child's body, and the medically-accepted amount should  
9 have been less than forty-seven nanograms. That is  
10 where the six-times comes from.

11 Again that is with regards to the analysis of  
12 the amount in the child's body. That's not related to  
13 what's in the bottle. The testimony about the bottle  
14 was that twenty-seven doses were missing, which is not  
15 the same as six times a medically-accepted level in a  
16 child's body.

17 THE COURT: All right. Well, respectfully,  
18 again, I'm going to deny your motion, sir.

19 Are we ready to go forward with sentencing?

20 MS. TANNER: Yes, Your Honor.

21 THE COURT: Is the defense ready?

22 MR. HOOD: Yes.

23 THE COURT: All right. You can either -- Mr.  
24 Hood, you can stay there, if y'all would like.

25 MR. HOOD: Okay. That will be fine.

WITNESSES

Inv. Wilson - BCSO

ARREST WARRANT NUMBER

J332265

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury  
Date: MAY 24 2007

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2007-GS-07-0927

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May TERM 2007

THE STATE  
vs.

Paris Genici Avery

Indictment for

HOMICIDE BY CHILD ABUSE

SC Code: 16-3-85(A)(1)

CDR Code: 2356

Class: FELONY(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

INDICTMENT  
2007-GS-07-0927

**HOMICIDE BY CHILD ABUSE**

At a Court of General Sessions, convened on May 24, 2007, the Grand Jurors of Beaufort County present upon their oath:

**HOMICIDE BY CHILD ABUSE**

That Paris Genici Avery , did in Beaufort County on or about August 19, 2006, cause the death of a child under the age of eleven (11) while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life, in violation of S.C Code Section 16-3-85(A)(1).

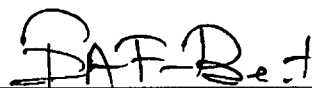
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
Isaac McDuffie Stone, III, SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 21st, 2009

A handwritten signature in black ink, appearing to read "EAT-Best", written over a horizontal line.

Elizabeth A. Franklin-Best  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

PARIS AVERY,

APPELLANT

---

FINAL BRIEF OF APPELLANT

---

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ATTORNEY FOR APPELLANT.

## TABLE OF CONTENTS

|                                    |    |
|------------------------------------|----|
| TABLE OF CONTENTS .....            | 1  |
| TABLE OF AUTHORITIES.....          | 2  |
| STATEMENT OF ISSUES ON APPEAL..... | 3  |
| STATEMENT OF THE CASE .....        | 4  |
| ARGUMENT.....                      | 5  |
| CONCLUSION.....                    | 20 |
| CERTIFICATE OF COUNSEL.....        | 21 |

## TABLE OF AUTHORITIES

### **Cases**

|                                                                             |    |
|-----------------------------------------------------------------------------|----|
| <u>McKnight v. State</u> , 378 S.C. 33, 661 S.E.2d 354 (2008).....          | 19 |
| <u>State v. Cherry</u> , 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001) ..... | 19 |
| <u>State v. Jarrell</u> , 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002) ..... | 19 |
| <u>State v. Martin</u> , 340 S.C. 597 533 S.E.2d 572 (2000) .....           | 19 |

### **Statutes**

|                                     |    |
|-------------------------------------|----|
| S.C. Code Ann. §16-3-85 (2002)..... | 19 |
|-------------------------------------|----|

STATEMENT OF ISSUES ON APPEAL

Was the evidence presented at trial sufficient to convict Paris Avery of homicide by  
child abuse?



### STATEMENT OF THE CASE

Paris Genici Avery was indicted by the Beaufort County grand jury during the May 2007 term of homicide by child abuse. (2007-GS-07-0927). She was tried before the Honorable Carmen T. Mullen, and a jury, between May 19<sup>th</sup> and 22<sup>nd</sup>, 2008. She was represented by Gene Hood, Esquire. She was convicted, and sentenced to 35 years incarceration. This appeal timely follows.

## ARGUMENT

The evidence presented by the State at trial was insufficient to convict Paris Avery of homicide by child abuse.

Paris Avery is a young African American woman who was working at the Golden Corral in Beaufort when she left her children with a babysitter and co-worker, Angenetta Wright. Her youngest child, Ra'Sean, was 15 months old and suffered from a bad case of eczema. Later that night, while in the custody of the babysitter, Ra'Sean died of an overdose of the doctor prescribed medicine, hydroxyzine, used to treat his condition. Paris Avery was subsequently charged with homicide by child abuse.

On that fatal day, Paris worked at the restaurant from 11:00am to 5:00pm. After her shift ended, she left to pick her children up from daycare. Later, Paris, Wright, and Paris's children went back to the Golden Corral for dinner at around 7:00pm. Wright then drove Paris and her children home from dinner; they lived close to one another. Wright saw Paris again shortly after 10:00pm. Paris needed to return to the Golden Corral to finish up some work, but had decided not to go. Wright went to Paris's house and talked her into going back to complete her duties at the restaurant. Wright then took Paris's children to her house. It was close to 11:00pm. An hour later, Paris returned to Wright's house, and her child had died. They called 911. (ROA page 1, line 11 to page 9, line 2).

The State's theory of the case was that Paris used the doctor prescribed medication as a "chemical restraint" for her child, as opposed to its therapeutic use. The State claimed that Paris "would intentionally medicate her children so that they would go to sleep and she wouldn't have to deal with them. In this instance she did it too much and the medication that was used this time caused the child's death." (ROA page 4, lines 7-14).

The evidence adduced at trial was not sufficient to convict Paris of homicide by child abuse. Her conduct simply did not rise to the level of “extreme indifference” to her child’s well-being, and the State, with its illogical and speculative theory, failed to meet its burden. Respectfully, Paris asks this Court to reverse her conviction.

*The State’s Attempted “Lyle” Witnesses*

The State attempted to introduce the testimony of two witnesses, Peggy Young and Sharon Williams, to buttress its claim that Paris was using medications to chemically restrain her children. The judge appropriately excluded the testimony, but it is relevant to this Court’s analysis of Paris’s insufficiency argument because Dr. Demi Garvin, the State’s expert toxicologist, and progenitor of the State’s theory of chemical restraint, testified that she never spoke to these two witnesses. (ROA page 151, line 18 to page 154, line 5). She should have, because their testimony militated *against* a finding of “chemical restraint” in this case.

*Witness #1: Peggy Young*

Young is the paternal grandmother of Ra’Sean and the other children. (ROA page 11, lines 6-18). Her son, Ra’Sean’s father, would come by “every now and then.” (ROA page 18, lines 11-13). She now has custody of the two surviving children, and she would like to keep them in her custody. (ROA page 20, lines 3-12)

According to her testimony, Ra’Sean lived with her during “all of his baby life.” (ROA page 12, lines 5-7). Young never observed Paris giving Ra’Sean any medication at all, (ROA page 12, lines 21-23), and she testified that she did not often observe them

together. (ROA page 17, lines 15-21). She claims that she did see Paris give the other children, four and five-year olds (ROA page 11, lines 16-20), Tylenol and Dimetab. (ROA page 13, lines 2-3). In other words, she never observed Paris attempting to chemically restrain Ra'Sean,—a significant fact inconsistent with the State's theory.

Witness #2: Sharon Williams

Williams worked with Paris at the Waffle House, a previous place of employment for Paris. She has known her for about 2 or 3 years. (ROA page 21, lines 18-23). She testified that she observed Paris, on two occasions, give either Tylenol *or* Benadryl to Ra'Sean because of his eczema. She claims she observed this approximately two months prior to the child's death.<sup>1</sup> (ROA page 24, line 7 to page 25, line 4). Even though this witness claimed that he was not sick at the time, and that she thinks Paris was giving it to him to "make him go to sleep or calm down" (ROA page 23, lines 22-24) she admitted that she and Ra'Sean's grandfather took the child to the doctor and that the doctor prescribed the hydroxydine "because he said it had got so bad in his bloodstream, that was the only way it would get cured faster, with the liquid." (ROA page 30, lines 22-25). Williams then admitted:

Q: So it was pretty bad, then, in other words?

A: Yes.

Q: And so the child was in a lot of pain; is that correct?

---

<sup>1</sup> It is important to note that these two witness' testimonies fell well short of the what the solicitor, rather dramatically, told the judge their testimony would prove—that Paris would give her children "pretty much any over-the-counter prescription—nonprescription drug she could get her hands on that caused drowsiness." (ROA page 7, lines 6-9).

A: Yes.

Q: Okay. And had difficulty sleeping, and things of that nature; isn't that—

A: Yes.

Q: -- Correct?

(ROA page 31, lines 1-9).

Williams also added that it was Ra'Sean's *grandfather* who picked the medication up from the pharmacy. Williams also administered the first dosages of the medication to Ra'Sean, and *continued to give the child dosages when Paris was not home*. (ROA page 30, lines 2-6). As to the last time Williams gave Ra'Sean the medication, she testified that:

Q: When was the last time, before his death, that you gave him his prescribed medication?

A: Before his death? I took him like—he had went to the doctor the week before, which I think was on a Monday or Tuesday I took him. Probably that Wednesday or Thursday was the last time I gave him medicine.

Q: So it would be about a week before his death?

A: Yes.

(ROA page 32, lines 7-14).

This testimony should have raised significant red flags for Demi Garvin, had she undertaken to speak to these witnesses, because it appears that this witness was giving the child dosages that Garvin attributed to Paris. Taken in conjunction with the testimony of Ryan Ranger, the pharmacist who filled this prescription, Williams's testimony was demonstrably false.

Ranger testified that the fatal prescription was filled on August 16, 2006 at 3:24 pm. (ROA page 172, lines 12-25). The prescription stated that it had been refilled before, on June 7, 2006. (ROA page 176, lines 3-6). There was no testimony offered to suggest that the prescription was otherwise refilled, and Garvin never testified that she predicated her findings on a belief that it was. As Garvin testified, there were 120 milliliters of medication in the prescription. Each accurate dosage amounting to 2.5 milliliters (1/2 tablespoon), there would have been 48 dosages in the bottle. If given every 6 hours, or 4 times daily, per the prescription, that would have amounted to 12 days worth of medication. The first prescription, then, assuming *appropriate* usage, would have likely run out around June 19, 2006. It appears the prescription was then filled two months later. Two and a half days after the prescription was refilled, the child received the fatal dosage.

From this, it is reasonable to conclude that Williams's statements that she had given the child medication a week earlier was inaccurate, since the earlier prescription would most likely have been exhausted at that point (and likely, much *earlier* if it had been used for purposes of restraint), and it is clear, from the testimony of the pharmacist, that the bottle had only recently been filled. If the bottle had been refilled on other occasions, the State never offered the testimony from their pharmacist, their toxicologist, their investigator, or any of their witnesses. Moreover, Williams testified that she is the one who took the child to the doctor in the first place. (ROA page 31, line 14 to page 21, line 6). So, not only did Paris not pick up the fatal prescription from the pharmacy, she did not even secure this prescription from the child's doctor. These acts were undertaken by the absentee-father's father, and a co-worker. These facts would have been extremely relevant for determining whether Paris was using this medication for purposes of "chemical restraint" and whether

her actions rose to the level of “extreme indifference” justifying a conviction for homicide by child abuse. The State did not provide any evidence that Paris was ever made aware of the toxic qualities of this medication, a drug that Garvin termed one “of last resort” since Paris neither spoke to the pharmacist nor the doctor about the medication. The State failed to prove that Paris knew the medication was potentially toxic.

Additionally, another person, Williams, was giving the child dosages out of the prescription (per Williams’s testimony). This undercuts completely the idea that Paris was using the medication as a “restraint,” since it is undetermined how much Williams gave to Ra’Sean versus the amount that Paris administered. Also, information that Williams was providing medication to the child serves to prove that there was a medical necessity for the medication.

These witness’ testimonies militate against a finding of homicide by child abuse in this case, and the evidence tending to support the conviction should be analyzed in light of the available information that the State’s expert toxicologist did not uncover in establishing her conclusion that Paris Avery committed child homicide by using this prescription medication to “chemically restrain” her child’s actions.

The State’s theory of this case, and why they argued this testimony was admissible as *Lyle* evidence is summed up rather histrionically, and transparently, in the solicitor’s argument during the *in limine* hearing:

[I]f you believe the State’s case, Avery Paris—Paris Avery did not give the medication to her child so he would have a good night’s sleep. She gave it to the child so she could do what she wanted to, so she didn’t have to be a mother, so she didn’t have to parent this kid, because she’s indifferent to being a mother to these children, which is why she constantly medicates them to keep them asleep so they don’t play, so they don’t make noise. She’s indifferent to their lives and their enjoyment of their lives. She puts

them down. She keeps them asleep. That's why she does it. She does it for herself, not the child . . . It's not an accident. It's she's indifferent to her own children. She's not mothering them.

You heard from these two women that over the fifteen months of this child's life, she only cared for him by herself maybe the last two weeks of it. And we see how that ended. She has been indifferent to him since the day he was born, including the older brothers who she's been giving medication to. It shows a common scheme or plan.

(ROA page 50; line 18 to page 51, line 19).

The solicitor's remarks highlight the improper quality of these witness's testimonies, and they were properly excluded from this trial.<sup>2</sup>

Testimony of Expert Toxicologist, Demi Garvin

The State offered the testimony of Dr. Demi Garvin to prove their theory of chemical restraint. Garvin has a doctorate in Clinical Pharmacy from USC College of Pharmacy. She is a licensed pharmacist in the state, and board certified in forensic toxicology. (ROA page 121, lines 15-23). She is the assistant laboratory director of forensic sciences for Richland County Sheriff's Department, and a consultant and owner of the Forensic Science Network, a private limited liability corporation. (ROA page 122, lines 1-16). She has been qualified as an expert in excess of 200 times in the areas of clinical and forensic toxicology, and drug chemistry (ROA page 123, line 1- 6).

She became involved in this case through her association with the Forensic Science Network. (ROA page 124, lines 11-15). The specimens involved in this case

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<sup>2</sup> The judge, however, ruled their testimonies would be admissible if Paris raised the defense of accident, even though the State clearly was attempting to introduce the testimony to impugn Paris's character and thus improperly. The judge said that she would declare a mistrial. (ROA page. 153, line 20 to page 155, line 11).



were collected at the autopsy and sent to a contract laboratory, National Medical Services, located in Willow Grove, Pennsylvania. (ROA page 124, lines 15-20).

After she received the results of the toxicology testing performed there, there was "communication between [her] with both the pathologist and the principle [sic] investigator in this case in order to obtain additional information in order to be able to make an appropriate interpretation . . . determining whether or not this death was, in fact, due to a toxic insult or a drug or poison-related situation." (ROA page 125, lines 5-12).

Analysis of the blood sample concluded that the victim's blood contained 300 nanograms per millimeter of hydroxyzine and hydroxyzine metabolites. (ROA page 125, lines 15-20). Based on her discussions with the lead investigator and pathologist, she concluded that:

"[P]ostmoretem hydroxyzine level was consistent with intoxication and overdose and I communicated to the pathologist that I felt it was in the absence of an anatomical cause of death, the principle [sic] cause of death, in this child."

(ROA page 125, line 23 to page 126, line 5).

Further:

"The circumstances, history that was provided to me, as well as the postmortem concentration, essentially left me with the opinion that the death did not rise to the level of an overt, massive intoxication but rather did seem to fit the circumstances of what I referred to earlier as a chemical restraint or an attempt at sedation, given the postmortem concentration that we found."

(ROA page 128, lines 6-13).

Her conclusion that Paris engaged in chemical restraint of her child then was predicated, per her testimony, on (1) her understanding of the “circumstances”, (2) the “history” that was provided to her, and (3) the concentration of toxins in the child’s system.<sup>3</sup>

During a preliminary hearing, outside of the presence of the jury, Garvin testified to the following relevant facts regarding the pharmaceutical itself:

Hydroxyzine is a generic name for a drug commonly known as Vistaril or Atarax. (ROA page 128, lines 17-20). It is an antihistamine. In children, it is used to treat the itching associated with dermatological conditions, including eczema. (ROA page 128, line 20 to page 129, line 4). Its side effects, even at therapeutic levels, include sedation and dry mouth. It can also cause pupil dilation, and other effects. Adverse effects increase with increasing dosages, and in an overdose situation, central nervous system depression would be expected. (ROA page 129, lines 5-19). Conversely, some children might experience hyper-stimulation resulting in seizures at high levels. (ROA page 129, lines 16-19).

Peak concentrations of the medication typically occur approximately 2 hours after the last dose, with effects that can last for six to eight hours. (ROA page 130, lines 4-7). Regarding this particular drug, Garvin is only aware of one reported child fatality, that of a six year old in 2004. (ROA page 133, line 1-24). Garvin referred to this drug as one of “last resort” in the pediatric population “because it is associated with more adverse

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<sup>3</sup> Despite having received the background history of the victim from Officer Wilson, Garvin testified that she never received any information about Paris’s purported use of “chemical restraint” against her other children. (ROA page 151, line 18 to page 152, line 23).

effects than some of the other first-generation antihistamines such as Benadryl.” (ROA page 133, line 25 to page 134, line 9). The drug is “toxic.” (ROA page 134, lines 10-11).

Garvin testified regarding making up a missed dose of the medication:

Q: Now, are you familiar with the information on the what happens if you miss a dose? Can you make up a dose, and things of that nature, on this particular drug?

A: That would speak to the information that a pharmacist such as myself would communicate to a caregiver. Yes, sir, I am.

Q: And I believe it says you can make up doses; isn't that correct?

A: Well, that's dependent on the time that has passed since the last missed dose. In an infant his young it would be my opinion, and my communication as a pharmacist to the individual administering the medication, that if the time has passed and it's time for the next dose to be given, that one should not double up on the dose but should rather just declare that a missed dose and medicate the individual or the child at the next—at the time of the next dose.

This medication, if you recall, was initially prescribed PRN, which means as needed, which is not the same as round-the-clock dosing such as we might give with an antibiotic to treat a bacterial infection. So there is no need to give the medication if there is no need. It's not to be given around the clock.<sup>4</sup>

Q: So in other words if there is a need, you take the drug?

A: That's correct.

(ROA page 146, line 22 to page 147, line 22).

Garvin again testified as to the bases of her conclusion that the death of the victim was the result of a homicidal act:

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<sup>4</sup> The State failed to prove that information of this nature was ever communicated to Paris.

“But I did not—I did not feel that, under any circumstance, that this was—once I was provided information both from the pharmaceutical end, the toxicologic end, the medical end, as well as the investigative end, there was no time that I felt it was unintentional or accidental. Let me use those words synonymously.”

(ROA page 142, lines 11-18).

Garvin never reviewed the child’s medical records. (ROA page 144, line 4-6).

### The Missing Medication

Garvin testified that she predicated her theory of “chemical restraint,” at least partially, on the amount of dosages present in the bottle after the child died. She testified to her calculations at (ROA pages 145 and 146, and at pages 149 to 151). At (ROA pages 125 to page 128) she testified as to why she excluded accident as a possible description for these events. According to her testimony, Garvin never considered the child was receiving a dosage of ½ **tablespoon** instead of the ½ **teaspoon** which was the accurate dosage amount. If she had, her opinion may have been vastly different. Here’s why:

Per her testimony, knowing that the prescription was filed at 3:30pm on August 16<sup>th</sup>, 2006 and that the child died either late August 18<sup>th</sup> or earlier August 19<sup>th</sup> (12:30am), she assumed 10 dosages were dispensed to the child, per the instructions on the label. The child was to receive .5 teaspoons every 6 hours. There were 120 milliliters in the bottle. ½ teaspoon= 2.5 milliliters. With ten dosages, 25 milliliters were dispensed, leaving 95 milliliters remaining in the bottle. This is what Garvin testified she would have expected to be remaining. Instead there were 52 milliliters present.

Assume, instead, that the child, instead of receiving  $\frac{1}{2}$  **teaspoon**, received  $\frac{1}{2}$  **tablespoon** for each dosage amount. There are 3 teaspoons in one tablespoon.  $\frac{1}{2}$  of a tablespoon = 7.5 milliliters. 7.5 milliliters x 10 dosages = 75 milliliters. 120 milliliters (the amount in the bottle) – 75 milliliters = 45 milliliters remaining. The difference between the 52 milliliters present in the bottle, and the 45 milliliters that would have been dispensed assuming  $\frac{1}{2}$  tablespoon dosage instead of the  $\frac{1}{2}$  teaspoon dosage is approximately 7 milliliters, or **one less dosage** of  $\frac{1}{2}$  tablespoon. The amount of medication still remaining in the bottle, then, should have given some cause to question whether there was any confusion over the prescribed dosage amount. Again, this is a particularly important fact since Paris never spoke to either the doctor or the pharmacist. Additionally, the label on the medication was not provided using the metric system, but used the measurement “teaspoon” which, incidentally, is not the same in every country. (ROA page 87, lines 11-14). And see <http://www.onlineconversion.com/volume.htm> (last visited May 18, 2009). Yet Garvin, in explaining all of the possible sorts of “accidents” which may have occurred, never touched upon one of the most common mistakes experienced by professional chefs and weekend gourmets—confusing two ubiquitous measurements.

#### *The State’s Closing Argument*

The State’s closing argument exposed the fundamental illogic of its case. The closing argument—the State’s opportunity to “connect the dots” and make sense of all of the evidence—was riddled with speculative connections and false claims. The assistant solicitor said:

And remember what Angenetta said. When she saw him at 11:00pm, he was already limp. There may be a chance he was already gone. She even commented to Paris about his condition. Remember what she said? She said, what did you do to him? I think Paris told her something along the lines, oh, he was playing outside. Really? From 8:00 to 11:00pm outside?

(ROA, page 261, lines 1-7).

First of all, Wright never used the word “limp” but actually said he looked “really tired” and “wore out.” (ROA page 6, lines 7-8). Secondly, it was 11:00pm, a time at which generally children are tired. Also, Wright never testified that Paris told her the children were outside playing.

The State argued that the medicine was not for her child, but was for Paris. Paris had a babysitter for her children that night—if it were true that “[t]he medicine is not for that baby; it’s for her” (ROA page 263, lines 6-7), then it would follow that she would not be giving the child medicine at a time when the child is likely to be sleepy anyway, and when she had a babysitter for the child. Instead, the State bizarrely fixated on the fact that the child was sleepy. But of course he was, because it was late at night, and he had been given a prescription medication which, even had the appropriate amount been given, would have resulted in the child’s being tired since it is an antihistamine, and drowsiness is a completely predictable—indeed, it was noted on the label-- side effect of antihistamine consumption.

Then the solicitor excoriated Paris for failing to leave the medication with Wright!

When he’s with the babysitter at night, she doesn’t leave it with the babysitter in case he needs it at one of these places. She’s not concerned about his itching, she’s not concerned about his medical condition. She’s saving it for home for her quiet time. The medicine is not for that baby; it’s for her.

(ROA page 263, line 1-7).

Again, the State's theory is simply bizarre— Paris's actions in *not* leaving the medication with Wright suggest that she was, in fact, conscious of not giving the child too much of the medication! The child had already received a dose at 8:00pm. It would have been an off-label and inappropriate use of the drug to give the child any more that night.

And the Solicitor was surprised that the other children were tired at 11:00pm! (ROA page 262, lines 2-12).

Then the Solicitor exclaimed: "Look at the amount. Six times. Twenty-seven doses missing from the bottle. No indication it was given for any medical purpose." (ROA page 263, line 25 to page 264, line 2). However, Garvin testified that 17 doses were missing, and there was ample testimony that there was a medical purpose for the medication.

It is deeply troubling and should cause this Court concern that the State prosecuted a woman for homicide by child abuse and repeatedly misstated the facts during closing arguments, and about issues that are at the heart of the prosecution. It evidences a belief that the State knew it had problems with the sufficiency of the evidence in this case, that it had to manufacture facts during its closing in an attempt to secure a conviction.

A person may be found guilty of homicide by child abuse if the person causes the death of a child under 11 while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life. S.C. Code Ann. §16-3-85 (2002). "Extreme indifference" is a mental state akin to intent characterized by

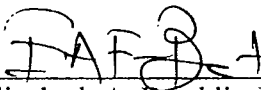
a deliberate act culminating in death. McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008); State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002). Paris's actions simply do not rise to that level. Paris gave her child a doctor prescribed medication for a condition that he had—eczema. The child died as a result of the medication that the State's expert herself called "a drug of last resort." Paris did not secure the drug from either the doctor or the pharmacist, and she was not the only person giving medication to the child during the relevant time frame. Two witnesses who the State proffered to show a course of conduct consistent with "chemical restraint" provided testimony that actually militated *against* that particular theory. And then the Solicitor, not content to argue the facts as they existed, repeatedly misstated the facts on important issues to secure her conviction. The trial court judge should have granted Paris's motion for a directed verdict (ROA page 252, line 13 to page 257, line 7). The evidence merely raised a suspicion that Paris was guilty of homicide by child abuse. State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001); State v. Martin, 340 S.C. 597 533 S.E.2d 572 (2000). The evidence presented at trial did not rise to the level to sustain a conviction for homicide by child abuse, and respectfully, Paris asks this Court to reverse her conviction.



CONCLUSION

For the preceding reason, Paris respectfully asks this Court to reverse her conviction.

Respectfully submitted,

  
\_\_\_\_\_  
Elizabeth A. Franklin-Best  
Appellate Defender

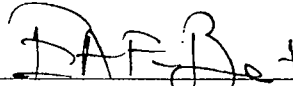
ATTORNEY FOR APPELLANT.

This 4<sup>th</sup> day of November, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 4<sup>th</sup>, 2009

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

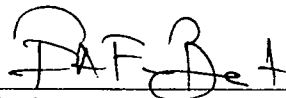
V.

PARIS AVERY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoort, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4<sup>th</sup> day of November, 2009.



Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 4<sup>th</sup> day of November, 2009.



(L.S.)

Notary Public for South Carolina

My Commission Expires: August 15, 2010.



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November 4, 2009

Norman Mark Rapoport, Esquire  
Senior Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

Re: The State v. Paris G. Avery

Dear Mark:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Elizabeth A. Franklin-Best  
Appellate Defender

EAF/eaf

Enclosure



# SCCID

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November 4, 2009

Ms. Paris G. Avery, #328464  
Graham Correctional Institution  
4450 Broad River Road  
Columbia, SC 29210

Re: Your appeal

Dear Ms. Avery:

Enclosed is a copy of the Final Brief of Appellant and Record on Appeal in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Elizabeth A. Franklin-Best  
Appellate Defender

EAF/eaf

Enclosure

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal From Beaufort County  
Carmen T. Mullen, Circuit Court Judge

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THE STATE,

Respondent,

vs.

6<sup>2</sup>  
PARIS/AVERY,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

---

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## TABLE OF CONTENTS

|                                                                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                      | ii |
| STATEMENT OF ISSUE ON APPEAL .....                                                                                                                                              | 1  |
| STATEMENT OF THE CASE .....                                                                                                                                                     | 2  |
| STATEMENT OF FACTS .....                                                                                                                                                        | 3  |
| ARGUMENT                                                                                                                                                                        |    |
| The trial judge properly denied the motion for a directed<br>verdict for homicide by child abuse, because there was<br>sufficient evidence to submit the case to the jury ..... | 11 |
| CONCLUSION .....                                                                                                                                                                | 17 |

## TABLE OF AUTHORITIES

### Cases:

|                                                                             |                |
|-----------------------------------------------------------------------------|----------------|
| <u>McKnight v. State</u> , 378 S.C. 33, 661 S.E.2d 354 (2008) .....         | 12             |
| <u>State v. Charping</u> , 333 S.C. 124, 508 S.E.2d 851 (1998) .....        | 16             |
| <u>State v. Green</u> , 356 S.C. 259, 589 S.E.2d 6 (2003) .....             | 15             |
| <u>State v. Jarrell</u> , 350 S.C. 90, 564 S.E.2d 362 (Ct. App. 2002) ..... | 11, 12, 14, 16 |
| <u>State v. Kelsey</u> , 331 S.C. 50, 502 S.E.2d 63 (1998) .....            | 11             |
| <u>State v. Lindsey</u> , 355 S.C. 15, 583 S.E.2d 740 (2003) .....          | 11             |
| <u>State v. Lyle</u> , 125 S.C. 406, 118 S.E. 803 (1923) .....              | 14             |
| <u>State v. McKnight</u> , 352 S.C. 635, 576 S.E.2d 168 (2003) .....        | 11             |
| <u>State v. McKnight</u> , 352 S.C. 635, 576 S.E.2d 169 (2003) .....        | 15             |
| <u>State v. Smith</u> , 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004) .....  | 14             |
| <u>State v. Varvil</u> , 338 S.C. 335, 526 S.E.2d 248 (Ct. App. 2000) ..... | 16             |

### Other Authority:

|                                            |    |
|--------------------------------------------|----|
| S.C. Code Ann. §16-3-85(A)(1) (2003) ..... | 12 |
|--------------------------------------------|----|



## **STATEMENT OF ISSUE ON APPEAL**

Did the trial judge properly deny the motion for a directed verdict for homicide by child abuse?

## **STATEMENT OF THE CASE**

Respondent concurs with the procedural Statement of the Case of Appellant Paris Avery.

## STATEMENT OF FACTS

Avery worked at a Golden Corral restaurant in Beaufort County with her friend, Angenetta Wright. (R. 102). Wright testified that she and Avery took Avery's three young children, John Doe, Richard Roe, and the fifteen-month-old victim, to daycare before work on August 18, 2006. (R. 112-113).

They left from work at five o'clock and drove to the daycare to pick them up. (R. 103). They arrived about six o'clock, and then went back to the Golden Corral for supper "a little after 7:00." (R. 103-04, 114). Wright recalled the victim acted "normal" at the restaurant, and he "was playing and laughing" that evening. (Tr. 71). They stayed at the restaurant "about an hour." (R. 104). Wright testified she dropped Avery and her children off at their home after dinner. (R. 104). Wright lived only two houses down from Avery. (R. 106).

Wright then proceeded to her mother's house in Walterboro to take her own children there. She got back home around "8:30 to nine o'clock." (R. 104-105, 114). She next saw Avery "a little after 10:00" when she went to her house to get her. Wright explained that Avery had some work to finish at Golden Corral and thought Avery might be asleep, because Avery failed to come to her house and take her car. (R. 105). Wright said she then drove to Avery's house and woke her up. Avery told Wright that she was not going to work. Wright testified she finally convinced Avery to go or she might lose her job. (R. 105).

Wright testified she then went to get the victim around eleven, but Avery "jumped" up and stopped her. (R. 106-107). Avery told Wright she would get him, because "[she] had a hard time putting him to sleep." (R. 106). Wright testified this was unusual, because "I

always get the baby. I'm always toting the baby." (R. 106). Wright then got one of the other children. They brought the three children to Wright's house in the car. Wright recalled Avery said she did not want to wake up the victim. She also noticed that Avery "slammed him in the car seat." (R. 106-07). Wright told Avery the victim looked "wore out," to which Avery responded, "he was playing, and he was tired." (R. 107). Wright testified it was now "close to eleven o'clock." (R. 107).

Avery and Wright brought the children into her house. Avery carried the victim and Wright told her to take him to her bed to sleep, because the other children were awake and on the floor. (R. 107-08). Avery then went to work. (R. 108). Wright testified she did not go into the bedroom or touch the victim. He was already asleep. (R. 108). Avery never brought any medication to the house. (R. 110). Wright said she knew the victim suffered from a "skin disorder," but she did not give him any medication that evening. (R. 110). Wright was not even aware of the type of medication prescribed for the victim. (R. 110).

Wright testified Avery returned around midnight. Wright had been asleep. (R. 108). Avery told Wright she came home early and did not finish her work. (R. 108-09). Wright said Avery then walked into the bedroom to get the victim to take him home. (R. 109). Avery's other children were asleep on the floor. (R. 117). Wright testified about what happened next.

[Avery] came out. When she came out she said, what's wrong with my baby. I said, what you mean what's wrong with him. And she said, I can't wake him up. And I was kind of thinking, I was like, why you trying to wake him up. And she said, he won't move. So I said, bring him here. And she put him in my arms, and I looked at him. And she was slapping him on the face, and I was telling her to stop because I thought she was going to hurt him. She was like, he won't

wake up. And when he didn't wake up, I went in the kitchen and got some water, put it in a cup and splashed it on his face, and he didn't move. . . . I remember asking her did he bruise his lips or something, because his lips was kind of bluish, a bluish color, and she said no.

(R. 109). Wright called 911 and they instructed her to attempt CPR. (R. 110).

EMS responded and arrived at Wright's house soon thereafter. (R. 76). The victim was "unconscious, not breathing, pulse was apneic, laying motionless." There was no "luster in the eyes," which indicated the victim had been dead about 20 to 30 minutes. (R. 76-77). No attempts were made to revive the victim. (R. 77-78). Paramedic Joseph Schaefer recalled that Avery and Wright were "upset" when he arrived, but the other children were asleep on the floor. (R. 77-79).

Wright's cousin, Regina Mitchell, lived nearby. She went over to Wright's house when she heard the police and EMS arrive. (R. 96). Mitchell went inside the house. She recalled that, despite "all the commotion that was going on" inside the house at that time with the victim, Avery's other children were sound asleep on the floor. (R. 96-97). Mitchell testified she and the police then went over to Avery's house "to find out why the kids were sleepy and tired, or what was the cause of what had happened to [the victim]." (R. 97-98).

The police also arrived on the scene. (R. 81-82). Sgt. Christine Wilson spoke to Avery at Wright's house. (R. 82-83). She was informed about the victim's skin condition and the medicine prescribed for it. (R. 83-84). Wilson testified that another officer and Mitchell went to Avery's home to retrieve the medication. (R. 84). They returned with the victim's prescription bottle of Hydroxyzine and a dosing syringe used to administer the medication. (R. 85, 97-100).

Wilson then questioned Avery about the medicine. Avery told Wilson that she gave the victim three doses that day: 9:00 in the morning, 3:00 in the afternoon, and then "sometime after 8:00 p.m." that evening. Avery claimed she followed the labeling instructions "to a T." (R. 86-87).

Wright overheard Wilson's conversation with Avery. Wright testified Avery was at work when she claimed to have given the victim his medication that afternoon. (R. 112).

The victim's prescription for Hydroxyzine was filled at K-Mart at 3:24 p.m. on August 16, 2006.<sup>1</sup> (R. 172-74). The instructions directed ½ teaspoon-full by mouth every six hours, "as needed." (R. 87, 171-72). The warning label stated the medicine "may cause dizziness, may cause drowsiness [and] alcohol could intensify its effect." (R. 172).

Sgt. Wilson examined the contents of the bottle and she observed that "over half the bottle of medication was missing," although the prescription was filled just two days earlier. (R. 87-88). Wilson testified "that indicated [to her] some type of a discrepancy in the dosage" given to the victim. (R. 88).

The next day, Sgt. Wilson spoke to the pathologist. Based on her investigation into the case, interviews with witnesses, and the medical reports, Wilson arrested Avery and charged her with homicide by child abuse. (R. 88).

Carolyn Ward operated the daycare center where Avery had taken her children for "just a week" before the victim died. (R. 158-59). Ward testified the victim and the other children stayed with her on August 18. He came in "about 10:30," and Avery picked them up "about 5:00." (R. 160, 162). Ward said the only medicine provided by Avery was topical

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<sup>1</sup>The pharmacist technician explained that Hydroxyzine was substituted for Atarax. (R. 174).

cream to treat the victim's eczema. Ward testified Avery did not leave a prescription bottle at the daycare. (R. 161-62, 164-65, 169-70). Ward explained that if any oral medication is administered to a child under her care, they prepare written documentation and a copy is left with the parents. (R. 165-66).

Dr. Michael Caplan performed the autopsy on the victim on August 19. (R. 188-89). An examination of the internal organs revealed congestion of the organs (*i.e.*, "lots of blood in them"), more blood and fluid in the lungs "than normal," and a swollen brain. (R. 192-93). Caplan explained that the congestion of the organs and the swollen brain was generally consistent with "some kind of asphyxial death . . . either through some sort of mechanical interruption in the airway, or when there's been some kind of depression of the breathing system in the body." (R. 193-94). The victim's liver appeared to be "normal." (R. 194-95). Caplan testified the victim was otherwise a "well-developed, well-nourished" child. (R. 207).

Dr. Caplan noted a "very small" bruise (about 3/4 of an inch) at the top of the victim's head that occurred "anywhere from minutes to hours before death." There was another small bruise (about 1½ inches) on the left buttock that was several days to a week old. Neither injury contributed to the victim's death. (R. 195-196).

The toxicology results reported a high concentration of Hydroxyzine. (R. 196). Dr. Caplan testified that Hydroxyzine is a class of antihistamine used to treat itching from skin diseases, such as eczema. (R. 196-200). One of the side effects is dry mouth. "[T]he most common effect after that is sedation . . . drowsiness, wanting to go to sleep, lethargy, somnolence." Another side effect could be an increased heart rate and agitation, with possible seizures. Caplan testified that different persons react differently to the drug. (R.

200-01). Caplan said a potential side effect to a child who received more than the recommended dosage would likely be the magnification of the sedative effects of the medicine. (R. 200-02). He testified that if a child received six times the recommended dosage (as in this case), the side effects would be more significant and would likely result in "sufficient depression of the central nervous system" that would interfere with the normal breathing pattern. On the other hand, there could be "tremendous" agitation or seizure activity, or "it could cause an abnormal rhythm of the heart." (R. 201-02). Caplan testified the normal time a liquid form of Hydroxyzine takes effect, or peaks, in children is "two to four hours" after it is ingested. (R. 202-03).

The toxicology report showed the concentration of Hydroxyzine in the victim was 300 nanograms per milliliter (ml.). (R. 196, 203, 213). Dr. Caplan testified the normal, expected therapeutic level of Hydroxyzine in a child fifteen months old would be less than 50 nanograms per ml. In other words, the victim's concentration was "six times" the expected therapeutic level. Caplan said this was a "toxic" and a "lethal" level. (R. 203, 214). Caplan stated the fluid in the lungs, the congestion of the internal organs, and the swelling of the brain was the result of a lack of oxygen and the interruption of normal breathing caused by an overdose of Hydroxyzine. (R. 203-06). He determined the cause of death was a homicide. (R. 195, 206).

Dr. Demetra Garvin testified as an expert in forensic toxicology.<sup>2</sup> Garvin stated that Hydroxyzine is considered "a drug of last resort" to treat atopic dermatitis. (R. 225). She explained the liquid form of Hydroxyzine is "rapidly absorbed" and that peak concentration

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<sup>2</sup>Garvin was qualified as an expert and testified at trial without an objection. (R. 220).



in the blood "is typically within two, possibly three, hours after the medication is given." (R. 223-24). Although no formal studies have been conducted for children as young as the victim taking the drug, Garvin testified there was a study conducted in children between the ages of six and eleven. These children were given 47 nanograms per ml., or about an eight-and-a-half milligram dose, which was greater than the five-milligram dose prescribed for the victim in this case. (R. 224-26). Garvin explained she would expect to find less than 50 nanograms per ml. in the victim's system based on his prescribed dosage, rather than the 300 nanograms per ml. reported at the time of his death, if the medication had been given properly and prescribed properly. (R. 226-27). Garvin concluded the victim received a lethal dose of the medicine. (R. 223). She said the victim's survival depended on the timing of medical intervention and the quality of care received. (R. 223).

Dr. Garvin calculated that 25 ml. of Hydroxyzine would have been given to the victim per the prescription over the three days since it was filled on August 16, or ten theoretical doses at  $\frac{1}{2}$  a teaspoon-full. This amounted to two-and-a-half ml. per dose every six hours. (R. 228-33). She then testified that a total of 120 milligrams was dispensed on August 16, and 95 ml. of medication should have remained in the prescription bottle at the time of death. (R. 231). However, only 52 ml. of medicine remained in the prescription bottle when it was recovered from Avery's house. (R. 182, 231). Garvin said there was 43 ml. of medicine missing, or about 17 doses. (R. 231-32).

Dr. Garvin explained that the dosing syringe found in Avery's house is used "for the smaller quantities that we typically associate with young children, infants, and toddlers" and "it's calibrated in one-half-teaspoon, one-teaspoon, one-and-a-half teaspoon, and two

teaspoon measurements." The syringe is also calibrated in ml. (R. 233-34).

Dr. Garvin testified that although accidental poisoning is always a possibility in these cases, "after looking at the case in its totality, I felt that there was no information that would support that this was an accident," particularly where the concentration of medication was "approximately sixfold higher than what I would have expected to see had [the victim] been receiving medication therapeutically." (R. 237-38). She concluded the victim was either intentionally poisoned or he died as a result of chemical restraint. (R. 237-38). Garvin described chemical restraint as follows:

. . . the care-giver or individual who is responsible for medicating the child engages in what we refer to as chemical restraint or when they capitalize on a medication's ability to cause drowsiness or sedation or somnolence in the child, most commonly, in my experience, for purposes of not wanting to care for the child for a particular period of time for some reason, or perhaps because the child represents a stressor, perhaps maybe unconsolable, maybe very sickly or ill, and the care-giver just cannot care for the child any longer or does not wish to, or perhaps does not want to care for the child because they have other duties or other reasons why they cannot.

(R. 236).

## ARGUMENT

The trial judge properly denied the motion for a directed verdict for homicide by child abuse, because there was sufficient evidence to submit the case to the jury. (Avery's Issue).

Defense counsel moved for a directed verdict at the conclusion of the State's case. (R. 252-55). The trial judge denied the motion. (R. 256-57).

On appeal, Avery argues the trial judge erred by denying the motion for a directed verdict, because there was insufficient evidence she committed homicide by child abuse. Her argument is without merit.

In reviewing the denial of a motion for a directed verdict, an appellate court must view the evidence in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, it must find that the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63, 69 (1998). In ruling on a directed verdict motion, the trial judge is concerned with the existence of evidence, not its weight. Id. If the State presents any evidence which reasonably tends to prove the defendant's guilt or from which his guilt could be fairly and logically deduced, the trial judge must send the case to the jury. State v. McKnight, 352 S.C. 635, 576 S.E.2d 168, 173 (2003); State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362, 366 (Ct. App. 2002). The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the trial judge's ruling. State v. Lindsey, 355 S.C. 15, 583 S.E.2d 740, 742 (2003).

The State charged Avery with homicide by child abuse. A person is guilty of homicide by child abuse if the person "causes the death of a child under the age of eleven

while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life . . .” S.C. Code Ann. §16-3-85(A)(1) (2003). “Child abuse or neglect” is defined in §16-3-85(B)(1) as “an act or omission by any person which causes harm to the child’s physical health or welfare.” For purposes of the homicide by child abuse statute, “extreme indifference” has been defined as “a mental state akin to intent characterized by a deliberate act culminating in death.” McKnight v. State, 378 S.C. 33, 661 S.E.2d 354, 361 (2008)[quoting Jarrell, 564 S.E.2d at 367].

The fifteen-month-old victim died of an overdose of Hydroxyzine, a drug used to treat eczema. The drug has several side-effects, including sedation, which are magnified if the recommended dosage is exceeded. The amount of the drug in the victim’s body was six times what it should have been if the medication was administered according to the prescription. The State proved that the last prescription was filled at K-Mart only two days before the victim’s death. However, there were 17 doses missing from the prescription bottle, in addition to the 10 doses if the medication was administered according to the directions. The prescription bottle was “over half” empty when it was found inside of Avery’s house just after the victim died. The prescription bottle was not left at Avery’s daycare when she went to work, and it was not at Wright’s house. Neither the daycare nor Wright administered the medicine to the victim. When the victim was picked up from daycare by Avery and Wright at six o’clock and they went to dinner, he was healthy and happy. The victim “was playing and laughing.” Avery and her children were then dropped off at her house. When Wright returned to get Avery for work around ten o’clock, Avery was asleep. Avery then stopped Wright from getting the victim to take him to her house to babysit, and she got the victim

herself. Wright said the victim appeared limp when Avery "slammed him" in the car seat. Avery told Wright that the victim was tired because he had played. Avery put the victim in Wright's bedroom around eleven o'clock and then went back to work. By the time Avery returned to Wright's house around midnight, the victim was already dead. Testimony also showed the other children were sound asleep on the floor, despite all the commotion inside the house caused by Avery and Wright, EMS, and the police. The medical experts testified Hydroxyzine peaks after two to four hours, which meant it was ingested between eight and ten o'clock that night, when it is undisputed the victim was home alone with Avery. Dr. Caplan ruled the victim's death a homicide. He testified it was not an accident due to the toxic dose of Hydroxyzine in the victim's system at the time of death. Dr. Garvin testified Avery either intentionally poisoned the victim to kill him or she intentionally gave him what turned out to be a lethal dose of Hydroxyzine as a chemical restraint; that is, Avery wanted to put the victim (and most likely her other children) to sleep so she would not have to care for them that evening. Wright testified she had to wake Avery up to return to work that evening and Avery did not want to go to work. Avery finally relented, but she then returned to Wright's house only an hour later. Avery admitted she did not complete her duties at the Golden Corral. Avery further lied to the police about the doses she gave to the victim the day he died, because she was at work during the afternoon when she claimed the victim was given his second dose.

The State's theory was that Avery deliberated used the victim's medication as a chemical restraint so she would not be bothered by the children that evening and she could stay home from work. When viewed in a light most favorable to the State, there was ample

evidence which reasonably tended to prove this theory at trial and thus, Avery's indifference toward the life of the victim that culminated in his death. State v. Smith, 359 S.C. 481, 597 S.E.2d 888 (Ct. App. 2004); see Jarrell, 564 S.E.2d at 367 [also noting "indifference in criminal statutes has been compared to the conscious act of disregarding a risk which a person's conduct has created, or a failure to exercise ordinary or due care"]. The charge of homicide by child abuse was, therefore, properly submitted to the jury.

Avery notes the State attempted to introduce Lyle testimony<sup>3</sup> from two witnesses to show Avery previously overused non-prescription medications on her children, but the trial judge prevented its admission at Avery's behest.<sup>4</sup> (R. 1-72). Avery now suggests the proffered testimony actually militated against a finding of chemical restraint in this case, because it was inconsistent with the State's theory and it further questioned the "history" and "circumstances" of the case considered by Dr. Garvin to conclude the victim was chemically restrained.<sup>5</sup> Avery's arguments are totally misplaced.

Firstly, Avery never argued this ground in support of the directed verdict at the close of the State's case or after she rested. (R. 252-55, 258). Issues not raised to the trial judge in support of the directed verdict motion are not preserved for appellate review. See State v.

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<sup>3</sup>State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

<sup>4</sup>In fact, the trial judge said she would revisit the admissibility of the Lyle testimony later at trial. (R. 53-56, 59-60, 65, 72). At the conclusion of Dr. Garvin's testimony, however, the assistant solicitor indicated that she would not call the Lyle witnesses, because the defense no longer intended to argue the victim's death was accidental. (R. 153-54).

<sup>5</sup>The State notes that, in her Brief, Avery mistakenly relies on Dr. Garvin's testimony initially proffered by the State pursuant to a pre-trial motion. (Tr. 118-57). (BOA at 11-15). Garvin's testimony actually before the jury, and the evidence properly considered by the trial judge on the directed verdict motion, appears later during the trial and is cited by the State.

Bailey, 298 S.C. 1, 377 S.E.2d 581, 584 (1989)[“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal”]; State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214, 221 (Ct. App. 1998)[noting a defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial judge below], *aff’d*, 337 S.C. 617, 524 S.E.2d 837 (1999). Secondly, the weight of the State’s evidence against Avery, including the credibility of its medical experts, was a matter properly left to the jury. State v. McKnight, 352 S.C. 635, 576 S.E.2d 169, 172 (2003)[noting that any defect in the expert testimony went to its weight, a defect the defendant was free to challenge with her own evidence]. Most important, the trial judge could not consider the sufficiency of the State’s evidence to submit the case to the jury in context of any excluded evidence, particularly testimony from the excluded Lyle witnesses in this case. See State v. Green, 356 S.C. 259, 589 S.E.2d 6, 9 (2003)[noting a motion for a directed verdict properly challenges the sufficiency of properly admitted evidence]. If the excluded testimony from these Lyle witnesses is so helpful to Avery’s defense, then she should have argued for its admission for the jury’s (and the trial judge’s) consideration rather than to successfully exclude it from consideration at trial. Of course, nothing prevented Avery from later admitting this “favorable” testimony once the State indicated it no longer planned to do so.

Avery further argues the State’s closing argument “exposed the fundamental illogic of its case” to warrant a directed verdict in this case. She cites to instances wherein the assistant solicitor misrepresented facts at trial, and he made speculative connections and false claims “to ‘connect the dots’ and make sense of all of the evidence.” (BOA at 16-18). These assignments of error are frivolous. Firstly, any complaints by Avery regarding the accuracy

of the closing argument or reasonable inferences drawn from the evidence presented were not objected to at trial and were thereby waived. State v. Varvil, 338 S.C. 335, 526 S.E.2d 248 (Ct. App. 2000). Secondly, the State's closing argument was not evidence at trial, so it had nothing whatsoever to do with the trial judge's consideration of the sufficiency of the evidence to submit the case to the jury. Any alleged inconsistencies in the State's case were argued to the jury and properly left to their consideration. State v. Charping, 333 S.C. 124, 508 S.E.2d 851 (1998). Finally and as previously noted, the State's theory on the homicide by child abuse charge (and also as argued to the jury by the assistant solicitor) was supported by the testimony in the record and in the light most favorable to the State for submission of the charge to the jury. The weight or credibility of the evidence was properly left for them as the fact-finders and not the trial judge at the directed verdict stage.

There was ample evidence to support the trial judge's denial of the motion for a directed verdict for homicide by child abuse. Jarrell, 564 S.E.2d at 367.



## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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Attorney General

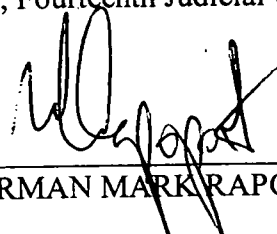
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ATTORNEYS FOR RESPONDENT

November 2, 2009

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Beaufort County  
Carmen T. Mullen, Circuit Court Judge

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THE STATE,

Respondent,

vs.

PARIS AVERY,

Appellant.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

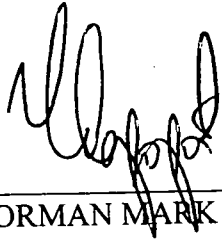
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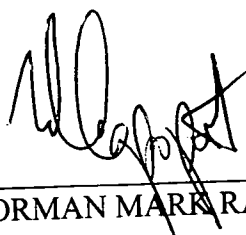
Appellant.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to her attorney of record, Elizabeth A. Franklin-Best, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 2<sup>nd</sup> day of November, 2009.

  
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