

3

VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

AUG 15 2017

SC Court of Appeals

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEIA DARION MCARDLE,

APPELLANT

APPELLATE CASE NO 2016-000843

RECORD ON APPEAL

Wanda Carter  
Appellate Defender

JOHN H. STROM  
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

WILLIAM F. SCHUMACHER  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

DAVID M. STUMBO  
Solicitor, Eighth Judicial Circuit  
Post Office Box 516  
Greenwood, SC 29649

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX.....i

TRIAL TRANSCRIPT..... 1

OPENING STATEMENT BY MR. STUMBO ..... 10

OPENING STATEMENT BY MR. VERNER..... 72

TESTIMONY

    LISA FRICK

        Direct Examination by Mr. Daniel ..... 26

        Cross Examination by Mr. Verner ..... 39

        Redirect Examination by Mr. Daniel ..... 48

    JOHN POLLARD

        Direct Examination by Mr. Stumbo ..... 51

        Cross Examination by Mr. Verner ..... 58

        Redirect Examination by Mr. Stumbo..... 62

    DR. DUNCAN HOLADAY

        Direct Examination by Mr. Stumbo ..... 63

        Cross Examination by Mr. Verner ..... 78

        Redirect Examination by Mr. Stumbo..... 96

        Recross Examination by Mr. Verner..... 101

    MIKE WOOD

        Direct Examination by Mr. Daniel ..... 109

        Cross Examination by Mr. Verner ..... 113

    JUSTIN HOLMES

        Direct Examination by Mr. Daniel ..... 120

        Cross Examination by Mr. Verner ..... 131

        Redirect Examination by Mr. Daniel ..... 148

        Recross Examination by Mr. Verner..... 150

    PATRICK OLIPHANT

        Direct Examination by Mr. Stumbo ..... 152

        Cross Examination by Mr. Verner ..... 191

ALLISON MOORE	
Direct Examination by Mr. Daniel .....	216
Cross Examination by Mr. Verner .....	264
KELLIE WILLIAMS	
Direct Examination by Mr. Stumbo .....	302
Cross Examination by Mr. Verner .....	323
Redirect Examination by Mr. Stumbo.....	330
Recross Examination by Mr. Verner.....	332
RICHARD BOWMAN	
Direct Examination by Mr. Daniel .....	336
Cross Examination by Mr. Verner .....	395
Redirect Examination by Mr. Daniel .....	559
Recross Examination by Mr. Verner.....	596
PATRICE MCARDLE	
Direct Examination by Mr. Daniel .....	604
Cross Examination by Mr. Verner .....	631
Redirect Examination by Mr. Daniel .....	661
CHRIS JOHNSON	
Direct Examination by Mr. Stumbo .....	665
Cross Examination by Mr. Verner .....	688
DR. JANICE ROSS	
Direct Examination by Mr. Stumbo .....	702
Cross Examination by Mr. Verner .....	732
Redirect Examination by Mr. Stumbo.....	760
Recross Examination by Mr. Verner.....	762
ROY MCCLURKEN	
Direct Examination by Mr. Stumbo .....	764
Cross Examination by Mr. Verner .....	783
Redirect Examination by Mr. Stumbo.....	799
MOTION FOR DIRECTED VERDICT .....	802
RULING ON MOTION FOR DIRECTED VERDICT .....	823

## TESTIMONY

DR. ELLEN RIEMER	
Direct Examination by Mr. Verner.....	835
Cross Examination by Mr. Stumbo.....	866
Redirect Examination by Mr. Verner.....	884
Recross Examination by Mr. Stumbo.....	890
Redirect Examination by Mr. Verner.....	89
THEIA MCARDLE	
Direct Examination by Mr. Verner.....	895
Cross Examination by Mr. Stumbo.....	953
Redirect Examination by Mr. Verner.....	974
Recross Examination by Mr. Stumbo.....	980
CLOSING ARGUMENT BY MR. VERNER.....	997
CLOSING ARGUMENT BY MR. STUMBO.....	1015
JURY CHARGE.....	1035
VERDICT.....	1054
SENTENCING.....	1067
STATE'S EXHIBIT #150 – SLED DIAGRAM.....	1073
STATE'S EXHIBIT #152 – SLED REPORT.....	1074
INDICTMENT.....	1082
CERTIFICATE OF COUNSEL.....	1084

1 hit the day before, or two days before, or three days  
2 before. Both pathologists and the doctor -- well, I'll come  
3 back to the doctor in a second. The State's pathologist,  
4 Dr. Ross, and the doctor today, Dr. Riemer of MUSC, both  
5 testified that that child was killed the day after -- but  
6 the same day that he had eaten his last dinner, which was  
7 the same day he got taken to the hospital.

8 Richard Bowman might be a bright guy, but you've got  
9 two pathologists saying that even if Richard had told one  
10 ounce of truth, none of his stories can be medically true.  
11 And I promise you, at some point I had to just stop reading  
12 the inconsistent statements. He gave 72 pages less than a  
13 month ago of testimony. At some point even the prosecutors  
14 had to say, huh-uh. Stop it. Go away. And he came back  
15 yet with more stories. And none of it just magically  
16 implicates himself. And he basically -- Richard -- they're  
17 saying he's putting himself in danger, but he's not. He's  
18 -- oh, well, you might get in trouble for hindering an  
19 investigation, or maybe you didn't report this abuse soon  
20 enough. No. Richard's not scared of those charges.  
21 Richard's scared of going to jail for homicide by child  
22 abuse. You think for a fact, for just one second he's  
23 scared of obstructing a police investigation case? You  
24 think that's what's kept him in jail for a year up at night  
25 wondering and waiting? No. It's 20 years to life for

1 homicide of that child. You think that might make somebody  
2 -- and he said I've been trying to protect Theia, but he  
3 didn't. Even from the beginning he's been implicating Theia  
4 as soon as he knew something was wrong he started saying,  
5 well, maybe -- maybe she did things. And he's just added to  
6 them over time where you've just got multiple stories that  
7 just can't be -- well, he hit her in the store, I think, a  
8 couple days before, or he hit her when we were going to  
9 Asheville for court on Saturday a couple days before. No.  
10 Even if they were true they medically didn't cause the  
11 death. Richard -- he doesn't know anything more about the  
12 injuries in the beginning than anybody does. They're saying  
13 how did these bruises happen and he starts, well, maybe she  
14 hit her head on the coffee table. Yeah, I saw that. Or  
15 maybe she pushed him down or hit him in the stomach a couple  
16 days ago when he scared her with the cap gun. They can't be  
17 medically true if you believe either or both of those  
18 pathologists. But he's going to sing.

19 I said Richard in the beginning might be -- you know,  
20 before he testified I said he's the witness of the case. I  
21 take that back. You know, the witnesses of the case was the  
22 two pathologists. Is there any question whatsoever Dr.  
23 Riemer and Dr. Ross both said that that child could not have  
24 eaten -- the food in that child's stomach was no more than  
25 an hour after that child was beaten to death. It just would

1 have dissipated in that child's stomach. Now, Dr. Riemer  
2 said it could have been up to two hours after that child's  
3 death. It's not a magical hour. I think Dr. Ross was  
4 pretty sure that she thought it would have been 30 minutes  
5 out of his system. But the other doctor said, you know,  
6 food can -- if it's like thick steak it can go around for  
7 two hours. They were both clear that dinner that night was  
8 that child's last meal. Dr. Riemer made it clear, that  
9 child in that condition could not have eaten that meal if he  
10 had been beaten at that point. That is the medical  
11 testimony from two pathologists. That child could not have  
12 eaten that meal that night. So the question becomes what  
13 time was that meal that night. That child's death was  
14 between the meal, whenever that child at dinner on the night  
15 of 12/29, and at some point prior to being taken to Newberry  
16 County Hospital. The question is when.

17 I was going to prepare last night for you a big fancy  
18 chart. I just didn't have time. I fell asleep. If I had a  
19 graph for the time that Richard Bowman had been with that  
20 child prior to that child's death the day beforehand, big  
21 round graph, I was going to have like one color time when  
22 Richard was with that child for the last 24 hours, and the  
23 graph was going to be entirely that color. And the second  
24 color was going to be times when Richard Bowman was not with  
25 that child for that 24 hours prior to that child's death,

1 and that color would not be on the map at all because it is  
2 conceded by them that Richard Bowman was with that child for  
3 at least 24 hours prior to the beating. There was no other  
4 person who was with that child constantly. So the question  
5 really becomes whether Richard Bowman is the kind of guy who  
6 would beat a child like that.

7 This is my first case in 15, 20 years where somebody's  
8 alibi was a John, or a prostitute, but we'll take them where  
9 we can get them. These are times when we know that Theia  
10 was not in the home on December 29th, because the cell phone  
11 records that the State introduced. You'll have them in your  
12 evidence. You all can take them back and look at them  
13 yourself. We know the tower pinged at her house when she  
14 was making calls from home, and we know when she was not at  
15 home making calls from other distant locations. On December  
16 29th between the hours of 1:13 in the afternoon and 3:53.  
17 I'm not saying that full time period. But between 1:13 and  
18 3:53, or at least part of that time we know Theia's gone  
19 because the phone towers in distance locations are reading  
20 off it. 1:13 to 3:53. Then there are no other phone calls  
21 outside of the home until -- we know Theia's out of the home  
22 sometime between 8:04 p.m. and 8:35 p.m., because we know  
23 distant towers read between those times. So I'm not saying  
24 Theia's out of the home that full time, but we know she  
25 left. She says she went to the gas station. She told that

1 to Officer Moore the day Officer Moore met her which was the  
2 day the child was killed. Before Theia knew the charges  
3 were coming, before Theia even know the child was beaten,  
4 she said I went to the gas station, I came back home and I  
5 made dinner. It's in the Officer's testimony, which I'll  
6 come back to. It's in the records that you'll listen to. I  
7 went and got gas and I came home and we made dinner for the  
8 child. But we know Theia is out of the home from 8:04 p.m.  
9 to 8:35 because distant phone towers are in. We know -- she  
10 says that at that point she came back home to drop off that  
11 cat, which Richard admitted she brought home a cat that I  
12 didn't want. The cat had a bad eye. It was a stray cat. I  
13 put it in the room with the other cats. That's the same  
14 story she told the police from day one. And she said I went  
15 back out to meet the man for the prostitution call. The  
16 Hispanic man, Papi Chulo. So Theia's back home sometime  
17 around 8:35. She's not back home until about 11:19 p.m. We  
18 know that because the cell phone records show that at least  
19 twice she's in Spartanburg. The motel which people  
20 testified is about 30 minutes away from her home. There are  
21 two phone towers that signal between 8:35 and 11:19. Theia  
22 is not at home. Richard is at home with the child. We know  
23 from the pathologist that child was not beaten until after  
24 dinner. As the pathologist says, at least 30 minutes, as  
25 much as an hour. So that would be the -- if Theia wasn't

1 home -- and we know she's home at 8:35, and the pathologist  
2 says it's an hour, 35 minutes up to an hour after that  
3 dinner. That child wasn't beat until after 9:00 that night.  
4 I'm not saying Theia was gone that full time. But we know  
5 from the distant tower readings that from 8:00 -- sometime  
6 between 8:35 and sometime a lot closer to 11:19 she's gone.  
7 And we know that's also precisely the same peek hours that  
8 both pathologists testified the child was beaten. Theia  
9 comes back. She's got a call that she has to come back to  
10 Newberry. It's 11:19 at night. Is it reasonable that house  
11 was dark? When I work late and my kids are asleep, and when  
12 any reasonable people comes asleep do you turn on the lights  
13 in the home? Wake everybody up. Come on everybody, we've  
14 got to go. No, you don't. You go into your room. She  
15 testified the TV was already in there. We know they had  
16 left about 11:41. So from 11:19 to 11:41 Theia's back at  
17 the home. That's a little over 20 minutes. That's a little  
18 over 20 minutes. Is it possible her story is true that she  
19 went and cleaned up. Told Richard -- who, by the way, the  
20 same day the child was killed also said I picked the child  
21 up and I put the child in the bed. Now, from 11:41 on it's  
22 a 35 minute drive from -- 30 minute drive from Enoree to  
23 Newberry. We know for a fact that beating couldn't have  
24 occurred during the car ride while Theia's driving and that  
25 child is sitting directly behind her. And we know it didn't

1 happen in Newberry because we got -- Justin Holmes might not  
2 be the brightest young man here in Newberry, and I'm sorry  
3 he's in this case, but he appeared to be a credible witness.  
4 He was the young man she met down here. He said she came --  
5 she called me about 12:22, said she can't find my house.  
6 That's she on the street. And then she pulled in and came  
7 in. Despite the attempts of the prosecutor to make them  
8 leave earlier. And the reasons -- why do you think the  
9 prosecutor is trying to Theia out of that house sooner?  
10 Because that's going on this prong, too, that she knew about  
11 the injuries and she just dilly-dallied about taking that  
12 child to the hospital, and that's not true. This witness  
13 said she was in my home until at least 11:15. Never been to  
14 Newberry before. It's midnight. We know it's rainy or  
15 overcast. You've got a cell phone that's not getting full  
16 coverage. Could it take somebody 15 minutes to get from the  
17 far side of Nance Street to the hospital who's never found  
18 that hospital before. I submit that's accurate, a fairly  
19 fair time. What we've really got here is a case where the  
20 child's been beaten to death. The police know somebody's  
21 done something wrong. But they don't know if it's him, or  
22 her or both of them, and they charge them both. And then  
23 they start investigating the case from that point on. And  
24 really the only hard evidence that they've got against Theia  
25 -- well, this is -- I won't call it hard. But the only

1 evidence against Theia is the receptionist there said, well,  
2 she didn't seem like she was hustling in. I didn't feel  
3 like she came in until about -- it took her, what did she  
4 say, 1:44 before Theia came in. When the actual time lapse  
5 -- and I was wrong about how -- for saying they weren't  
6 running it at the right time. But the time lapse still had  
7 a clock on it. It took Theia just slight over two minutes  
8 to get in that hospital room. Is it possible that a woman  
9 who didn't know her child was dying would go ahead and park  
10 her car carefully. I understand it's serious. She doesn't  
11 feel like she's taking any extra time. She's just parking  
12 discretely on one end of the parking lot. It's only four  
13 rows from the front door. You've got illegal tags. You're  
14 in here doing something illegal. There's no evidence, other  
15 than from Richard Bowman, that she knew anything was wrong.  
16 Is it possible she might want to discretely park her car and  
17 then -- it took her two minutes. And they want to say that  
18 that's prove that she's guilty of beating that child to  
19 death. You've got some testimony from some of the officers  
20 who just said, well, she didn't look like she was crying  
21 enough. And they want you to base a conviction on that for  
22 killing a child. We saw this mother and she just -- just  
23 something just wasn't quite right, which we think that means  
24 she killed the child. It doesn't. And you've seen the  
25 video. You saw Theia's reenactment. I ask you, you've got

1 medical records all that say that Theia was distraught.  
2 You've got Dr. Holaday's records saying that she was sitting  
3 at the foot of the bed saying keep working on him. Keep  
4 working on him. He had to console her. And they quibbled  
5 about what console means. You've got several medical  
6 records saying they were all frantic. And then you can  
7 watch Theia for yourself shaking while she's doing that  
8 demonstration. And they want you to somehow think that  
9 she's just indifferent to that child's death, and it's just  
10 not true. And it's not in evidence. It's just a hunch.  
11 You've seen the photographs. We've introduced Facebook  
12 photographs of that child within the last month on Theia's  
13 Facebook of what that child looked like in the last month of  
14 his life and you don't see any injury. You don't see  
15 anything distressing in the photographs of that child prior  
16 to that child's death. God Almighty. Just within this  
17 child's last few days -- I mean, within a month of this  
18 child being killed, Richard Bowman -- that's a picture of  
19 Richard Bowman. His Facebook. Within a month of this child  
20 being killed he starts posting pictures like that, like  
21 that, like that. A child with his face ripped open.  
22 Killing with knives. "I just met you. This is crazy. My  
23 name's Slender. I take your babies." And probably this one  
24 is the most chilling, which is a -- the monster looking at  
25 the screaming child in its bed, and just a chilling thing

1 that momma's you need to be careful because people will take  
2 your babies. I think maybe he's sending these messages to  
3 Theia. I think he had an intended audience. I think he was  
4 -- I submit to you the evidence shows that that was one of  
5 the ways Richard was controlling Theia. He's absolutely the  
6 worst boyfriend you can have. He's violent. He beats you  
7 up. And then he -- he'll do things. He'll break furniture.  
8 He's a car mechanic, but he can't fix spark plugs on a car.  
9 He doesn't want to fix spark plugs on a car he pulled out,  
10 because she'll leave him and he knows it. Mom buys her a  
11 new car. She buys him a new -- she buys her daughter a new  
12 car. At least gives her \$1,000 to get her a new car.  
13 Richard keeps the baby seat from her. They have to buy a  
14 new baby seat for the car. Does it sound like he's a  
15 controlling boyfriend? Does he sound -- I don't know if  
16 he's a pimp or not, but does he sound like he was a credible  
17 witness to you? You saw him testify. Did he even look  
18 believable? I'm just submitting to you that it is  
19 absolutely possible that Richard, because that child threw  
20 up while he was eating, or after dinner, or that child  
21 defecated in the bathtub -- Richard admits, I'm the one who  
22 threw up in that toilet, as we learned. Why didn't you  
23 flush that? Because he does that a lot. He's bulimic. He  
24 loses his temper with that child. Maybe he's stressed out.  
25 Maybe he's angry at Theia. I don't -- I'm not arguing he

1 meant to kill that child. I am arguing he meant to whoop  
2 that child good, and he did, and he killed the child. And  
3 the child either on his own he said get in your bed, or he  
4 put the child in bed. It's dark. Richard goes back to bed.  
5 Theia comes in. She's only home for 20 minutes. Is it  
6 possible she didn't see -- with all the doctors said until  
7 you took the clothes off of that child you would not have  
8 seen those injuries. And this is a child at dark in its  
9 bed. I submit to you is it realistically possible. She had  
10 another call she had to go out for. Even if she was going  
11 to sleep in her own home that night she might not have seen  
12 those injuries until the next day. But she would have seen  
13 them the following day. And then when they go down there  
14 and the child starts oozing stuff out of his mouth during  
15 the drive down there and Richard mentions it, he gets  
16 scared, and then he says something dumb like, well, does  
17 this child have sleep apnea, because I can't wake the child  
18 up. And she says -- this is by his statements. What do you  
19 mean you can't wake the child up. Wake the child up. And  
20 Richard even says that the first moment she saw the brown  
21 stuff on the child's face she started crying and trying to  
22 get the hospital on her cell phone. Is there any evidence  
23 that she looked like the kind of girl or sounded like the  
24 kind of girl who would have seen that child get beat up and  
25 not get in Richard's face? You all know for a fact there

1 would have been another sheriff's call out there where  
2 they'd gotten into a fighting incident between them. She  
3 would have stood up to him.

4 Here's the worst thing about this case is the  
5 Solicitor's really only evidence is that Theia got in  
6 trouble for slapping that child in April of 2013. April of  
7 2013. The death happened December of 2014. They want to  
8 show that somehow the slapping incident led to the death. I  
9 would agree with them. That's absolutely fair if there was  
10 evidence of this. If there was any evidence in the file of  
11 any old injuries. Two pathologists, the doctor looked at  
12 the child. The child has been in the morgue, examined  
13 multiple times for a crime investigation. If you all had  
14 heard any testimony about we saw old injuries on this child,  
15 we saw old bruises on this child. You don't think they were  
16 looking for them? You don't think that there would have  
17 been filed a report if they saw old spanking marks, old slap  
18 yellow bruises, broken bones, damaged teeth? You don't  
19 think that the doctor would have noticed -- I saw evidence  
20 of other bruising or other injuries in the file it would be  
21 in there? It's not. The only injuries those doctors saw,  
22 two of them, were bruises they both say happened at the same  
23 time. It was part of one beating. They both said that, and  
24 they both said it happened after dinner because that child -  
25 - it would have stopped that child from eating, digesting.

1 The injuries to the groin would have stopped that child from  
2 eating food. That child would not be in a good humor.

3 If you find that this is evidence of ongoing abuse you  
4 got a duty to convict her. But if you don't, you've got a -  
5 - you don't have to like Theia McArdle. You don't have to  
6 like somebody to say they're right, or to say they're not  
7 guilty. If somebody comes to you after the case and asks  
8 why you didn't find her guilty, it's easy. I think the  
9 answer is easy. If the prosecutors had shown me one  
10 picture, one slide, one exhibit of old injuries on that  
11 child, I would have found Theia guilty of child abuse. We  
12 didn't. Two pathologists examined that child. There were  
13 no old injuries. There's no cracked knuckles. There's no  
14 broken bones. They did -- they did the bone scans. They're  
15 in the record. There are no old bruises. But they want you  
16 to think that this is ongoing abuse because that's the only  
17 evidence they have in the case. They got that the car was  
18 parked backwards, she didn't cry enough, and the testimony  
19 of Richard Bowman. They have made a mistake. They charged  
20 -- well, they charged the right person, but they've also  
21 charged the wrong person. They charged the mother who's  
22 living a prostitute lifestyle. I mean, nobody disputes  
23 that. But she ain't guilty just because she's a prostitute.  
24 If there was any evidence -- any evidence from any  
25 legitimate witness in this case you would have it. I

1 promise you.

2 How much time I got left, Judge?

3 THE COURT: Twenty seconds, but I'll give you an  
4 additional two minutes. And I'll give you two minutes,  
5 Solicitor, as well.

6 MR. STUMBO: The nurse, two minutes and 21 seconds is  
7 how long it took Theia to get in the hospital after the  
8 child came in. Dr. Holaday estimated that the child had  
9 been dead at least two hours. Was it unusual for parents to  
10 bring the child in directly and not call an ambulance? He  
11 said 90 percent of people bring their kids to the hospital  
12 themselves and not use ambulances. The child was dead, the  
13 child was cold, the nurses and the doctor say when the child  
14 came to the hospital. Got Justin Holmes saying they  
15, wouldn't have left my home -- she was with me until about  
16 1:15 or so. Quiet street. If Richard had been honking the  
17 horn. Quiet street. Knife in the car. Whose knife do you  
18 think that is? Told the Officer -- you all look at your own  
19 notes. You don't have to go by mine. Told Officer Moore  
20 the day of the killing we had supper between 6:00 to 8:00  
21 p.m., came back from gas, started dinner around 8:30. Theia  
22 told that to them the day -- just a couple of hours after  
23 her child was born (sic), not seeing bruises, not knowing  
24 she's being charged. Which just happens to fall in the  
25 timeline of the pathologist of when that child would have

1 been beaten, because we know Theia is out of that house.  
2 Sometime between 8:35 and 11:19 we know Theia's gone,  
3 because there are phone calls somewhere else, and that just  
4 is precisely when both pathologist indicate they think that  
5 child was killed. Just no evidence in the record at all  
6 that Theia was aware of these injuries and refused to take  
7 the child to the hospital. In fact, the opposite. She took  
8 the child to the hospital straightaway. She might not be a  
9 great a mother. Is the house without any furniture. If  
10 there was any evidence that the child wasn't being  
11 adequately cared for this might be a good case, but there's  
12 not even that. It's just this insinuation that she's not a  
13 good mother and therefore we think she might have had  
14 something to do with killing her child. And just the  
15 medical testimony does not bear that out. And this is a  
16 case you are just obligated to find the Defendant not  
17 guilty.

18 THE COURT: Thank you, Mr. Verner. Mr. Stumbo, by my  
19 watch you will have 32 minutes and 30 seconds, sir.

20 MR. STUMBO: Thank you, Judge. If it please the Court.

21 THE COURT: Yes, sir.

22 CLOSING ARGUMENT

23 BY MR. STUMBO: I want to thank you all for your  
24 patience this week. I know this has been probably one of  
25 the most difficult things you've experienced, having to look

1 at this evidence. I know it's been as hard for you all as  
2 it's been for myself and Mr. Daniel and others involved in  
3 this case, even Mr. Verner. You probably never expected  
4 that you'd be coming in here to this courtroom this week and  
5 have to look at some of the stuff that you've seen. And I  
6 apologize that we had to show it to you. I do. But why  
7 we're here, and Mr. Daniel talked to you about this in  
8 opening he actually said G.M. would be three-  
9 years-old right now. Actually, that was a little bit  
10 incorrect. He never made it to his third birthday. He came  
11 up a few hours short. And I know you just heard that  
12 accusations that us as the prosecutors that we want to  
13 convict Theia McArdle because she's a prostitute. Theia  
14 McArdle is a child abuser. Theia McArdle had a boyfriend,  
15 Richard Bowman, that she brought into the house who is a  
16 child abuser. Now, the jury system is one of the greatest  
17 things ever invented in the legal system and here's why.  
18 Because 12 regular citizens to come in and listen to  
19 evidence and determine what the truth is. And that's what  
20 we're here for. And Mr. Daniel told you that in opening,  
21 that to the dead we owe the truth. And that's why we're  
22 here. And quite frankly, ladies and gentlemen, what we just  
23 heard from Mr. Verner -- he's a fine lawyer. We've worked  
24 with him many times. He's very good at what he does  
25 representing his clients. But it reminds me of a story I

1 once told you about two men standing there near a puddle.  
2 At the bottom of the puddle is a shiny gold coin sitting  
3 there at the bottom of that puddle. One man says the other  
4 -- the older fellow says to the younger fellow, thinking he  
5 was real smart, bet you 20 bucks I can make that little gold  
6 coin down at the bottom of the puddle disappear without  
7 touching it. The young man says, sure I'll take that bet.  
8 No way you can make it disappear without picking it up.  
9 Takes the bet. The older fellow goes over, reaches down,  
10 grabs a stick, starts scribbling up the mud stirring it up  
11 around that coin. That puddle muddies over. Clouds up.  
12 And guess what? That gold coin disappears at the bottom of  
13 that puddle without him touching it. That's exactly what we  
14 just heard from Mr. Verner, not only from opening  
15 statements, but all the way through his closing. He made  
16 two statements to you all when we first started this case in  
17 his opening statement that he has utterly failed to deliver  
18 on to you folks. He's utterly failed at two things he told  
19 you in opening.

20 The first thing Mr. Verner said is that if Theia  
21 McArdle was convicted of this crime, homicide by child  
22 abuse, that Richard Bowman would walk. That he'd be free.  
23 Not only did he fail to deliver that to you, he doesn't have  
24 the ability to deliver that to you. Richard Bowman is still  
25 charged with homicide by child abuse. And I will submit to

1 you, ladies and gentlemen, what he did on this stand this  
2 week -- and we'll go to the law in a second so we can  
3 demonstrate this to you how two people can be guilty of this  
4 crime. The same crime. But he told you Richard Bowman  
5 would walk. I submit to you he came in this courtroom under  
6 oath this week and essentially hung himself. He confessed  
7 to the crime of homicide by child abuse. And here's the  
8 thing -- we're going to go to the law in a second. I  
9 challenge you -- and if you hear something different from me  
10 or Mr. Verner on the law, and you hear from the Judge, the  
11 Judge is the judge of the law in this case. He's going to  
12 instruct you on what homicide by child abuse is. But I  
13 challenge you to try to hear from him that it's required  
14 that you figure out which person struck the fatal blow on  
15 the child. We've heard a lot from Mr. Verner all about  
16 Richard Bowman in this case. That you have to find that  
17 Richard Bowman struck the fatal blow, or that Theia McArdle  
18 struck the fatal blow. When you see the law in a second,  
19 you listen to it from the Judge, you do not have to find  
20 that. And the law actually contemplates the fact that  
21 multiple parties can be guilty of homicide by child abuse,  
22 even if only one of them struck the fatal blow. And we're  
23 going to go over that in a second. So Mr. Verner failed on  
24 promise number one that if Theia McArdle is convicted this  
25 week then Richard Bowman walks. I will submit to you that

1 he's trying to put Richard Bowman on trial. And the 12 of  
2 you are here to try the case of Theia McArdle. And there  
3 will be a day in court for Richard Bowman. As the  
4 prosecutor of the Eighth Circuit, I can assure you that  
5 there will be a day in court for Richard Bowman. And that  
6 will be a day in court where he answers for his  
7 responsibility in this case. But that's not the question  
8 for today. The Judge is going to instruct you on the law  
9 and you'll see that. But Mr. Verner has swirled the mud  
10 around the coin to try to get you all to take your eye off  
11 the ball to say it's all about whether Richard did this or  
12 Theia did the actual punching. I submit to you, ladies and  
13 gentlemen, based on what I've heard about the testimony, and  
14 we'll go over that in a second, too, that both of them --  
15 both of them could have struck blows on this child and  
16 inflicted the horrific injuries that we've seen. I'm not  
17 going to put the picture back up there, folks. You all will  
18 have those pictures in the jury room during your  
19 deliberations. Horrific, horrific injuries.

20 I'm going to talk about the law here. What does beyond  
21 a reasonable doubt mean? The burden of proof under our  
22 system of justice is always on the State, never on the  
23 Defendant. There's a presumption of innocence. The Judge  
24 is going to talk to you about that. The burden of proof is  
25 beyond a reasonable doubt. Proof beyond a reasonable doubt.

1 And I want you to listen to this when the Judge says this.  
2 This is not a magical formula what proof beyond a reasonable  
3 doubt is. It's not proof beyond all doubt. But it's proof,  
4 the burden is on us to ask you this question when you are  
5 reviewing the evidence. Are you firmly convinced. Firmly  
6 convinced of applying the law to the facts of this case that  
7 Theia McArdle is guilty of homicide by child abuse.

8 Now, what is homicide by child abuse? The Defendant  
9 caused the death of a child under the age of 11 while  
10 committing child abuse or neglect. And I'm going to define  
11 child abuse or neglect under the law. When the death of a  
12 child occurs under circumstances manifesting in extreme  
13 indifference to human life. Those are the elements of the  
14 crime. Not who struck the fatal blow. That's not what the  
15 law says. The law says child abuse or neglect. And I want  
16 you to pay close attention to what the law -- and the Judge  
17 is going to instruct you on these very words what child  
18 abuse or neglect is. An act or omission by any person which  
19 causes harm to the child's physical health or welfare. Act  
20 or omission. Do you see anywhere in there where it says you  
21 have to -- we have to know who struck the fatal blow? These  
22 two were both around this child virtually all day with the  
23 exception of the time that she goes to the call in  
24 Spartanburg. We're going to talk about those timeframes  
25 that Mr. Verner gave you all a second ago and I think you're

1 going to see that they're not as accurate and clear as he is  
2 proposing. What is harm to the child's physical health and  
3 welfare mean? This is what the law says. That it either  
4 inflicts or allows to be inflicted upon the child physical  
5 injury, including injuries sustained as a result of  
6 excessive corporal punishment, or B, fails to supply the  
7 child adequate food, clothing, shelter or health care, and  
8 the failure to do so causes physical injury or condition  
9 resulting in death. Fails to supply the child with adequate  
10 healthcare. Remember it says acts or omissions. The Judge  
11 is going to tell you what direct or circumstantial evidence  
12 means. Direct evidence is evidence of an eyewitness. And I  
13 would submit to you, ladies and gentlemen, Richard Bowman is  
14 the only person other than Theia McArdle in this case who  
15 witnessed what happened to G.M. that day. He's the only  
16 one. Be very clear, ladies and gentlemen, do we believe  
17 that by putting him on that stand that everything that he  
18 told you was the gospel truth and the entire truth? We  
19 still don't believe that either Theia McArdle, who testified  
20 this week, or Richard Bowman, is giving us the whole truth  
21 of what happened in this case. They're both minimizing.  
22 They're both trying to cover their own rear end. Richard  
23 Bowman, too. You saw that. You saw how evasive he was.  
24 But I will say this. The only person to have given any kind  
25 of consistency as far as what happened came right after --

1 when they were interviewed by law enforcement to now, has  
2 been Bowman. He said he spanked G.M. in the tub which  
3 caused him to fall down and hit his head. He told Chief  
4 McClurken that the day after this happened. He said it a  
5 few weeks ago in the interview in here for trial, and he  
6 said it on the witness stand. He admitted that. So it's  
7 obvious that he was part of the problem here, and part of  
8 the reasons why G.M. went from this young boy,  
9 who his grandmother described as a sweet, polite, respectful  
10 young man. He went from this energetic young man to dead on  
11 a table in the hospital on this third birthday. It's not an  
12 either/or here folks. You saw this in the record. It's a  
13 both/and. It contemplates that, and that's exactly what  
14 happened in this case.

15 First promise that Mr. Verner failed to deliver on was  
16 that Richard Bowman will walk, and we've laid that out. The  
17 law does not say that. That is absolutely 100 percent is  
18 not true. Richard Bowman is going to have his day in court.

19 Secondly, he said it was medically impossible for Theia  
20 McArdle to have inflicted any of these blows on G.M.  
21 Medically impossible. I don't know if you all caught that  
22 in his opening statement. He said it was medically  
23 impossible. And we heard a lot of medical testimony, folks,  
24 and I know it can be very confusing. It can be very tedious  
25 here and all the scientific terminology. Dr. Ross testified

1 to these causes -- the cause of death being subdural  
2 hemorrhage, but on the same page -- you'll have her report,  
3 bruising on the stomach and pancreas, hemorrhage around the  
4 bladder, perforation of the duodenum, the small intestine.  
5 He was so beat up on the inside of him that that could have  
6 caused his death, too. They -- well, Dr. Ross said -- you  
7 heard her. She said there's one line on the coroner's form  
8 she has to give a cause of death and she's got to give one  
9 or the other, and here she chose the head.

10 But I don't know if you noticed how hard Mr. Verner  
11 tried to get Dr. Ross and the doctor from Charleston today  
12 to age these injuries. Remember that? Remember how hard he  
13 tried to get them to say this happened in an hour or less?  
14 And any time I got back up and talked to the doctors and I  
15 said it's not scientifically or medically possible to age  
16 these things is it, and both of them agreed with me. They  
17 said no, it's not. Dr. Ross, in fact, I said if it's 60  
18 minutes or an hour could that have been 120 minutes. She  
19 said yes. Could it have been 180 minutes. She said yes.  
20 240, 360, every time she said these injuries and bruises  
21 could have been any of those. It's medically possible. And  
22 Mr. Verner told you it was medically impossible. There  
23 again, he failed to deliver on promise number two. And I  
24 will submit to you, ladies and gentlemen, if you look at  
25 that picture of the severe bruising around G.M.

1     genitals, of which is unlike anything I've ever seen in my  
2     life, that if you think that happened within an hour of his  
3     death and it was already revealing that much bruising, we  
4     know by common experience that that's not how bruises show  
5     up. And they admitted it. The doctors told us as much on  
6     the stand. They said we can't age these injuries. Mr.  
7     Verner wants to be able to age them in an hour or less  
8     because it's convenient for his defense to show that Theia  
9     was somehow gone on her call in Spartanburg when it  
10    happened. He said it's medically impossible. Not true. So  
11    let's try to uncloud the puddle and get to that coin at the  
12    bottom. And I encourage you, keep your eye on the ball as  
13    you're deliberating here. It's going to be real easy to  
14    have this case be all about Richard Bowman. But it's about  
15    Theia McArdle, and that's the decision you all have to make  
16    today. And Richard Bowman is obviously a part of that story  
17    and he's going to have his day in court later as well.

18           Let's look at the timeline here. And this is obviously  
19    -- you'll have to piece here today as the jury here trying  
20    to figure out all the evidence that's in the record what  
21    happened on these days and hours leading up to his death.  
22    And that's to say it's the final hours of a two-year-old boy  
23    who didn't make it to his third birthday. The 27th, we  
24    heard testimony from McArdle, Bowman and Theia's mother  
25    about them coming up to the park incident with the skates.

1 There was direct evidence in the record of a punching by  
2 Theia on G.M. Again, the Judge is going to instruct you  
3 as far as Richard Bowman and Theia McArdle, you can believe  
4 all of the witnesses testimony, none of it, or you can  
5 believe any part of it you want to. And so, if there's any  
6 part of either one of their testimony that matches with the  
7 physical evidence, that's what you need to piece together in  
8 this case. And evidence of Theia punching G.M. before  
9 they left for putting his shoes on improperly. And there's  
10 also evidence on the 27th of her striking G.M. as well.  
11 And Mr. Verner said there's no evidence in the record. It's  
12 your job as the jury to determine what you've heard from  
13 Theia McArdle and what you've heard from Richard Bowman, if  
14 anything, that's consistent with the physical evidence in  
15 this case being injuries, the phone records, the DNA  
16 reports. All the other evidence we've heard.

17 The 28th, they're all consistent that there's a trip to  
18 McDonald's that day to download a movie, to get Internet  
19 access. According to Richard Bowman, that there was a punch  
20 from McArdle to G.M. in his genitals because he mimicked  
21 Bowman by saying I got bigger balls than you, mom.

22 The 29th, and this is the day, and I'm going to try to  
23 go through this quickly. The last day of G.M. life.  
24 He wakes up and eats breakfast. Richard says he feeds him.  
25 Theia says she feeds him. So we've got a conflict there in

1 their testimony. Around 11:00 Richard says that Theia gets  
2 woke up by a toy gun of some sort. She wakes up and she  
3 smacks G.M. in the abdomen and he cries. The late  
4 morning that he takes a shower, G.M. takes a shower after  
5 him. Theia indicates they get ready to go to Laurens and go  
6 to the Family Dollar. Here's a specific timeframe, 1:13 to  
7 1:53 p.m. where they take a trip to Laurens to go to Family  
8 Dollar, and they're gone from the house during that time.  
9 The phone records. And you'll find that they're hitting off  
10 of different towers during that timeframe. They get back  
11 late afternoon. This will be after 3:53. Sometime after  
12 3:53 -- 3:53 is the first call that's made from her phone at  
13 the house. And that's not exact time in that -- that's the  
14 first call she makes, but sometime before or after that they  
15 get home. G.M. indicates -- or G.M. was screaming in  
16 the bedroom, Bowman says. And there again, folks, he  
17 indicates there's some incident where he sees Theia punching  
18 G.M. because of a laptop getting knocked off a table. He  
19 says at some point that he gets a complaint from G.M.  
20 about his penis hurting, and he tells G.M. go talk to  
21 your mom about that. Between 6:00 and 8:00 p.m., and this  
22 has been consistent -- one thing consistent we've heard from  
23 Theia McArdle from the beginning is that she made dinner  
24 that night of steak and corn, either potatoes or garlic  
25 bread, and that Richard Bowman indicates that G.M. vomits

1 on himself while he's trying to eat. And Bowman takes  
2 G.M. after this to the bathroom to clean up and he throws  
3 up on himself in the toilet. He says that Theia's at home  
4 when he throws up. Theia, of course, says I never seen  
5 G.M. throw up. Now, it's interesting that she calls her  
6 mother from the hospital right after G.M. dies and tells  
7 her mother that G.M. had been throwing at the house in  
8 Enoree earlier. Of course, she tells law enforcement later,  
9 no, I never knew anything. I never saw G.M. sick. Well,  
10 why would she tell her mother that right after she found out  
11 that G.M. had passed? There again, I submit to you that  
12 she's being evasive and she's lying. There again, I submit  
13 to you that she's being evasive and she's lying. G.M.  
14 based on the -- and this is the one piece of the medical  
15 evidence where the doctor seems to be able to get down to a  
16 more specific timeframe because of the food in the stomach.  
17 You all remember this? Both doctors testified that these  
18 injuries, some of these severe injuries occurred to cause  
19 his body to shut down within -- Dr. Ross said within 30  
20 minutes of the time he ate dinner. Now, as much as Mr.  
21 Verner has tried to stretch out this time where she's gone  
22 to Spartanburg, it's very clear that between 6:00 and 8:00  
23 sometime, and even by Theia's own admission, she makes  
24 dinner and they eat, sometime between 6:30 and 7:30. But  
25 within 30 minutes of G.M. eating that corn, folks, he's

1 being beaten and abused. Was it Theia McArdle? Was it  
2 Richard Bowman? Was it both of them? They were both at  
3 home. That's the best medical testimony we were able to  
4 ascertain as far as the timeframe of the assaults on  
5 G.M. because of what we know about the digestive system  
6 and the fact that his food did not digest. They said that  
7 there was enough food with corn kernels in the stomach to  
8 indicate that, that this happened right around dinnertime.  
9 The time when Theia McArdle and Richard Bowman were both at  
10 home. When did she actually leave to go service Papi Chulo  
11 is the only name we have, but apparently Ms. McArdle was  
12 going to run off with him later and take her son with her  
13 but she didn't even know his real name. But when did she  
14 actually leave to go see him that night? If you look -- and  
15 there again, there's vomit on the pillow case which would  
16 seem to indicate there's vomiting at the house in Enoree.  
17 That he had gotten sick there. You'll have the phone  
18 records, ladies and gentlemen, in Exhibit 44 which shows the  
19 tower locations and the times that they hit off the tower.  
20 But what you'll see there, and it's not so simple, is Mr.  
21 Verner telling you that she was only -- she was gone between  
22 8:35 and 11:19. The reason we say that is those are the  
23 times she actually makes calls. So we know at 8:35 she's at  
24 home. 8:52 is the first time her phone hits off another  
25 tower and it's going up to Spartanburg. So 8:52 is the

1 first time we can confirm she's away from the house. 10:52  
2 she hits on a tower very close to the one near the house.  
3 And the first call that she makes at home is 11:19. So she  
4 was gone, ladies and gentlemen, sometime in this time range  
5 for about two hours. There again, as much as Mr. Verner  
6 wants to tell you that it's medically impossible for these  
7 injuries to have occurred and that they all happened at the  
8 same time -- I don't know if you all noticed this today, but  
9 the expert that they brought and paid to come up here and  
10 testify said that in her opinion all these injuries happened  
11 at the same time. But, of course, when we start looking at  
12 the injuries to the swollen genitals and the abdomen she  
13 backs off of that. You all notice that, how she said, well,  
14 no. I can't really say they all happened at the same time.  
15 It's very possible that they could have happened throughout  
16 the course of the day. But, of course, initially she wants  
17 you all to believe this is one beating that happens at one  
18 time while Theia's gone to Spartanburg. It's a very  
19 convenient defense. But if you read the records, it's not  
20 accurate, and it is not medically impossible for Theia to  
21 have been at the house when this happened.

22 They go to Newberry. G.M. apparently is in the  
23 carseat. She thinks he's sleeping. Richard Bowman says  
24 that they hear him snoring. He's in a Puma tee shirt and  
25 shorts. Just to let you know, he's in a tee shirt and gym

1 shorts and it's December the 29th right around  
2 Christmastime. They depart sometime after 11:41 and they  
3 get to the John's house on Bedenbaugh Street 12:22 a.m.  
4 December 30th. She's inside for about 30 minutes at the  
5 house. And I would submit to you, folks, that the injuries  
6 to the head are not consistent with someone being able to  
7 hit -- you saw where he was sitting in the car on this side.  
8 Supposedly Richard Bowman is in the front passenger seat.  
9 But the one major bruise to the head is on the left side of  
10 his head and that's where the subdural hematoma is on the  
11 left side. Well, if that happened in the car at the hands  
12 of Mr. Bowman, where the child is here and to his right  
13 front was Richard Bowman in the passenger seat, that's  
14 physically impossible for him to get to that side. There  
15 again, inconsistent with the theory that they want you to  
16 believe that these assaults occurred in the car while --  
17 while Ms. McArdle was in the house in Newberry. He's  
18 covered up in the seat so that the John wouldn't see. At  
19 some point he wakes up and G.M. not breathing. He  
20 informs Theia of this when she gets back to the car. And  
21 according to Bowman, he says we need to get to the hospital.  
22 She says why don't we just go back to Laurens. And clearly,  
23 folks, if you look at the timeframe, the young man from  
24 Newberry did not say 1:15. You can run this back. He said  
25 sometime between 1:05 and 1:15. And then they don't get to

1 the hospital in Newberry, which is less than two miles away,  
2 until 1:35. You say that on the surveillance tape. Not in  
3 any apparent hurry to get there. And Theia McArdle clearly  
4 is driving the car by her own admission. And folks, Mr.  
5 Verner may minimize the fact that when they get to the  
6 hospital she slowly creeps the car over and backs into a  
7 parking place 200 to 250 feet away. What's human nature if  
8 you're really concerned about a child? I'll leave that for  
9 you all the jury to decide what the relevance of that is.  
10 Did she seem concerned talking about the death of her child  
11 up here today to you all? You all saw her. You saw her.  
12 He's pronounced dead at 2:06 a.m. Of course, the  
13 pathologists had said several times, and we asked this, when  
14 did he actually die. And they couldn't really say. That's  
15 just the legal term. They said when he got to the hospital  
16 he was cold to the touch. He's probably deceased then, but  
17 we can't give you a firm time of how long he was dead before  
18 he got there. We know it was long enough for the vomit that  
19 was lodged in his esophagus to congeal and harden. So it  
20 had been some -- a matter of time. Very possible, ladies  
21 and gentlemen, that he could have died at the house, he  
22 could have died on the ride there, he could have died in  
23 Newberry. I don't think based on any of the medical  
24 testimony, ladies and gentlemen, they're going to be able to  
25 tell you the exact moment G.M. passed away.

1 I hope you know that this three hour interview from  
2 Theia McArdle, it's State's Exhibit No. 37 and it's about  
3 three hours. We're already here on a Friday afternoon  
4 folks. It's not that we didn't play it for you because we  
5 didn't know -- it's in evidence. You can listen to it  
6 during deliberations. But I would submit to you it's the  
7 same self-serving lies that you heard from the witness stand  
8 today. Denials. She makes a comment at one point in her  
9 interview with law enforcement that well -- she talks to  
10 talk about him falling on the skates and the CPR. But  
11 doesn't cover all the injuries. At that point she didn't  
12 even know what the injuries supposedly were, according to  
13 her. That was a very interesting statement that you may  
14 want to zero in on. It's in the record. Did she say  
15 anything in her written statement to law enforcement about  
16 anything remotely explaining why her young son was dead?  
17 She didn't. You have that in the record.

18 Mr. Daniel talked to you about the truth in the case,  
19 and I want you all know when you go back to the jury room  
20 you're going to have a verdict form. You've heard the word  
21 verdict before, I'm sure. The word verdict is made up of  
22 two Latin words. It's verus dictum. And all that means,  
23 the word verdict, all it means is to speak the truth. To  
24 speak the truth. And so, that's what Mr. Daniel and I would  
25 ask you to do in this case. Focus on the law in this case.

1 The fact that no one in this courtroom on the State's side  
2 is alleging that Richard Bowman is innocent. In fact, he  
3 got up on that stand and hung himself and made himself  
4 guilty of homicide by child abuse, even if he didn't strike  
5 the fatal blows. And why is that? Because that little  
6 beaten, broken body of G.M. as it rode in the car  
7 from Enoree, South Carolina to Newberry was dying. The  
8 people in that car, folks, were Theia McArdle and Richard  
9 Bowman. And instead of getting medical help that he might  
10 need to maybe save him, they omitted to do that. And what  
11 did they do? They thought it was more important for Theia  
12 to make her prostitution call in Newberry while G.M.  
13 McArdle was dying in that backseat. The two of them were in  
14 that car more concerned with her getting to her call in  
15 Newberry.

16 What's the truth in this case, ladies and gentlemen?  
17 That Theia McArdle and Richard Bowman committed acts or  
18 omissions on December 29th, 2014 that caused the death of  
19 this little boy.

20 Thank you for your attention this week. Thank you for  
21 your diligence. We appreciate that. Your service as  
22 citizens here in Newberry, and that's what y'all are. The  
23 consciousness of this community that this type of abuse is  
24 not going to be tolerated. I'm going to ask you to go back  
25 in the jury room and consider all of this mountain of

1 evidence that we have that you've heard this week and find  
2 Theia McArdle guilty. Thank you.

3 JURY CHARGE

4 THE COURT: Thank you very much, sir. Ladies and  
5 gentlemen, these instructions should take about 15 minutes  
6 for me to give to you. Does anybody need a quick break  
7 before I do that? Everybody good? Raise your hand if you  
8 need a break. Going once, going twice. Okay.

9 Now, ladies and gentlemen, just a few caveats. At this  
10 point in time the record in this case is closed, and what  
11 that means essentially is that it's not possible to reopen  
12 the record and take additional testimony. So you'll have to  
13 decide this case based upon the evidence that has been  
14 presented to you thus far. It's simply not possible to  
15 introduce additional evidence. So if you have any questions  
16 about the facts in the case, or the evidence in the case,  
17 you're going to need to rely upon your recollection to the  
18 extent that you can, and certainly reference any exhibits  
19 that you may want to. However, if you have any questions  
20 about the law that applies, simply write that question down  
21 on a note and send it out and I will try and help you. I  
22 can help you on any legal issue. On any question concerning  
23 the law. Factually though I'm not permitted to answer any  
24 factual questions. All right?

25 Now, ladies and gentlemen, I'll tell you that when I

1 first started practicing law 23 years plus ago the way that  
2 judges would instruct a jury is that they would basically  
3 sit up here and they would read you 15 pages of the  
4 applicable law taken from various law books and the jury was  
5 supposed to just basically sit there, absorb it all, take it  
6 all in, and then take it back to the jury room and get it  
7 right the first time. Well, I always found that a little  
8 bit unreasonable, ladies and gentlemen, because like most  
9 people, it took me three years to get through law school and  
10 I don't think it's fair to ask you to learn in 15 minutes  
11 what it took me three years to learn. Long story short, you  
12 will have a copy of these jury instructions that you can  
13 refer to if you need to in the jury room. And again, I'm  
14 happy to answer any legal question that you may have.  
15 Please pay attention to the instructions as a whole. Don't  
16 simply pay attention to part of them to the detriment of  
17 some other portion of the instructions. And, of course,  
18 once you're done, please return these to the Court.

19 Now, ladies and gentlemen, I instruct you that the  
20 indictment in this case charges Ms. McArdle with the offense  
21 of homicide by child abuse. I remind you that the fact that  
22 Ms. McArdle was arrested, charged and indicted in this case  
23 is not evidence and cannot be considered by you as evidence  
24 of guilt in this case, nor does this indictment create any  
25 presumption or inference of guilt. This document is simply

1 the formal written instrument which contains the charge  
2 against her. It's the formal document by which this case is  
3 brought into court.

4 Now, in this case Ms. McArdle has pled not guilty to  
5 this charge and that plea puts the burden on the State to  
6 prove the Defendant guilty. I instruct you that a person  
7 charged with committing a criminal offense in this state is  
8 never required to prove herself innocent. It's an important  
9 rule of law that the Defendant in a criminal trial, no  
10 matter what the seriousness of the charge may be, will  
11 always be presumed to be innocent of the crime to which the  
12 indictment was issued unless guilt has been proven by  
13 evidence to satisfy you of her guilt beyond a reasonable  
14 doubt. This presumption of innocence does not end when you  
15 begin your deliberations, but it accompanies the Defendant  
16 throughout the trial until you, the jury, reach a verdict of  
17 guilt based on evidence satisfying you of that guilt beyond  
18 a reasonable doubt. The presumption of innocence is like a  
19 robe of righteousness. It's placed about the shoulders of  
20 the Defendant and it remains with her until it has been  
21 stripped from her by evidence satisfying you of her guilt  
22 beyond a reasonable doubt. Ladies and gentlemen, the  
23 presumption of innocence is not merely a legal theory. It's  
24 not a legal phrase. It's not just a legal phrase. It is a  
25 substantial right to which every Defendant is entitled

1 unless you, the jury, are satisfied from the evidence of the  
2 Defendant's guilt beyond a reasonable doubt.

3 Well, what is a reasonable doubt in the law? A  
4 reasonable doubt is the kind of doubt that would cause a  
5 reasonable person to hesitate to act. The State has the  
6 burden of proving the Defendant guilty beyond a reasonable  
7 doubt. And some of you may have served as jurors in civil  
8 cases where you were told that it's only necessary to prove  
9 that a fact is more likely true than not true, such as by  
10 the greater weight or the preponderance of the evidence. In  
11 criminal cases the State's prove must be more powerful than  
12 that. It must be proof beyond a reasonable doubt. Proof  
13 beyond a reasonable doubt is proof that leaves you firmly  
14 convinced of the Defendant's guilt. Now, there are very few  
15 things that we now in this world with absolute certainty and  
16 in criminal cases the law doesn't require proof that  
17 overcomes every possible doubt. If, based on your  
18 consideration of the evidence, you're firmly convinced that  
19 the Defendant is guilty of the crime charged, you should  
20 find her guilty. If, on the other hand, you think there's  
21 the real possibility that the Defendant is not guilty, you  
22 must give the Defendant the benefit of the doubt and find  
23 her not guilty.

24 Now, ladies and gentlemen, during this trial I remind  
25 you that you and I have certain duties to perform, and as

1 the trial judge it's been my responsibility to preside over  
2 the trial of this case and I have a duty to rule on the  
3 admissibility of evidence offered. You have to consider  
4 only the competent evidence before you. So any testimony  
5 which was ordered stricken from the record you must  
6 disregard that testimony because you're to consider only the  
7 testimony which has been presented from the witness stand,  
8 as well as any exhibits which have been made a part of the  
9 record in this case.

10 Now, I have the additional duty to charge you the law  
11 applicable. And as the presiding judge, I am the sole judge  
12 of the law. It's your duties as jurors to accept and apply  
13 the law as I now state it to you. So if you already have  
14 any idea as to what the law is or what it should be and it  
15 doesn't agree with what I now tell you the law is, you must  
16 abandon this idea because you're sworn to accept and apply  
17 the law as I state it to you.

18 Again, ladies and gentlemen, in this case, or in every  
19 case tried in this court before a jury, the jury becomes the  
20 sole and exclusive judge of the facts of the case. A trial  
21 judge cannot intimate, state, comment on or make any  
22 statement to a trial jury about the facts in a case. Since  
23 you, the jury, are the sole judges of the facts, you're not  
24 to infer from what I've said during the progress of this  
25 trial in ruling upon the admissibility of evidence or

1 otherwise, or anything that I say to you know during the  
2 course of this instruction to you that I have any opinion  
3 about the facts in this case. Ladies and gentlemen, the law  
4 does not permit me to have any opinion about the facts in  
5 this case. This is a matter solely for you, the jury, to  
6 determine. As jurors it's your duty to determine the  
7 weight, value, effect and truth of the evidence presented  
8 during the trial.

9 Now, typically, ladies and gentlemen, there are two  
10 types of evidence presented during the course of a trial,  
11 direct evidence and circumstantial evidence. Direct  
12 evidence directly proves the existence of a fact and does  
13 not require deduction, such as testimony by an eyewitness.  
14 Circumstantial evidence is proof of a chain of facts and  
15 circumstances indicating the existence of a fact. I  
16 instruct you that crimes may be proven by circumstantial  
17 evidence. The law makes no distinction between the weight  
18 or value to be given to either direct or circumstantial  
19 evidence. However, to the extent the State relies upon  
20 circumstantial evidence, all the circumstances must be  
21 consistent with each other, and when taken together, point  
22 conclusively to the guilt of the accused beyond a reasonable  
23 doubt. If these circumstances merely portray the  
24 Defendant's conduct or behavior as suspicious then the proof  
25 has failed. The State has the burden of proving the

1 Defendant's guilt beyond a reasonable doubt and this burden  
2 rests with the State regardless of whether the State relies  
3 upon direct evidence, circumstantial evidence, or some  
4 combination of the two.

5 Now, necessarily, ladies and gentlemen, you have to  
6 determine the credibility of witnesses who have testified.  
7 And again, credibility simply means believability. It  
8 becomes your duty as jurors to analyze and the evaluate the  
9 evidence and determine which evidence convinces you of its  
10 truth. In determining the believability of witnesses who  
11 have testified in this case, you may believe one witness  
12 over several witnesses or several witnesses over one  
13 witness. You may believe a part of the testimony of a  
14 witness and reject the remaining part of the testimony of  
15 that same witness. You may believe the testimony of a  
16 witness in it's entirety or reject the testimony of a  
17 witness in its entirety. You may consider whether any  
18 witnesses has exhibited to you any interest, bias,  
19 prejudiced or other motive in this case, and you can also  
20 consider the appearance and manner of a witness while on the  
21 witness stand.

22 Now, as I have explained yesterday and today, and maybe  
23 even on Tuesday, normally the rules of evidence don't permit  
24 witnesses to testify as to opinions or conclusions, but an  
25 exception to this rule exists for expert witnesses. A

1 witness who by education and experience has become an expert  
2 in some art, science, profession or calling may state an  
3 opinion as to relevant and material matters in which the  
4 witness claims to be an expert, and they also state the  
5 reasons for that opinion. You should consider any opinion  
6 given in this case, and like any other evidence, give it the  
7 weight you think it deserves. If you decide that the  
8 opinion of an expert is not based on sufficient education or  
9 experience, or if you concluded that the reasons given in  
10 support of the opinion are not sound, or that it's  
11 outweighed by other evidence. You may disregard the opinion  
12 entirely. An expert witnesses testimony is to be given no  
13 greater weight than that of any other witnesses simply  
14 because the witness is an expert. Further, you're not  
15 required to accept an expert's opinion even though it's not  
16 contradicted.

17 Now, ladies and gentlemen, during the course of this  
18 trial there has been evidence presented that witnesses have  
19 made prior statements which are not consistent with the  
20 witnesses present testimony. You may use this evidence to  
21 decide whether or not to believe the witness. You may also  
22 use the evidence of the earlier contradictory statement to  
23 determine the truth of those statements. It's up to you to  
24 decide whether to believe the earlier statement or the  
25 testimony given at trial. I instruct you that if a witness

1 has shown to have knowingly testified untruthfully  
2 concerning any material matter, you may consider this in  
3 determining whether to trust the witness's testimony as to  
4 other matters. You may reject all the testimony of that  
5 witness or give all or part of the testimony the weight you  
6 think it deserves.

7 I instruct you, ladies and gentlemen, that under the  
8 law of this state, if a person is fatally injured by an  
9 individual in one county but ultimately dies or passes away  
10 in another county, the indicted individual can be tried by  
11 this court in either county. The county of the injury or  
12 the county of death.

13 In this case, ladies and gentlemen, the Defendant is  
14 charged with the offense of homicide by child abuse.  
15 Therefore the State must prove beyond a reasonable doubt  
16 that the Defendant caused the death of a child under the age  
17 of 11 while committing child abuse or neglect. Child abuse  
18 or neglect is an act or failure to act which causes harm to  
19 the child's physical health or welfare. Harm to the child's  
20 physical health or welfare means that the Defendant either,  
21 one, inflicted or allowed to be inflicted in the child,  
22 physical injury or, two, knowingly failed to supply the  
23 child with adequate food, clothing, shelter or healthcare,  
24 and this failure caused a physical injury or condition which  
25 then caused death. I instruct you that knowingly means that

1 the Defendant had actual knowledge of infliction of physical  
2 injury or actual knowledge of the existence of the child's  
3 injuries and that failure to provide the child with adequate  
4 healthcare could reasonably lead to the child's death. The  
5 State must also prove beyond a reasonable doubt that the  
6 death occurred under circumstances showing an extreme  
7 indifference to human life.

8 Now, ladies and gentlemen, there are two possible  
9 verdicts that you can find in this case. And Madam  
10 Forelady, I've worked up this verdict form which is about as  
11 simple as I can possibly make it, that you can use to  
12 deliver your verdict and perhaps guild your deliberations.  
13 The verdict form makes the following statement. "We, the  
14 jury in the above-captioned case, on the charge of homicide  
15 by child abuse unanimously find Theia McArdle," and then it  
16 has two blanks for you to -- where you can initial, Madam  
17 Forelady, either not guilty or guilty. If you find the  
18 State has met its -- has failed to meet its burden of  
19 proving the Defendant's beyond a reasonable doubt, and all  
20 12 of you agree on that, you would initial here next to not  
21 guilty, knock on the door, let the bailiff know and we'll  
22 bring you back in here. If you find, however, that the  
23 State has met its burden of proving the Defendant's guilt  
24 beyond a reasonable doubt and all 12 of you agree, you would  
25 then, of course, initial next to guilty, sign your name,

1 knock on the door and we'll get you back in here.

2 Now, ladies and gentlemen, I instruct you that if any  
3 member of the jury panel has any issue or question about the  
4 law, simply bring it to the Court's attention and do so by  
5 way of writing a note. But, Madam Forelady, at no time  
6 should any member of the jury panel, or at no time should  
7 you, indicate or communicate with the Court concerning any  
8 numerical division as a result of your deliberations. Okay?  
9 I don't want to know -- if you have to communicate to me,  
10 the last thing I need to know, the last thing I want to know  
11 is okay, well, we're seven/five, or the vote is six/six, or  
12 the vote is 11/1. Okay? So just never give me that  
13 information ever. If you have any other questions about the  
14 law though, I'm all ears. But please, just never provide me  
15 with any kind of numerical division about your  
16 deliberations.

17 Now, ladies and gentlemen, I remind you that you have  
18 been chosen as fair and impartial jurors in this case. In  
19 other words, ladies and gentlemen, you've got no friends to  
20 reward. You have no enemies to punish. Your job is to  
21 render a verdict based solely upon the evidence as you find  
22 it to be and the law as I've instructed you.

23 Now, in a moment, ladies and gentlemen, I'm going to  
24 ask that you go ahead and take a break. The purpose -- but  
25 don't start your deliberations yet. The purpose of the

1 break is that we have to make sure that everything that's in  
2 evidence is altogether and put together and then we'll get  
3 it back to the jury room to you. I know that you've all  
4 been going collectively outside to get a breath of fresh  
5 air. So that's probably what you should do this time and  
6 just take a 10 minute break. But again, the purpose of the  
7 break is to gather up all the evidence and to also allow the  
8 attorneys to object to any of the instructions that I've  
9 given you on the record with regard to these instructions.

10         Additionally, ladies and gentlemen, there is -- I think  
11 there is a CD ROM in there which contains a three or four  
12 hour interview. If you need to listen to that interview or  
13 access any other CD ROMs or gig chips that may have been  
14 made a part of the record in this case, just ask us for a  
15 computer and we'll send one in there. It will probably be  
16 mine or my law clerk's. Okay? One of you I'm sure knows  
17 how to pop a CD in. Probably the youngest of you knows how  
18 to put a CD in and hit Media Player. But obviously whatever  
19 computer we send in is also going to contain other material.  
20 So simply use it as a record player or a CD player and don't  
21 go through snooping through the other stuff that's on the  
22 computer screen, please.

23         Additionally, just a few quick other rules that I have.  
24 Smoke breaks once a case starts deliberating, I usually  
25 limit it to about one every hour and a half, and I did that

1 because I ended up trying a case up in -- all 12 of you have  
2 to be present while deliberating, and if four or five pop  
3 outside to smoke then the deliberations have to stop. And I  
4 actually tried a case where a guy was a chain smoker and it  
5 was like every five minutes we were stopping deliberations  
6 because he couldn't take it. So smoke breaks are every hour  
7 and a half. Once the case is submitted to you however long  
8 you deliberate is entirely up to you. Okay? There is no  
9 set time for deliberation. If it takes you 10 minutes,  
10 that's fine. Ten hours, that's fine. I've never seen one  
11 take 10 days, but that is also fine. So it is entirely up  
12 to you all how long you choose to deliberate. If you find  
13 yourself getting tired for the evening and feel like coming  
14 back later tomorrow, Monday, whatever, I'm all ears. What  
15 I'm getting at though is once the case is submitted to you,  
16 you control the watch 100 percent. I do not. You do.

17 With that, pop outside. Get some fresh air. Have a  
18 smoke if you are so inclined, and we'll get the evidence  
19 together and I'll handle any objections or exceptions and  
20 then we'll get the case to you. Okay, Madam Forelady?  
21 Thank you.

22 (Whereupon, the jury exited the courtroom at 5:00 p.m.)

23 THE COURT: The Defendant objects to my failure to give  
24 a lesser included on unlawful conduct towards a child; is  
25 that correct?

1 MR. VERNER: Yes, sir. And -- yes, sir. But I  
2 understand the Court's ruling.

3 THE COURT: Very good. Aside from a quasi objection on  
4 the Court charging the knowingly aspect of this, any other  
5 objections or reservations?

6 MR. STUMBO: Just that, Judge. We take exception to  
7 that.

8 THE COURT: Okay. If you --

9 MR. VERNER: I had -- actually, Judge, I wanted to be  
10 heard.

11 THE COURT: Yes, sir.

12 MR. VERNER: I didn't -- it's been -- I didn't -- I got  
13 the jury -- the jury instructions. I got the jury  
14 instructions. I didn't get a copy of the verdict form prior  
15 to. I was going to propose prior to it, and it just didn't  
16 pop in my head when the Judge was talking about the  
17 instructions, I was asking, because of the way the State's  
18 presenting its charge, for a more individualized verdict  
19 form. It's either that she caused the death, or under the  
20 other -- not guilty or -- but they would have -- I wanted an  
21 interrogatory in the jury under which section --

22 THE COURT: Specific that either she acted as the  
23 principal and actually inflicted the injuries herself or  
24 that she knew of the injuries and failed to seek medical  
25 care?

1 MR. VERNER: Yes, sir. And I was also asking for a  
2 special interrogatory on the verdict form that the child  
3 died in Newberry. I understand the Court charge that it's  
4 possible for the trial to, you know, be tried in a separate  
5 county if a crime happens in another one and does. But  
6 because the vast majority of the -- substantial majority of  
7 the information talks about the beating likely occurring in  
8 Spartanburg, the pathologists testifying, if they're  
9 testimony is believed, the death would have had to occur in  
10 Spartanburg, I would ask for a special interrogatory in  
11 which county do you find the child died.

12 THE COURT: I doubt I'm going to give that to you.  
13 That's a venue issue that should have been raised pretrial,  
14 quite honestly, in my opinion. I know that you're probably  
15 going to argue that it's a subject matter jurisdiction  
16 issue. I don't believe it is. So I'm not going to really  
17 inquire about that. The case has to be tried somewhere, and  
18 under the law as I read it it can be tried here.

19 MR. VERNER: Oh, I understand that, Judge, but --

20 THE COURT: Does the State have any position on the --  
21 his suggestion is somewhat curious.

22 MR. STUMBO: I don't know that I've ever seen that,  
23 Judge. I don't know that there's any precedent for it. And  
24 quite frankly, I don't think that's -- the law requires the  
25 jury to make such a distinction. I know there's times when

1 the law does require the jury to make a distinction, say, in  
2 a --

3 THE COURT: Value of goods for a grand larceny.

4 MR. STUMBO: Right, exactly. Or a CSC case, I think,  
5 for purposes of the sex offender registry. Or for repeat  
6 offenses later I believe there's a finding of whether there  
7 was an intrusion or something of that degree. And I want to  
8 say, Your Honor, there again, my mind is kind of frazzled on  
9 a Friday afternoon at 5:00.

10 THE COURT: I think you're talking about a kidnapping,  
11 whether it was sexually related. Whether that would kick  
12 you onto the sex offender registry. That's what you're --

13 MR. STUMBO: That's one. But there's also -- I know  
14 I've seen it CSC with minor cases, what type of sexual  
15 battery was at play.

16 THE COURT: Right. Right. I know what you're talking  
17 about.

18 MR. STUMBO: It's under the new law. So I don't know  
19 if there's any provision for that here, Judge. It's all --

20 MR. VERNER: Well, Judge, if it's venue it would be a  
21 harmless error. If it's subject matter then, of course, it  
22 can be raised at any time. So if the State's right it's a  
23 venue -- and the Court's right, it's a venue issue, even if  
24 the jury ruled Spartanburg, it would be a harmless error.

25 But -

1 THE COURT: Well, it's being brought by the State of  
2 South Carolina, and the State of South Carolina is  
3 represented throughout the state by various Solicitors. So  
4 I respect your position and will decline to -- if that was a  
5 factual issue, that's a factual issue to be determined by a  
6 court as opposed to a jury trial. If the Court were to make  
7 a habit of inquiring of the jury after the case has been  
8 presented, obviously you have to try a case somewhere, and  
9 if the Court were to inquire of the jury after it was  
10 presented and then find out that the trial has taken place  
11 in the wrong county, and if that's the grounds to then retry  
12 it in the correct county -- no, we're not going to do that.  
13 That's why -- that's why you've got 17 dash whatever,  
14 whatever, that we talked about earlier.

15 MR. VERNER: I understand the practical difficulty of  
16 it, Judge.

17 THE COURT: Sure.

18 MR. VERNER: But is that on both motions then? Because  
19 I also had the motion for the first interrogatory --

20 THE COURT: Is your thinking just because it could  
21 guide the Court in terms of sentencing and in terms of  
22 culpability or -- I mean, I'm really -- my initial -- my  
23 default setting --

24 MR. VERNER: My thinking was more --

25 THE COURT: Here's what I'll do, Mr. Verner. I'll

1 submit it like this. If the verdict comes back as guilty I  
2 will consider -- if the Court feels like it will help the  
3 Court, I will consider a special interrogatory of the jury  
4 under which theory that they found.

5 MR. VERNER: One of the reasons was is that Solicitor  
6 in his closing mentioned several times, they did this  
7 together, which, of course, was the -- he was dancing on the  
8 aiding and abetting language.

9 THE COURT: You can only aid and abet a principal. I  
10 mean, you can have two people acting in concert, and if it's  
11 an agreement to inflict the injury or commit the crime then  
12 they're both liable as principals.

13 MR. VERNER: Well, I understand the Court's ruling that  
14 it would be practical for the -- possibly sentence purposes  
15 if -- depending on the verdict, I guess.

16 THE COURT: Very good. I'm going to submit it as I  
17 read it. If y'all want to inspect it, that's perfectly  
18 fine. But --

19 MR. VERNER: It's just a simple verdict form? Well,  
20 I'd still like to look at it.

21 THE COURT: Yeah. Other than that, you all inventory  
22 the exhibits, help Tara out in the regard. And I have the  
23 photos from Exhibit whatever that I did not include on that  
24 exhibit.

25 MR. VERNER: Your Honor, my position -- my second

1 position is if the Court's going to use a simple verdict  
2 form --

3 THE COURT: Yes, sir.

4 MR. VERNER: -- my preference, and it's because of a  
5 recent Court of Appeals case that I was in, is that the  
6 verdict form would be on the indictments itself. The -- or  
7 submitted with the indictments.

8 THE COURT: You want me to send the indictment back?

9 MR. VERNER: My take from a recent -- from the Mandy  
10 Smith Court case was that it was the general consensus of  
11 the Appellate Court that they thought it was appropriate for  
12 the verdict form to be submitted on the indictment because  
13 that would show the allegations. But in case, Your Honor, I  
14 would ask for the indictment to be sent back. I mean, I  
15 understand I might not what that in every case. But were  
16 it's a simple verdict form --

17 MR. STUMBO: I don't really have a position on that,  
18 Judge. I've seen it done both ways.

19 THE COURT: I've never sent the indictment back and  
20 I've never really wanted to. But if Mr. Verner wants it in  
21 this case and you don't care, I'll send it back.

22 MR. STUMBO: I've had Judges do it.

23 MR. VERNER: Maybe I need to double check the language  
24 of it. But at the Mandy Smith trial the --

25 THE COURT: My understanding is, and I've never seen a

1 Judge actually send the indictment back, even when I first  
2 started practicing. What I was told is that because the  
3 indictment was conclusory and because it was an allegation  
4 that it should not be submitted to the jury, because it's  
5 prepared by the Solicitor. It's -- I forget Judge Johnson's  
6 reasoning on it, but he explained it to me.

7 MR. VERNER: Well, the reason for the thinking in the -  
8 - why the Court of Appeals did it was because, I think, part  
9 of their reason was that the State would be bound by the  
10 allegations of the indictment and surely the jury would know  
11 the allegations of the indictment.

12 MR. STUMBO: Judge -- just correct me if I'm wrong,  
13 Charles. I know we were both at the Appellate --

14 MR. VERNER: -- had a better seat--

15 MR. STUMBO: -- argument, but I don't know that that  
16 was the issue they ultimately --

17 MR. VERNER: -- just one of them --

18 MR. STUMBO: It may have been in one of the briefs, but

19 --

20 MR. VERNER: It was actually in some of the questions  
21 from Justice Few.

22 THE COURT: The Solicitor does not object. I will  
23 leave it in your discretion, Mr. Verner. If you want it to  
24 go back, it can go back. You make the decision.

25 MR. VERNER: I this case, I would ask that it be sent

1 with the verdict form.

2 THE COURT: We shall send it back with the verdict form  
3 and the instructions then.

4 MR. STUMBO: That's fine, Judge.

5 MR. VERNER: And I understand the Court's tactical  
6 concern as a former public defender.

7 THE COURT: And as a former Solicitor. I tried to send  
8 it back one time. Jim Johnson said no.

9 MR. STUMBO: Judge, just off -- are we off the record?

10 THE COURT: Let's go off the record.

11 (Whereupon, a brief recess was held.)

12 THE COURT: Gentlemen, you all compare notes on the  
13 exhibits. I'm going to take a brief break. And for what  
14 it's worth, it's been a pleasure trying this case with you  
15 all. I'm very, very impressed and both sides did a good job  
16 prepping this case.

17 MR. STUMBO: It was a long week.

18 THE COURT: Ms. McArdle, pleasure to meet you, ma'am.

19 (Whereupon, the jury began deliberations at 5:22 p.m.)

20 VERDICT

21 THE COURT: We'll go back on the record. The record  
22 should reflect that Ms. McArdle is present along with  
23 counsel. I am informed that the jury has reached a verdict.  
24 Anything before receiving the jury back in the courtroom  
25 from the State?

1 MR. STUMBO: Nothing from the State.

2 THE COURT: From the Defense?

3 MR. VERNER: No, Your Honor.

4 THE COURT: Very good. Let's have the jury, please.

5 (Whereupon, the jury entered the courtroom at 6:07

6 p.m.)

7 THE COURT: All right. Madam Forelady, I'm told that  
8 the jury has reached a verdict; is that correct?

9 MADAM FORELADY: That's correct.

10 THE COURT: All right. And all 12 of you all agree on  
11 that verdict?

12 MADAM FORELADY: Yes, sir.

13 THE COURT: All right. If you would, hand the verdict  
14 form, please, to the bailiff. Madam Clerk, you may publish.

15 MADAM CLERK: Yes, sir. Indictment 2015-GS-36-0133,  
16 *State of South Carolina vs. Theia McArdle*. We the jury in  
17 the above-captioned case on the charge of homicide by child  
18 abuse unanimously find Theia McArdle guilty. Signed Kelly  
19 P. Ringer, Foreperson.

20 Ladies and gentlemen of the jury, if this is your  
21 verdict, please indicate by raising your right hand.

22 THE COURT: Let the record reflect that all 12 members  
23 of the jury have raised their hand. Anything prior to  
24 discharge of the jury from the State?

25 MR. STUMBO: Nothing from the State, Your Honor.

1 THE COURT: From the Defense?

2 MR. VERNER: I would like them polled, Your Honor.

3 THE COURT: All right. Ladies and gentlemen of the  
4 jury, the Clerk of Court will call your name in just a  
5 moment, and she will ask you basically two questions; is  
6 this your verdict and is it still your verdict. Just answer  
7 appropriately, okay, to those questions.

8 Go ahead, please.

9 MADAM CLERK: Yes, sir. Kelly P. Ringer, is this your  
10 verdict and is still your verdict?

11 JUROR: Yes.

12 MADAM CLERK: David Alexander, is this your verdict and  
13 is still your verdict?

14 JUROR: Yes, ma'am.

15 MADAM CLERK: Michelle Mosley, is this your verdict and  
16 is still your verdict?

17 JUROR: Yes, ma'am.

18 MADAM CLERK: Elenita Young, is this your verdict and  
19 is still your verdict?

20 JUROR: Yes, ma'am.

21 MADAM CLERK: Teresa Wise, is this your verdict and is  
22 still your verdict?

23 JUROR: Yes, ma'am.

24 MADAM CLERK: Robert Icard, is this your verdict and is  
25 still your verdict?

1 JUROR: Yes, ma'am.

2 MADAM CLERK: Cynthia Stefanini, is this your verdict  
3 and is still your verdict?

4 JUROR: Yes, ma'am.

5 MADAM CLERK: Mason Scott, is this your verdict and is  
6 still your verdict?

7 JUROR: Yes, ma'am.

8 MADAM CLERK: Mallory Matthews, is this your verdict  
9 and is still your verdict?

10 JUROR: Yes, ma'am.

11 MADAM CLERK: Abby Kesler, is this your verdict and  
12 still your verdict?

13 JUROR: Yes, ma'am.

14 MADAM CLERK: James Chaffins, is this your verdict and  
15 still your verdict?

16 JUROR: Yes, ma'am.

17 MADAM CLERK: Donnie Lominack, is this your verdict and  
18 is still your verdict?

19 JUROR: Yes, ma'am.

20 THE COURT: Ladies and gentlemen of the jury, I want to  
21 thank you for your service here this week. I know that we  
22 have kept you and we have inconvenienced you and in all  
23 likelihood we have exposed you to stuff that you would have  
24 not rather been exposed to or seen, and for that I am truly  
25 sorry and I truly apologize. I will tell you that jury

1 service is never, never easy. I've often felt like this is  
2 an imposition, and I know it is an imposition. But I  
3 promise you, your service here was absolutely necessary and  
4 I sincerely, sincerely, sincerely appreciate your all's hard  
5 work and your patience with us here this week. I will let  
6 you know that you will receive a letter from me thanking you  
7 for your jury service. The purpose of that letter is really  
8 twofold. It won't probably go out until Monday at the  
9 earliest because I've got to get by the office and do it  
10 this weekend. But the purpose is twofold. To thank you, of  
11 course, for your jury service. It's also to solicit  
12 feedback. So if there's anything that you did like about  
13 jury service, let us know. Anything you didn't like about  
14 it, definitely let me know. Okay? Please. Because I've  
15 changed the way the court operates based on feedback from  
16 folks like you all.

17 With that, at this point in time, the only thing that  
18 remains to be done is sentencing of the Defendant and  
19 entertaining some post-trial motions. If you want to stick  
20 around for that, that's perfectly fine. If -- otherwise you  
21 are absolutely 100 percent free to go. Okay? If you want  
22 to stay for sentencing, what I will ask is that you take one  
23 of the seats over here to the back of the courtroom. We'll  
24 just take a few moments break while I get the Foreperson to  
25 sign the indictment and you can collect whatever items you

1 left in the jury room and just, you know, go downstairs and  
2 then just come up the other way would be the best way for  
3 you to access that. So if you want to stay, you are free to  
4 do that.

5 You had something else, Mr. Verner?

6 MR. VERNER: Yes, sir. I'll promise I'll be brief.

7 THE COURT: Yes, sir.

8 MR. VERNER: But the item we mentioned prior to the  
9 deliberations about the interrogatory. I'll be less than  
10 five minutes, if the Court will hear me.

11 THE COURT: Approach, please. I might not be releasing  
12 you all quite yet. Hold on one second.

13 (Whereupon, a sidebar was held.)

14 THE COURT: Before I release you all, and this is  
15 actually a question that I do have, I'm going to ask that  
16 you all return and deliberate one more time on this  
17 particular question. And, Madam Forelady, you can feel free  
18 just to write this -- the answer to this question on a piece  
19 of paper. It's not -- it's not a terribly complicated  
20 question, so I'm just going to ask it of you and you can  
21 write your answer down. Based upon the verdict that was  
22 rendered, the verdict of guilt in this particular case, is  
23 that verdict based on the jury's finding that the Defendant  
24 acted alone or that she acted with the co-defendant in this  
25 case, or is it based upon the fact that she knew of the

1 injuries and should have provided medical care to the child  
2 involved. Okay?

3 So if you would, just adjourn to the back. I know that  
4 you all have already figured that out. Adjourn to the back,  
5 write that down, and then come back out as soon as you're  
6 ready. Okay? We'll remain here at ease.

7 (Whereupon, the jury returned to the jury room.)

8 THE COURT: While they're doing that, if one of the  
9 Solicitors wouldn't mind going ahead and preparing a  
10 sentencing sheet for me. And, Mr. Verner, you also wanted  
11 the Court to inquire of the jury concerning the McCloud  
12 case. You wanted the Court to ask specifically where the  
13 death of the child took place or --

14 MR. VERNER: In which county.

15 THE COURT: -- in which county it took place; is that  
16 correct, sir?

17 MR. VERNER: Yes, sir. I would argue under the McCloud  
18 case that if at all -- if the child was killed -- under any  
19 theory that she would be convicted, if the child was killed  
20 in Spartanburg County, because she has the right to be tried  
21 in the county where the crime happened, then the subject  
22 matter jurisdiction would be in Spartanburg County. My  
23 understanding is -- from reading the McCloud case, is venue  
24 is proper if there is any evidence that the crime happened  
25 in more than one county. Obviously if the jury finds that

1 the child was dead in Spartanburg there would be no venue  
2 issue, because if the child is dead in Spartanburg, taking  
3 it to Newberry for hospital care would be pointless. If  
4 it's a venue issue then it would be proper for the case and  
5 harmless error for this case to go forward. If it's  
6 jurisdictional, then that would speak for itself, Your  
7 Honor.

8 THE COURT: Solicitor, you at the sidebar opposed that  
9 motion. You concurred with the Court that it would not be  
10 appropriate, and under the South Carolina law --

11 MR. STUMBO: Under the statute, Judge, I think that  
12 it's pretty clear that it can be tried in either county.  
13 Based on the facts of the case as they played out, I think  
14 that's true. If the case had been tried in Spartanburg -- I  
15 think there was a better case for trying it in Newberry  
16 because that's where he was declared decease.

17 THE COURT: Certainly.

18 MR. STUMBO: But that's why we took the case,  
19 obviously, instead of Solicitor Barnett.

20 THE COURT: Very good. And for the record, Mr.  
21 Verner, you would renew all motions and also request a -- or  
22 move for a new trial at this particular point in time?

23 MR. VERNER: Yes, Your Honor.

24 THE COURT: Very good. The Court will take the new  
25 trial motion under advisement. The other motions, same

1 rulings as before.

2 MR. STUMBO: Judge, and just for the record. I know we  
3 discussed this at sidebar. We object -- we do object to  
4 this interrogatory on the basis that I don't know that the  
5 law requires the jury to unanimously find which elements of  
6 subsection (a)(1) that they feel like were applicable.  
7 Maybe -- I know Your Honor said you may want it for purposes  
8 of the sentencing decision. But I don't know that legally  
9 --

10 THE COURT: I would tend to agree with you -- Well, I  
11 would tend to agree with you, Solicitor. Quite honestly,  
12 one of the reasons, because sentencing is in the sole  
13 province of this Court, one of the reasons I am curious  
14 about it, and I think you would agree certainly, at least in  
15 my mind, one who actively beats or assaults a child  
16 intentionally, kills a child, in my mind there's a greater  
17 level of culpability for that person than perhaps another  
18 person who engages in passive conduct which results in the  
19 death of a child. Maybe they should have known or did know  
20 of a serious medical condition, but for whatever reason they  
21 failed to get treatment for that child. So that, in my  
22 mind, plays into sentencing. And that's one of the reasons  
23 -- that's probably the primary reason I asked that  
24 interrogatory of the jury. They are the finders of fact and  
25 it would be inappropriate for me to speculate on whether Ms.

1 McArdle is guilty as a principal. The principal one that  
2 assaulted the child, or whether she did it in concert with  
3 the co-defendant, or whether it's a more passive conduct  
4 that is being criminalized in this case.

5 MR. STUMBO: And, Your Honor, if it's only being used  
6 for your guidance in sentencing, I don't have any problem  
7 with that.

8 THE COURT: I understand.

9 MR. STUMBO: I just think I needed to preserve that for  
10 the record if it were to affect, I mean, the legal outcome,  
11 Judge. Maybe I didn't artfully put that --

12 THE COURT: I don't know that it necessarily  
13 jeopardizes the outcome. I suppose we're about to see.  
14 Perhaps I should not have asked that question, but we will  
15 see in a few moments.

16 And you all have prepared a sentencing sheet?

17 MR. STUMBO: I do, Judge.

18 MR. DANIEL: Yes, sir.

19 (Whereupon, a brief recess was held.)

20 THE COURT: If we may, let's go back on the record. My  
21 law clerk just brought a very valid point that had not  
22 occurred to me. The jury may very well be under the  
23 impression that they have to be unanimous as to the  
24 underlying theory. It's possible that some of the jurors,  
25 four of the jurors, felt that the first scenario was

1 correct, another four thought the second scenario was  
2 correct, and then another four concluded that the third  
3 scenario was correct. And if that's what's taking them  
4 longer than what I thought it would take them, that might be  
5 why they're still back there. I realize they've only been  
6 there for 10 minutes. I think I need to clarify that.

7 MR. STUMBO: Well, Judge, I don't have a problem with  
8 maybe Mr. Verner, if you want to walk back there and just  
9 tell them that, or have your law clerk say this part's not  
10 the verdict. The verdicts done. This doesn't have to be  
11 unanimous.

12 MR. VERNER: I guess the point of me asking for the  
13 interrogatory in the first place prior to going back was  
14 because the State has presented two different possible  
15 factual scenarios of guilt, so I did think that the jury  
16 would have to find them unanimously guilty of either one  
17 side. That was what I had contemplated for was if he had  
18 beat him to death, all 12 of you agree that it would be this  
19 one. If you think it's the lack of -- it's odd that that a  
20 statute that, you know -- I understand it's one statute for  
21 one offense for the same punishment, but there are entirely  
22 different factual findings that the jury would have to find  
23 to get you to punishment.

24 MR. STUMBO: Well, and that was, I think, one of my  
25 issues, Judge. And I indicated to you for sentencing

1 purposes that's one thing. For your guidance. But for this  
2 purpose I think it's wholly inappropriate, because what  
3 we're doing at that point is, I guess, telling the  
4 Legislature that they need to add elements to this crime. I  
5 don't know. I mean, the law is what it is and it's written  
6 as it's written, but we can have our opinion of that one way  
7 or the other.

8 MR. VERNER: But this is just a case where there are  
9 factually two --

10 THE COURT: I understand.

11 MR. VERNER: -- entirely inconsistent ways to find  
12 somebody guilty of the same crime. I don't think we're  
13 going to --

14 THE COURT: I appreciate your position. Apparently we  
15 have an answer.

16 MR. STUMBO: Thank you, Judge. And quite frankly, for  
17 those reasons, Judge, we would ask that it not be published  
18 necessarily. But you can -- certainly we believe that it's  
19 appropriate for you to use as you feel necessary for  
20 sentencing.

21 THE COURT: The question they just passed to me, "We  
22 are getting different interpretations of the questions. Can  
23 you clarify acting together." The second question I asked,  
24 "Does this mean that they were together beating the child?  
25 Can you clarify neglect without knowing." |

1           At this point in time, subject to the Defendant's  
2 objection which I know is going to be made here shortly, the  
3 verdict of guilt has been found. Just ask the jury to cease  
4 their deliberations and come on out, please. I understand  
5 your desire and your reasons for wanting it, Mr. Verner, but  
6 in my discretion, I'm not going to have them struggle with  
7 this any longer.

8           (Whereupon, the jury entered the courtroom.)

9           THE COURT: Ladies and gentlemen, again, I appreciate  
10 your efforts. I'm not going to ask you all to struggle with  
11 this question any longer. The verdict has been rendered and  
12 the verdict stands. Okay? So I'm not going to impose upon  
13 you all any further. Again, I do appreciate your hard work.  
14 I do appreciate your dedication on this case. And the Clerk  
15 informs me that your checks for your jury service this week,  
16 although it will not come close to compensating you for the  
17 inconvenience and for the service that you have provided the  
18 state, your checks are, in fact, ready. They are at the  
19 security desk downstairs. If you want to stick around for  
20 jury deliberations, don't worry about going downstairs  
21 because -- if you want to stick around for sentencing, don't  
22 worry about going downstairs. You can feel free to grab  
23 whatever items you have out of there and simply have a seat  
24 over in the gallery. You may have to go around that way  
25 yet. Go around the back hallway. The deputy or the bailiff

1 will show you how to move kind of around this way. And with  
2 that, you have my thanks, and I hope you have a lovely  
3 weekend if you choose not to stick around. Okay? Take  
4 care. Thank you.

5 (Whereupon the jury was released at 6:31 p.m.)

6 SENTENCING

7 THE COURT: Solicitor, aside from the information  
8 that's already been imparted to me about the conviction in  
9 North Carolina for the misdemeanor offense, any additional  
10 criminal history that the Court wants to apprise me of?

11 MR. STUMBO: Your Honor, there was a larceny conviction  
12 in North Carolina in 2013 and it looks like a breaking and  
13 entering in 2014.

14 MR. VERNER: It says dismissed with leave.

15 THE COURT: All right. The Court won't consider it.

16 MR. VERNER: And it shows that it was a misdemeanor  
17 charge anyway.

18 THE COURT: Very good. The Court won't consider that.

19 MR. STUMBO: I'm sorry. I'm showing Mr. Verner the  
20 wrong thing. July 15th, 2014. It was trial by judge,  
21 guilty verdict in North Carolina for breaking -- breaking or  
22 entering.

23 MR. VERNER: It appears to be a misdemeanor magistrate  
24 -- or at least a misdemeanor --

25 MR. STUMBO: A misdemeanor breaking or entering.

1 THE COURT: All right. Anything further from the  
2 State? Obviously the Court is very familiar with the  
3 evidence in this case, and certainly this was an extremely  
4 aggravated assault on this child. But anything further from  
5 the State, Mr. Stumbo?

6 MR. STUMBO: Judge, just that we intend to pursue  
7 Richard Bowman, and, you know, we've never believed in this  
8 case that we need to choose one or the other here, quite  
9 frankly. We think they're both responsible for this young  
10 man's death. Judge, it's horrific. I don't even think I  
11 need to elaborate on that. It's something that we take very  
12 seriously. We'll leave sentencing in your discretion.

13 THE COURT: Certainly. Thank you, Solicitor.

14 MR. STUMBO: Thank you.

15 THE COURT: Mr. Verner, I'm happy to entertain anything  
16 that you want to say in mitigation. Obviously, anything Ms.  
17 McArdle might want to tell me.

18 MR. VERNER: Just, Judge, the -- not so much -- she's  
19 22. She was living on her own at the age 16. She was  
20 pregnant at 17. I think because of her circumstances fell  
21 into the lifestyle. And I do think Richard Bowman was a  
22 negative influence on her, Your Honor. My only point is --  
23 she's been in jail since December 30th of 2014. The crime  
24 is 20 years, violent non-paroleable at a minimum to life.  
25 My position was that because the State indicted her as the

1 one who beat the child to death that there would have to be  
2 unanimous finding either of that or of failing to provide  
3 care for the child after the beating. It is our position,  
4 Your Honor, that the child was beat to death by Richard  
5 Bowman in a violent type relationship. Twenty years without  
6 parole is a lengthy sentence. I don't think that that is  
7 what the crime -- I think the crime deserves more than that.  
8 I just want to make sure the right person pays that -- the  
9 time for it, Judge. But we would ask for a 20 years  
10 sentence. It is violent non-parolable.

11 THE COURT: Ms. McArdle, anything you want to say,  
12 ma'am?

13 THE DEFENDANT: They just found the wrong one guilty.

14 THE COURT: I understand that. I appreciate your  
15 position.

16 MR. VERNER: The only other -- I apologize, Your Honor.

17 THE COURT: No, not at all.

18 MR. VERNER: We introduced evidence. She does have the  
19 bipolar diagnosis. That could be a factor in whatever  
20 happened, Judge.

21 THE COURT: Ms. McArdle, it is -- I'm truly sorry to  
22 have made your acquaintance under these circumstances,  
23 ma'am, and I have no doubt that you've had a tough life and  
24 that you've had a tough time of things and that you've  
25 struggled, and that perhaps in many respects you did as best

1 you could. And so, I do appreciate that. And I also  
2 believe that your co-defendant, of course, based on what's  
3 been presented here today and based on his testimony,  
4 basically accepting that he is also culpable in this case, I  
5 do believe that he shares blame with you.

6 Ms. McArdle, I've said it before, and I'm somewhat  
7 compelled to say it again. The first obligation of the law,  
8 ma'am, is to protect those who can't protect themselves, and  
9 a three-year-old child clearly, clearly falls into that  
10 category. And you and your co-defendant were supposed to be  
11 the first line of defense for that child. And by this  
12 verdict, the verdict rendered today, clearly you have failed  
13 in that regard and the life of a three-year-old -- life of  
14 anyone, that's something that's irreplaceable. I think you  
15 understand that. I do believe you appreciate that. The  
16 Court has taken everything into consideration, and the Court  
17 would have to believe that a life sentence would be more  
18 appropriately reserved for individuals who have an extensive  
19 substantial criminal -- prior criminal history, or who  
20 perhaps commit the homicide in a more brutal fashion through  
21 shooting or perhaps some other method. I've taken  
22 everything in account, Ms. McArdle, and the sentence of the  
23 Court, ma'am, is that you be committed to the Department of  
24 Corrections for 30 years. You'll receive credit for the  
25 time that you have served since December the 30th of 2014.

1 And I do wish you luck, ma'am. Take care.

2 This matter is concluded except for the fact I need the  
3 Forelady to sign the indictment itself. So everyone else is  
4 excused. And I forgot to tell the jury, who is still here,  
5 but you all are now free to speak to anyone you want to  
6 about any aspect of this case. Pleasure to meet you all.

7 (END OF REQUESTED TRANSCRIPT OF RECORD.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 Certificate of Reporter

2

3 I, the undersigned, Tara T. Scott, Official Court  
4 Reporter for the Eighth Judicial Circuit of the State of  
5 South Carolina, do hereby certify that the foregoing is a  
6 true, accurate, and complete transcript of record of all the  
7 proceedings had and evidence introduced in the trial/hearing  
8 of the captioned case, relative to appeal, in the Circuit  
9 Court for Newberry County, South Carolina, on the 4th-8th  
10 day of April, 2016.

11 I do further certify that I am neither of kin, counsel,  
12 nor interest to any party hereto.

13

14

15

*Tara T. Scott*

---

16

Tara T. Scott, CVR

17

Circuit Court Reporter

18

Abbeville, South Carolina

19

July 24, 2016

20

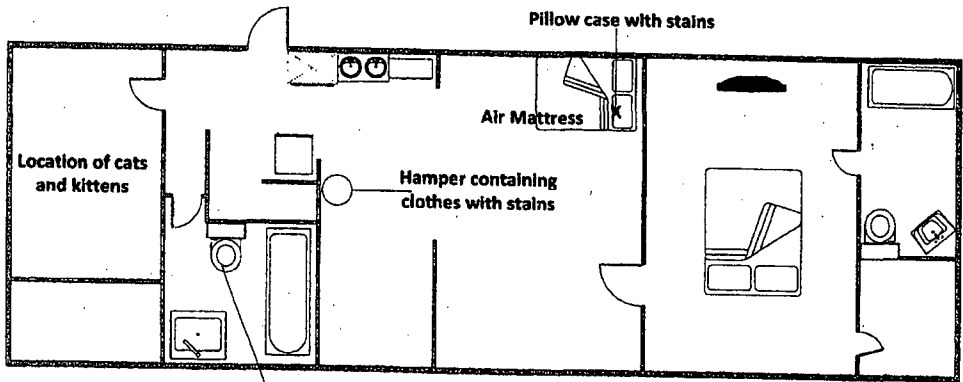
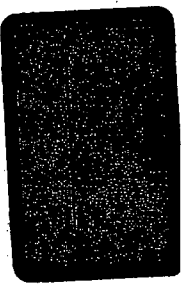
21

22

23

24

25



Toilet with red-brown substance

NOT TO SCALE  
Not all items shown

L14-16125  
Child fatality  
Newberry Police Department  
12-30-2014  
2302 Union Highway, Enoree, SC 29335  
Victim: Gabriel McArdle  
Suspect: Theia McArdle  
Suspect: Ricard Bowman  
Prepared by S/A Oliphant 01/06/2015  
Page 1 of 1

PSD



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 737-9000



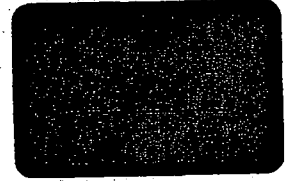
# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY  
*Governor*



MARK A. KEEL  
*Chief*



Roy McClurkin  
Newberry Police Department  
1507 Nance Street  
Newberry, SC 29108

**DNA ANALYSIS**  
July 24, 2015  
SLED LAB: L14-16125  
Your Case No: 2014-11322  
Incident Date: 12/30/2014  
[V-Deceased] G.M. [REDACTED]  
[S] Theia McCardle  
[S] Richard Bowman

---

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

---

### DNA ANALYSIS

#### ITEMS ANALYZED:

- 5.1 Dried blood standard from G.M. [REDACTED]
- 8.1 Cutting from one light colored towel from back seat of vehicle
- 9.1 Cutting from one black colored car seat cover from rear seat of vehicle
- 10.1 Cutting from one white colored "Puma" brand T-shirt with brown colored stains from rear seat of vehicle
- 18 Swabs taken from toilet in hall bathroom



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L14-16125  
July 24, 2015

Page 2 of 3

### EXAMINATIONS

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in the following table(s).

### RESULTS

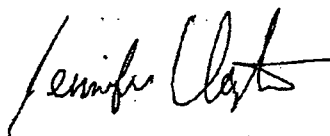
The DNA profile developed from items 8.1 and 10.1 matches the DNA profile of G.M. [REDACTED] The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 15 quintillion.

The DNA profile developed from item 18 is from an unidentified male individual and is not eligible for entry into the Combined DNA Index System (CODIS).

The partial DNA profile developed from item 9.1 is insufficient for comparison.

**Note: Any remaining evidence and/or packaging will be returned to the requesting agency.**

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*



Jennifer L. Clayton  
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014



ALI-359-T

Table 1 - Identifier Plus

Case Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	AMEL
5.1 McCardle	11,13	28,31.2	10,11	10,12	14,15	7,9,3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
8.1 Towel from back seat of vehicle	11,13	28,31.2	10,11	10,12	14,15	7,9,3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
9.1 Car seat cover from rear seat of vehicle	-	-	-	-	-	(7)	-	-	-	-	-	-	-	-	-	-
10.1 "Puma" brand T- shirt from rear seat of vehicle	11,13	28,31.2	10,11	10,12	14,15	7,9,3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
18 Toilet in hall bathroom	14	28,37	8,11	10,12	15,17	7,9	12,13	11,13	16,21	12,13.2	15,16	8,9	16,21	12,13	23,24	XY

( ) = stochastic range    - = no result    Bold = major contributor    Inc = Inconclusive



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY  
Governor



MARK A. KEEL  
Chief

Roy McClurkin  
Newberry Police Department  
1507 Nance Street  
Newberry, SC 29108

**DNA ANALYSIS**  
March 02, 2016  
SLED LAB: L14-16125  
Your Case No: 2014-11322  
Incident Date: 12/30/2014  
[V-Deceased] G.M. [REDACTED]  
[S] Theia McCardle  
[S] Richard Bowman

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

### SUPPLEMENTAL REPORT

#### DNA ANALYSIS

#### ITEMS ANALYZED:

- 5.1 Dried blood standard from G.M. [REDACTED]
- 8.1 Cutting from one light colored towel from back seat of vehicle
- 9.1 Cutting from one black colored car seat cover from rear seat of vehicle
- 10.1 Cutting from one white colored "Puma" brand T-shirt with brown colored stains from rear seat of vehicle
- 14.1 Cutting from towel
- 15.1 Cutting from front center of sweatshirt
- 16.1 Cutting from front collar area of shirt
- 17.1 Cutting from pillow case
- 18 Swabs taken from toilet in hall bathroom



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

**EXAMINATIONS**

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in the following table(s).

**RESULTS**

The DNA profile developed from items 8.1, 10.1, and 17.1 matches the DNA profile of G.M.

██████████ The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 15 quintillion.

The DNA profile developed from item 14.1 is a mixture from at least two individuals. The DNA profile of the major contributor is from an unidentified individual and is not eligible for entry into the Combined DNA Index System (CODIS). The partial DNA profile of the minor contributor is from a second unidentified individual and is not eligible for CODIS entry. G.M. ██████████ is excluded as a possible contributor to this mixture.

The DNA profile developed from item 15.1 is a mixture from at least three individuals. The DNA profile developed from the major component is consistent with being a mixture from two individuals and is not eligible for CODIS entry. The partial DNA profile of the minor contributor is from an unidentified individual, and may be suitable for exclusion but is not suitable for inclusion. G.M. ██████████ is excluded as a possible contributor to this mixture.

The DNA profile developed from item 16.1 is a mixture from at least three individuals. The DNA profile of the major contributor matches the DNA profile of G.M. ██████████. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor is approximately 1 in 15 quintillion. The partial DNA profile of the minor contributors is a mixture of at least two individuals and is not suitable for CODIS entry.

The DNA profile developed from item 18 is from an unidentified male individual and is not eligible for entry into the CODIS.

The partial DNA profile developed from item 9.1 is insufficient for comparison.

**Please submit standards from Theia McCardle and Richard Bowman for comparison.**



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014



**SLED LAB No. L14-16125**  
March 02, 2016

Page 3 of 4

**Note: Any remaining evidence and/or packaging will be returned to the requesting agency.**

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*



Jennifer L. Clayton  
Forensic Scientist



AN ASCLD/LAB-*International* ACCREDITED TESTING LABORATORY SINCE 09/19/2014



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Table 1 - Identifiler Plus

Case Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	AMEL
5.1 McCardle	11,13	28,31.2	10,11	10,12	14,15	7,9.3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
8.1 Towel from back seat of vehicle	11,13	28,31.2	10,11	10,12	14,15	7,9.3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
9.1 Car seat cover from rear seat of vehicle	-	-	-	-	-	(7)	-	-	-	-	-	-	-	-	-	-
10.1 "Puma" brand T-shirt from rear seat of vehicle	11,13	28,31.2	10,11	10,12	14,15	7,9.3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
14.1 Towel	11,13, 14	28,30, 31.2,36, 37	8,10, 11	10,12	14,15, 17,18	7,9	11,12, 13,14	11,13	16,19, 21,23	12,13, 13.2,14	15,16, 17	8,9, 11	16,21	11,12, 13	22,23, 24	XY
15.1 Center of sweatshirt	11,12, 13,14	28,30, 31.2,37	8,10, 11	10,12	14,15, 16,17, 18	7,9, (9.3)	11,12, 13,14	11,13	16,19, (20),21, 23	12,13, 13.2,14	15,16, 17	8,9, 11	16,(17), 21	11,12, 13	22,23, 24	XY
16.1 Collar area of shirt	11,13, 14	28,(30), 31.2,37	8,10, 11	10,12	14,15, (16),17, 18	7,9, 9.3	11,12, 13,14	11,13	16,19, 21,23, 26	12,13, 13.2,14	15,16, 17	8,9, (11)	16,17, 21	11,12, 13	22,23, 24,25	XY
17.1 Pillow case	11,13	28,31.2	10,11	10,12	14,15	7,9.3	12,14	13	23,26	12,14	16,17	8,9	16,17	12,13	24,25	XY
18 Toilet in hall bathroom	14	28,37	8,11	10,12	15,17	7,9	12,13	11,13	16,21	12,13.2	15,16	8,9	16,21	12,13	23,24	XY

( ) = stochastic range    - = no result    Bold = major contributor/component    Inc = Inconclusive



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

STATE OF SOUTH CAROLINA

RECEIVED THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
STATE VS. Theia Darion Mcardle

APR 20 2016

INDICTMENT/CASE#: 15GS36-0133

AKA:
Race: CAUCASIAN Sex: F Age: 22
DOB: SS#:
Address:
City, State, Zip: Enoree, SC 29335
DL#: SID#:

A/W#: 2014A3620200467
Date of Offense: 12/30/2014
S.C. Code §: 16-03-0085
CDR Code #: 2356

SENTENCE SHEET

20 years - 1 fe

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Homicide by child abuse (20Y to Life)

CONVICTED OF or PLEADS

in violation of § 16-03-0085 of the S.C. Code of Laws, bearing CDR Code # 2356
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Stumbo, David M. SC Bar# 72105 Defendant
Charlyfer 10033 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Since 12-30-2014
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
Set by SCDPPPS
Obtain GED
Attend Voc. Rehab. or Job Corp.

Recipient:
Substance Abuse Counseling
Random Drug/Alcohol testing

\*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100
§ 14-1-211(A)(2) (DUI Surcharge) \$100
§ 56-5-2995 (DUI Assessment) \$12
§ 56-1-286 (DUI Breath Test) \$25
Proviso 47.9 (Public Def/Prob) \$500
§ 14-1-212 (Law Enforce. Funding) \$25
§ 14-1-213 (Drug Court Surcharge) \$150
§ 50-21-114(BUI Breath Test Fee) \$50
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea
Proviso 90.5 (SCCJA Surcharge) \$5
3% to County (if paid in installments) \$
TOTAL \$133

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund

Other:

SCANNED

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Elizabeth O'Neil
Court Reporter Tara Scott
SCCA/217 (03/2011)

Presiding Judge Judge Code: 2157
Sentence Date: April 7, 2016
April 8, 2016

**WITNESSES**

Roy McClurkin  
Newberry Police Department

**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

**COURT OF GENERAL SESSIONS**

April Term, 2015  
Indictment # 15GS36-0133

**WARRANT NUMBER**

2014A3620200467

**THE STATE**

vs.  
Thera Darion Mcardle

**TRUE BILL**

*Phyllis Sanders*  
Foreman of the Grand Jury

Date: 4-2-15

**INDICTMENT FOR**

Homicide by Child Abuse  
§16-03-0085

CDR: 2356

**VERDICT**

*Guilty*  
*Keef P. Ring*  
Foreman 4-8-16

**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

**INDICTMENT FOR**

**Homicide by Child Abuse**

**§16-03-0085**

At a Court of General Sessions, convened on the 2nd day of April, 2015, the Grand Jurors of Newberry County present upon their oath:

That Theia Darion Mcardle did, on or about December 29, 2014 to December 30, 2014, in Newberry County, willfully and unlawfully cause the death of a child under the age of eleven (11) years, to wit: one G.M. (DOB: [REDACTED]), while committing child abuse or neglect as defined in Section 16-3-85(B) of the South Carolina Code of Laws, 1976, as amended, and the death occurred under circumstance manifesting an extreme indifference to human life, in violation of Section 16-3-85(A)(1) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

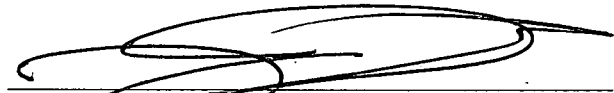


Assistant Solicitor

## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John K. Strom  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 15th day of August, 2017.

**RECEIVED**

AUG 15 2017

SC Court of Appeals