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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL D. WILSON,

APPELLANT

APPELLATE CASE NO. 2022-000783

RECORD ON APPEAL

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

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

JOSHUA A. EDWARDS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
(803) 734-2508

ATTORNEY FOR APPELLANT

KEVIN S. BRACKETT
Solicitor, 16th Circuit
1675 York Highway
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA.

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2018-GS-46-01856

7 DARRELL D. WILSON. JR.,

8 Defendant.

9 -----x

10 May 23-26, 2022

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE J. DERHAM COLE

15

16 A P P E A R A N C E S:

17 CHRISTOPHER EPTING &

18 SHARON KOPP O'HAYON

19 Attorneys for the State

20

21 BELINDA BUTLER & JAMES BOYD,

22 Attorneys for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

1 MS. O'HAYON: We are requesting that the defense
2 reframe from referencing any potential penalties for
3 any of the charges in the presence of the jury. It's
4 just one charge.

5 THE COURT: What is the defense's position?

6 MS. BUTLER: No objection.

7 THE COURT: All right. You all are in agreement.
8 Number four.

9 MS. O'HAYON: We are requesting that the defense
10 be precluded from eliciting testimony from Majorie
11 Rogers, that's the biological mother, regarding her
12 opinion whether the defendant's actions were
13 intentional.

14 THE COURT: All right. What say the defendant?

15 MS. BUTLER: Objection, judge. I think that will
16 have to come out at trial as to whether her opinions
17 are admissible or -- depending on what all she
18 testifies to I think that has to be flushed out. I
19 don't think there is any way to just know what she is
20 going to say and to certainly rule on that in advance.
21 Of course we have a statement from her.

22 THE COURT: All right. Does the statement address
23 this question?

24 MS. O'HAYON: Your Honor, she makes a couple of
25 statements where she says more or less that she thinks

1 that maybe the baby was dropped and she doesn't think
2 that the defendant did it intentionally.

3 THE COURT: Was she present when the event
4 occurred?

5 MS. O'HAYON: No, Your Honor.

6 THE COURT: Well, okay, she's not going to give an
7 opinion about what could have happened or might have
8 happened. If she testified what she saw and observed
9 and the State asked her a question like that obviously
10 she can answer, but she can't give an opinions on that
11 if she was not present.

12 MS. BUTLER: She was present. She was the one
13 that did the 911 call. She is the one that took the
14 baby to EMS.

15 THE COURT: She was a witness to the event?

16 MS. BUTLER: What event? We don't know if it
17 there was an event. We just know that she is the one
18 than found the baby in the house.

19 THE COURT: There had to be some event or we
20 wouldn't be here in court today.

21 MS. BUTLER: We don't know if there's an event. I
22 think the experts disagree that there was an event.

23 THE COURT: There was an event involving a child
24 that resulted in EMS coming, wasn't there?

25 MS. BUTLER: That was some vaccinations of the

1 baby a couple days before. There's some other --

2 THE COURT: What I'm saying, there's an event
3 involving some harm to this child. Whether it was
4 caused by the defendant or somebody else we don't
5 know.

6 MS. BUTLER: She was present. She's the one that
7 found the baby and she believed the baby was limp and
8 was not crying. She was the one present. She was the
9 one who called 911. My client did not believe
10 something was wrong with the child. She believed it
11 so she called 911. She got the ambulance. She was
12 the whole everything.

13 THE COURT: But she wasn't a witness to any event
14 that caused the child to have to be taken to a
15 hospital.

16 MS. BUTLER: What event? We really don't think
17 there's an event.

18 THE COURT: Okay. Well, maybe we're being too
19 picky here, but the child had an event. The child
20 went to a hospital?

21 MS. BUTLER: The child was in the hospital.

22 THE COURT: And for no reason or a yearly checkup
23 or what?

24 MS. BUTLER: Probably from vaccinations causing
25 having seizures.

1 THE COURT: That would be a event. So the child
2 had an event that required medical treatment.

3 MS. BUTLER: That would have been the vaccinations
4 two days before and she was present for those. She
5 took the child to those.

6 THE COURT: So you believe the child suffered some
7 event two days before this day?

8 MS. BUTLER: I don't know what happened to the
9 child. There's nothing that happened that my client
10 found.

11 THE COURT: I understand that. When I talking
12 about an event, I'm talking about something occurred.
13 I understand we don't know what or there's a dispute
14 about it, but something happened that caused this
15 child to be be taken to the hospital. Is that
16 accurate or am I am just trying to predict too much?

17 MS. BUTLER: I think you're trying to predict too
18 much.

19 THE COURT: So you don't think the child needed to
20 go to the hospital to start with?

21 MS. BUTLER: The child apparently needed to go
22 whenever everybody found out after the fact. What
23 happened was --

24 THE COURT: So then there was an event that caused
25 the child to have to go to a hospital for medical

1 treatment?

2 MS. BUTLER: Yes, and the mother took the child to
3 the event. The mother took the child to the
4 vaccination. So the mother was present and the mother
5 was present when she saw the child not breathing.

6 THE COURT: I'm talking about an event that
7 required immediate treatment by medical personnel for
8 a child.

9 MS. BUTLER: The mother was present. She's the
10 one that called. She's the one that saw the child not
11 breathing or what she classified as not breathing.

12 THE COURT: Okay, that's an event for the child.
13 Whether you think it was or not I bet that child
14 thinks that was an event. So that's what I'm
15 classifying as an event.

16 I'm not suggesting anybody is responsible for it,
17 personally, but there was an event that occurred that
18 required medical treatment to the child. Is that
19 true?

20 MS. BUTLER: That's right and she was present, the
21 mother.

22 THE COURT: Now, when you say the mother are we
23 referring to the biological mother or the adoptive
24 mother?

25 MS. BUTLER: Never changed that DNA. She's the

1 biological mother of the child, so I refer to Marjorie
2 Rogers as the mother of the child.

3 THE COURT: Are you suggesting that someone who
4 has adopted a child can not be described as the
5 child's mother?

6 MS. BUTLER: No, I just think we need to figure
7 out terms for now as to who will call who. I'm just
8 used to calling her the mother because I've been in
9 the case for so long and the DSS case.

10 THE COURT: "Her" is who?

11 MS. BUTLER: I'm not opposed to whichever terms
12 that the State wants to use to call them.

13 THE COURT: Why don't we just use their name.
14 Let's do that. That way it won't be confusing.

15 MS. BUTLER: I think that's an awesome idea.

16 THE COURT: So who are you referring to?

17 MS. BUTLER: So, I'm referring to Marjorie Rogers,
18 the one that the State made the motion to exclude
19 references.

20 THE COURT: Okay. Well, as I understand what the
21 State is moving to exclude is her opinion about any
22 participation that relates to this child by your
23 client. Not -- I don't think the State tried to
24 exclude any reference to Marjorie.

25 Is she not on the witness list? They're not

1 saying you can't refer to Majorie Rogers. They made a
2 motion to exclude Majorie Rogers giving an opinion
3 about your client.

4 MS. BUTLER: Yes, Your Honor. I don't agree.

5 THE COURT: You don't agree with what I just said?

6 MS. BUTLER: I don't agree with her motion.

7 THE COURT: I understood that, but I was just
8 pointing out the fact that they didn't say you
9 couldn't refer to Majorie Rogers which is what you
10 told me.

11 MS. BUTLER: Judge, I just called her the mama
12 because I'm just use to calling her mama. I think you
13 asked me who I was referring to and I said the mother.

14 THE COURT: I did.

15 MS. BUTLER: The biological mother. If they want
16 to call her the biological mother then call the other
17 lady --

18 THE COURT: We will call everybody by their names.
19 That way there won't be any issue about that.

20 MS. BUTLER: Sounds good. Yes, sir.

21 THE COURT: All right. In any event, if you
22 intend to elicit any testimony about Majorie Rogers'
23 opinion about whether or not the defendant has done
24 anything, that can not be done until the jury is
25 excused and we will address that outside of their

1 presence. It could be that it's admissible. Might be
2 that it's not. But it's not going to be come in until
3 it's ruled to be admissible.

4 MS. BUTLER: I understand. Thank you, Your Honor.

5 THE COURT: All right. Next and last.

6 MS. OHANYON: Your Honor, we are requesting that
7 the defense be precluded from eliciting testimony
8 regarding any DSS cases against Majorie Rogers.

9 THE COURT: What say the defense?

10 MS. BUTLER: We don't agree with the motion, Your
11 Honor. I think it's all relevant.

12 THE COURT: Well, give my your position.

13 MS. BUTLER: It's all relevant as to my client.
14 My client has the absolute right to defend himself.
15 If there is some information that is relevant under
16 the rules of evidence as the case unfolds then we
17 would submit that it definitely comes in.

18 THE COURT: Well, I think all relevant information
19 that's not unduly prejudicial ought to come in. I
20 agree with that.

21 MS. BUTLER: Thank you.

22 THE COURT: So you're just saying you don't agree
23 whether it's relevant or not right now, or you don't
24 think it has been established?

25 MS. BUTLER: I don't think it's been established.

1 participate in. So I do want to thank you in advance
2 for your participation as well as for your careful
3 attention.

4 I would ask that you please give the lawyers your
5 attention now as they give you their opening
6 statements.

7 THE COURT: Mr. Epting.

8 MR. EPTING: Thank you, Your Honor. May it
9 please the Court. Defense counsel.

10 December of 2017, Majorie Rogers left her son,
11 **N.W.** in the care of the defendant at his house on
12 Jack Wilson Road in York County. You will hear during
13 the course of this trial that Majorie Rogers and the
14 defendant seated over there at defense counsel table
15 had an on and off again relationship and on this
16 particular night they were off. Nonetheless, the
17 defendant said he wanted to have the child over. He
18 wanted to have a night with the child that he was
19 claiming kind of fatherly roll with the child. So
20 Majorie brings him over. Brings him over with car
21 seat, with all his supplies and she leaves him. She
22 checks up on him around midnight that night and the
23 testimony will be that the child was there sleeping on
24 a bed. Nothing wrong. Nothing amiss. At that point
25 she goes home where she lives with her mother, just

1 again, right down the road and she went to sleep. She
2 woke up the next morning to multiple contacts from the
3 defendant telling her to come get N.W. Come get
4 N.W. He won't stop crying. So she does. She gets
5 in her car. She drives out to Jack Wilson Road and
6 she picks N.W. and as she pulls into the yard she
7 hears her baby crying, crying outside. That's how
8 loud it was. So she goes in to check on him. He's in
9 his car seat. She leans down to pick him up and N.W.
10 goes limp. His arms splayed out to the side, his legs
11 splayed out to the side. Not normal she will testify.
12 Not N.W.

13 So at that point, understandably, she'll testified
14 she starts freaking out. Let's call 911. He needs
15 medical help. Look at him. And the defendant says,
16 no, your overreacting. I am not calling 911. Take
17 him. So she leaves. She calls her mom who lives just
18 right down the road who has some medical training.
19 Drives there probably very, very fast, and she brings
20 that baby into her momma's trailer. Her mother will
21 testify what she saw and heard that day. They'll
22 testify that leading up to this N.W. was a normal
23 developing four month old infant. Nothing amiss.
24 Normal. Growing. You'll hear that was not the same
25 child that was brought into the grandmother's house on

1 the morning in question. That child was limp. That
2 child was nonresponsive. That child was having
3 seizures. Never had one before the testimony will be.
4 Very shortly after she arrives EMS arrives, law
5 enforcement arrives. All kinds of help arrives. All
6 kinds of cars fill up that yard. EMS treats N.W.
7 They take his vitals and you will hear through other
8 testimony that his body temperature was 92 degrees and
9 I submit that will become significant as the case goes
10 on.

11 He's taken to the hospital where he is put on a
12 ventilator. He continues having seizures even in the
13 ambulance as they're taking him to the hospital,
14 again, never having had them before -- where he
15 receives treatment. Where they figure out what is
16 wrong with him. They take scans of his brain. They
17 take his vitals and they diagnose him.

18 You will hear from a pediatrician who is an expert
19 in child abuse trauma and particularly in abusive head
20 trauma, what is formerly known in the news as shaking
21 baby syndrome. It's not called that anymore. It's
22 called something different. And she will testify
23 about her review of N.W.'s records. Her review of
24 N.W.'s physical exam and her findings on how those
25 injuries inside that baby's skull could have, must

1 have happened within a reasonable degree of medical
2 certainty. She'll testify that it's a massive head
3 injury. She'll testify it was an internal head
4 injury. No bruising outside reported or seen that
5 could have caused that type of injury inside that
6 baby's brain. And she'll testify about her other
7 findings after reviewing the evidence that has been
8 provided to her and after reviewing the medical
9 records.

10 After **N.W.** was in the hospital and after
11 proceedings began he was sent to live with a new
12 family. He's been adopted by a new family and you
13 will hear from that family. You will hear about his
14 life now. You will hear about the seizures that he
15 has every day after his night alone with the
16 defendant. You will hear that he will never be the
17 same. You will hear that through testimony that he
18 was normally developing four month baby. No seizures.
19 No problems. And you will hear that now for the rest
20 of his life he will have seizures due to brain
21 injuries after his night along with the defendant.

22 After the close of the case, after all the
23 evidence is in, we will get up and have an opportunity
24 to tie in some of the things that you will hear over
25 the course of the next couple days and we ask that you

1 find the only verdict that is substantiated by the
2 facts, that is substantiated from the evidence that
3 you will here in courtroom. I will ask that you find
4 the defendant guilty.

5 Thank you.

6 THE COURT: Miss Butler.

7 MS. BUTLER: Burden is the word that I heard the
8 judge when he was talking to you and giving you the
9 instructions, the word burden, the term burden. He
10 used it about six times. Maybe more. I will use it a
11 few more because I think it's very important for us to
12 understand what we mean by the term burden when you
13 have a criminal case. I represent the defendant. The
14 process is as Judge Cole described it to you, the
15 State goes first. They present their case. Then we
16 go second. The burden is upon the State to show all
17 the evidence that they are submitting to you. What
18 they are just laying out to you and I know you will
19 remember everything that the solicitor just said to
20 you. All the facts that he was just pointing out that
21 they'll show. So I hope that you will listen to
22 everything that's testified to from the stand and
23 you'll come back to what you were just told of what
24 you were just going to be shown because it's their
25 burden. The burden rests upon the State.

1 When the judge talked about proof beyond a
2 reasonable doubt, burden and proof beyond a reasonable
3 doubt go hand in hand. You have to have the proof and
4 you all decide. So you all are the only ones. You're
5 very special. You're the ones that can decide if that
6 burden of proof beyond a reasonable doubt has been met
7 in this courtroom this week. Nobody else will decide
8 that for this baby, for this man, for this family.
9 Nobody will decide that but you all. Proof beyond a
10 reasonable doubt that what the State claims happened
11 to **N.W.** happened to **N.W.** because I wasn't there. Mr.
12 Epting wasn't there. All these witnesses that you are
13 going to hear from they were not there. Majorie
14 Rogers, the biological mother of the child, she came
15 up when something happened. Something was going on.
16 There's no doubt that **N.W.** had to received medical
17 attention. So Majorie is going to testify as to what
18 she saw when she came on the scene, but the rest of
19 the people, you know law enforcement they kind of go
20 back and they piece the puzzle together after the fact
21 of what they have. They work with what they got. The
22 child's grandma, she's going to testify to what she
23 saw when the child came over to her house that
24 morning. What she saw of the child. So you're going
25 to hear from the people who saw the child afterwards,

1 but you're going have to put the stuff together
2 yourself because nobody was present with Darrell and
3 **N.W.** at this time. And you will hear that Darrell
4 only had **N.W.** in his care for a short period of time.
5 That's what the prosecutors already told you. He told
6 you that she -- he and the mother were on again, off
7 again. They were off at this time and the mother had
8 brought the baby over the night before. So you have
9 to -- when your listening to what they're saying from
10 the stand you got to listen to what they're not
11 saying. It's my job to point out to you in the end
12 what they're not saying, but I'm going to point out to
13 you right now so you can think about it as they
14 testify, what they're not saying and what they're not
15 showing you. You don't have any bloody diapers. You
16 don't have any blankets. You don't have any blood on
17 the scene whatsoever that they're going to show you.
18 You don't have any -- you just don't have anything.
19 There's no evidence that is going to be presented here
20 of what could have happened. An object that could
21 have been used to hurt this baby. So you think about
22 that as the witnesses testify of what you don't have.
23 And let me talk to you for a minute about Dr. Lamb.
24 The defendant -- so there's a Dr. Susan Lamb. She's a
25 a child abuse doctor. I don't know what other term to

1 call her at this minute. But she came in and she
2 checked N.W. out and she made some diagnosis. So
3 she's going to testify and I will tell you in the end
4 this is really what it's going to come down to. You
5 will have Dr. Lamb that's going to testify as to what
6 she saw you and then you will have a doctor who is
7 actually a pediatric doctor who reads brain scans to
8 tell you what he read as to what happened with N.W.
9 after all is said and done. He's going to testify
10 last in this case. He's going to be your last witness
11 not because -- that's the way -- it's just the way
12 that the system works. The judge explained to you the
13 State gets to go first. They present all their
14 witnesses first. The defendant gets to go last. So
15 that doctor who is the pediatric brain doctor did he's
16 going to testify to you last just because that's the
17 defendant's case. That's how we have to present our
18 case is last.

19 So, as you go through you will hear all this stuff
20 all the way through for some days before you ever get
21 to hear anything from the defendant. And so, I am
22 just asking you through that whole process if you can
23 just keep that mind open for what you're going to hear
24 in that regard.

25 When you talk about the presumption of innocence

1 that the judge has told you about, the presumption
2 that still sits with Darrell Wilson as he sits right
3 here right now, the presumption that has sit with him
4 since 2017 as this case has been pending to make it
5 through the system. The presumption that's going to
6 sit with him all this week and the presumption that is
7 going to go back there in the jury room with you. The
8 presumption, let me talk to you about the term, legal
9 term presumption because you might not hear that word
10 a lot out in the real world. But presumption, we
11 presume when we're driving down the road and we come
12 to a stop light, the light above if the light is green
13 we automatically presume that car in front of us is
14 going to go through the green light. They're not
15 going to stop. That's our presumption. So, we're
16 carrying along with our business presuming that the
17 car is going to continue on through the green light
18 and they're not going to stop at the green light.
19 That's the same with Mr. Darrell Wilson here this
20 week. We are presuming that he did not do this. We
21 are giving him every benefit of every doubt that he
22 did not hurt **N.W.** That's the presumption that the
23 law has put here. That's not what we put here.
24 That's the law. That's how this process works and
25 there's a reason for that. That's because all kind of

1 people smarter than me and Mr. Epting come up and said
2 this is the way the due process works because they
3 understand how our brains work. So understanding we
4 are presuming this entire time, just like we presumed
5 that that car is going to continue run through the
6 green light, we're presuming Mr. Wilson did not do
7 that and that's how your viewing this evidence. That
8 Mr. Wilson did not do this because as of right now he
9 sits here and he is innocent.

10 Thank you.

11 MR. EPTING: The State calls Sherry Rogers, Your
12 Honor.

13 SHERRY ROGERS, called as a witness, having been
14 duly sworn by the clerk, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. EPTING:

18 Q Good afternoon, Miss Rogers.

19 A Goods afternoon.

20 Q How are you doing?

21 A I'm all right.

22 Q Been better?

23 A Been better days.

24 Q Is your mic on?

25 A I'm a not sure.

1 Q It seems to be picking it up. Miss Rogers, could you
2 please state your full name for the record.

3 A Sherry Rockhold Rogers.

4 Q Where are you from?

5 A Originally from Rock Hill, but I live in Hickory Grove.

6 Q How long have you lived in Hickory Grove?

7 A About six years.

8 Q Okay. And are you working now?

9 A No, sir.

10 Q Are you disabled?

11 A Yes.

12 Q What did you do prior to that?

13 A I worked for Interim Health Care.

14 Q And who is Majorie Rogers to you?

15 A She's my daughter.

16 Q And who is N.W. [REDACTED] to you?

17 A That's my grandson.

18 Q And I want to bring your attention to December 22nd of
19 2017. Do you remember that night, that day?

20 A Yes.

21 Q At some point did -- at some point did Majorie bring
22 N.W. for a sleep over at the defendant's house?

23 A Yes, she did.

24 Q Where did the defendant live at this time?

25 A It's in Sharon. I forget the name of the road.

1 Q Is that in York County?

2 A Jack Wilson Road.

3 Q Jack Wilson?

4 A Yes.

5 Q And that's in York County?

6 A Yes.

7 Q What was the relationship between the defendant and

8 Marjorie?

9 A They were boyfriend and girlfriend. They -- she had

10 left him the day before.

11 Q So they were not together at the time that this

12 happened?

13 A No.

14 Q And who was the defendant to N.W. [REDACTED]

15 A His -- his dad, stepdad.

16 Q Was that baby his?

17 A No. No, sir.

18 Q Did he claim him?

19 A Yes.

20 Q And you said that Marjorie took N.W. over to Jack

21 Wilson Road for a sleep over, is that correct?

22 A Yes, sir.

23 Q And who, if anyone, was living with you at the time

24 that this happened?

25 A It was me, my husband, my granddaughter we live there

1 and then Marjorie had stayed there -- well, and my oldest
2 daughter and then Marjorie and the baby came.

3 Q So Marjorie wasn't there permanently?

4 A No. She was just there overnight.

5 Q And what time did Marjorie take **N.W.** over to Jack
6 Wilson Road?

7 A I would say around 7:30ish in the evening. DJ had
8 called and asked if she would bring the baby over for him to
9 see.

10 Q This will be a dumb question, but had you had a chance
11 to see **N.W.** prior to this day?

12 A Yeah. Many. Yes.

13 Q And was **N.W.** a normally developing baby?

14 A Oh, yes, sir. Yes, sir.

15 Q Did he have any type of deficits whatsoever?

16 A No, sir.

17 Q Was he crawling at the time this happened?

18 A No.

19 Q Was he able to lift his head up?

20 A He could move his head up a little. Yeah, not
21 steadily. He just started holding a bottle.

22 Q All right. Going back to 22nd approximately what time
23 did Marjorie leave with **N.W.**

24 A I would say around 7:30.

25 Q 7:30?

1 A Yes, sir.

2 Q And did Marjorie stay out long or did she come back?

3 A At that point she just took the baby and came back.

4 Q Okay. And did Marjorie leave the house prior to the
5 next morning in any way, shape, or form?

6 A She did, yes, sir. She left later on that night. She
7 had some things going on with her daughter, her oldest daughter
8 and she wanted someone to talk to. So she did. She left for
9 like an hour.

10 Q Let me ask you this, had she had anything to drink
11 prior to her leaving?

12 A She did drink a beer I think.

13 Q Was she intoxicated?

14 A No. No, sir.

15 Q Would you have let her drive that car if she was
16 intoxicated?

17 A No. Absolutely not.

18 Q How long was she gone for?

19 A I would say about an hour maybe. At tops. Maybe just
20 a little over.

21 Q Did she come back to the house that night?

22 A Oh, yes, sir.

23 Q You said after an hour?

24 A She was home by 12:30.

25 Q And what was her demeanor when she came home?

1 A She was fine. She was just still upset, you know.

2 Ready to go to bed. She just had a rough day.

3 Q You said ready to go to bed?

4 A Yes.

5 Q Did she?

6 A Yeah, after we talk for a few minutes she went to bed.

7 Q And walk me through the after -- what time did you wake
8 up the next morning?

9 A The next morning -- I got diabetes and I wasn't feeling
10 very good so I know I woke up a couple of times and she told me
11 to go back to sleep but DJ had kept texting her to come get the
12 baby.

13 Q You said DJ had kept texting to come get the baby?

14 A That's what she had told me, DJ was texting her so she
15 took a shower.

16 Q Hold on a second. Who is DJ?

17 A N.W.'S dad. N.W.'S stepdad.

18 Q The defendant?

19 A Yes. Yes, sir. He had the baby over night.

20 Q Gotcha. And so DJ, the defendant, was texting her to
21 come get the baby?

22 A Yes, sir.

23 Q And did she?

24 A She did, yes, sir.

25 Q And at some point did you have contact with Marjorie

1 shortly after that?

2 A Yes, sir. She -- she -- I got on up because she had my
3 granddaughter that lives with me and I got up because Marjorie
4 had ordered breakfast and she never even ate her breakfast I
5 don't think. She responded to his message come get the baby.
6 So she went to go get the baby. She was gone for probably about
7 20 minutes or so and returned home with the baby but she called
8 me in between there.

9 Q Okay. And before we get to that phone call, without
10 saying what she said, what was her emotional state when she
11 called you?

12 A Oh, when she called me after she left. She was
13 screaming and crying and told me something was wrong with the
14 baby.

15 Q Remember as close as possible what she told you about
16 that.

17 A She just kept saying mama, mama, something is wrong
18 with the baby. He's not breathing, mama, but DJ took the phone
19 from her and told me Marjorie was overreacting.

20 Q And do you have medical training?

21 A Yeah.

22 Q Tell the jury about what medical training you have?

23 A I work with Interim Health Care from like '99 to 2011,
24 I think. I worked in the hospital. I did home health in the
25 hospital and different places for Interim Health Care.

1 Q So you worked in the medical field for approximately 20
2 years?

3 A Yes.

4 Q And she calls you for help?

5 A Yes, sir.

6 Q Does she do anything other than call you for help that
7 day?

8 A Well, she was panicking, you know. She didn't know
9 what to do, so yeah, she called me that day and I just told her
10 to bring the baby home and knew. I could tell. I'm a momma. I
11 court tell there was something different in he voice even though
12 DJ said there was nothing wrong. That she was overreacting.

13 Q And how far away was your house from Jack Wilson Road?

14 A Exactly six minutes.

15 Q And did Marjorie show up with N.W.

16 A She did.

17 Q Tell the jury about that?

18 A When Marjorie walked in with my grandson in her hands
19 he was limp. There was nothing. His legs were dangling. His
20 arms were back and nothing. But I had already called 911. As
21 soon as I hung the phone up with Marjorie I told her to get the
22 baby. DJ had took the phone from her and told me there's
23 nothing wrong with the baby. That she was overreacting, but I
24 could tell it, you know, you got kids you know there's a
25 difference in their voice and there was difference in Marjorie's

1 voice. So I called my niece which is a paramedic and she told
2 me to go ahead and call 911 and I said, well, the baby is not
3 here yet. She said that does not matter. Call them and get
4 them there. Told them the baby was on the way.

5 Q And describe again the baby's condition, **N.W.'S**
6 condition, when he comes into your house?

7 A He was -- I mean like a deceased baby. I've held one
8 deceased baby. That was my grandson.

9 Q What if any sounds was he making?

10 A He couldn't. He was like -- you see his chest go in a
11 little bit and from time to time and, you know -- but he
12 couldn't -- he wasn't doing anything. I never heard too much
13 noises out of him at the time.

14 Q At some point did he begin to have seizure episodes?

15 A It all happened so fast because as soon as -- I didn't
16 witness no seizure activity at all to me because as soon as she
17 walked in the door with him, like I said, I was still on the
18 phone with 911. They brought the baby in and they changed him
19 because his diaper was soaked. I mean his outfit everything was
20 soaked, you know. They laid him in the recliner and they
21 changed him. At about that time the ambulance was already
22 pulling in the yard and of course I guess the guy didn't want to
23 take the baby from Marjorie. So Majorie took him to the
24 ambulance where they worked with him.

25 Q What happened inside the ambulance?

1 A I just know that they worked with him. I had to stand
2 alone. I was listening to them, you know, trying to set up a
3 landing zone. But I just heard them say they didn't have no time
4 for a landing zone. They needed to get the baby to -- send the
5 helicopter to Piedmont. They're heading to Piedmont with him
6 and I guess trying to get him stabilized. I didn't get to see
7 him during all that time. So the next time I got to see him he
8 was on a ventilator

9 Q And where was that?

10 A He was at Levine's in Charlotte.

11 Q There are tissues up there if you need a tissue?

12 A I'm sorry.

13 Q So prior to December 21st, December 22nd, what in any
14 problems, what if any deficits, what if any health problems did
15 **N.W.** have?

16 A He didn't have any health problems. He was healthy. A
17 happy baby.

18 Q Was he showing any of the symptoms after he got home
19 from the defendant's house that he was showing before that day
20 or that night?

21 A No, I'm telling you he was healthy. Healthy and just
22 happy.

23 Q That's all the questions I have at this time. Please
24 answer any questions defense counsel has for you.

25 CROSS EXAMINATION

1 BY MS. BUTLER:

2 Q Miss Rogers, when is the last time you saw N.W.

3 A The last time I saw him -- I have seen him since then.
4 We had birthday party for him.

5 Q This birthday?

6 A No, its been a couple of years back, I don't -- I don't
7 have him. I mean, I don't get to see him very often.

8 Q Which birthday was it?

9 A It was his first.

10 Q You saw him for his first birthday?

11 A Yes, sir. I mean, yes, ma'am.

12 Q That's the last time you saw him?

13 A No, actually I've seen him was it Christmas, maybe two
14 -- two maybe three years ago. Two. Two years ago Christmas.

15 Q Two or three years ago you saw him at Christmas and you
16 saw him when he turned one?

17 A Yes.

18 Q Do you know how old N.W. is now?

19 A Yeah, he's almost five.

20 Q Is N.W. still with Marjorie?

21 A No, ma'am.

22 Q N.W. does not live with Marjorie?

23 A No, he does not.

24 Q Marjorie is your daughter?

25 A Yes.

1 Q Who is N.W.'s mother?

2 A Right.

3 Q You said it was 7:30 when Majorie took the baby to
4 Darrell on December 22nd of 2017?

5 A Approximately around there.

6 Q Approximately 7:30 p.m.?

7 A Yeah. Yes, ma'am.

8 Q You said she was gone for over an hour and I didn't get
9 that if it was when she took him at 7:30 or when she went to
10 check him on later that night?

11 A At 7:30 she was going to take the baby to DJ and I had
12 a few things I needed to get from the Dollar General there in
13 Sharon. It's like a Walmart. And she was to pick my husband up
14 when he got off work. His ride dropped him off right at the
15 stores right there in Sharon. Yeah, about an hour maybe.

16 Q So when she dropped -- when Majorie dropped off N.W. at
17 Darrell's house around 7:30 she was gone for about an hour and
18 then she came back?

19 A Oh yeah, she come back whenever my husband texted me.
20 She came straight back. She picked him up and come home.

21 Q And then later you said she was home by 12:30.

22 A Yes, ma'am.

23 Q So did she go back out later that night?

24 A She went to DJ's, yes, ma'am.

25 Q And she stayed gone about an hour then?

1 A Yes, ma'am.

2 Q All right. So she went back to -- Marjorie, your
3 daughter, went back to Darrell's house that night around
4 midnight?

5 A Yes, ma'am. She was upset and about a situation with
6 her daughter and I guess DJ was somebody she thought she would
7 spend her life with. They were going to be together for a while
8 and if this hadn't have happened then they probably would have
9 been together, maybe. I don't know what the future would hold
10 but regardless I guess she wanted somebody to speak to. To talk
11 to. She confined in him, and so, yes, she went there.

12 Q Okay. So while **N.W.** was at Darrell's house Marjorie
13 went back over there and stayed about an hour?

14 A Yes, ma'am.

15 Q She was home by 12:30?

16 A Yes, ma'am.

17 Q And you know she was home by 12:30"

18 A Yes, ma'am.

19 Q Were you up talking go to her?

20 A Yes, ma'am.

21 Q And you say the next morning she had ordered breakfast
22 but didn't get to eat it. Where did she order breakfast?

23 A C & N convenient store in Hickory Grove.

24 Q Okay. And when -- when Marjorie left to go get **N.W.**
25 this next morning, is that your testimony? She left from your

1 house to go get N.W.

2 A Yes, ma'am.

3 Q Were you awake?

4 A Yes, ma'am.

5 Q Were you still in bed?

6 A No, not at that time. I had got up right before she
7 left.

8 Q Okay. So you were still in the bed until she said she
9 was leaving?

10 A Well, actually until she was going to the store to get
11 the sandwiches. She went to go pick the breakfast up which is
12 just like two minutes away from my house and she come back in
13 put the food down.

14 Q All right. So when she left to go get the breakfast
15 that morning you got up out of the bed?

16 A Yes, ma'am.

17 Q And you say you have been in the medical field for 20
18 years?

19 A At least, yes, ma'am.

20 Q That was in 1999 to what year?

21 A That for just interim until 2011 and I work with York
22 County counsel on aging..

23 Q So from 1999 to 2011 you were in the medical field?

24 A Yes.

25 Q So for 11 years?

1 A But that was mainly at the hospital for interim health
2 care. I worked for different places also.

3 Q From 1999 to 2011?

4 A No, I started probably in medical -- I know I started
5 in '93 with medical.

6 Q Okay. All right, so the explanation you gave earlier
7 you were in medical from 1999 --

8 A That was with interim.

9 Q -- that was at that specific place?

10 A Yes, ma'am, but just with one company. They sent me
11 wherever. I mainly worked in the ER at Piedmont Medical Center.

12 Q Okay. What did you do at the ER at Piedmont Medical
13 Center?

14 A Just different stuff really. I mean just nursing, C an
15 A. Just different stuff in ER.

16 Q C and A. What is that?

17 A Certified nursing assistant.

18 Q And you did that a lot in ER?

19 A Oh, yes. Yes, ma'am.

20 Q When Marjorie pulled up with **N.W.** that morning did you
21 attempt to do PCR on **N.W.**

22 A No, ma'am. When Marjorie pulled up with the baby and
23 she brought in with **N.W.** in her hands like that (indicating) and
24 I mean, I'm sorry, they do teach us not to panic but when it's
25 your grand baby lifeless like that I don't know. I lost it, but

1 I was on the phone with 911 and when she walked through the door
2 she had enough time to take his clothes off and change his
3 diaper. The paramedics were already in the yard. They were
4 already there. I was on the phone. As soon as I hung the phone
5 up with her when she was still at his house I told her put the
6 baby in the car. Get the baby here now. And like I said it's
7 six minutes. I've timed it time and time again. Six minutes
8 and she was there with the baby, but I was still on the phone
9 with 911.

10 Q She brought the baby in limp and lifeless and she
11 changed the the baby's diaper?

12 A He was gasping for air, yes, ma'am, but I was already
13 on the phone with 911. I let her know they were on the way. I
14 didn't know they were that close, but yes ma'am.

15 Q He was gasping for air and she was changing his diaper?

16 A Yeah. I mean, he was soaked. I mean, a baby don't get
17 soaked like that. My daughter was gone probably 15 or 20
18 minutes. A baby don't get soaked like that that fast. He was
19 soaked.

20 Q So just so soaked that it was imperative that while
21 he's gasping for air she's changing the diaper?

22 A He was soaked. And 911, the paramedic was on the way,
23 yes, ma'am.

24 Q So while he wasn't breathing as a nurse you were
25 changing his diaper?

1 A No, ma'am, I was not changing his diaper. No, ma'am.
2 I was still sitting at the kitchen table talking to 911 when she
3 walked in the door, her and my oldest daughter was tending to
4 the baby. I don't know what they with doing. I was on the
5 phone with 911.

6 Q You were sitting at the kitchen table?

7 A And my oldest daughter is also certified in, yes,
8 that's where I was at.

9 Q Sitting at the kitchen table?

10 A Yes, my trailer is small. It's very small. The
11 kitchen table is probably from here to her. Probably 10, 15
12 foot at the most away. So, yeah, I was at my kitchen table.

13 Q While your grandson was lifeless over here?

14 A I was on the phone with 911. Yes, ma'am.

15 Q And you're a nurse?

16 A Yeah, I was on the phone with 911.

17 MS. BUTLER: Thank you.

18 MR. EPTING: Nothing further from the State, Your
19 Honor.

20 THE COURT: You may step down. We are going to
21 recess for the afternoon. I will ask the jury to
22 understand that your decision in this case has to be
23 based solely upon what you see and hear during the
24 trial. You can't be influenced by any outsiders
25 information. And so, at any time we take a break

1 Court. You will have them during the day but you
2 won't be taking them home. So make sure your number
3 is on there so you will be able to get it back.

4 MICHAEL HOLLOWAY, called as a witness, having been
5 duly sworn by the clerk, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. EPTING:

9 Q Good morning.

10 A Morning.

11 Q Could you please state your name for the record.

12 A Michael Holloway.

13 Q And Mr. Holloway, how are you employed?

14 A With Piedmont EMS.

15 Q How long have you been with Piedmont EMS?

16 A Ten years.

17 Q How have you been an EMT total?

18 A Twenty.

19 Q Twenty years. Did you have chance to respond to an
20 incident that occurred on December *of 2017, involving a four
21 month old infant in distress?

22 A Yes, I did.

23 Q Can you tell the jury how you became involved in it?

24 A I'm a supervisor and the initial crew requested a
25 supervisor to respond so I responded to the call. I believe it

1 was -- I'm not sure of the nature, but it was a four month old
2 injuries I believe.

3 Q And who was on the initial crew that called out to you
4 as supervisor?

5 A It was a paramedic and EMT. The paramedic was Max
6 Ledford. EMT was John Childers.

7 Q Is John Childers still an EMT here in York County?

8 A No, he doesn't work with us any more.

9 Q And Max, is he still with EMT?

10 A He is still with us us but he is out at the moment.

11 Q So when you arrived tell the jury what you saw?

12 A There was a child being treated by Max and John in the
13 back of their ambulance at the time.

14 Q What treatment had been provided by them prior to your
15 arrival?

16 A Prior to my arrival I believe there was a set of vitals
17 and they had put him on low oxygen and monitoring the child at
18 the time.

19 Q And was any bruising noted by you or those during the
20 course of the treatment?

21 A There was. The initial crew they pointed it out to me.
22 I noted there was bruising to the cheeks.

23 Q And again this was on four month old infant?

24 A Correct.

25 Q And you mentioned that they took have vitals?

1 A Yes.

2 Q Could you tell the jury what the body temperature of
3 the child was when the vitals was taken back in the ambulance?

4 A Not without the report I couldn't tell you.

5 Q Okay. Have you previously stated 96 degrees?

6 A Yes. Yes, we did discuss it.

7 Q Is that an unusual vital for a four month old infant to
8 have?

9 A Ninety-eight, no.

10 Q Or 96?

11 A Ninety-six, yeah. That's borderline hypothermia.

12 Q And in your experience doing this for 20 years would
13 you expect that temperature to increase or to decrease on the
14 way to treatment at the hospital?

15 A Hopefully increase.

16 Q If it decreased would that be a good thing or a bad
17 thing?

18 A That's a bad thing. You're looking at hypothermia.

19 Q What, if any, treatment did you provide the child and
20 why?

21 A Treatment was provided after it was -- they had
22 initiate Versed due to the baby began seizing.

23 Q And was a plan made to get that child to a facility?

24 A Yeah, initially they were considering flight, but due
25 to the ETA of the flight decided to transport back around.

1 Q So did the child fly out?

2 A No.

3 Q And again that was because the ETA was the same as
4 taking to the hospital?

5 A Correct.

6 Q Do you know which hospital that child was taken to?

7 A Went initially to Piedmont.

8 Q And then after that did you have any involvement?

9 A No.

10 Q Do EMT's in general or did EMT's that responded to the
11 incident have training protecting the neck and head of an
12 infant?

13 A They do.

14 Q Can you tell the jury why if at all that is
15 significant?

16 A Well, with it being a baby the child's head is pretty
17 disproportionate to the body compared to an adult. The neck
18 being as weak as it is you generally need support.

19 Q And to the best of your knowledge was that type of
20 support provided to the child during treatment?

21 A To be honest I do not remember as far as the report.

22 Q If the neck and head had not been protected would that
23 have been documented in some way?

24 A Correct. Yes.

25 Q And why?

1 A Because that's significant, you know, in case there is
2 any chance of injuries just to protect and safety precautions.

3 Q Was there any indication that was not done in this
4 case?

5 A No.

6 MR. EPTING: That's all the questions I have.

7 Please answer any questions defense counsel may have.

8 CROSS EXAMINATION

9 BY MS. BUTLER:

10 Q Mr. Holloway, when did you last review the
11 documentation?

12 A This morning.

13 Q Okay. And you were answering the solicitor's
14 questioning about the temperature. Was that temperature you
15 said that you discussed it with him and I think he gave you the
16 answer of 96 degrees. Is that what you think?

17 A It's documented in the report.

18 Q Okay. So you read it?

19 A Right.

20 Q It was 96 degrees?

21 A Correct.

22 Q So it is not 98 degrees?

23 A No, ma'am.

24 Q All right, and it's not 92 degrees?

25 A No, ma'am.

1 Q Okay. And you were not here yesterday at all. You're
2 just hear this morning, right?

3 A Correct.

4 Q So with the -- with that in mind, Mr. Holloway, when
5 you arrived at the scene you arrived at Marjorie Roger's house,
6 does that right?

7 A Yeah. I never entered the house or anything. I just
8 went straight to the ambulance. The crew was already initiating
9 treatment on the child.

10 Q Okay. And the child I think you testified was already
11 in the back of the ambulance?

12 A Correct.

13 Q So that means that the other EMS, paramedics that were
14 already there were already working on this child?

15 A Correct.

16 Q And you don't know what they had had already done
17 before that?

18 A Correct.

19 MS. BUTLER: That's all the questions. Thank you.

20 MR. EPTING: Beg the Court's indulgence.

21 Briefly Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. EPTING:

24 Q You testified that you had no involvement in the
25 child's treatment passed dropping him off at PMC?

1 A Correct.

2 MS. BUTLER: Objection. Exceeds the scope of
3 cross.

4 THE COURT: Overruled.

5 Q So did you have any involvement in treating the child
6 past dropping him off at PMC?

7 A No.

8 Q Can you tell this jury what his body temperature was
9 when he was in PMC?

10 A No.

11 Q Can you tell the jury what his body temperature was
12 when he was transferred to North Carolina?

13 A No.

14 MR. EPTING: That's all the questions I have.

15 MS. BUTLER: No follow up.

16 THE COURT: You may step down.

17 MS. OHAYON: The State calls Majorie Rogers.

18 Your Honor, may I step out to assistant by
19 co-counsel? The witness was in a room.

20 THE COURT: Okay.

21 (Witness entering courtroom)

22 MAJORIE ROGERS, called as a witness, having been
23 duly sworn by the clerk, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MS. O'HAYON:

2 Q Good morning.

3 A Good morning.

4 Q Can you please state your name for the record?

5 A Majorie Rogers.

6 Q And where do you live?

7 A I live in Hickory Grove.

8 Q Do you work?

9 A I don't.

10 Q What do you do?

11 A I stay home with my children.

12 Q And how many children do you have?

13 A I have five.

14 Q Which children do you stay home with?

15 A My two youngest, three and one.

16 Q And who is N.W. [REDACTED]

17 A That's my son.

18 Q What is his date of of birth?

19 A [REDACTED] [REDACTED]

20 Q And when he was born did he have any health conditions?

21 A No, ma'am.

22 Q And up until December 22, 2017 was he normally
23 developing child?

24 A Yes.

25 Q And he no health conditions from his birth to December

1 22, 2017?

2 A No, ma'am.

3 Q Had he reached any milestones at that point?

4 A He had just start trying to hold his bottle, but other
5 than that no. He was a chunky baby. So he didn't start rolling
6 or anything yet. He held his head up. Stuff like that, but
7 that was about it.

8 Q He was interacting with people?

9 A Yes.

10 Q Laughing? Smiling?

11 A Yes.

12 Q And who was his biological father?

13 A James Stewart.

14 Q Who was the father that is listed on his birth
15 certificate?

16 A Darrell Wilson.

17 Q Do you see Darrell Wilson in the courtroom today?

18 A Yes.

19 Q Could you please point him out and describe the color
20 of his shirt?

21 A He has on a blue shirt.

22 MS. O'HAYON: Please let the record reflect that
23 the witness has identified the defendant.

24 THE COURT: Well, where is he in the courtroom?

25 THE WITNESS: Right there to the right.

1 THE COURT: Who is he sitting with?

2 THE WITNESS: His attorney.

3 THE COURT: Okay. Between two lawyers?

4 THE WITNESS: Yes, I didn't see the other one on
5 the other side.

6 THE COURT: Do you see him now?

7 THE WITNESS: Yes.

8 THE COURT: She has identified the defendant.

9 MS. O'HAYON: Thank you, Your Honor.

10 Q When did you meet the defendant?

11 A I want to say December of 2016.

12 Q Okay. And what was your relationship at that point?

13 A We met, we talked for a little while and then him and
14 his wife split up and me and him got together.

15 Q And were you already pregnant when you and him got
16 together?

17 A Yes.

18 Q And describe your relationship between that time when
19 you first got together and December 22, 2017?

20 A We had a normal relationship. We fought a little bit.
21 A little more than normal, but I mean we had a -- it wasn't all
22 bad. We didn't have just a terrible relationship.

23 Q Would you say there were times when the two of you
24 split up and got back together?

25 A Yes, multiple times.

1 Q When was the last time you split up and didn't get back
2 together?

3 A It was would have been December 21st.

4 Q Okay. December 21st of 2017?

5 A Yes.

6 Q All right. Did you and the defendant communicate that
7 day about N.W.

8 A Yes.

9 Q What was that communication like?

10 A He said he wanted to get N.W. and keep him over night
11 and usually when we would split up he would want to see N.W. I
12 would take N.W. over there and I would end up staying but that
13 time I just dropped N.W. off and I left and went back home.

14 Q Okay. And how did you and the defendant?

15 A Through text message on messenger.

16 Q Facebook messenger?

17 A Yes.

18 Q And is that a reason on that?

19 A There was no service down there, so he had to use wifi.
20 He's got to use wifi on his phone.

21 Q So you said that you brought N.W. over and you dropped
22 him off that day?

23 A Yes.

24 Q Do you remember about what time that was?

25 A I want to say around 7:30, eight o'clock.

1 Q You say you left. Did you come back again that night?

2 A Yes, I came back around 11:30 that night.

3 Q Okay. And how long did you stay there?

4 A May be 30, 45 minutes.

5 Q Okay. And where was **N.W.** at the time?

6 A He was in the bed asleep in the bedroom.

7 Q Where did you go after you left after 30, 45 minutes?

8 A I went back to my Mom's house in Hickory Grove.

9 Q Before you got to the defendant's home had you been
10 drinking?

11 A Yes.

12 Q Were you intoxicated?

13 A No. I had one it was a big -- like 24 ounce beer. Yes.

14 Q How far is your mom's home from defendant's home?

15 A Maybe three miles. Its about six, seven minutes.

16 Q The next morning, December 22, 2017, did you and the
17 defendant communicate that day?

18 A Yes.

19 Q Tell me a little bit about what time the communications
20 were and what the communications were like?

21 A I'm not a hundred percent on the times but that morning
22 he said **N.W.** is fine and then it switched to come get him. He
23 would not stop crying.

24 Q Do you need a moment. There are tissues up there if
25 you need any.

1 When the defendant asked you to come get **N.W.** what did you
2 do?

3 A Well, first I figured **N.W.** had shots three days before
4 that I figured he was little bit cranky. I'm not sure what I
5 done first. I know I got breakfast and I knew I took a shower.
6 Then I went to get **N.W.**

7 Q Do you remember what time you went to get **N.W.**

8 A I want to say around nine-thirty, ten.

9 Q Okay. Describe when you pull up to the defendant's
10 home which is -- do you remember the defendant's address at that
11 time?

12 A I don't.

13 Q Do you remember what road he lived on?

14 A I know he lives on Jack Wilson Road. Not sure the
15 address.

16 Q And what is the town?

17 A Sharon.

18 Q And what county is that in?

19 A York County.

20 Q So you pull you up to the defendant's home and explain
21 to the jury what happens?

22 A When I pulled up -- we didn't use the front door. We
23 only used back door. So when I pulled up he had the back door
24 tied open with a leash. It was open and when I got out of the
25 car I could hear **N.W.** screaming and he didn't cry like that. He

1 wasn't a cry baby. So when I go in -- I mean everything -- it
2 was normal. **N.W.** was laying on the couch beside Mr. Wilson on
3 his pillow, you know, where he would always lay, but he was
4 screaming and DJ blew in his face. He would do that some times
5 he said it, you know, make them catch their break and quit
6 crying so much. Regroup. And I told him don't F'in do that, or
7 what are you doing. I'm not a hundred percent sure what I said
8 to him, but I picked **N.W.** up and he was screaming and when he
9 got comfortable in my arms I thought he was asleep.

10 Q Okay. What do you do when you pick him up and you
11 think he falls asleep?

12 A I thought he was asleep so I went to put him in the car
13 seat and when I pulled him off of me he was just completely
14 unresponsive, so I told Darrell that something was wrong with
15 him. We need to call 911. He touched him. He said, no, he is
16 breathing fine. I am overreacting. So I called my mom because
17 my mom was a nurse for a long time. He kept telling me I was
18 overreacting. My momma told me to get the baby there now. She
19 was going to call 911. I put him in the car and took him to my
20 mom's house and met the ambulance there.

21 Q Okay. When you get home before the ambulance gets
22 there, what do you do with **N.W.**

23 A I got him out of the car. I took him inside. He was
24 in a the fleece onesie. It was a three month onesie. It was
25 really small. He was in six to nine month clothes. He had poop

1 all the way up his back. So my sister started cleaning him up
2 while I got the phone from my mom and talked to the 911 operator
3 and they pulled up shortly after that.

4 Q Okay. Did you observe anything on **N.W.** any injuries
5 or anything at this time?

6 A At the time when I got there and got him, no. There
7 was nothing out of the ordinary. Whenever he laid -- my
8 sister laid him back in the recliner to change his clothes he
9 had one small mark under his chin and that was all he had at the
10 time.

11 Q Your emphasizing at the time that he only had a mark on
12 the chin. Did he have more marks later?

13 A Yes. He had like a whole line of bruises come up
14 across his face and his jaw and under his neck and on his back.

15 Q Okay. So EMS arrives and what do they do with him?
16 Are you the one who brings him into the truck or does EMS bring
17 take him into the truck?

18 A I brought him out there to the ambulance.

19 Q And what did they do with him? Do you observe what they
20 did with him?

21 A Yes, I stayed in the ambulance for a little while and
22 then they couldn't get him stable so they made me get out.

23 Q Did they eventually take him to the hospital?

24 A Yes. They called for a helicopter but they couldn't
25 get him stable enough to put him in so we took him to Piedmont.

1 Q Okay. Do you ride with him in the ambulance?

2 A Yes.

3 Q Okay. And when he goes to Piedmont what do had they do
4 with him at Piedmont?

5 A They got him stable. They put him on life support so
6 they were able to transport him to Levine's in Charlotte.

7 Q How did they transport him to Levine's?

8 A From a helicopter.

9 Q Do you go with him in the helicopter?

10 A No.

11 Q But you do eventually go to Levine's?

12 A Yes. I had to stay behind and meet with a detective
13 and a DSS worker.

14 Q Okay. Describe what you see and what you know happens
15 at Levine's?

16 A Well, at Piedmont they couldn't tell me that he was
17 going even to live. The brain bleed looked a lot worse then
18 what it really was. But at Levine's when I get there the doctor
19 tells me that they don't know his quality of life. But they do
20 know that he's going to live. He's going to be okay.

21 Q Do they have had him on life support --

22 A Yes.

23 Q -- or a ventilator?

24 A He was on life support, yes

25 Q Do you remember how long, about how long he stayed at

1 Levine's?

2 A Maybe a month, month and a half.

3 Q In between the time that you picked **N.W.** up and the
4 time that EMS is there or he goes to PMC or he goes to Levine's
5 are you communicating at all with the defendant?

6 A Yes.

7 Q Okay. What does he tell you originally about anything
8 that happened with **N.W.**

9 A First he said nothing happened out of the ordinarily
10 with him. Then I told him, you know, this was serious. They
11 were calling for a helicopter. I need to know what happened.
12 He said he rolled off the couch, but other than that nothing
13 else happened.

14 Q Okay. Do you talk with him at all about the police
15 being at his house?

16 A I'm not sure if I told him they were there or not. I
17 told him I didn't want to spook him with the police so I told
18 him that the workers at the hospital that was taking care of
19 **N.W.** needed to talk to him and needed to know what happened
20 because I know he's not fond of the cops. I didn't want to
21 spook him with the cops, so I told him the hospital needed to
22 talk to him because they needed to know what happened.

23 Q Okay. And **N.W.** was he rolling yet?

24 A No.

25 Q Where is **N.W.** now?

1 A He was adopted.

2 Q Okay. And who is his adoptive mom? Do you see her in
3 the courtroom?

4 A Miss Beth.

5 Q Okay. And did you give your rights up for him to be
6 adopted?

7 A Yes.

8 Q Tell the jury a little bit about why you gave up your
9 rights?

10 A I had **N.W.** on a visit and a lady come across the
11 intercom and it sounded like Miss Beth who use to take care of
12 **N.W.** And he started looking around looking for her and so the
13 next day I asked her would she be interested in adopting him
14 because I knew then that he loved her because he responded to
15 that. It had sounded just like her and I had talked with her a
16 lot. I knew she didn't have children and I knew that she loved
17 **N.W.** a lot. So I asked her would she be interested in adopting
18 him. She had a lot of medical experience where she could tend
19 to him.

20 Q Back in 2015 were you convicted of two crimes that
21 carried more than a year?

22 A I was. I'm not sure if they carried more than a year.
23 I was put on a youthful offender act for those.

24 Q Okay. And were you also convicted of filing a false
25 police report in 2015?

1 A Yes.

2 Q I am going to show you --

3 MS. O'HAYON: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 Q I am going to show you what has previously been marked
7 as State's Exhibit 1 for Identification, do you recognize this?

8 A Yes.

9 Q How do you recognize it?

10 A I looked at it and then signed it.

11 Q Okay. So you see your signature on it. What do you
12 recognize that to be?

13 A N.W.'s pictures.

14 Q And do you recognize what has previously been marked as
15 State's Exhibit 2?

16 A Yes.

17 Q And how do you recognize this?

18 A I signed that to. It's N.W.'s pictures as well.

19 Q Is there a difference between what has previously been
20 marked as State's Exhibit 1 and State's Exhibit 2 for
21 identification?

22 A One is prior to the incident and one is after.

23 Q Okay. And do these pictures that are on these many
24 discs fairly and accurately depict for exhibit one for
25 identification what N.W. looked like prior to December 22, 2017?

1 A Yes.

2 Q And the ones that are previously marked for exhibit two
3 for identification fairly and accurately depict what **N.W.** looked
4 like after December 22nd of 2017?

5 A Yes.

6 MS. O'HAYON: Your Honor, at this time the State
7 would like to move States 1 and 2 into evidence.

8 MS. BUTLER: I just haven't seen them on the disc
9 themselves, so I'm assuming it's what we got.

10 MS. OHAYON: Yes.

11 MS. BUTLER: No objection.

12 MS. OHAYON: Your Honor, may I public these to the
13 jury.

14 THE COURT: You may. They're admitted.

15 (WHEREUPON, State's Exhibits 1 and 2 were received
16 in evidence.)

17 Q Marjorie what is it that we are looking at right now?

18 A That's **N.W.**

19 Q Before or after the incident?

20 A Before.

21 Q Is this also **N.W.**

22 A Yes.

23 Q Is is that you holding him?

24 A Yes.

25 Q What about this picture?

1 A That's him laying on the floor playing.

2 Q And this one?

3 A He was in a walker it front of the Christmas tree.

4 Q Would this have been then close in time or one of the
5 closest pictures in time to the incident?

6 A Yes, because we had just put up the Christmas tree.

7 Q And that's also **N.W.** before the incident?

8 A Yes.

9 Q Thank you. I am now going to publish to the jury
10 State's Exhibit two.

11 Marjorie what are we looking at here?

12 A That is one of the marks that came up on the side of
13 his face.

14 Q Okay. So this picture was taken December 22nd or
15 after?

16 A Yes. I think it was a few days after when they had
17 took him off the ventilator.

18 Q And this picture?

19 A That was the marks that came up under his chin and on
20 his cheek.

21 Q And what is this a picture of?

22 A The bruising that came up the day that this happened.

23 Q So the bruise on the chin?

24 A Yes.

25 Q And these are pictures that were taken at Levine?

1 A Yes.

2 Q And that also is a picture of the bruise?

3 A Yes.

4 Q And that is as well?

5 A Yes.

6 Q Was this also N.W. at Levine?

7 A Yes.

8 Q You did describe him as a chubby baby?

9 A Yeah.

10 Q And this was also N.W. at Levine's?

11 A Yes.

12 Q And that is State's Exhibit 2. Thank you, Miss Rogers.

13 If you could please answer any questions defense counsel may
14 have?

15 A Okay.

16 CROSS EXAMINATION

17 BY MS. BUTLER:

18 Q Good morning.

19 A Good morning.

20 Q You weren't not in here but EMS paramedic testified
21 that they had to support N.W.'s head, his neck and head?

22 A Yes.

23 Q Were you aware of that?

24 A Yes, he was completely unresponsive. He had no control
25 over his head, his arms, or anything.

1 Q Okay. So to start with you only noticed one bruise on
2 N.W.'s chin?

3 A Yeah, the one right here.

4 Q That's what you noticed immediately?

5 A Once I got him home and he was laid down in the
6 recliner. He was laid down laying in the recliner. My sister
7 was changing him. He had the one right there. That is all he
8 had at the time.

9 Q Okay. I think you testified that later it was bigger?

10 A It came up on the side as you seen in the pictures, but
11 that wasn't there when I picked him up.

12 Q None of that was there?

13 A No.

14 Q Just one bruise under his chin?

15 A Yes.

16 Q Marjorie, I am going to ask I know it has been a long
17 time since you talked to EMS and the doctor's office that day,
18 December 22, 2017 over four years, four and a half years, is it
19 possible -- you testified that N.W. wasn't rolling over yet, but
20 is it possibly you told the doctors something different that
21 day?

22 A No, N.W. didn't roll. He was too chunky. He never --
23 he didn't ever roll in front of me.

24 MS. BUTLER: May I approach the witness?

25 MS. O'HAYON: Your Honor, I am objecting to this

1 method of impeachment. She's trying to impeach her
2 with someone else's report.

3 THE COURT: Hang on. Let me ask the jury to
4 please go to the jury room. Don't talk about the
5 case. I will address the issue and have you back in a
6 few minutes.

7 (WHEREUPON, the jurors leave the courtroom.)

8 THE COURT: All right. You may make your proffer.

9 MS. BUTLER: Thank you, Your Honor. The objection
10 is sustained or --

11 THE COURT: I asked you if you wanted to make a
12 proffer outside of the presence of the jury so I can
13 determine whether to overrule it or sustain it.

14 MS. BUTLER: Thank you, Your Honor.

15 THE COURT: I don't know what she is going to say
16 so I couldn't possible rule on something I don't know
17 what it is.

18 MS. BUTLER: Yes, Your Honor.

19 THE COURT: All right.

20 MS. O'HAYON: May I approach.

21 THE COURT: Yes, ma'am.

22 Q Can you tell the date right here, Marjorie?

23 A December 22, 2017.

24 Q And does this say CMC pediatric critical?

25 A Yes.

1 Q And can you read right here just starting where it says
2 she reports?

3 THE COURT: Miss Butler can you identify what
4 you're referring to because I don't think anybody
5 knows what you are referring to.

6 MS. BUTLER: Yes, Your Honor. This is the medical
7 records that were provided by the defense and I've --
8 I mean by the State. I've showed it to them and I am
9 on page 208 of 868 if they want to pull that up.

10 THE COURT: The medical record from where.

11 MS. BUTLER: Yes, Your Honor. This is from the
12 hospital at CMC Pediatric.

13 THE COURT: At this stage of the trial I don't
14 know what CMC Pediatric is.

15 Q Where did **N.W.** go?

16 A He was at Levine's Children's Hospital in Charlotte.

17 Q All right. Where did he go first when the paramedics
18 took him?

19 A He went to Piedmont Hospital.

20 THE COURT: Miss Butler, you can't stand in front
21 the witness and the court reporter. She's got to be
22 able to see.

23 MS. BUTLER: I'm sorry.

24 Q So **N.W.** went where that night, Marjorie?

25 A What night?

1 Q The night of the incident?

2 A It was morning.

3 Q Where did N.W. go first? I apologize.

4 A Went to Piedmont.

5 Q Okay. And then from there he went to Levine's?

6 A Yes.

7 Q All right. And did you talk to several doctors and
8 nurses?

9 A Yes.

10 Q Okay. Can you read right there where it says she
11 reports.

12 A "She reports that prior to last night N.W. last saw his
13 father three days prior. Mother states she does not have
14 custody, full custody of her other two children, but has
15 visitation rights and is scheduled to get custody on January
16 25th. She notes no concerns for patient's development and
17 states he holds his bottle, hold his head up and rolls halfway
18 over."

19 Q Thank you.

20 MS. BUTLER: That's my proffer, Your Honor.

21 THE COURT: Well, are you going to ask her.

22 Are you all agreeing the medical records to come
23 in? Are they in as an exhibit?

24 MS. OHAYON: No, they are not, Your Honor.

25 THE COURT: All right.

1 MS. BUTLER: I am just using it as a writing to
2 refresh her memory.

3 THE COURT: Okay, well ask her if that refreshes
4 her memory and ask her if she said that.

5 Q Does that refresh your memory?

6 A It does, but he didn't see him three days before that.
7 It was the day before that. So I don't know where the three
8 days prior come in because I had just left the day before that,
9 the incident. I left on the 21st of December, so I don't know
10 where the three days prior come in and, you know, but...

11 Q But it does refresh your memory as to what you told the
12 doctors?

13 A Yes.

14 Q And he was rolling halfway over?

15 A Yeah, he would turn, but he didn't roll over, you know.

16 THE COURT: Miss Rogers, the question Miss Butler
17 is asking is -- can you give me the verbatim statement
18 from the record.

19 MS. BUTLER: Yes, Your Honor, that you want to ask
20 her about.

21 MS. BUTLER: Yes, Your Honor. "She notes no
22 concerns for patient's development and states he holds
23 his bottle, holds his head up and rolls halfway over.

24 THE COURT: Miss Butler is asking you, did you
25 tell the medical personnel -- did you make that

1 statement to the medical personnel?

2 THE WITNESS: Yes.

3 THE COURT: All right. That's all we need to
4 know.

5 MS. BUTLER: Thank you.

6 THE COURT: All right. So now, Miss Butler, those
7 medical records are not in evidence, so you can't
8 refer to the medical records but you can ask her if
9 she made the statement to medical personnel and she
10 can respond to it.

11 MS. BUTLER: Okay. Yes, Your Honor.

12 THE COURT: All right. Bring the jury in please.

13 Now, I am just addressing that particular
14 statement not anything else in the medical record. If
15 we need to address that we need to address it now.

16 MS. BUTLER: Just that statement that I just read
17 to Your Honor.

18 THE COURT: All right.

19 (WHEREUPON, the jury enters the courtroom.)

20 THE COURT: All right. You may proceed.

21 MS. BUTLER: Thank you.

22 Q Miss Rogers, did you make a statement to the medical
23 personnel that night that you noted no concerns for patient's
24 development and states he hold his bottle, holds his head up and
25 rolls halfway over?

1 A Yes, ma'am.

2 Q So Miss Rogers, having had that statement refreshed to
3 you from so long ago, is it true that **N.W.** was holding his own
4 bottle?

5 A He started, yes. He wasn't like perfectionist at it
6 yet, but yes, he would try to hold it and he would hold it
7 pretty good. Yes.

8 Q And he was holding his head up?

9 A Yes.

10 Q And we saw in the pictures on there that he was pretty
11 sturdy in the floor and in the walker?

12 A Yes, ma'am.

13 Q Is that right?

14 A Yes, ma'am.

15 Q Okay. So you did report to the medical personnel that
16 night that he rolls halfway over?

17 A Yes, he would turn side to side but he's never rolled
18 over. He never made it over. That's why in the report it says
19 halfway over. H didn't roll over.

20 Q He would turn side to side though?

21 A Yeah.

22 Q He's old enough or capable enough?

23 A He couldn't get over his arm because his arms were so
24 chunky, but he could try and get up a little bit.

25 Q Okay. All right. You testified that **N.W.** had just had

1 a shot three days before. Did you say three days?

2 A Yeah, I believe it was two or three days before this,
3 yes.

4 Q A couple three days before **N.W.** had a shot. Do you
5 mean his vaccination?

6 A Yes, his four month vaccinations.

7 Q So, this is December 22nd. Do you know which date he
8 had those vaccinations? Would it have been December the 21st or
9 December the 20th?

10 A I'm not sure.

11 Q Okay. But your sure it was within two to three days
12 prior?

13 A Yes. It was within three days I'm a pretty sure.

14 Q And to try and narrow that down a little bit, you and
15 Darrell were still together, living together until December
16 21st, correct?

17 A Yes.

18 Q Okay. Did you take **N.W.** before you left Darrell?

19 A To get the shots?

20 Q Yes.

21 A Yes, we took them together.

22 Q You all took them together so you all still were
23 together and December 21st is when you left Darrell?

24 A Yes.

25 Q And December 22nd is when this happened?

1 A Yes.

2 Q And December 21st when you left Darrell, your testimony
3 is you came back later that night and stayed for about 45
4 minutes at his house?

5 A Yes.

6 Q And N.W.'s was in the bed?

7 A Yes.

8 Q So I think you testified that there had been times
9 before -- you and Darrell had a decent relationship. It was on
10 and off and you had left N.W. with him previously over nights,
11 right?

12 A No, ma'am. I would go to my Mom's like I did on the
13 21st. He would always wants to see N.W. I would take N.W.
14 back over there and I would always stay with him, but that time
15 I didn't.

16 Q Okay. I remember now you said you would take N.W. and
17 you would end up staying.

18 A He had N.W. alone like during the day but never over
19 night. I was always there over night.

20 Q Okay. All right. So he kept N.W. alone some times
21 during the day?

22 A I think he had maybe twice. Maybe three times, yes.

23 Q Okay. And when you took N.W. over there that night you
24 didn't have any concerns about leaving N.W. with him?

25 A No.

1 Q And when you went back that night at around midnight
2 you didn't have any concerns about leaving N.W. that night?

3 A No.

4 Q And I'm trying to gather this part. You said Miss Beth
5 was taking care of N.W. Is Miss Beth related to N.W.

6 A No, she was a foster parent. N.W.'s foster parent and
7 then she ended up adopting N.W.

8 Q Okay. So she wasn't involved in his medical care?

9 A No. She got him whenever he was being released from
10 the hospital.

11 Q Okay. So she was taking care of N.W. and during the
12 time that he was in the hospital?

13 A No, whenever he was released. He went with Miss Beth.
14 Whenever he was released. I stayed with him at the hospital.

15 Q And once he was released he went to Miss Beth and then
16 a couple - a couple days or weeks you asked her if she would
17 adopt him?

18 A Yes, maybe a couple months. I asked her would she be
19 interested in adopting him because she had a lot of medical
20 experience and he still had seizures. He did stop breathing.
21 So I couldn't. I was terrified. Even in the hospital when he
22 would have a seizure I would just freak out and I would, you
23 know, panic. So I knew I couldn't take care of him like that.

24 Q Okay. So at that time when you asked Miss Beth to
25 adopt N.W. he was around six months, seven monts old?

1 A Yeah, around seven, seven months old I believe.

2 Q So you had raised N.W. up until he was -- until he was
3 around five months old when he went into the hospital, right?

4 A Four months, yes.

5 Q Okay. So he was -- when he went into the hospital
6 December 22, 2017 and his birthday is when?

7 A [REDACTED].

8 Q Of [REDACTED]?

9 A Yes.

10 Q So from [REDACTED] [REDACTED] to December 22, 2017 you had
11 been raising N.W.

12 A Yes.

13 Q And then when he went in the hospital and he came out
14 some time in January?

15 A Yes.

16 Q And went to Miss Beth in foster care and then you asked
17 Miss Beth to adopt him?

18 A Yes, ma'am.

19 Q Do you have a relationship with N.W. now?

20 A I don't.

21 Q When you went to Mr. Wilson's house that morning to
22 pick up N.W. was it your testimony that you wanted him to call
23 911?

24 A I was just saying we need to call 911 because something
25 was wrong with him. Whenever I pulled him off of my chest to

1 put him in the car seat he had no -- his arms were back. His
2 head was back. He had no control. Like he was completely
3 unconscious, you know. I said we need to call 911 and he said I
4 was overreacting so I called my mom because I was hoping I was
5 overreacting.

6 Q It wasn't so bad that you didn't know if you should
7 call 911 or not?

8 A Yeah, he was just -- there was no -- he didn't wake up.
9 When you take a baby off of you, especially **N.W.** he's going to
10 hold his head or he is going to wake up he is going to open an
11 eye. He didn't. He didn't do that whenever I put pulled him
12 off to put him in car seat he didn't open an eye. He didn't
13 have any head control. He didn't have any arm control.
14 Nothing.

15 Q And you didn't call 911 though?

16 A No.

17 Q It wasn't so bad that you didn't call 911 and it wasn't
18 so bad that you didn't put him in the car seat and a strap him
19 in?

20 A Yeah, I put him in the car seat and strapped him in and
21 and called my mom because she's a nurse and I told her what was
22 going on. DJ got on the phone at one point telling her **N.W.** was
23 fine. I was overreacting, but I put him in the car and I met
24 the ambulance at my momma's.

25 Q Darrell thought you were overreacting. You didn't know

1 if you were overreacting so you called your mom?

2 A Yes.

3 Q Darrell never tried to take your phone from you or
4 anything like that though, right?

5 A No.

6 Q When your mom confirmed that you were not overreacting
7 she got 911 on the phone, right?

8 A Yes.

9 Q And by that time you had -- you had strapped **N.W.** into
10 his car seat and drove him over to your house where you live
11 with your mom?

12 A Yes.

13 Q Face forward just a little bit. You got to Levine's
14 after **N.W.** was taken there, Levine's Children Hospital, right?

15 A Yes, ma'am.

16 Q And you testified the doctor told you he's going to
17 live?

18 A Yes, ma'am.

19 Q Is it then that you started talking to the police
20 officers and DSS?

21 A No, from Piedmont I met with a DSS case worker at
22 Piedmont and then after they airlifted **N.W.** from Charlotte to
23 Levine's I had to go to Fort Mill and meet with an officer on my
24 way to Levine's. So I met with an officer, a detective, on my
25 way there, because I already spoke to him by the time I got to

1 Levine's.

2 Q Okay. So by this time you knew there was something
3 serious if you're talking to DSS investigators and police
4 officers?

5 A Yes. Well, I knew it was serious when the ambulance
6 came and they brought a lot of cops with them to my mom's.

7 Q All right. So when you are talking to all those folks
8 your understanding the seriousness of what's going on?

9 A Yes.

10 Q Miss Rogers, you understand the solicitor asked if you
11 have a criminal record?

12 A Yes, ma'am.

13 Q And you've lied to police officers before?

14 A Yes, ma'am.

15 Q You were charged and convicted of that?

16 A Yes, ma'am.

17 Q You testified from this stand this morning that you
18 drove over to Darrell's house that night after you had been
19 drinking?

20 A Yes, ma'am.

21 Q You testified from the stand this morning that Darrell
22 and his wife split up after you and Darrell got together?

23 A They split up before we got together.

24 Q Maybe I'll backtrack, but I thought I heard you say
25 that you all split up after?

1 A No, we were texting and they split up and that's when
2 me and him got together. She moved out but we texted while they
3 was together but we wasn't together until she moved out.

4 Q But you were texting Darrell when he was a married man?

5 A Yes.

6 MS. BUTLER: At this time I have questions that
7 Your Honor said the jury might not can hear from this
8 witness.

9 THE COURT: Okay. Let me ask the jury to please
10 go to the jury room. Don't discuss the case. I will
11 bring you back in a moment.

12 (WHEREUPON, jurors leave the courtroom.)

13 THE COURT: Miss Butler, the way to notify the
14 Court about a matter such as this you say, judge, I
15 have a matter I would like to take up outside of the
16 presence of the jury. You don't tell the jury that
17 this is a matter that the Court has said the jury
18 can't hear. I haven't rule on it. I don't know if
19 they can hear it or not.

20 MS. BUTLER: You said they might not can hear it.
21 I didn't want it to look like my client had something
22 to hide and what I was trying to ask her -- that's
23 where we're at.

24 THE COURT: Nobody was trying to hide anything.
25 All you had to say is I have matter I need to take up

1 outside of the presence of the jury. So that's the
2 way you will handle it from this point forward --

3 MS. BUTLER: Yes, Your Honor.

4 THE COURT: -- you don't instruct the jury. You
5 don't inform the jury that I said they can't hear
6 this. I don't know whether they can hear it or not.

7 MS. BUTLER: That it might not be heard.

8 THE COURT: Well, you can't tell that either. You
9 don't get to tell the jury what I might allow or not.
10 That's an evidentiary matter. That's why it's taken
11 outside the presence of the jury.

12 MS. BUTLER: Right, and I would rather not have
13 the jury go out. I would rather not send them out at
14 all and just let me ask the questions and then let
15 them object to it but that's not the way that Your
16 Honor said that we would do it. So I couldn't open
17 that door at all until we sent them out. So I'm not
18 the one trying to send them out. I don't want it to
19 look like I'm trying to hide something. I am not.

20 THE COURT: It wouldn't look like you're trying to
21 hide something if you said, judge, I have a matter I
22 need to take up outside of the jury's presence.

23 MS. BUTLER: The solicitor is the one that made
24 the motion pretrial that I should not be able to ask
25 her questions about the DSS history.

1 THE COURT: And what did I say in response to
2 that?

3 MS. BUTLER: That we would have to talk about it
4 outside the presence of the jury.

5 THE COURT: That's right. So we have to talk
6 about it outside the presence of the jury. Not
7 letting the jury know that we're talking about
8 something that somebody objected to or I said they
9 can't hear.

10 MS. BUTLER: That's not what I said.

11 Would Your Honor like me to proffer?

12 THE COURT: Do we need to get the court reporter
13 to repeat what you said.

14 THE COURT: If Your Honor, is so inclined I'm
15 ready to proffer if you want me to.

16 THE COURT: Well, I wish you would.

17 Q Miss Rogers, as to the DSS case did you have a finding
18 that there was abuse and neglect against you as regarding **N.W.**

19 A On neglect, yes.

20 Q And you were actually entered into the central registry
21 of child abuse?

22 A No, I don't think so.

23 MS. BUTLER: Beg the Court's indulgence.

24 I apologize. I can not find the order at this
25 time so I leave it at this question of whether she had

1 a finding of abuse and neglect based on the case with
2 **N.W.**

3 THE COURT: The answer was not so that would tell
4 me that is not relevant.

5 MS. BUTLER: She did have. She answered yes as to
6 that, Your Honor, as to neglect.

7 THE COURT: To neglect?

8 MS. BUTLER: Yes, Your Honor.

9 THE COURT: Okay. But your last question were you
10 placed on the registry for child abuse and she said
11 no.

12 MS. BUTLER: Right. So I will not -- I will not
13 ask that question. I'll ask her the question of was
14 she guilty of neglect of **N.W.**

15 THE COURT: That wasn't the question. The
16 question you asked her about what DSS might have done
17 about that. You didn't ask her if she ever neglected
18 her child. You asked her if DSS made a finding of
19 neglect and abuse.

20 MS. BUTLER: That's correct, Your Honor, that's
21 what I intend to ask her for the jury to know.

22 THE COURT: Okay. What's the State's position?

23 MR. EPTING: The State's position is that it's
24 completely improper. It's character evidence that's
25 being snuck through a DSS report. We think what

1 limited relevance that might have is substantially
2 outweighed by the prejudicial effect under Rule 403 as
3 well as the likelihood of jury being confused by a DSS
4 finding of neglect and that may play out in the trial
5 of Mr. Wilson. We don't believe it should come in
6 under the rules.

7 THE COURT: I don't know anything about the DSS
8 finding. What basis of it was or if there was one or
9 anything about it. Do you have somebody to provide
10 that information Miss Butler?

11 MS. BUTLER: She's willing to provide it. She
12 already answered the question, Your Honor, that she
13 did have a finding.

14 THE COURT: That doesn't make it relevant.

15 MS. BUTLER: Well, it's relevant if it's any fact
16 that tends to prove the probative value, so it is
17 relevant. I think that the solicitor's objection is
18 that it is more prejudicial then probative which my
19 response would be that it's absolutely not under the
20 circumstances of where Mr. Wilson is facing criminal
21 charges for the abuse of the child when she had a
22 finding of abuse against her for the same incident and
23 same child.

24 THE COURT: You keep using the term abuse and
25 neglect interchangeably. I find those to be different

1 terms, do you not?

2 MS. BUTLER: Under the statute 63-7-20 they are
3 under the same statute of abuse and neglect. There is
4 a difference of neglect implies to failing to protect
5 verses abuse can be taken as the physical part of it.

6 THE COURT: You would agree that's important in
7 this case wouldn't you?

8 MS. BUTLER: Yes. Yes, Your Honor.

9 THE COURT: Okay. All right. Based on what you
10 have presented I find it's not relevant on the issue
11 for the jury to decide on this case, but if had any
12 relevance whatsoever the probative value is
13 substantially outweighed by the danger of unfair
14 prejudice.

15 MS. BUTLER: Thank you, Your Honor, and the last
16 thing at this time I intend to ask her about what the
17 State also made a motion on to stop us from asking her
18 about, does she believe that Darrell intentionally --
19 would intentionally hurt the child which she
20 consistently said no throughout so I intend to ask her
21 that.

22 THE COURT: All right. Well proffer the
23 testimony.

24 Q Miss Rogers, throughout the case since December was it
25 your belief then and is it your belief now that Darrell would

1 never intentionally hurt N.W.

2 A I don't think he would intentionally do it, no.

3 Q Thank you.

4 A He was perfect with N.W. while I was around. I don't
5 think he would intentionally hurt him.

6 Q Thank you.

7 MR. EPTING: Do you believe that he did hurt N.W.

8 THE WITNESS: Yes. I don't think it was
9 intentional, but I do think he did. Nobody else was
10 there.

11 MR. EPTING: Your Honor, I think it calls for
12 speculation on both their answers and our answers.
13 She wasn't there when the abuse happened and shouldn't
14 be able to testify as to what she think what may have
15 been in the defendant's mind when this incident
16 occurred.

17 THE COURT: Do you want to respond to that Miss
18 Butler?

19 MS. BUTLER: Yes, Your Honor, she can testify as
20 to his character and what she knew about Mr. Wilson.
21 She's already testified that she left the baby with
22 Mr. Wilson that night. She's already testified as to
23 the statements that Mr. Wilson had said and it's
24 certainly Mr. Wilson prerogative to have the jury hear
25 the fullness of her testimony.

1 THE COURT: The proffer that you made I sustain
2 the State's objection to that proffer.

3 MS. BUTLER: May I inquire as to are sustaining it
4 based on the probative outweighs the prejudice?

5 THE COURT: Both, relevance and the fact that any
6 probative value is substantially outweighed by the
7 danger of unfair prejudice.

8 MS. BUTLER: Thank you, Your Honor. I have no
9 further questions.

10 THE COURT: Okay. You have no further proffer.
11 Do you have any further questions?

12 MS. BUTLER: No.

13 THE COURT: All right. Bring the jury back.

14 (WHEREUPON, the jury enters the courtroom.)

15 THE COURT: All right. Miss Butler.

16 MS. BUTLER: I have no further questions.

17 MS. OHAYON: The State has no redirect.

18 THE COURT: You may step down.

19 MR. EPTING: The State calls Elizabeth Matthews to
20 the stand.

21 ELIZABETH MATTHEWS: Called as a witness, having
22 been duly sworn by the clerk, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. EPTING:

1 Q Good afternoon.

2 A Hey, how are you?

3 Q Doing well. Could you please state your name for the
4 record?

5 A My name is Elizabeth Matthews.

6 Q And how are you currently employed Miss Matthews?

7 A I am a currently a substitute school nurse with the
8 York School District. I'm a registered nurse.

9 Q And who is N.W.

10 A [REDACTED] is my son.

11 Q Tell me how -- tell this jury how N.W. first came into
12 your life?

13 A My husband and I were foster parents. We got a call
14 from placement asking if we would take a four month old little
15 boy and we accepted. We picked him up from Levine's Children's
16 Hospital on January 11, 2018. Walked into the room to see this
17 big old chunky fat beautiful baby.

18 Q And how often did you see N.W. after that?

19 A Every day.

20 Q Was he able to come home with you?

21 A Yes. We took him home with us. We were his foster
22 parents.

23 Q And you mentioned earlier that you work as a school
24 nurse and that you're an RN?

25 A Yes, I graduated from Clemson University in 2005. My

1 first job was at Carolina's Medical Center in downtown
2 Charlotte. I was mother baby nurse and then when I got married
3 to my husband and inherited three teenage stepchildren my shift
4 wasn't appropriate any more and I became a school nurse to help
5 with my stepkids.

6 Q So you worked with babies as a nurse prior?

7 A Yes, sir, for about 12 years.

8 Q Describe N.W.'S home life to the jury?

9 A Currently, N.W.'S has a very different life from --

10 MS. BUTLER: Objection. Relevance.

11 THE COURT: Sustained.

12 Q What if any medical conditions does N.W. exhibit at
13 home?

14 A N.W.'S has daily seizures. He has been diagnosed with
15 a rare and progressive seizure disorder called Lennox-Gastaut
16 Syndrome. It is characterized by three different criteria the
17 first being that he has several different types of seizures that
18 are very difficult to control with medication.

19 The second criteria is his EEG shows --

20 MS. BUTLER: Objection as to what EEG shows. She
21 is not qualified to tell us that.

22 THE COURT: Well, sustained unless you can lay a
23 proper foundation.

24 Q You mention earlier that you are a register nurse?

25 A Yes, sir.

1 Q And you worked for how long as a register nurse?

2 A I have been a nurse for 18 years.

3 Q And you testified a lot of those were dealing with

4 babies, is that correct?

5 A Yes, sir.

6 Q Are you familiar with how diagnostics are taken?

7 A Yes, sir.

8 Q Are EEG's part of that diagnostics?

9 A Absolutely.

10 Q Did you go to school for this?

11 A Within nursing school you know that you have certain

12 criteria to meet a diagnosis and if you don't you don't get that

13 diagnosis and from what his neurologist has informed me he meets

14 these criteria.

15 Q As part of your training and as part of your

16 professional experience, do you know how to read an EEG?

17 A No, sir.

18 Q Do you know how to treat certain conditions?

19 A No, sir.

20 Q Well, let's move on. You said he had seizures?

21 A Yes, sir.

22 Q How often?

23 A Daily.

24 Q And is he on any medication for those seizures?

25 A Yes, sir, he's on four different medications.

1 MS. BUTLER: I will just object to this testimony.
2 She was not around when anything happened to N.W. to
3 testify as to what happened to N.W. It's more
4 prejudicial than probative.

5 MR. EPTING: The State's position is that we have
6 to prove great bodily injury in the case and that
7 being sustained injury that he's still receiving
8 treatment for is relevant.

9 THE COURT: The question was, what medications.

10 MS. BUTLER: This is current. This is not about
11 what happened December 22, 2017.

12 THE COURT: You can lay that foundation to if you
13 can.

14 Q As a result of the injuries he sustained that put him
15 in the hospital was he place on any medication?

16 A Yes.

17 Q What?

18 A He is currently on Keppra. He is currently on
19 Epidiolex. He is currently on Vimpat and he is currently on
20 Clonazepam.

21 Q And what are those medications for?

22 A Seizure activity. They are anti-epileptic.

23 Q What is N.W.'s life expectancy?

24 A He has no -- there's no shortening of his life
25 expectancy per se but his --

1 MS. BUTLER: Objection. Move to strike. Very
2 much not relevant at this time for her to talk us
3 about **N.W.** life expectancy even though she's saying
4 his life expectancy hasn't been shortened in way.
5 She's not an expert witness here. She's a lay
6 witness.

7 THE COURT: Overruled.

8 MS. BUTLER: Thank you.

9 Q Please continue.

10 A According to diagnosis he doesn't have any shortened
11 life expectancy, but it is progressive disorder. So, his
12 doctors have told us as his parents to expect that he will lose
13 ability --

14 MS. BUTLER: Objection as to what the doctors told
15 her.

16 THE COURT: Sustained.

17 MS. BUTLER: Thank you.

18 Q Without repeating what anybody else has told you.

19 A Okay. Sorry. We anticipate that he will lose
20 abilities as he gets older.

21 MR. EPTING: Beg the Court's indulgence.

22 Q Was abilities does he have now?

23 A He can currently walk.

24 MS. BUTLER: Objection. Relevance as to what
25 abilities he has.

1 THE COURT: Overruled.

2 MS. BUTLER: Thank you.

3 Q What abilities does he have now?

4 A He can walk. He uses a gate trainer and what's call
5 AFO's that help him not walk on his toes and be more stable.
6 His gate trainer helps him to walk and trains his gate to
7 alternate his legs. He is able to pick up pieces of food and
8 put it in his mouth. He can not use silverware. For the most
9 part we feed him. He's still in diapers. He is not potty
10 trained. We don't anticipate that. He's a sweet boy.

11 Q How old is N.W. [REDACTED]

12 A He's four. He will be five in August.

13 Q And this -- is this normal for four year old?

14 A No, it is not. He should be talking and walking and
15 playing and climbing and all the things, but he's still very
16 much a baby.

17 MR. EPTING: That's all questions I have at this
18 time. Please answer questions defense counsel have.

19 MS. BUTLER: No questions.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: We will take a short break. I will
23 ask the jury to please go to the jury room. Don't
24 discuss the case. I will bring you back after the
25 break.

1 (WHEREUPON, the jury leaves the courtroom.)

2 THE COURT: Who's the next witness going to be?

3 MS. OHAYON: Your Honor, we are going to call
4 Captain Carson Neely.

5 THE COURT: All right. We will be at ease for 15
6 minutes.

7 (WHEREUPON, there was a brief recess.

8 THE COURT: Let me see the lawyers just a moment.

9 (WHEREUPON, there was an off the record
10 discussion.)

11 THE COURT: All right. Are we ready for the jury.

12 MS. OHAYON: Yes, Your Honor.

13 THE COURT: Bring them in.

14 MR. BOYD: Your Honor, can you hold them for just
15 a second.

16 Your Honor, concerning that question, the concern
17 I have about that that question indicates they're
18 discussing the case. It appears if that's something
19 sent by the foreman is seems they're discussing the
20 case at this time and I don't think that is
21 appropriate.

22 THE COURT: I agree with you that they're not to
23 discuss the case, but the fact that this question has
24 been asked doesn't tell me they're necessarily
25 discussing the case. It tells me somebody has asked

1 the question as to whether they can get that
2 information. That doesn't mean they're discussing the
3 case. That means they're trying to get an answer to a
4 question, and as we discussed I will tell them they
5 don't need to be asking questions until the evidence
6 is presented and perhaps all of the questions they
7 might have may have been answered once all of the
8 testimony has been presented. And I will re-instruct,
9 if you like to, to keep in mind they're still not to
10 be talking about the case. I will make that point
11 clear.

12 Bring them back in please.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: Mr. Foreman, I have the note that you
15 sent out where you ask a question about an issue of
16 fact or evidentiary question. I am never permitted to
17 respond to those questions, but it's preferable if the
18 jury would just wait until all of the evidence has
19 been presented. Likely any question that you have is
20 going to be answered during the course of the trial
21 and during the presentation of evidence. And so I
22 expect the question you asked, is information that
23 will help you answer that question will be provided
24 during the course of the trial. So let's wait until
25 the witnesses testify and evidence is presented before

1 we start asking questions about factual issues or on
2 evidentiary matters. And keep in mind, as I
3 previously stated also, the jury is not under any
4 circumstances, in any fashion, to discuss this case
5 while your you're at a break, morning break, lunch
6 break, over night break. You can not discuss this
7 case in any fashion whatsoever until such time as the
8 the jury is instructed to begin deliberations in the
9 case. So do not be discussing the case at any time.

10 As I say, I anticipate the answer to that
11 question will be provided during the course of the
12 presentation of the evidence. All right. You may
13 continue.

14 MS. OHAYON: Thank you, Your Honor. The State
15 calls Captain Carson Neely.

16 CARSON NEELY, called as a witness, having been
17 duly sworn by the clerk, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY O'HAYON:

21 Q Good morning.

22 A Morning.

23 Q Please state your full name for the record?

24 A Carson Neely, last name N-e-e-l-y.

25 Q Where do you work?

1 A York County Sheriff's Office.

2 Q And what is your position with the the sheriff's
3 office?

4 A I am captain over the criminal investigation division.

5 Q How long have you been a captain?

6 A Since May of 2017.

7 Q And how long have you been with the sheriff's office?

8 A Since 1998. Going twenty-four years.

9 Q What other positions have you held?

10 A I started out on patrol. I went to narcotics, patrol
11 sergeant. I started in criminal investigations in 2005 up until
12 2015. Went back to patrol and then to captain of criminal
13 investigations.

14 Q So you have approximately 15 or so years in criminal
15 investigation division?

16 A Yes, ma'am, a little more.

17 Q And December of 2017 did you get involved in an
18 investigation related to the case we are here for today?

19 A Yes, ma'am, I did.

20 Q And once you became involved in the investigation where
21 did you go first?

22 A So initially I got a request to respond to this call.
23 I am part of a task force that deals with child abuse and child
24 fatalities. This was not a fatality, however I was still part
25 of a task force that will respond to a situation that might

1 result in something like that.

2 Initially I was going to respond to where the 911 call was
3 placed however deputies were already on scene. So I made a
4 phone call and spoke to the deputies that were on scene and I
5 accessed the situation. Got information from them and felt it
6 was necessary to respond to the location where the child N.W.
7 had spent the night the night before which is [REDACTED] Jack Wilson
8 Road in Sharon. That's where I went to.

9 Q And that's in York County?

10 A Yes, ma'am.

11 Q Okay, and when you get to house what do you observe?

12 A Well, as I approached it's a mobile home that sits back
13 of a property. There's a gate. The gate was open. I
14 approached the home and me and some other detectives knocked on
15 the door several times. Kind of felt like somebody was there
16 but no one answered the door.

17 Q Okay. What made you feel like someone was there?

18 A The sound from inside. Car in the yard, and just
19 knowing from other interviews that had taken place that somebody
20 should have been home.

21 Q So you go to [REDACTED] Jack Wilson Road?

22 A Yes, ma'am.

23 Q Did you know at that time who lives there?

24 A I did.

25 Q And who on was that?

1 A Mr. Wilson.

2 Q The defendant?

3 A Yes, ma'am.

4 Q And you're unable to get into the home. You don't
5 speak to anyone, is that correct?

6 A Correct.

7 Q So where did you go from there?

8 A So I decided well I needed to go to Piedmont Medical
9 Center. I learned that **N.W.** was being transported there so I
10 went to Piedmont Medical Center.

11 Q And was **N.W.** at PMC when you arrived?

12 A Either he was being taken care of medically or I think
13 I just missed him and he was being transported to Carolina's
14 Medical Center, Levine's Hospital.

15 Q So you didn't see him at PMC?

16 A I did not, no, ma'am.

17 Q So what did you do after that?

18 A I talked with medical staff there and kind of got I
19 evaluation of what they could tell me what was wrong with him
20 with **N.W.** And from there I attempted again to go to see **N.W.**
21 but this time he's already at Levine's being taken care of and I
22 could not see him at Levine's as well. Medical staff was taking
23 care of him.

24 Q What is the next step in your investigation at this
25 point in time?

1 A Well, after learning of the severity of injuries that
2 the medical staff described to me I felt it was still necessary
3 to go back to the scene where N.W. had spent the night before.
4 Knowing that I went there and no one was either home or no one
5 answered door I decided to get a search warrant so I contacted
6 one of my detectives and told him what to prepare the search
7 warrant for and we got a search warrant and went to back out to
8 the residence that afternoon.

9 Q Okay. So when you go back out with a search warrant
10 what do you see at that point?

11 A So as we arrived to the mobile home -- before we got to
12 the mobile home on Jack Wilson Road I believe it's somewhat of a
13 dirt path road. Anyway, the gate was locked shut with a chain
14 around it. So we stopped just short of that and went to [REDACTED]
15 Jack Wilson which is Mr. Willson's parents -- I think his
16 father's house.

17 Should I continue on?

18 Q Yes, what happens when you go to that house?

19 A Knock on door and asked is anyone at home at [REDACTED] five
20 which is the home we needed to go to. Spoke very briefly with
21 Mr. Wilson's father. He indicate that Mr. Wilson was inside the
22 house. I -- we eventually made it down to [REDACTED] We had to get
23 assistance getting the gate cut and assistance in getting inside
24 the home.

25 Q Okay. So you do get the gate cut and then you continue

1 to the home. How do you gain access into the home?

2 A Mr. Wilson helped us get into the home. He was present
3 at [REDACTED]. Spoke with him briefly. Went down to [REDACTED] and he
4 assisted us in getting inside the home.

5 Q Okay, and physically how did you guys get into the
6 home?

7 A We attempted to open the door with a screwdriver. That
8 didn't work, so he went through a window and came out the back
9 door and let us inside the home.

10 Q Okay. And was the defendant there present, at this
11 point your executing the search warrant of his home?

12 A Yes, ma'am.

13 Q Was he present the whole time?

14 A He was.

15 Q Based on your training and experience what do you do
16 executing the search warrant?

17 A So unfortunately, I've worked a number of these cases
18 over the years. One of the things we always do is photograph
19 the residence from beginning to end. Also other key things I
20 would normally do is do measurements. Collect clothing if
21 possible. Collect any kind of bottles, formula, take water
22 temperature. Just normal standard things just to kind of get an
23 idea what home conditions is like. And also to look at what
24 could have possibly happened. Build a scenario of what could
25 have happened. We measure couches. We measure beds. We took

1 some clothing from the washing machine. Well, I think it was
2 just a cloth from the washing machine. Clothing. Blanket. I
3 think a pacifier. I think. Just collected some items.

4 Q Okay. You mentioned taking measurements. Did you take
5 measurements of the couch you said?

6 A Yes, ma'am.

7 Q Do you remember how many inches off the ground the
8 couch was?

9 A Approximately 26 inches.

10 Q Did you take measurements of the couch with the
11 defendant lying on the couch?

12 A Yes, ma'am. That's with him laying there it was
13 approximately 26 inches.

14 Q Okay. And you mentioned you took photographs of the
15 home, right?

16 A Yes, ma'am.

17 MS. O'HAYON: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 Q I am showing you what has previously been marked as
21 State's Exhibit three for identification. Do you recognize
22 this?

23 A Yes. Flash drive which I put the pictures on.

24 Q Which pictures?

25 A From the residence.

1 Q From the search warrant?

2 A Yes.

3 Q And how do you recognize it?

4 A My initial and the date.

5 Q Okay. And do these pictures fairly and accurately
6 depict the pictures -- the state of the defendant's home on the
7 date you executed the search warrant?

8 A Yes, ma'am, it does.

9 Q Thank you.

10 MS. O'HAYON: The State would like to move State's
11 Exhibit 3 for identification into evidence.

12 MS. BUTLER: No, objection.

13 THE COURT: It's admitted.

14 MS. O'HAYON: Thank you. Your Honor, permission
15 to publish to the jury.

16 THE COURT: You may.

17 MS. O'HAYON: Your Honor may we take a brief
18 recess.

19 THE COURT: I think we have overloaded ourselves
20 with technology. Some times it's easier to just show
21 a picture, but we have all this. I'll ask the jury to
22 please go to your jury room. I will bring you back as
23 soon as we can.

24 (WHEREUPON, jurors leave the courtroom).

25 MR. EPTING: There was an error on the USB drive

1 with our pictures on it. It should take us less than
2 five minutes to get a new one.

3 MR. EPTING: Thank you, Your Honor.

4 MS. BUTLER: Can we he have the witness come and
5 confirm these will the same pictures.

6 THE COURT: Yes.

7 MR. EPTING: Your Honor, we are ready to proceed.
8 Thank you for your patience.

9 THE COURT: All right bring the jury in please.

10 (WHEREUPON, the jury enters the courtroom.)

11 THE COURT: Okay.

12 MS. OHAYON: Thank you, Your Honor, now I will be
13 able to publish State's Exhibit 3 for the jury.

14 Cont'd Direct

15 By Ms. O'Hayon:

16 Q Captain Neely, what are we looking at here?

17 A So these are photographs from inside the residence at
18 [REDACTED] Jack Wilson Road my crime scene unit took.

19 Q Is there any significance about this photo?

20 A Yeah. We collected one of the cloths that came from
21 the washing machine as part of the investigation.

22 Q Is there a reason why you collected that cloth?

23 A It's common for us to collect child's items from inside
24 the home during these types of investigation.

25 Q And what are we looking at here?

1 A A bed from the bedroom within that home.

2 Q And that was presumably the bed where **N.W.** was
3 sleeping?

4 A Could have, yes, ma'am. That's why we took pictures of
5 it.

6 Q Okay. And now you're looking at what is this for the
7 jury?

8 A A couch. I believe it's the living room of the home.

9 Q Okay. And now what are we looking at?

10 A Mr. Wilson laying on the couch with a measuring tape.

11 Q Okay. This is a different couch?

12 A Yeah. Yes, ma'am.

13 Q These are more measurements that you took?

14 A Yes, ma'am. We took various measurements from inside
15 the house.

16 Q And that's the pictures that we have on the State's
17 Exhibit 3. Other than executing the search warrant in the
18 defendant's home, taking measurements, taking pictures, did you
19 get any other search warrants?

20 A Yes. I think it's important to note that during this
21 process while this was going on I had directed another detective
22 to interview Marjorie about the same time as this. But yes, I
23 did obtain another search warrant later on for facebook, for
24 possible facebook messages and then preservation requested a
25 portal and requested a search warrant and submitted it to

1 facebook for messages.

2 Q Explain a little bit what that means the preservation
3 request for portal?

4 A It's basically a request for face book to retain all
5 the information that they may have content as far as messages
6 going back and forth based on one of the interviews that was
7 noted that supposedly Marjorie and Darrell had communicated that
8 way. Getting that information could have been important so we
9 requested that information be given to us from facebook.

10 Q And preservation letter that preserves whatever is on
11 facebook as of the date of your preservation letter?

12 A The date and time of the preservation letter, correct.

13 Q Were you able to obtain any messages?

14 A No, ma'am. No, ma'am.

15 Q Did you ever recover the defendant's cell phone?

16 A No, ma'am. We looked through the home and it was not
17 there.

18 Q Do you ever go to Levine's to see **N.W.**

19 A I did.

20 Q And explain to the jury what you observed when you went
21 to Levine's?

22 A December 24th I went to Levine's and took some
23 pictures. A couple of reasons. One, I wanted to kind of follow
24 up with the case and two, note sometimes injuries somewhat
25 appear a couple of days later. Bruises. I'm no medical expert,

1 but just through investigations in the past and trainings I have
2 taken it's sometimes a couple days it takes for a bruise to
3 develop and I just wanted to get some overall feeling on how
4 **N.W.** was doing.

5 Q Did you observe any bruising on **N.W.**

6 A Yes, ma'am.

7 Q And where did you observe the bruising?

8 A Basically just from memory right now just from his jaw
9 area, face, so I took some pictures.

10 Q Okay. And after you executed the search warrant in the
11 defendant's home what did you do?

12 A So from that point I got together with the other
13 detectives and kind of reviewed interviews that were done.
14 Evaluated what medical staff had told me as far as these types
15 of issues and the acute nature as far a timeline and based on
16 all the information I received I felt confident that this injury
17 could have only been caused by Mr. Wilson so I requested an
18 arrest warrant for him. He was placed under arrest and
19 transported and an arrest warrant was requested later that
20 night.

21 Q Thank you. One moment. Nothing further. If you can
22 please answer any questions defense counsel may have.

23 A Yes, ma'am.

24 DIRECT EXAMINATION

25 BY MS. BUTLER:

1 Q Officer Neely, you were looking specifically when you
2 got that search warrant for items that would indicate that a
3 crime had taken place, right?

4 A Yes, ma'am.

5 Q You were looking for blood, vomit?

6 A Yes, ma'am.

7 Q Saliva?

8 A Yes, ma'am.

9 Q DNA?

10 A Yes, ma'am.

11 Q Blankets, towels?

12 A Yes, ma'am.

13 Q Bottles?

14 A Yes, ma'am.

15 Q Any indication that a crime had taken place?

16 A We didn't collect anything that I guess what you're
17 getting at as far a blood or anything like that, no, ma'am.

18 Q And you didn't bring anything here today that you were
19 able to collect that indicated that a crime took place that
20 night?

21 A I didn't bring any evidence with me, no ma'am.

22 Q In fact though, Officer Neely, you were able to obtain
23 some of **N.W.'s** belongings though, right?

24 A Yes, ma'am.

25 Q You got four blankets?

1 A That sounds right, yes, ma'am.

2 Q That belonged to N.W.

3 A Yes, ma'am.

4 Q You got a pillow case that belonged N.W.

5 A Yes, ma'am.

6 Q And a wash cloth that belonged to N.W.

7 A Yes, ma'am.

8 Q And an outfit that belonged to N.W.

9 A Yes, ma'am.

10 Q And on any of that there was no indication of a crime?

11 A No indication of any type of blood or anything like
12 that.

13 Q As to the facebook preservation request that you put
14 in, you said that you were trying to preserve messages between
15 Marjorie and Darrell. Marjorie is the mother who testified
16 earlier, is that right?

17 A That's correct, yes, ma'am.

18 Q All right, so Marjorie Rogers and Darrell you put in a
19 facebook request to try and preserve messages between them?

20 A Yes, ma'am.

21 Q And Marjorie you testified she was already being
22 interviewed by some other investigators?

23 A Yes, ma'am.

24 Q On your team?

25 A Yes, ma'am.

1 Q And Marjorie and Darrell were the ones that you were
2 trying to preserve facebook messages between?

3 A Correct.

4 Q Did you all ask for Marjorie's facebook messages?

5 A Based off memory I believe that's who I submitted the
6 search warrant for, for that conversation between those two
7 persons. I don't remember if it was numbers or if it was the
8 user names, but yes, the conversation itself between those two,
9 yes, ma'am.

10 Q But you all had access to Marjorie and her phone,
11 right?

12 A Yes, Detective Martin did, yes, ma'am. Those messages
13 were deleted prior. She attempted to show them to Detective
14 Martin but she said they were deleted. Don't know from what
15 end.

16 Q And it was her phone?

17 A Yes, ma'am.

18 Q In her possession when your detectives interviewed her?

19 A Correct.

20 Q Thank you.

21 MS. BUTLER: That's all the questions I have.

22 Thank you.

23 MS. OHAYON: No redirect, Your Honor.

24 THE COURT: You may step down.

25 MR. EPTING: Your Honor, the State anticipates

1 having one final witness we will offer as an expert.
2 That testimony will be very lengthy. I would ask the
3 Court that we hear that after lunch.

4 THE COURT: We'll do that. We'll recess now for
5 lunch. We'll reassume this afternoon at 1:30. 1:30
6 this afternoon.

7 Keep in mind you're still not to discuss the case
8 in any fashion whatsoever with any person whatsoever.
9 Don't conduct any research. Don't do your own
10 investigation. Have a good lunch. We will see you
11 back here at the courthouse at 1:30. Hold on. Come
12 back. Make it 1:45 because I got something else I go
13 to do. 1:45. Okay. Thank you.

14 (WHEREUPON, the jury leaves the courtroom.)

15 THE COURT: Anybody matters to address before the
16 jury is brought in?

17 MR. EPTING: No, Your Honor the State is ready to
18 proceed.

19 MS. BUTLER: No, Your Honor.

20 THE COURT: All right bring them in.

21 (WHEREUPON, the jury enters the courtroom.)

22 THE COURT: Good afternoon ladies and gentlemen.
23 We are going to continue the State's presentation.

24 MR. EPTING: Thank you, Your Honor. May it
25 please the Court. The State calls Doctor Susan Lamb

1 be to the stand.

2 SUSAN LAMB, called as a witness, having been duly
3 sworn by the clerk, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. EPTING:

7 Q Good afternoon doctor.

8 A Good afternoon.

9 Q Could you please tell the jury what you do for a
10 living?

11 A Sure. I am a child abuse pediatrician.

12 Q How long have you been practicing as a child abuse
13 pediatrician?

14 A I ever been practicing for seven years.

15 Q And what education or qualification do you need to be a
16 child abuse pediatrician?

17 A Sure. So I graduate from medical school and then I
18 went on to do a pediatric residency. So I'm a board certified
19 pediatrician. I did that ending in 2012. I then did a
20 fellowship in child abuse and neglect pediatrics, subspecialty.
21 I completed that in 2015 and was board certified in child abuse
22 pediatrics in 2015.

23 Q So how long did that subspecialty in child neglect
24 take?

25 A It's a three year training program.

1 Q And is that done as part of medical school too?

2 A It's afterwards. It's called post graduate training.

3 Q Okay. And have you ever testified in court in the area
4 of pediatric child abuse?

5 A Yes.

6 Q Have you been declared an expert those times when you
7 testified?

8 A Yes, I have.

9 Q Can you tell the Court approximately how many times?

10 A I stopped counting at a hundred.

11 Q And as part of your job do you consult on and review
12 cases to determine whether child abuse injuries are present?

13 A Certainly. So that's the entirety of my practice. So
14 I see children where there is a concern for abuse or neglect and
15 I evaluate them and make a medical diagnosis.

16 Q And are you consulted by it state on cases?

17 A I am.

18 Q Without naming names are you ever consulted by defense
19 on cases?

20 A I am.

21 MR. EPTING: Your Honor, at this time we offer
22 Doctor lamb as an expert in pediatric child abuse.

23 MR. BOYD: No objection.

24 THE COURT: She is so qualified.

25 MR. EPTING: Thank you, Your Honor.

1 Q Could you tell the jury what abuse head trauma is?

2 A Sure. So abusive head trauma is q diagnosis. It goes
3 back to about 2009 and so it's instances where children who have
4 suffered no trauma or minor trauma have kind of catastrophic
5 brain injuries. There is injury to the brain itself as well as
6 hemorrhage around the brain in what's called the subdural
7 layers. So it's underneath that tough covering, the dura mater,
8 outside of the brain, between the brain's surface itself and
9 that covering. So there's hemorrhage there.

10 Some of the cases also will have retinal hemorrhages in the
11 eye. So those are hemorrhages in the back of the eye, but it
12 encompasses a wide variety of what we call inflicted head
13 injuries. So someone inflicting this trauma upon the child and
14 causing brain injury.

15 Q Is the term the observation or diagnosis of abusive
16 head trauma accepted within the scientific community widely?

17 A Yes, it is.

18 Q And are infants particularly vulnerable to abusive of
19 head trauma?

20 A Yes, they are. So abusive head trauma has to do with
21 the fact that infants or young children's heads are much bigger
22 than their bodies and they also have very weak neck muscles and
23 so when their heads are subjected to forces and their neck isn't
24 able to hold them upright or stabilize they can get extensive
25 trauma inside and around their brain.

1 Q And you mentioned some of these in passing, but what
2 are some telltale signs particularly in an infant that might
3 have suffered abusive head trauma?

4 A Certainly. So abusive head trauma, the hallmark is
5 brain injury itself. So the symptoms are like what you would
6 see for any other brain injury. It can start out kind of mild
7 like a concussion. You you might be fussy. You might be
8 sleepy. You might not want to eat or you may spit-up. Going to
9 more significant symptoms you may fall unconscious. You may
10 have trouble breathing. You may develop seizures and then the
11 most severe you may slip into a comma and die from abusive head
12 trauma. So those are kind of the symptoms that we see with
13 abusive head trauma.

14 Q You mentioned earlier seeing retinal damage as a
15 symptom?

16 A Yes. So that's a sign. Retinal hemorrhages are things
17 that we can see. So what we do is we get an ophthalmologist, a
18 pediatric ophthalmologist and we look at the back of the eye.
19 So that's that light that they shine and you can take pictures
20 and so with abusive head trauma the forces that impact the brain
21 and cause injury there also impact the eyes. So the jelly, the
22 vitreous inside the eye is rotating and moving as opposed to the
23 eyeball itself and the retina. And so as the two move they pull
24 and where those attachment points are they hemorrhage all along
25 the back of the eye.

1 Q Is that visible with the naked eye looking at infant?

2 A No. So those aren't hemorrhages in the white part of
3 you eye. Those are sclera hemorrhages. So you have to have an
4 ophthalmology -- ophthalmoscope and you have to be looking into
5 the back of the eye to see those hemorrhages.

6 Q You mentioned amongst other things that an injury
7 inflicted upon the brain being one the hallmarks of abusive head
8 trauma. Would that effect whether the brain can regulate body
9 temperature?

10 A Certainly. Your brain regulates everything. How you
11 do your body temperature, your breathing, your consciousness, if
12 you are able to eat, drink, walk. Do anything that you normally
13 do. So depending on how significant the damage and what parts
14 of the brain are effected. Any of those things can be effected.
15 Obviously if the breathing, kind of temperature area of the
16 brain is significantly affected then you get death quite
17 quickly.

18 Q And we've been talking about mostly internal injuries
19 as far as abusive head trauma. Is it possible to see external
20 injuries on an abusive head trauma case?

21 A Certainly. Abusive head trauma are the internal
22 injuries that you get around the brain. Occasionally abusive
23 head trauma also includes blunt force trauma to the head. So
24 that can be a force that's applied and so if an infant is
25 slammed into something, or something is slammed upon their head,

1 then often times you'll get that scalp swelling and the skull
2 fracture underneath it and so sometimes we do see those signs if
3 there has been blunt force trauma.

4 Q And if you have an injury without those external signs,
5 you mentioned earlier rotational acceleration. What types of
6 actions might cause that type without an external?

7 A Certainly. So one subset of abusive head trauma is
8 where there's that kind of rotational acceleration deceleration
9 back and forth and we know that occurs from that shaking motion.
10 If a child is grasped around their torso and violently shaken
11 back and forth and that head snaps back and forth in that arc
12 accelerating and decelerating.

13 Q As part of the things you look at in work in diagnosing
14 whether in your opinion abusive head trauma has occurred would
15 bruising on a four month old be significant as to a finding?

16 A Yes. So four months old are not mobile at all. They
17 are not -- some may be rolling a little bit but they are not
18 crawling. Generally they stay where the parents put them there
19 and so they can't inflict injuries upon themselves. So someone
20 would have to do something to them, be it accidental or
21 intentional or anything in between to inflict bruising onto a
22 four month old. So when we see that we're very concerned just
23 because we know they can't do it to themselves.

24 Q As part of your job were you asked to conduct an
25 examination for abusive head trauma and pediatric child abuse on

1 a patient named N.W.

2 A I was.

3 Q Approximately when did that happen?

4 A So that was November of 2019.

5 Q Tell the jury about your examination please?

6 A Certainly. So I was asked by law enforcement as they
7 were investigating a case that had occurred back in 2017. They
8 wanted me to review all the medical records. See N.W. Talk to
9 his caregiver. Examine him and see if I could help them
10 determine how N.W. sustained his injuries and when those may
11 have occurred.

12 Q So what types of things did -- did you do a physical
13 examination?

14 A Yeah. So just like every over medical provider that
15 you have seen, we take a history. We review the past medical
16 history. So when he had been in the ER, when he had been in the
17 hospital. What he had been to see the pediatric neurology. Any
18 scan there. We took a history from his caregiver so what was he
19 doing at home. How was he developing. What services had he
20 been receiving as far as different therapies. Then we do a
21 physical examination of the child and then we determine if any
22 additional tests are needed. So any blood work, any X-rays, any
23 scans, and finally we come to a medical diagnosis and
24 recommendation for what he would need forward in treatment. So
25 just like any other doctor that you have gone to we get all of

1 that information to help inform us about what is going on with
2 this child.

3 Q And when you examined **N.W.** did he present with
4 seizures?

5 A Certainly. So his foster mom was reporting that he had
6 several -- what are called atonic seizures and that A meaning
7 no, tonic meaning tone. He just drops and so he just kind of
8 goes limp there. And he was having multiple of those every day.
9 He was on two different medications specifically for his
10 seizures and then another one that kind of helped with his
11 cerebral palsy symptoms that he was having, but could help for
12 the seizures as well. So that was reported by foster mom and
13 then I confirmed it in the pediatric neurology notes, so his
14 last two visits with the neurologist. I looked at the imaging
15 they have done of his brain as well as EEG's. Kind of made sure
16 of what she was letting me know kind of match up with what the
17 pediatric neurology was saying about how he was doing with his
18 seizure disorder.

19 Q And did he have a diagnosis for seizure disorder?

20 A It said epilepsy, but nothing more specific than that
21 in the pediatric record.

22 Q And were you able to make a determination?

23 A Of/.

24 Q Of epilepsy?

25 A We do it by history and by relying on our colleagues.

1 So everything I saw concurred with what the pediatric
2 neurologist said. I didn't see anything to say there was some
3 underlying medical condition or some other reason or something
4 that spells were other than seizures.

5 Q Did you see any genetic conditions that might cause
6 these types of injuries or seizures or disorders?

7 A No. He didn't have any kind of -- we get those facial
8 features that are classic for the different genetic disorders or
9 malformations of arms or legs. He didn't have any of that and
10 looking back at the medical records because he had spent, you
11 know, over three weeks in Levine's Children Hospital and such.
12 There wasn't any report of -- they're called dysmorphisms, that
13 would classic for a genetic disorder. And then of course he had
14 been seeing the pediatric neurologist who of course specializes
15 in looking genetic seizure disorder and they hadn't found
16 anything. So far as I know medical provider had any of that.

17 Q As part of your workup did you determine whether he
18 recently received any vaccinations?

19 A Yes. So in the initial history that was provided mom
20 went to Piedmont Medical Center and then to Levine and mom gave
21 the history he had received his four month immunizations about
22 three days prior.

23 Q And in your report you noted that the injury onset was
24 acute in time?

25 A Yes.

1 Q Can you explain to the jury what that means?

2 A Certainly. So acute in terms of this would be minutes,
3 hours, definitely less than a day of. And we do that based on
4 when symptoms presented. So with abusive head trauma because
5 the injury is to the brain itself there's no lucid period.
6 There is no period where you bump your head, your fine for a
7 while and then you drop dead. Like once your brain is injured
8 it's injured and you're going to act like it. Symptoms can get
9 worse. Symptoms can get better. So basing on what the mother
10 reported in the medical history of when the child was normal and
11 then when the child was having seizures that's acute time period
12 for us.

13 Q When you are doing your job and you're evaluating cases
14 like **N.W.'s**, are you trying to put them into a classification?

15 A Certainly. So we're trying to make a medical
16 diagnosis. So obviously the first one that we consider is an
17 accident. You know, was this an accidental cause, is there a
18 history that will account for these injuries. Was this child in
19 a horrific car accident and that accounts for the significant
20 injuries. Then we're thinking about medical diagnosis. Is
21 there some underlying medical condition that would account for
22 these symptoms there and we heavily rely on other specialists to
23 let us know, you know, pediatric neurologist, hematologist such
24 that we're all looking at that and only if we can't find any
25 cause for the injuries and the child has suffered significant

1 injuries are we making the diagnosis that abuse has occurred.

2 Q And approximately how many times in your career do you
3 find abuse?

4 A So they track our numbers pretty closely. So we only
5 diagnose abuse about a third of the time. I see every child
6 that come to the hospital in Columbia for fractures under the
7 age of two. So I evaluate almost every skull fracture that
8 comes through our hospital there and so I can say that the
9 abusive head trauma percentage is much lower then a third for
10 all the head traumas that we evaluate there.

11 Q Based upon your review of the records provided as well
12 as the physical examination was there external signs of trama on
13 **N.W.**

14 A Yeah, so it was noted at both Piedmont Medical as well
15 Levine, he had bruising underneath his chin on the left side of
16 his jaw and bruising on his chest at two locations and that was
17 noted immediately when, you know, EMS when they brought care
18 there.

19 Q And as far as your workup, did you receive information
20 that the child potentially may have fallen from a couch or a
21 bed?

22 A Yeah, so it was reported in the initial history to the
23 the medical team that there had been a potential fall off of a
24 bed or a couch there and so that is considered kind of a short
25 fall and so we really good data about what injuries kids get

1 from a relatively short fall and that tends to be a bump on
2 scalp, maybe a skull fracture. If -- you know, maybe a little
3 bit of bleeding like right underneath that. So the injuries
4 didn't match that kind of history.

5 Q Just to be crystal clear, is the injuries that N.W. had
6 consistent with a short fall from a couch?

7 A No.

8 Q Why not?

9 A So N.W. had widespread subdural hemorrhages and brain
10 injuries. So all over the left side of his head. He also had
11 no signs of blunt force trauma. So no scalp swelling, no skull
12 fracture there. The bleeding in the back of the eyes, the
13 retinal hemorrhages we don't see with short falls at all. And
14 also the bruising to him here, here, here, here. (Indicating)
15 Like how with one impact going down could you get your head in
16 four separate area on the front of your body. So the mechanism
17 of falling off of this and go going straight down onto the floor
18 you should have one impact sight. One sight of injury
19 everything should be confined to that injury sight. So they
20 just didn't match.

21 Q And we talked earlier about how abusive head trauma may
22 impact the ability of the brain to regulate body temperature?

23 A Correct.

24 Q Did you have any records of the body temperature that
25 was taken of N.W. when he was as assessed by the EMTs?

1 A So with EMS I believe it was 96 degrees.

2 Q And when he reached the hospital?

3 A It was 93 degrees.

4 Q And is that a normal?

5 A No, you are suppose to be about 98 degrees. We looked
6 at how far the house was from the hospital and if someone, you
7 know, if they're doing CPR trying to resuscitate they're not
8 dressed. They're not warming a whole lot, but it is a sign that
9 his brain was injured and he was having trouble regulating his
10 body temperature there.

11 Q Based upon your observation of **N.W.** based upon the
12 records you were provided, based upon your years of expertise
13 and work experience, do you have opinion within a reasonable
14 degree of scientific certainty as to whether **N.W.** suffered from
15 abusive head trauma?

16 A Yes, he did.

17 MR. EPTING: That's all the questions I have at
18 this time. Please answer any questions defense
19 counsel may have.

20 CROSS EXAMINATION

21 BY MR. BOYD:

22 Q Good afternoon Doctor Lamb.

23 A Good afternoon.

24 Q Doctor Lamb, you stated you're a child abuse
25 pediatrician and where do you work or actually employed?

1 A So I work for Prism Health in the midlands. So my
2 office is on the Richland campus there.

3 Q Okay. And you said you evaluate every child that comes
4 into the hospital or any kind of broken bone or anything of that
5 nature?

6 A So, no, I was referring to our protocols. Our protocol
7 is if a child is two or younger and they have a fracture they
8 are referred to our office for evaluation. So I don't see every
9 child with a fracture that comes into the hospital.

10 Q Ever child under how old?

11 A Under two years.

12 Q Okay, so any child under two years old with a fracture
13 sees you?

14 A Yes.

15 Q Even if it's a broken finger?

16 A Yes, we at least get a phone call and discuss the
17 history, review the X-rays and determine if they need to see us
18 or not.

19 Q All right. And you also -- you said -- I assume you
20 get paid by Prism, by the hospital, is that correct?

21 A Yes, I get a salary.

22 Q All right. And do you get -- when you evaluate cases
23 and come to court to testify when law enforcement asks you to
24 testify, do you charged something extra for that?

25 A No, my salary stays the same no matter how many times I

1 testify. So if I go a hundred times or one time my salary is
2 exact same.

3 Q Now, when a child comes to a hospital having seizures,
4 a brain injury high on the list is that correct?

5 A So when a child comes having seizures -- I'm sorry I
6 don't under-

7 Q When a child comes into the hospital having seizures or
8 a baby -- let's take a baby N.W.'s age or someone under two
9 years old, comes to the hospital having seizures it is high on
10 the list of the differential diagnosis is that correct?

11 A What is high on the list?

12 Q Well, that would be something you would be looking for
13 potentially a brain injury if a child is having seizures, isn't
14 that correct?

15 A So when a child comes in with seizures the first thing
16 we do is do a CAT scan of their head. So we're looking for any
17 abnormalities with their brain, so yes, that is true.

18 Q That is correct. Okay. And the CT scan I believe you
19 just said is ordered to determine what is going on in the brain,
20 is that correct?

21 A Yes. What's going on brain, skull. It's imaging kind
22 of from the lower neck up.

23 Q And the CT scan is read by the radiologist or someone
24 trained in neuro imaging, is that correct?

25 A Yes, it's a radiologist.

1 Q Okay. And you are not a radiologist, is that correct?

2 A No, I am not.

3 Q So you are not the person that reads the scans when the
4 child comes into the hospital?

5 A No, I leave that to my radiology colleagues who are
6 more trained in that.

7 Q All right. And then if it is determined that the child
8 does have a brain injury then a child neurologist becomes
9 involved, is that correct?

10 A It depends on what kind of injury they find. So if you
11 have bleeding and someone needs to tap it its your neurosurgeon
12 who goes and taps it. If it's a tumor and it's going to be
13 cancer your pediatric hematologist oncologist, so its hard to
14 know and it also depends on how sick the child. Is the child
15 going to ICU? Is this outpatient? It's a whole team.

16 Q Okay, but if it seems to be a brain injury either from
17 a deliberate action or from a disease or from something from an
18 accident, would a neurologist likely get involved?

19 A Again, it depends if a child is having neurologic
20 symptoms, yes, pediatric neurology may be called. In cases were
21 they have seizures and you need to give them seizure medications
22 to stop the seizure then pediatric neurology is involved.

23 Q In N.W.'s case they did involve a pediatric
24 neurologist, is that correct?

25 A Yes, they did evaluate him and then follow him

1 outpatient because he kept having the seizure disorder.

2 Q But at Levine where **N.W.** went, was transferred from
3 PMC, they did get pediatric neurology involved, is that correct?

4 A They referenced pediatric neurology for seizure control
5 I believe.

6 Q And of course you're not a neurologist, is that
7 correct?

8 A No, I'm not a neurologist.

9 Q You're not certified in neurology, is that correct?

10 A No, I'm not a neurologist.

11 Q Okay. And your not certified in neuro imaging?

12 A No, I'm not a neuroradiologist.

13 Q A neurologist is trained to treat disease and injuries
14 to the brain, is that correct?

15 A They are. They are specialist in the treatment of
16 brain disease.

17 Q Okay, and would you agree that a neurologist is more
18 qualified than you to determine what kind of injury or disease
19 is going on in the brain?

20 A No, I would not.

21 Q Okay. So you're not certified in neurology and dealing
22 with the brain but you think your more qualified then a
23 neurologist to determine that?

24 A So neurology and I work hand and hand so I'm the expert
25 who deals with how injuries, accidents, diseases present. So I

1 am more of biomechanics. How things happen there. The
2 neurologist is more trained on how to treat things. How to deal
3 with medical issues. How to manage seizure disorders. So we
4 are part of a medical team. We always work hand and hand. I
5 defer to them when it comes to treatment, interpreting EEGs that
6 show the electrical activity of the brain. That is not my
7 subspecialty. But they defer to me when it comes to how this
8 injury would have occurred, could this be abusive or not. So
9 medical team has overlapping responsibilities, but that's
10 generally how the breakdown occurs. So that's why I'd wouldn't
11 defer to them when it's in my specialty of how an injury would
12 have occurred and if it is abusive or not.

13 Q And forming your opinion what medical records did you
14 review?

15 A I reviewed the medical records from Piedmont Medical
16 Center which would have been in the ED had his initial imaging
17 and then there were records at Levine's Children's Hospital
18 where he got some more imaging, lab studies, his MRI was there
19 for three weeks.

20 Q Did you review the actual CT scans?

21 A I reviewed the report of the CT scans. I did not have
22 the images themselves.

23 Q So you didn't review the images?

24 A Correct.

25 Q And how about the MRI. Did you review any MRI scans?

1 A I reviewed the report but not images themselves.

2 Q All right. And in forming your opinion I believe you
3 testified that you did consult with **N.W.'s** current I think you
4 said pediatric neurologist who was treating him?

5 A I reviewed their records from the visits in 2019 that
6 were the most recent.

7 Q Okay, did you consult with the actual -- talk to the
8 actual neurologist?

9 A No, I did not have a conversation with them.

10 Q Did you consult with any other specialist in forming
11 your opinion?

12 A No. I reviewed their records but as I didn't have any
13 specific questions for them, I did not consult with them
14 directly verbally.

15 Q Okay. Now, as far as -- let's talk about the bruising
16 a few minutes. You said you noted the bruising in the records,
17 is that correct?

18 A That's correct.

19 Q Did you review any photograph of bruises?

20 A No. I went off of the descriptions that were in the
21 Piedmont medical records and the Levine medical records.

22 Q And normally you can't just from looking at a bruise
23 you can't tell how old a bruise is can you?

24 A Looking at a bruise you can't date how old it is.

25 Q Okay. So you can't tell when the bruise was made from

1 looking at it?

2 A Not from looking at it. It depends on the caregiver
3 history about when it was there and when it was not there and so
4 in that gap of time is when the bruising occurred. So we're
5 relying on mother's history that the bruising wasn't present
6 when she dropped the child off.

7 Q Okay. And you certainly can't tell who made the
8 bruise?

9 A No, I can not.

10 Q You mention retinal hemorrhaging. Now, in the abusive
11 head trauma, is that a term that use to be called shaken baby
12 syndrome?

13 A Shaken baby syndrome is a diagnosis, an old one, that
14 is kind of under abusive head trauma there, but that's no longer
15 the medical diagnosis that we use. It was taken out by the
16 American Academy of Pediatrics in 2009.

17 Q Okay. When you are talking about rotational injuries
18 how do rotational injuries occur?

19 A Are you speaking about specifically with shaken baby
20 syndrome.

21 Q Well, let me go back to N.W. You said N.W. had a
22 rotational injury, is that correct?

23 A Yes, he did.

24 Q How does a rotational injury in someone like N.W.
25 occur?

1 A So as I was talking about the rotational injuries it's
2 that arcing, accelerating, decelerating, accelerating,
3 decelerating, in that arc, so one mechanism that can occur is
4 from violent shaking.

5 Q Is there any other ways that a rotational injury can
6 occur?

7 A Certainly. So I had accidental case. It was on one of
8 the major highways that was like 95. The grandmother had pulled
9 off to the side, accidentally put the car in neutral and then
10 rolled out into traffic and the car was hit, spun around several
11 times and hit the median and that child had subdural
12 hemorrhages, retinal hemorrhages. The same pattern as we would
13 see in **N.W.** that's where we kind of get the accidental
14 approximation of what would have occurred.

15 Q Okay. Now going back to the retinal hemorrhaging, so
16 retinal hemorrhaging can be caused by other things then just
17 shaking a child, is that correct?

18 A Yes, it depends on the pattern of retinal hemorrhages.
19 Each disease process has a different pattern of retinal
20 hemorrhages.

21 Q Okay. And did you actual look to see what **N.W.'s**
22 pattern was?

23 A Yes. So the pediatric ophthalmologist wrote a note
24 describing the retinal hemorrhages.

25 Q Okay. And the -- so retinal hemorrhages could be

1 caused by shaking, they can be caused by abrupt blow or
2 acceleration, deceleration?

3 A Well, if it's the repeated rotational one that we were
4 talking about, yes.

5 Q And are you -- are you familiar with Doctor Patrick
6 Lance a pathologist at Wake Forest Medical Center?

7 A No, I am not familiar with him.

8 Q You've never heard about his studies of retinal
9 hemorrhages?

10 A I would be happy to look at them if you had them.

11 Q Okay. I'm asking if you heard about them?

12 A No.

13 Q The a -- are you aware of a shaking type injury it
14 would be someone grabbing a child and violently shaking back and
15 forth like that, is that correct?

16 A Yes, that's what our perpetrator confession. So people
17 convicted of abusive head trauma that's what they describe and
18 demonstrated to law enforcement and to juries. So that's how we
19 know.

20 Q All right. And one of the things you look for in a
21 case like that is a whiplash injury or injury to the neck, is
22 that correct?

23 A No.

24 Q No?

25 A No.

1 Q Okay. So you think shaking a baby back and forth like
2 this (indicating) is not going to cause any kind of injury to
3 the neck?

4 A So right now it's in the recommended so sometimes we do
5 image the neck, but it's not necessary to make the diagnosis
6 there.

7 Q Okay. But when you you find a baby with all these
8 symptoms and you see a neck injury that is sometimes found,
9 isn't it?

10 A Sometimes the ligaments around the spine as it's in the
11 neck there, sometimes they'll stretch or be kind of injured
12 there.

13 Q And in **N.W.'s** case there was no notice of any kind of
14 neck injury, is that correct?

15 A Well, they did a CT but they didn't do a MRI. An MRI
16 is necessary to see those kinds of injuries, and an MRI wasn't
17 extended down into the neck when the MRI was done.

18 Q Now, what is actually damaging the brain tissue in a
19 case of this nature is the acceleration and deceleration, is
20 that correct?

21 A Yes, it's the violent forces on the brain itself.

22 Q Okay. And how much acceleration, deceleration is
23 required?

24 A So, unfortunately, Lee ethically we're not going to put
25 different forces on babies and see how much force it takes to

1 cause an injury. That would be unethical scientific study. So
2 what we do is we just accidental approximations like the child I
3 told you about who had the car injury and we use animal models
4 and pig models to have our kind of -- how much force. What kind
5 of mechanisms would do there. So that's the best approximation.
6 The American Academy Pediatric statement on abusive head trauma
7 says it's a violent act such that if you were observing it you
8 would be afraid for the child's life and so that's kind of what
9 we have.

10 Q All right. My question to you is, when I'm asking how
11 much, I mean is it measured? The actual amount of G-force or
12 acceleration, has that been measured?

13 A We can't because we can't successively apply force to a
14 child and see that when they get injured. That would be
15 unethical.

16 Q So the answer to that question is unknown? The answer
17 to that question unknown, is that correct?

18 A No, we have the animal models and we have the
19 accidental approximations and so we can make some approximation
20 from that.

21 Q Okay. But what do the animal models show?

22 A I would have to pull up the exact ones for the
23 G-forces.

24 Q So you're not aware of what the the G-force required
25 is?

1 A Not off the top of my head, no.

2 Q All right. Do you know how much G-force is caused by
3 an accidental fall of say three feet?

4 A It's very minimal, forces mass times acceleration.
5 Kids have very low mass and you only get this far to accelerate,
6 so it's very low force.

7 Q Are you familiar with the study by M. T Prange,
8 P-r-a-n-g-e, peak rotation of acceleration from a shake or less
9 than one foot fall on the carpet?

10 A Yes. So that's bad science.

11 Q You say it's bad science but that was a study that was
12 done and it was published, is that correct?

13 A It was.

14 Q Now -- now, concerning the age of -- and you said it
15 could be hours is that correct?

16 A Yes that's correct.

17 Q So an initial insult to the brain can require time to
18 develop and to start showing symptoms, is that correct?

19 A No, from our perpetrator confession studies all the
20 babies are symptomatic immediately after the violent act. They
21 all show symptoms.

22 Q Okay. Well what about the non-confessions?

23 A So in those cases it's as if you don't know what
24 happened or don't have a history so unless someone tell us what
25 occurred because it's only the infant and the adult in the room.

1 We have no way of knowing. It's essentially a black box.

2 Q Let me ask you if N.W. didn't have any signs of retinal
3 hemorrhages would your diagnosis be the same?

4 A So if he still had the subdural hemorrhages, the brain
5 injury, as well as the bruising to his front, my diagnosis would
6 still stay because only in about 80 percent of cases will you
7 have retinal hemorrhages there. So there is known significant
8 proportion of abusive head trauma cases where you don't see the
9 classic retinal hemorrhages.

10 MR. BODY: Thank you. That's all I have.

11 MR. EPTING: Briefly Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. EPTING:

14 Q Mr. Boyd asked you about a study. I won't even attempt
15 to pronounce the name, P-R-A-N-G that you say was bad science.

16 A Yes.

17 Q Can you explain to the jury what you meant by that?

18 A So there's some science about when a child's neck would
19 be injured or such. Some of them were performed on cadavers.
20 So not live children there. Some of them used science that are
21 from motor vehicles so that's a linear acceleration
22 deceleration. It's not that rotational. So we actually did
23 science on short falls. They did a complete review of the
24 scientific literature and found that short falls are fatal less
25 than one time in a million there, and it's because of the

1 factors of the fall. If you have accelerated complicated motion
2 like kids launching off of a swing set and you get that
3 rotational acceleration you can have different forces. But when
4 we really limit it to what is truly short falls and that are
5 simple linear very rarely is it fatal if you think about how
6 many times kids fall. And so the studies like the one
7 referenced are very small. They often times deal with dead
8 children. Not live children. And the other components is you
9 have you to take the history from two separate caregivers. So
10 we don't consider it a true history unless two different people
11 saw it.

12 So if you just take the history of one person how do you
13 know if they're being truthful or not about what occurred and so
14 it dirties the science and so that's what we consider, just
15 studies that don't have a lot of scientific validity. You can
16 pay money to get anything published. So we look at peer review
17 journals, the journals from the major societies; the Academy of
18 Pediatrics, Academy of Neurology, Pediatric Radiology there as
19 kind of our cornerstone articles.

20 Q And you mention earlier on your questioning that it's
21 not unusual to not look for whiplash in infants that have
22 suspected head trauma, is that correct?

23 A It is. It's the risk benefit ratio. So in order to
24 look for neck injuries we have to sedate a child and put them in
25 the MRI much longer and so is the benefit of finding that neck

1 injury when we already know what the diagnosis is because we
2 have the head, we're submitting the child to all of that extra
3 sedation and medications and the risk. So we're still
4 pediatricians. Yes, we want to get at the truth, but I also
5 don't want to eradiate everything in this child or sedate them
6 for hours. And so, we're working on fast MRI techniques that
7 don't need sedation but we're just not there with the science
8 yet where we can image the whole spine quickly and find every
9 injury.

10 MR. EPTING: Thank you. That's all the questions
11 I have.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 MS. OHAYON: Your Honor, at this time the State
15 rests.

16 THE COURT: All right. Ladies and gentlemen
17 before we go further I got some matters I will need to
18 address with the lawyers. So I'll ask you to please
19 go to the jury room and don't yet discuss the case. I
20 will bring you back shortly.

21 (WHEREUPON, the jury leaves the courtroom.)

22 THE COURT: Any motions or any matters we need to
23 address before we continue?

24 MS. Butler: From the defendant, Your Honor, we
25 would move at this time a motion for a directed

1 verdict for failure of the State to meet any prong of
2 the statute under 16-3-95 the statute specifically
3 references the term inflict and inflict the bodily
4 injury and there has been no showing that there was an
5 infliction of bodily injury to the child from Darrell
6 Wilson directly, and so we would motion the Court to
7 direct a verdict of not guilty.

8 MR. EPTING: Your Honor, in a light most favorable
9 to the State we believe that the evidence has been
10 presented is that the child was a healthy child. Had
11 no problems and no bruising. Was dropped off with the
12 defendant that night. When the child was picked up
13 the next morning he was extremely injured, extremely
14 sick and had bruising on his face. The doctors
15 testified that is hallmark of an abusive head trauma,
16 otherwise known as shaken baby syndrome. We believe
17 that's substantial circumstantial evidence enough to
18 send this to the jury.

19 THE COURT: Miss Butler, any reply?

20 MS. BUTLER: No, Your Honor.

21 THE COURT: All right. I find that there is both
22 direct and substantial circumstantial evidence to
23 establish each of the essential elements of the crime
24 alleged including the identity of the perpetrator and
25 therefore it makes it a jury question. Motion for a

1 directed verdict is denied.

2 MS. BUTLER: Thank you, Your Honor.

3 THE COURT: Any others?

4 MS. BUTLER: No, Your Honor.

5 THE COURT: Okay. Are you all ready to go
6 forward?

7 MR. BOYD: Your Honor, our expert witness is not
8 here at this time. He is testifying in Washington
9 State today. I had my paralegal try to constantly
10 check on the situation. They said he was scheduled to
11 testify there today. They're three hours behind us.
12 So he doesn't know exactly. He will definitely be
13 able to gets here tomorrow. I'm not sure what time
14 tomorrow. I am hopeful he can be here by noon or
15 thereabouts, but I am not exactly sure of what time.
16 He will not know until he finishes there.

17 THE COURT: Do you have any idea as to when you
18 might be able to get that information?

19 MR. BOYD: Well, I am hoping anytime. What I had
20 was earlier today and they said I know more definitely
21 within the next four or five hours. That was earlier
22 today.

23 THE COURT: Okay. Have you talked to Mr. Wilson
24 about his right to testify?

25 MR. BOYD: That would be Miss Butler.

1 THE COURT: Miss Butler, had you talked to Mr.
2 Wilson about his right to testify.

3 MS. BUTLER: I discussed it with him. I would
4 appreciate just a minute to just to make sure nothing
5 has changed.

6 THE COURT: All right. We will take an a few
7 minutes. Is 15 enough.

8 MS. BUTLER: Yes, Your Honor.

9 THE COURT: We will be at ease for 15 minutes.

10 (WHEREUPON, there was a brief recess.)

11 THE COURT: All right, Miss Butler, have you
12 talked to Mr. Wilson about his right to testify as
13 well as not testify?

14 MS. BUTLER: Yes, Your Honor.

15 THE COURT: Has he indicated a preference to you?

16 MS. BUTLER: That he does not wish to testify is
17 the preference he indicated to me.

18 THE COURT: All right. Mr. Wilson.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Miss Butler just told me she has
21 talked to you about your right to testify as well as
22 not testify.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And she says that you indicated to her
25 your preference is to not to testify. Is that true?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had plenty of time to talk to
3 her about that decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you had plenty of time to think
6 about that decision?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if you choose
9 not to testify in this case you can't wait until later
10 and change your mind about it. In other words you
11 can't wait until the jury goes out to deliberate or
12 after they come back with a verdict and say, I
13 actually wanted to tell them something else.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: This will be the only opportunity you
16 would have to provide any additional information that
17 if you wish to provide personally.

18 THE DEFENDANT: Yes, sir, I understand.

19 THE COURT: I understand there is another witness
20 that is going to be called by your lawyer, but I'm
21 just talking about your testimony.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that if you did
24 choose to testify and did take the witness stand that
25 you would have to answer not just your lawyer's

1 questions but you would have to answer the questions
2 of the prosecutors even if those responses might tend
3 to prove you guilty of the crime they claim you
4 committed.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And if you don't testify I will
7 instruct the jury as I have previously that's not
8 something that they can hold against you or consider
9 in any way in their deliberations or in their
10 determination as to whether or not your guilt has been
11 proven.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you and Miss Butler discussed the
14 advantages and disadvantages of testifying as well as
15 not testifying?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you have an appreciation of
18 what those advantages and disadvantages are?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you've had time to think about it?

21 THE DEFENANT: Yes, sir.

22 THE COURT: And have you made a decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And what is that decision?

25 THE DEFENDANT: No, I do not want to testify.

1 THE COURT: And is that a decision that you made
2 of your even free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody pressured you into that
5 decision?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anyone even suggested to you that
8 is the decision you ought to make?

9 THE DEFENDANT: No, sir.

10 THE COURT: You made that decision on your own?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you had plenty of time to reflect
13 upon it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you satisfied with that decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Thank you.

18 All right. Now I understand that the defense does
19 have a witness that will be called to testify. The
20 witness is presently unable to appear this afternoon
21 due to a scheduling conflict, but the defense is
22 hopeful airline arrangements can be made and the
23 witness will be here some times by lunch time
24 tomorrow. Maybe.

25 MR. BOYD: That's our hope, yes.

1 THE COURT: Aside from that witness is there any
2 other witness to be call by the defense?

3 MS. BUTLER: No, Your Honor.

4 THE COURT: Okay. All right we will bring the
5 jury back and I will excuse them and then they can
6 call in the morning to find out what the schedule is.

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: Ladies and gentlemen, as you know the
9 State has rested in its presentation of evidence so we
10 are going to proceed with the offering by the defense.
11 The first witness that will be called to testify by
12 the defense is a person that will be presented as an
13 expert and that person's schedule prevented him from
14 being here this afternoon and of course our schedule
15 too, and so arrangements have to be made. The witness
16 is not local and so arrangements have to be made for
17 that witness to be able to appear and that likely
18 won't happen before lunch time tomorrow, but I don't
19 know for certain and so what I am going to ask you to
20 do, you will be excused for the balance of today. You
21 will be asked to call back to the number you've been
22 given. All right. Call that number in the morning at
23 ten o'clock, ten o'clock in the morning, and you
24 should receive instructions as to when you need to
25 come back to the courthouse. If something unforeseen

1 should occur the message might tell you to call back.
2 But it is likely -- I hopeful when you call that
3 number you will be instructed what time you need to
4 come back here to the courthouse tomorrow. Okay. So
5 keep in mind the caution previously given. No
6 discussions with anybody, no research, no
7 investigation into any issue. Your notebooks, close
8 them. Leave them on the table back there and the
9 bailiff will take those up and clerk or the court
10 reporter will take possession of them. Nobody will
11 look at them. They will be sealed and then they will
12 be returned to you when you come back to the
13 courthouse. So be sure your juror number is on the on
14 the inside. Okay. All right. Have a good afternoon
15 and call back in the morning at ten o'clock to receive
16 that reporting information.

17 (WHEREUPON, the jurors leave the courtroom.)

18 THE COURT: Do either side have any instruction
19 request?

20 MS. O'HAYON: No, Your Honor.

21 MS. BUTLER: No, Your Honor.

22 THE COURT: Okay.

23 THE COURT: All right. Anything else we need to
24 address before we recess for the afternoon?

25 MS. O'HAYON: Your Honor, I just have a quick

1 question. I heard judges instruct differently on
2 beyond a reasonable doubt and I just want to know how
3 you will define it to the jury so I don't use
4 different terminology.

5 THE COURT: Well, that remains to be seen. Do you
6 have a request you would like to make?

7 MS. OHAYON: However you normally define beyond a
8 reasonable doubt. I've heard it both as firmly
9 convinced and cause someone to hesitate to act.

10 THE COURT: I do both of those.

11 MS. OHAYON: Okay. Thank you, Your Honor.

12 THE COURT: Any other questions or requests.

13 MS. BUTLER: I appreciate Ralph King Anderson's
14 request. I also appreciate Your Honor doing both.

15 Your Honor, we would like to address the bond
16 issue now with his mother -- my client's mother is in
17 the courtroom.

18 THE COURT: All right.

19 MS. BUTLER: She says she will stay on the bond.

20 THE COURT: Do you have a copy of the bond.

21 While she is looking for that, does the York
22 County have a home detention program? A monitor?

23 MR. EPTING: We have people who offer GPS
24 monitors, but we don't have inhouse home detection
25 program.

1 THE COURT: You mean there is somebody that will
2 offer monitoring device that is going to be paid for
3 by the defendant?

4 MR. EPTING: Yes, Your Honor.

5 THE COURT: I found that doesn't work out very
6 well.

7 MR. EPTING: We found the same.

8 THE COURT: In Spartanburg we actually have a
9 program, and it is supervise by county detention
10 facility which is supervised by the sheriff's
11 department.

12 MR. EPTING: We have similar issues. We had to
13 have judges issue orders to order the GPS company to
14 give us the GPS readouts to make sure that somebody is
15 actually keeping an eye on them.

16 MS. BUTLER: I found the the bail proceeding form
17 too, I'm not sure if that's what Your Honor needs.

18 THE COURT: I need to see whatever the bond form
19 was that some judge signed, and the defendant signed
20 that allowed him to be released from custody.

21 MS. BUTLER: I think I have it. Did you want me
22 to pass it up your bailiff.

23 THE COURT: Can we print it?

24 MS. BUTLER: I can you email.

25 THE CLERK: Yes, email it to me.

1 MS. BUTLER: I need to get her email address.

2 THE COURT: Okay. We will be at ease while we are
3 working on that and then I will come back.

4 (WHEREUPON, there was a brief recess.)

5 THE COURT: Okay. Be seated. I have copy of the
6 bond sheet. Apparently the only person obligated on
7 this bond is the defendant's mother and I have some
8 concerns about that for a lot of reasons. If I had a
9 professional bondsman I would feel more comfortable,
10 number one. Two, if I had ability to place a monitor
11 on the defendant I would certainly be more comfortable
12 also, but apparently those options are not available
13 to me here so I will decline the request to have him
14 released from custody pending the balance of the
15 trial.

16 Now, I understand the witness can be here
17 hopefully 11 pm tomorrow night.

18 MR. BOYD: That the information I have.

19 THE COURT: All right. And you think that you'll
20 get any better information or you think that's
21 certain?

22 MR. BOYD: I'm not sure. I hope it's better but I
23 have no information it will be better.

24 THE COURT: All right, we'll have the jury call
25 back at ten in the morning. If you get better

1 information let the clerk know.

2 MR. BOYD: Yes.

3 THE COURT: Send me email and let's me know what
4 it looks like. Okay. You got my law clerk's email.

5 THE CLERK: Yes.

6 THE COURT: All right anything else?

7 MR. EPTING: Nothing from the State.

8 THE COURT: All right. We'll be in recess until
9 one o'clock tomorrow afternoon. However, that likely
10 is not going to be when we can reassume unless Mr.
11 Boyd gets information that the witness can be here
12 much sooner then anticipated. So stay in touch with
13 the clerk's office and that's just in case he can get
14 here quicker. Likely that will not happen. It is
15 more likely we won't be able to reassume until
16 Thursday morning, but we will wait to get that
17 information until Mr. Boyd.

18 All right, court is in recess until we get that
19 further information but not later then ten o'clock
20 Thursday morning.

21 THE COURT: Thank you, Your Honor.

22 (WHEREUPON, court was in recess.)

23 (WHEREUPON, the trial resumed on May 25, 2022).

24 THE COURT: All right. We are here on State's
25 motion filed this morning regarding the motion to

1 exclude the testimony of an expert witness.

2 Mr. Boyd, are you going to handle that motion? I
3 understand Miss Butler is perhaps on the way. She
4 couldn't be here. I understand you were going to be
5 handling the expert witness.

6 MR. BOYD: Yes, sir, I'm prepared.

7 THE COURT: The presentation of testimony. Do you
8 need Miss Butler here for that?

9 MR. BOYD: I think I can go forward.

10 THE COURT: Okay. Thank you. All right.

11 MS. O'HAYON: Your Honor, the State's request was
12 to voir dire the expert outside the presence of the
13 jury. We never received a report up until the cross
14 of our expert yesterday. We weren't sure the
15 direction the defense was going and it seems based on
16 the studies that Mr. Boyd had asked our expert witness
17 that they are going to essentially say that the fall
18 off the couch is what caused the injuries. That is
19 not something that is widely accepted within the
20 medical community, so if that is the diagnosis that
21 Doctor Scheller plans to present to the jury then the
22 State would like to exclude his testimony and we feel
23 that is probably best done outside the presence of the
24 jury.

25 THE COURT: No question about that. Have you all

1 not discussed this issue before this case was called
2 for trial?

3 MS. O'HAYON: No, Your Honor I never received a
4 report. I sent discovery request motions. I only
5 received his resume and that was it.

6 THE COURT: Did you ask what he would be
7 testifying to?

8 MS. O'HAYON: I may not of. I'm a not sure if I
9 ever asked Melinda what his testimony will be.

10 THE COURT: Were you not curious?

11 MS. O'HAYON: Certainly curious, Your Honor.

12 THE COURT: Well, that would be why you would ask.

13 MS. O'HAYON: Yes. I'm not sure that she would
14 have had to told me what the defense was. I'm not
15 sure that she is required to by law.

16 THE COURT: Well, that's a totally different
17 issue. You mean you never asked someone for
18 information if you knew they weren't required under
19 the law to provide it to you?

20 MS. O'HAYON: Well, I did ask for the CV and I
21 don't think she was required to provide that to me and
22 she did.

23 THE COURT: Okay. So you asked for that and you
24 got what you asked for.

25 MS. O'HAYON: Yes, Your Honor.

1 THE COURT: So did you ask what the witness would
2 testify to.

3 MS. O'HAYON: No. Originally when I talked to
4 Miss Butler she had stated the defense was going to be
5 the injuries had happened 72 hours prior to this
6 actual incident date. She gave me the name of a
7 person that was alone with the baby 72 hours prior and
8 I went and interviewed that person with law
9 enforcement. So I was under the impression that she
10 was likely going to say that the injuries were not
11 acute in time and that they could have happened three
12 days before. Up until yesterday it seemed more like
13 what she was going for or what the defense was going
14 for is a short fall. So we have discussed the defense
15 of -- or what her defense was at one point and I did
16 not clarify with her that that is going to be her
17 defense moving forward.

18 THE COURT: All right. Mr. Boyd.

19 MR. BOYD: This is a little different then what I
20 saw in the written motion was to exclude Doctor
21 Schellar's testimony all together. If it's that I --

22 THE COURT: Let's stop right there. Let stop
23 right there. Let's do this. Have you all discussed
24 it this morning at all?

25 MR. BOYD: No, sir.

1 THE COURT: All right. Well, here's what we need
2 to do then. We'll take a recess and you all discuss
3 it. It might be that you all can understand what is
4 to be presented and you all can agree on what you will
5 agree to be admitted and what you contend is improper
6 admitted. And then I can have an intelligent
7 understanding and discussion with you all about it.
8 Okay.

9 MR. BOYD: That's fine.

10 MS. O'HAYON: Yes, Your Honor.

11 THE COURT: You all talk about it. Mr. Boyd is
12 going to tell you, solicitor, what he wants to present
13 by way of the witness's testimony and it might be
14 something that you had an understanding would likely
15 be coming in and therefore you don't have a problem
16 with it. Might be something you don't believe is
17 admissible or there's no foundation for it and it
18 shouldn't be allowed. But I think you all need to
19 talk about it before you talk to me about it so you
20 all have an understanding what the information is.

21 MS. O'HAYON: Yes, Your Honor.

22 THE COURT: You all let me know when you have that
23 discussion.

24 (WHEREUPON, court was in recess.)

25 THE COURT: All right, who wants to go first?

1 MS. O'HAYON: Your Honor, Mr. Boyd has informed me
2 of what he expects Doctor Scheller's to testify to.
3 My request would be that anything that isn't -- that
4 Doctor Scheller would admit is not widely accepted
5 within the medical community be excluded. It seems
6 that Mr. Boyd and I have a difference of opinion on
7 what isn't or is widely accepted and what he has
8 testified to in the past.

9 I'm not sure that we can resolve that without
10 Doctor Scheller actually coming in to say whatever his
11 expert opinion is and whether or not it is widely
12 accepted within the medical community.

13 THE COURT: Well, I'm just not quite certain why
14 we are addressing this at this point in time since you
15 you all have known for how long this case was going to
16 have experts testify. We could have addressed this
17 last week before the jury was involved and waiting on
18 us to do something. That's my concern, is that we
19 seem to be preparing for trial during the trial
20 instead of prior to trial.

21 MS. O'HAYON: Your Honor, I did not think that I
22 would be entitled to that information from the
23 defense, so I didn't ask.

24 THE COURT: You've already told me that. You
25 already told me that, but you also told me that you

1 didn't think they were required to give you the CV of
2 the expert but you asked for it anyway. So don't tell
3 me you don't ask for something because you don't think
4 they have to give it to you. You ask for things and
5 if they say, well, I don't have to give it to you so
6 I'm not. So that's where we are and we can address
7 that.

8 MS. O'HAYON: I understand.

9 THE COURT: I can't believe that your telling me
10 that your practice is if you believe that a lawyer is
11 not required to give you information you never ask for
12 the information. Because I'm confident that Mr. Boyd
13 and Miss Butler and any other defense lawyer asked you
14 for information all the time that you might give or
15 you might not, but they're asking whether you are
16 required to give it or not. Has that been your
17 experience?

18 MS. O'HAYON: My experience has been that the
19 State is usually required to turn things over that the
20 defense may not have to including the defense
21 strategy.

22 THE COURT: I am not talking -- I'm not comparing
23 the two. What my question is -- well, let's say this.
24 Are there things that the State is not required to
25 disclose to the defense?

1 MS. O'HAYON: I'm sure Your Honor.

2 THE COURT: Have you ever been asked to provide
3 something that you believe you're not required to
4 disclose?

5 MS. O'HAYON: Yes.

6 THE COURT: Okay. Well, so did you ask them why
7 are you asking me that? You know I don't have to give
8 it to you.

9 MS. O'HAYON: In my experience it's always been a
10 disagreement of whether or not they believe I should
11 be required to turn it over and then it becomes a
12 hearing in front of the judge about whether or not I
13 would be require to turn it over. I don't think that
14 it is questionable that the defense does not have to
15 turn over their defense strategy to me. So I did not
16 ask for something that I knew without question I was
17 not entitled to.

18 THE COURT: Well, I didn't know the testimony of
19 an expert was a defense strategy. I thought that was
20 the testimony of an expert. You don't want to know
21 what the expert is going to testify to because right
22 now you're asking me to take the testimony outside of
23 the presence of the jury. So again, you obviously do
24 want to know what the witness is going to testify to
25 but you never asked him before now to give that you

1 information. That's my point.

2 MS. O'HAYON: No, Your Honor and I don't believe
3 if I had asked I would have received that information.

4 THE COURT: You don't know though do you?

5 MS. O'HAYON: I don't. The information I had
6 originally from Miss Butler was that her defense was
7 that this was not acute in time.

8 THE COURT: Well, but did you ask her about that
9 or she just shared that voluntarily?

10 MS. O'HAYON: No, I asked her I think.

11 THE COURT: Well, why did you ask her if you
12 thought she wasn't required to give it to you.

13 MS. O'HAYON: I believe the conversation was she
14 told me if I could find an expert that would testify
15 that this could not have happened in 72 hours prior
16 she would have her client plead guilty and when I
17 provided her with that expert report she told me her
18 client was not pleading guilty. Obviously, I can not
19 force a defendant to plea guilty and so at that point
20 we looked at scheduling for this trial and then Covid
21 happen and we are here in 2022 now.

22 So my understanding all along of this defense was
23 that I assumed her expert was going to testify that
24 this was something that didn't happen acute in time
25 and then when he was crossing our expert and the

1 studies that he brought up, Mr. Boyd, and after
2 talking on to our expert it seemed -- and now after
3 talking to Mr. Boyd that's not exactly what this
4 expert is going to testify to.

5 THE COURT: Okay. All right. I see we're not
6 getting anywhere.

7 Mr. Boyd, what is it that your expert will be
8 testifying to?

9 MR. BOYD: Your Honor, he will be -- as I just
10 shared with them -- he will be testifying that as far
11 as the rotational injury, he'll be testifying to items
12 he has reviewed from the scans that indicate it is not
13 a rotational type injury.

14 THE COURT: Let me ask you this it.

15 All right. So that's number one. Number one, he
16 will testify to what?

17 MR. BOYD: That there are indications that there
18 is not a rotational injury.

19 THE COURT: All right. And he's testifying to
20 that fact based upon his education, training and
21 experience as a pediatric neurologist?

22 MR. BOYD: He is board certified as a
23 pediatrician. He's board certified in pediatric
24 neurology. He has a certificate in neuroimaging.

25 THE COURT: So board certified in pediatrics and

1 pediatric neurology.

2 MR. BOYD: That's correct.

3 THE COURT: All right. Miss O'Hayon, do you think
4 that opinion falls outside of his expertise.

5 MS. O'HAYON: Yes, Your Honor. I believe that
6 opinion is based on whether or not there was a neck
7 injury and I also believe that his certificate for
8 neuroimaging while reviewing his previous testimonies
9 in other cases he's admitted that certificate is not
10 accepted by the American Academy of Pediatrics. So
11 that is not a -- he's not a radiologist, not a
12 neuro-radiologist. It's clear on his CV. So I don't
13 know how he can read the scans and make a decision
14 that is different than what a radiologist and
15 neuro-radiologist board certified have made in this
16 case.

17 THE COURT: Well, experts rely upon other experts
18 testing all the time --

19 MS. O'HAYON: Yes.

20 THE COURT: -- in arriving at opinions. That's a
21 pretty routine sort of thing.

22 MS. O'HAYON: Yes, Your Honor, but he's not
23 relying on the medical records. He is relying on his
24 own assessment of the scans where he is not board
25 certified in that field.

1 THE COURT: Okay.

2 MR. BOYD: Your Honor, I will say this. I don't
3 think his review of the -- his own review of the scans
4 differs from the reports from the scans themselves.
5 His interpretation will be that there's still, even
6 regardless there are things that indicate this is not
7 a rotational national injury.

8 THE COURT: Let me clarify that. So you're saying
9 he has reviewed the medical reports just as Doctor
10 Lamb did.

11 MR. BOYD: He has and he has gone further and
12 reviewed the scans themselves.

13 THE COURT: And he review the scans themselves.

14 MR. BOYD: That's correct.

15 THE COURT: Not just the reports of the scans?

16 MR. BOYD: That's correct.

17 THE COURT: And you're saying he is not disputing
18 the report. He's just saying that in his view it's
19 subject to a different interpretation.

20 MR. BOYD: That's correct.

21 THE COURT: Okay. What is the second thing?

22 MR. BOYD: Your Honor, my understanding he's going
23 to testify concerning that you can't age the bruise --
24 bruises that were shown. I think that's consistent
25 with what the defense expert -- I'm sorry, the State's

1 experts says.

2 THE COURT: That you can't determine the age of
3 the bruise?

4 MR. BOYD: That's correct.

5 THE COURT: Okay.

6 MR. BOYD: He will testify concerning the -- if
7 you want me to go into more about why he's going to
8 say there's not a rotational injury I can give you
9 more details on on that.

10 THE COURT: Well, you can tell me what the basis
11 of his opinion is.

12 MR. BOYD: Well, his basis of his opinion is that
13 based on the neck showing no cervical injuries. He's
14 also saying that the location --

15 THE COURT: Stop right there just a minute. The
16 neck shows no injury?

17 MR. BOYD: That's correct.

18 THE COURT: And what is deriving that opinion
19 from?

20 MR. BOYD: From the scans. I understand the State
21 says well they didn't show that. There maybe a
22 dispute. I will have to clarify that with him what he
23 saw.

24 THE COURT: Well, now, I'm not bound to his
25 statement, but that would seem to indicate to me that

1 would require a radiologist who conducts those scans
2 and who does those studies to determine what was
3 actually done.

4 MR. BOYD: Well, I'm not sure what he's going to
5 say. I think --

6 THE COURT: All right.

7 MR. BOYD: That maybe part of neuroimaging, but
8 even if it's not he has reviewed the reports and he
9 says based on that there's no indication of how much.
10 I just heard yesterday and I haven't had the time to
11 talk about it, but from the State's expert that part
12 wasn't imaged enough or something of that nature. So
13 I'm going to have to clarify that with him. I don't
14 know exactly what his testimony will be on that.

15 THE COURT: I thought Doctor Lamb said that there
16 was no -- there was an MRI and CT scan but neither of
17 those were of the next.

18 MR. BOYD: Well, I have to clarify that with him
19 of what the basis of opinion.

20 THE COURT: All right, what else can you tell me
21 of the rotational injury.

22 MR. BOYD: He is also going to say based on the
23 location of the hematoma on the brain that it is
24 unlikely that that was caused by a rotational injury.
25 He will also testify that retinal hemorrhages can be

1 caused by other brain injuries to the brain or
2 diseases of the brain besides a rotational type
3 injury. I think even the State's expert admitted
4 that's the case in some cases.

5 THE COURT: Well, I'm not really concerned about
6 whether there is a dispute between the experts as to
7 fact, but I am concerned about whether or not the
8 expert has the expertise for a foundation to make such
9 a -- to provide us with such an opinion. And so I
10 guess that will be the issue, whether or not his
11 education training and/or experience as a board
12 certified pediatrician and pediatric neurologist
13 allows him to enter an opinion in other fields. If
14 they're connect he might. If they are not he may not.
15 That is the point we are discussing right now.

16 MR. BOYD: He will also testify that in some cases
17 a short fall can cause injuries such as this. He --
18 and basically I believe his testimony is it's not
19 often but it can happen.

20 THE COURT: And the basis for that is what?
21 What's the basis of that opinion?

22 MR. BOYD: The basis of his opinion is basically
23 from his review of literature, other items. I don't
24 know specifically.

25 THE COURT: Well, is it based on his own

1 experience in treating patients or is it just based
2 upon some study that he has reviewed. I know there is
3 one that already has been discussed that the State
4 takes exception to and the State's witness said it was
5 bad science. I don't know if those studies have been
6 peer reviewed or accepted by any significant
7 population in the medical community to deal with that.

8 MR. BOYD: I don't know the answer to whether he
9 has experience with that issue particularly.

10 THE COURT: Okay.

11 MR. BOYD: He will have to be asked. He also
12 would testify that the child had a pre-existing
13 condition in the brain. I'm sorry I can not -- I
14 don't have it written down what that condition was,
15 but that it would make him more susceptible to injury.

16 He did say -- tell me that -- I'm trying to read
17 my own notes now. That the pre-existing condition
18 that can cause blood vessels to break and leak.

19 THE COURT: And is this an opinion that falls
20 within -- that you contend falls within the expertise
21 of a pediatric neurologist or some other specialty
22 field?

23 MR. BOYD: It would be pediatric neurology.

24 THE COURT: Okay.

25 MS. O'HAYON: If I may ask, is that condition

1 cerebral sinovenous thrombosis.

2 MR. BOYD: No, I don't think so.

3 THE COURT: Do you have that information
4 somewhere, the pre-existing go condition? I know it's
5 not right in front of you I guess.

6 MR. BOYD: Well, I have a note here and I'm not
7 sure if I'm confusing my note. I will just spell it,
8 it looks like M-e-t-a-x-n-e-m-o-c and I maybe
9 misspelling that. And I'm not sure if this note is
10 correct because of the way I put my notes, but I think
11 that's it.

12 THE COURT: Are there any other opinions that you
13 intend to offer by way of the witness?

14 MR. BOYD: Not that I can think of Your Honor

15 THE COURT: All right. Miss Butler is present and
16 the reason I'm addressing Miss Butler is during the
17 course of our discussion here the solicitor indicated
18 that Miss Butler, that she had talked to you
19 previously. Not to Mr. Boyd, but to you, about what
20 you proposed to present by way of expert testimony.
21 And so I will let her repeat that so if you wish to
22 you will have a chance to respond to it.

23 MS. O'HAYON: When the case initially started Miss
24 Butler and I had a discussion that the injuries had
25 likely occurred 72 hours prior when the victim was

1 left with a Travis Hull and that if I could present an
2 expert witness in a report that would state that
3 there's no way these injuries happened 72 hours prior
4 which is what Doctor Lamb's report and testimony was,
5 that she would take that into consideration to try and
6 get her client to plead but after I presented that
7 report I was then told that this was scheduled for
8 trial and so it was my understanding that was the
9 defense.

10 THE COURT: And your understanding the defense
11 presented by way of expert was going to be what?

12 MS. O'HAYON: That the injuries were not acute in
13 time and could have happened when the baby was left
14 alone with another person 72 hours prior.

15 THE COURT: And that was told to you by Miss
16 Butler after you had discussions about what their
17 position was with regard to.

18 MS. O'HAYON: Yes, Your Honor when we were
19 discussing plea offers and negotiations.

20 THE COURT: All right. Do you have any interest
21 in responding to that?

22 DEFENSE TWO: Not really, but I will. The case
23 indicated December 2017, so we had some discussions
24 early on. We interviewed Travis Hull. We have a
25 video of that interview with Travis Hall because it

1 was presumes at that time that the baby was left alone
2 at the motel with Travis who Marjorie was staying with
3 but nothing of that interview came to pass. Travis
4 denied everything outright that he had been alone with
5 the baby and we were not able to substantiate in any
6 other way to show that Travis had been alone with the
7 baby within that timeframe. So that's when I got
8 Doctor Scheller and Mr. Boyd involved.

9 MR. BOYD: Your Honor, there is one more thing I
10 neglected to say about the opinions. He does have an
11 opinion that it is possible that the event or injury
12 occurred some time before hand and would not have
13 immediately been symptomatic and he bases that on his
14 training, education and experience as a pediatric
15 neurologist.

16 MS. O'HAYON: I believe he bases that on studies
17 that are not peered review. But Doctor Scheller, my
18 understanding of his most recent testimony, is that he
19 is not actually seen a pediatric patient in about 20
20 years. He has been testifying for the defense for the
21 last 15 to 20 years and he does maybe 20 to 25 percent
22 of his time is spent with his private practice. So,
23 I'm not sure he is basing that on his own assessments
24 of children that presented with what was abusive head
25 trauma or suspected abusive head trauma of if he is

1 basing that on the study that have not been peerred
2 reviewed.

3 THE COURT: Can you respond to that?

4 MR. BOYD: I can not. I would have to ask him.

5 THE COURT: Okay.

6 THE COURT: Mr. Boyd, making a proffer of Doctor
7 Schellar's testimony you think that would take how
8 much time?

9 MR. BOYD: His testimony is probably going to be
10 lengthy. If it's just a summary of it.

11 THE COURT: No, it will be a proffer because the
12 State is objecting to the testimony saying he is not
13 qualified to render the opinions that you have stated
14 he is intending to render.

15 MR. BOYD: If we go through the whole testimony we
16 are probably looking at in excess of an hour.

17 THE COURT: Okay. And he will be available when?

18 MR. BOYD: My latest information is he's
19 testifying today. His testimony ran over today. He's
20 not going to be able to make the flight he thought.
21 He is taking a flight that will put him in Charlotte
22 at eight am in the morning. He's coming directly here
23 from there.

24 THE COURT: All right. We will recess until ten
25 o'clock in the morning at which time we'll take the

1 proffer of Doctor Schellar's testimony and determine
2 its admissibility. Court is in recess.

3 Do you all have anything else?

4 MR. BOYD: Your Honor, the only problem with a
5 total proffer is the State is going to get to hear the
6 whole testimony twice in that event.

7 THE COURT: Well, all I can say they're objecting
8 to his testimony because they say the opinions that he
9 is to render are not within his expertise and I don't
10 have the slightest idea whether they are or not until
11 I hear what they are and then I can hear you all's
12 argument. That's what I was hoping we can do today
13 but apparently that can't happen.

14 MR. BOYD: Well, I think a proffer could be
15 limited to the issues we discussed and not everything.

16 THE COURT: Oh, well no, don't misunderstand me.
17 I don't mean you got to proffer everything he is going
18 to testify to, but you got to proffer his testimony
19 and his basis for knowledge and expertise for a
20 particular opinion. You and the solicitor can discuss
21 -- for rest of day as far as I'm concerned -- which
22 opinions that she objects to based upon a lack of
23 expertise or lack of foundation or lack of basis.
24 Some -- that's the reason I was asking about are these
25 opinions being rendered as an expert in the field of

1 pediatric neurology because if they are, if he's a
2 board certified pediatric neurologist then whether or
3 not the State agrees with his opinion or whether or
4 not Doctor Lamb agrees with it, he's still competent
5 to testify to it. The jury may reject it, but he can
6 testify to any opinion he has that is within the field
7 of pediatrics and/or pediatric neurology.

8 The State is having some issues with his
9 interpreting other specialities, reports and testing
10 such as the imaging. They're objecting that he's not
11 qualified to interpret certain tests and image go
12 because he's not a radiologist. Doctors rely upon
13 X-rays. They rely upon MRIs. They rely on CT scans
14 all the time but they rely upon the report generated
15 by that expert in that particular field and they act
16 upon that. They don't take it and then challenge it
17 when they are outside -- when it's outside of their
18 expertise. In other words, if Doctor Scheller is
19 looking at reports generated by experts and he agrees
20 with them, in other words he agrees with the
21 information provided, but in his field of expertise he
22 challenges the interpretation or he simply says that
23 can be interpreted more than one way because
24 reasonable minds can differ. Reasonable medical
25 professionals can differ on what that means. That is

1 something he can testify to. The jury will have to
2 decide the credibility and believability. But the
3 point is, he can't -- a specialist in one field can't
4 just necessarily testify about something that is
5 encompassed by another field of specialty unless they
6 have some education and training and experience in
7 that particular field. In other words, you don't
8 always have to be a specialist to testify about
9 matters that encompass a specialty, but you have to
10 base it -- if if you do render an opinion and you're
11 not in that specialty field you at least have to have
12 some education or training or experience or basis for
13 giving an opinion. And some times you can't because
14 you haven't been trained in radiology or MRIs and CT
15 scans. As I say, you know, accepting the reports and
16 using that as a basis for a judgement is fine. But I
17 don't think if you have no expertise in the field I
18 don't think you can challenge someone who is a
19 specialist in the field. You can't challenge their
20 opinion because I don't think agree with that because
21 you don't have a proper expertise or foundation for
22 it.

23 MR. BOYD: Right. I understand that.

24 THE COURT: I know you do. Okay. Well, that's
25 why I think you all can discuss it. As I say you got

1 all day to talk and discuss it. You can specify
2 exactly what opinions you propose to offer and I'm
3 guessing it should be perhaps some that they may not
4 necessarily agree with, but they agree that he's
5 qualified to render it. It might be different then
6 Doctor Lamb's but that doesn't mean that he's not
7 qualified to testify to it. But there are others that
8 has already been indicated that the solicitor doesn't
9 think he has the proper expertise to render. It's
10 outside of his specialty field or professional
11 knowledge. So, is that clear enough, or am I just
12 talking.

13 MR. BOYD: That's clear from this side.

14 THE COURT: Okay. All right, you all take the day
15 to sort it out we'll resume in the morning at ten
16 o'clock and hopefully at that time we will be able to
17 to take some testimony in order to resolve any
18 differences that you have. And you all will have to
19 me know when you all are through discussing it. Then
20 we can determine what amount of time we need to take
21 for Doctor Schellar's testimony. That way I can
22 determine what time I need to have the jury come back.
23 Let me know this afternoon as early as possible.

24 Anything else?

25 MS. O'HAYON: No, Your Honor.

1 THE COURT: All right.

2 MS. O'HAYON: Thank you.

3 MR. EPTING: Thank you, Your Honor.

4 (WHEREUPON, the trial was in recess and resumed on
5 May 26, 2022.)

6 THE COURT: All right. Are we ready to proceed?

7 MR. BOYD: Yes, Your Honor. Do you want me to go
8 ahead and call Doctor Joseph Scheller for proffer.

9 THE COURT: Yes, sir.

10 MR. BOYD: Doctor Scheller please come to be
11 sworn.

12 JOSEPH SCHELLER, called as a witness, having been
13 duly sworn by the clerk, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. BOYD:

17 Q State your name please

18 A Joseph Scheller, S-c-h-e-l-l-e-r.

19 Q And Doctor Scheller, I believe you have been retained
20 by the defense as an expert in this case, is that correct?

21 A Yes, sir.

22 Q Okay. Could you tell us what is your education?

23 A I went to medical school at the University of Illinois
24 in Chicago where I'm from and then I first trained to be a
25 pediatrician in Detroit, Michigan and then I trained to be

1 neurologist and child neurologist at the University Hospital and
2 the Children's Hospital in San Diego, California. I finished
3 that training way back in 1987. Since then I've done two other
4 trainings. One to be epidemiologist at the National Institute
5 of Health from '91 to '92 and one to be a specialist within
6 neurology called a neuroimaging specialist and that was 2012 to
7 2014 at the Winchester Hospital in Winchester, Virginia.

8 Q And just tell me what board certifications do you have?

9 A I am board certified as a pediatrician since 1988,
10 board certified as a neurologist and pediatric neurologist since
11 1989, board certified as a neuroimaging specialist within
12 neurology since 2015.

13 Q And tell me about the board certification in
14 neuroimaging. What is that?

15 A So every neurologist learns how to read CAT scans and
16 MRI scans just like every neurologist learns how to diagnose
17 stroke or Alzheimers or Parkinson disease but there are doctors
18 who want to advertise or tell patients that they have added
19 expertise in something like Alzheimers or stroke. So within the
20 neurology world they offer extra training. They call those
21 fellowships and they are a year or two. So I did a fellowship
22 in neuroimaging which just meant every day I was reading CAT
23 scans and MRIs under the supervision of a mentor. At the end of
24 that time period I had to take an exam that was composed,
25 comprised by the people who are considered high level

1 neurologist with expertise in neuroimaging. I passed that exam
2 and so that's what the neuroimaging is.

3 Q As part of neurology do you neurologist read
4 radiographs, CT scans, e-rays, those types of things?

5 A Sure. Every neurologist is expected to be able to read
6 head CT scans and spine CT scans, head MRI scans and spine MRI
7 scans.

8 Q All right. What states are you license in?

9 A Maryland and New Jersey.

10 Q And what positions have you held? Have you --
11 employment background, just give us that.

12 A Sure. I was a staff neurologist at the Childrens
13 Hospital in San Diego and at the Children Hospitals at the
14 University of Maryland in Baltimore and then at the Childrens
15 Hospitals of Washington DC and that was a total of 23 years. I
16 did the fellowship and then since 2014 I have had my own private
17 practice in neurology.

18 Q And have you testified as an expert witness in court
19 before?

20 A Yes, sir.

21 Q And how many times have you testified approximately?

22 A A few hundred.

23 Q Have you previously been qualified as an expert in
24 testifying in South Carolina?

25 A Yes, sir.

1 Q Beside testifying what else does your practice consist
2 of?

3 A Two days a week I see patients with neurological
4 problems. That can be adults or children. It's outpatient
5 because I travel so much with what I do the other three days a
6 week. The other three days I see medical/legal cases. Many of
7 them are head trauma cases and so I work with attorneys and
8 sometimes go to trial to explain what happened.

9 Q What records did you review in forming your opinions
10 about N.W. [REDACTED]

11 A I had his pediatric records and then I had the records
12 from Piedmont Hospital and the records from Levine Hospital and
13 then I also was able to review all the radiology images.

14 Q And would that being the radiology images from Piedmont
15 Medical Center and Levine Hospital?

16 A Yes, sir.

17 Q What -- tell me what you your findings regarding your
18 review of the records?

19 A You mean what I am going to say in front of the jury.

20 Q Yes.

21 A Oh sure. N.W. had seizures on the day int question and
22 I don't remember the day by heart. I put it on timeline but I
23 don't know exactly the day. It was in the morning he had
24 seizures. They were documented at Piedmont Hospital and as a
25 neurologist that's what we do every day is we diagnose and treat

1 seizures. His seizures were due to his brain being irritated by
2 a blood clot and that blood clot was really only on one side of
3 his head. Not on the other side of his head. There are a lot
4 of reasons for a child having a blood clot. In his case he had
5 had two risk factors for the blood clot. Risk factor number
6 one, was that he had a pre-existing condition where he had
7 excess fluid between the brain and the inside of the skull and
8 reason number two, he was found to have an unusual virus when
9 the hospital people at Levine put a swab up his nose and checked
10 for viruses. Those two triggers can trigger a blood clot, cause
11 seizures and then cause all the complications that he had from
12 the seizures. Unfortunately when seizures go on for one or two
13 three days as they did in his case they can be very, very toxic
14 to his brain and so unfortunately he suffered because of all the
15 seizures that he had and the seizures due to the blood clot, the
16 blood clot due to two conditions a viral condition that he had
17 and the pre-existing condition.

18 Q Let me ask you a few questions about that. You say
19 virus. Is that showing in the medical records?

20 A Yes.

21 Q Is that showing in the Levine medical records?

22 A Yes, sir.

23 Q And so that opinion is not based on any scans you
24 looked at?

25 A Well, I mean it's a whole picture and so I'm looking at

1 everything. I can't ignore something.

2 Q There is -- there was testimony earlier that **N.W.** was
3 injuries were a rotational injury. Do you have an opinion as to
4 whether or not his injuries were from a rotational injury?

5 A So, rotation could be spinning around on a chair like I
6 am sitting on, a secretary chair, or a rotation could be a
7 violent shake and I'm assuming -- I didn't hear the other
8 person's testimony that it was from a violent shake. Can I
9 confirm that.

10 Q Yes. In your opinion was **N.W.'s** injuries from a
11 violent shake?

12 A I believe that's less likely then what I'm suggesting
13 and I have several reasons for that.

14 Q All right. Can you give those reasons?

15 A Sure. Reason number one, if we are going to assume
16 that **N.W.** was a victim of a violent shake and he was about four
17 months old at the time. So in theory a person in a particular
18 state of mind could grab a child and shake that child violently
19 then you would look for marks on the chest and on the back where
20 that person was holding the child. You can not hold a child
21 gently and shake that child violently. You have to hold the
22 child aggressively and very, very firmly. Those were not
23 present in **N.W.'s** case. So that's reason number one.

24 Reason number two, often in cases of violent shaking we
25 encounter rib fractures and that's because somebody is squeezing

1 the chest so hard in a fit of anger and N.W. did not have any
2 rib factors.

3 Reason number three, children who are victims of violence
4 often have are limb fractures and N.W. was did not have the any
5 limb fractures.

6 Reason number four, if we are thinking that his head was
7 bouncing back and forth in a whiplash type of rotation, in other
8 words back and forth then you would expect to see some neck
9 injury like people get in car accidents. He had both a CAT scan
10 and an MRI that looked at his neck and neither one showed any
11 neck injury.

12 Five, and finally, when one looks at the brain scans of N.W.
13 everything negative that' is happening, all the bad things are
14 happening just on one side of his brain. The left side of his
15 brain. The left side of his brain and in between the left side
16 of his brain and inside of his skull. And in my view I can't
17 imagine how somebody be could violently shake something and only
18 injury one side. If I put an apple in a jar and I shake the jar
19 I don't think I would be clever enough to figure out a way I can
20 only injury one side of the apple. So the brain is situated in
21 the skull and if you shake that skull I'm not sure how he could
22 only injure one side of it, one side of the brain.

23 Q All right. Let's go through each of those items one at
24 a time. When you first said there was no bruising on -- I think
25 you said was it the chest or the back?

1 A I said the chest and back, yes, sir.

2 Q And is reflected from viewing the medical records that
3 there is no indication of bruising in those locations?

4 A Yes, sir.

5 Q Second -- what was your second reason again?

6 A No rib fractures.

7 Q Okay. Were there any --just looking at the written
8 medical records was there any indication of any rib fractures?

9 A They looked and there were no rib fractures.

10 Q And what is was the third reason?

11 A There were no limb fractures. Sometimes when children
12 are grabbed or pulled aggressively or beaten up they get bone
13 fractures, arms or legs.

14 Q And did those -- did the medical records indicate any
15 kind of fractures to the limbs?

16 A No, sir.

17 Q What was the next reason?

18 A Neck injury.

19 Q All right. And did the medical records show any
20 indication of a neck injury?

21 A No. They did a CAT scan and MRI scan of the neck and
22 there was no neck injury.

23 Q Now through was some testimony that there was I believe
24 that there was no MRI showing the cervical spine of that area.
25 Did you review the records? Were there radiographs of that

1 area?

2 A When they do MRI scans of the head you can very often
3 see the neck and they did include the neck on MRI scans of the
4 head.

5 Q Okay. And based on the written record and on your
6 review of the scans themselves, did you see any indication of
7 any injury to the neck?

8 A No, and they had done a CAT scan previously of the neck
9 that was dedicated let's just look at the neck with the CAT scan
10 that was done on the first day. Which, I'm sorry, I don't
11 remember the exact day. The day he came to Levine and that did
12 not show any neck injuries.

13 Q Is that shown in the written records as well as your
14 review of the scans?

15 A Yes, sir.

16 Q What was next reason?

17 A How could there be injury just to one side of the brain
18 if we're suggesting that the whole head was shaken.

19 Q And let me -- what do you base your opinion that there
20 was only injury to one side?

21 A It's pretty clear cut in the images.

22 Q And is that shown also in the written records?

23 A The record suggests that there was a little bit of
24 hemorrhage on the right but it's really nothing to speak of.
25 The hemorrhages is really over and within the left side of the

1 brain.

2 Q Now, did you also review some photographs -- they have
3 been introduced into evidence, of some bruising on N.W.

4 A Yes, sir.

5 Q And does that bruising -- well, first off, can you age
6 a bruise by looking at it?

7 A Not within any degree of specificity. You can't say it
8 happened at two o'clock or three o'clock. You can't say
9 anything like that.

10 Q Would those bruises be consistent with a violent
11 shaking?

12 A I couldn't imagine how.

13 Q Okay. Do you have an opinion as to the cause of those
14 bruises?

15 A Those bruises are situated around the mouth and the jaw
16 near the mouth and it looks like an area where they might put a
17 bag, a breathing bag on top of the child's face or do other
18 manipulations when they are trying to resuscitate a child.

19 Q Also, are N.W.'s injuries consistent with an blow to
20 the head?

21 A In theory, yes, but I didn't find evidence of that.

22 Q When you said there's no evidence of that, what's
23 lacking to show that?

24 A In your classic case and there are know absolutes in
25 medicine, but in your classic case -- let me just backtrack for

1 a moment. If I knew absolutely nothing about N.W. and I knew
2 nothing about his scalp or his skull, I would say well if you
3 have a blood clot on the left side of head, you got seizures
4 coming out of the left side of the brain, I bet he received a
5 blow to the left side of head. But then you look for evidence
6 of that blow and you look for scalp injury and you look for a
7 skull fracture and they're not there. So if you just look at
8 what happened to the brain you could say, yeah, that's
9 consistent with a blow to the head, but if you look for evidence
10 of that blow against scalp or skull injury and you can see the
11 scalp and skull very, very, well on a Cat scan and it is just
12 not there.

13 Q Is there anything in the medical records that show any
14 indication of bruising or a knot on the head or fracture of the
15 head?

16 A No, sir.

17 MR. BOYD: If the Court would indulge me.

18 Q As part of your training in the area of both pediatrics
19 and pediatric neurology, do you have -- is there training on
20 brain injuries?

21 A Well, every pediatric neurologist has to know a lot
22 about the brain injuries and every pediatrician has to know a
23 little about brain injuries so I first I learned a little and
24 then when I did my neurology training I learned a lot.

25 Q Is there training in the cause of injuries?

1 A Well, sure. Being a neurologist is about making a
2 diagnosis and so people can tell me I was in a car accident
3 yesterday and banged my head against the windshield can you tell
4 me what the consequences of that are. But other times you just
5 find people on the street and you don't have the story and it's
6 then your job as a neurologist to diagnose what happened.

7 Q Is that part of -- based on your training, education
8 and experience, do you make diagnosis of causation of injuries?

9 A Every day.

10 Q And do you -- and do you have experience with both
11 accidental and also deliberate injuries to children?

12 A Unfortunately, yes, having worked at children's
13 hospitals more than 20 years it is something that we see in
14 children's hospitals.

15 Q Now, have you basically given a summary here of your
16 opinions that you intend to give to to the jury?

17 A Let me think for a moment if I left anything out on. I
18 think that is it.

19 MR. BOYD: Your Honor, that's our proffer.

20 THE COURT: I understand that is the sum total of
21 the opinions that you intend to offer by way of this
22 witness?

23 MR. BOYD: That is correct, Your Honor. It will
24 be in more detail in front of the jury.

25 THE COURT: I understand.

1 MR. BOYD: But we are doing this more speedily,
2 but yes, that is correct.

3 CROSS EXAMINATION

4 BY MS. O'HAYON:

5 Q Good morning.

6 A Hello.

7 Q You mentioned when you were going over your CV you are
8 board certified in neuroimaging since 2015?

9 A That's right.

10 Q What board is that?

11 A It's the UCNS, it's the United Counsel of Neurologic
12 Subspecialist.

13 Q That is not the American Board of Subspecialties,
14 correct?

15 A That's right.

16 Q So it is a different board certification then your
17 board certifications in radiology or -- I'm sorry, not
18 radiology, pediatrics and neurology?

19 A That's correct.

20 Q It's a little misleading would you say, to say you are
21 board certified when that's a different kind of board then what
22 normal people would talk about?

23 A It's misleading to ask me that question because this is
24 a group of esteemed neurologist who are internationally known
25 and they felt it was very important to create a specialty within

1 neurology just like they felt important to create dementia, like
2 stroke, like other conditions, so no, not at all. This is
3 something that neurologist work hard to do and when they
4 accomplish it so they talk about as essentially an
5 accomplishment.

6 Q In America, the American Board of Subspecialties that
7 is not recognized as being board certified, is that correct?

8 A Not yet. There is an application and it takes time.

9 Q As of this moment?

10 A As of this moment it is not.

11 Q It is not. And to become board certified in radiology
12 how many years ever education?

13 A I don't know. I'm not a radiologist.

14 Q Would you say five or six years perhaps?

15 A I don't know.

16 Q Have you previously testified that it would take five
17 on to six years to become a radiologist?

18 A I may have. It changes. A lot of time they change.

19 Q And it only took you two years to complete this
20 fellowship, is that correct?

21 A That's right.

22 Q And under this fellowship you studied under a
23 particular doctor who essentially you read a scan and he told
24 you if it was right or wrong?

25 A Four doctors and it wasn't one scan. It was 10 to 20

1 scans a day over the course of that time and then reviewed it.
2 It wasn't just, oh here, let me check. Okay. Buy. I was
3 spending hours with a number of doctors.

4 Q Okay. Hours a day for just two years?

5 A That's right.

6 Q Okay. You previously -- you just testified now that
7 you have been qualified as an expert and you testified a few
8 hundred times, is that right?

9 A That's right.

10 Q Have you ever been precluded from testifying as an
11 expert?

12 A Not about neurology but about child abuse. Four times.

13 Q You were precluded from testifying in Texas and Ohio,
14 is that correct?

15 A That's correct.

16 Q And in Maryland where your own private practice is and
17 where you hold your licensed?

18 A Never been precluded Maryland.

19 Q Do you remember the case of the Maryland versus Kia
20 Divband?

21 A How do you say the last name.

22 Q D-i-v-b-a-n-d?

23 A Yeah, I was not precluded from that.

24 Q You were definitely not precluded in that case, is what
25 you are saying?

1 A Well, I never saw the ruling. I was just told by the
2 attorney that my testimony wasn't needed.

3 Q Okay. So you testified in a pretrial hearing in that
4 case, correct?

5 A That's right.

6 Q And then you never testified in front of the jury?

7 A That's right.

8 Q And you don't know why that is?

9 A Well, I know what the attorney told me and the attorney
10 told me that my testimony wasn't needed. He never sent me a
11 ruling that I was precluded.

12 Q Okay. And you also been precluded in Federal Court?

13 A That's right.

14 Q And you know specifically that you have been precluded
15 in Federal Court because your opinions do not fall under the
16 Daubert standard?

17 Q That's not completely true. I would say that's
18 misleading because the judge wrote several reasons why I was
19 precluded and among those several reasons that was one of them
20 and I just didn't do a good job explaining my position to the
21 judge?

22 Q You didn't do a good job explaining your position to
23 the judge in Federal Court?

24 A That's right.

25 Q After you testified two to three hundred times on child

1 abuse cases?

2 A I'm getting better all the time.

3 Q Probably three hundred times in lead paint cases?

4 A That's right.

5 Q You didn't do a good job explaining to the Court in
6 2017 when you have been testifying for 15 to 20 years?

7 A I thought it was 2019 the federal case. It may have
8 started in 2017 but the ruling came out in 2019.

9 Q You -- your proposed testimony was taken on November
10 15, 2017, does that sound accurate?

11 A It was a drawn out case so I originally testified then.
12 I went back I think twice to testify more.

13 Q And as of 2017 you had been testifying as a medical
14 defense expert in your own words for 15 to 20 years, is that
15 accurate?

16 A I don't always do defense but I have done many defense
17 cases and, yes, I have been testifying for at least a dozen
18 years or more than that.

19 Q Have you ever testified for the State?

20 A In a child abuse -- suspected child abuse case I've
21 never been asked.

22 Q So you never testified for the State in a suspected
23 child abuse case?

24 A Because I've been asked to testify for the State in a
25 child abuse case.

1 Q Because you don't believe abusive head trauma is an
2 accurate diagnosis?

3 A No, that's not true at all.

4 Q Have you not testified previously that you don't feel
5 that abusive head trauma is a proper diagnosis because it's too
6 vague?

7 A I have, but it has nothing to do as to why I've never
8 testified for the State.

9 Q You don't think that would be a reason why the State
10 wouldn't ask you to testify?

11 A I can't talk about what the State's motives. I can
12 just say they don't call me.

13 Q Do you think the State may be doesn't call you because
14 nine times out of ten you will say that in the abusive head
15 trauma cases that you are presented with that the doctors
16 originally diagnosing of abusive head trauma were wrong and you
17 find an alternative theory, is that correct?

18 A You are asking me why the State doesn't call me and I
19 can't tell.

20 Q Is it true that nine times out of ten you you will say
21 abusive head trauma did not exist when the doctors have already
22 diagnosed that?

23 A I never say that. In fact I can tell the Court what I
24 do say so nobody is mislead.

25 Q I will get to your testimony one second. Do you recall

1 testifying in Georgia versus Jebediah Sutton-Brown-Fox about
2 baby Atlas in December 2018?

3 A I remember the name because it's an unusual name and I
4 do remember I was in Georgia to testify. I don't remember the
5 details of that case.

6 Q Do you remember testifying, question," And you've
7 testified that you have found alternative explanations to
8 abusive head trauma in about a 90 percent of the cases that you
9 evaluate, correct?" Answer, "Give or take, yes."

10 A Let me explain why that is a misleading.

11 Q That's a yes or no.

12 A It's not a yes or no. I did say those words and I'm
13 sorry you are misleading the Court.

14 THE COURT: He can explain if he wants.

15 Q Go ahead.

16 A In a case like this, the N.W. case, and in the
17 case in Georgia, which I don't have a specific recollections of
18 -- my job is not to say I know this happened or I know that
19 happened. My job is to say is there an alternative that is
20 reasonable and medically sound. I was not there when N.W. began
21 to have seizures, but I can say there are reasons separate from
22 child abuse why a child would have seizures and that's what I
23 usually testify. It's not always seizures. Sometimes it's
24 lethargy. Sometimes it's just blood in the brain. But my job
25 is of what I am doing as neurologist is saying are there other

1 reasons why that might happen and in nine out of ten cases that
2 I get and these are cases where a lawyer finds a defendant very
3 credible and there is no reason why the lawyer suspects the
4 defendant so in those cases I nine out of ten of those I believe
5 that there is an alternative that was not seriously considered
6 by the child abuse doctor.

7 MS. O'HAYON: Your Honor, I would object to him if
8 he is permitted to testify in front of a jury of him
9 ever saying anything along the lines of a lawyer
10 believing anyone.

11 THE COURT: This is all a proffer right now.

12 Q Okay. You said that your testimony is based on
13 medically sound reasoning?

14 A Sure.

15 Q Okay. What medically sound reasoning?

16 A Having experience in all the neurological conditions
17 that can cause a particular series of symptoms and going through
18 them one by one and if they're all ruled out and then one can
19 arrive at the diagnosis of child abuse. If they are not all
20 ruled out then one can not arrive at the diagnosis of child
21 abuse.

22 Q You have no experience however with shaken babies with
23 no impact, isn't that accurate?

24 A I don't understand the question.

25 Q You've never diagnosed a baby with shaken baby syndrome

1 except for one time in 1990, so you do not have experience with
2 babies who have been shaken but not blunt force trauma?

3 A No one in the world does, so I'm part of that group.

4 Q Okay. So that group is only five percent of American
5 physicians, isn't that accurate?

6 A No. You are confusing two things and I am happy to
7 explain if you like.

8 Q Okay. What is the small group that you are a part of
9 that believes that shaken baby syndrome does not exist?

10 A No group believes that shaken baby does not exist.
11 There is a small group, a minority of pediatricians and others
12 who do not believe that it's a good diagnosis because it has
13 never been scientifically confirmed.

14 In other words, they've never shaken animals and produced
15 the same problems that we see in humans, they never caught it on
16 a nanny cam and found the conditions that we say happen in
17 shaken baby syndrome and they've never been able to copy the
18 findings using crash test dummy babies. Just like we can test
19 car seats and find out, well, how safe is a car seat. Let's put
20 a crash test dummy baby in there and measure what happens to
21 every body part when the car crashes. So similarly you can make
22 a crash test dummy and see what happens to the dummy baby when
23 we shake it violently and they've never been able to confirm
24 that idea that Mr. Boyd suggested that there's a rotational
25 injury, acceleration and deceleration injury. So I can't tell

1 you shaken baby syndrome doesn't exist. I can say in 2022
2 despite fifty years of that term being used I don't have
3 scientific evidence that it exists.

4 Q You and the minority of physicians across the world
5 feel that there isn't enough scientific evidence?

6 A Either there is or there isn't. It's not a feeling.

7 Q But there's 95 percent of physicians that do believe
8 there is scientific evidence that does support shaken baby
9 syndrome?

10 A I'm not sure that's true. I just think they are aware
11 of what they are taught and I was taught about shaken baby
12 syndrome in 1982, and so they believe what they're taught,
13 number one, and number two, they feel that it has been confirmed
14 by confessions and the confessions I read in those nine out of
15 ten cases are not believable. I don't believe that there is a
16 confession in this case.

17 Q So, 95 percent of physicians base their opinions on
18 shaken baby syndrome on a number of things. One, studies. Two,
19 confessions and three their own experience, correct?

20 A Yes.

21 Q Okay. Your saying that your opinion differs because
22 your experience is different but also you don't believe that
23 those studies are scientific and you don't believe the
24 perpetrators confessions, correct?

25 A That's right.

1 Q What about your beliefs are scientific?

2 A Oh, the science of it, and again, there's only three
3 ways to prove that shaken baby syndrome exist scientifically. A
4 confession is not science. It might be a legal way or
5 psychological way, but it's not science. Somebody says I shook
6 the baby and this is what happened. That's not science. It's
7 not something you can measure. It is not something you can
8 replicate. There is only three ways to do it. One way to do it
9 is on animals. Animals were shaken in the 70's and 80's and
10 90's. They never got subdural hematomas unless there was
11 impact. Number two, you can crash test dummy babies. You can
12 measure the forces inside the skull with crash test dummy babies
13 when we shake them and they don't even come to one tenth of the
14 forces that effect a crash test dummy baby when that crash test
15 dummy baby is dropped off of a counter like this (indicating)
16 which is about maybe three feet high and so reason number two is
17 the science.

18 Reason number three, there are videos that exist on
19 terrible people who are caught on nanny cams violently shaking
20 babies and not one of them thus far has been shown to have
21 either subdural hemorrhages or retinal hemorrhages. The
22 hallmark true findings of shaken baby syndrome. So of course if
23 we think logically of a violent person shaking a four month old,
24 that is probably going to some harm but to say, oh, I know it
25 causes this and I know it causes that. How do you know that?

1 Q But you're in the minority view, correct? That
2 viewpoint is only about five percent of physicians. That is not
3 a widely accepted viewpoint, is that correct?

4 A That's not completely correct.

5 Q It is not an accepted viewpoint within the medical
6 community, is that correct?

7 A I could say the whole medical community is about
8 discussion and learning things and so it's definitely a minority
9 viewpoint, but that's what medicine is. We learn as we get more
10 experience.

11 Q Are you familiar with the consensus statement that was
12 released in 2018? You recently testified to it.

13 A And the criticisms of it, yes, ma'am.

14 Q Yes. You said -- well, first of all in 2009 the
15 diagnosis of shaken baby was syndrome was essentially replaced
16 with abusive head trauma to incorporate shaken baby syndrome and
17 other types of head trauma?

18 A That's correct.

19 Q And that consensus statement came out in 2018 and it
20 was by the American Academy of Pediatrics, is that correct?

21 A They did not write it. It was written by a group of
22 radiologists. There were 12 radiologist. Radiologist do not
23 diagnose child abuse. There were two child abuse specialist and
24 one neurosurgeon. And so 12 radiologist publishing an article
25 about how to diagnosis child abuse is already ironic, but yes,

1 they wrote it and it was the American Academy of Pediatrics
2 said, oh yeah, I like this article and gave it their stamp of
3 approval.

4 Q Okay. So it has been approved by the Academy of
5 Pediatrics?

6 A The American Academy of Pediatrics, that's right.

7 Q And is true that the consensus statement states that
8 there is no controversy concerning the medical validity of the
9 existence of abusive head trauma with multiple components
10 including subdural hematoma, complex retinal hemorrhages that
11 are inconsistent with the provided mechanism of trauma?

12 A Your reading correctly. That's what it says in that
13 opinion piece.

14 Q Does it also state that the courtroom has become a
15 forum for speculative theories that can not be reconciled with
16 generally accepted medical literature?

17 A That's what they wrote.

18 Q Okay. And does it also state that the diagnosis of
19 abusive head trauma is a medical diagnosis made by a
20 multidisciplinary team of pediatricians and pediatric
21 subspecialty pediatricians, social workers and other
22 professionals base on consideration of all the facts and
23 evidence. Abusive head trauma is a scientifically
24 noncontroversial medical diagnosis broadly recognized and
25 managed throughout the world. Was that in the consensus

1 statement?

2 A You read it perfectly.

3 Q Okay. And you disagree with that consensus statement
4 don't you?

5 A I sure do.

6 Q You actually think the consensus statement was directed
7 to you. You think they wrote it about you?

8 A I think so and people like me.

9 Q Okay. Going back to you not believing suspect
10 confessions. So even if a suspect said I shook the baby like
11 this (indicating) you would still come up with an alternative
12 theory, correct? You have many, many times in the past.

13 A No, that's not true. Not at all true. Again, the
14 cases I get are a small window. If I'm living on a street and I
15 just have one window I can only see what happens in front of my
16 window. I don't know what happens let's say in Levine Hospital
17 on a day-to-day basis and when they are diagnosing child abuse.
18 But I can say in my window of cases that I get from people like
19 Mr. Boyd, these are cases where the confessions are so
20 ridiculous I'm just shocked anybody believes them. So, yes, if
21 a person walks into a hospital and says I did something really
22 stupid. I shook this baby violently. Oh, my God, please take
23 care of the baby. Sure, that is whole another story. I've
24 never seen a case like that.

25 Q Okay. Did you call any of the doctors who treated

1 N.W.

2 A No.

3 Q Did you write them asking to discuss the case?

4 A No.

5 Q Did you consult with any of the doctors involved in
6 treating N.W.

7 A No.

8 Q Okay, and you disagree with the findings of those
9 doctors?

10 A I disagree the with the diagnosis that it has to be
11 child abuse and it can't be anything else.

12 Q Okay. Do you recall testifying in Ohio in 2019
13 regarding baby Eric and being told by the prosecutor that the
14 appellant courts fault you for not doing those things?

15 A I know prosecutors asked me that question all the time
16 but I only do what the lawyers asks me to do. If the lawyers
17 asked me to talk to the doctors I'll do it. But they only ask
18 me to review the medical records.

19 Q Do you recall being told that you had been faulted and
20 your testimony is faulty because you do not do those things?

21 A Nobody ever actually told me that other than a
22 prosecutor.

23 Q So you have been told by a prosecutor?

24 A Oh, all the time. Every time I testify.

25 Q Every time you testify?

1 A Somebody like you says, why didn't you call the doctors
2 treating the child.

3 Q In 2019 you told the prosecutor that's the first time
4 you ever heard that?

5 A No, again, I hear that all the time. I have been
6 hearing that for years. Again, people like yourself saying why
7 didn't you call the doctors and discuss it with them.

8 Q So you hear it all the time and you still don't change
9 the way you diagnose these cases?

10 A Sure, if I heard it from Mr. Boyd that's a whole
11 another story.

12 Q Do you tell the defense attorneys that you have been
13 previously excluded from testifying?

14 A Sure.

15 Q Did you tell the defense attorneys in this case that
16 you have previously been excluded from testifying?

17 A I definitely told them in the last few days, but I
18 usually tell them up front. Now, this case is from 2018 and
19 back in 2018 I had not yet been excluded so, it have may got
20 lost in translation.

21 Q None of the decisions that you make on baby **N.W.** are
22 actual based on any sort of studies that were conducted that
23 were medically and widely accepted within the scientific
24 community, is that correct?

25 A That's simply not true.

1 Q How is that not true?

2 A Every neurologist knows what the -- what we call the
3 differential diagnosis. The various things that can trigger a
4 seizure is. The various conditions. So it's kind of a case by
5 case basis. Neurologist has to decide was it this condition?
6 Was it that condition? And so I can say, oh, there's a study
7 that came out that thirty babies who had seizures were shaken.
8 Oh, okay, well I don't even have to go to the hospital. **N.W.**
9 was shaken because that's what the study said. That's not what
10 medicine is. Medicine is looking at every case with its
11 individual traits and characteristics and making a diagnosis
12 based on that and trying to decide if it made sense. Not it's
13 not at all unusual I will make a diagnosis and my colleague
14 might make a different diagnosis, but we are making it based on
15 our knowledge, training and experience and we are doing the best
16 we can.

17 Q When is the last time you saw a pediatric patient?

18 A This morning.

19 Q At your private practice?

20 A On my cell phone. I had sort of face time with one of
21 my patients.

22 Q When is the last time you saw a pediatric patient that
23 was diagnosed with abusive head trauma?

24 A Probably ten years ago. Now, that's with an absolute
25 diagnosis. Many since then with suspected diagnosis of abusive

1 head trauma.

2 MS. O'HAYON: I beg the Court's indulgence.

3 Q You previously testified even in cases where defendants
4 have admitted to abuse and that it was not abusive head trauma
5 and you come up with an alternative theory, correct?

6 A That's right.

7 Q And you've disagreed with the medical professionals in
8 those cases you diagnosed hydrocephalus?

9 A In some cases.

10 Q Cerebral venous sinus thrombosis?

11 A In some cases.

12 Q Multiple areas of stroke?

13 A In some cases.

14 Q You testified that these conditions are rarely seen in
15 children?

16 A Correct.

17 Q But you've been able to see them in 90 percent of the
18 cases that are brought to you, is that true?

19 A Well, in some of them. There are other alternatives as
20 well that I believe child abuse doctors have missed, but again,
21 nine out of ten cases that I get from people like Mr. Boyd are
22 cases where somebody believes that the defendant has a good
23 case.

24 Q In all the times that you have been qualified as an
25 expert do you know whether the opposing counsel had objected to

1 you being qualified?

2 A Well, since 2019 the fashion has now been on the
3 prosecutor's side to object based on what the 2019 objection was
4 and usually they are unsuccessful but they have been successful
5 three times.

6 Q Three times only?

7 A Yeah, three more times. The first time was 2019 in New
8 Mexico in the federal case and since that time I testified many
9 times and they have been successful three times with excluding
10 me.

11 Q So prior to 2019 there has been no objection to your --
12 by the prosecutor essentially, that you recall?

13 A I go through voir dire.

14 Q Okay. And you previously been qualified as an expert
15 in South Carolina. What court was that?

16 A I don't remember.

17 Q Can I refresh your recollection with a transcript from
18 that court?

19 A You can do whatever you you want.

20 MS. O'HAYON: May I approach the witness?

21 THE COURT: You may.

22 Q Now, without reading ^ their ^ there out to the
23 courtroom I am just using this to refresh your recollection if
24 you can take a look at this and if you will let me know if you
25 recall testifying in that case?

1 A My name is there and I did testify. I'm not
2 recognizing the name of the case but that doesn't mean anything.
3 It was 17 years ago.

4 Q Do you remember what court it was in?

5 A It says South Carolina, Miss Butler's name is on there,
6 but I don't remember what court. I didn't look. I'm sure it
7 says it on there.

8 Q Let me refresh your recollection again. Can you please
9 take a look and see if looking at that refreshes your
10 recollections on which court that was?

11 A County of York, which I think the county we are in. I
12 don't think it has an address.

13 Q What type of court? Was it General Sessions?

14 A Oh, I'm sorry, it says Family Court.

15 Q Okay. And are you going to need to hold on to that to
16 answer this next question. Do you remember if opposing counsel
17 even objected to your testimony coming in seven years ago?

18 A I have no recollection.

19 Q Do you want to take a look at the transcript?

20 A I don't want to, but if I have to I will.

21 Q Go ahead.

22 A Can you help me and tell me what page it is on.

23 Q Sure. Right at the end of page nine.

24 A "No objection."

25 Q Thank you. Have you previously testified that 2019 you

1 made two hundred and fifty to thirty-three hundred thousand
2 dollars solely in reviewing these records and these types of
3 cases and coming in and testifying outside of your private
4 practice?

5 A That's right.

6 Q Seventy-five to eighty percent of your income is
7 derived from doing what you are doing here today?

8 A Well, most of it is from actually reviewing records
9 because the trials are a small percentage of that. But yes,
10 from reviewing suspected abuse head trauma cases and other
11 cases, but at this point in my life that's the majority of the
12 medical/legal work I do.

13 MS. O'HAYON: Your Honor, I have no further
14 questions.

15 MR. BOYD: I have some follow up.

16 REDIRECT EXAMINATION

17 BY MR. BOYD:

18 Q I think one thing that I neglected to ask you about
19 earlier was your opinion about the retinal hemorrhages that **N.W.**
20 had and is that a sign of abusive head trauma?

21 A Among child abuse doctors it is often thought that way.
22 Among neurologists and other doctors it is often just thought to
23 be a sign that is something is happening in the brain because
24 the brain and the eye are directly connected by blood vessels.
25 Whenever there's bleeding in or around the brain that reflects

1 back on the eyes. It's the equivalent of somebody stepping on a
2 garden hose. If I turn on the garden hose and I accidentally step
3 on it, if it's an old hose it's not necessarily going to leak
4 where I step on it. It's going to leak where it's cracked or
5 where it's been in the sun too long, where it's bent. And so we
6 can think of the blood vessels that connect the eye and the
7 brain as a garden hose and if they're being stepped on in or
8 around the brain they will leak at the weakest point which is
9 those tiny little blood vessels in the back of the eye.

10 Q And asking you on cross examination you were asked
11 about your rejection of rapid acceleration deceleration
12 causation and I believe in the United States where you were
13 excluded the Court based their exclusion on your opinion
14 concerning that, is that correct?

15 A There were a number of reasons the Court didn't
16 appreciate my testimony and that was one of them.

17 Q And basically in this case you haven't been asked to
18 challenge whether acceleration, deceleration is a cause of child
19 abuse exist or not, is that correct?

20 A That's correct.

21 Q So your not going into that issue unless your asked or
22 cross examined on that issue, is that correct?

23 A That's right.

24 Q Basically your testimony and it's your opinion is that
25 **N.W.** didn't have that type of injury or had injuries -- well,

1 let me back that up. That he also had issues that were
2 consistent with another explanation other than that, is that
3 correct?

4 A Right, there were five reasons I already said why I
5 didn't think he had evidence of a being violently shaken and I
6 thought that his condition that triggered the seizures on the
7 day that he came to Piedmont and Levine can be explained by
8 another pre-existing condition and a current existing condition
9 that was going on on that day.

10 MR. BOYD: Thank you. That's all I have.

11 MS. OHAYON: A brief redirect, Your Honor.

12 RECROSS EXAMINATION

13 BY MS. OHAYON:

14 Q You testified that your opinions on **N.W.** specifically
15 were obtained from medical records, correct?

16 A That's right.

17 Q Where did you get those medical records from?

18 A It was 2018. I don't remember.

19 Q Okay. And you also testified that **N.W.** had two risk
20 factors, a pre-existing condition of excess fluid and some
21 unusual virus?

22 A That's right.

23 Q What are the names of those?

24 A The name of the pre-existing condition is external,
25 outside the brain, hydrocephalus, too much fluid. And the name

1 of the virus -- it's a weird virus, Meta M-e-t-a, Pneumo
2 P-n-e-u-m-o Virus.

3 Q Okay. And then when Mr. Boyd just asked you some
4 questions about the reasoning for why you were precluded from
5 testifying in the Duren, case the federal case. You said the
6 Court held for multiple reasons, correct?

7 A That's right.

8 Q They stated specifically that you referenced no
9 scientific research, is that correct?

10 A I mean, that's what they said.

11 Q Okay. And they also said that your testimony is not
12 generally accepted by the scientific community, it's not
13 supported by the established scientific research on abusive head
14 trauma, is that correct?

15 A That's what they said.

16 Q And you previously testified that's true. You
17 testified countless times that you are in the minority
18 viewpoint?

19 A Sure.

20 Q And that's only shared by about five percent of medical
21 professions?

22 A Well, that's not completely accurate and I'm happy to
23 explain if the court is interested.

24 Q Have you previously testified that that viewpoint is
25 only accepted by five percent of medical professionals?

1 A With explanation I have testified that, yes.

2 Q Okay.

3 THE COURT: You can explain it.

4 A Thank you. A child abuse expert who has written
5 extensively about child abuse did a survey and he sent out 800
6 surveys that said, do you believe that shaken baby syndrome is
7 viable diagnosis? Do you believe abusive head trauma is a
8 viable diagnosis? He sent it to 800 people. Forty-nine -- and
9 they are all have a connection to pediatric care. Some of of
10 them were pediatricians, some ER doctors, some intensive
11 doctors, some pathologist, and out of that 800, 49 percent
12 responded. So less than half. In that less than half in the
13 overall group only five percent did not like the diagnosis of
14 shaken baby syndrome and abusive head trauma. But with the
15 specialties it really varied. For example, pathologist who very
16 often have to decide a cause of death, 40 percent of them didn't
17 like that diagnosis. Absolutely, I'm in the minority of that 49
18 percent. Now maybe the 51 percent who didn't respond all agree
19 with me. We'll never know.

20 Q Were you precluded from testifying in the Duran case
21 because the Court found that your testimony is not based on
22 sound methods and principals?

23 A That is what the judge wrote, yes.

24 MS. O'HAYON: No further questions.

25 MR. BOYD: Nothing further.

1 THE COURT: Okay, you may step down.

2 All right.

3 MS. O'HAYON: May I hand the consensus statement
4 to Your Honor?

5 THE COURT: Sure.

6 MS. OHAYON: Thank you.

7 Does opposing counsel need a copy?

8 MR. BOYD: Yes.

9 MS. OHAYON: I have one. (Handed)

10 THE COURT: Do you object to the testimony?

11 MS. OHAYON: Yes, I am objecting to his testimony
12 and his expertise coming in.

13 THE COURT: Do you want to provide me an argument?

14 MS. O'HAYON: Yes, Your Honor, I apologize.

15 The State's position is that Doctor Scheller is --
16 does not comply with the Daubert standards. According
17 to Daubert it is the trial judge's role as the
18 gatekeeper to keep out scientific testimony that is
19 unreliable, specifically whether reasoning or
20 methodology is underlying expert testimony
21 scientifically valid, and whether the known technique
22 that has been able to draw only minimal support within
23 the community may properly be viewed with skeptic
24 issue.

25 Doctor Scheller has testified that he is within

1 the minority and he did not cite any studies or
2 anything that we can say was scientifically valid. He
3 has been precluded multiple times in other
4 jurisdictions. Many jurisdictions never even objected
5 to him but in the times that he has been objected to
6 multiple jurisdictions have precluded his testimony
7 for those reasons.

8 It is the State's position that we shouldn't just
9 put up testimony from a medical doctor if his
10 testimony is not based in sound science and it was
11 confusing to the jury and as an expert I think there
12 is higher responsibility of the trial Court to keep
13 that out.

14 Thank you.

15 THE COURT: Mr. Boyd.

16 MR. BOYD: Your Honor, most of the cross
17 examination had to do with a non issue in this case.

18 THE COURT: That's what I was trying to discern.

19 MR. BOYD: We are not challenging whether or not
20 abusive head trauma exists in this case. Doctor
21 Scheller may have an opinion that has doubts about
22 that, but he's not going to testify to that in front
23 of the jury that it doesn't exist. His testimony is
24 for the reasons he doesn't believe it exists in this
25 particular case based on what is known about abusive

1 head trauma and basically the symptoms shown by N.W.
2 that he doesn't think that this happened in this case.
3 I mean, if the State opens the door and starts asking
4 him these questions like they did here I think he is
5 entitled to go with it and go with his reasons, but
6 that's not something we're going to bring out in
7 direct examination. I mean, he's board certified in
8 pediatric neurology. He has the ability to
9 radiographs. His education, training and experience
10 clearly shows him qualified to testify in a case such
11 as it this.

12 THE COURT: Any response?

13 MS. OHAYON: Yes, Your Honor. It's kind of hard
14 to parse out the abusive head trauma diagnosis from
15 this case because Doctor Scheller will never testify
16 that something was abusive head trauma. He thinks
17 that it's too vague a term. He doesn't believe in the
18 rotational acceleration, deceleration is able to cause
19 these injuries. So he will never consider that as a
20 diagnosis so I don't know how we get to what he is
21 diagnosing the baby with. He would never do that. He
22 would never say abusive head trauma. He has testified
23 to that. So, I don't know how we parse that out and
24 just have him not testify about abusive head trauma
25 because everything that he says would be what you

1 expect to see in abusive head trauma is not seen here,
2 like the neck injury or the rib fractures or the limb
3 fractures. He is saying you would expect to see these
4 things. You don't see these things and you also see
5 these other things that I have diagnosed based on no
6 studies. No scientific studies that are accepted. So
7 I don't know how you parse that out. His testimony
8 would include that there are no neck injuries.

9 THE COURT: Well, I know he didn't refer to any
10 studies. I thought it was from review of the medical
11 record. O'HAYONyes, Your Honor, but his viewpoint on
12 how he determines that diagnosis is not based on sound
13 science. He comes to those conclusions based on
14 studies that are not widely accepted, are not peer
15 reviewed and they are not accepted in the medical
16 community.

17 THE COURT: I didn't hear testify about any
18 studies. I heard him testify about a review of the
19 medical records. I mean, I understand that doctors,
20 lawyers, accountants, any kind of professional people
21 they can disagree. Certainly doctors on a diagnosis.
22 There's nothing wrong with a disagreement from a
23 review of a medical record.

24 MS. O'HAYON: I don't disagree, Your Honor, but
25 when I asked him if he had any studies he didn't cite

1 any.

2 THE COURT: What type of studies?

3 MS. O'HAYON: He referenced that there have been
4 studies done in the past, the neonatal pigs and the
5 lambs which Doctor Lamb also testified to those
6 studies where they shook the pigs and the lambs. They
7 both testified to that. He just chooses not to accept
8 that as valid science and he does not have any other
9 studies that were peer reviewed that he could testify
10 to that would support his diagnosis.

11 THE COURT: Okay, anything else.

12 MS. O'HAYON: No, Your Honor.

13 THE COURT: All right. We'll take ten minutes. I
14 need to see the lawyers in chambers.

15 (WHEREUPON, there was a brief recess.)

16 THE COURT: All right. What is the State's
17 position on the admissibility of the witness's opinion
18 to be provided in this case and expressed on his
19 direct examination.

20 MS. O'HAYON: We are going to withdraw our
21 objection at this time. We do believe he is qualified
22 as a pediatric neurologist.

23 THE COURT: All right. Anything else before the
24 jury is brought in.

25 MR. BOYD: No, sir.

1 THE COURT: All right. Bring them in please.

2 (WHEREUPON, the jury enters the courtroom.))

3 THE COURT: Good morning, ladies and gentlemen.
4 Thank you for your patience. As you know yesterday
5 when we recessed the State had concluded with their
6 presentation. So we are now going to proceed with
7 testimony offered by the defense. Mr. Boyd.

8 MR. BOYD: The defense calls Doctor Joseph
9 Schellar.

10 THE COURT: Please come forward to be sworn.

11 JOSEPH SCHELLER: Called as a witness, having been
12 duly sworn by the clerk, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BOYD:

16 Q State your name please.

17 A Joseph Schellar.

18 Q And where do you live?

19 A Baltimore, Maryland.

20 Q And what is your occupation?

21 A I'm a pediatric neurologist.

22 Q Okay. Could you tell us your educational background?

23 A Sure. I am from Chicago. I went to to medical school
24 at the University of Illinois. I completed that way back in
25 1982. I first became a pediatrician at the Children's Hospital

1 at Detroit, Michigan, and then I became a neurologist. Studied
2 to be a neurologist at the University Hospital and Children's
3 Hospital in San Diego, California. I did that in 1987 and I
4 became board certified in pediatrics and then in neurology in
5 1988 and 1989. Since then I've done two other training programs
6 in 1991 I went to the National Institute of Health outside of
7 Washington DC to study and become an epidemiologist. I use to
8 have describe what that means. I think the court knows what
9 that is now. And then in 2012 I went back again to train to get
10 a specialty within neurology called neuroimaging. So just like
11 a neurologist could get specialization in stroke or dementia so
12 you can also get added training or specialization in reading and
13 interpreting CAT scans and MRI scans of the brain and spine and
14 so I did that in 2012 and got my certificate in 2015. I am now
15 certified in that as well.

16 Q Okay, and you are -- are you board certified in
17 pediatrics?

18 A Yes as of 1988.

19 Q Okay. And just tell briefly what is pediatrics?

20 A Diagnosis and treatment of anything that could happen
21 to a newborn baby up to college age. Medical treatment.

22 Q And you are board certified in child neurology, is that
23 correct?

24 A Yes.

25 Q What is a neurologist?

1 A Expert in diagnosis and treatment of anything that
2 might effect the brain, spinal cord, nerves or muscles as well
3 as development or the opposite of development when people get
4 old and start to people to loss there skills, so that's what
5 neurologist do.

6 Q And what does a child neurologist do?

7 A So, unlike a an adult neurologist who might see a lot
8 of strokes and might see a lot of Parkinson disease and dementia
9 and back pain and nerve pain, a child neurologist see a lot of
10 children with seizures. I would say the number one diagnosis we
11 see a lot of children that have head trama. We see a lot of
12 children with developmental problems. Children with autism and
13 retardation. And so it's any kind of brain or development or
14 spine or nerve or muscle problems that a child might have is
15 what a child neurologist is suppose to diagnose and treat.

16 Q What is neuroimaging?

17 A So you can become a neurologist and you are trained as
18 a neurologist to know about reading CAT scans and MRI scans but
19 as I said before you can specialize in stroke or you can
20 specialize in dementia or seizure disorders. So you can get
21 that extra specialty training. It's a focus. It's a
22 concentration on reading and interpreting CAT scans and MRI
23 scans.

24 Q Okay, and even without the neuroimaging training does a
25 neurologist read and interpret CAT scans, radiographs and that

1 type of thing?

2 A Yes, sir.

3 Q Could you tell us what your work background is in the
4 field of medicine?

5 A Sure. I worked a children's hospitals. So first at
6 the children's hospital in San Diego, California and then at the
7 children's hospital which is part -- which is part of the
8 university hospital in Baltimore, Maryland and children's
9 hospital in Washington, DC and that totaled about 24 years or
10 so.

11 Q Okay. And what do you currently do?

12 A Two days a week I have my own private practice in
13 neurology so I see adults or children with neurological
14 problems.

15 Just yesterday I saw somebody with a severe back pain and
16 had a pinched nerve. She's middle age. Earlier that day I had
17 seen a child who had seizure and had to go into the hospital for
18 that. And this was done virtually by Zoom. And so two days a
19 week I see children and adults who have neurological problems.
20 Three days a week I do medical/legal work where I try to help
21 courts and attorneys understand what happened in cases where
22 there has been a neurological problem.

23 Q And have you -- what states are you licensed to
24 practice medicine in?

25 A Maryland and New Jersey.

1 Q Have you ever written any chapters for text books or
2 anything of that nature?

3 A Yes, I did one about seizures. Wrote a chapter in a
4 pediatric intensive care text book about seizures that don't
5 stop. That just persist. That is relevant to this case and
6 then I also written a chapter in a text book about what kind of
7 problems you might encounter in a newborn that can suffer
8 neurological problems as well.

9 Q Have you published any articles in medical journals?

10 A Yes, sir.

11 Q And what journals have you published in?

12 A Neurology journals, pediatric journals, epidemiology
13 journals. Various types.

14 Q And have you previously testified in court concerning
15 brain injuries to infants?

16 A Yes, sir.

17 MR. BOYD: Your Honor, at this time I would offer
18 Doctor Scheller as an expert in neurology, pediatric
19 neurology, pediatrics and neuroimaging.

20 MS. O'HAYON: No objection, Your Honor.

21 THE COURT: He is so qualified.

22 Q Okay. Let me ask you, were you asked by the defense in
23 this case to review records concerning N.W. [REDACTED]

24 A Yes, sir.

25 Q What records did you review?

1 A I had records of birth, pediatrician records and then
2 in December, towards the end of December I think it was the
3 22nd, **N.W.** was seen urgently at Piedmont Hospital and then was
4 transferred to Levine Hospital and so that generated a lot of
5 records. So I reviewed all those medical records and then at
6 Piedmont and Levine I had a bunch of radiological tests, X-rays,
7 CAT scans and MRI scans and I was able to review all those.

8 Q Okay, and the -- were you asked to look at those
9 records and give your opinions concerning what was going on with
10 **N.W.** at that time?

11 A Yes.

12 Q And I believe we're going back starting December 22,
13 2017, is that correct?

14 A Yes, sir.

15 Q Okay. Would it assist you in demonstrating to the jury
16 if you could show some scans of **N.W.'s** brain?

17 A Sure.

18 Q Okay, would you put those up please.

19 A I will try. Some times it's helpful, I don't know if
20 the lights can be dimmed just a little. I don't want to put
21 people to sleep. Thank you.

22 All right. What we're looking at is a computerized file
23 cabinet of **N.W.'s** radiology test and I will click on one at the
24 bottom there and it says the name, **N.W.** and if we follow
25 the purple line to the right it says CT head. That's a CAT scan

1 of the head. And if we follow this to the right hand column
2 this was done December 22, 2017. And then --

3 Q Where was it done?

4 A Where was it done?

5 Q Yes.

6 A There is something call Metadata and I can look.

7 Metadata is just like when you take a picture on your iPhone it
8 says where were you at the time, what was the temperature, what
9 time of day was it. So every time they take a picture of -- any
10 radiologic picture they generate Metadata and that will be right
11 over here and that was done -- it will say it somewhere. You
12 can see they generate a lot of data. It should say institution
13 name.

14 I am not seeing it, but a lot of times you can tell from the
15 time of day.

16 Q What time was that taken?

17 A All right. Let me get rid of this. I apologize, its
18 giving me the mirrored screen which is backwards so I have to
19 look at the time backwards. I am not sure, but I believe these
20 are the scans from Piedmont because they do put them in order
21 and I apologize I could take a moment to un-mirror the screen

22 Q Let's go ahead.

23 A I'm sorry.

24 Q What we are seeing now is that a scan of **N.W.'s** brain?

25 A Yes, and a scan is basically a series of slices, so

1 just like you can take a full loaf of bread, put it through a
2 slicer and pull out a slice, oh, this slice has seeds in it or
3 raisins in it. So similarly when someone lies on a CAT scan
4 table or a MRI table you can create virtual slices of that
5 person's body and look at particular slices and try and decide
6 is that a normal slice or does it have something abnormal in it.

7 Q All right, what is going on with N.W.'s brain at that
8 time?

9 A So, I would like to use the front to back -- I'm sorry,
10 THE top to bottom version to make it most clear and I like to
11 always start with the eyeballs so we can appreciate where we
12 are. So give me one moment. Just to get the size just right.
13 And it does say -- and I apologize that the details on the
14 bottom right left corner are mirrored. That's a glitch in my
15 computer but on the top of the imagine you can see the name,
16 N.W. and it has his birth date, . So
17 anyway, I would ask the Court to imagine -- I will use my hand
18 to demonstrate or actually I will use my phone to demonstrate,
19 if we can imagine that N.W. is lying on his back and there is a
20 virtual slicer across his eyeballs and that slicer slices down
21 and we can lift off part of his head and see what is underneath.
22 That's the slice. So we're are seeing this slice right now of
23 N.W. at the level of the eyeballs. On this slice at 11 o'clock
24 we can see his -- this happens to be his right eye. The
25 radiologist always like to put the right side of the patient on

1 the left side of screen. At one o'clock we can see his left
2 eyeball and at three o'clock we can see his left ear and at nine
3 o'clock we can see his right ear and then we can see the brain,
4 the bottom of the brain immediately behind the eyeballs. And so
5 this slice does not show anything abnormal but as you move the
6 slices up we are going to be looking for anything that looks
7 like a blood clot and a blood clot shows up on CAT scan -- let
8 rephase that.

9 A recent blood clot, what we call an acute blood clot
10 shows up on a CAT scan as looking like a piece of cotton, a
11 sometimes it can be a cotton ball and sometimes it can be a
12 wedge of cotton. Usually it just looks like a cotton crepe or a
13 cotton pancake that is wedged in part of the brain. So as we go
14 up we are going to see that cotton. And I will show you where
15 it is most obvious. So here we are seeing it between twelve
16 o'clock, and two o'clock, but there is going to be more to
17 follow. So what we are seeing right now is on **N.W.'s** left half
18 of his brain, outside the brain and inside the skull. The skull
19 is the bright white circle. The brain is sort of the charcoal
20 grey material.

21 In between the brain and the inside of the skull we can see
22 what looks like a wisp of cotton or maybe a very thin crepe of
23 cotton going from twelve o'clock to two o'clock. The name of
24 that wisp of cotton is called the subdural hematoma. It is a
25 blood clot between the brain and the inside of the skull. It's

1 not actually in the brain. And this is the number one bad thing
2 that could happen when somebody suffers an impact to the head.
3 In other words, somebody accidentally gets hit by a basketball
4 bat, falls off their bike, falls down the stairs. So this is
5 what you call a subdural hematoma and the number one cause would
6 be an impact. This is the smaller of the two subdural
7 hematomas. I would just ask the Court to appreciate that there
8 is a line in between the two halves of the brain and that line
9 is a piece of skin so the same piece of skin that covers the
10 brain actually divides the brain. As we go high higher up we
11 will see that the subdural hematoma is actually hugging this
12 left half the brain, up near the top of the brain. So even
13 though on first glance you might say that this subdural hematoma
14 going from the middle of the brain to six clock is inside the
15 brain it's actually not. It's outside the brain but under the
16 piece of skin that separates the two. So, what we are seeing is
17 sort of like a two part subdural hematoma, and again, that's a
18 blood clot. It's recent because it's sort of whitish and should
19 never ever be there for anybody and certainly not for a four
20 month old child. And it is absolutely true that that number one
21 cause of it is impact injury.

22 Now, there is going to be some buts in there, but if you
23 just ask any neurologist or neurosurgeon on the street, well,
24 what causes a subdural, oh, got hit on the head. That's what a
25 causes a subdural hematoma. So that's the number one cause, but

1 there are a lot more details to get into on this series of
2 images and I am happy to do so.

3 Q And what else do you see on that image?

4 A So, you have to go all the way to the top. So again,
5 you have to go all the way to the top to notice that the two
6 halves of the brain look different and let's say on this slice
7 we're all the way at the top so if we can imagine that virtual
8 slice sort of carving out the skull cap and then we're looking
9 from the top down bottom up, we can see some small blood clots.
10 Again over the left half the top. But what's much more
11 important we can see that the left half of the brain is very,
12 very blurry and right half of the top of the brain is that
13 detail that we remember from biology class, the folds and the
14 fissures, the hills and the valleys on the surface of the brain.
15 And so it is very, very clear that something bad is happening on
16 the left half of the brain and is not at all happening on the
17 right. So that's a very, very important observation. Two more
18 observations that are very, very important.

19 May I continue?

20 Q Yes.

21 A Number one is if go right here. This is just under the
22 skull cap. Again we can see the subdural hematoma hugging at
23 six o'clock hugging the left half of the brain. We don't see
24 anything on the right. But what we see is something like a
25 string of cotton or a little worm of cotton towards the middle

1 top of the brain. That is a blood clot inside a blood vessel.
2 The only thing that's in or around the brain that is stringy are
3 blood vessels and these are veins. So far we got two very
4 important findings.

5 We got subdural hematoma that is recent both in front and
6 towards the back. We got -- and then we've got a blood clot
7 inside of a vein towards the top, again on the left side. And I
8 had said two other findings but there are actually a total of
9 three. This was the first.

10 The second very important finding is that -- and I won't
11 take everybody through it, but if we look at the skull very,
12 very carefully and if we get rid of the brain and look at the
13 skull even more carefully and the technology allows to you do
14 it, you could just say remove the brain and let's just look at
15 the skull and scalp and that is done right here. So this
16 basically just a filter and say okay let's just look at the
17 skull and as we go up there are the eyeballs, and as we go up
18 and we look very carefully of the top and skull we know that the
19 baby bones grow together in the skull, but there are no skull
20 fractures. And we look very, very carefully on the left because
21 we did see the subdural hematoma on that one side and there is
22 no skull fractures and even more important, there's no scalp
23 swelling and so that is a mystery now. Well, we got subdural
24 hematoma. We know that happens from an impact injury, but
25 where's the impact. As of this minute we are sort of faced with

1 with a puzzle.

2 And then final finding I will get the brain back in there --
3 let's make it a little bigger -- is that there is something else
4 that doesn't belong that's subtle and that is fluid and you can
5 see it between nine o'clock and twelve o'clock. In other words,
6 if we look at the brain between six o'clock and nine o'clock
7 well the brain is up against the skull. Yes, we know from the
8 lab and from anatomy class that there is a thin layer of fluid
9 there, but this fluid, like what's it doing there? Why is there
10 fluid between the brain and the inside of the skull between nine
11 o'clock and twelve o'clock. And if we really look carefully
12 from twelve o'clock to the two o'clock it might even be there be
13 on the other side too, but we are distracted by this wisp of
14 cotton or this crepe of cotton which is the acute subdural
15 hematoma.

16 So let me just review all the findings. First and foremost,
17 there is no scalp or skull injury. You can't see it and you
18 often see it very, very clearly in a CAT scan.

19 Number two, there is sort of a two part subdural hematoma.
20 That is means blood in between the brain and inside of skull in
21 two locations. Towards the front, I'm pointing to my left front
22 and then down the middle towards the back. I'm pointing to the
23 middle of the back of my head.

24 Number three, there is a blood clot inside of a vein that we
25 see all the way at the tippy top. And number four, there's this

1 fluid which has sort of accumulated and is sitting between the
2 brain and the skull. Much more towards the front. So we have
3 to try solve the puzzle of and that's how I look at it as a
4 puzzle in what happened.

5 Q Okay. And so, did you also review the -- besides the
6 scans, you reviewed the actual medical records also?

7 A Yes, sir, both from Piedmont and Levine.

8 Q And did you see anything in those records that would
9 help you in diagnosing what was going on with **N.W.** because of
10 what you had seen?

11 A Yeah, let me just list them. A bunch of things. A
12 bunch of things that added to the puzzle and then sort of
13 contributed to my attempt to solve the puzzle.

14 Q Okay. What were those things?

15 A So, again, I'm going to say the number one cause of a
16 acute subdural hematoma somebody getting hit on the head.
17 Whether accidentally or by a mean person. So we didn't see it in
18 the skull and the scalp. Well, okay, maybe there is other
19 evidence that is somebody hit or there was some kind of violence
20 or inflicted injury on **N.W.** So I did not see any evidence of
21 chest bruising, if we can imagine that somebody --

22 Q Let me stop you a second. You said there was not
23 hitting. What about a rotational injury or a violent shaking
24 injury?

25 A What did I see in the record that may have helped me

1 understand that?

2 Q What in the records or in the scans and the records
3 support or doesn't support that theory of what happened?

4 A I don't think it is supported and I'm happy to explain
5 why.

6 Q Okay, if you can explain that.

7 A We're trying to imagine a very terrible person who is
8 picking up a child and then shaking that child back and forth,
9 in imagining that we're certainly not imagining somebody picking
10 up the child gently. We're imagining somebody picking up the
11 child roughly or aggressively. In that type of movement you
12 would expect to see some kind of bruising on the front of the
13 chest or on the back. That's typically how we're going to pick
14 up a child who we would think of shaking that child. So I
15 didn't see any evidence of that.

16 Number two, if somebody is being rough and aggressive and
17 shaking the child we might see rib fractures. Children's ribs
18 can break if you squeeze them too hard and they did chest X-rays
19 and other X-rays. There were no rib fractures. Again, if
20 somebody is being aggressive with a child they may grab an arm
21 or a leg in an attempt to pick up the child and you might see a
22 bone fracture of the leg or arm and they checked for that and
23 that didn't exist. If a child is being shaken back and forth
24 you might see a whiplash type of neck injury and the CAT scan
25 and MRI looked at the neck and there was no neck injury.

1 Q Let me stop you there. Were there CAT scan and MRI
2 records of the neck and cervical spine?

3 A Yes, sir.

4 Q All right. Go ahead.

5 A And so again, it all contributes to the puzzle. Maybe
6 this child was a victim of violence but why are some things
7 absent. And then the final thing which I think is the most
8 important if I take an apple and put an apple in the jar and I
9 shake the jar back and forth I don't know how I could just
10 damage one half of the apple. The whole apple is moving back
11 and forth and shaking and yet it's so clear to me that all the
12 unfortunate problem that is going on in N.W.'s brain is all on
13 the left side. That's where we see the subdural hematoma and
14 that's what we see the clot in the vein and how could that be if
15 he is a victim of violence shaking. So to me it's a great
16 mystery and I'm going to do my best to explain it in a different
17 way.

18 Q Let me ask you this. The records do show retinal
19 hemorrhages, is that correct?

20 A Yes, sir.

21 Q Okay, and what is the significance or cause of the
22 retinal hemorrhaging?

23 A Well, may I use an analogy?

24 Q Yes.

25 A Let's say there is a sketchy family that family

1 services is keeping their eye on because they don't know if they
2 are taking good care of the children and one of the children
3 comes in with a broken bone in the arm and big bruise over the
4 broken bone. So would you describe that -- I am going to answer
5 that for myself -- would I describe that as two injuries or one
6 injury? Well, of course that's one injury because whatever
7 broke the bone in the arm caused the bruise. That's just one
8 thing. That's not two things. And so, yes, of course that
9 needs to be investigated and let's find out how that happened.
10 But you can't say, oh, not only did this child have a bruise on
11 the arm the child had a broken arm. No, that's really one event
12 whatever that event was. If you find a bruise on the leg and a
13 broken arm, well, that might be two things.

14 So, in the world of child abuse there's the idea that if
15 you have something going on in the brain and something going on
16 in eye, that's two things. Oh, my God, something bad happened
17 in the brain and oh, my God something bad happened in the eye.
18 I believe that's incorrect. The eye and brain blood vessels are
19 directly connected. In fact, let me see if it's apparent in the
20 picture. Some times you can see them on the scan. Oh, we don't
21 see it very clearly on this scan. I apologize. And so I call
22 it the equivalent of stepping on a garden hose because the blood
23 vessels are connected. So if you step on one part of the blood
24 vessels it will cause bleeding or drops of blood to come out in
25 the weakest part. So if I step on a garden hose that's on where

1 is that water going to spray out of? Well, wherever that hose
2 has been in the sun too long. Wherever it's cracked. It might
3 not leak out where I step on it. So we know that something bad
4 is happening in N.W.'s brain and it involves the blood vessels.
5 Those are directly connected to the blood vessels in the back of
6 the eye which are the weakest link. So rather than say, oh, I
7 know that N.W. had two terrible injuries, no, no, N.W. had one
8 injury whatever it was and it effected two areas. It effected
9 the area around the brain and his left hemisphere and it
10 effected the back of eye and caused the hemorrhages.

11 Q If it wasn't a rotational or shaking type injury what
12 was going on with N.W. Something was happening.

13 A Right. So he had two conditions that were apparent.
14 One was from the pediatric records and then one is apparent that
15 I just showed you before and that is this. So I had showed the
16 court earlier the fluid in between the brain and the inside of
17 skull and the question is, you know, what does that come from?
18 Where is that fluid and what is it doing there? And having gone
19 back to N.W.'s pediatrician records it was clear that when he
20 was born actually his head size was in the 50 something
21 percentile. I don't remember the exact number. But he was
22 average compared to all the kids and now here were are at age
23 four months and his head circumference is in 95th percentile.
24 So if you go from the 50th to the 90th either that means the
25 brain is growing too fast, and this is normal size brain, or it

1 means there is something else growing in their that is expanding
2 the skull and that's this fluid.

3 So he had this chronic condition, it's a condition that
4 neurologist and neurosurgeons see occasionally that causes large
5 heads. And that condition is called external -- outside the
6 brain -- hydrocephalus -- too much fluid. And again, that's
7 indicated by the dark area, the dark thing on the CT scan that
8 you can see in front of his brain in between the brain and the
9 inside of the skull. So that's problem number one. Now that
10 usually not such a big problem but it could put stress on some
11 of the blood vessels that are on the surface of the brain. So
12 then you got that and then when he's hospitalized they discover
13 with the nasal swabs, which back in 2017 weren't such a big deal
14 and now have turned into a routine, they discovered that he had
15 a weird virus and the name of the virus is the Metapneumovirus.
16 An unusual virus, and what we have learned about unusual viruses
17 is they can sometimes trigger blood clots. We've certainly
18 learned that with Covid and we've seen it in adults and
19 children. And so I believe the alternative explanation to -- to
20 **N.W.** being victim of violence is that he had this chronic
21 condition of excess fluid and then that was aggravated by a
22 viral illness that he suffered on or around December 22nd.

23 Q Okay. How would that virus have caused all the
24 symptoms we're seeing and what's happening with **N.W.** Can you
25 just give a progression of how it would develop and how it would

1 happen?

2 A Sure, but I want to go backwards. I will start with
3 the seizures. So a seizure is unfortunately a response that the
4 brain has when it's irritated. So you take the wrong medicine
5 and it hurts your brain or you take a drug overdose or you have
6 a brain tumor or something, or brain infection, then that can
7 trigger a seizure. So anything that irritates the surface of
8 the brain you can have a seizure. So he has that seizure
9 December 22nd so something is irritating the surface of the
10 brain. What it irritated was a combination of the blood clot in
11 the vein and then blood that had leaked out of the brain and
12 caused a subdural hematoma. So now you got blood on the surface
13 of the brain, you got that blood clot on the left side and what
14 triggered that was his chronic condition and the viral infection
15 that he had.

16 Now I'll go forwards, chronic condition of excess fluid
17 viral infection, blood clot on the surface of the brain,
18 subdural hematoma and seizure and unfortunately a very serious
19 illness at that time.

20 Q Did you -- did you also review some photographs that
21 had been introduced into evidence earlier showing bruising
22 around **N.W.'s** face and area?

23 A Yes, sir.

24 Q Okay. And in your opinion are those bruises have
25 anything to do with the condition of his brain at that time?

1 A No, sir. And again, I can't imagine somebody grabbing
2 somebody by the cheek and violently shaking them that way. That
3 would not give us what we see on the CAT scan of December 22nd.

4 Q Do you have other reasons -- seeing the location of the
5 bruises -- the cause, what potential causes of those bruises?

6 A Sure. They're not unusual with emergency personnel
7 trying to put oxygen or other devices on top of the face to help
8 somebody breath. And so, to me that's a very, very acceptable
9 and reasonable explanation to those bruises.

10 Q Okay. I think **N.W.** was incubated, had a tube put down
11 his mouth also. Would holding him cause -- potentially cause a
12 bruise to do that holding in the chin area?

13 A If somebody was holding him very firmly to make sure
14 his jaw was open, yes, sir.

15 Q If you know, how long would it take symptoms as you
16 described -- well, the issues you're talking about actually
17 manifest themselves and symptoms that would cause an event that
18 would be noticed by a parent or a layman or something of that
19 nature?

20 A Sure, I will go back to the CAT scan. I will show the
21 larger subdural hematoma which is one at six o'clock. So that
22 does not develop in a minute or even an hour. What we are
23 talking about is a tiny, tiny blood vessel that is just drip,
24 drip. So imagine a tiny sink or hose with an occasional drip
25 coming out of it. That could take a few hours to get bigger.

1 It could take 12 hours or even 18 or 24 hours. So the stroke
2 that broke -- the straw that broke the camel's back was the
3 seizure and that happened after there was enough blood
4 accumulated to irritate N.W.'s brain. But what started this
5 all, did it start the morning of December 22nd? Did it start
6 the night of December 21st? There's no way I can tell you.

7 Q Okay, so assuming it was some kind of violent injury
8 would it -- would the same criteria apply? Would it take time
9 for the injury to manifest itself?

10 A Sure. We have plenty of children who fall off their
11 bikes who come in six hours, 12 hours later and then we discover
12 the subdural hematoma. It's not always oh, you fell off the
13 bike. You couldn't get up. Took him to the hospital.
14 There's that subdural. You got that whole variation.. Yes,
15 sometimes you do have immediate effect and sometimes it 6, 12,
16 18 hours later.

17 Q Okay. And you may have answered this, but what is in
18 your opinion the most probable cause of the brain condition that
19 was happening with N.W. on December 22, 2017?

20 A So again, I'm calling it a mystery but I am going to
21 say in my order of probabilities, least likely is that he was
22 violently shaken. That's least likely. A little bit more
23 likely, but still not, is that there was some unknown blow to
24 the side of his head, to just one side that may have been
25 accidental or may have been intentional, but I can't tell you

1 the timing of that. But then most likely, is that he had a
2 chronic condition of excess fluid complicated by a viral
3 condition that caused the bleeding, the seizures and then the
4 complications.

5 MR. BOYD: Thank you. No further questions.

6 THE COURT: I expect cross examination will be
7 somewhat lengthy perhaps. I'm not really certain of
8 that fact, but I know a lot of people eat lunch at
9 this time so probably it is best we break for lunch
10 now. We will come back this afternoon 1:45 and we
11 will reassume with the examination. So keep in mind
12 still no discussion, no research, no investigation.
13 Have a good lunch. Be back at 1:45

14 (WHEREUPON, the jurors exit the courtroom)

15 THE COURT: All right, Doctor Schellar you can
16 step down from the witness stand.

17 Can I take a moment to try and fix that mirror
18 problem?

19 THE COURT: Yes, you can but listen to me right
20 now. You will step down from the witness stand, but
21 during the lunch recess you can't talk about the case
22 with anyone including the lawyer.

23 THE WITNESS: Okay.

24 THE COURT: Thank you. Court is in recess until
25 1:45.

1 (WHEREUPON, there was luncheon recess.)

2 THE COURT: Are there any matters to address
3 before the jury is brought in.

4 MS. O'HAYON: No, Your Honor.

5 MR. BOYD: No, Your Honor.

6 THE COURT: Okay. Bring them in.

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: Good afternoon, ladies and gentlemen.
9 As you know when we recessed for lunch the witness had
10 just completed direct examination. So we will
11 continue with the cross examination this afternoon.
12 If you will come back around and resume your seat on
13 the stand.

14 You are still under oath.

15 MS. O'HAYON: May it please the Court.

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. O'HAYON:

19 Q Doctor Scheller, did you write a written report or
20 opinion in this matter?

21 A No, ma'am.

22 Q Were you asked or told not to file a report?

23 A I wasn't asked not to. I just said should I and they
24 said we'll let you know and they never let me know.

25 Q Okay. You are not board certified in child abuse by

1 the American Board of Pediatrics are you?

2 A I'm not.

3 Q Okay. You've never did not any course work to become a
4 child abuse expert?

5 A That's right.

6 Q You haven't completed the additional three years
7 required to be a child abuse expert?

8 A That's right.

9 Q Your not board certified in radiology?

10 A That's right.

11 Q And you need to be board certified -- a board certified
12 radiologist would require additional five years of training,
13 correct?

14 A I'm not exactly sure. They've changed the rules a few
15 times, but it's several years.

16 Q Okay. And the certificate that you mentioned earlier
17 in your imaging that's by a group known as the United Counsel
18 for Neurological for Subspecialties, correct?

19 A Yes, ma'am.

20 Q That is not the American Board of Medical
21 Subspecialties is it?

22 A That's right it's not.

23 Q So you are not board certified in neuroimaging?

24 A Not by the American Board, that's right.

25 Q And you're not a board certified radiologist?

1 A That's right.

2 Q And a radiologist has several more years of experience
3 and training in reading scans then you do?

4 A Well, that's arguable. I wouldn't agree with that.

5 Q Do they have several more years of education then you
6 do?

7 A They spend a lot of time reviewing ultrasounds of the
8 abdomen, X-rays of the legs, so as far as -- I just focus on the
9 brain and spine CAT scans and MRIs. It's probably the
10 equivalent to what they get as far as the brain and spine. I'm
11 not an expert in ultrasounds of the abdomen or chest X-rays.

12 Q Okay. You've never achieved tenure at any academic
13 position you've ever held?

14 A That's right.

15 Q You were only an assist professor at those positions?

16 A That's right.

17 Q You never formerly taught in this a classroom setting
18 about child abuse?

19 A That's right.

20 Q You never taught a class by recognizing abusive head
21 trauma?

22 A That right.

23 Q You've never made a presentation about recognizing
24 abusive head trauma?

25 A That's right.

1 Q You have never served on any government appointed
2 committee to study the dangers of child abuse have you?

3 A I have not.

4 Q Are you a child abuse expert?

5 A No.

6 Q Do you hold yourself out to be a child abuse expert?

7 A No.

8 Q Is your email childishexpert@gmail.com?

9 A One of had them, yes.

10 Q Are you a member of the American Academy of Pediatrics?

11 A No.

12 Q Have you ever spoken on behalf of the American Academy
13 of Pediatrics about child abuse?

14 A No.

15 Q Do you subscribe to the magazine they publish to
16 pediatricians about the current issues in pediatrics?

17 A I don't personally subscribe. It's available to me,
18 but I do not have a subscription to it.

19 Q Have you ever been a director for child abuse clinic?

20 A No, ma'am.

21 Q And you've worked in more than ten hospitals?

22 A It's about ten give or take.

23 Q You were never on the child abuse team?

24 A Never.

25 Q And you were never consulted on child abuse?

1 A I was not.

2 Q You never been awarded any grants to do research in
3 child abuse?

4 A That's right.

5 Q You've never participated in any study specifically
6 about child abuse?

7 A That's right.

8 Q Aside from the public defender's office has any
9 government agency ever sought your advise on child abuse?

10 A No.

11 Q And you've received any awards in your career regarding
12 your service as a neurologist?

13 A That's true.

14 Q Or a pediatrician?

15 A That's right.

16 Q And you presented for defense attorney conferences
17 about defending child abuse cases?

18 A Well, not specifically that but about mimics about
19 child abuse.

20 Q Okay. You made presentations for civil attorneys in
21 cases dealing with parents who may lose their children due to
22 suspected child abuse?

23 A I have talked to attorneys about mimics of child abuse
24 but I don't understand the part about the parents.

25 Q Okay.

1 Q How often have you testified in cases of suspected
2 child abuse?

3 A So far about 275 times.

4 Q And you've never testified for the State?

5 A No, ma'am.

6 Q And you've never testified that a child's injuries were
7 caused by shaking?

8 A That's right.

9 Q And you've never testified that in your opinion a child
10 injuries were the result of abusive head trauma?

11 A Not definitely, that's right. In other words there's
12 always that possibility because I'm not there when the event
13 happens, but I've never testified that they were definitely.
14 There are one or two exceptions to that case, if I may mention
15 them. But in general, I have not testified that the injuries
16 were from definite child abuse.

17 Q Have you ever treated any children who are victims of
18 injuries due to being shaken?

19 A Oh, sure.

20 Q Do you use hospital letterhead to submit your opinions
21 or reports for child abuse cases in which you testified?

22 A I didn't hear the first part.

23 Q Do you just hospital letterhead to submit your opinions
24 or reports?

25 A It could be I did it in the past. I haven't done it

1 for a long time.

2 Q When you testify you're not testifying on behalf of any
3 hospital, correct?

4 A That's right.

5 Q Have you ever been asked by a hospital representative
6 not to associate your testimony in child abuse cases with their
7 name or brand?

8 A I can't recall. I don't remember anybody telling me
9 that, but I don't have a specific recollections.

10 Q Okay. What's your fee structure like?

11 A I charge \$400 an hour. It was less back in 2018 when I
12 got this case. Right now I charge \$400 an hour for reviewing
13 records, discussing my findings and writing a report if needed
14 and then I charge \$3,000 for each day I am away from the office.
15 That's just a flat fee and of course plane ticket and hotel.

16 Q Okay. How much did you charge the defense in this
17 case?

18 A Well, I went back to 2018. I had charged and received
19 \$2,500 for the initial review of records. Back then it \$250 an
20 hour and it was ten hours and I don't think I've charged since
21 then. So I will have to charge for my meetings with the
22 attorneys by phone and then flying out today.

23 Q So, at minimum fifty-five hundred or six thousand or
24 more?

25 A In total that's right.

1 Q Okay. And how many times do you testify on average
2 annually?

3 A So Covid -- before Covid which I will say 2019, I had
4 testified about 30 or 40 times per year. Let's say 2019, '18,
5 '17. A little bit more than twice a month. Maybe three times a
6 month.

7 Q But you get more cases then you testify for that you
8 actually review and write letters?

9 A That's right. The majority of cases don't come to
10 trial.

11 Q And you said earlier that you have a private practice?

12 A I do.

13 Q That private practice is only about twenty to
14 twenty-five percent of your income, is that correct?

15 A That's right.

16 Q And seventy-five to eighty percent of your income comes
17 from reviewing abusive head trauma cases and testifying for the
18 defense?

19 A I would say reviewing medical and legal cases and it
20 has turned out over the last several years that most of those
21 cases are now suspected abusive head trauma cases.

22 Q Okay. How much money did you make in 2019 doing this?

23 A I don't remember but may be 300, \$350,000. I don't
24 remember exactly.

25 Q Okay. Have you ever render an opinion detrimental to

1 the person paying you in a suspected child abuse case?

2 A Sure, I get paid. Well, I mentioned this to you before
3 but I haven't said it to the jury. In about one out of every
4 ten cases that somebody like Mr. Boyd sends to me I'll write
5 back or call back and say, I think this was child abuse. I
6 don't think I could help you.

7 Q So in ninety percent of the cases where they're
8 suspected child abuse, when you review it you come to the
9 determination that it was not child abuse?

10 A Not that it was not because I am not there, but that
11 there is a very reasonable medical alternative based on my
12 knowledge and experience.

13 Q Okay. Did you previously testify that of the cases of
14 abusive head trauma none were in your opinion caused by shaking
15 except one in 1990?

16 A In my medical experience?

17 Q Did you previous testify to that?

18 A I have to understand the question to answer it
19 correctly.

20 Q Did you previously testify that of the cases of abusive
21 heard trauma that you have reviewed, none were caused by shaking
22 accept for one in 1990?

23 A I never said that about a case I reviewed. Cases I
24 have been involved with. Wait a second. I apologize. I'm
25 actually not sure what I said, but there is one case that I

1 remember that was definitely due to shaking. The other ones I'm
2 not sure about.

3 Q The one in 1990?

4 A That's right.

5 Q How did you get involved in this particular case
6 because you are from Maryland?

7 A I'm not sure, but earlier you reminded me that I had
8 done another case with Miss Butler so maybe that was it.

9 Q Okay. Do you know how many miles are between here and
10 Maryland?

11 A I don't know like a six hour drive. Seven hour drive.
12 Seven hours.

13 Q Seven hours. How many pediatric neurologists do you
14 think there are between here and Maryland?

15 A I am going to guess thirty.

16 Q Thirty. And of those 95 percent of them would likely
17 disagree with you, is that correct?

18 A That's not true.

19 Q That's not true?

20 A That's not true.

21 Q Have you previously testified that 95 percent of the
22 medical community does not agree with your opinions and
23 findings?

24 A That the overall medical community.

25 MR. BOYD: I will object to that. She's not

1 clarifying what opinion or what finding.

2 THE COURT: Be specific with your question.

3 MS. O'HAYON: One moment.

4 Q Do you recall testifying in the People of New York
5 versus assist Calvin Lebron?

6 A The name sounds familiar because it sounded like the
7 famous basketball player.

8 Q Do you remember being asked, " You'd agree with me that
9 out of the entire medical community you placed yourself in the
10 five percent that holds the particular views you hold about
11 abusive head trauma, is that correct?" And you answered,
12 "That's a very general statement, but I will definitely say I'm
13 in the minority and the average pediatrician certainly does not
14 agree with my findings or opinions."

15 A You are reading that correctly and I agree with that
16 one hundred percent.

17 Q Are you still part of email chain with about
18 approximate 20 to a 100 doctors that will go around the country
19 some of which will go around the country and testify as to these
20 alternative theories?

21 A Well, some of the things we're interested in. They
22 don't all testify and we don't share -- we share information
23 about evidence for abusive head trauma and other types of child
24 abuse and it is an email chain and some testify. Some don't.
25 Some feel one way. Some feel another. But it is I would say a

1 daily discussion about the topic.

2 Q Okay. And CV states you own a private practice in
3 Maryland?

4 A That's right.

5 Q But you spend 80 percent of your time testifying for
6 the defense?

7 A Most of the time is not testifying. Most of the time
8 it's reviewing records and/or talking to attorneys or writing
9 reports, but some of that time is testifying. About eighty
10 percent of the time is medical, legal. Much of it is suspected
11 abusive head trauma.

12 Q You consider yourself a medical/legal consultant, is
13 that correct?

14 A Yes.

15 Q And you didn't put that on CV?

16 A Okay.

17 Q Okay. And you only are a medical/legal consultant for
18 the defense?

19 A That's not true. In civil cases, I guess you call them
20 plaintiff.

21 Q Criminal cases?

22 A In criminal cases I've only been asked by the defense.

23 Q Okay. Did you call any of the doctors who treated **N.W.**
24 in this case?

25 A No.

1 Q Did you write any of them to discuss the case?

2 A I did not.

3 Q Have you ever consulted any doctors involved in
4 treating **N.W.**

5 A No.

6 Q But you disagree with the findings of those doctors,
7 correct?

8 A Well, certainly if a doctor writes that he's having
9 seizures I agree with that a hundred percent and they actually
10 documented the seizures. If a doctor writes that, you know, the
11 X-rays didn't show any broken bones I agree with that but then
12 you draw conclusions from that and I disagree with a number of
13 the conclusions.

14 Q Okay. But did you ever see **N.W.** yourself?

15 A No.

16 Q Have you previously been criticized in court for the
17 fact that you don't actually see the babies yourself or talk to
18 the other doctors?

19 A By prosecutors, yes.

20 Q You have been told that it's faulty?

21 A By prosecutors, never by a judge.

22 Q And you still haven't change your practice?

23 A That's right.

24 Q When it comes to your practice in Baltimore is there
25 diagnostic process or protocol that you follow?

1 A It's what every neurologist does. You get a history.
2 Do a physical exam. Do the appropriate lab tests. Do the
3 appropriate X-rays, CAT scans and MRIs and then try and make a
4 diagnosis. That's what every doctor does and certainly
5 neurologist.

6 Q And did you do all that in this case?

7 A Yes.

8 Q You did a full physical?

9 A I read other people's full physicals. I never touched
10 **N.W.** and I never saw him in real life.

11 Q And you testified earlier that you received medical
12 records from both PMC, Piedmont Medical Center, correct?

13 A Yes, ma'am.

14 Q And CMC Levine?

15 A That's right.

16 Q Are you familiar with CMC Levine's?

17 A I've heard of it because it's a well known children
18 hospital. I've never walked in the doors.

19 Q Are you aware that they were ranked among the best
20 children's hospital in eight specialties in 2021 to 2022
21 according to US News World Report?

22 A I'm not, but that's great.

23 Q Are you aware that they were ranked the best for the
24 last 14 year?

25 A Doubly great.

1 Q Are you aware one of the specialties is in neurology
2 and neurosurgery?

3 A I'm not, but that's great.

4 Q And your testimony is that both the doctors at PMC and
5 CMC Levine's came to the conclusion that this is abusive head
6 trauma and you're disagreeing with that?

7 MR. BOYD: I'm going to object to that. There's
8 been no evidence that is what occurred.

9 THE COURT: Sustained.

10 Q You testified that you do not agree with all of the
11 findings in the -- from the other doctors at CMC Levine's
12 correct?

13 A The conclusions of the doctors that concluded that this
14 was definitely child abuse, I did not agree with that.

15 Q You also do not agree with the radiologist?

16 A In part.

17 Q Are you familiar with the American Medical Association
18 Ethics?

19 A I haven't read it lately.

20 Q Do you follow those guidelines?

21 A I don't feel obligated. I don't belong to the American
22 Medical Association.

23 Q Okay. You testified multiple times that you disagree
24 with medical professionals in abusive head trauma cases and
25 you'll diagnose things like hydrocephalus?

1 A Some of the kids I have seen have hydrocephalus.

2 Q Cerebral venous sinus thrombosis?

3 A Some of the kids suspected of being abused have had
4 that condition which is basically a stroke.

5 Q Multiple areas of strokes some times?

6 A Sometimes multiple. Sometimes one or two.

7 Q And you testified that those are very rare conditions
8 in children?

9 A They are.

10 Q But you see them frequently when you testify?

11 A Well, it all depends on the window that you're looking
12 out of. If you ask an average pediatrician how many kids with
13 seizures did you see this year they might say three or four.
14 When I had a full time practice I would see five hundred kids
15 with seizures, so neurologist does do rare things.

16 Q Are you familiar with the consensus statement that was
17 released in 2018 that was with a stamp of approval from the
18 American Academy of Pediatrics regarding abusive head trauma in
19 infants and young children?

20 A I am.

21 Q That consensus statement is something generally
22 accepted by the medical community, correct?

23 A I can't say. I can say there's a little world of child
24 abuse experts and people who work with child abuse experts and
25 and they very much accept that consensus statement as gospel.

1 Q So the medical community as it relates to child abuse
2 they widely accept this consensus statement?

3 A The ones that I've talked to and again, I meet people
4 at trials and other venues and like the statement.

5 Q And you disagree with it?

6 A I think there is a lot of problems with it.

7 Q Okay. Did you previously testify that you felt like
8 the consensus statement was specifically written because of you?

9 A I don't know if I testified it to that, but I certainly
10 feel that way.

11 Q Okay. Does the consensus statement state that there's
12 no controversy concerning the medical validity of the existence
13 of abusive head trauma with multiple components including
14 subdural hematoma, complex retinal hemorrhages that are
15 inconsistent with the provided mechanism of trauma?

16 A You're reading correctly.

17 Q And the courtroom has become a forum for speculative
18 theories that cannot be reconciled with generally accepted
19 medical literature?

20 A That's another accurate quote.

21 Q And HT is -- I'm sorry, abusive head trauma is a
22 medical diagnosis made by a multi-disciplinary team of
23 pediatricians and subspecialty pediatricians and it's
24 scientifically non-controversial medical diagnosis broadly
25 recognized and managed throughout the world?

1 A That's an accurate quote.

2 Q And it was written and signed off by 10 to 15 doctors
3 who are board certified?

4 A Mostly radiologist, but it was -- and 15 doctors are
5 the official authors, but yes, they wrote it and published it in
6 their radiology journal.

7 Q Do you consider bilateral retinal hemorrhaging in a four
8 month old to be consistent with abuse of head trauma?

9 A It can be.

10 Q Would you say strongly associated with abusive head
11 trauma?

12 A I would just say associated.

13 Q Okay. Would you say it is rare to be seen outside of
14 abusive head trauma?

15 A No, I don't think it's rare.

16 Q What literature do you have that supports that position
17 or studies?

18 A Well, I've written my own articles about multi-layered
19 retinal hemorrhages. Are you talking about retinal hemorrhages
20 specifically?

21 Q Yes.

22 A The most important piece of literature is something a
23 piece written by Doctor Callaway, C-a-l-l-a-w-a-y, published in
24 2016 which actually has nothing to do with child abuse but does
25 give us a tremendous window to understand how multi-layered

1 bilateral retinal hemorrhages happen and the study was done on
2 two hundred perfectly normal newborns and they discovered that
3 20 percent of them had multi-layered retinal hemorrhages and so
4 then that begs the question, but wait a minute, somebody like
5 yourself just suggested that multi-layered retinal hemorrhages
6 are strongly associated with child abuse. Are we saying that 20
7 percent of perfectly normal newborns are the victims of abuse in
8 the nursery. Clearly nobody is saying that. The answer to that
9 puzzle or that mystery is, there are definitely other causes
10 that can produce retinal hemorrhages and they have to do with
11 what's going on in the head. They don't have to do with what's
12 going on in the eye.

13 Q Did you author in 2015 retinal hemorrhages in
14 non-accidental trauma looked susceptibility weighted imaging on
15 pediatric MRI?

16 A I was one of the authors, yes.

17 Q And did that article state, "Rarely retinal hemorrhages
18 may occur in accident trauma and, when present, are
19 predominantly unilateral, few in number, and located in the
20 posterior pole of the retina. The gold standard for the
21 assessment is ophthalmological evaluation with a dilated fundus
22 examination"?

23 A One of my colleagues wrote it, but I'm on that paper.

24 Q You signed off on that?

25 A I did.

1 Q Can you describe for the jury what kind of retinal
2 hemorrhaging N.W.

3 A Multilayer and I can explain it if the Court hasn't
4 heard about it.

5 Q Bilateral or unilateral?

6 A Bilateral mean both eyes. So yes, N.W. had retinal
7 hemorrhages in both eyes and again multilayer. And again, I can
8 explain it but the Court has already heard. I don't want to
9 bore them.

10 Q And were they few in number or many?

11 A Many.

12 Q Many. Okay. Do you agree with the statement that
13 bilateral retinal hemorrhages in a child with traumatic brain
14 injuries raises suspicious of abusive head trauma?

15 A Sure.

16 Q You previously testified about there being no
17 indication of neck injury here on N.W. right?

18 A That's right.

19 Q Is that something that is required to diagnose abusive
20 head trauma?

21 A No.

22 Q Isn't it true that neck injuries are subtle findings?
23 Could be a ligament injury. They are difficult to find outside
24 of an autopsy?

25 A Well, in the cases I get they're common, but you do

1 have to be looking. You have to pay a lot of attention to the
2 ligaments of the neck. Again, my window is where radiologists
3 are finding that often.

4 Q You testified earlier about the need for broken ribs or
5 broken limbs, correct?

6 A I didn't say a need, I would just --

7 Q Something that you look for?

8 A I'm sorry.

9 Q Something that you look for?

10 A Something I'm looking for if I suspecting a child was
11 the victim of violence.

12 Q Can you describe for the jury how baby bones are more
13 malleable?

14 A Oh, sure. Unlike adult bones that have very stiff baby
15 bones are still growing and being formed are just more flexible.

16 Q And so it's harder to actually break their bones isn't
17 that correct?

18 A I would say it depends.

19 Q Okay. Is it true that ninety percent of abusive head
20 trauma cases have no external injuries to the head?

21 A That's what's reported in the medical literature.
22 That's right.

23 Q There was actually external injury here, is that
24 correct?

25 A Mr. Boyd mentioned the facial and then there was a

1 couple of bruises on the middle on top of the chest.

2 Q Okay. Earlier you testified that the medical records
3 did not indicate that there were any bruises to the chest or
4 back?

5 A What I meant was -- and I apologize -- what I meant
6 was, bruises to the chest or back that would indicate that
7 someone was holding the child and gripping the child in a
8 violent manner.

9 Q Is that within your specialty to decide how bruises on
10 the chest and back is that within neurology?

11 A Pediatrics. I'm a board certified pediatrician.

12 Q Okay, so it's within pediatrics board certification
13 that you can decide how the bruises are on the chest or back?

14 A Well, I mean, I can decide and a child's doctors can
15 decide and some times we can agree and some times we can
16 disagree.

17 Q But you did testify that you would expect to see
18 bruising on the chest or back?

19 A Yes, in a nature that would -- or a pattern that would
20 help us imagine that somebody was rattling while holding the
21 baby.

22 Q And there were bruises to N.W.'s chest and back
23 indicated in the medical records?

24 A I didn't see any bruises on the back. Again, the
25 bruises on the chest were small and right in the middle.

1 MS. O'HAYON: May I approach the witness?

2 THE COURT: You may.

3 Q Would you take a look at these records. The two things
4 that I tabbed here and then here and let me know if that changes
5 your answer to my question?

6 THE COURT: Can you repeat the question?

7 Q Were there bruises on N.W.'S back?

8 A So the first page I'm looking at I don't see a date
9 stamp or anything, but it says N.W. on the top and
10 there's no date on it, and I'll just read it, it says, "Bruising
11 under the chin. Also with bruising on back and right lateral
12 chest, but I don't have the date on that. And so that's the
13 first tab that you showed me.

14 Q Okay.

15 A It is signed at the end on the 23rd. N.W. came into
16 the hospital on the 22nd, so if it is from the 23rd that doesn't
17 help me much.

18 The other one is -- the second one that you tabbed is again
19 under skin, bruising along the right chin, left jawline, small
20 petechiae. That's little red dots appearing lesion behind the
21 right ear, bruise in the mid-thoracic region around T-3, T-5.
22 I'm pointing to the middle of my chest. Approximately three to
23 four centimeters. Small amount of bruising to the right fifth,
24 sixth ribs. So I will point to that and that would be in this
25 area. And again, I'm looking for the date and I'm not seeing a

1 date. So I'm not sure when that he was written or typed or
2 dictated.

3 Q So the medical records indicate that there is bruising
4 to the center of N.W.'s chest?

5 A That's correct.

6 Q To his ribs?

7 A Well, you can't see a bruise on the ribs. The area of
8 the rib.

9 Q And to his back?

10 A Yes.

11 Q Would you consider N.W.'s brain injury to be massive?

12 A Did you say massive?

13 Q Massive?

14 A Yes.

15 Q Yes. Okay. And do you recall previously testifying
16 that a massive brain injury is going to cause symptoms right
17 away?

18 A If it's a traumatic brain injury I may have said that.

19 Q Okay.

20 A But non-traumatic not necessarily.

21 Q So a massive traumatic brain injury you would expect
22 there to be immediate symptoms?

23 A Typically yes.

24 Q Okay. Now specifically, about your opinion in this
25 case, you said that it was some rare virus, meta pneumonic

1 virus, correct?

2 A Not pneumonic, but pneumo, p-n-e-u-m-o, like pneumonia.
3 Meta pneumovirus that they found at Levine.

4 Q Okay. Does that virus cause bleeding?

5 A There are -- as far as we know, no, but it does cause
6 medical problems and illness.

7 Q Does it cause clotting?

8 A You mean excessive clotting?

9 Q Yes.

10 A I don't know.

11 Q Are there any reports that it does?

12 A I looked and I couldn't find them.

13 Q Okay. Isn't it true that that virus is actually one of
14 the strains of the common cold?

15 A It's a respiratory virus. I wouldn't call it a common
16 cold, but it definitely causes respiratory symptoms.

17 Q It's not as rare as you testified to?

18 A It is rare. We don't find it much when we're looking
19 at hospitals, but you do find it occasionally.

20 Q Is it your testimony that external hydrocephalus can
21 cause brain injury?

22 A It can with -- if there are complications.

23 Q What sort of complications?

24 A If the blood vessels get irritated by this -- the blood
25 vessels on the surface of the brain become irritated by the

1 excess fluid that between the brain and the inside of skull.

2 Q Isn't it true that external hydrocephalus may cause a
3 small subdural hematoma but babies are asymptomatic or only
4 mildly symptomatic?

5 A That might be true or it again, it might cause more
6 severe things.

7 Q What does the medical community as a whole believe?

8 A Well, it depends which paper you read. I've published
9 papers that state my belief, and other papers will say no, it
10 never happens. Those other papers typically come from what you
11 call the child abuse community.

12 Q Okay. And your papers that you previously published
13 are they peer reviewed?

14 A Yes, ma'am.

15 Q By which peers? Your peers or the peers of the
16 community at large?

17 A Well, the one that I am referring to was published in a
18 neurosurgery journal so it was peer reviewed by group of
19 neurosurgeons.

20 Q And what was paper about?

21 A It was about external hydrocephalus.

22 Q Okay. And in that paper did you say that it would
23 cause potentially a major brain injury?

24 A I don't have the paper in front of me but I definitely
25 said that it can cause seizures.

1 Q And N.W. had brain tissue injury, correct?

2 A Yes, that's right.

3 Q And it was wide spread?

4 A Yes.

5 Q And it was not only on the left side there was also
6 subdural hematoma on the right side as well? A small one, but
7 there was one?

8 A It was not important, but if you're really looking for
9 it you could see a tiny sliver of cotton on the right side.

10 Q It was not important?

11 A Not at all important.

12 Q In your opinion?

13 A I'll let the Court decide. They saw the pictures.

14 MS. O'HAYON: I have no further questions.

15 REDIRECT EXAMINATION

16 BY MR. BOYD:

17 Q Let me follow up on a few things you were asked. You
18 were asked you're not a board certified radiologist. As part
19 of the training for neurology do you have a particular training
20 in imaging and training of reading imaging of the brain and
21 spinal cord?

22 A Yes, sir.

23 Q And you were asked a question about being an assistant
24 professor. Were you assistant professor in a medical school?

25 A Yes, sir, three medical schools.

1 Q What medical schools have you been an assistant
2 professor at?

3 A The one in California, UCSD, University of California,
4 San Diego; University of Maryland in Baltimore; and the one in
5 DC is called the George Washington Medical School.

6 Q And so in that position you taught medical students, is
7 that correct?

8 A Yes, but most all of it is done on rounds or in the
9 clinic and very little is done in a classroom.

10 Q But that's the way it's typically done in medical
11 school isn't it?

12 A The last two years. The first two years is pretty much
13 sitting in a class and a finding out what you are going to need
14 to know for and then years three or four you're basically
15 spending time with doctors who are suppose to know what they're
16 doing and they're teaching you on the job.

17 Q And let me -- you said you do a lot of medical
18 consulting work. You testify. Why do you do what you do?

19 A It bothers me that people who are not neurologist are
20 talking about what they see in the brain and what it means and I
21 want to be that voice for neurology in the court to say we have
22 to really understand what's going on. Say what we do know and
23 what we don't know and what makes sense and what doesn't and
24 sadly that's just not a voice that is heard a lot.

25 Q And a child abuse pediatrician are they neurologists?

1 A No, sir, they are not.

2 Q And who is more qualified to testify concerning what's
3 going on in a brain, a child abuse pediatrician or a
4 neurologist?

5 A I would say neurologist.

6 Q There was some testimony about a consensus paper. Are
7 you familiar with that paper?

8 A Yes, sir.

9 Q Who was it written by?

10 A By a radiologist mostly; 12 radiologist, one
11 neurosurgeon and two child abuse specialist and I would say they
12 all have skin in game of child abuse, meaning either they all
13 have grants that are helping them diagnose child abuse or their
14 careers are built on how they diagnose child abuse and all their
15 publications about it.

16 Q Now, when you review a case for an attorney is that
17 generally a paid case that also already been screened that
18 there's a potential defense?

19 A Well, the attorney is calling me --

20 Q Objection Your Honor?

21 THE COURT: Rephase it.

22 Q When you are consulted by an attorney is it generally
23 to see if there is a defense in the case?

24 A In this kind of case, yes, either the attorney has a
25 reason to believe that there is alternative.

1 MS. O'HAYON: Objection, Your Honor, as to reason
2 to believe.

3 THE COURT: Sustained.

4 Q All right. Well, when you -- let me ask it this way.
5 Is your cases that you review generally cases that is already an
6 attorney involved in it?

7 A Always.

8 Q Okay. And the -- when you -- you just don't go out and
9 review every random child allegation of child abuse?

10 A No, I only get referrals from attorneys.

11 Q In your opinion is traumatic head injury something
12 that's overdiagnosed by child abuse pediatricians?

13 A Abusive traumatic head injury I believe is
14 overdiagnosed.

15 Q And you were asked a question about not having training
16 in child abuse. Is there a difference in opinions of
17 neurologist and child abuse pediatricians?

18 A Yes. May I use an analogy.

19 Q Sure,

20 A I'll just talk about a completely different scenario
21 that will hopefully help the court understand.

22 Let's imagine two parents bring in a child to the
23 pediatrician and that child has unexplained bruises. The
24 pediatrician says, why does this child have bruises? The
25 parents say we have no idea. The pediatrician is obligated to

1 make two referrals. One is to child protective and one is to a
2 hematologist. A blood specialist. Maybe there's something
3 wrong with the child's blood and that's causing the bruising.
4 If the hematologist gets back to the pediatrician first and says
5 this child has a problem with the blood, let's throw away the
6 referral to the child protective services. That's not an issue
7 anymore. So the idea is child abuse comes into play when there
8 is no reasonable explanation for what you find, but if there is
9 then how can you conclude child abuse. There's another
10 reasonable explanation. Of course if there are witnesses that
11 is a whole another story. We're talking about cases that nobody
12 saw it and we don't know what happened. So again, child abuse
13 is appropriate and we need that diagnosis when there is no other
14 reasonable explanation but if there is then why are you jumping
15 to that conclusion.

16 Q And did you find another reasonable explanation in this
17 case?

18 A I did.

19 Q And what is that?

20 A The child had a pre-existing condition of excess fluid
21 and the child had the virus that caused the blood clot.

22 Mr. Boyd: Thank you. That's all the questions I
23 have?

24 THE COURT: Thank you. You may step down.

25 MS. O'HAYON: Your Honor, may I have a brief

1 redirect -- recross.

2 THE COURT: Well, some times you need to. His
3 redirect was suppose limited to your cross, if he
4 brought up something different then you may ask him
5 bout it.

6 MS. O'HAYON: I have two questions I think are
7 necessary.

8 THE COURT: Okay.

9 RE CROSS EXAMINATION

10 BY MS O'HAYOM:

11 Q Was **N.W.** seem by a neurologist PMC and CMC Levine ?

12 A Yes.

13 Q And those neurologist opinions different from yours,
14 correct?

15 MR. BOYD: Your Honor, I will object. There's
16 been know evidence presented to that.

17 THE COURT: Sustained.

18 Q You reviewed the medical records?

19 A I did.

20 Q Okay, and were their conclusions different than yours?

21 A I'm not sure. I think they relied on the child abuse
22 doctor's conclusions.

23 Q Okay. And the opinion that abusive head trauma is over
24 diagnosed that's the minority opinion, correct?

25 MR. BOYD: Your Honor, I didn't say anything about

1 that.

2 THE COURT: I'll let you co,e back to that if you
3 need to,.

4 Q Did you testify just now that abusive head trauma is
5 over diagnosed?

6 A I did.

7 Q And that's in the minority opinion of the medical
8 community, correct?

9 A I think so.

10 THE COURT: Anything else.

11 MR. BOYD: No, sir.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you sir.

14 MR. BOYD: I would ask Doctor Scheller be excused.

15 THE COURT: Any objection?

16 MS. O'HAYON: No, Your Honor.

17 THE COURT: He may be. Call your next witness.

18 MR. BOYD: That's the defense case Your Honor.

19 THE COURT: Any reply?

20 MS. O'HAYON: No, Your Honor.

21 THE COURT: All right, ladies and gentlemen that
22 is all of the testimony and the evidence to be
23 received in the trial. What remains to be done are
24 the lawyers final summations after which I'll instruct
25 you on the law then you can begin deliberations. I

1 got a couple of matters I need to address first. It
2 shouldn't take long. So I will ask you to please go
3 to the jury room while I do that and I will bring you
4 you back shortly to conclude. Don't talk about the
5 case yet.

6 (WHEREUPON jurors leave the courtroom)

7 THE COURT: All right. Any matters to address
8 before we conclude?

9 MS. O'HAYON: Nothing from the State Your Honor.

10 MS. BUTLER: I would just renew the defense's
11 motion for a directed verdict based on my earlier
12 reasons.

13 THE COURT: All right. That motion is denied.

14 MS. BUTLER: Thank you.

15 THE COURT: Any requests for jury instruction?

16 MS. O'HAYON: No, Your Honor.

17 MS. BUTLER: Yes, Your Honor. I have just one
18 because I know that Your Honor is going to do the
19 standard.

20 THE COURT: Do you want to hand it up.

21 MS. BUTLER: I have it in book format. I can make
22 a copy ever it.

23 THE COURT: Make a copy of it.

24 MS. BUTLER: Yes. (Handed to the Court)

25 THE COURT: Okay what is the request.

1 MS. BUTLER: I'm requesting that Your Honor give
2 the definition of criminal intent to the jury as
3 stated in the section 111 that I passed up and with
4 the State versus Taylor stating that unless otherwise
5 indicated prohibit act must be accompanied by criminal
6 intent.

7 THE COURT: Criminal intent is an essential
8 element of the crime.

9 MR. EPTING: Your Honor, criminal intent includes
10 consequences which represent the very purpose for
11 which act is done. In research for this case we did
12 pull up the statute for intentional infliction of
13 injury upon a child, upon a minor, and it's hard to
14 tell from the statute exactly what intent is require.
15 I think in the absence of a specific intent a general
16 intent charge would be appropriate. Certainly he has
17 to have criminal contempt to commit this crime, but I
18 don't think he has to intend the result of what
19 happened in this case.

20 THE COURT: This request doesn't say that, does
21 it?

22 MR. EPTING: I am concerned about --and maybe I'm
23 over thinking this -- criminal intent includes
24 consequences which represent the very purpose for
25 which an act is done. I read that as more of a

1 specific intent charge which I don't believe is the
2 standard in this case.

3 THE COURT: Well, criminal intent may represent
4 the very purpose for which an act is done, as well as
5 those which are substantially certain to result
6 whether intended or not.

7 MR. EPTING: Yes, Your Honor.

8 THE COURT: Don't you think that is a fair
9 statement?

10 MR. EPTING: Certainly the second part.

11 THE COURT: Well, I have my own instruction. I'm
12 not going to read this but my instruction covers I'm
13 sure. You all pay careful so if you don't believe it
14 does you can state an appropriate objection or further
15 request.

16 MR. EPTING: Thank you, Your Honor.

17 MS. BUTLER: Thank you, Your Honor.

18 THE COURT: How much time do you all think you
19 will need to argue.

20 MS. O'HAYON: Maybe thirty minutes Your Honor.

21 THE COURT: Okay.

22 MS. BUTLER: Same or or less.

23 THE COURT: Okay. Do you need a minute before we
24 start?

25 MR. EPTING: Could we have a brief bathroom break?

1 THE COURT: We will take ten minutes and then we
2 will continue.

3 (WHEREUPON, there was a brief recess.)

4 THE COURT: Be seated.

5 Are we ready for the jury?

6 MR. EPTING: Yes, Your Honor, just to the clarify.
7 I believe under the new rules the State will go first
8 open in full -- or close in full and the defense will
9 close in full and then the State will have a
10 opportunity to reply since they presented evidence in
11 the case.

12 THE COURT: Sounds just like the old rule.

13 MR. EPTING: Well, under the old rule I believe
14 open on the law and then reply in full.

15 THE COURT: Well, nobody ever did that.

16 MS. BUTLER: And for clarification of the sequence
17 of how Your Honor is going to instruct the jury are you
18 going to before closing or after closing.

19 THE COURT: After.

20 MS. BUTLER: And will the jury go out after
21 closing remarks by counsel so that I can object to the
22 that language that Your Honor intends to submit to the
23 jury?

24 THE COURT: Well, you won't be able to object to
25 it if I hadn't given it.

1 MS. BUTLER: Well, before you give it I would like
2 to make a record. I can make it now.

3 THE COURT: Make it now if you want. If you don't
4 want to object afterwards, but I recommend you object
5 afterwards otherwise you haven't preserved --

6 MS. BUTLER: I will, but I think if I haven't
7 argued first then Your Honor don't know my arguments
8 and can't make a ruling on the record if I hadn't
9 argued it already.

10 THE COURT: Well, as you already know we had that
11 discussin already.

12 MS. BUTLER: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. BUTLER: I requested a charge of criminal
15 intent be given to the jury and I agree with the part
16 that Your Honor will submit except the last two
17 paragraphs and I think the next to the last paragraph
18 starts with while, and the last paragraph about
19 reckless disregard.

20 I think there has been no evidence of reckless
21 disregard put forth in this case by the defendant and
22 that I disagree with that language being presented and
23 charged to the jury.

24 Thank you.

25 THE COURT: Well, I'm not suggesting the defendant

1 has to put forth any evidence as it relates to his
2 mental state.

3 MS. BUTLER: The State has not put forth.

4 THE COURT: You said the defendant.

5 Okay. Anything else?

6 MS. BUTLER: No, Your Honor.

7 THE COURT: All right. Bring the jury in.

8 (WHEREUPON, the jury enters the courtroom.)

9 THE COURT: All right. As you know you are going
10 to hear from the lawyers. Then you will hear from me.
11 Then you will begin deliberation. The way the final
12 summations are accomplished, the State goes first,
13 follow by the defense and then the State is permitted
14 a brief reply. Then I will provide you with the legal
15 instructions.

16 Please give the lawyers your attention now as they
17 give you their final summations.

18 MS. O'HAYON: May it please the Court.

19 THE COURT: Yes, ma'am.

20 MS. O'HAYON: Okay. Finally summations, right.
21 So this case is the State of South Carolina against
22 Darrell D. Wilson Jr. This defendant he's charged
23 with inflicting great bodily injury upon a child.
24 What is this case about?

25 It is unlawful to inflict great bodily injury upon

1 a child. Your question is, did N.W. suffer great
2 bodily injury and was the defendant the one to inflict
3 it. Your role as jurors is to be the umpires of the
4 judicial system. To review all the evidence and the
5 testimony. You had pictures. You had testimony from
6 witnesses and expert witnesses and you are to review
7 all of that and as you review it think about the
8 demeanor of the witnesses on the stand. Think about
9 what you you have seen for yourself. Think about what
10 make the most common sense. You're not here to judge
11 the defendant. We're not saying that the defendant is
12 a terrible person for doing this or anything like
13 that. We're just here to determine whether or not he
14 inflicted great bodily injury upon that child. And
15 you here to answer whether his actions on December 22,
16 2017 constitute the charge.

17 So I'll talk to you a little bit about taking a
18 look at the witnesses on the stand and accessing their
19 credibility by looking at their demeanor. You should
20 think about their motive, their bias, their prejudice,
21 their ability to perceive the actual events and use
22 your common sense. Why do people lie? Do they have
23 something to gain from it? Are they avoiding
24 something? Do multiple people say the same thing?
25 For instance, both Marjorie and Sherry made statements

1 about N.W. being a perfectly baby before and they both
2 said there was a bruise on the chin before EMS
3 arrived. Do those things help you in determining
4 their credibility.

5 Now, you heard this beyond a reasonable doubt
6 standard a few times throughout this case and there
7 are several different definitions. The first one is
8 hesitate to act. So what does that really mean to
9 hesitate to act. If there is something reasonable
10 that causes you to hesitate in providing a guilty
11 verdict. It has to be reasonable. It's not beyond
12 any and all doubt because there are very few things
13 that we can know without any and all doubt and that's
14 not the standard here. It's a reasonable doubt and it
15 is proof that leaves you firmly convinced.

16 So great bodily injury is defined by law and the
17 judge is going to tell you the law and if my
18 interpretation of the law is at all different from
19 what he instructs you you listen to the judge. But it
20 is defined as a substantial risk of death, serious or
21 permanent disfigurement, protracted loss or the
22 function of bodily member or organ. I submit to you
23 that great bodily injury was inflicted on N.W. He
24 was in the hospital for a month. He had brain
25 injuries. He is no on longer the same. So what do we

1 know to get to the infliction on December 21st **N.W.**
2 was left alone with the defendant overnight. He was
3 fine. Before he was left with the defendant. There's
4 no evidence here that was presented to you that he was
5 anything but fine when he was dropped off. He was
6 picked up and his mom, his biological mom testified
7 that as soon as she picked him up and cradled him in
8 her arms and put him down to put him in the car seat
9 he went limp completely and she started freaking out
10 and asking to call 911 and the defendant said no, he's
11 fine. He starts seizing. His body temperature when
12 EMS arrived is 96. By the time he gets to Piedmont
13 Medical Center it's 93. His temperature is dropping
14 rapidly.

15 **N.W.** was a healthy baby and now he globally
16 developmentally delayed and suffers from seizures
17 daily and he was four months old at the time.

18 Let's talk a little bit about what each witness
19 said to you. Marjorie testified she dropped him off.
20 She came back a little later that evening. He was in
21 bed. When she came back she saw **N.W.** sleeping in the
22 bed and the next morning the defendant frantically
23 calls her. Come get **N.W.** The baby won't stop
24 crying. He won't stop crying. Come get him. Calls
25 her multiple times to come get the baby and with each

1 call he is increasing in his requirement for her to
2 come. He is getting more and more frantic. There was
3 no bruise to him when she dropped him off. But the
4 bruises start to appear. There's a bruise to the chin
5 that appears before EMS arrives and then the bruises
6 worsen. There's is a bruise across his face and the
7 medical records say there were bruises to the middle
8 of his chest, to the rib area, to the back, and Doctor
9 Scheller might want to say that is not where you would
10 hold a baby if you are holding a baby and shaking a
11 baby, but I submit to you it is absolutely possible to
12 hold a baby around the rib cage and shake them like
13 this and that would cause bruises and that was in the
14 medical records. And use your common sense. Bruises
15 don't always appear immediately. Sometimes they take
16 time to develop, and the testimony was, there were no
17 bruises. All of a sudden there is a bruise to the
18 chin. All of sudden there is a bruise to the face and
19 the medical records show a bruise to the body.

20 He was not rolling over all the way yet. But what
21 did the defendant tell Marjorie, oh, nothing happened
22 and then he rolled off the couch. There is some
23 bruising to his face and I submit you can take a look
24 at the bruising for yourself and you can see the
25 pattern of that bruising and the location of that

1 bruising on his face and you can make a determination
2 for yourself whether you believe Doctor Scheller's
3 testimony that this -- this was caused by medical
4 experts who are trained or whether it was caused by
5 the defendant.

6 You also heard from Sherry. She is calling 911 as
7 Marjorie is rushing home. She testified when he comes
8 his arms and legs are completely back. His head is
9 completely limp. It's like he's lifeless and he was
10 healthy before and the bruises appeared before EMS
11 arrived.

12 You also heard from his adoptive mother Miss Beth
13 Matthews. She adopted him upon his release -- well,
14 she picked him upon his release from the hospital and
15 later adopted him. She takes care of him daily and
16 she testified he still wears diapers. He will never
17 be potty trained and he has seizures every day with no
18 warning. You also heard from Captain Neely and this
19 is important because Captain Neely testified that he
20 went out to the defendant's residence. He didn't have
21 a search warrant but he heard noises inside. The gate
22 was open. When he leaves and comes back with a search
23 warrant the gate is now locked. When he is able to
24 get a hold of the defendant they clip the gate. They
25 go in. The defendant has to crawl into his own house

1 through the window in order to give them access to the
2 house. What is all with the closing of the gate and
3 you can't even get into your own house. What is he
4 hiding there.

5 Captain Neely measures the couch. It was 26
6 inches with the defendant laying on it. So if **N.W.**
7 had rolled off while he was laying on his chest the
8 height would have been at most 26 inches. We're
9 talking about just a little over two feet. He is
10 unable to get the facebook messages that were sent
11 between Marjorie and the defendant, and he testified
12 that Marjorie was talking to a detective and
13 attempting to retrieve those messages and was unable
14 to. And he testified he got a search warrant and the
15 messages were gone when he tried to get them from
16 facebook and he also testify that they could have been
17 deleted from either one, either Marjorie or Darrell
18 deleted those messages, but I submit to you it was
19 Darrell who deleted those messages because Marjorie
20 was attempting to get them to show them to the
21 detective and the defendant is never able to find his
22 phone.

23 So you heard from Doctor Lamb. She diagnosed this
24 as abusive head trauma. She said there was wide
25 spread subdural hemorrhages of the left side. These

1 are not focal injuries as in he was dropped and then
2 just one small location caused the injury. It was
3 wide spread throughout his whole left side. She said
4 there were retinal hemorrhages. The bruising to the
5 chin and the face, bruising to the chest and the back.
6 There was no signs of blunt force trauma. That's not
7 what is being argued here. And she said the injuries
8 would have had to be acute in time based on how
9 quickly his temperature is dropping. Normal
10 temperature 98. 96 when EMS gets there. 93 at PMC.
11 She says that these injuries are so severe, and Doctor
12 Scheller agrees that it was a massive head injury and
13 if it was traumatic it would have immediately
14 symptomatic. Doctor Lamb said this would have been
15 immediately symptomatic and he immediately went limp
16 when she picked up. Having been crying, having
17 trouble breathing, goes limp. And it's only the
18 infant and the adult in the room. She did testify
19 about this and that is the issue with child abuse
20 cases, right. It's usually done without someone else
21 observing it otherwise you will have a 911 call or
22 somebody stopping the abuse. So, it is up to you as
23 the jurors to determine whether all the evidence shows
24 that during the time that this defendant had **N.W.**
25 alone that he inflicted the injury.

1 You also heard from Doctor Scheller. His theory
2 is a common cold in addition to some fluid on the
3 brain caused a blood clot, caused seizures, caused
4 N.W.'s injuries. His opinions on abusive head trauma
5 diagnoses, as he testified, is in the minority of the
6 medical community. He does not diagnose abusive head
7 trauma very often. He thinks it is more reasonable
8 that a common cold and some fluid to the brain caused
9 these brain injuries then that this defendant took
10 that baby around his chest and around his ribs and
11 shook him out of frustration.

12 His primary role now as board certified
13 pediatrician is reviewing cases for the defense and
14 testifying for the defense. You heard him say he made
15 three hundred to three hundred and fifty thousand
16 dollars in 2012 doing just that. Talk about skin in
17 the game. He said that the child abuse pediatricians
18 have some skin in the game and that's why they had
19 that consensus statement. I think three hundred to
20 three hundred and fifty thousand dollars is skin in
21 the game.

22 So you got two different opinions. Drastically
23 different and which one is more accurate. Now Doctor
24 Scheller didn't say this couldn't have been abusive
25 head trauma, but he said it's the least likely option

1 and he gets paid to say that otherwise if he doesn't
2 say that he doesn't get approximate hired by the
3 defense. He had to be flown down here from Maryland,
4 and he is essentially a professional witness and there
5 were many other board certified neurological board
6 certified pediatricians between here and Maryland but
7 he's the one that can come here and testify because he
8 is the minority so there aren't any many doctors that
9 will testify as to what he says.

10 Doctor Lamb however, she's right down the road.
11 An hour away in Columbia. She comes up here. She's
12 consulted by both the defense and the State. She is
13 currently actively treating patients. You heard her
14 say she sees every patient under the age of two that
15 suffers a fracture and she has extensive training,
16 three extra years training in child abuse pediatrics
17 and she is diagnosing abusive head trauma and child
18 abuse, but she only does it less than one third of the
19 time and she said it's even smaller when you're
20 talking about a violent shaking. So it is not like
21 she's doing it ninety percent of the time like Doctor
22 Scheller, or ninety percent of the cases he reviews
23 are are not abusive head trauma. Think to yourself
24 who gains more from their testimony. If Doctor
25 Scheller didn't say that this was the common cold and

1 some brain fluid causing the clot he wouldn't have
2 made six thousand dollars to come in here and testify.
3 What did Doctor Lamb make by coming in here and
4 testifying?

5 So again, **N.W.'s** was fine. Perfectly healthy. No
6 bruises. He was dropped off at the defendant's house.
7 He's picked up. Has bruises on the face right after
8 the visit. EMS gets there. The bruises continue. He
9 seizing. Bruises on the chest and the back. Remember
10 Doctor Lamb's testimony about abusive head trauma and
11 the external. She says you don't expect to see
12 external injuries on the head. We're not saying that
13 the baby was slammed on anything or that the baby fell
14 and hit his head really hard. There's no external
15 injuries because the baby was shaken injuries. The
16 injuries are all internal. His brain going back and
17 forth.

18 Use your common sense. This is the first time
19 that **N.W.** had spent the night with the defendant
20 alone. Actually Marjorie testified that normally she
21 would go there and stay there. They would split up.
22 They're on and off. He would ask for the baby. She
23 would bring the baby by and she would usually stay and
24 this is the first time that they split up and she
25 brought the baby because the defendant asked for him

1 and didn't stay. He calls the next morning. Insists
2 that she picks him up. He's crying. He's crying. He
3 won't stop crying. What do you think happened? That
4 he got frustrated. Baby wouldn't stop crying. That
5 noise was too much, the crying over and over again.
6 He can't make it stop. He gets frustrated. He shakes
7 the baby to try and get him to stop. Then Marjorie
8 comes and he gaslights her. Says the baby is fine.
9 The baby is limp in her arms. Baby is fine. Don't
10 call 911. You're overreacting. And she, wishing that
11 she's overreacting, calls her mom and says this is
12 what's happening and her mom, Sherry, I can hear it in
13 her voice. I knew something was wrong. I know my
14 child. I know that something was wrong and she knows
15 her child and she knew something was wrong. So Sherry
16 immediately calls 911 for Marjorie. Marjorie's only
17 hesitation was that she hoped she was wrong about the
18 severity of the injuries that Darrell had inflicted on
19 **N.W.** But Darrell wouldn't let her call 911. Why?
20 If she's overreacting why not just call 911 make sure
21 EMS comes out and the baby is fine. If she's
22 overreacting why isn't the baby waking up. Why is he
23 that is not normal for a baby.

24 We also know that when Carson Neely went to the
25 house he said he heard some noises inside the house

1 that first time around and that he had to go back with
2 a search warrant. And he told the defendant's story
3 change and he originally told Marjorie that nothing
4 happened and then he said the child fell off the couch
5 and that inconsistent story, that inconsistency,
6 nothing happened. Oh, maybe N.W. fell off the couch.
7 What does that tell you. What does that tell you
8 about this defendant. Nothing happened. He's fine.
9 Don't call 911. Oh, the injuries are really bad. I
10 think he fell off the couch.

11 I submit that this was great bodily injury. This
12 was that defendant's fault. To be firmly convinced
13 that the defendant along with N.W. assaulted him
14 causing his life altering injuries because it makes
15 most sense and it's backed by the most reliable and
16 unbiased science and so I'm going to ask that you
17 bring back a verdict of guilty.

18 THE COURT: Miss Butler.

19 MS. BUTLER: Doctor Lamb testified that child
20 abuse expert is a new field. It's newly developed.
21 It didn't exist just a few years back. There was no
22 such thing as a child abuse expert.

23 MS. O'HAYON: Objection. I don't think that's
24 what she testified to.

25 THE COURT: Confine your argument to the evidence

1 that has been admitted into the record.

2 MS. BUTLER: Doctor Lamb testified as to folks in
3 the medical community they didn't want to do this.
4 They didn't want to get into this. So she got into
5 it. She got in and she got qualified as a child abuse
6 expert. Doctor Lamb has a whole position at a
7 hospital where that's all she does is diagnose child
8 abuse. That's her job. She is a child abuse expert.
9 If Doctor Lamb could diagnose child abuse that would
10 be just the end of it then Miss Kopp wouldn't be here
11 and I wouldn't be here, Judge Cole wouldn't be here
12 and none of you would be here today because Doctor
13 Lamb can't just diagnose child abuse and that be the
14 end it. That's why you all are here and that's why
15 you heard this evidence all week from Monday until
16 today and that's why we have to bring in Doctor
17 Scheller to testify to you because Doctor Scheller
18 still believes in the overall good of people. He
19 doesn't automatically look for child abuse. Doctor
20 Lamb that's her job. That's her focus.

21 You're riding down the road and you pass that
22 officer and you look at your speed odometer to see if
23 you were speeding. That's their job. That's their
24 focus. Try to keep our roads safe. That's Doctor
25 Lamb's job is to focus on child abuse. Look for child

1 abuse. If you're looking for something you're going
2 to find something. She looked for it. Every day
3 that's what she does. That's her position at the
4 hospital. That's what she's paid to do every day.
5 Doctor Scheller he doesn't look potential child abuse.
6 He's a doctor and he looks for other explanations
7 before he will diagnose anything of child abuse. So
8 if there's another plausible explanation he's trying
9 to find it. Not just diagnose child abuse.

10 A few years ago, maybe 10, 15, you know, a child
11 could get hit in the head with a golf club. You know,
12 my younger son hit my older son one time very
13 accidently. Had to have some stitches. A child could
14 fall off their bicycle and break their arm and there
15 wasn't no child abuse expert. There was no child
16 abuse doctor at the hospital, at the ER. There was
17 just a medical doctor. So you go in and the child get
18 stitched up or gets a cast on and it wasn't suspected
19 child abuse right off the bat. So Doctor Scheller he
20 still believes in the over all good of humanity and he
21 says as doctors we got to look and see if there are
22 other reasons, other explanations for what could
23 happen at this time. And so that's what Doctor
24 Scheller did as a neurologist, as an associate
25 profession who has trained other medical doctors

1 coming through the field as a doctor who has worked at
2 several different hospitals including the George
3 Washington Hospital, as a neurologist. So in his
4 field that he's testifying to you today he has worked
5 in that fields and reading scans.

6 Doctor Lamb she told you she didn't even read
7 those scans. She said she didn't even know there was
8 an X-ray of the neck. She said she read the report,
9 that talked about the scans. She didn't look at the
10 pictures. She read the report that talked about the
11 pictures. She didn't bring anything in here to show
12 you yourself what happened to N.W. She just wants
13 you to accept her conclusion of that. She's a child
14 abuse expert. She diagnosed it as child abuse and
15 that's what it is. She didn't bring nothing in here
16 for you to make your own conclusion. She didn't bring
17 a slide. Doctor Scheller brought you N.W.'s actual
18 scan of what those doctors took when he came in the
19 hospital that day. This is N.W. This is what he
20 wanted you all to see what was actually going on with
21 N.W. She didn't want you to see that. She didn't
22 bring it for you to see. Just accept it. That's what
23 she said. Okay. But that's not the way it is.

24 You all are here today to determine if it was
25 actually abuse of N.W. So what actions. Miss Kopp

1 talked to you about look at the actions. Look at the
2 actions of Mr. Wilson. Well, what actions? What
3 actions are you going to look at of Mr. Wilson. When
4 you look and you have Marjorie, Marjorie is where it
5 all started. Marjorie calls 911 or Marjorie's mama
6 sitting at the kitchen table calls 911. They say the
7 baby was just screaming and crying uncontrollably.
8 Well, where is the 991 call from that. Marjorie says
9 that the baby was grasping for air but she strapped
10 the baby in the car seat and she changed the baby's
11 diaper and she called her momma before she even
12 changed the baby's diaper. When she got home she
13 called her home and momma and she says, should I call
14 911. Well, if the baby is gasping for air and the
15 baby is limp -- in any event we'll give Marjorie some
16 benefit to that -- if she's calling her momma, if she
17 is scared because **N.W.** No doubt that Derrell has
18 called Marjorie and said something is wrong with **N.W.**
19 He's crying. He's crying uncontrollably. You need to
20 come and get him. She wouldn't have been over there
21 at that time if hadn't called her and said come get
22 him.

23 Marjorie, she testified to you that she understood
24 there was something real serious going on when
25 officers kept pouring into the yard and Marjorie then

1 told them that she saw a bruise on N.W. when she
2 picked N.W. up this morning. She didn't say the
3 bruise was on N.W. a couple days before. Marjorie
4 might have felt like eyes would have been on her if
5 there was something -- a bruise on N.W. a couple days
6 before.

7 Marjorie, she testified that she started -- when
8 she took N.W. over to Darrell that night she was
9 drinking and driving. She told you all that she took
10 N.W. at 7:30. She had drank a beer. She went back to
11 Darrell's house at midnight, round about. But she
12 only drank one beer the whole night she told you all.
13 Nobody says anything different, but, you know, you all
14 are the triers of fact here so you determine. You get
15 to use all your common sense and decide is Marjorie
16 being truthful and that don't matter. That's not
17 consequential hear in this case whether she drank one
18 beer or ten. It don't matter how many beers she had.
19 What matters with Marjorie is did Marjorie have a
20 reason to make up something. Did Marjorie have a
21 reason to make up that Darrell said the baby fell from
22 the couch? Did Marjorie have a reason to say that she
23 N.W. didn't have a bruise on his chin before she
24 dropped N.W. off that evening? Marjorie also stated,
25 you know, just to contradict what the State wants you

1 to believe about the bruising she didn't see any other
2 bruising on N.W. when she changed N.W.'s onesie and
3 N.W.'s diaper.

4 Marjorie also told you that she started texting
5 with Darrell while he was still married, before him
6 and his wife even split up. And you know, listen on
7 this. So, you're the triers of fact. You all have
8 heard. I've been sitting over there. I have been
9 taking notes. I've been dealing with this case for
10 four years now. You all have been dealing with it
11 just for this week. You know what these peopled
12 testified to more than I so if I say something that I
13 got it mixed up in there you listen to what you heard
14 because I know I heard Miss Kopp said a few things
15 that I thought was said differently up there. For
16 example, I thought that Officer Neely testified that
17 Marjorie herself had deleted her facebook messages
18 between she and Darrell. That's what I think that
19 Officer -- still think that Officer Neely testified to
20 when he was on the stand that Marjorie had deleted
21 those messages between her and Darrell. Marjorie and
22 everybody told you that Marjorie lied to the police
23 before. She's been arrested for it.

24 I'm Melinda Butler and I'm a criminal defense
25 attorney and I'm here to represent Darrell Wilson and

1 tell you that he's not guilty. You know what, I'm
2 biased. I'm very biased as to my client. Miss Kopp
3 is bias to the State.

4 MS. O'HAYON: Objection, Your Honor.

5 THE COURT: Sustained.

6 MS. BUTLER: We have our own -- we come from our
7 own perspective of doing what we're doing. You all
8 are not bias. You all have no bias in it. You are
9 here to find trust and justice and that's what we all
10 want is for you to find truth and justice.

11 So let me tell you how this case started back in
12 2017 with the legal part of it. So there's a standard
13 that the judge is going to talk to you about called
14 proof beyond a reasonable doubt. We discussed it a
15 little bit already. But before you get to proof
16 beyond a reasonable doubt, that's what you all get to
17 decide today, is there proof beyond a reasonable
18 doubt. But before you get to that standard you
19 couldn't even get into this courtroom today. Mr.
20 Wilson could have never been handcuffs if it wasn't
21 for some very low threshold standard called probable
22 cause.

23 In order for Mr. Wilson to be arrested for this
24 charge there only had to be probable cause. It's a
25 very, very low standard for somebody to be arrested of

1 a crime. Probable cause is all there has to be.
2 Officer Neely didn't have the benefit of all these
3 medical records when he arrested Darrell Wilson. He
4 didn't have the benefit of the CAT scan and the
5 records that showed what was going on in N.W.'s brain.
6 He didn't have the benefit of seeing that only one
7 side of N.W.'s brain had been effected by a suppose
8 shaking all over. And I'm not trying to understand.
9 I don't have to understand the medical part of it all
10 the way to understand that if your shaking that apple
11 in that jar like Doctor Scheller described there is
12 going to be damage to the apple all over. Not just
13 one side. And Doctor Lamb told you, their own expert,
14 they only come up with the conclusions that they do
15 because they rely on confessed criminal statements as
16 to what they did to the child.

17 Officer Neely didn't have any evidence to present
18 to you. He looked. He tried to find blood, vomit,
19 saliva. There was none. He had full access to the
20 couch, to scrub it, to do the black light. To do all
21 the forensics that they do. Full access. And he
22 found nothing. Nothing indicative that N.W. was hurt
23 there at Darrell's house. There's no place on N.W.'s
24 brain, Doctor Scheller showed you in the scans that
25 there's no indicia that something hit his brain. I

1 don't know. You you heard the evidence. You heard
2 everybody testify. Yes, Doctor Scheller has to go
3 around now testifying because child abusive gets
4 diagnosed so much.

5 You know, my kids and I we walked through a grave
6 site this fall just way back in the woods and it's
7 protected, but it's from the 1800's and I saw -- I
8 looked and looked and just reading the grave sites
9 the ones that were still legible. You have a four
10 month old, a two year old just engraved in here. And,
11 you know, long ago babies they just didn't make it
12 some times. There was just - it just didn't happen.

13 Ms. O'HAYON: Objection. Relevance.

14 THE COURT: Overruled. This is argument.

15 MS. BUTLER: But now, if something happens to a
16 baby we got all these child abuse experts that are
17 holding positions now that are getting paid that won't
18 have a job if they don't diagnose child abuse. We got
19 a real neurologist though who showed you all the
20 stuff. You just think about it. You come up with it
21 from all that you have seen there that you actually
22 saw for yourself that was described to you.

23 Let me talk to you a minute just on the standards
24 that the judge is going to give you and then I'm done.
25 I don't get to see you anymore. I don't get to talk

1 to you anymore. The rules are set up that the State
2 goes first and then the State goes last in closing.
3 So when the judge charges you on the law, so he's
4 going to tell you what the law of your case is. He
5 can't tell you what the facts are. He can't tell you
6 what facts to find. You get to determine yourself if
7 you believe part of what a witness said from that
8 stand, if you believe all of what a witness said from
9 that stand, or if you believe none of what a witness
10 said from that stand. You can believe one sentence
11 and not believe the next sentence. If you have
12 children, you know sometimes they'll mix the truth in
13 with a lie. They'll tell you something. Then they'll
14 tell something different based on what they think you
15 want to hear. That's what your prerogative is.
16 That's why you are very special. There is no better
17 people in this whole world to tell us what happened in
18 this case because we weren't there. None of us. Not
19 Officer Neely, not myself, not Doctor Lamb, not
20 Doctor Scheller. None of us. We don't know except
21 that we know what Doctor Scheller testified to.
22 Babies don't just come out of the womb now having CAT
23 scans. Thank God we haven't got to that point yet.
24 **N.W.** had no reason to have CAT scan. So it's the
25 first time that its been found. The preexisting

1 condition that Doctor Scheller found on a CAT scan it
2 was no reason for it to be found before. But he's
3 telling you it's there. That's unrefuted. It's
4 unrefuted that N.W. had preexisting condition and that
5 N.W. had a not formal virus. Whether those two
6 coupled together he can't tell you. What he can tell
7 you there is a possibility -- the lowest possibility
8 is, is that somebody inflicted trauma upon this baby
9 because there's just no outward sides of it. The
10 second possibility, you remember better than me at
11 this point.

12 The third possibility and the one that Doctor
13 Scheller thinks that it is, was a combination of where
14 this baby was born with something going on. The baby
15 just now four months old at the time. It's just
16 coming to par of what something -- of whatever he was
17 born with and long ago it would have just been what it
18 was. There would have been no diagnosis and child
19 abuse experts waiting at the gates of the hospital and
20 the ambulance.

21 Thank you for your time.

22 MS. OHAYON: Briefly, Your Honor.

23 Three hundred to three hundred fifty thousand
24 dollars a year makes up eighty percent of his income.
25 Of course he has to go around and testify about this.

1 That's quit the lifestyle he needs to keep up with.
2 Doctor Lamb told you she is not looking for child
3 abuse and she only finds it one third of the time.
4 Doctor Scheller finds alternative theories ninety
5 percent of the time of what he looks at. If you're
6 looking for something you'll find it. That's what
7 Miss Butler just told you.

8 Doctor Scheller sure finds alternative theories.
9 Now Miss Butler also mentioned that Doctor Lamb
10 didn't read the scan herself and she didn't bring the
11 the scans for you and no offense, none of you guys are
12 medical experts. You guys can't read those scans
13 yourselves. I'm not sure what the purposes of
14 bringing those scans in to show them to you and not
15 only that, Doctor Lamb testified she relies on board
16 certified radiologist that specialize in reading these
17 scans and she does not come up with her own opinion
18 because she recognizes there are other people in the
19 medical community who are better qualified to do that.
20 So she relies on a radiologist to read the scan and
21 give her the interpretation. And I'm a little unclear
22 because Miss Butler puts up Doctor Scheller. Says
23 this is a cold and a clot and liquid on the brain and
24 then comes up and argues about Marjorie and her
25 actions and whether she has a motive to lie. Why

1 would she be lying if this is a medical condition.
2 Which one is it. Did Marjorie drop the baby off with
3 this medical condition that she knew about it and
4 she's just lying about it. That makes no sense. I
5 don't understand that argument.

6 She also said that Doctor Lamb relies on
7 confessions from perpetrators. Why would someone
8 confess to shaking a baby if they didn't shake a baby.
9 Why would you ever confess to that. She also said
10 that she relies on studies. What studies did Doctor
11 Scheller say he relies on. I submit to you there were
12 none. There was no blood. No vomit. No saliva.
13 Doctor Lamb explained that you're not going to have
14 that if you don't have any external injury. You're
15 not necessarily going to have blood. No one is saying
16 that he hit him against anything. You're not going to
17 get blood if it's an internal injury.

18 She's also talking about what is very much refuted
19 and that's Doctor Scheller and his opinion. He told
20 you that himself, his viewpoints are in the minority.
21 His viewpoints are refuted, but his viewpoints make
22 him three hundred to three hundred and fifty thousand
23 dollars a year.

24 THE COURT: Ladies and gentleman, you of course
25 have heard and seen all the evidence. You have now

1 heard the final summations of lawyers. So I will
2 instruct you on the law that is applicable in the
3 case. You will then be asked to go back and begin
4 with your deliberations. Through the exercise of
5 good judgement and common sense consciously apply to
6 the testimony and evidence in the case. You will be
7 called upon to determine the facts where you can as
8 they relate to the material allegations. After
9 deciding the facts you will apply the law. Then you
10 will arrive at a fair and impartial decision, whatever
11 that decision might be, based upon the evidence
12 presented and the law that is applicable.

13 It is your exclusive duty to determine what the
14 facts are and to do that through your own common
15 sense, examination and evaluation of all the testimony
16 and other evidence received during the course of the
17 trial. You 12 jurors alone will decide what weight,
18 value and effect to give to any particular witness's
19 testimony or other evidence in the case. Your sole
20 objective of course is to simply render a fair and
21 impartial decision based upon your review of that
22 evidence, your decision as to the facts and then your
23 application as to law as I will have provided it to
24 you.

25 Now, in this case as you know, the State through

1 the solicitor and by way of the indictment, has
2 charged the defendant with the crime of infliction of
3 great bodily injury upon a child. That's a statutory
4 offense and that statute is set forth in section
5 16-3-95 of the South Carolina Code of Laws.

6 The State allege by way of the indictment that
7 Darrell D. Wilson Jr, did here in York County on or
8 about December the 22nd of 2017 inflict great bodily
9 injury upon a child. That child being N.W. [REDACTED]
10 who was approximately four months old at the time of
11 the event.

12 Now, as to those allegations and as to that charge
13 set forth in indictment the defendant has entered a
14 plea of not guilty. And as I previously told you that
15 plea of not guilty has placed upon the State the
16 burden of proving the allegations that they have made
17 by way of the indictment, the burden of proving each
18 of the essential elements that make us the crime they
19 have alleged against the defendant. And therefore the
20 burden is upon the State to establish the defendant
21 guilt to the satisfaction of you 12 jurors beyond a
22 reasonable doubt before such a finding could be made.
23 The burden is never upon a defendant or a person
24 accused of crime to prove that they are not guilty or
25 to prove that they're innocent because in some cases

1 that might not be possible.

2 The burden is always upon the State because they
3 made the accusation and they brought the charge to
4 establish the defendant's guilt to your satisfaction
5 beyond a reasonable doubt. You are instructed that it
6 is a vital important and carnal rule of law that every
7 defendant in a criminal trial, it doesn't matter how
8 serious the offense might be for which that person
9 stands charged that person shall always be presumed
10 innocent of that charge. That presumption of
11 innocence remains with any defendant as it does with
12 this defendant from the time that he is placed under
13 arrest and throughout the course of the criminal
14 process and even throughout the course of the actual
15 trial in the case.

16 As I told you, that presumption of innocence will
17 be with Mr. Wilson even as you go back in your jury
18 room to begin with your deliberations in this case.
19 That presumption of innocence will be with him in that
20 jury room and it will be with him forever unless you
21 12 jurors determine that he's no longer entitled to
22 that presumption of innocence. In other words, after
23 you have carefully considered all the evidence in the
24 case and from that evidence you have been able to
25 determine the facts as they relate to the material

1 allegations set forth in the indictment and upon
2 deciding those facts you apply the law that I would
3 have provided you, if you 12 jurors unanimously
4 determine that his guilt has been proven beyond a
5 reasonable doubt then he would no longer be entitled
6 to that presumption of innocence. But it is only if
7 and unless and until you are satisfied of his guilt
8 beyond a reasonable doubt that the presumption of
9 innocence would no longer be applicable.

10 Now the the State does have the burden of proving
11 the defendant's guilt to your satisfaction beyond a
12 reasonable doubt. That doesn't mean that the State
13 has to prove his guilt beyond all doubt or beyond any
14 possible doubt, but it does require the State to prove
15 his guilt to your satisfaction beyond a reasonable
16 doubt.

17 The term reasonable doubt should be given its
18 plain and ordinary meaning. A reasonable doubt is the
19 kind of doubt that would cause a reasonable person to
20 to hesitate to act upon the information provided. And
21 the defendant in a criminal trial is entitled to any
22 reasonable doubt that arises from the evidence or lack
23 of evidence in the case, and if upon any factual issue
24 essential to a finding of a verdict of guilty you have
25 some reasonable doubt as to how that issue should be

1 resolved it would be your duty to resolve that
2 reasonable doubt in favor of the defendant. Now while
3 there are various forms of evidence such as testimony,
4 photographs, documents, charts and other types of
5 physical exhibits, there are really only two types of
6 evidence and either or both of those types of evidence
7 may be used to prove any fact or issue, but the two
8 types of evidence are direct evidence and
9 circumstantial evidence.

10 Direct evidence is the testimony of a person who
11 testifies from actual knowledge of that fact. It is
12 testimony by a person who has perceived the existence
13 of some fact by means of his or her senses and then
14 they come into court and they testify as to what they
15 previously perceived by the use of those senses.

16 Direct evidence proves the existence of a fact
17 directly and it does not require any deduction or
18 inference in order to establish that fact.

19 Circumstance evidence on the other hand is the
20 proof of some other fact or a set of facts which taken
21 even singularly or collectively may prove the
22 existence of another fact as a necessary consequence
23 that is through a deduction or inference. An
24 inference is simply a deduction of fact that may
25 logically and reasonably be drawn from the proof of

1 some other fact or a set of facts. It is a fact not
2 proven by the direct testimony of a witness based upon
3 their personal perception, but it is a conclusion
4 which might reasonably be drawn from the proof of
5 other facts.

6 In other words, you may interfere that a
7 particular event occurred or that a particular fact
8 exists based upon the proof of sufficient factual
9 circumstances which would reasonably warrant your
10 arriving at a particular conclusion.

11 The commission of a crime and any particular
12 element necessary to prove a crime maybe proven by
13 direct evidence or by circumstantial evidence or by a
14 combination of both direct and circumstantial
15 evidence.

16 The law makes no distinction between the weight or
17 the value to be given to direct or circumstantial
18 evidence. However, to the extent that the State
19 relies upon circumstantial evidence in order to
20 establish the commission of a crime the circumstances
21 must be consistent with each other and when taken
22 together point conclusively to the guilt of the
23 accused beyond a reasonable doubt. If the
24 circumstances merely portray the defendant's behavior
25 as suspicious the proof is insufficient and it fails.

1 The burden rests with the State to prove the
2 defendant's guilt beyond a reasonable doubt regardless
3 of whether the State relies upon direct evidence or
4 circumstantial evidence or some combination of both
5 types of evidence.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.
8 There are very few things in the world that we can
9 know with absolute certainty and in criminal cases the
10 law does not require proof that over comes every
11 possible doubt. If, based on your consideration of
12 the evidence in this case, that you are firmly
13 convinced that the defendant is guilty of the crime
14 with which he stands charged then you must find the
15 defendant guilty of that crime. And if on the other
16 hand, you think there's a real possibility that the
17 defendant is not guilty of the crime with which he
18 stands charged then you must give him the benefit of
19 that doubt and find him not guilty.

20 Now, as I've said, the same law that provides that
21 you are judge of the facts provides that I am the
22 judge of the law, and so I am going to tell you what
23 the law is and you are going to decide what the facts
24 are. In order to decide the facts you often have to
25 judge or evaluate or assess the credibility or the

1 believability of witnesses that have testified during
2 the course of the trial.

3 Now, there are several factors which you should
4 consider in arriving at your assessment as to a
5 particular witness's credibility. You should consider
6 the demeanor of the witness. That is, how the witness
7 appeared to you while the witness was testifying from
8 that witness stand. Was the witness straight forward
9 in responding to questions or was the witness hesitate
10 or evasive in responding to questions that were posed
11 of the witness. Simply put, did the witness appear to
12 you to be telling the truth, and to have knowledge of
13 the facts for which that witness has testified. You
14 should also consider whether or not the testimony of a
15 witness is consistent or is it inconsistent with that
16 witness's own testimony provided here in court or
17 whether it is consistent or inconsistent with other
18 statements made by that same witness whether inside
19 the court or outside of court. You should also
20 consider whether or not the testimony of a witness is
21 consistent or is it inconsistent with other testimony
22 or other evidence received during the course of the
23 trial. You should also consider how the witness came
24 to know the facts to which a witness has testified.

25 In other words, what was that particular witness's

1 opportunity and ability to perceive the existence of
2 those facts to what the witness has testified by
3 having previously used his or her senses and then what
4 is that witness's ability to be able to come in to
5 court and to accurately recollect to you as to what
6 they had previously perceived.

7 You should also consider any bias or prejudice or
8 interest that a witness might have with respect to the
9 case. In other words, do you find some reason that a
10 particular witness would come in to court that will
11 testify one way or another to help or hurt one side or
12 the other, and you may consider any interest that a
13 witness might have in the outcome of the case if you
14 determine that witness does have such an interest and
15 you find that interest would bear upon that particular
16 witness's credibility.

17 You should also consider whether or not the
18 testimony of the witness is strengthened or is it
19 weakened by other testimony or other evidence received
20 during the course of the trial.

21 Now, in this case, there have been persons who
22 have been called to testify as expert witnesses. Lay
23 witnesses ordinarily are not permitted to testify in
24 an opinion form. They can testify as to what they
25 have perceived by the use of their senses and then

1 they come in to court and they testify as to what they
2 saw or heard or felt. But expert witnesses are folks
3 who have been qualified as experts in a particular
4 field, or subject matter, and where that witness has
5 been qualified as an expert in that particular field
6 or subject matter then than witness is permitted to
7 testify as to his or her opinions as they relate to
8 the issues involving the case.

9 Now, you got to judge expert testimony just like
10 you do any other testimony, and if you determine a
11 particular expert does not possess the requisite
12 education, training, skill or experience or did not
13 properly consider the facts that relate to this
14 particular matter then you can reject that expert's
15 opinion in its entirety, or, just like any other
16 witness you may believe some part of it and reject
17 some other part of it. But you have to determine
18 often the credibility and the believability of a
19 witness's testimony in order to determine the facts in
20 the case so that you can arrive at your decision. And
21 because you're judge of the facts you judge the
22 credibility of those witnesses. You can believe
23 everything. You can believe nothing. You can believe
24 one part and reject some other part. You can believe
25 one witness as opposed to several, or several as

1 opposed to one. But whatever your good judgement and
2 common sense tells you is the most believable
3 testimony is the testimony you should accept and you
4 should reject any testimony or other evidence that you
5 find not to be credible or believable.

6 Again, your sole objective is to simply render a
7 fair and impartial decision based upon the information
8 that has been provided to you.

9 The same law that provides that you are the judges
10 of the facts also provides that I am the judge of the
11 law and that simply means nobody is going to tell you
12 how to arrive in your determination of fact. You do
13 that through the exercise of good judgement and common
14 sense. Apply it to the testimony and evidence in the
15 case. You must however, under your oath as a juror,
16 accept the law as I provide it to you as being the law
17 that you are to apply in the case.

18 In other words, you are never to concern yourself
19 with what you thought the law was before you came to
20 serve as a juror this week or what you think the law
21 ought to be. Under your oath as a juror you have to
22 accept the law as I provide it to you as being the law
23 that you are to apply in the case and then you simply
24 take that law and you apply it to the facts as you 12
25 jurors determine those facts to be based upon your

1 review of the evidence.

2 Now, in this case as you've been told the defendant
3 is charged with violation of section 16-3-95 of the
4 South Carolina Code of Laws, and that particular code
5 section is entitled, infliction of great bodily injury
6 upon a child. And that section provides that it is
7 unlawful to inflict great bodily injury upon a child.
8 The term inflict, within the meaning of the statute,
9 means to cause someone to suffer something. And under
10 the statute that something would be great bodily
11 injury upon a child.

12 Great bodily injury is defined in the statute as
13 bodily injury which creates substantial risk or death,
14 or, which causes serious permanent disfigurement, or,
15 a protracted loss or impairment of the function of any
16 bodily member or organ. And the human brain is
17 included in the organ category.

18 In order to establish the defendant's guilt in
19 this case it is necessary that the evidence in the
20 case proved to your satisfaction beyond a reasonable
21 doubt that the defendant did inflict great bodily
22 injury upon a child and that he did so with criminal
23 intent. Criminal intent is a necessary element of the
24 crime which must be proven beyond a reasonable doubt.
25 Criminal intent is state of mind that operates jointly

1 with act in the commission of a crime.

2 The term intent refers to the state of a person's
3 mind which directs his actions and conduct. Intent
4 would include those consequences which represent the
5 very purpose for which an act is done as well as those
6 consequences which are known to be substantially
7 certain to result whether actually intended or not.
8 Criminal intent is a mental state with conscious
9 wrongdoing, in contrast to the commission of an act
10 which is the result of accident or mistake or
11 inadvertence and not accompanied by a criminal intent.
12 The element of criminal intent or state of mind just
13 like any other element of a crime must be proven
14 beyond a reasonable doubt, and it also may be proven
15 by direct or circumstances evidence.

16 Criminal intent may be inferred from acts,
17 declarations and conduct of the defendant as well as
18 from any other circumstances shown to have existed at
19 the time of the event from which you might reasonably
20 infer the existence of criminal intent. As often, the
21 state of a person's mind can only be proven by
22 circumstances evidence.

23 Now, while it may be shown that the defendant
24 acted willfully or purposefully or knowingly, or
25 intentionally or with intent to do harm, such a mental

1 state is not required to be proven in order for the
2 defendant to be found guilty of a crime. It is,
3 however, required that any conduct proven to have been
4 committed by the defendant constituting the infliction
5 of great bodily injury upon a child was accompanied by
6 at least a state of mind showing a reckless disregard
7 for the safety of the child.

8 Acting with reckless disregard for the safety of
9 another refers to a state of mind in which a person
10 consciously disregards a risk and engages in conduct
11 or commit acts notwithstanding knowledge that the
12 conduct creates risk to the safety of another person.

13 Now, I instruct you and I emphasis to you that the
14 fact that a defendant during the trial of a criminal
15 case does not take the witness stand and testify
16 during the course of that trial is not a circumstance
17 or a fact that you may allow to weigh in the slightest
18 degree against the defendant. As I told you the
19 burden is always upon the State because they brought
20 the charge, they made the accusation, to prove the
21 defendant guilty beyond a reasonable doubt. And as I
22 told you the burden is never upon a defendant to prove
23 that he or she is not guilty or to prove that he or
24 she is innocent because in some cases a might not be
25 possible, and therefore, you are never to draw any

1 conclusion or make any deduction or inference from the
2 fact that the defendant does not testify during the
3 course of the trial, nor may you even discuss that
4 fact while you are engaged in your deliberations in
5 this case.

6 Now, as I said, the verdict of the jury must
7 unanimous. All of you have to be in agreement. Mr.
8 Foreman, as you know, you are going to be tasked with
9 the responsibility of presiding over jury
10 deliberations in the jury room simply to insure that
11 those deliberations are are carried out in some
12 orderly fashion. But all jurors are expected to
13 participate in those deliberations because as I say,
14 the decision of the jury is the unanimous consensus
15 opinion of all 12, and all 12 must be in agreement.

16 Mr. Foreman, as I also told you, you will have
17 the indictment in the jury room. As I told you
18 previously it is not evidence, but it will serve as
19 the verdict form. On the back of the indictment, the
20 lower left hand corner you will see the word verdict
21 and it is beneath that word you will indicate the
22 jury's unanimous decision.

23 There are two potential verdict forms in this
24 case. Those two potential verdict forms are guilty
25 and not guilty. So whatever that decision is you will

1 insert it in the space provided, sign your name as
2 foreperson and place the correct date which today is
3 5-26, and you're the only person that has to sign the
4 verdict form.

5 Now, during jury deliberations there may come a
6 time when you have some question about the facts or
7 the evidence in the case, and as I previously told I
8 can't comment upon the facts. I can't comment upon
9 the evidence. All of the evidence which has been
10 introduced in the case will be verified before it's
11 sent back and so hopefully everything will be there
12 that was introduced during the trial. If you think
13 there is something else out there that was not
14 introduced during the trial but you think it would
15 help you in arriving at a decision please understand
16 it can't be introduced now. The case is closed. No
17 additional evidence can be received so don't ask me
18 about something else that has not been introduced
19 because even if it exists you can't have it. You to
20 base your decision upon what was presented during the
21 trial of the case.

22 If at any time you ever have a question about the
23 law that is applicable, I am permitted to answer those
24 questions, and so should you need a complete
25 re-instruction I can provide you with that. Should

1 you need simply an explanation or clarification of
2 some point of law that I provided I can provide you
3 with that. So, Mr. Foreman, if at any time during
4 deliberations there comes -- there arises some matter
5 that needs to be addressed to me, if you will write it
6 on a piece of paper. Give it to bailiff. He will
7 provide it to me and I'll respond accordingly.

8 I don't how many people smoke any more and I don't
9 know if any of them are on this jury, but if you do
10 you can smoke but you can't do it in courthouse. You
11 have to go outside. So if anybody wants to smoke let
12 the bailiff know. He will take that person or those
13 persons outside for that purpose, but deliberations
14 may only be engaged in when all 12 jurors are present
15 so that all may participate. So if at any time a
16 juror is absent for any authorized purpose the
17 deliberations must stop and they may only reassume
18 when all are present.

19 Well, I think that covers everything, but if it
20 doesn't I'm sure one of these lawyers will let me know
21 that I failed to provide you with some information and
22 if I agree and I need to provide you with any
23 additional information I will bring you back to give
24 you that additional information. If I do not need to
25 bring you back for any reason I will simply send word

1 by way of the bailiff that you may begin with your
2 deliberations and in that event he will bring to the
3 jury room all of the exhibits which have been
4 introduced and to you, Mr. Foreman, he will also bring
5 the indictment which serves as the verdict form.

6 Right now I will ask the 12 primary jurors if you
7 will retire to the jury room, but do not begin
8 deliberations until I send word to do so. If I don't
9 need to bring you back I will tell the bailiff to
10 instruct you to begin deliberations.

11 (WHEREUPON, the jury leaves the courtroom.)

12 THE COURT: I got Mr. McClain and Mr. Linker are
13 the alternate jurors. As you know, you can't
14 participate in deliberations because the original 12
15 are apparently able to do that. So that will conclude
16 your service in the trial of this case. It also
17 concludes your service for the week. So I do want to
18 sincerely thank you for your participation as jurors
19 in the case and I do sincerely hope that it has not
20 posed too much of hardship or inconvenience on you and
21 that it has been a benefit to you. If you talk with
22 the bailiff they'll let you know about your pay
23 vouchers and about employers statements should you
24 need one.

25 Do both of you have you a notebook.

1 JUROR: Yes, sir.

2 THE COURT: All right. What I want you to do is
3 tear out your notes. Take them with you and leave the
4 notebook here.

5 If you want to stay you're welcome to. You don't
6 have to but if you're curious and want to see what the
7 verdict is feel free to do that. Thanks again for your
8 help.

9 (WHEREUPON, the alternates leave the courtroom.)

10 THE COURT: Are there any exceptions taken to the
11 instruction or requests for additions to the
12 instructions by the State?

13 MS. O'HAYON: None from the State, Your Honor.

14 THE COURT: By the defendant?

15 MS. BUTLER: Yes, Your Honor. Your Honor failed
16 to instruct the jury that they are to take no
17 inference from the form of guilty and not guilty and
18 how they are positioned on the form, and also --

19 THE COURT: They aren't positioned on the form.
20 The form is blank.

21 MS. BUTLER: They're going to write in guilty or
22 not guilty?

23 THE COURT: Yes, ma'am. Did you think I had
24 written in there already?

25 MS. BUTLER: Usually there's a X beside not guilty

1 or you X beside guilty. You didn't show us the form
2 yet.

3 THE COURT: Well, is that on the indictment? Is
4 that ever on an indictment?

5 MS. BUTLER: Guilty or not guilty on the form?

6 THE COURT: I'm saying has that ever been placed
7 on an indictment?

8 MS. BUTLER: If Your Honor is saying there's not
9 guilty or not guilty on the form that they just had
10 and you are expecting them to write that in.

11 THE COURT: I'm saying the indictment as I have
12 stated at least three times serves as the verdict
13 form.

14 MS. BUTLER: Yes, Your Honor.

15 THE COURT: Would you like to look at it and see
16 if somebody has written guilty or not guilty on it.

17 MS. BUTLER: Yes, Your Honor.

18 THE COURT: I always leave it up to the jury to
19 write the verdict. I don't write it for them.

20 MS. BUTLER: And we appreciate your expertise in
21 that, Your Honor. I haven't always had it that way.

22 Your Honor, my next exception is to the reckless
23 disregard charge that the jury was given. The last
24 two paragraphs of that was prejudicial to my client
25 and I take exception to those instructions being given

1 to the jury on a reckless disregard charge since there
2 was no evidence presented in this case that there
3 could even be a potential of reckless disregard, and I
4 appreciate you hearing me.

5 THE COURT: Anything else?

6 MS BUTLER: No, Your Honor.

7 THE COURT: I will ask you all to verify the
8 exhibits before they go back.

9 MR. EPTING: Your Honor, I believe the exhibits
10 are fine to go back.

11 MS. BUTLER: I agree those are the exhibits.

12 THE COURT: We will instruct the jury to begin
13 deliberations. We will be at ease while the jury is
14 deliberations.

15 (WHEREUPON, the jury began deliberating at 4:09 pm)

16 THE COURT: Thank you be seated. I am told the
17 jury has reached a verdict. Are we ready to receive
18 it?

19 MS. O'HAYON: Yes, Your Honor.

20 MS. BUTLER: Yes, Your Honor.

21 THE COURT: Okay, bring them in.

22 (WHEREUPON, the jury enters the courtroom.)

23 THE COURT: Mr. Foreman, have you and your fellow
24 jurors reach a unanimous decision.

25 THE FOREPERSON: Yes, judge.

1 THE COURT: Have you reflected that decision on
2 the verdict form as requested?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: Did you sign it and date it?

5 THE FOREPERSON: I did.

6 THE COURT: If you will please hand that up by way
7 of the bailiff.

8 You may publish the verdict.

9 THE CLERK: Indictment number 2018-GS-46-01856 the
10 State of South Carolina versus Darrell D. Wilson Jr.
11 Indictment for inflicting great bodily injury upon a
12 child, the verdict is guilty. Signed by the
13 foreperson and dated.

14 THE COURT: Does the defendant wish to have the
15 jury polled?

16 MS. BUTLER: Yes, please.

17 THE COURT: All right, poll the jury please.

18 THE CLERK: If you all please stand and you may be
19 seated after I have call your juror number.

20 Number 73, is this still your verdict?

21 JUROR: Yes.

22 THE CLERK: Okay, you may be seated.

23 Number 82, is this still your verdict?

24 JUROR: Yes, it is.

25 THE CLERK: Thank you. Number 256, is this still

1 your verdict?

2 JUROR: Yes, it is.

3 THE CLERK: Number 247.

4 JUROR: Yes, it is.

5 THE CLERK: Thank you. Number 117, is this still
6 your verdict?

7 JUROR: Yes, ma'am.

8 THE CLERK: Number 270.

9 JUROR: Yes, it is.

10 THE CLERK: Okay. Number 139.

11 JUROR: Yes, it is.

12 THE CLERK: Number 278.

13 JUROR: Yes, it is.

14 THE CLERK: Number 104.

15 JUROR: Yes, it is.

16 THE CLERK: Number 147.

17 JUROR: Yes.

18 THE CLERK: Number 241.

19 JUROR: Yes.

20 THE COURT: Are there any other matters to be
21 addressed with the jury present?

22 MR. EPTING: Nothing from the State Your Honor.

23 MS. BUTLER: No, Your Honor.

24 THE COURT: All right. Thank you ladies and
25 gentlemen for your participation in this particular

1 trial and of course for your service this week. This
2 is the last case that is going to require a jury's
3 participation, so when you are excused now you will
4 not have to call back or have to report back tomorrow.
5 I do sincerely appreciate your willingness to serve as
6 jurors this week and I hope that your service in this
7 case has not posed too much of a hardship on you. I
8 do sincerely hope that it has been an educational and
9 beneficial experience for you. If you need information
10 about your pay voucher or you need information about a
11 statement for an employer the clerk will provide you
12 with that information. And so if you will go back to
13 the jury room one more time they will answer those
14 questions for you or give you that information and
15 then they will take your badges from you and you may
16 be excused and won't need to call back. Okay. Thank
17 you again for your service.

18 (WHEREUPON, the jury leaves the courtroom.)

19 THE COURT: I'm not concerned with how long it
20 they will take for either side to present any
21 additional information but if it's going to take too
22 long I will come back in the morning.

23 MR. EPTING: I don't think our presentation will
24 be lengthy if I could have a quick moment.

25 THE COURT: All right, what about the defense?

1 MS. BUTLER: It will not be lengthy, Your Honor.

2 THE COURT: All right.

3 MR. EPTING: I believe at the appropriate time the
4 adoptive mom would like to address the Court.

5 THE COURT: Okay. Proceed. All right, solicitor,
6 now is the time for your presentation.

7 MS. O'HAYON: Your Honor, the State requests the
8 full 20 years that the charge carries. This defendant
9 has shown absolutely no remorse for what he has done.
10 He has completely damaged this child's life
11 permanently as you've heard. He has a violent record.
12 He has three counts of ABHAN from 2006, failing to
13 stop for a blue light. He pled to A&B third off of a
14 CDV in 2014. This is not his first time being in
15 court. It is not his first time going to prison and
16 the acts that he did. You heard all the testimony and
17 all the evidence and what he did to that child is
18 completely inexcusable and he has never shown any
19 remorse for it. The State's position is that he does
20 deserve the full 20 years.

21 I believe the victim's mother would like to speak.

22 THE COURT: Sure.

23 MS. MATTHEWS: My name is Elizabeth Matthews and
24 I'm **N.W.'S** adoptive mother. His adoptive name is **N.W.**
25 Samuel Matthews. He is the child that I had prayed

1 for and I could not be prouder to be his mother. He
2 is the toughest, bravest little boy you will ever
3 meet. He can have a grand mal seizure, sit back up,
4 clap his hands and go about his day. He is nonverbal.
5 I've never heard him say I love you but I have felt
6 little arms around my neck and pull me close.

7 He has difficulty walking. He has difficulty
8 expressing himself. I don't know what he's thinking.
9 I don't know when he's hurt. I don't know how to help
10 him so many days out of my life. I am a registered
11 nurse and there is no greater honor then being his
12 nurse and I will take care of him for as long the Lord
13 allows me to. He is the best bravest little boy ever.
14 Because of December 22nd his life is drastically
15 different. Every single day it is different. He has
16 therapies. He has more specialists. He has more
17 specialists. He has doctors. He has already been
18 through one surgery to implant a device to control his
19 seizures and he may have more surgeries to actually
20 scrape his brain to hopefully yo get this wide spread
21 seizure seizures under control.

22 My husband and I love him dearly. It's not a
23 problem at all to stay home and take care of my boy.
24 It's not a problem at all for my husband to work 60,
25 70 hours a week to make sure that I can do that for

1 **N.W.** **N.W.'s** life is drastically different. My life
2 is drastically different. My husband's life is
3 drastically different. Those that love him have taken
4 time out of their lives to help us care for him and I
5 do not think it is too much to ask, Your Honor, with
6 you all due respect, that DJ's life be drastically
7 different as well after what happened on December
8 22nd.

9 I thank you for your professionalism and the
10 jurors for their verdict and I just thank you for
11 hearing us and for me.

12 THE COURT: Miss Matthews, thank you for your
13 intervention on behalf of this child --

14 MS. MATTHEWS: He's the best.

15 THE COURT: -- and for your sacrifice.

16 MS. MATTHEWS: Thank you so much. .

17 MR. EPTING: That's the State's presentation.

18 THE COURT: All right. Miss Butler.

19 MS. BUTLER: Thank you, Your Honor. As you heard
20 throughout the evidence **N.W.** has been adopted.
21 Marjorie is the biological mother who testified that
22 it didn't take her long into the hospital stay to
23 recognize that she was not going to be able to take
24 care of **N.W.** There was testimony outside of -- I'm
25 not trying to go into anything that you shouldn't hear

1 in sentencing, but it is for sentencing purposes,
2 there was testimony outside of jury about the DSS
3 involvement with the mother and we would ask Your
4 Honor to consider that involvement as to **N.W.** and the
5 mother and as to where Darrell Wilson came into the
6 picture on that day judge and we would ask you to
7 consider that **N.W.** has been adopted out and will no
8 longer be in either Marjorie or Darrell's family going
9 forward.

10 Judge Darrell is thirty five years old and he
11 resides here in York County for his full life. His
12 surname, the road that he lives on was actually named
13 after his family, the Jack Wilson Road, so the ties,
14 heritage and roots go deep there.

15 Your Honor, Mr. Wilson has been out on bond for
16 four years now since June of 2018 with no infractions
17 at all. Not even a speeding ticket. Judge, he was
18 also incarcerated from December 22, 2017 until June of
19 2018 with no infractions. We don't see that he will
20 be violating the law while he is inside or when he
21 gets back out. We are asking that, Your Honor, will
22 hear from his friend who is here and her name is
23 Brandy. His parents are also here. They're sitting
24 behind me. They have been here. Brandy is here and
25 she would like to address the Court at the appropriate

1 time.

2 THE COURT: All right. I will be happy to hear
3 from her.

4 MS. BRANDY: I know people say things and this has
5 been brought upon him. I have known DJ since
6 elementary school. I know he has a past and I know
7 things that may not have been brought up in here, but
8 DJ is not a bad person. I have been with him four
9 years. I have two daughters myself and a niece and he
10 has a niece and a nephew and daughter of his own that
11 he never once laid a hand on or harmed. And I do not
12 thing he deserves to spend 20 years in jail for
13 something that he possibly did not do and I know in my
14 heart he did not do it because I was part of his life
15 while he was married with his wife and his daughter
16 and I was part of his life while he was with Marjorie
17 and N.W. I was his pediatric medical assistant that
18 took care of him when he came in the pediatric office
19 and DJ was the one that mainly took care of the child.
20 Not Marjorie. And I just don't think Darrell should
21 have to spend 20 years of his life for something that
22 he didn't do and because other people think he may
23 have because I know him personally and I have seen him
24 with kids myself and kids love him to death and he's
25 not never once in my eyes or his family eyes ever laid

1 a hand or harmed a child.

2 And that's all have I to say.

3 THE COURT: Okay. Thank you ma'am.

4 MS. BUTLER: That's the defendants case, Your
5 Honor.

6 THE COURT: Do the parents wish to speak?

7 MS. BUTLER: No, Your Honor.

8 THE COURT: Mr. Wilson, would you like to be
9 heard?

10 THE DEFENDANT: I mean you all found me guilty. I
11 am not guilty of it. I'm sorry for what you all have
12 go through to take care of him but I didn't harm the
13 kid. I don't think I deserve the whole 20 year
14 sentence. I will leave that to you judge. I have no
15 say so. I mean I have done things wrong in my life
16 but that's not one of them. I love kids to death and
17 done a lot of things with kids. I never hurt a kid.
18 I would never hurt a kid.

19 I just don't believe I deserve the whole 20 year
20 sentence, but that's up to you Your Honor.

21 THE COURT: Thank you.

22 THE DEFENDANT: Thank you sir.

23 THE COURT: Anything else from anybody?

24 MS. BUTLER: No, Your Honor.

25 MS. O'HAYON: No, Your Honor.

1 THE COURT: On Indictment 2018-GS-46-01856, an
2 Indictment for inflicting great bodily injury upon a
3 child, having been found guilty by a jury, the
4 sentence of the Court is you, Darrell Lee Wilson, be
5 confined to South Carolina Department of Corrections
6 for a period of 18 years. You're to be given credit
7 for any time you're entitled to pursuant to 24-13-40.

8 Mr. Wilson, you have right to appeal the verdict
9 of the jury and the sentence of the Court. You must
10 file any notice of your intention to appeal those
11 decisions within ten days of today's date.

12 All right. The Court is adjourned.

13 MR. EPTING: Thank you, Your Honor.

14 MS. O'HAYON: Thank you judge.

15 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 23-26th day of May, 2022.

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

September 27, 2022

Aileen Butler

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2017A4610202532

ACTION OF GRAND JURY

TRUE BILL

MD Berman
Foreperson of Grand Jury

Date: 4-19-18

VERDICT

GUILTY

Foreperson of Petit Jury

Date: *Alan J. J. Jr.*

5/26/22

DOCKET NO. 2018-GS-46-01856

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 19, TERM 2018

THE STATE

VS.

DARRELL D WILSON, JR

INDICTMENT FOR

**INFLECTING GREAT BODILY INJURY
UPON A CHILD**

SC Code: § 16-03-0095(A)

CDR Code: 2766

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

328

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

2022 AUG 16 PM 12:28

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

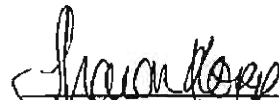
INDICTMENT

At a Court of General Sessions, convened on April 19, 2018, the Grand Jurors of York County present upon their oath:

INFLECTING GREAT BODILY INJURY UPON A CHILD

The defendant, Darrell D Wilson Jr, did on or about December 22, 2017, in York County, South Carolina, inflict great bodily injury upon a child, N.W. [REDACTED] (D.O.B. [REDACTED]) who was approximately 4 months old at the time of the incident. All in violation of 16-03-0095(A), *South Carolina Code of Laws* (1976, as amended).

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



SHARON J. KOPP
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

DARRELL D WILSON, JRAKA: Darrell J WilsonRace: W Sex: M Age: 35

DOB: [REDACTED] SS# [REDACTED]

Address: Jack Wilson RoadCity, State, Zip: Sharon, SC 29742

DL#* [REDACTED] SID# SC01618528

CERTIFIED TRUE COPY

2022 AUG 16 PM 12:27

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-46-01856A/W#: 2017A4610202532Date of Offense: 12/22/2017S.C. Code §: 16-03-0095(A)CDR Code #: 2766

SENTENCE SHEET

 ORIGINAL*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Inflicting Great Bodily Injury Upon A Child (NMT 20 years)In violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

<u>Sharon Ohayon</u>	100713	/s Darrell D Wilson, Jr	/s Melinda I. Butler	78040
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 18 ~~days/months/years/Time Served~~ ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; ~~provided that upon the service of~~ days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~ ~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDQC.
days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Darrell D Wilson, Jr

INDICTMENT/CASE#:

2018-GS-46-01856

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

	\$	\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:David Hamilton
Kleen ButlerPresiding Judge:
Judge Code:
Sentence Date:

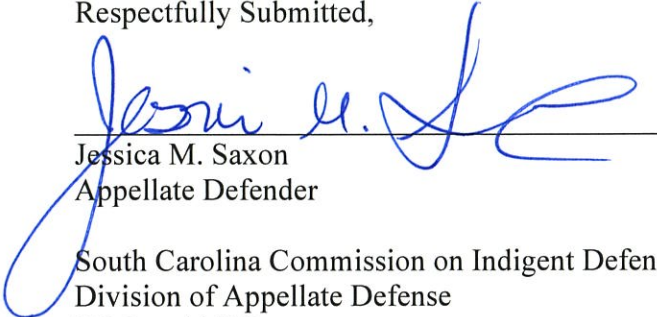
[Signature]
2093
May 24, 2022

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."

RECEIVED
Sep 20 2023
SC Court of Appeals

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 20th day of September, 2023.