

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County

Honorable Michael S. Holt, Circuit Court Judge

DEMETRIUS A. GOODWIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001205

APPENDIX

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M MARCUS - DIRECT

DIRECT EXAMINATION (CONTINUED)

BY MS. CAMPBELL:

Q. Doctor, I want to turn your attention to this case.

Did you have an occasion to consult with Dr. Marcus, the pathologist Dr. Marcus, in this case?

A. Yeah. In early March, Dr. Bradley Marcus had come to my place of work at Richland Hospital. And he had asked me to review X-ray images that were obtained during a postmortem examination on this particular case.

Q. And he chose you as a radiologist to review some imaging?

A. Yes.

Q. And your specialty is in pediatrics and children?

A. Yes.

Q. And just for the record, you aren't related to him, are you?

A. No.

Q. Okay. And you reviewed those at that time?

A. Yes.

Q. And you rendered an opinion and gave it to him?

A. I did.

Q. And in preparation for this case, did you also prepare a report summarizing your findings in this case?

A. Yes, I did.

Q. I want to show you a copy of this. I've actually

M MARCUS - DIRECT

1 highlighted part of that. Is that a copy of your report?

2 A. Yes.

3 Q. And, Doctor, basically going through exactly what you
4 did in this case and what you reviewed, can you tell this
5 jury what you reviewed and what your findings were?

6 A. Certainly. I reviewed these images as I would review
7 any images. We have a computer system which was called a
8 PAC system which has all our imaging studies on it.

9 And so that's how we're able to look at X-ray studies
10 and all other kind of diagnostic imaging studies.

11 Dr. Marcus had given me the patient's name and the
12 date of the exam. So I was able to go into the archive,
13 bring those images up and view them. And I was able to
14 look at all the different X-ray images that were included
15 in the study.

16 Q. And once you had reviewed those images, what was it
17 Dr. Marcus was asking you to render an opinion on?

18 A. He wanted me to review them in terms of looking at the
19 skeleton with regard to fractures and what I had seen.

20 Q. As outlined in your report, what were your findings?

21 A. Well, as outlined in my report, I described all the --
22 in the first paragraph, I described all the images that
23 were available that had been obtained. And then I, in the
24 second paragraph, I described both what I considered to be
25 pertinent negative findings as well as positive findings.

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1 And specifically, my positive findings were in regard
2 to rib fractures that I saw.

3 Q. You mentioned that you first found and reviewed all
4 the negative findings. So there was no significant
5 findings in your review of those. Basically you were
6 looking at pictures of the bones?

7 A. Yes.

8 Q. In your review of those, there was no other injury --
9 and we'll get to the ribs in a minute -- that you noted in
10 your review of those X-rays?

11 A. Yes.

12 Q. But, specific as to your findings as to the ribs, what
13 were your findings?

14 A. Well, part -- the images that I reviewed were images
15 of different parts of the whole skeleton. In addition,
16 there were two images of ribs that had been
17 disarticulated. And what I mean by that is the ribs had
18 basically been taken off the body. And they were X-rayed
19 separately.

20 Both ribs had two X-rays of it. One what we would
21 consider an AP view which as if you were looking at the
22 rib as if it were in the body. And the other, turning the
23 rib sidewise and looking at what we would call laterally
24 or axially through the rib.

25 So there were two separate ribs. And on those

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

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

5 A. Certainly, yes.

6 Q. And why is that, sir?

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

9 MS. HINES: Objection, Your Honor.

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

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

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

14 (Off-the-record discussion.)

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

17 MS. CAMPBELL: Yes, sir.

18 BY MS. CAMPBELL:

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

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

M MARCUS - DIRECT

1 to look for other concomitant injuries that can concur
2 with the injury that we're looking at.

3 Q. And specifically with pediatrics or with children, do
4 you have specialized training as far as the cause of
5 injuries or what may cause an injury and specialized
6 training in that area as well?

7 A. Certainly. With regard to certain mechanisms, yes.

8 Q. Whenever you're reviewing something, a chart or an
9 X-ray or an MRI or whatever you're reviewing, you're
10 looking, and in your training you've been trained as to
11 what might cause the injuries as well as the significance?

12 A. Yes.

13 Q. So you aren't just looking to see if there was a
14 break. You can also attribute through your training what
15 may have caused it as far as blunt force trauma, some kind
16 of constriction or things of that nature?

17 A. Yes. Through both my training and my experience as a
18 pediatric radiologist, yes.

19 Q. And those are diagnoses or assumptions you make every
20 day as part of your training as a doctor?

21 A. Yes, yes.

22 Q. Going back to the question I asked you before. As far
23 as rib fractures specifically, have you been trained as to
24 whether or not those may be significant as to any kind of
25 child abuse?

M MARCUS - DIRECT

1 A. Yes.

2 Q. And why are rib fractures significant in child abuse
3 cases?

4 A. Well, fractures of the ribs occur in settings of a
5 trauma to the chest, whether it's accidental trauma or
6 inflicted trauma. And additionally, patterns of rib
7 fractures can be seen with certain types of injuries.

8 Q. In this case, referring to these rib fractures, where
9 these rib fractures occurred on the rib cage, because ribs
10 can be fractured in the front?

11 A. Yeah. If you think about a rib, it's basically --
12 just think about an arc. And that arc can break at
13 basically any point. The ribs are going to be attached,
14 many of the ribs attach anteriorly to the sternum or to
15 cartilage and posteriorly. They actually articulate.
16 There's a joint with the vertebrae, the backbones.

17 Q. You used words I'm not familiar with. You said --
18 what do they attach in the front?

19 A. To the sternum or via cartilage is subsequently
20 attached to the sternum.

21 Q. And then in the back or posterior, I believe is how
22 it's termed?

23 A. Yes. That's posterior.

24 Q. And in the back they also attach?

25 A. Yes. They have a joint with the vertebrae, the spine

M MARCUS - DIRECT

1 bones.

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

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

6 Q. That's in the back?

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

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

11 A. Uh-huh.

12 Q. And which ribs were they?

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

15 Q. Okay.

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

19 Q. Yes, sir.

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

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

25 A. Yes.

M MARCUS - DIRECT

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

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

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

16 A. Uh-huh.

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

20 MS. HINES: Objection, Your Honor.

21 THE COURT: What's your objection?

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

23 THE COURT: Overruled. Overruled.

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

M MARCUS - DIRECT

1 pediatric involved trauma in which we do a CT scan which
2 is basically a fancier X-ray. And it lets us look at a
3 lot more of the tissues. You can clearly see areas where
4 there's hematomas or bruising where there's bleeding that
5 occurs at sites of trauma.

6 So certainly a more direct impact does typically
7 result in some evidence in the chest wall.

8 BY MS. CAMPBELL:

9 Q. Okay. And in this case, however, there's no bruising
10 or there's limited bruising on the arms and that. Can a
11 person still hold a child -- and this child I believe was
12 23 months old?

13 A. Excuse me?

14 Q. It was a 23-month-old child?

15 A. Uh-huh.

16 Q. Can she be held or squeezed in such a manner that
17 there would not be any bruising of significance to the
18 arms or --

19 A. Yes, certainly, because the mechanism that I'm
20 describing for posterior rib fractures, isn't necessarily
21 a squeeze that's completely around the whole thorax. The
22 force is really directed back to front, front to back.

23 So any sort of squeezing that is centered around the
24 back and the chest it could, the arms could be well out of
25 the way, would be the mechanism that could produce a

M MARCUS - DIRECT

1 posterior rib fracture.

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

5 A. Yes.

6 Q. Explain that to the jury.

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

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

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

19 A. Yes.

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

22 A. Uh-huh.

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

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

M MARCUS - DIRECT

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

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

8 A. Yes.

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

12 A. Yeah.

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

15 A. Certainly, yes.

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

20 A. Anteriorly by the sternum.

21 Q. Anterior means front?

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

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

M MARCUS - DIRECT

1 to review those two photographs?

2 A. Yes, I did. This morning.

3 Q. And are those significant to you?

4 A. Yes.

5 Q. And what do those show you?

6 A. Well, I'm looking, what looks like the intrathoracic
7 view of ribs with the organs of the chest removed. And I
8 see the intercostal muscles and I see a number of ribs.

9 And on one image, Exhibit Number Six, I see fairly
10 close to where the spine is, a rib that has a moderate-
11 sized hematoma on top of it, bleeding on top of it.

12 Q. And would that be significant as far as noticing where
13 that fracture would be?

14 A. Yes.

15 Q. Does that show where the fracture is, where that
16 hematoma is?

17 A. Yeah. That would certainly be a site that you would
18 have to evaluate for a fracture at, you know.

19 Q. And the second photograph I showed you shows a
20 different one at a different place; is that correct?

21 A. Yes. This is also a view of the thoracic cavity. On
22 the edge of this, I see what looks like cartilage here.
23 And so this looks like the more anterior portion of a rib
24 again with a site of bleeding or hematoma, slightly
25 smaller than the other hematoma.

M MARCUS - DIRECT

1 Q. And in your review of this case and conferring with
2 Dr. Marcus, did you also -- do these breaks show any sign
3 of healing?

4 A. No. Actually, not only is there not any evidence of
5 healing, very often both in terms of what's published and
6 what I can tell you from my own personal experience, when
7 fractures of ribs in infants and young children are very
8 acute and they're not displaced -- and what I mean by
9 displaced is that the ribs aren't offset at all where the
10 fracture is. They're perfectly lined up. They can be
11 almost impossible to see when they're acute.

12 So, on the -- so getting those magnified views and
13 those views of disarticulated ribs is really, really
14 helpful in terms of getting a bird's-eye view of each rib
15 and looking for a fracture. Again, not seeing them on the
16 larger views is very typical of acute rib fractures.

17 Q. And in this case, when you were able to observe what
18 you've been able to observe, was there any indication that
19 these ribs were in any type of healing mode?

20 A. Not radiographically, no.

21 Q. And as a rib heals typically it forms what's called,
22 and I'm not good with this terminology, a callous?

23 A. Yeah. There's a couple of things that go on and that
24 will be evident on radiographs, that will be evident on
25 X-rays.

M MARCUS - DIRECT

1 One of the first things that can happen around a
2 fracture very early on is where the bone is injured, some
3 of the bone will be absorbed right around the fracture.
4 So the fracture may actually in a couple of days begin to
5 look a little more apparent.

6 When you get past that process then the process of,
7 there's a sheath of tissue that surrounds the bone that
8 will help lay down new bone and help the fracture heal.
9 It's called periosteum. So you'll get periosteal bone
10 formation and you'll get callous formation.

11 Those are indicative of ribs that are in a more
12 subacute healing phase.

13 Q. And that was not present?

14 A. No.

15 Q. In this case, there's also some mention of the adrenal
16 glands?

17 A. Yes.

18 MS. HINES: Objection, Your Honor.

19 THE COURT: Yes?

20 MS. HINES: I, again --

21 THE COURT: Well, let her --

22 MS. HINES: -- he's an expert in pediatric
23 radiology.

24 THE COURT: I don't know what her question is
25 though.

M MARCUS - DIRECT

1 MS. CAMPBELL: I just asked him if there was some
2 mention of the adrenal glands. He's also a medical
3 doctor, too.

4 THE COURT: Come up here.

5 (Off-the-record discussion.)

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: You may proceed as instructed.

8 BY MS. CAMPBELL:

9 Q. And I want to limit this just to some adrenal gland
10 hemorrhaging.

11 A. Yes.

12 Q. Is that unusual when rib fractures occur?

13 A. In my experience as a radiologist, and especially
14 being at institutions where there's large amounts of
15 trauma, you can see adrenal hemorrhages in combination
16 with rib fractures in traumatized patients.

17 Q. And that's not uncommon?

18 A. Not uncommon.

19 Q. Once you had assessed and reviewed everything you had
20 reviewed in this case, did you then give your opinion to
21 Dr. Marcus back in March, I believe, of 2009?

22 A. March of 2011.

23 Q. And then again in March of 2011?

24 A. I don't believe I reviewed any of these studies back
25 in March of 2009. My review was from March --

M MARCUS - CROSS

1 Q. Okay. March of 2011?

2 A. -- of 2011, yeah.

3 Q. And you concur with his findings?

4 A. Yes.

5 MS. CAMPBELL: Beg the Court's indulgence?

6 THE COURT: Yes, ma'am.

7 (Pause.)

8 MS. CAMPBELL: Thank you. I have nothing

9 further.

10 THE COURT: Yes, ma'am.

11 MS. HINES: Thank you.

12 CROSS-EXAMINATION

13 BY MS. HINES:

14 Q. Good afternoon, Doctor. How are you doing?

15 A. Good afternoon.

16 Q. I just have a few questions. You said these were not
17 displaced?

18 A. Non displaced.

19 Q. Non displaced?

20 A. Yes.

21 Q. And what does that mean?

22 A. It means that the alignment of the bone at the
23 fracture site is normal.

24 Q. What would displaced -- displaced would then mean that
25 the bone is?

M MARCUS - CROSS

1 A. That the alignment was abnormal.

2 Q. Okay. And you just testified that you reviewed this
3 in March of 2011?

4 A. Yes.

5 Q. Did you review this case in March of 2009?

6 A. I don't recall reviewing this case in March of 2009,
7 no.

8 Q. Okay. And you testified as to two major causes of rib
9 fractures?

10 A. Yes.

11 Q. Are there any other causes?

12 A. Aside from, I'm sorry? Posterior rib fractures?

13 Q. Two major ways to get rib fractures in the back. Are
14 those the only two ways?

15 A. Those are the two ways that I know of from my
16 training, and the two ways that I've seen in my experience
17 as a pediatric radiologist.

18 Q. So a major blow or squeezing?

19 A. Or a squeezing mechanism, yes.

20 Q. Okay. And you've never seen a rib fracture other than
21 anterior with CPR?

22 A. I personally have never seen a rib fracture in a child
23 after CPR. There are descriptions of anterior rib
24 fractures after CPR that are described in literature.

25 There's an analysis, I think, of over 400 cases,

1 and -- of 400 cases of CPR performed in children, and
2 there were three or four rib fractures in that series of
3 three- or 400. So I personally have never seen one but
4 they are described and very rare.

5 Q. Okay.

6 MS. HINES: No further questions.

7 THE COURT: Any redirect?

8 MS. CAMPBELL: Just one question.

9 REDIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q. With CPR in the descriptions that you've seen, but you
12 haven't seen any, they're in the front?

13 A. Yes, because, again, it's a mechanism of the force
14 being applied to the front of the chest, okay. Not a
15 mechanism of force being applied in two directions
16 opposing each other.

17 MS. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Any recross based upon redirect?

19 MS. HINES: No, Your Honor.

20 THE COURT: All right. Thank you. You may step
21 down, sir.

22 Any objection to this witness being excused for
23 the balance of the testimony?

24 MS. CAMPBELL: None from the State, Your Honor.

25 THE COURT: Any from the defense?

VANDERSTEENHOVEN - DIRECT

1 MS. HINES: No objection.

2 THE COURT: Okay. You may call your next
3 witness.

4 MS. CAMPBELL: Thank you. The State calls
5 Dr. Vandersteenhoven.

6 JACOB VANDERSTEENHOVEN, having been duly sworn,
7 was examined and testified as follows:

8 THE CLERK: Have a seat in the witness box.
9 State your name for the record, please.

10 THE WITNESS: My name is Jacob Vandersteenhoven.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q. And, Doctor, where are you employed?

14 A. Currently at Professional Pathology Services.

15 Q. And that's the same place I believe Dr. Marcus, the
16 pathologist, works?

17 A. That's correct.

18 Q. What are your duties there, sir?

19 A. I have many. I serve primarily as a surgical
20 pathologist which has to do with reading biopsies. I do a
21 lot of cytology interpretation which is looking at
22 biologic preparations, as Dr. Marcus mentioned before, in
23 Pap smears and other cytologic preparations and making
24 diagnoses. That's the majority of my work.

25 Q. And, Doctor, you review slides and things of that

VANDERSTEENHOVEN - DIRECT

1 nature?

2 A. Yes, I do.

3 Q. Can you tell this jury a little bit about your
4 education and your training in the field of pathology?

5 A. I obtained my Ph.D. in experimental pathology from the
6 Medical University of South Carolina in 1983. Medical
7 degree from the Medical University of South Carolina in
8 1987. I completed a residency in anatomic pathology and
9 neuropathology at Duke University in Durham, North
10 Carolina. I finished that in 1992 and then did a
11 subsequent fellowship in cytopathology in 1996.

12 Q. And you say cytopathology. What does that mean?

13 A. Cytopathology.

14 Q. Yes, sir.

15 A. That's the study of cells, basically in making
16 interpretation on cellular preparation.

17 Q. And you mentioned neuropathology. What is that, sir?

18 A. That's a subspecialty of pathology where you become
19 proficient and you examine, as part of our training, learn
20 all of the neoplastic and non-neoplastic diseases of the
21 brain, the spinal cord, its coverings, and it also
22 includes peripheral nerve and muscle.

23 Q. Have you been board certified in pathology?

24 A. Yes, I am.

25 Q. And where are you board certified, sir?

VANDERSTEENHOVEN - DIRECT

1 A. I'm board certified in anatomic pathology,
2 neuropathology, cytopathology and, lastly, clinical
3 pathology.

4 Q. And what is anatomic pathology?

5 A. Anatomic pathology is basically the study of disease
6 as it relates to organ systems. It focuses more on
7 examination of organs, looking for disease processes that
8 you can identify visually or grossly, and then also
9 examine the organs microscopically and basically take
10 histologic slides of the diseased areas. Surgical
11 specimens removed in the OR are examined by a
12 pathologist. And that's kind of what I do.

13 Q. And clinical pathology?

14 A. Clinical pathology is another area of pathology.
15 Pathology has many, many different areas.

16 Again, it's a very large area that is basically
17 studying, understanding and management of the medical or
18 the clinical laboratory, understanding all the different
19 parameters of blood diseases, chemistries, serum
20 chemistries, blood chemistries, basically everything that
21 the clinical lab would do is actually what we do.

22 MS. CAMPBELL: Your Honor, at this time I would
23 offer him as an expert in anatomic, neuropathology,
24 cytopathology and clinical pathology.

25 THE COURT: Would you like to voir dire?

VANDERSTEENHOVEN - DIRECT

1 MS. HINES: I do have a few questions. Thank
2 you.

3 VOIR DIRE

4 BY MS. HINES:

5 Q. Dr. Vandersteenhoven, where did you go to medical
6 school?

7 A. The Medical University of South Carolina.

8 Q. And you graduated in 1987?

9 A. 1987; correct.

10 Q. And where -- you did your fellowship at Duke?

11 A. That's correct.

12 Q. And that was in neuropathology?

13 A. That's correct.

14 MS. HINES: I have no further questions. No
15 objection.

16 THE COURT: All right. The Court will then
17 qualify the doctor in clinical pathology, anatomic
18 pathology, cytopathology and neuropathology.

19 Ladies and gentlemen of the jury, again, he can
20 now render opinions to things that are relevant and
21 material that he knows about. You can place the weight
22 that you choose to put on his testimony when you do your
23 deliberations.

24 You may proceed, counsel.

25 MS. CAMPBELL: Thank you, Your Honor.

VANDERSTEENHOVEN - DIRECT

DIRECT EXAMINATION (CONTINUED)

BY MS. CAMPBELL:

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

A. That's correct.

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

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

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

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

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

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

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

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

VANDERSTEENHOVEN - DIRECT

1 Q. In reviewing these histological specimens from, I
2 believe, from the brain as well as the eyes?

3 A. No. Just the brain. I believe I might have seen
4 sections of --

5 Q. You are looking for disease or the presence of
6 disease?

7 A. Yes.

8 Q. And there were a number of slides in this case that
9 you actually reviewed?

10 A. That's correct.

11 Q. And in your review of those, specifically tell this
12 jury what you were looking for and what you found.

13 A. We typically start at the very beginning, looking at
14 the organ to see if there are any gross abnormalities, any
15 visual changes that we can attribute to some sort of
16 disease process.

17 And in this particular case there was nothing.

18 So we go to the next step and that is to look for
19 microscopic abnormalities. And so in this particular case
20 no gross abnormalities were identified. So we take a lot
21 of sections of different areas looking for inherent
22 diseases, maybe some congenital abnormalities that were
23 undetected, some dysgenetic or dysmorphic kinds of
24 diseases where there's a subtle abnormality that may
25 manifest itself at a later time frame, to microscopic

VANDERSTEENHOVEN - DIRECT

1 infection to microscopic tumors.

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

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

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

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

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

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

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

20 A. Nothing in the eyes, no.

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

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

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

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1 basically did you find any indications of any contributing
2 illness, disease or anything that would've contributed to
3 this child's death?

4 A. Not to my knowledge.

5 Q. There has been some questions about what's called
6 fatty or fat embolisms?

7 A. Uh-huh.

8 Q. Is that unusual?

9 A. It really depends on the circumstance. In cases of
10 trauma, automobile accidents and the like, yeah, it's not
11 uncommon. You can actually get it in the course of
12 routine orthopedic surgery.

13 A hip replacement, for example, you can get some sort
14 of showering of a bone marrow emboli. What that is is
15 anytime the integrity of a long bone, in particular the
16 long bones and pelvic bones, when that cortical surface of
17 the bony surface -- of the bone is actually broken and you
18 can get basically extravasation or injection of the marrow
19 elements which reside in the bone marrow down into the
20 circulation.

21 And typically what happens is the lungs act as a giant
22 filter. All the blood in your body goes to your lungs, to
23 your heart and then out to the rest of your body.

24 Basically all those little emboli are little balls of
25 marrow. And they shower off and they get into the lungs.

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1 And that's usually the first place they start.

2 Q. And, in this case there was a presence of some of
3 that?

4 A. Yes, there were.

5 Q. And was that significant in your assessment of this
6 case?

7 A. We see them not uncommonly. And for syndromes when
8 you actually have a fat bone marrow embolism or fatty
9 emboli syndrome, those emboli have to be really
10 significant. And the patient often has clinical
11 manifestations of this showering from them.

12 Q. Was there any indication that that in any way
13 contributed to or caused this child's death in your review
14 of this?

15 A. Not in my opinion, no.

16 Q. And just to follow up. You currently as far as your
17 academic performance, you're the clinical professor of
18 ophthalmology at the University of South Carolina?

19 A. That's correct.

20 Q. And you're also a professor of clinical neurosurgery?

21 A. That's correct.

22 Q. And you're also a staff pathologist?

23 A. That's correct.

24 Q. And you're the Medical Director of the Laboratory
25 Corporation of America?

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1 A. I was at one point, yes.

2 Q. Okay. And currently you're in the gastrointestinal
3 pathology section of Professional Pathology Services?

4 A. That's one of the other hats, yes.

5 Q. And you're the Medical Director at the Palmetto Health
6 University of South Carolina bio repository?

7 A. That's correct.

8 Q. In your review of this case, and you reviewed it with
9 Dr. Marcus, did you concur with his findings?

10 A. Yes, I did.

11 Q. So you would agree with him?

12 A. Yes, I do.

13 MS. CAMPBELL: I don't have anything further.

14 THE COURT: Thank you. Ms. Hines?

15 MS. HINES: Thank you, Your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MS. HINES:

19 Q. Hello. Now, you testified that you examined the
20 brains and histological sections?

21 A. That's correct.

22 Q. In the brain -- now, when these slides were taken --
23 you were present when the slide of the brain were taken?

24 A. Yes, I believe we were we were there together taking
25 the sections; that's correct.

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1 Q. Of the brain. Were you present when the sections of
2 other slides were taken?

3 A. No, I don't believe so. You mean of the other organ
4 systems and other body parts?

5 Q. Yes.

6 A. No, I don't believe I was.

7 Q. Okay. And when you reviewed the brain you found no
8 abnormalities in the brain?

9 A. That's correct.

10 Q. Now, you looked at the actual brain before the slides
11 were taken; correct?

12 A. Yes, I did.

13 Q. Okay. And there were no abnormalities visible?

14 A. Not in my opinion. That's correct.

15 Q. Okay. Did you -- you didn't notice any swelling?

16 A. No.

17 Q. Okay. And when you looked, did you see any cerebral
18 edema? Is cerebral edema something that you would see
19 examining the brain or the slides?

20 A. You can see it, when it's significant you can see it
21 grossly, looking at the organ. Sometimes microscopically
22 you can see slight changes, as was mentioned earlier in
23 the testimony. Sometimes when you have a neoplasm or you
24 have an area of hemorrhage, the surrounding tissue around
25 that has a reaction and part of that reaction is swelling,

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1 basically water coming into the surrounding tissue. And
2 that's edema.

3 So you can see it grossly. You can also see it
4 microscopically.

5 Q. You didn't see any evidence of cerebral edema?

6 A. No, I did not.

7 Q. So no evidence of swelling?

8 A. That's correct.

9 Q. And you reviewed the slides. When did you review the
10 slides of the brain?

11 A. Sometime after they were ready. I don't recall
12 exactly when.

13 Q. Was that in 2009?

14 A. I believe so. Yes.

15 Q. Okay. And have you reviewed them again in 2011?

16 A. I've had a chance to re -- look through them, yes,
17 that's correct.

18 Q. When did you review the slides of the organs?

19 A. I believe just within the last -- in the last go
20 through in the brain slides, they were in the same tray.

21 Q. So you didn't review the slides of the organs in 2009?

22 A. I don't recall if I did or didn't.

23 Q. Okay. Did you review the slide of the skeleton?

24 A. No, I did not.

25 Q. No. Okay. And that was on the same slide as the

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1 kidneys?

2 A. I don't recall.

3 Q. You don't recall?

4 A. No.

5 Q. In this case when -- with the slides of the organs,
6 the heart was on one slide; correct?

7 A. I don't recall. Very often in some cases, multiple
8 organs are on the same slide.

9 Q. Okay. And I was just getting to that. In this case
10 the left lung, the pancreas, the spleen, the liver and the
11 thyroid were all on one slide?

12 A. I don't know. You're telling me now.

13 Q. Okay. And then the lungs and the adrenal glands,
14 those were all on another slide?

15 A. I don't recall. I don't know.

16 Q. And then we have the kidneys and scalp hemorrhage on
17 the slide?

18 A. (Shrugs shoulders.)

19 Q. And the left eye on one slide?

20 A. I don't recall what was what on the different slides.

21 Q. Okay.

22 A. My primary focus was in consultant, basically looking
23 at the brain slides.

24 Q. Your primary focus was looking at the brain slides?

25 A. That's correct.

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1 Q. And there are 21 brain slides. Why did you take so
2 many slides of the brain?

3 A. In this particular case, if there is -- just to
4 exclude the possibility that there is some underlying
5 abnormality. Lots of different areas of different things
6 to look for in different areas.

7 Q. And there are -- how many lobes are there in the
8 brain?

9 A. There are two major hemispheres. And then there's a
10 cerebellum which has two hemispheres, but that sort of
11 sits at the bottom part of the brain.

12 Q. Okay. So there's a lot to look at there?

13 A. Yes, there is.

14 Q. So you took a lot of slides from different sections of
15 brain so you could see what's going on?

16 A. That's correct.

17 Q. How many lobes are there to a lung?

18 A. There are three on the right, two on the left.

19 Q. So there's five lobes of the lung?

20 A. Should be.

21 Q. And we've got two sections of the lung, one from the
22 left and one from the right; correct?

23 A. I don't know. You tell me.

24 Q. You don't know. If the autopsy report prepared by

25 Dr. Marcus said that there was a section of the left lung

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1 and a section of the right lung on the cassette summary,
2 would you disagree with that?

3 A. I don't know. I'd have to see his cassette summary.

4 Q. Okay.

5 A. And I don't know at this point what the slides look
6 like.

7 Q. Sure, sure. I show you a copy of that.

8 A. Uh-huh.

9 Q. Okay. So, on the -- there's one section of the left
10 slide?

11 A. Left lung.

12 Q. Left lung. I'm sorry.

13 A. Uh-huh. It says on cassette summary then block number
14 two or cassette number two contains a left lung, pancreas,
15 and liver and thyroid gland.

16 Q. And slide number three, what does that contain?

17 A. Under the cassette summary, slide number three
18 contains portion of right lung and adrenal glands.

19 Q. Okay. Now you said that there were five different
20 lobes in the lungs together combined. Do you know which
21 lobes these sections came from?

22 A. No, I don't, no.

23 Q. Is there any indication here, any way to go back and
24 look?

25 A. Not to my knowledge, no. Very often these are

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1 representative sections. They're representative sections
2 that may or may not include all the lobes.

3 Q. Okay. How large are the lobes?

4 A. You mean, how large?

5 Q. What's the approximate size?

6 A. Well, depends on what you're dealing with. You mean,
7 the gross size? The actual volume of a lung?

8 Q. Right.

9 A. In a child it's different than an adult, but basically
10 something like this (indicating).

11 Q. And these slides are very small?

12 A. Yes, but they usually are taken from areas that look a
13 little abnormal. If there's a little congestion or
14 something like that, that's where we want to take a
15 section. Something that looks normal, you take a
16 representative section but you want to have that higher
17 chance of getting some abnormality, potentially.

18 Q. Okay. And do you recall reviewing the scalp
19 hemorrhage on slide number four?

20 A. No, I don't.

21 Q. No? Okay. Do you recall viewing the thyroid gland on
22 slide number two?

23 A. No, I don't.

24 Q. Okay. Do you recall viewing the right lung on slide
25 number three?

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1 A. No, I don't.

2 Q. Do you recall viewing the heart?

3 A. No, I don't.

4 Q. Do you recall viewing the adrenal glands?

5 A. No, I don't.

6 Q. And do you recall viewing the pancreas?

7 A. No, I don't. No.

8 Q. Do you recall viewing the spleen?

9 A. No.

10 Q. So you don't really recall what you -- viewing these
11 slides?

12 A. On the second go round or this re-review, most recent
13 review of the slides, my review was essentially looking at
14 the, focusing in on the brain slides.

15 Q. So on the second go round you were focused on the
16 brain slides?

17 A. That's correct.

18 Q. You didn't -- the first go round, you only looked at
19 brain slides; correct?

20 A. I believe that's correct. Yes.

21 Q. And the second go round you focused on the brain
22 slides?

23 A. That's correct. I may have looked at some of the
24 other slides but not with the intent of reviewing the
25 other slides. So I don't recall.

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

2 A. That's correct.

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

5 A. They can be. Yes.

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

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

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

14 A. That's correct.

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

17 A. No.

18 Q. No dead brain cells?

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

24 Q. Anoxic, what does that mean?

25 A. Without oxygen.

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

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

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

6 A. That's correct.

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

9 THE COURT: Any redirect?

10 MS. CAMPBELL: Just a question or two.

11 REDIRECT EXAMINATION

12 BY MS. CAMPBELL:

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

17 A. Yes, they were.

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

21 A. That's correct.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Any recross?

24 MS. HINES: Yes. Briefly.

25 RECROSS-EXAMINATION

VANDERSTEENHOVEN - RECROSS

1 BY MS. HINES:

2 Q. Dr. Vandersteenhoven, is it uncommon to see cerebral
3 edema --

4 MS. CAMPBELL: Objection, Your Honor. Outside
5 the scope of my redirect.

6 THE COURT: Sustained.

7 BY MS. HINES:

8 Q. In cases of asphyxia, is it uncommon to see cerebral
9 edema?

10 A. You see cerebral edema when there's been some brain
11 injury. So whether the episode of asphyxia leads to brain
12 injury or not, that's -- you may or may not see it.

13 Q. Okay. Is there a lack of oxygen during asphyxia?

14 A. Yes. The whole concept is there's just no oxygen or
15 blood flowing to the -- there's no respiration. There's
16 no oxygen exchange. There's no blood flowing to the
17 brain.

18 Q. Okay. So the whole concept of asphyxia is a lack of
19 oxygen; correct?

20 A. In my view, yes.

21 Q. And would it be uncommon to see cerebral edema where
22 there's a lack of oxygen?

23 A. Part of it has to do with the extent of injury and
24 also from the time frame. And in cases where there's been
25 survival following an episode of anoxia or low oxygen,

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1 there's -- the patient recovers, then you can start to see
2 the reaction in the brain to that injury.

3 But if there's an episode where there's asphyxia and
4 the patient dies, then there's no chance for the brain to
5 react so you don't see anything.

6 Q. Okay. And what happens to neurons when they don't
7 have oxygen?

8 A. They basically die.

9 Q. Okay.

10 A. And there's certain neurons in the brain that are more
11 susceptible than others. And neurons are different than
12 other cells in the body. They have very little reserve
13 capacity. So it takes a very short period of time for
14 basically the whole cell to shut down. And then if it
15 persists for a very short period of time, there's no
16 recovery. And then you start to see neural injury, for
17 example.

18 Q. Which areas of the brain would be more susceptible
19 to -- which neurons? What kind of neurons?

20 MS. CAMPBELL: Objection, Your Honor. I think
21 we're well beyond the scope of the --

22 THE COURT: I'm going to overrule. She's still
23 on the asphyxia.

24 THE WITNESS: Rephrase the question. I'm sorry.

25 BY MS. HINES:

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1 Q. Certainly. Which neurons would be more susceptible to
2 a lack of oxygen?

3 A. One of the most common sites to find evidence of prior
4 anoxia injury is a layer of neurons called a Purkinje cell
5 layer in the cerebellum which again is the part of the
6 brain that's tucked underneath the main part of the brain
7 and has to do with motor coordination.

8 And then there are other areas in the main part of the
9 brain just underneath the temporal lobes, which are small
10 lobes, sort of projections on the side of the brain called
11 the hippocampi. And there are certain regions in the
12 hippocampi that are exquisitely sensitive to any sort of
13 anoxic injury.

14 Q. Now, you mentioned Purkinje cells. Did you view
15 slides with Purkinje cells on them?

16 A. Yes. There were multiple sections of cerebellum that
17 were submitted.

18 Q. Okay. Did you see any injury to any Purkinje cells?

19 A. No, I did not.

20 Q. All the Purkinje cells that you saw looked normal?

21 A. They looked pristine. There were all lined up and
22 there was no evidence of ischemic injury.

23 Q. So there was no evidence -- and the Purkinje cells are
24 -- did you view a slide of the hippocampi?

25 A. Yes, I actually took two sections of hippocampi.

1 Yeah, two.

2 Q. Okay.

3 A. Both sides.

4 Q. And did you see any evidence of cells that had a lack
5 of oxygen in the hippocampi?

6 A. There was no evidence of ischemic injury in the
7 hippocampi.

8 Q. Okay. So those are what you testified to, the two
9 that would react, would be the most sensitive to a lack of
10 oxygen; correct?

11 A. They tend to be the most sensitive, yes.

12 Q. Okay. And you didn't see any kind of injury?

13 A. I did not.

14 Q. And the Purkinje cells were pristine?

15 A. Yes.

16 MS. HINES: Okay. No further questions.

17 THE COURT: Thank you, Doctor. You may step
18 down.

19 Any objection to this witness being excused for
20 the balance of the trial, from the State?

21 MS. CAMPBELL: No, sir.

22 THE COURT: From the defense?

23 MS. SINGLETARY: None, Your Honor.

24 MS. HINES: No.

25 THE COURT: Thank you.

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

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

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

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

10 MS. SINGLETARY: Yes, Your Honor.

11 THE COURT: All right.

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

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

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

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

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

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

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

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

19 Your Honor, additionally --

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

21 MS. SINGLETARY: Okay.

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

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

24 THE COURT: State?

25 MS. McDUFFIE: Respectfully, Your Honor, taking

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

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

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

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

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

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

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

1 All right. Thank you.

2 MS. SINGLETARY: Thank you, Your Honor

3 THE COURT: Next motion.

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

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

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

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

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

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

1 THE COURT: But you would agree that would be
2 direct evidence?

3 MS. SINGLETARY: Well, Your Honor,

4 THE COURT: I mean, that's eyewitness of him
5 saying what he did.

6 MS. SINGLETARY: Well, Your Honor, again my
7 client in his statement says that he, if he did do
8 anything it was unintentional.

9 So I think with the circumstantial evidence that
10 they actually have, I think that ties back into the
11 initial argument. And I'm not trying to rehash that, but
12 the fact that, that he didn't manifest an extreme
13 indifference. I mean, it's clearly circumstantial
14 evidence that leads up to that last element that I think
15 that the State just hasn't proven.

16 THE COURT: State?

17 MS. McDUFFIE: Your Honor, I believe that the
18 standard that the courts are supposed to rely on is any
19 direct or substantial circumstantial evidence. Your
20 Honor, and I believe the State has produced both direct
21 evidence and substantial circumstantial evidence in this
22 matter, Your Honor.

23 THE COURT: Anything further?

24 MS. SINGLETARY: And, Your Honor, again, I would
25 just say that the only thing that the State has raised is

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

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

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

8 Any other motions?

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

12 THE COURT: And my rulings remain the same.

13 MS. SINGLETARY: Yes, Your Honor.

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

16 MS. SINGLETARY: Yes.

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

19 THE DEFENDANT: (Complies.)

20 (Defendant placed under oath.)

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

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

1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We've now reached the stage of the
4 trial where you may present your defense. You have a
5 right to -- you have a right to claim the protections from
6 the Fifth Amendment of the Constitution of the United
7 States which states in part that no person shall be
8 compelled in a criminal case to be a witness against
9 himself.

10 This means that you cannot be required to testify
11 in this case. You do have a right to testify on your own
12 behalf, however no one can make you testify.

13 This is a personal right and no one can waive
14 this right except for you.

15 Now if you decide to testify you will be
16 subjected to the same rules that apply to all other
17 witnesses. And you may be examined and cross-examined on
18 relevant issues in this case.

19 In addition, if you have any convictions
20 involving dishonesty or for crimes punishable by
21 imprisonment for more than one year, and I determine that
22 the probative value of admitting these into evidence
23 outweighs the prejudicial effect on you, then they may be
24 introduced to attack your credibility.

25 If you decide to testify, the decision on your

1 part must be freely and voluntarily made in light of the
2 knowledge and the protections that are granted to you by
3 the Fifth Amendment.

4 Now if you decide not to testify, please know
5 that I will instruct the jurors that they cannot give the
6 fact that you did not testify any consideration
7 whatsoever, and that there's to be absolutely no prejudice
8 towards you because of this. The decision is left
9 entirely up to whether or not you want to testify.

10 You may talk to your attorneys, your family
11 members, or your friends, or anyone else, but, again, the
12 final decision will be left up to you.

13 Do you need a few minutes -- or have you
14 understood all my questions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need a few minutes to speak to
17 your attorneys before you give me an ultimate answer on
18 that question?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Why don't we do this. Why don't we
21 take a 10-minute break, and when we come back from that
22 break after you've had an opportunity to speak to your
23 attorneys and family and friends, then I will ask you the
24 ultimate question as to whether you want to testify.

25 THE DEFENDANT: (Nods head.)

1 THE COURT: All right. Court will be in recess,
2 let's say, until quarter after three.

3 MS. CAMPBELL: Your Honor, one thing just as far
4 as notice. I'm not trying to tell them which order, but
5 if we could just have 15 or 20 minutes notice when
6 Dr. Kessler is going to testify so we could have the
7 appropriate people here.

8 THE COURT: Is that going to be a problem?

9 MS. HINES: No, it's not. We can give it right
10 now.

11 THE COURT: Okay. Is he testifying first?

12 MS. HINES: Yes.

13 THE COURT: Okay.

14 MS. CAMPBELL: Thank you.

15 THE COURT: You got your 15 minutes. Thank you.
16 Court's in recess.

17 (Thereupon a recess was taken, following which
18 the trial resumed as follows:)

19 THE COURT: Have you had an opportunity?

20 MS. HINES: Your Honor, I've conferred with my
21 client. At this point, the plan is to have him testify
22 but he is uncertain. He wants to hear the -- to make the
23 final decision --

24 THE COURT: All right.

25 MS. HINES: -- he wants to hear all of the

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

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

5 MS. HINES: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

22 THE COURT: You may proceed.

23 MS. HINES: Thank you.

24 DIRECT EXAMINATION

25 BY MS. HINES:

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

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

4 Q. And what year did you graduate?

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

7 Q. Oh. Medical school?

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

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

12 A. Yes.

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

15 A. Correct.

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

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

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

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

3 Q. Okay. Right.

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

7 Q. Okay.

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

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

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

19 A. I was a fellow in forensic medicine.

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

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

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

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

5 A. I worked at the office of the chief -- well, the
6 Medical Examiners, Palmetto Richland Health. I was on the
7 staff there from '05 to '07, the end of '08 actually. And
8 then I worked part-time also there as a quality assurance
9 officer when I stopped doing autopsies there.

10 And then in the summer of '07, I left to become -- my
11 friend was sick in Alaska. I went up there to help him
12 out. And the day after I got there he died. And I had to
13 take over his job as the chief medical examiner, first as
14 acting chief, then I became the chief and waited and
15 waited and waited for a contract which never came, so I
16 was there a total of six months and came back and stayed
17 here to work.

18 Q. And what do you do now?

19 A. I teach at the medical school. I have a private
20 practice of forensic medicine and I consult to various
21 organizations. I lecture and basically am semi-retired.

22 Q. How many autopsies have you done?

23 A. I have been -- I've signed off on over 12,000. That
24 means I participated in them. I've personally done 6,000
25 on my own, but at any one time since I was director of the

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1 fellowship training program, I think you heard what that
2 was, in forensic medicine for both Harvard and BU at the
3 Office of the Chief Medical Examiner in Boston, I would
4 run through three fellows of my own.

5 And at any time we had six residents of pathology
6 rotating in the office. So in my 15 years there, I had a
7 total of about 300, 320 fellows in residence come through
8 my office who I trained in forensic medicine.

9 Q. Okay. So you ran that training program?

10 A. Yes. I was the director of training, fellowship,
11 whatever.

12 Q. Are you board certified?

13 A. Yes, I am.

14 Q. In what?

15 A. Anatomic and forensic pathology.

16 Q. Okay. And you've done a number of publications;
17 haven't you?

18 A. Yes.

19 Q. How many, approximately, have you done?

20 A. Oh, 58ish, something. They're publications and
21 they're jurored presentations. That means you send in an
22 abstract of your article you want to present to your peers
23 and they either say they like it or they don't. And then
24 you can present it at a national conference and that's
25 published in their yearly abstract of that conference.

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1 Q. And you have about 58 of those?

2 A. About.

3 Q. Publications and these presentations?

4 A. Yes.

5 Q. Okay. When you were in training, -- Your Honor, at
6 this time, I would like to move to admit Dr. Kessler as an
7 expert.

8 MS. CAMPBELL: No questions at this time, Your
9 Honor.

10 THE COURT: Any objection to him being deemed an
11 expert --

12 MS. HINES: In anatomical and forensic pathology.

13 THE COURT: -- in anatomical and forensic
14 pathology?

15 MS. CAMPBELL: No, sir. We have no objection --
16 no questions, no objections.

17 THE COURT: Thank you.

18 Ladies and gentlemen, as we've done on several
19 other occasions, I've explained to you that he is now, I'm
20 deeming him to be qualified as an expert in anatomical and
21 forensic pathology. The weight that you determine that
22 should be given to his testimony is solely up to you as
23 the jurors.

24 You may proceed with your questioning.

25 MS. HINES: Thank you, Your Honor.

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1 BY MS. HINES:

2 Q. When you were in training, Doctor, did you do any
3 special studies?

4 A. Yes. I was the autopsy coordinator for a grant at
5 Johns Hopkins Hospital under Eugene Nagle, Department of
6 Anesthesia, where we looked at 750 extra autopsies that
7 normally wouldn't have come to the office, over two years,
8 and we looked at autopsy complications of CPR.

9 Q. Okay.

10 A. That was published initially in emergency medicine
11 right after that and then a larger study was continued
12 after I had left and that was published in just 1987.

13 Q. Okay.

14 A. Also when I was there, I did a review of a 20-year
15 study of meningococemia from the files of the medical
16 examiner's office where we looked at 50 cases of
17 meningitis and it was, we did what we call a brown bag
18 study. It was a research study. You looked at slides.
19 You reviewed the autopsies. You reviewed the histories.
20 You're trying to correlate whether the people were sick,
21 whether they weren't sick, and what you saw at autopsy.

22 And that was presented at the American Academy of
23 Forensic Science in '77. And that was a very interesting
24 study.

25 Q. Okay. And you testified that you -- you testified

KESSLER - DIRECT

1 that you ran a training program of fellows and you trained
2 fellows in pathology?

3 A. Correct.

4 Q. When you trained the fellows in pathology, did you
5 have to tell them to take photographs prior to opening the
6 body?

7 A. Always. In fact, one of our expenses was used to buy
8 new cameras, first non digital and then obviously we moved
9 to digital.

10 Q. Okay.

11 A. As was bought for me when I was in my training
12 program. And we always took them to the scene. So
13 whenever we would go to the scene, we'd always take body
14 photos.

15 Q. And you reviewed the autopsy in this case?

16 A. Yes.

17 MS. HINES: Your Honor, may we approach?

18 THE COURT: You may.

19 (Off-the-record discussion.)

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, we need to take up an issue of law. So I'm
22 going to dismiss you to the jury room at this point.
23 Thank you.

24 (Jury exits courtroom at 3:35 p.m.)

25 THE COURT: All right. Yes, ma'am. You want to

KESSLER - EXAMINATION IN CAMERA

1 state that on the record?

2 MS. HINES: Yes, Your Honor. We had a pretrial
3 motion pursuant to 404-B. The State indicated that they
4 were going to proceed under State versus Slocumb to admit
5 that -- evidence that we objected to under 404-B of
6 prior --

7 THE COURT: This would be the other incidents
8 that occurred at the hospital or her going to the hospital
9 when no finding of wrongdoing was made; is that correct?

10 MS. HINES: That is correct.

11 THE COURT: All right.

12 MS. HINES: Dr. Kessler just said that he
13 reviewed the autopsy in this case. I think that before we
14 proceed we would need to find out the basis for his
15 opinion, the underlying basis for his opinion and the
16 extent to which he relied on anything.

17 THE COURT: All right. You may proceed with your
18 questioning at this time.

19 MS. HINES: Thank you, Your Honor.

20 EXAMINATION - IN CAMERA

21 BY MS. HINES:

22 Q. Dr. Kessler, you reviewed the autopsy in this case?

23 A. Yes, I did.

24 Q. What else did you review in this case?

25 A. I reviewed the histology slides.

KESSLER - EXAMINATION IN CAMERA

1 Q. Okay. And, when you reviewed the histology slides,
2 did you want to review anything else?

3 A. Yes.

4 Q. What was that?

5 A. I had special stains of certain portions of the brain,
6 of the adrenals, and other tissues, a lot of different
7 tissues' stains, histology slides, and that's what I
8 reviewed.

9 Q. And did you review any medical records?

10 A. Not -- only the final terminal emergency room when the
11 little girl had her CPR. Other than that I didn't review
12 anything else.

13 Q. Okay. So you did review the medical records from
14 February 6, 2009?

15 A. The terminal CPR.

16 Q. And did you rely on those records?

17 A. I based -- I relied on the autopsy -- I used them to
18 find out what happened, but in reality I relied on the
19 autopsy report, the slides and the special stains for
20 determining the cause and manner of death.

21 Q. Okay. And when you say you relied on the autopsy
22 report, did you rely on the cause of death that was
23 determined by Dr. Marcus?

24 A. Not at all.

25 Q. Did you rely on what he -- that -- what he found the

KESSLER - EXAMINATION IN CAMERA

1 cause of death due to?

2 A. I did not rely on that at all. I don't agree with it.

3 Q. And there's a section in the autopsy which says,
4 contributory. On the first page. Did you rely on that?

5 A. No.

6 Q. Did you rely -- where he says, three previous
7 emergency room visits due to head trauma, did you rely on
8 that at all --

9 A. Not at all.

10 Q. -- what he contributed to his cause of death?

11 A. Not at all. Not in this case.

12 Q. Okay. And did you, under clinical summary where it
13 says -- the second paragraph. Do you have that autopsy
14 report in front of you?

15 A. Okay. I didn't rely on that at all.

16 Q. Okay. What did you rely on?

17 A. I basically relied on the fact that she was, according
18 to the coroner, the first paragraph, she had resuscitative
19 efforts and when she passed and where she passed, and the
20 aggressive CPR that she had.

21 Q. Okay. And you relied on those slides?

22 A. Slides.

23 Q. And the descriptions that are in this autopsy report?

24 A. I agree with a few, very few of the descriptions in
25 the autopsy report. I will restate those. Most of them I

KESSLER - FURTHER EXAMINATION IN CAMERA

1 don't agree with at all.

2 Q. Okay. But the, but the -- in the body of the report
3 where Dr. Marcus lays out what he saw --

4 A. That's fine.

5 Q. -- that all, you did look at all of that?

6 A. Yes. That's fine.

7 MS. HINES: Okay. I have no further questions at
8 this point.

9 THE COURT: Ms. Campbell?

10 MS. CAMPBELL: May it please the Court, Your
11 Honor. Your Honor, may I approach?

12 THE COURT: You may.

13 MS. CAMPBELL: This is just a copy of the autopsy
14 report.

15 FURTHER EXAMINATION - IN CAMERA

16 BY MS. CAMPBELL:

17 Q. Doctor, you concede that you received the autopsy
18 report in this case?

19 A. Yes.

20 Q. And that you used that report in making your analysis?

21 A. Correct.

22 Q. And you are a forensic pathologist?

23 A. I am.

24 Q. And part of -- the important part of a forensic
25 pathologist is to get the medical history of the person

KESSLER - FURTHER EXAMINATION IN CAMERA

1 you're examining?

2 A. Occasionally. There are certain circumstances. I
3 think you've heard that term before today. But the
4 circumstances in this were so obviously different that I
5 needed to investigate that further.

6 And if my investigation of those circumstances did not
7 prove to be futile, I would have asked to look at the
8 entire report which I didn't in this case.

9 Q. So your testimony is here today, sir, that you did not
10 review any of the medical history of this child?

11 A. That is correct, other than the Baptist terminal
12 event.

13 Q. And your testimony here today is you just skipped over
14 certain parts that you thought -- as far as reviewing the
15 entire report?

16 A. I didn't skip over the parts I thought were important
17 as a forensic pathologist. There are so many glaring
18 things here that I thought needed to be reevaluated,
19 that's what I did.

20 Q. Okay. And as far as the cause of death and the
21 contributing cause of death, you may disagree but you did
22 review those items?

23 A. I looked at them, but I don't agree with them.

24 Q. You don't agree with them but you did review them?

25 A. Correct.

KESSLER - FURTHER EXAMINATION IN CAMERA

1 MS. CAMPBELL: Your Honor, at this time under
2 State versus Slocumb basically this was when the expert in
3 the case who reviewed the records which included stuff
4 that the State admitted was not admissible under 404-B,
5 but the Court relied on Rule 703, 705 and 403 to find the
6 evidence admissible.

7 He may be required to disclose underlying facts
8 and data on cross-examination. I don't know how I can
9 cross-examine this person when he chooses to disagree with
10 the cause but he won't say that he reviewed the, part of
11 the contributing cause is the three prior visits as well
12 as the entire medical history on this child.

13 I don't know how the State can be limited to
14 cross-examining him when he is going to get up here and
15 say he doesn't agree with anything that Dr. Marcus did and
16 the reasons for that, and we can't fully evaluate, well,
17 did you consider this like he did, or did you consider
18 this like he did.

19 That would just simply limit us to not being able
20 to do any kind of cross-examination on him and just
21 bolster his opinions over the doctors who had more
22 information.

23 THE COURT: But you don't believe that the
24 prejudicial effect of the three prior hospital visits
25 would outweigh any probative value on that? I mean,

1 because these three other instances were all, there were
2 no findings of wrongdoing.

3 MS. CAMPBELL: And, Your Honor, in Slocumb
4 specifically, those were just other specific acts of
5 sexual abnormality. They involved no charges, no
6 findings, no referrals to DSS or anything like that in
7 Slocumb.

8 So we're talking about the same type of testimony
9 because the expert was provided that information and
10 reviewed it. And he has the absolute right to disagree
11 with it all day long, but that is part of the reason that
12 the doctor was able to come to the conclusions he did.

13 And I think we have the right to cross-examine
14 him. And that is the same analysis that was done in
15 Slocumb and upheld.

16 THE COURT: All right.

17 MS. HINES: If I may?

18 THE COURT: Yes, ma'am.

19 MS. HINES: In Slocumb -- and we disagree with
20 the State's reading of Slocumb. First of all, Slocumb
21 referred to -- well, it analyzes Rule 703 in conjunction
22 with 705. 705 says an expert may be required to disclose
23 underlying facts and data that they base their opinion on.

24 Dr. Kessler did testify that he did not base his
25 opinion on those portions. The two lines specifically

1 are -- that we object to, deal with the three prior
2 incidents. He did not base his decision on that. He --
3 in this situation, I think the State, the State is just
4 trying to back door inadmissible evidence in. I do
5 believe that it is more prejudicial than probative because
6 there were no underlying -- there were no findings of
7 abuse in those situations.

8 And if I could go into more detail about those
9 situations. One, I did talk about the roll off the bed in
10 pre-trial that happened when **DG** was approximately six
11 weeks old. And DSS did investigate that and found that to
12 be unfounded.

13 The other incident, she fell, hit her bottom
14 three teeth at 15 months old, and her teeth were loose.
15 She was taken to the emergency room. She was taken to
16 the -- she was -- they were told that she fell into a
17 table and she had loose teeth.

18 The doctors didn't suspect child abuse, didn't
19 make any indication that they suspected child abuse.
20 There's absolutely no indication of who was with her.
21 There's no indication of anything. I mean, it's a 15
22 month old and in fact they didn't even do anything. They
23 said they will firm up on their own.

24 The next incident that we're talking about is an
25 incident that happened when she was 17 months old. Both

1 parents took her to the hospital. The records indicate
2 that they were told that she fell into furniture. There
3 was a superficial half-inch laceration to the back of her
4 head. Bleeding was controlled by the time she got to the
5 hospital though they did put one stitch in it.

6 There's no indication that the Defendant was even
7 present when that incident happened. This was a 17 month
8 old that fell into -- the only evidence we have is that
9 it, a 17 month old fell into a piece of furniture and got
10 a half-inch cut, laceration, to the back of the head.

11 I mean, I think that in this situation the
12 probative value of this -- and by admitting this -- and
13 Dr. Kessler did not review the medical records on these as
14 he testified on direct examination. I think just to tell
15 the jury at this point that there are three prior head
16 injuries and head trauma is disingenuous and not -- and I
17 think it's more prejudicial. There's no probative value
18 here. I think it is more prejudicial than it is
19 probative. I think it's highly prejudicial.

20 Also I think that it has a tendency to confuse
21 the jury, to mislead the jury. The way that it's
22 described in the autopsy report that Dr. Kessler did
23 review, it's described as head trauma. I think that's
24 misleading to the jury.

25 I don't think that this should be admitted. I

1 don't think this should be admitted pursuant to 705
2 because Dr. Kessler did not rely on that.

3 In Slocumb there was an indication in the second
4 portion where an expert got an MRI, a report was sent with
5 it. He testified that he didn't rely on the report, that
6 he was capable of reading the MRI himself. And the Court
7 held that that could not be -- he could not be cross-
8 examined on that.

9 In addition to that, I think the 403 analysis in
10 this -- I think that that -- that the prejudicial effect
11 -- the probative value is substantially outweighed by the
12 prejudicial effect here, not only prejudicial effect,
13 confusion of the issues and misleading the jury. I think
14 all three of those.

15 THE COURT: All right. Thank you. Anything
16 further?

17 MS. CAMPBELL: Yes, Your Honor. Just --
18 basically she just admitted in her argument that he
19 reviewed this and relied on it. How can he say he
20 disagrees with his findings without saying he's reviewed
21 the basis of his findings?

22 THE COURT: Well --

23 MS. CAMPBELL: And, Your Honor --

24 THE COURT: -- I think he said he didn't review
25 the basis of the prior visits to the hospital.

1 I tell you, I think in this situation that the
2 indication of three visits to the hospital that were minor
3 incidents, the prejudicial effect in this situation in
4 this type of case would outweigh any probative value, and
5 therefore, I am going to deny the State the ability to
6 cross-examine him on the three prior incidents of going to
7 the hospital.

8 He says he did not rely on those in any way and
9 therefore that is my ruling, and I will grant your motion.

10 MS. HINES: Thank you, Your Honor.

11 MS. CAMPBELL: Your Honor, in that same vein so I
12 can be sure, though, his testimony was that he hasn't
13 reviewed any of the medical records --

14 THE COURT: No, ma'am. He said he only reviewed
15 the medical records --

16 MS. CAMPBELL: From the final visit.

17 THE COURT: -- from the final visit.

18 MS. CAMPBELL: So he never reviewed any of her
19 pediatric records which of course were --

20 THE COURT: He did not rely on those, and any
21 witnesses.

22 MS. CAMPBELL: So I can cross-examine him as to
23 the pediatric records because those don't involve hospital
24 visits, because it's basic forensic --

25 THE COURT: Yeah. I mean, I think that would be

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1 okay. He's reviewing her pediatric records, but I'm not
2 going to let you cross-examine him concerning three visits
3 to the hospital for a minor one-stitch laceration or
4 anything like that.

5 MS. HINES: Okay. And, Your Honor, I don't think
6 that he reviewed her pediatric records.

7 MS. CAMPBELL: He didn't. That's my point.

8 THE COURT: And you can ask him: Did you review
9 her pediatric records? And he's going to tell you no.
10 And then you can leave it at that. I mean, that's all you
11 can do at that point.

12 MS. HINES: Thank you, Your Honor.

13 THE COURT: All right. Let's bring the jury back
14 in.

15 (Jury enters courtroom at 3:50 p.m.)

16 THE BAILIFF: Jury seated, Your Honor.

17 THE COURT: All right. Thank you. You may
18 proceed, counsel.

19 MS. HINES: Thank you, Your Honor.

20 DIRECT EXAMINATION (CONTINUED)

21 BY MS. HINES:

22 Q. Okay. Dr. Kessler, you reviewed this case?

23 A. Yes.

24 Q. Right?

25 A. What I said I reviewed, yes.

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1 Q. And you were hired by the defense team to review this
2 case?

3 A. That is correct.

4 Q. Okay. And as part of what you do in private practice
5 you -- do you frequently testify in criminal cases?

6 A. Yes, both for defense and for the solicitor or
7 prosecution.

8 Q. Okay. In your career, how many times have you
9 testified?

10 A. About, a little over 300.

11 Q. Okay. And how many of those were -- how many of those
12 cases were you testifying for the defense?

13 A. The defendant? About 15.

14 Q. Okay. And, so you reviewed the autopsy in this case?

15 A. Yes.

16 Q. All right. And when you reviewed the autopsy report
17 in this case, what did you -- did something stand out?

18 A. Yes.

19 Q. What was that?

20 A. On the first page under number two, under blunt
21 trauma, D, periadrenal gland hemorrhage. If I may quote a
22 reference that I published in the Fourth Edition of Spitz
23 and Fisher, page 394: Adrenal hemorrhage is never trauma
24 unless it's massive.

25 I've seen adrenal hemorrhage in train crashes,

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1 airplane crashes, but it's so well protected. When you
2 have adrenal hemorrhage, you must rule out infection. And
3 what infection am I talking about that we as medical
4 examiners take on the role as a public health officer?
5 And in Alaska I was the public health officer and the
6 medical examiner.

7 About one-third of periadrenal hemorrhage is related
8 to Neisseria meningococcus, the meningitis, the bad one,
9 the one that's horribly infectious. So from the get-go in
10 this case, this case should have been -- when you open a
11 body -- this is what I used to teach my residents, all 300
12 and some and fellows that rotated through,
13 you -- especially in a child more than an adult -- you
14 open the abdominal cavity first. The adrenals are tucked
15 way up in there, under the liver, above the kidneys.

16 If you see periadrenal hemorrhage or edema, stop.
17 Close it up. We have bases of 10-percent bleach. Bleach
18 your hands. You're wearing gloves, obviously, and those
19 other things.

20 And then you go ahead and you take a needle and you go
21 into the base of the brain. It's a sternal tap. and you
22 pull out the fluid and you send it to the lab for
23 immunological tests that comes back within two hours. If
24 it's not meningitis, the bad one, meningococcemia, you're
25 safe.

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1 If in fact it was meningococccemia, anybody who had any
2 contact with that child would have to be Rye clear. I had
3 a resident not do it and I wound up turning yellow. It's
4 a drug you have to take. The public health people come in
5 and take over the case. So everyone was put at risk
6 initially.

7 Now in this case, it wasn't that. We lucked out. We
8 had a culture sitting there that was taken at Baptist
9 Hospital. We had pure fresh blood when the baby went in
10 there.

11 Q. Okay. Now when you say that you had a culture --

12 A. Well, we had a culture-in-waiting, so to speak.

13 Q. Was there any -- okay. When you say that we had a
14 culture --

15 A. Yes. We had the potential of having a blood culture.

16 Q. Okay. Was a blood culture done to your knowledge in
17 this case?

18 A. No, no.

19 Q. Okay. When you take a blood culture, do you want to -
20 - what, what kind of blood do you want to use?

21 A. I want to use admission blood.

22 Q. Okay.

23 A. Because that's the closest to the real-life situation
24 that we have. Obviously you can take postmortem blood the
25 next day. It's fraught with things overgrowing, but if

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1 you have a pure culture of a pathogen then that works,
2 too. And you take heart blood.

3 But we had blood drawn at Baptist that supposedly
4 somebody was new there. I heard it testified to today.
5 And no one took that blood and sent it for culture, or if
6 you don't do that, then you're supposed to go ahead and
7 perform that autopsy that minute. When you have symptoms
8 of nausea, vomiting, collapse or a fall downstairs, yellow
9 mucus and pus coming out of the nose, those are infectious
10 disease things.

11 And we as public health officers got to rule something
12 out. You want a culture cooking. You want to get that
13 autopsy moving. You don't send everybody home if you've
14 cleaned up. You do that autopsy. If it's two in the
15 morning you do that autopsy, because everybody is at risk
16 if it's meningitis.

17 And that wasn't ever done in this case.

18 Q. Okay. And that is the first thing that you taught
19 your fellows about adrenal hemorrhage?

20 A. That's correct. And it's substantiated in the
21 textbooks.

22 Q. So when you saw the autopsy on the first page, and I
23 think Dr. Marcus testified earlier, periadrenal
24 hemorrhage, that raised your concern?

25 A. Yes.

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1 Q. What did you want to do when you saw that?

2 A. First I then turned to the description that he had of
3 the adrenals which, by the way, should be weighed. And he
4 didn't weigh them in this case. They get big and heavy
5 and boggy. Usually they weigh about three grams, but we
6 don't have the weight.

7 So the cortical surfaces of the kidneys he talks
8 about. Then he says, um, do-do-do -- let me go on and
9 find it here.

10 Talk about the kidneys. I'm somehow losing the place
11 here. I just have so much material in here. All right.

12 Q. It's --

13 A. Okay. I'm sorry. I'm having trouble finding it,
14 that's all. My glasses are fogged.

15 Q. I believe it's the last page, after the slides.

16 A. Excuse me?

17 Q. After the slides.

18 A. After the slides. Oh. That's why I'm not seeing it.
19 I don't -- I don't have that page in this one. It's in --
20 can you show it to me, please? It's not in this report
21 that I have. It was in my other report that I have at
22 home.

23 Q. Yes.

24 A. Thank you. Okay. Adrenal glands. The adrenal glands
25 demonstrate hemorrhage surrounding the periadipose tissue.

KESSLER - DIRECT

1 Q. And what does that mean to you, Doctor?

2 A. There's a reason that the adrenals, both adrenals, not
3 one adrenal, are a bag of blood. They're hemorrhagic.
4 And you have to rule out bacteria. Certain viruses can do
5 it. Rarely fungi can do it, if they infect the aorta, but
6 you have to rule out a bad thing here that someone can
7 catch.

8 So you need to evaluate this very carefully. And in
9 this instance, it really wasn't done.

10 Q. And when you saw that, what did you want to do?

11 A. I wanted to see the slides personally.

12 Q. Okay. And did you review the slides in this case?

13 A. Yes, I did.

14 Q. And when you reviewed the slides in this case, did
15 you -- what did you do?

16 A. Well, I reviewed all the slides of the case, all the
17 body slides. The tissue was extremely limited. We had
18 a very little bit of tissue to look at, but from what I
19 looked at, I found evidence of prior lung problems.

20 Dr. Marcus actually says there is --

21 Q. Doctor, if I could stop you.

22 A. Sure.

23 Q. You wanted to look at the slides?

24 A. Yes.

25 Q. When you got the slides, did you take photographs of

KESSLER - DIRECT

1 the slides?

2 A. Yes, I did.

3 Q. Okay. And I'm going to show you what's been marked as
4 Defense Exhibits Number Two through 15.

5 A. Okay.

6 Q. Do you recognize those photographs?

7 A. These are the photographs that I took at the medical
8 school in the basement and made copies for court.

9 Q. Okay. And these photographs were taken from the
10 slides that you received in this case?

11 A. Correct.

12 Q. The re-cuts from Dr. Marcus?

13 A. That is correct.

14 MS. HINES: Your Honor, at this time I would move
15 to have these admitted into evidence.

16 THE COURT: Any objection from the State?

17 MS. CAMPBELL: No, sir.

18 THE COURT: All right. Without objection,
19 Defense Exhibits Two through 15 are admitted.

20 (Thereupon, Defendant's Exhibits Nos. 2 through
21 15, photographs, were received into evidence.)

22 BY MS. HINES:

23 Q. And did you request any special stains to be done?

24 A. After I reviewed the slides, I wanted to look further
25 because I saw evidence of infection here --

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1 Q. Okay.

2 A. -- in a focal area of the brain, two focal areas of
3 the brain, in the lungs, in the adrenals. So I asked for
4 special stains to be done on these. They're called Gram
5 stains. Tissue Gram stains.

6 And certain organisms, bacteria, will stay either
7 Gram-positive, blue, or Gram-negative, red. And you can
8 look to see what's going on there. So I ordered those.

9 Q. Okay. And when you reviewed those, did you take
10 photographs, some photographs of what you saw there?

11 A. Yes.

12 Q. Would you please review what's been marked as
13 Defendant's Exhibits Numbers 16 through 19? Are those the
14 photographs you took from the Gram stains?

15 A. Yes, they are. Those are photographs of the adrenal.

16 MS. HINES: Okay. Your Honor, at this time I
17 would move to have these admitted into evidence.

18 THE COURT: Any objection?

19 MS. CAMPBELL: No, sir.

20 THE COURT: Without objection, Defense Exhibits
21 16 through 19 are admitted into evidence.

22 MS. HINES: Okay.

23 (Thereupon, Defendant's Exhibits Nos. 16 through
24 19, photographs, were received into evidence.)

25 BY MS. HINES:

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1 Q. And we'll just go through them here. All right.
2 Doctor, first of all, I'm going to show you this
3 photograph.

4 A. Okay.

5 Q. What is that a photograph of?

6 THE COURT: Refer to it by exhibit number.

7 THE WITNESS: Two.

8 MS. HINES: Defense Exhibit Number Two.

9 THE COURT: All right.

10 THE WITNESS: I have done many cases of asphyxia
11 by suffocation in children. I have published two articles
12 in those. And have numerous children that have been
13 playing in pipes when sand collapses on them, burying them
14 up to their neck. I have numerous children that have been
15 rolled over by their parents in bed.

16 These are all mechanisms of suffocation. And
17 there are very specific findings in these, suffocation-by-
18 chest compression, that we didn't have in this case.

19 And one of the things you find in these brains is
20 anoxic change. And that is, that in the cerebellum the
21 Purkinje cells, these pretty little cells that are
22 pristine, as Dr. Vandersteenhoven said, lined up. They're
23 beautiful. They're normal.

24 When you have asphyxia enough to kill a child or
25 an adult, it usually takes four minutes of uninterrupted

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1 chest compression where you can't breathe and another four
2 minutes where they can be resuscitated back but would be a
3 vegetable. That's if it's total chest compression.
4 That's the minimum time. It may be eight minutes.

5 Then these cells disappear. They get red and
6 they disappear.

7 These cells are beautiful. There's nothing wrong
8 with these cells. It totally goes against any diagnosis
9 of chest compression or asphyxial death by suffocation.

10 BY MS. HINES:

11 Q. And can you just point out which, where the Purkinje
12 cells are on here?

13 A. These little guys here that are sort of pink-red.
14 They look like they have little eyes in the center. And I
15 have a close-up of this, too.

16 Q. Yes. I'm going to hand you what's been marked as
17 Defense Exhibit Number Three. What is that?

18 A. This is a close-up of -- the cells in the center are
19 what we call granular cells of the cerebellum. They're
20 normally there. And these guys here that have tails and
21 have beautiful central nuclei, nucleoli, beautiful
22 cellular anatomy, are normal brain cells.

23 There's no effect of any anoxia at all as you would
24 see in suffocation.

25 Q. Okay.

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1 A. It's not there.

2 Q. And this little mass in here, what is that?

3 A. That's the nucleus. 'And the dark mass in the center
4 is their controlling body of the nucleus. It's just
5 cellular parts. But usually when those cells begin to go,
6 that begins to break up into little tiny pieces, little
7 tiny black pieces. And we don't see any of those changes
8 at all.

9 And that happens extremely early. And I've seen
10 thousands of people dying from asphyxia from all different
11 causes. And you always have loss of these cells. It's
12 simply knowledge of forensic pathology. Everybody knows
13 about it. It's written in the textbooks.

14 Dr. Vandersteenhoven alluded to it. And it's well-known.

15 So that doesn't exist in this case.

16 MS. HINES: Could I have permission to publish
17 this to the jury, Your Honor?

18 THE COURT: Yes. This would be Defense Exhibit
19 Two and Three?

20 MS. HINES: Two and Three. Yes, sir.

21 (Pause.)

22 BY MS. HINES:

23 Q. Dr. Kessler, what are the signs of asphyxial death?

24 What are the things that you would look for?

25 A. Well, first of all, one of the first things you see --

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1 and I think this was mentioned today. An asphyxia death
2 means that oxygen isn't getting to the brain. If you
3 compress somebody's chest, and the most common mechanism I
4 see in children of this age is somebody rolls over, either
5 they're overweight or they're drugged or they're on
6 alcohol or whatever, a parent usually, or a guardian, and
7 they roll on them.

8 The problem with asphyxia deaths is you can't -- if
9 you take a breath, you'll notice, put your hands on your
10 chest, your chest cage isn't moving much when you
11 breathe. What does all the breathing? And Dr. Bradley
12 (sic) said it today. The diaphragm's what pulls the air
13 in and out of the lungs.

14 So you have to compress the diaphragm. Holding
15 somebody like this (demonstrating) is not going to cause
16 it, but lying on them face down causes the diaphragm to be
17 squashed.

18 Very similar to when police will handcuff somebody and
19 put them face down if they're especially overweight
20 because then they have to pull that weight up, all their
21 weight, because they're lying face down in constraints.
22 And people die like that. I used to lecture to police,
23 don't do this because you'll get asphyxiated. And we had
24 a whole bunch of training in the state police when I was
25 in Massachusetts for that.

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1 So first of all, you're not getting oxygen. What
2 happens when you don't get oxygen to the blood? It begins
3 to get blueish. Cyanotic. Cyan is a color. And all the
4 body tissues that you can see closely that represent
5 what's going on underneath the surface of the skin, like
6 the fingernails and the lips and inside the mouth, they
7 get blue, purple blue to blue. Cyanotic.

8 Q. Okay.

9 A. And it's a very obvious change.

10 Q. I'll stop you right there. Have you reviewed the
11 autopsy photographs in this case?

12 A. Yes, I have.

13 Q. And what's been marked as Defense Exhibit Number 20,
14 can you tell the jury what that is?

15 A. This is 20. This is a photograph of the decedent at
16 autopsy. And you'll notice that her lips are not blue.
17 They're pinkish. And her cheeks are pale and not blue,
18 not cyanotic.

19 There's no evidence of, any evidence of asphyxia here
20 at all in the face, as you would see -- and I have
21 pictures of kids that have died from asphyxial deaths from
22 rollovers. They're purple blue, almost to a T.

23 Q. Okay. And, Doctor, did you review Defense Exhibit
24 Number 21?

25 A. Yes, I did.

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1 Q. And what is that?

2 A. This is a picture of the fingernails. Remember I said
3 the nail beds are very easy to see cyanotic changes? And
4 you can see the nail beds here are pale. They're not
5 blue. And the color is sort of neutral, like a tannish.
6 But they're not cyanotic. Cyanotic is almost a color a
7 little lighter than my shirt. It's that color blue. And
8 I don't see that here at all.

9 MS. HINES: Permission to publish these to the
10 jury, Your Honor?

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. HINES:

14 Q. Okay. In addition to cyanosis, Doctor, what else
15 would you expect to see in an asphyxial death?

16 A. In an asphyxial death because of chest compression,
17 what you're compressing mostly besides just the chest,
18 you're also compressing the venous return to the heart.

19 The blood is coming down from the brain and because
20 you're squeezing it tight, the heart can't take it like
21 it used to be able to. And that little blood begins to
22 back up. Blood is going up at about 11 pounds per,
23 pressure per square inch, and it's coming down at about
24 seven pounds.

25 So sooner or later what's gone up is going to come

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1 down and start really swelling up. And that causes, what
2 I think one of the doctors here mentioned today, petechial
3 hemorrhages. So little tiny hemorrhages in the vessels.
4 The vessels rupture and you get little tiny petechiae in
5 your eyebrows, in the lips, in the buccal mucosa, the
6 inside of the cheeks, and in the face. And almost
7 everywhere above that compression mark. We see none of
8 that here. In fact, I even heard testimony that it didn't
9 exist.

10 Q. Okay. And so the petechial hemorrhage, again, would
11 be where?

12 A. You would see them anywhere the vessels are easily
13 seen near the surface. You could see them on the cheeks.
14 You can pull down the conjunctive and look there. You can
15 turn the lips over there and look there -- you can turn
16 the lips up and look inside the mouth. You can see them
17 in the neck.

18 But in general, you will have them somewhere. You may
19 not have tons of them, but you'll see them. That's what
20 you see in an asphyxial death by chest compression.

21 Q. Okay. And what about cerebral edema?

22 A. Cerebral edema is caused by the lack of oxygen to the
23 brain. And we always in our pathology reports note
24 whether it's cerebral edema or not. If you die an
25 asphyxiation death, 99 percent of the time you will have

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1 cerebral edema.

2 Because you don't die fast. Usually it's a drug
3 overdose or what have you. And even a death where someone
4 has suffocated, it's not fast. And these people damage
5 their brain. And when the brain is damaged it swells.

6 We have no evidence of cerebral edema here.

7 Q. All right. So, based on -- are there any other
8 symptoms you would expect to see?

9 A. Yes.

10 Q. What are those?

11 A. Because the heart is pumping and the brain is
12 supposedly turned off now because it's not getting oxygen,
13 there's a center deep in the brain that makes us breathe.
14 I'm not going to go into the fancy name but it's in the
15 brain. And when you don't get oxygen to the brain, it
16 turns off but, like chickens, our heart still pumps.

17 So we're not breathing when we're dying from asphyxia
18 and our heart's still pumping. So it's pumping and
19 pumping and pumping. That blood's got to go somewhere.
20 It goes into the lungs. And in a typical asphyxia death,
21 the lungs are almost three times their normal weight. Her
22 normal weight for her height should be about 85 to 90
23 grams.

24 And I can't believe someone can get the exact weights
25 of both lungs because one lung has an extra lobe. So how

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1 can somebody weigh the lungs and say it's 120 grams and
2 this is 120 grams, and one has 30 percent more tissue than
3 the other?

4 So I don't trust that weight at all, but that's my own
5 opinion.

6 So, we didn't see heavy lungs at all. We have
7 relatively -- the lungs are elevated a little bit.
8 They're a little bit congested because the kid is dying in
9 sepsis, septic shock. So you can see that in septic
10 shock. And they are a little bit congested, but that is
11 not an asphyxial death.

12 Q. Doctor, you just mentioned sepsis. What is sepsis?

13 A. Sepsis is bacteria that's gone into your bloodstream.

14 Q. And do we have any blood to review in this case?

15 A. No. Not at all.

16 Q. Okay.

17 A. However --

18 Q. Yes.

19 A. -- we have evidence of sepsis that Dr. Marcus saw and
20 reported as neutrophils or pus in the spleen. They're not
21 normally there.

22 Now, I don't agree that they're really neutrophils. I
23 think they're more red. I think they're more eosinophils,
24 but they're the same kind of cell. And when you see those
25 cells gathering in the spleen, it doesn't mean the

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1 spleen's infected. It means the body's infected. And
2 that's a sign of sepsis.

3 When I see a bunch of inflammatory cells, early
4 neutrophils, polys, in the spleen, that's sepsis. He
5 diagnosed it but didn't carry it further. That should
6 have been the evidence that something was septic here and
7 something was wrong here.

8 I saw sections where three or four of these cells were
9 together. You rarely see more than one. And if you see
10 more than two or three clumps, then you have to worry
11 about sepsis.

12 And I saw that in this case but I agreed with --
13 that's one thing I agreed with Dr. Marcus on. There's
14 neutrophils in the spleen.

15 Q. Okay. And in your review of the slides, Doctor, you
16 did take these photographs. And I'm going to show you
17 what's been marked as Defendant's Exhibit Number Four and
18 Five.

19 A. Yes.

20 Q. What is that?

21 A. Now, these are sections of the lung tissue close up.
22 This is a breathing tube. Think of the lungs as an
23 inverted tree. And as the branches get smaller and
24 smaller and smaller, soon they're going to go to leaves.
25 And those leaves are the breathing sacs. And so that's

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1 what we're seeing here.

2 We're making the cross sections drawing to a major
3 trunk and some of the limbs. And right around this major
4 trunk there's a bunch of cells. And those cells are like
5 a cart -- like, they have little fingers on them.

6 And their job is to take anything that's ingested and
7 those fingers move like this (indicating). And that's why
8 we have phlegm in the morning, cough up phlegm. Everybody
9 does that. That's bringing up the stuff that's in our
10 lungs. And if we have disorders of our cilia, it's not
11 good. Those little things are hairlike, they call them
12 cilia.

13 So here we have a picture of the cilia with, ciliated
14 cells, with a lot of inflammation around it and some
15 congestion. And if you look carefully at this, there is a
16 lot of -- these little blue things here. Those are not
17 normally there.

18 These are inflammatory cells right underneath the
19 mucosa. And the mucosa here, most of those ciliated cells
20 are pretty good, but every now and then some of them are
21 totally gone. And the cells actually have lymphocytes
22 going into them.

23 In my opinion, this is indicative of a lot of chronic
24 viral infection.

25 Dr. Marcus talks about cells having hemosiderin in the

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1 lung. Hemosiderin in the lung can be from ingesting
2 blood. Most people don't do it. They're swallowing. But
3 we get a lot of hemosiderin in our lungs. If we have a
4 cough, we cough a lot, we can tear those little leaves.

5 And when we tear them, they bleed. And when they
6 bleed, cells come, macrophages, big eaters they're called,
7 and they grab those little bits of red cells and they eat
8 them and they turn into hemosiderin.

9 So somewhere in the past three to four weeks this
10 child has had an infection.

11 Now the problem I have with this case is we were
12 looking at less than, his section is -- a micron -- these
13 sections are three microns thick. A hair in cross-section
14 is 40 to 50 microns. So you can see how thin they are.
15 And he's putting a ton of stuff on one slide.

16 I noticed Dr. Vandersteenhoven's slides. He had a
17 huge slide with one big piece of tissue. We had pictures
18 of these slides, but they're little, tiny little muffins.
19 We have a very little sampling error. We're looking at
20 the pebbles, and sure, we're finding some things that are
21 existent but if I looked at all these slides, I have big
22 slides for every single -- lobe of the lung, I have five
23 lung slides. And so in this little bit alone, I can see
24 there's been chronic infection of the lung.

25 Q. Okay. I want to show you what's been marked as

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1 Defendant's Exhibit Number Six and Seven. Is that another
2 area of infection?

3 A. Yes. And this is a little different. This is an
4 artery that's collapsed. And here's a bronchial, one of
5 those little trees, that have collapsed. And arteries are
6 just getting blood into there.

7 And here is this huge area of blue cells. What are
8 those little blue cells? Those are inflammatory cells.
9 Now if we go closer to those cells, and here's a close-up,
10 we have something here called a giant cell. And I'll
11 point it out. Notice how big it is. It's big and pale.
12 It's about 20 times the size of any other cell. That's a
13 giant cell.

14 And over here is an early what we call epithelial
15 cell. It's forming a granuloma. Those are seen in
16 chronic infections. It could be fungus. It could be
17 virus. It could be anything, but since we don't have
18 cultures and good sampling, we don't know what it was.

19 But it just shows this kid's been chronically sick
20 probably with the sniffles and coughs. And if we looked
21 at normal kids we may find this but for some reason I
22 think this infection along with pus coming out of her nose
23 tells me this kid's immune system has been compromised.
24 And she is set up now for a whopping infection.

25 And that's where we're going to go from here.

KESSLER - DIRECT

1 Q. Well, first I wanted to ask you: You did find these
2 areas of inflammation in the lungs. Is this what killed
3 her?

4 A. The areas of inflammation in the lung didn't kill
5 her. It tells us that she's been chronically ill. And I
6 think it's weakened her immune system so something else
7 that normally doesn't kill us comes along and knocks her
8 out.

9 MS. HINES: Okay. Permission to publish these to
10 the jury?

11 THE COURT: Permission granted.

12 (Pause.)

13 BY MS. HINES:

14 Q. Now, Doctor, I'm going to show you what's been marked
15 as Defendant's Exhibits Number Eight and Nine. What are
16 those?

17 A. These are sections of the brain. And exactly where
18 they are, I'll tell you in a second. These are in the mid
19 brain. And you can see normal brain here. And right
20 here, we all know what little blue cells are. There's an
21 area of inflammation. Shouldn't be there. And here's a
22 close-up of that section and you can see the lymphocytes
23 in that area.

24 Now, granted, if I took two more sections down on
25 this, I may cut through this completely. And this didn't

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1 kill her, but it just shows something's going on. So,
2 somebody could have looked at the original slides and not
3 seen this.

4 We need something that's in every single slide that's
5 going to tell us something's going on. But this was
6 real. It's a tiny focus of infection, probably goes along
7 with a little viral infection that she has. Didn't kill
8 her but it's there and it's not normal.

9 Q. And what's a lymphocyte? You mentioned a lymphocyte.

10 A. You have white blood cells. You have polyies which
11 sort of go and give out -- they have a lot of little good
12 guys and bad, so to speak. And they spray bacteria with
13 them when they get close. And they can lyse bacteria.
14 Some cells, macrophages, can eat bacteria.

15 What a lot of cells like to do is, bacteria -- or,
16 against the cell wall, especially in a vessel, and a hunk
17 of something called fibrin, which is a protein that
18 circulates in our blood, can latch on and pit against that
19 bacteria and it makes it immobile and then that little
20 macrophage, the poly come up and kill it and they eat it
21 and they go on.

22 And sometimes if that's overwhelmed, some bacteria are
23 so smart they make anti-fibrins. Fibrinolysis, like
24 streptococcus. What does that mean? So whenever bacteria
25 comes up and slaps it with a hunk of fibrin, they break it

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1 down. And sooner or later you can get a condition known
2 as disseminated intravascular coagulopathy where all the
3 clotting in the blood is messed and they don't clot.

4 Now we had a picture, I saw --

5 Q. Now --

6 A. I'm sorry. Go ahead.

7 Q. We're going to get there.

8 A. Okay.

9 Q. Permission to publish these?

10 THE COURT: Yes. Permission granted.

11 MS. HINES: Thank you.

12 (Pause.)

13 BY MS. HINES:

14 Q. And I'm going to show you what's been marked as
15 Defendant's Exhibits Number 10 through 13.

16 A. Okay.

17 Q. What is that?

18 A. This is very interesting. This is a section of the
19 pons. The pons is in the brain. And I have a picture
20 here of a vessel. And in that vessel you see something
21 that looks like a feather with a long tail.

22 And when I get closer to that, and I'll show you in a
23 minute, that came from somewhere in the body. Why does it
24 have a tail? Because blood has been flowing against it.
25 It's been hanging on, like you see in a stream. So that's

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1 that chunk of infected bacteria and fibrin and macrophages
2 and red cells. It's landed in the middle of the brain in
3 an artery, big artery.

4 Did it kill the kid? Probably not, but it shouldn't
5 be there in a normal kid. And as we get closer we can see
6 this infection with red cells. Little blue cells we know
7 about. And this granular material here is fibrin. It's a
8 clot. Remember I said somehow you start clotting against
9 these bacteria and then it has this long tail?

10 This could have been attached to a heart valve which
11 were not dissected well in this case or sections were
12 taken of them, but it came from somewhere in the body in
13 the arterial side.

14 And if we get very close to this, and I keep getting
15 closer, you can see the clear material. That's fibrin.
16 And you can see the macrophages, lymphocytes and red
17 cells.

18 And the last picture is interesting. This is why I
19 had to use the special scope. It's very high powered.
20 You can see a big section of that fibrin and if you'll
21 notice this in the jury room, you'll see tiny little black
22 things in there or dark things. Probably bacteria.

23 Now the reason I couldn't stain for bacteria in this
24 because when we cut it again, we cut into the block --
25 this is a very small little piece -- it wasn't there. But

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1 I have it here. So we didn't get a Gram stain of it, but
2 it's definitely there and you can see it.

3 That's abnormal. It tells me she's had an infection
4 going on and things aren't working too well. She's
5 clotting and infected clots coming off of something and
6 landing in her brain.

7 Q. Okay. Is this enough to kill her?

8 A. This is -- no, the piece of resistance is coming.

9 MS. HINES: Permission to publish?

10 THE COURT: Permission granted.

11 (Pause.)

12 BY MS. HINES:

13 Q. And I'm going to hand you what's been marked as
14 Defendant's Exhibit Number 14.

15 A. All right. This is another section of brain, a
16 different area, a separate artery, and another infected
17 frontus here. It looks like the other one. It's not as
18 dark.

19 So now we have two vessels in the brain with infected
20 thrombi in that, granted, if you cut this section and
21 looked at the original section, you could have missed it.

22 But I have it and that's all I need. So whether they
23 saw it or not, we have it here. And I have the slides
24 here that show this.

25 MS. HINES: Permission to publish this to the

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1 jury?

2 THE COURT: Permission granted.

3 (Pause.)

4 BY MS. HINES:

5 Q. Now I'm going to show you what's been marked as
6 Defense Exhibit Number 15. What is this?

7 A. I'll tell you what it -- first of all, I'll show you
8 what this is. This is an organ. Okay. This is the
9 adrenal.

10 First I'm going to show you the periadrenal tissue.
11 That's all Dr. Bradley (sic.) said was hemorrhagic. This
12 red material here is the periadrenal tissue. That's
13 blood.

14 But guess what else? All this stuff, that red, I
15 actually thought it was congestion. I looked very closely
16 with a very powerful microscope. It's all blood cells and
17 the cells of the cortex in the medulla, mostly the cortex,
18 all the adrenal cells are dead. The adrenal is shot. It
19 is gone.

20 You do not make epinephrine or adrenaline. You do not
21 make corticosteroids which help you fight off infection.
22 You do not make primary steroids. So many different
23 things the adrenals make. You cannot live with (sic) your
24 adrenals.

25 This is what killed the child. It killed her in

KESSLER - DIRECT

1 hours. Her weakness, her vomiting, her nausea, her
2 symptoms were minimal, but sometimes you don't even get
3 that. I have articles where this is only diagnosed at
4 autopsy.

5 But bilateral adrenal hemorrhage is what we have here
6 without any real trauma over it.

7 MS. HINES: Permission to publish?

8 THE COURT: Permission granted.

9 (Pause.)

10 BY MS. HINES:

11 Q. When you saw this adrenal -- when you looked at the
12 slide on the adrenal, is that when you wanted the special
13 stains done?

14 A. Yes.

15 Q. And why did you want special stains done?

16 A. I wanted to know what that was. I mean, I know
17 there's some kind of bacteria in there causing it or it's
18 a virus.

19 Now, I did special stains of the lungs. And they were
20 not positive for any bacteria but it looked viral because
21 of the cells that were there.

22 Here we have macrophages eating adrenal tissue. And
23 on the special stains which are Gram stains now under high
24 magnification, I could see thousands upon thousands spread
25 out throughout the tissue of Gram-positive lancet-shape

KESSLER - DIRECT

1 diplococcus streptococci pneumoniae. What subspecies I
2 don't know.

3 It's a thing we carry in our nose occasionally. Most
4 adults are immune to it, but kids don't have good immunity
5 to it and kids can easily die from it. And it's now one
6 of the more common causes of death in bilateral adrenal
7 hemorrhage.

8 It used to be meningococcemia. It's not wildly
9 infectious. I wouldn't touch that material without masks
10 and gloves because I don't know how infectious it is, but
11 most of you probably are okay. If you have a weakened
12 immune system, you're in chemotherapy, you're on drugs
13 for, aspirin drugs, what have you, nonsteroidal anti-
14 inflammatories, you could get this very easily.

15 And it can live in your nasal sinus which is where I
16 think this lived because we have that picture of the
17 girl's nose with pus hanging out. I didn't publish that.
18 You've already published that.

19 So we have the pictures now showing the bacteria, what
20 killed her.

21 Q. Let me just give you the next exhibits, Numbers 16
22 through 19.

23 A. Okay.

24 Q. What is that?

25 A. These are -- first of all, there's a lot of dead

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1 tissue here. The blue is collagen. The pale blue are
2 mostly red cells. These cells, you don't see them too
3 well, but these are dead adrenal cells. Everywhere.

4 And here you see these little dots here. If you look
5 carefully here, you'll see a poly. That's one of those
6 inflammatory cells and then there's another poly.
7 There's a macrophage. These are all inflammatory cells.

8 This is in the middle of the adrenal that supposedly
9 was trauma and it's full of bacteria. These little dots
10 are bacteria. Two little dots together, that's why it
11 used to be called diplococcus pneumonia.

12 Streptococcus pneumoniae is one of those organisms,
13 remember the flesh-eating bacteria? That's one of them.
14 Most of that is viridans and pyogenes, but it's that
15 species. They're nasty guys.

16 Now I have other slides here showing you closer up.
17 Here's more of the same. They're all over the place. If
18 this was postmortem growth of these organisms, they'd be
19 -- they would grow like a colony because they grow by
20 multiplication. You'd have a big huge dense mass.

21 Here we see them scattered throughout the entire dead
22 adrenal. That wasn't picked up at autopsy.

23 Q. And --

24 A. And here we have more of the same in macrophages
25 eating them. They're being destroyed by -- they're

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1 overcome.

2 And the best slide of all and this, this can only
3 happen while you're alive. Those are macrophages eating
4 these diplococcus pneumonia or strep pneumoniae.

5 It's a Gram-positive organism that's caused her death
6 due to massive adrenal hemorrhage and sepsis and shock.

7 Ninety percent of these kids -- Charlie Brian is the
8 Chief of Infectious Disease and the Chief of Medicine at
9 Provident Hospital here. He's written a textbook on
10 infectious disease, Primary Treatment of Infectious
11 Diseases. I think it was printed in 2003. But he says
12 under the best of treatment if you diagnose this you're
13 more -- if you diagnose it and you're in a hospital, your
14 mortality rate is over 90 percent.

15 Q. And is there a name -- is there a name for what this
16 is?

17 A. Yes. This was first described around the turn of the
18 century. Last century, 2011 (sic), by two gentlemen by
19 the name of Waterhouse and Friderichsen and they called it
20 the Waterhouse-Friderichsen syndrome. It can be caused by
21 meningitis, echovirus, but most likely today it's going to
22 be one of these guys, like a strep pneumonia.

23 It can be caused by numerous different agents but the
24 key is you got to culture it and if you don't culture it
25 you can always get the blocks out and do PCR genetic

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1 studies, but they're expensive.

2 The easiest thing to do is taking that blood when you
3 went to see the body at Baptist and cultured it. See what
4 you get. If it doesn't work, well you still do -- have
5 the slides.

6 Q. And, what are the symptoms of Waterhouse-Friderichsen
7 syndrome?

8 A. Well, funny you should ask but I don't think we
9 started -- we started out way back when when I said, when
10 I first went to the University of -- Jackson Memorial
11 Hospital in Miami where I trained in forensic medicine.

12 I did a ground paper study we called it, where I
13 looked at Waterhouse-Friderichsen syndrome which was
14 meningococccemia then. These were all meningococccemia in
15 1977 because that was the leader.

16 And I looked at 50 cases. And over half of those
17 cases you don't see meningitis. They die too fast. Most
18 of these kids were found at autopsy. And they're usually
19 under 15.

20 Some of them had sniffles. Occasionally they had
21 cough. Occasionally they had fever. A lot of them had
22 nausea and some had vomiting and some had diarrhea but you
23 could have nothing. It has to do with a weakened immune
24 system usually by a primary infection or some underlying
25 disease which knocks you out so that you succumb to it.

KESSLER - DIRECT

1 Waterhouse-Friderichsen syndrome.

2 Q. And, Dr. Kessler, what is your -- what did you
3 determine the cause of death to be in this case?

4 A. Shock. They go into shock. She has no ability to
5 maintain her blood volume at all. And usually when we
6 dictate autopsies, when I did, I always had my fellows in
7 residence discuss how much blood is in the great vessels.
8 You do an autopsy. You take the heart out. Either it's
9 filled with blood like most peoples' are, unless they have
10 heart disease or cancers or what have you, or if you bleed
11 to death because you got a gunshot wound, you don't find a
12 lot of blood in there because you bleed, you die from
13 shock.

14 There's no mention here of what the great vessels had
15 in them. Did they have any blood? Was it filled? Was it
16 a little bit? Was it a lot? It doesn't say anything
17 about that. So, I can't say.

18 The other thing I found interesting was there's a
19 gland in the body called the thymus gland. It's sort of
20 like a -- similar to a spleen. It sits in our neck. We
21 do not have a slide of the thymus gland and it's always
22 taken in all pediatric cases because the thymus gland is
23 this big gland, and it has a whole bunch of these little
24 inflammatory cells with sort of spaceships in the center,
25 we call them Haslips corpuscles, that guide those

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1 inflammatory cells.

2 And if that stress, these guys are usually out here,
3 those little spaceships you have 20 to 30, they shrink
4 when they get next to each other. It's called
5 involution. And I can't tell you anything about
6 involution because Marcus didn't take a section of it nor
7 did he take a section of the trachea which is where you
8 see these infections sometimes.

9 So I've done this on what I was left with trying to
10 retrospect and put it all together. And I think we did,
11 but it would have been nice to know if this kid had other
12 pneumonias.

13 I don't think there's saved tissue here because we
14 could always go back and look at more lung sections and
15 see what was going on in the lungs, but they don't save
16 tissues anymore.

17 Q. Okay. Now, Doctor, in this case there was some
18 testimony as to rib fractures?

19 A. Yes.

20 Q. Have you done any research in rib fractures?

21 A. Yes. Every autopsy we did in that study by Johns
22 Hopkins where I had a grant to do it, we looked at rib
23 fractures and we looked at the lungs.

24 And what we did with the lungs is a special stain.

25 It's called oil red-O. Because fat dissolves when we fix

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1 tissue in our normal processing, you've got to take a
2 frozen section and stain it with this oil stain that's red
3 and it shows up fat globs. We used to do them in all our
4 cases. We saw them all over the place.

5 The more recent the rib fractures, the more aggressive
6 the CPR, the more fat underlie we saw. Some cases we
7 didn't see any. But these fractures, the studies that are
8 done in rib fractures in kids are on kids under the age of
9 a year.

10 Beyond a year if this kid is basically dead, a lot of
11 what keeps the ribs elastic, and they're pretty elastic,
12 they can bend a lot without breaking which is truthful,
13 but think of those old water balloons that you would blow
14 up and fill with water and how sturdy that is.

15 Well think about all the blood that was inside that
16 rib no longer having any of that blood in it because she's
17 in shock. And because of that, those ribs snap like dry
18 twigs, much different than doing CPR on a live child who
19 has normal circulation in her ribs. This child didn't.

20 So those rib fractures, even though I've studied rib
21 fractures in the past, you can see them anywhere, but once
22 you're doing CPR on a dead child, and basically this child
23 was dead, I looked at the reports, you can get any kind of
24 fracture anywhere.

25 I don't think there's any meaning. If that fracture

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1 would have come in and torn the pleura, if it was
2 displaced and it came in and cut the rib, it would have
3 caused exsanguination through a torn rib. That would be
4 significant. That didn't happen here.

5 Q. Doctor, in your opinion, did the rib fracture
6 contribute to DG's death?

7 A. Not at all.

8 Q. Okay.

9 A. Not at all.

10 Q. And. So, please tell the jury what your opinion is as
11 to cause of death in this case.

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

17 And let me say one last thing. These little
18 diplococcus go throughout the body and go throughout
19 little vessels. Remember I said they were attached to
20 vessels and then fibrin will go in there and the white
21 cells will go in there and work on it and try to close
22 it? They make fibrinolysis, so we don't clot the way we
23 usually do. So we will have something. These conditions
24 usually have rashes, and in an African-American child it's
25 not easy to see a rash but often what people think are

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1 bruises -- first of all, they're very friable tissue
2 because these things are already infected. Every vessel
3 in her body is infected.

4 If you touched this kid like you would be touching a
5 child for doing CPR, putting a tube in and putting her
6 neck up and putting an endotracheal tube in, you can cause
7 hemorrhages or purpura. It means purple, and under the
8 surface you can see it.

9 If you took a section of those tissues, you may even
10 see the organism in there but since one wasn't done -- I
11 always do because I can't identify it with my naked eye.
12 I have to take a section to see things. So anyway.

13 And just another thing to say in this case. I did
14 look at the scalp hemorrhage. Even though Dr. Marcus said
15 that he doesn't believe in anything having to do with
16 aging of wounds, he took a section but he didn't look at
17 it or he didn't write a report on it. I looked at it.
18 It's at least a day or two old. It's a clot that is, it's
19 infected. It's not badly infected. It's slowly healing,
20 but it's not a fresh clot. It's not today's clot. It's
21 about a day or two old, and I can't be more specific.

22 Q. Okay. And, Doctor, when you're talking about these
23 bacteria that push up against, the cells that push up
24 against the walls of the vessel, is there a name for that?

25 A. Well, it goes -- it's a very complex name. It's

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1 called consumption coagulopathy or disseminated
2 intravascular coagulopathy.

3 What it basically means is the inflammatory process,
4 inflammation with a bacteria which is very close to the
5 cascade of clotting, it turns on the clotting mechanisms
6 to a point. We get micro clots that dissolve all the time
7 because these bacteria can dissolve clots. Fibrolysins.
8 Hemolysins.

9 These bacteria also have the ability to cause cells to
10 break apart. Strep has something called hyaluronidase.
11 Cell walls are glued together with, like, hyaluronic acid
12 and strep can actually cause these to break apart. So
13 vessels on their own can break apart.

14 Why the adrenals are more effective than anywhere else
15 in the body, I think if the child lived long enough
16 everything would be infected but the adrenals are an organ
17 that you can't live without for more than hours. If it
18 goes, you go.

19 And I think that's what happened here.

20 Q. And, Doctor, a lot of the medical lingo there, the
21 disseminated inter -- what was that one?

22 A. Intravascular coagulopathy.

23 Q. Disseminated -- that --

24 A. DIC.

25 Q. DIC -- that causes bleeding?

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1 A. Yes.

2 Q. More than a normal healthy person would bleed?

3 A. Oh yeah, because your clotting elements are all used
4 up. First the clots are used by the bacteria that split
5 them across and you make more of these. And sooner or
6 later you can't keep up with the amount of clotting
7 material you need and this is what happens.

8 Now, there's tests for that. If the baby lived you
9 could have tested for that. If she was in the hospital
10 you would have seen certain elements of the blood that
11 would show that, but that's just one of the side effects
12 of this disease.

13 I mean, the clotting issue is real. I saw that scalp
14 lesion which was still losing blood after a day or two and
15 that should have been clotted and well fixed and it
16 wasn't.

17 Q. Okay. And so just once again, can you tell the jury
18 in your opinion was **DG** suffering from
19 infection?

20 A. She suffered from an infection due to diplococcus
21 pneumonia. This is a natural disease that probably was
22 set up in her system because of a previous viral
23 infection. Most likely this was centered in her sinuses
24 as we've heard testimony that she blew out yellow mucus,
25 pus, from her nose. And we do have a picture showing pus

1 from her nose that Dr. Marcus showed you before.

2 And I think that's where the ni-ah-tus (phonetically)
3 is and it just took over her weakened immune system and
4 she died from that, catastrophically, rapidly and unhelp
5 -- she couldn't be helped no matter what. She was too far
6 gone.

7 This is a natural disease. No evidence of foul play.
8 No evidence of trauma.

9 Q. And just to clarify that last thing that you said. Is
10 there anything that anybody could have done here?

11 A. No, not at all.

12 MS. HINES: No further questions.

13 THE COURT: Thank you.

14 All right. Ladies and gentlemen, before we begin
15 our cross-examination, I'm going to give you a 10-minute
16 break or a 15-minute break and then we'll come back.

17 If any of you need to make a phone call to let
18 someone know we're going on late tonight, Bailiff, if you
19 could make that available. Some people might have baby
20 sitters or something.

21 Thank you. Please do not discuss anything about
22 the case at this time.

23 (Jury exits courtroom at 4:45 p.m.)

24 THE COURT: Doctor, for all practical purposes
25 you may get up and walk around, but you're still on the

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1 stand so you may not discuss the case with anybody.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Court's in recess until
4 five o'clock.

5 (Thereupon, at 4:46 p.m., a recess was taken,
6 following which the trial resumed:)

7 THE COURT: All right. Let's bring our jury in.

8 (Jury enters courtroom at five o'clock p.m.)

9 THE BAILIFF: Jury is seated, Your Honor.

10 THE COURT: Thank you. Ms. Campbell, cross-
11 examination.

12 MS. CAMPBELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. CAMPBELL:

15 Q. Doctor, you were hired by the defense in this case?

16 A. Yes, I was.

17 Q. And when did they hire you or contact you?

18 A. Oh, about six weeks ago.

19 Q. About six weeks ago. Would it be fair to say maybe
20 mid February, late February was the first time they talked
21 to you?

22 A. Possibly. Sure.

23 Q. And the first time that you requested any slides in
24 this case would have been toward the end of February; is
25 that correct?

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1 A. After I got involved with the case, yeah. I took it
2 home and I had a lot of other things I was doing.

3 Q. So the first time you became aware that this case even
4 existed was mid to late February of this year. So in the
5 last three, maybe four weeks?

6 A. Yeah.

7 Q. And you aren't doing this for free, are you, sir?

8 A. No, I'm not.

9 Q. And it's not part of your job like it's part of
10 Dr. Marcus's job, Dr. Vandersteenhoven, the other
11 Dr. Marcus, all of those people?

12 A. Not at all. I used to work for them, too.

13 Q. We'll get to that in a minute.

14 A. But I don't anymore. I work here.

15 Q. How much are you getting paid an hour?

16 A. I'm getting a total cap of six -- six-sixty for the
17 entire case. I put in over 35, 40 hours.

18 Q. You're getting how much?

19 A. \$6,600.

20 Q. And you put in 30 hours?

21 A. Forty.

22 Q. Forty. Excuse me.

23 A. Forty hours.

24 Q. And you've testified before in other cases in this
25 courthouse?

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1 A. Yes, I have. Numerous.

2 Q. In those cases you testified that you got paid like
3 \$500 an hour?

4 A. That is correct.

5 Q. And then subsequent to that you said that you got a
6 cap and then when you billed for it, it was more than
7 that?

8 A. I'm sorry?

9 Q. The total was more than what you admitted to in court?

10 A. I had gone over and sat in through an entire week's
11 worth of testimony that I didn't intend to do initially
12 and then I billed for that time. And I wasn't -- I didn't
13 collect for it because we didn't put in for it up front.
14 But an exact dollars-and-cents amount, I don't remember
15 those things.

16 Q. Do you remember if it was in excess of 10- \$15,000?

17 A. Never. Never. I've never billed for -- this state
18 more than, I'd say, 55- \$6,500.

19 Q. But it's your policy, you've told us before that you
20 don't testify unless somebody pays you?

21 A. I'm sorry?

22 Q. You don't testify unless somebody pays you?

23 A. I meet people and I don't testify unless I get paid to
24 testify. That's correct. That's my job. That's what
25 supports me.

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1 Q. And in the last four weeks you were able to, I
2 believe, review the pathologist's report?

3 A. The pathologist's report?

4 Q. Uh-huh.

5 A. You mean the slides?

6 Q. Did you not review his report like you testified?

7 A. I reviewed the report prior to that. The report has
8 been changed.

9 Q. You reviewed the slides; is that correct?

10 A. I reviewed the slides.

11 Q. And then you requested some additional slides and
12 those were provided to you?

13 A. That is correct.

14 Q. Did you ever review the pediatric records in this
15 case?

16 A. No.

17 Q. And do you remember testifying on that, on a prior
18 case that there's no way to come to a true conclusion in
19 pathology unless you review all the records?

20 A. I may have but the circumstances warrant evaluation of
21 each case as a unique case. When somebody comes in with a
22 gunshot wound and half his body is missing, it's obvious
23 what happened.

24 When somebody comes in with adrenal hemorrhage
25 bilateral, it's obvious where you got to go. You don't

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1 need to see all the records. If I didn't have that after
2 I reviewed all of the slides and the special stains, I
3 would have probably then asked for more records. But I
4 was able to determine the cause of death without needing
5 to do that.

6 Q. Even though this was a horribly botched autopsy by
7 your estimation?

8 A. Let's just put it this way: I wouldn't have done
9 things that way. Everybody does things their own way but
10 it's not the way I do things.

11 Q. But luckily for us you're able to come to this
12 determination despite all the deficiencies you've talked
13 about here today?

14 A. I don't understand what you mean by luckily for us.

15 Q. Were you able to come to all these conclusions despite
16 all the deficiencies you've testified to?

17 A. I was able to review what was left of the slides and
18 do special stains, fortunately there was tissue left, and
19 come to the conclusions I came to today based on the
20 slides and the special stains that I did.

21 Q. And when did you come to those conclusions, sir?

22 A. I came to those conclusions, probably, let's say it
23 was, like, Friday. I was working on this case Friday
24 morning.

25 Q. Friday morning?

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1 A. Friday morning. I was at the university where I
2 worked with some other people on this, and reviewed it,
3 and ran over and took some photographs.

4 Q. Okay.

5 A. And I didn't get the two people 'til, I think,
6 Monday. Could have been Saturday or Monday. I don't know
7 when.

8 Q. You didn't get what to the people, your report?

9 A. No. No report.

10 Q. Where is your report?

11 A. In my head. I didn't need to write a report. My
12 report are my photographs. It was obvious. This is not
13 something you need to sit and describe. It is so obvious
14 by looking at this you know what the cause of death is.
15 You can see the bacteria.

16 Q. You didn't write a report?

17 A. I didn't -- I wasn't asked to write a report. If I'm
18 asked to write a report, I write a report.

19 Q. And on Tuesday -- you've been here all day yesterday,
20 which I assume you're billing for; is that correct?

21 A. Correct.

22 Q. And all day today?

23 A. Correct.

24 Q. And at some point my co-counsel, Ms. McDuffie, came up
25 to ask you about what you thought about the case?

KESSLER - CROSS

1 A. That's correct.

2 Q. And you told her you wouldn't talk to her?

3 A. No. I said, you'll hear about it in court.

4 Q. Was there any --

5 A. That's why we're having a trial. That's why we're
6 having a trial, starting trial.

7 Q. Isn't it normal to issue a report as a medical doctor
8 or a forensic pathologist?

9 A. If I'm paid to issue a report and people want me to
10 issue a report, I will. In some cases I do and many cases
11 I don't.

12 Q. Well, you don't have anything to hide so there is no
13 reason you wouldn't tell her what your opinion was; is
14 there?

15 A. If people want a report, they request it. When I work
16 for you, if you wanted a report, you would request it. We
17 did cases together. And if you needed a special report, I
18 would have given you one.

19 Q. And let's talk about back when you used to work for
20 this group, who Dr. Vandersteenhoven and Dr. Marcus now
21 work for?

22 A. Correct.

23 Q. And you were employed by them from 2005 until, I
24 think, August of 2007?

25 A. Correct.

KESSLER - CROSS

1 Q. And you have a bias or prejudice towards them; don't
2 you?

3 A. Not at all, because when I left the group they hired
4 me in the hospital. I worked there as a quality insurance
5 officer for almost another year.

6 Q. You weren't --

7 A. I used to come down and have lunch with Jay. And I'd
8 meet with the people downstairs. Jay and Jeff and I were
9 very close. I'd eat in the doctors' cafeteria. I go
10 there still, so I don't see a problem.

11 Q. Why were you terminated?

12 A. I was not terminated. I was asked to not continue.
13 Gary and I didn't see eye to eye on a lot of things.
14 Gary's a nice guy, but we had a lot of differences of
15 opinion as sometimes happen when people get to be my age,
16 and it was felt better that we go ahead and not do it.

17 Also I had some medical problems. I think Ms. Benson
18 was there when I collapsed in the morgue one day. So I
19 needed to slow down. And I since then have had more stuff
20 done with my heart. I had a pacemaker put in, if you must
21 know. So it was better that I didn't continue working
22 that way and do autopsies.

23 Q. (Inaudible) subject to Dr. Catalano whose testimony is
24 that you were not terminated --

25 A. That's correct.

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1 Q. -- by Gary Watts?

2 A. No.

3 Q. It was by Dr. Catalaho, the head of the group?

4 A. I was not terminated by Gary Watts but it was Gary's
5 recommendation that I not continue because I didn't think
6 that the cases were done the way I wanted them to be
7 done.

8 And Gary and Ed play cards together every Tuesday
9 night, which is fine. They have a gin -- a game, and
10 they're friends. And so, that's a relationship that they
11 have which is nice, but then Ed went out of his way to
12 make sure I worked in the hospital for almost another year
13 and a half for --

14 Q. Are you --

15 A. -- Dr --

16 Q. Excuse me. Are you telling this jury that you weren't
17 terminated because of deficiencies in your performance?

18 A. I didn't have any deficiencies in my performance.

19 Q. Do you remember Jane Howell with the coroner's office?

20 A. Yeah. That was one of the problems I had.

21 Q. And Jane Howell I think is here in the courtroom?

22 A. Yes.

23 Q. Can you stand up?

24 (Woman in courtroom stands.)

25 Do you remember -- and when you went to Alaska I

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1 believe you testified you worked on, was it public
2 safety? Safety procedures? That's important. And in
3 this case you've criticized Dr. Marcus because he could
4 have exposed people to this disease; is that correct?

5 A. I think I said that.

6 Q. When you --

7 A. We didn't know what the disease was. We had to
8 determine what it was.

9 Q. When she was in the morgue with you on that day and
10 you threw feces and blood on her --

11 A. That's a lie.

12 Q. -- was that part of protocol?

13 MS. HINES: Objection.

14 THE WITNESS: That's an outright lie.

15 THE COURT: What's your objection?

16 THE WITNESS: That's an outright lie.

17 THE COURT: Hold on.

18 MS. HINES: Pursuant to rule -- badgering the
19 witness.

20 MS. CAMPBELL: Bias.

21 THE COURT: Can show bias or prejudice.

22 Overruled.

23 MS. HINES: Thank you.

24 BY MS. CAMPBELL:

25 Q. You don't recall that?

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1 A. Didn't happen.

2 Q. Do you recall the day that you sprayed Kristine Benson
3 with the coroner's office with water from an exposed
4 valve?

5 A. Kristine Benson walked in front of me as I was
6 cleaning a table and she was in a full ape suit on a case
7 we had cleaned up, and she was upset about that but she
8 walked in front of me cleaning the morgue. And that's
9 what happens in the morgue. People get wet. She wasn't
10 infected and we'd already finished cleaning.

11 It's not my issue. It seemed like they didn't want me
12 around so they found these things to fabricate these
13 issues.

14 I used to complain because Ms. Taylor would do body
15 work and she would never take body weights. She would
16 never do body temperatures on the outside. Complained
17 about that. Was a case I reviewed for -- and I was just
18 aghast at her work. And I didn't like it. And I talked
19 to Gary about it and we just didn't get along with that.

20 Q. And just like you --

21 A. But she didn't do body temperatures which is important
22 to determine the time of death of a corpse, especially a
23 young woman that was in a car for 36 hours. She didn't
24 take a body temperature. It would have been important to
25 know what part of that time of that 36 hours that the

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1 woman was lying in there, the initial part or the last
2 part so --

3 Q. And who is Ms. Taylor?

4 A. Huh?

5 Q. Who is Ms. Taylor?

6 A. She was working for the office. Jane Taylor. That
7 was her name then. I don't know what her name is now.

8 Q. So, you were doing the right thing and they just got
9 in the way?

10 A. I didn't say that. Let's just say we had differences
11 of opinion and I didn't want to stay there any more. And
12 I talked to Ed about it and I left. And Ed found me
13 another job in the same hospital.

14 Q. You were terminated.

15 A. Ed found me another job in the same hospital.

16 Q. But you show no bias or prejudice towards these
17 people; that's your testimony?

18 A. As I said, I saw Jay today. We hadn't talked for a
19 while. Asked how Anne was, how the kids were. I see them
20 in the infectious disease conferences. I saw Zem. Zem
21 and I get along. We all get along.

22 I stay out of the way of Ms. Taylor, that's for sure,
23 but the other people there I get along fine with. I have
24 no prejudice. I've eaten lunch with them. I've eaten
25 lunch with Jeff Walsh who's the new chief of the

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1 department. I eat there often.

2 So I don't have an issue with them.

3 Q. Do you remember being here in the courthouse
4 yesterday?

5 A. Yes.

6 Q. Do you know who Zem Dozier is?

7 A. Yes.

8 Q. Do you remember mid-morning yesterday going to the
9 restroom and he was there and you having a conversation
10 with him?

11 A. No. I just said hi, how are you doing.

12 Q. Do you remember telling him you have cases for the
13 State, some cases for the defense, whichever side pays
14 you?

15 A. No, not at all.

16 Q. So Mr. Dozier would be making that up?

17 A. I don't know why.

18 Q. And that's Mr. Dozier right there; right?

19 A. That's Zem right there.

20 Q. And did you know at the time that one of the
21 investigators was in the bathroom?

22 A. No.

23 Q. And he heard it also?

24 A. I'm sure they did. This is -- it's obvious.

25 Q. What's obvious, sir?

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1 A. That they're colluding together to do this, but that's
2 fine. They can do it if they want.

3 Q. All of these people independent of each other are in
4 collusion against you?

5 A. Well, obviously they're scared of something or they're
6 trying to discredit me. I don't know what's going on. As
7 far as I'm concerned, I have no ill will towards them at
8 all. Life goes on.

9 Q. Life goes on?

10 A. Life goes on, Ms. Campbell.

11 Q. You talk about how this child suffered from, how did
12 you put it? Pneumococcus?

13 A. No.

14 Q. That was your testimony.

15 A. No, it wasn't.

16 Q. Okay. What is it now?

17 A. You can read it again. Streptococcus pneumoniae.

18 Q. Streptococcus pneumonia?

19 A. Dip -- the old name is diplococcus and now it's
20 streptococcus pneumoniae.

21 Q. And is that different from pneumococcus?

22 A. It's -- pneumococcus is sometimes a vernacular. Some
23 people can call it pneumococcus but it's one of the names
24 for it.

25 Q. If I were to tell you -- it's one of the names. Okay.

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1 We agree?

2 A. One of the names for it. People call it strep
3 pneumonia. Some older people like me call it diplococcus
4 because the little two triads, but it's all the same thing
5 and by DNA they decided it belongs in strep because it
6 also forms chains.

7 Q. Yes, sir. And in this case you've gone on and on
8 about whichever name you want to give it, pneumococcus --

9 A. No, not whichever name. It's diplococcus pneumoniae
10 or strep pneumonia. It's one of those nasty
11 streptococcus.

12 Q. Are you aware there's an immunization for that?

13 A. Yes, there is.

14 Q. And are you aware this child was immunized for that?

15 A. No.

16 Q. You didn't bother to review her records so that she
17 could not have suffered from this disease you just
18 testified to?

19 A. Don't need to, because 30 percent of the people that
20 are immunized can still get the disorder. The immunity
21 doesn't work too well -- the vaccine doesn't work too
22 well. That I do know.

23 Q. You also testified this child suffered from -- let me
24 go back. Sepsis?

25 A. Sepsis.

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1 Q. Chronic infection?

2 A. Yep.

3 Q. Her immune system was compromised. She had a viral
4 infection, clotting of the blood, infective bacteria in
5 the brain artery, another infected thrombus in another
6 part of the brain, her adrenal is shot or gone, bacterial
7 or viral in different phases. You testified to all those
8 phrases?

9 A. That's correct.

10 Q. And she wouldn't have any symptoms?

11 A. She had symptoms. She had symptoms.

12 Q. Did you look at her medical records?

13 A. I read his statement. She was vomiting. She probably
14 collapsed instead of fell down stairs. She had diarrhea.
15 She was weak. She had symptoms. It's more than most
16 people. She vomited a lot. That may be the only symptoms
17 you have. Meningeal or any of those things may or may not
18 be present. I've already stated that. You don't have to
19 have symptoms to have this disease. Okay? It's been said
20 about 10 times.

21 Q. Okay. Can I just ask you a couple more questions?

22 A. Sure.

23 Q. As far as this goes, the night before if I were to
24 tell you that other people saw her running around,
25 laughing, playing, non-symptomatic, that wouldn't affect

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1 you in any way?

2 A. You don't always have to appear ill to everybody, but
3 at the same token the people that saw her ill reported
4 it. Not everybody looks at kids the same way. When
5 they're your own kids, you may see things others don't
6 have but certainly pus coming out of her nose is not a
7 normal sign.

8 Q. You've never seen a child with a snotty nose?

9 A. I had three kids and they never had pus coming out of
10 their nose. There's a difference between mucus and
11 yellow-green pus. Yellow-green pus is not thick mucus.
12 It looks very different. What was described and what I
13 see in the autopsy photo is pus, and that's a little
14 different than mucus.

15 Q. And you're able to date the scalp hemorrhage, this
16 blunt-force trauma to the head, as being at least a day or
17 two old?

18 A. Day or two old. It's not the most accurate thing --

19 Q. Did you --

20 A. -- in the world but it's not fresh. Fresh hemorr --
21 can I finish? Fresh hemorrhage is purple-red blood
22 without any inflammatory component. This has inflammatory
23 components. It has neutrophils. It has some little, a
24 few macrophages. It may be even older than that.

25 The point is, it's not acute. It's not -- it's older

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1 than six hours. It's probably within a day or two at
2 most.

3 Q. So now it's older?

4 A. To be more specific, it's not a specific thing but
5 it's not the end of the world here. We're not talking
6 about -- acute hemorrhage is very different. This is not
7 acute.

8 Q. It's not the end of the world? A child had died.

9 A. This is not the end of the world. If we have to go
10 from this hour or is it that hour. I'm not talking -- I'm
11 talking about something very different here. The timing
12 of wounds is not the most accurate thing in the world.

13 Dr. Marcus doesn't even take sections or look at
14 them. He says he doesn't believe in it, but then he takes
15 it and he doesn't look at it. I agree it's not the most
16 accurate thing, but I can differentiate between something
17 that happens within six hours versus something that
18 happens in a day or two. And they're totally different.
19 So that's what I'm talking about.

20 Q. And that day or two just happens to coincide to
21 corroborate the Defendant whose defense lawyers hired you?

22 A. It's the science corroborated by me.

23 Q. Let's talk about rib fractures.

24 A. Uh-huh.

25 Q. Your testimony is that -- and I didn't understand your

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1 testimony. So maybe you need to tell me. The rib
2 fractures were caused maybe by the CPR, maybe by blunt
3 force trauma or, what?

4 A. It was caused from CPR. The amounts, initially I
5 think Dr. Marcus said there was just a few areas of fat
6 emboli but if you read his report, numerous areas of fat
7 emboli. That's vigorous CPR. That's vigorous CPR. And
8 that's what that is from. From nothing else.

9 Q. Okay. Now, Doctor, and you've referred to how you did
10 a study on rib fractures at some point. You're talking
11 about something at Johns Hopkins; is that correct?

12 A. Yeah.

13 Q. Are you familiar with the article Rib Fractures in 31
14 Abused Infants Postmortem Radiological Histopathological
15 Study?

16 A. It's an article I wrote with Kleinman years ago. I
17 basically gave them the cases.

18 Q. Uh-huh. And in the first line in this thing says, rib
19 fractures have a strong association with infant abuse.
20 They result in manual thoracic compression as well as
21 blunt injury.

22 A. Correct. What's the age group there, Ms. Campbell?

23 Q. The age group?

24 A. That you're talking about?

25 Q. It's going to be up to a year.

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1 A. That's right. All under one year of age. The ribs
2 change and get thick. What we're talking about in that
3 study, which I wasn't going to bring up, is when you grab
4 a child from behind and you got the ribs. The ribs insert
5 to the vertebral bodies and your fingers can actually snap
6 those areas with the vertebra, in the back.

7 But these are in very young children, under one year
8 of age. After one year of age the ribs get thicker and
9 they don't have the propensity to break like that, but we
10 found fractures all over the place.

11 Q. Doctor, do you recognize the American Academy of
12 Pediatrics?

13 A. Do I recognize it? I don't know what you mean.

14 Q. You don't know who the American Academy of Pediatrics
15 is?

16 A. They're a group of pediatricians who get together and
17 publish literature.

18 Q. Well, would you say that they're the leading one in
19 the nation?

20 A. Well, I only look at the forensic journals but I'm
21 sure they are a good, I'm not going to say they're a bible
22 or I'm not going to say they're the best.

23 Q. How about Child Abuse, Medical Diagnosis and
24 Management, Third Edition, American Academy of
25 Pediatrics? Would you say that that's a reputable source?

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1 A. Well, since I worked with Mr. Reese, Richard Reese,
2 Dr. Reese was at Tufts and we used to give him cases.
3 Some things I agreed with and some things I didn't. I
4 don't know if he's still there. That's Northeastern
5 Medical School in Boston.

6 Q. And some things you agreed with --

7 A. We used to review our child abuse cases and we started
8 using Dr. Kleinman and Dr. Newbower at Children's Hospital
9 over Dr. Reese because we did not like the work he was
10 giving us. So I do know who he is.

11 Q. So once again, another doctor who's just not very good
12 at what he does?

13 A. He's fine but we chose not to use him. We had a
14 limited budget and we worked with Dr. Kleinman. You know
15 why? Because he didn't charge us anything. He was part
16 of the state, too.

17 Q. Not like you.

18 A. And Dr. Reese charges a lot of money.

19 Q. Like you?

20 A. Not me.

21 Q. And in this -- some say this is one of the leading
22 things on child abuse of the nation and it's published by
23 the American Academy of Pediatrics which is a pretty
24 renown group. You'd agree?

25 A. I'm not going to agree to anything. I don't know. I

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1 don't know that literature. And I haven't worked with
2 Dr. Reese since 2001.

3 Q. In this it says rib fractures from abuse are
4 frequently multiple. Posterior and lateral locations for
5 the fracture are common features based on a suspected
6 mechanism of AP compression of the thorax. Then it goes
7 on.

8 A. Yes.

9 Q. However rib fractures from CPR are very unusual, only
10 three in 923 patients. In those cases of fractures
11 associated with CPR, all were noted to be anterior. What
12 does anterior mean?

13 A. In the front.

14 Q. Thus CPR is not an adequate explanation as a source
15 for most rib fractures and in particular the classic post-
16 lateral rib fractures often seen with child abuse.
17 They're just wrong?

18 A. I don't agree with them. I worked with Dr. Reese. I
19 worked with Dr. Kleinman. I liked Dr. Kleinman. We used
20 him to do our studies. Your own expert referred to
21 Dr. Kleinman.

22 Q. Uh-huh. And he agrees with Dr. Kleinman and other
23 doctors, unlike you.

24 A. Well, I have a choice now to read the material they
25 write and to determine who I want to use as an expert and

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1 what to believe and not to believe. I have a lot of
2 experience and I make my own choices, not what someone
3 tells me is something I should choose.

4 Q. And if they pay you, you'll come to court and testify?

5 A. I'm sorry?

6 Q. And whoever pays you, you'll come to court and
7 testify?

8 A. That is not true. A lot of cases I turn down because
9 I don't think they're good cases. And I don't go to court
10 and testify.

11 Q. And this --

12 A. I'd say I turn down more than half the cases I have.

13 Q. In this case the cause of death, you said, every
14 vessel in this body was infected. And you have gotten
15 there and blown up all these photographs; right?

16 A. Correct.

17 Q. And these infections were so prevalent that you saw it
18 in the lungs, in the brain tissue, in practically
19 everything you looked at, as you've testified before this
20 jury here today. There was infection after infection
21 after obvious sign of infection in all these pretty
22 pictures; right?

23 A. That's what sepsis is. It's in the bloodstream. The
24 blood goes throughout the whole body. If there's bacteria
25 in the blood, it's going to take it to the lungs, the

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1 liver, the spleen. We have evidence of this in the
2 spleen. We have evidence of this in the adrenals. I
3 didn't stain every single tissue, but there's old
4 infection in the lungs. I saw that. And sepsis is blood
5 infection and that's what we're talking about.

6 Q. And all these different doctors have reviewed it, the
7 emergency room doctors saw her, everyone saw it, the
8 pathologist, that's been reviewed by another pathologist,
9 and you are the only one that caught all this infection
10 that's just everywhere?

11 A. Thank God, Ms. Campbell. That's why we have a
12 democratic system in this country. Thank God. People
13 have independent minds to review things and have their own
14 opinions.

15 And sometimes you'll buck the establishment, but if
16 you do and you're right, then you win some. And sometimes
17 you don't, but the bottom line is you keep trying.

18 And in this case, this was a pretty obvious cause of
19 death. You may not like what I said, but I stick to my
20 report in my head, I stick to my slides, and in my opinion
21 it has not changed.

22 Q. And this child's death was caused by disease?

23 A. It was caused by disease and this was reviewed by
24 another pathologist who also agrees with me. If you like,
25 I can give you his report that he gave me. That it's

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1 not -- would you like to see it?

2 MS. CAMPBELL: Your Honor, we have a matter of
3 law to take up.

4 THE COURT: Very good. Ladies and gentlemen, I'm
5 going to send you back to the jury room for a few moments
6 while we take up a matter of law.

7 (Jury exits courtroom at 5:30 p.m.)

8 MS. CAMPBELL: May it please the Court, Your
9 Honor. We asked earlier if there were any reports in this
10 case. We have asked, and we filed reciprocal Rule Fives
11 in this case.

12 He testified under oath as to what he relied on.
13 It was never mentioned in any other reports from any other
14 pathologists or anything of that nature.

15 At this time we have not been provided with
16 this. He was going to hand me a piece of paper. I have
17 no idea what it is.

18 THE COURT: Okay.

19 MS. HINES: Your Honor, the report that he is
20 talking about is a letter from a pathologist that he
21 consulted with. As I read Rule Five, I have to turn over
22 all the reports that I intend, or experts that I intend to
23 use in my case in chief. I did not intend to call this
24 expert.

25 THE COURT: That's hearsay. He wouldn't be able

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1 to put it in anyway.

2 MS. HINES: Correct.

3 MS. CAMPBELL: I think we have a right to review
4 anything that he's relied on in making any decisions in
5 this case. Simply when asked, he didn't provide it.

6 THE COURT: I think you have that right. How
7 long do you need to look at it?

8 MS. CAMPBELL: If I could see it, I can probably
9 tell you.

10 THE COURT: All right.

11 THE WITNESS: By the way, I took this to him
12 because I have to use the microscope at the school. And
13 he was looking at it with me and he agreed with me. I
14 didn't say, what do you think --

15 THE COURT: Sir, just hand her the piece of
16 paper.

17 THE WITNESS: Okay. (Complies.)

18 MS. CAMPBELL: If I could just make a quick copy,
19 Your Honor, I think we could move on.

20 THE COURT: You may.

21 (Pause.)

22 THE COURT: Let me ask: Are there any other
23 documents that are going to be revealed that have not been
24 revealed to the other side?

25 MS. HINES: No.

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1 MS. McDUFFIE: Nothing on the State's side.

2 MS. CAMPBELL: Your Honor, at this point are
3 there any other -- we would just ask this witness while
4 the jury's out, are there any other reports or anything
5 else that he's relied on other than what he's testified
6 to?

7 THE WITNESS: I'm not relying on it. I know what
8 it is. I didn't use this to make a diagnosis. I have
9 made a diagnosis, and that was just so I could use the
10 microscope and take the pictures.

11 MS. CAMPBELL: So that's all. You didn't rely on
12 that?

13 THE WITNESS: No, because I really knew what it
14 was. I already knew what it was. It's not any different
15 than what I said.

16 THE COURT: All right. Let's bring our jury back
17 in.

18 MS. CAMPBELL: Thank you, Your Honor. I'm
19 sorry.

20 (Jury returns to courtroom at 5:33 p.m.)

21 THE COURT: Let me see the attorneys up here for
22 just one moment.

23 (Off-the-record discussion.)

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

25 THE COURT: All right. Ladies and gentlemen of

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1 the jury, you will strike the last statement made by the
2 Defendant -- excuse me, not Defendant, by the defense
3 witness. Thank you.

4 BY MS. CAMPBELL:

5 Q. Doctor, just to back up for a minute. Your basic
6 opinion of this pathologist's work is he did a horrible
7 job?

8 A. My basic opinion is the pathologist's work, he skipped
9 corners. He put people at risk by not doing the proper
10 job that he should have. And it wouldn't be what I'd do.
11 I'm not going to say he's horrible or use an adjective
12 like that. It's just not what I would do, and I'll leave
13 it at that.

14 Q. And despite that, though, you were able to determine
15 here in the week before trial what the true cause of death
16 is?

17 A. Fortunately, I was. And I was surprised that I was.

18 Q. And this child, even though she had fractures of the
19 ribs which are indicative of abuse a hundred percent of
20 the time where they are --

21 A. I'm not agreeing with you. You're just making a
22 statement.

23 Q. -- that she died from disease?

24 A. That is correct. This is disease you do not recover
25 from. In and of itself, it's almost -- when treated by

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1 Dr. Brian who is your local doctor here -- 90 percent
2 fatal.

3 Q. Okay. And do you remember testifying in a case
4 US versus Austin, last year?

5 A. That is a case in -- let's see. That was in
6 Georgetown.

7 Q. Washington, DC.

8 A. Billy Carnes, Sirocca (phonetically), minimally.

9 Q. And that child by the autopsy report suffered from
10 multiple blunt impact trauma including fractures of the
11 skull, contusions and lacerations of internal organs and
12 internal hemorrhage and fractures of the ribs; is that
13 true?

14 A. That's not something I can answer as a simple yes or
15 no.

16 Q. And in this case you did a report?

17 A. I can't answer it as a simple yes or no because the
18 medical examiner that did the autopsy was supposedly, to
19 be a boarded pathologist for 26 years. She operated under
20 the auspices of Marion Berry and flunked her boards twice
21 and didn't seem to know what she was doing. So that's the
22 background of what you're talking about.

23 Q. Yet another doctor that didn't know what they're
24 doing?

25 A. There are a lot of doctors that don't know what

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1 they're doing. Thank God that some people do.

2 Q. And despite the skull fracture, the depressed fracture
3 of the skull, the hemorrhaging, the marked cerebral edema,
4 the fractures of the rib, the contusions and lacerations
5 of the lung, the liver, mesentery, the spleen, kidneys,
6 the adrenal glands, you found that she died from chronic
7 heart disease?

8 A. Yes. Because there was no blood. When you fracture a
9 skull you have bleeding and blood. This is a child who
10 had a torn mesentery, a torn liver, a torn everything
11 under the sun. She had three line backers doing CPR for
12 almost an hour on her. And she had no blood in her
13 abdominal cavity except less than an ounce, half ounce.

14 So with that case in mind, yes, that kid had a very
15 bad disease. She had fibrosis of the heart and her
16 liver. She had G6PD deficiency which I think killed her.
17 But that's my opinion and people have their own opinions,
18 but I don't think she died from trauma.

19 Q. Because you testified that she had an enlarged heart
20 but you messed that up because you got her age wrong. Do
21 you remember that?

22 A. No, not at all. Not at all.

23 Q. And it was the CPR that caused the depressed fracture
24 of the skull, the cerebral edema, the fractures of the
25 ribs, the lacerations of the lung, the liver, the spleen,

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1 the kidneys and the adrenal glands?

2 A. They actually admitted when they ran the patient to
3 the hospital they whacked her head up against the door
4 frame.

5 Q. That did it?

6 A. That probably caused it, but she was basically dead
7 when that happened. That's why there was no bleeding. I
8 have never seen a depressed skull fracture without
9 cerebral edema and without bleeding. And the brain was
10 normal, so I don't know how that happens.

11 But that's only my opinion and everybody's entitled to
12 their opinion in a democracy. And that's why we have
13 courts, ma'am. And that's why I testify and somebody else
14 can testify to something else.

15 MS. CAMPBELL: I have nothing else.

16 THE COURT: Any redirect?

17 MS. HINES: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. HINES:

20 Q. Do you still have pending cases in the solicitor's
21 office?

22 A. Yes.

23 Q. With this circuit solicitor's office?

24 A. Yes.

25 Q. And what is the cause of death in this case?

1 A. This case?

2 Q. This case.

3 A. Waterhouse-Friderichsen syndrome, massive adrenal
4 hemorrhage and collapse due to streptococcal pneumonia,
5 infection.

6 MS. HINES: No further questions.

7 THE COURT: Thank you. Any recross based upon
8 her redirect?

9 MS. CAMPBELL: No, sir.

10 THE COURT: All right. Thank you. You may step
11 down. Anyone object to this witness being excused for the
12 balance of the trial?

13 MS. HINES: I don't object to that.

14 MS. CAMPBELL: No, sir.

15 THE COURT: Thank you, Doctor. All right.
16 Ladies and gentlemen, we've reached a good time to break
17 for the evening. I am going to send you home with, again,
18 cautioning you not to speak to anyone about this trial,
19 not to mention it to anyone or to discuss it or to read
20 any media that may be present tonight or tomorrow
21 morning.

22 So I'm going to say, go home and read a novel
23 that has nothing to do with what we're doing here and
24 don't watch TV tonight unless you watch the History
25 Channel or something.

1 So, ladies and gentlemen, have a nice evening.
2 We will begin court again tomorrow morning at 9:30. And
3 again, thank you for you promptness this morning and every
4 other time that you've been called. Thank you.

5 (Jury exits courtroom at 5:40 p.m.)

6 THE COURT: Is there anything we need to discuss
7 before we break for the evening for tomorrow?

8 MS. McDUFFIE: Your Honor, we did submit two
9 proposed requests to charge and then we have a third
10 that's just on reasonable doubt.

11 THE COURT: I think those are part of my standard
12 charges. The defense has not completed their case, but do
13 you have any requests to charge? If you could just hand
14 them to my clerk, Mr. Smith, and therefore we'll have an
15 opportunity to look at them.

16 How many more witnesses do you think you'll
17 probably call? Just trying to get an idea of time.

18 MS. HINES: Possibly two.

19 THE COURT: Okay.

20 MS. HINES: Possibly two.

21 THE COURT: And y'all will have reply testimony?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: So if we finish the case probably by
24 mid afternoon, I would probably prefer to adjourn for the
25 evening and then argue and charge on Friday morning and

1 then give it to the jury at a reasonable time.

2 MS. CAMPBELL: Thank you.

3 THE COURT: All right. And of course that could
4 all change depending upon what happens tomorrow. And in
5 the morning I will then ask your client as to whether or
6 not he wants to testify.

7 All right. Court's adjourned until 9:30 tomorrow
8 morning.

9 MS. HINES: Thank you.

10 END OF DAY: 5:40 P.M.

11 ** * **

12 ON THURSDAY, MARCH 17, 2011 AT 9:30 A.M.:

13 THE COURT: Good morning. I understand the
14 defense has an issue?

15 MS. HINES: Yeah. We just needed to finish the
16 colloquy with Mr. Goodwin.

17 THE COURT: Oh, okay. All right.

18 Mr. Goodwin, we went over yesterday about certain
19 rights that you have, and I gave you overnight to speak to
20 your family members, your attorneys or any of your friends
21 as to whether or not you were going to testify.

22 Have you made a decision as to whether or not
23 you're going to testify?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Do you want to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: You will not testify?

3 THE DEFENDANT: (Shakes head.)

4 THE COURT: If you change your mind later, you
5 can, if you decide to testify.

6 I think we've only got -- are all of our jurors
7 in?

8 THE BAILIFF: I don't think they're all here yet.

9 THE COURT: Court will be at ease if there's no
10 other issues.

11 MS. SINGLETARY: Your Honor, we do. If it
12 pleases the Court, if I may speak?

13 THE COURT: Yes.

14 MS. SINGLETARY: Your Honor, we do have another
15 issue.

16 We wanted to actually inquire as to the rebuttal
17 evidence that the State intends to call. We actually have
18 some arguments as to why certain witnesses should not be
19 called.

20 And we wanted to see if the Court wanted to go
21 ahead and address that now.

22 THE COURT: Why don't we do that now while we're
23 waiting. Who do you intend to call at this point in
24 time? Of course, you don't know.

25 MS. CAMPBELL: I inquired of them this morning if

1 they intended to put up anyone else. They wouldn't tell
2 me.

3 So at this point it's a little premature, I
4 think.

5 THE COURT: What other witnesses --

6 MS. HINES: Your Honor, we don't intend to put up
7 anyone else.

8 THE COURT: No one else?

9 MS. HINES: We intend to rest.

10 MS. CAMPBELL: We just need a few minutes. It
11 was my --

12 THE COURT: Certainly.

13 MS. CAMPBELL: -- understanding from yesterday
14 that they were putting up two or three witnesses. At this
15 point in time, the only testimony we anticipate putting up
16 would be Dr. Olga Rosa who was on our witness list.

17 We basically -- she is a pediatric -- a forensic
18 pediatrician. Her specialty is child abuse. We would put
19 her up in reply to some of the testimony from the expert
20 yesterday.

21 In addition to that, we may potentially, we don't
22 know, it depends on kind of how it goes, there's
23 Dr. Vandersteenhoven or Dr. Marcus, just the one.

24 And let me think, because we -- beg the Court's
25 indulgence, Your Honor.

1 THE COURT: All right.

2 (State's counsel conferring.)

3 MS. CAMPBELL: And, Your Honor, then potentially
4 a lay witness or two that saw the child in or around the
5 time of death just to, because of the testimony yesterday
6 as far as that goes.

7 We also have people from the coroner's office
8 here as far as rebuttal, we do not think at this point
9 we're going to call them, all those issues that he was
10 crossed on yesterday.

11 THE COURT: Okay.

12 MS. SINGLETARY: Your Honor, if I may?

13 THE COURT: Yes, ma'am.

14 MS. SINGLETARY: Your Honor, as the Court is well
15 aware of, the prosecution cannot use rebuttal to actually
16 give a complete, a complete depiction of the party's case
17 in chief.

18 There was nothing that was actually brought up
19 on, in our defense about child abuse at all. Our
20 actual -- we never raised anything. Our expert never said
21 anything about child abuse.

22 So as to why they would be bringing Dr. Rosa Olga
23 in, that's something that if they could have used, even
24 though the door wasn't opened, they should have used that
25 in their case in chief.

1 I mean, she's not allowed to come in now to --
2 what is she going to rebut? Our expert never said
3 anything about child abuse.

4 THE COURT: Let me ask: What is she going to
5 rebut?

6 MS. CAMPBELL: She's going to rebut his
7 contention that this was a natural death. I think that's
8 pretty crucial to this whole case.

9 MS. SINGLETARY: And, Your Honor, that's not -- I
10 mean, the purpose of rebuttal, the only thing that our
11 witness actually brought up was that this child had an
12 actual infection, that she died of sepsis shock.

13 Did Dr. Rosa Olga review the slides? That is
14 what rebuttal is supposed to be for, for her to come in
15 and rebut whether or not this child had an infection. She
16 has -- I mean, as far as we know, she has not seen the
17 child. She has not reviewed the slides. She's not a
18 pathologist.

19 THE COURT: Well, why don't we let her testify
20 and see what she's going to say?

21 MS. SINGLETARY: Yes, Your Honor. Proffer her
22 testimony. Thank you.

23 THE COURT: Jurors here?

24 THE BAILIFF: All here.

25 THE COURT: And you intend to rest at this point

1 in time and then I'll send them back out?

2 MS. CAMPBELL: Your Honor, and we would just
3 refer to State versus McDowell. In that case a forensic
4 pathologist testified in the case in chief and was
5 recalled to reply, to rebut the testimony in their case.

6 THE COURT: All right.

7 MS. SINGLETARY: And, again, she's not a
8 pathologist.

9 THE COURT: I'll rule on that at the appropriate
10 time. All right. Let's bring our jury in.

11 (Jury enters courtroom at 9:40 a.m.)

12 THE BAILIFF: All jurors present.

13 THE COURT: Thank you, sir.

14 Good morning, ladies and gentlemen. I hope y'all
15 had a pleasant evening. I appreciate your timeliness
16 being here this morning. All right.

17 We will continue with the testimony. Yes,
18 ma'am?

19 MS. HINES: Your Honor, at this time the defense
20 rests.

21 THE COURT: All right. Thank you.

22 All right. Ladies and gentlemen, at this time
23 I'm going to send you back out for just a few minutes
24 while we take up a few matters of law. This is just
25 morning exercise for you.

1 (Jury exits courtroom at 9:41 a.m.)

2 THE COURT: Does the State need a few minutes now
3 to get ready for your reply?

4 MS. CAMPBELL: We have called her and asked her
5 to come on. We put her on standby as anticipated
6 testimony. We hope she should be here in about 15
7 minutes.

8 THE COURT: All right. We'll be in recess.

9 MS. HINES: Thank you, Your Honor.

10 THE COURT: Have both sides given us your
11 proposed charges?

12 MS. SINGLETARY: Yes, Your Honor.

13 THE COURT: All right. What my law clerk can do
14 is he will prepare a draft of the proposed charge and I
15 will e-mail it to you.

16 MS. CAMPBELL: Your Honor, we're pulling the
17 cases they, for their cite which we object to, at least to
18 both of the ones they submitted this morning. And we just
19 need to check the cites.

20 THE COURT: All right. Why don't y'all talk --
21 well, no, we'll have a charge conference later.

22 MS. HINES: Thank you.

23 (Court stood at ease from 9:24 a.m., until
24 10:20 a.m., and the trial resumed as follows:)

25 THE COURT: Is the State ready to proceed?

1 MS. CAMPBELL: The State's ready. If I could
2 hand up some cases at this point. I'll hand up these
3 cases. These are all South Carolina cases, State versus
4 Stewart, State versus Todd and finally State versus
5 McDowell.

6 MS. SINGLETARY: Could we have a copy of State
7 versus Todd?

8 MS. CAMPBELL: I just handed it to you. They're
9 all stapled together. The clerk of court just stapled
10 them all in one. There are three cases.

11 Your Honor, the testimony we are proposing is
12 from Dr. Olga Rosa. She did not actually see the child
13 but when we received information that they were going to
14 put up an expert in this case, or may, we went ahead and
15 consulted with her. That's kind of what she does.

16 In this case she actually reviewed all the
17 records in the case and is an expert and has been board
18 certified as a pediatrician with expertise in child abuse,
19 Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. CAMPBELL: And the reason -- yesterday during
22 the testimony and of course we did not have a report or
23 maybe we could have anticipated this and done some of it
24 in our case in chief as far as what Dr. Kessler was going
25 to attempt to testify to, his ultimate determination is

1 that this was a natural death caused by disease, I
2 believe.

3 THE COURT: And that no one could have saved her.

4 MS. CAMPBELL: Yes. That no one could have saved
5 her.

6 And then he went on to talk about how she had
7 Waterhouse-Friderichsen syndrome, that she had -- he
8 talked about fat emboli, soft tissues, that he talked
9 about strep -- I can't say these words, Judge --
10 streptococcus pneumonia, that he saw all these slides and
11 what he saw on these slides. He talked about how the rib
12 fractures just happened, and once a kid dies and they're
13 over a year old they just become twigs. He talked about
14 the cerebral swelling. He talked about the absence of
15 cyanosis in this case. He talked about how asphyxia
16 presents in all those different ages. He talked about the
17 brain, slides from a brain.

18 And he went specifically through these slides.
19 We didn't know what he was going to say about these slides
20 that he treated earlier in the week. So we couldn't
21 really anticipate that, Judge, until we heard what his
22 testimony was going to be.

23 Therefore, we are limiting our reply testimony to
24 the matters that he brought up.

25 And I think the case law that we just handed up

1 says that as long as we're putting up something
2 contradictory. I know there's an older case, State versus
3 Sow. It's a Lexington County death penalty case where the
4 State in that case just put up the bare minimum in their
5 case in chief and then basically waited for the defense to
6 go up and then brought in the majority of their evidence.

7 We aren't trying to do that, Judge, and we aren't
8 trying just to bolster our previous testimony.

9 We will be addressing the specific issues that
10 were brought up in testimony and we just couldn't, like I
11 said, if we had a report or something, maybe we could have
12 addressed some of those or if we had known what he was
13 going to say about those photographs that we've entered
14 now that weren't in evidence and they were not crossed on
15 them or anything of that nature.

16 So we do feel like our reply testimony would be
17 proper. We concede and we even thought about trying to
18 impeach him on some of what he said about his reasons for
19 leaving. We admit those are collateral issues and we
20 should not, probably not be able to go into those. And we
21 don't intend to call that just for purposes of trying to
22 -- anyway, that's what it is.

23 We aren't going to do that, Judge, so we are
24 trying to remain within the parameters of what is proper.

25 THE COURT: Yes, ma'am.

1 MS. SINGLETARY: Thank you, Your Honor. May it
2 please the Court.

3 In just addressing the actual cases initially
4 that was actually presented to the Court. Your Honor, in
5 State V. McDowell, the Court held that it was proper for
6 the pathologist that was actually in the State's case, who
7 actually come up and testified in rebuttal of what the
8 expert pathologist said.

9 However, the reason that the Court allowed for
10 that pathologist to actually come up in rebuttal was due
11 to the fact, number one, that that pathologist did not
12 testify in the State's case in chief, number two, the
13 expert actually stated that once this vic -- when this
14 victim in McDowell was shot a third time, that the victim
15 was actually standing up.

16 The Court allowed the pathologist to come up with
17 rebuttal evidence saying that the actual victim was
18 actually shot while they were laying down, Your Honor.
19 That was the material issue in McDowell.

20 Your Honor, you have Rosa Olga who is a child
21 abuse expert, Your Honor. She's not a pathologist. In
22 our defense, we did not bring up anything about child
23 abuse. However the State attempted to bring it up on
24 their cross. And our expert still at that time did not
25 say anything about child abuse.

1 So I don't see why they will be allowed to bring
2 up a child abuse expert to dispute his cause of action.
3 In their case in chief they have already had two
4 doctors -- well, they've had more than two doctors.
5 They've had three doctors to actually already testify to
6 what the cause of death was.

7 Your Honor, it's no needed for Rosa Olga to
8 actually come.

9 Your Honor, in that same McDowell case, the Court
10 held that a clinical psychologist was properly refused
11 permission to testify in response to a hypothetical
12 question that was actually, that an individual attempts to
13 cover up his involvement with the crime should not be
14 interpreted as an admission of guilt.

15 I mean, we haven't bringed (sic) up any issues
16 like this. I mean, a clinical psychologist coming in a
17 murder case, a child abuse psychologist coming in to
18 refute whether or not the cause of death was one cause
19 versus what we put up as a defense versus what they have
20 already put up in their case in chief.

21 I mean, the case law is clear that the State
22 cannot attempt to complete their case in chief by
23 rebuttal. And that's what they're intending to do in this
24 case.

25 They cannot try to introduce new evidence. Only

1 rebut what was presented in our case in chief.

2 Your Honor, in the State V. Holcolmb --
3 Hucklebee, it's clear that the prior testimony should be
4 limited to rebuttal of matters raised by the defense
5 rather than complete the Plaintiff's case in chief.

6 If they brought up something on cross against our
7 expert, just because they brought it up they can't now say
8 that, oh, in rebuttal we're going to bring another witness
9 to rebut what we brought out of a defendant (sic).

10 And it's our assumption that in this case they
11 didn't bring it. They didn't bring anything out about
12 expert, about child abuse. So what's the relevancy of the
13 actual child abuse expert actually being used?

14 Your Honor, looking in the other case, State V.
15 Todd, that they actually handed up. The reason why
16 rebuttal evidence was actually allowed to be admitted in
17 because they brought up a witness that directly
18 contradicted the Defendant's testimony.

19 In State V. Stewart, they were allowed to
20 actually bring up a rebuttal witness because in the
21 defense's case they used alibi as a defense. So the
22 prosecution then was for the limited reason, was to bring
23 in, and they were allowed to bring in, someone to dispute
24 the Defendant's alibi dispute.

25 This is not what we have going on today with what

1 the prosecution is saying that they are seeking to be
2 admitted in. It's strictly -- it does not follow the
3 rules, Your Honor.

4 THE COURT: Okay. All right. I'm ready to rule
5 on that.

6 I find that it is admissible and for the limited
7 purpose of what the pathologist specifically said, that
8 this was a natural death, it couldn't have happened any
9 other way.

10 I am going to allow Ms. Olga Rosa's testimony.

11 MS. SINGLETARY: Can we proffer her testimony,
12 Your Honor, prior to?

13 THE COURT: For what purpose?

14 MS. SINGLETARY: Well, we --

15 THE COURT: Go ahead.

16 MS. SINGLETARY: We don't want her to be allowed
17 to say that this was child abuse.

18 THE COURT: Madam Solicitor, would you like to
19 respond?

20 MS. CAMPBELL: Your Honor, she says it's not
21 about child abuse. This case is about child abuse.
22 That's what we're here about, whether or not this was a
23 natural death which is what her expert says, or what the
24 expert found, how -- I mean, in her review of everything.
25 I mean, this is her expertise.

OLGA - DIRECT

1 And if he says it's a natural death, then I think
2 she can give her opinion to contradict that and her review
3 of the records because that's what he said. I mean, if
4 they hadn't brought this up, I'd agree.

5 THE COURT: I find it's proper in this
6 situation. This is a homicide by child abuse. That's
7 like saying you can't say the word child abuse -- you
8 can't say the word murder in a murder case. I think
9 that's what the crux of this is. And I'm going to allow
10 the testimony. You may cross-examine at the appropriate
11 time.

12 Are we ready?

13 MS. SINGLETARY: Yes, Your Honor.

14 THE COURT: All right. Please bring the jury
15 in.

16 (Jury enters courtroom at 10:30 a.m.)

17 THE BAILIFF: All jurors present, Your Honor.

18 THE COURT: Thank you. All right. The State may
19 call its reply testimony.

20 MS. CAMPBELL: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: Thank you. The State calls
23 Dr. Olga Rosa.

24 OLGA ROSA, having been duly sworn, was examined
25 and testified as follows:

OLGA - DIRECT

1 THE CLERK: Please have a seat and state your
2 full name for the record.

3 THE WITNESS: It is Olga Rosa, R-O-S-A.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q. Dr. Rosa, where are you employed?

7 A. Good morning. I'm employed with the University of
8 South Carolina School of Medicine, Department of
9 Pediatrics.

10 Q. Okay. You talk about as fast as I do. Could you slow
11 down just a little?

12 A. I'm sorry.

13 Q. And what do you do at the Department of Pediatrics at
14 the University of South Carolina?

15 A. I am the Medical Director of the Division of Forensic
16 Pediatrics. I provide medical evaluations for children
17 with allegations of abuse and neglect.

18 Q. And providing a review of these records and stuff, do
19 you review records involving children that may have been
20 abused but didn't die as well as ones that are deceased?

21 A. That's correct.

22 Q. Can you tell this jury a little bit about -- you said
23 you're -- the name of your department is, forensic?

24 A. Forensic pediatrics.

25 Q. And what is forensic pediatrics?

OLGA - DIRECT

1 A. Forensic pediatrics is the term for child abuse
2 pediatrics. It's a subspecialty of pediatrics, where the
3 physician is trained first as a general pediatrician,
4 which I am a general pediatrician. I'm a board
5 certificated pediatrician.

6 And after that general pediatrician may choose to do a
7 subspecialty training. And I did that. I went to, was
8 accepted at Brown University School of Medicine to do my
9 secondary specialty which is child abuse pediatrics.

10 Q. Let me ask you this: Can you tell this jury a little
11 bit about your education and your training in your medical
12 field?

13 A. I completed my medical school at the University of
14 Puerto Rico School of Medicine from 1982 to 1986. From
15 '86 to '99 (sic) I did my three-year residency program in
16 pediatrics with the University of Puerto Rico School of
17 Medicine Children Hospital. After that I practiced for
18 two years in the academic setting.

19 Q. For two years?

20 A. For two years in the academic setting. After that I
21 came to the United States in '91. By that time I was
22 practicing general pediatrics. As part of that I was also
23 the consultant for the child protection team under the
24 employer I was at the time, at the Precise General
25 Pediatrics. I did that for a couple of years, from '91 to

OLGA - DIRECT

1 '93. Then I did, again, general pediatrics from '96 to
2 '99. During that time I was also involved in cases of
3 child abuse.

4 After that, then I decided to do a full-time venture
5 and that's when I went to Brown University and did my
6 subspecialty, came back and I've been doing child abuse
7 pediatrics full-time since 2000.

8 Q. And you went and actually participated in what's
9 called a fellowship?

10 A. Yeah. That's called a fellowship. That's correct.

11 Q. And you did your fellowship and your specialized
12 training in what area?

13 A. Child abuse pediatrics.

14 Q. Child abuse pediatrics which is also forensic
15 pediatrics?

16 A. Exactly. And I'm board certified in that, too.

17 Q. You mentioned you're board certified. In what areas
18 are you board certified?

19 A. I'm board certified in general pediatrics since 1989.
20 And I'm board certified in child abuse pediatrics since
21 2009 which was the first year that the board was offered.

22 Q. That the board was actually offered?

23 A. Yes.

24 Q. But you've actually been reviewing these cases and
25 participating in this field for how long?

OLGA - DIRECT

1 A. On and off since '91. Full-time since 2000.

2 MS. CAMPBELL: Your Honor, at this time we'd
3 offer her as an expert in forensic pediatrics or child
4 abuse pediatrics.

5 THE COURT: Would you like to voir dire?

6 MS. SINGLETARY: Yes, Your Honor.

7 VOIR DIRE

8 BY MS. SINGLETARY:

9 Q. Good morning.

10 A. Good morning.

11 Q. How are you doing?

12 A. Pretty good. Thank you.

13 Q. You're not -- you said that you were a doctor in
14 forensic pediatrics?

15 A. Yes. That's correct.

16 Q. Okay. And you said you're also board certified in
17 controlled substance?

18 A. Well, you carry a physician -- a license for drug, you
19 know, from DEA, from the Drug Enforcement Administration.
20 So that's not a board certification. That's a license.

21 Q. A license?

22 A. Yes, a license to practice.

23 Q. Okay. And the Drug Enforcement Administration, that's
24 also a license?

25 A. Yeah. The Drug Enforcement Administration is the

OLGA - DIRECT

1 federal agency that gives you your DEA license which
2 allows you to prescribe narcotics.

3 Q. Okay.

4 A. Controlled substances.

5 Q. And could you tell me what type of scientific method
6 is used in your field of study?

7 A. Can you -- I'm not -- I'm unclear about the scientific
8 method. It's medicine. You know, you go and you have to
9 do your school of medicine, you have to do your residency
10 program and then you choose your specialty which could be
11 in child abuse pediatrics or it could be pediatric
12 cardiology or it could be pediatric endocrinology. And we
13 have the same counterpart in adult medicine.

14 Q. I'm sorry. I didn't -- what my question was: You
15 said that you're a child abuse expert; correct?

16 A. I'm a child abuse pediatrician.

17 Q. Pediatrician. Are there scientific methods used to
18 collect data in child abuse cases?

19 A. Yes. I mean, there's research in child abuse like
20 there's research in any other specialty of medicine.

21 Uh-huh. Yes, ma'am.

22 Q. What type of method is it that's used?

23 A. I'm not really -- I'm not really clear on the question
24 that you ask. They do clinical research. They do, in
25 certain cases, bench researches which is in the lab.

OLGA - DIRECT

1 Clinical research is with patients. You have to go
2 through an institutional review board depending where you
3 are, which center, which patients, which hospital. So,
4 you know, it's kind of pretty broad.

5 Q. Okay. Let me see if I can limit it.

6 A. Uh-huh.

7 Q. How is data collected in reference?

8 A. Depending on the research that you're trying to
9 conduct. That's how data is collected. So you have to be
10 more specific. You have to ask me or tell me, you know,
11 what kind of research you're referring to.

12 Q. And that's what I'm trying to ask you. I'm trying to
13 figure out in the field of child abuse, how is research
14 conducted?

15 A. Research conducted. As I said, research is conducted
16 depending on what are you looking for. Are you doing
17 clinical research, are you involving, you know, actual
18 patients or are you doing bench research, are you doing
19 markers for head injury or are you doing the kids that
20 enter the hospital less than two years of age that are
21 hospitalized with a head injury and a determination is
22 made depending on their diagnostic evaluation.

23 So, again, you have to tell me --

24 Q. Okay. The clinical research --

25 A. Okay.

OLGA - DIRECT

1 Q. -- how's the data collected?

2 A. The data is collected after institutional review,
3 board approve the research project and the data is
4 collected from the patient.

5 Q. And are these patients just patients that actually
6 volunteer to be in the program or is it just randomly
7 picked?

8 A. The institutional review board requires, is a
9 mandated, that the parents of that child consent to any
10 enrollment in the study.

11 Q. Okay. And would you say that the information that is
12 actually collected, is it reliable in the field of child
13 abuse?

14 A. Once again, you know, it depends on the methods that
15 are used and how is this collected.

16 Q. And let me ask you this: How is the actual -- how is
17 the validity of the information tested?

18 A. The validity is tested statistically. So there are
19 different programs specifically to test the validity. And
20 depending on the variation of the sample, I don't know how
21 much statistics you want me to talk about right now but --

22 Q. Well, let me ask you this. And you brought up
23 statistics. I wasn't going to go into that next. What
24 specific statistical test is applied to that data that's
25 collected?

OLGA - DIRECT

1 A. Again, it depends on your sample, the variability
2 within the sample, the distribution of the sample. You
3 apply different tests from T. Test, from T. square test,
4 from Nova. I mean --

5 Q. What are the magical basis for these tests that are
6 conducted?

7 A. I'm sorry. I don't understand the question.

8 Q. You were just talking about the statics and there's
9 different ways that it can be collected. But what's the
10 baseline?

11 There's all -- as with all tests there's a basis on
12 which the tests are measured. And in your field, what's
13 the basis for what the tests are measured at?

14 A. I still don't clearly understand the question.
15 Because, as I said, the statistical measure that you use
16 depends, once again, as I said before, on the sample that
17 you are approaching.

18 So, depending on the sample your study subjects and
19 the variability within your study subject is the test that
20 you choose that will give you the highest probability to
21 prove the hypothesis that you started the research with.

22 Q. And, again, what are the tests? I still haven't
23 gotten clear on what tests are actually performed.

24 A. I'm so confused about the question. I really am,
25 because I'm, like, trying to tell you that the test that

OLGA - DIRECT

1 you choose depends on the sample. And I cannot be any
2 more clear than that because the sample -- again, the
3 researcher is, puts forward a hypothesis. I want to prove
4 if this is possible or not. Then he goes out there and he
5 choose his sample. Depending on the variability of the
6 sample and the control group he choose the statistical
7 measure that will apply to that sample to get the best
8 probability to prove or disprove his hypothesis.

9 Q. And is your field of study recognized in the
10 scientific community?

11 A. Child abuse pediatrics?

12 Q. Yes.

13 A. Yes, it is.

14 Q. And are you published; correct?

15 A. No, I have not.

16 Q. You've never published anything?

17 A. No.

18 Q. But there are publications that are out there?

19 A. Yes.

20 Q. Are they peer review?

21 A. Yes, they are.

22 Q. How often are they peer reviewed?

23 A. They are peer reviewed but they are published in peer
24 review journals.

25 Q. And how often are they peer reviewed?

OLGA - DIRECT

1 A. They have to be peer reviewed before they're
2 published.

3 Q. No. I understand that they have to be peer reviewed
4 before they're published, but how often do peers review
5 the actual publications?

6 A. The actual publication, it cannot reach publication
7 before the board of the journal peer reviewed the article
8 before it gets published. So therefore in any peer review
9 journal all articles are peer reviewed.

10 Q. Yeah. I understand that they all are peer reviewed,
11 but in fields of study there is a time -- I mean, there is
12 a time amount or a time limit when all articles are
13 reviewed by other peers. Number one, we've already said
14 that these are peer reviewed articles.

15 A. Correct.

16 Q. And I'm saying: How often are these peer reviewed
17 articles reviewed?

18 A. Depend on the editorial board that is current, that
19 the -- it depends on the editorial board of the journal
20 that is current that determines the length of the peer
21 review.

22 Q. Okay. How often are these studies conducted, would
23 you say?

24 A. I can't say because again, you know -- once again
25 depends on the hypothesis that the researcher is trying to

OLGA - DIRECT

1 look forward to, how long the sample is going to be taken
2 to accumulate and, you know, one year you can have 15
3 articles published in the field of child abuse
4 pediatrics.

5 And again, I sat in the field of child abuse
6 pediatrics but they are publishing different journals
7 including, by the way, the American Journal of Forensic
8 Medicine. You can have 50 in one year and you can have 30
9 the next year. So it is variable.

10 I have never really kind of looked year to year how
11 many they're published.

12 Q. Okay. Okay. Okay. And you're not a pathologist, are
13 you; correct?

14 A. That is correct.

15 MS. SINGLETARY: All right. Your Honor, I have
16 no further questions, however, I do have an objection to
17 her being tendered as an expert witness.

18 THE COURT: What's your objection?

19 MS. SINGLETARY: Your Honor, all tests must have
20 a measurable basis from which they must go by. Dr. Olga
21 has testified -- I mean, she hasn't been able to answer
22 the simple questions that I've asked her about the, in my
23 opinion, of the scientific method, the peer reviews. I
24 don't think that it meets the four-prong test of Jones,
25 Your Honor.

OLGA - DIRECT

1 I just don't think that this testimony at this
2 time is valid when we don't know what the measurable data
3 is coming from.

4 THE COURT: Okay. Yes, ma'am.

5 MS. CAMPBELL: Your Honor, I think she's
6 explained her education and her training. It's extensive,
7 as well as she is board certified in this area. It's a
8 recognized area.

9 THE COURT: I am going to qualify Dr. Rosa as an
10 expert in forensic pediatrics.

11 Ladies and gentlemen of the jury, as I told you
12 before, the fact that I have qualified her does not
13 necessarily mean that you have to accept her opinions in
14 this matter. You may give it the weight that you deem
15 that is proper. All right. Thank you.

16 Solicitor, you may proceed.

17 MS. CAMPBELL: Thank you.

18 DIRECT EXAMINATION (CONTINUED)

19 BY MS. CAMPBELL:

20 Q. Doctor, at my request back in February, I believe, we
21 received notification of certain things. Did we request
22 that you review this case?

23 A. That's correct.

24 Q. And can you tell this jury generally what types of
25 records you reviewed in this case?

OLGA - DIRECT

1 A. For this case I reviewed basically all the available
2 medical records for this child which include her newborn
3 records.

4 Q. Okay. Let me stop you right there. Reviewed her
5 newborn records?

6 A. Yes.

7 Q. As well as her pediatric records?

8 A. Pediatric care records.

9 Q. As well as the hospital records from this visit and
10 other records as well from the pathologist?

11 A. That is correct.

12 Q. And in addition to that, did you also review certain
13 statements from certain people as to the history of this
14 child and how she was acting the day and the day before?

15 A. That is correct.

16 Q. And is that important in your field to also review
17 those records?

18 A. Yes, because it provides me with a medical history.

19 Q. And that would include statements from the father as
20 well as the mother of this child?

21 A. That is correct.

22 Q. And just for the record. As far as you getting paid
23 personally here today, you don't receive any money, you
24 yourself, from my office or any other office; is that
25 correct?

OLGA - DIRECT

1 A. That's correct.

2 Q. But your job is actually reimbursed at the rate of, I
3 think \$300 an hour for the time --

4 A. My employer bills for my time here, yes.

5 Q. But that goes to your employer which is the University
6 of South Carolina?

7 A. Yes, it does.

8 Q. And your review of the history of this child, was that
9 significant to you?

10 A. Yes. It's always significant to know the history of
11 the child.

12 Q. And specifically as to the records from the day before
13 and the morning that this occurred, was that significant
14 to you --

15 A. Yes, it was.

16 Q. -- as far as how the child was acting? And you took
17 that into account in coming up to any conclusions in this
18 case?

19 A. That is correct.

20 Q. And yesterday we heard something about what's called
21 Waterhouse-Friderichsen syndrome. Did I say that right?

22 A. Yes, you did.

23 Q. And tell the jury what that is and how it presents.

24 A. Waterhouse-Friderick -- it's a long name --

25 Friderichsen syndrome, it is a syndrome that is well

OLGA - DIRECT

1 described quite early in the early 1960s. And it was
2 primarily associated with a bacteria, a bug, known as
3 *Neisseria meningitis* better known as meningococcus which
4 caused primarily an infection with meningitis and then in
5 this case Waterhouse-Friderichsen was described occurring
6 particularly, you know, with this bug or bacteria causing
7 a massive hemorrhage, bleeding, into the adrenal glands
8 but it also caused what the previous expert was talking
9 about of the disseminated intravascular coagulopathy.

10 Quite a long name. Basically what that means is that
11 the body use of all the clotting proteins and factors, all
12 the clotting things that allows you to clot to keep your
13 blood inside your blood vessels. And basically the
14 patient bleed out. If you puncture you cannot stop the
15 bleed.

16 They are associated with a show of viscus collapse.
17 They are associated with low, as I said, low blood
18 pressure, forming an infection. But the interesting thing
19 about this is that these kids are symptomatic. They
20 are -- see, the bacteria needs to get to the body some
21 way. And therefore once it gets into the body the kids
22 are not feeling that great. They're starting to look a
23 little bit puny, you know. They get a fever which is one
24 of the most, you know, common symptoms in some children
25 when they feel ill.

OLGA - DIRECT

1 You know, fever is going to make their appearance, if
2 they're going to have fever they're going to feel kind of
3 cranky, you know, irritable, lethargic. And sometimes
4 we'll say, okay, it's viral, you know. He's not doing
5 good, not eating that well. Vomiting here and there.

6 You treat them but then suddenly it doesn't get any
7 better and they just collapse. It is fulminan. They
8 appear -- there's one characteristic skin finding which is
9 call purpura fulminan.

10 It's basically, purpura is a type of bleeding to the
11 skin. And it is an impressive bleeding. And it's
12 secondary to the fulminan infection that the child is
13 sustaining.

14 So the child that dies of Waterhouse-Friderichsen
15 syndrome -- sorry about the accent. It is, it is an
16 impressive, impressive illness and it shows signs and
17 symptoms. These kids don't look, you know, normal by the
18 time of their collapse.

19 Q. On --

20 THE COURT: Before you ask her, Dr. Rosa, I am
21 going to have to ask you. I'm from Sumter so I have a
22 hard accent, too.

23 THE WITNESS: I know.

24 THE COURT: But I'm going to ask that for the
25 sake of my court reporter, I'm going to have to ask that

OLGA - DIRECT

1 you slow down just a little bit.

2 THE WITNESS: I will.

3 BY MS. CAMPBELL:

4 Q. Doctor, the events you just described, how the
5 symptoms initially present as they develop and then they
6 ultimately culminate as this mottling of the skin or some
7 markings on the skin; is that correct?

8 A. Yes.

9 Q. And I just simplified everything.

10 A. That's perfect.

11 Q. That takes time?

12 A. It takes time. The kid --

13 Q. It doesn't happen that morning?

14 A. It doesn't happen that morning. The kid that is seen
15 early in the morning playing around in her room is just
16 not going to just bling bling around the room and then
17 suddenly after that just going to collapse and be dead.

18 Q. This would be a matter of days and/or weeks not a
19 matter of hours?

20 A. These -- well, the kids -- also the infection
21 develops, you know, during the first, the first -- once
22 the the infection comes alive on the child's body there
23 are going to be symptoms. As I said, there's going to be
24 fever. They're going to be looking puny. They're going
25 to be fussy. They're not going to be, you know, eating

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1 very well.

2 And then they deteriorate. And when they deteriorate,
3 when they get bad, they really go bad, you know. A kid
4 that suffers meningococcemia, we use this term, but they
5 go down the tubes really quickly. And if they don't get
6 to medical care, they will definitely die.

7 Q. In addition to the physical characteristics, the
8 behavior issues that you just mentioned that would
9 manifest itself, the fever as well as the child not doing
10 well for a period of time and all of that, would it also
11 manifest, I believe you said, in certain markings on the
12 skin?

13 A. Yes.

14 Q. And I show you State's Exhibit Number 28 --

15 MS. SINGLETARY: Objection, Your Honor.

16 MS. CAMPBELL: We're just using this for --

17 THE COURT: Hold on. What's your objection?

18 MS. SINGLETARY: May we approach, Your Honor?

19 THE COURT: You may.

20 (Off-the-record discussion.)

21 BY MS. CAMPBELL:

22 Q. Doctor, I want you to make sure that just you look at
23 these pictures and no one else can see them because
24 they're graphic in nature. Okay?

25 A. I understand.

OLGA - DIRECT

1 Q. Did you -- just review those so that the jury can't
2 see them. And did you review those and do those
3 illustrate different parts of this child's body, her skin?

4 A. Yes, I did review these once.

5 Q. And in those photographs, there's some actual cut
6 downs of the skin itself?

7 A. Yes. They are.

8 Q. And what's the purpose of those cut downs?

9 A. The cut downs are standard autopsy procedure work.
10 When you see bleeding or what it appears to be a bruise on
11 the skin of a child, you cut to see if it is true bleeding
12 for -- and if it's a bruise you will see bleeding on the
13 tissue underlying or beneath that bruise which is what you
14 see on this child.

15 Q. On this child, in different parts of her body?

16 A. That is correct.

17 Q. We won't show those to the jury because they're too
18 graphic. But in your review of that, the manifestation,
19 you said it goes with this Waterhouse-Friderichsen. Is it
20 purple marks? Am I --

21 A. Purpura fulminans.

22 Q. Is there any evidence of that in those photos?

23 A. No.

24 Q. Is there any evidence of that in this child?

25 A. No.

OLGA - DIRECT

1 Q. And in your review of this child and these records, is
2 there any evidence that she suffered from this syndrome?

3 A. No.

4 Q. There's also some testimony yesterday about
5 streptococcus pneumonia?

6 A. Yes, ma'am.

7 Q. First of all, is there an immunization for that
8 condition? And it was discussed yesterday. It can go by
9 different names; is that correct?

10 A. Yes. Streptococcus pneumonia is the current name of
11 the bug. In, you know, in the early 70s, way before my
12 time, it was also called diplococcus pneumonia because
13 diplococcus means two, you know, that they come in pairs
14 when you look under, for them on the microscope, under the
15 microscope. But it's also called pneumococcus, but they
16 are all the same. It's just different names for the same
17 person -- or for the same bug.

18 Q. And in the last 20 years medical science, did they
19 come up with an immunization for this?

20 A. Yes. The immunization for the streptococcus pneumonia
21 or pneumococcus or diplococcus pneumonia has been into
22 effect since the year 2000.

23 Q. And, if a child is fully immunized for this, is the
24 success rate right at 100 percent?

25 A. Very close, yes.

OLGA - DIRECT

1 Q. And in this case I want to show you State's Exhibit
2 Number 27. Is that one of the records from this child's
3 pediatrician?

4 A. Yes, it is.

5 Q. And was this child immunized to protect her from ever
6 getting streptococcus pneumonia or whatever name you want
7 to call it?

8 A. Yes. She completed her series of immunizations.

9 Q. And it's right at 100 percent; correct?

10 A. It is close. Nothing in medicine is 100 percent, but
11 it's pretty close.

12 Q. In your review of these files in this case, is there
13 any evidence this child suffered from whatever that thing
14 is, the streptococcus pneumonia?

15 A. From streptococcus pneumonia, no, there's nothing.

16 Q. You mentioned that you practiced for many years as a
17 regular pediatrician?

18 A. Yes, I did.

19 Q. Before you became specialized. And during that period
20 of time, did you ever see any child that presented with
21 that?

22 A. With a streptococcus pneumonia? Oh yes, most
23 definitely.

24 Q. And how long has it been since you've actually seen
25 anyone present with that since the immunization came out

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1 for that?

2 A. It is interesting because now the most common, one of
3 the most common -- well, let's backtrack a little bit.

4 Streptococcus pneumonia, kids can have it in what we
5 call the nasopharynx, complicated name to say they have it
6 on their nasal and their throat, without causing them any
7 illness.

8 A number of them after a little bit of having that on
9 the nose or the throat may develop infection. And it is,
10 you know, it's one of the most common bugs that cause ear
11 infection in children, or sinusitis.

12 But the other thing, when it becomes what we call
13 invasive and that's why this immunization is so important
14 because it decrease the rate or the risk of these children
15 suffering from invasive disease. And when we talk about
16 invasive disease, it's deeper infection. It's infection
17 that goes into the blood.

18 One of the syndromes that streptococcus pneumonia used
19 to cause is what is called occult bacteremia. And the
20 interesting thing about this is that if the child that is
21 between three months up to three years that presents to
22 the doctor with fever, but when the doctor checks them out
23 there's nothing on the ears, there's nothing on the nose,
24 there's nothing on the throat.

25 The physical exam is normal but they still have

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1 fever. And it's a high fever, 39, 40, 40 degrees. But
2 they are still, don't have anything. Then when you do
3 blood cultures on these kids they, you capture the
4 bacteria.

5 And that's what bacteremia means is that the bacteria
6 is in the blood but it has still not really go to a
7 specific site. The brain has meningitis. The lungs have
8 pneumonia but it is still running like wild fire on the
9 blood.

10 The advantage of this immunization, the Pevnar, is
11 that it has decreased markedly the occurrence of this kind
12 of occult bacteremia which is the number one risk factor
13 to develop in basic disease in these children. Does
14 that --

15 Q. Yes. Is there any evidence of this in this case --

16 A. No.

17 Q. -- that this child suffered from this?

18 A. No.

19 Q. In fact, if she had this disease is it considered to
20 be contagious?

21 A. Yes, it is.

22 Q. So if she had been in close contact with adults and/or
23 other people it would, it's very contagious?

24 A. Particularly to other children.

25 Q. There's also some questions -- and there was some

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1 slides that were reviewed. Would that be more proper for
2 a pathologist to address?

3 A. Yes, ma'am.

4 Q. But there was some questions about cerebral swelling
5 or brain swelling?

6 A. Yes.

7 Q. And in this case, was there any evidence of any brain
8 swelling?

9 A. No. In the autopsy report of the child, no.

10 Q. And as far as when a child dies from asphyxia from
11 chest compression, would you necessarily have cerebral
12 brain swelling?

13 A. No.

14 Q. There's also some questions about whether or not this
15 child is what we called cyanotic or blue?

16 A. Yes, ma'am.

17 Q. In cases with asphyxia by, with chest compressions
18 involved, would they always have a blue tinge to them?

19 A. No.

20 Q. Why not?

21 A. Well to have the blue tinge, you have to obstruct what
22 is called the venous return. In other words, the blood
23 that is coming back to your heart has to be, there has to
24 be something, a blockage or something that stop it going
25 back to the heart and then getting back to the lungs,

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1 getting some oxygen and then out back to your body to
2 bring some oxygen. So much needed for all your functions
3 to keep maintaining the body in well condition.

4 But, see, kids that die, for example, from neck
5 compression, strangulation, if the jugular veins or the
6 veins get obstructed you will see that cyanosis. You will
7 see the petechia because the blood is not coming back to
8 the heart. So the pressure when it's increased it's going
9 to pop out, they're going to get first red, then blue
10 because oxygen is not getting there because the same time
11 you're putting more pressure you're also, you know, making
12 pressure over the airways.

13 So things are going to start happening. However if
14 your pressure does not involve the neck or does not impede
15 or block the venous return, you're not going to get
16 cyanotic. So it depends, see asphyxia is a general term
17 but the mechanism by which asphyxia happens are different.

18 Some start neck compression, some is smothering or
19 airway obstruction some is chest compression. And you
20 have to remember that kids and adults are different.

21 And you, when you look at a kid, particularly toddlers
22 and infants what's the first thing you notice. They have
23 a big head and small chest and a lot of belly.

24 So if somebody is compressing a chest of a baby or a
25 toddler in this case, there's going to be not just chest

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1 compression. The chest which is a little bit higher, but
2 there's going to be belly over here. So if you are an
3 adult and your kid basically weighs 20-something pounds
4 and you wrap your arms around that kid, those arms are
5 going to cover not just the chest. There's going to be
6 some compression also over the upper abdomen.

7 So that chest cavity cannot expand. The belly pops
8 out. So the diaphragm which is the respiratory muscle
9 cannot come down. So you're constricting the ability of
10 that child to open, move the chest, move the diaphragm so
11 air comes into their lungs.

12 Q. And there was some question yesterday about the
13 diaphragm that you just addressed.

14 A. Oh.

15 Q. And as far as this child, what is -- her chest was
16 compressed and she was not allowed to breathe, what would
17 the reaction be?

18 MS. SINGLETARY: Objection, Your Honor.

19 THE COURT: What's your objection?

20 MS. SINGLETARY: Speculation.

21 THE COURT: She is a -- I've qualified her as an
22 expert.

23 MS. SINGLETARY: Your Honor --

24 THE COURT: She's able to give that opinion.

25 MS. SINGLETARY: The State just asked her to

OLGA - DIRECT

1 demonstrate what this particular child did. I mean, she
2 would be speculating.

3 THE COURT: Rephrase your question.

4 BY MS. CAMPBELL:

5 Q. If a child's airway or chest is compressed to the
6 point where the diaphragm can't move and it can't get any
7 air in, how would a child react?

8 A. The child will be basically fighting off and trying to
9 move and fighting off. The child will be struggling to
10 get air in.

11 So basically, you know, whoever is compressing, you
12 know, the chest and the upper abdomen of the child,
13 they're compressing -- the child, there's still air;
14 entering but then there's going to be a point that air's
15 not going to come in and the child will be fighting
16 basically to be able to breathe.

17 So the child will be fighting, struggling, moving
18 against that restraint to be able to get some air in.

19 Q. And, with chest compressions and in your review of
20 this case, did it take a period of time for this child to
21 not be able to breathe any more?

22 A. Yes, it does.

23 Q. You also mentioned in this case there's no evidence of
24 any petechiae. Is that consistent with asphyxiation by
25 chest compressions, that there wouldn't be petechiae as

OLGA - DIRECT

1 you just explained?

2 A. Yes.

3 Q. In this case, you are aware that there were some rib
4 fractures?

5 A. That's correct.

6 Q. And the position of those fractures, where those ribs
7 actually broke is that significant?

8 A. Yes, it is.

9 Q. And have there been studies done by the American, and
10 who is the American Academy of Pediatrics?

11 A. The American Academy of Pediatrics is the body that
12 encompass or under the umbrella of which board certified
13 pediatricians across the United States and also Canada are
14 under. And it's the body recognized of the federal level
15 and national level as the main body regarding the care,
16 management and guidelines of practice of pediatrics.

17 Q. Okay. And specifically, one of the books you
18 consulted is actually this book on child abuse that's
19 published by them? I think you have your copy there.

20 A. Yes. That's correct.

21 Q. And in coming to your conclusion you consult with that
22 as well as other known experts?

23 A. Yes, I consult, you know, with the books, articles
24 that have been published, et cetera.

25 Q. Okay. And in all your literature review as far as the

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1 placement of the fact that these ribs broke posteriorly?

2 A. Posteriorly. On the back.

3 Q. What does that indicate?

4 MS. SINGLETARY: Objection, Your Honor.

5 THE COURT: What's your objection?

6 MS. SINGLETARY: At this point the testimony
7 would be cumulative to the State's case in chief
8 testimony.

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

10 (Off-the-record discussion.)

11 THE COURT: Counsel will proceed as directed.

12 BY MS. CAMPBELL:

13 Q. And do you in your review of the -- you've reviewed
14 the actual autopsy in this case?

15 A. Yes, I did.

16 Q. And in your review of that autopsy, do you concur with
17 the findings of the pathologist? Do you agree?

18 A. Yes, I do.

19 Q. Including his findings as to the rib fractures?

20 A. That's correct.

21 Q. And is that conclusion supported by your review of the
22 published material and the guidelines by all the known
23 bodies?

24 A. Yes, ma'am.

25 Q. Having reviewed everything in this case, Doctor, and

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1 specifically the only thing -- specifically having
2 reviewed all the records in this case, your review of the
3 autopsy, what was done and everything, was everything done
4 properly?

5 MS. SINGLETARY: Objection, Your Honor.

6 THE COURT: Sustained. I don't know that she can
7 testify to that.

8 BY MS. CAMPBELL:

9 Q. In your review of the autopsy and everything, did you
10 have enough knowledge, enough information that was
11 provided to you to come to a conclusion in this case?

12 A. Yes, ma'am.

13 Q. Was this a natural death?

14 A. No, ma'am.

15 Q. What was the cause of death, ma'am, in your expert
16 opinion?

17 A. This child died of, a death of asphyxia by chest
18 compression.

19 MS. CAMPBELL: Beg the Court's indulgence.

20 (Pause.)

21 MS. CAMPBELL: Thank you. I have nothing
22 further.

23 THE COURT: All right. Ms. Singletary.

24 MS. SINGLETARY: Thank you, Your Honor. May it
25 please the Court.

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CROSS-EXAMINATION

BY MS. SINGLETARY:

Q. Dr. Olga. Sorry for mispronouncing your --

THE COURT: Dr. Rosa?

MS. SINGLETARY: Dr. Rosa. I'm sorry.

THE WITNESS: That's okay. It's confusing.

BY MS. SINGLETARY:

Q. Sorry about that. You said, you brought up something on direct examination about if a child was actually being squeezed or if a child was actually having their diaphragm or their chest compressed that they would be struggling?

A. Yes, they will.

Q. Okay. And because that child will be struggling, you would typically see some type of scarring or some type of injuries inside that child's mouth?

A. Not necessarily.

Q. Okay. But, if this child is struggling and fighting, you would say that they're trying to gasp for air?

A. They are trying to get air in.

Q. And could you show the jury how the child would be trying to get air in?

A. Well, basically they will be struggling to get rid of what has constricted them. That's their main objective.

They -- you have seen kids when you try to restrain them they get squirmy. They start struggling. They, you know,

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1 want to get out of that restraint.

2 So that's what you will see. So basically the child
3 is struggling, you know, until basically the child cannot
4 get enough air and will lose consciousness.

5 Q. But how would the -- I guess my question is: Would
6 the child be like (demonstrating)? I mean, would they be
7 trying to get air in through their mouth?

8 A. They will try to get air through their mouth. To get
9 air through the mouth they need to kind of release the
10 restraint or the constraint that they have over, you know,
11 their chest and their upper abdomen to allow, to get that
12 breath in.

13 Q. And if they're going to be struggling like their
14 tongue may be sticking out or they may even be biting
15 their tongue because they're trying to get air?

16 A. It could be possible, yes.

17 Q. So we could probably see some damage in the mouth?

18 A. Possibly, not probably.

19 Q. Oh, possibly. I'm sorry about that.

20 A. That's all right.

21 Q. Did you actually look at all the autopsy photos?

22 A. Yes, I did.

23 Q. And you said that you actually relied on Dr. Marcus's
24 actual autopsy?

25 A. Yes, ma'am.

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1 Q. And when Dr. Marcus actually notated the mouth area,
2 was there any injuries inside the mouth or around the
3 mouth?

4 A. I can't remember but I can look up if you want.

5 Q. Well what if I tell you that he wrote there were no
6 injuries?

7 A. I will not be surprised either.

8 Q. Okay. Let me ask you again: You talked about
9 bacteria. In order to find out whether or not bacteria
10 was actually present in a child's body that a blood
11 culture would have to be done?

12 A. A child is first symptomatic and we, after we do the
13 physical exam and we don't find any focus for that fever,
14 because that's the reason the child is there --

15 Q. Uh-huh.

16 A. -- to be examined for. If we don't have a focus for
17 that fever and the child is between the ages of three
18 months to three years, we will do the blood culture.

19 Q. Okay. But a blood culture -- are you aware of the
20 fact whether or not a blood culture was actually done in
21 this case?

22 A. I didn't read anything about that on the autopsy
23 report.

24 Q. So no one looked at the child's blood to see whether
25 or not there was any bacteria in it?

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1 A. As I said before, there was no report in the autopsy
2 report.

3 Q. And, again, you're not a pathologist; correct?

4 A. You are correct.

5 Q. Okay. And didn't you -- you didn't do the autopsy on
6 **DG** in this case?

7 A. No, I did not.

8 Q. Yeah. And you actually did not get to see the body?

9 A. No, ma'am. I did not.

10 Q. You actually are just solely relying on the other
11 doctors' testimony? Well, not their testimony. I'm
12 sorry. Let me rephrase. Yeah. I didn't want you to get
13 me with that one.

14 You're just relying on their reports; correct?

15 A. Yes, I am.

16 Q. Okay. And you went through some symptoms of it in
17 your direct examination of, and I know I'm going to say
18 the word wrong too but Water --

19 A. Waterhouse-Friderichsen syndrome.

20 Q. You said one of the actual symptoms would be vomiting;
21 correct?

22 A. Yes. First they got their fever. They feel cranky,
23 irritable. And then they may have vomiting, they feel
24 what we call general malaise, that feeling of, I don't
25 feel good but I'm unable to tell you I don't feel good so

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1 I just, you know, lie around and, you know, less active,
2 less playful.

3 Q. And you also stated that the child would be, I guess,
4 underweight? I mean, could you explain that again? In
5 your direct examination you were saying something about
6 them having a small stature.

7 A. No, I didn't use the word stature.

8 Q. Yeah, I know you didn't use that word but you said
9 something about the weight of the child or the way the
10 child would actually appear?

11 A. Well what I said during the direct is that children
12 definitely are not small adults.

13 Q. Uh-huh.

14 A. And when you look at a child, the proportions, the
15 body proportions of a child are different from an adult.
16 What we call the upper segment of the body which is from
17 the belly button up and from the lower segment of the body
18 which is from the belly button down to the feet, their
19 proportion is different.

20 And therefore they have, you know, their belly is
21 bigger. If you look at a kid, they're more belly
22 prominent, you know. The chest, the chest wall is not as,
23 you know, the chest cavity, the chest wall, the thorax, is
24 not as big, as well developed as adults because it's
25 usually after 10 years of age that they acquire that same

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1 adult proportion.

2 So they got to have -- and their abdominal wall, the
3 muscles of the abdominal wall are not as well developed.

4 So they will have kind of a prominent belly, you know, not
5 as prominent chest and, you know, a head, usually the big
6 head of the kids.

7 Q. And are you aware in this case that **DG** was
8 actually 24 pounds at 23 months?

9 A. Yes. She was on the 25th percentile. That is
10 correct. Yeah, I know that.

11 Q. You said that you actually went through my client's
12 statement when you was actually reviewing this case?

13 A. Yes. What was provided to me; correct.

14 Q. And my client said in his statement that she was, that
15 his daughter was whiny. Do you remember that?

16 A. Yes, after, at 8:45. Can I talk about the statement
17 or --

18 Q. No. I'm just asking --

19 MS. CAMPBELL: Objection, Your Honor. She has a
20 right to answer.

21 THE COURT: She's on cross-examination. You can
22 formulate your question.

23 MS. SINGLETARY: Okay.

24 BY MS. SINGLETARY:

25 Q. My client said in his statement that his daughter was

OLGA - CROSS

1 whiny?

2 A. That's correct. I remember that part.

3 Q. He also said that she had some vomiting episodes;
4 correct?

5 A. One on the night before and with a little bit just
6 after that, and then one on the next morning.

7 Q. Okay. He also said that she kind of had a loss of
8 appetite; correct?

9 A. That part I don't remember, but if you say so.

10 Q. Okay. All right. And aren't those actually symptoms
11 of the, some of the symptoms of the Waterhouse-

12 Friderichsen syndrome?

13 A. As I said, they could be part of the syndrome, but
14 remember, there's something missing in here. There was no
15 fever which is a very important presenting symptom for any
16 infection, even viral.

17 And at the same time if I'm not mistaken there was
18 some runny nose, stuffy nose. So you can see that with
19 viral infections which is very common in toddlers. You
20 know, they get, you know, snotty nose and they get also
21 kind of not felling well during their first 24 hours, 48
22 hours of a viral infection.

23 Q. Are you aware of the fact that when my client
24 initially took his daughter to the actual emergency room
25 that her fever, that her temperature was not taken at that

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1 time?

2 A. It was taken.

3 Q. It wasn't taken at the time when she first came into
4 the emergency room.

5 A. Well, I reviewed the records and there's a temperature
6 taken right there.

7 Q. The temperature wasn't taken until after she was
8 deceased. I'm making that distinction.

9 A. I'm a tad confused because what I read from the
10 records is 97.2, the high when she was in the emergency
11 room being resuscitated. So I'm not sure, you know, what
12 do you consider -- I didn't read anything in the medical
13 records indicating that that temperature was taken after
14 the child has been declared dead.

15 So I'm confused.

16 Q. You weren't here on that day. Dr. Mercier
17 testified --

18 MS. CAMPBELL: Objection, Your Honor.

19 THE COURT: Sustained. The jury will disregard
20 the last statement of counsel.

21 BY MS. SINGLETARY:

22 Q. And did you look at the slides that -- well, did you
23 look at the slides that was actually provided to the
24 defense in this case?

25 A. No, ma'am.

OLGA - REDIRECT

1 Q. Okay. So you didn't review the slides?

2 A. No, ma'am.

3 Q. To see whether or not there was any bacteria in the
4 slides?

5 A. No, ma'am.

6 Q. And, again, you're not a pathologist?

7 A. That's the reason I did not review the slides.

8 Q. Yeah. And during direct examination you pretty much
9 gave us definitions of different diseases.

10 A. The presenting, the clinical manifestations of
11 different diseases. Yes, ma'am.

12 MS. SINGLETARY: Yes. I have no further
13 questions, Your Honor.

14 THE COURT: Redirect?

15 MS. CAMPBELL: Just a couple questions, Your
16 Honor.

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q. Doctor, did this child have Waterhouse-Friderichsen
20 syndrome?

21 A. No, ma'am.

22 Q. She asked you about injuries to the mouth. In order
23 for a child to die from chest compression asphyxia, does
24 there have to be any injuries to the mouth?

25 A. No, ma'am.

OLGA - RECROSS

1 Q. And in fact, are there three spots consistent with
2 fingers on her cheek?

3 A. Where there were bruises on her cheek, yes.

4 Q. And as far as chest compression asphyxia, holding a
5 child and squeezing it is not the only the way that can be
6 accomplished; is it?

7 A. Yes. That's correct.

8 Q. Can it also be accomplished in another manner or does
9 it have to be from a squeeze?

10 A. It could be squeezed. It could be the child is lying
11 on the floor and another person, you know, they're
12 limiting -- it's basically, the mechanism is basically
13 limiting the ability for that chest and the exertion of
14 the upper abdomen for air to enter the body. So anything
15 that do that, chest compression, putting the child on the
16 floor, putting pressure on the chest, the knees.

17 Q. So the knees across the chest?

18 A. Yes, ma'am.

19 Q. And if he was like holding her mouth?

20 A. Yes, ma'am.

21 Q. Anything like that?

22 A. Yes, ma'am.

23 MS. CAMPBELL: That's all I have.

24 THE COURT: Recross based upon her --

25 MS. SINGLETARY: Just briefly.

OLGA - RE CROSS

RECROSS-EXAMINATION

BY MS. SINGLETARY:

Q. Okay. You didn't look at slides in this case;
correct?

A. That's correct ma'am.

Q. Okay. You didn't check any blood culture because you
don't know whether or not there was any blood culture
taken?

A. There was no indication of a blood culture taken on
the records.

Q. And you can tell us without looking at the slides,
without testing that blood culture within 100 percent
possibility that you can exclude the Water -- the
Friderichsen system (sic). I can't say the word, I'm
sorry.

A. With a reasonable degree of medical certainty --

Q. Uh-huh.

A. -- I can say that what is called clinical pathological
correlation you cannot just take slides on a vacuum. You
have to have a clinical correlation. That's 101 medicine
and forensic pathology, too. You have to have a clinical
pathological correlation. Therefore at this time with a
reasonable degree of medical certainty, this child did not
die of Waterhouse-Friderichsen syndrome.

Q. So you're saying that a person would have to have the

1 clinical, and how did you phrase it? Clinical, what?

2 A. Clinical pathological correlation.

3 Q. The clinical pathological correlation to say that a
4 particular disease is present in a child; correct? You're
5 saying that you have to look at the slides, you have to
6 look at the blood and you have to have the clinical path
7 -- what you said previously?

8 A. Clinical pathological correlation.

9 Q. Yeah. You're saying that you have to have the both of
10 those?

11 A. You have to have the complete medical picture.

12 Q. The complete medical picture?

13 A. Uh-huh.

14 Q. But you don't have the complete medical picture
15 because you don't have the blood culture.

16 A. Again --

17 Q. Do you have blood culture?

18 A. Well, no, the answer is no.

19 Q. Okay.

20 THE COURT: All right. Thank you, Doctor. You
21 may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Any objection to Dr. Rosa being
24 excused for the balance of this trial, from the State?

25 MS. CAMPBELL: No, sir.

1 THE COURT: From the defense?

2 MS. SINGLETARY: No, Your Honor.

3 THE COURT: Thank you. All right.

4 Why don't we take a 10-minute break before we
5 call the next witness?

6 Ladies and gentlemen, please do not discuss this
7 case among yourselves or with anyone else. Thank you.

8 (Jury exits courtroom at 11:25 a.m.)

9 THE COURT: How many more witnesses does the
10 State plan to have?

11 MS. McDUFFIE: One, potentially two.

12 THE COURT: All right.

13 MS. McDUFFIE: Your Honor, but before we have
14 this witness we need the evidence brought into the
15 courtroom.

16 THE COURT: Excuse me?

17 MS. McDUFFIE: We need the evidence brought into
18 the courtroom.

19 THE COURT: Okay. We'll take a 15-minutes
20 recess.

21 (Thereupon a recess was taken. At 11:35 a.m.,
22 the trial resumed as follows:)

23 THE COURT: Anything before we bring the jury
24 back in?

25 MS. HINES: We do, Your Honor.

1 THE COURT: Let's come to order.

2 MS. CAMPBELL: Your Honor, with the Court's
3 permission.

4 Just, the only copies we have of these slides
5 have been reviewed by the expert, were the actual black
6 and white ones which were in here earlier. Could my
7 expert step out and just look at them again? If we could
8 have just five minutes again just to look at them?

9 THE COURT: Yes.

10 MS. CAMPBELL: Thank you.

11 MS. HINES: Your Honor, my understanding is that
12 the pathologist that -- and I don't have any objection to
13 them looking at them now. The pathologists that have
14 already testified did review the slides before they
15 testified.

16 MS. CAMPBELL: He reviewed the black and white
17 photos.

18 MS. HINES: They reviewed the color.

19 THE COURT: I thought we had the color ones the
20 other day. If he hadn't he can look at them. It's not a
21 problem.

22 MS. CAMPBELL: Thank you, Your Honor.

23 MS. HINES: Yes. I do have a motion to limit the
24 testimony by the pathologist to issues that they could not
25 have brought up in their case in chief. They can't

1 attempt to complete their case in chief by rebuttal.

2 The pathologists in this case that testified in
3 the State's case in chief, they did review those color
4 slides here in the courtroom together. Both of them sat
5 right there and reviewed them before I entered them into
6 evidence. I went right over there and picked them up.

7 They could have commented on those slides in
8 their case in chief because they did review them. They
9 did -- they did hear testimony about infection from
10 Dr. Marcus. We did hear --

11 THE COURT: And I understand that. The problem
12 is is that your expert provided no written report that
13 they could anticipate what his testimony is.

14 I am going to caution the Plaintiff that they are
15 only to -- that they don't get a chance -- you're not
16 going to get a chance to put your whole pathologist up
17 again. I'm not going to allow it.

18 And that what they will testify to is only in
19 rebuttal to what Dr. Kessler said.

20 MS. HINES: And we would just request that that
21 would be limited to what --

22 THE COURT: Well, I think I can't limit it just
23 to that. I will make sure that they don't re-present
24 their case, but I'm going to give them a little leeway
25 because they had no idea what Kessler was going to say.

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1 So there was a limiting factor.

2 And that allows a little bit of latitude that
3 would not normally be allowed had they already had
4 Kessler's report.

5 All right?

6 MS. HINES: Yes, sir.

7 THE COURT: Do you still need a few minutes?

8 MS. CAMPBELL: Just a few, couple minutes, Your
9 Honor. I apologize for not doing that before.

10 (Pause.)

11 MS. CAMPBELL: Okay, Your Honor. Thank you.

12 THE COURT: All right. Let's bring our jury in.

13 (Jury enters courtroom at 11:45 a.m.)

14 THE BAILIFF: All jurors present.

15 THE COURT: Thank you. All right. The State may
16 call its next witness for rebuttal.

17 MS. CAMPBELL: Yes, sir. May it please the
18 Court. The State calls Dr. Jay Vandersteenhoven.

19 JACOB VANDERSTEENHOVEN, having been duly sworn,
20 was examined and testified as follows:

21 THE CLERK: Have a seat in the witness box and
22 state your name for the record, please.

23 THE WITNESS: My name is Jacob Vandersteenhoven.

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

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1 Q. Dr. Vandersteenhoven, we're here just for purposes of
2 reply today. So I'm going to limit the testimony as far
3 as -- you were present in the courtroom yesterday when, I
4 believe, Dr. Kessler testified?

5 A. Yes, I was.

6 Q. And prior to these photos being provided sometime this
7 week, had you ever seen those before?

8 A. Not the photos, no.

9 MS. HINES: Objection.

10 THE COURT: What's your objection?

11 MS. HINES: The State's commenting upon when
12 things were provided. That's --

13 THE COURT: She just asked before this week have
14 you seen them. He said no. Overruled.

15 BY MS. CAMPBELL:

16 Q. And, Doctor, I would just hand you first this stack of
17 photographs. And you didn't produce those photographs;
18 did you?

19 A. Pardon?

20 Q. You did not produce those photographs; did you?

21 A. No, I did not.

22 Q. Those were provided by Dr. Kessler, I believe?

23 A. I believe so.

24 Q. However, in this case you did review some slides
25 specific as to the brain and other parts of the body of

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1 slides that were taken?

2 A. Yes, I did.

3 Q. And taking those first as far as, I believe, State's
4 (sic) Exhibit Number Two and Three, which are parts of the
5 cerebellum?

6 A. Uh huh.

7 Q. What part of the body is the cerebellum?

8 A. The cerebellum is the part of the brain that basically
9 sits in the back of your head, tucked up underneath the
10 brain, connected to the brain stem. And it's a part of
11 the brain that its primary role is muscle coordination,
12 basically coordination between why you can walk or not if
13 you didn't have your cerebellum.

14 Q. And I'm not going through all your expertise again.
15 But using that expertise and your training as a
16 pathologist, when you reviewed those items, State's --
17 Defense Exhibit Number Two and Three which is the slides,
18 photos from the slides from the cerebellum, what do you
19 note in your expert opinion?

20 A. This is a section of the cerebellum. Very typical
21 appearance. And these slides are standard, and very
22 routine stains that we normally use in all our evaluations
23 called hematoxylin eosin --

24 Q. Can you speak up just a little bit?

25 A. A routine stain that we use is called hematoxylin

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1 eosin. So the nuclei of the cells, the cell's center so
2 to speak, the nuclei, typically stain blue. And then all
3 the other substance stains pink.

4 And the cerebellum is very organized as the rest of
5 the brain is. It's basically a very organized circuit
6 board, if you will.

7 But it's very organized. And it was mentioned
8 yesterday on the cerebellum, granular cell layer and then
9 a layer of Purkinje cells which are specialized neurons.

10 In looking at these two pictures there's no histologic
11 abnormality. In other words, there is no disease
12 process --

13 MS. HINES: Objection, Your Honor, on the
14 Purkinje cells. I don't believe that there was any
15 testimony there was abnormality on the slides.

16 THE COURT: I'm going to give her a little
17 leeway.

18 MS. HINES: Okay.

19 THE COURT: Overruled.

20 BY MS. CAMPBELL:

21 Q. Go ahead, Doctor.

22 A. Well, the Purkinje cells -- the reason for taking a
23 section like this of this particular region of the brain
24 is to look for some sort of anoxic or hypoxic event in the
25 past. And the only time you really see an anoxic or

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1 hypoxic event in the cerebellum is just --

2 MS. HINES: Objection, Your Honor. I think this
3 expert has already testified to this on direct.

4 THE COURT: I'm going to give him a little leeway
5 here so they can present proper rebuttal. Overruled.

6 MS. HINES: Okay.

7 THE WITNESS: I'm sorry.

8 BY MS. CAMPBELL:

9 Q. You can go ahead.

10 A. If a patient survives, that's the time we would expect
11 to see changes like neuron dropout or ischemic change in
12 neuron or even cerebellar edema, okay, or cerebral edema.
13 Those changes only occur if a patient survives and a
14 temporal time after that.

15 Q. For some period of time after the actual asphyxia?

16 A. Right.

17 Q. And in this case, in review of this case this child
18 did not?

19 A. That's correct.

20 Q. So the finding in State's Exhibit -- excuse me,
21 Defense Exhibits Two and Three would be consistent or
22 support what happened in this case?

23 A. It's possible. That's correct.

24 Q. Yes. Thank you.

25 A. At least there's no sign of anoxic, prior anoxic

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1 injury.

2 I have Exhibits Eight and Nine now.

3 Q. Okay. I believe those are of the mid brain?

4 A. Sections of the mid brain. Again, the mid brain is
5 the mid portion of the brain. It's a part of brain stem
6 that's very close to the cerebellum.

7 It has another function which I won't get into, but
8 this is a representative section I'm told, is a
9 representative section of mid brain.

10 Mid brain is basically a lot of white matter which is
11 basically a lot of the circuits or the processes of
12 neurons. There a lot of tracks, a lot of which run
13 through the mid brain.

14 There's a little picture or a little area right here
15 at low power, little blue dots. Here it is again on, I
16 believe, a little higher power. Again, little blue dots.

17 And the area here in the upper right-hand corner is
18 the white matter. So I believe it was referenced
19 yesterday to this area of this kind of pale blue-pink area
20 and these little blue dots as representing inflammation or
21 a septic embolus.

22 In my opinion, this is just postmortem clot.

23 Q. And what is postmortem clot, sir?

24 A. In the case of a deceased individual, the blood
25 actually has its own clotting mechanisms which work during

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1 life and also immediately postmortem.

2 And what happens is when the blood pools or sits, it
3 will clot. And it will clot in a different pattern than a
4 blood clot in a living person. In a -- typically when you
5 have a blood clot in a living person, it's happening in a
6 blood flow stream. The pattern is a little different.

7 But we see this very often. And in times when we're
8 trying to determine whether something is, actually
9 represents an embolus of some sort, we have this problem
10 at -- on -- at autopsy trying to determine whether
11 something's postmortem blood clot or a true embolus.

12 But in my opinion, this is postmortem blood clot.

13 Q. Is there any indication from that there was any kind
14 of disease?

15 A. No. With a septic embolus, I would expect a lot more
16 acute inflammatory cells, also called neutrophils; a
17 mixture of more chronic inflammatory cells, which is
18 lymphocytes; sometimes plasma cells. And a true septic
19 embolus you can actually see bacterial colonies on this
20 routine study. You don't need a special stain
21 necessarily.

22 Q. And is any of that present on what you just reviewed?

23 A. It is not present in these slides.

24 Q. Okay.

25 A. And I have Exhibit 14.

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1 Q. That would be also mid brain?

2 A. Also mid brain. And here we, again, have white matter
3 of the mid brain. And now we have a portion of the
4 coverings of the brain called the left meninges.

5 And in the left meninges are sometimes little nerve
6 twigs, a lot of small vessels, both veins and arteries.

7 And what you're seeing here is actually a vessel right
8 here in the center with what looks like blood and small
9 blue dots or lymphocytes. And, again, this is, I guess,
10 is supposed to represent a septic embolus.

11 But I think, again, this is postmortem blood clot.

12 The other reason that it's probably not a septic
13 embolus or an embolus of any sort is emboli when they go
14 from another source, typically heart or lung, as they go
15 directly to the brain, would travel in arteries, not
16 veins. This is an example of a vein which is the return
17 system from the brain to the heart.

18 So, highly unlikely that you would see a septic
19 embolus in a small vein.

20 I have four more exhibits; 10, 11, 12 and 13.

21 Q. Yes, sir. That's also the brain thrombus, I believe?

22 A. Okay. I'll just show you quickly and go back through
23 them again.

24 Again, this is white matter, presume mid brain. This
25 is the soft tissue covering of the mid brain.

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1 Again the left meninges. And, again, we have an
2 aggregate or a little clot of red cells, small blue dots
3 in a very thin wall, irregular vessel right here.

4 Again I think, my opinion of this is a vein and the
5 aggregate that's in the middle of the vein is actually
6 postmortem blood clot and not a septic embolus.

7 Here's a little higher power view of this. Again,
8 your regular distribution. And what you see here in the
9 center and you see in a little higher picture, that's
10 fibrin. That's part of the natural clotting mechanism.

11 It actually looks like, I guess the analogy, to use
12 another analogy, just think of cotton wool or a cotton
13 ball. And in the case when a vessel is damaged or the
14 cells lining the vessels are damaged, you get this cascade
15 which is a chemical cascade which makes this fibrin. And
16 it acts as a mat basically to plug up the gap in the
17 vessel.

18 And then you start the clotting cascade. You have
19 platelets aggregating. And they aggregate on the walls of
20 these vessels in order to plug them up. But, again, the
21 same thing happens in a postmortem blood clot. And this
22 is an example of postmortem blood clot.

23 This is another high powered yet of the small blue
24 dots now, which are actually lymphocytes. We normally
25 have lymphocytes and some neutrophils in our blood, mixed

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1 with the red cells. Okay.

2 And here, right in the center, is another high-powered
3 view of fibrin. And, I think the view yesterday or least
4 the task of the expert witness was that this represented a
5 septic embolus and the small little dots that you see here
6 actually represent bacteria.

7 In my opinion this is, again, fibrin. And you can see
8 kind of artifactual little dots with fibrin. Again, think
9 about a cotton ball. If you see it on a horizontal plane,
10 you see a lot of little fibers. If you cut it on a cross-
11 section you'll see little dots.

12 And that's what I think you're seeing here.

13 Again, not bacteria. A blood clot, postmortem blood
14 clot with fibrin.

15 I have Exhibits Five, Six, Seven -- Four, Five, Six
16 and Seven.

17 Q. Yes, sir. Those are the lung, I believe, or different
18 ones of the lungs?

19 A. Again, these slides are representations. This is not
20 the way we make diagnoses, but I think as a seasoned
21 pathologist, I think I can recognize that this is lung
22 tissue.

23 And as was mentioned yesterday, think of the lung as
24 sort of an inverted tree. The trunks and the branches
25 represent the little airspaces. And the leaves and the

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1 other terminal portions of the tree represent the little
2 sacs, little airspaces, which are called alveoli. And
3 around the alveoli, think of like a little bag, there's a
4 little network of small, tiny little vessels. Okay.

5 That's what you see. All the little bags sitting in
6 the tiny little vessels in part of this lung. Okay. So
7 this is what a lung looks like.

8 In this area right here, there's a cross-section of
9 one of those little airspaces called a bronchial. And
10 then as was indicated yesterday this little aggregate here
11 of small blue cells are purported to be lymphocytes.

12 Here's another view, another portion of lung. This is
13 not the same picture. Again, a portion of one of these
14 little airspaces. This is normal lung.

15 MS. HINES: Your Honor, if he could give us
16 the --

17 THE COURT: Exhibit number?

18 MS. HINES: Yes. Exhibit number.

19 THE COURT: Yeah. Please refer to it by exhibit
20 number.

21 THE WITNESS: I'm sorry. Exhibit Number Four is
22 another representation of lung.

23 To my eye, this looks like a portion of another
24 airway. Another little aggregate of collection of small
25 blue dots. Again, probably lymphocytes. And then the

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1 surrounding tissue in my view is normal lung tissue.

2 There's no congestion. There's no hemorrhage.

3 The airspaces are clear. And they're clear
4 because on cross-section when we take the sections you
5 actually see light through them. There's no inflammatory
6 infiltrate. There's no evidence of prior infection where
7 you get organization and remodeling of the airspace after
8 its been occluded by inflammatory cells.

9 And then this is a little higher power again, of
10 probably one of the areas, Exhibit Number Seven, which
11 shows basically a collection of small lymphocytes and
12 possibly macrophages and possibly a single multinucleate
13 of a giant cell. Okay.

14 And then this view here on Exhibit Five was
15 another portion of this airway which is lined by typical
16 epithelium that you see in the airway called cilia
17 epithelium. And the little cilia basically just keep a
18 constant flow of mucus back out towards the mouth,
19 basically remove everything that we normally breathe in.

20 My point is that this is not an infectious
21 process. All the slides or the views that I've shown you,
22 everyone in this room has this sort of same pattern. I
23 have it. You all have it. It's not a sign of infection.

24 And lastly, Exhibit 15. The adrenal gland, I
25 presume.

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1 BY MS. CAMPBELL:

2 Q. Adrenal gland?

3 A. The only thing I can tell you at this power, this
4 low-power view of a portion of the adrenal gland that you
5 can see nicely demarcated here. And then there's a little
6 bit of periadrenal fat here.

7 But there's a little bit of blood right here in this
8 corner. That's periadrenal hemorrhage. And there's
9 congestion and maybe a little bit of hemorrhage right here
10 in the adrenal gland.

11 But this is not an adrenal gland of Waterhouse-
12 Friderichsen syndrome. I said that name again.

13 What you expect to see in this case is a massive
14 blowout of the adrenal glands.

15 And to tie this in with the Waterhouse-Friderichsen
16 syndrome, you would expect to see a lot more inflammatory
17 changes throughout all these organs that have just been
18 represented. You would expect to see a reaction to an
19 infection, a lot more acute inflammatory cells, a lot more
20 tissue destruction.

21 I just don't see that here.

22 Q. Doctor, in this case was this child from your review
23 of everything, did she die from Waterhouse-Friderichsen
24 syndrome?

25 A. I'm sorry. Your question is, did she?

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1 Q. Did she die from?

2 A. No. She did not die from Waterhouse-Friderichsen
3 syndrome.

4 Q. Did she die from any type of strepto -- I can't say
5 those words -- any type of infection at all?

6 A. In my opinion, she did not die of an infection.

7 Q. And without going through your entire testimony again,
8 this merely supports your testimony from the day before
9 yesterday?

10 A. Yes. That's correct.

11 MS. CAMPBELL: That's all we have, Your Honor.

12 THE COURT: All right. Thank you. Ms. Hines?

13 MS. HINES: May it please the Court. Yes, sir.
14 Thank you.

15 CROSS-EXAMINATION

16 BY MS. HINES:

17 Q. Good morning, Dr. Vandersteehoven.

18 A. Good morning, Ms. Hines.

19 Q. How are you?

20 A. Okay.

21 Q. Good. I just have a few questions. And I want to --
22 okay. I want to start with what you said. If I could get
23 those back?

24 A. Sure.

25 Q. Okay. Now, the last one that you testified about,

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1 Number 15?

2 A. Uh-huh.

3 Q. You said that this is the periadrenal area?

4 A. It looks like periadrenal fat; that's correct.

5 Q. Okay. And you see hemorrhage up in here?

6 A. I see red which indicates, red cells. It's probably
7 hemorrhage; yes.

8 Q. And what is this part? Looks like a clear demarcation
9 through there.

10 A. There are --

11 Q. What is the part below that?

12 A. There are two parts or the two areas, regions of the
13 adrenal gland. One is the cortex and the other is the
14 medulla.

15 And as was indicated yesterday I believe by
16 Dr. Bradley, that the adrenal glands is responsible for
17 many different hormones. And a number of the hormones are
18 made in this clear zone called the cortex.

19 And then epinephrine and norepinephrin, your fright
20 and flight response, hormones are generated in the
21 medulla, right here.

22 So this is a portion of, probably, cortex maybe
23 overlapping into some portion of the medulla. It's very
24 hard to tell. It's not as sharp as --

25 Q. All right. And this may be some hemorrhage, here?

VANDERSTEENHOVEN - CROSS

1 A. It looks like it's redder than the rest. So I'm
2 presuming there are more red cells there, yes.

3 Q. And so red cells --

4 A. So red cells could mean congestion or could be
5 hemorrhage. I'd have to look higher to be able to tell
6 whether it's been, let's say, if there's been tissue
7 disruption.

8 Q. Okay. So you're not saying that there's no hemorrhage
9 here? You can't say --

10 A. I can't say for sure.

11 Q. Okay. Thank you. Now, what do lymphocytes do?

12 A. Lymphocytes are a part of your immune response. The
13 constant surveillance that your body has in terms of
14 fighting off infection.

15 Again, as was mentioned yesterday, your body is
16 constantly fighting off infection. And they're a
17 particular immune-type cell typically involved in antibody
18 generation. For example, any sequence of antibody
19 generation, initially generated in the bone marrow and
20 then after they mature reside in the lymph nodes of the
21 body.

22 Q. And so they generally reside in the lymph nodes?

23 A. That's correct.

24 Q. And what do the macrophages do?

25 A. Macrophages are also part of the immune system, sort

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1 of more of the end-stage process.

2 They have multiple roles. They have clean-up duties,
3 if you will, phagocytic properties. So when there's been,
4 tissue damage or infection, typically they fagocytize or
5 ingest the debris, the cellular debris.

6 They're also involved in immune regulation.

7 If there's a site of infection or if you cut yourself,
8 for example, part of the healing process is sort of,
9 they're coaches so to speak. And they mediate and call in
10 all the forces that they need, basically, to resolve that
11 area.

12 Q. Okay. And in slide number seven -- here we go. When
13 you referred to slide number seven, if you could hold
14 that?

15 A. Uh-huh.

16 Q. Just a moment ago you said there was a collection of
17 lymphocytes?

18 A. Yes.

19 Q. Macrophages?

20 A. It appears to be, there are --

21 Q. And --

22 A. -- some. Maybe a macrophage or two, yes.

23 Q. And possibly a giant, multinucleate giant cell?

24 A. That's correct.

25 Q. Can you point out that multinuclear giant cell?

VANDERSTEENHOVEN - CROSS

1 A. This is probably it.

2 Q. Probably?

3 A. Probably.

4 Q. Probably. If it is a multi, a multinuclear giant
5 cell, is that normal?

6 A. Yes. It's part of, like you said, most people would
7 have these cells around their bronchials just as the --
8 and it would be perfectly normal.

9 Q. Okay.

10 A. It's part of that constant immune system you have.
11 Lymphocytes residing around the air spaces in your lung.
12 So it's not uncommon to see small collections of
13 lymphocytes.

14 Q. Okay. Lymphocytes?

15 A. And macrophages.

16 Q. And macrophages. Okay. Thank you.

17 And you testified about slide number four again about
18 an area of lymphocytes?

19 A. Yes.

20 Q. And can you show the jury that area of lymphocytes?

21 A. Right here.

22 Q. Okay. And you also testified that there was no
23 congestion or hemorrhage?

24 A. Well, there's no evidence on this slide, which is not
25 exactly sharp, of hemorrhage.

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1 And when you talk about hemorrhage in the lung, you
2 would expect to see blood, a lot of blood in these little
3 clear spaces. All these places are clear.

4 There's no evidence of hemorrhage. An isolated red
5 cell in the alveolar space, that's not hemorrhage, but I
6 can't say there's not a red cell in the alveolar space.

7 And then this here is just congested. It's full of
8 red cells which is a normal thing.

9 Q. So that's a normal?

10 A. Yes.

11 Q. Okay. Thank you. Now I want to go slide number two
12 and three.

13 Actually, let me just first of all go to slide number
14 eight. I'm sorry.

15 A. Okay.

16 Q. Slide number eight. That is a section of the brain.
17 This is brain tissue?

18 A. Purportedly it's brain tissue. And if it is brain
19 tissue, that's probably white matter.

20 Q. That's probably white matter. And so that's within
21 the brain itself?

22 A. Yes, it is.

23 Q. Okay. And you testified earlier that that is probably
24 a postmortem clot, postmortem blood clot?

25 A. A little bit of it here in the postmortem blood clot,

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1 yes.

2 Q. Okay.

3 A. Again, there's no sign of infection whatsoever in that
4 particular slide. There was no inflammatory infiltrate.

5 Q. Okay. And -- okay. And then let me go to slide
6 number two.

7 A. Uh-huh.

8 Q. This was the Purkinje cells and this is in the
9 cerebellum; correct?

10 A. That's correct.

11 Q. Do you see any blood vessels or arteries in there?

12 A. This particular part of the brain has, for the most
13 part, very tiny little capillaries which are the smallest
14 of the small vessels.

15 And they are -- some of them penetrate into the,
16 another area of white matter overlying the cerebellum
17 called the molecular layer.

18 And they're basically not dilated or congested but I
19 basically don't see any large vessels.

20 Q. Okay. There are capillaries in the brain?

21 A. Oh, yes.

22 Q. And. Slide number 10, you testified that this is with
23 a postmortem clot?

24 A. Yes.

25 Q. And what is this?

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1 A. That looks like brain tissue. It looks like white
2 matter.

3 And if that's the case then this is the covering of
4 the brain called the leptomeninges. And then the
5 leptomeninges. It's sort of a bi-layer. You have all
6 these tiny little vessels.

7 Q. Okay. And so you have white matter here?

8 A. Uh-huh.

9 Q. Which is what you said when we talked about slide
10 number eight?

11 A. Uh-huh.

12 Q. That's also, you think, white matter?

13 A. Yes.

14 Q. Okay. And it does look about the same; doesn't it?

15 A. White matter usually looks about the same on all these
16 sections, yeah.

17 Q. Okay. And this is the leptomeninges here?

18 A. It would appear that it's probably leptomeninges.

19 Q. And what is this?

20 A. That's a small vessel.

21 Q. A small vessel.

22 A. On cross-section. So you're seeing probably the
23 vessel along its length.

24 Q. Right. Okay. And back to this one again.

25 You said, number eight, that this is an area of

VANDERSTEENHOVEN - CROSS

1 clotted blood cells?

2 A. What I attribute that to be is an area of adherent
3 blood clot.

4 Q. Adherent blood clot?

5 A. Yes. When we prepare these sections you can
6 understand there's been a lot of dissection, examination
7 of the organs. There's a lot of blood. The blood clots.

8 And sometimes you get a little piece just stuck onto
9 an area of section. That's what that looks like. It's
10 not part of a vessel. It's just attached.

11 Q. But that would have come out of one of the capillaries
12 maybe?

13 A. It would have to come out of a blood cell, yes.

14 Q. Okay. Can you tell the jury about the blood brain
15 barrier?

16 A. The blood brain barrier is basically a safety
17 mechanism that God has created for us in the brain.

18 Unlike the rest of the body when your heart pumps, it
19 goes, it pumps red cells and blood to the rest of your
20 body. You go through basically large vessels, smaller
21 vessels to the capillaries, and then it goes into the
22 system and then comes back to the venous system.

23 In the brain, you have a specialized barrier between
24 the systemic circulation, which is the body circulation,
25 and the brain circulation.

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1 And it prevents a lot of antibiotics, chemotherapeutic
2 agents from actually crossing that barrier. So a lot of
3 agents that may be effective in the rest of the body are
4 not effective in the brain because they can't cross this
5 specialized blood barrier.

6 Q. And does the blood cross that specialized area?

7 A. You get permeation. You get permeations through; yes,
8 you do. You get permeation of oxygen supply as part of
9 the blood brain barrier.

10 Q. So you get permeation of oxygen supply. Does the
11 actual blood itself cross the blood brain barrier?

12 A. No.

13 Q. No?

14 A. No.

15 Q. And let me just ask you this: Does the white
16 matter -- which side of the blood brain barrier is the
17 white matter on?

18 A. The whole system is part of the blood brain barrier.
19 It goes into the brain, so it's a profuse level.

20 It's the differences in the endothelial cells lining
21 the capillaries and vessels in the brain that prevent
22 certain substances from crossing the blood brain barrier,
23 but oxygen goes, permeates through these blood vessels.

24 Okay.

25 Q. Okay. And so oxygen does permeate through that?

VANDERSTEENHOVEN - REDIRECT

1 A. Yes.

2 Q. But does blood itself actually go into the white
3 matter?

4 A. No. It goes through the capillaries. It doesn't come
5 through the vessels.

6 Q. Because of the blood brain barrier; right?

7 A. It's maintained by the blood system. It stays within
8 the capillaries.

9 Q. So it doesn't actually go into the white matter;
10 correct?

11 A. That's correct.

12 MS. HINES: I have no other questions, Your
13 Honor.

14 THE COURT: Thank you. Any redirect?

15 REDIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q. Doctor, one of your subspecialties is neuropathology;
18 is that correct?

19 A. Yes, it is.

20 Q. And that's the examination of the brain?

21 A. That's correct.

22 Q. And does your examination of all the slides, the brain
23 itself, and everything you indicated support your
24 conclusions that you previously stated?

25 A. Yes, they do.

1 MS. CAMPBELL: Thank you.

2 THE COURT: Thank you. You may step down. Yes,
3 ma'am?

4 MS. CAMPBELL: May we approach?

5 THE COURT: You may.

6 (Off-the-record discussion.)

7 THE COURT: Ms. Campbell.

8 MS. CAMPBELL: Your Honor, that's all we have in
9 reply.

10 THE COURT: All right. Ladies and gentlemen of
11 the jury, the State has now completed their reply
12 testimony. So there will be no more testimony in their
13 case.

14 We have a few other matters that we will need to
15 take up. So rather than sending you to lunch and then
16 bringing you back, what I'm going to do is I'm going to
17 dismiss you for the balance of the day.

18 Now, I am going -- because you are going to be
19 dismissed for a long period, I am cautioning you even more
20 not to speak to anyone about this case, not to look at any
21 news articles or have any contact with anybody who's
22 involved in this case.

23 So tomorrow morning at 9:30 we will again bring
24 you back in here where we will, the attorneys will give
25 you their summation, their final arguments, and then I

1 will charge you on the law. And then the case will then
2 be given to you for your deliberations.

3 So, ladies and gentlemen, I'm going to dismiss
4 you for the day with my current warnings about not
5 speaking with anyone.

6 Have a nice day. It's a nice day outside.

7 (Jury exits courtroom at 12:20 p.m.)

8 THE COURT: Have the attorneys had an opportunity
9 to look at the proposed charge?

10 MS. McDUFFIE: Your Honor, the State has looked at
11 your proposed charges and we have no objection.

12 MS. HINES: Yes, Your Honor.

13 THE COURT: Do you have any objection?

14 MS. HINES: We would request a charge on extreme
15 indifference. And with the charges that we submitted --

16 THE COURT: We were looking for South Carolina
17 law.

18 MS. HINES: -- the charge --

19 THE COURT: It's not a whole lot on that.

20 MS. HINES: There's not, but actually I think that
21 -- and I didn't prepare these charges, Your Honor, but I
22 do think that the South Carolina law clearly says that
23 extreme difference is a mental state akin to the intent
24 characterized by deliberate act culminating in death.

25 And that's the last line of the long charge that

1 we submitted. If we could include that definition and
2 that's a direct quote.

3 THE COURT: I'm not sure that applies in this
4 case. This is homicide by child abuse. If there was
5 specific intent, then this would be murder. This is not a
6 murder case.

7 MS. HINES: This actually comes directly from
8 homicide by child abuse case law, Your Honor.

9 This -- hold on just a second. See if I can ...

10 The mental state akin to intent characterized by
11 a deliberate act culminating in death comes from State V.
12 Jarrell, 350 South Carolina 90. That is a homicide by
13 child abuse case in which the issue in that case was
14 whether a directed verdict should be granted.

15 And the Court did analyze extreme indifference in
16 that case as it applies in a homicide by child abuse. And
17 that's what we're asking for, that definition as the Court
18 of Appeals -- this was a 2002 case.

19 THE COURT: Yes, ma'am?

20 MS. CAMPBELL: Can I just get something from
21 her?

22 THE COURT: Yes.

23 MS. CAMPBELL: Your Honor, we would prefer it
24 just be the statute. If she wants that then there are
25 some additional ones that come from that same case. And

1 we would ask that we can review that case.

2 THE COURT: If y'all want to look at those and
3 see what else would go in there, I would allow that. But
4 if it's directly from a case here in South Carolina, I
5 would tend to put that in there as a possible definition.

6 MS. HINES: If I could just add. The Court --
7 this was the actual holding of that case, that the Court
8 said, therefore we reject Jarrell's definition of the term
9 indifference and hold that in the context of homicide by
10 abuse statutes, extreme indifference is a mental state
11 akin to intent characterized by a deliberate act
12 culminating in death.

13 MS. CAMPBELL: I believe that's where they're
14 quoting the Arkansas case.

15 MS. HINES: Actually this is State V. Jarrell.
16 And they are rejecting Jarrell's definition. They've
17 spent, the Court of Appeals had spent some time talking
18 about Jarrell's position. And this is the holding of this
19 case.

20 THE COURT: Okay. We will review it and then
21 let's have a charge conference at nine o'clock tomorrow
22 morning. All right. Thank you.

23 MS. HINES: Thank you, Your Honor.

24 MS. SINGLETARY: Thank you, Your Honor.

25 THE COURT: Court's in recess until nine o'clock

1 tomorrow morning.

2 END OF DAY: 12:25 P.M.

3 * * *

4 ON FRIDAY, MARCH 18th, 2011, AT 9:40 A.M.:

5 THE COURT: We have had a charge conference. I
6 think we've got a charge that everyone agrees upon. State
7 have any other objections to the charge?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Defense have any objections?

10 MS. HINES: No, Your Honor.

11 THE COURT: All right. Thank you. Let's bring
12 our jury in.

13 THE BAILIFF: Yes, sir.

14 MS. HINES: Your Honor.

15 THE COURT: Hold on. Hold on.

16 MS. HINES: Your Honor, the defense at this time
17 would like to renew all of our motions and all of our
18 objections that we've made throughout the trial.

19 We would also like to renew our motion for a
20 directed verdict. We don't believe that based on the
21 evidence that's been presented this week that the State
22 has presented any direct evidence or substantial
23 circumstantial evidence and therefore we'd ask Your Honor
24 for a motion, for a directed verdict.

25 THE COURT: All right. Thank you.

1 MS. CAMPBELL: Your Honor, just for the record,
2 we will be opening on the law and then have the final
3 close as well.

4 THE COURT: I'm going to respectfully deny your
5 motion.

6 MS. HINES: Thank you.

7 THE COURT: Thank you. All right. Let's bring
8 them in.

9 (Jury enters courtroom at 9:45 a.m.)

10 THE BAILIFF: Your Honor, jurors present.

11 THE COURT: Thank you. Good morning, ladies and
12 gentlemen. I hope you had a nice evening. Surely was a
13 nice day yesterday. It's going to be an even nicer day
14 today.

15 I was told that one of the bailiffs -- we're
16 going to be one bailiff short, and I told him, I said I
17 didn't think it mattered as many times as y'all have
18 shepherded yourselves in and out. Y'all could probably do
19 it on your from this point forward.

20 So, ladies and gentlemen, all of the evidence has
21 been presented to you. Now is the time where the
22 attorneys will give you their closing arguments.

23 Is the State ready to proceed?

24 MS. CAMPBELL: State's ready, Your Honor.

25 THE COURT: Is the defense ready to proceed?

1 MS. HINES: Defense is ready, Your Honor.

2 THE COURT: Madam solicitor.

3 MS. CAMPBELL: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: Good morning. The first thing I
6 want to do on behalf of the State, the citizens of
7 Richland County, is to thank you for your service in this
8 case. I know when y'all showed up on Monday morning you
9 may have anticipated what type of trial you would, might
10 be picked on, you might sit on.

11 And I'm sure and on behalf of the State the facts
12 and circumstances and the testimony, the sheer gruesome
13 nature of it, and how it just becomes something we're
14 arguing over when in fact this is about the death of a
15 child.

16 So on behalf of the State, on behalf of **DG**
17 **[REDACTED]** we thank you because y'all have paid very close
18 attention to what at times has been horribly offensive
19 testimony in and of itself. But I hope and I think that
20 as the week has gone by you've understood why this is
21 important.

22 Now, I'm going to have the opportunity right now
23 to talk to you a little bit about the law in the case.
24 And then the defense is going to get up and then I'm going
25 to have a chance to respond to that because the burden of

1 proof is on us. And I'll talk a little bit more about the
2 facts of the case and what we submit the facts in this
3 case show.

4 And let me say right now as I go through the law,
5 if I say anything different from what the Judge tells you,
6 because ultimately after you hear from all of us, the
7 Judge will charge you on what the law is that you are
8 apply to the facts as you find them. So if I misquote or
9 misstate any of the law, please, it's not intentional.
10 Take it as the Judge gives it to you because he is the
11 ultimate person who charges you on what the law is in this
12 case.

13 And in that same vein, ladies and gentlemen, if
14 either side mischaracterizes or misquotes the facts, you
15 remember. Because the roles in this courtroom are very
16 well defined and they're very important.

17 The role of the prosecution is we are to bring
18 forth all relevant admissible evidence as to what happened
19 over that time period. Right there. And we're limited to
20 the time period. Right there, and leading up to the time
21 of this child's death. And then the subsequent
22 investigation.

23 The role of the defense is to defend their client
24 to the best of their ability.

25 The Judge's role is to decide what evidence you

1 are actually allowed to listen to, allowed to hear, what
2 is admissible.

3 But the most important role, ladies and
4 gentlemen, by far, in this courtroom is yours. Each of
5 you individually and then once you get back in that jury
6 room, collectively, because you must determine what
7 happened.

8 And in this case, it's not really about the
9 burden of proof because it happened one of two ways
10 because you've heard from experts; either it happened the
11 way the State's experts say it happened, or that this
12 child died of natural causes from a disease that was
13 caused by something she was in the ER for.

14 And you've heard all the evidence that you must
15 consider, and you must limit your verdict to the evidence
16 you have in this case.

17 The evidence is the testimony, the sworn
18 testimony and then the evidence that's submitted and will
19 go back with you to the jury room. You cannot base it on
20 the questions by the lawyers, fishing expeditions,
21 innuendo, conjecture, speculation. That's not evidence.
22 You must base it on the facts.

23 And I want to apologize if over the last several
24 days if we have done anything to offend you in any way.
25 At times my questioning, our questions may have been in

1 artful, clumsy, not well. At times the evidence has been
2 admissible and not admissible. We sent you all back and
3 forth to the jury room as we argued legal principles about
4 admissibility. If we have done anything, please, on
5 behalf of the State, the county, don't hold that against
6 us on behalf of this child. It was not intentional.

7 Now, in criminal cases it's somewhat unique
8 because you've heard about reports by doctors and medical
9 records, child pediatric records, different reports that
10 have been submitted in this case.

11 And as you noticed, none of those have been
12 admitted because in criminal court the defendant has a
13 right, as he should, to confront each and every witness
14 against him. No depositions, no video depositions, no
15 transcripts that are read to you.

16 The only thing of that nature that's actually
17 admissible are any statements made by the Defendant
18 himself. If they reach a certain level they are
19 admissible.

20 So the reason for that is so this Defendant and
21 his attorneys can confront the witnesses against him. And
22 that's a very important thing. And that has been done,
23 but that's why -- and the other reason for that is so that
24 you can judge the credibility of the witnesses
25 themselves.

1 You heard the testimony. You judge the
2 credibility because in this case it becomes very obvious,
3 credibility is key. Believability is key. Who has a
4 bias? Who has a prejudice? Who has a reason to testify
5 in a certain way?

6 Now you've also heard where some witnesses or
7 additional people may have been present, other police
8 officers present during parts of this case, other people
9 present during meetings. Mr. Carter's wife may have been
10 present.

11 We can't bring forward witness after witness to
12 say the same thing over and over and over, especially when
13 it's not a contested issue. We can bring forth the most
14 relevant evidence to you but we can't bring forth every
15 single person to say the same thing about what took place
16 at a meeting back in April of 2009.

17 So that's the reason you've heard mentions of
18 their name but they may not have been called.

19 And specifically in this case after the
20 defense -- and they don't have to put up a case. And let
21 me say that. They do not have to put up a case but once
22 they choose to put up a case, you judge their case the
23 same way you judge ours.

24 And in this case once they put up a case, we are
25 allowed in very narrow restrictions to put up what's

1 called reply testimony. You've heard the Judge address it
2 as that; you'll now hear reply testimony.

3 And we can't put up, say, Dr. Marcus to say the
4 same thing that he's already testified to on direct. We
5 can only put up certain witnesses to address certain
6 points that we haven't known about or that have come up in
7 their case. And that's the reason for that.

8 Now the burden of proof is on the State of South
9 Carolina to prove this Defendant guilty beyond a
10 reasonable doubt. And I submit, ladies and gentlemen, in
11 this case, in this courtroom, that is a burden we
12 welcome. Because the evidence, the credible evidence in
13 this case is overwhelming as much as no one wants it to
14 be.

15 No one wants this to be child abuse, but the
16 evidence is overwhelming. The burden is on the State of
17 South Carolina to prove this Defendant beyond a reasonable
18 doubt. It's the highest burden, as it should be.

19 But, ladies and gentlemen, I submit in this case
20 with these facts in this courtroom here today, that
21 evidence is overwhelming.

22 What is proof beyond a reasonable doubt? Our
23 courts have defined it and the most -- I guess the easiest
24 way to define it is what is reasonable doubt. Reasonable
25 doubt is the type of doubt that would make you hesitate to

1 act. Make a reasonable man hesitate to act.

2 But our courts have gone a little further and the
3 Judge will instruct you. Reasonable doubt. Proof beyond
4 a reasonable doubt is proof that leaves you firmly
5 convinced of the Defendant's guilt.

6 There are very few things in this world that we
7 know with absolute certainty. And in criminal cases the
8 law does not require proof that overcomes every possible
9 doubt. If, based on your consideration of the evidence,
10 you are firmly convinced the Defendant is guilty of the
11 crime charged, you must find him guilty.

12 If, on the other hand, you think that there is a
13 real possibility that he is not guilty, you must give him
14 the benefit of the doubt and find him not guilty.

15 Proof that leaves you firmly convinced.

16 The law recognizes we may not be able to overcome
17 every single doubt. We just have to leave you firmly
18 convinced of this Defendant's guilt.

19 Now, in this case you have one indictment that
20 was true billed by the grand jury. One charge. And the
21 Judge is going to charge you on the law. In our state the
22 statute reads: A person is guilty of homicide by child
23 abuse or neglect, in this case it's not neglect because it
24 was an overt act, it's more -- well, I guess it could be
25 neglect, but it's an overt act -- if a person causes the

1 death of a child under the age of 11 while committing
2 child abuse or neglect and the death occurs under
3 circumstances manifesting an extreme indifference to human
4 life.

5 The legislature in its wisdom decided there were
6 certain special classes of people that require special
7 statutes to protect them; the elderly, the young. Because
8 they are vulnerable, there are certain statutes.

9 We aren't here today charging Demetrius Goodwin
10 with murder or manslaughter. We are here today charging
11 him with the offense he committed. And that is homicide
12 by child abuse or neglect.

13 Causes the death of a child under the age of 11.
14 No one is going to dispute that. While committing child
15 abuse or neglect, and the death requires circumstances
16 manifesting an extreme indifference to the human life.

17 And what do some of these terms mean? The Judge
18 will charge you that these have been defined in some of
19 the manners. I'm not going to tell you everything he's
20 going to tell you, but child abuse or neglect merely means
21 an act or omission, a failure to act.

22 So it's either an act or a failure to act, by any
23 person which causes harm to the child's physical health or
24 welfare. And harm to a child's health or welfare occurs
25 when a person inflicts or allows to be inflicted upon the

1 child physical injury including injuries sustained as a
2 result of excessive corporal punishment.

3 So if someone chooses, and I'm just giving you
4 examples, to hit their child in such a manner that's
5 excessive or to try to calm their child in such a manner
6 that's excessive and it causes injury, that is harm.
7 That's child abuse or neglect.

8 The courts have gone further in defining this in
9 order to help you come to a decision. And the Judge will
10 also instruct you. And I'm not taking these in any sort
11 of order.

12 But extreme indifference. And I submit, ladies
13 and gentlemen, that grabbing a child and constricting its
14 chest to the point where its ribs break and it dies is
15 extreme indifference. I submit on its face alone that's
16 extreme indifference.

17 But here are the definitions that the Judge is
18 going to tell you. Extreme indifference is the measure of
19 a culpable mental state. And therefore it's kind of akin
20 to intent. We don't have to prove the specific intent.
21 It can be an act or an omission.

22 In this state indifference in the context of
23 criminal statutes has been compared to the conscious act
24 of disregarding a risk which a person's conduct has
25 created or failure to exercise ordinary or due care.

1 And let me repeat that.

2 It has been compared to a conscious act of
3 disregarding a risk which a person's conduct has created
4 or a failure to exercise ordinary or due care otherwise
5 stated.

6 A person acts under circumstances manifesting
7 extreme indifference to the value of human life when he
8 engages in deliberate conduct which culminates in the
9 death of some person.

10 And if that doesn't define what happened here,
11 ladies and gentlemen, I submit, nothing does.

12 The law has gone a step further in talking about
13 parents. Conduct of the parent which evidences an
14 established purpose to forego parental duties. The law
15 recognizes with parents there's a special duty with any
16 child, whoever's caring for them, there is a special duty.

17 May be fairly characterized as willful because it
18 manifests a conscious indifference to the rights of the
19 child to receive support and consortium from the parents.
20 A parent's role is even recognized in the law. It's to
21 protect, to support, to give aid.

22 The law recognizes that.

23 Now, there are two types of evidence in the law
24 and the Judge will instruct you on this. There's what's
25 called direct evidence and circumstantial evidence. One

1 doesn't have any greater weight than the other. And one
2 really isn't that different from the other. It's just how
3 we kind of characterize it in the law.

4 Direct evidence, as the Judge told you, is the
5 type of evidence that you get through your senses, what
6 you see, hear, smell, taste. That's direct evidence,
7 typically eyewitness testimony.

8 You heard from Marquis Carter or Marcus Carter.
9 He gave direct evidence talking about how the child was
10 the night before and what happened when Demetrius Goodwin
11 came out the first time, went back to check on the child
12 and then came back the second time. That's direct
13 evidence.

14 There's also circumstantial evidence.

15 Direct evidence is the testimony of a person who
16 asserts or claims to have an actual knowledge of a fact
17 such as an eyewitness. Circumstantial evidence is proof
18 of a chain of facts and circumstances indicating the
19 existence of a fact.

20 The law makes absolutely no distinction between
21 the weight or value to be given either direct or
22 circumstantial evidence nor is a greater degree of
23 certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all of the evidence in
25 the case and after weighing all of the evidence in the

1 case, if you are not convinced of the guilt of the
2 Defendant beyond a reasonable doubt you must find the
3 Defendant not guilty. If, on the other hand, you are
4 convinced of the Defendant's guilt beyond a reasonable
5 doubt, you must find him guilty.

6 Circumstantial evidence. That's the type of
7 evidence that's been testified to. These types of rib
8 fractures don't happen from CPR. They don't happen
9 necessarily from blunt force unless there is compression.
10 Remember what the radiologist testified to? It's a lever
11 effect. It broke right there next to the spine. Those
12 are the types that's recognized. That's circumstantial
13 evidence of what happened.

14 Direct testimony of what happened is the
15 Defendant's own words. What he says happened, and that he
16 admits caused this child's death.

17 You also heard about some statements given by the
18 Defendant. Voluntary statements. They're admissible in
19 this case. Once it became evident that the Defendant
20 might be a suspect in the case, he was read his Miranda
21 rights, as he should be. There is no evidence in this
22 case that the police did anything but exactly what they
23 should do.

24 In the case he was Mirandized before his
25 statement, the two statements in April. Up until then he

1 was a witness and we were trying to get a background.

2 In this case it was absolutely no evidence that
3 the police did anything but treat this Defendant fairly.

4 You also heard from expert witnesses. As the
5 Judge has instructed you every time he's qualified them,
6 there are certain people because of their training that
7 can be qualified as experts.

8 In this case you heard from pathologists,
9 radiologists, DNA experts, all of those types of people.
10 Once they are qualified as an expert they get to do
11 something more than, say, if I testify because I'm just a
12 lay witness. They're able to give opinions because the
13 law also recognizes that expert testimony can be crucial
14 in criminal cases.

15 And in this case, ladies and gentlemen, I submit
16 it is crucial.

17 So that's why they're allowed to give an
18 opinion. But in that same vein, as the Judge has told you
19 each and every time, you can believe part of what they
20 say, none of what they say. You can see whether they had
21 a substantial basis for which they are making this
22 assertion and also if they have any bias or prejudice,
23 just the same as you judge any other witness in this case.
24 It's the same.

25 And I beg you, judge the credibility of the

1 witnesses in this case. Who has something or will get
2 something as a result of their testimony? Who has
3 something to gain or to lose?

4 And that brings up the last point I want to talk
5 about which is credibility. In this case it's become
6 obvious because it happened one of two ways. Either he's
7 not guilty because this child died, as Dr. Stan Kessler
8 got up here and testified, from some disease from which
9 she was immunized that ultimately led to some syndrome
10 that caused her death for which at the time she presented
11 at the hospital she didn't even have the telltale signs
12 that she had this disease, but that's his testimony; or
13 Demetrius Goodwin killed this child.

14 We aren't saying his actions were meant to kill
15 this child. We're saying his actions were such that it
16 was an extreme indifference to human life, manifested by
17 the death of his own child.

18 Credibility. The Judge will tell you, believe
19 one against many, many against one. You can believe part
20 of a witness's testimony, another part you can disregard.
21 You can believe all or nothing. It's totally up to you.
22 You in your wisdom, as we pointed out, y'all came here,
23 you have your common sense. What makes sense? There's
24 been a lot of doctors with a lot of big words, but what it
25 boils down to, what is the credible evidence, the credible

1 opinions, who has something to gain or to lose.

2 You know, Dr. Bradley summed it up best when I
3 think he said when he's doing in his autopsy it's not
4 about the parents or the police or whoever, his focus is
5 the child. That's who he's there to determine what
6 happened, if necessary, to determine what caused this
7 child's death.

8 No one wanted to it be Demetrius Goodwin. No one
9 got up when this child presented at the hospital and
10 immediately pointed the finger at him and said he did it.

11 There was an ongoing investigation which they
12 went through, repeatedly. They even met -- Dr. Marcus
13 told the police not that the hug caused this, but that
14 simply the background they had at that point would not
15 have caused this child's death.

16 This is the type of investigation that you want
17 because no one should just be lightly or spontaneously
18 accused of killing their own child. No one. It would
19 have been easier if this wasn't a homicide.

20 The police, the pathologists, the doctors, they
21 did their job. They have nothing to gain or to lose if
22 this is a natural death or a homicide. They merely
23 reviewed the evidence. They jumped through the hoops and
24 they did their job.

25 Demetrius Goodwin has to live with the knowledge

1 that he had caused this child's death. When finally
2 confronted on April 13th when told what you're telling us
3 doesn't add up, he admitted the truth. His version of the
4 truth about causing this child's death, his was almost
5 surreal. He even asked the officer if he could go tell
6 his girlfriend, who supports him, himself.

7 Homicide by child abuse. No one's saying that he
8 absolutely meant to kill this child. Was he just trying
9 to shut her up? Was he trying to get her to stop spitting
10 on him? Was he trying to get her to stop swearing these
11 words at 23 months that he talks about? Was he teaching
12 her a lesson?

13 All we have to prove is that he acted with a
14 reckless disregard to human life.

15 Thank you.

16 MS. CAMPBELL: Thank you, Your Honor.

17 THE COURT: Ms. Hines, for the defense?

18 MS. HINES: Thank you, Your Honor.

19 On February 6, 2009, Demetrius Goodwin woke up to
20 the sounds of his **DG** wheezing. He went to her crib.
21 She didn't look right. Something was wrong. He picked
22 her up as any parent would.

23 She gave a faint cry. She went limp. He's
24 looking at her. He's thinking what's wrong, **DG** **████**
25 what's wrong. She's having trouble breathing. His mind's

1 racing. This is his baby. This is his child.

2 Any parent's mind would be racing. There's
3 something wrong. She's not breathing right. It doesn't
4 sound right. He puts her on the bed. She stops
5 breathing. He's doing CPR. There's green stuff coming
6 out of her nose. She starts breathing, there's green
7 stuff coming out of her nose. And there's something
8 yellow in her mouth. And he turns her on her side. He's
9 like, oh my God, this can't be happening. This is my
10 baby.

11 He runs to Mark Carter. I need you to take her
12 to the doctor. I need you to call 9-1-1. I don't know.
13 He doesn't know what he said in that moment. His baby is
14 not breathing. He goes back to her. She's gotten worse.
15 He runs out, she's not breathing, Mark, she's not
16 breathing. Mark, he comes in. She's (makes sound). He
17 showed you. Green stuff coming out of her nose. He
18 showed you what she was doing.

19 They grabbed her up. They take her to the
20 hospital as fast as they can. They're on auto pilot at
21 this point because the baby, there's something wrong.
22 That's his -- my baby. There's something wrong. This
23 is my baby. How could this be happening.

24 They run into the hospital, burst through the
25 doors. My baby's not breathing. Help.

1 The nurse grabs her. They work frantically. He
2 tells the nurse what he saw, what he did, what he
3 remembers. She fell last night. She vomited. She seemed
4 fine. I don't know, I don't know what happened. She
5 vomited this morning. She was wheezing. She was whiny.
6 I don't know. She was tired. There was green stuff
7 coming out of her nose.

8 All the while the nurses and the doctors at
9 Palmetto are working frantically to save **DG's** life.
10 Frantically. Aggressive resuscitative efforts. And he
11 tells them what he saw. He tells them what he did. He
12 tells them what he heard.

13 But **DG** didn't make it. This is every parent's
14 worst nightmare.

15 The pounding in your head, in his head that he
16 must have felt at that moment. What do you mean? This is
17 my baby. Any parent would be feeling that, any parent.

18 And Zem Dozier from the coroner's office came in
19 at that time. And he told Zem Dozier what he saw. He
20 told Zem Dozier what he heard. He told Zem Dozier what he
21 did. And he told Zem Dozier she fell down the stairs last
22 night. She was vomiting last night. I put her to bed.
23 She seemed fine. She vomited this morning. She was
24 wheezing. She was whiny. She had loose bowels. She was
25 tired.

1 He told all of that to Zem Dozier in the hospital
2 right after he had been told that his baby girl was dead.

3 He goes home. The crime scene investigators, Zem
4 Dozier, they come and take pictures the next day as
5 Demetrius and Shayla Matthews were making funeral
6 arrangements to bury their only child. Investigator
7 Mauldin comes because this can't wait.

8 And he tells Investigator Mauldin, she fell. She
9 vomited last night. I woke up, I heard her. She was
10 wheezing, the wheezing woke me up, I picked her up. She
11 gave a faint cry. She went limp. He's crying.

12 Investigator Mauldin told you that he was crying. He was
13 upset. He was -- I mean, he was in the process of making
14 arrangements to bury his baby.

15 The State wants you to believe that he
16 methodically and deliberately squeezed his baby girl to
17 death.

18 Did you hear any evidence at all about the way
19 that Demetrius acted on February the 6th, 2009, February
20 the 7th, April the 13th or April the 15th that would lead
21 you to believe that he did anything on February 6th in a
22 deliberate methodical fashion? No. He was panicked. He
23 was not calm. He was freaking out. His life, his whole
24 world came crashing down on him because his baby was dying
25 in front of his very eyes.

1 He was not deliberate. He was not methodical.
2 You heard Marquis Carter come up here and tell you when he
3 came back in Demetrius told him, she's gone, she's gone.
4 And he just broke down. He was hurting. Any parent would
5 be hurting.

6 Now the State's going to talk about his
7 statements and how he may have included the vomit here, he
8 may not have included the vomit here, he may have said she
9 was wheezing here, he may have said she was whining
10 there. He may have left something out. His baby just
11 died.

12 That doesn't matter. All the people that are
13 coming up to him saying, what happened, what happened,
14 what happened. It doesn't matter.

15 In here he's trying to process the loss of his
16 baby girl. So, attack him about his statements on those
17 days. Go ahead.

18 They want to attack the statement on February
19 13th. By February the 13th, okay, he didn't mention that
20 she vomited that morning, on February the 13th. Okay.

21 By that point they had had their meeting at the
22 solicitor's office and they had decided that the vomit
23 didn't matter. You see, because there's a lot of things
24 in this case that don't fit with the State's version of
25 events, that don't match.

1 Vomit's one of them.

2 By February the 13th, when they brought him and
3 questioned him for three hours, they already knew that
4 they had to minimize that vomit because it didn't match.
5 They don't want to talk about -- Zem Dozier, he didn't
6 know what it was. Dr. Mercier got up here and called it a
7 red and brown material. Zem Dozier called it some
8 substance.

9 There's a picture of it. Kids throw up. Yeah,
10 kids throw up. Every parent knows that kids throw up.
11 How often do they throw up this much? How often do they
12 throw up brown and red?

13 The State can't get around this. They want you
14 to forget this. They want you to forget that this vomit,
15 this vomit has nothing to do with being squeezed. And
16 they say **DG** had no symptoms. No symptoms of being sick
17 at all.

18 Right here. They can't get around it.

19 They made a big point of asking the nurse, Nurse
20 Blind and Dr. Mercier if there was any sign of vomit on
21 her clothes. Nurse Blind told you that she had a T-shirt
22 and underwear, probably a Pamper. This was February.
23 They didn't see any vomit on her clothes.

24 Right here in the State's picture. I want you to
25 look at this. What's this? It's a baby's nightgown. And

1 what's on the sleeve? Something brown. Something you
2 don't normally expect to see on a baby's nightgown on a
3 floor beside bedding covered with some substance, a lot of
4 some substance. And this, which we now know is blood
5 thanks to the DNA person, but what Ray Livingston thought
6 looked like Cool-aid. Does this look like Cool-aid?

7 Well the blood doesn't fit with a squeezing.
8 That doesn't fit, so forgot about this. Don't think about
9 that. That doesn't fit.

10 Now you heard a lot of testimony about these
11 doctors -- from these doctors. They told you about
12 asphyxia. The cause of death that the State believes --
13 what the State believes to be the cause of death is
14 asphyxia. They told you that there would be cyanosis.
15 Dr. Kessler told you there would be cyanosis. There would
16 be brain swelling.

17 Their neuropathologist said there was no sign of
18 brain swelling, cerebral edema. There was no sign of
19 that. There was no damage to the brain cells which
20 Dr. Vandersteenhoven would tell you would be the most
21 sensitive to a lack of oxygen. Asphyxia is a lack of
22 oxygen.

23 We don't have damage to these brain cells.
24 Pristine. They want you to forgot about this. They want
25 you to forget about the fact that Dr. Vandersteenhoven

1 told you there's no brain swelling.

2 What about the cyanosis, the blue lips?

3 Dr. Marcus. Those lips look pretty normal. They look
4 pink, light brown. You can look at these lips. There's
5 no bluing here. Forget about that.

6 Forget about the fingernails. There's no blue,
7 there was no cyanosis in the fingernails. You can look at
8 that and you can see it for yourselves. Forget about
9 that. That doesn't matter.

10 The green mucus, green stuff, pus, mucus, green
11 stuff coming out of this child's nose. You don't have to
12 take Demetrius's word for that. Marquis Carter told you
13 he saw it. If they called Ebony Wages, she was there.
14 She saw **DG** They didn't call Ebony Wages. Forget about
15 her. They can't call everybody. Two people other than
16 Demetrius saw **DG** alive right before she passed. They
17 can only call one of them? And yet they can call four
18 doctors.

19 Forget about her. Forget about the green mucus.
20 Forget about the green-yellow stuff that Marquis Carter
21 saw coming out of her nose that Dr. Marcus never saw.
22 Forget about that. Don't think about that. That doesn't
23 matter.

24 What are the other signs of asphyxia? The
25 petechial hemorrhaging. The blood backs up. It turns

1 blue. What happens to our blood when we don't have
2 oxygen? It turns blue. That's why your veins look blue.

3 And your arteries are represented in red on all
4 the little charts. While all the blood would be turning
5 blue, there would be carbon dioxide building up. The
6 blood would be backing up, and be causing all the little
7 capillaries to burst. You'd see petechial hemorrhages
8 here, in the mouth, in the eyes, in the cheeks, anywhere
9 where it's thin you'd see it. There's no sign of
10 petechial hemorrhage. Well, forget about that. They
11 don't want you to think about that. That doesn't matter.

12 What do they want you to think about? They want
13 you to think about the rib fractures. Her ribs were
14 fractured. We don't know how it happened. They would
15 submit that it happened while he was squeezing the life
16 out of her. The rib fractures, and they're going to focus
17 on the rib fractures. That's fine. The rib fractures are
18 not the cause of death.

19 The cause of death, that they say, is asphyxia.
20 They have to prove this beyond a reasonable doubt. They
21 have to prove the cause of death. Asphyxia. We got no
22 petechial hemorrhage. We've got no brain swelling. We
23 don't know if the blood was backed up in the great vessels
24 which Dr. Kessler told you about because Dr. Marcus didn't
25 look. We don't know about that, but, okay.

1 We've got no cyanosis. We've got no physical
2 signs that they can point to. Well, you don't have to
3 have these signs every time. You don't have to have these
4 signs every time. No. You don't always see petechial
5 hemorrhages. You don't always see brain swelling. You
6 don't always see Purkinje cells dying, neurons. How many
7 times do you see this where you see absolutely none of
8 this? No physical signs of asphyxiation. No cyanosis.
9 None of it. But trust Dr. Marcus because he knows. He
10 learned all about this. American University of the
11 Caribbean, Medical School. Learned all about this and how
12 this works.

13 Now they want to get up and discredit Dr. Kessler
14 and they want to make a bunch of baseless accusations up
15 in here --

16 MS. CAMPBELL: Objection, Your Honor. Her
17 characterization.

18 THE COURT: Rephrase.

19 MS. HINES: Yes.

20 THE COURT: Strike. The objection's sustained.

21 MS. HINES: Thank you, Your Honor.

22 They want to get up here and attack Dr. Kessler's
23 credibility. They don't want you to believe him. They
24 want to make personal attacks on him. They want to tell
25 you that he is biased. They want to tell you that he's

1 been paid. Yes, he was paid by the defense. We paid
2 Dr. Kessler. Doctors do not work for free.

3 And if you -- I don't know how many of the
4 witnesses that you heard from this week took unpaid leave
5 to be here. I don't know. I doubt that any of them did.

6 Except for Marquis Carter. He told you about the
7 green stuff. He told you about the breathing
8 (demonstrating), the way that she was breathing. He told
9 you about how Demetrius was panicked, about how he was, he
10 was hurting. He broke down.

11 So Dr. Kessler got paid. Yeah. \$6,600. \$6,600
12 is a small price to pay for finding out the real cause of
13 death here.

14 They've got the whole power of the State.
15 They've brought in doctor after doctor, investigators,
16 crime scene agents, coroner's office. They've got the
17 full investigative powers of the State of South Carolina.
18 \$6,600 is a small price to pay.

19 And they attack his credibility on personal
20 issues.

21 But I tell you what they can't attack. They
22 can't attack this. Dr. Kessler told you that this is
23 bacteria in **DG's** adrenal glands. They brought
24 Dr. Vandersteenhoven up here to tell you about all of
25 these things that he disagrees with Dr. Kessler about in

1 these slides.

2 And when Dr. Kessler went through these slides he
3 told you that's not the cause of death other than the
4 adrenal hemorrhage which Dr. Vandersteenhoven told you,
5 that's possibly some hemorrhage, that's possibly some
6 hemorrhage. It's not close enough to tell.

7 Well this is closer and it's stained special to
8 look for bacteria. He didn't tell you anything about
9 this. He didn't tell you this is not bacteria. He didn't
10 tell you this is not streptococcal pneumonia in her
11 adrenal. He didn't tell you that.

12 Do you think if he could have said that based on
13 the science, don't you think he would have?

14 No. This is, this, ladies and gentlemen, is
15 reasonable doubt. If you think there's a real possibility
16 that Demetrius Goodwin did not commit homicide by child
17 abuse, you must find him not guilty. You must give him
18 the benefit of the doubt.

19 Here, ladies and gentlemen, is your doubt.

20 Here is your doubt. Here's your doubt.

21 Blood. This didn't come from three little
22 scratches. Perfect brain cells. No cyanosis. And
23 bacteria that shouldn't be there in her adrenal gland.

24 This shouldn't be there.

25 And if Dr. Vandersteenhoven could have gotten up

1 here and told you this is normal, he would have. He
2 didn't.

3 Explain this. Explain these macrophages. And
4 you heard a lot of medical terms; macrophages,
5 lymphocytes. Dr. Marcus talked about macrophages,
6 lymphocytes, neutrophils. Dr. Vandersteenhoven talked
7 about them. Dr. Kessler talked about them. Dr. Marcus
8 told you sometimes people can get an overwhelming
9 infection and just die. It overwhelms the system. An
10 opportunistic infection he said.

11 But you know what he didn't do? He didn't check
12 DG's blood. He did not do a blood culture. If they had
13 done a blood culture, maybe they could have ruled this out
14 but he didn't do it.

15 They have to investigate everything? Well, it's
16 not easy to take postmortem blood. He took her blood to
17 do a toxicology screen at the morgue. They took her blood
18 at the hospital to test her blood-glucose level.
19 Dr. Mercier told you that. They took her blood. The only
20 thing they tested at the hospital was the blood-glucose
21 level. Did they ever culture the blood? Did they ever
22 rule out an overwhelming infection?

23 No. No, they didn't.

24 Now, Ms. Campbell said they are working on behalf
25 of DG They're working on behalf her, and

1 the people of South Carolina.

2 We represent Demetrius Goodwin, DG's father.
3 And behind him sits Shayla Matthews, DG's mother. And
4 they don't want you to think about Shayla Matthews. She
5 supports him. Ms. Campbell told you that. Yeah, she
6 does. A lot of people do; people that loved DG people
7 that loved Demetrius.

8 So they are working on behalf of DG Do they
9 know what her favorite TV show was? She used to like to
10 watch Little Bill.

11 MS. CAMPBELL: Objection, Your Honor, outside the
12 scope of testimony.

13 THE COURT: Sustained.

14 MS. HINES: I'll withdraw it.

15 Do they know what her favorite book was? Do they
16 know what her favorite color was? Do they know what her
17 favorite toy was? Have they ever even tried to find out
18 if she had symptoms before February the 5th? If anything,
19 if she had been sick at all?

20 They say there's no signs, no symptoms of
21 Waterhouse-Friderichsen syndrome. No symptoms that she
22 had been sick. No evidence that she had been sick.

23 What's this in her bedroom? Oh, it's a
24 humidifier. Why do you put a humidifier in a baby's
25 bedroom? There's no evidence that she had been sick prior

1 to April (sic) the 5th. Really? Yes, there is.

2 They're going to get up here and they're going to
3 attack Demetrius's statements. They're going to read
4 these statements. I killed, I killed my daughter. On
5 April the 13th when Investigators Martin and Mauldin,
6 after they had had their meeting, after Dr. Marcus had
7 told them the fall down the stairs doesn't solve this,
8 that's not what killed her.

9 We need to get more focused in. Y'all need to go
10 figure out what did it. Talk to him.

11 They had him in there for three hours. This fall
12 didn't do it. You said in your first statement you picked
13 her up. How did you pick her up. I don't know. I picked
14 her up. And I hugged her. Oh, you hugged her. That must
15 have been it. You hugged her. The hug turns into a hard
16 hug. The hard hug turns into a squeeze.

17 Look at those statements. You'll have them.

18 Picked her up, held her tight. His words.
19 Hugged her tightly. It turns into hugged her tightly,
20 turns into a hard hug, turns into a squeeze.

21 Now the State is going to get up and talk about
22 him saying I killed my daughter. He was upset. He was
23 being told something else. They were looking for another
24 event. They told you, after that February -- April 2nd
25 meeting, they were looking for another event that happened

1 closer in time.

2 Let's go back through it. Let's figure it out.

3 It had to be the hug.

4 That's what -- oh my God, oh my God. I killed my
5 daughter. Really. Oh my. What's going through his mind,
6 being told that and believing it because these are the
7 people that are supposed to know. Dr. Marcus is supposed
8 to know.

9 As a parent, any time your child gets injured,
10 any time your child gets sick, and I can only imagine when
11 your child passes, you question, is there something I
12 could have done? Is there something I did? Should I
13 have -- should I have taken her in when she fell? Maybe
14 they -- I don't know. Is there something else I could
15 have done?

16 You question that. That's normal. And when
17 you've got these trained investigators looking for some
18 event for three hours, you might start believing that
19 yourself. Nobody knew at that point.

20 We know now. Now, we know. We know.

21 On February 13th, 2009, on February the 15th of
22 2009, nobody knew. They assumed it had to be him. It had
23 to be Demetrius. He was the last person with her. They
24 talk about -- they talk about the squeeze.

25 Dr. Marcus told you it would be a minute, a

1 minute and a half? Dr. Rosa Olga said it could be up to
2 10 minutes. Dr. Kessler said it would be about -- it
3 would have to be about four minutes.

4 So somewhere between a minute and 10 minutes and
5 she would have been gone.

6 Well, how do you explain Marquis Carter seeing
7 her?

8 Ms. Campbell told you when she opened that he was
9 going to testify that she was not really breathing. The
10 (making noise), this happened after he supposedly squeezed
11 the life out of her. Marquis Carter sees her (making
12 noise). Green stuff coming out of her nose. Forget about
13 that. That doesn't matter.

14 They have an expert witness. They have experts.
15 They have experts that can tell you a lot of stuff but
16 they can't tell you that this is not bacteria, this is not
17 streptococcal pneumonia. They can't tell you that. If
18 they could have told you that, they would have told you
19 that.

20 So when they get up and attack his statements and
21 go through this line or that line, look at his
22 statements. I didn't mean it. It wasn't intentional. I
23 didn't do it on purpose. I was trying to comfort her.
24 This hug.

25 Oh, it's horrible for a parent to pick up their

1 sick child and hug them. Hug them. What parent wouldn't
2 pick up their baby and hug her?

3 When my child was two, every time he fell down
4 and got a .2-inch abrasion somewhere, I hugged him for at
5 least two minutes. That's what parents do. That is not
6 extreme indifference. That's what parents do. They love
7 their children. They hug their children. When their
8 children are hurt, when their children are sick, they hold
9 them.

10 Now, Ms. Campbell just said this is the kind of
11 investigation you want them to do. Is it? Is this the
12 kind of investigation you want them to do when they have a
13 child who presents in the emergency room, not breathing,
14 with a history of vomiting, with a history of diarrhea,
15 with a history of tiredness, with a history of no
16 appetite? That's in Demetrius's statement from the 7th,
17 the day after, while he was preparing funeral
18 arrangements. With a history of green stuff coming out of
19 her nose.

20 Do you want them to not check her blood to see if
21 there's something? Not do a blood culture? That's the
22 kind of investigation you want? Really? That's not what
23 I want. I want them to look at every possibility.

24 Ladies and gentlemen, the State is going to talk
25 to you. They're going to throw up a bunch of irrelevant

1 stuff. They're going to talk about how asphyxiation is,
2 you don't have to have these signs.

3 When you go back to your jury room I want you to
4 look at these. Look at these. This is your reasonable
5 doubt. This is your reasonable doubt.

6 How is the State's milk smelling today? Would
7 you sniff it? Would you drink it? I wouldn't.

8 Demetrius Goodwin is not guilty. He did not kill
9 **DG** He did not act with extreme indifference. He did
10 nothing but love that baby. And this is a tragedy.

11 When you go back into that jury room, I want you
12 to think about all of these things. And if you think
13 there's a real possibility that Demetrius Goodwin is not
14 guilty, then, and I know you will, find him not guilty.

15 THE COURT: Ms. Campbell?

16 MS. CAMPBELL: May it please the Court.

17 THE COURT: Yes, ma'am.

18 MS. CAMPBELL: Thank you.

19 In every case when you're preparing for trial you
20 try to anticipate the defense's case. And in homicide by
21 child abuse, typically it's the wrong guy charged; he
22 didn't have the child when the injury occurred; he didn't
23 admit to doing it; he didn't do it; or it could be the
24 classic, she fell out of high chair or she fell down the
25 stairs. Pretty standard defenses to homicide by child

1 abuse.

2 Because we don't have to prove intent to the
3 degree of, say, murder. We don't have to prove malice.
4 All we have to prove is some act with extreme indifference
5 to human life.

6 But in this case the defense has gone a little
7 bit further, because in this case they brought forth the
8 hypothesis that it's the wrong guy. Just ignore his
9 confessions. Ignore his declarations. Ignore his
10 admissions. Just toss those aside.

11 Even though he confessed to Rob Martin, to Josh
12 Mauldin, to Shayla Matthews, to a number of people, Gary
13 Watts, the pathologists. Ignore that because we're just
14 going to get up here and talk about these statements.

15 And, yes, we are, ladies and gentlemen. It's
16 called evidence. Relevant evidence.

17 And despite what everything has said, there's
18 reasonable doubt because of this, a stain, which when I
19 showed the pathologist the actual slide itself, there's no
20 evidence of any bacteria. No, I didn't show him this
21 one. It showed the same thing. The bacteria doesn't go
22 away.

23 And by the way, if this is reasonable doubt and
24 he wasn't going to be able to say that this wasn't
25 bacteria, then why didn't they ask when they had a chance.

1 His testimony was he reviewed everything, but
2 their defense is this child who had bruises -- how did he
3 put it -- confluent, so large that it's not even
4 consistent with a fall down the stairs.

5 Who had bruises -- I don't know which side. It's
6 on the diagram -- where someone had grabbed her face so
7 hard there are fingerprint marks. Who had bruises to her
8 chest which, quote the ER doctor, looked like someone had
9 hit her with a fist.

10 Who had broken ribs that only occurs with chest
11 compression or blunt force.

12 But if this was a natural death, don't convict
13 because they didn't do a blood culture and that would have
14 shown everything. Well, Dr. Kessler didn't need the blood
15 culture, did he, to make all these slides and assert that
16 she had this disease.

17 Reasonable doubt? So that doesn't work. Go back
18 to the most classic defense known, just attack everyone.
19 Attack the police. Attack the doctors who have no dog in
20 this fight. It doesn't make their life better that this
21 is a homicide. It doesn't make their life easier for them
22 to come to court and sit here for days so that they can be
23 questioned.

24 Attack the prosecutors who's going to get up here
25 and talk about irrelevant evidence. Ladies and gentlemen,

1 I submit all of the evidence in this case as the Judge has
2 ruled is relevant.

3 Try and create reasonable doubt.

4 And they talk about sour milk?

5 The only thing in this case, and this is a
6 tragedy, but the tragedy is not for Demetrius Goodwin.
7 The tragedy is for this 23-month-old child who never had a
8 chance to grow up. That's the tragedy.

9 And, yes, Shayla Matthews supports him. Who
10 wants to believe the man they love could do this? Who
11 wants to hear that when she left her child in his care
12 that he did something so deliberate that it caused her
13 child to die?

14 And this wasn't like a gut-wrenched reaction. It
15 wasn't even just a single blow although I submit that's
16 child abuse.

17 And in this case, did it take a minute? Two
18 minutes? Or the four minutes that Dr. Kessler -- and
19 Dr. Rosa never said anything about 10 minutes. I don't
20 know where that came from. It lasted a while. And even
21 Dr. Kessler didn't get up here and say this child would
22 have just quietly succumbed to having the life squeezed
23 out of her.

24 This is a tragedy. And no one, the sheriff's
25 department, the coroner's office, the pathologist's office

1 or the emergency room doctors or anyone is better because
2 of what Demetrius Goodwin did to his child.

3 You know, when you think what does a murderer
4 look like, how about a rapist, a child molester?
5 Unfortunately we know in our common every day experience,
6 it can be the preacher or the priest actually down the
7 street. It can be the boy scout leader. It can be people
8 that appear to be good in every other way, especially the
9 child abuse, the child molester.

10 Think about it.

11 I want to take this opportunity to talk about the
12 facts. And I am going to go through the statements
13 because they are relevant, ladies and gentlemen.

14 This is reasonable doubt. If
15 Dr. Vandersteenhoven was going to say this was bacteria,
16 he reviewed everything to begin with. Remember in the
17 beginning, and he reviewed it again. We chose to show him
18 the other pictures. And there is no evidence, as he
19 testified to, of anything other than some hemorrhage, no
20 evidence of bacteria.

21 They talk about the blood in the crib and that
22 that doesn't fit. We're the ones that took these
23 pictures. We're the ones that want to make sure we get
24 all the facts so that we have a complete picture. We're
25 the ones that do the DNA testing to make sure we know what

1 we have, if anything. And all we can say is that in the
2 cutting she tested the DNA matched the girl and that it
3 tested positive, a presumptive test for blood. We aren't
4 trying to hide things.

5 We brought this evidence to you because it does
6 fit. And this is something that each and every expert
7 that got up here before you considered. This was evidence
8 they had. They had the incident reports. They had all
9 the medical records. They had everything.

10 To say this doesn't fit, this is part of our
11 case. No one's going to dispute at some point this child,
12 if this is throw-up, urine, whatever, at some point there
13 was some blood in this crib or what tested positive for
14 blood. But that doesn't then wipe out asphyxiation with
15 chest compression and rib fractures.

16 Just because there is one, and she may have
17 thrown up that night, doesn't mean there's not the other.

18 Reasonable doubt.

19 In opening statement, the defense got up here and
20 in their version of the facts in opening statement they
21 talked about how she was covered in vomit that day.

22 I want to take this opportunity, ladies and
23 gentlemen, to address some of the relevant credible
24 evidence in this case.

25 One point of law the Judge is also going to

1 instruct you on, is a parent has a specific and un
2 delegable duty to serve the best interests of his child,
3 to make every effort not to knowingly place his child in
4 harm's way.

5 I submit, ladies and gentlemen -- and think about
6 Demetrius Goodwin. He's working a job. He has the
7 primary care for this child. We know that from the time
8 period from the night before into the morning hours, other
9 than the four or five hours he's gone to work and he works
10 a horrible shift, he has the primary care for this child.

11 Look at how he characterizes this child. What he
12 chooses to put in his statements. Because as much as he
13 didn't mean to do it and he repeatedly talks to the police
14 about how he's a good parent, he's a good parent. And
15 that's important for him to think.

16 How does he characterize this child? Well, I had
17 to grab her by the mouth the day before because she was
18 swearing, using -- and I don't want to misquote. It's in
19 the statement -- swearing, swear words. How he had to
20 spank her the day before, that may account for some more
21 of the bruising, because she was spitting.

22 That's the only reference he makes other than to
23 talk about how he's a good father. That's, when being
24 questioned about the death of his child, what he thinks is
25 important to tell the police about his own child. How she

1 spits. How she swears. This 23-month-old child. She
2 weighed 24 pounds. That's what he wants them to know
3 about this child.

4 But he's a good father.

5 That speaks volumes.

6 Now, ladies and gentlemen, what witnesses did you
7 hear from and what's relevant about what they told you?
8 You heard from Marcus or Marquis Carter, depends on who
9 you're talking with. And look at his statement. What is
10 his relationship? Does he have bias or prejudice in this
11 case? Marquis Carter lives near the Defendant. The
12 Defendant in his statement refers to him as cousin. I
13 think you even heard Mr. Carter on the stand say, I told
14 cuz I needed to do this.

15 They are tight. They are friends. Does he want
16 to help out Demetrius Goodwin? On the night in question,
17 the testimony from Marcus or Marquis Carter, cuz, is that
18 he asked Demetrius to come over and stay with his kids
19 while he went to the store.

20 He was gone for a period of 20 to 30 minutes. I
21 don't remember. You remember it as you heard it. What
22 else does he say? When he got there, she was fine. When
23 he got back from the store, his testimony is, is at that
24 point, and we're building a classic defense, that
25 Demetrius Goodwin tells him she fell down six or seven

1 stairs.

2 I think in his later statement he either
3 characterizes it as a tug of war, they were playing,
4 fighting over toys, something of that thing. The fall
5 down the stairs, classic defense when child abuse is being
6 inflicted. Classic.

7 When she fell down the stairs she was fine.
8 Marquis Carter told you that night after he got back he
9 saw her. She was running around and playing. She was
10 fine. She was not vomiting. She was not anything of that
11 nature.

12 At that point and we'll get back to his
13 statement, that's the last time he sees her until after
14 the injuries had been inflicted in this case. That goes
15 uncontroverted.

16 You also heard from Zem Dozier. And what does he
17 tell you? He gets to the hospital that day and when he
18 gets there, the mother's already there and the child is
19 already being worked on. And he gets a statement and I
20 want to back up for a minute because prior to him getting
21 there, Joy Blind, a nurse who I submit, ladies and
22 gentlemen, has no reason to make up stuff. She's got no
23 dog in this fight. She made notes of what she remembered
24 that she heard from this father because when this child
25 presented, not covered in vomit, by the way, whether or

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1 not she had a onesie on or not. It wasn't all over her
2 face. It wasn't on her hands. It wasn't anywhere as he
3 told her. And I'll get back to that.

4 They noticed the bruise to the chest. That's
5 unusual. This is so unusual that the doctor, the
6 emergency room doctor who's been doing this on a daily
7 basis for the last however many years, you remember,
8 remembers this case independently because children don't
9 just present dead everyday for no reason.

10 There was no car accident.

11 There was no horrific ATV accident.

12 This child merely presented dead. And he
13 remembers it.

14 As does she. And in her notes, what does she
15 remember about what the Defendant told her? And this is
16 the point where, yes, he's panicked. We agree on that.
17 He's panicked. He's killed his child.

18 What does he say? That the night before, and
19 specifically, has the child suffered any trauma. What is
20 the history on this child. We used the word history. We
21 don't mean that. What's happened in the recent past with
22 this child. It's important for medical doctors, and he
23 knows that. It's important to tell them just what
24 happened.

25 And what does he tell her? There's a fight over

1 a toy with another child. She fell down a flight of
2 stairs but was fine. Demetrius Goodwin in his own
3 statement says, she was fine at that point.

4 Later that night she threw up what appeared to be
5 chocolate milk. She was still fine and then she went to
6 sleep.

7 Does that account for what's in this crib? Yes.
8 Children throw up. That was something every doctor, every
9 expert considered in this case.

10 That the next morning she was fine. When she got
11 up, that she vomited and seemed whiny. That he went to
12 his cousin's house to get help. When he came back she was
13 covered in brown and red vomit, not breathing. That was
14 his first story.

15 There is no mention of mucus which becomes very
16 important to everyone in this case later. At that first
17 thing, the red vomit, fell down the stairs. That's the
18 first story.

19 Zem Dozier shows up later. And at this point no
20 one knows if this is anything but a natural death. There
21 has been no autopsy. There has been nothing. They wanted
22 to find out what happened to this child. They're just
23 trying to get to the truth. That's all anybody in this
24 case is trying to do is get to the truth. What happened.

25 Statement to Zem Dozier. And we admit he's still

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1 upset. He just killed his child. Around eight p.m. she
2 fell down some stairs. He took her home. She had a
3 bath. She ate because at this point she's eating.

4 He monitored her. She later that night vomited
5 and had loose bowels and appeared to be tired. Doesn't
6 say what time it was. The next morning he left and
7 returned home around 8:30 a.m. The child slept through
8 the night. He gave her juice, put the baby back to bed.

9 At 11:45 the child was wheezing. And this is the
10 first time you hear about the green matter from the nose.
11 Because he knows what he's done. And he knows that
12 falling down the stairs may not work. Green matter from
13 the nose. Got the presence to take her to the hospital.

14 You heard from the crime scene people who went to
15 the crime scene. Ray Livingston. He even went, because
16 he heard about the stairs, to document the stairs to see
17 if there was any sign that anything that could have
18 happened on the stairs to cause this child's death. Took
19 photographs.

20 Goes over to the house. Remembers what's
21 significant. By the time he gets to the house the parents
22 are already there. And the bedding that was supposedly in
23 the crib is now down on the floor. He photographs it as
24 he finds it. This bedding.

25 And you have the other pictures. These are the

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1 State's Exhibits. All the other pictures. Photographs
2 and collects it so it can be tested by the State to
3 corroborate the Defendant's story.

4 Because at this point, for all we know it could
5 have been caused by a fall down the stairs as far as Ray
6 Livingston knows, because he hasn't been privy with what
7 the doctors said. It needs to be documented. It needs to
8 be investigated.

9 You also heard from Deputy Kristin Pollis who
10 actually attended the autopsy and collected evidence in
11 this case, evidence that was later used to match to the
12 bedding where this child slept.

13 The next day after the initial statements were
14 taken and documented by the coroner's officers and by the
15 nurse, you heard how Josh Mauldin and other investigators
16 went over to the house. It was important. And they don't
17 like doing it. These people's child had just died, but in
18 order to document it, they go over there and they talk to
19 him and they take a statement.

20 He actually leaves Shayla Matthews in the house
21 and a statement was taken from her, too, and goes and
22 talks to him out in the car. And the purpose for that is
23 just to document the history of what had happened over the
24 past two days prior to that.

25 And this is what Demetrius Goodwin tells him.

1 And the defense is right, the statements are important.
2 Because the truth, ladies and gentlemen, I submit, is an
3 easy thing to relate, to tell other people. It's when you
4 start trying to figure out a way to cover things that it
5 can get a little fuzzy.

6 At this point, can you tell me what happened at
7 [REDACTED] Windmill Court on February the 5th? I was over at my
8 cousin's house -- that would be Marquis or Marcus, I don't
9 know which one -- with my daughter, DG [REDACTED] She was
10 playing with my cousin's two kids. I heard them playing
11 on the stairs. I went around the corner and saw the three
12 of them standing on the stairs and told them to go back up
13 into the room.

14 Now this is the four year old, the two year old
15 and the one year old that are all playing on the stairs.
16 And he tells them to go back upstairs.

17 The four year old went right up. I saw DG [REDACTED]
18 and the youngest, the one year old, going up the stairs.
19 And he went back around the corner and heard a thud.

20 Credibility?

21 I ran to the bottom of the stairs and saw her
22 laying flat. Her right arm was under her. She started to
23 pick herself up off the floor and she started crying. I
24 picked her up.

25 Next question: Did you see any visible injuries

1 on the child? Not immediately. I noticed them when I got
2 to the house when I gave her a bath. Because he knows at
3 this point that the autopsy's being performed that day.
4 And he knows that the autopsy is going to show the bruises
5 on the face and the head. The bruises to the chest,
6 because they're obvious to him and to everyone.

7 When I gave her a bath -- sorry.

8 Did DG [REDACTED] -- how did DG [REDACTED] act after she
9 had fallen? She cried a little bit. I checked her out.
10 I asked her if she was okay. She said, okay. I told the
11 boys they needed to play downstairs. She jumped up and
12 started playing. She was following them around the house
13 laughing.

14 That's his testimony.

15 Down here. How long then before you noticed that
16 something was wrong with DG [REDACTED] When I got back to the
17 house I sat her down and went to the bathroom. When I
18 came out I saw her throwing up.

19 How many times did she throw up? She threw up
20 and then stopped for a second and then threw up a little
21 bit more.

22 Aside from throwing up, did you notice anything
23 else was wrong? Not really. She splashed around a little
24 bit in the bath.

25 Did you notice any marks on DG [REDACTED] when you

1 bathed her? Yes, she had a red mark on her forehead and a
2 red mark on her chest. The next day I noticed that she
3 was showing marks on her back. The marks on her head and
4 chest had gotten deeper.

5 He has to explain the bruising because he knows
6 it's there.

7 He goes to work at three a.m. He gets back
8 around eight. She was still in the crib asleep. I picked
9 her up and she sat on the bed with me. I gave her some
10 juice and she drank her juice.

11 She was acting like she wanted to go back to
12 sleep so I put her back in the crib, laid down. Around
13 11:45 I heard her wheezing. I went to go pick her up.
14 She gave a small cry and looked like she was hurting. Her
15 body seemed limp. I put her on the bed in my mother's
16 room. I saw that her breathing was getting slower. I
17 tried to do CPR.

18 CPR on a child that's still breathing?

19 We don't have a phone. I was doing CPR. I
20 noticed green mucus coming out of her nose. When I was
21 doing the mouth to mouth, I saw yellow substance out of
22 her mouth. I turned her on her side so it could come
23 out. I ran outside to my cousin's house. I told him that
24 something was wrong with DG and that he needed to
25 call 9-1-1. I ran back in the house and she'd gotten

1 worse. I came back outside.

2 What's significant, ladies and gentlemen, is he
3 goes outside the first time. And you heard from
4 Mr. Carter. And he said, something's wrong with

5 DG And at that point he goes back inside. Not oh
6 my God, she's not breathing, as is his later versions.
7 Because when he left the first time, according to him, she
8 wasn't breathing. He goes back inside.

9 What was he thinking? Was he hoping maybe she
10 would take a breath? Maybe she'd really start breathing
11 again? Was it worthwhile to go back and check before I
12 try to run her to the hospital.

13 I saw the breathing had gotten worse. I came
14 back outside. He came over and tried to wake her up.

15 What is your cousin's name? Marquis Carter.

16 Can you describe her condition in the car? She
17 was lifeless.

18 The fall, did you see it? No, I didn't see the
19 actual fall.

20 Was Shayla Matthews there? No, she was out
21 running errands.

22 So, ladies and gentlemen, that's the substance of
23 the statement that he makes, the three statements he
24 makes, the 6th and the 7th of February. And at this point
25 the autopsy's being done.

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1 No decisions are made because they want to be
2 thorough because the police, and more importantly, the
3 pathologist wants to do his job because he is looking for
4 signs of bacteria, all these signs, the supposed blood
5 culture would show even though Dr. Kessler has no problem
6 seeing it in everything else, even though it doesn't
7 exist.

8 They're doing their job. They're running the
9 toxicology to make sure no foreign substances, no poisons,
10 no anything of that nature could have caused that child to
11 stop breathing.

12 In the meantime, he finds -- and what's
13 significant? What pictures did she not show you?

14 I'm sorry. I should have moved these around.

15 And I'm sorry for the graphic nature.

16 The break in the ribs, in the back. The studies
17 show, uncontradicted, other than Dr. Kessler who said
18 somehow people between the ages of one and two suddenly
19 have brittle bones that are like twigs and snap. I
20 suggest, ladies and gentlemen, if you have brittle bones
21 like twigs that snap when anybody's doing CPR, why didn't
22 they snap in the front like they always do in CPR?

23 You heard from a number of doctors. You heard
24 from Dr. Marcus Bradley -- excuse me. Bradley Marcus. I
25 always say it backwards. And what did he tell you? And I

1 submit, ladies and gentlemen, as much as they wish he
2 hadn't done his job, he did his job and he did it well.

3 You heard from him everything he did. He took
4 slides. He looked for anything that could possibly
5 explain what happened to this child other than child
6 abuse, because no one wanted to accuse anyone of killing
7 **DG** if there was another way it happened.

8 He did his job. He looked for signs of
9 infection. He looked for any brain swelling that could
10 have been caused by some infection. He took slides. He
11 reexamined them. He did everything. And I submit, ladies
12 and gentlemen, I beg you, judge his credibility. And he
13 didn't accuse him of doing it. He just reported out to
14 the police on April the 2nd, listen, a fall down the
15 stairs didn't cause this.

16 Not only were the rib fractures not consistent
17 with that because it has to be some kind of pressure. And
18 we put up the radiologist to talk to you about how that
19 lever effect will break those ribs right back there.
20 That's why they're so significant. And they said they
21 don't want to address them?

22 They talk about all of these pictures. And the
23 fact that she's not blue and that's reasonable doubt? I
24 beg you, explain the rib fractures.

25 The only way those could have occurred, even

1 Dr. Kessler in his own article talked about the rib
2 fractures being totally significant in child abuse cases,
3 although he tried to separate himself from his own article
4 because he said that was infants, not a 23 month old.

5 Credible?

6 There was a meeting on April the 2nd to discuss
7 it. At that point all Dr. Marcus told him was simply this
8 fall was not consistent, and they needed to find out what
9 happened closer in time because the fall wasn't consistent
10 with a huge massive confluent hemorrhage underneath the
11 skin on her head.

12 We don't have to prove, ladies and gentlemen,
13 even though that was a contributing factor in this case,
14 but I submit, consider that in conjunction with the rib
15 fractures and the fact this child is lifeless. Consider
16 all the bruises and how small the bruises are. Yeah, when
17 you grab someone's face with the end of your fingers,
18 either to control her mouth, and I'll get back to that in
19 a minute. When you hit them in the chest, the point of
20 impact may be the ends of the fingers. Not child abuse?

21 So they got back in touch with the family and
22 they found Demetrius Goodwin. They told him they needed
23 to talk to him. And he came in, remember, around 10,
24 10:15 that morning on the 13th of April.

25 And when they sat down with him, Investigator Rob

1 Martin, Investigator Josh Mauldin didn't know that a hug
2 with such force, and we're talking about great force here,
3 could cause this. All they knew was they needed more
4 information about something that happened a lot closer in
5 time than the night before and it wasn't a fall down the
6 stairs.

7 So they took his statement. He is advised of his
8 rights. In that statement, asked what happened on
9 February 5th.

10 I got home from work and woke DG up. I got
11 her something to eat. I watched TV for a little while.
12 Her mom was asleep. After she went to work, that would be
13 the mom, I went to Trell's house. Cousin Trell, whatever
14 you want to call him. She played with the kids. Trell
15 left and went to the store to get cigarettes. That's when
16 the incident happened.

17 And, again, we're back on the fall down the
18 stairs the night before. She got up and was fine. I went
19 back home, ran the bath for her. That's when she started
20 throwing up. I put her in the bath and that's when I saw
21 bruises like the one on her head and the one on her -- he
22 said it was supposed to be chest. I touched them but they
23 didn't really bother her. I put her down on the couch for
24 a little while and then I put her to bed.

25 This is two months later. He knows the case is

1 under investigation. At this point he's been told the
2 whole fall down the stairs did not cause her death. So
3 this is his story.

4 I tried to feed her but she didn't have an
5 appetite. I went to work a little while later. When I
6 got home I woke her up. She still didn't have an
7 appetite. She watched TV for a little while. I put her
8 down again. I went to take a nap.

9 That's when Shayla said she had to take her
10 grandma on errands. I woke up and heard her wheezing.
11 Shayla was gone. I ran in there and saw she wasn't
12 responding. I picked her up and she gave a faint cry. I
13 held her tight. Then I laid her on the bed and ran out
14 the door. I called for Trell.

15 I came back into the house and started CPR. I
16 ran outside and got Trell. He came in the house. Her
17 breathing was real slow. That's when we got in the car.

18 The question was: Earlier you told me -- and he
19 characterized it as a squeeze, a hug. It's got to be
20 characterized in some manner. I kind of think that the
21 police characterizing it as a hug is the least offensive
22 way you can characterize what happened to this child.

23 When you told me that you hugged her tightly, did
24 you do this to hurt DG on purpose? I woke up and
25 heard her wheezing. I went back into the room. She was

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1 laying on her side wheezing. I put my finger in her
2 hand. She didn't grab it. I picked her up and she cried
3 a little. She didn't hug me back like she normally did.
4 I hugged her really tight. It got worse after I hugged
5 her. I didn't do it on purpose. I swear I didn't mean to
6 do it.

7 When you gave her the hard hug -- I say that's
8 still generous -- she started make a hiccuping sound like
9 she couldn't breathe. That's when I laid her down and
10 went to get Trell.

11 Because he knew at that moment he had done
12 something to this child which he couldn't fix and he
13 needed to go get help.

14 Did you ever grab her face? Yes. The day before
15 I grabbed her because she was swearing.

16 Why didn't you mention the hug to Investigator
17 Mauldin when he interviewed you on the day of the
18 incident? I didn't want anyone to think I had killed her.

19 Remember during the course of this interview,
20 what's he telling the police? I killed my daughter but
21 I'm a good father. I didn't mean to. I killed my
22 daughter. I'm a good father, but I had to grab her face
23 when she was swearing. I'm a good father and I had to hit
24 her when she was spitting. I'm the good one, not

25 .DG

CLOSING STATEMENTS BY THE STATE

1 Is there anything else you told her? Wasn't
2 because she was acting bad like she normally did, just
3 because she was wheezing. Do you think you could have
4 squeezed her hard enough to break her ribs? Yes, but I
5 was scared.

6 How long did you hug DG It was for a
7 little while. Could have been for about two minutes.

8 Can you think of anything else we didn't ask that
9 may be important?

10 Again, he knows the autopsy is done. The
11 investigation is underway. The bruises are going to be
12 apparent.

13 I can go back to the day before. I spanked her
14 legs for spitting on people and I grabbed her face for
15 using profane language. That's his response when the
16 police ask him the open-ended question of, can you think
17 of anything else that might be important.

18 Yeah, let me tell you about DG She had to
19 have her face grabbed because she swears. Excuse me.
20 Uses profane language. She had to be spanked for spitting
21 on people.

22 That's what he thinks is important when he's just
23 admitted to killing her.

24 What's so significant in this is at that point
25 the Defendant, after giving a statement, requests from

CLOSING STATEMENTS BY THE STATE

1 investigators, can I please be the one to tell Shayla, the
2 mother of our child. Can I tell her.

3 You heard. Investigator Rob Martin brought that
4 out. And at that point he goes out and he tells Shayla
5 Matthews the news that she didn't deserve, that she should
6 never have to hear, that he killed their child. And the
7 only thing Shayla Matthews wants to know at that point,
8 what's he going to be charged with. She even knows.

9 After the meeting they leave. Shayla Matthews.
10 Can you imagine what's going through her mind? She
11 calls. She wants an appointment. She wants to find out
12 what happened to her child.

13 She doesn't want to believe, and do you blame
14 her, that she left the child in the care of the person
15 that caused that child's death. She wants a meeting face
16 to face. And it's set up for two days later at the
17 coroner's office at her request.

18 And she brings Demetrius and she brings her
19 mother, his father. They want to confront the
20 pathologist. And at this meeting, again, he didn't mean
21 to do it. He admits it but for some reason he's bonded
22 with Gary Watts. So he wants to talk to him alone.

23 And he goes in there to tell him what he's done.
24 And he admits that when he held that child it caused her
25 death. And he squeezed her hard and again he said it was

1 for two minutes.

2 And then Rob Martin advised him of his rights
3 again. Takes a statement. When you hugged DG
4 Goodwin very hard, did that cause her death? Yes, but it
5 wasn't intentional. Not like he intentionally grabbed her
6 face? In the chest? On the head? On the legs?

7 The defense does not have an obligation to put up
8 a case. And I can go through, but you all heard the
9 evidence. You heard from the experts, their opinion.
10 Rock solid.

11 You even heard from Dr. Rosa whom we consulted
12 and Dr. Kessler, rib fractures from abuse are frequently
13 multiple, posterior and lateral locations -- and these
14 words aren't good for me -- in the back. Her common
15 features based on the mechanism of AP compression of the
16 thorax. That's the rib cage. Rib fractures from CPR are
17 very unusual. When they did a study on three in 923
18 patients that had rib --

19 MS. HINES: Your Honor, I don't know this is in
20 evidence.

21 MS. CAMPBELL: We cross-examined --

22 MS. HINES: I don't know that Dr. Kessler agreed
23 with this. I think the solicitor read it.

24 MS. CAMPBELL: It's in evidence.

25 MS. HINES: She should limit it to what he said.

CLOSING STATEMENTS BY THE STATE

1 THE COURT: I think it came out in evidence. It
2 doesn't go back to the jury room though --

3 MS. CAMPBELL: No, sir.

4 THE COURT: -- but it came up as a learned
5 treatise.

6 MS. CAMPBELL: Those cases of fractures of the
7 ribs with CPR, all were noted to be anterior, in the
8 front. Thus CPR is not an adequate explanation for the
9 sources for most rib fractures and especially not classic
10 post lateral, in the back, rib fractures.

11 She said we attacked Dr. Kessler personally. We
12 have the right to attack Dr. Kessler about any possible
13 bias or prejudice. And as he stated, whoever's paying.

14 He came up here and in a couple weeks before made
15 some slides, blew them up and pointed out to you about how
16 this child had streptococcus pneumonia, Waterhouse-
17 Friderichsen syndrome that caused her death even though
18 she's immunized and couldn't have it, and it's 100 percent
19 effective. Like the polio vaccine.

20 But he saw it. He said, oh, 30 percent of the
21 time it's not even effective.

22 Not according to the literature.

23 Nothing was personal. We have the right to show
24 his bias and his prejudice, the reason he may come in here
25 and say anything. He was the only one that's taking home

CLOSING STATEMENTS BY THE STATE

1 money from this.

2 But what was most important? You know, when I
3 was questioning him, trying to talk to him about the rib
4 fractures at some point about something, remember what he
5 said, it's not the end of the world?

6 MS. HINES: Objection, Your Honor, that's a
7 mischaracterization. I don't believe he was talking about
8 rib fractures at that time.

9 THE COURT: The jury will remember. She's in
10 closing argument.

11 MS. HINES: Thank you.

12 MS. CAMPBELL: It might not have been at the
13 point of rib fractures. It was at some point in my
14 questioning of him. My point is about this 23-month-old-
15 child's death and his opinion and lack of credibility;
16 it's not end of the world.

17 I submit, ladies and gentlemen, Demetrius Goodwin
18 made a choice. And he had a hard day. He had to go on
19 the night shift. He's got a child that, according to him,
20 is not very pleasant to be around. She acts out. She has
21 to be controlled.

22 Did it just get to be more than he could handle?
23 For homicide by child abuse, it doesn't matter. For a
24 parent, it doesn't matter. I submit, the State has proven
25 in this case that for a period of maybe one minute, two

1 minutes, it wasn't that he grabbed her and squeezed her
2 and as soon as she struggled he let go.

3 Ladies and gentlemen, that did not happen. He
4 held her so hard that she couldn't breathe. What kind of
5 force did he hold her with? Did he hold her down? Did he
6 hold her between his arms as he showed? Did he think that
7 would make it better? But he was going to control her,
8 and he was going to finally get her in line. This
9 23-month-old child who weighed 24 pounds.

10 And I submit, ladies and gentlemen, as she
11 struggled and this was a painful death to breathe, the
12 panic comes over her because she can't breathe, because
13 the person that she trusts most or should trust most in
14 this world is literally choking, squeezing the life out of
15 her as she struggles.

16 And when you go back there, assume it's only a
17 minute until she passes out. He doesn't even let go then
18 because as he told you, her airway, the ribs have to
19 continue to be compressed. And there was no little he-let-
20 go-and-she-got-some-air-back and came back for a while and
21 then did it again. He held her for at least a minute and
22 a half, even after she lost consciousness to make sure she
23 learned her lesson.

24 And the fact that he was tired or overworked does
25 not excuse him. No one in this investigation, in this

CLOSING STATEMENTS BY THE STATE

1 courtroom wants for him to be guilty of killing his child.

2 All we ask is that you hold him responsible.

3 The other day when Dr. Kessler was on the stand
4 and announced, suddenly, this was a natural death. And
5 family members actually became upset, because do you know
6 how long they've been wanting to hear that? But wanting
7 it to be true and it really being true are two different
8 things, ladies and gentlemen.

9 On behalf of the State, on behalf of **DG**
10 Goodwin, hold him responsible. We didn't charge him with
11 a premeditated act. We didn't charge him with murder or
12 manslaughter. We charged him with what he did, extreme
13 indifference.

14 And I submit, ladies and gentlemen, the evidence
15 is overwhelming.

16 Thank you.

17 THE COURT: Ladies and gentlemen of the jury,
18 we're going to take a 15- or 10-minute break before I
19 charge you on the law. Please do not discuss anything
20 that has been stated in this courtroom amongst each other
21 until after I have instructed you to begin your
22 deliberations. All right. Thank you.

23 (Jury exits courtroom at 11:33.)

24 THE COURT: All right. Court will be in recess
25 for the next 10 minutes.

1 (Thereupon, a break was taken from 11:33 a.m.,
2 until 11:45 a.m., when the trial resumed as follows:)

3 THE COURT: All right. Let's bring our jury.

4 MS. SINGLETARY: Yes, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. SINGLETARY: If we may before the break --

7 THE COURT: Hold on. You may.

8 MS. SINGLETARY: Your Honor, if we may. During
9 the break we discussed this and we want to see if it was
10 possible for us to add an accident charge to be charged to
11 the jury --

12 THE COURT: I don't think there's any --

13 MS. SINGLETARY: -- based on our closings, Your
14 Honor.

15 THE COURT: There's no evidence of that,
16 presented.

17 MS. PINNOCK: Sorry, Your Honor. If I may
18 further elaborate on that? Based on some of the
19 statements made by the solicitor in her closing, we do
20 think that an accident charge would be appropriate based
21 on the statements that she made to the jury.

22 THE COURT: I disagree. I overrule that. Deny
23 your motion. All right. Bring the jury in.

24 (Jury enters courtroom at 11:45 a.m.)

25 THE BAILIFF: Your Honor, all jurors present.

1 THE COURT: All right. Please secure the
2 courtroom.

3 All right.

4 Ladies and gentlemen, all of the testimony and
5 other evidence has been presented to you in this case, the
6 attorneys have made their closing arguments and now it's
7 the time where I will charge you the law applicable to
8 this case.

9 Ladies and gentlemen, the indictment in this case
10 under Indictment 2009-GS-40-3175 alleges one offense
11 against the Defendant, Demetrius Goodwin; homicide by
12 child abuse.

13 Now, ladies and gentlemen, as I told you earlier
14 and I remind you again, the fact that the Defendant was
15 arrested, charged and indicted in this case is not
16 evidence and cannot be considered by you as evidence of
17 guilt, nor does it create any presumption or inference of
18 guilt.

19 The indictment is simply the formal written
20 instrument which contains the charge made against the
21 Defendant. It is the formal document by which this case
22 is brought into court.

23 Now, ladies and gentlemen, I remind you that
24 during this trial you and I have certain duties to
25 perform. As the Trial Judge, it is my responsibility to

1 preside over the trial of this case, and I also have the
2 duty to rule on the admissibility of evidence offered
3 during this trial.

4 You are to consider only the competent evidence
5 before you. If there was any testimony ordered stricken
6 from the record in this case during the trial, you must
7 disregard that testimony. You are to consider only the
8 testimony which has been presented from this witness stand
9 and any exhibits which have been made a part of the record
10 or any stipulations of counsel.

11 I have the additional duty, ladies and gentlemen,
12 to charge you the law applicable to this case. As the
13 Presiding Judge, I am the sole judge of the law in the
14 case. And it is your duty as jurors to accept and apply
15 the law as I now state it to you.

16 If you already have any idea as to what the law
17 is or what you believe the law ought to be and it does not
18 agree with what I tell you now the law is, you must
19 abandon that idea because you are sworn to accept the law
20 and apply the law exactly as I state it to you.

21 In every case tried in this court before a jury,
22 the jury becomes the sole and exclusive judge of the facts
23 in a case.

24 As a Trial Judge, I cannot intimate, state,
25 comment or make any statements to the trial jury about the

JUDGE'S CHARGE TO THE JURY

1 facts in a case. Since you are the jury, you are the sole
2 judges of the facts in this case and you are not to infer
3 by what I have said during the progress of this trial, in
4 ruling upon the admissibility of evidence or anything that
5 I say now during this instruction that I have any opinion
6 about the facts in this case.

7 The law does not allow me to have an opinion
8 about the facts of this case. This is a matter solely for
9 you, the jury, to determine. As jurors your duty is to
10 determine the effect, the value, the weight, and the truth
11 of the evidence presented.

12 Ladies and gentlemen, the Defendant, Demetrius
13 Goodwin, has pled not guilty to the indictment and that
14 plea puts the burden on the State to prove the Defendant
15 guilty. A person charged in South Carolina with
16 committing a criminal offense is never required to prove
17 his innocence. It's an important rule of law, ladies and
18 gentlemen, that the Defendant in a criminal trial, no
19 matter how serious the charge is, will always be presumed
20 to be innocent of the crime. This presumption of
21 innocence does not end when you begin your deliberations,
22 but it accompanies the Defendant throughout the trial
23 until you reach a verdict of guilt based upon evidence
24 satisfying you of that guilt beyond a reasonable doubt.

25 Ladies and gentlemen, the presumption of

1 innocence is like a robe of righteousness that is placed
2 about the shoulders of the Defendant which remains with
3 the Defendant until it has been stripped from the
4 Defendant by evidence satisfying you of the Defendant's
5 guilt beyond a reasonable doubt.

6 The presumption of innocence is not a mere legal
7 theory. It is not just a legal phrase that we use, but it
8 is a substantial right to which every defendant is
9 entitled to unless you, the jury, are satisfied from the
10 evidence presented of guilt beyond a reasonable doubt.

11 Ladies and gentlemen, during the trial there are
12 two types of evidence that are generally presented.
13 There's direct evidence and circumstantial evidence.
14 Direct evidence is the testimony of a person who claims to
15 have actual knowledge of a fact such as an eyewitness. It
16 is evidence that immediately establishes the main fact to
17 be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. It is evidence that immediately establishes
21 collateral facts from which the main fact can be inferred.

22 Circumstantial evidence is based on inference and
23 not on personal knowledge or observation. The law makes
24 absolutely no distinction between the weight or value to
25 be given to either direct or circumstantial evidence, nor

1 is a greater degree of certainty required of
2 circumstantial evidence than of direct evidence.

3 Ladies and gentlemen, you should weigh all of the
4 evidence in this case, and after weighing all of the
5 evidence if you are not convinced of the guilt of the
6 Defendant beyond a reasonable doubt, you must find the
7 Defendant not guilty.

8 Ladies and gentlemen, the question comes up:
9 What is reasonable doubt in the law? A reasonable doubt
10 is the type of doubt that would cause a reasonable person
11 to hesitate to act. The State has the burden of proving
12 the Defendant guilty beyond a reasonable doubt.

13 Some of you may have served on a -- as jurors in
14 a civil case where you were told that it is only necessary
15 that the fact be more likely true than not true.

16 In criminal cases, however, the State's proof
17 must be more powerful than that. Proof beyond a
18 reasonable doubt is proof that leaves you firmly convinced
19 of the Defendant's guilt.

20 Ladies and gentlemen, there are very few things
21 in this world that we know with absolute certainty. And
22 in criminal cases the law does not require proof that
23 overcomes every possible doubt. If based upon your
24 consideration of the evidence you are firmly convinced
25 that the Defendant is guilty of the crime charged, you

1 must find the Defendant guilty.

2 If, on the other hand, you think there's a real
3 possibility that the Defendant is not guilty, you must
4 give the Defendant the benefit of the doubt and find him
5 not guilty.

6 During the trial necessarily, ladies and
7 gentlemen, you must determine the credibility of witnesses
8 who have testified in this case. Credibility simply means
9 believability. If -- it becomes your duty as jurors to
10 analyze and evaluate the evidence and determine which
11 evidence convinces you of its truth. In determining the
12 believability of witnesses who have testified in this
13 case, you may believe one witness over several witnesses
14 or several witnesses over one witness.

15 You may believe a part of the testimony of a
16 witness and reject the remaining parts of the testimony of
17 that same witness. You may believe the testimony of a
18 witness in its entirety, or reject the testimony of a
19 witness in its entirety.

20 You may consider whether the witness has
21 exhibited to you any interest, bias, prejudice, or other
22 motive in this case. You may also consider the
23 appearance, the manner of a witness while on the witness
24 stand.

25 Ladies and gentlemen, I instruct you and I

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1 emphasize, the fact that the Defendant did not testify is
2 not a factor to be considered by you in any way in your
3 deliberations and in your consideration on the question of
4 guilt or innocence of the Defendant.

5 It must not be considered by you in any manner
6 whatsoever. A defendant has the constitutional right to
7 remain silent. And the assertion of this right must not
8 be considered by you in your deliberations. And I repeat,
9 under your oath, you are to draw no conclusion whatsoever
10 from the fact that the Defendant in this case did not
11 testify. The fact that the Defendant did not testify
12 should not even be discussed in the jury room.

13 The burden of proof, as I have stated to you
14 earlier, is on the State. The Defendant is not required
15 to prove his innocence. The burden of proof remains on
16 the State to prove guilt beyond a reasonable doubt.

17 Now, ladies and gentlemen, I have told you
18 several times as the trial progressed, the rules of
19 evidence ordinarily do not permit witnesses to testify to
20 opinions or conclusions. An exception to this rule exists
21 for witnesses we call expert witnesses. A witness who by
22 education and experience has become an expert in some art,
23 science, profession, or calling may state an opinion as to
24 a relevant matter which the witness claims to be an expert
25 in, and may also state the reason for the opinion.

1 You should consider an expert opinion received
2 into evidence in this case and, like any other evidence,
3 give it the weight that you think it deserves. If you
4 decide that the opinion of an expert witness is not based
5 on sufficient education and experience, or if you conclude
6 that the reason given in support of the opinions are not
7 sound or that the opinion is outweighed by other evidence,
8 you may disregard the opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than any other witness simply because the
11 witness is an expert. Further, you are not required to
12 accept an expert's opinion even though it is not
13 contradicted.

14 Now, ladies and gentlemen, the indictment in this
15 case charges the Defendant, Demetrius Goodwin, with the
16 crime of homicide by child abuse.

17 The State must prove beyond a reasonable doubt
18 that the Defendant caused the death of a child under the
19 age of 11 while committing child abuse or neglect.

20 Child abuse or neglect is an act or failure to
21 act which causes harm to a child's physical health or
22 welfare. Harm to a child's physical health or welfare
23 means that the Defendant either, one, inflicted or allowed
24 to be inflicted on the child physical injury or, two,
25 failed to supply the child with adequate food, clothing,

JUDGE'S CHARGE TO THE JURY

1 shelter or health care, and this failure caused a physical
2 injury or condition which caused death.

3 And the State must also prove beyond a reasonable
4 doubt that the death occurred under circumstances showing
5 an extreme indifference to human life. Extreme
6 indifference to human life is the nature of a culpable
7 mental state and therefore is akin to intent.

8 In this state, indifference in the context of
9 criminal statutes has been compared to the conscious act
10 of disregarding a risk which a person's conduct has
11 created or a failure to exercise ordinary or due care.
12 Otherwise stated, a person acts under circumstances
13 manifesting extreme indifference to the value of human
14 life when he engages in deliberate conduct which
15 culminates in the death of some person.

16 Conduct of the parent which evidences a settled,
17 characterized or may -- conduct of the parent which
18 evidences a settled purpose to forego parental duties may
19 fairly be characterized as willful because it manifests a
20 conscious indifference to the rights of a child to receive
21 support and consortium from the parent.

22 Ladies and gentlemen, there are two possible
23 verdicts which you may find in this case on the charge
24 under Indictment 2009-GS-40-3175 on the charge of homicide
25 by child abuse; not guilty or guilty.

1 Now, ladies and gentlemen, there is no
2 significance whatsoever in the order which I state the
3 possible verdicts. It's simply that one must be stated
4 first.

5 Now, ladies and gentlemen, your verdict must be a
6 unanimous one. All 12 of you must agree on the verdict.
7 Your decision must not be based on sympathy, passion,
8 prejudice, emotion, or any other consideration that is not
9 evidence in this case.

10 Mr. Foreman, when the jury agrees on the verdict,
11 you will check one of the two boxes that is made available
12 to you, and then you will sign your name as the foreman of
13 the jury. You will then knock on the jury room door and
14 inform the bailiff that the jury has reached a verdict.
15 You will then be received back into this courtroom for
16 publication of your verdict.

17 Now, ladies and gentlemen, I'm going to send you
18 to the jury room now, but please do not begin your
19 deliberations until you are directed to do so. There are
20 still a few matters that I need to take up with the
21 attorneys. All right.

22 Thank you, ladies and gentlemen.

23 If you could put the alternate jurors in a
24 separate room at this point.

25 THE BAILIFF: Yes, sir.

(Jury exits courtroom at 12:01 p.m.)

THE COURT: Are there any objections from the State to the charge given?

MS. CAMPBELL: No, sir.

THE COURT: Any objections from the defense?

MS. HINES: Your Honor, we would object to not including an accident charge based on the solicitor's closing arguments.

She said he didn't have to mean it. We think that characterizes it. The way that she characterized it, we think that we would be entitled to an accident charge. Other than that we have no objection.

THE COURT: I've already ruled on that. My ruling remains the same.

Court will be at ease pending the call of the Court.

I think I have one other thing and they're here.

If you all can get together and make sure all the evidence is together and then send it back. And you can give the jury the verdict form and instruct them to start their deliberations.

(Thereafter, at 12:01 p.m., the deliberations commenced. At 1:45 p.m., the trial resumed as follows:)

QUESTION FROM THE JURY AND FURTHER CHARGE

1 THE COURT: All right. We are ready to proceed.
2 We've received three questions from the jury. Two of them
3 I can't do anything about. One of them I can.

4 The first one is: Can we get a transcript of the
5 trial? The obvious answer to that is, no.

6 I don't think you transcribed it yet; have you,
7 Cher? That's a no.

8 The second one is: What are all the possible
9 sentences for the crime? And I will tell the jury that's
10 not their concern. They are the finders of fact to
11 determine guilt or innocence. And that's not something
12 they need to concern themselves with.

13 The third question is: Explain extreme
14 indifference to human life. And what I anticipate that I
15 will do is I will recharge that section that we talked
16 about earlier in total as to what the charge is and what
17 it means. That's all we can do. Okay.

18 Any questions?

19 MS. McDUFFIE: Your Honor, if you just wait for
20 Ms. Campbell to get here before you bring the jury out.

21 THE COURT: Okay.

22 MS. HINES: Your Honor, if I could just add. In
23 light of the -- I would like to renew my motion to have
24 the jury charged on accident in light of the question.
25 Based on the argument that I made earlier, I think this is

QUESTION FROM THE JURY AND FURTHER CHARGE

1 an issue, and I do believe it should be charged.

2 THE COURT: All right. Noted. Denied.

3 MS. HINES: Thank you.

4 THE COURT: You are within your one minute.

5 MS. CAMPBELL: I'm sorry, Judge. I apologize.

6 THE COURT: All right. Let's bring our jury in.

7 (Jury enters courtroom at 1:50 p.m.)

8 THE BAILIFF: Your Honor, the jury is present.

9 THE COURT: All right. Thank you.

10 Mr. Foreman, I got your message. You had three
11 questions.

12 As to the first question: Can we get a
13 transcript of the trial? No, you cannot.

14 I just talked to the court reporter. The
15 transcript will be about 800 pages and she has not started
16 transcribing it yet. So it's simply not available.

17 As to the next question: What are all the
18 possible sentences for this crime? That is not of your
19 concern. You are the finders of fact. You are to
20 determine guilt or innocence. The sentencing is up to me.

21 Now, as to your other question: Explain extreme
22 indifference to human life. I will recharge you the same
23 thing I told you before as to a homicide by child abuse
24 under Section 16-3-85-A.

25 The indictment in this case charges the

1 Defendant, Demetrius Goodwin, with the crime of homicide
2 by child abuse.

3 The State must prove beyond a reasonable doubt
4 that the Defendant caused the death of a child under the
5 age of 11 while committing child abuse or neglect. Child
6 abuse or neglect is an act or failure to act which causes
7 harm to the child's physical health or welfare.

8 Harm to the child's physical health or welfare
9 means that the Defendant either inflicted or allowed to be
10 inflicted on the child physical injury or failed to supply
11 the child with adequate food -- adequate food, clothing,
12 shelter or health care and this failure caused a physical
13 injury or condition which caused death.

14 The State must also prove beyond a reasonable
15 doubt that the death occurred under circumstances showing
16 an extreme indifference to human life. Extreme
17 indifference is in the nature of a culpable mental state
18 and therefore is akin to intent.

19 In this state indifference in the context of
20 criminal statutes has been compared to the conscious act
21 of disregarding a risk which a person's conduct has
22 created or a failure to exercise ordinary or due care
23 otherwise stated.

24 A person acts under circumstances manifesting
25 extreme indifference to the value of human life when he

1 engages in the deliberate conduct which culminates in the
2 death of some person.

3 The conduct of a parent which evidences a settled
4 purpose to forego parental duties may fairly be
5 characterized as willful because it manifests a conscious
6 indifference to the rights of the child to receive support
7 and consortium from the parent.

8 All right. Ladies and gentlemen, I'm going to
9 send you back to your jury room with the instructions that
10 you will continue your deliberations. Thank you.

11 FOREPERSON OF THE JURY: Thank you.

12 (Jury exits courtroom at 1:55 p.m.)

13 THE COURT: All right. Court will be at ease.
14 Everyone can get back to their lunches or whatever.

15 MS. HINES: Thank you, Your Honor.

16 MS. McDUFFIE: Thank you.

17 (Deliberations resumed at 1:55 p.m. At
18 3:30 p.m., the trial resumed as follows:)

19 THE COURT: We have received notification that
20 the jury has reached a verdict. To the alternates, let me
21 tell you thank you for the job that you did. You may
22 think that you didn't get to go all the way because you
23 weren't part of the final decision-making party, but let
24 me tell you, you were very valuable here because if
25 something had happened to one of the other jurors or two

VERDICT OF THE JURY

1 of the jurors, you were here, willing and able to fill in
2 their seat and therefore we would not have lost a week.
3 So that's why I kept you here.

4 I hope you enjoyed your lunch. This will count
5 for you as well as having served on a jury, so you will
6 not have to serve on a jury for the next three years if
7 you do not want to.

8 But, again, thank you. I'm going to release
9 you. If you'd like to sit out here in the audience to see
10 what happens, if your other jurors would have done the
11 same thing that you would have done, but I'd like the
12 opportunity to thank you.

13 THE BAILIFF: Come this way, please.

14 (Jury shakes hands of alternates.)

15 THE COURT: All right. Let's bring the jury in.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Before you bring them in, stop there
18 for just a second. Shut the door for just a moment.

19 Let me remind everybody who's in court today that
20 there's to be no show of emotion when the jury verdict is
21 read. Anyone who does not think that they can go through
22 this without showing emotion, I would urge you to leave
23 the courtroom now because a violent show of emotion will
24 lead you straight to the jail for contempt of court.

25 Does everyone understand that? Does anyone need

VERDICT OF THE JURY

1 to leave the courtroom before the verdict is read? All
2 right. Thank you. Bring the jury in.

3 (Jury enters courtroom at 3:37 p.m.)

4 THE BAILIFF: Your Honor, the jury is present.

5 THE COURT: Thank you. Mr. Foreman, I understand
6 the jury has reached a verdict?

7 FOREPERSON OF THE JURY: We have, Your Honor.

8 THE COURT: Is it unanimous?

9 FOREPERSON OF THE JURY: Yes, sir.

10 THE COURT: Please hand it to the bailiff.

11 FOREPERSON OF THE JURY: (Complies.)

12 THE COURT: All right. Please publish the
13 verdict.

14 THE CLERK: State of South Carolina versus
15 Demetrius Goodwin, Indictment Number 2009-GS-40-3175. As
16 to indictment number 2009-GS-40-3175 charging the
17 Defendant, Demetrius A. Goodwin, with the crime of
18 homicide by child abuse, we, the jury, unanimously find
19 the Defendant guilty. Signed by the foreperson, number
20 70, on March 18th, 2011.

21 Mr. Foreman, is this your verdict and the verdict
22 of the entire jury?

23 FOREPERSON OF THE JURY: Yes, it is.

24 THE CLERK: Thank you.

25 THE COURT: Does the State request polling of

1 jury?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Does the defense request polling of
4 the jury?

5 MS. HINES: Yes, sir.

6 THE COURT: Please poll the jury.

7 THE CLERK: I'm going to ask you guys -- ladies
8 and gentlemen of the jury, I'm going to ask you two
9 questions when I call your jury number. Just answer both
10 of these questions, please.

11 Number 70, was this your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Number 220, was this your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Number 262, was this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Number 159, was this your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.
2 THE CLERK: Number 54, was this your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Is it still your verdict?
5 THE JUROR: Yes.
6 THE CLERK: Number 65, was this your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 THE JUROR: Yes.
10 THE CLERK: Number 298, was this your verdict?
11 THE JUROR: Yes.
12 THE CLERK: Is it still your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Number 232, was this your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 THE JUROR: Yes.
18 THE CLERK: Number 168, was this your verdict?
19 THE JUROR: Yes.
20 THE CLERK: Is it still your verdict?
21 THE JUROR: Yes.
22 THE CLERK: Number 166, was this your verdict?
23 THE JUROR: Yes.
24 THE CLERK: Is it still your verdict?
25 THE JUROR: Yes.

VERDICT OF THE JURY

1 THE CLERK: Number 160, was this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Number 192, was this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: The jury's been polled, Your Honor.

10 THE COURT: The verdict stands.

11 Ladies and gentlemen of the jury, let me take
12 this opportunity to thank you for your service as jurors
13 for this whole week.

14 I want to compliment you on your attentiveness,
15 your promptness in this matter. Every day you were here
16 on time. Every day after lunch you were here ready to
17 go. You were very attentive. And, again, I want to thank
18 you for being part of our judicial system.

19 As I told you before, we live in a country that
20 has what I believe to be the greatest judicial system in
21 the world.

22 And it's because of people like you who are
23 willing to give up an entire week of their life. There
24 may be some important things that were going on in
25 Columbia this week, but I can assure you that there was

1 nothing more important going on in Columbia than what was
2 going on in Courtroom B-2 of the Richland County Judicial
3 Center.

4 Now, ladies and gentlemen, as you see from this,
5 it is never easy sitting in judgment of your fellow
6 citizens. But no one should ever question your integrity
7 in doing this.

8 As I told you all along, you were to talk to no
9 one about this trial. That is lifted from you. You may
10 talk to whoever you want to about this now, for as long as
11 you want to, or for as little as you want to. If someone
12 approaches you and wants to talk about it, you can talk to
13 them as long you want, but when you're ready to stop
14 talking about it and they persist, if you will please
15 contact somebody in the court and we will make sure that
16 they do not bother you or continue talking to you about
17 it. But, again, you're free to talk about it as much as
18 you want to.

19 Ladies and gentlemen, again, this satisfies your
20 requirement for jury service for the next three years.
21 You will not have to serve on a jury. And I can say with
22 absolute confidence that the small amount of money that
23 you will be paid is in no way even close to what you have
24 given for your county this week.

25 And, ladies and gentlemen, the sentencing of the

1 Defendant I will do at four o'clock. You are welcome to
2 stay and watch. You've been here all week. If you'd like
3 to stay until the end, you may do so.

4 If you're ready to leave and go back to your
5 homes, I understand that very much as well.

6 Ladies and gentlemen, if you would give me the
7 opportunity to shake your hand as you leave this
8 courtroom, I just want to thank you again for your
9 service.

10 FOREPERSON OF THE JURY: Thank you, sir.

11 (Judge shakes hands of all members of the jury.)

12 THE COURT: Any post-trial motions?

13 MS. HINES: Your Honor, we would like to renew
14 all of our objection and our motions. We do anticipate
15 post-trial motions. We would like to file that in writing
16 in the next couple of days, within --

17 THE COURT: Right. Anything you want to file,
18 please do it within the next 10 days. All right.

19 MS. HINES: And we'd also request that the Court
20 preserve all of the evidence, even that which was not
21 entered into evidence. We had autopsy slides marked for
22 identification. We would like to ask that the Court
23 preserve that as part of the record in this case.

24 THE COURT: All right. Very well.

25 Anything further from the State? We'll take a

SENTENCING

1 15-minute recess and then I'll sentence the Defendant at
2 that time.

3 MS. McDUFFIE: Nothing from the State, Your Honor.

4 THE COURT: Thank you. Court will be in recess
5 until four o'clock.

6 MS. HINES: If we could have a little bit more
7 time, Your Honor?

8 THE COURT: I'll give you to 4:30. Sentencing
9 will be at 4:30.

10 (Thereupon at 3:45 p.m., a break was taken.
11 The trial resumed at 4:30 p.m., as follows:)

12 THE COURT: Madam solicitor?

13 MS. McDUFFIE: Thank you, Your Honor. May it
14 please the Court. Standing before you is Demetrius
15 Goodwin with his attorneys, Kris Hines and Tracy Pinnock
16 of the public defender's office, and Nicole Singletary of
17 the private bar.

18 Your Honor, we are here for sentencing as the
19 jury has convicted Mr. Goodwin of homicide by child
20 abuse. The Defendant has no prior record.

21 THE COURT: All right. Ms. Hines?

22 MS. HINES: Thank you, Your Honor. May it please
23 the Court.

24 First of all, Your Honor, you heard the evidence
25 in this case.

SENTENCING

1 (Commotion erupts in courtroom.)

2 THE COURT: Remove him from the courtroom.

3 THE CLERK: Remove him from the courtroom. The
4 Judge said, remove him from the courtroom.

5 (Pause.)

6 THE COURT: That gentleman was just removed from
7 the courtroom. Anyone else acts out will be removed from
8 the courtroom and transported directly to the correctional
9 center.

10 Please proceed.

11 MS. HINES: Thank you, Your Honor.

12 Your Honor has heard all of the evidence in the
13 case. I don't feel a need to rehash that.

14 We do -- despite the jury's verdict, we still
15 strongly believe in Mr. Goodwin's innocence in this case.
16 I would ask Your Honor to consider suspending the
17 sentence.

18 This statute carries 20 to life, but under State
19 V. Thomas the Supreme Court ruled on this issue in regards
20 to a drug statute 44-53-445 in that the homicide by child
21 abuse statute, Your Honor, the term, the wording for that
22 is, but no less than a term of 20 years.

23 It's the same language that was used in the
24 proximity to a school statute, 44-53-445. And I do have a
25 copy of State V. Thomas here to hand to Your Honor.

SENTENCING

1 State V. Thomas ruled that that language was
2 suspendable. The Judge has the power under the statute to
3 suspend the sentence unless the legislature has
4 specifically said that it is not suspendable. Under
5 24-21-410, gives the Court the power to suspend the
6 sentence.

7 The Thomas case does cite statutes where the
8 Court -- where the legislature has specifically included
9 language to the effect that it may -- no part of which may
10 be suspended or probation granted.

11 There's another section of the CDV statute
12 wherein one subsection of it provides for early release
13 and good time. The next section of it is CDV third. It
14 does not provide for it.

15 The Court in Nelson V. Osmin said that because
16 part of that statute does provide for a suspended
17 sentence, the CDV second provides for a suspended or
18 actually the calculation of good time and earned work
19 credit, that the CDV third would not do that because the
20 statute specifically addressed it.

21 The admission of language indicates the
22 legislature did not intend to limit the general authority
23 to suspend sentences.

24 And I would point to State V. McKnight which is a
25 homicide by child abuse case, 352 South Carolina 635. In

SENTENCING

1 that case the Court did not address that suspended
2 sentence but in the first paragraph of that case it does
3 say that Ms. McKnight did get, receive -- received a
4 20-year sentence suspended to 12. So that the Court did
5 not address that issue at all, in dicta or otherwise.

6 I would also point out that there have been
7 several instances that I'm personally aware of in this
8 courthouse where a homicide by child abuse has been
9 suspended although they were not appealed. I would point
10 to State V. Charlene Green.

11 On November the 9th, 2009, I represented
12 Ms. Green on a plea. She received a 20-year sentence
13 suspended to 15 in front of Judge Manning.

14 And I would also point to Robert Hutto, State V.
15 Robert Hutto. On August the 23rd, 2010, he pled guilty in
16 front of Judge Cooper and received 20 years suspended to
17 15.

18 I would also like to point out that the criminal
19 law -- this case, State V. Thomas, was decided in 2007.
20 Recently the criminal laws have been amended. The
21 legislature did not -- while they did overhaul the laws
22 and they overhauled the statutes as relates to different
23 types of homicide, they did not feel a need to add that
24 specific language even in light of this case law. So I
25 would argue that it is suspendable.

1 And we would be requesting a suspended sentence
2 in this case.

3 I think Ms. Singletary would like to speak to
4 Your Honor further.

5 THE COURT: Ms. Singletary?

6 MS. SINGLETARY: Yes, Your Honor. If it pleases
7 the Court.

8 Your Honor, when Demetrius was first arrested I
9 was the public defender that was actually assigned to take
10 care of his case.

11 I left the public defender's office back in April
12 of last year. And I made a promise to Demetrius and I
13 made a promise to his family that I would be with him from
14 the beginning to the end.

15 I have. I shut down my entire office this week
16 and worked on this case pro bono because of my belief in
17 Demetrius.

18 I understand that the jury has spoken, Your
19 Honor. But, Your Honor, I -- in all the time that I've
20 known Demetrius, I've never known him to be aggressive.
21 I've never known for him to be a violent person.

22 Your Honor, we're just respectfully asking that
23 you would suspend the 20-year sentence, Your Honor, in
24 this matter.

25 MS. HINES: Your Honor, I know that his family

SENTENCING

1 members have been here all week. His -- I would like to
2 point out his mother sitting on the first row. And his
3 girlfriend, Shayla Matthews, who is DG's mother, sitting
4 beside her. Behind her is Shayla's mother, Sardarious
5 Matthews. DG was her only grandchild. They all support
6 him. They all believe in him because they saw the way
7 that he interacted with her. They have told us about the
8 way that he interacted with her. He was the primary care
9 that she had. He took care of her. He loved her.

10 We would just requestfully -- I don't know if
11 anybody would like to speak.

12 MOTHER OF THE DEFENDANT: May I?

13 THE COURT: Come forward.

14 MOTHER OF THE DEFENDANT: Well, I know what I
15 say, it probably wouldn't make a difference because -- I'm
16 just going to say it -- you already found him guilty.

17 THE COURT: Excuse me? Come speak into the
18 microphone so we can hear you. Please come forward.

19 MOTHER OF THE DEFENDANT: I said, I'm not going
20 to take up your time. I mean, the only thing I can say,
21 you found him guilty but what I can honestly say is I'm
22 not saying this because this is my child. I am saying
23 this because I seen this young man take care of DG
24 I've seen this young man practically raise DG by
25 himself.

SENTENCING

1 So the only thing I could ask of Your Honor, just
2 have mercy on him because he did a good job taking care of
3 **DG** because if I have any doubt in my heart that he
4 would have done what they say he has done, I don't mean no
5 harm, I would have stepped in the picture.

6 That's the only thing I'm asking. Just have
7 mercy on him. Because he did, he took care of **DG** and he
8 loved **DG** from the bottom of his heart. And no one in
9 this courtroom besides for me knows this because I know
10 how I raised him. I raised him. You get a baby in this
11 world, you will become the mother and the father to this
12 baby. And as God as my witness, he did. He did it.

13 This is why I can stand up here. I'm not going
14 to shed a tear. I'm not going to listen to what nobody
15 say. I'm just going to ignore all the smirks and laughing
16 that I seen when it was going on because I know this young
17 man. I know him from the bottom of my heart. And I thank
18 you for listening to me.

19 THE COURT: Yes, ma'am. Anyone else want to
20 speak?

21 MS. SHAYLA MATTHEWS: I'd like to apologize to
22 the Court.

23 This is my first child. This is my first love.
24 I agree with Demetrius mother fully. Now I can't speak on
25 the emotions fully because, like I said, this is my first

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1 child. Nothing in the world could change my mind about
2 how I feel about him because if, like I say, I believe
3 Demetrius mother firmly.

4 If I didn't, we would not be together. I would
5 not support him. He was locked up for 11 months. I
6 wouldn't have went to see him, talked to him on the phone,
7 nothing.

8 Demetrius's lawyers have done a wonderful job and
9 I appreciate them very much. And like I say, I do
10 apologize but nobody can feel my pain. Nobody. And I, I
11 honestly, if I could get on my hands and knees right now,
12 just beg you for the mercy. Just, please. That's all I
13 ask.

14 THE COURT: All right. Does Mr. Goodwin want to
15 say anything?

16 THE DEFENDANT: Your Honor, what they found me
17 guilty of, I swear on my life, I take care of my
18 daughter. She was my everything, I mean... (Loses
19 composure.)

20 MS. HINES: Your Honor, again, I would just like
21 to reiterate that we would respectfully request a
22 suspended sentence in this case.

23 THE COURT: Anything further?

24 MS. HINES: No.

25 THE COURT: State?

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1 MS. McDUFFIE: Your Honor, in response to the
2 defense's request to suspend the sentence, the State would
3 take the position that this offense is not suspendable
4 under the law.

5 In State V. Thomas, the Court gets the power to
6 suspend that sentence from Section 24-21-410. However,
7 Your Honor, that section says after a conviction or plea
8 for any offense except a crime punishable by death or life
9 imprisonment the Court may suspend a sentence.

10 Your Honor, this offense is punishable by life
11 imprisonment. It's the State's position that this is not
12 a suspendable sentence. I can hand up the law, Your
13 Honor.

14 THE COURT: And this is also a sentence that
15 whatever my sentence is, he will have to serve 85
16 percent?

17 MS. McDUFFIE: That's correct, Your Honor.

18 MS. HINES: Your Honor, if I could respond to
19 that. We take the position on that issue that that's
20 referring to a crime that carries death or life, one or
21 the other, for that specific crime, where death is an
22 option. That's not the case here.

23 THE COURT: All right. I'm going to step down
24 for just a moment while I consider this. The Court will
25 be at ease. I'll be back in about five or 10 minutes.

SENTENCING

1 MS. McDUFFIE: Thank you, Your Honor.

2 (Thereupon, Court stood in recess from 4:45 p.m.,
3 until 4:50 p.m., when the trial resumed as follows:)

4 THE COURT: The Court has considered what has
5 been stated here. I watched three days of testimony,
6 cognizant that the jury considered this case. They had
7 questions. You have been tried by a jury of your peers.
8 You have been found guilty. And I understand there's a
9 lot of crying going on today. And I understand that
10 everybody's real sorry today. But on February 6, 2009, a
11 child died as a result, and a jury has found, at your
12 hands.

13 I don't know what happened at your house but the
14 jury has found that you have acted in a way that would
15 cause the death of a child in a way that was indifferent
16 to a life of another human being, that child being your
17 own, wherein, the jury has found by the evidence that you
18 squeezed the life out of your child.

19 The sentence of this Court is thereby, Demetrius
20 A. Goodwin, under indictment 2009-GS-40-3175, on the
21 charge of homicide by child abuse -- and I'm also taking
22 into consideration that you have no criminal history, but
23 what happened that day means your child is no longer here
24 and will never be here.

25 THE SENTENCE OF THE COURT IS THAT YOU BE

SENTENCING

1 SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
2 PERIOD OF 25 YEARS. YOU WILL BE GIVEN CREDIT FOR TIME
3 SERVED. Good luck.

4 MS. McDUFFIE: Thank you, Your Honor.

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: Court is adjourned sine die.

7 END OF CASE: 4:50 P.M.

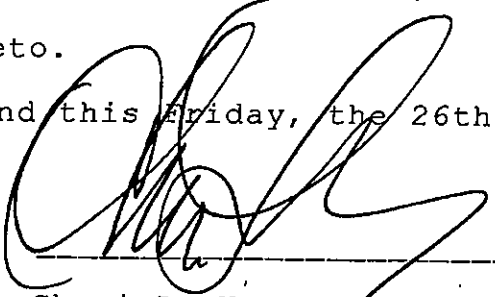
8 * * * *

9 CERTIFICATE OF REPORTER

10 I, Cheri L. Young, Registered Professional Reporter,
11 and Official Court Reporter for the State of South
12 Carolina, do hereby certify that the foregoing transcript
13 of proceedings heard on Monday, March 13, 2011 through and
14 including Friday, March 18, 2011, in Columbia, South
15 Carolina, was reported by me using machine shorthand and
16 realtime computer-aided translation and is a true,
17 accurate and complete transcript of the proceedings had
18 and evidence introduced in the hearing of the matter.

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

21 I have hereunto set my hand this Friday, the 26th day
22 of August, 2011.

23
24 
25 Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
SESSIONS)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL

Indictment Number: 2009-GS-40-03175

The State of South Carolina,)

vs.)

Demetrius Antoine Goodwin,)
Defendant.)

POST-TRIAL

MOTION FOR NEW TRIAL

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 MAR 25 PM 2:27

RICHLAND COUNTY
FILED

The Defendant, Demetrius Goodwin, hereby moves for a new trial in the case of State v. Demetrius A. Goodwin.

Defendant's trial began on Monday, March 14, 2011 when a jury was selected and a pre-trial hearing held. The jury was sworn in on Tuesday, March 15, 2011. On this day, opening arguments were heard and the state presented its first full day of testimony, including testimony from ten (10) witnesses. During the pre-trial hearing on Monday, March 14, 2011 and again several times during testimony on Tuesday, March 15, 2011, defense counsel raised concerns about whether the state had fully complied with Rule 5 of the South Carolina Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963) and *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006). Each time the issue was raised, the state informed the Court that there was no additional material that had not been provided to the defendant.

At 5:45 p.m. on Tuesday, March 15, 2011, the state informed defense counsel of the existence of 130 audio-recorded phone calls the defendant had placed from the jail. The defendant had been on bond since February 22, 2010. These newly disclosed jail calls were recorded between April 21, 2009 and February 22, 2010.

On Wednesday, March 16, 2011, defense counsel informed the court that these previously undisclosed phone calls had just been provided and again objected pursuant to Rule 5, *Brady* and *Riddle*. Defense counsel contended each of these jail calls could potentially last up to ten (10) minutes, so that the existence of potentially 1300 minutes worth of phone calls made by the defendant hindered defense counsel's ability to

adequately and meaningfully advise Mr. Goodwin about whether he should exercise his right to testify or not. While the court ruled that these phone calls would not be admissible, without an opportunity to review these calls defense counsel was still unable to effectively advise Mr. Goodwin about his right to testify, especially given the fact that if Mr. Goodwin were convicted and the case were later reversed on appeal or at post-conviction relief, at any re-trial, the state would then have the ability to use Mr. Goodwin's testimony in this trial and the jail calls against him. Furthermore, defense counsel had no way of knowing whether or not these calls contained exculpatory information. The state's tactic of providing this massive amount of evidence in the middle of trial effectively deprived the defendant of his right to testify and was therefore a violation of due process. Based on this, the defendant respectfully requests that the court grant a new trial to allow defense counsel an opportunity to review these jail calls and adequately and fully advise the defendant of his right to testify.

In addition, the defendant respectfully requests a new trial based on the Court's denial of the defendant's motion for a directed verdict. "If the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the case must go to the jury." *State v. Burdette*, 335 S.C. 34 (1999). However, this standard must be met as to each element of the crime. Under the homicide by child abuse statute, a person is guilty of homicide by child abuse if he causes the death of a child under the age of eleven, while committing child abuse or neglect and the death occurs under circumstances manifesting an extreme indifference to human life. Extreme indifference is a mental state akin to intent, characterized by a deliberate act culminating in death. *State v. Jarrell*, 350 S.C. 90 (Ct. App. 2002), *State v. McKnight*,

352 S.C. 635 (2003).

In the present case, the court ruled that the defendant's statement was direct evidence and denied the defendant's motion for a directed verdict. However, there is nothing in any of the three statements by the defendant that would indicate that the defendant acted with extreme indifference. To the contrary, the defendant's statement repeatedly indicates that he "didn't do it on purpose," "didn't mean it," and that he was scared. The statement taken on April 13, 2009 indicates: "I was concerned about her;" "I was worried;" and "I was scared at the way she was reacting and gave her a hug to get a response." The defendant's statement of April 15, 2009 provides as follows: Question: "When you hugged Denetria Goodwin very hard did that cause her death?" Answer: "Yes but it wasn't intentional. I was scared at the time and I didn't have a ride or a way to make contact. I just wanted to hug her for comfort." Furthermore, the state did not present any direct evidence or substantial circumstantial evidence that Mr. Goodwin acted with extreme indifference. All witnesses testified that he was upset, emotional, crying and concerned about his daughter. Because the state did not produce any evidence that Mr. Goodwin acted with extreme indifference, the directed verdict motion should have been granted. The defendant now requests a new trial on this basis.



Kris Hines
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina
This 25 day of March, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2009-GS-40-03175

The State of South Carolina,)
)
)

vs.)
)
)

Demetrius Antoine Goodwin,)
Defendant.)

CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the **POST-TRIAL MOTION FOR NEW TRIAL** on The State of South Carolina by delivering a copy to the State's attorney of record Luck Campbell to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with her clerk or other person of authority at said office.



Deborah Zaidman
 Paralegal
 Richland County Public Defender's Office
 P.O. Box 192
 Columbia, South Carolina 29202
 (803) 765-2592

Columbia, South Carolina

This 25TH day of March, 2011

RICHLAND COUNTY
 FILED
 2011 MAR 25 PM 2:27
 JEANETTE WOODBRIDGE
 C.C.P. & S.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Number: 2009-GS-40-03175

The State of South Carolina,)
))
))

vs.)
))
))

Demetrius Antoine Goodwin,)
Defendant.)

POST-TRIAL MOTION
TO RECONSIDER SENTENCE

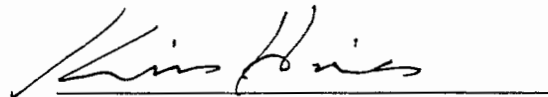
RICHLAND COUNTY
FILED
2011 MAR 25 PM 2:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

The defendant hereby moves, through his attorney Kris Hines, for reconsideration of the sentence imposed by the Honorable W. Jeffrey Young on March 18, 2011.

The Defendant was convicted of Homicide by Child Abuse, and sentenced to twenty-five (25) years in the Department of Corrections.

The Defendant, Demetrius Goodwin, is incarcerated at the Department of Corrections. The defendant hereby requests that the Court reconsider the sentence imposed and would request a hearing in this matter.

Respectfully submitted,



Kris Hines
Attorney for Defendant

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 25 day of March, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2009-GS-40-03175

The State of South Carolina,)
)

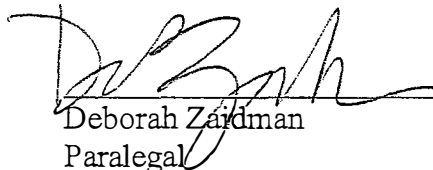
vs.)
)
)

Demetrius Antoine Goodwin,)
Defendant.)

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
 2011 MAR 25 PM 2:27
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

I certify that on this date I served a copy of the **POST-TRIAL MOTION TO RECONSIDER SENTENCE** on The State of South Carolina by delivering a copy to the State's attorney of record Luck Campbell to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with her clerk or other person of authority at said office.



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Columbia, South Carolina

This 25TH day of March, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) 2009-GS-40-03175

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 DEMETRIUS GOODWIN,)
)
 DEFENDANT.)
)
 _____)

MAY 9, 2011
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

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

KATHRYN "LUCK" CAMPBELL, ESQUIRE, ASSISTANT SOLICITOR
 ATTORNEY FOR THE STATE

LAURA KRIS HINES, ESQUIRE
 NICOLE L. SINGLETARY, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR
 CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: This is post-trial motion, case of *State*
2 *of South Carolina vs. Demetrius Antoine Goodwin* under
3 indictment number 2009-GS-40-3175. Present and appearing
4 is Ms. Hines for the defense, and Ms. Campbell is present
5 for the solicitor.

6 All right, Ms. Hines, this is this your motion.

7 MS. HINES: Yes, Your Honor. I have a motion to
8 reconsider the sentence. I also filed a motion for a new
9 trial. I asked for a motion to reconsider the sentence.
10 we'll proceed with that.

11 Your Honor, we had made an argument earlier that this
12 statute, the sentencing under this stature would be
13 suspendable. We ask Your Honor to consider suspending it,
14 to reconsider the decision that you made based on the
15 argument that Your Honor has the power to suspend this.
16 Your Honor did sentence Mr. Goodwin to twenty-five years.
17 Ms. Singletary would like to present argument on this
18 issue.

19 THE COURT: All right, Ms. Singletary.

20 MS. SINGLETARY: Thank you, Your Honor. If it pleases
21 the court? Your Honor, pretty much as it relates to the
22 homicide by child abuse statute that was enacted back in
23 1992, it would be our argument homicide by child abuse,
24 even though we know that there's a special category of
25 victims, that this case and this statute, it has -- there

1 are no lesser included offenses, Your Honor. We have
2 lesser included offenses for murder. We have voluntary
3 murder. We have involuntary murder. But in this case,
4 homicide by child abuse, there is no lesser offense. And
5 we feel that it's actually the legislator, legislators who
6 actually omitted this, and this is a tragic omission that
7 there isn't a lesser included to homicide by child abuse,
8 Your Honor.

9 As I was stating earlier, there is almost no crime
10 that I can think of, criminal offense -- there are few that
11 have lesser includeds. But when we talk about the severity
12 of a case that's homicide by child abuse or the severity of
13 a murder case, at least with the murder statute if there is
14 adequate provocation, then the jury can actually be given
15 the lesser included of voluntary manslaughter. If it was
16 an accident or so forth, Your Honor, if ---

17 THE COURT: If I remember correctly, wasn't he offered
18 voluntary manslaughter as a plea before going to trial?

19 MS. HINES: There were no formal discussion. I think
20 the solicitor mentioned that in your chambers. That was
21 the first time it was mentioned.

22 THE COURT: Okay.

23 MS. SINGLETARY: Your Honor, but, I mean, our argument
24 is, is that there should be a lesser included offense to
25 homicide by child abuse. Your Honor, the ---

1 THE COURT: You may be absolutely right, but down the
2 street there's a big building with a copper top. That's
3 where you would change that.

4 MS. SINGLETARY: And we understand that, Your Honor,
5 but we would like to bring it to your attention as it
6 relates to a motion to actually reconsider the sentence in
7 this matter.

8 In the closing argument made by the prosecution, when
9 the prosecution actually inferred to the fact that they
10 weren't saying that it was intentional that Mr. Goodwin
11 actually inflicted the injuries, let's look at the statute
12 homicide by child abuse.

13 The actual intent that is needed is the intent that's
14 akin to extreme, manifestation of extreme indifference. It
15 would be our argument that nothing was actually shown by
16 the prosecution. And we understand that the jury has
17 already spoken, Your Honor. But that there was not a
18 manifestation of extreme difference.

19 It would be -- to go along with our argument as to why
20 there needs to be a lesser included, and again, Your Honor,
21 I know that you cannot come up with a lesser included for
22 this offense. That it would have to go through the
23 legislature. However, Your Honor, I think that this is a
24 issue that clearly needs to be handled. And that my client
25 should be given the benefit of the doubt.

1 Your Honor sat throughout the entire trial, Your
2 Honor, and the extreme indifference element of this
3 offense, I mean, was not made. I mean, it's evident to us
4 as we spoke to jury members afterwards. I mean, it's
5 evident, and to the fact that as it relates to the record
6 when the jury members came out with a question.

7 THE COURT: That is irrelevant; do not go there. Do
8 not argue what you said after the trial to the jurors.
9 They made their ruling, and that's where it stands. We're
10 not going to go post-trial interviewing the jurors in this.

11 MS. SINGLETARY: Your Honor, I beg the court's
12 indulgence. I was going to say I was talking about the
13 actual questions that the jury members sent out. .

14 THE COURT: Oh, the questions.

15 MS. SINGLETARY: Yes. Okay.

16 THE COURT: Not your talking with them, okay.

17 MS. SINGLETARY: No, Your Honor. I'm actually
18 referring to the questions that the jurors sent out.

19 THE COURT: Right. I remember there was one specific
20 one that had to put shivers down your spine when they asked
21 how long could he get for this crime.

22 MS. SINGLETARY: Exactly, Your Honor, and in our
23 opinion, that the jury was actually thinking that that --
24 and this is us merely speculating. But when, when a jury
25 comes out, jury members come out with a question like that,

1 it's like they're looking for something else. And in this
2 case, they didn't have that something else, and that's what
3 our argument is here today. That, I mean, it's a
4 legislative tragedy that we don't have a lesser included
5 for homicide by child abuse.

6 But I think that it's evident from the record and the
7 questions that came back from the jury members that in this
8 case, if there was a lesser included offense, I would say
9 that the jury would have come back guilty on the lesser
10 included offense, but they had no other option, Your Honor.

11 THE COURT: But, you know, it also gave me a greater
12 leverage, or not leverage but scope of where I could --
13 rather than murder, which is thirty to life, this was
14 twenty to life. I think that may be where the legislature
15 reduced the amount of exposure that he had. And I could
16 have legitimately sentenced him to life.

17 MS. SINGLETARY: Your Honor, and I understand that.
18 And, Your Honor, one thing that I will note as it relates
19 to the ever, ever evolving changes in the law, the statute
20 homicide by child abuse. The legislature has actually
21 taken up the matter right now. They actually want to make
22 it for if someone is convicted of A(1), that it's life or,
23 or the death penalty can be seeked [sic] and the twenty
24 years is taken out. And with A(2), it's the twenty years
25 or the minimum ten years.

1 What I am simply saying is that this, because this is
2 a relatively law -- relatively new law, I would say because
3 it was enacted back in 1992 and since the time that it has
4 actually been enacted, it's been evolving. And still to
5 this day we have legislation that's pending that actually
6 changes the offenses. I know that both the sentencing for
7 individuals who's charged with that -- and I'm not saying
8 that that is a matter that actually reflects on my client
9 because we would want him to have the benefit of the old
10 law.

11 However, what I am saying is that the homicide by
12 child abuse statute is legislatively flawed to -- there
13 should be a lesser included, Your Honor. And that's why
14 we're standing in front of you here today asking on a
15 motion to reconsider the sentence.

16 I've seen, and I know Ms. Hines is actually going to
17 hit again on this. But, I mean, if you look at the
18 allegations made by the state, the state in essence at
19 trial said that a hug actually killed the twenty month --
20 twenty-three month-old child, Your Honor.

21 Now, if you look at all the prior case law that Ms.
22 Hines is going to go into detail about, I think that the
23 legislature, when they initially enacted this law, it
24 wasn't for these type of cases. It was for cases that had
25 horrific actual -- of showing of abuse and neglect, Your

1 Honor.

2 THE COURT: Death's pretty horrific in my opinion.

3 MS. SINGLETARY: Your Honor.

4 THE COURT: If somebody is killed, that's pretty
5 horrific. Don't you agree?

6 MS. SINGLETARY: Your Honor, I understand that when
7 someone is killed, that that is a ordeal. That is a
8 tragedy. However, there is a major difference between
9 someone actually, and I hate to sound crude, but there is a
10 major difference between someone giving someone a overdose
11 of sleeping pills to kill them versus someone such as a
12 case that was actually prosecuted in the Richland County
13 public -- I mean, solicitor's office where they're alleging
14 that a actual defendant smashed a child up against the wall
15 several times, and he gets fifteen years. But yet my
16 client does twenty-five years for a hug. So, I think that
17 there are major differences ---

18 THE COURT: That is you terming it a hug. I don't
19 think anyone else referred to it as simply a hug.

20 MS. SINGLETARY: Through the entire testimony, that's
21 what they said. All their medical investigators, all their
22 police officers, everyone said that it was a hug.

23 THE COURT: I think it was more of a constriction, not
24 a hug.

25 MS. SINGLETARY: And, and that ---

1 THE COURT: All right, I'll let Ms. Campbell speak.

2 MS. CAMPBELL: Your Honor, I'm not aware of anything
3 new that they've brought up today that you weren't able to
4 consider at sentencing.

5 As far as whether or not they liked the statute, it
6 has been in effect, by their own estimation, for nineteen
7 years. It has been challenged on numerous occasions.

8 As far as -- and you've already pointed out, Judge,
9 what I was going to bring up. That they've actually
10 lowered the level for murder twenty to life. They're
11 talking about, they're reconsidering the penalties now.
12 They're enhancing the penalties for what he was convicted
13 on, not lessening them.

14 I feel like that there's nothing new that they've
15 brought up as far as anything that you did not consider at
16 sentencing, Your Honor. You did have the benefit of
17 hearing the full trial and all the medical testimony, as
18 well as the investigative testimony. And I'm not aware of
19 anything different other than their dislike for this
20 statute, which I am not taking that away from them.
21 However, I do believe that your sentence was appropriate
22 within the facts that were presented to you. And you
23 considered that carefully prior to sentencing.

24 THE COURT: All right, on this issue, I'll take it
25 under advisement, and I'll notify you when I make my ruling

1 on that issue.

2 MS. CAMPBELL: Thank you, sir.

3 MS. HINES: Thank you, Your Honor.

4 MS. SINGLETARY: Thank you.

5 MS. HINES: We also have filed a motion for a new
6 trial.

7 THE COURT: Yes, ma'am.

8 MS. HINES: I briefed that, submitted that brief to
9 the court. I did not receive a written response from the
10 state. And if Your Honor would like for me to go into
11 that, or if you'd like to decide that on the brief?

12 THE COURT: I'm ready to proceed.

13 MS. HINES: Okay. Two reasons that we're asking for
14 a new trial in this case. One is that halfway through
15 the trial on Tuesday, on the Tuesday evening, I believe it
16 was Tuesday evening after a full day of testimony, we
17 received 130 jail calls. This influenced the decision, the
18 decision ---

19 THE COURT: And I excluded that ---

20 MS. HINES: If it ---

21 THE COURT: --- evidence.

22 MS. HINES: Yes, Your Honor. It was excluded. One of
23 the concerns that we had is whether we could adequately
24 advise Mr. Goodwin whether he could testify or not. Even
25 given the exclusion, whether it would be in some way able

1 to be used against him. We didn't have enough to ---

2 THE COURT: Well, these were his phone calls.

3 MS. HINES: Phone calls made between him and another
4 party. We don't, didn't know, had no time to find out
5 whether that contained potentially exculpatory information.
6 We believe that his rights were constricted because we
7 weren't able to make decisions, and we weren't able to
8 develop a trial strategy around whether he should testify
9 or not. We weren't able to make a decision. We were
10 basically going blind with no trial strategy at all at that
11 point, and ---

12 THE COURT: I mean, he couldn't have told you what was
13 on those phone calls?

14 MS. HINES: Well, we're talking ---

15 THE COURT: Because he made them.

16 MS. HINES: We're talking about potentially -- well,
17 1,300 minutes worth of calls, and I don't think that we
18 could have adequately gotten that information from Mr.
19 Goodwin. Given that we were in the middle of trial, again
20 we had no opportunity to develop any type of strategy for
21 how to deal with these calls.

22 THE COURT: All during your trial preparation, he
23 didn't tell you that he made about a 130 phone calls from
24 the jail?

25 MS. HINES: It did not come up, Your Honor.

1 THE COURT: I mean, he was -- he knew he had made
2 those phone calls, didn't he?

3 MS. HINES: It did not come up, Your Honor. For that
4 reason we think that, that his rights were constricted. He
5 was denied due process in his ability to testify, and his
6 ability for us to present a full and complete defense
7 because we did not have that information.

8 It was information that was in the state's custody the
9 entire time. It was in the state's custody from February
10 of 2010 up until trial. It was at the Alvin S. Glenn
11 Detention Center which is, you know, within the power of
12 the state to provide those, and they did not. That's the
13 first ground.

14 THE COURT: All right, let me let -- let's hear from
15 Ms. Campbell on that issue.

16 MS. HINES: Thank you.

17 MS. CAMPBELL: Your Honor, those were -- I think we
18 requested those during the trial. They were provided. We
19 stipulated, and Your Honor was correct in excluding them.
20 We were not able to use them for any purpose whatsoever.
21 The only way we could have been able to use them that could
22 affect their ability to put their client on the stand would
23 be impeachment. And specifically, we couldn't use them.
24 So, I don't know how that would have affected their trial
25 strategy because all that was excluded period. Was not to

1 be used. Impeachment, any other ---

2 THE COURT: Yeah. I think my ruling was it excluded
3 them for all purposes. They could not have impeached your
4 client.

5 MS. HINES: Yes. Yes, Your Honor. It also inhibited
6 our ability to develop a trial strategy as far as putting
7 up witnesses because we didn't know what the witnesses that
8 we would have put up might have said on those phone calls.

9 THE COURT: Let me get this straight. You -- I didn't
10 allow the evidence that you didn't know about to come in,
11 and that changed your trial strategy?

12 MS. HINES: It didn't change our trial strategy. We,
13 we began -- mid-trial we actually began proceeding with no
14 trial strategy in that situation because we did not have
15 the ability to listen to the calls. So, we were basically
16 flying blind at that point, Your Honor.

17 THE COURT: All right, next issue.

18 MS. HINES: Thank you, Your Honor. The next issue we
19 would ask Your Honor to revisit, the next issue in the
20 brief is the denial of the grant of -- the denial of
21 directed verdict, and this has to do with the mental state
22 of extreme indifference.

23 Under a directed verdict standard, each element has to
24 be shown; you have to have evidence of each element. The
25 extreme indifference is a mental state akin to intent,

1 characterized by a deliberate act culminating in death
2 under the standard. And I think that, based on the jury
3 question, that's the area that they had confusion with is
4 the law they were, they were confused about.

5 I believe, based on the questions that they asked,
6 they were confused about the law of extreme indifference.
7 And it was my error for not objecting to the definition of
8 extreme indifference at the time on the record.

9 THE COURT: I think at the time, I took it directly
10 out of the *Jewel* case. I mean, that was verbatim from a
11 Supreme Court case as to what the charge should be and what
12 they said it should be.

13 MS. HINES: It actually, actually the definition of
14 extreme indifference in the charge that you provided was,
15 was split in half, and language from other portion -- other
16 sections of the *Gerald* case was put into the middle of the
17 actual definition of extreme indifference. And it was my,
18 my error, and I had no strategy for this, but it was my
19 error for not objecting to that at the time.

20 I, I -- but I do believe that there was no evidence.
21 I think Your Honor said that the defendant's statement, Mr.
22 Goodwin's statement was direct evidence of the crime.
23 There was no direct evidence. There was no evidence in his
24 statement where he addressed extreme indifference. That
25 element, we would contend, was not, was not met, was not --

1 did not meet the standard. And so, based on that, we would
2 request, request a new trial in this matter.

3 THE COURT: Okay. Thank you.

4 Ms. Campbell.

5 MS. CAMPBELL: Your Honor, the medical testimony in
6 this case was overwhelming. That, coupled with his
7 statement and what he said he did. It's not unusual for
8 anyone in a murder case or otherwise to minimize what they
9 did, as he did in his statement.

10 However, the medical testimony I think was pretty
11 clear on what it would take to actually cause the injuries
12 to this child and ultimately cause her death. I believe
13 that's all you considered as far as directed verdict, and I
14 believe it was appropriate.

15 THE COURT: Those are your only two issues, weren't
16 they?

17 MS. HINES: Yes, Your Honor.

18 THE COURT: All right, I'll take this under
19 advisement. I'll give you my ruling by the end of the
20 week.

21 MS. CAMPBELL: Thank you, sir.

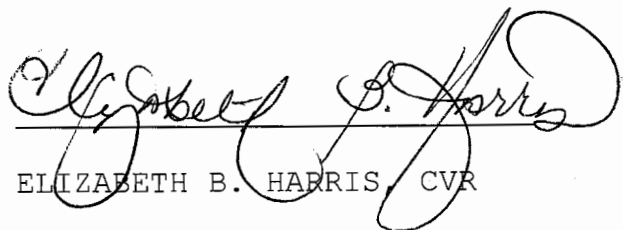
22 MS. HINES: Thank you, Your Honor.

23 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF MAY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

AUGUST 3RD, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

Indictment No: 2009-GS-40-03175

State of South Carolina,

v.

ORDER

Demetrius Antoine Goodwin,

Defendant.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 JUN 13 PM 12:47

RICHLAND COUNTY
FILED

This matter came before the Court pursuant to Defendant's Post Trial Motion for New Trial and Post Trial Motion to Reconsider Sentence filed on March 25, 2011. Present at the hearing were Kathryn Luck Campbell, Esquire, and Joanna McDuffie, Esquire representing the State; and Kris Hines, Esquire, and Nicole Singletary, Esquire representing Defendant, Demetrius Antoine Goodwin. Based on the reasons set forth herein, the Defendant's Motions are **DENIED**.

BACKGROUND

On March 14, 2011, the State called the above-captioned case to trial; in which, the Defendant was charged with Homicide by Child Abuse for an incident occurring on February 6, 2009. Present at the trial were Senior Assistant Solicitor Kathryn Luck Campbell, Assistant Solicitor Joanna McDuffie, and Assistant Solicitor Carter Potts, representing the State; Assistant Public Defender Kris Hines, Assistant Public Defender Tracy Pinnock, and Nicole Singletary, representing Defendant. The Defendant was convicted of Homicide by Child Abuse upon a trial



by jury and sentenced to a term of incarceration for twenty five (25) years. On March 25, 2011, Defendant filed his Motion for New Trial and Motion to Reconsider Sentence.

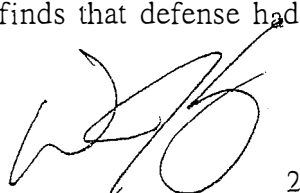
LEGAL ANALYSIS

A. DEFENDANT'S MOTION FOR NEW TRIAL

Pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure, a motion for new trial must be made within ten (10) days after the imposition of the sentence unless such motion is based on newly or after-discovered evidence. Rule 29, SCRPC. "The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). In his Motion for New Trial, Defendant argues that he is entitled to a new trial based on the following grounds: (1) the State's failure to timely disclose evidence deprived the defendant the right to testify and thus, violated Defendant's due process rights; and (2) the Court erred in denying the Defendant's Motion for a Directed Verdict.

As to Defendant's contention that the State failed to timely disclose the existence of jail phone calls and thus, deprived Defendant of his right to testify, this Court disagrees. Defendant argues that on March 15, 2011, the State informed defense counsel of the existence of audio recorded phone calls Defendant had placed from the jail between April 21, 2009, and February 22, 2010. Defense counsel argues that the timing of the disclosure of these calls made by Defendant hindered defense counsel's ability to adequately and meaningfully advise Mr. Goodwin about whether he should exercise his right to testify.

Importantly, the Court excluded the admission of this evidence, stating that the phone calls could not be used against the Defendant. Therefore, Defendant was not prejudiced in anyway. The Court also finds that defense had the ability and opportunity to adequately and



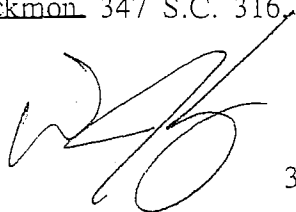
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effectively advise Defendant regarding his right to testify and that Defendant's due process rights were not violated, especially since the Court ruled that this evidence was inadmissible.

As to Defendant's argument that defense counsel had no way of knowing whether these calls contained exculpatory information, the Court finds it to be without merit. The jail calls that are the subject of this motion are recorded phone calls made by the Defendant during the time he was incarcerated at the Alvin S. Glenn Detention Center. Defendant is a party to each call, and thus, defense counsel had access to any and all information discussed in each call, i.e. possible witnesses, information that would assist in the defense's investigation, etc.

Finally, Defendant requests a new trial based on the Court's denial of the Defendant's motion for a directed verdict. At the outset, the Court recognizes that a Motion for New Trial is the improper avenue to address this issue.

In ruling on a motion for directed verdict, the judge "shall consider only the existence or non-existence of evidence and not its weight." State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (citing Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005)). The trial judge should view the evidence in the light most favorable to the State and should "deny motion for directed verdict if there is any direct or substantial circumstantial evidence which reasonably tends to prove accused's guilt, or from which his guilt may be fairly and logically deduced." Id.; see also State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct.App.2004). Furthermore, "when a motion for a directed verdict is made in a criminal case in which the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." Id. (citing State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002); State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001)). A defendant is only



entitled to a "directed verdict when the State fails to produce evidence of the offense charged." Cherry, 361 S.C. at 593, 606 S.E.2d at 478; Horton, 359 S.C. at 563, 598 S.E.2d at 284; State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct.App.2003). Based on the reasons set forth above, Defendant's Motion for New Trial is denied.

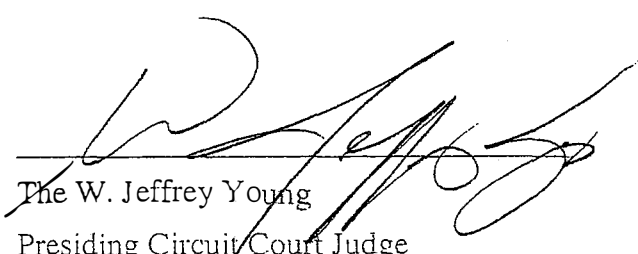
B. MOTION TO RECONSIDER SENTENCE

Defendant requests that the Court reconsider its sentence imposed in this matter. Under South Carolina law, a trial judge has the authority to alter, amend, or modify, a sentence imposed by him within the same term of court. State v. Smith, 276 S.C. 494, 497, 280 S.E.2d 200, 201 (1981). However, Defendant has failed to present any new or additional evidence that was not available to or considered by the trial judge except for a dislike of the law applicable in this matter. Therefore, the Court denies Defendant's Motion to Reconsider Sentence.

CONCLUSION

As set forth herein, Defendant's Motion for New Trial and Motion to Reconsider IS **DENIED** as to all grounds.

IT IS SO ORDERED.


The W. Jeffrey Young
Presiding Circuit Court Judge

RICHLAND COUNTY
FILED
2011 JUN 13 PM 12:47
JEANETTE W. MCBRIDE
C.C.P. & G.S.

June 1, 2011
-May 1, 2011
Columbia, South Carolina
Sumter

WITNESSES

(S) Capt. SMITH - RCSD

✓ ROB MARVIN - RCSD

ARREST WARRANT NUMBER

DP

09113

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 16 2009

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-

03175

The State of South Carolina

County of Richland

42

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE

vs.

Demetrius Goodwin

Indictment for

HOMICIDE BY CHILD ABUSE

SC Code: 16-3-85(A)(1)(B)(1)

CDR Code: 2356

Class: EXM/FELONY(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

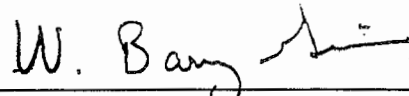
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on *April 15, 2009*, the Grand Jurors of Richland County present upon their oath:

HOMICIDE BY CHILD ABUSE

THAT Demetrius Goodwin DID IN RICHLAND COUNTY ON OR ABOUT February 6, 2009, CAUSE THE DEATH OF A CHILD UNDER THE AGE OF ELEVEN WHILE COMMITTING CHILD ABUSE OR NEGLECT, AND THE DEATH OCCURS UNDER CIRCUMSTANCES MANIFESTING AN EXTREME INDIFFERENCE TO HUMAN LIFE IN VIOLATION OF S.C. CODE SECTION 16-3-85(A)(1)(B)(1).

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



 WARREN B. GIESE, SOLICITOR

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-40-03175AW#: DP09113Date of Offense: Feb 6, 2009S.C. Code §: 16-3-85(A)(1)CDR Code #: 2356Demetrius A. Goodwin

AKA: _____

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____ M. Ellis RdCity, State, Zip Hopkins

DL# _____ SID# _____

SENTENCE SHEET

On disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Homicide by Child AbuseIn violation of § 16-3-85(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kellin C. Orr
Solicitor13009
SC Bar #Demetrius Goodwin
DefendantKimberly Jones
Attorney for Defendant72398
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

Fine	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	_____
§14-1-211(A)(2) (DUI Surcharge)	\$100	_____
§56-5-2995 (DUI Assessment)	\$12	_____
§56-1-286 (DUI Breath Test)	\$25	_____
§35.13 (Public Def/Prob)	\$500	_____
§73.3, 1B TP (Law Enforce. Funding)	\$25	_____
§33.7, 1B TP (Drug Court Surcharge)	\$100	_____
§50-21-114(BUI Breath Test Fee)	\$50	_____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	_____
§90.11 TP (SCCJA Surcharge)	\$5	_____
3% to County (if paid in installments)	\$	_____
TOTAL	\$	_____

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP, requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk: Jeanette McBride / crCourt Reporter: YoungPresiding Judge: [Signature]Judge Code: 2156Sentence Date: March 18, 2011

STATE OF SOUTH CAROLINA

County of RichlandDemetrius Antoin Goodwin 345309
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

In the Court of Common Pleas

JANETTE W. McBRIDE
C.C.P. & G.S.

2015 APR 23 AM 8:41

RICHLAND COUNTY
FILEDAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court of General Sessions;
1701 Main St., Columbia, SC, 29202
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-40-03175
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/18/11 : 25 yrs Imprisonment
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
 ii. South Carolina Supreme Court
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
 ii. Dismissed
 iii. _____

(c) the date of each such result:

- i. 3/13/13
 ii. 3/18/15
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2013-UP-110
 ii. 2015-MO-012
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance Of Trial Counsel
 (b) Ineffective Assistance Of Appellate Counsel
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Trial counsel failed to notify applicant of plea offer
 (b) Appellate counsel failed to raise all meritorious claims on appeal
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) This Application for Post-Conviction Relief provides the first opportunity to present these issues.

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Kris Hines, Nicole Singletary, & Tracy Pinnock, Esquires; Richland County Public Defender
1701 Main Street, Columbia, South Carolina, 29202

ii. La Nelle Cantey Durant; Division of Appellate Defense, 1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

To vacate the Applicant's conviction and sentence, and to remand for a new trial

19. Are you now under sentence from any other court that you have not challenged?

No

County of Richland

I, Demetrius Gaddum, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Demetrius GaddumSWORN to and subscribed before me this 31stday of March, 2015Susan H. Drye (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018JEANETTE W. MCBRIDE
C.C.P. & G.S.

2015 APR 23 AM 8:41

RICHLAND COUNTY
FILED

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Demetrius Gaddum, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Demetrius Gaddum

Applicant

SWORN or affirmed to and subscribed before me this

31st day of March, 2015Susan H. Drye
Notary PublicMy Commission Expires
March 5, 2018

My Commission Expires _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Demetrius Goodwin, #345308,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-02461

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief, CR-15-00001, filed April 23, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2009 term of the Court of General Sessions for Richland County for Homicide by Child Abuse (2009-GS-40-03175). Applicant was represented by Kris Hines, Esq.; Nicole Singletary, Esq.; and Tracy Pinnock, Esq. Applicant proceeded to trial on March 18, 2011. He was convicted as indicted. The Honorable W. Jeffrey Young sentenced Applicant to twenty-five years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Lanelle Durant, Esq. Following the submission of briefs by both sides, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Goodwin, No. 2013-UP-110 (S.C. Ct. App filed March 13, 2013). Applicant then filed a Petition for Writ of Certiorari. The Supreme Court of South Carolina dismissed the Writ as improvidently granted. State v. Goodwin, No. 2015-MO-012 (filed March 18, 2015). The Remittitur was issued on March 19, 2015.

RICHLAND COUNTY
FILED
2015 SEP -9 AM 11:59
JEANETTE W. McBRIDE
CLERK C.P. & G.S.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel, in that;
 - a. Counsel "failed to notify applicant of plea offer",
2. Ineffective Assistance of Appellate Counsel, in that;
 - a. Counsel "failed to raise all meritorious claims on appeal."

III.

Applicant's first claim is an allegation of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is also without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there

was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of trial and appellate counsels. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is

no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified or explained is hereby denied.

(SIGNATURE BLOCK ON NEXT PAGE)

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 2015

STATE OF SOUTH CAROLINA
COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DEMETRIUS GOODWIN, #345308

2015-CP-40-02461

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

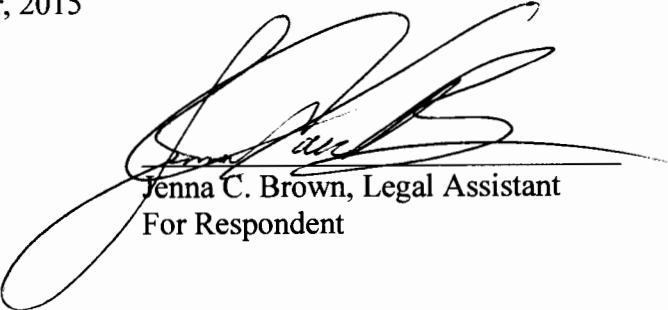
AFFIDAVIT OF SERVICE BY MAIL

2015 SEP -9 AM 11:59
RICHLAND COUNTY
FILED
JEANETTE W. MCBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia SC 29201

DATED this 8th day of September, 2015


Jenna C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Demetrius Antwan Goodwin, SCDC 345308,

Applicant,

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

Case No.: 2015-CP-40-02461

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed April 23, 2015, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Kris Hines, Esquire, Nicole Singletary, Esquire, and

Tracy Pinnock, Esquire:

- a. Counsel was ineffective for failing to object to the incorrect charge on Homicide by Child Abuse being presented to the jury, thus failing to preserve the issue for appeal.
- b. Counsel was ineffective for failing to properly preserve their objection and motion for mistrial related to improper burden shifting comments made during the testimony of Dr. Bradley Marcus.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JD Waller', written over a horizontal line.

Jonathan D. Waller
Waller Law Group
1821 Blanding Street
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

July 14, 2021

Columbia, South Carolina

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2015-CP-40-2461

3
4 Demetrius Goodwin,)

5 Plaintiff,)

6 vs.)

7 State of South Carolina,)

8 Defendant.)

TRANSCRIPT OF RECORD

9 July 14, 2021
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE MICHAEL S. HOLT, JUDGE.

15
16
17 A P P E A R A N C E S:

18 JONATHAN D. WALLER, ESQ.
Attorney for the Plaintiff

19 MICHAEL D. DAVIDSON, ASSISTANT ATTORNEY GENERAL
20 YASMEEN E. KLEIN, ASSISTANT ATTORNEY GENERAL
21 Attorneys for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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8 PLAINTIFF EXHIBITS

9 NO DESCRIPTION ID EV

10 1 Letter 113 113

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JULY 14, 2021

(WHEREUPON, the proceedings commenced at
10:57 a.m.)

THE COURT: Court will come to order. This is
2015-CP-40-2461. The Applicant is Demetrius
Goodwin. He is present with counsel, Mr. Jonathan
Waller. Seated for the State is Mr. Michael
Davidson and Yasmeen Klein, as Respondents. This
is before the Court on a post-conviction relief
matter.

Mr. Waller, are y'all ready to go forward at
this time, sir?

MR. WALLER: We are, Your Honor.

THE COURT: Is there anything you need to tell
the Court before we get started, or anything you
need to put on the record?

MS. WALKER: Your Honor, I amended -- the
application was amended. I believe Your Honor has
a copy of that amendment.

THE COURT: I do.

MR. WALLER: Your Honor, other than that, that
amendment is in addition to his initial handwritten
application, which would add just two issues. But
outside of that, we are ready to proceed.

THE COURT: Mr. Davidson, anything from you,

1 sir?

2 MR. DAVIDSON: Just briefly, I will put the
3 procedural history on the record. Is that okay,
4 Your Honor?

5 THE COURT: Yes, sir.

6 MR. DAVIDSON: May it please the Court?
7 Applicant was indicted in April of 2009 for
8 homicide by child abuse. He was represented on
9 those charges by Nicole Singletary, Kris Hines, and
10 Tracy Pinnock. Luck Campbell and Joanna McDuffie
11 prosecuted the case.

12 Applicant proceeded to trial on March 18,
13 2011, and he was convicted as indicted. The
14 Honorable Jeffrey Young sentenced Applicant to 25
15 years. A timely notice of appeal was filed on
16 Applicant's behalf, and an appeal was perfected by
17 LaNelle Durant. And following the submission of
18 briefs by both sides, the South Carolina Court of
19 Appeals affirmed Applicant's conviction on
20 March 13, 2013.

21 Applicant then filed a petition for writ of
22 certiorari, and the Supreme Court of South Carolina
23 dismissed the writ as improvidently granted, and a
24 remittitur was issued on March 19, 2015.

25 This PCR was filed April 23, 2015. And in his

1 application, the Applicant alleges that he is
2 being held unlawfully --

3 THE COURT REPORTER: I'm sorry, I didn't hear
4 you.

5 MR. DAVIDSON: In his application, the
6 Applicant alleges that he is being held in custody
7 unlawfully for the following reasons:

8 Ineffective assistance of counsel, in that
9 counsel failed to notify Applicant of the plea
10 offer;

11 Ineffective assistance of appellate counsel,
12 in that counsel failed to raise all meritorious
13 claims on appeal.

14 The State filed its return on September 9,
15 2015. And as Mr. Waller said, Applicant
16 subsequently filed amendment to application on
17 July 13, 2021, alleging two additional claims of
18 ineffective assistance of counsel, specifically:

19 Counsel was ineffective for failing to object
20 to the incorrect charge on homicide by child abuse
21 being presented to the jury, thus failing to
22 preserve an issue for appeal;

23 Number 2, counsel was ineffective for failing
24 to properly preserve their objection and motion for
25 mistrial related to improper burden shifting

1 comments made during the testimony of Dr. Bradley
2 Marcus.

3 Applicant is present, and he is represented by
4 Mr. Waller. And the State is ready to proceed.

5 THE COURT: All right. Mr. Waller?

6 MR. WALLER: Thank you, Your Honor. We would
7 call Kathryn Luck Campbell.

8 THE COURT: Kathryn Campbell?

9 MR. WALLER: Yes, Your Honor.

10 THE COURT: Ms. Campbell, if I can get you to
11 come forward.

12 (Witness approaches.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Have a seat in the
19 witness stand.

20 THE COURT: Thank you, Ms. Campbell.

21 (Witness seated.)

22 THE COURT: Ms. Campbell, would you tell us
23 your full name, please?

24 THE WITNESS: My legal name is Kathryn
25 Campbell Hubbard. When I prosecuted, I went by

1 Kathryn Luck Campbell. That was my maiden name.

2 THE COURT: Okay. Thank you.

3 THE WITNESS: May I take off my mask?

4 THE COURT: Yes, ma'am.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Yes, sir, your witness.

7 MR. WALLER: May it please the Court?

8 THE COURT: Yes, sir.

9 K. LUCK CAMPBELL,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good morning, Ms. Campbell. How are you?

14 A Good.

15 Q Ms. Campbell, where are you currently employed?

16 A I retired from the Richland County Solicitor's
17 Office in June, I think the end of June of 2018.
18 And since then I work part-time in the Lancaster
19 County Solicitor's Office just handling a few cases
20 up there.

21 Q Okay. So you left the Richland County Solicitor's
22 Office in 2018?

23 A I retired. Yes.

24 Q Have you had access to any of your files since that
25 time?

1 A No.

2 Q Okay. Did you review the file from this case in
3 preparation for today's hearing?

4 A I received a transcript yesterday. I was only able
5 to review part of that yesterday. I was just
6 glancing at the transcript, but I wasn't able to go
7 through the whole thing.

8 Q Okay. Did you speak to anyone about this case from
9 back in 2011 in preparation for today?

10 A Last Friday, I believe I spoke briefly with
11 Ms. Klein, with the AG's Office.

12 Q Okay. Did you speak with Ms. McDuffie about the
13 case?

14 A We have spoken about scheduling and mentioned it
15 briefly, yes.

16 Q Okay. Were you involved in the appeal of the
17 original trial of this case?

18 A No.

19 Q Okay. Have you had any other involvement in this
20 case since the trial in 2011?

21 A Not until I was subpoenaed for this.

22 Q Okay. All right. When you are -- this may sound
23 like an elementary question -- when you are
24 prosecuting cases, is it common to make plea
25 offers?

1 A It depends on the case. Every case is different.
2 Every -- some cases you actively pursue plea
3 offers, and some cases you don't.

4 Q Okay.

5 A It is a matter of assessment on a case by case
6 analysis.

7 Q Okay. Is there -- was there a policy when you were
8 with the Richland County Solicitor's Office
9 regarding plea offers and how they were conveyed to
10 Defendants or the parameters of those offers?

11 A Not that I'm aware of.

12 Q Okay. Did you -- in your case load, did you have
13 discretion to make plea offers?

14 A Yes. To some extent, yes. It depended on the
15 case, again, whether or not I needed to run it by
16 the Solicitor himself, but, yes.

17 Q Okay. All right. Did plea offers have to be
18 written or communicated any particular way?

19 A No.

20 Q Have you ever -- in your experience, have you ever
21 had a Defendant plead guilty on the kind of eve of
22 trial?

23 A Yes.

24 Q Have you ever had a Defendant plead guilty after
25 pretrial hearings were conducted?

1 A Yes.

2 Q Have you ever had a Defendant plead guilty during a
3 trial?

4 A Yes.

5 Q Have you ever had a Defendant plead guilty while
6 the jury was deliberating?

7 A I believe so, maybe once or twice.

8 Q Okay. Do you have any specific recollection of any
9 plea offers that were made in this case?

10 A My recollection in this case is, in speaking with
11 Defense counsel, they had spoken to their client,
12 he maintained his innocence and wasn't going to
13 plead to anything.

14 Q Okay. Do you recall if you made a plea offer at
15 all in this case?

16 A I have no memory of making any plea offers in this
17 case.

18 MR. WALLER: Thank you. I have no further
19 questions.

20 THE COURT: Mr. Davidson? Or Ms. Klein?

21 CROSS-EXAMINATION

22 BY MS. KLEIN:

23 Q Good morning, Ms. Campbell. I have just a few more
24 questions for you.

25 A Sure.

1 Q With regard to this case, so there were several
2 individuals who were on the team from the
3 Solicitor's Office, is that correct?

4 A Correct.

5 Q Yourself, Ms. Joanna McDuffie, and then was there
6 another individual also assisting?

7 A I believe Carter Potts was also a Prosecutor in
8 this case.

9 Q With regards to the Solicitor's team, were you the
10 lead Solicitor in this matter?

11 A Ms. McDuffie and I -- it just depended, but -- I
12 mean, I was the oldest, I can say that.

13 Q So at the time of this case, how long had you been
14 at the Solicitor's Office?

15 A I started in the Richland County Solicitor's Office
16 in 1990.

17 Q Okay. And so do you remember generally the facts
18 of this case?

19 A Generally, yes.

20 Q Could you articulate some of the facts that you
21 remember?

22 A Basically this case was a very strong medical case
23 as far as child abuse went. And in addition to
24 that, the Defendant confessed to multiple people on
25 multiple occasions to harming this child, so in my

1 opinion it was, as far as homicide by child abuse
2 cases go, a strong case for the State.

3 Q And so in preparation of this case for trial, did
4 the Solicitor's Office speak to several of the
5 individuals who had been involved with the original
6 investigation and the hospital officials?

7 A Of course. In preparation for trial, we always try
8 to touch base or interview witnesses or go over
9 their statement.

10 Q Does the Solicitor also discuss the case with the
11 Defense team or reach out to the Defense team to
12 see if the Applicant or the Defendant would be
13 interested in negotiating a plea?

14 A That is done in some cases. In this case, I
15 specifically remember the position from the day we
16 got the case, had any interaction with the Defense,
17 to the moment the jury came in, is that basically
18 they had spoken to their client, he wasn't pleading
19 to anything, and therefore there were no plea
20 negotiations to be had. I even remember -- I think
21 we went back on the first day of trial, and I don't
22 know that that was conveyed to Judge Young, but
23 basically we told Judge Young, you know, This is a
24 trial, we are going forward.

25 Q Okay. So do you recall how long you were preparing

1 for this trial from the time that the Applicant was
2 indicted to the time that you actually went before
3 Judge Young?

4 A Specifically, no. I mean, it could have been some
5 one week, and then you had another trial, and then
6 you get back to it. So on and off pretty much from
7 the time of the indictment, to some extent.

8 Q Okay. So it would have been -- I'm sorry, whatever
9 that means, so approximately a couple of years from
10 the time the Applicant was originally charged to
11 the trial, is that correct?

12 A If my memory is correct, but I'm not specific on
13 time.

14 Q And while you were preparing for trial, you said
15 that you did have some conversation with the
16 Applicant's counsel, his Defense team, is that
17 correct?

18 A We would meet and go over discovery and do things
19 of that nature, make sure that, you know, we had
20 provided them everything. We usually met on
21 multiple occasions because you are always going to
22 have something to slip through, and you want to
23 make they had everything.

24 Q And so during those meetings, it never came up, or
25 to your recollection it didn't come up that the

1 Applicant was interested in a plea?

2 A My memory is the exact opposite. It came up that
3 they had spoken to him, he maintained his
4 innocence, and he was not pleading to anything.
5 That is my memory of this case.

6 Q Do you remember what the Defendant's strategy was
7 in trial?

8 A Once we got into trial, basically their strategy
9 was to discredit all the experts we had. We had a
10 forensic pathologist. We had somebody that looked
11 at the brain issues. We also had -- we ended up
12 with a forensic pediatrician as well that testified
13 for the State. They brought in an expert who
14 basically said the child died from some type of
15 disease that he claimed he could see was present,
16 but none of the other experts, the multiple medical
17 experts that testified for us that they dismissed,
18 said that it was a natural death despite the broken
19 ribs, the fractures, the blunt force trauma to the
20 head, and the -- I think the cause of death was
21 asphyxiation, if I remember correctly.

22 Q And earlier on direct, counsel asked you if you had
23 the discretion to enter in plea negotiations to
24 provide plea offers, and you said a case by case
25 basis, is that accurate?

1 A Yes.

2 Q When you do have the discretion, what is
3 traditionally your process of figuring out what
4 those negotiations are going to be?

5 A Generally, if we are assessing the case and we
6 think that plea negotiations would be appropriate,
7 say, a lesser included, or to put some type of cap,
8 you also look at the Defendant's prior record,
9 things of that nature. But, primarily, in the
10 cases I handled, were pretty much all violent
11 crimes, for the most part, and we always would meet
12 with the victims prior to making any kind of offer.
13 That was pretty much our policy, or my policy, I
14 guess is the way to put it, because even though it
15 was our call, you always want the victim to be
16 informed of things of that nature.

17 Q And in this case, did you ever speak to the
18 victim's family or any extended family regarding a
19 plea?

20 A No. Because the victim, or what we would consider
21 the surviving victim, would have been the mother of
22 this -- and I don't remember if they were married
23 or if they were girlfriend/boyfriend or common law,
24 something of that nature, but it is my recollection
25 that I think the mother of the child even retained

1 counsel, I believe, and we had had -- I think maybe
2 tried to reach out to her, I don't know if we tried
3 to or just knew we couldn't, but she was supportive
4 of the father of the child, and so we had no
5 contact with her about plea negotiations, which we
6 would have if we made a plea negotiation.

7 Q You additionally earlier testified that you have
8 had circumstances where a plea is taken on the eve
9 of trial, correct?

10 A Yes.

11 Q Was there a plea made on the eve of trial in this
12 case?

13 A No, not to my recollection.

14 Q To your recollection, did anyone from the
15 Solicitor's team offer or extend an offer to the
16 Defense team or to the Applicant?

17 A Not that I know of.

18 Q Was anyone from the Solicitor's team talking to the
19 Defense team during trial about a plea offer?

20 A Not that I'm aware of.

21 Q So there were no pleas that were made after
22 pretrial motions?

23 A Not that I'm aware of. I mean, I just -- that is
24 contrary to what I remember in this case.

25 Q And had a plea offer been made prior to trial,

1 where would that traditionally occur? Would that
2 occur within the Solicitor's Office, within the
3 Defense Office, would that be before the judge in
4 chambers, or does it depend?

5 A It depends.

6 MS. KLEIN: Your Honor, I don't believe I have
7 any more questions.

8 THE COURT: Thank you, ma'am.

9 Mr. Waller, anything else?

10 MR. WALLER: Nothing further, Your Honor.

11 THE COURT: All right. Thank you for your
12 testimony. You can step down. Good luck to you.

13 (Witness steps down.)

14 THE COURT: Mr. Waller?

15 MR. WALLER: Your Honor, the Applicant would
16 call Joanna McDuffie.

17 THE COURT: Joanna McDuffie?

18 (Witness approaches.)

19 THE CLERK: Do you swear or affirm the
20 testimony you are about to give in this case will
21 be the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Have a seat in the
25 witness stand, please.

1 (Witness seated.)

2 THE COURT: Ms. McDuffie, if you need to
3 remove your mask, you are welcome to. Would you
4 tell me your full name?

5 THE WITNESS: Joanna McDuffie.

6 THE COURT: Thank you, Ms. McDuffie.

7 Your witness, sir.

8 MR. WALLER: Thank you, Your Honor. May it
9 please the Court?

10 JOANNA A. MCDUFFIE,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WALLER:

14 Q Good morning, Ms. McDuffie. How are you?

15 A I'm good. How are you?

16 Q Doing well. Ms. McDuffie, where are you currently
17 employed?

18 A I am Deputy Chief of Legal Affairs at the Richland
19 County Sheriff's Department.

20 Q Okay. And how long have you been in that role?

21 A Since the end of 2018.

22 Q Okay. Did you go directly from the Solicitor's
23 Office here in Richland County?

24 A I did.

25 Q You have been gone since 2018?

1 A Correct.

2 Q Have you had access to any of your files,
3 particularly this file, since you left the
4 Solicitor's Office?

5 A No.

6 Q Did you speak to anyone about this case in
7 preparation for today?

8 A Last night I spoke with Ms. Klein.

9 Q Okay. Were you involved in the appeal of this case
10 at all?

11 A I was not.

12 Q Since 2011 when the trial ended, have you had any
13 other involvement with this case at all?

14 A No.

15 Q All right. Where were you -- who all made up the
16 Prosecution team, I guess, as far as attorneys go?

17 A Myself and Ms. Campbell were involved in the case
18 from the beginning, and then when it was -- when we
19 were getting ready for trial, we brought Carter
20 Potts on as a third seat.

21 Q Okay. And you -- were you involved in the, for
22 lack of better term, investigation, to some extent,
23 before the indictment was presented to the Grand
24 Jury?

25 A Before the Defendant's arrest, I was involved in

1 several meetings with members of law enforcement,
2 SLED, and medical professionals about the case.

3 Q Okay. Did you receive a statement of the Defendant
4 before he was arrested or before he was indicted?

5 A In terms of a physical copy, I can't answer that,
6 but I was made aware of the contents of the
7 statement before his arrest.

8 Q Okay. Was there a policy that you are aware of as
9 far as how plea offers were made, specifically how
10 they were conveyed to the Defendant in your office?

11 A No, there was no policy.

12 Q Okay. And did the attorneys, and you in
13 particular, or this team in particular, have
14 discretion to make plea offers?

15 A Yes.

16 Q Okay. Do you have any specific recollection of
17 making any plea offers in this case?

18 A No. I specifically recall that there were no
19 offers in this case.

20 MR. WALLER: Thank you, Your Honor. I have
21 nothing further.

22 THE COURT: All right, sir.

23 Ms. Klein?

24 MS. KLEIN: Just briefly, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. KLEIN:

2 Q Good morning, Ms. McDuffie. How are you?

3 A Good morning.

4 Q I just have a few follow-up questions to make sure
5 we get everything rounded out. So you testified
6 just now that you -- to your recollection, there
7 were no plea offers that were made in this case, is
8 that correct?

9 A That's correct.

10 Q And you were on this case since the beginning?

11 A Before he was arrested, yes.

12 Q Before he was arrested? Okay. Do you remember
13 engaging in any conversations with the Defense team
14 in this case when y'all were prepping for trial?

15 A I mean, absolutely. We would have met numerous
16 times in preparation for trial on, you know,
17 discovery issues, things of that nature.

18 Q And at the time that you did interact with the
19 Defense team, what was your impression of their
20 belief in terms of moving forward?

21 A That it was going to be a trial, that the Defendant
22 was innocent of these charges, that they were very
23 emphatic that he was innocent of these charges and
24 that he was not going to plea to anything.

25 Q At any point was it expressed to either you or any

1 other Solicitors on the team that there would be an
2 interest in discussing plea negotiations?

3 A No. The opposite was true.

4 Q And as you stated, there were no plea offers made
5 to your recollection in this case?

6 A That's correct.

7 MS. KLEIN: No further questions, Your Honor.

8 THE COURT: Mr. Waller, anything else?

9 MR. WALLER: Nothing further, Your Honor.

10 THE COURT: Ms. McDuffie, thank you for your
11 testimony.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You may step down.

14 (Witness steps down.)

15 THE COURT: All right, Mr. Waller?

16 MR. WALLER: Thank you, Your Honor. The
17 Applicant would call Demetrius Goodwin.

18 THE COURT: Demetrius Goodwin?

19 As Mr. Goodwin makes his way to the stand, I
20 do want to note that Marie Assa'ad Faltas is in the
21 lobby. Who would that be?

22 MS. KLEIN: Your Honor, may I approach?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was
25 held.)

1 THE COURT: For everyone's benefit, in case
2 Mr. Goodwin doesn't understand, there is going to
3 be a witness who is going to testify virtually.
4 When that happens, I set up a virtual courtroom,
5 and that witness would then ask to join the
6 courtroom. There was a third party, who is not a
7 part of this litigation, who asked to join, but
8 they are not relevant to these proceedings, and so
9 that was the person's name that I called.

10 With that, I believe Mr. Goodwin has come to
11 the witness stand.

12 (Witness approaches.)

13 THE COURT: Madam Clerk?

14 THE CLERK: Do you swear or affirm the
15 testimony you are about to give in this case will
16 be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Speak up, please.

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Have a seat in the
22 witness stand.

23 (Witness seated.)

24 THE COURT: And, Mr. Goodwin, as you make your
25 way, make yourself comfortable. If you can, if you

1 need to pull your mask down so that you can speak
2 more clearly, you are welcome to. Just try to
3 speak into that microphone so we can all hear you.
4 It is a little difficult hearing in here with these
5 cubicles, so just try to keep voice elevated.

6 Would you tell me your full name, sir?

7 THE WITNESS: Demetrius Antwan Goodwin.

8 THE COURT: You probably have to speak a
9 little louder than that, Mr. Goodwin. I heard you,
10 but you just want to make sure we can hear you.

11 All right, your witness, sir.

12 MR. WALLER: Thank you, Your Honor. May it
13 please the Court?

14 DEMETRIUS A. GOODWIN,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WALLER:

18 Q Mr. Goodwin, so the court reporter can hear you,
19 you need to speak loudly and slowly and clearly so
20 everybody can -- so we get all this testimony into
21 the record, okay?

22 A Yes, sir.

23 Q All right. Mr. Goodwin, do you recall -- let me
24 take you back in time to when you were first
25 arrested on these charges. Do you recall that?

- 1 A Yes, sir.
- 2 Q Back in 2009, right?
- 3 A Yes, sir.
- 4 Q Okay. When you were first arrested, it was not the
5 first time you had interaction with law enforcement
6 on this case, correct?
- 7 A That was my first time.
- 8 Q On this case had you talked -- had you spoken to
9 law enforcement before about this case, before you
10 were arrested?
- 11 A No.
- 12 Q Did you give any statement to law enforcement?
- 13 A No, sir.
- 14 Q When you were arrested back in April of 2009 --
- 15 A Uh-huh.
- 16 Q -- had you met with law enforcement at all before
17 that? Before you were arrested?
- 18 A I don't understand the question.
- 19 Q I'll come back to it. When you were first
20 arrested, did you -- you had a lawyer? You were
21 appointed a lawyer?
- 22 A Yes, sir.
- 23 Q Okay. Who was that lawyer?
- 24 A Nicole Singletary.
- 25 Q Nicole Singletary. All right. Now, when you went

1 to trial, Ms. Singletary was not your only
2 attorney, is that correct?

3 A Correct.

4 Q Okay. Who were the other lawyers involved in your
5 defense?

6 A Kris Hines and Tracy Pinnock.

7 Q Okay. You need to keep speaking just a little bit
8 for me, all right? When did Ms. Hines and
9 Ms. Pinnock come into the picture?

10 A I can't recall.

11 Q Okay. Was it closer in time to the trial, or was
12 it relatively early on?

13 A Close to the time --

14 THE COURT REPORTER: I'm sorry, you are going
15 to have to speak up.

16 A -- going to trial. Close to the time going to
17 trial.

18 Q Yes, if you could speak into that microphone, that
19 will help us a little bit.

20 A All right.

21 Q Okay. So Ms. Singletary represented you for the
22 majority or for the most part by herself until you
23 got closer to trial?

24 A Yes, sir.

25 Q When you and Ms. Singletary first met, do you

1 remember what y'all discussed?

2 A She just basically gave me a brief on what was
3 going on with my case, like what I was being
4 charged with.

5 Q Okay. And I know it has been a long time. What
6 were you originally charged with?

7 A I was under the impression, homicide by child
8 abuse.

9 Q Okay. And that was the charge you went to trial on
10 and were ultimately convicted on?

11 A Yes, sir.

12 Q Okay. All right. Now, there were three different
13 statements that were introduced during the trial of
14 your case that you had given to law enforcement.
15 Do you recall that?

16 A Yes, sir.

17 Q Okay. Did you and Ms. Singletary or you and
18 Ms. Hines or you and Ms. Pinnock discuss those
19 statements?

20 A Yes, sir.

21 Q Okay. Did y'all talk about the circumstances and
22 how the statements were given?

23 A Yes, sir.

24 Q Okay. All right. I want to back up just a little
25 bit if I can. When you were first represented by

1 Ms. Singletary, what information did you provide
2 her? Did you tell her anything you wanted her to
3 investigate, anybody you wanted her to talk to?
4 What did y'all talk about?

5 A Basically, I gave her a summary of everything that
6 transpired, you know, with my daughter and to the
7 point where, you know, I was getting arrested.

8 Q Okay. Your daughter passed away in February, is
9 that correct?

10 A Yes, sir.

11 Q 2009?

12 A Yes, sir.

13 Q And you were arrested in the second half of April,
14 2009?

15 A Yes, sir.

16 Q Okay. So Ms. Singletary was appointed to represent
17 you. Was that because she was a Public Defender?

18 A Yes, sir.

19 Q Okay. What -- obviously you went to trial. What
20 did you and Ms. Singletary discuss as far as going
21 to trial? Did y'all discuss how -- the procedure
22 of a trial, how it was going to work in the
23 courtroom? What did y'all talk about?

24 A Basically what we were going up against --

25 THE COURT REPORTER: I'm sorry, I can't hear

1 you.

2 A What we were going up against, our defense, stuff
3 like that.

4 Q Okay. And you said your defense. What do you
5 mean specifically? What did y'all talk about your
6 defense?

7 A She said that the whole -- our defense was based
8 off of the expert witnesses and the statements.

9 MR. WALLER: Your Honor, may I approach and
10 just fix that microphone just a little bit, and
11 move it a little closer to him?

12 THE COURT: Yes, sir.

13 BY MR. WALLER:

14 Q All right. You said expert witnesses. There were
15 a number of experts called to testify in your
16 trial, some for the State, some for the Defense?

17 A Yes, sir.

18 Q Did you have a chance to see the reports of those
19 experts or know what they were going to testify to
20 before the trial started?

21 A No, sir.

22 Q Did you and your lawyers discuss that, you know,
23 the pathologist was going to testify or that a
24 pediatric radiologist was going to testify?

25 A No, sir.

1 Q Okay. Do you know if they were made aware that
2 those people were going to testify?

3 A No, sir.

4 Q You don't know, or you know they were not?

5 A I mean, I don't know.

6 Q Okay. In the -- when did you decide you were going
7 to trial?

8 A I said, excuse me, I just felt like I didn't fall
9 into the category of homicide by child abuse--

10 THE COURT REPORTER: I'm sorry. I'm sorry, I
11 didn't hear it.

12 THE COURT: I can't hear anything you are
13 saying. If you just speak loud, we will be able to
14 hear you.

15 BY MR. WALLER:

16 Q Speak slowly so everybody can hear, okay?

17 When, after meeting with your lawyer, when did
18 you decide to -- that you were going to trial?

19 A When I was being accused of homicide by child
20 abuse.

21 Q Okay. I believe your testimony was that you didn't
22 think it fit with homicide by child abuse?

23 A Exactly.

24 Q Did you and your lawyers have a chance to discuss
25 the elements of homicide by child abuse?

1 A Yes, sir.

2 Q Okay. And that is what you based your decision on?
3 You didn't think it fit, so you wanted to go to
4 trial to obviously make the State prove, you
5 know --

6 A Yes, sir.

7 Q Okay. All right. When you and your lawyers were
8 preparing for trial, what were your defenses? I
9 know you mentioned the expert witnesses, but what
10 defenses did you have -- did you think you had?

11 A We had --

12 THE COURT REPORTER: I'm sorry, I can't hear
13 you.

14 A We had our pathologist, and basically trying to get
15 the whole rundown on the statements that had been
16 made.

17 Q Okay. When you say statements, you mean your
18 statements?

19 A Yes, sir.

20 Q Okay. All right.

21 MR. WALLER: Your Honor, would it help if I
22 moved that microphone all the way closer to that
23 little window, do you think, just so he is kind of
24 directing everything towards you and the court
25 reporter?

1 THE COURT: You can try. I have no objection.

2 BY MR. WALLER:

3 Q Speak that way, through there.

4 All right, Mr. Goodwin, did you and your
5 attorneys ever discuss you potentially testifying
6 at your trial?

7 A It came up once.

8 Q What did y'all talk about?

9 A She asked me if I would like to take the stand in
10 order to, you know, give my testimony to what
11 happened.

12 Q Okay. All right. And obviously you don't have to
13 take the stand, that is your decision. Did y'all
14 discuss potentially testifying in any sort of
15 pretrial hearings or just at trial?

16 A Not that I recall.

17 Q Okay. When the trial got ready to start, did you
18 and your lawyers have a chance -- I mean, were you
19 able to communicate with them sitting in the
20 courtroom?

21 A Yes, sir.

22 Q Okay. At breaks and over, you know, after the
23 trial ended for the day, were you able to
24 communicate and meet with them?

25 A Yes, sir.

1 Q Going back in time, were there ever any plea offers
2 made in this case?

3 A I wasn't aware of it.

4 Q Okay. So you never got offered a plea early on or
5 even at -- later on?

6 A No, sir.

7 Q Okay. All right. Who were you mainly -- of your
8 three attorneys, who were you mainly talking to
9 when you were talking to your counsel?

10 A What?

11 Q Did you have a specific attorney you dealt with the
12 most of your three?

13 A Kris Hines.

14 Q Okay. When did it kind of shift when Ms. Hines
15 became your, I guess go-to person to talk to, since
16 Ms. Singletary represented you for the longest?

17 A Uh-huh.

18 Q When did that change?

19 A What do you mean?

20 Q When did you start -- when did Ms. Hines become
21 your kind of contact person as opposed to
22 Ms. Singletary?

23 A After Ms. Singletary left the Public Defender's
24 Office.

25 Q Okay. So she was no longer acting as a Public

1 Defender?

2 A Right.

3 Q Would you have considered any plea offers made if
4 there had been any made?

5 A I mean, it is something that could have been taken
6 into consideration, yes, sir.

7 Q Okay. But you, like you said, you were never made
8 aware of any plea offer so you never had that
9 opportunity?

10 A No, sir.

11 Q After you were convicted, obviously an appeal was
12 filed, is that right?

13 A Right.

14 Q Did you have a chance to speak with Ms. Durant?

15 A Briefly, yes, sir.

16 Q How did that -- how did you talk to her?

17 A Spoke over the phone and she basically gave me the
18 rundown on the issue that she was going to argue at
19 the appeal.

20 Q Okay. Did you have a chance to ask her any
21 questions, or anything like that?

22 A No, sir.

23 Q Okay. Did you have any issues you wanted her to
24 consider?

25 A I mean, no, sir.

1 Q Okay. How many times were you able to speak with
2 her?

3 A Just that one, verbally.

4 Q Just the one?

5 A Yes.

6 Q Did y'all communicate by letter?

7 A No, sir.

8 Q Okay. All right. Mr. Goodwin, I have asked you
9 all the questions that I have for you. Is there
10 anything that you think I have left out or that the
11 judge needs to be aware of Ms. Hines, Ms. Pinnock,
12 or Ms. Singletary's representation of you, or
13 Ms. Durant?

14 A No, sir.

15 Q Please answer any questions the Attorney General's
16 Office has.

17 MS. KLEIN: Ms. Klein?

18 CROSS-EXAMINATION

19 BY MS. KLEIN:

20 Q Hello, Mr. Goodwin.

21 A Hello.

22 Q So as you testified with Mr. Waller, you were
23 represented by three different attorneys at one
24 point prior to your trial, is that correct?

25 A Correct.

- 1 Q Originally you were represented by Ms. Nicole
2 Singletary?
- 3 A Yes, ma'am.
- 4 Q And then she left to go to private practice?
- 5 A Yes, ma'am.
- 6 Q And then when she left, you were then assigned to
7 Ms. Hines and Ms. Pinnock?
- 8 A Yes, ma'am.
- 9 Q And when did Ms. Singletary come back to assist in
10 the trial?
- 11 A I can't really recall.
- 12 Q But she came back prior to trial for the Defense,
13 correct?
- 14 A Right.
- 15 Q Do you know why she came back to assist with the
16 case?
- 17 A She felt as if she could help with my case, so she
18 wanted to help.
- 19 Q Were you able to review all of the discovery with
20 your attorneys?
- 21 A Yes, ma'am.
- 22 Q And do you remember what was included in the
23 discovery from the Solicitor's Office?
- 24 A Vaguely, yes, ma'am.
- 25 Q Did it include, as I think you testified earlier,

1 statements and perhaps some of the investigation
2 that occurred?

3 A Uh-huh, yes, ma'am.

4 Q When you were speaking with your attorneys, what
5 was the outcome that you were looking for with
6 regards to this case?

7 A What do you mean?

8 Q So did you always want to go to trial, or were you
9 interested in getting out as soon as possible?
10 What was your desired outcome with regards to this
11 case?

12 A I mean, I didn't understand why I was being charged
13 with homicide by child abuse, you know, because I
14 was always told that this was -- the whole thing
15 was an accident, even from the start.

16 Q And so when you were preparing for trial, do you
17 remember what the strategy was in terms of
18 presenting that to the jury?

19 A Could you repeat that?

20 Q Yes. So when you were preparing for trial with
21 your attorneys, do you remember there being any
22 specific strategies or defenses that you talked
23 about, how you were going to present your side to
24 the jury?

25 A With my attorneys?

- 1 Q Yes?
- 2 A Yes.
- 3 Q Can you articulate, if you remember, what sort of
- 4 things you discussed with them?
- 5 A I mean, basically it was the whole strategy on what
- 6 we were going to have to go through throughout the
- 7 trial. Just like I was told that it was going to
- 8 be based off of medical experts and basically
- 9 statements.
- 10 Q And your position is that you were innocent of the
- 11 charge that you were given, is that correct?
- 12 A Yes, ma'am.
- 13 Q When you were talking to your attorneys in
- 14 preparation, you testified just now that you would
- 15 have considered a plea. Is that what you testified
- 16 to?
- 17 A I mean -- repeat that?
- 18 Q Sure. So you, just now briefly with Mr. Waller,
- 19 you testified that you would have considered a
- 20 plea?
- 21 A If one was brought up to me, yes, ma'am.
- 22 Q Did you ever tell your attorneys that you were
- 23 interested or you would have considered a plea?
- 24 A I mean, it never came up.
- 25 Q Because primarily you had been preparing for just

1 the trial aspect of it, right?

2 A Yes, ma'am. That was the only impression I was
3 under, that we were going to trial.

4 Q Okay. And were your attorneys supportive of the
5 defense of your innocence in preparation for trial?

6 A Repeat?

7 Q Sure. Did your attorneys support the strategy and
8 defense of alleging you were innocent in prep for
9 trial?

10 A Yes, ma'am.

11 MR. WALLER: Your Honor, I am going to object.
12 That calls for speculation.

13 THE COURT: All right, I'll sustain the
14 objection.

15 BY MS. KLEIN:

16 Q Okay. Mr. Goodwin, had you brought up a plea to
17 your attorneys, do you think that they would have
18 approached the Solicitor in order to obtain a plea
19 for you?

20 A Say it one more time?

21 Q Sure. Had you told your attorneys that you were
22 interested in a plea, do you believe that they
23 would have spoken to the Solicitor about pursuing
24 that?

25 A Yes, ma'am.

1 Q That did not happen?

2 A No, ma'am. Like I said, I was under the impression
3 that we was just going to trial.

4 Q And with regards to the evidence that was brought
5 at trial, there were several physicians who
6 testified, correct?

7 A Correct.

8 Q And the State brought physicians as well as the
9 coroner and pathologists, is that correct?

10 A Correct.

11 Q Okay. And your attorneys had presented their own
12 physician, is that right?

13 A Right.

14 Q Okay. And so you had a doctor who testified with
15 regards to what his own findings in the coroner and
16 the autopsy reports were, correct?

17 A Correct.

18 Q Mr. Goodwin, Mr. Waller just asked you if you were
19 able to speak to Ms. Durant over the phone, and you
20 testified that you did, or at least you spoke to
21 her once, correct?

22 A Yes, ma'am.

23 Q Okay. And you also were asked if there were any
24 issues that you wanted her to consider, and you
25 said that you did not tell her any issues, is that

1 correct?

2 A No, ma'am.

3 Q So with regards to the issues that were brought up
4 on appeal, you don't have anything specifically
5 that you think she should have raised that she did
6 not raise?

7 A Actually, I do.

8 Q Can you articulate what those issues would be?

9 A State v. Day.

10 THE COURT REPORTER: I'm sorry?

11 A State v. Day.

12 Q Okay. And can you articulate what -- the grounds
13 for that issue?

14 A Basically, about the statements being admitted into
15 the trial.

16 Q Okay. But you said that you didn't tell her that
17 there were any issues that you wanted her to
18 consider?

19 A No, ma'am. I was just under the impression like
20 when she went through that it was just something
21 that would stand out to her.

22 Q Okay. Do you remember what it was that was raised
23 on appeal, the issue that was raised?

24 A I can't recall right now.

25 Q Do you recall there being a pretrial -- essentially

1 a hearing on the motion to suppress from your
2 attorneys about the statements?

3 A I can't remember.

4 Q If I told you that the transcript reflects that
5 there was, you know, a motion that was brought to
6 suppress the statements and it was overruled and
7 they were considered admissible, is it still your
8 opinion that Ms. Durant should have raised that on
9 appeal?

10 A Repeat?

11 Q Sure. With regards to the issues of the statements
12 that you said you wanted her to raise as a question
13 on appeal, with regards to the transcript, if those
14 statements were reviewed and found to be
15 admissible, would you still have wanted her to
16 raise that on appeal?

17 A I mean, if she felt like it was an issue that
18 needed to be raised, I would have, you know.

19 Q Okay. So if she felt that that was an issue to be
20 raised, you would have been confident with that?

21 A Yes, ma'am.

22 Q Okay. And so in her -- with regards to what she
23 did do in her appeal, you didn't have an issue
24 specifically with what the allegation was, you just
25 felt like maybe there should have been more things

1 included?

2 A Yes, ma'am.

3 MS. KLEIN: Your Honor, I don't believe I have
4 any more questions at this time.

5 THE COURT: Any response? Mr. Waller,
6 anything else?

7 MR. WALLER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WALLER:

10 Q Mr. Goodwin, you are not an appellant attorney, are
11 you?

12 A No, sir.

13 Q Okay. And your notice of appeal was filed shortly
14 after you were convicted, is that right?

15 A Right.

16 Q Okay. And it was filed by one of your attorneys
17 from the Public Defender's Office?

18 A Yes, sir.

19 Q Okay. And then Ms. Durant took over?

20 A Uh-huh.

21 Q Okay. All right. You were asked about whether you
22 would have considered any sort of plea offer. Did
23 you know what the sentencing range for homicide by
24 child abuse was? Did you and your attorneys talk
25 about that?

1 A Yes, sir.

2 Q So you knew there were the minimums involved?

3 A Yes, sir.

4 MR. WALLER: Okay. All right. Nothing

5 further. Thank you.

6 THE COURT: Anything else?

7 MS. KLEIN: Nothing further, Your Honor.

8 THE COURT: Mr. Goodwin, thank you for your

9 testimony, sir. You may step down.

10 (Witness steps down.)

11 THE COURT: Mr. Waller?

12 MR. WALLER: Your Honor, we call Nicole

13 Singletary.

14 THE COURT: Nicole Singletary?

15 (Witness approaches.)

16 THE COURT: Is there any objection if I let

17 Ms. LaNelle Durant know that we are dealing with

18 some other witnesses? She is just sitting here on

19 the computer.

20 MS. KLEIN: No objection.

21 MR. WALLER: No objection, Your Honor. I

22 apologize. We can call her next.

23 THE COURT: No, this is fine.

24 Madam Clerk?

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat in the
6 witness stand, please.

7 (Witness seated.)

8 THE COURT: Ms. Singletary, would you tell the
9 Court your full name?

10 THE WITNESS: Nicole Latonya Singletary.

11 THE COURT: Thank you, Ms. Singletary. I can
12 hear you perfectly.

13 Your witness.

14 MR. WALLER: Thank you. Your Honor, may it
15 please the Court?

16 NICOLE L. SINGLETARY,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WALLER:

20 Q Good morning -- it is still morning --

21 Ms. Singletary. How are you today?

22 A I'm doing well. How are you?

23 Q I'm doing well. Thank you for asking.

24 Ms. Singletary, do you recall representing
25 Demetrius Goodwin?

1 A Yes, I do.

2 Q Okay. And it has been touched on briefly, but did
3 you leave the Public Defender's Office during the
4 course of his case?

5 A Yes. My last day at the Public Defender's Office
6 was April 10, 2010.

7 Q Okay. All right. So when, if you recall, did --
8 how early after he got arrested did you get
9 appointed to represent him?

10 A Pretty much immediately after he got arrested, I
11 got appointed.

12 Q Okay. And I know it has been, gosh, 12 years now,
13 but do you have any recollection or generally what
14 would you have talked to a Defendant who you had
15 been recently assigned their case?

16 A So, I would make an introduction of myself, and
17 then I would tell them the charges that they were
18 actually charged with. I would actually get their
19 side of view, their point of view, like they would
20 tell me their story, so to speak, because at that
21 point I wouldn't have had the discovery. So when I
22 met with Mr. Goodwin, he told me the events that
23 led up to him being arrested.

24 Q Okay. And if you recall, at what point would you
25 have gotten at least the initial round of discovery

1 in this case?

2 A I would say like probably about two months.

3 Q Okay.

4 A After being appointed.

5 Q Do you have any recollection of what that would
6 have included?

7 A It would have included any statements that my
8 client made, also any medical reports that they
9 actually had at that particular moment, and then it
10 would have any incident reports from law
11 enforcement.

12 Q Okay. And in this case there were some statements
13 given by Mr. Goodwin, is that right?

14 A Yes, there were.

15 Q Three, is that correct?

16 A Yes.

17 Q To your recollection? Okay. There were also some
18 jail phone calls that he had made that were not
19 part of the trial but that were turned over I guess
20 during the trial. Do you recall that?

21 A Not specifically, but that happens all the time.
22 So it very well could have happened.

23 Q Okay. Did y'all have an opportunity to review
24 those phone calls, or did you have time to review
25 the phone calls?

1 A I would say that I did not review the jail phone
2 calls, as far as I can recall.

3 Q Okay. At what point in moving the case along did
4 you leave the Public Defender's Office?

5 A So Mr. Goodwin was arrested in 2009, and so I left
6 in April of 2010.

7 Q Okay. So you had represented him for some time,
8 but y'all weren't anywhere near going to trial or
9 anything like that?

10 A No, not at all.

11 Q Okay. And did you come back to the Public
12 Defender's Office, or just come back for the trial
13 of this case?

14 A I just came back for the trial.

15 Q Okay.

16 A I made a promise to Mr. Goodwin when I left the
17 Public Defender's Office that no matter where I was
18 at or what I was doing, I was going to come back
19 and assist with his trial.

20 Q Okay. Leading up to the trial, were you --
21 obviously you had another job -- were you able to
22 be involved in the preparation getting ready for
23 the trial?

24 A So I would say yes, but it was -- I would say that
25 it was minimal, because, as you have stated, I

1 mean, I had another job, and so what I would do is
2 in between, like I would meet with Ms. Hines, I
3 would meet with Ms. Pinnock when I was not in court
4 on my other cases.

5 Q Okay. So I don't want to put words in your mouth,
6 but you were assisting with kind of the trial once
7 it started and having -- obviously you had
8 knowledge of the case?

9 A Yes.

10 Q But you were not able to fully participate because
11 you had another employer, is that right?

12 A Yes.

13 Q Okay. All right. What -- if you recall, what were
14 the allegations, as you remember?

15 A So the allegation was that my -- I'm saying my
16 client.

17 Q Sure.

18 A He was not currently my client. But that my client
19 had squeezed his daughter like too hard, which
20 caused, if I remember correctly, at trial they were
21 talking about two rib fractures or that he may have
22 shook her also, and as a result of that, the child
23 actually died.

24 Q Okay. And what, if you recall, was the defense
25 strategy? What did y'all prepare? I know your

1 involvement was somewhat limited, but what was your
2 strategy as far as defending him in that trial?

3 A Okay. So the strategy was that, first of all, that
4 he did not actually commit the murder. The
5 strategy was that the actual child suffered from a
6 rare neurological disease, and as a result, that is
7 what caused her death.

8 Q Okay. And that was -- there was an expert witness
9 that y'all had retained that testified to that, is
10 that correct?

11 A That is correct.

12 Q Another pathologist?

13 A That is correct.

14 Q The hug you reference, that came from his own
15 statement, is that right?

16 A Yes.

17 Q Okay. Did y'all discuss with Mr. Goodwin how to
18 deal with those statements?

19 A I would say that we actually did. And I was
20 actually looking back through my notes earlier from
21 like talking to Mr. Goodwin about the different
22 meetings and the different statements that he made.
23 And to kind of give some context, and I think you
24 alluded to it earlier, the actual child passed away
25 in February, but Mr. Goodwin was not arrested until

1 about April of that year.

2 Now, during that time, basically the
3 coroner -- the Richland County Coroner's Office had
4 several meetings, I think there were about three
5 meetings with Mr. Goodwin. And so what the
6 Coroner's Office would do is, they would meet with
7 Mr. Goodwin and his family, and then they would
8 say, Well, how did this happen? Explain to us what
9 happened.

10 And so Mr. Goodwin would say, Hey, I don't
11 know what happened, like this is -- like I don't
12 know what was happening. Like he didn't know.

13 So what would happen is the Coroner's Office
14 would go back to the Prosecution's Office and say,
15 Hey, you spoke to Mr. Goodwin. He said this.

16 So as a result of them talking to the
17 Prosecution's Office, then they would call another
18 meeting with Mr. Goodwin and say, Okay, now tell us
19 again exactly what happened.

20 Like, and so he would tell them, This is what
21 happened.

22 The Coroner's Office would then consult with
23 the Prosecution's Office and then would go back to
24 Mr. Goodwin and say, Well, no, it couldn't have
25 happened this way, you had to have done something.

1 And so that is when miraculously the
2 confession occurred.

3 Q Okay.

4 A So our defense was, in all actuality, it wasn't a
5 confession.

6 Q Okay. And so just to kind of break that down just
7 a little bit, I know there are three specific
8 statements that were referenced during the trial.
9 One was just a few days after the child had passed
10 away.

11 A (Nods affirmatively.)

12 Q Do you recall that?

13 A Uh-huh, yes.

14 Q One was I believe April 13th?

15 A Uh-huh.

16 Q And then one was April 15th. And that was at a
17 meeting at the Coroner's Office?

18 A Yes.

19 Q And then he was arrested, or he was -- an arrest
20 warrant was issued the 16th, is that your
21 understanding?

22 A That is correct. And, as a matter of fact, I
23 looked at my notes, and my notes as it relates to
24 that actually says that, yes, right, that meeting
25 that they had on the 15th, they had every intention

1 of arresting my client the next day.

2 Q And that came out at trial that there was a meeting
3 between the Coroner's Office and the Solicitor's
4 Office and some SLED agents earlier on in April
5 where they wanted to interview him again, is that
6 your understanding?

7 A Yes.

8 Q Okay. And then he gave two subsequent statements
9 after that?

10 A Yes, that's correct.

11 Q All right. In your -- I don't know how you want to
12 characterize, I don't want to say third chair, that
13 doesn't make it sound too good, but in your role
14 during the trial, were you fully participating in
15 every meeting or everything that was taking place,
16 you know, from when your day started to when you
17 put this one down for the day?

18 A No, I did not.

19 Q What -- when you say -- what took place that you
20 weren't part of, if you recall?

21 A Well, so, like I can't remember actually being in
22 the actual meeting that happened on the date of the
23 trial in chambers.

24 Q Okay.

25 A Like, I can't -- like, I can't tell you that I was

1 at every single meeting, because one of the things
2 that I would like to say is that, because I was the
3 initial attorney on Mr. Goodwin's case, like I
4 spent the vast majority of my time with
5 Mr. Goodwin, because I had that rapport with him.

6 Q Okay. Okay. So if Ms. Hines and Ms. Pinnock were
7 dealing with another issue, you might be consulting
8 with Mr. Goodwin?

9 A Yes, absolutely.

10 MR. WALLER: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Pause.)

13 BY MR. WALLER:

14 Q Ms. Singletary, were you still with the Public
15 Defender's Office when your expert witness was
16 hired or decided to go that route?

17 A I was not. I had no involvement with picking the
18 expert witness.

19 Q Ms. Singletary, I have no further questions.
20 Please answer any questions the Attorney General's
21 Office has.

22 A Thank you.

23 THE COURT: All right. Mr. Davidson?

24 CROSS-EXAMINATION

25 BY MR. DAVIDSON:

1 Q Good morning, Ms. Singletary.

2 A Good morning.

3 Q All right. So you just testified that you were
4 appointed to represent Mr. Goodwin first, correct?

5 A Yes, that's correct.

6 Q And that you left after about a year of
7 representing him to join private practice?

8 A Yes, that's correct.

9 Q At the time that you left, were there any
10 negotiations for a plea offer at that time?

11 A No, not at all. And just with all candor, like I
12 remember very specifically talking to Solicitor
13 Campbell and saying that, I believe in my client's
14 innocence so much that I would stand in front of a
15 moving train.

16 Q And given that, would you have considered a plea
17 offer at any point, given that you believed so much
18 in his innocence?

19 A Up until me leaving in 2010, no, I would not.

20 Q Okay. And you testified that you were involved in
21 preparing for trial, but not fully?

22 A Yes, that's correct.

23 Q And, in fact, you were with Mr. Goodwin most of the
24 time when you were in trial?

25 A Yes. What I will actually say is that, as I stated

1 previously, Mr. Goodwin and I had the type of
2 relationship that like even during trial, like if
3 something occurred, he would look at me and he
4 would say, Nicole, do you agree with this? Like,
5 if you do agree with it, then I'll go along with
6 it.

7 Q Okay. And the day of trial, do you recall a plea
8 offer being extended?

9 A So I was not around when the plea offer was
10 extended on the day of trial, but I was actually
11 told that there was a plea offer that was given on
12 the day of trial.

13 Q And were you present to hear the testimony of
14 Ms. Campbell?

15 A Yes, I was.

16 Q Is it still your opinion that there was a plea
17 offer?

18 A So I was told by my co-counsel that there was a
19 plea offer. And I have to give you some
20 background. Like, I was not told about a plea
21 offer until probably two or three years after
22 Mr. Goodwin was convicted. So I was not told on
23 the date of trial, was not told a year later, was
24 not told two years later, it was more like three
25 years later I was told that a plea offer was

1 conveyed. However, with all candor, I was not
2 present when a plea offer was made.

3 Q And who told you about that plea offer three years
4 later?

5 A That was Attorney Hines.

6 Q When you testified that you were involved in
7 preparation but not fully involved --

8 A Yes.

9 Q -- did you have any active role in the trial?

10 A Yes, I did.

11 Q And what was your role?

12 A So, what we actually did for this trial is, like we
13 had an Excel spreadsheet and we had a list of all
14 of the witnesses, and then also we actually had a
15 column that said, Responsible Attorney. And so I
16 can tell you based on this what actual witnesses I
17 cross-examined.

18 Q Okay. As far as opening and closing, were you
19 involved in one of those?

20 A Yes, I did the opening.

21 Q And what was your opening strategy? Like, what did
22 you want to convey to the jury in opening?

23 A Okay. So I -- the opening strategy was that this
24 was a father who woke up and realized that his
25 daughter was not breathing. And then, as a

1 result -- and just, if you look at the transcript,
2 one of the things that we tried to say, and I did
3 say in opening statement, I believe, is that there
4 was some mucous that was coming out of her nose,
5 and so forth. And so he reacted. He grabbed his
6 daughter. He went next-door to a neighbor. And I
7 believe the neighbor's name was Chris. He did CPR.
8 And so what we said in the opening statement was
9 this was a father that was actually trying to save
10 his daughter, and that the rib fractures actually
11 came from him actually doing CPR on the daughter,
12 and that the daughter actually had a rare
13 neurological disease.

14 Q Okay. And so your defense was the neurological
15 disease presented by your expert?

16 A That is correct.

17 Q And you mentioned that you had no involvement in
18 hiring that expert?

19 A No, I did not.

20 Q Had you ever been on the case where he was expert,
21 either for your case or --

22 A I would have to say that I may have been, but he
23 was a witness for the Prosecution, because he used
24 to work for the Richland County Coroner's Office.

25 Q Right.

1 A Yes.

2 Q And do you know when he discovered his theory of
3 what he was going to testify to?

4 A No, I don't.

5 Q Did you, as a trial team, have a strategy to deal
6 with the statements that Mr. Waller brought up that
7 were admitted to trial?

8 A Yes. And we actually planted that seed in the
9 opening statement. In the opening statement, I
10 actually talked about possible statements and
11 talked about the meeting and talked about it was a
12 father that, after being questioned over and over
13 and over again, he finally was exhausted and said,
14 I must have done something. I don't know what I
15 did, but I must have done something. So we started
16 that from the very beginning in the opening
17 statement to convey that to the jury to say that,
18 Even though you are going to hear this, this is our
19 reason for why this occurred.

20 Q So your strategy was to hit it head-on from the
21 beginning?

22 A Yes.

23 Q Okay. And part of what you explained earlier was
24 the back and forth between the coroner,
25 interviewing Mr. Goodwin, going back to the

1 Prosecution. Are you -- is that a common
2 occurrence in a child abuse -- homicide by child
3 abuse?

4 A I wouldn't know, but I would hope not, because then
5 the Coroner's Office is not a neutral party, like
6 they are acting as an agent for law enforcement and
7 they are acting as an agent for the Prosecution's
8 Office where the Prosecution can say, Now go back
9 and ask these questions. So that is a way for
10 Mr. Goodwin to be interrogated technically by law
11 enforcement by using the Coroner's Office.

12 Q And Mr. Goodwin, in his amendment filed yesterday,
13 raised an issue about failure to properly preserve
14 the objection and motion for mistrial related to
15 improper burden shifting?

16 A Yes.

17 Q Comments made by Dr. Bradley Marcus? Do you recall
18 that testimony that Mr. Goodwin is referring to?

19 A I actually have my notes from the testimony right
20 here.

21 Q Okay.

22 A Uh-huh.

23 Q And do you recall who objected to that testimony?

24 A I actually objected to it.

25 Q Okay. And what happened after that?

1 A We actually had a side bar with the judge at that
2 particular moment. And if I remember correctly,
3 Attorney Hines was the one at the later time who
4 actually placed the actual argument on the record.

5 Q Okay. But she did place those on the record?

6 A Yes, she did place those on the record.

7 Q And what was the result of the objection?

8 A The judge gave a curative instruction, and I
9 believe the judge did strike that testimony from
10 the record also.

11 Q Okay. And so as far as preserving it, in your
12 opinion, was that objection preserved for appellate
13 review?

14 A That objection was preserved.

15 Q Okay. And then Mr. Goodwin also, in his amended
16 application, brings an allegation that your team
17 was ineffective for failing to object to the
18 incorrect charge on homicide by child abuse
19 presented to the jury? Do you recall going over
20 jury charges with your team?

21 A So, yes, we would. That was the typical practice,
22 for us to go over jury charges. And I believe in
23 this particular case the judge gave us until Friday
24 morning to actually submit what charges that we
25 actually wanted to go to the jury, and so forth.

1 Q And did you guys submit jury charges?

2 A I believe we did, yes.

3 Q Do you recall specifically what issues your team
4 had with the State's version of jury charges?

5 A I can't remember.

6 Q Okay. Did you guys have something specific that
7 you wanted to get into the jury charge?

8 A If I remember, I think we did. Like, I can't
9 recall offhand.

10 Q Do you recall seeing any problems with the jury
11 charge that was given?

12 A No.

13 MR. DAVIDSON: No further questions, Your
14 Honor.

15 THE COURT: All right. Mr. Waller, anything
16 else?

17 MR. WALLER: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. WALLER:

20 Q Ms. Singletary, Mr. Davidson just asked you about
21 your objection to Dr. Marcus's testimony. Have you
22 had a chance to review the transcript?

23 A No, I have not.

24 MR. WALLER: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes, sir.

2 MR. WALLER: It should be on Page 419, Your
3 Honor, of Volume 2.

4 A Okay.

5 Q And, Ms. Singletary, just so we're clear, the
6 testimony about being suggestive of child abuse,
7 that wasn't what you objected to, correct, it was
8 the comment about, Until proven otherwise?

9 A Yes.

10 Q So your objection was to the potential burden
11 shifting of that very last couple of words of that
12 sentence?

13 A That is correct.

14 Q And you did not make any other motions, either for
15 mistrial or for curative instruction, other than
16 making this initial objection?

17 A I did not.

18 Q All right. You testified on cross that you
19 believed so strongly in your client's -- in
20 Mr. Goodwin's innocence, I believe you said you
21 would stand in front of a train?

22 A Yes.

23 Q Now, would you have a duty to him to take any sort
24 of plea offers to him if made, regardless of your
25 belief in his innocence?

1 A Absolutely.

2 MR. WALLER: Okay. I have nothing further.

3 Thank you.

4 THE COURT: Anything else of this witness?

5 MR. DAVIDSON: Just one question.

6 RECROSS-EXAMINATION

7 BY MR. DAVIDSON:

8 Q Ms. Singletary, you just testified that the part of
9 the statement that you objected to was very
10 suggestive of child abuse until proven otherwise?

11 A Yes.

12 Q And after you objected, you had a conference, bench
13 conference, off the record, correct?

14 A That's correct.

15 Q And after that off-the-record discussion, based on
16 what that discussion was, what did the judge do?

17 A He actually gave a curative instruction, and he
18 struck that statement. And I'll tell you the
19 reason why we actually asked to approach the judge
20 because, like, if we would have made that argument
21 in front of the jury, it would highlight the actual
22 statement even more, which would have been even
23 more prejudicial to our client. So that is why we
24 approached.

25 Q And is it your opinion that if you put that on the

1 record right after that testimony, it would be the
2 same?

3 A Yes.

4 Q And so waiting until the witness was done
5 testifying to put it on the record would have
6 lessened the prejudice?

7 A Exactly. We did not want -- and I have had that
8 happen before in an actual unlawful conduct towards
9 a child case where burden shifting actually
10 occurred, and we did it that way also in that case.
11 We didn't want to highlight it in front of the
12 jury.

13 Q So the objection was contemporaneous?

14 A Yes.

15 Q The judge struck the testimony?

16 A That's correct.

17 Q And then at the end the basis of the objection was
18 put on the record?

19 A That's correct.

20 Q And is it still your opinion that that was properly
21 preserved?

22 A Oh, yes.

23 MR. DAVIDSON: Okay. Thank you. Nothing
24 further.

25 THE COURT: Anything else of this witness?

1 MR. WALLER: Nothing further, Your Honor.

2 THE COURT: Ms. Singletary, thank you, ma'am.

3 You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness steps down.)

6 THE COURT: Mr. Waller?

7 MR. WALLER: Yes, Your Honor. We would call

8 Tracy Pinnock.

9 THE COURT: Mr. Waller, I have had someone
10 step away. I have had Ms. Durant on the line for
11 quite a while, and she steps away, and she comes
12 back. I sent her a message, but she has not
13 responded to it, so I'm not sure she has seen it.

14 Let's take a five minute recess. And, Ms.
15 Pinnock, I don't want to swear you until we come
16 back, okay? Let's take ten minutes.

17 (WHEREUPON, a break was taken at 12:12
18 p.m.)

19 (WHEREUPON, the proceedings resumed at
20 12:27 p.m.)

21 THE COURT: Ms. Durant, I'm sorry you had to
22 wait.

23 MS. DURANT: Thank you for letting me testify
24 virtually. I appreciate that.

25 THE COURT: Ms. Durant, Mr. Waller, he wants

1 to call you as a witness next. How do you want to
2 proceed? Mr. Waller, I have got her on my computer
3 screen.

4 MR. WALLER: Your Honor, I am not 100 percent
5 sure. I don't know that I have --

6 THE COURT: Ms. Durant, the AG's Office is
7 going to put a computer up by the witness stand,
8 and Mr. Waller should be able to see you. And I
9 think that is how we are going to proceed. And
10 they are doing that right now, okay?

11 MS. DURANT: That's fine. Thank you.

12 (Pause.)

13 THE COURT: Just so we are on the same page,
14 Mr. Waller, you can call Ms. Durant at this time.
15 I've got her here.

16 Madam Clerk, I am going to swear her, okay?

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Ms. Durant, do you swear or affirm
19 to tell the truth, the whole truth, and nothing but
20 the truth, so help you God?

21 MS. DURANT: I do, Your Honor.

22 THE COURT: Okay. Mr. Waller, who you may be
23 able to see, is going to ask you some questions.

24 MS. DURANT: Yes, sir.

25 THE COURT: Mr. Waller?

1 MR. WALLER: Thank you, Your Honor.

2 Ms. Durant, can you hear me? I want to make
3 sure you can hear me from this side.

4 MS. DURANT: I need for you to speak a little
5 louder, please.

6 MR. WALLER: Okay. How about now? Can you
7 hear me now?

8 MS. DURANT: Not quite.

9 MR. WALLER: Okay.

10 THE COURT: I am going to turn my audio off
11 and turn that one up.

12 MR. DAVIDSON: Okay.

13 (Pause.)

14 MR. WALLER: All right, how about now,
15 Ms. Durant? Can you hear me now?

16 MS. DURANT: That's much better. Thank you.

17 THE COURT: State your name one more time,
18 Ms. Durant.

19 THE WITNESS: LaNelle Durant.

20 LANELLE C. DURANT,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q All right, Ms. Durant, can you state your name for
25 us one more time?

1 A I'm sorry, that is a little muffled. Could you
2 repeat that, please?

3 Q Can you state your name for us one more time?

4 A LaNelle Canty Durant.

5 Q All right. Thank you, Ms. Durant. Ms. Durant, you
6 are retired now, aren't you?

7 A I am.

8 Q How do you enjoy your retirement?

9 A Well, I miss the courtroom, I will have to be
10 honest with you. I like this opportunity.

11 Q I understand. Ms. Durant, before you retired,
12 where did you work?

13 A I worked with the Office of Appellate Defense, with
14 the Commission of Indigent Division.

15 Q Okay. And how long did you work there?

16 A I worked there twelve and a half years, and then
17 the Public Defender's Office five years before
18 that.

19 Q Okay. Do you recall representing Demetrius
20 Goodwin?

21 A Yes, I remember Mr. Goodwin's case.

22 Q Okay. Just generally, when you get -- how do cases
23 come to you in the Office of Appellate Defense?

24 A I'm sorry, can you repeat that?

25 Q Sure. How do cases come to you specifically in the

1 Office of Appellate Defense?

2 A Oh, I'm sorry, that was really muffled, marbled.

3 Q How do cases specifically come to you in the Office
4 of Appellate Defense?

5 A Okay. How did the case come to me?

6 Q Yes, ma'am?

7 A Okay. The Court of Appeals would send our office
8 transcripts of cases, and then our Chief Appellate
9 Defender, Bob Dudek, would assign the cases.

10 Q Okay. So that is how it was assigned to you?

11 A Yes.

12 Q Okay. When you get a new case, what is your
13 procedure?

14 A Well, first -- well, of course, a letter is sent to
15 the client informing them that I am representing
16 him. That is just a process, regular procedure.
17 Then we obtain the transcript because, as you know,
18 on appeals we can only use what is actually in the
19 transcript and any exhibits that were admitted. So
20 the first process is to read the transcript
21 thoroughly, looking for objections, because that is
22 all we can use are objections, and then look at any
23 exhibits that may have been admitted, and select
24 the issues based on the objections we reviewed. I
25 would review the law and look for any objections

1 that I felt would be -- have significant legal
2 merit on appeal that would be a winning case. That
3 is what we looked for.

4 Q Okay.

5 A And then we would prepare a brief and cite the
6 cases and send it to the Court of Appeals, is the
7 first step.

8 Q Okay. So specifically when you are deciding which
9 issues to raise, how -- is that based on the
10 transcript itself?

11 A Well, of course, as I was stating, you have to look
12 for the objections, but then there may be several
13 issues, some more significant than others.
14 Sometimes there will be no issues, then we would
15 write an Anders brief, which I think you are
16 familiar with an Anders brief. But if I found an
17 issue that I felt was really the winning issue, I
18 would raise just that issue, because I did not want
19 to dilute it with other minor issues. And that is
20 what happened in Mr. Goodwin's case. I don't
21 remember any other issues right off the top of my
22 head, but I do remember feeling that this was a
23 very significant issue, because after reading the
24 transcript, I knew that Mr. Goodwin did not have
25 extreme indifference towards this child. He did

1 not mean to hurt that child. And I felt the
2 Court -- the definition of extreme indifference as
3 the Court has used cases and as the statute said,
4 is very broad. It applies to many levels of
5 homicide by child abuse. And I just did not think
6 Mr. Goodwin fit any of those.

7 Q Okay. Okay. Your brief, your final brief, was
8 submitted October of 2012. Do you have specific
9 recollection of this case?

10 A Well, I remember the basics of it. As I said, it
11 was a heartbreaker for me, but I don't remember the
12 details thoroughly.

13 Q Okay. Do you recall reviewing the jury charge in
14 this case?

15 A Well, I think I mentioned it in my brief that I
16 felt the judge had a conflicting jury charge.

17 Q Okay. And kind of what I was getting to. Your
18 issue that you raised was regarding the motion for
19 directed verdict specifically, but it was the
20 definition of extreme indifference is what we were
21 discussing. Do you have any specific recollection
22 of reviewing the jury charges in this case?

23 A Well, I'm not sure I understand your question, but
24 I felt that the State did not prove extreme
25 indifference, but I don't think that is answering

1 your question. What was your question again?

2 Q Do you have any specific recollection of reviewing
3 the jury charge in this case?

4 A No, I don't remember specifically reading the jury
5 charge. I reviewed it in my brief when I just saw
6 it, yes.

7 Q Okay. Your brief was related to the denial of the
8 Defense's motion for a directed verdict. Does the
9 jury charge as presented to the jury, did you have
10 any issue with that, that you recall?

11 A Well, I felt that that was covered under the
12 extreme indifference, denial of the directed
13 verdict, because the jury charge was related to the
14 judge's definition of extreme indifference, and I
15 felt that it was covered by the main issue of not a
16 directed verdict being granted.

17 Q Okay. So, and that is what I was getting at. So
18 your understanding of the definition that was
19 charged to the jury was incorrect, that is your
20 opinion?

21 A Well, it was conflicting. He gave two different
22 parts of a jury charge, he gave two different
23 definitions of extreme indifference, yes.

24 Q Okay. Okay. All right. Did you review anything
25 related to Mr. Goodwin's statements that he had

1 made to law enforcement?

2 A Well, yes. I think he said that he knew he had
3 hurt the child; but he did not realize that what he
4 did would hurt the child. He was very remorseful
5 in his statement.

6 Q Did you consider raising any issues regarding the
7 circumstances which those statements were given?

8 A No, because I thought that it was a voluntary
9 statement.

10 Q Okay. I believe your testimony was that you wanted
11 to pick the strongest issue and not have other
12 minor issues that would not be meritorious, and you
13 wanted to pick the best one, is that right?

14 A Yes.

15 Q Okay.

16 A Based on my reading of the law, based on the case,
17 I would choose the issue that I felt would be a
18 winning issue, and I really thought this one was.

19 Q You are certainly not limited to one issue, is that
20 right?

21 A No, we are not, but we are not required to raise
22 all the issues either.

23 Q Okay. If there were more than one meritorious
24 issue, how would you decide which ones to raise?

25 A Well, based on my experience before the Court, the

1 Supreme Court and the Court of Appeals and the
2 years that I was there -- and I had been there
3 several years by the time I processed Mr. Goodwin's
4 case -- I felt that it was best to try to, if you
5 had a winning issue, to keep it as simple as
6 possible with the law that was significant, and I
7 really felt like the statute in this case needed to
8 be changed. If you look at the case of Jarrell
9 where the mother left home knowing the father was
10 going to kill the child, I mean, that was extreme
11 indifference. That did not happen with
12 Mr. Goodwin. And the definition covers all of
13 that. So I really believed that the Court would
14 find in Mr. Goodwin's case that he really did not
15 fit that.

16 Q Okay.

17 A I felt strongly about this issue.

18 Q Okay. In a general sense, if you have a case that
19 has more than one meritorious issue, are you --
20 would you present all of the issues in your brief,
21 or would you pick the best one, or how would you do
22 that?

23 A Well, I would choose the one that I felt would have
24 a chance. There may be meritorious issues based on
25 the law, but recent cases have shown that they are

1 really not that significant. And I don't remember
2 any other issues in Mr. Goodwin's case that I felt
3 were really significant at all. But I would
4 choose -- if I chose a second or third issue, it
5 would be that maybe I didn't feel that the first
6 one was a strong winning issue but needed some
7 other issues. So I would choose a second or third
8 based on the law.

9 Q Okay. And as an Appellate Defender, you would have
10 the discretion to decide which issues are raised
11 and which are not?

12 A I'm sorry, I didn't hear all of your question.

13 Q As an Appellate Defender, you would have the
14 discretion to decide which issues to raise and
15 which issues you do not think were -- should be
16 raised?

17 A I think you said I had experience in doing that?

18 Q Did you have discretion to decide which ones were
19 raised?

20 A Oh. Oh, discretion. Yes. Yes, I did.

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

22 THE COURT: Certainly.

23 (Pause.)

24 BY MR. WALLER:

25 Q Thanks, Ms. Durant. I have nothing further.

1 A Thank you.

2 THE COURT: Ms. Klein?

3 CROSS-EXAMINATION

4 BY MS. KLEIN:

5 Q Good afternoon, Ms. Durant. Can you hear me?

6 A Yes. Fine. How are you?

7 Q I'm doing well. I just have a few more questions
8 for you.

9 So you testified just now that your
10 traditional method when you receive a case is to
11 review the transcript and look for objections and
12 do investigation into the admissible law, is that
13 correct?

14 A Yes.

15 Q And you did that with Mr. Goodwin's case?

16 A Yes.

17 Q You additionally testified that in your experience
18 and professional judgment, you usually try for one
19 strong issue, or is that just what happened in this
20 case?

21 A All cases, when I am having a really, really strong
22 issue, but maybe meritorious issues based on the
23 law. There were a few cases where there would be
24 an outstanding issue that we felt -- that I felt
25 really needed to be addressed. And we would -- I

1 would take cases -- issues before the Court that I
2 usually felt needed changing. And in this case, I
3 really felt this definition needed to be changed.

4 Q And you make that decision based off your
5 professional judgment, is that correct?

6 A Yes. And many arguments I had done before the
7 Court and appearances there, yes.

8 Q And how long had you been at the Office of
9 Appellate Defense when you got this case, if you
10 recall?

11 A I went -- I was employed there in December of 2006,
12 so that was five years, six years.

13 Q And you testified that there may have been other
14 issues that you remember seeing when reviewing this
15 case, but none of them specifically stood out to
16 you as strongly as the issue that you actually did
17 raise on appeal, is that correct?

18 A That's correct. And one of the problems was
19 Mr. Goodwin's statement to law enforcement. His
20 voluntary statement was a problem, but that is why
21 I felt that it had to show that there was not
22 intent.

23 Q Do you traditionally speak to the individuals when
24 you are drafting the brief for appeal?

25 A I'm sorry, can you repeat that, please?

1 Q Do you, in your practice, did you traditionally
2 speak to the Defendants or the individuals you were
3 representing on appeal?

4 A Are you asking did I speak to them? Did I talk to
5 them?

6 Q Did you do that -- during your course of practice?

7 A Most of the time I would talk to them on the
8 telephone at some point in time. I think I did
9 speak with Mr. Goodwin. I can't remember exactly,
10 but I think I did.

11 Q Okay. So you do recall speaking to Mr. Goodwin in
12 this case?

13 A I don't recall a specific conversation, no.

14 Q But, in general, do you believe you spoke to him?

15 A I think I spoke to him. I can't verify that. I
16 don't have a strong recollection of it. I think I
17 talked with a family member. But I can't verify
18 that, no.

19 Q And you testified earlier that there is no
20 requirement for you to raise all meritorious issues
21 on appeal, is that correct?

22 A That is correct. We are not required to raise all
23 issues.

24 Q So you don't have to draft kitchen sink briefs?

25 A Pardon me?

1 Q You don't have to draft kitchen sink briefs?

2 A No.

3 Q And in your opinion, is the issue that you raised
4 still the strongest issue that could have been
5 raised on appeal?

6 A Yes, I think so.

7 MS. KLEIN: Your Honor, I have no further
8 questions.

9 THE COURT: All right, thank you.

10 Mr. Waller, anything else?

11 MR. WALLER: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WALLER:

14 Q Ms. Durant, what is the remedy at the Appellate
15 Court level if the judge's denial of a motion for
16 directed verdict was found to be improper?

17 A Well, they usually refer it back for another trial.

18 Q Okay.

19 A But they could have the ability to grant the
20 directed verdict at that point if they think it was
21 wrong.

22 Q So they had the ability -- the Appellate Court
23 would have the ability to grant a directed verdict?

24 A Not really. They don't really have the authority
25 to do that, but the typical procedure is to go back

1 and refer the case back for another trial.

2 Q Okay. What would be the remedy if an improper jury
3 charge was given to the jury which based its
4 decision on incorrect information?

5 A It would still be referred back for a new trial.

6 Q Okay. Thank you, Ms. Durant.

7 THE COURT: Anything else?

8 MS. KLEIN: No, Your Honor.

9 THE COURT: Ms. Durant, I think that is all
10 the questions. Thank you for your testimony.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Good luck to you.

13 THE WITNESS: Thank you.

14 (Witness leaves WebEx.)

15 THE COURT: Mr. Waller?

16 MR. WALLER: Thank you, Your Honor. I would
17 call Tracy Pinnock.

18 (Witness approaches.)

19 THE COURT: Madam Clerk?

20 THE CLERK: Do you swear the testimony you are
21 about to give in this case will be the truth, the
22 whole truth, and nothing but the truth, so help you
23 God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, please.

2 (Witness seated.)

3 THE COURT: Would you tell me your full name,
4 please?

5 THE WITNESS: Tracy Elaine Pinnock.

6 THE COURT: Spell your last name. P-as in
7 Peter-I-N-N-O-C-K.

8 THE COURT: Thank you. Your witness.

9 MR. WALLER: Thank you, Your Honor. May it
10 please the Court?

11 TRACY E. PINNOCK,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q Good afternoon now, Ms. Pinnock. How are you?

16 A Good. How are you?

17 Q Doing well. Thank you for asking. Ms. Pinnock, do
18 you recall representing Demetrius Goodwin?

19 A I do.

20 Q When did you come to represent him?

21 A The first dated notes I have are from February of
22 2011, so it was pretty far into his pending case
23 that I got involved.

24 Q Okay. Were you -- did you come in to assist with
25 trial?

1 A Yes.

2 Q All right. What -- if you could, what was your --
3 what was Defense's strategy in the case?

4 A Best that I can recall, it was very heavy
5 medically. A lot of focus was put on expert
6 testimony. And it just didn't make any sense that
7 Mr. Goodwin, you know, would have purposefully
8 hugged his child to death, but the majority of the
9 focus was on the medical testimony.

10 Q Okay. There were some statements that Mr. Goodwin
11 had given to law enforcement?

12 A Yes.

13 Q Is that right? And I believe you handled the
14 Jackson v. Denno hearing?

15 A Yes.

16 Q Do you recall what your preparation was like for
17 that hearing?

18 A Not in any great detail. At that point I was
19 fairly green as far as trial practice went, so I
20 remember that I, you know, that I handled the
21 questioning and making the argument for the Denno.
22 I know that I would have reviewed, you know, the
23 case law, getting ready for it. I would have, you
24 know, discussed questions that I had with Ms. Hines
25 and Ms. Singletary since at that point I honestly

1 don't know if I had ever done one before. But it
2 would have been, you know, my reading, creating my
3 questions, and then collaborating with the rest of
4 the team.

5 Q Okay. What was your, for lack of a better term,
6 what chair did you sit in during the trial?

7 A Third.

8 Q Okay. And that was your greenness, as you just
9 called it, that is why?

10 A Yes.

11 Q Ms. Singletary was no longer employed as a Public
12 Defender, though?

13 A Correct.

14 Q She came back just for the trial?

15 A Yes.

16 Q All right. Did you -- were you participating in
17 meetings, and things like that?

18 A I was.

19 Q In preparation. How about once the trial started?

20 A Yes.

21 Q So something has been mentioned about one of the
22 issues in the case. Do you recall a meeting in
23 judge's chambers prior to the trial starting?

24 A Vaguely, yes. I couldn't tell you, you know, in
25 any great detail about everything that was

1 discussed, but I recall meeting prior to the trial
2 starting.

3 Q Do you recall -- I guess backing up even further.
4 During your involvement of this case, were any plea
5 offers extended to Mr. Goodwin?

6 A There was an offer made to him. The details of it,
7 I cannot -- I would be making it up if I tried to
8 give you the details of it.

9 Q You mean details of the --

10 A The full conversation.

11 Q Okay. Do you recall what -- where it took place,
12 or how it was extended?

13 A It -- best that I can recall, it was a
14 conversation. Ms. Hines and I were there.
15 Ms. Singletary would not have been there because I
16 want to say it was either after hours or on the
17 weekend. We were standing in the lobby of the
18 Solicitor's Office. We had come down for
19 something. And then the conversation somehow, you
20 know, an offer was made. There was a reply -- a
21 retort by Ms. Hines to that conversation. And then
22 we went back downstairs to her office.

23 Q Okay. Do you -- in what timeframe was this? Was
24 it close to the trial? Was it right when you got
25 involved? Do you recall?

- 1 A It was fairly close to the trial. I don't know
2 exactly how far in advance that it was, but it was
3 fairly close to us starting.
- 4 Q Okay. Do you recall conversations you may have had
5 with other counsel or Mr. Goodwin regarding the
6 jury charge in this case?
- 7 A Not really.
- 8 Q Okay. Do you recall having a jury conference, a
9 charge conference with the judge during the trial
10 for this case?
- 11 A I mean, I feel like I am saying this a lot. In
12 great detail, no. I know we would have had one.
- 13 Q Okay.
- 14 A Because that is just what happens. But -- so I am
15 assuming we did. I mean, I have read the
16 transcript. We, you know, we had a conference, but
17 I don't recall in great detail.
- 18 Q Okay. Do you recall -- and for clarity's sake, did
19 the judge note your -- the Defense's objections and
20 said basically you and the Prosecution get together
21 and work out what is the appropriate charge before
22 you came back. Do you recall that at all?
- 23 A No.
- 24 Q Were you involved in any meetings with your expert
25 as far as in preparation for trial?

1 A Yes.

2 Q Based on his -- did he issue a written report?

3 A I don't recall there being a report.

4 Q Okay. Was Mr. Goodwin aware of his findings prior
5 to the trial starting?

6 A I would be assuming that we discussed it with him,
7 but I can't say for -- I don't have any notes from,
8 you know, any meetings with Mr. Goodwin that
9 documents that we discussed it with him.

10 Q Okay. Thank you, Ms. Pinnock. I have nothing
11 further.

12 THE COURT: Mr. Davidson?

13 CROSS-EXAMINATION

14 BY MR. DAVIDSON:

15 Q Good afternoon, Ms. Pinnock.

16 A How are you?

17 Q Doing well. How about you?

18 A Good.

19 Q Thanks for being here. You just testified that you
20 were not originally assigned to this case, correct?

21 A Correct.

22 Q And you testified that you came in to assist
23 specifically with trial?

24 A Yes.

25 Q And you testified that you were third chair because

1 you were green at the time?

2 A Yes.

3 Q Which, can you explain for the record?

4 A I'm sorry. I mean, I was young. I probably had
5 one, maybe two smaller trials prior to
6 Mr. Goodwin's trial, but I did not have what you
7 would consider a lot of trial experience. And
8 definitely nothing as serious a charge as this was.

9 Q Okay. And did you have -- in your prior trials,
10 were they as heavily medical-based?

11 A No, not at all.

12 Q So what kind of things would you to do help the
13 team prepare for trial?

14 A I reviewed the discovery. You know, I went to
15 meetings. I took a lot of notes. You know, I --
16 you know, I assisted with, you know, getting the --
17 if there was research that needed to be done, I
18 would help with that. You know, we would bounce
19 ideas of each other. But my role as far as coming,
20 you know, coming up with theories and, you know,
21 strategies, that wasn't something that was deferred
22 to me. I was basically kind of there to learn, to
23 be involved and to learn.

24 Q Okay. And when you got involved, were there any
25 plea offers on the table?

1 A Not that I was aware of, no.

2 Q Okay. And you testified that there was an offer
3 before trial, correct?

4 A Yes.

5 Q A plea offer. And you testified that Ms. Hines was
6 there?

7 A Uh-huh.

8 Q And Ms. Singletary was not?

9 A No.

10 Q What Solicitors were present?

11 A I am confident that Ms. McDuffie was there. I am
12 not confident whether or not Ms. Campbell was
13 there.

14 Q And what was your understanding of who kind of was
15 first chair in that case?

16 A I don't remember.

17 Q And you said part of your role was to like take
18 notes. Do you have any notes reflecting that
19 conversation?

20 A That conversation, no. My notes were, you know,
21 from meetings that we went to, you know, if we were
22 meeting with Mr. Goodwin, when we were meeting with
23 the expert, stuff like that. Just --

24 Q So there is no documentation about that
25 conversation?

1 A No. And like I said, I can't give you the details
2 of what led up to that being said or even what was
3 said, you know, from the Solicitors to us. I do
4 recall a retort by Ms. Hines that was something
5 along the lines of, Well, you know, he would plead
6 to time served or something in response to what was
7 said to us, but that is really -- that is all that
8 sticks out.

9 Q Okay. And given the evidence and the testimony
10 that was going to occur, in your opinion was credit
11 for time served a reasonable rebuttal offer?

12 A I mean, I can't -- back then, I mean, I couldn't
13 judge that. When I say I had never dealt with
14 something this serious before, I never had. So I
15 can't really pass judgment on the 2011 Tracy.

16 Q Okay. Did you ever have a discussion with
17 Mr. Goodwin about that lobby conversation?

18 A No.

19 Q Are you aware if Ms. Hines had a conversation with
20 him?

21 A I don't know if she did or not.

22 Q And on the day of trial, there was a meeting in
23 judge's chambers. Do you recall that meeting?

24 A Yes.

25 Q So you were present?

1 A I would have been in there, yes.

2 Q Who else was present?

3 A I know Ms. Hines was, I know Ms. Campbell was, Ms.
4 McDuffie was. I do not know if Mr. Potts was.

5 Q Okay.

6 A And I honestly don't remember if Ms. Singletary was
7 there or not.

8 Q Okay. And can you explain the circumstances of
9 what happened in that meeting?

10 A No.

11 Q Okay. Do you recall a plea offer being extended
12 during that meeting?

13 A I don't know if one was extended or if it came up,
14 if the original conversation came up again. So
15 that is all I can say about it.

16 Q Okay. And did you take any notes about that?

17 A No. Just with normal practice, we would have had
18 most of our stuff in the courtroom because that
19 would have been right before the trial started, so
20 I wouldn't have had anything with me.

21 Q Okay. And when you left the judge's chambers, did
22 you go back to the courtroom?

23 A Best I can recall, yes.

24 Q Do you recall talking to Mr. Goodwin about the
25 conversation in judge's chambers?

1 A No.

2 Q Do you recall Ms. Hines having a conversation?

3 A Not that I'm aware of, no.

4 Q Do you recall if the expert that you guys hired was
5 hired before you started working on the case?

6 A I don't know when he was brought on. I would not
7 have been part of that. Ms. Hines, because she was
8 lead counsel on the case, would have done the
9 funding order and, you know, been reaching out to
10 find whatever expert she wanted, so I don't know
11 exactly when he was brought on.

12 Q Okay. And touching on a point you just made about
13 Ms. Hines being first chair, as third chair, would
14 it have been your responsibility to take any plea
15 offers that were extended to Mr. Goodwin to speak
16 about it?

17 A No. Unless specifically asked by the first chair,
18 that is usually a conversation that is held with
19 lead counsel because, you know, they are the ones
20 that represent the client. They have got the, you
21 know, the strong relationship with them. So I
22 would not have gone down there without being told
23 to do it.

24 Q Okay. Do you recall Ms. Hines ever asking you to
25 do it?

1 A No.

2 Q And back to the State's expert. Did you ever
3 attend meetings before trial with the State's
4 expert?

5 A With the State's expert?

6 Q I'm sorry, your expert?

7 A Yes, a few times.

8 Q A few times? And do you recall asking him any
9 questions about the circumstances of why he left
10 the Coroner's Office?

11 A No.

12 Q You testified that you were in charge of the
13 Jackson v. Denno hearing?

14 A Yes.

15 Q Had you handled any Jackson v. Denno hearings prior
16 to that case?

17 A I can't say for sure.

18 Q And do you recall your team's trial strategy after
19 the statements were going to be admitted?

20 A Honestly, not really. I know that there was -- you
21 know, there was -- it was going to be addressed,
22 but exactly what we talked about and how we were
23 going to handle it, I don't recall.

24 Q Okay.

25 MR. DAVIDSON: Beg the Court's indulgence.

1 (Pause.)

2 BY MR. DAVIDSON:

3 Q Did you have any involvement in the -- working on
4 the jury charge that was submitted?

5 A Not that I recall.

6 MR. DAVIDSON: No further questions, Your
7 Honor. Thank you.

8 THE COURT: Mr. Waller, anything else?

9 MR. WALLER: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Ms. Pinnock, you testified on cross-examination
13 about an offer being extended outside the
14 Solicitor's Office, and that there was, I think you
15 said, a retort made by Ms. Hines?

16 A Yes.

17 Q You also testified you were not able to, you know,
18 the 2011 Ms. Pinnock was not able to evaluate the
19 appropriateness of her response. What was her tone
20 like? How did you characterize her response?

21 A Very clipped.

22 Q Okay. What was she -- was it sarcastic? Was it
23 flippant? Was it serious?

24 A So, I would, I guess serious and kind of dismissive
25 of what was offered.

1 Q Okay. Okay.

2 A Does that make sense?

3 Q It does.

4 MR. WALLER: Thank you. Nothing further.

5 THE COURT: Anything else? Nothing further?

6 MR. DAVIDSON: Just one question.

7 RECROSS-EXAMINATION

8 BY MR. DAVIDSON:

9 Q So you just testified that, I assume it was
10 Ms. Hines' retort that was very clipped?

11 A Yes.

12 Q And serious and dismissive?

13 A Yes.

14 Q And earlier you testified that this was an offer
15 that was extended?

16 A Yes.

17 Q Given her clipped and serious tone, do you think
18 that retort was -- if that was even an offer that
19 was extended?

20 A I mean, any time an offer is made in the case, we
21 have an obligation to discuss it with our clients,
22 whether or not we think it is a good one or a bad
23 one. So if the offer had been 50 years, if we knew
24 our client wasn't going to plead to 50 years, we,
25 you know, you can say something back like, This is

1 a waste of my time, but you still have to go
2 discuss it with your client before you can reject
3 something. So regardless if she thought it was
4 good, bad, ridiculous, whatever, the obligation
5 would have still been there to discuss it with
6 Mr. Goodwin prior to the trial starting.

7 Q And -- but you don't recall the details of the
8 State's offer?

9 A I don't. It was not a probation offer, it wasn't
10 something small, but the number of years that was
11 offered, I can't tell you. I don't remember.

12 Q And you genuinely believe that the State was
13 offering something?

14 A Yes.

15 MR. DAVIDSON: No further questions.

16 THE COURT: All right. Thank you, ma'am.

17 Thank you for your testimony.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness steps down.)

20 MR. WALLER: One more witness, Your Honor.

21 THE COURT: All right. About the same length?

22 MR. WALLER: Yes, sir.

23 THE COURT: Okay. Mr. Davidson and Ms. Klein,
24 he has one more witness. It is after 1:00 o'clock
25 right now. He has got another witness. We are

1 probably looking at working up past 2:00. So let's
2 go ahead and take a break now for lunch, and we
3 will come back and wrap up. Let's come back at say
4 2:10.

5 (WHEREUPON, a lunch break was taken at
6 1:10 p.m.)

7 (WHEREUPON, the proceedings resumed at
8 2:16 p.m.)

9 THE COURT: Let's come to order. Back on the
10 record with Demetrius Goodwin. We had taken a
11 break for lunch. I believe counsel was going to
12 call another witness, is that correct?

13 MR. WALLER: That's correct, Your Honor.

14 THE COURT: Mr. Waller?

15 MR. WALLER: The Applicant will call Kris
16 Hines.

17 THE COURT: Kris Hines?

18 MR. WALLER: Yes, Your Honor.

19 (Witness approaches.)

20 THE COURT: Madam Clerk?

21 THE CLERK: Do you swear or affirm the
22 testimony you are about to give in this case will
23 be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. Have a seat in the
2 witness stand.

3 (Witness seated.)

4 THE COURT: Ms. Hines, tell the Court your
5 full name, please.

6 THE WITNESS: Laura Kristine Hines.

7 THE COURT: Thank you.

8 Your witness.

9 L. KRISTINE HINES,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good afternoon, Ms. Hines. How are you?

14 A Very good.

15 Q Ms. Hines, where are you currently employed?

16 A Kershaw County Public Defender's Office.

17 Q Okay. How long have you been there?

18 A I've been there since September of 2014.

19 Q And where were you before then?

20 A The Richland County Public Defender's Office.

21 Q Okay. At some point were you assigned Demetrius
22 Goodwin's case?

23 A Yes.

24 Q How did that come to be your case?

25 A When Ms. Singletary left the Public Defender's

1 Office, her cases were redistributed, and
2 Mr. Goodwin's case was transferred to me at that
3 time.

4 Q Where, kind of in the process or the life of the
5 case, where was it at the time you picked it up?

6 A It was in the waiting period between charges and
7 trial. I mean, it was just kind of -- it was kind
8 of sleeping at the time. You know, there wasn't
9 really a lot going on. He was on bond. He had
10 been in jail for a good period of time while
11 Ms. Singletary still had the case, but at the time
12 I got the case, he was on bond. She had gotten him
13 a bond and we were just waiting for, I guess
14 waiting for a trial date.

15 Q Did you have discovery when you took over?

16 A Yes.

17 Q Did you end up getting more discovery?

18 A Yes. I mean, there is always more discovery. In
19 fact, we got handed a lot of jail calls mid-trial.

20 Q Okay. Were any of those calls used in the State's
21 case in chief?

22 A No, they were not used in the State's case in
23 chief, and they were not -- they were not used at
24 all. I didn't have time to listen to them, I was
25 in the middle of trial. I think it was like 1300

1 calls.

2 Q Okay.

3 A So I don't know what was on them. I don't know if
4 they were all to Mr. Goodwin or not. It was the
5 calls that had been made to Demetrius's mother's
6 phone.

7 Q Okay.

8 A But I didn't have time to listen to them. It was
9 just so --

10 Q Logistically you didn't have time?

11 A No. I mean, it was hours and hours and hours. I
12 think we got it on Tuesday afternoon mid-trial.

13 Q Okay. In the course of your representation, what
14 did y'all do to prepare for trial with Mr. Goodwin?

15 A We met with him a number of times. We met with his
16 family. We talked to him, you know, went through
17 the discovery with him, and we talked to him about
18 the expert that we had hired. I think we met with
19 him and his family and the expert one day at
20 Ms. Singletary's office so that the expert could
21 explain to him what he was talking about, Dr.
22 Kessler. And we, you know, we went through
23 discovery. We talked about whether he should
24 testify or not. Of course, that got thrown into a
25 tailspin when we got all those jail calls because

1 we didn't know what was on them.

2 Q Okay. Did you discuss with Mr. Goodwin the
3 statements he had made to law enforcement?

4 A Yes.

5 Q At that point did you -- when you took over the
6 case, did you explain to him, you know, how those
7 statements could assist him, or what did you
8 discuss with him about the giving of those
9 statements and how they might be used at trial?

10 A I don't remember specifically. I remember -- you
11 know, I remember talking to him about, you know,
12 that there would be a Jackson v. Denno hearing,
13 that there would be a hearing ahead of time, that,
14 you know, the statements would be used to try to
15 say he -- try to be called a confession. And that
16 is basically all I remember.

17 Q Okay. And, generally, when you take over a case
18 for another attorney, do you -- would you have kind
19 of started from the beginning as far as your
20 conversations with him to make sure he understands
21 his constitutional rights, the process, the charges
22 against him, or would you have relied on that
23 attorney dealing with that for you?

24 A I would have started over from the beginning. I
25 would have -- generally when I get -- take over

1 another case from another attorney, I look through
2 that attorney's notes, and anything that I think is
3 relevant I put into a note of my own, and then I
4 stick that attorney's notes into the back of the
5 file, and I make myself a fresh copy of the
6 discovery and review it as if it has never been
7 reviewed before. And I do everything from scratch
8 myself. I don't -- I tend not to rely on other
9 people's work.

10 Q Okay. So you would have had a conversation with
11 him about the charges he was facing and general
12 constitutional rights?

13 A Yes.

14 Q Okay. What -- have you had a chance to review the
15 transcript of the trial in the case?

16 A Portions of it.

17 Q Okay. Let me ask first about the charge of
18 homicide by child abuse and the definition of
19 extreme indifference. Let's talk about that some.
20 What preparations did you make? What research did
21 you do into that? Do you recall?

22 A Yes. That was my issue at trial. And I know
23 Ms. Singletary and Ms. Pinnock testified they
24 didn't really recall that much because that was my
25 issue to research.

1 In preparation for the trial, I read every
2 homicide by child abuse case. I have got them in
3 the back. I pulled specifically to bring up here
4 with me State v. Jarrell, because I think that is
5 the relevant one. I read all of the homicide by
6 child abuse cases and characterized them. I wrote
7 down my directed verdict argument. I am the one
8 that prepared the -- argued the request for the
9 jury charge issue. And so that was the preparation
10 that I did as far as the case law.

11 Q Okay. And you actually brought up to the Judge
12 State v. Jarrell?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q There was some discussion between you and the
17 Solicitor's Office regarding the proper definition.
18 I believe the statute says one thing. State v.
19 Jarrell was a very specific holding of the
20 definition. And it is my understanding the judge
21 kind of left for y'all to work out --

22 A Actually, that is not how I remember it.

23 Q Okay.

24 A The way I remember it, we were in chambers. The
25 judge's law clerk was sitting at the computer. And

1 I had asked for -- I had wanted the language in
2 Jarrell. And in the context of homicide by abuse
3 statutes, extreme indifference is a mental state
4 akin to intent characterized by deliberate act
5 culminating in death. That is the holding in
6 Jarrell. And that is what I wanted. And the State
7 wanted the language from McKnight. And the judge's
8 law clerk was typing. And what ended up happening
9 is that the definition of State v. Jarrell got cut
10 in half, and the language from McKnight got
11 inserted in the middle of it. I should have
12 objected to that, and I didn't. That was a mistake
13 on my part. But if you read the transcript, you'll
14 see the first part of Jarrell where extreme
15 indifference is a mental state akin to intent, and
16 then you see the language from McKnight is in
17 there, and then at the end of it, it ends with,
18 Characterized by a deliberate act culminating in
19 death.

20 Well, I think when you read Jarrell, that the
21 mental state akin to intent, that you have to have
22 it characterized by the deliberate act culminating
23 in death. If that condition, the second part of
24 that condition is the first part of that, so when
25 you stick the language from McKnight right in the

1 middle of that sentence and break up that sentence,
2 I don't think that the definition of extreme
3 indifference was clear. And I know I didn't object
4 to it, and I should have. And I believe I was
5 ineffective for not objecting to that.

6 Q Okay. So your recollection is that the definition
7 given by State v. Jarrell was kind of split in half
8 and some other language was kind of put in the
9 middle, and then it finished out the definition
10 from State v. Jarrell?

11 A That is my recollection. Now, I didn't realize it.
12 At the time that that was happening, I didn't
13 realize that that is what was happening.

14 Q Okay.

15 A Okay? In reading the transcript later when I got
16 the PCR, that is when I realized what -- how it had
17 played out. I do remember that the judge's law
18 clerk was typing on the computer in chambers,
19 typing that out as we were discussing it in
20 chambers.

21 Q Okay. So y'all had a charge conference where you
22 were provided a copy, either a hard copy or
23 electronically by the clerk?

24 A I -- I don't remember. I had a proposed jury
25 charge in my computer file. I don't remember if I

1 gave that written -- and it actually -- the
2 proposed jury charge that I had prepared ahead of
3 time for trial actually did include the language
4 from McKnight and the language from Jarrell. It
5 was not what ended up in at the end. I can't
6 remember if I offered that -- I think it would have
7 been clocked and been part of the record had I
8 offered it in writing -- or if we just argued. I
9 can't remember that. I do specifically remember
10 that I wanted this language from Jarrell, and the
11 reason why is that my original copy of Jarrell from
12 that trial is right here, and it is highlighted, it
13 is underlined, there is a mark here, and there is a
14 star on that language. And I had it folded open to
15 that page when I pulled it out of the file.

16 Q Okay.

17 A And that is the language that I wanted for the
18 definition of extreme indifference, but I don't
19 believe it was accurately conveyed in the jury
20 charge.

21 Q When court reconvened prior to closing arguments
22 and prior to the judge charging the jury, the judge
23 asked if there is anyone -- I think we have got a
24 charge that everyone agrees upon. Are there any
25 objections to the charge? And you say no.

1 A (Nods affirmatively.)

2 Q Is that --

3 THE COURT: You have to say yes or no, ma'am.

4 A Yes, that is correct.

5 MR. WALLER: And, Your Honor, that is on Page
6 732 of the transcript in Volume 2 of that
7 transcript.

8 BY MR. WALLER:

9 Q And then later on after the charge was given to the
10 jury, you did not object to that?

11 A Correct.

12 Q Okay. And was there any strategic reason for not
13 doing so?

14 A There was not. It was a mistake.

15 Q Okay. There was a comment made during the
16 testimony of Dr. Bradley Marcus, the State's
17 forensic pathologist, that was objected to by
18 Ms. Singletary as being burden shifting. Do you
19 recall that issue?

20 A I don't remember it. I have reviewed the
21 transcript of it.

22 Q Okay.

23 A And I have reviewed the, you know, where I put it
24 on the record. I don't remember it specifically as
25 it happened.

1 Q Okay. Do you have a copy of the transcript there
2 with you?

3 A I do.

4 Q If you could turn to Page 497, Volume 2 as well?

5 A Yes.

6 Q At first, why -- Ms. Singletary made the objection.
7 Why -- what was the reason behind you placing the
8 motion for mistrial on the record? As opposed to
9 her?

10 A Well, because we had -- it was my witness. I
11 believe I was the one that crossed Dr. Marcus.

12 Q I believe that is correct.

13 A It was my witness. And Ms. Singletary made the
14 objection. I believe I probably missed it, and she
15 made the objection. And then we went up to -- I
16 mean, not -- but it was my witness, and it was my
17 understanding that if it is my witness I have to
18 argue the objections and the issues.

19 Q Okay. All right, so when you made the motion for
20 mistrial, you stated that the, I believe the
21 curative instruction was sufficient?

22 A I think I said I don't know -- the transcript says,
23 I don't know that the curative instruction was
24 sufficient.

25 Q Correct. The transcript is much more accurate than

1 my question, I promise you. Was there -- what was
2 your thought process behind not requesting a more
3 substantial curative instruction?

4 A I had none. And I see -- like when I go -- when I
5 read through the transcript, on Page 497 at the
6 top, the Court did offer -- it seemed like the
7 Court offered a more strong -- a stronger curative
8 instruction, and I think I -- I don't -- I don't
9 think I -- I think I just made a mistake.

10 Q Also on 497, did you ever request or did the judge
11 give a ruling on your motion for mistrial? I
12 believe he notes your exception.

13 A I don't believe he did.

14 Q Okay. All right.

15 A And I didn't -- I don't think I made him.
16 Actually, I just realized -- I didn't realize that
17 until just now, but I don't -- I should have
18 specifically requested a ruling on the motion for a
19 mistrial in order to preserve it.

20 Q Okay. Ms. Hines, when you were -- when you
21 represented Mr. Goodwin, you took over for Ms.
22 Singletary, you were the lead attorney on the case,
23 is that right?

24 A Yes.

25 Q Were any plea offers extended to you?

1 A At that time, no.

2 Q Okay.

3 A And I -- what I recall -- and I don't remember -- I
4 was here in the courtroom for Ms. Pinnock's
5 testimony. I don't remember that conversation. I
6 do remember at some point in the lead-up to trial
7 making a -- a smarting off to the Solicitor saying,
8 I think he would -- something to the effect that,
9 He would take simple assault. And I think that was
10 in response to something. But I don't remember
11 that. I do remember saying something like, He
12 would take simple assault. But what I remember is
13 when we were in judge's chambers the morning of
14 the -- Monday morning, we were in the judge's
15 chambers, and Judge Young asked if there had been
16 any plea negotiations in the case. We were
17 sitting -- I was sitting -- there were two chairs
18 in front of the judge's desk, and Ms. Campbell was
19 in one and I was in the other, and the other
20 attorneys were behind us. And Ms. Campbell turned
21 to me and said, Would he take voluntary? And I
22 just looked at her and said, No. And I never -- I
23 actually didn't remember that that happened until
24 two or three months later. I never told
25 Mr. Goodwin about that.

1 Q Okay.

2 A And I didn't let him make that decision.

3 Q When she said, Would he take voluntary, would you
4 consider that as making an offer?

5 A Yes, I did.

6 Q Okay. I show you what has been marked as
7 Applicant's 1.

8 MR. DAVIDSON: No objection.

9 BY MR. WALLER:

10 Q I believe it is without objection, but let me ask
11 if you recognize that document?

12 A Yes.

13 Q All right. What is that document?

14 A That is a letter that I sent to Mr. Goodwin.

15 Q Okay.

16 A October 18th, 2013.

17 Q All right. That is your signature on there?

18 A Yes.

19 MR. WALLER: Your Honor, I would offer that as
20 Applicant's 1, I believe without objection.

21 THE COURT: Objection?

22 MR. DAVIDSON: None, Your Honor.

23 THE COURT: No objection. That will be
24 Applicant's Number 1.

25

1 (WHEREUPON, Plaintiff's Exhibit No. 1
2 was marked for identification and
3 received into evidence.)

4 BY MR. WALLER:

5 Q Ms. Hines, what is that letter telling Mr. Goodwin?

6 A About the interaction that I just relayed to the
7 Court.

8 Q Okay. What is the date of that letter?

9 A October 18th, 2013.

10 Q Okay. This trial was in 2011?

11 A Yes.

12 Q What is the -- is there a reason behind the 2-year
13 gap?

14 A Mr. Goodwin sent me a letter in 2013 asking for his
15 file so that he could prepare his PCR. Okay? And
16 this letter was sent in response. And I was
17 getting him a copy of his file so that he could
18 prepare his PCR. I'm not sure when the appeal was
19 finalized, if it was before or after this, but I
20 know that he was in the process of preparing his
21 PCR. And I told him about that because that was
22 the first time I had ever told him about it. It
23 was the first contact that he and I had had since
24 the trial. Not long after the trial, this trial, I
25 was diagnosed with cancer and was in treatment for

1 about a year in 2012. It was during that time that
2 I spoke with Ms. Pinnock and Ms. Singletary about
3 the interaction we had in chambers, about
4 Ms. Campbell saying, Would he plead to voluntary,
5 because the reason I approached Ms. Pinnock and
6 Ms. Singletary was because I didn't know if I would
7 be here for the PCR at that time, because I had
8 cancer. But after -- 2013 I was clear from that,
9 that had ended. But it was in response to his
10 letter asking for the file.

11 Q Okay.

12 A And I felt he needed to raise that issue on PCR.

13 Q Okay.

14 A And needed to be aware of it so that he could raise
15 it on PCR.

16 Q Okay. In your experience as a Public Defender,
17 have you had clients who have maintained that they
18 were going to trial throughout the entire process?

19 A Yes.

20 Q Has that had a, I guess -- has that caused plea
21 negotiations to kind of be stunted?

22 A It has, in -- especially in the early years that I
23 was a Public Defender. As I have gotten older, I
24 have learned to continue with plea negotiations,
25 get the offer, get the -- you know, nail it down,

1 get that so that my client can make a more informed
2 decision. Whether they want to take it or not,
3 that is up to them, but it is their decision to
4 make. And so as I have gotten older, now this is
5 not -- was not my practice in 2011, but as I have
6 gotten older, I have seen -- you know, there are so
7 many, so many of our cases plead the day of trial.
8 I pled a case on the fourth day of trial with
9 Ms. Campbell once. And, you know, I have -- so
10 many cases are resolved right there at the very
11 end. I think a better practice is to, even if the
12 client maintains that they are not going to plead
13 or maintains their innocence, is to at least give
14 them that option, because it is their decision,
15 they need to have all the facts.

16 Q So in your experience, despite a client wanting to
17 pursue trial, that can change at the end, as you
18 approach trial, even during the trial?

19 A Yes.

20 Q If an offer is made or the right offer is made?

21 A Yes.

22 MR. WALLER: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. WALLER:

1 Q Thank you, Ms. Hines. I have nothing further.

2 A Thank you.

3 THE COURT: Mr. Davidson?

4 CROSS-EXAMINATION

5 BY MR. DAVIDSON:

6 Q Good afternoon, Ms. Hines.

7 A Hello.

8 Q How are you?

9 A Good.

10 Q Good. All right. So you have already testified
11 that -- and a couple of other witnesses have too --
12 that you took over this case after Ms. Singletary
13 left for private practice, correct?

14 A Correct.

15 Q And at the time that Ms. Singletary left, did you
16 know that she was going to later be involved in the
17 case?

18 A Yes. When she -- when Ms. Singletary left, she had
19 developed a rapport with Mr. Goodwin, and when she
20 left the office, she and I had a conversation about
21 this case in particular. She wanted to come back
22 for the trial and help -- to help try the case when
23 she -- you know, pro bono.

24 Q Okay. And when you first got the case, were there
25 any plea offers on the table to your knowledge?

1 A Not to my knowledge at that time.

2 Q Did you have any conversations with Ms. Singletary
3 about this case prior to meeting with Mr. Goodwin?

4 A Yes. I would have had -- when Ms. Singletary left
5 the office, as I said, we had a conversation about
6 the case. I don't know if -- I can't remember if I
7 met Mr. Goodwin before Ms. Singletary left the
8 office or if it was after, but I know that I had
9 talked to her about the case.

10 Q Did her conversation -- did y'all's conversation
11 give you any type of impression about the strength
12 of the case?

13 A Well, I mean, Ms. Singletary believed in
14 Mr. Goodwin's innocence. I myself believed in his
15 innocence. I don't know how much Ms. Singletary's
16 belief influenced it or how much it was the
17 discovery and meeting with him that influenced it.
18 I know that the longer my representation went on,
19 the stronger my belief became. And by the time we
20 got to trial, I was very -- extremely convinced of
21 his innocence.

22 Q And what was it about this case that convinced you
23 of his innocence so much?

24 A Well, I believed the expert in this case. I mean,
25 first of all -- well, the statement -- I think the

1 statement was coerced. The circumstances under
2 which they obtained the third statement, I believe
3 that was coerced by the coroner. The cause of
4 death of the pathologist, Dr. Marcus Bradley, or
5 Bradley Marcus, I can never remember what order his
6 name goes in, but the cause of death was listed as
7 unknown until February 16th, which was -- or the
8 15th, which was the day that the third statement
9 was obtained. On that day, Dr. Marcus changed his
10 cause of death on the autopsy report from "unknown
11 etiology" to "homicide, asphyxiation." And I think
12 it was based solely on that third statement, and I
13 think -- I have always believed that third
14 statement was coerced by the coroner. They took
15 him in -- they brought the family into the
16 Coroner's Office and they took Mr. Goodwin into a
17 room -- the coroner took Mr. Goodwin into a room,
18 separate room, and had a conversation with him that
19 day and came out, and he was like, Oh, well, here,
20 take your statement. Law enforcement was there.

21 And then the pathologist, Dr. Kessler, that I
22 had hired, found streptococcal pneumonia in Ms. --
23 in **DG's** adrenal glands, and I believed that.
24 I believed that that was the cause of death. There
25 were signs -- I think -- and it was right at the

1 very end that he came up with that that diagnosis.
2 In retrospect, I should have probably asked for a
3 continuance and tried to get more experts to back
4 that up. But I believe that -- you know, when we
5 had -- we had asked -- they had the slides, the
6 pathology slides, we asked that they do gram stains
7 and other kind of stains. One of the stains that
8 we -- we asked for separate special testing on the
9 slides, the autopsy slides, and one of them was to
10 show bacteria and the other one was to have fungus
11 show up. Silver stain, I think it might have been.
12 And when, you know, the bacteria showed up, it was
13 in the adrenal gland. Our pathologist's opinion
14 was -- and I believe that this is -- I still
15 believe that this is what happened -- but our
16 pathologist's opinion was that Demetra had been
17 sick and that a secondary infection had taken over
18 and attacked her adrenal glands and that -- which
19 is why there was streptococcal pneumonia in the
20 adrenal glands, and that that had caused sepsis and
21 attacked her whole body, and that that is what
22 actually killed her.

23 You know, the State put on a forensic
24 pediatrician who testified that she had been
25 vaccinated for the streptococcal -- for pneumonia,

1 and that the pneumonia vaccine was 100 percent
2 effective against all strains of pneumonia, which
3 is, I found out later, realized later, not true.
4 It is called Prevnar 13 because it is effective
5 against 13 strains of pneumonia, of which there are
6 over 99, and it is not 100 percent effective as
7 those 13. As we have learned in the last year,
8 there are no vaccines that are 100 percent
9 effective. I think that was a completely
10 inaccurate medical statement on the part of the
11 State's expert, and I should have had an expert to
12 negate that, to tell the actual, you know, medical
13 truth.

14 But that is why I believed in his innocence, I
15 think that was your question, all of those reasons.
16 And I still believe in it.

17 Q So is it fair to say that your strategy to
18 challenge the State's expert was to have an expert
19 of your own that not necessarily was refuting what
20 they were saying, but giving a different theory
21 completely?

22 A Our expert was giving a different theory
23 completely, because the theory that Dr. Kessler had
24 was that it was illness, disease, not homicide.

25 Q And how close to the trial did he make that

1 discovery?

2 A It was about three weeks, two or three weeks before
3 the trial.

4 Q And how long had he been signed up as one of your
5 potential experts?

6 A We hired him probably within the last two months
7 before trial.

8 Q Okay. And before hitting that 3-week mark before
9 trial where you made the discovery, was that the
10 only witness that you had consulted?

11 A It was the only expert that I consulted, yes.

12 Q And when you consulted with him, what did you ask
13 him to do?

14 A I asked him to look at the autopsy and tell me, you
15 know, what he thought. I didn't direct him -- I
16 mean, I didn't suggest an outcome, I just asked him
17 to review the autopsy and the medical records from
18 the day of and give me an opinion, tell me what, .
19 you know --

20 Q Okay. And at that point you had the reports -- or
21 did you have the reports of any of the State's
22 witnesses?

23 A I did. I had the report -- I had the autopsy
24 report.

25 Q Okay.

1 A I never received a report from Dr. Omarosa or
2 their -- I think I got a letter, a 1-page letter
3 from their radiologist like the week before trial.
4 I didn't have it before.

5 Q And going into trial, he was your defense, right?

6 A Yes.

7 Q His testimony was the defense you were going to put
8 up?

9 A Yes.

10 Q And so once the State's witness testified about the
11 child being vaccinated, you had no witness to put
12 up to counter that?

13 A I should have, and I didn't. I should have had a
14 pediatrician or somebody, an expert in vaccines,
15 and I didn't have anyone, and I had no expert to
16 put up to counter that. I know now that what that
17 expert said was not true.

18 Q But at the time?

19 A At the time I suspected it wasn't true, but I
20 wasn't an expert to be able to get up and testify.

21 Q So it is reasonable that you didn't object to that
22 testimony because you weren't a doctor?

23 A Well, I -- I mean, I think I'm obligated to object
24 whether I'm a doctor if an expert says something
25 that I think -- I mean, I don't think I can say,

1 Well, I'm not a doctor, so I can't object to what a
2 doctor says, I'm the lawyer. I should have -- if
3 there is something I should have objected to and I
4 didn't, that is --

5 Q Could you have asked for a witness to --

6 A I think we would have had to delay the trial at
7 that point. I mean, we were mid-trial. I didn't
8 have a report ahead of time.

9 MR. WALLER: Judge, I am going to object. I
10 know this is cross-examination, but this is kind of
11 far outside of what -- any issues we raised. We
12 never brought anything up about their experts or
13 Defense's experts, State's experts. I'm just not
14 sure what the relevance of this line of questioning
15 is.

16 MR. DAVIDSON: I'll move on.

17 THE COURT: All right. He indicates he will
18 move on.

19 BY MR. DAVIDSON:

20 Q All right. You heard testimony about -- from the
21 Solicitors about whether or not there was a plea
22 offer, from the trial team whether or not there was
23 a plea offer. And I believe you testified that you
24 didn't recall any conversation of a plea in the
25 Solicitor's lobby?

1 A I don't remember that conversation that Ms. Pinnock
2 testified about.

3 Q Okay.

4 A I do remember at some point in the lead-up for
5 trial, I do remember saying something in a -- I
6 remember smarting off to one of them, and I will
7 characteristic it like that, I smarted off to one
8 of them and said, He would take simple assault, or
9 I might have said, He would take time served. But
10 I remember smarting off to one of them. And I
11 don't remember where that happened or which --
12 whether it was Ms. Campbell or Ms. McDuffie, but I
13 do remember smarting off to one of them, but I
14 don't remember a conversation in the Solicitor's
15 Office lobby.

16 Q Okay. And your recollection, when you smarted off,
17 was that a plea negotiation?

18 A I mean, I don't know why I would say, He would take
19 simple assault, if it wasn't in the context of a
20 plea negotiation.

21 Q Okay. So at that point --

22 A I mean --

23 Q -- was it an offer?

24 A I don't remember what that was in response to.

25 Q Okay. And --

1 A I assume it was in the context of a plea
2 negotiation because I don't know why I would say
3 that outside of that context.

4 Q When you were in chambers the day of trial, you
5 testified that Ms. Campbell offered involuntarily
6 manslaughter, is that correct?

7 A That is my -- yes.

8 Q And your response was?

9 A No.

10 Q Okay.

11 A And I said it just about that quick.

12 Q Do you recall Judge Young having any reaction to
13 that?

14 A I don't remember if he had a reaction or not. I
15 know we were sitting in the chairs. We were in
16 chambers, we were sitting in chairs. Ms. Campbell
17 and I were sitting right in front of the judge's
18 desk in the two chairs, the main chairs. She was
19 on this side of me to my left. And she turned to
20 me and said, Will he take voluntary? And I said,
21 No.

22 Q Okay. And you heard her testimony that there was
23 no offer ever made?

24 A Yes.

25 Q Do you have any idea how that discrepancy exists

1 now?

2 A I don't. Maybe she doesn't remember that and I do.
3 I don't know why she wouldn't -- I mean, it was a
4 very quick thing. It is not unusual in judge's
5 chambers the morning of trial and to be haggling
6 and saying, you know, Would he take this, We would
7 take that. That type of thing is not unusual. Of
8 course, the judge is asking, you know, Is this
9 something we can work out? You know, that is --
10 typically in trial Monday morning the judge wants
11 to hear from us. The first question the judge has
12 is why -- you know, What is the offer? Has an
13 offer been made? Is it something we can work out?
14 Do we really have to try this case? That is what
15 the judge is looking for. And it was in that
16 context. She turned to me and said, Will he take
17 voluntary? And I said, No. That was it.

18 Q And up to that point there hadn't been any plea
19 negotiations?

20 A No.

21 Q At all?

22 A No.

23 Q Was that told -- did you tell that to the judge?

24 A I assume that we did. But I should have -- I
25 should have told Mr. Goodwin about -- I know that I