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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

The Honorable J. Mark Hayes, II
Circuit Court Judge

Case No. 2019-CP-42-01605

Stephanie Irene Greene, # 359489

Petitioner,

v.

State of South Carolina

Respondent.

**APPENDIX
VOLUME II**

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Dr. Susan Kovacs
Direct examination by Mr. Barnette

1 you on April 30th of 2010.

2 A Correct.

3 Q And Mirena is an I.U.D. or a contraceptive device.

4 A Right.

5 Q Showing you State's Exhibit 49 that's been entered
6 into evidence. You didn't know about a Darvocet
7 prescription that was given on August 23rd of 2010 by Dr.
8 Bridges, did you?

9 A No.

10 Q And then there's one other prescription I missed. I
11 apologize. State's Exhibit 50. This is a MS Contin
12 prescription that was given by you on August 26th of 2010.

13 A Correct.

14 Q And, as a matter of fact, when did you find out that
15 she had had a baby?

16 A When the Chico came to the office to ask us about it.

17 Q Okay. You're talking about agent with the --

18 A Yes.

19 Q Right here. And that was in 2011.

20 A Yes.

21 Q It was well after.

22 A Well after.

23 Q And you found out the baby died I believe
24 November 13th of 2000 [sic], but you found out after the
25 fact.

Dr. Susan Kovacs
Direct examination by Mr. Barnette

- 1 A Right. Whenever he came.
- 2 Q Right. So she never told you.
- 3 A No.
- 4 Q And you had visits with her after, I guess, after the
5 death.
- 6 A Correct.
- 7 Q And she never said anything to you.
- 8 A No.
- 9 Q Okay. State's Exhibit 51. This prescription on
10 September 29th of 2010, that was given by Carolina
11 O.B.G.Y.N. for Motrin and Percocet. You didn't know
12 anything about that prescription either, did you, ma'am?
- 13 A No.
- 14 Q Doctor, do you expect a patient to be honest with you
15 when you ask them what medications they're on?
- 16 A Yes.
- 17 Q And she never told you about the morphine, did she, I
18 mean, about the other drugs that she was taking?
- 19 A No.
- 20 Q And she didn't even tell you she'd been pregnant.
- 21 A Correct.
- 22 Q And, like I said, you didn't find out until Agent --
23 we call him Chico, everybody that knows him -- came and saw
24 y'all and started an investigation of this case.
- 25 A Right.

Dr. Susan Kovacs
Direct examination by Mr. Barnette

1 MR. BARNETTE: Thank you, Your Honor. One moment,
2 Your Honor, please.

3 (Pause.)

4 Q And, Doctor, I think you've answered this question,
5 but I just want to make sure the jury is clear about this.

6 If you had knew she was pregnant would you have
7 prescribed her MS Contin and morphine?

8 A No. And we would referred her for the pregnancy. I
9 said the Mirena. And we would have talked to the
10 obstetrician at that point in time to see, you know, what
11 medications could be used.

12 Q So you would have talked to the O.B.G.Y.N. about this.

13 A Oh, yeah. I mean, they're right around the corner
14 from us.

15 Q The only thing she talked to you about was a
16 conceptive device on April 30th of 2010.

17 A Correct.

18 Q She never told you she was pregnant.

19 A No.

20 Q Never told you she was breastfeeding.

21 A No.

22 Q Thank you, ma'am. Please answer any questions the
23 defense may have.

24

25

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 CROSS-EXAMINATION

2 BY MR. WISE

3 Q Doctor Kovacs --

4 A Uh-huh.

5 Q -- Ms. Greene had some complex pain problems.

6 A Correct.

7 Q A history of model -- a motor -- motor vehicle
8 accident in 1998.

9 A Correct.

10 Q And that was documented, I believe, in Dr. Kooistra's
11 file.

12 A It's in mine too.

13 Q And yours too. Did you review Dr. Kooistra's file,
14 her file, on this --

15 A No. I just --

16 Q -- when you first saw her?

17 A When we first saw her she would have sent us some
18 records.

19 Q She would -- Dr. Kooistra would have sent some
20 records?

21 A I would think she may have, or Stephanie may have told
22 me that. I know it's just in my records.

23 Q All right. But she had -- and she was referred to you
24 for problems with pain.

25 A Correct.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

- 1 Q Correct. And I think it's a little more. It was some
2 pelvic problems.
- 3 A For some fractures.
- 4 Q From prior fractures, correct, which is not surprising
5 for someone who had been in a serious automobile wreck.
- 6 A Right.
- 7 Q I think she had a fractured skull in that wreck.
- 8 A Correct.
- 9 Q So the pains that -- that she had were not -- were
10 very consistent with her prior medical history.
- 11 A Correct.
- 12 Q And when you're dealing with -- with pain how do you
13 start deciding what to prescribe -- prescribe to a patient?
- 14 A If they're on short-acting pain medication and it's
15 not holding them, usually it works well to start with
16 longer-acting pain medicine.
- 17 Q And when she came to see you she was taking
18 Vicoprofen.
- 19 A Right.
- 20 Q And you knew that.
- 21 A Right.
- 22 Q Okay. And that -- she came to see you I believe in
23 November of 2007.
- 24 A Correct.
- 25 Q All right. So I believe you -- you told the

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 investigators that -- that the Vicoprofen dropped off her
2 list in April of 2009.

3 A Yeah. At one point she was not on it any more.

4 Q All right. And how did you find out she was not on
5 it?

6 A By -- well, we would have talked about going on a
7 long-acting medication so that she wouldn't have to take
8 all of the short-acting medicine.

9 Q Okay. Well, the patch that you put her on is a
10 long-acting medication.

11 A Correct.

12 Q So, and Vicoprofen is basically what they call for
13 breakthrough pain, isn't it?

14 A Yes. It's a short-acting.

15 Q Right. And what is breakthrough -- why do you take
16 something for breakthrough pain?

17 A Well, you take it for breakthrough pain or just to
18 control your pain.

19 Q Right. But, well, what is breakthrough pain?

20 A If you continue having pain.

21 Q Even though you're taking a long-term pill, a
22 long-term --

23 A Yeah. I mean, you can use it with a long-term
24 medicine or you can use it just by itself.

25 Q All right. So it's not unusual to use them together.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 A No. You can use them together.

2 Q Okay. Now, you specifically mentioned that she was
3 going to continue to taking the -- continue to take the
4 Vicoprofen for breakthrough pain in your notes.

5 A Yeah, until we got her on a dose that worked for
6 long-acting.

7 Q And then -- and where in your notes did she get on a
8 dose that worked for long-acting and wouldn't need the
9 Vica -- Vicoprofen?

10 A October of 2009 she wasn't on it any more. That's
11 when she was just on a patch.

12 Q October of 2009 she was not on Vicoprofen any more?

13 A No. We don't have it on our list.

14 Q All right. What about -- when was the last time you
15 have it on her list?

16 A I only have here I talked to her in 2009. I'd have to
17 have the chart.

18 Q Excuse me?

19 A I only have October of 2009. I didn't bring the whole
20 chart.

21 Q Well, let me help you out a little bit here. Have you
22 got one for April of 2009?

23 A No. April of 2010.

24 MR. BARNETTE: Your Honor, may I approach the witness?
25 Your Honor, I believe I have her records here if that would

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 help.

2 THE COURT: Show those to Mr. Wise.

3 MR. WISE: All right. Okay. I mean, you're going to
4 let her use them?

5 MR. BARNETTE: Oh, yeah. I'm sorry.

6 THE COURT: You can give them to her. Either one.

7 BY MR. WISE

8 Q Have you found one for April, I believe?

9 A There's a January.

10 Q All right. I believe you saw her some in April and
11 May of 2009.

12 A There's a May.

13 Q May. Right. Is Vicoprofen listed on there?

14 A We don't have the full medication list on May.

15 Q What do you have listed for medication?

16 A See medication from January.

17 Q All right. Didn't you tell Chico that that -- that on
18 May 20th she was seen in your office?

19 A Correct.

20 Q All right. And what does it say about -- where is the
21 notation in your notes where she told you I am no longer
22 taking the Vicoprofen?

23 A But we had increased her pain -- her long-acting pain
24 medicine, Duragesic patch.

25 Q Where -- and when did you do that?

Dr. Susan Kovacs
Cross-examination by Mr. Wise

- 1 A Actually, we had changed it to the -- it would have
2 been May.
3 Q of 2009?
4 A 2009.
5 Q All right.
6 A May of 2009 -- from the seventy-five to the hundred.
7 Q All right. So you went from seventy-five to what?
8 A A hundred.
9 Q A hundred on the patch.
10 A Correct.
11 Q And that's when she told you or you told her not to
12 take the -- take the --
13 A Yeah. At that point I'm assuming that I'm the one
14 giving her pain medicine.
15 Q All right. Did you notate in there that you
16 instructed her not to take the Vicoprofen?
17 A No. We just took it off of her medication list.
18 Q You took it off?
19 A Well, yeah, by increasing one and stopping the other
20 one.
21 Q But you weren't prescribing Vicoprofen.
22 A No.
23 Q Doctor --
24 A But I'm taking over her care.
25 Q Dr. Kooistra was, right?

Dr. Susan Kovacs
Cross-examination by Mr. Wise

- 1 A Right.
- 2 Q Where did you tell her in that notation that she's no
3 longer to take Vicoprofen?
- 4 A Well, I would tell her that I was the one taking her
5 pain medication over.
- 6 Q Right.
- 7 A You can't have two doctors doing it.
- 8 Q Okay. So at that point you assume there was no
9 Vicoprofen.
- 10 A Correct.
- 11 Q Did you fill out a form for her in September of 2009
12 concerning a request for nonformula drug? Do you have that
13 in your file?
- 14 A No. I just have what you gave me.
- 15 Q Do you recognize this one?
- 16 A I didn't fill it out, but somebody filled it out.
- 17 Q That's your signature at the bottom?
- 18 A Yeah.
- 19 Q All right. But you signed off on it as having read
20 it.
- 21 A Correct.
- 22 Q All right. And that's September 8th of 2009.
- 23 A Correct.
- 24 Q And on there it refers to Vicoprofen as she is taking
25 Vicoprofen since 2007 through current.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 A Right. It's medications that she had been on so the
2 Duragesic patch could be approved.

3 Q Well, through current means current, doesn't it?

4 A It means that she had been on it and -- and medicines
5 didn't work well enough in the Duragesic patch. That's why
6 she needed a Duragesic patch.

7 Q But you didn't tell the people in this application
8 that she stopped taking Vicoprofen back in May, did you?

9 A No.

10 Q Because she wasn't taking -- she was still taking it,
11 wasn't she?

12 A Not that I now of.

13 Q And-but what did you mean by 2007 to current?

14 A Well, it just meant she had been on it. They probably
15 looked at an old note.

16 MR. WISE: I'd like to introduce this, Your Honor.

17 MR. BARNETTE: No objection.

18 (Dr. Kovacs' Application for patch marked Defendant's
19 Exhibit No. 1.)

20 Q Show you Defendant's 1 up there. All right. And
21 you're saying that when you filled out or somebody filled
22 out and you signed it, Vicoprofen, 7.5 mg, 2007 through
23 current, you didn't mean 2007 through current.

24 A No. It's just medications for pain that she had been
25 on to the Duragesic patch approved.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 Q what did you mean by -- well, Klonopin. Was she still
2 taking Klonopin?

3 A Yes.

4 Q Was she still taking Cymbalta?

5 A I would assume so.

6 Q Was she still taking Vicoprofen?

7 A Not that I would have known in my notes.

8 Q How do you differentiate between 2007 and current for
9 two of those, meaning something different from 2007,
10 current, for the other?

11 A Because they probably went back to the last note and
12 just copied down any medication that she had been on.

13 Q All right. You filled out another form for her,
14 didn't you, in November of 2009? Do you recognize this
15 one?

16 A Yes. The same thing. I would have copied it to try
17 to get the Avinza approved.

18 Q Okay.

19 MR. WISE: Like to move to introduce this one.

20 THE COURT: Excuse me.

21 Dr. Kovacs, you might need to adjust that microphone.
22 I think you're blowing into it, and it is causing that
23 thumping sound.

24 THE WITNESS: Okay.

25 (Dr. Kovacs' application marked Defendant's Exhibit No.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 2.)

2 Q I want to show you this one. Do you recognize it, the
3 one just looked at? All right. That was filed out for a
4 request to -- for step therapy exception. What is that?

5 A That's to get the Avinza approved for pain.

6 Q Avinza is not a patch.

7 A No. It's a pill.

8 Q It's a pill. And what is Avinza composed of?

9 A It would replace the Duragesic patch. It's a
10 long-acting pain pill.

11 Q It's similar to -- not necessarily similar in the
12 chemical sense, but use-wise similar to morphine.

13 A Correct.

14 Q Okay. And in that one at the bottom you had to list
15 the drugs she was taking, correct?

16 A Correct. They would have copied whatever was on
17 there.

18 Q You list Kolopin [sic], 2007 to current, correct?

19 A Correct.

20 Q You list Vicoprofen 2007 to current, correct?

21 A Correct. They --

22 Q Concurrent would mean November the 8th of 2009.

23 A They probably copied the last sheet.

24 Q Well, then you've got Cymbalta 2007 to 2009. That
25 wasn't on the last sheet that way, was it?

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 A Well, we may have changed it to something else. I'd
2 have to look.

3 Q But the last one means something different because it
4 tells you when it ends, correct?

5 A Correct.

6 Q And in filling out these forms it's important for the
7 agency to know what drugs they're on and when they stopped.

8 A No. It's more to just give reasons why they need to
9 have the medicine approved.

10 Q So you just made a mistake when you said 2007 to
11 current?

12 A I believe so. It's not in my note at that point in
13 time that she's on it.

14 Q Well, where is it in your note that she was instructed
15 to stop taking Vicoprofen, you instructed her to, or she
16 said I'm not going to take it?

17 A I don't know that we have it in a note.

18 Q In fact, you don't have it, do you?

19 A That we just have it October 30th of 2009. It's not
20 on her list anyway.

21 Q Okay. Dr. Kooistra -- not Kooistra -- Dr. --
22 referring doctor?

23 A Kooistra.

24 Q Kooistra. Right. She keep up you to date on what she
25 was doing for Stephanie?

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 A Sometimes we would receive notes; sometimes we don't.

2 Q Have you got any copies of any reports from Dr.

3 Kooistra in there?

4 A I don't believe so in here.

5 Q All right. In your -- in your file is your record for
6 Stephanie Greene.

7 A Right.

8 Q And -- and there are many things in there. How were
9 they generated, do you know?

10 A Dictated.

11 Q All right. And-but there's some other records in
12 there. Do people send you records on occasion, other
13 doctors?

14 A Sometimes.

15 Q All right. And you put it in the file.

16 A Right.

17 Q Obviously. Let me borrow your file one second.

18 (Pause.)

19 Q Is this in day order?

20 A I don't know. It's not my file.

21 Q Excuse me?

22 A It's his file. It's not records that I brought. They
23 were from the solicitor's office.

24 Q This isn't -- you didn't bring your file.

25 A No. Nobody told me to bring my file.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 Q All right. So for a year and a half roughly from the
2 time you first saw her in November of 2007 up until May of
3 2009 all of your records reflect that she was taking --

4 A Vicoprofen.

5 Q Yeah. Taking the hydrocodone, correct?

6 A Correct.

7 Q All right. And you have no notes in your file that
8 say that she was not taking -- that you advised her to stop
9 taking it or that she told you she was not taking it.

10 A No. It's not written out, but that's what we talked
11 about.

12 Q Isn't that --

13 A I'm taking over her pain medicine.

14 Q Isn't that old saying in the medical profession that
15 if it's not written down it's not documented?

16 A Well, it would still be on the medicine list if I
17 thought she was still on it.

18 Q Could you have accidentally left it off the medicine
19 list?

20 A I guess, but we would have put it back on.

21 Q All right. Now, give me if you would -- let me show
22 you.

23 I sent a request to your office requesting her file,
24 correct? I'm sorry these are not in order, but I'm going to
25 just deal with two years.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 All right. Do you know how many times you saw her in
2 2009 and 2010?

3 A Probably four to six.

4 Q Four to six over a 2-year period of time.

5 A I believe she usually came every six months.

6 Q Every six months. All right. So you didn't have a
7 lot of conversations with her for her to tell you anything.

8 A Well, I had enough conversations for her to ask me
9 refer her to gynecologist for a -- have a Mirena removed.

10 Q Now, MS Contin and the patch are both Schedule II
11 drugs.

12 A Correct.

13 Q Right? And those have different prescribing standards
14 from Schedule III drugs.

15 A Yeah. You can't get refills.

16 Q Well, you can't get refills. You can't call them in
17 either, can you?

18 A Right.

19 Q In fact, would you not agree that the department of
20 health and environmental control requires that the
21 physician actually write the prescription in the patient's
22 presence?

23 A No.

24 Q You don't. So you think you can schedule -- you can
25 prescribe a Schedule II drug and never have face-to-face

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 contact with that patient.

2 MR. BARNETTE: Your Honor, I'm going to object to this
3 line of questioning at this point.

4 THE COURT: Well, let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: All right. I've got one matter I'll need
8 to address outside of the jury's presence.

9 So I'll ask you to please go to your jury room. Don't
10 talk about the case. I'll bring you back in just a few
11 minutes.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Solicitor, your objection is
15 what?

16 MR. BARNETTE: My objection, Your Honor, I don't know
17 if Mr. Wise is correctly quoting the law. I don't know of
18 any law -- I'd like to see what law he's got.

19 THE COURT: All right. Show him.

20 MR. WISE: It's regulations of the department of
21 health and environmental --

22 THE COURT: Show that.

23 MR. BARNETTE: That's different. I mean, regulations,
24 now, we're getting into something totally different. He
25 said the law.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 THE COURT: Well, the regulations as promulgated are
2 the law.

3 MR. BARNETTE: I understand, but I'd like to see what
4 he's --

5 MR. WISE: It's regulation 61-4 -- dash -- well, .505.
6 Let me just highlight it for you. It's Regulation
7 61-4.501.1. And it says, "Such practitioner shall be in
8 personal attendance of a patient at the time of the
9 issuance of the prescription."

10 MR. BARNETTE: Your Honor, my position would be that
11 they have seen him. It don't mean -- it's crazy to have
12 every prescription filled with the person there. I mean,
13 that's not the way --

14 THE COURT: Well --

15 MR. BARNETTE: I disagree with Mr. Wise's reading in
16 that because I think it's -- it's basically you have seen
17 the patient. It's not that every individual
18 prescription --

19 THE COURT: Let me read it.

20 MR. BARNETTE: Yes, sir.

21 (Pause.)

22 THE COURT: Yes, I agree.

23 Mr. Wise, this means that there has to be a -- there
24 has to be a current patient-physician relationship where
25 the physician has knowledge of the patient's condition in

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 order to prescribe a Schedule II drug.

2 MR. WISE: I agree with that, but then it goes on to
3 say "and" in the highlighted portion. And it's just for
4 Schedule II drugs. It's not any other drugs.

5 THE COURT: I understand.

6 (Pause.)

7 THE COURT: All right. Mr. Wise, your point is what,
8 now? What?

9 MR. WISE: You can only schedule -- you can only issue
10 a Schedule II prescription in the presence of the patient.

11 THE COURT: So in this situation you're saying that
12 this prescription was not given to the patient?

13 MR. WISE: It was not issued in the presence of the
14 patient, no, sir.

15 THE COURT: Who got the prescription?

16 MR. WISE: Well, one was mailed and one was picked up
17 at the front desk. I know that. And I think she testified
18 some were filled out by other doctors in the office when
19 she wasn't there.

20 THE COURT: I agree. That's what it says.

21 MR. BARNETTE: Wait a minute. Judge, can I be heard
22 on that?

23 THE COURT: Sure, if you need to be. Do you want to
24 read it again?

25 MR. BARNETTE: Yes, sir. I mean -- I mean,

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 it's personally. It's not -- I think it's being
2 misconstrued. I mean, that's -- the problem is --

3 THE COURT: Well, it may be, but what it says is you
4 have to be in personal attendance of the patient.

5 And the purpose, the reason, for that is is so that --
6 in other words, her relative couldn't pick up that
7 prescription. That's the purpose of it. It's a different
8 type of drug. It's a Schedule II. It's strictly -- it's
9 more strictly regulated than are others. And according to
10 that regulation you have -- it says, "And be in personal
11 attendance of the patient."

12 I was reading it above to mean you had to have a
13 relationship, but that's in addition to. And attendance
14 means in the presence of, I think.

15 MR. BARNETTE: Well, Judge, here's the problem.

16 If we start looking at this regulation of this which
17 I -- obviously, you've got cancer patients, you've got
18 people that can't see the doctor personally. So you're
19 going to require every person to go see --

20 THE COURT: I'm not requiring anything. I'm talking
21 about what the regulation says.

22 MR. BARNETTE: I understand, but, I mean --

23 MR. WISE: There are some procedures in those
24 regulations for emergency prescriptions that have to be
25 followed up very strictly.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 THE COURT: And I'm sure there are likely other
2 regulations that conform to a hospital setting too, but
3 that's not what that regulation addresses.

4 Do you want to take a few minutes and do some further
5 research on it?

6 MR. BARNETTE: Yes, sir. Well, I think you -- the
7 relationship has got to be required. But then it talks
8 about -- I think you've got to read the whole reg. I think
9 just what Mr. Wise has pointed to is --

10 THE COURT: Well, I read that -- that whole
11 regulation. What part of it changes?

12 MR. BARNETTE: I'd like to look at all of it to be
13 honest with you.

14 THE COURT: Okay. Well, we'll take -- we'll take a
15 few minutes.

16 All right. Dr. Kovacs, I'm going to ask you to step
17 down from the stand, but you can't discuss your testimony
18 during this break because you're still on the witness
19 stand.

20 THE WITNESS: Okay.

21 THE COURT: All right. We'll be at ease for 15
22 minutes.

23 (Whereupon, a recess was taken.)

24 THE COURT: Let me see y'all just a minute.

25 (Bench conference held off the record.)

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 THE COURT: All right. Any matters to address before
2 the jury comes in?

3 MR. BARNETTE: Yes, sir. I know we have a conference
4 with Your Honor in chambers.

5 Your Honor, I'm going to make a motion to strike
6 because if you look at other regs concerning this I think
7 that basically the way the defense is reading it is not the
8 way it should be done.

9 They talk about D.E.A. regulations in the regs. They
10 talk about electronic prescriptions, listing D.E.A. This
11 is 103(b), I guess formerly R61-4504.

12 It says electronic prescriptions. List D.E.A.
13 regulations provide practitioner with the option of
14 transferring electronic prescriptions for controlled
15 substance, and lists paper prescriptions.

16 And they do -- I mean, this prescription was filled
17 out by this doctor. She prescribed it or had ordered it.
18 She had seen the patient from there.

19 So I think it's totally different from what the intent
20 of the reg is from the way the defense is going from there.

21 THE COURT: All right. Well, what is it that you're
22 wanting to have stricken?

23 MR. BARNETTE: Stricken the question where he says is
24 it in the law, say this.

25 THE COURT: Oh.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 MR. BARNETTE: He asked that question.

2 THE COURT: All right.

3 MR. WISE: My thought, Your Honor, is I think it's
4 pretty black and white.

5 If he contends this isn't the way the law should be
6 interpreted, then he can bring in somebody to say it's not
7 the way to interpret it. I'm just dealing with the law as
8 written.

9 THE COURT: Well, I think he's willing to do that.

10 I'm going to deny the motion to strike it, but we're
11 going to refrain from that line of questioning, although
12 you can question the witness about what you believe to be a
13 nonconformity. But you can't address the regulation. I'll
14 address that later.

15 MR. WISE: That's fine.

16 THE COURT: Okay. All right. Bring the jury in,
17 please.

18 Dr. Kovacs, if you don't mind, please, come back
19 around and resume your seat.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: I understand that some of the jurors have
23 requested to take notes. And sometimes that's allowed;
24 sometimes it's not. There are reasons for permitting it;
25 there are reasons for not allowing it. But in this

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 particular case I have determined that it should be
2 permitted.

3 But please understand that just because somebody's
4 taking notes doesn't mean everybody ought to take notes.
5 But, at the same time, you can't rely upon a note-taker's
6 notes as your own memory of what a witness has testified to
7 or what a fact that has been established is. You have to
8 base that upon your own memory.

9 Now, obviously when y'all go back to deliberate at the
10 trial's conclusion you'll be engaged in deliberations. And
11 at that time you'll be sharing your ideas and opinions
12 about things. But I'm just saying that even at that time
13 you can't just rely upon a juror's note-taking as your
14 memory of a fact. If you agree with it, that's fine. But
15 you can't just rely upon it.

16 And if you need to have testimony replayed when you go
17 back to deliberate, we can accommodate that request should
18 it be necessary.

19 So, in any event, the point of all of this is just
20 that you can take notes if you want to, but they're your
21 notes, and they're not to be relied upon by anybody else.

22 Okay. All right. Mr. Wise.

23 BY MR. WISE

24 Q Dr. Kovacs, I believe you stated earlier that you had
25 seen Ms. Greene four times in 2009 -- excuse me -- 2009 and

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 2010 if you can check the records there besides you if you
2 want to verify that.

3 THE COURT: While she's looking at those records let
4 me also tell the jury when you -- for those of you who have
5 a pad and who are taking notes, write your name on the top
6 of it or put your juror number if you want to. And at the
7 end of the day those pads will be put in an envelope.
8 They'll be sealed. Nobody will be looking at them. And
9 they'll given back to you in the morning.

10 BY MR. WISE

11 Q Is that correct?

12 A Correct.

13 Q So you issued during this period of time some 23
14 Schedule II narcotics.

15 A On two years, yeah, about.

16 Q Through November of 2010.

17 A Every month they get a refill.

18 Q Right. So that would be 23 of them through the end of
19 November of 2010.

20 A Correct.

21 Q And you saw her four times during that, those numbers
22 of times.

23 A If this is all of them, yes.

24 Q Well, I want you to go check your records. And if you
25 find any more appointments other than those, please come

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 back and let us know.

2 A Okay.

3 Q Okay. So you did not see her every time you issued a
4 prescription.

5 A No.

6 Q Correct? And, in fact, you mailed one to her, didn't
7 you? I hand you that and ask.

8 A Correct.

9 Q Correct?

10 MR. WISE: I'd like to introduce this as
11 Defendant's --

12 (Dr. Kovacs' script mailed August 27, 2010 marked
13 Defendant's Exhibit No. 3.)

14 Q Now, this prescription for MS Contin was mailed on
15 August 27th of 2010.

16 A Correct.

17 Q Is that a normal means for you to deliver
18 prescriptions to patients?

19 A Typically, they come and pick them up.

20 Q And when they don't you mail them.

21 A I don't know what the circumstance was with it.

22 Q And then you on occasion will leave it up front to be
23 picked up, is that correct?

24 A It can be up front in an envelope with their name on
25 it.

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 Q Correct.

2 A And they'll come and pick it up.

3 Q Is that correct?

4 A Correct.

5 MR. WISE: I'd like to introduce this one.

6 (Dr. Kovacs' script note to pick up marked Defendant's
7 Exhibit No. 4.)

8 Q And this was a notation that it'll be picked up
9 available June 28th. And what year is that? Is that '10?

10 A I can't see it.

11 Q I can't read it. I can't read it up there either.

12 THE COURT: Why don't you show that document to her
13 and let her look at it, and then you can put it back on
14 that.

15 Q See if you can read it better than I can, because I
16 certainly can't read it.

17 MR. BARNETTE: Has it been admitted into evidence yet,
18 Your Honor?

19 MR. WISE: Yes.

20 THE COURT: It has.

21 BY MR. WISE

22 A Yeah. This isn't actually from me.

23 Q Well, what -- what is that a note of?

24 A It's a note that somebody called in that they wanted
25 MS Contin when it was due, because this isn't a

Dr. Susan Kovacs
Cross-examination by Mr. Wise

1 prescription.

2 Q Correct. That's from your office though.

3 A Right.

4 Q And it's the prescription will be picked up.

5 A Right. It's a note taken from somebody when they
6 called in.

7 Q Correct. That the prescription will be picked up.

8 A Right. They have to come pick up the prescription.

9 Q And you leave them out front for somebody to pick up.

10 A No. They're in an envelope, and they have to show
11 their I.D. to pick them up.

12 Q Right. And husbands picked up wives' prescriptions
13 before?

14 A If their name's on their form.

15 Q If their name's on there.

16 A Yeah, on the HIPA form.

17 Q So it's not really necessary that Stephanie Greene
18 show up to pick up the prescription as long as she
19 authorizes some third person to do it.

20 A She would have to tell us who was going to pick it up.

21 Q Right. All right. Now, have you got the report there
22 for April 10th of 2010?

23 A Yes.

24 Q All right. Did you make a referral for her in that,
25 on that day?

Dr. Susan Kovacs
Cross-examination by Mr. Wise

- 1 A Yes, to the gynecologist.
- 2 Q All right. O.B.G.Y.N.
- 3 A To the gynecologist.
- 4 Q Okay. And do you know who you referred her to?
- 5 A We referred to Carolina O.B.G.Y.N.
- 6 Q Carolina O.B.G.Y.N., correct?
- 7 A Correct.
- 8 Q And did you follow up with Carolina O.B.G.Y.N. to get
- 9 a report from them?
- 10 A No, because I wouldn't have anything to do with having
- 11 a Mirena replaced.
- 12 Q All right. But you didn't make any effort to find out
- 13 in your report from them.
- 14 A Not for a contraceptive device.
- 15 Q Would they have sent you a report of anything?
- 16 A Not unless something probably went wrong with the
- 17 procedure.
- 18 Q Something went wrong with the procedure like she was
- 19 pregnant?
- 20 A Well, no. You wouldn't put in an I.U.D. if you were
- 21 pregnant.
- 22 Q I understand that. Something went wrong like the
- 23 O.B.G.Y.N. found out she was pregnant, would they notify
- 24 you?
- 25 A They may or may not.

Dr. Susan Kovacs
Redirect examination by Mr. Barnette

1 Q You're a pain doctor, correct?

2 A I'm internal medicine.

3 Q Internal medicine. And you prescribe pain medicine.

4 A Right.

5 Q So the O.B.G.Y.N. who you referred it to, you would
6 not expect them to contact you if the O.B.G.Y.N. found --

7 A Well, if they knew she was on pain medicine, yeah,
8 they probably would.

9 Q But they didn't. In this case they didn't notify you.

10 A No.

11 Q Okay. Thank you very much.

12 MR. BARNETTE: Just a couple on followup, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. BARNETTE

15 Q Doctor, let me show you Defendant's Exhibits 4 and 3.
16 Actually, this is not even a prescription.

17 A Right. That's what I said. It's not a prescription.
18 It's a note taken from a phone call.

19 Q It is. But that's on July 28th, I mean, 2010. They
20 asked for it to be picked up, didn't they?

21 A Right.

22 Q Defendant's Exhibit 3. They mailed it August 27th of
23 2010.

24 A Correct.

25 Q They -- the defendant requested that obviously.

Dr. Susan Kovacs
Redirect examination by Mr. Barnette

1 A Correct.

2 Q She was pregnant, but she didn't want y'all to know
3 about it, did she?

4 A That's what it sounds like.

5 MR. WISE: I object. He's leading the witness.

6 THE COURT: Sustained.

7 BY MR. BARNETTE

8 Q If you would, ma'am, just do have still your
9 April 30th of 2010 note?

10 A Yes.

11 Q And in the note if I read it right you said, "She
12 would like me to refer her to a gynecologist."

13 A Correct.

14 Q She asked you that, right?

15 A Yes.

16 Q And then she needs the -- I can never pronounce that.

17 A Mirena.

18 Q Mirena removed.

19 A Correct.

20 Q And she wanted to go off the Duris [sic] patch and try
21 a pill.

22 A Correct.

23 Q And she said the Azitom [sic] was too strong and she'd
24 like to try MS Contin.

25 A Correct.

Dr. Susan Kovacs
Recross-examination by Mr. Wise

1 Q And they're the ones who requested those prescriptions
2 either be picked up or mailed to them.

3 A Correct. Usually, they come and pick them up.

4 Q So you didn't -- but they have to come to your office
5 and pick them up, right --

6 A Correct.

7 Q -- which is in your presence. I mean, obviously your
8 office is your -- office is a business, is that right?

9 A Right.

10 Q Is that a normal thing to be done?

11 A Yes.

12 MR. BARNETTE: Excuse me one second, Your Honor.

13 (Pause.)

14 Q And just one other question. Doctor, is it common to
15 discontinue a medicine and use medication for the same
16 reason, to go to another medication?

17 A Yes.

18 Q So that's just normal to discontinue that one and you
19 switch to another medication.

20 A Right.

21 Q Thank you, ma'am.

22 RECROSS-EXAMINATION

23 BY MR. WISE

24 Q Just a couple of questions.

25 The pain pill that begins with an A, the --

Dr. Susan Kovacs
Recross-examination by Mr. Wise

- 1 A Avinza.
- 2 Q Avinza. She complained it was too strong.
- 3 A Right.
- 4 Q Is that a problem you had with other patients too?
- 5 A A lot of people don't like Avinza.
- 6 Q All right. And it depends on the individual.
- 7 A Right.
- 8 Q Different problems with different medicines.
- 9 A Correct.
- 10 Q But her complaint was it was too strong.
- 11 A Right.
- 12 Q And so you switched to something that would not be
- 13 quite as strong?
- 14 A That hopefully she'd tolerate better.
- 15 Q Okay. And that was the MS Contin.
- 16 A Correct.
- 17 Q Thank you.
- 18 THE COURT: You may step down.
- 19 MR. BARNETTE: We'd ask for the witness to be excused,
- 20 Your Honor.
- 21 THE COURT: You may also be excused.
- 22 MR. BARNETTE: Your Honor, I would like to call Dr.
- 23 Kooistra to the stand.
- 24
- 25

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 DR. CAROL A. KOOISTRA, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, Doctor, state your full name for the
5 record, please.

6 A Carol Antonsen Kooistra.

7 Q And where do you work at, ma'am?

8 A I work at Carolina Neurology, 541 Floyd Road,
9 Spartanburg.

10 Q And how long have you been a medical doctor, ma'am?

11 A I've been a medical doctor for 30 years.

12 Q If you would, just tell the jury a little bit about
13 your educational background.

14 A I went to the University of Virginia where I graduated
15 with honors. Undergraduate I went to the University of
16 Virginia Medical School and then moved into an internship
17 in internal medicine at a Yale affiliated hospital in
18 Connecticut.

19 I then entered neurology training for three years at
20 the University of Florida where I was chief resident. I
21 did an additional year of training at the University of
22 Florida in higher functions and behavioral neurology, and
23 very much time was also as assistant professor at the
24 University of Florida.

25 I left the University of Florida and entered private

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 practice in Spartanburg in July of 1987 where I have
2 remained.

3 MR. BARNETTE: Your Honor, I'd like to move her as an
4 expert in medicine at this time, Your Honor.

5 MR. WISE: No objection.

6 THE COURT: She is so qualified.

7 BY MR. BARNETTE

8 Q Doctor, was the defendant a patient of yours, ma'am?

9 A Yes, sir.

10 Q I want you to tell this jury when you first met her in
11 2006 what condition she was in.

12 A Can I obtain my records?

13 Q Yes, ma'am.

14 A Well, Ms. Greene at that time was referred to me for
15 actually a seizure disorder, and she was also pregnant at
16 the same time.

17 Q So she was pregnant when you first met her.

18 A Yes, sir.

19 Q Did you prescribe her any narcotics at that time?

20 A No, sir.

21 Q Why not?

22 A Because basically I try to avoid prescribing
23 medications of any sort during pregnancy.

24 Q And what did you prescribe for her at that time?

25 A I did prescribe her seizure medicine, because it's

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 always a tradeoff trying to weigh risk and benefit in
2 treating patients who are pregnant.

3 Q And what kind of medicine did you give her for her
4 seizures, ma'am?

5 A You'll have to excuse the old paper charts.

6 I began her on a medication called Levetiracetam which
7 is also known -- name brand known as Keppra.

8 Q And that was for her seizures, no pain or anything
9 like that.

10 A That's correct.

11 Q You wasn't going to give her -- you didn't give her
12 any pain medication while she was pregnant.

13 A That's correct.

14 Q Go ahead, ma'am. I'm sorry.

15 A I did prescribe her some Darvocet in limited
16 quantities during that pregnancy.

17 Q But you didn't give her hydrocodone or Vicoprofen or
18 any morphine or anything like that.

19 A No, sir.

20 Q And, as a matter of fact, when she first came and saw
21 you I believe it was January 5th of 2006. Let me show you
22 what's been marked as State's Exhibit 59. Did she sign
23 what we call a narcotic pain medication contract with your
24 office?

25 A Yes, she did.

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 Q And do you have this done with every patient that
2 comes to your office?

3 A Yes, I do.

4 Q And was this signed -- given to her and did she sign
5 on January the 5th of 2006? I'll give you a chance to look
6 at it.

7 A Yes, she did.

8 MR. BARNETTE: Your Honor, I'd like to move this into
9 evidence at this time.

10 MR. WISE: No objection.

11 THE COURT: It's admitted.

12 (Contract marked State's Exhibit No. 59.)

13 MR. BARNETTE: Can I publish it to the jury, Your
14 Honor?

15 THE COURT: You may.

16 BY MR. BARNETTE

17 Q Showing you State's Exhibit 59. And, like I say, this
18 is a contract that you have signed with every patient that
19 you have.

20 A Yes, sir.

21 Q And it goes through what her responsibilities is. And
22 can you read No. 2 for us, please? It --

23 A I'm at a bad angle and I did not bring my glasses.

24 Q I'm sorry. Can -- can you read up close?

25 A Be near the mic -- if you don't mind, let me read

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 this.

2 Q No problem. And then I'll put it up there so you can
3 read it.

4 A But item No. 2 says, "I will not request or accept
5 controlled substance medication from any other physician or
6 individual while I am receiving such medication from my
7 physician at Carolina Neurology. Besides being illegal to
8 do so, it may endanger my health. The only exception is if
9 it is prescribed while I am admitted in the hospital."

10 Q I'll try to get you another copy of it too, ma'am. Do
11 you have a copy of it too?

12 A Somewhere.

13 Q So No. 2 is what you just read to the jury.

14 A Yes, sir.

15 Q Okay. So she signed a contract saying she
16 is responsible -- would not request or accept a controlled
17 substance medication from another physician, that is she
18 receiving it from you, from y'all.

19 A That's correct.

20 Q As a matter of fact, on page two does it have the
21 actual laws concerning this put on there?

22 A Yes, sir.

23 Q I believe it's section 44-53-390 and section
24 44-53-390 -- or 395 and 390. Excuse me.

25 A That's correct.

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 Q And this was given to her for her to read.

2 A That's correct.

3 Q I'm not going to read all that's on there. But
4 obviously it goes through explaining everything to them.
5 Do you have a copy in front of you down there?

6 A Yes, sir.

7 Q Okay. If you would, just read No. 6 for us.

8 A No. 6 says, "I understand that if I violate any of the
9 above conditions my controlled substance prescriptions
10 and/or treatment at Carolina Neurology may be ended
11 immediately. If the violation involved obtaining
12 controlled substances from another individual as described
13 above or the concomitant use of nonprescription or illicit
14 or illegal drugs I may also be reported to my physician,
15 medical facilities and other appropriate authorities."

16 Q And she signed -- signed this contract, is that right?

17 A Yes, sir.

18 Q And she wrote down. What grade did she complete?

19 A College grad, B.S.N.

20 Q What does B.S.N. mean, ma'am?

21 A Bachelor of science in nursing.

22 Q In treating her, when did you see her in 2010, ma'am?

23 A In 2010 my actual visit, first visit, with her was
24 2/16/10. She had had a no-show in January.

25 I'd also saw her in November -- 11/4/10. Between

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 those two actual office-visit dates there were several
2 phone calls for prescriptions.

3 Q Okay. Had she scheduled appointments?

4 A And there were two additional no-shows.

5 Q So she had scheduled appointments but did not show up.
6 Do you know when those appointments were scheduled, Doctor?

7 A One appointment was May 13th of 2010, which would have
8 been the routine three months after her February visit, and
9 she also had an appointment that she no-showed for
10 August 25th of 2010.

11 Q So later on she kept getting prescriptions from you
12 all, is that correct?

13 A Yes, she did get prescriptions. She had called for a
14 prescription approximately on 20 days prior to her missed
15 appointment in August. So that would have been August 5th.
16 And we noted then that she had an appointment coming up,
17 but then she failed to show for her subsequent appointment.

18 Q So the reason why y'all filled it, you felt like you
19 was going to see her 20 days afterwards. But she didn't
20 show.

21 A That's correct.

22 Q So did she request additional prescriptions in
23 October?

24 A Yes, she requested a prescription in October,
25 October 28th, for some Soma.

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 Q Okay. And what happened once she made that request?

2 A We -- I said no, she had not been seen since February
3 and she needed to come in.

4 Q So she came in. When did she come in to see you,
5 ma'am?

6 A So she came in to see me on November 4th.

7 Q Okay. At that time did she tell you that she had been
8 pregnant?

9 A No, sir.

10 Q Did she tell you that she was breastfeeding?

11 A No, sir.

12 Q In talking to her why did she say she missed all the
13 appointments and why she hadn't come and saw you?

14 A When I asked her why there had been this absence she
15 explained to me at that time that she had been in a severe
16 depression and had been unable to leave her house.

17 Q That's what she had told you in your report.

18 A Yes, sir.

19 Q Based off that did you give her prescriptions?

20 A Yes, sir.

21 Q And let me go through, Doctor. Going back to March of
22 2010, what was you prescribing her at that time?

23 A I was prescribing her Keppra for her seizure disorder,
24 Vicoprofen, Soma, Klonopin, Gabapentin, Prinprexol [sic].

25 Q Did she ever call you and tell you that she had had a

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

- 1 positive pregnancy test on March 20th of 2010?
- 2 A No, sir.
- 3 Q Did she continue to receive prescriptions through
- 4 April and May?
- 5 A April and May of what year?
- 6 Q of 2010. I'm sorry.
- 7 A I believe so.
- 8 Q Okay. And what was those prescriptions, ma'am?
- 9 A That section of the computer chart I did not bring
- 10 with me.
- 11 Q But it continued on with the same type of
- 12 prescriptions, ma'am?
- 13 A Yes, it would be the same prescriptions. We were --
- 14 we did change the Soma to Baclofen in November of 2010.
- 15 But otherwise her prescriptions remained stable throughout
- 16 the period of time preceding two to three years.
- 17 Q During this time did you know she was seeing an
- 18 O.B.G.Y.N. for pregnancy or anything like that?
- 19 A No, sir.
- 20 Q Did you know that Dr. Kovacs was prescribing morphine
- 21 to her, or MS Contin?
- 22 A No, sir.
- 23 Q She never told you that?
- 24 A No, sir.
- 25 Q As a matter of fact, when she was pregnant in 2006 you

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 didn't prescribe her any narcotics other than the Darvocet.

2 A That's correct.

3 Q And if you known she was pregnant would you have
4 prescribed the Vicoprofen, the hydrocodone, which is the
5 same thing, Klonopin, all of the other drugs?

6 A I would have had a conversation, and we would have
7 discussed between Ms. Greene, her obstetrician and myself
8 the risks and benefit of continuing this regimen. There
9 would be risks in discontinuing it; there'd be risks in
10 continuing it.

11 Q And obviously you never had that conversation.

12 A No, sir.

13 Q Because she never told you.

14 A No, sir.

15 Q Just going through these, State's Exhibit 43. Is that
16 a prescription that was supplied by your office for
17 Klonopin?

18 A That's a notation of a call-in prescription.

19 Q And is that something you would do for patients, to
20 call in prescriptions? You don't call them, actually call
21 them, into the pharmacy, is that right?

22 A Correct. Molly, who was my employee at that time,
23 called that in.

24 Q Would that be requested by -- by the defendant in this
25 case?

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 A Yes. And, as you can see, we don't give actually
2 refills on any controlled substance. So every month,
3 whether refills are allowed or not by law, we don't tend to
4 add refills so I can keep track of things a little bit.

5 Q Okay. State's Exhibit 44. Is this also a call-in for
6 July 6th of 2010?

7 A Yes, sir.

8 Q Is that Vicoprofen?

9 A Yes, sir.

10 Q Show you State's Exhibit 48. Is this a call-in
11 prescription for Klonopin?

12 A Yes, sir.

13 Q Showing you State's Exhibit 47. Is that a call-in
14 prescription for Vicoprofen also?

15 A Yes, sir.

16 Q And that was on August 5th of 2010?

17 A Right. That's the date that -- that was 20 days prior
18 to her anticipated office visit.

19 Q Which she canceled or did not show, I should say.

20 A Correct.

21 MR. BARNETTE: I apologize. One second, Your Honor.

22 (Pause.)

23 Q Let me show you State's Exhibit 54. Now, this is when
24 you had the office visit on November 4th of 2010.

25 A That's correct.

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 Q She never told you she had her baby, never told you
2 that she was breastfeeding.

3 A That's correct.

4 Q And she told you she was depressed and so forth, is
5 that right?

6 A That's correct.

7 Q Was shut in the whole time.

8 A That's correct.

9 Q And so you prescribed these to her to try to -- why
10 did you prescribe those drugs?

11 A Well, three of those drugs -- and that is my
12 handwriting -- drugs numbered two through four were her
13 preexisting regimen.

14 Drug No. 1 is a muscle relaxer that we were attempting
15 to try at her request in place of Soma which is -- which
16 was considered initially as a muscle relaxer but is now
17 recognized primarily as a narcotic.

18 Q Let me show you State's Exhibit 53. Like I said, you
19 had given her Klonopin on November the 4th, is that right?

20 A I wrote a prescription for it at that time, yes.

21 Q Yes, ma'am. Obviously, State's Exhibit 53, you didn't
22 know that Dr. Kovacs had wrote a prescription for Klonopin
23 on October 29th of 2010, did you?

24 A No, sir.

25 Q Would you have gave her a second prescription of that

Dr. Carol Antonsen Kooistra
Direct examination by Mr. Barnette

1 knowing that somebody had just filled it five -- or given
2 one five days earlier?

3 A No, sir.

4 Q And you didn't know she was getting -- and I can go
5 through them, but I'm not going to go through every one
6 because the jury has seen them. You didn't know that Dr.
7 Bridges had prescribed all of the drugs also, is that
8 right?

9 A No, sir.

10 Q So you didn't know. You hadn't had any talk with her
11 O.B.G.Y.N. because there's no reason to.

12 A That's correct, sir.

13 Q As a matter of fact, like you said, you didn't know
14 she was pregnant.

15 A That's correct.

16 Q But in 2006 you did, didn't you?

17 A Yes, sir.

18 Q And you didn't prescribe any of these medications for
19 her then, did you?

20 A No, sir.

21 Q As a matter of fact, you wouldn't subscribe [sic]
22 these medications if you knew she was breastfeeding too,
23 right, or would you have had a discussion with her --

24 A Again, a discussion with the patient and her -- and
25 the baby's pediatrician and to decide what the best course

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 of action was.

2 Q And the other thing too, and you wouldn't have
3 prescribed these medications if you knew she was getting
4 morphine and Klonopin from Dr. Kovacs, would you?

5 A Correct.

6 MR. BARNETTE: One moment, Your Honor, please.

7 (Pause.)

8 Q Thank you, ma'am. Please answer any questions the
9 defense may have for you.

10 CROSS-EXAMINATION

11 BY MR. WISE

12 Q You referred her to Dr. Kovacs, correct?

13 A I don't have an independent memory of that, and her
14 paper chart doesn't contain notations to that effect that
15 I'm aware of, but it's possible.

16 Q It's possible. Did you say that?

17 A Yes, sir. I do refer patients to Dr. Kovacs if
18 they're in need of a family doctor.

19 Q Have you got your notes from October the 4th of 2010?

20 A Yes, I do.

21 Q And you saw her on -- excuse me -- November the 4th of
22 2010.

23 A Yes, sir.

24 Q You've got that?

25 A Yes, sir.

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 Q And you saw that and prescribed several medicines for
2 her or listed her prescriptions, correct?

3 A Yes, sir.

4 Q And then on the second page I see that you've carbon
5 copied Dr. Kovacs.

6 A Yes, sir.

7 Q And that would be because Dr. Kovacs -- you had
8 referred her to Dr. Kovacs.

9 A It would be because I knew she was seeing Dr. Kovacs
10 at that point in time.

11 Q And so you sent a copy of that report to Dr. Kovcas on
12 November the 4th of 2010.

13 A Yes, sir.

14 Q And that report said that -- let me. Is this a copy
15 of your report?

16 A Yes, sir.

17 Q All right.

18 (Dr. Kooistra's report marked Defendant's Exhibit No.
19 5.)

20 Q I show you Defendant's 5. And there on the second
21 page is the carbon copy to Dr. Kovcas, correct?

22 A That is correct.

23 Q All right. Because either you had referred her to Dr.
24 Kovacs and knew she was seeing him -- for whatever reason,
25 you thought it was appropriate to him him a copy -- send

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 her a copy.

2 A Correct. I had made a number of medicine changes that
3 day. It had been a little bit of an extended visit.

4 Q And the medicines are listed there at the bottom,
5 right?

6 A The prescriptions that I wrote that day as we saw on
7 the --

8 Q Right. And Vicoprofen is on one of those.

9 A Yes, sir.

10 Q Now, have you got your file with you?

11 A I have my paper file and I have my office visits from
12 my computer-generated record.

13 Q Does your file reflect any comment from Dr. Kovacs
14 after you sent her that on November the 4th of 2010?

15 A The only communication that I am aware of that I have
16 from Dr. Kovacs is a letter dated September 2nd of 2011.

17 Q 2011. Can I see that letter? And that was the letter
18 from Dr. Kovacs basically restating her physical, is that
19 correct?

20 A And some laboratory results, yes.

21 Q Right.

22 MR. WISE: I'd like to introduce this.

23 THE COURT: Show it to Mr. Barnette.

24 MR. BARNETTE: May it please, Your Honor. I am going
25 to object because I don't understand the relevance of this.

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 THE COURT: All right.

2 MR. BARNETTE: She's -- it's after the incident
3 occurred and everything.

4 MR. WISE: I understand.

5 THE COURT: Let me see it.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 (Letter from Dr. Kovacs to Defendant dated September 2,
9 2011, marked Defendant's Exhibit No. 6.)

10 Q So you sent Defendant's Exhibit 5 to Dr. Kovacs on or
11 about October the 4th of 2010.

12 A That's correct.

13 Q And the next response you got from Dr. Kovacs was this
14 letter of September 2nd of 2011.

15 A It is possible that the patient brought that letter
16 with her at some point and gave it to me.

17 Q So you don't know if you got any response from Dr.
18 Kovacs.

19 A That's correct.

20 Q Okay. But at least you got that in your file somehow.

21 A Correct.

22 Q And you have no other indication of any response from
23 Dr. Kovacs in response to the file you sent her.

24 A That's correct.

25 Q Now, Stephanie's health problems were pretty complex,

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

- 1 is that correct?
- 2 A That's correct.
- 3 Q And, in fact, you would agree that she is disabled.
- 4 A That's correct.
- 5 Q And disabled for what reason?
- 6 A For the difficulties with her chronic pain and
- 7 limitations with the use of her neck, arms, back, plus
- 8 potential side effects from her medications.
- 9 Q And you were asked to fill out a form I believe when
- 10 she was applying for disability, correct?
- 11 A I would like to see the form.
- 12 Q Sure. No problem.
- 13 A I fill these forms out every day.
- 14 Q I understand.
- 15 A Yes.
- 16 Q All right. And these were filled out in 2008,
- 17 correct?
- 18 A I'd have to look at the date.
- 19 Q Well, I think it was 2008.
- 20 A August 7th of 2008.
- 21 Q Okay. And in this form you basically say she cannot
- 22 lift more than ten pounds at a time.
- 23 A I would need to see the form.
- 24 Q I promised you I had a copy, and I don't. I
- 25 apologize. All right. You go through it then.

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 Can't lift more than ten pounds at a time, correct?

2 A Lifting no more than ten pounds at a time and
3 occasionally lifting --

4 MR. BARNETTE: Your Honor, I don't understand the
5 relevance, and I object to the relevance of this from that
6 standpoint. I mean, she -- I think she said she applied
7 for disability and what not.

8 MR. WISE: They're prescribing a lot of pain
9 medication for my client, and I think it's relevant for the
10 jury to know the nature of her disability for what she was
11 receiving this medicine.

12 THE COURT: Overrule the objection.

13 BY MR. WISE

14 Q Go ahead.

15 A This questionnaire asks the following: "On an 8-hour
16 day, 5-day per week basis, can Stephanie Neet engage in
17 even sedentary work on a sustained basis, defining
18 sedentary work as follows," quote, "sedentary work involves
19 lifting no more than ten pounds at a time and occasionally
20 lifting or carrying articles like docket files, ledgers and
21 small tools. Although a sedentary job is defined as one
22 which involves sitting, a certain amount of walking and
23 standing is often necessary in carrying out job duties.
24 Jobs are sedentary if walking and standing are required
25 occasionally and other sedentary criteria are met."

1 And I answered that question, no, she cannot perform
2 sedentary work.

3 Q Okay. And the second question was?

4 A "Can Stephanie stand and walk in combination for more
5 than a few minutes during the work day?"

6 Q Okay. And your answer was?

7 A My answer was no.

8 Q The next one.

9 A "Must Stephanie avoid stooping? Yes. If Stephanie
10 attempted to work on an 8-hour day, 5-day per week, basis
11 would she most probably have to rest away from the work
12 station for significantly more than an hour during the
13 working portion of the work day?" And the answer was yes.

14 "If Stephanie attempted to work on an 8-hour day,
15 5-day per week, basis would she most probably have to miss
16 more than three days of work per month?" And the answer
17 was yes.

18 "If she attempted to work on an 8-hour day, 5-day per
19 week, basis would Stephanie most probably have to elevate
20 her legs above the waist for significantly more than an
21 hour during the working portion of the day?" I wrote no.

22 "If Stephanie attempted to work on an 8-hour day,
23 5-day per week, basis is it most probable that she would
24 have problems with attention to and concentration
25 sufficient to frequently interrupt tests during the working

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 portion of the work day," to which I answered yes.

2 "What are the diagnoses that underline the above
3 impairments?" I put, I said, fibromyalgia and seizures.

4 "What are the bases for your opinion that she suffers
5 from the above impairments at the above level of severity?"
6 And I put history and examination.

7 MR. WISE: I'd like to move to introduce this.

8 MR. BARNETTE: No objection.

9 (Disability opinions by Dr. Kooistra marked Defendant's
10 Exhibit No. 7.)

11 Q And in addition to what you listed you didn't even
12 mention the 1980 -- 1998 automobile accident, did you?

13 A Well, I believe her fibromyalgia to be a post -- have
14 a posttraumatic component to be in part related to that.

15 Q Related to the automobile wreck?

16 A Yes.

17 Q Okay. And she was involved in a quite severe
18 automobile wreck.

19 A Correct.

20 Q And you've reviewed those records.

21 A I don't know that I've reviewed those records
22 independently.

23 Q All right. But there's no question about that.
24 You've had x-rays made and --

25 A I don't -- I -- I believe that to be true.

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 Q Now, do you -- do you prescribe any Schedule II drugs?

2 A Yes, sir.

3 Q You do on occasions?

4 A Yes.

5 Q All right. You sent her the course to -- excuse me --
6 sent her to Kovacs for what reason?

7 A Well, first of all, I don't know for sure that I'm the
8 one who sent her.

9 Q Could you check your file and see?

10 A I've already checked my file.

11 Q Oh, okay.

12 A And-but if I sent her to Dr. Kovacs it would be for
13 the purpose of internal medicine management and not pain
14 management.

15 Q All right. And do you know what prompted you to send
16 that copy of that November of 2010 letter to Kovacs?

17 A I think, as I've already mentioned, this visit
18 followed a period of time that was a bit unusual.

19 She had had several no-shows. And then the reason
20 that she reported to me as the no-show involved a severe
21 depression.

22 I was changing one to two medications that could have
23 some potential side effects that she might interpret as a
24 medical problem such as nausea or something like that. And
25 I thought that to make that major of change she should --

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 her family doctor should be aware.

2 Q You just thought it was appropriate to exchange
3 information with another doctor that you knew the patient
4 was seeing?

5 A Correct.

6 Q And that's good medical practice.

7 A I consider that.

8 Q Do other doctors occasionally send you medical records
9 on their patients without your requesting them?

10 A Yes, sir.

11 Q And that's good medical practice.

12 A Yes, sir.

13 Q Because things don't always get communicated well if
14 you go through a third party like the patient.

15 A I just think it's a more direct way to let them know.

16 Q It's a more reliable way anyway, true?

17 A Correct.

18 Q All right. Now, she wanted to switch off from Soma to
19 what?

20 A Baclofen.

21 Q And the -- and the Soma -- and what was the reason for
22 that?

23 A Well, I believe she didn't think the Soma was working.
24 Again, when Soma -- Soma is a very old drug. And when it
25 was officially -- first released 30 years or more ago it

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 was felt to be a muscle relaxant. However, the body
2 actually takes this compound and metabolizes it into a
3 narcotic called meprobamate.

4 So over time it became recognized that it was not
5 really functioning as a muscle relaxant. It was really
6 functioning as a narcotic analgesic. And so especially in
7 the past five to eight years there has been attempts to
8 limit its use for the purpose of muscle relaxants. And it
9 has had its schedule change as well.

10 Q Now, you prescribed Darvocet on prior pregnancies.

11 A Correct, in the third trimester.

12 Q And Darvocet is now -- not recommended for taking
13 during pregnancy because it is a cardiologic toxin?

14 A Well, actually it's off the market.

15 Q It's off the market now?

16 A Yes.

17 Q And they took it off because of?

18 A I'm not sure to be honest.

19 Q All right. Now, you're aware that morphine can be
20 taken during pregnancy.

21 A Yes, sir.

22 Q And, in fact, there are women with morphine pumps
23 while pregnant and continuing after pregnancy.

24 A That's correct.

25 Q And the American Academy of Pediatric finds nothing

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

- 1 wrong with taking morphine while breastfeeding.
- 2 A So I've read.
- 3 Q So you've read. You've read those articles.
- 4 A I read a brief mention of that, yes.
- 5 Q You didn't research in its entirety.
- 6 A No. I was not prescribing morphine.
- 7 Q But you're aware that's out there.
- 8 A Yes, sir.
- 9 Q And you have prescribed it on occasion.
- 10 A Morphine sulfate?
- 11 Q Right.
- 12 A Yes. I can't that say I prescribed it to
- 13 breastfeeding women. I don't remember going through that
- 14 discussion with anyone, but I certainly have prescribed my
- 15 share of morphine.
- 16 Q So you didn't see her for a period of about nine
- 17 months?
- 18 A That's correct.
- 19 Q And you don't know what drugs she was taking during
- 20 that period of time because you never had a conversation
- 21 with her.
- 22 A That's correct.
- 23 Q All right. And you are using Vicoprofen for
- 24 breakthrough pain.
- 25 A I was using it for all of her pain.

Dr. Carol Antonsen Kooistra
Cross-examination by Mr. Wise

1 Q And it's not uncommon for pain doctors to prescribe
2 Vicoprofen and morphine.

3 A Well, I think the practice had been strange all over
4 the place.

5 A single physician may prescribe those two together,
6 although in my practice if I was prescribing a long-acting
7 medication such as MS Contin, long-acting morphine, I would
8 prescribe short-acting morphine to handle the breakthrough
9 pain as opposed to adding a competitor analgesic into the
10 regimen.

11 Q But some doctors do prescribe both of them together.

12 A I believe so.

13 Q Okay. Now, Dr. Kooistra, you used to practice in
14 North Carolina?

15 A Yes, sir. I still have my license in North Carolina.

16 Q And on October 15th of 2010 were you disciplined by
17 the North Carolina Medical Board for prescribing
18 ultrasound -- musculoskeletal ultrasounds without a valid
19 medical purpose?

20 A I signed a consent order on that date, and that was
21 one of the allegations in there, yes.

22 Q And you agreed to it in the consent order.

23 A I agreed to it.

24 Q Thank you.

25 MR. BARNETTE: Just a couple of questions on redirect,

Dr.. Carol Antonsen Kooistra
Redirect examination by Mr. Barnette

1 Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q Following up with Mr. Wise's question he asked you,
5 does patients usually lie to you or not tell you things,
6 talking about third --

7 A Every day.

8 Q From there. But, I mean, what I mean is though they
9 usually tell you about medications and things, like, you
10 expect them to tell you about the medications and all and
11 so forth.

12 A I do expect them to tell me, but I can't tell you that
13 they all tell me.

14 Q Sure. Most people do though, don't they, from that
15 standpoint?

16 A I hope so.

17 Q Okay. I understand. And he was asking you about MS
18 Contin.

19 Let me show you a form here, ma'am, concerning this.
20 He was asking you about safeties and stuff like that. The
21 medication guide has been approved by the F.D.A., the U.S.
22 Food and Drug Administration.

23 A It looks like the product. It looks like a simplified
24 version of the product insert.

25 Q For MS Contin, is that right?

Dr. Carol Antonsen Kooistra
Redirect examination by Mr. Barnette

1 A For MS Contin.

2 Q And could you tell us what it says about tell your
3 healthcare provider if you are --

4 A "Pregnant or planning to become pregnant. MS Contin
5 may harm your baby, unborn baby. Tell your healthcare
6 provider if you are breastfeeding. MS Contin passes into
7 breast milk and may harm your baby. Tell your healthcare
8 provider if you are taking prescription or over-the-counter
9 medicines, vitamins or herbal supplements.

10 Q All right. Obviously, you never knew she was
11 pregnant.

12 A Correct.

13 Q When did you find out she was pregnant?

14 A I believe it was January of when -- well, Chico that
15 week called -- Kaushik in to visit.

16 Q So he actually came and visited you, and that's when
17 you found out she even had had a baby.

18 A Correct.

19 Q And you didn't even know the baby had died. I mean,
20 didn't know about the baby, didn't know the baby had died.

21 A That's correct.

22 Q That's how you found out the first time.

23 A That's correct.

24 MR. BARNETTE: One moment, Your Honor, please.

25 (Pause.)

Dr. Carol Antonsen Kooistra
Recross-examination by Mr. Wise

1 Q Thank you, ma'am, for answering my questions.

2 MR. WISE: Just a couple of questions.

3 RECROSS-EXAMINATION

4 BY MR. WISE

5 Q Are you aware of any cases documented where a pregnant
6 woman who is breastfeeding taking MS Contin has harmed the
7 baby?

8 A I'm not aware of the literature in general on that
9 topic.

10 Q Thank you.

11 THE COURT: You may step down.

12 MR. BARNETTE: Your Honor, the state would like to
13 call Dr. Bridges to the stand.

14 THE WITNESS: May I also be excused?

15 MR. BARNETTE: Yes, Your Honor.

16 THE COURT: You may be excused. Thank you.

17 (Whereupon, the witness was excused.)

18 DR. KELLY ANN BRIDGES, having
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BARNETTE

21 Q Doctor, if you would, give your full name for the
22 record, please.

23 A Kelly Ann Bridges.

24 Q And where do you work at, ma'am?

25 A Carolina O.B.G.Y.N.

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 Q And how long have you been a doctor there, ma'am?

2 A At Carolina since -- well, I emerged from a different
3 practice. I've been in Spartanburg practicing O.B.G.Y.N.
4 since 2002.

5 Q And where -- could you give the jury a little bit
6 about your educational background, ma'am?

7 A Sure. I went to medical school at the University of
8 South Carolina School of Medicine and then did my residency
9 in O.B.G.Y.N. in Savannah at the University Memorial
10 Medical Center, which is associated with the University of
11 Georgia, and finished in that and became board O.B.G.Y.N.
12 and have been practicing here in Spartanburg ever since.

13 Q And how many patients have you seen over the years?

14 A Hundreds, thousands.

15 MR. BARNETTE: Your Honor, I would like to move her as
16 an expert in medicine at this time.

17 MR. WISE: No objection.

18 THE COURT: She is qualified.

19 BY MR. BARNETTE

20 Q Dr. Bridges, did you see the defendant?

21 A I don't remember personally, but looking back through
22 the records I saw her on three separate visits during her
23 pregnancy.

24 Q Can you tell the jury about when those three visits
25 was, ma'am?

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 A I saw her one time on August the 11th. She was 31
2 weeks and six days.

3 Wait a minute. I'm sorry. Before that it was on
4 June the 30th when she was 26 weeks.

5 Then August the 11th of 2010 she was 31 weeks and six
6 days.

7 And then the last time I saw her was on September the
8 17th of 2010. She was 37 weeks and one day.

9 And those are the only three times I've ever had
10 contact with her.

11 Q Okay. Let me take you back to July 30th -- or
12 June 30th of 2010 visit. At that time did you ask her
13 about what medications she was taking and so forth?

14 A Apparently. I have a note here that she was
15 complaining of a headache, a backache and varicose veins.
16 Apparently she told me at that time she was taking
17 Vicoprofen, and I told her to stop the Vicoprofen and
18 changed her to Darvocet for her headaches at that time.

19 Q You told her to stop taking Hycoprofen [sic].

20 A Yes.

21 Q why?

22 A To stop taking Vicoprofen specifically, not
23 hydrocodone.

24 Q Vicoprofen.

25 A Vicoprofen because the other ingredient besides

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 hydrocodone in Vicoprofen is ibuprofen. Ibuprofen is
2 dangerous in the third trimester of pregnancy because it
3 can close an area in the baby's heart called the ductus
4 arteriosus. And if it closes prematurely that can cause
5 heart failure and kill the baby in utero. So I did not
6 want her taking anything containing ibuprofen.

7 Q So if you take that late in the third trimester it can
8 affect the heart.

9 A Of the baby, yes.

10 Q And what drugs -- did she ever tell you she was on
11 morphine?

12 A No. We have no documentation of that.

13 Q And that's from any -- any of the visits, is that
14 right, ma'am?

15 A No. I filled out -- the visit, the first visit, that
16 she came in, which of course I did not see her that visit,
17 so but on the paperwork is listed, there's Vicoprofen
18 listed, but it was also listed that she stopped taking it
19 on 4/30/10 and that she was taking hydrocodone -- or I'm
20 sorry. That's acetaminophen. I'm sorry. And-but, no,
21 morphine is not listed anywhere in there.

22 Q So she never told you in any of the visits. And
23 obviously when she came and saw any of y'all she never
24 talked about any morphine.

25 A No.

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 Q Okay. And you told her to take -- don't take anything
2 with visiprofen [sic] in it, is that right?

3 A That's correct.

4 Q And you told her that on June 30th of 2010.

5 A That is correct.

6 Q At that time did she tell you about any of the
7 medications -- seeing the other doctors? Did you know
8 about Dr. Kovacs or Dr. Kooistra or anything like that?

9 A We do have documented that Dr. Kovacs was her primary
10 care physician and Dr. Kooistra is her neurologist.

11 Q Right. But she didn't tell you about, like I say, the
12 morphine or anything like that.

13 A Not that I know of, no.

14 Q And y'all asked that question.

15 A We didn't specifically ask her if she was on morphine,
16 no, but we asked what medicines are you taking.

17 Q Right.

18 A And we may not ask it every single visit, but we ask
19 it in their first visit and then, you know, expect them to
20 update us if -- if anything changes.

21 Q Yes, ma'am.

22 A And if we change anything we document it in the chart.

23 Q Yes, ma'am. Andrus Vera [sic] -- she testified
24 earlier she was the one that did the intake initially on
25 her.

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 A Vera Andrus, yes. She's the nurse that does the
2 intake, and then she has a first visit with a doctor
3 following that intake visit who should also review, you
4 know, her past medical history and everything at that time.

5 Q Let me ask you this question, ma'am. I noticed you
6 gave her prescriptions, and obviously you didn't know about
7 the other doctors' prescriptions, I guess.

8 A That's correct.

9 Q And State's Exhibit 45, is this the Darvocet that she
10 was given?

11 A Yes.

12 Q I believe that was on July 23rd of 2010.

13 A Yes.

14 Q And then on State's Exhibit 42, she was given
15 Darvocet-N 100 and that is June -- I guess that was the
16 visit.

17 A That was at the visit that I physically wrote that
18 prescription, yes, sir.

19 Q And then she was given another Darvocet on
20 August 23rd of 2010, is that correct?

21 A Yes.

22 Q And then she also received a prescription on
23 September the 29th of 2010 for Motrin and Percocet.

24 A Yes.

25 Q I believe that was from Ms. -- Dr. Johnson also?

Dr. Kelly Ann Bridges
Direct examination by Mr. Barnette

1 A That -- that looks to me to be when she was discharged
2 from the hospital because it's got her hospital sticker on
3 it, so that she probably had had. But that's probably from
4 delivery, having the baby.

5 Q Would you have prescribed these prescriptions if you
6 knew she was taking morphine and these other type -- if you
7 knew that ahead of time?

8 A No.

9 Q Okay. And why not?

10 A Because you could potentially overdose on narcotics if
11 you're combining those medications. It could be dangerous.

12 Q I understand. And obviously did y'all treat her after
13 she delivered?

14 A She had a, looks like, one postpartum visit from what
15 I can tell in the chart.

16 Q Did she ever come back to y'all after that?

17 A Not that I can tell.

18 Q So she --

19 A There was a note. There is a note in here that she
20 wanted to schedule her tubal, a tubal ligation for birth
21 control. And that was on 10/27/10. But then there's
22 nothing after that.

23 Q So she's never seen y'all since that day as far as you
24 can tell.

25 A Not -- not -- as far as I can tell her last physical

Dr. Kelly Ann Bridges
Cross-examination by Mr. Wise

1 visit in the office was 11/4/10, which was her post partum
2 checkup where she had had a physical exam.

3 Q So she saw y'all's office on --

4 A She saw Dr. John Nichols on 11/4/10, and he did a
5 6-weeks postpartum exam.

6 Q And she never mentioned anything about morphine?
7 Well, nothing's mentioned about that.

8 A Nothing is mentioned about that, no.

9 Q Nothing's mentioned about seeing Dr. Kooistra on
10 November the 4th?

11 A It says she is seeing her family doctor regarding her
12 blood pressure being a little elevated.

13 Q But nothing about Kooistra or any additional drugs or
14 anything like that?

15 A No. There's nothing about any medications in there in
16 that note.

17 MR. BARNETTE: One moment, Your Honor, please.

18 (Pause.)

19 Q Thank you, Doctor, for answering my questions.

20 CROSS-EXAMINATION

21 BY MR. WISE

22 Q Dr. Bridges, she first came to see your office when?

23 A It looks like she came in the first time -- I'm sorry.

24 Q That's no problem.

25 A It's a little bit out of order probably from getting

Dr. Kelly Ann Bridges
Cross-examination by Mr. Wise

1 copied. Looks like her very first visit at our office was
2 on 5/7/10. It looks like it was scheduled with Dr. Easton.

3 Q Okay. And what was the purpose of that visit?

4 A It says that she was -- for a new G.Y.N. But she had
5 a positive pregnancy test.

6 Q All right. What's a new?

7 A A new G.Y.N. is a -- just a new gynecologic patient to
8 our office. So when she was scheduled we did not know she
9 was pregnant.

10 Q And she didn't -- and did y'all do the pregnancy --

11 A We did a pregnancy test in the office and had a
12 positive test.

13 Q Why -- do you know what -- do you know who referred
14 her to y'all back in --

15 A That I do not know. When everybody was talking back I
16 looked backed in our correspondence to see if I could find
17 a referral note, and there is no documentation of a
18 referral in there. So I don't know.

19 Q So you don't know what doctor referred her.

20 A I don't know, and the referred-by section is blank
21 here, so.

22 Q Okay. Do y'all perform a routine pregnancy test?

23 A We probably did hers because her period was late. She
24 had said her last menstrual period was 12/3/09, and this
25 was 5/7/10.

Dr. Kelly Ann Bridges
Cross-examination by Mr. Wise

1 Q Right.

2 A So it was late, so we did a pregnancy test.

3 Q She didn't come in and request a pregnancy test.

4 A Not -- that I don't know.

5 Q Okay. Your notes just indicate y'all did one.

6 A Yeah. My notes just indicate that because her period
7 was late she had a positive pregnancy test.

8 Q And there's nothing in your notes to indicate that she
9 came in and said I think I'm pregnant and I need a
10 pregnancy test.

11 A I have no idea of what -- there's no -- his actual
12 dictated note I cannot find.

13 Q What I'm saying is that your notes don't show that she
14 scheduled this appointment to find out if she was pregnant.

15 A No. It does not say that.

16 Q All right. It is a policy in your office that if a
17 woman is several months late you're going to run a
18 pregnancy test out of an abundance of precaution.

19 A Automatically if they're late, yes.

20 Q It's just a good office practice.

21 A Yes, yes, sir.

22 Q Okay. Now, you work with the -- your department work
23 with the Spartanburg Regional Healthcare?

24 A We are owned by Spartanburg Regional Healthcare, yes.

25 Q And Spartanburg Regional Healthcare has a lot of their

Dr. Kelly Ann Bridges
Cross-examination by Mr. Wise

1 medical records computerized.

2 A They do. And we are now, but we are not at the time.

3 Q Back then. But you have the ability to -- do you know
4 what ability you had back then in 2010?

5 A We were on paper charts in 2010. This is paper
6 charts.

7 Q What ability did y'all have to go actually chart -- to
8 check the computer for Spartanburg Regional Healthcare to
9 see what was in it?

10 A We could check. A physician could get on the
11 physician portal and check hospital labs, but it would not
12 show anything done in the offices.

13 Q But she told you that she was seeing Dr. Kovacs?

14 A There is documentation in here. Now, she didn't
15 specifically tell me.

16 Q I understand that.

17 A But there's documentation in here that Dr. Kovacs is
18 her primary care physician -- Dr. Susan Kovacs -- and that
19 Dr. -- and Dr. Johnson -- looks like she wrote in that Dr.
20 Kooistra was her neurologist taking care of her seizures.

21 Q So she listed all of the doctors she was seeing.

22 A Yes.

23 Q And the Percocet is kind of -- is that a routine
24 medication prescribed to a new mother as they leave the
25 hospital?

Dr. Kelly Ann Bridges
Cross-examination by Mr. Wise

1 A The Percocet, yes.

2 Q Okay. And there's nothing unusual about prescribing
3 that.

4 A No, no. That's just for pain from delivery.

5 Q And it would be how long a supply?

6 A Usually it's 30 tablets, which could last, you know, a
7 few weeks.

8 Q Okay. Some two -- two weeks, three weeks maybe?

9 A It depends on how --

10 Q How frequently.

11 A -- frequently you take it, yeah, but it could --

12 Q Well, how often can you take it without --

13 A You can take up to two every four hours at -- is the
14 maximum dose.

15 Q Two every four. So that's 12 a day?

16 A At the maximum dose, yes.

17 Q Okay. So she -- if you're in severe pain they all's
18 go away in about two days then.

19 A Yeah.

20 Q It's not like it's a long-term.

21 A No. It's not a long-term. It's intended for
22 short-time pain relief.

23 Q And some people may even -- not need all of them.

24 A That's true. I still have mine from when I had my
25 baby, and he's six.

Dr. Kelly Ann Bridges
Redirect examination by Mr. Barnette

1 Q In '86?

2 A He's six years old. I still have the prescription.

3 Q Well, I guess there's --

4 A So it can last a very long time.

5 Q Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BARNETTE

8 Q Just a couple on redirect.

9 Doctor, when did you say her last menstrual period was?

10 A She stated on her -- that it was 12/3/09.

11 Q 12/3/09?

12 A Yes.

13 Q And she came and saw y'all in May?

14 A 5/7/10 was her first visit.

15 Q Okay.

16 MR. BARNETTE: Give me one second, Your Honor.

17 (Pause.)

18 Q And when did you tell her to quit taking Vicacon --
19 profen? I'm sorry, Doctor. That's the reason I'm asking
20 you that question.

21 A That's okay. 6/30/10 when she was 26 weeks pregnant.

22 Q Showing you State's Exhibit 47. Did you know she got
23 Vicoprofen on August the 5th of 2010?

24 A No, sir.

25 Q Did you know -- did you know she had got Vicoprofen

Dr. Kelly Ann Bridges
Recross-examination by Mr. Wise

1 filled on July 6th of 2010?

2 A No, sir.

3 Q And obviously that would have been in the third
4 trimester of her pregnancy, wouldn't it, at that point?

5 A Yes.

6 Q And what did you tell her again not to do?

7 A Take any ibuprofin containing medications while
8 pregnant.

9 Q And Vicoprofen has --

10 A Ibuprofin, uh-huh.

11 Q Okay. Thank you, ma'am.

12 RECROSS-EXAMINATION

13 BY MR. WISE

14 Q And the child was born with a healthy heart.
15 Obviously there was no harm.

16 A As far as I know.

17 Q It doesn't happen in every case.

18 A That's as far as I know. I don't -- I didn't know
19 anything about the -- anything about this.

20 Q Do your notes reflect that she came to see y'all
21 originally about a Mirena birth control device?

22 A I don't have that in the chart, exactly why. I do see
23 that the note that's in here is just a little handwritten
24 note from Dr. Easton. His dictation is not here. It said
25 something about a Mirena.

Dr. Kelly Ann Bridges
Redirect examination by Mr. Barnette

1 Q And that's on what area of the file and what date?

2 A That was that very first visit.

3 Q The very first visit.

4 A Yeah. Where did it -- let me get back to it if I can
5 find it here again. It's just a little handwritten
6 scratch. It said, "Mirena. Wanted removed." And then it
7 said, "October. Merix [sic] office." So that's just his
8 little notes he was taking.

9 Q And the Mirena can sometimes cause a woman not to have
10 a regular period?

11 A The Mirena can, yes.

12 Q Okay. So if she'd been a few months, wouldn't be that
13 unusual with that birth control device.

14 A It is possible not to have a visible cycle with a
15 Mirena.

16 Q Okay. Thank you.

17 MR. BARNETTE: Just one question on redirect, Your
18 Honor, following that.

19 REDIRECT EXAMINATION

20 BY MR. BARNETTE

21 Q Five months?

22 A Yes. It's possible. Some people that have a Mirena
23 have no visible cycles the entire time they have the
24 Mirena.

25 Q Which would it be something that they should check on

Wendy Bell
Direct examination by Mr. Barnette

1 in case they don't have one from that standpoint?

2 A No, because we warn them that that's a possibility
3 that that can happen.

4 Q Thank you, ma'am.

5 THE COURT: You may step down. You may also be
6 excused. Thank you.

7 (Whereupon, the witness was excused.)

8 MR. BARNETTE: The state would like to call Wendy Bell
9 to the stand, Your Honor.

10 WENDY BELL, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q If you would ma'am, please give your full name for the
14 record.

15 A My name is Wendy Bell.

16 Q And where do you work at, ma'am?

17 A I work at SLED, the South Carolina Law Enforcement
18 Division.

19 Q And what is your position there, ma'am?

20 A I'm currently the captain over the forensic
21 operations, which means I'm -- all the science divisions
22 fall under me. I supervise D.N.A., toxicology, drug
23 analysis, implied consent, which is our breath testing
24 program, and D.N.A., and trace department.

25 Q And could you give the jury a little bit about your

Wendy Bell
Direct examination by Mr. Barnette

1 educational background, ma'am?

2 A Sure. I have B.S. in chemistry from Furman
3 University. I got that in 1983. I went straight into
4 graduate school where I received my Ph.D. in analytical
5 chemistry from the University of South Carolina.

6 I came straight from there to SLED, and I've been
7 there since February of 1998. I started in the toxicology
8 department, and I was on the bench for nine years as a
9 toxicologist. I was the technical leader for the
10 department.

11 In 2007 I was promoted to the supervisor of the drug
12 chemistry unit, very similar testing techniques to
13 toxicology. It's a little -- it's a little simpler. In
14 one department we're looking for what a substance is. In
15 the other we're looking for the substances in the body.

16 In 2009 I was transferred, and I became a dual
17 lieutenant of both the drug chemistry and the toxicology
18 departments. And I was in that position in 2010 when this
19 case came through.

20 Q And how many -- how many drug cases, blood alcohol
21 cases, have you worked on, ma'am?

22 A There's been thousands.

23 Q And how many times have you been qualified in state
24 court as a forensic toxicologist, as well as a drug
25 toxicologist?

Wendy Bell
Direct examination by Mr. Barnette

1 A Over 30.

2 Q Over 30?

3 A Yes.

4 MR. BARNETTE: Your Honor, I would move at this time
5 as an expert in forensic toxicology involving drugs and
6 alcohol.

7 MR. WISE: For that limited purpose, I have no
8 objection.

9 THE COURT: She is so qualified.

10 BY MR. BARNETTE

11 Q If you would, ma'am, back in 2010 I think you said you
12 worked those dual roles over the department involving
13 toxicology at that time.

14 A That's correct.

15 Q If you would, I know you heard Quintus Young testify
16 about the Alexis Greene case. Can you tell how -- how
17 the -- his results are doublechecked by other people in the
18 department, as well as yourself?

19 A They're actually triple checked. Every phase of
20 testing in a laboratory -- we have quality control checks
21 because it's very important to us to -- to get the right
22 answer.

23 So any time data is performed an additional analyst is
24 going to sign off on it before that casework is accepted
25 and it goes into a case file. And then, so that's one

Wendy Bell
Direct examination by Mr. Barnette

1 check.

2 And then the analyst has to accept the data. He has
3 to agree that the quality control meets his expectations or
4 her expectations before he'll put his name on it as being
5 responsible for the testing.

6 So finally when they have all their data complete they
7 will write up a case file, and then it's sent to another
8 technical reviewer. And that experienced scientist also
9 looks at it and has to agree that they -- the conclusions
10 are supported by the data that's in the case file. So a
11 technical review is done on the final report. And so that
12 would be the third check.

13 Q And did you check over the results Quintus Young found
14 on this case?

15 A I did. It's not common practice for me to always
16 review everything that goes out, but because of this case I
17 did go back and pull all the data, the quality control and
18 do a full review of it myself.

19 Q And did everything appear to be correct?

20 A It did.

21 Q Okay. And I know you've seen the -- I have to find
22 the reports. I apologize.

23 (Pause.)

24 Q Show you State's Exhibit 62 which has been entered
25 into evidence already, specifically to the drug analysis.

Wendy Bell
Direct examination by Mr. Barnette

1 I think it's on page two of Mr. Quintus Young's report. If
2 you would, tell us about these drugs and the effects. And
3 if you would, educate the jury about that, ma'am.

4 A Well, Diphenhydramine and Chlorpheniramine are both
5 antihistamines. They're typically taken when someone's
6 experiencing cold-like symptoms or allergy-like symptoms
7 very much like this time of year.

8 Q Let me -- let me make sure they are --

9 THE COURT: Please be --

10 Q Are these the two substances --

11 THE COURT: -- mindful of the microphone, ma'am.

12 THE WITNESS: Thank you. I'm sorry.

13 Q Let me put the report here.

14 A It's difficult to look at that.

15 Q No problem. Do you have a copy of the report?

16 A I do have a copy of it.

17 Q Let's just start from the top if you can. That way
18 they can follow through with it from the beginning. The
19 first substance that was found.

20 A Well, we had some screens at the very top. I believe
21 Mr. Young explained that there was a cocaine metabolite
22 that screened as positive. That was actually later found
23 to be negative.

24 At the time the manufacturer of our screen started --
25 we started seeing that a lot of our child fatalities were

Wendy Bell
Direct examination by Mr. Barnette

1 screening positive. We were collecting data at this time,
2 and we later ended up raising our threshold on child
3 fatalities. But any time we had a screen that was near the
4 threshold in a child -- obviously, a child shouldn't have
5 cocaine -- we wanted to pursue that and make sure there
6 wasn't cocaine.

7 And in this case there was no cocaine. So that's why
8 that screen was positive. But you can have a false
9 positive screen. We followed up with a more selective,
10 more sensitive, screen to look for the actual substances,
11 and they were not there.

12 So the screens at the top indicate that there -- that
13 we should do further testing. So there was a positive
14 opiate screen.

15 Q Let me go back to the first page since we're talking
16 about that.

17 A Okay.

18 Q What's the first positive screen that y'all found?

19 A Benzodiazepines.

20 Q Okay.

21 A Typically prescribed for anxiety, some used for
22 antidepression. And -- and we did follow up with a full
23 panel Benzodiazepine quantitation for that.

24 Q On page two of the same report -- and you talked about
25 the positive for opiates. What would that be, ma'am?

Wendy Bell
Direct examination by Mr. Barnette

1 A I believe we cover six or seven different opiates, and
2 that -- those are things like hydrocodone, oxycodone,
3 morphine. We look for heroine. Well, the metabolites
4 pair, which was six -- sealed [sic] morphine. So it covers
5 a wide spectrum. Hydromorphone is also covered in that
6 panel. So we're looking for multiple substances, and it's
7 specific that we can tell which one is there.

8 Q And going through these -- and let me ask you this
9 question. How many child facilities do y'all examine?

10 A We get three -- anywhere from probably two to ten a
11 week. This is a very routine test that's actually --
12 legislated that child fatalities are supposed to come to
13 our laboratory for testing. Some -- there are a few
14 coroners that send it out for outside testing. But this is
15 a routine analysis.

16 Q So any time it's a child death it's automatically sent
17 to SLED.

18 A Anyone under age 18 it's required that a full
19 toxicology workup be done to make they weren't overdosed or
20 poisoned or anything like that.

21 Q So this is done routinely throughout the state.

22 A It is. And most are negative fortunately.

23 Q Most are negative. But this one obviously had some
24 positives.

25 A That's right.

Wendy Bell
Direct examination by Mr. Barnette

1 Q Okay. If you can, start with Acetopen [sic], the
2 first --

3 A So we found acetaminophen. It was actually
4 quantitated by florence polarization in the assay. We have
5 specific assay for that, but it was confirmed by gas
6 chromatography/mass spectrometry.

7 Q Okay. And the quantitation --

8 A The quantitation was 19 mg per liter.

9 Q Okay. If you would, go to the next substance.

10 A Diphenhydramine, which again is an antihistamine. It
11 was found at 0.03 mg per liter.

12 Q And the next substance.

13 A Chlorpheniramine, another antihistamine, found at 0.06
14 mg per liter.

15 Q And if you will, go to the next substance.

16 A Methorphan, which is if you take a product that has
17 D.M. after it, it's typically found in a lot of combination
18 cold medications. Again, it's used for coughing. That was
19 found at a level of 0.03 mg per liter.

20 Q And the next substance, ma'am.

21 A Methorphan is found at 0.04 mg per liter. That's a
22 metabolite of the methorphan. So we expect -- again, any
23 time you take a substance of the body it starts trying to
24 change it to be able to eliminate it from the body. So
25 it's common to see the palalines [sic] of those drugs. A

Wendy Bell
Direct examination by Mr. Barnette

1 person probably didn't take that drug. It was metabolized
2 by the body into that drug.

3 Q And the next drug, ma'am.

4 A Morphine was found at 0.52 mg per liter.

5 Q And obviously that was a lethal level.

6 A That was very much a concern to us when we saw it.

7 Q And that's not -- you weren't looking for anything
8 specifically. You have to test every child fatality that
9 comes through.

10 A That's right. This -- this case screened particularly
11 high for opiates, and it did confirm high on this, on the
12 confirmatory test.

13 Q Let me take you to the third page. What is this
14 substance here, ma'am, that was found?

15 A Clonazepam is the benzodiazepine, that very first
16 screen that we saw that was positive. When we removed
17 assay for that, that is what we found. It is a
18 benzodiazepine. It was found at 0.01 mg per liter.

19 Q Now, when we're looking at these levels and
20 everything, essentially -- usually you're looking at adults
21 in a lot of these tests.

22 A Yes. These levels that are listed are actually for
23 adults.

24 Q These levels are actually listed for adults, not for
25 children.

Wendy Bell
Direct examination by Mr. Barnette

1 A There's very limited pediatric information for these
2 type of medications, yes.

3 Q So these are for adults, not a 6-week-year-old baby.

4 A That's correct.

5 Q If you would, tell the jury about the effects like the
6 Klonopin against the morphine. How would that affect?
7 Would they have affect on each other?

8 A They would. All of these medications for the most
9 part are central nervous system depressants, which means
10 it's going to slow the respiratory system, the breathing,
11 the heart rate. And they can act together synergistically
12 to have affects on each other.

13 We're mostly concerned of course by that high level of
14 morphine because that's the one that stood out most. These
15 are not drugs that we commonly see in a 6-week-old baby.

16 Q And --

17 A If I can elaborate just one moment further --

18 Q Yes, ma'am.

19 A -- the concern there is that, you know, a lot of these
20 drugs aren't prescribed for children because their livers
21 have not fully developed yet. So it's very, very difficult
22 for them to metabolize this type of medication.

23 Most -- you know, most commonly you hear about babies
24 being prescribed acetaminophen for pain. And usually
25 doctors don't go a whole lot above that unless there's

Wendy Bell
Direct examination by Mr. Barnette

1 something very serious going on with the infant. And of
2 course pediatricians have the knowledge to assess a baby
3 and know what's safe. But commonly the children -- the
4 child fatalities that we examine, acetaminophen is going to
5 be the strongest thing we'd expect to see in a child
6 this -- this age.

7 Q So like you were telling the jury, the child's
8 organs -- liver and so forth -- haven't developed enough to
9 really fully metabolize these --

10 A No. And narcotics -- and particularly -- there's lots
11 of literature that supports it. Children under ten months
12 old cannot tolerate high levels of narcotics.

13 Q So obviously they're very susceptible to this from the
14 literature you've read.

15 A That's correct. They could be.

16 Q Could be from that standpoint.

17 A Could be.

18 Q And obviously these are not -- all of these drugs are
19 not drugs that you would normally see in children, and
20 especially morphine, I know.

21 A They're not normally dosed to children. They can
22 arrive here in different ways. We know that mothers do
23 breastfeed. Most of these are not going to be unsafe if
24 they're encountered that way in low doses.

25 Q Right. Talking about breastfeeding at this point,

Wendy Bell
Direct examination by Mr. Barnette

1 obviously, you've heard -- I know you've had to sit here
2 today and watch and hear some of the doctors and
3 everything.

4 would be appropriate to tell the doctors about when
5 you're taking medications and letting them know about these
6 medications that she's taking?

7 A I would think so but I -- that's a little out of my
8 area of expertise.

9 Q I know. You're basically on the pharmacology side.

10 A Right.

11 Q I know. But obviously these drugs, they can pass
12 through breast milk.

13 A They can.

14 Q And obviously -- and I believe I showed the doctor,
15 and I'll be glad to show you. MS Contin, which is the
16 morphine that was prescribed to the defendant, it was
17 obviously found in the baby.

18 A It was. If I may preface, at the time we found this
19 we didn't have a history that the mother was even taking
20 these medications. It was found without a history.

21 Q So y'all didn't know that.

22 A No, we didn't know it at the time.

23 Q It may still be up there. I apologize.

24 A I do think later in the coroner's report -- it may
25 have some information in it. But I don't think we're -- in

Wendy Bell
Direct examination by Mr. Barnette

1 that list, see, and verify that.

2 Q Let me go back. And I do have the report. But was
3 there additional testing done on the brain and liver of
4 Alexis in the case?

5 A Yes. After -- the brain and liver and kidney were not
6 originally submitted to us. That is not standard
7 procedure, because, again, most child fatalities come back
8 negative. But when we do see something unusual like this
9 if the tissue's available we like to get it because, again,
10 we can conform in multiple fluids that these substances do
11 exist.

12 We only tested for the morphine because that was the
13 one substance that was of interest to us because of the
14 high level. And there are some concerns with opiates, that
15 they can redistribute to the body after death. So we want
16 to make sure that we test the tissues to show that they're
17 consistent what we see in the blood to try to rule out
18 whether post mortem redistribution has occurred. That's a
19 phenomenon after death when the cells start breaking down.
20 Drugs can do that. So by testing, having similar results
21 in the three fluids, it kind of helps us rule out that that
22 is unlikely to have happened.

23 Q So that's why you did the additional testing, to make
24 sure the morphine levels was --

25 A To make sure it's real and to make sure the levels

Wendy Bell
Direct examination by Mr. Barnette

1 are -- are consistent.

2 Q And that would eliminate any issues, like I say, the
3 por -- the post settling or anything like that.

4 A It could, yes. That's what we're trying to do there.

5 Q So you had three different tests on three -- the
6 blood, the brain and the liver.

7 A Three separate tissues.

8 Q And talking about SM [sic] Contin, is the registered
9 trademark at MS Contin in Purdue Pharma -- or Pharmacy?

10 A That's right, Ucatrias [sic].

11 Q Okay. And I believe this is a report made by the
12 registered trademark at MS Contin.

13 A Yes. When manufacturers put out a new -- a new drug
14 they often provide this monograph with information from
15 their studies and research.

16 Q Okay. And let me direct you to page four of this
17 report. Talk about -- could you tell us what
18 contradictions are that they talk about in here?

19 A Well, contraindications. Those would be times we
20 would not want to use this medication.

21 Q And on that list, what do they say about
22 breastfeeding, pregnant, delivery, labor and delivery on
23 that?

24 A Find it.

25 Q I believe it's at the bottom of page four.

Wendy Bell
Direct examination by Mr. Barnette

1 A "Women who are pregnant --"

2 MR. WISE: Your Honor, I think this is beyond her --
3 her expertise. She said she wasn't a medical expert in
4 this area.

5 THE COURT: Yeah. Let me see y'all just a minute.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 BY MR. BARNETTE

9 Q But the morphine could come from MS Contin, is that
10 correct, ma'am?

11 A It could.

12 Q From what you know. And obviously this is a very high
13 amount. Was this along with the other drugs? Was that the
14 reason why this baby died?

15 A It certainly isn't a illegal level for an infant.

16 Q And the combination of all of these drugs, plus the
17 Klonopin on the next page, they'd have a syntroitic [sic]
18 effect on each other, I guess.

19 A They could.

20 Q And obviously this could be the reason why she died.

21 A It could be, yes.

22 Q And later on did you find that was the reason the
23 pathologist found out?

24 A We were told --

25 MR. WISE: Objection, Your Honor. Basing her

Wendy Bell
Cross-examination by Mr. Wise

1 conclusion on somebody else's.

2 THE COURT: Sustained.

3 MR. BARNETTE: She can testify later. One moment,
4 Your Honor, please.

5 (Pause.)

6 Q If you would, please, answer any questions the defense
7 may have for you, ma'am. Thank you.

8 CROSS-EXAMINATION

9 BY MR. WISE

10 Q Ms. Bell, first of all, you're assuming the accuracy
11 of these numbers.

12 A Yes, sir. Our laboratory is an accredited laboratory,
13 and as such we have to go into rigorous testing. We have
14 outside agencies come in and look at our protocols and make
15 sure that we're performing them properly and that they're
16 scientifically valid.

17 We also participate in prof -- proficiency testing
18 programs where they send us samples every year and we have
19 to accurately report them. And if not, then we're cited.
20 We have to undergo corrective action to find out why. And
21 we haven't had any of those for -- particularly for
22 opiates. We've been highly reliable in our opiate results.

23 Q So the answer to my question is yes.

24 A Yes.

25 Q Okay. You commonly dilute specimen before testing?

Wendy Bell
Cross-examination by Mr. Wise

1 A Commonly. It's an unusual question. In tissues --
2 tissue comes in a solid form, so you have to add water to
3 it to liquify it. And we typically do a one-to-four
4 dilution for that. So, yes, for tissues every time we test
5 tissues it's a one-to-four dilution. And one of the
6 reasons we do dilutions if I may give an analogy --

7 Q Sure.

8 A -- our instruments have a linear range. And you want
9 to keep the testing within the linear range of an
10 instrument.

11 An example might be if I brought in a bathroom scale
12 the only weighs up to 200 pounds and I put a 250-pound
13 person on it. The needle would go off, and we would get
14 inaccurate results.

15 So, obviously, you can't measure part of a person, but
16 we can cut our sample back and put a smaller amount of it
17 into the instrument. That way it pulls our sample back
18 into linear range.

19 And we've also been proficiency tested with diluted
20 samples, and they have been high accurate.

21 Q Thank you.

22 Did you ever use a one-to-sixteen ratio?

23 A It has been used, again, if it's needed. And we --
24 typically, in overdose type situations we'll run multiple
25 dilutions. We could either average the data if they look

Wendy Bell
Cross-examination by Mr. Wise

1 like they have similar quality controls, or we can choose
2 the data with the best response if there -- if one set of
3 data is better for one reason or another.

4 Q Do you use 1-16 dilution for blood?

5 A In very high levels of overdose we could.

6 Q You could. All right. Well, how do you know if it's
7 a high overdose before you do the test?

8 A Our screen indicated that it screened greater than
9 one, which is an indication. Our curve only goes up to
10 one. So we did a one-half dilution on the blood when we
11 screened it. It was screening at greater than one, which
12 told us if we ran it at a full mil it would have been
13 higher than a curve. So we needed to do the dilution,
14 again, to bring it back into that scale.

15 Q Do you have -- do you know what an ion mode scanner
16 is?

17 A Yes.

18 Q And what is that?

19 A Well, I'm assuming you -- ion mode, you're talking
20 about looking for master charge ratio ions --

21 Q Yes.

22 A -- in a mass spectrometer.

23 Q Right. Did y'all use that?

24 A We did.

25 Q Is that -- that's an accurate test too?

Wendy Bell
Cross-examination by Mr. Wise

1 A Yes, it is.

2 We ran -- our mass spec was run in full scan versus
3 sim. We -- you have the options with a mass spectrometer
4 to run it full scan or sim. We did run it in scan mode,
5 which in that mode we get a full fingerprint. In sim mode
6 you're only looking for three lines.

7 It makes your ion peak shapes a little bit better, and
8 visure [sic] sensitivity is lighter. But in scan mode we
9 get a better fingerprint to know exactly which compound we
10 have.

11 They're both used for quantitation in toxicology and
12 wildly accepted in the field. It's just kind of a personal
13 preference.

14 Q Is it common to use a full-scan mode to quantitate
15 drugs?

16 A It -- it is.

17 Q Okay. Is it as accurate as not using a full --

18 A It's actually more accurate. It's not as sensitive.

19 Q Well, you have to explain that a little bit to me.

20 A It's more accurate because you get a full-scan
21 spectrum, a full total ion femtogram of the compounds
22 you're looking for.

23 Where it decreases your sensitivity is with a sim
24 you're only looking for two -- or probably three to four
25 ions per compound. In our instance we were looking for the

Wendy Bell
Cross-examination by Mr. Wise

1 full scan, which covers a range of I think 40 to 400 mass
2 charge ratio. So it cuts down your sensitivity slightly,
3 but you do get full spectrum identification of the
4 compound. It's kinda like that fingerprint, again, that we
5 were discussing. So when we say it's morphine, we know
6 with a hundred percent certainty it's morphine.

7 Q Now, you at one time had requested the weight of the
8 mother and the weight of the baby that died, correct?

9 A I may have. It's been several years since this case
10 was received.

11 Q Let me find the e-mail. I believe you sent over an
12 e-mail to Rusty Clevenger requesting the weight of the
13 baby, is that correct?

14 A Yes.

15 Q And you wanted to do some calculations based on that.

16 A At one time we had found some information about how
17 milk can dep -- how morphine could deposit to the milk, but
18 what we ended up finding after further research was that
19 there's a widely varied opinion. So we were quite
20 concerned. This is a high level.

21 MR. BARNETTE: Your Honor, it's -- I'll be glad to let
22 her testify if that's what he wants her to do as an expert
23 on that area.

24 MR. WISE: I just asked if she did those tests.

25 A We -- we did not end up doing those calculations to

Wendy Bell
Cross-examination by Mr. Wise

1 answer your question. No, sir.

2 Q So you never did any type on test that, correct?

3 A We did not pursue that after we started seeing a lot
4 of the variability in the research.

5 Q And the variability just meaning different readings on
6 different situations?

7 A Well, a lot -- when we found out the facts of the
8 case, a lot of the mothers that have been tested who use --
9 who were dosed with MS Contin and then test how it
10 partitions into breast milk were not chronic users. And we
11 were later informed that Ms. Greene was a chronic user.
12 And therefore she doesn't fit a lot of the profile of a --
13 and also due to the age of the baby. There are a lot of
14 discrepancies.

15 So therefore the data that's available, as I said, is
16 very limited in pediatric cases and breastfeeding cases.
17 So rather than make speculation we chose not to go down
18 that avenue. What we know is what we found in the blood
19 and the tissue.

20 Q Correct. And that's -- assuming those are right
21 numbers, that's all you know. You don't know how it got
22 there.

23 A No, sir. That is not part of our job.

24 Q Okay. You don't know how much morphine somebody had
25 to take to get there.

Wendy Bell
Cross-examination by Mr. Wise

1 A No, sir.

2 Q All right. You do know, because there's an e-mail in
3 there, at one point where you stated that it is 100 times
4 some of the studies you've seen.

5 MR. BARNETTE: Your Honor, I'm going to object to
6 this. If he's going to let her testify, let her testify as
7 an expert. Don't keep adding information that he don't
8 want her to be the expert.

9 THE COURT: Well, are you going into that line?

10 MR. WISE: Well, let me find the e-mail real quick.

11 MR. BARNETTE: Your Honor, I'm object to -- I mean,
12 either he's -- he can't ask the question by not letting me
13 ask the question if he's not going to let her be an expert
14 in that area.

15 THE COURT: Well, I mean, if she's going to be an
16 expert in a particular area she's going to have to be
17 qualified as such for anybody to ask her a question. How
18 about that?

19 BY MR. WISE

20 Q You did look at several articles involving this case,
21 correct?

22 A Yes, I did.

23 MR. BARNETTE: Your Honor, I'm going to object to this
24 unless I get to ask her about the articles.

25 THE COURT: You'll certainly get to do redirect.

Wendy Bell
Cross-examination by Mr. Wise

1 MR. BARNETTE: Okay. That's fine. I just wanted to
2 make sure he understands where we're going.

3 BY MR. WISE

4 Q And one of the articles was from the Canadian Family
5 Physicians Mothers Update?

6 A It's been a while since I looked at it. I'd like
7 to --

8 (Pause.)

9 THE COURT: While she's looking at that let me see
10 y'all just a minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 BY MR. WISE

14 Q Pull that one back.

15 This figure -- I don't know if this is your area of
16 expertise or not. If it is, fine. If it isn't, just tell
17 me and we'll move on to something else.

18 Are you familiar with the blood-brain barrier they
19 refer to in drugs?

20 A Yes.

21 Q Okay. Morphine does not pass through the blood-brain
22 barrier very well.

23 A Actually, it can.

24 Q It can, I agree, but it doesn't pass, like it doesn't
25 pass as fast as heroine.

Wendy Bell
Cross-examination by Mr. Wise

1 A That is true.

2 Q Correct. And doesn't pass near as fast as Oxycontin.

3 A I -- I would have to look at those different numbers.

4 I -- I am familiar with it, but I don't know the exact
5 rates of those particular drugs off the top of my head. I
6 can refer to --

7 Q So I'm not asking for the specific numbers. I'm just
8 asking general knowledge. How about that?

9 MR. BARNETTE: Your Honor, we're going to -- I'm going
10 to object at this time.

11 If he wants -- I mean, this could go all out if we're
12 going to let it come. He's asking her all kinds of
13 questions about stuff that he --

14 THE COURT: She says this is within her realm of
15 knowledge in her profession.

16 MR. BARNETTE: Okay.

17 BY MR. WISE

18 Q So, but morphine is slower to go from the blood to the
19 brain than those other two substances.

20 A In -- in adults where most of the testing is done,
21 yes.

22 Q Right. And the children --

23 A Vary significantly.

24 Q We don't know.

25 A There's not a lot of data.

Wendy Bell
Cross-examination by Mr. Wise

1 Q And in this case the amount of alleged morphine in the
2 brain was considerably higher than the blood and the liver.

3 A It's not considerably higher.

4 Q Well, it's higher.

5 A Well, I would say statistically those are not terribly
6 significant differences.

7 Q Ten or 15 percent isn't significant?

8 A Not when you're talking about a lethal amount, because
9 it can vary. And tissues are very difficult to quantitate.
10 We have strong variability in our -- in our blood and in
11 our tissues. There's a lot of variability there.

12 Q The liver -- the liver though is more blood rich than
13 the brain.

14 A Yes, sir.

15 Q Okay. So if substances pass in the blood you would
16 expect the liver to be the highest reading normally?

17 A It can be, but, again, we're lysing the cells. We're
18 looking at total makeup of the tissues, not just what's in
19 the blood part.

20 We -- we homogenize the issue, which Mr. Young spoke
21 how he'd have to grind those up and liquify them. So it's
22 more of a [sic] intracellular and extracellular, not just
23 what's in the blood inside those tissues.

24 Q You know that the morphine breaks down into
25 subcomponents.

Wendy Bell
Cross-examination by Mr. Wise

- 1 A Yes.
- 2 Q That's part of that. It's M -- M -- M-6-G and M-3-G.
- 3 A Gluceron bound to morphine-3 and gluceron bound to
- 4 morphine-6, yes.
- 5 Q Okay. Now, were you given any stomach contents to
- 6 analyze in this case?
- 7 A We were not.
- 8 Q Okay. And those two substances can be used for
- 9 verification.
- 10 A Well, they're just additional substances. We know
- 11 that they're there because, again, the screen was so high,
- 12 and we did not quantitate what our screen was.
- 13 The screen cross reacts with the glucurone. There's a
- 14 difference between total morphine and free morphine. We
- 15 quantitated at the time free morphine. And we would do
- 16 total morphine upon request, but it wasn't requested in
- 17 this case.
- 18 Q Was requested. And what's the difference between the
- 19 two?
- 20 A Well, morphine-6 is active while morphine-3 is not
- 21 pharmacologically. And it's important because, again, it
- 22 can have -- if you have high morphine-6 levels it can add
- 23 to the toxicity, so it could even be more drug there that
- 24 we're not detecting, because we're looking for the free
- 25 drug.

Wendy Bell
Cross-examination by Mr. Wise

1 Q And you mentioned that there is the premise that --
2 that morphine or drugs can redistribute after death.

3 A Depending on how long the interval is between when the
4 body dies and when their sampled, that can be an issue.

5 Q And roughly 12 hours will start some redistribution.

6 A It can start it, yes.

7 Q Start a little less than that really.

8 A Depends on the drug.

9 Q Right. But 12 hours is a plenty for most drugs.

10 A Again, some drugs don't distribute very highly at all.
11 It depends -- high-level drug and the body distribution
12 throughout the body.

13 Q But morphine redistributes.

14 A It can, yes.

15 Q And when it redistributes you get a distorted reading.

16 A You can -- if you have high distribution it would
17 expect the tissues to be much higher than the blood because
18 it's pulling out of the tissues and dumping into the blood.

19 Q Uh-huh.

20 A But we didn't see extremely different levels in this
21 case.

22 Q Okay. Now, you ever run a hair test?

23 A We do not do hair testing in our laboratory.

24 Q Can that be done? Are you familiar with it?

25 A Yes, I am familiar.

Wendy Bell
Cross-examination by Mr. Wise

- 1 Q All right. And hair --
- 2 A Hair testing shows a history. We're looking more in
3 our laboratory for acute incidents. And if we -- we
4 do send some things off for hair testing. For example, if
5 we have a child that's suspected of being abused long-term
6 we might look to see if the parents were medicating it long
7 term.
- 8 Q And you do that through a hair test.
- 9 A We can, but we send that off.
- 10 Q And if you wanted to know whether or not someone was
11 taking an exorbitant amount of morphine you could do a hair
12 test and determine that.
- 13 A Potentially.
- 14 Q Well, I mean --
- 15 A I'm not sure how that works in babies. I'm --
- 16 Q Well, what about adults?
- 17 A Yes. You can test adults.
- 18 Q You can do that, right? So if -- if you have a sample
19 of Stephanie Greene's hair three or four days after this
20 incident you could have made some conclusions from it.
- 21 A Not three or four days. You typically want it -- we
22 would have to pull it. That'd be pretty painful.
- 23 Q You'd have to grow it a few days.
- 24 A Or a few weeks, yeah.
- 25 Q So how about a week later?

Wendy Bell
Cross-examination by Mr. Wise

1 A We could do hair testing.

2 Q And you could it a month later.

3 A Possibly.

4 Q And it sounds like that may even be better because
5 then you can determine peaks and valleys.

6 A That -- that type of testing is not frequently done,
7 and it's very expensive. It's not really --

8 Q Not frequently done.

9 A No.

10 Q But it is possible to be done.

11 A There are -- there are laboratories that could do it.

12 Q And they can take a sample of hair and determine
13 approximate morphine level a week earlier, two weeks
14 earlier, three weeks earlier.

15 A No, sir. It's not that -- it's not that quantitative.
16 It just shows use.

17 Q Shows use.

18 A We don't show levels in the hair like that.

19 Q Does anybody do testing that can show levels?

20 A The laboratories that we use do not do that kind of
21 leveling. It's more exposure.

22 Q Do any laboratories do quantitative hair testing?

23 A They do quantitative, but, again, it's -- it's
24 segmental. So it's not -- you can't tell it down to a
25 particular day. I'm not aware of that being possible.

Wendy Bell
Cross-examination by Mr. Wise

1 Q Excuse me one second.

2 (Pause.)

3 Q Thank you very much.

4 MR. BARNETTE: No further questions of this witness,
5 Your Honor.

6 THE COURT: You may step down.

7 MR. BARNETTE: We'd ask for the witness to be excused,
8 Your Honor.

9 THE COURT: She may be.

10 (Whereupon, the witness was excused.)

11 THE COURT: Ladies and gentlemen, we're going to
12 recess for the afternoon.

13 Keep in mind the caution I've previously given you,
14 and that is that you're not to have any discussions with
15 anyone. You're not to conduct any research or do your own
16 investigation into any issue in any fashion. You are not
17 to permit yourselves to be exposed to any type of media
18 coverage that relates to the trial, whether it be
19 television, radio or newspaper.

20 Do have a good evening, and please report to your jury
21 room at 9:30 in the morning, 9:30 in the morning.

22 If you have pads leave those with the bailiff, please,
23 and I'll put them in an envelope.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: Let me ask y'all to verify all of the
2 exhibits and let's be sure they're accounted for. And turn
3 them over to the court reporter.

4 (Pause.)

5 THE COURT: Court's in recess until 9:30 in the
6 morning.

7 END OF PROCEEDINGS APRIL 1, 2014

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1 (Proceedings April 2, 2014)

2 (The following takes place outside the presence of the
3 jury.)

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

5 MR. BARNETTE: Your Honor, just something that we need
6 to put on the record if that's okay for a second.

7 THE COURT: Okay.

8 MR. BARNETTE: Your Honor, we met back in chambers
9 prior to this. We I had done a redacted a copy of the
10 audio interview -- Investigator William Gary as well as
11 Investigator Kotecha in this case.

12 I supplied it to the defense, and we took out those
13 references to the drugs themselves, the drug charges.

14 We -- we would like to play it, but I understand from
15 the Court's ruling based off our conversation. I just want
16 to make sure the Court's ruling is the reason why is
17 because the officers and what was said -- I guess what
18 Mr. Wise's objection was -- I'll let him put on the record
19 from there at this point.

20 MR. WISE: Yeah. My objection -- my objection was the
21 officers offered too many opinions about the cause of
22 death, too many opinions about their opinion of her and
23 whether or not there are any addiction problems with her.

24 And they, quite frankly, just say, you know, I've been
25 around, I know, I know the signs, I know the symptoms and

1 so forth. And they were offering professional opinions in
2 both of those instances.

3 THE COURT: All right. Is that -- do you believe that
4 to be an accurate representation, Mr. Barnette, that the --
5 the officer on the audio is expressing an opinion about
6 things that would require some special medical training?

7 MR. BARNETTE: Well, there is times where Investigator
8 Gary mentions about, you know, obviously feels like
9 morphine could be passed through breast milk and things of
10 that nature.

11 THE COURT: well, as I understand it both sides in
12 this case are calling expert witnesses on that point.

13 Now, you're not submitting that Mr. Gary is an expert
14 in that field, are you?

15 MR. BARNETTE: No, sir. But I -- you know, I think
16 he's relying on information we feel like is correct, but I
17 understand the Court's ruling. I understand they totally
18 disagree with that.

19 THE COURT: well, I -- well, I obviously have not
20 listened to the audio. It may not be obvious, but I have
21 not listened to the audio because it's not been presented
22 to me for that purpose.

23 It's been shared with the lawyers in order to try to
24 agree to a submission of the audio of the interview between
25 Mr. Gary and the defendant. So I've not listened to the

1 audio. And I'm happy to listen to it if y'all think that
2 it's admissible.

3 However, if it's accurate that Mr. Gary is giving
4 medical opinions that you intend to call expert witnesses
5 to provide, then I'm satisfied that that would have to be
6 redacted.

7 MR. BARNETTE: Yes, sir.

8 THE COURT: I haven't listened to it, so I don't know
9 if that's the case.

10 MR. BARNETTE: Yeah, it is. I mean, he does do that,
11 yes, sir.

12 THE COURT: All right. Well, do you wish to do
13 further redactions, or do you just wish not to play it, I
14 mean?

15 MR. BARNETTE: Well, I think we start doing -- we
16 redacted a lot of it already, Your Honor. If we keep
17 redacting I think it's going to get to the point where it's
18 going to be hard to follow at that point.

19 THE COURT: Okay.

20 MR. BARNETTE: And obviously they can testify to their
21 interview, what she told them.

22 THE COURT: They can. But, now, you don't intend to
23 call lay witnesses, whether they be police officers or
24 otherwise, to testify about the ultimate medical opinions
25 in this case.

William Robert Gary
Direct examination by Mr. Barnette

1 MR. BARNETTE: Oh, no, sir. It's basically what --
2 what she told them during the interview. Obviously,
3 they're not going to take issue with what she told them.

4 THE COURT: Sure.

5 All right. Anything else?

6 All right. Bring them in, please.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 We're going to continue with the state's presentation
11 of evidence from yesterday.

12 MR. BARNETTE: May it please the Court, Your Honor.
13 I'd like to call Investigator William Gary to the stand.

14 WILLIAM ROBERT GARY, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. BARNETTE

17 Q If you would, sir, please state your full name for the
18 record.

19 A William Robert Gary.

20 Q And where do you work at, sir?

21 A Spartanburg County Sheriff's Office.

22 Q And what's your position there, sir?

23 A I'm a senior investigator in the criminal
24 investigation division currently assigned to violent crimes
25 encompassing homicide, robbery, those types of crimes.

William Robert Gary
Direct examination by Mr. Barnette

1 Q And how long have you been at the sheriff's
2 department, sir?

3 A A little bit over 19 years.

4 Q Was you assigned to this case involving Stephanie
5 Greene, the defendant in this case?

6 A Yes, I was.

7 Q And if you would, did you actually go to the scene
8 that day?

9 A Yes, I did.

10 Q If you would, tell the jury about that, sir.

11 A I got called by the coroner's office early in the
12 morning to tell me of this death, and I responded to the
13 scene. I assumed miscommunication with the con-center that
14 a uniformed deputy had arrived also, who had not gone.

15 When I got there the ambulance was parked in front of
16 the house. I went to step inside and ended up passing the
17 victim not knowing who she was -- or the defendant -- on
18 the porch not knowing who she was. She was sitting there
19 smoking a cigarette, drinking coffee.

20 I went in and was told the baby was out in the
21 ambulance, so I went out to look at the baby in the
22 ambulance.

23 And then I went back inside the house. When I went
24 back in an interview had already started with the coroner's
25 office and her inside the residence.

William Robert Gary
Direct examination by Mr. Barnette

1 Q Let me show this. This has been entered into evidence
2 as State's Exhibit 32. Is that a picture of her -- I guess
3 you actually saw her outside.

4 A I did. It was basically the same location. It just
5 wasn't at that exact moment.

6 Q Right. And so you didn't -- you didn't realize that
7 was even the -- was the mother in this case.

8 A No. I thought it was possibly a neighbor, friend,
9 someone like that.

10 Q Okay. And you said later on they -- they did start to
11 interview her, involving an interview with her.

12 A They did. I came into the -- it was at a like a
13 dining room table almost like -- not really an open area.
14 There's kind of a bar separating the dining room area and
15 the kitchen. And they were sitting at a dining room table
16 there, and I walked up and sat down while it was already in
17 progress, and so was there for a portion of that interview,
18 not the entire thing.

19 Q How did she appear to you?

20 A She was slow in her speech. She -- I didn't see her
21 move around a ton at that time, but everything she was
22 doing was slow.

23 To me with my experience in the years of working at
24 the sheriff's office, appeared to me she was under the
25 influence of something. I didn't know what. And during

William Robert Gary
Direct examination by Mr. Barnette

1 that she -- you know, I asked her, you know, have you taken
2 anything, any medications since you found her. And she
3 completely denied taking anything.

4 Q Obviously, the investigation continues. Obviously,
5 you have baby deaths. Everybody -- the sheriff's
6 department responds to all baby deaths in this situation.

7 A Yes, we do.

8 Q So all of these -- obviously, they're charged mainly
9 with finding out the cause of death and things like that.

10 A Right. Baby deaths can be difficult because this is
11 not your cookie-cutter homicide or anything like that.
12 There's no gunshot; there's no stabbing; there's no
13 beating; there's nothing like that. There's no signs of
14 trauma on the baby at all and no signs of violence like you
15 might have with a struggle in a home or something with a
16 fight.

17 So there was nothing that day that stood out to us to
18 say someone could have done something to this child. So of
19 course with that we -- we might can make some -- I guess in
20 a bad way -- educated guesses, assumptions, things,
21 opinions -- you know, work a case based on what we might
22 have seen in the past, what we see there, and ask questions
23 to go along with that. But we don't know anything in this
24 case until there's an autopsy performed. And here it
25 toxicology reports and things like that to give us some

William Robert Gary
Direct examination by Mr. Barnette

1 indication, because I didn't actually do an incident report
2 on this until a couple of months later.

3 Q Later on did y'all receive the pathology results, as
4 well as the toxicology results?

5 A Yes, I did.

6 Q And based off that what did the coroner's office
7 declare this to be?

8 MR. WISE: I object to his testifying what his report
9 said. He can testify what he did and what he saw.

10 THE COURT: You're asking him what the pathologist's
11 opinion was?

12 MR. BARNETTE: Yes, sir.

13 THE COURT: And the pathologist is going to testify?

14 MR. BARNETTE: Yes, sir.

15 THE COURT: All right. Overrule your objection.

16 BY MR. BARNETTE

17 Q Did you receive the pathology results, as well as the
18 toxicology results in this case?

19 A I did. Once I was notified of what was found there
20 that initiated the report and my investigation of doing
21 search warrants to obtain records for both the defendant
22 and for the child.

23 Q And did you do that, sir?

24 A I did.

25 Q And did you review those records?

William Robert Gary
Direct examination by Mr. Barnette

1 A Yes, I did.

2 Q Based off that did you conduct an interview with the
3 defendant?

4 A I did.

5 Q Let me show you what's been marked as State's
6 Exhibit 58. If you would, just tell us. Is that a waiver
7 that you did with the defendant concerning her rights?

8 A It is. This is the Spartanburg County Sheriff's
9 Office. It's entitled preinterrogation waiver form, which
10 is when we're doing an interview with someone who can be
11 considered to be in custody for something, or any time they
12 might perceive that, we go over their rights with them --
13 what you hear on television -- to remain silent and all of
14 that. We go over with that.

15 We ask them to sign both they understand their rights.
16 And then the second part asks if they will waive their
17 rights at that time and agree to talk to us about what we
18 want to talk to them about.

19 Q And did you read these rights to her?

20 A I did.

21 Q And did you -- did she sign that she understood these?

22 A She signed both that she understood her rights and was
23 willing to waive her rights at that time and talk to us
24 about this.

25 Q And was this witnessed by Kevin Bobo, and notarized by

William Robert Gary
Direct examination by Mr. Barnette

1 him?

2 A Yes, sir. He was present when it was written.

3 MR. BARNETTE: Your Honor, I'd like to enter State's
4 Exhibit 58 in at this time.

5 THE COURT: No objection?

6 MR. WISE: No objection.

7 THE COURT: It's admitted.

8 (Waiver form of the defendant marked State's Exhibit
9 No. 58.)

10 MR. BARNETTE: Can I publish it to the jury at this
11 time, Your Honor?

12 THE COURT: You may.

13 BY MR. BARNETTE

14 Q Before that just to show the jury this picture,
15 State's Exhibit 32, that's the first time that you saw --
16 obviously, you was coming in. That's how you saw the
17 defendant.

18 A I can't -- I can't say, you know, when the picture was
19 taken that's exactly when it was, but it's the same
20 location where she was when I came in.

21 Q And you didn't -- didn't appear to be the mother at
22 that time.

23 A Not to me.

24 Q Showing you State's Exhibit 58. If you would, just
25 read the form and explain to the jury what you did, sir.

William Robert Gary
Direct examination by Mr. Barnette

1 A The top, we fill out the personal information of the
2 person with their name, address, our case number if we have
3 one at the time. It's filled in.

4 And it goes with one through five -- their rights.

5 "I have the right to remain silent. Anything I say
6 can and will be used against me in a court of law. I have
7 the right to talk to a lawyer and have him present with me
8 while I'm being questioned. If I cannot afford to hire a
9 lawyer one will be appointed to represent me before any
10 questioning if I so wish. I have the right to stop
11 answering questions at any point in the questioning."

12 And we read that to the person. And when I do -- at
13 that point I stop just to ask do they understand any of it,
14 do I need to further explain any of those five.

15 And then, "The above rights have been read to me by
16 Detective Gary," which is me. "I've read the same and
17 understood the rights fully." And I'll ask that. If they
18 do, I'll ask them to sign, as she did there that she
19 understood her rights.

20 Then it says, "I waive, which means give up, my rights
21 as explained above and agree to talk to Officer Gary in
22 reference to Alexis Greene. My statement that I may make
23 is of my own free will without fear, threat, promise or
24 favor or reward of any kind. I'm able to read and write
25 the English language, finished 16 years in school."

William Robert Gary
Direct examination by Mr. Barnette

1 Once I read that to them I make sure they're willing
2 to talk to me. Ask to sign there, which she did that she's
3 willing to talk to us. I witnessed it, and sergeant Kevin
4 Bobo notarized it.

5 Q And she signed in two different places, is that right?

6 A Yes, sir.

7 Q And she had told you she went through four years of
8 school?

9 A Four years of college, yes, sir.

10 Q Four years of college. And did she also -- did she
11 tell you she was a nurse?

12 A Yes.

13 Q Okay. During the interview did Investigator
14 Kotecha -- did he come in at some part in the interview?

15 A He did. He came in a few minutes -- ten minutes or so
16 in the interview.

17 Q When -- if you would, tell the jury. What did she
18 tell you once you started asking her about what happened?

19 A When I first started talking to her about what the
20 toxicology report showed and started talking to her about
21 her omission to her doctors as far as not telling them, the
22 ones prescribing the medications to her, that she was
23 pregnant and telling them about the other -- one about the
24 other drugs -- her response was that they were covering
25 their own butts by not documenting it in there.

William Robert Gary
Direct examination by Mr. Barnette

1 And when I started talking to her about what was in
2 the toxicology report one story that she mentioned was that
3 her sister was at the house at some point and dropped some
4 medication, that one of her children could have picked up
5 the medication and given it to the baby -- the medication
6 being in pill form. And I -- I kind of asked her how that
7 sounded, did that sound reasonable that a child would pick
8 that up.

9 Later on she talked about that again, and she said
10 that her sister was still there when they were found and
11 her sister got them back. So I wasn't sure, you know, how
12 that -- if her sister was there and her sister got the
13 pills, how that would even be possible.

14 At one point during the interview she was asked
15 that -- with her wanting to take the morphine and is -- to
16 continue to take it if she might have had a problem with
17 it, an addiction problem, that could that be the reason why
18 she didn't tell the doctors that she was pregnant and
19 breastfeeding because she knew that they would not give her
20 the medication and she -- and that was the only time she
21 started showing any emotion the day that this happened, as
22 well as during the interview. And she said that that was
23 part of it.

24 Q Let me go through this with you. You asked her about
25 the prescriptions she'd had filled --

William Robert Gary
Direct examination by Mr. Barnette

1 A Correct.

2 Q -- all the way through her pregnancy and, you know, up
3 to the point where the child died. And she -- did she tell
4 you she didn't take them?

5 A She said she -- I asked her why. She was said she
6 wasn't taking the pills while she was pregnant. And so I
7 asked her why she was still filling the prescriptions if
8 she wasn't taking them. She said that she had insurance
9 that was covering it so she kept -- continued to get it
10 filled.

11 So my question to her was, you know, were you saving
12 it for a rainy day, you know, why would you continue to do
13 that, and she said that her husband Randy had her pills
14 locked up and would give her, you know, three days worth at
15 a time.

16 So that struck me as odd because all of these pill
17 bottles are setting on the dresser in the bedroom. So I
18 asked her about that and she -- her statement to me was at
19 that point in time he trusted me enough but he still had
20 some locked up.

21 Q At one point did she talk -- you talked to her about
22 the prescriptions. Did she say she didn't get the
23 prescriptions for four or five months and, as a matter of
24 fact, didn't get any prescriptions from Kovacs or Kooistra
25 during that four or five months? Did she make a statement

William Robert Gary
Direct examination by Mr. Barnette

1 about that?

2 A I remember her saying she wasn't taking the pills that
3 she had filled.

4 At one point she did say that her husband had picked
5 up the pills from the office, because I asked her about not
6 going into the office, you know. And she said that he had
7 gone by to pick up the -- the prescription for her, you
8 know. I don't -- I don't recall her saying that she just
9 did not get the prescriptions filled.

10 Q Okay. And/or she didn't get the prescriptions.
11 Actually, he went and got the prescriptions.

12 A I think she talked about that at least on one occasion
13 where he went to -- or he went and picked up the
14 prescription.

15 Q And her thing, she kept saying the doctor didn't write
16 down what she told him, is that right?

17 A Right. She -- I asked her about that, did they go
18 back and take this stuff out of the charts, you know,
19 because how would they know this is what it was going to
20 lead to if you had told them. You know, it made no sense
21 why they wouldn't document it -- did you -- you know. And
22 she just kept saying they -- that doctors do that, they
23 just cover their -- their own butts and cover themselves.

24 Q As a matter of fact, didn't she at one point start
25 saying that, well, her memory's not as good as it used to

William Robert Gary
Direct examination by Mr. Barnette

1 be?

2 A She talked about her -- her accident, which I have no
3 doubts that it happened. And she said that her -- her
4 memory wasn't -- wasn't that good.

5 So my question to her was should she have been
6 practicing as a nurse during that time. And she said
7 progressively it was getting worse as it went, which is
8 very possible. And -- and that's -- that was her
9 explanation, that her memory just wasn't what it used to
10 be, that it got worse because of the accident that she had.

11 Q And did she also make the comment during the talking
12 to you or whatever that she just breastfed a little, that
13 she was actually giving the baby formula?

14 A She said she supplemented a good bit with formula and
15 that she didn't breastfeed a lot, you know, which hearing
16 her talk about before with her talk about that there'd be
17 nights that Alexis would just -- she'd lay in the bed and
18 she'd stay latched on all night and feed as she wanted to,
19 to me that's not -- it was -- if you're doing that, I don't
20 know how you're not breastfeeding a lot.

21 Q And, as a matter of fact, what she told in the
22 coroner's interview that she breastfed all night.
23 Breastfed through the night.

24 A Right.

25 Q And she kept talking about her husband keeping her

William Robert Gary
Direct examination by Mr. Barnette

1 medications locked up.

2 A Right.

3 Q And then he finally let her have them because he
4 trusted her?

5 A That's what she said. She said he'd started to trust
6 her at that point. But she also said he still had some
7 locked up.

8 Q And she also -- did she say that she saw Kovacs that
9 summer? As a matter of fact, right -- right before, like
10 three or four months before, her pregnancy. And then you
11 asked her about, you know, well, wasn't that earlier and
12 everything. And she kept insisting it was until you showed
13 her and told her about it. And obviously it wasn't back
14 until April of that year.

15 A Yes.

16 Q As a matter of fact, she had talked about nurses that
17 had been nine months pregnant and, I mean, not even knew
18 they was pregnant for the nine months at times. She kept
19 talking about that at times.

20 A Correct.

21 Q As a matter of fact, keep talking about locking up the
22 prescriptions. He kept them locked up until right before
23 she had the baby.

24 A That's what she -- that's the way I took it from the
25 way she said it. It was like he had it locked up before or

William Robert Gary
Direct examination by Mr. Barnette

1 at some point until she had Alexis and then he -- she still
2 hadn't regained his trust the way -- the way she said it,
3 that's how I took it. And that's when he left the -- let
4 her have access to the medication.

5 Q And during the interview, Investigator -- and he'd
6 actually talked to her before that you had actually talked
7 to her.

8 A Yes, he did.

9 Q He confronted her, because actually she filled out
10 some of the lists herself just on the doctors, on the
11 medications, and left morphine off.

12 A Correct. And I'd talked to her also along that same
13 lines where she'd said that she told her O.B.G.Y.N. her
14 medications she was -- all of her medications she was
15 taking.

16 Q So once she realized that did she start telling y'all
17 more information after that?

18 A That's when she started -- it was obviously -- it was
19 towards -- towards the end of the interview is when she had
20 broken down crying. And she was saying that part of the
21 reason why she hadn't told them about the medication is
22 because they would stop prescribing it to her or about the
23 pregnancy is because they would stop prescribing it to her.

24 Q And you asked her about those admissions where she --
25 she finally admitted she just didn't tell them because she

William Robert Gary
Direct examination by Mr. Barnette

1 was afraid they'd take off her off the morphine.

2 A Yes.

3 MR. BARNETTE: One moment, Your Honor.

4 (Pause.)

5 Q And did you also ask her about did you and your
6 husband talk about what happened?

7 A Yes, sir. I asked her if after this had happened did
8 she have any conversations about this and that the -- could
9 the -- the cause of Alexis' death could be from these
10 drugs. And she said that her and her husband had discussed
11 that as a possible cause of this.

12 Q And, as a matter of fact, hadn't she reviewed her own
13 records before y'all had this interview?

14 A She said she had seen her records.

15 Q And was making reference to them during the interview?

16 A Yes, sir.

17 Q And when was the first time she had found out about
18 the morphine overdose that she told -- in that interview
19 when you told her?

20 A She said that -- she said she had no -- that no one
21 had told her anything. And -- and I told her what the
22 levels showed.

23 She asked -- if she wanted to know. She said yes.
24 And so I told her what the levels showed in the toxicology
25 and what the -- I told her -- I read to her what the ruling

William Robert Gary
Cross-examination by Mr. Wise

1 was on the -- from the pathology with the coroner's office.

2 Q And she admitted that was high.

3 A Yes, she did.

4 Q And she knew it was.

5 A Yes.

6 MR. BARNETTE: One moment, Your Honor, please.

7 (Pause.)

8 Q Thank you, sir. Please answer any questions that the
9 defense move for you, sir.

10 CROSS-EXAMINATION

11 BY MR. WISE

12 Q Officer Gary, you were there on the day of this
13 incident.

14 A Yes, I was.

15 Q And did you take anything from the house?

16 A No, sir.

17 Q Excuse me?

18 A No, sir.

19 Q Did you see anybody take any formula bottles from the
20 house?

21 A Yes, sir. We discussed it. While I was there during
22 part of the interview we were asking about the formula and
23 what was it that she had given to her at that time. And it
24 was pointed out to us I believe by both her and Randy where
25 the formula was in the kitchen. Then the coroner's office

William Robert Gary
Cross-examination by Mr. Wise

1 said they wanted to take that with them in case they needed
2 to get any testing done on it.

3 Q And they actually took the formula bottle too.

4 A As far as I know, yes, sir.

5 Q Okay. And they -- Mr. and Mrs. Greene both pointed
6 out to -- to somebody where the formula was, and the
7 formula bottle.

8 A Yes, sir.

9 Q Okay. Now, you said there were no bruises on the
10 baby.

11 A None that I observed, no, sir.

12 Q And you did look.

13 A Yes, sir.

14 Q And when you talked to her the first time -- this
15 interview was done when?

16 A This was done --

17 Q Let me pull it down and see if we can get the date off
18 the top.

19 A I can tell you. June the 24th of 2011 should be the
20 date.

21 Q Where is the date on it?

22 A Right in the middle up at the top. Yes, sir.
23 June 24th of 2011.

24 Q So this was some eight months after this incident.

25 A Let me just doublecheck the date.

William Robert Gary
Cross-examination by Mr. Wise

1 Q Going back to November the 13th.

2 A Yes, sir. It was November -- November the 13th, yes,
3 sir. It was about eight months.

4 Q About eight months later.

5 A Yes, sir.

6 Q All right. And the first time that she knew she was
7 accused of causing the death of her child was when you
8 interviewed her.

9 A Yes, sir.

10 Q Okay. She also told you that -- that she had
11 consulted with a lactation nurse --

12 A Yes, sir.

13 Q -- at the hospital.

14 A Yes, sir.

15 Q And that she'd also gone on line and looked up
16 things --

17 A Yes, sir.

18 Q -- about the safety of the drugs she was taking.

19 A Yes, sir.

20 Q Is that correct?

21 A Yes, sir. However, there was -- in a part of the
22 search warrants I got medical records from the hospital,
23 and there was no notes --

24 Q Well, you can't -- can't go into what the medical
25 records say unless they're your records. All right.

William Robert Gary
Cross-examination by Mr. Wise

- 1 A Okay.
- 2 Q All right. But she did tell you that.
- 3 A Yes, sir.
- 4 Q Right? Thank you. And -- and she also said she'd
- 5 done research on line.
- 6 A Yes, sir.
- 7 Q And I think, in fact, what she told you was that she
- 8 had not seen the doctors for four to five months.
- 9 A Sounds about right.
- 10 Q There was a period of time where it's obvious that she
- 11 had not seen these doctors.
- 12 A Yes, sir.
- 13 Q A period of several months.
- 14 A Yes, sir.
- 15 Q Okay. And she mentioned that -- that Randy would pick
- 16 up the prescriptions for her.
- 17 A She mentioned that about one.
- 18 Q Excuse me?
- 19 A She mentioned that specifically about one.
- 20 Q Okay.
- 21 A At least one time. I believe that's how she said it.
- 22 Q Do you recall what website she said she went on to
- 23 look it up?
- 24 A No, sir.
- 25 Q Do you know if it was the National Institute of

William Robert Gary
Cross-examination by Mr. Wise

1 Health, or did she say?

2 A I have no clue.

3 Q Okay. Thank you.

4 MR. BARNETTE: No further questions of this witness,
5 Your Honor. We'd ask for him to be excused. I think he's
6 going to stay, but be excused if he needs to leave in the
7 case or whatever.

8 MS. POULOS: Your Honor, the state next calls Kaushik
9 Kotecha.

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Volume II

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Stephanie Irene Greene,) 2011-GS-42-5758
6 Defendant.) March 27 - April 4, 2014
7 Spartanburg, South Carolina

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9
10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13
14

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

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17 TIMI POULOS, ESQUIRE
Attorneys for the State

18 C. RAUCH WISE, ESQUIRE
19 Attorney for the Defendant

COPY

20
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

Kaushik Kotecha
Direct examination by Ms. Poulos

1 KAUSHIK KOTECHEA, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. POULOS

4 Q If you would, please state your name for the record.

5 A Kaushik Kotecha.

6 Q And where are you employed?

7 A I'm -- currently I'm employed with Smith's Drug
8 Company. It's a wholesale drug company.

9 Q And back in November of 2010 where were you employed?

10 A I was working for the state bureau of drug control. A
11 lot of times it's known DHEC drug control. And I was the
12 district director for the drug control.

13 Q And what type of work did you do at DHEC?

14 A What we did was we did both regulatory and law
15 enforcement. Regulatory work would be where we go over
16 there and do inspections of the pharmacy, make sure their
17 records are correct. And then we also try to do education
18 along with that.

19 And on the law enforcement side is when someone
20 violates the law like forges a prescription, a doctor
21 diverting drugs, pharmacists diverting drugs. We did
22 investigation, install cameras. And then of course we also
23 look at any other violations like forged prescription or
24 anything like that.

25 Q Can you tell the jury about your educational

Kaushik Kotecha
Direct examination by Ms. Poulos

1 background and any certifications that you have?

2 A I was a -- I started out as a uniform police officer
3 in Spartanburg, and I got burned out and decided to go to
4 pharmacy school. So I became a pharmacist, practiced
5 pharmacy for about three years at Mary Black Hospital as a
6 staff pharmacist. And then I became an oncology pharmacist
7 with Drs. Bearden, Bradoff and Nelson.

8 Q So how long have you been a licensed pharmacist?

9 A Since 1989, so about --

10 Q About 25 years?

11 A Yes.

12 Q Are you a member of any medical or scientific groups?

13 A I'm a member of the South Carolina Pharmaceutical
14 Association.

15 Q And can you please describe what the study of pharmacy
16 is?

17 A Pharmacy is basically -- what you do is you look at
18 the -- well, first of all, you review the doctor's
19 prescription and make sure the doctor has got the
20 information.

21 And then what you do is -- is dispense the drug. And
22 then you look at interaction, if there is any interaction
23 with the drugs, and make a determination. If there's
24 interaction, you call the doctor and say, hey, doctor, did
25 you know that this was going on or this is -- probably

Kaushik Kotecha
Direct examination by Ms. Poulos

1 contraindicated for this patient.

2 I've seen -- I've had where someone was allergic to
3 penicillin and the doctor wrote a prescription for
4 penicillin. And so you call them up and correct it and
5 stuff like -- so you're kind of like the gatekeeper and
6 make sure the patient gets the correct drug.

7 Q Have you ever been qualified by this court as an
8 expert in the field of pharmacy?

9 A I have.

10 Q Do you remember which judge?

11 A Judge Cole.

12 MS. POULOS: Your Honor, at this time I would offer
13 Kaushik Kotecha as an expert in the field of pharmacy.

14 MR. WISE: No objection.

15 THE COURT: He is so qualified.

16 BY MS. POULOS

17 Q Did you begin your investigation in this case by
18 running a report through a prescription monitoring system?

19 A I did. It started out I received a call from the
20 Spartanburg County Solicitor's Office, asked me to look
21 into this matter.

22 And the first thing, what we do is South Carolina has
23 a program called script. But what it is, it's a
24 prescription monitoring program.

25 In other words, all of the controlled substances that

Kaushik Kotecha
Direct examination by Ms. Poulos

1 are filled in South Carolina are sent to the department of
2 health and environmental control where they keep a record
3 of who is getting what drugs. So therefore we can look at
4 doctor shopping or any kind of trends or anything like
5 that.

6 So if we -- if we're investigating a case we punch in
7 a person's name and find out, hey, what pharmacy are they
8 going to so we can look at that, because what we had was a
9 lot of people were going to different pharmacy and getting
10 the same drug.

11 Q And after receiving that information did you then go
12 talk to Dr. Kovacs?

13 A I did.

14 Q And what did you learn from that meeting?

15 A Well, from that meeting I learned that Dr. Kovacs was
16 not aware that --

17 MR. WISE: Your Honor, I would object to his
18 testifying to what Dr. Kovacs said as being hearsay.

19 THE COURT: Well, Dr. Kovacs has already testified.
20 So if we need to recall her, we can.

21 MR. WISE: All right.

22 BY MS. POULOS

23 A Dr. Kovacs say that she was not aware that Stephanie
24 Greene was pregnant, and of course she was not aware that
25 she was getting Vicoprofen from Dr. Kooistra who is a

Kaushik Kotecha
Direct examination by Ms. Poulos

1 neurologist.

2 Q And just to clarify again for the jury, which drug had
3 Dr. Kovacs been prescribing?

4 A Oxyco -- I mean, I'm sorry. MS Contin, which is
5 morphine.

6 Q Then did you also go to speak with Dr. Kooistra?

7 A I did.

8 Q And what was the drug, again, for the jury's
9 understanding that she had been prescribing?

10 A She had been prescribing Vicoprofen for her.

11 Q And what is the difference between mor -- I'm sorry --
12 hydrocodone and Vicoprofen?

13 A Vicoprofen is a drug. Hydrocodone is the -- is the
14 active ingredient, which is a pain reliever. Lortab is
15 a -- is a hydrocodone. But it's got acetaminophen in it.

16 Vicoprofen has got hydrocodone in it, but it's got
17 ibuprofen in it. So people who -- you know, say, have a
18 liver problem and stuff like that, a lot of times what
19 they'll do is they will give ibuprofen instead of Lortab.
20 That's the difference.

21 Q So basically just so the jury will understand better,
22 Vicoprofen has got the active ingredient of hydrocodone, is
23 that correct?

24 A That's correct.

25 Q Okay. And what are morphine and Vicoprofen or

Kaushik Kotecha
Direct examination by Ms. Poulos

1 hydrocodone usually prescribed for?

2 A Analgesic, pain.

3 Q And are they considered controlled substances?

4 A They are.

5 Q If you could, tell the jury. What is a controlled
6 substance?

7 A A controlled substance is they have -- and if -- if
8 you don't mind I can -- may I step out there and show that
9 provided the judge doesn't mind?

10 MS. POULOS: Your Honor, may the witness step down and
11 make a drawing?

12 THE COURT: Okay. Sure.

13 (Whereupon, the witness left the stand.)

14 A We have drugs right here, and then divided into O.T.C.
15 and prescription. I'm sorry. Thank you.

16 THE COURT: Be sure that the court reporter can see
17 your face as you testify so she can be certain to take down
18 what you say.

19 THE WITNESS: Okay.

20 A Or-and the other side of the drugs I call legend drug
21 or R.X. drug. All it means, it requires a prescription.
22 That's all it means.

23 Legend drug I subdivided into two other categories.
24 One category is called noncontrolled and the other category
25 is called controlled.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 So noncontrolled drugs are drugs like antibiotics,
2 Prednisone, 800 mg ibuprofen. All of those drugs are
3 noncontrolled drugs.

4 Then you have controlled drugs which is -- which is
5 regulated by D.E.A. And in the state of South Carolina
6 it's DHEC drug control. And these drugs are divided,
7 subdivided, into five different categories.

8 Well, the first one is C-1. Controlled substance
9 Schedule I drugs are heroine, methamphetamine and stuff
10 like that, which has no medical use. So that's why they're
11 called Schedule I drugs. They're potentially highly
12 addictive.

13 Then you have C-2 drugs. C-2 drugs are highly
14 addictive, but they do have medical use. An example, C-2
15 drugs are further subdivided into two categories. You've
16 got narcotic and nonnarcotic.

17 Narcotic drugs are the drugs like morphine, Dilaudid,
18 oxycodone. Those are the Schedule II narcotics.

19 The nonnarcotics are drugs like Methylphenidate used
20 for A.D.D., Adderall. Those are nonnarcotic. So these are
21 opioids.

22 Then you have C-3 drugs. Again, they're subdivided
23 into two categories, and those are, again, narcotic and
24 nonnarcotic.

25 And narcotic in that situation will be drugs like

Kaushik Kotecha
Direct examination by Ms. Poulos

1 Vicoprofen, Lortab. Those are narcotic drugs. Nonnarcotic
2 drugs on those are some of the weight loss prescriptions
3 that they have, and those are nonnarcotics.

4 Then you have Schedule IV drugs. And an example of
5 Schedule IV drugs would be like benzodiazepine, Valium,
6 Alprazolam, Lorazepam, Temazepam. All of those are
7 Schedule IV drugs. And, again, as you move forward, move
8 down to higher number, the less addictive they are.

9 And then of course, then you have C-5 drugs, which has
10 got the codeine. A lot of times used to be if you'd have a
11 cough you can to a pharmacy and the pharmacy will sell you
12 dextromethorphan. This was a codeine.

13 The only exception to the rule on this one is --
14 that's cocaine. Cocaine is a Schedule II. Technically,
15 it's a nonnarcotic. But the D.E. has pointed as a -- as a
16 narcotic. That's the only difference that we have.

17 Q If you could, show where on your chart that morphine
18 would fall under.

19 A Morphine --

20 Q Write it down.

21 A Okay. Morphine would be right here. It'd be a
22 narcotic.

23 Q And where would Vicoprofen and hydrocodone be?

24 A Vicoprofen and hydrocodone would be Schedule III
25 narcotic drug right here.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 Q And which of those two drugs are more addictive?

2 A Morphine. Then just Clonazepam -- that's the
3 benzodiazepine -- and that falls as Schedule IV.

4 (Whereupon, the witness returned to the stand.)

5 Q If you could, tell the jury about some of the side
6 effects of morphine.

7 A Again, morphine is a very good analgesic. As
8 oncologist I'd dispense a good bit of that. It is a very
9 good drug.

10 The problem with morphine of course you have -- I
11 usually when I was practicing pharmacy, I would tell them
12 that this is a very strong drug. And what you -- you
13 cannot drive. You need to be careful. Don't operate any
14 machinery or anything like that. Sometimes you'd be
15 unstable on your feet.

16 One of the biggest problems with morphine and
17 Vicoprofen is constipation. That was my general pharmacy
18 information that I passed onto the patient when I was
19 practicing.

20 Q As a pharmacist would you recommend someone who is
21 pregnant and/or breastfeeding to be taking morphine?

22 A I would -- I would say that, one, they would need to
23 check with their doctor because that's very important.

24 But it depends on the dose. If it's a high dose, I
25 certainly would have said, hey, this is too high of a dose,

Kaushik Kotecha
Direct examination by Ms. Poulos

1 you really need to check with your doctor. In other words,
2 I'd be more -- more assertive on my information in that
3 situation.

4 Q Is MS Contin a form of morphine?

5 A MS Contin means it's a continuous release. And that's
6 why they use that morphine -- continuous release.

7 Q And how is MS Contin different from other types of
8 morphine? Is it -- is it what you just said?

9 A Yeah. It's a continuous release versus immediate
10 release.

11 Immediate release, you get immediate pain relief right
12 there. And when it's a continuous release it just goes on
13 slowly. It builds up and then continues through the
14 timeframe. Usually it's -- you know, it depends on the
15 drug. Sometimes it goes through over eight hours.
16 Sometimes it's 12 hours.

17 Q And after you went and spoke with the doctors and got
18 your information did you then go to the pharmacies to
19 collect all of the prescriptions?

20 A I did.

21 Q And which pharmacies did you go to?

22 A C.V.S. in Inman and Rite-Aid in Inman.

23 Q And you actually -- you took the actual prescriptions
24 in evidence?

25 A I did.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 MS. POULOS: For the record, Your Honor, they're
2 Exhibits 37 through 55 that have already been admitted into
3 evidence through stipulation.

4 Q Some of the prescriptions -- and we saw yesterday --
5 for hydrocodone were call-in prescriptions. Is it -- is it
6 common to call in a prescription for hydrocodone?

7 A It is, yes. It is not uncommon to call in a
8 prescription for hydrocodone because it's a Schedule III.
9 You can call in a prescription for Schedule III through V.

10 Q Let me show you some of these photographs here that
11 have already been admitted into evidence. This is -- let
12 me get you to go through each one of these. This is
13 State's Exhibit No. 7. What is that drug?

14 A Says morphine sulfate ER, which is extended release.

15 Q And, again, is that a drug that you would recommend to
16 someone who is breastfeeding to be taking?

17 A I certainly would have had additional questions, and I
18 would want to talk to the doctor if I knew they were
19 breastfeeding.

20 Q This is State's Exhibit No. 9.

21 A Again, this is the same thing. Hydrocodone is
22 sometimes used in pregnancy -- not pregnancy but when --
23 well, in pregnancy. But if you're breastfeeding I would
24 want them to know about it. And I'd probably give them --
25 you know, I would call the physician and tell the

Kaushik Kotecha
Direct examination by Ms. Poulos

1 physician, hey, you know, she's breastfeeding, you know,
2 just make sure that the -- the patient and the physician
3 are aware of that.

4 Q This is State's Exhibit No. 10. Is this just -- is
5 that just the back side of that prescription?

6 A I can't see what --

7 Q Could you read out the warning label?

8 A Oh, I'm sorry. "Do not take this medication in the
9 third trimester of the pregn -- pregnancy. Consult your
10 doctor -- your doctor or your pharmacist. May make you
11 drowsy, dizzy especially with alcohol. Use care with car
12 and machinery." And that's what I would have said. That's
13 correct.

14 Q This is State's Exhibit 11. What is that prescription
15 for?

16 A It's Clonazepam 2 mg. That's a Schedule IV drug, and
17 it's used for anxiety.

18 Q And this is just State's Exhibit 12, the back side.
19 Would you read the warnings on the label?

20 A "May cause drowsiness. Alcohol intensifies the
21 effect. Use care using machinery. May cause dizziness.
22 Do not use if pregnant or suspect you are pregnant or
23 breastfeeding."

24 Q And is that a drug that you would recommend to someone
25 who is pregnant and/or breastfeeding to be taking?

Kaushik Kotecha
Direct examination by Ms. Poulos

1 A Obviously, there's a warning. I would -- I would
2 certainly -- and, you know, I'm not saying that you would
3 not, but I would certainly be inquiring as a physician and
4 talking to the patient, hey, you need to -- you should be
5 considering this.

6 Q This is State's Exhibit 13. What is that drug?

7 A Keppra XR.

8 Q What is that typically prescribed for?

9 A You typically -- it's prescribed for seizures.

10 Q This is State's Exhibit 14, just the back side. If
11 you could, read out those warning labels.

12 A "Make you drowsy, dizzy." I -- I can't read the part.
13 It's folded just a little bit. But, "With alcohol use care
14 with car and machinery. If pregnant or become so discuss
15 use of drugs with your doctor. Do not chew or crush.
16 Swallow whole."

17 Q And, again, is this a drug that you recommend to
18 someone who is pregnant?

19 A Again, you know, if this was all combination together,
20 I would have probably had a lot of heartaches on dispensing
21 this drug.

22 Q This is -- sorry -- State's Exhibit 15. And what is
23 that drug?

24 A Baclofen. And it's used for muscle relaxer.

25 Q Sixteen is just -- just the back of that.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 We'll move on to State's Exhibit 17. What is that
2 drug?

3 A Amlod -- Amlodipine. And usually that's used for
4 blood pressure.

5 Q This is State's Exhibit 19.

6 A That's Ro -- Ropinirole. And that is used for
7 restless leg syndrome.

8 Q Okay.

9 A And also used for people with Parkinson too sometimes.

10 Q This is State's Exhibit 20, just the back side of
11 that. Can you read the warning label?

12 A "Breastfeeding not recommended while using drug.
13 Consult doctor or pharmacist."

14 Q State's Exhibit 21.

15 A This is Keppra again. That's the same drug we had
16 earlier.

17 Q Okay. This is State's Exhibit 23.

18 A Gabapentin. This is used for neurological pain and
19 sometimes also used for seizures.

20 Q Would you recommend someone who is breastfeeding
21 and/or pregnant to be taking this drug?

22 A I probably would not. I would need to look at the
23 side -- side effect because it is -- it does have
24 drowsiness as one of the -- the problems with it. Side
25 effect.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 Q State's Exhibit 25. How about this drug?

2 A Savella 50 mg. And, again, that's used for restless
3 leg syndrome too.

4 Q And, again, would you follow the same protocol as far
5 as your recommendations on whether or not to dispense this
6 to someone --

7 A That is correct.

8 Q -- when they're breastfeeding?

9 A That's correct. And there's another use for this one
10 too, which is Parkinson.

11 Q State's Exhibit 27.

12 A Carisoprodol. And the brand name is Soma. And this
13 is a muscle relaxer. This drug is converted into
14 meprobamate and is -- again, this used to be a legend drug
15 like I was telling you did not require -- it was not a
16 controlled substance rather, but today it is a controlled
17 substance. It's Schedule IV controlled substance today.

18 Q And this is State's Exhibit 30. And what is that
19 basically?

20 A Looks like some kind of caffeine tablet.

21 Q Is caffeine recommended for someone who's
22 breastfeeding?

23 A You know, I haven't done enough study on that one. I
24 have dispensed caffeine for neonatals when -- when their
25 heart's slow to increase the heart. So I really don't know

Kaushik Kotecha
Direct examination by Ms. Poulos

1 about that one.

2 Q If you could, tell the jury. What is synergistic
3 effect?

4 A Synergistic effect is one plus one equals five, or one
5 plus one equals three. You may be taking -- you know, like
6 alcohol. When you mix alcohol with Benadryl it's -- you're
7 going to be even more drowsy, you know, because if you took
8 Benadryl you're going to be drowsy. But when you mix it
9 with alcohol, then all of a sudden you're going to be even
10 drowsy. So that's what synergistic effect is.

11 Q Could a combination of all of these drugs together
12 cause a baby to stop breathing?

13 A Yes.

14 Q I'm going to show you what was already admitted into
15 evidence. This is State's Exhibit 60, and this is the pill
16 inventory that the coroner's office did. Have you had a
17 chance to take a look at that?

18 A I made a mistake on one of the drugs that you showed
19 me. That's Savella.

20 Q On the pictures?

21 A In the pictures, yes. And I was looking through, and
22 I was trying to remember it. It's a -- it's a S.S.R.,
23 serotonin serum inhibitor. And I made a mistake on that
24 one. I wanted to correct that. I'm sorry about that.

25 Q You need to clarify that for the jury?

Kaushik Kotecha
Direct examination by Ms. Poulos

1 A Yes. The drug that's Savella is S.S.R., yes. And I
2 did do that.

3 Q Okay. And in looking at the pill inventory of the
4 medications that were located in the residence, I want to
5 ask you specifically about the second one here, the
6 morphine.

7 A Uh-huh.

8 Q According to the chart -- the 90 and the 12 -- what
9 did the 90 mean typically? Is that the number that the
10 original prescription was for?

11 A That's what -- that's the information that I received
12 from the coroner's office, that the prescription originally
13 was for 90, which I validated with the prescription that we
14 had. And that was original prescription issued for 90
15 tablets.

16 Q And according to this chart there were only 12
17 remaining, correct?

18 A That is correct.

19 Q And so in doing the math about how many -- well, how
20 many of the morphine pills had been taken since the date
21 the prescription was filled on 10/20/10?

22 A According to the chart that I have she had -- if she
23 was supposed to take it normally it would have been 72
24 pills.

25 Q And based on your calculations with the number of

Kaushik Kotecha
Direct examination by Ms. Poulos

1 pills that were supposed to be taken per dose can you tell
2 us she was taking them as prescribed or more than
3 prescribed?

4 A The remaining --

5 MR. WISE: I object. I don't think he can conclude
6 anything from that other than that's the number of pills in
7 that bottle.

8 THE COURT: Sustained.

9 BY MS. POULOS

10 Q Well, let's go down to the hydrocodone again.

11 A Okay.

12 Q How many total pills were originally prescribed for
13 that medication?

14 A Ninety tablets.

15 Q And, again, looking at this there were 42 left, is
16 that correct?

17 A That is correct.

18 Q So in doing the math how many were missing?

19 A Ninety minus 42 is, what, 48?

20 Q Okay. So between November 4th of 2010 when the
21 prescription was filled --

22 A Uh-huh.

23 Q -- and November 13th, nine days later, you say that
24 was how many pills were gone?

25 A Forty-eight pills.

Kaushik Kotecha
Direct examination by Ms. Poulos

1 Q Over a period of nine days.

2 A Over a period of nine days, that's correct.

3 Q And on -- later on after a few months after this case
4 had developed did you have the opportunity to interview the
5 defendant?

6 A I did.

7 Q And was Investigator William Gary also present during
8 that interview?

9 A Yes, he was.

10 Q And what did the defendant tell you about her
11 educational background and prior experience?

12 A That she was a B.S.N. in nursing. She -- she talked
13 about her automobile accident. And then of course when we
14 started talking about the drugs and the death of Alexis,
15 she finally confessed or admitted to me that, yes, she did
16 not tell the doctor what -- well, it was part of the reason
17 she didn't tell the doctor, was if she was pregnant and
18 then the doctors knew they would not prescribe the
19 medication.

20 Q Did she admit to being addicted to pain killers?

21 A Yes, she did.

22 Q Did she admit to lying to her doctors so that she
23 wouldn't lose her prescriptions?

24 A Yes. That's what I meant.

25 Q So did she admit that she was so addicted that she

Kaushik Kotecha
Direct examination by Ms. Poulos

1 didn't tell the doctors because.--

2 MR. WISE: Objection, Your Honor. She's leading the
3 witness.

4 Q what -- if you could, just explain to the jury. Tell
5 us exactly what she admitted to you.

6 A She admitted -- we know -- of course I explained to
7 her that I had been doing this for a long time, addiction
8 was a horrible thing, I've dealt with doctors who are
9 addicted and everything. So I kind of went through those
10 steps. And I said is this -- is this why you didn't tell
11 your doctor that you were pregnant, so you wouldn't get the
12 morphine. And she said that's part of the reason but/and
13 then, you know, that's basically where we were.

14 Q what was she like emotionally during that time?

15 A She was crying, wanting to know what was going to
16 happen to her, upset.

17 Q Did the defendant tell you anything about any pills in
18 her purse?

19 A She did.

20 Q what did she tell you about that?

21 A She said when the coroner's office was counting there
22 were pills in her purse and -- and they told the coroner's
23 office about those pills because of the numbers being
24 out of -- out of what I was looking for.

25 Q Okay. Thank you. Please answer any questions the

Kaushik Kotecha
Cross-examination by Mr. Wise

1 defense may have.

2 CROSS-EXAMINATION

3 BY MR. WISE

4 Q Pronounce your last name again for me.

5 A Kotecha.

6 Q Kotecha?

7 A Yes, sir.

8 Q Thank you.

9 DHEC monitors pharmacists as well as doctors.

10 A I'm sorry?

11 Q DHEC monitors pharmacists as well as doctors.

12 A Monitors? You mean regulate?

13 Q Regulate.

14 A I just want to make sure we are --

15 Q Okay. They regulate pharmacists as well as doctors.

16 A Right.

17 Q And one thing a pharmacist is supposed to do is report
18 suspicious prescriptions, aren't they?

19 A Yes, sir, they are supposed to report them.

20 Q Okay. So if a patient came into a pharmacist with a
21 prescription for a 30-day supply of -- of Oxy -- of
22 Oxycontin and then came in two days later with a
23 prescription from another doctor for a 30-day supply of
24 Oxycontin the pharmacist is not supposed to fill that one.

25 A I -- I think that the pharmacist's responsibility is

Kaushik Kotecha
Cross-examination by Mr. Wise

1 to call the doctor and inquire, hey, doctor, I just
2 received this prescription from doctor A and now I have got
3 this prescription from doctor B. There may be a reason why
4 they wrote the --

5 Q Sure. Prescription.

6 A So, you know, again it's just kind of you have to look
7 at the totality.

8 Q But y'all -- but y'all basically tell pharmacists when
9 you see something like that check it out.

10 A Absolutely. I think that's -- most pharmacists do
11 that.

12 Q Now, another thing. I don't know if y'all do it or
13 pharmacists do it. People are encouraged to use the same
14 pharmacy, aren't they?

15 A Yes, sir.

16 Q And why is that?

17 A So you can kind of monitor the side effects of drugs.
18 You know, you may be getting one drug that may counter the
19 effect of another drug or, you know, you may have a drug
20 that's synergistic effect, so yes.

21 Q That doctors may have forgotten about.

22 A Yeah, or it could be multiple doctors, right.

23 Q Basically, the pharmacists I think are trained that
24 they're responsible for making sure you don't take drugs
25 that interact with each other adversely.

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 A That is correct.
- 2 Q Okay. And -- and pharmacists -- okay. You know, some
3 of these prescriptions you talked about were called in.
- 4 A Yes, sir.
- 5 Q So pharmacists will actually in many cases see the
6 patient more times than a doctor will.
- 7 A Yes, sir.
- 8 Q All right. Now, in this particular case where did you
9 go to find all of the prescriptions for Stephanie Greene
10 except one?
- 11 A Majority of them were at C.V.S. in Inman.
- 12 Q A majority or all but one?
- 13 A All but one.
- 14 Q All --
- 15 A That's what I'm saying, yeah.
- 16 Q The one at the Rite-Aid.
- 17 A Right.
- 18 Q All of the rest of them is C.V.S. in Inman.
- 19 A That's correct.
- 20 Q Use the same pharmacy for everything.
- 21 A Yes, sir.
- 22 Q You didn't found -- you didn't find a pharmacy over in
23 Greenville for her.
- 24 A No, sir.
- 25 Q You didn't find a pharmacy down in Spartanburg.

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 A No, sir.
- 2 Q All of them in Inman.
- 3 A Yes, sir.
- 4 Q Now, when people engage in or when addicts engage in
5 drug-seeking behavior do they frequently go to different
6 pharmacists?
- 7 A They do.
- 8 Q And the reason for that is?
- 9 A Because they don't want pharmacy A to -- one pharmacy
10 to know that they're going to different doctors. So they
11 go to different pharmacists so they can't look at the data.
- 12 Q They can't get caught.
- 13 A Right.
- 14 Q Through your system they'll -- sounds like they'll
15 eventually get caught.
- 16 A Yeah. Again, the system is 30 days behind. So if you
17 got the prescription filled today -- and obviously a change
18 here recently -- but it would have been 30 days before you
19 got the information.
- 20 Q Now, in your investigation of this you learned that
21 Ms. Greene had some pretty complex pain problems.
- 22 A Certainly.
- 23 Q So she was taking a lot of pain medicine for different
24 things.
- 25 A Yes, sir.

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 Q For fibromyalgia and everything.
- 2 A Right.
- 3 Q Recklessly -- reckless -- excuse me -- sleepless leg
4 syndrome.
- 5 A Right.
- 6 Q Pain from the wreck --
- 7 A Right.
- 8 Q -- she had. Fibromyalgia. All of these things
9 require different type medications, right?
- 10 A That is correct.
- 11 Q Right. And when you're dealing with this many
12 different medications the prudent thing of course is to go
13 to the same pharmacy.
- 14 A That is correct.
- 15 Q Which is what she did.
- 16 A Yes, sir.
- 17 Q Okay. Did anybody from C.V.S. pharmacy ever notify
18 DHEC of any unusual prescriptions on her?
- 19 A No, sir.
- 20 Q Okay. Now, treating pain is a complex problem?
- 21 A That's what they say, yes, sir.
- 22 Q You're familiar with that fact that treating pain is a
23 complex problem?
- 24 A Yes, I am.
- 25 Q Okay. And people stigmatize people who get treated

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 for pain too sometimes, don't they?
- 2 A Yes, sir.
- 3 Q They're referred to as addicts when they're not.
- 4 A Yes, sir.
- 5 Q Because a lot of the public perception is that if you
- 6 take some pain pills and you're walking around you must not
- 7 really need them.
- 8 A Well, that -- that may be public perception.
- 9 Q I understand that.
- 10 A Healthcare professionals --
- 11 Q It's not true.
- 12 A It's not true, yes, sir. So I would say --
- 13 Q So people who are taking pain medicines tend to get
- 14 stigmatized by people, don't they?
- 15 A I would think so, yes, sir.
- 16 Q And particularly when you take a lot of them --
- 17 A Yes, sir.
- 18 Q -- such as this type of case, right?
- 19 A Right.
- 20 Q And people become very defensive about their pain
- 21 medications in a sense, don't they? Because they think
- 22 they really need them and believe and know they really need
- 23 them.
- 24 A I think that if -- if they're talking to their
- 25 healthcare professional they already know that.

Kaushik Kotecha
Cross-examination by Mr. Wise

1 Q Right.

2 A But if I was talking to someone like Timi or Barry or
3 anything like that I may be -- I may not tell them that I'm
4 taking pain medication. I don't think it's -- it's their
5 business to know.

6 Q Right. I mean, you -- people who take pain medication
7 tend to want to hide it from people who are not medical
8 professionals.

9 A If you say so, sir.

10 Q I'm just asking you has that been your experience.

11 A I -- I don't know that -- I don't know that.

12 Q Okay. If you don't know, you don't know.

13 Now, have you got the toxicology report in front of
14 you?

15 A I can get it, sir. Yes, sir.

16 Q All right. There's no codeine found in that
17 toxicology report, is there?

18 A No, sir. I don't see any codeine.

19 Q The drug for restless leg -- sleepless leg syndrome is
20 Rip and Roll? I'm mispronouncing it?

21 A I think it's Requip. That's the brand name if I'm not
22 mistaken, but yes, sir.

23 Q All right. Is any of that in the tox report?

24 A No, sir.

25 Q And those two were recommended that you don't take

Kaushik Kotecha
Cross-examination by Mr. Wise

1 while breastfeeding.

2 A Yes, sir.

3 Q Is that correct?

4 A That is correct.

5 Q And neither -- neither of those two drugs were found
6 in the tox report.

7 A The two drugs that are found were not found in the tox
8 report? Is that what you're saying?

9 Q The -- the reckless -- the sleepless leg syndrome --

10 A No, sir. They were not.

11 Q -- was not found in the tox report.

12 A No, sir. It's not in the report.

13 Q And the hydrocodone was not found in the tox report.

14 A That is correct.

15 Q All right. And those are two of the drugs on the
16 label that said don't take while breastfeeding.

17 A That is correct.

18 Q Do you know what the third one was?

19 A I'm sorry?

20 Q Do you know what the third drug was?

21 A Clonazepam? Is that what you're talking about in
22 the --

23 Q The one they say don't take while breastfeeding.

24 A There were -- there were several drugs that you
25 wouldn't want to take while you're breastfeeding.

Kaushik Kotecha
Cross-examination by Mr. Wise

1 Q I'm asking about warning on the label. Let me see if
2 I can find it for you quicker.

3 A Probably Baclofen, but I'm not sure, because it's a
4 muscle relaxer.

5 Q Do you know if that drug was found in the tox report?

6 A No, sir, it was not.

7 Q It was not.

8 A No, sir.

9 Q So the three drugs that say don't take while
10 breastfeeding were not found in the tox report.

11 A Can you put Clonazepam? I believe Clonazepam is one
12 of those drugs that -- can I look at that, sir?

13 Q You may look at it. You can find it quicker than I
14 can.

15 A Thank you.

16 (Pause.)

17 A Clonazepam was found in there.

18 Q Okay.

19 A And that's the drug that -- that's the other one.
20 This is the Keppra that you were talking.

21 Q Right. The other two were not.

22 A Yes, sir.

23 Q Correct?

24 A Yes.

25 Q All right. And the Clonazepam, how much of that was

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 found?
- 2 A .01.
- 3 Q .01.
- 4 A Milligram per liter.
- 5 Q And the therapeutic level is what?
- 6 A Of course this is an adult therapeutic letter --
- 7 level -- which is .007 to .028.
- 8 Q So maybe on the low end of therapeutic.
- 9 A I'd say it's a little bit higher, because on 007, and
- 10 this one is zero -- .01.
- 11 Q Right.
- 12 A So .007 is --
- 13 Q .00 --
- 14 A -- a thousand. And then this one is hundred.
- 15 Q There's a .003 difference.
- 16 A There's one zero different, in other words, yes, sir.
- 17 Q Correct. Kind of low end.
- 18 A Yes.
- 19 Q Okay. Now, you're not saying you don't take morphine
- 20 while breastfeeding, are you?
- 21 A No, I'm not saying that. I think it's a -- it's a
- 22 very -- you have to weigh the risks versus the benefit and
- 23 then make a determination. And of course I'm not a
- 24 prescriber.
- 25 Q Right.

Kaushik Kotecha
Cross-examination by Mr. Wise

1 A But if I was a pharmacist I would certainly -- would
2 inquire about the risk versus benefit.

3 Q And you'd ask --

4 A I would ask.

5 Q -- the customer about it.

6 A Right. Well, I don't know if the customer was there,
7 but I would certainly -- if I knew -- if she was pregnant I
8 would call the physician and talk to the physician about
9 it.

10 Q Well, and if -- if you saw the customer and you knew
11 she'd just had a child, I assume you would ask her a little
12 bit about how much pain you're in and so forth, or would
13 you call the physician?

14 A I probably would call the physician.

15 Q You wouldn't have any discussions with the -- with the
16 customer.

17 A I probably would not, because I probably would not
18 have the whole history about what's going on.

19 Q Well, if you'd been dealing with this customer for a
20 period of years you would have a little more knowledge.

21 A Absolutely, absolutely. But/and I know where
22 you're -- what you're saying. But in this situation there
23 are several different pharmacists coming through there. So
24 I may not see a customer, you know, for months on because
25 the other pharmacist is filling the medication.

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 Q But she had been going to the same pharmacy as far
2 back as you've got records.
- 3 A Yes, sir.
- 4 Q Which is a good practice.
- 5 A Absolutely.
- 6 Q A smart practice.
- 7 A Yes, sir.
- 8 Q And there's not a person in the world you would
9 encourage to do anything differently.
- 10 A No, sir.
- 11 Q Because it's important for your health to know what --
12 how drugs inter-react.
- 13 A Right, right.
- 14 Q And pharmacists in many cases know better about that
15 than the doctors who prescribe the drugs.
- 16 A Well, I don't want to say that because I might upset a
17 lot of the doctors here, sir.
- 18 Q But sometimes they do because sometimes the physicians
19 don't know of the drugs a person is getting.
- 20 A That is correct.
- 21 Q Through either inadvertence or whatever.
- 22 A Right.
- 23 Q And so the pharmacist is the one that can catch all of
24 that.
- 25 A Right.

Kaushik Kotecha
Cross-examination by Mr. Wise

- 1 Q If you funnel it all through one place.
- 2 A Right.
- 3 Q Do doctors have access to your script network?
- 4 A Do doctors have access to prescription monitoring?
- 5 Q Yes.
- 6 A Yes, they do.
- 7 Q And how long have they had access to it?
- 8 A I want to say since 2007.
- 9 Q So a number of years.
- 10 A Yes, sir.
- 11 Q And so that means that if a doctor has a patient they
- 12 can just put the patient's name in that computer and find
- 13 out what prescriptions -- what controlled substance they're
- 14 getting.
- 15 A That is correct.
- 16 Q And it would not give you over-the-counter.
- 17 A I'm sorry?
- 18 Q Of course it would not give you over-the-counter.
- 19 A No, it would not give you over-the-counter
- 20 information.
- 21 Q And so if somebody puts Stephanie Greene's name in the
- 22 script network they would have a list of everything she's
- 23 taking that's been prescribed by C.V.S. pharmacy.
- 24 A They would have everything that she got anywhere in
- 25 the state of South Carolina, yes, sir.

Kaushik Kotecha
Redirect examination by Ms. Poulos

1 Q Anywhere in the state of South Carolina.

2 A Anywhere in the state of South Carolina. So that way
3 they have an idea of what patient -- what they're dealing
4 with with the patient.

5 Q Is that something you encourage doctors to do?

6 A We do encourage doctors to do.

7 Q Thank you very much. Excuse me one second.

8 (Pause.)

9 Q Thank you very much.

10 MS. POULOS: Just a couple of questions.

11 REDIRECT EXAMINATION

12 BY MS. POULOS

13 Q In collecting all of these prescriptions did you learn
14 that the defendant had been getting the prescriptions under
15 two different names?

16 A There were two different names. There was one where
17 it's under Stephanie Neet and one under Stephanie Greene.
18 And there was some confusion about that.

19 Q And she had gotten mostly all of her prescriptions
20 from which pharmacy?

21 A C.V.S.

22 Q All but one?

23 A Yes. And when I -- and she -- she gave me an
24 explanation that the reason she went to Rite-Aid was
25 because Rite-Aid had a drive-through.

Kaushik Kotecha
Recross-examination by Mr. Wise

1 Q And which prescription was that for?

2 A Morphine.

3 Q For morphine. Okay. And he asked about the
4 toxicology report. In addition to morphine being found in
5 the baby's system was Clonazepam also found?

6 A Yes, it was.

7 Q And would those drugs have a synergistic effect?

8 A Yes.

9 Q Thank you.

10 THE COURT: You may step down.

11 MR. WISE: Just one second. A couple of questions.

12 RECROSS-EXAMINATION

13 BY MR. WISE

14 Q And you also found numerous morphine prescriptions
15 through C.V.S.

16 A Yes, I did.

17 Q So she'd got morphine from C.V.S. also.

18 A Right. And -- and, again, I think that you hit the
19 nail on the head.

20 Pain is subjective, that you, long-acting medication,
21 and then they give you medication for breakthrough pain.

22 And the only thing I can -- and when I talked to the
23 pharmacist at that time she felt like --

24 Q Well, you can't tell me what the pharmacist said. I'm
25 sorry.

Kaushik Kotecha
Recross-examination by Mr. Wise

- 1 A Okay. But basically what it was was for breakthrough
2 pain and that's why --
- 3 Q But the -- the breakthrough pain is the hydrocodone.
- 4 A That's correct.
- 5 Q Okay. And that's what you take for breakthrough pain.
- 6 A That's correct.
- 7 Q So it's not unusual to see the MS Contin and the
8 hydrocodone prescribed together.
- 9 A That is correct.
- 10 Q All right. One. Now, this morphine was time release?
- 11 A Yes, sir.
- 12 Q And so it's a 30 mg time release.
- 13 A Yes, sir.
- 14 Q And then it lasts eight hours, correct?
- 15 A Some people eight. A lot of time doctors will be
16 concerned. They give twice a day so they want to see last
17 12 hours, right.
- 18 Q Somewhere in that range.
- 19 A Right, right.
- 20 Q And so just a little bit of 30 mg gets into the system
21 at a time.
- 22 A That's correct.
- 23 Q And so you don't take it and get 30 mg.
- 24 A No, sir.
- 25 Q And you take it and you -- you get 30 mg over eight

Kaushik Kotecha
Recross-examination by Mr. Wise

1 hours.

2 A That's correct.

3 Q Is that correct?

4 A Yes, sir.

5 Q So the first hour you would maybe get a seventh of
6 30 mg.

7 A That I don't know. I mean, I just --

8 Q How it breaks down exactly, but it's designed to
9 release a little bit over a period of eight hours.

10 A That's correct.

11 Q Thank you.

12 MS. POULOS: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, sir.

15 MR. BARNETTE: Your Honor, I'd like to call Dr. David
16 Eagerton to the stand.

17 DR. DAVID H. EAGERTON, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q Doctor, if you will, give your full name for the
21 record, please.

22 A David H. Eagerton.

23 Q And where do you work at, sir?

24 A Currently I work at Presbyterian College School of
25 Pharmacy.

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 Q And what is your position there, sir?

2 A I'm assistant professor.

3 Q Okay. And if you would, tell the jury a little bit
4 about your educational background and experience, sir.

5 A Well, I have a B.S. in biology from the University of
6 South Carolina.

7 After that I went to the pharmacy school for a year at
8 the University of South Carolina College of Pharmacy. And
9 then I went -- basically I never -- I didn't finish
10 pharmacy school. I went directly to graduate school where
11 I received a Ph.D. in pharmacology in 1992.

12 Upon graduation I -- I got a job with SLED, the South
13 Carolina Law Enforcement Division, as a forensic
14 toxicologist. Went through the training as a forensic
15 toxicologist. Through my years at SLED I became board
16 certified for forensic toxicology.

17 And approximately five years after I started work
18 there I became the chief toxicologist where I was for
19 about -- I don't know -- 12 years until I retired in 2009
20 to be a founding faculty member at the Presbyterian College
21 School of Pharmacy.

22 Q And you teach pharmacy at the pharmacy school there.

23 A Well, I teach biochemistry, patho -- or some in
24 pathophysiology, some pharmacology. I teach toxicology and
25 drugs of abuse.

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 Q How many times have you been qualified in state court
2 as a forensic toxicologist and a pharmacologist?

3 A Between 80 and a hundred times.

4 MR. BARNETTE: Your Honor, I would move him as an
5 expert in pharmacology, as well as forensic toxicology at
6 this time.

7 MR. WISE: No objection.

8 THE COURT: He is so qualified.

9 BY MR. BARNETTE

10 Q Dr. Eagerton, did you receive some information
11 concerning this case involving the defendant and the death
12 of her child?

13 A Yes, I did.

14 Q Could you tell the jury what information you did
15 receive?

16 A Well, I don't have an exact account of it, but I
17 received some information involving just the case history
18 around it, the toxicology report, some medical records,
19 incident reports, coroner's reports, things like that.

20 Q And did you receive the information of the drugs that
21 she had been prescribed, as well as the drugs that was
22 found in the baby in this case?

23 A I believe so, yes, sir.

24 Q And did you also receive information about the
25 coroner's office's investigation concerning what the

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 defendant had told them prior to the death of the child --
2 what happened?

3 A Yes, sir.

4 Q Let me show you State's -- what's been marked as
5 State's Exhibit 62. I believe this is a toxicology report
6 that's been testified to several times already entered into
7 evidence.

8 A Okay.

9 THE COURT: Be careful of the microphone.

10 Q You're familiar with SLED. And you're familiar with
11 SLED. Let me do this. Why don't you just step down if you
12 would.

13 A Okay.

14 Q That'd be easier to step down.

15 (Whereupon, the witness left the stand.)

16 Q And let me start from the bottom up, I guess is the
17 better way to do it at this time or whatever. And you're
18 familiar with SLED's protocols and everything obviously
19 working there.

20 A Well, I'm familiar with it until at least October of
21 2009. It's changed a little bit but not a lot.

22 Q But, obviously, the first substance from the bottom of
23 the page is the morphine.

24 A That's correct.

25 Q And the amount that you've seen there -- and,

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 obviously, you've had a chance to review the findings of
2 SLED and everything. Are you in agreement with that number
3 that they came up with?

4 A Yes, sir.

5 Q And would you consider that a lethal level?

6 A I would.

7 Q And this -- and these amounts, are these for adults?

8 A Typically, that's where we have most of our
9 information, is from adults. We really have very limited
10 information on even children and even little -- even less
11 information on D.N.A. in some younger children.

12 Q So we're looking at -- I guess Alexie was a little bit
13 over six weeks and she weighed a little bit over 7 pounds.

14 A Right, right.

15 Q But, obviously, it's a lethal -- well, it'd definitely
16 be a lethal weapon for a child that size.

17 A Absolutely.

18 THE COURT: Excuse me just a minute.

19 Let me ask you, Dr. Eagerton, if you will. Do you see
20 this microphone hanging down from the ceiling there? Let
21 me ask you if you'll stand close to that, and because the
22 court reporter is having difficulty picking your voice up.

23 THE WITNESS: How about that?

24 THE COURT: Maybe a little bit closer. You don't
25 really have to look up at it. It should pick it up.

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 THE WITNESS: Okay. Thank you.

2 THE COURT: Okay.

3 BY MR. BARNETTE

4 Q Okay. And if you would, tell the jury about these
5 other substances that's found above the morphine.

6 A Well, I'm going to skip up to Methorphan and
7 Methorphanin.

8 Those are basically -- Methorphan is the active
9 ingredient that states through Methorphan. At the SLED's
10 methods we can't tell the difference between Dextro and
11 Levo. And it's a big difference. We can tell it's
12 Methorphan. It's consistent with Dextromethorphan. But
13 there is another drug to the Levo. So that's why it's
14 reported out as Methorphan.

15 Methorphan is the primary metabolite of the
16 Methorphan. And, again, we don't know whether it's Dextro
17 or Levo. But, again, that's -- that's a -- a medication
18 that would be used in over-the-counter cough medicine.

19 Q You're talking about these two substances here.

20 A Right. Methorphan and Methorphanin.

21 Q And go the next one if you would, sir.

22 A The next one is Chlorpheniramine. Chlorpheniramine's
23 an antihistamine. It's also -- it's used over the counter
24 as a -- you know, for allergies, runny nose, watery eyes,
25 itching, things of that nature.

Dr. David H. Eagerton
Direct examination by Mr. Barnette

1 Diphenhydramine is also an antihistamine. It is used
2 for the same treatment.

3 Q And above that.

4 A Acetaminophen is Tylenol. It's a nonnarcotic
5 analgesic. It's used primarily for aches and pains.

6 Q Turn to the back page of the report. If you would,
7 tell us about this substance here, sir.

8 A Clonazepam is Klonopin. It's a benzodiazepine. It's
9 very potent. It's a newer generation benzodiazepine. It's
10 a lot more potent than our classic Valiums or Xanax, and so
11 therefore it's a lot stronger. You use a lot less to
12 achieve the same effects. But it has a lot of -- it has a
13 lot of use in psychopharmacology, but it also has uses as
14 to treatment for anxiety or different things like that.
15 Could be even a muscle relaxer. It has a lot of different
16 uses.

17 Q And obviously this is the adult levels for blood --

18 A Yes.

19 Q -- from that standpoint. This amount here, would it
20 definitely have an affect on this child?

21 A Absolutely. That's a significant -- that's a
22 significant amount in anybody. But, you know, in and of
23 itself you can't really say.

24 As a general rule benzodiazepines are a lot -- they're
25 safe drugs. You have -- you can overdose on them and you

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1 can die from them, but you have to take a lot of them
2 typically.

3 Unless you mix it in combination with some other
4 similar reacting drug like some other what we call central
5 nervous system depressant, something like alcohol or even
6 some of these other drugs that we've talked about have some
7 central nervous depressant activity, certainly the morphine
8 does because it causes respiratory depression. So it has
9 some activity like that. But when you -- alone it's fairly
10 safe, but in combination it certainly can be deadly.

11 Q Okay. So based -- I think that's my next question
12 from that standpoint.

13 In your opinion all of these drugs, would they have an
14 effect on each other -- the morphine as well as the -- I
15 guess those are the two main ones we'll look at, is the
16 morphine and the Cla -- Klonopin. I'm sorry.

17 A Well, they don't really have an effect so much on each
18 other, or if they do I'm not really sure of the direct or
19 physical interaction. But the actions of one and the
20 actions of the other are certainly like they can be
21 synergistic or they are synergistic. Therefore when you
22 take them together they -- they can increase the effect
23 of -- that you would expect from either one alone or even
24 putting the two together. You would see a much greater
25 effect.

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1 It's hard to quantify exactly how great that effect is
2 because that may vary from individual to individual.

3 Q But it could be like one-plus-one-equals-three type
4 situation.

5 A It could be one plus one equals three, or it could be
6 one plus one equals five. It could be one plus one equals
7 something greater than that.

8 Q Right. So but they definitely have an effect on --
9 what I guess is they add effect to each other.

10 A It's more than that. It's -- it's at least added.
11 It's probably synergistic. It's greater than that.

12 Q Okay. And based on your opinion is this what this
13 child died from, was the effects of the special dose drugs
14 and morphine in this case?

15 A Well, it's -- it's really hard, you know. In
16 toxicology they ask us a lot, you know. It's -- it's hard
17 to exactly pin down, you know, a cause of death, especially
18 with a drug like morphine in an adult, because you can have
19 some tolerance if you're taking morphine for a long period
20 of time.

21 You can have some changes in your physiology that
22 can -- you can adapt and you can take higher levels of it.
23 And that's usually what you see with people on it
24 chronically for chronic pain and stuff like that. You have
25 to give them higher and higher levels to achieve the same

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1 effect.

2 So in those kind of people you can see higher levels
3 of morphine. That's why you see a therapeutic range that's
4 really a vast range.

5 In the literature it's nice to see -- if we could do
6 these studies in animals and stuff they'd look at things
7 like LD50. That's how much it takes to kill 50 percent of
8 your population of animals.

9 In humans we can't do that. We're only concerned with
10 how much it takes to kill one person. And so what we do is
11 we start the range at the lowest level where it's been
12 reported that one person has even died from it.

13 So you can see that a drug like morphine is a fairly
14 dangerous drug. I know it's used a lot commonly, but it
15 can be dangerous drugs.

16 Whenever you dispense it you need to monitor it to
17 make sure that the person is taking that properly. If
18 you're given this drug in a hospital one of the things
19 they're going to do is they're going to monitor your
20 respirations.

21 This is a primary thing that we worry about in
22 toxicology, is to increase your respiration, that is your
23 ability to breathe. It's going to increase your ability to
24 do that. So that's one of the things you monitor.

25 And sometimes if you've ever seen people in the

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1 hospital they may have a little thing on their finger.
2 It's actually measuring how much oxygen is in their blood
3 or in their hemoglobin so they can get a -- an idea of how
4 well they're breathing. And if it drops below a certain
5 level they have to take action. So it's something you
6 really want to monitor, especially if you're getting a high
7 dose or extended doses.

8 A lot of times morphine or drugs like morphine are
9 indicated for acute pain, that is if you break your leg or
10 you sprain your ankle or something. You're going to have
11 pain for a day or two. You could be prescribed this drug
12 to take it, say, for a few days, and then you quit taking
13 it because you don't need to take it forever and ever.

14 That's less of a problem. You have -- less likely to
15 have respiratory depression so you don't worry as much
16 about it. But if you're given higher doses for more severe
17 pain or for more chronic pain over a longer period of time
18 you have to watch out, and that you should monitor that in
19 my opinion.

20 Q I understand. And obviously we're talking about a
21 six-week-old-year-old child, 7 pounds, and now you've got
22 these amounts in that -- that body.

23 A That's -- that's -- that's -- that's a -- that's a
24 significant amount in my opinion absolutely.

25 Q All right. And in this case -- if you would, have a

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1 seat, Doctor.

2 (Whereupon, the witness returned to the stand.)

3 Q And I believe you found the prescription morphine was
4 MS Contin, is that right, from --

5 A That's what the records indicate, yes.

6 Q From there. And let me show you something here.

7 Actually, MS Contin produces this. I think I've given a
8 copy to the defense yesterday. I'll be glad to give them
9 another copy. And this I believe is approved by the United
10 States Food and Drug Administration. Is there -- what does
11 it say about MS Contin on that if you would, sir?

12 A Well, it's -- it gives a good bit of information, but
13 basically it says it's a strong prescription pain medicine
14 that contains an opioid narcotic used to treat moderate --
15 moderate to severe around-the-clock pain. Do you want me
16 to read the entire thing or --

17 Q No, just about the pregnancy and the -- the
18 breastfeeding if you would, sir, what it says -- what you
19 should tell your healthcare provider.

20 A "Before taking MS Contin tell your healthcare provider
21 if you have a history of it." It gives several histories.
22 And then in bold again it says, "Tell your healthcare
23 provider if you are pregnant or planing to become pregnant.
24 MS Contin may harm your unborn baby. If you're
25 breastfeeding MS Contin passes into the breast milk and may

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1 harm your baby. Taking prescription or over-the-counter
2 medicines, vitamins or herbal supplements." Also warnings
3 for that.

4 Q Thank you.

5 MR. BARNETTE: Your Honor, I'd like to move this into
6 evidence at this time.

7 MR. WISE: No objection.

8 THE COURT: It's admitted.

9 (F.D.A. warning marked State's Exhibit No. 67.)

10 MR. BARNETTE: May I publish it to the jury, Your
11 Honor?

12 THE COURT: You may.

13 BY MR. BARNETTE

14 Q I know you just read this, Doctor, but I believe the
15 area that you just read was right here, is that correct?

16 A Yes, that's correct.

17 THE COURT: Is that Exhibit 66?

18 MR. BARNETTE: Sixty-seven, Your Honor.

19 Q And if I could show you on the bottom of that, and it
20 says this -- can you read that, sir? I don't know if you
21 can see it or not.

22 A It's approved by the U.S. Food and Drug Administration
23 and issued July of 2012.

24 Q Yes, sir. I'd like to show you this, sir. Who -- who
25 has had a trademark concerning MS Contin?

Dr. David H. Eagerton
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1 A Perdue Pharma [sic].

2 Q Okay. And was this their product monograph concerning
3 their product?

4 A This appears to be a copy of it, yes.

5 Q Okay. If you would, go to page four of that, please.

6 MR. WISE: Your Honor, if -- if I may, my first
7 objection is he had nothing to do with preparing this
8 document. It doesn't take an expert to read this document.
9 And, thirdly, the document is dated October the 31st of
10 2012, which was about two years after this incident.

11 THE COURT: Let me see the document.

12 MR. BARNETTE: See the form, sir.

13 THE COURT: Let me see the lawyers just a minute,
14 please.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 THE COURT: Let me see the lawyers just a minute.

18 MR. BARNETTE: Yes, sir.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 BY MR. BARNETTE

22 Q Doctor, MS Contin -- basically Perdue now says that it
23 can't -- obviously, they don't recommend giving it to
24 breastfeeding women in this situation.

25 A That's correct.

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1 Q As a matter of fact, there's been studies done I
2 believe concerning opiate drugs such as morphine, codeine,
3 things like that that's been done by the American Academy
4 of Pediatrics concerning the use of those drugs with
5 children now. I guess that was just done this past year,
6 is that correct?

7 A That's what the more recent studies are showing, that,
8 you know, definitely they're coming out and taking a
9 stronger stand, absolutely do not use this.

10 But -- but that's the recommendation from what I can
11 gather from the literature and from my knowledge, is
12 basically that even prior to 2012 or 2013 -- these more
13 recent studies -- sustained release in high doses for a
14 longer period of time has never been, even though they may
15 not have necessarily come out and said absolutely do not do
16 this, they said be really, really careful and don't -- we
17 don't recommend that you do this, you can do it if you're
18 monitored appropriately.

19 Most of the time whenever you're looking at the -- at
20 the studies of -- look -- using opiates or opioids such as
21 morphine, codeine, things like that in breastfeeding,
22 they're usually talking about acute either with epidural
23 pain prior to or during delivery or postpartum pain by
24 something. It's usually an acute pain and it's usually
25 going to last for a very short period of time.

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1 And I think the general consensus back around
2 2010-2011 was it's probably all right, just be careful and
3 pay attention and look for the signs of lethargy and
4 respiratory impression in the infant, and the mother as
5 well.

6 But then if you look at the fine print they -- they
7 talk about sustained release and -- and continued use of
8 these products. It -- it drops it down to an un -- an
9 uncertain level or an unsafe level, and they don't -- they
10 didn't recommend it even prior to these studies.

11 Q So it was prior to when this occurred that that was
12 their recommendation to do that --

13 A That's right.

14 Q -- from there. And in this case I notice you -- you
15 did get to review the coroner's office records --

16 A I did.

17 Q -- in this case. And obviously she was having
18 problems I believe on November 10th if I remember right.
19 She was lethargic, had breathing problems at that time. As
20 a matter of fact, they even called the doctor's office
21 about that.

22 A Right. They called the doctors about that, yeah.

23 Q And is that signs of possible overdose at that time?

24 A It could be consistent with that, yes.

25 Q And obviously the child died. Obviously, it is

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Direct examination by Mr. Barnette

1 consistent with that. Through the breastfeeding and
2 everything a child -- can it metabolize drugs like an adult
3 does?

4 A No. They don't.

5 Q If you would, tell the jury about that, especially a
6 six-week-year-old.

7 A Okay. Typically, whenever -- just to kind of back up
8 a little bit how -- you have to understand what drugs do in
9 your body.

10 Once -- once you take them they don't stay there
11 forever. They go through a cycle. And in pharmacology we
12 use the acronym ADME absorption. You have to get the drug
13 into your system. So how do you get it in there?
14 There's -- there's lots of different ways. You can -- most
15 things we're talking about now is you think of it orally.
16 But you can give it, you know, as a shot either just under
17 your skin, in your muscle. You can give it IV directly in
18 your veins. You can absorb some drugs through the skin,
19 different things like that. So you have different routes
20 of administration depending on what you're trying to do and
21 what the drug is.

22 Once you absorb it it's going to distribute throughout
23 your body based on its chemical and physical properties,
24 that is whether it likes water or whether it likes fat, or
25 it distributes into one of those two areas in the body

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1 primarily.

2 Certain tissues may pick up drugs preferentially,
3 things like that. So it's going to distribute throughout
4 your body.

5 Then the next step is metabolism, which is more
6 correctly termed biotransformation. Basically, your liver
7 is responsible for that, and it has enzymes that develop
8 over time that basically take these foreign compounds that
9 you're taking and make it usually more water ciable [sic],
10 and the idea is to make it either less toxic or more
11 readily excreted. But the idea it to make it more
12 readily -- more water ciable [sic] typically so that it
13 could be more readily excreted from your body. And that's
14 the last stages of elimination. And it's eliminated --
15 it's eliminated -- most drugs are going to be once
16 they're -- especially once they've been metabolized and
17 made more water ciable [sic] they're going to be eliminated
18 throughout the water in your body -- urine, feces, sweat,
19 saliva, tears, things like that is how it's going to be
20 eliminated primarily. There are other ways too.

21 Q Does a six-week-year-old child metabolize at all?

22 A No, not typically because it take times for your liver
23 to develop. It takes time for these -- the genes that code
24 for these enzymes to turn on and be expressed. And you
25 don't -- even a child doesn't metabolize things the same as

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1 an adult.

2 Usually you don't -- whenever you go through puberty
3 is whenever most of the things that are going to turn on
4 for an adult is going to turn on.

5 And, in fact, it even goes the other way. As you get
6 old, become aged, some of these genes can become
7 nonfunctional. Some -- you may not have the same metabolic
8 capacity.

9 Your kidneys may not work as well, things like that.
10 So you have to take into consideration age certainly
11 whenever you're looking at the effects of drugs and how
12 long they're going to stay in your body.

13 Q Obviously, the baby Alexis showed signs of this before
14 the death.

15 A Right. The -- the lethargy, maybe trouble breathing.
16 I -- I don't know how to interpret that exactly, but there
17 some -- there were some symptoms that were conveyed that
18 were consistent with morphine toxicity.

19 Q And basically if she was continuously breastfeeding
20 and things like that could she reach a level, especially if
21 she didn't metabolize it nearly as fast as the mother, for
22 example, could it reach the levels of toxicology --
23 toxicity of the level?

24 A Yes. And that's one of the things that if you can't
25 metabolize it, then the drug may build up in your body and

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1 you become -- you have a toxic dose whenever you wouldn't
2 normally have a toxy dose.

3 Q And obviously there was another drug that you would
4 recommend not -- or, obviously, need to talk to your doctor
5 about these things, isn't that right?

6 A You know, any drug -- any time you take any drug for
7 any reason there's always risks associated with it.
8 There's nothing you're going to put in your body that's
9 going to alter your physiology that is totally safe.

10 Everything -- even Tylenol has risks and it does some
11 damage to your body. And you have to weigh do -- do the
12 benefits we're going to get from taking this drug outweigh
13 the risks that we're going to get from it or the damage
14 that may occur.

15 And that's what you have to do for every drug, and
16 that's why the physician has to be involved and they need
17 to know what all is going on so that they can make that
18 clinical decision.

19 Q And obviously -- the Klonopin is also another drug
20 that is not recommended for breastfeeding.

21 A That's correct. I don't think so.

22 Q From that standpoint. And that was something also
23 that showed up in Lexi's blood or in the baby's blood.

24 A That's correct.

25 Q And if I understand right it is your opinion based off

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1 what you've seen and the studies and so forth -- and, like
2 I said, even the American Academy of Pediatrics have
3 changed their view on this I believe from the study that
4 Dr. Sachs [sic] has done on that.

5 A It looks like -- it looks like over time at least that
6 they've at least strengthened their view and come out and
7 become, whereas before it was maybe they categorize these
8 things.

9 It may have been a C where there's potential harm, you
10 gotta be careful, or it's a moderate risk. They assign it
11 some sort of risk. And I -- I have nothing to do with
12 that.

13 But it seems now that the stance is because of the
14 information that we have, especially over the past years,
15 that the stance is a lot stronger where they're coming out
16 and saying we don't recommend it. At least that's what it
17 looks like.

18 Q And, as a matter of fact, they've changed the
19 warnings. I think the articles refers to the National
20 Library of Medicine database. And they talk about the use
21 of morphine during lactation.

22 A Right. They do.

23 Q And once a mother's milk comes in what is their
24 recommendation concerning that? Did you get a chance to
25 read that --

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1 A I have. I don't -- I don't have it memorized, and I
2 don't know exactly where, but the -- the general
3 recommendation without quoting specifically is that it's
4 not recommended.

5 Q Right. Basically, you're supposed to be a non --
6 nonnarcotic analgesic and limit the maternal intake with
7 meth -- morphine to a few days or low doses and close
8 infant monitoring.

9 A And that's the key to all of this. Again, in their
10 clinical -- you know, I'm not going to guess what they're
11 going to -- I'm not a physician. I don't prescribe. But,
12 again, they have to weigh the risk with the benefits. And,
13 again, even a dangerous drug can be acceptable if you
14 monitor just like -- like I was talking about in the
15 hospital. They're giving you dangerous, potentially
16 dangerous, levels to adults, but if they monitor you,
17 you're all right, because if you actually -- if you start
18 showing signs of respiratory depression there's -- No. 1,
19 there's an antidote that can reverse it, and, No. 2, they
20 can just stop giving you the drug or slow it down. And if
21 it -- you had it bad enough they can give you the antidote
22 to reverse the toxicity, or at least the respiratory
23 depression. And that's -- that's why if you monitor
24 closely you can handle it potentially. But, again, you --
25 you have to -- you have know about it and you have to

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1 monitor it and you have to really be aware of it.

2 Q So the doctors definitely need to know about this.

3 A Absolutely.

4 MR. BARNETTE: One moment, Your Honor, please.

5 (Pause.)

6 MR. BARNETTE: If you would, please answer any
7 questions defense may have for you, sir.

8 CROSS-EXAMINATION

9 BY MR. WISE

10 Q Dr. Eagleton?

11 A Eagerton.

12 Q Eagerton. Is there a single peer review article that
13 discusses an admission to a hospital by an infant, a young
14 baby, from an overdose of morphine through breast milk?

15 A There is one in the -- published in the Lancet where
16 they were taking hydroco -- not hydrocodone -- codeine.

17 Q Let me phrase my question again -- rephrase my
18 question. We'll discuss that one later.

19 For a mother taking morphine is there a single peer
20 review, reviewed article, that discusses a child being in
21 the hospital with a toxic level of morphine in the system?

22 A I haven't seen one.

23 Q Yes.

24 A There could be, but I don't know.

25 Q Could it be because it doesn't exist?

1 A No, probably not.

2 Q Well, let's go back to that article that you just
3 cited. All right. The more current view you said of the
4 American Academy of Pediatrics. Have you got it?

5 A I don't know. Which one?

6 Q It's that one right there.

7 A Okay.

8 Q The August 26th of 2013. All right. You got it?

9 A Yes, sir.

10 Q Turn to page 801.

11 A E801?

12 Q E801, yes.

13 A Yes, sir.

14 Q Middle column, last paragraph or kind of last
15 paragraph. They're not really divided into paragraphs very
16 well. Where it begins, "For these reasons." All right?

17 A Yes, sir.

18 Q All right. Well, first of all, above that if you go
19 back and glance at it -- you've read this article, haven't
20 you?

21 A I believe I have.

22 Q Okay. Above that they discuss the Canadian case about
23 the child who took codeine.

24 A Right.

25 Q And that evolved, came about, because of a unique

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1 genetic problem with the mother.

2 A She was a fast metabolizer.

3 Q Right. And somebody had the good sense to check and
4 see is there a genetic problem here, correct?

5 A Well, the genetic problem was with the mother.

6 Q Right.

7 A And basically she was taking codeine and it was
8 turning into morphine a lot more readily than --

9 Q Than --

10 A Than somebody that doesn't have this genetic
11 deficiency.

12 Q And that happens in a very relatively small amount of
13 population, does it not, except for apparently in Saudia
14 Arabia where it's 16 percent? Right above it are the
15 figures and it's -- in this country it would be in the one
16 percent range.

17 A It's a fairly small percent.

18 Q But it's still as a result of that someone learned it
19 could happen.

20 A That's correct.

21 Q Because somebody had the good sense to check the
22 genes.

23 A Yes, sir.

24 Q Correct? All right. So as a result of that the
25 American Academy of Pediatrics, you say, modified their

1 position, didn't they?

2 A Well, I don't know if it was totally a result of that,
3 but I believe that was in part.

4 Q In part because they -- the next paragraph, would you
5 read it with -- look at it with me?

6 A Yes, sir.

7 Q And it says there, "For these reasons when
8 narcotics -- narcotic agents are needed to treat pain in
9 breastfeeding women agents other than cocaine" --

10 A Correct.

11 Q And then they give examples -- Butorphanol, morphine
12 and Hydromorphone -- are preferred, is that correct?

13 A That's what it says, yes, sir.

14 Q So in August 13th of -- August the 26th of 2013 the
15 position of the American Academy of Pediatrics says on the
16 abundance of caution don't use codeine with the mother, use
17 morphine.

18 A It -- it says that is one of the things. But if you
19 look at it further their recommendation is this is for
20 nonsustained release and noncontinued use.

21 Q What does it say?

22 A If you look -- if you look at the recommendations they
23 say that for like MS -- drugs such as MS Contin they don't
24 recommend it.

25 Q What does it say there?

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- 1 A It doesn't say that in this article.
- 2 Q Well, where is the article that says that?
- 3 A I don't have it with me, but there are -- there are
4 several.
- 5 Q You didn't -- you didn't bring it to court today with
6 you.
- 7 A No, sir.
- 8 Q The article that tells this jury that the American
9 Academy of Pediatrics says don't prescribe MS Contin you
10 didn't bring to court today with you.
- 11 A No, sir.
- 12 Q Did you think it was important?
- 13 A I think Mr. Barnette has it.
- 14 Q Did you think it was important? Does he have it?
15 MR. BARNETTE: Yeah.
- 16 Q All right.
- 17 A Actually there are several that --
- 18 Q That is -- that is -- that is not a peer review
19 article though, is it?
- 20 A No, sir. That's not the one I was talking about.
- 21 Q Okay.
- 22 A There's another one that refers to the Lancet
23 publication that says that. I can get it for you.
- 24 Q Sure. Please do.
- 25 A You have it. May I?

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1 THE COURT: Yes, sir.

2 Q Sure.

3 (Whereupon, the witness left the stand.)

4 MR. WISE: Your Honor, if you want to take a little
5 break since we've been here a while, I'm going to --

6 THE COURT: We can do that.

7 Let me ask the jury to please go to your jury room.
8 Don't talk about the case. I'll bring you back shortly.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: All right. Before we take that break let
12 me caution Dr. Eagerton.

13 While you are permitted to discuss with Mr. Barnette
14 the location of the finding of that article, you're not
15 permitted to discuss the article or any of your other
16 testimony with anyone during the break because you're still
17 on the witness stand.

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. We'll be at ease for 15 minutes.

20 (Whereupon, a recess was taken.)

21 THE COURT: Are we ready for the jury?

22 MR. BARNETTE: The state's ready, Your Honor.

23 THE COURT: All right. Bring them in.

24 (The following takes place in the presence of the
25 jury.)

1 THE COURT: All right. Mr. Wise.

2 BY MR. WISE

3 Q Did you find an article?

4 A I found the one that I was thinking of, but I was
5 mistaken. It is essentially -- it was -- is Canadian, in
6 the Canadian journal. I believe it is peer review. But it
7 refers basically to that codeine.

8 Q So --

9 A So basically the same report that we were talking
10 about, so.

11 Q So what you're telling me is there is no peer review
12 publication based upon your research that ever says a
13 mother taking morphine can create a toxic level of morphine
14 in the child through breast milk.

15 A No, sir. That's a different question I believe than
16 what you asked me. I believe I do have one for that.

17 Q Let me get back to the other question.

18 Does that peer review article talk about MS Contin
19 being potentially dangerous creating a toxic level of
20 morphine through breast milk?

21 A I don't believe I've seen one those of those, no, sir.

22 Q All right. So what do you have on a -- on a peer
23 review article that says a mother can spread -- who is
24 taking morphine can spread a -- give a child a toxic level
25 of morphine through breast milk?

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1 A Well, this is just one report. This is in the Journal
2 of Clinical Toxicology --

3 Q Okay.

4 A -- published in 1990 where it talks about basically
5 levels of morphine in breast milk after mother taking it.

6 Q And how many of them got to the toxic level?

7 A Well, I don't know -- exactly know what a toxic level
8 is for a six-and-a-half-week old.

9 Q All right. Well, let's say -- what's the highest
10 level you've got in that article?

11 A I don't know. Well, the con -- they measured the
12 concentration in the milk, and it was varied at different
13 times as you would expect. It was a hundred nanograms per
14 mil, 10 nanograms per mil and 12 nanograms per mil.

15 Q And --

16 A And in the -- in the infant morphine was at around 4
17 nanograms.

18 Q Four nanograms. And you've had plenty of studies
19 where infants had 4 nanograms that are doing well.

20 A There are studies where it has come up and they've
21 seen it at that level and with medical treatment they're
22 doing well.

23 Q And there are studies where without medical treatment
24 they're doing well.

25 A And that's considerably lower than what we have here,

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- 1 yeah.
- 2 Q I understand that's considerably lower, but I'm asking
3 you where -- the question here is how did this morphine get
4 into this child, right? Do you understand that?
- 5 A well, yeah.
- 6 Q Okay. And the question is did it come through the
7 breast milk.
- 8 A Okay.
- 9 Q All right. And have you ever seen any study where a
10 level of .10 or greater was given to a child through breast
11 milk.
- 12 A A level of what?
- 13 Q .10.
- 14 A Give me some units.
- 15 Q Nanograms per liter. Is that the proper term?
- 16 A Point -- well, no, sir. Nanograms per mil.
- 17 Q Per mil. Okay. Milliliter.
- 18 A .10 or greater?
- 19 Q Yes.
- 20 A Yes, sir.
- 21 Q Where?
- 22 A This one that I just said was 4 nanograms per mil.
- 23 Q Four nanograms?
- 24 A Yes, sir.
- 25 Q All right. Let me. You and I are miscommunicating.

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1 It's my error and not yours. All right. The reading here
2 is .52.

3 A These are milligrams per liter.

4 Q All right.

5 A And we've got to get our units right and that's --

6 Q So what would that be in milligrams per liter?

7 A Would be .004 milligrams per liter.

8 Q So it would be -- basically this would be about 125
9 times higher.

10 A This level?

11 Q Right.

12 A Yes, considering.

13 Q Is that correct?

14 A Well, I'm not going to -- I didn't do the math, but
15 it's considerably higher, yes.

16 Q Would you trust me if I done the math?

17 A I trust you.

18 Q Okay. So have you ever seen any peer review
19 reports -- and if we deal with milligrams it may help me
20 because all of the charts in there, it helps me.

21 A Well, just for the record, that's -- that's what I'm
22 used to too, and that's why I have to convert it in my
23 head. That's why I pause every time.

24 Q Have you seen any reports then that talks about a
25 level of 10 milligrams per liter being passed to a baby

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1 through breast milk with the mother taking morphine?

2 A Okay. Let me see. I don't recall. I'm looking
3 through, but I don't recall any, no, sir.

4 Q You will agree that in 2000 the Journal of the
5 American Academy of Pediatrics listed morphine as safe to
6 take while breastfeeding.

7 A Yes.

8 Q Is that correct?

9 A With a caveat.

10 Q Well, let's go to that caveat. This is the -- do you
11 recognize this as the Journal of the American Academy of
12 Pediatrics?

13 A Yes, sir.

14 Q Do you have it there?

15 A Yes, sir.

16 Q Very good. Turn to page 781. First of all, let's go
17 back. We're looking at table six, correct?

18 A I don't know.

19 Q All right. Table six is listed in the American
20 Academy of Pediatrics, "Maternal medication is usually
21 compatible with breastfeeding." It is on page 780.

22 A 780?

23 Q Well, try my copy. Is that the same one you've got?

24 A No, sir.

25 Q Okay.

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- 1 A That's why.
- 2 Q Are you clear with that copy of the American Journal
3 of American Academy of Pediatrics?
- 4 A Okay.
- 5 Q All right. On page 780 they've got a table six.
- 6 A Yes, sir.
- 7 Q And table six lists medications that are usually
8 compatible with breastfeeding.
- 9 A Yes, sir.
- 10 Q All right. Go to the next page under morphine.
- 11 A Yes, sir.
- 12 Q What does it say?
- 13 A Well, it says morphine is a drug, and it says reported
14 sign or symptom and infant effect on lactation. None.
15 Infant may have measurable blood concentration.
- 16 Q None meaning what?
- 17 A I don't know. It says effect on lactation. That may
18 mean it has no effect on lactation.
- 19 Q Has no effect on lactation.
- 20 A Correct.
- 21 Q That's what the American --
- 22 A Lactation is the production of milk, not the
23 breastfeeding, just --
- 24 Q Okay. But then they say may have some -- may get
25 some --

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1 A "Infant may have measurable blood concentrations."

2 Q All right. So what the American Academy of Pediatrics
3 tells you is that if you take morphine you may get
4 measurable amounts in the child, but that's it, correct?

5 A That's what that says, yes.

6 Q That's what that says.

7 All right. The American Academy of Pediatrics cautions
8 against oxycodone, don't they?

9 A I would imagine.

10 Q Well, let's look at the article on August 26th of
11 2013, the highlighted portion in the right-hand column.
12 Read that for us.

13 A The extreme right?

14 Q It's the highlighted portion.

15 A "Other narcotic agents such as oxycodone, pentazocine,
16 propoxyphene, and meperidine are not recommended in the
17 lactating mother. Relatively high amounts of oxycodone are
18 excreted in human milk, and therapeutic concentrations have
19 been detected in the plasma of a nursing -- nursing
20 infant."

21 Q So that's kind of a precaution against oxycodone.

22 A It is.

23 Q All right. You've got the -- we've got the lab report
24 of that, don't we?

25 A Yes, sir.

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- 1 Q How much oxycodone was found in this child?
- 2 A None.
- 3 Q None, correct?
- 4 A That's correct.
- 5 Q She had a prescription for oxycodone, correct?
- 6 A No, sir.
- 7 Q What?
- 8 A I don't know.
- 9 Q She had a prescription for hydrocodone.
- 10 A Hydrocodone.
- 11 Q Okay.
- 12 A Totally different drug.
- 13 Q Hydrocodone. What's the recommendation on it?
- 14 A Don't know.
- 15 Q You don't know.
- 16 A I would -- I would say that it's probably the same as
- 17 with all of the other opioids.
- 18 Q Okay. But the hydrocodone had a warning label saying
- 19 don't breastfeed with it.
- 20 A I believe it did.
- 21 Q Okay. Are you familiar with LactMed?
- 22 A I am.
- 23 Q What is that?
- 24 A It's a -- a database for substances that -- and their
- 25 connection with breastfeeding and lactating mothers.

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- 1 Q Okay. And it's put out by whom?
- 2 A It's from toxnet. I don't know if it's a national
3 database.
- 4 Q National Institute of Health?
- 5 A I believe it is an N.I.H. subserve, yes.
- 6 Q All right. Well, I hand you -- look here at the
7 highlighted portion about the LactMed website and see if
8 that refreshes your memory.
- 9 A Yes, sir.
- 10 Q The National Institute of Health.
- 11 A Yes, sir.
- 12 Q Did you access that website in preparation for your
13 testimony here today?
- 14 A I did.
- 15 Q And which article on the National Institute of Health
16 website did you find that says a mother who breastfeeds can
17 give her child a toxic level of morphine?
- 18 A I don't recall.
- 19 Q Didn't find one.
- 20 A I don't recall.
- 21 Q Because it doesn't exist.
- 22 A May not.
- 23 Q Do you think if it existed you would have found it?
- 24 A I would hope so.
- 25 Q All right. Now, LactMed is a good source not only for

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1 doctors but for breastfeeding mothers to go check, correct?

2 A Yes, sir.

3 Q All right. Now, Journal of Human Lactation. Are you
4 familiar with it?

5 A Not expressly.

6 Q You've heard of it.

7 A Just now.

8 Q That's the first time you've heard of it?

9 A Yes, sir.

10 Q You didn't research any of it in anticipation for the
11 testimony here today?

12 A I don't know. I really didn't pay attention to the
13 name of the journals when I was looking at it.

14 Q Well, let me ask you if you're familiar with that
15 journal.

16 A No, sir. I'm not.

17 Q You're not. Do you know if it's a peer reviewed
18 article?

19 A I don't.

20 Q Okay. So you didn't read any of this.

21 A I didn't say I didn't read it. I don't know. I don't
22 know that I read it or not. You just asked me if it was
23 peer reviewed.

24 Q You don't know.

25 A I don't know.

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- 1 Q You don't know if you read it or not either.
- 2 A If I could see it again I could tell you.
- 3 Q No problem.
- 4 (Pause.)
- 5 A I don't remember seeing this one specifically, but I
- 6 believe that this was referred to perhaps in one of the
- 7 ones that I read. But, no, I don't remember that one
- 8 specifically.
- 9 Q Okay. Now, you have reviewed -- let me find my other
- 10 article. You're familiar with the Journal of Toxicology?
- 11 A I am.
- 12 Q Excuse me. Let me rephrase that. It's the Clinical
- 13 Toxicology --
- 14 A Journal.
- 15 Q -- Journal. Just gives me clinical toxicology.
- 16 A Yes, sir.
- 17 Q Look in upper right-hand corner.
- 18 A Yes, sir.
- 19 Q You're familiar with that.
- 20 A Yes, sir.
- 21 Q Okay. Something you subscribe to?
- 22 A Yes, sir, I actually do.
- 23 Q Have access to that at Presbyterian college.
- 24 A I do.
- 25 Q Let me borrow it a second. Did you read this article

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1 in anticipation for your testimony here today?

2 A I don't know. Can I see that article? I can I see
3 the title of it?

4 Q Sure. And what's the title of it?

5 A "Is maternal opioid use hazardous to breastfed
6 infants?" I don't think so.

7 Q You don't think so.

8 All right. Let me borrow it a second. I should have
9 made you a copy.

10 Look on page six of this journal. And this is a peer
11 review journal, correct?

12 A That's right.

13 Q All right. Something that people in the field of
14 toxicology rely upon --

15 A Yes, sir.

16 Q -- to get further educated --

17 A Yes, sir.

18 Q -- and to form their opinions.

19 A Yes, sir.

20 Q All right. Look there if you would on this
21 highlighted portion on the right-hand side where the little
22 star is.

23 A Okay.

24 Q Read that to us.

25 A "The medical literature describes scant evidence of

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1 opioid toxicity in breastfed infants."

2 Q Do you have any evidence that's contrary to that?

3 A No, sir. That's --

4 Q That's true.

5 A That's true, yes, sir.

6 Q So there's scant evidence.

7 A That is correct.

8 Q Which is pretty close to none.

9 A Yes, sir.

10 Q Right?

11 A That's right.

12 Q So you're in no position to say then that that number
13 came through breast milk.

14 A I don't believe I've said one way or the other.
15 Nobody's asked me.

16 Q Okay. But you don't have any basis for saying that it
17 came through breast milk.

18 A Had to get into the baby somehow.

19 Q That's not my question. You have no basis for saying
20 that number came into the baby through breast milk.

21 A I don't know that I'd say I have no basis. I'd say
22 the basis is the mother is taking MS Contin, which is
23 morphine. She is breastfeeding. We know that based on the
24 literature we've already talked about that at least small
25 amounts certainly do pass through into the breast milk. So

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1 I don't think I have basis to say that it didn't, or at
2 least some of it.

3 Q Well, I'll concede some of it.

4 All right. Did you do any calculations to determine
5 what level would have to be in the mother to get to that
6 level in the baby?

7 A No, sir.

8 Q So you don't know.

9 A I don't know that anybody can calculate that.

10 Q You don't -- you don't know how much morphine she
11 would have had to take to get that level, correct?

12 A I believe there's scant evidence in the literature
13 that allows us to do that, so I --

14 Q I understand.

15 A I don't --

16 Q So you -- we -- you cannot make a conclusion today as
17 to how that morphine got into the baby.

18 A No, sir. I think I can make a conclusion as to how.
19 Like I said, at least some of it I believe within a
20 reasonable degree of scientific and medical certainty had
21 to come through the breast milk.

22 Q .04 mg?

23 A Like I said earlier, I can't quantitate how much.

24 Q .01 mg, or are you going to agree with the literature
25 that says basically a very small amount?

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1 A Well, I don't disagree to the very small, that it's a
2 very small amount. I -- I don't disagree with that. But
3 it doesn't take much to kill a little baby.

4 Q Takes more than .04 mg though, doesn't it?

5 A May not.

6 Q You have studies in front of you that show children
7 with .04 mg.

8 A Right. And like I said a long time earlier, we in
9 forensic toxicology aren't concerned with the amount that
10 people can survive on. We're -- we're concerned with the
11 amount it takes to kill one person. And if you look at
12 the -- the level -- the levels of morphine -- if we slide
13 it back up -- it's a range. And people can die at much
14 lower levels, and people can survive. I can't really
15 predict that. I can only say as a forensic toxicologist
16 that this is a lethal level or this is consistent with a
17 lethal level, this is consistent with a toxic level. I
18 can't tell you specifically what levels somebody's going to
19 survive with and what level's going to kill somebody.

20 Q Let's go to another question, another area.

21 A Okay.

22 Q There is a concept known in toxicology as
23 redistribution of drugs after a person dies.

24 A Postmortem redistribution, yes, sir.

25 Q Is that correct?

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- 1 A Yes, sir.
- 2 Q Morphine is one of the drugs that will redistribute.
- 3 A Yes, sir.
- 4 Q And redistributing drugs after dies means it comes out
5 of the fat tissue into the blood.
- 6 A That's one way.
- 7 Q And the body tries to get a state of equilibrium, so
8 to speak.
- 9 A Well, the body's not trying anything. The body is
10 dead.
- 11 Q Right.
- 12 A I mean, but it's natural --
- 13 Q The natural body --
- 14 A The chemistry is moving toward equilibrium, yes.
- 15 Q More accurate way of putting it.
- 16 A Yes.
- 17 Q All right. Naturally moving toward equilibrium. And
18 in 12 hours time you can start the process of
19 redistribution of drugs.
- 20 A You can.
- 21 Q All right. And here we have a list of several drugs
22 here, correct --
- 23 A Yes, sir.
- 24 Q -- you said were synergistic with each other?
- 25 A Well, I said most of them are, not all of them.

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1 Q Okay. Most of them are. And all of those drugs will
2 redistribute after death.

3 A I don't know.

4 Q Well, tell me which one won't.

5 A I'm not sure about Tylenol.

6 Q Okay. Tylenol.

7 A Or acetaminophen.

8 Q Okay. Well, let's eliminate Tylenol then. The others
9 will.

10 A I don't recall the exact amount, so just because it
11 can redistribute doesn't mean that it's significant. And
12 that's a -- again, that's why we look at it in multiple
13 tissues. We don't just -- we -- we prefer. That's why we
14 look at the tissues --

15 Q None of these --

16 A The liver and brain and things like that.

17 Q But none of these other drugs were looked at in
18 multiple tissues.

19 A No, not according to the report, no.

20 Q So you're in no position to sit here today and say
21 that these levels of drugs found, other than the morphine,
22 were not caused strictly by redistribution of drugs.

23 A I don't really understand your question.

24 Q All right. Let's go to the first one up there. What
25 is it? You can pronounce it better than I can.

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- 1 A Well, the first one is Acetaminophen, but we ruled
2 that out.
- 3 Q Okay.
- 4 A So we're going to go to Diphenhydramine, right?
- 5 Q Right.
- 6 A All right.
- 7 Q What is it again?
- 8 A It's Diphenhydramine.
- 9 Q All right. Dip --
- 10 A Diphenhydramine.
- 11 Q Okay. All right. That's a .03.
- 12 A Yes, sir.
- 13 Q That will redistribute after death.
- 14 A It's possible.
- 15 Q All right. At what rate will it redistribute after
16 death?
- 17 A I don't know.
- 18 Q Nobody knows.
- 19 A I don't know that either.
- 20 Q Well, you haven't checked it with this anyway.
- 21 A No, sir. I looked -- and we could go down all of
22 these things and I can tell the same thing. I didn't
23 really look at -- to any great level of the postmortem
24 redistribution of those drugs because it doesn't really
25 matter.

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1 Q And it doesn't matter because the only thing you're
2 really looking at is morphine.

3 A Well, when you're looking at postmortem redistribution
4 you can do -- do one of two ways. Either your blood level
5 can be higher than it was before death, or lower. It can
6 go either way. Drugs redistribute both ways.

7 Typically, when you think of classically postmortem
8 redistribution you think of drugs that are -- are typically
9 for whatever reason taken up preferentially by the heart,
10 because a lot of times in autopsy -- or the heart is where
11 the most easiest blood to get to oftentimes, and so that's
12 where classically they'll -- the pathologists will go into
13 the heart blood and get heart blood.

14 Then we found out that heart blood differed if we
15 measured the levels it differed from the levels in the hart
16 blood versus peripheral blood.

17 Some -- some -- some levels were really, really high
18 and it looked like an apparent overdose when, in fact, it
19 really wasn't. So that's why we started -- in forensic
20 toxicology we recognize this phenomena. And so we started
21 asking for peripheral -- peripheral blood, as well as
22 central blood, and then tissues as well, so that if we get
23 an apparent overdose we can go to those other sources and
24 confirm or not confirm that this is a legitimate overdose.
25 And that's why we look at the tissues.

1 And in this case the only one that you're really
2 concerned about would be the one that's an apparent high
3 level, an apparent lethal level. So you want to confirm
4 that.

5 So that's exactly what the analysts at SLED did, was
6 they looked at the tissue levels of it to confirm or to
7 even show to say, hey, this is a really high level but the
8 levels in the tissue don't support that as an overdose so
9 my opinion would be it's not an overdose.

10 Q But you came in here and said the synergistic effect
11 of all of these drugs is one and one equals three or five
12 or ten or whatever, correct?

13 A That's right.

14 Q But you don't know what those levels were in that
15 child at the time of death because of redistribution of
16 drugs after death.

17 A You know, for most drugs the redistribution is not
18 that great. There's only a few drugs where it's really --
19 whenever you're looking at things -- the classic example is
20 going to be your tricyclic antidepressants. That's where
21 you really -- those were the first, some of the first,
22 drugs that we noticed was a big difference.

23 If you look at that level, .5, even if you had a -- a
24 twofold difference in it, that still, no matter if you cut
25 .5 in half, it's still a lethal level for this -- for this

1 person.

2 Q I'm not talking about morphine right now.

3 A So -- so it doesn't -- my point is the post -- the
4 postmortem redistribution, while it's real and while it
5 happens, really doesn't play that big of a role in my
6 interpretation or any -- in my interpretation of -- of this
7 being a death from a morphine overdose.

8 Q Leave the morphine out for a moment.

9 A Okay.

10 Q You testified earlier that the synergistic
11 inter-reaction of all of these drugs, you know, led you to
12 the conclusion that's what killed this child in part.

13 A They contributed, yes, sir.

14 Q But you're sitting here today saying that you don't
15 know -- forget the morphine for a moment. All of the other
16 drugs, you have no way of telling what their levels would
17 have been when the child was alive.

18 A I believe we have a pretty good representation. Like
19 I said, I don't believe that the postmortem redistribution
20 is going to be significant in these drugs.

21 Q Well, in those drugs.

22 A That's right.

23 Q All right. Where are those drugs stored, do you know?

24 A Do you mean in the body?

25 Q In the body.

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1 A They're going to distribute pretty well throughout the
2 body. I don't know their volumes of distribution, so.

3 Q They're going to be in the fat cells.

4 A No.

5 Q Some of them are?

6 A Most of those are pretty -- they'll -- they'll be
7 some -- really, no, not -- not -- none of those are really
8 extremely lipophilic that I would say they would be in the
9 fat cells in any greater concentration than in the other
10 nonfat cells.

11 Q And you've done some studies on that or researched
12 that issue? You didn't do that for this.

13 A I haven't researched it, but I can look at a structure
14 and tell whether it's hydrophobic or hydrophilic.

15 Q And those that tend to get in the fat get in there
16 quicker than those that don't.

17 A Obviously if --

18 Q Obviously?

19 A If they tend to not get in the fat, they're not going
20 to get in there at all.

21 Q None -- none of those drugs will never go into the
22 fat.

23 A They'll -- they'll go to some. They have some.
24 They're going to get into the brain, and so in order to get
25 into the brain you've got to have some lipophilicity. But

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1 they're not going to be preferentially sequestered there.

2 They're going to be distributed I think more evenly.

3 Q Woman that gives delivery is frequently given morphine
4 in the hospital, correct?

5 A Okay.

6 Q I mean, is that correct?

7 A I don't know what that -- what all they give them in
8 the hospital. I don't -- wouldn't be able to tell you how
9 frequently.

10 Q Not necessarily this case but in general.

11 A I don't know. I know morphine is given in the
12 hospital, but I don't know exactly. I'm not a physician.
13 I don't --

14 Q Have there been women who have had morphine pumps that
15 have breastfed their baby?

16 A I don't know.

17 Q Is it in the literature anywhere, or do you know?

18 A I don't recall.

19 Q Now, there's also a problem with the -- what they call
20 the blood-brain barrier.

21 A That's not a problem. It exists.

22 Q It exists.

23 A And protects us.

24 Q And it's a problem. All right. It's a problem in the
25 sense that a blood-brain barrier is what keeps some drugs

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- 1 from getting to the brain.
- 2 A Yes, sir.
- 3 Q All right.
- 4 A It's a good thing.
- 5 Q It's a good thing. But heroine has -- goes through
- 6 the blood-brain barrier pretty quickly.
- 7 A It does.
- 8 Q And Oxycontin goes through pretty quickly.
- 9 A Relatively.
- 10 Q Now, morphine not so much.
- 11 A Not as much as those two, but it gets in there pretty
- 12 good -- concentration.
- 13 Q I understand it gets in there eventually, but it's
- 14 going to be slower getting in there than the other two.
- 15 A Yes.
- 16 Q So in any toxicology report then you would expect --
- 17 well, let me back up a second. And the liver has a lot of
- 18 blood in it obviously, correct?
- 19 A If it's a normal healthy liver and not cirrhotic,
- 20 yeah.
- 21 Q All right. And nothing to indicate in this case it
- 22 wasn't a normal, healthy liver.
- 23 A I didn't recall seeing anything.
- 24 Q So you would find a greater concentration of blood
- 25 obviously in the liver than, frankly, except for the heart,

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1 any other part of the body.

2 A I don't know.

3 Q Okay. So with the blood-brain barrier would you not
4 expect to find the morphine level for the brain to be less
5 than the morphine level for the liver?

6 A I don't think that has anything to do with the
7 blood-brain barrier.

8 Q Well, back up a second.

9 The blood-brain barrier keeps morphine from getting to
10 the brain.

11 A It's not just morphine but --

12 Q Or it retards it.

13 A It is -- it is another membrane or barrier that a drug
14 would have to cross to get there, yes.

15 Q Correct. And it doesn't cross that barrier as quickly
16 as it would at the liver.

17 A I don't know how fast it will cross, but I would guess
18 not.

19 Q Okay. The blood-brain barrier slows down the
20 absorption of morphine into the brain.

21 A Yes.

22 Q All right. Then you would expect on any typical
23 report for the liver-morphine level to be higher than the
24 brain morphine level.

25 A No.

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1 Q And even with the barrier.

2 A Well, the barrier -- that's not really how it works.

3 There are receptors in the brain that the morphine's going
4 to be attracted to. So it's going to concentrate there.

5 Once it -- it's going to take a little longer to
6 concentrate. And that's probably why the general consensus
7 is if you take morphine or these kind of drugs acutely with
8 breastfeed, then it's probably okay because you don't get
9 that good penetration into this, into the brain. That's
10 probably one of the reasons.

11 Once it gets in the brain it -- there are receptors
12 there. These -- these opioid receptors there that are
13 responsible for the actions of the drug are going to bind
14 to it, and it's going to stay there longer than just
15 regular blood.

16 There are no opioid receptors that I'm aware of in the
17 liver. It's going to bind it. It's going to metabolize it
18 or not and pass it on. You've got to have that circulation
19 moving because that's your systemic circulation. You can't
20 stop the blood there or you're going to have problems.

21 So the other thing is whenever you take a -- a -- a
22 portion of brain, obviously, from a dead person, you can
23 measure levels of drugs throughout different areas of the
24 brain. You're going to get different levels.

25 So the levels of the drug in the brain are not that

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1 impressive to me. Specifically to me my interpretation of
2 those is that they're just consistent with a large amount
3 of morphine being in that -- this little baby's body.
4 Okay. So that's consistent with that high overdose level,
5 lethal level, of morphine.

6 The better tissue to look at that you have more
7 literature is the liver itself. And that's why you want to
8 look at the liver primarily when you're talking about
9 postmortem redistribution. You look at liver because
10 that's going to give you your -- your impression of whether
11 you've got a [sic] artificially high level in the blood.

12 So you gotta take all of these things into account.
13 The fact that the level in the brain may be lower than the
14 liver really has no bearing whatsoever in my opinion.

15 Q So you're not able to tell this jury how this morphine
16 got into this child.

17 A It had to -- most commonly it had to get there by the
18 oral route.

19 The other thing was somebody could have put it in a
20 syringe and given it to it subcutaneously, perennially as
21 we call it, not through the mouth.

22 I mean, there's any number of ways you can get
23 morphine into somebody. Those are the primary ways. I
24 don't recall seeing any track marks or anything where
25 somebody would have injected it. So it's the natural

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1 thing, is that it got ingested.

2 Q And if someone were to give this child a pill you
3 would see remnants of that pill in the stomach.

4 A More than likely.

5 Q More than likely. All right. And --

6 A This is a six-and-a-half-week old. I don't think a
7 six-and-a-half-week-old could swallow a pill. I mean, I'm
8 not an expert on that, but I just kinda think that they're
9 going to probably choke on it. I have -- I have a problem
10 swallowing pills, so I don't know.

11 Q And you're a little older --

12 A I'm a little older than six and a half weeks.

13 Q But you don't know for sure.

14 A I don't, but, I mean, I did -- I find that hard to
15 believe.

16 Q If it were cut in half would you still find it --

17 A Now, now, if you take it and crush it up and put it in
18 the formula or something and fed it to the baby that
19 would -- that certainly, that can happen.

20 Q And you would find in the stomach contents.

21 A You could. I don't think that the -- I thought about
22 that initially. I don't think that's as likely in this
23 case because this -- the morphine we're talking about is MS
24 Contin, which is a sustained release product.

25 If you crush up or cut a sustained release product it

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1 won't be sustained release any more. It'll dump it all at
2 once.

3 If that were the case in my opinion and then you
4 crushed it up and you gave it to an infant, the infant
5 would probably become toxic and leth -- and die within 30
6 minutes to an hour. They're going to absorb it. That
7 level's going to get high into the blood.

8 I think what we see here is -- is more of a chronic
9 type exposure, which is more consistent with through the
10 breast milk. Or it could be some combination of both. I
11 don't know.

12 Q All right. But you have no literature anywhere to
13 support your opinion that a chronic type of exposure to
14 morphine through breast milk would create a toxic level in
15 a child.

16 A I believe -- I believe that if we take the reports
17 that we have where it comes through in small levels that
18 means if it -- if you're getting a small dose of it you
19 gotta to take it longer over a period of time.

20 If we've got evidence that the -- these little babies,
21 this six-and-a-half-week-old -- probably can't metabolize
22 and get rid of the morphine as fast, so therefore it's
23 going to build up in its body. So that would suggest the
24 more chronic type of exposure. And I believe that's what
25 the literature that we've already gone over -- in my

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1 opinion that's what it points to.

2 Does it come out and out and say that? No. I don't
3 believe I've seen any literature that says that. But for
4 everything there's got to be a first.

5 Q Now, you'll also agree that at somewhere between two
6 and three months a child is pretty much adult-liver
7 function.

8 A No.

9 Q You don't? Excuse me one second then.

10 A I believe it's closer to six months.

11 Q Closer to six months. And certainly one month is much
12 greater than after birth.

13 A Well, by definition it would be 30 days.

14 Q Is that correct?

15 A Yes, sir.

16 Q All right. Now, you talked about the medical history
17 of this child, and you found that it was called in that the
18 child had a temperature, correct?

19 A No, sir.

20 Q Well, did you review the fact that there was a call to
21 the pediatrician about the child?

22 A Yes, sir. I -- and what I recall was that it did not
23 have a temperature, that's why they didn't want to see it.
24 If it had had a temperature I think they would have.

25 Q I believe it was a temperature the day before.

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1 A I don't -- I -- I recall that there was some talk
2 about that, but I believe that -- at least my impression
3 was that it did not have a temperature.

4 Q Okay. All right. And that -- what report was that
5 you relied upon?

6 A I don't recall.

7 Q Have you got it with you?

8 A I don't recall specifically. No, sir, I don't have it
9 with me.

10 Q Have you got that one with you?

11 A If you want to show it to me I'll be happy to look at
12 it.

13 MR. BARNETTE: I can provide it, Your Honor, if that's
14 okay.

15 MR. WISE: That will be fine.

16 THE WITNESS: Thank you.

17 BY MR. WISE

18 Q Have you got it?

19 A I've got one. I believe I've seen it referenced in
20 several places, but I've got one in particular, yes, sir.

21 Q And what does it basically tell you?

22 A Basically, this is in the Spartanburg County Coroner's
23 investigative report. It says that Stephanie stated that
24 infant had a cold on Wednesday, November 10th, and was
25 congested, not eating well, is somewhat lethargic that day.

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1 Q That's Wednesday, correct?

2 A Yes, sir, Wednesday, November 10th. Her rectal
3 temperature was 99.0. She called the pediatrician, Landrum
4 Family Physicians, the following morning, Thursday,
5 11/11/2010, and was told by the nurse that as long as Lexi
6 was not running a fever she did not need to bring her in to
7 be seen. She was instructed to get a vaporizer and baby
8 rub to use.

9 Q And no report about her being lethargic on Thursday or
10 Friday, just Wednesday.

11 A I don't see any --

12 Q Okay.

13 A Any note of that. I don't see anything that says she
14 wasn't. I don't see anything that says she was.

15 Q Well, you see in the report that says she was on
16 Wednesday, correct?

17 A That's right.

18 Q All right. And the absence of such statement in
19 Thursday and Friday would imply that it wasn't there.

20 MR. BARNETTE: Objection, Your Honor. Asking the
21 witness to speculate.

22 THE COURT: Sustained.

23 BY MR. WISE

24 Q You see no report saying that she -- she was --
25 nothing in that report says she was lethargic on Thursday

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1 and Friday.

2 A No, sir.

3 Q Okay. In fact, I think some reports said she was
4 alert and doing well on Friday, I believe.

5 A I don't see anything that says she was alert and doing
6 well. It says -- it seems to say that she was getting
7 better.

8 Q Okay. Getting better on Thursday and Friday, correct?

9 A Right.

10 Q Okay. Now, you're familiar with clinical toxicology.

11 A Yes, sir. We've already said that.

12 Q All right. Looking at July 1 of 2011.

13 A Okay.

14 Q And it's a topic entitled, "If maternal opioid use
15 hazardous to breastfed babies or breastfed infants."

16 All right. And the bottom of the left paragraph is a
17 marked thing. What does it say?

18 A I believe we've already discussed this one, but it
19 says we're not aware of any reports of suspected infant
20 toxicity from maternal morphine used while breastfeeding.

21 Q All right. Thank you. Give me one second.

22 (Pause.)

23 Q Just -- just one other question.

24 Do you -- have you done any studies on liver functions
25 of infants?

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1 A Not specifically, no, sir.

2 Q So you're going by what generally is talked about when
3 you say that infants don't have a good liver function.

4 A I believe there's literature that supported that.

5 Q On that point. All right. Thank you.

6 MR. BARNETTE: Just a couple on redirect, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BARNETTE

9 Q He talked about LactMed, about it's well recognized.

10 A Yes, sir.

11 Q And obviously you're familiar with it from there.

12 A Yes, sir.

13 Q This is on morphine. If you look under summary of use
14 during lactation --

15 A Yes, sir.

16 Q -- if you would, read what they say about using
17 opiates or pain killers.

18 A "Epidural morphine given to mothers for postcesarean
19 section analgesia results in trivial amounts of morphine in
20 their colostrum and milk. Intravenous or oral doses of
21 maternal morphine in the immediate postpartum period result
22 in higher milk levels than with epidural morphine. Labor
23 pain medication may delay the onset of lactation. Maternal
24 use of oral narcotics during breastfeeding can cause infant
25 drowsiness, central nervous system depression and even

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1 death."

2 Q This is a narcotic we're talking about -- morphine.

3 A Yes, it is.

4 Q And as well as the other substance. I believe it's
5 the Klonopin in there, but the morphine specifically. And
6 that's what LactMed says.

7 A Yes, sir.

8 Q And that's recognized nationally, and obviously you're
9 familiar with it too.

10 A Yes, sir.

11 Q And that's what they say about it.

12 A Yes, sir.

13 Q He was asking you about scant evidence. A lot of
14 these -- not going to intentionally -- I mean, with
15 children and so forth, little ones like this, you've got to
16 be -- you've got to monitor them when they're given
17 morphine, don't you, or keep an eye on them, because
18 obviously they can fall very quickly.

19 A Yes, sir.

20 Q And has there ever been any studies with a chronic
21 user of morphine that uses MS Contin or anything further?

22 A I think that's what we're -- no. I agree there's not
23 a lot of literature out there. It -- it -- no doubt.

24 Q But based off the history you've seen with this
25 defendant and everything obviously she's used morphine for

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1 a long period of time.

2 A That's what it would indicate, yes, sir.

3 Q And obviously do they build a tolerance over that
4 period of time to those drugs?

5 A You talking about the -- the mother using it?

6 Q Right, the mother.

7 A Yes, yes, sir.

8 Q And so a lot of times when they keep using drugs over
9 and over again they need more of it to sustain themselves.

10 A Yes, sir. That's correct.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q Thank you sir. Please answer any questions the
14 defense has for you.

15 RECROSS-EXAMINATION

16 BY MR. WISE

17 Q What page is that statement you read on?

18 A I don't know if the page number is right. It says
19 page one of five, or I think that's a five. I can't really
20 tell.

21 Q I think it is too. And what paragraph is that?

22 A It's the very first paragraph, summary of use during
23 lactation.

24 Q Summary.

25 A Yes, sir.

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1 Q At the end of the article if you go back to page 1 looks
2 like three of five --

3 A Yes, sir.

4 Q All right. It says, the paragraph under effects in
5 breastfed infants --

6 A Yes, sir.

7 Q It says there that, "Breastfed newborns of mothers
8 using intervenous P.C.A. morphine," right, "for
9 postcesarean -- word I can't pronounce -- anal --

10 A Analgesia.

11 Q -- analgesia were more alert and better oriented after
12 postpartum day three than infants of mothers using
13 intravenous P.C.A. meperidine and nonbreastfed control
14 infants," correct?

15 A Yes, sir, that's what it says.

16 Q So the children using morphine were more alert and
17 better oriented day three than children given -- mothers
18 giving on the drug.

19 A Again -- again, this is an acute. A P.C.A. is a
20 controlled dose. You can't overdose on it.

21 Q I understand.

22 A No matter how much you hit the button it'll only give
23 you so much.

24 Q Okay.

25 A So that's a very low level control for an acute

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1 situation.

2 Q And where is the article that discusses the alleged
3 death that occurred that's mentioned in the opening
4 paragraph?

5 A I don't know. I didn't look at the reference and see.

6 Q Do you want to look at the reference?

7 A Well, it's not specifically referenced. That's --

8 Q It's not specifically referenced, is it? That is
9 someone's opinion and not based upon any case study.

10 A That's my opinion.

11 Q But that statement and that article is not based upon
12 any specific case study, is it?

13 A I don't know. Like we said, it's not referenced.

14 Q It's not referenced.

15 A Right.

16 Q If you're going to make a statement like that it
17 should be referenced.

18 A I -- I think that that's pretty common knowledge
19 actually.

20 Q Will you agree with the statement that clearance of
21 morphine is decreased in -- in infants younger than one
22 month and approaches 80 percent of adult values by six
23 months of age?

24 A Yes, sir.

25 Q All right. So the time you have to be careful, really

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Redirect examination by Mr. Barnette

1 careful, about clearing morphine is the first month.

2 A Less than six months.

3 Q Well, the first month. And how much liver function
4 does a person need to function?

5 A I don't know.

6 Q You don't know?

7 A No, sir.

8 Q So if the function -- if the liver on a child is
9 functioning at 33 percent you don't know if that's enough
10 to clear morphine or not.

11 A Well, that's a different question. You said the
12 function. Obviously, the -- the function means to live.
13 If you're talking about to clear a specific drug, that's a
14 different question. I don't know the answer to that
15 either, but it's is a different question.

16 Q Okay. But you don't if -- if a young six-week-old
17 infant has 50 percent liver function you don't know how
18 much morphine would be cleared with that.

19 A Not precisely, no.

20 Q All right. Thank you.

21 MR. BARNETTE: No further questions.

22 THE COURT: You may step down.

23 MR. BARNETTE: We'd ask the witness be excused, Your
24 Honor.

25 THE COURT: He may be.

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Redirect examination by Mr. Barnette

1 MR. BARNETTE: Thank you, Your Honor.

2 (Whereupon, the witness was excused.)

3 THE COURT: We'll break for lunch.

4 Remember the caution. No discussion, no research, no
5 investigation, no media exposure.

6 Have a good lunch. Please report to your jury room at
7 2:30 this afternoon, 2:30 this afternoon.

8 Again, if you'll give those notepads to the bailiff
9 they'll put them in an envelope, and you'll be provided
10 those when you come back.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Court is in recess until 2:30.

14 (Whereupon, a recess was taken.)

15 THE COURT: Any matters to address before the jury
16 comes in?

17 MR. BARNETTE: None from the state, Your Honor.

18 MR. WISE: None from the defense.

19 THE COURT: Are you going to use that exhibit, or has
20 that just been up here since lunch?

21 MR. BARNETTE: I guess that's been up since lunch,
22 Your Honor.

23 THE COURT: Let's take it down.

24 MR. BARNETTE: Yes, sir.

25 (The following takes place in the presence of the

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1 jury.)

2 THE COURT: Good afternoon, ladies and gentlemen.
3 We're going to continue with the state's presentation.
4 Mr. Barnette.

5 MR. BARNETTE: May it please the Court, Your Honor.
6 I'd like to call Dr. Wren to the stand please.

7 DR. JOHN DAVID WREN, having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BARNETTE

10 Q Dr. Wren, if you would, give your name, please.

11 A It's John David Wren.

12 Q And where do you work at, sir?

13 A I work at Spartanburg Regional Medical Center.

14 Q And what is your position there, sir?

15 A I'm a clinical -- I'm the clinical laboratory medical
16 director at Spartanburg Regional and at Spartanburg
17 Hospital for Restorative Care.

18 I oversee all of the hospital clinical laboratory, and
19 I also do anatomic pathology. I'm a general pathologist by
20 the nature of where I work.

21 Q If you would, give the jury some of your educational
22 background and experience, please.

23 A Yes. I have a bachelor's degree, a master's degree
24 and a doctor of philosophy degree in chemical engineering
25 from university -- Clemson University.

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1 I did my doctoral dissertation on rate kinetics and
2 biological systems.

3 I then worked in industry for five years in research
4 and development and also did process control by digital
5 methods back in its infancy and process modeling.

6 I then went to the Medical University of South
7 Carolina where I majored in medicine, got my M.D. degree in
8 three years and four months.

9 I went directly into an anatomic clinical pathology
10 combined residency. I finished that in three years and ten
11 months getting credit for my research both at the medical
12 school and at Clemson University.

13 I then -- while I was there I was assistant medical
14 examiner for Charleston County from July 1st of 1979 until
15 January the 31st of 1983.

16 while I was doing that I did forensic autopsies for
17 the state of South Carolina, which a lot of the autopsies
18 were sent to the medical university under the supervision
19 of board certified forensic pathologists. And I got credit
20 for that time as a prerequisite to taking my boards if I
21 wanted to.

22 I then came to work in Spartanburg on October the
23 18th, 1982, because I had some vacation built up. And I've
24 been a pathologist in Spartanburg since that time.

25 At one time I was at Mary Black for a while, but I've

Dr. John David Wren
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1 been at Regional since 1989.

2 I was the department chairman of pathology at that
3 until a few years ago when they actually made us -- you
4 couldn't be succeeded, so I had to step down as the
5 department chairman. But I retained the clinical
6 laboratory directorship.

7 I'm board certified in anatomic and clinical pathology
8 on my first attempt. I took the boards in two parts
9 because, simply because, I was working. I had a family at
10 that time. And even when I was in medical school and I
11 took the first boards on anatomic pathology in September --
12 I mean -- November of 1983. Then I took the clinical
13 boards in November of 1987. As I said, I passed them on
14 the first attempt.

15 I never took the forensic boards because I simply
16 didn't have enough time to do it with the duties that I
17 had, but I have been qualified as a forensic all over this
18 state, as an expert in forensic pathology all over this
19 state. I can name most of the counties if anyone is
20 interested, but at least half of the counties in South
21 Carolina.

22 Q Yes, sir. So you've been qualified by numerous state
23 courts throughout the state.

24 A Yes.

25 Q And as a forensic pathologist.

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1 A Yes, sir.

2 MR. BARNETTE: And, Your Honor, at this time I'd move
3 him as an expert in forensic pathology.

4 MR. WISE: No objection.

5 THE COURT: He is so qualified.

6 BY MR. BARNETTE

7 Q Dr. Wren, did you perform the autopsy on Alexis
8 Greene?

9 A Yes, I did. I performed an autopsy on Alexis
10 Katherine Greene in the Spartanburg Regional Medical Center
11 on November the 13th of 2010. I began that autopsy at
12 4:45 p.m.

13 Q If you would, tell the jury about that autopsy if you
14 would, sir.

15 A Well, a forensic pathology -- I mean, a forensic
16 autopsy entails a history as much as can be provided,
17 although it's never completely accurate. It's just to give
18 you some indication of what is known prior to the autopsy.
19 I record that in my report so I can remember a little bit
20 about it. It's up to eight or ten years later sometimes.

21 We then -- I ask for the person that's brought for
22 autopsy to be left exactly like they are, no movement or
23 removal of any clothing or anything of that nature, exactly
24 like the coroner's office finds it.

25 I describe the clothing, look for any trace evidence

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1 on the clothing. Then I unclothe the body, and then I do
2 an external description.

3 In this case this infant was normally developed. She
4 didn't -- I didn't see any abnormalities, although it was
5 reported that she had a congenital cyst of the eye, was
6 part of the history given to me.

7 She weighed 3,345 grams, which for those people that
8 are not real good in the metric system that's 7 pounds and
9 6 ounces, which is normal for a 16 -- a
10 six-and-a-half-week-old infant.

11 She measured 37.8 centimeters from crown to rump and
12 54.3 centimeters from head to heel. Her head circumference
13 and chest circumference were relatively normal.

14 She had some rigor mortis and some posterior
15 non-blanching livor mortis, which is settling of the blood
16 in the tissues of the back. And when we say non-blanching
17 we mean that it's -- the person had been probably dead long
18 enough for that to start to where it won't blanch out.
19 It's settled into the tissues.

20 So in that case one can get an indication of where the
21 person -- the position they were in when they passed away
22 if it's become fixed. And, in other words, if you had a
23 person that was lying on their back and they have anterior
24 non-blanching livor mortis you could pretty much assume
25 that they have been dead for some time for it to not blanch

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1 on the chest, and then they were turned over.

2 It becomes more difficult when it's on both sides
3 because then you have to -- you have to correlate that with
4 what the history has given you.

5 She had cyanosis of her right ear. It was bluish
6 discoloration of her ear, which is an indication of some
7 settling of blood. And she had no acute injuries. And she
8 had a little bit of cyanosis of her nail beds, which is an
9 indication of respiratory problems usually, or it can be
10 heart failure with blood backing up in the system.

11 And that was all I found. No evidence of any trauma,
12 and I might say none externally or internally.

13 I then go to the internal examination where we open
14 the body with an infant's -- a crutch-shaped incision --
15 remove the chest plate, look into the thoracic and
16 abdominal cavity and examine what we see for any
17 abnormalities.

18 And I have to add that before you find out what an
19 abnormality is you have to know what normal is, and you
20 hardly ever get to -- to autopsy a normal person, so it's
21 based on experience as to -- as to what you see.

22 In her case she had a little bit of paleness of her
23 musculature which can go along with anemia in the chest.
24 She had no effusions, no adhesions, meaning no
25 accumulations of fluid in the chest, abdominal cavity, no

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1 evidence of scarring causing the lungs or any other tissues
2 to adhere to something that it wasn't supposed to. And
3 there were no masses.

4 She had a little bit of fluid on her pericardial sac,
5 which one has to have some because the pericardial sac has
6 to move. It's more rigid than the heart is, and it has
7 to -- the heart has to move within the pericardial sac. So
8 there was -- but there were no adhesions, indicating that
9 the heart was not freely moveable.

10 And her small intestine was a little bit dilated with
11 gas, a postmortem change.

12 Do you want me to continue?

13 Q Yes, sir.

14 A So there was nothing grossly externally or internally
15 that was very significant.

16 I might add that in SIDS death, which everyone is
17 familiar with -- sudden infant death syndrome -- the
18 telltale features of a possible SIDS death are petechial
19 hemorrhages on the thymus, on the heart and on the lungs.
20 She had none of those.

21 I always look for those in an infant because that's
22 one of the -- if you see no anatomic or other reasons for a
23 cause of death, like they didn't have pneumonia or heart
24 problems or infection or any other thing, and you have no
25 explainable anatomic cause of death and the toxicology is

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1 normal, we usually stop there and call it a SIDS death if
2 they have petechial hemorrhages. In other cases we just
3 call it sudden unexplained death in an infant, which is a
4 little bit different to a pathologist.

5 Now, her thyroid gland looked normal. Her thymus
6 gland was -- weighed 15.2 grams, which is within normal
7 range for an infant. Her heart weighed 20.6 grams. It
8 arose in a normal location. It had no anomalies of the
9 external circulation, meaning that the gray vessels came
10 off in a normal location. They weren't occluded or small
11 or any way involved with possible constriction. Her valves
12 and valve cusps were normal. The foramen ovale and the
13 ductus arteriosus were both closed.

14 And I'll have to explain what that means. I'm
15 having -- a patent foramen ovale and a patent ductus
16 arteriosus are both essentially necessary in children
17 before they're born, in fetuses.

18 And what it does is it bypasses the lungs because the
19 infant, I mean the fetus, does not breath air, and the
20 mother's already actually providing the oxygen for the
21 child.

22 So the blood goes into the heart already oxygenated.
23 It goes through the foramen ovale, which is an opening
24 between the right ventricle and the left ventricle, I mean,
25 the -- excuse me -- the right atrium and the left atrium.

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1 So the blood does not go into the right ventricle and
2 then out to the lungs. It goes directly through to the
3 left atrium, goes into the left ventricle, and then it's
4 pumped out to the body.

5 There is also a partial recirculation through the
6 ductus arteriosus which is between the pulmonary artery and
7 the aorta that does the same thing. It helps bypass the --
8 the lungs.

9 After death -- I mean, excuse me -- after birth since
10 the baby is starting to breathe oxygen and is producing
11 carbon dioxide, that carbon dioxide stimulates the tissues
12 around the foramen ovale and around the ductus arteriosus
13 to close. And that causes -- that then becomes normal
14 circulation. It occurs within three to four weeks of an
15 infant being born. If it's -- if it's residually there,
16 then there's a chance of circulatory problems later, and
17 heart failure. But these were closed.

18 She had no -- no septal defects. The heart was a
19 normal size, essentially within the normal range of
20 infants. And there was nothing else as I could see wrong
21 with the circulation.

22 Her respiratory system, she had a little bit of mucoid
23 material within her trachea, which is not -- and the major
24 bronchi which comes off of the trachea, which is not
25 unusual, although it is -- can be an indication of some

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1 congestion.

2 And her lungs were slightly heavy. They were
3 diffusely congested meaning that I could -- a normal lung
4 if a person is breathing like anybody in this room if they
5 don't have -- if they have a normal lung, or even infants,
6 their pleural surfaces of their lungs are pink and the
7 heart's fluffy.

8 I -- the only thing I can liken it to is if you cut
9 into a normal lung that's not congested, then it looks to
10 me -- it gives me the impression of angel food cake. It's
11 real soft, and you can push it together, and it doesn't
12 have any blood or fluid exposed.

13 But in her case it was congested. And not only was it
14 congested. It was what I called mottled, meaning that
15 there were some areas that were darker than others. That's
16 the way I described it.

17 And then the G.I. system. As I told you previously,
18 her small intestine was dilated with gas, and it was
19 slightly distended in the rectosigmoid colon, which is the
20 distal colon.

21 And she also had a small amount of white to focally
22 dark mucoid material within her stomach, not very much at
23 all. Surprising if she died within 90 minutes after she
24 was last fed, but it can vary, so.

25 Her liver looked -- weighed 146.1 grams, which I

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1 believe is within normal range. And it was, again,
2 slightly pale but not unusual for a child, I mean, a
3 newborn, young infant.

4 Pancreas and spleen were normal. The adrenal glands
5 were -- they weighed 3.1 grams together. That's a little
6 small for a child, an infant, but not particularly
7 bothersome.

8 Her kidneys were -- looked normal. They had what we
9 call persistent fetal ovulations. As the kidney is being
10 formed in an infant there's coalescence of epithelial
11 cells, and they come together in little clusters. And they
12 eventually form the kidney that everybody knows looks like
13 a swimming pool. And I was just kidding. Looks like a --
14 it's little knobby on the outside. But it has little
15 grooves in it. That's called fetal ovulations. In about
16 50 percent of the people they will persist even into late
17 adulthood, and even some people die with that, that fetal
18 ovulations. But it's not unusual.

19 She had about 3 ccs of urine in her bladder. And
20 internal genitalia were normal.

21 She had -- in her lymphoid system and bone marrow she
22 had some lymph nodes that are usually identifiable in a
23 mesentery of the small intestine, which is the -- actually,
24 the suspending area of the intestine is actually profused
25 with blood for absorption and maintenance. And whether any