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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 V**

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FORM 5

STATE OF SOUTH CAROLINA

County of Greenwood

Stephanie Irene Greene 359489
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019 CP 42 01605

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath CI, 2809 Airport Rd
Greenwood, SC 29149 (A-1, 102b)
2. Name and location of Court which imposed sentence 7th Circuit Court
Spartanburg, SC
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-BS-42-5758
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 1, 2014 20 years violent, non-parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty NO
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere NO
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Supreme Court
- ii. U.S. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. 1st degree manslaughter conviction reversed; HPCA affirmed with Justice Few dissenting in favor of reversal.
- ii. Petition for cert denied - 1/7/19
- iii. _____
- (c) the date of each such result:
- i. May 23, 2018
- ii. January 7, 2019
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. St. v. Alarado (1975); Bennett/Littlejohn analysis (Bennett 415 SC at 289, 761 SE2d at 354)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

Justice Few's
Dissent

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(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Actual Innocence - new evidence / expert witness - Dr. Christopher Costin, MD, Mistaken ID, NOG,
(b) Lack of Extreme Indifference / mens rea - breastfeeding cannot be a violent act
(c) Ineffective Trial/Appellate Counsel

11. State concisely and in the same order the facts which support each of the grounds set out

conviction does not
hold up to Jackson v.
Virginia review.

in (10): Insufficient factual basis to support the conviction - no testing was done on applicator - milk, blood, hair, or urine.
(a) State failed to prove causation as set forth in Justice Tew's dissent; New witnesses to testify to innocence
(b) St. v. Reyes - "to prove a defendant acted with extreme indifference, State must show the defendant simply did not care if the victim lived or died."
(c) Counsel failed to offer alternative theory of causation at trial & appeal (when directly asked by Justice's counsel talked defendant/applicator out of taking plea for involuntary manslaughter - Advised to reject plea

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? ~~YES~~ NO
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____
ii. _____
iii. _____
iv. _____

(b) the name and location of the Court in which each was filed:

i. _____
ii. _____
iii. _____
iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. causation
- ii. extreme indifference
- iii. _____

(b) the proceedings in which each ground was raised:

- i. SC Supreme court direct appeal
- ii. SC Supreme court direct appeal
- iii. _____

Revised 3/2003

- 10+11) a) Trial and appellate counsel rendered ineffective assistance by failing to adequately prepare for trial and oral arguments and for calling an expert witness that undermined the defense, and for failing to call an expert witness that supported the defense. Counsel was ineffective at trial for failing to offer an alternative theory of causation, and at both SC Supreme Court oral arguments (June 2016 & February 2018) when asked "point blank" about other possible theories of causation.
- b) Counsel failed to adequately argue on issue of lack of extreme indifference at both trial and appeal. It was mentioned in appellate briefs, but not argued at either oral argument, *St. v. Reyes* - "to prove a defendant acted with extreme indifference, State must show that defendant simply did not care if defendant lived or died." Applicant wanted her daughter to have the benefits of breast milk but supplemented with formula to limit her exposure. Where is the "extreme indifference" when evidence presented at trial established that there has never been a documented case of a toxic, let alone lethal amount of morphine in a breastfeeding mother who is taking morphine. Are the applicant's actions that much more extremely indifferent than those of parents who decline to vaccinate their children based on personal beliefs? If a parent refuses to vaccinate his/her child, and the child dies of a preventable disease, would a Court conclude that the parent acted with extreme indifference and sentence the parent to a mandatory minimum of 20 years without parole?
- c) Counsel's representation fell below an objective standard of reasonableness for failing to offer an alternative theory of causation or explain at either trial or oral arguments that no testing of defendant's person - not her milk, hair, blood, no urine was ever performed, nor was any testing of her daughter's hair, stomach contents for presence of pill fillers, or urine for metabolites, or the fact ~~10924~~ the state failed to investigate

any other theories or parties in the home at the time of her daughter's death. Additionally, counsel was deficient for advising applicant to reject the guilty plea offer. (Strickland v. Washington). Under the offer's terms, punishment would have been far less severe than the judgment and sentence that were imposed. Even if sentenced to the maximum of 10 years (non-violent) for involuntary manslaughter, applicant would have served her entire sentence and been released from SCD custody before now. Counsel stated to applicant, her husband, and father, "Barry Barnett can try his best case and I'll beat it any day." Applicant would have accepted the plea offer but for counsel's unprofessional advice to reject it. (Lafler v. Cooper US 50 (2012) & Missouri v. Frye 56 (US 134) (2012)). Performance of counsel was deficient when he advised applicant to reject plea on grounds she could not be convicted at trial. Counsel also failed to advise applicant as to collateral consequences of the charges prosecuted at trial (i.e. - 20 year mandatory minimum sentence, violent, non-parolable offense, and required 2 year community supervision upon release). "Any amount of additional jail time has left amendment significance, even if the trial itself is free from constitutional flaw," Oliver Supra @ 203, 121 SE 696, St. v. Lafler (2012) was conditionally granted requiring the state to re-offer the plea deal that ~~was~~ he would have taken but for his attorney's ineffective assistance.

II.A) New evidence / expert witnesses:

① Dr. Miska Tenplan, MD
American College of Obstetrics + Gynecology
Vice Commonwealth Univ. Med. Ctr Oregon
1250 E. Marshall St.
Richmond, VA 23298

② Dr. J. Christopher Castro, MD
1330 Boiling Springs Rd #2000
Spartanburg, SC 29303

Enclosure

PCR app:

Stephanie J. Greene

March 24, 2019

Stephanie,

By now you must have concluded that I have joined the ranks of the others who have abandoned you. Not true. That won't happen because I know it is scientifically impossible for you to be guilty of the charges. Don't ever lose sight of that, no matter what the law says. After a while one starts to believe lies from authoritative sources even though there is no truth behind them. Don't you ever do that.

The reason you have not heard from me is that I have been in the hospital, almost continuously, since the third week of January. I won't bother you with the messy details, but I came as close to dying as one can possibly come. Technically I was actually dead for a minute or so, having sustained a massive retroperitoneal haemorrhage (4 units) that went unrecognized until almost too late. Of course I developed multiple organ failure, required a month of dialysis and lost 32 pounds. I now look like a prisoner of war.

Anyway, I am home, able to walk, but only with assistance. I seem to have lost most of my memory of the last 4 months, but I suspect I am just as well off without it. I also seem to have lost all interest in forensics and have decided to completely retire. That doesn't mean I won't help you if you can find some legal representation.

The refusal of any of the supposedly concerned "woman's rights" entities to help you still bugs me as much as it must frustrate you, and I am at a loss to explain it. It isn't just that you have been falsely sentenced, it is a total repudiation of the role of modern sciences. Like accepting the argument that the earth is really flat, or that the moon landing was faked.

I am glad you are enjoying your subscription to National Geographics. If there are more magazines you would like, just send me your wish list and we will order them. Until then, try to stay sane and well. Regards. SBK

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ALBANY COUNTY
12000

Forensic toxicologist

Steven B. Karch MD

P.O. Box 5139

Berkeley, CA 94705-0139

(510) 421-7073

skarch@fdaa.com

PCR
Enclosure
Stephanie Green

Having testified at the trial of Stephanie Green, and having reviewed the transcript of both the trial and appeals court, it is my strong opinion that both should be set aside. I hold this belief for the following reasons.

Steven B. Karch, MD

- (1) While there is evidence that maternal use of morphine can lead to the appearance of insignificant amounts of morphine in the plasma and tissues of a one month old, no peer review paper, published in a reputable scientific journal, has ever linked maternal morphine use in a breast-feeding mother with the death of her child. The statement bears repeating, there is absolutely no scientific evidence that such an event has ever occurred.
- (2) The meager scientific evidence on the topic actually shows quite the opposite. At least two studies have shown that the amount of drug transferred to the child is insignificant [1]. Baka et. al. showed that, of seven volunteers, periodic administration of morphine (via patient controlled anesthesia devices) following a Caesarian Section, four of the women had no detectable morphine. In the remaining three, milk morphine concentrations range from less than 1 ng to 48 ng after two days of intermittent morphine administration. The authors of this study concluded "*The concentrations were found to be very small, thus supporting the safety of breast-feeding in mothers receiving IV patient-controlled analgesia with morphine.*" In a related study, [2], Oberlander reported his observations on the child of a mother being treated with intrathecal 59.9 mg morphine ("spinal anesthesia") for a medical condition unrelated to pregnancy. The infant was breast-fed and followed for 7 months, at which time the child was healthy and no morphine was detected in her milk. Both of these studies contradict testimony by Dr. Edgerton to the effect that studies demonstrating the safety of morphine were based only on short term administration Tr. Pp 357-358
- (3) The paucity of information may explain the less than enlightening explanation offered by Dr. Edgerton when asked by defense if he had "any basis for saying that it (the morphine) came from through the breast milk, to which Dr. Edgerton replied "Had to get into the baby somehow."
- (4) Dr Edgerton also erred when he told the jury that infants cannot metabolize morphine at the same rate as adults and that morphine would have accumulate to the toxic levels seen in the decedent. Tr. Pp. 360-361; pg 400. This is an outdated view. More recent, much more precise, studies have shown that the liver of the fetus can metabolize morphine very nearly at adult levels [3]. Dr. Bell made the same incorrect, outdated, assertion Tr. P 260 and 10-15.
- (5) I believe that the trial court erred by not considering a possible genetic aberration as a possible cause, particularly when I specifically brought it to their attention. Mutations are recognized in the enzymes required for the infant to metabolize morphine [4]. This affliction can be diagnosed with the

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technology available at the time of autopsy. Not considering alternative causation suggest to me, at least, that the defendant was denied a fair hearing [5]. Other cases have been reported as well [6], and the overall consensus of the medical community is that as many as 20 percent of SIDS cases are due to a genetic error [7].

- (6) Given the paucity of data about all drugs in breast milk, it is customary to estimate infant exposure to maternal medications by relying upon reported milk-to-maternal plasma drug concentration ratios, maternal plasma drug levels, and the volume of milk consumed over a given time by a normal child [8]. I believe that any laboratory certifying organization would consider that failing to determine these ratios (or even measured the mothers blood, let alone breast milk, would not conform to best practices standard.
- (7) Both the trial transcript and appellate court ruling misstate my testimony at the trial. I did refer to a very famous case where a child was indeed poisoned by breast milk, but only because the mother had a genetic defect (she had been prescribed codeine which the body partially converts to morphine). The defect was quickly diagnosed and confirmed with the appropriate genetic testing. All charges against the mother were dismissed [5]. However the drug concentration in that case was 84 ng/ml, which amounts to. I never said any dead infant had ever been found to have a blood concentration of .520 mg/L, as the contention is clearly absurd. A concentration of .520 mg/L translates to a concentration of 520 nanograms per milliter. The 84 nanograms per milliter I referred to would amount to not quite ONE-TENTH the amount report by the State's laboratory.

References:

1. Baka, N.E., et al., *Colostrum morphine concentrations during postcesarean intravenous patient-controlled analgesia*. *Anesth Analg*, 2002. **94**(1): p. 184-7, table of contents.
2. Oberlander, T.F., et al., *Prenatal and breast milk morphine exposure following maternal intrathecal morphine treatment*. *J Hum Lact*, 2000. **16**(2): p. 137-42.
3. Garland, M., et al., *Fetal morphine metabolism and clearance are constant during late gestation*. *Drug Metab Dispos*, 2006. **34**(4): p. 636-46.
4. Holthe, M., et al., *Sequence variations in the UDP-glucuronosyltransferase 2B7 (UGT2B7) gene: identification of 10 novel single nucleotide polymorphisms (SNPs) and analysis of their relevance to morphine glucuronidation in cancer patients*. *Pharmacogenomics J*, 2003. **3**(1): p. 17-26.
5. Koren, G., et al., *Pharmacogenetics of morphine poisoning in a breastfed neonate of a codeine-prescribed mother*. *Lancet*, 2006. **368**(9536): p. 704.
6. Ferreiros, N., et al., *Fatal and severe codeine intoxication in 3-year-old twins--interpretation of drug and metabolite concentrations*. *Int J Legal Med*, 2009. **123**(5): p. 387-94.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a)

(b) _____

(c) - Unable to raise at appeal

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes/N/A

(b) your trial, if any? yes

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. C. Ranch Wise 305 Main St, Greenwood, SC 29646
- representation from trial to appeal

ii. _____

iii.

(b) the proceedings at which each such attorney represented you:

i. trial & appeal

ii.

iii.

Revised 3/2003

19. State clearly the relief you seek in filing this application:

Vacating of sentence and conviction/Reverse or set aside
conviction unless the State holds a new trial allowing newly discovered
evidence/witnesses within a specified time

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Stephanie Irene Greene, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Stephanie Irene Greene

SWORN to and subscribed before me this 9th
day of April, 2019.

William J. [Signature] (L.S.)
Notary Public

My Commission Expires: 2-13-2029

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Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Stephanie Irene Greene, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Stephanie Irene Greene
Applicant

SWORN or affirmed to and subscribed before me this
13 day of April, 2019.

Mandy H. Lamb
Notary Public

My Commission Expires: 2-13-2029

2019 MAY -2 PM 2:43

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2259

Amy W. Cox
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

From: Spartanburg County Clerk of Court Office

- ☐ Master's fee required
- ☐ Signature required
- ☐ Original document required
- ☐ Satisfaction of Judgment required
- ☐ Check or Money Order must be made payable to the Clerk of Court
- ☐ Check not signed
- ☐ Insufficient filing fee; Please submit a business check or money order in the amount of \$
- ☐ Lis Pendens cancellation fee required (\$1.00)
- ☐ Coversheet not included (SCCA/23)
- ☐ This is not a Spartanburg County Case
- ☐ Please check our website for the requested information www.spartanburgcounty.org
- ☒ Please submit all 7 pages of your completed PCR Application *Completed*
- ☐ I suggest you contact your attorney
- ☐ A court date has not been scheduled for your case(s).

☒ Other: Page 7 of your application is not notarized. Please complete and return to our office. *Completed*

Please make the necessary corrections and return for processing

From: MF Date: 4/16/2019

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT FILED

3. CARD FILED

Spartanburg County Sheriff's Office

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSIGNMENT FILED

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

M127173 & D/I

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 15 2011

VERDICT

I. Guilty
II. Guilty
III. Guilty

Foreperson of Petit Jury

Date:

11-9S-42-5758

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 15 2011

TERM

THE STATE

v.

STEPHANIE IRENE GREENE

Indictment for

Count One: Homicide By Child Abuse
Count Two: Involuntary Manslaughter
Count Three: Unlawful Conduct
Towards Child

SC Code: 16-3-85 (A) (1); 16-3-60; 63-5-70

CDR Code: 2356; 0218; 2481

CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 16 PM 4:50
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 15 2011 the
Grand Jurors of Spartanburg County present upon their oath:

Count One- HOMICIDE BY CHILD ABUSE

That the defendant, Stephanie Irene Greene, did in Spartanburg County, on or about November 13, 2010, cause the death of [REDACTED] a child under the age of eleven (11), while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-3-85 (A)(1), Code of Laws of South Carolina (1976, as amended).

Count Two- INVOLUNTARY MANSLAUGHTER

That the defendant, Stephanie Irene Greene, did in Spartanburg County on or about November 13, 2010, did unintentionally and without malice kill the victim, [REDACTED] by recklessly disregarding the safety of Alexis Greene, causing her death, in violation of §16-3-60 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Count Three - UNLAWFUL CONDUCT TOWARD A CHILD

That Stephanie Irene Greene, did in Spartanburg County, on or around November 13, 2010, being the parent and/or lawful guardian of [REDACTED] a minor child, place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety and/or willfully abandoning the child, in violation of Section 63-5-70, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Stephanie Irene Greene

AKA:

Race: WHITE Sex: F Age: 39

DOB: [REDACTED] SS#: [REDACTED]

Address: 180 Kimbrell Loop

City, State, Zip: Campobello, SC 29322-9406

DL#: [REDACTED] SID#: [REDACTED]

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4205758

A/W#: M127173

Date of Offense: 11/13/2010

S.C. Code § : 16-03-0085(A)(1)(B)(1)

CDR Code #: 2356

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.APPEARED: Barnette BARRY 13039 SC Bar# Stephanie Greene Defendant R. [REDACTED] Attorney for Defendant 06188 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: L. I. [Signature] 0945

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2053Sentence Date: April 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Stephanie Irene Greene

AKA:

Race: WHITE Sex: F Age: 39

DOB: [REDACTED] S# [REDACTED]

Address: 180 Kimbrell Loop

City, State, Zip: Campobello, SC 29322-9406

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Involuntary manslaughter

in violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Barnette, Barry 13039 Stephanie Greene 06188
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL		\$133.90

Clerk of Court/ Deputy Clerk A. SeaceyCourt Reporter: A. Moffitt 0946

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4205758A

A/W#: 2011GS4205758A

Date of Offense: 11/13/2010

S.C. Code § : 16-03-0060

CDR Code #: 0218

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSPTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge William D. [Signature]Judge Code: 2053Sentence Date: April 4, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Stephanie Irene Greene

AKA:

Race: WHITE Sex: F Age: 39

DOB: [REDACTED] SS# [REDACTED]

Address: 180 Kimbrell Loop

City, State, Zip: Campobello, SC 29322-9406

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Children / Legal custodian, unlawful neglect of child or helpless person

INDICTMENT/CASE#: 2011GS4205758B

A/W#: 2011GS4205758B

Date of Offense: 11/13/2010

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Barnette, Barry Poulos 13039 Stephanie Irene Greene [Signature]
BARNETTE, BARRY Poulos SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 132.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

 Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature] 0947

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2053Sentence Date: April 4, 2014

CERTIFIED COPIES OF THE FOLLOWING SENTENCE WERE ACCEPTED BY:

STrom,

OF THE SPARTANBURG COUNTY JAIL.

DATED

4/4/14

ON

Stephanie Greene

WARRANT, TICKET, INDICTMENT NUMBER AND/OR PROBATION 11-5758(A)(B)

ARREST WARRANT

M-127173 **Computer**

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

11010502

against

Stephanie Irene Greene

Address: 180 Kimbrell Loop

Campobello, SC 29322-9406

Phone: _____ SSN: _____
Sex: F Race: W Height: 5 3 Weight: 120

DL State: SC DL #: 004114785

DOB: _____ Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: William Gary - 0425

Offense: Murder / Homicide by child abuse or neglect (20Y to Life)

Offense Code: 2356

Code/Ordinance Sec: 16-03-0085(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant S. Greeneon 6/24/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Personally appeared before me the affiant William Garybeing duly sworn deposes and says that defendant Stephanie Irene Greenedid within this county and state on or about 11/13/2010State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Homicide by child abuse or neglect (20Y to Life)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON NOVEMBER 13, 2010 IN THE COUNTY OF SPARTANBURG ONE STEPHANIE IRENE GREEN DID CAUSE THE DEATH OF ONE [REDACTED] BY NEGLIGENCE BY BREAST FEEDING HER WHILE SHE WAS TAKING A NUMBER OF PRESCRIPTION MEDICATION, CAUSING THE DEATH OF THE INFANT CHILD.

WARRANT BASED ON POLICE INVESTIGATION, TCM.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

BY: [Signature] D.C.
DATED 6-29-11

JUN 29 2011

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/13/2010 defendant Stephanie Irene Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Homicide by child abuse or neglect (20Y to Life)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me

on 06/23/2011

Signature of Issuing Judge

James Donnie Willingham

Judge Code: 7099

Judge's Address Spartanburg County Magistrate

Spartanburg, SC 29306-

Judge's Telephone (864)596-3424

Issuing Court: ☒ Magistrate☐ Municipal☐ CircuitFILED
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLANKLEY
2011 JUN 28 10:54Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ARREST WARRANT

M-127173

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

11010502

against

Stephanie Irene Greene

Address: 180 Kimbrell Loop

Campobello, SC 29322-9406

Phone: SSN: [REDACTED]

Sex: F Race: W Height: 5 3 Weight: 120

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: William Gary - 0425

Offense: Murder / Homicide by child abuse or neglect (20Y to Life)

Offense Code: 2356

Code/Ordinance Sec: 16-03-0085(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 6/24/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Personally appeared before me the affiant William Gary

who

being duly sworn deposes and says that defendant Stephanie Irene Greene

did within this county and state on or about 11/13/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Homicide by child abuse or neglect (20Y to Life)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON NOVEMBER 13, 2010 IN THE COUNTY OF SPARTANBURG ONE STEPHANIE IRENE GREEN DID CAUSE THE DEATH OF ONE [REDACTED] BY NEGLIGENCE BY BREAST FEEDING HER WHILE SHE WAS TAKING A NUMBER OF PRESCRIPTION MEDICATION, CAUSING THE DEATH OF THE INFANT CHILD.

WARRANT BASED ON POLICE INVESTIGATION, TCM.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/13/2010

defendant Stephanie Irene Greene

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Homicide by child abuse or neglect (20Y to Life)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/23/2011

Signature of Issuing Judge

James Donnie Willingham

Judge Code: 7099

Judge's Address Spartanburg County Magistrate

Spartanburg, SC 29306-

Judge's Telephone (864)596-3424

Issuing Court: ☒ Magistrate☐ Municipal☐ CircuitFILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUN 28
M. HOPE BLANKLEY
10:54

ORIGINAL

ORIGINAL

ORIGINAL



Spartanburg Sheriff's Office

Incident / Offense Report

8045 HOWARD ST SPARTANBURG SC 29303 -- (864)503-4500

Law

Number 11010502

Nature Death Report

Address 180 Kimbrell Loop

City Campobello

State SC

Zip 29322

Contact Greene, Stephanie

Pho [REDACTED]

When Reported 05:29:00 11/13/2010
(HH:MM:SS MM/DD/YYYY)

Misc. Info.

Occurred Start
(HH:MM:SS MM/DD/YYYY)

Occurred End
(HH:MM:SS MM/DD/YYYY)

VNI Issued NO

Responsible Gary W

Agency SHERIFF'S OFFICE

Area TRACT 17

Offense(s) Homicide

Circumstance(s) LOC-Residence or Home

MO

Observed Death Report

Clearance

Disposition Active

Disposition Date 01/13/2011

Case(s)

Names

1

Relationship

Last Name

Middle/Suffix

Birth Date

Address

City

Home Phone

VNI Contact
Person

Names

2

Relationship Suspect

Type INDIV

Last Name Greene

First Name Stephanie

Middle/Suffix Irene

SSN

Birth Date

36

Age

Juv

Sex F

Race

W-WHITE, NON-HIS

Address 180 Kimbrell Loop

City Campobello

State SC

Zip 29322

Home Phone

VNI Contact
Person

VNI Contact
Person #

Names

3

Relationship Type Last Name First Name Middle/Suffix SSN Birth Date ☐ Age☐ JuvSex Race Address City State Zip Home Phone Work Phone VNI Contact
Person VNI Contact
Person # Cell Phone DL Number/
State Height Weight Hair Eyes SMT

MO

Alert Code

Comments

Narrative

Narrative

The Spartanburg County Communications Center received a call for an unattended death on the above date and time. Spartanburg EMS and Coroner's Office responded to the scene [REDACTED] was in the parents bed deceased when EMS arrived. An autopsy was performed and blood was drawn for toxicology. There were no injuries located during the autopsy and the results of the toxicology report show lethal levels of morphine in the blood. It appears that this is going to be the cause of the death, and the morphine was most likely passed through breast milk from Stephanie Greene to [REDACTED].



SPARTANBURG COUNTY DETENTION FACILITY

950 CALIFORNIA AVENUE
SPARTANBURG, SOUTH CAROLINA-29303-2184

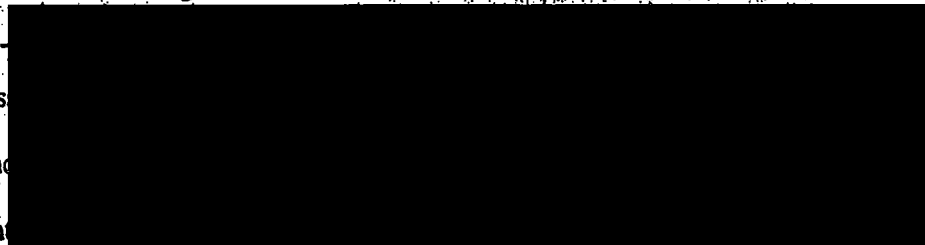
LARRY W. POWERS
DIRECTOR

TELEPHONE (864) 596-2607
FAX (864) 596-3421

VICTIM/WITNESS JAIL NOTIFICATION FORM

State v. Greene, Stephanie Ticket/Warrant # 11-127178 Agency SCSO
Offense Murder/Homicide by Child Abuse or Neglect

1. Victim's Name
2. Victim's Address
3. Victim's Telephone
4. Attempts to Contact



(A) Date _____ Time _____
(B) Date _____ Time _____
(C) Date _____ Time _____

Comments Suspect's Husband is Aware of Acc/Arrest of Suspect

5. Attempts to Contact of Release:

(A) Date _____ Time _____
(B) Date _____ Time _____
(C) Date _____ Time _____

Comments

J. Camp
Signature of Jail Official

Date 6/24/11

J. Camp
Printed Name of Official

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE OF SOUTH CAROLINA

vs.

Greene Stephanie Irene

Check and complete one of the following:

- ☐ A representative of the Spartanburg County Detention Facility, (the facility having custody of the defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s) _____

OR

- ☒ A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), * indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s) _____

J. Camp
(Representative's Signature)*

W. Smith
(Judge's Signature)

* Or the arresting officer if Defendant is brought directly before the Judge.

SCCA/560

Stephanie Irene Greene

M-127173

Name of Defendant

Warrant/Ticket No.

Charges: Murder / Homicide by child abuse or neglect (20Y to Life)

County of Spartanburg

Trial Court:

Magistrate

JS

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for **ALL GENERAL SESSIONS** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE**. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

☐ BAIL PROCEEDING / ☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding

- ☐ a. Bond Form I (personal recognizance)
☐ b. Bond Form II (surety, cash, percentage)
☒ c. None (Non-Bailable Offense) *CC Judge*

2. For cases in which bond was set, defendant was informed:

- ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- ☒ a. Orally
☒ b. In writing
{NOTE: Defendant must be informed of right both orally and in writing.}

☒ 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before

located at _____

_____ for indigency screening. Defendant is responsible for a statutory fee of \$ _____

for indigency screening.

- ☒ 6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

6-24-11

First Appearance or Bond Hearing Date:

[Signature]
JUDGE'S SIGNATURE
0957

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)

-vs-)

Stephanie Irene Greene,)

Defendant.)

Motion to Change Conditions of Bond

11-GS-42-5758, A & B

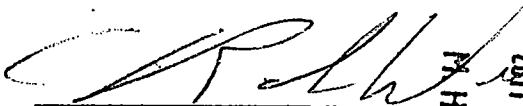
11-GS-42-05009-05046

M127303 ✓ M127204 ✓ M127205 ✓
M127207 ✓ M127209 ✓ M127211 ✓
M127212 ✓ M127213 ✓ M127201 ✓

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit

You will please take notice that Stephanie Irene Greene, the Defendant above named, will move before the Honorable J. Derham Cole on Thursday December 16, 2011 at 10 o'clock a.m or as soon thereafter as counsel may be heard for an Order modifying the conditions of the bond. The Defendant will request that the conditions of the bond as to home detention, GPS and SCRAM monitoring, and no contact with any child under the age of 16 unless supervised be modified or eliminated. This motion is based upon the fact that the Defendant has fully complied with all conditions of the bond. The payment of the GPS and SCRAM monitoring has become unduly burdensome as she is also paying her private attorney to defend her. She is informed and believes that Anne T. Green has no objection to modifying the bond conditions as per the letter from Mrs. Greene attached hereto.

November 30, 2011


C. RAUCH WISE
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauch@simplepc.net
S. C. Bar No 06188
Attorney for Stephanie Irene Greene

FILED
CLERK OF COURT
SPARTANBURG, SC
2011 DEC -6 PM 4:03
M HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)

-vs-)

Stephanie Irene Greene,)

Defendant.)

Motion to Examine Autopsy Slides
11-GS-42-5758, A & B,
11-GS-42-05009 - 05046

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit

You will please take notice that Stephanie Irene Greene, the Defendant above named, will move before the Honorable J. Derham Cole on Thursday December 16, 2011 at 10 o'clock a.m or as soon thereafter as counsel may be heard for an Order permitting the expert for the Defendant, Dr. Steven Karch to examine the autopsy slides used by the state to help determine the cause of death in this case.

November 30, 2011


C. RAUCH WISE
305 Main Street
Greenwood, South Carolina 29646
(864) 229-5101
rauch@simplepc.net
S C. Bar № 06188

Attorney for Stephanie Irene Greene

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC -6 PM 4:03
M. HOPE BLACKLEY

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

November 30, 2011

M. Hope Blackley
Spartanburg Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

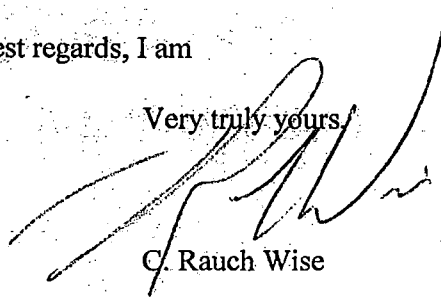
Re: State vs. Stephanie Irene Greene, 2011-GS-42-5758, A & B,
2011-GS-42-05009-05046

Dear Ms. Blackley:

I am enclosing herewith for filing two Motions involving the above case. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,


C. Rauch Wise

CRW/slt
Enclosure

cc Stephanie Greene
Barry Barnette, 7th Judicial Circuit Solicitor

FILED
CLERK OF COURT
CLERK OF COURT
2011 DEC -6 PM 4:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: , , , ,
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
_____)

AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that she copied/served the following materials on the defense:

One (1) DVD containing SUPPLEMENTAL DISCOVERY consisting of:

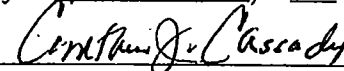
Video from Coroner RE: Crime Scene, Reinactment

I, C. Rauch Wise, attorney for the defendant(s) or his/her designee, have received copies of the above-referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter.


Seventh Circuit Solicitor's Office


Defense Attorney or Designee

Sworn to before me this 16th
day of December, 2011.


Notary Public for South Carolina
My Commission Expires: 1/26/2015

M. HOPE BLACKLEY

2011 DEC 19 AM 9:05

FILED
CLERK OF COURT
SPARTANBURG COUNTY

0961

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS:
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL

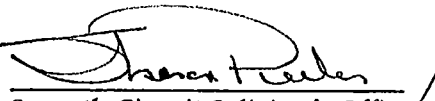
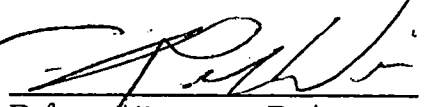
PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that she copied/served the following materials on the defense:

One (1) DVD containing INITIAL DISCOVERY dated 10/04/2011 consisting of:

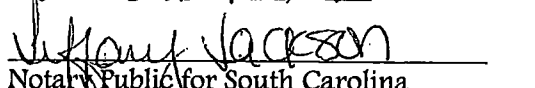
Arrest Warrants (Dated 07/25/11 - 39 pages)
DHEC Case File (Dated 07/25/11 - 210 pages)
Coroner's Report & Autopsy (Dated 07/25/11 - 373 pages)
Crime Scene & Autopsy Photos (Dated 07/25/11 - 62 pages)
Bond Sheet (Dated 07/27/11 - 9 pages)
Defendant's Criminal History (Dated 08/03/11 - 12 pages)
Sheriff's Office Case File (Dated 08/03/11 - 671 pages)
State Board Nursing Consent Agreement (Dated 07/25/11 - 4 pages)
911 Calls/CAD Sheets (Folder - Data and Audio)
CAD Sheets (7 pages)
Jail Calls (Folder- Audio)
Stephanie Greene Interview (Audio)
Stephanie Greene Interview 2 (Audio)

Total pages: 1,387

I, C. Rauch Wise, attorney for the defendant(s) or his/her designee, have reviewed copies of the above-referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.


Seventh Circuit Solicitor's Office

Defense Attorney or Designee

Sworn to before me this 20
day of October, 2011.


Notary Public for South Carolina
My Commission Expires: 11.9.17

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 21 AM 9:38
M. HOPE BLACKLEY

RR

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

October 4, 2011

M. Hope Blackley
Spartanburg Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

Re: Stephanie Irene Greene, Homicide by child abuse; Obtaining drugs by Fraud
M-127173; M127175-79; M-127182-207; M-1272209; M-127211-216

Dear Ms. Blackley:

I am enclosing herewith for filing the original Rule 5 regarding the above matter. Please return a clocked copy to my office in the enclosed self addressed envelope. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Cookie Peeler
Barry Barnette
7th Judicial Circuit Solicitor

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2011 OCT -7 PM 3:41
M. HOPE BLACKLEY

MB

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

The State of South Carolina,)

vs.)

Stephanie Irene Green,)

Defendant.)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

REQUEST FOR DISCLOSURE
RULE 5

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT -7 PM 3:41
M. HOPE BLACKLEY

TO: BARRY BARNETTE, SEVENTH JUDICIAL CIRCUIT SOLICITOR:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 5 of the south Carolina Rules of Criminal Procedure, Defendant above named requests the disclosure of the following information:

1. Any relevant written or recorded statements made by the Defendant or copies therein within the possession, custody, and control of the prosecution and the substances of any oral statement which the prosecution intends to offer into evidence at the trial.
2. The prior record of the Defendant.
3. Any books, papers, documents, photographs, tangible objects, buildings or places, copies or portions thereof which are in the possession, custody and control of the prosecution and which are material to the preparation of the defense of the Defendant or which are intended for use by the prosecution as evidence.
4. Any results or reports of any physical or mental examinations and of scientific tests or experiments or copies thereof which are in the possession, custody and control of

the prosecution which are material to the preparation of the defense or intended for use by the prosecution as evidence in the trial in chief.

Greenwood, South Carolina

Oct 4, 2011



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Defendant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT -7 PM 3:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
V.)

STEPHANIE IRENE GREENE,)
DEFENDANT.)

REQUEST FOR DISCOVERY

(Reciprocal Rule 5)

Warrant(s): M127173; M127175-179; M127182-207;
M127209; M127211-216

TO THE DEFENDANT AND HER ATTORNEY, C. RAUCH WISE:

PURSUANT to the South Carolina Rules of Civil Procedure, the State in the above-captioned matter, requests the disclosure of all evidence by the Defendant to the State that is required by Rule Five (5) of the Rules of Criminal Procedure, including but not limited to the following items:

- (1) That the Defendant notify the State of and permit the State to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the Possession, custody or control of the Defendant, the Defendant's witnesses, or her attorney and which the Defendant intends to use as evidence;
- (2) That the Defendant notify the State of and permit the State to inspect and copy and results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody or control of the Defendant, Defendant's witnesses, or her attorney, which the Defendant intends to use as evidence or when the results or reports relate to her testimony.
- (3) The prosecution requests that the Defendant serve upon the prosecution a written notice if she intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on the date(s) of 11/13/2009 and 04/29/09 - 12/29/2010 and the names, addresses and birthdays of the witnesses upon whom she intends to rely to establish such an alibi.
- (4) That any and all evidence is available for viewing at the arresting agency or the South Carolina Law Enforcement Division.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or to enter a plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.

Barry J. Barnette
Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
October 4, 2011

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 SEP -8 PM 4:31

M. HOPE BLACKLEY
Telephone
(864) 229-5010
Facsimile
(864) 229-2665

September 1, 2011

M. Hope Blackley
Spartanburg Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

Re: Stephanie Irene Greene, Homicide by child abuse; Obtaining drugs by Fraud
M-127173; M127175-79; M-127182-207; M-1272209; M-127211-216

Dear Ms. Blackley:

I am enclosing herewith for filing the First Court Appearance Report regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Barry Barnette
7th Judicial Circuit Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The State,

Plaintiff,

vs.

Stephanie Irene Greene,

Defendants.

FILED
CLERK OF COURT
IN THE COURT OF GENERAL SESSIONS
SPARTANBURG COUNTY
2011 SEP -8 PM 4:31
M. HOPE BLACKLEY
FIRST COURT APPEARANCE REPORT

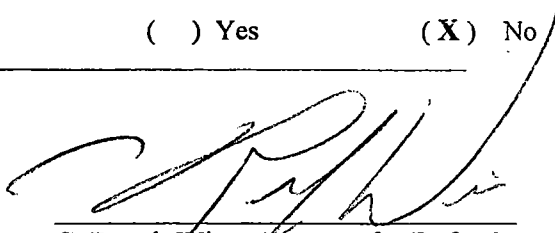
TO: THE CIRCUIT SOLICITOR AND THE CLERK OF COURT

This letter shall serve as notice that the undersigned has been retained by the defendant Stephanie Green, for representation on the below-referenced criminal warrant(s) and/or indictment(s) and provides the following information pursuant to Administrative Order(s) providing for the management of criminal cases in the Court of General Sessions.

Charge(s): Homicide by child abuse, obtaining drugs by Fraud

Warrant(s)/Indictment Number(s): M-127173; M127175-79; M-127182-207; M-1272209;
M-127211-216

A preliminary hearing has been requested.	(X) Yes	() No
A discovery request has been filed and served.	() Yes	(X) No
discovery has been provided.	(X) Yes	() No
A mental health evaluation is necessary.	() Yes	(X) No
A drug analysis report has been provided.	() Yes	(X) No
There is a conflict in representation.	() Yes	(X) No
The 180 day track is affected by an issue(s).	() Yes	(X) No


C. Rauch Wise, Attorney for Defendant
305 Main Street, Greenwood, SC 29646
Telephone Number: (864) 229-5010
Fax Number: (864) 229-2665
E-mail: rauch@simplepc.net

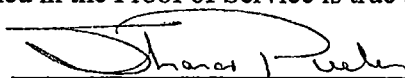
PROOF OF SERVICE

SERVED	DATE 3/21/14	PLACE SPARTANBURG SOLICITORS OFFICE
SERVED ON (PRINT NAME) ERIN STEEN		MANNER OF SERVICE PERSONAL
SERVED BY (PRINT NAME) SHARON PEELER		TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on 21st of March, 2014


SIGNATURE OF SERVER

180 MAGNOLIA ST.
ADDRESS OF SERVER Spthg SC 29306

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

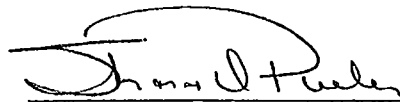
**AFFIDAVIT OF SERVICE
BY INTERNET EMAIL**

PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

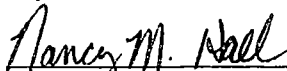
1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 21st day of March, 2014 served a copy of :
EMS Run Sheet (4 pages)

in the above-captioned matter on the following person(s) by sending same via internet email
to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 21st
day of March, 2014.

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 12-17-23

M. HOPE BLACKLEY
2014 MAR 21 PM 2:29

FILED
MAR 21 2014
CLERK OF COURT



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

**AFFIDAVIT OF SERVICE
BY INTERNET EMAIL**

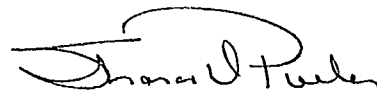
PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 19th day of March, 2014 served a copy of:

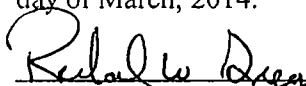
Copies of prescriptions (front and back) 54 pages

in the above-captioned matter on the following person(s) by sending same via internet email
to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 19th
day of March, 2014.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: Aug 23, 2014

M. HOPE BLACKLEY
2014 MAR 19 AM 11:52
CLERK OF COURT
SPARTANBURG, SC

SCANNED

14

SUBPOENA IN A CRIMINAL CASE

**AFFIDAVIT
OF
SERVICE**

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY SPARTANBURG
THE STATE OF SOUTH CAROLINA		CASE NO. M127173; 175-216 2011-GS-42-5011-46; 2011-GS-42-5758
V.		SUBPOENA FOR
STEPHANIE IRENE GREENE		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
[REDACTED]		
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE	COURTROOM	
180 Magnolia Street, 2 nd Floor Spartanburg, South Carolina 29306	To Be Determined	
	DATE AND TIME	
	Monday, March 31, 2014 @ 9:00 a.m. until excused by the Court	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S)		
DATE OF INCIDENT: November 13, 2011 LOCATION: 180 Kimbrell Loop, Campobello, SC SCSO CASE NO: 2011010502 SLED LAB NO.: L10-12917 AUTOPSY NO(S): FA-10-212 CORONER'S CASE NO.: C-10-068 DHEC CASE NO.: 211533 VICTIM: [REDACTED]		
Please contact Investigator Rick Gregory or Solicitor Barry Barnette and confirm receipt of subpoena and provide a contact number for court purposes and case updates		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT	DATE	
<i>M Hope Blackley</i>	12/10/2013	
(BY) DEPUTY CLERK		
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED)	
☒ SOLICITOR ☐ DEFENDANT	BARRY J. BARNETTE, SOLICITOR	
M. HOPE BLACKLEY	SEVENTH JUDICIAL CIRCUIT	
2014 JAN 27 PM 3:28	SPARTANBURG CO. COURTHOUSE	
	180 MAGNOLIA STREET, THIRD FLR.	
	SPARTANBURG, SC 29306	
	(864) 596-2575	

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

**AFFIDAVIT OF SERVICE
BY INTERNET EMAIL**

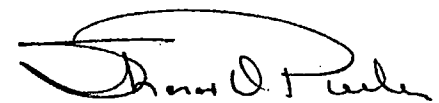
PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 6th day of March, 2014 served a copy of :

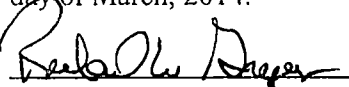
SLED Certified Chain of Custody (5 pages)

in the above-captioned matter on the following person(s) by sending same via internet email
to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 6th
day of March, 2014.


Notary Public for South Carolina

My Commission Expires: Aug 23, 2014

M. HOPE BEACONLEY

2014 MAR -6 PM (2:55)

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

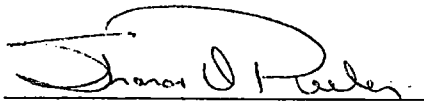
THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

**AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL
BY MAIL**

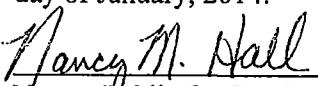
PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 3rd day of January, 2014 served a copy of the Notice of Arraignment for New Indictments and Bond Issues on These New Charges in the above-captioned matter on the following person(s) by sending same via internet email to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 3rd
day of January, 2014.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-17-2023

0974

FILED
CLERK OF COURT
2014 JAN -6 PM 3:28
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS
) FOR THE SEVENTH JUDICIAL CIRCUIT

State of South Carolina,

vs.

Stephanie Irene Greene,
Defendant.

) **NOTICE OF USE OF PRIOR BAD ACTS**
) **UNDER RULE 404(B) OF S.C.R.E.**

) Indictment Nos.: 11-GS-42-5011 thru
) 11-GS-42-5046 and 11-GS-42-5758
)
)
)
)

To: The Defendant, Stephanie Irene Greene and her attorney, C. Rauch Wise, Esq.

YOU WILL PLEASE TAKE NOTICE that the State pursuant to Rule 404(b) of the South Carolina Rules of Evidence will move to introduce the prior convictions of the Defendant under Indictment No.: 03-GS-42-1967 for Obtaining Darvocet by Fraud and under Indictment No.: 03-GS-42-4183 for Attempt to Obtain Controlled Substance by Fraud to show "the absence of mistake, accident, or intent" in the Defendant's present charges. This Notice is to notify the Defendant that the State intends to use these prior convictions under Rule 404 (b) of the South Carolina Rules of Evidence.



Barry J. Barnette
Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306
(864)-596-2575

Oct
Spa:

M127 205/197/183/
N127 204/198/184/173
207/199/185/
209/200/186/
211/201/187/
212/202/188/
213/175/189/
214/176/190/
215/177/191/
216/178/192/
193/179/191/
194/180/192/
195/181/192/
196/182/192/

SCANNED

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT 11 AM 9:19
M. NURE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

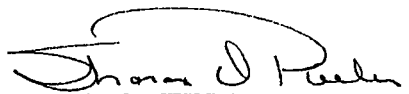
THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
AFFIDAVIT OF SERVICE
BY INTERNET EMAIL

PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

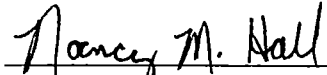
1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 22nd day of November, 2013 served a copy of :
SLED Questioned Document Report 10/15/13 (3 pages)
SLED Questioned Document Report 11/19/13 (3 pages)

in the above-captioned matter on the following person(s) by sending same via internet email
to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 22nd
day of November, 2013.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-9-2013

M. HOPE BLACKLEY
2013 NOV 25 AM 9:04
CLERK OF COURT
FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

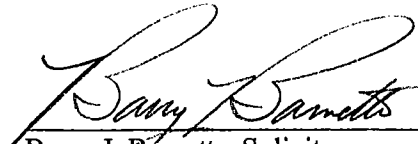
THE STATE,)
v.)
Stephanie Irene Greene,)
DEFENDANT.)

INDICTMENT NOS.: 13-GS-42-5124 thru
13-GS-42-5159

**NOTICE OF ARRAIGNMENT
FOR NEW INDICTMENTS AND
BOND ISSUES ON THESE NEW
CHARGES**

TO: THE DEFENDANT AND HER ATTORNEY: C. Rauch Wise, Esquire

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina will move in front of this Court on January 10, 2014 at 9 a.m. or when scheduled by this Court for an arraignment of the Defendant on her new indicted charges and for the matter of bond on these charges.


Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
January 3, 2014

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

State of South Carolina,)
))
vs.) **NOTICE OF JOINDER OF CHARGES, OR**
) **IN THE ALTERNATIVE FOR RULING IN**
Stephanie Irene Greene,) **LIMINE FOR ADMISSIBILITY OF OTHER**
Defendant.) **CRIMES UNDER SCRE 404(B)**
))
) Indictment Nos.: 11-GS-42-5011 thru
) 11-GS-42-5046 and 11-GS-42-5758

To: The Defendant, Stephanie Irene Greene and her attorney, C. Rauch Wise, Esq.

YOU WILL PLEASE TAKE NOTICE that the State hereby serves notice upon the Defendant, by and through his attorney, that the State does intend to try the Defendant on all charges currently pending against the Defendant, to include those offenses which occurred in 2009 and 2010, as previously noticed to the Defendant, including all charges in the above listed indictments including Obtaining Drugs by Fraud, Homicide by Child Abuse, Unlawful Neglect of a Child, and Involuntary Manslaughter.

THE STATE hereby serves notice and moves for an Order allowing the State to join and try those cases set forth above, on Indictment Nos: 11-GS-42-5011 thru 11-GS-42-5046 for Obtaining Drugs by Fraud, and Homicide by Child Abuse, Unlawful Neglect of a Child, and Involuntary Manslaughter on Indictment No. 11-GS-42-5758. The State seeks joinder based on precedent of the South Carolina Supreme Court, *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (SC 2005) (copy attached), which it submits should apply and support the court in the exercise of its discretion to grant the motion, in that the charges against this Defendant represent separate indictments "of the same general nature involving connected transactions closely related in kind, place, and character" which will not prejudice substantive rights of the Defendant.

The State believes the use of the drugs that were obtained by fraud are closely related to the incident involving the overdose of the victim [REDACTED] the Homicide by Child Abuse, Unlawful Neglect of a Child, and/or the Involuntary Manslaughter charges for the following reasons:

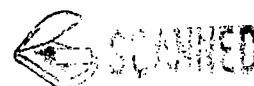
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When the Defendant called 911, she appeared to be under the influence of drugs (please see attachment #1- 911 call from Defendant on November 13, 2010). When the Spartanburg County Coroner's Office arrived at the Defendant's home, the victim was dead. Numerous drug bottles with pills were found on the dresser next to the bed where the Defendant had been with the victim, the night before (please see attachments #2 and #3- pictures of drug bottles beside the bed). Some of the drug bottles were prescriptions the State alleges the Defendant obtained by fraud. Witnesses at the scene will testify the Defendant appeared to be under the influence of drugs, and the remaining medications found in the bottles in the home were insufficient when compared to the dates of issue and the instructions given by the physician and pharmacy.

Furthermore, the Defendant had signed a contract with Carolina Neurology stating "I will not request or accept controlled substance medication from any other physician or individual while I am receiving such medication from my physician at Carolina Neurology. Besides being illegal to do so, it may endanger my health. The only exception is if it is prescribed while I am admitted in a hospital." (please see attachment #4- contract from Carolina Neurology).

The Defendant never disclosed to either Dr. Carol A. Kooistra, M.D. or Dr. Suzanne D. Kovacs, M.D. that she was pregnant or later that she was breastfeeding her child. Emily Horowitz, an Associate Professor of Sociology and Criminal Justice, in an article about the case based on interviews, *Murder by Nursing*, states that "In the hospital, Stephanie did not reveal that she was taking any medications at all, even though she was asked multiple times by multiple people...Stephanie had been a nurse in South Carolina long enough to know she was in a state where mothers and pregnant women who use or abuse drugs are viewed with special contempt. Stephanie was aware that her use of strong opioids (especially morphine) would raise suspicion." (Please see attachment #5- "Murder by Nursing" article).

It appears the Defendant and her attorney both spoke to Emily Horowitz about this case providing background for her article. The State argues the Defendant knew about the dangers of the drugs she was taking and made efforts to deceive others and to conceal her drug use from her doctors and caregivers. In short, she did not obtain these drugs legally further is evidence that she understood the risks to her child and understood



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disclosing her pregnancy or breastfeeding would likely result in her being denied access to these medications.

The incidents represent a pattern of behavior by the Defendant over a period of time and these of transactions are connected to one another by:

- (1) The commonality of the schemes involved in each case;
- (2) Their occurrence within a twenty-three month period of time involving the same doctors, and
- (3) The Defendant's deceit and concealment of the drugs as well as her concealment of her pregnancy and breastfeeding from both medical doctors;
- (4) The intoxication of the Defendant during the morning of November 13, 2010 related to her drug use.

Under *Cutro*, the previous requirement that the trial judge must find clear and convincing evidence of the charges to satisfy the requirements of *State v. Lyles/SCRE 404(b)* have now been discarded. *Cutro, Id.* A preliminary "mini-trial" to prove each charge to the trial judge before proceeding with a joint trial to the jury is unnecessary. *Id.* at p. 375.

Assuming for argument that *Curto* will not satisfy the trial judge's decision as to joinder, it is respectfully submitted the requirements of SCRE 404(b) are still satisfied here; the probative value of the facts in the Drug cases and the Homicide by Child Abuse; Unlawful Neglect of a Child, and Involuntary Manslaughter cases clearly outweigh the potential for undue prejudice and such evidence is admissible as long as the trial judge finds that the evidence has been established by the standard of that rule (clear and convincing, if not already subject of a conviction), provided it goes to show "the absence of mistake, accident, or intent" and/or "common scheme or plan."

Evidence of the facts in the drug investigations will not only go towards establishing those charges individually, but will also establish the Defendant's intent to deceive and/or conceal the drug use from her doctors; no absence of mistake on her part in these situations; as well as no accident.

The State has made a prior motion 404(b) motion concerning the use of the prior convictions of the Defendant under Indictment No.: 03-GS-42-1967 for Obtaining Darvocet by Fraud and under Indictment No.: 03-GS-42-4183 for Attempt to Obtain

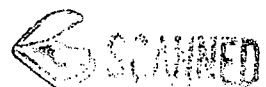
Controlled Substance by Fraud. The State would also ask to incorporate the prior conviction from Unlawful Conduct toward a Child conviction on Indictment No.: 02-GS-42-755 (please see attachment #6- incident report from Landrum Police Department) to show that all of the present charges should be allowed under Rule 404(b) because the prior conduct would show "the absence of intent, mistake, or accident" and/or a "common scheme or plan" on the part of the Defendant in the present cases before the Court, along with other matters and items discussed earlier in this Notice.



Barry J. Barnette
Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306
(864)-596-2575

October 23, 2013
Spartanburg, South Carolina

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365 S.C. 366
Supreme Court of South Carolina.

The STATE, Respondent,

v.

Brenda Gail CUTRO, Appellant.

No. 26027. | Heard May 3, 2005. | Decided
Aug. 15, 2005. | Rehearing Denied Sept. 21, 2005.

Synopsis

Background: Defendant day care provider was convicted in the Circuit Court, Richland County, M. Duane Shuler, J., of murder and sentenced to life imprisonment. Defendant appealed. The Supreme Court, 332 S.C. 100, 504 S.E.2d 324 reversed. Following retrial, the defendant was convicted in the Circuit Court, Richland County, James C. Williams, Jr., J., of two counts of homicide by child abuse. Defendant appealed.

Holdings: The Supreme Court, Moore, J., held that:

[1] charged offenses that consisted of two counts of homicide by child abuse and one count assault and battery demonstrated a common scheme or plan and motive, and thus were properly tried jointly;

[2] evidence concerning the memorabilia seized from defendant's home regarding victims was admissible to show that Munchausen Syndrome by Proxy (MSBP) was defendant's motive's for committing offenses;

[3] testimony from State's medical expert that autopsy reports of all Sudden Infant Death Syndrome (SIDS) deaths that occurred under one year of age in State for the past fifteen years did not show petechial hemorrhages of the brain, as were found in victims, was relevant; and

[4] admission of testimony from State's medical expert did not violate defendant's right of confrontation.

Affirmed.

Pleicones, J., dissented and filed a separate opinion.

West Headnotes (13)

[1] **Criminal Law**

Joint or Separate Trial of Separate Charges

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k620 Joint or Separate Trial of Separate Charges

110k620(1) In general

Charged offenses that consisted of two counts of homicide by child abuse and one count of assault and battery demonstrated a common scheme or plan and motive, in that Shaken Baby Syndrome was alleged to have been inflicted on each victim, and thus were properly tried jointly. Rules of Evid., Rule 404(b).

2 Cases that cite this headnote

[2] **Criminal Law**

Joint or Separate Trial of Separate Charges

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k620 Joint or Separate Trial of Separate Charges

110k620(1) In general

Generally, when offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced.

6 Cases that cite this headnote

[3] **Criminal Law**

Joint or Separate Trial of Separate Charges

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k620 Joint or Separate Trial of Separate Charges

110k620(1) In general

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In determining joinder, the trial judge need not find clear and convincing evidence of the charges.

[4] **Criminal Law**

➤ Purposes for Admitting Evidence of Other Misconduct

110 Criminal Law
110XVII Evidence
110XVII(F) Other Misconduct by Accused
110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General
110k368.3 Purposes for Admitting Evidence of Other Misconduct
110k368.4 In general
(Formerly 110k369.2(1))

Evidence of prior bad acts is inadmissible unless the evidence has a particular relevance to the crime charged and falls within at least one of five categories: motive, identity, common scheme or plan, absence of mistake or accident, or intent. Rules of Evid., Rule 404(b).

[5] **Criminal Law**

➤ Degree of proof

110 Criminal Law
110XVII Evidence
110XVII(F) Other Misconduct by Accused
110XVII(F)13 Proof and Effect
110k374.15 Preliminary Evidence
110k374.19 Proof of Other Misconduct
110k374.19(2) Degree of proof
(Formerly 110k374)

Evidence of prior bad acts that are not the subject of conviction must be proved by clear and convincing evidence. Rules of Evid., Rule 404(b).

[6] **Criminal Law**

➤ Joint or Separate Trial of Separate Charges

110 Criminal Law
110XX Trial
110XX(A) Preliminary Proceedings
110k620 Joint or Separate Trial of Separate Charges
110k620(1) In general

Before a defendant is tried on joint charges, the charges are investigated by law enforcement and subject to judicial procedures such as indictment and preliminary hearing, and in such a procedural context, it is unnecessary to hold a "mini-trial" for the State to prove each charge to the judge before proceeding with a joint trial to the jury.

1 Cases that cite this headnote

[7] **Criminal Law**

➤ Prejudicial effect and probative value

110 Criminal Law
110XVII Evidence
110XVII(F) Other Misconduct by Accused
110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General
110k368.7 Factors Affecting Admissibility
110k368.13 Prejudicial effect and probative value
(Formerly 110k369.1)

Prior bad act evidence that falls within a exception to allow for its admissibility and meets the clear and convincing standard may still be excluded if the danger of unfair prejudice substantially outweighs the probative value of the evidence. Rules of Evid., Rule 404(b).

[8] **Criminal Law**

➤ Substantial evidence

Criminal Law

➤ Issues relating to multiple charges or defendants

110 Criminal Law
110XX Trial
110XX(F) Province of Court and Jury in General
110k753 Direction of Verdict
110k753.2 Of Acquittal
110k753.2(3) Insufficiency of Evidence
110k753.2(4) Substantial evidence
110 Criminal Law
110XX Trial
110XX(J) Issues Relating to Jury Trial
110k867 Discharge of Jury Without Verdict; Mistrial
110k867.9 Issues relating to multiple charges or defendants
(Formerly 110k867)

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The standard for submission of charges to the jury is any substantial evidence, and if the trial judge finds there is no substantial evidence to submit any one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder.

[9] Homicide

⇒ Motive

203 Homicide

203IX Evidence

203IX(D) Admissibility in General

203k1000 Motive

203k1001 In general

In prosecution for child abuse by homicide, evidence concerning the memorabilia seized from defendant's home regarding victims was admissible to show that Munchausen Syndrome by Proxy (MSBP) was defendant's motive's for committing offenses; no expert testimony existed relating the evidence to the charged offense, and collecting memorabilia of a deceased child, while perhaps uncommon, was not behavior that itself indicated a bad character.

2 Cases that cite this headnote

[10] Criminal Law

⇒ Bodily condition

110 Criminal Law

110XVII Evidence

110XVII(R) Opinion Evidence

110k468 Subjects of Expert Testimony

110k473 Bodily condition

Testimony from State's medical expert that autopsy reports of all Sudden Infant Death Syndrome (SIDS) deaths that occurred under one year of age in State for the past fifteen years did not show petechial hemorrhages of the brain, as were found in victims, was relevant in homicide by child abuse prosecution; medical testimony created an issue regarding the significance of petechial hemorrhages in determining the cause of death of victims, and the fact that autopsies of SIDS deaths did not note the hemorrhages was relevant in distinguishing a SIDS case from a traumatic death. Rules of Evid., Rule 401.

2 Cases that cite this headnote

[11] Criminal Law

⇒ Relevancy in General

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k338 Relevancy in General

110k338(1) In general

Evidence is relevant if it tends to make the existence of any fact at issue more or less probable. Rules of Evid., Rule 401.

[12] Criminal Law

⇒ Public or Official Acts, Proceedings, Records, and Certificates

110 Criminal Law

110XVII Evidence

110XVII(P) Documentary Evidence

110k429 Public or Official Acts, Proceedings, Records, and Certificates

110k429(1) In general

An autopsy report is not inadmissible hearsay. Code 1976, § 17-5-280.

1 Cases that cite this headnote

[13] Criminal Law

⇒ Cross-examination and impeachment

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k662 Right of Accused to Confront Witnesses

110k662.7 Cross-examination and impeachment

Admission of testimony from State's medical expert that autopsy reports of all Sudden Infant Death Syndrome (SIDS) deaths that occurred under one year of age in State for the past fifteen years did not show petechial hemorrhages of the brain, as were found in victims, did not violate defendant's right of confrontation in homicide by child abuse prosecution; reports were public record, and thus not testimonial, and defendant was able to cross-examine expert regarding the possible inaccuracies in these autopsy reports and presented extensive expert

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testimony reinterpreting the significance of their findings. U.S.C.A. Const.Amend. 6.

5 Cases that cite this headnote

Attorneys and Law Firms

****891** Acting Chief Attorney Joseph L. Savitz and Assistant Appellate Defender Robert M. Dudek, both of S.C. Office of Appellate Defense; and Beattie I. Butler, of Charleston, for appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Senior Assistant Attorney General William Edgar Salter; and Solicitor Warren B. Giese, all of Columbia, for respondent.

Opinion

Justice MOORE:

***369** Appellant was convicted of two counts of homicide by child abuse for the deaths of two infants in her home daycare. We affirm.

FACTS

Appellant and her husband Josh Cutro operated a home daycare in Irmo, South Carolina. Between January and September ***370** of 1993, two infants, Parker Colson and Ashlan Daniel, died at the Cutros' home. A ****892** third infant, Asher Maier, became ill while at their home and was subsequently diagnosed with serious brain damage. The State produced evidence that all three infants were victims of Shaken Baby Syndrome. Appellant was convicted of two counts of homicide by child abuse and sentenced to concurrent life sentences for killing Parker Colson and Ashlan Daniel; she was acquitted of the assault and battery charge regarding Asher Maier.

The State's theory of the case was that appellant's actions were motivated by Munchausen Syndrome by Proxy (MSBP), which the State's medical experts defined as a form of child abuse in which the perpetrator harms a child in order to garner sympathy and attention for herself.¹

Parker Colson

Parker Colson was almost five months old when he was found dead in his crib at the Cutros' home on January 4, 1993. According to his parents, Parker was a healthy baby and had no health problems that morning. His mother dropped him off at the Cutros' daycare at about 7:30 a.m. At 1:57 p.m., emergency personnel received a call to the Cutros' home. When they arrived at 2:11 p.m., Parker was not breathing. He was rushed to the hospital where he was declared dead.

Parker's mother testified that appellant told her the following regarding Parker's death:

A: She told me that Parker was taking a nap. She went in and checked on him. He was asleep. She went in the kitchen, reached up in the cabinet to get his food down. Josh came in behind her and screamed, Parker's not breathing, call 9-1-1.

Q: After she left the room where Parker was and went into the kitchen, how long a period of time did she indicate it was before Josh entered the room and screamed?

A: The way she explained it to me was she checked on Parker, walked in the kitchen, and reached in the cabinet.

***371** Josh walked in behind her and screamed, Parker's not breathing, call 9-1-1—however long it takes to get from the living room into the kitchen and reach into a cabinet, a few seconds. And her kitchen was right beside the living room.

Q: So according to Gail Cutro, who was the last person who had contact with your son Parker before Josh Cutro found him not breathing?

A: Gail.

After an autopsy, the coroner's office reported Parker's cause of death as Sudden Infant Death Syndrome, or "SIDS," which is the diagnosis given when an infant's cause of death cannot be identified. Dr. Daniel, who performed the autopsy, testified the presence of petechial hemorrhages in the cortical section of Parker's brain which she testified was unusual in a SIDS case.

In July 1994, Parker's body was exhumed and re-autopsied. Dr. Ophoven, who reviewed the autopsy report, concluded

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that the presence of the petechial hemorrhages in Parker's brain and a sub-dural hematoma, which had not been discovered in the original autopsy, indicated Parker died a traumatic death caused by shaking and asphyxia. Dr. Gilbert-Barness testified that Parker died of Shaken Baby Syndrome which damaged the medulla causing the heart and respiration to stop.

Other medical testimony indicated that Shaken Baby Syndrome can occur with no external sign of trauma. Because a baby's brain is not fully developed, violent shaking damages the vital center of the brain that controls breathing which can cause death by asphyxiation. The presence of petechial hemorrhages indicates asphyxia. Expert testimony further indicated that the symptoms of Shaken Baby Syndrome manifest immediately after the shaking—head injury occurs within seconds and a baby might die immediately.

Asher Maier

Asher Maier was four months old when he began daycare with the Cutros on June 7, 1993. A couple of days after beginning daycare, Asher became irritable and stopped ****893** sleeping through the night. He was fussy on June 23 when his mother dropped him off at the Cutros' at about 7:30 a.m. Between 10:30 and 10:50 a.m., Mrs. Maier received a telephone ***372** call at work from appellant stating that the baby was "inconsolable" and suggesting she pick him up and take him to the doctor. When Mrs. Maier arrived at the Cutros' a short time later, the baby was already in his car seat and they immediately handed him to her. Asher remained in his car seat until he was in the doctor's office. When Mrs. Maier removed him, she discovered Asher was limp and unable to control his neck. Another child's parent had seen Asher that morning in daycare and testified he was moving normally at that time.

Dr. Alexander, who reviewed Asher's medical records, testified in his opinion Asher had been the victim of two shaking episodes. An MRI and CT scan revealed old and new blood in his brain indicating an earlier episode, probably two weeks previous, that had healed to some extent. Asher also exhibited retinal hemorrhages indicative of Shaken Baby Syndrome.

Ashlan Daniel

Ashlan Daniel was about two months old when she began daycare with the Cutros in June 1993. Ashlan was in daycare for about only two hours a day while Mrs. Daniel worked part-time. On September 9, 1993, Mrs. Daniel dropped Ashlan off at the Cutros' at noon. A picture of Ashlan taken earlier that day shows she was a healthy and normal baby, a description her parents corroborated.

When Mrs. Daniel left work at 2:30 p.m., she went to pick Ashlan up at the Cutros' home. She pulled up as EMS personnel were arriving. Josh Cutro came out of the house and told Mrs. Daniel that Ashlan was dead.

Ashlan's mother testified that appellant told her that she, appellant, found Ashlan not breathing and Josh was out of the house at that time. Another parent testified appellant told her Josh went to pick up their children from school and that she, appellant, was the only adult in the room when Ashlan stopped breathing.

Other parents of the Cutros' daycare children also testified. One parent testified Josh told her he had just returned home when appellant came outside to tell him about the baby. Another testified that appellant told her that she, appellant, "was in the room with Ashlan when she died ... and that she ***373** couldn't believe that she didn't notice that [Ashlan] had stopped breathing."

Dr. Reynolds, who autopsied Ashlan's body, testified petechial hemorrhages were present in her brain, which he had never seen in a SIDS death. Because he could not determine the cause of death, he concluded it was SIDS.

Ashlan's body was exhumed and re-autopsied in July 1994. Dr. Ophoven testified that Ashlan's brain had a subdural hematoma which, in addition to the petechial hemorrhages, indicated she had died of trauma and asphyxia. Dr. Gilbert-Barness concurred and stated that these injuries indicated Shaken Baby Syndrome.

Evidence of MSBP

As proof of motive, the State introduced evidence of appellant's attention-seeking behavior regarding the purported SIDS deaths of the two infants who died in her daycare. She kept their obituaries, photos, and items of clothing, as well as frequently visiting their gravesites and emotionally discussing their deaths repeatedly with others.

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Appellant also fabricated that she had lost one of her own children and that a baby had died in her care in 1992. The State's medical experts opined that the injuries to the three infants and appellant's behavior indicated a pattern of child abuse identified as MSBP.

ISSUES

1. Was appellant unfairly prejudiced by the trial court's refusal to sever the charges?
2. Was appellant unfairly prejudiced by evidence used to prove MSBP?
3. Were autopsy reports of other infants improperly admitted?

**894 DISCUSSION

1. Joinder of charges

[1] Appellant was first tried in 1994 and convicted of killing Ashlan Daniel. We reversed that conviction because evidence of the death and injury to the other two infants, *374 Parker Colson and Asher Maier, was not clear and convincing and therefore was improperly admitted as *Lyle*² evidence. *State v. Cutro*, 332 S.C. 100, 504 S.E.2d 324 (1998) (*Cutro I*).³ Appellant contends the trial judge erred in denying her motion to sever the charges in this case based on our holding in *Cutro I*. For the reasons set forth below, we find our evidentiary ruling in *Cutro I* is not controlling here.

[2] [3] Generally, when offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character,⁴ the trial judge has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced. *State v. Sullivan*, 277 S.C. 35, 282 S.E.2d 838 (1981); *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967). We have found prejudice where the defendant was jointly tried on charges for which the evidence would not otherwise have been admissible under *Lyle*. *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996). We now clarify that in determining joinder, the trial judge need not find clear and convincing evidence of the charges.

a. Distinction between evidentiary and joinder context

[4] [5] In the context of evidentiary law, *Lyle* and its progeny protect a defendant from the unrestricted admission of bad act evidence. *Lyle* prohibits such evidence unless the evidence has a particular relevance to the crime charged and falls within at least one of five categories: motive, identity, common scheme or plan, absence of mistake or accident, or intent.⁵ Further, bad acts that are not the subject of conviction *375 must be proved by clear and convincing evidence. *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001). This preliminary fact-finding by the judge ensures the evidence is subjected to some procedural safeguard before the jury hears it.

[6] In the context of the joinder of charges for a jury trial, however, procedural safeguards are already in place that eliminate the need for preliminary fact-finding by the trial judge. Before a defendant is tried on joint charges, the charges are investigated by law enforcement and subject to judicial procedures such as indictment and preliminary hearing. In this procedural context, it is unnecessary to hold a "mini-trial" for the State to prove each charge to the judge before proceeding with a joint trial to the jury. *Accord Solomon v. State*, 101 Md.App. 331, 646 A.2d 1064 (1995) (Moylan, J.).

[7] [8] Further, in the evidentiary context, bad act evidence that falls within a *Lyle* exception and meets the clear and convincing standard may still be excluded if the danger of unfair prejudice substantially outweighs the probative value of the evidence. *State v. Braxton*, 343 S.C. 629, 541 S.E.2d 833 (2001). Similarly, in the joinder context, the defendant may argue unfair prejudice if, after the State's case, the trial judge determines that a directed verdict should be granted. The standard for submission of charges to the jury is "any substantial evidence." *State v. Johnson*, 334 S.C. 78, 84, 512 S.E.2d 795, 798 (1999). If the trial judge finds there is no substantial evidence to submit any one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder.

**895 b. Application of joinder standard

Here, according to the State's case, all three offenses are similar in kind, place, and character—each involves Shaken Baby Syndrome inflicted on an infant in the Cutros' daycare. These offenses clearly fit within the *Lyle* categories for

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common scheme or plan and motive. We conclude the charges were properly tried jointly.

***376 2. Evidence of MSBP**

[9] Appellant contends evidence concerning the memorabilia seized from her home regarding the two dead infants was unfairly prejudicial and improperly admitted at trial. The State introduced the babies' memorabilia as indicative of MSBP which is marked by attention-seeking behavior. The trial judge charged the jury that it was to consider the diagnosis and evidence of MSBP only for the limited purpose of establishing motive or absence of illness, mistake, or accident.

Appellant claims exclusion of this evidence is mandated under *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998), which held that "propensity evidence" is inadmissible. We find *Nelson* distinguishable. In that case, children's toys, videos, photographs of young girls, and other evidence tending to depict the defendant as a pedophile were admitted at his trial for criminal sexual conduct and committing lewd acts on a minor. We held this evidence should have been excluded because character evidence is not admissible "for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." *Nelson*, 331 S.C. at 6, 501 S.E.2d at 719.

In this case, the evidence is not general propensity evidence but indicates appellant's behavior regarding the deaths of these two infants. Since the State's theory of the case was that appellant killed the victims to gain sympathy and attention for herself, this evidence is relevant to show motive. See *State v. Hocevar*, 300 Mont. 167, 7 P.3d 329 (2000) (evidence of MSBP admissible on issue of motive). Further, in *Nelson* the evidence was admitted simply to depict the defendant as a pedophile. There was no expert testimony relating the contested evidence to the charges as in this case.

Finally, collecting memorabilia of a deceased child, while perhaps uncommon, is not behavior that itself indicates a bad character. In fact, appellant presented extensive evidence that her grief was a normal response to the deaths of these children. This evidence did not unfairly suggest that appellant had a propensity to commit crimes against children. See *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (evidence is unfairly prejudicial if it has an undue *377 tendency to suggest decision on an improper basis).

We conclude appellant was not unfairly prejudiced by the admission of this evidence.⁶

3. Autopsy reports of other SIDS deaths

[10] The State's medical expert, Dr. Ophoven, testified she examined the autopsy reports of all SIDS deaths that occurred under one year of age in South Carolina since 1993. These 274 autopsy reports were marked as State's exhibits for identification during Dr. Ophoven's testimony along with a chart summarizing them. Dr. Ophoven testified that none of these autopsy reports noted petechial hemorrhages of the brain which are considered medical abnormalities that would ordinarily be documented in the course of an autopsy. She testified that the autopsies of Parker Colson and Ashlan Daniel were the only two in which such abnormalities were found, confirming her earlier observation that petechial hemorrhages do not occur in a SIDS death.

Appellant contends evidence concerning the autopsy reports of these other SIDS deaths was irrelevant, was inadmissible hearsay, and violated her confrontation rights.

****896 [11]** Evidence is relevant if it tends to make the existence of any fact at issue more or less probable. *State v. Frazier*, 357 S.C. 161, 592 S.E.2d 621 (2004); Rule 404, SCRE. Here, medical testimony created an issue regarding the significance of petechial hemorrhages in determining the cause of death of the two infants. The fact that autopsies of SIDS deaths did not note this type of brain abnormality was relevant in distinguishing a SIDS case from a traumatic death.

[12] Further, autopsy reports are not hearsay under Rule 803, SCRE. Subsection (8) of this rule excepts from hearsay public records and reports containing matters there is a duty to report. Autopsies are required in cases of SIDS if law enforcement deems it necessary. *378 S.C.Code Ann. § 17-5-540 (2003) and § 20-7-5915 (Supp.2004). Additionally, subsection (9) of Rule 803 specifically exempts from hearsay records of vital statistics, including "reports ... of ... deaths ... if the report thereof was made to a public office pursuant to requirements of law." Autopsy reports are required to be kept by the medical examiner's office. S.C.Code Ann. § 17-280 (2003). Accordingly, an autopsy report is not inadmissible hearsay.

In addition, Rule 703, SCRE, specifically provides:

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The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

We conclude evidence of the autopsy reports was admissible under the Rules of Evidence.

[13] Finally, in *Crawford v. Washington*, 541 U.S. 36, 54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court noted the hearsay exception for business records and observed that business records are not "testimonial" and therefore do not implicate the Confrontation Clause. A public record, very much like a business record, is not testimonial and its admission similarly does not violate the defendant's confrontation rights. Moreover, appellant was able to cross-examine Dr. Ophoven regarding the possible inaccuracies in these autopsy reports and presented extensive expert testimony reinterpreting the significance of their findings.⁷ We find appellant's confrontation rights were not infringed.

We hold the trial judge did not err in allowing Dr. Ophoven's testimony regarding the autopsies of other deaths.

CONCLUSION

Appellant's remaining issues are without merit and are disposed of pursuant to Rule 220(b), SCACR, and the following *379 authority: Issue 4: *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870 (1998) (for this Court to reverse based on erroneous exclusion of evidence, prejudice must be shown; error is harmless when it could not reasonably have affected result of the trial); *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999) (any error in exclusion of cumulative evidence is harmless); Issue 5: *State v. Johnson*, 334 S.C. 78, 512 S.E.2d 795 (1999) (if there is any substantial evidence tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced, the case should be submitted to the jury); *State v. Brown*, 360 S.C. 581, 602 S.E.2d 392 (2004) (on appeal from denial of directed verdict,

this Court must view the evidence in light most favorable to the State); Issue 6: *State v. Hyder*, 242 S.C. 372, 131 S.E.2d 96 (1963); *State v. Caulder*, 287 S.C. 507, 339 S.E.2d 876 (Ct.App.1986) (no error to refuse a charge on mere suspicion where the charge adequately instructs the jury regarding reasonable doubt); Issue 7: *State v. Mitchell*, 362 S.C. 289, 608 S.E.2d 140 (Ct.App.2005) (involuntary manslaughter is not a lesser included offense of homicide by child abuse under the elements test); Issue 8: *State v. Pauling*, 322 S.C. 95, 470 S.E.2d 106 (1996) (if jury asks for further explanation of the law after indicating deadlock, the requirements of § 14-7-1330 are met).

AFFIRMED.

**897 TOAL, C.J., WALLER and BURNETT, JJ., concur.
PLEICONES, J., dissents in a separate opinion.

Justice PLEICONES, dissenting:

I respectfully dissent. As I understand appellant's joinder argument, she contends that the charges were improperly consolidated for trial. I agree, and would reverse on this ground.

The general rule is that the trial judge has discretion to order separate charges to be tried together over the defendant's objection where the offenses charged "are of the same general nature, involving connected transactions closely related in kind, place and character..."¹ *380 *State v. Sullivan*, 277 S.C. 35, 43, 282 S.E.2d 838, 843 (1981); cf., *State v. Evans*, 112 S.C. 43, 99 S.E. 751 (1919) (no abuse of discretion in trial judge's denial of defendants' motion to try two murder charges together). Once a court determines that charges may properly be joined, it must then consider whether it should decline to consolidate the claims in order to protect the defendant's right to a fair trial. *Id.* (joinder is improper where the defendant can demonstrate that his substantive rights would be violated by such a procedure); see also *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996); *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967). As we have long recognized, "Circumstances might arise which would render a uniting of several counts unjust to the defendant." *City of Greenville v. Chapman*, 220 S.C. 157, 162, 41 S.E.2d 865, 867 (1947). Even when joinder is permissible, the trial court must be mindful of protecting the defendant's right to a fair trial because "[b]y the multiplication of distinct charges, the prisoner may be confounded in his

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defense, or prejudiced in his challenges, or the attention of the jury may be distracted." *Id.* (internal citations omitted).

In this case, the first issue is whether the trial judge abused his discretion in finding a relationship sufficient to permit the State to try appellant on three charges at a single trial: the homicide of Parker Colson on January 4, 1993; the injury to Asher Maier discovered on June 23, 1993; and the homicide of Ashlan Daniel on September 9, 1993. In my opinion, while these charges are of the same general nature, they do not involve "connected transactions closely related in kind, place and character" as these terms are defined by our case law. Crimes which do not arise out of a "single chain of circumstances" and which require "different evidence for proof" "clearly fail[] to meet the requirements for consolidation." *State v. Middleton*, 288 S.C. 21, 23, 339

S.E.2d 692, 693 (1986) (reversing where charges of rape and murder of one victim, rape and murder of a second victim the next day, and attempted robbery and assaults on the day after were consolidated for trial). I would hold the trial judge committed reversible error in allowing these three charges to be tried together over *381 appellant's objection, as they did not arise out of a single chain of circumstances and required different proof.² *Id.*

I would reverse appellant's convictions and remand the matter for further proceedings.

Parallel Citations

618 S.E.2d 890

Footnotes

- 1 MSBP was first identified by a pediatrician in 1997 and is a medically recognized syndrome.
- 2 *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).
- 3 Appellant was retried in 1999; that trial ended in a mistrial when the jury could not agree. This is appellant's third trial.
- 4 Here, the State produced evidence each offense involved the violent shaking of an infant at the Cutro's home daycare with the intent of promoting sympathy for the caregiver from the resulting injury to the child. These offenses are closely related in kind, place, and character as required to support joinder.
- 5 See also Rule 404(b), SCRE (codifying *Lyle* categories).
- 6 Appellant's brief mentions the funeral bulletin for the Lightfoot child, a baby who died of SIDS while in the care of another home daycare provider known to appellant through her church. This evidence also directly related to the case at hand. The State sought to establish that appellant knew about the outpouring of sympathy for the other daycare worker and this motivated her own behavior.
- 7 Dr. Sexton, who performed several of these autopsies, testified that some showed microscopic brain vessel damage similar to that seen in Parker Colson and Ashlan Daniel.
- 1 I disagree with the majority that the test for joinder is the same as the standard for admitting prior bad act evidence under *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)/Rule 404(b), SCRE.
- 2 Even if I were to find these charges were sufficiently connected so as to be subject to consolidation, I would hold that joinder should have been denied in order to protect appellant's right to a fair trial. *City of Greenville v. Chapman*, *supra*.

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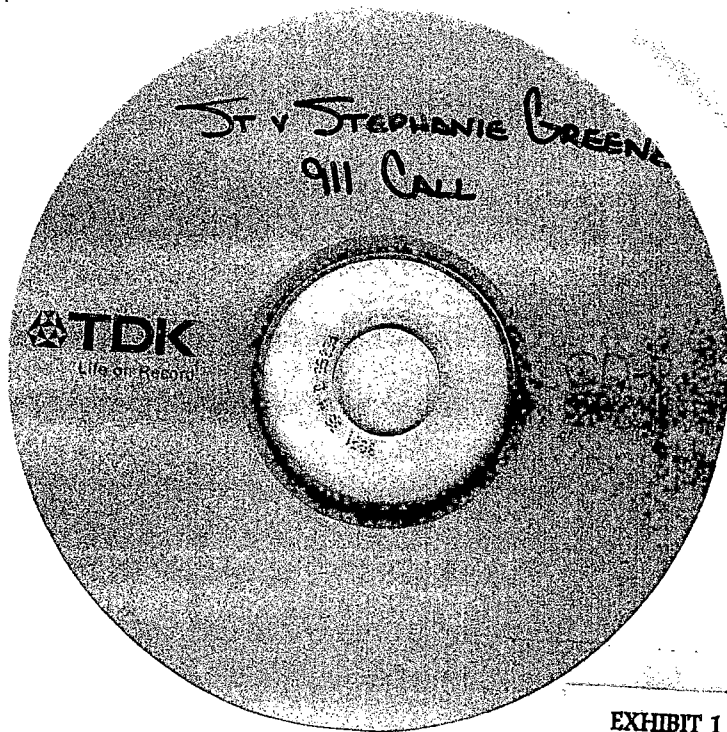


EXHIBIT 1

EXHIBIT 2

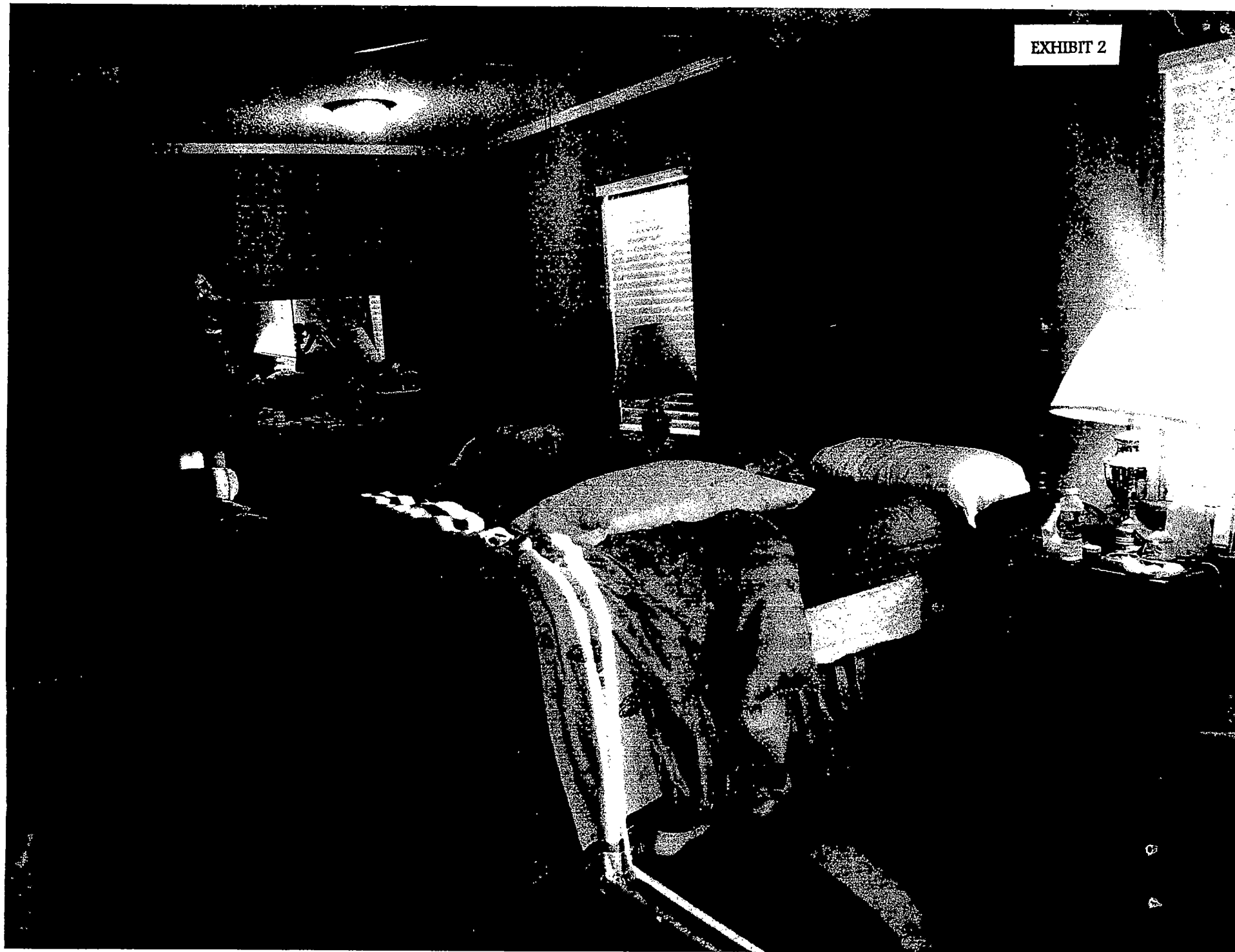


EXHIBIT 3



file
2/21/2011

Poisons and Controlled Substances 44-53-100

44-53-395. Prohibited acts; penalties

(A) It shall be unlawful:

(1) for any practitioner to issue any prescription document signed in blank. The issuance of such document signed in blank shall be prima facie evidence of a conspiracy to violate this section. The possession of prescription document signed in blank by a person other than the person whose signature appears thereon shall be deemed prima facie evidence of a conspiracy between the possessor and the signer to violate the provisions of this section.

(2) for any person other than a practitioner registered with the Department under this article to possess a blank prescription not completed and signed by the practitioner whose name appears printed thereon.

(3) for any person to withhold the information from a practitioner that such person is obtaining controlled substances of like therapeutic use in a concurrent time period from another practitioner.

(B) Any person who knowingly and intentionally violates this section a first time shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a term of imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both. Any person who knowingly and intentionally violates this section a second time shall be deemed guilty of a felony and upon conviction shall be punished by a term of imprisonment for not more than five years.

44-53-390. Prohibited acts C; penalties

(a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedules I or II except pursuant to an order form as required by 44-53-350.

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person.

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article.

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any other than foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(6) to distribute or deliver a non controlled substance or an imitation controlled substance.

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Carolina Neurology
541 Floyd Road
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Carol S. Nichols, M.D.
Carol A. Kooistra, M.D.

Practice Limited to Neurology
Nerve Conduction Studies
Evoked Potentials
Sleep Disorder Studies
Appointments by Referral

Controlled substance medications (i.e. Narcotics, tranquilizers, and barbiturates) are very useful, but have a high potential for misuse and therefore are closely controlled by the local state, and federal government. They are intended to relieve pain to improve function and /or ability to work, NOT simply to feel good. Because my physician is prescribing such medication for me to help manage my pain, I agree to the following conditions:

1. I am responsible for my controlled substance medications. If the prescription of medication is lost, misplaced, or stolen, or if I use it up sooner than prescribed, I understand that it will not be replaced.
2. I will not request or accept controlled substance medication from any other physician or individual while I am receiving such medication from my physician at Carolina Neurology. Besides being illegal to do so, it may endanger my health. The only exception is if it is prescribed while I am admitted in a hospital.
3. Refills of controlled substance medications:
 - a. Will only be made during regular office hours, Monday through Thursday between 9am-4pm, and Friday between 9am-12pm. Refills will not be made at night, on holidays, or weekends.
 - b. Will not be made if I "run out early", "lose a prescription", "spill or misplace my medication". I am responsible for taking the medication in the dose prescribed and for keeping track of the amount remaining.
 - c. Will not be made as an "emergency", such as Friday afternoon because I suddenly realize I will "run out tomorrow". I will call at least twenty-four (24) hours ahead if I need assistance with a controlled substance medication prescription.
4. It may be deemed necessary by my doctor for me to see a medication use specialist at any time while I am receiving controlled substances. I understand if I do not attend this appointment that my medications may not be continued or refilled beyond a tapering dose completion. I understand that if this specialist feels I am at risk for psychological dependence (addiction) that my medications will no longer be refilled.

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5. I agree to comply with random urine, blood, or breath testing documenting the proper use of my medications as well as confirming compliance. I understand that driving a vehicle may not be allowed at times while am taking controlled substances and that it is my responsibility to comply with the laws of the state while taking the medication prescribed.

6. I understand that if I violate any of the above conditions, my controlled substance prescriptions and/or treatment at Carolina Neurology may be ended immediately. If the violation involves obtaining controlled substances from another individual, as described above, or the concomitant use of nonprescription illicit (illegal) drugs, I may also be reported to my physician, medical facilities, and other appropriate authorities.

7. I understand that the main treatment goal is to improve my ability to function and/or work and/or reduce pain. In consideration of that goal and the fact that I am being given potent medication to help me reach that goal I agree to help myself by the following better health habits: exercise, weight control, avoiding the use of tobacco and alcohol. I must comply with the treatment plan as prescribed by my doctor. I understand that only through following a healthier lifestyle can I hope to have the most successful outcome to my treatment.

8. I understand that the long-term advantages and disadvantages of chronic opioid use have yet to be scientifically determined and that treatment may change throughout my time as a patient at Carolina Neurology. I understand, accept, and agree that there may be unknown risks associated with the long-term use of controlled substances and that my physician will advise me as knowledge and training advances and will make appropriate treatment changes.

I have been fully informed by Dr. Kooistra and Dr. Nichols and their staff regarding psychological dependence (addiction) of a controlled substance, which I understand is rare. I know that some persons may develop a tolerance, which is the need to increase the dose of the medication to achieve the desired effect, and I do know that will become physically dependent on the medication. This will occur if I am on the medication for several weeks, and when I stop the medication, I must do so slowly and under medical supervision or I may have withdrawal symptoms.

I have read this contract and the same will be explained to me by Dr. Kooistra/Nichols and/or their staff. In addition, I fully understand the consequences of violating this contract.

In addition, I state that I can and understand the ENGLISH language.

I have completed the college grad grade.

BSN

1-5-08

Date

Stephanal Green

Patient's Signature

Budger Jacks

Witness Signature

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ANALYSIS: LAW AND ETHICS

Murder by Nursing?



by Emily Horowitz, St. Francis College
February 21, 2012 - 6:57 am

Stephanie Greene is being charged with murder. Her crime? Breastfeeding her newborn.

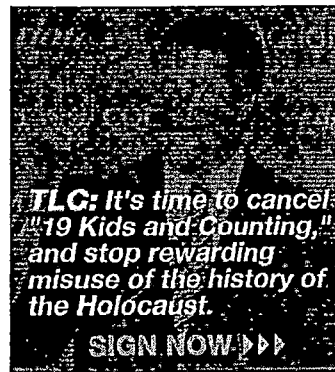
The unexpected death of a 5 ½ – week-old infant is a mind-numbing tragedy. Facing murder charges in the face of that death is an inconceivable horror. Yet this is happening to Stephanie Greene, 37, a woman currently facing homicide by child abuse charges.

Stephanie lives in Campobello, South Carolina. Prosecutors allege that Stephanie took so much prescription medication that her daughter died of a morphine overdose ingested via breast milk. The coroner's report shows the cause of death as drug overdose, because the infant had an elevated blood level of morphine. The case is complicated; because there is no question that Stephanie takes a significant amount of prescription medication for documented physical ailments (i.e. fibromyalgia, chronic pain, high blood pressure) resulting from a near-fatal car accident a few years ago, including MS Contin (a drug that metabolizes as morphine).

In the hospital, Stephanie did not reveal that she was taking any medications at all, even though she was asked multiple times by multiple people. Stephanie was sheepish when asked about this. Stephanie says she knew that her medication use would open her up to suspicion. South Carolina is the state, after all, notorious for shackling new mothers to their hospital beds if they (or their infants) tested positive for illegal drugs – and removing infants to foster care and the mothers to jail. Although the Supreme Court ruled this practice illegal, Stephanie had been a nurse in South Carolina long enough to know she was in a state where mothers and pregnant women who use or abuse drugs are viewed with special contempt.

Stephanie was aware that her use of strong opioids (especially morphine) would raise suspicion. South Carolina has aggressively (and, according to legal advocates, illegally) prosecuted women who unintentionally miscarry a fetus after illegal drug use. Although the state has come under fire from advocates for these racist (although Stephanie is white, almost all the women convicted of this charge have been African-American and poor) and problematic policies, a woman like Stephanie knew it was not a good idea to openly discuss her painkiller use while in the hospital.

Stephanie's lawyer, C. Rauch Wise (known as "Rock"), a noted local defense attorney, has represented a number of women facing similar charges, although he is unaware of others charged with homicide by child abuse as a result of breastfeeding. "What's scary to me," Rock explains, "is that the state thinks enough of a drug can be distributed through breast milk to kill a baby." Wise says that South Carolina takes advantage of their Whitner decision, a ruling that allows the state to use child neglect and homicide laws to punish pregnant women who use drugs. Organizations like National Advocates for Pregnant Women (NAPW), a group devoted to defending the civil and human rights of pregnant women, recognizes the peculiar harshness of South Carolina, noting that: "Every state court of last resort and all intermediate appellate courts that have addressed this issue have rejected the approach taken by the South Carolina Supreme Court in the Whitner case."



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Contraception Extremism and the Right-Wing Bubble by Amanda Marcotte
Should a 13-Year-Old and Her 12-Year-Old Partner Really Be Considered Sex Offenders? by Martha Kemper
On First Day of Texas Abortion Law Trial, State Asserts Interest in Protecting 'Unborn' by Andrea Gimes
Corporations Claiming Religious Liberty Try to Infringe on Their Employees' Religious Liberty by Gandy

Wise views Stephanie's case as something even more ominous than Whitner, and thinks if Stephanie goes to prison, women will be scared to breastfeed and will think they have the power to kill their infants – a power that is a point of significant scientific debate and controversy.

After arriving home, Stephanie says a lactation consultant from the hospital called to see how she was doing with her breastfeeding. Stephanie revealed her medications to the consultant – including the MS Contin. The consultant referred her to a website run by NIH with a comprehensive list of drugs and their compatibility with breastfeeding. The consultant told Stephanie she got all of her information from the site, and Stephanie accessed it and found that morphine is relatively safe for nursing mothers, with breast milk levels ranging from "trivial" to "quite low."

After being discharged from the hospital, nothing unusual was noted by the doctors or nurses, nor was anything unusual noted with either Stephanie or [REDACTED] during their 4-week pediatric visit or by a visit to a pediatric ophthalmologist (recommended because of an eye cyst). In the days just before [REDACTED] died, she had a cold and stuffy nose. Stephanie called the pediatrician who told her to use a vaporizer and vapor rub to help the baby breathe (which Stephanie did), which she did, but to only bring her to the office if fever was present (which Stephanie didn't, because it wasn't).

Stephanie spent all her time with newborn [REDACTED] caring for her like any new mother, and family photos show her older siblings and extended family doting on the new baby. [REDACTED] Stephanie's husband, strongly asserts that he would have noticed if Stephanie was under the influence or impaired in any way, and [REDACTED] Stephanie's father, stopped by the house almost every day after [REDACTED] was born, and he too forcefully says that Stephanie was doing all she possibly could for the new baby and was not neglectful in any way.

At 12:30am, on November 13, 2010 [REDACTED] awoke and Stephanie fed her – and then fell back to sleep next to Stephanie and [REDACTED] in bed. At 3:30am, Randy awoke and noticed something was wrong with the baby ("she felt cold," he says). Stephanie realized [REDACTED] was not breathing, and immediately began infant CPR. Randy called 911 and paramedics arrived, but they were unable to resuscitate [REDACTED] and she was pronounced dead.

Stephanie doesn't remember what happened next. The coroner says he has a video of Stephanie when he arrived at the house that same morning where she appears "under the influence". Another report claims that Stephanie smoked when they arrived and appeared unconcerned. Stephanie and [REDACTED] say none of this is true, except for the fact that she was smoking (she and Randy are both smokers). Obviously, they were in shock, and it seems pointless and cruel to critique the behavior of any parents in the hours after learning of the death of a child.

Stephanie and Randy [REDACTED] move on with their lives and mourn [REDACTED] They were totally shocked when on June 7, 2011, 9 months after [REDACTED] died, Stephanie was arrested. Initial reports say Stephanie used fraudulent prescriptions morphine and was "doctor-shopping." National and international outlets picked up the story about the "morphine mom" who nursed her baby to death.

A spokesperson for the county sheriff, Tony Ivey, was quoted in these reports saying that that toxicology proves that the infant died directly from medication ingested from Stephanie's breast milk, and that Stephanie is fully responsible for the death of the infant, noting "Taking care of children and raising children is very serious business, and if you're taking medication or whatever, follow the doctor's guidelines, consult your doctor, because this is something that should never have happened to an infant child like that. It had no control over this whatsoever and the mother should've known better."

In spite of what Ivey says, official records show that Stephanie was taking medication prescribed by the same doctors she had seen regularly over the past few years for her various ailments, and that she received all her prescriptions from the same pharmacy. Her doctors

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continued to prescribe medication after the death of [REDACTED] and only stopped following Stephanie's arrest. **Topics**

Abortion Media
Contraception Politics
Faith and Ideology Race and Class
Family Sexual Health
Health Systems Sexuality
Maternity and Birthing
In a similar Canadian case, a woman was charged with murder after her baby allegedly died after ingesting morphine-tainted breast milk. It turned out the woman was a "rapid metabolizer" of morphine, and extremely high levels of morphine were transferred to her breast milk. In that case, the woman was prescribed morphine for postpartum pain, and doctors regularly prescribe morphine to postpartum women because of its relative safety and few side effects. The La Leche League has even issued a statement saying that morphine is safe to take while nursing.

Did Stephanie try to hurt her baby? No. Was Stephanie neglectful because she breastfed her infant while taking prescription drugs? No. Any mother will tell you that breastfeeding can be more difficult than formula feeding. Mothers who can't nurse for physical reasons often suffer tremendous guilt – particularly when they see research about the often-hyped benefits of breastfeeding.

The notion that one would nurse a baby to death makes as much sense as cuddling or snuggling someone to death. Stephanie nursed her baby out of love and affection, and this is not something that can be questioned – by definition, nursing can never be an act of violence or harm.

After 4 weeks in jail, Stephanie was released on a \$100,000 bond in July 2011. Stephanie was under house arrest and had to wear a 24-hour-monitoring bracelet for 6 months. The family struggled to pay the \$136.50 weekly fees for the bracelet. Stephanie was relieved when it was finally removed on January 20, but she still can't be alone with her 3 minor children (ages 5, 12, and 14). Her attorney is baffled by the extreme restrictions, noting that Stephanie is clearly not a flight risk because she has lived her entire life in the area, has 4 other children, and put the home of her mother-in-law up for her bond.

Why prosecute Stephanie? Breastfeeding while taking medication is almost always safe. There is little funding for research about the safety of medication and breastfeeding, and women are mostly left on their own to learn about what medications are compatible with breastfeeding. It is an open secret, now documented widely on websites and blogs, that doctors will recommend weaning and will always say medications are unsafe for breastfeeding to avoid lawsuits.

Dr. Sears, a Harvard-trained expert on child health, advises that there are risks involved with weaning and exclusive formula-feeding that can be as significant as the effects of medication transmitted via breast milk. He notes that physicians often advise women to wean when they aren't sure about the effects of medication in breast milk, and that it is "impossible" for physicians to always keep up with the latest research about drugs in breast milk. He writes: "The risks of exposing a baby to a drug in breast milk should be weighed against the known risks of exposing a baby to infant formula while depriving him of breast milk.... Be aware that often what a mother is told about taking a medication about breastfeeding is based more on legal considerations than scientific knowledge. The information available from pharmaceutical companies about a drug.... often advises mothers not to breastfeed while taking a drug, but this advice reflects the company's desire to protect itself from lawsuits and to avoid having to do expensive research that would allow it to say a certain drug is safe." Women know not to ask their doctors if they should breastfeed if they are taking medication, because they know the answer – so they don't ask.

When every single drug has a warning that breastfeeding mothers should consult their physician before ingesting, it numbs women to the reality that some drugs might actually be harmful to their babies. Add to that a medical profession that puts forth contradictory messages about breastfeeding, and with a legitimate paranoia about lawsuits, and women are not going to feel comfortable being honest with their healthcare providers about their medication. Further, when mothers read about the myriad benefits of breastfeeding, many desperately want to breastfeed at any cost (for example, in a recent Harper's article, the

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French feminist Elizabeth Badinter points out that there are actually dangers to the extreme hype about breastfeeding, and argues that the interpretations of the existing studies about the benefits of breastfeeding are often exaggerated. Badinter notes that women who don't breastfeed are now considered "bad" mothers – and there is little or no hype about the many alternate studies that show that formula-feeding does not necessarily doom a child to disease, a low IQ, and psychological disorders).

Dr. Steven Karch, an expert witness for the defense, is a leading expert in the field of drug related death and author of the authoritative textbook in the field, Karch's Pathology of Drug Abuse. Karch believes that there is no chance that a baby can die from morphine absorbed solely through breast-milk when the mother does not have a genetic defect. Stephanie took morphine for many years and it is highly unlikely that she has this defect because she always tolerated morphine without a problem. According to Dr. Karch this genetic defect is exceedingly rare (and requires an expensive and difficult test), so it is still routinely prescribed for nursing mothers.

Most significantly, the coroner's office says that [REDACTED] had levels of morphine that exceeded 500 ng/mL. This is absurd, says Dr. Karch, and there is "zero possibility" that [REDACTED] could have morphine levels this high after ingesting breastmilk from a mother taking any amount of prescribed morphine. By contrast, the infant in the Canadian case had levels of only 70 ng/mL. In the latest version of his textbook, Karch explains that it one cannot determine breast milk drug transmission without testing the mother's milk, writing, "the only really accurate way to measure breast milk drug transmission is to collect the entire volume of milk from both breasts over 24 hours, then measure both the volume of milk and the amount of drug contained in it. This is difficult to do, and has not been done either for morphine or heroin in humans. However, when studies have been done on other drugs, such as prednisolone, fentanyl, and propofol and, more recently hydrocodone and hydromorphone, the amount of drug actually transmitted has been such a small percentage of the amount given to the mother that most experts see little need to discontinue breast feeding (normally, a nursing mother having elective surgery is advised to discard her milk for 24 hours)." According to Karch, in order to establish that drug-tainted breast-milk is the cause of infant death, one has to test the breast-milk from the mother and not only the blood levels of the infant – something that did not happen in Stephanie's case.

In California, a woman is currently facing manslaughter charges for breastfeeding after taking methamphetamine, and women have been prosecuted for the same crime since the early 1990s. Dr. Karch points out that the science behind these cases is also flimsy, noting methamphetamine has been used for many years as a treatment for various conditions, including narcolepsy, and earlier research saw limited negative effects in nursing infants. He explains that infants absorb drugs in different ways than adults, and that drugs need to bind to certain receptors in order to bind and do damage. "Babies," says Dr. Karch, "don't have a lot of those receptors, and newborns therefore don't have even places for drugs to bind." In most of the other documented cases of breastfeeding-related deaths, women plead guilty to lesser charges so they didn't have to face trial. In one case, a breastfeeding infant was found to have a tiny amount (.266 micrograms) of methamphetamine in her blood, and the coroner concluded that the infant died of methamphetamine poisoning. The mother pled guilty to child endangerment and spent six years in prison, even though the coroner admitted that they weren't sure what exact amount of methamphetamine could cause an infant death.

Why are women being prosecuted for murdering infants via breastfeeding when the science is so questionable? Clearly, prosecutors are deciding that women who use drugs are easy targets for public outrage and deserve punishment. On some level, it doesn't matter if the drugs actually caused the death in the eyes of the prosecution. The idea of a mother taking drugs and breastfeeding causes outrage, and if a baby with a drug-using mother dies this only increases moral panic and demands for justice.

Are women who use drugs and get pregnant and/or breastfeed criminals? While the medical community overwhelmingly sees drug addiction as a public health problem, our social welfare system contradicts this when they seek to punish or intervene in punitive ways when pregnant

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and breastfeeding women use drugs. These policies, that appear well meaning and obvious – after all, no one thinks it is good if a pregnant or nursing mother abuses drugs – effectively and subtly undermine efforts to promote public health and welfare and, in turn, expand the war on drugs and abortion rights. Women can't be prosecuted for having abortions or seeking birth control, but they can be punished for behaviors that supposedly end pregnancies or harm newborns – even though there is little scientific basis behind these charges. As NAPW points out, the women who are most harmed by these laws are overwhelming poor and lack access to health care and drug treatment. NAPW lawyers argue that there are actually no laws that authorize prosecuting pregnant or nursing women for drug use, yet they are continuing to happen – and this is what needs to be questioned and challenged by lawyers, advocates for women's rights, and well as the public health community.

In 1998, an impoverished woman named Tina Rodriguez was convicted in Texas for intentionally killing her son by starvation. The baby had milk in his stomach when he died, something that doesn't happen when someone is starved, and she breastfed him (and bottle-fed) him regularly, but nevertheless Rodriguez was convicted of murder. Her post-conviction lawyer presented testimony of a nutrition specialist and a pediatric expert in malnutrition who studied the autopsy report and concluded that he may have died from a rare genetic defect that prevented him from metabolizing the milk he drank. Rodriguez lost her appeal and, despite reasonable doubts, and is serving 38 years in a Texas prison, in spite of substantial scientific evidence that she did nothing wrong.

Why is so easy to believe that women like Tina Rodriguez and Stephanie Greene want to harm their babies by neglect or intention? The moral panic about adults deliberately harming children in their care is an unfortunate reality of modern times. From hysteria about sex rings at day care centers to myths about poisoned Halloween candy, our culture is transfixed and obsessed with the idea that adults want to deliberately harm children. Adults in playgrounds without children are breaking the law, as are parents who allow their children to ride bikes without helmets. If a child is hurt in a playground, it is because their parents weren't watching them and they should be arrested or because the playground equipment is dangerous and the designers should be sued. It is not possible that sometimes kids get hurt when they play – that is what scares us. The police state we live in makes everything a crime, especially when children are harmed. An adult must have caused this – accidents don't happen in a society where everyone is either a victim or a perpetrator.

Mothers like Stephanie Greene and Tina Rodriguez are easy targets in this social context, because they make us feel good about ourselves. Her baby dies, but it couldn't happen to us because we are different – we would never breastfeed after taking morphine and we would notice if our baby wasn't metabolizing milk properly. It is too horrible to think that babies die for no reason, or that we can't always protect our children, or that parents make mistakes. We are scared to allow our children to walk to school even in the "safest" suburbs or ride bikes without helmets – if we can afford it, we send our children to private schools when we live in neighborhoods with the very best public to have more control over their lives. Children in poor neighborhoods are on the path to being criminals, because their poverty itself is a crime, so we justify searching them with metal detectors when they go to school. If they die, we jump to their defense and arrest the parents, but, if they live, we treat them like potential criminals in the same way that we treat their parents like potential criminals. In Florida, the recent effort to drug test adults who receive welfare benefits because they are getting money from taxpayers highlights our contempt, distrust, and hatred of the poor.

If a healthy infant dies, there must be a reason – and the reason must be someone who is different than us. Stephanie Greene is a monster, mocked on websites "Bad Breeders," a place where horrible parents (mostly poor and drug-addicted) are ridiculed and targeted.

Medical associations and drug companies don't establish hard and solid rules about pregnancy and breastfeeding and drug use because the science just isn't there. Smoking and alcohol can contribute to miscarriages and hurt babies, and there are numerous public awareness campaigns preaching the negative effects of these behaviors, yet women still smoke and drink while pregnant and while nursing – women are not prosecuted for these

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behaviors. NAPW also points out that women who use drugs and pregnant and breastfeed are not being punished for using drugs but are actually being punished for being pregnant and not terminating the pregnancy. If they used drugs and terminated the pregnancy, there would not be a prosecution – the state is thus prosecuting women for being pregnant or nursing, and not for using drugs, and this is unlawful because it is essentially punishing women for having babies in spite of having a drug or health problem (like Stephanie).

Making efforts to prosecute women for killing their infants with tainted breast milk is similar to the crack-baby hysteria. In the 1980s, the media reported an epidemic of birth defects and brain damage resulting from pregnant women using crack. Yet, in 2005, University of Florida researchers Dr. Fonda Eyer, PhD, a developmental psychologist, and Dr. Marylou Behnke, MD, a neonatologist found that babies exposed to cocaine during pregnancy were no more likely to have birth defects than other babies. Interestingly, the mothers in the study were offered help but few accepted because of a state policy that often removed children from mothers in drug rehab centers. It is policies like these that discourage drug treatment and increase the likelihood that women with drug problems won't seek help.

The effort to prosecute Stephanie Greene is a witch-hunt. Stephanie breastfed because she believed she was doing the best for her baby, and because she depended on prescribed medication to manage her medically-documented chronic pain. Women who use illegal drugs are not much different – they are drug-dependent but they want to love and nurse their infants. The idea of a drug using pregnant or breastfeeding mother is shocking and upsetting, but there isn't enough scientific evidence that it is the sole or primary cause of infant. Women who use drugs and are pregnant or nursing need help and objective sources of information – not prison. Women have legal and civil rights even if they get pregnant and nurse babies, these cases violate their constitutional rights because they are not about drug use but about pregnancy. Pregnant and nursing women have human rights, and punishing their behaviors puts them in a special category that violates the reality that we all have equal protection under the law. Stephanie Greene might have been dependent on prescription drugs, but she didn't kill her baby.

Stephanie and [REDACTED] and the rest of their family are still mourning the loss of their baby. They also have to prepare for an expensive legal battle as well as the nightmare of waiting for a criminal trial that could result in a prison sentence. After Alexis died they put up a memorial webpage for her, and Stephanie posted this on the day of her funeral: "Lexi was born "sunny side up", and she was so sunny, such a good baby, such an angel in life, really the sunshine of our lives. We miss her beyond words..."

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Tagged: Analysis, Appropriations, Authorizations, Breastfeeding, Breastfeeding, Child abuse, court cases, crime, Family, Health Systems, Infant mortality, Law and Policy, Legislation, Maternity and Birthing, murder, Pain management, Parenting, Pregnancy complications, State legislatures



The Death Penalty, Life Imprisonment, and Other Punitive Measures: What's the Point?



Attorney Argues Death of Fetus in Minnesota Case Was Unlawful Abortion, Not Murder



Supreme Court Receives Requests to Take Up Hobby Lobby Contraception Mandate Case

Comments for this thread are now closed.

5 comments

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**St. Francis College**

Emily Horowitz is an Associate Professor of Sociology and Criminal Justice and Co-chairs the Women's Center at St. Francis College. She has published studies and articles on the way the media covers crime, false confessions, and educational inequality. She advocates on behalf of falsely accused and wrongfully convicted, specializing in the application of social science research to criminal cases. She received her Ph.D. in Sociology from Yale University, and her dissertation examined the extent to which domestic violence courts utilize feminist theory and ideology. Her current research examines the problems faced by incarcerated women and their children.

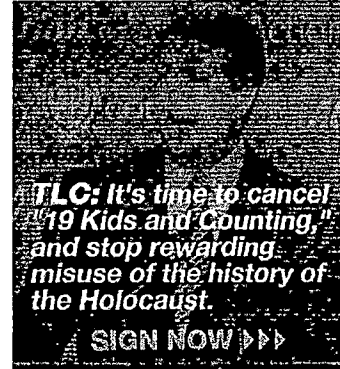
.....

ANALYSIS: LAW AND POLICY**Murder by Nursing?**

by Emily Horowitz, St. Francis College
February 21, 2012 - 6:57 am

Stephanie Greene is being charged with murder. Her crime? Breastfeeding her newborn.

.....



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Opponents of #TX omnibus #antichoice law went to court Monday in effort to block 2 tenets of #HB2 [ow.ly/q4j0a](#)

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Study: Breast may be best, but buying breast milk on the Internet is risky [ow.ly/q4mU9](#) #maternity #motherhood

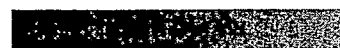
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RT @Care2: Could a Woman in the U.S. Be Forced to Give Birth on the Hospital Lawn? The idea is horrifying — [bit.ly/1726nYc](#)



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Contraception Extremism and the Right-Wing Bubble by Amanda Marcotte



Should a 13-Year-Old and Her 12-Year-Old Partner Really Be Considered Sex Offenders? by Maria Kempner



On First Day of Texas Abortion Law Trial, State Asserts Interest in Protecting 'Unborn' by Andrea Grimes



Corporations Claiming 'Religious Liberty' Try to Infringe on Their Employees' Religious Liberty by Imani Gandy

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AGENCY I.D.
C-0421000

INCIDENT REPORT
Landrum Police Department

EXHIBIT 6

CASE NUMBER

NCIC

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. PDC (Drunk)		☒ YES ☐ NO	☐ YES ☐ NO	Parking Lot		☐ Individual
2. Child Neglect		☒ YES ☐ NO	☐ YES ☐ NO			☐ Business
		☐ YES ☐ NO	☐ YES ☐ NO			☐ Financial Inst.
						☐ Government
						☐ Relig. Org.
						☐ Other
						☐ Unknown
						☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE	
INCIDENT DATE				24 HR CLOCK		TO DATE	
11-19-01				1840		11-19-01	
DISPATCH DATE/TIME 24 HR CLOCK				DISPATCH TIME		TIME ARRIVED	
11-19-01				1840			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	
RACE				SEX		AGE	
ETH.				DAYTIME PHONE		EVENING PHONE	

CITY				STATE		ZIP CODE		LOCATION NO.	

VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -				VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO UNK ☐ DRUGS ☐ YES ☐ NO UNK ☐				TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐				ALONE ☐ ASSISTED ☐				J - This Jurisdiction S - State O - Out of State U - Unknown											
SUBJECT				NAME (LAST, FIRST, MIDDLE)				RACE				SEX		AGE		ETH.		DATE OF BIRTH		HEIGHT		WEIGHT		HAIR		EYES	
				Neet, Stephanie, Irene				W				F		27		N				5-04		102		BRN		Hdz	
				FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																							
				ADDRESS				CITY				STATE		ZIP CODE		LOCATION NO.											
				400 N. Trade Ave				Landrum				SC		29356		520											
				SUBJECT (NO. 1) USING: ALCOHOL ☒ YES ☐ NO ☐ UNK ☐				ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐				DATE/TIME OF OFFENSE				DATE/TIME OF ARREST											
				DRUGS: ☒ YES ☐ NO ☐ UNK ☐				TOTAL # ARRESTED																			

ON ABOVE DATE & TIME R/O and Cpt. Stelant received A CALL of an intoxicated female and two small children in parking lot of the Bibo Hwy 14. When we arrived observed above subject pushing victims 2 & 3 in a shopping cart across parking lot toward Landrum. Subject was grossly intoxicated and unable to give officers any information. R/O was familiar with subject from prior calls. Victims was subject's son and daughter. Subject was in her pajamas and both children in short sleeve shirts the youngest being without shoes. Subject

TYPE (GROUP)		STOLEN		DAMAGED		BURNED		RECOVERED		SEIZED	
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER		☐ JUVENILE - NO CUSTODY	
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER	
K. M. Turner		11-19-01		526		005					

AGENCY I.D.
2-0421000

SUPPLEMENTARY REPORT
Landrum Police Department

CASE NUMBER

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE _____ of _____ PAGES.

Vehicle was found on the east side of the parking lot in exit lane locked with headlights left on. After subject was placed into Police Vehicle she stated she needed to go pick-up her kids. Subject has been investigated by DSS prior to this incident. Both children were taken into protective custody by this Department and transported to children's shelter in Gaffney. Vehicle was towed by McInters towing. ~~Vehicle~~ Subject was transported to 5136 Co. Jail.

NARRATIVE

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SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER					
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH				2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S) K. M. Turner				DATE 11-19-01		UNIT NUMBER 5261006		APPROVING OFFICER: OFFICER		DATE	
						FOLLOW-UP INVESTIGATION		☐ YES ☐ NO		UNIT NUMBER	

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758 (A)(B)
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
v.)
STEPHANIE IRENE GREENE,)
_____)

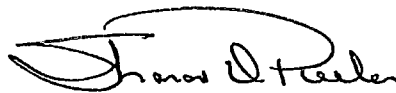
AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL
BY INTERNET and/or U.S. MAIL

PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 9th day of October, 2013 served additional discovery containing:
02.0755 (3 pages) 03.1967 (3 pages) 03.4183 (3 pages)

in the above-captioned matter on the following person(s) by sending same via internet email to:

C. Rauch Wise, Esquire
rauch@simplepc.net



SHARON O. PEELER

SWORN to before me this 9th
day of October, 2013.

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 4-23-19

M. HOPE BLACKLEY
2013 OCT 10 AM 11:02
SPARTANBURG COUNTY
CLERK OF COURT
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SCANNED

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

October 9, 2013

M. Hope Blackley
Spartanburg Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

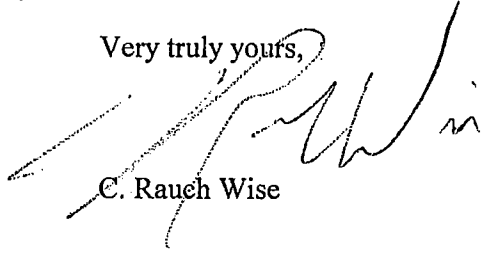
Re: State vs. Stephanie Irene Greene, 2011-GS-42-5009 to 11-GS-42-5046

Dear Ms. Blackley:

I am enclosing herewith for filing the original and two (2) copies of the Motion to Quash Indictments regarding the above matter. I would appreciate your returning a clocked copy to my office in the enclosed self-addressed envelope. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,


C. Rauch Wise

CRW/slt
Enclosure

cc Barry Barnette, Solicitor 7th Judicial Circuit

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2013 OCT 14 AM 9:31
M. HOPE BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
)
-vs)
)
Stephanie Irene Greene,)
)
)
Defendant.)

Motion to Quash Indictments

11-GS-42-5009 to 11-GS-42-5046

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE take notice that Stephanie Irene Greene, the Defendant above named, will move before the Presiding Judge for the Court of General Sessions for Spartanburg County as soon thereafter as counsel may be heard, for an order quashing the indictment in this matter.

This Motion is based upon the fact that the indictment is overly broad and vague in violation of the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of the United States of America and the right of the Defendant under Article I, § 14 of the Constitution of the State of South Carolina "to be fully informed of the nature and cause of the accusation" against her. These Constitutional violations occur in the following particulars:

1. The indictments in this matter fails to give the Defendant adequate notice as to what act of fraud she allegedly committed to violate S. C. Code § 44-53-390.

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M. HOPPE-BLACKLEY

SCANNED

2. The indictment in this matter fails to give the Defendant adequate notice as to whom she committed fraud against so as to violate S. C. Code § 44-53-390.

Oct 9th, 2013



C. RAUCH WISE
305 Main Street.
Greenwood, SC 29646
(864) 229-5010
S. C. Bar No 06188
rauch@simplepc.net
Attorney of Stephanie Irene Greene

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#2

SUBPOENA IN A CRIMINAL CASE

APPROVED
OF
SERVICE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY SPARTANBURG
THE STATE OF SOUTH CAROLINA		CASE NO. M127173; 175-216 2011-GS-42-5011-46; 2011-GS-42-5758
V.		SUBPOENA FOR
STEPHANIE IRENE GREENE		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
TO: 		
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE	COURTROOM	
180 Magnolia Street, 2 nd Floor Spartanburg, South Carolina 29306	To Be Determined	
	DATE AND TIME	
	Monday, October 14, 2013 @ 9:00 a.m. until excused by the Court	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S)		
DATE OF INCIDENT: November 13, 2011 LOCATION: 		
SCSO CASE NO: 2011010502 SLED LAB NO.: L10-12917 AUTOPSY NO(S): FA-10-212		
CORONER'S CASE NO.: C-10-068 DHEC CASE NO.: 211533 VICTIM 		
Please contact Investigator Rick Gregory or Solicitor Barry Barnette and confirm receipt of subpoena and provide a contact number for court purposes and case updates		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT	DATE	
	09/04/2013	
(BY) DEPUTY CLERK	FILED CLERK OF COURT SPARTANBURG COUNTY 2013 OCT 11 PM 4:14 McHOPE BLACKLEY	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED)	
☒ SOLICITOR ☐ DEFENDANT	BARRY J. BARNETTE, SOLICITOR SEVENTH JUDICIAL CIRCUIT SPARTANBURG CO. COURTHOUSE 180 MAGNOLIA STREET, THIRD FLR. SPARTANBURG, SC 29306 (864) 596-2575	

PROOF OF SERVICE

SERVED	DATE 9-10-13	PLACE 133 N Howard St. Columbus SC
SERVED ON (PRINT NAME) [REDACTED]		MANNER OF SERVICE Personal
SERVED BY (PRINT NAME) Rick Gregory		TITLE Investigator

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on
9-10-13

Rick Gregory
SIGNATURE OF SERVER

Self
ADDRESS OF SERVER

SUBPOENA IN A CRIMINAL CASE

AFFIDAVIT
OF
SERVICE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY SPARTANBURG
THE STATE OF SOUTH CAROLINA		CASE NO. M127173; 175-216 2011-GS-42-5011-46; 2011-GS-42-5758
V.		SUBPOENA FOR
STEPHANIE IRENE GREENE		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
TO: [REDACTED]		
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE	COURTROOM	
180 Magnolia Street, 2 nd Floor Spartanburg, South Carolina 29306	To Be Determined	
	DATE AND TIME	
	Monday, October 14, 2013 @ 9:00 a.m. until excused by the Court	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S)		
DATE OF INCIDENT: November 13, 2011 LOCATION: [REDACTED]		
SCSO CASE NO: 2011010502 SLED LAB NO.: L10-12917 AUTOPSY NO(S): FA-10-212		
CORONER'S CASE NO.: C-10-068 DHEC CASE NO.: 211533 VICTIM: [REDACTED]		
Please contact Investigator Rick Gregory or Solicitor Barry Barnette and confirm receipt of subpoena and provide a contact number for court purposes and case updates		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT	DATE	
<i>McHye Blackley</i>	09/09/2013	
(BY) DEPUTY CLERK	FILED CLERK OF COURT SPARTANBURG COUNTY 13 OCT 11 PM 4:17 M. HOPE BLACKLEY	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED)	
☒ SOLICITOR ☐ DEFENDANT	BARRY J. BARNETTE, SOLICITOR SEVENTH JUDICIAL CIRCUIT SPARTANBURG CO. COURTHOUSE 180 MAGNOLIA STREET, THIRD FLR. SPARTANBURG, SC 29306 (864) 596-2575	

PROOF OF SERVICE

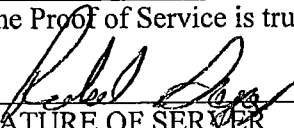
SERVED	DATE 9-10-13	PLACE 541 Floyd Rd Sptbg Sc
SERVED ON (PRINT NAME)		MANNER OF SERVICE Personal
SEE		TITLE Duo

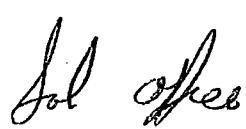
DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on

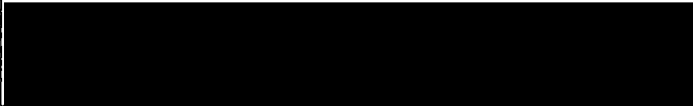
9-10-13


SIGNATURE OF SERVER


ADDRESS OF SERVER

SUBPOENA IN A CRIMINAL CASE

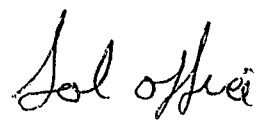
ATTACHMENT
OF
SERVICE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY SPARTANBURG
THE STATE OF SOUTH CAROLINA		CASE NO. M127173; 175-216 2011-GS-42-5011-46; 2011-GS-42-5758
V.		SUBPOENA FOR
STEPHANIE IRENE GREENE		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
TO:		
		
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE	COURTROOM	
180 Magnolia Street, 2 nd Floor Spartanburg, South Carolina 29306	To Be Determined	
	DATE AND TIME	
	Monday, October 14, 2013 @ 9:00 a.m. until excused by the Court	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).		
LIST DOCUMENT(S) OR OBJECT(S)		
DATE OF INCIDENT: November 13, 2011 LOCATION: 		
SCSO CASE NO: 2011010502 SLED LAB NO.: L10-12917 AUTOPSY NO(S): FA-10-212		
CORONER'S CASE NO.: C-10-068 DHEC CASE NO.: 211533 VICTIM: 		
Please contact Investigator Rick Gregory or Solicitor Barry Barnette and confirm receipt of subpoena and provide a contact number for court purposes and case updates		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT	DATE	
	09/04/2013 PM 4:17	
(BY) DEPUTY CLERK	FILED CLERK OF COURT SPARTANBURG COUNTY	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED)	
☒ SOLICITOR ☐ DEFENDANT	BARRY J. BARNETTE, SOLICITOR SEVENTH JUDICIAL CIRCUIT SPARTANBURG CO. COURTHOUSE 180 MAGNOLIA STREET, THIRD FLR. SPARTANBURG, SC 29306 (864) 596-2575	

PROOF OF SERVICE

SERVED	DATE 9.10.13	PLACE 1670 Skyleson Dr Spots SC
SERVED ON (PRINT NAME) [REDACTED]		MANNER OF SERVICE Personal
SERVED BY (PRINT NAME) Tom Smith		TITLE Law

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.	
Executed on 9.10.13	 SIGNATURE OF SERVER
	 ADDRESS OF SERVER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
 SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
)
)
)

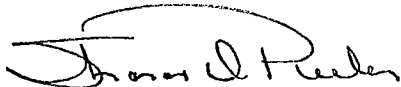
AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL
BY MAIL

PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

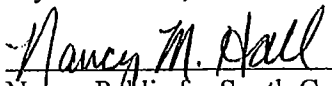
1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 7th day of October, 2013 served additional discovery containing:
07/05/11 Statement from [REDACTED] (1 page)
07/05/11 Statement from [REDACTED] (1 page)

in the above-captioned matter on the following person(s) by sending same via internet email to:

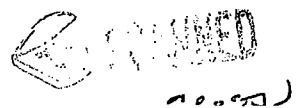
C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 7th
day of October, 2013.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-9-2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -7 AM 9:58
M. HOPE BLACKLEY



IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

VS.

**NOTICE OF USE OF PRIOR RECORD
UNDER RULE 609 OF S.C.R.E.**

Indictment Nos.: 11-GS-42-5011 thru
11-GS-42-5046 and 11-GS-42-5758

YOU WILL PLEASE TAKE NOTICE that the State pursuant to Rule 609 of the South Carolina Rules of Evidence will for the purpose of impeachment of the Defendant by evidence of a conviction of a crime intends to use the Defendant's convictions from more than ten (10) years old. The State believes that in the interests of justice that the probative value of the convictions for Obtaining Prescriptions or Drugs by Fraud (Crime of Dishonesty), Unlawful Neglect of Person, and other convictions listed on her NCIC sheet supported by specific facts and circumstances substantially outweighs its prejudice effect. This Notice is to notify the Defendant that the State intends to use these prior convictions.

Randy Barnett

Barry J. Barnette
Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306
(864)-596-2575

September 19, 2013
Spartanburg, South Carolina

h Carolina
M. HOPE BLACKLEY

2013 SEP 19 AM 11:03

FILED
CLERK OF COURT
SPARTANBURG COUNTY

ad

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

V.)

STEPHANIE IRENE GREENE,)

DEFENDANT)

**NOTICE OF MOTION AND MOTION OF
BOND REVOCATION**

WARRANT(S): M127175-79; M127182-99;
M127200-07; M127209; M127211-16
INDICTMENT(S): 2011-GS-42-5011-5046
2011-GS-42-5758

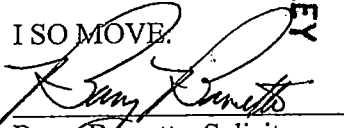
TO: THE DEFENDANT AND HER ATTORNEY, RAUCH WISE:

YOU WILL PLEASE TAKE NOTICE that on the 8th day of July, 2013 at 9AM or as soon thereafter as it may be heard, the State of South Carolina, through its undersigned attorney, will move before the Presiding Judge for the Court of General Sessions for Spartanburg County, for an order revoking the bond set for the said Defendant on the above-enumerated charges, at a hearing at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina.

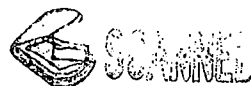
The State of South Carolina hereby moves this Court for an order revoking the current bond of the above-named defendant. This motion is made pursuant to Sections 17-15-40 and 17-15-50, Code of Laws of South Carolina (1976), as amended. The State alleges that the above-named Defendant has violated the good behavior provision of her bond and presents a danger to the community in which she resides for the following reasons:

- 1.) The Defendant was arrested on June 24, 2011 on charges of Homicide by Child Abuse and Violation of the Drug Distribution Law (multiple) under the above-referenced warrants. The Defendant was granted a \$100,000 surety bond on July 20, 2011.
- 2.) The Defendant was arrested on July 6, 2013 on the charge of Criminal Domestic Violence (Warrant 2013A4210202321) against a family member who resides at the home address with the Defendant.
- 3.) The Defendant's continued criminal activities make her a threat to the community, her family, and herself.
- 4.) The Defendant's subsequent arrest is in violation of the terms of her bond.
- 5.) The penalties that the Defendant is facing for all of the above-referenced charges make her a flight risk.

I SO MOVE.


Barry Barnette, Solicitor
Seventh Judicial Circuit

July ____, 2013
Spartanburg, SC



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL -8 PM 8:47
M. HOPE BLACKLEY





M Hope Blackley

Clerk of Court

Spartanburg County

180 Magnolia Street, P O Box 3483
Spartanburg, SC 29304

Gail Moffitt

Assistant Clerk of
Court

Telephone
(864) 596-2591

Fax Number
(864) 596-2259

September 16, 2013

Bondsman
Anne T Greene
908 Brentwood Drive
Spartanburg, SC 29302

def
RE: The State of South Carolina VS Stephanie Irene Greene M127173

Dear Anne T Greene:

The above Defendant must attend General Sessions Court for Trial Week of October 14, 2013 at 9:00 AM in the West Courtroom at the Spartanburg County Courthouse. The defendant(s) must also report each day thereafter until excused by the Clerk of Court.

As the Surety Bondsman in this case, it is your responsibility to have this Defendant(s) report and remain in the courtroom at the designated time.

If this Defendant(s) fails to report and remain in the courtroom, then a Bench Warrant will be sought and estreatment proceedings considered for the bond. A trial may be held in the absence of the defendant appearing for court.

Thank you for your cooperation.

Sincerely,

Lynn Byars

GS Docket Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NOS.: 11-GS-42-5010 thru
11-GS-42-5046 and 11-GS-42-5758

The State of South Carolina,)
vs.)
Stephanie Irene Greene,)
Defendant.)

**STATE'S RETURN TO DEFENDANT'S
MOTION TO QUASH INDICMENT**

TO: THE DEFENDANT AND HER ATTORNEY, C. RAUCH WISE, ESQUIRE

The State in response to the Defendant's Motion to Quash Indictment would ask that the Court deny the Motion based on the following:

In State v. Gentry, 610 S.E.2d 494, 363 S.C. 93 (2005), our South Carolina Supreme Court held that, "[t]he indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17-19-90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. See State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003); see also S.C.Code Ann. § 17-19-20 (2003) (sufficiency of indictment).

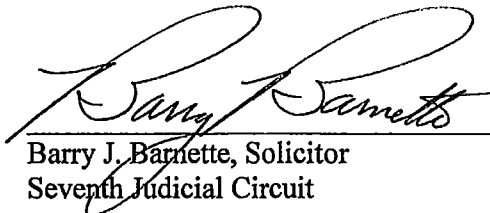
In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. State v.

SCANNED

Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). Further, whether the indictment could be more definite or certain is irrelevant. State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003).

The indictment in this case follows the law stated in Section 17-19-20 of the South Carolina Code of Laws. Section 17-19-20 states, "[e]very indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided." The State has complied with the statute in all of the indictments against this defendant and given proper notice of all charges.

The defendant has received his discovery materials in this case. The State has complied with everything that is required by current case law and statutory law in our state. The State would ask this Court to deny the Defendant's Motion to Quash.


Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
February 28, 2013

FILED
SPARTANBURG
2013 FEB 28 AM 10:49
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

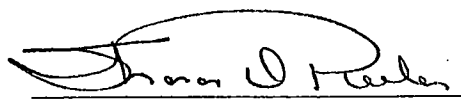
THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
_____)

**AFFIDAVIT OF SERVICE
BY INTERNET EMAIL**

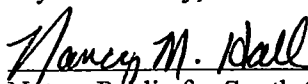
PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 28th day of February, 2013 served a copy of the State's Return to Defendant's Motion to Quash Indictment, in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid and/or via internet e-mail.

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 28th
day of February, 2013.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-9-2013

M. HOPE BLACKLEY
2013 FEB 28 PM 12:37
FILED
CLERK OF COURT
SPARTANBURG COUNTY

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

January 30, 2013

M. Hope Blackley
Spartanburg Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304

Re: State vs. Stephanie Irene Greene, 2011-GS-42-5758

Dear Ms. Blackley:

I am enclosing herewith for filing the original and two (2) copies of the Motion to Quash Indictment regarding the above matter. I would appreciate your returning a clocked copy to my office in the enclosed self-addressed envelope. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

C. Rauch Wise

CRW/slt
Enclosure

M. HOPE BLACKLEY
2013 FEB -4 AM 11:44

FILED
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
-vs)
)
Stephanie Irene Greene,)
)
Defendant.)

Motion to Quash Indictment

11-GS-42-5758

2013
M.H.
11:11:41

TO: Barry Barnette, Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE take notice that Stephanie Irene Greene, the Defendant
above named, will move before the Presiding Judge for the Court of General Sessions for
Spartanburg County ten days after the service of this motion or as soon thereafter as counsel may
be heard, for an order quashing the indictment in this matter.

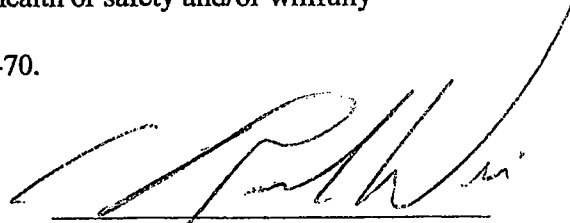
This Motion is based upon the fact that the indictment is overly broad and vague
in violation of the due process clause of Article I, § 3 of the Constitution of the State of South
Carolina and the Fourteenth Amendment to the Constitution of the United States of America in
the following particulars:

- CW
#1
1. The indictment in this matter fails to give the Defendant adequate notice as to what act
of commission or omission she allegedly committed to violate S. C. Code § 16-3-85(A)(1).
 2. The indictment in this matter fails to give the Defendant adequate notice as to what act
of commission or omission she allegedly committed to violate S. C. Code § 16-3-60.
 3. The indictment in this matter fails to give the Defendant adequate notice as to what act
of commission or omission she allegedly committed to place her daughter in unreasonable risk of

SCANNED

harm so as to affect the child's life, physical or mental health or safety and/or willfully
abandoning the child so as to violate S. C. Code § 63-5-70.

January 30th, 2013



C. RAUCH WISE
305 Main Street.
Greenwood, SC 29646
(864) 229-5010
S. C. Bar № 06188
rauch@simplepc.net
Attorney of Stephanie Irene Greene

#2

2013 FEB -4 AM 11:44
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

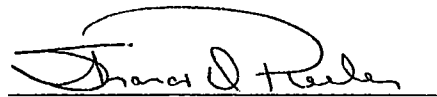
THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
_____)

AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL
BY MAIL

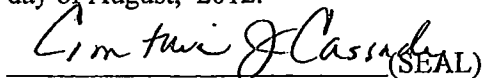
PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 31st day of August, 2012 served a copy of the disc from SLED containing Toxicology Files, in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid.

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646


SHARON O. PEELER

SWORN to before me this 31st
day of August, 2012.

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 1/26/2015

M. HOPE BLACKLEY

2012 SEP -4 PM 2:46

FILED
CLERK OF COURT
SPARTANBURG COUNTY

W

Moffitt, Gail

From: Cole, J. Derham Secretary (Teresa Johnson) [JColeSC@sccourts.org]
Sent: Monday, May 07, 2012 4:26 PM
To: Moffitt, Gail
Subject: FW: Emailing: Order.Autopsy Slides.Stephanie Greene 001.jpg
Attachments: Order.Autopsy Slides.Stephanie Greene 001.jpg

Gail,
Here Is a copy for you to keep.
Terrie

-----Original Message-----

From: Cole, J. Derham Secretary (Teresa Johnson)
Sent: Monday, May 07, 2012 3:10 PM
To: 'rauch@simplepc.net'; 'rdeming@srhs.com'; Barnette, Barry;
'rclevenger@spartanburgcounty.org'
Subject: Emailing: Order.Autopsy Slides.Stephanie Greene 001.jpg

Sending scanned copy of Order as to Autopsy Slides for 2011-GS42-5758 A & B, 2011-GS42-05009-05046

C. Rauch Wise, Attorney for Defendant - Stephanie Irene Greene Barry Barnette, Solicitor,
Seventh Judicial Circuit Dr. David Wrenn, SRMC (sent to Robin Deming, Legal Dept.) Rusty
Clevenger, Coroner, Spartanburg County

[REDACTED] via US MAIL

Your message is ready to be sent with the following file or link attachments:

Order.Autopsy Slides.Stephanie Greene 001.jpg

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

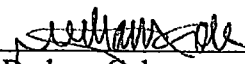
The State,)
)
)
-vs-)
Stephanie Irene Greene,)
)
Defendant.)

Order as to Autopsy Slides
11-GS-42-5758, A & B,
11-GS-42-05009 - 05046

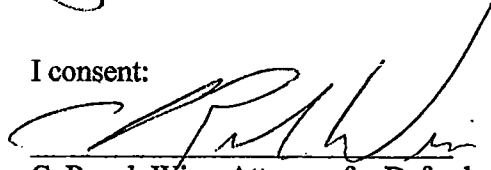
This matter comes before me by this consent order to have Dr. Steven Karch examine the autopsy slides used by Dr. David Wrenn in his examination in this matter. The parties have agreed that the autopsy slides used by Dr. Wrenn will be sent to Dr. Steven Karch by either Federal Express or United Parcel Service by overnight delivery. The slides are to be sent to Dr. Steven B. Karch [REDACTED] the slides shall be sealed and initialed by Rusty Clevenger, the coroner for Spartanburg County or a person designated by him.

Upon completion of the examination, Dr. Karch shall return the slides to Rusty Clevenger at Spartanburg County Coroner's Office, 366 North Church St., Suite 1700 Spartanburg, SC 29303.

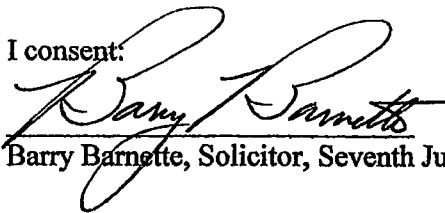
May 7, 2012


J. Derham Cole
Judge,
Seventh Judicial Circuit

I consent:


C. Rauch Wise, Attorney for Defendant

I consent:


Barry Barnette, Solicitor, Seventh Judicial Circuit

2012 MAY -7 PM 2:11
N. ADP BLANKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY

Message Confirmation Report

Date/Time : MAY-07-2012 02:59PM MON
Fax Number : 8645963592
Fax Name : JUDGE COLE
Model Name : 1815dn

No.	Name/Number	StartTime	Time	Mode	Page	Result
038	918642292665	05-07 02:57PM	00'47	ECM	002/002	O.K

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenville, SC 29615
crauch@comcast.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

May 1, 2012

Barry Barnett
Solicitor's Office
Spartanburg County Courthouse
180 Magnolia St.
Spartanburg, SC 29306

Re: State vs. Stephanie Greene

Dear Barry:

Enclosed herewith is the original Order as to Autopsy Slides concerning the above referenced matter. Please sign and forward to Judge Cole.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

C. Rauch Wise

CRW/njh

Message Confirmation Report

Date/Time : MAY-07-2012 02:59PM MON
 Fax Number : 8645963592
 Fax Name : JUDGE COLE
 Model Name : 1815dn

No.	Name/Number	StartTime	Time	Mode	Page	Result
039	95962386	05-07 02:59PM	00' 11	ECM	001/001	O.K

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
)
 The State,)
)
 -vs-) Order as to Autopsy Slides
) 11-QS-42-5758, A & B.
 Stephanie Irene Greene,) 11-QS-42-05009 - 05046
)
 Defendant.)

This matter comes before me by this consent order to have Dr. Steven Karch examine the autopsy slides used by Dr. David Wrenn in his examination in this matter. The parties have agreed that the autopsy slides used by Dr. Wrenn will be sent to Dr. Steven Karch by either Federal Express or United Parcel Service by overnight delivery. The slides are to be sent to Dr. Steven B. Karch [REDACTED] The slides shall be sealed and initialed by Rusty Clevenger, the coroner for Spartanburg County or a person designated by him.

Upon completion of the examination, Dr. Karch shall return the slides to Rusty Clevenger at Spartanburg County Coroner's Office, 366 North Church St., Suite 1700 Spartanburg, SC 29303.

MAY 7, 2012

I consent:

C. Rauch Wise, Attorney for Defendant

I consent:

Barry Bannette, Solicitor, Seventh Judicial Circuit

J. Durham Cole
 Judge,
 Seventh Judicial Circuit

2012 MAY -7 PM 2:11
 N. HUPF BLANK L /

Cole, J. Derham Secretary (Teresa Johnson)

From: Cole, J. Derham Secretary (Teresa Johnson)
Sent: Monday, May 07, 2012 3:10 PM
To: 'rauch@simplepc.net'; 'rdeming@srhs.com'; Barnette, Barry;
'rclevenger@spartanburgcounty.org'
Subject: Emailing: Order.Autopsy Slides.Stephanie Greene 001.jpg
Attachments: Order.Autopsy Slides.Stephanie Greene 001.jpg

Sending scanned copy of Order as to Autopsy Slides for 2011-GS42-5758 A & B, 2011-GS42-05009-05046

C. Rauch Wise, Attorney for Defendant - Stephanie Irene Greene Barry Barnette, Solicitor, Seventh Judicial Circuit Dr.
David Wrenn, SRMC (sent to Robin Deming, Legal Dept.) Rusty Clevenger, Coroner, Spartanburg County

[REDACTED] 3 via US MAIL

Your message is ready to be sent with the following file or link attachments:

Order.Autopsy Slides.Stephanie Greene 001.jpg

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

The State,

-vs-

Stephanie Irene Greene,

Defendant.

Order as to Autopsy Slides
11-GS-42-5758, A & B,
11-GS-42-05009 - 05046

This matter comes before me by this consent order to have Dr. Steven Karch examine the autopsy slides used by Dr. David Wrenn in his examination in this matter. The parties have agreed that the autopsy slides used by Dr. Wrenn will be sent to Dr. Steven Karch by either Federal Express or United Parcel Service by overnight delivery. The slides are to be sent to Dr. Steven B. Karch, [REDACTED] The slides shall be sealed and initialed by Rusty Clevenger, the coroner for Spartanburg County or a person designated by him.

Upon completion of the examination, Dr. Karch shall return the slides to Rusty Clevenger at Spartanburg County Coroner's Office, 366 North Church St., Suite 1700 Spartanburg, SC 29303.

May 7, 2012

I consent:

C. Rauch Wise, Attorney for Defendant

I consent:

Barry Barnette, Solicitor, Seventh Judicial Circuit

J. Derham Cole
Judge,
Seventh Judicial Circuit

M. HOPE BLANKLEY

2012 MAY -7 PM 2:11

CLERK OF COURT
SPARTANBURG COUNTY

E-4) NO FACSIMILE CONNECTION
E-2) BUSY
E-3) NO ANSWER

REASON FOR ERROR OR
HANG UP OR
LINE FAIL

Coroner's office

244 MEMORY TX

95962367

OK

1/1

TRANSMITTED/STORED : MAY 7 2012 3:32PM
FILE MODE OPTION

ADDRESS

RESULT

PAGE

FAX HEADER: 123

COMMUNICATION RESULT REPORT (MAY. 7. 2012 3:33PM) * * *

1033

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
V.) REQUEST FOR DISCOVERY
(Reciprocal Rule 5)
STEPHANIE IRENE GREENE,) Warrant(s): M127173; M127175-179; M127182-207;
DEFENDANT.) M127209; M127211-216

TO THE DEFENDANT AND HER ATTORNEY, DAVID G. INGALLS:

PURSUANT to the South Carolina Rules of Civil Procedure, the State in the above-captioned matter, requests the disclosure of all evidence by the Defendant to the State that is required by Rule Five (5) of the Rules of Criminal Procedure, including but not limited to the following items:

- (1) That the Defendant notify the State of and permit the State to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the Possession, custody or control of the Defendant, the Defendant's witnesses, or her attorney and which the Defendant intends to use as evidence;
- (2) That the Defendant notify the State of and permit the State to inspect and copy and results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody or control of the Defendant, Defendant's witnesses, or her attorney, which the Defendant intends to use as evidence or when the results or reports relate to her testimony.
- (3) The prosecution requests that the Defendant serve upon the prosecution a written notice if she intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on the dates of 11/13/2009 and 04/24/09 - 12/29/2010 and the names, addresses and birthdays of the witnesses upon whom she intends to rely to establish such an alibi.
- (4) That any and all evidence is available for viewing at the arresting agency or the South Carolina Law Enforcement Division.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or to enter a plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.

Barry J. Barnette
Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
August 3, 2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG -4 AM 9:27
J. ROPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS:
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
_____)

**AFFIDAVIT OF SERVICE
DISCOVERY MATERIAL**

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that she copied/served the following materials on the defense:

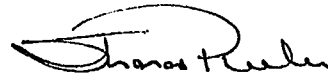
One (1) CD containing INITIAL DISCOVERY dated 07/25/2011, 07/27/2011 and 08/03/2011 consisting of:

Arrest Warrants (Dated 07/25/11 - 39 pages)
DHEC Case File (Dated 07/25/11 - 210 pages)
Coroner's Report & Autopsy (Dated 07/25/11 - 373 pages)
Crime Scene & Autopsy Photos (Dated 07/25/11 - 62 pages)
Bond Sheet (Dated 07/27/11 - 9 pages)
Defendant's Criminal History (Dated 08/03/11 - 12 pages)
Sheriff's Office Case File (Dated 08/03/11 - 671 pages)
State Board Nursing Consent Agreement (Dated 07/25/11 - 4 pages)
Jail Calls (Folder- Audio)
Stephanie Greene Interview (Audio)
Stephanie Greene Interview 2 (Audio)

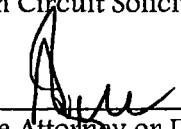
Total pages: 1,380

I, David G. Ingalls, attorney for the defendant(s) or his/her designee, have reviewed copies of the above-referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

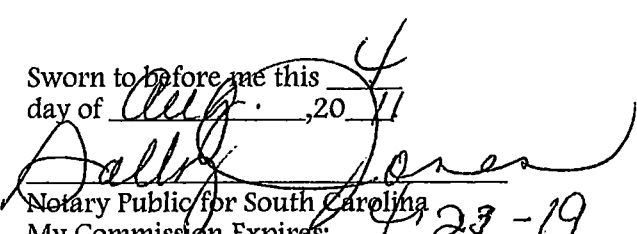
FILED
CLERK OF COURT
2011 AUG -5 AM 9:33
M. HOPE BLACKLEY



Seventh Circuit Solicitor's Office


Defense Attorney or Designee

Sworn to before me this
day of Aug, 2011


Notary Public for South Carolina
My Commission Expires: 6-23-19

* picked up 8/4/11
JAC

m

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

July 8, 2011

HAND DELIVERED

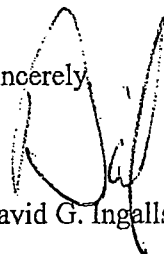
Barry Barnette,
7th Judicial Circuit Solicitor
County Courthouse, 3rd Floor
180 Magnolia St.
Spartanburg, SC 29306

SUBJECT: State v. Greene M-127173 et. al.

Dear Barry,

Enclosed please find copies of Defendant Stephanie I. Greene's Motion for a Bond Hearing and Brady Motion. Andy McKee and I will be representing Mrs. Greene in a limited initial capacity, in order to seek a hearing to set bond and for a Brady Motion. Please contact me at the above number if you have any questions.

Sincerely,


David G. Ingalls

RECEIVED
CLERK OF COURT
SPARTANBURG, SC
2011 JUL -8 PM 3:20
M. HOPE BLADALEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

The State of South Carolina

Plaintiff,

v.

Stephanie Irene Greene,

Defendant.

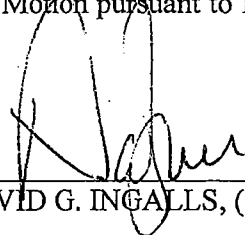
) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)
)

CASE NUMBERS:

M127173, M127175-79, M127182-99,
M127200-07, M127209, M127211-16

MOTION FOR BOND HEARING

YOU WILL PLEASE TAKE NOTICE that the Defendant by and through her attorneys, David G. Ingalls and Paul A. McKee, III, will move before the Honorable J. Derham Cole within the next four (4) days or as soon thereafter as can be heard, for a hearing to set Bond for Defendant Stephanie Irene Greene. Please take notice that attorneys David G. Ingalls and Paul A. McKee, III shall represent Defendant Greene in a limited capacity, in order to and for the purposes of seeking a Bond Hearing and Brady Motion pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.


DAVID G. INGALLS, (SC Bar #2888)


PAUL A. MCKEE, III, (SC Bar #77926)
Attorneys for Defendant

409 Magnolia Street
PO Box 2196
Spartanburg, South Carolina 29304
(864)-573-5149 telephone
(864)-585-2744 facsimile

Date: July 8, 2011
Spartanburg, South Carolina

2011 JUL -8 PM 3:20
M. HOFER - CLERK

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The State of South Carolina

Plaintiff,

v.

Stephanie Irene Greene,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)

CASE NUMBERS:

M127173, M127175-79, M127182-99,
M127200-07, M127209, M127211-16

NOTICE OF BRADY MOTION AND
CRIMINAL PRACTICE RULE 5
REQUEST FOR DISCLOSURE

YOU WILL PLEASE TAKE NOTICE that the Defendant, above-named, by his undersigned attorneys, will move before the presiding judge, Court of General Sessions, Seventh Judicial Circuit, ten (10) days prior to the time and date set for trial; for information pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and information pursuant to General Sessions Court Criminal Practice Rule 5 on the belief of the attorneys for the defense that such information is important to the Defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now or has been or may come to the attention of the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady v. Maryland, 373 U. S. 83 (1963).

2. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person known to the Defendant to be a prosecution agent.

3. A copy of the Defendant's prior criminal record, if any, as is within the

possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

4. All books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or where obtained from or belong to the Defendant.

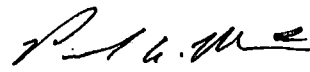
5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

6. All statements, oral or written, made by prosecution witnesses or prospective witnesses.

7. A certification from the State that the within Motion and Request has been complied with; and further a certification that any Court Order pertinent to the within Motion and Request has been complied with; and further that there is no information, either "material to the defense", or otherwise that has been kept from the defense; and further that the prosecution has not seen or known of any such information either in the custody of the prosecution or in the possession of any agent of the prosecution, police, or investigation agency; and transcripts of testimony of all fact witnesses before the Grand Jury.

CLERK OF COURT
SPRINGFIELD COUNTY
2011 JUL -8 PM 3:20
M. ROSE BLANKLEY


DAVID G. INGALLS, (SC Bar #2888)


PAUL A. MCKEE, III, (SC Bar #77926)
Attorneys for Defendant

409 Magnolia Street
PO Box 2196
Spartanburg, South Carolina 29304
(864)-573-5149 telephone
(864)-585-2744 facsimile

Date: July 8, 2011
Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG, SC
2011 JUL -8 PM 3:20
M. HOPE B. JACOBY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 2011-GS-42-5009-5046; 5758
WARRANT NOS: M127173; M127175-179;
M127182-207; M127209; M127211-216

THE STATE OF SOUTH CAROLINA)
)
v.)
)
STEPHANIE IRENE GREENE,)
_____)

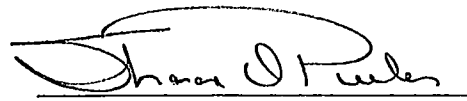
**AFFIDAVIT OF SERVICE
BY INTERNET EMAIL**

PERSONALLY appeared before me Sharon O. Peeler, who being duly sworn, states:

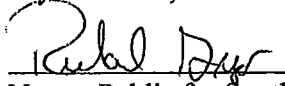
1. That I am employed by the Seventh Circuit Solicitor's Office, Spartanburg, South Carolina.
2. That regular communication by United States mail and/or e-mail via internet service exists throughout the State of South Carolina and beyond, and that this is a proper circumstance of service by mail and/or e-mail.
3. That I have this 27th day of March, 2014 served a copy of :
Drug Disbursement Chart from DHEC (12 pages)

in the above-captioned matter on the following person(s) by sending same via internet email
to:

C. Rauch Wise, Esquire
rauch@simplepc.net


SHARON O. PEELER

SWORN to before me this 27th
day of March, 2014.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: Aug 23, 2014

2014 MAR 28 AM 10:07
M. HOPE BLACKLEY

FILED
10:10 AM
MAR 28 2014

SCANNED

11 112 11 15; 11 112 11 15-14;
M127182-99, M127200-07
M127209, M127211-16
Criminal Charging Document No.

**BAIL PROCEEDING
FORM II**

STATE OF SOUTH CAROLINA
COUNTY OF Spkbg

IN THE ☒ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Stephanie Irene Greene
NAME OF DEFENDANT

Offense Charged: Homicide by Child Abuse, Viol. Drug Distribution
Laws X 38

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

GPS & SCRAM

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
- That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond; deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of 100,000.

- That the defendant shall appear at (check one):

☐ the term of _____ COURT OF GENERAL SESSIONS beginning on _____
at _____ o'clock, _____ M, at 180 Magnolia St. County Courthouse
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____
at _____ o'clock, _____ M, at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

- That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

Cole (Kw)
SIGNATURE OF JUDGE

7-19-11
DATE

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

180 Kimbrell Loop
Caneblle SC 29322

ADDRESS

X Stephanie K Greene

SIGNATURE OF DEFENDANT

7-20-11

DATE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

Home Detention pursuant to the Solbg County Home Detention Program to include GPS & SCRAM monitoring. No change of address without prior court approval. No firearms in actual or constructive possession.

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____ AM/PM

on _____ on condition that he return to the custody of _____

DATE(S)

NAME OF PERSON OR ORGANIZATION

at _____ as designated.

LOCATION

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

No Contact with any child under 16 years of age unless supervised by a parent, grandparent or legal guardian.

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of July 2011, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of 100,000 such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY BONDSMAN

CITY/STATE/ZIP

NAME OF INSURANCE COMPANY

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

MESSAGE CONFIRMATION

07/19/2011 13:50
ID=SPTBG CO CLK OF CRT

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
07/19	00'20"	1 864 596 3423	TX	01	OK 0000

07/19/2011 13:48 SPTBG CO CLK OF CRT → 3423

NO.749 001

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

The **STATE**,

ORDER FOR BAIL - SURETY REQUIRED
With Special Conditions

-vs-

Warrant/Indictment Number(s)

Stephanie Irene **GREENE**,

M-127173, M-127175-79, M-127182-99,
M-127200-07, M-127209, and M-127211-16

DEFENDANT.

This matter was before this Court on the defendant's motion, by and through his/her attorney, **David G. Ingalls, Esq.** pursuant to *S. C. Code Ann. Section 17-15-10 et. seq.* for release on bail pending trial on the above-referenced charge(s). At a hearing held in this matter the State was represented by **Barry J. Barnette**, the Circuit Solicitor.

It appears that the defendant is being held in the County Detention Facility having been charged with the crime(s) of **Homicide by Child Abuse** and **Violation of Drug Statutes** (38 counts)

It further appears that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to the community will result.

Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, and the nature of the offense(s), the Court finds that the defendant is not a suitable candidate for release on bail pending trial.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The STATE,

-vs-

Stephanie Irene GREENE,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

**ORDER FOR BAIL - SURETY REQUIRED
With Special Conditions**

Warrant/Indictment Number(s)

M-127173, M-127175-79, M-127182-99,
M-127200-07, M-127209, and M-127211-16

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It further appears that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to the community will result.

Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, prior criminal history, any record of flight to avoid prosecution and any failure to appear at other court proceedings, this Court finds that the defendant's **motion** for release on bail pending trial should be and is therefore **granted**.

It is therefore ordered that the defendant shall be released from pre-trial detention upon the execution of an appearance bond, with surety, in the sum of **ONE HUNDRED THOUSAND** Dollars, (\$ **100,000**), to be signed by a licensed professional bondsman and/or other person(s) owning sufficient property to secure such sum and/or such other good and sufficient surety as approved by this Court, with such bond being returnable on demand to the Court of General Sessions for Spartanburg County, South Carolina.

IT IS ORDERED THAT the defendant's release shall, in addition to the usual and ordinary conditions of release, be subject to the following **special conditions**:

HOME DETENTION pursuant to the Spartanburg County Home Detention program to include **GPS** and **SCRAM** monitoring; **NO CHANGE OF ADDRESS** without prior court approval; **NO FIREARMS** in actual or constructive possession; **NO CONTACT** with any child under 16 years of age unless supervised by a parent, grand-parent or legal guardian.

IT IS SO ORDERED!

J. DERHAM COLE, Presiding Judge,
THE SEVENTH JUDICIAL CIRCUIT COURT

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The STATE,

-vs-

Stephanie Irene GREENE,

DEPENDANT.

IN THE COURT OF GENERAL SESSIONS

ORDER FOR BAIL - SURETY REQUIRED
With Special Conditions

Warrant/Indictment Number(s)

M-127173, M-127175-79, M-127182-99,
M-127200-07, M-127209, and M-127211-16

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It further appears that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to the community will result.

Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, prior criminal history, any record of flight to avoid prosecution and any failure to appear at other court proceedings, this Court finds that the defendant's **motion** for release on bail pending trial should be and is therefore **granted**.

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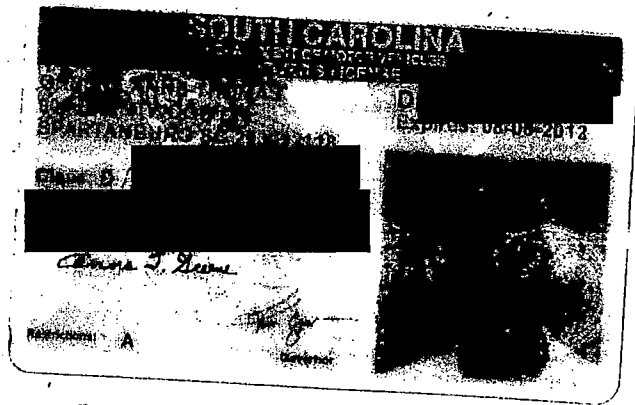
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IT IS SO ORDERED!

J. DERHAM COLE, Presiding Judge
THE SEVENTH JUDICIAL CIRCUIT COURT

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 FEB 19 AM 10:05
BLACKCL



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

)
) NOTICE OF PLEDGE OR AGREEMENT
) AFFECTING REAL ESTATE
)

TO: HOPE BLACKLEY, CLERK OF COURT OF SPARTANBURG COUNTY.

KNOW ALL MEN, by these presents that I, Anne T. Greene, as owner of the property described hereinbelow, do hereby pledge the below described real estate to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, as collateral for the approval of surety bonds for Stephanie Irene Greene. The surety bond is set in the amount of One Hundred Thousand and NO/100 Dollars (\$100,000.00).

See the attached legal description(s) in EXHIBIT 1.

In consideration for the issuance of approval of surety bonds to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, the undersigned does agree that said real estate will not be transferred, conveyed, or encumbered without notice to the said HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office.

This pledge shall remain in force and effect until canceled or released by instrument filed in the Register of Deeds for Spartanburg County.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 19th day of July, 2011.

IN THE PRESENCE OF

Randall T. Greene
Witness

Anne T. Greene
Anne T. Greene

Chandler N. Wilson
Witness

MTG-2011-25185
Recorded 5 Pages on 7/19/2011 3:02:50 PM
Recording Fee: \$11.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within name(s) Anne T. Greene sign, seal, and deliver the within Notice of Pledge of Real Estate; and that (s)he with other witness signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME THIS 19 day of July, 2011.

Rolfeith Payne, Jr. (SEAL)
Notary Public for South Carolina
My Commission Expires: July 24th, 2011

EXHIBIT 1
(Property Description)

All that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Spartanburg, located on the south side of Brentwood Drive and being shown and designated as Lot No. 23 in Block "D" on a plat of property of Brentwood, dated September 1946, made by W.N. Willis Engrs., recorded in Plat Book 21, at pages 180-182 in the Office of Register of Deeds for Spartanburg County, South Carolina.

Said lot has a frontage on Brentwood Drive of 100 feet with a western sideline of 155 feet, an eastern sideline of 155 feet, and a rear width of 100 feet. For a more detailed description, reference is hereby made to the plat above-referred to.

This being the same property conveyed to to Anne T. Greene by Deed of Distribution of Edward E. Greene recorded in the Office of Register of Deeds for Spartanburg County, South Carolina, on November 10, 2003 in Deed Book 79-B, Page 194. See Spartanburg County Probate Court Case Number 2003ES4201615.

Property Address: 908 Brentwood Dr., Spartanburg, South Carolina 29307
2011 Tax Map Number: 7-13-05-073.00

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

CERTIFICATE OF VALUE FOR BOND

This is to certify that the real estate designated as 908 Brentwood Dr., Spartanburg, South Carolina 29307, Tax Map Number 7-13-05-073.00, is vested in fee simple and is situate in the County of Spartanburg, State of South Carolina, the derivation of which is a Deed of Distribution from the Estate of Edward E. Greene to Anne T. Greene, recorded on November 10, 2003, in Deed Book 79-B, Page 194 in the Office of the Register of Deeds for Spartanburg County, State of South Carolina and is more particularly described in Deed attached and made a part hereto (see Exhibit A). (See In the Matter of Edward E. Greene, Spartanburg County Probate Court Case Number 2003ES4201615). The Certificate of Value for Bond is being issued so that Anne T. Greene may pledge the real estate described herein as collateral for a surety bond for Stephanie Irene Greene, who has been charged with Homicide by Child Abuse and Violation of Drug Statutes and perhaps other offenses, bond having been set at One Hundred Thousand and NO/100 Dollars (\$100,000.00), and this is to certify that after deducting the amount due under liens affecting the property and not including the value of any mobile home which may be situated on the property, that the value of the property is equal to at least One Hundred Thousand and NO/100 Dollars (\$100,000.00). The Spartanburg County Assessor's Office has estimated the total market value of this property to be One Hundred Twelve Thousand Five Hundred and NO/100 Dollars (\$112,500.00) per the 2011 public tax records.

This property is subject to an open-ended mortgage recorded in Real Estate Mortgage Book 3431, Page 895 in the Register of Deeds for Spartanburg County, South Carolina.

(Attorney Signature on next page)

This 19th day of July, 2011.



Paul A. McKee, III,
Attorney at Law, SC Bar # 77926

409 Magnolia Street
PO Box 2196
Spartanburg, South Carolina 29304-2196
(864)-573-5149 phone
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**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Stephanie Irene Greene, Appellant.

Appellate Case No. 2014-000764

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

Opinion No. 27802
Heard February 15, 2018 – Filed May 23, 2018

AFFIRMED IN PART, VACATED IN PART

C. Rauch Wise, of Greenwood, for Appellant.

Attorney General Alan Wilson and Senior Assistant
Attorney General David Spencer, both of Columbia, and
Seventh Judicial Circuit Solicitor Barry J. Barnette, of
Spartanburg, for Respondent.

JUSTICE KITTREDGE: Appellant Stephanie Irene Greene appeals her convictions and sentences for homicide by child abuse, involuntary manslaughter, and unlawful conduct toward a child for the death of her infant daughter, [REDACTED]. Appellant was sentenced to prison for twenty years for homicide by child abuse, five years concurrent for involuntary manslaughter, and five years concurrent for unlawful conduct toward a child. We affirm the homicide by child abuse and

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unlawful conduct toward a child convictions and sentences, but we vacate the involuntary manslaughter conviction and sentence.

I.

Appellant was [REDACTED] mother; she was [REDACTED] caretaker during her brief life. [REDACTED] died from morphine poisoning when she was forty-six days old. Appellant, a former nurse, was addicted to many drugs. The State contended that Appellant's morphine addiction (as well as dependence on other drugs) caused [REDACTED] drug poisoning through breastfeeding. The jury convicted Appellant on all charges.

This appeal followed. Appellant has raised four issues: (1) whether the trial court erred in denying her motion for a directed verdict on all charges due to the State's failure to prove causation; (2) whether the trial court erred in denying her motion for a directed verdict on the homicide by child abuse charge due to the State's failure to prove she acted with extreme indifference; (3) whether the trial court erred in failing to instruct the jury that it could only return a guilty verdict on one charge; and (4) whether the trial court erred in failing to require the State to open fully on the law and the facts of the case. We address each of these issues in turn.

II.

Appellant's first assignment of error is the trial court's failure to grant a directed verdict on all charges because the State allegedly failed to produce any evidence that the morphine found in [REDACTED] came from Appellant's breast milk. Appellant ignores the "synergistic effect" of the morphine poisoning when considered along with Appellant's abuse of other drugs. We have carefully reviewed the evidence and, when viewed in a light most favorable to the State as our standard of review mandates, we find sufficient evidence to present all charges to the jury. *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (noting that when reviewing the denial of a directed verdict the Court must not weigh the evidence but must view it in the light most favorable to the State, for the Court is concerned only with the existence or nonexistence of evidence) (citations omitted).

The State's causation theory was Appellant consumed excessive amounts of central nervous system depressants, principally morphine,¹ while breastfeeding [REDACTED] and these drugs passed through Appellant's breast milk, resulting in [REDACTED]'s death.

¹ While the State focused mainly on [REDACTED]'s morphine poisoning, the other central nervous system depressant abused by Appellant was Clonazepam.

The evidence at trial revealed that Appellant continuously took morphine—MS Contin—and other drugs while pregnant with [REDACTED] and while breastfeeding her. Moreover, the evidence showed that Appellant took more morphine than her doctors prescribed. In addition, Appellant exclusively breastfed [REDACTED] until approximately one week before her death. Appellant told investigators that she began supplementing with formula due to her new blood pressure medication; however, Appellant also told investigators that she breastfed [REDACTED] extensively during the two nights immediately preceding [REDACTED] death. Thus, sufficient evidence was shown that Appellant took many drugs, including morphine, and breastfed [REDACTED]

In addition, the evidence presented at trial was sufficient to show that the morphine and Clonazepam found in [REDACTED] came from Appellant's breast milk. Appellant contends there is no evidence to support a finding that [REDACTED] drug poisoning was the result of ingesting morphine through Appellant's breast milk. We disagree, for we find the evidence, when considered in its entirety, provides a substantial basis from which a reasonable juror could conclude Appellant's breast milk was the source of the morphine that killed [REDACTED]. The record includes extensive scientific evidence on morphine and the synergistic effect when combined with other central nervous system depressants. This evidence included the varying rates of metabolism in adults, the absence of metabolism in infants, the transferability of morphine from a mother to her baby through breast milk, and the risks of infants ingesting morphine (and other drugs) from their mothers' breast milk.

Dr. David H. Eagerton, an assistant professor of pharmacology and founding faculty member at the Presbyterian College School of Pharmacy and the former chief toxicologist at the South Carolina Law Enforcement Division, provided considerable testimony. Part of that evidence included the warning accompanying MS Contin, which provides that morphine "passes into the breast milk":

Dr. Eagerton: "Before taking MS Contin tell your healthcare provider if you have a history of it." It gives several histories. And then in bold again it says, "Tell your healthcare provider if you are pregnant or planning to become pregnant. MS Contin may harm your unborn baby. *If you're breastfeeding MS Contin passes into the breast milk and may harm your baby.*"

(emphasis added).

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Much of the scientific evidence addressed an infant's inability to absorb and process a drug like morphine:

The State: And obviously the child died. Obviously, it is consistent with that. Through the breastfeeding and everything a child—can it metabolize drugs like an adult does?

Dr. Eagerton: No, they don't.

The State: If you would, tell the jury about that, especially a six-week-[]old.

Dr. Eagerton: Okay. Typically, whenever—just to kind of back up a little bit how—you have to understand what drugs do in your body.

Once—once you take them they don't stay there forever. They go through a cycle. And in pharmacology we use the acronym ADME absorption. You have to get the drug into your system. So how do you get it in there? There's—there's lots of different ways. You can—most things we're talking about now is you think of it orally. But you can give it, you know, as a shot either just under your skin, in your muscle. You can give it [in an] IV directly in your veins. You can absorb some drugs through the skin, different things like that. So you have different routes of administration depending on what you're trying to do and what drug is.

Once you absorb it it's going to distribute throughout your body based on its chemical and physical properties, that is whether it likes water or whether it likes fat, or it distributes into one of those two areas in the body primarily.

Certain tissues may pick up drugs preferentially, things like that. So it's going to distribute throughout your body.

Then the next step is metabolism, which is more correctly termed biotransformation. Basically, your liver is responsible for that, and it has enzymes that develop over time that basically take these foreign compounds that you're taking and make it usually more

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water [soluble], and the idea is to make it either less toxic or more readily excreted. But the idea i[s] to make it more readily—more water [soluble] typically so that it could be more readily excreted from your body. And that's the last stage[] of elimination. And it's eliminated—it's eliminated—most drugs are going to be once they're—especially once they've been metabolized and made more water [soluble] they're going to be eliminated throughout the water in your body—urine, feces, sweat, saliva, tears, things like that is how it's going to be eliminated primarily. There are other ways too.

The State: Does a six-week-[]old child metabolize at all?

Dr. Eagerton: No, not typically because it take[s] time[] for your liver to develop. It takes time for these—the genes that code for these enzymes to turn on and be expressed. And you don't—even a child doesn't metabolize things the same as an adult.

Usually you don't—whenever you go through puberty is whenever most of the things that are going to turn on for an adult is going to turn on.

And, in fact, it even goes the other way. As you get old, become aged, some of these genes can become nonfunctional. Some—you may not have the same metabolic capacity.

Your kidneys may not work as well, things like that. So you have to take into consideration age certainly whenever you're looking at the effects of drugs and how long they're going to stay in your body.

The State: Obviously, the baby [REDACTED] showed signs of this before the death.

Dr. Eagerton: Right. The—the lethargy, maybe trouble breathing. I—I don't know how to interpret that exactly, but there [were] some—there were some symptoms that were conveyed that were consistent with morphine toxicity.

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The State: And basically if she was continuously breastfeeding and things like that could she reach a level, especially if she didn't metabolize it nearly as fast as the mother, for example, could it reach the levels of toxicology—toxicity of the level [sic]?

Dr. Eagerton: Yes. And that's one of the things that if you can't metabolize it, then the drug may build up in your body and you become—you have a toxic dose whenever you wouldn't normally have a tox[ic] dose.

Dr. Eagerton's testimony further included the warning on morphine from LactMed²:

Dr. Eagerton: "Epidural morphine given to mothers for post[-] cesarean section analgesia results in trivial amounts of morphine in their colostrum and milk. Intravenous or oral doses of maternal morphine in the immediate postpartum period result in higher milk levels than with epidural morphine. Labor pain medication may delay the onset of lactation. *Maternal use of oral narcotics during breastfeeding can cause infant drowsiness, central nervous system depression and even death.*"

(emphasis added).

Dr. Eagerton: "[A]t least some of [the morphine] I believe within reasonable degree of scientific and medical certainty had to come through the breast milk."

Accepting this evidence as true—as we must under the standard of review—one may reasonably deduce that morphine ingested through breastfeeding "can cause . . . death." The evidence, scientific and otherwise, further allows a reasonable juror to conclude that Appellant's breast milk was the source of the morphine found in [REDACTED] body. Thus, the testimony of Dr. Eagerton provides evidence that, if believed, is sufficient to survive Appellant's directed verdict motion. The State presented additional evidence.

² LactMed is a database that provides information and warnings on drugs to which breastfeeding mothers may be exposed. It is part of TOXNET, a database operated by the National Institute of Health.

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Dr. John D. Wren, a pathologist, performed the autopsy on [REDACTED] Dr. Wren is an experienced pathologist, having performed more than four thousand autopsies. Early in Dr. Wren's testimony, the State established that [REDACTED] body had no needle marks. Dr. Wren stated that "the only way this child could have gotten that much [morphine] would be orally, because I saw no injection sites. . . . The route of administration had to have been orally." And as Dr. Wren explained, the level of morphine in [REDACTED] was lethal:

Dr. Wren: Then you come to morphine. The level was .52 mg per liter, therapeutic level was .10 to .30 mg per liter. And from my references therapeutics [sic] .001 to .200. Toxic is .3 to 2.5. And lethal is .2 to 7.2.

Now, you'll notice that some of these overlap. It really depends on how the—how accustomed the body is to that drug.³

³ This is consistent with Dr. Eagerton's testimony that the line dividing toxic and lethal levels is not an exact demarcation but rather falls within "a range."

Thus, the dissent's misconceptions are twofold. First, the dissent fails to appreciate that the ranges for toxic and lethal levels of morphine are overlapping and that [REDACTED] level fell within the overlapping area. According to the expert testimony in this case, the level of morphine found in [REDACTED] (.52 mg) could have been classified in either the toxic level (.3 to 2.5 mg) or lethal level (.2 to 7.2 mg); it is simply lethal because it caused her death. Therefore, the dissent's attempt to draw an artificial distinction that there was only evidence showing enough morphine could pass through the breast milk to be "toxic" but not "lethal" is unavailing.

Second, the dissent fails to recognize the expert testimony that a baby is unable to metabolize this type of drug and chronic exposure can lead to a higher level of morphine building up within the body, which can logically result in a lethal level of morphine. It was not necessary to show [REDACTED] received a lethal level of morphine from one dose of breast milk in order to prove the State's causation theory: "the child died as a result of consumption of a controlled substance through the mother's breast milk." The State provided evidence that Appellant was taking morphine and breastfeeding [REDACTED] continuously, morphine can pass from a mother to a baby through breast milk, the level of morphine can build up in a baby due to the inability to process it, and [REDACTED] died from a lethal level of morphine. Contrary to the dissent's assertion, nothing more was required for the jury to make a logical deduction.

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And then in peds [sic]—I put this in because I had found this later—that the levels that produce surgical analgesia in pediatrics is .046 to .083, which is 46 to 83. Once again, the level reported [in █████] is 520. And then of course there's a caveat there. Lethal levels may be higher in individuals under chronic opioid treatment.

If you have a person that's under chronic opioid treatment they're taking in a lot—a lot often and they're—over a long period of time they adjust to the—their body physiology adjusts to that, and they can sustain higher levels without it having an effect on them.

So you have to take into account where the person has a history of that—and of course nobody that comes to the morgue is going to tell you they're taking morphine, and sometimes the family don't tell you either. So we have to take it if they don't have a prescription that they're getting it illegal[ly] or they're taking something else.

So based on all of that *all of these drugs essentially lead to respiratory depression*. And so I said based on the history and autopsy findings—and I should have put in including toxicology results—*it was my opinion that this child died as a result of respiratory insufficiency secondary to synergistic drug intoxication. I could just as easily have said morphine intoxication, but lawyers like to split hairs, and so I included them all.*

(emphasis added).

Dr. Wren's testimony continued:

The State: And, Doctor, let me ask you this. Obviously, being a young child, six-and-a-half weeks, her metab—the ability to metabolize drugs, is it much less than an adult?

Dr. Wren: That's—that's correct. It builds up.

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The State: So it will build up over a period of time if it—if it keeps getting the drugs.

Dr. Wren: Yeah. If they can't metabolize it'd have to go somewhere. And there's something called intrahepatic circulation. If it's excreted into the bile or whatever, it gets into the GI tract, and it's reabsorbed and goes back in[,] it just recirculates. It's just not eliminated unless she's—has affluent diarrhea or—or urinating all of the time.

The State: So, and the—the mother was taking morphine in this situation and breastfeeding. Obviously, the baby was getting morphine though the—taking MS Contin actually.

Dr. Wren: At least some, yeah.

The State: Yeah. From there. So the baby would get the morphine from the mother.

Dr. Wren: That's correct.

The State: And could then metabolize it as fast as it, you know—in a fast way or was constantly getting it from the breast milk, could it build up in that body?

Dr. Wren: That's right. I did a couple of calculations. I'm not as good in my head as I used to be, but I think I might be correct or at least close. I have one reference here if I can find it.

The State: Yes, sir. Take your time.

Dr. Wren: It's from toxnet.

The State: Yes, sir.

Dr. Wren: It says—this is a caveat. "Newborn infants tend to be particularly sensitive to the effects of even small doses of analgesics. Once the mother's milk come in—comes in it's best to provide pain control with a nonnarcotic analgesic and limit maternal intake of morphine to a few days at a low dosage with

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close infant monitoring. And then if the baby shows signs of increased sleepiness more than usual, difficulty breastfeeding, breathing difficulties, a physician should be contacted immediately."

It goes further to say there's a study here of one mother who was 21 days postpartum, which is about half this one, [who] received oral morphine, 10 mg every six hours, and for four doses. That's 40 mg. And then five [milligrams] every six hours for two doses. So that's actually 50 mg total she got in a 24-hour period.

She had a peak morphine of a hundred micrograms per liter after one hour, and four and a half hours after her first milligram, 5 mg dose.

Using the peak level from this study an exclusively breastfed infant would receive 15 micrograms per [] daily[,] equal to about three percent of the maternal daily dose assuming a daily maternal oral morphine dose of 40 mg.

Okay. So I took 40 mg and took three percent of that. That comes out to be 1.2 mg.

The baby weighed 3,345 grams, which is 3.345 kg [sic]. And I was doing this in my head, so I got—took three times 1.2. That's—well, actually I didn't even do that. I took 1.2 mg and divided that by the volume of blood in a child that age. The rule of thumb is 75 to 80 milliliters per kilogram.

Okay. This child weighed, again, 3.345 kilograms, so 3.345 times 75 or 80 comes out to be about 285 liters. 285 milliliters is all the blood that child had in her body, and that has to go into the tissues everywhere in the body. So the—the blood—you'll have to take my word for it. It is hard to get 10 ccs of blood out of a child, an infant. It is really hard. The younger they are, the harder it is.

And we—a lot of places that do blood toxicology, they want 21 milliliters. They want three 7-milliliter tubes of blood. We can't get that. So we have to send them small amounts.

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But, at any rate, if you take the 1.2 mg and divide it by two—.285 you get about 4 mg per liter, which is 4,000 micrograms per liter. So that's—that's a good bit of—when we're talking about micrograms and milligrams, that's a good bit.

Then I found another place in the same article where it says that an exclusively breastfed infant receives—tells what it receives. But it also says the peak morphine in—they did seven women who had preterm deliveries, and they—they gave them 60 mg of morphine in 24 hours cumulative. And they found out that the peak milk morphine varied, was 48 on the average mic—micrograms per liter. And the peak six glucuronide metabolite was 1,084 mg or micrograms per liter, which is also secreted in breast milk.

And it's thought that that—that active drug, the six—the six isomer is actually secreted in the milk too. And in the infant's digestive system it's converted back to morphine, and that is another source of morphine.

Dr. Wren also re-read portions of the LactMed warning on morphine:

Dr. Wren: "Maternal use of oral narcotics during breastfeeding can cause infant drowsiness, central nervous system depression[,] and even death. Newborn infant—infants seem to be particularly sensitive to the effects of even small do[s]es of narcotic analgesics and limited maternal intake of morphine to a few—to a few days at a low dosage with close infant monitoring is best to provide pain control and limited maternal intake to a few days at low dosage."

The defense stressed the lack of studies and peer-reviewed articles linking drug-related infant deaths to breastfeeding. Dr. Wren provided a common sense explanation:

Dr. Wren: I don't—I don't think anybody in here would subject [a] child to an ongoing test like that.

In sum, the State presented evidence that Appellant continuously ingested substantial doses of morphine and other drugs while pregnant and breastfeeding;

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that morphine and other drugs can and do pass from a nursing mother to a breastfeeding child through breast milk; that infants cannot metabolize morphine and other drugs effectively; that A ██████ exhibited symptoms consistent with morphine toxicity; and that ██████ death was caused by respiratory failure secondary to synergistic drug intoxication.

As noted, we are mandated when reviewing the denial of a directed verdict motion to view the evidence in a light most favorable to the State. When examined through the proper lens, the State presented ample evidence that would permit the jury to logically and reasonably conclude that Appellant's morphine consumption while breastfeeding "place[d] the child at unreasonable risk of harm," S.C. Code Ann. § 63-5-70(A)(1) (2010), and constituted "an act or omission by any person which causes harm to the child's physical health or welfare" resulting in the child's death, S.C. Code Ann. § 16-3-85 (2015). See *State v. McKnight*, 352 S.C. 635, 643-44, 576 S.E.2d 168, 172 (2003) (affirming the denial of a directed verdict motion in a homicide by child abuse action despite an expert's inability to identify "the exact mechanism" through which the cocaine affected the infant's body).⁴

⁴ We, of course, agree with the dissent that the "State must prove every element of the crime charged." We are convinced the State has done so in this case, sufficient to survive a directed verdict motion. With respect for the dissent, we disagree with its reliance on the law concerning a jury's consideration of circumstantial evidence. It is here that the dissent introduces its view that "additional reasoning" is needed. While the dissent's desired framework may apply to a jury's consideration of circumstantial evidence, it has no place at the directed verdict stage. The reliance on *McCormick on Evidence* section 185 is misplaced, for this section "clarifies the meaning of relevance[,] not a trial court's consideration of circumstantial evidence at the directed verdict stage. Similarly, the case of *State v. Logan*, cited by the dissent, addressed a challenge to a circumstantial evidence jury charge. 405 S.C. 83, 747 S.E.2d 444 (2013). *Logan* does not remotely touch upon a trial court's consideration of circumstantial evidence at the directed verdict stage. The dissent conflates the standards that apply to a trial court's consideration of circumstantial evidence at a directed verdict motion and a jury's consideration of circumstantial evidence. This conflation of different standards was addressed in *Bennett*, as the Court concluded that "the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). Paradoxically, the dissent does acknowledge that "the State presented substantial circumstantial evidence to support its theory that ██████ died as a result

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III.

Appellant argues that, even if causation was shown, the trial court erred in failing to direct a verdict on the homicide by child abuse charge because the State did not prove she acted with extreme indifference.

"A person is guilty of homicide by child abuse if the person . . . causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1) (2015). For purposes of this statute, we have previously defined "extreme indifference" as "a mental state akin to intent characterized by a deliberate act culminating in death." *McKnight v. State*, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting *State v. Jarrell*, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002)).

In this case, sufficient evidence was presented to show that Appellant was addicted to prescription drugs—including morphine—and Appellant knew she should use caution in taking morphine while pregnant or breastfeeding but elected to take it in excessive amounts without a doctor's supervision ensuring [REDACTED] safety.⁵

The testimony at trial revealed that Appellant began receiving prescription drugs due to injuries sustained in a car accident in 1998. In January 2006, Appellant was pregnant and began seeing Dr. Kooistra to treat a seizure disorder. Notably, Dr. Kooistra did not prescribe any pain medications for Appellant while she was pregnant and tried "to avoid prescribing medications of any sort during pregnancy." In November 2007, Appellant began seeing Dr. Kovacs and receiving

of ingesting morphine from [Appellant's] breast milk." The dissent circumvents this undeniable finding by parsing selected portions of the testimony favorable to Appellant and recasting that evidence as the "proper lens." The State must present evidence from which a jury can fairly and logically deduce that the defendant committed the offense charged, and at the directed verdict stage, the evidence must be viewed in a light most favorable to the State, not the defendant.

⁵ In addition, the toxicology report revealed that [REDACTED] tested positive for Klonopin (Clonazepam), for which Appellant had a prescription. The pill bottle for this drug, found in Appellant's room on the morning of [REDACTED] death, specifically instructed, "Do not use if pregnant or suspect you are pregnant or are breastfeeding."

prescriptions for various narcotics. Unbeknownst to Dr. Kovacs, Appellant continued to receive other pain prescriptions from Dr. Kooistra. In March 2010, when Appellant realized that she was pregnant with [REDACTED], she did not notify either prescribing doctor. In April 2010, Appellant requested to switch her prescription patch—Duragesic—to MS Contin pills, which Dr. Kovacs prescribed as she was unaware that Appellant was pregnant. Dr. Kovacs testified that she would not have prescribed morphine to Appellant had she known of the pregnancy. In addition, Dr. Bridges, Appellant's O.B.G.Y.N. physician, testified that she and her colleagues were unaware that Appellant was taking morphine prior to the birth, during delivery, and postpartum.

Throughout her pregnancy, Appellant failed to disclose that she was pregnant to the doctors prescribing morphine to her and failed to disclose that she was taking morphine to her prenatal doctors. In addition, she routinely omitted the fact that she was taking morphine from the paperwork that she submitted to her doctors. The testimony at trial was that, at the very least, the drug should only be taken under a doctor's supervision so the baby's health could be monitored. Nevertheless, Appellant failed to disclose this important information to any of her doctors.

The morphine addiction and concealment continued after [REDACTED] birth. In October 2010, Appellant told Dr. Kovacs that she had missed her appointments since receiving the MS Contin prescription in April because she had been so depressed that she could not leave the house—her pregnancy and [REDACTED] recent birth were never mentioned. One of the State's experts, Dr. Eagerton, testified that the use of morphine during lactation is not recommended. Moreover, in response to whether "the doctors definitely need to know about this," Dr. Eagerton stated, "Absolutely." Again, Dr. Kovacs testified that she would not have given Appellant the medication had she known about the pregnancy and Dr. Bridges testified that no mention of morphine was made during Appellant's postpartum visit. Due to her nondisclosure, the record reveals that Appellant received an additional prescription for MS Contin and continued to breastfeed [REDACTED].

The morning of [REDACTED] death, Appellant omitted morphine from the list of her current prescriptions that she provided to the investigators, despite their specific inquiry upon finding the pill bottle in her bedroom. At that time, Appellant only admitted to taking morphine while pregnant with [REDACTED]. When initially questioned by law enforcement, Appellant lied about her morphine addiction. It was only after the autopsy and toxicology reports were finalized and Appellant was interviewed again by Investigator Gary that she told the truth and acknowledged

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her addiction. Specifically, Investigator Gary testified that Appellant "finally admitted she just didn't tell [the doctors] because she was afraid they'd take off [sic] her off the morphine."

Thus, viewing the evidence in the light most favorable to the State, the jury could conclude Appellant acted with extreme indifference in taking the morphine and breastfeeding her child, resulting in [REDACTED] death.

IV.

Appellant argues alternatively that if the homicide by child abuse conviction stands, the multiple convictions and sentences for the remaining offenses cannot stand and should be vacated. Concerning the involuntary manslaughter conviction and sentence, we agree. As explained below, we find nothing in South Carolina's homicide statutes or law that reflects a legislative intent to deviate from the overwhelmingly prevailing view that the homicide of one person by one defendant is limited to one homicide punishment—one homicide, one homicide punishment. Concerning the unlawful conduct toward a child charge, we reject Appellant's challenge and affirm, for that entirely separate offense was complete prior to [REDACTED] death.

A.

Multiple offenses, including multiple homicide offenses, may be prosecuted in a single trial, but principles inherent in double jeopardy and due process preclude multiple punishments for the same offense.⁶ See, e.g., *State v. Cavers*, 236 S.C. 305, 311–12, 114 S.E.2d 401, 404 (1960) ("It was within the province of the jury to find whether appellant's conduct was negligent or reckless, or neither; if negligent, it would have supported a verdict of guilty of manslaughter, the court having eliminated murder and voluntary manslaughter; if reckless, it sustains the verdict of guilty of reckless homicide, and that finding by the jury is implicit in the verdict. The jury were instructed that they could not find appellant guilty on both

⁶ U.S. Const. amend. V ("No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb . . ."); U.S. Const. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"); S.C. Const. art. I, § 3 ("[N]or shall any person be deprived of life, liberty, or property without due process of law . . ."); S.C. Const. art. I, § 12 ("No person shall be subject for the same offense to be twice put in jeopardy of life or liberty . . .").

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counts. To sustain this point of appellant would require the court, instead of the jury, to determine whether his conduct was negligent or reckless, if either, which, under the evidence in this case, would be an invasion by the court of the province of the jury. The State cannot be required to elect between counts in an indictment when they charge offenses of the same character and refer to the same transaction, whether or not one charges a common law offense and another a statutory offense." (citations omitted)); *see also Ball v. United States*, 470 U.S. 856, 859, 861 (1985) ("It is clear that a convicted felon may be prosecuted simultaneously for violations of §§ 922(h) and 1202(a) involving the same firearm. This Court has long acknowledged the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case. . . . To say that a convicted felon may be prosecuted simultaneously for violation of §§ 922(h) and 1202(a), however, is not to say that he may be convicted and punished for two offenses. Congress can be read as allowing charges under two different statutes with conviction and sentence confined to one. Indeed, '[a]ll guides to legislative intent,' *United States v. Woodward*, 469 U.S. 105, 109, 105 S. Ct. 611-613, 83 L.Ed.2d 518 (1985), show that Congress intended a felon in [the defendant's] position to be convicted and punished for only one of the two offenses." (citations omitted)).

While the South Carolina legislature has manifestly authorized multiple homicide charges for a single homicide, we find no expression of legislative intent authorizing multiple homicide *punishments* for a single homicide committed by a single defendant. As a result, absent legislative intent to the contrary, we follow the prevailing rule—one homicide is limited to one homicide punishment per defendant. *See Ervin v. State*, 991 S.W.2d 804 (Tex. Crim. App. 1999) (collecting cases from various jurisdictions supporting that one person causing one death should result in one murder or homicide conviction); *see also People v. Lowe*, 660 P.2d 1261, 1271 n.11 (Colo. 1983), *abrogated on other grounds by Callis v. People*, 692 P.2d 1045 (Colo. 1984) (collecting "[c]ases holding that a person may be convicted of only one homicide offense for the killing of one person"). "It would be a strange system of justice that would permit the defendant to be sentenced to two . . . sentences for the killing of one person." *People v. Hickam*, 684 P.2d 228, 231 (Colo. 1984) (quoting *Lowe*, 660 P.2d at 1270-71). "[C]onviction of both charges, arising from the slaying of the same person amounts to piling punishment upon punishment. Fundamental fairness precludes such a practice." *Loscomb v. State*, 45 Md. App. 598, 613, 416 A.2d 1276, 1285 (1980).

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B.

Homicide by Child Abuse and Involuntary Manslaughter

Appellant was indicted on both homicide by child abuse and involuntary manslaughter charges as a result of [REDACTED]'s death.

The homicide by child abuse statute reflects the legislature's intent to define and target a specific societal problem—child abuse resulting in death, which further explains why multiple homicide offenses may be *prosecuted* in a single trial. The statute defines in detail the elements of homicide by child abuse: "caus[ing] the death of a child under the age of eleven while committing child abuse or neglect" where "the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1) (2015). Conversely, the now codified common law offense of involuntary manslaughter is defined in broad terms, covering unintentional killings from both unlawful conduct that does not naturally tend to place another in danger of death or serious bodily harm and lawful conduct that recklessly places another in danger of harm. *See, e.g., State v. Sams*, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014) ("Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others."); S.C. Code Ann. § 16-3-60 (2015).

In *McKnight v. State*, 378 S.C. 33, 51–52, 661 S.E.2d 354, 363 (2008), we applied the *Blockburger* "same-elements" test and held that involuntary manslaughter is not a lesser included offense of homicide by child abuse. *See Blockburger v. United States*, 284 U.S. 299 (1932). In *McKnight*, we stated a defendant charged with homicide by child abuse was not entitled to a jury charge on involuntary manslaughter because "the elements of involuntary manslaughter will never be included in the greater offense of homicide by child abuse." *Id.* at 52, 661 S.E.2d at 363. The lawful-conduct-in-a-criminally-negligent-manner prong could not apply because child abuse is not lawful. *Id.* at 51–52, 661 S.E.2d at 363. Further, the unlawful-conduct version of involuntary manslaughter could not apply because "child abuse could never be defined as an unlawful activity not tending to cause death or great bodily harm." *Id.* at 52, 661 S.E.2d at 363 (internal quotation marks omitted).

This issue is presented to us in an unusual posture. While both homicide charges were properly presented to the jury, the jury was not instructed in accordance with Appellant's proper request—Appellant could not be found guilty of both homicide by child abuse and involuntary manslaughter. In this situation, the jury should have been instructed that, depending on their view of the evidence, they could find Appellant not guilty of both homicide offenses, guilty of homicide by child abuse, or guilty of involuntary manslaughter—but may not find Appellant guilty of both homicide charges. The State erroneously contends both homicide convictions and punishments should stand.

The flaw in the State's argument on appeal is best understood by reviewing its theory of criminal liability as the trial unfolded. After indicting Appellant on varying homicide charges (which as a matter of law could not be premised on one theory of liability), the State ultimately elected to pursue a single theory of liability—[REDACTED]'s death from morphine poisoning was caused by the morphine in Appellant's breast milk—and the trial court instructed the jury, "That applies to each of the separate charges." The jury could have accepted Appellant's view of the evidence and found Appellant not guilty of homicide by child abuse. Specifically, the jury could have concluded the State failed to prove Appellant "committed a deliberate or intentional act under circumstances revealing an extreme indifference to human life."⁷ In that scenario, the jury may have nevertheless found Appellant guilty of involuntary manslaughter.⁸ But the jury's guilty verdict on Count One in the indictment—homicide by child abuse—precluded a guilty verdict on the charged offense of involuntary manslaughter.

⁷ This language is from the trial court's jury charge on homicide by child abuse.

⁸ The trial court's charge on involuntary manslaughter included the instruction, "Unintentional means that the defendant did not intend to kill the child nor did the defendant intend to inflict serious bodily harm or injury to the deceased child." A finding that Appellant's conduct satisfied this standard would be consistent with Appellant's argument that it is safe for breastfeeding mothers to take morphine. However, it would be inconsistent with a finding that Appellant "committed a deliberate or intentional act under circumstances revealing an extreme indifference to human life."

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Count Two. Thus, under these circumstances, a conviction and sentence for each homicide charge cannot stand.⁹

The situation here should be contrasted with a homicide that would properly fall within multiple homicide statutes. In that situation, a jury may properly return a guilty verdict on more than one homicide charge. In *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997), this Court affirmed convictions and sentences for two homicide charges—felony driving under the influence causing death and reckless homicide—arising out of a motor vehicle accident that killed one person and seriously injured another. The evidence and theory of criminal liability satisfied the elements of both homicide statutes. *Easler*, however, went further and affirmed multiple punishments for the single homicide committed by one defendant, and this was error. We overrule *Easler* to the extent it authorizes multiple homicide punishments involving only one homicide.

It is because of this rule—one homicide, one homicide punishment—that even were we to accept the State's argument that the involuntary manslaughter guilty verdict should stand, an additional sentence for [REDACTED] death could not stand. The fact that Appellant received a concurrent five-year sentence for involuntary manslaughter does not change the result. The concurrent sentence likely reflects the learned trial judge's inherent understanding that a consecutive sentence could not be imposed. Yet the conviction itself is considered a punishment and that, too, must be vacated. *Ball v. United States*, 470 U.S. 856, 864–65 (1985) ("The second conviction, whose concomitant sentence is served concurrently, does not evaporate simply because of the concurrence of the sentence. The separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. . . . Thus, the second conviction, even if it results in no greater sentence, is an impermissible punishment.").

V.

Appellant's final challenge is the claim of error in the trial court's refusal to "require the State to open fully on the law and the facts of the case [in closing argument] and replying only to new arguments of defense counsel." We affirm pursuant to Rule 220, SCACR, and the following authority: *State v. Beatty*, 300

⁹ This is the very argument made by defense counsel to the trial court, as he argued, "it's very inconsistent for the jury to have found that, one, [Appellant] was simply negligent, or, two, grossly negligent, or, three, extreme indifference, because there are different standards requiring different—different things."

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No. 27693 (S.C. Sup. Ct. filed Apr. 25, 2018) (Shearouse 2018 Adv. Sh. No. 17 at 57).

VI.

In sum, the homicide by child abuse and unlawful conduct toward a child convictions and sentences are affirmed; the involuntary manslaughter conviction and sentence is vacated; and we find no error in the order and manner of closing arguments.

AFFIRMED IN PART, VACATED IN PART.

BEATTY, C.J., HEARN and JAMES, JJ., concur. FEW, J., concurring in part and dissenting in part in a separate opinion.

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JUSTICE FEW: I concur in sections III, IV, and V of the majority opinion. I also concur with the conclusion the majority reaches in section II that Greene's conviction for unlawful conduct toward a child must be affirmed. I disagree, however, that we may affirm Greene's homicide convictions. On this point, for the reasons I will explain, I dissent.

I.

The State argues it is not required to prove scientific facts with expert testimony as we require civil plaintiffs to do. The State is mistaken. The State must prove every element of the crime charged, *State v. Attardo*, 263 S.C. 546, 550, 211 S.E.2d 868, 870 (1975), and when establishing any one element requires the State to prove a fact that is beyond the common understanding of lay people, the State must prove that fact by expert testimony, see *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 80, 735 S.E.2d 650, 659 (2012) ("In some design defect cases, expert testimony is required . . . because the claims are too complex to be within the ken of the ordinary lay juror."); *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (stating "expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge"); see also *Green v. Lilliewood*, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978) (holding that unless the subject is a matter of common knowledge, expert testimony is required to establish that a defendant failed to conform to a required standard of care in a medical malpractice case); *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979) (holding in a public accounting malpractice action: "Since this is an area beyond the realm of ordinary lay knowledge, expert testimony usually will be necessary to establish both the standard of care and the defendant's departure therefrom.").

II.

The State's theory of how Greene caused [REDACTED] death was narrow:¹⁰ Greene took morphine and other medications while breastfeeding, the morphine passed through

¹⁰ In all prosecutions for homicide, the State must prove the defendant caused the death of the victim. See *State v. McIver*, 238 S.C. 401, 406, 120 S.E.2d 393, 395 (1961) ("In a homicide case, the corpus delicti consists of two elements—the death of the person killed, and its causation by the criminal act of another."). *McIver* was a manslaughter case, 238 S.C. at 403, 120 S.E.2d at 393, and the causation element

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Greene's breast milk, and [REDACTED] died as a result of morphine intoxication.¹¹ The trial court charged the jury,

The State has the burden of proving these crimes, but it involves the ingestion of the controlled substance by the child through the child's mother's breast milk. That's the State's allegation and theory in the case, that the child died as a result of consumption of a controlled substance through the mother's breast milk. That applies to each of the separate charges.

The State had no difficulty proving Greene was taking morphine while breastfeeding, and that [REDACTED] died from morphine intoxication. The issue, therefore, is whether the State proved the morphine that killed [REDACTED] came from Greene's breast milk.

A. Circumstantial Evidence of Causation

On this point, as the majority has explained in detail, the State presented substantial circumstantial evidence, which we view in the light most favorable to the State. *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016). The majority has recited the strongest circumstantial evidence in the record that supports the State's theory of causation, but to be fair, there is even more than what the majority has included. In fact, the circumstantial evidence that [REDACTED] died from ingesting morphine through Greene's breast milk appears overwhelming, until we pose the scientific question of whether it is even possible for enough morphine to pass through breast milk to kill a child.

is specifically included in the statute governing homicide by child abuse, S.C. Code Ann. § 16-3-85(A) (2015).

¹¹ The State began the trial with alternative theories of causation. The first theory was that Greene administered morphine directly to [REDACTED]. At the conclusion of all evidence, however, the State elected not to proceed on the basis of a direct transfer of morphine, and the trial court directed a verdict for Greene on that theory.

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B. Circumstantial Evidence Cases

The use of circumstantial evidence to prove guilt in criminal trials contemplates that "even if the circumstances depicted are accepted as true, additional reasoning is required to reach the desired conclusion." Kenneth S. Broun et al., *McCormick on Evidence* § 185, at 397 (Hornbook Series, 7th ed. 2014). In *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), we described the "evaluation of circumstantial evidence" and stated it "requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence." 405 S.C. at 97, 747 S.E.2d at 451; *see also* 405 S.C. at 97-98, 747 S.E.2d at 451 ("Analysis of circumstantial evidence is plainly a more intellectual process."). In every circumstantial evidence case in which this Court affirmed the sufficiency of the evidence, the "additional reasoning" required to "connect[] collateral facts in order to prove the proposition propounded" was such that a lay juror could readily conduct the reasoning and make the connection. In those cases, the "intellectual process" through which the jury could reasonably infer the guilt of the defendant from the circumstances proven by the State involved a chain of inferences that lay jurors were fully capable of navigating.

In *Pearson*, for example, the State proved the following circumstances: the suspects fled the victim's home in the victim's stolen El Camino, and Pearson's fingerprint was found in the truck's bed where the victim saw one of the suspects sitting; Pearson lied about ever having been to the victim's house when he had previously done considerable landscaping work there; and Pearson lied about knowing the co-defendant whose DNA was found on the duct tape on the victim's head. 415 S.C. at 465-69, 473-74, 783 S.E.2d at 803-05, 808. From those circumstances, a lay juror could readily conclude through a chain of non-scientific inferences that Pearson was one of the people who robbed and beat the victim. We found "the evidence could induce a reasonable juror to find Pearson guilty." 415 S.C. at 474, 783 S.E.2d at 808.

In *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016), the State proved the following circumstances: Bennett's blood was found on the floor directly beneath the spot from which a television was stolen from a public building; his fingerprint was found on another television the suspects had attempted to steal from the "community room" of the building; and though Bennett "was known to frequent the room in which his blood was found, "[t]estimony suggested Bennett would have no reason to be in the community room." 415 S.C. at 234-35, 237, 781 S.E.2d at 353, 354. From those circumstances, a lay juror could readily conclude

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through a chain of non-scientific inferences that Bennett committed the burglary, malicious injury, and larceny. We found "the evidence could induce a reasonable juror to find Bennett guilty." 415 S.C. at 237, 781 S.E.2d at 354.

In *Pearson, Bennett*, and every other case in which this Court found the State's presentation of purely circumstantial evidence sufficient to survive a motion for directed verdict, a jury was fully capable of performing the "additional reasoning . . . required to reach the desired conclusion" by using its common knowledge, experience, and understanding.¹² In each of those cases, therefore, we focused only on the State's proof of collateral facts or circumstances—not on the inferences to be drawn from those facts or circumstances—and we found the State's proof of the circumstances sufficient to support the fact inferred.

C. The Circumstantial Evidence Standard

In *Bennett*, we reiterated that when reviewing the sufficiency of circumstantial evidence, "The Court's review is limited to considering the existence or nonexistence of evidence, not its weight." 415 S.C. at 235, 781 S.E.2d at 353 (citing *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478-79 (2004)). We criticized the court of appeals in *Bennett* for considering a "plausible alternative theory" because doing so is "contrary to our jurisprudence and misapprehends the court's role" compared to the role of the jury. 415 S.C. at 236, 781 S.E.2d at 354. We held "the trial court . . . must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" 415 S.C. at 236-37, 781 S.E.2d at 354 (quoting *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955)).

In this case, the State presented substantial circumstantial evidence to support its theory that [REDACTED] died as a result of ingesting morphine from Greene's breast milk, and abandoned any alternative theory of causation. Therefore, under *Bennett* and the long line of cases upon which it relies, our task is limited to the second step in the *Bennett/Littlejohn* analysis. The question before us under that second step is

¹² See generally *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204, 51 S.E.2d 744, 749 (1949) (discussing circumstantial evidence in a workers' compensation case, and stating, "The facts and circumstances shown should be reckoned with in the light of ordinary experience, and such conclusions deduced therefrom as common sense dictates.").

whether a reasonable jury could "fairly and logically" conclude from the circumstances proven that the State established the causation element under its theory. This, in turn, requires us to determine if the chain of inferences the jury must follow to reach this conclusion may be completed by the jury using its common knowledge, experience, and understanding, or whether expert testimony should be required.

Greene argues the jury could not fairly and logically complete this second step because, in the course of its analysis, the jury would necessarily consider whether it is even possible that a breastfeeding mother can transmit morphine through her breast milk in sufficient concentration to cause the death of a child. Green argues the means of answering this question are beyond the common knowledge, experience, and understanding of a lay juror. Therefore, Greene argues, expert testimony was required to establish the causal connection between morphine in the mother's breast milk and [REDACTED] death. Specifically, Greene argues the State was required to present an expert opinion that morphine—by itself or synergistically with other drugs—passed through her breast milk to kill [REDACTED]

I agree with Greene. In reaching this conclusion, I find it particularly important that the State's own expert witnesses refused to state the morphine that killed [REDACTED] came from Greene's breast milk, or even whether that was possible. The reader may repeatedly scour the majority's outstanding recitation of the State's expert testimony—or the record from which it came—but will not find any testimony that comes close to such a statement. In fact, as I will explain, the State's two experts openly avoided answering this question. In addition, the circumstances proven at trial, considered in the light most favorable to the State, include the fact that reliable medical organizations and journals have stated it can be "safe" to take morphine while breastfeeding a child. Finally, the record in this case does not include even one instance documented in medical literature of a lethal level of morphine in a child that resulted from a breastfeeding mother taking morphine.

D. Expert Testimony on Causation

The State presented the testimony of two experts. David H. Eagerton, Ph.D., is an assistant professor of pharmacology and founding faculty member at the Presbyterian College School of Pharmacy and the former chief toxicologist at the South Carolina Law Enforcement Division. His doctoral degree is in pharmacology, and he is board certified in forensic toxicology. Dr. Eagerton gave an extensive explanation of the numerous drugs found in [REDACTED]'s body after her

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death, including what he considered to be a lethal level of morphine, and how the combination of those drugs can work synergistically to increase the toxic effects of the drugs in the blood. He explained how drugs are absorbed into the body and that infants do not metabolize quickly because their liver has not yet developed. At one point, Dr. Eagerton testified a six-week old child like [REDACTED] typically does not metabolize "at all."

The State then asked, "If she was continuously breastfeeding . . . could [REDACTED] reach a level, especially if she didn't metabolize it nearly as fast as the mother, could it reach the levels of toxicology -- toxicity of the level?" Dr. Eagerton answered, "Yes." Dr. Eagerton went on to explain Alexis showed symptoms that were "consistent with morphine toxicity." He testified morphine may build up in a child's body to become "toxic." But Dr. Eagerton distinguished "toxic" from "lethal." Toxic means it will make you sick; lethal means it will kill you. There was never any dispute that morphine in breast milk could make a child sick. In fact, the label on the package states morphine "passes into the breast milk and may harm your baby."

On cross-examination, Dr. Eagerton acknowledged several articles in the medical literature that list morphine as "safe to take while breastfeeding," and conceded "based upon [his] research" he was not aware of any documentation in the medical literature "that ever says a mother taking morphine can create a toxic level of morphine in the child through breast milk." Counsel showed Dr. Eagerton a 2012 article from the journal *Clinical Toxicology* entitled, "Is Maternal Opioid Use Hazardous to Breastfed Infants," and the following dialogue took place,

Q: Look on page six of this journal. And this is a peer-reviewed journal, correct?

A: That's right.

....

Q: Look there if you would on this highlighted portion . . . [and] read that to us.

A: "The medical literature describes scant evidence of opioid toxicity in breastfed infants."

Q: Do you have any evidence that's contrary to that?

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A: No, sir. . . .

....

Q: So there is scant evidence?

A: That is correct.

Q: Which is pretty close to none.

A: Yes, sir.

....

Q: *So you are in no position to say then that that number^[13] came through breast milk?*

A: *I don't believe I've said one way or the other. Nobody's asked me.*

Q: But you don't have any basis for saying that it came through breast milk?

A: Had to get into the baby somehow.

Q: That's not my question. You have no basis for saying that number came into the baby through breast milk?

A: I don't know that I'd say I have no basis. I'd say the basis is the mother is taking . . . morphine. She is breastfeeding. We know that based on the literature we've already talked about that at least small amounts certainly do pass through into the

¹³ The question refers to the number 0.52 mg/L, the concentration of morphine measured in [REDACTED] blood after her death. Dr. Eagerton testified he considered that a lethal level of morphine.

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breast milk. So I don't think I have a basis to say that it didn't, or at least some of it.

The strongest testimony Dr. Eagerton gave on the causation question came when he read from the LactMed database¹⁴ on the TOXNET internet site maintained by the National Institutes of Health in its National Library of Medicine. He testified, "Maternal use of oral narcotics during breastfeeding can cause infant drowsiness, central nervous system depression and even death." However, Dr. Eagerton was careful never to say that the morphine that came from Greene's breast milk killed [REDACTED]—that it was "lethal." In fact, he was specifically asked, "So, you cannot make a conclusion today as to how that morphine got into the baby?" He replied, "No, sir. I think I can make a conclusion . . . at least some of it . . . had to come through the breast milk." When pressed as to whether morphine could get to a specific toxicity level from breastfeeding, however, he stated, "Like I said earlier, I can't quantitate how much."

The State's other expert was John David Wren, M.D., the pathologist who performed the autopsy. Dr. Wren testified [REDACTED] had lethal levels of morphine, "It's lethal in the brain, it's lethal in the liver, it's lethal in the blood." He explained, "it was my opinion that this child died as a result of respiratory insufficiency secondary to synergistic drug intoxication. I could just as easily have said morphine intoxication." However, Dr. Wren testified, "*It's not my opinion that it was from milk or anything else. I just know that it was there.*" On cross-examination, Dr. Wren testified, "*I don't know how it got there. It's unquestionably there. And you can argue any mechanism you want, but it's there, period.*"

E. The "Proper Lens"¹⁵

This case is different from *Logan, Bennett*, and every other circumstantial evidence case this Court has decided. The majority's suggestion that I have "conflated" the roles of judge and jury ignores that difference. None of those previous cases involved scientific questions, so the lay jury was fully capable of making all the necessary inferences on its own, "fairly and logically." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. The issue before the Court in those cases, therefore, arose only

¹⁴ The LactMed database contains information on drugs and other chemicals to which breastfeeding mothers may be exposed.

¹⁵ The term "proper lens" is taken from the majority opinion, slip op. at 12.

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under the first step of the *Bennett/Littlejohn* analysis—whether the circumstantial evidence met the "any substantial evidence" standard. That is not the issue we face in this case. As I have stated, the circumstantial evidence in this case that [REDACTED] died from ingesting morphine through Greene's breast milk appears overwhelming.

The issue in this case arises under the second step of the *Bennett/Littlejohn* analysis—whether the "additional reasoning" required to infer from the circumstances proven that the morphine that killed [REDACTED] came from Greene's breast milk required the jury to answer a scientific question beyond its common knowledge, experience, or understanding. It is the same question we addressed in *Graves*, *Watson*, *Green*, and *Kemmerlin*. Although *Watson*, *Green*, and *Kemmerlin* were not circumstantial evidence cases, *Graves* was a circumstantial evidence case. In this respect, this case is identical to *Graves*. We said in *Graves*—just like I say here—this case is not about the State's proof of sufficient circumstances, or "what quantum of circumstantial evidence . . . is necessary" to present a jury question. 401 S.C. at 80, 735 S.E.2d at 658.

In *Graves*, we first found the plaintiffs failed to present admissible testimony of an expert on the existence of a defect in a products liability case. 401 S.C. at 75-78, 735 S.E.2d at 656-57. We then turned to whether the plaintiffs nevertheless presented sufficient circumstantial evidence to reach a jury. We stated "the *Graves* have no direct evidence," and "[t]hus, the question is whether the record contains sufficient circumstantial evidence of a defect required to survive summary judgment." 401 S.C. at 79, 735 S.E.2d at 658. Focusing on the second part of the *Bennett/Littlejohn* analysis for circumstantial evidence, we stated "we need not determine what quantum of circumstantial evidence of a design defect is necessary to withstand summary judgment because the lack of expert testimony is . . . dispositive." 401 S.C. at 80, 735 S.E.2d at 658. "In some design defect cases," we held, "expert testimony is required . . . because the claims are too complex to be within the ken of the ordinary lay juror." 401 S.C. at 80, 735 S.E.2d at 659 (citing *Watson*, 389 S.C. at 445, 699 S.E.2d at 175).

Thus, as in *Graves*, the "proper lens" invoked by the majority forces us to examine whether the State has satisfied the second prong of the *Bennett/Littlejohn* analysis. Through this lens we must determine whether a lay juror can comprehend the scientific possibility that morphine—even acting synergistically with other drugs—may pass through a mother's breast milk in sufficient quantity to kill a child. Greene's counsel repeatedly pressed both Dr. Eagerton and Dr. Wren as to whether there is any scientific documentation supporting the theory that this is even possible. At one point, Dr. Eagerton responded, "I don't believe I've seen any

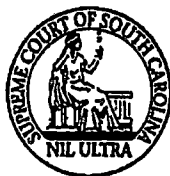
literature that says that. But for everything there's got to be a first." Dr. Wren responded, "No. But, . . . there is a first time for everything."

These answers demonstrate the narrow point upon which I would reverse Greene's homicide convictions. If medical and scientific professionals have nothing more definitive to say as to whether the factual premise of the State's theory is even possible, then we should not permit a lay jury to base a verdict in a criminal trial on the premise. One day there may be a "first" who says morphine can do what the State argues it did here, but it should be a medical or scientific professional, not a jury in a criminal case.

III.

I agree with the majority that Greene's conviction for unlawful conduct toward a child must be affirmed, and that under any circumstance both convictions for homicide cannot stand. However, I would find the trial court erred in not directing a verdict on the homicide charges because the State failed to present evidence of causation "sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354.

FILED
CLERK OF COURT
SANDHILLS COUNTY
2018 JUL -2 AM 9:45
M. HOPE BLACKLEY



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 26, 2018

The Honorable M. Hope Blackley
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Stephanie I. Greene
Lower Court Case No. 2011-GS-42-05758
Appellate Case No. 2014-000764

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Daniel E. Shearouse

CLERK

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL -2 AM 9:45
M. HOPE BLACKLEY

cc:

Barry Joe Barnette, Esquire

Alan McCrory Wilson, Esquire

David A. Spencer, Esquire

Clarence Rauch Wise, Esquire



ALAN WILSON
ATTORNEY GENERAL

June 28, 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL -2 AM 9:45
M. HOPE BLACKLEY

The Honorable Barry J. Barnette
Solicitor, Seventh Circuit
180 Magnolia Street
Spartanburg, SC 29306

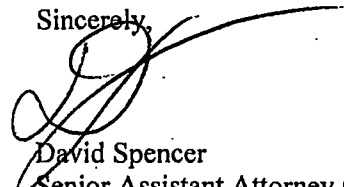
RE: The State v. Stephanie Irene Greene, #359489
2011-GS-42-05758
Appellate Case No. 2014-000764

Dear Solicitor Barnette:

In its Opinion No. 27802, filed on May 23, 2018, the South Carolina Supreme Court affirmed the above defendant's convictions and sentences for homicide by child abuse and unlawful conduct toward a child; however, the conviction and sentence for involuntary manslaughter was vacated. The Remittitur has been sent to the Spartanburg County Clerk of Court. With this letter, we are closing our direct appeal file in this matter.

According to the South Carolina Department of Corrections' website Inmate Stephanie Greene, SCDC No. 359489, is currently incarcerated. I would respectfully request that you please ensure that the decision of the court is properly carried out.

Sincerely,



David Spencer
Senior Assistant Attorney General

DS/aam
Enclosure

cc: The Honorable M. Hope Blackley
Barton J. Vincent, Esquire
Alexandra Perez-Caballero
Trisha Allen, Victim Advocacy Division

2011-GS-5758

The Supreme Court of South Carolina

The State, Respondent,

v.

Stephanie Irene Greene, Appellant.

Appellate Case No. 2014-000764

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2011GS4205758

CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL -6 AM 11:16
M. HOPE BLACKLEY

ORDER

The following exhibits filed with this Court are available for transportation to the Clerk of Court's office in Spartanburg County:

State's Exhibits #1-32 - Photographs
State's Exhibit #33 - 911 Call
State's Exhibit #34 - Recorded Interview
State's Exhibits #37-55 - Prescriptions
State's Exhibit #59 - Contract
State's Exhibit #60 - Pill Count List
State's Exhibits #62-63 - SLED Reports
State's Exhibit #67 - FDA Warning
State's Exhibit #68 - Report by Dr. Wren

FOR THE COURT

BY *Drenda L. Shealy*
Chief Deputy CLERK

Columbia, South Carolina

June 27, 2018

cc:

Barry Joe Barnette, Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
Clarence Rauch Wise, Esquire
The Honorable M. Hope Blackley

CLERK OF COURT
SPARTANBURG COUNTY
2018 JUL -6 AM 11:16
M. HOPE BLACKLEY

►Fax

6/11/2015

From: Melissa Vail
Phone: 803-734-1722
Fax: 803-734-4035
Company Name: SC Attorney General's Office

To: Spartanburg County Clerk of Court
Phone: 864-596-2591
Fax: 864-596-3600
Company Name:

Comments:

Thank you!

☐

Urgent

☐

For Review

☐

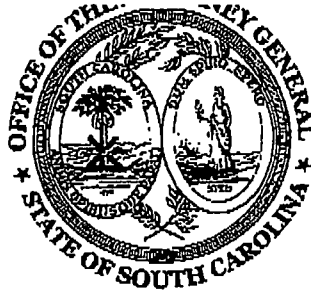
Please Comment

☐

Please Reply

☐

Please Recycle



ALAN WILSON
ATTORNEY GENERAL

June 11, 2015

Records Department – Spartanburg County Clerk of Court's Office

RE: Christopher Burkes v. State of South Carolina
Case No. 2010-CP-42-5985

To Whom It May Concern:

Please accept this as a formal request for a copy of the following documents filed in the case of Christopher Burkes vs. Spartanburg County Forensic Analysis Lab (2010-CP-42-5985):

- Answer by Spartanburg County Forensic Lab (filed 12/06/2010);
- Answer by Spartanburg County Clerk of Court Office (filed 12/6/2010);
- Answer by Chuck Wright (filed 12/06/2010);
- Answer by Spartanburg County Sheriff Office (filed 12/06/2010); and
- Letter by Spartanburg County Sheriff Office (filed 1/14/2014).

Please feel free to fax to this office at 803-734-4035 or e-mail to mvail@scag.gov.

Thank you for your assistance.

Sincerely,

Melissa Vail
Legal Assistant to Kaycie S. Timmons

KST/mv

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@emeraldis.com

C. Rauch Wise.

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

To: Cheryl
864-596-3600

From: M.J.

Date Sent: 6/11/15

Time Sent:

RE: Stephanie Greene

Comments: I am enclosing a copy of the Designation of Matter concerning the above matter that we discussed. The exhibits checked are the ones we need copied. Your help in this matter is greatly appreciated.

WE ARE SENDING A TOTAL OF ____ PAGE(S), INCLUDING THIS COVER SHEET.
PLEASE CONTACT US IF THERE IS A PROBLEM WITH THIS TRANSMITTAL.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge
Appellate Counsel No. 2014-000764

THE STATE,

Respondent,

vs.

STEPHANIE IRENE GREENE,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal:

- ✓ State's Exhibits Nos. 1-32 (photographs);
- ✱ State's Exhibit No. 33 (911 recording);
- State's Exhibit No. 34 (Recording of Coroner's Office Interview);
- ✓ State's Exhibits Nos. 37-55 (prescriptions);
- ✓ State's Exhibit No. 59 (contract);
- ✓ State's Exhibit No. 60 (pill chart);
- ✓ State's Exhibit Nos. 62 and 63 (SLED Reports);
- ✓ State's Exhibit No. 67 (Med Guide for MS Contin);
- ✓ State's Exhibit No. 68 (SLED Report);
- Trial Transcript pages 1-13; pages 28-614.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Chain of Custody of Evidence

Case Caption: The State vs. Stephanie Irene Greene

Case Number: 2011-GS-42- 5758 (2011GS4205758A)

Location: Evidence Room (Metal Sheft 2/Rowe 1)

Original Evidence Release to: Dave Spencer, Senior Asst. Atty. General

Evidence Released:

States:

Original State's Exhibits:

**1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,
31, & 32 (photographs)**

State's Exhibit 33 (911 Call)

States's Exhibit 34 (Recorded Interview)

**State's Exhibit 37,38,39,40,41,42,43,44,,45,46,47,48,49,50,51,52,53,54, & 55
(Prescriptions)**

States Exhibit 59 (contract) State's Exhibit 60(Pill Count List)

State's Exhibit 62 & 63 (SLED REPORTS)

State's Exhibit 67 (FDA Warning)

State's Exhibit 69 (Report by Dr. Wren)

Evidence Released by: *Gail Moffitt*
Gail Moffitt, Asst. Clerk of Court
Date: *4/16/15 @ 10:10 A.M.*

Original Evidence Released to: *DS*
Dave Spencer
Senior Assistant Attorney General

Address: Rembert C. Dennis Bldg.
P O Box 11549
Columbia, S. C. 29211-1549

Telephone: (803) 734-3970

Date Released: 4/16/15

Metel Shift 2
Rowe 1

os
win

The South Carolina Court of Appeals

The State, Respondent,

v.

Stephanie Irene Greene, Appellant

Appellate Case No. 2014-000764

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2011Gs4205758

ORDER

Pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, it is ordered that the Clerk of Court for Spartanburg County release:

State's Exhibits #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, #29, #30, #31, and #32 (Photographs),
State's Exhibit #33 (911 Call),
State's Exhibit #34 (Recorded Interview),
State's Exhibits #37, #38, #39, #40, #41, #42, #43, #44, #45, #46, #47, #48, #49, #50, #51, #52, #53, #54, and #55 (Prescriptions),
State's Exhibit #59 (Contract), State's Exhibit #60 (Pill Count List),
State's Exhibits #62 and #63 (SLED Reports),
State's Exhibit #67 (FDA Warning),
State's Exhibit #68 (Report by Dr. Wren)

to be transported to this Court by the South Carolina Attorney General's Office, for consideration in the above referenced matter.

ATTORNEY GENERAL'S OFFICE

RECEIVED 4-18-15

ADMINISTRATIVE INSTRUCTIONS

☒ FILE ☐ OPEN ☐ END

☐ HAVE ☐ COPIES MADE

☐ ROUTE TO

☐ ORDER: ☐ TRANSCRIPT

☐ PEN RECORDS ☐ CLERK RECORDS

☐ OTHER: ☐

- I will pick
up Thurs.
- check if new
due date

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

C. Rauch Wise, Esquire

Robert Michael Dudek, Esquire

David A. Spencer, Esquire

M. Hope Blackley



ALAN WILSON
ATTORNEY GENERAL

April 14, 2015

Attention:
Gail Moffitt
Spartanburg County Clerks Office

Re: State of South Carolina v. Stephanie Irene Greene
2011-GS-42-5758

Dear Ms. Moffitt:

Could you please have the attached exhibits ready for Attorney Dave Spencer to pick up on Thursday, April 16, 2015 around 9:30. If you have any questions please do not hesitate to call this office.

Sincerely,



Dave Spencer
Senior Assistant Attorney General

DS/nb

*We need the
originals.*

803-734-7239

Metel sup. -
Rowe 1

05
win

The South Carolina Court of Appeals

The State, Respondent,

v.

Stephanie Irene Greene, Appellant

Appellate Case No. 2014-000764

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2011Gs4205758

FILED
2015 APR 14 PM 4:45
M. ROZE BLANCHET

ORDER

Pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, it is ordered that the Clerk of Court for Spartanburg County release:

- State's Exhibits #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, #29, #30, #31, and #32 (Photographs),
- ✓ State's Exhibit #33 (911 Call),
- ✓ State's Exhibit #34 (Recorded Interview), (Also C+3 E-42.1)
- State's Exhibits #37, #38, #39, #40, #41, #42, #43, #44, #45, #46, #47, #48, #49,
- ✓ #50, #51, #52, #53, #54, and #55 (Prescriptions),
- ✓ State's Exhibit #59 (Contract), State's Exhibit #60 (Pill Count List),
- ✓ State's Exhibits #62 and #63 (SLED Reports),
- ✓ State's Exhibit #67 (FDA Warning),
- State's Exhibit #68 (Report by Dr. Wren)

to be transported to this Court by the South Carolina Attorney General's Office, for consideration in the above referenced matter.

SCANNED

SCANNED

ATTORNEY GENERAL'S OFFICE

RECEIVED 4-13-15
ADMINISTRATIVE INS. AUCTIONS

☒ FILE ☐ OPEN ☐ END

☐ HAVE ☐ COPIES MADE

☐ ROUTE TO

☐ ORDER: ☐ TRANSCRIPT

☐ PEN RECORDS ☐ CLERK RECORDS

☐ OTHER:

- I will pick
up Thurs.
- check if new
due date

12
COUNT
12-11-15

2015 APR 14 PM 4:45

11. HOPE BLACKLEY

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

C. Rauch Wise, Esquire

Robert Michael Dudek, Esquire

David A. Spencer, Esquire

M. Hope Blackley

2015 APR 14 PM 4:45
M. HOPE BLACKLEY

UNSCANNED



ALAN WILSON
ATTORNEY GENERAL

April 14, 2015

Attention:
Gail Moffitt
Spartanburg County Clerks Office

Re: State of South Carolina v. Stephanie Irene Greene
2011-GS-42-5758 (2011-0542-05758A)

CLERK OF COURT
SPARTANBURG COUNTY
2015 APR 14 PM 4:45
M. HOPE BLACKLEY

Dear Ms. Moffitt:

Could you please have the attached exhibits ready for Attorney Dave Spencer to pick up on Thursday, April 16, 2015 around 9:30. If you have any questions please do not hesitate to call this office.

Sincerely,



Dave Spencer
Senior Assistant Attorney General

DS/nb

*We need the
originals.*

SCANNED

803 734-7239

Computer

Rowe 1

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) INDICTMENT NO.: 11-GS-42-5758

STATE OF SOUTH CAROLINA)
VS.)
Stephanie Irene Greene ,)
DEFENDANT.)

State's Exhibit List

- 1. Picture of bedroom (180 Kimbrell Loop, Campobello, SC) showing dresser on the left side of the room.
- 2. Picture of bedroom showing the crib on the right side of the room.
- 3. Picture of the left front of the bedroom.
- 4. Picture of the right front of the bedroom.
- 5. Picture of the dresser in the bedroom with medicines on it.
- 6. Closeup picture of prescription drugs on the dresser in the bedroom.
- 7. Picture of the prescription of morphine sulf front of bottle.
- 8. Picture of the right side of the morphine sulf bottle.
- 9. Picture of the front side of the Hydrocodone BT-IBU prescription bottle.
- 10. Picture of the warning side of the Hydrocodone BT-IBU prescription bottle.
- 11. Picture of the front side of Clonazepam 2 MG (Klonopin) prescription bottle.
- 12. Picture of the warning side of Clonazepam (Klonopin)
- 13. Picture of the front side of the Keppra XR 500 MG prescription bottle.
- 14. Picture of the warning side of Keppra XR 500 MG.
- 15. Picture of the Baclofen 10 MG prescription bottle.
- 16. Picture of the warning side of Baclofen 10 MG.
- 17. Picture of the Amlodipine Besyla 5 MG tab.
- 18. Picture of the warning side of Amlodipine Besyla 5 MG tab.
- 19. Picture of the front of the Ropinirole HCL prescription bottle.

- 20. Picture of the warning side of Ropinirole HCL.
- 21. Picture of the front of Keppra XR 500 MG for Stephanie Neet.
- 22. Picture of warning side of Keppra XR 500 MG for Stephanie Neet.
- 23. Picture of Gabapentin 800 MG prescription bottle.
- 24. Picture of warning side of Gabapentin 800 MG.
- 25. Picture of Savella 50 MG Tablet prescription bottle.
- 26. Picture of warning side of Savella 50 MG.
- 27. Picture of Carisoprodol tabs prescription bottle.
- 28. Picture of 2 Refills on Carisoprodol prescription bottle.
- 29. Picture of warning side on Carisoprodol.
- 30. Picture of the front of the Caffeine (Alert Tablets).
- 31. Picture of the warning side of the Caffeine (Alert Tablets).
- 32. Picture of Defendant on the front porch.
- 33. 911 Tape.
- 34. Recorded Interview of the Defendant by the Coroner's Office.
- FO - 35. Recorded Interview of the Defendant by DHEC by Kaushik Kotecha.
- FO - 36. Waiver Form of the Defendant by DHEC- signed by Kaushik Kotecha and William Gary.
- 37. Prescription for Stephanie Neet (Greene) on March 11, 2010 from Dr. Kovcas (Piedmont Internal Medicine Associates) for Duragesic Patch.
- 38. Prescription for Stephanie Neet (Greene) on April 7, 2010 from Dr. Kovcas (Piedmont Internal Medicine Associates) for Duragesic Patch.
- 39. Prescription for Stephanie Greene on April 30, 2010 from Dr. Kovcas (Piedmont Internal Medicine Associates for MS Contin 30 mg- 90 tablets.
- 40. Prescription for Stephanie Greene on May 27, 2010 from Piedmont Internal Medicine Associates for MS Contin- 30 mg- 90 tablets.
- 41. Prescription for Stephanie Greene on June 28, 2010 from Dr. Finch (Piedmont Internal Medicine Associates for MS Contin 30 mg- 90 tablets.
- 42. Prescription for Stephanie Greene on June 30, 2010 from Dr. Bridges (Carolina OB/GYN) for Darvocet-N-100- 30 tablets (Four Refills).

- 43. Prescription (Call-in) from Dr. Kooistra (Carolina Neurology) on July 3, 2010 for Klonopin 2 mg (90 tablets)- 3 times a day (TID).
- 44. Prescription (Call-in) from Dr. Kooistra (Carolina Neurology) on July 6, 2010 for Vicoipufen (90 tablets)- 3 times a day.
- 45. Prescription (Call-in) from Dr. Bridges (Carolina Neurology) on July 23, 2010 for Darvocet W-100 (30 tablets)- No refills.
- 46. Prescription from Dr. Kovacs (Piedmont Internal Medicine Associates) on July 27, 2010 for MS Contin 30 mg- 90 tables (TID).
- 47. Prescription from Dr. Kooistra (Carolina Neurology) on August 5, 2010 for Vicoprofen TID- 90 tablets.
- 48. Prescription from Dr. Kooistra (Carolina Neurology) on August 5, 2010 for Klonopin 2 mg- 90 tablets.
- 49. Prescription from Dr. Bridges (Carolina OB/GYN) on August 23, 2010 for Darvocet N-100 (30 tablets).
- 50. Prescription from Dr. Kovacs (Piedmont Internal Medicine Associates) on August 26, 2010 from MS Contin 30 mg- 90 tablets- TID.
- 51. Prescription from Dr. April Johnson (Carolina OB/GYN) on August 29, 2010 for Percovet 30 tablets and Motrin 600 mg 40 tablets.
- 52. Prescription from Dr. Kovacs (Piedmont Internal Medicine Associates) on October 15, 2010 for MS Contin 30 mg- 90 tablets- filled at Rite-Aid.
- 53. Prescription from Dr. Kovacs (Piedmont Internal Medicine Associates) on October 29, 2010 for Klonopin 2 mg- 60 tablets- 5 refills.
- 54. Prescription from Dr. Kooistra (Carolina Neurology) on November 4, 2010 for Baclofen 10- TID- 5 refills; Vicoprofen- 90 tablets; Neuroton 800 mg- 90 tablets- 5 refills.; and Klonopin 2mg- TID- 90 tablets.
- 55. Prescription from Dr. Kovacs (Piedmont Internal Medicine Associates) on November 11, 2010 for MS Contin 30 mg- 90 tablets- prn.
- DD - 56. List of the Prescriptions of the Defendant by DHEC.
- DD - 57. Recorded Interview of the Defendant by Inv. William Gary.
- 58. Waiver Form of the Defendant by SCSO signed by Inv. William Gary and Sgt. Kevin Bobo.

- 59. Contract Signed by the Defendant with Dr. Kooistra and Carolina Neurology on January 5, 2006.
- 60. Pill Count List from the medicine bottles on the dresser in the bedroom beside the bed found by Teri Carter and the Spartanburg County Coroner's Office.
- JD - 61. SLED Report on the handwriting of the Defendant on the Contract and other handwriting samples.
- 62. SLED Report on the blood of the victim [REDACTED]
- 63. SLED Report on the brain and the liver of the victim, [REDACTED]
- 64. photos B. Wms.
- 65. photos bag main / liver / hist tissue
- JD - 66. DVD Submitted by:
- 67. FDA warning
- 68. Wren report

Barry Barnette
 Barry Barnette
 Solicitor
 Seventh Judicial Circuit

Spartanburg, South Carolina
 March 31, 2014

Received by
A. Seamus T. Camp
 4/4/14

From: Linda Moffitt

- ✓ Δ 1 - Kovacs app. for patch
- ✓ Δ 2 - " " " arena
- ✓ Δ 3 - Kovacs script mailed 8/27/10
- ✓ Δ 4 - " " note to pick up.
- ✓ Δ 5 - Kooistra report
- ✓ Δ 6 - letter from Kovacs to Greene copy to Kooistra 9/2/11
- ✓ Δ 7 - Disab. app. by Kooistra

C1-334
 C2-535
 C3-557
 C4-536
 C5-556

C6-Question from jury & response
 C7 SLED report
 C8 Copy of 02-755
 C9 " " 03-4180
 C10 " " 03-1967
 C11 Incident report¹¹⁰⁵

C-12 D's request
 to charge

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
email rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

April 9, 2014

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State vs. Stephanie Irene Greene

Dear Ms. Kitchings:

Enclosed herewith is the original Notice of Intent to Appeal concerning the above referenced matter, together with the original Affidavit of Service, and Request for Transcript.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh

cc: Honorable Joseph Derham Cole
Barry J. Barnette, Solicitor
Hope Blackley, Clerk

2014 APR 15 AM 8:52
CLERK
J. ABBOTT KITCHINGS



THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable Joseph Derham Cole, Circuit Court Judge

Case No. 11-GS-42-5758

State of South Carolina Respondent,

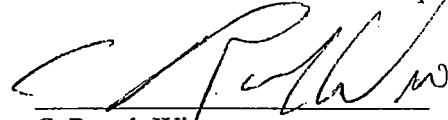
vs.

Stephanie Irene Greene, ... Appellant.

NOTICE OF APPEAL

Stephanie Irene Greene appeals her conviction and sentence in this case. The sentence was imposed by the Honorable Joseph Derham Cole on April 4, 2014. This appeal is taken from the order of the Honorable Joseph Derham Cole, dated April 4, 2014, which denied appellant's motion for a new trial. Appellant received oral notice of this Order on April 4, 2014.

April 9th, 2014



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

Other Counsel of Record:
Barry J. Barnette, Solicitor
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Honorable Joseph Derham Cole, Circuit Court Judge

Case No. 11-GS-42-5758

State of South Carolina Respondent,

vs.

Stephanie Irene Greene, ... Appellant.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on April 9, 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Notice of Intent to Appeal in the above case addressed to The Honorable Joseph Derham Cole, P.O. Box 1744, Spartanburg, SC, 29304 and to Barry J. Barnette, Solicitor, Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, SC, 29306, and to Hope Blackley, Clerk, Spartanburg County Courthouse, 180 Magnolia St., Ste. 500, Spartanburg, SC, 29303.

SWORN to and Subscribed

Sandy Traynham

before me this 9 day

of April, 2014.

Mark James Harter (L.S.)

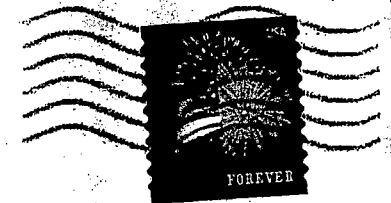
Notary Public for South Carolina

My Commission expires: 11/30/22

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646

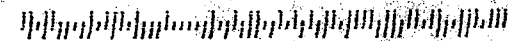
GREENVILLE SC 296

10 APR 2014 PM 2 L



Hope Blackley, Clerk
Spartanburg County Courthouse
180 Magnolia Street, Ste. 500
Spartanburg, SC 29303

29306239299



GS

Altima

Informational Services, Inc.

720 East McNab Road

Pompano Beach, FL 33060 USA

Tel 954-784-1915 Fax 954-784-1920

E-mail info@altimainfo.com

*** PLEASE RUSH ***

Information Request

April 07, 2014

Spartanburg County Clerk of the Court

Attn: Records

PO Box 3483

Spartanburg, SC 29304

Altima Informational Services, Inc. has been requested, on behalf of Allstate Life Insurance Company, to obtain documentation and/or official records pertinent to a claim involving the below named policyholder.

Insured:
Date of Birth:
Social Security #:
Claim #:
Case#:



*Mailed
4-15-14*

PLEASE PROVIDE THE FINAL DISPOSITION AND SENTENCING ORDER ON THE FOLLOWING CASES:

M127173

2011GS4205758A

2011GS4205758B

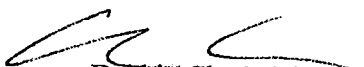
STEPHANIE GREENE

Since the claim is pending this information, your prompt attention to this matter would be greatly appreciated. Please forward by mail.

Remit to : Altima Informational Services, Inc.
Attn: Debbie Chadwick
720 East McNab Road
Pompano Beach, FL 33060

Enclosed is a pre-payment in the amount of \$3.00 ^{SAGE} for the records as requested. If you have any questions or foresee any delays, please call me at (954) 784-1915, ext. 217. Thank you for your cooperation.

Sincerely,


Debbie Chadwick

General Sessions

Clerk : M Hope Blackley
180 Magnolia Street
Spartanburg, SC 29304
(864) 596-2591

Received From: altima

Date : 4/15/2014

Paying for: altima,

RECEIPT # 236838

Clerk: C42CTIPTON

Payment Type: Check

\$3.00

Reference # 33314

Total Paid

3.00

Comment:

Total Received

\$3.00

Change Due

\$0.00



2011-65-42-5758

STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg)

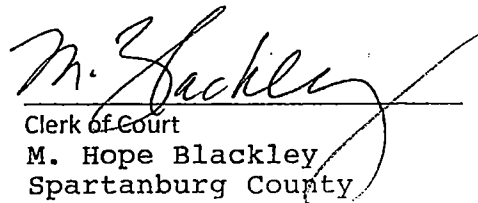
RELEASE OF
PLEDGE OF REAL ESTATE

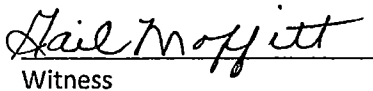
WHEREAS, Anne T. Greene pledged their property as a bond for the release of a defendant who was being held in Spartanburg County, South Carolina, and thereby established a lien in favor of the Clerk of Court for Spartanburg County; and

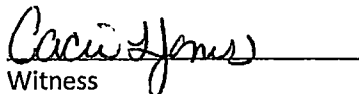
WHEREAS, the charge(s) are no longer pending against the defendant and the conditions of the bond have been fully satisfied.

KNOW ALL MEN BY THE PRESENT, that Hope Blackley, Clerk of Court for Spartanburg County, does hereby cancel and release the above referenced Pledge of Real Estate which was filed in Mortgage Book 4480 at Page 791-795 in the Register of Deeds Office for Spartanburg County, South Carolina.

Dated this 17th day of October, 2015.

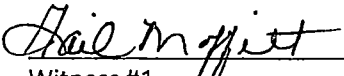

Clerk of Court
M. Hope Blackley
Spartanburg County


Witness


Witness

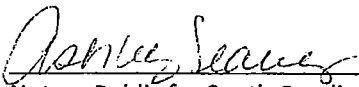
STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Hope Blackley, CLERK OF COURT, Spartanburg COUNTY, sign, seal, and deliver the within executed instrument and that (s)he with Cacie Jones witnessed the execution thereof.


Witness #1

SWORN TO BEFORE ME THIS

19 day of Oct, 2015.


Notary Public for South Carolina (Witness #2)

My commission expires 3/24/18

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

)
) NOTICE OF PLEDGE OR AGREEMENT
) AFFECTING REAL ESTATE
)

TO: HOPE BLACKLEY, CLERK OF COURT OF SPARTANBURG COUNTY.

KNOW ALL MEN, by these presents that I, Anne T. Greene, as owner of the property described hereinbelow, do hereby pledge the below described real estate to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, as collateral for the approval of surety bonds for Stephanie Irene Greene. The surety bond is set in the amount of One Hundred Thousand and NO/100 Dollars (\$100,000.00).

See the attached legal description(s) in EXHIBIT 1.

In consideration for the issuance of approval of surety bonds to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, the undersigned does agree that said real estate will not be transferred, conveyed, or encumbered without notice to the said HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office.

This pledge shall remain in force and effect until canceled or released by instrument filed in the Register of Deeds for Spartanburg County.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 19th day of July, 2011.

IN THE PRESENCE OF

Randall T. Greene
Witness

Anne T. Greene
Anne T. Greene

Chandler N. Wilson
Witness

MTG-2011-25185
Recorded 5 Pages on 7/19/2011 3:02:50 PM
Recording Fee: \$11.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within name(s) Anne T. Greene sign, seal, and deliver the within Notice of Pledge of Real Estate; and that (s)he with other witness signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME THIS 19 day of July, 2011.

Rolene H. Payne, Jr. (SEAL)
Notary Public for South Carolina

My Commission Expires: July 24th, 2011

EXHIBIT 1
(Property Description)

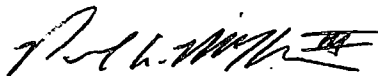
All that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Spartanburg, located on the south side of Brentwood Drive and being shown and designated as Lot No. 23 in Block "D" on a plat of property of Brentwood, dated September 1946, made by W.N. Willis Engrs., recorded in Plat Book 21, at pages 180-182 in the Office of Register of Deeds for Spartanburg County, South Carolina.

Said lot has a frontage on Brentwood Drive of 100 feet with a western sideline of 155 feet, an eastern sideline of 155 feet, and a rear width of 100 feet. For a more detailed description, reference is hereby made to the plat above-referred to.

This being the same property conveyed to to Anne T. Greene by Deed of Distribution of Edward E. Greene recorded in the Office of Register of Deeds for Spartanburg County, South Carolina, on November 10, 2003 in Deed Book 79-B, Page 194. See Spartanburg County Probate Court Case Number 2003ES4201615.

Property Address: 908 Brentwood Dr., Spartanburg, South Carolina 29307
2011 Tax Map Number: 7-13-05-073.00

This 19th day of July, 2011.



Paul A. McKee, III,
Attorney at Law, SC Bar # 77926

409 Magnolia Street
PO Box 2196
Spartanburg, South Carolina 29304-2196
(864)-573-5149 phone
(864)-948-1846 fax

General Sessions
Clerk : M Hope Blackley
180 Magnolia Street
Spartanburg, SC 29304
(864) 596-2591

Received From: Randy Greene

Date : 7/19/2011

RECEIPT # 210446

Clerk: gmoftitt

Paying for: Randy Greene,

Payment Type: Cash \$10.00

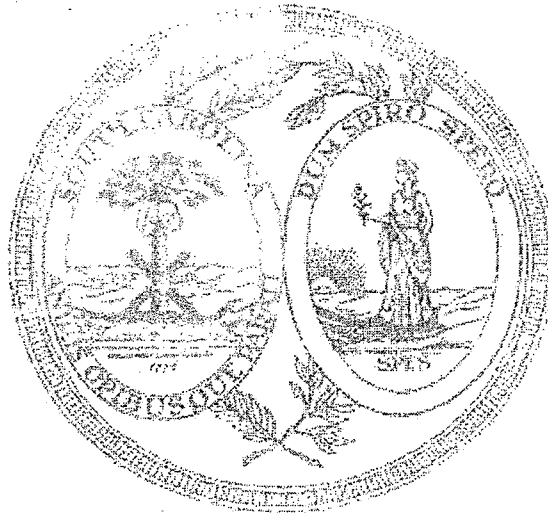
Reference #

Total Paid 10.00

Comment: Fee for filing Notice of Pledge-Stephanie Irene
Greene

Total Received \$10.00

Change Due \$0.00



2011-5
M127182-09, M127200-07
M127309, M127211-16
Criminal Charging Document No.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Spkg.

IN THE ☒ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Stephanie Irene Greene
NAME OF DEFENDANT

Offense Charged: Homicide by Child Abuse, Viol. Drug Distribution
Laws X 3B

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

GPS & SCRAM

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of 100,000.

3. That the defendant shall appear at (check one):

- ☐ the term of _____ COURT OF GENERAL SESSIONS beginning on _____
at _____ o'clock, M, at 180 Magnolia St. County Courthouse
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

- ☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____
at _____ o'clock, M, at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

Cole Kw

DATE

7/19/11
FILED
CLERK OF COURT
JUL 25 AM 11:58
SPRING ARREST

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

80 Kimbrell Loop

ADDRESS

imobello, SC 29322

SIGNATURE OF DEFENDANT

DATE

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

Home Detention pursuant to the South Carolina Home Detention Program to include GPS & SCRAM monitoring. No change of address without prior court approval. No firearms in actual or constructive possession.

☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____ AM/PM _____ TIME _____ AM/PM

on condition that he return to the custody of _____

DATE(S)

NAME OF PERSON OR ORGANIZATION

as designated.

LOCATION

☐ Other Conditions. The defendant will comply with the following other conditions of release:

contact with any child under 16 years of age is supervised by a parent, grandparent or guardian.

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of July 2011, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of 100,000 such sum to be paid on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

me T. Greene

NAME OF SURETY BONDSMAN

TELEPHONE

Brentwood Dr.

ADDRESS OF SURETY BONDSMAN

Spartanburg, SC 29302

CITY/STATE/ZIP

NAME OF INSURANCE COMPANY

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

SIGNATURE OF SURETY BONDSMAN

SIGNATURE OF JUDGE

DATE

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

) NOTICE OF PLEDGE OR AGREEMENT
) AFFECTING REAL ESTATE
)

TO: HOPE BLACKLEY, CLERK OF COURT OF SPARTANBURG COUNTY.

KNOW ALL MEN, by these presents that I, Anne T. Greene, as owner of the property described hereinbelow, do hereby pledge the below described real estate to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, as collateral for the approval of surety bonds for Stephanie Irene Greene. The surety bond is set in the amount of One Hundred Thousand and NO/100 Dollars (\$100,000.00).

See the attached legal description(s) in EXHIBIT 1.

In consideration for the issuance of approval of surety bonds to HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office, the undersigned does agree that said real estate will not be transferred, conveyed, or encumbered without notice to the said HOPE BLACKLEY, Clerk of Court of SPARTANBURG County, or successor in office.

This pledge shall remain in force and effect until canceled or released by instrument filed in the Register of Deeds for Spartanburg County.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 19th day of July, 2011.

IN THE PRESENCE OF

Randall T. Greene
Witness

Anne T. Greene
Anne T. Greene

Chandler N. Wilson
Witness

MTG-2011-25185
Recorded 5 Pages on 7/19/2011 3:02:50 PM
Recording Fee: \$11.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



EXHIBIT 1
(Property Description)

All that certain piece, parcel, or lot of land, with all improvements thereon, situate, lying, and being in the State of South Carolina, County of Spartanburg, located on the south side of Brentwood Drive and being shown and designated as Lot No. 23 in Block "D" on a plat of property of Brentwood, dated September 1946, made by W.N. Willis Engrs., recorded in Plat Book 21, at pages 180-182 in the Office of Register of Deeds for Spartanburg County, South Carolina.

Said lot has a frontage on Brentwood Drive of 100 feet with a western sideline of 155 feet, an eastern sideline of 155 feet, and a rear width of 100 feet. For a more detailed description, reference is hereby made to the plat above-referred to.

This being the same property conveyed to to Anne T. Greene by Deed of Distribution of Edward E. Greene recorded in the Office of Register of Deeds for Spartanburg County, South Carolina, on November 10, 2003 in Deed Book 79-B, Page 194. See Spartanburg County Probate Court Case Number 2003ES4201615.

Property Address: 908 Brentwood Dr., Spartanburg, South Carolina 29307
2011 Tax Map Number: 7-13-05-073.00

COUNTY OF SPARTANBURG

CERTIFICATE OF VALUE FOR BOND

This is to certify that the real estate designated as 908 Brentwood Dr., Spartanburg, South Carolina 29307, Tax Map Number 7-13-05-073.00, is vested in fee simple and is situate in the County of Spartanburg, State of South Carolina, the derivation of which is a Deed of Distribution from the Estate of Edward E. Greene to Anne T. Greene, recorded on November 10, 2003, in Deed Book 79-B, Page 194 in the Office of the Register of Deeds for Spartanburg County, State of South Carolina and is more particularly described in Deed attached and made a part hereto (see Exhibit A). (See In the Matter of Edward E. Greene, Spartanburg County Probate Court Case Number 2003ES4201615). The Certificate of Value for Bond is being issued so that Anne T. Greene may pledge the real estate described herein as collateral for a surety bond for Stephanie Irene Greene, who has been charged with Homicide by Child Abuse and Violation of Drug Statutes and perhaps other offenses, bond having been set at One Hundred Thousand and NO/100 Dollars (\$100,000.00), and this is to certify that after deducting the amount due under liens affecting the property and not including the value of any mobile home which may be situated on the property, that the value of the property is equal to at least One Hundred Thousand and NO/100 Dollars (\$100,000.00). The Spartanburg County Assessor's Office has estimated the total market value of this property to be One Hundred Twelve Thousand Five Hundred and NO/100 Dollars (\$112,500.00) per the 2011 public tax records.

This property is subject to an open-ended mortgage recorded in Real Estate Mortgage Book 3431, Page 895 in the Register of Deeds for Spartanburg County, South Carolina.

(Attorney Signature on next page)

This 19th day of July, 2011.



Paul A. McKee, III,
Attorney at Law, SC Bar # 77926

409 Magnolia Street
PO Box 2196
Spartanburg, South Carolina 29304-2196
(864)-573-5149 phone
(864)-948-1846 fax

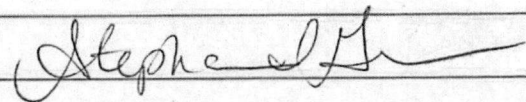
Stephanie I. Greene | #359489 A-3,101B
Leath CI #2809 Airport Rd
Greenwood, SC 29649

July 18, 2019

To whom it may concern;

I am submitting the enclosed addendum to my
PCR application - case #2019CP4201605. Thank you in
advance for your time and attention to this matter.

Sincerely,



RECEIVED

JUL 23 2019

Referred to James / RB
Answered _____

Handwritten notes at the top of the page, including the date "July 2, 1951" and some illegible text.

Handwritten text: "to be used in the future"

Handwritten text: "I am sure that the future of the world is bright"

Handwritten text: "and I am sure that the future of the world is bright"

Handwritten text: "and I am sure that the future of the world is bright"

Handwritten signature or name.

Handwritten text: "July 2, 1951"

Handwritten text: "to be used in the future"

Steven B. Karch, MD, FFFLM, FCSFS

PO Box 5139
Berkeley, California 94705

My name is Steven B. Karch, MD, FFFLM, FCSFS (Fellow of the Faculty of Forensic & Legal Medicine of the Royal College of Physicians; Fellow of the Chartered Society of Forensic Sciences, UK). This analysis is written in support of Mrs. Stephanie Greene's appeal for Post Conviction Relief on the grounds of her actual innocence. My area of practice focuses specifically on the toxic effects of abused drugs upon the heart. My textbook, *Karch's Pathology of Drug Abuse*, now in its 5th edition, is recognized as authoritative and used worldwide. Indeed, Dr. Wren, pathologist for the State at the Greene trial even asked whether I would personally autograph his copy! At Mrs. Greene's trial I testified on her behalf. I have also testified for the defense in three similar cases, including the Regina McKnight case, cited by the Appeals Court in their denial of Mrs. Greene's appeal. It is my belief that Mrs. Greene should be considered for pardon because she was wrongly convicted at the trial, and her appeal rejected, based upon provably false evidence.

I am not an expert on the legal issues involved in this matter, but I am an expert on forensic toxicology and pathology, and I can recognize "alternate facts" when I see them. Greene's conviction was based on totally bogus "expert" testimony that should never have been introduced into any legal proceeding. Greene's conviction occurred in spite of the total absence of evidence that she had anything to do with the morphine found in her daughter. She was convicted because a large amount of morphine was detected in blood taken from the heart of the decedent. The prosecution produced no evidence even suggesting such massive amounts of morphine were administered to the decedent, let alone transferred to the infant in breast milk. No accepted peer-reviewed study has ever confirmed such transference as even a possibility; let alone plausible, or probable to a reasonable degree of medical or scientific certainty. When defense argued that no such event had ever been reported, witnesses for the State could only counter that there is a "first time for everything."

The South Carolina Supreme Court rejected Greene's appeal, mainly because the Court accepted that the opinions of the State's witness were, in fact, true. In the absence of evidence that morphine had been transferred via breastfeeding, the State introduced two other theories: (1) morphine had accumulated in the infant and (2) that all infants lacked the enzymes necessary to detoxify morphine. Both theories are utterly untrue and have been widely debunked in the scientific peer-reviewed literature. Even though there was no scientific evidence, Justice Kittridge, writing for the majority, explained that the Court had to reject Greene's appeal because of the scientific testimony given by the State's two experts. Judge Kittridge stated this very clearly:

The Court: *Thus, the testimony of Dr. Eagerton provides evidence that, if believed, is sufficient to survive Appellant's directed verdict motion. The State presented additional evidence.*

But, because Dr. Eagerton's claims are directly and fully contradicted by the accepted scientific literature, they should not, under any circumstances, have ever been admitted at trial, and the Appeals Court should have accepted Greene's claim. The Court specifically states that if Dr. Eagerton's claims were to be believed, a jury would be perfectly capable of understanding them. The Appeals Court made no effort to verify the claims made by either side. The jury reached a verdict, because they fully understood the State's claims, never knowing that the statements made by the prosecution's "experts," were false, scientifically unsupported claims. Some of the errors are restated in the 2nd appeal ruling are quoted and discussed below.

State: *can a child – can it metabolize drug like an adult dose?*

Answer: Dr. Eagerton: *No, they don't.*

Comment: Both the accepted peer-review literature, and ToxLine, a government sponsored database, allegedly relied upon both by Dr. Eagerton, and the Court, state unequivocally that the enzymes needed to metabolize morphine are present in abundance, even prior to birth [1]. Further, these levels then increase steadily after birth, approaching adult levels by two months [2]. It is worth noting that the Trial Judge allowed the State to use the word "child" without ever defining it. The appeals court made no effort to verify the claims made by either side.

In addition to observational studies of neonatal metabolism, the ability of the neonate to metabolize morphine has been studied in controlled human clinical studies. Pacifici analyzed 15 peer-reviewed reports [3] and found they all consistently reached the same conclusions: (a) *"the half-life of morphine is longer in the earliest stages of life and rapidly decreases as the metabolic pathways develop meaning that the morphine is disposed of more quickly"* [4, 5]; (b) *"morphine clearance increases rapidly at the same time that it's half-life is decreasing"* [6]. *"The rate at which morphine is cleared from the body increases with age, with median clearances ranging from 5 mL/kg per minute in neonates aged 1 to 7 days, to 21 mL/kg per minute in infants aged 6 months and older. The change in clearance correlates closely with age, as does the formation of morphine metabolites"* [2]. *"The ability of the kidneys to clear morphine from the body is independent of age"* [7].

Morphine readily crosses the human placenta before birth [8] and approaches adult concentration values in the second month of life. The same article quoted from Toxline by Dr. Wren describes the pattern of excretion observed in a breastfeeding woman who was receiving 4 to 8 mg daily of continuous intrathecal morphine (injections of morphine into the covering of the spinal cord, which causes anesthesia). This woman had her milk sampled 11 times over seven weeks

The Court: *Thus, the testimony of Dr. Eagerton provides evidence that, if believed, is sufficient to survive Appellant's directed verdict motion. The State presented additional evidence.*

But, because Dr. Eagerton's claims are directly and fully contradicted by the accepted scientific literature, they should not, under any circumstances, have ever been admitted at trial, and the Appeals Court should have accepted Greene's claim. The Court specifically states that if Dr. Eagerton's claims were to be believed, a jury would be perfectly capable of understanding them. The Appeals Court made no effort to verify the claims made by either side. The jury reached a verdict, because they fully understood the State's claims, never knowing that the statements made by the prosecution's "experts," were false, scientifically unsupported claims. Some of the errors are restated in the 2nd appeal ruling are quoted and discussed below.

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Answer: Dr. Eagerton: *No, they don't.*

Comment: Both the accepted peer-review literature, and ToxLine, a government sponsored database, allegedly relied upon both by Dr. Eagerton, and the Court, state unequivocally that the enzymes needed to metabolize morphine are present in abundance, even prior to birth [1]. Further, these levels then increase steadily after birth, approaching adult levels by two months [2]. It is worth noting that the Trial Judge allowed the State to use the word "child" without ever defining it. The appeals court made no effort to verify the claims made by either side.

In addition to observational studies of neonatal metabolism, the ability of the neonate to metabolize morphine has been studied in controlled human clinical studies. Pacifici analyzed 15 peer-reviewed reports [3] and found they all consistently reached the same conclusions: (a) *"the half-life of morphine is longer in the earliest stages of life and rapidly decreases as the metabolic pathways develop meaning that the morphine is disposed of more quickly"* [4, 5]; (b) *"morphine clearance increases rapidly at the same time that it's half-life is decreasing"* [6]. *"The rate at which morphine is cleared from the body increases with age, with median clearances ranging from 5 mL/kg per minute in neonates aged 1 to 7 days, to 21 mL/kg per minute in infants aged 6 months and older. The change in clearance correlates closely with age, as does the formation of morphine metabolites"* [2]. *"The ability of the kidneys to clear morphine from the body is independent of age"* [7].

Morphine readily crosses the human placenta before birth [8] and approaches adult concentration values in the second month of life. The same article quoted from Toxline by Dr. Wren describes the pattern of excretion observed in a breastfeeding woman who was receiving 4 to 8 mg daily of continuous intrathecal morphine (injections of morphine into the covering of the spinal cord, which causes anesthesia). This woman had her milk sampled 11 times over seven weeks

postpartum. Morphine in milk was undetectable (<8 mcg/L) in eight of the 11 samples. In three of the 11 samples, morphine was detected, but only at levels below the quantification sensitivity of the assay (8 to 25 mcg/L). Using the maximum possible milk level of 25 mcg/L found in this study, an exclusively breastfed infant would receive about 3 mcg/kg daily from the maternal intrathecal morphine dose the mother had given [7]. Transfer in breast milk simply cannot explain the enormous concentration of morphine in the decedent.

"Furthermore, it is well established that morphine itself does not persist in tissues, and 24 hours after the last dose, tissue concentrations are low. Morphine is eliminated by glomerular filtration, primarily as morphine-3-glucuronide; 90% of the total excretion takes place during the first day. Very little morphine is excreted unchanged. Enterohepatic circulation of morphine and its glucuronides occurs, which accounts for the presence of small amounts of morphine in feces and urine for several days after the last dosage [9]."

The State: *"Does a six-week-old child metabolize at all?"*

Dr. Eagerton: *"No, not typically because it take[s] time for your liver to develop. It takes time for these—the genes that code for these enzymes to turn on and be expressed. And you don't—even a child doesn't metabolize things the same as an adult. Usually you don't—whenever you go through puberty is whenever most of the things that are going to turn on for an adult is (sic) going to turn on."*

Comment: As Elkomy, and many others have observed, **"Morphine is mainly eliminated by hepatic metabolism via glucuronidation to morphine-3-glucuronide (M3G) and morphine-6-glucuronide (M6G) [10]. The glucuronidation pathway is present, but immature, at birth [11, 12] and reaches maturity sometime between the second week and sixth month of life [13] [14]."**

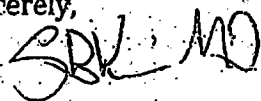
The State: *"And basically if she was continuously breast feeding and things like that could she reach a level, especially if she didn't metabolize it nearly as fast as the mother, for example, could it reach the level of toxicology – toxicity of the level (sic)."*

Dr. Eagerton: *"Yes. And that's (sic) one of the things that if you can't metabolize it, then the drug may build up in your body and you become – you have a toxic dose whenever you wouldn't normally have a toxic dose."*

Comment: Eagerton's assertion is utterly untrue, at least when it is applied to morphine. Simply put, the State's reasoning is not based on scientific fact (see discussion above). At one time it might have formed the basis for a reasonable hypothesis, but the notion was utterly disproven decades before the trial.

Worse, it is obvious that the "expert" toxicology witness has never even read about the actual mechanisms of morphine toxicity in neonates. In fact, it appears that Dr. Eagerton was manufacturing "alternative facts" as he went along. Without his false testimony, I doubt that Mrs. Greene would have ever been convicted.

Sincerely,



Steven B. Karch, MD, FFFLM, FCSFS
June 13, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Stephanie Irene Greene,	)	Case No.: 2019-CP-42-01605
S.C.D.C. No. 359489,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	(Counsel Appointed)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Stephanie Irene Greene (Applicant) on May 2, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the September 2011 term of the Spartanburg County Grand Jury for homicide by child abuse, involuntary manslaughter, and unlawful conduct towards a child (2011-GS-42-05758, Cts. I-III). C. Rauch Wise, Esq. represented Applicant. Barry J. Barnette and Timi Poulos, Esqs., of the Seventh Circuit Solicitor's Office, prosecuted the case. On March 27, 2014, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted on April 4, 2014. Judge Cole sentenced Applicant to imprisonment for concurrent terms of 20 years for homicide by child abuse, 5 years for involuntary manslaughter, and 5 years for unlawful conduct towards a child.

Applicant filed a timely notice of appeal and a direct appeal was perfected by attorney Wise, who raised the following issues:

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1. Did the trial court err in failing to direct a verdict when the State failed to prove through competent medical evidence or otherwise that the morphine in the deceased child came from the mother through breast-feeding?
2. Did the trial court err in failing to direct a verdict or grant a new trial when the State failed to prove Stephanie Greene acted with extreme indifference as required by South Carolina Code § 16-3-85?
3. Did the trial court err in failing to instruct the jury they could convict on only one of the charges as a conviction of more than one charge would violate the double jeopardy provisions of Article I, § 12 of the Constitution of the State of South Carolina and Fifth Amendment to the Constitution of the United States of America as the same fact was used to prove the cause of death in each case?
4. Did the trial court err in failing to require the state to open fully on the law and the facts of the case and replying only to new arguments of defense counsel when the defendant was deprived of a fair trial in violation of the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the constitution of the United States of America by her counsel not being able to respond to new arguments made by the state in its closing argument?

By order filed May 5, 2016, the Supreme Court of South Carolina certified the appeal pursuant to Rule 204(b), SCACR, immediately lifting the matter from the South Carolina Court of Appeals.

The parties proceeded to oral arguments on February 15, 2018. Attorney Wise represented Applicant, and David Spencer, Esq., of the South Carolina Attorney General's Office, represented the State. By opinion decided May 23, 2018, the South Carolina Supreme Court affirmed Applicant's convictions for homicide by child abuse and unlawful conduct towards a child, but vacated the conviction for involuntary manslaughter. State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018). The Remittitur was issued on June 26, 2018. Applicant petitioned the Supreme Court of the United States for a writ of certiorari on November 19, 2018, which was denied by summary disposition published January 7, 2019.

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II. STATEMENT OF THE FACTS

On November 13, 2010, Applicant Greene's infant child ("Victim") was already dead when officers and medical personnel responded at approximately 6:00 a.m. The death was the result of intoxication by morphine in combination with other medications. Evidence indicates the morphine and other substances were ingested by Alexis through Greene's breast milk. Due to Greene's efforts to conceal information from her treating physicians, the doctor prescribing the extended release morphine, known as "MS Contin," was unaware that Greene was breastfeeding.

The first witness for the State was Terri Carter, an investigator for the Spartanburg County Coroner's Office. Carter and fellow investigator Ellen Holmes responded to a call to Greene's residence concerning the death of an infant on November 13, 2010. By the time Carter arrived at Greene's residence at around 6:00 a.m., Victim was already in the ambulance laying in a stretcher. (Tr. 43).

Holmes interviewed Greene while Carter inspected the house. Carter noticed Greene was stumbling, slurred her words, spilled her coffee, her eyes were not focused, and she seemed cognitively unsound. Her husband was also present during the interview and needed to tell Greene to sit up. However, as the interview progressed over time, Greene became more alert and focused. Then at a later point in the interview, Greene left the room to use the restroom. Shortly after she returned, Greene's speech became slurred again, and she was clumsy once more. (Tr. 43-46).

Walking into the master bedroom, Carter observed numerous pill bottles covering the dresser. Carter published some of the warnings on the labels of these pill bottles that warned about taking the pills while pregnant or breastfeeding. (Tr. 50-53). Carter photographed the

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bottles, including the front and back of the bottles. Carter cataloged the medications found on the dresser and checked to see the number of pills remaining in each bottle, the dates the prescriptions were made available, and the dosage instructions found on the bottles. These tabulations were memorialized in a pill chart that was admitted into evidence. (Tr. 50-56; State's Trial Exhibit No. 60).

Notably, the label for the morphine pills indicated it originally contained 90 pills and the instructions allowed for one pill every eight hours. The prescription was filled on October 20, 2010. Accordingly, eighteen pills should have been left in the bottle, but only twelve remained. The morphine pill bottle was six pills short. (Tr. 59; Tr. 65; State's Trial Exhibits Nos. 7, 8, 60).

Even more hydrocodone pills were missing. The prescription was filled November 4, 2010, with ninety pills and was to be taken three times a day. Nine days later, only twenty-seven pills should have been missing, but instead there were forty-eight missing. (State's Trial Exhibit No. 60; Tr. 59-60). The pill count was short for Baclofen and Gabapentin as well. (Tr. 63-64).

The 911 tape was admitted into evidence. It documents Greene's attempts under the direction of the operator to administer CPR to her daughter. She had trouble remembering how to administer CPR, despite being a former nurse. The operator directed her to administer thirty compressions at a time, counting out loud. At times, Greene fails to count out loud and her voice trails off, usually when reaching the mid and upper teens in the count. (State's Trial Exhibit No. 33).

Ellen Holmes was the investigator from the Coroner's Office who interviewed Greene and her husband at their home the day Victim was found dead. She testified she responded 6:16 a.m., November 13, 2010. Victim was already in the back of the EMS vehicle. The baby was dressed in an oversized red turtle neck shirt and wore a wet diaper. Victim was only six-

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and-a-half weeks old. Victim was "extremely" pale and cold to the touch. Mild lividity had set in on her back. (Tr. 86-87). Holmes noticed Greene "had a very flat affect, slurred speech, almost incomprehensible at times. Her eyes were very heavy and glassy. . . . [W]hen she walked it was a very unsteady gait." (Tr. 87, ll. 19-22). Holmes testified that Greene seemed intoxicated, but when Holmes asked Greene if she had taken any medications that morning, Greene claimed she had not. (Tr. 87-88).

Greene told Holmes that on Wednesday (Victim died on Friday night/Saturday morning), Victim was congested, and the doctor's office recommended a vaporizer and baby rub. Victim was not running a temperature. According to Greene, she woke up at 4:30 a.m. (her husband said 5:00 a.m.) Saturday to find Victim unresponsive. (Tr. 89-90). Greene admitted to Holmes that she used to be a nurse. She told Holmes about breastfeeding times. (Tr. 90).

The interview was recorded. (Tr. 88; State's Trial Exhibit No. 34). During the interview, Greene's speech was markedly slurred evidencing her intoxicated state. She explained she called Victim's physician, Dr. Bridges, on Thursday night about Victim's upper respiratory system. Dr. Bridges said she did not need to bring Victim in for a visit. (State's Trial Exhibit No. 34 (00:15 - 1:00)). After following Dr. Bridges' recommendations to use a vaporizer and baby rub, Victim seemed to do better. Greene and her husband described Victim as bright-eyed and Thursday night, she nursed all night long. Greene told Holmes that Alexis was attached to Greene's breast the whole night, feeding when needed. State's Trial Exhibit No. 34 (2:00 - 3:30; 9:20 - 9:45). Friday, she remained bright-eyed and they did not notice anything out of the ordinary. Greene breastfed Victim that evening. (State's Trial Exhibit No. 34 (4:45 - 6:15)). Greene told Holmes she started supplementing breastfeeding with formula for the last week because Greene's blood pressure spiked and she started taking blood pressure medication. **Greene was concerned about**

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the blood pressure medication affecting Victim and she claimed she spoke with the lactation expert about the blood pressure medication and her other medications. (State's Trial Exhibit No. 34 (13:45 – 14:30)).

This prompted Holmes to ask about the other medications, and Greene slowly and deliberately listed several medications, but MS Contin was not one of them. (State's Trial Exhibit No. 34 (15:00 – 17:30)). Greene told Holmes she was taking Amlodipine, Baclofen, Vicoprofen, Pristiq, Keppra, and Klonopin. The other medications found, which Greene did not tell Holmes about, were Requip, Durotan, Savella, Soma, alert tabs, and Morphine. (Tr. 91).

On the extended form provided by Holmes for Greene to fill out, Greene was asked to list medications she took during her pregnancy. Greene listed MS Contin. However, Greene did not tell Holmes that she took MS Contin while breastfeeding. Greene was asked several times about her prescriptions. (Tr. 91-92).

RN Elaine Olsen worked at Piedmont Women's Healthcare. She testified that on March 25, 2010, she received a call from Greene informing Nurse Olsen that Greene took a home pregnancy test on March 20, 2010, that tested positive. An appointment was scheduled for April 12, 2010, but Greene never came to the appointment. (Tr. 116-117). An ultrasound was also scheduled for March 26, 2010, but Greene did not show up for that appointment either. (Tr. 123). Prior to that, Greene was last seen in August 2009. (Tr. 118).

Vera Andrus is an LPN for Carolina OBGYN. She took down the initial information from Greene on May 10, 2010. This was after Greene took a pregnancy test during a visit to Nichols on May 7, 2010. Nurse Andrus testified that she asked Greene about the medications Greene was taking. (Tr. 97-98; Tr. 100). Nurse Andrus explained the reason why it was important to ask patients about their medications as follows:

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It's important to know that because we want to know anything that the baby has been exposed to during pregnancy. And if those medications shouldn't be taken during pregnancy, then we need to advise the patient, you know, to have her stop or to stop or to wean off them.

(Tr. 98, ll. 15-19). Nurse Andrus testified that each time a patient comes in, the patient is asked if there are any changes to their medications. (Tr. 98, ll. 20-23).

Nurse Andrus testified she asked Greene for a list of medications she was currently taking or had taken since her last period. Greene told her Soma, Vicoprofen, Clonazepam, Keppra, Lortab, Neurontin, Claritin, Benadryl, Savella, and a prenatal vitamin. (Tr. 99, ll. 6-11). Greene did not tell Nurse Andrus she was taking morphine or MS Contin. Greene also did not tell Nurse Andrus she was taking morphine or MS Contin when she came in for a follow up visit. (Tr. 99, ll. 15-25).

Emile Marks Horne is a labor and delivery nurse who testified for the State. She testified that on September 27, 2010, Greene complained during triage about headaches and intermittent contractions. Greene was treated and then admitted into the hospital. Nurse Horne testified that Greene reported she was taking some medications, but she did not mention that she took MS Contin, Vicoprofen, or Neurontin. Greene delivered Victim the next day. She was given Nubain for headaches and Motrin and Percocet at discharge. (Tr. 109-112).

SLED forensic toxicologist Quintus Leon Young, II, testified that he performed an initial screen from Alexis' blood and it tested positive for benzodiazepines, cocaine metabolite, opiates and salicylates. (Tr. 141). This prompted Young to perform a more comprehensive screen which indicated Alexis' blood contained .52 mg/liter of morphine. Young testified this was within lethal levels. Young's testing also indicated the blood sample contained .19 mg/liter of acetaminophen, .03 mg/Liter Methorphan, .03 mg/liter Benadryl, .04 mg/L Methorphan, and .01 mg/L Clonazepam. (Tr. 141-144). This prompted further testing. Young received and tested

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samples of Victim's brain and liver tissue. These tests further confirmed the lethal ranges of morphine in Victim's body. The sample from the brain tested at .54 mg/liter, and the liver sample indicated a morphine level of .56 mg/liter. (Tr. 144; Tr. 147-148). Young confirmed that the combination of morphine and other medications could have a synergistic effect on each other. (Tr. 148).

Dr. Suzanne Kovacs, Greene's primary physician, testified she treated Greene from November 2007 into 2010. Dr. Kovacs testified she never knew Greene was pregnant or had a child and was breastfeeding. Dr. Kovacs adjusted Greene's medications during an April 30, 2010 visit, changing the prescription from a Duragesic patch to a prescription for MS contin. The Duragesic patch was originally prescribed for pain on March 11, 2010. This was based on Greene reporting that the patch was falling off or not working. Dr. Kovacs referred Greene to a gynecologist to have a contraceptive device known as a Mirena removed. Greene never told Dr. Kovacs that she was pregnant when changing medications. At the time of the April 30 visit, Greene had minimal weight gain from the previous visit: she weighed 133.9 pounds compared to 131 pounds the previous visit. (Tr. 163-168).

Dr. Kovacs gave Greene further prescriptions for MS Contin on May 27, 2010, June 28, 2010, July 27, 2010, August 26, 2010, and October 15, 2010. On October 29, 2010, Greene was given a new prescription for Klonopin. (Tr. 168-169; Tr. 171, ll. 4-8; Tr. 174, ll. 10-13).

Dr. Kovacs testified she was unaware of any prescriptions that her other doctors, Dr. Kooistra or Dr. Bridges, gave Greene. Dr. Kovacs testified that Greene was supposed to be off the prescriptions from Dr. Kooistra at that point in time. Greene never told Dr. Kovacs about the other doctors' prescriptions. (Tr. 170-171). Dr. Kovacs did not know about Dr. Kooistra's prescription for Klonopin from July 3, 2010. Dr. Kovacs also did not know about the August 3, 2010

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2010 prescriptions from Dr. Kooistra for Vicophen and Klonopin. (Tr. 171). Likewise, Dr. Kovacs did not know that Dr. Bridges had prescribed Darvocet on June 30, 2010, July 23, 2010, and August 23, 2010. (Tr. 173-174).

Dr. Kovacs testified she would not have prescribed morphine or any pain medication during pregnancy had she known Greene was pregnant. She would have let the gynecologist or obstetrician issue any prescriptions. (Tr. 171, ll. 20-24; Tr. 176).

Dr. Kovacs did not know Greene was breastfeeding. Dr. Kovacs was unaware that Dr. Kooistra gave Greene a prescription for Baclofen, Vicoprofen, Neuroton, and Klonopin on November 4, 2010. Dr. Kovacs testified she would not have gave Greene a prescription for Klonopin on October 29, 2010, if she had known that Dr. Kooistra gave Greene another prescription for Klonopin five days later. (Tr. 172-173).

Dr. Kovacs did not know Greene was pregnant, had a child, and lost the child until Dr. Kovacs was visited by law enforcement in 2011. (Tr. 174-176). Greene did not even tell Dr. Kovacs during visits subsequent to Alexis' death. (Tr. 175, ll. 4-6).

Dr. Kovacs confirmed that in 1998 Greene suffered a car accident and suffered from pelvic pain. She also suffered a skull fracture in the accident and suffered from seizures. (Tr. 177-178).

Dr. Carol Kooistra, a neurologist, testified she first saw Greene in 2006 when Greene was pregnant. Greene was referred to her for a seizure disorder. Dr. Kooistra did not prescribe any narcotics during Greene's 2006 pregnancy. She testified she tries to avoid prescribing medications of any sort during pregnancy. She did not prescribe any pain medication during pregnancy, only medicine for the seizure disorder (Levetiracetam, aka Keppra). (Tr. 209-210). Greene signed a narcotic pain medication contract with Dr. Kooistra's office on January 5, 2006.

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(Tr. 209, ll. 20-25; Tr. 211, ll. 4-7; State's Trial Exhibit No. 59). One of the contract terms is as follows:

I will not request or accept controlled substance medication from any other physician or individual while I am receiving such medication from my physician at Carolina Neurology. Besides being illegal to do so, it may endanger my health. The only exception is if it is prescribed while I am admitted in the hospital.

(Tr. 212, lines 4-9; State's Trial Exhibit No. 59). The second page of the contract contains the relevant laws on the matter – S.C. Code sections 44-53-390 and 395. (Tr. 212, ll. 20-25; State's Trial Exhibit No. 59, page 2). The contract further reads as follows:

I understand that if I violate any of the above conditions my controlled substance prescriptions and/or treatment at Carolina Neurology may be ended immediately. If the violation involved obtaining controlled substances from another individual as described above or the concomitant use of nonprescription or illicit or illegal drugs I may also be reported to my physician, medical facilities and other appropriate authorities.

(Tr. p. 213, ll. 8-15, State's Trial Exhibit No. 59). In the contract, Greene indicated she had a college degree and a Bachelor of Science in nursing. (Tr. 213, ll. 16-21).

Dr. Kooistra saw Greene on February 16, 2010, and did not see her again until November 4, 2010. There were two scheduled appointments in between that were no shows: May 13, 2010, and August 25, 2010. Instead, Greene requested her prescriptions by phone. Dr. Kooistra testified she was willing to issue the prescription on August 5, 2010, anticipating Greene would make her August 25, 2010 appointment. Greene requested a prescription by phone for Soma on October 28, 2010. Dr. Kooistra declined the request since she had not seen Greene since February. Subsequently, Greene came to her November 4, 2010 appointment. At that appointment, Greene did not tell Dr. Kooistra that between visits she became pregnant and birth or that she was currently breastfeeding. (Tr. 213-215).

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When Dr. Kooistra asked why she had not made any of her appointments since February, Greene claimed "she had been in a severe depression and had been unable to leave her house." (Tr. 215, ll. 14-16).

Greene never told Dr. Kooistra she was pregnant in March 2010. However, Greene continued to receive prescriptions for Vicoprofen, Soma, Klonopin, and Gabapentin. (Tr. 215-216). Dr. Kooistra did not know Greene was seeing an OBGYN and did not know that Dr. Kovacs was prescribing MS Contin. (Tr. 216).

On November 4, 2010, Dr. Kooistra prescribed Klonopin, unaware that Dr. Kovacs wrote a prescription for Klonopin on October 29, 2010. (Tr. 219-220). She was unaware Dr. Bridges was also prescribing medicines. (Tr. 220). On redirect, Dr. Kooistra published the medication guide for MS Contin that advises the following:

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

(Tr. p. 235, ll. 4-9).

On cross-examination, when Dr. Kooistra was asked: "And the American Academy of Pediatric finds nothing wrong with taking morphine while breastfeeding?" Dr. Kooistra answered, "So I've read." However, Dr. Kooistra clarified that she has not researched the issue closely. (Tr. 231-232).

Doctor Kelly Ann Bridges is a doctor with Carolina OBGYN and treated Greene. When she saw Greene for the first time on June 30, 2010, Greene was twenty-six weeks pregnant. Greene advised her she was taking Vicoprofen. She changed Greene's medication to Darvocet because Vicoprofen is dangerous during pregnancy. Greene did not tell Dr. Bridges that she was

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taking morphine during that visit or the other two visits in August and September 2010. Dr. Bridges testified her office asks what medications the patient is taking at every visit. Greene was given additional prescriptions for Darvocet on July 23 and August 23, 2010. Dr. Bridges gave prescriptions for Motrin and Percocet on September 29, 2010. (Tr. 236-241). Dr. Bridges testified she would not have prescribed Darvocet if she knew Greene was taking morphine and other drugs, "[b]ecause you could potentially overdose on narcotics if you're combining those medications. It could be dangerous." (Tr. 242, ll. 5-11).

Reviewing the office records, Dr. Bridges testified the last time Greene visited Carolina OBGYN was November 4, 2010, for a six week postpartum exam with Dr. John Nichols. Nothing in the records of that visit indicated Greene informed Dr. Nichols that she was taking morphine. (Tr. 242-243).

Wendy Bell, an expert in forensic toxicology involving drugs and alcohol, testified for the State. She reviewed SLED toxicologist Quintus Young's report. She testified that every phase of testing in the laboratory is triple-checked to ensure correct results. (Tr. 253). Bell testified as follows on the accuracy of her laboratory:

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

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

(Tr. 266, ll. 12-22). The results of the testing were as follows:

Acetaminophen: .19 mg/Liter;

Diphenhydramine (antihistamine): .03 mg/Liter;

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Chlorpheniramine (antihistamine): .06 mg/Liter;

Methorphan DM: .03 mg/Liter;

Methorphanan: .04 mg/Liter;

Morphine: .52 mg/Liter;

Clonazepam (benzodiazepine): .01 mg/Liter.

(Tr. 257-259) (emphasis added). Bell noted there is limited pediatric information on the type of medications involved. (Tr. 260). Bell testified the effects of drugs like Klonopin with morphine will act together synergistically. She explained the medications "are central nervous system depressants, which means it's going to slow the respiratory system, the breathing, the heart rate. And they can act together synergistically to have affects on each other." (Tr. 260, ll. 8-12). Bell testified "a lot of these drugs aren't prescribed for children because their livers have not fully developed yet. So it's very, very difficult for them to metabolize this type of medication." (Tr. 260, ll. 19-22). Bell noted, "Children under ten months old cannot tolerate high levels of narcotics" and noted a lot of literature supports that proposition. (Tr. 261, ll. 10-15).

Investigator William Robert Gary testified he responded to Greene's house on the day of the incident. Victim was in the ambulance parked in front of the house. Investigator Gary passed Greene sitting on the porch, unaware she was Victim's mother. Greene "was sitting there smoking a cigarette, drinking coffee." (Tr. 286, ll. 11-19).

Investigator Gary checked on the victim. When he returned inside the house, the investigators with the coroner's office had already begun the interview. Investigator Gary noted Greene was slow in her speech. "Everything she was doing was slow." (Tr. 287, ll. 20-22). Investigator Gary testified Greene appeared to be under the influence of something. Greene denied taking any medications since she found Victim. (Tr. 287-288).

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Investigator Gary interviewed Greene on June 24, 2011. Investigator Gary spoke with Greene about her omitting information from her doctors about either her pregnancy or the drugs she was taking, Greene claimed they were covering themselves by not documenting it. Greene claimed her sister dropped some medication and claimed one of children could have picked up the pills and given it to the baby. Later in the interview, Investigator Gary inquired if the reason she did not tell doctors about being pregnant and breastfeeding was because of her morphine addiction and the awareness that the doctors would not give her the medication if they knew. Her response was the only time she showed emotion during the interview, and she answered "that was part of it." (Tr. 293-294; Tr. 302 (direct quote, Tr. 294, ll. 22-23)).

Greene claimed she was not taking the pills while she was pregnant, but filled the prescriptions because her insurance covered it. She claimed her husband locked up the medication and gave her three days' worth of medication at a time. Of course, Investigator Gary was skeptical about this since he had seen the pill bottles sitting on the dresser. In response, Greene said that by that point, her husband trusted her enough to leave them out, but still kept some locked up. (Tr. 295).

Investigator Gary testified as follows about his conversation with her about breastfeeding Victim:

She said she supplemented a good bit with formula and that she didn't breastfeed a lot, you know, which hearing her talk about before with her talk about that there'd be nights that Alexis would just - she'd lay in the bed and she'd stay latched on all night and feed as she wanted to, to me that's not - it was - if you're doing that, I don't know how you're not breastfeeding a lot.

(Tr. 297, ll. 14-20). Investigator Gary testified the investigators confronted Greene about how she filled out the lists of medications she was on at the doctors' offices and omitted morphine, contradicting her claim that they removed or omitted records themselves. Toward the end of the

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interview, Greene broke down crying and admitted they would stop prescribing morphine to her if they knew about her pregnancy or other medications. (Tr. 299-300). Greene admitted to Investigator Gary that she and her husband discussed the possibility that Victim's death could be from the drugs. Greene admitted the morphine levels in the coroner's report were high. (Tr. 300-301).

On cross-examination, Investigator Gary agreed that Greene claimed she spoke with a lactation nurse at the hospital, however, there were no notes in the hospital records. Greene also claimed to have researched the issue online on her computer. (Tr. 303).

Kaushik Kotecha, who at the time of Alexis' death was employed by the State Bureau of Drug Control, part of the Department of Health and Environmental Control (DHEC), testified. Without objection, he was qualified as an expert in the field of pharmacy. Following time as a uniformed police officer, Kotecha went to pharmacy school and has been a licensed pharmacist for twenty-five years. His duties with DHEC included both law enforcement and regulatory enforcement of drug control laws. (Tr. 307-310).

Kotecha testified as follows about morphine: "The problem with morphine of course you have - I usually when I was practicing pharmacy, I would tell them that this is very strong drug. . . Sometimes you'd be unstable on your feet." (Tr. 315, ll. 10-15). Kotecha testified that MS Contin is a continuous release form of morphine. (Tr. 316). Looking at State's Trial Exhibit No. 7, the bottle for morphine sulfate ER, Kotecha testified that it is an extended release morphine. When asked if he would recommend morphine sulfate ER for someone who was breastfeeding, Kotecha responded, "I certainly would have had additional questions and I would want to talk to the doctor if I knew they were breastfeeding." (Tr. 317, ll. 17-19). Likewise, Kotecha indicated

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that if he was aware someone was being prescribed medication containing Hydrocodone while breast feeding, he would double check with the prescribing physician. (Tr. 317-318).

Kotecha published to the jury the warnings contained on the pill bottle photographed in State's Trial Exhibit Nos. 9 and 10, which advise: "DO NOT TAKE MEDICATION IN 3RD TRIMESTER OF PREGNANCY." (Tr. 318). The warnings for Clonazepam advise in part as follows: "Do not use if pregnant or suspect you are pregnant or breastfeeding." (Tr. 318, ll. 20-23; State's Trial Exhibit No. 12). The warnings on a bottle of Keppra pills likewise warns about discussing use with a doctor if pregnant. (Tr. 319; State's Trial Exhibit No. 14). Another drug found was Ropinirole, used for restless leg syndrome. It likewise warns that breastfeeding is not recommended while using the drug. (Tr. 320, State's Trial Exhibit No. 20).

Kotecha explained about how substances may have a synergistic effect on each other. Kotecha testified that the combination of all these drugs together could cause a baby to stop breathing. Kotecha noted that the hydrocodone pills were originally prescribed for 90 pills on November 4, 2010, and on November 13, 2010, there were only 42 remaining. (Tr. 324).

Referring to the pill chart prepared by the Coroner's investigators, he noted that if she took the appropriate doses of morphine since the prescription was filled on October 20, 2010, only seventy-two pills should have been taken. However, only twelve pills remained. (Tr. 323-324). Eighteen pills should have been remaining, so six pills were missing.

Kotecha was present during the June 2011 interview. During the interview, Greene admitted she was addicted to pain killers. She admitted she lied to doctors to avoid losing her prescriptions. Greene was upset and wanted to know what was going to happen to her. (Tr. 325-326).

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On cross-examination, Kotecha admitted that with the exception of one prescription, all the prescriptions were from one pharmacy, the Inman CVS. Tr. pp. 329-330. On redirect examination, Kotecha noted that Greene used two different names to fill her prescriptions, Stephanie Greene and Stephanie Neet. (Tr. 340). Greene said she used Rite-Aid once because it had a drive-thru. That prescription was the October 20, 2010 prescription for MS Contin. (Tr. 340-341).

Dr. David Eagerton testified as an expert in forensic toxicology and pharmacology. Dr. Eagerton is an assistant professor at the Presbyterian College School of Pharmacy. Dr. Eagerton received a Ph.D. in pharmacology in 1992. Dr. Eagerton was the chief forensic toxicologist with SLED for approximately twelve years until he retired in 2009 and became a professor. Dr. Eagerton had testified as a forensic toxicologist and pharmacologist between eighty and a hundred times by the time of trial. Dr. Eagerton was qualified as an expert without objection. (Tr. 343-345).

Dr. Eagerton testified that Alexis had toxic levels of morphine. He also noted Clonazepam or Klonopin is a benzodiazepine that is very potent. Dr. Eagerton testified these medicines can have a synergistic effect on each other. (Tr. 346-350).

Dr. Eagerton published FDA warnings about MS Contin from the Medication Guide, approved by the U.S. Food and Drug Administration, which provides the following warnings:

Tell your healthcare provider if you are:

- **pregnant or planning to become pregnant.** MS Contin may harm your unborn baby.
- **breastfeeding.** MS Contin passes into the breast milk and may harm your baby.

(States Trial Exhibit No. 67; Tr. 354-55) (emphasis in original).

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Dr. Eagerton noted that while studies indicated treatment with morphine for short periods of time for acute pain might not be dangerous, the studies, even prior to 2010-2011, did not recommend use of the sustained release morphine products. Tr. pp. 357-358. Specifically, Dr. Eagerton noted:

[I]f you look at the fine print they – they talk about sustained release and . . . continued use of these products. It . . . drops it down to an . . . uncertain level or an unsafe level, and they don't . . . recommend it even prior to these studies.

(Tr. 358, ll. 6-10). Dr. Eagerton noted that infants livers are not fully developed, specifying on cross-examination that they do not reach adult level liver function until towards six months of age. (Tr. 360-361; Tr. 400). Dr. Eagerton testified that "the lethargy, maybe trouble breathing. . . I don't know how to interpret that exactly, but . . . there were some symptoms that were conveyed that were consistent with morphine toxicity." (Tr. 361, ll. 15-18). "[I]f you can't metabolize it, then the drug may build up in your body and you become – you have a toxic dose whenever you wouldn't normally have a [toxic] dose." (Tr. 361-62).

Dr. Eagerton agreed on cross-examination that a 2000 article listed morphine as safe to take while breastfeeding. (Tr. 375, ll. 4-7). Dr. Eagerton testified as follows on cross-examination:

Q: Okay. But you don't have any basis for saying that it came through breast milk.

A: Had to get into the baby somehow.

Q: That's not my question. You have no basis for saying that number came into the baby through breast milk.

A: I don't know that I'd say I have no basis. I'd say the basis is the mother is taking MS Contin, which is morphine. She is breastfeeding. We know that based on the literature we've already talked about that at least small amounts certainly do pass through into the breast milk. . . .

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(Tr. 383-84). Counsel conceded "some of it." Commenting on the amount of morphine necessary to kill someone, Dr. Eagerton testified as follows:

[W]e in forensic toxicology aren't concerned with the amount that people can survive on. We're -- we're concerned with the amount it takes to kill one person. . . . And people can die at much lower levels, and people can survive. I can't really predict that. I can only say as a forensic toxicologist that this is a lethal level or this is consistent with a lethal level, this is consistent with a toxic level. I can't tell you specifically what levels somebody's going to survive with and what level's going to kill somebody.

(Tr. 385, ll. 8-19).

Dr. Eagerton talked about the blood-brain barrier on cross-examination, agreeing with defense counsel that it keeps some drugs from getting to the brain. Dr. Eagerton agreed with defense counsel that heroine and oxycontin pass through the blood-brain barrier quicker than morphine, but noted that morphine passes through the blood-brain barrier in a pretty good concentration. (Tr. 393-94).

Dr. Eagerton noted that taking morphine acutely while breastfeeding may be perceived as acceptable because "you don't get that good penetration into this, into the brain." (Tr. 396, ll. 2-10). But "[o]nce it gets in the brain it -- there are receptors there. These -- these opioid receptors there that are responsible for the actions of the drug are going to bind to it, and it's going to stay there longer than just regular blood." (Tr. 396, ll. 11-15). Speaking further on the significance of morphine levels in the brain, Dr. Eagerton commented as follows:

So the other thing is whenever you take a . . . portion of brain, obviously, from a dead person, you can measure levels of drugs throughout different areas of the brain. You're going to get different levels.

So the levels of the drug in the brain are not that impressive to me. Specifically to me my interpretation of those is that they're just consistent with a large amount of morphine being in that -- this little baby's body. . . . So that's consistent with that high overdose level, lethal level, of morphine.

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(Tr. 396-97).

Dr. Eagerton was asked to consider other modes of delivery than breast milk for explaining the morphine level in Victim. Dr. Eagerton noted the lack of needle marks on Victim and discounted the possibility of morphine being injected. Dr. Eagerton also discounted the possibility that the baby swallowed the pill, agreeing there would likely be pill remnants in her stomach. Although the pill could be crushed up, Dr. Eagerton opined this would have killed the baby in thirty to sixty minutes. Instead, Dr. Eagerton opined: "I think what we see here is -- is more of a chronic type exposure, which is more consistent with through the breast milk. Or it could be some combination of both. I don't know." (Tr. 398-399 (direct quote, Tr. 399, ll. 8-11). Defense counsel claimed in his question posed to Dr. Eagerton that no literature supported his opinion. Dr. Eagerton disagreed, explaining the following:

I believe that if we take the reports that we have where it comes through in small levels that means if it -- if you're getting a small dose of it you gotta to take it longer over a period of time.

If we've got evidence that the -- these little babies, this six-and-a-half-week-old -- probably can't metabolize and get rid of the morphine as fast, so therefore it's going to build up in its body. So that would suggest the more chronic type exposure. And I believe that's what the literature that we've already gone over -- in my opinion that's what it points to.

Does it come out and out and say that? No. I don't believe I've seen any literature that says that. But for everything there's got to be a first.

(Tr. p. 399-400).

On redirect, Dr. Eagerton published a portion of LactMed pertaining to the use of morphine, as follows:

Epidural morphine given to mothers for postcesarean section analgesia results in trivial amount of morphine in their colostrum and milk. Intravenous or oral doses of maternal morphine in the immediate postpartum period results in higher

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milk levels than with epidural morphine. . . . Maternal use of oral narcotics during breastfeeding can cause infant drowsiness, central nervous system depression and even death.

(Tr. 404-05).

Dr. John David Wren was admitted as an expert in forensic pathology. He performed the autopsy on Victim. At the time of the autopsy, he observed that Victim was normally developed and of normal weight. Some rigor mortis and liver mortis had set in. Dr. Wren found no evidence of trauma. Dr. Wren testified that Victim did not have any of the tell-tale signs of SIDS. He observed her lung was congested. Dr. Wren observed nothing physically wrong with Victim. (Tr. 415-429).

Dr. Wren testified about the drug levels in Victim's blood. Acetaminophen levels were .19 mg/Liter, which was in the high end of therapeutic levels. (Tr. 428-426). Chlorpheniramine levels were .06 mg/Liter. Dr. Wren testified that therapeutic levels are .01 to .04 mg/Liter. So the Chlorpheniramine level was above therapeutic levels and needed to be taken into account. Tr. p. 431. The dextromethorphan metabolite was .04 mg/Liter and therapeutic levels are .007 to .021 mg/Liter, indicating Victim had elevated levels of this drug. As to morphine, the level was .52 mg/Liter. Dr. Wren testified therapeutic levels were .001 to .200 mg/Liter according to his references. Toxic levels would be from .30 to 2.5 mg/Liter. Lethal levels are from as low as .20 mg/Liter to 7.2 mg/Liter. (Tr. 432). Dr. Wren testified there are reported deaths with levels as low as .20 mg/Liter. (Tr. 432).

Dr. Wren confirmed, "It's well known that infants and children do react differently to medications than adults, and it takes some -- infants are much more susceptible to any drug than others. . . . They don't need as much and they're more susceptible to effects of them." (Tr. 434-435, 437-438, 440-441, 443-444, 446-447, 449-450, 452-453, 455-456, 458-459, 461-462, 464-465, 467-468, 470-471, 473-474, 476-477, 479-480, 482-483, 485-486, 488-489, 491-492, 494-495, 497-498, 500-501, 503-504, 506-507, 509-510, 512-513, 515-516, 518-519, 521-522, 524-525, 527-528, 530-531, 533-534, 536-537, 539-540, 542-543, 545-546, 548-549, 551-552, 554-555, 557-558, 560-561, 563-564, 566-567, 569-570, 572-573, 575-576, 578-579, 581-582, 584-585, 587-588, 590-591, 593-594, 596-597, 599-600, 602-603, 605-606, 608-609, 611-612, 614-615, 617-618, 620-621, 623-624, 626-627, 629-630, 632-633, 635-636, 638-639, 641-642, 644-645, 647-648, 650-651, 653-654, 656-657, 659-660, 662-663, 665-666, 668-669, 671-672, 674-675, 677-678, 680-681, 683-684, 686-687, 689-690, 692-693, 695-696, 698-699, 701-702, 704-705, 707-708, 710-711, 713-714, 716-717, 719-720, 722-723, 725-726, 728-729, 731-732, 734-735, 737-738, 740-741, 743-744, 746-747, 749-750, 752-753, 755-756, 758-759, 761-762, 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Dr. Wren concluded that Alexis died as a result of respiratory insufficiency secondary to synergistic drug intoxication. Dr. Wren explained, "I could just as easily have said morphine intoxication, lawyers like to split hairs, and so I included them all." (Tr. 433, ll. 18-22). Dr. Wren noted "all of these drugs essentially lead to respiratory depression." (Tr. 433, ll. 15-16).

Dr. Wren also concluded the morphine was administered orally, as there were no signs of injection. (Tr. 434-435). As to the determination of blood levels, Dr. Wren noted lethal levels were found in the blood, brain, and liver, and he noted the level and sort of testing employed by SLED was "kind of hard to mess up [by] an experienced operator." (Tr. 436, ll. 6-8).

The defense presented Dr. Steven Bernard Karch as an expert in the effect of drugs on the human body. He claims to have written over a hundred peer reviewed articles, but he has not performed an autopsy in forty-five years. He earned an undergraduate degree from Brown University, then studied at Stanford, but left before earning any degree to go to medical school at Tulane. After getting his M.D., he did a fellowship at the Royal London Hospital in neuropathology. From there he worked at the only heart transplant lab in the world during the 1980's and 1990's. Dr. Karch then worked one day a week for the San Francisco Medical Examiner for roughly a decade. Dr. Karch authored the "Pathology of Drug Abuse, Fourth Edition." (Tr. 485-492).

Dr. Karch disagreed that a lethal amount of morphine could pass through breast milk, although he agreed a toxic level sufficient to make a child sick could be achieved. He testified that he thought it has happened. Dr. Karch claimed the American Academy of Pediatrics did not even list morphine as being dangerous for women who are breastfeeding. (Tr. 492-494). In

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contrast to other witnesses, Dr. Karch claimed a one-month-old baby would already have developed an 80% normal metabolism rate.¹ (Tr. 497).

However, Dr. Karch noted the American Academy of Pediatrics recommended starting with nonsteroidal medications like aspirin or ibuprofen and not starting with morphine. (Tr. 494, ll. 5-10). **Dr. Karch admitted a baby could have achieved a morphine level as high as .52 mg/Liter from breast milk**, noting a case where a baby had a blood level of 84 nanograms from a mother on morphine. That baby did not happen to die. (Tr. 504-505).

Dr. Karch confirmed "the mode of death for morphine is to stop respiration." (Tr. 510, ll. 20-21). Dr. Karch testified as follows on the cause of death:

Q: All right. Yet you said in this case where 52 mg – nanograms of morphine – you would believe that that could have been a cause of death if that number is accurate.

A: If the number is accurate and if the baby was intolerant. I don't – I have no way of proving what the mother's drug usage was or was not during that period.

(Tr. 511, ll. 5-10).

Dr. Karch testified he did not know of any medical group that advises against taking morphine while breastfeeding because of dangers to the child. (Tr. 513, ll. 22-25). Dr. Karch testified as follows on what physical traits a baby would develop if the baby was slowly building up morphine in their system:

The baby would start to go south. It wouldn't nurse. It would be lethargic. Its color might not be too good.

The best example I know of – and even though it's codeine and not morphine, or initially, but codeine turned into morphine –

¹ See The Transfer of Drugs and Therapeutics Into Human Breast Milk: An Update on Selected Topics, 132, PEDIATRICS, Official Journal of the American Academy of Pediatrics, e796, e801 (September 2013) ("Clearance of morphine is decreased in infants younger than 1 month and approaches 80% of adult values by 6 months of age.").

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was the baby went off its feed and the mother was concerned that the baby just wouldn't take the breast milk.

(Tr. 515, ll. 17-23). In that case, the child was being purely breastfed. The child would not gain weight and was taken to the doctors. (Tr. 516). Based on that case, Dr. Karch testified that if a baby was on morphine, he would expect the baby would not gain weight. (Tr. 519, ll. 8-19).

Holmes was recalled as a reply witness for the State. She testified that the medical records indicated Victim was 7 lbs., 2 oz. when born. In her second week, Victim weighed 7 lbs., 11 oz. At the time of death, Victim only weighed 7 lbs., 6 oz.—a loss of five ounces since her two week check-up. Holmes also testified that when she saw Victim the day she died, she was “extremely pale, very pale, all over.” (Tr. 525, ll. 11-15).

The weight loss is confirmed by Greene's interview with the Coroner's Office where she admits that she had noticed Alexis had lost a lot of weight and was going to ask the doctor to weigh Alexis at an upcoming visit. (State's Trial Exhibit No. 34 (circa 11:30)).

III. CURRENT APPLICATION

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. “Actual Innocence – new evidence/expert witnesses – Dr. J. Christopher Caym, MD, Dr. Miska Terplan, MD; ACOG”
 - a. “Conviction does not hold up to Jackson v. Virginia review.”
 - b. “Insufficient factual basis to support the conviction – no testing was done on Applicant's milk, blood, hair, or urine.”
 - c. “State failed to prove causation as set forth in Justice Few's dissent; New witnesses to testify to innocence”
 - d. Applicant provides the names and contact information of the above two individuals, as well as a letter purportedly written by one Steven B. Karch, M.D.
2. “Lack of Extreme Indifference / mens rea – breastfeeding cannot be a ‘violent act’”
 - a. “St. v. Reyes – ‘to prove a defendant acted with extreme indifference, State must show the defendant simply did not care if the victim lived or died.’”
3. Ineffective trial/Appellate Counsel”

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- a. "Trial and appellate counsel rendered ineffective assistance by failing to adequately prepare for trial and oral arguments and for calling an expert witness that undermined the defense, and for failing to call an expert witness that supported the defense. Counsel was ineffective at trial for failing to offer an alternative theory of causation, and at both SC Supreme Court oral arguments (June 2016 & February 2018) when asked 'point blank' about other possible theories of causation."
- b. "Counsel failed to adequately argue on issue of lack of extreme indifference at both trial and appeal. It was mentioned in appellate brief, but not argued at either oral argument *St. v. Reyes* – 'to prove defendant acted with extreme indifference, State must show that defendant simply did not care if defendant lived or died.' Applicant wanted her daughter to have the benefits of breast milk but supplemented with formula to limit her exposure. Where is the 'extreme indifference' when evidence presented at trial established that there has never been a documented case of a toxic, let alone lethal amount of morphine in a breastfeeding mother who is taking morphine?"
 - i. "Are the applicant's actions that much more extremely indifferent than those of parents who decline to vaccinate their children based on personal beliefs? If a parent refuses to vaccinate his/her child, and the child dies of a preventable disease, would a Court conclude that the parent acted with extreme indifference and sentence the parent to a mandatory minimum of 20 years without parole?"
- c. "Counsel's representation fell below an objective standard of reasonableness for failing to offer an alternative theory of causation or explain at either trial or oral arguments that no testing of defendant's person – not her milk, hair, blood, no urine was ever performed, nor was any testing of her daughter's hair, stomach contents for presence of pill fillers, or urine for metabolites, or the fact that the State failed to investigate any other theories or parties in the home at the time of her daughter's death."
- d. "Additionally, Counsel was deficient for advising applicant to reject the guilty plea offer. (*Strickland v. Washington*). Under the offer's terms, punishment would have been for less severe [than] the judgment and sentence that were imposed. Even if sentenced to the maximum of 10 years (non-violent) for involuntary manslaughter, Applicant would have served her entire sentence and been released from SCDC custody before now. Counsel stated to applicant her husband, and father, 'Barry Barnett can try his best case and I'll beat it any day. Applicant would have accepted the plea offer but for Counsel's unprofessional advice to reject it. [*Lafler v. Cooper*, 566 U.S. 156, (2012); *Missouri v. Frye*, 556 U.S. 134 (2012).] Performance of counsel was deficient when he advised applicant to reject plea on grounds she could not be convicted at trial."

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- e. "Counsel also failed to advise applicant as to collateral consequences of the charges prosecuted at trial (i.e. – 20 year mandatory minimum sentence, violent, non-paroleable offense, and required 2 year community supervision upon release). 'Any amount of additional jail time has 6th amendment significance, even if the trial itself is free from constitutional flaw,' [Lafler, 566 U.S. at 165, 166].²" *St. v. Lafler* (2012) was conditionally granted requiring the State to re-offer the plea deal that he would have taken but for his attorney's ineffective assistance."

Applicant requests relief as follows:

- "Vacating of sentence and conviction/Reverse or set aside conviction unless the State holds a new trial allowing newly discovered evidence/witnesses within a specified time."

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO CLAIMS OF ACTUAL INNOCENCE, NEWLY-DISCOVERED EVIDENCE, AND INSUFFICIENT EVIDENCE

Applicant's claims of actual innocence and "lack of extreme indifference" should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act. Claims by an applicant that he or she is actually innocent, is not guilty, or that the evidence against him or her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); Dickson v. State, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966).

² Applicant appears to combine language from separate portions of the Lafler opinion and indicates in the application only to the case cited by Lafler for part of the proposition: Glover v. United States, 531 U.S. 198 (2001).

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("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus.").

Applicant does seem to indicate there exists newly-discovered evidence, such that she should be entitled to an evidentiary hearing. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

Applicant identifies two doctors who did not testify at her original trial: Dr. J. Christopher Caston, of Spartanburg, South Carolina, and Dr. Miska Terplan, of Richmond, Virginia. However, Applicant does not identify what new evidence these witnesses could provide, or why that evidence could not have been discovered before the trial by the exercise of

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due diligence, or anything to show that their testimony would not be merely cumulative to that provided at trial. Instead, Applicant only provides materials purportedly written by Dr. Karch, who testified at Applicant's trial. Applicant fails to establish a *prima facie* case of newly-discovered evidence.

For all of these reasons, Respondent moves for summary dismissal of the allegations of actual innocence, insufficient evidence, and newly-discovered evidence.

V. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by the "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered

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adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

Ineffective Assistance of Appellate Counsel, Generally

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every not-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues

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according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy")).

Applicant must show that appellate counsel's performance was deficient and that he or she was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Smith v. Robbins, 528 U.S. 259, 288 (2000) (citing Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Failure to Prepare Alternative Theory

Applicant alleges Counsel was ineffective in failing to prepare for trial and appeal in failing to prepare an alternative theory for Victim's death. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v.

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State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant criticizes Counsel for failing to identify an alternative theory for Victim's death, but fails to present any such theory he should have presented. First, neither a criminal defendant nor a criminal defendant's attorney are obliged as a matter of law to present an affirmative defense or alternative theory of how a victim came to his or her misfortune. The burden of proof lies exclusively on the State to prove a defendant's guilt beyond a reasonable doubt. It is sufficient for a defense attorney to challenge the State's theory of the case as inadequate.

Second, attempting to present an alternative theory without its own adequate scientific support could have served to only bolster the State's theory further. Put another way, a bad defense can made a weak prosecution case look strong.

Third, there is no alternative theory to be presented—Victim could have *only* died from narcotic overdose through Applicant's breastmilk. Much of the trial against Applicant was dedicated to the task of excluding other possible causes by process of elimination: Victim had no signs of being injected, no signs of having ingested any pills, and crushed up pills would have very rapidly killed the child whereas Victim exhibited signs of narcotic lethargy for a period of time prior to her tragic death. Nobody else breastfed Victim.

Fourth, much of the investigation insisted upon by Applicant would by now be impossible. We cannot turn back the clock to the day of Victim's passing to draw blood milk from Applicant, such that we are left only with the possibility of speculation as to what

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would result from tests not performed. For all of these reasons, Respondent denies Applicant is entitled to post-conviction relief by way of this allegation.

Failure to Call a Favorable Expert Witness, Calling an Expert Who Undermined Defense

Applicant contends Counsel was ineffective in calling Dr. Karsh instead of some other expert witness who would have been more favorable to her defense. Offering the testimony of an expert witness who is going to provide testimony favorable to the State, where the potential harm of the expert's testimony is known or through reasonable diligence knowable to defense counsel, may constitute deficient performance. See McKnight v. State, 378 S.C. 33, 44, 661 S.E.2d 354, 359 (2008) (holding "it was unreasonable for counsel to produce a single expert witness at the second trial whose testimony had clearly benefitted the State's case in the first trial," where the expert's process "mimicked that of the State's expert[.]").

Applicant does not specifically identify which expert witness was harmful to her, but given the record, Respondent presumes she refers to Dr. Steven B. Karch. First, Applicant's complaint is two-faced given her inclusion and reliance upon communications and writings from Dr. Karch as part of her application. Second, Applicant does not identify which parts of Dr. Karch's testimony was harmful, though as emphasized in the Statement of the Facts, the State was able to force concessions through effective cross-examination. Third, a review of the record in its entirety reflects Dr. Karch overwhelmingly testified in Applicant's favor, and only conceded the most undeniable points of the State's case when aggressively pressed upon in cross-examination. Fourth, Applicant does not present any information to show that Counsel knew or should have known that Dr. Karch would ever testify to anything which would be arguably harmful to her defense. To the contrary, the documents purportedly from Dr. Karch included with the application, in addition to the summary of his testimony in the first trial,

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referenced in McKnight, reflect an expert witness zealously dedicated discounting and rejecting anybody's guilt. Finally, though Applicant names potential alternative witnesses, she does not provide what they could testify to that would be materially different from Dr. Karch's testimony.

For all of these reasons, Respondent denies Applicant is entitled to post-conviction relief by way of this allegation.

Failure to Argue Extreme Indifference

Applicant complains that Counsel was ineffective in failing to argue the State failed to prove extreme indifference during his oral arguments on appeal. First, as Applicant concedes, Counsel raised the issue in briefing, and the issue was ruled upon by the Supreme Court. Greene, 423 S.C. at 276-79, 814 S.E.2d at 503-04 (Section III of the opinion). Second, Respondent can find no instance where a Counsel was found constitutionally deficient exclusively for performance in an oral argument. The ebb and flow of oral arguments are barely, if at all, within the command of an appellate advocate. Though an effective appellate advocate will approach arguments with an outline or "road map" of how to work through each of the issues raised to the court, and be prepared to address each issue, it is the appellate court that commands which issues actually receive attention during oral arguments. Appellate arguments are strictly time limited, and if an appellate court is focused upon one of many issues, any argument may be expended on more complex questions of law to the exclusion of comparatively simpler matters.

For all of these reasons, Respondent denies Applicant is entitled to post-conviction relief by way of this allegation.

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Misadvice to Reject Plea Offer

Applicant contends Counsel was ineffective in advising her to reject a plea offer, and alleges that Counsel advised her that she could not be convicted at trial. It is worth noting that Applicant asserts Counsel's alleged statement was error while also arguing that it should be a correct statement. Nonetheless, Respondent is without sufficient information to admit or deny this allegation at this time.

Failure to Advise of Collateral Consequences

Applicant's allegation that Counsel was ineffective in failing to advise her of collateral consequences of conviction is without merit. "The imposition of a sentence may have a number of collateral consequences, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." Williams v. State, 378 S.C. 511, 514, 662 S.E.2d 615, 617 (Ct. App. 2008) (quoting Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)). "Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny." Id., 378 S.C. at 511-12, 662 S.E.2d at 617.

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. See State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1365-66 (4th Cir. 1973).

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Here, Applicant did not even plead guilty—she denied guilt and was only convicted after a trial. Counsel was not obliged to discuss the collateral consequences of conviction with her. It is not actually entirely clear from the application whether Applicant is complaining about not being advised of a collateral consequence or a direct consequence; she seems to indicate at one point that she was not advised of the sentencing consequences of being convicted at trial, which would most certainly be a direct consequence. In any event, because Applicant specifically refers to collateral consequences, Respondent denies she is entitled to post-conviction relief by way of this allegation.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing.

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Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

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IX. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss as set forth in Section IV, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

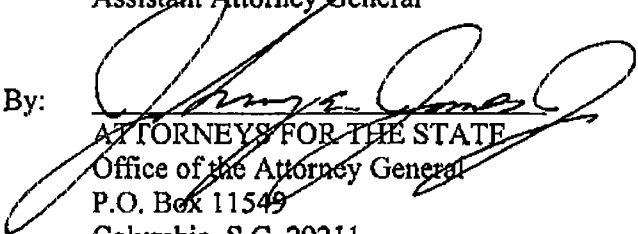
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