

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County
Honorable Kristi F. Curtis, Circuit Court Judge

HEATHER MARIE LAWSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001806

APPENDIX

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Janice Ross - Cross-Examination by Mr. Williams

1 Q Well, it could be anything that had substance to
2 it, couldn't it; it could be -- well, I don't know, it
3 could be a -- it could be that pole over there or rod or
4 something like that, couldn't it?

5 A Yes.

6 Q And that's certainly not a fist?

7 A Correct.

8 Q Now, when you did your examination and your
9 determination as to the cause of death, I believe you
10 stated that the cause of death would have been blunt force
11 injury to the head, right?

12 A That is correct.

13 Q But you could not rule out another cause of death,
14 could you?

15 A There was -- there was no natural death that --
16 there was no disease. There was no -- toxicology was all
17 negative. There was no heart disease, no cancer, or
18 anything else to cause death, and the brain was definitely
19 swollen.

20 Q Do you have your report with you?

21 A Yes.

22 Q Would you turn to page 5. Your last page. And I
23 ask -- and I would ask you to look at that last page on
24 your file, your case summary.

25 A Yes.

Janice Ross - Cross-Examination by Mr. Williams

1 Q Last -- next to the last paragraph.

2 A Suffocation cannot be ruled out. That could be
3 part of it, yes. A baby, you can suffocate the baby
4 without leaving a lot of marks around the nose. There was
5 a little bit of a bruise around the nose.

6 Q So blunt force trauma is one possible cause of
7 death; it could be suffocation also?

8 A Well, the blunt force injury is more prominent
9 because of the fact that it was -- it produced bruises and
10 abrasions on different parts of the head.

11 Q How would you determine if the child died by
12 suffocation?

13 A Sometimes you can't in a young child.

14 Q So you really can't -- if the child died by
15 suffocation, you can't tell if the child died by
16 suffocation, can you?

17 A Not necessarily, but you don't always -- you don't
18 see the bruises on top and you don't see that much brain
19 edema.

20 Q So the bruising that we saw, I think you said you
21 determined that there was no skull fractures?

22 A Correct.

23 Q How soft is a child's, a seven month old child's
24 skull?

25 A It's pliable. It's like a plastic.

Janice Ross - Cross-Examination by Mr. Williams

1 Q Is that why you say there's no fractures and it
2 might have been -- why there was no -- why you think it's a
3 fist because there was no fractures. If it had -- if
4 something else had hit the child's head, maybe a baseball
5 bat, it would have fractured the skull? Or do you know?

6 A It could have, but a baby's skull is not as
7 calcified and -- and hard as an adult skull. So it takes
8 quite a bit of force to -- to cause a fracture.

9 Q So you don't really know exactly what would have
10 hit the baby's head to cause -- you don't -- you don't
11 really know why the baby died; either suffocation or it
12 could be blunt forced trauma?

13 A It's blunt force trauma. The suffocation could
14 have been in addition.

15 Q Well, what would happen if the baby was suffocated
16 and then the baby evidenced trauma to the head?

17 A You would have that red mark, the little red mark.
18 Without circulation, a blunt force injury to the skin would
19 -- would look more yellow.

20 Q How long would it take you to fail to have blood
21 which would pool on the scalp and the brain area after
22 suffocation?

23 A After suffocation, you don't have -- I'm not sure
24 what you're asking.

25 If you have suffocation and you're -- and you die

Janice Ross - Cross-Examination by Mr. Williams

1 within a few minutes and then you had some injury to the
2 head, those are going to be yellow based.

3 Q As opposed to red-based except for the amount of
4 blood that was there at the time, right?

5 A I'm not sure I understand what you're saying.

6 Q Let me ask you -- let me ask you this. You made
7 the comment that there's no way in which a three-year old
8 child could have been the cause of these injuries also,
9 didn't you?

10 A Again, the baby was in a pack 'n play, allegedly,
11 and no, I don't see a way of a three-year old producing
12 that much injury on so many different areas of the head.

13 Q If a toy was used to strike the child's head?

14 A Again, there was no pattern of any kind of shape on
15 the --

16 Q Well, there actually -- go ahead. Go ahead.

17 A -- on the top of the head there.

18 Q There was a pattern. There was a heart-shaped
19 pattern face on the child, wasn't there?

20 A Yes, and that actually represented two different
21 contusions that came together.

22 Q But clearly it was a heart-shaped pattern?

23 A Yes.

24 Q Not the pattern of a fist?

25 A No.

Janice Ross - Cross-Examination by Mr. Williams

- 1 Q But a heart-shaped pattern?
- 2 A It could be two fists marks.
- 3 Q Two fist marks?
- 4 A Well, this and this, right adjacent to each other.
- 5 Q So you're saying that the fist marks were so close
- 6 together that they created a heart shape on the child's
- 7 forehead?
- 8 A Possible.
- 9 Q Possible?
- 10 A Possible, yes.
- 11 Q You keep using the word possible?
- 12 A Yes.
- 13 Q You're an expert?
- 14 A Yes.
- 15 Q Don't y'all normally use terminology known as most
- 16 probable and -- when you describe your assessment of
- 17 things?
- 18 A It's most probable.
- 19 Q Right, but you haven't used any of those statements
- 20 earlier on. You've said possible, haven't you?
- 21 A Correct.
- 22 MR. WILLIAMS: I don't have any other questions,
- 23 Your Honor.
- 24 THE COURT: Redirect, Solicitor?
- 25 MS. MAYES: Yes, sir, Your Honor.

Janice Ross - Redirect Examination by Ms. Mayes

1 For demonstrative purposes, Your Honor, we have
2 this item.

REDIRECT EXAMINATION

3
4 BY MS. MAYES:

5 Q I'm going to ask you Dr. Ross in followup. Mr.
6 Williams was asking you specifically about the State's
7 Exhibit 39. You can take a look at it here and then also
8 the same injury depicted here in State's Exhibit 36. If an
9 infant is being injured with blows to the top of the head
10 and the infant is wrapped around the neck area, with he's
11 stricken, can you tell us whether or not the gripping of a
12 human hand can produce such injury?

13 A It could.

14 Q And then specifically about what he termed, or I
15 think what's been referenced by both the State has defense,
16 s a heart-shaped pattern, can you show us here what you're
17 referring to regarding a human fist and how a human fist
18 may produce such a pattern?

19 A Actually these are two bruises together that I
20 don't have a picture of, under the skull or bottom of the
21 undersurface of the skull. I'm sorry, the undersurface of
22 the scalp to show that there are actually two bruises that
23 are together there. You can almost see a line of
24 demarcation there.

25 Q All right. And that line of demarcation indicates

Janice Ross - Redirect Examination by Ms. Mayes

1 to you to a reasonable degree of medical certainty what
2 concerning whether that's a single injury caused by a
3 pattern or whether that's a constellation of injuries?

4 A It's a constellation. There are -- it looks like
5 two different injuries.

6 Q All right. And here, looking once again at State's
7 Exhibit 37.

8 Now, he was asking you about a reference in your
9 report regarding suffocation. I want to start by asking
10 you ultimately what did you determine to be the cause of
11 death for Minor 1?

12 A The blunt force injury to the head.

13 Q And you did actually observe the cerebral edema or
14 the swelling of the brain upon your physical examination?

15 A Yes.

16 Q In addition to a primary cause of death may you
17 sometimes have a contributing factor to take into account?

18 A Yes.

19 Q And looking here at State's Exhibit 41, what, if
20 anything, did you observe around the nose?

21 A Well, it's little abrasion around the top -- the
22 tip of the nose. There was also this abrasion on the upper
23 eyelid on the left.

24 Q So if a child were being held facedown and being
25 beaten around the crown, can you tell us whether or not

Janice Ross - Redirect Examination by Ms. Mayes

1 that may produce such an injury to the nose?

2 A Something hit the nose, yes.

3 Q All right.

4 A That's possible.

5 Q And can you tell us whether or not that could also
6 produce suffocation?

7 A It could if the -- if the face is pushed into a --
8 a mattress or something like that.

9 Q In addition to the blunt force trauma to the head?

10 A Correct.

11 Q And finally, I just want to followup on when Mr.
12 Williams was asking you about your definition of mid
13 afternoon. I believe your response was three o'clock, but
14 just to clarify, time of death, is there ever a way to
15 actually put a per second or per minute definitive
16 description of that?

17 A Not unless there's a video going and watching the
18 whole thing.

19 Q Or someone's death is witnessed for example?

20 A Correct.

21 Q All right. So without being able to put a
22 definitive time, I believe you mentioned some variables and
23 certain factors that you take into account, but can you
24 ultimately determine a specific type of range for time of
25 death?

Janice Ross - Redirect Examination by Ms. Mayes

1 A Not really. What we -- all we can do is talk about
2 what's in the stomach from the last food that was eaten.
3 Temperature is -- gives a range. Rigor mortis gives a
4 range.

5 Q Okay.

6 A And somebody found dead at home, when the last mail
7 was delivered, et cetera; so time does is very difficult to
8 identify specifically.

9 Q Okay. And so if we're looking at a scenario where
10 the body temperature is 98.9 at 6:08 p.m. 9-1-1 is called
11 at 5:18 p.m. and you've given three o'clock as your
12 description of mid afternoon, can you tell us whether or
13 not those findings are consistent with the child suffering
14 death between 3 p.m. and 5:18 p.m. when 9-1-1 is called?

15 A Yes, because during the transport to the hospital,
16 it would have been warmed -- she could have been warmed up.

17 Q Nothing further.

18 MR. WILLIAMS: No questions on recross, Your Honor.

19 THE COURT: Thank you. Thank you, Solicitor.

20 Thank you, Mr. Williams.

21 Thank you, Dr. Ross. Thank you for being with us
22 this afternoon. You may step down and you may be excused.

23 All right. Ladies and gentlemen, the clerk of
24 court tells me your lunch is here. We'll take about --
25 we'll be back about 2:20. You are certainly welcome to

1 take a walk about if you like. You don't have to be held
2 captive in the jury room. Please do not discuss the case
3 with others during this luncheon recess. Thank you very
4 much.

5 (The jury left the courtroom at 1:07 p.m.)

6 THE COURT: All right. Court will be in recess
7 until 2:20. Thank you.

8 (Court was in recess for lunch.)

9 THE COURT: Anything from the State before we bring
10 in our jury, Solicitor?

11 MS. MAYES: Nothing from the State, Your Honor.

12 THE COURT: Defense?

13 MR. WILLIAMS: Nothing from the defendant, Your
14 Honor.

15 (The jury entered the courtroom at 2:34 p.m.)

16 THE COURT: Welcome back, ladies and gentlemen. I
17 hope you all had a pleasant lunch. Please continue to give
18 the parties your complete and undivided attention.

19 Solicitor, you may call your next witness.

20 MR. MCNAIR: Your Honor, the State calls Monica
21 Wise.

22 THE COURT: All right. Ms. Wise, if you'd come
23 around and join us, please, ma'am?

24 MONICA D. WISE,
25 having been duly sworn, testified as follows:

Monica D. Wise - Direct Examination by Mr. McNair

1 THE CLERK: Please be seated. State your full and
2 spell your last name.

3 THE WITNESS: Monica D. Wise, W-I-S-E.

4 DIRECT EXAMINATION

5 BY MR. MCNAIR:

6 Q Ms. Wise, what do you do for a living?

7 A Childcare.

8 Q Do you know Heather Lawson?

9 A Yes.

10 Q Who first introduced you to Heather Lawson?

11 A Richard Tuckus.

12 Q When you met Ms. Lawson, did she have children?

13 A Yes, three.

14 Q Three; what were their names?

15 A Minor 2, Minor 3, and Minor 1.

16 Q Now, did you have an occasion to watch her kids
17 from time to time?

18 A Yes.

19 Q How often would you watch them?

20 A About five times a week, sometimes four.

21 Q Okay. Is that when she would be at work?

22 A Yes.

23 Q And usually when they would stay with you, how long
24 a period of time did you watch them for?

25 A She worked like a 8-to-10-hour day.

Monica D. Wise - Direct Examination by Mr. McNair

1 Q So you'd watch them for 8 to 10 hours five days a
2 week?

3 A Uh-huh, Yes.

4 Q Did you have ample opportunity to observe them
5 interact with each other?

6 A Yes, sir.

7 Q Did you ever see an occasion where ^{Minor 2} or ^{Minor 3}
8 were aggressive towards Minor 1?

9 A No, never.

10 Q How would you describe how they interacted with
11 Minor 1?

12 A They were loving. They never really paid much
13 attention to Minor 1. They played together.

14 Q How would you describe Minor 1 as a baby?

15 A She was a happy, loving, little thing.

16 Q Now, do you recall when the last time you saw
17 Minor 1 was?

18 A The Friday before she passed on Sunday.

19 Q Did you keep her -- what time that day did you keep
20 her on Friday?

21 A I don't recall, sir.

22 Q Do you recall seeing any bruising on Minor 1 on
23 that Friday?

24 A No, sir.

25 Q Did Minor 1 appear fine to you?

Monica D. Wise - Direct Examination by Mr. McNair

- 1 A Yes, sir.
- 2 Q Now, how did you learn of Minor 1's death?
- 3 A Heather called me and said she wasn't breathing.
- 4 Q So the day she died?
- 5 A Yes, sir.
- 6 Q And had you talked to Heather earlier that day?
- 7 A By text. I had texted her to tell her what the
- 8 children needed for the next week.
- 9 Q Okay. You say what they needed?
- 10 A Yeah, like supplies: Formula, or, you know, a
- 11 change of clothing, diapers, wipes.
- 12 Q Okay. So I guess when you watch somebody's kids,
- 13 it was their responsibility to bring food and supplies for
- 14 their kids?
- 15 A Usually just like diapers and wipes, but I worked
- 16 with Heather being she was a single mother and she was
- 17 having a hard time; so I worked with her and she would
- 18 bring their food and that reduced her fee that I charged
- 19 her.
- 20 Q Okay. Now if -- if the kids didn't have what they
- 21 needed one day, who would you call?
- 22 A Well usually if they didn't, I would get it myself,
- 23 but say if one of them was sick or Minor 1 was running a
- 24 fever or something, usually Richard would bring it.
- 25 Q So if they needed something, you'd call Richard?

Monica D. Wise - Cross-Examination by Mr. Williams

1 A He was the one that was more available to be able
2 to leave and come to my house.

3 Q So Richard would bring you things for the kids?

4 A Yes, sir.

5 Q Did Ms. Lawson ever make any comments to you about
6 the child support?

7 A Yes, she had mentioned that. John Pillsbury, which
8 is the father of the two, the older two, had stopped paying
9 her child support.

10 Q Did she ever mention anything to you about Richard
11 not helping out?

12 A No.

13 Q That's all the questions I have, Ms. Wise. Please
14 answer any that Mr. Williams has.

15 THE COURT: Thank you, Solicitor.

16 Mr. Williams.

17 MR. WILLIAMS: May it please the Court?

18 **CROSS-EXAMINATION**

19 BY MR. WILLIAMS:

20 Q Ms. Wise?

21 A Yes, sir.

22 Q You said that you were introduced; maybe I'm using
23 the wrong word. You got to know Heather through Richard;
24 is that correct?

25 A Yes, sir.

Monica D. Wise - Cross-Examination by Mr. Williams

1 Q Explain to me what you mean by that; how you got to
2 know Heather through Richard?

3 A I met Richard through my husband's nephew because
4 Richard repairs and works on computers. So he became my
5 go-to person for computer work. And he messaged me one day
6 and then called me, they was needing somebody that, you
7 know he could trust, to watch ^{Minor 1} and the other two
8 children. So that's how I met Heather.

9 Q And long have you known Heather?

10 A I'd only kept the children a few months, so I just
11 knew her just them few months before ^{Minor 1} passed.

12 Q Well, now ^{Minor 1} is only seven months old, so you
13 couldn't have known ^{Minor 1} too long?

14 A No.

15 Q How many months would you have known -- did you
16 know, I guess I should say, did you know Heather before
17 ^{Minor 1} was born?

18 A No, sir.

19 Q So after ^{Minor 1} was born is when you got to know
20 Heather?

21 A Yes, sir.

22 Q Well, how old was ^{Minor 1} when you first started
23 babysitting her?

24 A She was -- I think she was at the end of six
25 months. She was seven -- right on seven months, right at

Monica D. Wise - Cross-Examination by Mr. Williams

1 seven months.

2 Q Well, now how long --

3 A She was like --

4 Q I'm sorry?

5 A I only kept -- I only kept them a few months, so
6 she might have been five months, four months.

7 Q Well, now if ^{Minor 1} died when she was seven months
8 old --

9 A Yeah, I only kept them a few months before she
10 passed.

11 Q So okay, if you kept them a few months, would that
12 mean that she was --

13 A About five months.

14 Q That's only two months though, isn't it?

15 A Yeah, a few months -- well a couple or few maybe I
16 should have specified.

17 Q Okay. So that's okay. So you'd known Heather for
18 about two months?

19 A Yes, sir.

20 Q And before you started keeping ^{Minor 1}, you kept the
21 other children?

22 A Yes, sir.

23 Q And I think you said that you gave her a little bit
24 of a break; that she would bring their food -- she would
25 bring food from her house to offset what you charged in

Monica D. Wise - Cross-Examination by Mr. Williams

1 regards to what you were charging to watch the child?

2 A No, she would bring -- it just reduced her fee.

3 Normally I provide breakfast, snack, lunch, snack, drink,

4 and she would bring, you know, food for ^{Minor 2} and ^{Minor 3} and,

5 of course, naturally if it's an infant, you naturally going

6 to provide the formula and stuff.

7 Sometimes, if ^{Minor 1} ran out, I would get formula.

8 If the kids needed anything, I made, you know -- and

9 Heather wasn't able to get it at the time -- I'd make sure
10 they had it.

11 Q Now, who paid you the money for your babysitting?

12 A Heather always give me the money.

13 Q Heather always gave you the money?

14 A Uh-huh (affirmative response).

15 Q And the time that Richard came to your house, he
16 would bring something that had been -- that you needed; did
17 you know whether or not it came from Heather's house and
18 she just couldn't get off from work?

19 A No, he would go buy it. It would be like from
20 Walgreens, CVS. You know, if it was, say for instance,
21 Tylenol or something for the baby if she ran a fever.

22 Q Was ^{Minor 1} normally in good shape; was she a sickly
23 child?

24 A The kids kept like colds a lot; whether it had been
25 from allergies or what, I'm not sure, but they -- you know,

Monica D. Wise - Cross-Examination by Mr. Williams

1 they were -- had colds a lot.

2 Q So when this child died, it just came as a complete
3 shock to you, didn't it?

4 A Yes, very much so.

5 Q Now, did you ever tell Heather that you saw ^{Minor 3}
6 hit ^{Minor 1} when she was in your care?

7 A No, ^{Minor 3} would try to feed ^{Minor 1}, but of course, it
8 would be something that she could not eat, but no, ^{Minor 2} and
9 ^{Minor 3} never showed aggression toward ^{Minor 1} whatsoever --

10 Q Okay.

11 A -- at my house.

12 Q And you never saw the evidence of any type of
13 aggression or injuries on ^{Minor 1}, did you?

14 A No, she had a little bruise on her forehead one
15 time and Heather told me she had, you know, fell from the
16 playpen.

17 Q And how big was this bruise?

18 A Just maybe a quarter size if that, but it wasn't
19 like just black; it was just a normal, typical bruise.

20 Q And how long ago was that from her death; how many
21 -- how many weeks or months was it before her death?

22 A Oh, it was that week.

23 Q That week?

24 A She just had, you know, probably the first of the
25 week.

Monica D. Wise - Cross-Examination by Mr. Williams

1 Q So you kept the child the week of June the 26th,
2 right?

3 A Yes, I kept them Monday through Friday.

4 Q So you saw a little bruise on her forehead --

5 A Uh-huh (affirmative response).

6 Q It's not a forehead, it's a forehead, that Monday?

7 A Yes, sir.

8 Q And it was just a little small bruise where she had
9 bumped her head?

10 A Yes.

11 Q So did -- did it get better or worse on Tuesday?

12 A It was better.

13 Q How about Wednesday?

14 A It was better. I mean by the end of the week it
15 was gone.

16 Q By the end of the week it was completely gone?

17 A It was gone. And I mean, Minor 1 acted normal,
18 perfectly fine.

19 Q And you saw Heather -- Heather held her all the
20 time; as far as you know she was a good mother, wasn't she?

21 A Yeah, I mean as far as I know, you know, she --
22 there was times she would, I don't know how you would call
23 it, kind of aggravate ^{Minor 2} when she picked him up to get
24 him to wake up. You know, she might have picked him up by
25 his ankles and hung him upside down --

Monica D. Wise - Cross-Examination by Mr. Williams

1 Q I got you.

2 A -- or something, but...

3 Q Playing with him.

4 A I didn't have a whole lot of interaction with
5 Heather because she was always going to work. So she would
6 drop them -- bring them, drop them off when she got there
7 because if she had to work over, sometimes it might be
8 midnight, one o'clock, if she had to take care of stuff at
9 the store. So she was naturally coming and she was picking
10 them up and leaving.

11 Q Did that frustrate you when she came in at these
12 late hours? Did it mess with your schedule a little bit?

13 A No.

14 Q Because she would never leave the children
15 unattended, would she?

16 A Not with me. I mean, I can't say as far as her
17 home, I never went to her home. So I don't know as far as
18 -- as you say, on that side of the fence, I couldn't tell
19 you what...

20 Q But what you know about her, she came and picked up
21 her children no matter what time it was and the worse you
22 can say about her is she messed with the little boy
23 sometimes?

24 A Yeah, and when I first started watching them, like
25 the bottles, Minor 1's bottle was -- well, I'll put it this

Monica D. Wise - Cross-Examination by Mr. Williams

1 way, I wouldn't feed her out of it. I tried washing it,
2 scalding it, boiling it, you name it; I tried it. I ended
3 up sending my son, older son, to go buy bottles. And you
4 know, they weren't always --

5 Q Clean?

6 A -- clean, groomed, you know.

7 Q You were concerned about that?

8 A Well, what bothers me might not bother another.

9 But if something bothered me, I would say something to
10 Richard or I'd say something to her. You know, because I
11 -- and if they needed a bath, I cleaned them, you know,
12 whatever. I fed them dinner.

13 Q Why did you understand that Richard -- did you ever
14 ask Richard to pay for the babysitting?

15 A No, because if they had an agreement, that was
16 between them; it wasn't -- to me it wasn't --

17 Q Wasn't --

18 A -- any business of mine.

19 Q I got you. But you never got paid from Richard for
20 keeping the child?

21 A Yeah, I mean Richard dropped it off maybe once, but
22 as a rule, Heather give it to me.

23 Q When did he drop it off; when did he pay money?

24 A She was at work and didn't get her check. The
25 check didn't clear the bank or something.

Monica D. Wise - Cross-Examination by Mr. Williams

1 Q You remember this?

2 A Yes. Yes, I remember every baby I keep to the tee.

3 Q How many babies have you kept?

4 A Over 25 years, gosh, about thirty or more.

5 Q And that week leading up to the death of the child,
6 that child was fine?

7 A Yeah, she's been perfectly fine. ^{Minor 1} was always a
8 happy baby, always.

9 Q And as far as you were concerned with her mother,
10 she was treating her fine that week too, wasn't she?

11 A She was -- excuse me?

12 Q She was treating her fine that week too, except for
13 the little bump on the head on Monday that she had?

14 A As far as I knew, yes, sir, because she never, you
15 know, like I say, as far as I know. But I never, you know,
16 went to her house or observed anything there.

17 Q Okay. You said she called you and told you ^{Minor 1}
18 wasn't breathing?

19 A Yeah, I had talked to her earlier that day. I had
20 texted her telling her, you know, what the children needed
21 and such and you know, she said she didn't have the money
22 and all, so I told her okay, I would get what they needed
23 and it just -- then it seemed like no time that she called
24 me and she was screaming and crying, you know, that ^{Minor 1}
25 wasn't breathing.

Monica D. Wise - Cross-Examination by Mr. Williams

1 Q When was this; what time is this?

2 A It was that afternoon.

3 Q You recall what time it was?

4 A It was after 5:00. About -- maybe 5:10, 5:15, and
5 I asked her, I said what do you mean, you call the
6 ambulance, you know. And then she just got off the phone
7 and I guess, I guess maybe she was getting, you know, the
8 ambulance -- I don't if she had already called them, I
9 don't know.

10 Q Was it her voice you were hearing; she wasn't
11 texting this?

12 A No, she called me.

13 Q How did she sound?

14 A She was upset at the time. She was upset and, you
15 know, I didn't know and I kept texting her asking her, you
16 know, had she been resuscitated, what was going on, were
17 they taking -- I wanted to find out what was wrong with
18 Minor 1.

19 Q Uh-huh (affirmative response).

20 A And, um, --

21 Q Did you get a text back?

22 A No, and then the next thing I knew, she was in
23 custody.

24 MR. WILLIAMS: That's all the questions I have,
25 Your Honor.

Monica D. Wise - Redirect Examination by Mr. McNair

1 THE COURT: Redirect, Solicitor?

2 REDIRECT EXAMINATION

3 BY MR. MCNAIR:

4 Q Ms. Wise, will you explain the circumstances a
5 little more when you said she antagonized ^{Minor 2} by picking
6 him up by his feet upside down?

7 A Like, if he wouldn't get up and she wanted him to
8 get up so they could leave, and she was getting ^{Minor 1} and
9 then ^{Minor 3}, she normally, you know, carried -- she'd carry
10 one and then carry the other and try to get ^{Minor 2} to get up
11 to walk. And she would pick him up by his ankles, you
12 know, turn him upside down.

13 Q Tell me this. You said she worked like nightshift,
14 so she came to your house to pick up the kids late?

15 A Yes.

16 Q Was ^{Minor 2} awake or asleep?

17 A No, they were asleep. I always fed them dinner and
18 had them --

19 Q So when she would come pick up ^{Minor 2} and he was
20 asleep, she would pick him up by his ankles upside down?

21 A Yeah, or take a key and do in his ear trying to get
22 him to wake up.

23 Q Did you consider that playing?

24 A I didn't like it. Because I wouldn't want somebody
25 doing it to me if I was sound asleep. I would probably --

Monica D. Wise - Redirect Examination by Mr. McNair

1 that would probably make me angry or irritable.

2 Q Well, isn't the rule of thumb, you don't pick --
3 wake up a sleeping baby?

4 A I wouldn't mine. I'd ease them out into the
5 vehicle so they wouldn't wake up.

6 Q Tell us more about these baby bottles you said she
7 brought?

8 A The very first time I kept her, it was like kind of
9 where it had maybe just been rinsed instead of washed and
10 so it had residue around the nipple, around the ring and it
11 was, Mam bottles so you had to unscrew the bottom. And it
12 had a another rubber piece that fit in it. And like I say,
13 I tried to do everything with it and I wasn't going to feed
14 her out of it. Just, you know, it could have made her
15 sick. So I bought bottles and just had at my house for
16 her.

17 Q Okay.

18 A And I think that might have been the only bottle
19 she had because her cats kept getting the bottles and
20 chewing the nipples and...

21 Q I got you. And you testified that she, I guess,
22 for a reduced rate she was supposed to bring her own food
23 for her kids?

24 A Yes.

25 Q Was that consistent?

Monica D. Wise - Recross-Examination by Mr. Williams

1 A Yes, I mean, she would, yeah, she would bring
2 stuff. I would feed them though, like if I cooked, I fed
3 them what I cooked because it was -- a lot of it was, like
4 little packs of the little thin lunch meat and stuff. And
5 I preferred them having like vegetables trying to get them
6 to eat better, but she, you know, she would bring what she
7 had or what she could, she'd bring it. If I happened to
8 need anything, I'd just -- and it's just me, I would get
9 it.

10 Q Now, are you aware if she any type of special
11 benefits that would have provided for her kids food?

12 A I believe she received food stamps.

13 Q EBT?

14 A Yes.

15 Q All right. No further questions. Thank you.

16 THE COURT: Recross?

17 MR. WILLIAMS: Just one question.

18 **RECROSS-EXAMINATION**

19 BY MR. WILLIAMS:

20 Q When she would try to get the son up, she'd take a
21 key and try to wiggle his ear back?

22 A Inside, not outside, inside.

23 Q That's fine. She has two other children that she's
24 toting, right; she's got ^{Minor 1}, who is --

25 A That's what I, you know, what I said. I said she

Keith Sprinkle - Direct Examination by Ms. Mayes

1 was toting -- trying to take the kids out and trying to get
2 him to get up and walk.

3 Q Because he's -- he's the oldest one whose going to
4 have to stand up and walk because she can't tote all three,
5 right?

6 A Right.

7 Q That's all the questions I have.

8 THE COURT: Thank you. Thank you, Ms. Wise. Thank
9 you for being with us. You may step down and you may be
10 excused.

11 MS. MAYES: Sergeant Keith Sprinkle.

12 KEITH SPRINKLE,
13 having been duly sworn, testified as follows:

14 THE CLERK: Please be seated. State your full name
15 and spell your last name?

16 THE WITNESS: Keith Sprinkle, S-P-R-I-N-K-L-E.

17 **DIRECT EXAMINATION**

18 **BY MS. MAYES:**

19 Q Good afternoon Sergeant Sprinkle. Can you give us
20 some information about yourself and where you are employed
21 and what your background and training includes?

22 A I am employed with the Lexington County Sheriff's
23 Department. I've been employed with them for the past
24 seven years, which during this time -- during this
25 incident, I was a crime scene investigator. I was for

Keith Sprinkle - Direct Examination by Ms. Mayes

1 three years during that time period and recently have been
2 promoted to patrol supervisor. In CSI, the forensic
3 technician going through eleven different classes within
4 the three years. I completed 369 hours of training and
5 then did over a 170 actual physical crime scenes.

6 Q Can you tell us whether or not your specific
7 education and training in the field of crime scene
8 investigation includes homicide investigations or the scene
9 of a death?

10 A Yes, it does.

11 Q And can you tell us whether or not you have
12 received that training leading up to the date of June 26th,
13 2016?

14 A Yes.

15 Q Tell us about your initial response to [REDACTED] Weaver
16 Drive, what led you there and what information you had at
17 that point?

18 A At 5:43 p.m. that day on the 26th of June 2016, I
19 received a phone call from Sergeant Barr over major crimes
20 investigations. I got the phone call and was advised that
21 we had an incident with an incident with an infant death
22 and the infant was being relocated to the hospital and we
23 had the crime scene at that location at [REDACTED] Weaver Drive,
24 [REDACTED] and they requested for a CSI to respond. So I
25 responded. I went to the -- to the location at the house.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q Tell us about that.

2 A Okay. Since we had to -- we had the scene and then
3 we had the hospital, I called out a secondary CSI to go to
4 the hospital and take photographs and examine the body at
5 the hospital. I went to the initial crime scene. We knew
6 that we were going to be obtaining a search warrant for
7 that house. Once I got there, I made contact with the road
8 units that were already there and got debriefed by the road
9 units and the investigator that showed up shortly and we
10 were standing by for a search warrant.

11 Q How does your team or you as a CSI investigator go
12 about documenting a crime scene as well as processing that
13 crime scene?

14 A Well, any -- standard protocol for any kind of
15 crime scene, before we do anything, we take photographs and
16 document everything before any kind of manipulation of any
17 kind of evidence, so we take a lot, a lot of photographs.
18 A general camera that we actually will photograph 360 on
19 the outside of the -- of the scene before we work our way
20 into the scene and we take each room at a time.

21 Q And you did that in this particular case?

22 A Yes, I did.

23 Q All right. I'm going to show you a document that's
24 already in evidence and ask you whether or not you
25 recognize what is depicted in State's Exhibit 10?

Keith Sprinkle - Direct Examination by Ms. Mayes

1 A I do.

2 Q All right. And when we're talking about processing
3 the scene, can you tell us whether or not, once you gained
4 entry into the residence, you were able to process or
5 document your findings as to each room of that home?

6 A Yes.

7 Q Now considering the fact that this involved a child
8 death investigation and there are still units at the
9 hospital, did you know at this point in time any specific
10 details regarding the death of Minor 1 ?

11 A The information that was relayed to me was that I
12 was told that we had infant death approximately six or
13 seven months old and that the infant incurred multiple head
14 injuries. We had bruising and abrasions on multiple areas
15 of the head. That's what was relayed to me.

16 Q Okay. So you were aware of the head injuries, but
17 had you had an opportunity to actually see Minor 1
18 yourself?

19 A No, I had not because I responded directly to the
20 crime scene itself.

21 Q Okay. Or had you had an opportunity to even review
22 any photographs of her?

23 A No, I had not.

24 Q Okay.

25 A Not that night.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q So at this point, you only know that she has a head
2 injury, but you don't know the details of that. Did you
3 have any specific knowledge as to any instrument that was
4 used?

5 A No, all that we knew was the bruising and
6 abrasions, which would -- obviously what we -- as a crime
7 scene investigator, we would be looking for things that
8 would be more of a blunt force objects that we're looking
9 for on the scene. Since we didn't have any kind of
10 lacerations or, you know, stabbings, or lacerations or
11 anything like that.

12 Q All right. Now once you gained entry to [REDACTED] Weaver
13 Drive, how did you go about documenting the environment in
14 terms of temperature and how the home is maintained?

15 A As far as temperature and how the home is
16 maintained, throughout the initial walkthrough and
17 photographing of the crime scene, I always document if
18 there is a thermostat in the house, I take photographs of
19 this. So in the house there were -- in the first room is
20 the kids room. As soon as you walk into the house, you
21 have the kids bedroom. That had a AC unit in one of the
22 windows. The AC unit was on and it was set for 66 degrees
23 Fahrenheit and then the thermostat for the house itself was
24 on and set for 75 degrees Fahrenheit.

25 Q All right. Now as you went through each room of

Keith Sprinkle - Direct Examination by Ms. Mayes

1 the home, were you able to take photographs?

2 A Yes, I was.

3 (State's Exhibit Number 45, Number 46, Number 47,
4 Number 48, Number 49, Number 50, Number 51, Number 52,
5 Number 53, Number 54, Number 55, Number 56, Number 57,
6 Number 58, and Number 59 was marked for identification.)

7 BY MS. MAYES:

8 Q I'm going to show you some photos and ask you
9 whether or not you recognize them. I have them marked
10 individually 45, 46, 50, 47, 51, 48, 49, 52, 53, 56, 57,
11 58, 59, 55, and 54. If you could keep them in that order.

12 A Yes, I recall those photos.

13 Q Are they a fair and accurate representation of the
14 scene as you documented it that night?

15 A Yes, they are a fair and accurate representation of
16 the scene of the night that I responded to that house and I
17 took those photographs.

18 MR. WILLIAMS: No objection, Your Honor.

19 THE COURT: All right. And the numbers again
20 please, Solicitor?

21 MS. MAYES: Yes, sir, Your Honor. 45, 46, 50, 47,
22 51, 48, 49, 52, 53, 56, 57, 58, 59, 55 and 54.

23 THE COURT: Do you have those numbers, Madam Court
24 Reporter?

25 THE COURT REPORTER: Yes, sir.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 THE COURT: Those numbers are in evidence, State's
2 evidence, without objection.

3 (State's Exhibit Number 45, Number 46, Number 47,
4 Number 48, Number 49, Number 50, Number 51, Number 52,
5 Number 53, Number 54, Number 55, Number 56, Number 57,
6 Number 58, and Number 59 was entered into evidence.)

7 BY MS. MAYES:

8 Q Now, I want to start by asking you, Sergeant
9 Sprinkle, when you first get to a scene, how do you
10 preserve it and photograph it exactly as it's found as
11 opposed to manipulating any type of evidence beforehand?

12 A Uh-huh. First we want to make sure that the crime
13 scene is secure. With law enforcement present and also the
14 crime scene tape assuring that keeping the integrity of the
15 scene itself, making sure that no one goes in and out. We
16 control, first of all, the environment that way. As I'm
17 photographing and documenting what's inside the house, I'm
18 looking for things for evidence. Whenever I identify
19 something as evidence, I will then photograph it where it's
20 at, and we call it a faraway, medium and close-up
21 photographs. I'll take a faraway photo of where it is in
22 the room; medium where it's at and then close-up right on
23 it so I can show exactly what it is. I'll put an ID
24 placard, those yellow number placards that you see on TV,
25 identify and put that placard, which will identify that

Keith Sprinkle - Direct Examination by Ms. Mayes

1 specific item and never use that item again during that
2 crime scene that is identified for that specific item. And
3 again, take photographs of it before lifting it,
4 manipulating or collecting it.

5 Q Everything is photographs as it's found?

6 A As it's found, yes, that's correct.

7 Q Let's start with State's Exhibit 46. And tell us
8 what we are looking at here.

9 A This is a photograph of the -- that first room
10 whenever you walk in -- into the mobile home, is that you
11 have, as you walk in directly to your right, so it's the
12 front right corner of that house, is the -- is the child's
13 pack 'n play. And so this side right here is going to be
14 where the -- where your entrance is. This is the front
15 wall of the house; this is the right wall of the house.
16 And right in this corner is going to be where the -- where
17 the pack 'n play is.

18 Q All right. Now, were you able to examine the
19 interior of the pack 'n play for the possibility of any
20 weapons being in the pack 'n play?

21 A Yes, I did.

22 Q And what did you determine?

23 A No weapons were observed. The only items I found
24 on top of the pack 'n play are what you see. You have the
25 -- the bedding here, and then you have two stuffed animal

Keith Sprinkle - Direct Examination by Ms. Mayes

1 -- two stuffed animals, and then you have the baby bottle.
2 Those were the only 3 items that were on top of the crib or
3 on top of the pack 'n play.

4 Q Okay. And is the baby bottle glass or plastic?

5 A It's plastic.

6 Q And what are we looking at here, State's 50?

7 A I -- I found it important that the -- the condition
8 of the bottle that I found. This is the only bottle --
9 baby bottle that was located inside the residence. I found
10 it being in top of the pack 'n play. This is the picture
11 of an up-close photo of the bottle in the child's pack 'n
12 play. You've got, it's very old; you've got chunks of the
13 white liquid inside and you have essentially solidified on
14 the outside. So it's very, appeared to be very old and
15 unclean.

16 Q Now when we're talking about the interior of this
17 pack 'n play, why was the pack 'n play of significance in
18 terms of your crime scene?

19 A Somebody -- that's where the -- the deceased
20 victim -- it said in our call, that's where she slept;
21 that's her crib; her -- her bed, so we collected that and
22 also that's where supposedly the baby was found deceased.
23 So -- and any of that stuff -- that's standard operating
24 procedure for me. Anytime that we have an infant death
25 under investigation, I take the crib or the bassinet or the

Keith Sprinkle - Direct Examination by Ms. Mayes

1 pack 'n play in this situation.

2 Q All right. Now, other than the plastic bottle and
3 the two stuffed animals, were there any other significant
4 items found there at the top of that bassinet?

5 A No, those were the only three items that were found
6 on top of the bassinet or pack 'n play.

7 Q Now I'm going to move on next to the pack 'n play,
8 and also located in that area there at the front entrance
9 of the home called the kids room. We're going to look at
10 State's 47. What did you observe in this area?

11 A This is that same pack 'n play in that corner and
12 directly to the left of it on the floor is this fairly
13 large pink sheet or comforter.

14 Q All right. And now I'm going to move on to the
15 same item now with a placard. And you've been able to
16 examine this. It has been -- the underneath of the blanket
17 is showing. Did you have an opportunity to actually handle
18 that item?

19 A I did.

20 Q And what can you tell us about that item in terms
21 of its weight or its flexibility?

22 A That -- it's a -- it's a kid's comforter. It's
23 actually for -- a comforter I would say for a child's
24 comforter. It was actually a fairly large and cumbersome
25 comforter.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q All right. Now, we're going to move on to State's
2 Exhibit 48. What is noted there in the forefront of this
3 photograph?

4 A Again in that same room, this is going to be that
5 front wall. Your door, your front door is going to be on
6 the opposite side over here and this item directly in front
7 is going to be a, it is a collapsible stroller.

8 Q All right. Now State's 49?

9 A This is that AC unit that I was explaining about
10 earlier in the kids room. Attached to one of the windows
11 is this AC unit. My Item B, I labeled it with a letter A
12 kind of lettering I utilize for any kind of swabbing or
13 something that's not tangible. In this case because I saw
14 this reddish brown stain on the -- on the AC unit, I wanted
15 to collect it. So I labeled it as B. I had an A prior to
16 that. I had B and I swabbed that -- those unknown stains
17 at that time since we had -- anytime we have investigation
18 like a possible homicide or especially if we stains that --
19 that we're unsure of, we're definitely going to document
20 it, so identify those and collect those.

21 Q All right. Now in addition to those stains, were
22 there any other stains that you collected in the area of
23 the kids room?

24 A Yes.

25 Q And that's for precautionary measures?

Keith Sprinkle - Direct Examination by Ms. Mayes

1 A Yes.

2 MS. MAYES: And, Your Honor, I believe there is a
3 stipulation as to the results of the swabbing?

4 MR. WILLIAMS: Your Honor, if she'll tell me where
5 the swabbing was done, I think we can stipulate.

6 THE WITNESS: The swabbing, I collected these
7 swabs, like I said, at the -- in the kids room; the AC unit
8 at [REDACTED] Lot -- Weaver Drive, [REDACTED] [REDACTED]

9 BY MS. MAYES:

10 Q And once those swabs were collected from you -- by
11 you, they were analyzed for the presence of any possible
12 blood?

13 A Yes, that's correct.

14 Q And what were the results of that analysis?

15 A I was advised that the results were negative for
16 blood.

17 Q Now --

18 MR. WILLIAMS: We would stipulate to that, Your
19 Honor.

20 THE COURT: Thank you, Mr. Williams.

21 BY MS. MAYES:

22 Q State's Exhibit 52, if it's kind of difficult to
23 see here with the projector, but that would be the house
24 thermostat which you referred to previously?

25 A Yes, that's the house thermostat.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q Now what, if anything, was significant about
2 State's 53, this being a washing machine?

3 A I notated this and found it notable that the
4 washing machine in the house, opening it up, I saw that
5 there were a load of laundry in there. It was still damp,
6 but it did have a smell to it, smelling sour, the clothes
7 did. But on top, so you have all the clothes around and
8 this one blanket on top that was completely dry. It had
9 not been in the mix with the -- with the original laundry.

10 So I didn't know exactly what quite the
11 significance of that, but did find it interesting and --
12 and did take note of that. That you did have the one item
13 on top of -- one blanket on top of the laundry and it was
14 completely dry and had some fibrous hairs on it.

15 Q Sergeant Sprinkle, at any point in time, was there
16 any evidence throughout the home of fresh cleaning?

17 A Absolutely not.

18 Q All right. Was there any evidence of laundry being
19 freshly done?

20 A No, the only laundry that appeared to have been
21 washed was this and like I said, it was actually wet and
22 sour.

23 Q Sour indicating it's been present for a while?

24 A Yes, present for a while.

25 Q Now State's Exhibit 54, specifically when you took

Keith Sprinkle - Direct Examination by Ms. Mayes

1 this photograph in the bathroom, are you getting close
2 enough to actually inspect the tub for any type of recent
3 use, such as bathing of the children earlier that day?

4 A Oh, yes. Like I said, the entire house -- and I
5 can elaborate and go through every -- every room that I
6 went through, but the entire house was completely
7 disordered, very, very unorganized and dirty. You had in
8 the one bedroom -- in the one bathroom, I took this
9 photograph showing that there was no water, no -- on the
10 floor, in the tub. There was no indication of a recent
11 bathing of any sort. You actually had, which I notated in
12 my report, this appears to be some sort of trash in the tub
13 and this, the white items were consistent with or appeared
14 to be some sort like drywall. It was dry; it was not -- it
15 was not wet, nothing in the bathroom was wet.

16 Q All right. Was there any evidence in your
17 examination of the kitchen of recent cooking or preparing a
18 dinner?

19 A No, there was not. You had, in the kitchen you
20 had --

21 Q State's Exhibit 56.

22 A -- this is one side of the kitchen counters. Right
23 here you have the oven and the stovetop, you have some old
24 plates with food that did not appear to be fresh at all.
25 You had pots and pans that some of the pots had -- one pan

Keith Sprinkle - Direct Examination by Ms. Mayes

1 had some items in it, the other pots and pans were
2 completely empty of any kind of content. This is the stove
3 top right here and you actually have a towel on top of the
4 -- on top of the stove.

5 So there was no heat coming from it, nothing
6 appeared to be freshly cooked or cleaned in the kitchen
7 itself. Again, this right over here is going to be your
8 stovetop. You've got microwave and toaster oven. Baby
9 food or baby formula is found two containers on the kitchen
10 counter. This right here is the plate that I said appeared
11 to have some old food on it.

12 Q All right. And in the examination of the sink, was
13 there any evidence of bottles in the sink or near the sink?

14 A No.

15 Q Did you find any other bottles other than the one
16 that you noted in the pack 'n play?

17 A No, the only bottle that I found inside of the
18 residence was the one on top of the pack 'n play.

19 Q Now regarding the pack 'n play itself, did you have
20 the opportunity to actually inspect it to determine its
21 condition?

22 A I did.

23 Q Shown here in State's Exhibit 56. Did you seize
24 that as evidence in this case?

25 A I did.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q Where is it currently located?

2 A It's actually currently located here inside the
3 court.

4 Q And upon your seizure of that item, where has it
5 been maintained?

6 A At the Lexington County Sheriff's Department
7 evidence.

8 Q Have you had an opportunity to examine it today?

9 A I have.

10 Q Is the condition of that pack 'n play today the
11 same as it was that night?

12 A It is.

13 Q In terms of its physical condition.

14 A Yes, it is.

15 MS. MAYES: Your Honor, at this time, we would
16 offer this item for identification and evidence?

17 MR. WILLIAMS: We have no objection to placing it
18 in evidence, Your Honor.

19 MS. MAYES: And if Sergeant Sprinkle may step down
20 to retrieve the item.

21 THE COURT: And this would be 60?

22 THE COURT REPORTER: Yes, sir.

23 THE COURT: State's 60?

24 THE COURT REPORTER: Yes, sir.

25 THE COURT: All right. State's 60 is in evidence

Keith Sprinkle - Direct Examination by Ms. Mayes

1 without objection.

2 And you may step down, yes, sir.

3 THE WITNESS: Thank you, Your Honor.

4 (State's Exhibit Number 60 was marked and entered
5 into evidence.)

6 (The witness stepped down to retrieve the pack 'n
7 play and stood in front of the jury.)

8 BY MS. MAYES:

9 Q And Sergeant Sprinkle, I'm going to ask you to
10 switch places with me --

11 A Okay.

12 Q -- so that the court reporter can catch your voice.

13 What, if anything -- did you have a chance to
14 actually examine this pack 'n play knowing that the victim
15 was found inside the pack 'n play?

16 A I did.

17 Q And at any point in time, were you also presented
18 with part of the statement that children may have gotten
19 into the pack 'n play and harmed Minor 1 ?

20 A Yes.

21 Q All right. Did you have a chance to actually
22 examine this and make any notations or observations?

23 A Yes, I did. A couple of things about this pack 'n
24 play is it's one, very unstable. The inside is very
25 unstable as it rocks very easily. It's actually indented,

Keith Sprinkle - Direct Examination by Ms. Mayes

1 so it's kind of con caved. All these would be factors that
2 would make it more difficult for any child to actually get
3 inside and actually move around. Also the bottom is all
4 torn. The inside cannot be crawled into. You do have some
5 holes, but they are very small.

6 Q All right. Let me get you to keep your voice up.

7 And so just to clarify, this top layer would be
8 considered the bassinet?

9 A Yes.

10 Q All right. And then where the holes are located,
11 would be in what relation to the bassinet?

12 A Can you explain?

13 Q Yes. All right. So where these holes are located,
14 is there anything that is separating the location where
15 these holes are from the actual top layer, which would be
16 the bassinet?

17 A Yes, there is a full bottom at the -- underneath
18 this netting area or that the net is actually connected to.
19 So this top layer -- well, will actually sit on top, there
20 is no -- no way from underneath you can get inside to the
21 top part of the bassinet from underneath.

22 Q So the point of entry would be over the bassinet,
23 correct?

24 A Yes, correct.

25 Q Okay. You may return.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 One more thing. What is shown here in State's
2 Exhibit 51, being a blanket. Can you tell us whether or
3 not that was also seized?

4 A Yes, that blanket was also seized.

5 Q Let me show you this item and ask you whether or
6 not you recognize it and if so, how.

7 A Yes, I do recognize it.

8 (State's Exhibit Number 61 was marked for
9 identification.)

10 BY MS. MAYES:

11 Q All right. And what is that item?

12 A This item is the blanket or the comforter from the
13 child's room that was depicted in that photograph. It was
14 found on the floor to the left of the pack 'n play.

15 MS. MAYES: Your Honor, at this time, this would be
16 State's Exhibit 61 for evidence?

17 MR. WILLIAMS: Without objection, Your Honor.

18 THE COURT: State's 61 in evidence without
19 objection.

20 (State's Exhibit Number 61 was entered into
21 evidence.)

22 BY MS. MAYES:

23 Q Now, first of all -- and before we get to the
24 blanket, I want to show you these photos of exactly how the
25 -- how you found the pack 'n play. That's going to be

Keith Sprinkle - Direct Examination by Ms. Mayes

1 State's 48 and State's 47 where one side is against the
2 wall and then one side is exposed. Examining the
3 underpinning here, if you can tell us which side was
4 against the wall and which side was exposed?

5 A This is the front of the house that this side of
6 the pack 'n play would be on. This would be on the right
7 side -- right wall of the house and these two would be the
8 two sides of the pack 'n play that's exposed to the room.

9 Q All right. So State's 47, if you could take a look
10 at State's 47?

11 A Yes, ma'am.

12 Q You've already did that one?

13 A Yes, is the actual side; I got turned around. This
14 is going to be the side that was on the -- the front of the
15 house. This is going to be the side that was on the
16 backside. This is going to be the right side of the house
17 and these are going to be the two sides exposed to the
18 room. As you can tell in this photograph, State's Exhibit
19 47, with the specific and unique holes to this crib, to the
20 right -- the side meshing of the crib, that's going to be
21 the right side exposed to the room.

22 Q All right. So we'll put that on the projector.
23 This is going to be State's 47.

24 And if you could tell us what we're looking at
25 there as opposed to here.

Keith Sprinkle - Direct Examination by Ms. Mayes

- 1 A Okay. Again, this is the right side of the house.
2 Over on this side off the view of the photograph is going
3 to be the front of the house. This bassinet or this pack
4 'n play, these two sides are going to be the sides exposed
5 to the room. And in identification of the mesh, the holes
6 that you have right here, matches what you see on this
7 side. That's going to be the side exposed.
- 8 Q All right. And then this other side as depicted
9 here in 48, this other backside would be completely against
10 the wall here?
- 11 A Correct. Both this side and this side is
12 completely backed up against the wall.
- 13 Q And this would be the exact positioning as you
14 found it that night?
- 15 A Yes, that's correct.
- 16 Q Now Sergeant Sprinkle, having examined this blanket
17 -- first of all, was the blanket examined for any kind of
18 blood or anything of that nature?
- 19 A Visibly on scene, yes.
- 20 Q Okay. And was there anything of that indication on
21 the blanket?
- 22 A No.
- 23 Q And if you could, go ahead and tell us what, if
24 anything, is significant about the blanket in terms of the
25 blanket having reportedly been inside the pack 'n play at

Keith Sprinkle - Direct Examination by Ms. Mayes

1 some point?

2 A The only -- what's significant from the blanket is
3 it's relevant as to how close it was to the bassinet or to
4 the pack 'n play. It was kind of rolled up on the floor.
5 It was kind of folded up, rolled up on the floor and -- do
6 you mind if I --

7 Q Okay.

8 A (Showing the comforter to the jury.) -- it's
9 actually quite large.

10 All right. As I said, this is a full comforter and
11 that's actually quite heavy for a child's comforter.

12 Q And as you're doing now, as an adult, is it easy to
13 manipulate?

14 A Like I said, it's almost like a -- it's a full size
15 comforter there so it's not easy to move around and
16 whatnot, especially for a child.

17 Q Thank you. You may return.

18 A Okay. Thank you.

19 (The witness returned to the witness stand.)

20 BY MS. MAYES:

21 Q And in general, having been to this scene, the
22 single-wide mobile home, Sergeant Sprinkle, what, if
23 anything, can you tell us about whether there are any sound
24 barriers?

25 A The only -- you have the door to the outside of the

Keith Sprinkle - Direct Examination by Ms. Mayes

1 residence. Inside the residence, between the child's room
2 and the kitchen, there was no door. I guess the door had
3 been taken off the frame or what, but the only sound
4 barrier that you had from the kids room into the kitchen
5 was a blanket that had been somehow affixed to the -- to
6 the wall.

7 Q Now were -- was the master bedroom searched?

8 A Yes, it was.

9 Q What, if anything, was found in the master bedroom
10 that may -- well, that was taken as potential relevance to
11 this case?

12 A Just one second please. (Looking at notes.)

13 To my knowledge there was -- in the -- in the
14 master bedroom, to my knowledge, there wasn't anything
15 collected. It was notated that in the master bedroom that
16 you had the abundance of -- collection -- stuff, trash in
17 there and there were ani -- there were cats inside --

18 Q All right.

19 A -- in the master bedroom.

20 (State's Exhibit Number 62 was marked for
21 identification.)

22 BY MS. MAYES:

23 Q I'm going to show you this document, or these
24 documents and ask you whether or not you recognize them?

25 A Yes, I recognize this.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 Q All right. And do you recall where those were
2 taken from?

3 A Yes, these -- these are papers and handwritten
4 notes that were found in the living room on the floor.

5 Q All right. We're going to go to that room. This
6 is going to be State's Exhibit 14. Again, I don't believe
7 we specifically discussed this room, but it's State's
8 Exhibit 14. On the diagram, this is called the living
9 room. So that's going to be the area right here in the
10 center?

11 A Yes, that's correct.

12 Q All right. And what, if anything, can you tell us
13 about the documents that were located there?

14 A These documents in this photograph, that would be
15 these white papers right there and it's actually in the
16 living room right in front of the sofa on top of -- they
17 were right on top of a plastic bin. The significance of
18 them were the contents of these -- the content of this --
19 of these papers.

20 Q Were some of them ripped up?

21 A Yes, some of them were in different size pieces.

22 Q Or cut up?

23 A Yes, with little tears on the edges.

24 Q And this is how they were found?

25 A Yes, that's correct.

Keith Sprinkle - Direct Examination by Ms. Mayes

1 MS. MAYES: Your Honor, this would be State's
2 Exhibit 62 for evidence?

3 MR. WILLIAMS: I have no objection, Your Honor.

4 THE COURT: Step up here just a moment.

5 (There was a bench conference out of the hearing of
6 the jury and the court reporter.)

7 THE COURT: Thank you. Thank you, Mr. Williams.
8 Thank you, Solicitor.

9 This will be 62, Solicitor?

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: All right. State's 62 is in evidence
12 without objection.

13 (State's Exhibit Number 62 was entered into
14 evidence.)

15 BY MS. MAYES:

16 Q And, Sergeant Sprinkle, these items were as you
17 found them, correct?

18 A Yes, they are.

19 Q Indicating, I love Richard Wade Tuckus, other
20 sentiments to that?

21 A Yes.

22 Q Thank you, Sergeant Sprinkle.

23 MS. MAYES: Your Honor, we have nothing further at
24 this time.

25 THE COURT: Thank you. Thank you, Solicitor.

Keith Sprinkle - Cross-Examination by Mr. Williams

1 Mr. Williams.

2 MR. WILLIAMS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q How are you doing, Investigator Sprinkler?

6 A I'm doing well. How about you?

7 Q How many CSI investigators were involved in this
8 case?

9 A Two the night of the event.

10 Q You came to the scene, the other CSI investigator
11 comes to the hospital and takes pictures of the baby so
12 that you're covering both places at one time, correct?

13 A Yes.

14 Q You get there, it's daylight; when you leave is it
15 dark?

16 A Yes.

17 Q Did the lights work inside the trailer in the
18 bedroom where the crib or the pack 'n play was?

19 A No.

20 Q So there was no visible light in the pack 'n play
21 -- in the area where the pack 'n play was for anyone to
22 observe anything in there; you had to observe it in the
23 daylight hours?

24 A Yes.

25 Q Were there any, I use the word lights, but I want

Keith Sprinkle - Cross-Examination by Mr. Williams

1 to be specific. Were there any lamps in the area where the
2 pack 'n play was?

3 A Yes, there was one lamp that was found -- observed
4 on the -- on the floor as soon as you walk into the -- into
5 the house. There was a broken lamp on the ground in the
6 kids room.

7 Q And so there was one -- there was no overhead
8 lighting and there was one lamp which was found in the kids
9 bedroom, which was broken laying on the ground is what you
10 described?

11 A Yes, sir, the lamp is a broken lamp. There was no
12 light bulb in it. It was not plugged in or anything to the
13 walls, but it was -- it was broken; there was no lamp
14 shade, there was no light bulb. It was broken on the
15 ground.

16 Q Okay. Did you check to see if -- did you plug it
17 in to see if there was electricity going to it or anything
18 like that? When you say it was broken, it was broken
19 because it did not have a lamp shade and did not have a
20 light bulb in it?

21 A I say it was broken because the lamp's on the
22 ground, no lampshade; the actual -- the actual connector
23 where the light bulb screws into the top, that was actually
24 broken off and actually strewn down by the -- by the actual
25 cord. So it was actually in two different pieces so to

Keith Sprinkle - Cross-Examination by Mr. Williams

1 speak. If I had plugged it in without any kind of a light
2 bulb, I would not have been able to know if it worked.

3 Q Did you seize that lamp?

4 A Yes, I did.

5 Q Why did you seize that lamp?

6 A Like I said, the information, as a CSI, whenever
7 we're given any kind of information for what might have
8 been the cause of death. In this -- in this situation, I
9 knew I didn't have a gunshot wound; I didn't have a
10 stabbing; I'm not looking for any kind of guns or knives.
11 I'm looking for specifically any -- any item that could be
12 used as -- for blunt force trauma, that would cause any
13 kind of blunt force. So in -- in -- right now at that
14 time, at the time of the incident, we had no doctor that
15 had performed an autopsy yet and we don't know exactly what
16 kind of item we're looking for. Anything that might look
17 suspicious or might have been anyone could use as a blunt
18 force item, I'm going to collect that on a crime scene.

19 Q Did you perform any type of examination or
20 evaluation on that lamp; meaning, did you check it for
21 fingerprints, did you check it for blood, did you check it
22 for DNA, anything at all on that lamp to determine if it
23 had indeed been used in an assault involving the child?

24 A I did visual inspection of any kind of blood
25 spatter and did not observe any kind of -- any kind of

Keith Sprinkle - Cross-Examination by Mr. Williams

1 stains or any kind of blood spatter. Like I said, that's
2 -- that's the only -- I collected it and observed it for
3 any kind of stains and collected it as is on scene and that
4 goes with all the other evidence I actually collected
5 there.

6 Q Is there such a thing as trace DNA or touch DNA
7 which you can determine whether or not an object has had
8 contact with a particular individual based on a test that
9 would be done on the object?

10 A Yes, it can.

11 Q And what is that actually called?

12 A Sir?

13 Q What is that actually called; did I say it
14 correctly, is it called trace DNA or touch DNA?

15 A We call it -- for -- in the field, we call it touch
16 DNA.

17 Q All right. So did you swab the lamp for touch DNA?

18 A No, I did not. I collected the entire piece. Like
19 I said, on scene I collected multiple items, did not know
20 if it was actually used or not. If it was in use of this
21 crime or not, but any item like that collected and any --
22 because it is preserved, we can always use it later, send
23 it off for any kind of testing.

24 Q Now, at some point in time, you learned that the --
25 that the trauma that the child endured was blunt force and

Keith Sprinkle - Cross-Examination by Mr. Williams

1 there was no evidence -- obviously you had no evidence of
2 blood that you found inside that residence, right?

3 A Correct.

4 Q So the only -- the only forensic type of testing or
5 proof that you could get to anything would be that DNA
6 touch, right, it would be something on an object that would
7 indicate that it was used in the assault, right?

8 A Well, the thing is, is you say any kind of forensic
9 testing -- I processed that scene the way it should have
10 been and processed what could have been even, you know,
11 unknown stains to me, still processed them. That's
12 actually a forensic testing is what you're saying. But
13 yeah, I processed the scene as needed and -- and tested
14 what needed to be tested.

15 Q Tell me about that matching metal rod that you
16 found?

17 A There were multiple rods. Without having it front
18 of me, I would say it's about, approximately this long.
19 There were a couple of them found, I believe three
20 different locations.

21 Q Do you have it on a photograph that I can show the
22 jury?

23 A Yes, I took photographs on the scene.

24 Q Which one?

25 A I do not know what photograph it was, but I took

Keith Sprinkle - Cross-Examination by Mr. Williams

1 multiple photographs throughout the scene of these matching
2 rods.

3 Q Would it have been near the pack 'n play?

4 A There was one in there. It wasn't in the pack 'n
5 play, no.

6 Q Would it have gone to the pack 'n play?

7 A That I cannot say.

8 Q If I show you State's Exhibit Number 12, can you
9 tell me -- would refresh your memory as to whether or not
10 it would have been with the pack 'n play or not?

11 A If -- I can do that.

12 MR. WILLIAMS: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 THE WITNESS: Exhibit 12, I see the photograph that
15 I took of the -- of the child's room and I see the pack 'n
16 play and some of the toys and the bed, but I don't see the
17 rod that you're speaking of or anything, so --

18 BY MR. WILLIAMS:

19 Q The rod I'm speaking of is what you put in your
20 report that you seized?

21 A Yes, sir. And -- and what are you asking?

22 Q I guess what I'm asking is, you give a list of
23 items that you seized and I'm trying to find out if they
24 were near the crib; you thought there was some significance
25 about them.

Keith Sprinkle - Cross-Examination by Mr. Williams

1 A The significance -- I'm trying to look through my
2 notes exactly where the three were located. I know one was
3 actually located in the living room sofa in between the
4 cushions in the sofa. One was found on top of a shelf in
5 the kitchen and I believe one was found in the -- in the
6 child's bedroom, I'd have to look exactly where I did find
7 it, but the three that were -- they were all similar; they
8 were the same -- same type rod, the light gray rod, metal
9 rod, that I found throughout the house. Like I said, I
10 found three different ones that was interesting that I
11 found throughout the house.

12 Q You actually put in your report that you found one
13 metal rod under the pack 'n play. The other two rods were
14 found in different locations; one in the living room and
15 one in the couch, right?

16 A Yes, that's correct. Now that you say that, and I
17 was trying to find that in my report exactly where that --
18 that first one was found, it's actually underneath that
19 pack 'n play. Meaning once I removed the pack 'n play,
20 actually collected that as Evidence Number 1. That first
21 rod that I found was actually, I say first one, just
22 because I processed that first room first. So that would
23 have been the first one that I found. So the first rod
24 that I found was actually once I removed the pack 'n play
25 collected that, there was that first rod that I found.

Keith Sprinkle - Cross-Examination by Mr. Williams

1 Q And as you have detailed, when you photograph these
2 items, you give 'them numbers which are not reused meaning
3 you give something a 1, take a picture of it, and we've
4 seen that; and then something at number 2.

5 A Yes.

6 Q What number did you give this rod, which was found
7 underneath the pack 'n play?

8 A This one was Item Number 6.

9 Q All right. And did you take an individual picture
10 -- I guess you've answered that. You didn't take a picture
11 of it while it was underneath the pack 'n play, but you
12 took a picture of it at some later point in time?

13 A Sir?

14 Q You gave it a number; did you take a picture of it
15 later on?

16 A I didn't see the -- the rod until I actually moved
17 the pack 'n play.

18 Q Okay.

19 A I didn't know that it was what was underneath
20 there. You know, that's very common that as you're moving
21 items through a house that you can only see what's in front
22 of you; you don't know what's underneath. As I moved the
23 pack 'n play, then it exposed the rod underneath in which I
24 didn't put an ID placard on that.

25 Q You did not put one on it?

Keith Sprinkle - Cross-Examination by Mr. Williams

1 A Sir?

2 Q You did not put one on it, is that what you said?

3 A I did.

4 Q You did?

5 A Yes, sir.

6 Q All right. Have you seen the autopsy pictures of
7 the child that was involved in the -- the death?

8 A Yes, sir, I have.

9 MR. WILLIAMS: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. WILLIAMS:

12 Q Referring to State's Exhibit Number 36. Describe
13 that -- you are a CSI guy so you probably can describe --
14 you're investigator type of guy who is used to examining
15 items in conjunction -- in conjunction with injuries, right?

16 A Yes, we're -- we're used to seeing a lot of
17 injuries and weapons that caused the injuries.

18 Q Because that's why you were grabbing these items
19 that could possibly be used as a blunt force trauma, right?

20 A Yes, like I said, I didn't know exactly what was
21 used, but that's why I was searching for -- for possible
22 weapons inside the residence was anything that could have
23 potentially caused any kinds of blunt force damage to this
24 -- this victim, this child.

25 Q So referring to State's Exhibit, what's that number

Keith Sprinkle - Cross-Examination by Mr. Williams

1 please, Mr. Sprinkle?

2 A 36.

3 Q State's Exhibit Number 36, was the rod that you
4 found underneath the pack 'n play consistent with the type
5 of injury which you're viewing on that exhibit? Which
6 would be the linear bruise on the child's neck and back or
7 neck I should say.

8 A This linear bruise and abrasion right there, I
9 think that's what you're --

10 Q Yes.

11 A -- speaking of? This bruising, this kind of
12 abrasion could have been potentially been caused by a
13 linear object such as -- as the rod or a hand or something
14 to that matter.

15 Q Thank you, sir.

16 Now, having said that, did you test that rod for
17 fingerprints or any type of DNA to see, number 1, if it had
18 touched the child's neck; number 2, who was the last person
19 to touch that rod?

20 A I collected the rod on scene. To my knowledge,
21 unless someone had signed -- signed off that evidence from
22 Lexington County, the last person that I'm aware of that
23 has touched that rod would have been me. Again that's to
24 my knowledge unless otherwise, but I collected that from
25 the scene and packaged it to preserve it as the evidence.

Keith Sprinkle - Cross-Examination by Mr. Williams

1 Again, I had not swabbed it like the -- just like the lamp,
2 unknowing to me what had actually been used at the actual
3 crime scene, but anyone trying to explain any kind of a --
4 a touch DNA, that would have to go to a professional under
5 DNA.

6 Q What about -- why did you seize the wooden broom
7 which was found in the house?

8 A Again, a broom could have potentially caused any
9 kind of bruising or abrasions or blunt force trauma.
10 Again, unknown to me what kind of injuries, what kind of
11 blunt force trauma this seven-month old had incurred, I did
12 not know. But any kind of items, especially that were out
13 of place that I could have found as evidence. Like I said,
14 the broom could have caused those injuries, so I collected
15 it.

16 Q So essentially, you seized a bunch of stuff that
17 you thought might be useful in the future maybe in
18 determining whether or not they were or were not used in
19 the assault or the damage to the child, right?

20 A Correct. Whenever we had that search warrant, we
21 had a limited time that we can actually keep that search
22 warrant open and so the one shot that we have at processing
23 that crime scene properly is collecting what could have
24 been a potential weapon, what is evidence.

25 Q And you keep track of it, you give it numbers, you

Keith Sprinkle - Cross-Examination by Mr. Williams

1 secure it, you put it in an evidence facility where no one
2 else can touch it, no one can tamper with it, you know
3 exactly what you have just like this port 'o crib, you
4 brought that with you, you had it in a box and you knew
5 exactly what was in the port 'o crib?

6 A Yes, once I collected, I -- I secured it in my --
7 well at that time, it was the CSI vehicle and I transported
8 it to Lexington County Sheriff's Department. I bag it or
9 package it, secure it and enter in with the Lexington
10 County evidence custodians.

11 From there anything that -- that would be the last
12 I would have any kind of contact with it after turning it
13 over to the evidence custodians at the sheriff's
14 department.

15 Q Where did you get the box from?

16 A Sir?

17 Q Where did you get the box from that you put it in?

18 A We have packaging, all sorts of different kind of
19 packaging items at the sheriff's department in the CSI Lab
20 and the crime lab because we have to, we have anything from
21 paper bags, cardboard, paper, plastic, you name it, but --
22 saran wrap. We have to have these items to be able to
23 properly package all this evidence to keep it in its -- in
24 its original state for any kind of keeping it secured.

25 Q Just -- Officer Sprinkle, can I ask you to -- could

Keith Sprinkle - Cross-Examination by Mr. Williams

1 I ask you to step down one second for me, please sir?

2 THE COURT: Yes, you may step down. Yes, sir.

3 BY MR. WILLIAMS:

4 Q Whose bluish-green child's shirt is that in your
5 box?

6 A I do not know whose -- I have not seen that item
7 before.

8 Q So you get this crime scene --

9 A Uh-huh.

10 Q -- and you take this port 'o crib and you secure
11 it, you take the photographs, you give it numbers, you
12 package it up, you take it to the sheriff's department to
13 make sure that you can maintain the integrity of these
14 items; and you bring it in a box with a child's shirt, but
15 you don't even know whose it is and bring it to court,
16 right?

17 A This box, I put together from the supplies that we
18 have. This was a brand new box and did not have that item
19 in it whenever I initially created the box to store the
20 crib in or the pack 'n play.

21 Q So some other individual placed a piece of a
22 child's shirt in your box along with this port 'o crib that
23 you bring to court that you're going to use in this case?

24 A This item was not in the box prior to. I placed
25 this -- I created the box for this evidence, placed it into

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 evidence at the sheriff's department; and like I said, I am
2 unaware of exactly who has seen this evidence from the
3 sheriff's department. I'm aware that individuals have
4 inspected or seen this item, and in doing so, that it would
5 have been documented, but I have not tampered or messed
6 with this crib since --

7 MR. WILLIAMS: I have no other questions, Your
8 Honor.

9 THE COURT: Thank you, Mr. Williams.
10 You may retake the stand, sir.

11 Redirect, Solicitor?

12 MS. MAYES: Yes, sir, Your Honor, briefly.

13 **REDIRECT EXAMINATION**

14 BY MS. MAYES:

15 Q All right. Now, Mr. Williams was asking you about
16 various objects that you took from the residence. And just
17 to clarify, the time of your search warrant was what time
18 on the 26th?

19 A I arrived at the scene at 6:39. And if you'll give
20 me one moment and I will see what time I was actually
21 notified of the search warrant being in hand. I was
22 notified by Sergeant Barr at 6:58 that the search warrant
23 had been signed and in hand and I could proceed with the --
24 with the search of the residence.

25 Q All right. And again, your time of arrival was?

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 A My time of arrival was 6:39 p.m. that day.

2 Q All right. So you're there at the scene at 6:39
3 p.m. and everything that you have photographed, the photos
4 are exactly as you found at 6:39, correct?

5 A That is correct.

6 Q And at that point in time, ^{Minor 1} had just been
7 pronounced dead and no autopsy yet?

8 A That's correct.

9 Q And in addition to no autopsy, you had not seen
10 photos of her?

11 A That is correct.

12 Q Now, Mr. Williams was asking you specifically about
13 the injuries in comparison to items that you seized. I'm
14 going to ask you to take a look at these photos in addition
15 to the one he questioned you about, which was 36. I'm
16 going to ask you to take a look at 38, 39, 40 and 37. You
17 did not have the advantage of having viewed those photos?

18 A That's correct.

19 Q I'm going to show you some items and ask you if you
20 recognize them; one's a photograph and then two are
21 physical evidence items.

22 (State's Exhibit Number 63 was marked for
23 identification.)

24 THE WITNESS: This item right here packaged
25 evidence, I.E. Number 6 is the gray metal rod that I found

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 underneath the pack 'n play on the scene.

2 BY MS. MAYES:

3 Q Can you tell us whether or not that's a fair --
4 well, whether or not this is exactly as you found it?

5 A That's exactly as I found it on scene, yes.

6 Q All right. And again this would have been on the
7 floor underneath the pack 'n play?

8 A On the floor underneath the pack 'n play.

9 Q Now in general, you have described this home as in
10 disarray --

11 MR. WILLIAMS: I have no objection, Your Honor, if
12 she's offering it.

13 THE COURT: Are you offering it?

14 MR. WILLIAMS: I said I have no objection if she's
15 offering. She's asking him about these things.

16 MS. MAYES: That's correct, Your Honor, I am going
17 to offer it.

18 BY MS. MAYES:

19 Q But looking her at these photos, 48, 51, to what
20 extent were various household items throughout this
21 residence on the floor?

22 A As far as the items that I had collected?

23 Q Any items. Were there numerous items on the floor?

24 A Yes, throughout the entire residence, there was
25 various toys, trash, clothing, it was, like I said, very

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 much in disarray as I would call it and trash, being that
2 there was actual trash all throughout the residence.

3 Q All right.

4 MS. MAYES: So this would be 63 for evidence, Your
5 Honor.

6 MR. WILLIAMS: Again, Your Honor, no objection.

7 THE COURT: State's 63 is in evidence without
8 objection.

9 (State's Exhibit Number 63 was entered into
10 evidence.)

11 BY MS. MAYES:

12 Q And having the advantage now, Sergeant Sprinkle, of
13 these photographs, having found this item, would you have
14 even seized that item, this item that night; were you aware
15 of -- if you had been aware of these injuries?

16 A No, I would not have.

17 (State's Exhibit Number 64 was marked for
18 identification.)

19 BY MS. MAYES:

20 Q All right. And now moving on, I'm going to ask you
21 about the next item he was asking you about that's depicted
22 here in this photograph, if you recognize it?

23 A This is packaged as Evidence Item Number 9. That's
24 the ID number that I identified this, the broken lamp from
25 the scene right at the entrance of the home.

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 Q All right. And I believe your testimony on direct
2 was that you did also examine the lamp for any evidence of
3 blood or anything of that nature?

4 A Yes, I visually inspected it for any kind of blood
5 or unknown stains.

6 Q And what can you tell us, if anything, about the
7 weight of that lamp?

8 A It's kind of significant weight to it.

9 Q All right. And do you see, I'm just going to ask
10 you to take a look at that, if you would look at the top
11 and look at the bottom.

12 Now, being aware of the injuries, Sergeant
13 Sprinkle, would you have seized that item had you known the
14 appearance of ^{Minor 1}'s injuries?

15 A No, you've got sharp edges on this item. Both have
16 them on the top, on the bottom and on the sides that would
17 -- the injuries observed on the victim's head would not be
18 consistent with this.

19 Q And did you find any evidence of blood in the crib,
20 on ^{Minor 1}'s clothing, on the lamp itself to indicated that
21 she had been stricken by any type of sharp object or object
22 with sharp edges?

23 A No.

24 Q Now, Mr. Williams was asking you about the rod,
25 specifically whether it was examined to see --

Keith Sprinkle - Redirect Examination by Ms. Mayes

1 MR. WILLIAMS: I'd place an objection if she's not
2 placing that into evidence because she's asked the witness
3 about the item.

4 MS. MAYES: We'll place that into evidence, Your
5 Honor, that's no problem.

6 MR. WILLIAMS: And then I would not object, Your
7 Honor.

8 MS. MAYES: That would be State's 64.

9 THE COURT: The item being the lamp?

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: State's 64 is in evidence without
12 objection.

13 (State's Exhibit Number 64 was entered into
14 evidence.)

15 BY MS. MAYES:

16 Q And then he was asking you specifically about
17 whether or not this was submitted to see who had been the
18 last to touch it; you're a CSI Officer and have been
19 trained as a CSI Officer, correct?

20 A Correct.

21 Q Does DNA have an age on it and by that, I mean is
22 it -- is it possible to determine who was the last that
23 touched something?

24 A No. No, it does not have an age date to it as far
25 as when someone touched an item. If DNA is present, then

Keith Sprinkle - Recross-Examination by Mr. Williams

1 DNA is present.

2 Q And again, knowing what you know now, is there any
3 reason to believe this instrument is connected to this
4 crime in any way?

5 A I would say that did not cause - it would not be
6 consistent of an item that would have caused the injuries,
7 especially to the top or left front of that child's head.

8 Q All swabs that you collected at the scene were
9 negative for blood?

10 A Correct.

11 Q Nothing further.

12 THE COURT: Mr. Williams?

13 **RECROSS-EXAMINATION**

14 BY MR. WILLIAMS:

15 Q And did you swab those items that we just
16 referenced before?

17 A No, not the items, no, sir.

18 MR. WILLIAMS: That's all the questions I have,
19 Your Honor.

20 THE COURT: Thank you. Thank you, Sergeant. You
21 may step down.

22 MS. MAYES: Your Honor, if we may approach?

23 THE COURT: Yes, ma'am.

24 (There was a bench conference out of the hearing of
25 the jury and the court reporter.)

Susan Luberoff - Direct Examination by Ms. Mayes

1 THE COURT: Let's take about a 15 minutes recess,
2 ladies and gentlemen. Do not discuss the case during this
3 brief recess. We're going to take one more witness today.
4 Thank you. Thank you very much.

5 (The jury left the courtroom at 4:10 p.m.)

6 THE COURT: Anything before we bring in the jury,
7 Solicitor?

8 MS. MAYES: No, sir, Your Honor.

9 THE COURT: Mr. Williams?

10 MR. WILLIAMS: Nothing from the defendant, Your
11 Honor.

12 (The jury entered the courtroom at 4:27 p.m.)

13 THE COURT: All right. Solicitor, you may call
14 your next witness.

15 MS. MAYES: The State calls Dr. Susan Luberoff.

16 THE COURT: Dr. Luberoff, if you'd please come
17 around and join us.

18 SUSAN LUBEROFF,

19 having been duly sworn, testified as follows:

20 THE CLERK: Please be seated. State your full name
21 and spell your last name please.

22 THE WITNESS: I'm Susan Breland Luberoff,
23 L-U-B-E-R-O-F-F.

24 DIRECT EXAMINATION

25 BY MS. MAYES:

Susan Luberoff - Direct Examination by Ms. Mayes

1 Q Dr. Luberoff, if you could tell us some information
2 about yourself; what is your educational background and
3 training and what is your current profession?

4 A Sure. I graduated from the USC School of Medicine
5 in Columbia in the third class to graduate from that
6 school. So I'm a medical doctor. I completed a 3-year
7 pediatrics residency at Children's Hospital at Richland
8 Memorial in 1986 and since then, I've been a pediatrician,
9 and I've worked in several different areas of pediatrics,
10 but the largest piece of time that I've spent has been in
11 the field, the subspecialty of child abuse pediatrics. I'm
12 board certified in general pediatrics and I'm also board
13 certified in the subspecialty of child abuse pediatrics.

14 I'm employed by the University of South Carolina
15 School of Medicine. I'm a Clinical Associate Professor of
16 Pediatrics and some of my duties involve teaching.

17 Q In addition to currently acting in a role of a
18 professor, do you also still see patients or have you
19 continued to see patients throughout your career?

20 A Oh, yes.

21 Q As a Pediatrician?

22 A Yes.

23 Q And does that include the diagnosis and treatment
24 of child abuse?

25 A Yes.

Susan Luberoff - Direct Examination by Ms. Mayes

1 Q Does that include the diagnosis and treatment of
2 severe child abuse in which children ultimately may die of
3 injuries?

4 A It does.

5 Q Dr. Luberoff, have you testified previously as an
6 expert in the field of forensic pediatrics?

7 A Yes, I have.

8 Q Have you testified previously as an expert in the
9 field that includes the subspecialty of diagnosis and
10 treatment of child abuse?

11 A Yes, I have.

12 Q And that includes child physical abuse?

13 A Yes.

14 Q Has that been on more than one occasion in the
15 criminal courts of South Carolina?

16 A I stopped counting how many times I had testified
17 when I got to 100, years and years and years ago; so almost
18 all my testimony has been within the State of South
19 Carolina, much of it in criminal court, but also a lot in
20 family court.

21 MS. MAYES: Your Honor, the State would offer Dr.
22 Susan Luberoff as an expert in the field of forensic
23 pediatrics to include the diagnosis and treatment of child
24 physical abuse.

25 MR. WILLIAMS: Without objection, Your Honor.

Susan Luberoff - Direct Examination by Ms. Mayes

1 THE COURT: Thank you. Thank you, Mr. Williams.

2 Again, Mr. Foreman, ladies and gentlemen, as you've
3 heard me say previously, normally a person cannot give
4 opinion testimony. Normally when a person testifies, they
5 must testify as to either what they saw, heard, sensed by
6 smell, or something of that nature. However, there is an
7 exception when someone is qualified because of education or
8 experience in a particular area, art, science, profession
9 or craft. They are permitted to give their opinions and
10 the basis of holding those opinions in those areas if the
11 Court qualifies them that way.

12 This witness, Dr. Susan Breland Luberoff will be
13 qualified in the areas of forensic pediatrics, diagnosis
14 and treatment of child physical abuse.

15 And was there a third field, Solicitor? I tried to
16 write.

17 MS. MAYES: That is correct, Your Honor. That
18 would be forensic pediatrics with a specialty in diagnosis
19 and treatment of child physical abuse.

20 THE COURT: Dr. Luberoff will be allowed to give
21 opinion testimony and the basis of holding those opinions
22 in those areas. That does not mean you must accept the
23 opinions and the basis, but it will be evidence to be used
24 by you, the jury, in any way you deem fit and appropriate.

25 Thank you, Solicitor, you may continue.

Susan Luberoff - Direct Examination by Ms. Mayes

1 MS. MAYES: Yes, sir, Your Honor.

2 BY MS. MAYES:

3 Q Now, Dr. Luberoff, how do you normally come across
4 patients that you are treating as a practicing
5 pediatrician?

6 A I'm -- I'm stationed mostly at one of the
7 children's advocacy centers in the Midlands. It's called
8 the Metropolitan Children's Advocacy Center and that's a
9 clinic or a facility where children are evaluated where
10 there's a concern for abuse or neglect, physical abuse or
11 sexual abuse or maybe being a witness to a homicide or
12 something like that and those referrals come to us from DSS
13 or law enforcement.

14 So ordinarily, in a normal day the patients that I
15 see are seen in that clinic and they're referred to us in
16 the course of an investigation into a worry about a abuse.

17 I also am on call to see patients in the hospital
18 that are admitted to Children's Hospital at Richland where
19 the medical staff are concerned about possible physical or
20 sexual abuse or neglect. So if there's a concern among the
21 hospital staff, my team is on call to go over and evaluate
22 that child and help answer the question about abuse or
23 neglect or whether a report needs to be made for an
24 investigation and that sort of thing.

25 If a child dies that I've never seen before, then

Susan Luberoff - Direct Examination by Ms. Mayes

1 often one of the agencies will involve me in reviewing that
2 child's death with them to help figure out whether it looks
3 like abuse or neglect was involved in that death or to look
4 at issues related to safety of surviving children in that
5 home, that sort of thing.

6 Q Now, you mentioned reviewing cases in which
7 children have died as a result of abuse or neglect. Does
8 South Carolina have a specific type of a team or committee
9 to review such cases?

10 A Yes.

11 Q And what has your involvement been with that team?

12 A There's a legislatively appointed committee called
13 the -- the State Child Fatality Advisory Committee that is
14 composed with several representatives of several different
15 agencies that -- that touch children in the course of their
16 work. The purpose of that committee is to review every
17 unexpected child death that happens in South Carolina on
18 anyone under 18 years old. We would not, for example,
19 review a child that died of cancer, where it's an expected
20 death, but if it's an unexpected death and gets reported to
21 SLED because it's unexpected, all of those cases get
22 reviewed by this team of -- of many different disciplines
23 to look at it from a lot of different angles. One of the
24 members of that committee has to be a member of the
25 American Academy of Pediatrics, South Carolina Chapter and

Susan Luberoff - Direct Examination by Ms. Mayes

1 the chapter recommends someone to the governor and then the
2 governor appoints the person to be on that committee. I
3 have served on that committee for four years and chaired it
4 for four years. I actually just rotated off on July the
5 1st of this year. But I was the chair and a member of the
6 State Child Fatality Advisory Committee for reviewing
7 children's deaths.

8 Q And pursuant to your role on that committee, do you
9 give opinions regarding homicides related to child physical
10 abuse?

11 A That committee reviews how manners of death have
12 been assigned and sometimes the committee will make
13 corrections to manners of death. It's not -- it's not the
14 committee where I write a report about a particular child
15 or about my opinion about that child. It's done as a team.
16 But we do, in other death reviews that I do, not on that
17 committee, but -- but with law enforcement agencies and DSS
18 for children who have recently died, then that's where my
19 opinion is sought about homicides, sometimes about manner
20 of death, sometimes about whether there are injuries on the
21 child that appear to be related to the death or not, that
22 sort of thing; whether the child, for example, is
23 developmentally capable of doing something that's alleged
24 that he is doing at the time he died. That's another area
25 that I'm often consulted about, about children's

Susan Luberoff - Direct Examination by Ms. Mayes

1 developmental skills and how they fit into the picture.

2 Q So, Dr. Luberoff, how is it given that background
3 that you became involved this case involving Minor 1
4 ?

5 A The Lexington County Sheriff's Department often
6 consults with my team when they have a death or a live
7 child where there's a concern about abuse or neglect. And
8 in this particular case I received a telephone call from
9 Sergeant Traci Barr, who leads the special victim's unit at
10 the Lexington County Sheriff's Office alerting me that they
11 had recently become aware of a fatality and asking if I
12 would come to Lexington Emergency Room and look over the
13 child. There were injuries on the child and they were
14 asking if I would come and -- and help think through the
15 case with them, see what I thought about the injuries.

16 Q And where did you first arrive?

17 A Where? At the Lexington County Emergency Room, the
18 Lexington Hospital Emergency Room.

19 Q And did you get an opportunity to physically
20 examine Minor 1 at that point in time?

21 A I did. I assisted the coroner's deputy with taking
22 her photographs. And in doing that was able to very
23 closely examine all of Minor 1's skin and -- and really do
24 a good exam on her deceased body, yes.

25 Q All right. What were your general observations

Susan Luberoff - Direct Examination by Ms. Mayes

1 having had that opportunity to examine her there in the
2 emergency room after she was pronounced deceased?

3 A She had a number very obvious and very significant
4 injuries on her head involving four major areas of her head
5 and these were bruises and abrasions. She also had two
6 smaller bruises on her back, a little abrasion or a piece
7 of peeled skin on the center of her chest and I do recall
8 that at the time I saw her in the emergency room, she had
9 some stiffening of her body or rigor, that is one of the
10 stages that happens after death. She had some stiffness in
11 her arms and legs.

12 Q All right. Then as part of your reviewing this
13 case beyond your actual examination of Minor 1 there in the
14 emergency room, have you had an opportunity to review the
15 autopsy findings?

16 A I had an opportunity to review the autopsy findings
17 and the autopsy photographs and some scene photographs.

18 Q All right. At this time, Dr. Luberoff, I'm going
19 to show you what is State's Exhibit 36, 37, 38, 39, 40, 41,
20 42, 43, 44, then from the emergency room, 17, 18 --

21 A I'm just going to make two stacks here.

22 Q -- 19, 4 and 5. And are you familiar having
23 reviewed those photos?

24 A Yes, I was in the emergency room on the day that
25 the emergency room photos were taken, so I recognize these

Susan Luberoff - Direct Examination by Ms. Mayes

1 injuries as being -- these are good representations of what
2 I saw when I inspected Minor 1 's body there and the
3 photographs in the autopsy stack are familiar to me also.
4 So I have had a chance to review these closely.

5 Q All right. Now, Dr. Luberoff, what is meant among
6 medical professionals by the term blunt force trauma?

7 A Well trauma is injury and there are different kinds
8 of forces that can cause injury. Injury can be caused by
9 -- by sharp force like stabbing; it can be caused by heat;
10 it can be caused by electrical injury; and then blunt force
11 injury is -- is impact or crushing, a category that
12 involves force. It's blunt in the nature in which it's
13 delivered.

14 Q All right. And how is it that a blunt force
15 injury, if it's severe enough, may lead to a child's death?

16 A Well, it depends on what part of the body is
17 involved.

18 Q A head injury for example?

19 A A head injury for example. The blunt force deliver
20 to a head can cause actual bleeding and actual injury to
21 the tissues inside the skull to the brain itself. But a
22 child can also die from blunt force trauma to the head that
23 doesn't cause bleeding in the brain. The child can be
24 impacted sufficiently for -- for the functions of the brain
25 to stop. To -- to sort of be concussed or -- or have

Susan Luberoff - Direct Examination by Ms. Mayes

1 enough of a force that the brain just stops functioning
2 normally; it disrupts the function of the brain. That
3 death can happen very, very suddenly and the injury may be
4 limited to the more superficial areas like the scalp.

5 We don't necessarily always see injury inside the
6 skull at autopsy when there's a blunt force trauma death.
7 Often we do, but certainly not always.

8 Q Okay. And, Dr. Luberoff, I'm going to ask you to
9 just take your time and look through those photographs and
10 find any that you, in your opinion, to a reasonable degree
11 of medical certainty, depict that type of blunt force
12 injury that you described?

13 A Well, every one of these photographs that you
14 handed me includes the head and there was just extensive
15 significant bruising and abrasion to the child's head on
16 multiple areas of the head. I believe every one of these
17 included the head. Yes, even -- even the pictures that
18 showed the trauma -- that do show that head trauma also.

19 Q Actually, Dr. Luberoff, it may be better if I ask
20 you to step down from the witness stand.

21 MS. MAYES: If we may have permission, Your Honor?

22 THE COURT: Yes, ma'am, Solicitor.

23 You may step down.

24 (The witness stepped down in front of the jury.)

25 BY MS. MAYES:

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1 Q I'm going to start here with State's Exhibit 41.

2 And if you could just describe for the jury what is
3 depicted in that photo and what -- what type of force would
4 be necessary to generate an injury of that nature.

5 A Okay. So this photograph and I know these are
6 distressing, but this photograph shows an extensive injury
7 over the child's forehead. This involves bruising and it
8 also involved abrasion that I could feel with my finger,
9 scraping of the skin that you don't see that as much in the
10 photograph, but it was definitely present on her exam.

11 One of the things that's significant about these
12 injuries is that they involve the whole curved area of that
13 forehead. They're not all just on one side and so they
14 represent repeated blows on different areas of the face.
15 There's also a bruise here just up under the left eyebrow.
16 That bruise underlies one of the boney parts above the eye
17 and that's an area of impact also. You can see a little
18 bit of abrasion on the tip of the nose in this photograph
19 also.

20 Q State's Exhibit 18.

21 THE COURT REPORTER: Excuse me. Can we get her to
22 kind of turn toward me a little bit. That's great. Thank
23 you.

24 THE WITNESS: So this is the child in a different
25 position and here you can see bruising to the crown or the

Susan Luberoff - Direct Examination by Ms. Mayes

1 top of Minor 1 's head. You can also see the forehead
2 bruise though, that we saw in the previous picture; but you
3 can see another collection of multiple bruises underneath
4 the hair here on the top of the child's head.

5 BY MS. MAYES:

6 Q And then finally, State's Exhibit 43.

7 A So the one that I just showed with the injury along
8 the crown of the head, that injury is now here on this
9 picture and so we see yet another large area of bruising
10 further back on the head and the one area of bruising
11 that's not showing in these particular -- these three
12 pictures is the one behind the left ear and that I think is
13 significant also. She had a fourth area and all of these
14 areas involve bruising. And I can't remember whether every
15 single one of them, I think this one, I couldn't feel
16 abrasion over the one behind the left ear, but we could
17 feel abrasion mostly on the forehead.

18 And this, Number 19, shows a bruise that's kind of
19 in the shape of a line; it's sort of linear on the boney
20 part of the skull behind the left ear. So that's, I'm
21 counting four different areas of the head that suffered
22 impact. One being the face, the -- the forehead or frontal
23 area and this eye area, the next being the crown in the
24 head, and the third being the area further back, and then
25 behind the left ear is a separate area that had impact

Susan Luberoff - Direct Examination by Ms. Mayes

1 injury.

2 Q Now, Dr. Luberoff, when we talk about the delivery
3 of such injuries, what type of force would be necessary?

4 A It takes a lot of force to cause a bruise. Could I
5 sit back down?

6 Q Yes.

7 (The witness returned to the witness stand.)

8 THE WITNESS: Bruises happen when the soft tissue
9 is -- is crushed or injured to the point that blood vessels
10 break within that soft tissue within the skin and the blood
11 oozes out of those blood vessels into places where it's not
12 supposed to be. That's what a bruise is. And you know, we
13 probably all have, in here, experienced bruises from, not
14 terribly significant trauma, but those are generally very
15 small, very localized.

16 The bruises on this child's head represent a
17 significant amount of trauma, a significant amount of force
18 applied to that skin to cause a large area of crushing and
19 torn blood vessels.

20 Q Now, following the death of Minor 1, pursuant to a
21 request by law enforcement and for precautionary measures,
22 were the siblings also evaluated for medical purposes?

23 A I evaluated them, yes.

24 Q All right. And that would be three-year-old Minor 2
25 and one-year-old Minor 3 ?

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1 A Yes. I saw them actually the very next day on the
2 27th. I'm just going to double-check ^{Minor 3'}s age.

3 MR. WILLIAMS: I have a matter of law to take up
4 with the Court, if we can approach the bench.

5 THE COURT: Yes, sir.

6 (There was a bench conference out of the hearing of
7 the jury and the court reporter.)

8 THE COURT: Thank you. Thank you, Mr. Williams.

9 Thank you, Solicitor. You may ask your next
10 question, Solicitor; or repeat your last question.

11 MS. MAYES: Yes, sir, Your Honor.

12 THE WITNESS: I have been checking my notes to
13 refresh my memory on exactly what ^{Minor 3'}s age was because
14 you can be one-year old and be twelve-months old or you can
15 be one-year old and be a month shy of two-years old and
16 that's -- that's a vast difference in pediatrics and she
17 was 22 months old. She was two months shy of being two.
18 And ^{Minor 2} at the time I saw him, was three months shy of
19 being four years old.

20 BY MS. MAYES:

21 Q All right. Now, as part of that evaluation, were
22 they measured for height?

23 A They were.

24 Q Okay. And do you have any records or notations in
25 that regard?

Susan Luberoff - Direct Examination by Ms. Mayes

1 A I do.

2 Q What was the height of Minor 2 ?

3 A Minor 2 was 39 inches tall and weighed 35 pounds. And
4 Minor 3 was 31 and a quarter inches tall and weighed 11.7
5 kilograms. We weighed her on the infant scale and if you
6 do the math, that brings her up to about 24, a little bit
7 over 24 pounds, close to 25 pounds.

8 Q Now, during the course of those evaluations, did
9 you also get a chance to watch the two of them interact?

10 A I did a comprehensive examination of both children.
11 When children, live children come in to be evaluated for
12 any kind of worry about abuse or neglect, we actually
13 examine them for any kind of abuse or neglect. So we did a
14 very careful examination of all of their skin, looking at
15 their overall hygiene, the care of their teeth. We do a
16 careful examination of their genitalia, we look at their
17 developmental skills.

18 In this particular case, I knew from the discussion
19 at the emergency room that there had been raised the
20 question of could the one-year old and three-year old have
21 been involved in the death of the child I was seeing at the
22 emergency room. So I actually spent some extra time with
23 these children in free play, what we call free play, in the
24 waiting room observing how they interacted with the toys in
25 the waiting room, what their skills were with those things,

Susan Luberoff - Direct Examination by Ms. Mayes

1 how they interacted with each other and -- and just getting
2 a good overall developmental picture in my mind of -- of
3 these two children.

4 Q At any point in time, did you ever observe any
5 signs of aggression by either one of those children towards
6 one another?

7 A No, as a matter of fact, ^{Minor 2} was interested in the
8 kitchen area of the waiting room and at one point, he was
9 -- was playing at serving tea to ^{Minor 3} and sharing things
10 with her and his speech was a little bit delayed, but it
11 was clear to me when in his communication with her that at
12 one point, I think when the indication had come that it was
13 time to get ready to leave, that he instructed her to start
14 helping pick things up off the floor.

15 Q Having observed them physically, Dr. Luberoff, as
16 well as their interactions with one another, do you have an
17 opinion to a reasonable degree of medical certainty, as to
18 whether or not the injuries that are depicted in ^{Minor 1}'s
19 photo would have been caused by any child of their age or
20 size?

21 A I do.

22 Q And what is that opinion?

23 A No, and particularly on -- can I expand on that?

24 Q You can.

25 A Particularly not these two individual children. I

Susan Luberoff - Direct Examination by Ms. Mayes

1 have also had occasion to see some video of Minor 1 before
2 she died so I have an idea, a picture of what her
3 developmental skills are and what her strength is and that
4 kind of thing. These injuries are very concentrated.
5 They're repeated injuries concentrated over certain areas
6 of the head. They required someone having a lot of control
7 over this seven-month old who actually has the
8 developmental skills to be able to sit up on her on, pull
9 up, push away. She would have not been like a two-week old
10 laying completely helpless.

11 She would have been able to move around and take
12 measures to protect herself against a 22-month old and a --
13 and a almost four-year old to a certain degree. The
14 concentration of these injuries and the fine motor skills
15 needed to just deliver these blows over and over and over
16 again in these concentrated areas are outside the
17 capability in my opinion of either of these toddlers that I
18 saw in my office.

19 Q Now, Dr. Luberoff, you mentioned a video that you
20 have observed. Were you made aware, at any point in time,
21 of a fall that Minor 1 had sustained, I believe on the
22 previous date of her death?

23 A Yes.

24 Q And that fall was actually captured on video
25 surveillance from a convenience store where her mother

Susan Luberoff - Direct Examination by Ms. Mayes

1 worked?

2 A Yes.

3 Q And ultimately, footage from throughout the night
4 was put into an 11-minute video. Were you able to observe
5 that video of the 11-minute video in its entirety?

6 A Yes.

7 Q All right. And let me show you this and ask you
8 whether or not you recognize it?

9 A It's -- I can tell you that it says surveillance
10 footage, 11 minutes, 10 seconds. I can't tell you whether
11 this particular DVD is the -- is the one that I saw. When
12 I see the content, I'll be able to tell you.

13 Q All right.

14 MS. MAYES: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. MAYES: It's in evidence, Your Honor.

17 At this time, this footage is 11 minutes, 10
18 seconds, Your Honor, but we would ask that we publish it at
19 this time for purposes of Dr. Luberoff's narration.

20 BY MS. MAYES:

21 Q Now, Dr. Luberoff, you mentioned that you also, as
22 a pediatrician, are able to make note of certain
23 developmental skills that children have.

24 A Yes, I actually am the faculty member in the
25 Department of Pediatrics that teaches the development

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1 lecture to the third-year medical students who are rotating
2 on pediatrics. So that's an area that I spend -- pay a lot
3 of attention to.

4 Q Okay. And were you able to make such observations
5 regarding Minor 1, during the course of watching this video
6 and seeing her throughout the night?

7 A Yes.

8 Q And as we go, Dr. Luberoff, I believe you may feel
9 free to just add any opinion that you may have or any
10 notations that you would like to make for the record
11 regarding the developmental skills of Minor 1 and as
12 well, the fall.

13 (The video was playing for the jury.)

14 THE WITNESS: Okay. So that's Minor 1 in the arms
15 of the lady. And one thing that I notice is that you can
16 see that none of the injuries that exist in these
17 photographs are present on her head. We get lots of views
18 of her head. She's got good head control, she's holding
19 her head up as her mother is carrying her through the door.
20 I assume that's her mother. She's got one arm draped over
21 her mother's shoulder and using the other arm. She's
22 looking at the other child that just crossed under.

23 She's clearly very alert, interested in her
24 environment, has good trunk control there. Her mother has
25 now let go of her back and she's able to control her trunk.

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1 Pushing on the door, still maintaining her balance and her
2 -- her posture, looking around, making good eye contact
3 with the other lady there. She was anticipating being put
4 down into that seat; you can see her hands flare. She
5 appears a little unhappy now, still very engaged with her
6 surroundings.

7 And that's ^{Minor 2}. So this is another view and
8 again, she's just got really good posture, good head
9 control. It looks like she's being placed down in a
10 cardboard box on the floor and she's maintaining sitting by
11 herself even though she's twisting her trunk and looking
12 around. She's got very good sitting skills. And that's
13 developmentally on target for her age.

14 Now, she's pulled up and is actually bearing weight
15 on her legs. This is about -- about an eight- to
16 nine-month old skill. She's kind of teetering a little
17 bit, but she's pulled up. She's got hold of the chair.
18 And again, another view of her head with very little hair
19 on it where you can see that she doesn't have the bruise
20 injuries that she came in with the next day. So she's
21 holding on to the edge of the box and still being able to
22 pull herself up. This clearly is not the first time she's
23 ever done this and the box tips.

24 Now, that -- is there a way to pause it for a
25 second because there's a lot of information in that little

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1 piece. And I don't know if it's possible to go backwards
2 in it, but I've looked at this over and over and over again
3 because there's a history that there's a fall the night
4 before and we have a luxury of being able to see that fall,
5 then we can really see could that fall explain the injuries
6 and when she falls.

7 If you look very carefully, her cheek touches the
8 upholstered part of the chair, the padded part, and
9 actually as the box starts to tip, that's a slow motion
10 fall; it's a low velocity fall. The box is actually
11 slowing her fall. She grazes the cushion part and then
12 ends up on the floor.

13 And you can let it go ahead and go forward now.
14 She's still completely fine. She's reaching with her hand,
15 rolling over, she's crying, she's not happy that she's
16 fallen, clearly. You can kind of tell there, you can't see
17 her feet, but you can tell that she's kicking, she's
18 rolling over, back to side, now you can't see her legs.
19 She still has use of all of her extremities and now her mom
20 has responded and picked her up.

21 Then we see her -- that's the sister, that's ^{Minor 3}.

22 BY MS. MAYES:

23 Q And here from a different angle, are we watching
24 the fall again to the left of the screen?

25 A Yes, you can barely see her back behind the car

Susan Luberoff - Direct Examination by Ms. Mayes

1 seat. You can still see the fall, you can see her legs.
2 She immediately is moving; she's certainly not lost
3 consciousness or anything. There's just no amount of force
4 in that fall. That's a very low force, low velocity fall
5 and the fall actually was broken by -- by hitting the
6 cushion of the chair before she hit the floor.

7 Q The same fall; different camera angle?

8 A I'm sorry, could you back it up there to where
9 she's just leaving the room because I do want to make a
10 comment about her alertness at that point. Here she's
11 being picked up and as she comes out, you can see she still
12 has good control of her head, her eyes are open, she's
13 holding on to her mother's shoulder. This is an attached
14 child at this point.

15 Now she's going back to the car seat holding that
16 head up. No injury to the scalp that we can see. Her hair
17 is very short; it's real easy to see her scalp.

18 Q Any evidence of injury you see to Minor 1 at this
19 point?

20 A No. She's moving her leg. Still sitting up.

21 Q Was there ever any indication of a loss of
22 consciousness?

23 A No. Not even an indication of being stunned.

24 She looks less than ecstatic about being in the car
25 seat right now, but -- or the stroller, but she -- you can

Susan Luberoff - Direct Examination by Ms. Mayes

1 really see that she's moving all of her extremities, she's
2 holding her head up; actually in this you can see the
3 relative size of ^{Minor 3} and ^{Minor 1} also.

4 You can see ^{Minor 3} doing very developmentally
5 appropriate things with her little hands.

6 Q And now later?

7 A So now there's a man and I believe it's been
8 represented to me that this is her father that she's
9 clearly looking at him. She's still moving all of her
10 extremities, her eyes are open, reaching.

11 Q All still consistent with an uninjured child?

12 A Yes. You can see her forehead very well in this
13 view. You can't see the top of the head very well just
14 because of the shadowing, but you can see that the forehead
15 is still clear.

16 She does a lot throughout this whole 11 minutes.
17 She does a lot of trying to engage adults, get up, focusing
18 on them, reaching out to them. You can kind of see her
19 vocalizing, so she really looks like a very developmentally
20 normal seven-month old. Seven-month olds are at an age
21 where they can babble and laugh.

22 In my review of these videos, I also never saw ^{Minor 2}
23 behaving aggressively with any of the items in the room or
24 -- or acting anything other than normally around his
25 sisters. Even his activity level is just normal for his

Susan Luberoff - Direct Examination by Ms. Mayes

1 age.

2 She does not like being in that stroller, but she's
3 still intact.

4 Q And now exiting the store.

5 A So now she's still engaged with her mother. She's
6 got her eyes open looking at her mother's face. It looks
7 like she might be holding something in her hand; I'm not
8 sure; maybe, maybe not. Minor 2's trying to help with the
9 door. So I believe that's the last time that we see her in
10 this video. She leaves the store still an intact child.

11 Q All right. And any observation whatsoever of
12 injury to Minor 1 beyond that fall from the cardboard box,
13 which you have already addressed?

14 A No.

15 Q Now, looking at the injuries that Minor 1
16 sustained, do you have an opinion, Dr. Luberoff, as to
17 whether or not such injuries could be caused by a fist?

18 A Yes, my opinion is that they could be caused a
19 fist.

20 Q Now, moving on to the events of the next day. This
21 is a child who you have observed to be developmentally on
22 target, who you have observed and I believe your testimony
23 has been, no apparent injury from that fall. How often
24 throughout the day would a seven-month old need to be fed
25 or changed during daytime hours after having slept through

Susan Luberoff - Direct Examination by Ms. Mayes

1 the night?

2 A Ordinarily a seven-month old still takes two good
3 naps during the day. One maybe late in the morning and one
4 later in the afternoon. And they spend the majority of the
5 rest of the time awake; they eat several times during the
6 day at that age, and generally would be expected in sort of
7 a 24 hour period to have on the order of six or eight wet
8 diapers, at least one messy diaper ordinarily. That
9 varies, of course, with -- some children don't have one
10 every single day. But she would have required diaper
11 changes several times during the day. Am I answering the
12 question?

13 Q Yes. And what about a bottle feeding for example?

14 A And at the age of six months, children have
15 sometimes started to be introduced to foods as well as
16 bottles, but they still get the majority of their nutrition
17 from the bottle or breast if they're being breast fed and
18 so they would generally take on the order of a quart of
19 formula in 24 hours and that's going to be five or six
20 feedings, usually.

21 Q All right. Now, the injuries that Minor 1
22 sustained that ultimately killed her that you testified
23 about, the blunt force injuries, What kind of symptoms
24 would they produce and how long would it take for those
25 symptoms to be apparent to a reasonable caregiver?

Susan Luberoff - Direct Examination by Ms. Mayes

1 A Well Minor 1 died.

2 Q Okay.

3 A So her symptom was death.

4 Q So from that can you tell us whether or not death
5 would have been -- could have been immediate as well as
6 unconsciousness being immediate?

7 A Her death would most likely have happened very
8 shortly after the assault happened; either during the
9 assault or -- or very shortly after. This is not the kind
10 of -- of death -- you hear sometimes in the news about head
11 injuries where someone lingers for a while; those are head
12 injuries where maybe there's -- there's blood in the head
13 that's growing and causing pressure. This child's cerebral
14 function was disrupted by the blows and so her brain
15 stopped doing the functions that are necessary to support
16 breathing and support her heart. It may be that she didn't
17 die for four or five minutes. She may have stopped
18 breathing and possibly been resuscitatable for a few
19 minutes if she had had emergency attention. I don't know;
20 we'll never know that because she had clearly been dead for
21 a while before she came to the emergency room.

22 But this is a child that died contemporaneous to
23 the assault that she had experienced.

24 Q And that assault and resulting bruising there to
25 the front of the forehead, the top of the head, the back of

Susan Luberoff - Cross-Examination by Mr. Williams

1 the head, do you have an opinion as to whether or not those
2 injuries were sustained simultaneously?

3 A Well, they weren't simultaneous because they
4 represent numerous strikes so it would have been one after
5 another; so not all in the same moment, but they are all of
6 approximately the same appearance as far as age and as far
7 as amount of force and so on. And so in my opinion, these
8 injuries all happened contemporaneous to one another, all
9 in the very short span of time to one another, not some
10 last night and some this afternoon or some two days ago.
11 It was all in a concentrated time span.

12 Q And the immediate symptomology would have been
13 death?

14 A Well Minor 1, she may not have died, you know it
15 may have taken her a few minutes to die, but she -- she
16 would have absolutely immediately been very obviously in --
17 in extreme circumstances.

18 Q Nothing further, Dr. Luberoff.

19 MR. WILLIAMS: May it please the Court?

20 THE COURT: Yes, sir, Mr. Williams.

21 CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q How are you doing, Dr. Luberoff?

24 A I'm well, thank you, how are you, Mr. Williams?

25 Q I'm doing well. I'll be brief.

Susan Luberoff - Cross-Examination by Mr. Williams

1 A Please don't on my account.

2 Q I will. On the findings -- on the findings that
3 you gave in your report, you note the condition of the
4 child, obviously, before you start doing anything -- and do
5 you have your report in front of you?

6 A I do.

7 Q And in the skin findings, you list the appearance
8 of the child in terms of nourished, well-nourished, clean,
9 whatever. Would you just kind of recite what you -- what
10 you said in regard to how the child appeared?

11 A Sure. Shall I read that part so I don't leave
12 anything out?

13 Q Okay.

14 A The child, and this is Minor 1, appears overall
15 well nourished and clean. She -- I do recall she had a
16 little bit of dirt under her fingernails, but so do most
17 seven-month olds -- with adequate subcutaneous tissue.
18 Which means that she seemed to be at an appropriate
19 thickness or size for her height. She didn't have any
20 signs of malnourishment in other words.

21 There is some rigor evident in the extremities and
22 the mouth. And that's stiffness. And I did note that her
23 fingernails are trimmed, meaning that someone had been
24 keeping up or recently kept up with -- with her
25 fingernails.

Susan Luberoff - Cross-Examination by Mr. Williams

1 I also recall that her teeth were in good
2 condition. Down at the bottom of that paragraph, it says
3 two lower central incisors are erupted and well seated.

4 Q What is --

5 A I actually didn't make more of a comment about it,
6 but I do recall that they were in good condition.

7 Q And essentially the child was, from an appearance
8 standpoint in regards to how the child's maintained, other
9 than the bruising, the child appeared normal and fine and
10 well-nourished?

11 A Not only on my emergency room encounter, but also
12 on reviewing the video. She clearly was strong. She --
13 she was developmentally on target. You can tell looking at
14 her that she looks like a physically healthy child.

15 Q Now, one of the things you put in your report is
16 that there were no retinal hemorrhaging, which was visible,
17 right?

18 A To my bedside exam, right.

19 Q Now -- and you were describing the way trauma or
20 blows to the head -- a child or a person sometimes dies and
21 -- one thing you described was a hemorrhaging or the brain
22 hemorrhages and that is a slower deal, correct? I mean
23 that's a slower death in terms of how it actually occurs;
24 the blood hemorrhages until eventually the child or the
25 person would die, right?

Susan Luberoff - Cross-Examination by Mr. Williams

1 A Sometimes it can take some time; sometimes it
2 doesn't, but sometimes it can, yes, you heard that
3 correctly.

4 Q Tell me what you were describing as that immediate
5 type of death, I mean how does that occur?

6 A The brain is responsible for supporting breathing
7 and supporting the heart beating. These blunt -- it's --
8 to give an analogy, when there is a boxing match and
9 someone knocks out the other boxer, that boxer gets knocked
10 out because the function of the brain is impaired by that
11 blunt force. He doesn't necessary have, and usually
12 doesn't have, bleeding inside his brain or something that
13 you're going to see on a CAT scan, but it's an immediate
14 functional result of the force that was used on his head or
15 on his face. That's the kind of thing that we're talking
16 about. What happens there is that -- that the function of
17 the brain is disrupted.

18 In Minor 1, not only was her conscious function
19 disrupted but she actually stopped breathing and her heart
20 stopped beating and she died.

21 Q So from an anatomical viewpoint, what exactly
22 happens to the brain that stops the person, that kills the
23 person that died?

24 A It's not an anatomical event that happens; it's a
25 functional event.

Susan Luberoff - Cross-Examination by Mr. Williams

1 Q Okay. Meaning?

2 A Meaning that the force has confused and disrupted
3 the function of the brain, the electrical function and the
4 chemical functions of the brain.

5 Q And is there a way to, as a scientist, to -- to
6 tell that that is what actually occurred?

7 A You --

8 Q Can you measure it?

9 A You can tell it by the fact of the death without
10 any structural abnormalities to the brain and the presence
11 of this very clear evidence of blunt force being applied to
12 the head.

13 Q Is -- is it like *res ipsa loquitur* because --
14 because the child is dead and there is no hemorrhaging,
15 then we determine that the person died as a result of that;
16 there's no -- there's nothing you can look at it to see it,
17 is there?

18 A I'm not -- I want to be -- I want to answer your
19 question correctly and I'm not quite sure that I follow it.

20 Q Well, consider that I'm kind of dumb because my --
21 my mom used to say that sometimes.

22 A Well I know better than that.

23 Q What can you see -- what -- you know, if we had the
24 ability to -- I mean, you can open up a body and see that a
25 heart is defective or has a clogged valve or something.

Susan Luberoff - Cross-Examination by Mr. Williams

1 You can open up the skull and look at the brain and see if
2 there's a tumor in there. What can you physically look at
3 if you were performing an autopsy or something to make that
4 decision that that's what occurred on this particular
5 person?

6 A What we see in this child, we see extensive,
7 extensive, blunt force to the head and we see no actual
8 direct tearing or injury to the brain itself. And we know
9 with that kind of blunt force being delivered to the head,
10 there is interruption of the normal physiologic jobs and
11 duties of the brain.

12 Q Okay. So -- so if we had opened this child up,
13 which is a terrible thing to say, but the brain would have
14 looked fine?

15 A Well, you did -- we --

16 Q You did open it?

17 A -- we did open the child and --

18 Q And the brain looked fine --

19 A -- the brain looked fine except for being dead,
20 yes.

21 Q And the only thing that you could see from an
22 objective standpoint was the bruising and the abrasions on
23 the child's head?

24 A Correct.

25 Q And the difference between a bruise and an abrasion

Susan Luberoff - Redirect Examination by Ms. Mayes

1 is the feel of the skin, meaning the bruises underneath the
2 skin and the abrasion is a rough area on top of the skin?

3 A Abrasion means a disruption of the surface of the
4 skin, so a scrape is a -- is a form of an abrasion.

5 Q Now, you used the words 'consistent that a fist
6 could cause this. Are you saying as an expert that a fist
7 did cause this?

8 A I'm not.

9 Q Okay. Because something else could have caused
10 that too, couldn't it?

11 A Something else could have delivered the blunt
12 force, yes.

13 Q That's all the questions I have.

14 THE COURT: Redirect, Solicitor?

15 MS. MAYES: Yes, sir, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MS. MAYES:

18 Q And just to clarify that, if you have an event
19 where it's unwitnessed and it's not on video, is there ever
20 really a way to determine what type of instrument was used
21 to deliver blunt force?

22 A Sometimes, yes. Sometimes if an instrument is used
23 to deliver blunt force, it may leave a very clear imprint
24 of itself on the skin or sometimes even on the bone. So
25 sometimes we're able to look at bruises and -- and pretty

Susan Luberoff - Redirect Examination by Ms. Mayes

1 immediately know what caused that bruise.

2 In Minor 1, first of all, except for the bruise
3 behind her ear, which was sort of in a linear or a line
4 sort of arrangement, the rest of them didn't have any
5 particular pattern to them and there were so many of them
6 overlying one another that I couldn't -- if there had been
7 a pattern in any of those individual ones, it was not
8 discernable because -- because of the number of blows that
9 she had sustained.

10 Q All right. So based on that, is it possible to say
11 to reasonable degree of medical certainty exactly what
12 caused it?

13 A Blunt force trauma caused it, but I can't say what
14 the implement was that caused it.

15 Q But a potential implement would or could include a
16 human fist?

17 A Yes, it could and there are some portions of the --
18 of the injuries, especially in the autopsy photographs
19 where the hair has been shaved so that we can see it more
20 clearly that are -- that are suggestive of the kinds of
21 bruises that we often see from human knuckles, but not with
22 enough detail for me to say that that is what they're from.

23 Q All right. Now, Dr. Luberoff, finally to followup
24 on Mr. Williams's question about the findings, the term
25 cerebral edema, just to break that down, that's swelling of

Susan Luberoff - Redirect Examination by Ms. Mayes

1 the brain?

2 A Yes.

3 Q How does swelling of the brain result in death?

4 A Well the -- the skull is a closed space and the
5 brain occupies a certain amount of that space. And if the
6 brain starts to swell, there's nowhere for it to go. So in
7 the swelling pressure is created on that brain that can
8 then actually compress blood vessels and slow the blood
9 supply to parts of the brain. It can cause disruption of
10 the cerebral spinal fluid flow around the brain and cause
11 very different pathways and -- and disruption of the
12 electrical impulses that go through the brain.

13 Q Nothing further.

14 MR. WILLIAMS: No questions on recross, Your Honor.

15 THE COURT: Thank you. Thank you, Solicitor.

16 Thank you, Doctor, thank you for being with us
17 today.

18 THE WITNESS: Thank you.

19 THE COURT: You may step down and you may be
20 excused.

21 All right. Ladies and gentlemen, perhaps now would
22 be a good time to take our evening recess. I would remind
23 you, as I say I know you can repeat it back to me, do not
24 discuss the case with others, your family members, fellow
25 jurors, family, friends, or anyone else. Do not do any

1 independent research or any research on the internet. Do
2 not read, watch or listen to any news reports, should there
3 be any. With that being said, 9:30 in the morning. 9:30
4 in the morning. I hope y'all have a pleasant evening. If
5 you'll leave your notes, our clerk will secure them for the
6 evening.

7 (The jury left the courtroom at 5:27 p.m.)

8 THE COURT: Anything from the State before we take
9 our recess, Solicitor?

10 MS. MAYES: Your Honor, just a matter of
11 scheduling. We anticipate no more than one or two
12 witnesses in the morning. And that should have us resting
13 no later than 10:45 or 11:00.

14 THE COURT: All right. Mr. Williams, would you
15 have your client come up?

16 Madam Clerk, would you please place Ms. Lawson
17 under oath please.

18 HEATHER MARIE LAWSON,
19 having been duly sworn, testified as follows:

20 THE COURT: Tell me your full name please?

21 THE DEFENDANT: Heather Marie Lawson.

22 THE COURT: And how old are you, Ms. Lawson?

23 MS. LAWSON: I'm 23.

24 THE COURT: And how much education do you have?

25 THE DEFENDANT: I have a high school diploma.

1 THE COURT: All right. I need to go over some
2 things with you. I can do it now or at the time the State
3 rests, but I thought I would do it now so you would have
4 the opportunity to perhaps discuss it further with your
5 attorney and think about it over the evening -- evening
6 recess.

7 We're approaching the stage of the trial, as you've
8 heard, the State may have two witnesses left and then the
9 State will rest. And then your side, the defense, may
10 offer evidence or testimony on behalf of your defense. You
11 will be able to present evidence for the jury to consider.

12 Do you understand where we will be at at that
13 stage?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In that regard, you, through your
16 attorney may call witnesses to testify on your behalf and
17 if you choose to testify yourself, you may do so. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: No one can force you to testify. You
21 have the absolute right to remain silent and if you choose
22 not to testify, I will tell the jury that they cannot hold
23 your silence against you in any way. I will further tell
24 them they are not to even discuss the fact that you do not
25 testify in the jury room; do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Williams, do you agree based on
3 State v. Beaty, you will get the final argument just prior
4 to any reply argument from the State?

5 MR. WILLIAMS: I do, Your Honor.

6 THE COURT: Okay. In other words, whether you put
7 up evidence or testimony or not, it doesn't change the flow
8 of the final argument under the current law?

9 MR. WILLIAMS: I do understand that, Your Honor.

10 THE COURT: Does Ms. Lawson have any prior criminal
11 record that would subject her to impeachment under Rule
12 609?

13 MS. MAYES: She does not, Your Honor.

14 THE COURT: All right. Ms. Lawson, the decision
15 about whether you testify or not is your decision to make
16 and yours alone. I expect that you have conferred with
17 your attorney and perhaps with others whose opinions you
18 value on important decisions, but the ultimate decision
19 about whether you testify or not is your decision, is your
20 call to make; do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anyone exercised any undue
23 influence over you to get you to testify or not to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Today are you under the influence,

1 meaning drugs, alcohol, medication, or any substance that
2 negatively affects your thinking ability?

3 MR. WILLIAMS: She's actually not taking medication
4 that she needs, Your Honor, and I realize I'm speaking on
5 her behalf when you ask that question. She's supposed to
6 be on --

7 THE DEFENDANT: Seroquel and Celexa.

8 MR. WILLIAMS: And the jail has not given it to her
9 in two days.

10 THE COURT: So, so she would be taking her
11 prescriptions according to her doctor's instructions if she
12 had them?

13 MR. WILLIAMS: If she -- if the jail would allow
14 her to take them.

15 THE COURT: Why -- why am I just -- and you're the
16 messenger. Why am I just finding this out?

17 MR. WILLIAMS: I found out about it this morning.
18 Supposedly, I believe the mother has had contact with the
19 jail. They were supposed to be verifying the prescription
20 amount she takes with the pharmacy. We have not been back
21 to the jail to see if that has been done.

22 THE COURT: The fact that you have -- let me track
23 this again. When was the last time you took your
24 medication?

25 THE DEFENDANT: Monday.

1 THE COURT: Monday. Today is Tuesday and you took
2 your full prescription --

3 Don't shake your head.

4 Have her leave the courtroom please, that blonde
5 back there. Don't let her come back in my courtroom. If
6 she does, I'm holding her in contempt. I don't -- I don't
7 abide by any up and down, back and forth, negative or
8 positive. I've got enough to do up here and that jury has
9 got enough to do up here.

10 Ms. Lawson, let me backtrack. The last time you
11 took your full prescription was Monday; is that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So you didn't get it -- you didn't have
14 it available to take Tuesday?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Nor have you had it today?

17 THE DEFENDANT: That is correct.

18 THE COURT: Does that negatively affect you in any
19 way where you do not understand what you're doing today.

20 THE DEFENDANT: No, it does not.

21 THE COURT: Ma'am?

22 THE DEFENDANT: It does not.

23 THE COURT: Okay. You understand what we're doing
24 today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand what I'm explaining
2 to you at this point?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And if at any time you have any -- you
5 have any questions that you would like to put to me about
6 my questioning to you or procedure or anything of that
7 nature, you ask me, all right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Or you can notify your attorney and he
10 will ask me on your behalf; do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I'm not going to ask you to
13 make your decision tonight. The reason I am explaining it
14 to you tonight, as I said previously, that will give you
15 the opportunity to think about it, perhaps talk with your
16 attorney, to -- to review whatever decision you might make
17 or decide to make on your right to testify or not testify;
18 do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions you would
21 like to ask me about your right to testify or not testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: In your opinion, do you understand your
24 right to testify or not testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand it's your call to
2 make?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Thank you. Thank you very
5 much. You may return to your seat.

6 MR. WILLIAMS: Thank you, Your Honor.

7 THE COURT: Sheriff, who's in charge of security in
8 the courthouse right now?

9 THE OFFICER: Sergeant Tackett, sir.

10 THE COURT: Is Sergeant here?

11 THE OFFICER: Yes, sir.

12 THE COURT: All right. Would you have him meet me
13 in my chambers. I'm going to followup on some instructions
14 for the jail.

15 MR. WILLIAMS: And, Your Honor, on behalf of my
16 client, we will again followup in regards to the
17 medication.

18 THE COURT: In regards to what?

19 MR. WILLIAMS: The medication deal.

20 THE COURT: Well, that's what I'm going to do right
21 now also.

22 MR. WILLIAMS: All right, sir.

23 THE COURT: So you -- you -- you continue on your
24 path --

25 MR. WILLIAMS: Yes, sir.

1 THE COURT: -- Mr. Williams.

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: And members of her family, but I'm
4 going to notify the sergeant to contact the jail and if I
5 can facilitate that in any manner, I will certainly do so.
6 All right?

7 MR. WILLIAMS: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. WILLIAMS: Nothing from the defendant, Your
10 Honor.

11 THE COURT: Solicitor?

12 MS. MAYES: Nothing from the State, Your Honor.

13 THE COURT: Thank you. Thank you very much.

14 Make sure you have your witnesses available, Mr.
15 Williams, as you heard the Solicitor.

16 MR. WILLIAMS: I will, Your Honor.

17 THE COURT: Thank you. Thank you very much.

18 **THURSDAY, AUGUST 10, 2017**

19 THE COURT: Please be seated. Thank you. All
20 right. Anything from the State before we bring in our
21 jury, Solicitor? Anything from the State?

22 MR. MCNAIR: No, sir, Your Honor.

23 THE COURT: Defense?

24 MR. WILLIAMS: Your Honor, the defendant is ready
25 and for the Court's information, she did receive her

Michael Phipps - Direct Examination by Mr. McNair

1 medication.

2 THE COURT: Thank you. Thank you very much, Mr.
3 Williams. Anything -- anything else?

4 MR. WILLIAMS: No, sir.

5 (The jury entered the courtroom at 9:40 a.m.)

6 THE COURT: Good morning, ladies and gentlemen.
7 Welcome back. As you recall, we're continuing the trial of
8 the case by the presentation of evidence and testimony by
9 the State in its case in chief. If you please continue to
10 give the parties your complete and undivided attention as
11 you have done throughout the trial of this case.

12 Solicitor, you may call your next witness.

13 MR. MCNAIR: Thank you, Your Honor. The State
14 calls Investigator Mike Phipps.

15 THE COURT: All right. Come around and join us
16 please, sir.

17 MICHAEL PHIPPS,
18 having been duly sworn, testified as follows:

19 THE CLERK: Be seated, sir. Once you're seated,
20 state your full name spelling your last, please.

21 THE WITNESS: Michael Stewart Phipps. P-H-I-P-P-S.

22 **DIRECT EXAMINATION**

23 **BY MR. MCNAIR:**

24 Q Investigator Phipps, will you give the jury a
25 little bit of your background in law enforcement, what you

Michael Phipps - Direct Examination by Mr. McNair

1 currently do?

2 A Yes, I'm an investigator with Lexington County
3 Sheriff's Department. My current job duty or my current
4 title is Forensic Technology Examiner. But like most
5 people at the sheriff's department, I started out on the
6 road; worked approximately five years as a patrol deputy on
7 the road. I was then promoted into the crime scene unit
8 and spent 13 years in the crime scene unit. So for just a
9 little over a year-and-a-half now, I moved out of the crime
10 scene unit and concentrate my duties specifically to
11 examining digital evidence, electronic devices.

12 Q All right. And when you say electronic devices,
13 does that include cell phones, computers, and things of
14 that nature?

15 A It does.

16 Q All right. What type of additional education and
17 training do you have in that regard?

18 A During my tenure as a crime scene investigator, I
19 also had sort of a collateral duty in examining electronic
20 evidence as well. So it's sort of an overlapping
21 assignment. So I think since 2002 is when I started taking
22 courses that concern examining digital evidence. Since
23 that time, I've had ten courses of study that involves
24 specifically forensic examination of computers, cell
25 phones, and cell phone mapping.

Michael Phipps - Direct Examination by Mr. McNair

1 Q All right. And have you been qualified as an
2 expert in General Sessions Court before?

3 A I have.

4 Q How many times?

5 A Nine times.

6 Q All right. And roughly how many examinations,
7 forensic examinations of cell phones do you think you've
8 performed?

9 A Probably on the order of 200 plus a year.

10 Q All right. And do you perform cell phone
11 extractions for even other agencies in this county?

12 A Yes, I belong to a task force at our agency, that's
13 administered by the secret service and as part of that --
14 those duties, we offer our forensic services to the local
15 jurisdictions in surrounding counties. So additionally, we
16 do all the municipalities within Lexington County as well
17 as Orangeburg County, Saluda County, anyone else that asks.

18 MR. MCNAIR: Your Honor, at this time, we'd offer
19 Investigator Phipps as an expert in the Forensic
20 Examination of Digital Devices including cell phones.

21 MR. WILLIAMS: Without objection, Your Honor.

22 THE COURT: All right. Thank you, Mr. Williams.

23 And again, Ladies and gentlemen, I won't go through
24 the entire charge, I've charged you twice as far as expert
25 testimony. This officer, Detective Phipps, will be

Michael Phipps - Direct Examination by Mr. McNair

1 qualified as a Forensic Examiner of Digital Devices
2 including cell phones.

3 Thank you, Solicitor, you may continue.

4 MR. MCNAIR: Thank you, Your Honor.

5 BY MR. MCNAIR:

6 Q Investigator Phipps, will you describe for the jury
7 kind of the process of how you do a forensic extraction of
8 a cell phone and what type of information you're able to
9 obtain off of a cell phone.

10 A Yes, cell phones, as everyone is aware these days,
11 have quite a bit of information on them. They're more like
12 a miniature computer. When we receive a request, it's
13 usually using a search warrant. So I receive that search
14 warrant from the investigator, I go sign out that device
15 from our evidence unit. We do a digital examination of the
16 device. We put it in a mode, or power it up in a way that
17 it's not able to connect to the network to try to preserve
18 any data that's on it. We use a forensic tool produced by
19 Cellebrite called a UFD, Universal Forensic Device. It's
20 able to interface with the phone and pull off virtually all
21 the information on the phone.

22 There are some limitations depending on the make
23 and model of the phone versus the operating systems.
24 Sometimes we're able to get more information on some models
25 than we are others. That information is pulled up,

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1 nothing's changed, nothing's added to it and then we're
2 able to generate a report that has those artifacts on which
3 as you would imagine would include call logs, texting,
4 possible third-party chat applications, web history, just
5 anything you would have on your phone.

6 Q All right. And did you perform of an extraction of
7 a cell phone in this case?

8 A I did.

9 Q Did you use Cellebrite to generate a report of all
10 the information that was contained on that phone?

11 A I did.

12 Q I'm going to show you State's Exhibit 31, can you
13 tell me whether or not this is the phone that you performed
14 an extraction on?

15 A Yes, sir, it is.

16 Q Who submitted that phone to you?

17 A Detective Creech.

18 (State's Exhibit Number 65 was marked for
19 identification.)

20 BY MR. MCNAIR:

21 Q All right. I'm going to show you State's Exhibit
22 65. Can you identify what that is?

23 A Yes, sir, it's a disc that contains the data
24 extracted from the phone.

25 Q All right. And that is all the data that was on

Michael Phipps - Direct Examination by Mr. McNair

1 that phone?

2 A It's all the data that Cellebrite was able to
3 recover on the initial examination.

4 Q Okay. All the data pursuant to the first
5 extraction?

6 A Yes, sir.

7 Q Now, after you did that first extraction, did you
8 go back and execute a second search warrant on that phone?

9 A We did. After examining the data that was
10 recovered, the first examination occurred June 29th, 2016.
11 After examining that, we identified that the Facebook
12 Messenger Application was installed on the phone. Due to
13 limitations of the software, we weren't able to extract the
14 chat messaging from Facebook. So our only course of action
15 at that point is to power the phone back up and just
16 photograph the screen as you see it.

17 Q All right. So you went back into the phone that
18 day and just photographed the Facebook Messages that were
19 on that phone?

20 A That's correct.

21 Q All right. And specifically, what messages -- who
22 were those messages between?

23 A It was between Heather, the owner of the phone
24 itself, the party that owns the phone, and a Richard
25 Tuckus.

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1 (State's Exhibit Number 66 was marked for
2 identification.)

3 BY MR. MCNAIR:

4 Q All right. I'm going to show you State's Exhibit
5 66. Are those the photos you took of the phone pursuant to
6 the search warrant of those Facebook messages?

7 A They are.

8 MR. MCNAIR: Your Honor, we'd offer State's 66 into
9 evidence at this point.

10 MR. WILLIAMS: Without objection, Your Honor.

11 THE COURT: State's 66 in evidence without
12 objection.

13 (State's Exhibit Number 66 was entered into
14 evidence.)

15 (State's Exhibit Number 67 was marked for
16 identification.)

17 BY MR. MCNAIR:

18 Q Now, based on the information obtained from that
19 phone, pursuant to the first full extraction and then the
20 information based contained in those Facebook messages, did
21 you assist our office in the preparation of a summary
22 spreadsheet?

23 A I did.

24 Q All right. And did that spreadsheet contain --
25 well explain what that spreadsheet contained?

Michael Phipps - Direct Examination by Mr. McNair

1 A We created basically a timeline chart on an
2 Excel-type spreadsheet that took the various artifacts that
3 were significant to this case, put them in a date/time
4 sequence and whether it be an incoming/outgoing phone call,
5 a text message or a Facebook chat or web history, all those
6 artifacts were put in a date/time sequence.

7 Q All right. And did -- I guess that spreadsheet
8 covered the dates from June 24th, 2016 to June 26th of
9 2016?

10 A Yes, sir, it did.

11 Q All right. And on June 24th and June 25th, did the
12 spreadsheet contain all the communications that you saw on
13 the phone between Heather Lawson and Richard Tuckus?

14 A Yes, sir.

15 Q And on the 26th, does the spreadsheet contain all
16 the information or all the activity you saw on that phone
17 period?

18 A Yes, sir.

19 Q And all the information contained in this summary
20 spreadsheet is the same information that you obtained
21 pursuant to the extraction and the photos of the Facebook
22 messages?

23 A Yes, sir.

24 Q The underlying data is the same?

25 A It is.

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1 MR. MCNAIR: Your Honor, we'd offer State's 67 into
2 evidence at this point?

3 MR. WILLIAMS: I don't have any objection to that,
4 Your Honor.

5 THE COURT: State's 67 is in evidence without
6 objection.

7 (State's Exhibit Number 67 was entered into
8 evidence.)

9 MR. MCNAIR: Your Honor, permission for the witness
10 to step down to publish the spreadsheet?

11 THE COURT: You may step down.

12 THE WITNESS: Yes, sir.

13 (The witness stepped down in front of the jury.)

14 BY MR. MCNAIR:

15 Q All right. Can you -- can you just describe in
16 general for the jury kind of how this spreadsheet is broken
17 down?

18 A At the top, the headers up there, the first column
19 is just an arbitrary number we assigned for reference
20 purposes in case we have to refer to a particular line.
21 The second column is a type. I know it's a little
22 difficult. I just want to zoom in on the top part. Under
23 type, we're listing what type of communication or artifact
24 that you're seeing; whether it's a text message, Facebook
25 chat, web history, call logs; so you'll see that in the

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1 first column.

2 The second column; if it's a communication showing
3 you a direction whose talking to who. So the data is from
4 the phone, so incoming means it's someone on the outside
5 communicating with the person that is in possession of the
6 phone. Outgoing means the phone's owner is communicating
7 with someone on the outside.

8 And then, of course, we have the date and time
9 stamp of when that occurred. The party, and there is like
10 a phone number and/or a person's name listed there.
11 Obviously, people put and associate names with particular
12 phone numbers in their address book. So when you see a
13 name in this column, it's derived from the address book.
14 We didn't type that in there; that's how it was entered in
15 their address book.

16 And then the final column is just a description and
17 it will show the content of the text or whatever it's
18 referring to, whether it's a web activity; it will describe
19 that.

20 Q All right. And can you tell me whether or not you
21 were able to confirm that the contact in this exhibit
22 listed as Richard, is Richard Tuckus?

23 A It was. The phone number that's listed there,
24 which is [REDACTED] (verbatim) was derived or determined
25 to be Richard Tuckus through records that were provided in

Michael Phipps - Direct Examination by Mr. McNair

1 the case file.

2 Q All right. And were you able to determine whether
3 or not the dates and times on that phone were accurate that
4 are reflected in this exhibit?

5 A Yes, in examining the phone, phones by default are
6 usually set to derive their date and time from the network
7 that they're on. You can manually override that, but in
8 this case, we went in and did verify that this phone was
9 set to pull its date and time information from the network,
10 which is usually a very accurate time stamp.

11 Q All right. Now can you tell me what Items 1
12 through 48 on this exhibit represent?

13 A They are all text messaging between Richard Tuckus
14 and the phone's owner, which was determined to be Heather.

15 Q All right. Can you just please read those messages
16 in chronological order for the jury and when do those
17 messages begin?

18 A This first sequence of texts back and forth began
19 on June 24th, 2016, at 10:44 p.m. and concluded 10:58. So
20 it's an exchange that starts at that time and ends at that
21 time.

22 The first entry here is an incoming communication
23 from Richard that reads: I am; you just woke me up.

24 The response is: You don't care about me.

25 Richard responds: OMG, why not. What's your

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1 problem; I'm in bed. Go to sleep.

2 The response to Richard is: Just don't worry about
3 it. You told me that when she was done with her meds,
4 you'd stay the night with me; yet, you aren't.

5 Richard responds: She's not done; who said she
6 was? She's got one more.

7 The response back to Richard is: You said five
8 days and it's five days. You said one of them was three
9 and the other was five.

10 Richard responds: No, it's not. It starts one day
11 after her surgery, bonehead.

12 Then the response to Richard is: Yet, you always
13 tell me to start it the same day.

14 Richard responds: That's Rochelle, not me. I
15 wasn't here.

16 And then she responds: Uh-huh.

17 Q All right. And that's the last communication
18 between them on the 24th?

19 A It is, yes, sir.

20 Q All right. The next communication picks up on the
21 25th?

22 A Yes, we then start with a series of communications
23 between Richard and Heather that start at 7:01 a.m. on the
24 25th and run through 7:38 a.m.

25 Q All right. Can you read those text communications

Michael Phipps - Direct Examination by Mr. McNair

1 please.

2 A I will. Heather sends Richard the first outgoing
3 that says: Is this really how today is going to be?

4 Richard responds: I'm never speaking to you ever
5 again. You really -- you really ruined it this time.
6 Leave me the F alone.

7 Heather responds: How did I ruin it; you've been
8 ignoring me and avoiding me, being around me for over a
9 month. I've not gotten a good nights sleep in so long. My
10 back is killing me.

11 Richard replies: You're very disrespectful to me.
12 I don't care if your back hurts. I don't deserve to be
13 treated like shit. Your back hurts, call -- if your back
14 hurt -- no. Your back hurts, call a doctor and sleep in
15 your bed.

16 Heather responds: I can't sleep in there. You
17 don't want me to -- want to be with me; just admit it.
18 This has nothing to do with me. It's about you still
19 wanting Rochelle.

20 Q And it's pronounced Rochelle?

21 A I'm sorry. Rochelle.

22 Then Richard responds: No, it's you being an ass.
23 I'm in a good mood now -- I'm in a good mood and now I'm
24 not anymore. I don't want Rochelle, if I did, I'd still be
25 with her.

Michael Phipps - Direct Examination by Mr. McNair

1 Heather responds: You don't have a reason not to
2 be. I haven't done anything to you.

3 Richard responds: The way you talk to me, you're
4 making me feel like I'm nothing to you.

5 Heather responds: You're the one that refuses to
6 spend one F'ing hour with me.

7 Richard replies: I forgot, I'm a bad person. So
8 sorry. You don't do anything wrong. I ask you to clean
9 and you won't. I ask you to take care of your house
10 because I don't want to smell it, but you won't, but yet,
11 I'm the bad person. I never said you were -- I never said
12 you were, I'm just stating a fact.

13 Heather responds: When I clean the house before,
14 you still want come over. You always have a reason as to
15 why not come over. Today will be no different. There's no
16 reason for me to even come home.

17 Richard replies: Because you don't clean the whole
18 house, there's something always in another room, a dirty
19 diaper or something nasty. I told you I don't like it.

20 Heather replies: There's no point in arguing about
21 it. I'm -- you've already dumped me.

22 Richard says: I didn't dump you; I asked you to
23 leave me alone because all I can say, you put me in a bad
24 mood.

25 Heather replies: I'm never speaking to you ever

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1 again. You really ruined it this time. What do you call
2 that?

3 Richard says: I say shit when I'm very upset --
4 when I'm upset, sorry, but I didn't dump you.

5 Heather replies: Yes, you did. So when you get
6 what you want, you leave -- you'll leave. I'll leave you
7 alone. Bye.

8 Richard then replies -- well that's the end of that
9 series. There seems to be a break in time at that point
10 from 7:38 to 8:04.

11 The next series of communications starting at 8:04
12 is a incoming message from Richard and it reads: I love
13 you. I can't believe these people are acting out after I
14 leave.

15 Heather responds: No, you don't. You kind of
16 figured -- No, you don't and kind of figured it would
17 happen.

18 Q You can stop right there.

19 Now the next messages after that, from 49 through
20 92 or so, what do those messages appear to be about?

21 A It appears to be work related conversations back
22 and forth.

23 Q All right. Now let me direct your attention to
24 Item 96. Can you tell me what Item 96 reflects?

25 A That is at 11:44 p.m. on June 25th, 2016. It's an

Michael Phipps - Direct Examination by Mr. McNair

1 outgoing call log entry that lasts 16 minutes and 56
2 seconds to Richard and that appears to be the last
3 communication with Richard that day.

4 Q All right. And that's the last communication with
5 Richard on the 25th, correct?

6 A Yes, sir.

7 Q All right. And when is the next communication
8 between Ms. Lawson and Richard Tuckus?

9 A It would be the next day, June 26th at 12:16 a.m.
10 in the morning.

11 Q All right. So shortly after midnight?

12 A Correct.

13 Q And what is the content of that message?

14 A Here it's -- here we're in the category of Facebook
15 messenger so this is communication using the Messenger App
16 and it's an outgoing to Richard and it reads: No, I never
17 said I was leaving you. All I said is you don't want me
18 around. You get your way, so if you're saying it's over
19 then that's what you want because I never said it. The
20 only time I see you is when you pull up and I have to come
21 outside just to see you.

22 Q All right. If you would, just continue.

23 A Okay. This is a -- from Richard: No, it's not.
24 But you do see it's 12 at night, right? I need to get home
25 at best in bed.

Michael Phipps - Direct Examination by Mr. McNair

1 The reply back to Richard reads: You could come
2 here and go to bed. You didn't have to go home; you choose
3 to.

4 Q All right. And when is -- that was at what time,
5 12?

6 A 12:16 in the morning.

7 Q All right. When is the next communication between
8 Ms. Lawson and Richard? I direct your attention to Item
9 number --

10 A 113.

11 Q -- 104, I believe?

12 A Well there's -- there's a series of communication.

13 Q Yes.

14 A 104 is a missed call. There was a call attempt
15 into the phone, but it wasn't answered. Answer is zero
16 seconds showing the duration.

17 Q All right. What time was that missed call?

18 A That was at 8:35 a.m. in the morning.

19 Q On the 26th?

20 A Yes, sir.

21 Q All right. And what is the next call after that?

22 A Again on the 26th is an incoming call at 9:51 a.m.
23 in the morning from the S-Mart. Her phone number
24 identified as S-Mart in the phone.

25 Q All right. Now, when is the next communication

Michael Phipps - Direct Examination by Mr. McNair

1 between the two of them at that point?

2 A The next communication is a Facebook messenger
3 chat.

4 Q That's Item 113?

5 A Yes, sir.

6 Q All right. And what time was that?

7 A That's at 9:55 on the 26th.

8 Q The morning of the 26th?

9 A Yes, and it's an outgoing to Richard that reads:
10 Baby, I promise, I've been asleep the whole time.

11 Q All right. When was the next communication between
12 the two of them?

13 A A series of communications that occurred at 10:43
14 a.m.

15 Q That's Item 121?

16 A That is correct.

17 Q That's where it starts?

18 A Correct.

19 Q At 10:43 a.m. What type of message is this?

20 A It's through the Facebook Messenger Application and
21 it's a -- there wasn't any texts associated with the
22 initial entries. They were photos that were sent through
23 the app and the description there that we've written there
24 is that they were photos of candy on shelves and appear to
25 be in a commercial establishment.

Michael Phipps - Direct Examination by Mr. McNair

1 Q And those photos were reflected on the Facebook
2 messages that you took photos of off the phone, correct?

3 A Yes, sir.

4 Q It appeared to be candy at the store?

5 A Yes, sir. Photos of candy. Then there was a text
6 portion that was attached to that that read, 500 bucks
7 worth right there; and then the response at the same time
8 to Richard was: Damn.

9 Q All right. If you could, just kind of go through
10 the rest of this page I believe. Explain what it shows.

11 A All right. On the 26th at 10:49 a.m. there's an
12 incoming phone call from the S-Mart that lasts 3 minutes
13 and 5 seconds. Then at 10:53 a.m. another incoming phone
14 call from Richard that lasts 6 minutes and 2 seconds. Then
15 at 11:06 a.m. there's another outgoing call to Richard that
16 lasts 1 minute and 37 seconds. That rolls into a series of
17 Facebook messenger communication at 11:10 a.m.

18 The first being outgoing to Richard that reads:
19 You better give me mine when you get home.

20 The response from Richard is: You will; I better
21 get mine. Get that room cold.

22 And then response back to Richard is: The A/C has
23 been on all day.

24 There is an incoming --

25 Q Actually, yeah, continue?

Michael Phipps - Direct Examination by Mr. McNair

1 A An incoming phone call at 12:32 that doesn't
2 connect. There's no -- no communication. Then we roll
3 into a series of Facebook chats at 1:11 p.m. the first
4 being an incoming from Richard that reads: Do you got any
5 more toilet paper?

6 Q Let's stop right there now. The last -- the last
7 communication between Heather Lawson and Richard Tuckus,
8 via Facebook Messenger was at 11:10 a.m. on the 26th?

9 A Correct.

10 Q And is it your understanding or do you have
11 knowledge or are you aware that Mr. Tuckus did go over
12 there that day for the purpose of having sex?

13 A I'm not aware of that.

14 Q All right. And there's been testimony that he
15 arrived there around noon and left around 12:45 that day.
16 So the next communication you see is between the two of
17 them is when?

18 A The next series is at 1:11 p.m.

19 Q All right. And what is that message?

20 A It's outgoing. I'm sorry, incoming from Richard,
21 reading: Do you got anymore toilet paper?

22 The response to that back to him is: No, still in
23 Mama's truck.

24 There's a missed call there at 1:23.

25 Q That's just from a number we haven't identified,

Michael Phipps - Direct Examination by Mr. McNair

1 correct?

2 A That is correct.

3 Q All right.

4 A The next series of Facebook communications start at
5 -- are at 1:25 p.m. and it's from Richard reading: Can you
6 bring it, smiley face, I need toilet paper, frown.

7 The response outgoing to Richard reads: So you
8 want me -- so you want me to go to wherever Mama's car is
9 to get you toilet paper?

10 The response back from Richard: LOL, no, but you
11 need it as well.

12 Response back to Richard: So I thought you had to
13 meet Mark at 1:00.

14 Q All right. So those are communications between
15 Heather and Richard at 1:25 p.m. on the 26th, correct?

16 A Yes, sir.

17 Q All right. And what does the next item show, Item
18 140?

19 A That's in the category of web activity and it's
20 describing a search that's conducted on Google Chrome, web
21 browsing application and the term that was entered is just
22 G-E-N. Gin.

23 Q All right. And did that web activity continue on
24 the next page?

25 A It did. There was a second and third search items

Michael Phipps - Direct Examination by Mr. McNair

1 expanded gen, the card game; and then just gen again. The
2 following up at that at 2:45, there was a recorded activity
3 on the phone that showed that an application was installed
4 on the device and that application was identified as Gin
5 Rummy and then a second application, Gin Rummy Plus at
6 2:45.

7 Q Okay. And this would reflect activity of somebody
8 basically on the internet?

9 A Yes, sir.

10 Q On their phone?

11 A Uh-huh (affirmative response).

12 Q Just searching or downloading these -- Gin Rummy?

13 A Yes, sir.

14 Q All right. Were you able to confirm what that is?

15 A It's a card game application; it's free, you can
16 download it.

17 Q All right. So that continues until when, at 3:17
18 p.m.?

19 A The last entry is an actual video clip that plays.
20 It's related to an ad for another card game at 3:17 p.m.

21 Q All right. So when's the next communication
22 between Richard and Heather?

23 A That would be a Facebook chat at 3:35 p.m. and it's
24 an incoming from Richard that reads: Yeah, he cancelled so
25 I decided to clean up a little. I'll be walking over later

Michael Phipps - Direct Examination by Mr. McNair

1 on so chill.

2 The response back to Richard was: Sure, and wah --
3 wah -- why can't you just drive over for the night.

4 Q All right. Now stop right there. Actually so
5 that's the -- I guess that's the last communication between
6 Richard and Heather in that string of messaging?

7 A Yes.

8 Q All right. What's the next -- what's the next text
9 on there?

10 A The next activity on the phone is at 4:48 p.m.
11 It's an incoming text message from someone identified as
12 Wise, Monica, or Monica Wise.

13 Q Monica Wise?

14 A It reads: Hey Toots, the kids need diapers, wipes,
15 food, milk, and juice. ^{Minor 1} needs some formula and pack of
16 veggies. Please send them all two extra suits of clothes.
17 See you in the morning.

18 The response back at 4:49 p.m. to Monica Wise was
19 out of baby food for ^{Minor 1} and I got tea I can send for the
20 kids. I'm about out of everything.

21 Q All right. Now stop right there. Prior -- I guess
22 that last message that Ms. Lawson responded to was 3:35
23 p.m., correct, she sent Mr. Tuckus a message at 3:35 p.m.,
24 a Facebook message?

25 A You said Monica?

Michael Phipps - Direct Examination by Mr. McNair

1 Q No, it was Item 147, it was a message sent to Mr.
2 Tuckus at 3:35 p.m., correct?

3 A Yes, correct.

4 Q The next time she responds to anything is 4:49 p.m.
5 and that is response to Monica Wise's text to her, correct?

6 A That is correct.

7 Q Between 3:35 p.m. and her responding to Monica Wise
8 at 4:49 p.m., did you detect or see any other activity on
9 that phone?

10 A I did not.

11 Q All right. You can continue with the text after
12 the response to Monica Wise?

13 A All right. At 4:55, Monica Wise responds to her
14 previous message: You and me both, freaking sucks and then
15 an outgoing back to Monica at 4:55 it just reads: Yeah.

16 Q All right. And whose the next call to?

17 A Then we have a series of activity on the phone
18 itself, using the phone or call logs. The first is an
19 outgoing to Richard that doesn't connect; there's no
20 duration to that call.

21 Q What time was that call?

22 A That call was at 5:14 p.m.

23 Q All right. And what's the next call after that and
24 that call did not connect or nobody answered?

25 A Correct, it just -- it doesn't show any time,

Michael Phipps - Direct Examination by Mr. McNair

1 whether they hung up or didn't wait for someone to answer
2 or went to voice mail or --

3 Q All right. What's the next call after that?

4 A The next call after that is a call outgoing to
5 9-1-1 at 5:18 p.m. that lasts 7 minutes and 14 seconds.

6 Q All right. And what are -- after the 9-1-1 call,
7 where are the next calls up until 1:57?

8 A Immediately after 9-1-1 is an incoming phone call
9 at 5:26 p.m. from someone listed as Granny that lasts 1
10 minute and 54 seconds. And next is an outgoing at 5:29
11 p.m. to Monica Wise that lasts 1 minute and 9 seconds. And
12 then we have another incoming at 5:34 p.m. from Richard
13 that lasts 1 minute and 28 seconds.

14 Q All right. And what does Item 157 represent?

15 A It's a outgoing text message and it's to Richard
16 and it was placed at 5:37 p.m. and it reads, I guess you
17 need to call Tamir.

18 Q All right. So that text message to Richard about
19 calling Tamir, is less than 20 minutes after her 9-1-1
20 call?

21 A Yes.

22 Q All right. You can sit down.

23 MR. MCNAIR: I have no further questions, Your
24 Honor.

25 THE COURT: Thank you, Solicitor.

Michael Phipps - Cross-Examination by Mr. Williams

1 Mr. Williams.

2 MR. WILLIAMS: May it please the Court.

3 THE COURT: Yes, sir.

4 **CROSS-EXAMINATION**

5 BY MR. WILLIAMS:

6 Q Investigator or Detective?

7 A Investigator.

8 Q Investigator, Phipps, how you doing?

9 A Just fine, sir. Yourself?

10 Q Doing fine. You obviously know I have gray hair
11 and I'm not the most technological guy in this room. Tell
12 me if you can, how is it on an iPhone that when I walk near
13 a store or I'm driving down the road, it sends me
14 information that acts like I'm near that store or I'm in
15 close proximity when I'm not even using the iPhone?

16 A Right.

17 Q How does it do that?

18 A There are various apps that you install on your
19 phone or are native to the phone and when you install a new
20 app, it has that long laundry list of permissions that you
21 give and most people just ignore it and you want the app
22 and don't bother reading the fine print. But sometimes
23 that's giving that application access to your location
24 information or Wifi connectivity. So when you drive past a
25 store that has Wifi, it identifies the store to your phone

Michael Phipps - Cross-Examination by Mr. Williams

1 and seizes that connection and then phones home so to speak
2 and lets the advertisers know that you're close to that
3 store and they'll send you targeted advertising for it.

4 Q And since we don't live in a vacuum, we know that
5 law enforcement can ping a phone, and can tell you where
6 that phone is located at a particular time if that's what
7 you want to do?

8 A Yeah, there's obviously certainly restrictions on
9 when we can ping a phone. You have to have --

10 Q I'm not talking about the legal restrictions, I'm
11 talking about the ability to do it?

12 A Yes, sir, there is the ability.

13 Q Now, does the ping of the phone, in terms of -- it
14 obviously -- can tell you where the phone is at the time
15 you ping it. Does law enforcement have the ability to ping
16 a phone and determine where it was at an earlier time?

17 A Well, the term pinging means you're sending out an
18 active transmission from the service provider, say it's
19 Verizon. And we would contact Verizon and say we need this
20 number pinged. So they go in and they send out a request
21 to that number for it to basically phone home and tell us
22 where you're at on our network.

23 So, no, that -- that process doesn't tell you
24 historical information prior to that one moment in time.

25 Q But does Verizon, AT&T -- who else, Sprint, do they

Michael Phipps - Cross-Examination by Mr. Williams

1 have the ability to subpoena those records, to indicate
2 activity on a phone that would -- that would show where an
3 individual was during a time period on a particular day?

4 A The service provider and depending on the service
5 provider, because each one keeps different type of records
6 and different levels of detailed records. They can
7 potentially show you cell site information, which cell site
8 is just a big antenna and it's divided up usually into
9 three quadrants. So they may be able to tell you that that
10 phone was at that point in time connected to this tower on
11 this particular face, which faces a certain geographical
12 area. And that geographical area has a certain range.

13 So as far as the cell phone records themselves,
14 they may not be as detailed as like GPS coordinates, but
15 they'll tell you a generalized area that the phone was in.

16 Q Is there anything that is more specific -- and I
17 understand what you're saying. If you were, say if you
18 were tracking somebody going to Charleston who may have
19 committed a crime in Charleston, you could get cell phone
20 records that would show if that person was operating a
21 phone, made a phone call in Orangeburg; made a phone call
22 in such and such a place and you could actually, with the
23 cell phone records, could actually track where that person
24 had been during an historical time period?

25 A The -- and there again, certain providers have a

Michael Phipps - Cross-Examination by Mr. Williams

1 service, like you said, when subpoenaed, that potentially
2 for -- if you can do it within a certain time period within
3 the event. In other words, you can't go back and say I
4 want records from last year. And I don't know exactly what
5 the time restrictions are, but it's fairly tight, you know,
6 on the order of just weeks within the event that
7 potentially could give you a higher resolution of location
8 information, but it's still not the same level as true GPS
9 coordinates.

10 Q So to your knowledge, does anyone possess the
11 ability to track a cell phone for a period of time over
12 history if they had the cell phone with them, the
13 particular cell phone that you were concerned about? Could
14 you take my cell phone and tell me where my cell phone was
15 an hour ago.

16 A Well, separate from what a cell phone provider can
17 do, and say you have a phone that's an Android phone and
18 Android phones usually are associated with a Google
19 account, unless you go in and turn off location history
20 information, that Google location information is being
21 archived to your personal account online. So in theory, I
22 guess law enforcement could subpoena Google records, not
23 cell phone provider, but Google records and see additional
24 information.

25 Q So if Mr. Tuckus had a cell phone and he had a

Michael Phipps - Cross-Examination by Mr. Williams

1 Google account, you could determine -- if you had access to
2 his phone -- you could determine his physical location of
3 the cell phone through that period of time, if you didn't
4 know when it was, you could -- you could use the Google
5 account and determine where the person was or where that
6 phone was?

7 A Again, within -- it's not like a GPS in your car
8 that's going to pinpoint you within 30 feet. I could pull
9 up my Google account right now and show you what it's
10 recorded for me this morning since I've come to the
11 courthouse and it may say that I'm in the front parking lot
12 of the courthouse right now or the adjacent building. So
13 while it's telling me I'm in this geographical area, it's
14 not saying I'm in this courtroom.

15 Q What you're saying is it's very specific for
16 today's -- for today. It may get better over time as we
17 get better with technology, but it can put you in the
18 ballpark in terms of where the phone is?

19 A Yes, sir.

20 Q Did you attempt any type of examination on the
21 phone of Richard Tuckus?

22 A No, sir.

23 MR. WILLIAMS: That's all the questions I have,
24 Your Honor.

25 THE COURT: Redirect?

Michael Phipps - Recross-Examination by Mr. Williams

1 MR. MCNAIR: Yes, sir, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MR. MCNAIR:

4 Q So cell phone tower information would put you in,
5 the vicinity of something; it won't tell you exactly where
6 the person is specifically, right; it's not exact GPS
7 coordinate?

8 A That's correct.

9 Q If somebody was in this trailer and the other
10 person was in this trailer, could you tell which -- whether
11 or not what individual trailer they were in?

12 A No, sir.

13 Q It might show just being in the same vicinity of
14 that trailer park, correct?

15 A Yes, sir.

16 Q All right. Thank you.

17 THE COURT: Mr. Williams?

18 MR. WILLIAMS: One question on redirect.

19 **RECROSS-EXAMINATION**

20 BY MR. WILLIAMS:

21 Q And that goes back to the area. But can you tell
22 if there's any variation when you're looking at the
23 Google -- you were talking about how close, how accurate it
24 was. Can you tell if there's a movement from say 3:40 p.m.
25 to 3:50 p.m. on a particular day if you had the Google

Michael Phipps - Recross-Examination by Mr. Williams

1 account, whether it would say you were at 200 East Main or
2 201 East Main?

3 A From looking at my own Google account, no, it may
4 show, in other words, if we'd pull it up right now, it may
5 show my arrival in the parking lot and then unless I make a
6 significant movement and change, it's not going to update;
7 it'll just show a generalized area.

8 Q Do you know how much of a change you would have to
9 make before it changed?

10 A No, sir, I don't.

11 MR. WILLIAMS: That's all the questions I have,
12 Your Honor.

13 THE COURT: Thank you. Thank you, Detective
14 Phipps, you may step down. You may be excused.

15 All right. Solicitor, you may call your next
16 witness.

17 MS. MAYES: At this time, Your Honor, the State
18 will rest.

19 THE COURT: Thank you. Thank you very much. All
20 right.

21 Ladies and gentlemen, upon the resting of the
22 State, there's matters I have to take up outside of your
23 presence. If you would please leave your notes on the
24 chair. We'll take a brief recess. As I told you, do not
25 discuss this case with anyone else. Thank you.

1 (The jury left the courtroom at 10:26 a.m.)

2 THE COURT: All right. Mr. Williams, motions?

3 MR. WILLIAMS: Yes, Your Honor. We would move at
4 this stage for a directed verdict in the -- in that at this
5 stage, where the State has produced its evidence and it
6 should be insufficient as a matter of law for a jury to
7 return a verdict of guilty as to the indictment regarding
8 the homicide of this child.

9 THE COURT: Thank you, Mr. Williams.

10 Solicitor.

11 MS. MAYES: Yes, sir, Your Honor. The State's
12 position is that the elements have been met. The child is
13 under the age of 11 and the testimony certainly supports a
14 finding by the jury that the defendant exhibited extreme
15 indifference to human life by striking repeated blows where
16 the testimony has said that it was contemporaneous.

17 Although this is an unwitnessed event, Your Honor,
18 the testimony thus far by Dr. Ross is that this occurred
19 sometime between the time period of three o'clock and 5:18
20 p.m. when 9-1-1 was called. She was the only adult in the
21 residence and there's also been expert medical testimony
22 that the toddlers in the residence could not have produced
23 these injuries.

24 THE COURT: All right. Response, Mr. Williams?

25 MR. WILLIAMS: None, Your Honor.

1 THE COURT: All right. Based on the standard I
2 must apply at this point under State vs. Pearson and a
3 long, substantial line of cases. In looking at the
4 standard in the light most favorable to the State, the
5 Court is concerned with the existence or lack of existence
6 of the evidence. I will find based on the evidence and
7 testimony before the Court, there is both -- there is
8 direct and substantial circumstantial evidence such that I
9 would respectfully deny the motion for a directed verdict.

10 Mr. Williams, would you and your client come around
11 please.

12 Madam Clerk, will you place Ms. Lawson under oath?

13 HEATHER LAWSON,

14 having been duly sworn, testified as follows:

15 THE COURT: All right. Ms. Lawson, do you recall
16 our conversation, my questioning and your responses to me
17 yesterday afternoon?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And we discussed your right to testify
20 or not to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you would
25 like to ask me about your right to testify or not testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Today are you under the influence of
3 any medication, drugs, alcohol or anything that negatively
4 affects your thinking ability?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had an adequate opportunity to
7 discuss your decision about whether to testify or not
8 testify?

9 THE DEFENDANT: I have.

10 THE COURT: Do you need more time to talk with your
11 lawyer about whatever your decision may be?

12 THE DEFENDANT: I do not.

13 THE COURT: And what is your decision, Ms. Lawson?

14 THE DEFENDANT: I am testifying.

15 THE COURT: All right. Thank you. Thank you very
16 much. You may return to your seat.

17 I find that the decision of Ms. Lawson to testify,
18 is her own decision made freely, knowingly and voluntarily.

19 All right. Anything further before we take about a
20 15 minute recess, Solicitor?

21 MR. MCNAIR: No, sir, Your Honor.

22 THE COURT: Mr. Williams?

23 MR. WILLIAMS: Nothing, Your Honor.

24 THE COURT: All right. Any requests to charge, if
25 y'all would submit it to -- to Ms. St. Clair or you can

1 e-mail it to Ms. St. Clair or to Ms. Poole.

2 MS. MAYES: Your Honor, the State's only request
3 would be what are currently in your bench book charges, the
4 direct and circumstantial evidence primarily and intent.

5 MR. WILLIAMS: And I'm all right with that also,
6 Your Honor.

7 THE COURT: All right. Thank you. Thank you very
8 much. We'll take about a 15-minute recess.

9 (A brief recess was observed.)

10 THE COURT: Mr. Williams, would you have your
11 client come back around.

12 Madam Clerk, would you swear Ms. Lawson in again?

13 THE CLERK: Yes, sir.

14 HEATHER LAWSON,

15 having been duly sworn, testified as follows:

16 THE COURT: Ms. Lawson, I just have a couple more
17 questions I would like to ask you concerning your decision
18 to testify. That is your decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Made of your own free will and accord?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: That's your call?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Thank you. Thank you very
25 much.

1 All right. Anything from the State before we bring
2 in our jury, Solicitor?

3 MS. MAYES: Nothing from the State, Your Honor.

4 THE COURT: Defense.

5 MR. WILLIAMS: Nothing from the defendant, Your
6 Honor.

7 (The jury entered the courtroom at 11:03 a.m.)

8 THE COURT: Welcome back, ladies and gentlemen. As
9 you recall just prior to the break, the State has rested.
10 You've heard all the evidence and all the testimony you're
11 going to hear from the State in its case in chief. The
12 defense may now present evidence and testimony if the
13 defense chooses to do so. A criminal defendant in South
14 Carolina, regardless of the seriousness of whatever the
15 charge may be, is never required to prove herself or
16 himself innocent. A criminal defendant is presumed to be
17 innocent. The State has the burden of proving its case,
18 each and every element of the offense charged, beyond a
19 reasonable doubt.

20 As I've just said, the defense may present evidence
21 and testimony if the defense chooses to do so. So we will
22 now turn our attention to Mr. Williams and ask, Mr.
23 Williams, does the defense intend to present any evidence
24 or testimony?

25 MR. WILLIAMS: We do, Your Honor.

Heather Lawson - Direct Examination by Mr. Williams

1 THE COURT: All right. Would you call your first
2 witness please.

3 MR. WILLIAMS: I would call Heather Lawson to the
4 stand.

5 THE COURT: All right. Ms. Lawson, if you'd come
6 around and be sworn.

7 HEATHER LAWSON,
8 having been duly sworn, testified as follow:

9 THE CLERK: Have a seat. Once you're seated, state
10 your full name spelling your last please.

11 THE WITNESS: My name is Heather Lawson.
12 L-A-W-S-O-N.

13 **DIRECT EXAMINATION**

14 BY MR. WILLIAMS:

15 Q Heather, where do you live?

16 A I live with my grandmother.

17 Q In what county?

18 A Lexington.

19 Q And how old are you?

20 A 23.

21 Q Now, how many children do you currently have?

22 A Two.

23 Q And their names and ages?

24 A Minor 2 , who is four; he'll be five next
25 month; and Minor 3 , who is two, going to be three

Heather Lawson - Direct Examination by Mr. Williams

1 this month.

2 Q All right. And obviously this trial is about your
3 third child that you had, right?

4 A It is.

5 Q And what's her name?

6 A Minor 1 .

7 Q And when -- when was she born?

8 A She was born [REDACTED], 2015.

9 Q Please tell the jury how you got to know Richard
10 Tuckus?

11 A I actually -- the first time I met Richard Tuckus
12 was at his residence in -- on Weaver Drive. My ex, who is
13 the father of my older two was in orientation at Walmart
14 with him and I had an issue with the radio in my car. So
15 my ex introduced me and Richard to have the radio in my car
16 fixed.

17 Q All right. And how did that relationship change
18 over the years; when did it change to more of a
19 husband/wife, fiancé, girlfriend/boyfriend relationship;
20 when did that happen?

21 A We had started talking more when -- it was a little
22 after my second daughter was born, after I got out of the
23 hospital. He had messaged me and asked me about it and I
24 had asked him about him and his wife, referring to
25 Rochelle, which I was not aware that they were not married

Heather Lawson - Direct Examination by Mr. Williams

1 and said why, I'm not married. And we started talking
2 then; it was probably around September of 2014 when we
3 actually started talking.

4 Q When did y'all get together as a boyfriend and
5 girlfriend relationship?

6 A March 3rd, 2015.

7 Q You remember that specific date?

8 A I do.

9 Q How is it you remember that specific date?

10 A That was the day I moved in with him and we decided
11 to make it official that we were a couple.

12 Q When did -- you say on March 3rd, 2015, where did
13 you move at, the location?

14 A [REDACTED] Weaver Drive, [REDACTED]

15 Q Now, is that the lot that he currently resides in?

16 A Currently, no.

17 Q Is that the lot that you resided in?

18 A It is not.

19 Q So neither one of y'all, you'd never resided in [REDACTED]
20 [REDACTED], up until that time in fact, you moved away from him and
21 you did not live back at that lot?

22 A That's correct.

23 Q Now, who all was living with you at [REDACTED]

24 A It was me, Richard, and my two children.

25 Q And, were you working at the time?

Heather Lawson - Direct Examination by Mr. Williams

1 A I was.

2 Q Where were you working?

3 A I was working at Carolina Convenience.

4 Q And where was he working?

5 A Carolina Convenience.

6 Q Is that significant in terms of how you got to meet
7 him or how you got to be boyfriend and girlfriend with him?

8 A Significant, no.

9 Q All right. So you lived together and obviously you
10 had a child, ^{Minor 1}. Who is the father of ^{Minor 1}?

11 A Richard.

12 Q And during this time span, ^{Minor 1} was born when?

13 A She was born in [REDACTED] of '15.

14 Q So -- so you moved on March the 3rd of 2015 and she
15 was born in [REDACTED] of 2015?

16 A She was.

17 Q So basically after you moved in together, you got
18 pregnant and she was born?

19 A I was pregnant prior to us moving in.

20 Q But no question that Richard Tuckus is the father?

21 A None.

22 Q All right. Now, why is it that you -- have you as
23 of this date, ever entered into a marriage relationship,
24 meaning have you gone before a priest or preacher or what
25 have you, have you signed a marriage certificate or

Heather Lawson - Direct Examination by Mr. Williams

1 anything like that?

2 A I have not.

3 Q So y'all were living together. You had this child
4 and after the child was born, did you ever -- did anything
5 change regarding to where you were living?

6 A After she was born, no.

7 Q Okay. When was -- when did you move -- when did
8 you move away from Richard or did Richard move away from
9 you?

10 A It was in June of 2015, it was on a Sunday; it was
11 Father's Day.

12 Q All right. Let me ask you this. You and Richard
13 moved in together on March the 3rd, ^{Minor 1} was born in
14 [REDACTED] of 2015 and are you saying that you moved away
15 from Richard in June of 2015 before you gave birth to ^{Minor 1}?

16 A I am.

17 Q So you were pregnant with ^{Minor 1} from Richard and
18 y'all separated during that time span?

19 A We did.

20 Q Where did you go to live?

21 A [REDACTED] Weaver Drive, [REDACTED] which was Rochelle's old
22 trailer. He switched us around.

23 Q Okay. You said he switched y'all around; how could
24 he control your moving into Rochelle's trailer?

25 A I was at the lake with my family for Father's Day.

Heather Lawson - Direct Examination by Mr. Williams

1 Over which time at the lake, he messaged me informing me
2 that he was moving Rochelle in and moving me out. By the
3 time I got home, half of my stuff was already out of the
4 house and into the other house.

5 Q Okay. So Rochelle was living at Lot 14 and then he
6 moved her out of Lot 14 into what lot?

7 A Lot 6.

8 Q Lot 6, which was the lot that you and he were
9 living in?

10 A It was.

11 Q What was the reason?

12 A She was having some complications with her
13 pregnancy. She was in the hospital. She was hardly
14 working. There was some drama at the store. She was also
15 employed with Carolina Convenience as well. She had quit
16 her job that same week.

17 Q Back up a little bit away from the mic. When you
18 lean forward, I know a lot of people don't know this, but
19 sometimes it gets loud. There you go. And you have a loud
20 voice anyway. Okay?

21 A So over that week where she quit her job and she
22 had ended up in the hospital, she just said complications,
23 I don't know the whole story. I did not associate with
24 her. I just -- I do know she was in the hospital.

25 Q So basically he moved you out and moved you into

Heather Lawson - Direct Examination by Mr. Williams

1 the other location. Did you ever move back in again with
2 him?

3 A I did not.

4 Q All right. Now that was in June of 2015. Your
5 child was born in [REDACTED] of 2015. At any point in time
6 between [REDACTED] of 2015 and June of 2016, did Richard
7 Tuckus ever pay any child support?

8 A He did not.

9 Q How many children does Richard have?

10 A At that point or now?

11 Q Well, at that point?

12 MR. MCNAIR: Your Honor, may we approach real
13 quick.

14 THE COURT: Yes, sir.

15 (There was a bench conference out of the hearing of
16 the jury and the court reporter.)

17 BY MR. MCNAIR:

18 Q At that point in time, when you moved out in June
19 of 2015, how many children did -- was -- did Richard have?

20 A At that point in time he had three and two on the
21 way.

22 Q Okay. Now from the time span of June 2015 until
23 November 2015, what was the relationship like in regards to
24 you and Richard?

25 A I'm sorry?

Heather Lawson - Direct Examination by Mr. Williams

1 Q What was the relationship like?

2 A We fought a lot. It was mostly fighting. We had
3 some good days, bad days. With me and him both working for
4 the same company, let alone in the same store, our
5 relationship had to be hidden. So there were very few
6 people that actually knew about us, so we weren't able to
7 go in public very much or anything like that.

8 Q And of course now, he was living with Rochelle too,
9 right?

10 A He was.

11 Q And how was he able to live with Rochelle and come
12 be with you -- he was coming over to your place and having
13 sex with you, wasn't he?

14 A He was.

15 Q Did you know whether or not Rochelle knew or didn't
16 know about all this?

17 A I did not know.

18 Q All right. Well, let's go -- let's go to the
19 specific date of June 26th. Let's move around that date
20 because that's the important thing, isn't it?

21 A Yeah.

22 Q I want you to tell the jury as best you recall what
23 transpired -- I guess you could pick it up from the 25th
24 when you were in the convenience store. What happened on
25 June 25th, when you were in the convenience store?

Heather Lawson - Direct Examination by Mr. Williams

1 A Well, I was in the store. I was there because I
2 had an employee that was late for work and one that -- I
3 had had a shift to cover due to lack of employees and I was
4 also interviewing a young lady to -- for -- as an employee.
5 And I didn't have anyone to watch the kids, so I took them
6 with me.

7 While I was there, I was back and forth between the
8 office, watching surveillance video proving where an
9 employee was stealing, and back and forth on the register
10 with customers. While I was with a customer, ^{Minor 1} was in
11 the office on a box -- in a box on the floor and I heard
12 her fall. I heard her fall. I left the customer at the
13 window and I ran to the office to grab her and then brought
14 her with me back up there with the customer and held her to
15 make sure she was okay.

16 Q All right. So that's the -- that is part of that
17 video which we have seen, which has already played to the
18 jury showing that event; is that correct?

19 A It is.

20 Q And how was ^{Minor 1} after the fall?

21 A She was fine. She was feisty. She wanted to be
22 held. She did not want to be put down and when I put her
23 down, she cried. She wanted to be held. She was fighting
24 sleep.

25 Q So what time did you leave that night?

Heather Lawson - Direct Examination by Mr. Williams

1 A It was after 11:00.

2 Q Richard Tuckus appears in that video. What did
3 Richard -- why was Richard Tuckus at the location that
4 night?

5 A He had came to see me and so -- because I was in
6 the process of becoming a store manager, I did not actually
7 know what all I had to go into the hire packet with new
8 employees. So he was also there to help me. He was also
9 the one working as my assistant manager until one was found
10 for me. So he was there also because he had to work the
11 next morning.

12 Q All right. So where did you go -- obviously we see
13 you leave the convenience store, you and your three
14 children; where do you go from there?

15 A I went home.

16 Q And what did you do when you went home?

17 A When I got home -- when I first pulled in, there
18 was a white car sitting beside Richard's trailer that I did
19 not recognize and I know he was behind me on the way home
20 as well. So I called him and told him about the vehicle
21 that was sitting beside his trailer and when he got there,
22 he didn't go to his house, but it was later revealed that
23 it was the maintenance man named John asleep in a car by
24 his house.

25 Q So the maintenance man was at Richard's house

Heather Lawson - Direct Examination by Mr. Williams

1 asleep in the car?

2 A In his car drunk; he had passed out.

3 Q Now, what position did Richard Tuckus have at this
4 trailer, this -- was it a campground trailer park?

5 A It was a trailer park.

6 Q Did he have a specific job there, obviously he
7 wasn't the maintenance man because he was drunk in the car;
8 did he have another job?

9 A Well, Richard was the property manager. If there
10 were electrical issues, Richard was the maintenance person
11 required in the electrical issues of the trailer park and
12 the water, in charge of bleaching the wells, collecting
13 rent, and keeping up with leases and stuff.

14 Q All right. And did he have access to your trailer?

15 A He did.

16 Q How many keys did he have to your trailer?

17 A He had his personal key and the copy for the
18 landlord for the trailer park.

19 Q When he would come visit you at the trailer, did
20 you have to get up and unlock the door to let him in or how
21 would he get in?

22 A He would use his personal key to get in the house.

23 Q Would he ever get into the trailer when you didn't
24 know he was in the trailer?

25 A He did.

Heather Lawson - Direct Examination by Mr. Williams

1 Q So it wasn't unusual to just -- he would be there?

2 A That's correct.

3 Q Tell me after you witnessed the drunk maintenance
4 man there, what -- what did you do; what happened that day?

5 A After we realized it was just nobody out of the way
6 up there sleeping, I gave Richard a hug, he went home. I
7 got my kids inside. I had taken the stroller that, the
8 diaper bag and myself and my bookbag into the trailer, and
9 then I came back and I got my son out of the car seat, put
10 him on the ground and got my other two kids.

11 I woke ^{Minor 3} up and had her walk to the porch. I
12 carried her up the steps and had ^{Minor 1} in my arm. And
13 whenever I got on the porch, I put ^{Minor 1} down, I mean ^{Minor 3}
14 down while I opened the door to get inside and I had a
15 one-year old pit bull who I was fighting to keep in the
16 trailer as I got in the door to get ^{Minor 3} to follow me.

17 Q Well, let me ask you about your son. When you were
18 coming in there, was your son running off or anything like
19 that, was there anything happening with your son?

20 A When I did get them down, I went back on the porch
21 and my son was at the far end in the front near the
22 neighbor's house.

23 Q Okay. But -- but your two daughters were already
24 in the trailer?

25 A Yes.

Heather Lawson - Direct Examination by Mr. Williams

1 Q The pit bull was -- your puppy pit bull was already
2 in the trailer?

3 A He was.

4 Q And did you retrieve your son?

5 A I did.

6 Q Anything else happen that night; what happened next
7 that night, I guess I should say or the early morning
8 hours?

9 A After I had -- it was probably around 12, I
10 honestly don't know.

11 Q Okay. So what happened next?

12 A After I got ^{Minor 2} inside, I went in the living room
13 and I turned the TV on and I laid down.

14 Q What about the children?

15 A ^{Minor 3} and ^{Minor 2} were asleep. ^{Minor 1} was fussing a
16 little.

17 Q Where was she -- what was her location; where was
18 she?

19 A She was in her playpen.

20 Q All right. So the two oldest children were already
21 in their bed and she was in the playpen fussing a little
22 bit?

23 A Yeah.

24 Q Was anything wrong with her, in terms of -- was
25 there physically -- anything physically wrong with her at

Heather Lawson - Direct Examination by Mr. Williams

1 that time?

2 A She just had a little bruise right there that she
3 had had that day, but other than that, no.

4 Q , Sleepy?

5 A Yeah.

6 Q So what did you do next?

7 A I went to sleep.

8 Q Okay. Where did you sleep?

9 A On the couch.

10 Q When is the -- what is the next thing that you
11 remember after you woke up?

12 A I remember my phone ringing and looking at the
13 phone and it was Richard. I cannot remember which phone he
14 was calling from, the store phone or his phone, but it was
15 Richard calling me and I answered the phone.

16 Q All right. And what did y'all talk about?

17 A I don't remember.

18 Q Okay. What's the next thing you remember?

19 A Getting up and going to ^{Minor 1}, waking her up,
20 changed her diaper and feeding her.

21 Q Approximately what time would this have been that
22 you woke her up?

23 A It would have been around 9:53, 9:54.

24 Q Okay. That's kind of a specific time. Why would
25 you choose 9:53 or 9:54?

Heather Lawson - Direct Examination by Mr. Williams

- 1 A Because that's when I had woken up. That's --
- 2 Richard had called me, it was about 9:50 and by the time I
- 3 got off the phone and I actually got up off the couch and
- 4 out to the room, it would have been about two or three
- 5 minutes.
- 6 Q So you're guessing about the time based on when
- 7 Richard called you?
- 8 A I am.
- 9 Q Okay. So, she was still asleep when you woke her
- 10 up?
- 11 A She was.
- 12 Q Okay. And you fed her?
- 13 A I did.
- 14 Q What did you feed her?
- 15 A Pear baby food.
- 16 Q And anything else?
- 17 A And formula.
- 18 Q All right. And how was -- how was your child that
- 19 morning?
- 20 A She was fine. I did notice just a small bruise
- 21 right here. It wasn't too big.
- 22 Q It wasn't anything like we've seen the last two or
- 23 three days here in the courtroom, was it?
- 24 A It was not.
- 25 Q So what happened next?

Heather Lawson - Direct Examination by Mr. Williams

1 A Next, after she ate, she did spit up. It was -- we
2 were trying to wean her onto baby food. It was a baby food
3 she had never had before. So the vomiting is normal when
4 you have a baby who's not used to something, it doesn't set
5 on their stomach very well.

6 Q Now, we were talking about Richard and him being at
7 the store. Had you any problems with Richard in regards to
8 helping with ^{Minor 1}; had you any discussions about ^{Minor 1} and
9 needing help from him?

10 A I did.

11 Q When was this?

12 A It was all the time. We had verbal conversations
13 over the phone where, when I had not been sleeping very
14 well, I would ask him if he could take ^{Minor 1} for a little
15 bit so I could get a little bit of rest; or my house was a
16 disaster and I know it was and I was trying to get it done
17 and having three kids and ^{Minor 1} was sick. She had RSV very
18 bad. She was actually hospitalized twice from it and I
19 would ask him to get her and he would always tell me no,
20 that he can't because he can't handle her or he has his
21 other daughter and he can't handle two babies.

22 Q Well, did you ever make any comments to him about
23 child support?

24 A I did, several times.

25 Q What did you tell him?

Heather Lawson - Direct Examination by Mr. Williams

1 A I would always tell him that we could make an
2 agreement where he could pay me \$50 each week like he did
3 with his ex-wife, who he has a child with, where he will
4 keep ^{Minor 1} every other weekend or something like that and
5 pay \$50 a week in child support or if he didn't want to do
6 that, I would put him on child support like I did my ex for
7 the same very reason.

8 Q Did he ever do that?

9 A He did not.

10 Q So we're back on the 26th, you fed ^{Minor 1}, she spit
11 up a little bit and it's about 9:53, 9:54 in the morning.
12 What did you do after she spit up?

13 A I cleaned her up. I went and laid her back in the
14 playpen.

15 Q How did you clean her up?

16 A Baby wipes.

17 Q Okay.

18 A I put her in the playpen. She had her toys. She
19 sat in there playing for a little while. I then got ^{Minor 2}
20 and ^{Minor 3}, they were starting to wake up. I got them up and
21 changed their diapers.

22 Q Okay. Then what happened?

23 A ^{Minor 3} and ^{Minor 2} ate.

24 Q What did you feed -- what did you feed them?

25 A I don't remember.

Heather Lawson - Direct Examination by Mr. Williams

1 Q Okay.

2 A They ate and then I sat back down on the couch and
3 turned -- started watching TV again.

4 Q How many hours a week were you working at the
5 convenience store then?

6 A I worked anywhere from 50 to 60, 70 hours a week
7 for the last -- that was the last three weeks.

8 Q What happened next in that day?

9 A I had been sitting on the couch. I had got up, I
10 went to the bathroom. While I was in the bathroom, at some
11 point in time, Richard had got to the house. I looked up
12 from the toilet and he was standing in the doorway and he
13 asked me why aren't you naked yet.

14 Q Let me stop here. About what time would that have
15 been?

16 A It was after 12:00 because I had checked on ^{Minor 1}
17 between 12:00 and 12:10 and after I checked on her I went
18 to the bathroom.

19 Q All right. Now, where were your other two
20 children; ^{Minor 1} is in the playpen?

21 A Uh-huh (affirmative response).

22 Q It's a little bit after 12:00, you're in the
23 bathroom, where were the other two children?

24 A They were in the bathroom with me.

25 Q Now is it normal for you and your two kids to be in

Heather Lawson - Direct Examination by Mr. Williams

1 the bathroom at the same time?

2 A It is. As any mother knows, when you have small
3 children, bathroom breaks are not alone time; your children
4 follow you everywhere you go.

5 Q And you looked up and he was there?

6 A He was in the doorway.

7 Q What did you do after that?

8 A Um --

9 Q Wait a minute. You didn't let him in?

10 A I did not.

11 Q Okay. What happened then?

12 A When I was using the bathroom, we went to the
13 bedroom and we had sex.

14 Q Where were the kids?

15 A They had went back into the living room, but I
16 honestly cannot say if they were in the living room or
17 their room.

18 Q But they were not in the room that you were in?

19 A They were not.

20 Q All right. Approximately what time did he leave?

21 A It was approximately 12:40, 12:45.

22 Q Okay. And then what happened for the rest of the
23 day?

24 A I had cleaned up a little and gave the kids a bath.
25 I made supper.

Heather Lawson - Direct Examination by Mr. Williams

1 Q Let me ask you about cleaning up the kids. We seen
2 pictures of the, of the tub there?

3 A Yes.

4 Q That tub appears to be dry?

5 A The tub -- the picture was taken 5 or 6 hours
6 after, plenty of time for the tub to dry, but also the
7 seal, my tub did not hold water. Where the drain is, is
8 not sealed underneath, so the tub has a leak.

9 Q So where does it leak to?

10 A Directly underneath the house onto the ground.

11 Q Not in the floor but on the ground?

12 A On the ground.

13 Q And there appeared to be some sort of object that
14 was in the -- in the tub; do you know where that came from?

15 A I do, that came from the fish tank. I had cleaned
16 the fish tank and it was the white gravel rocks from the
17 fish tank.

18 Q So the white spots in the tub were the rocks from
19 the fish tank?

20 A They were.

21 Q Okay. Now, after this was done, after you washed
22 the kids, you said you also fed them; is that what I heard?

23 A It is.

24 Q Now, what did you feed them?

25 A There was leftover -- I cannot remember if was

Heather Lawson - Direct Examination by Mr. Williams

1 exactly cube steak or if it was pork chops in the fridge
2 and the corn, there was a zip lock bag I had left over meat
3 from the night before, two nights before, that I had cooked
4 and I fed them and I made a steamable bag of asparagus and
5 I also cooked potato wedges.

6 Q All right. How did you cook the potato wedges;
7 what pot did you cook the potato wedges in?

8 A It was a big red pot that I had ended up leaving in
9 the sink when I drained the water out of them. I boiled
10 them in water and then I used the glass rectangle pan to
11 bake them in.

12 Q And is that picture of that big red pot visible in
13 one of the pictures that have been shown, that have been
14 filed today?

15 A I believe so, yes.

16 Q So after you got through feeding the children what
17 happened?

18 A We laid down. I had gotten a gray pan that I using
19 as a table to draw. So I was trying to draw a picture for
20 Richard like I -- it's normal for me. I like to draw.
21 Trying to do bubble letters for a picture.

22 Q What are bubble letters?

23 A Like block letters, it's not just directly draw
24 them, you have space in between where it can be colored in.
25 You can draw other things inside the letters or --

Heather Lawson - Direct Examination by Mr. Williams

1 Q So that it's almost three dimensional when you look
2 at it; you know what three dimensional means?

3 A Yes.

4 Q Like it has depth to it?

5 A In a way, yes.

6 Q Now, we've seen some items that have been placed
7 into evidence, which has I love Richard Tuckus on them?

8 A Yes.

9 Q Is that what you're describing?

10 A It is.

11 Q And we note that it has been cut?

12 A Uh-huh (affirmative response).

13 Q It's obviously not torn, is it?

14 A It is not.

15 Q Why is it cut like that?

16 A When I'm drawing I do have a little bit of an issue
17 where if it is not perfect a line is crooked or I don't
18 like the way the letter is made, I'm not going to use it;
19 I'm going to trash it and all those papers that were torn,
20 there was a mistake in there that I did not like so I tore
21 it up and grabbed another one and had redone it to where it
22 was better.

23 Q Okay. So you were doing that; what were the
24 children doing?

25 A They were running back and forth playing between

Heather Lawson - Direct Examination by Mr. Williams

1 the living room and the bedroom.

2 Q What is the next thing that happened?

3 A I realized that it had gotten late and that I
4 hadn't heard ^{Minor 1} and I went to go check on here.

5 Q So what time was this that you went to go check on
6 ^{Minor 1}?

7 A I know it was around 5:00. I'm not sure exactly
8 what time it was.

9 Q Now, we obviously have seen some texting, some
10 Facebooking, some stuff like that that you had texted back
11 and forth to Richard or he's texting you or Facebooked you?

12 A Yes.

13 Q That's some of the things that went on during that
14 day?

15 A Yes, I always text when I do everything. It
16 doesn't matter what I'm doing, I've always got my phone
17 right next to me texting.

18 Q Now, there appears to be a time span between 3:35
19 and like 4:00 something, 4:45 or something like that when
20 there's obviously no texting going on; you heard the
21 solicitor bring that out. Do you recall what was going on
22 at this point in time?

23 A At that point in time, I had sat down on the couch
24 and I believe I had dozed off.

25 Q And you really weren't doing anything; is that what

Heather Lawson - Direct Examination by Mr. Williams

1 you're saying?

2 A At that point in time, I wasn't doing nothing.

3 Q Now, in some of these statements, you have
4 indicated something about cleaning the house?

5 A I did.

6 Q Now we've all see the pictures?

7 A I know.

8 Q What does cleaning the house mean to you when you
9 make that statement?

10 A I had started the living room. When I clean
11 especially the living room, I take everything and push it
12 toward the kitchen where I can vacuum that half of the
13 floor. Then I went through everything on the other half
14 that was like all the clothes, picked all the dirty clothes
15 out, threw them into a pile on the other side of the room
16 where it had already been vacuumed and I picked up all the
17 trash. I had put the trash in a gray bucket, a gray tote
18 that I did not need; it was one I was going to throw away.
19 So I threw all the trash in it and set it to the side.

20 Q Tell me about the clothes in the washing machine
21 that smelled and they were wet?

22 A My washing machine itself has a smell. It's not
23 necessarily the clothes. Working late hours always on
24 call, having to go, I did forget some dirty clothes and
25 there was times where I had clothes in the washing machine

Heather Lawson - Direct Examination by Mr. Williams

1 for a week at a time. So the washing machine had a smell
2 and I never cleaned the washing machine.

3 Q How is it that there was wet clothing in the
4 washing machine, but something dry on top of the wet
5 clothes?

6 A I have to wash my clothes 2 times, like I said,
7 because the washing machine had a smell. It will take two
8 washes for the clothes to actually smell clean. After I
9 had finished washing the first time I was going to restart
10 the washing, the dog had peed on the blanket, one of my
11 kids blankets. So I just threw it in there to have it
12 washed.

13 Q So the item which is dry, which is on top of the
14 wet clothes is what?

15 A Is dirty.

16 Q And it's a what, a blanket?

17 A A blanket.

18 Q Which the dog had peed on?

19 A The dog peed on.

20 Q So I get the feeling that you're pushing stuff away
21 and you cleaned the floor. Is there anything clean in that
22 house but the floor, meaning all you were doing was
23 basically vacuuming?

24 A I was basically vacuuming, picking stuff up off the
25 floor. I may have straightened up the table a little bit.

Heather Lawson - Direct Examination by Mr. Williams

1 I honestly, I didn't mess with the table too much, but a
2 lot of it was just paperwork and stuff. I didn't really
3 know what was with it and I wasn't in the mood to go
4 through it.

5 Q Now, when you went in and saw ^{Minor 1}, was ^{Minor 1} --
6 describe what you saw when you went in and saw ^{Minor 1}. And
7 you called it a playpen like I do. Is it a carrier?

8 A It's a pack 'n play.

9 Q Pack 'n play. Used as a crib?

10 A It is.

11 Q So what -- what did you observe in that pack 'n
12 play or crib when you went in there?

13 A When I first went into the bedroom, I noticed the
14 blanket was in there on her, which it had happened before,
15 it wasn't the first time I found it. Not that specific
16 blanket, but I have found a blanket or clothes in there
17 with her that my daughter or my son had thrown in there.

18 Q Let me ask you, the blanket, which blanket are we
19 talking about?

20 A It was my daughter's pink comforter.

21 Q So is that the item that we saw yesterday?

22 A It is.

23 Q Okay. So it was in there?

24 A It was.

25 Q And what else did you observe?

Heather Lawson - Direct Examination by Mr. Williams

1 A I noticed as I was walking towards the playpen, my
2 daughter and my son were over to the doorway by the kitchen
3 and they were in the room by the doorway just sitting there
4 like this as I walked toward the playpen.

5 Q Had you heard anything earlier during the day or
6 during the afternoon?

7 A My dog had been in there barking. I don't know
8 what he was barking at. I had yelled at him to hush. I
9 had heard a thud like a toy had been thrown, which was
10 pretty normal.

11 Q Anything else did you hear?

12 A Just them playing in the room.

13 Q All right. Had you heard your other two children
14 that afternoon, the ones -- your older children, had you
15 heard them?

16 A Heard them?

17 Q Yeah, and were they just playing as far as you
18 knew?

19 A As far as I knew, yes.

20 Q All right. So when you saw them, did you say
21 anything to them?

22 A I did not.

23 Q You didn't think anything about it?

24 A At that point in time, no, I really wasn't
25 thinking. I was trying to hurry to get the blanket off of

Heather Lawson - Direct Examination by Mr. Williams

1 her. I had a weird feeling something was wrong, but I just
2 wasn't sure what.

3 Q Were you -- did you wake up startled or something?

4 A Huh?

5 Q Did you wake up funny; did you have a funny feeling
6 when you woke up, or --

7 A When I realized I hadn't checked -- I hadn't heard
8 her. I mean I hadn't heard her in a while.

9 Q Okay. So you went in there and you saw the blanket
10 on her. What else did you observe?

11 A When I pulled the blanket back, I did not pull the
12 blanket completely out or even completely uncover her.
13 When I found her, half of her body from here and her arms
14 were like this, like she had plopped out and her head, her
15 eyes were barely open and the bruising was really bad on
16 her forehead.

17 Q So what did you do?

18 A I tried to call Richard; he didn't answer and then
19 I just ran out the house. I was not going to believe what
20 I seen was real.

21 Q So -- and where did you run to?

22 A I ran to his house at Lot 6.

23 Q And I guess we've heard the rest; did y'all call
24 9-1-1?

25 A When I got to his house, I was banging on his door.

Heather Lawson - Direct Examination by Mr. Williams

1 When Rochelle opened the door, I collapsed on the porch. I
2 couldn't even get ^{Minor 1} /'s name out of my mouth. I was just
3 repeating Ad -- Ad -- Ad I could not get it out and she
4 came down and she helped with me and she is the one that
5 told Richard exactly what I was trying to say. I don't
6 know how she knew what I was trying to say, I guess as a
7 mother and me being upset and could not say my daughter's
8 name. I don't know how she knew what I was trying to say.

9 Q All right. Let's skip. I'm skipping; leave you
10 there.

11 Obviously, we all know that law enforcement,
12 doctors, EMS, everybody came out there and took the child
13 to the hospital. At some point in time, you have had
14 meetings with various law enforcement people, right?

15 A Yes.

16 Q You've given several different statements, haven't
17 you?

18 A I have.

19 Q Can you explain why you gave different statements?

20 A When I was being questioned, I wasn't acting
21 offensive that day, I was upset. I was, you know, wanting
22 to be -- I was wanting my children and I didn't know what
23 was going on. They asked me the events of that day and I
24 told them that day and they never once asked me the events
25 of that night or the week before or anything. And I had

Heather Lawson - Direct Examination by Mr. Williams

1 told them -- you know when they say anything uneventful and
2 I said no. Yes, my daughter had thrown up, to me that was
3 uneventful. Because she was teething, she was being weaned
4 on the formula; that was a normal occurrence where a child
5 throws up is not a significant event that she's going to
6 throw up something she's never had before.

7 Q Now, those bruises on that child's head were not
8 uneventful or in-eventful were they?

9 A They're not.

10 Q Had you see those before you woke the child up?

11 A No, I didn't.

12 Q Well, I'm sorry before you saw the child?

13 A No.

14 Q You go through a litany of things where the child
15 may have gotten injured. Why did -- why did you say those
16 things?

17 A After that, the only thing I noticed when I woke
18 her -- when I went to go wake her up was right here. I did
19 not know about anything else on her because I did not move
20 her. I did not move to look first. I didn't want to
21 believe what was happening was real and Detective Barr,
22 when we -- I was being questioned by her and the other
23 female officer, she was taking her hands like this going
24 around, talking about is it possible if anywhere in here
25 could have been hit. And I just -- I did not know where

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1 the injuries were. I did not know any of it. And she was
2 asking could this have happened. So I said well, it --
3 it's thinking, you know, I was in a hurry and thinking that
4 could have happened, but what she was saying, I told her
5 yes, that could have happened, agreeing with her what she
6 was saying that yes, it could have happened.

7 Q Did you hit ^{Minor 1?}

8 A Huh?

9 Q Did you hit your daughter with anything?

10 A No, I did not.

11 Q Did you use your fists?

12 A No.

13 Q Did you use an object?

14 A No.

15 Q Do you know how your child suffered these injuries?

16 A I don't.

17 Q Why did you -- why did you blame the children?

18 A At the time, because I had found them in the
19 playpen before. They would take the little red table, it's
20 like, it has got no weight to it. It's just a little toy
21 table; they would move it against the -- close to the
22 playpen and started climbing and I just didn't know. And
23 at the time, you know, we are the only ones there and I
24 know I didn't do this. And I know that my kids were able
25 to get in the playpen and I know that someone had put the

Heather Lawson - Cross-Examination by Mr. McNair

1 blanket on her and my daughter would turn -- it had a
2 little weight to it; my kids are strong. My daughter would
3 carry that blanket and like follow her in the living room
4 back and forth between the rooms all the time.

5 Q Was there any other adult who was in that trailer
6 that day?

7 A That day, yes, Richard was there.

8 Q Do you know whether or not he came back that day?

9 A I don't.

10 Q Were you in love with Richard?

11 A I was.

12 MR. WILLIAMS: That's all the questions I have,
13 Your Honor?

14 THE COURT: Thank you, Mr. Williams.

15 Solicitor.

16 MR. MCNAIR: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 BY MR. MCNAIR:

19 Q Ms. Lawson, why are you crying now?

20 A I have cried off and on throughout this entire
21 trial. I've cried off and on since the day I found my
22 daughter.

23 Q I didn't see you cry over there when these pictures
24 were displayed?

25 A I had some tears roll down, but it is not --

Heather Lawson - Cross-Examination by Mr. McNair

1 Q Did you? I didn't see you cry when your baby was
2 on that video; you're crying now because you're on the
3 line, aren't you?

4 A No, I'm not.

5 Q It's not about your baby at all; it's about you;
6 it's always been about you, hasn't it?

7 A No, it's not.

8 Q What story are you asking this jury to believe; the
9 first one you told to 9-1-1; the one you told Detective
10 Creech at the hospital; the one you gave at the sheriff's
11 department, or the second one you gave to the sheriff's
12 department; which story are you asking this jury to
13 believe? You're a liar aren't you?

14 A No, I'm not.

15 Q You lied to Detective Creech at the hospital when
16 doctors were trying to save your baby's life. If you would
17 lie in that situation, when wouldn't you lie?

18 MR. WILLIAMS: Your Honor, I'd object to the number
19 of questions being asked without time for a response.

20 THE COURT: Thank you, Mr. Williams.

21 If you don't understand the question, Ms. Lawson,
22 ask the solicitor to repeat the question for you.

23 And of course, Solicitor, you may ask your next
24 question or your previous question.

25 MR. MCNAIR: Thank you, Your Honor.

Heather Lawson - Cross-Examination by Mr. McNair

1 BY MR. MCNAIR:

2 Q At the hospital, you told Detective Creech that you
3 put Minor 1 down around 1:40 to 2:30 for a nap and that you
4 didn't see any injuries to her at that time. Then once you
5 get to the sheriff's department and they tell you they
6 don't believe your story about a one and three-year old
7 doing it, you say, Yeah, I did see those bruises that
8 morning and she was acting lethargic and vomiting. That
9 was a lie, wasn't it.

10 A It was not.

11 Q Well, you told them at the hospital that you didn't
12 see the bruises. The next day you said I did see those
13 bruises and they're the worst I've ever seen. You lied at
14 the hospital. What mother would lie --

15 MR. WILLIAMS: Objection to the testimony from the
16 solicitor as opposed to a question.

17 THE COURT: It's cross-examination. Did you lie at
18 the hospital; is that the truth or a lie. You may rephrase
19 the question.

20 BY MR. MCNAIR:

21 Q You did not tell Detective Creech you saw any
22 bruises at the hospital, did you?

23 A I never told him that I saw bruises. I did not
24 tell him I did or did not.

25 Q What mother -- if you didn't know how your child

Heather Lawson - Cross-Examination by Mr. McNair

1 had died, what mother wouldn't volunteer that information
2 at the hospital; that wasn't important to you?

3 A I was upset and trying to control my emotions just
4 to talk to him.

5 Q When you called 9-1-1, you told them, I think my'
6 kids suffocated her; I'm sure my other kids jumped on her.
7 I'm sure. That wasn't some story about a maintenance man
8 or Richard having keys to your apartment or your trailer.
9 I'm sure my other kids jumped on her. On 9-1-1, that's the
10 first thing you said. You were speculating. You sat here
11 in court this whole week and realized none of those stories
12 made sense. You're just hoping this jury believes
13 anything, aren't you?

14 MR. WILLIAMS: Your Honor, I would renew my
15 objection as to the testimony from the solicitor. These
16 are not questions.

17 THE COURT: The last phrase he said was, you expect
18 this jury to believe you, don't you? That's a question.

19 MR. WILLIAMS: All right, sir.

20 THE COURT: You may answer the question.

21 THE WITNESS: I do not expect them to believe it.
22 No one can make them or expect them to believe anything.

23 BY MR. MCNAIR:

24 Q You're right. And who would believe a mother who
25 lied about her child at the hospital when the doctors are

Heather Lawson - Cross-Examination by Mr. McNair

1 doing everything they can to save her life; who would
2 believe someone like that? They shouldn't believe you,
3 should they?

4 A No.

5 Q Now, when you talked -- when you called 9-1-1, you
6 said you put ^{Minor 1} down for a nap around 2:00 to 3:00 p.m.
7 So that time you had seen her at 2:00 to 3:00 p.m. Then
8 you told Detective Creech 1:40 to 2:30. Then you changed
9 that and said the last time you checked on her was noon and
10 you admitted that you had seen the bruising that morning
11 and she was lethargic and throwing up and you checked on
12 her -- the last time you checked on her was noon and the
13 next time you saw her was after 5:00 when you called 9-1-1.

14 You let her -- you saw her in that condition and
15 you didn't check on her for over five hours?

16 A I did not.

17 THE COURT: I couldn't quite hear that one, what?

18 THE WITNESS: I said I did not.

19 BY MR. MCNAIR:

20 Q You don't care do you?

21 A I do care.

22 Q I think actions speak louder than words. And you
23 said repeatedly no one else had any interaction with ^{Minor 1}
24 that day, haven't you? You told Detective Creech and
25 Detective Barr that repeatedly, didn't you?

Heather Lawson - Cross-Examination by Mr. McNair

1 A To my knowledge, no one else did.

2 Q You didn't say that; you didn't tell them to my
3 knowledge or somebody could have snuck in or Richard had
4 keys. You said no one else had any interaction with ^{Minor 1}
5 from the night before until you found her except you?

6 A ^{Minor 1} died when I was being questioned. I had just
7 been told my daughter was dead. I was extremely upset. I
8 was not thinking about nothing else. I was thinking about
9 wanting to take care of my daughter.

10 Q Who could forget every detail of their daughter's
11 last day on earth? Isn't that significant to you?

12 A I did not forget.

13 Q Well then why did your story keep changing; because
14 it's a lie isn't it?

15 A As I said, I was upset and not thinking. I had
16 just been told my daughter was dead. I was not thinking
17 about this time or that time. I was just wanting to be
18 near my children, near my daughter. Yes, my times, I got
19 them confused. Anyone who is upset is going to get their
20 times confused. Even people who are not upset get their
21 times confused at times.

22 Q But they don't blame their other two children, do
23 they?

24 A No, they don't.

25 Q Why can't you just admit it; did you black out?

Heather Lawson - Cross-Examination by Mr. McNair

1 A No, I did not.

2 Q Did you block it out from your memory?

3 A No.

4 Q You never accused Richard of doing this, have you?

5 A During the questioning, no, I did not.

6 Q I guess it doesn't make you feel good now that
7 Richard's married to Rochelle, does it?

8 A I honestly don't care.

9 Q In fact, after you were arrested, you kept -- you
10 talked to Richard for what, six more months?

11 A I did.

12 Q And you have never once told a story that implied
13 Richard did this at all, have you?

14 A During my questioning, no, I did not.

15 Q That is the only story you haven't told yet until
16 today because none of the other ones made sense, did they?
17 You just testified that you fell asleep at some point
18 during that day, didn't you?

19 A I did.

20 Q Well, you previously put in your statements that
21 you were, during that timeframe, you were cooking, cleaning
22 and bathing your kids, right?

23 A I did.

24 Q You never told anybody you fell asleep, did you?

25 A I did not.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q And you told your mother on a recorded phone
2 conversation that you never fell asleep, didn't you?

3 A I did.

4 Q Okay. So that's a lie too. You testified and what
5 you said today is a lie? At that time, you didn't like the
6 fact that Richard lived with another woman, did you?

7 A No, I did not.

8 Q Because y'all were supposedly engaged?

9 A We were.

10 Q And you didn't like the fact that he didn't spend
11 enough time with you, did you?

12 A I did not.

13 Q And you didn't like the fact that that day, he came
14 over and had sex and left in less than an hour, did you?

15 A I didn't like it, but I was used to it, because
16 that's how it always was.

17 Q Well, you did send that text the day before and
18 said you never even spent an F'ing hour with me, didn't
19 you?

20 A I did.

21 Q And then he told you he was going to run with Mark
22 at 1:00, didn't he?

23 A He did.

24 Q And he didn't go?

25 A No, he did not.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q And you didn't like that either, did you; you could
2 see his car over there with Rochelle, didn't you?

3 A That happened all the time, but that day I was not
4 looking out my window.

5 Q You admit, during that time period you were
6 stressed out, weren't you?

7 A I was stressed.

8 Q You were behind on bills?

9 A I was.

10 Q John Pillsbury wasn't paying you child support?

11 A He was not.

12 Q You made comments you felt like you didn't have any
13 time for yourself; you were either spending time at work or
14 with your kids, right?

15 A That is true.

16 Q I'd call it just being a grown up?

17 A It is.

18 Q You made comments about hating kids; do you deny
19 that?

20 A I never physically said I hated children.

21 Q Those words came out of your mouth.

22 A No, they did not.

23 Q You deny saying -- making comments about hating
24 kids?

25 A I do.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q You deny making comments about wanting -- just
2 making comments about strangling your children at times?

3 A I do not. I did say that.

4 Q You did say that?

5 A I did say that. They were just statements that I
6 did not mean.

7 Q It's a heck of thing to say anyway?

8 A And I know I was wrong.

9 Q You admit you made comments about never wanting
10 kids?

11 A I do.

12 Q You admit you made that comment?

13 A I do.

14 Q I guess the truth, the sad truth is really you
15 didn't really care about your kids, did you?

16 A I did care about my children.

17 Q Well you said, your words, that night when you got
18 home from the gas station, you dumped ^{Minor 1} in the playpen
19 from two to three feet away, correct?

20 A When I wrote that I had been questioned for hours
21 and the words the detectives were using were also what I
22 was writing.

23 Q Well, you said you didn't even try to stop it; do
24 you remember saying that?

25 A I do.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q Is that caring for your kids? She falls out of
2 your arms and you don't even try to stop it; is that caring
3 for your kids?

4 A When I was putting her in the playpen, I had one
5 arm on the playpen; she was like this in my arm and I was
6 bending over. She -- she two or foot less (verbatim) when
7 I was bringing her down to put her in the playpen and I
8 moved my arm like this, she slipped and was falling out of
9 my arm into the playpen.

10 Q And your words were, you didn't even try to stop
11 it?

12 A I was tired and I did not try to stop it. If I
13 would have took my arm off --

14 Q You were tired.

15 A -- of the bed to catch her. I would have fell
16 completely.

17 Q And after that, you admitted, you turned on Family
18 Guy and you turned up the volume to drown out her crying
19 like you always do, didn't you?

20 A I did.

21 Q Is that caring about your kids? Is that what you
22 describe as caring about your kids?

23 A That does not seem like it.

24 Q It doesn't. And then when you claim you saw

25 Minor 1 that morning with all that bruising on her head and

Heather Lawson - Cross-Examination by Mr. McNair

1 throwing up, you didn't even take her to the doctor?

2 A As I said, the bruise was just one small bruise.
3 It was nothing like it was when I found her; it was one
4 small bruise in the middle of her forehead and the one she
5 had previously. That had begun to fade away and the
6 throwing up was from baby food that she had never had
7 before that did not agree with her.

8 Q Well, in your first statement, on page 4 -- and the
9 jury is going to have all your statements -- you said you
10 had never seen bruises as bad as what ^{Minor 1} had?

11 A It was a bad bruise, yes, it was.

12 Q A bad bruise and she was throwing up; that's not a
13 sign to you that something's wrong?

14 A It was not, because everything was normal. The
15 bruise she had, yes, she had fallen the night before. She
16 had a bruise. The food, she had never had it before. My
17 other two children, when you gave them something that did
18 not agree with them, they throw it up; the same as with
19 ^{Minor 1}. The food didn't agree with her and she threw it up.

20 Any mother that feeds their children new foods, if
21 they don't like it, is going to see that if the stomach --
22 the body is going to reject it.

23 Q She fell at the gas station the night before. You
24 saw a significant bruise on her head -- I'll leave it at
25 that. She was acting lethargic and threw up after you fed

Heather Lawson - Cross-Examination by Mr. McNair

1 her and you didn't take her to the doctor and the reason
2 was because you were too tired; do you remember saying
3 that?

4 A I do. And I --

5 Q Is that a mother that cares --

6 MR. WILLIAMS: She was answering the question.

7 THE COURT: Don't interrupt her. You may finish
8 your answer.

9 THE WITNESS: I have also been told by my
10 pediatrician that if a child hits their head, then you know
11 to take them to the hospital continue to cry for hours and
12 no matter what you do, you cannot console them, they need
13 to go to a hospital. If you pick them up and they stop
14 crying, then they are fine and I was told this when my son
15 fell 6 foot at a playground area and took him to the
16 hospital and I could not get him consoled.

17 So being able to control and console her and she
18 calmed down and quit crying as soon as I picked her up. It
19 was only when I put down and I followed the pediatrician's
20 advice, that I did not need to take her to the hospital.

21 Q Well, you didn't console her, you just said after
22 you saw that you put her in the pack 'n play and didn't
23 check on her again.

24 A When I put her in the pack 'n play, she was not
25 crying. In the morning after I fed her, yeah, she threw

Heather Lawson - Cross-Examination by Mr. McNair

1 up, but she not fussing about it, she was not crying.

2 Q Let me ask you this: You had Medicaid, correct?

3 A I did.

4 Q And it does not cost you anything to call 9-1-1,
5 does it?

6 A It does not.

7 Q You even get free ambulatory service, don't you?

8 A I do.

9 Q Okay. So there's nothing that would have prevented
10 you from calling a doctor?

11 A There's not.

12 Q And you admit that you fed Minor 1 out of crusty
13 bottles, didn't you?

14 A The bottle I had rinsed out, no it was not clean.
15 The white in the end there was cereal in the bottle.

16 Q Well, that's the only bottle I think that was in
17 your house.

18 A It was.

19 Q Okay. How do you describe that bottle?

20 A It was dirty.

21 Q Is that somebody that cares about their baby?

22 A No.

23 Q And on that video, you were at the gas station that
24 night how long?

25 A I was up there probably four to six hours.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q That's what I thought. At any point in that video,
2 do you feed ^{Minor 1}?

3 A I did not.

4 Q Did you change her diaper?

5 A Not in the store, no. I had changed her when I got
6 there in the back of my car and before I left to go back in
7 the car.

8 Q So she went five hours without a diaper change?

9 A She did.

10 Q And that is a mother who cares, correct?

11 A She did not need a diaper change.

12 Q I've got children. They can go five hours without
13 a diaper change?

14 A Some of them do.

15 Q Okay. You also admitted that when ^{Minor 2} and ^{Minor 3}
16 would cry for more food, you'd pop them in the back of the
17 head?

18 A I did.

19 Q Another sign of a mother who cares, right?

20 A It was not a hard pop; it was just a small little
21 pop.

22 Q You think feeding them will make them quit crying
23 too?

24 A When they -- my children would eat and eat until
25 they threw up and made themselves sick. It is not healthy

Heather Lawson - Cross-Examination by Mr. McNair

1 for them.

2 Q And what did you do when you found your baby not
3 breathing? Was she face down?

4 A When I moved the blanket, I could feel her and the
5 blanket shift and it was only from here up, that she was
6 face up.

7 Q And you didn't even pick her up, did you?

8 A I did not.

9 Q And you didn't try CPR?

10 A I did not know how.

11 Q Well, you didn't even call 9-1-1 did you?

12 A I did not.

13 Q Where did you go?

14 A I ran -- I tried to call Richard, but I ran to him.

15 Q Ran to Richard. The man you are now saying had
16 keys to your trailer and may have snuck in; is that what
17 you're trying to imply to this jury?

18 A I am not.

19 Q Because you don't think Richard did it, do you?

20 A I do not know.

21 Q You don't think Richard did it. You talked to him
22 for six months after this happened. Y'all were -- you were
23 recorded conversations crying; y'all are talking to each
24 other crying; you don't think he did it, do you?

25 A I do believe he had reason to do it.

Heather Lawson - Cross-Examination by Mr. McNair

1 Q What burden was Minor 1 to him?

2 A He was going to be put on child support and did not
3 want her. People at our job were starting to find out that
4 she belonged to him. He was about to have a third child.
5 That would have been more money coming out of his pocket.

6 Q You never mentioned anything about Richard owing
7 child support; you always said John Pillsbury owed child
8 support and you had EBT as well, right?

9 A I did.

10 Q All right. And that provided for food and
11 everything for those kids, didn't it?

12 A It did.

13 Q All right. The only thing that makes sense is that
14 you did it, doesn't it?

15 A I did not do it.

16 Q You don't want to admit it?

17 A I did not do it. There's nothing to admit.

18 Q If I did it, I blacked out. You made that comment,
19 didn't you?

20 A I did.

21 Q Did you blacken this part out?

22 A I did not.

23 Q You sure do remember a lot of details about
24 insignificant things, but you can't remember anything about
25 the most important part of that day, can you?

1 MR. MCNAIR: I don't have anything further.

2 THE COURT: Redirect, Mr. Williams?

3 MR. WILLIAMS: No questions, Your Honor.

4 THE COURT: Thank you, Ms. Lawson, you may step
5 down.

6 All right.

7 MR. WILLIAMS: That would be the defendant's case,
8 Your Honor.

9 THE COURT: The defense rests?

10 MR. WILLIAMS: We do, Your Honor.

11 THE COURT: Thank you. Ladies -- excuse me.

12 Solicitor, any evidence or testimony in reply.

13 MS. MAYES: I beg the Court's indulgence.

14 THE COURT: All right. What I'm referring to,
15 ladies and gentlemen of the jury, the procedure in a trial,
16 there is the State's case in chief, the defendant may or
17 may not present a case; the defense has rested. The State
18 has a right to offer evidence in reply, if they choose to
19 do so.

20 MS. MAYES: No reply from the State, Your Honor.

21 THE COURT: All right. Thank you. Thank you very
22 much.

23 Ladies and gentlemen of the jury panel, you have
24 now heard all the evidence and all the testimony you're
25 going to hear in the trial of this case. Although I have

1 certain motions to hear, I'm going to advise the jury that
2 I think your lunch will be here about 12 --

3 THE CLERK: In about maybe five minutes. She's
4 downstairs with it now.

5 THE COURT: So that would be 12:20. In about five
6 minutes, our clerk informs me. So what we'll do is take
7 our luncheon recess. I will hear those motions during the
8 luncheon recess. Thereafter, upon your return, I will
9 advise you administratively where we're at with the trial
10 of the case.

11 All right. Thank you very much. You may now go
12 with your bailiff and -- do we have a bailiff; if you want
13 to take a walk about or what -- and I'll say about 1:30
14 we'll get you back in the courtroom at 1:30.

15 All right. Thank you. Thank you very much.

16 (The jury left the courtroom at 12:08 p.m.)

17 THE COURT: Motions, Mr. Williams?

18 MR. WILLIAMS: Yes, Your Honor. Now that all the
19 evidence is in, we would move for a directed verdict of not
20 guilty on the charge that she's charged with, of the
21 homicide; that the evidence taken as a whole is
22 insufficient and it's a matter of law for this jury to
23 return a verdict of guilty.

24 THE COURT: All right. I would respectfully deny
25 that motion in reading of 16-3-85, homicide by child abuse

1 and the -- both the A Section and the B Section which has
2 the definition of terms there and find that there is a
3 standard I must apply looking at the motion in the light
4 most favorable to the non-moving party, there are both
5 direct and sufficient circumstantial evidence.

6 Now I was looking at the statute itself and there's
7 an A(1) and B. So the State is proceeding on as far as the
8 substantive charge, not the definitional charge, the
9 substantive charge, the question is whether or not the
10 State has proved its case beyond a reasonable doubt as to
11 16-3-85(a)(1), correct, Solicitor?

12 MS. MAYES: That is correct, Your Honor.

13 THE COURT: All right. Thank you. Thank you very
14 much.

15 And I know I've asked you both, you, Solicitor and
16 Mr. Williams, no additional requests to charge, correct?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: The standard charge?

19 MS. MAYES: That is correct, Your Honor. Although
20 as you just mentioned, Section B of that statute, contains
21 the definition of --

22 THE COURT: I will read (b)(1), (b)(2), (b)(2)(a) I
23 guess.

24 MS. MAYES: We request (b)(2)(b).

25 THE COURT: All right. I was just reading through

1 that.

2 MS. MAYES: Nothing further, Your Honor.

3 THE COURT: Not (c)?

4 MS. MAYES: Correct, Your Honor.

5 THE COURT: All right. Thank you. Thank you very
6 much. We'll be in recess until 1:30 and will begin closing
7 arguments at that time. Thank you. Thank you very much.

8 MS. MAYES: Thank you, Your Honor.

9 (Court was in recess for lunch.)

10 THE COURT: All right. Anything before we bring in
11 our jury from the State?

12 MS. MAYES: Nothing from the State, Your Honor.

13 THE COURT: Defense?

14 MR. WILLIAMS: Nothing from the defendant, Your
15 Honor.

16 (The jury entered the courtroom at 1:34 p.m.)

17 THE COURT: All right. Welcome back, ladies and
18 gentlemen.

19 As you recall, the State has rested, the defense
20 has rested, and you have heard all the evidence, all the
21 testimony you're going to hear from the parties in the
22 trial of this case.

23 We're now at the stage of the closing arguments by
24 the attorneys. They're different from opening statements.
25 They are true arguments. The attorneys may comment on the

1 facts, inferences to be drawn from the facts, and the law.
2 Closing arguments are not evidence, but they're important.
3 They're important to the State and to -- and to Ms. Lawson.

4 The procedure we follow is the State closes first,
5 presents his closing argument first, being the party having
6 the burden of proving the case beyond a reasonable doubt.
7 Thereafter, followed by Mr. Williams on behalf of his
8 client, Ms. Lawson; and the State has the right for a brief
9 closing argument in reply after the closing argument by Mr.
10 Williams.

11 I do not allow anyone in or out of the courtroom
12 while the attorneys are addressing the jury. If you want
13 to leave after the solicitor's closing before Mr. Williams
14 gets started, you may certainly do so. If you want to
15 leave between Mr. Williams's argument and the reply by the
16 State, you may do so, and if you want to leave after all
17 the closing arguments prior to my instruction to the jury,
18 you may certainly do so. Otherwise, remain in place.

19 With that being said, ladies and gentlemen, please
20 continue to give the parties your complete and undivided
21 attention.

22 All right. Solicitor.

23 MS. MAYES: May it please the Court?

24 THE COURT: Yes, ma'am.

25 **CLOSING ARGUMENTS**

1 MS. MAYES: Time always reveals the truth. No
2 matter what efforts she took to conceal it, to hide it, and
3 to fabricate false explanations by blaming her two
4 surviving toddlers, time reveals the truth.

5 One of the most difficult things in life is to
6 accept something that we cannot change. And no one here
7 can change what happened to ^{Minor 1}. And beyond that, what
8 makes it most difficult is to accept the reality of her
9 situation, the reality of ^{Minor 1}'s life. We also have to
10 accept the reality that there's a cold, harsh, ugly truth.
11 She just didn't want her. That's what it came down to.
12 She didn't want her. That's what's brought us here today.

13 Through all the testimony that you've heard,
14 through the doctors that told you about the blow after blow
15 that she took, she caused and took her daughter's life.
16 That's what it all comes down to. Through it all, one
17 thing stands like stone. One things stands above all else,
18 she did it. She did it, and there's no other reasonable
19 explanation for what brought us here.

20 Now, the point that I finish speaking, Mr.
21 Williams' finished speaking, Your Honor will charge you on
22 the law. And one of the things he's going to charge you
23 about is not only direct evidence, but what we call under
24 law circumstantial evidence. And I submit that
25 circumstantial evidence is good evidence. Under the law,

1 it has the same weight and bears the same credence as
2 direct evidence. And as to Mr. McNair, as Mr. McNair
3 explained in his opening argument, one of the best
4 analogies that you'll ever find is when you wake up one
5 morning in December and there's snow on the ground, you may
6 have never seen a single snowflake fall. You may have
7 never felt it on your skin. When you wake up and there's
8 snow on the ground, it is a reasonable inference and
9 conclusion that it snowed the night before. And this is
10 exactly the same thing.

11 One of the best things about being a member of the
12 jury is that you get to rely on the same common sense and
13 common experiences that carry you through everyday life,
14 whether home as a parent or at work and on the job. You
15 get to rely on those same common experiences. What we know
16 is that she was the only one in that house, the only adult
17 caregiver for ^{Minor 1}. She told lie upon lie upon lie, and I
18 submit to you is still doing the same thing today right up
19 there on that witness stand. You know when the first time
20 she's ever, ever, ever come up with a story that, oh, by
21 the way, I dozed off in that mysterious gap of time that we
22 know exists; that gap of time between 3:35 p.m. to 4:48
23 p.m. when there's no phone activity. She's finally put
24 that phone down. That is the first time she has ever, ever
25 said I must have dozed off. Well, how coincidental that

1 according to the forensic pathologist, Dr. Ross, that's the
2 exact time frame that ^{Minor 1} was killed right here. Right
3 here. That's the reality of it.

4 She took that stand and said she never even checked
5 on ^{Minor 1} for over five hours. It's unbelievable; that's not
6 credible. Anyone who has ever raised a child knows, the
7 child has to be fed. The child has to be changed and ^{Minor 1}
8 is no different. ^{Minor 1} needed her attention, attention she
9 wasn't willing to give. And that day, that afternoon on
10 June 26th, 2016, she took out all the rage and the anger
11 that she had toward Richard Tuckus, she took it out on his
12 child.

13 Now, what we don't have to prove here is murder.
14 This is not a murder case. That means that the State does
15 not have to prove any form of a premeditation or malice
16 aforethought or any of those elements that you seek in a
17 murder case. Under the law of this case only requires
18 what's known as extreme indifference to human life, extreme
19 indifference to human life. And I don't know if there's
20 ever going to be a better way to sum up her entire
21 relationship with her youngest child than that, an extreme
22 indifference to human life. The same indifference that
23 caused her to feed her daughter out of this one bottle,
24 this crusty dirty bottle that was found right here next to
25 ^{Minor 1}.

1 What we know is that she had EBT and food stamps.
2 She had assistance to get formula, to get baby food, to get
3 the help that ^{Minor 1} needed. We also know that ^{Minor 1} had full
4 medicaid coverage. If she wanted to save ^{Minor 1}'s life even
5 after she inflicted those blows that took her life, all she
6 had to do was pick up that phone that she had right there
7 in her hand, the same phone she used to call Richard
8 Tuckus, is to call 9-1-1 instead. Maybe had she done that
9 after that first blow to the head, maybe she could have
10 rendered some aid that ultimately could have saved ^{Minor 1},
11 saved her from her own mother. She didn't do that.
12 So instead what we have is just a tangled web of lies that
13 even she can't keep up with.

14 She starts out there in the emergency room -- well
15 first of all, let's start with the 9-1-1 call and you've
16 got that transcript, the same transcript that you read as
17 we listened to that call. She starts out, Oh, I'm sure
18 she's dead, so I'm not going to bother with CPR because I'm
19 sure she's dead. She was sure, she said.

20 And secondly, I'm sure my other kids must have
21 jumped on her. Again, just a fabrication to cover her own
22 guilt and her own actions, obviously not very well thought
23 out, but at that point in time, she knows the only one
24 there and the only one responsible and it's the best story
25 she can come up with.

1 So later at the hospital, she ends up telling
2 Detective Creech, she never saw any bruises on ^{Minor 1}, and it
3 was an uneventful morning, and that she put her down for a
4 nap between 1:30 and 2:30 roughly, same kind of story she
5 told 9-1-1 when she told them, Oh, I just saw her two hours
6 ago and she was fine. Well all that is far after Richard's
7 left, long gone, and she's the only one in the house; and
8 then later she completely backs up on all those stories and
9 gets all that foggy, foggy memory.

10 And now suddenly her times are changing and it
11 turns out the last time she saw ^{Minor 1}, I don't know, maybe
12 around noon and she never really put her down for a nap,
13 she just looked in there and her stomach was breathing --
14 her stomach was moving so she must have been breathing and
15 she never checked on her ever again. It was all lies that
16 she can't keep straight.

17 And then from there, the story evolves to, Oh,
18 yeah, well you know she did have some bruises on her. She
19 had some bruises on her and she was vomiting. Again, she's
20 trying to come up with another explanation for what
21 happened to ^{Minor 1} because she knows that no one is buying
22 the story that a one-year old and three-year old did this.

23 So now she's going to blame it on that fall at the
24 gas station and how she had this severe bruise that morning
25 and was vomiting and had all these signs of a head injury

1 and she just didn't realize how serious it was. Well we
2 know from the doctors and we know from watching that video
3 ourselves, that fall at the gas station played no role
4 whatsoever in this. But again just another story she's
5 coming up with because the first one didn't work.

6 So now it's, Oh, these were severe bruises, the
7 worst I've ever seen. That's what she puts in her written
8 statement, but I just, I don't know, I was tired -- I was
9 tired and I thought I would just fall asleep if I took her
10 to the hospital, so I just didn't. Well from her own
11 testimony, she got home at midnight and then stayed asleep
12 until 9:00 a.m. when Richard called. She got well over 8
13 hours of sleep and that's the best explanation she can come
14 up with for why she didn't seek care of ^{Minor 1}.

15 No, that's not it at all. ^{Minor 1} didn't have a mark
16 on her. This photo taken the day before by her own phone,
17 you see here, ^{Minor 1} didn't have a mark on her and even after
18 she fell on that video at the gas station, she didn't have
19 a mark on her. She didn't have a mark on her the next
20 morning either. It's just another lie she couldn't keep up
21 with.

22 Then she comes in here and is like, Well, no, I
23 guess it wasn't severe bruises even though that's what I
24 said in my statement. I'm going to go back to what I said
25 before, she had no bruises or maybe just a small bruise,

1 but I didn't think anything of it and now I'm going to
2 remember for the first time, that after I did all this
3 cooking and cleaning and bathing of the children, even
4 though that bathtub is bone dry, after I did all that, now,
5 for the first time, I'm going to say I dozed off. I dozed
6 off between, I don't know, 3:30 and 5:30, 3:30 and 5:18
7 when I finally checked on ^{Minor 1}.

8 Again, the good thing about being on a jury is you
9 do get to rely on your common sense, especially when it
10 comes to evaluating credibility of witnesses and this
11 ever-changing story. So now she accepts, well it wasn't
12 ^{Minor 2} and it wasn't ^{Minor 3} and as she admitted on the stand,
13 it really wasn't Richard either. She's never thought that.
14 She's never said that. The first time she ever insinuated
15 it could be Richard was right here this week, and again,
16 because the other story did not work. She knows full well
17 in her heart, Richard had nothing to do with this. She
18 knows exactly what happened to ^{Minor 1}.

19 So as you look through the photographs and you're
20 evaluating her testimony about her timeframe, take your
21 time in looking at the pictures. The living room here,
22 where in the world in that living room was it vacuumed? It
23 wasn't. These rocks from the fish tank, maybe they are,
24 but they weren't there from that day. That bathtub wasn't
25 used as a CSI agent told you. Fresh cooking, the phone

1 tells us the story. The phone tells us she spent that day
2 focused on Richard. You'll have this summary of the phone
3 activity right back there with you.

4 So what we know is, she actually spends the day on
5 that -- first of all, she's on the phone with Richard. He
6 comes over, even by her account and is gone by 12:45 after
7 they have sex. We know he's back home by 1:00 because
8 she's mad that he didn't go run with his friend at 1:00.
9 She actually sends him a text saying I thought you were
10 going to go meet Mark at 1:00. She's mad because he didn't
11 do what he said he would do and because he's right back
12 there over at his house with Rochelle.

13 So as the day goes on she's getting angrier and
14 angrier. Here we are at 2:44, she's playing gin rummy on
15 that phone. She's playing gin rummy on through 2:45. Then
16 she talks to Richard again at 3:35. He says, Yeah, he
17 canceled, talking about his friend. And then she responds
18 back at 3:35, Sure, why can't you just drive over for the
19 night. The problem is, Richard doesn't really respond.
20 Richard's not coming over and she knows it. So you've got
21 this big gap of time right here from 3:35 to 4:48 and all
22 of a sudden, there's no phone activity whatsoever.

23 Little ^{Minor 1} had been in that pack 'n play all day
24 long. All day long. According to her own testimony, she
25 hasn't been fed or changed since around 10 a.m. So what's

1 a seven month old going to do? Cry for her mother and it's
2 in this period of time right here that she took that life
3 of that beautiful child.

4 You heard the testimony from Dr. Ross and Dr.
5 Luberoff, fist, we're talking about the fist of an adult on
6 the head of an infant more than once. One blow is more
7 than enough to take her life. This isn't one blow; she's
8 hit here, she's hit here, and she's hit in the back of the
9 head repeatedly. And as she's hit -- Dr. Luberoff
10 explained this child weighed 15 pounds. She's old enough
11 to try and get away. What does she have to do to hold her
12 and control her and manipulate her as she's moving around
13 to continue beating her right there. The marking right
14 there, absolutely consistent with an adult hand grabbing
15 her when she's delivering those blows. She wants to
16 suggest to law enforcement that a one-year old and
17 three-year old did that. She knows full well it didn't
18 happen like that.

19 This photo, Number 40, this photo tells us what
20 happened. As Dr. Ross explained right here you see the
21 imprint is consistent with an adult fist. She talked about
22 the 11,000 autopsies she's done. Some of those, many of
23 those, included people who were beaten to death just like
24 Minor 1. When you're beaten to death underneath the scalp, we
25 peel it back right here in Plaintiff's 44. The points of

1 impact from the nose, that forensic pathologist, Dr. Ross,
2 30, 40 years of experience, she knows what she's looking
3 at; and she said blunt force trauma caused by the human
4 fist is absolutely consistent with those injuries she
5 observed at ^{Minor 1}'s autopsy.

6 When we talk about time of death, we know that her
7 temperature was still right where it should have been 98
8 degrees. We know that her core was warm when she arrived
9 there at the ER; although some rigor had set in, puts it
10 right there in that time frame, within 90 minutes of her
11 coming through those hospital doors, between three o'clock
12 and 5:18 p.m. when 9-1-1 was called just as Dr. Ross said.
13 The same gap in time and she now suddenly for the first
14 time, can't account for because none of her other stories
15 worked.

16 Now she's going to say she must have dozed off.
17 Maybe it was the maintenance guy who was drunk the day
18 before. Is that why we heard about him for the first time
19 today; he was never part of any of these other statements.
20 Is the suggestion now that the drunk maintenance man from
21 the night before snuck in her home while she was on the
22 living room couch 31 feet away in a single-wide mobile home
23 with no sound barriers and killed ^{Minor 1}?

24 You know what happened to ^{Minor 1}. We're
25 going to look here at her own words, at her own statements,

1 and you'll have her statements back there. Even the verbal
2 portions of these statements, she admitted today on the
3 witness stand, she made those statements. I laid her down
4 for a nap between 1:40 and two o'clock; the same thing she
5 told 9-1-1, it was even later than that when she talked to
6 9-1-1, but now she's suddenly back up. The last time she
7 saw her was around noon. Well you know what, the whole
8 reason she's back up to that timeframe is that puts ^{Minor 1}
9 alive and well long after Richard Tuckus has left her
10 house. So you know what, now I'm not going to admit that
11 anymore; I'm just going to say that never happened. I'm
12 going to pretend I never said that even though I put it in
13 my written statement in the first paragraph.

14 Next story, she cleaned and bathed her other two
15 kids and cooked and ate supper. I realized ^{Minor 1} hadn't
16 cried for a while and I went to check on her. Five hours.
17 Now her statement's five hours it took for her to realize
18 she needed to check on ^{Minor 1} because 15 feet away from the
19 kitchen where apparently she claimed she was doing all this
20 cooking and cleaning that there's absolutely no evidence of
21 in those crime scene photos.

22 Now, after I seen ^{Minor 1}, I tried to call Richard.
23 He didn't answer, so I ran to him. Her story is someone
24 has found ^{Minor 3's} blanket and not only beaten ^{Minor 1} to death,
25 but someone has wrapped ^{Minor 1} all up in ^{Minor 3's} blanket and

1 she doesn't have any idea how that happened. Her story is
2 she comes over here, she sees ^{Minor 1}, but I didn't touch her,
3 I didn't move her, I didn't even really check for a pulse
4 and I didn't call 9-1-1 or even pick her up to run with her
5 for help. According to her, all she did, took a look at
6 her and tries to call Richard; not 9-1-1, Richard. As
7 you'll see here, that first call is to Richard even before
8 9-1-1 and when he doesn't answer, what does she do; she
9 leaves ^{Minor 1} laying there and runs to his house. Rochelle
10 was the first one to call 9-1-1 even before Heather does.
11 Are those the actions of a mother who cares; absolutely
12 not, those are the actions of a mother who has killed her
13 child.

14 We know as she said in her statement, I was never a
15 baby person. She talks about the night before when she
16 comes home from the store. I felt her slipping, but I
17 didn't try catching; I just let her fall into the playpen
18 and then after that, I didn't even check on her. I went in
19 the living room, put Family Guy on and laid down. We know
20 from those photos of ^{Minor 1} in the emergency room, she's
21 wearing the same exact outfit she was wearing the night
22 before in that video. She never changed her clothes.

23 Then we have the statement that she admitted right
24 there on the stand she made and these two detectives had
25 her there in that interview room and were saying, did you

1 do this; did you do this? Did you smother ^{Minor 1?} And her
2 response is, If I did, I blacked out.

3 Well, she's told so many other stories, she's now
4 just going to float them around and see how they work.
5 They followup with, Please explain further what you meant
6 by blacking out? Her answer, in the past I have fell
7 asleep and moved room to room without even knowing. I've
8 been told by my mom that I have woke up, drank milk and
9 went back to sleep. When waking in the morning, I don't
10 remember. So is that going to be another attempt to say,
11 Well, maybe I did it, if but I did it I blacked out because
12 I have a history of just not remembering things in the
13 morning. Who would ever say that if they didn't do it; no
14 one would ever even leave that possibility out there that
15 they did it -- could have done it, but blacked out.

16 Ultimately, she says to them, you have no reason to
17 believe me because I lied. Those moments, those critical
18 moments right there in the emergency room when you've got
19 paramedics working non-stop, they never stopped CPR even
20 for a split second. They kept it going from the time they
21 left ■ Weaver Drive until the time they went through
22 those ER doors. Never let up. He worked it so hard, he
23 left that mark, potentially, on her chest. They're doing
24 all that to save her life and you know what she's doing;
25 she's lying to Detective Creech about the events of that

1 day. Those are only the actions of someone covering up
2 their own guilt. That's the only reasonable explanation
3 for what has brought us here.

4 So let's take a look at the law. Homicide by child
5 abuse, as I said before, homicide by child abuse is
6 actually quite simple under the law. It's nowhere near as
7 complex as a charge like murder where you have some form of
8 premeditation, malice aforethought. She doesn't have to
9 premeditate anything because this statute is meant and
10 intended to cover caregivers or parents just like her;
11 people who act in a rage for whatever reason and that burst
12 of anger taken out on a child and then take that child's
13 life. That is under the law what we call extreme
14 indifference to human life.

15 So the elements, as Your Honor will charge you that
16 you cause the death of a child under the age of 11. We
17 know that element has been met, while committing child
18 abuse or neglect. There is no question that we are talking
19 about child abuse in this case. And finally, that the
20 death occurs under circumstances manifesting an extreme
21 indifference to human life. That final element, I submit,
22 the very essence of this case.

23 As I said at the outset, we know that fall had
24 nothing to do with ^{Minor 1}'s death. And we know that ^{Minor 1} was
25 perfectly fine earlier that day. You heard Monica Wise,

1 the babysitter, talk about the fact she had never witnessed
2 the toddlers act out in any form of aggression towards
3 Minor 1. She talked about how Minor 1 was always a happy child,
4 a happy little loving thing is what she said. And on that
5 video, we saw that Minor 1 thrived despite her conditions. We
6 saw a child who struggled to get out of that box and then
7 when she fell, just within seconds she was able to adapt
8 and be fine. Just like that, once again, that ability to
9 adapt and to adjust and thrive despite her conditions.
10 That moment really captured her life, because that's what
11 she living every day. She was an example of a child who
12 was able to thrive despite a lack of proper care and proper
13 love. So remember that moment on that video.

14 Then remember her skin covered in bruises and the
15 long agonizing fight to survive in those final minutes
16 right here. She deserves to be remembered. This case, the
17 facts of this case demand justice. This case cries out for
18 justice. A crime of this nature, will not be tolerated
19 anywhere in society and not here. We can't have this. As
20 I said at the outset, no one here can change what happened
21 to Minor 1. It's too late to save her, but it is not too late
22 for justice. It's never too late. The correct verdict in
23 this case is guilty of homicide by child abuse, guilty of
24 homicide by child abuse at the hands of Heather Lawson.
25 You have before you the most noble of opportunities, to

1 strike back against injustice of the worse kind and deliver
2 a verdict that speaks the truth. Thank you.

3 THE COURT: Thank you, Solicitor.

4 Mr. Williams.

5 MR. WILLIAMS: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. WILLIAMS: You know, the solicitor and I do
8 agree on one thing and that is we both agree on justice.
9 You know, justice is not just for ^{Minor 1}; justice is also for
10 Heather, her mother. So when you paint a picture of a
11 child who was beaten, has had a hard life and she's
12 deceased, it tugs at your heartstrings to want to punish
13 somebody.

14 I kind of like to think that I'm probably closer to
15 it that maybe a lot of other people. I was adopted as
16 young -- as an infant and I was fortunate enough to have a
17 mother who adopted me, a nice family, who took care of me
18 and when my -- when my father died when I was six months
19 old, my mother worked like three jobs. Everybody is not
20 that lucky. Some people are born into poverty. Some
21 people are born into families where the mother doesn't know
22 how to keep house, how she doesn't know how to take care of
23 cooking the way they should, don't know how maybe to dress
24 the children as they should, don't know how to pick the men
25 that they choose to associate with. There's something

1 which I like to think that all mothers possess and that is
2 a love for their child.

3 Now I saw different things from the evidence that
4 was presented. Now let me tell you this, she doesn't have
5 anything to prove. You know all these statements about she
6 was saying one thing or she was saying another thing or she
7 was coming up with another thing, so what? So what if
8 she'd never said anything? You've got a lady who's crying,
9 she's upset and she's lost her child. She's being asked
10 questions. She was so upset that when they took her to the
11 hospital, she didn't even have her shoes on.

12 She probably gave all kinds of statements and you
13 know the way to fix that, the way to fix the justice, fix
14 justice in any criminal trial is when you start taking
15 people's statements. When you want to prove exactly what
16 they said when they've not given a written statement, you
17 record it. I'm not in charge of that. I know this, I know
18 if you're driving down the road and you're intoxicated,
19 they'll videotape you. They'll record you. You'll know
20 exactly what the person says. And I only say that is
21 because sometimes people hear things a different way. You
22 don't get to hear the question that's being asked to the
23 answer. So that would have helped in this particular case.
24 There are a lot of things that would have helped in this
25 case.

1 You don't just pick her because she's the mother.
2 You don't just pick her because she was there. You know,
3 when you make a decision on the guilt or the innocence of a
4 person charged, you get to look at all the facts that you
5 have, you get to evaluate the facts, you get to determine
6 what you believe to be true, you get to weigh that
7 evidence. You know, you also get to say well what about
8 this; why wasn't this put forward. This is causing me to
9 question something.

10 Where are all these witnesses that might shed some
11 light on this? And I say that because in this particular
12 case, this particular case, there were several witnesses
13 that were never called. There were several statements that
14 were never brought out. If I were sitting on a jury, I
15 think I'd want to know what the coroner heard; what did the
16 coroner find out? The person who's charged with Lexington
17 County to make the determination as to how somebody died,
18 what she found out. And more important than anything else,
19 I'm going to tell it to you up front, than anything else
20 that we've heard in this case, and I hesitate in saying it
21 because it's going to sound bad. It's going to sound like
22 Theo Williams is a mean individual. I want to know if that
23 four year old boy was talked to.

24 Oh, that's a good one; that's a good one. He was,
25 you know, Oh Theo, he's picking on him. Now he's blaming

1 it on the four-year old child. I don't know who did this.
2 I want to know what he would say. I want to know if he saw
3 somebody else in there. I want to know if he saw his momma
4 doing it. I want to know if he saw his daddy doing it. I
5 want to know what he saw.

6 Do you remember what the expert witness --
7 Luberoff, a lovely person, has spent her life taking care
8 of abused children, pediatrician, she holds positions. You
9 heard her expertise. You saw her on the stand. Who can't
10 but look at that particular witness and know that she is
11 doing her job, she's trying to tell you what she knows and
12 she articulates that they talked to both of the children,
13 they examined both of the children, and she particularly
14 talked about the fact that the young man, the son, the boy,
15 was taking care of his sister and he was talking to his
16 sister saying, Okay, now it's time to clean up. It's time
17 to clean up. He obviously is capable of saying something
18 about what transpired.

19 How did she describe those children; clean,
20 well-cared for, fingernails were clipped, even talking
21 about the deceased, ^{Minor 1}. She was kept the same way. So
22 who is doing this; who was -- who was making sure that
23 these children were well fed, who was making sure that
24 their skin was clean, who was making sure that their
25 fingernails were clipped; who was doing that? Was it

1 Richard; was he the one doing it?

2 You know, you have people who talk about things and
3 people who tell you what they heard. The one thing I love
4 about photographs, I love about you can't change
5 photographs. Well I say that. I guess probably if you
6 some kind of expert you could, but it's normally like in a
7 conspiracy setup. But you can't normally change
8 photographs. We've got a video tape that was done the day
9 before this child was killed, and I use the word killed
10 because let's don't change what we're talking about. We're
11 not trying to slide into the death of this child by saying,
12 well, that baby must have bumped his head and knowing mom,
13 she was so slack, she didn't take the child to the doctor,
14 even though he threw up. That's not what this case is
15 about.

16 Are we saying that? That's not the theory of this
17 case. The theory of this case is somebody pummeled that
18 child with fists. So we can look at that little video and
19 we can see how that child was in that convenience store in
20 that little box and the child fell over.

21 You know when I was a little boy, you know what I
22 used to ride around in? A tobacco drag. And you probably
23 don't know what a tobacco drag is. It's got absolutely no
24 wheels. One time I fell in a hog trough. I had to stand
25 up all the way home. The baby fell. The baby was with his

1 mama. The baby was being cared for by his mama. She ran
2 in there and she picked him up, she held him, I guess he
3 did bump his head. She didn't bump his head. The thing
4 which I took away from that video though is I took away her
5 going out the door. She's got one baby in one hand and
6 she's holding on to another baby; she's carrying all kind
7 of stuff on her back, she's got this one other child that
8 she's going out the front door; what's Richard doing; he's
9 there, is he holding the door, is he saying, ma'am, can I
10 hold this package, can I hold ^{Minor 1}, can I help you out the
11 door?

12 You want to paint a picture of somebody, no, he was
13 just in there and he was walking out. In the video, did
14 you ever see him hold ^{Minor 1}; no, she did.

15 So let's prove that she's the one that pummeled
16 that child to death. Let's see what you would want to
17 prove that. We know this, we know that the child had
18 bruises. We've seen them. We know that the child had
19 abrasions. We know that the skull was not fractured. We
20 know all those things from those x-rays and when I say
21 abrasions, there's marks on the body, which is scraped up.
22 You know, if your theory of the case is that somebody is
23 hitting you with your fists, you don't have to be a rocket
24 scientist, to figure out you want to look at the
25 defendant's fists. It's not that hard. It's asking

1 questions. It's not deciding who did it before you know
2 all the facts. You get all the facts and then you decide
3 who did it. You cannot prove that beyond a reasonable
4 doubt.

5 This has to do with just -- see that's why --
6 that's why our great government has set this system up
7 where you have to prove someone is guilty beyond a
8 reasonable doubt, that you must be firmly convinced of that
9 person's guilt because anybody in this courtroom can be in
10 a position where they can't defend themselves. Something
11 can happen in your household and you can't defend yourself
12 if you don't know about it.

13 So that's why we want -- we want law enforcement to
14 do everything they can. We want law enforcement to record
15 the complete statement so that we can hear the tenor of how
16 somebody is saying something as to whether or not that
17 tenor is believable or not, whether or not I'm actually
18 asking the questions that I'm saying later on. Why not do
19 that? We want law enforcement to go into that trailer, get
20 a tape, wrap it off. You keep people there on the scene
21 who are supposed to be on the scene. You keep people from
22 moving evidence, you put the little numbers down there, and
23 you take pictures of things that might be important. And
24 you secure that information until everything can be tested.
25 And when you come to court and you have a box and there's

1 some other -- there's some child's clothing in the box and
2 the person who secured it doesn't know where it came from,
3 that makes me worry. That's like finding a bug in your
4 Coca Cola. It makes me worry.

5 So what -- what would we look for if we had these
6 items, if we think that maybe it was an object that was
7 used to beat the child's head. You seize the objects and
8 you check them. You test them and see if there's some DNA
9 on them. This is like a fishing episode. We're just
10 making all kinds of determinations, which we really don't
11 have proof for. We have decided that she's guilty, she was
12 in the house, she can't clean her clothes, she's bumped the
13 children's head, so she's guilty of murder. No it's not
14 murder, because we've already learned that that requires a
15 different element, but she's guilty of homicide, the
16 killing of her child. And for her to be guilty of that,
17 what our theory -- what the theory of the case is, is that
18 she was pummeling. But we don't have any objects that we
19 can test.

20 We have experts who are differing in regards to how
21 it happened. One expert said, I can't necessarily say it
22 was the hands that killed her. The linear thing on the
23 neck, I don't think it was the hands; it could have been an
24 object. So you have dueling experts, if you will. You've
25 got one expert saying well, it could have been suffocation.

1 I really don't think all that, they're different, but isn't
2 that important.

3 If you believe that Heather took her fists, beat
4 that child, and that there's no possibility that that child
5 didn't suffer those some other way, you don't have a
6 choice. If you believe that in -- if you believe in your
7 heart beyond a reasonable doubt, if you are firmly
8 convinced of that, you don't have a choice, but there's so
9 many other questions that haven't been asked. So many
10 questions that haven't been answered. Where's the coroner?
11 What did the child say?

12 Well let's go on. I did ask some interesting
13 things because I was curious about it, about the cell
14 phone, whether or not the GPS -- because I had this deep
15 feeling, deep down in my side, in my heart that probably
16 the government knows where we are at all times, so I was
17 going to ask that question. And we learned yeah, you could
18 if you got a Google App, but it's not really that close.
19 The reason I was asking that question, is because maybe if
20 we had the cell phone, go back and find out where the
21 father was, maybe that might be helpful. We know this, you
22 see some people look at this timeline and they say, Oh,
23 that's a big victory. That's a big proof of -- what did I
24 do with the timeline, it's over here somewhere. I thought
25 it was here. They say between 3:30 and I think 4:45 that

1 there is a gap in the texting, there's a gap in the
2 Facebooking, there's a gap that indicates that that would
3 have been the only time -- that would have been the time in
4 which the child was killed. We patched it up, we've
5 stuffed it with paper, we've put a ribbon on it.

6 So now, not only do we know who did it, we know how
7 they did it; they used their fists and it happened between
8 that time period of 3:30 and 4:45. Well you have to say
9 that because if you didn't say that, then you wouldn't be
10 able to explain why there's all this texting for every
11 other time period and e-mailing for every other time period
12 except that period. But you know, I look at that texting a
13 little bit different. What were they saying? What did
14 those texts reveal? What was the e-mailing revealing? Did
15 it say I'm going to kill our daughter because you're a
16 worthless human being? I didn't see anger in any of those
17 texts. All those texts just went on. Do you think all of
18 a sudden you just wake up and say, God, I've had it. No,
19 to me that tells me what is the motive? You know there's
20 this whole thing that used to be on TV all the time about
21 motive, opportunity and convenience.

22 Opportunity, she had opportunity, she certainly had
23 the means, maybe he had the opportunity. And maybe he had
24 the means. What's the motive? Does she think she's not
25 going to have to clean up the house anymore; is that the

1 motive? Well, she's not going to clean up the house
2 anymore anyway. When she's got two other children that are
3 older than she is. She tries. She tells him because he's
4 complaining about what a sloppy housekeeper she is. She
5 says, Well, I'll do better and she kind of pushes things
6 around.

7 This is my client I'm talking about. I warned her
8 that I was going to talk about her cleaning her house, but
9 you know what, she's still got two children. That's not
10 going to save her any housework. She's still got to clean
11 up the house and the difference is, the difference is, she
12 loves that child. You know, there's a picture in here
13 which speaks volumes. This is two days before. She's over
14 there with her cousin maybe and she has this child, mama or
15 grandmama hadn't see the child in a while, so she takes the
16 picture showing those two lovely babies playing together.
17 Is that the same mother that's just going to pummel
18 somebody?

19 You know, I watched Heather on the stand. She
20 probably admitted to a lot of stuff and everybody said, Oh,
21 God, I can't believe she said that; I can't believe she
22 said that. I listened to all the oral statements that
23 supposedly she gave to the detectives. Didn't get to hear
24 the one she gave to the coroner. I listened to those
25 statements. You know, the one thing I didn't hear, I

1 didn't hear her say that she killed her child. She tried
2 to come up with stuff how the child could be hurt.

3 You remember in the beginning when I talked to you
4 about responsible and guilt; two different things. She's
5 responsible for that sloppy house. She's responsible to
6 make sure the children are fed. She's responsible to make
7 sure that they grow up well, but she's not guilty of
8 killing that child.

9 Now the way we pigeon-hole this time of 3:30 to
10 4:45, that that was not -- it -- it's an artful form to be
11 able to do this. You get these moving items and you try to
12 place those items so that they fit with what you're trying
13 to prove. We know that there was a gap which was between
14 3:30 and like 4:45, something like that, but there was no
15 texting going on. Again, we had that because we went
16 through all this texting and stuff like that so we know
17 that there's a gap there.

18 So what we've got to have done, is we've got to say
19 that baby was killed between 3:30, around 3:30 to 4:45. So
20 that it all fits together and the first thing you get, is
21 you get the expert who says, Dr. Luberoff, I believe, says
22 that you know, you can't really tell the time of death.
23 It's kind of a moving target, kind of a moving target. We
24 learned a little bit, didn't we. We learned that when you
25 kind of decide what the person's temperature is and I'm

1 sure if you watch TV, you know that's why they put them in
2 the freezer, you know, so you can't tell when they exactly
3 died. You get them warmed up, the body temperature
4 changes, all that stuff. So you dance around this issue
5 about well, maybe they warmed up when they were in the
6 ambulance ride. You heard the temperature of the child
7 when it was taken. It's like my temperature right this
8 minute. How do you explain that?

9 You explain that this child's been dead for two
10 hours; how do you explain that? Riding in the ambulance, I
11 don't know, had a blanket on her. Well, you know, if
12 that's the situation, if that's one of the key elements in
13 determining time of death, then you might not want the
14 nurse who's just recording the information in the Lexington
15 County Hospital log to come up and testify as to what it
16 was. You might want to know the person who actually gave
17 the rectal temperature and determined what the temperature
18 of the child was on that day. Whoever that was and we
19 don't know who it was.

20 I sincerely want to tell you now, because I'm
21 through. I'm through. You probably won't sit on a
22 homicide case in Lexington County on many occasions. You
23 probably won't be on another one. I'm sure after this case
24 is over with, His Honor is going to tell you that he
25 appreciates your service because we don't expect -- we do

1 this because we're lawyers and judges and stuff, but we
2 have to deal with this stuff. We take an oath, we have to
3 deal with this. As a citizen, you agree to do justice.
4 You agree to come in here and sit on a jury and make
5 determinations based on the fact that you don't get to say,
6 Gosh, I'm so squeamish; I don't want to look at those
7 pictures. You've done that and every time I see a jury
8 that sits on a murder case, a homicide case, a rape case,
9 anything that's got bad pictures in it, I say you've done a
10 good job. You've done a good job. All I ask is that you
11 do what the judge charges you.

12 No one's going to quibble about your decision is.
13 You've done your job by sitting in here; and I've watched
14 every one of you. I've seen jurors fall asleep, I've seen
15 them nod, I've seen them turn their head away; you didn't
16 do it and I want to thank you. Thank you all.

17 THE COURT: Thank you, Mr. Williams.

18 All right. Solicitor?

19 MS. MAYES: May it please the Court.

20 Just briefly. Just a few thing to some of Mr.
21 Williams's comments. First of all as to ^{Minor 2} or ^{Minor 2}, who
22 was three years old, not four years old. You've heard from
23 the pediatrician, Dr. Luberoff. She did see him, she did
24 evaluate him, just like ^{Minor 3}. And she talked there on the
25 witness stand about her notation regarding his speech

1 delays. The State is not hiding any evidence in this case.
2 If ^{Minor 2}, being a three-year old or any other witness being
3 cornered, if Margaret Fisher had anything additional to add
4 that was material in this case, I submit, you would have
5 heard from them. We do not keep you here for weeks
6 listening to witness after witness after witness. We do
7 submit, it's called a witness list, who have material
8 information.

9 We talked about that body temperature. That's the
10 nurse who keeps the chart. She kept ^{Minor 1}'s medical
11 chart. We know she was correct about the zero pulse rate,
12 the zero numbers of times she was able to breathe per
13 second. We know she was right about every aspect of
14 ^{Minor 1}'s medical care. She's the one who recorded and
15 kept that chart of the 98 degree body temperature.

16 Now, as to time of death, as Dr. Ross explained,
17 there are variables, but it's not something that they can
18 ever look at a body say, this person died at exactly 3:52
19 p.m. It cannot be done. Scientifically and medically, it
20 can't be done. But they can give us a range and they know
21 it was fresh because of that body temperature and because
22 her core was warm. We know it was in that timeframe when
23 her phone went silent.

24 I believe Mr. Williams's term when he talked about
25 Dr. Ross and Dr. Luberoff was that they were dueling

1 experts. They're not dueling experts with different
2 opinions or opposing opinions. They are two doctors, two
3 professionals, at the very height of their field, but it's
4 two very distinct and different fields in that Dr. Luberoff
5 treats children who are living and Dr. Ross sees patients
6 who are deceased. So one sees patients as they appear
7 after death, little things like looking underneath the
8 scalp and seeing those marks consistent with knuckle marks.
9 That's Dr. Ross's job.

10 Thankfully, Dr. Luberoff, being a pediatrician,
11 doesn't normally see those kind of things. When she's
12 called into review case, she's not a pathologist, she's a
13 pediatrician, so she can tell us the important aspects of
14 Minor 1 like the fall not killing her because she sees --
15 she sees kids every day who have fallen. She sees kids
16 every day who have head injuries. She knows these were
17 fatal and these were blunt force and these would have been
18 immediately symptomatic and resulted in death.

19 And then finally, Mr. Williams seemed very focused
20 on the fact that there is no specific object that was ever
21 identified. She's the only one that would tell us that,
22 verbally at least. Pictures, photos and Minor 1's little
23 body that Dr. Ross examined. That tells the rest of the
24 story.

25 We know what happened to Minor 1. Reasonable doubt

1 as Your Honor will charge in just a few moments.
2 Reasonable doubt does not mean that the State has to prove
3 a case beyond every possible doubt that may exist. It
4 means the State proves its case with evidence that leaves
5 you firmly convinced, firmly convinced of her guilt. It
6 means you can look past mere speculation and look at the
7 facts and reach a logical conclusion. And here there's
8 only one conclusion, Heather Lawson is guilty as charged of
9 homicide by child abuse.

10 Thank you.

11 THE COURT: Thank you. Thank you, Solicitor.

12 **JURY CHARGE**

13 THE COURT: Ladies and gentlemen, if you would
14 please give me your complete and undivided attention. I am
15 now going to instruct or charge you on the law that you are
16 to apply to the facts of the case as you find them to be.
17 The way I instruct a jury is I charge the general criminal
18 law that applies in all criminal trials in South Carolina.
19 Thereafter, I charge the specific statute, the specific law
20 that is charged in the indictment. And finally, I will
21 instruct you in the form of the verdict.

22 Generally when I change from one topic to the next,
23 I will give you the subject matter of the topic I am fixing
24 to cover. And as I say, when I go to the next, I will give
25 you the topic of the next area of the law that I'm fixing

1 to cover.

2 Charge, arrest, indictment is not evidence. The
3 indictment charges the defendant, Heather Marie Lawson,
4 with homicide by child abuse, the elements of which I will
5 explain to you later in my instructions. I remind you, the
6 fact that Ms. Lawson was arrested, charged, and indicted in
7 this case is not evidence in this case and cannot be
8 considered by you as evidence of guilt in this case. Nor
9 does this indictment create any presumption or inference of
10 guilt. This document is simply the formal written
11 instrument which contains the charges brought or made
12 against the defendant. It is the formal document by which
13 this case is brought before the Court.

14 Presumption of innocence. The defendant has pled
15 not guilty to the indictment and that plea puts the burden
16 on the State to prove the defendant guilty. A person
17 charged with committing a criminal offense in South
18 Carolina is never required to prove herself or himself
19 innocent. I charge you that it is an important rule of the
20 law that the defendant in a criminal trial, no matter what
21 the seriousness of the charge may be, will always be
22 presumed to be innocent of the crime for which the
23 indictment was issued, unless guilt has proven by evidence
24 satisfying you, the jury, of that guilt beyond a reasonable
25 doubt. This presumption of innocence does not end when you

1 begin your deliberations, but it accompanies the defendant
2 throughout the trial until you, the jury, reach a verdict
3 of guilt based on evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 The presumption of innocence has been said to be
6 like a robe of righteousness placed about the shoulders of
7 the defendant, which remains with the defendant until it
8 has been stripped from the defendant by evidence satisfying
9 you of the defendant's guilt beyond a reasonable doubt.
10 The presumption of innocence is not a mere legal theory.
11 It is not just a legal phrase. It is a substantial right
12 to which every defendant is entitled unless you, the jury,
13 are satisfied from the evidence of the defendant's guilt
14 beyond a reasonable doubt.

15 What is a reasonable doubt in the law? A
16 reasonable doubt is the kind of doubt that would cause a
17 reasonable person to hesitate to act. The State has the
18 burden of proving the defendant guilty beyond a reasonable
19 doubt.

20 Some of you may have served as jurors in the past
21 in civil cases, where you were told that is only necessary
22 to prove the fact is more likely true than not true, such
23 is by the greater weight or preponderance of the evidence.
24 In criminal trials, the State's proof must be more powerful
25 than that; it must be beyond a reasonable doubt. Proof

1 beyond a reasonable doubt is proof that leaves you firmly
2 convinced of the defendant's guilt. There are very few
3 things in this world that we know with absolute certainty.
4 And in criminal cases, the law does not require proof that
5 overcomes every possible doubt.

6 If based on your consideration of the evidence, you
7 are firmly convinced that the defendant is guilty of the
8 crime charged, you must find the defendant guilty. If, on
9 the other hand, you think there is a real possibility that
10 the defendant is not guilty, you must give the defendant
11 the benefit of the doubt and find her not guilty.

12 Duties of jury and trial judge. I remind you,
13 during this trial, you and I have certain distinct duties
14 to perform. As the trial judge, it is my responsibility to
15 preside over the trial of this case and I also have the
16 duty to rule on the admissibility of evidence offered
17 during the trial. You are to consider the competent
18 evidence before you. If there was any testimony ordered
19 stricken from the record in this case during the trial, you
20 must disregard that testimony. You are to consider only
21 the testimony which has been presented through the
22 witnesses from the witness stand and any exhibits which
23 have been made a part of the record in this case.

24 I have the additional duty to charge you the law
25 applicable to this case. As the presiding judge, I am the

1 sole judge of the law of this case and it is your duty as
2 jurors to accept it and to apply the law as I now state it
3 to you. If you already have any idea as to what the law is
4 or what the law ought to be and it does not agree with what
5 I now tell you the law is, you must abandon, set aside your
6 idea, because you are sworn to accept the law and apply the
7 law exactly as I state it to you.

8 In every case tried in this court before a jury,
9 the jury becomes the sole and exclusive judge of the facts
10 in a case. A trial judge cannot intimate, state, comment
11 on or make any statement to a trial jury about the facts in
12 a case. Since you, the jury, are the sole judge of the
13 facts in this case, you are not to infer from what I have
14 said during the progress of this trial in ruling upon the
15 admissibility of evidence or otherwise, or anything that I
16 say now during the course of this instruction to you that I
17 have any opinion about the facts in this case. The law
18 does not allow me to have an opinion about the facts in
19 this case. That is a matter solely for you, the jury, to
20 determine. As jurors, it is your duty to determine the
21 effect, the value, the weight and the truth of the evidence
22 presented during this trial.

23 Direct and circumstantial evidence. There are two
24 types of evidence which are generally presented during a
25 trial; direct evidence and circumstantial evidence. Direct

1 evidence is the testimony of a person who claims to have
2 actual knowledge of a fact, such as an eyewitness or an ear
3 witness. It is evidence which immediately establishes the
4 main fact to be proven.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a fact.
7 It is evidence which immediately establishes a collateral
8 fact from which the main fact may be inferred.
9 Circumstantial evidence is based on inferences and not on
10 personal knowledge or observation.

11 The law, our law, makes absolutely no distinction
12 between the weight or value to be given to either direct
13 evidence or circumstantial evidence. Nor is there a
14 greater degree of certainty required of circumstantial
15 evidence than of direct evidence. You should weigh all of
16 the evidence in this case. After weighing all the
17 evidence, if you are not convinced of the guilt of the
18 defendant beyond a reasonable doubt, you must find the
19 defendant not guilty. If after weighing all of the
20 evidence, if you are convinced of the guilt of the
21 defendant beyond a reasonable doubt, you must find the
22 defendant guilty.

23 Credibility of witnesses. Necessarily, you must
24 determine the credibility of the witnesses who have
25 testified in this case. As you all know, credibility

1 simply means believability. It becomes your duty as jurors
2 to analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth. In determining the
4 believability of the witnesses who have testified in this
5 case -- excuse me.

6 In using your individual and collective good
7 judgment and common sense, you may believe one witness over
8 several or several witnesses over one witness. You may
9 believe part of the testimony a witness and reject the
10 remaining part of the testimony of that same witness. You
11 may believe the testimony of a witness in its entirety or
12 reject the testimony of a witness in its entirety. You may
13 consider whether any witnesses exhibited to you any
14 interest, bias, prejudice, or other motive in this case.
15 You may also consider the appearance, the manner, the
16 demeanor of a witness while on the witness stand. You may
17 consider whether a witness's testimony has been
18 corroborated by another witness's testimony, made stronger,
19 or if not corroborated, made weaker. You may consider if
20 there are any prior inconsistent statements by a witness in
21 the case. You may consider anything in this record that
22 will assist you in determining the credibility and
23 believability of the witnesses who have testified before
24 you in this case.

25 Expert witnesses. I know I have charged a shorter

1 version and this is not a lengthy version, I know I have
2 charged a shorter version of this during the course of the
3 trial; however, I will further instruct you the rules of
4 evidence ordinarily do not permit witnesses to testify to
5 opinions and conclusions. An exception to this rule exists
6 with witnesses that we call expert witnesses. A witness
7 who by education and experience has become an expert in
8 some art, science, profession, craft, or calling, may state
9 an opinion as to relevant and material matter in which the
10 witness claims to be an expert and may also state the
11 basis, the reasons for holding that opinion. You should
12 consider any expert opinion received in evidence in this
13 case. And like any other evidence, give it the weight you
14 think it deserves. If you decide that the opinion of an
15 expert witness is not based on sufficient education and
16 experience or if you conclude that the reasons given in
17 support of the opinion are not sound or that the opinion is
18 outweighed by other evidence, you may disregard the opinion
19 in its entirety.

20 An expert witness's testimony is to be given no
21 greater weight than that of any other witness simply
22 because the witness is an expert. Further, you are not
23 required to accept an expert's opinion even though it is
24 not contradicted.

25 Statement of Defendant. Statements alleged to have

1 been made by the defendant have been admitted into evidence
2 in this case. While the Court has determined that the
3 statements are admissible, I instruct you, that you make
4 the ultimate decision of whether or not the defendant made
5 the statements. If the defendant did make the statement,
6 you must determine whether or not the statements were made
7 by the defendant voluntarily and of her own free will.
8 This means that the statement -- statements was not caused
9 by pressure, force, fear, threats, coercion, or
10 intimidation or by hope or a promise of leniency or a
11 reward of any kind.

12 In determining whether or not each statement was
13 voluntary, you should consider both the characteristics of
14 the defendant and the details of the questioning. Some of
15 the factors that you must consider are the age of the
16 defendant, the defendant's education or lack of education,
17 the defendant's mental ability or capacity, the defendant's
18 IQ or intelligence, the defendant's background and
19 environment, the place and length of detention, the nature
20 of the question and the advice or lack thereof to the
21 defendant of her constitutional rights including, but not
22 limited to, the right to remain silent, that any statement
23 could be used against her in a court of law, the right to
24 have a lawyer present, that if she could not afford a
25 lawyer, a lawyer would be appointed to represent her

1 without any costs and that she could stop making a
2 statement at any time.

3 You must carefully consider all of the surrounding
4 circumstances, before you give any weight to any alleged
5 statement. The State has the burden of proving beyond a
6 reasonable doubt that the alleged statements were
7 voluntary. If you determine the statements was voluntary,
8 you may give the statement any further consideration that
9 you deem proper, fit and appropriate. You must decide what
10 weight, if any, should be given to any alleged statement.
11 If you determine that the alleged statement was not the
12 free and voluntary statement of the defendant, you should
13 not consider the statement at all.

14 Ladies and gentlemen, that covers the general
15 criminal law that applies to all criminal cases in South
16 Carolina. Just to recap by subject matter headings,
17 charge, arrest, indictment, not evidence; presumption of
18 innocence; reasonable doubt; duty of jury and trial judge;
19 direct and circumstantial evidence; credibility of
20 witnesses; expert witnesses; statement of the defendant.

21 Intent. In order to establish criminal liability,
22 criminal intent is required. By way of an example, the
23 mental state required to be proven by the State for a
24 particular crime might be purpose, purposefully,
25 intentional, with knowledge, recklessness or criminal

1 negligence. Criminal intent must be proven by the State
2 beyond a reasonable doubt. Criminal intent is always a
3 matter that must be determined by the jury from the
4 circumstances surrounding the situation. There's no way to
5 prove intent to a mathematical certainty. There is no way
6 medical science can dissect a person's brain and determine
7 what the person had in mind. So the law, our law, says
8 that criminal intent may be inferred from the circumstances
9 shown to have existed. This is how you make your
10 determination of whether or not the element requiring
11 intent was present. It is not necessary to establish
12 intent by direct and positive evidence, but intent may be
13 established by inference in the same way as any other fact
14 by taking into consideration the acts of the parties and
15 all the facts and circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 defendant intended to do based on the circumstances shown
19 to have existed. Criminal intent can arise from action or
20 a failure to act. It may arise from negligence,
21 recklessness, or an indifference to duty or to consequences
22 that is considered by the law to be the equivalent of
23 criminal intent.

24 Ladies and gentlemen, the charge in the indictment
25 is homicide by child abuse. I will cover that particular

1 statute which is in our code, Code Section 16-3-85(a) and
2 definitionally some terms 16-3-85(b). The defendant is
3 charged with homicide by child abuse. The State must prove
4 beyond a reasonable doubt that the defendant caused the
5 death of a child under the age of 11 years while committing
6 child abuse or neglect. A person is guilty of child abuse
7 if the person causes the death of a child under the age of
8 11 while committing child abuse or neglect and the death
9 occurs under circumstances manifesting an extreme
10 indifference to human life.

11 The term child abuse is defined in that statute.
12 Child abuse or neglect means an act or omission by any
13 person which causes harm to the child's physical health or
14 welfare. Harm is defined: Harm to a child's health or
15 welfare occurs when the person inflicts or allows to be
16 inflicted upon the child physical injury, including
17 injuries sustained as a result of excessive corporal
18 punishment; or B -- and/or B, fails to supply the child
19 with adequate food, clothing, shelter, or healthcare and
20 the failure to do so causes a physical injury or a
21 condition resulting in death.

22 Or to the child's physical and mental health or
23 welfare means that the defendant either 1, inflicted or
24 allowed to be inflicted on the child, physical injury; 2,
25 failed to supply the child with adequate food, clothing,

1 shelter, or healthcare and this failure caused a physical
2 injury or condition which caused death. That is the charge
3 of homicide by child abuse.

4 Finally, ladies and gentlemen, the form of the
5 verdict. There are two possible verdicts which you may
6 find in this case. There is no significance whatsoever in
7 the order in which I will now state these possible
8 verdicts, nor is there any significance whatsoever in the
9 order I have them listed on the verdict form. It is simply
10 that one must be stated first before the other. You may
11 find the defendant guilty of homicide by child abuse, or
12 not guilty.

13 Ladies and gentlemen, your verdict must be a
14 unanimous one. All 12 of you must agree. Your verdict may
15 not be based on passion, prejudice, bias, sympathy or any
16 motive not in evidence in this case. Yet, you will have
17 this form of the verdict along with all the items of
18 evidence that have been presented during the course of the
19 trial with you in your jury room during the course of your
20 deliberations.

21 This is a very simple form. It has the caption,
22 the name of the case, the indictment number and such and it
23 says, Please mark the appropriate verdict below and follow
24 the accompanied instructions carefully. If, after your
25 determination of the facts as you find them to be, you take

1 your facts and apply them to law, the standard of the law,
2 as I have explained it to you, you find that the State has
3 met its burden of proving its case beyond a reasonable
4 doubt and all twelve of you agree, it must be a unanimous
5 verdict, then your verdict would be guilty of homicide by
6 child abuse.

7 Mr. Foreperson, if that is the verdict, the
8 unanimous verdict of the jury, I will ask you to please
9 check on the line to the left of the words guilty of
10 homicide by child abuse, circle both the check mark and the
11 words guilty of homicide by child abuse, sign as presiding
12 juror and date it.

13 If after your determination of the facts in the
14 case, comparing the facts as you, the jury, find them to
15 be, apply them to the law as I have explained the law to
16 you, you find that the State has failed to meet its burden
17 of proving its case beyond a reasonable doubt and that is a
18 unanimous verdict, all twelve of you agree, I would ask
19 you, Mr. Foreman, to please check to the left of the two
20 words, not guilty, circle your check mark, circle the two
21 words not guilty, sign as presiding juror and date it.

22 After you have reached a unanimous verdict, if you
23 would please, and after having executed the verdict form, I
24 would ask you to please knock on the jury room door, inform
25 the bailiff that you have reached a verdict and at that

1 time, we will receive you back into the courtroom.

2 I'm going to ask you to momentarily step to your
3 jury room. Do not begin your deliberations until you are
4 instructed to do so. The law requires that I meet one
5 final time outside of your presence with the attorneys from
6 the time of the end of my charge until you begin your
7 deliberations. If I do not have to bring you out here for
8 any further deliberations, what will happen is we will
9 marshal the exhibits; I think it's 1 through 67 or 68; what
10 was it?

11 THE COURT REPORTER: 67.

12 THE COURT: All right. 67. Once those are
13 marshaled, they will be presented to you, you will be
14 directed by the clerk to begin your deliberations.
15 Everybody looks great today, which would mean our two
16 alternates would come out and then you would begin your
17 deliberations. Also I will make arrangements to have -- I
18 wanted to say 8-track, I know that's not what it is,
19 electronic -- electronic equipment back there for, I
20 believe there's a couple of 9-1-1 tapes, the video, and I'm
21 sure that all of you can operate that equipment.

22 And if you need anything further during the course
23 of your deliberations, Mr. Foreman, or any member of the
24 jury, just write out a note for me, knock on the jury room
25 door, give it to the bailiff and I will respond in a timely

1 manner.

2 Again, you may take your notes now. Do not begin
3 your deliberations until you are directed to do so. Thank
4 you. Thank you very much.

5 (The jury left the courtroom at 3:09 p.m.)

6 THE COURT: All right. Solicitor?

7 MS. MAYES: No exceptions from the State, Your
8 Honor.

9 THE COURT: Mr. Williams?

10 MR. WILLIAMS: No exceptions to the charge, Your
11 Honor.

12 THE COURT: All right. If y'all would marshal the
13 exhibits, and since I promised them the equipment, make
14 sure you have whatever you need for the 9-1-1 tapes.

15 MS. MAYES: Yes, sir, Your Honor.

16 THE COURT: And look at the form of the verdict.

17 MS. MAYES: I believe this computer that we have is
18 what we call a clean computer without internet access.

19 THE COURT: Is that suitable with you, Mr.
20 Williams?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: All right. And they can play the 9-1-1
23 and the video also?

24 MS. MAYES: Yes, sir.

25 THE COURT: All right. You got them altogether,

1 Brenda?

2 THE COURT REPORTER: Well they're together. I'm
3 waiting for them to tell me the numbers so I can check them
4 off.

5 THE COURT: Waiting what?

6 THE COURT REPORTER: They got to tell me the
7 numbers so I can check them off while they go through them.
8 They're here. They're all here.

9 (The attorneys were checking exhibits with the
10 court reporter.)

11 THE COURT: Thank you. Please be seated. Thank
12 you.

13 I understand y'all have reviewed the exhibits and
14 are satisfied with those exhibits?

15 MR. WILLIAMS: We have, Your Honor.

16 THE COURT: Solicitor?

17 MS. MAYES: We have, Your Honor, there was concerns
18 that there may not be room in the jury for the pack 'n
19 play. I believe one of the bailiffs mentioned that that
20 may be a concern. We can keep it here and then if they
21 want to see it, maybe they can send a note. Whatever you
22 want to do; I'm good either way.

23 THE CLERK: I don't know where they'd put it in
24 there unless they sit it in the middle of the table.

25 MR. WILLIAMS: That's really a judge call, Your

1 Honor. I would like for it to be back there, but there's
2 no place to put it; she's right about that.

3 THE COURT: What are you asking me for; it's in
4 evidence. What are you asking me to do?

5 MR. WILLIAMS: Just leave it out here, I guess,
6 Your Honor, and tell them if they want to see it, then we
7 can find a way to let them. Actually I want it in there,
8 Your Honor.

9 THE COURT: It's in evidence?

10 THE CLERK: Yes, sir.

11 THE COURT: All right. Take it there. All right.

12 (The jury started deliberations at 3:20 p.m.)

13 (It was reported to the Court that a verdict was
14 reached at 4:28 p.m.)

15 THE COURT: Please be seated. Thank you. I
16 understand our jury has a verdict. I would remind those in
17 the courtroom that the taking of a verdict can be very
18 emotional for one side, the other or both. I -- I enforce
19 the rules of decorum and proper demeanor and conduct in the
20 courtroom. I do not tolerate any show of emotion one way
21 or the other by one side or the other. So if you feel like
22 you cannot contain your emotions, after taking of the
23 verdict, I would ask you to please leave at this time. If
24 you remain, I do expect you to conduct yourself in such a
25 manner that is appropriate conduct for the courtroom.

1 All right. Anything before we bring in our jury
2 from the State?

3 MR. MCNAIR: No, sir, Your Honor.

4 THE COURT: Defense?

5 MR. WILLIAMS: Nothing from the defendant, Your
6 Honor.

7 (The jury entered the courtroom at 4:42 p.m.)

8 THE COURT: All right. Madam Clerk?

9 **VERDICT**

10 THE CLERK: Mr. Foreman, have you reached a
11 verdict?

12 THE FOREMAN: Yes, ma'am.

13 THE CLERK: Please pass it up by the bailiff.

14 THE COURT: All right. The verdict appears to be
15 in the proper form.

16 Madam Clerk, would you publish our verdict?

17 THE CLERK: Indictment 2017-GS-32-2364, State
18 versus Heather Marie Lawson. As to the homicide by child
19 abuse, we, the jury, unanimously find the defendant guilty
20 of homicide by child abuse. It is so signed by the
21 Foreperson August 10th, 2017.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 this is your verdict, please indicate, each of you, by
24 raising your right hand.

25 All hands raised, Your Honor.

1 THE COURT: Thank you, Madam Clerk.

2 Anything further for the jury from the State,
3 Solicitor?

4 MS. MAYES: Nothing from the State, Your Honor.

5 THE COURT: From the Defense, Mr. Williams?

6 MR. WILLIAMS: Only one thing, Your Honor.
7 Individual polling.

8 THE COURT: All right. Madam Clerk, would you
9 explain that procedure to our jury panel and then conduct
10 the polling of the jury?

11 **POLLING OF THE JURY**

12 THE CLERK: Yes, sir. As I call your juror number,
13 if you'll hold your hand up where I can recognize you, I
14 will ask you as to the verdict, was this your verdict and
15 is it still your verdict. At that time, please respond.

16 Number 2, as to the verdict, was this your verdict
17 and is it still your verdict?

18 THE JUROR: Yeah.

19 THE CLERK: Number 54. As to the verdict, was this
20 your verdict and is still your verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: 117. As to the verdict, was this your
23 verdict and is it still your verdict?

24 THE JUROR: Yes, it is.

25 THE CLERK: Number 15. As to the verdict, was this

1 your verdict and is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Number 11. As to the verdict, was this
4 your verdict and is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: 110. As to the verdict, was this your
7 verdict, is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: 142. As to the verdict, was this your
10 verdict, is it still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: 186. As to the verdict, was this your
13 verdict, is it still your verdict?

14 THE JUROR: It was.

15 THE COURT: It was and it is?

16 THE CLERK: And it still is?

17 THE JUROR: Yes.

18 THE CLERK: Number 53. As to the verdict, was this
19 your verdict, is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: 85. As to the verdict, was this your
22 verdict, is it still your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Number 88. As to the verdict, was this
25 your verdict, is it still your verdict?

1 THE JUROR: Yes, it is.

2 THE CLERK: 123. As to the verdict, was this your
3 verdict, is it still your verdict?

4 THE JUROR: Yes, ma'am, it is.

5 THE CLERK: Thank you, ma'am. All jurors polled,
6 Your Honor.

7 THE COURT: Thank you, Madam Clerk.

8 Anything further for the jury from the defense, Mr.
9 Williams?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: All right. Thank you. Thank you very
12 much.

13 Momentarily, ladies and gentlemen, I'm going to, of
14 course, release you from your jury service for the
15 remainder of the day and the remainder of the week. You do
16 not have to call back. You do not have to come back. As
17 you may recall, in general qualifications, jury service
18 this calendar year disqualifies that juror from further
19 service for this calendar year. So you would have about
20 three-and-a-half months of disqualification.

21 For the next two calendar years, if you have served
22 as you have done in state circuit court of record, you
23 would have an exemption from jury service in state circuit
24 court of record if you wish to exercise that exemption.

25 I did want to, as Mr. Williams pointed out during

1 his closing argument to you, he was sure I would thank you
2 for your service and I certainly will. I do thank jurors
3 for their service, as a matter of course, but it quite
4 frankly is very heartfelt as a matter of course. I realize
5 what a disruption it causes to both your personal and
6 professional lives and I do, along with all the parties
7 involved, in the trial of a case, thank you for your
8 service, your civic mindedness, your willingness to perform
9 your civic duties, and you know, stepping up to the plate.

10 I have found even sometimes you read the paper or
11 read the news on the internet or other sources that many
12 times our country can be quite divisive. I've never
13 experienced that with a jury panel. I have found when
14 there are small groups, small numbers, twelve in this case,
15 people come together and they resolve these very -- and
16 make these very difficult decisions whether it be in civil
17 court where the dispute may be over property or money or
18 injuries and such, or criminal court, that, of course, the
19 stakes are high, they're very high.

20 And I guess all these years of being a circuit
21 court judge, in addition to working with the wonderful
22 courthouse staff, officers, bailiffs, court reporters, just
23 everyone involved in the system, has been delightful to
24 work with, but also the citizens. We really couldn't do
25 this without you. They could do it without me, they could

1 -- they'd put somebody else up in a robe when I'm gone, who
2 I'm sure will stand up to the task of performing as a judge
3 and hopefully -- hopefully I have done so in some small
4 measure, but they couldn't do it without the citizens, both
5 civil and criminal, to try these things week in and week
6 out throughout the State of South Carolina.

7 I do thank you again. I won't to delay your
8 departure and I realize I've tried right near 300 cases as
9 a judge, the majority of which have been criminal cases.
10 Many of which have been homicides and homicides by child
11 abuse such as that and it -- it doesn't get any easier, but
12 I know how difficult it can be and almost traumatizing
13 sometimes to demand citizens up here, draft them, the last
14 -- last draftees in America since the Viet Nam War and have
15 them stand up and follow their oath and perform their
16 duties.

17 It's been my pleasure and privilege to -- and one
18 more privilege to the Bench. This is my last week with my
19 court reporter. She's leaving me, going on to I'm not sure
20 what color those pastures are, but she's going to a
21 different pasture and she's really been very close to me
22 both personally and professionally the years she's been
23 with me.

24 With that being said, you're now released from your
25 jury service. Again, thank you very much for your

1 participation and your dedication, focus and attention.

2 Thank you.

3 And, Mr. Foreman, the clerk would just like to meet
4 with you momentarily in the hallway behind the courtroom.

5 Thank you. Thank you very much.

6 (The jury left the courtroom at 4:42 p.m.)

7 THE COURT: All right. Motions, Mr. Williams?

8 **POST-TRIAL MOTIONS**

9 MR. WILLIAMS: Yes, Your Honor. That is motions
10 that are made after the return of the verdict. We would
11 move to set aside the jury's verdict and grant the
12 defendant a new trial on the basis that the evidence as a
13 whole, was insufficient as a matter of law for the jury to
14 have returned a verdict of guilty.

15 THE COURT: Thank you. Thank you, Mr. Williams.

16 MR. WILLIAMS: Thank you, Your Honor.

17 THE CLERK: The jurors are wanting to come in and
18 want to know if they can hear the verdict. Mr. Richardson
19 is taking them around and bringing them in the back.

20 THE COURT: Thank you. All right. As to the
21 motion for a new trial, I would respectfully deny that
22 motion. I believe there was overwhelming, even if a lower
23 standard, more than sufficient evidence for which the jury
24 to reach the verdict that they rendered and I would renew
25 all my pretrial, trial rulings, and all my evidentiary

1 rulings during the course of the trial.

2 Any other motions, Mr. Williams.

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: Any reason, Mr. Williams, why sentence
5 cannot be imposed at this time?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: If you would have Ms. Lawson step
8 around to the podium please.

9 **SENTENCE**

10 THE COURT: All right. Solicitor, anything further
11 from the State?

12 MS. MAYES: Your Honor, with the sentencing sheet,
13 I'm going to pass up some photographs of Minor 1. I know
14 that you saw some during the course of this trial, but we
15 did want to document them again for sentencing. The
16 severity and degree of injuries of blunt force trauma that
17 Minor 1 sustained.

18 THE COURT: All right. Yes, ma'am. Have you seen
19 these, Mr. Williams?

20 MR. WILLIAMS: I have, Your Honor.

21 THE COURT: Victim impact, Solicitor?

22 MS. MAYES: Your Honor, Mr. Tuckus is present in
23 the courtroom with our victim advocate. She has indicated
24 that he does not wish to address the Court regarding
25 sentencing, but I believe in discussions with law

1 enforcement, they just want to convey to the Court that
2 it's -- it's an extremely serious case in the minds of law
3 enforcement as well as the community.

4 THE COURT: Thank you. Thank you, Solicitor.

5 All right. Mr. Williams.

6 MR. WILLIAMS: Your Honor, she's 24 years of age.
7 She works in a canvas sewing company now. At the time that
8 this event occurred, she was working at a convenience
9 store. She has two children; one is four years of age, one
10 is two years of age. Those children are currently residing
11 with their father who was referenced in the trial. She has
12 absolutely no prior record of any kind that I'm aware of.

13 Throughout the entire trial, she's had her family,
14 who has stood by her, her mother, grandmother,
15 great-grandmother, mothers on both sides, cousins,
16 whatever. So and I guess the point of all that, Your
17 Honor, is that I think everybody in this courtroom would
18 say that the offense to the child was a heinous, terrible,
19 crime. They're here to say that they love her, referring
20 to my client, Heather, that she's been a good person
21 throughout her existence as far as they know; that
22 obviously the jury has spoken and we don't quibble with
23 what the jury has decided, but she -- if she were to speak
24 -- if Heather were to speak, she would say that she loved
25 her child.

1 Throughout the entire trial, she obviously has
2 denied that she was the person who caused this. But that
3 decision has been made. Her previous -- her condition
4 prior -- her existence on this earth before this child was
5 born was law abiding. After this event, as far as I know,
6 her existence has been law abiding and I think it's a shame
7 for everyone that this beautiful child is no longer on this
8 earth, but we would ask the Court to be as lenient as
9 possible based on these facts and circumstances.

10 And I don't know if Heather would like to say
11 anything to Your Honor, but I would ask Your Honor, if she
12 would, that you would entertain that.

13 THE COURT: Of course. Anything you'd like to say
14 Ms. Lawson?

15 THE DEFENDANT: I know I'm innocent, but the jury
16 has spoken. There's nothing I can do.

17 THE COURT: Any members of her family like to
18 address the Court on her behalf, Mr. Williams?

19 MR. WILLIAMS: I don't think so, Your Honor.

20 THE COURT: And I have noted as I always do in
21 trials, very tragic as you know, you're a very experienced
22 trial lawyer as is the -- as are the Solicitors. Being in
23 courtrooms, I don't wish upon anyone to have to be in a
24 courtroom. I may include myself. But when -- when there
25 is a criminal defendant having family support on his or her

1 behalf is very important, very important. Mothers, as you
2 say, grandmothers, siblings. I don't again, wish upon
3 anyone to have to be in a criminal courtroom, but if they
4 have to be, I wish I would see more fathers as much as I do
5 mothers. I've read from my favorite book many years ago,
6 there's only one emotion stronger than a tiger for its prey
7 and that's a mother's love for her child and I believe that
8 and I take into consideration that Ms. Lawson does have
9 some support, strong support and has had it throughout the
10 course of the trial. And there's no one in this courtroom
11 or elsewhere that would have heard these facts, not to
12 realize what a tragedy -- tragedy it was.

13 I watched with a high degree of interest as I watch
14 all the evidence throughout the trial of the case. The
15 fact that there was a video on the 25th of June at the
16 Carolina Convenience and I looked -- and in fact, I
17 couldn't -- I couldn't see -- I couldn't read it from my
18 angle. I asked my paralegal to read it for me and it was I
19 think 6:45 p.m. and it was very difficult to look at that
20 time stamp and realize that that child would be dead within
21 24 hours.

22 And just to position that against the fact that Ms.
23 Lawson was a working mother, to the extent that she had or
24 did take her children, three children, none over the age of
25 four, to work with her. That wasn't ideal, of course,

1 particularly given the duties and responsibilities she had
2 at work, but she did do that. And just not have the
3 ability to wrap my brain or my head around why things like
4 this happen.

5 In listening to the statements she gave to both
6 Detective Creech and Sergeant Barr, they all appear to be
7 misdirection, misguidance. As you related in your closing
8 and I've heard your story before, Mr. Williams, about being
9 adopted and your feelings for your mother. And that
10 experientially many years ago. I'm not a mother of course,
11 but a father, lost a child to what they call Sudden Infant
12 Crib Death and this isn't specific to me, but you tend to
13 rise to the occasions that you're put in. You tend to be
14 able to go outside your own boundaries.

15 It's been many years since I've been trained to
16 properly perform CPR, but I bet I'd try. You would too. I
17 don't quite wrap my mind around that. You have to stand
18 outside of yourself. You have to be selfless to be a
19 parent, a mother, father, or friend. You would put that
20 child above yourself. And you know, Mr. Williams, you've
21 heard me say many times, I don't -- I don't judge people; I
22 judge behavior. I don't label people. I try to take with
23 my hopefully cool head and warm heart and try to impose
24 sentences upon folks as I have to as best I can. Cases
25 like this make me realize there are a lot of children in

1 America, but not enough childhood. Seven months. Seven
2 months.

3 And really, when she was placed in that pack 'n
4 play, and I -- there's no need for me to be inflammatory or
5 passionate, dumped, dropped, or what have you, that
6 happens. Children can slip out of your arms, even when
7 you're trying for them not to, that can happen. In my
8 mind, that was no more than putting her in a coffin. I'm
9 not sure she ever got out of it. Most -- most of the time
10 you see something heart-shaped makes you smile. That
11 doesn't.

12 There is part of the statute I believe that says in
13 sentencing a person under this section, the judge must
14 consider any aggravating circumstances including, but not
15 limited to, a defendant's past pattern of child abuse or
16 neglect of a child under the age of 11 and any mitigating
17 circumstances, however a child's crying does not constitute
18 provocation so as to be considered a mitigating
19 circumstance. I do consider and I take it, Solicitor,
20 there is no past pattern of child abuse or neglect of a
21 child under the age of 11?

22 MS. MAYES: That is correct, Your Honor.

23 THE COURT: And as a mitigating circumstance, I
24 take in to account she has no prior criminal history, that
25 she has family support. I take into account the totality

1 of all the circumstances with a seven-month old child
2 that's totally defenseless. Health is to the extent that
3 they cannot care for themselves. Although on the video,
4 she did seem very well developed.

5 2017-GS-32-02364, State versus Heather Marie
6 Lawson, the jury having returned verdict of homicide by
7 child abuse. Taking into account all the facts and
8 circumstances, the totality of mitigation and such, the
9 defendant is committed to the State Department of
10 Corrections for a term of life without parole.

11 Good luck to you, Ms. Lawson.

12 MS. MAYES: Thank you, Your Honor.

13 THE COURT: 9:30 in the morning, Solicitor?

14 MS. MAYES: Yes, Your Honor.

15 THE COURT: Thank you. Thank you very much.

16 Court will be in recess until 9:30 in the morning.

17 MS. MAYES: Yes, sir, Your Honor.

18 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the days of August 7
13 through 10, 1017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 13th day of March, 2018.

18
19
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21
22
23
24
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Heather Marie Lawson, Appellant.

Appellate Case No. 2017-001715

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2020-UP-120
Submitted April 1, 2020 – Filed April 29, 2020

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

WILLIAMS, KONDUROS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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June 10, 2020

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: The State v. Heather Marie Lawson
Lower Court Case No. 2017GS3202364
Appellate Case No. 2017-001715

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,

V. Claire Allen

CLERK

Enclosure

cc: Heather Marie Lawson, 373466
Alan McCrory Wilson, Esquire
Wanda H. Carter, Esquire
William M. Blich, Jr., Esquire

STATE OF SOUTH CAROLINA)

County of Richland)Heather Lawson 373466)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

2020 CP 3203026)

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 SCDC Camille Griffin Graham
2. Name and location of Court which imposed sentence Lexington County
Court house in Lexington, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017G53202364
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 10, 2017 life w/o parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
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. Lexington County Court house
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 29, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

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

(a) inaffective counsel

(b) new evidence

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) There were several things he should have done and did NOT

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any 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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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) this is my first PCR
 (c) _____

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

(a) your arraignment and plea? No
 (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?
No

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. Robert Theo Williams 200 East Main St
Lexington, SC 29072
 ii. Robert Pachak 1330 Lady Street, Suite 401
Columbia, SC 29201
 iii. Wanda Carter 1330 Lady Street, Suite 401
Columbia, SC 29201
 (b) the proceedings at which each such attorney represented you:
 i. trial, sentencing
 ii. appeal
 iii. appeal

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

Sentence reduction

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

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

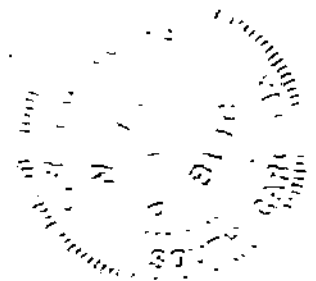
I, Heather Lawson 3734166, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Heather Lawson

SWORN to and subscribed before me this 1st day of September, 2020.

Cristy Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026



FILED

2020 SEP 14 AM 10:08

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2020CP3203026

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

I, Heather Lawson 373466, 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.

Heather Lawson

Applicant

SWORN or affirmed to and subscribed before me this

2nd day of September, 2020.

Cynthia Jones
Notary Public

My Commission Expires:

July 2nd, 2026



2020CP3203026

FILED

2020 SEP 14 AM 10:08

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Heather Marie Lawson, SCDC #373466,	)	Case No. 2020-CP-32-3026
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Heather Marie Lawson (Applicant) on September 14, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on June 27, 2016, following an investigation into the death over her seven-month old child. During its July 2017 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2017-GS-32-2364).

On August 7, 2017, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Robert Theo Williams, Esquire (Counsel) represented Applicant. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robert McNair of the Eleventh Circuit Solicitor's Office prosecuted the case.

A. Summary of Evidence Adduced at Trial

On June 26, 2016, Applicant beat her seven-month old baby to death by repeatedly punching the baby in the head with her fists. (R. 148). The only people present in the home at the

time of her death were Applicant, her one-year old daughter, and her three-year old son. (R. 148). Later that evening, Applicant left her toddlers at home alone and ran to her ex-husband's house with the child's body. (R. 148–49). Applicant claimed she had just found the baby in her pack 'n play under a heavy blanket. (R. 148–49). The child was not breathing. (R. 148–49).

Applicant's ex-husband's girlfriend called 9-1-1 while he took Applicant back to her house and instructed her to call 9-11. (R. 149). Applicant told the dispatcher that her other kids smothered the baby and jumped on her. (R. 149). When EMS arrived, they discovered bruising all over the baby's head. (R. 149). Slight rigor mortis had already begun to set in. (R. 149). EMS nonetheless attempted all live-saving procedures while rushing the baby to the hospital. (R. 149). The child was dead. The forensic pathologist who performed the autopsy determined the cause of death to be a homicide by blunt force trauma to the head. (R. 151–52).

Applicant told investigators the same story during her first interview. A forensic pediatrician then examined the body, and informed investigators that the siblings could not have caused such injuries. (R. 150). They then conducted a second interview with Applicant, and told her they did not believe her story that a one-year old and three-year-old did this. (R. 150–51). At that point, she disclosed that she took the baby to work with her the night of June 25th. (R. 151). She told them the baby fell out of a box and hit her head on the concrete floor. (R. 151). She then admitted that she lied in the first interview, and says she did notice the bruising the next morning. (R. 151). She also told them that the baby was acting lethargic and vomited after she fed her around 10:00 AM. (R. 151). When asked why she did not take the baby to the doctor, she replied that she was too tired and did not want DSS to get involved. (R. 151–52).

The forensic pathologist who performed the autopsy determined the cause of death to be a homicide by blunt force trauma to the head. (App. 151–52). A forensic pediatrician testified at

trial that the siblings could not have caused such injuries. (R. 150).

B. Verdict & Subsequent Proceedings

On August 10, 2017, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Pachak perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issues:

Whether the trial court erred in denying trial counsel's motion for a directed verdict when the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that [Applicant] committed the crime of homicide by child abuse?

On April 29, 2020, the Court affirmed Applicant's conviction and sentence. *State v. Lawson*, 2020-UP-120 (S.C. Ct. App. filed April 29, 2020). The case was remitted back to the circuit court on June 10, 2020. Applicant commenced this PCR action on September 14, 2020.

II. CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following (verbatim):

1. "Ineffective counsel"
 - a. "There were several thing he should have done and he did not."
2. "New evidence"

Applicant requests relief as follows:

"sentence reduction"

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the

¹ *Anders v. California*, 386 U.S. 738 (1967).

trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown

in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. *See id.*, at 695 (Where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

The State submits Applicant’s claims of ineffective assistance of counsel are without merit. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. RESPONSE TO ALLEGATION OF NEWLY-DISCOVERED EVIDENCE

Applicant next asserts she is being held in custody unlawfully as a result of newly-discovered evidence. The Act states a person may institute a PCR 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); *See* S.C. Code Ann. § 17–27–45(C) (2014) (allowing applications to be filed within one year of the date of actual discovery of the facts or from the date when the facts “could have been ascertained by the exercise of reasonable diligence”). An applicant requesting a new trial based on after-discovered evidence following 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)). The State submits Applicant cannot satisfy any of the elements required under *Hayden*. However, the record likely does not refute or disprove Applicant’s claim of newly-discovered evidence; therefore, the State requests an evidentiary hearing to fully resolve this issue. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant’s claims of ineffective assistance of counsel and newly-discovered evidence are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations because Applicant has failed to provide specific facts to support each claim. “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that she was deprived of adequate and effective assistance of counsel is

insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCPP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend her application to provide a more definite statement of her allegations of ineffective assistance of counsel and newly-discovered evidence pursuant to Rule 12(e), SCRCPP and the Post-Conviction Procedure Act.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. 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. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)-(b), SCRCPP. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, 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, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State 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 the State.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section VI, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel and newly-discovered evidence.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
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P.O. Box 11549
Columbia, S.C. 29211

March 1, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE FAMILY COURT
COUNTY OF LEXINGTON	)	2020-CP-32-03026
Heather Lawson,	)	
	)	
Petitioner,	)	TRANSCRIPT OF RECORD
	)	
vs.	)	April 7, 2023
	)	
State of South Carolina,	)	Lexington, South Carolina
	)	
Respondent.	)	
	)	
	)	
	)	

B E F O R E:

THE HONORABLE KRISTI CURTIS, Judge

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

ASHLEY MCMAHAN, Esquire
Attorney for Petitioner

T. CRUISE MITCHELL, Esquire
Attorney for State

Recorded by: DCRP

Transcribed by: MISSY BROWN
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Heather Lawson				
By Ms. McMahan:	4		24	
By Mr. Mitchell:		13		28
Robert Theo Williams				
By Mr. Mitchell:	30		48	
By Ms. McMahan:		38		
CERTIFICATE OF REPORTER	52			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

****Digital court reporter/courtroom monitor did not
mark any exhibits during requested hearing.****

P R O C E E D I N G S

April 7, 2023

(WHEREUPON, court was in session with all parties present when the following matters were had.)

MS. MCMAHAN: Good morning. Judge, this is 2020-CP-32-3026. It's Heather Lawson versus the State. And at this time the applicant will call Heather Lawson.

(The witness was duly sworn.)

THE CLERK: Thank you.

HEATHER LAWSON,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. MCMAHAN:

Q. Would you state your name for the record?

A. Heather Lawson.

Q. And did you file this PCR application?

A. I did.

Q. Okay. We had some conversations. Do you remember what I told you about what the judge can do for your PCR, that you can only start over from the beginning, that she can't reduce your sentence?

A. Yes, ma'am.

Q. Understanding that, do you still wish to go forward?

A. Yes.

Q. Who was your attorney?

A. Theo Williams.

1 Q. Okay. Was he retained or appointed?

2 A. Retained.

3 Q. Were you in the detention center the whole time or
4 were you out on bond?

5 A. I was out on bond.

6 Q. How long were you out on bond for?

7 A. About eight months.

8 Q. How many times would you say that you met with Mr.
9 Williams?

10 A. Like three or four.

11 Q. What were you guys talking about when you guys met
12 with each other?

13 A. He just told me -- one time he said that there was no
14 plea being offered. He told me that -- one time it was
15 just to show me the pictures of my daughter so I would be
16 prepared when they showed them in the courtroom. And the
17 other time was to just go over and ask about the details of
18 what happened.

19 Q. Did he ever have a conversation with you about what
20 your trial strategy was or anything?

21 A. No.

22 Q. Did you ever have a discussion about witnesses you
23 might be able to call in your defense?

24 A. We had asked him about character witness and he
25 dismissed it.

1 Q. Did he explain to you that generally you don't want to
2 open up the door to character in a trial?

3 A. Yes.

4 Q. Did you have a conversation about that?

5 A. Yes.

6 Q. So what did he tell you that you were charged with?

7 A. That I was being charged with murder/homicide by child
8 abuse.

9 Q. Did he tell you what it carried?

10 A. Yes, he told me it carried 25 to life.

11 Q. Were you wanting some type of plea offer? Was that
12 what you were trying to look for or ---

13 A. No. I had never asked for a plea. But even before I
14 was asked -- could even ask, he told me there wasn't one
15 being offered, that even if I was to plea, they were still
16 moving for life.

17 Q. So regardless of what happened, the State was going to
18 ask for life?

19 A. Yeah, that's what he told me.

20 Q. Did he tell you you could just go ahead and plead to
21 what you were charged with?

22 A. No.

23 Q. So was it always a situation where you wanted a trial?

24 A. Yeah.

25 Q. So what do you think that Mr. Williams could have done

1 better in handling your case?

2 A. He could have told me the different -- like came up
3 with a strategy and talked to me about what was gong to
4 happen, what was going on, the process and everything else.

5 Q. So he never kind of walked you through, like, what the
6 whole process was from arrest to conviction?

7 A. No.

8 Q. I'm sorry to interrupt you. Go on.

9 A. He could have asked me if I was even willing to take a
10 plea or if I felt there was anything, like, -- to just,
11 like, -- I don't know. Just even, like, during the trial,
12 when, like, there were lies told on the stand and I would
13 point out, write down, and tell him that this was not true
14 and this, you know, overstated that, he never brought it
15 up.

16 Q. So you don't think he adequately crossed those people
17 that were lying about their lies?

18 A. Right.

19 Q. What was the issue with the coroner? Was the coroner
20 called?

21 A. The coroner was not called, because when I had at --
22 we're at the hospital and I was talking to the coroner and
23 she was in the room with me by herself. And I had told her
24 about my daughter falling at the store the day before. The
25 solicitor -- or the detective, Creech, was not in the room

1 at the time. So when I later told him about my daughter,
2 he said that I had never brought it up and that I had lied
3 to him.

4 Q. So when you say he, do you mean Creech or do you ---

5 A. Creech.

6 Q. Okay. And who was Creech?

7 A. He was one of the detectives on the case.

8 Q. And who was Barr?

9 A. She was also a detective.

10 Q. And what was your issue with her?

11 A. My issue with Traci was that she's someone that I've
12 know since I was a child. She was more family. And she
13 had me write stuff during -- in my statement, more her
14 words than mine. And I just -- even when I had asked my
15 first attorney, the State-appointed one, about the conflict
16 of interest because she was family, if that was an issue,
17 and they told me, No, because Lexington's small and
18 everybody knows everybody.

19 Q. When you say family, do you mean actually related or
20 just a ---

21 A. No. Just, like, she was basically family. She would
22 always come visit us, spend time with us. She would come
23 to my soccer games, birthday parties.

24 Q. Is that because she was also involved in your family
25 before?

1 A. When I was small, she -- her first solo case as a
2 detective was my father. And she became personally
3 involved during that case and she became like part of our
4 family through that case.

5 Q. And did Mr. Williams discuss any, like, possible
6 expert witnesses or anything that could have been called on
7 your behalf?

8 A. No.

9 Q. When you met with him the one time to talk about what
10 happened -- well, when you met with him all those times,
11 did you talk about anything else, other than, you know, the
12 pictures, your version of events, and kind of what you were
13 charged with?

14 A. No.

15 Q. Did you talk to anybody else in his law firm?

16 A. No. Actually, when I was in County, I don't remember
17 his name, but it was another one in the firm. He came
18 basically to introduce himself and tell me that they were
19 taking over my case.

20 Q. Did you know that Mr. Williams was being hired to
21 represent you?

22 A. Yes. I found out -- after he was retained by my
23 family, they told me.

24 Q. And you had Mr. Mauldin before that, from the public
25 defenders' office?

1 A. Yes.

2 Q. But that was just briefly?

3 A. Briefly.

4 Q. What were you initially charged with?

5 A. The night I was arrested Traci told me I was being
6 charged with unlawful conduct to a minor.

7 Q. When did you find out it had been upgraded?

8 A. When I went to my first bond hearing.

9 Q. That's when they read out the charge, second charge?

10 A. Mm-hmm.

11 Q. Was unlawful conduct still kept?

12 A. No.

13 Q. So what were you ultimately tried on?

14 A. Murder/homicide by child abuse.

15 Q. Did you guys meet just before the trial or anything?

16 A. Yeah. That was the three times I saw him was in the
17 few weeks preceding our trial.

18 Q. So what did he tell you about, you know, what could
19 happen if you were found guilty at that trial?

20 A. Just that I would be sentenced and sent to prison.

21 Q. On the same day?

22 A. Yeah.

23 Q. Did Mr. Williams ever discuss, like, a need for an
24 expert or anything like that?

25 A. No.

1 Q. Well, did he go through kind of what the State's
2 experts were saying had happened to your child?

3 A. No.

4 Q. Do you -- what kind of -- do you feel like he could
5 have done a better job of defending you?

6 A. Yes.

7 Q. Anything in particular you felt he should have done?

8 A. I definitely felt like when I presented him with the
9 issues and the statements by other witnesses, that he
10 should have addressed the issues that I pointed out.

11 Q. And who particularly did you point out?

12 A. Richard Tuckus had lied on the stand. His story had
13 changed twice during his questioning. And when I said
14 something to Theo, he never addressed the fact that the
15 story had changed.

16 Q. Okay. Anybody else?

17 A. Traci Barr, when she said that she had -- that the
18 first time she met me was at the hospital after Minor¹ died.

19 Q. What was not right about that?

20 A. She first met me in 2003.

21 Q. Oh. So she said she first -- so really the first time
22 you ever met her was in 2003, not that first time at the
23 hospital ---

24 A. Right.

25 Q. And he never asked her, like, well, isn't it true

1 you've really known her family for a long time?

2 A. Right. It was never even asked if Traci knew me prior
3 to this case.

4 Q. When you were talking to Traci and when you first met
5 with her at the hospital what were your thoughts about what
6 was going on?

7 A. Truth ---

8 Q. She wanted you to believe that something else was
9 going on, other than what you found out?

10 A. Truthfully, I don't really remember. I was still in
11 shock hearing that my daughter was dead, not being allowed
12 to see her, and not being allowed to have my family in the
13 room with me. Even before I was charged or arrested with
14 anything, they wouldn't let me talk to my family.

15 Q. And did Mr. Williams present a defense on your behalf
16 during trial?

17 A. Huh-uh.

18 Q. What was your defense that you wanted out there?

19 A. I wanted it known, like, I was not the last adult in
20 the room with her before she died. The fact that -- just
21 everything. Like there was never a defense, even, strategy
22 talked about or anything.

23 Q. Who was the last adult with her when she died?

24 A. Richard.

25 Q. And who is Richard?

1 A. Her father.

2 Q. And where were you when -- so obviously you weren't
3 home at the time?

4 A. I was home, but I was in the other room. Our front
5 door was in the children's bedroom. And Richard was the
6 last one in there when he left that day, before I found
7 Minor 1.

8 Q. So Richard had been in the room with her?

9 A. Right.

10 Q. And then he leaves and then you find Minor 1?

11 A. A few hours later, yes.

12 Q. And then -- and then you called 9 -- who called 9-1-1?

13 A. I did.

14 Q. And then you end up in the hospital?

15 A. Yes.

16 Q. Anything else you want Judge Curtis to know about your
17 PCR today?

18 A. No.

19 MS. MCMAHAN: Answer any questions that the
20 attorney general may have for you.

21 CROSS-EXAMINATION BY MR. MITCHELL:

22 Q. Good morning, Ms. Lawson.

23 A. Good morning.

24 Q. Do you remember giving multiple statements to law
25 enforcement?

1 A. Yes.

2 Q. And do you remember your -- in your first statement
3 with Detective Creech, do you remember what your story was?

4 A. I had told him the events of the day up until I found
5 Minor 1.

6 Q. Do you remember telling him that it must have been
7 your other two children, Minor 3 and Minor 2, who did it?

8 A. Yes.

9 Q. Do you remember in your second statement to law
10 enforcement at the police station you said your daughter
11 appeared fine the day of with no significant bruises?

12 A. Nothing major, just the small bruise on her forehead.

13 Q. And with regard to the fall at the BP, you never
14 mentioned that in your first statement?

15 A. I hadn't thought about it. And then the coroner --
16 when the coroner came in the room at the hospital and she
17 asked me about the events of the previous night, I told
18 her. But the events of that day, when I was asked about
19 that day, no, I did not say.

20 Q. And do you remember in all three statements you made,
21 you testified that you ran over to Richard's house after
22 you found your baby dead?

23 A. Yes.

24 Q. So Richard -- so you were the last one to see your
25 daughter?

- 1 A. When she was already -- when I found her dead.
- 2 Q. Yet you testified -- you gave a statement saying that
- 3 Richard left your house ---
- 4 A. Mm-hmm.
- 5 Q. --- after you had sex with him around noon?
- 6 A. Right.
- 7 Q. And that he didn't come back; right?
- 8 A. Right.
- 9 Q. And then where were you during this time?
- 10 A. I was in the living room when he left.
- 11 Q. And then what time did you find your daughter?
- 12 A. Around five.
- 13 Q. And Richard had not come back?
- 14 A. No.
- 15 Q. And do you remember what you did after you found your
- 16 daughter dead?
- 17 A. I ran from the house, because I didn't want to believe
- 18 what I was seeing was real.
- 19 Q. And where did you go?
- 20 A. To Richard's, next door.
- 21 Q. And what did you do with your other two kids?
- 22 A. They stayed standing in the room.
- 23 Q. They're still in the house?
- 24 A. They were still in the house.
- 25 Q. And your daughter had died?

1 A. Yes.

2 Q. And you didn't call 9-1-1 when you found your daughter
3 dead; correct?

4 A. I did after I got back to the house.

5 Q. Were you the first person to call 9-1-1?

6 A. Originally I had thought so, but it came out in the
7 trial that I was not.

8 Q. And do you know who was the first person to call 9-1-
9 1?

10 A. It was Rochelle.

11 Q. And who is Rochelle?

12 A. She was Richard's girlfriend.

13 Q. And you didn't call 9-1-1 until after Richard told you
14 to call 9-1-1; correct?

15 A. When we got back to the house, yes, I called 9-1-1.

16 Q. And do you recall a 9-1-1 operator testifying at your
17 trial?

18 A. Yes.

19 Q. And she informed you that you should perform CPR on
20 the child; correct?

21 A. Correct. She tried to tell me, but the only thing
22 going through my head was we were taught if you do not know
23 how to perform CPR, you are never to attempt it, especially
24 on a child, because you could actually kill the child nine
25 -- more often than not, than help them.

1 Q. But in this situation, you were being advised to
2 perform CPR; correct?

3 A. She asked me if I could.

4 Q. And who actually did try to perform CPR?

5 A. Richard had put her on the floor and -- but the EMS,
6 they got there before he could.

7 Q. So in your first statement to law enforcement, you
8 said that after you got home from work you put your baby
9 down?

10 A. Mm-hmm.

11 Q. And she was fine the next morning; correct?

12 A. Yes.

13 Q. And then you went and took a nap.

14 You put -- when was the last time you saw -- in
15 the first statement you told law enforcement you put down
16 your daughter around 1:40, 2 p.m.; correct?

17 A. No, it was around lunch time. It was around noon.
18 Around -- between 11 and 12 when I put her down.

19 Q. Well, that's not what you said in your first
20 statement; correct? You said in your first statement that
21 you -- that you put her down around 1:40, 2 p.m.?

22 A. I truthfully don't remember what time I said because I
23 was not exactly coherent when they were questioning me.

24 Q. If you look at the transcript, would that help refresh
25 your memory?

1 A. Yes.

2 MR. MITCHELL: Beg the Court's indulgence, Your
3 Honor.

4 (Pause.)

5 MR. MITCHELL: May I approach the witness, Your
6 Honor?

7 THE COURT: Uh-huh.

8 Q. This is during the ---

9 MR. MITCHELL: And do you have a packet, Your
10 Honor?

11 THE COURT: Uh-huh. I do.

12 Q. This is on page 356 of the record. This is during the
13 testimony of Detective Creech.

14 You said in your first statement, The last time I
15 checked on her was around 12 or 1 and it looked like she
16 was sleeping.

17 And then you responded, All right.

18 So at this point, instead of a nap at 1:40 or 2,
19 she's stating the last time she checked on her would have
20 been 12 or 1?

21 That is correct.

22 A. Yes.

23 Q. So do you remember telling law enforcement that you
24 had originally put her down at 12?

25 A. Yes.

1 Q. And then you changed your story to 1:40 to 2:00? Oh,
2 I'm sorry. In your first statement you said 1:40 or 2.
3 And then in your second statement you said it was around
4 noon?

5 A. Right.

6 Q. And then in your second statement you claim that your
7 daughter had fallen out of a box at a BP station; correct?

8 A. Right.

9 Q. And you brought your daughter to work with you?

10 A. I did.

11 Q. And where did you put your daughter when you were
12 watching her at the BP?

13 A. Originally I was holding her until -- and she was --
14 there was an empty box on the floor beside my chair where I
15 was sitting while I was going over surveillance of the --
16 our employee who was stealing, and she was beside me. And
17 then after my employee left, I was by myself. So when a
18 customer came in, I had to get up and go to the front.

19 Q. So your daughter was in a cardboard box; correct?

20 A. Yes.

21 Q. And you never mentioned this fall at the BP in your
22 first statement; correct?

23 A. Not at the hospital with Creech.

24 Q. Then you -- then you proceeded to have an interview
25 with Sergeant Traci Barr; correct?

1 A. Right.

2 Q. And then you included a bunch of additional accidents
3 that may have occurred, including, she may have hit her
4 head falling from the playpen, on a toy after being pushed
5 over by her brother, on a doorway walking into work, on
6 floor after falling out of the cigarette box, corner of the
7 office door, and on the car while putting her in the car
8 after work. Do you remember that?

9 A. I do. Those came about because that same night after
10 we had left the hospital, Traci was asking me if it was
11 possible, and I told her I didn't know. I was extremely
12 upset. My daughter had just died. I was in a room,
13 couldn't see my family or anything. And she was asking me,
14 Is this possible? Is that possible?

15 Q. Yet you didn't mention -- you didn't think to mention
16 these earlier?

17 A. They weren't -- I didn't even consider those until
18 Traci asked me -- brought those direct scenarios and asked
19 if it was possible.

20 Q. So the first time you were asked about whether
21 anything may have occurred to your child was during -- was
22 during the interrogation with Detective Barr?

23 A. Yes.

24 MR. MITCHELL: I beg the Court's indulgence, Your
25 Honor.

1 (Pause.)

2 Q. Do you remember in your first statement to Detective
3 Creech you said your daughter appeared fine?

4 A. Yes.

5 Q. And then in your second statement you claim that she
6 was vomiting and crying uncontrollably during breakfast?

7 A. I said that after she had ate a new baby food that she
8 had never had before, she threw it up, yes. And she was
9 fussy, crying. She was teething and she had RSV. It was
10 not uncommon for her to cry.

11 Q. And when you got home the night of work, the night
12 before your daughter's death, she was crying uncontrollably
13 and you -- you stated you dumped her into the playpen?

14 A. I laid her in the playpen.

15 Q. You stated you dumped her in the playpen?

16 A. I stated that I went to lay her in the playpen and as
17 I was leaning over, not even a foot from the playpen, her
18 body was here, and, like, six inches was the mat, she
19 slipped from my arms and fell right there into the playpen.

20 Q. And do you remember telling law enforcement that you
21 didn't even try to stop it because you were too tired?

22 A. I did.

23 Q. And your daughter continued to cry uncontrollably.
24 And what did you do next?

25 A. I went into the other room.

1 Q. And you turned on Family Guy to drown out the sound of
2 crying?

3 A. I did.

4 Q. As I always do?

5 A. I did.

6 Q. And do you remember an expert witness testifying, Dr.
7 Susan Luberoff, that the fall at the BP could not have
8 caused the injuries that killed your daughter?

9 A. I do remember.

10 Q. Do you recall the video at the BP of your daughter
11 falling out of the box being admitted into evidence at your
12 trial?

13 A. I do.

14 Q. And do you recall Dr. Janice Rice testifying that your
15 daughter's injuries were also inconsistent from the fall at
16 the BP box?

17 A. I do.

18 MR. MITCHELL: I beg the Court's indulgence, Your
19 Honor.

20 Q. And do you recall Dr. Susan Luberoff testifying that
21 the multiple bruises to your daughter's head occurred
22 contemporaneous with one each other and weren't injuries
23 that occurred over a period of time?

24 A. I remember her saying that.

25 Q. And do you remember her testifying that these injuries

1 could be consistent with fists?

2 A. Yes.

3 Q. And do you remember Dr. Luberoff testifying that death
4 would have occurred in a very short time span after the
5 assault?

6 A. Yes.

7 Q. And you were given Miranda rights before each of these
8 statements; correct?

9 A. Right.

10 Q. You had signed a written Miranda form, initialed by
11 everybody; correct?

12 A. I did.

13 Q. And furthermore, do you remember having a hearing
14 before trial where you were contesting the admissibility of
15 those statements?

16 A. The one when I was still in County?

17 Q. Correct.

18 A. Yes.

19 (Off-record discussion at counsel table.)

20 MR. MITCHELL: I beg the Court's indulgence, Your
21 Honor.

22 (Pause.)

23 Q. So from your statement that you gave law enforcement
24 and the testimony here today, you were the last adult to
25 see your child alive; correct?

1 A. In the old -- in my original statement, yes. But
2 after I thought about the events of that day, I realized
3 that as Richard left the house through the children's room,
4 he was the last adult in the room before I found her dead.

5 Q. How did he exit the house?

6 A. Through the front door, which was in the children's
7 bedroom.

8 Q. That's the only door he could have gone out; correct?

9 A. Correct.

10 Q. Because your back door was broken?

11 A. The back door was broken.

12 Q. And also, it wasn't just your first statement, your
13 second and third statement with law enforcement, you never
14 brought up to them the possibility that Richard might have
15 done this?

16 A. Because at that time, it had never crossed my mind.

17 Q. So, in fact, the first time you ever brought up this
18 about Richard Tuckus was at your trial?

19 A. Yes.

20 MR. MITCHELL: I beg the Court's indulgence, Your
21 Honor.

22 No further questions, Your Honor.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION BY MS. MCMAHAN:

25 Q. How often was Richard alone with her?

1 A. Almost daily.

2 Q. And that was her dad?

3 A. It was her dad. He never actually interacted with
4 her, but anytime he entered or left the house, if she was
5 in her playpen, he was alone with her.

6 Q. And you say he left from the front door. That's the
7 room where the kids are?

8 A. Yes.

9 Q. And your other kids are there too?

10 A. Yes.

11 Q. Did they sometimes, kind of, -- would they have played
12 rough with *Minor 1* or anything like that?

13 A. They would. There were several times I had found them
14 inside *Minor 1*'s playpen.

15 Q. And how old are those two?

16 A. At the time my son was almost four and my daughter,
17 *Minor 3*, was almost two.

18 Q. And the four-year-old was definitely climbing around
19 stuff; right?

20 A. Yes.

21 Q. And the two-year-old was walking and learning to walk?

22 A. She was already walking and climbing. My son had
23 actually learned how to push stuff up to help him climb.

24 And she would follow his ---

25 Q. Lead?

1 A. Yeah. -- his lead and climb up behind him.

2 Q. And the night before, how many hours did you work at
3 the gas station?

4 A. I had went in. I had worked that morning from like 5
5 or 6 until around 12. Then I had to leave to go pick up my
6 children from my Granny Debbie, who was watching them at
7 the time. And I was back at the gas station some time --
8 it was later that evening.

9 Q. Do you remember what time you got off work?

10 A. I left at a little after 11.

11 Q. So you had worked more than eight hours that day?

12 A. Yes.

13 Q. Is it likely you worked closer to 12? 12 hours? So
14 if you'd gotten in five or six, that would be about six
15 hours. Did you go in around 5 p.m later that night?

16 A. Yes.

17 Q. Besides your granny, would Richard ever watch the kids
18 or would anybody else watch the children?

19 A. I had another babysitter between Monday and Friday. I
20 think her name was Monica. And then my Granny Debbie or
21 anybody else would watch them Saturday mornings when I went
22 in. And if I had to go extra, sometimes I was able to find
23 a -- most of the time I could find a sitter.

24 Q. So you heard the attorney general ask about your
25 statements. So ---

1 A. Mm-hmm.

2 Q. --- one of those statements I guess he was asking
3 about was with Creech. But did Creech ever ask you
4 specifically what happened the night before?

5 A. No.

6 Q. Who was the only one that asked you about the night
7 before?

8 A. The coroner.

9 Q. So Barr didn't ask you about the night before?

10 A. No.

11 Q. Do you feel like Barr was putting her words in your
12 mouth when you were writing that statement?

13 A. She was.

14 Q. And at the time were you incredibly distraught over
15 what was going on?

16 A. I was.

17 Q. Were you crying?

18 A. I was.

19 Q. Was that whole kind of, like, afternoon from the time
20 you found ^{Minor 1} forward just kind of a blur for you?

21 A. It is.

22 Q. And after you sat -- were you able to become a bit
23 more clearheaded about the whole situation once you were
24 able to calm down?

25 A. Once I was able to calm down and able to actually

1 reflect on things.

2 Q. That's when you sort of remembered some of the
3 details?

4 A. Yes.

5 Q. And did you discuss these details with Mr. Williams?

6 A. I did.

7 Q. Do you feel like he adequately addressed those details
8 in your trial?

9 A. No.

10 Q. Do you feel like he adequately addressed the issue of
11 Richard during your trial?

12 A. No.

13 Q. Do you feel like he adequately addressed the
14 discrepancies in your statement based on what they were
15 asking you?

16 A. No.

17 Q. Was there anything ever -- any questioning of Ms. -- I
18 mean of Investigator Barr about who kind of came up with
19 that statement and who wrote it?

20 A. No.

21 MS. MCMAHAN: I have nothing further, Your Honor.

22 MR. MITCHELL: Just briefly, Your Honor.

23 RECROSS-EXAMINATION BY MR. MITCHELL:

24 Q. Do you recall at trial when Dr. Luberoff testified
25 that she examined both of your children in a controlled

1 setting?

2 A. Yes.

3 Q. She determined that -- witnessed no aggression from
4 either of them?

5 A. Yes.

6 Q. And do you recall your former babysitter, Monica Wise,
7 testifying?

8 A. Yes.

9 Q. And she testified that she never witnessed ^{Minor 2} or
10 ^{Minor 3} acting aggressively towards your daughter?

11 A. Right.

12 Q. And Ms. Wise testified she would babysit your children
13 eight to ten hours a day, five days a week?

14 A. Yes.

15 Q. So you would agree she was with -- around them a
16 significant amount of time?

17 A. Right.

18 MR. MITCHELL: I beg the Court's indulgence, Your
19 Honor.

20 (Pause.)

21 Q. And you were distraught that day; correct?

22 A. Yes.

23 Q. And as you testified, the day was pretty blurry?

24 A. It was.

25 Q. So things could have happened that you don't remember?

1 A. Possibly.

2 MR. MITCHELL: No further questions, Your Honor.

3 THE COURT: You can step down.

4 MS. MCMAHAN: The applicant rests, Your Honor.

5 MR. MITCHELL: The State calls Mr. Robert Theo
6 Williams.

7 (The witness was duly sworn.)

8 THE CLERK: Thank you. Please be seated in the
9 witness stand.

10 ROBERT THEO WILLIAMS,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. MITCHELL:

13 Q. Good afternoon, Mr. Williams.

14 A. Good afternoon. Good morning.

15 Q. It's morning still. All right. My time's all messed
16 up.

17 How long have you been practicing law?

18 A. This November will be 47 years.

19 Q. And a lot of your time practicing has been in criminal
20 law?

21 A. Probably since '96, ninety-five percent of it has been
22 criminal law.

23 Q. And were you retained in this case?

24 A. I was.

25 Q. And did you meet with Ms. Lawson before trial?

1 A. Yes.

2 Q. Do you recall how many times before trial?

3 A. I have no idea. Several.

4 Q. Would you say over three?

5 A. Yes.

6 Q. Over four then?

7 A. Probably. Yes.

8 Q. During those meetings did you discuss the elements of
9 what she was charged with?

10 A. Yes.

11 Q. And the possible consequences?

12 A. Yes.

13 Q. Did you discuss with her the discovery?

14 A. Yes, every bit of it.

15 Q. And the -- discuss with her the State's evidence in
16 this case?

17 A. Yes.

18 Q. And before trial, was there ever a plea offer offered?

19 A. Not that I'm aware of.

20 Q. Had there been a plea offer offered, would you have
21 brought that to the attention of Ms. Lawson?

22 A. Sure, I would.

23 Q. And what was your defense theory in this case?

24 A. I attacked everything that Suzanne threw at me, from
25 insinuating that her boyfriend was somehow involved in it,

1 to the two children somehow having caused it, to some
2 unknown person caused it, to attacking the cause of the
3 damage that was done to this child. I tried to look for
4 any opening I could get.

5 Q. And you attacked all these -- all the State's theory
6 during your cross-examination of the expert witnesses;
7 correct?

8 A. Well, sure. Like one of the expert witnesses had
9 indicated that -- I think we even talked about the brain of
10 the child. And she was talking about that if you opened --
11 even opened the head, you wouldn't see any evidence of any
12 type of damage to the brain itself. And it appeared that
13 everywhere I went, they closed that gap. Suzanne did a
14 very good job on redirect, and they closed the gap.

15 But the only thing I think probably would have
16 saved her would have been if she hadn't made so many
17 statements. Inconsistent statements, I should say.

18 Q. And did you cross-examine Richard Tuckus?

19 A. I did.

20 Q. And was one theory of the case that he possibly could
21 have done it or somebody else?

22 A. Sure. I may have insinuated that paying money for
23 support of the child was an issue. I tried early on to
24 open the gates about another child that had died who was a
25 child of his, and they had closed that by -- by motion

1 earlier, prior to the case being tried.

2 Q. So the State filed a motion in limine to exclude any
3 talk about the death of the other child?

4 A. They did.

5 Q. But you would have brought that up if it was not ruled
6 inadmissible.

7 A. Absolutely. Because it's strange. It's really
8 strange that you would have two children, same father,
9 different mothers, who somehow have died.

10 Q. And when you cross-examined Detective Creech, you
11 brought up -- did you bring up the fact that there was
12 another witness present, the coroner?

13 A. Yes.

14 Q. And was it part of your theory to say, Why would the
15 State not be calling the coroner as a witness?

16 A. Sure. Sure, even though I knew the answer. But I did
17 try to bring that up.

18 Q. And did you also bring up why one of the other
19 children weren't brought in as witnesses as well?

20 A. Yes. Yes. Because they would have been the only two
21 witnesses for this time span that could say what happened.

22 Q. And so the biggest -- the biggest threat to your case
23 from the beginning were the inconsistent statements?

24 A. Nobody wanted to look at my client and say that she
25 was responsible for the death of that child. Heather is

1 not -- does not offend anybody. And it's hard to believe
2 that that occurred, that the child died. But with the
3 inconsistent statements, it just made her look worse and
4 worse and worse.

5 Q. And with regard to those statements, did you file a
6 motion to suppress them before trial?

7 A. We had a Jackson v. Denno hearing, yes.

8 Q. So you had a Jackson v. Denno hearing where both
9 Detective Creech and Sergeant Barr both testified?

10 A. Correct. And I attacked -- I attacked how they took
11 the statements. I think I even brought up the fact that
12 they didn't record these statements on video camera, like
13 they used to do at the sheriff's department, and why that
14 they couldn't -- why couldn't they record the statements in
15 a different way that would show it, because they can.

16 Q. Did you ever discuss the need for character witnesses?

17 A. There's -- there's absolutely no reason to bring
18 character witnesses in unless the person has already been
19 convicted. Because if you bring character witnesses in,
20 then you open up her character. But, yes, we did talk
21 about it.

22 Q. And you explained that ---

23 A. And I explained it to her and I think she understood
24 it.

25 Q. Did you explain to her the process of what she would

1 be going through?

2 A. Sure.

3 Q. And any type of lie that you would have thought would
4 have occurred on the stand, you would have cross-examined
5 the witness about that; correct?

6 A. Any kind of what now?

7 Q. If there were any -- if you perceived anything -- the
8 applicant perceived anything as a lie on the stand, would
9 you have rebutted that on cross?

10 A. If it was a lie that would've hurt my client,
11 absolutely. But if it was a lie that helped my client, I'm
12 not sure I would have said anything about it. But
13 obviously anything that would impeach the testimony of that
14 witness, I would have brought up.

15 Q. And do you believe that you adequately cross-examined
16 the witnesses in this case?

17 A. Yes. Absolutely.

18 Q. Do you believe you were prepared for this case?

19 A. I sure was.

20 Q. And do you believe you informed the applicant of
21 everything regarding the process, the elements she was
22 charged with?

23 A. Sure.

24 Q. And she was never charged with unlawful conduct with a
25 minor; correct?

1 A. You mean never tried on that?

2 Q. Never -- was she charged with unlawful conduct with a
3 minor? She had testified earlier that she thought she was
4 originally charged with unlawful conduct with a minor.

5 A. She was never indicted on that, I don't think. Maybe
6 they had threatened her with unlawful conduct towards a
7 child.

8 I think what happened on that -- because early on
9 -- I think early on everybody thought that it was just an
10 unlawful conduct towards the child, and the true issue was
11 -- whether or not it turned into a homicide came after they
12 made the determination that the injuries that were suffered
13 by the child were brought by blunt instrument. That's
14 where it actually became a murder by homicide -- I mean, a
15 murder of the child or homicide of the child, I should say.
16 Because early on I think they thought it was an accident.

17 Q. Did the applicant ever mention to you anything
18 regarding her relationship with Traci Barr?

19 A. Only that she knew her. And I didn't actually see
20 that as a problem.

21 I talked to Traci before she gave her testimony.
22 And I don't know that Traci Barr's testimony or her
23 feelings toward her -- you have some police officers that
24 you worry about who will really hurt your client if they do
25 testify. I really wasn't concerned that Traci Barr's

1 testimony, other than the fact that she had to say what
2 happened, would hurt her.

3 Q. And do you stand by your representation of your
4 client?

5 A. Yes.

6 MR. MITCHELL: I beg the Court's indulgence, Your
7 Honor.

8 (Off-the-record discussion at counsel table.)

9 Q. Did Ms. Lawson ever indicate to you that Ms. Barr was
10 putting words in her mouth when she gave her statement?

11 A. No.

12 Q. And, in fact, those statements were ruled freely and
13 voluntarily given by Judge McMahon at the Jackson v. Denno
14 hearing?

15 A. They were.

16 (Off-the-record discussion at counsel table.)

17 Q. During trial, during any of the witnesses'
18 testimonies, would Ms. Lawson ever tell you that person is
19 lying about this? That person is lying about that?

20 A. You use those words lying, I don't know that she ever
21 said -- used the word lie or anything like that. I don't
22 really recall her saying that that's not what happened or I
23 didn't do that.

24 In listening earlier, I don't know exactly what
25 that was all about, her testimony earlier today.

1 MR. MITCHELL: No further questions, Your Honor.

2 CROSS-EXAMINATION BY MS. MCMAHAN:

3 Q. I'm sorry. I've been having problems this week with
4 the microphones. So I have to look for it.

5 Why didn't the State call the coroner?

6 A. I think that -- I think that Suzanne thought that
7 calling the coroner would simply just bring out the fact
8 that originally the coroner had assessed it as being
9 accidental, but she also knew that the coroner didn't
10 possess the medical skills that could actually make a
11 determination like the doctors could do it.

12 As you know that normally anytime anybody finds
13 somebody -- in this situation, they normally would call it
14 accidental until they make a determination that the death
15 had some sort of blunt instrument or something like that.
16 Based on the earlier statements, surely it would have been
17 accidental until they found out about the bruising and all
18 that.

19 Q. Until there were reports out about the bruising and
20 all of that stuff?

21 A. Right.

22 Q. Did you call the coroner ---

23 A. No.

24 Q. --- or subpoena the coroner?

25 A. Huh-uh.

1 Q. Would that testimony have helped your client at all?

2 A. I think when the coroner got up there she was going to
3 fall right in line with the other experts who testified.

4 And she was easily explained -- it could easily explain why
5 she originally called it accidental.

6 Q. I mean essentially I guess you would have had to
7 impeach your own witness if you had called her?

8 A. Yes.

9 Q. Was there any body-worn camera footage in this case,
10 like, of her statements or anything? Obviously, not on the
11 coroner, but any of the other officers?

12 A. I'm thinking. That's a good question. I don't
13 believe there were. The only one that would have had it
14 would have been Traci. But Traci didn't have it because I
15 think in her capacity she wouldn't have had one. Back then
16 the only people who would have had body cameras, I believe,
17 were, like, road patrol. None of the detectives had body-
18 worn cameras back then. This case is kind of old. I don't
19 think any of them had body cameras at the time.

20 Q. And then you said you brought up about Richard's other
21 child ---

22 A. Yes.

23 Q. --- having died before. Was that a motion that you
24 made in open court? Was that something you filed or was
25 that just a pre-trial motion?

1 A. Suzanne filed a motion in limine to prevent us from
2 talking about that. And it's in the Court's documents.

3 Q. And what was -- do you know how that other child had
4 died?

5 A. You're asking me right this minute.

6 Q. I know it's been a long time ago.

7 A. No. That's okay. That's okay. You know, I tend to
8 remember things longer ago than I do two seconds ago,
9 nowadays. I want to say -- I want to say that child
10 suffocated. The child was in the bed with the mother, and
11 I don't know if Richard or not was in the bed at the time.
12 And supposedly the mother of the child rolled over on the
13 child and the child suffocated in the bed.

14 Q. And so when you sit down with a client, how do you
15 typically explain the court process to them?

16 Q. Well I tell them that we're going to go to court and
17 they'll put their witnesses up first. There will be
18 opening statements that are made by the solicitor and
19 myself. And that will be basically what each party intends
20 to prove, that the State will present witnesses and I'll
21 get to cross-examine those witnesses. At the end of that
22 time, then we'll make motions for directed verdict.
23 Depending on what happens then, and I assume it will be
24 denied, then we'll have the opportunity to present
25 witnesses and give our side of the story. And at the end

1 of the case, we'll make motions on that. And then we have
2 to wait on the jury to ---

3 Q. Make their decision.

4 A. Yeah, to make a decision. I also tell the client to
5 listen to what the person is asking. If they ask you a
6 question, don't run your mouth. Make sure you know what
7 the question is before -- unlike me -- make sure you
8 understand what the question is before you answer it.

9 Q. Do you tell your clients not to lie on the stand?

10 A. You know, I tell my clients to tell the truth.

11 Q. I don't ---

12 A. I don't tell them not to lie. I assume that all my
13 clients tell the truth when they come in there.

14 Q. Thank you for that lesson.

15 So do you explain to them if they don't know the
16 answer, an appropriate response is, I don't know or I don't
17 remember?

18 A. Sure.

19 Q. Do you recall Richard sort of changing his story from
20 being asleep to awake?

21 A. You talking about when she came over or are you
22 talking about when he was supposed to go to the dam and
23 switch out a cell phone with somebody and he got a phone
24 call from her saying, Why in the world did you go there?
25 You lied to me about going to the dam and switching out the

1 cell phone. Are you talking about -- because I can't
2 remember if it was -- if he was waking up from a phone call
3 from her about why he lied to her or if it's when she came
4 to tell him that the child had died.

5 Q. From when the child had died.

6 A. Okay. And what's the question?

7 Q. Do you recall if Richard said -- do you recall Richard
8 kind of changing his story saying he was asleep at the time
9 to that he was actually awake at the time?

10 A. I think I do. I think I do.

11 Q. Well, in your cross-examination of Richard, what was
12 your main goal with him?

13 A. I wanted to indicate -- and I know he's in the
14 courtroom now, I hope he doesn't take offense at this -- I
15 wanted to indicate that this is not the way you go through
16 life, having babies with one woman and another baby and
17 moving the girl -- the lady back in there. And then -- and
18 then insinuate that -- and not by accusing him, but
19 insinuate that the only one that had anything to gain, if
20 anything, would have been not to have to pay child support.
21 All of those things are insinuations, I think, that float
22 through a general layer, without actually accusing anybody
23 or saying anything bad about the other person.

24 Q. Is Richard the father of the other two children?

25 A. No. I don't believe he was. I think he was the

1 father only of this small child.

2 Q. So her statement with Investigator Barr, did she
3 actually hand write that statement? I mean she, Heather,
4 not Ms. Barr.

5 A. I don't think she wrote the whole thing. I think
6 Traci wrote some of the things in there. But I -- she
7 asked the questions and it was spelled out. She never
8 denied that she said any of these statements.

9 Q. Did she tell you -- when I say she, Heather. Did
10 Heather tell you that Barr told her to change some of the
11 words on the statement?

12 A. No. I don't think she ever said Traci told me to say
13 something or change her story in any way. It was more
14 like, you know, she was confused at the time or she was
15 upset or something like that.

16 Q. If you had known that, would you have cross-examined
17 Traci about that?

18 A. Sure.

19 Q. What -- I mean, I know you talked about, kind of, your
20 trial strategy. What was the ultimate defense? Was there
21 one? And if so, what was it?

22 A. SODDIT.

23 Q. Huh?

24 A. SODDIT.

25 Q. Some other dude did it?

1 A. Either that or we just don't know how the child died.
2 Because what you have here is you have a trailer, you have
3 two young children, and you have a dead child in the
4 playpen. And no one can explain who did it. It's not
5 really my job to say who did it. My job is to indicate to
6 the jury that there's not enough for them to point the
7 finger at my client, because I don't know who did it. I
8 don't think -- I mean, because I wasn't there.

9 Q. It was basically just saying we don't really know who
10 did it, but we know it's not Heather?

11 A. That's right. Well that's what you always do when you
12 represent a client. You try to prove that the burden of
13 proof is insufficient to find your client guilty. We're
14 not police officers.

15 Q. No, we're not.

16 And so you said that Suzanne did a good job of
17 every time you would get up to try to cross-examine, she
18 would then close those holes?

19 A. She did.

20 Q. And was one of them, you said, the issue about the
21 brain not being damaged?

22 A. Yes. Yes. Because, you know, the bruising, I think
23 is probably the indication of the blunt instrument, the
24 bruising on the forehead, on the back of the head, and on
25 the top of the head.

1 Q. Was there any indication of what the blunt instrument
2 could have been?

3 A. She said -- Suzanne indicated fists. I didn't -- but
4 the only reason Suzanne, I think -- I think she brought
5 that in. If you read the transcript, I think Suzanne
6 slipped in a leading statement about, So a fist could have
7 left that or done that or something like that?

8 Q. Did you object to that statement?

9 A. It was already out there. The damage was done. The
10 damage was done. The -- I think -- I think a -- and if it
11 had been -- if it had been overruled or something like
12 that, it's -- anything that causes -- you know, actually,
13 it doesn't really hurt me, if you want to know the truth,
14 because I don't think the average jury would actually think
15 that fists would have caused that.

16 I think, if anything, dropping the child on a
17 hard surface, in my mind, just a regular Joe who is not a
18 doctor, would be more of an indication of -- to cause
19 something like that blunt injury. I mean, it just makes
20 sense to me. I have no -- I have no medical degree in
21 that. I'm just kind of giving you the way it looks like to
22 me.

23 Q. When you're trying a case and there's leading
24 questions being asked, do you object to all of them
25 throughout the trial?

1 A. Every one that I catch on time. Just like when you
2 were leading her up on the stand, if I'd been representing
3 the attorney general's office, I would have objected every
4 time that you were testifying on behalf of your client.

5 Q. Or perhaps the time that you were testifying about
6 what Suzanne thought?

7 A. Yeah.

8 Q. Okay.

9 A. So, I mean, I think we're all lawyers and we all know
10 what leading is. I think the judge probably knows we know
11 what leading is.

12 Q. How many cases do you think you've handled where
13 Suzanne's been the prosecutor on the other side?

14 A. I don't know; twelve, fourteen. Guessing.

15 Q. Does she often give plea offers in her cases or ---

16 A. She does, unless it's a high profile or unless it is a
17 case like this. If it's a case where -- that she thinks
18 that she's going to win and there's nothing you can do to
19 prevent her from winning. And if it's a case that makes
20 everybody upset, you know, making an offer on the death of
21 a child where you have a slam-dunk case, probably not the
22 thing that most solicitors would do, to make a plea offer
23 that was less than what they were charged with. It's a
24 high profile kind of thing for the solicitor to put in his
25 website.

1 Q. If you -- if you had -- if Ms. Lawson had said I want
2 to plead guilty, straight up, what would your advice have
3 been to her about that?

4 A. Why?

5 Q. Okay.

6 A. I would have first asked why. And then the only thing
7 that she could benefit would be the fact that she was
8 admitting guilt and that might help her in some way.

9 Q. So that might somehow not gotten her a life, but maybe
10 a little bit less?

11 A. 25.

12 Q. What was the minimum you could have gotten on that?

13 A. 25.

14 Q. So it was 25 to life?

15 A. If I remember right, it was 25 back then.

16 Q. I know they kind of change it around every now and
17 then; don't they? They like to keep us on our toes over in
18 the House and Senate, changing up some of our sentence
19 ranges.

20 Is there anything else you want the Court to know
21 today about your representation of Ms. Lawson?

22 A. I scanned that transcript and I thought I did a pretty
23 good job. It's -- it is tough sometimes. I am -- I never
24 like to lose. I never like for a client to be found
25 guilty. I'm not exactly sure what I could have done to

1 have kept that client from being found guilty. That's just
2 an honest statement from Theo.

3 MS. MCMAHAN: Court's indulgence.

4 (Pause.)

5 Q. You indicated earlier that you said you remember
6 Richard kind of changing his statement from being asleep to
7 awake. You said something -- why didn't you sort of
8 address that, I guess, in your cross-examination of him?

9 A. I don't remember.

10 MS. MCMAHAN: Nothing further, Judge.

11 A. Actually I do remember, or I can answer the question.
12 I'm not sure it would have made a difference.

13 Q. What would the answer to the question be?

14 A. Whether he was asleep or awake and whether he changed
15 his testimony, just on that point, I don't know would be
16 significant.

17 Q. Okay. Thank you.

18 MS. MCMAHAN: Nothing further, Your Honor.

19 MR. MITCHELL: Just briefly, Your Honor.

20 REDIRECT EXAMINATION BY MR. MITCHELL:

21 Q. Was there ever a statement admitted, from Mr. Richard
22 Tuckus, admitted in this trial?

23 A. No.

24 Q. And so the only statement on the record would have
25 been his testimony at trial?

1 A. That's correct.

2 MR. MITCHELL: No further questions, Your Honor.

3 THE COURT: Thank you. You may step down.

4 MR. MITCHELL: Your Honor, the State rests.

5 THE COURT: Anything in the way of closing
6 statements y'all want to make, briefly?

7 MS. MCMAHAN: Judge, you know, I understand that
8 you're looking at a three-volume transcript that probably
9 needs to be scanned. I'd just ask that you review that
10 before making a decision.

11 I just wanted to kind of point out that there
12 were inconsistent statements that weren't necessarily
13 addressed on cross-examination, particularly the one with
14 Richard, you know, talking to Investigator Barr about, you
15 know, the statement that Barr wrote. And even though that
16 Ms. Lawson did give some statements that may have seemed to
17 be inconsistent, there were certainly reasons for that.
18 You know, particularly she wasn't asked about some of the
19 issues by one person and not the other. So I just ask that
20 you review it as a whole before making a decision.

21 MR. MITCHELL: Your Honor, the State will let the
22 testimony today and the record pretty much speak for
23 itself. But the State submits that applicant has not
24 showed her burden entitling her to post-conviction relief.

25 Through counsel's testimony today, he prepared

1 for every defense he could. He poked holes in the State's
2 case in cross. He motioned to suppress all the
3 inconsistent statements. He cross-examined all the expert
4 witnesses regarding what, through her statements, what
5 could have happened. He cross-examined Richard Tuckus. He
6 brought up the defense that somebody else did it, that
7 maybe it was somebody else. Maybe it was Richard Tuckus.
8 And, you know, -- so -- and the jury had all the evidence
9 of the fall at the BP, and that evidence was refuted
10 through the testimony of an expert who was adequately
11 crossed by Mr. Williams.

12 The possibility that maybe it was one of her
13 other kids, it was brought up by the State and refuted
14 through expert witness testimony and the testimony of the
15 babysitter, who were both adequately cross-examined by Mr.
16 Williams.

17 So, Your Honor, I would just say that counsel was
18 not deficient in his representation of Ms. Lawson and she
19 did not suffer any prejudice as a result.

20 Thank you.

21 THE COURT: Again, it's my practice to take this
22 under advisement. I have read a good deal of the
23 transcript, but I will take a close look at it before I
24 email you all with my ruling.

25 MS. MCMAHAN: Thank you.

1 THE COURT: Thank you.

2 MR. MITCHELL: Thank you, Your Honor.

3 (Hearing adjourned at 12:04 p.m.)

4 ***END OF TRANSCRIPT OF RECORD***

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CERTIFICATE OF REPORTER

I, the undersigned Missy Brown, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that to the best of my ability, the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned case, as recorded by DCRP and transcribed by me, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 7th day of April 2023.

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

June 27, 2023

Court Reporter

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2023 NOV 13) AM 8:18 FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT
Heather M. Lawson, SCDC #373466 LEXINGTON SC Case No. 2020-CP-32-03026

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Heather Lawson (Applicant) on September 14, 2020. On April 7, 2023, a hearing into the matter was convened before the Honorable Kristi F. Curtis at the Lexington County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and R. Theo Williams, Sr. (Counsel).

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its July 2017 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2017-GS-32-2364). Applicant was represented by R. Theo Williams, Sr., Esquire. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robert E. McNair, III, of the Eleventh Circuit

Solicitor's Office prosecuted the case.

On August 7, 2017, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Pachak perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issues:

Whether the trial court erred in denying trial counsel's motion for a directed verdict when the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that [Applicant] committed the crime of homicide by child abuse?

On April 29, 2020, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Lawson*, 2020-UP-120 (S.C. Ct. App. filed April 29, 2020). The case was remitted back to the circuit court on June 10, 2020. Applicant commenced this PCR action on September 14, 2020.

FACTUAL SUMMARY

On June 26, 2016, Applicant beat her seven-month-old baby to death by repeatedly punching the baby in the head with her fists. (R. p. 148). The only people present in the home at the time of her death were Applicant, her one-year old daughter, and her three-year old son. (R. p. 148). Later that evening, Applicant left her toddlers at home alone and ran to her ex-husband's house for help. (R. p. 148–49). Applicant claimed she had just found the baby in her pack 'n play under a heavy blanket. (R. p. 148–49). The child was not breathing. (R. p. 148–49).

Applicant's ex-husband's girlfriend called 9-1-1 while he took Applicant back to her house

¹ *Anders v. California*, 386 U.S. 738 (1967).

and instructed her to call 9-1-1. (R. p. 149). Applicant told the dispatcher that her other kids smothered the baby and jumped on her. (R. p. 149). When EMS arrived, they discovered bruising all over the baby's head. (R. p. 149). Slight rigor mortis had already begun to set in. (R. p. 149). EMS nonetheless attempted all live-saving procedures while rushing the baby to the hospital. (R. p. 149). The child was pronounced dead at the hospital.

CURRENT APPLICATION

Applicant timely commenced this PCR application on February 4, 2022. In her application Applicant alleged she was entitled to relief based on the following grounds:

1. "Ineffective counsel."
 - a. "There were several things he should have done and he did not."
2. "New evidence."

At the hearing, Applicant raised the following additional allegations:

1. Counsel was ineffective for failing to call witnesses, specifically character witnesses and the coroner.
2. Counsel was ineffective for failing to develop a trial strategy.
3. Counsel was ineffective for failing to effectively cross examine witnesses.
4. Counsel was ineffective for failing to address a claimed conflict of interest between Detective Barr and Applicant. Detective Barr was friends of Applicant and her family.
5. Counsel was ineffective for failing to present defense that Richard Tuckus was the last adult in the room with her baby when she died.

Applicant went forward only on the allegations raised during the PCR hearing.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in her application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. 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 687; *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 its "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 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*, 540 U.S. 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.").

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 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-

probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court finds Applicant’s allegations of ineffective assistance of counsel are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Call Witnesses

Applicant contends counsel was ineffective for failing to call witnesses on Applicant’s behalf, specifically character witnesses and the coroner. This Court disagrees and finds counsel was not ineffective in this regard.

1. PCR Testimony

Applicant testified she asked counsel about the possibility of calling character witnesses,

but he dismissed it. (PCR Tr. p. 5). Applicant testified counsel informed her that calling character witnesses would open the door to her character during trial. (PCR Tr. p. 6). Applicant testified the coroner was not called as a witness during trial. (PCR Tr. p. 7). Applicant testified she spoke with the coroner alone in the hospital room following her child's death. (PCR Tr. p. 7). Applicant explained to the coroner the story of her daughter falling at the store the day before her death. (PCR Tr. p. 8). Applicant testified she made a statement to Detective Creech, who later accused her of never mentioning the fall in any statements. (PCR Tr. p. 8).

Counsel Theo Williams testified they discussed the possibility of calling character witnesses. (PCR Tr. p. 34). Counsel testified there was absolutely no reason to call character witnesses, because it opens the door to her character. (PCR Tr. p. 34). Counsel believed the State did not call the coroner as a witness because she initially ruled the death accidental. (PCR Tr. p. 38). However, counsel testified coroners typically rule deaths accidental until certain determinations are made, such as bruising or use of blunt instruments. (PCR Tr. p. 38). Although the coroner initially ruled the death accidental, counsel believed she would have ultimately testified the death was a homicide. (PCR Tr. p. 39). Counsel testified the coroner would have been able to easily explain why she initially ruled the death an accident. (PCR Tr. p. 39).

2. Discussion

Applicant alleges counsel was ineffective for failing to call character witnesses and the coroner. This allegation is without merit. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel."

Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

This Court finds counsel discussed the possibility of calling character witnesses with Applicant. Counsel reasonably informed Applicant that opening the door to character at trial would not be beneficial to her defense. Furthermore, this Court finds counsel did not believe the coroner's testimony would have been beneficial to the defense as he believed the coroner would have ultimately testified the death was a homicide. Counsel clearly articulated a reasonable trial strategy for not calling character witnesses and the coroner at trial; thus, counsel was not deficient for failing to call these witnesses.

Furthermore, Applicant failed to offer the testimony of any potential character witnesses or the coroner during the PCR hearing. Our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Because Applicant has failed to present testimony of any favorable character witnesses or the coroner during the PCR hearing, or credible evidence of the potential testimony, she has failed to meet her burden establishing prejudice in this regard.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for failing to call character witnesses and the coroner during trial is **DENIED**.

Failure to Develop a Trial Strategy²

Applicant next contends Counsel was ineffective for failing to adequately develop a trial strategy, specifically for failing to present a defense that Richard Tuckus (victim's father) was the last adult in the room with the victim before she died. This Court disagrees and finds the record

² Allegations 2 and 5 will be addressed in this section.

Counsel's credible testimony refutes this allegation.

1. PCR Testimony

Applicant testified counsel should have devised a defense strategy. (PCR Tr. p. 7). Applicant testified she wanted evidence presented at trial that Richard Tuckus was the last adult in the room when victim was killed. (PCR Tr. p. 12). Applicant testified she was in the other room when victim died and Richard was the last one in the house before Applicant found victim dead. (PCR Tr. p. 13).

On cross-examination, Applicant testified she gave multiple statements to law enforcement in which she never mentioned the possibility Richard may have been the perpetrator. (PCR Tr. p. 24). Applicant explained that she did not do so "because at that time, it had never crossed [her] mind." (PCR Tr. p. 24). Applicant testified that Richard had left the house around noon and did not come back that day. (PCR Tr. p. 15). Applicant testified she ran to Richard's house after finding victim deceased. (PCR Tr. p. 15). Applicant testified the first time she brought up the possibility Richard may have killed victim was during her trial. (PCR Tr. p. 24).

On re-direct, Applicant testified counsel did not adequately address this defense during trial and did not adequately address the discrepancies in her statements based on the questions law enforcement asked. (PCR Tr. p. 28).

Counsel Williams testified he met with Applicant several times before trial. (PCR Tr. p. 31). Counsel testified he went over all the discovery and State's evidence in this case. (PCR Tr. p. 31). Counsel testified he thoroughly explained every stage of the trial with Applicant. Counsel testified he developed a strategy that someone else may have committed the homicide, including Richard Tuckus. (PCR Tr. pp. 31 – 32). Counsel testified Applicant's inconsistent statements were the biggest weakness for the defense. Counsel explained he filed a motion to suppress the

statements and a *Jackson v. Denno*³ hearing was held prior to trial. (PCR Tr. p. 34). Counsel testified he insinuated that Richard Tuckus may have been involved in the victim's death. (PCR Tr. p. 42). Counsel testified he intended on presenting evidence that another child of Richard Tuckus had also died; however, the State filed a pre-trial motion in limine and the evidence was excluded. (PCR Tr. p. 33).

Counsel reiterated that his trial strategy was to argue someone else committed the homicide. (PCR Tr. p. 43). Counsel explained his goal during his cross-examination of Richard Tuckus was to underscore his tumultuous relationships with women and to insinuate that Richard Tuckus was the only one who had anything to gain from the victim's death since he no longer had to pay child support. (PCR Tr. p. 42).

2. Discussion

This Court finds that Counsel developed a reasonable trial strategy in which he argued a third party committed the homicide. As part of that strategy, through testimony and in closing argument, counsel insinuated Richard Tuckus may have been the perpetrator. (R. p. 730). On cross-examination, counsel elicited testimony from Richard Tuckus that he failed to pay any child support for victim. (R. 290). As counsel credibly testified, this was meant to support a potential motive for killing the victim. Furthermore, counsel presented evidence that Richard Tuckus had a key to Applicant's trailer, demonstrating he could access it at any time. (R. p. 160; R. pp. 294 – 295).

Furthermore, it is clear from the trial transcript that counsel's strategy was also to argue the shoddiness of the investigation and the failure of the State to meet its burden of proof at trial. Counsel argued law enforcement failed to record any statements Applicant made during the

³ *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

investigation, failed to properly secure the crime scene and failed to properly collect evidence at the crime scene. (R. p. 722; R. p. 727). Counsel argued there were several witnesses the State failed to call, including the coroner and the minor son of Applicant who was present during the death of the victim. (R. p. 723). Counsel further argued Applicant's children were well-looked after and there was no evidence of any prior child abuse. (R. pp. 724 – 725). In light of the State's evidence in this case, this Court finds counsel clearly developed a reasonable trial strategy and argued it commendably.

Applicant alleged counsel did not adequately address the discrepancies in her statement as part of his trial strategy. This allegation is without merit. Counsel filed a motion to suppress the statements; however, the statements were ruled free and voluntary by the trial court following a *Jackson v. Denno* hearing. (R. pp. 63 – 123). Furthermore, counsel argued against the validity of the statements during cross-examination of witnesses and in closing argument. This Court finds counsel was not ineffective in failing to address the discrepancies of Applicant's statement.

Applicant further alleges counsel should have argued Richard Tuckus was the last adult in the room with the victim; however, the evidence presented at trial, Applicant's statements to law enforcement and Applicant's own testimony at the PCR hearing refute this assertion. Included in the evidence presented at trial were at least two statements Applicant made to law enforcement in the days following the homicide; in none of these statements did Applicant assert Richard Tuckus was with the victim when she died. In Applicant's first statement, she places the blame on her two other children who were present during the death of the victim. (R. pp. 70 – 75). Applicant admitted in her statement no other adults had access to victim that day, and Richard Tuckus had not seen the victim. (R. p. 76).

The evidence presented at trial showed that Richard Tuckus left the house around 1 p.m.

the day of his daughter's death and did not return. (R. p. 148; R. pp. 273 – 274; R. p. 308). The time of death of the victim was hours after 1 pm. (R. p. 494). Furthermore, during cross examination at the PCR hearing, Applicant testified Richard Tuckus left the house at noon that day and did not come back; thus, by her own admission, Richard Tuckus was not the last adult in the room with the victim before she died. (PCR Tr. p. 15).

For these reasons, this Court finds counsel was not deficient in developing a trial strategy. Accordingly, this Court finds Applicant's allegation counsel was ineffective for not admitting co-defendant's statement at trial is **DENIED**.

Failure to Effectively Cross Examine Witnesses

Applicant contends counsel was ineffective for failing to effectively cross examine witnesses. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified counsel did not adequately cross examine witnesses who were lying on the stand. (PCR Tr. p. 7). Applicant testified that during trial there were lies told on the stand, she would point them out to counsel, and he would not bring them up on cross-examination. (PCR Tr. p. 7).

Counsel testified if he perceived a witness lying about something that damaged Applicant's defense, he certainly would have impeached them on it. (PCR Tr. p. 35). Counsel testified that during cross-examination of Detective Creech he attacked the process in which law enforcement took Applicant's statements, specifically the lack of any recording of the statements. (PCR Tr. p. 34). Counsel explained he attacked the State's theory of the case during cross examination of the expert witnesses. (PCR Tr. p. 32).

As discussed in the previous section, counsel testified he cross-examined Richard Tuckus

regarding his failure to pay child support. (PCR Tr. p. 42). Furthermore, counsel attempted to open the door regarding the death of another child of Richard Tuckus; however, the State filed a pre-trial motion in limine to exclude any mention of Richard's other deceased child, which was granted by the trial court. (PCR Tr. p. 32). Counsel testified he did not specifically cross-examine Richard Tuckus about a change in his statement because "whether [Richard Tuckus] was asleep or awake and whether he changed his testimony, just on that point, I don't know would be significant." (PCR Tr. p. 48).

2. Discussion

This Court finds Applicant has not met her burden of proving counsel's performance in cross-examining witnesses was deficient. This Court finds Counsel would have impeached any witness who lied about something that damaged Applicant's defense if he had a method of proving the testimony to be false. Counsel explained he thoroughly cross-examined the expert witnesses regarding the cause of death of the victim. Counsel cross-examined Richard Tuckus regarding his failure to pay child support in an attempt to make that an issue in this case. (R. p. 288). Additionally, counsel elicited testimony that Richard Tuckus was in possession of a key to Applicant's trailer. (R. p. 294). Counsel would have addressed the death of Richard Tuckus's other child; however, he could not because the trial court excluded any mention of it in a pretrial motions hearing. (R. pp. 126 – 134). This Court finds counsel's credible testimony and the record from Applicant's trial transcript demonstrates counsel was not deficient in cross-examining the witnesses.

Furthermore, Applicant has not met her burden establishing prejudice by counsel's alleged failure to effectively cross-examine witnesses. Applicant failed to testify as to which witnesses counsel allegedly failed to cross-examine and what they were allegedly lying about. Applicant has

counsel allegedly failed to cross-examine and what they were allegedly lying about. Applicant has presented no evidence or testimony of how more effective cross-examinations would have resulted in a different outcome at trial.

Accordingly, this allegation is **DENIED**.

Failure to Address Claimed Conflict of Interest Between Detective Barr and Applicant

Applicant next contends Counsel was ineffective for failing to address a conflict of interest between Detective Traci Barr and Applicant. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified she has known Detective Barr since she was a child. (PCR Tr. p. 8). Applicant testified they were like family; she would come to Applicant's soccer games and birthday parties growing up. (PCR Tr. p. 8). Applicant testified that Detective Barr's first solo case as a detective involved her father and she became like a part of their family through that case. (PCR Tr. p. 9).

Counsel Willimas testified he was only aware that Applicant knew Detective Barr. Counsel testified he did not see that as a problem. (PCR Tr. p. 36). Counsel spoke with Detective Barr prior to her testimony and Counsel was not concerned her testimony would harm Applicant outside of her saying what happened. (PCR Tr. p. 36). Counsel testified Applicant never indicated Detective Barr told her to change words in her statement; Applicant never denied she said any of her statements. (PCR Tr. p. 37; p. 43).

2. Discussion

This Court finds Counsel was not deficient in failing to address a claimed conflict of interest between Detective Barr and Applicant. Although Counsel was aware Detective Barr and Applicant knew each other, he did not believe this was a problem. Applicant never denied anything in her

prior to trial. Counsel was not concerned any claimed conflict of interest between Applicant and Detective Barr would be harmful to Applicant's defense. This Court finds Counsel articulated a valid reason for not addressing a claimed conflict of interest between Applicant and Detective Barr; thus, was not deficient in this regard. Furthermore, Applicant has failed to present any evidence or testimony that her relationship with Detective Barr improperly affected Detective Barr's duties as an investigator or her testimony at trial. If anything, the parties' previous close relationship would have made Detective Barr *more* sympathetic to Defendant. Thus, this Court finds Applicant has failed to meet her burden establishing prejudice.

Accordingly, this allegation is **DENIED**.

CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 1st day of November, 2023.



THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina

WITNESSES

Lexington County Sheriffs Department

A Creech

Law Enforcement Case #: 16012846

LSM

ARREST WARRANT NUMBER

2016A3210201119

ACTION OF GRAND JURY

TRUE BILL

Sherrill R. Ferguson

Foreperson of Grand Jury

Date: 7-10-17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017 S3202364

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

vs.

Heather Marie Lawson

CDR #: 2356

Indictment for

Homicide by Child Abuse

§ 16-03-0085(A)(1) and (B)

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
Homicide by Child Abuse

COUNTY OF LEXINGTON)

§ 16-03-0085(A)(1) and (B)

At a Court of General Sessions, convened on JULY 2017, the Grand Jurors of Lexington County present upon their oath:

That **Heather Marie Lawson** did in Lexington County, South Carolina, on or about June 26, 2016, cause the death of a child who was under the age of eleven years at the time of her death, and that the defendant did cause the death of said child while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; such being an act or omission which caused harm to the child's physical health or welfare, to wit: child physical abuse, including but not limited to blunt force trauma to the head, and/or medical neglect of the child; furthermore, the aforesaid child abuse or neglect caused the death of Minor 1 [REDACTED], date of birth [REDACTED] 2015, in violation of Section 16-3-85(A)(1) and (B), South Carolina Code of Laws (1976, as amended).

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

Suzanne Mayes
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Heather Marie Lawson

AKA:

Race: Sex: F Age: 23

DOB: SS#: -

Address: 1

City, State, Zip: Lexington, SC 29073-8300

DL#: SID#:

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

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

TO: Homicide by child abuse (20Y to Life)

INDICTMENT/CASE#: 2017GS3202364

A/W#: 2016A3210201119

Date of Offense: 6/26/2016

S.C. Code §: 16-03-0085(A)(1)

CDR Code #: 2356

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 12 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 (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 61.6 (Public Def/Probation) \$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 \$ 3% to County (if paid in installments) \$ 1TOTAL \$ 125Clerk of Court/ Deputy Clerk Lisa JonesCourt Reporter: B. Sigurdson

SCCA/217 (07/2016)

PTUP 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,

§ Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code: Sentence Date: 10/17/17RECEIVED
AUG 15 2017
SC Court of Appeal

ARREST WARRANT

2016A3210201119

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

against

Heather Marie Lawson

Address: Weaver Dr
 Lexington, SC 29073-8300

Prosecuting Agency: Lexington County Sheriff
Prosecuting Officer: A Creech - +
Offense: Murder / Homicide by child abuse (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

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
521 Gibson Road
Lexington, SC 29072

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant A Creech who
being duly sworn deposes and says that defendant Heather Marie Lawson
did within this county and state on or about 6/26/2016 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)
in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Homicide by child abuse (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:

On 6/26/16, Heather Lawson did commit the crime of Homicide by Child Abuse at 157 Weaver Dr Lot 14, in the Redbank area of
Lex. Co., SC, when she did fail to provide her 7 month old daughter, Minor 1 (DOB 11/15), with necessary health care,
resulting in her death. On 6/25/16, Lawson said the child fell and struck a concrete floor with her head, and at 0900 on 6/26/16 she
said she saw bruising about the child's head and the child was vomiting and lethargic. Lawson did not tell anyone and did not seek
medical care for the child, citing fatigue and a desire to avoid DSS. Around 1700, after not checking on the child for several hours,
she found the child deceased underneath a blanket. Lawson was the sole person responsible for the welfare of the child. Lawson
provided a written statement, and autopsy results showed brain swelling, along with bruising and abrasions present on multiple
planes of the child's skull, inconsistent with a singular falling incident. Blunt force trauma was ruled as the cause of death.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson Road

Lexington, SC 29072-

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 6/26/2016 defendant Heather Marie Lawson

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

☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Homicide by child abuse (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 6/27/2016

Signature of Issuing Judge

Gary W. Reinhart

Judge Code: 5059

(L.S.)

Judge's Address Lexington County Judicial Center

Lexington, SC 29072-

Judge's Telephone (803)785-2594

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

F16-02979

LE Report: 7-29-16