

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

FEB 19 2013

Edward W. Miller, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2012-212508

BRANDI LYNN TURNER-HOLDER, 313870,
A/K/A BRANDI LYNN TURNER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

TARA DAWN SHURLING
Attorney and Counselor at Law

JOHN W. MCINTOSH
Deputy Attorney General

3614 Landmark Drive, Suite A
Columbia, S. C. 29204
(803)738-8622 Phone

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

(803)738-1600 Fax
Email: tdslaw@shurlinglaw.com

KAREN C. RATIGAN
Assistant Attorney General
Post Office Box 11549
Columbia, S. C. 29211
(803) 734-3737

ATTORNEY FOR PETITIONER.

ATTORNEYS FOR RESPONDENT.

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	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2003-GS-23-1307
	)	2003-GS-23-1312
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BRANDI LYNN TURNER HOLDER	)	VOLUME I
A/K/A BRANDI LYNN TURNER,	)	
AND	)	
MARK ANTHONY MARTUCCI,	)	
DEFENDANTS.	)	

February 6, 7, 8, and 9, 2006
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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

BRYNA S. SEAY, ESQ.
Assistant Solicitor

BRUCE A. BYRHOLDT, ESQ.
DAVID E. PHILLIPS, ESQ.
Attorneys for Defendant Brandi Lynn Turner Holder a/k/a
Brandi Lynn Turner

STEVEN W. SUMNER, ESQ.
THOMAS J. QUINN, ESQ.
Attorneys for Defendant Mark Anthony Martucci

HOLLIE M. JENKINS
Circuit Court Reporter

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 (IC) - Denotes In Camera

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Greenville County.

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1 THE COURT: Is it Martucci, Mark Martucci? Is that
2 correct?

3 MR. SUMNER: Yes, sir. It's Mark Martucci, Your
4 Honor, yes, sir.

5 THE COURT: And Brandi Holder is here. She's present?

6 MR. BYRHOLDT: That's correct, Your Honor.

7 THE COURT: And Mr. Martucci is not present; is that
8 correct?

9 MR. SUMNER: That is correct, Your Honor.

10 THE COURT: All right. Solicitor, do you have some
11 information you want to put on the record?

12 MS. SEAY: Yes, Your Honor.

13 May it please the Court?

14 I would like to state for the record that Mark
15 Martucci was notified for trial by the Solicitor's Office
16 by way of postcard to appear today, Monday, February 6th,
17 2006, at 8:30 a.m. And the notice states that a trial --
18 excuse me, a failure to appear may result in trial being
19 conducted in the Defendant's absence and/or a bench
20 warrant being issued for the Defendant's arrest.

21 We sent these postcards to the addresses that we had
22 for him, which are , that's

23 Lyman, South Carolina, 29365. Another notice
24 was sent to , Greer, South Carolina,
25 29651.

1 And in addition, his bonds person, Ed Macon,
2 A-Carolina Bonding, was also notified by card.

3 In addition, Your Honor, I notified Mr. Martucci's
4 counsel by way of a letter. They were notified by letter
5 on December 30th, 2005. I did send notice to Steve Sumner
6 and Tom Quinn that the trial of this case would be
7 scheduled to begin today on February 6th. And it is my
8 understanding that they were in receipt of that notice,
9 and that they did make that information available to their
10 client as well. So he, I'm told, was aware of the trial
11 date.

12 THE COURT: Okay. Is that correct, Mr. Sumner?

13 MR. SUMNER: Yes, Your Honor.

14 As an officer of the court, he was -- I received that
15 communication and I have communicated that to him in
16 advance -- well in advance of today's date.

17 THE COURT: All right. I, specifically, find then
18 that he received notice of his right to be present at his
19 trial and was warned that the trial would proceed in his
20 absence upon his failure to attend court today. And,
21 therefore, he will be tried in his absence.

22 Anything now before I bring the panel of jurors up?

23 MS. SEAY: Your Honor, just for the Court's planning
24 purposes, I think we'll have a couple of matters pre-trial
25 that we'll need to handle, a Blair hearing in regard to

1 Ms. Holder, and also a Jackson v. Denno hearing in
2 reference to oral statements by both Defendants and a
3 written statement -- a two-part written statement by
4 Ms. Holder.

5 THE COURT: All right. Can we get the jury and not
6 swear them until after the motion is disposed of?

7 MS. SEAY: Yes, sir.

8 THE COURT: Any objection?

9 MR. BYRHOLDT: No objection on behalf of Ms. Holder,
10 Your Honor.

11 MR. SUMNER: We have some motions as well.

12 We have no objection to proceeding.

13 Your Honor, there may be one motion I would like to
14 have heard on the record at this point.

15 THE COURT: All right.

16 MR. SUMNER: And that would be a motion to sever the
17 trial. I can give the Court argument on that point, if
18 you'd like to hear it. I think you're aware on the
19 indictments the various matters that would be present. So
20 I will be glad to argue that motion to you now --

21 THE COURT: All right.

22 MR. SUMNER: -- if you're prepared to rule upon it.

23 THE COURT: That's fine. Go ahead.

24 MR. SUMNER: Your Honor, I think it would be highly
25 prejudicial to my client, Mark Martucci, should the case

1 be heard with the co-defendant, Brandi Holder, present and
2 part of the same trial. There's going to be some Bruton
3 issues that are going to be heard, I'm sure, later on this
4 morning. I think it -- that would be the primary reason,
5 Your Honor, a potential statement issue back and forth,
6 right to the confrontation clause, cross-examination, and
7 those type matters.

8 So I would ask you to consider that. And I, again,
9 would renew before you my motion to sever the trial on
10 behalf of Mark Martucci.

11 Thank you.

12 THE COURT: Solicitor.

13 MS. SEAY: Your Honor, I would just point out that
14 under South Carolina law, criminal defendants may be tried
15 jointly and are not entitled to a separate trial as a
16 matter of right. There are several advantages to having a
17 joint trial, including judicial economy.

18 The well-settled law is that if the trial judge
19 issues cautionary instructions to the jury that the jury
20 should consider the evidence in question separately as to
21 each defendant, no prejudice results from a joint trial.
22 That's State v. Dennis. And a defendant must show that
23 some real prejudice would result from a joint trial.
24 That's State v. Smith. And the fact that they may intend
25 to present mutually antagonistic defenses is not

1 necessarily a ground for granting separate trials either,
2 according to our law.

3 THE COURT: I deny your motion, Mr. Sumner.

4 MR. SUMNER: Thank you, Your Honor.

5 THE COURT: Now, I have indictments and amended
6 indictments.

7 MS. SEAY: Your Honor, the State is proceeding on the
8 amended indictments.

9 MR. BYRHOLDT: Your Honor, on behalf of Ms. Holder,
10 we would have some proposed voir dire that we would ask
11 the Court to consider.

12 THE COURT: And do I have a complete witness list?

13 MR. BYRHOLDT: I think we had a couple of additions
14 that were not on the State's list, but they may be -- most
15 of them are included on that list, Your Honor.

16 THE COURT: All right. Anything now before I bring
17 the panel of jurors up?

18 MS. SEAY: Nothing from the State.

19 THE COURT: All right. Bring the panel up, please.

20 MR. BYRHOLDT: Your Honor, the strikes, we've got ten
21 or --

22 THE COURT: No, you've got --

23 MR. BYRHOLDT: Five each?

24 THE COURT: Yes, five each. And the State has five.

25 (WHEREUPON, the jury panel entered the courtroom.)

1 THE COURT: Good morning, ladies and gentlemen.

2 If I can have your attention, at this time, we will
3 select a jury in the case of the State against Mark
4 Anthony Martucci, M-A-R-T-U-C-C-I, and Brandi Lynn Turner
5 Holder. They are each indicted for homicide by child
6 abuse.

7 The indictments allege, specifically, that on or
8 between the 1st day of June, 2002, and the 7th day of
9 July, 2002, during the commission of child abuse or
10 neglect accompanied by circumstances manifesting an
11 extreme indifference to human life, they caused the death
12 of VICTIM , a child under the age of 11
13 years.

14 Now, ladies and gentlemen, in the trial of a criminal
15 case, a defendant never has any burden whatsoever. A
16 defendant does not have to attend trial, participate in
17 trial, produce any evidence, or testify. That is because
18 the burden is always on the State to prove a defendant
19 guilty beyond a reasonable doubt.

20 Now, Mr. Martucci is not present here today to
21 participate in his trial. And that is his right. And I
22 will charge the jury more fully on that right at the
23 conclusion of the trial.

24 Ms. Holder, would you, please, stand up a moment and
25 face the jury panel for me, please.

1 Thank you.

2 You may be seated now.

3 JURY QUALIFICATION

4 THE COURT: Now, potential witnesses, in this case,
5 will be: Jonathan Jackson, Kurt Jacobsen, Doug Kelly,
6 Michael Hildebrand, Paul Silvaggio, Wes Smith, Wayne
7 Arnette, Bobby Alexander, Antonio Bailey, Mike Brown, and
8 Tim Martin, they are all with the Greenville County
9 Sheriff's Office. Additional witnesses will be: Ladye
10 Kelley, Dr. Kevin Gregg, Dr. Michael Ward, Kim Banish,
11 John Allen Parker, Jason Dean Bentley, Miranda Marie
12 Byrom, Robin Lynn Center, Angie Eccles, Paula Edmond,
13 Stephanie Henderson, Matthew Neal McCullough, Brandy Carol
14 Mason, Dianne Turner, Jane Venesky, Ron Venesky, Trevor
15 Venesky, James Darren Turner, Ben Holder, Marie Holder,
16 Robert Millwood, Miranda Byrom -- I've already called her
17 name -- and Ronnie Anders.

18 Now, I would inquire, at this time, if any member of
19 the jury panel is related by blood, or marriage, or
20 connected by employment to the Defendants or to any
21 potential witness in the case? Are you sensible or aware
22 of any bias or any prejudice with respect to the State, to
23 these Defendants, or to the subject matter of the case,
24 that being an alleged death by child abuse, or do you know
25 any reason why you could not give the Defendants and the

1 State a fair trial based on the law and evidence? If so,
2 would you, please, stand and give me your name.

3 (There was no response.)

4 THE COURT: I have some additional questions I'm
5 going to ask you, at this time, ladies and gentlemen. And
6 if you would respond to these questions, I would ask that
7 you come forward so that I can talk with you and counsel
8 privately.

9 Do I have any member of the panel or any member of
10 your family who has been the victim of alleged abuse?
11 Have you or any member of your family been accused of
12 committing a violent act, whether or not a formal
13 complaint was ever made? Has any member of the panel
14 served before in a case involving child abuse? Do I have
15 any member of the panel or any member of your family who
16 have been the victim of assaultive behavior by another
17 person? Do I have any member of the panel or any member
18 of your family who has ever been treated by a social
19 worker, psychologist, or psychiatrist? Do I have any
20 member of the panel or any member of your family who is a
21 social worker or who works in the field of child abuse?

22 If anyone would respond to those questions, would you
23 come up so that I can speak with you and counsel privately.

24 (WHEREUPON, a sidebar was held with the jurors and
25 counsel.)

1 THE COURT: Just come right over here, please, ma'am.
2 Wait just a minute. I need to get counsel up here.
3 First of all, would you give me your name?

4 JUROR #36, MARJORIE M. CLEVELAND: Marjorie
5 Cleveland, #36.

6 THE COURT: Cleveland?

7 JUROR #36, MARJORIE M. CLEVELAND: Uh-huh.

8 THE COURT: Okay. Ms. Cleveland.

9 JUROR #36, MARJORIE M. CLEVELAND: My daughter was
10 attacked at a bar here in Greenville when she was in
11 college.

12 THE COURT: Okay. Now, my question to you is, would
13 that fact in any way interfere with your ability to be a
14 fair and impartial juror on this case?

15 JUROR #36, MARJORIE M. CLEVELAND: No, sir. I always
16 try to be fair.

17 THE COURT: Thank you, ma'am.
18 You're qualified.

19 JUROR #36, MARJORIE M. CLEVELAND: I want to tell you
20 one other thing. My daughter-in-law is a lawyer in
21 Chicago and she works with children.

22 THE COURT: Okay. Again, I would ask you the same
23 question. Would that in any way interfere with your
24 ability to be a fair juror?

25 JUROR #36, MARJORIE M. CLEVELAND: No. I just wanted

1 you to be aware.

2 THE COURT: Thank you, ma'am.

3 You're qualified.

4 All right. Come up, please, sir.

5 First of all, give me your name

6 JUROR #195, LARRY A. HUDSON: Larry Hudson.

7 THE COURT: Hudson.

8 JUROR #195, LARRY A. HUDSON: I'm a previous employee
9 of the Pickens County Department of Social Services in
10 child protection.

11 THE COURT: All right. Would that in any way
12 interfere with your ability to be a fair and impartial
13 juror?

14 JUROR #195, LARRY A. HUDSON: No. I don't feel that
15 it would.

16 THE COURT: Thank you, sir.

17 You're qualified so far.

18 Yes, sir. Come around.

19 Your name, sir?

20 JUROR #66, LINDSAY B. GRAHAM: Lindsay Graham.

21 THE COURT: Graham.

22 JUROR #66, LINDSAY B. GRAHAM: Yes. My wife is a
23 social worker.

24 THE COURT: Would that fact in any way interfere with
25 your ability to be a fair and impartial juror on this

1 case?

2 JUROR #66, LINDSAY B. GRAHAM: No, it would not.

3 THE COURT: Thank you.

4 I appreciate it. You're qualified.

5 Yes, ma'am.

6 Would you give me your name, first of all?

7 JUROR #133, JANICE B. MOORE: Janice Moore.

8 THE COURT: Ms. Moore. Okay.

9 JUROR #133, JANICE B. MOORE: Yes. On two occasions,
10 my daughter was a victim of spousal abuse. And by a court
11 order, her husband has never been allowed to see her
12 child. I was --

13 THE COURT: Okay. Now -- I'm sorry.

14 JUROR #133, JANICE B. MOORE: And I was a Greenville
15 County school teacher. And I attended a specific workshop
16 on child abuse.

17 THE COURT: All right. Now, my question to you is,
18 would that in any way interfere with your ability to be a
19 fair and impartial juror on this case?

20 JUROR #133, JANICE B. MOORE: I think it would.

21 THE COURT: Okay. Thank you.

22 And I appreciate you telling me that. We would not
23 put you on this case.

24 You just go back and have your seat.

25 Thank you, Ms. Moore.

1 JUROR #133, JANICE B. MOORE: Okay. Thank you.

2 THE COURT: Yes, ma'am.

3 Would you come forward, please.

4 MR. SUMNER: Your Honor, was that Janice Moore, #12,

5 Your Honor?

6 THE COURT: Oh, was it #12. Okay.

7 MR. SUMNER: So she's out for cause?

8 THE COURT: Yes.

9 Yes, ma'am.

10 JUROR #156, DEBORAH F. ROGERS: My brother is a
11 Family Court judge in Spartanburg. And my husband is a
12 physician and has had to testify in cases.

13 THE COURT: And your name, please, ma'am?

14 JUROR #156, DEBORAH F. ROGERS: Debbie Rogers.

15 THE COURT: Ms. Rogers, would that in any way
16 interfere with your ability to be a fair and impartial
17 juror on this case?

18 JUROR #156, DEBORAH F. ROGERS: I don't think so.

19 THE COURT: Thank you, ma'am.

20 You're qualified so far.

21 Okay. Thank you, gentlemen.

22 MR. SUMNER: Your Honor, there's one more.

23 THE COURT: Oh, we've got one more. I'm sorry.

24 Your name, please, ma'am?

25 JUROR #143, LAURA B. PELHAM: Laura Pelham.

1 THE COURT: Yes, Ms. Pelham.

2 JUROR #143, LAURA B. PELHAM: I'm a nurse. And,
3 occasionally, I see cases that involve child abuse.

4 THE COURT: I understand. And would that in any way
5 interfere with your ability to be a fair and impartial
6 juror on this kind of case?

7 JUROR #143, LAURA B. PELHAM: No, sir.

8 THE COURT: Thank you, Ms. Pelham.
9 You're qualified.

10 (WHEREUPON, the sidebar was concluded.)

11 THE COURT: Now, do I have any member of the jury
12 panel who has any connection, family, business, social, or
13 otherwise with Bob Ariail, the Solicitor, or with Bryna
14 Seay, who is the Deputy Solicitor on this particular case,
15 or with law enforcement, whether that be federal, state,
16 county, or municipal? If so, would you, please, stand and
17 give me your name.

18 All right. Your name, first of all, please, ma'am?

19 JUROR #25, SHARON A. MADDEN BUTLER: Sharon Butler.

20 THE COURT: Ms. Butler, your husband is a magistrate?

21 JUROR #25, SHARON A. MADDEN BUTLER: Yeah.

22 THE COURT: Would that fact in any way interfere with
23 your ability to be a fair and impartial juror on this
24 case?

25 JUROR #25 SHARON A. MADDEN BUTLER: No.

1 THE COURT: Thank you, ma'am.

2 You're qualified.

3 Yes, ma'am. Your name, please?

4 JUROR #138, GWEN T. PACE: Gwen Pace.

5 THE COURT: All right.

6 JUROR #138, GWEN T. PACE: I have a niece that's a
7 deputy sheriff.

8 THE COURT: Say it again.

9 JUROR #138, GWEN T. PACE: I have a niece that's a
10 deputy in the Sheriff's Department.

11 THE COURT: Oh, in the Sheriff's Department. And
12 she's your niece?

13 JUROR #138, GWEN T. PACE: Yes.

14 THE COURT: Would that in any way interfere with your
15 ability to be a fair and impartial juror on this case?

16 JUROR #138, GWEN T. PACE: No.

17 THE COURT: Thank you, ma'am.

18 Your name, please, ma'am?

19 JUROR #143, LAURA B. PELHAM: Laura Pelham.

20 THE COURT: Yes, ma'am, Ms. Pelham.

21 JUROR #143, LAURA B. PELHAM: Bob Ariail is my
22 neighbor and friend.

23 THE COURT: Thank you, Ms. Pelham.

24 For that reason, I would not put you on this case.

25 JUROR #143, LAURA B. PELHAM: Okay.

1 THE COURT: I appreciate you telling me that.

2 Thank you so much.

3 Steve Sumner and Tom Quinn represent Mr. Martucci.

4 Bruce Byrholdt and David Phillips represent

5 Ms. Holder.

6 Do I have any clients now or formerly of these
7 attorneys? If so, would you, please, stand and give me
8 your name.

9 (There was no response.)

10 THE COURT: Do I have any member of the panel who has
11 any knowledge about this case, whether you've heard about
12 it or read about it? Would anyone respond to that
13 question? Does anyone know anything about this case?

14 Your name, sir?

15 JUROR #63, WILLIAM B. GAUTHIER: William Gauthier.

16 THE COURT: All right, sir.

17 JUROR #63, WILLIAM B. GAUTHIER: Just what I read in
18 the paper.

19 THE COURT: Would that fact in any way interfere with
20 your ability to be a fair and impartial juror on this
21 case?

22 JUROR #63, WILLIAM B. GAUTHIER: No, sir.

23 THE COURT: Thank you, sir.

24 The strikes are ten [sic] for the State, and five for
25 each Defendant.

1 Ladies and gentlemen, when your name is called, I'll
2 ask that you, please, come forward to this podium up
3 front, turn around and face counsel, and await further
4 instructions.

5 Thank you.

6 JURY SELECTION

7 THE CLERK: #149, James Robert Redmon.

8 (James Robert Redmon, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. SEAY: Please present the juror.

11 THE CLERK: What says the Defendant?

12 MR. SUMNER: Your Honor, I believe the first name on
13 the indictment is Ms. Holder.

14 THE COURT: All right.

15 MR. BYRHOLDT: Present the gentleman.

16 MR. SUMNER: Please swear the juror.

17 THE CLERK: Take your place in the jury box, please.

18 #169, Carolyn A. Terry.

19 (Carolyn A. Terry, a white female, came forward.)

20 THE CLERK: What says the State?

21 MS. SEAY: Please present her.

22 THE CLERK: What says Defendant Holder?

23 MR. BYRHOLDT: Please swear the lady.

24 THE CLERK: Defendant Martucci?

25 MR. SUMNER: Please swear Ms. Terry.

1 THE CLERK: Take your place in the jury box, please,
2 ma'am.

3 #152, Leslie L. Robbins.

4 (Leslie L. Robbins, a white female, came forward.)

5 THE CLERK: What says the State?

6 MS. SEAY: Please present the juror.

7 THE CLERK: What says Defendant Holder?

8 MR. BYRHOLDT: Please swear the lady.

9 THE CLERK: Defendant Martucci?

10 MR. SUMNER: Please swear Ms. Robbins.

11 THE CLERK: Take your place in the jury box, please.

12 #195, Larry A. Hudson.

13 (Larry A. Hudson, a white male, came forward.)

14 THE CLERK: What says the State?

15 MS. SEAY: Please present him.

16 THE CLERK: What says Defendant Holder?

17 MR. BYRHOLDT: Please excuse him from service on this
18 case.

19 THE CLERK: You're excused in this case. Just be
20 seated, please, sir.

21 #18 Ronald G. Bowers.

22 (Ronald G. Bowers, a white male, came forward.)

23 THE CLERK: What says the State?

24 MS. SEAY: Please present the juror.

25 THE CLERK: What says Defendant Holder?

1 MR. BYRHOLDT: Swear the gentleman.
2 THE CLERK: Defendant Martucci?
3 MR. SUMNER: Please swear Mr. Bowers.
4 THE CLERK: Be seated in the jury box, please, sir.
5 #138, Gwen T. Pace.
6 (Gwen T. Pace, a white female, came forward.)
7 THE CLERK: What says the State?
8 MS. SEAY: Please excuse her from this case.
9 THE CLERK: You may be excused in this case.
10 #136, Robin K. Oddo.
11 (Robin K. Oddo, a white female, came forward.)
12 THE CLERK: What says the State?
13 MS. SEAY: Please present her.
14 THE CLERK: What says Defendant Holder?
15 MR. BYRHOLDT: Please swear the lady.
16 THE CLERK: Defendant Martucci?
17 MR. SUMNER: Please swear Ms. Oddo.
18 THE CLERK: Be seated in the jury box, please, ma'am.
19 #139, Cecil F. Parlier.
20 (Cecil F. Parlier, a white male, came forward.)
21 THE CLERK: What says the State?
22 MS. SEAY: Please excuse him from this trial.
23 THE CLERK: You may be excused in this case.
24 #11, Tina Y. Belcher.
25 (Tina Y. Belcher, a black female, came forward.)

1 THE CLERK: What says the State?

2 MS. SEAY: Please present her.

3 THE CLERK: What says Defendant Holder?

4 MR. BYRHOLDT: Please swear the lady.

5 THE CLERK: Defendant Martucci?

6 MR. SUMNER: Please swear Ms. Belcher.

7 THE CLERK: Be seated in the jury box, please, ma'am.

8 #182, Theresa G. Williams.

9 (Theresa G. Williams, a black female, came forward.)

10 THE CLERK: What says the State?

11 MS. SEAY: Please present her.

12 THE CLERK: What says Defendant Holder?

13 MR. BYRHOLDT: Please excuse her from service on this
14 case.

15 THE CLERK: You may be excused in this case.

16 #33, Stephanie D. Childress.

17 (Stephanie D. Childress, a white female, came
18 forward.)

19 THE CLERK: What says the State?

20 MS. SEAY: Please excuse her from this case.

21 THE CLERK: You may be excused in this case.

22 #159, Beverly D. Sampson.

23 (Beverly D. Sampson, a white female, came forward.)

24 THE CLERK: What says the State?

25 MS. SEAY: Please present her.

1 THE CLERK: What says Defendant Holder?

2 MR. BYRHOLDT: Please excuse her from service on this
3 case.

4 THE CLERK: You may be excused in this case.

5 #194, Barbara J. Hanner.

6 (Barbara J. Hanner, a white female, came forward.)

7 THE CLERK: What says the State?

8 MS. SEAY: Please present her.

9 THE CLERK: What says Defendant Holder?

10 MR. BYRHOLDT: Please excuse her from service on this
11 case.

12 THE CLERK: You may be excused in this case.

13 #17, Wayne C. Bower.

14 (Wayne C. Bower, a white male, came forward.)

15 THE CLERK: What says the State?

16 MS. SEAY: Please present him.

17 THE CLERK: What says Defendant Holder?

18 MR. BYRHOLDT: Please swear the gentleman.

19 THE CLERK: Defendant Martucci?

20 MR. SUMNER: Please swear Mr. Bower.

21 THE CLERK: Take your place in the jury box, please,
22 sir.

23 #153, Jacqueline A. Robinson.

24 (Jacqueline A. Robinson, a black female, came
25 forward.)

1 THE CLERK: What says the State?

2 MS. SEAY: Please present her.

3 THE CLERK: What says Defendant Holder?

4 MR. BYRHOLDT: Please swear the lady.

5 THE CLERK: Defendant Martucci?

6 MR. SUMNER: Likewise.

7 THE CLERK: Take your place in the jury box, please,
8 ma'am.

9 #45, Elaine Bowers Cross.

10 (Elaine Bowers Cross, a white female, came forward.)

11 THE CLERK: What says the State?

12 MS. SEAY: Please present her.

13 THE CLERK: What says Defendant Holder?

14 MR. BYRHOLDT: Please swear the lady.

15 THE CLERK: Defendant Martucci?

16 MR. SUMNER: Likewise.

17 THE CLERK: Be seated in the jury box, please, ma'am.

18 THE COURT: Ms. Cross, would you take that first seat
19 and serve as foreperson on this case for me, please,
20 ma'am?

21 THE CLERK: #25, Sharon A. Madden Butler.

22 (Sharon A. Madden Butler, a black female, came
23 forward.)

24 THE CLERK: What says the State?

25 MS. SEAY: Please present her.

1 THE CLERK: What says Defendant Holder?

2 MR. BYRHOLDT: Please excuse her from service on this
3 case.

4 THE CLERK: You may be excused in this case.

5 #96, Sara N. Johnson.

6 (Sara N. Johnson, a white female, came forward.)

7 THE CLERK: What says the State?

8 MS. SEAY: Please excuse her in this case.

9 THE CLERK: You may be excused in this case.

10 #126, Faye King Meares.

11 (Faye King Meares, a white female, came forward.)

12 THE CLERK: What says the State?

13 MS. SEAY: Please present her.

14 THE CLERK: What says Defendant Holder?

15 MR. BYRHOLDT: Please swear her.

16 THE COURT: Defendant Martucci?

17 MR. SUMNER: Please excuse Ms. Meares from the trial
18 of this case.

19 THE CLERK: You may be excused in this case.

20 #105, Allen O. Kinzer.

21 (Allen O. Kinzer, a white male, came forward.)

22 THE CLERK: What says the State?

23 MS. SEAY: Please present him.

24 THE CLERK: What says Defendant Holder?

25 MR. BYRHOLDT: Please swear the gentleman.

1 THE CLERK: Defendant Martucci?
2 MR. SUMNER: Please swear Mr. Kinzer.
3 THE CLERK: Be seated in the jury box, please.
4 #66, Lindsay B. Graham.
5 (Lindsay B. Graham, a white male, came forward.)
6 THE CLERK: What says the State?
7 MS. SEAY: Please present him.
8 THE CLERK: What says Defendant Holder?
9 MR. BYRHOLDT: Please swear the gentleman.
10 THE CLERK: Defendant Martucci?
11 MR. SUMNER: Likewise.
12 THE CLERK: Be seated in the jury box, please, sir.
13 #142, Arthur S. Peck.
14 (Arthur S. Peck, a white male, came forward.)
15 THE CLERK: What says the State?
16 MS. SEAY: Please present him.
17 THE CLERK: What says Defendant Holder?
18 MR. BYRHOLDT: Please swear the gentleman.
19 THE CLERK: Defendant Martucci?
20 MR. SUMNER: Likewise.
21 THE CLERK: Take your place in the jury box, please,
22 sir.
23 THE COURT: And let's get one alternate, please.
24 THE CLERK: #60, June Forrester Black.
25 (June Forrester Black, a white female, came forward.)

1 THE CLERK: What says the State?

2 MS. SEAY: Please present her.

3 THE CLERK: What says Defendant Holder?

4 MR. BYRHOLDT: Please excuse her from service on this
5 case.

6 THE CLERK: You may be excused in this case.

7 #170, Robert W. Thomas.

8 (Robert W. Thomas, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. SEAY: Please excuse him from this case.

11 THE CLERK: You may be excused in this case.

12 #156, Deborah F. Rogers.

13 (Deborah F. Rogers, a white female, came forward.)

14 THE CLERK: What says the State?

15 MS. SEAY: Please present her.

16 THE CLERK: What says Defendant Holder?

17 MR. BYRHOLDT: Please excuse her from service on this
18 case.

19 THE CLERK: You may be excused in this case.

20 #168, Kathy P. Sullivan.

21 (Kathy P. Sullivan, a white female, came forward.)

22 THE CLERK: What says the State?

23 MS. SEAY: Please present her.

24 THE CLERK: What says Defendant Holder?

25 MR. BYRHOLDT: Please swear the lady.

1 THE CLERK: Defendant Martucci?

2 MR. SUMNER: Likewise.

3 THE CLERK: Be seated in the jury box, please, ma'am.

4 THE COURT: At this time, I ask the balance of the
5 panel to report back downstairs to the jury assembly room.

6 Thank you.

7 (WHEREUPON, the jury panel exited the courtroom.)

8 THE COURT: Ladies and gentlemen, there are some
9 matters that I need to take up before we start this trial,
10 and I'll give you a recess while I do that.

11 You don't know any more about this case other than
12 what I have briefly told you. But I need to instruct you
13 that from this point on, don't talk about this case. You
14 do not discuss the facts of this case until you have heard
15 all of the testimony to be presented, the arguments by the
16 attorneys, and my charge on the law.

17 So if you will be at ease and follow the bailiff,
18 we'll start just as soon as we can.

19 Thank you.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 11:56 a.m.)

22 PRE-TRIAL MOTIONS

23 THE COURT: All right. I understand you have some
24 motions to dispose of at this time.

25 MS. SEAY: Yes, sir, Your Honor.

1 THE COURT: What are you going to do first,
2 Solicitor?

3 MS. SEAY: If it's acceptable to the Court, we will
4 handle Ms. Holder's Blair hearing.

5 THE COURT: All right.

6 MS. SEAY: She was ordered to submit to an evaluation
7 for competency and criminal responsibility on August 2nd,
8 2002, by Judge Patterson. And this was done on the
9 Court's motion based on the allegation that a mother
10 participated in the death of her own child naturally
11 raises an issue of competency at present and at the time
12 of the act was Judge Patterson's ruling at that time.

13 She was evaluated on October 14th, 2002, at the South
14 Carolina Department of Mental Health. Dr. Tracy Gunter,
15 forensic psychiatrist, issued a report of findings and
16 they are as follows: Defendant was diagnosed with anxiety
17 disorder not otherwise specified. They found that she is
18 capable of understanding the nature of her charges and is
19 capable of assisting counsel in her defense. She had the
20 ability to differentiate right from wrong at the time of
21 the alleged offenses on or about July 17th, 2002. In
22 addition, she had the capacity to conform her conduct to
23 the requirements of the law.

24 And I would introduce for the Court an order for the
25 evaluation, as well as the report of findings. And it is

1 my understanding that these are admitted by stipulation
2 with Ms. Holder's counsel. And we would ask that the
3 Court make findings consistent with those in the mental
4 health report.

5 THE COURT: All right. Mr. Byrholdt, do you have
6 anything to present?

7 MR. BYRHOLDT: We do not, Your Honor. We have no
8 questions as to Ms. Holder's competency.

9 THE COURT: All right. She's competent.
10 Now, you have a Jackson Denno; is that correct?

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

12 We would call Doug Kelly to the stand as our first
13 witness.

14 MR. BYRHOLDT: Your Honor, we would request that the
15 witnesses be sequestered.

16 THE COURT: All right. We will sequester all the
17 witnesses testifying, in this case, either for the State
18 or the Defense.

19 Who is your chief investigating officer that you want
20 to remain?

21 MS. SEAY: Investigator Kelly.

22 THE COURT: All right.

23 MR. BYRHOLDT: Your Honor, after the Jackson v.
24 Denno, we may withdraw that request. But, at least,
25 during this right now, we would ask that they all be --

1 THE COURT: Are these family members? Are they
2 witnesses?

3 MR. BYRHOLDT: You're a potential witness, Marie.

4 Ben, you're going to have to step out.

5 David, you're going to have to step out.

6 THE COURT: All right. Do we have everybody? No
7 other potential witnesses now in the case?

8 (There was no response.)

9 THE CLERK: Put your left hand on the Bible and raise
10 your right hand.

11 WHEREUPON,

12 DOUG KELLY,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: State your name for the record, please.

15 THE WITNESS: Doug Kelly.

16 THE CLERK: Thank you.

17 Be seated.

18 DIRECT EXAMINATION

19 BY MS. SEAY:

20 Q Investigator Kelly, where are you currently employed?

21 A With the Greenville County Sheriff's Office.

22 Q How long have you been employed there?

23 A I was employed over 17 years until I had to retire on
24 some medical problems back in 2003. And now I came back
25 in December of last year.

1 Q So you were out from approximately September 2003
2 until December of 2005; is that correct?

3 A That's correct.

4 Q And could you, please, briefly state what your
5 education and training is to perform the law enforcement
6 duties that you perform?

7 A I've been in law enforcement approximately 28 years
8 off and on with different agencies. But I was with the
9 Greenville County Sheriff's Office for 17 years, extensive
10 training in homicide investigations or anything involving
11 law enforcement.

12 Q What are your primary duties?

13 A Now or back then?

14 Q What were your primary duties back in July of 2002?

15 A I was assigned to the violent crimes unit and
16 homicide.

17 Q As part of your duties, did you become involved in an
18 investigation involving a child death on that date?

19 A I did, yes, ma'am.

20 Q How did you -- how were you brought into the case?

21 A I was contacted by the deputy coroner, Linda
22 Holbrook, at the time, and informed that she was out at
23 the Allen Bennett Hospital in Greer with a deceased child
24 and requested my assistance in the matter.

25 Q And so you responded to Allen Bennett Hospital?

1 A Yes, ma'am, I did.

2 Q Did anyone respond with you?

3 A Later on, Investigator Bobby Alexander came. He was
4 my backup. And he came up to the hospital.

5 Q Can you, please, tell us who the persons were there
6 when you arrived?

7 A I first met Dr. Ward, who is the forensic
8 pathologist, as he was coming out of the hospital. We
9 passed and he kind of briefly stated that a young child
10 was deceased and he had been called there.

11 Once I went into the hospital, Deputy Corner Linda
12 Holbrook was there. I was advised that the mother of the
13 child, Brandi Holder, and some of her family members were
14 present in the family room. And also a -- two other
15 individuals by the name of Mark Martucci, who was the
16 boyfriend of Brandi Holder, and a John Parker, who was a
17 roommate, were also located there, but were in a separate
18 section from where the family members of Ms. Holder were.

19 Q What was your purpose for going there?

20 A Any time there's a child's death, we have to
21 investigate it. And once we were contacted either by the
22 coroner or by our dispatch, of course, we have to respond.
23 And, basically, we begin our investigation into how this
24 child died.

25 Q And would you state, again, what the day and date was

1 that you responded?

2 A It was on a Wednesday of July the 17th, 2002.

3 Q Approximately what time did you go to the hospital?

4 A I arrived there somewhere between 3:00 and 3:30 that
5 afternoon.

6 Q Did you speak to any of the people that you've just
7 described who were still there at the hospital?

8 A I spoke to most everybody that was there, initially,
9 the nurses and Ms. Holbrook. And after viewing the
10 child's body, I then located where the Holder family was
11 located, which was in a family room.

12 Present, at that time, was Ben and Marie Holder,
13 which were the grandparents, Brandi Holder, which was the
14 mother, and an uncle by the name of David Kelly, and some
15 hospital support staff were in there.

16 Q Did you speak with the mother of the child, Brandi
17 Holder?

18 A I did. I introduced myself and advised her who I was
19 and our purpose for being there, that we have to respond
20 to any child -- minor child's death. And I, basically,
21 just asked her what happened as she knew it.

22 Q And what, if anything, did she tell you?

23 A She told me that she had been at -- had left for work
24 that morning working at a beauty salon over in the Mauldin
25 area. And that the child, which was named was **VICTIM**

1 , they called him *victim* " had apparently been sick on
2 Tuesday night and that some vomiting had occurred, that he
3 had been involved in an ATV accident a four-wheeler
4 accident, on Sunday, but he seemed to be fine. But there
5 was some indication that they thought that may have been
6 what caused his injuries.

7 Q And you received this history of the injuries from
8 Brandi Holder?

9 A That's correct, from Brandi.

10 Q Did you speak with anyone else while you were at the
11 hospital?

12 A I did speak with Marie Holder briefly there, just,
13 again, trying to gather some information on *victim* and what
14 possibly could have happened. That conversation didn't
15 take place very long.

16 After that, I advised her -- or requested that they
17 respond to the law enforcement center for purposes of
18 continuing the investigation and statements. And I
19 believe the uncle, David Kelly, transported Brandi to the
20 LEC, the law enforcement center. And also Ms. Holder,
21 Marie Holder, and Ben Holder, the grandparents, they
22 traveled on their own also to the LEC.

23 Then I located Mr. Martucci and John Parker. They
24 were on the -- actually, the outside of the hospital in
25 the little eating area that they have there.

1 Q Let me stop you there. I just want to go back to
2 Ms. Holder for just a moment. Did you ever at any point
3 in time tell her that she was under arrest for anything
4 when you spoke with her at the hospital?

5 A No, ma'am. She was not under arrest, not in custody,
6 and she was not advised of that.

7 Q And when you stated that these folks were going to go
8 to the law enforcement center to talk with you further,
9 did you tell them that they had to go to the law
10 enforcement center?

11 A No. I requested that they go for the purpose that we
12 need to, you know, take statements from them as to what
13 had happened to ~~VICTIM~~ and how the injuries had occurred.

14 Q Okay. And so I believe that you were picking up at
15 the point when you went to talk with Mr. Martucci and
16 Mr. Parker?

17 A Right. Basically, the same type of thing as with
18 Brandi. We asked what had happened, trying to give us
19 some indication of how ~~victim~~ received the injuries.
20 Mr. Martucci just stated that the ATV accident occurred on
21 Sunday and that the child had become sick on Tuesday
22 night, got worse on that Wednesday. And he and Mr. Parker
23 transported ~~victim~~ to the hospital.

24 Mr. Martucci said ~~victim~~ was awake and conscious when he
25 got to the hospital, but that he had stopped breathing at

1 some point in time. And they attempted to revive him.

2 And, again, I asked them, if they would, to respond
3 to the law enforcement center for the purposes of that
4 statement. And they drove themselves down there.

5 Q Okay. Did Mr. Martucci mention anything to you about
6 this baby being accident-prone?

7 A Yeah. He mentioned a lot, that ~~VICTIM~~^{VICTIM} was clumsy, he
8 would fall around a lot, that some dog had knocked him
9 down in the past, that he would fall on the steps, he
10 would fall out of bed, he would fall in the pool, just
11 several different times that he would mention that he was
12 falling around where he lived on Jug Factory.

13 Q Who was -- what was -- backing up just little bit.
14 What was Ms. Holder's demeanor at the time you first spoke
15 with her at the hospital?

16 A She was very upset as far as crying and that type of
17 thing. You could tell that she was visibly upset. She
18 requested to see ~~VICTIM~~ And we advised her, at the time,
19 that he was being shipped to Greenville Memorial Hospital
20 for further tests and an autopsy. And that we didn't -- I
21 advised her that it wouldn't be, you know, proper to view
22 ~~VICTIM~~ at that time.

23 Q What about Mr. Martucci, what was his demeanor when
24 you spoke with him and he gave you that information?

25 A He was not upset at the time we spoke with him at the

1 hospital. He was very controlling as far as, you know,
2 speaking with us and talking to us. But he showed no real
3 hysterical, you know, attitude or anything like that. He
4 wasn't crying or really concerned about what was going on.

5 Q And John Parker, who was there when you talked to
6 Mr. Martucci, what was his demeanor?

7 A Mr. Parker seemed very intimidated by being in the
8 presence of Mr. Martucci. When we would ask him certain
9 questions, he was somewhat reluctant to get any kind of
10 detail going on. So we didn't pursue that with him, at
11 that time, until we could get them separated.

12 Q Okay. So you requested that they report to the law
13 enforcement center also, and they were willing to do that?

14 A That's right. They drove themselves there.

15 Q Did you advise them -- meaning Mr. Martucci and
16 Mr. Parker -- that they were under arrest or in any kind
17 of detention at any point?

18 A No. They were never advised of that.

19 Q I'm going to -- for purposes of this hearing, I'm
20 going to jump ahead a little bit with you in order to
21 facilitate what we're trying to do here. At some point,
22 you went back to the law enforcement center; is that
23 correct?

24 A Correct, later on that evening.

25 Q And who all was present in terms of the people

1 involved in this?

2 A With regards to ~~VICTIM'S~~ family, it was the grandmother,
3 Marie, and the grandfather, Ben. David Kelly was there.
4 Brandi Holder was there. John Parker was there. And Mark
5 Martucci was there. And the law enforcement personnel
6 were Investigator Wes Smith, Investigator Paul Silvaggio,
7 and Investigator Bobby Alexander. And I think that was
8 all that was present at that time --

9 Q Were all those people --

10 A -- when I arrived.

11 Q Excuse me. Were all those people in one room?

12 A No. They were separated in different rooms.

13 Q Did you have an opportunity to find out what
14 Investigator Silvaggio and Investigator Alexander were
15 doing at that time?

16 A Yes, ma'am. They were interviewing, at that time,
17 Brandi Holder.

18 Q Did you have knowledge of her giving a statement at
19 that time?

20 A I did. When I entered the room, I was advised that
21 she had given a written statement.

22 Q And did you become aware of what John Parker was
23 doing during this time?

24 A Correct. He was with Investigator Wes Smith. I
25 entered that room and was advised that Mr. Parker had also

1 given a written statement.

2 Q Okay. And as a result of your learning that, what
3 did you do?

4 A I -- the first room I went in was with Investigator
5 Silvaggio and Bobby Alexander where they were interviewing
6 Brandi. They handed me the statement that Brandi had
7 given them. And I reviewed it and read it.

8 Q Did you notice anything about it, based on your
9 investigation at that point in time?

10 ~~*~~ A Yes, ma'am. Some of the information that I had
11 gathered outside of what they had interviewed her, at that
12 time, was a little bit different than what she had stated
13 in her statement. I confronted her with the information
14 that I had. And, at that time, she indicated that she
15 wanted to give an additional statement.

16 Q And did she do that?

17 A She did, yes, ma'am.

18 Q Did you talk further with John Parker?

19 A I did. Once I left the interview room where Brandi
20 was, I went to Mr. Parker. And Investigator Smith was
21 talking to him. I read his statement that he had given,
22 the same situation. I confronted him with some of the
23 information I had. And, at that time, he indicated that
24 he wanted to make an additional statement.

25 Q Okay. And then were you involved in taking that

1 additional statement?

2 A No. I left the room, at that time, and the statement
3 was taken by Investigator Smith

4 Q What did you do next?

5 A I went to the room where Mr. Martucci was at. At
6 that time, he was alone by himself. And no one had
7 started to interview him.

8 Q Where was he?

9 A He was in one of our sergeants offices there at the
10 LEC up in our office.

11 Q Was it an isolated office or was it in some of those
12 areas you have where there are a lot of small offices
13 together?

14 A In our office on that floor right there, there's
15 several different small offices, and then there's an open
16 bay. But he was in one of the small offices that the
17 sergeants have.

18 Q And did you notice anything about him when you first
19 went to talk to him?

20 A When I entered the room, Mr. Martucci was asleep. He
21 had his head laid down on the desk. And I had to wake him
22 up.

23 Q And did you ask to talk to him?

24 A I did. Again, I explained to him who I was again, as
25 I had at the hospital. At that time, I advised him of his

1 rights. He did sign a rights form and indicated that he
2 understood what his rights were.

3 MS. SEAY: Your Honor, I would ask that this be
4 marked for identification for purposes of the hearing.

5 THE COURT: All right.

6 (WHEREUPON, State's Exhibit No. 1 was marked for
7 identification only.)

8 BY MS. SEAY:

9 Q Investigator Kelly, do you recognize State's Exhibit
10 No. 1 for identification?

11 A I do, yes, ma'am. This is the Waiver of Rights Form
12 that we use. And it has my signature, and also this form
13 was signed by Mr. Martucci.

14 Q Is there a process or procedure that you use when you
15 are advising someone of their rights?

16 A Yes, ma'am. I give them a copy of this same form to
17 read along with me. And I go through each question
18 reading the rights and making sure that they understand
19 them. If they don't understand a particular thing, I stop
20 and explain it to them. I explain to them exactly what
21 "pressure" and "coercion" mean to make sure they
22 understand that part of it.

23 In this case, Mr. Martucci indicated that he did
24 understood his rights. And he did not ask for an attorney
25 at that time.

1 Q Did you obtain information about him as far as his
2 educational level of background?

3 A I did. At the top of the rights form, I put the full
4 name, address, date of birth, social security number, and
5 how far he went in school.

6 Q Did he indicate to you that he knew how to read and
7 write?

8 A He did, yes, ma'am.

9 Q And could you, please, give us an idea about the time
10 that was involved in your advising him of his rights?

11 A Yes, ma'am. The form has a place for date and time.
12 And it's dated July the 17th, 2002. The time was 19:30,
13 which is 7:30 at night. I completed the form after
14 reading it to him and having him sign it at 19:35. So it
15 took five minutes to read it and have him read it and sign
16 it himself.

17 Q Did he sign it?

18 A He did, yes, ma'am.

19 Q Voluntarily?

20 A Yes, ma'am.

21 Q Did you force him to sign it?

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

23 Q Did anyone in your presence force him to sign it?

24 A I did not -- myself and Mr. Martucci were alone in
25 that the other investigators were tied up and no one else

1 was available. So it was just he and I in the room.

2 Q And you witnessed this waiver with your signature?

3 A I did, yes, ma'am.

4 Q And I believe you noted the time?

5 A Yes, ma'am, 19:35. It was 7:35.

6 Q Did you then have a conversation with Mr. Martucci?

7 A I did. I explained to Mr. Martucci what we had found
8 out about the injuries to ~~VICTIM~~ and that Mr. Parker and
9 Ms. Holder were now cooperating with us. And if he would
10 like to make any statements to me at this time about the
11 incident, I'd be glad to listen to him. He indicated that
12 he had nothing to do with any of the injuries.

13 THE COURT: I'm not interested in the content. I'm
14 interested only in the admissibility of the statement, the
15 voluntariness of it. Okay.

16 MS. SEAY: Yes, sir.

17 BY MS. SEAY:

18 Q Investigator Kelly, just tell me, if you will, the
19 conversation that you had with Mr. Martucci, did he freely
20 and voluntarily relate this information to you?

21 A Yes, ma'am, he did.

22 Q Did he appear to be under the influence of anything
23 that might impair his good judgment or ability to do that?

24 A No, ma'am. I didn't detect anything that would
25 hinder him from being able to talk to me freely.

1 Q Did you promise him anything in exchange for talking
2 to you?

3 A No, ma'am, I did not.

4 Q And did you threaten or coerce him in any way to do
5 that?

6 A No, ma'am, no threats, no coercion.

7 Q At the time that you just described that you
8 explained the Waiver of Rights and Mr. Martucci signed it
9 and indicated his understanding, was he in custody at that
10 time?

11 A He was not in custody, no, ma'am.

12 MS. SEAY: Those are all the questions for this
13 witness, Your Honor.

14 THE COURT: All right. Mr. Sumner or Mr. Quinn.

15 MR. SUMNER: Your Honor, as to the issue before the
16 Court now, I don't have any questions of Mr. Kelly.

17 THE COURT: Mr. Byrholdt, do you all have any
18 questions of this witness?

19 MR. BYRHOLDT: Briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BYRHOLDT:

22 Q Now, you interviewed Ms. Holder at the hospital;
23 correct?

24 A Yes, sir, correct.

25 Q And you told her -- did you tell her that her son had

1 been killed?

2 A She already knew that.

3 Q She asked you if she could go see ^{victim}; correct?

4 A Correct.

5 Q And you told the mother of a dead child she couldn't
6 go see her son?

7 A No. I advised her -- the way I put it, I said, it's
8 not advisable at this point, because he had already been
9 put in a body bag and was being transported to Greenville
10 Memorial Hospital.

11 Q Was she hysterical?

12 A She was pretty well upset, crying.

13 Q I mean, describe what you saw.

14 THE COURT: Well, now, what does this have to do with
15 the voluntariness -- is this of her statement now?

16 MR. BYRHOLDT: Yes, sir.

17 THE COURT: All right. Go ahead.

18 BY MR. BYRHOLDT:

19 Q I mean, describe what you mean by being very upset,
20 Officer.

21 A Well, I mean, crying and -- I don't know how else to
22 put it. She was crying. And we were very easy in dealing
23 with her because she was crying.

24 Q Was she coherent or was she just repeating herself?

25 A No. She was coherent, but it was just -- you know,

1 her child had just died, but she was crying.

2 Q And the only statement you took from her was at the
3 hospital, you did not take the statements at the law
4 enforcement from her?

5 A No, sir. I didn't take any statements at the law
6 enforcement center. This was just a -- trying to find out
7 exactly how ~~Viana~~ got in the position --

8 Q Were you present during her interrogation at the law
9 enforcement center?

10 A I was not, not on the first one. I got to the --
11 when I arrived there, the statement had already been taken
12 by Paul Silvaggio.

13 Q Do you know what time her statement was taken, sir?

14 A I would have to look at the time on the statement.

15 Q There's two statements; correct?

16 A Yes, sir.

17 Q Let me hand you -- I think those are both statements.
18 And if you could tell me any place on there where there's
19 a time of when those statements were taken.

20 A Do you have the rights form? That's where the time
21 is at.

22 Q I know when the rights form was given. My question
23 is, on Mr. Parker's statements, there's times when the
24 statements were taken. Can you tell us what time of day
25 those statements were taken? Do you have any idea?

1 A No, sir. I wouldn't have any idea about the time,
2 because I wasn't present when they started that.

3 Q Do you know how long Ms. Holder was interrogated at
4 the law enforcement center?

5 A I don't know a time.

6 Q If I tell you that they began the rights form a
7 little after 5:00 in the afternoon, do you know what time
8 they finished with her?

9 A It would have been later on that evening.

10 Q Would it have been midnight?

11 A I don't know whether it was midnight or not, no, sir.

12 Q In your training, would six or seven hours of
13 interrogation with no breaks be excessive?

14 A No, sir. Because she was given an opportunity to
15 eat, drink, whatever she wanted. As a matter of fact, we
16 gave her a blanket that night.

17 Q Are you saying you provided her food?

18 A She was offered that. Because we keep food there in
19 the office like crackers and things like that.

20 Q You offered her that yourself?

21 A I think -- I mean, I can't say I did, because I was
22 in and out.

23 Q Did you ever offer her food or a bathroom break or
24 anything while you were there?

25 A Well, again, I wasn't in the presence very long.

1 MR. BYRHOLDT: Thank you, sir.

2 THE COURT: Anything else, Solicitor?

3 MS. SEAY: Nothing further.

4 THE COURT: All right. Thank you.

5 You can step down.

6 MS. SEAY: Your Honor, I'll call Investigator Paul
7 Silvaggio.

8 THE COURT: Okay. Let me -- for the benefit of the
9 jury, how much more do we have? Should I go ahead and
10 send them to lunch and start after lunch?

11 MR. BYRHOLDT: Your Honor, I'm probably going to have
12 four witnesses myself.

13 THE COURT: All right. Bring the jury in for me,
14 please.

15 How many more have you got, Solicitor?

16 MS. SEAY: Your Honor, I'll have two more witnesses,
17 and then two that, I think, will be brief as to the
18 statement issues.

19 THE COURT: Okay.

20 (WHEREUPON, the jury came into open court at
21 approximately 12:27 p.m.)

22 THE COURT: Ladies and gentlemen, I have not yet
23 concluded these pre-trial matters. It will take me a
24 little longer to do that. So, at this time, I'm going to
25 release you for lunch. And we'll pick back up after

1 lunch.

2 Now, as I said earlier, you don't know any more about
3 this case other than what I briefly told you. But, again,
4 I need to instruct you that you do not talk about this
5 case among yourselves or with anyone else. This includes
6 even members of your own family, if you go home for lunch.
7 If anybody contacts you and tries to talk to you about
8 this case, get their names and addresses and report that
9 to me.

10 Please keep your badges on during the lunch recess.
11 I ask that you do that so that everyone involved with this
12 case will know that you're a juror on the case and they
13 should not discuss it in your presence. There will be
14 witnesses, members of the families in and around the lobby
15 and out in the hallways, so, please, keep your badges on
16 and have them conspicuous so that none of these folks will
17 discuss this case in your presence.

18 Ladies and gentlemen, I ask that you be back in your
19 jury room where you've been on recess at 2:30, 2:30 this
20 afternoon.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 12:29 p.m.)

24 THE COURT: All right. Solicitor.

25 MS. SEAY: Your Honor, I would call Investigator Paul

1 Silvaggio.

2 THE CLERK: Put your left hand on the Bible, please,
3 and raise your right hand.

4 WHEREUPON,

5 PAUL ANDREW SILVAGGIO,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: State your name for the record, please,
8 sir.

9 THE WITNESS: Paul Andrew Silvaggio, S-I-L-V-A-G-G-I-O.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MS. SEAY:

13 Q Investigator Silvaggio, you are currently employed at
14 the Greenville County Sheriff's Office?

15 A Yes, I am.

16 Q How long have you been so employed?

17 A 19 years.

18 Q And your duties are primarily investigating violent
19 crimes; is that correct?

20 A That is correct.

21 Q Did you have occasion to be brought into the case
22 that we are here about today, the death of Bobby Holder?

23 A Yes, I was.

24 Q How were you brought into that?

25 A I was asked by Investigator Doug Kelly to conduct an

1 interview on Brandi Holder.

2 Q And did you do that?

3 A Yes, I did.

4 Q Where were you when you conducted an interview?

5 A I was at the Greenville Law Enforcement Center in
6 Room 210, which is in the violent crimes unit seated at my
7 desk in a room accompanying eight other desks besides
8 myself.

9 Q Okay. Did Ms. Holder come there to be interviewed?

10 A Yes, she did. She was at the law enforcement center
11 when Investigator Doug Kelly directed me to conduct the
12 interview with her. And I escorted her from the waiting
13 area in the Criminal Investigation Division back to my
14 office where I seated her next to my desk.

15 Q Do you know how she had arrived at the law
16 enforcement center?

17 A She was not in custody. And I believe she arrived in
18 the company of family.

19 Q So you met her in the lobby area and went to Room
20 210; is that right?

21 A That is correct.

22 Q Was anyone else present in Room 210 when you
23 conducted this interview?

24 A Investigator Bobby Alexander, who is also with the
25 violent crimes unit in the Criminal Investigation

1 Division.

2 Q What was the first thing that you did in reference to
3 this?

4 A At first, I advised Brandi of her legal rights. And
5 when we completed the rights waiver form, we then
6 proceeded with an interview.

7 MS. SEAY: I would ask that this be marked for
8 identification for this hearing.

9 (WHEREUPON, State's Exhibit No. 2 was marked for
10 identification only.)

11 BY MS. SEAY:

12 Q Investigator, this is State's Exhibit No. 2 for
13 identification, do you recognize that?

14 A Yes, I do.

15 Q What is that?

16 A This is the rights waiver form that I presented to
17 Ms. Brandi Lynn Turner Holder on July the 17th, 2002.

18 Q At approximately what time did you do that?

19 A 5:05 p.m.

20 Q Is there a procedure or process that you use when you
21 ask someone about waiving their rights?

22 A Yes, there is.

23 Q Would you explain what that is?

24 A I start with noting the case number at the top
25 right-hand corner. And then I proceed with asking the

1 individual their full name, address, telephone number,
2 birth date, and social security number. I then make
3 notation of the date and the time that we've begun the
4 questioning process in respect to her personal
5 identification. And then I go on to begin the reading of
6 the rights.

7 Following each of the rights, I ask them if they do
8 understand the reading of that particular right to place
9 their initials beside it, if they do understand it. I
10 then proceed with reading them their rights. And then we
11 go back to -- as she initials at the end of each one of
12 the waiver -- each one of the rights, if you will. And
13 then I have her go back and read to me a portion of the
14 waiver so that I can get an indication that she can read.
15 After that, I have her sign beside the portion of the
16 waiver that she has read back to me.

17 Q And in this particular situation, did you obtain her
18 educational background?

19 A I did in the statement portion of the interview, but
20 not the waiver portion.

21 Q Were you able to establish whether she could read and
22 write?

23 A Yes, she could.

24 Q And as you just described, you said that you read
25 each line of the rights and asked her to initial them, did

1 she do that?

2 A Yes, she did.

3 Q Did she indicate that she understood what you were
4 saying to her?

5 A Yes, she did. In fact, she read back to me the
6 portion, "You have the right to talk to a lawyer for
7 advice before we ask you any questions and to have them
8 with you during questioning." And she read that back to
9 me and signed beside that particular portion of her
10 rights.

11 Q And then she also signed under the Waiver of Rights;
12 is that correct?

13 A Yes, she did.

14 Q And I believe you witnessed that?

15 A Yes, I did.

16 Q Along with Investigator Alexander?

17 A Yes, ma'am.

18 Q Did she ask you any questions during this process?

19 A No, she did not.

20 Q Did she ask you if she could stop the process?

21 A No, she did not.

22 Q Did you advise her that she was in custody at the
23 time?

24 A No, I did not. In fact, I made it very clear to her
25 that she was not in custody and was free to leave should

1 she so desire.

2 Q After you completed the Waiver of Rights, did you
3 then move on to take a statement?

4 A Yes, I did.

5 Q And can you briefly describe the process that you
6 used to do that?

7 A Yes. I explain to the individual what I'm doing in
8 respect to the statement forms are installed on our laptop
9 computers. In the beginning of the statement form, we
10 insert their full name, their educational level, their
11 age, their address. And then I go down and create an
12 additional paragraph. And I noted as additional
13 particulars on Statement E.

14 In there, I explain to the individual that I will be
15 inserting their birth date and their social security
16 number. I ask them if they can read and write and if
17 they're under the influence of any drugs or alcohol. We
18 talk about their educational level in that paragraph as
19 well. And I then advise them whether or not they're in
20 custody and that in no way is there any -- is this
21 statement to be construed as being any exchange for any
22 reward or any leniency.

23 Once we complete that portion, then I ask the
24 individual to proceed with their statement. And as they
25 talk about the incident, then I type verbatim. As they're

1 talking, I type verbatim. And that's how we proceeded.

2 Q And is that what you did with Ms. Holder?

3 A Yes, ma'am.

4 Q Was it a fairly lengthy interview?

5 A Yes, it was.

6 Q Do you know approximately how long it took to take
7 this statement?

8 A Probably, I would estimate an hour and a half to an
9 hour and 45 minutes from start to finish. That being
10 printing it, having her proofread it, make any corrections
11 to the statement in writing, and then initialing the
12 beginning and end of each paragraph, and then signing it,
13 and then having it notarized.

14 MS. SEAY: I'd like to mark this for identification.

15 (WHEREUPON, State's Exhibit No. 3 was marked for
16 identification only.)

17 BY MS. SEAY:

18 Q Investigator, this is State's Exhibit No. 3 for
19 identification, do you recognize it?

20 A Yes. This is the initial statement that I obtained
21 from Brandi Holder Turner.

22 Q And do her initials appear at the beginning and end
23 of each paragraph of the statement?

24 A Yes, they do.

25 Q And how many pages is the statement?

1 A It is eight pages long with the top header being the
2 same on each page, that being the advisement of her
3 rights. So she had that eight -- the waiver form, plus
4 eight additional times on the statement form.

5 Q Did she sign her name at the bottom of each
6 statement --

7 A Yes, she did.

8 Q -- at each page of the statement?

9 A Yes, ma'am.

10 Q And was she provided a copy of the statement?

11 A Yes, she was.

12 Q Did -- during this process, did she ever state that
13 she wanted to stop the process?

14 A No, she did not.

15 Q Did she ever indicate that she didn't understand what
16 was going on and ask for help?

17 A No, she did not.

18 Q Did she ever request that she'd like to have a lawyer
19 present with her during this statement?

20 A No, she did not.

21 Q Did you subsequently take another statement from her?

22 A Yes, I did.

23 Q And how did that come about?

24 A At the conclusion of this statement, per se, as it
25 was notarized, I presented the statement to Investigator

1 Doug Kelly, as he was the lead investigator on this case.
2 He read through the statement and saw inconsistencies in
3 her statement. He then came back to my office where I was
4 then present again with Brandi. He confronted her with
5 the inconsistencies of her statement.

6 At that time, he left. Brandi said that she wanted
7 to correct the first statement and tell the truth about
8 what, actually, happened. At that time, I took a second
9 statement from her, which was approximately five pages in
10 length, indicating what happened and what took place with
11 the victim in the case.

12 Q When Investigator Kelly came and told her that he had
13 information that tended to show that her statement was not
14 entirely correct, were you present for that conversation?

15 A Yes, I was.

16 Q Did Investigator Kelly threaten her that she had to
17 give another statement?

18 A No, he did not.

19 Q Did he promise her anything?

20 A No, he did not.

21 Q Did anybody, in your presence, at that time, promise
22 her anything?

23 A No, ma'am.

24 Q Threaten her in any way?

25 A No, ma'am.

1 Q And as far as the process of taking the second
2 statement, did you follow, basically, the same procedure
3 that you've already described?

4 A The same process we had already established in the
5 initial statement that she was not under the influence of
6 drugs and alcohol, and that first paragraph that I had
7 earlier mentioned. So we proceeded with -- went right
8 into the statement portion. And I typed as she dictated
9 to me.

10 MS. SEAY: Okay. I'd like to have this marked.

11 (WHEREUPON, State's Exhibit No. 4 was marked for
12 identification only.)

13 BY MS. SEAY:

14 Q Investigator, this is State's Exhibit No. 4 for
15 identification, do you recognize it?

16 A Yes, I do.

17 Q And it is?

18 A This is the second statement that I made reference to
19 that followed within the same course of the interview
20 under her rights.

21 Q Does Ms. Holder Turner's signature appear on that
22 statement?

23 A Yes, it does.

24 Q Did she sign the bottom of every page of that
25 statement?

1 A Yes, ma'am.

2 Q And did you also, following your typical procedure,
3 have her initial each paragraph?

4 A Yes, I did. And also to make any corrections within
5 the paragraphs that she may find that need to be
6 corrected, she would initial those as well.

7 Q Did she make any corrections?

8 A Yes, she did.

9 Q Was she given a copy of this statement also?

10 A Yes, she was.

11 Q During the time that you were with Ms. Holder taking
12 the statements and establishing her rights, did you in any
13 way threaten or coerce her that she had to speak with law
14 enforcement about this?

15 A No, ma'am.

16 Q Did you promise her anything?

17 A No, ma'am.

18 Q Are you aware of anyone else who might have done
19 that?

20 A No, ma'am.

21 Q Did she ever during this entire period indicate that
22 she wanted to stop the interview?

23 A No, she did not.

24 Q Do you know approximately how long it took to do the
25 Waiver of Rights and the two statements?

1 A I would estimate no more than four hours total.

2 MS. SEAY: Those are all the questions I have for
3 Investigator Silvaggio.

4 THE COURT: All right. Mr. Byrholdt.

5 MR. BYRHOLDT: May it please the Court?

6 CROSS-EXAMINATION

7 BY MR. BYRHOLDT:

8 Q You estimated about four hours. Could it have been
9 as much as seven?

10 A No, not seven, sir.

11 Q It couldn't have been seven?

12 A No, sir.

13 Q Did -- who was in the room with you during your
14 interview?

15 A It would be myself, Investigator Bobby Alexander, and
16 Brandi.

17 Q And then Doug Kelly, on occasion, would come in and
18 out?

19 A Doug came in on the one occasion at the conclusion of
20 the one statement. And then he left the room.

21 Q Did anyone else, any other officer, ever go in that
22 interrogation room?

23 A No, sir.

24 Q Can you tell me how her statement got -- how Brandi's
25 statement got notarized saying she was put under oath when

1 nobody ever went in there to notarize it? Can you explain
2 that to the Court?

3 A Well, at the conclusion of the interview, she went
4 before Wes Smith, who is a notary and an investigator in
5 the unit, and did have her statement notarized. But that
6 was at the conclusion of the interview.

7 Q I just asked you during the interrogation who was in
8 the room. Are you saying now that Wes came in and put her
9 under oath?

10 A No. During the interrogation, it was Investigator
11 Bobby Alexander, myself, and Brandi. At the conclusion of
12 that interview, then Wes Smith was introduced to Brandi.
13 And she then swore to the statement that she provided
14 Bobby Alexander and myself.

15 Q Oh, so after the fact?

16 A Yes, sir.

17 Q Did anybody go through Ms. Holder's purse?

18 A I don't recall, sir.

19 Q And take out a photograph of a young boy and threaten
20 to tear it up?

21 A Now, I can say the -- I don't recall anybody taking a
22 photograph out. But anybody making such threats to do
23 something as hideous as that, that would not have taken
24 place.

25 Q And how long have you been a law enforcement officer?

1 A 19 years.

2 Q And I know you have never put pressure on a subject
3 to make a statement, have you?

4 A Respectfully, sir, not like that.

5 Q Did you ever tell Ms. Holder if she made these
6 statements that she could go home?

7 A No, I did not, sir.

8 Q You never told her that?

9 A No, sir.

10 Q Did you ever go out and tell her family out in the
11 waiting room that in just a few hours she'll be going home
12 with you?

13 A No, I did not, sir.

14 Q What was Brandi's emotional condition during this
15 interview?

16 A She was upset such as the way she is at the Defense
17 table today. She was visibly upset, crying.

18 Q Did you provide any comfort for her?

19 A Yes, I did.

20 Q Tell us what you did.

21 A I provided her a beverage, if she desired. I asked
22 her if she smoked, asked her if she needed something to
23 drink, provided her tissues, asked her if she needed to
24 use the restroom. Whatever it is that she needed at that
25 particular time, it was afforded to her.

1 Q Did she ask if she could go home?

2 A No, she did not.

3 Q Never during this interview period did she say, can I
4 go home?

5 A No, she didn't, sir.

6 Q Do you know whether her family ever -- did you ever
7 speak with her family in the waiting room?

8 A No. I don't recall having any contact with anybody
9 but Brandi.

10 Q Room 210 is in the Homicide Division?

11 A It's within 206, and it's to the back of the CID
12 Division, yes, sir.

13 Q Do you guys have tape recorders up there?

14 A Yes, we do.

15 Q Video recorders?

16 A We don't have video recorders up there, no, sir.

17 Q Nowhere in the Greenville County Sheriff's Office do
18 you have a video recorder?

19 A Not in the Sheriff's Office itself, no, sir.

20 Q Why wouldn't you record a -- you're doing a homicide
21 interview, why wouldn't you record that with either video
22 or audio so we could hear what happened?

23 A Because the way -- I type the statement. I type it
24 verbatim as the person is saying it. I'd swear under oath
25 that what is in the statement is true and correct. And

1 our policy dictates that to be a correct procedure.

2 Q Wouldn't the best procedure be to have a video with
3 you sitting there and this lady making a voluntary
4 statement so we could all see whether anybody put any
5 pressure on her?

6 A Sure. I think that would be nice to have, but --

7 Q Your policy -- excuse me.

8 A No, I'm sorry.

9 Q Your policy with the Sheriff's Office is not to do
10 that; right?

11 A Not to do that. But we interview the rights waiver
12 with two law enforcement officers and obtain the statement
13 and do the statement and have it notarized, if a notary is
14 available. And then we testify under oath that it is true
15 and correct. And as we testify under oath, we don't
16 perjure ourselves. We testify to the truth.

17 Q And you're not telling me that a police officer has
18 never perjured himself in the history of --

19 A I'm telling you Paul Silvaggio has not perjured
20 himself in the history of Paul Silvaggio.

21 Q But it makes it easier when you have two officers and
22 only one subject; right? Because if the subject disagrees
23 with you, you've got a brother officer backing you up.

24 A No. And I think the courts recognize that by
25 sequestering witnesses, the other officer can't hear or

1 know what I'm saying and, therefore, is subject to
2 cross-examination on that.

3 Q How come you didn't put the times down on State's
4 Exhibit Nos. 3 and 4 on when these statements were taken?

5 A The times are not -- as it does on the waiver form
6 require a time, the statement form does not require a time
7 noted. So, therefore, it wasn't placed on there, sir.

8 Q But wouldn't it be nice to know if she was in there
9 an hour when she gave the statement, four hours, or six
10 hours?

11 A Right. In testifying to that, I testified no more
12 than four hours, sir.

13 Q Do you have your notes with you, your case file?

14 A I don't take notes during the interview process.

15 Q Do you have any document that reflects the time her
16 interview ended and when she was placed in custody?

17 A No, I don't, sir.

18 Q Do you recall whether she ate anything during this
19 approximately four-hour period?

20 A She would have been offered something to eat. I
21 don't recall if she ate anything or not.

22 Q And you don't recall -- do you recall seeing a
23 picture like that at any time during your interview with
24 her?

25 A I don't recall, sir. I don't recall that.

1 Q If an officer threatened to tear that up or ruin that
2 picture, what would you have done?

3 A I would have excused him from the interview and
4 reported it to the superiors on that.

5 MR. BYRHOLDT: Thank you.

6 THE COURT: Thank you.

7 Step down.

8 Anything else, Solicitor?

9 MS. SEAY: Nothing from Investigator Silvaggio at
10 this time.

11 We would call Investigator Bobby Alexander.

12 THE CLERK: Put your left hand on the Bible, please,
13 and raise your right hand.

14 WHEREUPON,

15 BOBBY F. ALEXANDER,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: State your name for the record, please.

18 THE WITNESS: Bobby F. Alexander.

19 THE CLERK: Thank you.

20 Be seated.

21 DIRECT EXAMINATION

22 BY MS. SEAY:

23 Q Investigator Alexander, you're employed with the
24 Greenville County Sheriff's Office?

25 A I am.

1 Q How long have you been employed there?

2 A With Greenville County, just a shade over 30 years.

3 Q Do you have other law enforcement experience?

4 A I have five years previous experience.

5 Q Can you briefly describe your training and education?

6 A I have an Associates Degree in Electronics
7 Engineering. I attended the criminal justice academy in
8 Columbia. I have numerous schools in investigative and
9 other law enforcement training school.

10 Q Were you in your current position back in July of
11 2002?

12 A I was.

13 Q What was your title and what were your duties at that
14 time?

15 A I was an investigator in our Criminal Investigation
16 Division. And I was assigned the duties of being a backup
17 person. I had other duties within the Sheriff's Office.
18 But my other duties were to be a backup investigator in
19 the major crimes unit as a backup homicide investigator.

20 Q And had you worked with that unit before?

21 A I had.

22 Q Did you have occasion on July 17th, 2002, to be
23 brought into a case involving the death of Bo Holder?

24 A I did.

25 Q How were you brought into the case?

1 A I, basically, was on backup call for that particular
2 week that it occurred. I was Doug Kelly's backup
3 investigator. And I was notified by dispatch and also by
4 Investigator Kelly of a situation that -- he requested
5 that I meet him at the Allen Bennett Hospital in Greer.

6 Q And so you met Investigator Kelly at Allen Bennett
7 Hospital in Greer?

8 A Correct.

9 Q Did you come in contact with Brandi Holder at that
10 time?

11 A I did.

12 Q Can you describe what transpired?

13 A We, basically, met with Brandi Holder in the family
14 room along with other family members to, basically,
15 introduce ourselves as to who we were and what our duties
16 were, that we were there to investigate the death of the
17 child.

18 Q Did she talk to you about what had happened?

19 A Yes, she did. She was, basically, giving us a little
20 bit of background, you know, of the child's age, a little
21 of the medical history. And then she talked about there
22 was an ATV accident.

23 Q Did you tell her -- during this conversation, did you
24 tell her at any time that she was being detained, or
25 that she was in custody, under arrest, or anything like

1 that?

2 A No, we did not.

3 Q Did you all ask her if she would come to the law
4 enforcement center?

5 A Yes, we did. We told her, basically, you know, while
6 waiting for the results from the hospital that we would
7 have an additional interview that we would need to
8 conduct. And as a matter of fact, a family -- another
9 family member brought her. We met her at the law
10 enforcement center. Another family member brought her
11 there. She was not transported by law enforcement. She
12 was brought to the law enforcement center by a family
13 member.

14 Q And were you involved in interviewing her at the law
15 enforcement center?

16 A Yes, I was. Myself and Paul Silvaggio interviewed
17 Ms. Holder.

18 Q Can you describe the physical location where that
19 took place?

20 A We were in the major crimes office in the CID section
21 of the Sheriff's Office, which is on the third floor of
22 the law enforcement center.

23 Q And how many offices are there?

24 A Well, in that particular area, there was just one
25 large office. And there was nobody else in that section

1 but myself, Investigator Silvaggio, and Ms. Holder.

2 Q Okay. And how did you begin the interview with
3 Ms. Holder?

4 A We started out, we, basically, gave her -- you know,
5 again, introduced ourselves as to who we were, advised her
6 of her rights, which was read to her, and she signed in
7 certain sections where she understood what her rights
8 were.

9 Q Who, actually, read the rights to her?

10 A Investigator Silvaggio.

11 Q Okay. This is State's Exhibit No. 2 for
12 identification, do you recognize it?

13 A I do. And this is the waiver that Ms. Holder signed,
14 and also my signatures as one of the witnesses.

15 Q Okay. And did she appear to understand those rights
16 when they were read to her?

17 A Yes, she did.

18 Q Did she appear to be under such emotional strain that
19 she couldn't understand what was going on?

20 A No.

21 Q Did she sign each line?

22 A Yes, she did. Investigator Silvaggio went through,
23 basically, you know, as -- read each line to her and asked
24 her if she understood. And then she initialed each one of
25 those afterwards. And then she was asked to read a line

1 to understood [sic] it -- so that we would understand that
2 she could read and write and was, basically, understanding
3 what was being read to her. And then she signed the line
4 that she read and also initialed it.

5 Q Okay. And your signature appears there as a witness
6 also?

7 A Yes, it does.

8 Q Can you tell me what time that process began and
9 ended as far as the rights?

10 A The time started at 5:05 p.m., and was completed at
11 5:13 p.m.

12 Q At that point in time, did you -- or are you aware of
13 anyone else threatening her or coercing her to waive her
14 rights and talk to you all?

15 A No.

16 Q Who, actually, took her statement?

17 A Basically, it was being typed by Investigator
18 Silvaggio with her consent that to -- she agreed that Paul
19 could type it up on a laptop computer where she could see
20 the screen and could read everything that was being typed,
21 and had an opportunity to view each section as it was
22 being typed by Investigator Silvaggio

23 Q And you were present during this entire process?

24 A That's correct.

25 Q Did she give quite a bit of information?

1 A It was a total of eight pages, the statement.

2 Q Did she ever ask you if she could stop or if she had
3 to continue?

4 A I think she might have asked for either some water or
5 something during that time frame, but nothing to be
6 excused or anything like that. She just -- it may have
7 been some water.

8 Q And was she restrained in any way during this?

9 A No, she was not.

10 Q This is State's Exhibit No. 3, Investigator, do you
11 recognize it?

12 A Yes, I do. And it is also witnessed as one of the
13 witnesses with my signature on each of the pages.

14 Q And that is the eight-page statement that she
15 provided at first?

16 A That is correct.

17 Q Were you present when she placed her initials at
18 various locations?

19 A I was.

20 Q And did anyone force her to do that?

21 A No, they did not.

22 Q Were you there when she signed the bottom of each
23 page of the statement?

24 A I was.

25 Q Are you aware of anyone forcing her to do that or

1 threatening her in any way?

2 A No, I am not.

3 Q Was she provided a copy of the eight-page statement?

4 A She was.

5 Q Can you describe what happened after she gave the
6 first statement?

7 A After the first statement was completed, we met with
8 Investigator Kelly and let him go over, basically, what --
9 the statement that had just been taken. And there was
10 some discrepancies as to what Investigator Kelly had
11 discovered from talking with the doctor, autopsy, and some
12 other witnesses. And then myself and Investigator
13 Silvaggio had talked again with Ms. Holder and advised her
14 there was some discrepancies that we needed to clear up.
15 And then she gave a -- basically, another five-page
16 statement to clear up some of the details in her first
17 statement.

18 Q Were you present when Doug Kelly had that talk?

19 A I was.

20 Q Did he threaten her?

21 A No, he did not.

22 Q Did he coerce her?

23 A No, he did not.

24 Q Did he promise her anything?

25 A No, he did not.

1 Q And were you present when the next five-page
2 statement was given?

3 A I was.

4 Q And did Paul Silvaggio go by the same process in
5 taking it as he had the first?

6 A Yes, he did.

7 Q What was your role?

8 A Again, to be -- to assist and observe and be present
9 when the statement was taken.

10 Q This is State's Exhibit No. 4, do you recognize it?

11 A I do. And my signature as a witness is on each of
12 the five pages.

13 Q Did Ms. Holder make any corrections on the statement?

14 A Yes, she did.

15 Q Was she given an opportunity to read it in full?

16 A Yes, she did -- or was.

17 Q What do you recall about her demeanor during this
18 time?

19 A She was upset, but not -- I don't mean upset to the
20 point that she didn't understand what was going on. But,
21 you know, it was obvious that she was upset as a result of
22 the death of her child.

23 Q And despite that, she was able to relate all this
24 information to you?

25 A She was, yes.

1 MS. SEAY: Those are all the questions I have for
2 you.

3 Thank you.

4 THE COURT: Mr. Byrholdt.

5 MR. BYRHOLDT: May it please the Court?

6 CROSS-EXAMINATION

7 BY MR. BYRHOLDT:

8 Q Officer Alexander, how long was she in there being
9 interrogated?

10 A Sir, I don't remember the -- I couldn't tell you if
11 it was an hour or several hours. I mean, it was time
12 consuming. But I don't know if it was -- I couldn't say
13 it was three hours or a couple of hours. I don't remember
14 the exact time.

15 Q There are no times on her statements, are there?

16 A Not on the statements, no, there's not.

17 Q Why wouldn't you put times on the statements?

18 A I don't know why there wasn't no times written.

19 Q Would it be fair to keep somebody in there six or
20 seven hours without a break?

21 A I don't think it was six or seven hours, but I don't
22 know that for a fact.

23 Q Is there any other law enforcement officer that ever
24 saw Brandi Holder in your interrogation room other than
25 you, Silvaggio, or Kelly?

1 A Not that I'm aware of, no, sir, other than the one
2 who notarized the statements.

3 Q How many times did he come in there?

4 A Just -- well, basically, twice, to come in once the
5 statements were completed. It was just to notarize the
6 statements. One statement -- the first eight-page
7 statement was notarized by Investigator Wes Smith and,
8 basically, the interview was completed. All he did was
9 come in and witness her signature and notarize the
10 statement.

11 Q Tell me exactly what Wes Smith did.

12 A He came in and identified himself as being with the
13 Sheriff's Office, identified himself as being the notary
14 public, asked her to identify herself as -- that she was
15 who she said she was, and that was her signature that was
16 being placed on the statement.

17 Q And that's it?

18 A That was it.

19 Q He never put her under oath?

20 A Well, yeah. He asked her if her statement was true,
21 to the best of her knowledge. And she, actually, was
22 given --

23 Q I just asked you that and you said that didn't happen.

24 A Well, he did -- when he introduced himself and asked
25 her about the statement, he asked her if that is her

1 statement and is the statement true, to the best of her
2 knowledge. He did do that, sir.

3 Q Did you go through Ms. Holder's personal belongings,
4 her purse?

5 A I didn't, no, sir.

6 Q Did you ever see a photograph removed from her purse
7 during her interview process?

8 A I didn't, no, sir.

9 Q I didn't ask you if you did. I asked you if you ever
10 saw a picture of her son showed to her during the
11 interview process? Do you recall that?

12 A I don't, no, sir.

13 Q It didn't happen or no recollection of it?

14 A I don't have -- I don't know, sir.

15 Q Did she ever ask to go home?

16 A No, sir.

17 Q Did anyone ever tell her she could go home if she
18 gave a statement?

19 A No, sir.

20 Q Did anybody tell her she was a target of an
21 investigation?

22 A No, sir.

23 Q Okay. Because she wasn't under arrest?

24 A No, sir.

25 Q There was really no need to Mirandize her; right?

1 A No, sir, just a formality doing so.

2 Q At any time during the interview period, did you tell
3 her that she was -- had become a target?

4 A No, sir.

5 Q Did you put her under arrest?

6 A I didn't, no, sir.

7 Q Who did? Or do you know?

8 A I don't know who, actually, placed her under arrest,
9 sir.

10 Q Is there a reason you guys did not audio or videotape
11 this statement?

12 A It's not one of our standard procedures to video or
13 do the audio.

14 Q It kind of keeps us from not knowing what really
15 happened, doesn't it?

16 A I guess if you want to put it that way, sir.

17 MR. BYRHOLDT: No further questions.

18 Thank you, sir.

19 THE COURT: Thank you.

20 Step down.

21 MS. SEAY: Your Honor, we need to call Investigator
22 Wes Smith briefly.

23 THE COURT: All right.

24 THE CLERK: Put your left hand on the Bible and raise
25 your right hand.

1 WHEREUPON,

2 WESLEY SMITH,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record, please.

5 THE WITNESS: Wesley Smith.

6 THE CLERK: Thank you.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MS. SEAY:

10 Q Investigator Smith, you're employed with the
11 Greenville County Sheriff's Office?

12 A Yes, ma'am.

13 Q How long have you been employed there?

14 A Going on 23 and a half years at the Sheriff's Office.

15 Q Any previous law enforcement experience?

16 A A year and a half at the Williamston Police
17 Department.

18 Q What are your primary duties and your title at the
19 Sheriff's Office?

20 A I'm a master deputy investigator. I'm assigned to
21 the violent crimes unit. I work homicides and robberies.

22 Q Were you working in that capacity in July of 2002?

23 A Yes, ma'am.

24 Q Do you recall on July 17th, 2002, being asked to
25 participate in a case involving the death of VICTIM ?

1 A That's right.

2 Q Let me show you State's Exhibit No. 3 for
3 identification, do you recognize that?

4 A Yes, ma'am.

5 Q How do you recognize it?

6 A It's the statement that I notarized on that date by
7 the date on the top and who gave the statement.

8 Q Okay. And this is State's Exhibit No. 4, do you
9 recognize this?

10 A No, ma'am. That's nothing I participated in.

11 Q As far as the exhibit that you're holding in your
12 hand, did you notarize that statement?

13 A I did.

14 Q And did you have occasion to come in contact with the
15 person who had given the statement, Ms. Holder?

16 A Yes.

17 Q Did you determine that that was her statement?

18 A Yes.

19 Q Do you have a procedure that you use when you
20 notarize something?

21 A In this case, I -- usually, it's the same thing every
22 time. But, in this case, Paul Silvaggio asked me to come
23 in and notarize the statement. When I was in there, she
24 was still reading the statement. Investigator Silvaggio
25 began to show her where to sign and then had her initial

1 all the paragraphs. And I saw all that.

2 And at the end of it, the statement was handed to me.
3 And I asked her was she Brandi Lynn Holder Turner. And
4 she said she was. I said, Is that your signature? Yes.
5 And I said, Is that your statement? She said, Yes. And I
6 said, Is this true? And she said, Yes. And then I signed
7 all of the pages and put my commission expiration.

8 Q Did she indicate to you, at any time, that she wanted
9 to withdraw that statement or not have you notarize it or
10 anything like that?

11 A No, ma'am. She seemed fully cooperative the whole
12 time.

13 MS. SEAY: That's all the questions I have.

14 THE COURT: All right. Mr. Byrholdt.

15 CROSS-EXAMINATION

16 BY MR. BYRHOLDT:

17 Q Did you put her under oath?

18 A No, sir.

19 Q Did you say, Do you swear to tell the whole truth,
20 nothing but the truth, so help you God?

21 A No, sir, I did not.

22 Q So if someone else testified that you put her under
23 oath, they would be incorrect. You just asked her if it
24 was true?

25 A I just asked her if it was true.

1 MR. BYRHOLDT: Thank you, sir.

2 THE COURT: Step down.

3 MS. SEAY: I'm calling Investigator Wayne Arnette
4 briefly.

5 THE COURT: Okay.

6 THE CLERK: Put your left hand on the Bible, please,
7 sir, and raise your right hand.

8 WHEREUPON,

9 FLOYD WAYNE ARNETTE,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: State your name for the record, please.

12 THE WITNESS: Floyd Wayne Arnette.

13 THE CLERK: Thank you.

14 Be seated.

15 DIRECT EXAMINATION

16 BY MS. SEAY:

17 Q Investigator, you're employed at the Greenville
18 County Sheriff's Office?

19 A Yes, ma'am, I am.

20 Q How long have you been employed?

21 A About six years.

22 Q Do you have previous law enforcement experience?

23 A Not other than the Greenville County Sheriff's
24 Office.

25 Q What are your basic duties and your title at the

1 Sheriff's Office?

2 A I'm a property crimes investigator, which involves
3 burglaries and larcenies.

4 Q What capacity were you working in July of 2002?

5 A I was cross-training in the Criminal Investigation
6 Division homicide and armed robbery of the Greenville
7 County Sheriff's Office.

8 Q On July 17th, 2002, did you have occasion to become
9 involved in a case involving the death of two-year-old
10 VICTIM?

11 A I did.

12 Q What was your involvement as to the statement that
13 Ms. Holder gave?

14 A Ms. Brandi Holder?

15 Q I'm sorry.

16 A This is from the other one.

17 Q This is State's Exhibit No. 4, do you recognize that?

18 A I do.

19 Q And is your signature on it?

20 A It is.

21 Q In what capacity did you sign that?

22 A As a -- I notarized the statement.

23 Q Please explain how you went about doing that.

24 A Investigator Silvaggio had asked me to notarize the
25 statement for Ms. Holder. When she finished giving him

1 the statement, I witnessed her signature on it, asked her
2 if it was -- if this statement was true and accurate, and
3 if this was her signature. And she said, Yes. And that's
4 when I signed it as a notary.

5 Q So you observed her signing the pages of the
6 statement?

7 A Yes, ma'am.

8 Q Was anyone forcing her to do that?

9 A No, ma'am.

10 Q Did anybody, in your presence, threaten her, coerce
11 her, or promise her anything?

12 A No, ma'am.

13 MS. SEAY: Those are all the questions I have.

14 Thank you.

15 CROSS-EXAMINATION

16 BY MR. BYRHOLDT:

17 Q Did she sign it in your presence, sir, or had she
18 already signed it and you inquired whether that was her
19 signature? You're not saying she signed all these
20 initials and everything in your presence, are you?

21 A No, sir, not the initials. I don't recall the
22 initials.

23 Q Well, on each page, there's a signature page at the
24 bottom.

25 A That's --

1 Q Are you saying you saw her under oath --

2 A No. I understand --

3 Q You said --

4 A I asked her if this was her --

5 THE COURT: Wait, wait.

6 MR. BYRHOLDT: I apologize, Your Honor.

7 THE COURT: Let him finish.

8 THE WITNESS: I asked if this was her signature. And
9 she would say -- and she said, Yes. I didn't -- I don't
10 know that she, actually, signed it with me standing over
11 her.

12 BY MR. BYRHOLDT:

13 Q So you inquired whether that was her signature?

14 A Right. Yes, sir.

15 Q At any time, did you place her under oath?

16 A No, sir.

17 MR. BYRHOLDT: Those are all the questions I have.

18 Thank you, sir

19 THE COURT: Thank you.

20 Step down.

21 Is that it?

22 MS. SEAY: Yes, sir.

23 THE COURT: Okay. I think we'll recess for an hour
24 and pick back up at 2:15.

25 Be back at 2:15.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Mr. Phillips, are you ready to proceed?

3 MR. PHILLIPS: Yes, sir, Your Honor.

4 THE COURT: All right. You may proceed.

5 MR. PHILLIPS: We call Ben Holder.

6 THE CLERK: Put your left hand on the Bible, please,
7 and raise your right hand.

8 WHEREUPON,

9 BENJAMIN L. HOLDER, SR.,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: State your name for the record, please.

12 THE WITNESS: Benjamin L. Holder, Sr.

13 THE CLERK: Thank you.

14 Be seated.

15 DIRECT EXAMINATION

16 BY MR. PHILLIPS:

17 Q Mr. Holder, would you state your name for the record,
18 please, sir?

19 A My name is Benjamin L. Holder, Sr.

20 Q And how do you know Brandi Holder?

21 A She's my daughter.

22 Q Do you recall on July 17th, 2002, how you found out
23 about your grandson, *VICTIM* dying?

24 A Yes. I was at work. I had just finished up my lunch
25 break, which ends at 1:00 p.m. It was approximately 15,

1 20 minutes after that, I received a phone call from my
2 son. And he informed me that I needed to come home. And
3 after I questioned why, he put his mother on the phone.
4 And she told me that ~~Vic~~ had passed away.

5 Q And after you found out that your grandson had died,
6 what did you do?

7 A I asked my son to come to the plant and pick me up so
8 that we could go to the hospital together. But a couple
9 of my friends that I work with saw that I was not in very
10 good condition to drive. And they followed me out of the
11 plant. And my wife and son came driving up. One of my
12 friends offered to drive the family car. And the other
13 friend drove me so that they would have a vehicle to
14 return back to work with.

15 Q All right. And when you arrived at -- I believe it
16 was Allen Bennett Hospital, what time did you arrive at
17 the hospital?

18 A I really don't recall exactly the time. But it takes
19 probably 20, 30 minutes to get there from the plant, so
20 I'm going to say around 2:00.

21 Q When you arrived, what did you see and who did you
22 see?

23 A When we pulled into the parking lot of Allen Bennett,
24 I saw John Parker and Mark walking down the sidewalk
25 together outside the building. And then when we parked,

1 that was it. We went inside the building together.

2 Q All right. When you went inside the building, who
3 did you meet there?

4 A There was a lady in a dark blue uniform with silver
5 hair, I did not catch her name, and there was a uniformed
6 officer.

7 Q Okay. And then when did you first see your daughter,
8 Brandi, at the hospital?

9 A Approximately five minutes after that, just shortly
10 after that.

11 Q What was Brandi's condition like when you arrived at
12 the hospital?

13 A When we walked into the room where Brandi was at, she
14 was hysterical, crying uncontrollably and just, basically,
15 inconsolable.

16 Q All right. How long were you at the hospital before
17 law enforcement arrived and talked to -- well, let me ask
18 you this. Was law enforcement there with Brandi when you
19 got there and first saw her?

20 A If they were, I did not recognize them, other than
21 the uniformed officer that was there at the door when I
22 walked in.

23 Q Okay. At some point, law enforcement contacted you
24 there at the hospital and talked to you there; is that
25 right?

1 A That's correct.

2 Q And how is it that you came to go to the law
3 enforcement after you left the hospital?

4 A After a time of grieving together, I was approached
5 by Mr. Doug Kelly, who came up to me and put his hand on
6 my shoulder. And he said, I -- he shared his condolences
7 with me over the loss of ~~VICTIM~~. And he asked if Marie and I
8 would be willing to come down to the law enforcement
9 center and answer some questions. He told me, at that
10 time, that he had already talked to Brandi and Brandi had
11 agreed to come down and answer some questions.

12 And I was concerned about Brandi's condition. And he
13 said that he didn't think she was in any condition to
14 drive herself, so he was going to have Mr. David Kelly,
15 who is a family member, drive her down to the hospital.

16 Q All right. So that's Doug Kelly who didn't think
17 that Brandi was able to drive there herself, he didn't
18 think it was safe for her to do that? Is that what
19 you're testifying to?

20 A That's what he told me.

21 Q All right. As a result of that, did David Kelly, in
22 fact, take Brandi to the hospital -- I mean, to the law
23 enforcement center from the hospital?

24 A Yes, he did.

25 Q All right. What time was it approximately when you

1 and Brandi and the rest of the family arrived at the law
2 enforcement center? Did you arrive at approximately the
3 same time?

4 A Yes. My older brother -- when I went back to get
5 Marie, my oldest brother and his wife were there. And
6 they did not think that we were in any condition to drive.
7 So he offered to drive us to the hospital [sic]. We left
8 the hospital together shortly after that. And it was
9 sometime after 4:00 -- shortly after 4:00 when we arrived
10 at the law enforcement center.

11 Q All right. Had Brandi gone back for questioning at
12 that time?

13 A No. We met up in the parking lot together and we
14 walked in as a family, David Kelly, Brandi, Marie, and
15 myself, and my brother and sister-in-law.

16 Q On the walk from the parking lot into the law
17 enforcement center, what was Brandi's condition like?

18 A She was shaking. Brandi had had asthma since she was
19 very, very small. And she had labored breath. She was
20 pale, very pale and, basically, lethargic. She just
21 stared into space.

22 Q Did she need any assistance?

23 A We walked in arm-in-arm. I don't know if she was
24 close to fainting or anything of that nature. But her
25 mother and I escorted her into the waiting room where we

1 were -- where the officer escorted us to.

2 Q All right. So shortly after 4:00, all of you arrived
3 at the law enforcement center. How long after that was it
4 before Brandi was taken back into the -- a different part
5 of the law enforcement center and away from the rest of
6 the family?

7 A We were in the waiting room, I'm going to say between
8 20 and 30 minutes. I remember Brandi sat next to me. I
9 held her hand because I was very concerned with her
10 condition. When the law officer came out and asked Brandi
11 to go back, she stood up and went back with the officer.
12 I looked at my watch and it was five minutes until 5:00,
13 4:55 p.m.

14 Q Okay. After that, what contact, if any, did you have
15 with Brandi Holder, your daughter?

16 A We never saw her again after that.

17 Q Until when?

18 A She called us, I think, it was two days later from
19 the law enforcement -- from the detention center. And we
20 got a chance to go see her for the first time about two
21 weeks after that.

22 Q All right. Did you remain in the law enforcement
23 center waiting room or the waiting area?

24 A We were in the waiting area for the entire course of
25 the evening.

1 Q During that time, were you contacted or talked to or
2 spoken to by anyone from law enforcement about Brandi and
3 her condition?

4 A Quite frequently, Mr. Doug Kelly would come into the
5 waiting room to see if we were okay and needed anything.
6 At one time, he even offered coffee for me and my older
7 brother.

8 Each time he came out into the room, my wife would
9 ask about Brandi's condition, if she was doing okay. She
10 was concerned as well with her asthma. She even mentioned
11 to him one time about having an inhaler for Brandi. I
12 remember one -- at one time, he mentioned to Marie, my
13 wife, that Brandi was doing better than she was.

14 Q That was what Doug Kelly said?

15 A Yes.

16 Q Was Brandi -- were you allowed to see Brandi or did
17 anybody ask if they could see Brandi during this time?

18 A We asked to see Brandi towards the end of that
19 evening. Mr. Kelly came back in approximately at 11:00.
20 I did not look at my watch, but it was late. We could see
21 out a window and it was dark outside. And he told us, at
22 that time, if we wanted to go home that he knew we had
23 been through a very trying and hard day --

24 THE COURT: Mr. Phillips, now, what part does this
25 have to do with the voluntariness of the statement made

1 several weeks before?

2 MR. PHILLIPS: The length of time -- the length that
3 she was kept in there in the interrogation, Your Honor,
4 goes to the voluntariness of it. It's one of the factors
5 that's recognized from the analysis that the Court must
6 do, the fact that she was kept away from her family for an
7 extended period of time, her state of mind --

8 THE COURT: How much time elapsed between the time
9 the statement was given and this conversation you're
10 talking about?

11 MR. PHILLIPS: Just probably seven hours or eight
12 hours.

13 This was the day the child died, Your Honor, the
14 17th. They all went to the law enforcement center right
15 after that from the hospital. Brandi was taken in the
16 back and stayed there for several hours. And that's when
17 all of this occurred. And we're trying to determine what
18 her condition was like, was she deprived of things like
19 food, water --

20 THE COURT: All right. I want to know what her
21 condition was at the time the statement was given.

22 MR. PHILLIPS: Okay.

23 BY MR. PHILLIPS:

24 Q Do you recall what time it was that you left the law
25 enforcement center?

1 A Yes. It was just shortly after midnight. Mr. Kelly
2 came back out at midnight and told us that we could go on
3 home, Brandi would not be leaving with us that evening,
4 that he was going to book her, that she admitted that she
5 was guilty.

6 MR. PHILLIPS: No further questions at this time.

7 THE COURT: All right. Solicitor.

8 MS. SEAY: I don't have any questions for Mr. Holder.

9 THE COURT: Thank you.

10 You can step down, Mr. Holder.

11 MR. PHILLIPS: Your Honor, we call David Kelly.

12 THE COURT: Come around, Mr. Kelly, please.

13 THE CLERK: Put your left hand on the Bible, please,
14 and raise your right hand.

15 WHEREUPON,

16 DAVID SCOTT KELLY,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: State your name for the record, please.

19 THE WITNESS: David Scott Kelly.

20 THE CLERK: Thank you.

21 Be seated.

22 DIRECT EXAMINATION

23 BY MR. PHILLIPS:

24 Q Mr. Kelly, would you state your name for the record?

25 A David Scott Kelly.

1 Q And what is your occupation?

2 A I'm a pastor.

3 Q All right. And do you recall July 17th, 2002, going
4 to Allen Bennett Hospital to meet with Brandi Holder
5 because her son had died?

6 A Yes, sir, I do.

7 Q All right. When you arrived at the hospital, when
8 did you first see Brandi?

9 A I was led to a room where the family was, at that
10 time, and Ms. Holder was there in that room.

11 Q What was her condition like at the time?

12 A I would say that she was distraught.

13 Q Was she weeping?

14 A Yes.

15 Q All right. At some point, were you approached by
16 Doug Kelly and asked to take her to the law enforcement
17 center?

18 A I was approached by someone. I'm not sure that it
19 was Doug Kelly, but I was approached by someone to escort
20 Ms. Holder to the law enforcement center.

21 Q Did he tell you why he wanted you to do that?

22 A To make a statement that night.

23 Q Did he tell you why he wanted you particularly to
24 drive her there?

25 A He did not.

1 Q Okay. When you arrived at the law enforcement center
2 with -- well, what was Ms. Holder's condition like on the
3 drive to the law enforcement center and once she arrived
4 there?

5 A It was pretty much the same. The whole trip she
6 weeped. She seemed distraught. We talked very little.
7 And she had kind of calmed down a little bit when we
8 reached the law enforcement center.

9 Q Okay. How long were you at the law enforcement
10 center that night?

11 A I would say we arrived somewhere between 4:00 and
12 5:00 p.m. And I think I left that night somewhere between
13 11:00 and midnight.

14 Q All right. And what caused you to leave the law
15 enforcement center at 11:00, or midnight, or whenever it
16 was?

17 A The investigator came out and told the family there
18 that Ms. Holder would not be leaving, that she was being
19 charged in this death. And the family was told that they
20 could go home.

21 MR. PHILLIPS: Thank you very much, Mr. Kelly.

22 THE COURT: All right. Solicitor.

23 MS. SEAY: No questions for him

24 THE COURT: Thank you.

25 You can step down, Pastor.

1 MR. BYRHOLDT: We call Brandi Holder, Your Honor.

2 THE CLERK: Put your left hand on the Bible, please,
3 ma'am, and raise your right hand.

4 WHEREUPON,

5 BRANDI LYNN HOLDER,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: State your name for the record, please.

8 THE WITNESS: Brandi Lynn Holder.

9 THE CLERK: Thank you.

10 Be seated:

11 THE COURT: Would you give her some water, please?

12 THE BAILIFF: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. BYRHOLDT:

15 Q Brandi, I'm going to ask you to speak up. Would you
16 give us your full name for the record, please?

17 A Brandi Lynn Holder.

18 Q Brandi, I'd like to take you back to July the 17th of
19 2002. Were you approached at the Allen Bennett -- or
20 Allen Cannon Hospital that there was a death of your son?

21 A Yes.

22 Q Did you talk to any law enforcement people there?

23 A No, not that I recall.

24 Q All right. Do you recall being asked sometime that
25 day to go to the law enforcement center?

1 A Yes.

2 Q Who asked you to go there?

3 A I remember a family member just saying that I needed
4 to go with my uncle, David.

5 Q All right. And did you go?

6 A Yes.

7 Q Do you recall what time you got there?

8 A It was around 4:00, 4:30.

9 Q All right. There's been an exhibit put in where you
10 signed the rights form somewhere around 5:00 in the
11 afternoon. You don't disagree with signing that, do you?

12 A No.

13 Q Tell the Court what happened when you were in the
14 interrogation room. Who was there?

15 A Mr. Silvaggio was there and Mr. Kelly.

16 Q All right.

17 A Mr. Kelly was in and out of the room the whole time.
18 Mr. Silvaggio pretty much typed the entire time that I was
19 in there. I asked to go home. I wanted to be with my
20 family. And I was told when I gave them what they wanted
21 that I could go home with my family.

22 Q How many times did you ask to be allowed to go home?

23 A As many times as I could. I wanted to go home.

24 Q Were you told you were free to leave?

25 A No.

1 Q What were you told?

2 A I was told when they got what they wanted that I
3 could go home, that my family was waiting on me.

4 Q All right. And you provided a written statement; is
5 that correct?

6 A I didn't hand write a statement, no.

7 Q A typed statement?

8 A He typed a statement.

9 Q And did you sign it?

10 A He told me I had to.

11 Q All right. What happened after that first statement
12 was given?

13 A Mr. Kelly came to me and said that he didn't believe
14 what was in that statement. And I told him that I didn't
15 know -- you know, I had no idea what happened, which I had
16 already told, you know, several times. And they said that
17 that wasn't good enough for them.

18 Q So what happened next?

19 A He went through my purse. And he said, Any good
20 mother carries a picture of her child.

21 Q Did you have a picture of your child in your purse?

22 A Yes, I did.

23 Q What happened with that picture?

24 A He pulled it out in front of me. And he held it and
25 he was threatening to tear it and told me that I didn't --

1 Q Now, who was doing that?

2 A Mr. Kelly.

3 Q What did you do next?

4 A I started crying. And I told him I wanted to go
5 home.

6 Q Did they let you go home?

7 A No.

8 Q Did they type out a second statement?

9 A Yes, they did.

10 Q Did you sign that one?

11 A Yes.

12 Q Why?

13 A Because he told me that if I kept him past 10:00 at
14 night that he was going to lock me up.

15 Q Brandi, do you feel like you had a choice when you
16 made those statements?

17 A No.

18 Q Were you ever offered any food?

19 A No.

20 Q Were you ever offered a bathroom break?

21 A No. I asked several times to go to the bathroom.

22 Q Do you know for sure how long you were kept in there?

23 A I know it was past midnight.

24 MR. BYRHOLDT: That's all the questions I have.

25 Please answer any questions of Ms. Seay.

1 THE COURT: Solicitor.

2 CROSS-EXAMINATION

3 BY MS. SEAY:

4 Q Ms. Holder, I'm going to ask you if you recognize
5 State's Exhibit No. 2?

6 MR. BYRHOLDT: Your Honor, we'll stipulate that she
7 signed the rights form and signed the two statements.
8 That's not the issue in this case. They were signed by
9 her. We'll stipulate to that.

10 THE COURT: All right.

11 MS. SEAY: I would like to continue.

12 THE COURT: Okay. Go on.

13 MS. SEAY: Thank you.

14 BY MS. SEAY:

15 Q Did you give this information to Mr. Silvaggio?

16 A That was taken off of my driver's license.

17 Q Did you initial each of these lines? Are those your
18 initials?

19 A He pointed, I initialed.

20 Q Did you say, I don't want to?

21 A He didn't give me an option.

22 Q Did he tell you, Before we ask you any questions, you
23 must understand your rights?

24 A They were never read to me or anything.

25 Q Did he tell you, You have the right to remain silent?

1 A No, he did not.

2 Q Did he tell you, Anything you say can be used against
3 you in Court?

4 A No.

5 Q You have the right to talk to a lawyer for advice
6 before we ask you any questions and to have him with you
7 during questioning?

8 A No.

9 Q If you have no money to pay a lawyers fee, the Court
10 will appoint one to represent you without cost, if you
11 wish?

12 A No.

13 Q If you decide to answer questions now without a
14 lawyer present, you will still have the right to stop
15 answering at any time. You also have the right to stop
16 answering at any time until you talk to a lawyer?

17 A No.

18 Q You're telling me that he didn't read you any of
19 that?

20 A No, he pointed.

21 Q You just initialed those without reading them?

22 A I would have done anything to go home. I just lost
23 my baby.

24 Q What was going to be at home?

25 A My family.

1 Q Tell me, is that your signature?

2 A Yes.

3 Q And you have a high school degree, do you not?

4 A I have a GED.

5 Q You went almost all the way through twelfth grade,
6 and then obtained your GED; is that correct?

7 A Yes.

8 Q And you have been working in gainful employment at a
9 hair salon as a stylist for several years, haven't you?

10 A Yes.

11 Q You have gainful employment now, don't you?

12 A Yes.

13 Q And you just signed that without reading it or having
14 it read to you?

15 A Yes, I did.

16 Q This is State's Exhibit No. 3, do you recognize that?

17 A Yes.

18 Q This is the eight-page statement that you gave?

19 A He typed it.

20 Q Where did he get that information?

21 A Doug Kelly was in and out of the room the whole time.
22 And a lot of what they were talking about, I'm assuming,
23 he put in there.

24 Q Do you think that they would have known that you had
25 just turned 18 years old in March of 1999, and graduated

1 from J.L. Mann High School, got pregnant, didn't know who
2 the father was, got an apartment at the Paddock Club with
3 Bobby Barringer? Do you think they would have known those
4 kind of things? You told them this, didn't you?

5 A With the questions --

6 Q You told them this, didn't you?

7 A Not all of that, no, ma'am.

8 Q Well, which parts did you tell them?

9 A The basic information at the top.

10 Q Which basic information?

11 A How old I was.

12 Q And that's all you told them?

13 A I told them my name.

14 Q And that's all you told them?

15 A That top paragraph, yes, ma'am.

16 Q And you did not give them eight pages of typed
17 information, they just made this up?

18 A I cried the entire time wanting to go home with my
19 family.

20 Q Did you give them the information in these eight
21 pages or not?

22 A No, ma'am.

23 Q So they just made this up?

24 A Yes, ma'am.

25 Q Okay. And, in addition, you have initialed every

1 single beginning and end of every single paragraph in this
2 statement, have you not?

3 A Where he pointed, I signed.

4 Q And, again, with your reading ability, you can see
5 right here at the top is another advisement that you have
6 rights, that you don't have to give a statement?

7 A I didn't read it.

8 Q Are you in the custom of signing things that effect
9 your possible freedom without reading them?

10 A They told me that my freedom was not at jeopardy, so
11 I didn't know. I've never been in trouble before in my
12 life.

13 Q Did you sign each page of this statement? Is that
14 your signature?

15 A Where he put his pen, I signed.

16 Q And you never said, I don't want to sign this --

17 A All I told them is I wanted to go home.

18 Q -- don't make me sign this. I don't want to sign
19 this?

20 A Once he said if I kept him past 10:00 that he was
21 locking me up --

22 Q Who said that?

23 A Mr. Silvaggio.

24 Q Isn't it true that you expressed that you were cold
25 and somebody got you a blanket?

1 baby?

2 A The entire time.

3 Q Really. Because you knew what had happened to him.

4 A No, I did not.

5 MR. BYRHOLDT: I object on relevancy to that.

6 THE COURT: I sustain the objection to that.

7 Is that all?

8 MS. SEAY: Nothing further.

9 THE COURT: Anything else, Mr. Byrholdt?

10 MR. BYRHOLDT: No, Your Honor.

11 THE COURT: Step down, please.

12 MR. BYRHOLDT: That would be all from the Defense,

13 Your Honor.

14 THE COURT: Anything in reply, Solicitor?

15 MS. SEAY: Nothing further from the State, Your

16 Honor.

17 THE COURT: The burden on the State, at this point,
18 is to show by a preponderance of the evidence that the
19 Defendant was advised of her rights and that she
20 voluntarily waived those rights and gave a statement. And
21 I find that the State has proved that by the preponderance
22 of the evidence.

23 I find that she was properly advised of her rights,
24 that the statement given by her was not the result of any
25 coercive police tactics, and that under the totality of

1 the circumstances that it was freely and voluntarily made.
2 It will, therefore, be admissible. The burden on the
3 State, at trial, will be to prove beyond a reasonable
4 doubt the advisement of the rights and the voluntariness
5 of the statement.

6 All right. Anything before I bring the jury in?

7 MR. SUMNER: Yes, sir, there would be.

8 THE COURT: All right. And the same thing with
9 respect to your client to any statement made by him, I
10 would make the same --

11 MR. SUMNER: Same ruling.

12 THE COURT: -- ruling.

13 MR. SUMNER: Yes, sir.

14 THE COURT: All right, sir.

15 MR. SUMNER: Your Honor, two things from the Defense.
16 First of all, I believe that the State will attempt to
17 introduce -- well, the State could attempt to introduce a
18 statement given by Ms. Holder, the one that you've heard
19 the testimony about today, the five-hour, eight-page
20 statement. There is a Bruton issue there, Your Honor.

21 I received from Ms. Seay -- and I'll just hand this
22 up.

23 I think you've got a copy, don't you, Ms. Seay, of
24 what you sent to me?

25 MS. SEAY: Yes.

1 MR. SUMNER: On --

2 MS. SEAY: I could just give the Court a copy, if you
3 want to hold on to yours.

4 MR. SUMNER: Oh, yeah, sure.

5 MS. SEAY: Your Honor, I'll hand you up what I
6 provided to the Defense.

7 THE COURT: All right.

8 MS. SEAY: And these are both redacted statements
9 that I prepared in anticipation of offering them into
10 evidence. And I --

11 THE COURT: The statements that you have put into
12 evidence now have been redacted?

13 MS. SEAY: The originals have not been --

14 THE COURT: All right.

15 MS. SEAY: -- what we used in the hearing. But I did
16 prepare these redactions and sent them to the Defense
17 several weeks ago.

18 THE COURT: Mr. Sumner.

19 MR. SUMNER: Thank you, Your Honor.

20 May it please the Court?

21 I think when the Court examines these statements, it
22 appears to me -- and I'll ask Ms. Seay to correct me if
23 I'm wrong -- that the redaction as it relates to my
24 client, Mark Martucci, simply took his name out and put
25 the pronoun "he" or "him" in its place. And if anything

1 else was done, I would ask Ms. Seay to correct me if I'm
2 wrong.

3 Your Honor, I think, certainly, you know more about
4 this issue than I do. It deals with Bruton and whether or
5 not -- there's a lot of information in the statements
6 regarding Mr. Martucci that came out during particularly
7 her -- both statements, first and second statement.

8 I would ask the Court to not allow the redaction as
9 it has been offered or as it will be offered by the State,
10 because I don't feel that it complies with Bruton and the
11 subsequent cases underneath Bruton.

12 I can -- I will quote one case, Your Honor, the
13 Singleton opinion. It's a South Carolina case dealing
14 with this issue, a Supreme Court opinion from 1991,
15 wherein Justice Harwell stated -- or a murder -- not a
16 murder charge, Your Honor, a criminal conviction was
17 reversed. Basically, the Supreme Court held that the
18 trial judge erred in refusing to redact physical
19 descriptions from a statement given by a non-testifying
20 co-defendant.

21 Your Honor, the use of the pronoun "he" or "him" only
22 eliminates half of the population. And I think when you
23 read the statements, there will be no mystery as to who
24 Ms. Holder was referring to. It will be clear that she
25 would be referring to Mr. Martucci. And I would ask the

1 Court to not accept that redaction.

2 I would ask that the word "person" be used instead of
3 a pronoun "he" or "him." I would ask also just for the
4 Court to consider other potential avenues available from
5 the bench as to how best to deal with this issue. But I
6 believe the statements will come in. I believe you have
7 already ruled on that just a few seconds ago. And I'll
8 just give you time to review the statements.

9 THE COURT: Your only objection is the use of the
10 word "he," as opposed to the word "person"?

11 MR. SUMNER: One second, Your Honor. Please let me
12 just consult.

13 (Pause.)

14 MR. SUMNER: Your Honor, there's a lot of identifying
15 information in the statements. It talks about living with
16 him and their joint address together. And I don't quite
17 know exactly how best to remedy that. I understand the
18 Court's ruling that the statements come in. But I just
19 don't know how the statements can be redacted to the point
20 where they comply with Bruton in terms of everything
21 Bruton stands for. I guess that's what I'm saying.

22 THE COURT: Solicitor.

23 MS. SEAY: Your Honor, in researching the issue to
24 prepare the redaction, the cases that I looked at
25 indicated that the test is whether you can deduce the

1 identity of "he" from the statement itself or whether
2 other evidence is necessary to support it. And that is
3 not prohibited if other evidence is introduced that shows
4 that that person is her co-defendant. I replaced --

5 THE COURT: At what point in time do you intend to
6 introduce the -- or attempt to introduce the statement?

7 MS. SEAY: I'm not sure about that yet.

8 THE COURT: Well, I'm looking at a case here, Gray v.
9 Maryland, which is a Supreme Court case in 1998, that
10 says, "Redacting a confession of a co-defendant that
11 implicates the Defendant by simply deleting the name of
12 the Defendant is insufficient to satisfy the confrontation
13 clause."

14 Now, if you've done nothing more than just change
15 the -- his name to "he," then have you complied with Gray
16 v. Maryland?

17 MS. SEAY: Well, I was relying on, as I said, the
18 cases that I was looking at where it indicated that that
19 had been an acceptable substitute, whereas things such as
20 marking through it with a black magic marker or using the
21 word "delete" or something like that had not been found to
22 be sufficient.

23 But I need to look at the Gray case?

24 THE COURT: 118 Supreme Court 1151. It's a 1998
25 case.

1 So I'll get back to my other question. I mean, if
2 you have testimony that you want to present and then try
3 to offer the statements later, I might agree with your
4 point, that once I've heard other testimony, then it may
5 not then become objectionable.

6 MS. SEAY: I don't have the Gray case in my file, but
7 I will review that. And I can maybe give you a better
8 idea of what my intention is as far as order of
9 introduction.

10 THE COURT: All right. So you can do that tomorrow?

11 MS. SEAY: Yes, sir.

12 THE COURT: And not -- do the statements today?

13 MS. SEAY: I'm sorry.

14 THE COURT: I say, you have testimony that will take
15 the balance of today?

16 MS. SEAY: Without involving the statements?

17 THE COURT: Right.

18 MS. SEAY: Yes, sir.

19 THE COURT: And then research that, whatever you want
20 to do overnight, and present it to me in the morning.

21 MS. SEAY: Yes, sir.

22 THE COURT: All right. Now, you want to make opening
23 statements to the jury.

24 MS. SEAY: Your Honor, I have one additional matter
25 before we begin.

1 THE COURT: All right.

2 MS. SEAY: I think that you probably would like to go
3 ahead and handle the issue of photographs in the case. I
4 would like to so I would know how to tailor my comments to
5 the jury.

6 We have several photographs that Dr. Ward, the
7 medical examiner who did the autopsy, in this case, would
8 like to use to illustrate and demonstrate his testimony in
9 this case. And there is a case remarkably on point as to
10 this issue.

11 THE COURT: Let -- what photographs do you intend to
12 use?

13 And which ones do you object to, gentlemen?

14 MR. QUINN: I haven't --

15 MR. BYRHOLDT: We don't know which ones she intends
16 to use.

17 MS. SEAY: These are the 11. I provided all of the
18 photographs. I've just selected a few.

19 THE COURT: Okay. Those are the ones you intend to
20 introduce?

21 MS. SEAY: Yes, sir.

22 MR. BYRHOLDT: We would --

23 THE COURT: Let me see them.

24 MR. BYRHOLDT: I think it's the last two or three we
25 would object to, Your Honor.

1 THE COURT: You object to which ones? Just show me
2 the ones you object to.

3 MR. QUINN: Oh, you'll know.

4 MR. BYRHOLDT: You'll know. It's totally unnecessary
5 from what we've talked to the doctor about on these.

6 THE COURT: All right. Now, why -- you say the
7 doctor is going to use these in his testimony?

8 MS. SEAY: Yes, sir.

9 THE COURT: And why is it necessary for him to have
10 these photographs for use in his testimony?

11 MS. SEAY: He would like to use them to illustrate
12 his testimony in explaining the extent of injury to this
13 child. He died of multiple blunt force trauma to various
14 parts of his body.

15 And in addition, Your Honor, I would point out the
16 State v. Fletcher case that I was getting ready to tell
17 you about. It is a South Carolina case from 2005, a Court
18 of Appeals case. It was a homicide by child abuse case.
19 And postmortem photos were admitted in that case to
20 corroborate the testimony of witnesses who saw the victim
21 near the time of the injuries and at or near the time of
22 his death demonstrating trauma that occurred over a period
23 of time due to the different ages of the bruises, found
24 them necessary to depict the severity of the victim's
25 bruises, which are inconsistent with any sort of

1 accidental infliction, and indicate the presence of
2 internal injuries.

3 The photos, in that case, corroborated testimony that
4 the cause of death was, in fact, abuse and that it
5 manifested an extreme indifference to human life, which is
6 an element of the crime that the State has to prove. And
7 I think that for that purpose, they are critical.

8 THE COURT: I think if the doctor has to have those
9 photographs to support his testimony, then I think I'd
10 have to say that the probative value outweighs any
11 prejudice.

12 MS. SEAY: Thank you.

13 THE COURT: Now, but you're telling me you're going
14 to show these to the jury in your opening statement?

15 MS. SEAY: No, sir. But I did just want to know if
16 they were going to be admitted so that I didn't misspeak
17 about what evidence we intend to present.

18 THE COURT: I understand.

19 All right. Mr. Sumner.

20 MR. SUMNER: Yes, sir.

21 Briefly, Your Honor. Investigator Kelly when he gave
22 his testimony regarding the statements that Mr. Martucci
23 made -- I respect, certainly, the Court's rulings
24 regarding the admissibility by a preponderance of the
25 evidence at this point. But there was some other

1 statements made by Investigator Kelly regarding the
2 apparent demeanor that he perceived of Mr. Martucci. He
3 talked about, I believe, a person named John Parker, who
4 said he appeared to be intimidated to be in the presence
5 of Mr. Martucci. And I would just ask that his testimony
6 be limited to actual words that were spoken and not in
7 terms of his speculation as to, well, he appeared to me to
8 be this way or that type. I think you know what I'm
9 talking about. I mean --

10 THE COURT: Well, I'm not going to have him testify
11 to his state of mind, but he can testify to what he
12 observed.

13 MR. SUMNER: Well, when he talked about Mr. Parker,
14 when he said, He appeared, to me, to be intimidated to be
15 in Mr. Martucci's presence, I mean, would that not be
16 Mr. Kelly trying to suppose or opine what would be in
17 Mr. Parker's mind at that point? I mean, I don't believe
18 that would be proper.

19 THE COURT: I'm not going to have him -- let him
20 testify to that. But he can testify as to what he
21 observed physically, what he said, and what physical
22 condition he was in.

23 MR. SUMNER: Okay. I was mainly just talking about
24 when he talked about Mr. Parker appeared, to me, to be
25 somewhat intimidated. Again, what he observed and what he

1 heard.

2 THE COURT: Where do you intend to go with that,
3 Solicitor?

4 MS. SEAY: I think that he should be entitled to
5 state what he personally observed.

6 THE COURT: He can testify about what he personally
7 observed, but not what Mr. Phillips thought.

8 MS. SEAY: Mr. Parker?

9 THE COURT: Mr. Parker. I'm sorry.

10 MS. SEAY: Okay. Yes, sir.

11 THE COURT: All right. Now, I don't want you to
12 argue in your opening statements. Okay. Just tell the
13 jury what this case is about and we'll move on.

14 Okay. Bring our jury in.

15 MR. BYRHOLDT: Your Honor, we would withdraw our
16 request to sequester witnesses. At this point, the
17 Jackson v. Denno has been heard and I've got no problem
18 with letting them in.

19 THE COURT: All right. That's fine.

20 (WHEREUPON, State's Exhibit Nos. 5, 6, 7, 8, 9, 10,
21 11, 12, 13, and 14 were marked for identification
22 only.)

23 (WHEREUPON, the jury came into open court at
24 approximately 3:00 p.m.)

25 THE COURT: Ladies and gentlemen, I understand that

1 one or more of you have asked concerning the taking of
2 notes during the course of this trial. That's perfectly
3 all right. But I need to instruct you that those notes
4 can be used only by you to refresh your recollection as to
5 what the testimony is or was during the trial. In other
6 words, you cannot use your personal notes as a transcript
7 of what was said. The only official transcript is that
8 being made by the court reporter. So you can take notes,
9 but you can use them only to refresh your recollection.

10 Okay. Opening statements -- we need to swear the
11 jury.

12 THE CLERK: Ladies and gentlemen, would you stand and
13 raise your right hand for the oath in this case. And the
14 appropriate response after the oath is, "I will."

15 (WHEREUPON, the jury was sworn at 3:01 p.m.)

16 THE CLERK: Thank you.

17 Be seated.

18 THE COURT: All right. Solicitor.

19 OPENING STATEMENTS

20 MS. SEAY: Thank you, Your Honor.

21 May it please the Court?

22 Ladies and gentlemen, this case is about homicide.
23 You hear that word a lot, "homicide," which simply put
24 means death at the hand of another. And, in this case,
25 the death at the hands of others was a two-and-a-half

1 year-old boy. He was born on January 3rd of 2000. He
2 lived a short life up until July 17th of 2002.

3 The State is going to present evidence to you that
4 the people responsible for this child's death are his own
5 mother and her boyfriend, the Defendants that you are here
6 to decide. I ask you to seek out the truth in this case,
7 seek it out, and speak a verdict after you've heard the
8 evidence that is justice in this case.

9 The evidence is going to show that this child was
10 beaten and battered and bruised for weeks leading up to
11 his death. And under our law, you don't have to be the
12 one to inflict the blows to be guilty. People who are
13 responsible for children and don't protect them are
14 equally guilty.

15 Ultimately, Mark Martucci, Ms. Holder's boyfriend,
16 took little Bo to the hospital. And you're going to hear
17 about how he was dead. You're going to hear about a lot
18 of things leading up to it. And you're going to hear
19 about why he was dead. And you're going to see
20 photographs of what he looked like. And you're going to
21 hear testimony from the medical examiner who did the
22 autopsy on this child that -- he's going to tell you about
23 the horrible blows that happened to this child to cause
24 his intestines to be severed, to damage his liver, his
25 kidneys, such that he bled to death internally. And he's

1 going to tell you that the people caring for this child
2 knew. They had to know.

3 The homicide by child abuse statute or law that we're
4 talking about is a special law. It's a special homicide
5 law just for children under 11. Children are the most
6 defenseless and helpless of our population. They rely on
7 adults, parents, and care givers for their every need,
8 particularly, a two-and-a-half-year-old, a little baby,
9 who should have been learning his ABC's and singing
10 nursery rimes instead of suffering and dying the horrible
11 death that he did.

12 And I ask you to listen to the evidence and determine
13 for yourselves who's responsible for this child's death.
14 And I submit that you'll find Ms. Holder is responsible,
15 and Mark Martucci is responsible. I'm going to ask you to
16 find them guilty at the conclusion of our case.

17 Thank you.

18 THE COURT: All right. Mr. Phillips.

19 MR. PHILLIPS: Thank you, Your Honor.

20 May it please the Court?

21 Ladies and gentlemen, Brandi Holder was 21 years old
22 when her son, ~~victim~~, died at two and a half years of age.
23 And you will see photographs of him. You'll see that he
24 was a blond-haired, dark hazel-eyed boy, blond eyebrows.
25 And he looked a lot like Brandi Holder.

1 Brandi was his mother and had Bo when she was 19
2 years old. And she loved ~~VICTIM~~ and cared for ~~VICTIM~~. When she
3 was 19 and had ~~VICTIM~~ she needed help from her family to
4 survive. So she moved and -- she lived with her parents.
5 And they took care of her and helped her take care of ~~VICTIM~~.
6 She worked to earn a license as a cosmetologist and worked
7 at a salon in Mauldin. And she did these things to
8 provide for ~~VICTIM~~ and to try to better herself and take care
9 of him.

10 Now, at Capelli's Hair Salon in Mauldin, she met a
11 customer named Mark Martucci. He is the other person on
12 trial here today in this room. She met him and they
13 developed a romantic relationship. They began living
14 together in March of 2002, when Brandi decided that she
15 would try to spread her wings and move out from her
16 parents home.

17 During that time in June of 2002, while Brandi worked
18 during the day and Mark Martucci was at home during the
19 day, to save on day care expenses, Mark Martucci began
20 watching ~~VICTIM~~, Brandi's child. So while Brandi
21 worked during the day, Mark was at home with ~~VICTIM~~, the
22 two-and-a-half-year-old boy, taking care of him. At
23 least, that's what she thought.

24 Now, ladies and gentlemen, Brandi Holder, Mark
25 Martucci, and another man, who will probably be a witness

1 here today or sometime this week is -- and that person is
2 John Allen Parker, those three people were charged with
3 homicide by child abuse, in this case, all three of them.

4 Now, John Allen Parker hadn't even been in the house
5 very long. He had only been there a few days, the
6 evidence will show, when ~~victim~~ died. But they were all
7 charged with homicide by child abuse for events that
8 happened allegedly between June 1st of 2002 and July 17th
9 of 2002. What happened during that time is the basis for
10 the State's charge against Brandi Holder.

11 The State has to prove that Brandi Holder committed
12 homicide by child abuse or aided and abetted in homicide
13 by child abuse beyond a reasonable doubt. Now, what that
14 means -- what is reasonable doubt? Judge Pyle will give
15 you very good definition at the end of this case. And
16 he'll describe what it is and tell you that it's a very
17 high standard.

18 Why do we have such a high standard of proof in a
19 criminal case like this? The reason is because we don't
20 want innocent people going to jail. And this isn't a new
21 concept. It's an old one. It's the one that what has
22 stood the test of time because of the wisdom of the people
23 who put it in place. The State must prove beyond a
24 reasonable doubt that Brandi Holder did this or you, in
25 the exercise of your duty as jurors, must find her not

1 guilty.

2 Now, ladies and gentlemen, the State will not be able
3 to prove that Brandi Holder did this beyond a reasonable
4 doubt or that she even knew about it beyond a reasonable
5 doubt. They will have witnesses who will come in here and
6 have motives to lie. And we won't lead you to speculate
7 or wonder as to what those motives to lie are. We'll tell
8 you. We'll point that out for you when they're on the
9 witness stand. Other witnesses may want a high profile
10 conviction of Brandi Holder. Think of those things when
11 you hear the evidence in this case.

12 This case means the world to Brandi Holder. She's on
13 trial for a very serious crime. She loved ~~victim~~ all ~~victim's~~
14 life. And she still loves Bo today. No one will be able
15 to tell you differently. Every day, she awakens to her
16 room with photographs of Bo to look at. She looks around
17 her room and sees his photographs and misses him. She
18 misses the sound of his little footsteps along the
19 hallway, the warmth of a little child's embrace, her own
20 son's hugs, the smell of his hair, the sound of his
21 laughter, the sound of his voice. Every day, she misses
22 him.

23 Ladies and gentlemen, we stand here today telling you
24 that we're putting Brandi Holder's life in your hands.
25 And we do so out of faith that each of you --

1 MS. SEAY: Your Honor, I'm going to object and ask
2 for an instruction on that, please.

3 THE COURT: Yes.

4 Move on, sir.

5 MR. PHILLIPS: Ladies and gentlemen, thank you for
6 your service here today. We have faith that you will
7 exercise your duties as jurors as best you can.

8 And we thank you for your attention in this very
9 difficult case.

10 THE COURT: Mr. Sumner or Mr. Quinn.

11 MR. SUMNER: It will be myself, Your Honor.

12 THE COURT: All right.

13 MR. SUMNER: Good afternoon. Hello.

14 My name is Steve Sumner. And it's a pleasure to be
15 here with you all today, this afternoon, and probably for
16 the better part of this week. I practice law here in
17 Greenville. Tom Quinn is seated with me. Tom is my
18 co-counsel in this case. And it is a pleasure for both of
19 us to be here.

20 I want to follow-up with a few remarks regarding
21 Judge Pyle's comments earlier today. And then I'm going
22 to sit down and we're going to get the trial started.

23 First of all, as Judge Pyle stated, Mr. Martucci is
24 not present. But Judge Pyle, I believe, will instruct you
25 that proof in a case and his presence is not required, as

1 he already has mentioned that to you all this morning or
2 earlier this afternoon. And that cannot be held against
3 Mr. Martucci in any way, that you all will weigh the
4 evidence and make a determination irrespective of his
5 presence here or not here.

6 Secondly, I'm not sure if Judge Pyle has covered this
7 already, but any person accused of a crime in the United
8 States or here in Greenville County is presumed to be
9 innocent. And that presumption of innocence remains with
10 both Defendants.

11 This trial is a little bit unusual because there is
12 more than one defendant during the same trial. But the
13 presumption of innocence applies to Ms. Holder as equally
14 as it applies to Mr. Martucci. And that presumption of
15 innocence remains with the person until you have -- you
16 feel that you've got evidence so powerful that you're
17 convinced beyond a reasonable doubt of that persons
18 guilt.

19 As Judge Pyle mentioned -- and I've had the pleasure
20 of trying numerous cases in his courtroom -- the burden of
21 proof is on the State. And, please, remember that as we
22 proceed through this trial. There's no burden of proof on
23 this table with either Mr. Quinn or myself, or at this
24 table with Mr. Byrholdt or Mr. Phillips, as they represent
25 Ms. Holder. The burden of proof always stays here and it

1 never shifts across the courtroom.

2 Now, your verdict, in this case, again, because it's
3 a criminal case, Madam Forelady, and, ladies and gentlemen
4 of the jury, has to be unanimous. It is not enough for
5 the State to prove it to eight of you, nine of you, ten of
6 you, or even 11 of you. Your verdict must be unanimous.
7 Judge Pyle, again, will comment on that at the conclusion
8 of the case.

9 He'll also talk about how powerful the State's proof
10 must be. And he'll talk about proof beyond a reasonable
11 doubt. He will tell you what those words mean and what
12 type of standard of proof the State must bring to you as
13 it relates to Mr. Martucci.

14 One last thing. The order of this trial will be as
15 you have heard us speak to you today. And that is
16 Ms. Seay will put some witnesses up to begin with. The
17 first person to be able to cross-examine a witness will be
18 then Mr. Byrholdt or Mr. Phillips. And then the last
19 person to cross-examine a witness will be either Mr. Quinn
20 or myself.

21 So I want to say one thing. Mr. Quinn and myself
22 will probably talk amongst ourselves before we ask
23 somebody a question. And, please, don't think that we're
24 trying to waste your time as a jury. Actually, what we're
25 trying to do is not waste your time. If -- Mr. Byrholdt

1 or his co-counsel, Mr. Phillips, if we feel that they've
2 asked all the questions, we don't want to ask the same
3 question two or three times. So if you'll bear with us a
4 little bit on that point, ladies and gentlemen. There may
5 be a delay between their questioning and our questioning.
6 And that will only be for the benefit of everybody here so
7 that we don't ask the same questions two or three times.
8 So if you'll bear with us on that point.

9 I will get an opportunity to address you all at the
10 conclusion of the case. And I, certainly, look forward to
11 that. We're going to try to keep the case moving at a
12 quick pace.

13 Thank you all very much.

14 THE COURT: Solicitor.

15 MS. SEAY: Thank you, Your Honor.

16 We call Ladye Kelly as our first witness.

17 THE CLERK: Put your left hand on the Bible, please,
18 ma'am, and raise your right hand.

19 WHEREUPON,

20 LADYE EASTLAN KELLY,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: State your name for the record, please.

23 THE WITNESS: Ladye Eastlan Kelly.

24 THE COURT: Thank you.

25 Be seated.

DIRECT EXAMINATION

BY MS. SEAY:

Q Ms. Kelly, would you state your name once more and let me make sure we can hear you this far over?

A Yes, ma'am. Ladye Eastlan Kelly.

Q You might need to pull that towards you just a little bit.

A Ladye Eastlan Kelly.

Q That's a little bit better.

Ms. Kelly, where are you currently employed?

A At the North Greenville Emergency Room.

Q What do you do there?

A I'm a registered nurse.

Q How long have you been a nurse?

A 23 years.

Q Can you briefly describe your education and training to perform nursing duties?

A Yes, ma'am. I have an Associates Degree in Nursing from Greenville Technical College. And I began working with the hospital system, I believe, in September of '79.

I, originally, worked at Greenville General Hospital. And then when everything was moved to Memorial, I went to the intensive care unit at Memorial where I worked in several of the different specialities. I ended up working mostly in neurotrauma ICU until probably '91.

1 And then I moved to Saint Francis for a little while
2 and worked over there in their ER and ICU. Then I went
3 back to the system and worked in -- let's see -- I believe
4 it was the Allen Bennett emergency room and, presently,
5 North Greenville.

6 Q Okay. So you were employed in your current capacity,
7 but stationed at Allen Bennett Hospital back in July of
8 2002?

9 A Yes, ma'am.

10 Q On July 17th, 2002, were you working?

11 A Yes, ma'am, I was.

12 Q Did you have occasion to see a child by the name of
13 VICTIM while you were working that day?

14 A Yes, ma'am, I did.

15 Q And about what time did you see him?

16 A It was right around lunchtime, because I remember I
17 was hungry and hadn't eaten lunch yet. So I'd say
18 somewhere between 12:00 and 1:00.

19 Q Would you, please, describe how you first came in
20 contact with him?

21 A I'm not really sure exactly what I was doing at the
22 time. I think I was going to check on another patient.
23 But, at that time, the emergency room was under
24 construction. And they had put in some new ambulance
25 doors where the ambulance entrance was, or what we call

1 the back entrance.

2 And I was passing those doors when I caught something
3 out of the corner of my eye so that I looked to see what
4 it was. And there was this man that had gotten out of a
5 truck, I believe, and was coming towards the emergency
6 room doors with a child in his arms.

7 Q What, if anything, did you observe about the child in
8 his arms?

9 A What I noticed is, being a nurse for the period of
10 time that I have been, a live body just kind of flops
11 different than one that is no longer alive. And the child
12 looked dead to me. He did not -- it was just -- that's
13 the only way I know how to explain it.

14 Q Did he appear conscious at all?

15 A No. He was totally unconscious, no movement, just
16 flopping from being carried.

17 Q What did you do?

18 A I called for Dr. Gregg, who was on duty.

19 Q And did you then have any interaction with the man
20 carrying the baby?

21 A He came in through the doors. And, at that time, we
22 told him to follow us to a room with the child. And so he
23 followed us into one of the trauma bays. And from there,
24 he laid the child down on the end of the bed and then
25 turned around and walked out.

1 Q Did he say anything to anyone?

2 A Not to me. I didn't hear him say anything.

3 Q And so what did you observe about the baby then?

4 A It's -- I first started just generally looking.

5 There's several things that we think about when we're
6 looking at it, are they breathing, what's the color of
7 their skin, several small things all at one time, touching
8 him, you know.

9 I moved him up on the bed closer to the monitor,
10 because I knew that he wasn't breathing. I wanted to get
11 something to start breathing for him and also, at the same
12 time, working with the other hand trying to get him hooked
13 up to the monitor so that we could make sure that there
14 was no heart beat, or if there was a heart beat. I did
15 not feel one, at that time, when I touched his chest.
16 But, at that point, my main concern was this child and
17 trying to figure out what was wrong and doing everything I
18 could for him.

19 Q Would you describe if you saw anything unusual about
20 this child's body?

21 A He had multiple bruises over most of his body.

22 Q Can you be more specific about some of the ones that
23 you noted?

24 A Some of the things that I noticed about him was marks
25 on the right side of his face that were a very odd pattern

1 that looked very much to me like knuckle prints.

2 MR. BYRHOLDT: Your Honor, I could not hear her.

3 THE COURT: Can you speak up a little louder, please,
4 Ms. Kelly.

5 THE WITNESS: I'm sorry.

6 He seemed to have --

7 MR. SUMNER: If you could just -- I'm sorry, just
8 lean in a little bit, I think, to the microphone.

9 THE WITNESS: He -- on the right side of his face, he
10 seemed to have odd marks around in this area that appeared
11 and looked like they were too round, like it would have
12 been knuckle marks.

13 MR. BYRHOLDT: I object to that, Your Honor, and ask
14 that it be stricken unless she can lay a foundation.

15 THE COURT: No. I overrule.

16 Go ahead.

17 BY MS. SEAY:

18 Q What other bruises did you observe?

19 A He also had multiple bruises on his legs, on his
20 arms. His eyes were blackened. He also had a place
21 around his mouth that was scratches or abrasions right up
22 in here and had a lot of bruising. Also on his back in
23 the lower area of the back was a purple black mark that
24 was about like this. It covered most of his back.

25 Q The description that you just gave with your hands,

1 is that approximately how large it was?

2 A Yes, ma'am. Several of the bruises just looked
3 strange. And what I mean by that is, as long as I've
4 worked in ER's and things like that, we get a lot of
5 assaults and people fighting. And some of the bruising
6 looked like grab marks, based on my experience from what
7 I've seen. Some of them looked like fist hit-type marks
8 to me.

9 Q Did you notice if all of the bruises appeared to be
10 of approximately the same age or not?

11 A Definitely not. They were all in different stages of
12 healing. Some of them were very fresh looking
13 dark-purplish blue colors. Others were yellow, barely
14 noticeable that had healed and were in between those two
15 things. Some were darker than others. Some were lighter
16 than others.

17 Q Did you notice anything particular about his abdomen?

18 A It was very swollen. I'm not sure --you know, at
19 that time, I had no idea why, but he just looked -- it
20 looked swollen to me.

21 Q In your experience, what sort of things does that
22 usually indicate?

23 MR. BYRHOLDT: I object, Your Honor, unless she can
24 lay a foundation. She's not a medical doctor.

25 THE COURT: I think a sufficient foundation has been

1 laid.

2 Go ahead.

3 THE WITNESS: Based on my knowledge, the two things
4 that can cause that is sometimes people can get distended
5 when we're trying to resuscitate them and breathing for
6 them, it could be the air in the stomach. Or in other
7 cases, it could be due to internal bleeding or other fluid
8 from other parts of the body.

9 BY MS. SEAY:

10 Q What was his color like?

11 A Pale. He was very pale. He was blue around the
12 mouth.

13 Q What does that mean?

14 A It usually shows that there's a lack of oxygen. He
15 hadn't been breathing. And he was beginning to turn blue
16 because he wasn't breathing and not getting any oxygen.

17 Q Did you assist Dr. Gregg with efforts to try to
18 revive this child?

19 A Yes, I did.

20 Q And were you successful?

21 A No, ma'am.

22 Q What did you do after you all had determined that
23 there was nothing else to be done?

24 A Dr. Gregg wanted me to stay with the child. He
25 realized that there was something wrong here. And he told

1 me he didn't want anybody in the room.

2 MR. BYRHOLDT: I object to what he told her being
3 hearsay.

4 THE COURT: Yes. I sustain the objection.
5 Don't tell us what he said.

6 THE WITNESS: Okay. I'm sorry.

7 THE COURT: All right. Move on.

8 THE WITNESS: Basically, he left the room to go do
9 some other things.

10 BY MS. SEAY:

11 Q And you remained there?

12 A And I remained in the room with the child.

13 MS. SEAY: Those are all the questions I have for
14 you.

15 Please answer any that the other attorneys may have.

16 THE COURT: All right. Who's going first?

17 MR. BYRHOLDT: Me.

18 May it please the Court?

19 CROSS-EXAMINATION

20 BY MR. BYRHOLDT:

21 Q Do you have your records with you today?

22 A No, sir.

23 Q Have you reviewed your records? Have you done any
24 review with the Solicitor before testifying?

25 A No.

1 Q You haven't done anything?

2 A (Witness shook head.)

3 Q I'll ask you, is that a record that you would have
4 prepared?

5 A No, sir. That's the doctor's sheet. I don't have my
6 glasses. I need my glasses.

7 Q Are they --

8 A They're right over there.

9 Q Are these the right ones?

10 A Yes.

11 Thank you.

12 Q Is that a record that you would have filled out?

13 A Yes, sir.

14 Q Let me show you this one.

15 A Yes, sir.

16 Q And I believe that one --

17 A Yes, sir.

18 Q I'm going to ask you to look at those. And in any of
19 those, is there any mention about a swollen abdomen or
20 anything like that that you testified to today?

21 ~~X~~ A No, sir, there isn't.

22 Q So -- and the records that -- and you're required to
23 chart per the nursing regulations; correct?

24 A Uh-huh.

25 Q And nowhere in your chart was there any mention of

1 any swollen abdomen or anything like that, is there?

2 A No, sir, there's not.

3 Q And then you mentioned about bruises in various
4 stages of healing. Are you telling me, as a registered
5 nurse, you could tell us how long a bruise has been on
6 someone's body? You're not telling us that, are you?

7 A I'm not saying I can tell you how long a bruise has
8 been on anybody, no. But they do lighten with age --

9 Q But you can't --

10 A -- with healing.

11 Q I'm sorry. Can you tell us if they've been there six
12 hours, 12 hours, 24 hours? You can't, can you?

13 A No, sir, I cannot.

14 Q Can you tell this jury today who inflicted those
15 bruises on VICTIM?

16 A No, sir, I cannot.

17 Q Did you ever see Ms. Holder that day, July the 17th,
18 2002, at the ER?

19 A I don't know who it was, but, at one point, when we
20 were trying to resuscitate Bo, there was a woman that came
21 in the doors --

22 Q And tried to get in?

23 A And I just -- I don't know if she tried. I just
24 looked up and saw somebody and just asked them to wait
25 outside until we could -- so that we could work with the

1 child.

2 Q As a registered nurse, I take it in your -- have you
3 ever had the unfortunate duty to have to explain to the --
4 a loved one that their -- either their son, daughter, or
5 husband had passed away?

6 A I've gone with physicians to do that. And I have
7 done that, yes.

8 Q Have you ever been in a case where they haven't let
9 the person see that person to say goodbye?

10 A No, sir.

11 Q It's pretty unusual, isn't it?

12 A I wouldn't know.

13 Q Okay. You wouldn't want to be treated that way,
14 would you?

15 MS. SEAY: I'm going to object.

16 THE COURT: I sustain the objection.

17 MR. BYRHOLDT: No further questions.

18 Thank you, ma'am.

19 CROSS-EXAMINATION

20 BY MR. QUINN:

21 Q Ms. Kelly, just a couple questions. Did you see the
22 truck pull up to the hospital?

23 A No, sir.

24 Q Okay. So the first you noticed then was when you saw
25 somebody coming up and holding the child?

1 A Yes, sir.

2 Q All right. Did you happen to notice if the driver
3 was a man or a woman?

4 A No, sir.

5 MR. QUINN: I don't have any other questions.

6 Thank you.

7 THE COURT: Thank you.

8 You can step down.

9 Do you want to excuse this witness?

10 MS. SEAY: Well, I was going to ask that she be
11 excused, if she wishes. She might prefer to stay. I
12 think there's some other staff here.

13 THE COURT: Okay. That's fine. If she wants to
14 stay, that's fine.

15 MS. SEAY: Your Honor, we call Dr. Kevin Gregg.

16 THE CLERK: Put your left hand on the Bible, please,
17 sir, and raise your right hand.

18 WHEREUPON,

19 KEVIN GREGG, M.D.,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: State your name for the record, please
22 sir.

23 THE WITNESS: My name is Kevin Gregg.

24 THE CLERK: Thank you.

25 Be seated.

DIRECT EXAMINATION

BY MS. SEAY:

Q Dr. Gregg, your occupation is a medical doctor; is that right?

A Right. I'm a board certified emergency physician.

Q Where are you currently practicing?

A I work with the Greenville Hospital System through all of their emergency departments.

Q So you rotate emergency rooms?

A Yes, ma'am.

Q Okay. Would you briefly describe what your training and education is and how long you've been practicing?

A I graduated medical school from the University of Illinois in 1983. I did a year of surgical internship, followed by an emergency medicine residency at Charity Hospital in New Orleans. I've been board certified since 1990. In 1994, I came to Greenville. I've worked in THS emergency departments ever since.

Q And would it be fair to say that being an emergency room doctor, you see a lot of different things?

A Yes, ma'am.

Q Back in July of 2002, were you working in your current capacity?

A Yes, ma'am.

Q Did you have occasion on that day to come in contact

1 with a baby who was later learned to be Bo Holder?

2 A Yes.

3 Q Would you describe how you came in contact with him?

4 A My recollection was I was looking through the
5 ambulance doors, which is the only window to the outside
6 world that the emergency -- that that emergency department
7 had at that time. And I can recall a vehicle. And there
8 was a goateed gentleman carrying a -- carrying the patient
9 in his arms. I recalled that there was another gentleman
10 on the driver's side of the vehicle.

11 They were both coming into the ambulance entrance,
12 which was unusual, because the emergency department was
13 under construction and there wasn't any ambulance sign.
14 So it was just unusual for anybody to come in the back
15 door.

16 Q Okay. What did the man carrying the baby do once he
17 got inside?

18 A I forget the exact words. But he indicated that he
19 had a very ill child. And Ms. Kelly and I promptly
20 directed him to the closest large room, which I think was
21 Room 6. The gentleman placed the patient on the bed.

22 And then Ms. Kelly and I worked to resuscitate the
23 patient and called for help so that the rest of the
24 emergency department knew that we had a pediatric
25 resuscitation going on.

1 Q So it was just you and Ms. Kelly that remained in the
2 room at that time?

3 A Ms. Kelly and I were the primary providers. There
4 were other people. There was a pharmacist that came in.
5 We called him. There were social workers that we called
6 in, multiple other sources of care.

7 Q Were you the primary person in charge of trying to
8 resuscitate the baby?

9 A Yes.

10 Q Would you describe what you observed about the
11 child's body?

12 A My recollection of the patient is that he appeared to
13 be a generally healthy two-and-a-half-year-old boy with
14 multiple bruises about the face and the chest. And he was
15 apnea compulsive, which means he made no effort to take a
16 breath. He had no pulses. He had no evidence of cardiac
17 activity when we hooked him up to the monitor.

18 I proceeded as I always do. Airway comes first. We
19 tried to breathe for him with a bag valve mask giving him
20 oxygen and breathing for him until I could secure an
21 intratracheal airway, which is a semi-plastic tube that
22 goes down the windpipe. Simultaneously, Ms. Kelly was
23 hooking him up to hear monitors. We were determining that
24 he had no cardiac activity and that he had no pulses. So
25 we began CPR.

1 Q Were any of your efforts successful?

2 A Bo got a very, very long resuscitation as is the
3 usual course when a child is dead. Nobody wants to let a
4 child die. So the usual resuscitation is 20 minutes.

5 ~~VICTIM~~'s was 40. I tried high dose epinephrine. I recall I
6 got some success. He got some electrical complexes on the
7 monitor. I don't think he ever got any pulses. The
8 electrical complexes lasted for less than a minute and it
9 was primarily due to the high dose adrenaline. We lost
10 pulses. I tried high dose epinephrine two other times, in
11 addition to some other agents.

12 I asked the pharmacist, who came down to help us, if
13 there were any other thoughts. I did everything I could.
14 But, ultimately, he died -- I should say, ultimately, he
15 was pronounced dead.

16 Q And along that line, let me ask you if you have an
17 opinion, based on your training and experience, as to
18 whether ~~VICTIM~~ was alive when he was brought in?

19 MR. BYRHOLDT: Your Honor, what's the proper
20 foundation? I guess it must be most probably based on his
21 medical --

22 THE COURT: All right.

23 MR. BYRHOLDT: If he can do that.

24 THE COURT: Solicitor.

25 MS. SEAY: I didn't -- I'm sorry. I didn't hear what

1 he said.

2 THE COURT: He says you have not laid a proper
3 foundation for the doctor to express that opinion.

4 BY MS. SEAY:

5 Q Dr. Gregg, in your experience as an emergency room
6 doctor, have you had occasion to see people who were
7 dead?

8 A Yes.

9 Q Do you know approximately how many?

10 A I've probably seen 1,000 dead people.

11 Q And do you have an opinion as to whether this child
12 was dead when he arrived?

13 MR. BYRHOLDT: Again, Your Honor, same objection.

14 THE COURT: No. I'm going to allow that.

15 Go ahead.

16 THE WITNESS: Yes, I do.

17 ~~Victim~~ was dead and I think he was freshly dead. He was
18 cooler -- his temperature was cooler than 98.6, but it was
19 warmer than room temperature.

20 BY MS. SEAY:

21 Q And that's what you would base your assessment of the
22 timing on?

23 A (Witness nodded.)

24 THE COURT: You have to answer, Doctor.

25 THE WITNESS: Yes.

1 BY MS. SEAY:

2 Q Dr. Gregg, did you talk to anybody that was
3 associated with this baby about what might have happened
4 to him?

5 A Oh, yes. Part of doing a resuscitation is gathering
6 information from any source that you can find. The -- I
7 asked the two gentlemen about the history. And the
8 history that I was given was that ~~victim~~ had had a
9 four-wheeler ATV accident earlier in the week. I believe
10 it was a Sunday. He was not wearing his helmet. I forget
11 if he flipped or was ejected out of the ATV, so the story
12 went.

13 The story was that he looked okay after the injury so
14 the family didn't feel a need to bring him to the ER to
15 get checked. But that -- the day before he presented to
16 the emergency department, he had vomited. And then the
17 day that he came to the emergency department, he had -- he
18 appeared weak, had vomited several times, and then was
19 unresponsive.

20 Q Did you obtain any history information from anyone
21 besides the man you just described?

22 A My recollection is that I was asking both gentleman.
23 And one or both persons gave me that information. It's
24 my job to gather information, not to remember who said
25 what.

1 At a later time, the mother appeared. And as is my
2 custom, especially with mothers, because mothers usually
3 have better medical information on children than males do,
4 I asked the mother to get further information to verify
5 that the information that I had was correct, that the kid
6 is not diabetic, that he's not taking any unusual
7 medications, that he hadn't been exposed to any poisons.
8 Because at the time the mother appeared, I think we were
9 still working to resuscitate ~~VICTIM~~. And so if she had said,
10 he took grandma's pills, then maybe there's something I
11 can do real quick to bring him back.

12 Q So it would be important for you to know,
13 specifically, what had happened in order to be able to
14 properly treat the baby?

15 A Yes.

16 Q And did you get any information from the mother?

17 A I don't have any recollection of that. My usual
18 policy would be to say, I'm Dr. Gregg. I'm taking care of
19 your son. I understand he was in a four-wheeler accident
20 earlier in the week. And he was okay until yesterday and
21 he vomited. And then today he got real sick. Do you know
22 any further information?

23 And then I wait for the response. And if there was
24 any further information, I would write it on the
25 chart under "Additional History," which I do all the

1 time.

2 Q And did you obtain any additional history?

3 A My recollection is that there was no additional
4 history.

5 Q Okay. Have you had occasion in your experience as an
6 emergency room doctor to see children with non-accidental
7 injuries?

8 A Yes. I was an emergency medicine resident in New
9 Orleans and I saw a lot of violence.

10 Q And in your opinion and your training and your
11 experience, did you find that the story about the baby
12 being in a four-wheeler accident was consistent with his
13 injuries?

14 A Not really. But I accepted the information at face
15 value. Because, at that time, I'm dealing with a
16 pediatric resuscitation. And I'm a doctor, I'm not a
17 detective. It's not my job to query things. I just say
18 this is what I understand, is it true?

19 Q And I think my question is, did you find that the
20 injuries that you saw appeared to be consistent with that
21 kind of an accident?

22 A I'm sorry. No, he had bruises. He didn't have cuts.
23 He didn't have abrasions. He didn't have the usual signs
24 of wear and tear you see on a two-and-a-half-year-old boy.
25 He didn't have skinned knees. He didn't have scraped up

1 palms from playing or rolling or falling off the porch.

2 He had bruises.

3 Q Okay. What did you do after you had pronounced the
4 time of death for *VICTIM*?

5 A I don't recall the exact sequence of events. We
6 notified the coroner. And, at some point, I counseled the
7 parents.

8 Q Did you notify anyone besides the coroner?

9 A I think I talked to the coroner and asked to speak to
10 Dr. Ward.

11 Q And Dr. Ward is not the coroner; correct?

12 A Yeah. I thought he was.

13 Q Did you ask for Dr. Ward to come in and check the
14 situation?

15 A Yes.

16 Q And did he come over to the hospital and do that?

17 A Yes, he did. I've never asked a coroner to do that
18 before and I've never asked since, but I thought it
19 important.

20 MS. SEAY: Those are all the questions I have,

21 Dr. Gregg.

22 Please answer any questions that the other attorneys
23 may have.

24 THE COURT: Mr. Byrholdt.

25 MR. BYRHOLDT: May it please the Court?

CROSS-EXAMINATION

BY MR. BYRHOLDT:

Q Dr. Gregg, in your report, did you make a notation that the child probably died from injuries from an ATV? Is that in your report -- or report attributed to you?

A I don't think I specified the cause of death.

Q Can you identify that signature on the bottom?

A No.

Q There's an underlined portion in yellow, do you recall telling that to any member of the staff at the hospital?

A I think I may have told the parents that he may have died as a result of the ATV accident, because that was the information that I was working on.

Q Do you recall talking with Brandi Holder?

A Vaguely.

Q But the history you got from the two gentlemen?

A Uh-huh. Yes.

Q Do you know if Brandi -- did she ask you if she could see ~~VICTIM~~?

A I don't recall.

Q I mean, if she would have asked, you would have let her see her child, wouldn't you?

A Yes.

MR. BYRHOLDT: Nothing further.

1 Thank you.

2 THE COURT: Mr. Quinn.

3 CROSS-EXAMINATION

4 BY MR. QUINN:

5 Q You got the history from the two men first --

6 A Yes.

7 Q -- before you got anything from Ms. Holder; is that
8 right?

9 A Correct.

10 Q Okay. And then you recounted it as I -- I believe
11 you said, at least, your standard would be, you would say
12 to Ms. Holder, This is what I already know?

13 A Yes.

14 Q Is there anything to add?

15 A Yes.

16 Q And your memory here is she didn't add anything?

17 A Yes.

18 Q Did she deny anything saying, no, the information
19 you've been provided is inaccurate?

20 A If she would have said, no, there was no four-wheeler
21 accident, I don't know what you're talking about, I would
22 have written that on the chart.

23 Q Okay. And have you reviewed your chart before you
24 came to testify today?

25 A Yes.

1 Q And is there any indication of that on your chart?

2 A No, there's not.

3 Q Now, when you got the information from the two
4 gentlemen, did you also ask them if they had attempted any
5 sort of procedures bringing the child in, CPR, anything
6 like that?

7 A Yes. Mr. Martucci said that he had delivered
8 cardiopulmonary resuscitation -- or rather that he had
9 attempted mouth-to-mouth breathing on the patient either
10 at the home or in the vehicle, and that ~~victim~~ had bit him in
11 the upper lip.

12 Q And that information was provided to you before
13 Ms. Holder ever became involved; isn't that right?

14 A I'm not sure, but I think that information was
15 provided prior to Ms. Holder appearing.

16 MR. QUINN: Thank you, Doctor.

17 I don't have any other questions.

18 THE COURT: Anything else, Solicitor?

19 MS. SEAY: No, sir.

20 And I would ask that he be excused or remain if --

21 THE COURT: Hold on.

22 Mr. Byrholdt.

23 MR. BYRHOLDT: I have one question in response to the
24 cross by Mr. Quinn.

25 THE COURT: Yes, sir. Go right ahead.

RE CROSS-EXAMINATION

2 BY MR. BYRHOLDT:

3 Q Mr. Quinn asked you about -- if Ms. Holder gave you
4 any other explanation other than the ATV accident. You
5 don't have any record in your documents that you even
6 spoke to Ms. Holder, do you, as far as what happened,
7 nothing in your records, documentary evidence?

8 A I think the social worker --

9 Q I'm asking you whether you talked her. It's a
10 question dealing with you.

11 A Okay. I didn't document the conversation.

12 Q Because had you talked to her, you would have charted
13 it?

14 A No.

15 Q You don't --

16 A I got the primary history.

17 Q From two people?

18 A From two people. And when the mother appears, as is
19 my custom, I verify that there's not anything else to the
20 story. But I don't document that I do that.

21 Q And you have no recollection of whether you did that
22 in this particular case?

23 A Yes. I did talk to her and say, I'm Dr. Gregg.

24 We're working on ~~VICTIM~~. This is what I understand. Do you
25 have anything to add?

1 MR. BYRHOLDT: Thank you.

2 THE COURT: Thank you, Doctor.

3 You can step down.

4 MS. SEAY: I'd ask that he be excused or allowed to
5 remain, if he desires.

6 THE COURT: Any objection to excusing the Doctor?

7 MR. QUINN: No objection.

8 MR. BYRHOLDT: No objection.

9 THE COURT: Thank you, Dr. Gregg.

10 You're excused.

11 THE WITNESS: Can I add one thing?

12 THE COURT: Well, no.

13 THE WITNESS: No. Okay.

14 THE COURT: You need to talk to the Solicitor first.
15 Thank you.

16 (Pause.)

17 MS. SEAY: Your Honor, may I be permitted to redirect
18 on one question?

19 THE COURT: Yes.

20 MS. SEAY: Thank you.

21 THE COURT: Come back around, please, Doctor.

22 REDIRECT EXAMINATION

23 BY MS. SEAY:

24 Q Dr. Gregg, just briefly, you described that
25 Mr. Martucci had told you that he did CPR or

1 mouth-to-mouth resuscitation and that Bo bit him on the
2 lip?

3 A Yes.

4 Q Do you have any opinion about that comment based on
5 your medical training?

6 A That is something that I've never seen before. I've
7 never heard of it before. When you do rescue breathing on
8 somebody, they are unconscious. And an unconscious person
9 can't bite. Doing mouth-to-mouth, you're not sticking
10 something obnoxious down the throat. There's no reflex
11 involved. And it's very unusual to -- for -- I don't
12 understand why an unconscious boy would bite somebody on
13 the lip.

14 Q So it's fair to say that that would be very unusual
15 to you?

16 A It would be very unusual.

17 MS. SEAY: Thank you.

18 THE COURT: All right. Any questions, Mr. Byrholdt
19 or Mr. Quinn?

20 MR. QUINN: Oh, yeah.

21 RECROSS-EXAMINATION

22 BY MR. QUINN:

23 Q What you really want to say is it didn't happen;
24 isn't that right, Doctor, not that it's unusual, but that
25 it didn't happen?

1 A What I'm saying is I've never heard of that before.

2 Q Okay. So are you saying it did not happen?

3 A I wasn't there. I've never seen that before. I've
4 never heard of it before. It's very unusual.

5 Q All right. And so are you saying it's impossible?

6 A Yes.

7 Q Okay. Why?

8 A Why would an unconscious child bite somebody on the
9 lips when you're doing mouth-to-mouth? It's a kiss.

10 Q And, Doctor, isn't it your theory, as you weren't
11 there when it was ongoing, I assume, that the child was
12 unconscious the entire time? Isn't that right?
13 Otherwise, it could have happened. If the child became
14 conscious or had a reflex or moved, isn't it possible that
15 he could have been bitten?

16 A No.

17 Q Conscious children don't bite?

18 A If he's conscious, he doesn't need mouth-to-mouth
19 resuscitation.

20 Q And if you were not a medical personnel and you were
21 concerned that a child you were taking to the hospital
22 might be dying and you were attempting to perform CPR --
23 probably not proper cardiac CPR for a child -- is it
24 possible that the child might have bit you if he started
25 to become awake?

1 A An adults mouth is bigger than a toddlers mouth. How
2 are his teeth going to reach my lips, assuming it's me
3 doing it?

4 Q Do you have any children?

5 A Uh-huh.

6 Q Your finger is bigger than their lips, isn't it, a
7 two-and-a-half-year-old?

8 A (Witness nodded.)

9 Q And isn't it possible for a child to bite your
10 finger?

11 A Sure, playing.

12 Q And so you just think it's impossible?

13 A (Witness nodded.)

14 Q Okay. And do you have any theory about why he would
15 make such a thing up?

16 A No.

17 Q Are you telling this jury he did not perform CPR?

18 A No. I'm saying he didn't get a cut on the lip from
19 performing CPR.

20 Q Now, he didn't say he got a cut on the lip, did he?
21 He said he got bit on the lip; isn't that right? Wasn't
22 that your earlier testimony?

23 A I recall that he had a cut.

24 Q You do?

25 A (Witness nodded.)

1 Q Did you treat it?

2 A No.

3 Q Was it an open wound?

4 A I believe so.

5 Q Did you document it in any way?

6 A No.

7 Q Photograph it?

8 A I'm a doctor, I'm not a photographer.

9 Q So I'll assume that answer then is a "no"?

10 A No.

11 Q Okay. And as a doctor, you treat peoples injuries;
12 isn't that right?

13 A Uh-huh.

14 Q So did you attempt to determine what was the cause of
15 the injury to his mouth so that you could tell anybody, a
16 jury, a doctor, his mother where the injury had come from
17 and if it had anything to do with ~~victim~~?

18 A I believe we touched on it briefly, and he declined
19 treatment.

20 Q And is that documented in any way?

21 A No.

22 Q Was there anyone else in the room when it happened?

23 A When he was injured?

24 Q When you asked him about treating him and he declined
25 the treatment.

1 A I don't recall.

2 MR. QUINN: I don't have any other questions.

3 THE COURT: Thank you, Doctor.

4 Step down.

5 Ms. SEAY: Your Honor, we call Kim Banish.

6 THE CLERK: Put your left hand on the Bible, please,
7 ma'am, and raise your right hand.

8 WHEREUPON,

9 KIMBERLY ANN BANISH,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: State your name for the record, please.

12 THE WITNESS: Kimberly Ann Banish.

13 THE CLERK: Thank you.

14 Be seated.

15 DIRECT EXAMINATION

16 BY MS. SEAY:

17 Q Ms. Banish, where are you employed?

18 A Allen Bennett Hospital, Greenville Hospital System.

19 Q In what capacity?

20 A I am a licensed social worker.

21 Q How long have you been a licensed social worker?

22 A For approximately 13 years.

23 Q And would you briefly describe what the education and
24 training is to become that?

25 A Yes. I went to Anderson College for two years and

1 got an Associate's Degree. I went on to the University of
2 South Carolina in Spartanburg and got a Bachelor's Degree
3 in Sociology. After that, I went to Limestone College and
4 took some additional courses to become licensed as a
5 social worker.

6 Q And in your work as a social worker at the hospital,
7 what types of things are you responsible for?

8 A Basically, I work all over the entire hospital. We
9 do discharge planning for patients on our medical surg
10 floor. We do crisis intervention in the ER. We work with
11 babies in labor and delivery. So we work with all
12 different populations.

13 Q Do you recall being called to a situation on July
14 17th, 2002, at Allen Bennett?

15 A Yes, I do.

16 Q What were the circumstances of you being called
17 there?

18 A They had paged me saying that they had a child come
19 in and they wanted me to help with the family. I went
20 down to the emergency room. And they had Mr. Martucci
21 and, I think, a friend was with him, John, in the chapel
22 and they asked me to stay with them while they worked with
23 VICTIM.

24 Q Okay. And, at some point, did you learn that VICTIM
25 could not be revived?

1 A Yes.

2 Q Did you have an opportunity to speak with
3 Mr. Martucci and ~~VICTIM~~'s mother, Ms. Holder?

4 A I did.

5 Q Did they give you any information about what had
6 happened to ~~VICTIM~~?

7 A Mr. Martucci had told me that he fell off an SUV
8 several days before over the weekend.

9 Q Have you had a chance to review your notes in this
10 file?

11 A Yes, I have.

12 Q I want to direct your attention to that note, if you
13 have it with you.

14 A Okay.

15 Q And would you read the portion of it that details
16 your conversation?

17 A With Brandi and Mark?

18 Q Right here.

19 A "Brandi and Mark both stated that the child fell off
20 a four-wheeler on Sunday, but appeared to have no injuries
21 and seemed fine. They did state that the child had been
22 vomiting some over the past few days, and that was the
23 reason they brought him to the emergency room today."

24 Do you want me to continue?

25 Q No. That's fine.

1 So that's the information you obtained?

2 A Yes.

3 MS. SEAY: Those are all the questions I have.

4 Please answer any questions the other attorneys may
5 have.

6 THE COURT: Mr. Byrholdt.

7 MR. BYRHOLDT: May it please the Court?

8 CROSS-EXAMINATION

9 BY MR. BYRHOLDT:

10 Q Your note says they brought him to the emergency
11 room. That's not correct, is it? Apparently, from what
12 everybody else says, ~~VICTIM~~ was brought in by Mr. Martucci and
13 Mr. Parker. So is that a mistake? Wouldn't you agree
14 with me that it would have to be an error?

15 A Brandi was not there at the time that they brought
16 him in.

17 Q So that's a mistake. Now, where it says, "Brandi and
18 Mark both stated the child fell off," are you sure that
19 both of them stated that or is that something that Mark
20 said upon coming in?

21 A Mark told me that. When Brandi got there, she also
22 told -- said that.

23 Q Did you talk to Brandi before she knew ~~VICTIM~~ was dead,
24 or did you talk to Brandi after she would have been
25 informed that ~~VICTIM~~ was no longer with us?

1 A I talked with her before and after.

2 Q What was her condition when she got this news?

3 A She was distressed. She was crying.

4 Q Do you mean distressed or was she hysterical?

5 MS. SEAY: Your Honor, the witness answered the
6 question.

7 THE COURT: I didn't understand what she --

8 MS. SEAY: She said she was distressed.

9 THE COURT: No. He's on cross-examination.

10 Go ahead.

11 THE WITNESS: She was crying. That's all I remember.

12 She was --

13 BY MR. BYRHOLDT:

14 Q Did she ask to see *VICTIM*?

15 A I do not recall that.

16 Q Were you around -- were you there as soon as she got
17 to the ER?

18 A They brought her into the chapel, yes.

19 Q Do you know whether she ever made an effort to get
20 into the room where they were trying to resuscitate *VICTIM*?

21 A I'm not aware of that.

22 Q All right. Did you have anything to do with the fact
23 that the people at Allen Bennett would not let her see *VICTIM*?

24 A No.

25 Q As a social worker?

1 A (There was no response.)

2 Q Is that right?

3 A I was not aware that she did not see him.

4 Q It's kind of hard to have closure, isn't it, without
5 seeing your child? Do you agree with that as a social
6 worker?

7 A Yes.

8 Q Did you ever see ~~VICTIM~~?

9 A No.

10 MR. BYRHOLDT: Thank you, ma'am.

11 That's all the questions I have.

12 THE COURT: Mr. Quinn.

13 CROSS-EXAMINATION

14 BY MR. QUINN:

15 Q Ms. Banish, do you have in your notes or do you
16 remember, did either person say they were with ~~VICTIM~~ when he
17 had this ATV accident?

18 A I don't recall.

19 Q And did you offer to get Mr. Martucci treatment for
20 his lip?

21 A No.

22 MR. QUINN: Thanks.

23 I don't have any other questions.

24 THE COURT: Thank you.

25 You can step down.

1 Take the jury out for a short recess, please.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 4:07 p.m.)

4 THE COURT: We'll take a very short recess.

5 MS. SEAY: Your Honor, may we approach for scheduling
6 for just a minute?

7 THE COURT: Yes.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Bring the jury in, please.

10 (WHEREUPON, State's Exhibit No. 15 was marked for
11 identification only.)

12 (WHEREUPON, the jury came into open court at
13 approximately 4:19 p.m.)

14 THE COURT: Ladies and gentlemen, we've gone about as
15 far today as we can go, so we'll suspend and we'll pick
16 back up tomorrow morning with the testimony.

17 During the -- when you leave, now, please, remember
18 that you do not talk about this case among yourselves or
19 with anyone else. If anybody contacts you or tries to
20 talk to you about this case, get their names and addresses
21 and report that to me.

22 Please keep your badges on and have them on when you
23 return in the morning.

24 Please be back tomorrow morning at 9:00.

25 Thank you.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 4:20 p.m.)

3 THE COURT: All right. See you all in the morning.

4 (WHEREUPON, the proceedings were concluded at
5 approximately 4:20 p.m., to be reconvened on
6 Tuesday, February 7, 2006.)

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TUESDAY, FEBRUARY 7, 2006

THE COURT: Anything now before I bring the jury in?

MS. SEAY: No, sir.

THE COURT: We're ready. Bring them on in.

(Pause.)

THE COURT: We're still missing one juror.

Did you do some research last night?

MS. SEAY: Yes, sir, I did.

Do you want me to discuss that now?

THE COURT: Let's go ahead and do that now.

MS. SEAY: Okay. I read the Gray v. Maryland, which is the Supreme Court case from 1998 that you had indicated. That case seems to be saying that it is improper to leave a blank where the co-defendants name would be, or to put "delete" in it, or to make a mark through it, or something of that nature.

And since that time, there's a state -- South Carolina State case, Garrett, that I can hand up a copy of that finds it permissible to use a term such as "the other guy." And in that case, they're dealing with four co-defendants. And so saying "the other guy" was found not to be a violation of the Bruton rule.

So my position would be that we're only dealing with two defendants in this case. And in the redaction, I have

1 replaced references to Mark Martucci with the pronoun "he"
2 or "him," which would seem to be acceptable under the
3 theory of "the other guy." Because that's not necessarily
4 gender neutral either. And I'll be glad to hand you that
5 case.

6 THE COURT: Yes. Let me see that case.

7 Well, clarify something for me. As I understand it,
8 there is a third person allegedly involved with this who
9 is not a participant in this trial.

10 MS. SEAY: Your Honor, he has pled guilty to aiding
11 and abetting homicide by child abuse. And he is going to
12 be called as a witness in the State's case.

13 THE COURT: All right. Mr. Sumner.

14 MR. SUMNER: I'd just rather look at the case she
15 brought, if I could, and then respond afterwards.

16 THE COURT: All right. I guess my question is, if
17 there is a third person involved, then the statement, as
18 you have redacted it, using the word "he" or "him" could
19 refer to either your client or to the other person,
20 couldn't it?

21 MS. SEAY: Well, I don't think so. Because in the
22 case that we're dealing with here, the third person that
23 you're referring to, John Parker, is not really even
24 mentioned in the statement --

25 THE COURT: Okay.

1 MS. SEAY: -- except for maybe one or two times, and
2 not of any import as of committing any abuse or anything
3 like that.

4 THE COURT: Okay.

5 (Pause.)

6 THE COURT: Have you looked at it, Mr. Sumner?

7 MR. SUMNER: I have.

8 Your Honor, I'll confine my comments to Headnote 9 of
9 this opinion, which appear to be on point.

10 THE COURT: Okay.

11 MR. SUMNER: First of all, as the Court is aware, the
12 general rule is that these statements not come in. I
13 mean, that's the general rule we're talking about. The
14 general admission of a statement made by a non-testifying
15 co-defendant and implicating the Defendant violate the
16 confrontation clause and are inadmissible.

17 Your Honor, this opinion, the Garrett opinion, goes
18 on to say, "However, such a statement is admissible
19 against the confessor in a joint trial if references to
20 the co-defendant are redacted so as to not implicate the
21 co-defendant."

22 Your Honor, this -- and I don't have the amended
23 indictment in front of me. But the references to
24 Mr. Martucci are replete throughout the entire statements.
25 I mean, I think one statement is five pages, and one

1 statement is eight pages. It talks about, We lived
2 together. It talks about -- a variety of different
3 references are made to Mr. Martucci throughout the entire
4 statement.

5 And I'm not -- I don't have the amended indictment in
6 front of me.

7 Do you have it, Ms. Seay?

8 But I believe that the time frame for the alleged
9 crime is June 1st through --

10 What was the date, Ms. Seay?

11 MS. SEAY: July 17th.

12 MR. SUMNER: Ma'am?

13 MS. SEAY: July 17th.

14 MR. SUMNER: Is June 1st through July 17th.

15 THE COURT: Yes.

16 MR. SUMNER: Which is -- I mean, that's a six --
17 almost seven-week time period here where these
18 statements -- and, again, I'm not going to go through
19 them. You've seen them. My recollection of the
20 statements that Ms. Holder gave are that they began prior
21 to that. They began like in January or February of 2002,
22 and catalog the references to Mr. Martucci.

23 So I would say that, as I mentioned yesterday, I
24 don't quite know how it could be accomplished because
25 there's so many references made to Mr. Martucci.

1 And, Your Honor, we go on in this opinion, "Davis'
2 statement" -- and, again, I'm under Headnote 9, Judge
3 Pyle. "Next, the statement was redacted to omit specific
4 mention of Garrett and was limited in scope to events
5 occurring the night of the crime in question."

6 I'm not going to reiterate my same argument. But
7 this is a seven- or eight-week or however -- seven-week
8 time span, as opposed to, apparently, this case dealt with
9 a one-night incident in question.

10 So it's easier there to, I guess, redact it for maybe
11 one night or one event. When you look at these five- and
12 eight-page statements, again, they're just replete with
13 references over, basically, a six- or eight-month period.

14 THE COURT: How about, though, State v. Evans, which
15 is quoted in that same paragraph that says, "State v.
16 Evans held that a co-defendants statement was admissible
17 because the statement did not on its face incriminate him,
18 although its incriminating import was certainly inferable
19 from other evidence that was properly admitted against
20 him."

21 I gather, in this case, that the State is going to
22 introduce the other evidence.

23 MR. SUMNER: Well, you know, I think it's a great
24 point, Your Honor. And what I was going to say is -- or
25 suggest is that -- and I talked about this with my

1 co-counsel this morning about other evidence. I would
2 suggest maybe the Court consider that the last witness --
3 or that the statements not be brought in or attempt to be
4 brought in until all the other evidence from the State is
5 put forward. I think that might give the Court a better
6 opportunity to determine what evidence has come forward
7 under the Evans decision and make a decision at that
8 time.

9 THE COURT: How about that, Solicitor?

10 MS. SEAY: I don't object to that at all. In fact,
11 that was my plan.

12 THE COURT: All right. Good.

13 MR. SUMNER: So we'll just renew it at that point.

14 THE COURT: All right. Do we have everybody here
15 now?

16 THE CLERK: Ms. Robinson is not here. And they've
17 gone down to call her house.

18 THE COURT: We'll take a short recess while we try to
19 find this absent juror.

20 (WHEREUPON, a break was taken.)

21 (WHEREUPON, State's Exhibit Nos. 16 and 17 were
22 marked for identification only.)

23 THE COURT: Bring the jury in, please.

24 (WHEREUPON, the jury came into open court at
25 approximately 9:50 a.m.)

1 THE COURT: Good morning.

2 Ladies and gentlemen, I try very hard to use
3 reasonable hours of court, not to start too early in the
4 morning or run too late at night, because I understand you
5 all have many obligations. But it is important that we
6 start court promptly. We start court when I say we start.
7 And we stop when I say we stop, not when someone in the
8 jury assembly room might tell the balance of the panel to
9 report back.

10 So it's very important that you listen to me when we
11 recess for lunch and when we recess in the afternoon for
12 which time to report back for service.

13 Now, I need to tell you that if you don't obey my
14 directions as far as what times we operate this Court,
15 then that could constitute contempt of court. So, please,
16 be very careful to listen to my instructions about
17 starting times.

18 Okay. Solicitor.

19 MS. SEAY: Thank you, Your Honor.

20 I am calling Jane Venesky. And I would like to call
21 her for the limited purpose of a photograph, and then be
22 able to recall her later.

23 THE COURT: All right.

24 THE CLERK: Put your left hand on the Bible, please,
25 ma'am, and raise your right hand.

1 WHEREUPON,

2 ELIZABETH JANE VENESKY,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record, please.

5 THE WITNESS: Elizabeth Jane Venesky.

6 THE CLERK: Thank you, ma'am.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MS. SEAY:

10 Q Ms. Venesky, state your name again, please, and make
11 sure we can hear you.

12 A Elizabeth Jane Venesky.

13 Q Can you pull the microphone up to you just a little
14 more?

15 THE COURT: Can you pull in just a little closer,
16 please.

17 That's good.

18 BY MS. SEAY:

19 Q Ms. Venesky, where do you live currently?

20 A Currently, [REDACTED], Duncan, South
21 Carolina.

22 Q And how old are you?

23 A 40.

24 Q Did you previously live on [REDACTED] in Greer?

25 A Yes, ma'am.

- 1 Q When was that?
- 2 A 2001, 2002.
- 3 Q Who was your next door neighbor?
- 4 A Mark Martucci.
- 5 Q Living next door to Mr. Martucci, did you have
- 6 occasion to get to know ~~victim~~ Holder, the little boy?
- 7 A Yes, ma'am.
- 8 Q Did you ever have an occasion to take some pictures
- 9 of ~~VICTIM~~?
- 10 A Yes, ma'am.
- 11 Q I'm going to show you what's marked as State's
- 12 Exhibit Nos. 16 and 17 for identification, do you
- 13 recognize those?
- 14 A Yes, ma'am.
- 15 Q How do you recognize those?
- 16 A Well, that's me and that's ~~VICTIM~~.
- 17 Q Okay. Who took those photographs?
- 18 A My husband.
- 19 Q Okay. And you, actually, appear there in the
- 20 photograph with him?
- 21 A Yes, ma'am.
- 22 Q Do these accurately depict what ~~victim~~ looked like when
- 23 these pictures were taken?
- 24 A Yes, ma'am.
- 25 Q Have they been changed or altered in any way?

1 A No, ma'am.

2 MS. SEAY: Your Honor, I'd offer these two
3 photographs into evidence at this time.

4 THE COURT: Any objection?

5 MR. BYRHOLDT: Your Honor, we'd object on the basis
6 of Lyle evidence, Your Honor, that it's preexisting. And
7 we probably need to take it up outside the presence of the
8 jury.

9 THE COURT: All right. Take the jury out, please.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 9:55 a.m.)

12 THE COURT: All right. Now, what is your objection?

13 MR. BYRHOLDT: May it please the Court?

14 We believe this is going to be evidence of an alleged
15 prior bad act or prior abuse, which is unrelated to the --
16 this is a homicide by child abuse case, which it's my
17 understanding that the injuries that effected this death
18 were sometime either the 16th -- 15th, 16th, or 17th of
19 July. And this is a month prior to that, Your Honor. And
20 we think it -- you know, the prejudice of --

21 THE COURT: How is this Lyle material?

22 MR. BYRHOLDT: Trying to establish that the child was
23 abused. The picture shows some faint bruises on the back
24 and on the arm of the child.

25 THE COURT: Solicitor.

1 MS. SEAY: Your Honor, it's within the time frame
2 alleged in the indictment, the child abuse and neglect
3 that led to the child's death.

4 THE COURT: Has it been established as to when they
5 were taken?

6 MS. SEAY: I might -- neglected as to ask that
7 question. And I can do that.

8 THE COURT: All right. Go ahead.

9 BY MS. SEAY:

10 Q Ms. Venesky, do you know when these pictures were
11 taken?

12 A Probably the middle of June.

13 Q Okay. Of what year?

14 A 2002.

15 Q Okay. And, in fact, is there a date on the
16 photographs printed on there.

17 A It's 2002, June the 20th.

18 THE COURT: Okay. Objection overruled.

19 Bring the jury in.

20 I'm sorry, Mr. Sumner. Do you want to be heard?

21 MR. SUMNER: Your Honor, I would just reiterate, for
22 the record, the character evidence and object to it on
23 that basis.

24 THE COURT: Okay.

25 MR. BYRHOLDT: Your Honor, could I be heard briefly

1 on that? Because we have to make a full record.

2 THE COURT: All right.

3 MR. BYRHOLDT: My concern is that this is a homicide
4 by child abuse. It's not a neglect case. They have
5 not charged Ms. Holder with just simple neglect under
6 the --

7 THE COURT: I understand.

8 MR. BYRHOLDT: -- Section 20 statute. It deals with
9 homicide and the relevant evidence that will be any abuse
10 that -- or neglect that led to the death of this child.
11 And we think that's why they're -- and the State, we
12 believe, has to prove by clear and convincing evidence
13 that these prior bad acts had occurred.

14 THE COURT: Okay.

15 MR. BYRHOLDT: Thank you, Your Honor.

16 MR. SUMNER: Your Honor, again, for brevities sake, I
17 would reiterate that on behalf of Mark Martucci.

18 THE COURT: Yes, sir.

19 (WHEREUPON, the jury came into open court at
20 approximately 9:57 a.m.)

21 THE COURT: All right. Solicitor.

22 MS. SEAY: Thank you, Your Honor.

23 BY MS. SEAY:

24 Q Ms. Venesky, do you know when these photographs were
25 taken?

1 A June the 20th, 2002. I'm not going to say that's the
2 exact date because it's a digital camera. But it was
3 during Bible school, so it was like the 17th through the
4 24th.

5 Q That same week of June 2002?

6 A Yes, ma'am.

7 MS. SEAY: Your Honor, I think I already moved those
8 into evidence.

9 THE COURT: All right.

10 MS. SEAY: And I would ask that -- I reserve the
11 right to recall Ms. Venesky later.

12 THE COURT: All right. Subject to objection, they
13 are in evidence.

14 Have they been marked?

15 MS. SEAY: Yes, sir.

16 (WHEREUPON, State's Exhibit Nos. 16 and 17 were
17 admitted into evidence.)

18 THE COURT: Mr. Byrholdt, do you want to --

19 MR. BYRHOLDT: No questions at this time.

20 THE COURT: Thank you.

21 You can step down.

22 MS. SEAY: Your Honor, our next witness will be
23 Dr. Michael Ward.

24 THE CLERK: Put your left hand on the Bible, please,
25 sir, and raise your right hand.

1 WHEREUPON,

2 MICHAEL EUGENE WARD, M.D.,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record, please
5 sir.

6 THE WITNESS: Michael Eugene Ward.

7 THE CLERK: Thank you.

8 Be seated.

9 DIRECT EXAMINATION

10 BY MS. SEAY:

11 Q Dr. Ward, would you, please, state your name again
12 and make sure we can hear you?

13 A Michael Eugene Ward.

14 Q Dr. Ward, where are you currently employed?

15 A I'm employed here in Greenville by Pathology
16 Associates of Greenville, as well as by Greenville County
17 as the chief medical examiner.

18 Q How long have you been in that capacity?

19 A I've been here for ten and a half years.

20 Q Would you briefly describe the education and training
21 that you have to perform your duties?

22 A I received my Bachelor's Degree in Biology from the
23 University of Alabama. I received a Master's Degree in
24 Forensic Science from the University of Alabama in
25 Birmingham. I received my medical degree from the

1 University of South Alabama in Mobile. I did a four year
2 anatomic pathology residency at the Medical University of
3 South Carolina in Charleston. And I did a one year
4 fellowship in forensic pathology at the University of New
5 Mexico in Albuquerque. I'm board certified by the
6 American Board of Pathology in both anatomic and forensic
7 pathology.

8 Q Dr. Ward, as part of your duties, do you conduct
9 autopsies on a regular basis?

10 A Yes, I do.

11 Q Can you give us an approximate number of autopsies
12 that you've conducted during your career?

13 A It would be greater than 3,000.

14 Q Have you testified in court in South Carolina before?

15 A Yes, I have.

16 Q Do you know approximately how many times?

17 A Well over 50 times.

18 Q And have you previously been qualified as an expert
19 in the courts of South Carolina?

20 A Yes, I have.

21 MS. SEAY: Your Honor, I would offer Dr. Ward as an
22 expert, at this time, in the fields of anatomic and
23 forensic pathology.

24 THE COURT: Any voir dire testimony to his expertise
25 in that area?

1 MR. BYRHOLDT: None from Ms. Holder.

2 MR. QUINN: None from Mr. Martucci.

3 THE COURT: He's qualified.

4 Proceed.

5 MS. SEAY: Thank you.

6 BY MS. SEAY:

7 Q Dr. Ward, were you employed in your current position
8 back on July 17th, 2002?

9 A Yes, I was.

10 Q Before we go into any events relating to that, can
11 you briefly describe the fields that you have mentioned,
12 the fields of anatomic and forensic pathology?

13 A Pathology is the study of disease and how that
14 disease process effects man. Forensic pathology takes
15 that one step further and deals with how these disease
16 processes or trauma or injuries cause us to die, and then
17 the presentation of that information gleaned from the
18 autopsy and in the courtroom process.

19 Q Thank you.

20 Can you briefly describe what an autopsy is in
21 laypersons terms?

22 A An autopsy is a detailed physical examination that's
23 performed on a person after they die. We do an external
24 examination to look for any evidence of natural disease or
25 trauma. And then we do an internal examination to look at

1 the underlying organs of the body, of the chest, the
2 abdomen, and of the head, again, to look for any natural
3 disease that may be present or the continuation of any
4 trauma that may also be present and to, ultimately,
5 determine how and why that person died.

6 Q Did you have occasion to come into contact with a
7 child named **VICTIM** back in July of 2002?

8 A Yes, I did.

9 Q When did you first come in contact with him?

10 A It was on July 17th, at approximately 2:00 p.m. I
11 was asked to go to Allen Bennett Hospital and see the body
12 of a child who had just been pronounced dead.

13 Q Is that common or routine for you to be called to a
14 hospital or a death scene?

15 A Yes, ma'am, it is.

16 Q Dr. Ward, if you would, just describe what your
17 observations were at the time that you saw this baby at
18 Allen Bennett Hospital.

19 A On initial examination at Allen Bennett Hospital,
20 there were numerous bruises to **VICTIM** about the face, the
21 chest, the back, and the extremities. There were injuries
22 that were present around the perineum or the penis, and to
23 one of the arms that were especially disconcerting to us.
24 And so we took samples of them at that time.

25 Q Were you made aware of any history of what might have

1 happened to ~~victim~~ when you saw him then?

2 A Yes. There was some history at that time.

3 Q Were you aware that the history was that the child
4 had been in a four-wheeler --

5 MR. QUINN: Objection to the leading nature of the
6 question.

7 THE COURT: What's your objection?

8 MR. QUINN: The leading nature of the question.

9 THE COURT: Don't lead.

10 BY MS. SEAY:

11 Q What was the history that you became aware of?

12 A As I recall, there was a history of several days
13 prior to his death that ~~victim~~ had been involved in an
14 accident where he either fell off or was thrown off an
15 all-terrain vehicle.

16 Q When did you perform an autopsy on ~~victim~~?

17 A The autopsy was performed the next morning on July
18 18th.

19 Q Can you state whether ~~victim~~ was in substantially the
20 same condition as when you saw him the day before?

21 A Yes, he was.

22 Q Dr. Ward, if you would, detail the biographical
23 information that you obtained about this child such as
24 date of birth, height, weight, and identifying
25 information?

1 A VICTIM was described, to me, as being two and a half
2 years old. I'm not certain what his date of birth was.
3 At the time of his autopsy, he weighed 36 and a half
4 pounds and was 36 inches or three feet in length.

5 Q Thank you.

6 Doctor, I'm going to show you some photographs that
7 have been marked for identification, State's Exhibit
8 No. 12 -- excuse me, State's Exhibit Nos. 5, 6, 7, 8, 9,
9 10, 11, 12, 13, 14, and 15, and ask if you recognize those
10 photographs?

11 A Yes, I do.

12 Q How do you recognize them?

13 A These are color prints or photographs that were made
14 at the time of autopsy of VICTIM ..

15 MS. SEAY: Your Honor, I would offer these exhibits
16 into evidence at this time.

17 THE COURT: All right. Subject to objection, they --
18 put them in.

19 MR. BYRHOLDT: Your Honor, we would object to all of
20 the photographs. And it's -- I need to put something on
21 the record, Your Honor.

22 THE COURT: All right. Take the jury out, please.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 10:08 a.m.)

25 MR. BYRHOLDT: Your Honor, on behalf of Ms. Holder,

1 we would object to these photographs under Rule 403 that
2 the prejudicial nature of these photographs greatly
3 outweighs any probative value, especially as it pertains
4 to State's Exhibit Nos. 14, 13, and 15, Your Honor.

5 We also believe that the number of photographs are
6 cumulative in nature, and one or two of the photographs
7 would suffice of the bruising on the child. The State's
8 Exhibit Nos. 13, 14, and 15 photographs are photographs
9 dealing with the autopsy pictures after ~~victim~~ had been opened
10 up by the pathologist. Even in death penalty cases, those
11 types of photographs are not even admitted usually until a
12 sentencing phase in a death penalty case. Here, we've got
13 a homicide by child abuse case where the State seeks to
14 illicit these photographs and put them into evidence
15 during the guilt phase, not at sentencing or anything
16 else.

17 We think there's less intrusive ways for Dr. Ward to
18 be able to explain this to the jury. There are medical
19 charts that are available. I've got a Grey's Anatomy book
20 here. I've got two charts that show the internal organs
21 of the digestive system. Those could be put up and those
22 could be explained to the jury.

23 The only reason to put those in there is not to
24 explain anything to the jury, but to arouse the emotion
25 and prejudice. And we believe those -- under 403, the

1 unfair prejudice weighs -- outweighs any probative value.
2 And I don't think there's any contest, at least, on our
3 behalf, of what the cause of death was, that this child
4 died of blunt trauma to the abdomen and back area, which
5 ruptured -- essentially ruptured the stomach and small
6 intestine. That issue is not even in dispute. We think
7 that evidence in that regard would not even be relevant.

8 THE COURT: All right. Your objection is overruled
9 on the same grounds that I overruled it yesterday,
10 assuming that the Doctor will testify to the need for
11 those three.

12 MS. SEAY: Yes, sir.

13 MR. QUINN: Your Honor, if I might, on behalf of
14 Mr. Martucci, not only do I join in that argument, but
15 yesterday, the Prosecutor told you that she believed that
16 the pictures would be admissible based on the analysis of
17 State v. Fletcher. I don't know if Your Honor has had the
18 opportunity to review that case yet. But the case talks
19 about bruises on the exterior of the child's body, and
20 that those pictures were admissible to be able to show the
21 age of the bruises and the possibility of internal
22 injuries. But no internal injury photographs of the
23 anatomical detail that are being offered here were
24 introduced or found to not be prejudicial under 403.

25 I think those last photographs that we're discussing,

1 the internal photographs, are, clearly, intended to arouse
2 the emotions of the jury. And those photographs in and of
3 themselves do not depict anything. They require the
4 expert testimony. That expert testimony can be presented
5 without the photographs either by Mr. Ward, who has
6 testified -- Dr. Ward, who has testified numerous times,
7 or by the use of his charts and his notes. I don't think
8 the photographs are necessary to his testimony and are
9 intended to inflame the jury.

10 THE COURT: All right. Your objection is overruled
11 if the proper foundation is laid by the Solicitor for
12 their introduction.

13 Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 10:12 a.m.)

16 THE COURT: All right. Solicitor, you may proceed.

17 MS. SEAY: Thank you, Your Honor.

18 CONTINUED DIRECT EXAMINATION

19 BY MS. SEAY:

20 Q Dr. Ward, we were talking about these photographs.
21 And I believe you stated that you took these photographs
22 at the time of autopsy; is that correct?

23 A That's correct.

24 Q And are these photographs of assistance to you in
25 demonstrating or illustrating the injuries that this child

1 sustained?

2 A Yes, they are.

3 Q Dr. Ward, if we may, I'd like to ask you, first of
4 all, to give a brief overview of the injuries that the
5 child had.

6 A There were multiple bruises about the face, the
7 head -- I'm sorry, about the face and head of Bo Holder.
8 There were multiple bruises over the back, the chest, and
9 abdomen, the lower extremities, the upper extremities, as
10 well as a bruise and a laceration at the base of the
11 penis. There were also injuries to the organs of the
12 abdominal cavity, as well as a rib fracture.

13 Q Thank you.

14 Doctor, would it be possible for you to break down
15 those injuries into sections to further discuss them and
16 the extent of the injury?

17 A Yes, it would be.

18 Q Would the photographs assist you at this time?

19 A Yes, they would.

20 MR. BYRHOLDT: Your Honor, where can we relocate?
21 They're going to pull this down. Where do you want us to
22 sit, in front of the other table?

23 THE COURT: Yes. I guess we can't do any better than
24 that.

25 How far down does it have to come?

1 MR. BYRHOLDT: Down to the table.

2 THE COURT: Solicitor, can you raise the projector so
3 that we don't have to have it down all the way?

4 Cut on the projector, Solicitor, and let me see
5 where it is.

6 MR. J.D. ROWELL: Your Honor, it's on. They're going
7 to have to dim the lights so you can see.

8 That's as high as it will go, Your Honor.

9 THE COURT: You can't put a book or something under
10 the side?

11 MR. BYRHOLDT: Here is a book.

12 THE COURT: Put a photograph up and let's see where
13 it goes, Solicitor.

14 All right. I'm sorry. You'll have to remove the
15 book to put it where it was before.

16 MS. SEAY: Thank you.

17 THE COURT: I'm sorry, Mr. Byrholdt.

18 MR. QUINN: Your Honor, it's my understanding that
19 these pictures are not yet in evidence. So I don't think
20 it's proper to be showing them to the jury.

21 THE COURT: That's correct, Solicitor.

22 MS. SEAY: I apologize. I thought I had moved them
23 into evidence earlier. And if not, then --

24 THE COURT: I want you to lay the proper foundation
25 before you show the photographs, please.

1 BY MS. SEAY:

2 Q Dr. Ward, did you recognize the photographs that I
3 just showed to you?

4 A Yes, I did.

5 Q How did you recognize them?

6 A I recognized them as the photographs that I took at
7 the time of autopsy. And each photograph has a unique
8 autopsy number present within the photograph.

9 Q Okay. And have these pictures been altered or
10 changed in any way since you took them?

11 A They have not.

12 Q Would they assist you in illustrating your testimony
13 concerning the injuries to this child?

14 A Yes, they would.

15 MS. SEAY: I would offer these into evidence, Your
16 Honor.

17 THE COURT: No.

18 Take the jury out.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 10:19 a.m.)

21 THE COURT: Solicitor, I want to know why,
22 specifically, with respect to the internal photographs why
23 those are needed for his testimony.

24 MS. SEAY: Your Honor --

25 THE COURT: I want to know the reason why.

1 MS. SEAY: Well, Dr. Ward has advised me that it's
2 necessary to explain the extent --

3 MR. QUINN: Your Honor, I object.

4 THE COURT: All right. I want to hear it from the
5 Doctor, please, ma'am, if you'll just ask him the
6 question.

7 DIRECT EXAMINATION

8 BY MS. SEAY:

9 Q Dr. Ward, how would these photographs assist you?

10 THE COURT: I'm interested only --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- in the internal ones.

13 THE WITNESS: Okay. The internal injuries help by
14 demonstrating the anatomic relationships and the
15 disruption of those anatomic relationships. There may be
16 some lack of knowledge of internal anatomy. And it helps
17 to demonstrate the disruption of that normal anatomy with
18 the representation in the photographs. They show the
19 tears and hemorrhage within the --

20 THE COURT: Okay. And that could not be explained to
21 the jury without the photographs, is that what you're
22 telling me?

23 THE WITNESS: I can certainly explain it. But
24 whether I can explain it to their understanding, I don't
25 know.

1 THE COURT: All right. But those would assist you in
2 the explanation?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. I'm --

5 Yes, Mr. Byrholdt

6 MR. BYRHOLDT: May we cross him on that issue?

7 THE COURT: Yes, you can.

8 CROSS-EXAMINATION

9 BY MR. BYRHOLDT:

10 Q Dr. Ward, isn't it true that anatomic charts could do
11 the same thing, that you could show where the stuff that
12 goes into, what, the gonad?

13 A Yes, sir.

14 Q And into the small intestine?

15 A Yes, sir.

16 Q And couldn't you do it that way without having these
17 bloody photographs put before these 12 people?

18 A I can present it in any number of ways. I think
19 these photographs, certainly, would be the best way by not
20 only demonstrating the anatomic relationships, but also
21 showing the injuries.

22 Q You say there's no other way to do it, that's the
23 only way you can do it?

24 A I'd say that's the best way to do it, yes.

25 Q But there are less intrusive manners; correct?

1 A Absolutely.

2 Q You have got Grey anatomy charts with you today,
3 don't you.

4 A I have two photocopies of normal anatomy, yes.

5 MR. BYRHOLDT: I've got three books here. I'd be
6 happy to let you use them to show the same thing.

7 THE COURT: All right. Subject to your objection,
8 I'm satisfied the proper foundation has been laid.

9 Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:23 a.m.)

12 THE COURT: All right. Solicitor.

13 MS. SEAY: Your Honor, I would offer State's Exhibit
14 Nos. 5 through 15 into evidence at this time.

15 THE COURT: Subject to objection, put them in.

16 MS. SEAY: Thank you.

17 (WHEREUPON, State's Exhibit Nos. 5, 6, 7, 8, 9, 10,
18 11, 12, 13, 14, and 15 were admitted into evidence.)

19 CONTINUED DIRECT EXAMINATION

20 BY MS. SEAY:

21 Q Dr. Ward, if you will, break your autopsy down into
22 the different sections of the body and describe the
23 injuries that were observed.

24 THE WITNESS: May I step down, Your Honor?

25 THE COURT: Yes.

1 BY MS. SEAY:

2 Q Would it be suitable to start with the upper and
3 lower extremities?

4 A That would be fine.

5 On the lower extremities, the first injuries that we
6 saw were a bruise to the front part of the right leg. It
7 was on the medial part or the inner part of the right
8 thigh. It was a bruise that appeared, as all the other
9 bruises, a reddish to a red-brown to pink-brown contusion.

10 This is a photograph of the left back leg of *VICTIM*

11 . This is right in the crux of the leg. And, as
12 you can see, there are these bruises and superficial
13 abrasions of the skin running in a linear fashion across
14 the skin. These indicating that this is a result of blunt
15 injury.

16 So it's not a sharp injury that you would expect from
17 a knife or from some sort of cutting instrument. And it's
18 not from a penetrating injury like a gunshot wound, but
19 it's a blunt injury where the skin is compressed and
20 there's disruption of underlying blood vessels resulting
21 in a bruise, as well as a superficial abrasion or a
22 scratching of the skin.

23 So this is linear injuries or line-shaped contusions
24 to the back of *VICTIM* 's leg.

25 Q Dr. Ward, in your experience and training, are there

1 any particular mechanisms of inflicting such a linear
2 bruise?

3 A There are. There are numerous instruments that can
4 be used that will cause a linear-type bruise. Generally,
5 they are things that are longer than they are wide.
6 Certain things can be -- they can be cords. They can be
7 belts or even fingers if a slap is applied in a hard
8 enough fashion that create these linear and sort of
9 semi-circular type bruises as with this.

10 I don't believe we have photographs of the upper
11 extremities. I believe that's a distant photograph of the
12 leg, if you'd like to show it.

13 Again, this is just for orientation purposes. The
14 region here is the distant shot of the photograph that we
15 just showed demonstrating the linear contusions to the
16 back of VICTIM 's right leg. And this is the unique autopsy
17 number.

18 There were also some injuries to the upper
19 extremities of VICTIM . There were focal pinpoint
20 bruises to the back of each elbow. These numbered three
21 to four on each elbow. Also on his wrist were these
22 curvilinear or curved-shaped bruises, one on the front
23 portion of the wrist and one on the back portion of the
24 wrist. And they appeared to parallel with each other just
25 on the back and the front. And they were opposing. These

1 were very similar or, at least, in appearance appeared to
2 us to be consistent with a bite mark made by the teeth of
3 an individual as they bit the skin of *VICTIM* .

4 Q Dr. Ward, if you've completed the upper and lower
5 extremities --

6 A Yes, ma'am.

7 Q -- I'd like to move on to --

8 MR. QUINN: Your Honor, may we approach?

9 THE COURT: Sure.

10 (WHEREUPON, a bench conference was held.)

11 THE COURT: Take the jury out, please.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 10:28 a.m.)

14 THE COURT: All right. Mr. Quinn.

15 MR. QUINN: Your Honor, as I said at the bench, I'm
16 loathed to ever ask a judge to reconsider something he's
17 already ruled on. And I understand that Your Honor is
18 giving me great latitude allowing me to do that.

19 But it is clear that Dr. Ward does not need pictures
20 to be able to identify and explain to the jury injuries as
21 it's just been demonstrated when they have no photographs
22 of the upper extremities or his arms. And the Doctor has
23 no problem standing before the jury without notes and
24 explaining in great detail what his findings were, what
25 the indications are, and what may even have caused that

1 injury, that one may have, in fact, a bite mark with no
2 photographs.

3 There was no difficulty, that I'm aware of, with the
4 jury understanding that testimony. The photographs are,
5 clearly, intended to inflame the jury and are not
6 necessary. And that, I think, is the issue, not could it
7 help, because almost anything could help. They could
8 bring blood in just to show you what blood looked like to
9 help. The question is, is it necessary? And I don't
10 believe it's necessary, in this case, as Dr. Ward's
11 testimony has proven.

12 THE COURT: Solicitor.

13 MS. SEAY: Your Honor, I think, as Dr. Ward testified
14 to earlier, there are certainly other ways that he could
15 illustrate his testimony with a diagram from an anatomy
16 book and that type thing. However, this is the most
17 accurate way to show the jury what the injuries were.

18 And, yesterday, I quoted you a case, the Fletcher
19 case. And I understand Mr. Quinn took issue with one part
20 of that earlier. But that case is important, along with
21 State v. Gerald, which is also a homicide by child abuse
22 case where photographs were permitted in order to show the
23 nature, the extent, and the severity of the injuries in
24 order to assist in proving an element of the crime.

25 The State has to prove extreme indifference to human

1 life. And those were, specifically, found to be
2 appropriate.

3 THE COURT: Mr. Byrholdt.

4 MR. BYRHOLDT: Your Honor, I would join in Defense
5 counsel's remarks. Again, Dr. Ward is an excellent
6 witness. He's done this before. And there was absolutely
7 no need for him to explain -- and he explained in great
8 detail about a bite mark, about -- you know, marks around
9 the wrist, again, without the benefit of any pictures.
10 And we agree. We think the State is using these pictures
11 merely to arouse the sympathy of the jury. These are
12 terror pictures.

13 THE COURT: Oh, I understand that. But I --

14 MR. BYRHOLDT: And, again, the pictures are not
15 necessary to instruct the jury or to aid them in reaching
16 the ultimate issue, which is, you know, why did this child
17 die and was it the result of blunt trauma?

18 THE COURT: I understand. But I disagree with that,
19 Mr. Byrholdt.

20 MR. BYRHOLDT: Yes, sir.

21 THE COURT: And I still rule that under -- hold that
22 under Rule 403, the probative value outweighs any
23 prejudicial. And, certainly, the photographs are
24 inflammatory. I understand that. But I think the
25 probative value outweighs.

1 All right. Bring the jury in.

2 MR. BYRHOLDT: Thank you, Judge.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:33 a.m.)

5 THE COURT: All right. Solicitor.

6 MS. SEAY: Thank you, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY MS. SEAY:

9 Q Dr. Ward, the next photograph is State's Exhibit
10 No. 10, and I would ask if you could explain what is
11 depicted here?

12 A This is a photograph of the perineal region of the
13 body of VICTIM . This is the abdomen here, the
14 pelvis, the penis, and the scrotum. Here at the base of
15 the penis is a bruise, a sort of butterfly-shaped, if you
16 will, bruise approximately one and a half inch in greatest
17 dimension. There's a smaller bruise in this region here.

18 And right here at the base of the penis where the
19 skin of the penis attaches to the pelvic skin, there's a
20 superficial laceration or tear of the skin in this
21 region. I took microscopic sections -- at the time of
22 autopsy, I took microscopic sections of the skin through
23 this region here. It demonstrated acute hemorrhage or
24 bleeding into the skin. But it indicated that there was
25 no evidence of any healing. There was no inflammation.

1 There was no granulation tissue. There was no evidence of
2 repair to this region here or here.

3 Q And what did that indicate to you?

4 A That it was a recent injury only a -- no more than a
5 few hours old. And as we will see with other injuries
6 that there were, there was -- which have evidence of
7 healing that this act most very likely occurred at a
8 different time than the other injuries -- some other
9 injuries. This is the result of blunt trauma. I believe
10 that this is a blunt injury to this region here with
11 superficial tearing of adjacent skin.

12 Q Dr. Ward, State's Exhibit No. 9, would you describe
13 what your findings were?

14 A This is a photograph of the back of **VICTIM**
15 taken at the time of autopsy. And it demonstrates
16 multiple bruises or contusions over various locations of
17 the back.

18 There are, basically, three groups. This group here
19 over the right upper back, a group in the mid-back, and a
20 group in the left upper back. There are two smaller
21 separate bruises here right at the base of the neck. And
22 there's a large bruise over the lower back, sort of
23 overlying the lumbar and sacral vertebral regions. This,
24 again, is -- we describe this as a geographic pattern of
25 this bruise in this region here.

1 My opinion is that this trauma to this region was
2 very likely central and that blood dissected out from this
3 central area in similar type pattern to create this almost
4 mirror image of itself. It's very unlikely that whatever
5 instrument that caused this was this shape, but was more
6 likely here in the center and then the blood has just
7 dissected along the skin as we very commonly see. And
8 then at the top of the left buttocks overlying the bone
9 and the posterior hip is another bruise in this region
10 here.

11 At the time of autopsy, we took sections -- well, I
12 dissected the skin in this area here and peeled it back on
13 either side to expose the underlying musculature. There
14 was hemorrhage within the muscle associated with each of
15 these bruises as well as with this large bruise on the --
16 in the midline.

17 We examined the underlying spinal cord. There was
18 blood or hemorrhage in the muscle along the sides -- the
19 vertebral column. But the examination of the spinal cord
20 itself did not show any trauma to the central nervous
21 system to the spinal cord itself.

22 Q Dr. Ward, do you have an opinion about what kind of
23 force would be applied to cause such an injury?

24 A Well, these are, certainly -- fairly extensive force
25 would be required to not only cause hemorrhage within the

1 skin, as we commonly get bruises, but to get hemorrhage
2 with an underlying musculature beneath these areas, and to
3 get hemorrhage within a musculature along both sides of
4 the vertebral column in those deep muscles would take a
5 great deal of force. The force would have to compress not
6 only the skin, but the underlying musculature to
7 underlying bones.

8 So you would have to pinch it between whatever is on
9 the outside and the underlying bone to cause hemorrhage
10 within those muscles.

11 Q Doctor, would it be fair to say that that would be a
12 painful injury?

13 MR. QUINN: Objection to the leading nature of the
14 question.

15 THE COURT: No. That's -- the question is all right.

16 Go ahead.

17 THE WITNESS: Yes. I would expect it would be very
18 painful.

19 BY MS. SEAY:

20 Q Dr. Ward, State's Exhibit No. 14, if you would,
21 describe your observations.

22 A This is a photograph taken at the time of autopsy
23 showing the intraabdominal cavity of VICTIM. There
24 were bruises on the outer surface of the skin. As we
25 dissected beneath, there was -- there were bruising

1 beneath the skin and above the muscles of the abdomen.

2 When we reflected those muscles of the abdomen, we
3 were able to demonstrate that there was over 250
4 milliliters of blood present in the peritoneal cavity or
5 in the abdominal cavity. 350 milliliters is about the
6 size of a can of Coke. So this is almost the amount of
7 blood that's in a can of Coke or a little bit less than
8 that.

9 This is the small intestine here. And this is the
10 large intestine. As you can see, there's a space between
11 here that should not normally be. There's a fatty
12 ligament that normally attaches this large intestine to
13 the underlying structures of the abdomen. This has been
14 torn. It's been torn away from the underlying surface of
15 the large intestine. And in this region here, there is
16 blood that is hemorrhaged within the outer surface of the
17 large intestine, as well as --

18 MR. BYRHOLDT: Your Honor, I hate to interrupt.

19 Can I ask that my client be allowed to go in the back
20 for a few minutes?

21 THE COURT: Sir, you have no objection to continuing
22 without her?

23 MR. BYRHOLDT: We'll proceed without her, Your Honor.

24 THE COURT: Okay. That's fine.

25 MR. BYRHOLDT: Thank you, Your Honor.

1 I apologize.

2 (Pause.)

3 THE COURT: All right. You may continue.

4 THE WITNESS: So not only is there tearing here, but
5 there's a hemorrhage within the mucosa of the
6 underlying -- I'm sorry, on the outside of the underlying
7 small intestine.

8 BY MS. SEAY:

9 Q This is State's Exhibit No. 13.

10 A State's Exhibit No. 13, again, demonstrates the
11 tearing of the ligament that normally attaches the large
12 intestine to the stomach demonstrating that it has been
13 torn away along this broad surface of the transverse
14 colon, hemorrhage within the outer surface of the colon,
15 as well as hemorrhage deep down in the structures of the
16 abdomen. Within this region here, it's the head of the
17 pancreas. There have been trauma and hemorrhage to the
18 head of the pancreas with the soft tissue surrounding the
19 pancreas with hemorrhage.

20 And the interesting thing about this injury is that
21 when I took microscopic sections from this region, it did
22 show evidence of healing, that there were evidence --
23 there were areas that showed not only acute hemorrhage,
24 but there were other areas that showed hemorrhage that had
25 been there for a period of time, several hours to a couple

1 of days such that the body had started to react to this
2 injury. It had started to try to repair it. And there
3 was -- there were fibrous tissues being laid down. There
4 were new blood vessels there. There were cells that come
5 in and try to clean up this blood.

6 So we have two different ages of trauma here in the
7 abdomen. We've got some that shows evidence of healing,
8 and some that show no evidence of healing and only fresh
9 blood.

10 Q State's Exhibit No. 15.

11 A This is a photograph -- State's Exhibit No. 15 is a
12 photograph of a small intestine as it comes from what's
13 called the jejunum and it transitions to the duodenum,
14 which are the first and second parts of the small
15 intestine.

16 In this region here, there's a great deal of
17 hemorrhage within the serosa or the outer surface of the
18 small intestine. But when we looked on the inside of the
19 small intestine in this region here, there was a tear in
20 the mucosa.

21 So not only had it traumatized to the outer surface
22 of the small intestine, but also torn the inner surface of
23 the small intestine. And that, certainly, would have,
24 eventually, caused peritonitis or escape of contents from
25 the small intestine into the abdomen.

1 Q Do you have an opinion about the force involved in an
2 injury of this kind?

3 A The injuries that I've described to the internal
4 organs of the abdomen, including tearing of the ligaments
5 of the large intestine from the stomach, bruising and
6 tearing the actual wall of the small intestine, bruising
7 and causing hemorrhage to the head of the pancreas, as
8 well as causing hemorrhage around the left kidney and the
9 left adrenal glands, which are very deep in the abdomen,
10 it would take enough force to be able to cause the skin of
11 VICTIM 's stomach to be compressed all the way to his spinal
12 column, which is going to be, at least, three and a half
13 to four inches.

14 So whatever force it was, whether it was a fist,
15 whether it was a stomp with a foot or a knee, whatever
16 force it was compressed the skin all the way from the
17 outside and trapped those organs of the abdomen between
18 the vertebral column and the lateral that's causing the
19 outside force. So it would take a great deal of force to
20 be able to do that.

21 Q And just to follow-up on that, Dr. Ward. Is there
22 any scenario that you're aware of that would tie the
23 bruises on the back that you've already shown to the blunt
24 force trauma of the abdomen?

25 A There are two possible scenarios. One that you have

1 blunt trauma to the front portion of the abdomen causing
2 these physical injuries, and that you have separate blunt
3 trauma to the back in the lower back region.

4 The other scenario would be that if VICTIM were laying
5 flat on a firm surface that whatever force had caused --
6 whatever trauma he received to the front portion of his
7 abdomen was great enough to cause the back portion of his
8 back to become compressed against the floor, or a table,
9 or whatever was firm enough causing those bruising -- that
10 bruising within the tissues of his back.

11 So it could even have been two injuries, one to the
12 front and one to the back, two sets of injuries, a set to
13 the front and a set to the back, or one blow or one set of
14 injuries to the front part that compressed his back
15 against the floor or a firm object resulting in injury to
16 the outside of the skin as well.

17 Q Dr. Ward, in describing the two separate traumas that
18 you've described, could you give us an opinion about what
19 kind of symptoms VICTIM would have exhibited after these
20 injuries?

21 A The blunt injuries to VICTIM'S gastrointestinal system
22 would, basically, cause his small and large intestine to
23 no longer function in the way that we know it to do. The
24 small intestine, basically, takes food, water, and other
25 products from the stomach and allows it to pass and begin

1 to digest on its way down to the large intestine. When
2 you traumatize the small intestine, as *VICTIM* had with tearing
3 of the mucosa, then the muscles -- the smooth muscles in
4 the small intestine are no longer going to work together
5 to move things down the system. So they're going to back
6 up.

7 And the most common presentation of someone with
8 trauma to the small intestine like that and no longer
9 moving fluids out would be vomiting, in that anything that
10 goes in is going to sit on the stomach and not be able to
11 be passed down. The pressure is going to be increased.
12 And then the person would have nausea and vomiting.
13 Certainly, I would expect it to be, obviously, fairly
14 painful in that he may even show some guarding and not
15 want you to touch his stomach.

16 Q The next photograph is State's Exhibit No. 6, can you
17 describe your findings in regard to these injuries?

18 A These are photographs to the right side of
19 *VICTIM*'s face. And we can see several groups of
20 contusions on the face. There's a contusion here in the
21 right forehead region, a group here in the right temple
22 region just in front of the ear, a larger group overlying
23 the upper portion of the right cheek, and then a group
24 here on the right lower chin right at the angle of the jaw
25 in this region here.

1 Q Dr. Ward, were those bruises visible to you when you
2 saw him on the date of his death?

3 A Yes, they were.

4 Q State's Exhibit No. 7.

5 A Can you turn it over?

6 This is a photograph of the left side of ~~VICTIM~~'s face
7 showing distinct bruises here on the left forehead, the
8 left temporal region, right at the outside of the left
9 eye, across the left upper cheek, and then down on the
10 left lower chin. These bruises were also visible at Allen
11 Bennett on the time of -- on the day of his death when I
12 initially examined him.

13 Q Dr. Ward, do you have an opinion about whether these
14 bruises exhibit any kind of a pattern?

15 A There are -- to my opinion, to my mind, these
16 photographs, certainly, bring up a certain pattern that
17 the smaller -- this larger one and this group of smaller
18 ones may represent most characteristically knuckle marks,
19 in that there's one large and as they progress out, they
20 become smaller and smaller and smaller, as do your
21 knuckles.

22 So this would be one group of knuckles. This may
23 represent another pattern or another blow with a knuckle.

24 Q This is State's Exhibit No. 8.

25 A This is a photograph that shows the inside of the

1 upper lip of VICTIM . Here is a bruise right at the
2 left angle of the mouth that we've not seen. There is
3 some abrasion to the tip of the nose on both sides. There
4 were -- and right here, it's difficult to see, there's a
5 small band of tissue called the frenulum that attaches the
6 lip to the gum.

7 And right at that attachment, there's been a tear in
8 the mucosa of the upper lip or of the gum resulting in
9 hemorrhage within this tissue here. There was also a tear
10 in the mucosa or a busted lip, if you will, on the inner
11 aspect of the right part of the lower lip and the inner
12 aspect of the left part of the lower lip.

13 Q Dr. Ward, do you have an opinion as to whether that
14 injury is typically accidental or non-accidental?

15 A The contusions or the laceration or the busted lip to
16 the lower part, certainly, we've all had busted lips.
17 Some have been intentional when we've been in altercations
18 with others. Some have been accidental when we fall. The
19 tear to the frenulum of the upper lip is much, much less
20 commonly seen accidentally.

21 It, generally, is the result of an upper force taking
22 the lip and pressing it upward. It can either be the
23 result of blunt injury or just taking the lip itself and
24 moving it and pushing it up. So while these are fairly
25 commonly seen in accidental circumstances, this one is

1 much less commonly seen as an accidental injury.

2 Q This is State's Exhibit No. 5.

3 A This is a front view of the face of VICTIM .

4 Again, it demonstrates the injuries that we've seen not
5 only on the right and on the left, but also the
6 perioral -- or the contusions or bruises around the mouth
7 and nose of VICTIM.

8 Again, these are the abrasions that were present at
9 the tip of the nose. Some abrasions just above the right
10 lip -- I'm sorry, just above the upper lip, the bruise
11 that we saw at the left angle of the mouth, the right
12 angle of the mouth, and then this bruise right along the
13 jawline in this fashion here.

14 Q Dr. Ward, are you able to give an opinion about the
15 possible ages of the bruises that you observed?

16 MR. BYRHOLDT: I object, Your Honor.

17 What bruises are we talking about? I mean, I think
18 that -- what bruises is she talking about?

19 THE COURT: Overruled. You can handle that on
20 cross-examination.

21 THE WITNESS: The bruises to VICTIM on gross
22 examination, which, basically, means as I look at them
23 with my eyes, all appeared to be the same. They all had
24 the same fairly sharp outer characteristic in that they're
25 not blending into the normal skin. There's no variation

1 in pattern. So it's not pink on the outside and starting
2 to turn yellow or green on the edges indicating that they
3 may be healing.

4 I took sections from several bruises, the one from
5 the -- at the base of the penis, one from the back. All
6 of them appeared to be recent in that there was hemorrhage
7 in the skin, but no inflammation and no evidence of
8 healing. So it would be my opinion that these bruises
9 were all at or about the same period of time.

10 BY MS. SEAY

11 Q Dr. Ward, I would like to show you State's Exhibit
12 Nos. 16 and 17. and ask if you recognize these?

13 A Yes, I do.

14 Q And how do you recognize them?

15 A These are photographs that were shown to me by you
16 during one of our conferences.

17 Q State's Exhibit No. 16, do you have an opinion about
18 anything you observe there?

19 A Yes, ma'am, I do. It's difficult to see at this
20 projection, but there are bruises here, here, and here
21 very much in the same pattern that we saw at the autopsy
22 photographs.

23 These bruises are yellow to yellow and green, and
24 indicate that they're well into healing. They've been
25 there for several days. And, as we know, the body tries

1 to rid itself of excess blood and tissues. So if we have
2 a bruise, it will, eventually, heal and go away. These
3 bruises here, here, and here are well into the healing
4 process and do not resemble the bruises that we saw at the
5 time of autopsy.

6 Q Doctor, when you say they don't resemble the ones at
7 autopsy, what are you referring to?

8 A I'm referring to the age of the bruises. These
9 bruises here are not -- although they're in the same
10 location, they're not the same bruises that we saw at the
11 time of autopsy.

12 So he has bruises here at this time. He has separate
13 and distinct bruises in virtually the same place at the
14 time of autopsy.

15 Q Dr. Ward, in your opinion, and your expertise in the
16 area, do you have an opinion about all of these injuries
17 taken as a whole as to whether they were accidentally or
18 non-accidentally inflicted?

19 A Yes, I do.

20 Q What is your opinion?

21 A It would be my opinion that these are non-accidental
22 injuries.

23 Q I believe you testified earlier that you were
24 familiar with a history of a four-wheeler accident several
25 days prior to *Vicnm's* death. Are the injuries you observed

1 consistent with such an accident?

2 A No, they're not.

3 Q Can you explain why?

4 A **VICTIM** had, at the time of autopsy, contusions and
5 superficial lacerations on multiple body surfaces, the
6 right side of the head, the left side of the head, the
7 front anterior portion of the thorax and abdomen, the
8 chest and abdomen, the back, back of arms, front and back
9 of arms, and back of legs. These are all blunt injuries
10 creating only contusions.

11 From my experience, one, if we fall off of our
12 bicycle or off of an ATV that, one, we may injure one body
13 surface, but not, generally, the front and back, not the
14 left and right. And if you fall off a moving vehicle,
15 generally, you skid, not only do you hit the ground, but
16 you skid across the ground. So you get a bruise. But,
17 you, generally, also get these abrasions or road rash, as
18 we commonly know that. And **VICTIM** had no indication of any
19 type of deep abrasion or road rash that would be
20 consistent with falling off an ATV or an all terrain
21 vehicle.

22 Q And along the same lines, could you comment on
23 whether these injuries are consistent with just a toddler
24 who might not be walking well and falling around a lot,
25 that type of thing? Would that be consistent with what

1 you saw?

2 A No, they wouldn't. Generally, toddlers who -- at
3 least, in my personal experience, as they fall and are
4 learning to walk, they, certainly, may have bruises about
5 the legs and maybe the arms, but, certainly, not on both
6 sides of the face, certainly, not deep abdominal injuries.
7 And falling on the small of the back is virtually -- well,
8 it would be very uncommon to see that as a result of an
9 accidental fall of a toddler learning to walk. My
10 experience is, as they're falling, they tend to sit, as
11 opposed to allowing themselves to fall.

12 Q Do you have an opinion about what sort of pain this
13 child might have been experiencing from those two major
14 blunt force trauma injuries to his abdomen?

15 A I would expect that, initially, they would -- each
16 blow would have been very painful that to tear the
17 intestine is extremely painful. There are pain sensors
18 there that make us aware of when the intestinal wall
19 expands or contracts to let us know how much stool is
20 there and if we need to go to the restroom, that sort of
21 thing.

22 So as your intestinal tract expands or as it's forced
23 to gap open like that, then that would be exceedingly
24 painful. You may not know what the pain is from, but it
25 would be very painful. A bruise around the head of the

1 pancreas is going to be very painful. The pancreas tends
2 to be an organ that as it is traumatized and begins to
3 heal, it releases the enzymes that normally go into the
4 intestinal tract. And, basically, it begins to dissolve
5 the tissues around it. And that has been described as
6 being exceedingly painful.

7 Q After the first blow that you have described, can you
8 give an opinion about the symptoms that might result from
9 that?

10 A To the abdomen?

11 Q Yes. I'm sorry.

12 A With trauma to the abdomen like this with injury to
13 the underlying intestinal tract and the pancreas, my
14 expectation would be that ~~VICTIM~~ would not appear to be his
15 usual playful self. I don't think he would be willing to
16 take very much in by eating or drinking. And if he did,
17 he would, certainly, throw that up. He would not interact
18 as he would be expected to normally. He's going to appear
19 to be sick or injured, depending on how you would
20 interpret those signs.

21 Q And so, in your opinion, would persons in contact
22 with him during that time be expected to notice these
23 obvious symptoms?

24 A I would think so, yes.

25 Q What, finally, killed ~~VICTIM~~?

1 A *VICTIM* died as a result of blunt force trauma
2 of the abdomen. Basically, he had trauma to the visceral
3 organs of his abdomen with a tear in the small intestine,
4 trauma to the pancreas, and bleeding into the abdominal
5 cavity. This would result in what we would consider to be
6 a progression of a shock where the body because of this
7 trauma and because of this damage to the intestine and the
8 pancreas would, basically, begin to shut itself down. His
9 blood pressure would decrease. His heart rate would
10 increase. He would, finally, become unconscious and die
11 as a result of those injuries.

12 Q And those sorts of shock symptoms that you've just
13 described, are those fairly obvious to detect by a
14 layperson?

15 A Quite possibly not. I think it would be obvious that
16 *VICTIM* doesn't feel good. I think it would be obvious that
17 he's not going to be up and running around and playful.
18 But you may not notice that he's -- his heart rate is
19 increasing and his blood pressure is decreasing. He may
20 be sweaty or diaphoretic, and cold and clammy. But to
21 notice the increase in heart rate and the other changes
22 would not likely be something that you would pick up on on
23 observation.

24 Q Dr. Ward, if medical treatment had been given to
25 *VICTIM* at some point maybe after the -- say, the first

1 blow, what is your opinion about how that might have
2 effected him?

3 A I think that *VICTIM* would have had a fairly good
4 chance of a normal recovery, that he probably would have
5 required surgery, eventually, to repair the tear in the
6 intestinal tract. But with supportive care, I think he
7 would have recovered.

8 Q Is your opinion the same concerning the second major
9 trauma?

10 A I think at the time of the second trauma, we also
11 have underlying a progression of the first trauma. So
12 that as the injuries to the abdominal cavity that he
13 received initially are progressing and *VICTIM* is getting
14 sicker and sicker, if you will, from that injury. And for
15 what -- and the addition of the second injury makes it
16 more difficult to treat those injuries.

17 But to say -- I don't know that I can absolutely say
18 that he would have been able to survive with appropriate
19 care or not.

20 Q Dr. Ward, I just -- I have one further question. And
21 that is, would it be fair to say that at *VICTIM*'s size of
22 36 and a half pounds that the last few days and hours of
23 his life were very painful?

24 MR. BYRHOLDT: I object, Your Honor.

25 THE COURT: I sustain the objection to the form of

1 the question.

2 MR. BYRHOLDT: Thank you.

3 MS. SEAY: Dr. Ward, please answer any questions that
4 the other attorneys may have.

5 THE COURT: We'll take a short recess before
6 cross-examination.

7 Take the jury out for a recess.

8 You can step down and take a little rest.

9 THE WITNESS: Thank you.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 11:07 a.m.)

12 THE COURT: All right. We'll take a short recess.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Okay. Bring the jury in.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:23 a.m.)

17 THE COURT: Mr. Byrholdt.

18 MR. BYRHOLDT: May it please the Court?

19 CROSS-EXAMINATION

20 BY MR. BYRHOLDT:

21 Q Dr. Ward, I'm Bruce Byrholdt. David Phillips and I
22 represent Brandi Holder, ~~VICTIM'S~~ mother.

23 In your direct testimony, you told this jury that the
24 bruises appeared recent. I think your last statement was,
25 all bruises the same, recent, and at about the same time?

1 A That's correct.

2 Q Can you tell us, assuming that ~~victim~~ arrived at the
3 hospital around 12:30 on the 17th, when those bruises
4 occurred and when those incidents took place?

5 A Not to a time frame, no.

6 Q Could they have occurred within the last six hours
7 prior to him reporting to the hospital?

8 A Yes.

9 Q That would be consistent with what you found from a
10 medical standpoint?

11 A It could be, yes.

12 Q Can you tell this jury today who inflicted those
13 injuries on Bo?

14 A No, I cannot.

15 Q Now, there was a bite mark that you said you saw on
16 Bo; is that true?

17 A There was an injury consistent with a bite mark, yes.

18 Q Well, did you do bite mark measurements to see if it
19 was consistent with a bite that Bo could have inflicted on
20 himself or whether it was an adult bite mark?

21 A I measured the wound. I did not measure Bo's teeth,
22 no.

23 Q Because there is forensic technology where they do
24 bite marks and stuff like that to try and identify where a
25 bite came from?

1 A Yes, sir.

2 Q Why didn't you do that?

3 A We do not have a forensic odontologist.

4 Q Nowhere in South Carolina?

5 A Not available at the time of autopsy, no, sir.

6 Q There's no way you could have called?

7 A Not at the time of autopsy, no, sir.

8 Q And, I believe, you also testified that at -- for a
9 layperson, the degree of distress would not have been
10 apparent, the seriousness of the injuries?

11 A The signs and symptoms of shock most likely would not
12 have been apparent. I think ~~victim~~^{victim}, certainly, would not have
13 appeared himself.

14 Q There could have been vomiting?

15 A Absolutely.

16 Q Cold and clammy?

17 A Yes.

18 Q If someone had a stomach ailment, a virus, or
19 something like that that there was throwing up and
20 vomiting, would there be similar symptoms?

21 A Yes, they could be.

22 Q All right. Now, at one point, you thought that ~~victim~~^{victim}
23 might have been sexually assaulted; correct?

24 A That's correct.

25 Q That's turned out to be negative?

1 A I found no indication of a sexual assault.

2 Q Okay. The history that you got about the ATV
3 accident, do you know where that came from? Did you talk
4 to anyone, other than medical staff, to get that history?

5 A That history was first reported to me by the
6 Coroner's Office investigators, who take -- talk with
7 family members, talk with members that are possible
8 witnesses that are there at the time of the autopsy -- I'm
9 sorry, at the time of the hospital investigation to get
10 initial preliminary history. That information was relayed
11 to me by the Coroner's Office personnel. I did not,
12 specifically, speak with anyone regarding that incident.

13 Q So you did not speak with my client?

14 A I have not.

15 Q As -- I mean, you're the expert forensic pathologist.
16 Can you tell this jury anything better than that the
17 bruises were recent, or when they took place? You're not
18 able to, are you?

19 A I don't think it's been greater than a day. I don't
20 think it's been greater than 12 hours. So, no, sir -- but
21 beyond that, no, sir.

22 Q So anywhere -- well, is it 24 hours, 12 hours, or
23 some period less than that?

24 A I think it's less than 12 hours. And it's very
25 likely greater than an hour to two for them to become so

1 prominent.

2 Q Well, sometime -- would you agree between two and
3 ten? Between two and 12?

4 A Two and 12 would be reasonable, yes.

5 Q As far as the force to inflict these, I mean, someone
6 was angry or lost their temper to do this; right? In your
7 opinion, it's not normal disciplining, this is someone
8 that lost it.

9 MS. SEAY: Your Honor, I'm going to object to his --

10 THE COURT: What's your objection?

11 MS. SEAY: My objection is that's beyond the scope of
12 his knowledge.

13 THE COURT: I'll allow it.

14 Go ahead.

15 THE WITNESS: I would not consider this to be normal
16 disciplining in that neither the location nor the severity
17 of these injuries would fall into what I think the average
18 person would be considered -- would be to consider normal
19 discipline.

20 BY MR. BYRHOLDT:

21 Q Let me ask you to assume that the injuries, say,
22 happened at 6:00 in the morning, some six and a half hours
23 before he appeared at the -- ~~Vicnm~~ appeared at the hospital.
24 Would the bruises be readily apparent or would it take
25 minutes or a couple of hours for the bruises to surface?

1 A They're going to become readily apparent. They will,
2 over time, become more distinct. But I think after the
3 initial blow to that area, it certainly is going to become
4 red and become maybe even a little bit swollen. But over
5 a period of time, it will form into a distinct bruise.

6 Q How long does it take a bruise to form where it
7 becomes physically viewable?

8 A It's, initially, there. But for it to become -- to
9 have its shape, then the blood has to define itself as it
10 leaks out of the capillaries into the skin. That takes a
11 period of time. Exactly how long, I do not know.

12 Q I mean, minutes? Hours?

13 A At least, an hour or so, yes.

14 Q Can you tell this jury with any degree of specificity
15 more than two to 12 hours when the first blow was struck?

16 A The first blow to the abdomen or the first blow to --

17 Q The first blow to ^{victim}'s body.

18 A I think the first blow to ^{victim}'s body, which resulted
19 in trauma to his underlying visceral organs with which we
20 have healing and repair, happened greater than 12 hours
21 before this time and probably greater than a day.

22 Q I thought you said all the bruises were recent,
23 within two to ten hours?

24 A The bruises are the external injuries that we see on
25 the outside of the body. The trauma to the underlying

1 visceral organs is not considered to be a bruise.

2 Q Would that -- and you think that happened first?

3 A I think it happened before the bruises that we see,
4 yes.

5 Q Well, other than the guarded symptoms and vomiting,
6 would there have been any outward signs, marks, bruises,
7 anything that would reflect before ten to 12 hours?

8 A Not necessarily, no.

9 MR. BYRHOLDT: That's all the questions I have.

10 Thank you, Dr. Ward.

11 THE COURT: All right. Mr. Quinn.

12 MR. QUINN: Just one.

13 Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. QUINN:

16 Q Dr. Ward, you say that what people have now started
17 describing as the first blow, that is the first blow to
18 the abdomen, could have been greater than a day?

19 A Yes.

20 Q Can you give me an outside --

21 A No. I mean, I don't think it's three days to a week.
22 But between a day, a day and a half, two days, no, I
23 can't.

24 Q Okay. Certainly, no more than three days?

25 A (There was no response.)

1 Q Well, I mean, you know, you just said no more than
2 three or seven. That's why I asked you.

3 A I understand. There's healing of this wound. These
4 are processes that differ depending on location. What is
5 happening is that ~~VICTIM~~'s body is trying to heal this
6 wound. I cannot put it on a time clock.

7 I think that for -- to get granulation tissue growth
8 of new blood vessels into this area is going to require,
9 at least, 24 to 48 hours. I don't think that these
10 changes indicate anything that's been going on for a week.

11 So if you want to cut it off at three days is as
12 reasonable as any. But to say it couldn't be three and a
13 half or four, I can't go there.

14 Q Okay. And you say, "at least." Can you give me an
15 at most?

16 A No, sir.

17 Q I mean, can you say you would go -- that it's no more
18 than five days, or no more than -- and if you're not
19 willing to, that's acceptable.

20 A I cannot do that, no, not without a scenario.

21 MR. QUINN: I don't have any other questions.

22 THE COURT: Is that all, Mr. Quinn?

23 MR. QUINN: Yes, Your Honor.

24 Thank you.

25 THE COURT: Any redirect?

MS. SEAY: Nothing further.

2 THE COURT: Thank you, Doctor.

3 Can we excuse Dr. Ward?

4 MR. BYRHOLDT: No objection.

5 MS. SEAY: No objection.

6 THE COURT: Thank you.

7 All right. Solicitor.

8 MS. SEAY: The State calls Jane Venesky.

9 THE CLERK: Put your left hand on the Bible, please,
10 and raise your right hand.

11 WHEREUPON,

12 ELIZABETH JANE VENESKY,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: State your name for the record, please.

15 THE WITNESS: Elizabeth Jane Venesky.

16 THE CLERK: Thank you.

17 Be seated.

18 DIRECT EXAMINATION

19 BY MS. SEAY:

20 Q Ms. Venesky, you previously stated your name, age,
21 and address. Are you married?

22 A Yes, ma'am.

23 Q And your husband is?

24 A Ronald Venesky.

25 Q Do you have children?

1 A I have one. I used to have two.

2 Q One of your children is deceased?

3 A Yeah.

4 Q When did you live on ~~Jug Factory Road~~?

5 A April of 2001.

6 Q And who were your neighbors?

7 A Mark Martucci, and my sister and her husband.

8 Q Are you describing one on each side?

9 A Yeah.

10 Q Your homes there, were they houses or trailers or --

11 A Trailers.

12 Q Did you get to know Mark as being your neighbor? Did
13 you get to know him at all?

14 A Somewhat, yeah. My son and his friends hang out over
15 there.

16 Q Okay. Did you ever have occasion to meet Brandi
17 Holder?

18 A No, ma'am, not during the time -- as far as when? Is
19 that what you're asking?

20 Q Yeah. Did you know Brandi Holder at the time you
21 lived there?

22 A Yeah.

23 Q How did you come to meet her?

24 A She called me on the phone one afternoon asking me if
25 I had a cat. And I told her, no. And she said a cat had

1 been crawling on her car. And then --

2 Q That was the first contact you had with her?

3 A Yeah.

4 Q What was her demeanor with you on the telephone?

5 A Just, basically, asking me questions about Mark, and
6 his girlfriends, and stuff like that.

7 Q What did she want to know?

8 A If I knew of any of his ex-girlfriends. And I told
9 her, no.

10 Q Did she ever further question you about things of
11 that nature?

12 A Yes, ma'am.

13 Q Would you describe that?

14 A It was that same afternoon, but it was later on, she
15 came -- well, ~~Victim~~ and Trevor was out in the yard playing.

16 Q And Trevor is?

17 A My son.

18 Q Your son.

19 A And her and Trevor and ~~Victim~~ came over to my house. And
20 I thought they were wanting to watch a video. And I told
21 Trevor it was too late. But she was wanting a video that
22 had been taken at Mark's house during a party before she
23 ever came in the picture. And I told her I didn't have
24 that video. I didn't see that video and didn't want to
25 see that video.

1 Q Did she tell you why she wanted to see it?

2 MR. QUINN: Your Honor, I'm going to object. I don't
3 know how any of this is relevant.

4 THE COURT: What's the relevance?

5 MS. SEAY: I'll move on.

6 THE COURT: All right.

7 BY MS. SEAY:

8 Q Did you have a chance to get to know ^{victim}?

9 A Yeah, a little bit.

10 Q What kind of child was he?

11 A He was a very sweet child, but he was scared to death
12 of women.

13 Q Explain what you mean by that.

14 A He wouldn't come to me, but he would go straight to
15 my husband. And that night that they were over there, he
16 came over there to me because I had some donuts. And I
17 was feeding him donuts. But any other time you'd see him
18 out in the yard, he would be clinging to one of the guys,
19 not nowhere near the women.

20 Q Did Ms. Holder ever comment to you about that?

21 MR. PHILLIPS: Objection. Hearsay.

22 THE COURT: Overruled.

23 BY MS. SEAY:

24 Q Did Ms. Holder ever comment to you about what you
25 just described about ^{victim} and women?

1 A I don't recall.

2 Q You stated that you got to know *victim*. Did you ever
3 observe any injuries on *victim*?

4 A Yes, ma'am.

5 Q Can you, please, describe?

6 A A bruise on this shoulder, a burn mark right here,
7 and somewhat like a busted lip.

8 Q Do you know about when that was that you saw those?

9 A The evening we took the pictures.

10 Q Okay. Explain how you came about taking those
11 pictures.

12 A Well, my husband had seen *victim* outside earlier in the
13 week. And Trevor had mentioned to me some bruises on *victim*.
14 And I said, something is not right for this. And so
15 that's how we came to take the pictures. Because I
16 thought, well, if something happens or we see he's being
17 abused, at least, we'll have some kind of pictures. So
18 that's why we took the pictures.

19 Q Who was there when you took the pictures?

20 A My nephew, Rodney, Brandi, and my husband.

21 Q So *victim's* mother was there?

22 A Yes, ma'am.

23 Q What was she doing there?

24 A She had walked over there with *victim* and -- excuse me.
25 Trevor was there.

1 Q When was that?

2 A That was the night before she came over to spend the
3 night.

4 Q Describe the night she came over to spend the night.

5 A We had a knock at the door at about 10:00 at night.
6 And it was Brandi and ~~victim~~ saying that Mark had kicked her
7 out and he wanted her to leave. And she asked if she
8 could spend the night.

9 Q Did you let them?

10 A Yes, we did.

11 Q Did you notice any injuries on ~~victim~~ then?

12 A No. She took him straight to the bedroom.

13 Q Was this the week of Bible school that you talked
14 about before?

15 A Yes, ma'am.

16 Q When Brandi came over that night and they spent the
17 night with you, did you have any further involvement with
18 them as a result of that?

19 A Yes. I had called my cousin, Robin, to see if she
20 would keep ~~victim~~ the next day.

21 Q Why were you looking for somebody to keep him?

22 A Because she said she didn't have anybody to keep him.
23 And I asked her why didn't she call her mom and dad. And
24 she said that she wasn't speaking with them. And I said,
25 Well, give me their name and number and I'll call and get

1 them to come up here and get ~~VICTIM~~. And she didn't give it
2 to me. And I didn't know her last name because on the
3 caller ID, it came up as Brandi Martucci. So I had no way
4 of knowing.

5 Q All right. Well, explain then about asking your
6 friend, Robin, to baby-sit ~~victim~~ the next day.

7 A She said, yeah, sure. And the next morning my
8 husband -- Brandi followed my husband up to Robin's house
9 to take ~~victim~~ up there.

10 Q And why was that?

11 A Because she didn't know how to get up there.

12 Q Had Robin and Brandi ever met, to your knowledge?

13 A No, ma'am.

14 Q Did Brandi ever say anything to you about those
15 pictures that you took?

16 A Yeah. We couldn't get ahold of anybody. He went to
17 Bible school that night.

18 Q ~~VICTIM~~ did?

19 A Yeah. I went and picked them up and came back. And
20 Trevor walked ~~victim~~ over to Mark's, because Brandi's car was
21 there. And Brandi --

22 Q Let me interrupt you and ask this. Is this after she
23 had come to your house asking to spend the night?

24 A Uh-huh.

25 Q Okay.

1 A And she had called me and asked why did I -- who gave
2 her -- me permission to take pictures of her child? And I
3 said, You were there. And then Mark was in the background
4 saying, Tell the truth, Brandi. Tell the truth.

5 And then I told her I didn't want nothing else to do
6 with it. If they were going to put that child in harms
7 way, then my hands was tied.

8 Q Was she angry with you when she called?

9 A Oh, yes.

10 Q Did she ever comment about -- to you -- did she ever
11 comment to you about physically mistreating ~~VICTIM~~?

12 A No -- oh, yeah. I'm sorry. The -- when the
13 pictures -- when she called about the pictures, she said
14 she was just mad, that she smacked ~~victim~~ in the mouth when he
15 back-talked her.

16 Q She told you that?

17 A Yes, ma'am.

18 Q And after Trevor walked ~~victim~~ home after Bible school,
19 did you ever see ~~victim~~ again?

20 A No, I sure didn't.

21 Q And when did you move to your residence you live at
22 now?

23 A Probably a week later.

24 Q So you didn't have an opportunity to see ~~victim~~ after
25 that?

1 A (Witness shook head.)

2 MS. SEAY: Thank you, Ms. Venesky.

3 Please answer any questions that the attorneys may
4 have for you.

5 THE COURT: All right. Mr. Phillips.

6 MR. PHILLIPS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q Ms. Venesky, you said your husband was Ronald
10 Venesky; is that correct?

11 A Yes, sir.

12 Q The two of you lived near the -- near Martucci and
13 Brandi Holder when this happened on July 17th, 2002; is
14 that correct?

15 A Yes, sir.

16 Q Your husband, in fact, was accused by Ms. Holder of
17 having a crush on her and pursuing her romantically; is
18 that correct?

19 A I have no --

20 Q Is that correct?

21 A I have no -- I don't recall that.

22 Q You didn't know that he was coming up to the hair
23 salon and trying to see her a lot?

24 A I don't think my husband ever went to the hair salon.

25 Q Did you ever see Brandi hurt ~~victim~~ in any way?

1 A No.

2 Q And you said Robin Center is your friend?

3 A My step-cousin.

4 Q Your step-cousin?

5 A Uh-huh.

6 Q Okay. And that's the person that -- Bible school was
7 about the time that you took these pictures of VICTIM;
8 correct?

9 A Uh-huh.

10 Q And, actually, I guess, it was your husband that took
11 the pictures; correct?

12 A Yes.

13 Q All right. It was -- how soon was it -- or how close
14 was it in time between the time that photograph was taken
15 and the time VICTIM went to Bible school with Robin Center?

16 A That picture was took that evening. And the next
17 day, she came to the house to spend the night. And then
18 he went to Bible school. So it was like two days.

19 Q So within a day?

20 A Yeah, something like that.

21 Q So the very next day is when he went to Bible school;
22 is that correct?

23 A Yeah.

24 Q When you took the photograph of VICTIM - the photographs
25 of VICTIM with the bruises on his shoulder, did you take

1 pictures of all the bruises that you found on him?

2 A I didn't strip him naked.

3 Q But as to what was on his back and stomach and neck,
4 you took pictures of whatever you saw?

5 A He had a diaper on.

6 Q Okay. I'm not asking about the diaper area. I'm
7 talking about where you could lift his shirt up, you took
8 pictures of everything, all the bruises you saw?

9 A Yeah.

10 Q If you suspected something was wrong, why didn't you
11 call DSS?

12 A I didn't, Robin did.

13 Q Okay. Why didn't you call the police?

14 A Well, I didn't want -- I really don't know why I
15 didn't call the police.

16 Q Was there some reason, any reason, you didn't want
17 them to come out to your house?

18 A No. I didn't have anything to hide.

19 MR. PHILLIPS: Nothing further at this time.

20 THE COURT: All right. Mr. Quinn.

21 MR. QUINN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. QUINN:

24 Q Ms. Venesky, during one of the conversations you've
25 described, did Brandi tell you she had had six years of

kickboxing?

A Yes.

Q And she could take care of herself?

A Yes.

Q And having seen the relationship between ~~VICTIM~~ and Mark Martucci, was Brandi jealous of that relationship?

A In my own opinion?

Q Yes, ma'am.

A I thought so.

MR. QUINN: Thank you.

I don't have any other questions.

THE COURT: Any redirect?

MS. SEAY: Nothing further.

THE COURT: Thank you.

You can step down.

MS. SEAY: The State calls Robin Center.

THE CLERK: Put your left hand on the Bible, please, ma'am, and raise your right hand.

WHEREUPON,

ROBIN LYNN CENTER,

after first having been duly sworn, testified as follows:

THE CLERK: And what is your name, please?

THE WITNESS: My name is Robin Lynn Center.

THE CLERK: Thank you.

Be seated.

DIRECT EXAMINATION

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BY MS. SEAY:

Q Ms. Center, will you state your name and make sure we can hear you back here?

A It's Robin Lynn Center.

Q Okay. Pull the microphone up just a little bit or scoot towards it.

A Okay.

Q How old are you, Ms. Center?

A I'm 37.

Q And do you live in Greenville County?

A I do.

Q How long have you lived here?

A In Greenville County, since I was 13. I was trying to add it up.

Q Okay.

A A good 20 years, I know.

Q Do you have children?

A Yes, I do.

Q How many?

A I have three foster girls and two biological sons.

Q Are the foster girls still with you?

A Not any more.

Q And how long were they with you?

A How long were they with me? One was with me for

1 eight years. Two of them -- one was with me three years.

2 And one was with me almost a year.

3 Q Okay. Did you know Mark Martucci?

4 A No, I did not.

5 Q Did you know Brandi Holder?

6 A No, not until I met VICTIM.

7 Q Okay. How did you come about meeting VICTIM?

8 A I had a phone call asking would I keep a child. And
9 I said, yes. And that's how -- I met VICTIM before I met
10 Brandi. But, yes, the next morning they brought VICTIM to me.

11 Q And Ms. Venesky asked you about keeping him?

12 A She did, because I keep kids a lot.

13 Q So the next morning you said Bo was brought to you.

14 Describe that.

15 A Describe it. She didn't know how to get there, so
16 Ron, which is Jane's husband, she followed him up there.
17 They pulled up. I chatted with him a second, turned
18 around. VICTIM was in the back seat. And I just opened the
19 door, because I do love kids. VICTIM did come with me.
20 Trevor was with me at the time. I'm sorry. Trevor had
21 already come around. And VICTIM did come to me. But he
22 wanted to go straight in the house. Brandi was in the
23 front seat. She didn't get out. She didn't talk a lot to
24 me either at all.

25 Q Did she say anything to you about keeping him that

1 day?

2 A I don't recall if she did. I recall I struck up the
3 conversation trying to talk, but she was really short
4 talked. And I didn't know the situation. So I was just
5 more concerned -- no offense to her. I didn't know her.
6 I didn't know the kid. But I was more concerned about the
7 child. I don't -- we may have spoke very briefly. I know
8 I did ask her if she wanted to get out. And she said, no.

9 Q Did you get ~~VICTIM~~out?

10 A I did get ~~VICTIM~~out myself.

11 Q Did Ms. Holder send any supplies with him for the
12 day?

13 A Ms. Holder sent me two diapers for that day. I had
14 to go next door and get more diapers from a neighbor. He
15 was dirty. And she sent no clothes.

16 Q Did you notice anything unusual about his appetite?

17 A For some reason that day, ~~VICTIM~~ was very, very thirsty.
18 And he did eat a lot, a little at a time, but a lot. It
19 took ~~VICTIM~~ a while to get used to me. Trevor had to help me
20 with that. But then after that, he was -- he just ate all
21 the day. He had one truck he played with in one place.
22 And he would just eat and drink all day long. The
23 drinking was more than anything. He stayed thirsty. The
24 drinking was a whole lot more.

25 Q Did you notice any injuries on ~~VICTIM~~?

1 A Yes, I did.

2 Q Would you describe them, please?

3 A- If I can.

4 Q It's okay.

5 A This was -- to my knowledge, he was around two years
6 old. And it was just heartbreaking. When I got him out,
7 I automatically seen his lip. It was swollen. It had a
8 little laceration and just a small cut like place.

9 I just took him in the house, you know, took him in.
10 And when we got in there, like I said, it was hard for him
11 to get used to me. And Trevor helped a lot letting him
12 know that I was good. And he convinced -- the child was
13 very good after that.

14 But my main thing was getting him a bath because he
15 was dirty. And I had some clothes from where -- I have
16 grandchildren from my foster kids. I was changing the
17 clothes and -- I got him a change of clothes and was going
18 to give him a bath. He gave me a real bad time about that
19 at first, just scared like he didn't want to get in the
20 water.

21 And I took him back out. Trevor Venesky come in to
22 help me, which is Jane's son. And I think he was like 12
23 at the time. I'm not sure. I don't want to lie. And he
24 come in and he helped me get ~~victim~~calmed down. I had
25 touched ~~victim~~wrong or something. I had touched him in the

1 back. Well, I got to looking and he had a black place on
2 the back of his neck sort of like a big bad bruise in the
3 back and -- I'm sorry.

4 He had a burn place on his back. He had bruises. He
5 had them on the small of his back. And he had -- and then
6 like a blueish almost -- it's hard because there were so
7 many. But it's almost like a blue and reddish like
8 purplish-looking colors. Then -- that was on the small of
9 his back. I remember that distinctly. But on right down
10 in here, he had just a few, you know, just some light
11 ones.

12 He had a burn. I do remember a burn distinctly on
13 one of his hands. I think on his leg I remember a burn.
14 I say I think, but I do remember a burn. I believe it was
15 on his leg. I couldn't tell you exactly what part now.
16 And I -- to my knowledge, he had a burn that -- an old --
17 it did look old that looked like a -- the end of an iron,
18 to me, not a curling iron, the end of an iron is what it
19 looked like. But I am not an expert so I can't tell you
20 that's what it was, but it did look like it.

21 He had faint bruises. I don't want to miss anything.
22 But there's just so much that I seen on him. It is really
23 shocking to somebody to go through that.

24 Q Were you upset about what you had seen?

25 A Was I upset? Yeah. Just -- yeah. I love kids.

1 I've watched up to 16 at a time. And I had never seen
2 that happen.

3 Q Was Brandi scheduled to come pick ^{victim} up from you
4 after --

5 A Brandi was supposed to pick ^{victim} up that evening.

6 Q Did she come?

7 A No. She didn't come. And I was taking --

8 Q Did she call?

9 A No.

10 Q What did you do?

11 A I got ahold of Jane, you know, because that's the
12 only relay I had. And Jane had -- I don't know the
13 situation. They couldn't get ahold of her. The car was
14 in the yard, but they couldn't get anyone to come get the
15 phone. So we just used our best judgment and took the
16 baby with us that evening to Bible school.

17 Q Did he act like he wanted to go to Bible school with
18 you?

19 A Yeah. He didn't want to go home. He didn't want to
20 leave. He wanted to stay. He couldn't talk good. And
21 he -- what little bitty words he said --

22 MR. PHILLIPS: Objection.

23 THE COURT: What's your objection?

24 MR. PHILLIPS: That's not admissible under the dead
25 man's statute.

1 THE COURT: Solicitor.

2 MS. SEAY: I believe it's admissible.

3 THE COURT: Take the jury out.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 11:59 a.m.)

6 THE COURT: All right. Mr. Phillips.

7 MR. PHILLIPS: Your Honor, why we objected, they're
8 trying to use the words of a dead child that nobody,
9 except for this witness, can verify. So it's highly
10 unreliable.

11 And I don't believe that what she's testifying to
12 goes to anything relevant or deeper than tangentially related
13 to this case. And we'd argue that it shouldn't be
14 admitted.

15 And, in addition, I don't know that -- I don't
16 believe it was disclosed in anything that we have received
17 from the Solicitor's Office that Bo said anything to
18 Ms. Center.

19 THE COURT: Solicitor.

20 MS. SEAY: Your Honor, I'm not, first of all, aware
21 of any rule that would require me to advise them of a --

22 THE COURT: I'm not concerned about that.

23 MS. SEAY: Okay. I would submit that it is
24 admissible as a present-tense impression or then-existing
25 mental, emotional, or physical condition.

1 THE COURT: Under what rule?

2 MS. SEAY: Rule 803, Subsections 1 and 3.

3 MR. PHILLIPS: Your Honor, Rule 803 only applies if
4 the declarant is available as a witness.

5 MS. SEAY: It applies immaterial of the availability.

6 THE COURT: Mr. Phillips, do you have any case law or
7 any statutes that I can look at?

8 MR. PHILLIPS: Your Honor, I don't.

9 We didn't anticipate this, because we weren't put on
10 notice of any statement that ~~victim~~ made to -- that any of
11 these witnesses were going to testify to. We received
12 their written statements, but we don't have anything from
13 them that says that ~~victim~~ was going to say -- that they're
14 going to say that ~~victim~~ said this or that to them. We would
15 be happy to research the issue and present it to the
16 Court, but we just don't have the capability to do that
17 right here in the courtroom.

18 THE COURT: Solicitor.

19 MS. SEAY: Your Honor, it might be useful for
20 Ms. Center to proffer what it is she was going to say.

21 THE COURT: All right. Go ahead and let her proffer
22 the testimony.

23 THE WITNESS: Now?

24 THE COURT: Yes.

25 THE WITNESS: But I just -- I wasn't going to give a

1 statement that he said. I was simply going to say what he
2 did say was -- the very little that he did talk, you
3 couldn't -- he wasn't a very good talker. I couldn't
4 hardly understand anything he was saying.

5 MR. PHILLIPS: I mean, I don't have an objection to
6 that.

7 THE WITNESS: That was all I was going to say.

8 THE COURT: All right. Bring the jury back in.

9 (WHEREUPON, the jury came into open court at
10 approximately 12:04 p.m.)

11 THE COURT: All right. You may proceed.

12 MS. SEAY: Thank you, Your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. SEAY:

15 Q Ms. Center, was ~~victim~~ able to communicate with you?

16 A No. ~~Victim~~ could say -- he didn't say very much. And
17 what he did say, it was very hard to understand what he
18 was saying. He wasn't very -- I couldn't understand his
19 words at all. It wasn't very clear speaking at all.

20 Q Okay. After y'all went to Bible school, what did you
21 do with ~~VICTIM~~?

22 A After -- I mean, when we got to Bible school?

23 Q After Bible school -- he went to Bible school with
24 you that night?

25 A Right.

1 Q What did y'all do after that?

2 A After we got to Bible school, I went to my pastor
3 first and had him pray with me and VICTIM. We didn't know
4 what exactly was going on. So I can't say that. But we
5 were asking him to pray for him, because we could see some
6 physical stuff. And we did. And we come home and
7 Ms. Venesky took -- she took VICTIM home. And I didn't see
8 him -- I didn't get to see him any more after that.

9 Q Did you ever try to go check on him?

10 A Yes, ma'am. I apologize.

11 The next day, I went to Jane's because I was watching
12 Trevor. Like I said, I love kids. And I was watching
13 Trevor. And I went to Jane's to do it because it was near
14 there. And Trevor and my boys were out playing pool.

15 First, I do want to state at 11:45, I called DSS that
16 day. It was right around 11:45, I remember that, because
17 it was near lunch for the kids.

18 And my -- he had a pool table. "He" being Mark. He
19 had a pool table outside of the trailer with a little shed
20 over it. And the kids had always played over there as far
21 as I know. So my children were nine, 11, and 13 then.
22 They were out playing with Trevor. And I didn't see VICTIM
23 out there.

24 So I walked over to Mark's trailer and asked for him.
25 And he was on the phone, but I knocked several times

1 and --

2 Q Who was on the phone?

3 A Mark. I'm sorry. Mark was on the phone.

4 I knocked several times. He yelled --

5 Q How do you know he was on the phone?

6 A I could see him going back and forth. He could see
7 me.

8 Q Okay.

9 A He just let me stand there. But I could see him
10 going back and forth talking to someone on the phone. And
11 I, finally, did it again. And Mark -- and I did not know
12 this man, but I knew who he was, you know, his name. And
13 he hollered at me, you know, just -- I don't really want
14 to say what he said. He said, wait a -- and he said
15 something else.

16 Q You can say what he said.

17 A He told me to wait a damn minute.

18 Q Okay.

19 A Okay. And when he did that, I was sort of shocked
20 that I didn't want to leave until I heard from ~~VICTIM~~. I
21 wanted to see ~~VICTIM~~. He said that I couldn't see ~~VICTIM~~ that he
22 was there, but he was asleep, I think he said. And I told
23 him I was worried about the bruises on ~~VICTIM~~. And he told me
24 that ~~VICTIM~~ was -- not to worry about it, that ~~VICTIM~~ was always
25 bumping around, you know. He just always was bumping into

1 things and falling down.

2 Q So you didn't see ^{VICTIM} at all that day or any time
3 after that?

4 A No. He told me that he was asleep. And he would
5 not -- I asked him could he come out and play with the
6 kids later, but he never did.

7 MS. SEAY: Thank you.

8 That's all the questions I have.

9 Please answer any questions the other attorneys may
10 have.

11 THE COURT: All right. Mr. Phillips.

12 MR. PHILLIPS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PHILLIPS:

15 Q Ms. Center, had you ever seen Brandi Holder hurt ^{VICTIM}
16 in any way?

17 A No. I never seen her more than six minutes.

18 Q Okay. You stated that you called the Department of
19 Social Services about this; is that right?

20 A I did the next day from Jane's.

21 Q Can you explain why it is that DSS has no record of
22 that?

23 A I have no idea. But I gave them a name at the time
24 that I thought it was. And they did have a lady working
25 there, but I did not hear anything else back on that.

1 Q And you've had dealings with the Department of Social
2 Services before; correct?

3 A Such as?

4 Q Such as becoming licensed as a foster care giver.

5 A No. That was just went through -- these girls were
6 given to me by their dads with a notary saying -- no.

7 Q So you're not saying that you're a licensed foster --

8 A I am not a licensed foster parent, no, sir. And I
9 apologize for that.

10 Q Okay.

11 A I'm not licensed at all.

12 Q What's your date of birth?

13 A 2-15-68.

14 Q Okay. And you say you took ~~VICTIM~~ to Bible school on
15 June 18th or so of 2002?

16 A I want to say, yes. It was within a day or two of
17 that date.

18 Q So June 18th or 19th?

19 A Something like that.

20 Q That's about the same time that the photographs that
21 Jane Venesky says they took were taken; is that correct?

22 A I think I was told later that they were taken the
23 night before that I took him to Bible school.

24 Q So those photographs were taken the night before and
25 then you saw ~~VICTIM~~ the next day?

1 A Uh-huh, I did.

2 Q And ^{victim} had a large black bruise on the back of his
3 neck?

4 A He had a -- I'm not saying large like this. It was
5 up -- can I show you? It was like right up in here and it
6 was -- yeah, it was large. But I'm not saying it was down
7 here. It was up in the -- this part. And I knew -- that
8 was just when I tried to touch him, he yelled. And I
9 looked to see what was going on.

10 Q And it was large enough for you to see it?

11 A Right. Yes, sir.

12 Q And be upset about it; correct?

13 A Right.

14 Q Can you explain why there's no indication of a bruise
15 on his neck in the photographs that were taken by the
16 Veneskys?

17 A Well, I mean, I can't explain their theory. I can
18 explain mine, if you want my opinion on it. Is that what
19 you're asking me?

20 Q Yes.

21 A Okay. My opinion on that was it was under the back
22 of his hair. When I touched his head is when he cried.
23 That's when I lifted it up and looked exclusively and
24 found it.

25 Q You also gave a statement to law enforcement, did you

1 not?

2 A Yes, sir.

3 Q Around July 26, 2002; is that right?

4 A That would have been a month later, close to it.

5 Q Okay. And in that statement, you said that ^{VICTIM} had
6 some blue marks on his chest; is that right?

7 A That's what I was referring to as down a little bit.

8 Q None of those marks show up in the photographs that
9 you -- that Ms. Venesky took, did they?

10 A Well, I have no idea.

11 Q Do you want me to show the photographs to you?

12 A I have seen those photographs quite [sic] times, but
13 I don't see -- I know what I seen. I'm not trying to
14 say -- I mean, I wouldn't be up here if I didn't. But
15 these weren't -- like I said, these were light right here.
16 And I don't know anything about what Venesky took. I
17 do -- I've seen them from -- someone else had showed them
18 to me.

19 Q All right. Now, a month after you were taking ^{VICTIM} to
20 Bible school at your church, isn't it true, that you pled
21 guilty to petit larceny?

22 A Petit larceny. Yes, I did do that. I did plead
23 guilty to that, yes.

24 Q Okay. And isn't it true that in September of 2001,
25 you were indicted for lynching second degree?

1 A No. That's not true. That was completely and
2 totally dropped. And it was supposed to be being
3 expunged.

4 Q I didn't ask if it was dropped.

5 MS. SEAY: Your Honor, I object.

6 THE COURT: I sustain the objection.

7 I instruct the jury to disregard it.

8 Move on, Mr. Phillips.

9 MR. PHILLIPS: Your Honor, if I may --

10 THE COURT: No, sir.

11 MR. PHILLIPS: I've got case law on that.

12 THE COURT: No, sir.

13 Move on.

14 MR. PHILLIPS: And I need to make a record.

15 THE COURT: Take the jury out.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 12:13 p.m.)

18 THE COURT: All right, sir.

19 MR. PHILLIPS: Thank you, Your Honor.

20 Your Honor, this testimony is admissible under Rule
21 608(c) of the South Carolina Rules of Evidence. I have
22 the two most recent opinions on that, one from the South
23 Carolina Supreme Court and one from the South Carolina
24 Court of Appeals addressing that issue.

25 The South Carolina Supreme Court case was decided on

1 January 14th , 2002, the State v. Sims, S-I-M-S, 558 SE2d
2 518. In that case, this -- very similar facts, almost
3 identical facts. Defense counsel attempted to
4 cross-examine a witness about an indictment or a possible
5 deal that had been made with the State in that case.

6 And let me give you the facts that I believe the
7 evidence will bring out in this case.

8 THE COURT: Okay.

9 MR. PHILLIPS: Ms. Center was under indictment
10 beginning September of 2001, and continuing through July
11 26th of 2002, when she signed her statement for the State.
12 Ten days later, that case was dropped by this Solicitor's
13 Office. And I believe that -- and the Court -- the
14 Supreme Court and Court of Appeals both said that not only
15 was it proper, but that in those cases, the trial judge
16 erred in not allowing defense counsel to -- they erred by
17 limiting defense counsel's cross-examination about that
18 matter.

19 So not only should it -- should I be allowed to
20 cross-examine her about that, but also go deeply into it
21 and describe exactly what it was. Because under Rule
22 608(c), it's allowed to show a motive or bias, or some
23 reason that this witness has to testify against the
24 accused.

25 THE COURT: Solicitor.

1 MS. SEAY: Your Honor, I think that is completely
2 ridiculous. She was not convicted of this offense. It
3 says "nolle prossed" on her NCIC. I think it is totally
4 improper for him to go into that. And --

5 THE COURT: Well, who was it nolle prossed by?

6 MS. SEAY: Well, and, again, there's some implication
7 that I had something to do with that. I have no idea. I
8 wasn't even aware of this case. This case against
9 Ms. Holder and Mr. Martucci was assigned to me while I was
10 on maternity leave. I had no knowledge of any of it.

11 THE COURT: Well, I understand your position,
12 Solicitor. But the case law he cited, why --

13 MS. SEAY: I would like an opportunity to read what
14 he's relying on.

15 THE COURT: Okay.

16 (Pause.)

17 MS. SEAY: I've only gotten to this one, the State v.
18 Sims, which is a 2002 Supreme Court of South Carolina
19 case. And I think it's completely distinguishable from
20 the issue at hand, because this person had pending
21 charges. Her charges are not pending.

22 MR. PHILLIPS: They were pending at the time that she
23 was --

24 THE COURT: Well, what I understand Mr. Phillips is
25 saying is that she was indicted, she gave a statement to

1 the police -- to the Sheriff's Office concerning this
2 case. And then her case was nolle prossed.

3 Now, could the jury not infer from that that she cut
4 a deal for her testimony under 406(c)?

5 MS. SEAY: May I see the indictment, please?

6 MR. PHILLIPS: I've got the printout from the --

7 MS. SEAY: I'd like to see the indictment you're
8 referring to.

9 MR. PHILLIPS: I can give you the indictment number.

10 THE COURT: All right. I'll tell you what. We'll
11 recess for lunch now. And I'll give you a chance over
12 lunch to do some research.

13 Okay. You can step down right now.

14 THE WITNESS: I can?

15 Thank you.

16 THE COURT: Don't discuss your testimony with the
17 Solicitor's Office or with anyone else. Okay?

18 THE WITNESS: Thank you.

19 THE COURT: All right. Bring the jury in, please.

20 MR. SUMNER: Your Honor, may we approach just one
21 second about scheduling, purely scheduling?

22 THE COURT: Yes.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: Mr. Phillips, do you have an extra copy
25 of that case?

1 MR. PHILLIPS: No, Your Honor. I'll be glad to make
2 a copy. That's, actually, the only copy I have of that
3 case.

4 THE COURT: Caroline, can you copy it on your
5 machine?

6 THE CLERK: Yes.

7 (WHEREUPON, the jury came into open court at
8 approximately 12:20 p.m.)

9 THE COURT: Ladies and gentlemen, we are going to
10 recess for lunch at this time. We'll pick back up after
11 lunch at 2:00.

12 During the lunch recess, do not talk about this case
13 among yourselves or with anyone else. If anybody contacts
14 you and tries to talk to you about this case, get their
15 names and addresses.

16 Please keep your badges on during the recess.

17 Please be back promptly at 2:00 p.m.

18 Thank you.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 12:21 p.m.)

21 THE COURT: Let Caroline run me a copy of that, please.

22 MR. PHILLIPS: It's, actually, two cases, Your Honor.
23 I'll give you both. The Court of Appeals is more recent
24 than the Supreme Court case.

25 THE COURT: Okay.

1 MS. SEAY: Your Honor, did you say it was Rule 403
2 that you were directing my attention to?

3 THE COURT: No. It's Rule 608(c).

4 MS. SEAY: 608.

5 THE COURT: All right. Please be back at 2:00.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: All right. Bring our jury in, please.

8 MR. BYRHOLDT: Your Honor, we would have one
9 issue that --

10 THE COURT: Yes, we do.

11 Has the other issue been resolved, the one you were
12 researching? Is that the one you --

13 MR. BYRHOLDT: No. It's another one.

14 THE COURT: You've got another one?

15 MR. BYRHOLDT: It was brought to my attention that
16 one of the jurors was observed reading a newspaper at
17 lunch. I would just ask the Court to inquire whether they
18 were reading about this case.

19 THE COURT: Well, okay.

20 Now, what's your position on the admission of
21 cross-examination of this witness?

22 MS. SEAY: Your Honor, my position, based on the
23 cases that Defense has provided us, is that both of these
24 are distinguishable in that the witness at issue is facing
25 pending charges.

1 And the Jillian -- or Gillian case says that there
2 was an agreement that the Solicitor had agreed to advise
3 the plea judge of that witnesses cooperation, and that the
4 trial judge still retains wide latitude to impose
5 reasonable limits on this kind of cross-exam based on
6 concerns about confusion of issues, prejudice, and things
7 that are marginally relevant. And they, specifically,
8 noted that because of the number of charges pending
9 against that witness and the severity of sentences that he
10 was facing that it was probative as to the issue of bias.
11 And I don't think that is the case here because this
12 charge is not pending. It was dismissed.

13 And I have Assistant Solicitor Howard Steinberg here
14 who handled the case. And he reviewed his paperwork and
15 states that the charge was dismissed due to lack of
16 cooperation on the part of a victim. And that he had no
17 knowledge of this case to create any situation there. So
18 I'll be glad for you to hear from him, if you need to.

19 THE COURT: Mr. Phillips.

20 MR. PHILLIPS: Your Honor, we still feel it's
21 admissible under the cases that we submitted to the Court
22 this morning, or just before lunch.

23 A witness -- the Defense is entitled to cross-examine
24 the witness against her fully under the confrontation
25 clause. And we would ask that we be allowed to do that.

1 The issues raised by the Prosecutor go to the weight to be
2 given to the evidence, and not to its admissibility.

3 THE COURT: Solicitor, if there were pending charges
4 against the witness, if she then gives a statement
5 concerning this case, and after that, her case is
6 dismissed, now, why is that not --

7 MS. SEAY: I understand your point. But, at this
8 point in time, I think that knowing what we know about it
9 that it would be unfair for them to be able to intimate
10 what they're trying to intimate knowing what they know
11 about the situation. That's where I stand on it.

12 THE COURT: Well, perhaps you could call Howard to
13 the stand and have him explain what he did.

14 MR. BYRHOLDT: I think that would be --

15 THE COURT: And then it becomes an I issue for the
16 jury to determine.

17 I think he's entitled to cross-examine her. It's
18 already been testified to that she was charged with
19 lynching. And I don't know that it was testified to that
20 it was nolle prossed. But that would be the extent. But
21 you could ask, were there any promises made or anything
22 like that? But as far as going beyond that, I wouldn't
23 allow that.

24 MR. PHILLIPS: Your Honor, under that one case, I
25 believe that even the Solicitor quoted the language that

1 they weren't allowed to cross-examine the witness about
2 the severity -- the possible severity of the sentences.

3 THE COURT: We're not going to go there, no.

4 All right. Now, the other issue was concerning the
5 newspaper. I will --

6 MR. BYRHOLDT: Thank you, Judge.

7 THE COURT: All right. Bring the jury in.

8 (WHEREUPON, the jury came into open court at
9 approximately 2:07 p.m.)

10 THE COURT: Ladies and gentlemen, it's been brought
11 to my attention that during the lunch recess, one or more
12 jurors was reading the newspaper.

13 And I need to inquire if any member of the panel
14 reading the newspaper read anything about this case that
15 was reported in the newspaper, would anyone respond to
16 that? If you read the newspaper, did you read anything
17 about this case?

18 (There was no response.)

19 THE COURT: Okay. I need to instruct you -- and I
20 overlooked doing that yesterday. During the course of
21 this trial, you should not read anything in the newspaper
22 or watch anything on the television should there be
23 anything. In other words, I would instruct you to ignore
24 and disregard all media coverage, if any, of this trial.

25 All right. Come back around, please, Ms. Center.

1 You're still under oath.

2 All right. Mr. Phillips, you may proceed.

3 MR. PHILLIPS: Thank you, Your Honor.

4 CONTINUED CROSS-EXAMINATION

5 BY MR. PHILLIPS:

6 Q Ms. Center, when we -- before we broke, we were
7 discussing that in July of 2002 on the 17th when this --
8 when ~~Victim~~ died, you were under an indictment at that time
9 for lynching second degree; is that correct?

10 A Yes.

11 Q Okay. And on July 26th of 2002, you gave a statement
12 helping the State's case, in this case, did you not?

13 A Yes.

14 Q Ten days after that statement was given on behalf of
15 the State, your case -- the case against you for lynching
16 second degree was dropped, was it not?

17 A It was.

18 MR. PHILLIPS: I have no further questions at this
19 time.

20 THE COURT: All right. Mr. Quinn or Mr. Sumner.

21 MR. QUINN: No questions.

22 MR. SUMNER: No questions of the witness, Your Honor.

23 THE COURT: Thank you.

24 You can step down.

25 I'm sorry. Any redirect?

1 MS. SEAY: Thank you.

2 REDIRECT EXAMINATION

3 BY MS. SEAY:

4 Q Ms. Center, have you -- did you ever discuss any
5 promise for leniency or promise for dismissal of charge or
6 anything with anyone from the Solicitor's Office?

7 A No.

8 Q And when did you and I first meet?

9 A It was after that. I'm not sure of the date, but it
10 was after that. It was after the -- it was after that.

11 MS. SEAY: Thanks.

12 THE COURT: Thank you.

13 You can step down.

14 MS. SEAY: Your Honor, I would call Howard Steinberg.

15 THE CLERK: Put your left hand on the Bible, please,
16 and raise your right hand.

17 MR. HOWARD STEINBERG: I prefer to affirm.

18 WHEREUPON,

19 HOWARD STEINBERG,
20 after first having been duly affirmed, testified as
21 follows:

22 THE CLERK: State your name for the record, please.

23 THE WITNESS: Howard Steinberg.

24 THE CLERK: Thank you.

25 Be seated.

DIRECT EXAMINATION

BY MS. SEAY:

Q Mr. Steinberg, where are you employed?

A I'm an assistant solicitor here in Greenville.

Q And you and I work in the same office; is that right?

A Yes, ma'am.

Q Have you and I ever discussed the case of Robin Center prior to a few moments ago?

A I did not know anything about this case until lunch today. The only conversation you and I had was concerning a motion on a continuance. You didn't even mention the name of the people involved. And you asked me a legal question about a month and a half ago.

Q At the time that you were handling Ms. Center's case, did you know anything about the homicide by child abuse case against Brandi Holder and Mark Martucci?

A I hadn't even heard the names before.

Q Did you have any involvement in the investigation of the case?

A No, I did not.

Q Did you have any involvement in the taking of statements in the case?

A I did not.

Q Have you ever personally met with Robin Center?

A No. I don't believe I have.

1 Q Okay. And how did you handle the charge against her?

2 A I had a charge involving Ms. Center and another
3 individual charged with the crime of lynching. I reviewed
4 the case. I decided that I did not have a good enough
5 case against Ms. Center. The victim refused to cooperate.
6 I dismissed the charge against Ms. Center. I did proceed
7 with a lesser charge involving the co-defendant, but
8 there -- I offered no deal whatsoever to Ms. Center.

9 Q And what was the -- her co-defendant's outcome?

10 A Her co-defendant pled guilty to a magistrate-level
11 charge of simple assault and battery.

12 MS. SEAY: Thank you.

13 THE COURT: All right. Mr. Phillips.

14 MR. BYRHOLDT: I will cross-examine, Your Honor.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. BYRHOLDT:

18 Q Who were the officers involved in the lynching case?
19 Do you have your file with you?

20 A I do have some notes. I think it was Deputy Glenn,
21 but I'll tell you. I don't have the entire file. At the
22 time, we destroyed most of our files. We do keep some
23 documents.

24 Deputy Glenn, who is no longer with the Sheriff's
25 Office, I don't believe was involved in that case.

1 Q Is there anything in your file or -- the original
2 file is downstairs in the Clerk's Office; right, the
3 indictments and stuff like that?

4 A Well, actually, we looked for that. It might not be.
5 It might be in archives. Again, I did not know to pull
6 this document until I heard about this case at lunch time
7 today.

8 Q Would it surprise you that the file is down there?

9 A It would not surprise me. It might be here or it
10 might be in archives.

11 Q And there's no notation at all, other than "Case
12 Ended" on a stamp with your initials on the indictment.

13 A No, sir. That's not correct. I have reviewed this
14 document involving Robin Center dated July 29th, 2002,
15 which says, "Victim refused to cooperate." That is my
16 handwriting. And it was done on July 29th, 2002.

17 Q And you believe that's in the Court's file, too?

18 A It is on our scanned imaging. We do not keep the
19 physical copy in our office. We keep a scanned copy.

20 Q So you put no notes on the indictment itself when you
21 end the case?

22 A I never write on an indictment under any
23 circumstances.

24 MR. BYRHOLDT: Thank you, Howard.

25 THE COURT: Thank you, sir.

1 You can step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: All right. Solicitor.

4 MS. SEAY: Your Honor, the State calls Angie Eccles.

5 THE CLERK: Put your left hand on the Bible, please,
6 and raise your right hand.

7 WHEREUPON,

8 ANGELA MARIE ECCLES,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: State your name for the record, please.

11 THE WITNESS: Angela Marie Eccles.

12 THE CLERK: Thank you.

13 Be seated.

14 DIRECT EXAMINATION

15 BY MS. SEAY:

16 Q Ms. Eccles, would you state your name one more time
17 so I can make sure we hear you back here?

18 A Angela Marie Eccles.

19 Q You might want to pull the microphone to you just a
20 tad.

21 A Is that better?

22 Q Ms. Eccles, do you reside in Greenville County?

23 A Yes, I do.

24 Q And how old are you?

25 A 43.

1 Q Where are you currently employed?

2 A Capelli's Hair Salon in Mauldin.

3 Q I'm having a little bit of trouble hearing you.

4 THE COURT: Yes. Pull in a little closer to the --

5 THE WITNESS: Capelli's Hair Salon in Mauldin.

6 BY MS. SEAY:

7 Q And how long have you been employed there?

8 A About seven years.

9 Q Okay. And what do you do at Capelli's Salon?

10 A I'm a hair stylist.

11 Q Do you generally work every day?

12 A I usually work Tuesday, Wednesday, Friday, Saturday,
13 but it can always change.

14 Q Does your salon have regular days that they're
15 closed?

16 A We're usually closed on Monday. But, there again,
17 sometimes we work on Monday.

18 Q What about Sunday?

19 A We're always closed on Sunday.

20 Q Do you know Brandi Holder?

21 A I do from working with her.

22 Q How do you know her from working with her?

23 A She was a hair stylist. And she worked right behind
24 me.

25 Q When did she start work at Capelli's Salon?

1 A January of 2002.

2 Q Do you recall meeting Mark Martucci?

3 A Yes, I do.

4 Q Would you describe the circumstances of that?

5 A He worked next door. There was a carpet store, at
6 the time, right next to our hair salon. So I kind of met
7 him just from him being outside and, Hi, how are you kind
8 of thing. And then when Brandi came to work with us, I
9 believe, he was her first client, a walk-in client. And
10 she cut his hair.

11 Q Okay. And did you after that have knowledge of them
12 developing a relationship?

13 A Yes.

14 Q Were you aware of them -- or her moving in with him
15 at some point?

16 A Yes.

17 Q Did Ms. Holder bring her son, ~~Vic~~ to the shop very
18 much?

19 A I saw him at the shop a few times, maybe three.

20 Q Maybe three times?

21 A Uh-huh, maybe four, three or four times.

22 Q Was it customary for the stylists to have their
23 children in the shop ever?

24 A Yes. We sometimes just had to bring our kids due to
25 baby-sitter issues, or after school pick them up from

1 school and bring them back to work with us for a little
2 while. Because they're young kids.

3 Q And the owners did not frown upon that?

4 A No, never.

5 Q Okay. Do you remember an occasion that ^{Vic} came into
6 the shop?

7 A Yes.

8 Q Do you know about when that was?

9 A It was early July when he had come in for a hair cut.
10 Brandi had cut his hair.

11 Q Do you recall noticing anything about him that day?

12 A Yes. I noticed some bruises around the outer edge of
13 his face.

14 Q Can you better describe, if you will, where the
15 bruises were located?

16 A Yeah. After looking at him a little bit, we just
17 started -- or I started wondering if somebody hadn't
18 squeezed him. And he had bruises along the sides of his
19 face.

20 Q And was that your impression of what might have
21 happened?

22 A That was my impression. That's just what came to me,
23 yes.

24 Q Did you do anything when you noticed this?

25 A No. I mean, I talked to the other girls about it.

1 Q Did you ask Ms. Holder about it?

2 A I asked Brandi, and she told me and the other girls
3 that he had fallen at Mark's sister's house and the dog
4 had kind of pushed him into the pool. And he had fallen
5 into the pool. And that -- the thing that I thought was
6 odd is she added that she wouldn't have believed it
7 herself, except it got caught on video because Mark's
8 sister was videotaping at the time. And she added that
9 in.

10 Q Okay. How did ^{victim} act that day when he was at the
11 shop?

12 A He screamed his whole hair cut. He just wasn't real
13 happy. He was crying on the couch and he --

14 Q Let me interrupt you and ask you. Was that the way
15 that he was on the other occasions when you had seen him?

16 A No

17 Q Okay. Was his behavior out of the ordinary?

18 A Yeah. I mean, he was much more intense. And I had
19 never seen him cry and act out that much before in the
20 other times that he had been there.

21 Q When he was upset that day, did Ms. Holder comfort
22 him?

23 A No. She said, You better behave or I'm going to take
24 you home to Mark.

25 Q And what was ^{victim}'s reaction?

2 A He threw himself on the floor and kicked and
screamed, cried.

3 Q Were you concerned about that?

4 A Yeah. I just thought it was odd.

5 Q Did you and some of the other employees discuss it?

6 A Yeah.

7 Q During the time that you worked with Ms. Holder, can
8 you describe just in general what sort of personality she
9 had?

10 A When she first started working there, she talked more
11 about ~~VICTIM~~ and -- it's hard to explain. She was a little
12 more soft-spoken. She dressed a little more
13 conservatively. And over a period of weeks, it started to
14 change, especially now looking back at the change of her
15 dress. She started dressing a little different.

16 MR. BYRHOLDT: Your Honor, I -- reasonable objection
17 under Rule 404, Your Honor, placing her character in
18 evidence.

19 THE COURT: No. Overruled. I'll allow this.

20 BY MS. SEAY:

21 Q You can go ahead.

22 A And let's see -- she dressed a little differently.
23 And she didn't talk about ~~VICTIM~~ as much. She started talking
24 about Mark, Mark, Mark.

25 Q Did she discuss Mark a lot?

1 A Yeah, all the time. Mark this and Mark that, whereas
2 I don't know if it's just because we're all moms, but we
3 all talk about our kids, kids, kids.

4 Q Did you know anything about Ms. Holder's relationship
5 with her parents?

6 A Just the little bit that she told us, that she wasn't
7 speaking to them. They had tried to call. And I don't
8 remember if it was her or Mark that had told her she
9 didn't need to talk to them or if she herself just did not
10 want to have anything to do with them anymore.

11 Q You were aware of a strained relationship there?

12 A Yeah, definitely.

13 Q Do you recall the week that ~~VICTIM~~ died, the day being
14 Wednesday, July 17th? Do you recall that week?

15 A Yes. That Wednesday morning, yeah.

16 Q Were you working that week?

17 A I was working that day.

18 Q Let me take you back to the Monday of that week. Was
19 the salon open or closed?

20 A The salon was closed on Monday.

21 Q Did Brandi work on Tuesday?

22 A No. I believe she called in sick on Tuesday.

23 Q That would have been July 16th?

24 A Yes.

25 Q Did you see her on Wednesday?

1 A Yes. I saw her Wednesday morning when she came in.

2 Q Did she say anything to you?

3 A She just walked right back to the back. Because her
4 and I worked back in the back. And I was doing somebody's
5 hair. And she said that ~~victim~~^{victim} had thrown up all night, it
6 must be the chicken fingers. And I just responded with,
7 Oh, poor baby, thinking maybe he had a stomach virus or
8 some such thing.

9 Q And she indicated that it was ~~victim~~^{victim} that was sick?

10 A Yes.

11 Q Do you know if she had any appointments scheduled
12 that day?

13 A I do not believe she did. I'm not 100 percent, but I
14 believe not.

15 MS. SEAY: Thank you, Ms. Eccles.

16 Please answer any questions they may have for you.

17 MR. BYRHOLDT: May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. BYRHOLDT:

20 Q Did they keep an appointment book at Capelli's?

21 A Yes.

22 Q So it would have been easy to find out if she had
23 any; right?

24 A Yes.

25 Q Have you ever given a statement to any law

1 enforcement officer involved in this case?

2 A I talked with them.

3 Q Who did you talk to?

4 A Mr. Kelly.

5 Q How many times?

6 A Once right after this happened.

7 Q At the salon?

8 A No, not at the salon. I went downtown. I was
9 downtown at his office.

10 Q Did you give a written statement or just an oral
11 statement?

12 A I gave an oral statement. He wrote things down.

13 Q He wrote down what you told him?

14 A Yes.

15 Q Okay. When was the next time you talked to Officer
16 Kelly?

17 A In November last year when we were going to start the
18 trial in November. I talked to him right before all that
19 was going to start.

20 Q Did you give another statement or go over his notes
21 with him or what did you --

22 A I went over my notes.

23 Q You have notes or his notes?

24 A His. I didn't have any notes with me.

25 Q Okay. So he had written notes that he used just to

1 go over -- because it's been three and a half years;
2 right?

3 A Yes.

4 Q Just to refresh your memory?

5 A Yes. You remember something like this.

6 Q Did you ever get a copy of those notes so you could
7 review them?

8 A No.

9 Q You said you saw some marks on the edge of ^{VICTIM}s face,
10 was it on both sides of his face?

11 A Both sides.

12 Q And it caused you concern?

13 A Yes.

14 Q Because you thought he might have been abused?

15 A Well, after thinking about it, maybe in hindsight
16 now.

17 Q Well, how about back then?

18 A I probably thought something. We wondered, I hope
19 nobody is hurting that little boy.

20 Q Did you call DSS?

21 A No.

22 Q Did you call the police?

23 A No.

24 Q Did you ask Brandi what the heck was going on with
25 VICTIM?

1 A Yes. She told us he fell in the pool and it was on
2 video.

3 Q When was that?

4 A Early July, the 3rd, possibly, 2nd, 3rd.

5 Q Maybe around the 4th of July holiday time?

6 A Yeah, before the 4th, though.

7 Q Before the 4th?

8 A Yeah.

9 Q It was sometime maybe the weekend prior to the 4th?

10 A Yes.

11 Q Who would have Brandi's appointment book? You were
12 just an employee there; right?

13 A I don't know who has it. I do not have it.

14 Q Do you know whether the law enforcement people ever
15 asked for that book?

16 A I believe they did.

17 MR. BYRHOLDT: That's all the questions I have.

18 Thank you, ma'am.

19 THE COURT: Any questions?

20 MR. QUINN: No questions, Your Honor.

21 Thank you.

22 THE COURT: Any redirect?

23 MS. SEAY: No, sir.

24 THE COURT: Thank you.

25 You can step down.

1 MS. SEAY: The State calls Paula Edmond.

2 THE CLERK: Put your left hand on the Bible, please,
3 and raise your right hand.

4 WHEREUPON,

5 PAULA EDMOND,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: State your name for the record, please.

8 THE WITNESS: Paula Edmond.

9 THE CLERK: Thank you.

10 Be seated.

11 DIRECT EXAMINATION

12 BY MS. SEAY:

13 Q Ms. Edmond, state your name again to make sure we can
14 hear you back here.

15 A Paula Edmond.

16 Q You need to pull the microphone in to you a little
17 bit.

18 Ms. Edmond, do you live in Greenville County?

19 A Yes, I do.

20 Q I can't hear you.

21 A Yes, I do.

22 Q Can you scoot up just a little bit?

23 A Is that better?

24 Q Yes.

25 A Okay.

1 Q How long have you lived in Greenville?

2 A All my life.

3 Q How old are you?

4 A I'm 41.

5 Q Where are you currently employed?

6 A Capelli's.

7 Q And I believe you have ownership in the business; is
8 that right?

9 A Co-ownership, yes, ma'am.

10 Q Who do you own the business with?

11 A Dine Turner.

12 Q How long have you all had the business?

13 A Eight years.

14 Q Did you have occasion to meet Brandi Holder?

15 A Uh-huh, yes, ma'am.

16 Q Describe how you came to meet her.

17 A She came in for a job interview, and I met her then.

18 Q Did she eventually start working with you?

19 A Uh-huh.

20 Q Do you know when that was?

21 A She started working February of '02.

22 Q Okay. And did she have regular work hours, or what
23 was her schedule?

24 A She pretty much worked from like 9:00 to 5:00. But
25 if someone came and wanted a later appointment, she would

1 stay.

2 Q Okay. Did you ever have occasion to meet Mark
3 Martucci?

4 A Yes, ma'am. He worked next door to us.

5 Q Did you meet him before you ever met Brandi?

6 A Just speaking in the parking lot like in passing.

7 Q Were you aware of the two of them having a
8 relationship at some point?

9 A Yes, ma'am.

10 Q Were you aware of Ms. Holder's relationship with her
11 parents? Did she talk to you about that?

12 A Just of her speaking at the salon.

13 Q Did she tell you anything about ~~VICTIM~~ and her parents?

14 A She -- at first, she talked about how close her
15 parents were to him. And then as the relationship went
16 on, she would come in and make comments about how she
17 wouldn't let her parents see ~~VICTIM~~ anymore.

18 Q Did you ever see ~~VICTIM~~ outside of the salon setting?

19 A Yes, ma'am. He came to a birthday party for my
20 little boy.

21 Q When was that?

22 A That was the first weekend in March in '02.

23 Q Okay. And do you know if Ms. Holder had moved in
24 with Mr. Martucci at that time?

25 A No, ma'am, not at that time.

1 Q Did you notice whether ^{VICTIM} was a healthy child when
2 you saw him in early March?

3 A He was very healthy and didn't have any marks on him
4 at that time.

5 Q Were you present in the salon when ^{VICTIM} was brought in
6 for a hair cut that Ms. Eccles was just talking about?

7 A Yes, ma'am.

8 Q What did you observe about ^{VICTIM}?

9 A When I had finished what I was doing and was up front
10 when they were getting ready to leave, she and ^{VICTIM}, when
11 she come up, we were talking and we noticed the marks on
12 ^{VICTIM}'s face. And I had asked Brandi about it. And she said
13 that he had fell in the pool at Mark's sister's. And I
14 said, Well, that's odd. I've got a pool and my kids have
15 fell in and they never had marks on them.

16 Q What did those marks look like to you?

17 A If you put your hand on somebody's face, it had
18 three -- he had three little marks on one side and one on
19 the other.

20 Q And did you question Ms. Holder about that
21 independent of Ms. Eccles?

22 A Yes, ma'am. I didn't know Angie had already asked.

23 Q Okay. What was ^{VICTIM}'s personality like that day?

24 A Well, I only seen him when they were getting ready to
25 leave. And he didn't want to leave the salon. When she

1 told him they had to leave, he pitched a fit and didn't
2 want to go. And that's when she told him that she was
3 going to take him home to Mark if he didn't settle down.

4 MS. SEAY: Thank you.

5 Answer any questions that the other attorneys may have.

6 THE COURT: Mr. Byrholdt or Mr. Phillips.

7 MR. BYRHOLDT: No questions.

8 THE COURT: Mr. Quinn.

9 CROSS-EXAMINATION

10 BY MR. QUINN:

11 Q Ms. Edmond, have you had the opportunity to review
12 your statement that you gave to the police back in 2002
13 before you testified?

14 A No, sir. I haven't looked over it.

15 Q Would it surprise you that in your statement you wrote
16 that the day ~~victim~~ got his hair cut he seemed like a normal
17 child and appeared to be well?

18 A Uh-huh.

19 Q Okay. But, now, you're describing a child that was
20 falling on the floor and throwing a fit?

21 A When he got ready to leave.

22 Q So before that is when he seemed like a normal child
23 and was well?

24 A Yes, sir.

25 MR. QUINN: I don't have any other questions.

1 Thank you.

2 THE COURT: Step down.

3 MS. SEAY: Your Honor, I need just one moment,
4 please, if I may.

5 THE COURT: All right.

6 (Pause.)

7 MS. SEAY: Your Honor, the State calls Brandy Mason.

8 THE CLERK: Put your left hand on the Bible, please,
9 and raise your right hand.

10 WHEREUPON,

11 BRANDY MASON,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: State your name for the record, please.

14 THE WITNESS: Brandy Mason.

15 THE CLERK: Thank you.

16 Be seated.

17 DIRECT EXAMINATION

18 BY MS. SEAY:

19 Q Ms. Mason, would you state your name so I can make
20 sure that we hear you?

21 A Brandy Mason.

22 Q Okay. Thank you.

23 How old are you, Ms. Mason?

24 A 24.

25 Q Where do you live?

1 A I live in Inman.

2 Q Are you from the area?

3 A Yes.

4 Q Ms. Mason, did you ever have occasion to meet Mark
5 Martucci?

6 A Yes.

7 Q How did you meet him?

8 A I met him when we all -- when we went on vacation to
9 Lake Keowee on July the 4th.

10 Q Of what year was that?

11 A Of 2002, I believe.

12 Q Did you have --

13 A It's been a while.

14 Q I'm sorry.

15 A It's been a while.

16 Q Did you have occasion to meet Brandi Holder?

17 A Yes.

18 Q When was that?

19 A At the same time.

20 Q Okay. Who all was on this camping trip? You said,
21 We all went on a camping trip.

22 A It was me, my fiance, Jason, Jamie, Crystal, Dustin
23 and then Robert, and ~~WAT~~^{WAT} Mark, and Brandi.

24 Q And that was really the first time you had spent time
25 with them?

1 A Yes.

2 Q Okay. What was ~~Victim~~ like?

3 A He was a sweet kid. I loved him.

4 Q Did you notice anything unusual about him?

5 A I noticed bruises on his face. I noticed he had a
6 speech problem. Other than that, he didn't like women at
7 all.

8 Q How do you know that?

9 A Because he didn't want to be around me or Crystal at
10 all. He wanted to be around men.

11 Q Did you say anything to him or his mother when you
12 saw bruises on his face?

13 A I asked Brandi what was wrong with his face, why he
14 had the bruises. And she said that he fell, but she
15 didn't say where he fell at.

16 Q How was Brandi over the course of the camping trip?

17 A Her and Mark argued all the time. She stayed to
18 herself. She really didn't speak to me and Crystal much
19 at all. So we don't -- we never did really talk to her.

20 Q Who cared for ~~Victim~~?

21 A Mainly Brandi. Because she wouldn't let nobody else
22 mess with him.

23 Q Did you -- you mentioned just a minute ago that ~~VICTIM~~
24 had a speech problem?

25 A Uh-huh.

1 Q Can you describe that a little bit more?

2 A Every time he talked to you, he would have like an
3 "S" sound to every one of his words, like he really
4 couldn't speak that well for a two-year-old. He acted
5 like he couldn't speak. He was like a year-old speaking.

6 Q Did he appear to have anything wrong with his mouth?

7 A It -- when he would talk to you, it looked like his
8 tongue was swollen. But other than that, he seemed fine.

9 Q Did you mention that to Ms. Holder?

10 A I asked her about it and she said that he bit his
11 tongue and that he had always done that.

12 Q Did you have occasion to go over to Mark and Brandi's
13 house near the time of ~~victim's~~ death?

14 A Yes.

15 Q When was that?

16 A It was almost -- I think it was like a month after we
17 come back from vacation. It might have been the same
18 time. But I went over there talking to Mark about a
19 trailer that he had beside his house for rent. And me and
20 my fiance was going to get it and rent it from them. And
21 I had to talk to Brandi about the paperwork and sign the
22 lease and stuff with her.

23 Q Did you go inside their house?

24 A Yes.

25 Q Did you have occasion to see Ms. Holder interact with

1 VICTIM?

2 A Yes.

3 Q Describe that.

4 A Well, we was sitting there doing our paperwork and I
5 was getting ready to sign my name to the lease and
6 everything. And we was talking about me baby-sitting VICTIM.
7 Because, at that time, I wasn't working. So I was going
8 to baby-sit VICTIM for her while she worked and when Mark
9 could work. And VICTIM was getting a little fussy. And
10 Brandi told VICTIM to hush crying. And VICTIM never would.

11 So she jerked him up by the arm and took him into his
12 bedroom and threw him in the bedroom and shut the door and
13 locked it to where he couldn't get back out.

14 Q Can you describe -- when you say she jerked him up by
15 the arm, can you describe what you mean by that?

16 A She picked him up by the wrist to where he couldn't
17 reach the floor and carried him through the hallway and
18 put him in his room.

19 Q Was she supporting his body in any other way?

20 A No, just by the arm.

21 Q What happened after she locked him in his room?

22 A He continued crying and wanted out. And I had got to
23 the point to where I couldn't stand it no more. So I
24 signed my paperwork and I just left. I went outside. I
25 couldn't stay in there no longer to listen to it. Because

1 she wouldn't let him out.

2 Q Did that upset you?

3 A Yes. I left.

4 Q During the time that you were there, did you witness
5 any kind of an accident with a four-wheeler?

6 A No.

7 Q Did you see a four-wheeler?

8 A No.

9 Q Do you recall having a conversation with Brandi about
10 a car wreck that she might have had?

11 A Yes.

12 Q Can you describe that?

13 A We was all standing at Mark's house and she had just
14 pulled up. Me and my fiance was there. And she had
15 pulled up.

16 Q Let me interrupt you just a second. Did she have her
17 own car?

18 A Yes. She had a little blue car.

19 Q Okay. Go ahead.

20 A I don't know what kind of model it was.

21 She had pulled up. She had said that she almost hit
22 a car on a bridge and she had to slam on brakes. And she
23 said she had hurt her leg. It was her left leg, I
24 believe. And ^{VICTIM} had a bruise on his shoulder from the
25 seatbelt. And she said that she couldn't feel nothing in

1 her leg at all. So to prove to Mark that she couldn't
2 feel nothing, she took a set of keys and stabbed herself
3 in the leg with it and left bruises on her leg from the keys.

4 Q And she said she did that to prove it to Mark?

5 A Yes. That she didn't have no feeling in her leg.

6 Q Now, this bruise that ^{VICTIM} had, did you see it?

7 A Yes. She showed it to me.

8 Q Where was it?

9 A It was on his shoulder from the seatbelt.

10 Q She told you it was from the seatbelt?

11 A Yes.

12 MS. SEAY: Thank you, Ms. Mason.

13 Please answer any questions they may have.

14 THE COURT: Mr. Byrholdt.

15 MR. BYRHOLDT: May it please the Court?

16 CROSS-EXAMINATION

17 BY MR. BYRHOLDT:

18 Q You gave a statement, in this case, didn't you?

19 A Yes.

20 Q Your testimony today is a lot more than in your
21 statement, isn't it, about seeing bruises on ^{VICTIM}'s
22 shoulder? That's nowhere in your statement, is it? Look
23 at the last paragraph, ma'am.

24 A I can't read very well, so.

25 Q I'm sorry. Would you like me to read it to you?

1 A You can.

2 Q It says, "One day, I can't remember when, Brandi was
3 talking to me in the driveway. She said that she and
4 VICTIM had almost been in a wreck and she had lost feeling
5 in her leg. She also said that VICTIM got injured from the
6 seatbelt."

7 A Uh-huh.

8 Q There's nothing in there about you seeing any bruises
9 or anything else on his shoulder?

10 A I must have not mentioned it to the police then.

11 Q Oh, and you love VICTIM; right?

12 A Yes. VICTIM was a sweet boy.

13 Q How many times had you met VICTIM?

14 A I met him about four times at that point.

15 Q And you loved him?

16 A Uh-huh, everybody would. Anybody would have loved
17 him if they would have met him.

18 Q And you're sure that Brandi jerked him up?

19 A Yes. I was in there.

20 Q That's nowhere in your statement either, ma'am.

21 A The police didn't ask me. Me and -- the police is
22 what wrote down what I said.

23 Q They didn't ask you what happened and whether you saw
24 any incidents of abuse?

25 A No. The only thing they asked me was about the

1 bruises on his face. And I told them about it.

2 Q Would you be shocked if the door to ^{VICTIM}'s bedroom --
3 because that's where you said that she -- Brandi put him;
4 right --

5 A Yes.

6 Q -- didn't have a doorknob, no lock?

7 A Well, it did that day because I seen it. Whether she
8 took them off after I left or whatever, that was her. I
9 don't know. But it was there when I was there with him.

10 Q Did anybody ever read this statement to you before
11 today when I read that little part to you?

12 A No. I just gave the statement to the police and the
13 police didn't read it back.

14 Q And you signed it?

15 A Yes. Because I cannot read very well at all.

16 Q And they didn't read it to you, did they?

17 A No.

18 MR. BYRHOLDT: No further questions.

19 THE COURT: All right. Mr. Sumner.

20 MR. SUMNER: Briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. SUMNER:

23 Q Ms. Mason, do you know how the doorknob came to --
24 first of all, did you see that the doorknob had, in fact,
25 been removed from the bedroom door?

1 A No.

2 Q Okay. So that's -- you don't have any knowledge of
3 that?

4 A I don't have no knowledge of it. When I was there,
5 there was a doorknob and a lock on the door on the
6 outside.

7 Q You told the jury about what you observed that day,
8 the incident between Brandi Holder and VICTIM?

9 A Yes.

10 Q Isn't it correct that several hours later you saw
11 Mark take VICTIM out of the room; is that correct?

12 A No. I was not there for him to take VICTIM out. I never
13 went back into the house for VICTIM to come out of the room.

14 Q You did not?

15 A No.

16 Q Did you have any other interaction with Mark and
17 that day, or Mark and VICTIM that day?

18 A That night, they come over to the trailer when I was
19 over next door cleaning, me, Jason, and Robert was. And
20 that -- him and VICTIM come over then and we spoke to VICTIM.

21 Q And was VICTIM in a normal state of mind or --

22 A Yes. He was happy. He was smiling.

23 Q He was?

24 A Uh-huh.

25 Q And he was just with Mark at that point; is that

1 right?

2 A Yes.

3 MR. SUMNER: One second, please, Your Honor.

4 (Pause.)

5 MR. SUMNER: No further questions.

6 Thank you, Ms. Mason.

7 THE COURT: Anything else, Solicitor? Any redirect?

8 MS. SEAY: No, sir.

9 THE COURT: Thank you.

10 You can step down.

11 MS. SEAY: Your Honor, I call Trevor Venesky.

12 THE CLERK: Put your left hand on the Bible, please,
13 sir, and raise your right hand.

14 WHEREUPON,

15 TREVOR MICHAEL VENESKY,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: State your name for the record, please.

18 THE WITNESS: Trevor Venesky.

19 THE CLERK: Thank you.

20 Be seated.

21 DIRECT EXAMINATION

22 BY MS. SEAY:

23 Q Trevor, would you say your full name one more time so
24 we can see if we can hear you back here?

25 A Trevor Michael Venesky.

- 1 Q Okay. How old are you, Mr. Venesky?
- 2 A 15 -- or 15 in three days.
- 3 Q 15 in three days?
- 4 A Uh-huh.
- 5 Q Where do you go to school?
- 6 A D.R. Hill.
- 7 Q What grade are you in?
- 8 A Eighth.
- 9 Q Okay. Who are your parents?
- 10 A Ron Venesky and Jane Venesky.
- 11 Q I believe your mom has testified earlier today?
- 12 A Yes, ma'am.
- 13 Q Did you used to live beside Mark Martucci?
- 14 A Yes, ma'am.
- 15 Q How old were you then?
- 16 A I was about 11 or 12. I can't remember.
- 17 Q Did you have occasion to get to know him?
- 18 A Yes, ma'am.
- 19 Q Did you ever meet Brandi Holder and her son, VICTIM?
- 20 A Yes, ma'am.
- 21 Q Did you get to know them?
- 22 A Yes, ma'am.
- 23 Q Describe your relationship with VICTIM.
- 24 A See, my brother had died when -- it was around that
- 25 time. So, you know, I've always wanted another brother.

1 And then when he moved in, you know, I saw him outside
2 playing one day. And that's when I kind of met him. And
3 I got to know him really well. And it was just like I had
4 another brother there with me.

5 Q Did he stick around you a lot?

6 A Yes, ma'am.

7 Q And you took time to play with him?

8 A Yes, ma'am.

9 Q What kind of personality did he have?

10 A He was always happy like when he was around me. He
11 was like -- he was just always talking about -- because he
12 always loved this one truck that I had. And it was remote
13 control. And he always loved playing with it. And we
14 would always play with that. And then he'd be so happy
15 that he'd get tickled at it when it would go down the hill
16 or something. And we would always play that.

17 Q Okay. Did ^{VICTIM} ever come over to your house to play?

18 A Just one time he came over, which was when Brandi
19 wanted to see the videotape when we -- me and her was
20 playing pool over at Mark's.

21 Q Okay. And did you go over to ^{VICTIM}'s house to play?

22 A I went over one time, which was when we was all
23 outside. And I don't know where Brandi was at the time.
24 But me and -- I think it was John, we walked inside the
25 house to play ATV Off-road Fury. And that's when I heard

1 like screaming. And it was ^{VICTIM}locked in the room.

2 Q Where was he locked?

3 A He was locked in -- see, Mark had two doors down.
4 And one room was the bathroom and one -- in the middle
5 area of the hallway was that room. And so I opened the
6 door. And he was there. And we took him -- he said he
7 had to use the bathroom, but she wouldn't let him.

8 Q He told you he had to use the bathroom?

9 A Yes, ma'am.

10 Q And did he tell you someone would not let him?

11 A Yes, ma'am.

12 Q Who was that?

13 A He didn't never give me a name. He just said, She
14 won't let me use the bathroom.

15 Q Was ^{VICTIM}--

16 A And so --

17 Q I'm sorry. Go ahead.

18 A And so we took him to the bathroom and let him use
19 it.

20 Q Was ^{VICTIM}learning how to use the potty?

21 A Mark said he was potty-trained. But we had to help
22 him a little bit with it.

23 Q Did you ever see Mark interact with ^{VICTIM}?

24 A Yeah. He was -- he -- Mark -- or ^{VICTIM}kind of clinged
25 on to Mark like he always liked being around Mark and

1 stuff. And this one day, I was over at Mark's house when
2 we went over to his momma's house with VICTIM in the car. And
3 Mark had his nephew. And I had my little cousin, Bridges,
4 there with me. And we rode to his mom's house. And we --
5 I met his mom and, I think, it was his sister. I don't
6 know.

7 Q Okay.

8 A I can't recall it.

9 Q Did Mark -- were you aware of Mark baby-sitting VICTIM
10 while his mother worked?

11 A Not at all. I was mainly at school that time.

12 Q No. I mean, were you aware that Mark kept VICTIM while
13 Brandi worked?

14 A Yes, ma'am.

15 Q You knew that?

16 A Yeah.

17 Q Okay. Did you ever witness Mark teaching VICTIM an ugly
18 word?

19 A Yes, ma'am.

20 Q Describe that.

21 A When we was sitting on the hill, he said -- he was
22 talking to me about how he taught VICTIM how to say the "P"
23 word.

24 Q Okay. You can spell it if that would be more --

25 A P-U-S-S-Y.

1 Q And Mark was teaching ^{VICTIM} to say that word?

2 A Yeah.

3 Q Did you ever notice any marks or bruises on ^{VICTIM}?

4 A The only thing I noticed was the ones on his back
5 that I let my momma know about. And then his mouth. I
6 was wondering what happened to his mouth.

7 Q So you talked to your mother about it?

8 A Yes, ma'am.

9 Q And you were present at Robin Center's house the day
10 that she baby-sat ^{VICTIM}?

11 A Yes, ma'am.

12 Q Did you see the injuries that Ms. Center was talking
13 about?

14 A Yes, ma'am. She had called me in there when she was
15 changing him. And she showed me his diaper. And then she
16 tried to get me to help him take a bath and calm him down,
17 because he was kicking and screaming in the water. And he
18 didn't want to take a bath. So I came in there with him
19 and he calmed down.

20 Q Did he go to Bible school with you that night?

21 A Yes, ma'am.

22 Q And did you take him home from Bible school?

23 A Yeah. Yes, ma'am.

24 Q Well, your mother drove you home; is that correct?

25 A Yes. Because she had gotten a new car that day. So

1 that's how I remember that.

2 Q Okay. And she drove you home. And then did you walk
3 VICTIM home to his house?

4 A Yes, ma'am.

5 Q Did you ever see him after that?

6 A No, ma'am.

7 MS. SEAY: Thank you.

8 Please answer any questions they might have for you.

9 THE COURT: Mr. Byrholdt.

10 MR. BYRHOLDT: May it please the Court?

11 CROSS-EXAMINATION

12 BY MR. BYRHOLDT:

13 Q Mr. ~~Venesky~~, going to that incident where you say VICTIM
14 was locked in a room. Was he locked in a bedroom?

15 A Yes, ma'am -- or yes, sir. I'm sorry about that.

16 Q And you're sure about that?

17 A Yes, sir, positive.

18 Q Describe his bedroom.

19 A His bedroom -- okay. Like I would -- we would always
20 go in there and play a game that Mark had set up in there.
21 And it was ATV Off-road Fury, which VICTIM loved to play that
22 game. And I went in there with him in the room when we
23 was playing it. That was -- I think that was the day that
24 me and John walked out and then we come back in and he was
25 in the room there crying and screaming.

1 Q Did you see Brandi?

2 A No, sir.

3 Q So you don't know who locked him in the room?

4 A No, I don't. But Mark was outside with us, though,
5 that's the only reason --

6 Q Who were the people that you saw there?

7 A I saw Mark. And I didn't know where Brandi was at
8 the time --

9 Q And John?

10 A And it was me, John, and Mark. And I don't remember
11 who else. We was all playing pool.

12 Q So I guess Mark could have locked him in the room?

13 A It's a possibility.

14 Q John Parker could have locked him in the room?

15 A He was with me the whole time.

16 Q He was one of the people there that you saw?

17 A Yeah.

18 Q Did ~~victim~~ have a little bed in his bedroom that kind of
19 sat a little low off the ground?

20 A Yes, sir.

21 Q And are you telling this jury that ~~victim~~ talked really
22 well?

23 A No.

24 Q I mean, you said that, you know, he told you he had
25 to go to the bathroom, and he's telling you all these

1 things.

2 A Well, he kind of said it like in a stuttering voice.
3 He'd always like -- it's like he talked like his tongue
4 was out of his mouth.

5 Q He always talked that way?

6 A Yes, sir. And he was -- and I had him in my arms.
7 And he kept calling, he kept saying "Mark," because he
8 couldn't pronounce Mark's name right.

9 Q Okay. Do you recall when this was?

10 A I don't recall. I know it was in the month of --

11 Q Well, and I'm not trying to trick you. If -- let's
12 assume that your -- you had said your mom took some
13 pictures -- or your mom and dad in the middle of June.
14 Was it around that time or was it later on?

15 A Well, I know -- I remember it was June 16th, because
16 the next day, we was going to Bible school, or it was June
17 17th.

18 Q And that was the same day he got locked in the thing?

19 A I think it was a week before that. I'm trying to
20 think. I can't -- it's all blurry.

21 Q But Brandi was not around when that happened? You
22 never saw Brandi?

23 A I seen her one time and that was when -- I didn't see
24 her no more. I seen her in the house.

25 Q When you went to vacation Bible school, did ~~VICTIM~~ stay

1 with you or did ^{VICTIM} go with Ms. Center?

2 A He stayed with her.

3 Q Earlier you said that you and ^{VICTIM} went together, he
4 stayed with Ms. Center; right?

5 A Yeah. We went there together. And that was in the
6 morning where we had -- we was all in a group. And we'd
7 eat breakfast. And when I handed him to Travis, which was
8 in a lower group than us, he stayed with Travis and Robin.

9 Q Did you ever see the preacher that day at vacation
10 Bible school?

11 A That was my first time going, too, so I don't
12 really --

13 Q What church was it, son?

14 A Ebenezer Baptist Church.

15 MR. BYRHOLDT: Okay. Thank you.

16 THE COURT: Any questions?

17 MR. SUMNER: No, Your Honor.

18 THE COURT: Any redirect?

19 MS. SEAY: No, sir.

20 THE COURT: Step down.

21 Thank you.

22 MS. SEAY: Your Honor, I would respectfully request a
23 brief recess.

24 THE COURT: All right. Take the jury out for a short
25 recess.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 2:58 p.m.)

3 THE COURT: All right. We'll take a short recess.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Are you ready to go?

6 MS. SEAY: Yes, sir.

7 THE COURT: Okay. Bring our jury in.

8 (WHEREUPON, the jury came into open court at
9 approximately 3:11 p.m.)

10 THE COURT: Solicitor, you may proceed.

11 MS. SEAY: Thank you, Your Honor.

12 The State calls Dianne Turner.

13 THE CLERK: Put your left hand on the Bible, please,
14 and raise your right hand.

15 WHEREUPON,

16 DIANNE TURNER,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: State your name for the record, please.

19 THE WITNESS: Dianne Turner.

20 THE CLERK: Thank you.

21 Be seated.

22 DIRECT EXAMINATION

23 BY MS. SEAY:

24 Q Ms. Turner, please state your name again.

25 A Dianne Turner.

1 Q Can you pull the microphone to you just a little bit?

2 I think that will be better.

3 Ms. Turner, do you live in Greenville?

4 A Yes, I do.

5 Q How long have you been here?

6 A 54 years.

7 Q Okay. Your whole life?

8 A Uh-huh.

9 Q Where are you employed?

10 A I am co-owner of Capelli's Salon in Mauldin.

11 Q Okay. You and Ms. Edmond, who's already testified?

12 A Right.

13 Q And how long have you had your salon?

14 A Eight years.

15 Q Did you hire Brandi Holder?

16 A Yes. We -- Paula and I did together.

17 Q When was that?

18 A In January of 2002.

19 Q How did that work out?

20 A Good.

21 Q Was she a good stylist and reliable employee?

22 A Yes, she was.

23 Q Were you aware that she started dating Mark Martucci?

24 A Yes, I was.

25 Q Did you know him?

1 A Just from working next door and saying hello in the
2 parking lot.

3 Q Did you have occasion to note anything about their
4 relationship in terms of when they were dating?

5 A Not really.

6 Q Were they affectionate with one another?

7 A I never really saw them together, other than when he
8 came in the salon to get his hair cut.

9 Q Did he ever send flowers or anything?

10 A Yes, on one occasion. I think it was maybe for
11 Valentine's.

12 Q Okay. Were you aware of any other gifts or anything
13 of that nature?

14 A I believe he gave her a necklace at one point, I'm
15 not sure for what, that was an emerald and maybe diamond
16 gold necklace. But I don't recall the date.

17 Q Once they started a relationship, did you see him in
18 the shop more often?

19 A No.

20 Q Were you aware of what kind of child care
21 arrangements Ms. Holder had when she was working with you?

22 A I knew that after a while, Mark was no longer working
23 at the carpet place. And he kept ^{victim} while Brandi came to
24 work.

25 Q And was it your understanding that they were living

1 together?

2 A Yes, ma'am.

3 Q And that ~~victim~~ was living with them?

4 A Yes.

5 Q Did Ms. Holder ever talk with you about her
6 relationship with her parents?

7 A No. On occasion, she had said, I think, that they
8 weren't allowing ~~victim~~ to see his parents for whatever
9 reason.

10 Q Do you mean his parents or her parents?

11 A Her parents. I'm sorry.

12 Q And when you say "they," who were you referring to?

13 A She and Mark.

14 Q And she indicated that was a decision that they had
15 made?

16 A Uh-huh.

17 Q Did you tell her anything? Did you tell her how you
18 felt about that?

19 A Yes, I did. Because I am a grandmother myself, I
20 have one grandson. And I said, you know, Nothing could
21 keep me away from my grandchild, nobody.

22 Q Did you encourage her to have contact?

23 A Yes. I told her that, you know, ~~victim~~ was very close to
24 her mom and dad. And I -- you know, I told her that I
25 just didn't think it was right to keep him away from them.

1 Q Do you know about how many times ~~VICTIM~~^{VICTIM} might have come
2 into the salon?

3 A Three or four maybe. I'm not real sure.

4 Q Do you remember an occasion in early July of 2002?
5 The month that he died, do you remember him coming into
6 the shop?

7 A Yes, I do.

8 Q What were the circumstances?

9 A He came in to get his hair cut. And then Brandi was
10 going to take him to meet ~~VICTIM~~^{VICTIM} [sic] to stay with him.

11 Q Did you become aware of some injuries that he had?

12 A Yes, ma'am.

13 Q Describe how that happened.

14 A There were some bruises on his face. And I really
15 hadn't paid them that much attention. I'm usually pretty
16 busy when I'm there. And she made it a point to tell me
17 that the bruises on his face he had gotten from falling in
18 the swimming pool. And she would not have believed it if
19 she had not seen the video that Mark's sister had taken.

20 Q At the time she told you that, were you aware that
21 some of your co-workers had also asked about bruises on
22 his face --

23 A Yes.

24 Q -- and had discussed that?

25 A Uh-huh.

1 Q What was ~~victim~~'s personality like that day in the salon?

2 A He cried that day. He didn't want to get his hair
3 cut and didn't seem to want to leave.

4 Q On Monday, July 15th, your salon would have been
5 closed; right?

6 A Yes, ma'am. That's right.

7 Q Did Ms. Holder work on Tuesday, July 16?

8 A No, ma'am. She called in sick. She -- I answered
9 the phone when she called in. And she told me that she
10 had either a virus or food poisoning from the food she had
11 eaten the night before, and would that be okay. And I
12 said, Sure, I hope you feel better tomorrow.

13 Q Had she ever called in sick before?

14 A No.

15 MS. SEAY: Thank you, Ms. Turner.

16 Please answer any questions they may have for you.

17 CROSS-EXAMINATION

18 BY MR. BYRHOLDT:

19 Q Did she sound sick when you talked to her?

20 A Yes, sir.

21 Q All right. Now, you gave a statement to the police
22 also, didn't you?

23 A Yes, sir.

24 Q And there's no mention in your statement about any
25 problems with her parents in your statement. Do you

1 recall that?

2 A No, sir.

3 Q Well, you've reviewed your statement, haven't you?

4 A Oh, yes.

5 Q Let me ask you to review it again.

6 Is that just something you wanted to add in this
7 afternoon?

8 A No. It's just maybe something they didn't ask me
9 about.

10 Q Well, didn't they ask you to tell them everything
11 that you knew?

12 A Sometimes you just don't remember everything.

13 Q All right. Did you ever see Brandi mistreat ^{victim}?

14 A No, sir, I did not.

15 MR. BYRHOLDT: Thank you, ma'am.

16 That's all the questions I have.

17 THE COURT: All right. Any questions?

18 MR. SUMNER: No, sir.

19 THE COURT: Anything in reply?

20 MS. SEAY: No, sir.

21 THE COURT: Thank you.

22 You can step down.

23 MS. SEAY: The State calls Stephanie Henderson.

24 THE CLERK: Put your left hand on the Bible, please,
25 and raise your right hand.

1 WHEREUPON,

2 STEPHANIE HENDERSON,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record, please.

5 THE WITNESS: Stephanie Henderson.

6 THE CLERK: Thank you.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MS. SEAY:

10 Q Ms. Henderson, please state your name.

11 A Stephanie Henderson.

12 Q Do you live in Greenville?

13 A Yes, I do.

14 Q How long have you been here?

15 A My full life.

16 Q Are you employed?

17 A Yes.

18 Q Where?

19 A Capelli's Salon in Mauldin.

20 Q How long have you been there?

21 A Six years.

22 Q Did you meet Brandi Holder when she started working
23 there?

24 A Yes.

25 Q And that would have been back in 2002?

1 A Yes.

2 Q Did you all get to know each other?

3 A We did.

4 Q Were you good enough friends that you knew what was
5 going on, who she was dating, and that kind of thing?

6 A I did.

7 Q Who did she become involved with?

8 A Mark Martucci.

9 Q Did you know him?

10 A I just knew that he worked next door.

11 Q Were you aware of when Brandi and her son, ~~VICIA~~, moved
12 in with Mark?

13 A Yes.

14 Q Do you know approximately when that was?

15 A I'm going to say it was the end of February.

16 Q Do you recall approximately what hours Ms. Holder
17 would be there?

18 A Usually, I believe that she would be there from like
19 9:00 in the morning until 7:00 at night, maybe 7:30.

20 Q Did she ever discuss with you anything that she did
21 on her off hours?

22 A She did.

23 Q Can you give me an example?

24 A She would talk about -- one time, they, supposedly,
25 had gone to Florida for a trip. She --

1 Q "They" being her and Mark?

2 A Yes.

3 Q Okay.

4 A She talked about going to the lake, going
5 four-wheeling. That's all I can recall right now.

6 Q Did you meet ^{victim}?

7 A I met him one time.

8 Q Do you know approximately when that was?

9 A It may have been around Easter.

10 Q Did you notice if ^{victim} was injured at that time?

11 A The only thing that I noticed was that he had some
12 sun burn on his shoulders. And Brandi had pointed those
13 out to me.

14 Q Did that -- did it appear like a normal sun burn to
15 you?

16 A It was just, basically, on the shoulders. And you
17 could tell they were scabbed over. So, you know, I didn't
18 see any other sun burn on him.

19 Q Did Brandi share how she felt about Mark Martucci?

20 A She seemed to really like him. She talked about him
21 quite a bit. I mean, I do know that in the beginning when
22 she worked there, her parents were keeping ^{victim}. And then
23 Mark lost his job. And as soon as he lost his job, he
24 became the guardian that watched him while she was at
25 work.

1 Q Is it correct that the salon was closed on Monday,
2 July 15th?

3 A Yes.

4 Q Did you work on Tuesday, July 16th?

5 A Yes.

6 Q And are you aware if Ms. Holder worked on Tuesday,
7 July 16?

8 A No. She called in sick.

9 Q Let me direct your attention to the next day --

10 A Okay.

11 Q -- Wednesday, July 17th. Did Ms. Holder come to work
12 that day?

13 A Yes, she did.

14 Q Do you know approximately what time she got there?

15 A I'm going to say it was probably around 9:00 or
16 10:00.

17 Q Did she have any appointments scheduled that day?

18 A No.

19 Q What was her demeanor?

20 A She just came in as usual. And, you know, she was
21 telling me that she had been sick the day before from --
22 she thought it was food poisoning from a Chinese
23 restaurant that she had been to, I guess, on Monday. And
24 she said that ~~VICTIM~~ was sick. And she thinks it was from the
25 same thing. And he had been throwing up all night.

1 And she said that Tuesday night that she had fixed
2 supper and fixed him chicken fingers, and that he would
3 not eat. And that Mark was mad and said that he was
4 faking it. And I looked at Brandi and I said, Brandi, how
5 does a two-year-old fake being sick?

6 She said, Well, then he started throwing up. And
7 Mark realized he really was sick. So he -- me and him
8 took turns during the night taking care of him while he
9 was throwing up.

10 Q She said that she and Mark took turns?

11 A Yes.

12 Q Did you go to lunch with her that day?

13 A I did.

14 Q Approximately what time?

15 A It was probably around 11:00.

16 Q Do you remember where you went?

17 A We went to Ron's in Simpsonville.

18 Q And who went?

19 A Me, Brandi, and a guy that worked there named
20 "Billy."

21 Q Do you recall anything significant about your lunch
22 that day?

23 A Well, I think that's when she, actually, told me
24 about how ~~VICTIM~~ was sick and that he was -- Mark thought he
25 was pretending to be sick. And she hardly ate. She was

1 just picking at her food, which I would tell Brandi a lot
2 of things and she didn't really want to hear it. Because
3 I mean, I'm just -- I've got two children. I told her a
4 lot about how it wasn't fair for ~~him~~^{him} to be kept from his
5 grandparents, and that they needed to see him.

6 Q Did you all talk about that that day?

7 A No, not on that -- on that day, I was to the point,
8 at this time, I was tired of, you know, running my mouth
9 about it. So I didn't say anything. And I just noticed
10 that she was just picking at her food. And I said, I'm
11 just not even going to fool with it. And I didn't say a
12 word.

13 Q Did she seem quiet that day to you?

14 A She did.

15 Q Did she say anything, specifically, about why she was
16 picking at her food?

17 A She said that -- gosh. She said today that she was
18 going to eat slow. Because, normally, when we eat, we're
19 usually eating in a hurry. And on this day, she said, I'm
20 going to eat slow.

21 Q Did you all take more time for your lunch that day?

22 A No. In fact, I looked at mine and Bill's plate and
23 our food was gone. And I'm like she has hardly eaten
24 anything. And I didn't even say anything. Normally, I
25 would. But I was to the point where I didn't say

1 anything.

2 Because I've told her -- like on Father's Day, I had
3 told her to go see her dad for Father's Day and to take
4 VICTIM. And she came back to the salon after Father's Day and
5 I said, Did you go see your dad? And she said, Yeah. And
6 I said, Well, good. And then she told the other girls at
7 the salon that she didn't see her dad, don't tell Stephanie.

8 Q After the lunch, did all of you go back to the salon?

9 A Yes.

10 Q Did Brandi leave sometime after that?

11 A She did.

12 Q Do you know why?

13 A She had said that she was going to go and take VICTIM to
14 the doctor.

15 Q Okay. And then, at some point that afternoon, did
16 you learn that VICTIM had died?

17 A Yes.

18 MS. SEAY: Thank you, Ms. Henderson.

19 Please answer any questions that the attorneys have.

20 THE COURT: Mr. Byrholdt.

21 MR. BYRHOLDT: May it please the Court?

22 CROSS-EXAMINATION

23 BY MR. BYRHOLDT:

24 Q In your statement, you said you didn't even realize
25 Brandi had left work?

1 A Well, in the beginning, I didn't. But then I
2 realized that she wasn't -- that she was gone.

3 Q And she told you she was taking ^{victim} to the doctor, or
4 did she tell you that ^{victim} was at the doctor's?

5 A She said she was taking ^{victim} to the doctor.

6 Q And what time -- this was sometime after 1:00?

7 A Well, it was probably after 12:00. Because,
8 usually, when we go to eat lunch, we, usually, have like
9 an hour.

10 Q And you go to lunch at 11:00?

11 A On this particular day, somebody didn't show up so
12 I -- all of the sudden, I had a gap. And I told Bill, I
13 said, See if you can move your next person, and me and you
14 will go to lunch. And he said, Okay.

15 So he called his person and he moved them. And me
16 and Bill were going to run to lunch. And then I said,
17 Well, should we ask Brandi to go? And he goes, Yeah, go
18 ahead. So I said, Brandi, do you want to go eat with us?
19 And she said, Yes.

20 Q Do you know whether Brandi got a phone call to go to
21 the doctor or anything like that?

22 A I know that she got a phone call.

23 Q Do you know who it was from?

24 A It was from Mark. And then during this phone call,
25 she was, supposedly, talking to ^{victim} on the phone and said,

1 Honey, I'm going to take you to the doctor.

2 Q Is that where you're getting this information about
3 going to the doctor --

4 A Yes.

5 Q -- you heard this conversation?

6 A I didn't, actually, hear it, but Bill heard it and he
7 told me.

8 Q So what you told the jury is something you didn't
9 even hear?

10 A No. I mean, I just know that she --

11 MS. SEAY: Your Honor, I object to that
12 characterization, because he asked her the question.

13 THE COURT: Overruled.

14 Go ahead.

15 THE WITNESS: I'm just saying that she left. And,
16 supposedly, she told Bill that she, supposedly --

17 BY MR. BYRHOLDT:

18 Q Okay. Don't tell me what Bill said.

19 A Okay.

20 Q Did you hear Brandi say anything about where she
21 was --

22 A No.

23 MR. BYRHOLDT: Thank you.

24 THE COURT: All right. Mr. Sumner.

25 MR. SUMNER: Yes, sir.

CROSS-EXAMINATION

2 BY MR. SUMNER:

3 Q Ms. Henderson, I believe on direct testimony with the
4 Prosecutor, you stated that Brandi Holder discussed many
5 events with you involving herself and Mark Martucci; is
6 that right?

7 A Uh-huh.

8 Q You mentioned a Florida trip, I believe, fishing
9 trips, and four-wheeling things, and things of that
10 nature?

11 A Uh-huh.

12 Q Now, you worked with Brandi for about six months.
13 Does that sound right?

14 A Uh-huh.

15 Q And you all worked closely and you all were in the
16 same salon and a lot --

17 A Right.

18 Q -- of conversation back and forth between you and her
19 on pretty much a daily basis?

20 A Uh-huh.

21 Q Would that be correct?

22 A Yes.

23 Q Now, during this six month time frame, did Brandi
24 Holder ever mention anything to you about Mark Martucci
25 abusing ~~victim~~ in any way?

1 A No.

2 MR. SUMNER: Thank you.

3 I don't have any other questions.

4 THE COURT: Any redirect?

5 MS. SEAY: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SEAY:

8 Q Ms. Henderson, going back to that phone call for
9 just a moment. I know you didn't take the call; is that
10 correct?

11 A Right.

12 Q Did you observe Ms. Holder when she, actually, left
13 after the phone call?

14 A She just -- all of the sudden, she was gone.

15 Q Do you recall what her demeanor was?

16 A I mean, she was so quiet I didn't even know that she
17 had gone until she had walked out the door.

18 Q She didn't say anything to you or anyone?

19 A No.

20 MS. SEAY: Thank you.

21 THE COURT: Thank you.

22 You can step down.

23 MS. SEAY: Your Honor, the State calls Jason Bentley.

24 THE CLERK: Put your left hand on the Bible, please,
25 sir, and raise your right hand.

1 WHEREUPON,

2 JASON BENTLEY,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record, please.

5 THE WITNESS: Jason Bentley.

6 THE CLERK: Thank you.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MS. SEAY:

10 Q Mr. Bentley, would you say your name, please?

11 A Jason Bentley.

12 Q Okay. We can hear you fine.

13 Where do you live currently, Mr. Bentley?

14 A I live at ~~840 Doc Thompson Lane~~ in Inman, South
15 Carolina.

16 Q Have you lived in this area for a long time?

17 A All my life.

18 Q How old are you?

19 A 31.

20 Q Are you or have you been a friend of Mark Martucci?

21 A Yes, ma'am.

22 Q Do you know about how long you've known him?

23 A Since about '99.

24 Q How did you all meet?

25 A I met him at a party, actually.

1 Q Okay. What about Brandi Holder, was she a friend of
2 yours?

3 A No. I only met her once or twice.

4 Q Okay. Did you meet her through your association with
5 Mark?

6 A Yes.

7 Q Were you aware of Ms. Holder's having a son?

8 A Yes.

9 Q Did you have occasion to meet ^{VICTIM}?

10 A Yes, ma'am.

11 Q Do you know when you met him?

12 A It was probably like two days before we went to the
13 lake on the 4th of July.

14 Q Okay. So you were part of this⁸ camping trip to the
15 lake for the 4th?

16 A Yes, ma'am.

17 Q Okay. What, if anything, did you observe about ^{VICTIM}
18 when you met him?

19 A I observed that he had a speech problem. He just
20 couldn't -- he really couldn't talk well. And he had a
21 bruise, but it was already like a yellowish-looking
22 bruise. And so it really didn't raise any flags to ask
23 any questions to anyone. It's like, you know, I've got
24 two kids of my own, so.

25 Q Did it look like an older bruise?

1 A Yes, ma'am.

2 Q Did you ask your friend, Mark, about the bruise?

3 A I asked him. He just said he got it playing out in
4 the yard.

5 Q Do you recall him ever telling you that ^{VICTIM} falls down
6 a lot?

7 A No, ma'am. He did not ever tell me that.

8 Q At some point, did you move into the residence next
9 door to Mr. Martucci and Ms. Holder?

10 A We was on our way moving in after we come back from
11 the lake. And I got to meet with -- I got to see ^{VICTIM} then
12 with Mark. And then the next day, we came to start moving
13 our stuff in and there was police everywhere. So we never
14 proceeded to move in.

15 Q Did you purchase that residence or were you renting
16 it from someone?

17 A We was going to rent it from Ms. Brandi and Mark
18 Martucci.

19 Q So was it your understanding that they owned that
20 trailer and were renting it?

21 A Yes.

22 Q Is -- Ms. Mason, who testified earlier, Brandy Mason,
23 is she your girlfriend?

24 A That's my fiance, yes, ma'am.

25 Q Fiance. Do you recall trying to set up a plan for

1 Ms. Mason to baby-sit ^{VICTIM} some?

2 A Yes. That was the -- part of the agreement was that
3 Ms. Mason would watch ^{VICTIM} in return of rent money so they
4 would knock off some of the rent every month for her
5 watching Bo.

6 Q Did you go over to talk to them about that at some
7 point?

8 A Well, I spoke to Mark on numerous occasions. And
9 Mark said he had to get with Brandi. And then my fiance
10 went over there. And they talked. And they was supposed
11 to do the finalization thing, so -- what was going on.
12 Because I really didn't get to see Brandi much. She
13 wasn't -- if you go into Mark's house, she would always go
14 to the bedroom, so. It was like I never really got to
15 speak much to her.

16 Q Do you know what happened with the arrangement
17 with --

18 A No, ma'am. I was never really kept up as to what had
19 happened on the arrangement.

20 Q What did you observe about Mark and Brandi's
21 relationship? Did they have a peaceful relationship?

22 A No, ma'am.

23 Q Could you describe it?

24 A It was just a lot of fussing all the time. She'd
25 always fuss at him or he would always fuss back at

her.

2 Q Do you know what they fussed about?

3 A No, ma'am. It really wasn't my business.

4 Q Did Ms. Holder ever seem jealous or express any
5 jealousy that you saw about Mr. Martucci doing things with
6 you or other people?

7 A Yes.

8 Q How would she act?

9 A Very aggressive. She would cuss him out and slam
10 doors. She even towards -- with ~~victim~~ and stuff when we
11 would be out in the yard, she would make ~~victim~~ go in the
12 house if we was all outside, so.

13 Q What kind of -- we talked about Ms. Holder. But what
14 kind of personality did Mr. Martucci have?

15 A Mark Martucci was an arrogant, loud-mouthed person,
16 truthfully.

17 Q Were you aware of them having a four-wheeler at their
18 home at some point?

19 A Yes, ma'am. They did have a four-wheeler at some
20 point there.

21 Q Do you know what happened to it?

22 A It got stolen while we was gone on the 4th of July.
23 When we came back from the 4th, Mark Martucci had called
24 us on our cell phone and told me that someone had stole
25 his four-wheeler, so. And his actual words is, Someone

1 stole the baby's four-wheeler. And if we had knowed
2 anything or seen anyone that may have it to let him
3 know.

4 Q So that was while y'all were on the 4th of July trip?

5 A Yes, ma'am. That was while we was gone on the 4th of
6 July trip.

7 MS. SEAY: Thank you, Mr. Bentley.

8 If you'll answer any questions they have to ask you.

9 CROSS-EXAMINATION

10 BY MR. BYRHOLDT:

11 Q Now, you gave a statement to the police also, didn't
12 you?

13 A Yes, sir.

14 Q You told them that if you ever saw bruises on **VICTIM**
15 again you were going to call DSS?

16 A That's right. I told Mr. Martucci that.

17 Q Did you ever do that? You told who that?

18 A I told Mr. Martucci that.

19 Q Not Brandi?

20 A I never spoke to Brandi, sir.

21 Q Well, you said you saw them fussing and fighting all
22 the time?

23 A Yeah. We stayed right next door.

24 Q But you never spoke to her?

25 A I never -- I only spoke to Brandi probably twice the

1 whole time her and Mark was together, once was at the lake
2 and on our way there.

3 Q Who did you say you were -- who did you tell you were
4 going to call DSS?

5 A I told Mark Martucci.

6 Q What was his response?

7 A He said that there wasn't nothing going on.

8 Q I take it you would call DSS because you're a good,
9 law-abiding citizen?

10 A I wouldn't say all that. I just don't think that
11 someone should put their hands on a kid.

12 Q Well, did you see anybody put their hands on a kid?

13 A I'm not saying that. I told him if I seen any more
14 bruises that I would call DSS.

15 Q Now, Jason, you said you have two children of your
16 own?

17 A Yes, sir, I do.

18 Q Are they with Ms. Mason or somebody else?

19 A No. They're with two other women, sir.

20 Q Is it fair to say you've had some problems with the
21 law during your life?

22 A Yes, sir.

23 Q A lot of bad checks?

24 A The bad checks wasn't really all that bad. I had a
25 few.

1 Q That's not bad?

2 A I didn't say that. I just said I had a few. It
3 wasn't that bad.

4 Q Shoplifting?

5 A Yeah.

6 Q Drugs?

7 A Yeah.

8 MR. BYRHOLDT: Nothing further.

9 Thank you, sir.

10 THE COURT: All right. Mr. Sumner.

11 MR. SUMNER: No questions.

12 THE COURT: Any redirect?

13 MS. SEAY: No, sir, nothing further.

14 THE COURT: Thank you.

15 You can step down.

16 MS. SEAY: The State calls Darren Turner.

17 THE CLERK: Put your left hand on the Bible, please,
18 sir, and raise your right.

19 WHEREUPON,

20 JAMES DARREN TURNER,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: State your name for the record, please.

23 THE WITNESS: James Darren Turner.

24 THE CLERK: Thank you.

25 Be seated.

DIRECT EXAMINATION

2 BY MS. SEAY:

3 Q Mr. Turner, will you state your name once more for
4 me, please?

5 A Darren Turner.

6 Q Thank you.

7 Mr. Turner, where do you live?

8 A ~~438 BECKY GIBSON ROAD~~ Greer, South Carolina.

9 Q And you're from this area; is that right?

10 A That's correct, Greenville.

11 Q And how old are you?

12 A 27.

13 Q Where are you currently employed?

14 A Michelin Tire.

15 Q What's your position at Mitchell?

16 A I'm currently operator maintainer [phonetic].

17 Q And are you also a student?

18 A Yes, ma'am.

19 Q What are you studying?

20 A Mechanical engineering.

21 Q And, I believe, you're married; is that right?

22 A No, I'm not.

23 Q You have a girlfriend?

24 A Correct.

25 Q Okay. And do you have children?

1 A Yes, I do.

2 Q You have a new baby?

3 A Yes. I have a five-month-old son.

4 Q Let me take you back to 2000, the year 2000. Did you
5 have occasion to meet Brandi Holder?

6 A Yes, ma'am, I did.

7 Q How did y'all meet?

8 A We met through some mutual friends. We, actually --
9 there was about eight or ten of us that went to Columbia
10 to a hockey game. And we all went there. And through
11 conversation, I talked to Brandi then and, actually, met
12 her then.

13 Q Did you ask her out on some dates after that?

14 A Yes. I, actually, talked to her on the phone.

15 Afterwards, I had asked her for her number and I talked to
16 her then. And we, actually, went out after that and
17 started dating.

18 Q At the time you started dating, who did she live
19 with?

20 A She lived with her parents.

21 Q And she already had her son, ~~victim~~; correct?

22 A That's correct.

23 Q How old was he at the time?

24 A When we met, he was about three months old.

25 Q And both of them lived with her parents?

1 A Correct.

2 Q Tell me, eventually, what happened with your
3 relationship.

4 A As we progressively dated -- we dated very seriously
5 for about six months. And, I believe, in October -- or,
6 actually -- I'm sorry. In August, I had asked Brandi to
7 marry me. And we got married in September, on the 16th of
8 the year 2000. And then we proceeded to move to my
9 current residence now when we got married.

10 Q So y'all lived together then at Becky Gibson Road in
11 Greer?

12 A Yes, ma'am.

13 Q Did ~~Victim~~ live with you there?

14 A Yes, ma'am.

15 Q Did you know anything about ~~Victim~~'s history as far as
16 biologically?

17 A No. I did not know -- as far as his father, I did
18 not know who his biological father was.

19 Q Do you know if Ms. Holder was aware of who his father
20 was?

21 A No, ma'am, I do not.

22 Q At some point, were you asked to be his father?

23 A Yes, ma'am.

24 Q Explain that, please.

25 A Shortly after me and Brandi got married, we made the

1 decision that I would be ^{victim}'s father, in essence,
2 primarily for him to get health insurance. And also on
3 the birth certificate, he was -- it was stated as the
4 father being unknown.

5 When we got married, we went to the health department
6 and said that I was the father and proceeded to get my
7 name on the birth certificate. And ^{victim} carried my last
8 name. Then he carried health insurance from the time that
9 we got married until we were divorced.

10 Q Okay. Did you have Ms. Holder on your health
11 insurance, too?

12 A Yes, ma'am.

13 Q And ^{victim} was on your health insurance from his -- from
14 a young age on?

15 A From the point when we got married -- it, actually,
16 went back from when we got married or the time that we
17 changed his name until the date of his death.

18 Q When did he come off of your health insurance?

19 A The day he died.

20 Q He had insurance all the way up until the day of his
21 death?

22 A Correct.

23 Q How did the early part of your marriage go?

24 A The early part of the marriage went very well. We
25 got along great. We did have some arguments, but not

1 several. I mean, it was just discovery of each other, I
2 guess. And then later on, things weren't as good as it
3 was.

4 Q Can you describe what the problems were?

5 A Well, with my current job description, I swing shifts
6 where I work five days a week. I am off on the weekends,
7 but I do swing from third, second, to first five days a
8 week. I was on that current rotation when we met.

9 And it come to a time that Brandi -- a lot of times
10 when I come home from second shift, Brandi would not be at
11 home. She would be at her parents house. And we argued a
12 lot about the fact that she wasn't at home when I come
13 home. And I made a lot of concerns about us being a
14 family and that we lived at the same residence and that I
15 would like for her and ~~victim~~ to be there. And there come a
16 time that if I wanted --

17 MR. BYRHOLDT: Your Honor --

18 THE WITNESS: -- to see her --

19 MR. BYRHOLDT: Your --

20 THE COURT: Hold on. Hold on.

21 Yes, sir.

22 MR. BYRHOLDT: I have to object on relevancy grounds,
23 Your Honor. I don't know where they're going with this.

24 THE COURT: Relevancy, Solicitor?

25 MS. SEAY: Your Honor, I believe that I can establish

1 that if you'll allow me to go a little further here.

2 THE COURT: All right. Go ahead.

3 BY MS. SEAY:

4 Q Did you and Ms. Holder separate at any time during
5 your marriage?

6 A Yes, ma'am.

7 Q Do you recall an occasion when it was a separation
8 over an argument or something?

9 A Yes. The first one was, actually, a disagreement on
10 a purchase I had made. And she decided that she was going
11 to leave. And she did so.

12 Q What did you purchase?

13 A I purchased a dirt bike with some overtime that I had
14 made over Christmas shut down in the year 2000. And it
15 was, I believe, in February of 2001, late February, I
16 purchased the dirt bike. And she proceeded to go back to
17 her parents house at that time.

18 Q Did she tell you why?

19 A Because of the fact that I did purchase that dirt
20 bike. And she also stated that she would not return
21 unless I sold it.

22 Q Did she take ~~victim~~ with her?

23 A Yes, ma'am.

24 Q Did -- what did ~~victim~~ call you when he was able to say
25 anything?

1 A Dad.

2 Q Did you purchase a car for your wife?

3 A Yes. With the tax return money, actually, that we
4 had gotten back from the year 2000, actually, with the
5 return, I had paid Brandi's taxes because she's an
6 independent contractor. She doesn't pay taxes throughout
7 the year. With the leftover money, we did use that money
8 to put a down payment on a 2000 model Honda Civic. And I
9 also co-signed with her to get a loan for the car.

10 Q Did you as the adopted father of -- I use that term
11 loosely, not the legal term -- but as the adopted father
12 of ~~VICTIM~~, did you help in his day-to-day care as far as
13 everything that he needed?

14 A Yes, ma'am. The times that I was at home like if she
15 had to go to work and I was on second shift, at times, I
16 would take him to day care. Also sometimes, when I was on
17 first shift, I would take him to day care and also the
18 daily functions of, actually, taking care of ~~VICTIM~~.

19 Q Was ~~VICTIM~~, generally, a healthy child during the time
20 that you were with him?

21 A During the time he was with me, he was a perfectly
22 healthy child.

23 Q When did you and Ms. Holder, eventually, make a
24 permanent separation?

25 A The permanent separation was -- I believe it was the

1 end of March 2001 or the first of April, March-April time
2 frame of 2001.

3 Q After that, after your separation -- what did you
4 say, March 2001?

5 A Yes, ma'am.

6 Q Did you get to see ^{victim} after that?

7 A Yes. On occasions when I would -- me and Brandi were
8 still in contact through September of 2001. We'd talk
9 occasionally. I would go over on the weekends. We'd go
10 out on dates and stuff trying to reconcile the marriage.

11 Q Did you, at some point, give up on reconciling the
12 marriage?

13 A Yes, ma'am.

14 Q Did you still see ^{victim} after that?

15 A No, ma'am. After -- the last time I talked to Brandi
16 was, I believe, the last part of September of 2001. And
17 that's the last time that I saw ^{victim} in person and Brandi.

18 Q Did -- I'm sure it's fair to say that you loved ^{victim}?

19 A Yes, ma'am.

20 Q Did Ms. Holder call and tell you what had happened to
21 him?

22 A No, ma'am.

23 Q How did you learn what happened?

24 A I learned -- actually, on the Friday afterwards,
25 which was three days after or two days, however you want

1 to look at it, my mother called me at work. And I believe
2 my aunt or someone else had seen it on the Internet on the
3 news website Brandi's picture. And that's how I found out
4 what happened.

5 Q Did you have any further involvement with
6 Ms. Holder's family in regards to ^{VICTIM}'s death?

7 A Yes, ma'am. I -- after I -- learning of ^{VICTIM}'s death,
8 I, eventually, made contact with Brandi's family and made
9 the point that I would like to have been a part of ^{VICTIM}'s
10 arrangements -- funeral arrangements.

11 Q Did you contribute?

12 A Yes, ma'am. I paid for his funeral.

13 MR. SUMNER: Your Honor, again, I'm going to have to
14 object to the relevance.

15 THE COURT: What's the relevance of this, Solicitor?

16 MS. SEAY: Well, I don't want to launch into an
17 argument --

18 THE COURT: Well, you told me you were going to tie
19 it in. And I haven't figured out how it's -- how you're
20 tieing it in, though.

21 MS. SEAY: I just have a couple more questions.

22 THE COURT: All right.

23 BY MS. SEAY:

24 Q Mr. Turner, did Brandi Holder ever physically
25 mistreat you?

1 A On one occasion.

2 Q Do you mind describing that?

3 MR. BYRHOLDT: I object, Your Honor, on relevancy.

4 THE COURT: Take the jury out.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 3:54 p.m.)

7 THE COURT: All right. Now, what's the relevancy of
8 any mistreatment of her then-husband got to do with --

9 MS. SEAY: Your Honor, I think it simply, from my
10 position, goes to the aggressive part of her personality.
11 I think that, obviously, one of the things that the State
12 is possibly going to be encountering here is her -- how
13 her will was overborne by police officers and forcing her
14 to sign a statement, and that type of thing. And so I
15 think it's relevant to that. And I would submit --

16 THE COURT: Well, perhaps that might be relevant in
17 reply, but I don't see any relevancy at this point.

18 MS. SEAY: Well, I can cease.

19 THE COURT: Go ahead and proffer it, and let me hear
20 it.

21 DIRECT EXAMINATION

22 BY MS. SEAY:

23 Q I'll proffer then the last question that I asked you.
24 Did Ms. Holder ever physically mistreat you?

25 A Yes.

1 Q Would you describe it, please?

2 A It was one situation where we was in an argument.
3 And there were a lot of times that when she got mad, she
4 would like to go for a drive. She would just leave.

5 And there was one situation where she was there and I
6 was holding ~~VICTIM~~. And it was one afternoon. I'm not sure
7 exactly when it was. I think it was early 2001. And we
8 got in an argument about something. I don't know what.

9 And she wanted to leave, but, yet, she wanted to take
10 ~~VICTIM~~ with her. And I said, No, I'll watch ~~VICTIM~~. I'll take
11 care of ~~VICTIM~~. You go do what you need to do, me and ~~VICTIM~~ will
12 spend some time together. We proceeded more into an
13 argument.

14 She then proceeded to slap me in the face. ~~VICTIM~~ began
15 screaming. It shocked me so bad I busted out into tears.
16 I didn't -- I've never had someone -- a woman just slap me
17 in the face like that. And she proceeded to take ~~VICTIM~~ out
18 of my arms screaming. And she left.

19 MS. SEAY: Thank you.

20 And so, Your Honor, I would submit it for the reason
21 that I expressed, and also the treatment of her child

22 THE COURT: I'm not going to allow it at this time.

23 All right. Is that all?

24 MS. SEAY: Yes, sir.

25 THE COURT: All right. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 3:58 p.m.)

3 THE COURT: Ladies and gentlemen, at this point, I
4 instruct you to disregard the last question by the
5 Solicitor and answered by the witness.

6 All right. Anything further, Solicitor?

7 MS. SEAY: Nothing further.

8 THE COURT: All right. Mr. Byrholdt.

9 MR. BYRHOLDT: May it please the Court?

10 CROSS-EXAMINATION

11 BY MR. BYRHOLDT:

12 Q Mr. Turner, you gave a statement to the police
13 officers also, didn't you, sir?

14 A That is correct.

15 Q And in your statement, isn't it true that you told
16 the police that during the time you and Brandi were
17 together that Brandi, if anything, neglected you to take
18 care of ^{victim}; isn't that true?

19 A That is correct.

20 Q She put ^{victim} first?

21 A That's correct.

22 Q She took him to the doctor when he had a sniffle?

23 A Yes, sir.

24 Q Like I say, to the point of neglecting your needs?

25 A Correct.

1 Q And that there was never any evidence of abuse, or
2 maltreatment, or neglect on her part?

3 A No, sir.

4 Q And the Solicitor asked you whether Brandi called you
5 to tell you about Bo's death, and she didn't?

6 A No.

7 Q Do you know where she was after ~~Bo's~~^{victim} death?

8 A Yes.

9 Q She was in jail; right?

10 A That's correct.

11 Q Do you know whether she even had access to a phone to
12 call you those first few days?

13 A No.

14 Q Was she a good mother when you were with her?

15 A Yes.

16 Q She might have been not the best wife, but a good
17 mother, fair enough?

18 A Yes.

19 MR. BYRHOLDT: Thank you, sir.

20 THE COURT: Any question, Mr. Sumner?

21 MR. SUMNER: No, sir.

22 THE COURT: Any redirect?

23 MS. SEAY: No, sir.

24 THE COURT: Thank you.

25 You can step down.

1 Next witness.

2 Ms. SEAY: Your Honor, we're trying to see if he's in
3 the hallway.

4 (Pause.)

5 MS. SEAY: Your Honor, the witness we were expecting
6 to call has taken his wife to the hospital. She was in
7 labor.

8 THE COURT: All right.

9 MS. SEAY: So I'm going to change that plan a little
10 bit.

11 THE COURT: All right.

12 MS. SEAY: The State calls John Parker.

13 THE CLERK: Put your left hand on the Bible, please,
14 and raise your right hand.

15 WHEREUPON,

16 JOHN ALLEN PARKER,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: State your name for the record, please.

19 THE WITNESS: John Allen Parker.

20 THE CLERK: Thank you.

21 Be seated.

22 DIRECT EXAMINATION

23 BY MS. SEAY:

24 Q Mr. Parker, will you state your name once more for
25 me, please?

1 A John Allen Parker.

2 Q Okay. You might want to move your chair up just a
3 little bit.

4 Where do you currently live, Mr. Parker?

5 A I live in Spartanburg County.

6 Q Okay. Do you have regular employment?

7 A Yes, ma'am.

8 Q What do you do?

9 A I'm a diesel mechanic.

10 Q How long have you been in that profession?

11 A About six years.

12 Q Have you had special training in order to perform
13 that kind of work?

14 A Yes, ma'am.

15 Q How old are you, Mr. Parker?

16 A I'm 25.

17 Q Who are your parents?

18 A Dale Parker and Deborah Matthews.

19 Q Are your parents together or apart?

20 A They're separated.

21 Q Did your father previously live next door to Mr. Mark
22 Martucci?

23 A Yes, ma'am.

24 Q Did you ever stay with your father or live with him
25 during that time?

1 A Yes, ma'am.

2 Q Can you tell us when that was?

3 A We lived at 3893 Jug Factory Road for approximately
4 two years.

5 Q Did you get to know Mr. Martucci during that time?

6 A Yes, ma'am.

7 Q Were you all friends?

8 A Yes, ma'am.

9 Q Did you hang out together and do stuff together?

10 A Yes, ma'am.

11 Q Did you always stay with your father?

12 A Not always.

13 Q Did he, subsequently, sell his trailer?

14 A Yes, ma'am.

15 Q Do you know who he sold it to?

16 A To Ms. Brandi Turner.

17 Q Do you know when that was?

18 A Not exactly. I'm guessing around June.

19 Q Okay. Let me ask it this way. Was it during the
20 time that Brandi Holder lived with Mark Martucci?

21 A Yes, ma'am.

22 Q Okay. And were you aware of her son, ^{victim}, living
23 there as well?

24 A Yes, ma'am.

25 Q Let me direct your attention to June of 2002. Did

1 you have occasion to be in the Martucci-Holder residence?

2 A Yes, ma'am.

3 Q Did you have occasion to see ~~victim~~^{him} in the residence?

4 A Yes, ma'am, I did.

5 Q Describe what ~~victim~~ was like at that time.

6 A He was pretty playful. He liked to play outside. He
7 liked to play with his little match box cars inside. He
8 was often trying to learn how to ride a bicycle. I would
9 say he -- for the most part, he was a happy kid.

10 Q Was he potty-trained at that time?

11 A They were in the process of teaching him.

12 Q Did that seem to be going okay as far as you knew?

13 A As far as I knew, yes, ma'am.

14 Q Is it fair to say that during this time in June 2002,
15 you were visiting in their home from time to time?

16 A From time to time, not very often. We were in the
17 process of getting our trailer ready. We had already
18 planned on selling it.

19 Q During the time that you were in the residence, did
20 you observe anything that was disturbing to you?

21 A Yes, ma'am, I did.

22 Q Can you describe what that was?

23 MR. SUMNER: Your Honor, I would object at this time.
24 And I need a sidebar, Your Honor, at this point.

25 THE COURT: All right. Take the jury out.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 4:06 p.m.)

3 THE COURT: All right. Mr. Sumner.

4 MR. SUMNER: Your Honor, I would object to any
5 testimony that might be offered from the State through
6 Mr. Parker about alleged abusive acts that he might have
7 seen as it relates to Mark Martucci toward the child that
8 are not within the time frame given to us earlier today by
9 Dr. Ward.

10 Dr. Ward said, according to my notes, that he -- the
11 cause of death was, I believe, blunt force trauma to the
12 abdomen. On direct and cross-examination, he said that
13 the maximum time frame that he would give to the blows
14 that caused the death of the child -- or more than likely,
15 I believe, to a reasonable degree of medical certainty
16 caused the death of the child would have been three days
17 at the outside.

18 So I would object to any testimony from Mr. Parker
19 that would fall outside of that time frame.

20 THE COURT: Solicitor.

21 MS. SEAY: Your Honor, the indictment alleges that
22 the incidents of child abuse and neglect, which resulted
23 in harm to the child, occurred from June 1st, 2002, up
24 through the date of death on July 17th, 2002.

25 And, clearly, Dr. Ward did not limit the injuries to

1 the two most traumatic things. Obviously, he looked at a
2 photograph that was taken in June of the child where he
3 had non-accidental injuries then. And, of course, there's
4 been testimony from numerous witnesses who saw injuries on
5 the child all through the month of June and July.

6 THE COURT: I think that testimony is relevant. And
7 I would allow it.

8 Bring the jury in.

9 (WHEREUPON, the jury came into open court at
10 approximately 4:08 p.m.)

11 THE COURT: All right. Solicitor, you may proceed.

12 MS. SEAY: Thank you, Your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. SEAY:

15 Q Mr. Parker, did you have occasion to witness some
16 incidents when you were in the residence of Mr. Martucci
17 and Ms. Holder?

18 A Yes, ma'am.

19 Q Can you please describe?

20 A There was an incident where we were in his living
21 room and ~~was~~ was crying. And Mr. Martucci had told him on
22 numerous occasions to --

23 MR. SUMNER: Your Honor, can he lean forward?

24 MR. BYRHOLDT: Yes. We cannot hear him.

25 THE COURT: All right. Speak up, please, sir.

1 THE WITNESS: He was asked -- Mr. Martucci asked
2 him -- or told him on numerous occasions to stop crying.
3 And ~~VICTIM~~ did not do so. He then proceeded to tape his mouth
4 shut with tape. There were incidents --

5 BY MS. SEAY:

6 Q Let me stop you there. Who was present when that
7 happened?

8 A Mr. Martucci. Mr. Martucci was there, myself, and
9 Ms. Turner was in the bedroom.

10 Q When you say "Ms. Turner," are you referring to
11 Brandi?

12 A Yes, ma'am. And, I believe, there was one other
13 person, but I can't remember who.

14 Q All right. When Mark Martucci did this to ~~VICTIM~~, was
15 Ms. Brandi Holder aware of it?

16 A She had walked into the living room on occasion, yes,
17 ma'am.

18 Q All right. I'll let you carry on with what you were
19 getting ready to say next.

20 A There were episodes where he would be in the bathroom
21 and Mr. Martucci would be giving him a bath. I would hear
22 ~~VICTIM~~ crying. And I would walk in to see what he was crying
23 about and Mark would be pouring water over his head. And
24 ~~VICTIM~~ would continue to keep crying. He would tell him that
25 crying is for pussys. And he would dunk his head under

1 water. He did that on numerous occasions.

2 Q When you say "dunk his head under water," was it a
3 quick dunk?

4 A No, ma'am. I'd say, at least, a couple of seconds at
5 a time.

6 Q How was ^{Victim} reacting to that?

7 A He would swallow water almost like he was choking on
8 the water. And then he would pull him up. And then no
9 sooner -- he would barely even catch his breath and he
10 would do it again.

11 Q Where was his mother during this?

12 A There was times, I believe, she was in the living
13 room. She would walk in and -- into the living room
14 and -- or into the bathroom and tell Mark that that's not
15 going to work, it's just going to make it worse, and then
16 walk away.

17 Q Did you witness anything else abusive?

18 A We were in the van at -- no, I take that back. We
19 were outside sometimes and then there was a couple of
20 occasions in the inside of his house where he would be
21 crying and Mr. Martucci would slap him in the face on both
22 sides of his face.

23 Q Can you sort of demonstrate in some way what you're
24 talking about? What kind of slap or force was used?

25 A The only way I can describe it is the way a person

1 would smack a dog to make them mean, back and forth.

2 Q That's what he did to ^{victim}'s head?

3 A Yes, ma'am. I've seen him grab his face like that
4 when he wouldn't stop crying and try to tell him to be
5 quiet.

6 Q Did you ever see bruises or marks on ^{victim}?

7 A I did notice the bruises on his face from the way he
8 was grabbing him. And I believe I did notice the bite on
9 his wrist. They -- it did seem that they went out of
10 their way to make sure that he kept clothes on. I very
11 rarely seen him without clothes, except for the incidents
12 in the bathroom.

13 Q Did they take him out of the house very much or go
14 places very much?

15 A Not very often. He would take him -- Mark --
16 Mr. Martucci would take him in the van places on occasion,
17 but not very often would he leave the van.

18 Q When you saw the marks and bruises, did you ever ask
19 ^{victim}'s mother or -- and/or Mark where those had come from?

20 A I did once. I believe this is shortly around the
21 time that I first started going over there frequently.
22 And they said that he fell down the steps.

23 Q Did you ever see him fall down steps?

24 A No, ma'am, I didn't.

25 Q Did you find him -- being around him, did you find

1 him to be an accident-prone child? I mean, more so than
2 a -- you know, a normal two-and-a-half-year-old?

3 A No, ma'am.

4 Q I want to draw your attention to the weekend prior to
5 ~~victim~~'s death. Were you in and out of their residence during
6 that time?

7 A Yes, ma'am.

8 Q Did you have plans to go to work for Mark? Did you
9 all have an arrangement?

10 A He -- I asked him -- I was trying to find -- get my
11 life going again. And I had no money and no job. And I
12 had worked with Mr. Martucci before. And he had told me
13 on occasion that he was trying to get his business going
14 again. And he said that I could stay there with him and
15 work with him to get it started.

16 Q But he was not working full-time hours at that time
17 either?

18 A No, ma'am.

19 Q Was he primarily responsible for ~~victim~~ during the day?

20 A Yes, ma'am.

21 Q Do you know approximately what hours he would have
22 him?

23 A The majority of the day, I would say -- well, more
24 than three-quarters of the day.

25 Q And where would Ms. Holder be?

1 A She would be in the bedroom or at work.

2 Q How did she get to work? Do you know?

3 A She drove.

4 Q She had a car?

5 A Yes, ma'am.

6 Q On that weekend when you were there, did you notice
7 any sickness that ~~VICTIM~~ was having?

8 A Can you repeat that?

9 Q Any sickness that ~~VICTIM~~ was having?

10 A When was this?

11 Q The weekend prior to his death and leading into that
12 week.

13 A Not that I can recall.

14 Q All right. Were you over there on -- well, let me
15 ask you this. Were you over there on Sunday the 14th?

16 A Yes, sir -- I mean, yes, ma'am. I'm sorry.

17 Q And when you were there on that date, did you observe
18 a four-wheeler accident that ~~VICTIM~~ was involved in?

19 A No, ma'am.

20 Q Did you know ~~VICTIM~~ was in a four-wheeling accident that
21 day?

22 A No, ma'am.

23 Q Did anybody tell you that on that day?

24 A No, ma'am.

25 Q Did you see Mark, Brandi, and ~~VICTIM~~ that day?

1 A Yes, ma'am.

2 Q On Monday, were you in the residence at all?

3 A For the majority of the day, yes, ma'am.

4 Q Okay. What about Tuesday?

5 A Yes, ma'am.

6 Q And, I believe, you've heard testimony that

7 Ms. Holder called in sick to her work that day. Was she

8 at home with y'all that day?

9 A Yes, ma'am.

10 Q What were you doing?

11 A I was outside some. We went to Wal-Mart and picked

12 up some things for Mr. Martucci's computer.

13 Q This is on Tuesday that we're talking about?

14 A I'm pretty sure, yes, ma'am.

15 Q When you say "we," who went?

16 A We all went, myself, Mr. Martucci, and Brandi. We

17 went to Wal-Mart and we picked up some things for his

18 computer. I think it was a printer or a scanner.

19 Q For whose computer?

20 A For Mr. Martucci's computer?

21 Q Okay.

22 A And we bought -- or Mark bought ~~VICTIM~~ a little race car

23 set.

24 Q Did you see ~~VICTIM~~ sick that night any time?

25 A Yes, ma'am.

1 Q Can you describe that?

2 A We had to go back to Wal-Mart later on that evening.
3 And when we came back, Ms. Brandi was in the process of
4 cooking dinner. After she cooked dinner, ~~VICTIM~~ was standing
5 up at the table -- or at an end table in the living room
6 eating. And he couldn't eat very much. I think he took
7 one bite of a steak that she made. And he didn't finish
8 it. Then he didn't -- he couldn't finish it. He couldn't
9 swallow it all the way, I believe. And he got sick and
10 Mark took him to the bathroom.

11 Q Did he throw up?

12 A Yes, ma'am. And I heard Mark say that he was
13 throwing up in the bathroom. And he came back into the
14 living room and said that -- he said that he threw up all
15 over the place. And, I believe, he went back in there and
16 was cleaning him up.

17 And Brandi walked into the bathroom with him. And
18 they were both in there. And when they got finished in
19 the bathroom, I believe it was Brandi took ~~VICTIM~~ into the
20 bedroom and, I believe, laid down with him.

21 Q At some point, did you see Mark and Brandi in the
22 bedroom with ~~VICTIM~~?

23 A I didn't see them. I seen them go into the bedroom,
24 but I didn't see them in the bedroom.

25 Q Was ~~VICTIM~~ acting like his normal happy self?

1 A I couldn't really tell. I mean, I was in the living
2 room -- or, actually, I was standing up at the bar in the
3 kitchen.

4 Q Let me ask you this. You stated that you went in the
5 bathroom while Mark was cleaning him up, did he have his
6 clothes off of him?

7 A I think he had his shirt off.

8 Q Because what I wanted to ask is if you noticed any
9 injuries at that time?

10 A I don't recall standing there very long. I believe
11 it was -- I just walked back to see and then walked back.

12 Q What was your reaction when you would hear this stuff
13 going on that you described between Mark and victim?

14 A It would upset me. It would upset me to the point to
15 where I would have to walk outside. I couldn't listen to
16 it any more.

17 Q Did you ever think about trying to call for help for
18 him?

19 A I thought about it, yes, ma'am. Me and Mr. Martucci
20 had -- we had had conflicts in the past. And I knew of
21 his temper from hanging out with him a lot --

22 MR. SUMNER: Your Honor, I would object to any
23 character evidence of Mr. Martucci.

24 THE COURT: I'll allow this.

25 Go ahead.

1 THE WITNESS: We had -- I knew of his attitude. I
2 knew that he had pistols in the house. I knew that he --
3 we had had conflicts in the past to the point -- we had --
4 there was one episode in Myrtle Beach to where me and a
5 few friends of mine were down there as well as --

6 MR. SUMNER: Your Honor, I hate to object --

7 THE COURT: Yes.

8 This is getting a little bit too far now, Solicitor.

9 MS. SEAY: Your Honor, I will say that this is
10 relevant to his state of mind and --

11 THE COURT: All right. I'm going to stop it here. I
12 think it's gone far enough.

13 Move on, please.

14 BY MS. SEAY:

15 Q Were you afraid of Mark?

16 A Yes, ma'am.

17 Q And did you become afraid of him based on prior
18 incidents?

19 A Yes, ma'am.

20 Q Would you describe his size in comparison to yours?

21 A I was pretty small.

22 Q Were you smaller then or now?

23 A I was a lot smaller then. I was maybe 120 pounds,
24 125 pounds, at the most. And he was a lot taller than me.
25 He was built better than I was -- I mean, bigger than I

1 was. There was -- I was afraid of just the way he -- him
2 and his temper was the majority of it.

3 Q Okay. And so you're saying that that is what stopped
4 you from doing anything or confronting him?

5 MR. SUMNER: Your Honor, I would object to the
6 leading.

7 THE COURT: That is a leading question, Solicitor.
8 Please don't lead.

9 MS. SEAY: Yes, sir.

10 BY MS. SEAY:

11 Q What stopped you from getting help?

12 A The fact that I was afraid of him and I knew the --
13 what could happen scared me.

14 Q What could happen to who?

15 A To me, what could happen to me.

16 Q Let me direct your attention to Tuesday evening. I
17 think we've been through the day. You said y'all ran some
18 errands, went to Wal-Mart, and that kind of thing.

19 Tuesday night, were you in the residence all night or
20 were you in and out? What was going on Tuesday
21 night?

22 A Tuesday night, I was there for dinner. After they
23 laid him down, I went outside occasionally. But I would
24 come right back in. I played on their computer the
25 majority of the night.

1 Q Did you hear or notice anything unusual during the
2 night?

3 A Nothing during the night, no, ma'am.

4 Q Were you aware of any -- of ^{VICTIM} or anyone being sick
5 during the night?

6 A There was a time when he threw up. And Mr. Martucci
7 carried him to the bathroom and -- or because he threw up,
8 Mr. Martucci carried him to the bathroom. And he cleaned
9 him off and went back into the bedroom and laid back down
10 with him.

11 Q Do you know where Ms. Holder was at that time?

12 A At some point in time, I don't remember when exactly,
13 she went into the -- to the back bedroom to her and Mark's
14 bedroom.

15 Q After the -- after Tuesday night -- or during Tuesday
16 night, you played on the computer most of the night, you
17 said. When did you next see ^{VICTIM?}

18 A That following morning when I woke up.

19 Q Describe what happened.

20 A I woke up to Mark yelling and carrying on just
21 babbling, He's throwing up everywhere, and he didn't know
22 what to do. And he had him in the bathroom. And I guess
23 he had thrown up again. And Mark had him in the bathtub
24 trying to clean him off.

25 Q Did you see -- did you go in there and see?

1 A Yes, ma'am.

2 Q What did ~~victim~~ look like?

3 A He had a lot of bruises on his face. He didn't -- he
4 wasn't himself at all. I asked Mark what was wrong. He
5 said that he got sick through the night. And that was
6 about all he said. And I asked him if he had -- I asked
7 him if he had taken out his dog. And he said, No.

8 So I took out the dog. And I went outside and I
9 smoked a cigarette. When I come back in, Mark had ~~victim~~ on
10 the floor trying to give him CPR it looked like. And when
11 I looked at him, he wasn't himself at all.

12 Q What do you mean by that?

13 A He was -- his eyes were almost closed. He was real
14 pale.

15 Q Was he moving? Was he conscious?

16 A He didn't appear to be conscious at all. He -- Mark
17 was pinching his nose and trying to blow in his mouth.
18 And he would push on his stomach and -- I guess trying to
19 give him CPR or something. I'm not exactly sure. But he
20 was -- every time Mark Martucci would push on his stomach,
21 he would -- like bloody saliva would come out of his
22 mouth. And I -- as soon as I seen him laying on the
23 floor, I knew something wasn't -- he just wasn't right.

24 Q What, if anything, did you say to Mark?

25 A I almost kind of lost it myself. I was just asking

1 him, what is wrong? What is wrong? What's the matter
2 with him? And Mark wasn't saying anything. He just
3 kept -- continued doing what he was doing. And I was
4 telling him that we needed to take him to the hospital or
5 call an ambulance. And he wasn't doing nothing. He said,
6 No.

7 Q Did he call Brandi at some point?

8 A I believe he did call Brandi at one point and --
9 while he was trying to do that, yes, ma'am.

10 Q Could you overhear the conversation --

11 A No.

12 Q -- as far as what they were saying to each other?

13 A I heard that he was saying that he wasn't right that
14 we needed -- that she needed to come home.

15 Q Was ~~victim~~ able to speak to his mother on the phone at
16 that time?

17 A No, ma'am.

18 Q Okay. Would it be fair to say that he was,
19 basically, unconscious?

20 A Yes, ma'am.

21 Q And were you worried about that?

22 A Yes, ma'am, very much.

23 Q And so what did you do?

24 A I continued trying to tell him to call an ambulance,
25 not to worry about her at the moment that it was -- he

1 needed to get help. And he wasn't -- he didn't want to
2 call the ambulance.

3 Q So what did you do?

4 A I kept trying to get the phone. He had both of them
5 with him. And, finally, I think -- I can't remember if he
6 dialed the number or I dialed the number to Brandi. I
7 think he dialed the number to Brandi. And then he told
8 her to -- that we're taking ^{victim} to the hospital. And then
9 he handed the phone to me. And I told her that we're
10 taking him to Allen Bennett that he's just not right,
11 something bad is wrong with him.

12 Q Okay. So y'all took him to Allen Bennett?

13 A Yes, ma'am.

14 Q Who drove?

15 A I did.

16 Q What did you drive?

17 A I drove Mr. Martucci's van.

18 Q And where did he ride?

19 A He was in the passenger seat.

20 Q Where was ^{victim}?

21 A In his arms.

22 Q Had he put clothes on ^{victim} since he had had him in the
23 bathtub earlier?

24 A No, ma'am. He had -- I believe he had a diaper on
25 and that was it.

1 Q So about how long from where you were did it take you
2 to get to Allen Bennett Hospital?

3 A Inside 15 minutes, roughly.

4 Q Did the baby make a sound or anything on the way?

5 A No, ma'am.

6 Q Was he just completely unconscious?

7 A Yes, ma'am.

8 Q What was Mark doing?

9 A I think he was on the phone. I can't recall exactly.
10 I was just trying to drive and get us there as quick as
11 possible.

12 Q When you got there, who took him in?

13 A Mark did.

14 Q And what did you do?

15 A I dropped them off at the emergency exit at the
16 hospital and parked the van. And I went in for a second.
17 And after they had taken ~~VICTIM~~ from Mark, I told Mark that I
18 was going outside to meet Brandi so she would know where
19 to come in at.

20 Q So you went outside to wait for her?

21 A Yes, ma'am.

22 Q And when she got there, you escorted her in?

23 A Yes, ma'am.

24 Q Do you recall whether she and Mark talked at that
25 time?

1 A I believe she asked him what happened.

2 Q Do you recall what was said?

3 A Not exactly.

4 Q Did -- were you present when the doctors or nurses
5 came to ask what had happened to the baby?

6 A Yes, I was.

7 Q Did you tell them anything?

8 A No. Mr. Martucci, I believe, spoke up first and said
9 that he was in a four-wheeler accident and that he was --
10 the day before, I believe is what he said.

11 Q And did you know anything about that?

12 A No, ma'am.

13 Q When Ms. Holder arrived, you walked her in. Did she
14 give that same story to any of the personnel?

15 A After the doctors came back out and said that there
16 was nothing else that they could do, they took us to the
17 grieving room. And someone asked her and that's -- she
18 did say that.

19 Q That there had been a four-wheeler accident?

20 A Yes, ma'am.

21 Q I understand that law enforcement officers came to
22 the hospital, and coroners, various people to see what had
23 happened. Did you agree to go down to the law enforcement
24 center to talk to the investigators about what you knew
25 about the situation?

1 A Yes, ma'am.

2 Q How were you feeling about it at that time?

3 A I didn't know what to think. I was --~~victim's~~ death
4 really shook me up. And I just didn't know what to think.

5 Q Did you give them a statement about some of the stuff
6 that you knew about the situation?

7 A Yes, ma'am.

8 Q Did you give them the whole story then?

9 A No, ma'am.

10 Q Why not?

11 A Because I was scared of what might happen. I just --
12 I really didn't know what to say. I was just scared at
13 the moment.

14 Q Did you continue talking to the investigators and
15 determine that you needed to tell them more about what you
16 really knew?

17 A Yes, ma'am.

18 Q And did you give them statements in regard to what
19 you knew?

20 A Yes, ma'am.

21 Q Mr. Parker, you, I'm sure, are well aware you were
22 also charged with homicide by child abuse, in this case,
23 weren't you?

24 A Yes, ma'am.

25 Q And you have pled guilty to aiding and abetting

1 homicide by child abuse; is that correct?

2 A Yes, ma'am.

3 Q And is it your understanding that you will be
4 sentenced on that at the conclusion of this case?

5 A Yes, ma'am.

6 Q Have you been promised anything in return for
7 testifying?

8 A No, ma'am.

9 MS. SEAY: Those are all the questions I have.

10 Please answer any questions the other attorneys may
11 have.

12 THE COURT: Mr. Byrholdt.

13 MR. BYRHOLDT: May it please the Court?

14 CROSS-EXAMINATION

15 BY MR. BYRHOLDT:

16 Q Mr. Parker, did you, with your own eyes, ever see
17 Brandi abuse^{VICTIM}?

18 A No, sir.

19 Q Never?

20 A No, sir.

21 Q And, I believe, you told this jury -- when did it get
22 so bad you had to leave? Was that Monday morning or would
23 it be Wednesday morning where it got so bad that you had
24 to go out for a while? Was it early morning before you
25 took him to the hospital?

1 A I went in and seen that he was cleaning him up. And
2 I walked outside.

3 Q I mean, it scared you to death; right?

4 A Yes.

5 Q The night before, you had gone -- or the afternoon
6 before on Tuesday, you had gone to the China Garden for
7 lunch; correct?

8 A Yes.

9 Q And it was you, Brandi, Mr. Martucci, and ^{VICTIM}?

10 A Yes.

11 Q ^{VICTIM} didn't have any bruises on him at that point, did
12 he? Because, I mean, you're out there in the public
13 eating lunch.

14 A In the evening?

15 Q No. I'm talking about that afternoon when you went
16 to China Garden, there were no bruises on him at that
17 point?

18 A Not that I recognized.

19 Q All right. You also went to the Alltell store;
20 right?

21 A Correct.

22 Q All of you went in there. I think ^{VICTIM} was playing
23 with the phones on the counter; right?

24 A I believe so.

25 Q People were working there, no bruises at that point?

1 A I wasn't paying attention.

2 Q I mean, nothing that caused you to be concerned about
3 Bo's well-being at that point?

4 A Correct.

5 Q And then you went to Wal-Mart that night, all four of
6 you again, and did some shopping. ~~VICTIM~~ was still okay at
7 that point?

8 A Yes, sir.

9 Q Then, I believe, Brandi stayed home and, you,
10 Mr. Martucci, and ~~VICTIM~~ went back to Wal-Mart to return some
11 stuff; correct?

12 A Correct.

13 Q You came home and it's time to eat?

14 A Correct.

15 Q At that time, did you see any visible marks on Bo
16 that caused you to be concerned at that point?

17 A No, sir.

18 Q All right. Where you got concerned is when you got
19 up early the next morning and you walked in to use the
20 bathroom and Mark Martucci is cleaning ~~victim~~ up; right, and
21 ~~victim~~'s got bruises all over him?

22 A Correct.

23 Q Brandi wasn't even in the house at that point, was
24 she?

25 A No, sir.

1 Q When you got up, she had already gone on to work?

2 A Correct.

3 Q Can you tell this jury today whether Brandi knew
4 anything that happened that night? You didn't know what
5 was going on, did you? You were asleep?

6 A I didn't go to sleep before --

7 MS. SEAY: Objection.

8 THE COURT: What's your objection?,

9 MS. SEAY: That he would know someone elses -- that
10 he would have knowledge what someone else knew.

11 THE COURT: Well, what he knows from his own
12 knowledge.

13 THE WITNESS: I didn't go to bed until approximately
14 6:00 that morning.

15 BY MR. BYRHOLDT:

16 Q All right. From the time that ~~VICTIM~~ first got sick
17 that night after dinner until 6:00 in the morning, did
18 you see Brandi doing anything other than taking care of
19 ~~VICTIM~~?

20 A No, sir.

21 MR. BYRHOLDT: That's all the questions I have.

22 Thank you, Mr. Parker.

23 THE COURT: All right. Mr. Sumner.

24 MR. SUMNER: Thank you, Your Honor.

25 May it please the Court?

CROSS-EXAMINATION

BY MR. SUMNER:

Q Now, John -- or Mr. Parker. I'm sorry. Let me move this for a second.

You've testified today on direct examination that you -- on the evening of ~~victim~~'s death, you gave two statements; is that correct, to the police.

A Yes, sir.

Q Okay. Would you agree with me that you've also given another statement? Do you recall speaking to a private investigator about ten or 15 days after the statements to the police?

A Yes, I did.

Q You do. Okay. And that was an interview that you gave to a person by the name of Gerald Raven; is that right?

A I don't recall that.

Q You don't?

A I don't recall giving a statement.

Q Okay. So you're saying that you did not have an interview with somebody around August 3rd of 2002, and talk about this incident?

A Not that I can recall, no, sir.

Q Okay. Now, getting back to the statements which you talked about on direct examination. Would you agree with

1 me that your first statement was given around 6:00 p.m. on
2 July 17th? Does that sound about right to you, of 2002?

3 A It could be, yes, sir.

4 Q Okay. And that was a statement given at the law
5 enforcement center, wasn't it?

6 A Yes, sir.

7 Q There were several officers there in the room with
8 you; is that correct?

9 A Yes, sir.

10 Q You signed a -- an actual -- what's called a Waiver
11 of Rights Form, didn't you?

12 A Yes, sir.

13 Q Where they explained your rights to you and you
14 indicated to them -- you signed it that you understood
15 what your rights were; is that right?

16 A Yes, sir.

17 Q And, actually, not only did you sign the form, but
18 I'm going to hand you now just to refresh your
19 recollection, you -- you can look at that, if you need to.
20 You, actually, circled the words "pressure" and
21 "coercion"; is that correct?

22 A Yes, sir.

23 Q Okay. And that was done so that you were signifying
24 then that you were not under any pressure whatsoever; is
25 that right?

1 A Yes.

2 Q Okay. And that you understood what you were doing
3 and you were speaking freely and voluntarily to the police
4 at that point; is that right?

5 A Yes.

6 Q Okay. You were in a safe environment, weren't you?

7 A Yes, sir.

8 Q I mean, you were at the law enforcement center and
9 you were surrounded by police officers at that point. Did
10 you feel safe?

11 A Yes, sir.

12 Q Okay. The first statement that you gave was a
13 four-page statement. Does that sound right to you?

14 A Yes, sir.

15 Q Single-spaced?

16 A I guess so, yes, sir.

17 Q Okay. Well, I mean, I can show it to you, if you
18 need and want me to. But, I mean, it was four full pages;
19 is that right?

20 A Yes, sir.

21 Q Now, at the bottom of each page in the first
22 statement -- and you can feel free to look at it, if you
23 need to, Mr. Parker. But at the bottom of each page, you
24 signed it; is that right?

25 A Yes, sir.

1 Q Okay. And right above your signature in bold print
2 it states, "I have read the statement and it is true and
3 correct and is to the best I can recall"; is that right?

4 A Yes, sir.

5 Q Okay. Is that your signature?

6 A Yes, sir.

7 Q And you signed each of the four pages?

8 A Yes, sir.

9 Q Not only did you sign them, you, actually, swore they
10 were -- they became a sworn statement because they were
11 notarized; is that right?

12 A Yes, sir.

13 Q So, basically, this statement, this four-page
14 statement, is no different than the sworn testimony that
15 you're giving today; is that right?

16 A Yes, sir.

17 Q Because you were under oath then and you're under
18 oath now; is that right?

19 A Correct.

20 Q All right. Now, in the first statement, the very
21 first time that you were placed under oath, you talk about
22 what had happened. Didn't you tell the police, "I have
23 never seen Mark spank ^{victim}"?

24 A (There was no response.)

25 Q Do you want me to show it to you?

1 A Yes, sir.

2 Q Okay. Let me step around here. Is that what that
3 says right there, "I have never seen Mark spank ^{victim}"?

4 A Yes, sir.

5 Q Okay. Now, in the statement, you did reference
6 discipline from Mark to ^{victim}, didn't you? I mean, you
7 did -- let me rephrase that.

8 You did talk about Mark taking toys away from ^{victim} to
9 discipline ^{victim}, is that right?

10 A Yes, sir.

11 Q You did talk, I believe, about him standing in a
12 corner -- or Mark Martucci making ^{victim} stand in a corner as
13 a disciplinary measure for a little while?

14 A Yes, sir.

15 Q Now, in your first statement, you talked about how
16 Mark fed ^{victim} a good bit; is that right?

17 A Sometimes, yes, sir.

18 Q It wasn't just an occasion. I mean, he took good
19 care of ^{victim} for a while when he wasn't working; is that
20 right, or took care of ^{victim}?

21 A Yes, sir.

22 Q Okay. He bathed him. I believe that you talk in
23 your statement that he cleaned him up and fed him from
24 time to time; is that right?

25 A Yes, sir.

1 Q Now, on the morning of ^{victim}'s death, in your first
2 statement, your written testimony, you heard ~~victim~~ crying; is
3 that right?

4 A In the morning?

5 Q Yes, sir.

6 A Yes, sir.

7 Q On the morning of his death when you woke up. And
8 did Mark say to you -- Mark Martucci, I don't know what to
9 do? Do you recall that, Mr. Parker?

10 A Could you repeat that?

11 Q Certainly. Do you recall that morning when ~~victim~~ was
12 crying when you first woke up that -- and we're talking
13 about the morning of his death, unfortunately. Did Mark
14 say to you -- Mark Martucci say to you, I don't know what
15 to do, referring to ^{victim}?

16 A He was saying a lot of things. I don't know if they
17 were directed solely towards me. But just, in general, he
18 was babbling on and on, yes, sir.

19 Q But you -- and I do understand what you're saying.
20 Do you agree with me that you heard him say that, he
21 wasn't necessarily talking to you, but you did hear him
22 say, I don't know what to do?

23 A Yes, sir.

24 Q Okay. Did you hear him speak to Brandi Holder on the
25 phone?

1 A I heard him talking. I didn't hear her on the other
2 end.

3 Q Okay. Did you hear him say to somebody, Why is he
4 throwing up like this, referring to ^{victim}?

5 A I believe so, yes, sir.

6 Q Okay. I believe you testified on direct examination
7 that you, actually, saw Mark Martucci give -- or attempt
8 to give CPR to ^{victim}; is that right?

9 A Yes, sir.

10 Q In your first statement -- and let me -- I'll hand it
11 back to you just in case you need to refresh your memory
12 with it. Okay. If you need to look at it, please feel
13 free to. This is your first statement to police.

14 Now, Mr. Parker, in that statement, there was no
15 mention of Mark abusing ^{victim}, was there?

16 A No. I don't recall so.

17 Q You don't recall or there isn't?

18 A I don't believe so, no, sir.

19 Q Okay. So your answer to that is, you didn't mention
20 to the police in that four-page statement anything about
21 Mark abusing ^{victim}?

22 A No, sir.

23 Q You didn't mention Mark beating ^{victim}, did you?

24 A I don't believe so, no, sir.

25 Q Okay. You didn't mention anything about Mark

1 smacking ~~victim~~^{him} in his head with his hands?

2 A No, sir.

3 Q You didn't mention anything about Mark pushing him
4 under water, did you?

5 A No, sir.

6 Q Okay. And, I guess, you would agree with me that
7 that was important information about Mark Martucci?

8 A Yes, sir.

9 Q Sometime shortly after your first statement, you gave
10 a second statement; is that right?

11 A Yes, sir.

12 Q Okay. Now, for direct examination for the
13 Prosecutor, I believe your testimony was that you were
14 scared of what might happen to you; is that right, if you
15 told the testimony or the story that you're telling today;
16 is that correct?

17 A Yes, sir.

18 Q What happened between the first and second statement
19 that would alleviate that fear -- or that would take that
20 fear away?

21 A In the first statement, I was real nervous. I really
22 didn't know what to do. I had been -- I had just been
23 through a lot going through from that morning until then.
24 I didn't -- I mean, I was scared. I really didn't know
25 what to do. And after sitting in there in the room with

1 the police officers, it just -- I guess it just hit me to
2 realize what had all happened.

3 Q So, basically, when you went under oath the very
4 first time, I guess, you're telling the jury that that
5 wasn't true; is that correct?

6 A Not completely.

7 Q And, I guess, the part about when you said, I have
8 never even seen Mark spank ^{victim}, I guess, that was -- I mean
9 a lie, I guess, wasn't it, based on your testimony today?

10 A Yes, sir.

11 Q But, now, you were sworn to tell the truth just like
12 today; is that right?

13 A Yes, sir.

14 Q When you went to the hospital that morning with ^{victim}
15 and Mark, did you observe any injuries to Mark Martucci's
16 face or mouth that you can recall?

17 A Not that I can recall, no, sir.

18 MR. SUMNER: One second, please, Your Honor.

19 (Pause.)

20 BY MR. SUMNER:

21 Q Would it be fair to say that -- Mr. Parker, that Mark
22 Martucci was worried about the child from the time that
23 you woke up that morning?

24 A I guess you could say that, yes, sir.

25 Q Because, I mean, he's cleaning him up after throwing

1 up and saying, I don't know what to do, and getting people
2 on the phone, and then the CPR and all that. Would that
3 be correct?

4 A Yes, sir.

5 MR. SUMNER: Thank you.

6 I don't have any other questions.

7 THE COURT: Any redirect?

8 MS. SEAY: Nothing further.

9 THE COURT: Thank you.

10 MR. BYRHOLDT: Your Honor, I have one question.

11 THE COURT: All right.

12 RE CROSS-EXAMINATION

13 BY MR. BYRHOLDT:

14 Q Mr. Parker, was Mark Martucci worried about ^{victim} or was
15 he worried about Mark Martucci?

16 A I believe he was more worried about himself.

17 MR. BYRHOLDT: Nothing further.

18 Thank you.

19 THE COURT: Thank you.

20 You can step down.

21 Ladies and gentlemen, we will suspend at this time.

22 We'll pick back up tomorrow morning at 9:00.

23 Now, when you leave, please, remember, do not talk
24 about the case among yourselves or with anyone else.

25 Please keep your badges on.

1 Now, under the oath you took, in this case, ladies
2 and gentlemen, you swore to try the case based only and
3 solely on the testimony and evidence presented in this
4 courtroom. I, therefore, admonish you not to see any
5 media or read any media coverage of this case. To do so
6 would be a violation of your oath. So ignore all media
7 coverage, if any, about this case.

8 And with that, I'll ask that you be back promptly
9 tomorrow morning at 9:00, 9:00, 9:00. Okay.

10 MR. SUMNER: What time in the morning, Your Honor?

11 THE COURT: 8:30 for you.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 5:02 p.m.)

14 THE COURT: All right. See you in the morning at
15 9:00.

16 Solicitor, how much do you have left?

17 I'm was trying to determine what to do about this
18 next jury.

19 MS. SEAY: Your Honor, my -- assuming that the
20 witness that might be having the baby won't be here, I
21 would have just the officers in relation to the
22 statements.

23 THE COURT: Okay. Can you tell me about how long
24 your case will be?

25 MR. BYRHOLDT: At best, a couple of hours.

1 THE COURT: Okay.

2 MR. BYRHOLDT: If there is one.

3 THE COURT: At best.

4 MR. SUMNER: Judge, I can tell you I don't think
5 we're going to have a lot to put up.

6 THE COURT: Okay. How long do you think you need to
7 talk to the jury?

8 MR. BYRHOLDT: I'm not long.

9 MR. SUMNER: I'd say for me, 10 to 15 minutes.

10 THE COURT: Okay. That's fine.

11 MS. SEAY: Judge, have you considered any more what
12 we need to do, if anything, about the redacted statement
13 situation?

14 THE COURT: I think it's all right like it is now.

15 MS. SEAY: Okay. I didn't know if I needed to work
16 on cutting and pasting tonight.

17 THE COURT: No. You don't need to work on it.

18 MR. SUMNER: I just renew, for the record, my
19 objection on that.

20 THE COURT: I understand.

21 See you in the morning

22 (WHEREUPON, the proceedings were concluded at
23 approximately 5:04 p.m., to be reconvened on
24 Wednesday, February 8, 2006.)
25

1 WEDNESDAY, FEBRUARY 8, 2006

2
3 THE COURT: Are you ready to proceed?

4 MS. SEAY: The State is ready to proceed.

5 THE COURT: All right. Bring the jury in.

6 MR. BYRHOLDT: Your Honor, we're probably going to
7 have a Bruton issue. They've just given me a statement
8 from Mr. Martucci, who we know is not here, at least, not
9 yet.

10 MS. SEAY: Your Honor, this is in reference to the
11 oral statements that Mr. Martucci made that Investigator
12 Kelly testified to in the Jackson v. Denno hearing. And
13 what I did was just extract that portion and replace the
14 co-defendant's name with a pronoun just like we're doing
15 with the written statement.

16 THE COURT: All right.

17 MS. SEAY: I just wanted to make sure they were aware
18 of it because they were -- they're the oral statements
19 that were testified to.

20 MR. BYRHOLDT: The oral statement -- or the statement
21 I've been given today with the redacted version is -- I
22 don't recall Officer Kelly testifying that Martucci stated
23 that he had been noticing the bruises on the child and
24 felt that she -- and the only "she" we have is
25 Ms. Holder -- was inflicting them. I don't recall that

1 testimony at all. And I don't think we've ever been made
2 aware of this prior to this morning.

3 MS. SEAY: Your Honor, those are, clearly, outlined
4 in Investigator Kelly's reports. And I think that what
5 may have happened now that I'm thinking back on it is I
6 think that we did the establishment that the Defendant was
7 properly advised of his rights and that he freely and
8 voluntarily signed the rights waiver and spoke with
9 Investigator Kelly. And I think we were limited in
10 getting into the substance of it. I don't think you were
11 interested in that at that time.

12 THE COURT: That's right.

13 I don't see any problem, Mr. Byrholdt, with this.
14 It's been properly redacted.

15 MR. BYRHOLDT: If I could have a minute or two to
16 review it. I mean, I was just handed this as you walked
17 in the door.

18 THE COURT: Okay.

19 (Pause.)

20 MR. SUMNER: Your Honor, could I be heard as to the
21 oral statement that the Prosecutor handed up?

22 THE COURT: Sure.

23 MR. SUMNER: Your Honor, I would object to merely the
24 last sentence.

25 THE COURT: I don't have a copy of it.

1 MS. SEAY: I'm sorry. Let me give you a copy, Your
2 Honor.

3 MR. SUMNER: The last sentence of the first
4 paragraph, Your Honor, "I gave him the opportunity to give
5 a sworn written statement. He stated he had no statement
6 to make."

7 I don't believe it's proper to bring to the jury's
8 attention that somebody invokes their rights. I think
9 there's case law on that that you can't bring to the
10 jury's -- or the trier of facts attention that somebody
11 invoked their right not to give a statement.

12 So other than -- I mean, other than that, I mean, I
13 know there's a Bruton issue there that you're going to
14 rule upon this morning regarding all the statements.
15 Other than that and the standard Bruton objection, I --
16 but I don't think that sentence is proper.

17 THE COURT: All right. How about that, Solicitor,
18 the last sentence of the first paragraph?

19 MS. SEAY: Your Honor, I think it's proper in that he
20 had already stated all these other things when he said
21 that. He had already voluntarily made statements.

22 THE COURT: All right. Solicitor, I'm going to
23 delete that last sentence of the first paragraph.

24 MS. SEAY: Yes, sir. I don't object to that.

25 Thank you.

1 MR. BYRHOLDT: Your Honor, my objection -- I mean, as
2 far as I know, we've been provided essentially a two-page
3 supplemental report based on Officer Kelly's interview
4 with Martucci, and none of that information is in that,
5 Your Honor. We claim surprise, I mean.

6 MS. SEAY: Your Honor, the entire case file has been
7 provided to defense. Mr. Byrholdt and Mr. Phillips were
8 retained on this case in November, about a week and a half
9 before this case was set for trial. And they got the file
10 from the previous attorneys. And we verified that with
11 them. And it's been provided. And I'll be glad to give
12 you documentation.

13 MR. BYRHOLDT: I've got no problem with that. What
14 I'm saying is the only two pages that I have -- now, if
15 she has something else, I'd be happy to look at it. But,
16 I mean, I've got two pages of the Martucci interview with
17 Kelly. And none of this information is in there.

18 THE COURT: None of what information?

19 MR. BYRHOLDT: The statement that he suspected Brandi
20 as being the cause of this injury to ^{victim}. It's just not in
21 there.

22 MS. SEAY: What page are you referring to?

23 MR. BYRHOLDT: I've got the supplemental report --
24 I've got it marked 29 or 30 at the top. I just wanted to
25 make sure -- is there something else?

1 MS. SEAY: And everything else has been provided. I
2 mean, I don't know what else to say.

3 MR. BYRHOLDT: What I'm saying is, those statements
4 are not in Officer Kelly's report.

5 MS. SEAY: They are.

6 MR. BYRHOLDT: They are?

7 MS. SEAY: Yes.

8 MR. BYRHOLDT: Where?

9 I mean, that's what I'm saying. I've got the two
10 pages. I'll be happy to hand them up.

11 THE COURT: I don't need that. Let her find it. She
12 says it's in there.

13 MR. BYRHOLDT: Okay.

14 (Pause.)

15 THE COURT: Can you help her, Mr. Kelly?

16 MR. DOUG KELLY: Yes, sir. I read it last night.

17 MS. SEAY: It's on Page 7. It begins on Page 7 of
18 Investigator Kelly's supplemental report. This
19 investigator interviewed Mark Martucci after obtaining a
20 signed Waiver of Rights Form. What he testified to --

21 MR. BYRHOLDT: I'll withdraw the objection that I
22 wasn't provided it, Your Honor.

23 But I still think under the Gray v. Maryland case,
24 Your Honor, and also under the case of State v. Garrett,
25 567 S.E.2d 523, admission of a statement made by a

1 non-testifying co-defendant -- and we have an absent one
2 so we know he's not going to testify -- and implicating
3 the Defendant violates the confrontation clause unless it
4 is redacted so as to not implicate the co-defendant.

5 There's no way it's redacted. The only woman in this
6 trial is Ms. Holder. There's no way Mr. Martucci is going
7 to testify. We're not going to be able to cross-examine
8 him. And we think that violates the Sixth Amendment right
9 to confront the witnesses against us, Your Honor.

10 THE COURT: Solicitor.

11 MS. SEAY: Your Honor, this is, essentially, the
12 exact same issue that we've been discussing and that you
13 had ruled would -- the redaction would be proper with the
14 substitution of a pronoun, which is exactly what I've done
15 with that.

16 THE COURT: I agree with the Solicitor. I deny your
17 motion.

18 All right. Bring our jury in, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 9:09 a.m.)

21 THE COURT: Good morning.

22 All right. Solicitor, you may proceed.

23 MS. SEAY: Thank you, Your Honor.

24 The State calls Investigator Doug Kelly.

25 THE CLERK: Put your left hand on the Bible, please,

1 sir, and raise your right hand.

2 WHEREUPON,

3 DOUG KELLY,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: State your name for the record, please.

6 THE WITNESS: Doug Kelly, K-E-L-L-Y.

7 THE CLERK: Be seated.

8 MR. SUMNER: Your Honor, prior to Mr. Kelly starting,
9 could we approach a second, myself and the Prosecutor?

10 THE COURT: Sure.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: Take the jury out for a minute, please.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 9:11 a.m.)

15 THE COURT: All right. Mr. Sumner.

16 MR. SUMNER: Your Honor, may it please the Court?

17 On the notes which were given to me this morning from
18 the Prosecutor, the last paragraph states -- and this,
19 presumedly, will be Investigator Kelly's testimony -- "I
20 advised him that he, Brandi Holder, and John Parker were
21 to be charged with homicide by child abuse in the death of
22 VICTIM . He stated that he was not worried, that he had
23 50,000 witnesses that would say he had done nothing."

24 Your Honor, I would ask that that last sentence of
25 that paragraph, which I just read in the record, not be

1 allowed to be testified to before the jury, and that my
2 client has a right to remain silent as the Court has
3 stated to the jury early on in the beginning of the trial
4 and that there's no burden on Mr. Martucci. He doesn't
5 have to be present. He doesn't have to present a defense
6 at all. The burden is on the State.

7 So I would ask that that comment that he had 50,000
8 witnesses that would say he had done nothing not be
9 allowed to be heard by the jury.

10 THE COURT: And I would deny that.

11 MR. SUMNER: Okay.

12 THE COURT: Bring the jury back, please.

13 (WHEREUPON, the jury came into open court at
14 approximately 9:13 a.m.)

15 THE COURT: All right. Solicitor.

16 DIRECT EXAMINATION

17 BY MS. SEAY:

18 Q Investigator Kelly, would you, please, state your
19 name again so I can make sure you're heard back here?

20 A My name is Doug Kelly.

21 Q Investigator, where are you currently employed?

22 A The Greenville County Sheriff's Office.

23 Q How long have you been employed with the Sheriff's
24 Office?

25 A I was employed with the Sheriff's Office for

1 approximately 17 years before I had to retire medically in
2 2003. Now, I've returned as of December of last year.

3 Q Okay. So you were there for 17 years and in 2003 --
4 do you recall approximately what month?

5 A September of 2003.

6 Q You medically retired; is that correct?

7 A That's correct.

8 Q And you had some very serious health issues for quite
9 some time; is that right?

10 A Yes, ma'am. I had a couple of issues that were life
11 threatening at the time.

12 Q And when did you return to active duty at the
13 Sheriff's Office?

14 A In December of 2005.

15 Q So you've been back a short time?

16 A A couple of months.

17 Q Investigator Kelly, would you describe what your
18 education and training is, and also give us what your
19 experience with law enforcement has been?

20 A Yes, ma'am. I'm a '74 graduate of Lander University
21 where I have a BS and a double major in economics and
22 math. Prior to that, I was in the United States Army
23 military police.

24 After I graduated from college, I remained in law
25 enforcement with different state agencies. I worked with

1 the Eighth and Tenth Circuit Solicitor's Office for a few
2 years as an investigator. I then moved on to private
3 practice or private business with Lloyds of London for a
4 couple of years.

5 And then I returned to law enforcement with the
6 Greenville County Sheriff's Office in the '80's. And
7 during that time, I've had extensive training in all
8 aspects of law enforcement, homicide investigations,
9 interviews, forensic pathology, and that type of thing.

10 Q Okay. What were your duties back in July of 2002?

11 A In July of 2002, I was assigned to the violent crimes
12 unit of the Sheriff's Office as a homicide investigator.

13 Q Generally speaking, what were some of your duties as
14 an investigator for violent crimes?

15 A Basically, we responded to really all death
16 investigations. The only thing that we didn't respond to
17 was natural deaths and traffic accidents. We investigated
18 all kinds of suicides, accidental deaths due to someone
19 getting run over by a train, anything like that, plus the
20 homicides.

21 Q Do you know or can you estimate approximately how
22 many investigations you've been involved in?

23 A Over the years, it's been several hundred.

24 Q Back in July of 2002, did you have occasion to be
25 called to Allen Bennett Hospital?

1 A I did, yes, ma'am.

2 Q On what date?

3 A It was July the 17th of 2002. It was on a Wednesday.

4 Q What was the nature of your response?

5 A I had received a call from Deputy Coroner Linda
6 Holbrook at my office. I was the on-call death
7 investigator for that week. She advised me that she was
8 at Allen Bennett and there was a deceased child, a
9 two-year-old child, there. And she requested my response
10 there.

11 Q Okay. Did you go alone or did you have other
12 officers with you?

13 A I contacted my backup at the time, which was
14 Investigator Bobby Alexander. I proceeded there on my own
15 and then Bobby followed.

16 Q Would you tell us when you arrived who all was
17 present?

18 A When I first arrived at Allen Bennett, I first met
19 Dr. Michael Ward as he was coming out. He advised me what
20 the situation was, that there was a child that he had been
21 called to examine, that the child had multiple bruises,
22 and it was a possible abuse.

23 And when I went into the emergency room, I was met by
24 Sergeant Roberson, who would be the supervisor from the
25 uniform patrol that was called by the officer that had

1 originally responded, which was Officer Jackson.

2 He then guided me to the trauma room where the child
3 was located. And there, I met with Deputy Coroner Linda
4 Holbrook and we viewed the child.

5 Q What did you observe when you looked at the child?

6 A Well, when I went into the room, the child had
7 already been placed into a body bag, which was proper
8 procedure for the Coroner's Office. That was due to the
9 child was going to be transported to Greenville Memorial
10 Hospital for autopsy purposes.

11 Q So were you able to look at him?

12 A I was. Linda opened the body bag and I viewed the
13 child and was advised that his name was VICTIM .

14 They called him "VICTIM" In looking at the child, he was --
15 there was incredible bruises all over the child's body
16 from the head to his feet and on --

17 Q Were --

18 A -- his back also.

19 Q Oh, excuse me. Go ahead.

20 A Yeah. It was just covered front and back with
21 bruises.

22 Q Were there any other investigators there at that
23 time?

24 A Not at that time. Bobby arrived later.

25 Q And "Bobby" being?

1 A Bobby Alexander.

2 Q And is he an investigator with the Sheriff's Office?

3 A He is, yes, ma'am.

4 Q Okay. Did you meet the mother of the baby there?

5 A I was advised by Linda that the parents were there.
6 Then I learned, of course, that the biological mother was
7 there.

8 Q What was her name determined to be?

9 A Her name was Brandi Holder. She had been placed into
10 what they call a family room there at Allen Bennett. Two
11 other individuals, which was identified as Mark Martucci
12 and John Parker, had been separated from Brandi. And they
13 were in a different area of the hospital.

14 Q You said the parents -- you learned "the parents"
15 were there. Was the baby's biological father there?

16 A No, ma'am. That's just what was stated at the start.
17 They said "parents." That was stated by one of the
18 officers, not realizing that Mr. Martucci was not,
19 actually, the biological father.

20 Q You said that they were in different rooms. Did --
21 had they been directed to go to certain places to await
22 your arrival?

23 A They had, which is our procedure in any death
24 investigation. We separate the individuals that we need
25 to talk to as we gather information as to how this child

1 died.

2 Q Were they under arrest?

3 A No, ma'am. Nobody was in custody.

4 Q They were free to leave the hospital, if they felt
5 like it?

6 A Yes, ma'am. If they felt like they needed to leave,
7 they could leave.

8 Q Did you get any information, at that time, as to
9 VICTIM 's date of birth?

10 A Correct. I was, originally, told it was the
11 But later, I learned it was, actually, the
12 of the year 2000. I learned his address, that type of
13 thing.

14 Q Okay. Did you have occasion to talk to VICTIM^M's mother?

15 A I did. Myself, Deputy Coroner Holbrook, and
16 Investigator Alexander were led to the family room where
17 Brandi Holder was located. Along with Brandi, her parents
18 were there, VICTIM^M-- I mean, not VICTIM^M, Ben and Marie Holder
19 which --

20 Q They are Brandi Holder's parents?

21 A That's Brandi Holder's parents and grandparents of
22 VICTIM. Also there was an uncle there by the name of David
23 Kelly. There was some hospital support staff and
24 counselors, which I didn't get their names. But they were
25 present also.

1 Q Did you say anything to Brandi Holder?

2 A I introduced myself and advised her that I was an
3 investigator from the Sheriff's Office, and that it was
4 our procedure on a child's death that we respond to
5 investigate the death.

6 Q And did you talk with her about what had happened?

7 A Yes, ma'am. Briefly, we asked Brandi could she tell
8 me exactly what had happened to ^{VICTIM} and how he came to be
9 at Allen Bennett. She, basically, stated she had gone to
10 work somewhere between 9:30 and 10:00 that morning, which
11 was a Wednesday morning. She had received a call from
12 Mark sometime after lunch and that ^{VICTIM} was sick and was
13 being carried to the Allen Bennett Hospital.

14 She stated that ^{VICTIM} had been vomiting the night before
15 and that he had been in a -- at the time, they called it
16 ATV, but it was a four-wheeler accident on Sunday, but
17 they thought he was fine. He seemed to be fine during
18 that time. Other than that, she provided us no other
19 information.

20 Q And was Mark Martucci in the room when she told you
21 this information?

22 A No, ma'am.

23 Q Who else did you speak with at the hospital?

24 A Once we -- well, I spoke with Marie Holder for a
25 short time, again, just trying to gather some information.

1 Marie Holder stated she had not seen --

2 MR. BYRHOLDT: I object to what Marie Holder said as
3 being hearsay, Your Honor.

4 BY MS. SEAY:

5 Q Without saying what she said, did you talk with her?

6 A Yeah. We talked with her briefly. And then after
7 that, we located Mark Martucci and went and talked with
8 him.

9 Q Okay. What did you tell him?

10 A The same type of situation, advised him of who we
11 were, an investigator with the Sheriff's Office. And it
12 was myself and Linda Holbrook at that time. We were
13 speaking with him. He was in the company of John Parker.
14 It was also -- Officer Jackson was standing by there.

15 We located him in a courtyard just outside the
16 hospital. It's like a dining area for the employees
17 there. We advised him the same thing, that if he could
18 tell us exactly what had happened to ^{victim}, how he came to be
19 at the hospital and was now deceased.

20 Mr. Martucci got into telling us he was self-employed
21 as a carpet installer, I believe he said, and that he had
22 lived on Road for approximately four years,
23 and that ^{victim} and Brandi had been living with him for, you
24 know, a short period of time. And that ^{victim} had been sick
25 the night before and had been vomiting, which would have

1 been on a Tuesday night. And that morning the vomiting
2 continued and got worse. And that he and Mr. Parker had
3 transported ^{VICTIM} to the hospital.

4 He also mentioned, too, that ^{VICTIM} had been involved in
5 a four-wheeler accident on the Sunday prior to that. He
6 also said he thought ^{VICTIM} was fine -- seemed to be fine
7 after the accident. But, then again, the vomiting started
8 on Tuesday evening.

9 Q Did he tell you anything else by way of explanation
10 of how ^{VICTIM} got his injuries?

11 A No. We didn't get into the extent of ^{VICTIM}'s injuries.
12 Again, I was just trying to gather information as to what
13 possibly could have happened at that time. I asked
14 Mr. Martucci and also Mr. Parker that -- would they come
15 to the law enforcement center, that we needed to take
16 statements as to what he had just told us. And they
17 agreed to do so and, actually, drove themselves down to
18 the law enforcement center.

19 Q Okay. While you were at Allen Bennett talking with
20 him, did he tell you ^{VICTIM} was an accident-prone child or
21 anything of that nature?

22 A Yes, ma'am. He stated further on as we were talking
23 that ^{VICTIM} was a clumsy child, that he had been falling off
24 the porch, and that one time some dog had knocked him down
25 and had caused some bruises on him, that he was constantly

1 falling around, falling out of bed, and that type of
2 thing.

3 Q And that was at the same time he talked about the
4 four-wheeler accident?

5 A Yes, ma'am.

6 Q What was Mr. Martucci's demeanor while you talked
7 with him at the hospital?

8 A Well, he was quite calm. He didn't seem to be real,
9 you know, upset about what had happened, that ~~VICTIM~~ had died,
10 you know. He was freely talking to us. We really didn't
11 have to ask a lot of questions. He was providing
12 information to us, at the time, telling us about him
13 falling around and that type of thing.

14 Q And you stated that Mr. Parker was present during
15 this, John Parker?

16 A Yes, ma'am.

17 Q What was his demeanor during that time?

18 A He was very quiet. He seemed to be very timid. If
19 we would say something to him, he was slow in reacting and
20 answering questions.

21 Q Did he provide any information?

22 A He had provided us with hardly any information at
23 that time. So our main attention was asking Mr. Martucci
24 about ~~VICTIM~~.

25 Q Okay. And you stated, I believe, that they then were

1 requested to come to the law enforcement center and they
2 drove on their own to the law enforcement center?

3 A Yes, ma'am. It's my understanding that they were in
4 Mr. Martucci's van. And they drove themselves down to the
5 law enforcement center.

6 Q Did anyone -- did you or anyone else tell them that
7 they had to go to the law enforcement center?

8 A No, ma'am. We did not state or demand that they had
9 to go. We just requested that they come for purposes of
10 getting information and taking statements from them about
11 VICTIM's condition.

12 Q And did they indicate their willingness to do that?

13 A Yes, ma'am. They said they would go.

14 Q At some point, did you go to the residence where VICTIM
15 had died?

16 A Yes, ma'am. I -- Bobby -- I instructed Bobby
17 Alexander to go to the LEC and assist with taking the
18 statements from Mr. Martucci.

19 And I need to state, too, that we had requested the
20 same thing from Brandi, that she respond to the LEC for
21 statement purposes. And her uncle, David Kelly,
22 transported her down there.

23 So I had Bobby -- Investigator Alexander go down
24 there to assist in that area. I had talked with Sergeant
25 Roberson and requested that he send a unit out to the

1 residence on Road.

2 Q Did you go out there?

3 A Eventually, I went out there also.

4 Q Did you talk with some neighbors while you were out
5 there, without saying what anyone said?

6 A Yeah. Several people were there. And I talked to
7 several neighbors. We even had some that came up that
8 were -- that didn't live exactly in that neighborhood, but
9 came up and talked with me.

10 Q So you didn't go out looking for people to talk to
11 then, people came to you?

12 A Correct. When I arrived at the residence, there was
13 some neighbors that lived right next door, they were
14 there. And they came up to us and started talking to us.

15 Q Did you make arrangements for them to come and give
16 you more information and possibly take statements from
17 them?

18 A I did. I requested -- everyone that I had talked
19 with out there, I requested them to respond. I think they
20 came the next day.

21 Q Okay. Did you have occasion to meet the Veneskys,
22 who have testified earlier in the trial?

23 A Yes, ma'am. Ron Venesky came and requested to speak
24 with me through one of the other officers. And I did.
25 And I met with him and talked with him briefly at the

1 scene at the residence of Mr. Martucci and Brandi.

2 Q Did you later obtain some photographs from them?

3 A I did.

4 Q Who were the photographs of?

5 A It was photographs of *VICTIM*, the child -- I mean,
6 *VICTIM*.

7 Q All right. So going back to the law enforcement
8 center, you were describing a moment ago that other
9 investigators were requested to assist with statements.
10 When you got to the law enforcement center, had any
11 statements been taken?

12 A Yes, ma'am, they had. I was advised that two
13 statements had been taken.

14 Q And from whom had the statements been taken?

15 A One statement had been taken from Brandi Holder, and
16 one statement had been taken from John Parker.

17 Q Did you have an opportunity to read those?

18 A I did.

19 Q What did you surmise?

20 A The first statement that I read, I went into the area
21 there from our office, which is the violent crimes office,
22 and Investigator Paul Silvaggio and Investigator Alexander
23 were there. They were interviewing Brandi Holder.

24 So I reviewed her statement that she had given them
25 first. After reading the statement, I noticed there were

1 some inconsistencies in it as to what, you know, actually,
2 had taken place or information that I had.

3 I then approached Brandi about that and about the
4 information in the statement that she had given and that I
5 felt like it was incorrect. And, at that time, she stated
6 she wanted to -- well, there was an incident about the
7 four-wheeler accident that we had found out.

8 Q Let me stop you there. Did you tell her something
9 about the four-wheeler accident?

10 A I did, yes, ma'am.

11 Q What did you tell her?

12 A That we -- I had learned that the four-wheeler
13 accident had not taken place.

14 Q Did she then admit to you that it had not taken
15 place?

16 A She did. She said that the four-wheeler accident
17 had -- did not happen and that she now wanted to tell what
18 had happened.

19 Q So subsequent to that, did she give another
20 statement?

21 A Yes, ma'am, she did. She indicated that she wanted
22 to give another statement. And as she started to give it
23 to Investigator Silvaggio, I left the room with her
24 present giving a statement to Paul Silvaggio and to Bobby
25 Alexander.

1 Q Okay. When you went in to talk to her after you had
2 reviewed her first statement, where were they all located?
3 Where was she and the other investigators located?

4 A In our office at the law enforcement center, it's
5 kind of a large area. If you want me to describe how it
6 is --

7 Q Yeah. Just kind of briefly describe the setup of the
8 offices.

9 A When you first come in our office, there's a
10 receptionist there. When you look down the right side of
11 the office, there's separate rooms that our sergeants
12 usually occupy. There's a partition that separates their
13 office from what we call the white collar section, which
14 is a bay area, an open area, that has several different
15 desks in it. Our captain's office is just off from where
16 the receptionist is.

17 In the back of that bay area, there's a wall with a
18 door that leads into the violent crimes section, which
19 usually seats six to seven people desk-wise. Brandi was
20 located in that area at Paul Silvaggio's desk, which was
21 the second desk on the left. And Bobby Alexander was
22 sitting in the first desk. And Brandi was sitting right
23 beside Paul's desk.

24 Q So this was an area where there were several officers
25 normally located when they were there working?

1 A Yeah. That's where the violent crimes homicide
2 offices are.

3 Q And you said that the -- I'll call the rooms, so to
4 speak, are divided by partition-type material?

5 A Yeah, just temporary partitions that are set up that
6 can be moved, if they have to be.

7 Q Sort of what you might call a cubicle-type situation?

8 A Cubicle-type. And that's where our white collar
9 investigators are.

10 Q When you went in and you talked to her about what you
11 had learned about the four-wheeler accident, what was her
12 demeanor at that time?

13 A She seemed to be, you know, relaxed. I noticed they
14 had given her a blanket. She was -- you know, our office
15 stays kind of cold because of the air conditioning. She
16 was wrapped in the blanket and was talking freely to Paul.
17 You could tell she had been crying, but she wasn't crying
18 at the time that I came in there.

19 Q Did you notice whether she was restrained in any way
20 or anything of that nature?

21 A No. She was not in cuffs and she was not in custody
22 at that time.

23 Q Okay. Do you know whether she was under arrest for
24 anything at that time?

25 A No, ma'am. She was not under arrest.

1 Q If she had decided to just get up and walk out of the
2 law enforcement center, could she have done so?

3 A She could have, yes, ma'am.

4 Q What did you do after you talked with her and that
5 process started? What did you do next?

6 A When I left that area, I was advised that Mr. Parker
7 was being interviewed by Investigator Wes Smith down in
8 our captain's office, which is on the opposite end of that
9 section. I went down there. And Investigator Smith
10 handed me his statement. And I read it. And pretty much
11 the same thing about the information that I had was a
12 little different than what I read in his statement. I
13 approached Mr. Parker about it. And, at that time, too,
14 he indicated that he wanted to tell the truth and
15 proceeded to give another -- or a second statement.

16 Q Did he -- what was his demeanor at that time?

17 A You could tell that -- or I observed that Mr. Parker
18 was -- he was very nervous. He was very quiet. When we
19 would ask him questions, again, he was slow in responding
20 not that he was, you know, terrified or anything. He was
21 just -- visibly, he was upset about what had gone on.

22 Q Did he appear nervous to you?

23 A Yes, ma'am. He was nervous.

24 Q After you talked with Mr. Parker, did you have an
25 opportunity to talk to Mark Martucci?

1 A I did once the -- Investigator Smith started his
2 second statement on Mr. Parker, I left that room. I was
3 advised where Mr. Martucci was located, which was in one
4 of our sergeants offices.

5 Q Who was with him?

6 A Nobody at that time. He was by himself.

7 Q Had he been just asked to wait until someone could
8 speak with him?

9 A I have to assume that's what they did. I wasn't
10 there when they arrived, so.

11 Q When you went in, what was Mr. Martucci's demeanor at
12 that time?

13 A When I went into the room, Mr. Martucci had his head
14 laying down on the desk. And he was asleep.

15 Q Did you wake him up?

16 A I woke him up, yes, ma'am.

17 Q Did you request to speak with him?

18 A I did. At first, I advised him who I was, again, and
19 that I was there to try to talk to him. And then I
20 proceeded to read -- go over his rights with him.

21 Q All right. When you advise someone of their rights,
22 do you have a particular procedure that you have to use?

23 A Yes, ma'am. We have rights forms that we use. I
24 provided him with a copy. And then I kept a copy to read
25 from. I gathered his information -- personal information

1 that I documented at the top of the form.

2 MS. SEAY: Bear with me just a moment, please, Your
3 Honor.

4 (Pause.)

5 MS. SEAY: I apologize.

6 BY MS. SEAY:

7 Q Investigator Kelly, do you recognize what's been
8 marked as State's Exhibit No. 1 for identification?

9 A Yes, ma'am. This is the rights form that I filled
10 out on the night of July the 17th of 2002.

11 Q Is that a rights form that your agency uses?

12 A It is, yes, ma'am.

13 Q If you would, explain in detail the procedure that
14 you went through to advise Mr. Martucci of his rights.

15 A Okay. Once I identified who I was, again, to
16 Mr. Martucci, I advised him that I needed to read him his
17 rights. And I provided him a copy of this form, this
18 blank form. And I kept one copy. And I advised him that
19 I was just going to read him his rights, explain them to
20 him, if he had any questions about any of them, to stop me
21 and I would explain it to him.

22 I determined that -- or asked Mr. Martucci if he
23 could read and write. And he said he could. I then asked
24 him how far he went in his education. And he stated he
25 went -- graduated through the eleventh grade, and he did

1 not have any problems reading and writing. I got his
2 information as far as his full name, address, date of
3 birth, and social security number, which I listed at the
4 top.

5 Q And you obtained all that information from him?

6 A Yes, ma'am. I obtained that from him. I put the
7 case number at the top that was assigned to this
8 investigation. I dated it July the 17th, 2002, and marked
9 the time as military time. It was 19:30, which would be
10 7:30 at night. I then began to read through the
11 questions, each one. When I got down to where it says,
12 "Waiver of Rights," I asked Mr. Martucci if he understood
13 these rights as I had read them to him. And he stated --
14 indicated that he did.

15 Q Would you, please, just backtrack just a moment and
16 read the rights as you read them to Mr. Martucci, please?

17 A Okay. As I read the rights to him, I said, "Before
18 we ask you any questions, you must understand your rights.
19 You have the right to remain silent. Anything you say can
20 be used against you in court. You have the right to talk
21 to a lawyer for advice before we ask you any questions and
22 to have him with you during questioning."

23 "If you have no money to pay a lawyer's fee, the
24 Court will appoint one to represent you without cost, if
25 you wish. And if you decide to answer questions now

1 without a lawyer present, you still have the right to stop
2 answering at any time. You also have the right to stop
3 answering at any time until you talk to a lawyer."

4 At that point, I asked him did he understand those
5 rights. And he said that he did.

6 Q Did you make any notations on that form to indicate
7 that you had explained -- read and explained every line?

8 A Yeah. I marked each line myself, I underlined it,
9 and made sure that he understood what I had read to him.

10 Q And then what happened?

11 A Then you have the Waiver of Rights that is as
12 follows, it says, "I have read this statement of my rights
13 and I understand what my rights are. I am willing to make
14 a statement and answer questions. I do not want a lawyer
15 at this time. I understand and know what I am doing. No
16 promises or threats have been made to me and no pressure
17 or coercion of any kind has been used against me."

18 And I asked if he understood that part. And he
19 indicated that he did.

20 Q Did he sign that form?

21 A He did. He -- and I asked him, if you want to sign
22 this form and you want to talk to me, you can indicate it
23 by signature right here, and it's not admitting to
24 anything. He did. And he put his signature there in my
25 presence.

1 Q Did he indicate to you in any way that he did not
2 want to sign the form?

3 A No, ma'am. He was very cooperative. And then, of
4 course, I signed it and dated it. And I signed it and put
5 the time that I completed the reading of the rights, which
6 was 19:35, which would have been 7:35, which it took five
7 minutes to read the rights to him.

8 Q Okay. In addition to what you read that's printed on
9 here, are you aware of any kind of pressure, coercion,
10 threats, or anything of that nature that came into play
11 with Mr. Martucci?

12 A No, ma'am. I'm not aware of anything of that nature.

13 Q Did you tell him what you had found out?

14 A After I read him the rights, I asked him did he want
15 to talk to me. And he said -- you know, he indicated that
16 he did. I then explained to him that I had learned about
17 the four-wheeler accident not taking place and that ~~victim~~^{victim} had
18 been badly beaten. And I needed to talk with him about
19 that and see if he could explain to me how this occurred.

20 Q Did he say anything then?

21 A Basically, what he said was that he had been noticing
22 bruising -- bruises on ~~victim~~^{victim}, and that he felt like she had
23 been inflicting them.

24 Q Did he say anything further?

25 A Yeah. He went on further to say that he had,

1 basically, been trying to get rid of her. And that he was
2 only letting them stay with him because of the child,
3 because of ^{VICTIM}, because they didn't have any place to go.
4 I asked him if -- you know, about the bruising and what he
5 meant by that. He indicated that the only time that he
6 saw her do anything was spanking his hand.

7 I then asked him how could these numerous bruises be
8 on ^{VICTIM} just by merely spanking his hand. I didn't get any
9 response from Mark about that. At times, Mark would
10 appear like he was trying to cry. But just as abruptly as
11 that started, it would stop. I never saw him crying. It
12 just appeared he was trying to do so. Again, I never got
13 any response about the bruising that was on ^{VICTIM}, the many
14 bruises -- the several bruises that had been noticed by us
15 at the hospital. He stated that he knew she was abusing
16 the child because of the bruises. But then he denied that
17 he had abused the child.

18 Q Okay. What did you do at that point?

19 A At that point, I advised him that, you know, there
20 would be charges forthcoming. Because we had already
21 taken statements from the other two, you know, John Parker
22 and Brandi, and that he would also be charged with the
23 homicide by child abuse in the death of ^{VICTIM}.

24 Q Did he have a response to that?

25 A The response I got from him was that he was not

1 worried, that he had 50,000 witnesses that would say he
2 had done nothing. And, at that point, no other
3 conversation took place.

4 Q Did you attend the autopsy that was done on ^{victim}?

5 A I did on the next day. On July the 18th, I attended
6 the autopsy.

7 Q Is that customary?

8 A Yes, ma'am.

9 Q At some point around that time, did you make
10 arrangements for interviews of the employees at the
11 Capelli Salon that testified in this trial?

12 A Yes, ma'am, I did. I made contact with them and
13 briefly spoke with them and requested them also to -- if
14 they would respond to the LEC. We scheduled dates for
15 them to come in where we could take written statements
16 from them. And they agreed to do so.

17 Q All right. I want to backtrack just a little bit to
18 your contact with Brandi Holder at the law enforcement
19 center. When you were present and you reviewed the
20 statement and you confronted her with additional
21 information, during that time, did you threaten her in any
22 way?

23 A No, ma'am.

24 Q Did you promise her anything in exchange for
25 cooperating with you?

1 A No, ma'am.

2 Q Did you promise her that maybe you could arrange for
3 some leniency for her if she cooperated?

4 A No, ma'am.

5 Q Did you tell her she had to give a statement?

6 A No, ma'am.

7 Q Are you aware of anyone else, any other law
8 enforcement officer, who was there or otherwise doing any
9 of those things?

10 A No, ma'am.

11 Q Did she appear to be coherent?

12 A Oh, yes, ma'am. She was very coherent.

13 Q Did she appear to be speaking without difficulty?

14 A Yes, ma'am.

15 Q Did she appear to be so distraught that she couldn't
16 speak?

17 A No, ma'am.

18 Q Did she appear to be under the influence of any kind
19 of substance that might impair her ability to talk?

20 A No, ma'am.

21 Q Did you ever hear her indicate that she wanted to
22 leave?

23 A Not in my presence, no, ma'am.

24 Q Did you ever hear her say, I want to stop talking to
25 you people?

1 A No, ma'am.

2 Q Did you ever hear her say, I just want to go home?

3 A No, ma'am.

4 Q Let me ask you one final question just to clarify one
5 thing. Where did you determine the residence to be, the
6 address and the county where Bo had died?

7 A The address was at Jug Factory Road. I believe it
8 was 3895. I'm not real sure of the numbers now. But it's
9 located within Greenville County.

10 Q Is it in the Greer vicinity?

11 A Just outside of the Greer vicinity, between Greer and
12 Blue Ridge.

13 Q But it is in Greenville County?

14 A It is in Greenville County.

15 MS. SEAY: Thank you, Investigator Kelly.

16 THE COURT: All right. Mr. Byrholdt.

17 MR. BYRHOLDT: May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. BYRHOLDT:

20 Q Officer Kelly, you're the lead investigator in this
21 case?

22 A I was, yes, sir.

23 Q Did you advise the police officers to do a forensic
24 investigation of the scene?

25 A We conducted a search warrant at the scene -- at the

1 trailer, yes, sir.

2 Q Well, did you find any blood evidence at the scene?

3 A No, sir.

4 Q Did you even look for it?

5 A Yes, sir.

6 Q Did you conduct a forensic investigation in the van
7 that Mr. Martucci was driving that took ~~victim~~ to the
8 hospital?

9 A No, sir. Not at that time, no, sir.

10 Q Why not?

11 A The time frame had already passed from the time of
12 the hospital and there. And once we got the statements
13 from them, we didn't look in the van. But it was
14 cluttered. So we didn't feel like it was necessary, at
15 that time, to conduct any kind of forensics inside it.

16 Q How do you know the beating didn't take place in the
17 van?

18 A We had no indication that the beating took place
19 anywhere at that time.

20 Q You didn't even check it, though, did you?

21 A No. We didn't check the van.

22 Q Now, ~~victim~~ was carried into the hospital in either a
23 blanket or a beach towel. Did you check that?

24 A The forensics collected those items, I believe,
25 because I wasn't there when -- the body was already in a

1 bag when I got there, so.

2 Q But do you think that would have been an important
3 thing to have?

4 A If that was the case when he was brought in, they
5 should have collected it. I'm not sure --

6 Q But you're the lead investigator, did you ever check
7 on it?

8 A I don't recall on the forensics. They responded to
9 the hospital. I think they -- our basic forensics
10 responded out to the trailer.

11 Q But you're the lead investigator, you go back and
12 check and make sure they dotted their I's and crossed
13 their T's?

14 A Yes, sir.

15 Q Let me hand you what's been provided to us, which is
16 a -- when they collect evidence at the scene, they keep a
17 record of it; right?

18 A Correct, sir.

19 Q Is there anything on that list about any blanket,
20 towel, or anything else?

21 A Well, this is, actually -- the one you handed me
22 is --

23 Q I apologize.

24 A -- this is from Capelli's Beauty Salon.

25 Q Here is the one from the house.

1 A Ask me again, Mr. Byrholdt. Which items are you
2 looking for?

3 Q A blanket, a beach towel, anything that was taken.

4 A Do you just want me to read off what was collected?

5 Q No. I want you to look at it and tell me if there's
6 anything about a blanket or a beach towel being collected
7 from the hospital.

8 A No. This is from the house. This has got nothing to
9 do with the hospital.

10 Q Do you have anything that was collected from the
11 hospital?

12 A I didn't. No, sir, I didn't.

13 Q You're the lead investigator, though.

14 A I was at the house.

15 Q And you were at the house. How long were you at the
16 house?

17 A Approximately -- myself, approximately an hour, hour
18 and a half.

19 Q Do you know what time you got to the law enforcement
20 center?

21 A That evening, I probably -- between -- somewhere
22 between 6:30 and 7:00, maybe at 7:00, somewhere in that
23 range.

24 Q Do you know what time it was when you first saw
25 Brandi Holder at the law enforcement center?

1 A It was shortly after I arrived. So it had to be
2 between that time, 6:30 and 7:00, when I went in to talk
3 with her.

4 Q And she had already given her first statement?

5 A Correct. Yes, sir.

6 Q How long did it take to get her second statement?

7 A That, I can't tell you. Because I left the room when
8 they started taking the second statement and went on to
9 other things.

10 Q Did you -- are you aware of any blood evidence or
11 physical evidence being found at the home located in the
12 Greer area?

13 A No, sir. The items that were collected were checked
14 and I don't believe anything was -- come out of SLED. I
15 haven't seen the SLED reports. It's been a while so I
16 would have to look at those.

17 Q Well, with no physical evidence, how can you tell
18 this jury that this incident even happened in Greenville
19 County?

20 A Based on the statements saying that's where it
21 occurred, and based on statements and the child,
22 supposedly, in a four-wheeler accident at that residence
23 where the injuries occurred. And, of course, based on the
24 statements of the child being abused inside that trailer.

25 Q Do you have any statement that says the child was

1 abused inside that trailer?

2 A From John Parker, yes, sir.

3 Q At what time and by whom does Parker say ^{VICTIM} was
4 abused?

5 A I'd have to read his statement again.

6 Q You were here yesterday when he testified; correct?

7 A I was, yes, sir.

8 Q I believe he testified he never saw Brandi abuse the
9 child; right?

10 A I heard him say that, yes, sir.

11 Q And that the morning of this incident, that Brandi
12 was not there when he woke up and the child was being
13 harmed?

14 A I heard him say that, yes, sir.

15 Q Okay. Now, you looked at the child, ^{VICTIM}, at the
16 hospital?

17 A Correct, sir.

18 Q Brandi was never allowed to; correct?

19 A I can't answer that. I don't know if she requested
20 that of the hospital personnel or not.

21 Q Did she or her family ever ask you if they could see
22 ~~VICTIM~~?

23 A Brandi asked me when I first was talking with her. I
24 advised her that ~~VICTIM~~ was already put in a body bag and was
25 being transported to Greenville Memorial.

1 Q Well, ~~Victim~~ had already been put in a body bag when you
2 went back to see him; right?

3 A Correct.

4 Q Why couldn't the mother go back and see her child?

5 A He was being transported to Greenville Memorial. I
6 didn't know that she hadn't seen him. She had been there
7 for, you know, several hours, I guess, a couple of hours.

8 Q And you say it's your practice as a criminal
9 investigator to separate witnesses; correct.

10 A Yeah. That's our procedure. And we --

11 Q Why didn't you separate Martucci and Parker? You
12 talked to them together; right?

13 A They were together outside when I walked out there.
14 I didn't note they hadn't been separated. There was no
15 need at that point.

16 Q But you talked to them together?

17 A Correct.

18 Q You talked to Martucci and Parker was present?

19 A Correct.

20 Q When you asked Brandi to come to the law enforcement
21 center, you had already talked to Dr. Ward; correct?

22 A Briefly. I met him as he was coming out and I was
23 going in.

24 Q You suspected child abuse?

25 A He did. I hadn't been in there yet.

1 Q Well, after you saw the child, did you?

2 A I -- well, again, if you're looking at all the
3 bruises, yes, I would suspect it right off the bat.

4 Q Of course, you did. Did you ever tell Brandi, come
5 on, now, we suspect this is a homicide case, come out and
6 talk to us?

7 A No, sir. Because, at that point, we didn't suspect a
8 homicide. We suspected the child had been abused.

9 Q Well, did you ever talk to Brandi and say, I suspect
10 your child has been abused, we want to talk to you about
11 that? You didn't, did you?

12 A No, sir, not at that point.

13 Q Why didn't you tell her that?

14 A Because we were just gathering information as to how
15 the bruises occurred at that point.

16 Q You testified today that when you went in there and
17 spoke to Brandi after she had given her first statement,
18 she was relaxed and doing fine; right?

19 A She appeared to be to me, yes, sir.

20 Q Have you ever testified saying that she was upset,
21 crying, distraught?

22 A At the hospital, she was -- yeah. She was upset.
23 She was crying then.

24 Q How about at the law enforcement center?

25 A Not in my presence, no, sir.

1 Q You never saw her crying?

2 A Not in my presence.

3 Q And you're telling this jury that she never asked to
4 go home, all she wanted to do was go home?

5 A Pardon?

6 Q That Brandi asked repeatedly to go home?

7 A Not from me.

8 Q Did you ever pick -- did you go through her purse --

9 A No, sir.

10 Q -- at the law enforcement center?

11 A No, sir.

12 Q You never went through her purse?

13 A No, sir.

14 Q You never took out a picture of ~~VICTIM~~?

15 A No, sir.

16 Q You never threatened to tear it up and crush it in
17 front of her while she was giving a statement?

18 A No, sir.

19 Q You wouldn't do that, would you?

20 A No, sir.

21 Q How many statements did you take from possible
22 suspects, three -- I mean, you interviewed three?

23 A I didn't take any.

24 Q Or they were taken at -- did you ask them to take
25 statements? Did you call Paul Silvaggio?

1 A I didn't know who was taking them at the time. I
2 just knew investigators were up there. I didn't know who
3 was interviewing who.

4 Q All right. And I take it since we're now in the 21st
5 century and they've got videotape equipment and audiotape
6 equipment that the police would videotape these statements
7 so the jury can see to make sure nobody was coerced when
8 they gave these statements; right?

9 A No. We don't -- it's not our policy here. We never
10 have done that.

11 Q Well, people get arrested for DUI and they videotape
12 them; right?

13 A I don't know anything about DUI.

14 Q You know nothing about a DUI?

15 A As far as videotaping, no, sir. I haven't been
16 involved in that in years.

17 Q But the reason statements aren't audiotaped or
18 videotaped is because the only thing that we have to go on
19 is you; is that correct, sir, the officer taking it?

20 A That's statements you're making. I don't know, sir.
21 We never used it.

22 Q Would you agree with me that if a video was taken,
23 we'd be able to see if there was any coercion or pressure
24 put on the person; right?

25 A I guess. I don't know.

1 Q You guess?

2 A We've never used it so I don't -- I can't testify to
3 that.

4 Q Well, would you agree with me that --

5 MS. SEAY: Your Honor, I'm going to object at this
6 point. The witness has answered the question.

7 THE COURT: Yes. I sustain the objection.

8 Move on, please, Mr. Byrholdt.

9 BY MR. BYRHOLDT:

10 Q Do you know how long Brandi was at the law
11 enforcement center before she was charged?

12 A I don't know --

13 Q Assuming she got there around 5:00?

14 A Okay. Which question do you want me to answer?

15 Q Do you know how long she was there?

16 A Time wise, no, sir. I didn't keep up with it as far
17 as documenting any time.

18 Q Do you know when she was taken into custody, sir?

19 A Shortly -- probably after she gave the statements
20 indicating -- her second statement. At that point, we
21 would have started a procedure to take them into custody.

22 Q And I take it, at that time, you would have come out
23 and told her family that she had been charged and she
24 wasn't going home?

25 A Eventually, I did, I think.

1 Q Well, eventually. I mean, once she's charged, you're
2 pretty much over it then, aren't you?

3 A Well, there's a lot of things that goes on,
4 Mr. Byrholdt. Once we get an individual charged, I have
5 to type warrants and that type of thing. I'm not just
6 going to stop at that point.

7 Q Do you know what time you came out and told her
8 parents that she had been charged?

9 A I don't recall, no, sir. It would have been sometime
10 after she gave the second statement.

11 Q Would it be close to midnight, sir?

12 MS. SEAY: Your Honor, I object. He testified he
13 didn't know.

14 THE COURT: He didn't know.

15 That's correct, Mr. Byrholdt.

16 MR. BYRHOLDT: Okay.

17 BY MR. BYRHOLDT:

18 Q You're the lead investigator and you just don't know?

19 A I just didn't keep up with the time, no, sir.

20 MR. BYRHOLDT: That's all the questions I have.

21 Thank you, sir.

22 THE COURT: All right. Mr. Sumner or Mr. Quinn.

23 MR. SUMNER: One second, please, sir.

24 (Pause.)

25 MR. SUMNER: No questions.

1 THE COURT: Any redirect?

2 MS. SEAY: Your Honor, I need to move Mr. Martucci's
3 Waiver of Rights into evidence.

4 THE COURT: All right.

5 MS. SEAY: I think it's been identified as State's
6 Exhibit No. 1.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 THE COURT: Is there anything else?

10 MS. SEAY: Nothing further.

11 THE COURT: Thank you.

12 You can step down.

13 THE COURT: All right. Take the jury out for a short
14 recess.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 10:02 a.m.)

17 THE COURT: We'll take a very short recess.

18 MR. BYRHOLDT: Judge, could I ask for about -- at
19 least, ten minutes to talk to my client?

20 THE COURT: Sure.

21 (WHEREUPON, a break was taken.)

22 (WHEREUPON, State's Exhibit Nos. 18 and 19 were
23 marked for identification only.)

24 THE COURT: All right. Are we ready to proceed?

25 MS. SEAY: Yes.

1 THE COURT: What do you have now, Solicitor?

2 MS. SEAY: I will be calling Investigator Bobby
3 Alexander next.

4 THE COURT: All right. Bring the jury in.

5 (WHEREUPON, the jury came into open court at
6 approximately 10:42 a.m.)

7 THE COURT: Solicitor, you may proceed.

8 MS. SEAY: Thank you, Your Honor.

9 The State calls Investigator Bobby Alexander.

10 THE CLERK: Put your left hand on the Bible, please,
11 and raise your right hand.

12 WHEREUPON,

13 BOBBY ALEXANDER,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: State your name for the record, please.

16 THE WITNESS: Bobby Alexander.

17 THE CLERK: Thank you.

18 Be seated.

19 DIRECT EXAMINATION

20 BY MS. SEAY:

21 Q Investigator Alexander, where are you currently
22 employed?

23 A The Greenville County Sheriff's Office.

24 Q How long have you been employed there?

25 A 30 years.

1 Q Would you, please, describe your education and
2 training to perform your duties?

3 A I have a high school diploma. I'm also a graduate of
4 the criminal justice academy. I began my law enforcement
5 career with the South Carolina Highway Patrol in 1971. I
6 left there and began working with the Sheriff's Office in
7 1976. I started out as a uniform officer and was promoted
8 to uniform sergeant.

9 I then transferred to our CID division, which is the
10 criminal investigation division. I remained a supervisor
11 in our CID for approximately 20-some odd years. I retired
12 in November of -- excuse me, December of 2000. And I then
13 came back in a part-time capacity in January of 2001. And
14 about three months later, I was asked to come back as a
15 full-time officer.

16 I have an Associate's Degree in Electronics
17 Engineering. I have numerous schools, investigative,
18 basic investigation, homicide investigation, arson, auto
19 theft. And my expertise was as an auto theft
20 investigator.

21 Q Were you in your current capacity back in July of
22 2002?

23 A I was.

24 Q What were your duties then and your job title?

25 A At that time, I was working in what we call our cold

1 case unit, which is unsolved homicides. I was a full-time
2 employee. And I was also as a -- what we call an
3 assisting or a backup investigator in violent crimes.

4 Q Back on July 17th, 2002, were you requested as backup
5 for Investigator Doug Kelly?

6 A I was.

7 Q Where were you asked to go?

8 A I was contacted by our dispatch and advised that I
9 needed to meet with Investigator Kelly at Allen Bennett
10 Hospital in Greer.

11 Q And you responded there?

12 A I did.

13 Q Do you know approximately what time?

14 A I don't remember what time of the evening it was.

15 Q Was it daytime?

16 A It was daytime, yes.

17 Q Okay. Did you come into contact with the mother of
18 the child at the hospital?

19 A I did.

20 Q Did you have occasion to talk with her?

21 A I did.

22 Q Did you ask her what had happened to her baby?

23 A Basically, myself and Investigator Doug Kelly went to
24 the family room and met with the family and -- who was
25 with Ms. Holder at the time. The basic questions were

1 being asked by Investigator Kelly, but I was present at
2 that time.

3 Q Okay. Did you have occasion to speak with Brandi
4 Holder's mother, Marie Holder?

5 A I did.

6 Q Did you and Investigator Kelly request that Mr. and
7 Mrs. Holder and Brandi Holder come to the law enforcement
8 center to talk further with you all?

9 A We did.

10 Q Did you tell them that they had to go?

11 A No, ma'am, I did not.

12 Q Did anyone, in your presence, tell them that they had
13 to go to the law enforcement center?

14 A No, ma'am.

15 Q Did they go in their own vehicles to the law
16 enforcement center?

17 A If I'm not mistaken, I think the mother and father
18 came in a vehicle and an uncle -- I think when I left, it
19 was -- the arrangements was that an uncle would be
20 transporting Brandi Holder to the law enforcement center.

21 Q Okay. Were they under arrest for anything? Was
22 Brandi Holder under arrest for anything?

23 A She was not.

24 Q Was she in any kind of detention by your agency?

25 A No, she was not.

1 Q Did you then go to the law enforcement center?

2 A I did.

3 Q Did you meet with Brandi Holder there?

4 A Yes. When I got back to the hospital -- back to the
5 law enforcement center, a short time later, I was advised
6 by one of the -- another investigator that they were there
7 in the lobby. And I met with the family at the law
8 enforcement center. And then I interviewed and later met
9 with Brandi and Investigator Paul Silvaggio in the
10 criminal -- the CID, the violent crimes office.

11 Q All right. And were you requested to assist with
12 talking to Ms. Holder with Investigator Silvaggio?

13 A I was.

14 Q Would you, please, briefly describe the scene where
15 you were when this discussion took place?

16 A The violent crimes office is a -- the back room or
17 the back end of our criminal investigation division. As
18 you go into that general area, there's a receptionist
19 area, a secretary area, then our captain's office, then
20 there's what we call the outer office, which is divided by
21 a partition that only goes about five feet that separates
22 the section down the middle. One side is white collar.
23 The other side is the auto theft section.

24 At the back of that section is another wall and a
25 doorway that goes into the violent crimes section. It's a

1 fairly large room. There's three desks down each side of
2 the wall. And it's an open area.

3 Q Where did you interview Ms. Holder?

4 A We were sitting at Paul Silvaggio's desk. I was in
5 the desk just in front of him. And that's where our
6 interview took place.

7 Q Okay. And was it just the three of you present for
8 the most part?

9 A That's correct.

10 Q What was Ms. Holder's demeanor at that time?

11 A She was nervous. She appeared to have been crying at
12 some point. Her eyes were red. But she was fairly calm.
13 She indicated that she was cold, one, being that she was
14 nervous, and the other that the CID -- or in the violent
15 crimes section, the thermostat is fairly low. So it's a
16 little cool in that area.

17 So Investigator Silvaggio obtained a blanket, a new
18 blanket, still wrapped in a package. And she used that to
19 help warm her.

20 Q Were you present when Brandi Holder's rights were
21 explained to her?

22 A I was.

23 Q Who else was present?

24 A Investigator Silvaggio

25 Q And who was primarily in charge of that procedure?

1 A Investigator Silvaggio

2 Q Were you present for the entire explanation of
3 rights?

4 A I was.

5 Q Let me show you what's State's Exhibit No. 2 for ID,
6 and I ask if you recognize it?

7 A I do. This is the Waiver of Rights of Brandi Holder,
8 and my signature is also as a witness.

9 Q All right. Would you, please, describe how
10 Investigator Silvaggio explained that to her?

11 A Basically, he lays the form in front of her. And
12 she's looking at it as he's, basically, starting out with
13 getting the basic information, her name, her address, her
14 date of birth, her social security number, which is
15 attached or written on the upper left side of the form.

16 And then it's -- as he sets it down and reads it to
17 her, he reads each line. Each investigator has their own
18 style. This just happens to be Paul's style. He,
19 basically, reads each line to her and asks if she
20 understands that. And then he has her initial at the end
21 of that sentence. Then he goes to the next line and does
22 the same thing, asks if she understood it, and then asks
23 if she understood and has her initial it at the end of
24 that sentence, and the same way all the way through the
25 form.

1 About halfway through the form, there's one line that
2 he asks to understand that she can read and write. He
3 asks her to read that line after it's been explained to
4 her. He then asks her to read it so we can understand
5 that she can read and write. She signs it and she also
6 had previously initialed that she understood that line.

7 Q All right. During that process, did Brandi Holder
8 appear to understand what you all were saying to her?

9 A She did.

10 Q Did she appear coherent?

11 A She did.

12 Q Did she appear emotionally upset to the extent that
13 she was unable to communicate with you?

14 A She did not.

15 Q And did she voluntarily place her initials in those
16 locations and sign the form?

17 A She did.

18 Q Did anyone, you or anyone else, tell her she had to
19 sign it?

20 A No.

21 Q Did you or anyone else promise her anything for
22 waiving her rights?

23 A No, we did not.

24 Q Did anyone threaten her?

25 A No, they did not.

1 Q Investigator Silvaggio's signature appears on that
2 form also; is that correct?

3 A It does.

4 Q And then you have signed as a witness as well?

5 A That is correct.

6 Q And was Brandi Holder under arrest at that time?

7 A No, she was not.

8 Q Was she restrained in any way?

9 A No, she was not.

10 Q Was she in any kind of detention?

11 A No, she was not.

12 Q If she had decided to just get up and walk out of the
13 law enforcement center, could she have done so?

14 A She could have, yes.

15 Q Were you present when Brandi Holder gave a statement?

16 A I was.

17 Q This is State's Exhibit No. 18 for identification, do
18 you recognize it?

19 A I do.

20 Q How do you recognize it?

21 A It's a statement given by Brandi Holder. And it also
22 has my signature as a witness to the statement.

23 Q Okay. Were you present when that information was
24 obtained?

25 A I was.

1 Q How do you all go about taking a statement, or how
2 did you go about taking this one?

3 A We have a program called Omni Forms. It was on a --
4 this particular computer, it was a laptop computer. And
5 we ask if the person has a -- wishes to type their own
6 statement, hand write their own statement, or if they have
7 any problem with one of the investigators typing the
8 statement on the laptop computer as they can see and read
9 the statement as it was being typed.

10 Q In your experience, what method do most people
11 choose?

12 A They choose for one of us to type the statement.

13 Q Okay. And is that done just in a conversational way
14 as in the person is talking and you're typing it?

15 A It is typed as the person is telling it.

16 Q After Brandi Holder gave that statement, was she
17 asked to sign it?

18 A She was.

19 Q And did she do that?

20 A She did.

21 Q Does an additional advisement of rights appear on
22 that statement?

23 A It does. It's at the top of the form.

24 Q Is it at the top of every page?

25 A Yes, it is.

1 Q And is that the same or similar advisement of rights
2 that you were talking about a few minutes ago?

3 A Yes, it is.

4 Q Did she voluntarily sign each of those pages?

5 A Yes, she did.

6 Q Did she, in addition, initial numerous locations?

7 A Yes, she did.

8 Q And why was she asked to do that?

9 A Basically, it's -- she reads through the statement
10 and then she goes through each paragraph and section that
11 she understands and where no insertions can be made later,
12 she initials at the beginning of each paragraph and at the
13 end of each paragraph. And if there was a mistake in the
14 typing, she would also initial that.

15 Q Did she make any corrections to any typographical
16 errors?

17 A There was a couple of corrections where she initialed
18 where a word was misspelled.

19 Q And when she signed those pages and she initialed
20 those paragraphs, did anyone tell her she had to?

21 A No, they did not.

22 Q Did anyone, you or anyone in your presence, force her
23 to do it?

24 A No, they did not.

25 Q Was she threatened in any way?

1 A No, she was not.

2 Q Was she promised any kind of leniency or reward for
3 giving the statement and signing it?

4 A No, she was not.

5 Q During the time that you were with Brandi Holder in
6 this room, was she offered basic things that she might
7 need such as a restroom or something to drink?

8 A She was. There's a restroom down the hall. There's
9 a coffee pot right outside the door of the violent crimes.
10 There's also a water fountain close by. So she could
11 have had -- she had the opportunity to any of those, if
12 she had asked for them.

13 Q Did she ever express that she wanted to stop talking
14 to you all?

15 A No, she did not.

16 Q Did she ever express that she wanted to go home then?

17 A No, she did not.

18 Q After that statement had been given, what happened
19 next?

20 A It's gone through and -- witness statements are taken
21 and then it has to be notarized. And another
22 investigator, who is a notary public, came in, introduced
23 himself, basically, swears to -- you know, asked her to
24 swear that the -- swears her in that the statement is
25 true, to the best of her knowledge, and that she is

1 receiving a copy of it. And he notarizes it and notarizes
2 her signature that she is who she says she is and that
3 was, in fact, her signature.

4 Q Okay. And she's given a copy of the statement?

5 A That's correct.

6 Q And that was done?

7 A It was.

8 Q After that had been completed, did you have occasion
9 to talk with Investigator Doug Kelly again?

10 A We did.

11 Q And as a result of that conversation, were you asked
12 to take another statement from Brandi Holder?

13 A We were. We, basically -- due to that Doug was back
14 at the law enforcement center and after this statement was
15 completed, and signed, and notarized, we let Doug --
16 Investigator Doug Kelly review it. And based on the
17 information he had, there were some inconsistencies in
18 some of the information that Ms. Holder had provided as to
19 what took place during this time. And Investigator Kelly
20 also came into the violent crimes section and also talked
21 with Kelly regarding some inconsistencies regarding the
22 ATV accident. And at that --

23 Q Excuse me. You stated "talked with Kelly," but I
24 assume you meant talked with Brandi Holder?

25 A Correct. I'm sorry.

1 Q Did you witness this conversation --

2 A I did.

3 Q -- that Mr. Kelly had with her?

4 A I did.

5 Q Was there any pressure or coercion involved in that?

6 A No, there was not.

7 Q Did he tell her, I know that what you said is not
8 true and you've got to give another statement and tell us
9 the truth?

10 A No, he did not.

11 Q Did he promise her anything, leniency, reward?

12 A No, he did not.

13 Q And she is still not in custody; is that correct?

14 A That's correct. She was not in custody.

15 Q Did she then give another statement?

16 A She did.

17 Q Was it taken down in the same fashion as what you
18 described about the first statement?

19 A Yes, it was.

20 Q And it was taken by Investigator Silvaggio also;
21 correct?

22 A That's correct.

23 Q What was her demeanor during this process?

24 A Pretty much the same as the -- as it was in the first
25 statement. I mean, she had been crying, but was not

1 crying at that time and was using the blanket to -- you
2 know, to stay warm.

3 Q Did she appear to be so upset that she could not
4 communicate with you all?

5 A No, she was not.

6 Q Did she appear coherent?

7 A Yes, she did.

8 Q She didn't appear to be under the influence of
9 anything?

10 A No, she did not.

11 Q This is State's Exhibit No. 19 for identification,
12 and do you recognize it?

13 A I do. It's the second statement provided by Brandi
14 Holder, and witnessed by myself, and it has my signature
15 as a witness.

16 Q And were you present when she initialed certain areas
17 of this statement and signed it?

18 A I was.

19 Q And I'll ask you the same questions that I've asked
20 you previously, did she sign it of her own free will?

21 A Yes, she did.

22 Q Did she ever say, I don't want to sign this?

23 A No, she did not.

24 Q Did she ever say, I want to stop talking to y'all?

25 A No, she did not.

1 Q Did she say, I want to go home?

2 A No, she did not.

3 Q Did anybody make her do this?

4 A No, they did not.

5 Q Did she receive a copy of the second statement?

6 A She did.

7 Q Was that the extent of your involvement in this
8 particular investigation?

9 A It was.

10 MS. SEAY: Thank you, Investigator.

11 If you'll answer any questions that the other
12 attorneys may have.

13 THE COURT: All right. Mr. Phillips.

14 MR. PHILLIPS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. PHILLIPS:

17 Q Mr. Alexander, how long was Brandi Holder at the law
18 enforcement center?

19 A Several hours.

20 Q All right. And this was on July 17th, 2002, right
21 after she came straight from the hospital over there; is
22 that right?

23 A When I left the hospital, she was still at the
24 hospital and had come, at some point, with other family
25 members to the hospital -- I mean, to the law enforcement

1 center.

2 Q Her two-and-a-half-year-old son had just died at
3 1:10?

4 A That is correct, sir.

5 Q So within just a few hours of her only child dying,
6 she was asked to go to the law enforcement center?

7 A That is correct.

8 Q Were you there when Doug Kelly spoke to David Kelly,
9 Brandi's uncle, about driving her to the law enforcement
10 center?

11 A All I was told when I was in the family room was that
12 an uncle would be transporting her. I did not talk with
13 him, no. And I was not present when Doug Kelly talked
14 with him.

15 Q And the reason that he was asked is because Brandi
16 was in no condition to drive at that point, was she?

17 A I don't know that, no, sir.

18 Q Did you have the opportunity to observe her?

19 A I did.

20 Q If she were your wife or loved one, would you have
21 been concerned about her ability to drive a car that day
22 in her condition that you observed?

23 MS. SEAY: Your Honor, I'm going to object to that.

24 THE COURT: I sustain the objection to the form of
25 that question.

1 BY MR. PHILLIPS:

2 Q Her condition was that she was in great distress;
3 correct?

4 A It appeared so, yes.

5 Q Crying tremendously?

6 A Yes, sir.

7 Q She needed help walking from the car to the law
8 enforcement center?

9 A I didn't observe her walk, sir, so I couldn't answer
10 that.

11 Q All right. When you got there -- or when you got
12 there and Brandi Holder got there, it was about 5:00 on
13 July 17th, wasn't it?

14 A That is correct.

15 Q Okay. And Brandi didn't type the statement that --
16 she didn't type any statement herself?

17 A That is correct, sir, no.

18 Q She gave the first statement that has -- before Doug
19 Kelly came back from the crime scene; correct?

20 A That is correct.

21 Q The alleged crime scene?

22 A That is correct.

23 Q How long did that first statement take?

24 A I'm not -- I don't know exactly how long it was.
25 Because there -- I don't have a beginning time and an

1 ending time. It was an eight-page statement, so it took a
2 little while.

3 Q It took quite a while?

4 A Yes, sir.

5 Q It took long enough for Doug Kelly to interview
6 witnesses at the scene in Greer?

7 A That is correct, sir.

8 Q Numerous witnesses; correct?

9 A I'm not sure what time he got back to the law
10 enforcement center. And I wasn't there when he talked
11 with the witnesses. I don't know, sir.

12 Q He went, actually, to one of their homes from what --

13 A From what I heard, yes, sir.

14 Q All right. So he had enough time to do all that, go
15 to Greer, and then come back to the law enforcement center
16 before Brandi had finished the first statement; correct?

17 A That, I don't know, sir. I wasn't there so I don't
18 know what Investigator Kelly did and how long it took him.
19 I was already at the law enforcement center. But it did
20 take some time, yes, sir.

21 Q All right. Now, you said that Brandi could have
22 gotten up and walked out of the law enforcement center at
23 any time?

24 A That's correct, sir, she could have.

25 Q Her son had just died and she was asked by deputies

1 to come to the law enforcement center; correct?

2 A That is correct, sir.

3 Q Is it reasonable for her to assume that she was free
4 to just get up and walk out at any time?

5 A Yes, sir.

6 Q Why didn't she just -- why wasn't she said to, well,
7 you're free to go after the first statement?

8 A She never indicated that she wanted to leave, sir.

9 Q Were you in there the whole time?

10 A During the first statement I was.

11 Q But you were not present for the second statement?

12 A I was also present. But during the course of the --
13 when the first statement was completed and Investigator
14 Kelly had reviewed the first statement, I went out and
15 briefed the family that we were still conducting and
16 taking statements and asked if anybody needed anything.

17 Q Did any of the family ask to see Brandi?

18 A They asked if they could. And I advised them until
19 we completed the statements that they could not see her.

20 Q Well, if that's the case, why couldn't Brandi just go
21 out and see them --

22 A She could have, if she would have wanted to.

23 Q But you said the family couldn't go back and see her?

24 A Not to where she was, no.

25 Q Where they were, could you -- could the family see

1 the hallway leading to the rooms where the three people
2 being interrogated -- and that would be Martucci, Parker,
3 and Holder, could the family see down the hallway where
4 they were? The hallway where the rooms are --

5 A I really don't know where those persons were because
6 I was in the back.

7 Q Is it possible from the waiting room to be able to
8 see down that hallway?

9 A If you're describing the three sergeants offices,
10 they're individual offices. And if they were in those
11 offices, no, sir, they could not see them.

12 Q But you could see the hallway?

13 A Well, it's not a hallway. It's a total open area.

14 Q Isn't that where the bathrooms are?

15 A No. The bathrooms are out in the hallway.

16 Q They are in the hallway?

17 A Yes, sir.

18 Q So the bathrooms are on that hallway?

19 A Outside our -- there's a waiting room inside our
20 office just inside the hallway. And the restrooms are
21 just outside the hall -- just outside in the hallway.

22 Q Okay. Now, you've had experience -- you described
23 what Investigator Paul Silvaggio's typical routine is with
24 taking a statement, did you not?

25 A Yes, sir.

1 Q So you're familiar with that?

2 A Yes, sir.

3 Q Isn't it common practice for him to go through and
4 intentionally make mistakes and have the witness initial
5 by those mistakes?

6 A No, sir. It's not intentional.

7 Q Does he do that frequently?

8 A I don't know, sir.

9 Q Isn't it true that Brandi Holder asked repeatedly to
10 go home during the first and second statements that were
11 taken?

12 A Not in my presence, no, sir.

13 Q And you said you were in there the whole time?

14 A That is correct, sir.

15 Q Except when there was some part that you were not
16 there for?

17 A Just between the -- when the first statement was
18 completed and before the second had started.

19 Q Isn't it true that Investigator Silvaggio promised
20 her that if she would initial here, here, and here, and
21 pointed and put the pen there on both of those statements,
22 if she would just sign that, she could go home?

23 A No, sir, he did not.

24 Q And you've been in law enforcement -- you testified
25 how long, but I forgot. How long?

1 A Right at 35 years.

2 Q Isn't it true we wouldn't have any question about
3 what happened if you had just gotten a simple video camera
4 and recorded this interrogation?

5 A Sir, video is a tool that some agencies use. Our
6 Sheriff's Office does not use video or audio equipment.

7 Q And the reason for that is that you don't want people
8 to know how you get people to sign interrogations; isn't
9 that correct?

10 A No, sir.

11 Q I mean, because what you described earlier under
12 direct examination sounded like a very pleasant
13 experience. Isn't it true that law enforcement officers
14 regularly use -- in fact, in your experience -- let me
15 direct it to you -- that you've observed investigators put
16 extensive pressure on witnesses in interrogations?

17 A No, sir.

18 MR. PHILLIPS: Bear with me one moment, Your Honor.

19 BY MR. PHILLIPS:

20 Q On the statements -- written statements that were
21 taken from Brandi Holder that day, why weren't the times
22 put on the statements as to when the interrogation began
23 and when the interrogation ended?

24 A There's really nothing on the statement that
25 indicates that we're required to ask the beginning time

1 and an ending time.

2 Q Well, wouldn't it help you three and a half years
3 later to remember how long the interrogation lasted?

4 A I'm not sure where there would be -- that's relevant
5 to --

6 Q Well, the question is, it would help you to remember
7 and know exactly how long the interrogation lasted --

8 A Yes, sir.

9 Q -- three and a half years later?

10 A Yes, sir.

11 Q But that wasn't done, was it?

12 A No, sir, it was not.

13 MR. PHILLIPS: Nothing further at this time.

14 THE COURT: Mr. Quinn.

15 MR. QUINN: No questions, Your Honor.

16 Thank you.

17 THE COURT: Thank you.

18 Any redirect?

19 MS. SEAY: Nothing further.

20 THE COURT: Thank you.

21 You can step down.

22 MS. SEAY: Your Honor, the State calls Investigator
23 Wayne Arnette.

24 THE CLERK: Put your left hand on the Bible, please,
25 and raise your right hand.

1 WHEREUPON,

2 FLOYD WAYNE ARNETTE,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your name for the record.

5 THE WITNESS: Floyd Wayne Arnette.

6 THE CLERK: Thank you.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MS. SEAY:

10 Q Investigator Arnette, you're employed at the
11 Greenville County Sheriff's Office?

12 A Yes, ma'am, I am.

13 Q How long have you been employed there?

14 A Approximately six years.

15 Q Would you, basically, describe your training and
16 education to perform law enforcement duties?

17 A I graduated with honors from the Greenville -- I
18 mean, excuse me, from the criminal justice academy and
19 started work with the Greenville County Sheriff's Office
20 uniform patrol. I did training in investigations in our
21 CID department. And for the last several years, I've been
22 a burglary investigator for the Sheriff's Office.

23 Q Are you routinely called in to assist with notarizing
24 a statement, or witnessing a statement, or something of
25 that nature?

1 A I am.

2 Q Were you employed in your current capacity on July
3 17th, 2002?

4 A No, ma'am. I was in training in investigations with
5 the CID of the violent crimes division as part of a
6 training program with the Sheriff's Office.

7 Q So you were primarily just working on the
8 investigations with them?

9 A Yes, ma'am, helping out investigations.

10 Q On that date, July 17th, 2002, were you asked to
11 notarize a statement given by Brandi Holder?

12 A I was.

13 Q Do you recall who requested that you do that?

14 A Investigator Paul Silvaggio.

15 Q This is State's Exhibit No. 19, do you recognize it?

16 A I do.

17 Q How do you recognize it?

18 A It's a statement from Ms. Holder that I notarized for
19 Investigator Silvaggio

20 Q Does your signature appear somewhere on that?

21 A It does.

22 Q And does anything else -- did you write anything else
23 on there?

24 A I signed my name and also the date that my commission
25 as a notary public for South Carolina ends.

1 Q Okay. Where did you go to do this notarization?

2 A At Investigator Paul Silvaggio's desk.

3 Q Who was present?

4 A Investigator Silvaggio and Ms. Holder that I can
5 recall.

6 Q And when you went to notarize it, what procedure did
7 you follow in order to properly notarize the form?

8 A I look at the name at the top, whose statement it is,
9 and ask the person present if they are Brandi Holder, and
10 if this is her signature at the bottom of the pages, and
11 if the statement is true and accurate.

12 Q Did she say it was her signature?

13 A Yes, ma'am.

14 Q Did she say that it was true and accurate?

15 A Yes, ma'am.

16 Q And so you notarized it on that basis?

17 A Yes, ma'am.

18 Q Did she appear to be under any kind of duress at the
19 time you saw her?

20 A No. I just saw her for just a short period of time.
21 You could -- I could tell that she had been crying at some
22 point during the day. But she wasn't crying at that time.

23 Q Did you -- in the brief time, I assume, that you were
24 with her, did she say anything to you or anyone else about
25 wanting to leave the law enforcement center?

1 A No, ma'am, not to me or in my presence.

2 Q Did she say to you or anybody in your presence, I
3 don't want to sign this statement, I want to stop talking
4 to you, or anything of that nature?

5 A No, ma'am.

6 MS. SEAY: Investigator Arnette, those are all the
7 questions that I have for you. Please answer any that the
8 other attorneys have for you.

9 THE COURT: All right. Mr. Byrholdt.

10 MR. BYRHOLDT: May it please the Court?

11 CROSS-EXAMINATION

12 BY MR. BYRHOLDT:

13 Q Did you put her under oath?

14 A No, sir.

15 Q You didn't, did you? I mean, as a notary, aren't you
16 supposed to do that?

17 A I've never -- it's never -- I've never done that on
18 notarizing a statement for the Sheriff's Office.

19 Q Okay. What time did you notarize this last
20 statement?

21 A I don't recall, sir.

22 Q And the only people in there were you, Ms. Holder,
23 Paul Silvaggio, and yourself?

24 A That I recall, yes, sir.

25 Q So Bobby Alexander wasn't in there?

1 A I don't remember.

2 Q He's kind of a big guy to miss, isn't he?

3 A I just recall Investigator Silvaggio and Ms. Holder.

4 Q And you have no idea what time of day or night it
5 was?

6 A No, sir. I have no idea what time it was.

7 Q I mean, what shift were you working?

8 A Well, I work first shift. But in investigations, you
9 work overtime sometimes, so.

10 Q Was that the last thing you did that night?

11 A I don't recall.

12 Q Do you have any notes?

13 A No, sir.

14 Q Would you dispute -- can you dispute that it was
15 sometime between 11:00 and almost midnight on the 17th?

16 MS. SEAY: Objection. He's answered the question.

17 THE COURT: That's been asked and answered, I think,
18 Mr. Byrholdt.

19 BY MR. BYRHOLDT:

20 Q Were her eyes swollen from crying? Could you tell?

21 A I don't know about her eyes, but you could tell
22 that -- you know, just from, I think, the makeup streaks
23 that she had been crying.

24 MR. BYRHOLDT: Thank you.

25 MR. QUINN: No questions.

1 Thank you, Judge.

2 THE COURT: Thank you.

3 You can step down.

4 MS. SEAY: We call Investigator Wes Smith.

5 THE CLERK: Put your left hand on the Bible and raise
6 your right hand.

7 WHEREUPON,

8 WESLEY SMITH,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: State your name for the record, please.

11 THE WITNESS: Wesley Smith.

12 THE CLERK: Thank you.

13 Be seated.

14 DIRECT EXAMINATION

15 BY MS. SEAY:

16 Q Investigator Smith, you are also employed at the
17 Greenville County Sheriff's Office?

18 A Yes, ma'am.

19 Q How long have you been there?

20 A Almost 23 and a half years.

21 Q What's your education and training?

22 A I'm a graduate of the South Carolina criminal justice
23 academy. I am almost a graduate from Greenville Tech with
24 a degree in criminal justice. I've also attended Furman
25 University. I've attended specialized training in

1 homicide investigations at the University of Louisville.
2 I've attended specialized training in homicide
3 investigations at the Miami Dade Medical Examiner's
4 Office. I've been through over 1,000 hours of in-service
5 training, which include interview and interrogation
6 techniques and legal updates.

7 Q What's your current capacity at the Sheriff's Office?

8 A I'm a master deputy investigator assigned to the
9 violent crimes unit where I primarily investigate
10 homicides and robberies.

11 Q How long have you been involved in that?

12 A Since 2001. And in 1997, I worked there in that
13 capacity for about four months.

14 Q Okay. Back in July of 2002, were you working as an
15 investigator in criminal investigations?

16 A Yes, ma'am.

17 Q Did you have occasion on July 17th, 2002, to notarize
18 a statement given by Brandi Holder?

19 A Yes, ma'am.

20 Q Do you recall who asked you to do that?

21 A Investigator Paul Silvaggio.

22 Q Where did you go to perform that duty?

23 A In the violent crimes office, which is a small office
24 at the rear of the criminal justice -- excuse me, the
25 criminal investigations division at the Sheriff's Office.

1 Q And do you recall who was present when you went in
2 there?

3 A I think Investigator Alexander was there. Silvaggio
4 was there. Ms. Holder was sitting at Silvaggio's desk.
5 And I think that was it.

6 Q Do you recall what her demeanor was at that time?

7 A She was quiet and seemed to be very cooperative with
8 them. It was obvious that she had been crying some. But
9 she was not overly distraught or appeared to be under
10 the -- duress or anything.

11 Q Let me show you State's Exhibit No. 18, and ask if
12 you recognize it?

13 A Yes, ma'am.

14 Q How do you recognize it?

15 A It has my signature on the bottom and my notary
16 commission expiration date. And it's for Brandi Holder.
17 And it's also dated the same date.

18 Q All right. What procedure did you follow in order to
19 notarize the statement?

20 A Investigator Silvaggio called me into the office to
21 notarize the statement. And as I went into the room, I
22 could see Ms. Holder reading the statement. Once she
23 completed reading the statement, I saw her under
24 Investigator Silvaggio's instructions show her where she
25 needed to initial each part of it and where to place her

1 signature on the two lines of each page.

2 After that, the statement was handed to me. I asked
3 her was she Brandi Holder. And she said she was. I asked
4 her if that was her statement. And she said it was. And
5 I asked her was it true. And she said it was. And then I
6 notarized it by putting my signature and my commission
7 expiration on all eight pages.

8 Q During the time that you were there doing that, did
9 you or anyone in your presence force her to sign that?

10 A No, ma'am.

11 Q Did you or anyone in your presence threaten her in
12 any way?

13 A No, ma'am.

14 Q Did anyone or yourself promise her anything in
15 exchange for the statement?

16 A No, ma'am.

17 Q Did she appear to be -- even though I know you said
18 she appeared to be upset at some point, did she appear to
19 be coherent?

20 A Yes, very.

21 Q And lucid?

22 A Yes.

23 Q Did she ever say to you, I want to leave?

24 A No.

25 Q Did she say to you or anybody in your presence, I

1 want to go home?

2 A No.

3 Q And I understand that you were also involved in
4 taking the statement of John Parker; is that correct?

5 A That's correct.

6 Q And did you do that in a separate area?

7 A I did. I interviewed him in Captain Brooks private
8 office.

9 Q Can you describe what his demeanor was like?

10 A He was cooperative. He really acted like he was
11 scared of Mr. Martucci and what his involvement in the
12 case would be and what would happen to him.

13 Q Okay. But you did obtain two statements from him; is
14 that right?

15 A Yes, ma'am.

16 MS. SEAY: Thank you, Investigator Smith.

17 Answer any questions the other attorneys have for
18 you.

19 THE COURT: Mr. Byrholdt.

20 MR. BYRHOLDT: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BYRHOLDT:

23 Q Did you put her under oath?

24 A No, sir.

25 Q Did you put the time down on when this happened?

1 A I did not, but the time is on --

2 Q The time is on the rights form.

3 A -- the rights form, yes, sir.

4 Q 5:00 in the afternoon?

5 A Something like that.

6 Q What time did you go in there to notarize this?

7 A It was probably around 7:00 or so.

8 Q So she had been there, would you agree then, at
9 least, an hour and a half to two hours --

10 A Yes, sir.

11 Q -- for the first statement, because you notarized the
12 first statement?

13 A No. I notarized the second statement, I think it
14 was.

15 Q And you're saying the second statement was done at
16 7:00?

17 A Sir, I'm telling you that I was there at 7:00 when I
18 was called in or thereabout. And I don't know whether it
19 was the first statement or the second statement. See, I
20 was doing other things until I was called in there.

21 Q I'm just trying to get a time frame on how long this
22 lady was in the interrogation room.

23 A I can't answer that one accurately, sir.

24 Q And you've been through -- it's 1,000 hours of
25 training that you've had?

1 A Yes, sir.

2 Q In interrogation techniques?

3 A Yes, sir.

4 Q And one of those is to keep a person in an
5 interrogation room for a lengthy period of time; correct?

6 A No, sir.

7 Q That's not an interrogation technique?

8 A No, sir. That's not an acceptable technique.

9 Q I didn't say "acceptable," I said it's an
10 interrogation technique.

11 A It's not one that I would employ.

12 Q You weren't conducting the interrogation, were you?

13 A No, sir.

14 Q When you interrogate someone, do you put the time
15 down that you start and finish?

16 A Not all the time.

17 Q Why not? Wouldn't that tell the jury how long this
18 lady was in that interrogation room? It would, wouldn't
19 it?

20 A Yeah. If it was documented, yes, sir.

21 Q Or if it was videotaped?

22 A That's not what we do.

23 Q Well, I know it's not what you do.

24 A We don't even have the facilities to do that here.

25 Q You don't have a videotape camera in the Greenville

1 County Sheriff's Office?

2 A We don't even have an interview room in the Sheriff's
3 Office.

4 Q You're telling this jury, under oath, that the
5 Greenville County Sheriff's Office does not have a video
6 camera?

7 A No, sir. I'm not telling you that.

8 Q Okay. If you had one, you would use it?

9 A No, sir.

10 Q And the reason you wouldn't use it, it's got -- that
11 way the jury doesn't know for sure what happened; right?

12 A No, sir.

13 MR. BYRHOLDT: No further questions.

14 THE COURT: All right. Any questions?

15 MR. QUINN: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. QUINN:

18 Q Investigator Smith, you say that Mr. Parker acted
19 like he was scared of Mr. Martucci?

20 A Yes, sir.

21 Q Now, how did he act that way?

22 A When you would ask him questions about Mr. Martucci's
23 actions or what he did in the house and how he reacted to
24 the stuff that was going on in the house, he was always
25 kind of hesitant. And you'd have to ask him two or three

1 times before he would answer the questions.

2 Q And that wasn't true of the other questions that you
3 had asked him?

4 A Well, sometimes it was true, yes.

5 Q So what made the questions about Mr. Martucci
6 different than the way he responded to other questions?

7 A I seemed to think that his demeanor would change when
8 you would ask him a question about Mr. Martucci,
9 specifically.

10 Q Did he cry?

11 A Yes, he cried some.

12 Q About being afraid of Mr. Martucci?

13 A Yes.

14 Q Okay. And did he, specifically, tell you he was
15 afraid of Mr. Martucci?

16 A Yes.

17 Q And was that reflected in either of the statements he
18 gave?

19 A No, sir.

20 Q Now, when he gave the statements, he was in your
21 presence; isn't that right?

22 A That's right.

23 Q He knew you were a police officer, I assume?

24 A Yes, sir.

25 Q He knew he was in the Greenville County Sheriff's

1 Office?

2 A Yes, sir.

3 Q Separated from Mr. Martucci?

4 A Yes, sir.

5 Q By sight and sound?

6 A Yes.

7 Q I assume that when you asked him questions for the
8 first statement, you asked him to tell the truth?

9 A Yes, sir.

10 Q And he indicated he was telling you the truth?

11 A Yes, sir.

12 Q And it turned out the first statement was a lie?

13 A Right.

14 Q Okay. How is he any less scared of Mr. Martucci then
15 when he gave the second statement? Were you in a
16 different place?

17 A No. We were in the same room.

18 Q Same people?

19 A Yes.

20 Q Dressed the same way, same building?

21 A Yes, sir.

22 Q So in terms of him feeling safe, nothing had changed
23 about his fear of Mr. Martucci; isn't that right?

24 A As far as I can know, yes, sir.

25 Q And isn't it true that what happened was Officer

1 Kelly came in and said, Son -- and I'm not trying to say
2 these were Mr. Kelly's words, but words to the effect of,
3 Son, that's a lie, you're not telling us the truth?

4 A I wasn't in there when Detective -- Investigator
5 Kelly talked to him. I was outside standing in the main
6 office. I wasn't in there, at that point, when
7 Investigator Kelly talked to him.

8 Q So Investigator Kelly spoke with him by himself in
9 the room?

10 A The best I can recall, it was either him by himself,
11 or he and Captain Saltmarsh were in there talking to him.

12 Q And so you don't know what Doug Kelly might have said
13 to him, or Captain Saltmarsh, if he was there?

14 A No, sir.

15 Q All right. But something changed so that Mr. Parker
16 suddenly changed his story; isn't that right?

17 A Yes, sir.

18 Q And that was February 17th, 2002?

19 A No, July.

20 Q I'm sorry. You're absolutely right, July 17th, 2002.
21 In the time period since then, have you spoken with
22 Mr. Parker again?

23 A Not that I can recall.

24 Q Have you tried to take another statement from him?

25 A No.

1 Q And isn't that because you were happy with the second
2 statement?

3 A I was not instructed to do anything further in the
4 investigation. I was not the lead investigator. And I
5 was not responsible for the delegating of the task. I was
6 not asked to take any further participation in that case.

7 Q Did you then -- let me just talk about you. Did you
8 do anything to determine if the statement was accurate?

9 A No.

10 Q Would that be a normal investigative technique to
11 determine if somebody gave me a statement that there was
12 supporting evidence?

13 A That's -- generally, what happens is the person
14 conducting the interview would take a statement, write a
15 supplemental to that interview, and turn it over to the
16 lead investigator, who would then determine what further
17 investigation needed to be done in the case.

18 Q And, in fact, that's sort of what happened here with
19 the first statement; right?

20 A That's right.

21 Q Mr. Kelly walked in and said, I've got information,
22 now, tell me the truth?

23 A Right.

24 Q Do you know if that second statement was ever
25 examined in that way or challenged in that way?

1 A No.

2 MR. QUINN: I don't have any other questions.

3 Thank you.

4 THE COURT: Any redirect?

5 MS. SEAY: Nothing.

6 THE COURT: Thank you.

7 You can step down.

8 MS. SEAY: We call Investigator Paul Silvaggio.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 PAUL ANDREW SILVAGGIO,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: State your name for the record, please.

15 THE WITNESS: Paul Andrew Silvaggio, S-I-L-V-A-G-G-I-O.

16 THE CLERK: Thank you.

17 Be seated.

18 DIRECT EXAMINATION

19 BY MS. SEAY:

20 Q Investigator Silvaggio, you are also employed at the
21 Greenville County Sheriff's Office; is that correct?

22 A Yes, I am.

23 Q How long have you been employed there?

24 A 19 years, ma'am.

25 Q Could you describe your education and training to

1 perform law enforcement duties?

2 A Yes. Following my graduation at Syracuse, New York,
3 I entered the United States military where I joined the
4 Army. And through my stint in the United States Army, I
5 attended a series of criminal investigation courses and
6 division work where I conducted military investigations.

7 I then exited the United States military with an
8 honorable discharge and joined the Greenville County
9 Sheriff's Office here in South Carolina where I attended
10 the criminal justice academy. And I have attended a
11 series of hundreds of hours of criminal investigation
12 courses, our basic training at the police academy,
13 advanced training, and a series of interview and
14 interrogation and death investigation-type courses
15 throughout my 19 years.

16 Q What positions have you held at the Sheriff's Office?

17 A I have been a uniform patrol officer, a community
18 deputy, a burglary investigator, a robbery investigator.
19 Also prior to my burglary investigation stint, I was in
20 narcotics. And I then went to burglary. I then
21 transferred to robbery and then transferred to homicide.

22 Q How long have you been dealing with homicide
23 investigations?

24 A Since 1998.

25 Q Can you estimate approximately how many

1 investigations you've been involved in?

2 A Total investigations, several thousand. Death
3 investigations, in excess of 500.

4 Q Were your title and your duties what they are now
5 back in July of 2002?

6 A Yes, they were.

7 Q Did you have occasion to be brought into this case on
8 July 17th, 2002?

9 A Yes, I was.

10 Q Would you explain how that came about?

11 A Yes. The criminal investigation division is
12 commanded by two individuals, one lieutenant and one
13 captain. At the time, the second commander of the
14 criminal investigation division, who was Lieutenant Al
15 Saltmarsh, came back to the violent crimes office and
16 indicated that there was a death investigation underway,
17 which was being led by Investigator Doug Kelly, that he
18 needed additional manpower and resources to conduct
19 interviews of persons coming to the law enforcement
20 center. And he asked that I stand by to assist in the
21 interview process. I complied with his directives and
22 stood by where I then met with one of the witnesses that
23 came to the law enforcement center.

24 Q Okay. And you ended up meeting with Brandi Holder;
25 is that right?

1 A Yes, I did.

2 Q Do you know how she got to the law enforcement
3 center?

4 A I was informed that she would be brought by family
5 members to the law enforcement center.

6 Q When you came in contact with her, was anyone holding
7 her in custody or detention in any way?

8 A No, they were not.

9 Q Where did you meet with her?

10 A I met with her in the waiting area of the criminal
11 investigation division, which is on the second floor of
12 the Greenville County Law Enforcement Center.

13 Q Can you describe the general area and the setup near
14 where you were?

15 A Yes. As you come off the elevator on to the second
16 floor, you would turn to the left and then turn past the
17 bathrooms, the water fountains, and then turn left into
18 Room 206 where you would be in a very small waiting area.
19 You would then walk through that threshold and turn to the
20 right where you would have a series of desks lined up
21 width to width of the room where it would accommodate the
22 auto theft investigators, arson investigators, and then
23 white collar crime investigators with supervision offices
24 to the right on the right wall.

25 You then proceed back towards the back of that room.

1 It's a large room. You proceed back where you then enter
2 the threshold of Room 210, which is our office, the
3 violent crimes office, which has a door and is, clearly,
4 marked as to what office it is.

5 There you would have a series of seven to eight desks
6 lined up on the wall, four on the right side and three on
7 the right side.

8 Q Who was present when you met with Brandi Holder?

9 A It was myself and Investigator Bobby Alexander were
10 the only two present in Room 210 at the time.

11 Q Did anyone explain to her why she had been asked to
12 come there?

13 A I had explained it to her. I had very limited
14 knowledge as to this investigation as this was the onset.
15 This was still the preliminary investigative phase. And
16 having limited knowledge of the case, I explained to her
17 that I had limited knowledge of what took place and that I
18 was there to speak with her and obtain a statement as to
19 what could have taken place, and what did take place to

20 **VICTIM** .

21 Q Did you know anything, at that time, about what role,
22 if any, she had played in this incident?

23 A No, I did not.

24 Q So you were just attempting to gather information
25 from her; is that correct?

1 A Right. I knew that she was the -- said to be
2 biological mother of the deceased, that the deceased is
3 a -- was a two-and-a-half-year-old. And that her being
4 the biological mother and that he lived with the mother,
5 it was imperative that we identify the events which led up
6 to his hospitalization and subsequent death.

7 Q Did she appear to be cooperative to that?

8 A Yes, she was.

9 Q Did she tell you, No, I don't want to talk to you
10 about that?

11 A No, she didn't. In fact, she was very polite. She
12 was visibly upset and was crying. But she wasn't --
13 didn't give any indication that she was distressed by
14 being at the law enforcement center or being in my
15 presence.

16 Q You said that she was crying and in some distress,
17 was it so overwhelming that she couldn't communicate with
18 you?

19 A No, it was not.

20 Q Did you explain her rights to her?

21 A Yes, I did.

22 Q This is State's Exhibit No. 2 for identification, do
23 you recognize it?

24 A Yes, I do.

25 Q How do you recognize it?

1 A This is -- it's the rights waiver form. It's in my
2 handwriting. And I've identified it through my
3 handwriting and also my signature at the bottom left-hand
4 corner in the witness block.

5 Q Would you explain the procedure that you used in
6 explaining her rights?

7 A Yes. I, initially, identified, through law
8 enforcement, what the case number is to that particular
9 investigation. And I logged that at the top right-hand
10 corner. I then asked her for her full name, address, home
11 telephone number, her birth date, and her social security
12 number. I then write that information into the waiver
13 form. I write the beginning time, the beginning date, and
14 then proceed with the waiver form.

15 Q And is that what you did in this case?

16 A Yes, ma'am.

17 Q Would you, please, read the information that you
18 obtained and put on the form?

19 A Yes. The top right-hand corner, as I explained, the
20 case number, 2002-111024. Then I proceed and write --
21 obtain her full name and identification from her verbally,
22 Brandi Lynn Turner Holder, 3895 Jug Factory Road,
23 Greenville, South Carolina, 29651 --

24 MR. BYRHOLDT: I object, Your Honor. That's not --
25 that's incorrect.

1 THE WITNESS: Greenville, SC 29651 --

2 THE COURT: Hold on just a minute.

3 What's your objection?

4 MR. BYRHOLDT: He read it incorrectly.

5 THE COURT: Well, you can handle it on
6 cross-examination.

7 MR. BYRHOLDT: All right.

8 THE COURT: Go ahead.

9 THE WITNESS: Greer, SC 29651; identifying home
10 phone, 864-895-3919; "W" for white female; "F" for female;
11 21 years of age, marked with "21"; 3-24-81; her social
12 security number with social security number abbreviated as
13 "SSN," 251-65-5993.

14 And then I proceed with the Waiver of Rights by
15 reading the Waiver of Rights Form to her.

16 BY MS. SEAY:

17 Q What did you read to her?

18 A "Before we ask you any questions, you must understand
19 your rights."

20 And after each one of the rights that I read to her,
21 I have her initial at the end of that indicating she
22 understands her rights. I also have one portion of the
23 waiver form that I have her read back to me so that I can
24 indicate whether she can read. And that was done as well.

25 So as we go, "Before we ask you any questions, you

1 must understand your rights." She initials with her
2 initials "BLT." "You have the right to remain silent,"
3 initials "BLT." "Anything you say can be used against you
4 in court," initials "BLT."

5 I then read to her, "You have the right to talk to a
6 lawyer for advice before we ask you any questions and to
7 have him with you during questioning." I asked her to
8 read that back to me so that I can indicate that she can
9 read. She did read that back to me and then signed it,
10 "Brandi L. Turner."

11 Then I read, "If you have no money to pay for
12 lawyer's fees, the Court will appoint one to represent you
13 without cost, if you wish," initials "BLT." "If you
14 decide to answer questions now without a lawyer present,
15 you will still have the right to stop answering at any
16 time. You also have the right to stop answering at any
17 time until you talk to a lawyer," initials "BLT."

18 We then proceed with the Waiver of Rights. I read
19 this to her, "I have read the statement of my rights and I
20 understand what my rights are. I am willing to make a
21 statement and answer questions. I do not want a lawyer at
22 this time. I understand and know what I am doing. No
23 promises or threats have been made to me. And no pressure
24 or coercion of any kind has been used against me."

25 I then circle "coercion," and explain to her that

1 coercion means that nobody has threatened you, nobody has
2 put you under any undue pressure for you to waive your
3 rights and to talk to us, that she can freely not waive
4 her rights. She initialed where I circled "coercion."
5 And she initialed the beginning and the end of the Waiver
6 of Rights Form indicating that she understood that. And
7 then she signed "Brandi L. Turner" in the signature block
8 provided.

9 I then signed the form. Investigator Bobby Alexander
10 signed the form. And we concluded the Waiver of Rights
11 Form at 5:13 p.m. And she initialed confirming the time
12 with "BLT."

13 Q Investigator Silvaggio, did you tell her she had to
14 initial all those lines?

15 A I asked her if she understood them, if she would
16 place her initials to verify that she understood the
17 information.

18 Q Did she appear to understand what you had told her?

19 A Yes, she did.

20 Q Did you tell her she had to sign the Waiver of
21 Rights?

22 A No. I told her if she wished to waive her rights and
23 to speak to us that she needed to sign the form, at that
24 point, if she wished to speak to law enforcement. And she
25 did.

1 Q She did sign it?

2 A Yes, she did.

3 Q And did you or anyone in your presence force her to
4 do so?

5 A No, ma'am.

6 Q Did you or anybody in your presence threaten her if
7 she didn't sign it?

8 A No, ma'am.

9 Q Did anybody, you or anyone else, promise her a reward
10 or any leniency in the case or anything in exchange for
11 signing the statement -- the waiver?

12 A No, ma'am.

13 Q Did it appear to you that she placed her initials on
14 this waiver and signed this waiver of her own free will?

15 A Yes, she did.

16 Q After you obtained the rights, did you proceed to
17 have a conversation with her?

18 A Yes, I did.

19 Q Tell me how you go about doing that when you are
20 brought into a case, as you described earlier, that you
21 don't know a lot about.

22 A What I do is knowing that this involves a small child
23 and this is the mother that I'm present with, I try to
24 take the event -- because this is a traumatic event. It
25 was, obviously, very traumatic to her. I try to take that

1 event and shift it for a moment so that we can get
2 pertinent information about her background and then start
3 the interview process farther back in time leaving out and
4 leading up to, if you will -- leading up to the tragic
5 event. That's what I did with her.

6 I had her provide me with her birth date and social
7 security number, again, her educational level, identify
8 whether or not she was under the influence of any drugs or
9 alcohol. And then I get her permission to type her
10 statement for her prior to, actually, typing the
11 statement.

12 Once that is done, I ask her if she would then go
13 back. And we usually go back -- I go back to when she was
14 in high school and kind of work up from there, because she
15 is a young female. Being a young individual, going back
16 to high school gave us enough time to be able to get
17 enough background so that we could do a further
18 investigation at the conclusion of the interview.

19 At that time, I asked her to go ahead and proceed
20 with talking to me, tell me about her background and lead
21 up to the events which led her to the law enforcement
22 center on this particular day. And I'm typing as she's
23 talking.

24 Q Did she appear cooperative in doing so?

25 A Yes, she did.

1 Q Did she just talk freely with you?

2 A She did. Now, she was visibly upset. And I
3 understood why she was upset and was compassionate with
4 her and provided her whatever tools she needed, if you
5 will, tissue, drinks, whatever she needed to try to calm
6 herself in that situation.

7 Q Was she restrained in any way during this time?

8 A No, ma'am.

9 Q Was she under arrest at the time?

10 A No, she was not.

11 Q Was she in any kind of detention with you all?

12 A No, she was not.

13 Q Was she offered the opportunity to use the bathroom,
14 if she needed to, that type of thing?

15 A Yes, she was.

16 Q Someone, I believe, has testified that someone,
17 actually, gave her a blanket because she was cold; is that
18 correct?

19 A Yes. We have blankets that are pre-sealed that are
20 donated to the Victim Advocate's Office. So it was cold
21 in the office, which is very common. And I provided her
22 with a pink flush blanket where she covered with that in
23 my office while seated at my desk.

24 Q And when you were taking the statement, she was
25 talking and you were typing out what she was saying; is

1 that right?

2 A Yes, ma'am.

3 Q Referring to the first statement that you took, about
4 how long was it?

5 A The statement in length single-spaced typed was eight
6 pages in length.

7 Q This is State's Exhibit No. 18, do you recognize it?

8 A Yes, I do. This is the statement that I obtained
9 from her following the Waiver of Rights.

10 Q Okay. And who provided the information in that
11 statement?

12 A Brandi Holder.

13 Q After you completed the statement -- well, excuse me.
14 Let me ask you one other thing. Do you know approximately
15 how long it took you to compile that first statement?

16 A Approximately two hours. Once we began the interview
17 process, it took approximately two hours to complete the
18 first statement.

19 Q What did you do when you had completed it?

20 A I had her go back through the statement. The
21 statement is typed on a laptop. The forms are then
22 printed. The statement is printed. Then she reads it for
23 approval and makes any changes that need to be made. And
24 then she initials the beginning and end of each paragraph
25 indicating that she understands the statement and makes

1 any corrections that need to be made initialing those
2 corrections, initials at the end of the paragraph so that
3 nothing could ever be added to the end. And then signs
4 the statement form in the presence of a notary.

5 Q Did you advise her that if there was something
6 incorrect in the statement or something that needed to be
7 added to, deleted, changed, or modified in any way that
8 that could be done?

9 A Yes, ma'am.

10 Q Did she, in your presence, read the statement?

11 A Yes, she did.

12 Q And did she sign each page?

13 A Yes, she did.

14 Q And, in fact, she initialed several places as well;
15 is that right?

16 A That is correct. On a statement form -- when I
17 conduct an interview, I want to be assured that the person
18 understands what's in the statement.

19 So, as a result of that, I have them read it and then
20 initial the beginning and end of each paragraph so that it
21 says they -- it's clear to me that they understand what's
22 in each paragraph and that it is true and correct. And it
23 is supported then, again, by the signature on the
24 statement.

25 Q So you would find it a fair statement that a

1 statement given to law enforcement that you're signing is
2 very important?

3 A That is correct.

4 Q And you take special measures to make sure that
5 people understand that?

6 A Understand that the statement is very important and
7 that Miranda is very important. As it's read -- in this
8 particular statement form that's used at the Sheriff's
9 Office, it has Miranda -- or "Waiver of Rights" at the top
10 of each page of all eight pages.

11 Q Did anybody force her to initial and sign the
12 statement?

13 A No, they did not, ma'am.

14 Q Did you threaten her, pressure, coerce her, anything
15 of that nature?

16 A No, ma'am.

17 Q Did you witness anyone else doing it?

18 A No, I did not.

19 Q Did she ever tell you that she needed to leave or
20 wanted to leave?

21 A No, she did not.

22 Q And during this, what I'm assuming was sort of a
23 lengthy conversation to do the first statement, did she
24 ever indicate she wanted to stop talking to you?

25 A No, she did not.

1 Q After you had obtained the first statement, what did
2 you do next?

3 A At that time, I present the original statement to the
4 lead investigator, which in this particular case was
5 Investigator Doug Kelly. I ask him to review the
6 statement, as he knew more of the facts of the case, and
7 then to acknowledge to me whether or not the statement
8 corresponded with the evidence. And in viewing the
9 statement, he readily advised me that the statement was
10 inconsistent with the evidence and that she was being
11 untruthful in the first statement to myself and
12 Investigator Alexander.

13 Q And during this period where this was taking place,
14 did Investigator Kelly or Investigator Alexander threaten
15 Ms. Holder and say, You didn't tell the truth and you're
16 going to be in trouble, or We're going to put you in jail,
17 or anything like that?

18 A No. Investigator Kelly came back into the violent
19 crimes room where Bobby Alexander and myself and Brandi
20 Holder were seated. He came back there and confronted
21 Brandi with inconsistencies in her first statement. And,
22 at that point, he then left the room. And then Brandi
23 said that she wanted to correct the statement and offer a
24 second statement.

25 Q Were you responsible for taking the second statement?

1 A Yes, ma'am.

2 Q Who was present during that?

3 A Investigator Bobby Alexander, myself, and Brandi
4 Holder.

5 Q Did you use the same process that you described when
6 you told about taking the first statement, a conversation
7 and you were typing it?

8 A Exactly. The first part, eliminating the additional
9 particulars on the statement we had, because it was
10 corresponding with the fact of the first paragraph in the
11 first statement, we didn't put her birth date and social
12 again, or her educational level again, or where she
13 graduated from, if you will, in the second statement. We
14 then went in and put a line in there that she wanted to
15 correct the first statement, and then proceeded with the
16 interview.

17 Q Did she communicate with you readily about the
18 information she was giving you for the second statement?

19 A Yes, she did.

20 Q She was -- was she forthcoming?

21 A Yes.

22 Q Did she appear reluctant to talk to you and tell you
23 what she told you?

24 A She seemed very reserved. But under the circumstance
25 of losing her son, I was taking that into consideration.

1 And I just went on to have her expound a little bit
2 farther during the interview process.

3 Q When the second statement was completed, did you
4 follow the same procedure in allowing her to read it and
5 offering to correct or amend whatever needed to be done?

6 A Yes, I did.

7 Q Did she read through the second statement?

8 A Yes, she did.

9 Q This is State's Exhibit No. 19, do you recognize it?

10 A Yes, I do. This is the second statement that I took
11 from Brandi Holder.

12 Q Okay. And how many pages is it?

13 A Five pages.

14 Q Did she initial certain places on the second
15 statement as well?

16 A Yes, she did. In the same manner that she initialed
17 the first statement, she initialed any corrections,
18 initialed the beginning and end of each paragraph, and
19 then signed in two places on each page of the statement
20 form.

21 Q Was she given a copy of both statements?

22 A Yes, she was, ma'am.

23 Q Did you tell her she had to do the initialing again?

24 A No. I told her that by initialing the form -- and I
25 explained to her, by virtue, if she understands it, if she

1 would initial the beginning and end of each paragraph.
2 And I explained to her, again, the purpose of that was to
3 acknowledge that she read her statement and that portion
4 is correct before she proceeded to the next paragraph.
5 And to initial at the end of each paragraph so that
6 nothing could be added to the end of that specific
7 paragraph in the future.

8 Q And had she been placed into any kind of custody at
9 this time?

10 A No, she had not.

11 Q Was she being detained by anyone?

12 A No, she was not.

13 Q Was her physical movement restrained in any way?

14 A No, it was not.

15 Q Did she ever express wanting to stop the interview?

16 A No, at no time did she.

17 Q Did she ever ask you or anyone in your presence to
18 let her go home?

19 A No, she did not.

20 Q Did you or anyone in your presence threaten her in
21 any way during this entire process?

22 A No, ma'am.

23 Q Did you or anyone in your presence promise her
24 anything during this process?

25 A No, ma'am.

1 Q Was her demeanor, basically, the same as what you
2 described earlier during the second statement process?

3 A Yes. There was -- she became tearful and upset. And
4 then she would have her composure. She would be very
5 calm. And then when she spoke of certain events as it
6 related to her son, *VICTIM*, she would become upset.

7 Q Were you patient with her in that regard?

8 A Absolutely, yes.

9 Q And approximately how long did it take you to prepare
10 the second statement?

11 A I would estimate two hours on that as well.

12 Q So overall taking statements in cases of this nature
13 can be a lengthy process, would you agree with that?

14 A Yes, ma'am.

15 Q Did you offer her a break, if she needed one?

16 A Yes, ma'am.

17 Q What about any offers of food or water had she needed
18 that or wanted that?

19 A Yes. And that is part of our process in the criminal
20 investigation division that -- to afford the people that
21 we're interviewing the same opportunities that we have,
22 whether it be to smoke a cigarette, have a soda, need
23 something to eat, go to the bathroom, take a break. All
24 those were afforded to her during the interview process.

25 Q Do you recall her doing or taking advantage of any of

1 those things?

2 A I know she was afforded something to drink and eat,
3 but she didn't eat. And if she smoked cigarettes, then
4 she would have smoked cigarettes there at my desk, if that
5 were the case.

6 Q That's allowed? Smoking is allowed in that area?

7 A At that particular time it was, yes.

8 MS. SEAY: Your Honor, at this time, I would offer
9 the exhibits that we've been talking about during
10 Investigator Silvaggio's testimony, State's Exhibit Nos.
11 Exhibits 2, 18, and 19, into evidence.

12 THE COURT: All right. Subject to objection, put
13 them in.

14 MR. BYRHOLDT: Your Honor, I object to -- I think
15 it's State's Exhibit Nos. 18 and 19, which are the two
16 statements, on the voluntariness.

17 THE COURT: Subject to your objection, put them in.
18 (WHEREUPON, State's Exhibit Nos. 2, 18, and 19 were
19 admitted into evidence.)

20 MS. SEAY: Your Honor, I would request the Court's
21 permission to publish these statements.

22 THE COURT: All right.

23 BY MS. SEAY:

24 Q Do you mind publishing them?

25 A Sure.

1 This is the first statement that I obtained from
2 Brandi Holder on July the 17th, 2002. "I, Brandi Lynn
3 Holder Turner, do hereby give freely and voluntarily this
4 statement to Investigator Paul A. Silvaggio and
5 Investigator B.F. Alexander, who have identified
6 themselves to me to be deputies of the Greenville County
7 Sheriff's Office, Greenville, South Carolina."

8 "I have been advised that I do not have to make this
9 or any other statement and that what I say can be used
10 against me in a court of law. I have been asked that I
11 have the right" -- I'm sorry. "I have been advised that I
12 have the right to counsel and consult with an attorney of
13 my choice, that if I am financially unable to obtain an
14 attorney, the Court will appoint an attorney to represent
15 me. I have not been threatened or promised any reward to
16 make this statement."

17 "I am 21 years old. And I reside at 3895 Jug Factory
18 Road, Greer, SC 29651. (H) 864-895-3919, (W) 288-1725."
19 "H" being for home, and "W" being for work. "Additional
20 particulars on statementee: DOB: 03-24-81; SSN:
21 251-65-5993."

22 "I can read and write; graduated from J.L. Mann High
23 School. I am not under the influence of any drugs nor
24 alcohol and I know what I am doing. I have given you,
25 Investigator Silvaggio, my permission to type my statement