VOLUME II OF II

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

RECEIVED
FEB 19 2013
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

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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

ATTORNEYS FOR RESPONDENT.

TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S. C. 29204
(803)738-8622 Phone
(803)738-1600 Fax
Email: tdslaw@shurlinglaw.com

ATTORNEY FOR PETITIONER.

INDEX

VOUME I of II

Index i

Trial Transcript dated February 6 - 9, 2006 .....

VOUME II of II

Trial Transcript dated February 6 - 9, 2006 501

Supreme Court Opinion No. 26644 Filed May 4, 2009 703

Remittitur from the Court of Appeals dated 715

Application for Post-Conviction Relief filed April 20, 2010 716

State's Return dated September 14, 2010 723

Amended Application for Post-Conviction Relief filed April 4, 2012 728

Clerk of Court Records 734

SCDC Records 741

PCR Hearing Transcript dated April 4, 2012 745

PCR Hearing Exhibits Receipt 936

Applicant's Exhibit 1 Exhibits Receipt 937

Applicant's Exhibit 2 SLED DNA Analysis 938

Applicant's Exhibit 3 ME Report 941

Applicant's Exhibit 4 Statement of Brandi Lynn Holder Turner 951

Applicant's Exhibit 5 AMELX Report 959

Applicant's Exhibit 6 Hartman Straight Chiropractic Center Case History 963

Applicant's Exhibit 7 Chiropractor Notes.....968

Applicant's Exhibit 8 CVS Records.....970

Order of Dismissal filed June 25, 2012 974

Notice of Appeal filed July 12, 2012 996

STATE OF SOUTH CAROLINA	)	
	)	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

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

Page No.

Jury Qualification.....16
Jury Selection.....25
Pre-Trial Motions.....34

(SW) DOUG KELLY (IC):
Direct Examination by Ms. Seay.....37
Cross-Examination by Mr. Byrholdt.....51

(SW) PAUL ANDREW SILVAGGIO (IC):
Direct Examination by Ms. Seay.....57
Cross-Examination by Mr. Byrholdt.....68

(SW) BOBBY F. ALEXANDER (IC):
Direct Examination by Ms. Seay.....74
Cross-Examination by Mr. Byrholdt.....83

(SW) WESLEY SMITH (IC):
Direct Examination by Ms. Seay.....87
Cross-Examination by Mr. Byrholdt.....89

(SW) FLOYD WAYNE ARNETTE (IC):
Direct Examination by Ms. Seay.....90
Cross-Examination by Mr. Byrholdt.....92

(DW) BENJAMIN L. HOLDER, SR. (IC):
Direct Examination by Mr. Phillips.....94

(DW) DAVID SCOTT KELLY (IC):
Direct Examination by Mr. Phillips.....102

(DW) BRANDI LYNN HOLDER (IC):
Direct Examination by Mr. Byrholdt.....105
Cross-Examination by Ms. Seay.....109

Opening Statement by Ms. Seay.....127
Opening Statement by Mr. Phillips.....129
Opening Statement by Mr. Sumner.....133

INDEX (CONTINUED)

(SW) LADYE EASTLAN KELLY:
Direct Examination by Ms. Seay.....137
Cross-Examination by Mr. Byrholdt.....144
Cross-Examination by Mr. Quinn.....147

(SW) KEVIN GREGG, M.D.:
Direct Examination by Ms. Seay.....149
Cross-Examination by Mr. Byrholdt.....158
Cross-Examination by Mr. Quinn.....159
Recross-Examination by Mr. Byrholdt.....161
Redirect Examination by Ms. Seay.....162
Recross-Examination by Mr. Quinn.....163

(SW) KIMBERLY ANN BANISH:
Direct Examination by Ms. Seay.....167
Cross-Examination by Mr. Byrholdt.....170
Cross-Examination by Mr. Quinn.....172

TUESDAY, FEBRUARY 7, 2006

Matters of Law.....175

(SW) ELIZABETH JANE VENESKY:
Direct Examination by Ms. Seay.....182

(SW) MICHAEL EUGENE WARD, M.D.:
Direct Examination by Ms. Seay.....188

Matters of Law.....194

(SW) MICHAEL EUGENE WARD, M.D.:
Continued Direct Examination by Ms. Seay.....196

Matters of Law.....199

(SW) MICHAEL EUGENE WARD, M.D. (IC):
Direct Examination by Ms. Seay.....200
Cross-Examination by Mr. Byrholdt.....201

(SW) MICHAEL EUGENE WARD, M.D.:
Continued Direct Examination by Ms. Seay.....202

Matters of Law.....205

INDEX (CONTINUED)

(SW) MICHAEL EUGENE WARD, M.D.:
Continued Direct Examination by Ms. Seay.....208
Cross-Examination by Mr. Byrholdt.....228
Cross-Examination by Mr. Quinn.....234

(SW) ELIZABETH JANE VENESKY:
Direct Examination by Ms. Seay.....236
Cross-Examination by Mr. Phillips.....244
Cross-Examination by Mr. Quinn.....246

(SW) ROBIN LYNN CENTER:
Direct Examination by Ms. Seay.....248

Matters of Law.....254

(SW) ROBIN LYNN CENTER:
Continued Direct Examination by Ms. Seay.....256
Cross-Examination by Mr. Phillips.....259

Matters of Law.....263

(SW) ROBIN LYNN CENTER:
Continued Cross-Examination by Mr. Phillips.....272
Redirect Examination by Ms. Seay.....273

(SW) HOWARD STEINBERG:
Direct Examination by Ms. Seay.....274
Cross-Examination by Mr. Byrholdt.....275

(SW) ANGELA MARIE ECCLES:
Direct Examination by Ms. Seay.....277
Cross-Examination by Mr. Byrholdt.....284

(SW) PAULA EDMOND:
Direct Examination by Ms. Seay.....288
Cross-Examination by Mr. Quinn.....292

(SW) BRANDY MASON:
Direct Examination by Ms. Seay.....293
Cross-Examination by Mr. Byrholdt.....299
Cross-Examination by Mr. Sumner.....301

(SW) TREVOR MICHAEL VENESKY:
Direct Examination by Ms. Seay.....303
Cross-Examination by Mr. Byrholdt.....309

INDEX (CONTINUED)

(SW) DIANNE TURNER:
Direct Examination by Ms. Seay.....313
Cross-Examination by Mr. Byrholdt.....318

(SW) STEPHANIE HENDERSON:
Direct Examination by Ms. Seay.....320
Cross-Examination by Mr. Byrholdt.....326
Cross-Examination by Mr. Sumner.....329
Redirect Examination by Ms. Seay.....330

(SW) JASON BENTLEY:
Direct Examination by Ms. Seay.....331
Cross-Examination by Mr. Byrholdt.....336

(SW) JAMES DARREN TURNER:
Direct Examination by Ms. Seay.....339

Matters of Law.....348

(SW) JAMES DARREN TURNER (IC):
Direct Examination by Ms. Seay.....348

(SW) JAMES DARREN TURNER:
Cross-Examination by Mr. Byrholdt.....350

(SW) JOHN ALLEN PARKER:
Direct Examination by Ms. Seay.....352

Matters of Law.....356

(SW) JOHN ALLEN PARKER:
Continued Direct Examination by Ms. Seay.....357
Cross-Examination by Mr. Byrholdt.....375
Cross-Examination by Mr. Sumner.....379
Recross-Examination by Mr. Byrholdt.....388

WEDNESDAY, FEBRUARY 8, 2006

Matters of Law.....391

(SW) DOUG KELLY:
Direct Examination by Ms. Seay.....398
Cross-Examination by Mr. Byrholdt.....424

INDEX (CONTINUED)

(SW) BOBBY F. ALEXANDER:
Direct Examination by Ms. Seay.....437
Cross-Examination by Mr. Phillips.....452

(SW) FLOYD WAYNE ARNETTE:
Direct Examination by Ms. Seay.....461
Cross-Examination by Mr. Byrholdt.....464

(SW) WESLEY SMITH:
Direct Examination by Ms. Seay.....466
Cross-Examination by Mr. Byrholdt.....470
Cross-Examination by Mr. Quinn.....473

(SW) PAUL ANDREW SILVAGGIO:
Direct Examination by Ms. Seay.....478
Cross-Examination by Mr. Byrholdt.....531

State Rests.....535
Motions.....536

(DW) BRANDI LYNN HOLDER:
Direct Examination by Mr. Byrholdt.....540
Cross-Examination by Mr. Quinn.....559
Cross-Examination by Ms. Seay.....572
Redirect Examination by Mr. Byrholdt.....604

(DW) BENJAMIN L. HOLDER, SR.:
Direct Examination by Mr. Byrholdt.....606
Cross-Examination by Mr. Quinn.....614
Cross-Examination by Ms. Seay.....616
Redirect Examination by Mr. Byrholdt.....618

(DW) DAVID SCOTT KELLY:
Direct Examination by Mr. Byrholdt.....619
Cross-Examination by Ms. Seay.....622

Defense Rests.....623
Motions.....623
Matters of Law.....624

INDEX (CONTINUED)

THURSDAY, FEBRUARY 9, 2006

Matters of Law.....628
Closing Argument by Mr. Phillips.....630
Closing Argument by Mr. Sumner.....639
Closing Argument by Ms. Seay.....652
Charge on the Law by the Court.....677
Question from the Jury.....689
Verdict of the Jury.....693
Motions.....695
Sentencing by the Court.....700
Certificate of the Reporter.....702

INDEX (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(State's Exhibits)		
S-1	Waiver of Rights Form of Mark Martucci	48	436
S-2	Waiver of Rights Form of Brandi Holder	59	499
S-3	First Statement of Brandi Holder	63	
S-4	Second Statement of Brandi Holder	66	
S-5	Photo	126	202
S-6	Photo	126	202
S-7	Photo	126	202
S-8	Photo	126	202
S-9	Photo	126	202
S-10	Photo	126	202
S-11	Photo	126	202
S-12	Photo	126	202
S-13	Photo	126	202
S-14	Photo	126	202
S-15	Photo	173	202
S-16	Photo	180	187
S-17	Photo	180	187
S-18	Redacted First Statement of Brandi Holder	436	499
S-19	Redacted Second Statement of Brandi Holder	436	499
S-20	Appointment Book	602	
	(Defendant Holder's Exhibits)		
D-1	Photo	539	549
D-2	Photo	539	549
D-3	Photo	539	549
D-4	Photo	539	549
D-5	Photo	539	549
D-6	Photo	539	549
D-7	Photo	539	549
D-8	Photo	539	549

INDEX (CONTINUED)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(Court's Exhibits)		
C-1	First Statement of Brandi Holder	538	538
C-2	Second Statement of Brandi Holder	538	538
C-3	Note from the Jury	691	691
C-4	Competency Evaluation	696	696
C-5	Report of Findings-Competency Evaluation	696	696

All Exhibits were retained by the Clerk of Court for Greenville County.

for me as I tell you and Investigator Alexander about what has transpired since I found out that I was pregnant with my son, VICTIM , to the present time."

"I fully understand that I am not under arrest and that I am not in custody and can leave your office at any time I so desire. I understand that I have a right to have a lawyer present with me during questioning. And I further understand that I know that I do not have to say anything. I am on my own free will speaking with you and giving you this statement. I do not want a lawyer present."

"I had just turned 18 years old in March of 1999, and graduated from J.L. Mann High School in May of 1999. I got pregnant while I was a senior at J.L. Mann High School, which I don't know who by. I had just gotten pregnant with VICTIM in April of 1999, the last month of school. I was pregnant and then deliverec VICTIM on , 2000."

"I moved out of my parents when I was 17 because my parents and I don't get along. I got an apartment at the Paddock Club Apartments with Bobby Barringer, which he had an apartment out there in Apartment 122. Bobby and I shared the rent and dated each other some, but we mostly lived together and dated other people and shared the responsibility of the rent."

"I was working at the J.C. Penny Styling Salon at the Haywood Mall at the time. I left there and worked at Cost Cutters on Woodruff Road and started getting morning sickness, so I quit and didn't start back to work until after I had VICTIM. My parents and I were always fussing because my mom didn't like anyone that I was friends with, nor dated, and said that she had a premonition at church that I was going to marry a guy named David."

"My mom started making me go to a therapist named Nellie Barr on Wade Hampton Boulevard. My mom refused to attend with me and she said that she was paying them to fix me and didn't have to attend the sessions with me. So I just quit going. I was seeing her for just a couple of visits before she asked that my mom come in and talk with her. But when my mom refused, I stopped going. This was before I got pregnant and was living at the Paddock Club Apartments on Woodruff Road."

"When I got pregnant, I didn't have a steady man in my life. I was very stressed out from my parents and wanted to be like everybody else that I hung out with like nerds. I moved out and met Bobby playing softball at church, Mauldin Church of God. He was divorced and had two kids. And we got along real good. And when I was pregnant, he was the only person I hung out with."

"I stopped going to church because my mom was

embarrassed for me to go and be pregnant, so I stopped going."

Do you want me to repeat the waiver again at the top?

THE COURT: No.

THE WITNESS: "I was living at the Paddock Club Apartments for a year from July to July and Bobby decided to move back to Woodruff. And I didn't have a job and could not afford to keep the place so I moved back home with my parents; July 1999. Bobby and I still hung out and he was busy with work and softball. And I hung out with some of my other friends, just anything to stay out of my parents house."

"My parents and I fought and fussed up until the time I was five months pregnant because they thought I was going to miscarriage because I could not keep my food down and could not take my prenatal vitamins. My dad would tell me that he could not afford to feed me because every time he saw me I had food in my mouth. At five months pregnant, my parents started being all nice and buying baby stuff. We still had disagreements over guys because she didn't like them because none of them were named David, as my mother wished for them to be."

"I then had VICTIM who I called VICTIM, in 2000. It was at that time I gave birth to VICTIM that my mother started to take over. My mother tried to dictate to me

all the time as to how I should live my life and who I should date. And my dad just kept his mouth shut and stayed out of it."

"I delivered VICTIM at Greenville Memorial Hospital. I was put in the hospital once during the pregnancy for a kidney inflection that I had and they gave me antibiotics through an IV, so I had to be put in the hospital. I went into the hospital on January the 2nd, 2000, at 11:00 p.m. and I wasn't dilated enough and they told me that they couldn't keep me, but I could walk around for an hour and they would check me again."

"After I walked around for an hour, they checked me and they decided at the hospital to keep me. I delivered VICTIM at a.m. on , 2000. I officially went into hard labor at 3:00 p.m." -- I'm sorry -- "at 3:00 a.m. on , 2000. I pretty much delivered VICTIM naturally because they didn't have enough time to give me anything."

"The doctor came in and told me to stop pushing and the nurses pushed my legs together because there was no one there to catch the baby when he was born. VICTIM came out with a bruise on his top right of his head and had a hematoma, which was from the inside out. I had an easy delivery and went home 24 hours later and I took VICTIM home with me."

"VICTIM did real good at home and I took him to his ten-day checkup, and he was fine. That was at the Greenville Memorial Clinic because, at that time, I was on Medicaid. I took him to all of his follow-up visits and vaccinations at the clinic and at North Hills on Highway 14, which Dr. Bethey took care of VICTIM. When North Hills stopped seeing babies there, I started taking VICTIM to the health department in Greenville for his shots."

"I then got VICTIM on my insurance after I got married and then started taking VICTIM to the Christy Group at their branch on Highway 14. The only problems VICTIM had was that I had to take him there because he broke out in a rash at 18 months and they said that he had eczema. They said it could come from sensitive skin or a nervous condition. So they gave me a treatment plan for that and his doctor was Dr. Joseph Pool."

"At the time, I was keeping VICTIM at the Child Care Center in Taylors at the Fairview Child Development Center on Highway 290 and 101. VICTIM was in the day care for about three months from ten months to short of one-year-old when my mom went to the day care to pick VICTIM up and she didn't like the lady at the door. So I never took VICTIM back there."

"My mom kept VICTIM after that and that started causing problems between me and Darren because she wanted

to keep him overnight. And when I got off of work and went to her house to get VICTIM, she would not be there. And I would have to track them down. And it just became a problem."

"I got married September 16th, 2000, to James Darren Turner, which I call him Darren. I met Darren in March of 2000 at a hockey game in Florence, South Carolina. The night that I met him was the first time I had been out of the house since I gave birth to VICTIM. I met Darren at the hockey game and we started seeing each other shortly after that. After about a month, Darren and I started seeing each other on a one-on-one. My mom would not let me take VICTIM on any dates with me. Darren and I dated and got engaged and were planning a wedding, but my mom raised such a fit because she didn't like Darren. Darren and I then got married by a justice of the peace about one month after we got" -- "after the engagement."

"After we married, we moved into Road in Greer, which we got that trailer about a week before we got married. We got married in Greenville County, South Carolina, and obtained our marriage license at the Greenville County Marriage Licensing Department."

"Darren got along fine with the baby and had been around VICTIM since he was two months old. About five or six months after living at Road, our storage

building got broken into and they stole the riding lawn mower. I became scared and Darren was working swing shifts at Michelin and I was afraid to be home alone."

"There was one night that Darren's vehicle broke down and he came home and he knew I was scared to be there alone so he knocked real hard before he came in. And I got under the bed scared to death. That was when Darren and I separated and I moved back in with my parents and Darren stayed on Becky Gibson Road. My mom asked me to move back home, but I told her that I wanted a place of my own. My mom promised me that she would not say a word to me and would let me do what I wanted to do."

"I moved in and my mom's promise to have changed lasted about a month. From the time I moved into my parents house, I have tried to get my own place. But with no credit, that was impossible. My mom did let one of my friends come over. His name was Jonathan David Isemann."

"My mom was getting to the point of telling VICTIM to call me Brandi, and to call her mommy, and my dad, daddy. I got Jonathan not to come over any more because my mom was pushing the issue about Jonathan and I getting together."

"I got another job at a salon and the hours were 12 hours a day and I was exhausting myself. I then moved to another salon in January of 2002 at Capelli's Salon

located at 304 Main Street, Suite B, in Mauldin. I am presently working there as an independent contractor."

"This was how I met him, who worked next door to the salon that I presently am at. He was the manager of the carpet company. He was the manager of the store, but his trade was vinyl, wood, brick, glass installer. He no longer works for this carpet company and is presently unemployed. He is able to work, but just can't find the work that he likes and is waiting for the right job he desires."

"He had a traffic accident in Spartanburg County about three years ago when an ambulance rear-ended him and threw him through the windshield. Since that time, he has had a motorcycle accident where he now has pins in his right ankle. Both these traffic accidents took place before he and I met."

"He and I were dating first. And I went home and told my mom that I was dating someone from work. And I told her that I wasn't on a date for some time and I described him to her and she, right off the bat, did not like him. I saw him every night after that. His birthday was in February and he asked me to spend the weekend with him. And, of course, I couldn't tell my mom so I told her that I was going off with my girlfriends and I stayed with him that weekend."

"After the weekend of his birthday in February, he asked me to move in with him. I told him that he knew that that wouldn't go over very well with my mom. He then asked me if it would go over very well if he married me. And I told him that he was a gentleman and he knew what he needed to do and to call my mom. He called my mom while I was standing right there with him and asked her if he could have her permission to marry me. My mom told him no and that she did not like him and thought he was a drug addict because of his gold jewelry."

"After that, I was still living with my parents and my mother would give me grief over seeing him. VICTIM would go over to his place and we would spend time together without my mother knowing. My mom said that his hair was too long and his eyes seemed like he was hot tempered."

"We would go to the hockey games at the Bi-Lo Center with season tickets with my parents and we would sit right there with them and they would not even speak to him. One time at the Bi-Lo Center, Bo turn around and spit on another spectator there and I corrected him and he spit again. So he pointed his finger at Bo and told him that I told him no. My parents then did not like him for that and haven't spoke with him since."

"My son, VICTIM and I moved out of my parents house the first weekend in March of 2002. We moved in with him at

his trailer. At this time, my mom was still keeping VICTIM while I was working. He was working as well at LSI Floor Covering at 304 North Main Street in Mauldin, Suite A, where he has worked there up until April of 2002."

"He has worked odd jobs since April of 2002, but nothing steady. His parents let him cash in some of his CD's. They fired him from the LSI Floor Covering because he stayed out of work with me because I was out with a cousin's brother who shot himself. And he has the settlement from Spartanburg County from that accident."

"He and I are not stressing out financially because he draws unemployment and has his settlement which he gets in three different installments, which I don't know the amount, and then his CD's. His mom takes care of all his accounts. He attended the University of Miami, but I don't think he graduated."

"He and VICTIM got along great. He started calling himself uncle and VICTIM started calling him daddy about two months ago. My mom didn't like that at all. Every time I would pick VICTIM up from my mother's, it would be a fight. I told my mom that I would find someone else to keep VICTIM and we would just chill out and maybe then we could be a family."

"I hadn't heard from my parents until right before Father's Day when my dad called me and I spoke with him.

I didn't speak with them until earlier in the week, last week, when I called them about my car taxes being due the end of the next month. The conversation went fine. And then my mom liked to argue and I hung up and then I called her back when I got home. And VICTIM wanted to speak to her. And she was starting with him on the phone asking him if he wanted Nannie to come and get him. And he was not there as he had gone fishing."

"I refused to let VICTIM go and stay with her. It was always a hassle when I would pick VICTIM up from my parents because they would promise him everything and when we got home, I couldn't do all of that. He (not VICTIM) said that my parents owed him an apology because of the way that they talked to him. He has spent his own money on a bicycle and helmet for VICTIM. He keeps a roof over our head."

"This four-wheeler came up for sale and he bought it" --

THE COURT: Hold on just a minute, Mr. Silvaggio.

I think I'm going to take a break so I can order lunch for the jury and then pick back up. And then we'll take a lunch break when the food gets back for the jury.

THE CLERK: He's outside now with menus.

THE COURT: All right. Please take the jury out.

(WHEREUPON, the jury was excused from open court at approximately 12:17 p.m.)

THE COURT: I'll give you a short recess while the jury does their lunch orders.

Paul, you can step down.

THE WITNESS: Thank you, sir.

THE COURT: We'll take a short recess.

(WHEREUPON, a break was taken.)

THE COURT: Bring the jury back in.

(WHEREUPON, the jury came into open court at approximately 12:28 p.m.)

THE COURT: All right. Now, you may continue, Mr. Silvaggio.

THE WITNESS: "This four-wheeler came up for sale and he brought it for VICTIM and fixed it. For the past two months, VICTIM has wanted to go on the four-wheeler. It's a small four-wheeler. An adult needs to ride with him and it doesn't go very fast."

"On the 4th of July, I bought him (not VICTIM) a boat and we all went to Lake Keowee and we took the boat out to the lake. When we got back 4th of July night, or I guess it was the 5th of July, the storage building had been broken into and the four-wheeler and the riding lawn mower had been stolen. Officer Alligood took the report. He (not the officer) told VICTIM that he would look for another four-wheeler."

"Some of our friends came over Sunday with a

four-wheeler that was for sale. We decided that we were going to buy it and take turns riding it. Matt, which I don't know his last name and I don't know his phone number nor address, but he lives with his pregnant girlfriend and her mother, was riding VICTIM on the four-wheeler this past Sunday at about 5:00 or 6:00 p.m. at the rented property where we live."

"VICTIM had his butt on the seat of the four-wheeler and was holding on to the handle bars while Matt was riding behind him. Matt and Victim were riding and me, him, Miranda, and John were sitting in the grass watching them."

"Matt was driving through the yard and then went up a ditch and the right front wheel caught the sand in the ditch and the four-wheeler started to slide to the right. Matt took Victim and tossed him to the left and then Matt jumped off to the left. We ran to Victim who fell in the ditch on the ground. The ditch is made of grass and tree branches out there."

"VICTIM was not crying and I asked him if he was okay and he said he was fine and said 'Do it again.' I told VICTIM to give it a break and we would try it later. Victim was fine all night. And Monday morning, Matt and Miranda, which Miranda is 16, was upset because she found out two weeks ago that she was pregnant. I took Miranda and VICTIM to dinner at Mutts on Highway 14. He, Matt, and John stayed

behind and they were doing an odd job measuring and did not get back until midnight."

"He brought back a toy, which was a yellow Mustang that pulls a jet ski behind it. VICTIM was in bed. And when we came in, he said that he wanted to go fishing. So he left and VICTIM slept with me."

"I noticed Monday night that VICTIM had bruises on his body. He had bruises on the left side of his face, one on the small of his back like he had hit one of the branches in the ditch, bruises on his left arm, and his knees seemed scraped up from his bicycle falls. Those were the ones that I noticed."

"Tuesday morning, I woke up at 4:00 in the morning and I was throwing up. And about 8:00 a.m., I was throwing up again and I called work and told them that I was sick and would not be coming in. Later on Tuesday, Matt and Miranda came by and I told her that I was sick and she said that there was a virus going around. He and John, which John Parker lives with us and has been for about a week, but has been our next door neighbor even before I moved in up there, left."

"Early yesterday, he, VICTIM, John, and myself left about 11:00 a.m. and we went to Carpets One because he's supposed to start working there next week. Then we went to Haywood Road to Alltel Cellular because his cell phone

was messing up and then went to the Wal-Mart on Wade Hampton in Greer and bought a scanner and a mouse for the computer. He bought Bo a racetrack for his Hot Wheels and then we went home."

"He started building the race car set with VICTIM, which John and I were hooking the scanner up to the computer, but couldn't get it to work. He and John took the scanner back to Wal-Mart while VICTIM stayed home with me."

"He called me from the store and said that they had a problem with the receipt being torn and said that he would get the printer as well from the house and return it and had the money put back on my card. He said that he could go next week and buy a scanner. That's was when he told me to cook the steaks, and I did, and added macaroni and cheese and rice."

"He and John came back home and got the printer that we previously bought from Wal-Mart and VICTIM wanted to go with him. VICTIM, him, and John left about 7:30 p.m. and got back about 8:15 p.m. He called and asked if I wanted some gas for the car and asked if he could get a pack of cigarettes and a soda for home, and I said yes. He never hangs up the phone without letting me speak to VICTIM. I heard him ask VICTIM to ask me if he could have some candy, and I said yeah."

VICTIM came home with a soda and a pack of shock tarts.

VICTIM wanted me to open his candy, and I told him he had to eat his dinner first. He ate all the macaroni and cheese and he ate a couple of pieces of steak and his rice. I let him have a couple of pieces of his shock tarts. I tried to get him to eat more and he refused. And he said that he would watch him while I took my shower."

"VICTIM said that he had to go potty. And he (not VICTIM) took his pants down and VICTIM was now in the bathroom because we were trying to potty train him. Victim all of the sudden threw up in the toilet. It was blue and the macaroni and cheese. And the blue was from the Kool Aid that he had had."

"He started cleaning up the vomit which was all over the floor in the bathroom and hosed off the clothes VICTIM was wearing. I put VICTIM in the tub and watched him. And it was like he did not understand what had happened because he really has not thrown up before other than as a baby throwing up clear liquids. I told VICTIM that it was all right and that we would wash him off and put a movie in for him to go night-night."

VICTIM fell asleep laying on his chest in victim's bedroom. Victim slept good last night and slept on his chest the whole night. I got up this morning from my bed because I had fell asleep on the floor in VICTIM's room. But after it was hurting my back, I got in my bed."

"My alarm went off at 7:30 this morning and I went into VICTIM's bedroom to check on him and VICTIM was still laying on his chest and they were both asleep on VICTIM's floor. I went to my bedroom and started putting my makeup on when he came in and had vomit all over his chest and his legs. He came in there to rinse off and he brought the comforter in there because it was all over the comforter and he had changed VICTIM's clothes."

"After he gave him a bath, VICTIM was whimpering a little and he was telling him that it was okay. He (not VICTIM) and I have had diarrhea and thought then that it had to be from something we ate."

"I went on to work at about 9:20. I got to work about 10:00 a.m. this morning. VICTIM was not running a fever when I left and his temperature when I checked it before I went to work this morning was '98.6.' VICTIM was talking and ready to play. And I told him that I was going to work and he said, 'Bye, momma.'"

"He called my work at about 12:00 this afternoon and said, 'Brandi, you've got to come home, it's VICTIM I don't know what is going on. VICTIM was not acting right and looked disoriented. I gave him his Kool Aid and VICTIM asked for his bottle so I gave him his water bottle. I lifted him up and let him pick up the video that he wanted, laid him down on the pallet, and he started watching a movie with

his bottle.'"

"He said, 'I went to go work on the boat and was in and out the whole time and VICTIM was not acting like himself, acting disoriented.' He said, 'The last time I went to check on VICTIM, he was just laying there and had a heartbeat and it was scaring me.' He said, 'I tried to give him CPR. I thought he was breathing because John felt a heartbeat. And when I gave him CPR, he bit my lip.'"

"I told him to get in the van and get the baby to the hospital and I would meet him at the hospital. He said that VICTIM was mumbling and talking to him right up until the time they got to Highway 14. And I told them I would meet them at the hospital because I had to drive."

"I then met them at Allen Bennett Hospital and they were already there when I arrived. I went into the emergency room and John walked me from my car. And he (not John) was crying. He (not John) said that VICTIM was okay and he was still talking to us."

"I walked into the room where VICTIM was at and the nurse told me that I had to get out. The doctor came out and said that they were breathing for him and that he did not have a heartbeat when he came in. I asked if he was okay and the doctor said that he did not know and turned around and walked off. The doctor came back out and said that he was sorry. And I knew what that meant. And I started

screaming and crying."

"Yesterday afternoon, at about 2:00 p.m., myself, VICTIM, him, and John went out to lunch at the China Garden buffet on Orchard Park Drive. I fixed a salad and started feeding VICTIM some of it. It was lettuce, cheese, mushrooms, carrots, Ranch dressing, and bacon bits. I told the lady that the salad did not taste right. I pushed it to the side and fixed our main plate, which was some kind of chicken, string beans, fresh fries, chicken nuggets. VICTIM took a little bite of the chicken nuggets and played with his fries and then ate what I was eating, which was some kind of peppered chicken and string beans."

"We ate and then left and VICTIM fell asleep on the way to Wal-Mart. We woke him up when we got to Wal-Mart and he walked into Wal-Mart by himself. We then went home. And before, VICTIM went with him and John back to Wal-Mart after he and John went back for the second time alone. I changed VICTIM's diaper, which had a loose stool in it, but was not like diarrhea."

"From our house at 3895 Jug Factory Road to Allen Bennett Hospital, it takes about ten minutes. He was on the phone with me and I told him to take the baby to the hospital right then. I did not feel that we had time to wait for an ambulance because by the time the ambulance would have got to our home, he would have already been at

Allen Bennett Hospital."

"I have never seen him strike or yell at VICTIM. In fact, he has never yelled at me. I have to fuss at him because he calls me, 'yes, ma'am.' He does not have a temper and is great with VICTIM and I. The only thing that I have seen him do was put VICTIM in his room and VICTIM will cry. And when he stops, he will let him come out and play and ask him if he's going to be a big boy. And VICTIM will say 'Big boy, no cry.' And he will say, suck it up, and VICTIM will suck up his lips and everything is fine."

"I have no reason to believe that he nor John would hurt VICTIM He (not John) and my parents are the only ones that have kept VICTIM while I've been at work. But I have never known any of them to hurt my son. My parents haven't seen VICTIM in five weeks just to keep down the strain in the family."

"I have never done anything to hurt my son. I would never do anything to hurt my son. He would give anyone the shirt off his back. He tells VICTIM that he loves him every night and kisses him and tucks him in at night. He and VICTIM were really, really close. He taught him how to do things that a two-year-old just doesn't get to do. He taught him how to fish."

"I am telling you the truth and have absolutely nothing to hide. I will not cover for anyone and would

not allow anyone to harm my child. I will do without in order for my son to have what he needed."

"I have never been investigated by DSS. And he has two step-kids from a previous marriage. I have never seen them."

End of statement.

THE COURT: All right. Solicitor.

MS. SEAY: Your Honor, I would request permission for Investigator Silvaggio to publish the second statement.

THE COURT: All right.

MR. BYRHOLDT: Same objection, Your Honor.

THE COURT: Same objection is noted.

MR. BYRHOLDT: Thank you.

THE WITNESS: The second statement is also dated July the 17th, 2002.

The rights form, again, do you want read?

THE COURT: No. You don't have to read that.

THE WITNESS: "I want to correct the first formal statement that I have given this evening with the truth about what has happened to my son, VICTIM ."

"My son VICTIM, who I call VICTIM and I moved in with him around the first weekend in March of this year at his trailer. Everything was fine until he lost his job on April 10th of this year. He lost his job because he stayed out with me on April the 8th to go to a funeral.

My mom was still keeping VICTIM for about a week after that."

"VICTIM was coming back from my mom's and was being difficult and said that he wanted to go back to my parents and live with them because he had lived with them for so long. VICTIM was acting difficult about the situation in front of him and he said that he couldn't stand my parents because VICTIM was fine before he stayed with my parents and then was difficult to deal with when he came back home."

"The most that I have done to VICTIM was popping his legs and hands for things like touching the stove or an electrical outlet, then VICTIM wouldn't do that any more. I would then put him in his room to play with his cars, but no TV. I would make him stay in his bedroom for no more than five minutes and then I would go and get him. VICTIM was with me all the time."

"He (not VICTIM) has never hit him. He (not VICTIM) has been verbally abusive to me in the past, but lately we have been getting along. The last time that I recall him being abusive to me was when his nephew came up. His nephew is 14 and said he did not want to stay with us because he was yelling at us and he wanted to stay with his grandparents. I don't remember what the yelling was about. He has raised his voice a lot and has not yelled in a hurtful manner for me to cry. He has never threatened to beat me."

"I started noticing injuries on VICTIM right before Father's Day. My parents came and took VICTIM out of the house and VICTIM was sunburned then because he did not put any lotion or sunscreen on VICTIM. With Father's Day being on June 16th, it was two weeks before that that I saw a bruise on VICTIM's right cheek and it was a big bruise. I asked him how that happened and he said that he had VICTIM at his parents house and the dogs knocked him over and caused that bruise. His sister told me that the dogs did jump up on VICTIM and knocked him over. The dogs are a big size and they will trample whoever is in their way."

"My next door neighbor, Trevor, came to me and told me that he (not Trevor) had been yelling at VICTIM saying that he was not going to have a son for a pussy. Trevor's dad, Ron, started calling me at work and calling me at home trying to go out with me, and also to tell me that VICTIM was having injuries on him. This was a week before Father's Day."

"I noticed injuries on VICTIM when I was getting him dressed for bed. I saw a bruise on VICTIM's back, a real skinny thin bruise from the mid-section of VICTIM's back up to his shoulders on his spine. I asked him (not VICTIM) about it and he told me that he did not know how that got there. VICTIM had a bruise on his forearm in the dimension of a little bit bigger than a quarter. He (not VICTIM) again said

that he did not know how he got that bruise on his arm."

"That same week, I was getting ready to cook in the kitchen and he had just finished ironing his clothes and left the iron on the stove after he unplugged the iron to cool. I turned back and saw that VICTIM had the iron in his hand by the handle and it startled me. So I said, 'VICTIM, no.' And I took the iron from him and placed it on top of the refrigerator. I noticed that VICTIM had on the other forearm a small burn mark in a triangle fashion with a small dot in the middle. I knew that was from the iron incident that I just explained to you."

"Ronnie, the guy that had been hanging out at the trailer, said that he took VICTIM out for a hot dog and VICTIM had a bite mark on both sides of his tongue. He (not Ronnie) said that VICTIM spit and he popped his jaw which caused the bruise underneath VICTIM's chin and he bites his tongue. He (not Ronnie) later said that VICTIM was sitting on the couch and he caught VICTIM chewing on his tongue."

"I have seen bruises on VICTIM since we have been living with him on his forehead, left cheek, left side of his head, his tongue, both sides of his cheeks, his chin, his lower back from the diaper line up to three to four inches, bruises on his upper back on the spine, bruises on his butt, bruises on his shins, bruises on his upper thighs and butt. I've seen little scratches on VICTIM's

penis."

"This past Sunday I went in VICTIM's bedroom and saw him striking VICTIM on his legs, at least, ten times. And I told him to stop. I told him to leave and cool off. He was hitting VICTIM with his hands. I don't know why other than VICTIM had pissed him off. VICTIM was crying about something and I was folding clothes in the bedroom on the other side of the trailer and could hear VICTIM crying. He was grabbing VICTIM's hand and pulling VICTIM into VICTIM's bedroom. Then I saw him hit VICTIM, at least, ten times on his legs. VICTIM was kicking and crying trying to get away from him and he would front-hand his legs and then back-hand his legs. VICTIM was crying for me and he said to me, 'No momma, no momma.'"

"I noticed a small pale yellow bruise on VICTIM's forehead that I noticed once VICTIM started sleeping in his own bed in his room. VICTIM's bed is attached to a bookcase, which is like the bottom bunk to a bunkbed. I went to tell him one morning that I was going to work and VICTIM rose up and hit his forehead on the bookcase. I figured that was where the bruise came from and I stuffed that area with pillows. He told me to forget about stuffing the pillows and made VICTIM a pallet on the floor for him to sleep from now on."

"I have noticed that VICTIM's right ear was bruised

around the edge. I noticed this a week or two ago, but thought it was from when a truck ran me off the road when VICTIM was sitting in his car seat in the back seat on the right side and it bounced around the inside of the car. I thought VICTIM had hit his ear on the car seat or on the right side window. VICTIM was strapped into the seat. VICTIM also had a bruise on his right chest near his nipple. And I thought that that bruise was from the car incident."

"Last night, VICTIM threw up. He (not VICTIM) said he wanted to know what I fed him. He started cleaning the vomit up and said, 'I'm just not daddy material.' He cleaned up the vomit and gave VICTIM a bath and then took him to his bedroom. I heard a couple of thuds thinking that it was VICTIMS head. I walked into VICTIM's bedroom and he was putting a diaper on VICTIM and it looked like VICTIM was pushed back on the floor. I asked if VICTIM was all right. And he said that he was fine and put a movie in for VICTIM and closed his door."

"He went back outside and I went to the bedroom. I fell asleep and woke up about 1:00 a.m. this morning and I went into VICTIM's bedroom and saw that VICTIM was lying asleep on VICTIMS chest. I laid down with them for a little while and the floor was hurting my back so I went back to my bedroom."

"I woke up this morning and was getting ready for

work when he came into the bedroom with vomit over the front of his chest. He wanted to know what the hell I had given VICTIM to eat. He had the comforter with vomit on it and threw the comforter in the washing machine. He went to VICTIM's room and came back in the bedroom and asked where VICTIM was at. He went back in there and found him hiding under the bed. I told him that Bo was probably scared to death of him. And he called me a bitch and said that he was, actually, starting to feel sorry for VICTIM."

"Yesterday, I stayed out of work because I was sick to my stomach and was really nervous to my stomach. He was in a bad mood and I felt like I better stay home. And I knew that he had to go to that job interview. We all ended up going."

"Starting about a month ago, I noticed bruises on VICTIM's facial cheeks which are the exact size-of the way I have seen him squeeze VICTIM's cheeks with his hands. He only does this when he is pissed off at [redacted] and he wants [redacted] to listen to him. In the past month, I have seen him squeeze VICTIM's cheeks, at least, four different times. I told him to stop. He kept asking me how the bruises got on VICTIM'S face and I told him that he will bruise from squeezing his cheeks. He said that he could not take VICTIM out in public like that."

"About two weeks ago, I noticed my son's tongue had a

milky film over it. I looked in his mouth and noticed that he had bit his tongue on both sides. There was a bruise underneath his chin which I noticed at the same time. And then I noticed a smaller bruise underneath VICTIM'S chin last week. He said that it was from the bigger one that was getting smaller from the dogs at his parents house back before Father's Day and even after Father's Day. I always see bruises on VICTIM's shins which are from his tripping on his sandals."

"Yesterday, while John and I were working on the scanner for the computer that I mentioned in my first statement to you, VICTIM was sitting in the recliner crying. He (not John) took a piece of scotch tape and put it across VICTIM's mouth and then started laughing about it. I told him that that was uncalled for and I removed the tape from VICTIM's mouth."

"About a month ago, on June the 9th, he had VICTIM in the bathtub with water in the tub and bobbed VICTIM's head under the water three different times saying, 'I'm not going to have a sissy boy. VICTIM was crying during all this and gasping for air. And then he would say, 'Have you stopped crying yet, boy?' And then he would bob his head under water again. I told him, 'You're making matters worse.' I smacked him and told him that he was not helping matters and that he was going to have him terrified of water."

"Victim was seated in the tub and he grabbed Victim by the back of the head and pushed his head down between his legs covering his face with water. This was not for Victim to learn how to swim. And he was yelling at him telling Victim that he was not going to have an sissy afraid of water. I know this was on the 9th because the next day, which was the 10th, I withdrew money out of my savings and bought the trailer next door for $3,700 from John Parker. I told him not to do that again. And he said that he was not my momma nor my daddy and said that he would throw my stuff over the deck and put me out."

"Last night, the bruises on Victim's body were a couple of bruises on his shins, bruises on the small of his back, from the edge of his diaper up about four inches in a football diamond shape. There was a bruise on Victim's left cheek, actually, two bruises overlapping each other. One was a half dollar size and the other was small and just above the larger one. The bruise on his cheek was there Saturday afternoon when I came home at 1:00 p.m. But when I left at 9:00 a.m. Saturday for work, the bruise was not there. He said that the bruise on his back came from Victim slipping down the steps on the deck of the trailer, which the deck is made of wood."

"Last week was when I noticed the scratches on Victim's penis. I saw that he was having Victim pull on his bird which

he's naked because he (not VICTIM) does that in front of his friend and laughs about it. I have noticed a bruise right there on VICTIM's left upper thigh at his diaper line. This bruise was one single bruise the size of a finger tip."

"I have never called the police on him because he would threaten me saying that he would throw my shit out with me. He's threatened me that no one would believe that he would hurt my child and would blame me for the bruises."

"I have never been investigated by the Department of Social Services."

"VICTIM and I could have moved back in with my parents, but I did not want to do that because we don't get along."

"I bought the trailer next door so that VICTIM and I could get away from him and have our own place. This wasn't going to be the best way to get away."

"Life for VICTIM hasn't been good since the week before Father's Day. My son, VICTIM, has taken a lot of abuse from him. And I couldn't stop it. I have been seeing this abuse of my son since before Father's Day."

"I am in love with him and tried to correct the abuse he was inflicting upon my son. I thought I could change him and teach him to better handle his temperament with Bo. It just got worse and worse and now my son is dead."

End of statement.

THE COURT: All right. Solicitor.

MS. SEAY: No further questions for Investigator Silvaggio.

THE COURT: Mr. Byrholdt or Mr. Phillips.

MR. BYRHOLDT: May it please the Court?

CROSS-EXAMINATION

BY MR. BYRHOLDT:

Q Officer Silvaggio, can you tell us how long Brandi was in there with you that night?

A It was a series of hours. I would say an estimated two, two and a half hours for each statement.

Q I noticed the statement is in the narrative form. Are you telling this jury that you did not ask her questions during this statement?

A Yes. The questions are interjected when I'm speaking with her. And her responses and her answers are in narrative form as this is her statement.

Q But the questions or the information that you provided Brandi is not in that statements, is it?

A I would ask her questions and her answers would correspond with the question.

Q Like, for example, if you would have described the bruises that Officer Kelly reported to you that he saw, those are not in there; correct?

A I would not have described the bruises to her. I

would have asked her to describe the injuries to me.
Q Do you know if Officer Kelly described the bruises to her?
A He confronted her with the injuries that he observed, so.
Q Because today, this court reporter is taking down the questions I ask you and your answers so we know what has been said by you verbatim by a reporter.
A In a courtroom setting, that is correct.
Q But we don't have that information, other than what you typed out that night. We've got your typed summary.
A No. You have her typed statements is what you have with -- that has been approved and signed by her.
Q Do you recall what she was wearing that night?
A I don't recall, sir. I know she was cold and I offered her a blanket up there in the office.
Q When you first came into contact with Brandi, was she in the waiting area with her parents?
A I believe she was with somebody. I don't know who the people were that she was with.
Q Did you invite anyone to come back with her to observe this statement being taken?
A No. And that's not customary. We would not do that.
Q And it's always customary for you to have, at least, a minimum of two officers when you interview; correct?

A Not necessarily. With the rights waiver, yes. With the statement, no.

Q Well, if she wasn't in custody, you didn't even have to give her her rights, did you?

A You're right. But in my experience, I think it's always best to advise people of their legal rights even though they see it on TV and they know they have the right to a lawyer. I always want to make sure that they know that they have a right to a lawyer. Because I don't know the circumstances behind how this young man died.

So, in my eyes, anybody is a person of interest and possible suspect. So I just do the Miranda to err on the side of caution.

Q And I noticed that the word "coercion" is circled on her rights form?

A Yes, sir.

Q Is that circled because she was coerced or because she wasn't coerced?

A As I explained earlier, respectfully, I never knew what coercion was until I went into law enforcement and knowing that term and seeing it on a Miranda form. So I circle it and explained to her what coercion means because it is an uncommon English word.

Q The first statement you think is untrue; correct?

A I think the facts related to what happened to VICTIM

are untrue.

Q Are there any errors from your investigation in the second statement? Could there be?

A Following the second statement, the statements were turned over to Investigator Kelly for review and analysis based on the facts of the case and what evidence was gathered, medical and forensic evidence. So Investigator Kelly would make that analysis, not myself.

Q Do you know what forensic evidence was gathered in this case?

A I have absolutely no idea.

Q It's kind of unusual in a homicide case not to have some physical evidence, isn't it?

A That's not true. The body is your most critical piece of evidence in a case like this, the victim's body.

Q DNA, you don't have that?

A I don't know that DNA is necessary in this case. As I said, the body and the body structure and injury is your most critical piece in a case like this.

Q Did anybody check the hands of Ms. Holder, Mr. Parker, or Martucci for any injuries? I mean, if you hit somebody, you might have damaged knuckles. Did anybody ever do that that you're aware of?

A I had a very good observation of your client and didn't find any injuries or nothing stood out to me as an

injury nature.

Q That's something you would look for; right, as an investigator?

A On the person I'm interviewing --

Q Sure.

A -- and, subsequently, would have photographed that --

Q Well, do you know whether any other officer ever looked at the hands of Mr. Parker or Mr. Martucci?

A I don't know. In fact, I never met those individuals that night.

MR. BYRHOLDT: I beg the Court's indulgence for one moment.

(Pause.)

MR. BYRHOLDT: Thank you, Officer.

THE COURT: Mr. Quinn.

MR. QUINN: No questions.

Thank you.

THE COURT: Thank you.

Step down.

MS. SEAY: Your Honor, I just need to confirm that I did enter State's Exhibit Nos. 2, 18, and 19 into evidence.

THE COURT: They are in evidence.

MS. SEAY: The State rests.

THE COURT: All right. Take the jury out, please.

(WHEREUPON, the jury was excused from open court at approximately 1:05 p.m.)

MOTIONS

THE COURT: All right. Any motions Mr. Byrholdt, Mr. Sumner, or Mr. Quinn?

Mr. Byrholdt.

MR. BYRHOLDT: May it please the Court?

On behalf of Defendant Brandi Holder, we move for a directed verdict of acquittal on whether she caused the death of VICTIM . I'm not aware of any evidence that's been presented that she's inflicted these injuries. The only person that was -- that has testified, at this point, that was present that would have knowledge would be Mr. Parker who, as I recall his testimony yesterday, that when the -- in the time frame when the fatal injuries could have been inflicted, Ms. Holder was not present. And he never saw Ms. Holder inflict any injuries.

So I don't think there's any proof that she has caused this death of a child under the age of 11 while committing abuse or neglect. I think they've charged her under A with the homicide itself, not aiding and abetting, Your Honor. And I would ask the Court for a directed verdict of acquittal on those grounds that there's no proof of -- that anything that she has done -- any proof they have put up caused the death of VICTIM . And I

think an essential element is that her actions or inactions if they're saying she caused it that resulted in his death and there's causation -- no proof of causation, in this case, Your Honor.

THE COURT: The statute says, "Causes death while committing child abuse or neglect." And that is defined as, among other things, an omission by any person that causes harm to the child's physical health or welfare.

Why --

MR. BYRHOLDT: But the omission must result in the death, must cause -- I mean, the cause still -- I agree the cause could be an omission. But I don't think there's been any evidence that an omission by Ms. Holder caused the death.

THE COURT: Solicitor.

MS. SEAY: It accurately reads, "Child abuse or neglect means an act or omission by any person which causes harm to the child's physical health or welfare." And harm is further defined as, "Inflicting or allowing to be inflicted upon the child physical injury, failing to supply the child with adequate food, clothing, shelter, or health care. And the failure to do so causes physical injury or a condition resulting in death."

THE COURT: I deny your motion, Mr. Byrholdt.

MR. BYRHOLDT: Thank you, Your Honor.

THE COURT: Mr. Sumner.

MR. SUMNER: Your Honor, I would also join in a motion for directed verdict of acquittal as to the Defendant Mark Martucci. If you need any argument on that, I'll be happy to supply it.

THE COURT: I don't believe I need any argument. Thank you.

Your motion is denied.

All right. Now, Mr. Byrholdt, will you have some testimony? Do you need to talk --

MR. BYRHOLDT: I need to talk, Your Honor.

THE COURT: All right. We'll take a recess while you talk with your client and let me see where the --

THE CLERK: They're loading the food up now to bring it in.

THE COURT: All right. We'll take a recess while you talk to your client.

(WHEREUPON, a break was taken.)

(WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked for identification and entered into evidence replacing State's Exhibit Nos. 3 and 4.)

THE COURT: I understand that the food for the jury is here, so we'll take a break while the jury eats.

Now, you want -- are you all going to stay in and around the courthouse or are you going to go across the

street?

MR. SUMNER: We were just going to run to a sandwich place real close. I mean, I feel like, you know, 45 minutes tops.

THE COURT: Well, how about do this. How about --

MR. BYRHOLDT: Sir?

THE COURT: I'm just saying that the jury has got their food now. So we'll go ahead and break for lunch and --

MR. SUMNER: I mean, we were just going to run three or four blocks away and eat and come right back.

THE COURT: Do this for me, if you will. How about try to be back maybe at 2:00.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, Defendant Holder's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, and 8 were marked for identification only.)

THE COURT: Mr. Byrholdt.

MR. BYRHOLDT: We will be putting up a defense, Your Honor.

THE COURT: Anything before I bring in the jury?

(There was no response.)

THE COURT: Okay. Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 2:17 p.m.)

THE COURT: All right. Mr. Byrholdt.

MR. BYRHOLDT: May it please the Court?

We call Brandi Holder to the witness stand.

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

WHEREUPON,

BRANDI LYNN HOLDER,

after first having been duly sworn, testified as follows:

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

THE WITNESS: Brandi Holder.

THE CLERK: Thank you.

Be seated.

DIRECT EXAMINATION

BY MR. BYRHOLDT:

Q Brandi, I'm going to ask you to speak up so this last gentleman in the jury box can hear you.

Give us your full name, please.

A Brandi Lynn Holder.

Q And where do you live?

A [redacted].

Q How old are you now?

A I'm 24.

Q Back in July of 2002, how old were you?

A I was 21.

Q How old were you when you got pregnant?

A 18 years old.
Q Tell us about VICTIM.
A He was my little boy, always laughing from the time he was a little baby, always playing. We lived with my parents. He was our baby.
Q What do you mean "our baby"?
A All of us took part in raising him. And he was ours. There was no father involved. And he just loved to have fun. He loved to laugh. And he was the best thing that ever happened to me.
Q Was there a period of time when you did not get along with your parents and moved out?
A Yes.
Q Can you tell us about that?
A I'm sorry.
Q Would you like some water?
A Please.
Q Brandi, was there a time when you and your parents did not get along after you had VICTIM?
A Yes. There came a point in time where my mom and I didn't see eye to eye on raising him. She would give him everything that he wanted. And I couldn't live up to those standards.

There came a point in time where she kept him while I worked. I went back to work when I first had him. I

wasn't working. And that upset me because I would come home and I was like the big sister. I wasn't like the mommy anymore. And she was more like the mommy. He called her mommy instead of Nannie. And he would call me by my first name.

Q In the early part of 2002, did you go to work at Capelli's?

A Yes, I did.

Q All right. And did you meet Mark Martucci there?

A I did.

Q And we heard that you developed a relationship and moved in with him; is that true?

A That's true.

Q The morning of July the 17th of 2002, were you at work at Capelli's?

A I was.

Q Did you get a phone call?

A I did.

Q Tell the jury what you were told on the phone.

A I was told that VICTIM was sick and that he was throwing up. And he said, What should I do? And I said, I will call the doctor.

Q All right. Did you call the doctor?

A No. I hung up to call the doctor and immediately got another phone call.

Q From who?
A From Mark.
Q And what was the basis of that conversation?
A He said that something wasn't right, that VICTIM wasn't acting right. And he wanted me to talk to him.
Q Did you speak into the phone?
A I did.
Q Did you get any response at all?
A No.
Q All right. What did you then do?
A Mark got back on the phone and he said that he was taking VICTIM to the hospital.
Q What did you say?
A I said, Why? And I got no response. And then the phone went dead. He just hung up.
Q Earlier that morning, what time did you get up on the 17th?
A Somewhere around 8:00.
Q All right. And did you shower and get ready for work?
A No. I showered the night before. I did get ready for work.
Q All right. What did you do when you got up around 8:00 that morning?
A I got up, went to the bathroom, got everything laid

out and ready for work. I blew -- I straightened my hair. So I had to go through it with a hair dryer and the round brush and straighten it again and get ready. I put my makeup on and finished getting dressed.

Q Did you see VICTIM that morning?

A I didn't.

Q Did you see Mark Martucci that morning?

A Yes, I did.

Q Tell me where you saw Mark and what he was doing.

A When I was getting ready to leave for work, I was walking through the kitchen and he came in holding a comforter.

Q Did he tell you anything? Did he say anything to you?

A He did.

Q What did he say?

A He said that VICTIM had thrown up all over the place. And I asked him if he needed me to stay. I was running late for work. And he said, no, that he could take care of it.

Q All right. Did you check on VICTIM that morning before you left for work?

A No, I didn't.

Q When was the last time that you saw your son, VICTIM ?

A The night before.

Q When you saw VICTIM -- do you mean the night of the 16th?

A Yes.

Q How late during the 16th did you see VICTIM?

A I went to check on him about 1:00 in the morning.

Q And when you went to check on him, where did you go check on him?

A I went to his bedroom.

Q All right. Was VICTIM in his bedroom?

A He was.

Q Was anybody with him?

A Mark was in there with him.

Q Was VICTIM all right at that time?

A He was asleep.

Q The night of the 16th, did VICTIM get sick?

A Yes, he did.

Q About what time was that?

A Probably 10:00 or so.

Q All right. Had you, on the day of the 16th, gone out in public with VICTIM?

A Yes, we did.

Q Tell the jury where -- well, who was together on the 16th? What people were around you and VICTIM?

A It was myself, VICTIM, Mark, and John.

Q Do you mean Mark Martucci and John Parker?

A Yes.
Q And where in public did you go on the 16th?
A We went to a carpet store where Mark was going to put in a resume.
Q All right. About what time of day was that?
A Around lunchtime, 11:30, 12:00.
Q All right. After you left the carpet store, where did you guys go?
A We went to Alltel on Haywood Road. It's a cell phone place.
Q All right. Did all of you go in the store?
A Yes.
Q Was VICTIM visible to be seen by anyone in that store?
A Yes.
Q Where did you go after you left Alltel?
A We went to eat lunch at China Garden buffet.
Q All four of you?
A Yes.
Q Any problems at the China Garden?
A He wanted to flirt with the waitress.
Q After you left China Garden, where did you guys go?
A We went to Wal-Mart.
Q Was VICTIM with you?
A Yes.
Q Did anybody say anything unusual to you at Wal-Mart?

A No.
Q Did VICTIM leave without you at any time the evening of July 16th?
A Yes, he did.
Q When he left your side, who did he go off with?
A Mark and John.
Q Do you know how long they were gone?
A Probably two hours, two and a half hours.
Q What were you doing while they were gone?
A I was cooking dinner.
Q All right. Did you feed VICTIM when he got home that night on the 16th?
A I did.
Q Did he eat very much?
A He ate all of his macaroni and cheese, and he ate a few pieces of steak.
Q Did he get sick after that?
A Yes, he did.
Q All right. At any time on the 16th or 17th, did you see any marks of abuse on VICTIM ?
A No.
Q Prior to the 16th, while you lived with Mark Martucci, did you see any indications that VICTIM was being abused by anyone?
A No.

Q And you were here when they -- you heard people say that on the weekend of -- I think it was the 4th of July that VICTIM had bruises on him?
A Yes.
Q Let me hand you what's been marked for identification purposes as Defendant Holder's Exhibit Nos. 1 through 8. And just, at this time, I ask you to review those and ask you if you can identify those?
A Yes.
Q Do you know who took those photographs?
A Yes.
Q Who?
A Me.
Q Do they accurately portray VICTIM's condition at the time those pictures were taken?
A Yes.
Q And what time were those pictures taken?
A At different times.
Q But what dates?
A These were taken 4th of July weekend at the lake.
Q At which lake?
A Lake Keowee.
MR. BYRHOLDT: Your Honor, I'd move Defendant Holder's Exhibit Nos. 1 through 8 into evidence.
THE COURT: Any objection?

MS. SEAY: No, sir.

THE COURT: No objection. Put them in.

(WHEREUPON, Defendant Holder's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, and 8 were admitted into evidence.)

MR. BYRHOLDT: Your Honor, if I may show those to the jury.

I beg the Court's indulgence for just a moment.

(Pause.)

THE COURT: Okay. Let's move on now.

MR. BYRHOLDT: May it please the Court?

BY MR. BYRHOLDT:

Q Brandi, when you took those pictures of VICTIM, did you see any bruises on him?

A No.

Q There were some pictures that were put in by the State, and you've seen those pictures?

A Yes.

Q Were you present at the Veneskys house when those pictures were taken?

A I don't remember. It's very possible. They were next door neighbors and I went over there a lot.

Q When you saw those pictures, did you inquire of Mark what happened?

A Yes, I did.

Q And is that where the -- he told you about the dogs

and --

MR. QUINN: I object to the leading nature of the question.

THE COURT: Don't lead, please, sir.

BY MR. BYRHOLDT:

Q What did he tell you?

A He didn't tell me anything. He couldn't explain them.

Q Why did you stay there if he couldn't explain marks on your son?

A I didn't see any danger staying there at that time.

Q At any time up until July the 17th, when you went to Allen Bennett Hospital, were you concerned about VICTIM'S safety?

A No.

Q If you had been concerned about VICTIM'S safety, what would you have done?

A I would have left.

Q Where would you have gone?

A I would have found somewhere to go, even if it was a shelter.

Q Could you have gone home?

A Yes.

Q Have your parents ever turned you away?

A No.

Q When you got to the hospital, at Allen Bennett, were you allowed to see VICTIM?
A No, I was not.
Q And you tried?
A Yes, I did.
Q What happened?
A I was pushed away.
Q Did you ever get to say good bye to VICTIM?
A No.
Q When you were at the hospital, did you tell anyone at the hospital that there had been an accident on an ATV?
A I only repeated what I was told.
Q And who told you that?
A Mark.
Q When did you find out that VICTIM had died?
A The doctor came out and said he was sorry, there was nothing more he could do.
Q And what did you do?
A I screamed and tried to climb the wall. I fell on my knees. I couldn't get back up.
Q At some point, did someone approach you and ask you to go to the law enforcement center?
A Yes.
Q Who approached you?
A It was one of my family members told me that I needed

to go with my uncle, David, to the law enforcement center.
Q Did you ask why?
A No.
Q Did you go?
A I did.
Q Do you recall about what time you got to the law enforcement center?
A Between 4:30 and 5:00. I don't know.
Q And did you sit with your family?
A I did.
Q At some point, did you leave your family and go back to where the detectives were?
A Yes.
Q Who took you back there?
A One of the officers.
Q And you were given your Miranda warnings, your rights form?
A Yes.
Q Do you recall that?
A No, I don't.
Q Well, what was your emotional condition at that time?
A I was crying. I was in shock. I wanted to go home with my family.
Q Did you ever ask -- well, Officer Silvaggio, was he the one that conducted the interview?

A Yes.
Q Did you ever ask him for anything during the interview?
A I asked several times if I could go to the bathroom. And I was told to wait a minute.
Q Is that the only thing you asked for?
A No. I begged to go home. I wanted to go home with my family.
Q Were you allowed to go home?
A No, I was not.
Q You gave a statement?
A Yes.
Q The first statement?
A Yes.
Q State's Exhibit No. 18, if I recall right, an eight-page statement?
A Yes.
Q There's a lot of personal information in it?
A Uh-huh.
Q Did you provide that information?
A I had to have.
Q All right. A few hours later, you gave a second statement?
A Yes.
Q Do you know how long you had been in the interview or

interrogation room before you gave your second statement?
A At least, two or three hours.
Q All right. Did they provide you a blanket?
A They did.
Q Other than that, did they provide anything else for you?
A No.
Q After you gave your first statement, did any other officers come in and talk with you about your statement?
A Yes.
Q Who?
A Mr. Kelly.
Q And when he came in, tell the jury what happened.
A When he came in, I was sitting at the end of Mr. Silvaggio's desk in a chair. I had my head laying on a table and I was crying. And Mr. Silvaggio told me when I got done that I could go. And I thought it was getting that time.

And he came in and went through my purse. It was sitting on his desk. And he said, Any good mother has a picture of their babies. And he found one and he picked it up and he acted like he was going to rip it in half. And he told me that I didn't give a "F" about that baby, and that he had talked to neighbors and he had talked to other people and they were saying what had happened was

not true, and that they were not going to let me leave until they got what they wanted out of me. And he tossed my picture across the table and he left.

Q In your second statement --

A Yes.

Q -- there's a history of abuse that you say you knew what was going on. Is that statement true?

A Not completely, no.

Q Well, did you know of any abuse going on between Mark and VICTIM, or between anybody and VICTIM?

A No.

Q Were you abusing VICTIM?

A No, I was not.

Q Why would you put that information in a statement or sign it?

A After the investigators had come in and gone out, Mr. Silvaggio drew a stick finger on a piece of notebook paper and said he wanted to know any bruise that VICTIM had ever had from the time he was born. And he told me when I did that that I could go home.

Q And what did you do?

A I did what he asked me to do.

Q Did you ever ask for your parents?

A Yes. I was told that they were waiting on me, they would be there when I got done.

Q So statement number one, State's Exhibit No. 18, is not accurate?
A No.
Q The second statement is not accurate?
A No, not in entirety.
Q Why would you initial every paragraph and sign your name to all these pages?
A My son had just died and I wanted to go home. I was promised I could go home. And he said if I did it that I could. And he pointed and he told me where to sign.
Q Brandi, could you explain to me and this jury how the horrible injuries that victim suffered could have happened and you not know about it?
A No, I can't.
Q When you last saw him early in the morning of the 17th, did he have any injuries like that?
A On the 16th?
Q No. The early morning of the 17th, you said you checked on him?
A I didn't check on him.
Q You didn't get up in the middle of the night and check on him?
A In the middle of the night. I thought you were talking about --
Q Did you see anything out of the ordinary?

A No. He was laying on top of Mark's chest and he had his pajamas on.
Q What was he wearing?
A He was wearing a little baseball top that was striped. It was unbuttoned in the front and a diaper. That was it.
Q It's been three and a half years since this happened, you've been waiting for this week?
A Yes.
Q Is there anything that made you aware that your son was at risk for being hurt?
A Looking back in hindsight, there were things that I wish I had questioned that I didn't at the time. I wish I had checked on him that morning. And I have to live with that for the rest of my life that I didn't go -- that I was running late for work and I didn't go and check on my baby. And, now, all I've got are pictures of him.
Q The State asked your former husband, David [sic], if he got a call from you, you know, telling him about VICTIM'S death. Were you -- what happened to you later on the night of the 17th?
A They arrested me.
Q I thought they promised you that you could go home?
A He did.
Q You went to jail?

A Yes.

Q Did you talk to anybody that night? Were you allowed a phone call to call your parents?

A No.

Q Were you allowed to call your former husband to tell him about VICTIM?

A No.

Q When was the next time you saw anyone, other than law enforcement people?

A I saw my parents two weeks later for the first time.

Q In the two and a half years that VICTIM was alive, did you ever hurt him?

A Absolutely not.

Q Did you ever allow anybody to hurt him?

A No, I did not.

Q And when you last saw him sometime during the early morning of the 17th, he had not been beaten?

A No.

MR. BYRHOLDT: Brandi, thank you.

Please answer any questions the State or the Defense would have for you.

THE COURT: Mr. Quinn, or, Mr. Sumner, do you have any questions?

MR. QUINN: I do, Your Honor.

My understanding was that the Solicitor would go

next. Am I wrong in terms --

THE COURT: No, sir. You can go next.

MR. QUINN: Okay.

CROSS-EXAMINATION

BY MR. QUINN:

Q Ms. Holder, is it fair to say that you've had difficulty in your relationships throughout your life?

A No, it's not.

Q But you told the jury that you had difficulty with your parents at one point; isn't that right?

A Yes, I did.

Q And you had difficulties with Darren Turner, your husband; isn't that right?

A Yes.

Q And, I assume, you had difficulties with the father of VICTIM, whom you have never identified; isn't that right?

A No.

Q You didn't have any difficulties with him?

A No.

Q And you had difficulties with the Veneskys; isn't that right?

A Yes.

Q And, in fact, you started trouble in their relationship by accusing Mr. Venesky of some interest in you; isn't that right?

A No, sir. He approached me on numerous occasions.
Q Okay. And you don't remember the Veneskys taking these pictures when you were there?
A It's been a long time ago. And it's very possible I was there. I don't deny that.
Q Do you deny getting angry about it and having an argument with Ms. Venesky on the phone?
A I remember getting angry with her. Because I went and told her what was going on with her and her husband -- with myself and her husband.
Q You remember getting angry with her because you told her about her husband, is that what you said?
A (Witness nodded.)
Q Okay. So you didn't get angry about the pictures? You didn't say to her, Who gave you permission to take those pictures?
A I talked to her husband. I had caught her husband taking pictures of me and other things in the past, looking in the windows.
Q And did you report that to the police at any point?
A No, I did not.
Q To your landlord?
A No.
Q To any of your neighbors in case they had those same sort of difficulties?

A She was the only neighbor at the time.
Q Did you put it in either of the statements you gave to the police?
A No.
Q Did you go back after you found out that Ms. Venesky had given a statement against you and correct it with the police and tell them what the problems were?
A I didn't find any of that out in time to go to the police and tell them anything.
Q Ms. Venesky gave a statement in July of 2002, so you haven't had the opportunity in the last three years to go back and correct it?
A Not until the approach of this trial.
Q Okay. And do you agree that Ms. Venesky -- as Ms. Venesky testified, that VICTIM would go straight to men?
A No. I do not agree.
Q Okay. The other witnesses that said he would go to men, but he was a little leery of women at the 4th of July party and things like that, is that accurate or not?
A No, it is not.
Q In your testimony, as well as the testimony of others, that Mark loved VICTIM taught him how to fish, is that accurate?
A He taught him how to fish. He said that he loved him.

THE COURT: Hold on just a minute.

Get the phone, please.

THE BAILIFF: Yes, sir.

THE COURT: All right. Go ahead, sir.

BY MR. QUINN:

Q That Mark bought this four-wheeler and called it VICTIM'S four-wheeler?

A Yes.

Q That he would buy him toys. They talked -- I think one witness talked about a truck pulling a jet ski, and another one talked about a red truck?

A Well, come to find out later, he had taken that from the Veneskys boy.

Q Which one did he take from the Veneskys boy?

A The -- it was -- I don't remember which car it was. It was the big hummer with the boat that was attached to it.

Q And when was that --

A I don't --

Q -- before or after your problem with Mr. Venesky?

A This was probably during.

Q And did he buy a truck at the Wal-Mart on the night we're talking about, the night of the 16th?

A No, he did not. That was purchased on my account.

Q Okay. And so you had your money and he had his, is

that what you're telling this jury?
A Yes.
Q So tell the jury then why if you had $3,700 of your money in an account that you couldn't leave.
A I did not have that money in an account. He had asked me to get a loan.
Q I'm sorry. What was the last part about a loan?
A He had asked me to get a loan for him.
Q Did you not in your statement to the police tell them that you had $3,700 and that you, in fact, had purchased the trailer next door?
A I had to get a loan to do that.
Q Okay. However you obtained that money, you had $3,700 of your money; isn't that right?
A To purchase the trailer.
Q That you took VICTIM and lived in?
A No. It was not livable at that time. There was a lot of work that had to be done.
Q So you didn't leave Mark Martucci at any point, did you?
A No.
Q That's because Mark Martucci was not abusing VICTIM at all, was he?
A I don't know that.
Q You knew that VICTIM had been sick throwing up; isn't

that right? And we're talking about the day of the 16th.
A He threw up that night.
Q You, in fact, either saw or saw the aftermath of him throwing up that Mark Martucci was cleaning up; isn't that right?
A Mark had informed me.
Q And Mark took VICTIM to the bathroom and cleaned him up; isn't that right?
A Yes.
Q On more than one occasion that night?
A Only the one that I knew of.
Q Did you leave, at any point, during the night?
A I left and went to the bedroom and took my shower and went to bed.
Q Okay. And at what time would that have been, roughly?
A 11:00.
Q And when you checked on VICTIM, Mark is laying with VICTIM in his room; isn't that right?
A Yes.
Q And you go to your bedroom in another part of the trailer; isn't that right?
A Yes.
Q And then the next morning, you get up and you don't even go check on VICTIM, do you?

A No, I didn't.
Q You leave and go to work?
A Yes, I did.
Q To your job at Capelli's?
A Yes.
Q Where you had no appointments that day?
A I can't say that for sure.
Q But you can say for sure to the jury you were running late to an appointment that did not exist? How were you running late?
A Appointments can be erased out of the appointment book that I had. If they call and cancel and I'm not there, someone else could have erased my appointments.
Q And you called in Monday, I think it was, because you were ill; isn't that right?
A No, sir, Tuesday.
Q Tuesday. I'm sorry.
Thank you.
And so you didn't take the time to check on your son who you thought you were leaving with a child abuser before you left?
A I never thought I was leaving him with a child abuser.
Q And, in fact, you weren't because when you walked out the door, the child abuser walked out the door; isn't that

right?
A No. That is not right.
Q Because you're the one who picked up VICTIM by his arm in front of witnesses and would drag him down the hall and throw him in his room; isn't that right?
A I have never picked my child up and dragged him anywhere. That was my baby.
Q Because VICTIM was a problem for you and Mark, wasn't he?
A No, he was not.
Q You were jealous of his relationship with Mark; isn't that right?
A Absolutely not. He was a momma's boy. There was not a day that I came home from work that he didn't sit in my lap and hug me.
Q And the momma's boy you just walked out on that morning when he was still sick and left him home with Mark; right?
A Yes, I did.
Q And so it was Mark that had to take him to the hospital; isn't that right?
A He could have called an ambulance. He could have called me. I would have done it. That was his decision, not mine.
Q Because he was there with the child to make those decisions; isn't that right?

A Yes.
Q All right. So it's your testimony that since you didn't do it, it has to be either Mr. Parker or Mr. Martucci; is that right?
A Yes.
Q Okay. There was no one else available to injure VICTIM, was there?
A No.
Q Now, you have told this jury that the first statement you gave the police is a lie; isn't that right?
A It is not 100 percent correct.
Q Now, most people would call that a lie. Is there a different word that you'd like to attribute to it? And I'll use whatever word you prefer.
A There are portions of it that are incorrect. There are portions of it that are very accurate.
Q All right. So you gave a first statement that is somewhat accurate and somewhat inaccurate?
A Correct.
Q You gave a second statement that, I believe, you have described in your direct testimony as not accurate; isn't that right?
A Yes.
Q Did you ever offer to give a third statement and correct whatever inaccuracies there might have been?

A I was never given a chance to. I was immediately arrested and placed into custody.
Q And do you agree that some people would call what you describe as an inaccurate statement a lie?
A Yes.
Q Okay. Your testimony today about the police and the manner in which they treated, your testimony is they just said, Sign this and you can go home when you sign it?
A Absolutely.
Q Don't you agree you went through and corrected errors in it?
A He pointed out errors. He misspelled VICTIM's name and pointed it out to me, oops.
Q So all of this was Mr. Silvaggio's doing?
A Yes.
Q He came up with all this information?
A He didn't come up with all of it. He asked me questions. He initiated everything.
Q But they were your answers he put down; isn't that right?
A Some of them were. Some of them were taken after Mr. Kelly and other investigators came in.
Q And they confronted you and said, You have given us inaccurate information; isn't that right?

A Yes.
Q Now, your testimony also today is that you never saw marks on VICTIM?
A No.
Q No, that's not your testimony or you did not see marks on VICTIM?
A See Mark?
Q Marks.
A Marks on VICTIM, Oh, I thought you said see Mark with VICTIM.
Q No. I'm sorry.
Is it your testimony today to this jury that you never saw marks on your child, VICTIM?
A In his lifetime as a two-and-a-half-year-old little boy, he had marks.
Q Did you ever see the bruises that were in the pictures that the Veneskys took?
A (There was no response.)
Q And you can answer. You don't have to wait for me. I'm sorry.
A Oh, I thought you were going to show me.
Q Well, I will. I'll show you what are State's Exhibit Nos. 17 and 16, which are photographs reported to be taken by the Veneskys.
A Yes. I have seen that one.

Q All right. And the witness has indicated she saw the mark in State's Exhibit No. 17; is that right?
A Yes.
Q But you did not see the marks in State's Exhibit No. 16?
A No.
Q So Mark bathed VICTIM?
A Yes.
Q Mark dressed VICTIM?
A Yes.
Q Mark took care of VICTIM to the extent that if there were marks on his shoulders, you would not even have seen them?
A It's very possible, yes.
Q Okay. Let me show you State's Exhibit No. 5. Is it your testimony that you did not see any of those marks on your son?
A My child has never looked like that.
Q Is it your testimony that you never saw those marks?
A I have never seen those marks.
Q That you never saw the marks in State's Exhibit No. 9?
A No.
Q The injuries to the back and to the arms, you never saw that?
A No.

Q Was VICTIM covered from head to toe whenever he was with you?

A In the summertime, he wore shorts and a T-shirt.

Q So in July, the summertime, he would have worn shorts and a T-shirt?

A Yes.

Q So you would have been able to see perhaps in a pair of shorts the marks on his legs from State's Exhibit No. 11?

A Yeah. I would have been able to see that.

Q Did you?

A No.

Q So it's your testimony that you never saw any of the marks on the child's face, the child's rear torso, or his legs?

A No.

Q Ms. Holder, have you discussed with your attorney the charges pending against you?

A Yes.

MR. BYRHOLDT: Objection.

THE COURT: Hold on.

MR. QUINN: I'm not going to get into the --

MR. BYRHOLDT: Okay.

THE COURT: All right.

THE WITNESS: Yes.

BY MR. QUINN:

Q And you understand -- well, I will avoid the next question.

It's your testimony here today that you didn't put any of these marks on VICTIM?

A No, I did not.

Q And is that testimony as accurate as your first statement, your second statement, and your testimony about not seeing these marks on VICTIM?

A It's the truth.

Q And didn't you also say all those other things were the truth, too?

A I am under oath.

MR. QUINN: I don't have any other questions.

THE COURT: All right. Solicitor.

CROSS-EXAMINATION

BY MS. SEAY:

Q Ms. Holder, you said today you're under oath, so we are to rely upon what you say as being the truth; correct?

A Yes.

Q When you gave these statements, you signed them saying they're true and correct, as best I recall.

A I was told to sign them. I was never put under oath.

Q But you were indicating that this was true, were you not, by signing there?

A Yes.
Q And so now, these are not true?
A I didn't get to read them until after all this had happened. My child had just died. And I was promised I could go home.
Q So you maintain that you did not read these documents that you signed your name to?
A No, I did not.
Q You have a high school education, you have training in cosmetology, you have held competitive employment, and you're telling me that you would sign documents that might limit your freedom without reading them --
A I didn't know --
Q -- is that what you're telling me?
A I didn't know that my freedom was at jeopardy. No, I didn't read them. He told me I could go home.
Q You wanted to go home?
A I asked to go home. My child had just died. Anyone in that state would want to be with their family.
Q Let's go through a couple of things I want to ask you about. In your first statement, of course, after you had been advised of your rights on a separate rights waiver that I'll show you, State's Exhibit No. 2, is that your signature?
A Yes.

Q And is that your signature?
A Yes.
Q And are these your initials indicating that you understand that you have all these rights?
A Yeah.
Q "You have the right to remain silent. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have the right to stop answering at any time."
All that was explained to you, wasn't it?
A No. It was not explained.
Q They didn't explain any of it to you?
A No. He told me that I had to sign it, that we would go on with the questioning, and then I could go home.
Q So you were forced to sign your initials one, two, three, four, five, six, seven, eight, nine times -- no, ten, 11 times, 12 times, and put your signature under a Waiver of Rights that said, "I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me. And no pressure or coercion of any kind has been used against me."
You signed that?

A And, at that point, no coercion or pressure had been used.
Q And you knew what all that meant --
A No, I did not.
Q -- and you knew what your rights were?
A I did not read them.
Q So you just signed this?
A Yes, I did.
Q And you expect everybody to believe that you didn't read this and that it wasn't read to you as has been testified to by the law enforcement officers?
A When they put themselves in that situation that day, yes, I do.
Q What was the answer to my question?
A Yes.
Q All right. Going to the first statement that has now been described by you as partially correct?
A Yes.
Q Would you kindly point out for us what the correct parts of this statement are?
A Everything but the four-wheeler.
Q Everything is correct, except for this four-wheeler?
A (Witness nodded.)
Q So you acknowledge and have acknowledged prior to today that this four-wheeler accident that VICTIM was

supposedly injured in did not happen; is that correct?
A Yes.
Q And why don't you explain to us why you would go to such lengths to give such an elaborate description of an event that didn't happen, if you didn't know about your child being abused? Please explain that.
A When I got to the hospital that day, I asked -- I questioned both John and Mark about what happened. And John never said anything. And Mark just kept saying, That damn four-wheeler, that damn four-wheeler. And he went into that. My state of mind -- you just get a phone call that your child has been taken to the hospital, you're very hysterical.
Q And so at what point did you say, no, all the nurses and doctors who are asking me what happened, no, that's not what happened, there was no four-wheeler, let me tell you what happened so that you can help my child? When did you do that?
A The nurses and doctors never asked me. And I never witnessed anything. I was not there. I didn't know what had happened. I had just been called to the hospital.
Q Did you think it would have been important for you to let them know that your son had been being abused for weeks?
A I didn't know that he had been being abused for

weeks.

Q Well, in this statement, you give pretty good description of a lot of incidents of abuse that you knew about over a period of time, don't you?

A Mr. Silvaggio drew a stick figure and wanted to know every bruise my son had had from the time he was born.

Q So you expect us to believe that he made this up, Mr. Silvaggio made all this up, based on some stick diagram where you said VICTIM had had bruises?

A He pressured it. And he wanted to know dates. And I couldn't date anything. He wanted me to go back from the time he was born and crawling.

Q All right. Well, let's go back to this first statement where you say that everything is true except for this four-wheeler paragraph on Page 5; is that correct?

A Yes.

Q Page 6, "I noticed Monday night that VICTIM had bruises on his body" --

MR. BYRHOLDT: Your Honor, could we provide her a copy of the statement?

THE COURT: Yes.

MR. BYRHOLDT: I've got one here.

THE COURT: All right.

MR. BYRHOLDT: Statement one?

MS. SEAY: Yes.

BY MS. SEAY:

Q All right. So you can refer to Page 6 of 8. Are you on Page 6 of 8?

A Where are the pages listed?

Yes.

Q Okay. Up towards the top, you stated, "I noticed Monday night that VICTIM had bruises on his body. He had bruises on the left side of his face, one on the small of his back like he had hit one of the branches in the ditch, bruises on his left arm, and his knee seemed scraped up from his bicycle falls."

A That is not true as it relates to the four-wheeler accident.

Q So that is a lie, too?

A Because it's connected with the four-wheeler accident, yes, ma'am.

Q Okay. Let's see. You talk about going to eat at Mutt's, eating dinner at Mutt's on Monday evening with Matt and Miranda and you. And Bo ate at Mutt's. And do you deny that Bo was sick at that time and that he could not eat his food?

A He ate his food.

Q Do you deny --

A He also had a popsicle afterwards.

Q Do you deny that you took the food home in a to-go

box because he didn't eat it?
A I took my leftovers home in a to-go box.
Q All right. Let's see. So then you cooked the dinner on Tuesday night, that's Tuesday after you called in sick to work and you all ran around doing errands all day; correct?
A Yes.
Q You were not too sick to go to the carpet store for the interview, Alltel to get the phone fixed, and Wal-Mart a couple of times, were you?
A It was later on in the afternoon around lunchtime. And Mark said he was taking my car and they were going to go, did I want to go?
Q And you went?
A I went.
Q You weren't too sick to do all that?
A It was my vehicle. I did not feel well, but I was feeling better than I did that morning.
Q The toys that were bought for VICTIM that night at Wal-Mart, those were gifts of a guilty conscience by you and Mark, weren't they?
A No, ma'am, they were not. I always -- I never went anywhere -- he always wanted gum. He always got something. That was my baby and I spoiled him. That was my privilege to do.

Q So everything else in here is true, everything that I'm reading, except anything to do with the four-wheeler?
A Down at the bottom, that was relayed information.
Q Would you tell me what you're pointing to?
A Where it starts there, that was relayed to me by Mark.
Q What page are you on, the same page?
A Yes.
Q Read the part you're saying is -- is that a true part or an untrue part?
A It's relayed information so I can't verify its truth. It's just what was told to me.
Q Okay. Well, read me that so I can find that here.
A "VICTIM said that he had to go potty. And he (not VICTIM) took his pants down and VICTIM was now in the bathroom because we were trying to potty train him. VICTIM all of the sudden threw up in the toilet. It was blue and the macaroni and cheese and the blue was from the Kool Aid that he had."
Q Okay. So what's not true?
A I just can't verify its truth because it was relayed information. That is what Mark told me.
Q Okay. And so VICTIM is continuing to throw up, and Mark relays you this information, and you just go on about your business without concern for what's going on with VICTIM?
A No. I was concerned. And I went in there. Mark

hadn't started bathing him. He threw up in the toilet, but Mark had already cleaned it up. And I asked him and he told me -- he described what had happened.

Q Mark cleaned up a lot of the vomit that happened during this time, didn't he?

A Yes.

Q All right. So since the rest of this is true, I will direct your attention to Page 7 of 8. "I got to work about 10:00 a.m. this morning. VICTIM was not running a fever when I left. And his temperature when I checked it before I went to work this morning was 98.6"?

A I didn't check on him that morning.

Q So that's a lie?

A Yes.

Q So you felt compelled to make up this elaborate lie because you knew nothing about your child being abused and there was nothing wrong and -- help me understand that.

A I was asked questions. I was interrogated. I was leaded [sic] to answers.

Q So somebody told you that this was -- that you were to say this and this would be attributed to you?

A No. It was relayed information. It was stuff that Mark had told me. So I can't verify its truth. But I did not check on him. I did not take his temperature.

Q Well, you didn't say Mark relayed anything to you.

You said, "When I checked it before I went to work this morning, it was 98.6"?

A I didn't type my statement.

Q Did you not have an opportunity to read these statements in their entirety and correct anything that needed to be corrected?

A I did not read my statement, though.

Q You didn't?

A No.

Q But you initialed every single paragraph at the beginning and end, and you signed your name, "I've read the above statement and it is true and correct as best I recall."

And you signed your name to that eight times without reading it?

A I initialed everywhere that he pointed and did what he asked me to do so I could go home.

Q I want to talk about the second statement for a minute. "I started noticing injuries on VICTIM right before Father's Day."

That would have been several weeks before his death, would it not?

A Yes.

Q "With Father's Day being on June 16th, it was two weeks before that that I saw a bruise on VICTIM his right

cheek, and it was a big bruise."

So that would have been early June, wouldn't it?

A Yes, it would have been.

Q And according to your statement here, Trevor Venesky, the 15-year-old boy, told you that VICTIM had bruises on him. And it says here that Ron Venesky started calling you, and you say to go out or whatever, "And also to tell me about VICTIM having injuries on him. This was a week before Father's Day."

So we're back into early June again, aren't we?

A Yes.

Q "I noticed injuries on VICTIM when I was getting him dressed for bed. I saw a bruise on VICTIM's back, a real skinny thin bruise from the mid-section of VICTIM's back up to his shoulder on his spine."

So you noticed that?

A No. That is what is in my statement off of that stick figure.

Q So that's a lie?

A I didn't date these.

Q Let's see. And then that same week we have the iron accident where you say that VICTIM burned himself on his forearm with an iron; is that correct?

A He did.

Q State's Exhibit No. 17, how about that?

A I was ironing clothes and he picked it up when I turned to hang it up.

Q And what did you do about that injury?

A I doctored it.

Q How did you doctor it?

A Triple antibiotic ointment and a Band-Aid.

Q "I have seen bruises on VICTIM since we have been living with him on his forehead, left cheek, left side of his head, his tongue, both sides of his cheeks, his chin, his lower back from the diaper line up to three to four inches, bruises on his upper back on the spine, bruises on his butt, bruises on his shins, bruises on his upper thighs and butt. I've seen little scratches on VICTIM's penis."

It's fair to say that's a lot of bruising, isn't it?

A Yes.

Q And you saw all that?

A He had me name everything from the time VICTIM was born. When a baby learns how to walk and is learning how to crawl, they get little bruises.

Q Did VICTIM just --

A This was not all in the same time. This was taken off of a stick figure that I can't date. I can't tell you when I saw them if he was six months old, if he was a year old.

Q So these were all injuries that little VICTIM being a toddler, just got on himself at times just being a toddler?

A Yes.

Q And, what, did he run into an 18-wheeler to get the blunt force trauma that displaced his intestine and that killed him?

A I can't explain what happened.

Q "This past Sunday, I went into VICTIM's bedroom and saw him striking VICTIM on his legs, at least, ten times. And I told him to stop. I told him to leave and cool off. He was hitting VICTIM with his hands. I don't know why other than VICTIM had pissed him off."

And you saw that?

A No, I did not.

Q You didn't?

A No.

Q This is a lie, too?

A Yes.

Q I don't know how we're going to figure out when you tell the truth. Or do you ever tell the truth?

A Yes, I do.

MR. BYRHOLDT: I object, Your Honor, argumentative.

THE COURT: I sustain the objection and instruct the jury to disregard the last comment by the Solicitor.

BY MS. SEAY:

Q "Bo was crying about something and I was folding clothes in the bedroom on the other side of the trailer. I could hear VICTIM crying. He was grabbing Bo's hand and pulling VICTIM into VICTIM's bedroom. And then I saw him hit VICTIM, at least, ten times on his legs. VICTIM was kicking and crying trying to get away from him. And he would front hand his legs and then back hand his legs. VICTIM was crying for me."

I'll bet you're going to say that didn't happen.

MR. BYRHOLDT: I object again, Your Honor, argumentive.

THE COURT: Rephrase the question, please.

BY MS. SEAY:

Q Did that happen?

A No.

Q No?

A It did not come from me. This came after several other investigators had come back saying they had talked to neighbors. And they had been in Parker's room and they had talked to Parker. And they had been in and they had talked to Mark. And they're saying this and they're saying that.

Q So you want us to believe that there is the grand conspiracy amongst the law enforcement officers involved

in this and the witnesses, who had done nothing but express concern about your child, this is all a big conspiracy for them to make stuff up that's in here, they all made this up?

A I only know what was done to me that night when I was begging to go home.

Q You only know what was done to you.

"I noticed a small pale yellow bruise on VICTIM'S forehead that I noticed once VICTIM started sleeping in his own bed in his room." You say he rose up and hit his head on the bookcase. "I figured that was where the bruise came from."

Well, let me ask you this. Later on, you say that after VICTIM threw up and Mark asked you what you had fed him and he started cleaning the vomit up, he said, "I'm just not daddy material. He cleaned up the vomit and gave VICTIM a bath and then took him to his bedroom." And you say, "I heard a couple of thuds thinking it was VICTIM'S head."

A No.

Q And you did not suspect that your child was being abused? You want us to believe that?

A It's the truth.

Q "He came back in the bedroom and asked where VICTIM was at. He went back in there and found him hiding under the bed. I told him that VICTIM was probably scared to death of

him. And he called me a bitch and said that he was, actually, starting to feel sorry for VICTIM."

MR. BYRHOLDT: I object, Your Honor, unless there's a question in there. Right now, the Solicitor is testifying.

THE COURT: All right. What's your question?

BY MS. SEAY:

Q And so my question is, is it not reasonable to expect a mother to be concerned about her child hiding under the bed to escape from someone?

A I didn't know that it was escape from someone.

Q But you had for weeks been seeing these unexplained bruises and injuries?

A I had not for weeks being seeing those.

Q Well, that's not what the statements say.

A That's not what that statement says. I was pressured.

Q Okay. Let's go to Tuesday, which would have been the day before VICTIM died, July 16th. And I'll quote your statement here and follow it up with my question.

"Yesterday, I stayed out of work because I was sick to my stomach and was really nervous to my stomach. He was in a bad mood and I felt like I better stay home and I knew that he had to go to that job interview. We all ended up going."

Isn't it true that you stayed home that day because you knew something horrible had happened to VICTIM and was happening to VICTIM?

A No, it is not. I did not feel well that day and I had been sick.

Q "Starting about a month ago, I noticed bruises to VICTIM's facial cheeks which are the exact size of the way I have seen him squeeze VICTIM's cheeks with his hands. In the past month, I have seen him squeeze VICTIM's cheeks, at least, four different times."

You saw those bruises, didn't you?

A No.

Q Well, did you not say that in your statement?

A No, I didn't. My statement was taken by somebody else.

Q You go on to say that about two weeks ago, you noticed a problem with his tongue and bruises on his shins. And isn't it true that any time anybody confronted you -- all the people that have testified in this trial, when they saw bruises on your child and they confronted you that you knew what had happened, but you made an excuse; isn't that right?

A I didn't make an excuse. If there was anything, I questioned stuff. That was my baby.

Q You questioned stuff. When did you question it?

A After the Veneskys, I questioned.
Q You questioned, but then isn't it true that you called the Veneskys all bent out of shape and mad asking them who gave them permission to take a picture of your child?
A And of myself. They were taking pictures of me. I caught him sneaking around the house peeping in.
Q So you were worried about something about you and not these injuries on VICTIM?
A I was worried about my child. But, at the same time, I didn't want a drunk neighbor going around taking pictures of me.
Q You were worried that they were going to turn those photographs over to somebody that might come and try to help your child, weren't you?
A No, I was not.
Q You weren't worried about that?
A If my child needed help and they thought that and I did not recognize it, then I would have been glad for them to have called.
Q Do you deny that person after person after person told you, this child is being abused, you need to get out of this situation, you need to get help? Do you deny that people told you that?
A Yes, I do.

Q So they are just all lying about that?

A There are a lot of them that got up here and they testified that, no, they might have thought something, but they didn't mention it to me.

Q What about the night that you went over to the Veneskys residence, knocked on the door, told them that Mark had put y'all out, and you didn't have anywhere to go, and you and Jane discussed that VICTIM was being abused that night, didn't you?

A We discussed several matters that night.

Q Did you discuss that VICTIM was being abused?

A She asked questions. And I told her that I did not know, that I would keep my eyes open, that I had not seen anything with my work schedule.

Q When did you -- at some point, after you had started seeing this unusual constellation of bruises and injuries, when did you call the doctor and get an appointment to take him in to get this checked out since it was awfully concerning?

A I didn't take him to the doctor for a bruise. I would take him for a cold or a sniffle.

Q A bruise, I can understand. His body is covered in bruises.

A They were not when I saw him. He had never before in his life ever looked like that.

Q So on Tuesday night, the night prior to VICTIM's death, the time frame wherein the pathologist believes that a major blow that killed this child happened, you had him in the bathtub, you saw bruises on his body?

A I did not have him in the bathtub. I did not give him a bath that night. Mark gave him a bath.

Q You noticed scratches on his penis the week before?

A He did it several times because of his fingernails. When he pulled on it, he would get them.

Q I think this is the bottom line, "I've never called the police on him because he would threaten me saying that he would throw my shit out with me. He's threatened me that no one would believe that he would hurt my child and would blame me for the bruises. I am in love with him and tried to correct the abuse he was inflicting upon my son. I thought I could change him and teach him to better handle his temperament with VICTIM. It just got worse and worse."

And you didn't do anything, did you?

A Where are you at?

Q The last page.

You didn't do anything, did you?

A That was stretched. I didn't know anything was going on or I would have. That was my baby. I carried that child for nine months. That was the only reason I got up

every morning.
Q The reason you got up every morning, got in your personal vehicle, and drove to your job where you stayed, at least, eight hours, and left your child at home to be tortured?
A I didn't know that, because I was at work trying to support my son as a single mother.
Q After all these bruises, all these bruises, after people telling you, there's -- you know, there's a problem. I see bruises on his face. I see bruises on his back. I see bruises on his legs, everywhere imaginable. And you're telling me that you did not know anything was going on?
A Not all that was mentioned to me. No, I did not know anything was going on. Nothing was done in my presence.
Q Isn't it true that you were angry with your parents because they didn't like Mark and you were really in love with him? Is that true?
A I was not really in love with him. I got irritated with my parents because they didn't like anybody that I dated.
Q Well, in fact, you got so irritated that you refused to let them see VICTIM for, at least, six weeks or more before he died; isn't that correct?
A No. That is not correct.

Q Are you sure about that?
A They could come and get him any time they wanted to.
Q You and Mark decided that they couldn't see him because it was some kind of a contest about them and him, and y'all being mad at each other. And so when you had an opportunity to take your child to a safe place, you were too selfish because of your own anger to do it; isn't that right?
A No. That is not true.
Q You could have moved in with your parents with VICTIM at any time; isn't that right?
A Yes, I could have.
Q You had lived with them before, VICTIM had lived with them before?
A Yes.
Q They cared for VICTIM. Did VICTIM ever have any injuries when he was living there with your parents?
A Yes, he did.
Q Injuries that killed him?
A No.
Q Okay. So when -- during this time where you're starting to notice these problems of abuse, when do you call your mom and go, mom, it's just not working out over here. I need for you to take VICTIM for a while because I want him to be safe. I don't want him to be hurt. When

did you make that call?

A I did not fear that he was being hurt. I did not know that. And I talked to my mother almost every other night.

Q Would it be more accurate to say that you didn't know it -- would it be more accurate to say that you chose to disregard it because Mark was more important to you than VICTIM?

A No.

Q Would that be more accurate?

A No, it would not.

Q You were in love with him at the time, were you not?

A No, I was not.

Q You lied in your statement about that?

A No. Mr. Silvaggio put that in there.

Q Oh, okay. I can't understand how that would be a fact that he would know, can you?

A With his questions, yeah, I'm sure there's a lot that went on that night that I don't agree with.

Q And when and with whom did you file your complaint about that?

A What --

Q About all this police stuff you're talking about?

A I was immediately arrested. I wasn't allowed to file anything else. It took two weeks to see my parents.

Q Well, you've been out on a bond where you could have done whatever you needed to do.
A And I've talked to my attorneys about it. I was not instructed that that's what I needed to do.
Q Did you ever not feel even the least bit guilty when your child is crying for you when he's being hit by adult male hands and he's saying, Mommy, mommy? Did you not ever feel the least bit of guilt to try to help him?
A None of that went on when I was there. I never witnessed anything like that.
Q You said you did in your sworn statement.
A I didn't say that. I was not sworn under oath.
Q How about when you said you observed Mark dunking VICTIM's head under the water until he gasped for air and couldn't come up, and then would make him drink the water and then bring him up and push him right back down?
A I didn't say that. I believe Mr. Parker did.
Q You walked in and you said, That's just going to make it worse. That was your response.
A No.
Q It's what's in your statements. Why didn't you do something then? That was terrible mistreatment of your child, don't you agree?
A If it had happened.
Q So none of this happened. None of this happened, is

that where we are right now?
A I'm not saying none of it happened. My child is dead so something did happen.
Q Oh, yes. He is dead. He is, in fact, dead. He might not have been dead had somebody taken the time to get some treatment for him when there was still hope, would he?
A He was fine the day before.
Q He was not fine and you know it.
A Yes, he was.
Q And that is why you stayed out of work on Tuesday.
MR. BYRHOLDT: Your Honor, I'm going to object. That's argumentative --
THE WITNESS: No, it's not --
THE COURT: Hold on.
Now, rephrase your question, Solicitor.
BY MS. SEAY:
Q You stayed out of work Tuesday because you knew something was wrong; isn't that right?
A No, it is not.
Q And you said in your statement that Mark was in a bad mood and you were nervous to your stomach. There was a problem, wasn't there?
A No, there wasn't.
Q Okay. So, on Wednesday morning, you get up and you

go to work. And I can't remember which one it is now about whether you told the truth about you checked on him or you didn't before you left.

MR. BYRHOLDT: I object, Your Honor. That --

THE COURT: I sustain the objection.

BY MS. SEAY:

Q Did you check on him or not? I can't remember.

A No, I did not.

Q Okay. So you didn't check on him. He's been terribly violently ill, throwing up for hours on end, can't eat anything --

MR. BYRHOLDT: I object, Your Honor. Those are facts not in evidence.

THE COURT: Well, I'm going to allow that.

Go ahead.

BY MS. SEAY:

Q And so you determine it's best not to check on him and you go to work?

A He had thrown up twice that I was aware of that Mark had relayed to me. It was not hours on end.

Q And you did not have any clients scheduled for Wednesday, did you?

A I don't know that I did or that I did not. I was out the day before.

Q If I show you your appointment book, would that help

refresh your memory?

A It could.

MR. BYRHOLDT: Ms. Seay, may we see that? We haven't seen it.

MS. SEAY: Yes.

(Pause.)

MR. BYRHOLDT: Here you go.

THE COURT: All right. Solicitor.

BY MS. SEAY:

Q I believe the day in question is Wednesday, July 17th. Does that refresh your memory?

A Anybody could have erased that.

Q Are there any appointments on that date written down?

A No. But the book is left at the salon. And I was not there on Tuesday. So the last time I would have seen it would have been Saturday. And you can see that there was an appointment scheduled at 10:00, and it was erased. If they call and cancel and I'm not there, then I don't know.

Q Okay. But that morning, you got up and you went to work. You didn't check on your child. And you did that because you and Mark knew that you had a big problem on your hands with how bad VICTIM was injured; isn't that right?

A No. It is not right.

Q And so you independently give the story about the

four-wheeler accident, because that was what had been arranged to be told; isn't that right?

A When I got to the hospital, that was all he was saying. I was at work, I had no idea.

Q Okay. Do you recall that the social worker at the hospital testified that you told her that there had been a four-wheeler accident on Sunday?

MR. BYRHOLDT: I object, Your Honor. That's pitting one witness against another.

THE COURT: No. That's a fair question.

Go ahead.

THE WITNESS: It would have been after I had already arrived at the hospital. Nobody greeted -- John was there. John led me in. And this was all said before anybody came around.

BY MS. SEAY:

Q Do you understand what I'm asking you is, the social worker testified that you told her that there had been a four-wheeler accident on Sunday?

A And this would have been after we had moved to another room. I had already had that time with Mark and John. And when I asked what happened, that is what I was told. I only know what I was told because I was not there. I was at work.

Q Right. And then in your first statement, you give

this elaborate description of this four-wheeler accident that you later say was a complete lie; isn't that right?

A Yes.

Q You were trying to conceal what had really happened to VICTIM, weren't you?

A I didn't know what had really happened to VICTIM.

Q Then why come up with an elaborate story that isn't true in the first place?

A I only know what I am told.

Q Well, did you -- while you were at work every day after you left VICTIM to be there with Mark knowing what was going on, did you ever, ever feel one iota of motherly love and instinct to help your child?

MR. BYRHOLDT: I object, Your Honor, argumentative.

THE COURT: No. That's a fair question.

Go ahead.

THE WITNESS: I did not know what was going on. There's a lot of motherly instinct. I called and checked on him every chance that I got. I always asked to speak to him on the phone. I loved that baby more than anything.

BY MS. SEAY:

Q But, yet, you ignored repeated abuse. You loved him more than anything and you ignored this, didn't you?

A No.

Q Ms. Holder, when is your birthday?
A March 24th.
MS. SEAY: I didn't have this marked for ID. I apologize.
(WHEREUPON, State's Exhibit No. 20 was marked for identification only.)
BY MS. SEAY:
Q Okay. Let me direct your attention to March 24th on your appointment book. That's a Sunday; right?
A Yes.
Q Okay. And it notes that that is your birthday. Is that your handwriting?
A Yes.
Q So you wrote your birthday here on Sunday, March 24th?
A Yes.
Q And VICTIM'S birthday was ; is that correct?
A Yes.
Q Show me on here where you noted his birthday.
A I didn't because I got the book and I didn't start work until later. And I just used that for notes. I would have marked it on the next year.
Q Okay. So instead of marking his birthday here, you used this page to fill it up with "Mr. and Mrs. Mark Martucci. Brandi Martucci. I love Mark Martucci"?

A I doodled when there was nothing to do.
Q And so it would have been noted on the next year. Okay. Here we are, January 3rd of 2003, have you noted it there?
A No.
Q But, interestingly, I will ask you why it was imperative to --
MS. SEAY: Bear with me just a minute.
THE COURT: Are you going to be much longer, Solicitor?
MS. SEAY: No, sir.
THE COURT: I can give the jury a recess.
MS. SEAY: No. I think I know where -- right where I need to be. But I don't object to a recess, if you'd prefer to do it that way.
THE COURT: Well, are you -- is this your last question or do you have more?
MS. SEAY: I may have a few more.
THE COURT: Okay. Take the jury out for a recess.
(WHEREUPON, the jury was excused from open court at approximately 3:50 p.m.)
THE COURT: All right. We'll take a short recess. You can step down, Ms. Holder. Don't discuss your testimony with your lawyers.
(WHEREUPON, a break was taken.)

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 4:02 p.m.)

THE COURT: Solicitor, you may continue.

MS. SEAY: Your Honor, I do not have any more questions for Ms. Holder.

THE COURT: All right. Do you have some redirect, Mr. Byrholdt?

MR. BYRHOLDT: Just a couple, Your Honor.

May it please the Court?

REDIRECT EXAMINATION

BY MR. BYRHOLDT:

Q The photographs that you were shown on cross-examination of VICTIM, did you ever see VICTIM in that condition?

A No. I've never seen VICTIM in that condition.

Q When they showed you your appointment book -- you went to work at Capelli's when? Was it after VICTIM's birthday?

A Yes.

Q They asked you about appointments on the 17th. Let me show you the -- does it appear from that book that an appointment was scheduled for around 10:00 and then erased at some point?

A Yes, it does.

Q Did you erase that appointment?
A No.
Q Do you recall that you thought you had an appointment that morning?
A Yes, I did.
Q And you were the sole support of VICTIM?
A Yes.
Q You weren't getting any money from anybody else?
A No.
Q Did you hurt VICTIM?
A No, I did not.
Q Did you know VICTIM was being hurt?
A I would have never let it happen.
MR. BYRHOLDT: Thank you.
THE COURT: Anything else, Mr. Quinn?
MR. QUINN: No, Your Honor.
Thank you.
THE COURT: Anything else, Solicitor?
MS. SEAY: No, Your Honor.
THE COURT: Thank you.
Step down.
MR. BYRHOLDT: I call Mr. Holder to the stand, please.
THE CLERK: Put your left hand on the Bible, please, sir, and raise your right hand.

WHEREUPON,

BENJAMIN L. HOLDER, SR.,

after first having been duly sworn, testified as follows:

THE CLERK: State your name for the record, please

THE WITNESS: Benjamin L. Holder, Sr.

THE CLERK: Thank you.

Be seated.

DIRECT EXAMINATION

BY MR. BYRHOLDT:

Q Mr. Holder, I'm going to ask you to speak up so this last lady here in the jury box can hear you.

Can I get your full name, please?

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

Q And your relationship to Brandi?

A I'm her father.

Q And VICTIM was your grandson?

A That's correct.

Q Did you ever see any evidence of abuse on your grandson, VICTIM?

A No.

Q On the 17th of July, 2002, did you get a call that VICTIM had been hurt?

A Yes, I did. It was shortly after my lunch period ended. It ends at 1:00. I'm going to guess it was around 1:15 or 1:30 when I received a call from my son at home

saying that I needed to come home. When I questioned him, I was informed that VICTIM had passed away.

Q And where were you at?

A I was at work.

Q Where do you work, sir?

A General Electric.

Q Where is that located?

A That's on Garlington Road, 300 Garlington Road, Greenville.

Q And how far is that from Allen Bennett Hospital?

A Depending upon the route you take. The route I would take is about 20, 25 minutes.

Q Did you go to Allen Bennett?

A My wife and son came by the plant to pick me up because she was distraught over the telephone. And I thought that maybe I needed to be with my wife as well. We wanted to go in as a family.

Two of my friends, which are my coworkers, they overheard part of the conversation that I had had on the telephone, because they sit in the cubicles next to me. They escorted me out of the plant just to make sure that I was okay and to stand with me until my wife got there in the parking lot.

When my wife got there, they both decided that neither one of us should drive to the hospital because of

our condition. So I rode with one friend in his vehicle. My other friend drove my wife's car with my son and wife in it.

Q All right. When you got to Allen Bennett, did you see your daughter?

A Yes, I did. After, initially, walking in, I got to see my daughter after a few minutes, yes.

Q Describe to the jury what her condition was.

A When I walked in, Brandi was hysterical. She was going from heavy crying to screaming almost. It wasn't completely a shrill, but it was a very loud wail.

Q Were you present when the police asked her to come up to the law enforcement center so they could talk to her?

A No, I was not.

Q All right. Were you asked to go to the law enforcement center?

A Yes, I was.

Q All right. How did you get there?

A After I was asked to go to the law enforcement by Mr. Kelly -- I think it was Mr. Kelly asked me to go down and answer a few questions, my wife and I. He informed me that Brandi would be riding with a family member, David Kelly, because he didn't think she was in any condition to drive.

Q Did you think she was in any condition to operate a

vehicle?
A No, sir, absolutely not.
Q Did you go to the law enforcement center that afternoon?
A Yes. My oldest brother and my sister-in-law were at the hospital. They came to the hospital. At about the time that they arrived, we were -- that was about the time we were asked to leave. And so my oldest brother decided that, you know, he would take me and Marie to the law enforcement center.
Q When you got to the law enforcement center, did you see Brandi?
A Brandi came -- as she walked in -- as a matter of fact, we parked in the parking lot. And she and David got out of his vehicle, we got out of my brother's vehicle and we walked in together, yes.
Q All right. Where did you go inside the law enforcement center?
A To the little foyer or whatever when you first walk in the front door. And we told them who we were and then they escorted us up to the second floor.
Q What was Brandi's condition when you got up to the second floor of the law enforcement center?
A When we went into the little waiting room there, she was, basically, lethargic. She was very pale, white

almost. She had very labored breaths. And she was shaking and just staring like into midair.

Q All right. At some point that afternoon, did she leave you and go back to the interview room?

A Yes, she did. She was sitting next to me. And I remember being very concerned about her condition. I really thought she was in shock. And I held her hand and tried to comfort her, but she was nonresponsive to those things. And at the time the officer came out into the waiting room and asked her to got back, I looked at my watch and it was five minutes to 5:00 p.m.

Q Did you stay at the law enforcement center that evening?

A Absolutely.

Q How long did you stay there?

A We were there until almost midnight, maybe a little bit -- I don't remember if it was five or ten minutes before. It could have been five or ten minutes after, but it was almost midnight.

Q A period of about seven hours, six or seven hours, at least?

A Yes.

Q Did you make any inquires of your daughter?

A Yes, we did. Mr. Kelly came through the waiting room and came into the waiting room on several occasions.

There was some other officers that came in. And we would inquire each time they come in about Brandi.

Q What were you told?

A We were told one time, specifically, that she was doing better than we were.

Q Did you ever make any inquiries of whether she could go home with you?

A I was informed at the hospital -- I didn't ask if she could go home with me, but her mother did. And I was asked -- at the hospital when we were asked to come down to the law enforcement center, the comment about Mr. Kelly driving Brandi down to the hospital, the reason given for that to me was so that Brandi would have a way back to the hospital to pick up her car when she went home.

Q Were you allowed to see her at any time during those six or so hours that you guys were at the law enforcement center?

A No, sir.

Q Did anyone ever come out and tell you what happened?

A There was several conversations -- well, I say several. There were a few conversations that took place. One conversation was that Mr. Kelly came out at one time and invited my brother and I to go back for a cup of coffee, but there was no mention about the case.

There was another time when he came out. He had

mentioned to us in casual conversation that that Mark guy was a pretty tough case, that he had gotten down on him pretty hard in the interrogation room, and he almost hit him. He said, I thought he was going to hit me.

Q Who was going to hit who?

A Mark was going to hit Mr. Kelly.

Q Did Mr. Kelly come out later on that night?

A Yes, he did. He came out at 10:00, around 10:00. I remember because there was about an hour left before midnight. He came out at 11:00 and he said, I know you guys have had a tough night. If you want to, you can go on home and when we finish questioning Brandi, I'll call you to come pick her back up, to come pick her up.

Q And in response to that, what did you say?

A My wife looked at him and said, What's the problem? He said, We have some more questions we want to ask her. She said, How much time is that going to take? And he said, About another hour. And we both commented, We'll wait on her.

Q All right. And did you wait there?

A Yes, we did.

Q Did Detective Kelly come out later on?

A Yes, he did. He walked out at approximately 12:00 and he informed us that we could go on home, that Brandi had admitted that she was guilty. And on that remark, I

stood up and I asked Mr. Kelly, I said, Surely to God, you can't be telling me that my daughter has pleaded guilty to doing this. And he said, Yes.

Q That she pleaded guilty?

A Yes.

Q This case has been going on for three and a half years?

A Yes, sir.

Q Did you talk to your daughter?

A We talked to my daughter at the law enforcement center, but not about the case. And then after she made bond, I think four months after she was in jail, she came home. We talked on several occasions, but I made the decision not to mention anything about the case for a few weeks to let her kind of diffuse and calm down. And, yes, we did have some conversations.

Q Do you think your daughter hurt VICTIM?

A Absolutely not.

Q Do you think your daughter knew that VICTIM was being abused and would have stayed in that house?

A I don't think my daughter knew it, not one iota. She would have never stayed in that house.

MR. BYRHOLDT: I beg the Court's indulgence for one moment.

(Pause.)

BY MR. BYRHOLDT:

Q Would Brandi let you, as a grandfather, discipline VICTIM?

A Since I was the only father figure that VICTIM had at the time he was living with me, I had to walk on egg shells. If I raised my voice to VICTIM, she would get in my face. I remember one time he liked to stick his hand in the VCR, and I was fussing at him about it. And I smacked him on the hand to try to tell him no and teach him no, and I thought I was going to have to leave the house.

Q From what you saw of the condition of your daughter when you last saw her the night of the 17th, how would you describe her condition when you last -- when she left your side and went into that interview room with the officers?

A I thought she was almost in shock.

MR. BYRHOLDT: Thank you, sir.

THE COURT: Mr. Quinn.

CROSS-EXAMINATION

BY MR. QUINN:

Q Did the doctor offer to treat her for shock before she left the hospital?

A I have no knowledge of that. I never talked to the doctors at all.

Q Did she advise you that she, in fact, had seen the doctor who had been treating VICTIM and had spoke with the

doctor before she left the hospital?
A No. She was in no condition to talk. She said very little at the hospital to me.
Q You recognized that somebody had to tell her that Bo had passed away; isn't that right?
A That's correct.
Q Do you disagree that it was the doctor who was treating VICTIM who came and told her that her child had passed away?
A No. I do not disagree with that.
Q Don't you agree that a doctor would be able to recognize the signs of shock?
A Yes.
Q Did the doctor or anyone at the hospital treat her for shock?
A To my knowledge, no.
Q Now, I understand you're saying that Brandi would not let you discipline VICTIM?
A That is correct.
Q That she handled all the discipline herself?
A She would handle the discipline herself.
Q Do you know if that was different in any of her other relationships?
A To my knowledge, no. I remember when she first got married to Darren that Darren made some statements that,

you know, he couldn't even talk to VICTIM- same situation like me. He couldn't talk to VICTIM without her getting in his face. And I think she took care of all the discipline there.

MR. QUINN: I don't have any other questions.

THE COURT: Solicitor.

CROSS-EXAMINATION

BY MS. SEAY:

Q Mr. Holder, this thing about Brandi not allowing you or her former husband to discipline VICTIM and that she would get in your face and that kind of thing, really, I think shows her somewhat aggressive nature, don't you?

A Aggressive towards her son, yes.

Q Well, is it fair to say that she's very assertive and aggressive towards you in telling you that you can't discipline him? You said, I thought I was going to have to leave the house.

A Yeah. She would get in -- she would get pretty rough on me, yes.

Q Okay. And you said that you didn't see any injuries on VICTIM ever; is that correct?

A I saw -- we went and picked VICTIM up in June because of a sunburn that Brandi called the house and was talking to her mother and just casually mentioned that Bo had gotten sunburned. So we went up -- she had asked him about

treating -- or Brandi asked her mother about treating the sunburn.

So Marie and I decided to go up and take a look at it. Her mother talked to her about what she had done. And she said she had put some aloe vera on it. And she said, Should I be doing something else? And she said, No, that's all I treated, you know, both of our children with, that should be sufficient. But we still went up there to check on it.

And we took his T-shirt off because he was ready to go to bed. And we looked at the sunburn. And it did not look like it was any different than any sunburn either one of my children had when they were growing up. So we were not concerned about it.

Q Well, on that same visit, isn't it true that you all saw two round burns on VICTIM's neck that you thought were cigarette burns?

A Not on that visit, no. I didn't see it.

Q Is it possible your wife saw them?

A That could be possible.

Q Do you recall Brandi saying that she assumed that VICTIM had brushed against the muffler of the four-wheeler to get those burns?

A She didn't say that to me, no.

Q Well, y'all have had -- you and your wife and Brandi,

y'all have had a somewhat tumultuous relationship, haven't you?

A Yes.

Q And when Brandi was at the law enforcement center after VICTIM died and all this was going on, you and your wife immediately went there and went to her aid; right?

A Yes.

Q Because that's what parents do, isn't it?

A Because we love her, yes.

MS. SEAY: Thank you.

REDIRECT EXAMINATION

BY MR. BYRHOLDT:

Q Did Brandi use -- if she was the disciplinarian, did she use corporal punishment and hit VICTIM or did she do other things?

A No. I've never seen Brandi even smack VICTIM. When he did something wrong, she would give him, I guess, the equivalent of time-out or things of that kind of nature for disciplinary action.

MR. BYRHOLDT: Thank you.

Nothing further.

THE COURT: Thank you.

Step down.

MR. BYRHOLDT: One more short witness.

David Kelly.

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

WHEREUPON,

DAVID SCOTT KELLY,

after first having been duly sworn, testified as follows:

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

THE WITNESS: David Scott Kelly.

THE CLERK: Thank you.

Be seated.

DIRECT EXAMINATION

BY MR. BYRHOLDT:

Q David, I'm going to ask you to speak up. Give us your full name, please.

A David Scott Kelly.

Q And where do you live?

A I live at [redacted], Simpsonville.

Q And what do you do, sir?

A I'm a local pastor. And I also work at General Electric.

Q And were you the person that drove Brandi from the Allen Bennett Hospital to the law enforcement center on July the 17th, 2002?

A Yes, sir, I was.

Q Can you describe to the jury what her condition was when you saw her at the hospital?

A Brandi seemed very distraught in the room where the family was gathered. Several family members were there, a lot of crying, a lot of weeping. It was pretty much the same on the drive to the law enforcement center.

Q Was she able to converse with you on the way to the law enforcement center or was she pretty much just --

A We talked very little out of myself just trying to console her a little. And also being a family member, I was at a loss for words as well. So there wasn't very much conversation.

Q Was she able to -- did you have to assist her in getting her to the car and getting her out, you know, at the law enforcement center?

A I helped her out of courtesy, yes. Whether she could have done it on her own, I do not know that. But I did assist.

Q Well, this is a mother that had just been notified that she had lost her son, no question about -- was she hysterical at the hospital? Was she crying, screaming?

A Yes. She was, like I said, very distraught, crying and just seemed surprised. I don't know the word to use, maybe shock would be the right word.

Q Lost?

A That would be a good description.

Q Was she making sense? I mean, could she carry on a good conversation or was she just pretty much out of it?

A No. I could not say that she could carry on a good conversation.

Q Did you stay at the hospital that night?

A I did.

Q I mean, at the -- I apologize, at the law enforcement center that night?

A I did.

Q Was it around midnight when you guys finally left?

A Yes, sir. It was close to that time. I do not remember the exact time. I do remember it was past 11:30 to 12:00.

Q As a pastor, were you allowed to provide any comfort for her from 5:00 when she went back there until you guys left at midnight?

A I did not see Brandi from the time that she went back with the investigators until a later visit a few days later at the law enforcement center.

MR. BYRHOLDT: Thank you, sir.

THE COURT: Any questions, Mr. Quinn, or, Mr. Sumner?

MR. SUMNER: No questions of this witness, Your Honor.

THE COURT: Solicitor.

CROSS-EXAMINATION

BY MS. SEAY:

Q Mr. Kelly, in addition to being a pastor, you're also related to the Holders, aren't you?

A Yes.

Q What is the relationship?

A I am Brandi's uncle, Benny and Marie's brother-in-law.

Q Okay. Well, being a part of the family, I assume that you all kind of kept up with family information and family goings on?

A Yes.

Q Well, were you aware that Brandi had not allowed Mr. and Mrs. Holder to see VICTIM for almost 11 weeks before he died?

A No, ma'am, I was not. I'm sure that, as grandparents, they didn't get to see him as much as they would have liked since she did move out. But I was not aware of an absence of not allowing to see him or anything of that nature.

MS. SEAY: That's all I have.

Thank you.

THE COURT: Thank you.

You can step down.

MR. BYRHOLDT: Nothing further, Your Honor. That

would be the Defense's case.

THE COURT: All right. Do you have anything to present, Mr. Sumner?

MR. SUMNER: Your Honor, the Defense rests for Mr. Martucci.

THE COURT: All right. Anything in reply, Solicitor?

MS. SEAY: No, sir.

THE COURT: Okay. Ladies and gentlemen, the testimony is complete in this case. What we have remaining is the final arguments by the attorneys and then my charge on the law. And we will do that in the morning.

I'll ask that you report back to your jury room at 9:00 tomorrow morning. And, please, remember my other admonitions about keeping your badges on, and not discussing the case, or reading or viewing any media coverage of the case.

So be back at 9:00 in the morning.

Thank you.

(WHEREUPON, the jury was excused from open court at approximately 4:24 p.m.)

MOTIONS

THE COURT: All right. Any requests to charge -- or any motions, first?

MR. BYRHOLDT: Your Honor, we would renew -- on

behalf of Ms. Holder, I would renew my motions for directed verdict of acquittal on the same grounds that we don't think there's sufficient evidence to show that she caused the death under Subsection A. There may be evidence to go over to Section B, but I would make that motion for the record, Your Honor.

THE COURT: And I would deny that motion.

MR. SUMNER: Likewise.

THE COURT: And I deny your motion, too.

MR. BYRHOLDT: May we inquire -- based on the evidence, do you intend to charge both sections of the statute?

THE COURT: Solicitor, how about that? Aren't they entitled to both Sections --

MR. BYRHOLDT: I think we are.

THE COURT: -- A and B?

MS. SEAY: I don't know that they are.

THE COURT: Why?

MS. SEAY: I don't think necessarily that Subsection B is a lesser included. And the --

THE COURT: Well, I agree it's not a lesser included. But the definition of homicide by child abuse is "caused by death manifesting extreme indifference to human life," but then it's "or." And it describes knowingly aiding or abetting.

MS. SEAY: Right. And we felt that her participation was much greater than that and --

THE COURT: Suppose the jury didn't agree with that. Suppose they find that she aided and abetted, but she didn't, actually, cause it with indifference.

MS. SEAY: Well, that -- the theory that we were proceeding on, based on the evidence as we knew it to be, was that she would be a principle in that she through her acts and/or omissions under the definitions given for the statute could be equally culpable as someone who inflicted the blows.

THE COURT: Well, I agree. But I -- but the difference in A and B is the penalty, which is imposed by the Court, not the jury.

MS. SEAY: Okay. I don't follow what --

THE COURT: I think that they're entitled to have the full statute charged and the jury make an election, if they convict her, whether she's under A or under B. I think they're entitled to that.

MS. SEAY: Do you believe that it's a lesser included of the --

THE COURT: No. I don't -- I think under the statute the way it reads "or" -- I mean, it's the same -- I think somewhat similar to criminal sexual conduct in the first and second degree. In that kind of case, one is the use

of physical force to commit sexual battery. But the second degree is to threaten the use. And if there's any factual evidence to support one or the other, then you charge both first and second degree.

So I think, in this case, you've got evidence that she is guilty of A. But I think there's also evidence that she could be guilty of B. So I think I would be required to charge that as to this Defendant, not as to Mr. Martucci.

I think --

MR. SUMNER: One second, please, Your Honor. I just want to confer with him to see if we want to request that.

THE COURT: All right.

(Pause.)

MR. SUMNER: Your Honor, we would request that the same charge be given to Mr. Martucci. The jury could find, based on the testimony provided, that Mr. Martucci somehow aided and abetted potentially the other co-defendant in the crime.

So we would say because the jury could reach that conclusion based on the testimony and evidence presented, we would ask for B as well.

THE COURT: And I will deny that.

All right. Any other requests to charge?

(There was no response.)

THE COURT: I'll see you all at 9:00 in the morning.

(WHEREUPON, the proceedings were concluded at approximately 4:39 p.m., to be reconvened on Thursday, February 9, 2006.)

THURSDAY, FEBRUARY 9, 2006

THE COURT: Anything before I bring in the jury?

MR. QUINN: I have one matter, Your Honor.

THE COURT: All right.

MR. QUINN: Your Honor indicated yesterday that in your submission to the jury of what charges Mr. Martucci could be convicted of that you were only going to submit Section A(1) of 16-385 of the homicide by child abuse. My position would be that that's an error.

Your Honors own analysis yesterday indicated that you don't believe these are lesser included, but, in fact, one continuing statute as is designated by the word "or" that is used between Subsections 1 and 2. My understanding is that Your Honor's intention is to submit both subsections as to Ms. Holder. If you submit only one as to Mr. Martucci, it's tantamount to a charge on the facts to say to the jury Mr. Martucci must have killed the child, therefore, Ms. Holder might be guilty of one of these two, but Mr. Martucci can only be guilty of one.

I believe, therefore, it would be error to do it -- to only submit A(1) under two analysis'. First of all, your own about how it is a continuing statute and, therefore, both should be submitted without any consideration of lesser included offense. And, secondly,

that it is tantamount to a charge on the facts for the jury.

THE COURT: How about that, Solicitor? It makes sense to me.

MS. SEAY: Your Honor, I think based on the position that I've already taken, which is that one or both either inflicted the injuries and/or one or both had knowledge of the injuries, that a jury could feasibly find that Mr. Martucci was only an aider and abetter in the same sense as Ms. Holder.

THE COURT: All right. Out of an abundance of caution, I'll include that in my charge.

MR. QUINN: Thank you, Judge.

THE COURT: Now, are you going to waive opening, Solicitor?

MS. SEAY: Yes, sir.

MR. BYRHOLDT: May it please the Court?

I would make one inquiry to the Court. Does the Court in their charge intend to -- there's a definition of extreme indifference, I believe the State will argue that, the State v. Fletcher case, which says in the context of a homicide by child abuse statute is in the nature of a culpable mental state and, therefore, akinned to intent.

THE COURT: Yes.

MR. BYRHOLDT: Thank you, Judge.

We just wanted to make sure about that before we argued it.

THE COURT: All right. So you're going to talk first and then --

MR. BYRHOLDT: Mr. Phillips.

MR. SUMNER: Are you going to waive opening on the law?

MR. BYRHOLDT: She is.

MS. SEAY: Yes.

THE COURT: Mr. Phillips, Mr. Sumner, and then the Solicitor?

MR. SUMNER: Yes, sir.

THE COURT: All right. Bring the jury in.

MR. PHILLIPS: Your Honor, could we use the video machine?

THE COURT: Yes, sir.

(WHEREUPON, the jury came into open court at approximately 9:03 a.m.)

THE COURT: Good morning.

All right. Mr. Phillips.

CLOSING ARGUMENTS

MR. PHILLIPS: Thank you, Your Honor.

May it please the Court?

Ladies and gentlemen, in this case, the State is trying to prove that Brandi Holder is guilty of homicide

by child abuse, which the Judge will instruct you is that she must have caused -- beyond a reasonable doubt caused the death of a child under the age of 11 while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life. That's one option. Under that option, extreme indifference is defined as a culpable mental state akin to an intent. And the Judge will also instruct you on that.

And what I intend to do, at this point, is just to give you an overview of the law. Now, the other choice -- and there will be three choices -- is that he's going to instruct you that you may find her guilty if she knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of 11.

Aid and abet means that she helped, assisted, or facilitated the commission of the crime for but the accomplishment thereof, help in advancing or bringing it about or encouraged, counseled, or incite as to its commission. She did something active intentionally to help kill her child. The other option is that she is not guilty. And that is the option that we intend to show you today.

In the State's opening statement, Bryna Seay told you -- the Solicitor told you that VICTIM had been battered,

bruised, and beaten for weeks before his death, and that they would prove that. The evidence proves anything but that. VICTIM had not been beaten, battered, and bruised for weeks leading up to this. And I'll get to that later.

She also told you that Dr. Ward said that the parents had to know. And you heard his testimony, and that wasn't true. In fact, he said it would have been very difficult for a layperson to distinguish what VICTIM was suffering from, from a normal virus or some other kind of thing that just made him feel bad.

All the evidence -- who killed VICTIM then? All the evidence, in this case, points to Mark Martucci. Mark watched VICTIM during the day while Brandi worked starting in June of 2002. Now, that's the time period that we're looking at. That's when the death occurred. That's what the State has charged her with. All these actions occurred between June the 1st of 2002, and July 17th of 2002. More than coincidentally, that's when Mark Martucci began watching this child during the day.

John Parker, the other person, the third person charged, in this case, with homicide by child abuse told us about Mark beating VICTIM. You heard other State's witnesses say that Mark was loud, arrogant, and mean. Parker told us that he was afraid of Mark. And what about Brandi? None of the witnesses called by the State said

that Brandi -- that they ever saw Brandi do anything abusive to VICTIM. None of them. Now, Parker said he saw Mark Martucci beat VICTIM, but nobody ever said they saw Brandi do anything to VICTIM.

The worst thing that any State's witness said was that Brandi would pop VICTIM on the hand if he did something wrong. And then think about this, the State called Brandi's ex-husband, James Darren Turner, to testify. And he testified that although Brandi was not a great wife to him that she was a great mother to VICTIM, her son.

What did Brandi know then, ladies and gentlemen? Brandi knew about some bruises on VICTIM's shoulders in mid-June. After that, she asked Martucci what they were from. Then she started watching VICTIM more carefully after Mark gave her the explanation that he gave her. So we've got this window of time.

Those photographs were taken in June of 2002, around June the 20th. VICTIM died July 17th, 2002. Dr. Ward testified -- and I'm coming back to him. Dr. Ward testified that the bruises that were visible on VICTIM's body could have come from trauma that happened only one and a half to 12 hours before VICTIM died at 1:10 p.m. on July 17th, 2002. VICTIM died at 1:10 p.m., one and a half hours before that would get us back to just before 12:00.

Brandi Holder went to work that morning at 9:00 and

was gone and never saw VICTIM again after 9:00 that morning. The beating could have occurred during that time period. And even the State's expert witness couldn't tell you differently. If the beating occurred then and the State can't prove differently, Brandi knew nothing about it and is innocent of homicide by child abuse.

The photographs from the July 4th weekend. Ladies and gentlemen, these are photographs from the July 4th weekend. And you'll have these with you in the jury room. July 4th, 2002, July 5th, 2002, that was a Friday and Saturday. This is the VICTIM that Brandi knew. Look at his face. Look at his arms. And you see nothing of the bruises and beatings that are on the pictures from Dr. Ward's autopsy photos. Not a great picture there, but you can see his face. You can see his hands and arms. Again, this is July 4th and 5th of 2002, 12 days before this happened.

When you look at these pictures, those show you the reason that Brandi Holder didn't know that there was anything wrong with VICTIM. These photographs are from later on that week. VICTIM's shirt is off. He's petting his dog. There's no sign of bruising on his face, or on his body, or back. This is the VICTIM that Brandi knew.

Again, more pictures from later on after the July 4th weekend, sometime between the 7th and the 11th of July.

We're getting into a time period that was less than a week before VICTIM died. There's no bruises, no scratches, a big smile on his face, life in his eyes. That's the VICTIM that Brandi knew. The same time period, ladies and gentlemen, no bruises, no scratches, and, again, a big playful smile on his face.

Here he is with a sippy cup grinning, smiling, shorts on, no shirt, nothing wrong with his body there. And, again, July 4th weekend at Lake Keowee, nothing on his face or arms there. That's the VICTIM that Brandi knew. That's why she didn't think that there was anything going on that she needed to be worried about.

And then let's think about the testimony. Those are the photographs and you saw all those photographs. What happened between Sunday July 14th of 2002 through Wednesday July 17th of 2002? Monday, July 15th of 2002, Brandi, VICTIM, Miranda Byrom, and Matt McCullough went to a place called Mutt's Bar-BQ on Highway 14 with VICTIM, no bruises on VICTIM then. That's Monday, July 15th.

John Parker, the State's key witness and a co-defendant, testified that on Tuesday, July 16th, 2002, Brandi, John, Mark, and VICTIM went to three places in public. And VICTIM went in with them everywhere they went. They went to Alltel. They went to the China Garden restaurant. And they went to Wal-Mart. And John Parker, who's already

pled guilty, testified there wasn't anything wrong with VICTIM then. He said Tuesday night, the night before VICTIM died, he didn't see any bruises on VICTIM.

The next morning, John Parker testified that he awoke and heard crying and sounds after Brandi went to work. Tuesday night, there were no bruises on VICTIM. Wednesday morning, John Parker, who has no reason, at this point, to tell us anything that's not true, John Parker said that he didn't see any bruises on VICTIM on Tuesday night. Wednesday morning, after Brandi has gone to work, he awakes and hears crying and sounds from VICTIM.

Then let's think about something else that Dr. Ward said. He was talking about the abdominal injury. And, unfortunately, you're going to have some ugly pictures in there to look at. And the State may even show them to you again today. That injury, that internal injury, Dr. Ward testified that it would have been very difficult for a layperson to distinguish the symptoms of what he was going through -- of what VICTIM was going through from something other than a virus or VICTIM just feeling bad. A layperson wouldn't know.

Now, even on the autopsy photos, there's no bruise on his stomach. There's no bruise here. All the other bruises, he said, happened between one and a half hours to 12 hours later. The stomach injury may have happened

sometime before then, but she wouldn't have been able to know because Dr. Ward said that a layperson wouldn't have been able to distinguish those symptoms from just a virus or something where he wasn't feeling good.

You heard a lot about Brandi's statements. Detective Silvaggio and Detective Kelly's interrogation of Brandi was no picnic for her to go through just after her son had died, just the same day. She hadn't had a chance to really be consoled fully by her family. She was in tears and wanted to be with them. And this interrogation went on for hours, beyond midnight. Brandi was 21 years old.

Now, you were told that she was able to get up and leave, but I don't know that anybody told her that. They have videotape recorders in patrol cars, highway -- hallways, parking lots, convenience stores. You go into any little restaurant and they've got a little video camera over the cash register. Why not have one in the police station where they can record what went on in the interrogation room? The reason is that they don't want you to know what went on in the interrogation room. They want to be able to come in here one by one by one and get on the stand and tell you what they want you to hear about what happened in the interrogation room.

Where was the physical evidence in this case? There was no blood found in the Martucci residence. There was

no physical evidence collected from Mark Martucci. There were no bloody clothes found, no bloody diapers, and no bloody towel, no blood in the residence. Again, what did Brandi Holder know? There's no blood anywhere. In this case, no evidence of blood in the house that would have called Brandi -- or pointed to Brandi knowing something about this until July 17 of 2002.

The bite mark on VICTIM's arm, no measurements were taken of the bite marks or comparison to any of the people charged with this crime. The only thing the evidence, in this case, has proven is that Mark Martucci snapped the morning on July 17th, 2002, while Brandi was at work and beat VICTIM to death.

Now, ladies and gentlemen, reasonable doubt. Judge Pyle will instruct you again on what that is. It's a doubt that causes you to hesitate to act, to hesitate to say, yes, that person is guilty and should be punished accordingly.

Let's think about that three-and-a-half hour window, 9:00 to 12:30 a.m. on July 17th of 2002. Brandi was at work during that time. Only John Parker and Mark Martucci were in that residence to know what was going on. John told us what he heard again. It was crying and sounds that morning after Brandi went to work. That's what happened, Mark killed VICTIM that morning. John Parker was

there. He saw it and testified to it. And that is the reasonable doubt, in this case, and why you should find Brandi Holder not guilty of anything. She didn't know. She didn't help. She didn't do anything to cause the death of her child. And that's what the State must prove beyond a reasonable doubt. And they won't be able to do it and haven't done it, ladies and gentlemen.

Thank you.

THE COURT: Mr. Sumner.

MR. SUMNER: May it please the Court?

Good morning. Hello.

I want to say, again, that it's been a pleasure for myself and Tom Quinn to be with you all this week. I know it's been a difficult week. Our work is ending and you all's work is continuing. It will continue through the deliberations and verdict in this case.

I just want to make a few points. Judge Pyle will advise you, I believe, of the following. First of all, he will emphasize to you all that the -- Madam Forelady, and, ladies and gentlemen of the jury, that Mark Martucci's decision not to be here cannot be held against him in any way. He will tell you that a defendant's failure to be present is -- cannot even be discussed in the jury room. And I know that you will follow your oath that you took when you were first sworn in to well and truly try and a

true verdict render in this case. I know that you will follow all of Judge Pyle's instructions as he gives them to you. So I wanted to remind you of that point.

Secondly, Judge Pyle will talk about the presumption of innocence. And he will tell you that anybody accused of a crime is presumed innocent and they remain innocent until conclusive proof beyond a reasonable doubt is presented to you as a jury. He will also remind you that the burden of proof is on the State. And that the burden of proof does not rest with Mark Martucci between Mr. Quinn and myself, nor does it rest with Ms. Holder's attorneys or herself. It rests entirely at this table right here throughout the course of the trial.

I believe that he will also talk with you about reasonable doubt. And if I say anything that contravenes or goes against Judge Pyle's charge, please accept his word on the law over my own. But I believe that he will tell you that proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt to the point that there is no real possibility that the person did not commit the crime.

And let's take that definition and take a look at what's come out in this trial to this point. Briefly, I'm going to go back to Dr. Ward's testimony. He, basically, said that the cause of death of VICTIM- and let me say this

right from the outset. This was certainly a tragedy. And I hope that you all don't feel that neither Mr. Quinn's questions during the course of the trial or my questions of witnesses during the course of the trial lessen that tragedy. Please don't think anything other than that we concur that this was, certainly, a tragic death.

But I believe Dr. Ward stated that the cause of death of VICTIM was blunt force trauma to the abdomen. I believe he said it was two blows, one blow that was inflicted that would have caused the repeated vomiting that we heard testimony about during the course of the trial, and the second blow that, unfortunately, lead to his death.

He also said that when -- or when Mr. Quinn asked him about the time frame, he said that the blow was probably inflicted -- the fatal blow was probably inflicted within two to 12 hours of VICTIM's death. But he also said that it would be a time frame up to within 72 hours. Do you remember that testimony?

Because Mr. Quinn asked Dr. Ward and he did hedge a little bit, but he said, well, 48 hours, you know, maybe 72 at the outside, maybe two to 12. I mean, he was -- and I'm certainly not being critical of Dr. Ward's testimony or him whatsoever. But he said, I would say two to 12, but 72 hours at the outside. You all probably remember that as to when the initial blow or the fatal blow, one of

the two blows, would have been struck. That would be a three-day period.

Now, so we know that this case is about the blows, the two blows to VICTIM in the abdomen because that's what caused his death. And then referring to the charge against Mr. Martucci of murder, it is referred to as homicide by child abuse, but this is a murder case. And the charge against him is murder. So we know that's really the crux of the trial is the proof of these blows. Okay. Because that's what led to his death.

Now, let's take a look at the evidence offered to prove conclusive guilt of Mark Martucci on those two points. Because that's the only thing we're here about is this cause of death and what caused that.

And the only evidence or testimony that I heard was that of John Parker. And you will recall John Parker. He came up and he testified about what he -- his relationship with Mark Martucci. And he testified also about, frankly, some abusive acts that he observed, in his opinion, that Mark had committed toward VICTIM. He talked about him grabbing him, I believe, around the face and then pushing his head under the water, certainly, not things that are good to do to a child. There's no question about that.

But I never heard him testify to anything about striking him in the stomach or anything of that type.

Please remember that his first statement, the very first time he was placed under oath, he didn't talk about any abuse from Mark Martucci toward the child at all.

The very first time he was asked to tell the truth, the very first time he was sworn, you all recall he gave two statements that night, and the very first thing that he said was, I did not see any abusive acts from Mark Martucci towards VICTIM at all.

Please remember that he was in a safe environment at that point. I asked him -- and, you know, why did I ask him that? You might have said, why is Mr. Sumner asking about did he feel safe and all that? Because he had talked about this fear factor that he had. And I just wanted to make sure that when he gave the first statement, what was different from the first statement than the second statement? And he said, basically, nothing. I was sworn to tell the truth both times. I was in a safe environment both times. And I just decided to change my story.

And I'm going to try not to repeat anything that Mr. Phillips said in his closing remarks to you.

There's no physical evidence whatsoever linking Mark Martucci to striking or laying the fatal blows. There's no forensic evidence whatsoever linking Mark Martucci to delivering or striking the fatal belows. And, basically,

what the State is asking you all to do from our -- from Mr. Quinn and I -- our perspective is they're asking you to convict Mr. Martucci of murder. Please hear me now.

When you push everything to the side and you focus on what is critical, they're asking you to convict Mark Martucci of murder, based on pretty much the testimony and second statement of John Parker. And when you go back and deliberate in the jury room, please, think about that.

There's no question that the child, unfortunately, died. There's no question, from Dr. Ward's testimony, that it was fatal blows to the abdomen. But when you say, okay, there's no question about that. But then you say, okay, it's a two-hour -- Madam Forelady, and, ladies and gentlemen of the jury, it's a two-hour to 72-hour type window here.

There's no question that the vomiting that we heard about was consistent with the injuries that Dr. Ward described. But, basically, when it's all said and done -- and just push all the chaff away and get down to the wheat, they're asking you to convict Mark Martucci of murder, based on the testimony of John Parker that doesn't even reference -- and I'll talk about that in a second. He didn't talk about any blows to his stomach. He didn't talk about anything of that type whatsoever. He did talk about some things that I, certainly, wouldn't condone or

none of us would condone in terms of handling a child. But he didn't talk about anything like that. And, please, remember that he gave more than one sworn testimony -- sworn statement that evening.

Now, let's talk a little bit about Brandi Holder. We heard her testimony yesterday. And what did she say? She said, I never saw Mark abuse or hurt VICTIM in any way. Now, think about that. She's living there for six months. And she got up there yesterday and swore to tell the truth and said, I never saw Mark Martucci hurt or abuse VICTIM in any way.

Now, does it make sense? If you take her testimony, does it make sense that all of the sudden within a 48 to 72 -- within a two- to 72-hour period that Mark Martucci is going to all of the sudden beat this child to death when she says, I never saw anything for six months? It wasn't like she lived there for a couple of weeks. I mean, we're talking about, basically, a six-month time frame here. Okay.

She also talked about how Mark took VICTIM fishing, I believe. She talked about swimming, four-wheeling. You all heard that testimony. He, basically, took on the role of a father figure for [redacted]. victim

She talked about how Mark took care -- this, I thought, was pretty important. She talked about how Mark

took extensive care of VICTIM during that two-day period. You know what I'm talking about when -- the night before when he was, unfortunately, throwing up, vomiting, this type of thing. She talked about how Mark was the one who took care of the child. I believe she said that she didn't even go in there and check on him. Remember that? She said, I didn't go in there and check on him because Mark took care of him.

I believe she said -- either her -- either Brandi Holder or John Parker one said, I went in there and VICTIM was laying on Mark's chest. I believe it might have been her because she was describing the -- some type of clothing that he was wearing, talking about VICTIM.

Mark took -- no question about how much care he took of the child in this -- I'm going to say 24-hour period, roughly, maybe 36-hour period right before they took him to the hospital and he died. John Parker was in full agreement on that. From my recollection of his testimony, he said, Mark took care of him. Mark cleaned him up. Mark was the one who gave him his baths during that -- I'm not going to say during the entire six months because I don't believe I heard that, but, certainly, toward the end and, certainly, the last couple of days said that Mark gave him several baths. Mark cleaned up all the time when he threw up. And I think he threw up more than one time

from the testimony. He said that Mark even tried to perform CPR on the child before taking him to the hospital.

Please ask yourselves with your good common sense that you bring here into the courtroom as jurors, does this make sense? Just step back a second in the jury room and ask yourselves, does this make sense? Would somebody who unequivocally undisputed takes care of the child and I'm -- and the first three or four months, you know, we talked about the fishing and four-wheeling, and all that kind of stuff. But does it make sense that the person who would beat the child to death when they -- when it's undisputed that they're the person taking care of the child? That, to me, doesn't make any sense. It just doesn't make any sense.

I'm going to return my attention a little bit to Brandi Holder. What do we know about Brandi? Numerous troubled relationships in her life, no question about that. She talked about her mom and dad. She talked about -- I believe it was Darren Turner. I believe her first husband came in and testified. She has a tremendous amount of difficulty in having relationships with people. I think that's been shown.

There was testimony of abusive behavior from Brandi Holder toward VICTIM that came out during the course of this

trial in the presence of other people. We heard from Trevor Venesky. And if I get the names wrong, rely on your own memories, please. But I believe it was Trevor Venesky who told us about an incident where Brandi locked the screaming child in the bedroom. Do you all remember that? He was the 11- or 12-year-old young man.

Stephanie Henderson, a lady who worked with Brandi Holder at Capelli's, said, remember, Brandi lied to me about whether or not she had seen her parents, that it came out with her conversations with her coworkers that, I'm not going to tell Stephanie the truth, I'm going to lie to her about seeing my parents. So we know that that's an unfortunate character trait that Brandi has. She also said that Brandi never mentioned any abusive behavior from Mark toward VICTIM during this six months that they were coworkers together at Capelli's.

Brandi Mason came in and talked with us about an incident where -- that she observed where Brandi Holder -- I believe she was the lady that said that Brandi jerked VICTIM up by the wrist, I believe, remember that, and just carried him down the hall like this and threw him in the bedroom. I may have the names wrong. I know one lady testified about that. That happened, again, in her presence. I don't recall any of these people having anything negative to say about Mark in that regard, Mark

Martucci. She talked about that, which, again, just please consider that in the jury room.

She also talked -- remember this, about this story about Brandi had an accident in a car. And I believe Mark Martucci didn't believe her or said he wasn't sure that it happened. And she took out her keys and stabbed herself in the leg to make sure that she had a mark on her leg so that Mark -- a mark on her leg so that Mark Martucci would believe her about this accident that occurred. Brandi Mason also talked about how VICTIM wanted to be around men. He did not want to be around women.

Mr. Holder came up and testified yesterday. And we heard from him. And he was real clear, I thought, interestingly, a very credible man, in my opinion. He seemed to be a very credible person. He said that Brandi Holder handled all the discipline. I mean, he was very clear to everybody in the courtroom about that.

Remember, he said when she came over and the child would be with her that she handled all the discipline. That he, one time, tried to pop VICTIM on the hand for putting his fingers, I think, inside a VCR -- which I think every child has probably done -- and that he thought he was going to have to leave the house, I believe was his testimony. He said, I thought I was going to have to leave the house. And he talked about any time that

anybody had anything to do with VICTIM that she -- I believe any time he tried to correct VICTIM and he said, I was walking on egg shells. Remember when he said that? And she got in my face. I mean, think about that. She comes up in my face about, whatever, leave my child alone or whatever it was. I mean, he really gave us a glimpse inside her personality yesterday.

What does the evidence show? What inferences can be drawn? The closer that Mark Martucci and VICTIM got, the more erratic Brandi Holder's behavior became. I mean, just step back and look at it. You can see that he begins to take over. He's giving the child the baths. He's feeding, he's clothing. He's taking care of VICTIM while she's working at Capelli's. And it's clear that the closer they got, in her mind, something triggered. There's no question about that. Because that's when her behavior got more and more erratic. When Mark Martucci began taking care of VICTIM, it's very clear that you could see from the evidence that Ms. Holder just couldn't handle it.

Interestingly, Dr. Ward -- I go back to his testimony because his testimony is real critical. He gives it this 2-hour to 72-hour window. The only persons testimony that we have to show -- that I heard to show that Brandi Holder was not in and around VICTIM during that time frame was hers.

I don't recall anybody else.

Now, they did talk about her going to Capelli's that morning. Okay. I believe there was a lot of discussion about that. But, now, remember, Dr. Ward pushed the time frame much further back than that. He said, these blows could have been struck within 72 hours. And I don't believe anybody but Brandi -- Brandi Holder herself removed herself from VICTIM during that time frame. But, again, I think the central thing that I've already mentioned -- and I'm wrapping my comments up here. And I appreciate very much you all's attention.

Thank you.

As to Mark Martucci, the case comes down to the State asking you to convict him of murder, based primarily on the testimony of John Parker. That's it. That's what they're asking you to do. And, remember, please, in the jury room, that John Parker gave two statements that night. He was sworn under oath. The second time he talked. He did talk about things that I don't believe any of us would believe that should happen to a child and disciplinary measures and things that Mr. Martucci took.

Even if you believe his testimony, the second time, please, also remember that he talked about how much Mark took care of the child. He talked about who took care of the child for that 72-hour period. It was completely

Mark, nobody else. He talked about how Mark gave VICTIM CPR. He talked about how Mark said, I don't know what to do. Remember, he said -- I don't know if it was stated to me. But he said, I don't know what to do. He was on the phone. He was trying to figure out what to do. They took the child to the hospital. And he talked about how Mark cleaned up. And I'm not going to go through that again.

But in the jury room, I would ask you, in closing, to, please, remember Judge Pyle's charge about the burden of proof is on the State in a criminal case. And also he will tell you, I believe, that it is your duty that if you are not convinced beyond a reasonable doubt or if you're not so firmly convinced of the proof of every element of this charge that your verdict should be and must be not guilty.

And I would ask you to, please, if you have concerns about any of the things that I've mentioned or questions that Mr. Quinn has asked during the course of the trial that cause you to have a reasonable doubt, please make your voice heard in the jury room.

Thank you.

THE COURT: Solicitor.

MS. SEAY: Thank you, Your Honor.

May it please the Court?

Ladies and gentlemen, good morning.

I have been looking forward to coming back to you to talk to you now that you've had an opportunity to hear and see the evidence in this case. And I told you when I first talked to you that the State intended to prove that Mark Martucci and Brandi Holder caused the death of her child, VICTIM.

The law under which they are charged, homicide by child abuse, holds people equally responsible for inflicting physical injury on a child or allowing physical injury to be inflicted on a child. Equally culpable, equally guilty. The statute itself talks about being guilty for your acts or omissions. And I want to talk to you a little bit about how, I think, that plays into this case.

First of all, we know from the witnesses that you heard from, beginning with Ms. Venesky, I believe, that she saw bruises and what she thought might be a possible burn on little VICTIM. And she knew that it was between June 17th -- or the week of June 17th, because that was their Bible school week. And that was the week that he was there and he went with them. So that stands out in her mind.

Ms. Venesky did not really know Brandi Holder or Mark Martucci, other than she lived next door to Mr. Martucci, and Brandi and VICTIM, at some point, moved in. And,

interestingly, her first encounter with Brandi, she described to you, was that Brandi called her up on the phone fussing about her cat being on her car. That was her first encounter with her. Quite an assertive move for a woman who wants you to believe that the police were able to overcome her will and make her sign statements and waivers that she didn't say and didn't want to sign.

The other interesting thing that Ms. Venesky pointed out, in addition to seeing these bruises on VICTIM, is that Brandi seemed very concerned and kept wanting to know and asking her about some kind of video that had been made that showed Mark with other women. And she wanted to find out more about that. That was what she was concerned about at the time.

Now, we have the pictures that were taken -- and I believe those are in evidence -- taken by the Veneskys. Because they knew that something did not seem right about this. This wasn't normal for a child. And, in fact, you heard from little -- not little, but 15-year-old and three days Trevor Venesky. He told you that he had, actually, noticed some problems and injuries with VICTIM and talked to his mom about it. And so in the end, these pictures were taken. And you'll have a chance to look at them very closely in the jury room, because they're in evidence. But, mainly, they were concerned because of these three

distinct bruises across his back. And then he had something that appeared to be a burn on his arm.

And jumping forward just a little bit, I'll point out to you that you may recall Dr. Ward's testimony that at autopsy when he examined the musculature under the skin of this area, there were almost identical hemorrhages that indicated bruising under those very same spot. And that was a month later. These bruises were going away. So what he was seeing was new injury. It was continuing.

You will recall, I think, from Ms. Venesky's testimony also that Brandi Holder was there when these pictures were taken. She was there. Because she had come to their home, knocked on the door around 10:00 at night with VICTIM, and said, Mark put us out, can we stay here? And so they said, yes. And I think they began to discuss some things that were going on. And that's the reason the pictures were taken.

Well, you know, it wasn't but a couple of days later that Brandi calls the Veneskys and goes into a tirade irate about the fact that someone had taken pictures of her child without her permission. She was reminded by Ms. Venesky that she was there when that happened. And Brandi's response to Ms. Venesky was, well, I was just mad, I smack VICTIM in the mouth when he smart-mouths me. I think that's an interesting comment.

Robin Center testified, and she told you that she did not know Mark and Brandi at all. And that Jane Venesky, her relative of some degree, had called her and asked her to baby-sit VICTIM that next day so that Brandi could go to work. And, of course, Robin agreed. You heard her testimony and her, I think, genuine expression of love for kids in general.

And she took VICTIM in the next day. And she described how Brandi drove VICTIM over there and did not get out of the car. And Robin just came and got VICTIM out of the car. And Brandi didn't say anything to her. She's leaving him with a total and complete stranger.

And VICTIM goes to Robin. He seemed anxious to go to her. Robin noticed some injuries that day. She told you about them, that he had what looked like a busted lip, bruises on the small of his back, faint bruises on other parts of his body, bruises on the top of his back, and that he was scared to death when she tried to put him in the bathtub. She said that he screamed and was hanging on to her. He didn't want to be put into that water. The child had been traumatized so much that he was afraid to get in the bathtub. And she was kind to him. And she got Trevor involved. And he and Trevor were close because they were sort of buddies and brothers. And she was able to ease him in to take a bath.

That night, Brandi Holder was supposed to come pick Bo up at 6:00. That had been arranged is what Ms. Center told you. And 6:00 came and Brandi did not show up. Brandi did not call. Ms. Venesky told you Brandi's car was back over at Mark's trailer. And they were unable to get in touch with her to find out if it was okay for VICTIM to go to Bible school with them that night. So they just took him on. And they said VICTIM acted like he wanted to go. So he went to Bible school with Trevor and Ms. Center and Ms. Venesky.

And after that was over, Ms. Venesky drove everybody home. And then Trevor walked VICTIM over to his trailer and took him home. And I believe he testified that that was the last time that he saw him.

Robin Center was so concerned about what she had observed that one day that she had the baby that she made it a point to get in her car and go over to Mark and Brandi's to try to check on Bo. That was how concerned she was. She didn't even really know them or VICTIM. She had met him that one day. And Mark was there. And she described how rude he was to her, that, you know, he was on the phone and didn't want to be bothered by her and told her to wait a damn minute.

And then, you know, she asked him, can I, please, see VICTIM? I'm concerned about him. I kept him the other day

and, you know, he seemed to be hurt. And Mark would not let her see him. And Mark said, He always has bruises. He's always falling around. They are excuses that you're going to hear more and more as you go through the case.

I thought that it was really interesting that the Defense wanted to bring up a petit larceny charge that Ms. Center had pled guilty to and then bring up a charge that had been dismissed, nolle prossed, under no suspicious circumstances or anything like that, as if that would discredit what she told you.

And you had the opportunity to listen to her and to watch her and to determine what you think about her credibility. She had no dog in this fight. She had no reason whatsoever to get involved in this and to come tell you what she did. She didn't know these people. She was just asked to baby-sit for a day.

And I think that the lengths that the Defense is willing to go to with those kind of tactics is indicative of the fact that they are afraid that you are going to look at the evidence in the case. And that's not what they want you to look at. They want to distract you with these other irrelevant matters. And that's just the first of them.

You heard from several people from the Capelli's Salon where Brandi was employed. And all of them told you

about a time in early July -- they think it was July 3rd when Brandi brought VICTIM into the salon to have a hair cut. And they talked about how they all noticed bruises on his face that they described as -- that looked as if someone had grabbed his face like this to the extent that bruises were left.

And they asked Brandi about it. And she said that VICTIM fell in the pool and she would not have believed it herself if there hadn't been a video taken of it. And she made a point to tell them this. But we've yet to see a video of this incident. And I submit to you the reason we haven't seen a video of this incident is because no video exists. This was just one excuse in her little tool box of excuses that she continued to pull out.

All of the ladies at the salon, Angie Eccles, and Paula Edmond, and Dianne Turner, talked about how VICTIM acted that day, that they had -- in the few times they had ever seen him, they found him to be a normal acting child and, you know, not disruptive or ill or anything like that. But on this particular day, VICTIM was upset. He was crying. He didn't want his hair cut. He was disagreeable.

And he did not want to leave the salon when Brandi said, it's time to go. They described a fit that he gave. And that Brandi's response to the fit was, You better behave or I'll take you home to Mark, which I submit to

you that little VICTIM probably took as a serious threat, based on what he was going through every day of his life.

You heard from a witness by the name of Brandy Mason who met Mark and Brandi for the first -- met Mark, Brandi, and VICTIM for the first time when they went on this camping trip that has been discussed to Lake Keowee. And that was for the 4th of July. She just met them for the first time now. Okay. She noticed bruises on VICTIM's face. She noticed that he had a bad speech problem, that something seemed to be wrong with his tongue. And she also pointed out that she thought that he acted as if he did not like to be around women. She asked Brandi about it and Brandi said that he fell and he bites his tongue.

She described the relationship that she observed during that short period of time that they were together, Mark and Brandi arguing, fussing, fighting. She had an opportunity to go to their house one time after that. And she described to you what happened and how upset she became that she had to leave because she was so upset by seeing VICTIM being jerked up by his wrist by his mother and carried without any support whatsoever, thrown in his room and locked in there wherein he proceeded to scream, cry, and bang on the door.

And, again, I'm going to point out to you that this woman, Brandy Mason, had no motive to say that stuff if it

weren't true. She didn't know them. She had just met them through the other friends on that one occasion.

She also told you about a conversation that she had with Brandi about a car wreck that may have happened. And Brandi described to her that she was in some kind of a car wreck or a near-miss car wreck or something where she hurt her leg and that VICTIM had a bruise on his shoulder, which was being attributed to he got injured by the seatbelt in this accident.

And she told -- Brandi told Brandy Mason that Mark did not believe she was really hurt. So she jabbed her keys in her leg to make marks to prove to him that she was hurt. That -- I'm not sure how to even characterize that kind of behavior as anything other than bizarre and extreme and an attempt to get attention for one's self.

Jason Bentley, who is Brandy Mason's fiance, talked to you and said he had met these folks one or two times, that on the 4th of July trip, he also noticed the very obvious speech situation that VICTIM had. He said it was like he talked with his tongue out of his mouth. And he noticed a yellowish bruise on VICTIM. And he asked Mark about it. And Mark said he fell. And I think you'll probably recall Mr. Bentley sitting here saying, I told him that I would call DSS if I saw another mark on this child because you don't hit a child.

He described to you that he had observed scenes between Mark and Brandi where Brandi was jealous of Mark spending time with other people. And her reaction to that was screaming, and fussing, and slamming doors. And I point this out to you because that is the real Brandi Holder. You have seen a Brandi Holder here this week who is sitting in a chair for the most part crying. And I'll also submit to you those tears are not for VICTIM. Those are tears for her because the buck has stopped here. And the last thing she wants you to do is to consider the overwhelming evidence of her guilt in this case.

She -- we know -- through her ex-husband's testimony, we know that she was an assertive woman. She left him because he bought a dirt bike with his overtime pay. And that made her so mad that he had done that that she left and she said, I'm not coming back until you sell it. So he sold it and she went back. That's a woman who knows what she wants and how to go about getting it. But, yet, she was never, ever, ever able to call for help for a defenseless two-and-a-half-year-old child who was suffering from being abused day in and day out.

She told you that she didn't get along with her parents. And so -- and that was because of something about they didn't like Mark. And so she and Mark had decided that Victim wasn't going to see them. So they kept VICTIM

from the grandparents, who, obviously, loved him very much, and I believe would have gladly taken that child if Brandi hadn't been so selfish as to want to perpetuate this little argument, instead of doing what was in VICTIM'S best interest and saying, mom, dad, there's some problems and I need you to keep VICTIM, can you do that? I can't imagine that they would have said no. But she was too selfish. It was all about her winning that argument, her and Mark winning that argument. It didn't matter about where VICTIM'S interest fed into this thing -- fit into this thing.

But I noted in her statement that she -- conveniently, she called her parents even though they were not having contact because of this little rift or whatever it was. I noticed in her statement, she said she did call her parents to talk to them about her car taxes. So when she needed something, you know, she would ask. She's willing to ask for help with car taxes, but not to help save the life of her child.

You did hear from John Parker, who was charged along with Brandi Holder and Mark Martucci. And he took the stand and he told you that he did not tell the full truth when he first started talking to the investigators. And he told them that he was scared, that he was nervous, that he just couldn't comprehend what had happened. And then

he proceeded to tell them what he knew about the abuse that he had seen Mark inflict.

And you had an opportunity to observe his demeanor and his believability. And I think it's important, too, to consider what you already know. And that is that he's pled guilty to aiding and abetting homicide by child abuse and is taking his responsibility in this.

He talked about numerous incidents of Mark beating VICTIM, of Mark taping his mouth shut when he wouldn't stop crying, that bath time must have just been sheer terror for that child with that man giving him a bath and dunking his head under the water and holding it there until he was gasping for air. And he'd bring him up and tell him, Crying is for pussys. And he would push him back down until he couldn't breath any more.

And his mother walks into the room while this is going on and says, You're just making it worse, and walks out. And she would have you believe -- sitting up on this stand yesterday, she would have you believe that she knew nothing, she saw nothing. And it's just completely unbelievable.

John Parker described some other things to you about how Mark would slap VICTIM'S face back and forth. And he described it, he said, The only way I know to describe it is like how you do a dog to make it mean.

John Parker was able to tell you that on the Sunday prior to VICTIM'S death on Wednesday that there had, in fact, been no four-wheeler accident. And he did note that on Tuesday that he knew that Victim was sick, that Victim was throwing up. And he was in and out of the house, as I recall his testimony, during the night. And then he and some others were playing on the computer for a while and that type thing.

The next thing he remembers is waking up and Mark is babbling. And Victim is, basically, unconscious is how he described it. And Mark is trying to give him mouth-to-mouth resuscitation. And John described the horribleness of the -- every time he pushed on him that bloody saliva would come out of this child's mouth. And John said, I just kept saying, What's wrong? What's wrong? Let's call an ambulance. Which Mark wouldn't do. He wouldn't give him the phone.

Mark called Brandi instead and said, Victim is not doing so good. I think I need to take him to the hospital. He's still throwing up and everything. So they agreed to meet at the hospital.

And when they get there, when Mark is asked -- and this is before Brandi gets there. When Mark is asked, you know, what happened to this baby? He tells that he was in a four-wheeler accident on Sunday, but he seemed fine.

But then he started vomiting. And so we thought we better bring him in.

Brandi arrives at the hospital and is taken to a separate area. And she, interestingly, also responds that VICTIM had been in a four-wheeler accident when she was asked about it.

Now, you know from her statements that are in evidence that you'll have a chance to further review more carefully, you know that she, finally, admits that there was no four-wheeler accident. So she knows she's lying right then at the very beginning of the hospital scenario. And so help me reconcile that if she's sitting on the stand telling us, I didn't see anything, I didn't know anything, I had no reason to suspect anything was wrong, why do you lie about how he got his injuries?

She proceeds to give a statement to law enforcement later that day. And she doesn't just say, you know, he was in a four-wheeler accident on Sunday, you know, and he might have gotten hurt.

She gives a really descriptive rendition of what happened. "This four-wheeler came up for sale and he bought it for Victim and fixed it. For the past two months, VICTIM wanted to go on a four-wheeler. It's a small four-wheeler and an adult needs to ride with him. And it doesn't go very fast. On the 4th of July, I bought him a

boat. And we all went to Lake Keowee and we took the boat out to the lake. When we got back 4th of July night" -- or, I guess, it was the 5th of July -- "the storage building had been broken into and the four-wheeler and the riding lawn mower had been stolen."

So, apparently, then victim was told that they would look for another four-wheeler for him. Okay. So here is where this explanation of victim's injuries comes in, the explanation given by the mother who knew nothing, saw nothing.

"Some of our friends came over Sunday with a four-wheeler that was for sale. We decided that we were going to buy it and take turns riding it. Matt, which I don't know his last name, and I don't know his phone number, nor address, but he lives with his pregnant girlfriend and her mother, was riding victim on the four-wheeler this past Sunday about 5:00 or 6:00 p.m. at the rented property where we live."

"Victim had his butt on the seat of the four-wheeler and was holding on to the handle bars while Matt was sitting behind him. Matt and victim were riding. And me, him, Miranda, and John were sitting in the grass watching them. Matt was driving through the yard and then went up a ditch and the right front wheel caught the sand in the ditch and the four-wheeler started to slide to the right."

"Matt took victim and tossed him to the left and then Matt jumped off to the left. We ran to victim, who fell in the ditch on the ground. The ditch is made of grass and tree branches out there. Victim was not crying. And I asked him if he was okay. And he said he was fine and said, 'Do it again.' I told victim to give it a break and we would try it later."

So that's pretty elaborate for what turned out to be a lie. This illustrates the intent that she had to cover-up what was really happening.

And, again, I point out that the four-wheeler story is given independently by Mark and by Brandi, which would lead one to believe that they had a prepared scenario to present when, and if, victim was seen by any doctors.

You heard from the law enforcement officers who were involved in the case, some of them more extensively than others. So that's what I want to focus on. But you know from the testimony that several of them became involved because there were several people who needed to be interviewed to find out what had happened to little victim.

All of them described to you the procedure that they use and are required to use to advise people of their rights and to make sure that they are talking freely and voluntarily to law enforcement. And you heard the testimony. And you heard the extensive lengths that they

went through to advise Ms. Holder of her rights. And the fact that she not only signed it at the bottom saying that she has read it and wants to make a statement and answer questions and understands and knows what she's doing, and no promises or threats have been made to her, and no pressure or coercion has been used against her. She signs her signature. She also initials all of the rights as the investigator is explaining them to her. She signs her signature there.

Now that the buck has stopped here, that waiver is very inconvenient for her. Because, I think, what was attempting to be established is that she was just so overwrought with emotion and trauma that she was just acting out of her mind or something. But that's not what you heard described by the law enforcement officers.

And so, I guess, in an effort to attempt to negate the fact that she signed this Waiver of Rights and that she then gave an eight-page statement and a five-page statement, they had to try to imply that there was some huge law enforcement conspiracy to frame Brandi Holder. And then all these unknown neighbors and people like that came into it and they were all part of it. I mean, it's totally ridiculous. It's just totally ridiculous.

She gave them this information. When you have a chance to sit down with these statements and you can go

over it again and see what's contained in here, you'll know that Investigator Silvaggio didn't make up, you know, where she -- when she lived with so and so at Apartment 122, and, you know, the details of her labor and delivery of victim. He didn't make all that up. He didn't know that. She gave him the information.

And then in the second statement, when she finally tells the truth, now, she says it's not the truth. Right in the -- flying in the face of a -- she's been advised of her rights on every single page. They've told her her rights. She's signed a rights waiver. She's initialed the beginning and end of every single paragraph. She's been allowed to read through it and make corrections. But, now, it's not true because that does not fit into the plan of, see no evil, hear no evil, I know of no evil. This statement will be very important to you as you review the evidence in the case.

The last things that I want to talk to you about are -- the final days of victim's life. And then I want to talk a little bit about the statute, the law that you're going to be given to apply to the case.

Brandi Holder did not work on Sunday. The salon was closed on Monday, you heard that. So she didn't work on Monday. She was home. On Tuesday, she called in sick. And the reason, according to her, that she called in sick

was because, "I was really nervous to my stomach. He was in a bad mood. And I felt like I better stay home." Something terrible had already happened or was getting ready to happen. And she knew she better be there. And so she was there for all these days.

And Dr. Ward talked to you about -- in addition to all the just various bruises all over the child's body, he talked to you about the internal damage, which is what, actually, killed this baby. He talked to you about that there was one episode of blunt force trauma to the child's abdomen that happened well before the final one. And I noticed that the Defense just forgot about that one. Because that doesn't fit into Brandi's defense at all.

There was one horrible blow to this child that could have been as far out as three days from the day that he died. It happened somewhere in there. Dr. Ward said he wasn't willing to go past three days. So that takes us to Sunday, Monday, Tuesday, when she was there.

And he said in addition to just the pain that one would feel in taking such a blow that it would be horrible. It would be horrible afterwards. And he said victim would not be acting like his normal self. He would be hurting. He would be whiny. He would be crying. He might not be able to eat because his intestines are all severed and messed up such that he's not functioning

properly. And he knew that this was an older episode because some of those tissues that he observed had already begun healing.

Well, then we get to Wednesday morning. And victim had been sick all night throwing up, throwing up, throwing up. And Brandi still wants you to believe that she had no reason to think that anybody was in danger or anything was going wrong. And she gets up and goes to work. She has no clients scheduled that day. She has a terribly sick child at home. And she gets in her car and goes to work. She consciously made the decision to leave victim there knowing what probably would happen to him.

Shortly after noon that day, Mark and John Parker realize that this baby has -- he's dying. He's that sick that he's dying. And they call Brandi -- Mark calls Brandi and says, Meet me at the hospital. Maybe when you look at all the facts together, maybe you'll decide that perhaps that was the way they had it planned, that they all couldn't be there at one time and so she would go to work and he would call her and they would meet at the hospital where they would both independently give the four-wheeler story. I think it's something for you to consider.

I want to talk to you just a minute about the homicide by child abuse statute. And this is the law that

you will be given in order to decide this case. Both of these people are charged with homicide by child abuse. And our law says that you are guilty of homicide by child abuse if you --

MR. BYRHOLDT: Your Honor, I'm going to object to her using the statute, because it leaves off a section of the statute. She's got a partial statute printed out, which is totally incorrect.

THE COURT: Well, I'll allow it.

Go ahead.

I'll charge the law, Mr. Byrholdt.

MR. BYRHOLDT: Okay.

MS. SEAY: "If you cause the death of a child under the age of 11 while committing child abuse or neglect and the death occurs under circumstances manifesting an extreme indifference to human life." And then it goes on to define what it means by child abuse or neglect. It goes on to define what it means by harm. And child abuse or neglect means an act or omission by any person which causes harm to the child's physical health or welfare. And harm occurs when a person inflicts or allows to be inflicted upon the child physical injury.

The evidence, in this case, has clearly shown that Mark Martucci and Brandi Holder committed child abuse or neglect. There were plenty of acts and omissions to talk

about. And the harm -- obviously, there was severe physical harm to this child resulting in his death.

And, like I told you, the law holds you equally responsible whether you inflict the blows or whether you allow them to be inflicted. Acts -- when we talk about acts or omissions, acts are not limited to hitting a child or kicking a child. An act can be a conscious decision by a person to place their child in harms way. An act can be deciding to ignore what is, obviously, really going on and do nothing.

One of the things that I think I need to acknowledge, in this case, is it is so hard and very, very difficult for you, me, other people to fathom that a mother would injure her child or allow her child to be injured and killed. That's really hard to fathom. But it happens. And you cannot ignore the evidence of it.

Did we ever hear evidence, in this case, indicating that Brandi Holder ever, ever placed victim's interest above her own? Did we ever hear any evidence that, as the mother of this baby, she nurtured him or comforted him? He's throwing up violently and he keeps being sick. And all you hear about is Mark dealing with him and cleaning it all up.

And, you know, children -- and you know this from being a child and you know this from if you have a child

or children, when children are hurt, they want their mommy. And victim didn't have his mommy. All he had was terror every single day. I cannot imagine the life that he lived in those last few weeks, particularly, when you get down to the last days of his life.

And you heard Dr. Ward talk about the pain that that child would have felt as his intestines have been severed and his abdomen is filling up with blood. And no one would help. Him mommy wouldn't help him. Mark wouldn't help him.

Dr. Ward told you that had someone sought medical treatment for him after the first episode that he might have had to have some surgery, obviously, for his intestinal damage, but that he could have been fixed. He could have been okay. But nobody did that. She didn't do it. And he didn't do it. And John Parker didn't do it. John Parker was there and he didn't do it.

And that's the next thing I want to tell you is, he has pled guilty to aiding and abetting homicide by child abuse. And I think Mr. Phillips mentioned to you that aiding and abetting is to assist, to offer assistance, to help, that kind of thing. Well, that's what he pled to. Because that's, I believe, what the evidence shows is he was minimally there in comparison to the two primary people responsible for victim, his mother and Mark Martucci.

And the Judge is going to give you an opportunity when he charges you on the law. He's going to charge you on this law, but he's also going to give you an additional charge called aiding and abetting homicide child abuse, and give you an option to consider that as to both of these defendants.

Well, aiding and abetting is what John Parker did. Aiding and abetting is not what she did. What she did, she allowed this. She knew about it and she let it go on. And it was as if she cared not a bit. She ran around doing her thing, getting in her vehicle, going to work, leaving victim there to be beaten and abused, emotionally as well. And then she'd come home and she would witness what she describes in these statements. And then she would just get up the next morning and go to work again. That's not aiding and abetting. That's allowing it to happen. And allowing it to happen is what caused his death.

And they both allowed it. You don't have to decide who did what. You may decide, well, both of them either inflicted or allowed it to be inflicted to find them guilty of that offense. And I submit to you that the evidence shows that that's what they are both guilty of, an extreme indifference to human life. If that isn't extreme indifference to human life, I don't know what is.

A defenseless vulnerable child, two years old. He

can't fend for himself. He depends on adults for everything he needs, everything, food, a roof over his head, clothes for his body, diapers. And this is what he gets. It is such a tragedy of magnitude that you can't even hardly look at it and believe that it's real. But it is real. And this was a real child born on [sic] , 2000. He died on July 17th, 2002. He died a horrible tortious death at the hands of people who were supposed to love and care for him.

I urge you to find a verdict of justice in this case.

CHARGE ON THE LAW

THE COURT: All right. No one in or out of the courtroom during my charge. So if anyone needs to leave, now is the time to go.

Now, ladies and gentlemen of the jury, as you know, the Defendants, in this case, are each charged with homicide by child abuse. This is a statutory offense and Section 16-3-85 of our Code of Laws reads in part as follows: "A person is guilty of homicide by child abuse if the person, one, causes the death of a child under the age of 11 years while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life. Or, secondly, knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results

in the death of a child under the age of 11."

For purposes of this section, the following definitions apply, "Child abuse or neglect means an act or omission by any person, which causes harm to the child's physical health or welfare. Harm to a child's health and welfare occurs when a person, (A) inflicts or allows to be inflicted upon the child physical injury, including injury sustained as a result of excessive corporal punishment, or, (B) fails to supply the child with health care, and the failure to do so causes a physical injury or condition resulting in death."

Now, ladies and gentlemen, I charge you that the term "extreme indifference" as used in the statute, is a mental state akin to intent characterized by a deliberate act culminating in death. With respect to the term "aids and abets," as used in the statute, I charge you that when one does an act in the presence of and with the assistance of another, the act is done by both.

However, proof of mere presence at the scene of a crime is not sufficient. Because intent to commit a crime is a necessary element of aiding and abetting. And the crime must have been committed with the person aiding and abetting by some overt act. The presence at the commission of a crime means to be sufficiently near so as to be able to aid and abet in its commission.

So, ladies and gentlemen, with respect to this statute, what the State must prove beyond a reasonable doubt is, first of all, the death of a child under the age of 11 years of age, in this case, VICTIM. And, secondly, that VICTIM was subjected to child abuse, as I have defined that term to you, by a parent, guardian, or a person responsible for his welfare.

Ladies and gentlemen, in the trial of a case, the State can rely on direct evidence or circumstantial evidence, or on a combination of the two as here.

Now, direct evidence proves the existence of a disputed fact by using one or more of our five senses without the aid of any inferences. For example, the testimony of a person who asserts or claims to have actual knowledge of a fact, in other words, an eyewitness, that is direct evidence.

Circumstantial evidence, on the other hand, is where certain facts known through using one or more of our five senses produces a logical inference that other facts exist without directly proving those facts. Circumstantial evidence is the proof of a chain of facts and circumstances indicating the existence of a fact.

Now, as I've said, the State may rely on either or both of this type evidence, direct or circumstantial. And neither is inferior to the other. The one is as good as

the other if equally convincing to you, the jury. They are each entitled to the same weight.

Now, you should weigh all the evidence in this case. And after doing so, if you're not convinced of the Defendants guilty beyond a reasonable doubt, then you must find them not guilty.

Ladies and gentlemen, no statement may be considered by you, the jury, unless you find beyond a reasonable doubt that the statement or statements, under the totality of the circumstances, was or were freely and voluntarily given. And if given while in custody that it or they were given after an explanation of his or her Miranda rights, which must have been understood by them. In other words, I charge you that a statement of a defendant cannot be considered against him or her unless he or she was first advised of his or her right to remain silent, of the right to counsel, and of the fact that any statement by him or her could be used against them. All of which must have been understood by him or her.

A statement cannot be considered against a defendant if it was made through force, or fear, or under duress, or compulsion of any kind, or if it was induced by any promise of leniency or reward of any kind. I further charge you, ladies and gentlemen, that a defendant's mental capacity or condition alone is not sufficient to

render a statement involuntary, but is a factor to be considered along with all the other attending facts and circumstances in the case in determining the voluntariness of the statement.

Now, the oral and written statements entered into evidence, in this case, must be disregarded by you and not considered against a defendant unless the State has satisfied you from the testimony beyond a reasonable doubt that they were, actually, made by the Defendants.

And even if you find that the statements were made by the Defendants, it still must be disregarded by you and not considered against the Defendant or Defendants unless the State has also satisfied you from the evidence beyond a reasonable doubt that they were not extorted by force, or fear, or induced by promise, but that it was free and voluntary in every respect. And, of course, in order to constitute any evidence, the statements must be believed by you, the jury.

Ladies and gentlemen, with respect to the statements introduced in evidence, in this case, I charge you that you can consider each Defendants statement only against the one who made it. In other words, I charge you that the statement of Ms. Holder can be considered by you only against her. And the statement of Mr. Martucci only against him. In no way can they be considered as evidence

of guilt of the co-defendant.

Ladies and gentlemen, the rules of evidence ordinarily do not permit witnesses to testify as to opinions and conclusions. Now, an exception to this rule exists as to those whom we call "expert witnesses." Witnesses who by education and/or experience have become an expert in some art, science, profession, or calling may state an opinion as to relevant and material matter in which they profess to be expert, and they also state their reasons for their opinions.

Now, you should consider the expert opinion received in evidence, in this case, and give it such weight as you think it deserves. If you should decide that the opinion of an expert is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of that opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion in its entirety. An expert's testimony is to be given no greater weight than that of other witnesses simply because that person has been declared to be an expert.

Ladies and gentlemen, our law does not compel a defendant in a criminal case to take the witness stand and testify. And no presumption of guilt may be raised and no inference of any kind may be drawn from the Defendant

Martucci's decision not to testify. Our law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses, or producing any evidence, or testifying. Therefore, the decision of this Defendant not to take the stand and testify in his behalf cannot be taken, held, discussed, or considered against him in any manner whatsoever.

Now, ladies and gentlemen, as jurors, in this case, you have a function or a responsibility that is entirely separate and distinct from my function in the case as the trial judge. The Constitution of our state does not allow me to charge you on the facts of this case or to discuss the facts with you, or in any way or manner let you know what my personal feelings, if any, are about this case. That is because you, and you alone, are the judges of the facts. Therefore, if during the course of this trial or if during the course of my charge, you have a feeling or you have been left with the impression that I have a personal feeling about this case one way or the another, then you disregard that feeling or that impression.

Now, it's your duty and your duty alone to weigh the testimony and evidence presented, in this case, and to pass upon the credibility or the believability of the witnesses you heard testify. In this connection, you have the right to believe all that a witness told you, or you

can disbelieve all that a witness told you. You can believe a part of what a witness told you and disbelieve a part of what a witness told you. You can believe one witness as against several, or you can believe several as against one. You also have the right to take into consideration any bias, or prejudice, or interest you feel a witness in the case might have.

I am the judge of the law in this case. And it is my duty to charge you the law that applies to the facts. It is not a question of what you feel the law might be or what it should be. It is not necessarily what the lawyers may have told you it is. Because, under your oath, you are required to take the law as I give it to you, apply that law to the facts, as you determine those facts to be, and to write your verdict accordingly.

It is also my duty to see that this trial is conducted according to the rules of court and the rules of evidence that apply to the admissibility of testimony and evidence, as I understand those rules to be. And, therefore, you are not to consider in any way or manner testimony or evidence that was ruled out by me as being not admissible.

Now, ladies and gentlemen, in this case, as in all criminal cases, these defendants come into this courtroom presumed to be innocent. And this presumption continues

and carries through the entire trial until and unless it is removed by evidence that satisfies you of their guilt beyond a reasonable doubt.

The burden is on the State, in this case, to prove these Defendants guilty and to prove each and every element of the offense with which they are charged beyond a reasonable doubt.

Now, some of you may, in the past, have served on civil jury cases. And, if so, you were probably told it was only necessary to prove that a fact was more likely true than not true. But in criminal cases, the State's proof must be more powerful than that. As I have told you, it must be beyond a reasonable doubt.

Now, proof beyond a reasonable doubt is proof that leaves you firmly convinced of these Defendants guilt. There are very few things in this world that we know with absolute certainty. And in criminal cases, our law does not require proof that overcomes every possible doubt.

If, based on your consideration of the testimony and evidence, in this case, you are firmly convinced that these Defendants are guilty, then you must find them guilty. If, on the other hand, you think there is a real possibility that they are not guilty, then you must resolve that doubt in their favor and find them not guilty.

Ladies and gentlemen, under the oath you took, in this case, you swore to try this case based only and solely on the testimony and evidence presented in this courtroom. I tell you that it is your duty to lay aside all outside opinions, bias, prejudice, or sympathy you may have in reaching your verdicts.

The word "verdict," ladies and gentlemen, is taken from the Latin word "veredicto." That means to speak the truth. You have no friends to reward, in this case, or enemies to punish. I charge you to abide by your oath and return verdicts that speak the truth.

Now, you'll have in the jury room with you, ladies and gentlemen, the indictments in this case. These indictments do not constitute evidence. They simply set forth the allegations by the State. These indictments are the legal documents that bring this case into the courtroom and presents it to you for your determination.

Ladies and gentlemen, there are one of three possible verdicts in this case. The first possible verdict is guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life. The second possible verdict is guilty of homicide by child abuse by knowingly aiding and abetting another person to commit child abuse or neglect. The third possible verdict is not guilty.

Ladies and gentlemen, whatever your verdict is on each of these two indictments, it must be unanimous. That is, all 12 of you must agree.

Madam Forelady, I have written out on a separate sheet of paper the three possible verdicts in this case. I do that simply to assist you in writing out whatever the unanimous verdict of the jury is. You should attach no significance to the sequence in which I have listed these verdicts. I have to put them in some sequence. And I do that simply because that's the sequence that arises out of the testimony and evidence presented in the case.

Madam Forelady, whatever the unanimous verdict of the jury is, you'll find a place on the back of each indictment where it says, "Verdict," please write out that verdict in the space provided. And then sign your name on the line where it says, "Foreperson of the Petit Jury."

Now, at this time, I'm required to go over my charge with the lawyers. I need you to go back into the jury room, but do not begin deliberating until I send word in for you to do so.

Thank you,

(WHEREUPON, the jury was excused from open court at approximately 10:53 a.m.)

THE COURT: Anything further from the State?

MS. SEAY: No, sir.

THE COURT: Anything further from the Defense?

MR. PHILLIPS: No, sir.

MR. BYRHOLDT: Yes, sir. I don't believe I heard that the verdict must be unanimous.

THE COURT: Yes, I did.

MR. BYRHOLDT: Okay. Then I missed it. I'm sorry.

MR. SUMNER: Nothing from the Defendant Martucci.

THE COURT: All right. Do you have all the exhibits together?

Tell them to deliberate, please. And bring my alternate in.

MR. BYRHOLDT: Defendant Holder has reviewed the evidence and no objection to the evidence.

MR. SUMNER: Same for Martucci. No objection to the evidence.

(Brief recess.)

THE COURT: Ms. Sullivan, since our 12 jurors have made it through this case, this will conclude your service on this case. And I have the pleasure of telling you that you're through for the week. You don't have to come back today or tomorrow.

The clerk will mail a voucher to you for your service and attached to that will be a slip for you to give to your employer, if you need that. If you should need one of those slips today, then the bailiffs can arrange to get

one for you.

JUROR #168, KATHY P. SULLIVAN: Okay.

THE COURT: Any question I can answer -- try to answer for you before I let you go?

JUROR #168, KATHY P. SULLIVAN: No, sir.

THE COURT: If you want to hang around and wait and see what the verdict is, on this case, you're certainly welcome to do that. You can remain in the courtroom. If you don't want to do that, you're free to go.

Thank you so much.

I appreciate your service.

JUROR #168, KATHY P. SULLIVAN: Thank you.

THE COURT: All right. Folks, if you'll be at ease, please.

(WHEREUPON, the proceedings were recessed at approximately 10:56 a.m.)

QUESTION FROM THE JURY

THE COURT: The jury has a question.

Now, the jury wants a copy of the statute. And they also have a question: "Does one verdict apply to both Defendants or could we render two different verdicts?"

I am aware of an opinion out of the Court of Appeals concerning providing a jury with a statute. I do that routinely. I think if there was any error at all in that

opinion, it was including the sentence. I think that was the objection. I will certainly not do that.

Is there any objection if I have Caroline run a copy of the statute and just let me simply black out the inapplicable portions that I did not read?

MS. SEAY: No objection from the State.

MR. BYRHOLDT: No objection, Your Honor.

And I've got a copy of the statute that we can just cut off.

THE COURT: All right.

MR. SUMNER: We'd like to see it, Your Honor, before it goes back.

THE COURT: Sure.

MR. BYRHOLDT: Judge, at the end of the first page, it leaves out the sentencing portion. You may want to delete "C." It just says it's a felony.

THE COURT: All I have done is strike out the part of Section B that says, "Failing to supply adequate food, clothing, and shelter." The only part of that section that would apply would be health care.

Do you want to take a look at it, Mr. Sumner?

MR. SUMNER: Yes, sir.

No objection, Your Honor.

MS. SEAY: No objection.

THE COURT: Okay. Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 11:25 a.m.)

THE COURT: Now, Madam Forelady, you've asked for a copy of the statute that I read to you and I'm going to provide that for you. I have blacked out or deleted the inapplicable sections that don't apply to this case. So I'm giving you verbatim what I read to you from the statute.

Your next question, "Does one verdict apply to both Defendants or could we render two different verdicts?"

The answer to that question is, yes, you can find each Defendant guilty under Section A, or you can find them both under -- A(1) or both under A(2), or you can find one guilty of one and one the other.

Does that answer your question?

(All jurors said yes.)

THE COURT: Okay. If you'll retire and continue with your deliberations.

(WHEREUPON, the jury was excused from open court at approximately 11:26 a.m.)

THE COURT: All right. Thank you.

If you all will be at ease and stay close, please.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and admitted into evidence.)

(WHEREUPON, the proceedings were recessed at approximately 11:27 a.m.)

THE COURT: Now, ladies and gentlemen, I am informed that we have a verdict in this case. And, obviously, we do not know what that verdict is. But I need for everyone in the courtroom to understand that regardless of what the verdict is that I will not permit or condone any displays of emotion, no outbursts of any kind. Should there be any, that will constitute contempt of court. And I assure you that I will punish accordingly.

All right. Now, does anyone in the courtroom not understand what I just said? If so, stand and give me your name.

(There was no response.)

THE COURT: All right. If anyone does not believe they can accept the verdict without displaying emotion, then now is the time to leave the courtroom.

MR. BYRHOLDT: Can we have one minute, Your Honor?

THE COURT: Sure.

(Pause.)

MR. BYRHOLDT: Thank you, Judge.

THE COURT: I see someone just walked in the courtroom and did not hear my comments.

No one else in the courtroom.

Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 11:57 a.m.)

VERDICT

THE COURT: Madam Forelady, if you've reached a verdict, would you hand it to the bailiff, please, ma'am.

Would you, please, publish the verdicts?

THE CLERK: Your Honor, case number 2003-GS-23-1307, the State v. Brandi Lynn Turner Holder, also known as Brandi Lynn Turner, indicted for homicide by child abuse, the verdict is guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life, signed Elaine B. Cross, Forelady.

2003-1312, the State v. Mark Anthony Martucci, indicted for homicide by child abuse, the verdict is guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life, signed Elaine B. Cross, Forelady.

If these are your verdicts, then, please, raise your right hand.

(All jurors raised their hand.)

THE COURT: All right. Anything further from the jury from the State?

MS. SEAY: No, sir.

THE COURT: From the Defense?

MR. SUMNER: No, sir.

MR. BYRHOLDT: No, Your Honor.

THE COURT: Thank you, ladies and gentlemen, for your

service on this case. And thank you for your service this week. Insofar as you're concerned, you're through. You don't have to come back today or tomorrow.

So let me take this opportunity to thank you for coming and serving. I want you to know that we're well aware of the fact that jury service is a burden to you. We know that it's difficult for you to take time off from your jobs and families and spend it with us on jury duty.

I do hope you understand the importance of being here this week. For without your presence, we could not get off from our docket the cases that we do. It is a very important service that you've performed this week. And I thank you very much for that service.

Now, the clerk will mail vouchers to you for your service this week. And attached to that voucher will be a slip for you to give to your employer should you need one. And should you need one of those slips today, then the bailiffs can see that you get one.

Now, do I have any questions from any member of the panel that I can try to answer for you before letting you go? Any questions?

(There was no response.)

THE COURT: I enjoyed working with you so much.

Thank you.

You're free to go.

(WHEREUPON, the jury exited the courtroom at approximately 12:00 p.m.)

MOTIONS

THE COURT: Any motions?

MR. SUMNER: One second, please, Your Honor.

MR. BYRHOLDT: Your Honor --

THE COURT: Mr. Byrholdt.

MR. BYRHOLDT: -- on behalf of Ms. Holder, I understand it's a determination for the jury to make, but we think the evidence, in this case, at best, supported a finding that she aided and abetted under Section 2 of the statute, Your Honor. And we'd ask the Judge to set aside the verdict.

THE COURT: And I'd have to deny that motion.

MR. BYRHOLDT: I understand, Your Honor.

Thank you.

MR. SUMNER: No motions.

THE COURT: All right. Do you have the sentencing sheets, Solicitor?

MS. SEAY: Your Honor, they are in another folder. I can be back in just a moment.

THE COURT: Okay. Please hurry.

MR. BYRHOLDT: Your Honor, can I step out and explain what happened to the family?

THE COURT: Yes, you can.

(WHEREUPON, Court's Exhibit Nos. 4 and 5 were marked for identification and admitted into evidence.)

(Brief recess.)

THE COURT: All right. Come around, please.

Mr. Sumner, and, Mr. Quinn, do you want to come around and let me hear from you first since this will be a sealed sentence?

MR. SUMNER: Yes, sir, Your Honor.

Give me just one second. I didn't -- I was unaware of whether or not we would argue now or -- I was incorrect on that point. Give me just one second on that.

THE COURT: Okay.

MR. SUMNER: Your Honor, the only thing I want to bring to the Court's attention, I'm unaware of any prior record that Mr. Martucci had. I think the facts of the case, certainly, speak for themselves. You've heard it for the last four days. So that's all that we -- I don't know of anything else I need to say.

THE COURT: Thank you.

All right. Come around.

Now, Ms. Holder, you have a perfect right, at this time, to address the Court with respect to sentence. Anything now that you would like to say before I sentence you?

DEFENDANT HOLDER: Yes, Your Honor.

I'm sorry that I didn't protect victim with my full power. And I live with that every day of my life.

THE COURT: All right. Mr. Byrholdt.

MR. BYRHOLDT: May it please the Court?

We've got her father and her fiance would like to speak. I ask them to identify --

Mr. Holder, do you want to speak first?

THE COURT: You can come around, Mr. Holder. You can come up.

MR. BYRHOLDT: And give us your full name so the court reporter can take it down.

MR. BENJAMIN HOLDER: Benjamin L. Holder, Sr.

THE COURT: All right. Mr. Holder.

MR. BENJAMIN HOLDER: First of all, Judge, I'd like to thank you for the courtroom that you've conducted this week. As a concerned parent, that means a lot to me.

THE COURT: I understand that.

MR. BENJAMIN HOLDER: And I thank you.

Next, I would like to say that the happiest day of my life was the day that my daughter was born. She's been a perfect child. And we have a special bond that I just can't imagine living the rest of my life without her. And I plead for mercy from the Court.

THE COURT: Thank you, sir.

Yes, sir.

Do you want to come around, please, sir, and give me your name?

MR. BYRHOLDT: Give your full name, please.

MR. STEVEN PATRICK KING: Steven Patrick King.

THE COURT: All right. Mr. King.

MR. STEVEN PATRICK KING: I, unfortunately, never had the opportunity to meet victim. Victim, from what I've been told, was the most wonderful, precious thing Brandi ever has had in her life.

And I just beg you, she has lost one child. She's carrying my child right now. And I beg you for mercy on her. Her family has been tragically through enough as it is. The death of victim was a very unfortunate event. And I just beg for mercy.

MR. BYRHOLDT: Thank you, Steve.

THE COURT: Mr. Phillips.

MR. PHILLIPS: Your Honor, Brandi is here today. She has no prior record. She was very young when all this was going on. I just ask the Court to consider all the mitigating circumstances that you've heard over the last three and a half, four days. And we'd ask you for mercy on Brandi.

THE COURT: Mr. Phillips, I'll have to say, I haven't heard very many mitigating circumstances. You know, we tried this case. And we have officers with 30 years

experience testifying as to what occurred during the statement. We have witnesses who have no reason to come into the Court and lie, testify against Ms. Holder. We have had coworkers to come in and testify. And, yet, she denies all of this. She says it never happened.

I just -- I don't know what went wrong with you, young lady.

MR. BYRHOLDT: Your Honor, may I be heard briefly?

THE COURT: Oh, yes, sir. I'm sorry, Mr. Byrholdt. You certainly may.

MR. BYRHOLDT: I apologize, Your Honor.

The questions that bother you at this moment, I've been wrestling with since I got involved, in this case, back in November. And I can't give you an explanation of that. I've asked her, Why are you telling me that you didn't know these things? And that is the story that she has stuck with since I first met her. I told her, it's not -- as, you know, it's not one that we would make up because --

THE COURT: Oh, I understand that.

MR. BYRHOLDT: -- it's very hard to fathom. I don't know if it's the three and a half years while this is pending that you deal with this on a daily basis that you just can't make yourself believe that this happened.

THE COURT: I suspect she's probably in a period of

denial.

MR. BYRHOLDT: And that was my -- what we talked with her about. My only concern, Your Honor -- in the 25 years I've been doing this, we have, essentially, a 21-year-old lady that made wrong decisions. We've lost victim. Putting her in jail for the rest of her life will never bring back victim. It may send a message. But I think the statute does give you leeway of 20 years to life.

We attempted to resolve this matter. I would just ask the Court in your wisdom, your discretion, and your mercy to fashion a sentence which speaks justice, but which is tempered with mercy.

This family has lost a grandson. This man that took a child into his life, not legally, but through love has lost a child. Now, they're in the process of losing their daughter for the rest of their lives. And I would just ask you to temper your sentence with mercy, sir.

THE COURT: Thank you.

Solicitor, anything?

MS. SEAY: Nothing further from the State.

SENTENCING

THE COURT: All right. Now, with respect to Mr. Martucci, since he did not participate in his trial, this sentence will be sealed. A bench warrant will be issued for his arrest. And when he is apprehended, he

will be brought into court and the sentence imposed.

Ms. Holder, the sentence of the Court is you be committed to the Department of Corrections for a period of 25 years.

MR. BYRHOLDT: Thank you, Your Honor.

THE COURT: All right. That will conclude this case.

**********END OF TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th, 7th, 8th, and 9th days of February, 2006.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2006

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Brandi L. Holder, Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Opinion No. 26644
Heard March 18, 2009 - Filed May 4, 2009

AFFIRMED

Deputy Chief Appellate Defender for Capital Appeals Robert M. Dudek, of South Carolina Commission on Indigent Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Norman Mark Rapoport, of Columbia; and Solicitor Robert Mills Ariail, of Greenville, for Respondent.

JUSTICE BEATTY: Brandi L. Holder was convicted of homicide by child abuse for the death of her son, VICTIM, and was sentenced to twenty-five years in prison. Holder appeals, arguing the trial court committed reversible error (1) in allowing a police investigator to testify regarding statements made by a codefendant during interrogation, (2) in admitting testimony from a coworker regarding her behavior, (3) in admitting autopsy photographs, and (4) in admitting photographs taken of her son one month before his death that suggested prior abuse. We affirm.

I. FACTS

Holder's son, [redacted] was born on January 3, 2000. Holder started working at a hair salon in January 2002, and she thereafter met Mark Martucci, who worked at a carpet store next door. Holder and her son moved in with Martucci sometime in early 2002. Martucci was not [redacted]'s biological father.

Between 12:00 p.m. and 1:00 p.m. on Wednesday, July 17, 2002, [redacted] who was two-and-a-half years old, was brought unconscious to the emergency room at Allen-Bennett Hospital in Greenville, South Carolina by Martucci and another man, identified as John Parker.[1] [redacted] was not breathing and had no heartbeat. Martucci told hospital personnel that [redacted] had fallen off an All-Terrain Vehicle (ATV) earlier that week and had injured himself. When Holder later arrived at the hospital, she also told hospital personnel that [redacted] had been involved in an ATV accident.

Extensive efforts were made to resuscitate [redacted] but they were unsuccessful and he was pronounced dead. Dr. Michael Eugene Ward, a pathologist who conducted the autopsy of [redacted] testified that [redacted]'s injuries were not caused by an accident. [redacted] had bruising in the pattern of knuckle marks on his face, and the inside of his lip had been split. Bruising was present around his mouth and face. [redacted] also had numerous bruises all over his body that were in various stages of healing. Dr. Ward concluded [redacted] died as a result of blunt force trauma to the abdomen. Specifically, [redacted] sustained trauma to the visceral organs of his abdomen with a tear in the small intestine, trauma to his pancreas, and bleeding into the abdominal cavity that caused his body to shut down.

Holder gave a statement to the police initially denying any knowledge of abuse. When she was told by investigators that they had discovered there had been no ATV accident, Holder indicated that she wanted to tell what had happened and she gave a second statement in which she admitted having knowledge of repeated incidents of Martucci's abuse of [redacted].[2]

At a joint trial, Holder and Martucci were convicted of homicide by child abuse in the death of [redacted] Holder was sentenced to twenty-five years in prison. Martucci did not appear for trial, so his sentence was sealed. Martucci subsequently appeared to receive his sentence and was ordered to serve life in prison. See State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008).

II. LAW/ANALYSIS

"A person is guilty of homicide by child abuse if the person . . . causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1) (2003).

"Child abuse or neglect" is defined for purposes of the statute as "an act or omission by any person which causes harm to the child's physical health or welfare." Id. § 16-3-

85(B)(1). "Harm to the child's physical health or welfare" occurs when someone "inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment." Id. § 16-3-85(B)(2)(a).

(A) Statements by Codefendant

Holder asserts the trial court erred in allowing Doug Kelly, an investigator with the Greenville County Sheriff's Office, to relate what codefendant Martucci told him during interrogation. Martucci's redacted oral statement was allowed in to the effect that he had noticed some bruises on Bo, and "he felt like she had been inflicting them." Holder contends her Sixth Amendment right to confront and cross-examine witnesses was denied, citing Bruton v. United States, 391 U.S. 123 (1968), because Martucci did not testify at trial. Holder alleges the redaction of Martucci's statement was insufficient in this case.

The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses. Richardson v. Marsh, 481 U.S. 200, 206 (1987).

In Bruton, the Supreme Court held that, in a joint trial, admission of a non-testifying codefendant's statement that expressly inculpates the defendant violates the defendant's rights under the Confrontation Clause, as the use of only a limiting instruction is insufficient to remove any prejudice to the defendant. 391 U.S. at 136-37.

In Richardson, the Supreme Court remarked that the rule announced in Bruton is a "narrow" one that applies only when the statement implicates the defendant "on its face"; the rule does not apply where the statement becomes incriminating only when linked to other evidence introduced at trial, such as the defendant's own testimony. Richardson, 481 U.S. at 207-08. The Supreme Court also noted Bruton can be complied with by the use of redaction:

Even more significantly, evidence requiring linkage differs from evidence incriminating on its face in the practical effects which application of the *Bruton* exception would produce. If limited to facially incriminating confessions, *Bruton* can be complied with by redaction--a possibility suggested in that opinion itself. *Id., at 134, n. 10, 88 S.Ct., at 1626, n. 10.* If extended to confessions incriminating by connection, not only is that not possible, but it is not even possible to predict the admissibility of a confession in advance of trial.

Id. at 208-09.

In Gray v. Maryland, 523 U.S. 185 (1998), a 5-4 decision, the Supreme Court considered Bruton's application when the redaction consists of replacement of the defendant's name with an obvious blank space, a symbol, or a word such as "deleted." The Court noted the Richardson decision had limited the scope of Bruton to instances where the reference to

the defendant was on the face of the statement. However, the majority in Gray held that a statement that "substituted blanks and the word 'delete' for the petitioner's proper name[] falls within the class of statements to which *Bruton*'s protections apply." Id. at 197.

The majority reasoned that one must look at the kind of inferences that are necessary to make a connection to the defendant, not the simple fact that there are inferences, to determine the applicability of Bruton. Id. at 196. Richardson involved statements that did not directly refer to the defendant, but which became incriminating only when linked to other evidence developed at trial. Id. at 196. However, the Gray Court stated "[t]he inferences at issue here [in Gray] involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even [if the statement was] the very first item introduced at trial." Id. Thus, the statements are protected under Bruton because in such instances the defendant is implicated almost as if there was a direct reference, and the connection does not depend on other evidence introduced at trial. Id. at 196-97.

Violations of the Confrontation Clause are subject to a harmless-error analysis. State v. Murphy, 270 S.C. 642, 644, 244 S.E.2d 36, 36-37 (1978) (observing where a wealth of evidence exists against the appellant, it eliminates any error in the admission of a codefendant's statement). "A [C]onfrontation [C]lause error is harmless if the evidence is overwhelming and the violation so insignificant by comparison that we are persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." State v. Vincent, 120 P.3d 120, 124 (Wash. Ct. App. 2005). "Considerations include the importance of the witness's testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case."[3] Id.

In the current appeal, Holder argues the substitution of her name with the pronoun "she" was insufficient to obscure her identity because the jury could readily determine that the statement referred to her as she was the only female defendant. We find the redaction in this case is analogous to that discussed in Gray because, despite the redaction, it was apparent that Martucci was referring to Holder, and this inference was one that could be readily made even without reliance on the other testimony developed at trial. Thus, we find the admission of the redacted statement violated Holder's rights under the Confrontation Clause as Martucci did not testify and was not subject to cross-examination.

However, even though the redacted statement was admitted in error, we hold the error was harmless beyond a reasonable doubt in the context of the entire record. Holder admitted in her own statement to the police that she observed numerous instances where Martucci abused her child, including dunking him in the bathtub to stop him from crying while he gasped for air; striking him on the legs, back, and face; and taping his mouth shut, among other things. In her police statement, Holder stated Martucci's abuse of [redacted] began when Martucci lost his job and he began babysitting [redacted].

Holder also initially told hospital personnel that [redacted] was injured in an ATV accident, and then later admitted there was no accident. Holder was at home with Martucci and her son on the Sunday, Monday, and Tuesday prior to her son's death on Wednesday, July 17, 2002, so she was present during the time frame the pathologist testified the fatal injuries occurred. According to the medical authorities, [redacted]s distress would have been acute and impossible to ignore, and had [redacted] been taken to the hospital when the injuries occurred, he could have been saved. This failure to timely seek medical attention for [redacted] is evidence of extreme indifference to human life.

Coworkers and neighbors also testified that they had seen bruising on [redacted] while he was in the company of Holder and that they had voiced their concerns to her. In fact, Holder was present when a neighbor took photographs to document the injuries. Holder also fabricated statements to coworkers and even to hospital personnel on the day of her son's death to hide the true source of [redacted]'s injuries. Thus, Holder undoubtedly was aware of and was complicit in the severe abuse of her son, leading to his eventual death by beating at the age of two-and-a-half years. Thus, it was established beyond a reasonable doubt that Holder was guilty of the offense of homicide by child abuse independent of the challenged statement so the error was harmless in the context of the entire record.

(B) Coworker's Testimony Regarding Holder

Holder next contends the trial court erred in allowing a coworker, Angela Eccles, to testify that Holder began dressing differently and talked less about her child once her relationship began with Martucci. Holder argues the testimony was inadmissible character evidence under Rule 404(a) of the South Carolina Rules of Evidence (SCRE) because it implied Holder "was acting in conformity with this bad trait of her character by putting her relationship with Martucci ahead of her own child's best interests."

Eccles testified that she is a hair stylist at Capelli's Hair Salon in Mauldin and had worked there for seven years. Holder started working at the salon in January 2002. Mark Martucci worked at a carpet store next door. Martucci was one of Holder's first clients, and Eccles was aware that the two had developed a relationship and moved in together.

Eccles stated that when Holder brought her son, [redacted], to the salon for a haircut in early July 2002, she noticed that [redacted] "had bruises along the sides of his face." Her impression, based on his appearance, was that somebody had squeezed his face. Eccles asked Holder about it, and Holder said her son had been pushed into a swimming pool by a dog at the home of Martucci's sister. Eccles testified that Holder "added that she wouldn't have believed it herself, except it got caught on video because Mark's sister was videotaping at the time."[4]

Eccles said that during this July visit to the salon, Holder's son seemed upset compared to the three or four times she had previously seen him and he was crying. Holder told her son, "You better behave or I'm going to take you home to Mark." At that point, the child fell to the floor and cried and screamed, which Eccles said concerned her because she "thought it was odd."

When asked to generally describe Holder during the time she worked with her, Eccles stated:

When she first started working there, she talked more about [redacted] and -- it's hard to explain. She was a little more soft-spoken. She dressed a little more conservatively. And over a period of weeks, it started to change, especially now looking back at the change of her dress. She started dressing a little different.

Defense counsel objected to this last response quoted above, summarily stating, "reasonable objection under Rule 404, Your Honor, placing her character in evidence." The trial court overruled the objection. Eccles concluded her testimony on this particular point by stating that Holder did not talk as much about [redacted] and starting talking about "Mark, Mark, Mark" basically "all the time" once they met. She stated she did "know if it's just because we're all moms, but we [the other salon employees] all talk[ed] about our kids, kids, kids."

Eccles later testified, without objection, that Holder had stopped speaking to her parents, although Holder said they had tried to call her. Eccles stated, "I don't remember if it was her or Mark that had told her she didn't need to talk to them or if she herself just did not want to have anything to do with them anymore."

The State contends the testimony was relevant to Holder's state of mind as it was required to prove that Holder caused the death of her child while committing abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life. Thus, the evidence about Holder's relationship with Martucci, her changed appearance, and her failed relationship with her parents[5] was relevant to Holder's state of mind.

"The admission or exclusion of testimonial evidence falls within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent abuse resulting in prejudice." State v. Brannon, 341 S.C. 271, 277, 533 S.E.2d 345, 348 (Ct. App. 2000).

"Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Rule 404(a), SCRE. An exception to this rule exists for "[e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same." Id. Rule 404(a)(1).

"The term 'character' refers to a generalized description of a person's disposition or a general trait such as honesty, temperance or peacefulness." State v. Nelson, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998). "Generally speaking, character refers to an aspect of an individual's personality which is usually described in evidentiary law as a 'propensity.'" Id. (citations omitted).

"A person is guilty of homicide by child abuse if the person . . . causes the death of a child under the age of eleven while committing child abuse or neglect, and the death

occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1) (2003) (emphasis added).

For purposes of the homicide by child abuse statute, "extreme indifference" has been defined as "a mental state akin to intent characterized by a deliberate act culminating in death." McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002)).

We conclude Eccles's testimony regarding Holder is not inadmissible character evidence. Rather, the coworker was merely recounting her version of events leading up to the time Holder's child was killed, as well as her impression of Holder during this time frame. The State's purpose for offering the testimony was not to show Holder had a propensity to abuse her child in conformance with a character trait. Rather, it was to show Holder's strong desire to please Martucci instead of protecting the welfare of her child and to establish an element of the offense, that she manifested an extreme indifference to the well-being of her son.

Moreover, the impact of this brief evidence was minimal in light of the record as a whole, and it was cumulative to other evidence along these same lines that was admitted without objection. See, e.g., State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001) (holding the erroneous admission of evidence is harmless beyond a reasonable doubt where it is minimal in the context of the entire record and cumulative to other testimony admitted without objection).

(C) Autopsy Photographs

Holder next argues the trial court committed reversible error in admitting autopsy photographs, especially those showing [redacted] internal injuries, into evidence.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id.

"To constitute unfair prejudice, the photographs must create 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

In the current appeal, the pathologist, Dr. Michael Eugene Ward, testified, in camera, that the photographs would help him in "demonstrating the anatomic relationships and the disruption of those anatomic relationships. There may be some lack of knowledge of internal anatomy [among the jurors]." Dr. Ward stated he could explain the injuries to the jury without the photographs, but he was not sure if he could "explain it to their understanding." He also noted that this "would be the best way by not only demonstrating the anatomic relationships, but also showing the injuries."

During his testimony, Dr. Ward explained that some of [redacted] internal injuries showed signs of trying to heal, so they had been inflicted more than a day before his death. Dr. Ward stated [redacted] also had external bruising on his abdomen that was probably inflicted closer to the time of his death. The pathologist also indicated blunt trauma force was used and noted the extensive bruising over the child's body. Dr. Ward used the photographs to explain the evidence and the reasons for his findings.

We find the photographs clearly demonstrate the extent and nature of the injuries in a way that would not be as easily understood based on the testimony alone. The photographs corroborated the pathologist's testimony about the extensive bruising on the child, which was in various stages of healing, and showed that even internal organs manifest signs of bruising. This is particularly helpful to jurors who are unversed in medical matters. Although Holder testified she was unaware of any marks on her son prior to his death and thought he was suffering from simple food poisoning, it is abundantly clear from the extensive bruising on the child, which was in various stages of healing, and the torn internal organs, that he had been seriously injured. These photographs demonstrate that the damage to the child would have been difficult to ignore.

Although the photographs were graphic, the facts in this case were graphic, and there is no suggestion that their admission had an undue tendency to suggest a decision on an improper basis. We hold the trial court properly exercised its discretion in admitting the autopsy photographs in this case. See, e.g., State v. Ward, 374 S.C. 606, 613, 649 S.E.2d 145, 149 (Ct. App. 2007) (holding the trial court did not abuse its discretion in allowing two autopsy photographs to illustrate a graze wound on the murder victim's back as the jury's understanding of the graze wound was necessary to rebut the defense's argument about the angle of the shot); State v. Jarrell, 350 S.C. 90, 106-07, 564 S.E.2d 362, 371 (Ct. App. 2002) (finding the trial court properly admitted several autopsy photographs in a case of homicide by child abuse because they were necessary for the jury to comprehend the pathologist's testimony regarding the extent of the baby's injuries and the nature of the abuse; the court noted that, "while some of 'the photograph[s] are graphic, the facts of the case are very graphic' and the photos helped the jury understand the pathologist's testimony" (alteration in original)).

(D) Photographs Showing Prior Abuse of the Victim

Holder lastly argues the trial court erred in admitting State's Exhibits 16 and 17, photographs taken of her son approximately a month before his death, because they were intended to imply her son had previously been abused. Holder contends the photographs were inadmissible evidence of prior bad acts and the State failed to prove the prior abuse by clear and convincing evidence. Holder asserts the photographs "show minor injuries at best [even] if they were intentionally inflicted."

State's Exhibit 16 shows a woman kneeling next to [redacted] whose back is facing the camera. The woman has pulled [redacted]'s T-shirt up to reveal faint bruising on his back. In State's Exhibit 17, the same woman is holding [redacted]'s right arm straight out with the inside of the

arm facing up. A small, triangular mark resembling a burn is visible just below the child's elbow. Both photographs bear the date June 20, 2002.

Elizabeth Jane Venesky testified that she lived next door to Martucci, Holder, and [redacted], and that she is the woman who appears in the two photographs. She said the photographs were taken by her husband, Ronald Venesky, on or about June 20, 2002, and Holder was present. Venesky stated when Holder came over that day with [redacted], she noticed [redacted] had a bruise on his shoulder, a burn mark, and "a busted lip." Venesky's son, who played with [redacted], mentioned seeing bruises on [redacted], so Venesky decided to have some photographs taken because she thought "something is not right [with] this." Venesky explained, "And so that's how we came to take the pictures. Because I thought, well, if something happens or we see he's being abused, at least, we'll have some kind of pictures."

Venesky further testified that, around the same time the photographs were taken, Holder and [redacted] spent the night with her after Holder told her Martucci had kicked them out. The next day, Venesky arranged for her step-cousin to take care of [redacted] for a day after Holder told her she needed someone to keep him and did not want to contact her parents.

Venesky stated Holder thereafter called her and was angry that photographs had been taken of her son. Venesky reminded Holder that she had been present when the photographs were made. Venesky recalled that Holder stated at one point during their conversation that "she was just mad, that she smacked [redacted] in the mouth when he back-talked her."

Robin Center, Venesky's step-cousin, testified that when Holder left [redacted] with her, she noticed [redacted] had a triangular burn mark, which looked like it was caused by the end of an iron, as well as a swollen, lacerated lip. [redacted] also had a large black bruise on the back of his neck, as well as "purplish-looking" bruises on the small of his back and some additional, lighter bruising. Center stated "there's just so much that I s[aw] on him" and it was "really shocking."

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. "It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Id. Evidence of prior bad acts that are not the subject of a conviction must be establishing by clear and convincing evidence. State v. Smith, 300 S.C. 216, 218, 387 S.E.2d 245, 246-47 (1989). "The evidence admitted 'must logically relate to the crime with which the defendant has been charged.'" State v. Stokes, 381 S.C. 390, ___, 673 S.E.2d 434, 441 (2009) (quoting State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000)).

The probative value of the evidence must outweigh the danger of unfair prejudice. Rule 403, SCRE. The determination of the prejudicial effect of the challenged evidence must be based on the entire record, and the result will generally turn on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

"A person is guilty of homicide by child abuse if the person . . . causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." S.C. Code Ann. § 16-3-85(A)(1) (2003).

For purposes of the homicide by child abuse statute, "child abuse or neglect" is defined as "an act or omission by any person which causes harm to the child's physical health or welfare." Id. § 16-3-85(B)(1). The statute defines "harm" as occurring when a person "inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment." Id. § 16-3-85(B)(2)(a) (emphasis added).

"Extreme indifference" as used in the statute has been defined as "a mental state akin to intent characterized by a deliberate act culminating in death." McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2008) (quoting State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 367 (Ct. App. 2002)).

"The statute makes clear that child abuse may be committed by either **an act or an omission** which causes harm to a child's physical health." State v. Smith, 359 S.C. 481, 492, 597 S.E.2d 888, 894 (Ct. App. 2004) (emphasis in original). "Additionally, harm to a child's health occurs when a person either **inflicts, or allows to be inflicted** physical injury upon a child." Id. (emphasis in original). In Smith, the court concluded there was evidence of homicide by child abuse where, among other things, the medical evidence indicated the injuries to the child were so severe that they were the result of child abuse that would have been readily apparent. Id.

We hold the trial court did not abuse its discretion in admitting the photographs in this instance. Under section 16-3-85, the State was required to show Holder manifested an "extreme indifference" to her child's well-being. These photographs tend to establish Holder was aware of ongoing abuse of her child, which is directly relevant to whether her acts or omissions resulted in the death of [redacted]. They are thus relevant to establish elements of the offense, including "extreme indifference."

Further, the photographs established a pattern of continuous abuse and neglect, which made it more probable that [redacted] was a victim of child abuse or neglect rather than a mere accident. The State's primary theory in this case was that Holder had allowed Martucci to abuse [redacted] in the months prior to his death. Holder's culpability for homicide by child abuse arose from her complicity in the abuse, which culminated in the death of [redacted] on July 17, 2002 from severe internal injuries that had been inflicted in the day or days prior to his death.

The injuries to [redacted] at the time these photographs were taken, including the bruising on his back and the mark on his arm, were similar to the injuries he had sustained prior to his death, as the pathologist noted extensive bruising on [redacted]'s back and an unusual mark on his arm, among other injuries. [redacted] also had a lacerated mouth at the time of his death, which is similar to the split lip the witnesses testified they observed in June 2002. See, e.g., State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008) ("Where there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the Court of Appeals have held prior bad acts are admissible to demonstrate a common scheme or plan.").

The photographs also corroborated other evidence that was admitted on this point without objection. Venesky and Center both testified without objection about the injuries they observed on [redacted], including the bruising on his back and the burn mark, and Holder admitted that she had hit her son in the face. Thus, we find there was clear and convincing evidence of prior abuse of [redacted] and conclude the photographs were properly admitted by the trial court.

III. CONCLUSION

Based on the foregoing, the conviction and sentence of Holder are

AFFIRMED.

TOAL, C.J., WALLER, PLEICONES and KITTREDGE, JJ., concur.

[1] Parker, who had been staying with Martucci and Holder, pled guilty to aiding and abetting homicide by child abuse and testified at the trial in this matter. Parker stated he had repeatedly urged Martucci to take [redacted] to the hospital on the morning of [redacted]'s death, but Martucci had initially refused. Parker also testified that he had witnessed Martucci abusing [redacted] on several occasions.

[2] At trial, Holder repudiated her police statement in which she admitted knowledge of abuse, maintaining it had been fabricated by the authorities.

[3] In Vincent, the Washington Court of Appeals stated that, although the use of "the other guy" had been upheld as a proper substitution in previous cases, the exact words used for redaction must be evaluated in context to determine whether the reference to the defendant was adequately obscured. Thus, there could be some instances where this identical phrase would not be sufficient, such as where the implication of the defendant is apparent. The court concluded, however, that any error in this case was harmless beyond a reasonable doubt because the evidence of the defendant's guilt was overwhelming and the disputed statement was merely cumulative to other, admissible evidence. Id. at 156-57.

[4] No videotape of this alleged event was offered at trial.

[5] No objection was made to the testimony concerning Holder's relationship with her parents.

© 2000-2012 South Carolina Judicial Department

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 20, 2009

REMITTITUR

The Honorable Paul B. Wickensimer
305 E. North Street
Greenville, SC 29601-2120

Re: The State v. Holder, Brandi L. - 2003-GS-23-01307

Dear Mr. Wickensimer:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/jjp

Enclosure

cc: (without enclosure)
Deputy Chief Appellate Defender for
Capital Appeals Robert M. Dudek
Senior Assistant Attorney
General Norman Mark Rapoport
Solicitor Robert M. Ariail

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010-CP-23- 3160

BRANDI LYNN TURNER HOLDER, 313870)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)
)

APPLICATION FOR POST-CONVICTION RELIEF

FILED CLERK OF COURT
2010 APR 20 P 12:48

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention: Leath Correctional Institution, 2809 Airport Road, Greenwood, South Carolina 29649

2. Name and location of Court which imposed sentence Greenville County General Sessions Court

3. Name(s) of co-defendant(s) (if any) : Mark Anthony Martucci and John Allen Parker.

4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) 2003-GS-23-1307- Homicide by Child Abuse.

5. The date upon which sentence was imposed and the terms of the sentence:

   (a) February 9, 2006- Twenty-Five (25) years.

6. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals.

ii. Supreme Court of South Carolina.

iii. N/A

(b) the result in each such Court to which you appealed:

i. Client's case was passed up to the Supreme Court.

ii. Affirmed

iii. N/A

(c) the date of each such result:

i. N/A

ii. May 4, 2009.

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. Opinion No. 26644

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during her trial in violation of her rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The judgment and sentence against the Applicant were entered in violation of her right to due process of law and effective assistance of counsel.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to provide client effective assistance of counsel prior to and during her trial proceeding. Counsel failed to recognize errors which occurred during her trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and at a minimum deprived her of the opportunity to have these issues addressed on their merits on direct appeal. .

(b) _____

(c) _____

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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

(a) the specific nature thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented:

i. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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

(a) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

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

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

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

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

i. Susannah Ross, Esq. 2435 E. North St. #222, Greenville, SC 29615-1442.

ii. David E. Phillips, Esq. P. O. Box 1647, Easley, SC 29641-1647 and Bruce A. Bryholdt, Esq. P. O. Box 2506, Anderson, SC 29622..

iii. Robert Dudek, Esq. South Carolina Commission on Indigent Defense, 1330 Lady St. Ste 401, Columbia, SC 29201

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

i. Pretrial up until three weeks before original trial date.

ii. Trial and Sentencing.

iii. Appeal to the Supreme Court of South Carolina.

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged? no

2010-CP-23- 3 / 720

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF GREENVILLE

I, Tara Dawn Shurling, *retained* counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.

TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 15th day of April, 2010.

Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Brandi Lynn Turner Holder, a/k/a Brandi Lynn Turner, S.C.D.C. No. 313870, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS C.A. No. 2010-CP-23-3160 **RETURN**

In response to the post-conviction relief application filed April 20, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant on the charge of homicide by child abuse (2003-GS-23-1307). Bruce A. Byrholdt, Esquire and David E. Phillips, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On February 9, 2006, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals and the case was later certified for review by the South Carolina Supreme Court. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court affirmed the Applicant's conviction and sentence on May 4, 2009. State v. Holder, 382 S.C. 278, 676

S.E.2d 690 (2009).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In her application for post-conviction relief the Applicant alleges she is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
   a. "Counsel failed to provide client effective assistance of counsel prior to and during her trial proceeding. Counsel failed to recognize errors which occurred during her trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's [sic] failure to make these objections may have changed the outcome of the Applicant's trial and at a minimum deprived her of the opportunity to have these issues addressed on their merits on direct appeal."

III.

The Respondent asserts the Applicant's allegation that her attorneys were ineffective is without merit. The Respondent asserts the Applicant's attorneys rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:
Attorneys for Respondent

September 14, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2010-CP-23-3160
	)	
BRANDI LYNN TURNER HOLDER, 313870	)	
a/k/a Brandi Lynn Turner	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Brandi Lynn Turner Holder, 313870
Leath Correctional Institution
2809 Airport Road
Greenwood SC 29649

Tara Dawn Shurling, Esquire
3614 Landmark Drive; Suite D
Columbia SC 29204

DATED this 14th day of September, 2010.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BRANDI LYNN TURNER HOLDER, 313870)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)
)

2010-CP-23-3160

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAULA HICKENSIMER
2012 APR 4 D 1:43

The Post-Conviction Relief Application previously filed on April 20, 2010 under docket number 2010-CP-23-3160 alleges generally that the Applicant's right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution, was violated prior to and during his trial. She now asks that the following specific allegations be added to those contained in his original Post-Conviction Relief Application and is hereby amended as follows:

1. Defense Counsel was ineffective for failing to present numerous readily available character witnesses on behalf of the Applicant.

2. Defense Counsel was ineffective for failing to clarify for the jury that the testimony of multiple State witnesses concerning previous bruises observed on the victim in fact referenced only a few incidents recalled by multiple witnesses.

3. Trial Counsel was ineffective for failing to present evidence which would have established that the victim had been diagnosed with and treated for eczema, and that the lesions on the child's skin could have been mistaken for burns.

4. Trial counsel was ineffective for failing to present testimony from a Chiropractor who treated the Applicant's entire family, including the victim, on a regular basis, and could have testified to the absence of any evidence of prior abuse.

5. Trial Counsel was ineffective for failing to present testimony from the Applicant to clarify the distinctions between her two statements to the police.

15. Defense Counsel was ineffective for failing to point out to the jury in closing argument that there was evidence that the Applicant herself was sick the day before her son died with something that made her, like her son, throw up and therefore that she had every reason to believe the child's illness was from the same source as her own.

16. Defense Counsel was ineffective for neglecting to question the Applicant's father concerning an incident weeks before the victim's death after which he was advised the victim had been in an accident involving Mark Martucci's ATV.

17. Defense Counsel was ineffective for failing to present evidence to establish that Mark Martucci had in fact possessed an ATV, and that witnesses had seen him ride the victim on the ATV.

18. Defense Counsel was ineffective for failing to object to questioning by the State concerning cigarette burns where there was no foundation for the assertion that this witness had ever described seeing what looked like cigarette burns on the victim.

19. Defense Counsel was ineffective for failing to present evidence to establish that the Applicant did not smoke after the State questioned her father about marks described as looking like cigarette burns.

20. Defense Counsel was ineffective for failing to call the Applicant's mother as a witness to establish that marks previously described as burn marks on the victim's neck were in fact observed when the Applicant and the victim were living with her and her husband in a household where no one smoked cigarettes.

21. Defense Counsel was ineffective for characterizing the Applicant as "not the best wife" while cross-examining Witness Turner; the Applicant's ex-husband.

22. Defense Counsel was ineffective for failing to object to highly inflammatory and irrelevant questions concerning the victim's biological history and whether the Applicant knew who had fathered her child.

23. Defense Counsel was ineffective for failing to make a motion for a mistrial when the State illicited highly inflammatory and improper testimony from the Applicant's ex-husband, Darren Turner, concerning the victim's biological history and whether the Applicant knew who had fathered her child.

24. Defense Counsel was ineffective for failing to make a motion *in limine* to prohibit the State from calling the Applicant's ex-husband James Darren Turner as a witness for the State where there was nothing he could testify, as evidenced by his pre-trial statement, which would be relevant to the charge against her.

25. Defense Counsel was ineffective for failing to enter a timely objection when the State asked Witness Turner a highly improper question about the Applicant having physically mistreated him in the past.

26. Defense Counsel was ineffective for failing to make a motion for a mistrial after the State asked witness Turner an improper and highly irrelevant question concerning whether the Applicant had ever physically mistreated him, and the prejudice arising there from was too great to be cured by the subsequent curative charge.

27. Defense Counsel was ineffective for neglecting to introduce evidence specifically a SLED Forensic Services Lab Report, documenting that there was a mixed DNA sample taken from bite marks on the victim which yielded DNA not inconsistent with the victim *and* DNA from an unknown individual with XY Amelogenin meaning the DNA came from an unknown *male* contributor.

28. Defense Counsel was ineffective for failing to make a timely objection when the prosecution asked a question designed to illicit irrelevant and prejudicial testimony concerning who paid for victim's funeral.

29. Defense Counsel was ineffective for failing to secure a ruling from the trial court concerning the objection raised when the Solicitor illicited testimony from Witness Turner concerning the fact that he paid for the victim's funeral.

30. Defense Counsel was ineffective in that they failed to make a motion for a mistrial when the prosecution intentionally illicited irrelevant and inflammatory testimony from Witness Turner concerning the fact that he paid for the victim's funeral.

31. Defense Counsel was ineffective for failing to question Witness Turner concerning whether he had life insurance on the victim after the State illicited prejudicial testimony disclosing the fact that Turner paid for the victim's funeral.

32. Defense Counsel was ineffective for failing to make a motion to strike irrelevant and prejudicial testimony introduced during the testimony of Witness Turner.

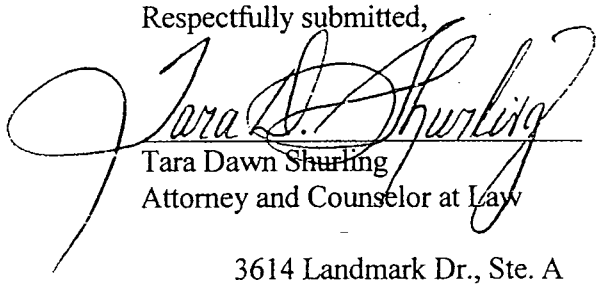
33. Defense Counsel was ineffective for failing to request a curative charge instructing the jury to disregard testimony from the Applicant's ex-husband concerning material irrelevant to the changes before the Court and highly prejudicial to the Applicant.

34. Defense Counsel was ineffective for failing to object to a confusing and incomplete answer given by the trial court in response to a question from the jury concerning verdict options.

35. Defense Counsel failed to provide the Applicant effective assistance of counsel in that they failed to object to a jury charge which defined "an extreme indifference to human life" as used in § 16-3-85 (A) (1) as "a mental state akin to intent characterized by a deliberate act culminating in death."

The Applicant has no further amendments at this time. Copies of these amendments have been served on opposing counsel, and Trial Counsel for the Applicant.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 3rd day of April, 2012.
Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Brandi Lynn Turner Holder, 313870,)
)
Applicant,)
v.)
)
State of South Carolina,)
)
Respondent.)

Certificate of Service

2010-CP-23-3160

The undersigned attorney hereby certifies that one copy of the Applicant's Amendment to Application for Post-Conviction Relief in the above-entitled cause has been served upon, Bruce A. Byrholdt, Esquire and David E. Phillips, Esquire by E-mail on the 3rd day of April, 2012.

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 3rd day of April, 2012.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Brandi Lynn Turner Holder, 313870,
Applicant,
v.
State of South Carolina,
Respondent.

Certificate of Service

2010-CP-23-3160

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 APR -4 P 1:43

The undersigned attorney hereby certifies that one copy of the Applicant's Amendment to Application for Post-Conviction Relief in the above-entitled cause has been served upon opposing counsel, Karen Ratigan, Assistant Attorney General, by E-mail on the 3rd day of April, 2012.

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 3rd day of April, 2012.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA

COUNTY OF STATE Greenville

VS.

Brandi Lynn Holder

AKA: Brandi Lynn Turner

Race: W Sex: F Age: 24

DOB: 1981 SS# -5993

Address: GREER, SC 29651

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2003GS2301307

A/W#: H149222

Date of Offense: 07-17-2002

S.C. Code § : 16-03-0085(A)(1)(

CDR Code #: 2356

☐ **CASE RESTORED SENTENCE**

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: HOMICIDE BY CHILD ABUSE

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $ _____ plus 20% fee: $ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharg	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

Paul B. Wicker

Clerk of Court/ Deputy Clerk

Court Reporter: H. Jenkins

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E begining _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____

$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP Requires $500 be paid to Clerk during probation.

PRESIDING JUDGE [signature]

Judge Code: 21 01 710

Sentence Date: 2/9/06

SCCA/217 (7/2003)

735

WITNESSES

DOUG KELLY

GCSO

07/18/02

ARREST WARRANT NUMBER

H 149222

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life.

Foreperson of Petit Jury Elaine B. Cross *Date:* 02-09-06

DOCKET NO. 2003-GS-23-001307

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

Guilty GUILTY

VS.

BRANDI LYNN TURNER HOLDER
AKA
BRANDI LYNN TURNER

AMENDED

Indictment for

2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-3-85

464

Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3-22-10

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED
INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on December 13, 2005 the Grand Jurors of Greenville County present upon their oath:

That BRANDI LYNN TURNER HOLDER AKA BRANDI LYNN TURNER did in Greenville County between the 1st day of June, 2002, and the 17th day of July, 2002, during the commission of child abuse, or neglect, accompanied by circumstances manifesting an extreme indifference to human life, cause the death of VICTIM, a child under the age of eleven. This is in violation of §16-3-85 of the South Carolina Code of Laws (1976) as amended.

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

Bryna S. Seay
SOLICIT

031
7-16-02

ARREST WARRANT

H-149222 CASE #02-110972

STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of
GREENVILLE

THE STATE
against

BRANDI LYNN TURNER HOLDER

Address: GREER, S.C. 29651
Phone: _____ SSN: -5993
Sex: F Race: W Height: 5'6 Weight: 130
DL State: _____ DL#: _____
DOB: 81 Agency ORI#: _____
Prosecuting Agency: GREENVILLE COUNTY
Prosecuting Officer: INV. DOUG KELLY *195
Offense: HOMICIDE BY CHILD ABUSE
Offense Code: _____
Code/Ordinance Sec. 16-3-85

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant BRANDI LYNN TURNER (HOLDER) on 7/18-02

B Alexander *5
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MAGISTRATE ~~ETTA REID~~ Hudson

AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1990 SCCA 518

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
GREENVILLE)

Personally appeared before me the affiant INV. DOUG KELLY who being duly sworn deposes and says that defendant BRANDI LYNN TURNER HOLDER did within this county and state on OR ABOUT JULY 17, 2002 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of GREENVILLE) in the following particulars:

DESCRIPTION OF OFFENSE: HOMICIDE BY CHILD ABUSE 16-3-85

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

ON JULY 17, 2002, [redacted], A CHILD OF THE AGE OF TWO YEARS AND SIX MONTHS, DID DIE AT THE ALLEN BENNET HOSPITAL IN GREER, S.C. THE AFFIANT HAS A SWORN WRITTEN STATEMENT FROM THE DEFENDNAT AND A CO-DEFENDANT WHICH STATES THAT THE VICTIM WAS WILFULLY AND MALIOUSLY ABUSED WHICH DID CAUSE GREAT BODILY HARM AND EVENTUAL DEATH. THIS OFFENSE OCCURRED ON OR ABOUT THE 17TH OF JULY 2002 WHILE THE DEFENDANT AND TWO CO-DEFENDANTS WERE RESIDING AT [redacted] JUG FACTORY ROAD WHICH IS IN GREENVILLE COUNTY.

JUL 16 2002

Sworn to and subscribed before me on _____)
_____ (L.S.))
Signature of Issuing Judge

Doug Kelly
Signature of Affiant
Affiant's Address 4 MCGEE STREET GREENVILLE, S.C.
Affiant's Telephone 467-5103

STATE OF SOUTH CAROLINA)
XX County/ [ ] Municipality of)
GREENVILLE)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on OR ABOUT JULY 17, 2002 defendant BRANDI LYNN TURNER HOLDER did violate the criminal laws of the State of South Carolina (or ordinance of XX County/ [ ] Municipality of GREENVILLE) as set forth below:

DESCRIPTION OF OFFENSE: HOMICIDE BY CHILD ABUSE 16-3-85

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

_____ (L.S.))
Signature of Issuing Judge)
Judge Code: 5701

Judge's Address 4 MCGEE STREET GREENVILLE, S.C.
Judge's Telephone 467-5302
Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

737

Ticket or Warrant No.: H149 222

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE OF SOUTH CAROLINA
v.
Name of Defendant Brandi Lynn Holder

IN THE ( ) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF General Session

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Homicide by Child Abuse

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

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

This determination was based upon the following findings of fact:

C C

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

THEREFORE, IT IS HEREBY ORDERED:

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

CASH IN LIEU OF BOND

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

CASH PERCENTAGE IN LIEU OF BOND

☑ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $ 30,000 his release to be obtained by payment to the court of 3,000 (10%) of this bond in cash, this amount being $ 3,000 The defendant will be obligated to the State in the full amount of $ 30,000, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☑ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $ 2,000.

3. That the defendant shall appear at (check one):
☐ the term of the court of general sessions beginning on [Date:] when called at [Time:]__:__ o'clock, __M., at [Place:]_____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (cirde one) court beginning on [Date:]_____ at [Time:]__:__ o'clock, __M., at [Place:]_____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant BLH

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Paul B. Wickensimer — Signature of Judge
11-15-02 — Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

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

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Address
Greer, SC 29651
City/State/Zip
593 -4887
Social Security Number/Telephone No.

Brandi Holder
Signature of Defendant
11-15-02
Date
Susannah Ross
Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
Name of person or organization

_____ _____ _____ _____
Address City State/Zip Telephone

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

_____ _____
Signature of Custodian (If Appointed) Date

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

_____

_____

_____

_____

_____

c. ☐ Part-time Release. The defendant will be released from custody from ___:___ o'clock, ___M. to ___:___ o'clock, ___M. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ☒ Other Conditions. The defendant will comply with the following other conditions of release: Defendant to placed under House Arrest with the exception of Church, school or work. At all times defendant must be in the presence of at least one of the parents. Defendant is to have no contact with any child under 16 yrs old.

Brenda Holder
Acknowledgement

APPEARANCE RECOGNIZANCE WITH SURETY

On the 15th day of Nov, 2002, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $30,000 such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

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

Marie or Benjamin Holder
Name of Surety (Printed or Typed)

Marie Holder Benjamin Holder
Signature of Surety

_____
Address of Surety

Paul B. Workman
Signature of Judge

Greer, SC 29651
City/State/Zip

11-15-02
Date

4887

Form Approved by
S.C. Attorney General
Section 17-15-40
March 4, 2000

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
The State of South Carolina,)
-vs-)
BRANDI LYNN HOLDER)
Defendant.)

X IN THE COURT OF GENERAL SESSIONS
__ IN THE FAMILY COURT

ORDER FOR COMPETENCY EVALUATION
(AND CRIMINAL RESPONSIBILITY)

This matter comes before me on motion of Assistant Solicitor Catherine Townsend

For an order requiring the defendant, Brandi Lynn Holder

charged with Homicide by Child Abuse

to submit to a psychiatric examination. This was done on court's own motion. Allegation that mother participated in death of her own child naturally raises issue of competency at present and at time of act. LRP

I have considered the showing made in respect to the motion for such an order and am of the opinion that the defendant should be so examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED that the defendant shall be:

(a) Examined and observed at the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed (15) days relative to his mental capacity to stand trial. (Section 44-23-410 (1) or Section 44-23-410 (2), Code of Laws of South Carolina, 1076)

And shall/~~shall not be~~

(b) Examined as aforesaid to determine whether or not the above-named defendant is criminally responsible pursuant to the McNaughten test for his actions on or about

July 17, 2002

And shall/~~shall not be~~

(c) If found responsible pursuant to the McLaughten test, examined as aforesaid to whether or not, because of mental disease or defect, the defendant lacked sufficient capacity to conform his conduct to the requirements of the law. (Section 17-24-20(A), Code of Laws of South Carolina, 1976)

The ordered examination shall be requested by the solicitor and scheduled by the examining facility as soon as possible. The defendant is to be transported to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility.

The defendant continues under the jurisdiction of this court. If the defendant is currently free on bond or personal recognizance, such bail is hereby revoked to the extent necessary to carry out the provisions of this order.

LRP

```
CMTI330D                SCDC OFFENDER MANAGEMENT SYSTEM                    05/14/10
OMCOMITA                      RELEASE DATE SCREEN                          C040481
SCDC# >  313870                                          LOC: LEATH
TURNER, BRANDI LYNN                      SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL REGISTRY..: N
                                           SEXUAL PREDATOR..:
                                           DNA STATUS.......: COMPLETED
                                           GPS REQUIREMENT..: N
                                           PREA DECISION....:
CURRENT SENTENCE: 025-00-000       CONSECUTIVE SENTENCE ..: N
                  025-00-000       CURRENT SENT START DATE: 10/09/2005
PROJECTED COMPLETION DATES
  MAXOUT DATE .....: 01/02/2027    CURRENT EWC .: 3 F 5
  YOA SIX YEAR DATE:   /  /        CURRENT EEC .: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 01/09/2027    NEXT PAROLE HEARING DATE: 01/09/2027


TOTAL GT DAYS EARNED .......: 000000     LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000394     LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000      CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000
TOTAL SERVICE TIME EARNED ..: 001655

PFKEYS:       5:HISTORY OF DATE CHANGES
4-©                1 Sess-1    167.7.50.33                SCDC1568        3/11
```

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 05/17/10 00404

TURNER.BRANDT LYNN FBI # 741126WB8 SID# SC01429952 SCDC # 313870
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ..: LEATH CORRECTIONAL INST. DORM.....: PB0217B
SECURITY/CUST.: 3 MINIMUM IN RACE....:W SEX...:F
CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 01/02/2027
CENTRAL MONITORING.: NO PROJ PAROLE DATE: 01/09/2027
SOCIAL SECURITY #...: 5993 EWC JOB..: WARDKEEPER ASSISTANT
EDUC PGM.: NO CURR EDUC PROGRAM
CURRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 3E5 EEC LEVEL:
AGE...: 29 DATE OF BIRTH..: 3/81 ASSIGNMENT..: BLDING DETAIL BLDG.

PREVIOUS NUMBERS:
** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
HOMICIDE BY CHILD ABUSE	25	0	0	GREENVILLE	10/ 9/20	5 V	5

PRIOR COMMITMENTS OVER 90 DAYS:
INMATE HAS NO PRIORS
DETAINERS (HOLD,WANTED,NOTIFY):
NO DETAINERS
NO DETAINERS
ESCAPES:
NO ESCAPE HISTORY
CRIMINAL CHARGES:
NO CRIMINAL CHARGES WHILE IN CUSTODY
NO CRIMINAL CHARGES HISTORY
ASSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY
NON-ASSAULTIVE DISCIPLINARIES:
6/ 7/ 9 FALSE STATEMENT TO HARM CONVICTED ADMIN
8/ 6/ 8 ABUSE OF PRIVILEGES CONVICTED ADMIN
HISTORY OF MOVEMENTS:

3/23/10	LEATH	INCARCERATED	ADMINISTRATIVE
6/15/ 9	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
6/ 7/ 9	GRAHAM R&E	INCARCERATED	DISCIPLINARY
8/28/ 7	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
8/28/ 7	KIRKLAND	INCARCERATED	MEDICAL
7/31/ 6	GRAHAM CORR INS	INCARCERATED	RETURN FROM COURT
7/31/ 6	LAURENS CO	AUTH ABSENCE (AWL)	TO COURT
5/16/ 6	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
5/14/ 6	PALMETTO RCHLAN	AUTH ABSENCE (AWL)	MEDICAL
3/16/ 6	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
3/16/ 6	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
3/14/ 6	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
3/13/ 6	GRAHAM R&E	INCARCERATED	ADMINISTRATIVE
3/13/ 6	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
2/16/ 6	GRAHAM R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	03/25/10	0/ 0/ 0		3E5
MACHINE OPERATOR TRA	06/16/09	3/23/10	INSTIT TRANSFER	3E5
MACHINE OPERATOR TRA	11/19/08	6/ 7/ 9	DISCIPLINARY/LOCK-UP	3E5
BARBER	05/24/07	11/18/ 8	INMATE REQUEST	3E5
MACHINE OPERATOR TRA	03/27/07	5/23/ 7	INMATE REQUEST	3E5
WORKER ACTIVITY HELP	08/10/06	3/26/ 7	INMATE REQUEST	3E5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION

*,BRANDT LYNN EBT # 741124WB8 STD# SC01429952 SCDC # 313870 (CONTINUED)
DESCRIPTION DATE DATE REASON
NO SCHOOL ASSIGNMENTS*
********* END OF REPORT *********

STATE OF SOUTH CAROLINA

COUNTY OF STATE Greenville

VS.

Brandi Lynn Holder

AKA: Brandi Lynn Turner

Race: W Sex: F Age: 24

DOB: 1981 SS# 5993

Address: GREER, SC 29651

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2003GS2301307

A/W#: H149222

Date of Offense: 07-17-2002

S.C. Code § : 16-03-0085(A)(1)(

CDR Code #: 2356

☐ **CASE RESTORED SENTENCE**

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: HOMICIDE BY CHILD ABUSE

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $ _____ plus 20% fee: $ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharg	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

Paul B. Wicker

Clerk of Court/ Deputy Clerk

Court Reporter: H Jenkins

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E begining _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____

$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP Requires $500 be paid to Clerk during probation.

PRESIDING JUDGE [signature]

Judge Code: 2 0 1 2 0

Sentence Date: 2/9/06

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	) Case No(s).:2010CP2303160
Brandi Lynn Holder Turner, Applicant,	)
-VS-	) TRANSCRIPT OF RECORD
State of South Carolina, Respondent.	)

April 4, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

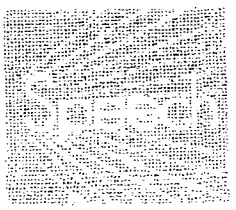
A P P E A R A N C E S:

KAREN C. RATIGAN, Esquire
Attorney for the State

TARA D. SHURLING, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are taken and produced via



CAT 7

I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
Opening Remarks	5			
Applicant's Witnesses:				
Bruce Bryholdt				
by Mrs. Shurling	9			
by Mrs. Ratigan		62		
by Mrs. Shurling			67	
David Phillips				
by Mrs. Shurling	71			
by Mrs. Ratigan		95		
Rebecca Fisher				
by Mrs. Shurling	99			
by Mrs. Ratigan		108		
Brandi Turner				
by Mrs. Shurling	109			
by Mrs. Ratigan		138		
Ben Holder				
by Mrs. Shurling	139			
Joel Maddox				
by Mrs. Shurling	145			
Kevin Clark				
by Mrs. Shurling	149			

I N D E X

	DIRECT	CROSS	REDIRECT	RECROSS
Nadine Kelly				
by Mrs. Shurling	152			
Debra Atkins				
by Mrs. Shurling	156			
Becky Leopard				
by Mrs. Shurling	160			
David Kelly				
by Mrs. Shurling	162			
Lisa Griffin				
by Mrs. Shurling	166			
Marie Holder				
by Mrs. Shurling	171			
Argument	175			
Ruling of the Court	189			
Certificate of Reporter	191			

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV
	APPLICANT EXHIBITS		
A-1	Statement of J. Turner	23	23
A-2	Serology Analysis	51	51
A-3	ME Report	57	57
A-4	Statement of Brandi Turner	70	70
A-5	AMELX Report	70	70
A-6	Case History	102	102
A-7	Chiropractor Notes	104	104
A-8	CVS Records	119	119
	RESPONDENT EXHIBITS		
	(No exhibits offered.)		
	COURT EXHIBITS		
	(No exhibits offered.)		

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 4th day of April, 2012 at approximately 2:09 p.m.)

THE COURT: All right. Yes, ma'am.

MRS. RATIGAN: May it please the Court, Your Honor. This is the case of Brandi Lynn Holder versus the State of South Carolina. The docket number is 2010-BP-23-3160. Mrs. Holder was indicted for Homicide by Child Abuse. She was represented on these charges by Mr. Byrholdt and Mr. Phillips. The case was brought to trial on February of 2006 at which point the applicant was found guilty of the charge as indicted.

I would note -- and you can tell from the transcript, Your Honor -- this was actually a joint trial with the co-defendant. That co-defendant was actually tried in his absence.

On February 9th of 2006, Judge Pyle sentenced Mrs. Holder to 25 years. Notice of Appeal was filed at the Court of Appeals. That case was later certified over to Supreme Court and perfected by the Office of Appellate Defense. Supreme Court affirmed the conviction sentenced May 4th of 2009 and the State is

ready to proceed.

THE COURT: Okay. All right.

MRS. SHURLING: Good afternoon, Your Honor. Thank you. For the record, I'm Tara Shurling. I'm representing Brandi Lynn Turner Holder. Your Honor, we filed an amended application for post-conviction relief. I understand a copy has been handed up to you. For the record, I would like to, uh, make it clear that the vast majority of these allegations were provided to respondent in advance of today. I simply didn't file it until I arrived at the Greenville County Courthouse today.

Your Honor, we are proceeding on, of course, as most PCRs are a general claim that my client received ineffective assistance of counsel prior to and during her jury trial in violation of her rights pursuant to the 6th and the 14th amendments to the United States Constitution as well as Article 1, Section 14 of the South Carolina Constitution.

The specific errors and omissions that we believe evidence the lack of reasonable professional assistance of counsel are

delineated in the amended application as well as generally referenced in the original application. We will proceed to cover those at length as we proceed through this hearing. I would note, Your Honor, that Allegation 1 was that defense counsel was ineffective for failing to present numerous readily available character witnesses on behalf of the applicant. Specifically witnesses who would have been available to testify to the applicant's representation for truth and voracity in the community as well as her reputation for peacefulness.

As Your Honor can see, the courtroom is full. I believe the vast majority, if not all of those here today, are here to show their support for the applicant, but a number of them are persons that I would introduce as having been readily available as character witnesses in this case.

I have no interest to waste Your Honor's time or that of the people that are here. I have discussed this matter with Mrs. Ratigan and have proposed that perhaps now or if Your Honor would prefer later in the proceeding that

we might agree on a procedure whereby we would ask that those present for that purpose stand and be sworn and asked if -- ask would they had been able to give testimony concerning those areas, the reputation for truthfulness in the community, reputation for peacefulness and if they would have been willing to testify and state their names for the record that way, we could knock out about 15 stones within a short period of time as opposed to my having to call them one at a time. Would Your Honor prefer for me to get that out of the way up front or --

THE COURT: No, let's just get -- let's get going.

MRS. SHURLING: Great. Your Honor, at this time, I would call Mr. Bruce Byrholdt as the applicant's first witness.

THE COURT: All right.

THE CLERK: Mr. Byrholdt, place your left hand on the Bible and raise your right hand.

BRUCE BYRHOLDT

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Bruce, middle initial A,

last name Byrholdt, B-Y-R-H-O-L-D-T.

MRS. SHURLING: Your Honor, before we proceed, I had asked my client if she had any questions or needed to bring anything to my attention to write it down and hand it to me rather than disrupt the proceedings. Her hands are cuffed so tightly in her lap that she can't write. Could I ask that one hand be uncuffed?

THE COURT: Well, that's -- yeah. Get, uh, -- we don't have the authority to do that. She's not in our custody. Where are the Correction officers?

If y'all can just check around on that, Cathy, and see if we can get it worked out. All right.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Good afternoon. Mr. Byrholdt, you represented Mrs. Holder in her trial in February of 2006 along with co-counsel, Mr. David Phillips, is that correct?

A That's correct. Mr. Phillips had the case and asked me to -- associated me with it when it looked like it was going to trial.

Q Okay. Uh, do you know -- I've already mentioned that this case proceeded to trial in 2006,

specifically February 6th through the 9th, 2006. About how long have you been on board as part of the defense team when the case went to trial?

A I can't remember. Probably -- I'd say maybe four to six weeks at best.

Q Okay. And at that time, if you are like me, it's hard to put these things in reference. But at the time of 2006, approximately how long had you been practicing law?

A Uh, 25 years.

Q And what percentage of your practice during that time period was criminal?

A 50 percent at least.

Q 50 percent? And in terms of your background as an attorney, were you ever a prosecutor?

A Prosecuted one case.

Q One case?

A Yeah.

Q Were you an employee of the Solicitor's office at that time?

A No, that was back when you could hire private attorneys to prosecute cases. I prosecuted a stabbing case in Walhalla.

Q Okay. Were you ever a Public Defender?

A No.

Q And did you ever participate in the Public Defender contract system here in Greenville?

A No.

Q Okay. Uh, Mr. Holder, it has been brought to my attention that you had apparently -- well, let me ask you. Did you have some sort of a relationship in terms of being a mentor to the prosecutor in this case, Mrs. Seay?

A None whatsoever.

Q Did you at any time participate in her training?

A Not that I'm aware of.

Q Not that you're aware of?

A No.

Q Thank you. I just wanted to get that out of the way. All right. Uh, Brandi Holder was, of course, charged with Homicide by Child Abuse along with her boyfriend at the time her son died, Mr. Mark Anthony Martucci.

A That's correct.

Q Mr. Martucci did not show up for trial?

A He did not.

Q Did you have any advanced notice that he was not going to be present?

A Nope.

Q And did you or -- when I say you, for the most part, I mean the defense team as a unit. Did you make a motion to sever this case from that of Mr. Martucci?

A I don't have any independent recollection. I've got the transcript here. But like I said, it's been six years. I did not go back and review the transcript or anything. I know I've got information in my file on a motion to sever. But I don't have any independent recollection, Mrs. Shurling.

Q At the time you came on board, had there, to your knowledge, already been any plea negotiations explored by Mr. David Phillips in this case?

A I'm not aware of any plea negotiations when I came on board. I think she had an attorney prior to David becoming involved. There was some problems with bond. Then she got out on bond. Met with Brandi. Met with her parents. Went over the discovery material that the State had provided us. Uh, met with pathologists and started working with the family on how we were going to approach the defense of this case.

Q You said you met with the pathologist. The pathologist that had done the autopsy Dr. Ward?

A Dr. Ward. Dr. Ward.

Q Did you have any previous dealings with Dr. Ward? Did you know him?

A That was my first time dealing with Dr. Ward.

Q Okay. Uh, and had you previously been involved in the defense of any cases that you can recall involving 16-3-85, that being the statute for homicide by child abuse?

A I've been involved in numerous murder cases. That was the first time for a homicide by child abuse.

Q In preparation to defend Mrs. Holder, did you do any specific research concerning the law that has evolved concerning our statutory offense of homicide by child abuse?

A I reviewed the statute, what the requirements -- what the State had to prove, what the elements necessary for the State to prove a -- obtain a conviction.

Q Okay. Uh, there were number of witnesses in this case who testified to having observed the young victim at different junctures in time and having observed some minor bruising on the child at a time period before his death.

A If I recall right, there was a neighbor, there was some co-workers of Mrs. Holder's that testified that they saw marks on the child's back or allegedly some kind of burn or something like that.

Q Okay. And the co-workers that all testified, and the record, of course, will speak for itself. But the co-workers were addressing an occasion when the child had been brought to the mother's place of work or a hair salon, correct?

A That's my recollection, yes, ma'am.

Q And there were multiple witnesses who fit in that category, employees of the salon that described having observed bruises on one side of the child's face.

A If that's what the record reflects.

Q There was also, I believe, a neighbor that testified --

A That would be the teenager?

Q You took the words out of my mouth. There was a neighbor and her son ---

A Right.

Q --- who testified to having observed some bruising on the child on a previous occasion.

A Right.

Q In addition, there were two witnesses who

had gone on a camping trip with the applicant and the boyfriend some time in early July, is that correct?

A If the record states that.

Q Okay. Would you agree with me that there were far more witnesses to seeing bruises than incidents involving bruises being seen? That was not worded as articulately as I try to pride myself on. Would it be fair to say that multiple witnesses were referencing single incidents in which bruising was appeared?

A I would say there were friends and co-workers of Brandi that testified they saw bruises that did not specifically say this was an ongoing occurrence. It might have been one or two incidents where they saw it. Multiple people saw the same thing ---

Q Exactly.

A --- if that answers your question.

Q For example, there were several co-workers that described seeing bruises on VICTIM's face when he came in to get a haircut?

A True.

Q Those were the same bruises, just seen by multiple people?

A It was just -- it was just -- the State put

up a lot of witnesses with cumulative testing.

Q Thank you. I'm not going to go -- the record will speak for itself. The same thing with the camping trip. There were a couple of different people --

A That were there on the trip.

Q Exactly. Okay. Now, uh, how did you and your co-counsel go about deciding on a division of labor in this case in terms of who questioned whom, who was going to do closing argument? You have any recollection of how you decided to divide up the witnesses?

A When I was getting in the case, I figured we'd pretty much split the thing down the middle. When we got closer to trial and went through the evidence -- I had much more experience than David. I said -- I took -- I probably took 60 to 70 percent, at least, of the witnesses. I thought I could handle them better. We discussed that. That's how we arrived at it.

We had a couple of holes that we were trying to plug. We had a terrible statement that Brandi had given. I remember the detective that took the statement and testified. I went after him as well as I could cause, you know, I thought the

statement was coerced, you know. We battled that battle, but Judge Pyle let it in. And, you know, it hurt us. It was holes we couldn't plug.

Q Uh, just to fill in a little bit. That statement was taken from your client at the sheriff's department within an hour of her having discovered her child was dead, correct?

A And she was in there for a long period of time, a number of hours. I had been aware of the detective. I was concerned about how the statement went down.

Q Thank you. Now, taking a look at the statute itself. Your client was indicted for Homicide by Child Abuse under Subsection (A)(1), which is causing the death of a child under the age of 11 directly through either child abuse or neglect and the death occurs under circumstances manifesting an extreme indifference to human life, correct? I believe at trial His Honor agreed to also charge Subsection (2) which was the aiding and abetting provision.

A Right.

Q Okay. Can you tell me -- you referenced a little while ago having gone through the discovery with your client and with co-counsel prior to the

trial ---

A Yeah, at David's office.

Q Do you recall reviewing the statement that had been taken by law enforcement from the applicant's ex-husband Mr. Darren Turner?

A I don't have any independent recollections of it at this time.

Q Did you interview Mr. Turner to your knowledge?

A I did not.

MRS. SHURLING: May I approach, Your Honor?

THE WITNESS: Thank you.

BY MRS. SHURLING:

Q Can you identify this document?

A I mean I can -- it appears to be a statement from James Darren Turner to Investigator Hilda Brown dated 29 July 2002. Now, that's the notary. July -- well, it does say July 29, 2002. I don't know if that's a typo or what.

Q If you could, take a moment to glance over that and refresh your recollection please.

A (Reviewing.) All right.

Q Did you have any discussions, to your recollection, with the prosecution concerning why Mr. Turner was on their witness list?

A Uh, I don't recall any discussions. I don't recall at all.

Q Based on the statement that I asked you to review, was there anything about the statement that had been given by Mr. Turner that would be relevant to the charges against the applicant in terms of the State's position?

A Uh, no.

Q In fact, he refers to the child as well-cared for?

A Healthy, well-cared for. She was, if anything, a good mother. Maybe neglected him and took care of the child.

Q Did you consider making a motion in limine prior to this trial asking that Mr. Turner's testimony be prohibited on grounds of relevancy and on 404(b) grounds if it was the intent of the State to introduce this testimony to show prior bad acts?

A Well, at that time, if this is all we had, there's no evidence there's any bad acts referred to in here.

Q I understand.

A No, that would not -- I would not have made a motion in limine. There's nothing in this statement that hurt Brandi.

Q Was there any discussion between you and co-counsel that you can recall as to why you thought the State might be offering Mr. Turner as a witness?

A A lot of times, the State lists everybody that they can that might have some relationship with the defendant. And they call usually maybe a third or half the people they list as witnesses. And the prosecutor was not going to share with me in advance what her trial strategy was.

Q Well, if you had made a motion in limine to exclude this testimony on the grounds of relevancy, could you have asked for a hearing on your motion?

A Had we done that, I could have. But you had to have grounds to raise that. There's nothing in here that would put us on notice that he was going to say anything negative about Brandi.

Q Is there anything in there relevant to the charge of neglect?

A They had no relationship during the time.

Q During Mr. Turner's testimony, the State was allowed to question him concerning the parentage of the victim, did they not?

A I don't recall. I've got the transcript here. If you give me a page and line number, I can see.

MRS. SHURLING: Moment's indulgence, Your Honor. (Pause.)

BY MRS. SHURLING:

Q Looking -- starting at 338. 330 going over to 338. Pardon me. I'm sorry. 338 to 351 and going on over beyond that point.

Your Honor, I apologize. My flag fell off.

341. I found it. 341. Line 15. Did you know anything about victim history as far as biologically?

A Okay. I said no. I don't know. As far as his father, I did not know who his father was.

Q Okay. Could you publish on down a couple of lines please.

A Next question. Do you know if Mrs. Holder was aware of who his father was? No, ma'am. I do not. At some point, were you asked to be his father. Yes, ma'am.

Q Let me stop you for a moment. What relevance did whether or not Brandi Holder knew who the father of this baby was have to the accusation she was facing?

A Probably none, but I didn't see any harm in it. He was not hurting us at that point. Why object to it or bring attention to something?

Q You didn't consider that Brandi Holder was being portrayed as a woman who didn't even know who the father of her child was might be negative character evidence that would not bode well for her with the jury?

A That's not what he said. The question was do you know if Mrs. Holder was aware of who the father was. He did not know what she knew. It called for speculation on his part. But he didn't say she didn't know who it was. That would cast question on her character. We didn't want to get into that issue, I'll tell you that. Brandi was expecting another child during this trial.

Q I understand.

A We didn't want to get into that at all. But I didn't see that as harmful.

Q Once again, if you had made a motion in limine to exclude his testimony on grounds of relevancy pretrial, all of this could have been fleshed out before the trial.

A All we had before that was the statement. There was no reason to have any concern about a motion in limine when he was listed as a potential witness. That's why no motion was made.

Q And you did have his statement in the

discovery package reviewed by you preparing for trial?

A I would have to go through my entire file.

Q Let me see if I can save you the trouble. Do you specifically recall -- you said you reviewed the discovery --

A Do I have a --

Q Do you specifically -- whether it was in your file or co-counsel's, do you recall reviewing Mr. James Darren Turner's statement before the trial?

A I have no recollection of that today. It was six years ago. If it was produced -- David and I looked at everything that the State produced to us.

Q Okay. So if it was in the discovery package provided ---

A It would have been reviewed.

Q --- you reviewed it.

MRS. SHURLING: Your Honor, at this time, I would move to introduce a copy of Mr. Turner's statement.

MRS. RATIGAN: I have no objection, Your Honor.

(WHEREUPON, Applicant's Exhibit 1 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q Do you have your copy of the transcript?

A I do.

Q If you can look over to the next page on 342, testimony was elicited from this witness concerning whether the victim was on Mr. Turner's health insurance. You see that point?

A I do.

Q Okay. And there is testimony concerning the fact that he was on his health insurance up through the time of his death, correct?

A It says that, yes, ma'am.

Q Okay. Moving further along. At some point, this witness was questioned concerning whether he had any further input in the child's life after he and Brandi separated. Do you recall that? In one moment I will find you a page reference. I apologize.

A There was a separation mentioned on 344.

Q One second. Your Honor, I'll find the page cite in a moment.

Do you recall testimony in which it was elicited from this witness -- ahh, found at 347 starting with line 5 going through line 12. Mr. Turner's question concerning what involvement he had with the family after VICTIM's death and he specifically

asked if he contributed to the child's family. Do you see that?

A Yes.

Q After, he says, yes, ma'am. I paid for his funeral. Actually, your co-counsel objected on grounds of relevance.

A No, that was opposing counsel.

Q Opposing counsel. Pardon me.

A Right.

Q On grounds of relevance.

MRS. SHURLING: Actually, Your Honor, I would submit that that's a typo. When the objection is made, there is -- the previous objection on relevance was made by defense counsel. The objection is, once again, I'm going to have to object on relevance. It is during questioning by Mrs. Seay. At that point, the Court inquires of the Solicitor what's the relevance of this. It's clear that it's a defense objection, Your Honor.

BY MRS. SHURLING:

Q My question is, did you consider objecting to the testimony concerning relevance when the question was asked?

A Are we going back to the question about the

funeral?

Q Yes.

A Uh, I guess no. If I objected afterwards, I guess that's when I objected. I objected four or five pages earlier on relevancy of this whole line of questioning.

Q I apologize to you. Mr. Sumner, counsel for -- co --

A Martucci.

Q I thought you were saying you thought it was Mrs. Seay. I apologize.

A No.

Q Did you as counsel for Brandi Holder consider objecting on grounds of relevancy to whether or not her ex-husband paid for her child's funeral?

A Well, I didn't object.

Q Okay.

A So I must not -- like I said, I objected three lines later. I joined in the objection. We objected on this whole ground of relevancy on page 343. As usually the case, the opposing lawyer said I'm going to tie it in, and they let them go.

Q When a question is asked that could potentially elicit prejudicial testimony to your client, is it your custom to object when the question

is asked or to wait until after the answer is given?

A When the question is asked if it's prejudicial to the client.

Q And did you consider the potential prejudice to your client from testimony that her ex-husband, not she or any member of her family, had paid for the funeral services of this child?

A I didn't consider that to be that prejudicial, no, ma'am.

Q When Mr. Turner testified that he kept health insurance on the child and later that he paid for the funeral, did you consider asking Mr. Turner whether he had life insurance on the child?

A No, I didn't want to get on this -- I wanted to get out of this -- like I said, I was questioning the relevancy of this whole thing. I wanted him off the stand.

Q Once the State introduced testimony that he kept the child on his life insurance, on his health insurance, that he paid for the child's funeral, would it have been beneficial to you to demonstrate that there was good reason why he was the one to pay for the funeral?

A Uh, let's put it this way, he was not a person charged with a crime. There was nothing to

tie in that he was related to this crime at all. Why bring in life insurance to get a jury hotter than they already are when you've got a death of an infant?

Q I understand. I'm not trying to be difficult, but the definition of the crime she's charged with involves extreme indifference to the child. Weren't you concerned that this testimony that even in death that someone other than a family member of this child paid for his funeral would go toward a general impression of indifference?

A No. No, ma'am.

Q Well, moving along, Mrs. Seay asked -- and am I pronouncing her name correctly? Is it Seay?

A It is Seay.

Q Thank you. Asked Mr. Turner whether Brandi Holder ever physically mistreated him. Last question, page 347, 24 through 25. Top of page 348, he answers, on one occasion. Only after he's asked to describe that occasion.

A She asked him to describe that. I objected on relevancy.

Q Exactly.

A Right.

Q Is there any reason why you didn't object

when the question was asked?

A Well, it was probably asked and answered right away and then I objected. I don't know. I don't think Mr. Turner took a long time. I think the question was asked, immediately answered and I objected.

THE COURT: The timing of the objection under these circumstances really doesn't go to the ineffective assistance of counsel. Let's move along.

MRS. SHURLING: Thank you. Your Honor.

BY MRS. SHURLING:

Q Respectfully, after that objection was entered, you went in camera. The testimony of Mr. Turner on that point was proffered. The court refused to allow any elaboration on that line of testimony, correct?

A That's what the transcript says.

Q If you look at page 349, line 22, you will find the Court's ruling.

A Right.

Q Did you consider asking the Court to instruct the jury to disregard, to strike from the record testimony concerning the prior act of violence?

THE COURT: We don't have a -- we don't have a motion to strike from the record in South Carolina. The judge did instruct the jury to disregard the question and the answer. Move along.

BY MRS. SHURLING:

Q Did you consider requesting a curative instruction on that point?

A I do not like curative instructions. In the 30 years I've been practicing, all it does is ring the bell again. The jury is going to listen to something really bad and they are going to pay attention to it. All right.

Q In general, at the end of the day, Mr. Turner testified to Brandi being a good mother but describing ever so briefly a prior incident of violence with him or acknowledging that one had occurred.

A The jury -- said disregard.

Q And brought up at least the question of the child's questionable paternity was explored during his testimony.

A Is there a question?

Q My question is what in James Turner's testimony was relevant to the charges against your

client?

A That's why I objected. I don't think it was. I objected.

Q Thank you. Moving along to the end of your recross of Mr. Turner on page 351, you asked was she a good mother when you were with her. That's at line 14 and the answer is on 15. The answer is yes. 351. You see that?

A Yes.

Q Once he acknowledged that your client was a good mother, can you tell us what the purpose of your next question was? Read it for the record please.

A She might not have been the best wife but a good mother, fair enough? Yeah. They argued. They separated on occasions. They had problems. I'm just saying somebody could be a bad wife and be a good mother. That's why it was asked.

Q What potential benefit was there to your client to have her own lawyer describe her as not a good wife or not the best wife?

A I was describing her as a good mother.

Q Moving along. Do you recall during the testimony of Mr. Ben Holder, the applicant's father, him being questioned about observing burns on the child that were described as cigarette burns?

A I don't know. I don't have a recollection. Mrs. Shurling, if it's in the record, uh, -- I know they asked a lot of questions when he was on the stand on cross-examination.

Q Did you consider objecting to that question on the grounds that there was no foundation for the suggestion that there were cigarette burns on the child?

A If you give me a page. Was it cross-examination? Cross-examination, the latitude is pretty wide in South Carolina. You can ask about, you know -- I think there had been testimony before Mr. Holder got on the stand about the other injuries from the co-workers and stuff if my recollection is right.

Q So you did not see any reason to object to that characterization in examination?

A No.

Q Okay. Going back --

A What I told Mr. Holder to do when he got on the stand was tell the truth. I think he did that.

Q Going back to previous testimony offered by the State through Robin Center, she described seeing bruises and burn marks on the victim. Did you consider raising any objection to Mrs. Center's

testimony as lacking in foundation for her to testify that the marks in question were burns?

A No. I think a lay witness can testify to what they believe they have seen. They characterized it as a burn or not. I don't think a judge is going to you, you know, say you can't testify to that. It's what they believe they observed. Now, whether it's true or not is for the fact finder to determine.

Q Did you discuss the victim VICTIM'S general physical condition with his mother and grandparents prior to this trial?

A We did. We did, yes.

Q Do you recall being advised that the child suffered from a skin condition known as eczema?

A I don't have any recollection of that. I saw that -- I don't have any recollection of that. I remember there was talk about an ATV accident that may or may not have happened. We thought that might not have been something that had been made up but Brandi could not give an explanation of how these injuries occurred or why she didn't know about them. It's hard to explain with the extent of injuries on that child when we met with the autopsy photographs and everything that -- it was just -- it was probably the second worse case I've ever seen in my 30 years

of practice.

Q And I will get to that in a moment if you don't mind ---

A No.

Q --- when we approach Dr. Ward's testimony. Did you consider calling any health care providers regularly used by the Holder family to present evidence concerning the child's general good condition and the lack of previous evidence of abuse?

A The chiropractor?

Q Yes.

A Uh, if I recall the chiropractor's records, Bo started seeing a chiropractor at two weeks of age which was a little bit unusual. If my recollection was right and I don't have the records in front of me, but I think there was one occasion when there was some marks on him when the chiropractor saw him. I didn't want anybody, the health care provider coming in and saying they saw questionable marks on this child that they couldn't explain.

Q Did you interview the chiropractor?

A Not when we looked through the records and saw that there were a history of prior marks on him, we did not. People either love chiropractors or hate them. If you use them, you go to them. But I don't

know too many people that would take a two-week-old infant to a chiropractor for some kind of treatment.

Q As this case developed in the trial, was it the State's theory of the case that Mark Martucci was responsible for actually physically inflicting the injuries that killed the child?

A I would say the case -- the State played it both ways. The State didn't know who did it. The only two people that they said could have done it was Brandi Holder herself of Mark Martucci. Mark was gone. He didn't show up for trial. We couldn't explain away the statement or the horrific injuries.

Q What, if any, direct evidence was there at trial of Brandi Holder having ever physically abused her son?

A There was none. No direct evidence. Circumstantial evidence, you've got a dead child. You've got a statement. You've got the fact that based on her statement that she testified at trial that the child was sick and she was running late for work and didn't check on the child that morning. The child turns up dead a few hours later.

Q Mr. Byrholdt, I should know this. I've known you a lot of years. Do you have children?

A I have an adopted daughter with three

grandkids and a stepson that's in college.

Q In your experience, do people in your family take a child to the doctor every time it has an episode of throwing up?

A Uh, no. But --

THE COURT: What does that have to do with what we're doing here?

MRS. SHURLING: Your Honor, it goes to whether counsel should have considered the argument that Mrs. Holder was not on notice of any condition that --

THE COURT: That is a real stretch. Let's just keep confined to the record and whether or not he was an effective advocate for the lady at trial.

MRS. SHURLING: All right.

THE COURT: I'm not going to let you get into his personal life.

BY MRS. SHURLING:

Q There is evidence that Brandi Holder called in sick to work the day before the child died, correct?

A Yes.

Q And how had she described her illness to her co-workers when she --

A I don't recall that. I know the morning she said she was running late for work, VICTIM wasn't where he should have been. She was late. She got -- took her shower -- showered the night before, got up, got dressed and left.

Q Do you recall testimony that she had reported that she had been sick and throwing up the day before herself?

A I think they got something to eat and it didn't agree with them or whatever, yeah.

Q And that VICTIM had been sick as well and throwing up?

A Yes.

Q And there was even testimony that she thought it might have been food poisoning?

A They had eaten somewhere strange.

Q So we got her going to work with a child that's had something making him throw up, correct?

A Yes.

Q And she testified that she went to work that morning without physically checking on her son?

A True.

Q Other than that, what evidence did we have in this trial that she was on notice that Mark Martucci posed a great risk to her child's physical

safety and well-being?

A There's, you know -- as I recall the doctor said these are horrendous injuries. Someone had to know what was going on. The only people, and there were three people in the house, Martucci, Parker and Brandi. You know, the -- when we were going through preparation, the family had some concerns about Mr. Martucci. We couldn't -- like I said, that's a hole we couldn't plug, ---

Q I understand.

A --- you know.

Q Isn't it true that the testimony of Dr. Ward indicated that the injuries could have been inflicted as little as 12 hours before the child's death?

A True.

Q And if Brandi Holder left at 8:30 for work and did not see the child before she left for work and the child died according to the death certificate just after 1:00 on the 17th, that's more than 12 hours, isn't it?

A The testimony -- you have to repeat that again to get the timeframe.

Q If you take from the record the fact that the State was very quick to point out that she did

not physically see her son on the morning of the 17th --

A Did not check on him when she had given the statement that he had been ill, just ill?

Q Correct. Which means that she had not seen him since the previous evening, if she said she didn't see him on the morning of the 17th before she went to work --

A She went to work on the morning on the 17th without checking on him.

Q And there was evidence that she had fed the family dinner on the evening of the 16th. The evening of the 16th would have been the last time that she saw her son.

A Right.

Q My question is even if she saw him even very late on the evening of the 16th and he did at 1:00 p.m. on the 17th, that's certainly in excess of 12 hours, correct?

A It would be 12 hours from one o'clock in the morning, right? So something happened during that period that nobody heard anything when this injury happened.

Q I understand but my question is if she did not see the child, what evidence is there of

preexisting injuries that would have been physically apparent to Brandi Holder in the weeks and months before the child's death that would have put her on notice that it was dangerous to leave the child with Mark Martucci?

A Well, there is testimony there was bruises on him, marks on him before, right? If I recall, right. I haven't gone back in six years. I think there was, I recall maybe a swimming pool incident where Mark was mistreating him if I recall right. I may be mistaken on that. I have to turn back the memory six years.

The State did not have the strongest case against Brandi Holder in our opinion. Good case of neglect. But the fact that she gave the confession and the hole that we couldn't plug about her checking on the child, I think the State or the jury said, you know, we don't know -- I don't know. That's speculating on my part. The jury found enough evidence from the State to convict them both. The judge -- Judge Pyle was --

Q Let's talk about that unplugable hole for a minute.

A All right.

Q Brandi gave two statements to law

enforcement? Is that correct?

A I believe so.

Q In her second statement, she describes having been aware of certain mistreatment at the hands of Mark Martucci, correct?

A I don't have the statement handy.

MRS. SHURLING: Moment's indulgence, Your Honor. (Pause.)

THE WITNESS: Okay.

BY MRS. SHURLING:

Q Can you describe for us what injuries Brandi Holder ultimately acknowledges having observed or what mistreatment she observed between Mark and the victim?

A Well, this is -- uh, in the statements you'd handed me, it says starting about a month ago, I noticed bruises to VICTIM's facial cheeks which are about, which are the exact size the way I've seen Mark squeeze VICTIM's cheeks with his hands. Mark only does this when he is pissed off at victim and he wants VICTIM to listen to him.

In the past month, I've seen Mark squeeze VICTIM's cheeks at least four different times and told Mark to stop. He kept asking me how the bruise got on VICTIM's face. I told him that he bruised for

squeezing his cheeks. Mark said he could take VICTIM out -- could not take VICTIM out in public like that.

About two weeks ago, I noticed my son's tongue had a milky film over it. I looked at his mouth and noticed that he bit his tongue on both sides. There was a small bruise underneath his chin which I noticed at the same time and then I noticed a smaller bruise underneath his chin last week. Mark said it was from the bigger one that was getting smaller.

The dogs in his parents house -- the statements she's given -- this is three of five. This is a different one. This is five of five. There's a couple of pages missing.

Q Thank you. Uh, in the statement, she describes having seen Mark dunk VICTIM's head under the water when he was in the swimming pool, correct? Or in the tub, the bathtub? Saying he wasn't going to have a sissy boy?

A Yeah.

Q And in the trial, there's a reference to Brandi having observed Martucci tape her son's mouth closed. Do you recall that testimony from Parker?

A I don't recall, but if it's in the record.

Q Okay. In the first paragraph of this

statement, uh, Mrs. Holder describes seeing Mark put a piece of scotch tape across VICTIM's mouth and laughing about it. You see that?

A I saw -- I've got a different statement than you have.

Q Paragraph above the one you started. I'm sorry.

A Okay. No, that's a different one.

Q Okay.

A This is a different statement. This is three of five. This is four of five.

Q Four. Okay. Pardon me.

A Okay. Yeah. Mark took a piece of scotch tape and put across VICTIM's mouth and then started laughing about it. I told Mark that was uncalled for. I removed the tape from VICTIM's mouth. Then you got the bathtub incident. Then it goes on about bruises again on his shin and small of his back. Bruises on his cheek.

Q Okay.

A That's four. That's five. That's three.

Q While I'm certainly not condoning scotch taping a child's mouth, I wouldn't say that I would. But would you agree that the description of Martucci having put a piece of scotch tape across the child's

mouth and laughing about it sounds considerably less onerous than the description given by John Parker that Brandi had witnessed Mark tape the child's mouth shut?

A Yeah.

Q And with regard to the allegation that Brandi had witnessed Mark hold the child's head under water, would you agree that again -- I'm not saying it's good parenting or that I would approve of it, but would you agree that the description given by Brandi of Mark dunking the child in the tub sounds considerably less vicious than that described in the testimony of John Parker?

A I think John Parker was probably exaggerating his testimony.

Q And ultimately, you put Brandi Holder up as a witness at trial, did you not?

A We made that decision, yes, ma'am.

Q All right. Did you consider at that time asking questions that would give Brandi Holder an opportunity to elaborate on exactly what she had and had not witnessed and why she did not perceive it to be serious enough to be a threat?

A I did not ask Brandi while she was on the stand every possible question that could have been

asked based on what the State had put in. I wanted her to tell her side of the story, explain, uh, you know, you know, what she had witnessed, what she had experienced. We had to have Brandi take the stand and try and give an explanation to give the jury something to hang their hat on.

Q I understand. But the version of what Brandi Holder was on notice of came out through the testimony of Mark Martucci's friend that had gone to the hospital with him to take the child to the doctor, John Parker, correct?

A Yeah.

Q And --

A And the other witnesses.

Q And I believe you just indicated that you think his testimony was exaggerated.

A He just put a little different spin on it. Are you dunking somebody or holding their head under water? That's all perception.

Q Exactly. My question is once that perception had been presented to the jury through the testimony of John Parker, didn't you feel it was essential to give Brandi an opportunity to clarify that what she had, in fact, been on notice of was not the kind of abuse described by John Parker?

A I don't think the dunking incident carried any weight. What hurt was her statement saying she saw bruises on this child that she explained as coming from Mark Martucci. For whatever reason, having this guy still in the house or leaving your child with somebody else in attendance when this child dies.

Q Do you recall the autopsy report in this case done by Dr. Ward?

A I recall the autopsy report, I recall the pictures and I recall a long afternoon with Dr. Ward.

Q Okay. And would it be fair to say that the majority of the injuries described by Dr. Ward were injuries that were, uh, consistent in time and place with the child's mortality. There were things that happened when the incident was, whether it was 12 hours or two days, the majority of the injuries described by Dr. Ward were indicated as being new or recent and part of the contributing incident?

A Right.

Q And isn't it true that Dr. Ward's testimony indicated that on autopsy the only major evidence of previous injury that he addressed in his testimony was some evidence of some healing and an abdominal injury, previous abdominal injury?

A If that's what the record shows, yes.

Q And I believe that you or your co-counsel were able to elicit from him that that kind of an injury could have resulted in symptoms that could have been mistaken as a virus or bug that would not necessarily had been picked up by an unknowing parent as indicative of abuse?

A True.

Q That being said, did you think it was important to highlight in your cross-examination of Dr. Ward what, if any, evidence there was of injuries, preexisting injuries that would have been apparent enough to put your client on notice that the child was being abused?

A The problem is Dr. Ward was not going to help us in any way, shape or form. We met with him. He said this was the worse case he had ever seen. The injuries were so severe the vital organs had been ripped way. The question is, is there an 11-hour time frame or a 20-something-hour time frame? If it's an 11-hour time frame, your argument makes some sense. If it's a 24-hour time frame, somebody's covering up.

Q And the record will speak for itself. I believe would it be fair to say that Dr. Ward's

testimony indicated that he was leaning towards an estimate of 12 hours.

A Around that time, but he said it could be longer than that.

Q Okay.

A Dr. Ward was a hell of a witness against us.

Q I understand.

A Even to the point of putting in photographs that I didn't think were necessary that I tried to keep out. When the jury saw those --

Q It's undisputed that this child suffered horrific injuries at the hand of someone, correct?

A Yes, ma'am.

Q And would it be fair to say that the pivotal issue at your client's trial was whether she -- issues, rather -- I should say plural -- was whether she participated in inflicting those injuries, A, or, B, had enough previous notice of abuse or the child's current illness was so severe than her leaving the child in the care and custody of Mark Martucci would constitute reckless indifference to human life?

A Uh-huh.

Q That being the case, wasn't it important to

try to clearly evidence for the jury just how little evidence there was that Brandi Holder had any notice that the child was being seriously injured?

A We tried to put that forward. The problem is when she gives a statement that says she's noticed bruises and marks him, it's kind of hard to sell that when she didn't check on the baby. That's the problem. Had she got up that morning and checked on the baby, the baby was fine when she went to work, sure strengthens that argument.

Q Do you recall the autopsy report containing evidence that the child had bite marks on his wrist? A bite mark.

A A bite mark.

Q On his wrist?

A Yes.

Q And you, in fact, cross-examined Dr. Ward about that injury and whether or not the services of another doctor had been sought in this case and you called him to --

A I was trying to get anything I could from Dr. Ward.

Q Do you recognize that document, Bruce?

A Yeah, that's the, uh, SLED report.

Q Could I get you to take a look at page 2?

A Yes.

Q Under Results?

A Yes.

Q Would you read what it says concerning the DNA profile for item 1.12, which was the bite mark.

A The bite mark is 1.12. The DNA profile developed from item 1.12 is a mixture. The major contributor to this mixture is not unlike the victim. The minor contributor to this mixture is an unknown individual.

Q So we know from the SLED report introduced -- pardon me -- submitted to you -- and when I say you, I mean the defense team -- in the discovery package, that there was foreign DNA in the bite mark, the DNA not consistent with the child, an unknown individual.

A True.

Q And according to the chart on that page, it describes -- and I'm not going to try to pronounce this word, but A-M-E-L-O-G-E-N-I-N.

A XY, which would be the male chromosome.

Q Correct.

A Right.

MRS. SHURLING: Your Honor, I would move to introduce this SLED report previously provided

to respondent.

MRS. RATIGAN: No objection. It was in discovery.

THE COURT: This trial lasted how many days?

THE WITNESS: Three.

THE COURT: Three days. We're not going to retry the case.

MRS. SHURLING: I understand.

THE COURT: Let's get to what you say he did not do correctly.

(WHEREUPON, Applicant's Exhibit 2 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q You testified a little while ago that the State was trying to have their cake and eat it too, that they were not clearly choosing between Mark Martucci and Brandi Holder as the person who they believed had inflicted the injuries.

A I would say that's a fair assessment.

Q They were trying to leave the door open for it to possibly be your client versus Martucci.

A Or at least they would argue that my client had to know what was going on.

Q Okay. Would it be fair to say that the

presence of male DNA in the bite mark on the child's wrist is evidence that the unknown contributor was a male.

A That's what it says.

Q Would it have been valuable for the jury know that?

A No, because there they couldn't identify my client as putting the bite mark on there. They didn't.

Q But couldn't you have used this report from the State's own expert to exclude her beyond any question as the person that bit the child?

A The child wasn't killed by a bite mark. The child was beaten to death.

Q I understand. But the bite mark was described as contemporaneous in age with the other injuries that did kill the child.

A All right. And also matched the victim.

Q I understand. So the answer is you didn't consider introducing that report?

A I didn't.

Q Okay. Thank you. There was testimony concerning the fact that your client initially gave a statement about an ATV accident days before the child's death.

A Right.

Q And she later admitted that that wasn't true and gave this other statement we referred to, correct? Did you question your client or her family to determine whether there had been a previous accident involving the child and an ATV?

A We discussed that there was an ATV but there was no accident involving VICTIM on that ATV, that was just something that was made up.

Q So clarify.

A We discussed with the family that there had been an ATV around. But the statement was not true that VICTIM had been hurt in an ATV accident.

Q Taking that as a given that there had not been an ATV incident days before the child's death, did you explore whether there was any evidence that there had been an earlier accident involving the child and an ATV?

A No. We were concerned about the time frame surrounding the death of this child and what had happened.

Q I understand.

A The fact that something may have happened before, I don't -- like I said, I don't have any records at this point, but I don't think we can

consider that important. What was important was the time frame when VICTIM died.

Q Well, Dr. Ward testified, did he not, to not only the injuries that were thought to have contributed to the child's death but also to the evidence of a previous abdominal injury that was healing?

A If that's what the record says. I think we went through that a little while ago.

MRS. SHURLING: I'm sorry, Your Honor. My paralegal was a little bit too good a job mapping this stuff out.

THE WITNESS: Thank you.

BY MRS. SHURLING:

Q The autopsy report, I'm going to hand you a copy to refresh your recollection, on the last page, describes introabdominal soft tissue damage using a lot of words I can't pronounce followed by this is likely the result of previous trauma. You see that?

A What line are you?

Q Last paragraph.

A I know.

Q Well, excluding the manner of death is homicide.

A It says microscopic sections of

introabdominal soft tissues included periaortic, peripancreatic soft tissues demonstrated microscopic changes of fiber blast proliferation, neovascularization and old hemorrhage with hemosiderin macrophages consistent with granulation tissue likely result from previous trauma.

Q Okay.

A He had been hurt once before at least.

Q And did you review the rest of the autopsy report for references to any other old injuries that were present at the time or observable to the pathologist at the time of autopsy?

A David and I went through the entire autopsy report at Dr. Ward's office and then with Dr. Ward at his office. We spent a couple of hours with Dr. Ward.

Q And if the autopsy report reflects that this abdominal injury is the only one--that is given any attention in the autopsy report, could you -- well, that would be consistent, would it not, with Dr. Ward's trial testimony where he references the previous injury being abdominal?

A Yes.

Q And we've already covered that. I'm not going to go over it again. But did you consider

arguing to the Court when you made the motion for directed verdict of acquittal that the only evidence of Brandi Holder being on notice of mistreatment that rose to the level of manifest indifference to human life was this injury which the doctor himself said could have been mistaken for a virus or some other sickness? Did you consider arguing that?

A No, that wasn't the only evidence in the record.

Q Pardon?

A That wasn't the only evidence in the record. You've also got the bruising and the other problems. That's the problem.

Q I'm not going to reinvent the wheel. It's your position that there was evidence in the record, that Brandi Holder knew about injuries that would rise to the level of being some evidence of a grave risk to her child's safety?

A I think there was evidence in the record that Brandi knew that leaving the child with Mark Martucci was a danger to that child's well-being.

MRS. SHURLING: Your Honor, I would move to introduce a copy of the --

MRS. RATIGAN: That was part of the discovery. I don't have it any objection.

MRS. SHURLING: It was.

(WHEREUPON, Applicant's Exhibit 3 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q Did you do any investigation as to whether or not Mark Martucci, in fact, possessed an ATV or whether witnesses had ever seen him ride the child on that vehicle?

A Uh, no. When we found out that the story they were telling us was not true, we didn't think it was real important to go that -- we were trying to figure out what happened to this child, why and what had happened.

Q And to clarify, when you said you found out it wasn't true, it wasn't true with regard to an incident that happened days before his death?

A It wasn't true that it caused any injury that was relevant to this time period we are talking about.

Q Thank you. Do you remember the jury coming back with a question in this case during deliberations?

A I don't have any independent recollection.

(Pause.)

Q Jury requested a copy of the statute and they asked the question does one verdict apply to both defendants or could we render two different verdicts.

A I was happy with that question.

Q I'll bet. Would you please take a look at the judge's answer to the question? I believe that is on 691, line 10. The answer to that question is yes, you can find each defendant guilty under section (A) or you can find them both under (A)(1) or both under (A)(2) or you can find one guilty of one and one of the other. Does that answer your question. Do you see that?

A I do.

Q Is there any particular reason why you didn't object to that answer?

A I guess in hindsight, I should have. He should have said find one guilty of one, one not guilty or both not guilty. I think he answered his question the way it was asked.

Q Well, the specific question was does one verdict apply to both defendants. He says yes. Now, I realize --

THE COURT: He's already said he should have objected.

MRS. SHURLING: Thank you. Moving on.

BY MRS. SHURLING:

Q Do you recall the jury instruction given in this case concerning what constituted an extreme indifference to human life as used in 16-3-85?

A I do not have any specific recollection of that at this time.

Q Initially, on page 677, the Court reads the statute in relevant part. On 678, lines 12 through 15.

A Yes, ma'am.

Q He describes extreme indifference as used in this is a mental state akin to intent, characterized by a deliberate act culminating in death. Did you consider objecting to that instruction as inadequate?

A Uh, no, I didn't. I thought it was good. It helped us. I didn't think there was any -- as we viewed it, we didn't think there was evidence to support that Brandi intended to have this child hurt. She just essentially didn't protect the child from Mr. Martucci.

Q So --

A We thought that -- I thought that was a correct statement of the law at that time.

Q Did you do any research in preparation for this trial in how our court has addressed the definition of extreme indifference in other child abuse cases?

A Mrs. Shurling, I can't tell you from six years ago. If I did, I know we looked at the jury charge and discussed it with the judge, you know, before he charged the jury. He went over the jury charge with us as Judge Pyle always did.

Q This instruction standing alone without further guidance, were you concerned that it could be interpreted to mean that any deliberate act that resulted in the child dying could meet the standard of extreme indifference?

A No, not at all.

Q Can you tell me what guidance you think this jury got from the instructions as given as to how to differentiate between acts?

MRS. RATIGAN: I'm going to object. That's speculative, Your Honor.

THE COURT: Sustained.

BY MRS. SHURLING:

Q Can you tell me what other portions of the jury instruction you believe also addressed this subject?

A The judge charged -- the charge as a whole, he told the jury what their duties were. He charged the statute. He gave the definition of the elements within that statute. I think that was in accord with what the laws were at that time.

Q Did you consider asking for any kind of jury instruction which would have advised the jury that they needed to evaluate the evidence for evidence that there was a conscious act indicative of disregarding a risk to the victim?

A No, I think that would come close to being a charge on the facts.

MRS. SHURLING: Thank you. Your Honor, I would have no further questions of Mr. Byrholdt.

THE COURT: Well, let's take a -- let's take a short break.

Mr. Byrholdt, you may stand down. Please don't discuss your testimony.

THE WITNESS: Yes, sir.

MRS. SHURLING: Your Honor, I do have a couple of things that were addressed during the testimony that I wanted to get marked. I'll address them with the respondent during the break.

THE COURT: All right. Let's take a

break.

(WHEREUPON, a short recess is taken.)

THE COURT: Okay. Mrs. Ratigan.

MRS. RATIGAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MRS. RATIGAN:

Q In your opinion, was Mrs. Holder's testimony helpful to the case, harmful, kind of mutual?

A I think it was helpful. We had to have her testimony. We had to have her side of the story. I said earlier there was some holes we couldn't plug. You got to be able to give a jury an explanation of what's going on.

Q Did you go over with Mrs. Holder what affect these vastly different statements would have on the defense case?

A We sure did. Anytime you give a statement and you go back and give a second statement, you have not been truthful. It doesn't help the situation. I tell people don't talk at all or tell the truth. You can't have it both ways.

Q Would it be fair to say that your client's explanation for that second statement was basically that she was feeling pressure or coerced?

A Exactly. That's why we challenged the detective that took the statement.

Q As part of the discovery, you have a statement from her co-defendant Mark Martucci, was that something you recall?

A I did not go through this file. I don't do that.

Q You recall whether he ever pointed the finger at your client saying she's the one who was responsible for the injuries?

A I can't recall.

Q And you knew going into trial that Johnny Parker was going to testify for the State?

A Well, he wasn't at trial with us.

Q And what was he charged with? Was it accessory? Or do you recall?

A I think he was charged with possibly accessory after the fact. It was not a charge as serious as what Mr. Martucci and Mrs. Holder was facing.

Q But his basic testimony was going to be that he saw Mark abuse the child and that Brandi knew about it, would that be fair to say?

A I have no -- it's been six years. I have no independent recollection.

Q What was the trial strategy going into trial?

A To try and, if possible, keep the statements out. But if not, explain -- like I said, when this tragedy occurred, that she did not know about it. It was going to be hard to explain from the time the child went to bed until she gets the phone call, she has this period of time where she doesn't know anything. It was going to be hard for anybody to believe that.

Q So it basically was going to ball down to who the jury believed, is that fair to say?

A We were hoping that they were going to believe that Martucci committed these acts and, if anything, she might be guilty of neglect or something less than the homicide. When the statement came in, when Judge Pyle said that was going to be for the jury to determine the voluntariness of it, it was going to be difficult, especially after the autopsy photographs came in.

Q You stated that Mrs. Holder showed -- when she came to trial, she was pregnant?

A We kept that hidden.

Q That was going to be my next question. You kept that out as far as her being pregnant?

A Yeah, we didn't want anything of that nature coming out.

Q Did your client ever indicate to you that she wanted to plead guilty?

A No, I think it was the second day of trial after the statement came in, it may have ever been before -- I think it was right before Dr. Ward was getting ready to testify. We were on a break. Things were not looking good. I can't recall if Judge Pyle questioned whether there had been any plea negotiations. I remember that we went to the Solicitor and at that time the Solicitor was trying the case, her message back to the Court was there was no plea negotiations once the trial started based on the decision by the then Circuit Solicitor Bob Ariail which did not make the judge real happy and did not make us happy.

Q So you would have been open to the idea of a plea during the trial?

A To something like neglect or something like that where she was not looking at 20 years to life. It was -- like I said, we were just stonewalled.

Q This was again six years after the fact, Monday morning quarterback kind of question, but is there anything else, in your opinion, you could have

done to prepare yourself for the trial?

A As far as preparing ourselves, no. I think Dave and I were prepared to go to trial. We knew we were facing trial. It was a terrible result for Brandi. It was a terrible tragedy for VICTIM. But I don't think there was anything we could have done differently and reached a different result.

Q The only other question I have for you is did you ever entertain the idea of giving any kind of expert witnesses?

A This case was based on testimony. As far as the bite mark goes, I had an earlier case where we tried to get somebody to identify a bite mark on a three-year old child. We spent about $4000 and it did us absolutely no good. This was just a terrible tragedy all around. We spent a lot of time with the family. It was heartbreaking.

MRS. RATIGAN: Beg the Court's indulgence.

(Pause.)

BY MRS. RATIGAN:

Q One of the issues in the amended application, I believe it was number 20, referred to whether -- it just says defense counsel -- it doesn't specify you or Mr. Phillips -- was ineffective for failing to call the applicant's mother as a witness

to establish that marks previously described as burn marks on the victim's neck were, in fact, observed when the applicant and the victim were living with her and her husband in a household where no one smoked cigarettes. Do you recall whether you and Mr. Phillips discussed calling Mrs. Holder's mother as a witness?

A Yes, that was discussed extensively. We did not believe that she would hold up at trial or be a good witness. She was under a lot of stress at the time. There was no way I was going to put her on the stand as a witness. That was going to be a loose -- we didn't know what was going to be said.

Q And did you explain that to your client, your rationale?

A We sure did. That was -- that was just a terrible situation.

MRS. RATIGAN: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MRS. SHURLING:

Q With regard to the question concerning expert witnesses, in light of the report that we discussed on direct examination, you didn't need an expert to establish for the jury that the bite mark

had been identified with a male contributor, isn't that true?

A That was already in the record. Didn't need an expert.

Q Was it in the record before the jury that the bite mark was --

A We didn't think it was -- that was not the cause of death. The cause of death were these tremendous injuries.

Q I understand. What about character witnesses? Did you consider --

MRS. RATIGAN: I would object to that being outside the scope, Your Honor.

THE COURT: Yeah. That's outside the scope of cross.

MRS. SHURLING: No further questions.

THE COURT: All right. Thank you, sir. You may stand down.

THE WITNESS: May I be excused? Can they let me go?

THE COURT: Any objection to letting him go?

THE WITNESS: I have court tomorrow.

MRS. SHURLING: I have no objection, Your Honor.

MRS. RATIGAN: I have no objection.

THE WITNESS: Thank you, Judge.

THE COURT: Be careful going down I-85.

MRS. SHURLING: Your Honor, before we move on, I had already discussed with counsel for the respondent that I want to introduce a copy of my client's witness -- 8-page witness statement given on July 17th, 2002, which was part of the discovery packet.

MRS. RATIGAN: We have no objection. It was part of discovery. Not only that, I would just note redacted statements -- both statements in redacted form were actually published to the jury by Investigator Silvaggio between pages 500 and 530. The only redaction is they took out the words "Mark" or "Mr. Martucci" and put in "he" or "him". So the State doesn't have an objection.

THE COURT: Okay.

MRS. SHURLING: Thank you, Your Honor. And Your Honor, during the testimony, we referred to the finding in the SLED report that a DNA contributor to the bite mark listed as 1.12 was an unknown individual with amelogenin of XY. They have agreed not to object to a report I

pulled up from the internet on Genetics Home Reference guide which gives a definition of that word indicating that it's DNA with an origin involving teeth.

MRS. RATIGAN: The State's only comment would be that I don't know that it necessarily needs to be an exhibit if the judge can just take judicial notice that this is the definition.

THE COURT: Well, you -- I'll let her put it in. I'm not sure if that's the definition or not.

MRS. SHURLING: Thank you, Your Honor. I have an extra copy if Your Honor would like to have one. Thank you. I have, for the record, provided one for the respondent, Your Honor.

(WHEREUPON, Applicant's Exhibits 4 and 5 are marked for identification and admitted into the record.)

MRS. SHURLING: Your Honor, at this time, I would call the applicant's co-counsel in her trial, Mr. David Phillips.

THE CLERK: Mr. Phillips, step over here to the Bible. Let me swear you in. Please your left hand on the Bible and raise your right

hand.

DAVID PHILLIPS

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: David Earl Phillips.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mr. Phillips, I'm going to try to shortcut some of this and not go back all the way through everything we went through with Mr. Bryholdt. If you will, bear with me for just a moment. Did you and your co-counsel -- and I apologize. I believe I referred to you as the applicant's co-counsel -- Mr. Byrholdt's co-counsel. Did you discuss the possibility of introducing witnesses from the community for the purpose of addressing her character, her known reputation for character and voracity and peacefulness in the community?

A I don't know whether we did or not. I know that we, as I recall, developed testimony from witnesses who did testify for the defense as to her character. I don't know if we discussed calling additional character witnesses. I do think that she -- that Brandi had said that her prior attorney had

led her to believe that that was going to be the substance of her defense was to call numerous character witnesses. I don't recall Mr. Byrholdt and I discussing that.

Q Can you tell me why you decided against introducing character witnesses on her behalf?

A I know that we discussed it. I think that we felt comfortable with what we had in terms of the witnesses who did testify that we were drawing out enough character evidence from the witnesses who did testify for the defendant. We didn't feel like bringing the entire community up here.

Q Let's talk about that. Who did you put up as witnesses for the defense? Do you recall?

A I think we put up -- I know we put up her father. I believe there was -- I don't remember his relation, but I think he was a minister of some sort, maybe on a part-time basis. That's been a while back. It maybe someone else that we --

Q The record will speak for itself. Would you agree -- is your recollection consistent with the fact that you put up the defendant herself, Brandi Holder, her father, Mr. Benjamin Holder and Mr. David Kelly, who was an uncle?

A That sounds right. That does sound right.

Q And would it be fair to say that her uncle, Mr. David Kelly's testimony was fairly restricted to the circumstances under which he drove her to the sheriff's department after VICTIM's death and the circumstances surrounding her questioning on the evening?

A I don't know. I would have to look back at his testimony. I don't remember.

Q Okay. The record will speak for itself on that.

A Yes, ma'am.

Q So as a trial attorney, would it be fair to say that you can generally expect the parent's testimony to be viewed with a skeptical eye because of the familial relationship between parent and child?

A That's possible. I could see how that would be. Not every case obviously, but certainly possible.

Q And certainly, the testimony of the accused is rightly potential for being considered self-serving?

A True.

Q So my question would be who among the persons that testified would have fulfilled the role

of letting this jury know that this young woman had a very positive background, positive reputation and a reputation for peacefulness?

A I don't recall who actually did testify to that or what they testified to. I felt like when we were putting up our defense that the witnesses we had put up -- and our focus was not on that so much. Our focus was more on the hard evidence that we were dealing with which was the fact that her two-year-old child had died and we didn't have a very good explanation from our client to work with as to how it happened or how she could not have known about it happening.

Q Thank you. Did you consider putting up witnesses or perhaps presenting people to give supporting statements on her behalf during sentencing?

A I don't remember. I don't remember if we discussed that or not.

Q Were you aware that your client had been an honor roll student in high school?

A I don't remember if she told us that or not. It wouldn't surprise me, but I don't remember that.

Q And did you interview anyone in connection

with this case to determine if there were witnesses available that could testify to the lack of any evidence that the child had a history of visible signs of abuse prior to this incident?

A Could you repeat that. I'm not sure if I followed your question on that.

Q Let me -- it wasn't worded the best. I apologize. For example, uh, the chiropractor was mentioned during Mr. Byrholdt's testimony. Were you aware that there was a chiropractor who had treated both Brandi Holder Turner and her son since very early in his life?

A Yes, I was.

Q Were you aware that that chiropractor had had occasion to see the victim on an almost weekly basis for the majority of his young life?

A I looked at, uh, -- when I got the amended application, I went back and looked at those records. The records -- the child appeared -- in the records from the chiropractor, there was mention of a couple of bad falls. Some other things that we were concerned or would have been concerned, was it would have caused the jury to think that this had been going on for a much longer time. Uh, in addition, the records reflect that the child stopped going to

the chiropractor about three months prior to his death. That was -- that's why we stayed away from the chiropractor best I could remember.

Q Okay. How about presenting testimony from others in the community who had had an opportunity to observe Brandi with her child and observe the child on a regular basis and see his physical condition? Did you consider introducing testimony from anyone like that to establish that there was no pattern of visible injuries that would put her on notice?

A I don't know that we did. We may have and I don't remember. We were focused more on the events that happened more proximate to the time of the child's death and the date of the child's death than what those would have gone to.

Q What evidence that you can recall did the State introduce tending to show that Brandi Holder was on notice that Mark Martucci posed a serious risk to her child's well-being?

A The testimony -- there was testimony from Parker, I think his first name is John, who talked about, if I remember right, the child being dunked under water in the bath tub, held under water. Brandi was in the living room and came in and said that's not going to help and just came back to the

living room. There was evidence that there were bruises. As far as the testimony that the State or the evidence that the State put up, there was really a lot of testimony that there had been bruises and that Brandi was around the child, saw the bruises and there was some things that she should have been questioning. -

Q As a defense lawyer, did you think that just any bruises present on a two-and-a-half-year-old little boy would necessarily be indicative of child abuse?

A No, not necessarily but if you have a two-year-old child who dies from internal injuries caused by blunt force trauma certainly raises the level of suspicion.

Q That was the nut, if you will, at this trial, wasn't it, of whether or not prior to this admittedly horrific injury, series of injuries inflicted simultaneously or within a short period of time of whether there had previously been abuse of this child that should have been obvious to Brandi Holder such that she knew there should have been a risk? That was basically the question, wasn't it?

A If not the question, it was a major issue.

Q Okay. And the two major sources of

evidence that Brandi knew Mark had mistreated the boy in any way were the testimony of John Parker himself, the friend he was with, Mark Martucci, when he took, the boy to the hospital and her own statement to the police and her own testimony, correct?

A That's true. That's not all of it, but that's the biggest part.

Q Well --

A There were witnesses who -- there was a witness I recall who was so concerned about it some time before the child died that after Bible school, I think -- and this is again by six years ago memory -- that she took photographs of the child, bruises on the child's back before the child was picked up from Bible school. There's evidence of that that came in.

Q Let me ask you about that. I neglected to cover this with Mr. Byrholdt, but the witness you are referring to would be a Mrs. Center. Her testimony at trial was that she kept -- her testimony begins on page 247 of the record. She indicates that she was a relative of a Mrs. Vaneski [phonetically] who was also a witness for the prosecution and that she, on occasion, kept VICTIM at her home. You recall that testimony?

A No, but if it's in the record, I'll go

along with it.

Q Okay. She actually went so far as to say that she called and reported what she perceived to be evidence of abuse to DSS. Did you investigate whether there had ever been a report to DSS concerning possible abuse of this child?

A I believe we did. I believe we couldn't find that there was any kind of record. That's again -- I don't remember from six years ago. I don't think there was anything that came in about that having been reported. One of the things that hurt us in the case, we were hired over three years after the child died. We were getting up to speed late in the game. We got up to speed as quickly as we could. I don't know that they kept records long enough or what the situation was, but we weren't able to determine from DSS one way or another whether they did, whether it was or wasn't reported.

Q Do you recall the testimony of Darren Turner, the ex-husband?

A No, I -- not independently.

Q Okay. Do you recall reviewing the discovery materials with your client and with your co-counsel before this trial?

A I know we did do that. I know we went

through it thoroughly. I couldn't tell you how many hours we spent on this case, but it wouldn't surprise me if it were more than 150 to 200 hours at least within the last month or two leading up to it.

Q Let me back up for just a couple of minutes. I asked Mr. Byrholdt some background questions. You were retained initially in this case before you brought Mr. Byrholdt in on the defense?

A My recollection on that is a little different than Mr. Byrholdt's recollection of it. I think that -- if I remember right, the family was referred to us by someone I had represented on a civil matter. I met with the family and Brandi and talked to them about what had been going on with the case. At that time, I had been an attorney for eight years going -- I think starting on nine years maybe something like that. I knew that this would be a case where there would probably be voluminous mountains of evidence to go through. I wanted somebody with a lot more experience in criminal matters than I had. I talked to them. I made sure that Bruce was going to work with me on the case before we were engaged to represent the defendant.

Q Certainly. Uh, did you have any criminal background at the time you took this case?

A I did. I had some criminal background. I had done some Public Defender work for juveniles in 2000 which was about five years before we were engaged. Just here and there, other cases we had worked on.

Q Prior to --

A And I worked with Bruce. I worked with Bruce for seven years too. So I had done some work on criminal cases with him before.

Q Prior to this case, you ever been involved in the trial of a major felony, a Class A, B or C felony case?

A No.

Q Okay. Uh, in reviewing the discovery materials in this case, I understand you said you don't have any independent recollection of the testimony of Mr. Turner, the ex-husband, do you recall reviewing his statement in the discovery?

A I don't recall doing that. I looked through everything thoroughly. I mean, I even tried to look up anything I could find on witnesses the State was going to call.

THE COURT: Let me just short circuit this. Page 350 of the transcript, lines 12 through 18 indicate that -- this is cross-

examination by Mr. Byrholdt where he examines Mr. Turner over Mr. Turner's statement. The only reasonable inference is that they are familiar with the statement.

MRS. SHURLING: Thank you. I will try to short circuit this a little bit more.

BY MRS. SHURLING:

Q You've been sitting here during the testimony of your co-counsel. You've heard me go over various items that I believe to be either errors or admissions in the defense of Mrs. Holder. Are there any of those specific questions that were addressed to Mr. Byrholdt that you would either differ with his answers or that you would feel you have anything further to offer with regard to any tactical or strategic decisions?

A No. I agreed with everything -- pretty well everything he said. I can't think of anything I don't agree with that he testified to.

Q Okay. And if the SLED report in the discovery provided you with direct evidence that the DNA, a DNA sample taken from the bite mark was male in origin, you have any explanation for why you would not have introduced that evidence to the jury to exclude your client as a contributor?

A Nothing in addition to what Mr. Byrholdt already offered on that.

Q Okay. And when the jury came back with a question of whether or not one verdict would apply to both defendants and the judge answered yes and then said you can find both guilty of one, both guilty of the other or one guilty of one and one guilty of the other subsections but gave no verdict alternatives including one or both of them being found not guilty, any particular reason why you didn't object to that answer to the jury's question?

A No, other than I think that my mind unfortunately went to what I think the jury was asking, the essence of the question rather than the specifics of how it was worded. I think I probably made the same error in judgement in hindsight that Mr. Byrholdt did.

Q Thank you. Did you do any research independent of Mr. Byrholdt concerning what our appellant courts have done with regard to definitions or jury instructions regarding extreme indifference to human life as it is used in the statute defining homicide by child abuse?

A I know we did a lot of research on that. I don't remember specifically everything that we looked

at. I felt like when we looked at the charge that it was a correct statement of law. Beyond that, I don't recall specifically researching that definition or the definition of what you described.

Q Okay. And going to the ATV incident that Ms. Holder initially describes as having happened in the days before her son's death, did you ever explore with your client whether or not there had ever been an ATV accident involving her son? Not in the days immediately preceding his death but ever any time in the weeks or months before his death?

A We talked about -- I'm sure we talked about where this ATV assertion came from. But I don't remember the substance of what we talked about. I know we talked about that earlier because it was mentioned in the statements and we were trying to figure out where this came from and how to reconcile the two statements that Brandi gave. But I don't recall anything beyond -- exactly what we said, I don't remember.

Q Had you read the autopsy report done by Dr. Ward prior to his testimony at trial?

A I had read it. I mean, I read everything that we had. I can't remember it today. But I read everything in the file numerous times.

Q Did you consider questioning Dr. Ward with more specificity concerning what, if any, findings in the autopsy report supported the conclusion that there were previous injuries that should have been apparent to your client prior to the one that led to her son's death?

A I'm not sure that I actually -- it's been so long ago. I apologize for saying that. But I think Mr. Byrholdt handled that -- handled him as a witness.

Q Thank you. If you don't remember, you don't remember. I understand. Uh, going back for just a couple of minutes to the testimony of the ex-husband, do you remember ever considering making a motion in limine to exclude his testimony pretrial on the grounds of relevance?

A No.

Q Did -- once he was asked questions concerning whether Brandi even knew who the father of her child was, did you consider objecting to that line of questioning?

A I deferred to Mr. Byrholdt who was handling that witness specifically for our defense team and just left it in his judgement as to what he did. I think he did object. I think he objected to certain

parts of that line of questioning. In looking back over his statements that we had, there were some good things that he had to say about Brandi that, uh, I don't know if that could come in and help you or not. I don't know if that was the rationale. I let Bruce make the decision on that.

Q Uh, with regard to the other matters that came out during his testimony, the alleged prior physical abuse of the husband by your client, was there any reason why you didn't object to that or were you simply leaving any objections with regard to that witness with your co-counsel?

A I was leaving that to my co-counsel who was the one handling that witness.

Q Were you aware going into the trial that the State was going to introduce evidence or did you have reason to suspect they were going to introduce evidence that the husband paid for the child's funeral?

A I don't remember having any evidence of that ahead of time. I don't know that we knew that going into it. I had the statement that we had. That would have been the only thing we would have known was what was in the statement.

Q And once you were confronted with the

testimony that came in, uh, concerning the fact that Mr. Turner paid for the boy's funeral, did you consider questioning him as to whether or not he'd have life insurance on the child?

A I never considered doing that.

Q In retrospect, given the line of questioning that could have led the jury to believe that the ex-husband had to pay for the funeral because he was the only one willing to pay to bury the child, would it had been helpful to demonstrate that he was paying for the funeral because he was the one of the group that had life insurance on the child?

A I don't know if it would have helped or not. I really don't know giving the other evidence that we faced, I don't know that it would have made any difference.

Q Okay. Why did you make the closing argument?

A We were trying to divide up work. Bruce, as you can tell, Mr. Byrholdt had a significant percentage of the witnesses that he was handling and had to prepare for. We discussed what was going to be done in closing argument and opening statements. I felt like I could, uh, present our case to the jury

well. That would leave Bruce more time to dig into the witnesses that we were going to have to try to neutralize.

Q By the time you were getting ready to do closing argument, the witnesses were done, weren't they?

A That's true. We closed after -- at the end of the case.

Q I believe your earlier testimony was that you had not tried any serious felony cases before this one, correct?

A You said A, B, C or D felonies. I don't -- you know, that's true.

Q Uh, did you consider pointing out in your closing argument the fact that the abuse or the mistreatment, I believe is the word used in the testimony, allegedly witnessed by John Parker was suspiciously identical to the mistreatment supposedly described by Brandi Turner in her second statement?

A I don't remember if I specifically thought about it in those terms. I do remember that the -- probably what I felt was the most compelling evidence that we had that Brandi wouldn't have known that the child was being hurt or harmed by Martucci was that we had photographs from July 4th, I think, a couple

of weeks before -- actually, it may not have been even quite that long. A couple of weeks before or thereabouts where the child, at least from the photographs, you couldn't see bruising on the child. We tried to -- I tried to focus the jury's attention on that rather than refocus them on Parker's statement and the bad that went along with that.

Q Okay. Uh, do you think that any bruises on a two-and-a-half-year old boy necessarily would be indicative of child abuse?

A Not necessarily, not just any bruises, no.

Q Did you consider arguing to the jury that you could probably take any two-and-a-half-year old and find some bruises on some occasion?

A I don't remember if I considered doing that.

Q Did you argue to the jury in any way in your recollection that the fact that a little boy had on some isolated occasions been demonstrated to have bruises on him did not necessarily mean that he had been abused or that the mother knew he was being abused.

A The point we were getting at was we tried to argue that Brandi didn't know that he was being abused. There was some evidence that although they

had all these witnesses lined up saying there was bruising on this child, that we had these photographs from the 4th of July. That's where I went with that. I said don't believe what I'm saying. Just look at the pictures and see for yourself kind of thing.

Q Did you consider asking the jury to examine the State's evidence and determine for themselves exactly what evidence there was or was not that tended to show that Brandi Holder had any notice that there was a grave risk to her child's safety if she left him with Martucci?

A I don't remember exactly what we -- what I -- I don't remember what I said in closing arguments.

Q Okay.

A I don't know.

Q When you presented testimony from the applicant at trial, who did her direct examination?

A Mr. Byrholdt did.

Q Did you discuss that proffer of evidence with your co-counsel before you put her up on the stand?

A I know we discussed the issues that we wanted to highlight and the evidence that we wanted to highlight with regard to the overall presentation of the case. I don't remember specifically if we

talked about exactly what he was going to say or present through Brandi's testimony. I don't remember. I know we talked about all the witnesses that we had. I just don't remember what we specifically discussed with regard to any one particular witness.

Q With regard to your statement, there was a specific litany of items that she owned up to knowing Mark had done, dunking the kid's head under water, grabbing him by the face when he went to look at him when he was talking to Mark. I forget the others at the moment. But did you discuss with co-counsel the need to have your client go through those one at a time and explain to the jury why each of those were not particular red flags to her concerning her child's safety?

A I don't remember talking to Mr. Byrholdt about that prior to the trial or during the trial for that matter. I don't remember talking about it at all.

Q One moment's indulgence please. (Pause.)

You referenced that you were not involved in the case until three or three and a half years after the fact, correct?

A Something like that.

Q And I believe the record reflects that Mrs. Ross who was affiliated with the Public Defender system had been the previous counsel?

A That's correct.

Q Did you have her file?

A We obtained her file, but I don't remember what was in it. I can't remember what was in it to be honest with you. I don't know. I can't remember if she had all the discovery in the file or if we obtained that from Mrs. Seay. At some point, we got the discovery. And when we did -- if I recall correctly, they were led to believe that the State didn't have a very strong case against Brandi.

Q Okay.

A But when we got the discovery materials, we immediately got the family and Brandi in and talked to them about it. There were a lot of statements here that were harmful.

Q Okay. Now, plea negotiations. When you took this case over, I assumed you talked to Mrs. Ross about the case at some juncture?

A I don't know if I -- I can't remember if I spoke to her or not. I know I spoke to Bryna Seay with the Solicitor's office about whether there were any offers on the table. I was told there were no --

no offers had been extended -- had been extended to the defense at that point.

Q Did you proactively make any offers to the office of the Solicitor or make any suggestions as to alternative charges that might be more appropriate for your client that you thought you might could influence her plea to?

A Well, we really didn't. When we spoke to Brandy, she maintained her innocence the entire time. I think she told us she met with somebody that for some exorbitant about of money could get her a two-year sentence and that she was not interested in that. She was innocent and didn't do this. That's why we didn't go any deeper on that.

Q Well, did you go over the statute defining homicide by child abuse with your client?

A I'm sure we did. I just don't -- I can't recall the occasion but I know we did. We went over everything with her.

Q Did you explain to her that Subsection (A)(1) calls for a sentence of 20 years to life?

A Yes.

Q Did you explain to her that Subsection (A)(2) only called for a penalty of 10 years?

A We would have gone over all that. I know

we went over that. I just don't remember the occasion that we did.

Q Okay. And were you aware at that time that since Subsection (A)(2) did not carry a potential sentence of life nor did the statute contain language prohibiting suspension of any portion thereof that if she had been able to plead, for example, to Subsection 2, there would have been a possibility of a portion of the minimum being suspended?

A We were aware of that.

Q Was your client? Did you explain that to her?

A I believe we did. She wasn't interested in pleading. It wasn't until deep into the trial that I think that changed. Bruce's recollection may have been different. But if I recall, Brandi's father was the first one to realize that. He had been every day for trial. I think he was the first one who started talking about, you know, maybe we ought to look at a plea. I don't remember that for 100 percent certain, but that was kind of my recollection.

Q Thank you. Did you also hear Mr. Byrholdt refer to the fact that Judge Pyle made inquiries during the trial concerning whether or not it couldn't be worked out with a plea? Do you recall

that?

A I don't recall that. But that's not to say it didn't happen. I just don't remember it that way. It may have happened and I just don't recall.

MRS. SHURLING: No further questions, Your Honor.

CROSS-EXAMINATION

BY MRS. RATIGAN:

Q So you retrieved Mrs. Ross' file when you assumed representation?

A That's correct.

Q And I believe you stated that, uh, Mrs. Holder had been lead to believe the State didn't have a strong case against her. Was she led to believe that by Mrs. Ross?

A That's what they told me. I never did talk to Mrs. Ross or at least I don't remember talking to her.

Q And as your client stated she was innocent, you just never pursued any kind of plea negotiations after you took the case?

A No, and I don't think the State was very interested in -- my recollection is they weren't very interested in a plea that I think that Brandi would have gone for. I think they were looking at over 10

years at least. It was a significant amount of time they wanted her to do.

Q You stated you and Mr. Byrholdt spent hundreds of hours on the case, at least 150 to 200. Would it be fair to say that several of those hours would have been meetings with Mrs. Holder?

A Yes. We met with her a lot. We met with her quite often in the month or two leading up to the case.

Q And you reviewed with her the State's discovery materials?

A Yes.

Q And that would have included both of her statements?

A Yes.

Q And that would have included y'all discussing with her the impact those statements would have on y'all's case at trial?

A Yes.

Q Did you review -- do you recall reviewing her co-defendant's statement?

A Yes.

Q Did it point the finger at your client as being the abuser?

A I don't remember what the content of that

one was. Certainly if I remember right, when -- I can't remember if this was Parker's testimony or his statement, but one or both pointed their finger at -- well, at least as far as her knowing that it was going on and not stopping it and not doing anything to prevent it.

Q I believe you testified that Mrs. Holder was never able to come up with any satisfactory reason why she wouldn't have known this behavior was going on?

A That's true.

Q In your opinion, did that remain consistent, just her inability to kind of fill in the blanks?

A Throughout. I mean to the point that I still don't have any better explanation.

Q Would it be fair to say that the defense strategy was that she did not know because she was not put on notice of this behavior?

A That was what we hoped to demonstrate.

Q Was it also to point at Mark Martucci as being the abuser?

A That was what I believed. I still believe that, that he was the one who actually struck.

Q Would that strategy have been assisted by

the fact that he did not appear for trial?

A Yes.

Q And at some point, you stated that during the trial, somehow it came about the idea of trying to enter a plea?

A That's right.

Q And I believe Mr. Byrholdt testified that the State was approached and they said no. Is that accurate?

A They actually, I think, looked into it. Bryna Seay checked it out. As I understood it, the elected Solicitor was the one who made the decision that they have a policy of not doing a plea once the trial starts.

Q I'll ask you the same question I asked Mr. Bryholdt. I know it's several years after the fact. But in your opinion, is there anything else you could have done to prepare this case to go to trial?

A No. I thought and thought, but I can't think of anything else we could have done.

MRS. RATIGAN: That's all I have, Your Honor.

MRS. SHURLING: Nothing further, Your Honor.

THE COURT: Okay. Call your next witness.

MRS. SHURLING: Your Honor, at this time, I would call Dr. Rebecca Hartman.

MRS. RATIGAN: Your Honor, may Mr. Phillips be excused?

MRS. SHURLING: Certainly.

THE COURT: All right. Thank you.

THE CLERK: Yes. Come up here. Place your left hand on the Bible. Raise your right hand. Raise your right hand.

REBECCA HARTMAN

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Rebecca Ann Fisher Hartman.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Good afternoon, Dr. Hartman. Can you tell us, if you will, what your area of practice is?

A I'm a straight chiropractor. I graduated from Sherman College of Straight Chiropractic in Spartanburg in 1978.

Q And could you repeat what you said? You are a straight?

A I'm a straight chiropractor. There are two

different kinds. It's a political thing.

Q And I actually know that. But for the benefit of the Court, could you tell us the difference between a regular chiropractor and a straight chiropractor?

A It's a philosophical difference. Different techniques are within both fields. But generally, it's the idea that you are helping the body, uh, with it's healing capabilities by adjustment of the spine.

Q Okay. And in your practice, did you treat the applicant Brandi Holder?

A Yes, ma'am.

Q And I believe you treated Mrs. Holder under a family practice plan that was paid for by her father Benjamin Holder, is that correct?

A I took care of Ben. Actually, my husband took care of Ben. I took of Brandi and then VICTIM.

Q Okay. If I could explain please --

THE COURT: You got to speak up, ma'am.

THE WITNESS: Oh, okay.

BY MRS. SHURLING:

Q She has to repeat every word you say. I'm a little hard of hearing.

A Okay. All right.

Q If you could speak up, I'd appreciate it.

At my request, have you brought with you copies of your medical records concerning your treatment of the youngest member of the Holder clan, VICTIM , before he died?

A I brought chiropractic records.

Q I'm sorry.

A That's a legal --

Q I should be careful with my words. You brought copies of your chiropractic records?

A Yes, ma'am.

Q If I could hand you those, your records indicate that you began treating the child when?

A I have a January 10th of 2000 was when I checked him first. But he was not adjusted until April 3rd of 2000.

Q Okay. So January 10th, 2000 would, according to your records, be when he was seven days old. Does that sound correct?

A Okay.

Q Well, let me get you to identify this. This is from your file. I believe it's a client --

A That's the chiropractic case history.

Q Great. This would be the original from your file?

A Yes, ma'am.

Q Did you, at my request, make copies?

A Yes, ma'am.

Q Of that document?

MRS. SHURLING: Your Honor, at this time, I would move, without objection by respondent, to introduce a copy of that document.

MRS. RATIGAN: It is without objection.

THE COURT: All right.

MRS. SHURLING: Thank you.

(WHEREUPON, Applicant's Exhibit 6 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q In addition, you have brought with you a chart from your file that indicates all of your visits with VICTIM, correct?

A Yes, ma'am.

Q And what is the date of the last visit?

A April 8th of 2002.

Q And the child died in July 2002?

A Yes, ma'am.

Q Okay. Uh, looking over your notes from this chart, can you tell us what, if any, injuries you had the opportunity to observe on the child during your regular visits with him?

A Typical little baby things. I'm not sure

of your question there.

Q Well, did you ever notice any unusual or severe bruises on the child?

A No, ma'am.

Q Did you ever notice any unusual cuts or abrasions on the child?

A No, ma'am. Generally, the grandmother was the one helping me with VICTIM. This was long before there was any incidents that y'all are discussing.

Q So during the time period that you were treating him, did he appear to be a healthy, normal child?

A Yes, ma'am.

Q Did you ever see any injuries on the child that gave you reason to suspect that he was being neglected or abused in any way by his mother or other caregivers?

A No, ma'am.

Q Did you see him on an almost weekly basis?

A Generally, I do have like an every week or every two weeks for people. Children need care.

Q For folks that are believers in straight chiropractory as opposed to regular chiropractory, that's not unusual, is it?

A No, ma'am.

Q Okay. There was testimony earlier today that your records indicate that there had been several bad falls in the child's life. Can you review these records for me and tell me what, if any, records you have of a bad fall or a serious fall?

A Just what you see there. A child took a tumble learning to walk, pulling up on a chair. When I said two bad falls -- you're looking at the one April 2, 2001, that's all I know. That was 11 years -- 9 years ago.

Q And would -- there's explanations that are in the notes in your file come by way of history provided by the caregiver that brought the child in?

A Generally, yes, ma'am. The child couldn't talk.

Q If there had been an observable, physical trauma to the child such as cuts, serious bruises, would those had been noted on your chart?

A Yes, ma'am.

MRS. SHURLING: Your Honor, I would move to introduce without objection --

THE COURT: Any objection?

MRS. RATIGAN: No objection, Judge.

(WHEREUPON, Applicant's Exhibit 7 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q Now, Doctor, I realize that you are not a medical doctor but if you had ever observed any indication that this child was being neglected or mistreated at the hands of any of his caregivers, including his mother, would you have felt ethically bound to report it?

A Yes, ma'am.

Q Did you ever have any such occasion?

A No, ma'am.

Q Can you tell me what this document is?

A Yes, those are just readings. We call them -- it's a thermographic reading taken on the neck. You run it on the back of the neck and that determines -- to see if it's nice and smooth versus -- it's a heat differential pattern.

Q In order to perform this test, are you attaching things to the child's neck?

A No, ma'am. It's just like a little thermometer.

Q Thumb? You said thumb?

A Thermometer.

Q Thermometer. Okay. Where is the thermometer attached?

A It's not attached to the baby. You hold it

against them as you read them.

Q Where is it held against?

A Against the back of the neck.

Q So in doing this test, you would have been holding a thermometer against the back of the child's neck?

A Yes, ma'am.

Q So if, in doing these tests, you would have ever observed any serious injuries on the child's neck, you would have noted?

A Yes, ma'am.

Q This document indicates that this test was done repeatedly from January 2000 up through at least -- show me, Doctor, but I believe I'm looking at July 2000 as the last date for one of those.

A August 28th of 2000.

Q Thank you.

MRS. SHURLING: Your Honor, I would move to introduce a copy of that document as well.

MRS. RATIGAN: I'm going to object to that one. I don't know that these readings are relevant if the doctor already testified that she did not note any bruises on the chart. I don't know that this is really relevant.

MRS. SHURLING: Your Honor, the testimony

reflects that you ran these tests periodically between the first examination and January 2000 up to as late as July 2000.

THE WITNESS: It was August 28th.

MRS. SHURLING: Pardon me. August 28th of 2000?

THE WITNESS: Yes, ma'am.

MRS. SHURLING: And in doing the tests, the thermometer was put on the neck. With that in mind, I don't really need the document.

BY MRS. SHURLING:

Q Did either of the defense lawyers that represented Mrs. Holder at trial ever interview you prior to her trial?

A No, ma'am.

Q Would you had been willing to be a witness for her at trial if you had been asked to?

A Yes, ma'am.

Q In other words, I subpoenaed you and you came. If they had, you would have as well.

A Yes, ma'am.

Q Once again, you're not aware -- are you aware of any evidence of Mrs. Holder having been an unfit or abusive mother?

A No, ma'am.

Q In your experience, were there occasions when Brandi brought her child to your clinic or was it always her mom?

A I'm trying to remember. I don't know if Brandi was driving yet or had her own car. She may have, but I don't remember. It's just one of those things. I don't even see the cars people have. I'm in the office doing my thing. How they get there is fine.

MRS. SHURLING: Thank you. No further questions.

MRS. RATIGAN: Just one or two, Your Honor.

CROSS-EXAMINATION

BY MRS. RATIGAN:

Q Dr. Hartman, the item marked Exhibit 7, which is the adjustment and notes.

A Okay.

Q Does it indicate the last date that you treated both?

A Yes, ma'am. It was on the back side of it. It was April 8th of 2002.

Q And what is the next, uh, --

A The next line was -- I just wrote down July 17th of '02. I wrote deceased.

Q So it would have been -- according to your

notes, your last treatment would have been approximately three months before he died?

A Yes, ma'am.

Q Okay. That's all I have, Your Honor.

THE COURT: All right. Thank you. You can step down.

MRS. SHURLING: Your Honor, at this time, I would call the applicant Brandi --

THE COURT: All right. Come on around.

BRANDI HOLDER TUNER

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Brandi Lynn Holder Turner.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Brandi, I've been calling you Brandi so long that I'm not certain whether you go by Holder or Turner these days. Which is it?

A Turner.

Q Turner?

A Yes, ma'am.

Q Okay. Mrs. Turner, did your lawyers, and by your lawyers, I mean those that represented you

ultimately at trial, Mr. Byrholdt and Mr. Phillips ever discuss with you the possibility of entering a guilty plea to the charge against you?

A No, ma'am. It wasn't until the middle of trial that was even discussed with those attorneys.

Q Did they discuss with you the penalties that were possible under our law in South Carolina for the two different types of homicide by child abuse?

A Yes, ma'am. If you could, would you explain exactly what you mean under statute A?

Q You heard us talking about the fact that the statute under (A)(1) has a definition of abuse and neglect and (A)(2) refers to aiding and abetting someone else who was abusing and neglecting.

A Okay. Prior to trial, the only one that was discussed was statute A. During the mist of trial when the jury was given the option, that was the only time the other was discussed.

Q So prior to trial, there was no discussion with you about what would be the lesser offense under the code section that you were indicted under?

A No, ma'am.

Q And I'm being somewhat repetitive, but just being clear, you were not informed of the

differential between the penalty for one versus the other than I can only assume?

A No.

Q Okay. Had it ever been explained to you that a plea to homicide by child abuse under Subsection (1) -- (A)(2), pardon me, not (1), but (A)(2) carried a potential penalty of 10 to 20 years versus 20 to life?

A No, ma'am. The only one that was discussed with me was the one that carried 20 to life.

Q Yes, ma'am. After reviewing the evidence with your lawyers, if they had explained to you that the lesser charge, the (A)(2) carried a significantly less severe penalty, would you had been willing to at least consider the possibility of a plea bargain?

A Yes, ma'am.

Q And you were never given that option?

A No.

Q Uh, you gave a statement to the police on the evening that your son died is my understanding, correct?

A Yes.

Q In fact, you gave two.

A Yes.

Q Now, there's been some discussion, to be

candid, at some point, you were actually under the impression that there were three statements, is that accurate?

A Yes, ma'am.

Q You understand that in the discovery package and in the trial testimony, there are only two statements that are disclosed and introduced against you at trial?

A Yes.

Q Okay. Did your lawyers ever discuss with you the impact that the portions of your second statement referring to your being aware of mistreatment of your child by Mark Martucci would have on the probability of you being convicted at trial?

A Yes, they did.

Q And did they ever go over with you the individual acts that you describe in that statement and give you an opportunity to explain for their benefit exactly what you were referring to in that statement?

A I was able to speak briefly with them about it, but it was never brought up in court.

Q Did they ever discuss with you how important it would be to explain each of those items

to the jury in your testimony?

A No, ma'am.

Q Well, let's go over one at a time. In your statement, the one referred to as your second statement at trial, you admit to having observed Mark on occasion grab your child's face and it leaving bruises on at least on occasion. Can you explain to us exactly what you saw Mark do?

MRS. RATIGAN: I'm going to object, Your Honor. We're getting into retrying the case instead of limiting ourselves to ineffective assistance.

THE COURT: Yeah. We're not going to go through this whole thing again. If you've got where they, where her lawyers were deficient, that's where we need to focus.

MRS. SHURLING: Yes, sir, Your Honor. But I have to demonstrate -- I have alleged that they were ineffective for failing to bring out certain matters on direct in her testimony. In order to demonstrate prejudice, I have to be allowed to show what her testimony, if properly questioned, would have been so that I could demonstrate the prejudice in those questions not being asked.

THE COURT: Well, let's be specific and just get to the -- cut to the chase.

MRS. SHURLING: Yes, sir.

BY MRS. SHURLING:

Q Can you describe as succinctly as you can what you observed Mark do that described that way in your statement?

A There was an incident where VICTIM did not want to eat his food. Mark was trying to -- as a normal two-and-a-half-year old, if it's something they don't want to eat, they would turn their head. He would physically turn it back.

Q There was a reference in your statement to Mark having held VICTIM's head under water and not wanting him to be a sissy boy. Can you tell us a little bit more about that incident briefly but tell us more exactly what that was that you observed.

A Yes, ma'am. VICTIM didn't care too much for water to be in his face. Mark said he was trying to get him used to the water. He would either, like, giving him a bath, pour water over his head rinsing shampoo or I have witnessed him. He would kind of dunk him under the water. But no, not hold him.

Q When you say no, not hold him, he did not hold his head under the water?

A No, ma'am.

Q Have you seen people dunk each other in a swimming pool?

A Yes, ma'am.

Q Would it be akin to that kind of an incident?

A Yes.

Q Okay. And, uh, there was a reference in your statement to your having seen him, uh, hit or slap VICTIM on the jaw. Can you explain to us what it was that the officer may have been interpreting from your oral statement in that written portion of your statement?

A I have no idea how the interpretation would have gotten even so misconstrued as to say slap him like that. There are questions, you know, about the interrogation. I'm not sure that I'm able to speak of those at this point.

Q One moment's indulgence, Your Honor.

(Pause.)

There was testimony from one of your co-workers at trial that you had your son at work one day and when he wouldn't behave, you threatened to take him home to Mark. Do you recall that testimony?

A I recall that.

Q Do you recall the day you had your son at work?

A I do.

Q And how many times did you ever take him to work with you?

A Uh, he only went with me to work twice. Once for a haircut and once I ended up having to attempt to babysit him and work at the same time.

Q Okay. The time that he went for a haircut was described by multiple employees, co-workers as when bruises on his face were observed?

A Yes, ma'am.

Q Those bruises had been explained to you by Mark Martucci as occurring how?

A He said he had victim at his sister's house. They had a big in-ground pool. They were playing. They had a big yellow Labrador and he had gotten knocked down by the dog.

Q Did you have any reason at that point to disbelieve Mark concerning the origin of those bruises?

A Yes, ma'am.

Q Did you ever see any marks on your child that gave you reason to believe that Mark had burned him with a cigarette?

A No, ma'am. He had eczema. There would be little splotches like that, but nothing that was blistered like a burn would.

Q Did his eczema cause him to get lesions on his skin?

A Yeah, it would cause sometimes large spots, sometimes small spots. Usually in the back of the knees hot spots. They would be dry, scaly, would sometimes chap up.

Q Did you take him to the doctor for that condition?

A Yes, ma'am. I did.

Q Did the doctor prescribe for your son medication for that condition?

A He did, yes, ma'am. He did.

Q Can you identify for me what this box is?

A Yes, ma'am. This is the box for the creme that he was prescribed.

Q And can you take a look at this readout from CVS pharmacy and show -- there are two different dates for this prescription having been filled. Can you tell us what they are?

A May 25th, 2001 and September 30th, 2001.

MRS. SHURLING: Your Honor, without objection, I would introduce the records from

CVS pharmacy and the actual box of creme that was prescribed to the child for the eczema.

MRS. RATIGAN: If you'd lay a little bit more foundation in terms of chronology of it, I wouldn't have an objection.

MRS. SHURLING: Certainly.

BY MRS. SHURLING:

Q During -- according to this, the prescription was first filled in May of 2002 and again in September -- I mean 2001 and September of 2001. Did your son have a continuing problem with eczema during that time period?

A He did during that time period. But it wasn't often. It would be sporadic, you know, seasonal and different things.

Q Okay. At times, were the lesions that he got from the eczema fairly noticeable?

A Yes.

Q Were they red?

A Yeah, they were red. They are patchy. They are dry. They would be -- sometimes he got one that was on the back of his calf, you know. And he would actually complain about that.

Q Okay.

A I would apply the creme.

Q Based on your observations of those lesions, could they appear to someone that didn't know they were eczema to be a burn?

A Yes.

MRS. SHURLING: I would move to introduce these records.

MRS. RATIGAN: No objection, Your Honor.

(WHEREUPON, Applicant's Exhibit 8 is marked for identification and admitted into the record.)

BY MRS. SHURLING:

Q Brandi, how far was where you were living with Mark Martucci from where you worked?

A About 40 to 45 minutes.

Q And on the day that your son died, there was testimony that you went to lunch with a co-worker early in the day and that you didn't get the phone call about your child's illness until you got back from lunch, correct?

A Right.

Q Why did you go to lunch with a friend instead of going home to check on your child?

A Uh, I worked in Mauldin. It was a 40-to-45-minute drive to go back to the house. There was no way I would have made it back to work. I probably would have gotten in trouble for that.

Q So you did not have time on your lunch break to go home?

A No, ma'am.

Q Did you call earlier in the day and check on your son?

A Yes.

Q And what were you told about his condition?

A That he was okay. Mark had it under control.

Q Prior to this terrible day, were there times when Mark treated your child in a way that you didn't particularly like?

A Absolutely. VICTIM was kind of a momma's boy. So I was a single mother at 18. I kind of got a little -- I didn't like how a lot of people treated him, but that was my child.

Q Okay.

A I was a little prejudiced.

Q But have you ever seen Mark Martucci treat your child in a way that gave you reason to think leaving VICTIM in his care was risky or dangerous?

A No.

Q For example, you described in your statement there being an occasion where you saw Mark put a piece of scotch tape over the boy's mouth.

Tell us how that happened.

A He was joking around with VICTIM We were sitting in the living room. VICTIM wanted to play with his cars, play with his cars. You know, a two-year old, they're just going to keep asking and keep asking. He had taken a piece of little scotch tape similar to that and had placed it over his mouth. He was like, in a minute, you know, stop.

Q Was there anything about that gesture that you interpreted to be, uh, gravely threatening or dangerous to your child?

A No, ma'am. Not with a little piece of scotch tape.

Q Now, much was made at trial of the fact that your parents didn't particularly care for Mark Martucci. That was a fair assessment, wasn't it?

A Yeah.

Q Did you, at any time, believe that there was any reason you couldn't go home if you needed to?

A No.

Q And if you ever seen any indication that your child was genuinely at risk, would you have gone home?

A I would have.

Q The day before your child died, were you

sick?

A I was very sick.

Q Throwing up?

A Yes, ma'am.

Q How many times did you throw up that day?

A I probably threw up at least three times. I also had diarrhea. I didn't know if it was something I had eaten, if it was a bug or what it was.

Q On the 16th, the day you were sick, was VICTIM also sick, the victim?

A He didn't get sick until that evening. It was later that night. Probably 7:00, 8:00 o'clock.

Q And he was two and a half. Did he eat some of the same people food that you ate or did he just eat baby food?

A He usually ate off my plate.

MRS. RATIGAN: I'm going to object at this point to relevance. This was all testified to at trial. Again, it's not really tying back to, uh, anything relating to trial counsel.

MRS. SHURLING: Your Honor, this testimony was not brought out at trial. It would have gone to what she was on notice of and what her reasonable beliefs were.

THE COURT: What is -- ask the question.

MRS. SHURLING: Whether VICTIM was sick in the same way she was throwing up the day before his death and if he was on the same diet that she was, did he eat some of the same food she did.

MRS. RATIGAN: That was testified to on page 546 and 547 about having gone to lunch at the buffet and they both got sick.

THE COURT: Okay.

MRS. SHURLING: I'll move on.

BY MRS. SHURLING:

Q Brandi, did VICTIM throw up occasionally as a child?

A Could you explain that?

Q He was a little boy. Did he throw up sometimes?

A Yes, ma'am.

Q Did you take him to the doctor every time he threw up?

A No.

Q Do you remember the discussion earlier today about the discovery package having been reviewed with you before the trial?

A Yes.

Q Did that happen? Did you get a chance to

go through all the discovery?

A Not all of it. There were pieces of it. We were very -- with him being hired late in the game, we filed a continuance. They were only granted 60 days by the judge. In that time, we had Thanksgiving holidays, Christmas holidays. We went over a little bit but not all of it.

Q Mrs. Center testified that you left VICTIM with her one night and you just didn't show back up to pick him up. Was that true?

A No, ma'am.

Q Were you afforded an opportunity in your testimony at trial to refute what she had said about you not showing up to pick your child up?

A I was not. That never came up.

Q The woman testified that she took your child to a Bible school or summer Bible school or something on that evening when you didn't pick him up. Had she, in fact, asked your permission to take him to that church?

A She did. She had called me earlier that day and said that they were having vacation Bible school and would it be alright if he went. I said yes. She said that when it was over, she would drop him off at our hours.

Q Mrs. Center was described at trial as a stranger that you left your child with. Did you know Mrs. Vaneski [phonetically] fairly well from the area where you lived?

A Yes. We lived next door to her for five to six months.

Q Was Mrs. Center related to her?

A She was.

Q And was she given favorable references to you by your neighbor?

A She was.

Q And is that why you entrusted your child with her?

A The only reason.

Q If you had been asked those questions at trial, would you have explained why it was that you came to leave your child with Mrs. Center if you had been given a chance to?

A Yes, ma'am.

Q Did anybody ever -- we talked about plea bargains. Did anybody ever discuss with you, uh, the possibility of pleading to what we call as lawyers straight up? I've explained that to you, haven't I?

A Yes, you have.

Q Did you discuss with your lawyers at all

the possibility of entering a straight up plea under a case called Alford versus North Carolina?

A No, ma'am.

Q And have I explained to you what an Alford plea is?

A Yes, ma'am.

Q Given the way your trial was going, at some point during the trial -- well, let me back up. Did there come a point when Judge Pyle in your presence asked questions concerning why this case hadn't been worked out with a plea?

A It was -- I was present in the courtroom but he had called the attorneys to the bench. I wasn't able to hear all of the conversation.

Q Did you later become aware that that's what the conversation was about?

A Yes, ma'am.

Q At that point, did you have any discussion with your lawyers about the possibility of entering -- I think you already answered this. I'm sorry. I'm tried of losing track. Did you have any discussion about possibly entering an Alford plea?

A No, ma'am.

Q Was there, uh, any discussion with you about presenting character witnesses at your trial?

A I had given a list of names to my attorneys, but none were presented in the actual trial. I'm not sure they were ever interviewed.

Q Pardon?

A I'm not sure the witness list that I had given my attorneys was ever even interviewed.

Q Did your lawyers discuss with you the perimeters of the kind of testimony that character witnesses from the community could have introduced?

A No, ma'am.

Q Did they discuss with you the possibility of introducing nonfamilial witnesses, people from the community that were not related to you by blood or marriage that might could have testified to observing you with your child?

A No.

Q Were there persons available to you that you could have given your lawyers to present as witnesses to present that kind of testimony?

A There were.

Q How about Mr. William Lam? He was a -- there were a bunch of your co-workers who testified. Mr. Lam did not. The day that you said you were babysitting victim at the salon, did there come a point when you said you thought you were going to have to

take him home to Mark?

A Yes.

Q Explain that in context. How did that happen?

A Uh, we were trying to work. There were five, six of us stylists there, plus you have customers coming in. It's a place of business. VICTIM saw everything as a toy. He wanted to climb in the shampoo bowls and everything like that. He was just getting a little out of hand. I couldn't do my work as well as try to watch him. So I made the comment I'm going to have to call Mark to come and get him.

Q And when you commented that you were going to have to take him home to Mark, at that time, Mark was unemployed, wasn't he?

A Yes.

Q And who was VICTIM's primary caregiver at that time?

A At that time, myself and Mark.

Q So if you couldn't keep him at the salon, taking him home to Mark would not be unusual?

A No.

Q In that context, you weren't threatening the child with Mark, were you?

A No.

Q And who did you make those comments in the presence of?

A It just would have been in front of my co-workers.

Q Okay. Was anybody questioned about the circumstances surrounding that at trial that you recall?

A No, I don't believe that they ever got into that. There's possibly one briefly. She got up and said that I threatened to take him to Mark.

Q Okay. After you separated from Darren Turner, you lived with your mom and dad for a time?

A Yes.

Q And after you first began to live with Mark Martucci, initially your child lived with your parent?

A Yes.

Q For a little while?

A For a little while.

Q And then he came to live with you. At least initially, did your mother care for the boy during the day?

A She did.

Q At some point, did Mark lose his job?

A He did.

Q Once Mark left his job, is that when you quit taking VICTIM to your mother?

A It is.

Q Uh, at trial, it was suggested that you were doing that in a spiteful manner because you were angry at your parents or you were withholding VICTIM from your parents, is that true?

A No, that's not true. It just, at the time, made logical sense considering the distance where my parents lived, where my job was at. Mark did not have a job. It was convenient. But in no way was it out of argument or punishment to my parents.

Q And how recently had the change in custody, pardon me, child care arrangements been made prior to his death? About how long had Mark been keeping him?

A Uh, not very long. It had only been around June of that year. Late May or June.

Q A moment's indulgence please. (Pause.)

Brandi, were you a good student?

A Yes, ma'am.

Q Were you actually selected for the Who's Who of American high school students or some such honor?

A Yes.

Q When did you quit high school?

A Uh, my senior year.

Q Did you complete your degree through GED?

A I did.

Q Had you ever been in trouble with the law?

A No.

Q Never?

A I had one fender bender when I was 16 years old in school traffic leaving the school. That's the only time I ever had an encounter.

Q Ever suspended from school for fighting or anything like that?

A No, ma'am.

Q Would you have wanted -- in your testimony to the jury, given the opportunity, would you have wanted to explain to them more about the types of behavior you had a chance to witness between Mark and victim?

A Uh, yes, ma'am. I would have liked to have been afforded the opportunity to explain a lot.

Q Is there anything else in particular that you would have wanted the jury to know about your relationship with Mark or your relationship with the child that you were not afforded the opportunity to tell the jury?

A Yes, ma'am. I would.

Q Share that with us as briefly as you can.

A I was a single mother. My child was my world. Yeah, I wanted him to have a male figure. All he had was my dad. I know that things, you know, didn't look good. But nobody wants to face all the I told you so's and stuff like that. So I chose to tough it out. But, uh, not everybody makes, you know, good choices. I tried to do what I could to put food on the table for my child and give him what he needed.

Q You admit that your pride may have kept you from leaving Mark?

A Yes.

Q Were you ever confronted with anything that gave you reason to believe that it was dangerous to victim for you to stay?

A No, ma'am. I never thought that this would happen.

Q Would you have left and gone home if you had?

A Absolutely if I knew that my son would still be here today. Nothing can bring that back.

Q Okay. Last thing I have to ask -- and I'm sorry. But post-conviction relief is a tool for trying to get a new trial. The crime you were

indicted for under (A)(1) carries a penalty of 20 years to life. I've explained that to you, haven't I?

A Yes, ma'am.

Q I've also explained to you that under South Carolina law under the State versus Lewis Hilton decision, uh, that if you were to win a new trial and go back to retrial, there would be the possibility that you could get more time than you have now?

A Yes, ma'am.

Q I've explained to you that if you were being tried by the same judge and he wanted to increase the penalty, he would have to explain why he was doing so, but as long as it was any other judge, they could give you any penalty allowed by law?

A Yes, you have.

Q Even with that risk in mind, are you sure you want to go forward with asking Judge Miller to grant you a new trial?

A I do.

Q Thank you. Will you please listen carefully to the questions put to you by the respondent's lawyer and answer them truthfully.

MRS. RATIGAN: I have no questions for this witness, Your Honor.

THE COURT: All right. Thank you. You can step down.

MRS. SHURLING: Your Honor, I'm sorry. I had forgotten one rather important question. Any objection if I ask?

MRS. RATIGAN: That's fine.

BY MRS. SHURLING:

Q Brandi, in your first statement, you did say that there had been an ATV accident a couple of days earlier?

A Yes, ma'am.

Q Who told you to say that?

A Mark did.

Q Did Mark, in fact, tell you that there had been an ATV accident days earlier?

A He did.

Q You believed him?

A Yes, ma'am.

Q Once the officers went over the evidence with you and told you why they thought various things didn't fit, did you begin to believe that Mark had harmed your child?

A I didn't know what happened but I knew something had.

Q And once you no longer believed Mark,

that's when you gave your second statement and told the truth?

A Yes, ma'am.

Q When you gave these statements, it was within hours of finding out that your only child had been beaten to death, correct?

A Yes.

Q What kind of state of mind were you in?

A Shock. I was distraught. Unbelief. I never knew when I left that morning that I'd never see my child again.

Q Okay. Had there been a previous incident sometime in weeks or -- you tell me. Had there been a previous incident where Mark had told you that the child had been involved in an ATV accident?

A He did. But it had actually -- the timeframe didn't fit. It had been a few weeks before them.

Q Had you, in fact, reported that incident to someone in your family?

A I did. I had talked to my mom and my dad both about it.

Q And at that time, you told them what Mark had told you about the accident, that it had occurred two or three weeks before the child died?

A Yes.

Q After that accident, did you see any severe bruises or cuts or abrasions or anything on VICTIM that made you think he had been seriously injured?

A Nothing, you know, out of the ordinary that you would suspect, like a bruised knee or maybe a cut from the grass or twigs or something. But nothing out of --

Q When you admitted to law enforcement in your second statement that you had not been truthful in the first statement, that you really didn't have have any firsthand knowledge of an ATV accident a few days earlier, did you tell them that you had been previously told by Mark Martucci about another alleged ATV accident two or three weeks earlier?

A I did. That was actually how the whole conversation had come up was actually talking about that previous accident that I had been told about.

Q Did you explain that to your lawyers that there was a previous reported ATV accident and that you had told family members about it?

A No, other than what was in the statement, that wasn't discussed with my attorneys.

Q And how do I know about it?

A Cause I discussed it with you.

Q I asked you.

A You asked me very detailed questions about it.

Q I asked you had there ever been an accident involving an ATV. From that, we discussed this other information.

A Yes, ma'am.

Q If your lawyers had asked whether or not there had been a previous ATV accident or whether Mark had reported there being one, would you had told them?

A Yes.

Q Would you had wanted to explain to the jury in your testimony why you believed Mark, that maybe there had been a recent ATV accident?

A I believe that they deserved to know that.

Q Were the questions that were asked of you by your lawyers such that you had that opportunity?

A No, ma'am.

Q You heard Dr. Ward talk about a previous injury that he described in the autopsy report and in his testimony of an abdominal injury. Did the timeframe for that supposed injury fit with when Mark previously told you about an ATV incident?

A It would have.

Q Thank you. No further questions.

MRS. RATIGAN: Again, I have no cross, Your Honor.

THE COURT: So this previous ATV accident that you talked about, what are the details of it?

THE WITNESS: Uh, a friend of his, Matt, was riding him on a four-wheeler. The four-wheeler hit a tree root and started to tip. He had tossed VICTIM off so the four-wheeler would not flip on him. That was the story that Mark had given me.

THE COURT: Did you ask VICTIM about it?

THE WITNESS: Uh, I asked him about it. He just wanted to -- at two and a half, he just wanted to ride the four-wheeler again.

THE COURT: Okay.

MRS. RATIGAN: I do have one question in response to your question, Judge.

CROSS-EXAMINATION

BY MRS. RATIGAN:

Q In your first statement, didn't you mention that, uh, VICTIM had been tossed off of a four-wheeler by a friend the week before?

A Uh, the time frame was not right.

Q Answer my question. Didn't you, in your first statement say last Sunday, VICTIM got tossed off a four-wheeler by a friend and Mark?

A No. I did not say that.

Q You did not say that. Okay.

THE COURT: All right. Thank you. You can step down.

MRS. RATIGAN: Your Honor, I call Mr. Ben Holder. He'll be a very brief witness, Your Honor.

THE CLERK: Mr. Holder, please place your left hand on the Bible and raise your right hand.

BENJAMIN HOLDER

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Benjamin Lynn Holder, Sr.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mr. Holder, you are Brandi's father?

A Yes.

Q And you testified for the defense at trial?

A That is correct, yes.

Q During your testimony at trial, were you asked anything about any knowledge you may or may not have had of an ATV accident?

A I don't remember being asked any questions during the trial about the ATV accident.

Q Did the lawyers representing your daughter ask you if you were aware of any prior incident which VICTIM had been in an accident involving an ATV?

A During the trial?

Q Before or during.

A We discussed in David Phillips' conference room.

Q Okay. And some time prior to your grandson's death, did your daughter report to you that Mark had told her that VICTIM had been in an accident involving an ATV?

A Yes, ma'am.

Q And did she report to you that he had been seriously injured in any way?

A No, ma'am. I even asked that question.

Q Okay. Was she upset with Mark for letting VICTIM ride on the ATV?

A She seemed a little upset about it. I questioned her about his condition. She said he looked perfectly okay, that when he got through

dusting himself off, he went to get back on the four-wheeler.

Q Okay. Was your grandson a fairly active child?

A Extremely.

Q A little rough and tumbled little boy?

A He was very rough and tumultuous little boy.

Q Was he given to climbing on things?

A Climbing on things, swinging things. He loved hockey games. I brought him a little stick at the hockey game. He would jump up and down in the back room like the hockey players and fall down on the concrete floor to simulate what they did in the games.

Q How recently had you seen your grandson before his death?

A It was somewhere around May, the last of May. We went to their home to visit.

Q During this time period, uh, did it coincide with when you found out your wife, Marie, had been diagnosed with cancer?

A It's about that same timeframe.

Q Not a happy time for the family, I'm sure.

A No, ma'am.

Q Did Marie's diagnosis with cancer and her treatment for what I believe turned out to be sarcoidosis have anything to do with Marie not keeping VICTIM as frequently as she had before?

A It did have repercussions of that nature, yes.

Q Okay. If you had been asked in your testimony, would you had been willing to testify to what knowledge you had concerning a previous incident where Mark reported to your daughter that the child had been in an ATV accident?

A Yes.

Q Uh, there was a reference to having observed sunburn on your grandson.

A Yes, ma'am.

Q And I believe it was your daughter's testimony that Mark had used old sun screen on the child.

A Yes, ma'am.

Q And he had gotten burned?

A That plus he was swimming and it washed some of the old stuff off of his shoulders.

Q Did you see the child at the time he had the sunburn?

A Yes, ma'am. I did.

Q Did he also have something on his lip? A fever blister or...

A It looked like it might have been a chapped lip where it had cracked open.

Q Cracked open and looked bloody?

A Yes, ma'am.

Q Okay. And, uh, in your observation, was that associated with his sunburn?

A I think it was. Yes, that's my opinion.

Q Okay. If you had been asked to describe the sunburn and its aftermath, including the lesion on the boy's lip, the fever blister or whatever, would you had done so at trial?

A Yes, ma'am.

Q You believe that might had been relevant to refuting the claims of some that a child had a busted open lip at some juncture?

A Absolutely.

Q Thank you. No further questions.

MRS. RATIGAN: I have no cross, Your Honor.

THE COURT: All right. You can stand down. Thank you.

MRS. SHURLING: Your Honor, at this juncture, I would like to, uh, introduce a number of witnesses that were familiar with

Brandi and her interaction with her child and the lack of any apparent evidence of child abuse as well as her general reputation for truth and voracity and peacefulness in the community. I can short circuit this and try to do it if the respondent is okay with us doing it that way. What do you think?

MRS. RATIGAN: My only concern is it's kind of a nightmare for Mrs. Johnson when you have a courtroom full of people standing up. My suggestion to Mrs. Shurling was to perhaps pick one or two character witnesses and then state that testimony would be representative of the entire mass and it would just be kind of cumulative rather than just having unknown persons standing up in the courtroom. However, obviously, Your Honor wants to do it.

THE COURT: That makes a lot more logistical sense.

MRS. SHURLING: That's --

THE COURT: The only witness that Mrs. Holder talked about giving to the attorneys was Mr. William Lam.

MRS. SHURLING: Actually, Your Honor, I asked her if there were multiple character

witnesses.

THE COURT: We don't know who they are.

MRS. SHURLING: Sir?

THE COURT: We don't know who -- what lawyer, what names she gave to her lawyers. I don't know if the people that you are presenting now would be the people that would have been available for the lawyers to talk to.

MRS. SHURLING: I can establish that through their testimony, Your Honor. At this time, I would call Mr. Joel Maddox.

THE CLERK: Mr. Maddox, please place your left hand on the Bible and raise your right hand.

JOEL MADDOX

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Joel Edwin Maddox.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mr. Maddox, this is going to be a little bit like speed dating. I want to do a lot of people quickly. How do you know Brandi Turner?

A She is my wife's cousin.

Q Did you have occasion to be around her and her son VICTIM?

A Yes, I did.

Q Were you around them on a fairly regular basis?

A Usually if we had family get-togethers, Christmas, Thanksgiving, any kind of holidays like that. We always, once a month, like have a family get-together.

Q Did Brandi regularly attend those functions with her son?

A Yes, she did. Most all the time.

Q Prior to his death, how recently would you have had an opportunity to see the child?

A Probably within six months.

Q Okay.

A I'm going to say around six months.

Q During the time period that you did observe Brandi with her son, was she, in your opinion, an attentive mother?

A Oh, yes.

Q Did you ever observe her to be harsh or impatient with the child?

A No.

Q Did you ever see any marks or bruises, cuts, abrasions or anything on the child that gave you reason to suspect that he was an abused toddler?

A No, ma'am.

Q Are you familiar with Brandi's general reputation in the community for truth and voracity?

A Whenever we was always together, she was always fun to be around and just as nice as she could be.

Q I'm going to set the tone for all the people that are fixing to sit in your chair. The specific question you need to answer is, are you familiar with her general reputation in the community for truth and voracity? Was she thought of as a truthful, honest person?

A Yes, she was.

Q You ever had reason to question her honesty or her voracity?

A No, I have not.

Q Would you believe her under oath?

A Yes, ma'am.

Q Are you familiar with her general reputation for peacefulness?

A Yes, ma'am.

Q Have you ever known her to engage in any

conduct that gave you reason to question her as a peace-loving person?

A No, I have not.

Q Have you ever known her to be violent toward victim or anyone else?

A No, I have not.

Q If you had been asked to testify on behalf of Mrs. Turner at her trial, would you had been willing to come forward and provide character testimony and firsthand eyewitness testimony concerning her interaction with her son?

A Yes, I would.

Q No further questions.

MRS. RATIGAN: No questions on cross, Your Honor.

THE COURT: You can step down.

MRS. SHURLING: Kevin Clark.

THE CLERK: Mr. Clark, please place your left hand on the Bible. Raise your right hand.

KEVIN CLARK

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Kevin Michael Clark.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mr. Clark, do you personally know Brandi Turner?

A I most certainly do.

Q And how long had you known her?

A Ever since she was born.

Q Ever since she was born?

A Correct.

Q Are you related by blood or marriage to her?

A I am not.

Q You are not?

A I am not.

Q And how do you happen to know Mrs. Turner?

A I work with her father.

Q And where is that?

A At General Electric.

Q At General Electric?

A Correct.

Q So having been around her since she was a child, did you have occasion to be with her once she had a child?

A On many occasions.

Q Did you have occasion to be around her for

a sufficient duration of time to observe her interaction with the child?

A For hours.

Q In your opinion, was she an attentive, good mother?

A Absolutely.

Q Did you ever see her be impatient or harsh with her child?

A Not once.

Q Did you ever see her engage in any behavior that gave rise to concern that she might be abusive or indifferent toward his well-being?

A Absolutely not.

Q Are you familiar with her general reputation in the community as it concerns her reputation for truthfulness and voracity?

A Absolutely.

Q Would you believe her under oath?

A Yes.

Q Are you familiar with her general reputation for peacefulness?

A Of course.

Q Is she known in the community as a person of a peaceful nature?

A As what I saw of her.

Q And are you aware of anything in terms of her reputation in the community that gives you reason to believe that she has the propensity towards violence?

A Absolutely not.

Q If you had been asked by one or both of her defense attorneys to come to her trial and provide testimony concerning her character, her reputation for character and peacefulness in the community as well as your firsthand observations concerning her interaction with the child, would you had been willing to do so.

A Without a doubt.

Q Did you ever see VICTIM with any bruises, cuts, burns, abrasions or any other marks on him that gave you reason to be concerned that the child was being abused?

A Never.

Q If you had, would you had reported it?

A I would have probably had discussed it with her father.

Q Thank you. No further questions.

MRS. RATIGAN: No cross, Your Honor.

THE COURT: Okay. You can step down.

MRS. SHURLING: Your Honor, I would call

Debra Atkins to the stand.

THE COURT: Okay. Hold on just a minute.

(Pause.)

Okay. We'll just take a short break.

(WHEREUPON, a short recess is taken.)

THE COURT: All right. Let's get going.

MRS. SHURLING: Debra Atkins. Debra Atkins. Debra Atkins. (Pause.)

Nadine Kelly please, Your Honor.

THE CLERK: I'm sorry. I didn't catch her name.

THE WITNESS: Kelly.

THE CLERK: Kelly?

THE WITNESS: Yes, ma'am.

THE CLERK: Place your left hand on the Bible and raise your right hand.

NADINE KELLY

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Nadine Griffith Kelly.

THE CLERK: Okay. Thank you.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mrs. Kelly, do you know Brandi Turner?

A I do.

Q How long have you known her?

A Her whole life.

Q And what connection do you have to the Holder/Turner family?

A Brandi is my niece.

Q She's your niece?

A Yeah.

Q Okay. Her mom's your sister?

A Yes, ma'am.

Q Okay. Uh, as her aunt, have you had the opportunity to be around Brandi a good bit with her child VICTIM before he died?

A Many times.

Q And in your opinion, was she an attentive mother?

A Oh, yes. He was spoiled. He had every toy, every snack. Yes.

Q Did you ever observe Brandi to behave in a way with VICTIM that gave you cause for concern that she was impatient or rough or violent with him, overly strong with him in any way?

A No, ma'am.

Q Did you ever observe on the child any cuts, bruises, lesions that appeared to be burns or any

other marks that gave rise to concern on your part that the child might be being abused?

A No, ma'am.

Q Did you ever see Brandi behave in a way that gave you concern that she might, uh, be abusing the child or being overly forceful, say, with corporal punishment or any other concerns about her physical treatment with the child?

A No, ma'am. Not at all.

Q Was he, in your experience, a healthy, happy, well-adjusted child?

A Very. He was beautiful. Very.

Q Were you familiar with your niece's general reputation in the community as it concerns truthfulness and voracity?

A Yes, ma'am.

Q Was she, in your experience or to your knowledge, known as a person who was truthful and could be trusted under oath?

A Yes, ma'am.

Q Would you believe her under oath?

A Yes, ma'am.

Q How about peacefulness? What was her reputation in the community as it concerns peacefulness? Was she known as a peaceful person?

A Yeah. She was a very sweet person. Everybody liked her. Everybody loved her.

Q Her general personality, was she ever in your experience aggressive or violent in nature?

A No, never.

Q If you had been asked to come to court and provide testimony on your niece's behalf concerning your firsthand observations of her care and treatment of her son and as it regards your knowledge of his -- pardon me -- of her reputation for truthfulness and peacefulness in the community, would you had been willing to come?

A Yes, ma'am.

Q Did anyone representing your niece ever contact you or interview at all concerning presenting testimony?

A Never.

Q Thank you.

MRS. RATIGAN: I have no cross, Your Honor.

THE COURT: All right. Stand down.

MRS. SHURLING: Debra Atkins please.

THE CLERK: Ma'am, please place your left hand on the Bible and raise your right hand.

DEBRA ATKINS

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Debra Ann Atkins.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mrs. Atkins, how do you know Brandi Turner?

A Uh, Brandi is, uh, my husband's cousin. And I worked with her for a while at Greenville Meats.

Q Okay. So you had the opportunity to know her both as a family member and as a co-worker at some point?

A Yes, ma'am.

Q Did you have occasion to be around her with her son VICTIM before he died?

A Yes, ma'am.

Q Were you frequently around her with her child?

A I was around her some. I had a grandchild that was the same age. They would get together and be able to play together.

Q Okay. Were there occasions when you were around Brandi with VICTIM and others when you were around VICTIM with his grandmother or grandfather?

A Yes, ma'am.

Q Okay. Let's start with when you were around Brandi and her son. Did you ever see Brandi with her son on an occasion when you felt she was, uh, short tempered or abusive in any way toward her child?

A Never. Never.

Q Was she, in your experience, an attentive, caring mother?

A Yes, ma'am.

Q Did you ever see the child with bruises, bite marks, abrasions, burns, any injuries that would have given cause for concern that he was being abused by anyone?

A No, ma'am.

Q How recently before his death would you say you had seen VICTIM?

A I had probably seen him in June or May. I -- we had taken our children to ride dirt bikes, my son and Brandi's brother. And, uh, VICTIM and my granddaughter were together that day. They played and had the best time. He was just a happy baby.

Q And are you familiar -- you said she was actually a co-worker at one time.

A Uh-huh.

Q Were you familiar with her general

reputation in the community in which she worked and lived as far as whether she was a truthful, honest person?

A She was truthful. She was honest and she was a joy to work with. And I'm older than she is. But she taught me how to do the cash register and things. Being patient with me was hard.

Q So in the context of teaching you things, you had an opportunity to observe her to be a patient person?

A Yes, ma'am.

Q And, uh, were -- in your experience with her, was she an attentive loving mother?

A Yes, ma'am.

Q Did she appear to make VICTIM a priority in her life?

A She did and she loved him. He was a precious baby. She was a precious mother.

Q In terms of her general reputation in the community in which she lived and worked, was she regarded as a peaceful person?

A Yes, ma'am.

Q Are you aware of any incidents which gave rise to a contrary reputation in the community and that being was there ever any incident that gave rise

to, uh, her being referenced as someone who was violent or short-tempered?

A No, ma'am.

Q Thank you. If you had been asked by either of Mrs. Turner's lawyers, would you had been willing to talk to them about your life experiences with Ms. Turner?

A I surely would.

Q And would have wanted to come to trial and appear as a character witness for her, uh, addressing the same matters that you are addressing here today if you had been given the opportunity to do so?

A Yes, ma'am.

Q Thank you. No further questions.

MRS. RATIGAN: I have no cross, Your Honor.

MRS. SHURLING: Becky Leopard.

THE COURT: You can step down.

THE WITNESS: Thank you.

THE CLERK: Please place your left hand on the Bible. Raise your right hand.

NANCY REBECCA LEOPARD

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Nancy Rebecca Leopard.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mrs. Leopard, how do you know Brandi Holder Turner?

A She is my niece.

Q And are you her mother's sister?

A Uh-huh.

Q Another sister?

A Another sister.

Q And did you have an opportunity to be around Brandi and her son VICTIM before he died?

A All the time.

Q And did you have an opportunity to watch her over a sufficient period of time that you had to make observations concerning what kind of a young mother she was?

A Very good.

Q And did you ever observe her behave in any way that gave cause for concern that she might be overly aggressive or impatient or even abusive with her son?

A Not at all.

Q Was VICTIM, in your experience, a healthy, happy, well-adjusted child?

A Yeah.

Q Did you ever see any signs of bruises, cuts, abrasions, burns or any other injuries on that child that gave you cause for a moment's concern that he might be being abused?

A No.

Q I know she's your niece, but in terms of her general reputation in the community, was Brandi one with a reputation for truthfulness?

A Yes.

Q Was your niece someone that was thought of as a person with a reputation for honesty such that you would believe her under oath?

A Yes, absolutely.

Q And as far as her general reputation in the community for peacefulness, was she known in the community, based on your knowledge, as a person of a peaceful nature?

A Yes, very.

Q Are you aware of any incidents or experiences which would cause her to have a negative reputation in the community with regards to physical violence or other forms of physical aggression?

A Not at all.

Q If you had been asked by her attorneys the

same questions that I put today, would you have given them the same information you are providing to the court today?

A Most certainly.

Q And would you had been willing to take the time out of your schedule to come to court and provide this testimony at trial?

A Yeah.

Q Thank you. No further questions.

MRS. RATIGAN: No cross, Your Honor.

THE COURT: You can step down.

MRS. SHURLING: David Kelley.

THE CLERK: Please place your left hand on the Bible. Raise your right hand.

DAVID KELLEY

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: David Scott Kelley.

THE CLERK: You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mr. Kelley, how do you know Brandi Turner?

A I was a youth minister at a church that she attended and also married her aunt.

Q You knew her aunt?

A I married her aunt.

Q You married her aunt. So you are an uncle by marriage?

A Yes.

Q Had you known her most of her life?

A No, ma'am. Only for 10 years.

Q Okay. Did you have an opportunity to be around her on a regular basis with her son VICTIM before his death?

A Yes, ma'am.

Q Uh, were those encounters with Brandi such that you had sufficient time to observe her with the child and observe the way she interacted with him as a mother?

A Yes.

Q In your personal experience, was she an attentive, loving mother?

A Yes, ma'am.

Q Did you ever see any indications in your firsthand observations of Brandi with her child that she was every abusive in any way, shape or form with her son?

A I never observed any.

Q And you -- did you ever observe on the

child any burns, cuts, bruises, abrasions, any other marks that gave rise to concern that the child might be being abused by anyone?

A No, ma'am.

Q In your observation, was the child a fairly active little boy?

A Yes, ma'am.

Q Kind of rough and tumultous, all-boy kind of kid?

A Yes, ma'am.

Q Okay. I know that you said you are a minister. I assume that you take oaths very seriously and I'm grateful for that. As a minister, I'm asking you were you familiar with Brandi Holder Turner's reputation in the community at large as it regarded truthfulness and honesty?

A Yes, ma'am.

Q And was she regarded generally as a person of honest disposition?

A Yes, ma'am.

Q And would you believe her under oath?

A I would.

Q Was she someone with a general reputation in the church community and the community at large as a peaceful person?

A Yes, ma'am. Everyone in the church thought very highly of her.

Q And are you aware of any incidents in the community that you had either firsthand knowledge of or heard of which gave rise to a negative reputation in the community for physical violence or a propensity toward aggressive or violent behavior?

A I am not.

Q If you had been contacted by either or both of her attorneys and asked if you would be willing to come to court and present testimony such as you are presented today, would you have been willing to appear on her behalf as a witness?

A Yes.

Q Thank you. I have no further questions.

MRS. RATIGAN: No cross.

THE COURT: Mr. Kelly, did you ever observe Mrs. Holder with Mr. Martucci?

THE WITNESS: No, sir. I did not.

THE COURT: Okay. Thank you.

MRS. SHURLING: Lisa Griffin please.

THE CLERK: Please place your left hand ont he Bible and raise your right hand.

LISA GRIFFIN

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Lisa Goodenough Griffin.

COURT REPORTER: What's your middle name?

THE WITNESS: Goodenough.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q You heard the questions. Same one. How do you know Brandi Holder?

A Uh, she's my niece by marriage.

Q Your niece. Another sister?

A Sister-in-law.

Q Sister-in-law. Okay.

A My husband is Marie's brother.

Q Got it. So you are not a blood relative. You are an aunt by marriage?

A Yes.

Q Did you have an opportunity to be around Brandi with her son VICTIM on a regular basis before the child died?

A Yes, ma'am.

Q And were those exposures to Brandi and her child of sufficient duration that you had an opportunity to form an opinion concerning what kind of mother she was?

A Yes, ma'am.

Q Was she in your experience attentive to the child and his needs?

A Yes, ma'am.

Q Did you ever see anything about her conduct or behavior that gave rise to concern that she might not be attentive to the needs and health and well-being of the child?

A No, ma'am.

Q Were there other occasions when you were around VICTIM when Brandi wasn't around?

A Yes, ma'am.

MRS. RATIGAN: You need to speak up just a little bit.

THE COURT: Yes, ma'am. You've got to raise your decibel level.

THE WITNESS: Yes, ma'am.

BY MRS. SHURLING:

Q And during any of those occasions, did you ever observe anything or hear VICTIM say anything that gave rise to concern that he might be abused?

A No, ma'am.

Q Never observed any cuts, abrasions, bruises, burns or any marks on the child of suspicious origin?

A No, ma'am.

Q Uh, never heard the child complaint of his treatment by his mom or anyone else?

A No, ma'am.

Q Are you familiar with the general reputation of Brandi Holder in the community concerning truth and voracity?

A Yes, ma'am.

Q Uh, in your opinion, was her general reputation in the community that of a truthful, honest person?

A Yes, ma'am.

Q Would you believe her under oath?

A Yes, ma'am.

Q Are you familiar with her general reputation in the community as far as her reputation for peacefulness?

A Yes, ma'am.

Q In your experience, is her general reputation in the community that of a peaceful person?

A Yes, ma'am.

Q Are you aware of any incidents or experiences or opinions voiced in the community concerning the reputation for contrary behavior?

That meaning are you aware of any incidents or reports of behavior that would indicate that she had a propensity for violent or aggressive behavior?

A No, ma'am.

Q If you had been asked by Mrs. Turner's lawyers to come to court and present testimony like you have presented today, would you had been willing to come to court and do so?

A Yes, ma'am.

Q Would you lie for your niece?

A No, ma'am.

Q How recently before VICTIM'S death was your last chance you got to see him?

A Probably four or five months.

Q Okay. And in your experience, in your -- based on your exposure to Brandi and her son, do you have any reason to believe that she would have ever allowed anyone else to be abusive to her child?

A No, ma'am.

Q No previous experience with former boyfriends or anything that would give you cause for such concern?

A No, ma'am.

Q Thank you. No further questions.

THE COURT: Cross?

MRS. RATIGAN: No cross.

THE COURT: Ma'am, just a second. Ma'am?

THE WITNESS: Yes, sir.

THE COURT: Did you ever observe Mrs. Holder with Mr. Martucci?

THE WITNESS: No, sir.

THE COURT: Okay. You have any opinion as Mr. Martucci's reputation in the community for peacefulness?

THE WITNESS: No, sir. I didn't know him.

THE COURT: For violence?

THE WITNESS: I don't know. I didn't know him.

THE COURT: For truthfulness?

THE WITNESS: I don't know, sir.

THE COURT: Okay. Thank you very much. You can step down.

MRS. SHURLING: Your Honor, I'm going to quit while I'm ahead. I would like to ask anyone who has not testified, but is here, to show --

THE COURT: Wait a minute. That's not how we do -- we're not going to conduct court like this. I have given you such incredibly wide latitude, but you're not going there.

MRS. SHURLING: Yes, sir.

THE COURT: If you have a witness to call, call them.

MRS. SHURLING: I'll stop at this juncture, Your Honor, and present no further witnesses.

THE COURT: Okay.

MRS. SHURLING: Uh, I take that back. One last one. Marie Holder. Then I will quit.

THE CLERK: Please place your left hand on the Bible and raise your right hand.

MARIE HOLDER

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: Marilyn Marie Holder.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MRS. SHURLING:

Q Mrs. Holder, I'm sorry to have to put you through this. You heard testimony earlier today that the decision was made for you not to be a witness because they thought you just couldn't stand up to it. Would it be fair to say that you were emotionally not in a condition to testify at the time of trial?

A No, ma'am. I was totally shocked.

Q Okay. Did you take part in any meetings with your daughter and her attorneys or your husband and the attorneys and yourself? Did you have meetings with them?

A Yes, a few.

Q And was there, at any time, discussion of determining, uh, potential character witnesses from the community that might be willing to present favorable testimony on Brandi's behalf at trial?

A We discussed it. But what they said is they didn't time to do that because we had retained them so late. They had to focus more on what was important and that that wasn't their most important thing to do.

Q How long before the trial approximately were they retained?

A Uh, probably eight weeks.

Q Now, who gathered the list of potential character witnesses for me in this post-conviction relief proceeding?

A Who gathered?

Q Who compiled the list of character witnesses for this proceeding, the PCR?

A Me.

Q And if the lawyers, while busy preparing for trial, had asked you to make a list of people who were willing to present character testimony for your daughter, would had been willing to do it for them as well?

A Yes. I would have done anything to help my daughter.

Q And they didn't ask you to do that?

A No.

Q Would you had been willing to provide the lawyers with summaries of what the witnesses would have been willing to testify to and how they knew Brandi?

A Yes.

Q If they had asked you to do that, would have done it?

A Yes.

Q Okay. One last area of concern, there was testimony at trial concerning your grandson being laid to rest. Your former son-in-law, Mr. Turner, testified that he had inquired about funeral arrangements and was asked whether he did contribute to your grandson's funeral. Did there come a time during that time period that you became aware that through your son-in-law's employment at Michelin that

there was a life insurance policy on your grandson?

A He came to us. He told us he had a life insurance policy and that was something he wanted to do with that life insurance policy. We thanked him and he did that.

Q Was the fact that he had life insurance proceeds coming from VICTIM's death the major factor that influenced you and your husband Ben to pay for the funeral?

A Yes. We had all planned on doing it. We were going to do it. We didn't know that anybody would ever step up and help anything.

Q So not to make light of his contribution because I know you appreciated it, but you didn't allow him to pay for the funeral because you didn't want to pay for it?

A No, ma'am. No, ma'am.

Q Thank you. No further questions, Your Honor.

MRS. RATIGAN: I have no cross, Your Honor.

THE COURT: All right. Thank you, ma'am. You can step down.

MRS. SHURLING: Your Honor, I would have no further witnesses. Given the time of day and the number of issues that are addressed in this

case, I would ask the Court if you would please allow us to submit proposed orders.

THE COURT: No. You have anything?

MRS. RATIGAN: No, Your Honor. The State would rest on the voluminous trial record and the testimony of Mr. Byrholdt and Mr. Phillips.

THE COURT: Okay. Just tell me what they did wrong and how that would have changed the outcome of the trial.

MRS. SHURLING: Very well, Your Honor. I believe as a preliminary matter that in reviewing the discovery they had available to them the testimony provided by Darren, uh, Turner concerning the case. That statement was introduced into evidence and which was in the discovery material yielded no evidence that was material to the charges against the client which should have given rise to defense as to the relevancy of the man's testimony. Had they filed a motion in limine to prohibit the State from introducing his testimony, they would have had the opportunity to have a hearing. At which, it would have become apparent that the purpose of introducing Mr. Turner was to portray Brandi Holder Turner as a woman of bad character

and a woman with a sordid past with regard to multiple sexual partners.

It also came out during trial testimony the State intended to try and introduce and succeeded in, to a limited degree, introducing testimony of an alleged prior incident in which my client slapped her former husband, evidence of prior bad conduct under 404(b) would have clearly not have been relevant to the charges before the court and should have been excluded. Had they made a motion in limine pretrial, none of that would have ever come out. It's clear that the judge very quickly lost patience with the inability of the State to demonstrate prejudice -- I mean, pardon me -- relevancy in regards to the testimony of Mr. Turner. It's our position that the record speaks for itself with regard to the fact that a hearing on a motion in limine would have quickly demonstrated that Mr. Turner's testimony was not relevant and should not have been introduced.

We believe, Your Honor, that trial counsel was ineffective for failing to highlight the testimony of Dr. Ward the fact that the vast majority of the injuries outlined by the doctor

were those that were contemporaneous with the incident which led to the child's death by homicide and that there were, in fact, very few bruises and/or abrasions that were referred to by the physician as preexisting conditions that would have been observable by the naked eye. That would have been significant as to it going to the question of whether or not the defendant was on sufficient notice of reason to believe that Mark Martucci was, in fact, a danger to her child.

Trial counsel was ineffective, Your Honor, for failing to afford the applicant an opportunity to clarify the distinctions between her two statements to the police and why she did, in fact, make the first statement and why she decided to make the second one. More specifically, we also allege that there were a handful of incidents described by Brandi Turner in her statement concerning actions against her child by Mark Martucci that left unexplained, could have been interpreted by the jury as sufficient prior notice of Mr. Martucci's propensity for violence against the child when, in fact, given the opportunity, uh, Mrs. Turner

was able to demonstrate that each of those incidents were, in fact, fairly minor and so -- and did not give rise to the type of incident that should have put her on notice that Mr. Martucci was, in fact, a high risk to the safety of her son.

Your Honor, we would also submit that trial counsel missed the opportunity to present testimony from the family chiropractor who had an opportunity to observe the child over a period of time and could have given testimony that would have established that while the child was under her care, Brandi Holder Turner's care, that there was no evidence of any sign of physical abuse during that time period. Your Honor, we would suggest -- submit rather that defense counsel was ineffective for failing to present and structure a well-organized closing argument in which arguments were presented to the jury concerning lack of evidence of any notice of propensity for violence that, in fact, placed the child at risk.

It's our position, Your Honor, that, uh, trial counsel was ineffective for failing to question Mrs. Turner's father concerning a

previous report of an ATV incident that had in fact been reported to Mrs. Holder by Mr. Martucci two or three weeks before the child died. It's our position, Your Honor, that, uh, the defense counsel as previously noticed should have made a pretrial motion in limine concerning the testimony of Mr. --

THE COURT: Ma'am, just stay in one place please.

MRS. SHURLING: But once they didn't do that, Your Honor, it's my position, our position that defense counsel failed to make timely objections to improper questions by the State concerning the parentage of victim, whether or not Brandi Holder Turner had ever been physically violent toward him and additionally should have objected quicker to an irrelevant line of questioning concerning who had paid for the child's funeral. We believe that all of that testimony was not only irrelevant to the charges against Mrs. Holder, but it was presented in general to portray her as a person of bad character who was indifferent to her child and to establish for the jury that the family in general were so indifferent toward the

child that the ex-husband had to step forward and pay for the child's funeral.

We submit that trial counsel was ineffective for failing to explore whether or not the father had life insurance on the child. The father testified that he carried medical insurance on the child and that he paid for the funeral. The logical question would have been whether or not he also carried life insurance on the child, a fact which provided a probable explanation for his willingness to pay for the funeral. It's our position, Your Honor, that trial counsel was ineffective for neglecting to note from the discovery a SLED report which has now been introduced into evidence which clearly established through SLED forensic documentation that DNA in the bite mark on the child's arm was general in nature and from a male contributor other than the victim. If there was cross-examination of Dr. Ward concerning the bite mark and the failure of the State to use a (inaudible), uh, to attack that particular area of evidence. But at no time was the jury made aware that there was forensic evidence available from the State, which, in fact, excluded Brandi

as the person who bit her child before his death.

Your Honor, we believe that trial counsel was ineffective for referring to his own client as not the best wife during the cross-examination of her former husband and questioned that was, in fact, a reformation of a question that had already been asked and answered affirmatively to the applicant's advantage before that question was positive.

Your Honor, we would also submit that trial counsel was ineffective when failing to ask for a mistrial following the various portions of highly inflammatory and improper testimony from Mr. Darren Turner. It's our position, Your Honor, as well that trial counsel was ineffective when he failed to, uh, object to the answer given to the jury to a question positive concerning whether or not they had to make one verdict for both defendants. The answer to that question was yes. It was subsequently explained that they could find one guilty of (A)(1) and one guilty of (A)(2) or both of (A)(1) or both of (A)(2) but at no time in that answer did the Court include the possibility of finding one or

both of the defendants on trial not guilty and the other guilty or both not guilty as part of the answer. Therefore, that answer should have been objected to and further clarification requested by defense counsel.

Your Honor, in addition, we would submit that trial counsel was ineffective for failing to object to the general definition of extreme indifference to human life. As it is used in the context of section 16-3-85 as a mental state to intent characterized by a deliberate act culminating in death. I will forthrightly admit to the court that there are two case directly on point. Give me a second. I can dig them out.

The first case in which, uh, extreme indifference was addressed by the court was an opinion of the South Carolina Court of Appeals in State v. Jerrell, J-E-R-R-E-L-L, found at 350 SC 90, 564 SE 2d 362. It is a June 19th, 2002 decision.

In that decision, Your Honor, I candidly admit that the court ultimately concludes that extreme indifference is a mental state characterized by a deliberate act culminating in death, which is, in fact, the same verbiage used

by the Court in this case. However, the Court goes on to talk about extreme indifference being in the nature of a culpable mental state, being akin to intent but it also talks about it being an extreme indifference under circumstances. And it cites with approval cases where extreme indifference is demonstrated under circumstances where the individual is showing a, uh, reckless disregard for the safety of the individual in question.

It's important to note that in the Jerrell decision, the court found specifically that Jerrell left home knowing her child would be killed while she was gone. Very different factual situation. The Court, uh, -- that was Court of Appeals decision, Your Honor.

The Supreme Court of South Carolina dealt with the same issue in State versus McKnight, which is found at 352, 635, 576 S.E. 2d 168. In that case, uh, the court, while citing the definition of reckless disregard found in the Jerrell decision cites with approval, uh, previous decisions of our court in which indifference in the context of criminal statute has been compared to the conscious act of

disregarding of risks which a person's conduct has created or a failure to exercise ordinary or due care. The case cited before that proposition, Your Honor, is a 1997 case State versus Rowell, R-O-W-E-L-L.

The facts in both of those cases are very different from the facts in the Holder-Turner case. It is our position, Your Honor, that the language of those, uh, decisions taken in toto is such that trial counsel could have objected on the facts of this case, uniquely on the facts of this case, that the instruction being limited to the sparse definition of a mental state akin to intent characterized by a deliberate act culminating in death could allow the jury to find any intentional act at the end of which the child was dead being a sufficient finding to justify a finding of extreme indifference.

Therefore, for that reason, it's our position that counsel should have objected to the instruction and presented for the Court's consideration a more carefully tailored, uh, proposed instruction taking into account some of the more expansive language found in the McKnight decision. Your Honor, uh, that is a

very fast overview of what had been many issues presented here today. I would rely in my case -- my client on the allegations filed in the amended application, the testimony presented in total today.

In addition, Your Honor, I would note that the testimony here today indicates that there was a failure to explore a plea deal pretrial, that the attorneys in this case intended to indicate that the client said she was innocent and didn't want to plea but they did not explore a plea bargain. We've demonstrated through the testimony of Brandi Holder that had she understood the stark difference in the penalties between, uh, a finding under (A)(1) and (A)(2) that she would have been wiling to consider a plea bargain.

I realize that there's been testimony that the State was not open at the time of trial to a plea bargain and that there had been some recalcitrants concerning plea bargaining earlier. However, it's our position that if defense counsel had adequately explained the strength of the State's case and the disparity between the punishment for the two different,

uh, subsections on the homicide by child abuse statute that the client would have made clear notwithstanding her position concerning innocence that she would have considered a plea bargain. We believe with the assistance particularly of Judge Pyle that there is a realistic possibility that there may have been some deal worked out prior to trial.

Your Honor, it's our concern as well that some of the matters that were not explored in this case appeared to have been affected by a three-and-a-half-year delay in the attorneys coming on board in the case. I understand the Court's opinions placing blame for that to a greater or lesser degree on a defendant hiring someone late in the ball game. However, I do not believe that coming into the trial as late as six or eight weeks before trial as described by counsel provides any adequate excuse or tactical or strategic reason for not engaging in a basic defense strategy and that being to present character testimony, particularly in a case where the, uh, voracity, the believability of Brandi Turner's testimony was so crucial when there was, in fact, a need for the State to rely

heavily on her statement and that of John Parker.

We believe that it was imperative that Brandi Holder Turner be given the opportunity to explain more expansively some of the information contained in her statement to the police, her second statement that was particularly true where the State was taken at a time when this young mother had only an hour earlier when the interrogation began suddenly been told of the beating death of her young son. Given those extremely traumatic and stressful circumstances and the totality of the situation including the very real potential for her to have been in shock, we believe that it was particularly important that she be afforded the opportunity to expand and explain portions of that statement to the jury during her testimony. I would make special note of the fact that Attorney Phillips, by his own testimony, can't recall ever even talked to the former attorney who had been on the case for three and a half years.

Your Honor, again, it's late. It's been a long day. I believe that I have adequately summarized the issues. However, I would stand

on the record, my amended application for post-conviction relief and the record and all the testimony and evidence presented here today as a showing of proof with regard to our allegations. To the extent that I have been unable to thoroughly cover everything that we covered here today, I apologize and I rely on the record.

THE COURT: All right. Mrs. Ratigan?

MRS. RATIGAN: Your Honor, I'm not going to try to reinvent the wheel. I'll just simply state that it's the State's opinion that Mrs. Holder has the burden of proof. I would simply just state that for all of these issues that were raised today, it's our opinion that trial counsel addressed all of them or the majority of them at trial strategy. You know, some of these things either did not fit their trial strategy or was contrary to their trial strategy. Unless Your Honor has any specific questions to ask, we would state the record is --

THE COURT: The only thing that really catches my eye is the failure to object to the charge by the judge.

MRS. RATIGAN: The question.

THE COURT: The only thing that, you know,

that, uh, the Court Reporter noted when he asked does that answer your question, the Court Reporter noted that they all responded yes. I don't know that the objection would have carried much weight even if they had objected and he had recharged what he -- you have any thoughts on that?

MRS. RATIGAN: Just basically along the same lines as Your Honor. I would note that there were four attorneys involved in this case. Ms. Holder had two attorneys and then Mr. Quinn and Mr. Sumner were representing Mr. Martucci even though he did not appear. And none of the attorneys clearly perceived any kind of issue with that. There's nothing in the record to reflect. And I can't remember if it was Mr. Byrholdt or Mr. Phillips who stated that it was their opinion that the way the question was phrased, they thought that the way the judge answered it was in answer to the question.

THE COURT: That was Mr. Byrholdt.

Well, Mrs. Holder-Turner, you do have the burden in these circumstances. This record has been thoroughly examined. There may be some, uh, -- it could be upset with these lawyers who

had eight weeks to prepare for a major case. But a client is always entitled to the lawyer of their choice. I think you chose well.

But I'm going to tell you that I'm going to deny your application. I don't find that any of the attorneys' conduct fell below an objective standard of reasonableness. In any instance where it may have, as in the failure to object to the charge in answer to the jury's question, I do not believe it would have undermined confidence in the verdict of the jury. So I respectfully deny your petition. Thank you very much.

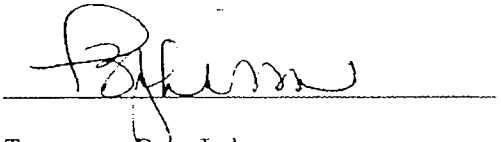
(WHEREUPON, the proceedings conclude at approximately 6:27 p.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 5th day of July, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE Common Pleas COURT

CASE NO(s). 10-CP-23-3160

EXHIBITS RECEIPT

PLAINTIFF	Brandi Holder	PLAINTIFF'S ATTORNEY	
DEFENDANT	State	DEFENDANT'S ATTORNEY	
JUDGE	Miller	DATE OF HEARING	04/04/12

The following exhibits were received by me from Teresa B. Johnson, Court Reporter for the Thirteenth Judicial Circuit, on the 4 day of April, 2012.

They are, as follows:

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
1 Statement-J. Turner ID / EV	1 ID / EV	1
2 Serology Analysis ID / EV	2 ID / EV	2
3 ME Report ID / EV	3 ID / EV	3
4 Statement-B. Turner ID / EV	4 ID / EV	4
5 AMELX report ID / EV	5 ID / EV	5
6 Case History ID / EV	6 ID / EV	6
7 Chiropractor Notes ID / EV	7 ID / EV	7
8 CVS Records ID / EV	8 ID / EV	8
9 ID / EV	9 ID / EV	9
10 ID / EV	10 ID / EV	10
11 ID / EV	11 ID / EV	
12 ID / EV	12 ID / EV	
13 ID / EV	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
16 ID / EV	16 ID / EV	
17 ID / EV	17 ID / EV	
18 ID / EV	18 ID / EV	
19 ID / EV	19 ID / EV	
20 ID / EV	20 ID / EV	
21 ID / EV	21 ID / EV	
22 ID / EV	22 ID / EV	
23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

Jan White
Clerk of Court

4/4/12
Date Received

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 JULY 29, 2002@0925

I, JAMES DARREN TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR HILDEBRAND 663 *509 and _____ who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 24 years old, and I reside at: [redacted] GREER SC 29651

I have a 12TH grade education, and I can read and write.

ADDITIONAL PARTICULARS ON STATEMENTEE: DOB:5-16-1978/ SS#250-69-2303/ PHONE NUMBER: 864-907-6264/ I AM NOT UNDER THE INFLUENCE OF ANY DRUGS NOR ALCOHOL AT THIS TIME. I DO GIVE YOU, INVESTIGATOR HILDEBRAND, PERMISSION TO TYPE MY STATEMENT.

****

I MET BRANDI HOLDER IN MARCH 2000. WE MET THROUGH MUTUAL FRIENDS AT A HOCKEY GAME. I MET WITH SOME FRIENDS HERE IN GREENVILLE AND WE DROVE TO FLORENCE TO WATCH THE GAME. BRANDI RODE WITH ME AND A FRIEND TO THE GAME IN FLORENCE. I ASKED BRANDI HOW OLD SHE WAS AND SOME OTHER INFORMATION ABOUT HER, AND IN THE CONVERSATION BRANDI TOLD ME ABOUT BO. BRANDI AND I BEGAN TO DATE AND I SAW HER EVERY WEEKEND. I MET BO THE NEXT TIME BRANDI AND I WENT OUT. I WENT TO BRANDI'S HOUSE, WHO WAS LIVING WITH HER PARENTS ON [redacted]. I MET VICTIM WHICH IS SHORT FOR VICTORIA, AT HER HOUSE THE FIRST TIME. BRANDI TOLD ME THAT VICTIM WAS TWO MONTHS OLD, AND I NOTICED THAT [redacted] LOOKED VERY CLEAN AND HEALTHY. BRANDI HAD TOLD ME THAT SHE HAD LIVED WITH SOMEONE PRIOR TO US MEETING, BUT SHE DID NOT TELL ME WHO THE FATHER OF VICTIM WAS. THE ENTIRE TIME I DATED BRANDI, SHE WAS VERY NICE AND TREATED [redacted] VERY WELL. BRANDI AND I MARRIED ON SEPTEMBER 16, 2000 AND WE MOVED INTO OUR OWN PLACE ON [redacted]. SOON AFTER WE GOT MARRIED, BRANDI LISTED ME AS THE FATHER OF [redacted] ON THE BIRTH CERTIFICATE. BRANDI NEVER PHYSICALLY ABUSED [redacted] THE ENTIRE TIME WE WERE TOGETHER. BRANDI ALWAYS PROVIDED FOR [redacted]. [redacted] ALWAYS HAD CLEAN CLOTHES AND FOOD TO EAT. [redacted] WAS A HEALTHY CHILD THE ENTIRE TIME I KNEW HIM. THE ONLY TIME [redacted] REALLY GOT SICK, HE HAD AN EAR INFECTION AND UPPER RESPITORY PROBLEMS, BRANDI AND I TOOK [redacted] TO ST FRANCIS WOMENS HOSPITAL. FOR A WHILE [redacted] WAS IN A NURSERY, BUT HE GOT SEVERAL COLDS AND BRANDI TOOK HIM OUT BECAUSE SHE DID NOT LIKE FOR [redacted] TO GET SICK. BRANDI WOULD WORRY ANY TIME [redacted] WOULD EVEN SNEEZE. BRANDI WAS A VERY STRONG WILLED PERSON AND SOMETIMES I FELT THAT BRANDI NEGLECTED ME. BRANDI WOULD NEVER NEGLECT [redacted] ON APRIL 30, 2001 BRANDI MOVED OUT OF OUR HOUSE AND BACK WITH HER PARENTS. BRANDI TOLD ME THAT SHE DID NOT LIKE LIVING THAT FAR OUT. AFTER BRANDI MOVED OUT, I STILL KEPT IN TOUCH WITH BRANDI AND TRIED TO MAKE THINGS WORK. I WOULD STILL SEE [redacted] AND HE WAS ALWAYS HEALTHY AND WELL CARED FOR. THE LAST TIME I SAW OR SPOKE TO BRANDI WAS ON SEPTEMBER 30, 2001. AT THAT TIME BRANDI WAS STILL LIVING WITH HER PARENTS.

ON MARCH 28, 2002 I GOT SERVED WITH DIVORCE PAPERS FROM BRANDI'S ATTORNEY, WHO IS PAUL AARON. IT WAS BRANDI'S IDEA TO GET A DIVORCE, AND I WOULD HAVE NEVER WANTED TO GET A DIVORCE. THE ONLY CONTACT I WOULD HAVE WAS THROUGH BRANDI'S ATTORNEY. THE DIVORCE WAS TO BE FINAL IN MAY OF THIS YEAR, BUT BRANDI'S ATTORNEY DID NOT RESPOND TO THE FINAL AGREEMENT.

I DID NOT FIND OUT WHAT HAPPENED TO [redacted] UNTIL LAST THURSDAY. MY AUNT CALLED MY MOTHER, WHO TOLD ME THAT SHE SAW IT ON THE INTERNET. BRANDI CALLED MY PARENTS LAST FRIDAY AND ASKED IF I WAS HOME, BUT I HAVE NOT SPOKEN WITH BRANDI SINCE SHE WAS PUT IN JAIL.

I WOULD NOT HAVE THOUGHT THAT BRANDI COULD DO ANYTHING LIKE THIS TO [redacted]. BRANDI ALWAYS TOOK GOOD CARE OF [redacted].

**********END OF STATEMENT**********

I have read the above statement of ____ pages and it is true and correct as best I recall.

WITNESS:

HILDEBRAND 663*509

I HAVE RECEIVED A COPY OF THIS STATEMENT

Sworn before me this 29 day of July 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires April 23, 2018

PLAINTIFF'S EXHIBIT 04/04/12 TBJ

PENGAD 800-631-6989

SOUTH CAROLINA LAW ENFORCEMENT DIVISION 938

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

PLAINTIFF'S EXHIBIT 2
04/04/12 TPI

Department of Forensic DNA Analysis
November 21, 2005
SLED Lab No.: L02-9028
Your Case No.: 02-110972
Incident Date: 7/17/02
(V) VICTIM

INV DOUG KELLY
GREENVILLE COUNTY SHERIFF'S OFFICE
LAW ENFORCEMENT CENTER, 4 MCGEE STREET
GREENVILLE, SC 29601

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

ITEMS SUBMITTED:		RESULTS OF EXAMINATIONS:	
1	Child sexual assault evidence collection kit - VICTIM		
1.4	Blood standard from victim	1.4	See DNA results.
1.6	Smears- oral and rectal	1.6	No spermatozoa identified.
1.8	Oral swabs	1.8	No semen identified.
1.9	Rectal swabs	1.9	No semen identified.
1.10	Suspected semen- penile swab	1.10	No semen identified. See DNA results.
1.11	Fingernail scrapings	1.11	Nothing of evidentiary value found.
1.12	Bite mark	1.12	No saliva indicated. See DNA

DNA ANALYSIS

ITEMS ANALYZED:

1.4 Blood standard from victim- VICTIM

1.10 Suspected semen- penile swab
1.12 Bite mark

EXAMINATIONS

DNA profiles were developed from all items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

No DNA profile unlike the victim's was developed from item 1.10.

The DNA profile developed from item 1.12 is a mixture. The major contributor to this mixture is not unlike the victim. The minor contributor to this mixture is an unknown individual.

Table 1 - **Profiler Plus**

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317	D7S820	Amelo-genin
VICTIM (item 1.4)	15,16	15,16	24	13,14	29,30	14	11,12	9,12	9,11	XY
Bite mark (item 1.12)	15,16 19	(15),16 (17)	(22),24	12,13 (14)	29,30	(14)	10,(11) 12	(9),(12)	(9)	XY

() indicates alleles between 75 and 149 rfu

SLED LAB NO.: L02-9028
November 21, 2005

Table 2 - **Cofiler**

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelo-genin
VICTIM (item 1.4)	15,16	10,14	6,9.3	8	10,12	9,11	XY
Suspected semen (item 1.10)	15,16	10,14	6,9.3	8	10,12	9,11	XY
Bite mark (item 1.12)	15,16 19	(10),13 (14)	(6),7 9.3	8,(10)	(10),12	(9)	XY

() indicates alleles between 75 and 149 rfu

These examinations were conducted by S/A Lilly S. Gallman, Forensic Analyst, South Carolina Law Enforcement Division.

L. Gallman

Lilly S. Gallman
Senior Agent

11/21/05

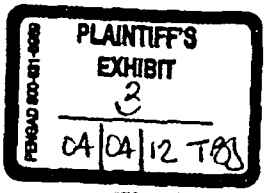
Date

jmj

cc: Greenville County Solicitor's Office

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Office of the Medical Examiner
County of Greenville



301 University Ridge, Suite 5950
Greenville, SC 29601
(864) 467-7536
(864) 467-7537 (Fax)

Report of Findings

NAME:	VICTIM	**AUTOPSY #:**	A-02-209
AGE:	2.5 Years	**EXPIRED:**	July 17, 2002 at 1:10 p.m.
SEX:	Male	**POST MORTEM:**	July 18, 2002 at 9:00 a.m.
RACE:	White	**PHYSICIAN:**	Michael Ward, MD
SS #:	5910	**HOSPITAL #:**	970104405

FINAL ANATOMIC DIAGNOSIS

I. BLUNT FORCE TRAUMA OF THORAX AND ABDOMEN WITH:

- A. Multiple contusions, chest, abdomen and back.
- B. Subcutaneous and intramuscular hemorrhage, chest, abdomen and back.
- C. Laceration, mesentery, small intestine, gastrocolic ligament, and mucosa of small intestine.
- D. Hemoperitoneum (250 ml).
- E. Hemorrhage, serosa, small and large intestine, gastroesophageal junction, right and left hemidiaphragms, peripancreatic, periadrenal, and perirenal soft tissues.
- F. Fracture, left 7th rib, anterior axillary line.
- G. Hemorrhage, pulmonary hilum, bilateral.

II. BLUNT FORCE TRAUMA OF HEAD AND FACE WITH:

- A. Multiple contusions, abrasions and lacerations, head, face, and oral cavity.

III. BLUNT FORCE TRAUMA OF PERINEUM WITH:

- A. Superficial laceration, base of penis.
- B. Contusion, perianal skin.

IV. BLUNT FORCE TRAUMA OF UPPER AND LOWER EXTREMITIES WITH:

- A. Multiple contusions and abrasions, upper and lower extremities.

Michael Ward MD

MICHAEL WARD, M.D./aqm-August 27, 2002
Medical Examiner

VICTIM
A-02-209
Page 2

Office of the Medical Examiner
County of Greenville

PROTOCOL

An autopsy is performed on a body identified as that of VICTIM at the Greenville Memorial Hospital, Greenville County, South Carolina, on the 18th day of July 2002. The autopsy is conducted in the presence of Deputy Coroner Linda Holbrook, Marty Clapp of the Greenville County Criminal Justice Support Department, and Greenville County Sheriff's Detective Doug Kelly. This autopsy falls under the jurisdiction of the Greenville County Medical Examiner's Office.

EXTERNAL EXAMINATION: The body is that of a well developed, well nourished, Caucasian child who weighs 36.5 pounds, is 36 inches in length, and appears compatible with the stated age of 2.5 years. An identification band is present on the left wrist labeled in part "VICTIM 970104405".

The body is initially examined at Allen Bennett Hospital on July 17, 2002 at approximately 2:00 p.m. At this time the body is slightly cool to touch, rigor mortis is minimally present, and no livor mortis is significantly appreciated. Penile swabs and a swab from the left wrist are taken, air-dried and submitted for analysis.

At the time of autopsy, the body is cold to touch. Rigor mortis is fully present. Blanchable purple-red livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure.

The scalp hair is light brown and measures 2-3 inches in length over the crown. The irides are blue. The pupils are bilaterally equal at 0.5 cm. The cornea are translucent. The sclerae and conjunctivae are unremarkable. The nose and ears are not unusual. The teeth are appropriate for age and in good repair. The neck is unremarkable.

The thorax is well developed and symmetrical. The abdomen is slightly protuberant. The anus and back are unremarkable.

The penis is circumcised. The testes are bilaterally descended within the scrotum.

The upper and lower extremities are well developed and symmetrical, without absence of digits.

Identifying marks and scars include numerous faint linear hypopigmented scars overlying the anterior left and right lower extremities, ranging in size from 1 to 3 inches, and a curvilinear hypopigmented scar overlying the posterior left calf, 2.7 inches in length.

Evidence of medical intervention includes an endotracheal tube, an oral gastric tube, recent needle puncture sites in the right antecubital fossa and the left anterior lower leg, an intravenous catheter in the left wrist, and an intraosseous catheter in the anterior right lower leg.

VICTIM
A-02-209
Page 3

Office of the Medical Examiner
County of Greenville

EVIDENCE OF INJURY

HEAD AND NECK: On the left anterolateral forehead within the region of the hairline, are two pink-red contusions of the skin, each 0.8 inch in greatest dimension. On the lower left forehead extending in a curvilinear fashion posteriorly and inferiorly, are four roughly circular red-pink contusions, ranging in size from 0.4 to 0.7 inch in greatest dimension. A similar grouping of three pink-red contusions are arranged in a curvilinear fashion along the left side of the face, extending from the lateral canthus of the left eye to the left angle of the mouth, ranging in size from 1.1 to 0.5 inch in greatest dimension. Within the right lateral forehead at the hairline, are three pink-red to red-brown contusions ranging in size from 0.2 to 0.3 inch in greatest dimension. At the lateral canthus of the right eye and extending onto the right lateral cheek, are two pink-red to red-brown contusions, the larger 1.7 inch in greatest dimension, and the smaller 0.7 inch in greatest dimension. A red-brown contusion is present on the mid-portion of the right cheek, 0.4 inch in greatest dimension.

At the inferior surface of the chin in the region of the prominence and following along the chin line, is a 1.5 x 0.4 curvilinear area of red-brown contusion. At the right margin of the inferior chin are two pink-red to red-brown contusions, 0.4 and 1 inch in greatest dimension.

At the medial canthus of the right eye involving the upper and lower eyelids, are two red-brown contusions, the upper 0.4 inch in greatest dimension and the lower 0.2 inch in greatest dimension.

Similar contusions are present within the mid-portion and the lateral canthus of the left eye, within the upper lid 0.3 inch in greatest dimension and the lower lid 0.2 inch in greatest dimension. A 0.5 inch in greatest dimension contusion is present at the lateral canthus.

On the superior brim of the nares bilaterally are small areas of skin excoriation, 0.3 inch in greatest dimension each. Similar excoriation is present on the skin of the upper lip, 0.2 inch in greatest dimension on the left and 0.3 inch in greatest dimension on the right.

On the skin of the mid-portion of the chin beneath the lower lip, are three curvilinear superficial abrasions, on the right chin 0.2 inch and on the left chin roughly in parallel, 0.2 inch.

At the left lateral margin of the mouth there is an area of excoriation of the skin that blends into the above described purple-red contusion, 1 x 0.7 inch in greatest dimension.

On the left posteroparietal scalp are three pink-red contusions of the skin, each 0.7 inch in greatest dimension.

The skin of the scalp is reflected to reveal subgalial hemorrhage underlying the above described contusions of the left parietal scalp and forehead. No skull fractures are noted. Upon removal of the calvarium, no epidural, subdural nor subarachnoid hemorrhage is present. No cortical contusions are identified.

Upon examination of the oral cavity there is a 0.2 inch in greatest dimension tear of the frenulum of the upper lip with hemorrhage within surrounding mucosa. On the inner aspect of the right lower lip is a 0.2 inch mucosal tear with associated hemorrhage. A similar 0.2 inch tear is present on the left lower lip with intramucosal hemorrhage. A 0.2 inch laceration of the right tip of the tongue is present with intramuscular hemorrhage.

THORAX AND ABDOMEN: On the left upper chest in the subclavicular region, is a 1 inch in greatest dimension red-brown contusion. Overlying the mid-portion of the sternum are four roughly circular red-brown contusions arranged in a curvilinear fashion, ranging in size from 0.3 to 0.4 inch in greatest dimension. These have an overall curvilinear length of 2.1 inch. On the left anterolateral chest are two circular red-pink contusions, each 0.2 inch in greatest dimension. Similar contusions are present on the right anterolateral chest, three in number, and ranging in size from 0.2 to 0.4 inch.

On the right lower quadrant of the abdomen is a grouping of five red-brown contusions in a slight curvilinear fashion, each approximately 0.3 inch in greatest dimension. Just lateral to the umbilicus within the right lower quadrant, is a 0.2 inch in greatest dimension red-brown contusion. A similar contusion is present just inferiorly, 0.4 inch in greatest dimension. Within the left lower quadrant of the abdomen two red-brown contusions, 0.4 inch in greatest dimension. Within the skin of the lower abdomen overlying the symphysis pubis and at the base of the penis, is a red-brown contusion, 0.8 x 0.8 inch in dimension. Just to the left of this contusion is a faint red-brown contusion, 0.3 inch.

Involving the skin of the base of the penis is a 0.3 inch in length horizontally oriented superficial laceration.

On the left upper back roughly overlying the scapular prominence, is a grouping of multiple blue-green to red-brown contusions, 1.2 inch in overall dimension. A similar grouping is present within the mid-upper back with contusions ranging in size from 0.2 to 0.4 inch in greatest dimension. A similar grouping is present on the right back, roughly overlying the scapular prominence, with contusions ranging in size from 0.2 to 0.5 inch in greatest dimension. On the right upper shoulder is a 0.5 inch pink-red contusion.

Within the mid-portion of the back overlying the thoracic vertebrae is a 1 inch in greatest dimension red-brown contusion. Just inferior to this is a geographically shaped large red-brown contusion, 3 x 4.5 inch in greatest dimension. On the right lower back overlying the posterior iliac crest, is a 0.5 inch in greatest dimension red-brown contusion and on the left lower back at the level of the superior margin of the natal cleft, is a 1.5 x 1 inch pink-red contusion.

Upon reflection of the skin of the back there is hemorrhage within the subcutaneous tissues and deep musculature of the back overlying the large contusion of the mid-back, and adjacent to the thoracic and lumbar vertebrae. Similar subcutaneous and intramuscular hemorrhage is associated with the contusions of the left and right upper back. Dissection of the vertebral column from a posterior approach demonstrates hemorrhage within the paraspinous musculature of the lower thoracic and lumbar vertebrae. Upon removal of the spinal cord, no epidural, subdural nor subarachnoid hemorrhage is present overlying the cord within this region. No vertebral fractures are noted.

VICTIM

Upon reflection of the skin of the chest and abdomen there is subcutaneous and intramuscular hemorrhage within the region of the sternum, as well as within the region of the left anterolateral chest. There is fracture of the left 7th rib in the anterior axillary line in association with the above described contusion. There is hemorrhage within the deep subcutaneous tissues and musculature in a periumbilical region.

There are 250 ml of hemoperitoneum. In situ examination of the organs of the abdomen demonstrates a 15 cm in length laceration of the mesentery of the small intestine within the region of the proximal jejunum. This is associated with contusion and hemorrhage within the serosa of the small intestine within this region. Upon opening of the intestinal tract, a 0.2 inch superficial tear of the mucosa is present within the distal duodenum, at the level of the ligament of Treitz. There is traumatic disruption with hemorrhage of the gastrocolic ligament with thickening of the adipose tissue within this region. There is hemorrhage within the peripancreatic soft tissues in the region of the pancreatic head, with hemorrhage extending to the serosa and perigastric soft tissues. There is hemorrhage within the region of the diaphragm at the crux, with hemorrhage extending within the serosa of the distal duodenum and the gastroesophageal junction. There are bilateral intramuscular hemorrhages involving the right and left diaphragm, greater on the left than the right. There are 100 ml of cloudy pink-red fluid within the right pleural cavity with focal hemorrhage present within the pulmonary hilum, greater on the right than the left.

Following removal of the abdominal organs there is extensive hemorrhage within the region of the left adrenal gland as well as within Gerota's fascia surrounding the left kidney. There is intramuscular hemorrhage involving the psoas musculature, greater on the left than the right, with hemorrhage extending into the pelvic gutters. Upon removal of the testicles there is hemorrhage within the spermatic cord and extending to involve the connective tissue overlying the testicular tunics, greater on the left than the right.

PERINEUM: Examination of the anal vault demonstrates a small amount of yellow-green stool. This is gently removed to reveal an area of purple-red contusion involving the anterior portion of the transition skin within the region of the anal sphincter, 0.3 inch in greatest dimension.

UPPER EXTREMITIES: On the posterior left upper arm are two pink-red contusions within the region of the elbow, 0.2 and 0.5 inch in greatest dimension. On the posterior left forearm is a 0.4 inch pink-red contusion. On the posterior and posteromedial left wrist near the junction with the hand, is a curvilinear pink-red contusion, 1 x 0.3 inch in greatest dimension. A faint, however, similar curvilinear grouping of contusions is present on the posterolateral left wrist, 1 inch in greatest dimension. Within the central portion of this grouping of contusions is a distinct circular pink-red contusion, 0.4 inch in greatest dimension. This area is swabbed for DNA analysis.

On the posterior right upper arm within the region of the elbow, are four pink-red contusions of the skin ranging in size from 0.2 to 0.4 inch in greatest dimension.

LOWER EXTREMITIES: On the anteromedial right upper thigh is a 0.8 inch in greatest dimension red-brown contusion. Within the regions of the popliteal fossae bilaterally are faint horizontally oriented superficial abrasions, within the left popliteal fossa, 0.5 and 0.4 inch in greatest dimension, and within the right popliteal fossa, 0.7 and 0.3 inch.

Total body radiographs demonstrate the above described fracture of the left 7th rib in the anterior axillary line. No other old or recent skeletal abnormalities are noted.

During the external examination and prior to autopsy, a sexual assault kit is collected to include oral and rectal swabs, known head hair, known blood spot, penile swabs, swab of left wrist, and fingernail clippings. The sexual assault kit and the disposable diaper recovered from Allen Bennett Memorial Hospital, and clothing recovered from Allen Bennett Memorial Hospital are receipted to Officer Hornsby of the Greenville County Criminal Justice Support Department on July 20th, 2002.

INTERNAL EXAMINATION

BODY CAVITIES: There are 250 ml of hemoperitoneum and 100 ml of cloudy fluid in the right pleural cavity. No adhesions are present. All body organs are present in normal and anatomic position. The subcutaneous fat layer of the abdominal wall is 0.2 cm thick.

HEAD (CENTRAL NERVOUS SYSTEM): The brain weighs 850 grams. There are focal subgalial hemorrhages in association with the above described contusions of the scalp and forehead. No skull fracture, epidural, subdural nor subarachnoid hemorrhage is noted. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels are intact and free of abnormality. Following fixation, examination of the brain reveals no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The cerebral ventricles are of normal caliber. Sections through the brainstem and cerebellum are unremarkable. The spinal cord is examined to reveal no evidence of epidural, subdural nor subarachnoid hemorrhage. No intracordal hemorrhage is noted.

NECK: Examination of the soft tissues of the neck, including strap muscles and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. Examination of the tongue reveals the above described laceration of the tip of the tongue, and focal intramuscular hemorrhage.

CARDIOVASCULAR SYSTEM: The heart weighs 90 grams. The pericardial surfaces are smooth, glistening and unremarkable. The pericardial sac is free of significant fluid or adhesions. The coronary arteries arise normally and follow the usual distribution of a right dominant pattern with no atherosclerotic stenosis of the coronary arteries. The cardiac chambers and valves bear the usual size/position relationship and are unremarkable. The myocardium is dark red-brown, firm and unremarkable; the atrial and ventricular septa are intact. The aorta and its major branches arise normally and follow the usual course with no evidence of atherosclerosis. The vena cava and its major tributaries return to the heart in the usual distribution and are unremarkable.

RESPIRATORY SYSTEM: The right and left lungs weigh 160 and 130 grams, respectively. The upper and lower airways are patent, and the mucosal surfaces are smooth, yellow-tan and unremarkable. There is focal hemorrhage within the hilar regions of the lungs bilaterally, greater on the right than the left. The pleural surfaces are smooth, glistening, and unremarkable. On sectioning, the pulmonary parenchyma is light pink to purple and exudes minimal amounts of blood and frothy fluid. Except for the hemorrhage within the region of the hilum, no other focal lesions are noted. The pulmonary arteries are normally developed and patent.

VICTIM

LIVER AND BILIARY SYSTEM: The liver weighs 470 grams. The hepatic capsule is smooth, glistening, and intact covering a red-brown parenchyma. The gallbladder contains viscid bile. The extrahepatic biliary tree is patent.

ALIMENTARY TRACT: The esophagus is lined by a gray-white smooth mucosa. There is hemorrhage within the outer surface of the esophagus and stomach, within the region of the gastroesophageal junction. The gastric mucosa is arranged in the usual rugal folds, and the lumen is essentially devoid of contents. The small and large bowel are remarkable for traumatic disruption of the mesentery of the small intestine and gastrocolic ligament as well as serosal hemorrhages as previously described. A focal disruption of the mucosa of the distal duodenum is also present. The lumen of the small intestine contains bile-stained mucoid material. The large intestine contains yellow-green soft stool. The appendix is present. The pancreas demonstrates hemorrhage within peripancreatic soft tissues, and on sectioning there is hemorrhage within the gland of the pancreas.

GENITOURINARY TRACT: The right and left kidneys weigh 50 grams each. There is hemorrhage within the adipose tissue surrounding the left kidney, as previously described. The renal capsules are smooth, thin, semitransparent and strip with ease from the underlying, smooth, red-brown, firm cortical surfaces. The cortices are sharply delineated from the medullary pyramids. The calyces, pelves, and ureters are unremarkable. The urinary bladder is devoid of urine. The mucosa is gray-tan and smooth. The prostate is unremarkable. The testes and the spermatic cord show hemorrhage, as described above.

RETICULOENDOTHELIAL SYSTEM: The spleen weighs 60 grams and has a smooth intact capsule covering a red-purple moderately firm parenchyma. The splenic lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The bone marrow is red-purple and homogeneous without evidence of focal abnormality.

ENDOCRINE SYSTEM: The pituitary and thyroid glands are unremarkable. There is hemorrhage within the periadrenal adipose tissue surrounding the left adrenal gland. The right adrenal gland is unremarkable.

MUSCULOSKELETAL SYSTEM: There is fracture of the left 7th rib in the anterior axillary line, as previously described. There is associated intramuscular hemorrhage. There is also intramuscular hemorrhage within the right and left hemidiaphragms.

VICTIM
A-02-209
Page 8

Office of the Medical Examiner
County of Greenville

MICROSCOPIC EXAMINATION

SKIN (LOWER ABDOMEN): Sections from the lower abdomen demonstrate the intact overlying squamous epithelium. Within deep dermis and subcutaneous tissues there is acute hemorrhage with extravasation of intact erythrocytes. No inflammatory process is seen. Special stains for iron are negative.

PERIPANCREATIC SOFT TISSUE: Sections of peripancreatic soft tissue show fibroblast proliferation, acute and chronic inflammation, and neovascularization, consistent with granulation tissue. Adjacent adipose tissue demonstrates acute hemorrhage with intact erythrocytes extravasated into adipose tissue.

DISTAL RECTUM: Sections of colonic mucosa are without abnormality. No hemorrhage is noted within the underlying submucosa or muscularis.

PERIAORTIC SOFT TISSUE: Sections of fibroconnective tissue demonstrate acute hemorrhage within intact erythrocytes extending into fibroconnective tissue and fat. Adjacent areas show fibroblast proliferation and neovascularization. Special stains for iron show numerous hemosiderin-laden macrophages within these regions.

KIDNEY: Sections of kidney show focal hemorrhage along the capsular surface, clinically as the left kidney. No other significant microscopic abnormalities are noted.

ADRENAL GLANDS: Within periadrenal adipose tissue, acute hemorrhage is seen with extravasation of intact erythrocytes. Within these regions there is also a mild fibroblast proliferation as well as the presence of ghost erythrocytes. A mild acute inflammatory component is present.

RIGHT TESTIS AND SPERMATIC CORD: Sections of testis and spermatic cord show acute hemorrhage within fibroconnective tissues surrounding the vas deferens and vascular plexus of the spermatic cord. Similarly, acute hemorrhage is present overlying the tunic of the kidney.

SPLEEN: Sections of spleen show acute hemorrhage along the capsular surface, however, there is no extension of this hemorrhage into the underlying splenic parenchyma.

PANCREAS: Sections of pancreas show acute intraparenchymal hemorrhage with erythrocytes present within interpancreatic fibroconnective tissue as well as within spaces separating glandular elements. Focal pancreatic necrosis as well as fat saponification is present.

LUNG: Multiple sections of lung show a mild acute pulmonary vascular congestion. No acute inflammatory process is seen.

HEART: Sections of myocardium are without significant histopathologic abnormality.

LIVER: Sections of liver show the usual hepatic architecture. No histopathologic abnormalities are seen.

VICTIM
A-02-209
Page 9

Office of the Medical Examiner
County of Greenville

SMALL INTESTINE: Sections from the region of the small intestine show acute hemorrhage within the mesentery of the small intestine. This acute hemorrhage is also associated with focal areas of fibroblast proliferation and neovascularization. Sections from the duodenum, from the clinically noted area of mucosal disruption, show acute hemorrhage within submucosal tissues and extending into underlying muscularis. Similar, somewhat more extensive hemorrhage is noted within more distal sections of small and large intestine. Within the large intestine, acute hemorrhage is present within epiploic adipose tissue.

DIAPHRAGM: Sections of hemidiaphragm show acute intramuscular hemorrhage.

SKIN (BASE OF PENIS): Sections of skin from the base of the penis show disruption and focal thickening of the stratified squamous epithelium with minimal acute hemorrhage within underlying superficial dermis. Special stains for iron are negative.

BRAIN: Multiple sections of brain show no significant histopathologic abnormalities.

BLOCK SUMMARY

#1 Skin (Lower Abdomen)
#2 Peripancreatic Soft Tissue
#3 Distal Rectum
#4 Periaortic Soft Tissue
#5 Kidney
#6 Adrenal
#7 Right Spermatic Cord and Testis
#8 Spleen, Salivary Gland, Lymph Node
#9 Pancreas
#10 Small Intestine Mesentery
#11 Lung
#12 Heart, Liver
#13 Small Intestine
#14 Diaphragm
#15 Duodenum
#16 Small Intestine
#17 Large Intestine
#18,#19 Skin, Base of Penis
#20,#21 Brain

OPINION

VICTIM , a 2 and a half-year-old white male, died as a result of blunt force trauma of the thorax and abdomen. He was reportedly transported by personal vehicle to a local hospital with a chief complaint of a several hour history of vomiting and becoming unresponsive during transport. He was pronounced dead shortly after arrival to the hospital.

At autopsy, there were multiple blunt force injuries of the face, thorax and abdomen, back, and upper and lower extremities and perineum, with patterned contusions of the face and back. Associated injuries included extensive laceration of the mesentery of the small intestine as well as the gastrocolic ligament, with 250 ml of hemoperitoneum, extensive hemorrhage surrounding the left kidney, left adrenal gland and pancreas, hemorrhage within the musculature of the right and left hemidiaphragms, hemorrhage at the crux of the diaphragm surrounding the gastroesophageal junction, and a superficial laceration of the mucosa of the small intestine at the ligament of Treitz. There were multiple contusions about the head and face, with laceration of the oral mucosa, including laceration of the frenulum of the upper lip. A superficial laceration was present at the base of the penis and there was hemorrhage surrounding the testicles and extending along the spermatic cord. Contusions were present within the perianal skin. Microscopic sections of intra-abdominal soft tissues, including periaortic and peripancreatic soft tissues, demonstrated microscopic changes of fibroblast proliferation, neovascularization, and old hemorrhage with hemosiderin-laden macrophages, consistent with granulation tissue. This likely is the result of previous trauma.

The manner of death is homicide.

PLAINTIFF'S EXHIBIT 4 04/04/12 TP

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002 BLT

I, BRANDI LYNN [HOLDER] TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement. BLT

I am 21 years old, and I reside at: [redacted] GREER, SC 29651 /(H)[redacted](W)[redacted] BLT

I have a 12TH grade education, and I can read and write. BLT

ADDITIONAL PARTICULARS ON STATEMENTEE: DOB: 03-24-81 / SSN: 251-65-5993 / I CAN READ AND WRITE; GRADUATED FROM J.L. MANN HIGH SCHOOL. I AM NOT UNDER THE INFLUENCE OF ANY DRUGS NOR ALCOHOL AND I KNOW WHAT I AM DOING. I HAVE GIVEN YOU, INVESTIGATOR SILVAGGIO, MY PERMISSION TO TYPE MY STATEMENT FOR ME AS I TELL YOU AND INVESTIGATOR ALEXANDER ABOUT WHAT HAS TRANSPIRED SINCE I FOUND OUT THAT I WAS PREGNANT WITH MY SON, VICTIM TO THE PRESENT TIME. I FULLY UNDERSTAND THAT I AM NOT UNDER ARREST AND AM NOT IN CUSTODY AND CAN LEAVE YOUR OFFICE AT ANY TIME I SO DESIRE. I UNDERSTAND THAT I HAVE A RIGHT TO HAVE A LAWYER PRESENT WITH ME DURING QUESTIONING AND I FURTHER UNDERSTAND AND KNOW THAT I DO NOT HAVE TO SAY ANYTHING. I AM, ON MY OWN FREE WILL, SPEAKING WITH YOU AND GIVING THIS STATEMENT. I DO NOT WANT A LAWYER PRESENT. BLT

****

I HAD JUST TURNED 18 YEARS OLD IN MARCH OF 1999 AND GRADUATED FROM J.L. MANN HIGH SCHOOL IN MAY OF 1999. I GOT PREGNANT WHILE I WAS A SENIOR AT J.L. MANN HIGH SCHOOL WHICH I DON'T KNOW WHO BY. I HAD JUST GOT PREGNANT WITH VICTIM IN APRIL OF 1999, THE LAST MONTH OF SCHOOL I WAS PREGNANT AND THEN DELIVERED [redacted] ON [redacted], 2000. I MOVED OUT OF MY PARENTS WHEN I WAS SEVENTEEN BECAUSE MY PARENTS AND I DON'T GET ALONG. I GOT AN APARTMENT AT [redacted] WITH BOBBY BARRINGER WHICH HE HAD AN APARTMENT OUT THERE IN APARTMENT BOBBY AND I SHARED THE RENT AND DATED EACHOTHER SOME BUT WE MOSTLY LIVED TOGETHER AND DATED OTHER PEOPLE AND SHARED THE RESPONSIBILITY OF THE RENT. I WAS WORKING AT THE J.C. PENNY STYLING SALON AT THE HAYWOOD MALL AT THE TIME. I LEFT THERE AND WORKED AT COST CUTTERS ON WOODRUFF ROAD AND STARTED GETTING MORNING SICKNESS SO I QUIT AND DIDNOT START BACK TO WORK UNTIL AFTER I HAD VICTIM. MY PARENTS AND I WERE ALWAYS FUSSING CAUSE MY MOM DIDNOT LIKE ANYONE THAT I WAS FRIENDS WITH NOR DATED AND SAID THAT SHE HAD A PREMINITION AT CHURCH THAT I WAS GOING TO MARRY A GUY NAMED DAVID. MY MOM STARTED MAKING ME GO TO A THERAPIST NAMED NELLIE BARR ON WADE HAMPTON BLVD. MY MOM REFUSED TO ATTEND WITH ME AS SHE SAID THAT SHE WAS PAYING THEM TO FIX ME AND SHE DIDNOT HAVE TO ATTEND THE SESSIONS WITH ME SO I JUST QUIT GOING. I WAS SEEING HER FOR JUST A COUPLE OF VISITS BEFORE SHE ASKED THAT MY MOM COME IN AND TALK WITH HER BUT WHEN MY MOM REFUSED, I STOPPED GOING. THIS WAS BEOFRE I GOT PREGNANT AND WAS LIVING AT ON BLT

WHEN I GOT PREGNANT, I DIDNOT HAVE A STEADY MAN IN MY LIFE. I WAS VERY STRESSED OUT FROM MY PARENTS AND WANTED TO BE LIKE EVERYBODY ELSE THAT I HUNG OUT WITH LIKE NERDS. I MOVED OUT AND MET BOBBY PLAYING SOFTBALL AT CHURCH, MAULDIN CHURCH OF GOD. HE WAS DIVORCED AND HAD TWO KIDS AND WE GOT ALONG REAL GOOD AND WHEN I WAS PREGNANT, HE WAS THE ONLY PERSON I HUNG OUT WITH. I STOPPED GOING TO CHURCH BECAUSE MY MOM WAS EMBARRASSED FOR ME TO GO AND BE PREGNANT, SO I STOPPED GOING. BLT

I have read the above statement of 1 OF 8 pages and it is true and correct as best I recall.

WITNESS: BLT

PAUL A. SILVAGGIO

B.F. ALEXANDER

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OF M Miller Smith MCE 3/9 2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002 BNT

I, BRANDI LYNN [HOLDER] TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: -SEE PAGE ONE- BNT BNT

I have a 12TH grade education, and I can read and write. BNT

I WAS LIVING AT [redacted] IT FOR A YEAR FROM JULY TOO JULY AND BOBBY DECIDED TO MOVE BACK TO WOODRUFF AND I DID NOT HAVE A JOB AND COULD NOT AFFORD TO KEEP THE PLACE SO I MOVED BACK HOME WITH MY PARENTS; JULY 1999. BOBBY AND I STILL HUNG OUT AND HE WAS BUSY WITH WORK AND SOFTBALL AND I HUNG OUT WITH SOME OF MY OTHER FRIENDS, JUST ANYTHING TO STAY OUT OF MY PARENTS HOUSE. MY PARENTS AND FOUGHT AND FUSSED UP TO THE TIME I WAS FIVE MONTHS PREGNANT BECAUSE THEY THOUGHT I WAS GOING TO MISCARRAGE CAUSE I COULD NOT KEEP MY FOOD DOWN AND COULD NOT TAKE MY PRENATAL VITAMINS. MY DAD WOULD TELL ME THAT HE COULD NOT AFFORD TO FEED ME BECAUSE EVERYTIME HE SAW ME, I HAD FOOD IN MY MOUTH. AT FIVE MONTHS PREGNANT, MY PARENTS STARTED BEING ALL NICE AND BUYING BABY STUFF. WE STILL HAD DISAGREEMENTS OVER GUYS BECAUSE SHE DIDNOT LIKE THEM CAUSE NONE OF THEM WERE NAMED DAVID, AS MY MOTHER WISHED FOR THEM TO BE. I THEN HAD BOBBY WHO I CALL VICTIM IN JANUARY 2000. IT WAS AT THE TIME I GAVE BIRTH TO VICTIM THAT MY MOTHER STARTED TO TAKE OVER. MY MOTHER TRIED TO DICTATE TO ME ALL THE TIME AS TO HOW I SHOULD LIVE MY LIFE AND WHO I SHOULD DATE AND MY DAD JUST KEPT HIS MOUTH SHUT AND STAYED OUT OF IT. BNT

I DELIVERED VICTIM AT GREENVILLE MEMORIAL HOSPITAL. I WAS PUT IN THE HOSPITAL ONCE DURING THE PREGNANCY FOR A KIDNEY INFECTION THAT I HAD AND THEY GAVE ME ANTIBOTICS THROUGH AN I.V. SO I HAD TO BE PUT IN THE HOSPITAL. I WENT INTO THE HOSPITAL ON [redacted] 2000 AT 11:00 PM AND I WASNOT DIALATED ENOUGHT AND TOLD ME THAT THEY COULDNOT KEEP ME BUT THAT I COULD WALK AROUND FOR AN HOUR AND THEY WOULD CHECK ME AGAIN. AFTER I WALKED AROUND FOR AN HOUR. THEY CHECKED ME AND THEY DECIDED AT THE HOSPITAL TO KEEP ME. I DELIVERED VICTIM AT 3:22 AM ON [redacted], 2000. I OFFICIALLY WENT INTO HARD LABOR AT 3:00 AM ON [redacted], 2000 AND PRETTY MUCH DELIVERED VICTIM NATURALLY BECAUSE THEY DIDNOT HAVE ENOUGH TIME TO GIVE ME ANYTHING. THE DOCTOR CAME IN AND TOLD ME TO STOP PUSHING AND THE NURSES PUSHED MY LEGS TOGETHER BECAUSE THERE WAS NO ONE THERE TO CATCH THE BABY WHEN HE WAS BORN. CAME OUT WITH A BRUISE ON HIS TOP RIGHT OF HIS HEAD AND HAD A HEMOTOMIN WHICH WAS FROM THE INSIDE OUT. I HAD AN EASY DELIVERY AND WENT HOME 24 HOURS LATER AND I TOOK VICTIM HOME WITH ME. VICTIM DID REAL GOOD AT HOME AND I TOOK HIM TO HIS TEN DAY CHECK UP AND HE WAS FINE; THAT WAS AT THE GREENVILLE MEMORIAL CLINIC BECAUSE AT THAT TIME I WAS ON MEDICAD. I TOOK HIM TO ALL OF HIS FOLLOW-UP VISITS AND VACINATIONS AT THE CLINIC AND SOME WERE AT NORTH HILLS ON HIGHWAY 14 WHICH DOCTOR BETHEY TOOK CARE OF VICTIM. WHEN NORTH HILLS STOPPED SEEING BABIES THERE. I STARTED TAKING VICTIM TO THE HEALTH DEPARTMENT IN GREENVILLE FOR HIS SHOTS. I THEN GOT VICTIM ON MY INSURANCE AFTER I GOT MARRIED AND THEN STARTED TAKING VICTIM TO THE CHRISTY GROUP AT THERE BRANCH ON HIGHWAY 14. THE ONLY PROBLEMS HAD WAS THAT I HAD TO TAKE HIM THERE BECAUSE HE BROKE IN A RASH AT 18 MONTHS AND THEY SAID THAT HE HAD EXAMHA. THEY SAID IT COULD COME FROM SENSITIVE SKIN OR A NERVOUS CONDITION, SO THEY GAVE ME A TREATMENT PLAN FOR THAT AND HIS DOCTOR WAS DOCTOR JOSEPH POOLE. BNT

I have read the above statement of 2OF8 pages and it is true **and correct as best I recall.**

WITNESS: BNT

PAUL A. SILVAGGIO/

B.F. ALEXANDER/

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OCR Wesley Smith MCE 3/9/2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002 BNT

I, BRANDI LYNN [HOLDER] TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement. BNT

I am 21 years old, and I reside at: 3895 JUG FACTORY ROAD GREER, SC 29651 /(H) 864-895-3919/(W) 288-1725 BNT

I have a 12TH grade education, and I can read and write. BNT

AT THAT TIME I WAS KEEPING VICTIM AT A CHILD CARE CENTER IN TAYLORS AT THE FAIRVIEW CHILD DEVELOPMENT CENTER AT HIGHWAY 290 & 101. VICTIM WAS IN DAY CARE FOR ABOUT THREE MONTHS FROM TEN MONTHS TO SHORT OF ONE YEAR OLD WHEN MY MOM WENT TO THE DAY CARE TO PICK VICTIM UP AND SHE DIDNOT LIKE THE LADY AT THE DOOR SO I NEVER TOOK VICTIM BACK THERE. MY MOM KEEP VICTIM AFTER THAT AND THAT STARTED CAUSING PROBLEMS BETWEEN ME AND DARREN CAUSE SHE WANTED TO KEEP HIM OVER NIGHT AND WHEN I GOT OFF OF WORK AND WENT TO HER HOUSE TO GET VICTIM, SHE WOULD NOT BE THERE AND I WOULD HAVE TO TRACK THEM DOWN AND IT JUST BECAME A PROBLEM.

I GOT MARRIED SEPTEMBER 16, 2000 TO JAMES DARREN TURNER WHICH I CALL HIM DARREN. I MET DARREN MARCH OF 2000, AT A HOCKEY GAME IN FLORENCE, SOUTH CAROLINA. THE NIGHT THAT I MET HIM WAS THE FIRST TIME I HAD BEEN OUT OF THE HOUSE SINCE I GAVE BIRTH TO VICTIM I MET DARREN AT THE HOCKEY GAME AND STARTED SEEING EACHOTHER SHORTLY AFTER THAT. AFTER ABOUT A MONTH DARREN AND I STARTED SEEING EACHOTHER ON A ONE ON ONE. MY MOM WOULD NOT LET ME TAKE ON ANY DATES WITH ME. DARREN AND I DATED AND GOT ENGAGED AND WERE PLANNING A WEDDING BUT MY MOM RAISED SUCH A FIT BECAUSE SHE DIDNOT LIKE DARREN. DARREN AND I THEN GOT MARRIED BY A JUSTICE OF THE PEACE ABOUT ONE MONTH AFTER WE GOT ENGAGEMENT. AFTER WE MARRIED WE MOVED INTO [redacted] IN GREER, WHICH WE GOT THAT TRAILOR ABOUT A WEEK BEFORE WE GOT MARRIED. WE GOT MARRIED IN GREENVILLE COUNTY, SOUTH CAROLINA AND OBTAINED OUR MARRIAGE LICENSE AT THE GREENVILLE COUNTY MARRIAGE LICENSING DEPARTMENT. DARREN GOT ALONG FINE WITH THE BABY AND HAD BEEN AROUND VICTIM SINCE HE WAS TWO MONTHS OLD. ABOUT FIVE OR SIX MONTHS, AFTER LIVING AT [redacted], OUR STORAGE BUILDING GOT BROKEN INTO AND THEY STOLE THE RIDING LAWN MOWER. I BECAME SCARED AND DARREN WAS WORKING SWING SHIFTS AT MICHELIN AND I WAS AFRAID TO BE HOME ALONE. THERE WAS ONE NIGHT THAT DARRENS VEHICLE BROKE DOWN AND HE CAME HOME AND KNEW I WAS SCARED TO BE THERE ALONE SO HE KNOCKED REAL HARD BEFORE HE CAME IN AND I GOT UNDER THE BED SCARED TO DEATH. THAT WAS WHEN DARREN AND I SEPARATED AND I MOVED BACK IN WITH MY PARENTS AND DARREN STAYED ON [redacted]. MY MOM ASKED ME TO MOVE BACK HOME BUT I TOLD HER THAT I WANTED A PLACE OF MY OWN. MY MOM PROMISED ME THAT SHE WOULD NOT SAY A WORD TO ME AND WOULD LET ME DO WHAT I WANTED TO DO. I MOVED IN AND MY MOMS PROMISE TO HAVE CHANGED LASTED ABOUT A MONTH. FROM THE TIME I MOVED IN TO MY PARENTS HOUSE, I HAVE TRIED TO GET MY OWN PLACE BUT WITH NO CREDIT THAT WAS IMPOSSIBLE. MY MOM DID LET ONE OF MY FRIENDS COME OVER, HIS NAME WAS JONATHAN DAVID ISEMANN. MY MOM WAS GETTING TO THE POINT OF TELLING VICTIM TO CALL ME BRANDI AND TO CALL HER MOMMY AND MY DAD, DADDY. I TOLD JONATHAN NOT TO COME OVER ANYMORE BECAUSE MY MOM WAS PUSHING THE ISSUE ABOUT JONATHAN AND I GETTING TOGETHER. I GOT ANOTHER JOB AT A SALON AND THE HOURS WERE 12 HOURS A DAY AND I WAS EXHAUSTING MYSELF. I THEN MOVED TO ANOTHER SALON IN JANUARY OF 2002 AT CAPELLI SALON LOCATED ON 304 MAIN STREET SUITE B IN MAULDIN. I AM PRESENTLY WORKING THERE AS AN INDEPENDANT CONTRACTOR. BNT

I have read the above statement of 3 OF 8 pages and it is true and correct as best I recall.

WITNESS: BNT

PAUL A. SILVAGGIO/

B.F. ALEXANDER/

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OF

Wesley Smith MCE 3/9/2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002

I, BRANDI LYNN [HOLDER] TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: -SEE PAGE ONE-

I have a 12TH grade education, and I can read and write.

THIS WAS HOW I MET MARK MARTUCCI, WHO WORKED NEXT DOOR TO THE SALON THAT I AM PRESENTLY AT. MARK WAS THE MANAGER OF THE CARPET COMPANY. HE WAS THE MANAGER OF THE STORE BUT HIS TRADE, VINAL, WOOD, BRICK, GLASS INSTALLER. HE NO LONGER WORKS FOR THIS CARPET COMPANY AND IS PRESENTLY UNEMPLOYED. MARK IS ABLE TO WORK BUT JUST CAN'T FIND THE WORK THAT HE LIKES AND IS WAITING FOR THE RIGHT JOB HE DESIRES. MARK HAD A TRAFFIC ACCIDENT IN SPARTANBURG COUNTY ABOUT THREE YEARS AGO WHEN AN AMBULANCE REAR ENDED HIM AND THREW HIM THROUGH THE WINDSHIELD. SINCE THAT TIME MARK HAS HAD A MOTORCYCLE ACCIDENT WHERE HE NOW HAS PINS IN HIS RIGHT ANKLE; BOTH THESE TRAFFIC ACCIDENTS TOOK PLACE BEFORE MARK AND I MET.

MARK AND I WERE DATING FIRST AND I WENT HOME AND TOLD MY MOM THAT I WAS DATING SOMEONE FROM WORK AND I TOLD HER THAT I WASNOT ON A DATE FOR SOMETIME AND I DESCRIBED HIM TO HER AND SHE RIGHT OFF THE BAT DIDNOT LIKE HIM. I SAW MARK EVERYNIGHT AFTER THAT. MARKS BIRTHDAY WAS IN FEBRUARY AND HE ASKED ME TO SPEND THE WEEKEND WITH HIM AND OFCOURSE I COULDNOT TELL MY MOM THAT SO I TOLD HER THAT I WAS GOING OFF WITH MY GIRLFRIENDS AND I STAYED WITH HIM THAT WEEKEND.

AFTER THE WEEKEND OF MARKS BIRTHDAY IN FEBRUARY, MARK ASKED ME TOP MOVE IN WITH HIM. I TOLD HIM THAT HE KNEW THAT THAT WOULDNOT GO OVER VERY WELL WITH MY MOM. HE THEN ASKED ME IF IT WOULD GO OVER VERY WELL IF HE MARRIED ME AND I TOLD HIM THAT HE WAS A GENTLEMAN AND HE KNEW WHAT HE NEEDED TO DO AND TO CALL MY MOM. HE CALLED MY MOM WHILE I WAS STANDING RIGHT THERE WITH HIM AND ASKED HER IF HE COULD HAVE HER PERMISSION TO MARRY [redacted]. MY MOM TO HIM NO AND THAT SHE DIDNOT LIKE HIM AND THOUGHT HE WAS A DRUG ADDICT BECAUSE OF HIS GOLD JEWELRY. AFTER THAT I WAS STILL LIVING WITH MY PARENTS AND MY MOTHER WOULD GIVE ME GRIEF OVER SEEING MARK. [redacted] WOULD GO OVER TO MARKS PLACE AND WE WOULD SPEND TIME TOGETHER WITHOUT MY MOTHER KNOWING. MY MOM SAID THAT MARKS HAIR WAS TO LONG AND HIS EYES SEEMED LIKE HE WAS HOT TEMPERED. WE WOULD GO TO THE HOCKEY GAMES AT THE BILO CENTER WITH THE SESSION TICKETS WITH MY PARENTS AND WE WOULD SIT RIGHT THERE WITH THEM AND THEY WOULD NOT EVEN SPEAK TO MARK. ONE TIME AT THE BILO CENTER, [redacted] TURNED AROUND AND SPIT ON ANOTHER SPECTATOR THERE AND I CORRECTED HIM AND HE SPIT AGAIN SO MARK POINTED HIS FINGER AT [redacted] AND TOLD HIM THAT I TOLD HIM NO. MY PARENTS THEN DIDNOT LIKE MARK FOR THAT AND HAVENT SPOKE WITH HIM SINCE.

MY SON [redacted] AND I MOVED OUT OF MY PARENTS HOUSE, THE FIRST WEEKEND IN MARCH OF 2002. WE MOVED IN WITH MARK AT HIS TRAILOR AT [redacted]. AT THIS TIME MY MOM WAS STILL KEEPING [redacted] WHILE I WAS WORKING. MARK WAS WORKING AS-WELL AT LSI FLOOR COVERING AT 304 NORTH MAIN STREET IN MAULDIN SUITE A, WHERE HE HAS WORKED THERE UP UNTIL APRIL OF 2002. MARK HAS WORKED ODD JOBS SINCE APRIL OF 2002 BUT NOTHING STEADY. MARKS PARENTS LET HIM CASH IN SOME OF HIS CD'S, THEY FIRED HIM FROM THE LSI FLOOR COVERING BECAUSE HE STAYED OUT OF WORK WITH ME BECAUSE I WAS OUT WITH A COUSINS BROTHER WHO SHOT HIMSELF, AND HE HAS THE SETTLEMENT FROM SPARTANBURG COUNTY FROM THAT ACCIDENT.

I have read the above statement of 4OF8 pages and it is true **and correct as best I recall.**

WITNESS:

PAUL A. SILVAGGIO/

B.F. ALEXANDER

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OCR

MY 3/9 2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002

I, BRANDI LYNN [HOLDER] TURNER, do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: -SEE PAGE ONE-

I have a 12TH grade education, and I can read and write.

YESTERDAY AFTERNOON, ABOUT 2:00 PM, MYSELF, [redacted] MARK AND JOHN WENT OUT TO LUNCH AT THE 'CHINA GARDE BUFFET' ON ORCHARD PARK DRIVE. I FIXED A SALAD AND STARTED FEEDING [redacted] SOME OF IT; ITS WAS LETTECE, CHEESE, MUSHROOMS, CARROTS, RANCH DRESSING AND BACON BITS. I TOLD THE LADY THAT THE SALD DIDNOT TASTE RIGHT. I PUSHED IT TO THE SIDE AND FIXED OUR MAIN PLATE WHICH WAS SOME KIND OF CHICKEN, STRING BEANS, FRESH FRIES, CHICKEN NUGGETS. [redacted] TOOK ALITTLE BITE OF THE CHICKEN NUGGETS AND PLAYED WITH HIS FRIES AND THEN ATE WHAT I WAS EATING WHICH WAS SOME KIND OF PEPPERED CHICKEN AND STRING BEANS. WE ATE AND THEN LEFT AND [redacted] FELL ASLEEP ON THE WAY TO WALMART. WE WOKE HIM UP WHEN WE GOT TO WALMART AND HE WALKED INTO WALMART BY HIMSELF. WE THEN WENT HOME AND BEFORE [redacted] WENT WITH MARK AND JOHN BACK TO WALMART AFTER MARK AND JOHN WENT BACK FOR THE SECOND TIME ALONE, I CHANGED [redacted] 'S DIAPER WHICH HAD A LOOSE STOOL IN IT BUT WAS NOT LIKE DIAREHA.

FROM OUR HOUSE AT [redacted] ROAD TO ALLEN BENNETT HOSPITAL IT TAKES ABOUT 10 MINUTES. MARK WAS ON THE PHONE WITH ME AND I TOLD HIM TO TAKE THE BABY TO THE HOSPITAL RIGHT THEN. I DID NOT FEEL THAT WE HAD TIME TO WAIT FOR AN AMBULANCE BECAUSE BY THE TIME THE AMBULANCE WOULD HAVE GOT TO OUR HOME, MARK WOULD HAVE ALREADY BEEN AT ALLEN BENNETT HOSPITAL.

I HAVE NEVER SEEN MARK STRIKE OR YELL AT [redacted], IN-FACT HE HAS NEVER YELLED AT ME. I HAVE TO FUSS AT MARK BECAUSE HE CALLS ME YES MAMM. MARK DOES NOT HAVE A TEMPER AND IS GREAT WITH [redacted] AND I. THE ONLY THING THAT I HAVE SEEN MARK DO WAS PUT [redacted] IN HIS ROOM AND [redacted] WILL CRY AND WHEN HE STOPS MARK WILL LET HIM COME OUT AND PLAY AND ASKS HIM IF HE'S GONNA BE A BIG BOY AND [redacted] WILL SAY "BIG BOY NO CRY" AND MARK WILL SAY SUCK IT UP AND [redacted] WILL SUCK UP HIS LIPS AND EVERYTHING IS FINE.

I HAVE NO REASON TO BELIEVE THAT MARK NOR JOHN WOULD HURT [redacted]. MARK AND MY PARENTS ARE THE ONLY ONES THAT HAVE KEPT [redacted] WHILE I HAVE BEEN AT WORK BUT I HAVE NEVER KNOWN ANY OF THEM HURT MY SON. MY PARENTS HAVEN'T SEEN [redacted] IN FIVE WEEKS JUST TO KEEP DOWN THE STRAIN IN THE FAMILY.

I HAVE NEVER DONE ANYTHING TO HURT MY SON. I WOULD NEVER DO ANYTHING TO HURT MY SON.

MARK WOULD GIVE ANYONE THE SHIRT OFF HIS BACK. MARK TELLS [redacted] THAT HE LOVES HIM EVERY NIGHT AND KISSES HIM AND TUCKS HIM IN AT NIGHT. MARK AND [redacted] WERE REALLY REALLY CLOSE, MARK TAUGHT HIM HOW TO DO THINGS THAT A TWO YEAR OLD JUST DOESN'T GET TO DO; MARK TAUGHT HIM HOW TO FISH.

I AM TELLING YOU THE TRUTH AND HAVE ABSOLUTELY NOTHING TO HIDE. I WILL NOT COVER FOR ANYONE AND WOULD NOT ALLOW ANYONE TO HARM MY CHILD. I WILL DO WITHOUT INORDER FOR MY SON TO HAVE WHAT HE NEEDED. I HAVE NEVER BEEN INVESTIGATED BY DSS AND MARK HAS TWO STEP KIDS FROM A PREVIOUS MARRIAGE WHEN HE WAS MARRIED TO MARY ANN MARTUCCI; I'VE NEVER SEEN HER OR THE KIDS. --END OF STATEMENT--

I have read the above statement of 8OF8 pages and it is true and correct as best I recall.

WITNESS:

PAUL A. SILVAGGIO

B.F. ALEXANDER

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OCR MCE 3/9/2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002

I, BRANDI LYNN [HOLDER] TURNER, do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: GREER, SC 29651 /(H) /(W)

I have a 12TH grade education, and I can read and write.

MARK AND I ARE NOT STRESSING OUT FINANCIALLY BECAUSE MARK DRAWS UNEMPLOYMENT AND HAS HIS SETTLEMENT WHICH HE GETS IN THREE DIFFERENT INSTALLMENTS, WHICH I DON'T KNOW THE AMOUNT AND THEN HIS CD'S. HIS MOM TAKES CARE OF ALL HIS ACCOUNTS. MARK ATTENDED THE UNIVERSITY OF MIAMI BUT I DON'T THINK HE GRADUATED.

MARK AND [redacted] GOT ALONG GREAT. MARK STARTED CALLING HIMSE;LF UNCLE MARK AND [redacted] STARTED CALLING HIM DADDY MARK ABOUT TWO MONTHS AGO. MY MOM DIDN'T LIKE THYAT AT ALL. EVERYTIME I WOULD PICK UP FROM MY MOTHERS, IT WOULD BE A FIGHT. I TOLD MY MOM THAT I WOULD FIND SOMEONE ELSE TO KEEP [redacted] AND WE WOULD JUST CHILL OUT AND MAYBE THEN WE COULD BE A FAMILY. I HADN'T HEARD FROM MY PARENTS UNTIL RIGHT BEFORE FATHERS DAY WHEN MY DAD CALLED ME AND I SPOKE WITH HIM. I DIDN'T SPEAK WITH THEM UNTIL EARLIER IN THE WEEK LAST WEEK WHEN I CALLED THEM ABOUT MY CAR TAXES BEING DUE THE END OF NEXT MONTH. THE CONVERSATION WENT FINE AND THEN MY MOM LIKED TO ARGUE AND I HUNG UP AND THJEN I CALLED HER BACK WHEN I GOT HOME AND [redacted] WANTED TO SPEAK TO HER AND SHE WAS STARTING WITH HIM ON THE PHONE ASKING HIM IF HE WANTED NANNIE TO COME AND GET HIM AND MARK WAS NOT THERE AS HE HAD GONE FISHING. I REFUSED TO LET [redacted] GO AND STAY WITH HER. IT WAS ALWAYS A HASSLE WHEN I WOULD PICK [redacted] UP FROM MY PARENTS BECAUSE THEY WOULD PROMISE HIM EVERYTHING AND WHEN HE GOT HOME I COULDNOT DO ALL OF THAT. MARK SAID THAT MY PARENTS OWED HIM AN APOLOGY BECAUSE OF THE WAY THAT THEY TALK TO HIM. MARK HAS SPENT HIS OWN MONEY ON A BICYCLE AND HELMET FOR [redacted]. MARK KEEPS A ROOF OVER OUR HEAD.

THIS FOUR WHEELER CAME UP FOR SALE AND HE BOUGHT IT FOR [redacted] AND FIXED IT. FOR THE PAST TWO MONTHS [redacted] HAS WANTED TO GO ON THE FOUR WHEELER. ITS A SMALL FOUR WHEELER AND AN ADULT NEEDS TO RIDE WITH HIM AND IT DOESNOT GO VERY FAST. ON THE 4TH OF JULY I BOUGHT MARK A BOAT AND WE ALL WENT TO LAKE KEOWEE AND WE TOOK THE BOAT OUT TO THE LAKE. WHEN WE GOT BACK 4TH OF JUILY NIGHT, OR I GUESS IT WAS THE 5TH OF JULY, THE STORAGE BUILDING HAD BEEN BROKEN INTO AND THE FOUR WHEELER, THE RIDING LAW MOWER HAD BEEN STOLEN; OFFICER ALLIGOOD TOOK THE REPORT. MARK TOLD [redacted] THAT WE WOULD LOOK FOR ANOTHER FOUR WHEELER. SOME OF OUR FRIENDS CAME OVER SUNDAY WITH A FOUR WHEELER THAT WAS FOR SALE. WE DECIDED THAT WE WERE GOING TO BUY IT AND TAKING TURNS RIDING IT. MATT WHICH I DON'T KNOW HIS LAST NAME AND I DON'T KNOW HIS PHONE NUMBER NOR ADDRESS BUT HE LIVES WITH HIS PREGNANT GIRLFRIEND AND HER MOTHER, WAS RIDING [redacted] ON THE FOUR WHEELER THIS PAST SUNDAY ABOUT 5:00 OR 6:00 PM AT OUR RENTED PROPERTY ON [redacted] WHERE WE LIVE. [redacted] HAD HIS BUTT ON THE SEAT OF THE FOUR WHEELER AND WAS HOLDING ONTO THE HANDLE BARS WHILE MATT WAS SITTING BEHIND HIM: MATT AND [redacted] WERE RIDING AND ME, MARK, MIRANDA AND JOHN WERE SITTING IN THE GRASS WATCHING THEM. MATT WAS DRIVING THROUGH THE YARD AND THEN WENT UP A DITCH AND THE RIGHT FRONT WHEEL CAUGHT THE SAND IN THE DITCH AND THE FOUR WHEELER STARTED TO SLIDE TO THE RIGHT. MATT TOOK [redacted] AND TOSSED HIM TO THE LEFT AND THEN MATT JUMPED OFF TO THE LEFT. WE RAN TO [redacted] WHO FELL IN THE DITCH ON THE GROUND. THE DITCH IS MADE OF GRASS AND TREE BRANCHES OUT THERE. [redacted] WAS NOT CRYING AND I ASKED HIM IF HE WAS OKAY AND HE SAID HE WAS FINE AND SAID "DO IT AGAIN"

I have read the above statement of 5OF8 pages and it is true and correct as best I recall.

WITNESS:

PAUL A. SILVAGGIO/

B.F. ALEXANDER/

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OF Melissa Smith MCE 3/9/2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002

I, BRANDI LYNN [HOLDER] TURNER • do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: -SEE PAGE ONE-

I have a 12TH grade education, and I can read and write.

I TOLD [redacted] TO GIVE IT A BREAK AND WE WOULD TRY IT LATER. [redacted] WAS FINE ALL NIGHT AND MONDAY MORNING MATT AND MIRANDA, WHICH MIRANDA IS 16 WAS UPSET CAUSE SHE FOUND OUT TWO WEEKS AGO THAT SHE WAS PREGNANT. I TOOK MIRANDA AND [redacted] TO DINNER AT MUTTS ON HIGHWAY 14. MARK, MATT AND JOHN STAYED BEHIND AND THEY WERE DOING AN ODD JOB MEASURING AND DIDNOT GET BACK UNTIL MID-NIGHT. MARK BROUGHT BACK A TOY WHICH WAS A YELLOW MUSTANG THAT PULLS A JET SKI BEHIND IT. [redacted] WAS IN BED AND WHEN MARK CAQME IN HE SAID THAT HE WANTED TO GO FISHING, SO HE LEFT AND [redacted] SLEPT WITH ME. I NOTICED MONDAY NIGHT THAT [redacted] HAD BRUISES ON HIS BODY. HE HAD BRUISES ON THE LEFT SIDE OF HIS FACE, ONE ON THE SMALL OF HIS BACK LIKE HE HAD HIT ONE OF THE BRANCHES IN THE DITCH, BRUISES ON HIS LEFT ARM AND HIS KNEES SEEMED SCRAPED UP FROM HIS BICYCLE FALLS. THOSE WERE THE ONES THAT I NOTICED. TUESDAY MORNING I WOKE UP AT 4:00 IN THE MORNING AND I WAS THROWING UP AND ABOUT 8:00 AM I WAS THROWING UP AGAIN AND I CALLED WORK AND TOLD THEM THAT I WAS SICK AND WOULD NOT BE COMING IN. LATER ON TUESDAY, MATT AND MIRANDA CAME BY AND I TOLD HER THAT I WAS SICK AND SHE SAID THAT THERE WAS A VIRUS GOING AROUND. MARK AND JOHN, WHICH JOHN PARKER, LIVES WITH US AND HAS BEEN FOR ABOUT A WEEK BUT HAS BEEN OUR NEXT DOOR NEIGHBOR EVEN BEOFRE I MOVED IN UP THERE, LEFT. EARLIER YESTERDAY, MARK, [redacted] JOHN AND MYSELF LEFT ABOUT 11:00 AM AND WE WENT TO CARPETS ONE BECAUSE MARK IS SUPPOSED TO START WORKING THERE NEXT WEEK, THEN WENT TO HAYWOOD ROAD TO ALTEL CELLULAR BECAUSE HIS CELLPHONE WAS MESSED UP AND THEN WENT TO THE WALMART ON WADE HAMPTON IN GREER AND BOUGHT A SCANNER AND A MOUSE FOR THE COMPUTER. MARK BOUGHT [redacted] A RACE TRACK FOR HIS HOT WHEELS AND THEN WE WENT HOME. MARK STARTED BUILDING THE RACE CAR SET WITH [redacted] WHICH JOHN & I WERE HOOKING THE SCANNER UP TO THE COMPUTER BUT COULDN'T GET IT TO WORK. MARK AND JOHN TOOK THE SCANNER BACK TO WALMERT WHILE [redacted] STAYED HOME WITH ME. MARK CALLED ME FROM THE STORE AND SAID THAT THEY HAD A PROBLEM WITH THE RECEIPT BEING TORN AND SAID THAT HE WOULD GET THE PRINTER AS-WELL FROM THE HOUSE AND RETURN IT AND HAVE THE MONEY PUT BACK ON MY CARD. HE SAID THAT WE COULD GO NEXT WEEK AND BUY A SCANNER. THAT WAS WHEN HE TOLD ME TO COOK THE STEAKS AND I DID AND ADDED MACARONI AND CHEESE AND RICE. MARK AND JOHN CAME BACK HOME AND GOT THE PRINTER THAT WE PREVIOUSLY BOUGHT FROM WALMART AND [redacted] WANTED TO GO WITH THEM. [redacted], MARK AND JOHN LEFT ABOUT 7:30 PM AND GOT BACK ABOUT 8:15 PM. MARK CALLED AND ASKED IF I WANTED SOME GAS FOR THE CAR AND ASKED IF HE COULD GET A PACK OF CIGARETTES AND A SODA FOR HOME AND I SAID YES. HE NEVER HANGS UP THE PHONE WITHOUT LETTING ME SPEAK TO [redacted] I HEARD MARK ASK [redacted] TO ASK ME IF HE COULD HAVE SOME CANDY AND I SAID YEAH. [redacted] CAME HOME WITH A SODA AND A PACK OF SHOCK TARTS. [redacted] WANTED ME TO OPEN HIS CANDY AND I TOLD HIM HE HAD TO EAT HIS DINNER FIRST. HE ATE ALL THE MACARONI AND CHEESE AND HE ATE A COUPLE OF PIECES OF STEAK AND HIS RICE. I LET HIM HAVE A COUPLE OF PIECES OF HIS SHOCK TARTS. I TRIED TO GET HIM EAT MORE AND HE REFUSED AND MARK SAID THAT HE WOULD WATCH HIM WHILE I TOOK MY SHOWER. [redacted] SAID THAT HE HAD TO GO POTTIE AND MARK TOOK HIS PANTS DOWN AND [redacted] WAS NOW IN THE BATHROOM BECAUSE WE ARE TRYING TO POTTIE TRAIN HIM. [redacted] ALL OF A SUDDEN THREW UP IN THE TOILET; IT WAS BLUE AND THE MACARONI AND CHEESE AND THE BLUE WAS FROM THE KOOLAIDE THAT HE HAD.

I have read the above statement of 6OF8 pages and it is true and correct as best I recall.

WITNESS:

PAUL A. SILVAGGIO/

B.F. ALEXANDER

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OCR MCE 3/9/2006

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

02-110972 / JULY 17, 2002

I, BRANDI LYNN [HOLDER] TURNER, do hereby give freely and voluntarily this statement to INVESTIGATOR PAUL A. SILVAGGIO and INVESTIGATOR B.F. ALEXANDER who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 21 years old, and I reside at: GREER, SC 29651 /(H) W)

I have a 12TH grade education, and I can read and write.

MARK STARTED CLEANING UP THE VOMIT WHICH WAS ALL OVER THE FLOOR IN THE BATHROOM AND HOSED OFF THE CLOTHES [redacted] WAS WEARING. I PUT [redacted] IN THE TUB AND WASHED HIM AND IT WAS LIKE HE DIDNOT UNDERSTAND WHAT HAD HAPPENED BECAUSE HE REALLY HAS NOT THROWN UP BEFORE OTHER THAN AS A BABY THROWING UP CLEAR LIQUIDS. I TOLD [redacted] THAT IT WAS ALRIGHT AND THAT WE WOULD WASH HIM OFF AND PUT A MOVIE IN FOR HIM TO GO NIGHT NIGHT. FELL ASLEEP LAYING ON MARKS CHEST IN [redacted] 'S BEDROOM. [redacted] SLEPT GOOD LAST NIGHT AND SLEPT ON MARKS CHEST THE WHOLE NIGHT. I GOT UP THIS MORNING FROM MY BED BECAUSE I HAD FELL ASLEEP ON THE FLOOR IN [redacted] 'S ROOM BUT AFTER IT WAS HURTING MY BACK I GOT IN MY BED. MY ALARM WENT OFF AT 7:30 THIS MORNING AND I WENT INTO [redacted] 'S BEDROOM TO CHECK ON HIM AND [redacted] WAS STILL LAYING ON MARKS CHEST AND THEY WERE BOTH ASLEEP ON [redacted] 'S FLOOR. I WENT TO MY BEDROOM AND STARTED PUTTING MY MAKE-UP ON WHEN MARK CAME IN AND HAD VOMIT ALL OVER HIS CHEST AND HIS LEG. HE CAME IN THERE TO RINSE OFF AND HE BROUGHT THE COMFORTER IN THERE CAUSE IT WAS ALL OVER THE COMFORTER AND HE CHANGED [redacted] S CLOTHES. AFTER MARK GAVE HIM A BATH. [redacted] WAS WHIMPERING ALITTLE AND MARK WAS TELLING HIM THAT IT WAS OKAY. MARK AND I HAVE HAD DIARREHA AND THOUGHT THEN THAT IT HAD TO HAVE BEEN FROM SOMETHING WE ATE. I WENT ON TO WORK AT ABOUT 9:20 TO GO TO WORK. I GOT TO WORK ABOUT 10:00 AM, THIS MORNING. [redacted] WAS NOT RUNNING A FEVER WHEN I LEFT AND HIS TEMPERATURE WHEN I CHECKED IT BEFORE I WENT TO WORK THIS MORNING WAS "98.6". [redacted] WAS TALKING AND READY TO PLAY AND I TOLD HIM THAT I WAS GOING TO WORK AND HE SAID "BYE MOMMA". MARK CALLED MY WORK AT ABOUT 12:00 THIS AFTERNOON AND SAID "BRANDI YOU'VE GOT TO COME HOME, ITS [redacted] I DON'T KNOW WHAT IS GOING ON [redacted] WAS NOT ACTING RIGHT AND LOOKED DISORIENTED. I GAVE HIM HIS KOOLAIDE AND [redacted] ASKED FOR HIS BOTTLE SO I GAVE HIM HIS WATER BOTTLE. I LIFTED HIM UP AND LET HIM PICK UP THE VIDEO THAT HE WANTED, LAYED HIM DOWN ON THE PALLET AND HE STARTED WATCHING A MOVIE WITH HIS BOTTLE". HE SAID "I WENT TO GO WORK ON THE BOAT AND WAS IN AND OUT THE WHOLE TIME AND [redacted] WAS NOT ACTING LIKE HIMSELF, ACTING DISORIENTED". HE SAID "THE LAST TIME I WENT TO CHECK ON [redacted] HE WAS JUST LAYING THERE AND HAD A HEART BEAT AND HE WAS SCARING ME" HE SAID "I TRIED TO GIVE HIM CPR AND THOUGHT HE WAS BREATHING BECAUSE JOHN FELT A HEART BEAT AND WHEN I GAVE HIM CPR HE BIT MY LIP". I TOLD HIM TO GET IN THE VAN AND GET THE BABY TO THE HOSPITAL AND I WOULD MEET HIM AT THE HOSPITAL. HE SAID THAT [redacted] WAS MUMBLING AND TALKING TO HIM RIGHT UP TO THE TIME THEY GOT TO HIGHWAY 14 AND I TOLD THEM I WOULD MEET THEM AT THE HOSPITAL BECAUSE I HAD TO DRIVE. I THEN MET THEM AT ALLEN BENNETT HOSPITAL AND THEY WERE ALREADY THERE WHEN I ARRIVED. I WENT INTO THE EMERGENCY ROOM AND JOHN WALKED ME FROM MY CAR AND MARK WAS CRYING. MARK SAID THAT [redacted] WAS OKAY AND HE WAS STILL TALKING TO US. I WALKED INTO THE ROOM WHERE [redacted] WAS AT AND THE NURSE TOLD ME THAT I HAD TO GET OUT. THE DOCTOR CAME OUT AND SAID THAT THYEY WERE BREATHING FOR HIM AND THAT HE DIDNOT HAVE A HEART BEAT WHEN HE CAME IN. I ASKED IF HE WAS OKAY AND THE DOCTOR SAID THAT HE DIDNOT KNOW AND TURNED AROUND AND WALKED OFF. THE DOCTOR CAME BACK OUT AND SAID THAT HE WAS SORRY AND I KNEW WHAT THAT MEANT AND I STARTED SCREAMING AND CRYING.

I have read the above statement of 7OF8 pages and it is true and correct as best I recall.

WITNESS:

PAUL A. SILVAGGIO/

B.F. ALEXANDER/

X Brandi Turner

I HAVE RECEIVED A COPY OF THIS STATEMENT

X Brandi Turner

Sworn before me this 17TH day of JULY 19 2002 NOTARY PUBLIC FOR SOUTH CAROLINA

OF

Wesley Birch MCE 3/9/2006

PLAINTIFF'S EXHIBIT 5 04/04/12 TBJ

Genetics Home Reference
Your Guide to Understanding Genetic Conditions
http://ghr.nlm.nih.gov/ A service of the U.S. National Library of Medicine®

AMELX

Reviewed February 2007

What is the official name of the *AMELX* gene?

The official name of this gene is "amelogenin, X-linked."

AMELX is the gene's official symbol. The *AMELX* gene is also known by other names, listed below.

What is the normal function of the *AMELX* gene?

The *AMELX* gene provides instructions for making a protein called amelogenin, which is essential for normal tooth development. Amelogenin is involved in the formation of enamel, which is the hard, white material that forms the protective outer layer of each tooth. Enamel is composed mainly of mineral-containing crystals. These microscopic crystals are arranged in organized bundles that give enamel its strength and durability. Although the exact function of amelogenin is not well understood, it appears to separate and support the ribbon-like crystals as they grow. Amelogenin is removed from the developing crystals when it is no longer needed, leaving mature enamel that contains very little protein.

Studies suggest that small amounts of amelogenin may also be present in tissues other than developing tooth enamel. For example, amelogenin has been found in certain bone, bone marrow, and brain cells. The function of amelogenin in these tissues is unknown.

One copy of the amelogenin gene is located on each of the sex chromosomes (the X and Y chromosomes). The *AMELX* gene, which is located on the X chromosome, makes almost all of the body's amelogenin. The copy of the amelogenin gene on the Y chromosome, *AMELY*, makes very little amelogenin and is not needed for enamel formation.

How are changes in the *AMELX* gene related to health conditions?

amelogenesis imperfecta - caused by mutations in the *AMELX* gene

At least 15 mutations in the *AMELX* gene have been identified in people with X-linked forms of amelogenesis imperfecta. (X-linked disorders are caused by mutations in genes on the X chromosome.) Some *AMELX* mutations lead to the production of an abnormal version of the amelogenin protein that can interfere with the formation and organization of enamel crystals. Other *AMELX* mutations prevent one copy of the gene from producing any amelogenin protein at all. Enamel cannot form properly without an adequate amount of amelogenin.

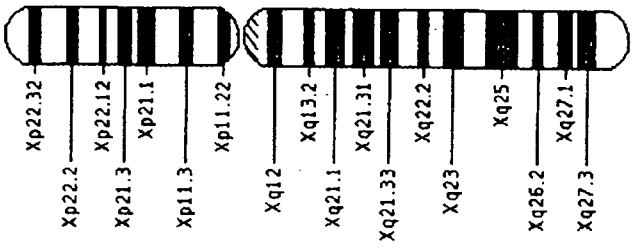
Males have a single copy of the X chromosome in each cell. Males who inherit a defective copy of the *AMELX* gene have very little amelogenin and develop almost no enamel to cover and protect their teeth. Females have two copies of the X chromosome in each cell. Females who inherit one altered copy of the *AMELX* gene are less severely affected because they have a normal copy of the gene on the other X chromosome to produce amelogenin. Their tooth enamel may have structural defects such as a distinctive pattern of vertical grooves. No symptoms other than abnormal enamel development have been reported in

people with *AMELX* mutations.

Where is the *AMELX* gene located?

Cytogenetic Location: Xp22.31-p22.1

Molecular Location on the X chromosome: base pairs 11,311,532 to 11,318,880



The *AMELX* gene is located on the short (p) arm of the X chromosome between positions 22.31 and 22.1.

More precisely, the *AMELX* gene is located from base pair 11,311,532 to base pair 11,318,880 on the X chromosome.

See How do geneticists indicate the location of a gene? (http://ghr.nlm.nih.gov/handbook/howgeneswork/genelocation) in the Handbook.

Where can I find additional information about *AMELX*?

You and your healthcare professional may find the following resources about *AMELX* helpful.

- Educational resources - Information pages
  School of Dentistry, University of North Carolina at Chapel Hill
  (http://www.dentistry.unc.edu/research/defects/pages/ai_2.htm#genes)

You may also be interested in these resources, which are designed for genetics professionals and researchers.

- PubMed - Recent literature (http://www.ncbi.nlm.nih.gov/pubmed?term=((AMELX%5BTIAB%5D)+OR+(amelogenin%5BTI%5D))+AND+((Genes%5BMH%5D)+OR+(Genetic+Phenomena%5BMH%5D))+AND+english%5Bla%5D+AND+human%5Bmh%5D+AND+%22last+1800+days%22%5Bdp%5D)
- OMIM - Genetic disorder catalog (http://omim.org/entry/300391)
- **Research Resources - Tools for researchers**
  - Atlas of Genetics and Cytogenetics in Oncology and Haematology (http://atlasgeneticsoncology.org/Genes/GC_AMELX.html)
  - Entrez Gene (http://www.ncbi.nlm.nih.gov/gene/265)
  - GeneCards (http://www.genecards.org/cgi-bin/carddisp.pl?id_type=entrezgene&id=265)

- HUGO Gene Nomenclature Committee (http://www.genenames.org/data/hgnc_data.php?hgnc_id=461)

What other names do people use for the *AMELX* gene or gene products?

- AIH1
- ALGN
- amelogenin (amelogenesis imperfecta 1, X-linked)
- AMELX_HUMAN
- AMG
- AMGL
- AMGX

See How are genetic conditions and genes named? (http://ghr.nlm.nih.gov/handbook/mutationsanddisorders/naming) in the Handbook.

What glossary definitions help with understanding *AMELX*?

amelogenesis ; bone marrow ; cell ; chromosome ; enamel ; gene ; hypoplasia ; mineral ; mutation ; protein ; sex chromosomes ; symptom ; tissue

You may find definitions for these and many other terms in the Genetics Home Reference Glossary (http://ghr.nlm.nih.gov/glossary).

References

- Deutsch D, Haze-Filderman A, Blumenfeld A, Dafni L, Leiser Y, Shay B, Gruenbaum-Cohen Y, Rosenfeld E, Fermon E, Zimmermann B, Haegewald S, Bernimoulin JP, Taylor AL. Amelogenin, a major structural protein in mineralizing enamel, is also expressed in soft tissues: brain and cells of the hematopoietic system. Eur J Oral Sci. 2006 May;114 Suppl 1:183-9; discussion 201-2, 381. (http://www.ncbi.nlm.nih.gov/pubmed/16674683?dopt=Abstract)
- Entrez Gene (http://www.ncbi.nlm.nih.gov/gene/265)
- Greene SR, Yuan ZA, Wright JT, Amjad H, Abrams WR, Buchanan JA, Trachtenberg DI, Gibson CW. A new frameshift mutation encoding a truncated amelogenin leads to X-linked amelogenesis imperfecta. Arch Oral Biol. 2002 Mar;47(3):211-7. (http://www.ncbi.nlm.nih.gov/pubmed/11839357?dopt=Abstract)
- Hart PS, Aldred MJ, Crawford PJ, Wright NJ, Hart TC, Wright JT. Amelogenesis imperfecta phenotype-genotype correlations with two amelogenin gene mutations. Arch Oral Biol. 2002 Apr;47(4):261-5. (http://www.ncbi.nlm.nih.gov/pubmed/11922869?dopt=Abstract)
- Kida M, Sakiyama Y, Matsuda A, Takabayashi S, Ochi H, Sekiguchi H, Minamitake S, Ariga T. A novel missense mutation (p.P52R) in amelogenin gene causing X-linked amelogenesis imperfecta. J Dent Res. 2007 Jan;86(1):69-72. (http://www.ncbi.nlm.nih.gov/pubmed/17189466?dopt=Abstract)
- Kim JW, Simmer JP, Hu YY, Lin BP, Boyd C, Wright JT, Yamada CJ, Rayes SK, Feigal RJ, Hu JC. Amelogenin p.M1T and p.W4S mutations underlying hypoplastic X-linked amelogenesis imperfecta. J Dent Res. 2004 May;83(5):378-83. (http://www.ncbi.nlm.nih.gov/pubmed/15111628?dopt=Abstract)
- Margolis HC, Beniash E, Fowler CE. Role of macromolecular assembly of enamel matrix

proteins in enamel formation. J Dent Res. 2006 Sep;85(9):775-93. Review. (http://www.ncbi.nlm.nih.gov/pubmed/16931858?dopt=Abstract)

- Stephanopoulos G, Garefalaki ME, Lyroudia K. Genes and related proteins involved in amelogenesis imperfecta. J Dent Res. 2005 Dec;84(12):1117-26. Review. (http://www.ncbi.nlm.nih.gov/pubmed/16304440?dopt=Abstract)
- Wright JT, Hart PS, Aldred MJ, Seow K, Crawford PJ, Hong SP, Gibson CW, Hart TC. Relationship of phenotype and genotype in X-linked amelogenesis imperfecta. Connect Tissue Res. 2003;44 Suppl 1:72-8. Review. (http://www.ncbi.nlm.nih.gov/pubmed/12952177?dopt=Abstract)
- Wright JT. The molecular etiologies and associated phenotypes of amelogenesis imperfecta. Am J Med Genet A. 2006 Dec 1;140(23):2547-55. Review. (http://www.ncbi.nlm.nih.gov/pubmed/16838342?dopt=Abstract)

The resources on this site should not be used as a substitute for professional medical care or advice. Users seeking information about a personal genetic disease, syndrome, or condition should consult with a qualified healthcare professional. See How can I find a genetics professional in my area? (http://ghr.nlm.nih.gov/handbook/consult/findingprofessional) in the Handbook.

Reviewed: February 2007
Published: April 2, 2012

Lister Hill National Center for Biomedical Communications :+
U.S. National Library of Medicine :+, National Institutes of Health :+
Department of Health & Human Services :+, USA.gov :+

Freedom of Information Act :+ Copyright :+ Privacy :+ Accessibility :+

:+ Indicates a page outside Genetics Home Reference.
Links to web sites outside the Federal Government do not constitute an endorsement.
For selection criteria for web links, see Genetics Home Reference at http://ghr.nlm.nih.gov/

Hartman Straight Chiropractic Center
308 E. Butler, Ste. C Mauldin, SC 29662 (864) 297-9160
Rick Hartman, D.C. Rebecca Hartman, D.C.

Straight Chiropractic Case History

Dear Patient,

Welcome! We will do our very best to provide your child with any chiropractic care needed. In order to do this, please answer the following questions as completely as possible. Take your time. It is an important part of our initial evaluation of your child.

Please keep in mind that, although some of these questions are medical, we do not provide medical care. However, we do need to know what your child's physical history is in order to accurately analyze his/her spine.

This is a family chiropractic office. We look forward to your child joining our "family"!

Drs. Rick and Rebecca Hartman
Straight Chiropractors

1. General Information

Today's date: [illegible] Case No. [illegible]

Child's Full Name: First: VICTIM Middle: VICTIM Last: VICTIM

What name do you wish us to call your child? _____

Mother's Name: Brandi Mother's phone: (H) _____ (W) _____

Father's Name: _____ Father's phone: (H) _____ (W) _____

Mailing address: _____ City: Greer State: SC Zip: 29651

Child's Date of Birth: _____ Age: 7days Sex M: ☒ F: ☐

Present age: Years_____ Months _____

Child's Social Security No:_____--_____--_____ How many children do you have? 1

How did you find out about us? ☐ Referral If referred, by whom? _____
☐ Sign ☐ Yellow Pages ☒ Other Current care

Has your child ever been to a chiropractor before? Yes: ☐ No: ☒
If yes, when? _____ Were X-rays taken? Yes ☐ No ☐

Chiropractor's name?_____ Where? _____

Please tell us why you brought your child into our office.: preventive care

C.C O.C

PLAINTIFF'S EXHIBIT 6

2. Pregnancy History

Was your child carried full term: ☒ Yes ☐ No
If not, how long? Months _____ Weeks _____

Were ultrasounds taken? ☒ Yes ☐ No If yes, how many? 2
Have there been side effects? ☐ Yes ☒ No
If yes, What? _____

Did the mother take any drugs during the pregnancy? ☐ Yes ☒ No
If yes, what? _____
Have there been side effects? ☐ Yes ☒ No
If yes, what? _____

3. Birth History

☒ Single ☐ Twin ☐ Triplet

Where born? ☐ Home ☐ Birthing Center ☒ Hospital

Who delivered your child? ☒ MD ☐ Midwife ☐ Spouse ☐ Other

Type of birth? ☒ Vaginal ☐ Cesarean ☐ Medicated ☒ Non-medicated

Were any of the following used? ☐ Forceps ☐ Vacuum Extraction ☒ Fetal Monitor

Was the delivery long? ☐ Yes ☒ No If yes, how long? 4pm-3:22 am 1hr 16min heavy labo

Was the umbilical cord wrapped around the infant's neck? ☐ Yes ☒ No

Were there complications which may have injured the infant? ☐ Yes ☒ No

If yes, please explain _____

What position was your child in during delivery?
Head first? ☒ Normal (face down) ☐ Anterior presentation (face up)
Other? ☐ Breech (both feet delivered at the same time) ☐ Frank breech (bottom first)
☐ Footling Breech (One foot first, as if infant doing a split)

Were any of the following present at birth:
Congenital defects: ☐ Yes ☒ No
If yes, what? _____

Cyanosis (blue): ☐ Yes ☒ No
Cuts, dents or bruises ☒ Yes ☐ No
If yes, please explain hematoma on back, left side of head

4. Drug History

s your child been given antibiotics? ☐ Yes ☒ No
yes, for what problem? _____

Has you child been given other drugs? ☐ Yes ☒ No
If yes, which ones? _____

Has your child been vaccinated? ☐ Yes ☒ No
If yes, were there reactions to the vaccinations? ☐ Yes ☐ No
If yes, please explain _____

5. Early History

Feeding: ☒ Breast ☐ Bottle ☐ Both

Does/did the infant have digestive or elimination difficulties? ☐ Yes ☒ No
If yes, please explain _____

Does/did the infant have sleeping difficulties? ☐ Yes ☒ No
If yes, please explain _____

Does/did the infant have unusual crying spells? ☐ Yes ☒ No
If yes, please explain _____

Do/did you notice any position in which the infant seemed uncomfortable? ☐ Yes ☒ No
If yes, please explain 1st wk uncomfortable lying on back

Does/did your child seem delayed in any area? ☐ Yes ☒ No
If yes, please explain _____

Can your child walk? ☐ Yes ☒ No
If yes, do/did you notice any problems with balance or position of feet?
If yes, please explain _____

Has your child taken any bad falls while learning to walk? ☐ Yes ☐ No
If yes, please explain _____

Does your child have tubes in the ears? ☐ Yes ☒ No
If yes, please explain _____

Has your child had any other surgery? ☐ Yes ☒ No
If yes, please explain _____

_____

6. History of Injuries

Has your child broken any bones? ☐ Yes ☒ No
If yes, please explain _____

Has your child ever been knocked unconscious? ☐ Yes ☒ No
If yes, please explain _____

Is your child involved in a sport? ☐ Yes ☒ No
If yes, please explain _____

Has your child had any falls which may have injured the spine? ☐ Yes ☒ No
If yes, please explain _____

Has your child been involved in a car accident? ☐ Yes ☒ No
If yes, at what age? _____ Date of Accident: _____
Was your child: ☐ in a car seat? ☐ wearing a seat belt?
Were x-rays taken? ☐ Yes ☐ No If yes, of what area? _____
Please describe any injuries _____

7. Payment Information

☐ Individual Plan ☒ Family Plan ☐ Health Insurance ☐ Car Accident Insurance

If you intend to file with an insurance company, we need the following information:

Name of primary (or auto) insurance company: _____
Insurance Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Insurance's Phone Number: ( ) _____ -- _____

Primary Policyholder's Name _____ Social Security No. _____--_____--_____
Place of policyholder's employment: _____ Phone: _____

I, _____, am the parent/legal guardian of _____, and I authorize the insurance company given above to pay benefits directly to the Hartman Straight Chiropractic Center. I understand that I assume ultimate responsibility for the payment of fees for services rendered to my child by the Hartman Straight Chiropractic Center and I accept these services on this basis.

Signed: _____

Date: _____

8. Rules for Care

I am the parent/legal guardian of VICTIM

I grant permission for this child to receive straight chiropractic care from Drs. Rick and Rebecca Hartman. This care will include a relevant spinal examination, instrumentation, specific chiropractic spinal adjustments and spinal x-rays, if necessary.

I understand that Drs. Rick and Rebecca Hartman will provide straight chiropractic care for my child.

I understand that my child's body is a self-healing one which will function at a higher level when vertebral subluxations are reduced and/or corrected.

Since this is a family practice, we want your child to feel at home here. However, we ask that there be no roughhousing and that each show respect for ill or elderly adults who might be bothered or injured by their activity.

Thank you for helping us keep the atmosphere harmonious and where children are most welcome to bring their parents!

Signed: [signature]

Date: January 10, 2000

Doctor's notes:

Name: VICTIM Case No. 1326 Card No. 1

Date:	Adjustments and Notes:	Leg Bal.
1/10/00	NCGH B better than A Unmedicated 30 min delivery 1/3/00	
1/17/00	NCGH ONLY	
1/31/00	True pattern evident C7/T1 NG; A-R on thumb w/ act on TP GP	
2/7/00	HCGH ONLY	
2.21.00	" "	
2.28.00	" "	
4.3.00	A-R	
5.8.00	NCGH ONLY	
5.22.00	C7 NO POST	
6.12.00	NCGH ONLY begin crawl	
6.19.00	C7 fell around	
6.26.00	NCGH ONLY teething pulling up onto chair	
7.10.00	" " 3RD tooth	
7.25.00	A-R ACT 5th tooth - bm walking	
8.7.00		
8.21.00	NCGH ONLY	
9/11/00	C7 fell against cat entertainment cat	
9/25/00	A-R	
10/9/00		
10/16/00	NCGH ONLY	
10/23/00	" " took steps + climb	
10/30/00	C7	
11.3.00	C7 teething 103 -	
11.8.00	C7 cof + bloody nose - wheeze	
11.13.00	NCGH ONLY cof	
11.17.00	" "	
11.27.00	C7 bad cof	
12.4.00	C7 just learned to walk	
12.5.00	NCGH ONLY	
12.11.00	NCGH ONLY	
1.8.01	C7 croupy cof	
1.9.01	T1,2 running nose	
1.21.01	~~A-R T1,2~~ (L) OL congestion	
1.26.01		
1.29.01	A-R / C7/T1	
1.30.01	C7/T1	
2.1.01		
2.2.01		
2.5.01	NCGH ONLY	
2.12.01	" " cof @ night	
2.19.01	" "	
2.23.01	fever again	
2.28.01	C7/T1	
3.2.01	NCGH ONLY	
3.26.01	" "	

PLAINTIFF'S EXHIBIT 7 04/04/12 TBJ

Date:	Adjustments and Notes:	Leg
4.2.01	C7 teething 4 — 2 bad falls	
4.9.01	C7	
~~[illegible]~~ 4/23/01	NCGH ONLY suffering 2 teeth	
5/14/01	C7	
5/21/01	NCGH ONLY	
6.4.01	C7 ~~[illegible]~~ DIMATAP 2.	
6.25.01	AR · SLEPT W/ HPT (R)	
7.2.01	NCGH ONLY	
7.17.01	AR	
8.6.01	~~C7~~ A-R Dressed & dentist	
8.20.01	~~[illegible]~~ A-R	
9.24.01		
11.5.01		
11.12.01	NCGH ONLY	
12.27.01	C7/T1 to dentist - Rx to benadryl	
12.21.01	" "	
1.14.02	C3	
2.4.02	(C7/T1) NCGH → AND (L) → GP	
2.18.02	NCGH ONLY	
2.25.02	(C7) ACT 2-3 days dripping nose	
3.25.02	NCGH ONLY	
4.8.02	C7 diarrhea bgn yest 6	
5/17/02	deceased —	

CVS
pharmacy

Privacy Office
One CVS Drive
Woonsocket, RI 02895

Private and Confidential
Intended for Addressee Only

2331989

GREER SC 29651

03/23/2012

Re: MARIE HOLDER MOTHER
VICTIM

Enclosed, please find the patient prescription profile obtained using the information as specified per your request.

To cover the expense of processing these records, please remit a payment of $0.00 to CVS/pharmacy, One CVS Drive, Woonsocket, RI 02895, Attn: Privacy Office. The Federal Tax ID number is 05-03-40626.

If you have questions regarding this report you may contact the Privacy Office at 1-800-287-2414 or e-mail us at PrivacyOffice@cvs.com.

Sincerely,
CVS/pharmacy Privacy Office

INVOICE

BOBBY TURNER

Request Nbr	Date	Amount Due:	Payment Amount:
2331989	03/23/2012	$0.00	$_____

Payment Due Upon Receipt

Mail payment to:
CVS/pharmacy
Privacy Office
One CVS Drive
Woonsocket, RI 02895

Make Checks Payable to: CVS/pharmacy
Include Request Number and customer name on check.

CVS Caremark is currently reviewing processing standards with regard to the disclosure of Protected Health Information (PHI) performed at the request of our patients.

PLAINTIFF'S EXHIBIT 8

CVS/pharmacy
#2195 Ph:864.255-4461
VICTIM
Dr. POOL,JOSEPH D
Rx: 281909
APPLY 3 TIMES A DAY FOR
7-10 DAYS
ELOCON 0.1% CREAM SCH
Rx only
SCHERING
15 g ELOCON®
mometasone furoate
Cream 0.1%

CVS PHARMAC
PATIENT PRESCRIPTIC
BETWEEN 04/01/2000 AN
PHARMACY # 2195

PHARMACY NAME: CVS PHARMACY #2195
ADDRESS: 426 WADE HAMPTON BOULEVARD
CITY, ST, ZIP: GREENVILLE SC 29609

PATIENT KEY: 2195352211
PATIENT NAME: VICTIM
ADDRESS
CITY, ST, ZIP: GREER SC 29651

TELEPHONE: 864-9
BIRTHDATE: 01/03/

ALLERGIES:
99 Unknown
99

Notified: 01
Notified: 01

CONDITIONS: None communicated by the patient.

RX NUMBER	REL	NDC NUMBER	DRUG DESCRIPTION	PRESCRIBER NAME	D/ FI
251909	0	00085056701	ELOCON 0.1% CREAM SCH	POOL, JOSEPH D	09/3

PHARMACY NAME: CVS/REVCO #7397
ADDRESS: 3611 PELHAM RD
CITY, ST, ZIP: GREENVILLE SC 29615

PATIENT KEY: 7397334181
PATIENT NAME: VICTIM
ADDRESS
CITY, ST, ZIP: GREER SC 29651

ALLERGIES:
99
99 Unknown

CONDITIONS: None communicated by the patient.

RX NUMBER	REL	NDC NUMBER	DRUG DESCRIPTION
484249	0	00085056701	ELOCON 0.1% CREAM SCH

CVS PHARMACY
PATIENT PRESCRIPTION RECORD
BETWEEN 04/01/2000 AND 12/31/2003
PHARMACY # 7397

PAGE: 1
RUN DATE: 03/23/2012 TIME: 16:52:17
REQUEST NBR: 2331989

TELEPHONE: - - - -
BIRTHDATE: '000

Notified: 01/08/2001 Deactivated: 06/30/2010
Notified: 01/08/2001 Deactivated:

PRESCRIBER NAME	DATE FILLED	RPH INT	QUANT DISP	TOTAL PRICE	PATIENT PD AMT	PAYER #	PAYER PD AMT	TP AUTHORIZATION #
POOL, JOSEPH D	05/25/2001	RH	30	40.47	8.09	4000	32.38	

Fax Server 3/23/2012 5:06:33 PM PAGE 07/001 Fax Server

CVS PHARMACY
PATIENT PRESCRIPTION RECORD
BETWEEN 04/01/2000 AND 12/31/2003
PHARMACY # 2195

PAGE: 1
RUN DATE: 03/23/2012 TIME: 16:52:17
REQUEST NBR: 2331889

PHARMACY NAME: CVS PHARMACY #2195
ADDRESS: 426 WADE HAMPTON BOULEVARD
CITY, ST, ZIP: GREENVILLE SC 29609

PATIENT KEY: 2195352211
PATIENT NAME: VICTIM
ADDRESS
CITY, ST, ZIP: GREER SC 29651

TELEPHONE: 864-968-8862
BIRTHDATE: 01/03/2000

ALLERGIES:
99 Unknown
99

Notified: 01/08/2001 Deactivated:
Notified: 01/08/2001 Deactivated: 06/10/2010

CONDITIONS: None communicated by the patient.

RX NUMBER	REL	NDC NUMBER	DRUG DESCRIPTION	PRESCRIBER NAME	DATE FILLED	RPH INT	QUANT DISP	TOTAL PRICE	PATIENT PD AMT	PAYER #	PAYER PD AMT	TP AUTHORIZATION #
261909	0	00085056701	ELOCON 0.1% CREAM SCH	POOL, JOSEPH D	09/30/2001	DD	30	41.25	8.25	4000	33.00	

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2303160

Brandi Lynn Turner Holder *vs.* South Carolina State Of

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 25th day of June, 2012.

Court Reporter:

PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 25th day of June, 2012, and a copy mailed first class this 25th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Shurling Tara Dawn Shurling, PA 3614 Landmark Dr., Ste. D Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan Attorney Generals Office Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

JUN 27 2012

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-3160
COUNTY OF GREENVILLE)	
)	
Brandi Lynn Turner Holder,)	
a/k/a Brandi Lynn Turner,)	
S.C.D.C. No. 313870,)	
)	
Applicant,)	
)	**ORDER OF DISMISSAL**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 20, 2010. The Respondent made its return on September 14, 2010. A hearing into the matter was convened on April 4, 2012 at the Greenville County Courthouse. The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on her own behalf at the PCR hearing. Also testifying were Dr. Rebecca Hartman, Ben Holder, Joel Maddox, Kevin Clark, Nadine Kelly, Debra Atkins, Becky Leopard, David Kelly, Lisa Griffith, Marie Holder, and the Applicant's trial attorneys: Bruce A. Byrholdt, Esquire and David E. Phillips, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, the appellate records, and the Applicant's Exhibits.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to

orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted by the Greenville County Grand Jury for homicide by child abuse (2003-GS-23-1307). She was represented by Bruce A. Byrholdt, Esquire and David E. Phillips, Esquire.

After the State called the case to trial,[1] the Applicant was found guilty as indicted. On February 9, 2006, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals and the case was later certified for review by the South Carolina Supreme Court. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court affirmed the Applicant's conviction and sentence on May 4, 2009. State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009).

ALLEGATIONS

In her application, the Applicant alleges she is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
   a. "Counsel failed to provide client effective assistance of counsel prior to and during her trial proceeding. Counsel failed to recognize errors which occurred during her trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's [sic] failure to make these objections may have changed the outcome of the Applicant's trial and at a minimum deprived her of the opportunity to have these issues addressed on their merits on direct appeal."

In an Amended Application for Post-Conviction Relief filed by the Applicant's PCR counsel on April 4, 2012, the Applicant made the following allegations:

1. Ineffective assistance of trial counsel:
   a. Failed to present character witnesses.

[1] This was a joint trial with co-defendant Mark Martucci, who was tried in absentia.

b. Failed to clarify that the testimony of multiple witnesses about the victim's bruises was in reference to "only a few incidents recalled by multiple witnesses."

c. Failed to present evidence the victim was treated for eczema and "that the lesions on the [victim]'s skin could have been mistaken for burns."

d. Failed to present testimony from the family chiropractor regarding the absence of evidence of prior abuse.

e. Failed to present testimony from the Applicant to clarify the distinctions in her two statements.

f. Failed to question the Applicant on direct examination in a manner that would allow her to explain some of the victim's prior injuries.

g. Failed to point out to the jury that the incidents of prior abuse the Applicant admitted knowing were similar to incidents of prior abuse of the victim (by the co-defendant) which were noted in Parker's statement.

h. Failed to present evidence of claims by State witnesses that they had reported possible abuse to DSS.

i. Failed to object to Robin Center's testimony describing burn marks on the victim when no foundation had been laid for her ability to identify such marks.

j. Failed to impeach Trevor Venesky's testimony that the Applicant once locked the victim in his room with evidence that door locked from the inside.

k. Failed to introduce evidence the Applicant's workplace was 45 minutes from home, which left the jury to draw a negative inference from the Applicant going to lunch with co-workers instead of checking on the victim.

l. Failed to allow the Applicant to explain why she did not check on the victim before leaving for work on the day of his death.

m. Failed to present testimony from the Applicant that she had been told (by the co-defendant) of a prior accident with the victim and an ATV, which would demonstrate she had reason to believe earlier injuries were accidental.

n. Failed to point out in closing argument that, as the Applicant was sick the day before the victim died, there was reason she could have believed the victim was similarly ill.

o. Failed to question the Applicant's father about an incident where he had been advised the victim was in an ATV accident.

p. Failed to present evidence the co-defendant possessed an ATV and the victim had been seen on this vehicle.

q. Failed to object to questions about cigarette burns where there was no foundation asserted that the witness ever described seeing cigarette burns on the victim.

r. Failed to present evidence to establish the Applicant did not

smoke.

s. Failed to call the Applicant's mother to testify the marks on the victim described as burn marks occurred while the victim and the Applicant were living with her.

t. Erred in characterizing the Applicant as "not the best wife" when cross-examining the Applicant's ex-husband.

u. Failed to object to questions about the victim's paternity.

v. Failed to move for a mistrial when the State elicited testimony about the victim's paternity.

w. Failed to move in limine to prohibit the State from calling the Applicant's ex-husband as a witness, as he had no relevant testimony.

x. Failed to object when the State asked the Applicant's ex-husband whether she had physically mistreated him.

y. Failed to move for a mistrial when the State asked the Applicant's ex-husband whether she had physically mistreated him.

z. Failed to introduce a SLED Forensic Services Lab Report indicating there was a mixed DNA sample from bite marks on the victim (with DNA from a male contributor).

aa. Failed to timely object when the State elicited irrelevant testimony about who paid for the victim's funeral.

bb. Failed to obtain a ruling from the trial judge concerning the objection raised when the State questioned the Applicant's ex-husband about his payment for the victim's funeral.

cc. Failed to move for a mistrial when the State elicited irrelevant testimony from the Applicant's ex-husband about who paid for the victim's funeral.

dd. Failed to question the Applicant's ex-husband about whether he had life insurance on the victim.

ee. Failed to move to strike irrelevant and prejudicial testimony from the Applicant's ex-husband.

ff. Failed to request a curative charge instructing the jury to disregard testimony from the Applicant's ex-husband concerning material irrelevant to the charges.

gg. Failed to object to a "confusing and incomplete answer" given by the trial judge in response to a jury question about verdict options.

hh. Failed to object to a jury charge defining "an extreme indifference to human life" as "a mental state akin to intent characterized by a deliberate act culminating in death."

2. Ineffective assistance of appellate counsel:

a. Failed to brief the refusal of the trial judge to grant a directed verdict where the record contained no evidence the Applicant abused or neglected the victim under circumstances manifesting an extreme indifference to human life.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges she received ineffective assistance of trial counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant's testimony provided factual details that she implied trial counsel should have used to counter the State's witnesses. The Applicant stated counsel never discussed a guilty plea with her until during the trial. The Applicant stated she understood one section of the

statute had potential sentences of 20 years to life but that – if she had known there was another section with lesser potential sentences – she would have considered pleading guilty. The Applicant stated the victim only came with her to work twice and that she had no reason to doubt her co-defendant's explanation of the victim's bruise on one of those occasions as a result of playing with the dog. The Applicant stated the victim never had burn marks, but instead suffered from eczema – which could look similar – and for which he had prescription cream. The Applicant stated counsel did not challenge Robin Center's testimony that she left the victim with Center overnight without warning. The Applicant stated she gave counsel a list of character witnesses but was unsure if counsel contacted these witnesses, as they did not discuss the potential use of such witnesses at trial. The Applicant stated she briefly discussed the impact her second statement had on the case. The Applicant stated she told counsel "the situation" regarding the acts described in her statements to police but they never asked her about it at trial. The Applicant stated her co-defendant started babysitting the victim while she was at work because he was unemployed. The Applicant stated she never saw the co-defendant harm the victim. The Applicant stated the co-defendant told her about an ATV accident with the victim a few weeks before his death, and she had believed him. The Applicant stated she did not discuss this with trial counsel but that she would have wanted to explain at trial why she believed her co-defendant that the victim had been involved in another ATV accident. The Applicant stated she did not return home to check on the victim on the day he died (and instead had lunch with a friend) because her workplace was 40 minutes away.

Dr. Rebecca Hartman testified she practices straight chiropractic medicine. Hartman stated she treated the victim every one or two weeks from when he was a week old (January 10, 2000) to approximately three weeks before his death (April 8, 2002). Hartman stated she never

noticed any unusual bruises or abrasions on the victim and would have noted such. Hartman admitted, however, that she had notes the victim had suffered "two bad falls." Hartman stated the Applicant's attorneys never interviewed her and that she would have testified at trial.

Ben Holder, the Applicant's father, stated he was never asked at trial about the victim's prior ATV accident, though he had discussed this with trial counsel. Holder stated the victim was "a rough and tumble" child and that statements about him having a "busted" lip were incorrect because his lips were chapped.

Marie Holder, the Applicant's mother, stated she was at some of the meetings with trial counsel. Holder stated counsel said there was no time to focus on character witnesses because they had to focus on important issues. Holder stated she would have been able to provide a list of character witnesses. Holder stated the Applicant's ex-husband said he had life insurance and wanted to pay for the victim's funeral.

Joel Maddox (who is married to the Applicant's cousin), Kevin Clark (a family friend), Nadine Kelly (the Applicant's aunt), Debra Atkins (who is married to the Applicant's cousin), Becky Leopard (the Applicant's aunt), David Kelly (the Applicant's uncle), and Lisa Griffith (the Applicant's aunt). These witnesses stated they saw interactions between the Applicant and the victim and had no cause for concern. These witnesses stated they never saw injuries on the victim and that the Applicant had "a general reputation" for truthfulness. At least two of these witnesses (Kelly and Griffith) stated they never saw the Applicant with the co-defendant.

Lead counsel, Bruce A. Byrholdt, Esquire, testified co-counsel associated him on this case 4-6 weeks before trial. Byrholdt testified they had several meetings with the Applicant and her family and they reviewed: the State's evidence, the Applicant's version of events, and the impact the Applicant's two statements would have on the defense case. Byrholdt testified the

defense strategy was to prove the Applicant was not aware of the co-defendant's abuse of the victim. Byrholdt indicated the defense case was difficult because there was a dead child, the Applicant gave conflicting statements, and Dr. Ward's testimony that the victim's injuries were horrendous and would have been apparent. Byrholdt testified there were no plea negotiations in this case. Byrholdt testified that, after the Applicant's statement was admitted at trial but before the pathologist testified, the trial judge brought up the idea of a guilty plea but that the State would not make any offers. Byrholdt testified the Applicant's co-workers and neighbors testified to seeing marks and burns on the victim but these were multiple witnesses testifying about a single event. Byrholdt testified there was no basis to object to Center's testimony about burns because, as a lay witness, she could testify as to what she saw. Byrholdt testified they had discussed the victim's injuries with the Applicant and she could not explain them. Byrholdt testified he did not recall whether she said the victim had eczema. Byrholdt testified they reviewed the chiropractor's records, which indicated the victim had some marks when he visited. Byrholdt testified he did not call the chiropractor at trial because he did not want the victim's health care provider to testify regarding questionable marks and noted some people do not like chiropractors. Byrholdt testified he met with the pathologist, Dr. Ward, before trial and that Dr. Ward would not be helpful because he had said these were the worst injuries he had ever seen. Byrholdt testified Dr. Ward said the majority of the victim's injuries were recent and part of the contributing incident. Byrholdt testified that, while Dr. Ward said some injuries were twelve hours old and the Applicant had left for work that day without checking on the victim, it did not help the case because of testimony about the victim's prior injuries. Byrholdt testified he cross-examined Dr. Ward about a bite mark on the victim's wrist but admitted he did not hire an expert or introduce evidence that DNA from the bite mark was male. Byrholdt testified this would not

have helped the case because the DNA did not identify anyone in particular and the victim was not killed by a bite mark. Byrholdt testified the Applicant gave two statements and, in the second one, admitted she saw the co-defendant injure the victim and the victim's resulting injuries. Byrholdt testified that he did not ask the victim every possible question when she testified because he wanted her to simply tell her side of the story and what she witnessed. Byrholdt testified he discussed the prior ATV incident with the Applicant and her family because it was mentioned in the Applicant's first statement. Byrholdt testified he was not concerned with the prior ATV incident because it was not relevant to the time frame in this case. Byrholdt testified Johnny Parker's testimony put a different spin on the evidence but that it was all about how the jury perceived it. Byrholdt testified he did not make a motion in limine to limit testimony of the Applicant's ex-husband (on the grounds of relevancy) because there was nothing in his statement that hurt their case. Byrholdt testified he did not object to a question about to the ex-husband about whether the Applicant knew the victim's paternity because it was not harmful to the case. (Trial transcript, p.341). Byrholdt testified there were objections to the relevancy of questions to the ex-husband about whether he paid for the victim's funeral and whether the Applicant mistreated him. (Trial transcript, pp.347-48). Byrholdt testified he was not concerned about the funeral issue and was satisfied with the trial judge's statement to disregard because he does not like curative instructions that highlight issues to the jury. (Trial transcript p.350). Byrholdt confirmed he asked the ex-husband whether the Applicant "might have been not the best wife, but [was] a good mother." (Trial transcript, p.351). Byrholdt testified he was happy with the jury's question and that, while in hindsight he might have objected to the trial judge's answer, the judge was responsive to the question. (Trial transcript, pp.689-91). Byrholdt testified the "extreme indifference" language in the jury charge was both a

correct statement of law and helpful to their case because there was no evidence to support the Applicant intended harm to the victim. (Trial transcript, pp.677-78).

Co-counsel, David E. Phillips, Esquire, testified he was retained approximately three years after the incident, but was not the first attorney in this case. Phillips testified, however, that he associated Byrholdt before he accepted this case. Phillips testified they had several meetings with the Applicant and they discussed the discovery materials, her version of events, and the impact her statements would have on the defense case. Phillips testified he and Byrholdt probably spent 150-200 hours on this case. Phillips testified the defense strategy was that the Applicant was not aware of any harm inflicted on the victim and the co-defendant was the abuser. Phillips testified they also reviewed the co-defendant's statement and that Johnny Parker would testify the Applicant knew about the abuse. Phillips testified the State never made a plea offer in this case and the Applicant was not interested in pleading guilty. Phillips testified they did discuss the possibility of a guilty plea during the trial but the State rejected that idea. Phillips testified he had explained to the Applicant that – under the statute – she was facing 20 years to life imprisonment under one section an 10 – 20 years under the other section. Phillips testified they were aware a chiropractor had treated the victim. Phillips testified they did not present the chiropractor as a defense witness because the records (1) indicated the victim had bad falls and (2) stopped three months before the victim's death. Phillips testified that, contrary to Robin Center's testimony that she previously called DSS because she suspected abuse, there were no such DSS records. Phillips testified he did not recall discussing character witnesses but that he felt comfortable with the defense case as it was. Phillips testified the defense case was to focus on hard evidence, not character witnesses, and show there was no reason for the Applicant to have harmed the victim. Phillips testified the Applicant mentioned a prior accident with the

victim and an ATV in her first statement and they discussed this. Phillips testified Byrholdt conducted the direct examination of the Applicant at trial and was not sure if they discussed the exact questions he would ask her. Phillips testified Parker stated at trial that the Applicant knew of the abuse by the co-defendant. Phillips testified he did not recall considering filing a motion in limine to exclude the Applicant's ex-husband and noted that witness had favorable things to say about the Applicant. Phillips testified he handled the closing argument and felt he presented their case to the jury well. Phillips testified they had pictures of the victim a few weeks before his death (in which he appears uninjured) and that he tried to focus the jury on this sort of evidence and not on Parker's testimony. Phillips testified he focused on the essence of the jury's question and not the trial judge's answer.

This Court finds the Applicant's testimony is not credible, while also finding trial counsels' testimony is credible. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, developed and implemented a trial strategy, and were thoroughly competent in their representation.

This Court finds the Applicant failed to meet her burden of proving trial counsel did not properly advise her of the potential sentences she was facing. The Applicant argued that if she had been advised the second section of the homicide by child abuse statute carried a penalty of less than twenty years imprisonment, she would have considered entering a guilty plea. Phillips testified, however, that he had explained the sentencing ranges to the Applicant for both sections of the statute. Phillips also testified the Applicant never indicated she wanted to plead guilty. This Court finds Phillips is a more credible witness than the Applicant. Upon a review of the trial record and the testimony from the PCR hearing, it is clear the Applicant has always asserted her total innocence in this case. This Court finds the Applicant has failed to demonstrate a

reasonable probability either that she was not advised of the possible sentences in this case or that she would have (with this information) chosen to plead guilty. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

This Court finds the Applicant failed to meet her burden of proving trial counsel did not properly investigate and counter the State's evidence. The Applicant argued trial counsel should have pointed out to the jury that multiple witnesses were providing testimony about the same incident. Byrholdt noted the State presented some cumulative witness testimony. This Court finds there was no error in how trial counsel questioned these witnesses. It was clear from the testimony that several witnesses saw the victim at a single event – whether it was at the Applicant's workplace or the July 4th camping trip. This information was before the jury, who weighed it in their determination of the Applicant's guilt. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is "the finder of fact and weigher of credibility"). The Applicant argued trial counsel should have presented evidence to the jury that the victim did not have burn marks, but instead had eczema. Byrholdt testified the Applicant was never able to explain the victim's injuries and that he did not recall being told the victim had eczema. This Court finds there was no error. Trial counsel cannot be expected to have argued this point if he was not aware the victim had eczema. Regardless, as there was an abundance of witness testimony about other bruises and abuse of the victim, the lack of testimony about the victim's eczema did not change the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735. The Applicant argued trial counsel should have objected to a witness's testimony that the victim had burn marks because she was not qualified to make that statement. Byrholdt testified, however, there was no basis for such an objection because a lay witness can testify about what they observed. This

Court finds trial counsel did not err in not objecting to a witness's testimony that she observed burn marks on the victim. See Rule 701, SCRE. The Applicant argued trial counsel should have presented the victim's chiropractor to testify to his lack of injuries. Phillips testified they had reviewed the chiropractor's records but did not want to call her as a witness because the records indicated the victim had sustained several falls and the Applicant stopped bringing the victim for visits three months before his death. Byrholdt testified they did not want to present the chiropractor as a witness because her notes indicated the victim had some marks on his body and many people do not like chiropractors. This Court finds trial counsel articulated valid reasons they did not call the chiropractor as a witness at trial. This Court notes this was a legitimate trial decision because the chiropractor's records could have been harmful to the defense case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel); see also Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) ("Counsel's strategy will be reviewed under an objective standard of reasonableness."). The Applicant argued trial counsel should have presented evidence to counter Robin Center's testimony that she filed a previous DSS report. Phillips confirmed there was no record of a DSS report. This Court finds, however, that there is no reasonable probability the outcome of the trial would have been different if Center was impeached with this information. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

This Court finds the Applicant failed to meet her burden of proving trial counsel should have better challenged the findings of the victim's autopsy report. The Applicant argued trial counsel should have more thoroughly questioned Dr. Ward about the fact that some of the

victim's bruises were 12 hours old. The Applicant also argued trial counsel should have introduced the DNA report that found DNA from the bite wound on the victim came from a male. Byrholdt testified he knew Dr. Ward would not be a helpful witness in this case. Byrholdt testified he questioned Dr. Ward about the age of the bruises but that this information ultimately did not aid their case because of the other evidence of the victim's injuries. This Court notes Dr. Ward testified the victim's injuries were recent and the result of "fairly extensive" force. (Trial transcript, pp.209-11). Dr. Ward testified this was a compression injury – resulting in a torn intestine – and would have been painful. (Trial transcript, p.212; p.215; p.217; pp.224-25). Dr. Ward testified the victim's bruises appeared to be recent and received about the same time. (Trial transcript, pp.220-21). Byrholdt questioned Dr. Ward on cross-examination about the ages of the victim's injuries. Byrholdt had Dr. Ward narrow the age of the bruises to 2-12 hours before death and also state the first blow to the victim (that damaged his internal organs) was greater than 12 hours and possibly a day old. (Trial transcript, pp.231-33). This Court finds trial counsel properly cross-examined Dr. Ward to elicit testimony about the age of the victim's bruises. As such, this information was available to the jury to aid in their determination of whether the Applicant was guilty of abusing, neglecting, and manifesting extreme indifference towards the victim. Regarding the DNA issue, this Court notes the bite mark on the victim was one of the more minor injuries he suffered and did not factor into the cause of death. This Court finds that, based on the overwhelming evidence of the victim's serious injuries, there was no reasonable probability of a different result in this case if the DNA report had been admitted into evidence. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

This Court finds the Applicant failed to meet her burden of proving trial counsel should

have called character witnesses at trial. While the Applicant argued trial counsel should have called character witnesses during the defense case at trial, Phillips testified the defense focus was to concentrate on the actual evidence instead of things such as character witnesses. This Court finds trial counsel were not deficient in failing to call character witnesses during the defense case. This Court further notes that the character witnesses who testified at the PCR hearing all stated they had observed the Applicant's interactions with the victim and that the Applicant had a general reputation for truth and veracity. This Court finds that, given the overwhelming evidence of abuse and neglect of the victim presented at trial, there was no prejudice from the lack of character witness testimony. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet her burden of proving trial counsel did not properly question the Applicant on direct examination in order to allow her to resolve some issues in the case. The Applicant argued trial counsel should have questioned her about the two statements she gave police in order to explain the differences in both the statements and the circumstances surrounding those statements. This Court finds the Applicant failed to meet her burden of proving error or resulting prejudice. Byrholdt questioned the Applicant on direct examination about the circumstances surrounding the two statements. (Trial transcript, pp.552-58). The Applicant also explained the statements (and circumstances) during her cross-examination by both co-defendant's counsel and the State. (Trial transcript, pp.567-69; pp.572-89). This Court finds the Applicant failed to articulate what more trial counsel should have done

in order to elicit more specific testimony about the statements during her direct examination. Regardless, this Court finds there was no prejudice from the lack of a more specific direct examination because the Applicant testified about the statements in full detail on cross-examination. This Court also finds that any error by trial counsel would be harmless in this case because the State presented overwhelming evidence of abuse and neglect of the victim. See Franklin v. Catoe, 346 S.C. at 570 n. 3, 552 S.E.2d at 722 n. 3; Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346. The Applicant argued trial counsel should have questioned her at trial about a prior ATV accident involving the victim – which explained why she initially believed the co-defendant's story that the victim was injured after another ATV accident. Byrholdt and Phillips testified they discussed the prior ATV accident with the Applicant because it was mentioned in her first statement. Byrholdt testified he was not concerned about the prior ATV accident because it was so far removed in time from the victim's death. This Court finds trial counsel did not err in failing to direct questions to the Applicant about this issue. The Applicant did not take the opportunity to volunteer information about the ATV incident during her direct testimony, despite Byrholdt's intention that her testimony was an opportunity for the Applicant to tell her story. This Court finds the Applicant cannot prove resulting prejudice – especially since the various witnesses testified to seeing bruises and marks on the victim and the Applicant detailed long-term abuse of the victim in her second statement to police. (Trial transcript, pp.521-30). See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625; Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735. The Applicant argued trial counsel should have questioned her at trial about the time period immediately before the victim's death – that she had been sick the day before (which is why the victim's illness did not overly concern her) and was too far away to check on him on her lunch break on the day he died. The implication is that the Applicant would have

been able to mitigate the appearance that she overlooked the co-defendant's abuse of the victim. This Court finds that, given the overwhelming evidence of abuse and neglect of the victim presented at trial, there was no prejudice from trial counsels' failure to have the Applicant testify about why she did not check on the victim before leaving for work that day or during her lunch break. See Geter v. State, 305 S.C. at 367, 409 S.E.2d at 346.

This Court finds the Applicant failed to meet her burden of proving trial counsel did not properly handle issues related to her ex-husband. The Applicant argued trial counsel should have filed a motion in limine to prevent the ex-husband from testifying and that counsel erred in how they handed the following issues relating to her ex-husband: Byrholdt's statement that the Applicant "was not the best wife," testimony that the Applicant had mistreated him, questions about the victim's paternity, and testimony that the ex-husband paid for the victim's funeral. Byrholdt and Phillips testified they were not concerned about the ex-husband as a witness because he had favorable things to say about the Applicant and did not hurt their case. Byrholdt testified he was not concerned about the issues related to the victim's paternity and funeral because they were not prejudicial to the defense case. This Court has examined the record and finds the Applicant failed to prove either error with regard to issues concerning the ex-husband or any resulting prejudice. This Court finds there was no error in counsels' decision not to file a motion in limine to prevent the ex-husband's testimony on the ground of relevance. Phillips testified there was nothing in the ex-husband's statement that hurt their case. Further, a motion in limine is not a final ruling and would likely not have prevented the ex-husband's testimony. See State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997) (noting a ruling in limine is not a final ruling on the admissibility of evidence); see also Rules 402, 601, SCRE. This Court finds there was no error in counsels' handling of issues related to the victim's funeral and the

Applicant's treatment of the ex-husband. Trial counsel made proper objections on these issues at trial. (Trial transcript, pp.347-48). This Court finds there was no error in counsels' failure to object to a question about the victim's paternity. This Court further agrees with Byrholdt that, regardless, this question and corresponding answer did not harm the defense case. This Court finds there was no error in counsel's question to the ex-husband that the Applicant "might have been not the best wife, but [was] a good mother." (Trial transcript, p.351). The overall effect of this question and answer was to highlight the potential bias of the witness against the Applicant, yet point out his belief in her competence as a mother.

This Court finds the Applicant failed to meet her burden of proving trial counsel should have highlighted issues to the jury during closing argument. In the amended PCR application, the Applicant argued trial counsel failed to state that she did not check on the victim on the day he died because she believed he was sick with the same illness she suffered the day before. The Applicant testified at trial that she was sick the day before the victim's death and had not gone to work. (Trial transcript, p.565; p.579; p.589). The Applicant gave detailed testimony on both direct and cross-examination but never stated she believed the victim was suffering from the same ailment. This Court finds Phillips presented an organized and thorough closing argument in which he argued the State had not proven the Applicant's guilt. Phillips never mentioned the Applicant's previous illness as a reason for not checking on the victim before she went to work because this was not testified to at trial. Regardless, the Applicant's testimony – including that she was ill the day before the victim died – was before the jury. It is clear that, regardless of the strong argument put forth by trial counsel, the jury simply did not accept the Applicant's version of events. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."); see also Bruno v. State, 347 S.C. 446, 556

S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired).

This Court finds the Applicant failed to meet her burden of proving trial counsel should have objection to the portion of the jury charge that defined "extreme indifference" under the homicide by child abuse statute as "a mental state akin to intent characterized by a deliberate act culminating in death." (Trial transcript, pp.677-78). Byrholdt testified this was a correct charge and actually helpful to the defense case, as he believed they had shown the Applicant did not engage in deliberate acts towards the victim. This Court finds there was no reason for trial counsel to have objected to this language in the jury charge. A trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). The trial judge's definition of "extreme indifference" under the homicide by child abuse statute has been found by our Supreme Court to be proper. See McKnight v. State, 378 S.C. 33, 48, 661 S.E.2d 354, 361 (2007).

This Court finds the Applicant failed to meet her burden of proving trial counsel should have objected to the trial judge's response to a jury question. The jury requested a copy of the homicide by child abuse statute and asked "Does one verdict apply to both Defendants or could we render two different verdicts?" (Trial transcript, p.689). The jury was brought into the courtroom and given an redacted copy of the statute. The trial judge then stated "[t]he answer to that question is, yes, you can find each Defendant guilty under Section A, or you can find them both under – A(1) or both under A(2), or you can find one guilty of one and one the other." The jurors all said "yes" when asked if this answered their question. (Trial transcript, p.691). Byrholdt and Phillips testified they were pleased with the jury's question. While Byrholdt stated that, in retrospect, he may have objected to the judge's answer, he believed that answer was

responsive to the jury's question. This Court finds there was no error from counsels' decision not to object. The jury indicated the trial judge's answer was responsive to their question.

Accordingly, as to all issues of ineffective assistance of trial counsel raised at the PCR hearing, this Court finds the Applicant failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed errors or omissions in their representation of the Applicant. This Court finds the Applicant failed to prove the second prong of Strickland – that she was prejudiced by counsels' performance. This Court concludes the Applicant has not met her burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet her burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her trial and sentencing proceedings. Counsel were not deficient and the Applicant was not prejudiced by counsels' representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if she wants to secure appellate review. Her

attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of June, 2012.

Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W. Miller, Presiding Judge

2010-CP-23-3160

RECEIVED
JUL 12 2012
S.C. Supreme Court

BRANDI LYNN TURNER HOLDER,
a/k/a BRANDI LYNN TURNER, 313870

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through her undersigned counsel, giving notice of her appeal from the Order of Dismissal denying her Post-Conviction Relief filed with the Clerk of Court's Office on June 25, 2012, and received by counsel on June 27, 2012.

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 11th day of July, 2012.

Other Counsel of Record:
Karen S. Ratigan, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W. Miller, Presiding Judge

RECEIVED
JUL 12 2012
S.C. Supreme Court

2010-CP-23-3160

BRANDI LYNN TURNER HOLDER,
a/k/a BRANDI LYNN TURNER, 313870

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Karen C. Ratigan, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 11th day of July, 2012.

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 11th day of July, 2012.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013