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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman

Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Appellant,

v.

State of South Carolina, ... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA :
2 COUNTY OF AIKEN : COURT OF GENERAL SESSIONS
3 STATE OF SOUTH CAROLINA :
4 Plaintiff : TRANSCRIPT OF RECORD
5 versus :
6 TIMOTHY F. GREEN :
7 Defendant :
8
9 March 5, 1986
Aiken, South Carolina
10
11 B E F O R E:
12 HONORABLE RODNEY A. PEEPLES, Judge.
13
14 A P P E A R A N C E S:
15 Robert Harte, Solicitor
16 appearing for and on behalf of the plaintiff
17
18 Jerry M. Screen, Attorney
19 appearing for and on behalf of the defendant.
20
21 See P. 53
22 Erika Green's Testimony
23 P. 40 - Shirt - Stains 1, 2 & 3 - human blood
24 P. 42 - pants - human blood "as if it had been dropped"
25 Group O blood
P. 94 - Cut on left arm
P. 99 - Blood on wall ???

Brenda A. Wingard
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1	-	<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	CAROLYN JOHNSON				
4	Mr. Harte	11		30	
5	Mr. Screen		22		31
6	PHYLLIS HILL PRICE				
7	Mr. Harte	31, 43		60	
8	Mr. Screen		48		
9	EMMA SIMPKINS				
10	Mr. Harte	33			
11	Mr. Screen		34		
12	STEVE DERRICK				
13	Mr. Harte	35, 65			
14	Mr. Screen		37		
15	PATSY HABBEN				
16	Mr. Harte	39, 66			
17	Mr. Screen		43		
18	ERICA GREEN				
19	Ms. Cox	53			
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21	MIKE TERRY				
22	Mr. Harte	61			
23	V. J. RAY				
24	Mr. Harte	62			
25	Mr. Screen		64		

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2			<u>I N D E X</u>		
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	DR. JOEL SEXTON				
5	Mr. Harte	67			
6	Mr. Screen		75		
7	ROY PASCAL				
8	Mr. Harte	79			
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ROCEEDINGS

THE COURT: In the trial of a civil case, the burden of proof is upon the party bringing the claim. That burden being by the prepondance of the evidence, by the greater weight of the evidence or by the greater amount of the truth. In a fraudulent civil action there is a second burden of proof by evidence that is convincing.

In a criminal case, General Sessions, in which we are now about to engage, that burden of proof is beyond a reasonable doubt. Not any sort of a doubt, not an imaginary, weak or fanciful doubt. My definition of a reasonable doubt is a doubt in which a person is honestly seeking the truth about a matter. I will explain in more detail to you during my charge on the law. Bear in mind in criminal court, ladies and gentlemen, that every person that comes into this court charged with a criminal offense is presumed in the eyes of the law, to be innocent of those charges until and unless the State removes that presumption of innocence by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt.

You are not to be concerned during your deliberations... I've told you that you are the judge of the facts, I am a judge of the law. But you are not to

1 be concerned with any sentence that may be imposed, as to
2 whether anyone gets probation or fined or time in jail or
3 split sentence, part of one or part of both. You are not
4 to discuss that in your jury room or allow it to enter
5 into your deliberations. Our laws in regard to
6 imprisonment and release are so discombobulated. For
7 example, if I sentence somebody today, they get four
8 ninety day credits. They get credits for a year in jail
9 the minute I sentence them. They get another thirty days
10 credit in jail the minute I sentence them. There are a
11 lot of provisions that apply to that. Unless there's a
12 death penalty case, you're not concerned with sentencing
13 or whether somebody goes to jail or not. A lawyer knows
14 better than to get up here and argue. You find him
15 guilty, he'll go to jail. That's not proper argument
16 because he may get probation. He may get this or he may
17 get that. So that is not a matter for your concern,
18 please. I'd ask you to pass up the indictment list of
19 witnesses, gentlemen.

20 Ladies and gentlemen of the jury panel, give me
21 your attention please. We are about to draw a jury in
22 regard to Indictment 85-GS-02-847, the State versus
23 Timothy F. Green. Mr. Green, would you please stand and
24 face the jury panel? Thank you. Be seated, please. Is
25 there any member of this jury panel who is related by

1 blood or connected by marriage with the subject, Timothy
2 Green? If so, please stand.

3 (NO RESPONSE)

4 Ladies and gentlemen, in this indictment, the
5 State of South Carolina claims or alleges that on or
6 about September 23, 1985, in Aiken County, Timothy F.
7 Green did kill one, **Victim** by means of making an
8 assault and battery upon the body of one, **Victim**
9 a minor, being three years of age, causing severe
10 internal injuries. Said **Victim** did die in
11 Richmond County as a proximate result of that on
12 September 23, 1985, thereby constituting the crime of
13 murder. Is there any member of this jury panel that has
14 any information or knowledge about the alleged facts
15 contained in this indictment? If so, please stand.

16 (NO RESPONSE)

17 I am advised that the prospective or potential
18 witnesses in the trial of the case would be as follows:
19 Carolyn Johnson, Phyllis Hill Price, Emma Simpkins, V. J.
20 Ray, Jim Whitehurst, Patsy Habben, Roy Paschal, Steve
21 Derrick, Dr. Joel Sexton, Erica Green, and further, Tim
22 Green and Elizabeth Green. Any member of this jury panel
23 related by blood or connected by marriage with any of
24 those persons whose names I have just called as
25 prospective or potential witnesses in the trial of the

1 case? If so, please stand.

2 (NO RESPONSE)

3 Has any member of this jury panel been
4 approached by anyone or had this case discussed with them
5 in any manner whatsoever? If so, please stand.

6 (NO RESPONSE)

7 Any member of this jury panel know of any
8 reason why they could not give both the State of South
9 Carolina and the defendant at the bar, Timothy Green,
10 both a fair and impartial trial? If not, please stand.

11 (NO RESPONSE)

12 THE COURT: Any further questions by the State?

13 MR. HARTE: None, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: Madam Clerk, give us the jury. Ten
17 strikes for the defendant, five strikes for the State.

18 As your name is called, please come forward.

19 (Jury panel is selected; Ms. Irene Knight is
20 appointed forelady.)

21 THE COURT: Alternate is waived by both the
22 State and the defendant. It is understood, Madam Court
23 Reporter, in the event I'd have to excuse either of my
24 twelve jurors for business, personal or otherwise, the
25 State and the defense would go to verdict with less than

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1 twelve jurors.

2 (Jury panel is duly sworn and thereafter
3 retired to jury room.)

4 THE COURT: Anything for the record before I
5 bring the jury in?

6 MR. HARTE: None from the State, Your Honor.

7 (Jury returns to open court room at 11:50 A.
8 M.)

9 THE COURT: Let the record reflect please,
10 Madam Court Reporter, we are proceeding in regard to
11 General Sessions Indictment 85-GS-02-847, State versus
12 Timothy F. Green. Mr. Green is present with his attorney
13 as is the Solicitor, representing the State. The jury
14 venire has been qualified, the panel selected, the
15 forelady appointed, the jury has been sworn and we are
16 now proceeding.

17 Madam Forelady, ladies and gentlemen, by this
18 indictment, which is the white sheet of paper I hold in
19 my hand, the State of South Carolina charges the
20 defendant at the bar, Timothy F. Green, with the offense
21 of murder here in Aiken County on or about September 23,
22 1985. To this indictment the defendant has plead not
23 guilty and that plea of not guilty places the burden of
24 proof upon the State, represented by your Solicitor, to
25 establish the guilt of the defendant beyond a reasonable

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1 doubt. Because it is the law of this State that every
2 defendant that comes into this court, regardless of the
3 enormity of the charge made against him, is always
4 presumed or thought to be innocent of those charges until
5 or unless that presumption of innocence is removed by
6 evidence satisfying you, the jury, of his guilt beyond a
7 reasonable doubt. Now, the term reasonable doubt means
8 exactly what it implies. It does not mean any sort of a
9 doubt, ladies and gentlemen, because you and I know that
10 from our every day experiences in life, that one can have
11 any sort of a doubt about every matter that arises,
12 regardless of how serious or how trivial that matter may
13 be. The definition which I prefer, is that a reasonable
14 doubt is a substantial doubt for which a person honestly
15 seeking to find the truth can, in fact, give a reason.
16 Now under the Constitution of South Carolina, you, ladies
17 and gentlemen of the jury, are the sole and only judges
18 of the facts in this case. I don't know a thing in the
19 world about this case except what I have read or gleaned
20 from this indictment. This indictment is not evidence,
21 it is merely a legal document which contains the charges
22 as preferred by the State against the defendant. The
23 sole evidence by which you shall determine what the true
24 facts are in this case will come from testimony of
25 witnesses who testify from this witness stand under oath

1 and from any exhibits that may be introduced into
2 evidence. If this case is as the usual cases of this
3 nature, that are tried in this court, there will be
4 certain conflicting or contradictory testimony. Now, how
5 are you, and each of you, as conscientious members of
6 this jury panel, going to determine what the true facts
7 are from any conflict that may arise from the testimony?
8 I tell you, Madam Forelady and ladies and gentlemen of
9 the jury, that you will do that by using your good
10 judgment and by using your common sense and by passing
11 upon the believability or creditability of the
12 witnesses. You have the right as a juror, to take into
13 consideration the interest, the bias, the prejudice of a
14 witness as well as the demeanor or behavior of a witness
15 upon the stand, anything that is in the record that will
16 aid or assist you in evaluating the testimony of the
17 several witnesses who shall testify during this case. As
18 you can readily see, Madam Forelady and ladies and
19 gentlemen of the jury panel, that is your duty under your
20 oath as jurors, to please pay close attention, to listen
21 to the witnesses, listen to the attorneys, listen to the
22 Court so that at the conclusion of this trial you will
23 then be in a posture to arrive at your verdict. The word
24 verdict being derived from the Latin phrase Veridicto,
25 meaning to speak the truth. Now, I share these brief

1 remarks with you because some of you may not previously
2 have had experience in the trial of a criminal case in
3 this State. This is merely an attempt on my part to
4 explain to you certain legal definitions and certain of
5 your duties under your oath as jurors in the trial of
6 this case. I hope it will be of some benefit to each of
7 you in arriving at a fair, a just and a true verdict.
8 Fair to the State of South Carolina and the citizens
9 residing therein, and fair to the defendant at the bar,
10 Timothy F. Green. Thank you.

11 Any exceptions to my opening comments by the
12 State?

13 MR. HARTE: None, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: All right, you may make a brief
17 opening statement, gentlemen.

18 (Opening statements presented by respective counsel.)

19 CAROLYN JOHNSON being called and duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. HARTE:

23 Q. Ms. Johnson, where do you live?

24 A. Gloverville.

25 Q. Do you know the defendant, Timmy Green?

1 A. Yes.
2 Q. How long have you known him?
3 A. Almost a year.
4 Q. Do you know his sister?
5 A. Yes.
6 Q. Elizabeth Green?
7 A. Yes.
8 Q. How long have you known her?
9 A. Almost a year.
10 Q. Do you know Phyllis Price - Phyllis Hill Price?
11 A. Yes.
12 Q. How long have you known her?
13 A. Not long.
14 Q. Did you know all those people on September the
15 23rd of last year?
16 A. Yes.
17 Q. Did you know where Elizabeth Green lives?
18 A. Yes.
19 Q. Where does she live?
20 A. In the building next to me.
21 Q. What type of buildings are those?
22 A. Brick buildings - apartments.
23 Q. They are apartment buildings?
24 A. Yes.
25 Q. Who lives in that apartment with Elizabeth

1 Green?

2 A. Her kids.

3 Q. How many children does she have?

4 A. Five.

5 Q. Did you know where Phyllis Price lives?

6 A. Yes.

7 Q. Where did she live on September the 27th?

8 A. Right in back of me in an apartment building.

9 Q. So all three of you live in apartments in that

10 area?

11 A. Yes.

12 Q. How about Timothy Green? Do you know where he

13 was living?

14 A. Not really.

15 Q. Did you see him on occasion, in those

16 apartments?

17 A. Yes.

18 Q. Was he sort of going with somebody?

19 A. He was dating Phyllis.

20 Q. Dating Phyllis. Did he sometimes stay in that

21 apartment?

22 A. I guess.

23 Q. Did you know Victim

24 A. Yes.

25 Q. Who is Victim

1 A. Phyllis's daughter.
2 Q. How old was **Victim** do you know?
3 A. Three, I think.
4 Q. Did Phyllis have any other children?
5 A. Yes.
6 Q. How many?
7 A. She had another girl and a little boy.
8 Q. Was the other girl older or younger than
9 **Victim**
10 A. Older.
11 Q. Was the little boy older or younger?
12 A. Younger.
13 Q. So, **Victim** was the middle child?
14 A. Yes.
15 Q. On September the 23rd, the date that all of
16 this happened, did you have occasion to be in the
17 apartment of Elizabeth Green?
18 A. Yes.
19 Q. What time did you go over to that apartment?
20 A. It was about eight or a little after.
21 Q. Who was at the apartment when you got there?
22 A. Nobody but Liz and her little daughter.
23 Q. Were any of the other children around?
24 A. Not at that time when I went over there.
25 Q. Tell me what you'all did that day.

1 A. Liz walked down the hill to the store to help
2 me bring some packages back.
3 Q. Can you tell me about how long you were gone?
4 A. About thirty minutes.
5 Q. Was one of the things you bought, beer?
6 A. One quart.
7 Q. One quart of beer?
8 A. Yes.
9 Q. And did you start drinking it at that time?
10 A. After we got back to Liz's apartment.
11 Q. At that time, were any of the kids in the area?
12 A. Yes.
13 Q. Who was there and what were they doing?
14 A. After we went from the store, Phyllis's kids
15 came over there. **Victim** and another one to play with
16 Erica.
17 Q. How about the little boy? Was he too young?
18 A. He's not walking at all.
19 Q. So he would have been at home or somewhere
20 else?
21 A. Yes.
22 Q. What happened when they came over?
23 A. They just went to playing.
24 Q. Playing with the other children?
25 A. Yes.

1 Q. - What happened then
2 A. Liz saw Timmy walking up and she called him.
3 Q. Where was he when she saw him walking up?
4 A. Let me see. In the back of the apartment
5 walking in the back and he was going, like up a hill,
6 sorta like a hill.
7 Q. She called him?
8 A. Yes.
9 Q. Did he come over or did he go on or what did he
10 do?
11 A. He came over.
12 Q. Did he stay for long?
13 A. Yes.
14 Q. How long did he stay?
15 A. About ten minutes the first time.
16 Q. And then where did he go after he left?
17 A. I don't know. Phyllis called him at one point.
18 Q. He left the apartment?
19 A. Yes.
20 Q. Did you see him come back?
21 A. Yes.
22 Q. How long was that?
23 A. How long did he stay?
24 Q. How long was he gone?
25 A. I can't say for sure.

1 Q. - Do you know what brought him back?
2 A. No.
3 Q. What did he do when he came in?
4 A. He dranked almost a half a cup of beer and
5 talked with us a little while.
6 Q. Let me ask you, where were you in the
7 apartment?
8 A. Sitting near the back door near the window.
9 Q. What room?
10 A. Kitchen.
11 Q. And from where you were sitting, where was the
12 back door?
13 A. That was the back door.
14 Q. Right next to you?
15 A. Yes.
16 Q. Where was the front door in relation to where
17 you were sitting?
18 A. On my right.
19 Q. Could you see the front door-from where you
20 were sitting?
21 A. Yes.
22 Q. Did you pretty much sit in that same place all
23 morning?
24 A. Yes.
25 Q. Did you see anybody else come in or out of the

1 apartment?
2 A. No.
3 Q. Where were the children?
4 A. The last time they came in, they went back in
5 the back room to play.
6 Q. Who was in the back room?
7 A. Just the three girls.
8 Q. And their names are what?
9 A. **Victim** Erica and I don't know Phyllis's
10 other daughter's name.
11 Q. How about Stephanie, would that be it?
12 A. I don't know her real name.
13 Q. Ebony, does that sound right?
14 A. I never heard them call her anything but Poo.
15 Q. They had a nickname for her?
16 A. Yes.
17 Q. And they were in the back?
18 A. Yes.
19 Q. Can you tell us what is in the back of the
20 apartment? How many bedrooms?
21 A. Three.
22 Q. What else is back there?
23 A. The bathroom.
24 Q. Do you know which room they were in?
25 A. They were in Liz's bedroom.

1 Q. How do you know?
2 A. That's where she was telling me they was at and
3 from her bedroom you really can't hear.
4 Q. So when Timothy came back - you're talking
5 about the defendant seated next to Mr. Screen over here?
6 A. Yes.
7 Q. Tell me what happened.
8 A. When he came back he do what he usually do, he
9 look in the frige there and stove and he talked some more
10 and he went back in back.
11 Q. Was he the only adult that you saw go back in
12 the back that morning?
13 A. Yes, sir.
14 Q. How long was he back in there?
15 A. About fifteen or twenty minutes.
16 Q. When he came back out, describe what happened.
17 A. He had **Victim** laying on his shoulder and he
18 told Liz that she was back on her bed asleep.
19 Q. She was laying on his shoulder?
20 A. Yes.
21 Q. What happened then?
22 A. He took her over to her Mother, Phyllis.
23 Q. Did he go out the front door or the back door?
24 A. The back door and as he was going out of the
25 house I heard Phyllis screaming.

1 Q. Let me ask you this, when he came out with her
2 on his shoulder, describe how he was holding her.
3 A. He just had her laying up like this. Her head
4 was laying on his shoulder.
5 Q. From where you were, were you able to see her
6 face?
7 A. No.
8 Q. Was she moving at all while she was on his
9 shoulder?
10 A. No.
11 Q. Did she say anything or make any sounds?
12 A. No.
13 Q. And you say he went across the street. Did he
14 go directly across to Phyllis's apartment?
15 A. Yes.
16 Q. How long after he left did you hear the
17 screams?
18 A. I can't exactly remember.
19 Q. Was it less than a minute?
20 A. Well, it don't really take two minutes to walk
21 over to Phyllis's because her apartment is so close.
22 Q. What I'm trying to find out, was there any time
23 lapse between the time he went over there and the time
24 you heard the scream?
25 A. About a minute, I guess.

1 Q. - And when you heard the screams, what did you
2 do?
3 A. I turned and told Liz something was wrong and
4 we went over there.
5 Q. What did you see when you got over there?
6 A. Nothing but the child. She looked like she was
7 asleep.
8 Q. What was happening? Where was she?
9 A. He laid her down on the back porch and asked me
10 to go get a cold compress to put on her head.
11 Q. What did he then do?
12 A. He was trying to wake her up.
13 Q. How was he doing it?
14 A. Trying to get her to say something.
15 Q. How was he doing that?
16 A. Just rubbing her face and shaking her and
17 calling out to her.
18 Q. Did you see any blood?
19 A. No.
20 Q. Later on, did you see blood?
21 A. No, not from the child, I didn't.
22 Q. Not from the child?
23 A. No.
24 Q. Where did you see blood?
25 A. In Liz's apartment.

1 Q. - In Liz's apartment?
2 A. Yes.
3 Q. Where in Liz's apartment did you see blood?
4 A. On the wall side her bed.
5 Q. In the back room?
6 A. Yes.
7 Q. Where the children were?
8 A. Yes.
9 Q. Did you see Timothy do anything? Something
10 like CPR?
11 A. Yes.
12 Q. Resuscitation?
13 A. Yes.
14 Q. Describe what he was doing.
15 A. He just placed his hand on her chest and was
16 pressing it slightly.
17 Q. I want you up here at the microphone and I want
18 you to show the jury how hard he was pressing on the
19 child's stomach or chest.
20 A. Like this. He wasn't doing it very hard.
21 Q. Ms. Johnson, did you hear anybody say anything
22 about any worm medicine?
23 A. Not that day, I didn't.
24 Q. Later on you heard about that?
25 A. I heard about this in the courtroom.

1 Q. - Answer any questions Mr. Screen might have.
2 CROSS EXAMINATION:
3 BY MR. SCREEN:
4 Q. Ms. Johnson, you are a friend of Liz Green?
5 A. Yes.
6 Q. And you go over to her apartment frequently?
7 A. Yes, I did.
8 Q. And the morning in question, the 23rd of
9 September 1985, you were all over there drinking beer, is
10 that right?
11 A. After we came from the store.
12 Q. Well, you drank some beer over there, didn't
13 you?
14 A. Yes.
15 Q. In the kitchen?
16 A. Yes.
17 Q. What else did you'all have to drink?
18 A. That was it.
19 Q. You didn't drink any whiskey?
20 A. After they carried the child away.
21 Q. I'm talking about prior. Prior to this
22 incident happening, did you drink any whiskey?
23 A. That day we did.
24 Q. Was that moonshine?
25 A. No.

1 Q. - What was it?
2 A. Seagrams Seven.
3 Q. Seagrams Seven gin?
4 A. No, just Seagrams Seven.
5 Q. How much did you'all drink?
6 A. Half a pint.
7 Q. Half a pint of that, how much beer?
8 A. Pardon me?
9 Q. How much beer?
10 A. A quart.
11 Q. Who all was drinking that half pint of Seagrams
12 Seven and that quart of beer?
13 A. Liz and Timmy and I.
14 Q. All right. How many drinks did you have?
15 A. A cup of beer.
16 Q. How about the whiskey?
17 A. Well, you can't get very much out of a half a
18 pint.
19 Q. How much did you drink?
20 A. A small glass.
21 Q. How long did you say you and Liz and the
22 defendant sat in the kitchen?
23 THE COURT: Are we talking about eight o'clock
24 in the morning or eight o'clock in the afternoon? Was
25 this in the morning?

1 A. We drank the beer in the morning and we drank
2 the liquor in the afternoon.

3 THE COURT: This is eight o'clock in the
4 morning. Let me just take you back. What time did you
5 get over there?

6 A. It was about eight or a little after because
7 the store don't open 'till eight o'clock.

8 Q. And you went by Liz Green's house?

9 A. Yes.

10 Q. Did you go in the house?

11 A. Yes.

12 Q. Did you go in the back of the house at that
13 time?

14 A. Yes, I did.

15 Q. You went in her bedroom?

16 A. Bathroom.

17 Q. Did you go in Liz's bedroom?

18 A. No.

19 Q. All right. You had a conversation with her as
20 you'all walked to the store?

21 A. I went over there purposely to ask her to go
22 with me.

23 Q. And at some point you walked to the store with
24 her?

25 A. Right.

1 Q. How long did it take you'all to go to the store
2 and come back?
3 A. I never timed it.
4 Q. I'm asking you, have you got any idea?
5 A. About fifteen minutes, I guess.
6 Q. You walked back from the store along with
7 Elizabeth Green?
8 A. Right.
9 Q. What I'm trying to ask you now, Ms. Johnson,
10 when did you drink the whiskey? Did you drink it after
11 you came from the store or before you went?
12 A. We didn't drink it after we came from the
13 store. It was after twelve. I don't understand the
14 question.
15 Q. I'm asking you - you said that morning shortly
16 after eight o'clock you went over to Liz Green's house.
17 A. Right.
18 Q. You used the bathroom in that house.
19 A. Yes.
20 Q. All right, you got her and then you'all walked
21 down to the store.
22 A. Right.
23 Q. You said you stayed about fifteen minutes at
24 the store. I'm asking you, did you drink the whiskey
25 prior to going to the store or did you drink the whiskey

1 after you got back to the house?

2 A. No, we didn't drink it when we got back to the
3 house because we didn't even bring anything with us at
4 that time.

5 Q. All right. So, then other than you going in
6 the back of the house to the bathroom, when you went back
7 there to the bathroom the children weren't even there at
8 that point, isn't that right?

9 A. Wasn't nobody there when I got over there but
10 Liz and her daughter, Erica.

11 Q. All right, and isn't it a fact that you did not
12 go back in that bedroom anymore prior to Timmy coming
13 over there did you?

14 A. No.

15 Q. In fact, you did not go back to that bedroom
16 until after this incident was all over, isn't that right?

17 A. I only went back there when I first went over
18 to Liz house.

19 Q. You told me that. When you went to the
20 bathroom.

21 A. Right.

22 Q. Was that after all of this thing had
23 transpired?

24 A. Right. After all of it had happened and they
25 had took the child away.

1 Q. And you didn't go back there in the bedroom
2 when the children were back there playing, did you?
3 A. Not at the time, no.
4 Q. Did you go in to either one of the other two
5 bedrooms?
6 A. No.
7 Q. Do you know for a fact if anyone was in either
8 one of the other two bedrooms?
9 A. No, I can't say for a fact.
10 Q. And you've already testified on the fact that
11 you can't hear what's going on from the bedroom - from
12 Liz's bedroom, is that right?
13 A. From Liz's bedroom, no.
14 Q. So you didn't hear any noise or anything
15 unusual going on back there that morning with the
16 children, did you?
17 A. No.
18 Q. Now let's track the movement of the defendant
19 when he came in. What time did you say that he came into
20 the house?
21 A. I can't be sure. I wasn't watching the clock.
22 Q. Well, how long had you been there before he
23 came in?
24 A. Before Timmy came, 'bout an hour.
25 Q. About an hour. That's after you came back from

1 the store. All right, he walks in and you said he
2 checked the stove and the refrigerator and then he drinks
3 a cup of beer with you'all.

4 A. He didn't drink quite a full cup of beer.

5 Q. Then you said he went to the back of the house,
6 is that right?

7 A. Yes.

8 Q. Do you know where in the back this man went?

9 A. No, I didn't follow him back there.

10 Q. So, you don't know whether he went in that
11 bedroom or in the bathroom or anywhere, do you?

12 A. No, I don't.

13 Q. And while he was back there, you didn't hear
14 anything unusual or a sound or anything unusual going on
15 back there, did you?

16 A. No, I wasn't paying any attention.

17 Q. Did you'all have a radio on that morning?

18 A. Yes, we did.

19 Q. Where was the radio? In the kitchen?

20 A. In the living room.

21 Q. So, you'all could hear it from where you were
22 sitting?

23 A. Barely.

24 Q. All right. Do you know Liz Green's brothers?
25 Do you know if she has some brothers?

1 A. - Yes, sir.
2 Q. Is it safe to say she has two or three of them?
3 A. I guess.
4 Q. Do they live out there in that home?
5 A. I wouldn't know.
6 Q. Well, have you seen them out there on occasion?
7 A. Yes.
8 Q. Have you seen them at times that would lead you
9 to believe they may have spent the night there?
10 A. No.
11 Q. All right. You don't know then, you're not
12 telling these ladies and gentlemen that Timothy Green did
13 anything to this kid, are you?
14 A. I can't say what he did.
15 Q. You're not saying that he did anything, are
16 you?
17 MR. HARTE: Objection. He's asked the
18 question. She's answered it.
19 THE COURT: Sustained.
20 MR. SCREEN: I have no further questions.
21 THE COURT: Anything on cross?
22 REDIRECT EXAMINATION:
23 BY MR. HARTE:
24 Q. Ms. Johnson, when did you'all drink the liquor?
25 Was it before the ambulance came and got the child or was

1 it after the ambulance came?

2 A. It was after the ambulance had gone.

3 Q. Before that, you'all drank some beer, is that

4 correct?

5 A. Right, a quart.

6 Q. Nothing further.

7 RE CROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Was there anything else, did you'all consume

10 anything else - any drugs - were you doing anything else

11 in that house that morning?

12 A. No.

13 Q. Thank you.

14 THE COURT: Ma'am, was there anybody else back

15 in that room where the children were playing when Timmy

16 Green came in?

17 A. No.

18 THE COURT: Thank you, ma'am. Next witness.

19 PHYLLIS PRICE being called and duly sworn,

20 testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. HARTE:

23 Q. Ms. Price, where do you live?

24 A. Apartment C, Valley Homes in Gloverville.

25 Q. All right, you're going to have to get close to

1 that microphone and speak up just a little bit so I can
2 hear you. If I can hear you, these jurors can hear you.
3 Now tell me again where you live.
4 A. Apartment 10 C, Valley Home Apartments in
5 Gloverville.
6 Q. Are those the apartments that Ms. Carolyn
7 Johnson was just talking about?
8 A. Yes.
9 Q. How long have you lived in those apartments?
10 A. Almost three years.
11 Q. Who lived there back in September of 1985,
12 September 23rd, who lived in that apartment with you?
13 A. Me and my three kids and Tim.
14 Q. When you say Tim, you're talking about the
15 defendant, Timothy Green?
16 A. Yes, sir.
17 Q. How long did he live in that apartment with you
18 and your kids?
19 A. About eight or nine months.
20 Q. And he was living there on September the 23rd?
21 A. Yes, sir.
22 Q. Now, I show you what's been marked as State's
23 Exhibit #1 and ask you, just yes or no, --
24 MR. SCREEN: May I approach the bench, Your
25 Honor?

1 THE COURT: Certainly.
2 (Bench conference in the presence of the jury,
3 out of the hearing of the jury and off the record.)
4 Q. Can you tell me who this is a picture of?
5 MR. HARTE: I'm not going to show it to you
6 again. I withdraw it.
7 THE COURT: Ma'am, would you like to step down
8 while we call another witness? All right, next witness,
9 Mr. Solicitor.
10 EMMA SIMPKINS being called and duly sworn,
11 testified as follows:
12 DIRECT EXAMINATION:
13 BY MR. HARTE:
14 Q. Okay Ms. Simpkins, where do you live?
15 A. Sand Hills in Gloverville.
16 Q. Is that anywhere near these apartments we've
17 been talking about?
18 A. Well, it's not very far from there.
19 Q. Do you know the defendant, Timothy Green?
20 A. Well, I guess I've seen him around but not
21 really to know him.
22 Q. You know him when you see him?
23 A. Yes.
24 Q. Did you see him the afternoon this child died?
25 A. Yes.

1 Q. - Where was that?
2 A. Down in the project in the park.
3 Q. In the park?
4 A. Yes.
5 Q. Did you hear him say anything about what had
6 happened?
7 A. Yes.
8 Q. What did you hear him say?
9 A. Well, I was standing out by the flag pole and
10 he came up to me and told me that he felt as though he
11 was being punished by God and if **Victim** lived he
12 wouldn't do anything wrong anymore.
13 Q. Thank you. Answer any questions Mr. Screen may
14 have.
15 CROSS EXAMINATION:
16 BY MR. SCREEN:
17 Q. Mr. Green didn't tell you why he thought God
18 may have been punishing him, did he?
19 A. No, he didn't.
20 Q. The fact that all of you'all was standing
21 around there and were sad as to what had happened,
22 weren't you?
23 A. Well, that was before she had passed.
24 Q. I'm saying you were sad because she had to be
25 taken away in an emergency vehicle, is that right?

1 A. Quite naturally, yes.

2 Q. It's nothing unusual about him being concerned
3 about that child, is it?

4 A. No, I guess not.

5 Q. Thank you.

6 MR. HARTE: Nothing on redirect, Your Honor.

7 THE COURT: Thank you, step down. Next
8 witness.

9 STEVE DERRICK being called and duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION:

12 BY MR. HARTE:

13 Q. State your name, please.

14 A. Steven Derrick.

15 Q. How are you employed?

16 A. Forensic Investigator with the Aiken County
17 Sheriff's Department.

18 Q. And as such, did you have an occasion to be
19 involved in the investigation of the death of **Victim**
20 **Victim**

21 A. Yes, sir, I did.

22 Q. And did you receive some clothes in regards to
23 this case?

24 A. Yes, sir, I did.

25 Q. When did you receive those clothes?

1 A. I believe it was on the 25th of September.
2 Q. Whose clothes were they?
3 A. Clothing that belonged to Timothy Green.
4 Q. I show you what has been marked as State's
5 Exhibit #2 and #3 and ask you if you can identify these?
6 That's number two.
7 A. Yes, sir.
8 Q. What is number three?
9 A. A blue shirt that belonged to Timothy Green.
10 Q. And number two?
11 A. It's a pair of trousers that belonged to
12 Timothy Green.
13 MR HARTE: I'm offering these in evidence at
14 this time.
15 THE COURT: Any objection?
16 MR. SCREEN: Yes, sir.
17 THE COURT: State your objection.
18 MR. SCREEN: I am concerned about chain of
19 custody, Your Honor - when these clothes were taken and
20 what time and how it relates to this incident.
21 THE COURT: It's unnecessary to prove chain of
22 custody on something that could not be altered or
23 changed, such as this. I'll let them admit them subject
24 to being linked up as to their probative value.
25 MR. HARTE: Thank you, Your Honor.

1 - (State's Exhibits #2 and #3, a blue shirt and a
2 pair of trousers, entered into evidence with objection.)

3 Q. What did you do then, Mr. Derrick?

4 A. I maintained custody of the clothes until such
5 time that I turned them over to the State Law Enforcement
6 Division for further analysis.

7 Q. Thank you. Answer any questions Mr. Screen may
8 have.

9 CROSS EXAMINATION:

10 BY MR. SCREEN:

11 Q. What time did you get these clothes?

12 A. It was in the morning time from the County
13 Detention Center.

14 Q. What date?

15 A. I believe it was the 25th.

16 Q. Which is two days after this alleged incident,
17 isn't that right?

18 A. Yes, sir.

19 Q. And what was your reason for taking those
20 clothes?

21 A. For scientific analysis for any stains that may
22 be on the clothes.

23 Q. You don't know if those are the same clothes
24 the defendant had on the day of this incident, do you?

25 A. The blue shirt I know to be because Timothy

1 Green told us that that was the shirt he had on during an
2 interview that I was present at, and to the best of my
3 memory and recall, he had it on that day. The trousers
4 were taken from the clothing room.

5 Q. You know who all had possession of that shirt,
6 where that shirt was from the time he took it off until
7 you got it?

8 A. Other than the fact that he had it on at the
9 times that I saw him.

10 Q. Yes, sir, but I'm asking you do you know who
11 had the shirt from the time he took it off of his body
12 until you got custody of it?

13 A. He took it off in my presence.

14 Q. On the 25th?

15 A. On the 25th.

16 Q. But you don't know where it was all the other
17 times. You don't know whether he had it or somebody else
18 had it during those two days interim, do you?

19 A. No, sir, I do not.

20 Q. Thank you.

21 MR. HARTE: That's all.

22 THE COURT: Thank you. Step down. Next
23 witness.

24 PATSY HABBEN being called and duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION:

2 BY MR. HARTE:

3 Q. How are you employed, Ms. Habben?

4 A. I am a Forensic Serologist employed at SLED.

5 Q. What is your educational background?

6 A. I attended Columbia College for four years and
7 received a BA Degree in Biology. I have also attended
8 the FBI School of Serology and have received graduate
9 credit in this area from the University of Virginia.

10 Q. What is your experience in Serology?

11 A. I have been employed at SLED for approximately
12 eight years.

13 Q. Have you ever been qualified in the court of
14 law as an expert in Serology?

15 A. Yes, I have, many times.

16 MR. SCREEN: I'd so stipulate to that, Your
17 Honor.

18 THE COURT: Stipulate she's an expert in the
19 field of Serology. Thank you, ma'am

20 Q. What is Serology, please Ms. Habben?

21 A. Serology is the study of body fluids such as
22 blood, semen and saliva.

23 Q. Did you have an occasion to make some
24 examinations in relation to this case?

25 A. Yes, I did.

Shirt - stains 1, 2 + 3 = human blood

1 Q. I show you what has been marked as State's
2 Exhibits #2 and #3 and ask you if you can identify these
3 and tell us what you did with regards to those items.

4 A. Yes, I can identify these items. They have my
5 initials on them and what I did with each one was
6 examined it for body fluids such as blood, semen and
7 saliva. In particular, the blue
8 shirt, I analyzed it for blood, saliva and semen. I
9 checked six different stains on the shirt. The first
10 stain, I checked to see if it was blood. It was positive
11 for blood. After we checked it for blood we have to
12 determine if the blood is human blood or animal blood.
13 In this case it was positive for human blood. Then I
14 wanted to find out what type of blood it was. All of you
15 have a blood type of one of four groups; Group A, Group
16 B, Group O or Group AB, so what I wanted to do was find
17 out what blood type was on this shirt. In this case,
18 sample #1 was Group O, human blood.

19 Q. Can you tell us where that stain was?

20 A. Yes, I can. This is the shirt with the tag in
21 the back, on the front facing you. Sample #1 is on the
22 right sleeve sorta like right here if I had the shirt
23 on. Sample #2, I analyzed it also for body fluids and in
24 this case it was negative for semen and positive for
25 blood. Again, it was positive for human blood and the

1 blood_type again was Group O, human blood. I also
2 checked it for semen which was negative and the blood on
3 this shirt in sample #1 and #2 appeared to me to be very
4 dilute or watered down. So, I wanted to find out maybe
5 what it was that diluted this blood sample. I did another
6 test for saliva. To some people they call it spit, it's
7 just another name for spit. I tested for saliva to see
8 if maybe saliva had been mixed with this blood to dilute
9 it and it was positive for saliva also. So, on Sample
10 #2, which is located on this shirt, if I had on this
11 shirt it would be right here on the shoulder on the right
12 side as noted by this #2 here. So, it was Group O, human
13 blood and it was also mixed with saliva. Sample #3,
14 which again, is located on the shoulder area a little bit
15 behind here. I found human blood but the type was
16 inconclusive. I could not determine what type it was.
17 Samples #4, #5 and #6 were negative for blood. And that
18 was this shirt.

19 Q. That's State's Exhibit number --

20 THE COURT: No, sir, that's not an exhibit yet
21 because you're going to have to prove chain of custody
22 from the time State got it until it was -- you're going
23 to have to prove that -- I believe Mr. Derrick said he
24 witnessed the defendant taking the shirt off and handing
25 it to him and then he delivered it to SLED. He did

1 testify that he turned it over to SLED. Who did he turn
2 it over to at SLED?

3 MR. SCREEN: Who received the items at SLED?

4 A. I received the shirt and pants from Steve
5 Derrick.

6 Q. Where were they kept until --

7 A. These were secured in the Evidence Locker until
8 I had time to examine it and throughout the examination
9 of this shirt, it was secured in the Evidence Locker at
10 SLED.

11 Q. How about the pants?

12 A. Also the pants.

13 Q. Tell me about your examination in regards to
14 the pants.

15 A. On the pants, I examined three different
16 stains. The first stain was negative for semen, the
17 second stain was also negative for semen but it was
18 positive for blood. It was also positive for human blood
19 and the blood type on these pants was Group O, consistent
20 with the same blood type that was on the shirt. This
21 blood did not appear to be diluted. It was a
22 concentrated sample of blood as if it had been dropped on
23 there. It was not diluted. This sample was found on the
24 leg, denoted by the number two right here a little bit
25 below the knee area on the right leg. And sample #3 was

1 negative for semen and also for blood.
2 Q. Did you receive a sample of blood from Dr. Joel
3 Sexton?
4 A. I received a vial of blood from Steve Derrick,
5 labeled **Victim**
6 THE COURT: You may cross examine.
7 CROSS EXAMINATION:
8 BY MR. SCREEN:
9 Q. Ms. Habben, let me ask you, can you tell the
10 jury what percentage of persons in this population that
11 we live in, have O type blood?
12 A. Approximately forty percent of the population.
13 Q. Thank you very much. No further questions.
14 THE COURT: Any thing on redirect?
15 MR. HARTE: No, sir.
16 THE COURT: Thank you.
17 DIRECT EXAMINATION:
18 BY MR. HARTE:
19 (PHYLLIS PRICE being recalled to the stand.)
20 Q. I believe you testified you had three children
21 in September of 1985, is that correct?
22 A. Yes, sir.
23 Q. And is one of your children **Victim**
24 A. Yes, sir.
25 Q. How old was **Victim**

1 A. - Three.

2 Q. And did she live with you?

3 A. Yes, sir.

4 Q. On September the 23rd, the day that she died,
5 where were you that morning?

6 A. I was at home.

7 Q. What were you doing at home?

8 A. I was in the kitchen cooking..

9 Q. Did you know where **Victim** was?

10 A. Yes, sir.

11 Q. Where did you believe her to be?

12 A. I saw her go to Liz's house 'cause I was
13 standing at the back door when they went in.

14 Q. Who is they?

15 A. My two little girls, Ebony and **Victim**

16 Q. How old is Ebony?

17 A. Four.

18 Q. And **Victim** was three at the time?

19 A. Yes, sir.

20 Q. About what time was it when they went over
21 there?

22 A. Maybe about nine-thirty or ten.

23 Q. Had you seen your little girl, **Victim** that
24 morning?

25 A. Yes, sir.

1 Q. Had you seen her in days previous to that time?
2 A. Yes, sir.
3 Q. Did she appear to be ill or under any distress
4 or anything like that?
5 A. No, sir.
6 Q. Did you ever notice any bruises about her?
7 A. No, sir.
8 Q. Had you ever done anything that would have
9 caused bruises to be about her body?
10 A. No, sir.
11 Q. When was the next time you saw **Victim**
12 A. When Timmy brought her back home.
13 Q. Had you seen Timothy before that, that morning?
14 A. Yes, sir.
15 Q. Where was that?
16 A. He spent the night at my house.
17 Q. About what time did he leave the apartment?
18 A. He left a little before nine.
19 Q. When was the next time you saw him?
20 A. I don't know what time it was but the next time
21 I saw him he was bringing my little girl.
22 Q. Describe that to me.
23 A. Well, he told me to come get **Victim** because I
24 think she's asleep. So I went to the back door and I saw
25 blood coming out of her nose and mouth and I started

1 screaming and I asked him what was wrong with her. At
2 first he told me she was asleep but then I recognized the
3 blood. He said maybe she had took some poison.
4 Q. Did he say what kind of poison he thought she
5 took?
6 A. Not at that time.
7 Q. Later on did he say what kind of poison?
8 A. He said maybe she took some worm medicine.
9 Q. Some worm medicine?
10 A. Yes.
11 Q. Something you give to dogs?
12 A. Yes.
13 Q. When did he say that?
14 A. After we was at the University Hospital he
15 called to the Hospital and told them that on the 'phone.
16 Q. Said something about worm medicine then?
17 A. Yes, sir.
18 Q. What happened after you saw the blood and
19 started screaming? What happened then?
20 A. I ran to my Mom's to call an ambulance. Well,
21 I called and I couldn't talk so Liz took the 'phone and
22 told them how to get to the apartment. I ran back home
23 and Timmy had laid **Victim** down on the ground.
24 Q. What was he doing?
25 A. I wasn't looking what he was doing 'cause I was

1 laying on the ground crying and I wasn't looking at what
2 he was doing to her.

3 Q. Do you know anything about any worm medicine at
4 your house or anybody's house?

5 A. Well, Timmy had bought it 'cause he had a dog
6 and one of the dogs died and he got another one that
7 Sunday before **Victim** had died and David Glover had the
8 worm medicine in his car.

9 Q. You went a little fast for me. Timmy had
10 bought some worm medicine?

11 A. Yes, sir.

12 Q. Where was the worm medicine being kept?

13 A. Well, it was at my house.

14 Q. What happened to it when it left your house?

15 A. David Glover had got a dog and his dog had
16 worms and he wanted to use the worm medicine.

17 Q. David Glover?

18 A. Yes, sir.

19 Q. Where does he live?

20 A. He stays there in the project where we stays
21 at.

22 Q. When did he take the worm medicine out of your
23 house?

24 A. I don't know when he took it but he had took
25 the worm medicine about a week or so before my little

1 girl had died.

2 Q. Do you have any knowledge or any information
3 that that worm medicine ever got in the apartment of
4 Elizabeth Green?

5 A. No, sir.

6 Q. Answer any questions Mr. Screen may have.

7 CROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Ms. Price, your children were up and out of the
10 house shortly after eight o'clock in the morning, is that
11 right?

12 A. After nine.

13 Q. Beg your pardon?

14 A. After nine.

15 Q. And they were out, you let them go over to
16 Elizabeth Green's house?

17 A. Yes.

18 Q. Did they go over there frequently?

19 A. Yes.

20 Q. You don't know if there was any worm medicine
21 or anything in Liz Green's house? You hadn't inspected
22 for that, had you?

23 A. No, sir.

24 Q. In fact, you don't know what happened to your
25 daughter, do you?

1 A. I know she's dead.

2 Q. Yes, ma'am, and I'm sorry about that. We'll

3 all agree on that but you don't know what caused her

4 death, who may have hurt her.

5 A. No, because I'm not a doctor.

6 Q. Did you have anything to drink that morning,

7 Ms. Price?

8 A. No.

9 Q. Ms. Price, how many children do you have? You

10 had three children prior to September 23, 1985, is that

11 right?

12 MR. HARTE: Your Honor, may we approach the

13 bench?

14 THE COURT: You may do so.

15 (Bench conference in the presence of the jury,

16 out of the hearing of the jury and off the record.)

17 THE COURT: Sustained.

18 Q. Ms. Price, let me ask you, were you here when

19 the SLED lady was testifying, that held up the blue

20 shirt?

21 A. Yes.

22 Q. I'm referring to this blue shirt. Do you

23 recall the defendant, Tim Green, having this shirt on or

24 a shirt similar to this?

25 A. Yes.

1 THE COURT: Having it on when, Mr. Screen?
2 MR. SCREEN: I'm talking about on the 23rd of
3 September, 1985.
4 A. Yes, that is the shirt he had.
5 Q. And the same shirt he had on when he was
6 carrying your daughter, Card**Victim** in his arms?
7 A. Yes.
8 Q. This is the same shirt he had on when you say
9 you saw blood coming out of her nose and mouth, is that
10 right?
11 A. Yes.
12 Q. I have nothing further.
13 MR. HARTE: Nothing on redirect.
14 THE COURT: Thank you, ma'am. Next witness.
15 ERICA GREEN being called and duly sworn,
16 testified as follows:
17 MR. SCREEN: Your Honor, may we approach the
18 bench?
19 THE COURT: You may do so.
20 (Bench conference in the presence of the jury,
21 out of the hearing of the jury and off the record.)
22 THE COURT: Madam Forelady, ladies and
23 gentlemen, I'll excuse you to go to lunch. Please do not
24 discuss this case, deliberate or decide what your verdict
25 should or would be in the trial of this case. Don't let

1 anybody approach you about the case. Swearing of the
2 bailiff's is waived.

3 (WHEREUPON the jury retired for lunch at 1:05
4 P.M.)

5 THE COURT: Mr. Harte and Mr. Screen, let me
6 emphatically state for the record, when we reconvene this
7 court and I ask for the next witness, if the witness
8 ain't here, the witness ain't going to be presented as
9 evidence in the trial of the case. That applies equally
10 to the State and equally to the defendant. Any problem
11 with any witnesses, ladies and gentlemen, that this Court
12 can help you with?

13 MR. HARTE: None, Your Honor.

14 MR. SCREEN: None, Your Honor.

15 THE COURT: Anything for the record before we
16 recess?

17 MR. SCREEN: None for the defense, Your Honor.

18 MR. HARTE: None for the State, Your Honor.

19 THE COURT: All right, the court will be in
20 recess for one hour, until five after two.

21 THE COURT: Dr. Joel Sexton, Forensic Pathology
22 expert will be called to testify. Please, I call to your
23 attention, that while the law is that you are allowed
24 broad latitude in cross examination, that when
25 questioning an expert, and I told a hundred new

1 prospective lawyers this as late as yesterday morning
2 you cannot ask a witness, "could it have been raining?",
3 "could it have been snowing?", "could it have been
4 sleeting?". You must put it in the terminology with a
5 reasonable degree of medical certainty. Is it more
6 likely than not or is it more probable than not? I tell
7 the Solicitor that, I tell the defense lawyer that. Any
8 of you have any questions about that? About my ruling?
9 Because I ain't going to get in any argument in front of
10 this jury and I ain't going to send them out to tell
11 you'all that again. Any questions about that Mr.
12 Solicitor?

13 MR. HARTE: No, sir, Your Honor.

14 THE COURT: Mr. Screen?

15 MR. SCREEN: No, sir.

16 THE COURT: Thank you. Anything for the record
17 before we bring the jury in?

18 MR. HARTE: Your Honor, our next witness is a
19 four year old child and I would request under the State
20 versus Sinclair that the public be asked to leave the
21 courtroom and also ask that the witness be allowed to sit
22 in the lap of the Victim Witness Coordinator.

23 THE COURT: With regard to your request that
24 people leave the courtroom, my discretion is to deny it.
25 Mr. Screen, what do you say about the request of sitting

1 in the Victim Witness Coordinator's lap?

2 MR. SCREEN: Your Honor, please, I understand
3 the tender years of this child but I want her to sit like
4 any other witness.

5 THE COURT: All right, Mr. Screen, I will
6 permit her to sit in a chair in front of the jury box
7 rather than up here and let her face the jury box.
8 Obviously, she's going to have to be postured so the
9 Court Reporter can hear that which she is saying. I'll
10 sustain the objection. I will not permit her to sit in
11 the lap of the Victim Witness Coordinator. Anything
12 else, gentlemen? Bring the jury in.

13 (WHEREUPON, at 2:25, the jury returned to the
14 jury box.)

15 X THE COURT: You may call your next witness.

16 ERICA GREEN being called and duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION:

19 BY MRS. COX:

20 THE COURT: Do you know what it means to tell
21 the truth?

22 A. (She nods her head, yes.)

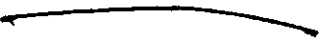
23 THE COURT: If somebody asks you a question,
24 you'll tell them what you know about it?

25 A. Yes.

1 - THE COURT: Erica, how old are you?
2 A. (She holds up four fingers.)
3 THE COURT: How many is that?
4 A. Four.
5 THE COURT: Do you go to Church?
6 A. Huh-uh.
7 THE COURT: Do you know what the Bible is?
8 A. Yes.
9 THE COURT: Does anybody read the Bible to you?
10 A. Yes.
11 THE COURT: And do you know that you are
12 supposed to tell the truth?
13 A. Yes.
14 THE COURT: Do you believe in Santa Claus?
15 A. Yes.
16 THE COURT: And do you know that if you do
17 things bad that you will be punished for it?
18 A. Yes.
19 THE COURT: Thank you. Now you just sit in
20 that chair and talk to this lady.
21 Q. Erica, you look at these people and tell
22 them, when I ask you these questions, you answer the
23 questions and tell them what happened, okay?
24 A. About **Victim**
25 Q. About **Victim**

Erica

1 A. - She was jumping on the bed.
2 Q. She was jumping on the bed? Was this back --
3 A. Me and Poo and Victim
4 Q. You'all were jumping on the bed? Was this at
5 your house that you'all were jumping on the bed?
6 A. At Stephanie's room.
7 Q. Okay. You'all were jumping on the bed, you and
8 Poo and Victim is that right?
9 A. (Nods yes).
10 Q. Was Tim back there with you'all?
11 A. Tim was in the bed.
12 Q. Did Tim go to the bathroom?
13 A. Tim was in the bathroom.
14 Q. And what did Victim do?
15 A. Victim walked in on Timmy and Timmy said, "get
16 out of here, Victim and she didn't.
17 Q. Victim didn't get out when Timmy told her to?
18 What did Timmy do?
19 A. Timmy was kicking her.
20 Q. Timmy was kicking her? Where did he kick her?
21 A. In the stomach.
22 Q. What did Victim do?
23 A. Nothing.
24 Q. Did she cry?
25 A. Yes.

1 Q. Was there any blood?
2 A. She was sick.
3 Q. Was there any blood?
4 A. Yes.
5 Q. Where was the blood?
6 A. On the wall.
7 Q. What happened then? Did **Victim** get up after he
8 kicked her? Did she run off?
9 A. She was throwing up.
10 Q. She was throwing up?
11 A. (Nods affirmative).
12 Q. Where was she throwing up?
13 A. In the yard.
14 Q. No further questions.
15 CROSS EXAMINATION:
16 BY MR. SCREEN: 
17 Q. I object to it but I will go into that at a
18 later time.
19 THE COURT: Notice objection for the record.
20 Overruled.
21 Q. Erica, how old are you? Four years old?
22 A. (Holds up four fingers).
23 Q. That's four years, right? Did you talk to this
24 lady about this before you came here today?
25 A. (Nods affirmative).

1 - THE COURT: How many times did you talk to her?
2 A. Just once.
3 Q. You talked to her for six months. Did anyone
4 tell you what to say? Did anyone tell you what you ought
5 to say here today?
6 A. (Shakes head negative).
7 Q. Tell me what you're saying, don't shake your
8 head.
9 A. Huh-uh.
10 Q. Did you see Tim hit **Victim**
11 A. Yeah.
12 Q. Where were they at?
13 A. We was in the room and he came out and she come
14 in the bathroom with Timmy and Timmy said, "get out of
15 that bathroom" and she didn't.
16 Q. She went in the bathroom with Timmy?
17 A. Timmy was finished and Timmy said, "I'm going
18 to beat your butt, **Victim**
19 Q. Where did he hit her?
20 A. In the stomach.
21 Q. With what? His hand or what?
22 A. With his foot.
23 Q. Did you tell your Mama that?
24 A. Not yet.
25 Q You told your Mama?

1 A. - Yeah.

2 Q. Did you tell her that day?

3 A. (Shakes head yes).

4 Q. These people buy you anything to eat? This

5 nice lady sitting back here at the back, did they buy you

6 anything to eat?

7 A. Yeah.

8 Q. What did they buy you to eat?

9 A. A cookie and a soda.

10 Q. Did they talk to you before that or after that?

11 A. Yeah.

12 Q. Did they talk to you before?

13 A. Yeah.

14 Q. And then they bought you a cookie and a soda?

15 A. Yeah.

16 Q. Did you tell her that? That Tim hit **Victim**

17 Did you tell this lady back here that you saw Tim hit

18 **Victim**

19 A. Yeah.

20 Q. Do you know what it means to tell the truth?

21 A. Yeah.

22 Q. Are you telling us what you saw or are you

23 telling us what somebody told you to tell us?

24 A. No.

25 Q. Nobody told you to say anything?

1 A. - No.
2 Q. Did they take you and keep you with them for a
3 while?
4 A. Yeah.
5 Q. Was your Mother there?
6 A. Where?
7 Q. When you were with this lady.
8 A. Yeah.
9 Q. Not your Mother, this lady right here. See the
10 lady right there with the purple on, sitting in the back?
11 A. Yeah.
12 Q. Was your Mother with you when you talked to
13 that lady?
14 A. Yeah.
15 Q. Did you tell her that while your Mother was
16 with you?
17 A. Yeah.
18 Q. You did?
19 A. Yeah.
20 Q. I have nothing further, Judge.
21 THE COURT: Anything on redirect, Ms. Cox.
22 MRS. COX: No, Your Honor.
23 THE COURT: Thank you. You may take her back.
24 Ladies and gentlemen of the jury panel, you've
25 been listening to the testimony of Erica Green, age four,

1 and it may enter your mind as to her age as a witness,
2 which you must determine, as is true with any other
3 witness, is the believability and the creditability of
4 the testimony. Whether she understood the questions, as
5 to her memory, as to her telling the truth and it's up
6 for you to decide whether Erica Green understood the
7 seriousness of her appearance as a witness in this
8 criminal trial and it's up to you to decide if she
9 understood the questions I asked of her and the answers
10 that were given. Thank you, ma'am. You may call your
11 next witness *

12 MR. HARTE: The State would recall Phyllis
13 Hill.

14 PHYLLIS HILL recalled and reminded of her oath.

15 REDIRECT EXAMINATION:

16 BY MR. HARTE:

17 Q. Have you ever seen this bottle before, Ms.
18 Hill?

19 A. Yes, sir.

20 Q. Who did you get that bottle from?

21 A. David Glover had it. Tim had bought it for his
22 dog.

23 Q. Did you get this bottle back from David Glover?

24 A. Yes, sir.

25 Q. When did you get it back?

1 A. - After **Victim** had died.
2 Q. The same day?
3 A. It may have been the next two days.
4 Q. Who did you give this bottle to?
5 A. Mike Terry.
6 Q. Investigator from my office?
7 A. Yes, sir.
8 Q. Did you do anything to the bottle during the
9 time you had it after you got it from David Glover?
10 A. No.
11 Q. That's all I have.
12 THE COURT: Cross.
13 MR. SCREEN: None.
14 MIKE TERRY being called and duly sworn,
15 testified as follows:
16 DIRECT EXAMINATION:
17 BY MR. HARTE:
18 Q. State your full name, please.
19 A. William Michael Terry.
20 Q. Are you employed by me?
21 A. Yes.
22 Q. In what capacity?
23 A. Investigator.
24 Q. And as such, can you identify - in relation to
25 your job, did you receive this bottle?

1 A. - Yes, I did.
2 Q. Who did you receive it from?
3 A. Phyllis Hill.
4 Q. When did you receive it?
5 A. I think it was on the 25th of September.
6 Q. You think, or it was?
7 A. I'm pretty sure it was. I can get the Chain of
8 Custody Form and verify it.
9 Q. What did you do with it?
10 A. I turned it over to V. J. Ray.
11 Q. When did you turn it over to Mr. Ray?
12 A. The same day.
13 Q. And while it was in your possession, did you or
14 anyone else do anything with that bottle?
15 A. No, sir.
16 Q. Or the contents thereof?
17 A. No, sir.
18 Q. Answer any questions that Mr. Screen may have.
19 MR. SCREEN: None, Your Honor.
20 THE COURT: Step down. Next witneess.
21 V. J. RAY being called and duly sworn,
22 testified as follows:
23 DIRECT EXAMINATION:
24 BY MR. HARTE:
25 Q. Mr. Ray, how are you employed?

1 A. - Investigator with the Sheriff's Office.
2 Q. Were you so employed on September 23, 1985?
3 A. I was.
4 Q. Did you get a call in regards to the death of
5 **Victim** that day?
6 A. Yes, sir, I did.
7 Q. When did you first become aware there had been
8 an injury or a problem with **Victim**
9 A. It was about 10:30 P.M. in the night time.
10 Q. When was the first time you were able to go to
11 the residence of Elizabeth Green and the apartment
12 complex that we were talking about?
13 A. It was about twelve midnight, or shortly
14 thereafter.
15 Q. Where had you been during the time you found
16 out until you got there?
17 A. At the University Hospital in Augusta.
18 Q. Did you have occasion to look in the apartment
19 of Elizabeth Green?
20 A. I did.
21 Q. With regard to any dog worm medicine or
22 anything like that, did you specifically look for
23 anything like that?
24 A. I did. I looked in the bathroom cabinets and
25 the only thing I found was an empty Clorox bottle.

1 Q. - Empty Clorox bottle?
2 A. Right.
3 Q. I will ask you if you had occasion to come into
4 possession of this bottle?
5 A. I did.
6 Q. Did you receive it from Mike Terry on September
7 the 25th?
8 A. I did.
9 Q. And what did you do with it?
10 A. I turned it over to the forensic man, Steve
11 Derrick.
12 Q. When did you turn it over to him?
13 A. Same day.
14 Q. And during the time that it was in your
15 possession, did you or anyone else tamper or bother that
16 material in any way?
17 A. I did not.
18 Q. Answer any questions Mr. Screen may have.
19 CROSS-EXAMINATION:
20 BY MR. SCREEN:
21 Q. You said you looked in the bathroom, where else
22 did you look for that dog medicine?
23 A. I was in the whole house.
24 Q. But you didn't find it?
25 A. I didn't find anything in the house.

1 Q. - But that doesn't mean it wasn't in there.
2 A That bottle wasn't.
3 Q. If there was another bottle like that, you
4 wouldn't know that, would you?
5 A. No, sir.
6 Q. Thank you, sir.
7 MR. HARTE: Step down.
8 STEVE DERRICK being called and reminded of his
9 previous oath, testified as follows:
10 DIRECT EXAMINATION:
11 BY MR. HARTE:
12 Q. Mr. Derrick, did you have occasion to receive
13 this bottle?
14 A. Yes, I did.
15 Q. When did you receive it?
16 A. I received it on September the 25th 1985.
17 Q. From whom did you receive it?
18 A. Investigator V. J. Ray.
19 Q. What did you do with it?
20 A. I maintained custody of the bottle until
21 September the 26th of 1985, at which time I turned it
22 over to the SLED chemist.
23 Q. Who did you turn it over to at SLED Chemistry?
24 A. Ms. Patsy Habben.
25 Q. During the time it was in your possession, did

1 you or anyone else tamper with it or do anything to the
2 bottle or the contents?

3 A. Did nothing to the contents.

4 Q. How about to the bottle?

5 A. The bottle was dusted for latent prints.

6 Q. And you also put your initials on it?

7 A. That's correct.

8 Q. Thank you. Answer any questions for Mr.
9 Screen.

10 MR. SCREEN: No questions, Your Honor.

11 THE COURT: Witness excused.

12 PATSY HABBEN being called and reminded of her
13 oath, testified as follows:

14 DIRECT EXAMINATION:

15 BY MR. HARTE:

16 Q. Ms. Habben, I show what's been marked for
17 identification, State's Exhibit #4, and ask you if you
18 received that from Steve Derrick?

19 A. Yes, I did, on September 26, 1985.

20 Q. What did you with it?

21 A. I turned it over to our Toxicologist at SLED on
22 October 8, 1985.

23 Q. Where was it kept in between the time you
24 received it and you turned it over to the Toxicologist?

25 A. It was secured in the Evidence Locker.

1 Q. - Was anything done to the contents or the bottle
2 during that time?

3 A. No, it was not.

4 Q. And who is your Toxicologist?

5 A. Roy Paschal.

6 Q. Thank you. Answer any questions Mr. Screen may
7 have.

8 MR. SCREEN: No questions, Your Honor.

9 THE COURT: Thank you, step down. Next
10 witness.

11 DR. JOEL SEXTON being called and duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION:

14 BY MR. HARTE:

15 Q. State your full name, please.

16 A. Dr. Joel Steven Sexton.

17 Q. Dr. Sexton, what is your educational
18 background?

19 A. Graduated from the University of Virginia in
20 1958 with a Bachelor Degree in Chemistry, was in the Navy
21 for three years.

22 MR. SCREEN: We are familiar with Dr. Sexton
23 and I would stipulate to his expertise.

24 THE COURT: He is qualified in the field as a
25 Forensic Pathologist?

1 MR. SCREEN: Yes.

2 THE COURT: Thank you.

3 Q. Dr. Sexton, how long have you been involved in

4 the field of Forensic Pathology?

5 A. Since 1968.

6 Q. During that time, how many autopsies have you

7 performed? Can you give us any idea?

8 A. Over three thousand.

9 Q. Have you testified in court on numerous

10 occasions as an expert?

11 A. Over three hundred times.

12 Q. Dr. Sexton, how are you employed now?

13 A. I am the Pathologist with the Newberry County

14 Memorial Hospital in Newberry, South Carolina.

15 Q. Would you define for the jury what Forensic

16 Pathology is?

17 A. Well first, a pathologist is a physician who,

18 after his medical training, specializes in the field of

19 pathology and during that time a person learns to examine

20 tissue, remove it surgically and determine if it has

21 cancer in it or not. This is often done with the frozen

22 section techniques while the patient is still asleep. A

23 Pathologist also is in charge of supervising the

24 laboratory that runs various procedures on urine, blood

25 and other fluids to help your physician to know if you

1 have a disease. And if you do have a disease or illness,
2 to know whether you're getting better or worse, depending
3 on the values of these various fluids that are analyzed.
4 A Pathologist is also the one doing autopsies on persons
5 dying in the hospitals. In those cases, it is to
6 determine why they didn't live a little longer or a
7 little more comfortably during their terminal illness.
8 In the case of a Forensic Pathologist, a Forensic
9 Pathologist does autopsies on persons dying suddenly or
10 violently where perhaps the cause of death is not clear
11 or when a violent death needs to have documentation, not
12 just as to the cause but as to the circumstances
13 surrounding the death. A person that was shot, it's
14 important to know whether they were shot while struggling
15 over a gun or shot in the back or lying in the floor or
16 what the circumstances were. A person that was
17 strangled, it is important to know if they were sexually
18 assaulted or if they were involved in some sort of
19 violent death, it is important to know whether they were
20 under the influence of some drug or chemical. But a
21 Forensic Pathologist is a physician with specialized
22 training who examines people who die suddenly or
23 violently to determine the cause of death and the
24 circumstances surrounding that death.

25 Q. Dr. Sexton, in September of 1985, did you have

1 occasion to examine the body of Victim

2 A. Yes, I did.

3 Q. Would you describe to us what you did and what
4 your findings were?

5 A. In a Forensic autopsy we take a great deal of
6 time on the external surfaces of the body trying to
7 document as many facts as we can as to what injuries may
8 be present and in general, the condition of the
9 individual. In examining the external surface of
10 Victim body, we noticed a number of superficial
11 injuries. These consisted of bruises, small circular
12 bruises or contusions on the upper part of the chest and
13 a number of small scars that indicate prior injuries.
14 These were on the knees, elbows as well as on the inner
15 aspect of the left arm and a few on the face. In
16 addition to these external injuries that were minor,
17 there was also some large bruises or contusions of the
18 face. Both lips were swollen, the left eye was swollen
19 and there was a large contusion on the right forehead.
20 The internal examination revealed that in addition to
21 these external injuries, there were multiple internal
22 injuries. These also, were bruises or contusions. In
23 the abdominal region, there were about three or four on
24 the right side and three or four on the left side of the
25 abdominal region plus one deep one here on the upper left

1 chest. Internally, the organs, meaning the liver, the
2 kidneys and the other structures of that sort, also had
3 injuries. Notably, a large laceration in the liver. The
4 liver is the largest organ in the body and it traverses
5 the whole aspect of the body as it goes from one side to
6 the other and in this case it was split in the middle and
7 was bleeding from the large split in the middle of it.
8 In addition, there was injury to the small intestines
9 that passed across the abdominal portion of the spine.
10 Something had struck the child hard enough to press that
11 portion of the body of the internal anatomy up against
12 the interior and by pushing against the spine, had
13 actually lacerated that portion of the small intestine.
14 There was also injury to the pancreas, which is an organ
15 which also passes straight across the internal portion of
16 the body, lying on top of the spine. All of this led to
17 acute inflammation inside the abdomen, which we call
18 peritonitis. So, in general the child had in the
19 abdominal and chest region, primarily the abdominal
20 region, contusions on the external surfaces, contusions
21 in the muscle and tissue and injuries to the internal
22 organs. As I mentioned, there were also contusions on
23 the face and under the scalp, there were contusions of
24 the scalp. Bruises where multiple injuries had occurred
25 on top of the head, on the front of the head and on the

1 back of the head. The examination of the brain showed
2 that there was also hemorrhage on the surface of the
3 brain.

4 Q. Dr. Sexton, you indicted that there were some
5 old scars or wounds and there were some fresh ones. Can
6 you tell us or give us an opinion, with a reasonable
7 degree of medical certainty, as to the time frame of the
8 age of the older ones?

9 A. The older ones were weeks to months old. It
10 takes about three weeks for a scar to form to the degree
11 that these were. So these were weeks or months old. I
12 can't say that they were not years old.

13 Q. Do you have an opinion, with a reasonable
14 degree of medical certainty, as to the cause of death of
15 **Victim**

16 A. Yes, I do.

17 Q. What is that opinion?

18 A. The abdominal and head injuries caused her
19 death. The abdominal injuries caused internal
20 hemorrhage, which in spite of the surgery that was
21 performed, she went into shock and did not come out of
22 the shock and died during surgery. So, the abdominal
23 injuries primarily, but the head injuries certainly,
24 contributed to the cause of death.

25 Q. Do you have an opinion, within a reasonable

1 degree of medical certainty, as to what would have caused
2 such an injury?

3 A. Yes, I do.

4 Q. What is that opinion?

5 A. Considering the multiplicity, that is, there
6 were multiple contusions on the abdomen, on the face, on
7 the chest, on the top of the head and the nature of the
8 internal injuries, this requires not just falling against
9 a flat surface but it would require falling on some
10 pointed surface or more likely, in my opinion, is from
11 blows to this region of the body.

12 Q. Do you have an opinion, within a reasonable
13 degree of medical certainty, as to when the fatal blow or
14 blows were struck?

15 A. On or about the day of death.

16 THE COURT: When did you make your
17 examination, Doctor?

18 A. I examined the body the following day, the 24th
19 of September. My records reflect the deceased died on
20 the 23rd of September.

21 THE COURT: If you had examined her four days or
22 two days, your opinion would not have differed?

23 A. That's correct. There is no change that occurs
24 after death as far as these injuries. These injuries
25 stay the same once death occurs. During life, the

1 healing process changes the appearance of the injury but
2 once death occurs, it would not change.

3 Q. Dr. Sexton, did you take any samples from
4 **Victim**

5 A. Yes, I did. We usually take tissue samples and
6 turn those over to the proper authorities for
7 investigation.

8 Q. And did you turn some samples over to State Law
9 Enforcement Laboratories?

10 A. Right. I gave some tissue samples to Roy
11 Pascal at the State Law Enforcement Division.

12 Q. Would you tell us what you gave him?

13 A. There were tissues from the body, pieces of
14 some of the internal organs and some bile.

15 Q. Some bile?

16 A. Some bile.

17 Q. What is that?

18 A. Bile is the fluid made by the liver that is
19 secreted to digest fats.

20 Q. After taking his samples and prior to
21 delivering to Mr. Pascal, did you do anything with them
22 other than preserve them?

23 A. No.

24 Q. Do you have an opinion, within a reasonable
25 degree of medical certainty, as to whether or not

1 intaking Piperazine would cause the injuries or problems
2 that you saw in this child?

3 A. No, they would not cause these injuries. It is
4 a medication that goes into the GI tract. If you swallow
5 something like a penny, it will come out the other end.
6 This medication does the same thing. It stays within the
7 GI tract and kills any parasites that might be in the GI
8 tract. It does not get into the body's system. No
9 medication of this sort could cause the injuries that I
10 saw in the body.

11 Q. Dr. Sexton, please answer any questions Mr.
12 Screen might have.

13 CROSS EXAMINATION:

14 BY MR. SCREEN:

15 Q. Dr. Sexton, would you briefly describe the
16 liver condition, the condition of the liver as you found
17 it? Specifically concerned about whether you found any
18 dead tissue and that kind of stuff.

19 A. Well, as I mentioned earlier, there was a tear
20 in the liver. The liver was examined at surgery and of
21 course, the liver tissue was removed so that they could
22 repair the remaining tissue and it was sent to the
23 laboratory in Aiken, then it was forwarded on to me and I
24 did the autopsy and those microscopic slides show changes
25 in the liver, what we refer to as necrosis, meaning the

1 liver tissue had died and a healing process has started.
2 These tissues that were forwarded to me did show
3 necrosis.

4 Q. Within a reasonable degree of medical
5 certainty, can you pin point about how long it would take
6 live tissue like that to reach a necrotic state?

7 A. To reach a necrotic state might take a few
8 minutes or hours depending on the circumstances but to
9 reach the stage where there is some necrosis or healing,
10 it might take a day or two or several days.

11 Q. Within a reasonable degree of medical
12 certainty, would a person who sustained a blow that would
13 cause the liver tissue to begin to die, what kind of
14 discomfort would likely accompany that?

15 A. It would vary, depending on the age and the
16 ability to withstand pain of an individual who is
17 injured. Some people have a very high pain threshold,
18 others do not. Some injuries of this sort do cause a lot
19 of pain, some do not. There is no way I can really say
20 how much discomfort this person would have. A person who
21 would have discomfort from it would tend to have
22 abdominal pain, might be a little nauseated, might tend
23 to vomit.

24 Q. Might vomit and be nauseated?

25 A. That's true but there is no way I could

1 prediet, on the finding of the autopsy, as to whether
2 this particular child would or would not have had
3 symptoms from the injury. Recognize, there are really
4 two injuries here. There is an injury that had occurred
5 and caused necrosis and was healing and there was a small
6 injury to the liver. And then there was the devastating
7 injury that occurred on or about the time of death that
8 completely separated the two lobes of the liver and
9 caused fatal hemorrhage. But at the time of the injury,
10 there was already some decomposing tissue there retained
11 under the capsule of this organ so it was more easily
12 damaged and then released into the abdominal cavity.

13 Q. All right sir, I would ask you if you found any
14 evidence of hemorrhaging, prior hemorrhaging from that
15 organ?

16 A. Yes, there was, like I said, in the capsule
17 there was damage to the liver. The liver is a structure
18 that has a thin capsule over it. There had been bleeding
19 inside the capsule that had not ruptured out into the
20 abdominal cavity.

21 THE COURT: Excuse me, when you say prior
22 hemorrhaging, are you talking about prior to his
23 examination, prior to death or prior to the time of the
24 alleged blow? Which time are you referring to? Before
25 September the 23rd of 1985?

1 A. That would be correct. Before the day of death
2 there was some prior hemorrhaging inside the organ and
3 some prior necrosis and repair of that area.

4 Q. Did you find any evidence of any seepage or
5 blood from that organ or any other internal organ, into
6 the abdominal area?

7 A. At the time the child was seen in the emergency
8 room and examined and at the time that I saw the child at
9 autopsy, yes, there was some of this bile smelling
10 hemorrhage that was inside the organ that had leaked out
11 into the body cavity at the time that the liver was split
12 open by the terminal injuries that occurred on or about
13 the day of death.

14 Q. Doctor, within a reasonable degree of medical
15 certainty, can you give us an age of the wound to the
16 scalp that you said you found a small clot on the brain?

17 A. The injuries to the head, including the blood
18 clot on the brain, were on or about the time of death.
19 They occurred that day. The blood, when it leaks out on
20 the surface of the brain, in a period of time becomes
21 solidified and develops a membrane over the surface of
22 this structure. There was no membrane and it was not
23 solidified, it simply was liquid blood in that area, so
24 it occurred on or about the time of death.

25 Q. Doctor, within a reasonable degree of medical

1 certainty, would a person, would a child, more likely
2 than not, with a child of the age of the decedent, lose
3 consciousness as a result of that blow?

4 A. Not as a result of the amount of hemorrhage
5 because it wasn't sufficient hemorrhage there to cause
6 pressure on the brain to cause the child to lose
7 consciousness. As far as the blow, whether it did or did
8 not cause unconsciousness, that's a variable that we just
9 cannot say just from looking at the injury. Injuries of
10 this sort in patients that I've see in the past, in some
11 cases it has caused unconsciousness and in some cases it
12 did not. There is no absolute certainty based on the
13 amount of bruising, as to whether the child was or was
14 not unconscious.

15 Q. All right sir, I have no further questions.

16 THE COURT: Anything on redirect?

17 MR. HARTE: None, Your Honor.

18 THE COURT: Thank you, you may step down. Any
19 objection to this witness being excused?

20 MR. SCREEN: None from the defense, Your Honor.

21 THE COURT: Thank you. Next witness.

22 ROY PASCAL being called and duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION:

25 BY MR. HARTE:

1 Q. - State you full name for the record, please.
2 A. Roy B. Pascal.
3 Q. Mr. Pascal, how are you employed?
4 A. I am employed by the State Law Enforcement
5 Division, better known as SLED, as a Toxicologist.
6 Q. What is your educational background?
7 A. I received a Bachelor of Science Degree in
8 Chemistry from Baptist College in Charleston. Upon my
9 employment with SLED, I underwent an initial training
10 period and was supervised by the Chief and Assistant
11 Chief Chemist. I attended numerous lectures and seminars
12 by the companies that manufacture the instruments that we
13 use at SLED. I've attended advanced Toxicology courses
14 sponsored by Analyst Assistance Incorporated and also
15 advanced Toxicology courses at the Health and Science
16 Center in San Antonio, Texas. I've attended advanced
17 Toxicology courses sponsored by the Society of Forensic
18 Toxicology. I'm a member of the Southern Association of
19 Forensic Scientists and I'm a member of the Society of
20 Forensic Toxicology.
21 Q. How long have you been employed by SLED?
22 A. Approximately seven and a half years.
23 Q. And during that time, what has been your job
24 role?
25 A. As a Toxicologist, it is my responsibility to

1 receive evidence from requesting agencies and perform
2 analysis on that evidence.

3 Q. Towards what end? What is your purpose?

4 A. To test various body fluids for drugs, poisons
5 and alcohol and to present those findings in the courts
6 in South Carolina.

7 Q. Have you been declared as an expert in the
8 courts of South Carolina?

9 A. Yes, I have.

10 Q. Your Honor, I submit that he is an expert in
11 the area of Toxicology.

12 THE COURT: You may cross examine.

13 MR. SCREEN: I stipulate, Your Honor.

14 THE COURT: Thank you.

15 Q. Mr. Pascal, I show you what has been marked as
16 State's Exhibit #4 and ask you if you can identify this.

17 A. Yes, sir, I can.

18 Q. Did you receive that from Ms. Patsy Habben?

19 A. Yes, sir, I did.

20 Q. What did you do with that?

21 A. This was a bottle of Piperazine. I tested this
22 bottle to make sure the substance in this bottle was
23 indeed, Piperazine.

24 Q. And what was your finding as a result of the
25 testing?

1 A. - This bottle indeed, contains Piperazine, which
2 is a worm medicine.

3 Q. Your Honor, I would move that this be
4 introduced into evidence.

5 THE COURT: Any objection?

6 MR. SCREEN: No objection.

7 (Without objection, State's Exhibit #4, a
8 bottle of Piperazine, marked and entered.)

9 Q. Mr. Pascal, did you receive certain samples
10 from Dr. Joel Sexton?

11 A. Yes, I did.

12 Q. When did you receive those samples?

13 A. I received the samples on October 3, 1985.

14 Q. What did you do with those samples?

15 A. I submitted those samples to analysis.

16 Q. What samples did you receive and what did you
17 do with them and what were your findings?

18 A. I received a red stop tube, or vial, containing
19 some liver tissue, some kidney tissue and some brain
20 tissue. I analyzed those tissue specifically for the
21 substance, Piperazine.

22 Q. With what findings?

23 A. It was negative for Piperazine, no Piperazine
24 was found in those tissues.

25 Q. Thank you. Answer any questions Mr. Screen may

1 have..

2 CROSS EXAMINATION:

3 BY MR. SCREEN:

4 Q. Mr. Pascal, as a Toxicologist, within a

5 reasonable degree of medical certainty, is it more likely

6 or not that Piperazine would have been present several

7 days later?

8 THE COURT: Later than what?

9 MR. SCREEN: Later than the 23rd, the date of

10 death.

11 A. Once an individual is deceased or dies, the

12 breakdown of drugs ceases, so anything present at the

13 time of death would be detected in some form.

14 THE COURT: Whether it's two days or twenty

15 days?

16 A. That's correct, if they are properly preserved

17 and they were in this case.

18 Q. All right sir, I have nothing further.

19 THE COURT: Step down. Next witness.

20 MR. HARTE: That's all, Your Honor.

21 THE COURT: How about your shirt? Are you

22 going to introduce those exhibits?

23 MR. HARTE: Your Honor, I believe that I have

24 already done that.

25 THE COURT: No, sir.

1 MR. HARTE: I would move to have them introduced
2 at this time.

3 THE COURT: You'd offer the shirt and pants?
4 MR. HARTE: Yes, sir.

5 THE COURT: Any objection to State's #2 and
6 #3. Without objection, let them be marked as Exhibits.
7 State's #2 and #3.

8 (State's Exhibit #2, a blue shirt, and State's
9 Exhibit #3, a pair of trousers, marked and entered
10 without objection.)

11 THE COURT: All right, the State rests. You
12 may proceed Mr. Screen.

13 MR. HARTE: Your Honor, could Ms. Habben and
14 Mr. Pascal be allowed to return to Columbia Court?

15 THE COURT: Any objection?
16 MR. SCREEN: No.

17 THE COURT: Thank you. You may be excused.
18 Thank you ladies and gentlemen for being with us.

19 MR. SCREEN: The defense would call Elizabeth
20 Green.

21 ELIZABETH GREEN being called and duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION:
24 BY MR. SCREEN:
25 Q. Ms. Green, where do you live?

1 A. - Gloverville.
2 Q. Do you live in the apartment area commonly
3 referred as Valley Homes?
4 A. Yes.
5 Q. What is your apartment number?
6 A. Sixteen.
7 Q. How long have you lived at that place?
8 A. A year.
9 Q. Were you living there on the 23rd day of
10 September, 1985?
11 A. Yes.
12 Q. Ms. Green, what is your relationship to the
13 defendant, Timothy Green?
14 A. He is my brother.
15 Q. Do you know Phyllis Price or Phyllis Hill?
16 A. Yes.
17 Q. How long have you known her?
18 A. About a year.
19 Q. How did you come to know Phyllis Price at that
20 time?
21 A. She lived right across the street from me.
22 Q. Was she your brother's girlfriend?
23 A. Yes.
24 Q. Did he live with her?
25 A. Yes, he was.

1 Q. Was he living with her at her place on 9-23-85?
2 A. Yes.
3 Q. Ms. Green, I would ask you to take your mind
4 back to the 23rd day of September, 1985. I would ask you
5 if you recall seeing the defendant, Timothy Green?
6 A. Yes, I do.
7 Q. Where did you see him that day?
8 a. He was going across the hill and I called him.
9 My Mother was sick and she wanted him to call home.
10 Q. What time was that?
11 A. About ten to nine.
12 Q. Do you recall some children coming over to your
13 house that morning?
14 A. Yes.
15 Q. Who came over there, Ms. Green?
16 A. **Victim** and Poo.
17 Q. Who is Poo?
18 A. **Victim** sister, Phyllis's kids.
19 Q. **Victim** Poo and who else?
20 A. And Erica. Those are the only two that came
21 over.
22 Q. Is Erica your daughter?
23 A. Yes, Erica is my daughter.
24 Q. What time did they come over?
25 A. A little after nine, I believe.

1 Q. Did you talk with them or what did they do when
2 they came over to your house?
3 A. They sat down there in the kitchen with us and
4 Carolyn Johnson was present at the time. Then she asked
5 them to go play. She had to get into some of her drugs.
6 Q. Who asked them to go play?
7 A. Carolyn Johnson.
8 Q. Asked who to go play?
9 A. **Victim** Poo and Erica.
10 Q. Where did they go?
11 A. In the bedroom.
12 Q. You recall walking to the store with Carolyn
13 Johnson that day?
14 A. Yes, I do.
15 Q. What time did you'all go to the store?
16 A. That was eight-thirty or something to nine.
17 Q. Who was at home with the children when you'all
18 walked to the store?
19 A. Erica went. Nobody wasn't there but Erica.
20 Q. Where did the other two children go?
21 A. They wasn't there at that time.
22 Q. They didn't come - your testimony is that they
23 didn't come to your house until you returned from the
24 store?
25 MR. HARTE: Objection to the leading nature of

1 the question.

2 THE COURT: Please don't lead the witness.

3 Q. Did they come to your house before you went to
4 the store or after?

5 A. After I came from the store.

6 Q. Now, at your house, we're talking about Erica,
7 who is four years old.

8 A. Right.

9 Q. And how old was she then?

10 A. Four.

11 Q. How old was she on September the 23rd, 1985?

12 A. Four.

13 Q. Poo, how old is Poo?

14 A. Four.

15 Q. And how old is the other kid?

16 A. Three.

17 Q. Where did they go when you came from the store
18 and they came in?

19 A. When we came from the store, Carolyn went home
20 to get her bottle, some bootleg moonshine.

21 Q. What kind of bottles.

22 A. It was in a gin bottle but it was moonshine.

23 Q. Where were the children at that time?

24 A. They was in the kitchen when she got back and
25 she asked them would they go play until she did her

1 cocaine.

2 Q. Carolyn Johnson had cocaine that morning?

3 A. Yes.

4 Q. Where was the cocaine?

5 A. She had it in a brown bag about this big and
6 about this much was in it.

7 Q. Did you see her inhale any of that cocaine?

8 THE COURT: Mr. Screen, excuse me now. What
9 relevance does Carolyn Johnson have as to cocaine? Are
10 you going to be able to tie this up?

11 MR. SCREEN: Judge, Carolyn Johnson is a
12 witness who has testified previously for the State. She
13 says that she was at this lady's house on the morning in
14 question. She says she saw my client come in and she
15 testified as to a time period he was at the house. I
16 intend to show that she was under the influence of drugs
17 and liquors and didn't know who was coming and going and
18 that she was, in fact, drunk.

19 THE COURT: All right. Go ahead.

20 Q. I'll ask you again Ms. Green, did you see
21 Carolyn Johnson take any of the drugs?

22 A. Yes, I did.

23 Q. Did she drink any of that moonshine whiskey?

24 A. Every drop. Over half of the half a pint.

25 Q. Well, did you drink any of that with her?

1 A. - No, I didn't. I don't drink that slop.
2 Q. Did your brother have any?
3 A. He wasn't there at that time.
4 Q. Oh, I see. So Carolyn had this cocaine and
5 moonshine whiskey and you were sitting there. Where are
6 the kids now?
7 A. They was back there in the bedroom.
8 Q. Who else was in the house?
9 A. Nobody. Oh, yes it was. A friend of mine was
10 there.
11 Q. Who was that?
12 A. Fred Bailey.
13 Q. Fred Bailey was in the house, too?
14 A. Yes, at that time.
15 Q. How old is he?
16 A. Forty-two.
17 Q. He's your boyfriend?
18 A. Yes.
19 Q. Did Mr. Bailey have any of this contraband that
20 you'all had with you?
21 A. No.
22 Q. What time did your brother, Tim, come in the
23 house?
24 A. Let me see. I don't remember the time too good
25 but it had to be about nine-thirty or something.

1 Q. - Were the children in the back of the house at
2 that time?
3 A. Uh-huh.
4 Q. Did Mr. Tim Green go to the back of the house?
5 A. He went to the bathroom.
6 Q. How do you know he went to the bathroom?
7 A. Because he asked for the tissue and I got the
8 roll out of the bag and gave it to him.
9 Q. Did you hear him in the bathroom?
10 A. I heard the bathroom flush.
11 Q. How long was he back there in the bathroom?
12 A. About five or six minutes.
13 Q. Where did he go then?
14 A. He came back in the kitchen and sat at the
15 table with us and Carolyn. He asked for some of the beer
16 and she poured him some and he sat down and Phyllis
17 called him. He was in the back bedroom.
18 Q. Phyllis Hill, Phyllis Price?
19 A. Yes.
20 Q. She called Tim?
21 A. Yes.
22 Q. Where did he go then?
23 A. Went over to Phyllis's house.
24 Q. Did he ever go back over to your house?
25 A. Yes.

1 Q. - How long was he over to Phyllis's house?
2 A. About five or ten minutes.
3 Q. What did he do when he came back over to your
4 house?. Now this is the second time.
5 A. He sat down at the table, picked up his cup and
6 started drinking again and then I said for him to go
7 ahead and call Mama.
8 THE COURT: Who was that drinking?
9 A. Me, Carolyn Johnson and Tim.
10 THE COURT: What was he drinking?
11 A. Beer. A quart.
12 THE COURT: Did he leave and go call your
13 Mother at that point?
14 A. Yes, he was going across the street to a lady
15 named Minnie, to call. He was standing outside and was
16 talking to some man out there in the yard. And the kids,
17 they also were in the yard, too. Tim came back in the
18 house. The kids came back in first then Tim came back in
19 the house after he went and I said, "did you get her?",
20 and he said, "Minnie's not home".
21 Q. All right, did he go back in the back of the
22 house where the children were again?
23 a. Yes. Erica and them were calling him.
24 Q. The children were calling Tim?
25 A. Yes.

1 Q. Did you go back there too?
2 A. No.
3 Q. Well, how long was he back there when they
4 called him back?
5 A. No time at all.
6 Q. When did you next see him?
7 A. When he was coming through the kitchen.
8 Q. Was he carrying anything?
9 A. He had Victim
10 Q. He had Victim How was he carrying her?
11 A. He had her sorta on - some sorta way like
12 this. But he didn't have but one arm around her.
13 Q. What happened then?
14 A. I said, "is she 'sleep?" and he said, "yeah",
15 he said Erica and them was calling him to get her up out
16 of the floor.
17 MR. HARTE: Objection, Your Honor. It would be
18 hearsay.
19 THE COURT: I'm going to allow it.
20 Q. Go ahead.
21 A. 'Cause he said Erica had done called previously
22 to say that she had fell out of the bed.
23 Q. Did you hear that?
24 A. Did I hear Erica call?
25 Q. Yes. Tim went back in the back.

1 A. - Yes.

2 Q. And he came back and had **Victim** in his arms?

3 A. Yes.

4 Q. Where did he go then?

5 A. He took her home.

6 Q. How far does Phyllis Price live from where

7 you'all were in the kitchen that day?

8 A. About as far as from here to the sidewalk out

9 there.

10 Q. All right. Did you go along with him? Did you

11 accompany him?

12 A. No. I was looking out the kitchen window. I

13 could see right to her house.

14 Q. Did you see anything unusual about **Victim**

15 except for the fact that she appeared asleep?

16 A. Nothing. Not a thing.

17 Q. Didn't see any blood?

18 A. No, I didn't. The only blood I saw was on Tim

19 because he had a cut on his arm. I asked him how did he

20 get it and that's that only blood I seen.

21 Q. Did you ever go over to Phyllis Price's house?

22 A. Yes, when she started hollering.

23 Q. Did you see your brother out there working with

24 **Victim**

25 A. Yes, I did, and he was definitely working with

1 her to be sure.

2 Q. What was he doing?

3 A. He was giving her mouth to mouth, he was
4 holding a wet cloth on her face and he was mashing. He
5 was sure trying to save that child's life, and he
6 wouldn't hurt no child no way.

7 MR. HARTE: Objection, Your Honor. It's
8 improper.

9 Q. Did you ever see Tim hit either one of those
10 children?

11 A. No. Tim is not the type to hit a child.

12 MR. HARTE: Objection to her opinion, Your
13 Honor.

14 Q. Just answer the questions that I ask. I said
15 did you ever observe your brother hitting either one of
16 the children? Just answer yes or no.

17 A. Okay.

18 Q. How long was he out there trying to revive
19 **Victim** that morning?

20 A. About fifteen to twenty minutes.

21 Q. Did Tim have on the clothes that they are
22 talking about, the pants and blue shirt?

23 A. I believe so, I'm not sure.

24 Q. Did you talk to the police about this, Ms.
25 Green?

1 A. Yes, I did:
2 Q. Did you tell them what you just testified to?
3 A. I told them part. I didn't tell them anything
4 about cocaine because they were there then to remove my
5 kids from the house. I was upset over this child. I was
6 upset about my kids. I didn't think of all of it. I
7 didn't want no more trouble than I already had so I only
8 told them part.
9 Q. Were your children taken at one point?
10 A. Yes, they were. From September the 25th until
11 January the 23rd.
12 Q. Ms. Green, you were sitting in the kitchen.
13 You were in the kitchen with Carolyn Johnson, Fred Bailey
14 and yourself.
15 A. Right.
16 Q. And Tim comes in --
17 MR. HARTE: Objection.
18 THE COURT: Sustained. You're leading the
19 witness. You can ask her a question but you can't rehash
20 the testimony, Mr. Screen.
21 MR. SCREEN: I understand.
22 Q. How many of you were sitting in the kitchen,
23 Ms. Green? Tell me who was in that kitchen.
24 A. Okay. At first it was only me and Carolyn
25 until Fred came over. When Fred came over, that's when

1 she went and got the cocaine and the moonshine. Tim
2 wasn't there at that time.

3 THE COURT: She's repeating what she has
4 already testified to. I'm not going to allow it. It's
5 the same question twice.

6 Q. Did Mr. Bailey ever go to the back of that
7 house?

8 A. To the back?

9 Q. Yes, where the children were, from your
10 personal knowledge?

11 A. No, I don't believe so.

12 Q. Did anyone else ever go back there?

13 A. Not to my know about. But I did go over to
14 Carolyn's house at one time. She was going to bring back
15 some more stuff.

16 Q. Have you ever seen any of that worm medicine
17 that they were talking about there?

18 A. Have I ever seen it?

19 Q. Have you ever seen that bottle?

20 A. Yes.

21 Q. Where did you see it?

22 A. He had it at the house at one time.

23 Q. He who?

24 A. Tim. Tim Green.

25 Q. You saw your brother with it at your house?

1 A. - Yeah, one time.

2 Q. How long ago was it? The day of this incident?

3 A. No.

4 Q. All right. Answer any questions the solicitor

5 might have.

6 CROSS EXAMINATION:

7 BY MR. HARTE:

8 Q. Ms. Green, you didn't tell this officer, when

9 you talked to him on October 2nd, anything about any

10 cocaine?

11 A. No, I didn't.

12 Q. You didn't tell him anything about any

13 moonshine?

14 A. No, I didn't.

15 Q. And that bottle of worm medicine was not in

16 your house on the day that **Victim** died, was it?

17 A. Not to my know about.

18 Q. And Mr. Bailey, you didn't tell him anything

19 about Mr. Bailey, did you?

20 A. No, I didn't. He was removing my kids. I was

21 upset.

22 Q. Mr. Bailey did not go in the back of that

23 house, did he?

24 A. Yes, he did.

25 Q. He did go in the back of the house? I thought

blood on wall?

1 you just told Mr. Screen he did not go in the back of the
2 house.

3 A. Oh, I thought you was talking about him. Who
4 are you talking about?

5 Q. Fred Bailey.

6 A. No, he didn't. I thought you was talking about
7 him.

8 Q. Fred Bailey never went in the back of that
9 house?

10 A. Not to my know abouts.

11 Q. Who was it that washed the blood off of the
12 walls?

13 A. Nobody, because if I had of washed something I
14 wouldn't have told the officers anything about it.

15 Q. So, the blood was still on the walls?

16 A. Whatever it was. 'Cause lipstick was in there
17 as well as nail polish.

18 Q. No further questions.

19 MR. SCREEN: I have no further questions.

20 THE COURT: Step down. Next witness.

21 TIMOTHY GREEN being called and duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION: .

24 BY MR. SCREEN:

25 Q. State your name for the record, please.

1 A. Timothy Fitzgerald Green.
2 Q. Mr. Green, where were you living prior to
3 September 23, 1985?
4 A. Apartment 10 C.
5 Q. Where is that?
6 A. Gloverville Apartments.
7 Q. Who were you living with?
8 A. Phyllis Price.
9 Q. How long did you live with Ms. Price, Mr.
10 Green?
11 A. About eight months.
12 Q. Who else lived in that apartment along with you
13 and Phyllis Price?
14 A. Ebony, **Victim** and Bradley Hill.
15 Q. How many people?
16 A. Five.
17 Q. Two of you and three children?
18 A. Yes, sir.
19 Q. Are you the natural father of any of those
20 children, Mr. Green?
21 A. No, sir.
22 Q. These are Phyllis's children?
23 A. Yes, sir.
24 Q. Mr. Green, are you employed? Are you working?
25 A. At one time I was working at the Graniteville

1 Townsend Mills.

2 Q. Were you working on September the 23rd of 1985?

3 A. No, sir.

4 Q. Mr. Green, I'll ask you to bring your mind to

5 that date, September 23rd 1985, and I'll ask you if you

6 spent the prior night with Phyllis Price?

7 A. Yes, sir. I was there.

8 Q. What time did you leave the house that morning?

9 A. I left the house, it was about seven because I

10 was waiting on Fleming to come pick me up.

11 Q. Did you ever go over to your sister's house?

12 A. Yes, sir.

13 Q. What time did you go over to your sister's -

14 and we're talking about Elizabeth Green.

15 A. It was about eight-thirty or nine.

16 Q. And how long did you stay over there?

17 A. I went over there - I stayed maybe five

18 minutes. I was in there sitting down talking to Carolyn

19 and my sister. They was telling me about the conflict

20 between the fellows - about this girl that was sitting

21 over at Minnie's house.

22 Q. You stayed there about five minutes. Was that

23 when you drank the beer?

24 A. Yeah, I was sipping on some beer, yeah.

25 Q. Where did you go when you left there?

1 A. - My sister had told me that my Mother wanted me
2 to call her so if Diane was in the next apartment, I
3 could have gone over there because Diane called me and
4 she wanted to know was my car there. You know, they
5 wanted to go out.

6 Q. Just tell me where you went from there, Tim.

7 A. I went back to my sister's and she asked me did
8 I call. I told her, you know, I ain't had time.

9 THE COURT: We can't get into these
10 conversations, Mr. Screen.

11 Q. Just tell me what you did as a result of
12 something. Where did you go when you first left your
13 sister's house after you were sipping the beer?

14 A. I went to Phyllis's house, I mean to Minnie's
15 house.

16 Q. How long did you stay there?

17 A. Maybe a minute.

18 Q. And where did you go after that?

19 A. I come back to my sister's.

20 Q. Is this all in one little area?

21 A. Yes, sir.

22 Q. What did you do when you returned to your
23 sister's house?

24 A. I sat down and took another sip off the beer.

25 Q. Did you see **Victim** on the morning of

1 September the 23rd, 1985?
2 A. No, sir. I did not.
3 Q. When did you first see her?
4 A. When I came back from Phyllis's house I went to
5 Minnie's and when I come back from Minnie's, Poo and them
6 come to the corner and told me that she was back there on
7 the floor asleep.
8 Q. Did you return then to your sister's house?
9 A. After I took the little girl, I returned back -
10 I went to carry Phyllis to the hospital.
11 Q. All right, you're getting ahead of me now. You
12 went back to the back of the house -
13 MR. HARTE: Objection, he's leading the
14 witness.
15 THE COURT: Sustained.
16 Q. Mr. Green, did you ever go back to the back of
17 your sister's house?
18 A. Yes, sir.
19 Q. Did you go back there the first time, the
20 second time or both times?
21 A. I went back there the first time. I used the
22 bathroom but I didn't see anybody. I, you know, used the
23 bathroom and I come out and went to Minnie's to call my
24 Mom.
25 Q. All right sir. And did you at some point

1 return to that same apartment?

2 A. Yes, sir.

3 Q. Did you see Carolyn Johnson in there drinking

4 whiskey and smoking cocaine?

5 A. I didn't see her using but she was drinking.

6 Q. Did you see the presence of any?

7 A. Yes, sir.

8 Q. When did you go back to the back of the house

9 to check on the child?

10 A. When Poo called me, I went back there and I

11 picked up the little girl and she was laying like this.

12 I picked her up and she grabbed me around the neck and I

13 was coming out with her and I told my sister, she asked

14 me where was I going and I told her I'm going to take her

15 and I'll be right back. And when I got down the road she

16 threw some kind of fling on my shoulder and her eyes was

17 rolling back in her head and I was trying to ask her what

18 was wrong with her. I was shaking her like that because

19 you know, her eyes was going back in her head. So

20 Phyliss come to the door and she said, "Tim, what's

21 wrong?", and I said, "I don't know, she just threw up on

22 my shirt", 'cause there was a big stain on my shirt. She

23 went to screaming and hollering and Carolyn and my sister

24 came running and Teresa and you know, a lot of people

25 came running.

1 Q. - What did you do then?
2 A. I asked my sister what's wrong because, you
3 know, there was a whole bunch of stuff was drizzling on
4 my shirt.
5 Q. Was any of that stuff blood?
6 A. I didn't see any blood, no time, I didn't see
7 any blood.
8 Q. Did it have an odor to it?
9 A. It was stinking - it was smelling. That's the
10 reason why I asked by sister what could she have got hold
11 to.
12 Q. What did you do after you got over to Phyllis's
13 house?
14 A. I laid her down. She was acting like she was
15 going in and out of the state so I had, you know, she
16 acted like - probably one time, she acted like she had a
17 problem breathing so I was performing CPR on her.
18 Q. What do you know about CPR?
19 A. Coach Roy Starkes taught us in Junior High
20 School. Two courses, you know, of CPR. How to treat
21 people in shock, you know, when they're going in and out
22 of shock.
23 Q. Mr. Green, let me ask you, did you ever hit
24 **Victim**
25 A. No.

1 Q. - Did you kick her that day?
2 A. No, sir.
3 Q. Did you throw her up against the wall?
4 A. No.
5 Q. Have you ever seen anyone hit **Victim**
6 A. No, sir.
7 Q. Did you ever see her Mother hit her.
8 A. Otherwise, spanking, you know.
9 Q. Did you keep the children sometimes, Mr. Green?
10 A. If I ever kept them, I always took them to
11 somebody and put them there and before she got back, I'd
12 go get them. She'd come back and they ain't there and
13 she'd ask me who got my kids and I told her she's over at
14 my sister's.
15 q. Did you ever physically assault this child at
16 any point, Mr. Green?
17 A. No, sir.
18 Q. Answer any questions the solicitor might have.
19 CROSS EXAMINATION:
20 BY MR. HARTE:
21 Q. What kind of work do you do, Mr. Green?
22 A. I'm not employed.
23 Q. How do you normally make your living?
24 A. Shooting pool or hustling.
25 Q. Hustling pool?

1 A. - Yes, sir.

2 Q. At the time that this child got injured and
3 killed, you were living with the child's Mother, weren't
4 you?

5 A. Yes, sir.

6 Q. And you'all were on good terms, wasn't that
7 right?

8 A. Yes, sir.

9 Q. Isn't it a fact that at one time she had asked
10 you not to discipline the kids because they had come to
11 her about some problems they had had with you?

12 A. No, sir.

13 Q. That never happened?

14 A. No, sir. She come to me one time and the
15 little boy, he had some kind of stuff on his arm and she
16 told me her Mother was talking about she was going to
17 call the cops on me. I told her call them 'cause
18 whatever was wrong with the kid it needed to be found out
19 about. So I told her to tell her to call them. I wanted
20 to know what it is myself.

21 Q. Did you tell Phyllis at one time that if she
22 didn't start disciplining her kids that they would never
23 mind her?

24 A. I told her if she didn't start taking care of
25 the kids and keeping up with them that somebody

1 eventually would tell something on her because her Mother
2 had - she had recited to me one time that her Mother said
3 she was going to take the kids away from her.

4 Q. Because she thought the kids were being abused,
5 didn't she?

6 A. I don't know what the purpose, what she thought
7 was going on but this was before I really started moving
8 in with her. You know, staying there because I was going
9 home for about -

10 Q. Isn't it a fact that you told the Parameds and
11 the people at Aiken Community Hospital that you thought
12 that the child had taken some poison?

13 A. No, sir. I told them at the time because she
14 had threw up, they asked me what was that on my shirt. I
15 told them that was where she had thrown up on me.

16 Q. And didn't you tell them that you thought she
17 had taken poison?

18 A. I told them - that's the first thing that come
19 to my mind.

20 Q. And, in fact, she was treated at Aiken
21 Community Hospital for poison instead of for the injuries
22 that she had received, isn't that right?

23 A. I really don't know what they treated her for.

24 Q. Because of what you told them, isn't that
25 right?

1 A. - I don't know what they treated her for because
2 they asked me what was that coming out of her mouth and
3 why is her lip busted and Phyllis said her Mother told me
4 she had fallen in the park.

5 Q. And, in fact, at the time you were telling them
6 about wormer - dog wormer, this bottle of wormer was in
7 David Glover's car, wasn't it?

8 A. I didn't tell them about the de-wormer until I
9 had got back and they told me once I get home to check
10 and see what she could have got. I called back at the
11 hospital and told them to ask Phyllis where my de-wormer
12 was.

13 Q. And at the time you said that, it was in David
14 Glover's car, wasn't it?

15 A. I didn't never precisely say what it was.

16 Q. Do you dispute that, you say it was?

17 A. I never said what it was that she threw up.

18 THE COURT: Do you know where the wormer was on
19 September the 23rd?

20 A. No, sir, I don't know where it was.

21 THE COURT: You didn't know if it was in the
22 car or the house?

23 A. I don't know if it was in the car or the house,
24 I just know it was missing.

25 Q. But you know now where it was, don't you?

1 A. From what she apparently told me and told the
2 court.
3 Q. Are you the same Timothy Green that pled guilty
4 or was convicted of forgery by uttering a forged
5 instrument on August 12, 1981?
6 A. Yes, sir.
7 Q. Are you the same Timothy Green who was
8 convicted or pled guilty of housebreaking on October 6,
9 1982?
10 A. Yes, sir.
11 Q. No further questions.
12 THE COURT: Anything on redirect?
13 REDIRECT EXAMINATION:
14 BY MR. SCREEN:
15 Q. Mr. Green, other than those charges that Mr.
16 Solicitor has read you, have you ever been convicted of a
17 violent crime - attacking anybody?
18 A. No, sir.
19 Q. Your crime has been stealing, hasn't it?
20 A. Yes, sir.
21 Q. Thank you, sir.
22 THE COURT: Step down. Next witness.
23 MR. SCREEN: Your Honor, I would call Doris
24 Green.
25 DORIS GREEN being called and duly sworn,

1 testified as follows:
2 DIRECT EXAMINATION:
3 BY MR. SCREEN:
4 Q. Where do you live Ms. Green?
5 A. I live in New Ellenton right now with my Aunt.
6 Q. You employed?
7 A. No, sir.
8 Q. How far do you go to school?
9 A. I go to Silver Bluff now. Last year I went to
10 Midland Valley and also Silver Bluff.
11 Q. What year are you in at Silver Bluff?
12 A. All my years except for last year, I went to
13 Midland Valley.
14 Q. How are you classified? What grade are you in?
15 A. Eleventh.
16 THE COURT: How old are you?
17 A. Right now, I'm seventeen.
18 Q. Do you know the defendant, Timothy Green?
19 A. Yes, sir.
20 Q. What is your relationship to him?
21 A. He's my Uncle.
22 Q. All right, Ms. Green, I'll ask you if you know
23 Phyllis Price or Phyllis Hill?
24 a. Yes, I do.
25 Q. I ask you if you have ever lived in Valley

1 Homes?
2 A. Yes, I did.
3 Q. When did you live in Valley Homes?
4 A. I lived there last year for about six months
5 and I went home about, on or before March and I used to
6 go there week-ends to baby sit for Liz, which is my
7 Mother.
8 Q. Did you see Phyllis Price when you were living
9 there and those week-ends you'd go back there?
10 A. Yes, I did. I used to go over to her house
11 with friends. Some of my friends, Lynn Holloway and
12 Melissa Messousa, lived in Valley Homes.
13 Q. Did you ever see --
14 THE COURT: Mr. Screen, you need to tie down
15 the six months that she was living there. Is it the
16 first six months of 1985 - the last six months? You need
17 to be more precise, please.
18 Q. What months in 1985 did you live in Valley
19 Homes, Ms. Green?
20 A. In 1985?
21 Q. Yes, ma'am.
22 A. Probably from the end of August to somewhere in
23 about March. Several week-ends when I used to visit and
24 baby-sit --
25 THE COURT: The end of August of what year to

1 March?

2 A. Of 1984 and to 1985.

3 Q. Were you in Valley Homes on the 23rd day of
4 September 1985?

5 A. No, sir.

6 Q. During the time that you came to Valley Homes,
7 did you ever observe Phyllis Price hit or strike or do
8 anything to abuse her children?

9 A. Yes, I did.

10 Q. Would you relate those cases to the jury?

11 A. I used to go over to Phyllis's house with some
12 friends, Lynn Holloway and Melissa.

13 MR. HARTE: I believe he has got to lay a
14 better foundation, Your Honor, as to the time, before she
15 can testify.

16 MR. SCREEN: Dr. Sexton testified and laid out
17 a pretty lengthy period of time over which this kid could
18 have been scarred or hurt.

19 THE COURT: Also he testified that any prior
20 injuries would not have contributed to her death so
21 please tell me the probative value of that which you are
22 going into. Do you have further testimony you can link
23 up to the issues for trial in this case, Mr. Screen?

24 MR. SCREEN: This witness can. If she had
25 prior injuries - if she hit her on those occasions, at

1 least the jury needs to know about it.

2 THE COURT: All right, I'm going to let her
3 testify. Ask her the questions.

4 Q. I'll try not to get too remote in time, Ms.
5 Green, so don't carry me two years away and all of that.
6 When did you last, prior to September the 23rd 1985, use
7 that as a time frame, from that backtrack. When did you
8 last see and observe Phyllis Price hit and strike the
9 children?

10 A. It's hard to say. I've seen them hit on quite
11 a few occasions.

12 THE COURT: You are going to have to give at
13 least within a month, ma'am. I understand you couldn't
14 give a date but was it July or was it March or was it
15 April?

16 A. Okay, I had visited there in July with Liz for
17 the Fourth of July.

18 Q. Did you observe it then?

19 A. Well, I walked over there with Melissa and Lynn
20 and they were having something like a party, like a get
21 together, it wasn't really a party because there wasn't
22 that many people there, but they were having a party and
23 the kids were there and Phyllis told them to go in the
24 back room and play. She then called the little girl,
25 Poo, to go in the refrigerator and get her a beer or a

1 glass-or something, so she went in the kitchen to get the
2 beer or whatever it was she sent her after. She dropped
3 the glass out of the refrigerator onto the floor.

4 Phyllis came into the kitchen and was sweeping up the
5 glass while the little girl had gone back in the room but
6 she came back again and when she came back again, Phyllis
7 took the broom and hit her daughter with it.

8 Q. On any other occasion - was there any other
9 period of time that you saw her strike the kids?

10 A. Except for when she was sitting there screaming
11 and she leaned over the table --

12 THE COURT: Now, wait a minute, ma'am, you got
13 to tell us when.

14 A. On the same day when she was sweeping up the
15 glass she took the broom because the little girl came
16 back and she hit the girl with the broom. The little
17 girl was standing there hollering because she hit her
18 with the broom and then she took her hand and hit her in
19 the back and like, pushed her down the hallway, like back
20 toward the room, which she sent her to in the beginning.

21 Q. Answer any questions Mr. Solicitor might have.

22 CROSS EXAMINATION:

23 BY MR. HARTE:

24 Q. Ms. Green, you were over at - is Ms. Green your
25 Mother or your Aunt?

1 A. My Mother.
2 Q. So, Timothy Green would be your Uncle?
3 A. Yes, sir.
4 Q. You were over there either the afternoon or the
5 night of the 23rd, weren't you?
6 A. Yes, I was.
7 Q. In fact, you took some bed sheets off that bed
8 and took them to the Laundramat, didn't you?
9 A. No, sir, I didn't.
10 Q. You didn't?
11 A. I did not.
12 Q. Those bed sheets had blood on them, did they
13 not?
14 A. I have no idea. I didn't even see any bed
15 sheets. As a matter of fact, I didn't enter the bedroom.
16 Q. You are the same lady that was trying to get
17 little Erica in the car a few minutes before two o'clock
18 to drive her away?
19 A. That is a lie.
20 THE COURT: Are you speaking of today?
21 MR. HARTE: Yes.
22 A. That is a lie. One lady came to the bathroom
23 while Erica was in the bathroom using the bathroom and
24 said she had to take Erica right away. Erica was using
25 the bathroom and I told her to wait until she was

1 finished and I would take her back and she said that she
2 knew a short cut and she would take her back because the
3 Judge needed her right away.

4 Q. That was before lunch.

5 A. Yes, sir.

6 Q. Just before the end of lunch, weren't you
7 trying to get Erica in a car out here?

8 A. No, sir. I don't even have a car.

9 Q. I didn't say your car. I said a car.

10 A. No, sir.

11 Q. Didn't you come in here and try to get Erica
12 away from --

13 A. Yes, I told Erica that she could come sit with
14 us and she said she needed Erica to sit with them and I
15 wanted to know why she had Erica sit with them. I'm
16 Erica's sister and I don't know why she had Erica sit
17 with her. She had came over before and tried to get
18 Erica away from us.

19 Q. No further questions.

20 THE COURT: Anything on redirect?

21 MR. SCREEN: Nothing, Your Honor.

22 THE COURT: Step down. Next witness.

23 MR. SCREEN: Defense rests, Your Honor.

24 THE COURT: Anything in reply?

25 MR. HARTE: No, Your Honor.

1 THE COURT: Any requests of charge?
2 MR. SCREEN: I have notes from your last
3 charge.. That was satisfactory with me.
4 THE COURT: Any requests?
5 MR. HARTE: No, sir.
6 THE COURT: I will charge the law from State
7 versus Ferman Vaughn on voluntary intoxication, for your
8 information. How long you want to argue?
9 MR. SCREEN: Fifteen or twenty minutes, Your
10 Honor.
11 MR. HARTE: That will be fair enough.
12 THE COURT: Not to exceed twenty minutes a
13 side. Testimony has only taken two hours and thirty-
14 minutes. And so with that Madam Forelady, ladies and
15 gentlemen of the jury, you have now heard all the
16 testimony and evidence offered by both the State and the
17 defense. At this time, you will hear the closing
18 arguments and summations by the respective attorneys,
19 after which I will instruct you as to the law applicable
20 to the facts as you may find the facts to be. Please
21 give us your attention. Thank you. You may proceed.
22 (Closing summations by respective attorneys,)
23 THE COURT: Madam Forelady, ladies and
24 gentlemen of this jury, by this indictment, the State of
25 South Carolina charges the defendant at the bar, Timothy

1 F. Green, with the offense of murder. You will have this
2 indictment with you when you go into your jury room for
3 your deliberations and you may give it such reading at
4 that time as you deem proper although I instruct you, it
5 is not evidence, but merely a legal document containing
6 the charges as preferred by the State against this
7 defendant. Now, to this indictment, the defendant has
8 pled not guilty and that plea casts the burden of proof
9 upon the State to prove the defendant, because a person
10 charged with committing a criminal offense in South
11 Carolina is never required to prove one's self innocent
12 because in many instances that might not be possible. I
13 instruct you that it is a cardinal and important rule of
14 the law of evidence, that a defendant in a criminal
15 trial, no matter what the enormity of the charge made
16 against one may be, will always be presumed or thought to
17 be innocent of the crime for which he is indicted until
18 his guilt has been proven by evidence satisfying you, the
19 jury, of that guilt beyond a reasonable doubt. This
20 presumption of innocence does not cease but rather
21 accompanies the defendant from the time of one's
22 appearance throughout the trial and until you have
23 reached a verdict of guilt based upon the evidence
24 satisfying you of that guilt beyond a reasonable doubt.
25 The Supreme Court has said the presumption of innocence

1 is like a robe of righteousness placed about the
2 shoulders of the defendant and it remains with him and
3 assigns him to that class, the innocent, until that
4 presumptive robe of righteousness has been stripped from
5 his person by evidence satisfying you of that guilt
6 beyond a reasonable doubt. So, you can see it is not a
7 mere legal theory and neither is it just a legal phrase
8 and I say to you that it is a substantial right to which
9 everyone is entitled. Now, by the term reasonable doubt,
10 I do not mean some whimsical, imaginary, weak, fanciful
11 or slight doubt, because it is none of those, but rather
12 it is a substantial doubt arising out of the testimony or
13 lack of testimony in the case for which a person,
14 honestly seeking to find the truth, can give a reason.
15 If you have such a doubt in your mind as to whether or
16 not the State has proven this defendant guilty, you
17 should resolve that doubt in his favor and write a
18 verdict of not guilty and acquit him. If, however, on
19 the other hand, the State of South Carolina has
20 established his guilt beyond a reasonable doubt, it would
21 equally be your duty under your oath as jurors, to return
22 a verdict of guilty and to convict him. Now, under the
23 Constitution of the State of South Carolina you, ladies
24 and gentlemen of the jury, are the sole judges of the
25 facts in this case. It was my duty during the trial to

1 rule upon the admissibility of testimony but the weight
2 or probative value of the evidence is entirely up to
3 you. It is your duty to weigh and consider the evidence
4 and so determine what the facts are from the testimony as
5 you heard it from the witnesses upon the stand. I cannot
6 intimate any opinion I may have about the facts in this
7 case and any innuendo or inference that you may have
8 gathered or gleaned from any action or ruling or saying
9 on my part as to what I may think the facts of this case
10 are, or should be, you will please disregard the same
11 because that certainly was not my intention because you
12 are the sole judges of the facts. Hence, you must
13 necessarily pass upon the creditibility or the
14 believability of the witnesses. You have the right to
15 believe many witnesses as opposed to one. You may
16 believe one witness as opposed to many. You may believe
17 a portion of what a witness tells you and disregard the
18 remainder or you may reject a witness' testimony in its
19 entirety, provided there is a sound reason in the record
20 for so doing. Further, in passing upon the believability
21 of witnesses, you may take into consideration the
22 opportunities for observation and knowledge of the
23 matters to which they have testified, as well as any
24 interest or bias or prejudice a witness may have. You
25 may further consider the demeanor or the behavior of the

1 witness upon the stand. In fact, you may consider
2 anything, which in your good judgment, tends to show
3 whether or not a witness is telling the truth. Your
4 objective being to find the truth whether it comes from a
5 witness for the State or from a witness for the
6 defendant. Having thus determined what the facts are, it
7 then becomes your duty to apply the law, as now being
8 charged by this Court to the facts, as found by you, and
9 thereby arrive at a true verdict. I instruct you that
10 the evidence of prior crimes is admissible only as
11 regards the creditability or the believability of a
12 witness. (A child is not disqualified as a witness simply
13 by reason of one's youth or age. There is no precise age
14 which determines a child's competency. This depends on
15 one's capacity and intelligence and understanding of the
16 difference between truth and falsehood and on one's
17 appreciation of one's duty to tell the truth. As with
18 any other witness, you are the sole judges of the
19 believability of a child who testifies. You may consider
20 one's age, one's demeanor on the stand, one's capacity to
21 observe facts and to recreate them, one's ability to
22 understand questions and to answer them intelligently.
23 Whether one impresses you as having an accurate memory
24 and recollection or is a truth telling individual or any
25 other facts and circumstances which impress you as

1 significant in determining one's believability. On the
2 basis of your consideration, you may give a child's
3 testimony such weight as you, in your good judgment, deem
4 or think that it is entitled.)

5 Now, ladies and gentlemen of the jury, by
6 direct evidence of a fact is meant, the testimony of
7 persons who have preceived its existence by means of
8 their senses, as when a person sees a crime committed and
9 comes into court and testifies as to what one saw.

10 By indirect or circumstantial evidence, is
11 meant the proof of some other fact or facts from which,
12 taken either singly or collectively, the existence of the
13 particular fact in question may be inferred as a
14 necessary consequence. Crime may be proven by
15 circumstantial evidence as well as by the direct
16 testimony of eye witnesses and the State can rely partly
17 on direct evidence and partly on circumstantial evidence
18 or can rely upon either or both. Circumstantial evidence
19 is good provided it meets the legal test. To the extent
20 that the State relies on circumstantial evidence, it must
21 prove all the circumstances relied on beyond a reasonable
22 doubt. They must be wholly and in every particular,
23 perfectly consistent with one another and they must point
24 conclusively, that is, to a moral certainty, to the guilt
25 of the accused to the exclusion of every other reasonable

1 hypothesis. That is, they must be absolutely
2 inconsistent with any other reasonable hypothesis and the
3 guilt of the accused. In the consideration of
4 circumstantial evidence, the jury must seek some
5 reasonable explanation thereof, other than the guilt of
6 the accused, and if such reasonable explanation be found,
7 one cannot convict on such evidence. The mere fact that
8 circumstances are strongly suspicious and the defendant's
9 guilt probable, is not sufficient to sustain a conviction
10 because the proof offered by the State must exclude every
11 reasonable hypothesis except that of guilt and must
12 satisfy you, the jury, beyond a reasonable doubt.

13 The two phrases, beyond a reasonable doubt and
14 proof to a moral certainty, are synonymous and the legal
15 equivalent of each other. These phrases connote,
16 however, a degree of proof distinguished from absolute
17 certainty and the reasonable doubt that the law in its
18 mercy, gives the benefit of the accused, is not a weak or
19 slight doubt but rather a serious or strong and well
20 founded doubt as to the truth of the charges.

21 Now, ladies and gentlemen, murder is defined in
22 Code Section 16-3-10 of the 1976 Code of Law as being the
23 unlawful killing of any person with malice aforethought,
24 either expressed or implied. This is the same as common
25 law murder. In order to convict one of murder, the State

1 must not only prove the killing of the deceased by the
2 defendant but that it was done with malice aforethought
3 and that proof must be beyond a reasonable doubt. Malice
4 is defined in the law on homicide as an unlawful killing,
5 as a term of art. That is a **Victim** term importing
6 wickedness and excluding just cause or excuse. It's
7 something that springs from wickedness, from depravity
8 from a heart void of social duty, and mischief. The
9 words express and imply do not mean different kinds of
10 malice but merely the manner in which the only kind known
11 to the law may be shown to exist, that is, either by
12 direct evidence or by inference. Malice may be expressed
13 as with previous threats of vengeance or lying in wait or
14 other circumstances, show directly that an intent to kill
15 was really entertained. Malice may also be inferred as
16 where though no express intent to kill was proven by
17 direct evidence, it is indirectly but necessarily
18 inferred from the facts and circumstances of the case
19 which is proven. Malice may be inferred from the
20 willful, deliberate and intentional doing of an unlawful
21 act without just cause or excuse. In other words, in
22 this general signification, malice means the doing of a
23 wrongful act intentionally and without justification or
24 excuse. But even if facts proven are sufficient to raise
25 an inference of malice such inference would be rebuttable

1 and it's for you, the jury, to determine from all the
2 evidence in the case, whether or not malice has been
3 established beyond a reasonable doubt. Now, ladies and
4 gentlemen, there must be malice aforethought and while
5 the law does not require malice shall exist for any
6 particular length of time before the commission of the
7 act, it must be aforethought. It must be a combination
8 of devious, evil intent and the act producing the fatal
9 results.

10 The State of South Carolina is not required to
11 prove motive. I charge you, some casual relationship must
12 exist between the defendant's alleged act and the death
13 of the deceased. This casual relationship is said to
14 exist when one's act was a proximate cause of the death.
15 A defendant is criminally liable, provided the necessary
16 intent or malice is present. If one's act was a
17 proximate cause of the death, if the death was a natural
18 and probable consequence of his act, the defendant's act
19 may be regarded as a proximate cause if it was a
20 contributing cause of the death. The defendant's act
21 need not be the sole cause of the death provided that it
22 be a proximate cause actually contributing to the death
23 of the deceased. If a wound causes a disease and death
24 results from it, the wound is the cause of death in the
25 eyes of the law and the act of the person who inflicted

1 the wound is a proximate cause therefor. The same is
2 true if death results from the combined effect of a wound
3 so inflicted and of a disease produced by, or contributed
4 to, by the wound but is otherwise if the disease is not
5 connected with the wound in the relationship of cause and
6 effect.

7 I charge you, ladies and gentlemen, it is the
8 law of this State that voluntary intoxication, whether
9 from alcohol or drugs, is never an excuse for or a
10 defense to crime, regardless of whether the crime is one
11 involving general or specific intent. A person who
12 volunteers or renders himself intoxicated is no less
13 responsible for his acts in such condition. If one
14 voluntarily drinks intoxicating liquor, wine or beer or
15 is under the influence of drugs and becomes intoxicated
16 to whatever degree, and if while in that condition,
17 commits an act which would be a crime if it had been
18 committed by a sober person, the fact of drunkenness
19 would not relieve the intoxicated person from
20 responsibility.

21 Ladies and gentlemen of the jury, your verdict
22 must be unanimous. All twelve of you must agree as to a
23 verdict of not guilty or a verdict of guilty. Please
24 derive no inference from the order in which I have stated
25 the forms of verdict to you. As very obviously, when you

1 state two things, you have to state them in some order.
2 At such time, Madam Forelady, as the jury has arrived at
3 a unanimous verdict, I would ask that you please, write
4 that verdict on the bottom right hand corner of this
5 indictment underneath the word "Verdict". You will see I
6 have written here "Guilty" or "Not Guilty". Those are
7 your two forms of verdict. Please write that verdict
8 from a unanimous jury and sign your name as "Forelady"
9 and knock on the door. We will bring you back into the
10 courtroom and receive your verdict at that time.

11 Any objections or additional requests by the
12 State?

13 MR. HARTE: No, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: All right. Madam Forelady, if
17 you'll need any crackers or soft drinks or Tylenol,
18 aspirin, whatever, cigarettes, anything we can get for
19 you to make your stay pleasant and comfortable as
20 possible, please let us know. You are excused to go to
21 your room. Take the exhibits into the jury room, along
22 with the indictment, and you may commence your
23 deliberations.

24 (WHEREUPON, the jury retired to deliberate at
25 4:20 P.M.)

1 (WHEREUPON, at 7:02 P. M., the jury returned to
2 open court to report its verdict.)

3 THE COURT: Madam Forelady, ladies and
4 gentlemen of the jury, have you arrived at a verdict?

5 A. Yes, we have, Your Honor.

6 THE COURT: Please hand it to the lady bailiff
7 and pass it up to the Clerk. Madam Clerk, you may
8 publish the verdict of the jury, please.

9 MADAM CLERK: Yes, Your Honor. We have case
10 number 85-GS-02-847, State versus Timothy F. Green,
11 indicted for murder. Verdict - guilty. Signed, Irene
12 Knight, Forelady.

13 MADAM CLERK: Madam Forelady, ladies and
14 gentlemen of the jury, if this be your verdict, so say
15 you all.

16 (ALL ANSWERED AFFIRMATIVE.)

17 THE COURT: Anything further from this jury .
18 before I excuse them, Mr. Solicitor?

19 MR. HARTE: No, sir, Your Honor.

20 THE COURT: Mr. Screen?

21 MR. SCREEN: No, sir, Your Honor.

22 THE COURT: Madam Forelady, ladies and
23 gentlemen of the jury, when I told you this morning
24 twelve dollars a day wasn't enough, now you know why.
25 It's not a pleasant thing serving on a criminal jury and

1 I realize that. It's not pleasant holding criminal
2 court. It just disturbs me greatly when some people live
3 as they do. You know, you bring children into this
4 world. I think you owe an obligation to them to try to
5 teach them right from wrong and protect them and feed
6 them and clothe them and take care of them. In twelve
7 years I've seen a lot of situations that are a lot of
8 heart break and misery and this case is no exception.
9 Little three year olds are human beings just like you and
10 I and it's a shame when something such as this occurs and
11 I realize it's not a pleasant case for you ladies and
12 gentlemen, to have to listen to. I've had worse, in
13 fact, all of them are bad. Let me please thank you for
14 having been willing to serve on the jury here this week.
15 I can't very well have jury trials without the services
16 of you good ladies and gentlemen who are willing to be
17 away from your jobs and from your families, your work,
18 your play and whatever. And you do indeed, perform a
19 valuable service to your county and to your state and I
20 thank you so much.

21 THE COURT: Anything for the record by the
22 State?

23 MR. HARTE: No, Your Honor.

24 THE COURT: By the defendant?

25 MR. SCREEN: Yes, Your Honor.

1 THE COURT: Be glad to hear from you, sir.

2 MR. SCREEN: On behalf of the defendant, I move

3 for judgment NOV and for a new trial.

4 THE COURT: Let the record reflect, he's moving

5 for a new trial. We don't have a JNOV. He's moving for

6 a new trial.

7 MR. SCREEN: All right, sir.

8 THE COURT: On what grounds?

9 MR. SCREEN: The weight of the evidence as

10 produced from witnesses that the jury heard, doesn't

11 support the verdict.

12 THE COURT: All right, Mr. Screen. As you so

13 well know, the admissibility of testimony, the rules of

14 evidence are upon the Court but the weight or the

15 believability is for the jury. That's their province.

16 The verdict is certainly a proper one. It depends on who

17 they believe. If they had believed the defendant's

18 testimony and brought in a verdict of not guilty, I'd

19 have no qualms with the jury. They believed the State's

20 witnesses or part of yours or all of theirs or whatever

21 portion, and they bring in a verdict of guilty. I have

22 no qualms with the jury and the verdict is entirely a

23 proper one and I respectfully decline to grant your

24 motion, sir.

25 Approach the bench for sentencing. All right

1 Mr. Solicitor, I have the prior record of the defendant
2 as was testified, or as you ask him on cross
3 examination. August 12 of 1981, conviction of forgery.
4 What was his sentence then?

5 MR. HARTE: Your Honor, his sentence was
6 eighteen months suspended upon eighteen months probation.

7 THE COURT: Straight probation for eighteen
8 months. Then October 6th of 1982, which was fourteen
9 months. While he was on probation he was convicted or
10 plead guilty to housebreaking October 6, 1982, according
11 to my notes. What was his sentence?

12 MR. HARTE: Five years suspended upon service
13 of thirty-seven months and thirty-eight months probation.

14 THE COURT: So, of that thirty-seven months --
15 how long were you in jail, Mr. Green?

16 MR. GREEN: A year and four months.

17 MR. HARTE: Your Honor, at that time he also
18 had five months of his previous sentence revoked to run
19 consecutive.

20 THE COURT: Five months consecutive, so he had
21 forty-two months and you served one year and four months
22 or two months.

23 MR. GREEN: Four months.

24 THE COURT: That's twelve and four is sixteen.
25 So you served sixteen months. That would be October 6th

1 of 1983 and another six months, that would be until April
2 the 6th of 1984 when you started your probation of thirty-
3 eight months so you're on probation at this time?

4 MR. POSEY: On parole.

5 THE COURT: You're on parole now?

6 MR. GREEN: Yes, sir.

7 THE COURT: Mr. Posey, check your files and see
8 if this man's on probation or on parole, Timothy Green.

9 MR. POSEY: He's on parole, Your Honor.

10 THE COURT: Parole? What happened to the
11 thirty-eight months probation the Judge ordered?

12 Be glad to hear from you Mr. Screen. Anything
13 you'd like to tell the Court?

14 MR. SCREEN: I don't know exactly what I can
15 tell you, Judge. I understand that you have very little
16 discretion, if any, in the imposition of sentence on a
17 conviction of murder. I would ask you if you decide to
18 revoke any of that time that's left, that you run it
19 concurrent with the sentence.

20 THE COURT: Well, if he's on parole that's a
21 matter within the purview of the Parole Board. If it's
22 on probation then it would be a matter that would be
23 before this Court. If it is probation, any objection to
24 taking it up at this time?

25 MR. SCREEN: No, sir.

1 THE COURT: Sure am interested in seeing the
2 recidivism rate, the return rate, the crime of the
3 probation and the Parole Office. I've had quite a number
4 here in the last two months. You been working while you
5 been in jail, Mr. Green?

6 A. No, sir.

7 THE COURT: All right, no credit for your jail
8 time. Captain Lewis, I would encourage the jail and
9 County Council to adopt a policy, I'm not saying in a
10 murder case that you might not want him to work outside
11 the fence but at least rather than just let them be dead
12 weight, I would encourage you to adopt a policy where
13 you're giving him credit for his jail time. That helps
14 him and it helps the County because you're getting some
15 free work out of them. I ain't talking about making up
16 the bed either. I talking about work. All right, you
17 got seven dollars and seventy-five cents, Mr. Green?

18 A. No, sir.

19 THE COURT: Any member of your family here got
20 it?

21 A. Yes, sir.

22 THE COURT: All right, if you would, come pay
23 the lady for me, please. Under the Governor's law,
24 everybody that goes to jail has to pay seven dollars and
25 seventy-five cents. You on parole or on probation?

1 Thank you, ma'am, otherwise the Clerk would
2 have had to keep a ledger card for twelve or fourteen
3 years or whenever it is that he will get out. Not
4 supposed to be eligible for twenty years but they got a
5 lot of gimmies, credits for work and a lot of other
6 things.

7 MR. POSEY: Your Honor, I can't find a Parole
8 Certificate in this file.

9 THE COURT: Is he on active supervision with
10 your office?

11 MR. POSEY: Yes, sir.

12 THE COURT: For parole or probation?

13 MR. POSEY: He's on parole.

14 THE COURT: So his probation hasn't started?

15 MR. POSEY: On provisional, but let me be sure,
16 Your Honor. Let me check on through this file.

17 THE COURT: It further reflects, Mr. Solicitor,
18 March 16, 1982 on that forgery, that he got a probation
19 then. November 30 of 1982, he had a housebreaking and
20 larceny and he got five months, unlawful possession of
21 Food Stamps, three months, forgery by uttering another
22 forgery, four months CS, I suppose is consecutive. Then
23 October of 1982, housebreaking - one count, five years
24 suspended, thirty-seven months probation.

25 MR. HARTE: That's the one I was giving to you

1 before, now the other one --

2 THE COURT: Why did you miss the other one?

3 MR. HARTE: Your Honor, on the Sheriff's
4 Department record, it just shows the indictment numbers
5 but didn't show the charges and on the SLED record it
6 didn't show at all.

7 THE COURT: Why don't you'all check with the
8 Probation Office for prior records also.

9 MR. HARTE: Well, normally they would have the
10 same thing on the SLED computer that we would.

11 THE COURT: No, sir, they don't. Here's
12 something additional. 'Course Mr. Sanders with Parole is
13 trying to get twenty-one new people so they can clear up
14 a hundred and thirty-three thousand undisposed of Arrest
15 Warrants at SLED. I don't know why the solicitor and the
16 police don't send them in or why they don't tap in to the
17 information the clerk sends in. I don't see why that's a
18 function of Parole.

19 Anything you want to tell me about this case?

20 MR. SCREEN: No, sir.

21 THE COURT: So, provisional parole, that's a
22 matter for the Parole Board. Be sure and include this in
23 your recidivist rate now. When he finishes provisional
24 parole, he will go into the thirty-eight months
25 probation?

1 MR. POSEY: Into the probation, yes, sir.
2 THE COURT: So he was still supposed to be in
3 jail but the Parole Board decided to let him out.
4 MR. POSEY: That's correct, Your Honor.
5 THE COURT: Thank you, Mr. Posey. Anything
6 else from the State?
7 MR. HARTE: No, sir.
8 THE COURT: Anything else from the defendant?
9 MR. SCREEN: No, sir.
10 THE COURT: Anything you want to tell me,
11 Timothy F. Green?
12 A. Yes, sir. I don't feel as though justice was
13 done here tonight and I feel as though I deserve another
14 trial in another county.
15 THE COURT: In another county?
16 A. Yeah, because you know, I don't feel like - I
17 feel like it was a racial matter here and that it was a
18 conflict.
19 THE COURT: A racial matter? All the parties
20 involved were of the same race.
21 A. I'm talking about family-wise, you know what
22 I'm saying?
23 THE COURT: Oh, it was family against family?
24 A. No, it wasn't family against family, it was
25 family against one person in general, one man.

1 THE COURT: Against you?

2 A. And I don't feel like in my heart that I could

3 kill a person and take a person's life and God is my

4 witness to that and I feel as though in the near future

5 he will deliver me. And I have faith in that.

6 THE COURT: Well, keep the faith. But you

7 understand, Mr. Green, that you picked the family, didn't

8 you?

9 A. I did what?

10 THE COURT: You picked the family. You

11 selected Phyllis Price Hill's family. You made that

12 choice, did you not? Well, as I mentioned earlier to the

13 jury just as they were leaving, that such an unpleasant

14 thing, it is really a tragedy when anybody loses their

15 human life, in particular, a three year old, that just

16 really didn't have a chance.

17 A. I lost my Mother, too. What is that? That

18 isn't nothing right, huh?

19 THE COURT: No credit for jail time. Seven

20 dollars and seventy-five cents has been paid. That

21 twenty dollar assessment for Community Corrections be

22 waived due to financial hardship. Sentence of the Court,

23 mandated by law, is that Timothy F. Green be confined to

24 hard labor upon the Public Works at Aiken County or in

25 the State Penitentiary for the balance of his natural

1 life. Good luck to you, Mr. Green.
2 - - -END OF REQUESTED TRANSCRIPT- - -
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CERTIFICATE

I, the undersigned Brenda A. Wingard, Official Court Reporter for the Second 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 evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Aiken County, South Carolina, on the 5th day of March, 1986.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 1, 1986

Brenda A. Wingard
Court Reporter

Brenda A. Wingard
Certified Court Reporter
1765 Huckleberry Drive
Aiken, South Carolina 29801