

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Case No.: 2010-GS-32-01876

State of South Carolina, ... Respondent,

v.

Lexie Dial, III, ... Appellant.

RECORD ON APPEAL
Volume Three

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SC COURT OF APPEALS

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III

1 MR. FLOYD: No, sir.

2 THE COURT: All right. As far as this case, the
3 Court will be in recess until nine thirty in the morn-
4 ing.

5 (Whereupon, the Court was in recess as to this
6 case until April 14, 2011, when the matter was re-
7 sumed.)

8 THE COURT: All right. Anything from the State
9 before we bring in our jury?

10 MR. WATERS: Yes, sir, there is. I believe a
11 couple of matters.

12 First, we need to, for efficiency sake, get my
13 exhibits out.

14 Your Honor, we plan to call Mr. Russell this morn-
15 ing with regards to the confession, and in this regard
16 I remember hearing in the Jackson v. Deno hearing that
17 Detective Russell in speaking with the Defendant was
18 asked how much time homicide by child abuse carried,
19 that he was told it carried twenty to life.

20 That he was asked if you could get PTI for that
21 and was told it was not an option.

22 Your Honor, as I'm sure you are aware, sentencing
23 is not the job of the jury and there can be no men-
24 tion of it in a trial.

25 So I wanted to make sure we are all on the same

1 page with the State's questioning, and with regard
2 to the witness himself so he understands that. Eric
3 Russell, of course, is present here now.

4 Defense Counsel understands that question and
5 that fact that the sentence for homicide by child
6 abuse should not be elicited.

7 I think that is consistent with the rules, and
8 I don't want anything to happen once he gets on the
9 stand that can be a mistake.

10 What I propose to do is have Detective Russell
11 testify that just generally that Mr. Dial asked him
12 about the charge and he might mention he told him what
13 it carried; that he, of course, had no authority to
14 make any promises or anything of that nature.

15 That is in fact what went on, and he knows to
16 avoid any mention of a specific sentence.

17 THE COURT: All right. Mr. Floyd?

18 MR. FLOYD: Your Honor, we would object to the
19 State picking and choosing what portions of the state-
20 ment would be published to the jury.

21 The questions were asked and the questions were
22 answered, and I think the jury has a right to hear
23 the questions and the responses.

24 Furthermore, Your Honor, at this stage anything
25 Lieutenant Russell did question him about would not

1 be allowed because there is still the issue of whe-
2 ther the Defendant was properly arrested before the
3 interview with Detective Russell.

4 MR. WATERS: Your Honor, he is not the next wit-
5 ness but I wanted to bring this up while we had this
6 opportunity.

7 THE COURT: All right.

8 (Pause in the proceeding)

9 THE COURT: Specifically, Mr. Waters, do you have
10 a cite to give me?

11 MR. WATERS: Your Honor, I don't have right now,
12 but I can pull one up. I didn't do any research on
13 whether sentencing is for the jury's consideration.

14 That certainly is throughout the case law that
15 sentencing is not a matter for their consideration.

16 THE COURT: That's not the question. The ques-
17 tion is whether or not the issue that comes up during
18 the statement as far as sentencing goes to the volun-
19 tariness of the Defendant's statement.

20 Looking at State versus Wilburn -- of course,
21 in that case, the State used the fact that the Defen-
22 dant asked questions about sentencing to show that he
23 understood and comprehended the criminal justice sys-
24 tem.

25 MR. WATERS: Right.

1 THE COURT: I understand that, and I think that
2 that is a different issue.

3 I understand that sentencing is not for the jury
4 but those responses are elements of the voluntariness
5 of the statement, and his understanding and such.

6 MR. WATERS: Right, and that is . .

7 THE COURT: So I think that's a different issue.

8 MR. WATERS: This is my concern, and I agree with
9 everything you said.

10 But it is kind of darned if I do and darned if I
11 don't. I didn't want to get in a situation where it
12 came out and we're addressing it first and then Mr.
13 Floyd ask for a mistrial. So as a practical matter,
14 on the other hand, I have to take kind of a long view.
15 That is typically not a matter for the jury consider-
16 ation so I wanted to make sure he was agreeable to
17 that and it was clearly on the record as a procedural
18 matter or whether he was agreeing to let that in.

19 I didn't want to have an issue of a claim of,
20 well, you let in impermissible evidence.

21 So that is kind of the dilemma I was in, and I
22 wanted to be sure to hash this out ahead. If Mr.
23 Floyd is willing to say on the record that that he
24 is in agreement, then I think we can move forward.

25 THE COURT: Mr. Floyd?

1 MR. FLOYD: We're not going to object to it coming
2 in, Your Honor.

3 THE COURT: All right.

4 MR. FLOYD: Okay.

5 MR. WATERS: Thank you, Your Honor.

6 THE COURT: You know, of course, again the pur-
7 pose for which it comes in is a limited purpose as to
8 the voluntariness of the Defendant's statement, not
9 what sentence any defendant may receive in case like
10 this if he or she were found guilty.

11 That is not the issue. That would, of course,
12 be an arbitrary factor in that regard that the State
13 would not want, nor would the Defense, in my opinion.

14 MR. WATERS: And along those lines, I think it
15 would be appropriate -- obviously that that would be
16 an appropriate matter for arguments.

17 THE COURT: It is limited to the issue -- I kind
18 of would analogize it to a prior criminal record.
19 It is limited for the purpose of credibility.

20 The sentencing comes in solely on the issue of
21 the voluntariness or lack of voluntariness of the De-
22 fendant's statement.

23 MR. WATERS: I just don't want there to be an
24 argument where Mr. Floyd is saying you are about to
25 commit the Defendant to twenty years to life or

1 some such thing as that.

2 I agree with you but . .

3 THE COURT: They're not going to do that, and I
4 mean they, the jury -- if they were to find him to be
5 guilty, they wouldn't be sentencing him.

6 At any rate, I'm sure if Mr. Floyd made that
7 argument you would object.

8 MR. WATERS: Yes, sir.

9 THE COURT: You or Madam Attorney General or both.
10 You understand that, Mr. Floyd?

11 MR. FLOYD: Yes, sir, I do. That is very clear
12 and there is no dispute, Your Honor.

13 THE COURT: You have another issue?

14 MS. WEISS: Your Honor, just an issue about sche-
15 duling, and I don't know it will come into play, but
16 it is almost ten o'clock at this point, and we have
17 four witnesses lined up to go this morning.

18 Dr. Luberoff, Dr. Susan Luberoff, is scheduled to
19 come to the Courthouse approximately at one o'clock,
20 and I just didn't know if Your Honor -- I'm just try-
21 ing to work with scheduling so as not to make anybody
22 wait.

23 Would it be possible if we finish a little bit
24 ahead of our typical lunch break schedule to break for
25 lunch so as not to have to call Dr. Luberoff and try

1 to get her here earlier.

2 Sometimes we are not able to manage that.

3 THE COURT: All right. Do you have any objection
4 to that, Mr. Floyd, as far as administratively?

5 MR. FLOYD: No, Your Honor. I've got to line up
6 people myself. I don't have any objection if we have
7 to stop early and start back early.

8 THE COURT: Then I will do that, for the State
9 and for the Defense.

10 All right, so you think, Madam Attorney General,
11 we will get through your four witnesses this morning
12 and then have Dr. Luberoff?

13 Do you think the State will rest sometime in the
14 afternoon, late afternoon maybe?

15 MS. WEISS: Yes, Your Honor.

16 THE COURT: All right, just keep that in mind,
17 Mr. Floyd, as far as your witnesses or as to whether
18 you are going to call any witnesses or offer any tes-
19 timony.

20 Anything further from the State?

21 MR. WATERS: No, Your Honor.

22 THE COURT: From the Defense?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: All right, the Court Reporter informs
25 me that two items were marked 83, the table which was

1 introduced into evidence and the videotape, which I --
2 the shaken baby videotape from the hospital, which I
3 did not allow.

4 The Court Reporter is going to mark the videotape
5 83 A for identification purposes only, and the table
6 will remain 83.

7 All right, bring us our jury.

8 (Jury returned to Courtroom)

9 THE COURT: Good morning, ladies and gentlemen.
10 I hope you all had a pleasant evening.

11 We will continue in the trial of the case by the
12 presentation of evidence and testimony by the State
13 in its case in chief.

14 You may call your next witness.

15 MR. WATERS: Yes, Your Honor. The State would
16 call Detective Shawn Grant.

17 SHAWN GRANT, being duly
18 sworn, testified as follows:

19 CLERK: Have a seat on the witness box, and state
20 your name, spelling your last name for the record,
21 please.

22 WITNESS: Shawn Grant, G R A N T.

23 DIRECT EXAMINATION

24 BY MR. WATERS:

25 Q. Detective Grant, how are you this morning?

MR. GRANT ON DIRECT

1 A. Fine, sir. Yourself?

2 Q. Real well. What is your current position, if
3 you will?

4 A. Major crimes detective, Lexington County Sheriff's
5 Office.

6 Q. And a major crimes detective -- generally, what
7 does that entail? What are your duties?

8 A. We have duties to investigate various crimes, in-
9 cluding homicides, sexual assault, and any kind of
10 death investigation, aggravated assault.

11 Q. Do you prosecute people?

12 A. Yes.

13 Q. And quickly run down if you would your experience
14 in law enforcement?

15 A. I've been in law enforcement for approximately
16 eight years.

17 Q. And all right. Did you start in Richland County
18 or with another agency?

19 A. I began a law enforcement career in 2003 with
20 the Calhoun County Sheriff's Department, and came to
21 Lexington County in 2005.

22 Q. And when did you become a detective?

23 A. I became a detective in 2007, at the end of 2007,
24 after being a school resources officer for two years.

25 Q. All right. Did you have any involvement in the

MR. GRANT ON DIRECT

1 investigation of the death of Joshua Dial?

2 A. Yes, sir, I was the lead investigator in this
3 particular case.

4 Q. And how did you come about being the lead inves-
5 tigator?

6 A. It was assigned to me. I was called to go to
7 the scene when the call came in as a part of the in-
8 vestigative team.

9 Q. So you were assigned as lead investigator?

10 A. Yes.

11 Q. You did go to the scene?

12 A. I did.

13 Q. And when was that?

14 A. It was on January 19th of 2010, at approximately
15 twenty forty-seven hours which equates to eight
16 forty-seven P.M.

17 Q. All right, and where did you respond to?

18 A. To 317 Oakey Springs Drive in the Gaston area of
19 Lexington County, South Carolina.

20 Q. Okay, and when you arrived what was going on?
21 What was going on when you arrived?

22 Tell us what you saw when you got there.

23 A. Well, there was already another detective there.
24 There were a patrol shift supervisor, another deputy,
25 and a crime scene had already been established.

MR. GRANT ON DIRECT

1 Q. And that means putting up the tape?

2 A. Putting up the crime scene tape, yes.

3 Q. And what's the purpose of crime scene tape, if
4 you could explain that to us?

5 A. The crime scene tape is basically to observe the
6 integrity of the crime scene. Where there is anything
7 suspicious that there may be a crime, to develop later
8 on.

9 It is to preserve any type of evidence, to pre-
10 serve the scene.

11 Q. And when you put up that crime scene tape, only
12 authorized personnel are allowed in there. Is that
13 correct?

14 A. Yes, and to prevent any type of contamination.

15 Q. And authorized personnel are trained to not tam-
16 per with what's there or mess with anything?

17 A. Yes. Only people pertinent to that actual scene
18 are allowed.

19 Q. Without getting into any hearsay, did you talk
20 to anybody when you got there?

21 A. Yes, I talked to several officers on the scene,
22 as well as to the Defendant.

23 Q. And do you see the Defendant in the Courtroom to-
24 day?

25 A. Yes.

MR. GRANT ON DIRECT

1 Q. Could you identify him for us?

2 A. He's sitting beside Attorney Floyd, wearing a
3 white shirt and striped tie.

4 MR. WATERS: Your Honor, could the record reflect
5 the Detective has identified the Defendant.

6 THE COURT: It will so reflect.

7 MR. WATERS: Thank you.

8 BY MR. WATERS:

9 Q. You said you talked with the Defendant. If you
10 would, just describe generally how the Defendant was
11 acting and what you talked about?

12 A. Upon being in contact with the Defendant, he ex-
13 emplified a random nonchalance. Upon speaking with
14 him, you couldn't tell there was anything serious
15 going on at the scene.

16 Q. Okay. Just kind of a flat demeanor?

17 A. Right.

18 Q. And where was he when you first talked with him?
19 Where was he?

20 A. When I first arrived, he was basically sitting
21 in the back of another deputy's patrol vehicle.

22 Q. Were his feet in or out of the car?

23 A. His feet were outside of the car, and he was
24 sitting in back of the patrol vehicle.

25 Q. All right. You said a random nonchalant manner.

MR. GRANT ON DIRECT

1 Did you ask him if he was under the influence or any-
2 thing of that nature?

3 A. Well, he comes over as nonchalant, and it kind
4 of stuck in my mind that he was under the influence
5 of some type of narcotic or prescription drug or of
6 alcohol.

7 Q. Because his demeanor didn't seem consistent with
8 the nature of what was going on?

9 A. No, it didn't.

10 Q. Did he make any requests or ask you to do any-
11 thing or about anyone or anything?

12 A. During my time with him, he continued to ask for
13 a cigarette.

14 Q. All right. Did he ever ask about his son or ex-
15 press concern about his son?

16 A. Not until the end of our interaction.

17 REPORTER: I'm sorry.

18 WITNESS: Not until the end of our interaction.

19 BY MR. WATERS:

20 Q. And at the end, what did he ask you?

21 A. Would he able to go to the hospital.

22 Q. All right. What was the nature of your conver-
23 sation with the Defendant? What did you all talk
24 about?

25 A. I asked him who was there at the time when the

MR. GRANT ON DIRECT

1 child was there, and he said it was just him because
2 the child's mother went to work, and he watched the
3 child while she was at work.

4 And I asked him, well, what happened, because
5 when I arrived at the scene it was kind of chaotic
6 and there was not a whole lot of information to assist
7 medical personnel in helping the child.

8 So I was trying to see if I could find out exactly
9 what happened to better assist medical personnel at
10 the hospital in treating the child.

11 And he told me two different stories. The first
12 story he told me was that he was walking with the child,
13 stubbed his toe on a vacuum or carpet cleaner, and he
14 fell on top of the child.

15 The second story he gave me was that he stood
16 up with the child and started to walk and then fell,
17 causing the child to hit his head.

18 Q. Did he say there had been any other injury to the
19 child other than this accident sort of event that he
20 had described to you?

21 A. No.

22 Q. Did he say the child had been acting unusual all
23 day or hadn't been right all day, or anything of that
24 nature

25 A. No, he did not.

MR. GRANT ON DIRECT

1 Q. Did he say the child had been hurt the day be-
2 fore or that morning?

3 A. No, he did not.

4 Q. He described to you just one event?

5 A. That's right.

6 Q. And did he say what happened after this sup-
7 posed accident?

8 A. No, basically our conversation was very limited.

9 Q. All right. What did you do next, Officer Grant?
10 What were your actions?

11 A. I contacted my supervisor to alert him that we
12 needed to get a search warrant for the residence so
13 that we could go in and basically begin to process
14 the crime scene.

15 Through his demeanor, I really -- it was really
16 unsettling to me, and so I gave my supervisor just the
17 general outline of how he was acting, and then I had
18 contacted Deputy Clayton, who had initially responded
19 there, I believe, and . .

20 Q. Let me interrupt you there. Had Deputy Clayton
21 -- that is Deputy Clayton, the K-nine officer, who
22 testified the first day of trial?

23 A. Yes, it is.

24 Q. Continue on.

25 A. Upon speaking with Deputy Clayton, he initially

MR. GRANT ON DIRECT

1 basically corroborated, which means he . . .

2 MR. FLOYD: Objection. That would be hearsay.

3 THE COURT: That is sustained.

4 BY MR. FLOYD:

5 Q. After those discussions, what did you do?

6 A. From what was told to me, then we sought a search
7 warrant for taking a sample of his blood and urine for
8 analysis.

9 Q. Okay, and did you advise the Defendant of that?

10 A. I did.

11 Q. Okay, and did he have any reaction to that?

12 A. No, no reaction, no resistance.

13 Q. And what did you all do next with regard to the
14 samples?

15 A. Well, after arrival of the search warrant, the
16 search warrant for the residence, and the arrival of
17 the search warrant for taking the blood and urine
18 samples, he was transported by another patrol car to
19 the Lexington Medical Center and I followed them.

20 Q. You followed behind when he was transported?

21 A. Yes, I followed.

22 Q. Do you know which deputy transported him?

23 A. It was Deputy Steele.

24 Q. Deputy Steele, who testified the first day?

25 A. It was.

MR. GRANT ON DIRECT

1 Q. And was he in uniform?

2 A. Yes, he was.

3 Q. And once you transported him to Lexington Hosital
4 for the samples, was he under arrest at that time?

5 A. He was not under arrest.

6 Q. Was he handcuffed or anything like that?

7 A. No, he wasn't handcuffed either.

8 Q. Once you arrived at Lexington Hospital, what
9 happened next?

10 A. We got him out of the car and we had to go through
11 the procedures for obtaining the actual samples at the
12 Lexington Medical Center and we waited in a waiting
13 area near the laboratory.

14 Q. And did you see those samples being taken?

15 A. Yes. I remained with him while he was giving
16 the samples at the hospital. I stood -- it's a bath-
17 room there and I stood at the door between the hallway
18 where I could actually see him, but his back was to me
19 so I didn't see him urinating into the cup.

20 Once that was done, it was put into a tamper-
21 proof vessel and medical personnel obtained the blood
22 sample. I observed them obtaining the blood sample
23 from the person of the Defendant.

24 Q. And what did you do with those samples once they
25 were obtained?

MR. GRANT ON DIRECT

1 A. I took those samples in the tamper-proof container
2 then I secured those samples and took them back to
3 the Lexington County Sheriff's Department, the samples
4 of those things, for preservation.

5 They were logged into the refrigerator and secured
6 to be sent to SLED for further analysis.

7 Q. They were put in a protected area where they
8 could not be tampered with?

9 A. Yes.

10 Q. And were they ultimately sent somewhere?

11 A. They were sent to the State Law Enforcement Di-
12 vision or SLED.

13 Q. And they were analyzed and what came back was
14 Phenergan as Ms. Sorrells testified two days ago, is
15 that correct?

16 A. That's correct.

17 Q. And that was the only thing that was found in
18 the Defendant's blood?

19 A. Yes.

20 Q. A medication for nausea?

21 A. Yes.

22 MR. WATERS: We'll let the Court Reporter catch
23 up for a moment.

24 REPORTER: Yes, I did.

25 BY MR. WATERS:

MR. GRANT ON DIRECT

1 Q. What about -- did you ever have any conversation
2 -- I don't want any hearsay, but did you ever have
3 any conversation with the doctors at the hospital as
4 to -- about the nature of Joshua's injuries?

5 A. The following day, Lieutenant Russell and I re-
6 turned to the hospital, where we made contact with
7 several doctors there.

8 Q. Did you discuss the injuries?

9 A. Yes, we did.

10 Q. I don't want any hearsay.

11 A. Okay, we discussed the injuries to the child.

12 Q. After discussing the injuries to the child, and
13 seeing the Defendant's versions, did you all make a
14 decision to take any action?

15 A. After obtaining all the evidence and the expres-
16 sions in totality of the officers, the varying accounts,
17 and after discussions with medical personnel, we . .

18 MR. FLOYD: Objection, Your Honor, and move
19 that that be stricken.

20 THE COURT: That would be hearsay as far as the ac-
21 counts of the medical personnel. There is a motion to
22 strike which I will grant.

23 You are not to consider that statement in your
24 deliberations in this case.

25 BY MR. WATERS:

MR. GRANT ON DIRECT

1 Q. I'm not asking for what they told you, but just
2 what you did as a result of what they told you.

3 Let me ask you, what doctors did you talk to?
4 Do you recall?

5 A. Most notable, Dr. Luberoff.

6 Q. All right, and continue with what happened as a
7 result of that conversation.

8 A. After gathering all the facts, we presented --
9 had another officer present probable cause before a
10 Judge, the probable cause to obtain an arrest warrant.

11 Q. And was there a particular procedure that you
12 needed to follow in this particular case in regards
13 to the arrest?

14 A. Yes. Being that Detective Russell and I were
15 actually in Richland County at the hospital, we called
16 into the Lexington County Sheriff's Department head-
17 quarters and talked to another detective; advised him
18 of what we had as to probable cause, and at that time
19 he was in before a Judge.

20 Once that warrant was obtained, we knew we were
21 in another County, so we called the warrant into
22 NCIC, the national police computer.

23 Q. All right.

24 A. The warrant was obtained, you know, by another
25 officer who works with the U. S. Marshall's task

MR. GRANT ON DIRECT

1 force, where he has jurisdiction to make a legal ar-
2 rest.

3 MR. FLOYD: Objection, Your Honor. That would
4 be hearsay.

5 THE COURT: I would overrule that objection.

6 BY MR. WATERS:

7 Q. Well, let me ask you this. Is it routine and
8 typical practice for officers on the scene to provide
9 information back to an officer at headquarters, who
10 had access to computers and printers, to prepare that
11 warrant?

12 A. It is fairly standard.

13 Q. And is it a typical practice and procedure when
14 you are needing to make an arrest in another county,
15 to contact the officers that have that State-wide
16 jurisdiction?

17 A. Yes, it is.

18 Q. Who is the officer that you contacted?

19 A. Sergeant Henry Dukes.

20 Q. Did he have that State-wide jurisdiction?

21 A. Yes, he did.

22 Q. All right. What was the initial warrant for?

23 A. The initial warrant was for inflicting great
24 bodily harm upon a child.

25 Q. All right, and at the time you sought that, was

MR. GRANT ON DIRECT

1 Joshua still alive?

2 A. Yes, he was still alive at the time.

3 Q. All right, and did Joshua subsequently pass away?

4 A. Yes, he did.

5 Q. And when did that occur?

6 A. Joshua passed away at approximately fourteen O
7 six hours, or two O six P.M.

8 A. And was that after the initial warrant had al-
9 ready been entered into NCIC?

10 A. Yes, that initial warrant had. It was entered.

11 Q. And after that, did you make any request to the
12 officer back at headquarters with regards to the
13 warrant?

14 A. After the child died, we asked that that warrant
15 be recalled and that another warrant be obtained for
16 homicide by child abuse.

17 Q. All right, and who was the officer back at head-
18 quarters who was handling the warrant issues?

19 A. Detective Rivera.

20 Q. All right. Were you present when Mr. Dial was
21 arrested?

22 A. I was.

23 Q. Was he allowed to see his son before he was ar-
24 rested?

25 A. He was.

MR. GRANT ON DIRECT

1 Q. All right, and after that what happened with re-
2 gards to the arrest?

3 A. After the Defendant had been allowed to see the
4 child, after the child passed away, the Defendant was
5 escorted from the room and into a separate room, and
6 he was discreetly placed into handcuffs.

7 Q. Who was the person who officially and actually
8 made that arrest?

9 A. Sergeant Dukes.

10 Q. That's the one who had the State-wide jurisdic-
11 tion?

12 A. Yes.

13 Q. How did this arrest go? Did anybody rough him
14 up or was anybody mean to him, or was it a peaceful
15 process?

16 A. It was a peaceable process.

17 Q. Okay, and where did the Defendant go after that?

18 A. The Defendant was escorted out of the hospital.

19 Q. Who was escorting him?

20 A. Sergeant Dukes and another officer with the U. S.
21 Marshall's task force.

22 Q. And did Detective Russell go with them as well?

23 A. Yes, he did.

24 Q. Did you go back with them with the Defendant,
25 or did you stay at the hospital?

MR. GRANT ON DIRECT

1 A. I remained at the hospital.

2 Q. Did you -- were you present when any sort of pro-
3 cedure was done on Joshua's eyes?

4 A. I was in the room when Nurse Emory arrived to
5 take photographs of Joshua's eyes.

6 Q. And Nurse Emory was the nurse who testified yes-
7 terday or day before -- excuse me?

8 A. Yes.

9 Q. And you observed her take the camera and take
10 the pictures of Joshua's eyes?

11 A. I did.

12 Q. Were you able to see those pictures as they were
13 being taken?

14 A. Yes. As they were being taken, they were dis-
15 played on a laptop, where it was recording all the
16 images being seen by the camera.

17 Q. And the images of the eyes that Dr. Cheeseman
18 showed the jury, were those the images you saw as
19 well?

20 A. They were.

21 Q. And, again, I don't want to get into any hearsay,
22 but did you ever make contact with Michael Szenas?

23 A. Yes.

24 Q. And did you take a statement from Michael Szenas
25 as to what he observed?

MR. GRANT ON DIRECT

1 A. I did.

2 Q. And he's the individual who testified, the
3 neighbor?

4 A. Yes.

5 MR. WATERS: Your Honor, that would be all the
6 questions I would have.

7 THE COURT: Thank you. Mr. Floyd.

8 MR. FLOYD: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. FLOYD:

11 Q. Detective Grant, you had never met Lexie Dial
12 before that, had you?

13 A. No, sir, I hadn't.

14 Q. You don't know what his normal demeanor is?

15 A. No, I don't.

16 Q. You don't know what his demeanor is in response
17 to tragedy?

18 A. No.

19 Q. And let me make sure I got something right. You
20 initially got a warrant for inflicting great bodily
21 harm on a child, is that right?

22 A. That was before the child died, yes.

23 Q. You never served that warrant -- you never
24 served that warrant on the Defendant?

25 A. No, sir. That warrant was on NCIC prior to the

MR. GRANT ON CROSS

1 arrest.

2 Q. And didn't you just say you withdrew that war-
3 rant and got another warrant for homicide by child
4 abuse?

5 A. Yes. After the child died.

6 Q. And the other warrant never was served on the
7 Defendant, was it?

8 A. . . .

9 Q. The great bodily harm one?

10 A. It was on NCIC before he was placed under ar-
11 rest.

12 Q. Was it ever served on the Defendant?

13 A. That warrant was never served officially on him,
14 but it was on NCIC once he . . .

15 Q. And that . . .

16 THE COURT: Please, please.

17 MR. FLOYD: I'm sorry.

18 THE COURT: The Reporter can't take two people
19 talking at the same time.

20 Answer Mr. Floyd's question that he asked, and
21 then after he answers, Mr. Floyd, ask another ques-
22 tion.

23 You may ask your question again.

24 MR. FLOYD: Thank you.

25 BY MR. FLOYD:

MR. GRANT ON CROSS

1 Q. Was the warrant for infliction of great bodily
2 harm ever physically served on the Defendant?

3 A. Again, the warrant . .

4 THE COURT: Let me stop you a minute. You can
5 answer yes or no, and then you can explain your an-
6 swer.

7 A. No, the warrant was never physically served, but
8 it was on NCIC. Once an individual is transported
9 back to the Richland County Sheriff's Department, the
10 warrant -- that's when the warrant was actually phy-
11 sically served. When the actual paper was served on
12 the individual.

13 Q. Was the infliction of great bodily harm ever, ever
14 served on the Defendant?

15 A. Not that particular warrant.

16 Q. Now, in fact, that warrant was withdrawn and it
17 was replaced with the warrant for homicide by child
18 abuse after the death of the child?

19 A. Yes, which contained the same facts, including
20 the death of the child.

21 Q. At the time you got there to the home in Oakey
22 Springs, the Defendant was already out of the house
23 and seated in a patrol car, is that correct?

24 A. Yes.

25 Q. Now, did he resist you in any way?

MR. GRANT ON CROSS

1 A. No.

2 Q. Did he cooperate with you in every way?

3 A. Yes.

4 Q. And he voluntarily gave the samples, is that
5 correct?

6 A. Yes.

7 Q. Gave the blood and urine samples?

8 A. Yes.

9 Q. And when you asked him if he had consumed any
10 alcohol or narcotic drugs, he said no?

11 A. That's correct.

12 Q. And he gave the samples, and the samples came
13 back negative, is that correct?

14 A. Yes, except for Phenergan.

15 Q. But no narcotic drugs and no alcohol?

16 A. No.

17 Q. And the photographs we saw of the eyes, those
18 were not taken until after he was arrested, is that
19 correct?

20 A. Yes, after he was transported back after the
21 child died, yes.

22 Q. Thank you. No further questions.

23 THE COURT: Redirect?

24 MR. FLOYD: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

MR. GRANT ON REDIRECT

1 BY MR. WATERS:

2 Q. The warrant for inflicting great bodily injury,
3 that was NCIC before the arrest was made, is that
4 correct?

5 A. Correct.

6 Q. All right, and what time did the child die?

7 A. That was approximately fourteen O six hours,
8 which was two zero six P.M.

9 Q. Okay, and by the time the Defendant had been
10 transported back to Lexington County, the warrant
11 for homicide by child abuse had been prepared, and
12 that was one that was served and the paper that ws
13 ultimately given to the Defendant, is that right?

14 A. That's correct.

15 Q. And there is nothing wrong with that procedure,
16 is that correct?

17 A. . .

18 MR. FLOYD: Objection, Your Honor. That is for
19 the trial judge.

20 THE COURT: You are correct. That is a decision
21 for the Trial Judge.

22 MR. FLOYD: Thank you, Your Honor.

23 MR. WATERS: Nothing further.

24 THE COURT: Anything on Recross?

25 MR. FLOYD: Nothing further.

1 THE COURT: Thank you very much, Detective.

2 You may step down.

3 (Witness excused from stand)

4 THE COURT: You may call your next witness.

5 MR. WATERS: Thank you. We would call Detective
6 Rivera.

7 THE COURT: Come around and be sworn for us,
8 please.

9 LUIS RIVERA, being duly
10 sworn, testified as follows:

11 CLERK: Take a seat in the witness box and state
12 your name for the record, spelling your last name,
13 please.

14 WITNESS: Luis Manwell Rivera, Junior.

15 CLERK: Spell your middle name.

16 WITNESS: Manwell, M A N W E L L, and last name
17 is Rivera, R I V E R A.

18 DIRECT EXAMINATION

19 BY MR. WATERS:

20 Q. Detective Rivera, how are you doing today?

21 A. Fine, sir. How about you?

22 A. Doing well. Could you tell the jury what your
23 position is?

24 A. Major crime and gang investigator for the Lex-
25 ington County Sheriff's Department.

MR. RIVERA ON DIRECT

1 Q. And you heard Detective Grant describe what he
2 does. Is that pretty much what you do as well?

3 A. Pretty much, in addition to dealing with the
4 gangs. Gangs in the area.

5 Q. And could you just quickly run down your law en-
6 forcement experience?

7 A. I began in 1998 with the City of Cayce as a pa-
8 trol officer and supervisor on the road.

9 I came to Lexington County in 2002 where I was
10 also a road deputy and supervisor, and I was promoted
11 to detective around the same time Detective Grant
12 was.

13 Q. Okay. So in January of 2010, was that your
14 role?

15 A. Yes.

16 Q. Did you have any involvement in the investigation
17 into the death of Joshua Dial?

18 A. I did, sir.

19 Q. And could you describe what that roll was?

20 A. I received a phone call from Detective Russell.

21 Q. Is he in the Courtroom?

22 A. Yes, he is.

23 Q. Would you point him out?

24 A. Detective Russell is sitting there with the
25 glasses in the dark suit.

MR. RIVERA ON DIRECT

1 Q. Is he one of your fellow detectives in major
2 crimes as well?

3 A. He is.

4 Q. All right. Continue on, please.

5 A. I got a call from Detective Russell, and he asked
6 if I would obtain a warrant for Mr. Dial in reference
7 to inflicting great bodily harm on a child.

8 He gave me the facts of the case as he knew them.

9 Q. All right. Let me ask you, real quick there, if
10 that is an accepted and typical routine practice for
11 officers on the scene to provide information back to
12 officers who may be at headquarters to prepare and to
13 receive warrants?

14 A. Yes, it is.

15 Q. Tell me what you did.

16 A. I obtained the -- I did all the paperwork to get
17 the warrant, sent the paper work to the Judge's office
18 via Email. I went and presented the case to the
19 Judge and . .

20 Q. You physically went over there and talked to the
21 Judge?

22 A. Yes.

23 Q. Go on.

24 A. I went to the Judge and was sworn in to give
25 the facts of the case as I knew them, and he issued the

MR. RIVERA ON DIRECT

1 warrant.

2 Q. And that was in the Magistrate's Office?

3 A. Right.

4 Q. What happened next? What did you all do next?

5 A. Because -- Detective Russell advised me prior to
6 getting the warrant that they were in Richland County,
7 so I went ahead and faxed the papers over to the
8 Records Division and had them enter the warrant into
9 NCIC which is a national crime computer.

10 Q. Okay, and when did the facts arrive in Records?

11 A. The time was approximately one thirty-eight.

12 Q. P.M.?

13 A. Yes, sir.

14 Q. What date?

15 A. This would be on January 20.

16 Q. January 20, 2010?

17 A. January 20, 2010.

18 Q. All right, and you said they did what?

19 A. Entered it into the NCIC warrant file.

20 Q. And what time was entered into NCIC?

21 A. The warrant was approximately entered into NCIC
22 at -- before two hundred hours, which is two o'clock
23 P.M.

24 Q. All right. After that, did you advise anyone it
25 had in fact been entered into NCIC?

MR. RIVERA ON DIRECT

1 A. Yes. Once I had the paperwork, I contacted De-
2 tective via phone and let him know the warrant was in
3 NCIC.

4 Q. Is that a typical and routine practice?

5 A. Yes, it is.

6 Q. All right. Did you ever receive any further
7 phone call in regard to this matter?

8 A. Yes, I got a call from Detective Russell. He
9 advised me that the child had . .

10 MR. FLOYD: Object to any hearsay.

11 MR. WATERS: This is not offered for the truth
12 of the matter.

13 THE COURT: I would sustain the objection. You
14 can rephrase the question.

15 BY MR. WATERS:

16 Q. Without going into what he said, did you have a
17 subsequent phone call?

18 A. Yes, I did.

19 Q. And as a result of that phone call, did you do
20 anything?

21 A. Yes, I did. I obtained a phone call and went
22 ahead and did the same procedure; typed up a warrant
23 and actually edited the narrative and added the new
24 information on the fact that it was now a homicide
25 by child abuse.

MR. RIVERA ON DIRECT

1 Q. That was the only two differences between the
2 warrants?

3 A. Yes.

4 Q. And what did you do with that warrant?

5 A. I went ahead and sent it to the bond court via
6 Email also. Judge Jeffcoat, at that time.

7 I was sworn in and advised him of the facts, and
8 he issued a warrant.

9 Q. You physically went before the Judge and told --
10 presented that warrant?

11 A. Yes.

12 Q. All right, and what did you do with that warrant
13 after that was done?

14 A. That warrant was taken back through our own pro-
15 cedure to the warrants division where they stamped it
16 to go ahead and enter it.

17 Q. And did you give that warrant to anyone?

18 A. Detective Russell arrived, and that warrant was
19 turned over to him.

20 Q. I don't have any further questions. Please
21 answer any questions Defense Counsel may have for you.

22 THE COURT: Mr. Floyd.

23 CROSS EXAMINATION

24 BY MR. FLOYD:

25 Q. Detective Rivera, when you got the original

MR. RIVERA ON CROSS

1 warrant in this case, did you express the facts be-
2 fore the Judge?

3 A. Yes, I did.

4 Q. And did you have any personal knowledge of the
5 facts of the case?

6 A. I did not have any personal knowledge.

7 Q. All right, and this second warrant you swore on
8 to the Judge, . .

9 A. Yes, sir.

10 Q. . . did you have any personal knowledge of those
11 facts?

12 A. No, sir.

13 Q. And when was the second warrant issued?

14 A. The second warrant was issued shortly after I got
15 the phone call from Detective Russell.

16 Q. And when was it entered in NCIC?

17 A. I do not have that paperwork. I don't know when
18 it was entered into NCIC.

19 Q. You got the paper work and got the warrant and
20 it was entered into NCIC?

21 A. Yes, sir.

22 Q. But you don't have the time?

23 A. No, I do not. The warrant was stamped on the
24 face of it, but I don't have that warrant with me.

25 The warrant was stamped on the face.

MR. RIVERA ON CROSS

1 Q. So you would have gotten a call from Detective
2 Russell, and you would have -- where were you when
3 you received the call?

4 A. I was at headquarters.

5 Q. And where is that located?

6 A. At 521 Newsome Road in Lexington.

7 Q. And you had to add something else on it, is that
8 correct?

9 A. All I actually had to do was -- the initial af-
10 fidavit was still on the computer, and all I had to
11 do was add the new facts to the warrant.

12 Q. And then you would have had to walk over to the
13 bond court?

14 A. Yes, sir.

15 Q. And catch the Judge?

16 A. Yes.

17 Q. Where the warrant would be issued?

18 A. Yes, sir.

19 Q. And how much time would that take, just approxi-
20 mately?

21 A. Anywhere from ten to fifteen minutes.

22 Q. In the ten to fifteen minute range?

23 A. Yes.

24 Q. And you can't tell us when it was entered in
25 NCIC?

MR. RIVERA ON CROSS

1 A. No, sir. I don't recall.

2 Q. What is involved in putting it in NCIC?

3 A. When we have someone that -- when we are trying
4 to serve a warrant outside the County, we enter the
5 warrant in NCIC.

6 Once agencies are up with the person that is
7 wanted, with that NCIC or what we will call a NCIC
8 hit, they will send us a request saying, is this a
9 valid warrant or do you have a valid warrant for this
10 person?

11 Yes, we have a warrant and you can make the ar-
12 rest on that NCIC hit.

13 At that time, that person is arrested and they
14 are turned over to Lexington County where they are
15 taken to the detention center or we pick them up, but
16 they are turned over to our officers.

17 Once they get to the Sheriff's Department or to
18 the detention center, at that time the warrant is
19 served.

20 Q. So the NCIC entry authorizes the arrest of an
21 individual outside the jurisdiction that requests it?

22 A. Yes.

23 Q. Somewhere outside of Lexington?

24 A. Yes, sir.

25 Q. But you can't tell us when that was done?

MR. RIVERA ON CROSS

1 A. The first one was done at two o'clock.

2 Q. But you can't tell us when the second one was
3 done?

4 A. I cannot tell you when the murder warrant was
5 put in.

6 Q. It would have had to be after the fifteen min-
7 utes or so it took you to get it issued?

8 A. That's right.

9 Q. Thank you, no further questions.

10 THE COURT: Redirect?

11 MR. WATERS: Yes, sir, just very briefly.

12 REDIRECT EXAMINATION

13 BY MR. WATERS:

14 Q. You were asked about whether you had personal
15 knowledge of the facts in the warrant that you pre-
16 pared.

17 Is it a typical and accepted and routine practice
18 for officers on the scene to provide those facts to
19 the officer at headquarters to seek the warrant?

20 A. Yes.

21 Q. Is that commonly done?

22 A. Yes.

23 Q. And you rely on your colleagues that you know
24 are in the field?

25 A. Yes.

MR. RIVERA ON REDIRECT

1 Q. Let's talk a little bit about NCIC.

2 Is it necessary for a warrant to be in NCIC if
3 the warrant is being served to a Defendant who lives
4 in that county?

5 A. Usually we don't -- when we put a warrant into
6 NCIC, it's because we don't have that person there.
7 That way if an officer stops someone, they run their
8 name and they come back with a warrant.

9 We don't have to put a warrant in NCIC. It is --
10 it is up to us, and we do it when we try to catch
11 somebody who is not there physically so that we have
12 custody.

13 Q. Physically and in the County or in your custody?

14 A. Or in our custody.

15 Q. Is there a normal or typical routine practice
16 when you are seeking someone that is outside the
17 jurisdiction of your County that particular officers
18 within your department have that ability to serve a
19 warrant outside of Lexington County?

20 A. Yes.

21 Q. And is one of these police officers Sergeant
22 Dukes?

23 A. Yes.

24 Q. And is he the one who affected the arrest in
25 this case?

MR. RIVERA ON REDIRECT

1 A. To my understanding he is.

2 Q. Nothing further.

3 THE COURT: Recross, Mr. Floyd?

4 MR. FLOYD: Nothing further, Your Honor.

5 THE COURT: Thank you. Detective Rivera, you
6 may step down.

7 (Witness excused from stand)

8 THE COURT: All right, you may call your next
9 witness.

10 MR. WATERS: Thank you. We would call Henry
11 Dukes, Your Honor.

12 THE COURT: All right, come around to be sworn,
13 sir.

14 HENRY DUKES, being duly
15 sworn, testified as follows:

16 CLERK: Take the witness box and state your full
17 name for the record, spelling your last name.

18 WITNESS: Henry Dukes, D U K E S.

19 DIRECT EXAMINATION

20 BY MR. WATERS:

21 Q. How you doing today?

22 A. Doing fine, sir.

23 Q. Back in January of 2010, what was your position?

24 A. I was a Sergeant with the Lexington County
25 Sheriff's Department, assigned to the U. S. Marshall's

MR. DUKES ON DIRECT

1 Service task force.

2 Q. And as a part of the U. S. Marshall's fugitive
3 task force, does that give you any particular abili-
4 ties beyond just those of a regular Lexington County
5 Officer?

6 A. Yes, sir.

7 MR. FLOYD: Excuse me, Your Honor. If he is
8 going to testify that he had authority to arrest out-
9 side of Lexington County, that would be hearsay.

10 We would require them to prove that with some
11 documentation.

12 THE COURT: Please step out, ladies and gentlemen,
13 and leave your notes upside down on your chair.

14 (Jury excused from Courtroom)

15 THE COURT: I'm not sure I understand that objec-
16 tion, Mr. Floyd.

17 That's why I asked the jury to step out.

18 MR. FLOYD: Thank you, Your Honor. Your Honor,
19 in order for a Lexington County deputy to arrest
20 someone outside of the jurisdiction of Lexington
21 County, there must be some governmental agreement to
22 authorize that arrest, as you would have under certain
23 statutes.

24 I would pass up to Your Honor the case of -- a
25 recent Supreme Court case that you are probably very

MR. DUKES ON DIRECT

1 familiar with, a Lexington County case, . .

2 THE COURT: Give me a -- thank you.

3 MR. FLOYD: Your Honor, there are agreements in
4 some counties that they have with each other to allow
5 an officer to come in and make an arrest, but those
6 agreements would have to be strictly followed by the
7 statutes that authorize such agreements.

8 The only way that he could have authority to
9 make an arrest outside of the County of Lexington was
10 with some kind of governmental agreement that was ap-
11 proved by the Lexington County governing body.

12 Unless they can establish that, then he would
13 have no authority to arrest outside of Lexington
14 County.

15 THE COURT: All right. Mr. Waters?

16 MR. WATERS: Thank you, Judge. Obviously, Ser-
17 geant Dukes here has his credentials, showing his
18 membership in the U. S. Marshall's Task Force.

19 I think an officer is certainly capable of tes-
20 tifying to his capabilities in that regard.

21 Moreover, beyond that, we already have evidence
22 in evidence without objection as to his State-wide
23 jurisdiction and his ability to make that arrest, and
24 that that is the routine and typical practice of the
25 agency to affect an arrest outside the County in that

MR. DUKES ON DIRECT

1 regard.

2 So I think he can certainly testify to that. He
3 has credentials right there that display that capa-
4 bility.

5 There has been no evidence presented that there
6 is any problem with that.

7 So I think he's capable of giving that testimony
8 at this time.

9 THE COURT: What are those -- I can't quite wrap
10 my mind around the names of those multi-jurisdictional
11 drug cases, Mr. Floyd.

12 I know there were some issues with those several
13 years ago. Whether or not the Court answered the
14 Counties that signed those . .

15 MR. FLOYD: Yes, and there were rulings that some
16 of those agreements that were in place were not
17 valid.

18 THE COURT: Because they had not been signed at
19 the proper time.

20 MR. FLOYD: That's correct.

21 THE COURT: But even before that -- my question
22 is -- I have several questions. Why is this even
23 relevant to the jury? His arrest or the authority to
24 make the arrest?

25 It might be relevant as to whether or not the

MR. DUKES ON DIRECT

1 arrest was valid.

2 Just like with a search warrant, once I decide
3 the search warrant was valid, it is not an issue for
4 the jury.

5 MR. FLOYD: Oh, I agree it is not -- that is why
6 I am making the motion. I knew you would have to rule
7 on it outside the presence of the jury, and that it
8 would be really the Court's decision.

9 MR. WATERS: Your Honor, I know Mr. Floyd has
10 raised this issue, and I just wanted to ensure that
11 there was no question or issue with regard to that ar-
12 rest.

13 That Mr. Floyd -- since it is not a matter for
14 the jury, if there is any problem with that -- this is a
15 case that deals with the agreements between state,
16 county or local law enforcement -- I don't have the
17 cite at the moment, but it talks about referral -- I
18 believe the statute talks about referral, officer re-
19 ferral, and State-wide jurisdiction, and that is what
20 we're talking about here.

21 I believe Mr. Dukes has federal jurisdiction,
22 based on his membership in the Marshall's Service.

23 THE COURT: Well, you can certainly have an in-
24 camera hearing, and I will make that decision.

25 You may proceed.

MR. DUKES IN CAMERA

1 (The following testimony was taken out of the
2 presence of the jury)

3 BY MR. WATERS:

4 Q. Mr. Dukes, you mentioned you were a member of
5 the U. S. Marshall's Task Force, is that correct?

6 A. Yes, sir. I'm a special deputy, a sworn special
7 deputy with the United States Marshall's Service Task
8 Force.

9 Q. And you were sworn in by whom?

10 A. At the time it was U. S. Marshall Johnny Mack
11 Brown.

12 Q. At the -- in January of 2010, were you a member
13 of that?

14 A. Yes, sir.

15 Q. And when you affected the arrest of the Defen-
16 dant were you a member of that?

17 A. Yes.

18 Q. Do you have credentials showing that authority
19 with you?

20 A. Absolutely, I do.

21 Q. Can you show them to me?

22 A. Yes, sir.

23 THE COURT: Show them to Mr. Floyd first.

24 (Brief pause in proceeding)

25 THE COURT: All right, would you make a copy of

MR. DUKES IN CAMERA

1 this, Madam Clerk?

2 CLERK: Yes, sir.

3 THE COURT: We'll be in recess for fifteen min-
4 utes.

5 (Whereupon, the Court took a brief recess, after
6 which the matter resumed)

7 THE COURT: All right, you may proceed, Mr.
8 Waters.

9 REPORTER: It will be Court's 2.

10 THE COURT: You may proceed.

11 MR. WATERS: Your Honor, with regards to the cre-
12 dential issue, I apologize for that. I was not aware
13 of that limitation.

14 My research is that the only acceptable method
15 is to coordinate the name and the number and the
16 agency of the individual.

17 In that regard, the officer that we have here
18 . . .

19 THE COURT: I'm not concerned about that. I'm
20 concerned about this officer's authority to make an
21 arrest in Richland County. That's the issue before
22 this Court.

23 MR. WATERS: Yes, sir.

24 THE COURT: You can report me to the United
25 States Attorney, if you want, Mr. Attorney General.

MR. DUKES IN CAMERA

1 I don't have any objection to that whatsoever. I am
2 trying to run this Court . .

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

4 THE COURT: . . and I am concerned about the
5 authority of this officer to make an arrest in
6 Richland County.

7 You may proceed on that issue.

8 MR. WATERS: Yes, Your Honor. Under 23 1 212,
9 and I apologize I don't have a copy of that right
10 here but maybe you can pull it up there.

11 That statute does give federal officers, and
12 that includes their marshalls and deputy marshalls --
13 gives them certain powers, and one of those includes
14 the powers of a South Carolina law enforcement offi-
15 cer, which would have State-wide jurisdiction to make
16 an arrest.

17 So I would assert that under that statute and
18 under the powers he had as a deputy marshall that an
19 arrest in Richland County would be valid.

20 That it is accepted in the course of business of
21 the State.

22 THE COURT: Anything further?

23 MR. WATERS: Not at this time.

24 THE COURT: Thank you. Mr. Floyd?

25 MR. FLOYD: Well, Your Honor, a couple of things.

MR. WATERS IN CAMERA

1 First, I don't believe . .

2 THE COURT: Do you have any questions of Mr. Dukes?

3 QUESTIONS OUT OF THE PRESENCE OF THE JURY

4 BY MR. FLOYD:

5 Q. Mr. Dukes, do you have any -- a copy of any au-
6 thorization which would authorize you to make an arrest
7 in Richland County?

8 A. No, sir, I don't.

9 Q. Thank you.

10 MR. FLOYD: No more questions.

11 THE COURT: Thank you, you may step down, Sergeant
12 Dukes.

13 (Witness excused from stand)

14 THE COURT: All right, I'll be glad to hear from
15 you.

16 MR. WATERS: From me, Your Honor?

17 THE COURT: Mr. Floyd was speaking and I asked
18 if he had any questions. He asked one question and
19 sat back down.

20 MR. FLOYD: Your Honor, I beg your pardon.

21 THE COURT: Yes, sir.

22 MR. FLOYD: First of all, 23 1 212 does not
23 apply in this case. That applies to full time fed-
24 eral law enforcement officers employed by a federal
25 or state agency.

1 Secondly, his credentials say he can only make
2 an arrest at the Marshall's direction in Lexington
3 County.

4 Thirdly, it is still not a valid employee, and
5 I don't care whether you give him credentials or not.
6 The only way a Lexington County officer can make an
7 arrest outside of Lexington County is if they meet
8 the requirements of 23 1 210 or 215 -- if they are
9 complied with.

10 That would require approval of a governing body,
11 of which there is no evidence whatsoever, that there
12 is any governing body that would approve.

13 If that were the case, he could make arrest out-
14 side the County, but absent that approval any arrest
15 would not be valid.

16 We would move to dismiss on an improper arrest,
17 Your Honor.

18 THE COURT: You would have to cite me the case
19 that would authorize the dismissal, even if it were a
20 wrongful arrest.

21 All I'm familiar with is the line of cases that
22 plows into the fruit of a poisonous tree, if it is an
23 unlawful arrest.

24 I don't know of any case that says dismissal
25 would be the remedy there.

1 MR. FLOYD: Well, absent dismissal, Your Honor,
2 we would move to dismiss any evidence obtained subse-
3 quent to the arrest as being the fruit of the poison-
4 ous tree.

5 THE COURT: Yes, sir, Mr. Waters.

6 MR. WATERS: Your Honor, the statute that he
7 cites in reference to the agreements is a -- it deals
8 with local and county law enforcement.

9 I don't believe that is the one that is applica-
10 ble here.

11 We are -- if the Court is still not satisfied
12 with the credentials that Mr. Dukes has in his posses-
13 sion, and the testimony that is already in evidence,
14 already in without objection, we are attempting to
15 look at that further, but, unfortunately, at this
16 very moment we are contacting the Marshall's Service
17 and don't have anything further.

18 Again, it is my understanding based on State-
19 wide jurisdiction, and I stand to be corrected, but
20 I understand that he is a deputized U. S. Marshall.

21 THE COURT: All right. Would you hand that up?

22 MR. WATERS: Yes, sir.

23 (Brief pause in the proceeding)

24 MR. WATERS: I should also advise that to clear
25 this matter up further that General Counsel has

1 obtained assistance in getting a copy of the documenta-
2 tion regarding this arrangement, and that should be
3 here shortly.

4 In the event that Your Honor is not satisfied in
5 that regard, I would like to make an additional argument
6 before the Court.

7 THE COURT: All right. Do you have that witness
8 here?

9 MR. WATERS: She should be here shortly.

10 THE COURT: Well, you can put up that testimony
11 if you have that testimony.

12 MR. WATERS: If I could beg the Court's indul-
13 gence for a moment?

14 THE COURT: All right.

15 (Brief pause)

16 MR. WATERS: Your Honor, we have the assistant
17 to General Counsel with a copy of the Memorandum of
18 Understanding as to Marshall Service in Richland
19 County.

20 I believe the . . .

21 THE COURT: I didn't hear you.

22 MR. WATERS: If you -- I can put her on the stand
23 or provide a copy of this . . .

24 THE COURT: I'll leave that up to you.

25 MS. WATERS: We would call Ms. Luvisi.

1 KATHERINE LUVISI, being
2 duly sworn, testified as follows, out of the presence
3 of the jury.

4 CLERK: Please have a seat on the witness stand
5 and state your name for the record, spelling your last
6 name.

7 WITNESS: My name is Katherine Luvisi, spelled
8 L U V as in Victor I S I.

9 REPORTER: And Katherine . .

10 WITNESS: With a K.

11 DIRECT EXAMINATION

12 BY MR. WATERS:

13 Q. Ms. Luvisi, tell us what your current position
14 is?

15 A. Paralegal to John Tate.

16 Q. And who is John Tate?

17 A. He is the General Counsel for the Lexington
18 County Sheriff's Department.

19 Q. All right, and in that position do you have ac-
20 cess to and custody of records of that office?

21 A. Yes.

22 MR. WATERS: I would get something marked as a
23 Court's Exhibit.

24 REPORTER: Court's Exhibit 3, Your Honor.

25 THE COURT: Thank you.

MS. LUVISI IN CAMERA

1 Q. I show you what's been marked as Court's 3. Do
2 you recognize that document?

3 A. Yes.

4 Q. What is that document?

5 A. It's the MOU Fugitive Task Force . .

6 REPORTER: I'm sorry.

7 WITNESS: M O U -- Memorandum of Understanding.

8 Q. And is that document in the regularly kept files
9 and records of your office?

10 A. Yes.

11 Q. Is it in the regular business of your office
12 that you keep those records?

13 A. Yes.

14 Q. Is that a part of the records that set forth the
15 activities of the office and agency for which you work?

16 A. Yes.

17 MR. WATERS: Your Honor, those would be the only
18 questions we would have.

19 THE COURT: All right, Mr. Floyd.

20 MR. FLOYD: I have no questions of the witness,
21 Your Honor.

22 THE COURT: Thank you very much, Ms. Luvisi.
23 You may step down.

24 (Witness excused from stand)

25 THE COURT: All right, anything further, Mr.

1 Waters?

2 MR. WATERS: Yes, sir. We have here the writing
3 in the agreement, and essentially where the agreement,
4 Court's 3 here, talks about the authority of the
5 U.S. Marshall's Service to investigate fugitive mat-
6 ters, 28 USC 566, and it goes on to essentially some
7 part of the agreement whereby the local law enforce-
8 ment provide assistance to -- excuse me, counter-offer
9 and provide assistance to the U. S. Marshall's Service
10 in that regard.

11 And as an additional matter, and as I stated be-
12 fore, I don't believe the law enforcement assistance
13 wording actually applies to the agreement.

14 If you look at 23 20 20, it defines law enforce-
15 ment agency as being any state, county, municipal or
16 local law enforcement authority.

17 There is no mention of federal there. It enters
18 into an agreement for procurement of law enforcement
19 support services, essentially the MOA.

20 The Marshall's Service is procuring the service
21 of local authorities for local law enforcement --
22 excuse me, county law enforcement, and that is the
23 manner in which Deputy Dukes made this arrest.

24 So I don't know that the approval of the Lexington
25 County Counsel is necessary.

1 Further, Your Honor, it was the case before and
2 is still the case now that, unlike the issue Mr.
3 Floyd had raised in Boswell, in that case there was
4 evidence of a -- that the act was not proper.

5 In this particular case we have no such evidence,
6 and there is no such evidence that has been offered.
7 Again, we have it both in camera as well as in the
8 proceedings that Deputy Dukes had that State-wide
9 jurisdiction based on his deputization as a United
10 States Marshall.

11 That he affected this arrest in accordance with
12 jurisdiction, and that this was the normal and usual
13 practice in a case such as this.

14 Regardless of all of that, to go beyond that,
15 if we look at Boswell there is still the concept of a
16 citizen's arrest.

17 In this particular instance that clearly applies.
18 The problem in Boswell was that it was a misdemeanor,
19 and there is a different rule for misdemeanors.

20 The rule for felonies is under Section 17 13 10,
21 about a private person may arrest one when there is
22 a felony committed who had such information as to
23 convince a reasonable man that a felony has been com-
24 mitted, even though the information prove false.

25 In this particular instance, the officers were,

1 aware of such information, aware of the extent of the
2 injuries to Joshua Dial, aware of the doctors' testi-
3 mony or statements that the injuries were inconsistent
4 with the manner in which the Defendant had described
5 it.

6 They were aware that the infant had died, regard-
7 less of whether the warrant was for great bodily injury
8 or homicide by child abuse.

9 In that regard, a citizen's arrest would be ap-
10 propriate, so even if the Judge has some concern with
11 regards to this, I think that that is a back-up posi-
12 tion to preclude any issues.

13 Moreover, again, I think we go back to the fact
14 that Deputy Dukes has those credentials and they are
15 here.

16 There has been no evidence, unlike Boswell. To
17 the contrary, in Boswell there was evidence that the
18 statute had been violated.

19 Here there is no such evidence, and in the ab-
20 sence of any such evidence and with the testimony that
21 is already in the record without objection, that the
22 arrest was valid.

23 THE COURT: Thank you. Mr. Floyd?

24 MR. FLOYD: Thank you, Your Honor. I don't
25 they have met the requirements of 23 l 220 or 23 l 216

1 whether it is a federal agency or state agency or local
2 agency.

3 Lexington County is not authorized by law to en-
4 ter into agreements to extend jurisdiction, and they have
5 not met the requirements of the statute.

6 On its face, this says it is related to fugitives,
7 and there is no information and there is no dispute
8 that Lexie Dial was not a fugitive, running from any-
9 body.

10 In fact, the testimony is that he cooperated fully
11 with law enforcement, and this is according to the
12 testimony of several officers.

13 Furthermore, Your Honor, the citizen's arrest is
14 not an issue that would apply, even if the requirements
15 of the statute were met.

16 Thank you.

17 MR. WATERS: Your Honor, if you go back to the is-
18 sues in Boswell, 23 1 216 just speaks to the agreement,
19 and there is not an issue -- there has been no evidence
20 other than he has his credentials and he was authorized
21 to make the arrest. There is no other information be-
22 fore the Court.

23 Thank you.

24 THE COURT: Thank you, Mr. Waters, Mr. Floyd.

25 (Brief pause in the proceeding)

1 MR. WATERS: Your Honor, if I could, . .

2 THE COURT: Yes, sir.

3 MR. WATERS: If I may, I would point out that 210
4 is applicable because it talks about the transfer of
5 municipal or county law enforcement officers to
6 another municipality or county.

7 The section is applicable to 212, and, of course,
8 it clearly refers to Marshalls and that sort of thing,
9 service marshalls.

10 In a DUI, it speaks to temporary assistance and
11 the power to act as a South Carolina law enforcement
12 officer offering temporary assistance.

13 As Court's Exhibit 3 sets forth, and as we know,
14 the U. S. Marshall Service through the powers they
15 have can offer assistance in the apprehension of peo-
16 ple who are wanted.

17 The statute cites in 28 USCA 566 -- I think the
18 statute literally allows this, and there is no evidence
19 to the contrary, which is as it should be.

20 THE COURT: All right, thank you very much.

21 MR. FLOYD: Your Honor, may I respond briefly?

22 THE COURT: Mr. Floyd.

23 MR. FLOYD: I would say that 23 1 212 only ap-
24 plies to conduct of federal law enforcement agencies,
25 and that is clear.

1 Mr. Dukes is an officer of Lexington County,
2 employed by Lexington County, and, secondly, Your
3 Honor, we know that the arrest occurred in Richland
4 County.

5 There is certainly no agreement with Richland
6 County, and they have not met the requirements as
7 necessary, Your Honor.

8 THE COURT: All right.

9 MR. WATERS: Your Honor, . .

10 THE COURT: Yes, sir.

11 MR. WATERS: If that were the case, the section
12 certainly doesn't apply at all. Under the federal
13 statute, 566, clearly there is the authority to assist
14 -- clearly the Marshalls have the authority to assist
15 in apprehension of a fugitive. That is the basis on
16 which Sergeant Dukes had his power as a deputized U.S.
17 Marshall.

18 So that clearly answers the question.

19 THE COURT: All right. As to the issue of the
20 basis for the arrest, the record before this Court
21 in that regard, as an initial matter, and after hear-
22 ing Lieutenant Russell testify that Sergeant Dukes
23 had State-wide jurisdiction -- that is the record be-
24 fore the Court.

25 Sergeant Rivera has testified that the procedure

1 they follow is to -- excuse me -- that wasn't Sergeant
2 Rivera but Sergeant Grant.

3 Then Sergeant Dukes testified and presented cre-
4 dentials to the Attorney General, which Mr. Floyd also
5 reviewed.

6 The Court is reviewing this Court's Exhibit Num-
7 ber 2, that Henry L. Dukes, Junior, is a special
8 deputy U. S. Marshall, and, as he, as Sergeant Dukes
9 testified, he was sworn in by the U. S. Marshall at
10 the time, Marshall Brown.

11 The card itself reads that he is a duly sworn law
12 enforcement officer, deputized to serve as a U. S.
13 Marshall.

14 That he is authorized to carry firearms, make ar-
15 rests, serve warrants and conduct other business as
16 directed by the U. S. Marshall.

17 When I look at Court's Exhibit 3, which is the
18 document under which this authority arises between the
19 Sheriff of Lexington County and the United States
20 Marshall.

21 It has been signed and also signed by the Assist-
22 ant Director of IOD.

23 It appears that the primary mission of that task
24 force is to investigate and arrest as part of joint
25 enforcement operations persons who have active state

1 federal warrants for their arrest.

2 The intent of the joint effort is to investigate
3 and apprehend local, state and federal fugitives,
4 thereby improving public safety and reducing violent
5 crime.

6 It further indicates task force personnel may
7 be required to travel outside of the jurisdiction to
8 which they are assigned to further task force opera-
9 tions.

10 It is clear that this is different from Boswell.
11 In Boswell, there was no warrant.

12 Regardless of the testimony -- looking at the
13 testimony in the light most favorable to the Defend-
14 ant, it was an arrest warrant that had been issued
15 for abuse to a child or great bodily injury, prior to
16 the child's death.

17 In Boswell, one of the issues, of course, is the
18 unlawful arrest because it was a warrantless arrest,
19 and the 1999 agreement was no longer valid.

20 There is no testimony, no evidence, that this
21 agreement is invalid whatsoever, so it is an arrest
22 for a felony, an arrest on a warrant that has gone
23 through a neutral and detached magistrate for a felony.
24 It has been validly entered in NCIC.

25 The whole issue with the warrant and the re-issue

1 of the warrant, in this Court's opinion, does not
2 change. The charge has been upgraded in the light of
3 the death of the victim in that regard.

4 So it is a warrant arrest by an officer with the
5 authority of Court's Exhibit Number 3.

6 All that being said, I think under State versus
7 Swilling it is a valid citizen's arrest.

8 The Court in Boswell said it could not have been
9 a citizen's arrest because the only thing on which
10 the arrest could have been made was indecent exposure,
11 which is a misdemeanor.

12 Because there was no testimony that the items
13 that Boswell was throwing out of the car related to
14 the Lexington County crime of burglary, in this case
15 from a common-sense point of view, it is clear that
16 the arresting officers were at the Palmetto-Richland
17 Health Center because Joshua had been transported to
18 the Lexington Medical Center and was thereafter sent
19 to the pediatric intensive care unit at Richland
20 Hospital.

21 Under 17 13 10, a citizen may make an arrest --
22 excuse me -- upon, A, view of the crime being commit-
23 ted, or, B, certain information that a felony had been
24 committed.

25 When you look at the totality of the circumstances,

1 the officers at Richland County talked to the doctors
2 and called an officer with authority, in their opin-
3 ion, to make the arrest under the agreement.

4 I think even if the agreement was invalid, the
5 arrest would be valid under 17 l3 l0, upon certain
6 information that a felony had been committed which
7 caused great bodily injury and finally the homicide
8 by child abuse.

9 With that being said -- I also would point out
10 that State vesus Swilling is a murder case, and in
11 that case part of the issue was, well, they didn't
12 take him before the magistrate.

13 Again, they point out that in that case he would
14 not have been released anyway because he was charged
15 with murder, which is a capitol offense, as they ana-
16 lyzed it there.

17 There was a valid arrest warrant in this case,
18 and the arrest is valid.

19 Bring us our jury, please.

20 Have our witness retake the stand.

21 (Witness Dukes taking the stand)

22 (Jury returned to the Courtroom)

23 THE COURT: Put Court's Exhibit 2 under seal.

24 All right, I apologize for the delay, ladies and
25 gentlemen. It wasn't caused by either one of the

1 attorneys. As I told you, I'm a poor manager some-
2 times of your time. I apologize for that.

3 We will press on. The attorneys have been out
4 here working very hard in this regard, and I know
5 you will not hold these delays against either one of
6 them or their clients.

7 If you hold it against anyone, hold it against
8 me.

9 All right, Mr. Waters, you may proceed.

10 DIRECT EXAMINATION CONTINUED OF MR. DUKES

11 BY MR. WATERS:

12 Q. We left off when you were testifying that you
13 are a deputized United States Marshall, is that cor-
14 rect?

15 A. Yes, sir.

16 Q. And as part of that, it gave you jurisdiction to
17 make State-wide arrests?

18 A. Yes, sir.

19 Q. Did you arrest Mr. Dial in this case?

20 A. Yes, I did.

21 Q. And was that after you had been advised that a
22 warrant was in NCIC?

23 A. Yes, sir, it was.

24 Q. Did you take him into custody at the hospital?

25 A. Yes, sir.

MR. DUKES CONTINUED ON DIRECT

1 Q. And where did you transport him?

2 A. To the Lexington County Sheriff's Office.

3 Q. Did anyone accompany you when you transported
4 him to Lexington County?

5 A. Detective Eric Russell.

6 Q. Is he in the Courtroom now?

7 A. Yes, he is.

8 Q. And would you point him out for us?

9 A. He's the gentleman sitting at the corner of the
10 jury room.

11 Q. Thank you. Nothing further.

12 THE COURT: Thank you. Mr. Floyd?

13 MR. FLOYD: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. FLOYD:

16 Q. What time did you arrest Lexie Dial?

17 A. I have to be honest with you. I do not know the
18 time, sir.

19 Q. And for what offense did you arrest him?

20 A. All I had, there was an outstanding warrant. I
21 did not know what the offense was. I had heard that
22 it was child abuse with great bodily injury, and that
23 that charge was being upgraded.

24 When I arrived at the hospital, the child was
25 still alive. He became deceased while I was at the

MR. DUKES ON CROSS

1 hospital, and I was advised by Detective Russell the
2 charge was being upgraded.

3 Q. So the arrest was for homicide by child abuse?

4 A. There was an outstanding warrant. I can't sit
5 here and say which warrant was actually in play at the
6 time, sir.

7 Q. You say you don't know what you were arresting
8 him for?

9 A. The original warrant was told to me to be the
10 great bodily injury.

11 That was being upgraded to homicide so his arrest
12 was based on the homicide charge because the child de-
13 ceased in my presence while I was at the hospital.

14 Q. Did you arrest him for homicide by child abuse?

15 A. Yes, sir, the child deceased in my presence. He
16 was arrested for the homicide.

17 Q. And you were there when the child died?

18 A. Yes, I was.

19 Q. And how soon after that was he arrested?

20 A. I would say probably in the neighborhood of ten
21 to twenty minutes. I wasn't looking at my watch.

22 Q. Wasn't it about five minutes?

23 A. I can't -- it could have been, sir.

24 Q. No further questions.

25 THE COURT: Redirect?

1 MR. WATERS: No further questions.
2 THE COURT: Thank you very much, Sergeant Dukes.
3 You may step down.
4 Call your next witness.
5 MR. WATERS: Thank you, Your Honor. May the wit-
6 ness be excused?
7 THE COURT: Any objection?
8 MR. FLOYD: No objection.
9 THE COURT: Yes, sir, you may be excused.
10 (Witness excused)
11 MR. WATERS: Your Honor, we would call Eric
12 Russell.
13 THE COURT: All right. Come around, please, and
14 be sworn.
15 MR. FLOYD: Your Honor, please note my objected
16 to -- my objections.
17 THE COURT: Yes, sir, your objections are noted
18 for the record.
19 I would reaffirm my previous rulings.
20 ERIC RUSSELL, being duly
21 sworn, testified as follows:
22 CLERK: Have a seat and state your full name
23 for the record.
24 WITNESS: Eric Russell, R U S S E L L.
25 DIRECT EXAMINATION

1 BY MR. WATERS:

2 Q. Lieutenant Russell, how are you doing today?

3 A. Fine, thank you. How about yourself?

4 A. I'm good.

5 Q. Would you briefly tell the jury your current
6 position?

7 A. I'm a Lieutenant and Assistant Commander of the
8 South Region Area of the Lexington County Sheriff's
9 Office.

10 Q. Just quickly, what is a Lieutenant of the South
11 Region?

12 A. I oversee the operations of road patrol, investi-
13 gation and the community service people that have
14 been working in the South Region of Lexington County.

15 We have probably anywhere from thirty-five to
16 forty people that work under me.

17 Q. Is it fair to say you are second in command in
18 that regard?

19 A. Yes, sir, it is. The Assistant Commander, and
20 there is a Captain. I'm under Captain Mark Jones.

21 Q. Back in January of 2010, were you a Lieutenant
22 at that time, or did you have a different job?

23 A. In January of 2010, I was a crime scene investi-
24 gator at the Sheriff's Office.

25 Q. Kind of like Detective Grant and Detective

MR. RUSSELL ON DIRECT

1 Rivera, is that correct?

2 A. That's correct.

3 Q. Would you just quickly for us run down your law
4 enforcement career and the length of time you've
5 been an officer?

6 A. Okay. I came with the Lexington County Sheriff's
7 Department in 1992. I spent three years at the deten-
8 tion center, a year and a half as a corrections offi-
9 cer and then after that as supervisor there.

10 In 1995 I went to the road patrol where I worked
11 until 2002. In 2000, I was promoted to the supervisor
12 of patrol, and in 2002 I became a major crimes inves-
13 tigator.

14 I did that until November of last year when I was
15 promoted to the position of Lieutenant of the South
16 Region.

17 Q. And how many total years have you been in law
18 enforcement?

19 A. I'm in my nineteenth year.

20 Q. Where were you born?

21 A. I was born here in Lexington, South Carolina.

22 Q. Did you grow up here as well?

23 A. I was born in Lexington in 1967. I graduated
24 from Lexington High School in 1985, and shortly there-
25 after in 1986 I went into the Air Force.

MR. RUSSELL ON DIRECT

1 I stayed there until 1991. I achieved the rank
2 of Sergeant in the Air Force, and I got out in 1991
3 and came to the Sheriff's Office.

4 Q. And back in January of 2010 when you were a major
5 crimes investigator -- quickly, what does that entail?

6 A. It's crimes against people, assaults, robberies,
7 rapes, homicides, that kind of thing. It is not a
8 crime where property is involved. We don't deal with
9 stolen cars or burglary or that kind of thing.

10 Q. Did you have any involvement in the investigation
11 into the death of Joshua Dial?

12 A. I did.

13 Q. And what was your first involvement?

14 A. On January 20th I came to work just as normal,
15 and my boss at the time, Lieutenant Scott Prior, called
16 me into his office and discussed this case with me a
17 little bit.

18 He told me the injuries that were known at that
19 time, what they thought the prognosis was, and that
20 I was going to assist Detective Grant in investigating
21 this case.

22 Q. All right. Did you take any action?

23 A. I did. Early that morning I went with Detective
24 Grant from the Sheriff's Office over to Palmetto-Richland
25 Hospital to speak with the staff there at the hospital

MR. RUSSELL ON DIRECT

1 about Josh Dial.

2 Q. I don't want to get into any hearsay, but did
3 you talk to any particular person while you were
4 there?

5 A. I did. I talked to Dr. Susan Luberoff. I was
6 familiar with Dr. Luberoff. At that time I had been
7 working these type of cases for several years.

8 Like I say, I had worked with Dr. Luberoff on
9 numerous occasions on both physical assault and sexual
10 assault in children.

11 Q. Again, I don't want any hearsay, but did Dr.
12 Luberoff give you her findings with regards to Joshua's
13 injuries?

14 A. She did. Dr. Luberoff as well as other people at
15 the hospital.

16 Q. When you first arrived at the hospital, was Josh
17 still alive?

18 A. He was.

19 Q. And did anything happen while you were there?

20 A. Yes. Actually as we completed one of our inter-
21 views and stepped out of the little conference room
22 we were in, there was a big commotion going on in
23 Josh's room.

24 We approached that room with the hospital staff,
25 and they said that Josh's heart had quit beating at

MR. RUSSELL ON DIRECT

1 that time and there was attempts being made to re-
2 vive him. Unfortunately, those attempts were not
3 successful.

4 Q. After Joshua died, was the Defendant and other
5 family allowed to see him?

6 A. They were. To back up just a little bit, if I
7 may.

8 After speaking with the doctors and also getting
9 the information that had been given the night before
10 at the scene, we did have probable cause to attempt
11 to obtain an arrest warrant for Mr. Dial, and I called
12 back and spoke with Detective Rivera and relayed all
13 that information to him with a request that he pre-
14 pare an affidavit, a warrant affidavit, and pursue it
15 to a magistrate, to see if he could get a warrant is-
16 sued.

17 I also advised him that we were in Richland
18 County at Palmetto-Richland Hospital, and Eric
19 Russell, a detective with the Sheriff's Office, does
20 not have jurisdiction to serve that warrant in Rich-
21 land County.

22 I was asking him to have that warrant placed on
23 NCIC which means that warrant can be served anywhere,
24 and asked he have Sergeant Dukes respond, who had
25 State-wide jurisdiction and was able to serve warrants

MR. RUSSELL ON DIRECT

1 in Richland County.

2 Q. All right, and in that regard was ultimately
3 the Defendant taken into custody?

4 A. He was.

5 Q. And did you observe him being taken into cus-
6 tody?

7 A. I did.

8 Q. And was there any difficulty or problem with
9 that arrest?

10 A. No.

11 Q. Did you go with the Defendant and Sergeant Dukes
12 when he was transported anywhere?

13 A. I did.

14 Q. And where did you all go?

15 A. We rode from the hospital to the Lexington
16 County Sheriff's Office.

17 Q. While you were in the car, were any threats made
18 to him or any coercion, promises, or anything of
19 that nature?

20 A. None whatsoever. It was general, idle small talk.

21 Q. Okay, and once you arrived at the Lexington
22 County Sheriff's Office, what happened then?

23 A. Sergeant Dukes and myself both escorted Lexie
24 Dial from his vehicle to the Sheriff's Department
25 interview room number one.

1 We arrived at that interview room, and at that
2 point Sergeant Dukes left, so it was just Mr. Dial
3 and myself.

4 I removed the handcuffs from Mr. Dial, asked him
5 to have a seat, and we sat down at a table inside the
6 interview room.

7 I got out one of my standard Lexington County
8 Sheriff's Department statement forms. The top portion
9 of that has just some general information, your name,
10 your birthday, your address, and when it got down to
11 the education level the question if he could read and
12 write, understand the English language.

13 Then it goes down to the Miranda Rights that you
14 read to the person in the interview room. So I filled
15 out that form, the top portion containing just the
16 general information.

17 Q. Okay. Let me show you what's been marked State's
18 63 for identification at this point and see if your
19 recognize that?

20 A. I do. That's the form I'm talking about that I
21 used to gather Lexie's information and also advise him
22 of his Miranda Rights.

23 Q. All right, and at the top of that document, what
24 does it reflect?

25 A. The very top of it has the date it is started,

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1 which was January 20, 2010; where we're at, which was
2 the Lexington County Sheriff's Office; that we began
3 at the interview at fourteen fifty-nine hours, or one
4 minute before three o'clock in the afternoon.

5 Q. Is this a copy of the statement that you ultimately
6 took from Mr. Dial?

7 A. I believe this is actually the original.

8 Q. Is that the original?

9 A. Yes.

10 MR. WATERS: Your Honor, at this time we would
11 move State's 63 into evidence.

12 MR. FLOYD: Subject to previous objections.

13 THE COURT: All right, Mr. Floyd. Thank you.

14 State's 63 is in evidence subject to previous
15 objections.

16 (Lexington County form containing statement admitted
17 into evidence subject to objection as State's
18 Exhibit 63)

19 BY MR. WATERS:

20 Q. If I could ask you to step down briefly, and
21 let's talk about some things explained to Mr. Dial.
22 By putting this on the machine, would it help you to
23 explain that?

24 A. Yes.

25 Q. All right. If you would, explain to the jury

MR. RUSSELL ON DIRECT

1 the discussion you had with Mr. Dial at that point?

2 A. When we arrived in the interview room, I got some
3 general information to start with before I advised
4 him of his Miranda Rights.

5 This is just our standard Miranda Statement. Of
6 course, at the top it has the date that you started,
7 January 20, 2010, and we were at the Lexington County
8 Sheriff's Office, at fourteen fifty-nine or one minute
9 to three o'clock in the afternoon.

10 Next it has his name, Lexie Dial, Third; age of
11 eighteen; birthdate, and current address was 317
12 Oakey Springs Road in Gaston, South Carolina.

13 Q. And where did you get the information to put it
14 in?

15 A. I got it from Lexie Dial. I asked him the ques-
16 tions and he answered.

17 Q. All right, continue on.

18 A. Next is the education portion of the form, and
19 it says, I completed grade blank. Some talking was
20 done about that, and he told me he was currently in
21 the eleventh grade on internet school.

22 I asked the last grade he had completed and he
23 had not completed the eleventh grade. He was cur-
24 rently in that grade.

25 I asked him if he could read and write, and he

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1 stat he could read and write. I asked him to put
2 his initials right here, and he placed his initials,
3 stating I can read and write.

4 Q. And is that his own hand right there?

5 A. That's correct. The LD right there is his writ-
6 ing and also right here is his writing, his initials,
7 where an error was scratched out and corrected.

8 Come down a little further, and I didn't put any
9 alternate phone contact in there.

10 Then we went to, before answering any questions,
11 making any statement, Detective Eric Russell, and that
12 is my handwriting, a person who identified himself as
13 a Lexington County Sheriff's deputy and advised me that
14 -- this is the part where I am reading Mr. Dial his
15 Miranda Rights -- that before I can talk to you about
16 this case I have to advise you of your Miranda Rights.

17 Then I read the Miranda Rights to him and had him
18 initial that he understood. I sat the form like right
19 here and as I was reading them he read them as well.

20 Number one on here, and this is what I read to
21 him, I have the right to remain silent, and he initialed
22 there that he understood that right.

23 Number two, anything I say can and will be used
24 against me in a Court of Law.

25 Again, he initialed in his own handwriting that

1 he understood that right.

2 Number three, I have a right to talk to a lawyer
3 for advice before being asked any questions and have
4 him or her with me during questioning.

5 Once again, his initials there in his hand that
6 he understood.

7 Number four, if I have no money for lawyer fees
8 the Court will appoint one to represent me without
9 cost to me, and again his initials by that right.

10 Number five, if I decide to answer any questions
11 now without a lawyer present, I would still have the
12 right to stop answering questions at any time.

13 I also have the right to stop answering questions
14 at any time until I have talked to a lawyer, and again
15 his initials right there that he understood that
16 right.

17 Q. Did Mr. Dial during the course of that discussion
18 show any indication that he didn't understand what
19 you all were talking about?

20 A. Absolutely not.

21 Q. Continue.

22 A. They were the standard questions, and he was giv-
23 ing me the standard and expected answers.

24 Q. And during the course of your interaction with him,
25 did he display any sign of mental illness, or drug or

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1 alcohol intoxication, or inability to understand your
2 conversation?

3 A. Absolutely not.

4 Q. All right. After you read those rights to Mr.
5 Dial, did you ask him anything?

6 A. No, I read this sentence, I have read this state-
7 ment over and I understand what my rights are, and
8 these are his initials right here that he was read his
9 rights and he understands his rights. This is his
10 writing.

11 Q. At that time, did Mr. Dial agree to talk to you?

12 A. He did.

13 Q. And during your interaction, did he request an
14 attorney?

15 A. No.

16 Q. At any time during your interaction, did he ask
17 to stop the questioning or interview with him?

18 A. No, he did not.

19 Q. All right. You can take a seat back on the
20 stand. Thank you.

21 After you explained to him his rights and he then
22 agreed to speak with you, what is the next thing that
23 you did?

24 A. After the interview then I began as far as what
25 occurred at that time, and I told Mr. Dial -- I said,

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1 you know, I have heard from several different people
2 stories that you have allegedly said about what hap-
3 pened, but I want to hear it from you.

4 I want you to tell me what happened the previous
5 day. What he told me was -- he said that -- actually
6 I started off saying, go through the whole day. Start
7 in the morning and tell me all the way through.

8 He said he got up around eleven o'clock. His
9 father who lives with him had already gone, and it was
10 just him, Lexie, Third, Misti and Joshua who was there
11 in the house.

12 He said he got up around eleven and just kind of
13 hung around, and he and Misti played with the baby for
14 a while until Misti had to get ready to go to work
15 because she had to be at work at three o'clock.

16 He said that before time for her to go to work he
17 drove to a nearby gas station to call his father. He
18 spoke to his father about giving Misti a ride to
19 work and he went back home.

20 That about a little around three o'clock or so,
21 Miss Christina Hagens came to the house, and then she
22 and Misti went to a local gas station for a pack of
23 cigarettes. She came back and he and Misti split that
24 pack of cigarettes and he -- excuse me, that Misti and
25 Christina left to take Misti to work.

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1 That left just Lexie and Joshua home alone, and
2 I asked him at that time was anything wrong with Joshua.
3 He was fine.

4 You know, they just did a little father-baby
5 stuff, playing and that kind of thing throughout the
6 rest of the day, until about six o'clock.

7 He said about six, his father, Lexie, Junior, came
8 home for about thirty minutes and then left. Once again
9 no indication that at that time there was anything
10 wrong with the baby. He was fine.

11 He said about eight -- excuse me -- at about
12 eight o'clock he was sitting on the couch, feeding
13 Joshua some turkey baby food. He said Joshua got it
14 all over his face and he didn't bring anything to wipe
15 it with.

16 So he got up to look for a bib or bathcloth to
17 clean the child's face with. He walked into a room
18 and couldn't find anything in that room, so he left
19 the bedroom and walked toward Joshua's room, and he
20 said he tripped over the steam cleaner; he said he
21 fell onto the coffee table, and at that point he no-
22 ticed that Joshua was not breathing.

23 He went on to say that he put Joshua down and
24 tried to do CPR. I asked him, what exactly do you
25 mean by CPR, and he said he pushed on the chest and

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1 tilted his head back and blew into his mouth.

2 He said that wasn't working so he left Joshua
3 laying on the floor and went to his neighbor's house
4 and called his dad to come help him.

5 I asked him -- said, did you tell anybody what
6 had happened, or did you tell your dad why he needed
7 to come, or tell the neighbor, and he said he didn't.

8 He goes back home and continues the CPR on Joshua
9 until his dad gets there, and they kind of swap off
10 back and forth, one doing CPR and one talking to nine
11 one one until EMS arrived.

12 Q. Did he say anything that happened after EMS ar-
13 rived?

14 A. He did. He said that while EMS was there and
15 they were working on Joshua, trying to revive him, he
16 heard one of them say that he did not have a heart-
17 beat.

18 At that point, he said he went into a bathroom
19 down the hall or something, and he said he took a
20 bunch of pills.

21 I kind of stopped him right there for a minute,
22 and I said, was that a suicide attempt? Were you
23 trying to kill yourself, and he just kind of sat there
24 and looked down, and he looked back up at me and said,
25 I guess it was.

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1 I said, why would you want to try to kill yourself,
2 and he said he didn't want to live with anybody else
3 close to him.

4 Q. Okay. Did you ask him about when Joshua fell,
5 if he hit anything?

6 A. I did. I asked him -- I said when Joshua fell,
7 did you actually see if he hit anything, and he said
8 his head hit the coffee table.

9 Q. And going back to what he told you about taking
10 the pills, did you ask him if he felt suicidal right
11 then and there?

12 A. I asked him, are you still having suicidal
13 thoughts, and he said no.

14 Q. All right, and at that time -- this was the next
15 day, is that correct?

16 A. Correct.

17 Q. And do you know what time this interview started?

18 A. This interview started at one minute until three
19 on the 20th, which I think was a Wednesday, in the
20 afternoon.

21 Q. So that was on the afternoon of the next day?

22 A. Yes. Roughly eighteen or nineteen hours after
23 the incident.

24 Q. Okay. All right, after he told you this version
25 of the incident, did he -- did he tell you that orally,

1 or was that written down?

2 A. It was orally.

3 Q. And after he told you that version of the events,
4 that oral version of events, did you do anything else?

5 A. I did. At that point I told Lexie, I said, Mr.
6 Dial, I want to tell you something. I have spoken
7 with the doctors at the hospital, and gotten your story,
8 and from what I understand the injuries that Joshua
9 was suffering from could not have been caused by a
10 single fall as you were holding the child, and his
11 head hitting the coffee table.

12 And I explained to him what the injuries were. I
13 said, it is my understanding that Joshua was suffering
14 from a bilateral -- I don't know if I actually told
15 him that -- bleeding on the brain is what I believe I
16 told him.

17 He understood what bleeding on the brain meant,
18 and I also told him that he was suffering from severe
19 retinal hemorrhaging.

20 Lexie said he didn't understand exactly what ret-
21 inal hemorrhaging was, and I explained it to him.

22 I told him that in the back of his eyes or inside
23 of his eyes there was blood; that the vessels inside
24 his eyes had been ruptured, and he was bleeding in
25 his eyes.

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1 I said, now to look at him -- just to look at
2 Joshua, you cannot see that, but the medical staff
3 used their instruments they have and looking in his
4 pupils would be able to see that bleeding, after which
5 he said, yeah, I understand what you're talking about
6 now.

7 Q. And how did the conversation progress from there?

8 A. I went on to say that in a case like this it is
9 very important for you to be honest, because the fact
10 that the story you are giving does not equate to the
11 injuries that Josh suffered from, it appears you are
12 hiding the truth from me.

13 So it is very important for you to tell me the
14 truth, and he asked me at that point, you know, what
15 am I under arrest for, and I told him again it was
16 the same thing we told him at the hospital; that you
17 are under arrest for homicide, by child abuse.

18 He asked me what does that carry; twenty to life;
19 and he asked me could I get PTI for that.

20 Q. What is PTI?

21 A. PTI is pre-trial intervention, and this is just
22 an example. If you get arrested for disorderly con-
23 duct and you have never had any felony record or any-
24 thing like that, that is a program you can go through,
25 and I'm not sure, but I think it's like alcohol abuse

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1 or that type of thing.

2 It's just kind of an ordinary program for moder-
3 ate offenders, minor offenses. This is not used for
4 any type of homicide charge.

5 Q. So did he mention PTI to you, or did you mention
6 PTI to him?

7 A. I did not mention PTI to him.

8 Q. So when he asked you if he could get PTI for
9 this, what did you say?

10 A. I told him no. I had previously told him what
11 the charge carried, but I also told him, Lexie, I
12 have no idea, if you're found guilty of this, what
13 you would be sentenced to; I don't have any authority
14 to make you any promises; I cannot make you any prom-
15 ises; I'm not telling you what you are going to be
16 sentenced to.

17 Q. All right. After that conversation, what hap-
18 pened next?

19 A. After that conversation, I made the statement to
20 Lexie that I don't actually think you had any intent
21 to harm Joshua, and by that I mean that I don't think
22 you woke up at eight o'clock on the 19th with the
23 intent to do something wrong.

24 That is not what I thought happened, but I also
25 once again told him that it was important for him to

MR. RUSSELL ON DIRECT

1 be honest with me because this was serious.

2 He sat there for a minute and looked down and
3 looked back up, and he said it was an accident.

4 So I said I believe that, Lexie, but I don't be-
5 lieve it was the accident you were telling me, so I
6 need you to tell me the honest truth of what happened,
7 and he then gave another account of events.

8 Q. All right, and did he give you that second ac-
9 count of events orally or did he write it down?

10 A. Both. He gave it to me orally at first.

11 Q. Tell us what he told you.

12 A. The statement account of events was that he and
13 Joshua were sitting on the floor, and that he had
14 been trying to teach Joshua how to walk and he demon-
15 strated to me.

16 You know, how you would normally hold a child
17 with your hands out in front of you and the child's
18 arm resting between your thumb and forefinger, like
19 this, and he was rocking him back and forth, trying
20 to get him to take a step, but he wouldn't.

21 So I asked him if it was because he wouldn't
22 take a step and you got frustrated, and actually his
23 words were that Joshua would not cooperate, and because
24 of that he got frustrated and he picked him up to
25 roughly eye-level with him like this, and shook him

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1 back and forth, saying why won't you cooperate? Why
2 won't you cooperate?

3 And when he stopped, he said he noticed that
4 Joshua was not breathing but that he was trying to
5 breathe, but it looked like his body was making the
6 effort to suck air in but there was no air going in.

7 And I asked him to demonstrate that to me also,
8 and he was like (demonstrating) -- your body is making
9 the move but it's not working and there's no air com-
10 ing in.

11 So I asked him what happened then, and he said
12 he laid Joshua down and the rest about the CPR and
13 going next door to his neighbor's house and all he had
14 said before in his story.

15 That he had -- that after he shook him and he
16 wasn't breathing, he laid him down and went to the
17 neighbor's, called his dad, and the remainder of that
18 first thing he had said.

19 Q. Did you mention anything about shaking the baby or
20 about shaken baby?

21 A. I did not.

22 Q. And had you at all mentioned that?

23 A. No.

24 Q. So he said that without any comment from you?

25 A. That's right.

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1 Q. All right, and after he told you that and he
2 demonstrated with his hands what he had done, what did
3 you do at that point?

4 A. I asked him would he write that down on paper
5 for me, and he agreed to do so.

6 Q. Tell us how you went about that process?

7 A. That same statement form that we used for the
8 advisement of Miranda Rights, underneath that has got
9 some blank lines that you can write on.

10 Q. Can you come down and show us what you're talk-
11 ing about?

12 A. Sure. Underneath here at that time there was no
13 writing on here. I asked him if he would be willing
14 to provide a written statement for me, and he agreed
15 to do so.

16 Q. Okay.

17 A. And that's when he wrote this. This is his hand-
18 writing right here.

19 Q. All right, he wrote that himself right there in
20 front of you, is that correct?

21 A. Yes.

22 Q. Did you tell him anything to say?

23 A. Absolutely not.

24 Q. Did you have any input whatsoever in what he
25 wrote?

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1 A. No, I did not.

2 Q. What did you do while he was writing that?

3 A. I sat there and waited while he did that.

4 Q. And there are some scratch marks and that sort
5 of thing on there. Could you explain what that is?

6 A. I can. He was writing his statement and when
7 he made a mistake he would scratch it out. In order
8 for it not to look like I had scratched anything out,
9 I asked him to put his initials where he did that.
10 So he put his initials by the scratched-out places.

11 All of these scratch-out places have his ini-
12 tials right beside it.

13 Q. And you observed him scratch those out and to
14 place those initials, is that right?

15 A. Yes, I did.

16 Q. And when you come down to right here, what is
17 that?

18 A. This is the end of what he wrote, and this is
19 his signature right here, the date.

20 Q. After he got done writing that, did you ask him
21 to sign it?

22 A. I did.

23 Q. Did you observe him signing that form?

24 A. Yes, and here is my name signed as a witness
25 that I watched him do that.

MR. RUSSELL ON DIRECT

1 Q. I see over here it says pages one and two, is
2 that correct?

3 A. That's correct.

4 Q. So there is more than one page?

5 A. There is.

6 Q. Would you read to us what Lexie wrote down?

7 A. I was trying to teach the baby how to walk and
8 he wouldn't cooperate. I got angry and held him in
9 front of me and said, why won't you cooperate, and
10 shook him.

11 Then he wasn't breathing, right, and I tried
12 CPR and it didn't help, and I went next door and
13 called my dad and told him to come here fast.

14 Then I went and continued doing CPR. When my --
15 my dad got there and he did CPR. Then the police
16 came there and started doing CPR and then the EMS
17 people showed up.

18 Q. And that is what you saw him write in his own
19 handwriting?

20 A. That's correct.

21 Q. After that, was that the end of the interview or
22 did you do anything else?

23 A. After that on page two I wrote down some ques-
24 tions and Lexie wrote down the answers.

25 Q. And is that shown on page two of the Exhibit

1 there?

2 A. It is.

3 Q. And on page two is a continuation of the state-
4 ment?

5 A. Yes, it is.

6 Q. Tell us how that occurred?

7 A. I would ask him the question and write them down,
8 and he would write down his answer. This is my hand-
9 writing.

10 Q. Why did you do that?

11 A. Because I had some questions I wanted to ask
12 him.

13 Q. So that first part is your handwriting?

14 A. That's correct.

15 Q. And what about below that?

16 A. Below that is Lexie's handwriting, his answers
17 to my questions. He wrote them down.

18 Q. And you observed him write that?

19 A. I did.

20 Q. Did you at all tell him what to say or suggest
21 any answer to him?

22 A. I did not.

23 Q. And what is next?

24 A. The next question is, did I make any promises
25 to him, and in his handwriting is the word, no.

MR. RUSSELL ON DIRECT

1 Q. All right, and what is next?

2 A. The next question, is there anything you want to
3 add to this statement, and that is my handwriting.

4 Q. And what did he write?

5 A. I am so sorry. I wasn't thinking. I wish I
6 could change it, and then he stopped.

7 Q. And that is in his handwriting?

8 A. It is.

9 Q. At that time, did you suggest any answers or tell
10 him what to write?

11 A. I did not.

12 Q. And the corrections he made he scratched out?

13 A. He did.

14 Q. And right here . .

15 A. That's where we ended it.

16 Q. And on the bottom of State's Exhibit 63, pages
17 one and two -- is that his signature?

18 A. Lexie Dial's signature in his own handwriting
19 on there, and my signature, Notary Public, and
20 signed this 20th day of January 2010, and my commis-
21 sion expires January 12, 2017.

22 Q. Did you observe Lexie Dial sign there?

23 A. I did.

24 Q. And you signed it after him?

25 A. I did.

1 Q. You can take your seat on the stand.

2 About what time did you finish your interview
3 with Mr. Dial?

4 A. It was a little after four, about ten after four.

5 Q. And what did you do at that point?

6 A. At that point I served the homicide by child
7 abuse warrant on Mr. Dial and walked him back to the
8 jail.

9 Q. At any time, did you make any promises to Mr.
10 Dial?

11 A. None whatsoever.

12 Q. And in fact he wrote that on the statement?

13 A. He did.

14 Q. At any time, did you threaten Mr. Dial?

15 A. I did not.

16 Q. At any time, did you coerce Mr. Dial?

17 A. I did not.

18 Q. At any time, did you raise your voice to Mr.
19 Dial?

20 A. I did not.

21 Q. At any time, did you lay your hands on Mr.
22 Dial?

23 A. I probably had my hand on his arm as I walked
24 him into the interview room. Other than that, no.

25 Q. At any time, did you assault Mr. Dial?

MR. RUSSELL ON DIRECT

1 A. I did not.

2 Q. At any time, did Mr. Dial ask to stop this inter-
3 view?

4 A. He did not.

5 Q. At any time, did Mr. Dial ask for an attorney?

6 A. He did not.

7 Q. At any time, did Mr. Dial give any indication
8 that he didn't know what was going on?

9 A. No. He indicated by his answers that he knew
10 exactly what was going on. He was coherent and he
11 gave normal answers to all the questions.

12 Q. Thank you, Lieutenant. Nothing further.

13 THE COURT: Thank you, Mr. Waters.

14 Mr. Floyd?

15 MR. FLOYD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q. Lieutenant Russell, . .

19 A. Yes, sir.

20 Q. . . you arrested Mr. Dial within five minutes
21 of the death of his child?

22 A. I didn't arrest him. Sergeant Dukes arrested
23 him.

24 Q. Was he arrested within five minutes of the death
25 of his child?

MR. RUSSELL ON CROSS

1 A. Somewhere in that neighborhood, yes.

2 Q. And he was taken to the jail -- excuse me. He
3 wasn't taken to the jail but to the Sheriff's Depart-
4 ment?

5 A. Yes.

6 Q. And it is one building, but the jail is actually
7 a separate part of that building?

8 A. Yes, the front is the Sheriff's Department.

9 Q. And he was handcuffed, was he not?

10 A. I'm sorry.

11 Q. Had he been handcuffed?

12 A. Yes.

13 Q. He was not free to leave?

14 A. He was not.

15 Q. And this is an important case, homicide by child
16 abuse?

17 A. Yes.

18 Q. So I would assume that you recorded this inter-
19 view?

20 A. No, sir.

21 Q. We don't have a tape so we can know exactly what
22 was said?

23 A. No, sir.

24 Q. Do you have a video so we can see exactly what
25 was said?

MR. RUSSELL ON CROSS

1 A. No.

2 Q. So all we've got is your saying what was said?

3 A. Yes, sir, and we have the written statement in
4 his hand.

5 Q. But we don't know what was said before that
6 statement by independent means? We don't have a
7 recording of it?

8 A. No, sir.

9 Q. Now, he was in your presence for an hour and ten
10 minutes, is that correct?

11 A. Roughly, yes.

12 Q. And that took about five minutes to write?

13 A. No, I'd say it probably took a little longer
14 than that.

15 Q. Ten minutes?

16 A. I don't know.

17 Q. But it didn't take too long?

18 A. No.

19 Q. And the first thing he told you was about the
20 tripping and falling, is that correct?

21 A. Yes.

22 Q. And you didn't have him write that one down, did
23 you?

24 A. No.

25 Q. You weren't going to take that statement, were

MR. RUSSELL ON CROSS

1 you?

2 A. If that's all he gave me, I'd take it.

3 Q. And that is when you told him it couldn't be
4 true because of the shaking you were told about at
5 the hospital?

6 A. No, sir. I never mentioned shaking to him until
7 he mentioned it to me. I did that on purpose. I pur-
8 posely did not say that word to him. I did not want
9 to put that in his head.

10 Q. But we would know that if we had a recording of
11 it?

12 A. I know that.

13 Q. What you did was you told him he was facing
14 twenty years to life before he gave that statement,
15 didn't you?

16 A. That's correct.

17 Q. And didn't you tell him that things would go
18 better for him if he cooperated?

19 A. I didn't say things would go better if he coop-
20 erated. I said it was important for him to be honest
21 with me.

22 Q. So you never told him it would be better for him
23 if he gave you a statement?

24 A. No. That would be making a promise to him, and
25 I didn't do that.

MR. RUSSELL ON CROSS

1 I told him it was important for him to be honest
2 with me.

3 Q. Did he make that statement after you told him
4 he was facing twenty years to life?

5 A. That's correct.

6 Q. Now, this case was originally being handled by
7 Debra Moore with the Solicitor's Office, is that
8 correct?

9 A. That's correct.

10 MR. WATERS: Your Honor, I have a matter.

11 THE COURT: All right, step up to the bench,
12 please.

13 (Conference at the bench between counsel and the
14 Court off the record)

15 BY MR. FLOYD:

16 Q. Now, Lexie Dial had just turned eighteen years
17 of age, is that correct?

18 A. Yes, sir.

19 Q. And he was going to internet school in the
20 eleventh grade?

21 A. Correct.

22 Q. And how much education have you had?

23 A. I graduated high school. I have no college.

24 Q. And how many years of experience with law en-
25 forcement?

MR. RUSSELL ON CROSS

1 A. Right now I'm in my nineteenth year. I guess I
2 was in my eighteenth at that time.

3 Q. A lot more sophisticated than Lexie Dial, would
4 you say?

5 A. I have had more life experience than Lexie Dial
6 has had.

7 Q. And how much experience with being able to talk
8 to people?

9 A. I've interviewed a lot of people, yes, sir.

10 Q. And you made Lexie Dial think it would be better
11 for him if he went along with what you wanted him
12 to do?

13 A. I didn't tell him that. I told him it was im-
14 portant for him to be honest with me. I didn't
15 tell him it would be better for him.

16 I specifically told him that I did not know what
17 type of sentence he would get if he was convicted
18 of this crime.

19 Q. But it would be twenty years to life?

20 A. Twenty to life he was facing, yes.

21 Q. And you never indicated to him it would go bet-
22 ter for him if he cooperated?

23 A. No, sir.

24 Q. You never told him that he had to have shaken
25 the baby because that's what you were told?

MR. RUSSELL ON CROSS

1 A. No. Once again, I specifically did not use the
2 word shaken or anything like that because I figured
3 one day we would be where we're at right now and I
4 didn't want it said that it was an idea I put in his
5 head. That came from him and not from me.

6 Q. And that's why you didn't record it?

7 A. I don't understand that question.

8 Q. Isn't that why you didn't record the interview,
9 because you didn't want us to be able to hear exactly
10 what you told him?

11 A. Absolutely not. I've been -- like I said, I've
12 got nineteen years law enforcement experience, and
13 eight of that is major crimes investigations, and it
14 is not standard operating procedure to record our in-
15 terviews.

16 That is not what we normally do.

17 Q. Because if it is recorded, some day a jury can
18 hear exactly what was said in the interview?

19 A. No, it's just -- like I said, it is just that we
20 don't record them.

21 Q. Thank you.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. WATERS:

25 Q. You've been a law enforcement officer for nineteen

MR. RUSSELL ON REDIRECT

- 1 years?
- 2 A. Yes.
- 3 Q. Is that correct?
- 4 A. Correct.
- 5 Q. And ten in the South Region?
- 6 A. Correct.
- 7 Q. Born and raised in Lexington County?
- 8 A. Yes.
- 9 Q. And you know your obligations as a police offi-
- 10 cer?
- 11 A. Correct.
- 12 Q. You know your ethical obligations as a police
- 13 officer?
- 14 A. Absolutely.
- 15 Q. And you follow those?
- 16 A. I do.
- 17 Q. When you told him he faced twenty to life,
- 18 did you just bring that out, or did he ask you first
- 19 what it carried?
- 20 A. He asked me what did the charge he was charged
- 21 with carry.
- 22 Q. When he asked you about PTI, did he ask you
- 23 that first or did you mention it to him?
- 24 A. He brought it up to me.
- 25 Q. So he already knew about PTI?

MR. RUSSELL ON REDIRECT

1 A. That's correct.

2 Q. He already knew about that aspect of the criminal
3 justice system?

4 A. He did.

5 Q. And he knew enough to say what does this carry?

6 A. He did.

7 Q. All right, and you were asked about whether you
8 made any promises, and you expressly told him there
9 were no promises?

10 A. I did.

11 Q. On page two of this statement he wrote down in
12 his own hand that you didn't make any promises to him,
13 isn't that right?

14 A. Yes, it is.

15 Q. You just asked him for the truth?

16 A. I asked him for the truth and told him it was
17 important for him to tell the truth.

18 Q. And you have talked to many witnesses, as you
19 have just testified?

20 A. Yes.

21 Q. And many Defendants?

22 A. Many Defendants, yes.

23 Q. Have you ever -- it is a violation of your ob-
24 ligations to promise anything, is that right?

25 A. Absolutely.

MR. RUSSELL ON REDIRECT

1 Q. And you didn't do that in this case?

2 A. I did not promise him anything.

3 Q. Nothing further.

4 THE COURT: Anything further?

5 MR. FLOYD: May we approach?

6 THE COURT: Yes, sir.

7 (Conference at the bench between counsel and the
8 Court)

9 THE COURT: Do you have any further questions,
10 Mr. Floyd?

11 MR. FLOYD: No questions.

12 THE COURT: Thank you very much, Lieutenant
13 Russell. Step down.

14 (Witness excused from stand)

15 THE COURT: All right. Perhaps now would be a
16 good time to take our -- I was about to say our
17 evening recess but we haven't quite made it there yet.
18 Our luncheon recess.

19 Please remember, do not discuss this case with
20 anyone, even your fellow jurors, your lunch mates,
21 friends or anyone else.

22 If anyone tries to talk to you about the case,
23 please let me know.

24 Do not watch, listen to or read any news reports
25 or accounts of the case, should there be any.

1 Do not do any investigation on the internet or
2 independently.

3 Remember to keep an open mind. Do not begin your
4 deliberations until I instruct you to do so.

5 If you would leave your pads upside down on your
6 chair, the Clerk will secure them during the lunch
7 hour.

8 If you would be back at two fifteen. Be back
9 in your jury room promptly at two fifteen. Hope you
10 all have a pleasant lunch.

11 (Jury excused from Courtroom for the lunch re-
12 cess)

13 THE COURT: All right, anything further from the
14 State?

15 MR. WATERS: We have nothing, Your Honor.

16 THE COURT: Defense?

17 MR. FLOYD: Yes, Your Honor. If I may make
18 some remarks on the record?

19 THE COURT: Certainly.

20 MR. FLOYD: Your Honor, during my cross exami-
21 nation of Lieutenant Russell, I, of course, attempted
22 to explore the relationship he had or has with the
23 former Solicitor in this case, which resulted in the
24 Attorney General being involved in the case.

25 I did attempt to explore that again after the

1 Redirect Examination was concluded.

2 On Redirect, the Attorney General asked of Lieu-
3 tenant Russell if he ws familiar with all of his
4 ethical obligations as a police officer, and he said
5 that he was.

6 I then attempted to renew my questioning in the
7 matter about the relationship with the prosecuting
8 officer in the case, and I was again denied that op-
9 portunity.

10 Your Honor, it is our position that they've cer-
11 tainly opened the door so that we should be allowed
12 to explore on Recross Examination whether or not
13 this relationship may have caused the officer to vio-
14 late his ethical obligations as a police officer
15 in this investigation.

16 I would hand this up, for the record, a letter
17 that was sealed by the Lexington County Solicitor's
18 Office in this matter which is a Court's Exhibit.
19 The Court may want to see that.

20 THE COURT: All right, I will look at it, and
21 if you would mark it Court's 4.

22 REPORTER: Yes, sir.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: Thank you. All right, Mr. Waters.

25 MR. WATERS: Your Honor, I don't necessarily have

1 anything to add, but I will be happy to answer any
2 of the Court's questions regarding this matter and
3 that relationship, which has nothing to do with his
4 obligation as an officer.

5 He was correctly responsive to the Defense's
6 questions on Cross Examination. There were more
7 questions on the promise of something by Lieutenant
8 Russell than about the nature of the events that
9 occurred.

10 (Brief pause in the proceeding)

11 THE COURT: All right. As far as the issue of
12 whether or not the door was opened as to the rela-
13 tionship, I would rule that it was not.

14 That came up in Redirect by the Attorney Gen-
15 eral, and there were questions of Mr. Russell, proper
16 questions, of course, by Mr. Floyd, totally revolving
17 around the voluntariness of Mr. Dial's statements,
18 whether there were promises made or whether or not
19 there were thoughts planted in his mind about shaking
20 the baby.

21 There were indications that there was something
22 hidden or sinister because it wasn't taped in the
23 presentation to the jury. I took the Attorney Gener-
24 al's Redirect as being in response to that, and I think
25 the form of the question was you know your -- your

1 ethical obligations as a police officer or as a law
2 enforcement officer. I forget the exact phraseology.

3 So there are certain ethical rules about which
4 we should all conduct our behaviors, and there are
5 additional ethical rules about which we should con-
6 duct ourselves within our chosen professions.

7 The testimony is obviously he has conducted him-
8 self within the ethical obligations of his profes-
9 sion with the Lexington County Sheriff's Office
10 because he's been promoted since October 2010.

11 So there could be no question in that regard,
12 but you are certainly protected on the record, Mr.
13 Floyd.

14 MR. FLOYD: Thank you, Your Honor.

15 THE COURT: I will see you back at two fifteen.
16 Thank you very much.

17 (Whereupon, the Court took the lunch recess,
18 after which the matter was resumed)

19 THE COURT: Anything before we bring our jury
20 in?

21 MS. WEISS: No, Your Honor.

22 THE COURT: From the Defense?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Bring us our jury, please.

25 (Jury returned to Courtroom)

1 THE COURT: All right. Welcome back, ladies
2 and gentlemen. I hope you all had a pleasant lunch.
3 We will be continuing the trial of the case
4 with the presentation of testimony by the State.
5 You can call your next witness.
6 MS. WEISS: Thank you, Your Honor. We'd call
7 Dr. Susan Luberoff.
8 THE COURT: All right, Doctor, if you would come
9 around and be sworn, please.
10 SUSAN LUBEROFF, being duly
11 sworn, testified as follows:
12 CLERK: Please take a seat on the witness box
13 and state your full name and spell your last name.
14 WITNESS: Susan Freeman Luberoff, L U B E R O F
15 F.
16 DIRECT EXAMINATION
17 BY MR. WEISS:
18 Q. Good afternoon, Dr. Luberoff.
19 A. Good afternoon.
20 Q. Would you please introduce yourself to the jury
21 and explain to them your training and what you do?
22 A. Sure. My name is Susan Luberoff, and I'm a
23 pediatrician, and graduated from the third class to
24 graduate from the U.S.C. School of Medicine in 1983.
25 And I completed a pediatric residency at Children's

1 Hospital at Richland Memorial in 1986. That is a
2 three year residency concentrating in pediatrics.

3 And since then I have worked in the field of
4 pediatrics in several areas, but the largest concen-
5 tration of my professional experience
6 has been in the setting of assisting with medical
7 evaluations of children who are suspected of having
8 been physically or sexually abused or significantly
9 neglected.

10 I am a board certified pediatrician, which means
11 I passed a two stage set of board exams.

12 I have also been voluntarily recertified sev-
13 eral times, I think three times, since the initial
14 certification.

15 I am a Fellow of the American Academy of Pedia-
16 trics, and I am a member of two of the sections, a
17 section on child abuse and neglect, and a section on
18 adolescent health.

19 I have received ongoing training in the field
20 of medical aspects and other aspects of child abuse
21 and neglect. Specifically in about 1990 or 1991,
22 I spent six weeks in Denver at the Kemp National
23 Center for the Prevention and Treatment of Child
24 Abuse, as a scholar in resident, which is kind of
25 like a mini-fellowship with advanced training, working

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1 with people that are in the field, and I have con-
2 tinued to attend seminars and workshops and five or
3 six day-long trainings on the effects of child abuse
4 and neglect, and also on other aspects of pediatrics
5 throughout my career.

6 I also provide training to various profession-
7 als in the field, to other physicians, nurses, law
8 enforcement, DSS workers, teachers, in how to recog-
9 nize signs of abuse and how to help tell whether an
10 injury is from abuse or from accident.

11 Q. Where are you currently employed?

12 A. I am employed by the University of South Carolina
13 School of Medicine, Department of Pediatrics, and
14 I am an associate professor of clinical pediatrics
15 with the medical school.

16 I am stationed at a facility called the Assess-
17 ment and Resource Center which is a clinic, an outpa-
18 tient clinic, that does evaluations of children sus-
19 pected of having been physically or sexually abused.

20 MS. WEISS: Your Honor, at this time I would
21 offer Dr. Luberoff as an expert in child abuse and
22 pediatrics.

23 THE COURT: Mr. Floyd?

24 MR. FLOYD: No questions.

25 THE COURT: All right, ladies and gentlemen.

1 As you recall, a witness cannot give opinions. Nor-
2 mally when a witness testifies they must testify as
3 to what they saw or heard or sensed by smell or by
4 something of that nature.

5 However, there is an exception when someone is
6 qualified by education or experience or training in a
7 particular art, craft, science or profession. They
8 are permitted to give their opinion in certain areas
9 if the Court qualifies them.

10 In that way, this witness, Dr. Susan Luberoff,
11 will be qualified as an expert in the area of child
12 abuse and pediatrics, to give opinion testimony in
13 those areas.

14 That does not mean that you must accept the
15 opinions but it is evidence that you, the jury, may
16 use in any way that you see fit.

17 Thank you. You may continue.

18 MS. WEISS: Thank you, Your Honor.

19 BY MS. WEISS:

20 Q. Dr. Luberoff, how many years -- I know you've
21 been through all of that -- have you been working
22 primarily with child abuse and pediatrics?

23 A. I worked in the -- directly in the field for
24 seven years and then took a break to work with handi-
25 capped children. During that time I helped people

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1 by working behind the scenes kind of to help them
2 figure out cases but I didn't see children.

3 I've been back and had this job for a little
4 over five years. So eleven years it has been pretty
5 much full time.

6 Q. And that basically means on a day to day basis
7 that you are evaluating these types of cases?

8 A. Yes.

9 Q. To determine whether or not there is child abuse
10 involved?

11 A. Yes.

12 Q. Were you doing this back on January 20th of
13 2010?

14 A. Yes, I was.

15 Q. And did you have the opportunity to see Joshua
16 Hunter Dial?

17 A. Yes.

18 Q. Why did you have that opportunity?

19 A. The responsibilities that I have as a physician
20 with the medical school is that if a child is ad-
21 mitted to Children's Hospital, Palmetto-Health Child-
22 ren's Hospital, and the treating team is concerned
23 that there might be an issue of child abuse, then they
24 will often consult me, and I go and have a look at
25 that child and help them in their evaluation.

1 It was in that role that I was consulted to see
2 Joshua on January 20th.

3 Q. Do you recall who contacted you?

4 A. Dr. Sarah Webb-Wood was the resident at the time
5 in the intensive care unit, and she is the one who
6 contacted me. Her supervisor was Dr. Harper.

7 Q. What was the condition of Joshua Dial when you
8 first saw him?

9 A. When I was called -- when I received the call
10 from Dr. Webb-Wood, she notified me that Joshua was
11 not expected to survive actually for very long, so I
12 went over there on the same day.

13 And Joshua was completely unresponsive to any-
14 thing that I did during the examination.

15 He was completely limp. He was on a ventilator
16 with a tube to breathe for him.

17 His pupils were completely dilated. They did
18 not have any response to shining light into his eyes.

19 He was already starting to show signs of his
20 body organ systems starting to fail, which were steps
21 in his death.

22 So it was clear that he was a child that was in
23 a very morbid condition.

24 Q. Did you do any background work before you actu-
25 ally began assessing him?

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1 A. I had some of history supplied to me by Dr.
2 Webb-Wood. It basically was the history that the
3 child came in the hospital -- in medicine when we
4 say history, we mean what the care-giver or what the
5 child has told.

6 So I had the history that there had been some
7 kind of a minor fall within the household and that
8 the care-giver had called another relative. Nine
9 one one eventually was called, and the child was
10 transported first to the Lexington Hospital and then
11 was transferred over to Palmetto Children's Hosital.

12 I also was able to look at and talk with the
13 treating staff about lab results that were back at
14 that time and the head CT scan that had been done at
15 Lexington Hospital.

16 I believe I also was able to speak with the in-
17 vestigator who was officially just beginning his in-
18 vestigation at that point too.

19 Q. What did you do once you got to Joshua's room?

20 A. Well, I performed a physical examination of him.
21 In my exam of children, really regardless of what the
22 history is, I'm there to look for any signs of abuse
23 or neglect and also to look for other alternative
24 explanations for injuries that we might find.

25 So an ordinary approach is to do a very careful

1 examination of all the skin, which I did in Joshua,
2 looking at everything I can see. The mouth, the ears,
3 the genital area, if that is pertinent, but I do a
4 careful examination of all the areas.

5 Also, I felt all of his bones to feel whether
6 or not there is any tenderness, if the child is
7 alert enough to respond to that, or see if I feel a
8 break.

9 I check the joints to see if they can move. I
10 look at the child for how much fat tissue the child
11 has and muscle tissue, to see if there are any signs
12 of neglect or starvation.

13 Then if I have any visible physical findings, I
14 take photographs of those to help me remember what
15 those injuries look like.

16 I also look in the eyes, the ears, the mouth,
17 to find out if there is trauma in the mouth or other
18 parts that we pay specific attention to.

19 Q. From your examination of the outside of Joshua's
20 body, did you find any evidence of breaks, bruises,
21 or wounds of any sort?

22 A. The only wounds or abnormalities that I found,
23 besides what the hospital had done like an IV on the
24 child or things like that, were a circular bruise
25 along the jaw line on the left that was very easy

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1 to see.

2 The area over Joshua's collar bone on the right
3 looked like it could be the beginning of a bruise,
4 but he didn't survive long enough for us to know
5 whether that turned into a bruise, an obvious bruise
6 or not.

7 He was starting to develop a little bit of eros-
8 ion or a little bit of a rash around his anus because
9 of diarrhea. That is because his gut was starting
10 to shut down.

11 Q. I'm going to show you what has been marked as
12 State's Exhibit 20 for identification. Do you recog-
13 nize this photo?

14 A. Yes, this is one of the photographs that I
15 took.

16 MS. WEISS: Your Honor, at this time I would
17 like to move Exhibit 20 into evidence.

18 THE COURT: Mr. Floyd.

19 MR. FLOYD: No objection.

20 THE COURT: State's 20 is in evidence without
21 objection.

22 (Photograph admitted in evidence without ob-
23 jection s State's Exhibit 20)

24 BY MS. WEISS:

25 Q. Is this the bruise under the cheek or under the

1 jawline that you were describing?

2 A. Yes, it is.

3 Q. I'll show it to the jury. Were you able to
4 take measurements?

5 A. The technician did the photograph so that I could
6 go back and take measurements and compare -- for
7 example, sometimes we will have injuries on a child
8 that look like they were inflicted by a particular
9 weapon like a belt or something like that.

10 We might not have that implement available right
11 away, so there is a measuring device and a picture
12 to provide that information so we can go back and
13 compare it.

14 This particular bruise didn't have a pattern to
15 it to suggest some particular kind of weapon, so I
16 didn't document the measurements, but there is a
17 marker there where we can go back and do that if we
18 needed to.

19 Just looking at this picture, this bruise appears
20 to be one and a half centimeters in the length of it.

21 Q. Okay, and was there any way for you to make any
22 sort of finding as to what you believed this to be
23 from?

24 A. No.

25 Q. Okay. After you had examined the outside of the

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1 body, what did you do next?

2 A. After examining the outside of the body and tak-
3 ing the photographs, I discussed my findings with Dr.
4 Webb-Wood, with the investigator . .

5 Q. Let's go back one step. You said you looked in
6 the child's eyes?

7 A. That is part of my exam, yes.

8 Q. And can you explain to the jury what -- did you
9 have any findings, any other findings you found,
10 other than the bruising?

11 A. Yes. The eye exam actually was quite remarkable.
12 Using the hand-held ophthalmoscope, which is the light
13 to look in the eyes with, the routine light we use
14 in regular practice situation, I was able to see ex-
15 tensive retinal hemorrhages or bleeding into the back
16 of the child's eyes, using that simple bedside in-
17 strument, and the child's eyes were dilated as I've
18 explained earlier, so I would be looking straight down
19 when I shined the light in his eyes, and that gave
20 me a very good view of that area.

21 But sometimes we can't see retinal hemorrhages
22 with that hand-held ophthalmoscope, and it is not
23 until the ophthalmologist comes in with specialized
24 equipment that we can see them, but here I could
25 see them quite easily just on the bedside exam.

1 Q. Were there -- did you have any other findings?

2 A. Not that I recall.

3 Q. What did you do next?

4 A. Then I dictated a report.

5 Q. Were you able to make a determination, based on
6 what you knew at that point, as to whether or not
7 this case qualified as an abuse case? A potential
8 abuse case?

9 A. Yes. At that point I was -- I actually made a
10 diagnosis of non-accident blunt force head trauma or
11 abusive head trauma.

12 Q. And did you stop there or did you continue to
13 look into Joshua's history?

14 A. I continued to look into the history, and then
15 over the next several days or several weeks other in-
16 formation was received, such as his outpatient medi-
17 cal records. Those usually aren't right there when
18 a child comes in.

19 I was furnished those to review. I was furnished
20 Joshua's new-born nursery records from when he was
21 born, as well as his mother's prenatal records from
22 when she was carrying him, and the labor and deliv-
23 ery records relating to his birth.

24 Q. And what is the purpose of looking at those re-
25 cords?

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1 A. Looking for any other signs of preexisting con-
2 dition or abnormalities that could possibly make a
3 child more at risk for injuries or explain injuries.

4 Q. Did you find anything like that?

5 A. No.

6 Q. Dr. Luberoff, based on your examination, your
7 experience, your expertise, could you tell us or do
8 you know physically what happened to Joshua Dial?

9 A. No. I know that Joshua was the victim of blunt
10 force head trauma but as far as exactly what object
11 hit his head or what kind of forces were applied to
12 the inside of his head, I can't sit here and tell you
13 exactly this happened and then this happened to that
14 child's head.

15 There are really only two people who can answer
16 that question, and one of them isn't here any more.
17 The other is whoever inflicted the injury.

18 Q. You say your finding though is non-accidental
19 blunt force head trauma?

20 A. Yes, or abusive head trauma is another phrase
21 that we use.

22 Q. Can you explain how you came to that conclusion,
23 Doctor?

24 A. We look at the particular types of injuries,
25 and one of those major injuries in Joshua was the

1 injury inside his head which was notable on the
2 head CT scan, and we could see it.

3 But that was the bleeding within the layers
4 surrounding the brain called subdural hemorrhage, and
5 at autopsy there also were some subarachnoid hemor-
6 rhage.

7 We look at the presence and the distribution and
8 appearance of the retinal hemorrhages, and any other
9 findings such as bruising, which is quite unusual in
10 a child this age to have skin bruising, and history
11 taken into account also.

12 Q. When you look at these, if you can call them
13 markers of potential abuse, do you look at them sep-
14 arately, or do you look at them as one whole piece of
15 evidence?

16 A. We definitely look at them as one whole piece
17 of evidence. One particular element of it is what
18 gets our attention in the first place, but we use all
19 of the information that is available to put into a
20 whole picture, and then make a diagnosis.

21 Q. Can you describe for the jury -- we've heard
22 blunt force head trauma, abusive head trauma reviewed,
23 as well as from the pathologist describing it as
24 blunt force head trauma.

25 Can you describe what that term means?

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1 A. That is a way of labeling trauma in a category.
2 For example, if you are stabbed with a knife, that's
3 a sharp force trauma. If you're electrocuted, that
4 is an electrical trauma.

5 It means a force that is -- a force whose ori-
6 gin is a blunt type of mechanism. That could -- that
7 includes lots of different mechanisms in application
8 of that blunt force trauma.

9 If, for example, you are hit in the head with a
10 baseball, that is a blunt force trauma.

11 If a child is involved in a motor vehicle acci-
12 dent and is ejected from the car and his head im-
13 pacts the sidewalk, that is a blunt force trauma.

14 If a child is violent shaken, then if the brain
15 moves around within the skull and hits the skull, or
16 even shears within the brain, that is felt to be one
17 of the forms of blunt force trauma.

18 Q. And with the trauma you pointed out to the jury,
19 the bleeding and hemorrhaging that led to the death
20 of Joshua Dial, is there an accidental explanation
21 for these injuries?

22 A. There is not an accidental explanation for this
23 child's presentation and these injuries.

24 Q. How are you, based on a history -- let me re-
25 phrase that. Could these injuries, the injuries that

1 Joshua Dial presented with, be caused by the everyday
2 household events?

3 A. No, these were fatal injuries. They were very,
4 very, very severe injuries based on blunt force, not
5 the kind of force that is seen in household routine
6 falls or accidents.

7 Q. And what type of falls and accidents would you
8 categorize under routine household events?

9 A. Well, toddlers and older children fall fre-
10 quently. Toddlers fall several hundred times a year
11 if you actually followed the child around and count
12 the falls.

13 It is common, quite common, for toddlers to fall
14 to the floor, for toddlers to fall against a coffee
15 table or against a door jamb, out of a high chair or
16 off a changing table, off a bed.

17 Those are very, very common falls. They are
18 seen on a regular basis in routine pediatrics or in
19 an emergency room with someone who is very concerned,
20 quite commonly.

21 And we know through studies that have been done,
22 looking at those kinds of injuries, at the out-
23 come of those types of injuries, that those don't re-
24 sult in the horrendous multi-system injuries and
25 fatalities in children who are otherwise normal.

1 Q. And you talked about a toddler. Would the head
2 of a toddler be similar to that of the head of a
3 five month old?

4 You were saying toddler . .

5 A. I did say toddler. A five month old falls more
6 into the realm of infancy, and we have a kind of a
7 rule of thumb in pediatrics, that you don't bruise
8 until you cruise.

9 That is not one hundred percent correct. Cer-
10 tainly, a child that is not cruising -- and cruising
11 means to hold on and walk around, holding onto fur-
12 niture.

13 They can get bruised younger than that. If they
14 do get bruised younger than when they are able to
15 move around, then it usually involves another person
16 who is the cause.

17 They're dropped onto the floor or they bruise
18 because something is dropped on the child.

19 The more mobile the child gets, the more bruises
20 we can expect to see in children, and we do expect
21 to see bruises on children.

22 As a general pediatrician, if I see older child-
23 ren one years old or two years old that have no
24 bruises on them, I wonder what kind of physical ac-
25 tivity they are allowed to get.

1 So we do expect to see bruises in children once
2 they become mobile. Five months old is -- if the
3 child is developing mentally normal then that child
4 will have learned to roll over by that age and should
5 not be independently sitting or at least not for any
6 length of time, and is definitely not crawling, walk-
7 ing, running, climbing, doing the things that contri-
8 bute to more and more bruising.

9 Q. You talked about shaking can cause abusive head
10 trauma or the blunt force head trauma, so when you
11 see infants on parents' back packs jogging, hiking, and
12 even mothers bouncing a child, could that type of
13 bouncing and shaking cause head trauma?

14 A. Once we realized that that repetitive kind of
15 shaking can severely injure or kill a child, people
16 started studying those more routine kind of bouncing
17 around kind of activities, and it has been well docu-
18 mented that riding in a backpack on a mother who is
19 jogging or bouncing on the grandfather's knee, those
20 kinds of things, none of these cause the injuries we
21 see in Joshua.

22 Q. So can you describe what type of shaking would
23 cause these injuries? What that would be like?

24 A. First of all, there is no way to actually study
25 with a live child to demonstrate exactly how much

1 force it takes to kill that child.

2 I mean, that would obviously be completely un-
3 ethical to say, well, let's take the children and
4 put it on videotape and be able to know exactly what
5 that looks like.

6 The amount of force though far exceeds that en-
7 countered in normal falls in the household and far
8 exceeds the force involved in jogging, bouncing, or
9 normal play.

10 We do have a collection of literature where peo-
11 ple have confessed to shaking babies and confessed on
12 videotape where they demonstrated what it was that
13 they did.

14 You know, probably ^{some} of those confessions are a
15 little bit minimized, a little bit not quite to the
16 extent that it actually happened, but it is clear to
17 professionals working in this field that the amount
18 of force is such that a lay person, walking by and
19 seeing it happen, would clearly know that that child
20 was in jeopardy and in danger.

21 Q. And you said you reviewed all of Joshua's med-
22 ical records from when he was born?

23 A. All the medical records that I know about, ped-
24 iatric records, his birth records, and, of course, his
25 death record.

1 Q. We've heard from several doctors who -- Dr.
2 Ross and some we've seen earlier -- who stated that
3 the cause of death was a subdural hematoma, subarach-
4 noid hemorrhage, cerebral edema, blunt force head
5 trauma, and the head hit something or something hit
6 the head.

7 Dr. Harper also has . .

8 MR. FLOYD: Your Honor, I'm going to object. I
9 am not sure that her recalling testimony of wit-
10 nesses would be proper.

11 It's pitting witnesses against each other.

12 THE COURT: This is the type of information that
13 an expert would normally provide, and I think it is
14 admissible under 702, 703. That's where you are
15 heading, Madam Attorney General?

16 MS. WEISS: Yes, Your Honor. Thank you.

17 THE COURT: All right. If at the end of the
18 question you still have an objection, bring it back
19 before me.

20 MR. FLOYD: Thank you.

21 THE COURT: You may continue.

22 BY MS. WEISS:

23 Q. Dr. Luberoff, you used shaking as a mechanism of
24 injury?

25 A. Yes.

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1 Q. And Dr. Cheeseman and Dr. Ross used non-accidental
2 blunt force head trauma.

3 Are those statements consistent with what you're
4 describing now?

5 A. Yes. They are different phrases that mean the
6 same thing.

7 Q. Dr. Luberoff, we have heard several different
8 scenarios about how this could have happened.

9 I would like to ask you hypothetically, in your
10 expert opinion, whether the injuries that you've ob-
11 served in Joshua could have happened if the father
12 was feeding the child, stood up and the child dropped
13 to the floor?

14 A. No.

15 Q. Why do you say that?

16 A. Because these were overwhelming fatal injuries.
17 Children fall in scenarios similar to that frequently
18 and most of them don't end up even to the attention
19 of medical providers.

20 The majority of them were at home because they
21 don't present symptoms except perhaps crying, but
22 those that do come to medical care because of the his-
23 tory involved that I dropped him and his head hit the
24 floor or hit something, then a certain number of times
25 those children have x-rays or have head CTs done to

1 be sure, and we don't see these injuries in children
2 with that kind of history, especially in those where
3 it is witnessed by another person.

4 Q. What about if someone is in a carpeted living
5 room, holding a child, and trips over something in
6 the floor, and the child and person fall and land on
7 top of this table?

8 A. If a person is holding a child and falls with
9 the child, that adds force to the fall, but we still
10 do not see this kind of injury in a plainer kind of
11 fall.

12 If someone is holding a child and falls down the
13 stairs carrying the child, and the whole weight of
14 that adult contributes to the child -- the adult falls
15 on top of the child at the bottom of the stairs, then
16 we can see more serious injuries.

17 Even in those cases, the children do not usually
18 die, but we will at times see broken bones, and some-
19 times see some subdural hemorrhage in cases such as
20 that.

21 Q. And in cases such as I've just explained, if the
22 person tripped and fell, and the child hits the back
23 of his head and his neck on the table, would you ex-
24 pect to see these types of injuries?

25 A. I would not.

1 Q. What type of injuries would you expect to see?

2 A. It's possible the child may sustain a small
3 bruise where the back of his head hit the table. Of-
4 ten we don't see bruising when that kind of thing
5 happens.

6 The child may have his feelings hurt. He may
7 cry, but we don't see life-threatening injuries from
8 that type mechanism.

9 Q. And what about if an adult was holding a child
10 between -- under the arms in this manner, and was
11 shaking the child back and forth?

12 A. Repetitive shaking is known to cause fatal in-
13 jury in children. The harder one shakes, the more
14 times the shaking happens, there is additive force ap-
15 plied in shaking repetitively.

16 If a child's head is shaken -- for example, if
17 a child falls and hits the floor, his head may bounce
18 once. There is one shake kind of involved in that.

19 But when a person is holding a child and violently
20 shaking a child, there is force being applied to the
21 brain. The head is also moving. It's rotating about,
22 back and forward, on an arc, and the brain is -- the
23 brain is more than one entity.

24 The brain is not all one solid mass like a rub-
25 ber ball. It has different densities of material,

1 and when that brain starts moving in that skull, the
2 different densities move at slightly different speeds,
3 and you can get tearing of structures within the
4 brain.

5 You can get direct injury to the brain from the
6 brain actually banging or contacting against the
7 skull, and then in those kinds of scenarios, then we
8 do search and see much more serious injuries and some-
9 times death in children.

10 Q. Do you often find in the research and in your
11 experience that if someone shakes a child and they
12 just sort of stop, that there is something that goes on
13 after the shaking?

14 A. Often people will describe shaking, followed by
15 an impact, such as violent shaking following by
16 throwing the child down to a surface, and that sur-
17 face may be a bed, a crib or floor, any kind of sur-
18 face.

19 You know, as I mentioned earlier, there really
20 are only two people in any given case that know
21 exactly what happened, the person who did it, and the
22 child, and the child hasn't survived in this case.

23 There is no way to go back and look at the child's
24 brain and say, okay, this child was shaken X number
25 of times or minutes, and the head also hit an object

1 at the end of the shaking.

2 We are starting to find through the literature
3 that if there is an impact involved with the shaking
4 that it starts to look like that impact does contri-
5 bute a lot to the ultimate injury that the child sus-
6 tains.

7 So that while shaking alone can cause serious
8 injury and can harm or kill a child, shaking with im-
9 pact probably makes the injury worse and makes death
10 more likely.

11 Q. You said if you are shaking and the child then
12 goes down onto a couch or a bed, you would think it
13 would be a soft landing. Is that actually true in
14 these scenarios?

15 A. Well, the problem is that the -- that whatever
16 it is that the child encounters, the skull stops mov-
17 ing and the brain continues for just a fraction of a
18 second. It is motion within that skull, and that is
19 -- it is the sudden stopping of that head that is a
20 problem, not necessarily what the material is that
21 stops the head.

22 You know, if the child fell on something espec-
23 ially soft, like a beanbag chair, it probably wouldn't
24 contribute the same kind of impact to what I'm de-
25 scribing, that a sofa or floor or bed or a coffee

1 table would.

2 Q. Is it unusual in a case where there is suspected
3 blunt force head trauma -- if you describe holding a
4 child like this and shaking, is it unusual not to
5 have breaks or bruising around the ribs or the back?

6 A. In young children, we actually quite often find
7 fractures of the ribs along the spine in the back of
8 the child, where the child is gripped so hard during
9 the shaking that the ribs actually break.

10 In this case, Josh did not have broken ribs, and
11 even in children that have broken ribs, that we know
12 a tremendous amount of force was applied to the chest
13 in squeezing, we almost never see bruising on the
14 skin.

15 I have never in my career seen bruising overlying
16 those broken bones. In fact, in other broken bones --
17 if a child falls off a bike and breaks an arm, we do
18 not usually see -- sometimes we can, but we don't us-
19 ually see bruising over the fracture.

20 There is a fracture under there, and that is
21 where most of that force got absorbed, but in Joshua we
22 didn't see any fractures. He did undergo what we
23 call a skeletal survey, x-raying all the bones in
24 his body to look for any broken bones. He had none.

25 Q. Is it possible not to have fractures either when

1 you are shaken?

2 A. Yes.

3 Q. Joshua did not have fractures or bruising?

4 A. No.

5 Q. We've heard a lot of testimony about coagulop-
6 athy. Can you tell us what that is and how it comes
7 into effect in this case?

8 A. Coagulopathy -- the words means a disorder in
9 clotting. That's basically what it means. In
10 Joshua's case he did -- when he presented to the hos-
11 pital and his blood could be drawn and he could be
12 tested as to his clotting abilities, he was demonstrat-
13 ing a coagulopathy, a problem with his clotting.

14 This coagulopathy in Joshua was a result of the
15 head trauma and was a part of his process of death.

16 When the brain is injured, chemicals are then re-
17 leased which initiate a cascade of events that use
18 up the clotting factors in the body.

19 That was what we could see. We actually very
20 commonly expect to see some coagulopathy in a child
21 who is at the morbid stage that Joshua was in.

22 Q. Was there any evidence that Joshua had ever had
23 any coagulopathy before this?

24 A. No evidence in looking at when the autopsy was
25 done and all the other organs. There was no evidence

1 there of any bleeding abnormalities. He did not have
2 any other bruises on his body except for the one that
3 I noted.

4 There was no physical evidence and no historical
5 evidence of any pre-existing coagulopathy. We would
6 have expected to see what we saw with his clotting
7 test at the stage that he was in.

8 Q. Is there any reason to believe that the bleeding
9 issues as presented at the morbid stage exacerbated
10 or had to do with causing the injuries?

11 A. The bleeding disorder happened after the injury
12 happened.

13 Q. And so what you were able to look at and assess
14 -- what you assessed did not look worse or make you
15 think worse than what had happened based on a bleeding
16 issue that may have appeared later?

17 A. No.

18 Q. In this case, we've heard about trying to teach
19 a five month old to walk. Does a five month old --
20 is a five month old in any way ready to start learn-
21 ing how to walk?

22 A. Actually I teach the development lecture to the
23 third year medical students so that's kind of up my
24 alley too.

25 Infants when they are first born are born with

1 a collection of what we call primitive reflexes,
2 things that happen by reflex.

3 If you put something in the mouth of a newborn
4 baby, the baby automatically sucks.

5 One of the reflexes that babies are born with
6 is called a pacing reflex -- P A C I N G. That is
7 one where if the sole of the baby's foot is gently
8 touched, or you bring the baby down to let his foot
9 touch the floor or the bed, his ankle and his knee
10 and his hip automatically, without thinking about it,
11 flex. They track up, and what results is that it
12 looks like the child is picking that foot up.

13 That reflex persists for several months and it
14 actually abolishes or goes away. Around six months
15 old, five to six months old, it is replaced by the
16 child.

17 When the sole of the foot comes down to touch
18 the bed or the floor, when lowering him down to it,
19 instead of everything flexing he extends.

20 The result is if you're supporting his body that
21 he ends up kind of bouncing. Children enjoy this.
22 They will often laugh at it. It is a precursor to
23 later, around nine months old, when they ought to be
24 able to start their pulling up and bearing weight on
25 the legs.

1 So around five or six months old you see a change
2 in what happens to a child's legs when an adult or
3 another person lowers the child down to touch a sur-
4 face.

5 Q. And if you take the child and start trying to
6 tilt them from side to side and make them do it, over
7 and over, as if in a walking fashion, what happens?

8 A. It fatigues. A child at that age is certainly
9 nowhere near walking. They don't do any kind of reci-
10 procal moving of their legs over the floor. They
11 will do the stiffening or the appearance of bearing
12 weight through their legs and if you were trying to
13 shift their legs from one leg to another, it is not
14 going to be productive, and the child is not going
15 to start walking from that or learn to walk from that.
16 Nothing productive is going to happen in that fashion.

17 Q. And when they fatigue, what happens?

18 A. Well, they will stop extending their legs.

19 Q. And how long would you say a child would be --
20 would have to be shaken to cause these type of in-
21 juries?

22 A. We don't know the answer to that.

23 Q. Could it be a very short period of time?

24 A. It can be. We believe it can be a matter of just
25 a few seconds if the shaking is very vigorous and

1 very repetitive.

2 There have been studies giving normal adults mo-
3 dels or weighted objects that approximate the weight
4 of a child to see -- and asking them to shake it as
5 hard as they can, counting how many shakes happen in
6 a second, how long can the adult do that before the
7 adult fatigues and has to stop doing it.

8 We have some idea of the shake frequency and that
9 can be involved in this, but we just don't know
10 exactly how many times a second or minute a child is
11 shaken, or for how long it happens in one particular
12 given case.

13 Q. To cause severe injuries in Joshua Dial, it had
14 to be more than one shaking or one hit?

15 A. Yes.

16 Q. And so then just a few seconds of the back and
17 forth motion, repetitive motion?

18 A. If it is vigorous, violent and repetitive. It
19 is the repetitive nature, the rotational movement of
20 the head back and forth within the skull, in addition
21 to any impact that might happen that damages the
22 brain in the child.

23 Q. And is there any question from your findings, in
24 your expert opinion, that the shaking or force that
25 had to be applied to cause these injuries would be

1 classified as abuse?

2 A. Is there any doubt that I would classify it as
3 abuse? I would consider that force to be abuse, yes,
4 that results in the worst kind of outcome. In this
5 case, it was fatal.

6 Q. And how long between the time Joshua Dial re-
7 ceived these injuries before he would be symptomatic?

8 A. This child would have been symptomatic imme-
9 diately after the injury was inflicted.

10 Q. Is it your expert opinion that these injuries
11 were inflicted at the same time?

12 A. I'm sorry?

13 Q. These injuries you talked about, were they in-
14 flicted at the same time from the same trauma?

15 A. You mean the retinal hemorrhages -- those are
16 not injuries. It's one injury, and those are several
17 markers of the single injury.

18 Q. Those occurred at the same time and the child
19 became immediately symptomatic?

20 A. Yes.

21 Q. What would have happened when the child became
22 symptomatic?

23 A. Well, symptomatic could mean that he became un-
24 conscious. It could mean that he became severely
25 stunned.

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1 It would be quite common to have breathing prob-
2 lems start to become obvious.

3 Q. But there's one person with the child when he
4 becomes unconscious with breathing problems, so would
5 it be fair to say that is the person that caused the
6 injury?

7 A. . . .

8 MR. FLOYD: Objection, Your Honor. Leading.

9 THE COURT: Rephrase your question, please.

10 BY MS. WEISS:

11 Q. These injuries on a five month child -- could
12 a five month old child have caused injury to himself?

13 A. No, there's no way he could have caused these
14 injuries to himself.

15 Q. No further questions, Your Honor.

16 THE COURT: Thank you very much. Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. FLOYD:

20 Q. Good afternoon, Dr. Luberoff.

21 A. Good afternoon.

22 Q. You reviewed the records, pediatric records,
23 of Joshua Dial in connection with your investigation.
24 Is that correct?

25 A. I did.

1 Q. And would you agree with me that there was no
2 previous history of abuse on this child?

3 A. There was no previous history of abuse. In
4 fact, Joshua was growing well and there is no evidence
5 in the medical record of neglect or abuse.

6 Q. A well-parented child before January 19, 2010?

7 A. No evidence at all that he was not a well-parented
8 child.

9 The child came in for routine scheduled well-baby
10 check-ups. He hadn't yet been in for his four month
11 visit, but there was no sickness in there that --
12 you know, sometimes children don't get there exactly
13 at four months, but nothing raised any red flags for
14 me.

15 Q. Now, let's also talk first about that there was
16 a bruise under his chin. Is that correct?

17 A. Along the jaw line is how I described it.

18 Q. And you don't know what caused that bruise?

19 A. I don't. It didn't have a particular pattern
20 for me to match to a particular object.

21 Q. And there was no evidence you could say that
22 that bruise was any evidence of abuse on the child?

23 A. That bruise, all by itself, would not necessar-
24 ily be evidence of abuse. It was on the type area
25 that we will see accidental bruises, particularly

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1 when children are older, but that bruise in and of
2 itself. That bruise in and of itself would have
3 raised a little bit of concern because of his age, but
4 it was not diagnostic of abuse.

5 Q. In fact, were you aware that he had traveled
6 with EMS with one of those masks over his face?

7 A. Yes.

8 Q. Held on his face?

9 A. Yes.

10 Q. Are you aware that they had put the tube in too
11 far?

12 A. Yes, that is not uncommon at all.

13 Q. And could that in itself have caused some bruising?
14 ing?

15 A. It is possible that bruising on the face can happen
16 from that mask.

17 Q. Not saying intentional, but just that it's something
18 that could happen?

19 A. Yes.

20 Q. Now, you did examine -- what time did you examine
21 the child?

22 A. As I recall, it was early afternoon. It was not
23 long before he coded and expired.

24 Q. And did you examine his hands and his arms?

25 A. Yes.

1 Q. Did you see any evidence of abuse in your exami-
2 nation of his hands and his arms?

3 A. I did not.

4 Q. Did you examine his feet?

5 A. I did.

6 Q. Did you find any evidence of abuse on his feet?

7 A. I did not.

8 Q. Did you examine his chest and his abdomen?

9 A. I did.

10 Q. Did you find any evidence of abuse on his chest
11 and abdomen?

12 A. I did not.

13 Q. Did you examine his genitalia?

14 A. I did.

15 Q. Did you find any evidence of abuse in your exam-
16 ination of his genitalia?

17 A. No. The only -- again, he had some erosion be-
18 cause of diarrhea he was having. No evidence of any-
19 one abusing his genitalia.

20 Q. Now, did you examine the inside of his mouth?

21 A. To the degree that I could, but the tube was pre-
22 sent so that limited what I could see, but of the
23 area of his mouth I could see I saw no evidence of
24 abuse with regard to his mouth.

25 Q. So the only evidence that could claim to be

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1 abuse were the injuries to the brain?

2 A. And death. Right.

3 Q. And death from that injury?

4 A. Right.

5 Q. And in fact, you found no bruising on the head
6 of the child?

7 A. I did not find head bruising except for the jaw
8 line.

9 Q. Now, you can have a blow to the head resulting
10 in internal injury, which does not bruise?

11 A. Resulting in internal injury that does not bruise?

12 Yes. Actually, it is quite common even in children
13 who come in with fractures, so we know there has been
14 an actual object involved.

15 We almost never see bruising on the fracture.
16 There maybe swelling but we almost never see bruising
17 in the area of the fracture.

18 So scalp bruising is really quite uncommon in
19 severe head injuries. It can be there but it is com-
20 mon for me not to see it.

21 Q. Now, isn't it true that in many cases in what
22 you would call a severe shaking injury that there are
23 signs of injury to other parts of the child's body?

24 A. There are often some injury to other parts.

25 Q. And I think you mentioned to us about the broken

1 ribs that you can get from gripping too tightly, and
2 that is pretty common, isn't it, in shaking incidents?

3 A. It is.

4 Q. Can you also have injury to the neck area from
5 severe shaking?

6 A. Yes, you can.

7 Q. And can you have injuries to the arms or to the
8 legs from severe shaking?

9 A. You can. The legs can sustain fractures or
10 breaks during the shaking.

11 Q. And there was a complete skeletal done on Josh,
12 was there not?

13 A. A skeletal survey, which was an x-ray of differ-
14 ent bones in the body.

15 Q. And isn't it true there was no evidence of any
16 fractures or injuries to the bones of the body?

17 A. That's correct.

18 Q. Now, are you testifying or saying -- if a child
19 was dropped five feet and struck his head, are you
20 saying that could not produce such serious injury?

21 A. That is an in-household type fall, and those
22 types of falls can cause bruise and can sometimes
23 cause skull fracture, but they don't result in the
24 chaos and severe global head injury, retinal hemor-
25 rhages, the kind of injuries that Josh experienced.

1 Q. Could they produce a subdural hematoma?

2 A. It can produce subdural hemorrhage if there is
3 a fracture. There can be a small subdural hemorrhage
4 right under the fracture.

5 Where the bone breaks there can be a tiny little
6 bit of bleeding associated with that fracture. It
7 is -- I'm not going to say it is impossible to get a
8 subdural hemorrhage without a fracture from a fall
9 like that, but the type of subdural hemorrhages that
10 we see from common types of fall are very small, very
11 isolated.

12 They do not result in severe injury to the child
13 and death.

14 The subdural hemorrhage isn't what killed Joshua.
15 The subdural hemorrhage is a marker for the injury
16 that he sustained.

17 Q. And would the injury be greater if an adult fell
18 on top of the child?

19 A. If an adult simply falls on top of a child then
20 we don't see -- we almost never see head injury from
21 that. If it's what we call a complicated fall, which
22 would be an adult running with a child or an adult
23 going downstairs with a child and then falls with a
24 child, and the weight of the adult contributes greatly
25 to that fall, then those are the kinds of scenarios

1 where we can see some head injuries.

2 Again, those children do not get injured, except
3 very, very rarely, to the point of death.

4 Q. But it can happen? It can happen?

5 A. A child can die from a restraint complicated
6 fall. In fact, infant walkers or stairs are particu-
7 larly dangerous combinations, unlike the adult holding
8 the child.

9 With a child restrained in an infant walker who
10 somehow gets to stairs and tumbles in the walker, then
11 the head takes the full amount of force, and that is
12 the largest reason the American Academy of Pediatrics
13 recommends that infant walkers not be used that can
14 contribute to these complicated falls.

15 Q. A complicated fall is one that involves more
16 than one force?

17 A. It involves more than one force and more than one
18 aspect to it.

19 Q. For example, a child falling and striking an
20 object and then being struck again by the object
21 on top of it? On top of him?

22 A. It wouldn't be what I would classify as a compli-
23 cated fall, no. It would be a common fall.

24 Q. That's a common fall? All right.

25 Now, are you aware of the height of the table

1 that was struck?

2 A. I'm not. I've heard it described as a coffee
3 table, but I don't know the exact height of it.

4 Q. Assume for my questions you've got a table, a
5 small table, and you have an adult holding the child,
6 and the adult trips over another object and so that he
7 is going down with some force.

8 The child's head strikes the table and the adult
9 lands on top of the child to go through the table, and
10 then the child hits the floor under the adult.

11 In your opinion, could that produce a significant
12 injury?

13 A. That is a good question, because that sounds at
14 first blush like a complicated fall because of the
15 child hitting and then hitting again.

16 In fact, the original part of that hit, where
17 the child hits the hypothetical coffee table and ab-
18 sorbs almost all the force of that fall, the remainder
19 -- if the child goes through the coffee table and he
20 hits the floor, there is very little force left in
21 that fall.

22 So that is a fairly uncomplicated type of fall.
23 It is complicated by the fact that the adult is hold-
24 ing the child and that does add force to it, but it
25 is not the same thing as hitting that coffee table

1 and then having the same amount of force left to also
2 hit the floor under the table.

3 I believe that's the way you've described it.

4 Q. And then there is another way that can happen
5 also, is there not, that the child could have a glanc-
6 ing blow on the table complicated by the fall to the
7 floor?

8 A. If there is a glancing blow on the table, de-
9 pending on how glancing it is -- if the glance is
10 that there is relatively no force used in that, then
11 you are left with a very simple fall to the floor.

12 If the glancing blow uses up some of the force,
13 then that does take away from the amount of force
14 left, and that -- when you say glancing, it is not
15 like there is a medical definition of glancing, so I
16 am having to picture that, but glancing types of injur-
17 ies to children don't kill them.

18 There is really -- there is no explanation that
19 I can envision with the coffee table that would re-
20 sult in the type of injuries that we found in Joshua.

21 Q. Now, of course, you don't know what happened?

22 A. I don't.

23 Q. We can't say what happened to the child?

24 A. I was not there.

25 Q. And what you are doing is giving your opinion

1 based on what you observed?

2 A. That's correct.

3 Q. Now, would you agree with me that if a person
4 tripped over another object, causing that person to
5 fall, that the extra force generated with the trip
6 would create more downward force than just a fall?

7 A. Yes. Those are the kinds of scenarios where we
8 start to see fractures, where we start to see skull
9 fractures, or sometimes even crush injuries if some-
10 one is really in a hurry and falls, but we don't see
11 the global involvement of the brain.

12 The skull does a really good job protecting the
13 brain in those sorts of direct application injuries
14 like that.

15 The skull would heal before it would let the
16 brain be hurt. So we see fractures but not the in-
17 ternal injury.

18 Q. But you don't know, and nobody knows how much
19 shaking you'd have to do to cause injury?

20 A. We do not know how long the child has to be
21 shaken. We don't know specifically.

22 Q. Well, could a person -- could a child be shaken
23 without serious injury and then later develop compli-
24 cations with a fall?

25 A. You know -- well, all right. I thought you were

1 asking me something else, and I didn't listen as care-
2 fully as I should have. Could you ask me that again?

3 Q. Could a child experience some injury from a shak-
4 ing and then that later could be exacerbated with a
5 subsequent fall?

6 A. You say that if a child is shaken and then falls,
7 could that fall add to the injury that the child had
8 from shaking?

9 Well, that is going to be two different events,
10 and whatever injury the child had from shaking, we're
11 going to let that kind of stand alone.

12 The fall would produce its own injury. If the
13 child in the original shaking was shaken what we call
14 sub-clinically, meaning shaken not to death but shaken
15 to the point where, for example, he stopped crying
16 -- from the shaking event, he had stopped crying, and
17 he later has a fall, that child is not going to because
18 of the fall then go back and redevelop these global
19 injuries and horrible retinal hemorrhages like we saw
20 in Joshua.

21 So the fall can contribute its own separate in-
22 jury and that is not going to mimic a worse shaking
23 injury.

24 Q. In fact, can't there be some significant period
25 of time between the shaking incident and something

1 -- some symptoms arise?

2 A. If a child is shaken, not to the point of dying,
3 then there is a continuum of shaking injury. Often,
4 when we have a child come into the intensive care
5 unit with blunt force trauma to the head, we often
6 find that during that child's evaluation that there ac-
7 tually was earlier injury as well where the child
8 didn't come to the hospital.

9 That there was an injury that didn't cause the
10 child to be so sick that he died -- injury but not
11 fatal injury.

12 That is fairly common, that we see old and new
13 injury. In a child where the shaking or blunt force
14 trauma event is so forceful that that child dies, the
15 child is immediately symptomatic of that force, imme-
16 diately symptomatic.

17 Q. Now, there could be other causes of retinal
18 hemorrhages, are there not?

19 A. There are other causes of retinal hemorrhages.

20 Q. And the hemorrhages themselves are not life-
21 threatening, are they?

22 A. The retinal hemorrhages are a marker.

23 Q. Just a sub-marker . .

24 A. They may threaten vision in the child, but the
25 retinal hemorrhages do not kill the child.

1 Q. Not every shaking is going to injure the child?

2 A. Not every shaking is going to injure the child?

3 A. Not every shaking -- not every shaking injures
4 the child. Certainly not every shaking results in the
5 child's death.

6 Q. Now, there can be a shaking just to get the
7 child's attention?

8 A. There can be a shaking, and the tragic thing
9 about shaking -- of course, that really doesn't apply
10 because there is no evidence Joshua was shaken before,
11 but one of the tragic things about shaking is that
12 shaking works, and if a care-giver is annoyed by a
13 child for whatever reason, often for crying, if they
14 get that child and shake them a few times and the
15 child stops crying -- it stuns the child and the child
16 stops crying -- the child may not be mortally injured
17 but it worked, and so it becomes a strategy that the
18 care-giver may use again.

19 And it may be used with more force the next time,
20 and more force the next, and that explains why some-
21 times when we get the fatal injury or it is bad enough
22 to come into the intensive care unit, there is evi-
23 dence of less severe earlier injury.

24 Q. And in fact a parent may shake a child and cause
25 some injury, not really intending to injure the child?

DR. LUBEROFF ON CROSS

1 A. Not the kind of shaking that is involved in nor-
2 mal handling or normal play. That doesn't result in
3 injury.

4 If the shaking is with significant force, to ac-
5 tually rip the structures in the brain, to cause the
6 bleeding -- you know, what is going through that per-
7 son's mind when he or she is applying that kind of
8 force -- I can't tell you what's going through their
9 mind, or what the plan is, but if it is a significant
10 force -- it's force that another person watching would
11 recognize as potentially harmful to the child.

12 Q. But you can't measure it, can you?

13 A. We can't ethically measure it, no.

14 Q. Now, are you familiar with the coup contracoup
15 term?

16 A. Yes.

17 Q. If a person has a force going in one direction,
18 and then it rebounds in another direction . .

19 A. Yes.

20 Q. So if a child, for example, fell and let's say
21 he's going down with force, and instead of his head
22 hitting a table a shoulder-neck injury occurs, sling-
23 ing the head further down, it's going to be a bounce
24 with that?

25 A. Probably.

1 Q. And that would produce a shaking-like symptom?

2 A. No, it really wouldn't because the blunt force
3 is absorbed in that shoulder actually, and virtually
4 in every fall that a child has within the house, you
5 know, parts of the child are going to continue follow-
6 ing through with the fall and bounce.

7 We just don't see this kind of injury, and this
8 child didn't have a coup contracoup injury so that
9 doesn't really apply.

10 Q. So the bottom line is that -- would you agree
11 that the person who is in the best position to deter-
12 mine cause of death in a child is the forensic patholo-
13 gist making the post-mortem examination?

14 A. Certainly that is what they are trained in, to
15 determine cause of death.

16 I'm not sure exactly what you're asking.

17 Q. That is their job, isn't it, to determine cause
18 of death?

19 A. Correct.

20 Q. Thank you, I have no further questions.

21 THE COURT: Redirect.

22 MS. WEISS: Very briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. WEISS:

25 Q. Mr. Floyd went through Joshua's body and that

DR. LUBEROFF ON REDIRECT

1 there were no other injuries, and you could have in-
2 juries on the leg or have prior injuries, and he went
3 through all of that.

4 And in a shaking case you could have injuries.

5 Did you see any evidence of prior injuries on
6 Joshua?

7 A. I saw no evidence of any prior injuries, no.

8 Q. Any evidence in the history or anything you re-
9 viewed of any prior injuries?

10 A. No. Well, when he was born, which is usually
11 for most of us the most traumatic event we go through
12 in our whole lives where it is quite dangerous, he
13 did have a bruise on his face from the birth process.
14 Other than that, I saw no documentation of any in-
15 jury.

16 Q. And while it may be true that you can get other
17 injuries from shaking, can you get this injury that
18 Joshua Dial had with these markers without a violent
19 and abusive blunt force head trauma?

20 A. No.

21 Q. Thank you. Nothing futher.

22 THE COURT: Recross, Mr. Floyd?

23 MR. FLOYD: Nothing further.

24 THE COURT: Thank you, Doctor, you may step down.

25 WITNESS: Thank you.

1 MS. WEISS: Your Honor, may Dr. Luberoff be ex-
2 cused?

3 THE COURT: Any objection?

4 MR. FLOYD: No objection.

5 THE COURT: Yes, she is excused. Thank you
6 again, Doctor.

7 (Witness excused)

8 THE COURT: All right, how long for your next
9 witness, Madam Attorney General?

10 MS. WEISS: Your Honor, the State rests.

11 THE COURT: All right. Thank you very much.

12 Ladies and gentlemen of the jury, we now are
13 going to take a brief recess.

14 Please remember my instructions and do not dis-
15 cuss this case with anyone including with your fellow
16 jurors.

17 If anyone tries to talk to you about the case,
18 please let me know immediately.

19 Remember to keep an open mind. Do not begin
20 your deliberations until you are instructed to do so,
21 and leave your notes upside down on your chairs.

22 (Jury excused from Courtroom)

23 THE COURT: Madam Clerk, if you will secure the
24 notes during the recess?

25 CLERK: Yes, sir.

1 THE COURT: All right, we'll take about a fif-
2 teen minute recess.

3 (Whereupon, the Court took a recess, after which
4 the matter was continued)

5 THE COURT: All right, anything from the State
6 before we bring in our jury?

7 MS. WEISS: No, Your Honor.

8 THE COURT: Defense?

9 MR. FLOYD: Well, now that the State has rested,
10 the Defense would move for a directed verdict of ac-
11 quittal.

12 Your Honor, in support of the motion, we would
13 renew all motions made since the beginning of the
14 trial, and there are some specific comments we would
15 make.

16 First of all, on the issue of whether or not the
17 arrest of Lexie Dial, Third, was valid, of course,
18 it would be our position that the arrest was made
19 without a warrant by someone who was not actually
20 authorized to make the arrest in Richland County.

21 That, therefore, the arrest was unlawful, and
22 any evidence seized as a result of that arrest, in-
23 cluding the alleged statement of the Defendant, should
24 have been disallowed.

25 We would renew our motion as to that, Your Honor,

1 as well as move for dismissal.

2 We would assert that a witness for the State
3 tried to take the witness stand with the urn with
4 the ashes of the child.

5 We would further move for dismissal on the
6 grounds that, even taking the statement and the evi-
7 dence in the light most favorable to the State, the
8 various doctors that have been called were inconsis-
9 ent in their findings and their theories, and, in
10 fact, the forensic pathologist -- her cause of death
11 was entirely inconsistent with what the State has been
12 trying to claim, the shaken baby case.

13 Whereas, the forensic pathologist said it would
14 take a blow to the head, which would be consistent
15 with the accident involved, as the Defendant at
16 first told the police about.

17 For all these reasons, Your Honor, we would move
18 for a directed verdict in the case.

19 THE COURT: All right, the motions are denied,
20 based upon prior rulings.

21 As to the directed verdict motion, looking at
22 the evidence in the light most favorable to the non-
23 moving party as I am required to do, I find there is
24 direct and substantial circumstantial evidence to
25 find that the Defendant caused the death of the child

1 under the age of eleven while committing child abuse
2 or neglect, and that the death occurred under circum-
3 stances manifesting an extreme indifference to human
4 life.

5 It is clear that the care-taker at the time the
6 incident occurred, even if I take the testimony of
7 Dr. Cheeseman that it could go back as far as ninety-
8 six hours, in the context that Joshua was a healthy
9 thriving baby -- I think one witness referred to him
10 as a chunky, beautiful baby boy -- on January 19,
11 2010 when EMS arrived and began life-saving attempts
12 to impair the progression of the injury, although
13 there may have been artificially induced bodily func-
14 tions, there was no brain activity from that point on.
15 He did die on the 20th day of January, 2010, at two
16 0 six in the afternoon.

17 I take into account the testimony of Dr. Harper,
18 Dr. Cheeseman, the inconsistent statements that he
19 gave to officers on the scene, Deputy Clayton and
20 Deputy Steele.

21 Even if I set aside the statement to Detective
22 Russell, which I am not required to do and would not
23 do, I find that the State has met its responsibili-
24 ties at this point, and I would deny the motion for
25 directed verdict.

1 Mr. Floyd, does the Defendant intend to offer or
2 produce any evidence?

3 MR. FLOYD: Yes, Your Honor.

4 THE COURT: Could you tell me or share with me
5 now -- you do not have to if you do not want to --
6 whether the Defendant intends to testify, or do you
7 request that I interview the Defendant in that re-
8 gard?

9 MR. FLOYD: Your Honor, that is a decision he and
10 I are still discussing. My plan was to put up three
11 or four short witnesses this afternoon, and we will
12 make our decision at that time.

13 THE COURT: All right. I will revisit that
14 after we release the jury tonight and before we re-
15 cess then.

16 Anything further?

17 MR. FLOYD: No, sir.

18 THE COURT: Anything from the State before we
19 bring in the jury?

20 MS. WEISS: Your Honor, very briefly.

21 Mr. Floyd has indicated that he wishes to intro-
22 duce all of the doctors' medical records, and I don't
23 want it to appear later that I object to it or that
24 I'm trying to hide from it.

25 I would just like to object at this time as to

1 the relevance of it. The child's pediatric records
2 were all prior to the incident.

3 MR. FLOYD: Thank you, Your Honor. Of course,
4 this would bear out the testimony that the child
5 was well cared for before this episode.

6 Also, Your Honor, in those records one thing that
7 is very important to us is that it shows which parent
8 brought the child in for medical visits, and you will
9 see that it is Lexie Dial.

10 There is a page in there that records the parent
11 who brought the child in

12 THE COURT: Madam Attorney General?

13 MS. WEISS: Your Honor, of course, we have not
14 heard the testimony of Dr. Cope yet, but in our talk-
15 ing I don't know the purpose of Mr. Floyd attempting
16 to introduce them when in the testimony of Dr. Cope
17 he can testify as to who brought the child in.

18 There is a sign-in sheet, and whichever parent
19 in the pediatrician's office goes to the window signs
20 him in, so it could be misleading to the jury.

21 Whereas, we have Dr. Cope here to testify, and
22 obviously his testimony is going to be that in fact
23 this was a healthy child. We have no objections to
24 that.

25 I think the records are misleading and are

1 irrelevant.

2 THE COURT: I don't see the point, quite frankly,
3 when Mr. Dial is on trial for some twenty years of
4 his life or his life, that the State would object
5 to these documents coming in, when the last witness
6 who testified said I reviewed all these records. I
7 mean, the experts relied on these records.

8 I just don't see that point. Your objection is
9 overruled.

10 MS. WEISS: Thank you, Your Honor.

11 THE COURT: Anything further before we bring in
12 the jury?

13 MR. FLOYD: Nothing further, Your Honor.

14 MS. WEISS: No, Your Honor.

15 THE COURT: Bring us our jury, please.

16 (Jury returned to the Courtroom)

17 REPORTER: Judge, I've marked Defendant's 4 for
18 ID.

19 THE COURT: What is Defendant's 4?

20 REPORTER: The records.

21 THE COURT: All right. Welcome back, ladies and
22 gentlemen.

23 As you will recall, the State has rested, and
24 that means you have heard all the evidence and the
25 testimony you are going to hear in the trial of the

1 case from the State.

2 The Defense may now present evidence and testi-
3 mony if he chooses to do so. You will recall the
4 State has the burden of proving its case beyond a
5 reasonable doubt, and the Defendant is always pre-
6 sumed to be innocent in South Carolina, regardless of
7 the seriousness of the offense with which he has been
8 charged.

9 A Defendant is never required to prove himself
10 or herself innocent. However, they may present evi-
11 dence and testimony if they choose to do so.

12 So we will now turn our attention to Mr. Floyd
13 and ask, Mr. Floyd, does the Defendant wish to pro-
14 duce any evidence or testimony?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right, sir. Would you call your
17 first witness?

18 MR. FLOYD: Yes, sir, Your Honor. I'd call Dr.
19 Cope.

20 THE COURT: Is this Dr. Cope?

21 MR. FLOYD: Yes, sir.

22 THE COURT: Please come forward and be sworn
23 by our Clerk.

24 BRUCE COPE, being duly
25 sworn, testified as follows:

1 CLERK: Please have a seat, and when you are seated
2 state your name for the record, spelling your last
3 name.

4 WITNESS: Let's see. My name is Bruce Kevin Cope,
5 C O P E.

6 DIRECT EXAMINATION

7 BY MR. FLOYD:

8 Q. And, Dr. Cope, what is your profession? What is
9 your profession?

10 A. I'm a pediatrician at Sand Hills Pediatrics.

11 Q. And where did you receive your medical training?

12 A. The University of South Carolina School of Med-
13 icine.

14 Q. And did you have any training after that?

15 A. A pediatric residency.

16 Q. How long have you been a pediatric physician?

17 A. I graduated residency in 2000, so since 2000. I
18 became a practicing pediatrician in the community.

19 Q. And where is your office located?

20 A. On 378 by I 20.

21 Q. What is it called?

22 A. Sand Hills Pediatrics.

23 Q. And, Dr. Cope, in your practice have you had the
24 opportunity to treat Joshua Dial?

25 A. Yes, I have.

DR. COPE ON DIRECT

1 Q. And when did your relationship with Joshua Dial
2 begin?

3 A. I first saw Joshua a few days after discharge
4 from, I believe, Lexington Medical Center. Soon af-
5 ter birth they followed up with the pediatrician.

6 Q. I want to hand you some documents that have been
7 marked Defendant's Exhibit 4. Do you recognize those
8 documents?

9 A. Yes, sir, I do.

10 Q. And could you tell the jury what those are?

11 A. These are records from the -- from my office for
12 Joshua.

13 Q. And in your treatment of Joshua, did you ever
14 observe any signs of abuse?

15 A. No, I never did see any. He's been -- he was a
16 healthy baby, and I never saw any signs of abuse or
17 . .

18 Q. And did the parents -- was he brought in on a
19 regular basis?

20 A. Based on -- I had to go back and review my re-
21 cords. He was seen for two well visits at two weeks
22 of age and two months of age.

23 Let's see, his first appointment in my office he
24 was four days of age and that was a hospital follow-
25 up. So he was seen -- so if you count that as a sick

1 visit, which we would, there were four sick visits
2 and two well checkups.

3 Q. Six visits?

4 A. A total of six, yes.

5 Q. And when the parents would come in, is there a
6 place where they sign in? Where the parents sign in
7 for the visit?

8 A. When you walk into a pediatric office, in most
9 offices you know how you have to sign in and a parent
10 will sign, one or two but usually not both, and they
11 will sign the patient in.

12 They will just sign the form.

13 Q. So both parents may come but only one signs up
14 usually?

15 A. For the sign-in sheet, yes, sir, I believe so.
16 I usually don't look at that.

17 Q. Would you check your sign-in sheets?

18 A. We don't have the sign-in sheet at the front.
19 What I have is my chart, and this happened to be
20 around the time that we were in the process of chang-
21 ing over our forms and writing down who brought --
22 specifically who brought in the patient.

23 So if -- so just reviewing those, the two well
24 checkups, we don't have anything labeled of who was
25 there.

DR. COPE ON DIRECT

1 Whether it was the mom or dad, or both, and then
2 for the sick visits it says when he was four days old
3 he came in for jaundice. Both parents were there.

4 Six days old, two day later, both parents were
5 there.

6 Let's see, May 28, 09, and 8 31 09 -- when he
7 was nine days of age, his mom brought him in, and
8 then when he was three months with the last sick
9 visit, and both parents brought him in. Or it says
10 parent -- it does not say parents, but just says par-
11 ent, so which one I don't know.

12 Q. May I see those documents?

13 A. Sure.

14 Q. What would this document be?

15 A. This is actually the immunization record. When
16 you come for well checkups, you -- part of a well
17 checkup is you obviously get immunizations.

18 After I see the child and I leave, my nurses
19 will come in and medically insert the vaccines, and
20 they will record the vaccines, and as a part of that
21 record they have a parent signature.

22 I think what you were referring to is -- he had
23 only gotten one set of vaccines from my office, and
24 that was -- it has LD beside it as far as a parent
25 signature.

DR. COPE ON DIRECT

1 Q. LD was who, sir?

2 A. Where it says parent signature, it has LD there.

3 Q. Thank you, Dr. Cope. Please answer any ques-
4 tions the State might have.

5 THE COURT: Mr. Attorney General.

6 MR. WATERS: Thank you, Judge.

7 CROSS EXAMINATION

8 BY MR. WATERS:

9 Q. Dr. Cope, how are you doing today?

10 A. Fine.

11 Q. You testified as to some of the visits. Do you
12 remember seeing the mother bringing this baby in?

13 A. I do.

14 Q. And do you remember the father coming along as
15 well?

16 A. I do, vaguely, yes.

17 Q. Do you remember anything specific about the
18 father's demeanor that drew your attention?

19 A. I -- when I first saw him, it struck me maybe
20 that he was sleepy. I think the very first time I
21 saw him it struck me.

22 To be honest, it's been a long time.

23 Q. Thank you very much.

24 THE COURT: Redirect, Mr. Floyd?

25 MR. FLOYD: No, Your Honor. We would ask that

1 Dr. Cope be excused.

2 MR. WATERS: No objection, Your Honor.

3 THE COURT: Thank you very much for being with
4 us this afternoon, Doctor. You may step down and be
5 excused.

6 (Witness excused)

7 MR. WATERS: I would call Lexie Dial, Junior.

8 THE COURT: Was that offered?

9 MR. FLOYD: We would offer that as evidence,
10 Your Honor.

11 MR. WATERS: No objection.

12 THE COURT: Defendant's 4 is in evidence without
13 objection.

14 (Medical record admitted in evidence without ob-
15 jection as Defense Exhibit 4)

16 THE COURT: All right, Mr. Dial, if you would
17 come around and be sworn, please.

18 LEXIE DIAL, JUNIOR, being
19 duly sworn, testified as follows:

20 CLERK: Please have a seat and state your name
21 for the record, spelling your last name.

22 WITNESS: Lexie Dial, Junior, and the last name
23 is D I A L.

24 DIRECT EXAMINATION

25 BY MR. FLOYD:

MR. DIAL JUNIOR ON DIRECT

1 Q. Mr. Dial, what is your relationship to the Defen-
2 dant, Lexie Dial, Third?

3 A. I'm his father.

4 Q. And where were you living at the time this inci-
5 dent occurred?

6 A. I was at the home with my grandson and my son
7 and his girlfriend were living.

8 Q. And how long had you been living with them?

9 A. I would say probably about five -- four or five
10 months.

11 Q. So pretty much since Joshua was born?

12 A. Yes, sir.

13 Q. So did you have the opportunity to observe Lexie,
14 your son, as a father?

15 A. Yes, sir.

16 Q. And what was his relationship with Josh?

17 A. It was good. He would give him his bath at night
18 and feed him, and when he would go to pick his girl-
19 friend up from work he would leave Josh with me so he
20 didn't have to take him because it was cold and he
21 didn't want to take him out in the cold, so I would
22 watch him until he'd get back home.

23 Q. So you had an opportunity to observe him every
24 day with Josh?

25 A. Yes, sir.

MR. DIAL JUNIOR ON DIRECT

1 Q. And did he appear to be a loving father?

2 A. Yes.

3 Q. Now, how long -- what were Misti's working hours?

4 A. It would alternate. Usually when I would come
5 -- she usually when I come in -- I would leave at
6 seven in the morning, and come back home usually about
7 six thirty or seven o'clock.

8 She would be asleep apparently and then when I
9 would leave -- when I would come home, she would be
10 gone.

11 Q. So you had a regular job yourself?

12 A. Yes, sir.

13 Q. What were you doing?

14 A. I was employed with Time-Warner Cable, and I
15 worked from seven in the morning until usually when
16 my job got done -- usually that was at seven at
17 night.

18 Q. And when you would come home, who would be there?

19 A. My son.

20 Q. And would he have Josh there with him?

21 A. Yes, sir.

22 Q. And was that a common practice that Josh would
23 be left alone with Lexie the Third?

24 A. Yes.

25 Q. Now, do you recall this day of January 19th of

1 2010?

2 A. Yes, sir.

3 Q. And had you worked that day?

4 A. Yes.

5 Q. Now, did you receive any type of communication
6 from your son, Lexie, that day by telephone?

7 A. Yes, sir, I talked to him early about -- I would
8 say it was about eleven thirty or twelve o'clock or
9 in that time frame, because he asked me -- the lady
10 that I was dating at the time -- to make sure whether
11 she was coming by to take Misti to work.

12 Q. And what happened after that?

13 A. It was later on that evening when I got home I
14 seen him and Josh.

15 Q. So he called you about eleven thirty or so?

16 A. Eleven thirty or twelve o'clock -- in that time
17 frame.

18 Q. Now, he and Misti didn't have a phone in the
19 home, did they?

20 A. No, sir.

21 Q. So in order for him to call you, he would have
22 had to have gone somewhere to call, is that correct?

23 A. Yes, sir.

24 Q. Now, what time did you get home?

25 A. I got home about -- it was around about quarter

MR. DIAL JUNIOR ON DIRECT

1 to seven or somewhere in that time frame.

2 Q. What did you observe at that time?

3 A. My son said Josh just woke up. He was kind of
4 like groggy like when you first wake up, and he was
5 fixing him something to eat, fixing him his baby food
6 and getting his bottle.

7 So I held him while he was doing that, and then
8 I went to shower and I had to go to a friend's house
9 for a minute.

10 Q. So what time would you say you left the house?

11 A. Probably -- let's see. It was seven -- probably
12 eleven or eleven thirty. Eleven thirty-five or some-
13 where in that neighborhood.

14 Q. Then what was the next thing you heard from your
15 son?

16 A. Fifteen or twenty minutes later, or twenty-five
17 minutes later, somewhere in that time frame, my son
18 called me and said, Daddy, I need you to come home;
19 something is wrong with Josh.

20 So that's when I went home. I was about five
21 to seven minutes away.

22 Q. And what did you observe when you got home?

23 A. My son was in there. He was in there with Josh,
24 and Josh was in the little packy play -- kind of a
25 little packy play that he slept in. He was laying

1 in there, so I went over there and picked him up,
2 and that's when I called nine one one. I had picked
3 him up and she said to lay him on the floor and start
4 commencing doing CPR.

5 Q. Do you recall who called nine one one?

6 A. I did.

7 Q. And what did you do at that time?

8 A. I picked Josh up -- well, I had picked Josh up
9 and she told me to lay him on a flat surface and I
10 started doing CPR. I started with that.

11 Q. And did you know how to do CPR?

12 A. You just do two fingers right in the -- right up
13 on the chest right here, and just breathe in the
14 mouth. She was explaining how . .

15 Q. She told you how to do that?

16 A. Yes, sir.

17 Q. How long would you say you did that?

18 A. I would say probably about three to maybe five
19 minutes, and then the Knine officer come in the room
20 where I was at.

21 Q. Now, where was -- what was Lexie like while you
22 were doing that?

23 A. He was in hysteria because he was down on his
24 knees right beside me while I was doing CPR, asking
25 me about Josh.

MR. DIAL JUNIOR ON DIRECT

1 Q. So when the Knine man got there, what did you
2 and Lexie do at that time?

3 A. Well, we give him up -- I got ahold of my son
4 and asked him to step out so he would give him a lit-
5 tle room, because emergency vehicles was coming in, so
6 we wanted to give room because it was kind of a lit-
7 tle closed-in area there.

8 Q. Had Lexie suffered any other loss in the year
9 past?

10 A. Yeah, my ex-wife, she passed away.

11 Q. Do you remember when she passed away?

12 A. It was -- I can't recall, but I think it was
13 like seven or eight months ahead of that.

14 Q. Before this?

15 A. Yes, sir.

16 Q. And how was Lexie's reaction over that thing?

17 A. He is kind of like me. I don't show much out-
18 side. When I get off to myself is when I show my
19 feelings.

20 I don't show my feelings until I get away.

21 Q. Could you tell whether or not Lexie was in dis-
22 tress at this time?

23 A. Yes, sir. I could -- I'm his Daddy, so I could,
24 but as far as anybody else they couldn't.

25 Q. Now, Lexie, did you also go to the hospital where

MR. DIAL JUNIOR ON DIRECT

1 Josh was taken?

2 A. Yes, sir.

3 Q. And were you present inside the room at the
4 Richland Memorial Hospital when Josh died?

5 A. Yes, sir. Yes.

6 Q. Would you describe to the jury what happened
7 after that?

8 A. Well, we was -- all of us was in the room right
9 there, and my grandson, his heart stopped, and they
10 rushed us out of the area into the hallway so they
11 could get everybody in there to work on him, and we
12 was all in the hallway, and shortly after that is
13 when they announced that he . .

14 Q. You were present when you lost him?

15 A. Yes, sir.

16 Q. Now, they announced him dead?

17 A. Yes, sir.

18 Q. What happened next?

19 A. They got -- the momma and my son, they pulled
20 them into the room, I guess to say their last goodbyes
21 to my grandson.

22 Q. And then what happened after that?

23 A. Then that's when the investigators, they came to
24 arrest my son.

25 Q. Did you see them do that?

MR. DIAL JUNIOR ON DIRECT

1 A. Yes. When they come in, I was talking to my
2 son because I was trying to grieve with him about his
3 loss, and I seen what they was fixing to do, and I
4 talked to him for just a very few minutes.

5 Q. And did you say anything to the officers when
6 they arrested him?

7 A. Yes, sir, I remember saying right there that you
8 have a attorney.

9 MS. WEISS: Objection, Your Honor. That is ir-
10 relevant.

11 THE COURT: Yes, it's relevant.

12 Overruled.

13 BY MR. FLOYD:

14 Q. Did you say anything to him?

15 A. Yes, I vaguely said -- I remember two of the of-
16 ficers but there was a bunch in there in the hallway,
17 and I said, son, you have a attorney, and he said,
18 okay, Daddy, and that was -- then they rushed me out
19 the door, rushed me out the door, while they proceeded
20 doing what they had to do.

21 Q. And who was the attorney you were referring to?

22 A. Mr. Bill Rast.

23 Q. And did Mr. Rast represent you in some matter?

24 A. Yes, sir, he represented me in my divorce.

25 Q. And you in fact contacted Mr. Rast's office at

MR. DIAL JUNIOR ON DIRECT

1 that point?

2 A. Yes, sir, I did.

3 Q. And tell us what happened after you called him?

4 A. I talked to his receptionist or secretary, and
5 she got hold of Mr. Rast -- she said she would get
6 ahold of him.

7 Q. And how soon after the arrest did you make con-
8 tact with the attorney?

9 A. Well, my grandson passed away -- probably about
10 ten or fifteen minutes because time they got me out
11 in the hall I called on my cel phone.

12 Q. So that would be ten or fifteen minutes from
13 the death?

14 A. Yes, sir.

15 Q. Thank you, Mr. Dial. Answer any questions the
16 State may have.

17 THE COURT: All right. Redirect.

18 MS. WEISS: Thank you, Your Honor. We have no
19 questions for the witness, Your Honor.

20 THE COURT: Thank you very much. You may step
21 down, Mr. Dial.

22 WITNESS: Thank you, sir.

23 (Witness excused from stand)

24 MR. FLOYD: Your Honor, the Defense now calls
25 Mr. William Rast.

1 THE COURT: All right, Mr. Rast. Come around to
2 be sworn, please.

3 WILLIAM RAST, being
4 duly sworn, testified as follows:

5 CLERK: Please have a seat in the witness box
6 and state your full name, spelling your last name, sir.

7 WITNESS: William Rast, R A S T.

8 DIRECT EXAMINATION

9 BY MR. FLOYD:

10 Q. Mr. Rast, what is your occupation?

11 A. I am in West Columbia.

12 Q. And what do you do there?

13 A. I'm a lawyer.

14 Q. And how long have you been a lawyer?

15 A. Since 1975.

16 Q. And what areas of law do you work in?

17 A. I used to do everything when I started, but I
18 am limited now to just criminal and domestic.

19 Q. And in that practice, did you have a client by
20 the name of Lexie Dial, Junior?

21 A. Yes, I did.

22 Q. Is that the gentleman we just saw testifying?

23 A. Yes, it is.

24 Q. And did you have occasion -- did you get a mes-
25 sage from him on January 20th of 2010?

MR. RAST ON DIRECT

1 A. Yes, I was over here at the Courthouse in a hear-
2 ing and when I proceeded to leave after I finished my
3 hearing, and the deputies told me to call my office.

4 I called my office and talked to my secretary
5 and got the message that Lexie had called because his
6 son had been arrested.

7 Q. And so where did you go at that time?

8 A. I went straight over to the Sheriff's Department
9 to the jail. It was around three o'clock.

10 Q. About what time did you arrive there?

11 A. Around three o'clock. Maybe a little bit before
12 or maybe a little bit after three o'clock.

13 Q. And the people in the jail, are they Lexington
14 County Sheriff's Department employees also?

15 A. They are.

16 Q. And did you tell them your reason for being
17 there?

18 A. Well, I initially went over there and asked to
19 see him; that he had been arrested, but they had no
20 record of him being arrested.

21 I said I just got a message that he was arrested
22 and at the jail, and they then called the booking of-
23 fice which was on the other side of the building. He
24 had not been booked in.

25 Q. Okay, but you were there . .

MR. RAST ON DIRECT

1 A. That's what I was told.

2 Q. But you were there to be with him?

3 A. Yes, I was.

4 Q. And if you had been allowed access to him, would
5 you have gone and . .

6 MS. WEISS: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. FLOYD:

9 Q. What were you supposed to do when you got there?
10 What would you have done?

11 A. The first thing I would do was tell him to keep
12 his mouth shut and don't make a statement to anybody,
13 and then I would have asked him to tell me a little
14 bit about what had happened.

15 I wouldn't have gone into great detail at that
16 time because he was incarcerated or would have been
17 incarcerated.

18 I stayed over there until about four thirty and
19 they still did not have him. Why I had to leave at
20 four thirty -- I don't know if I had to go to another
21 Court -- some of these magistrates have court at
22 five o'clock -- but I stayed there from three until
23 about four thirty.

24 Q. And you were never allowed to see him?

25 A. No. They didn't have any record of him being

MR. RAST ON DIRECT

1 there.

2 I did not know which officer had arrested him,
3 so I could not go to the desk sergeant there and
4 ask for him.

5 I mean, that was not in the message.

6 Q. Thank you, Mr. Rast. Answer any questions the
7 State may have.

8 THE COURT: Madam Attorney General.

9 MS. WEISS: No questions, Your Honor.

10 THE COURT: Mr. Rast, you may step down.

11 WITNESS: May I be excused, Judge?

12 MR. FLOYD: May he be excused, Your Honor?

13 THE COURT: Any objection?

14 MS. WEISS: No, sir.

15 THE COURT: Yes, sir, you may be excused, Mr.
16 Rast. Thank you for being with us.

17 (Witness excused)

18 THE COURT: All right, you may call your next
19 witness.

20 MR. FLOYD: Courtney Von Dial or Courtney Von
21 Baltzer.

22 THE COURT: All right, come around and be sworn.

23 COURTNEY VON BALTZER, being
24 duly sworn, testified as follows:

25 CLERK: Please have a seat and state your name,

1 spelling your last name.

2 WITNESS: Courtney Von Baltzer. V O N

3 B A L T Z E R.

4 DIRECT EXAMINATION

5 BY MR. FLOYD:

6 Q. Courtney, do you know the Defendant, Lexie Dial,
7 Third?

8 A. Yes, sir.

9 Q. How do you know him?

10 A. He was my step-son for nine years.

11 Q. So you were formerly married to Lexie Dial,
12 Junior?

13 A. I was.

14 Q. And that's how you got to know him?

15 A. Yes, sir.

16 Q. Now, at the time of this occurrence, in January
17 of 2010, were you still with Lexie Dial, Junior?

18 A. No, sir.

19 Q. You all had separated at some point in time be-
20 fore that?

21 A. Yes, sir.

22 Q. Had you separated at the time Josh was born?

23 A. Yes, sir.

24 Q. And you were living somewhere else?

25 A. Yes, sir.

MS. VON BALTZER ON DIRECT

1 Q. Now, did you have occasion to see Lexie Dial,
2 Third, during the day of January 19th of 2010?

3 A. Yes, sir. I was taking my older son to school
4 which is Sand Hill Elementary, and I was on my way
5 back. It was between seven forty-five and eighty
6 fifteen in the morning.

7 And he was using the pay phone at the BP station
8 on Highway 321.

9 Q. Did you have any contact with him at all at that
10 time?

11 A. No, sir. I was at the stop light and I glanced
12 over and saw him there in his grandmother's van.

13 Q. Did you have occasion to see him later that
14 night?

15 A. Unfortunately, yes.

16 Q. Were you contacted about what was going on?

17 A. Yes, sir.

18 Q. Did you come to the scene?

19 A. Yes, sir.

20 Q. Now, at the time you got there were the EMS peo-
21 ple . .

22 MS. WEISS: Objection, Your Honor. Leading.

23 THE COURT: Rephrase your question, please.

24 Sustained.

25 BY MR. FLOYD:

MS. VON BALTZER ON DIRECT

1 Q. Who was there when you got there?

2 A. When I got there, my ex-husband was in the front
3 yard. My stepson was crunched down by the front door,
4 and when I walked up to the house the baby was laying
5 on the floor between the wall and the bed, and there
6 was an officer there giving him CPR.

7 Q. No further questions.

8 THE COURT: Ms. Weiss, Mr. Waters?

9 MS. WEISS: Nothing for this witness, Your Honor.

10 THE COURT: Thank you, you may step down.

11 WITNESS: Thank you.

12 (Witness excused from stand)

13 THE COURT: You may call your next witness.

14 MR. FLOYD: I would call Reba Hill.

15 THE COURT: All right, come around for us, please,
16 Ms. Hill, and be sworn.

17 MR. FLOYD: Your Honor, may Ms. Von Baltzer be
18 excused if she wants to be?

19 MS. WEISS: No objection.

20 THE COURT: She may be excused.

21 (Witness excused)

22 REBA HILL, being duly
23 sworn, testified as follows:

24 CLERK: Have a seat and spell your last name
25 for the record.

1 WITNESS: My name is Reba Hill, H I L L.

2 DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q. What is your relationship to Lexie Dial?

5 A. I'm Lexie's grandmother.

6 Q. Are you the paternal or maternal grandmother?

7 A. I'm the maternal.

8 Q. And has Lexie ever lived with you?

9 A. Yes, he has.

10 Q. And what years did he live with you?

11 A. Well, I can't remember the years, but I remem-
12 ber the age.

13 Q. Tell the ages.

14 A. He was about three years old, and before that he
15 was like my buddy. He went with me everywhere I
16 went.

17 But he started living with me when he was three
18 years old. His mother and daddy separated, and he
19 lived with me until he was twelve years old.

20 Q. So from three to twelve?

21 A. That's right.

22 Q. So do you know Lexie, understand Lexie?

23 A. I think I know him pretty well.

24 Q. And after he no longer lived with you, did you
25 still have contact with him?

MS. HILL ON DIRECT

- 1 A. Oh, yes, sir.
- 2 Q. How often?
- 3 A. I would say at least every two weeks I would see
4 him.
- 5 Q. Do you recall when Josh was born?
- 6 A. Yes, sir. He was my great-grand.
- 7 Q. And where was Lexie living at that time?
- 8 A. They were living with me. They came home from
9 the hospital and lived with me.
- 10 Q. Had they lived with you before that?
- 11 A. Sort of.
- 12 Q. Now, Reba, had Lexie suffered a loss sometime
13 before Josh was born?
- 14 A. Yes, sir. On December 10th, 2008, he lost his
15 step-father, and on February 13, 2009, he lost his
16 mother.
- 17 Q. How old was his mother at that time?
- 18 A. She was thirty-seven years old.
- 19 Q. Your daughter?
- 20 A. Yes, sir.
- 21 Q. Now, was Lexie close to his mother?
- 22 A. Yes, sir.
- 23 Q. How did he react to that?
- 24 A. Like he always acts. If something happens to
25 him that he can't deal with, he becomes very zombie-

MS. HILL ON DIRECT

1 like. Then he goes on just like nothing has hap-
2 pened, but that's his way of dealing with things.
3 It has been since he was a little fellow and his dad
4 and his mom separated.

5 He withdrew a little bit then, doing the same
6 thing, but he got out of it because he was living
7 with me and, like I said, everywhere I went until he
8 started to school when he was in Four K he was like
9 that. He just can't deal with things so he zones
10 them out.

11 Q. So he just shuts down?

12 A. Yes, he does. Also, lots of times when he does
13 that and his -- he looks like he's real tired, drowsy.
14 His eyes will get red.

15 He has allergies, and his eyes get red from that,
16 and I've even had him to the eye doctor and he says
17 it is allergies he has.

18 Q. Now, Reba, when they came home from the hospital
19 with Josh to your house, how long did the three of
20 them live with you at your house?

21 A. Not very long because as a young couple they
22 wanted to have a home of their own, so I was helping
23 them to try to find a place, and with me trying to
24 help her they found a place, and it was a very nice
25 place. It was a good place.

MS. HILL ON DIRECT

1 And, you know, I helped them move and things
2 like that.

3 Q. That was to 317 Oakey Springs?

4 A. Yes, sir.

5 Q. Did you have a lot of opportunity to observe
6 Lexie with Josh?

7 A. I did.

8 Q. What was their relationship like?

9 A. I never saw him angry with him. I know that if
10 he needed a diaper changed and Misti was busy or
11 something he would do a diaper change.

12 If he needed feeding, he would feed him, you
13 know. He just took it upon himself to feed him or
14 give him his bottle.

15 Q. And when Misti worked, what would she do with the
16 baby?

17 A. Lexie took care of the baby when she worked.

18 Q. Okay.

19 A. There were a few times that he called me to come
20 and get Josh, and I went over there when he needed a
21 little time to hisself.

22 As parents, we need time for ourselves sometimes.
23 Him being young, I felt like, you know, that was a
24 good way for me to go over there anyway and take Joshua
25 home with me.

MS. HILL ON DIRECT

1 Then I could take a little time with him and I
2 would do that when he needed some time to hisself.

3 Q. Did it change his schooling situation for a
4 while?

5 A. Yes, in a way. I want to say -- I want to tell
6 the truth.

7 When his mother passed away, he totally lost all
8 interest in school, and I talked to him and asked him
9 if I was to enroll him in school on line would he
10 finish school, and he agreed.

11 So I enrolled him and I got him the computer
12 that he needed to do that. Then before he could get
13 started, this happened.

14 Q. Did you see him with Josh often?

15 A. I did.

16 Q. And how was he responding to fatherhood?

17 A. He loved Joshua. He was attentive with him. He
18 played with him, bathed him. I never saw him give
19 him a bath but I know he did. He had to.

20 And I want to put in this too, . .

21 THE COURT: No, maam.

22 WITNESS: I didn't intend to . .

23 THE COURT: At this time you have to answer the
24 questions.

25 WITNESS: Sorry.

MS. HILL ON DIRECT

1 THE COURT: Ask your next question, please, Mr.
2 Floyd.

3 BY MR. FLOYD:

4 Q. While you observed Lexie, was he a loving and a
5 caring father?

6 A. Yes, sir.

7 Q. Thank you, Ms. Hill. Please answer any ques-
8 tions the State has.

9 THE COURT: Thank you, Mr. Floyd.

10 MS. WEISS:

11 MS. WEISS: No questions, Your Honor.

12 THE COURT: Thank you very much, Ms. Hill. You
13 may step down.

14 (Witness excused from stand)

15 THE COURT: All right, you may call your next
16 witness.

17 MR. FLOYD: Barbara Sox.

18 BARBARA SOX, being duly
19 sworn, testified as follows:

20 CLERK: Please have a seat in the witness box,
21 state your name and spell your last name for the re-
22 cord.

23 WITNESS: I'm Barbara Sox, S O X.

24 DIRECT EXAMINATION

25 BY MR. FLOYD:

1 Q. Ms. Sox, where do you work?

2 A. I work for Lexington School District Two.

3 Q. And how long have you worked there?

4 A. Twenty-four years.

5 Q. Now, do you know Lexie Dial?

6 A. Yes, I do.

7 Q. How long have you known him?

8 A. Twelve years.

9 Q. How do you happen to know him?

10 A. His cousin is my God-daughter, and I met him
11 when she was born.

12 Q. So there was some distant family . .

13 A. I have no relation to him. Just I knew the
14 cousin's mother, and was God-parent for her.

15 Q. Now, did you ever have an occasion to be alone
16 with him?

17 A. Yes.

18 Q. How did that come about?

19 A. I have a pool and so him and his brother would
20 come to my house to swim, and, you know, I'd take them
21 home. I'd pick them up and bring them there and then
22 when I was at the Airport High School -- I worked
23 there for five years -- in the guidance office as a
24 secretary, and I had occasion to speak with him then.
25 He was enrolled there for a period of time.

MS. SOX ON DIRECT

1 Q. And would you sometimes take him home from the
2 school?

3 A. Yes. He would go to football practice and so
4 his grandmother didn't have to come pick him up I
5 would take him home.

6 Q. So you would talk with him on these trips home?

7 A. Yes, sir.

8 Q. What was his normal demeanor like?

9 A. Quiet. I would talk with him, ask him questions
10 about football or whatever, and he would sort of
11 mumble, and I would say, Lexie, you've got to speak
12 up; I can't hear you.

13 Or, you know, things like that, and when he's
14 come into the guidance office after school after foot-
15 ball practice and wait for me to take him home, he
16 would sit by my desk, and I would try to have a con-
17 versation with him.

18 I wanted him to feel comfortable being around
19 me, and he would just answer my questions and that's
20 it. You know, he wouldn't elaborate too much, and
21 he didn't make any eye contact whatsoever, but very
22 polite. I mean, he wasn't ever rude to me or any-
23 thing.

24 Q. Are you familiar with his reputation for truth
25 and honesty?

MS. SOX ON DIRECT

1 A. Yes, sir. I never had a problem with him, and
2 I've been around him a good bit.

3 Q. And is it good?

4 A. Yes, sir. As I said, very polite. Yes, maam;
5 no, maam. That type of stuff.

6 Q. Thank you, Ms. Sox. Please answer any questions
7 the State may have for you.

8 MR. WATERS: No questions, Your Honor.

9 THE COURT: Thank you, Ms. Sox. You may step
10 down.

11 WITNESS: Thank you.

12 MR. FLOYD: Your Honor, may I have a moment?

13 THE COURT: Yes, sir.

14 (Brief pause in the proceeding)

15 MR. FLOYD: May we approach?

16 THE COURT: Yes, sir.

17 (Conference at the bench between counsel and the
18 Court off the record)

19 THE COURT: Ladies and gentlemen, perhaps now
20 would be a good time to take our evening recess.

21 I remind you during the recess do not talk about
22 this case with anyone, and that includes your fellow
23 jurors, family, friends, or anyone else.

24 Do not read, watch, listen to any news accounts
25 of the case, and do not do any investigation on your

1 own or use your cellular phone or computer to obtain
2 or disclose any prohibited information, which I have
3 previously reviewed with you, that being information
4 which I did previously review with you, that being
5 information about a party, an attorney or court officer;
6 news accounts of the case; information collected through
7 your research on any topic, phrase or testimony by
8 any witness.

9 Information collected through your research on
10 any topic that you might think would be helpful con-
11 cerning this case.

12 Obviously, you have been a part of -- a major part
13 of this process through the entire week, and we are
14 going to press on tomorrow.

15 You all have given all the parties your complete
16 and undivided attention, so please remember, as I know
17 you will, my instructions to you.

18 Please leave your notepads updown down on your
19 chairs, and they will be secured by the Clerk's Office
20 during our overnight recess.

21 I will see you at nine thirty in the morning.
22 Be present in your jury room at nine thirty.

23 Thank you very much.

24 (Jury excused from Courtroom for the evening)

25 THE COURT: All right. Mr. Dial, if you would

1 come around with your lawyer up here, please?

2 (Defendant and Mr. Floyd appearing before the
3 Bench)

4 THE COURT: Madam Clerk, if you would put Mr.
5 Dial under oath.

6 (Defendant sworn by the Clerk)

7 THE COURT: Mr. Dial, I need to go over some
8 things with you. I do this with everyone who is on
9 trial, and I wanted your responses to be under oath.
10 That is why I had the Clerk place you under oath.

11 We have obviously come to the point in the trial
12 where your side, the Defense, has already offered wit-
13 nesses and evidence in your defense.

14 In that regard, you may testify yourself, if you
15 choose to do so. Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: No one can force you to testify. You
18 have the absolute right to remain silent, and if you
19 choose not to testify I will tell this jury that they
20 cannot hold your silence against you in any way.

21 I will tell them they are not to even discuss that
22 in the jury room.

23 Do you understand?

24 DEFENDANT: Yes, sir.

25 THE COURT: Madam Attorney General, does the

1 Defendant have any prior criminal history that would
2 subject him to impeachment under Rule 609?

3 MS. WEISS: No, Your Honor. He has no adult re-
4 cord.

5 THE COURT: All right, thank you.

6 Mr. Dial, the decision about whether you testify
7 or not is your decision and yours alone. I expect
8 that you have conferred with your attorneys and others
9 whose opinions you value on important decisions, but
10 the ultimate decision on whether you testify or not is
11 your decision to make, your call.

12 Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: Has anyone exercised any undue influ-
15 ence over you to get you to choose to testify or not
16 to testify?

17 DEFENDANT: No, sir.

18 THE COURT: Today are you under the influence of
19 any drugs or alcohol, medication, or anything that
20 may affect your thinking?

21 DEFENDANT: No, sir.

22 THE COURT: Do you suffer from any physical, men-
23 tal or emotion problems today that would affect your
24 thinking abilities today?

25 DEFENDANT: No, sir.

1 THE COURT: Do you have any questions that you
2 want to ask me about your right to testify or not to
3 testify?

4 DEFENDANT: No, sir.

5 THE COURT: All right. I'm going to give the
6 overnight hours for you to confer with your attorney
7 before I call on you to advise me of your decision
8 as to whether or not you wish to testify or not.

9 Thank you, Mr. Dial. You may be seated.

10 MR. FLOYD: Thank you, Your Honor.

11 (Defendant and Counsel returning to their seats)

12 THE COURT: I would like to place a couple of
13 things on the record.

14 During the course of the presentation of the tes-
15 timony by the Defense testified -- I'm certainly not
16 offering criticism in any manner -- but one of the
17 witnesses, Mr. Lexie Dial, Junior, who is the father
18 of the Defendant, the grandfather of the deceased,
19 became emotional on the stand, cried during part of
20 his testimony, and I think the point of the testimony
21 he was testifying was the time frame of being at the
22 hospital at Palmetto Health when Joshua passed away.

23 I observed that he did cry and became emotional.
24 As I say, I am not saying that for any criticism what-
25 soever, but just to reiterate my point of the emotions

1 involved in a case like this, whether it is from the
2 party sitting on the State's side or the party sitting
3 on the Defendant, Mr. Dial, Third's, side.

4 That reaffirms the decision in my discretion
5 that I exercised previously in denying a motion for
6 a mistrial in that regard, both as to Ms. Richard
7 when she was not on the witness stand, and the issue
8 that has to do with the urn, and also with Ms. Richard
9 who has, since that time, as has everyone on the De-
10 fendant's side of the Courtroom, conducted herself in
11 a very appropriate manner.

12 The other thing is the State objected at a point
13 concerning Mr. Dial, Junior, making the statement con-
14 cerning the attorney, and I overruled that motion.

15 The reason I did, so the attorneys know, is per-
16 haps that may go to the issue of voluntariness of the
17 statement because I do not know what Mr. Dial, Third,
18 may testify to in that regard.

19 He may testify that -- I don't know what he may
20 testify to, with regard to an attorney or having an
21 attorney, so that could be relative to the issue of
22 the voluntariness of the statement, which is ultimately
23 a decision for the jury.

24 I obviously allowed it into evidence but they make
25 a decision on the weight and the value of it.

1 Do you want to put anything on the record in that
2 regard, Mr. Attorney General?

3 MR. WATERS: Just very briefly, Your Honor. Our
4 only concern with that is that the jury won't necessar-
5 ily be told the rule that the attorney contact was
6 not necessary to the ultimate decision of the Defendant
7 in . .

8 THE COURT: And, of course, Mr. Floyd asked the
9 question of Mr. Rast, were you allowed to see Mr. Dial,
10 and even if he was there the officer would not have had
11 to allow Mr. Rast to see Mr. Dial.

12 You know, perhaps -- I tend to -- I mean, I agree
13 with you in that regard, but I still didn't know how
14 that would go to the issue of the voluntariness of the
15 statement.

16 I can certainly understand the State's concern,
17 and I understand Mr. Floyd's position also in offering
18 the testimony.

19 I will be glad to consider any request to charge
20 that you may have, in that regard or any other regard,
21 Ms. Weiss and Mr. Waters, and any that you have, Mr.
22 Floyd.

23 MR. FLOYD: Thank you, Your Honor. Just one mat-
24 ter of housekeeping . .

25 THE COURT: Yes, sir.

1 MR. FLOYD: I would move into evidence what we
2 had marked for ID purposes Defense Exhibits 1, 2 and
3 3, Your Honor.

4 THE COURT: Your Number 1 was Ms. Richard's
5 cards, and . .

6 MR. FLOYD: Two and 3 were the pathologist . .

7 THE COURT: Two was the front cover and 3 was the
8 amended cover, so to speak, of Dr. Ross' . .

9 MR. FLOYD: That's correct.

10 THE COURT: Do you all have a position as to any
11 of those items?

12 MS. WEISS: Your Honor, it's the State's position
13 that the appropriate time would be to move it in with
14 the witness, and if he had done that we would have
15 been able to cross -- I mean, to Redirect on these
16 issues, but he chose not to do so at that time.

17 So to enter it at a later time with just his
18 Cross but without any chance for us to Redirect on
19 these issues . .

20 THE COURT: So that would entail recalling Ms.
21 Richard and recalling Dr. Ross, as far as 1, 2 and 3?

22 MS. WEISS: Your Honor, I think . .

23 MR. WATERS: Your Honor, could we have just a mo-
24 ment?

25 THE COURT: Certainly.

1 MR. WATERS: Thank you.

2 THE COURT: We can talk about this in the morning
3 as far as I'm concerned.

4 (Brief pause in proceeding)

5 THE COURT: Yes, maam.

6 MS. WEISS: Thank you, Your Honor. As to Defen-
7 dant's Exhibits 2 and 3, I think the pathologist has
8 explained that, and I don't know if -- you know, she
9 said that her final record was Exhibit 3. That was
10 her final report.

11 So I would think that would be the most appro-
12 priate one to put into evidence. She did -- I mean,
13 she explained the correction on the two, and she put
14 that on the record.

15 If the Court finds it appropriate to admit it in
16 evidence, I don't see any point in objecting to that.

17 As for Defense Exhibit 1, these are cards that
18 the victim's mother said she did, you know -- that she
19 did recognize.

20 They were not introduced at the time. These are
21 questions and research -- things the victim's mother
22 did at the time so they are really prejudicial.

23 She testified as to her belief at the time, and
24 these are not -- they are basically internet research
25 and beyond anything she would have been qualified to

1 testify to.

2 THE COURT: All right.

3 MS. WEISS: I think it is an ultimate question
4 for the jury, Your Honor.

5 (Pause in the proceeding)

6 THE COURT: All right. As far as Defense Exhi-
7 bit Number 1, I would find that they are not admissi-
8 ble under a 403 analysis.

9 I further find that although they are notes that
10 the mother made, it appears that there is a good bit
11 of research in them.

12 She testified that she was searching everything
13 she could for shaken baby syndrome.

14 You know, in a tragedy like this your assumptions
15 are gone. You think the world is going to operate in
16 a certain way and it turns upside down.

17 So you reach out to whatever sources may be avail-
18 able to you at the time to regain those assumptions
19 you've lost.

20 I think that although it was written in her hand
21 they are based on research that it is apparent would
22 be hearsay, number one.

23 Number two, it refers to media reports by the
24 authorities. I'm assuming that is the Sheriff's Office
25 and something of that nature, and other things also.

1 Did you have -- Madam Attorney General, did you
2 have an objections to 2 or 3? Let me be clear on
3 that.

4 MS. WEISS: Your Honor, I think we won't object
5 to them.

6 THE COURT: I'm not asking you not to object. If
7 you have an objection, I want to be clear on the basis
8 of your objection. That's all.

9 MS. WEISS: My objection was that the witness tes-
10 tified to the pathology reports, and she corrected her
11 first report and issued 3 as the appropriate report,
12 which would be her final conclusion, the one that it
13 ended up to be ultimately.

14 THE COURT: Well, they are clearly not prior in-
15 consistent statements. She did explain -- let me think
16 about it until tomorrow.

17 I'll take those two under advisement.

18 Requests to charge -- do you have any of those
19 for me?

20 MR. FLOYD: Not at this time, Your Honor. I do
21 want to note an objection to . .

22 THE COURT: I'll hear you in the morning if that
23 is all right.

24 MR. FLOYD: Yes, sir.

25 THE COURT: Do you have any requests to charge?

1 MR. FLOYD: No, Your Honor. I don't at this
2 point. We, of course -- Your Honor will charge on .
3 the standard of the particular crime itself, the
4 particular crime and as it relates to indifference,
5 utmost indifference, and which goes to intent. So we
6 would ask for some kind of charge on that element.

7 We are still researching to see whether or not
8 there is a lesser included offense. We may have some-
9 thing more . .

10 THE COURT: I don't know of a lesser included of-
11 fense but I'll certainly look at whatever you have in
12 the morning.

13 MR. FLOYD: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 MR. WATERS: Your Honor, along those lines there
16 is some sort of a standard charge, I know, but the
17 Supreme Court defines extreme indifference as akin to
18 intent and a deliberate act, and we would certainly
19 request that.

20 THE COURT: That's what I was just looking at,
21 the language in Jarrell, and I will try to put it in
22 my charge.

23 There is a different thing with regards to Mr.
24 Rast, and it may be necessary to charge the jury with
25 regards to . .

1 MR. WATERS: I will try to come up with something,
2 Your Honor.

3 THE COURT: Well, I was thinking about something
4 in the area of my charge on the voluntariness of the
5 statement. There are certain factors and certain
6 possibilities that make it come in there.

7 I will certainly look at whatever you have, and
8 if you'd give a copy to Mr. Floyd.

9 MR. WATERS: Certainly, yes, sir.

10 MS. WEISS: Your Honor, may I move on to another
11 topic?

12 THE COURT: Yes, maam.

13 MS. WEISS: Earlier in the day during the Cross
14 Examination of Lieutenant Russell, Mr. Floyd started
15 to go into an area that we had discussed pre-trial.

16 At that point, there was a Court's Exhibit marked,
17 and I would ask at this point -- it's a Court's Exhi-
18 bit so we did not feel like we could necessarily object
19 to it, but, unfortunately, at that point that letter
20 becomes a part of the record, and . .

21 THE COURT: I will seal that letter as a Court's
22 Exhibit.

23 MS. WEISS: Okay, and if that letter is sealed,
24 does that -- would that . .

25 THE COURT: Well, usually when I put something

1 under seal it can only be opened upon an Order of the
2 Court, and I do this to protect the record in case
3 there is ever any Court looking into what I've done
4 here.

5 All right, I'll do that. You don't have any ob-
6 jection to that, Mr. Floyd?

7 MR. FLOYD: Your Honor, I assumed you would put
8 it under seal.

9 THE COURT: All right.

10 MS. WEISS: Thank you, Your Honor.

11 THE COURT: Thank you all very much.

12 Nine thirty in morning.

13 (Whereupon, the Court stood in recess for the
14 evening, and the matter resumed on April 15, 2011)

15 THE COURT: Mr. Floyd, I believe you wanted to
16 be heard on Defense Exhibits 2 and 3?

17 MR. FLOYD: Yes, sir.

18 THE COURT: All right, I'll be glad to hear
19 from you.

20 MR. FLOYD: Your Honor, I think we're talking
21 about 2, 3 and 4.

22 THE COURT: I let 4 in. Four is -- isn't 4 the
23 records of Dr. Cope?

24 MR. FLOYD: Yes, sir.

25 THE COURT: I let those in. Your 1 is not

1 admitted. I have ruled that is not admissible.

2 I think all that's left is 2 and 3. The cover
3 sheet of Dr. Ross and the amended cover sheet of Dr.
4 Ross.

5 I think that's all that is left.

6 MR. FLOYD: I did want to make sure Number 1 was
7 marked for identification.

8 THE COURT: Yes, sir.

9 MR. FLOYD: As to the Number 1, the index cards,
10 it is our position they should be allowed in. Al-
11 though they arguably are hearsay, they are not being
12 submitted for the truth of what they contain.

13 Your Honor, they just go to show the extent of
14 confidence Misti had in Lexie. It shows that she ac-
15 tually researched and assisted him initially.

16 THE COURT: That doesn't really change my opinion,
17 of course. Ms. Richard testified to that.

18 She testified she made those notes and she wrote
19 those notes out as a result of her research on the
20 internet.

21 As I recall her testimony, she said that in her
22 heart she could not believe Lexie would have hurt the
23 child.

24 I think as far as that is concerned, that is for
25 the jury and it even puts an arbitrary factor in there

1 with the prosecutor's inability to be able to even
2 know who to cross examine in that regard.

3 You are certainly protected on the record as to
4 that, Mr. Floyd.

5 MR. FLOYD: Thank you. As to 2 and 3, Your Honor,
6 of course, those are documents that were prepared by
7 Dr. Ross in the case, and, Your Honor, the import of
8 it is the particular block on the form, block number
9 43.

10 The testimony was that she originally filled out
11 block number 43 and put -- in this block the question
12 is, describe how the injury occurred, and she wrote,
13 head hit object.

14 She then had a conversation with someone from the
15 Sheriff's Department and she admitted that.

16 I'll pass that on to you.

17 THE COURT: All right. All right, Ms. Weiss,
18 Mr. Waters, would either of you care to respond to --
19 anything further, Mr. Floyd?

20 MR. FLOYD: We would ask the Court for the jury
21 to be able to see that.

22 THE COURT: I'll be glad to hear from you, Ms.
23 Weiss.

24 MS. WEISS: Thank you, Your Honor. I think it
25 is important to note that our recollection of the

1 testimony is completely the opposite of what Mr.
2 Floyd stated.

3 He specifically asked her that question, and her
4 testimony was, no, this was my decision; that the
5 original piece of paper was typed out during the au-
6 topsy, and I reviewed my notes and I changed it and
7 then I called the Coroner's Office and advised them I
8 had changed it.

9 So this was something that -- this was her final
10 report based on her decision to change it. She did
11 not speak to anyone, and that was her testimony.

12 So that was her final report.

13 THE COURT: Thank you.

14 (Brief pause in proceeding)

15 THE COURT: All right, Defendant's 2 and 3 are
16 not being allowed into evidence, and I would sustain
17 the Prosecutor's objection.

18 I think, as I recall the testimony of Dr. Ross,
19 she testified to filling out State's Exhibit Number
20 2, which has block 43 in it obviously.

21 And thereafter she filled out Defendant's Exhi-
22 bit Number 3 which has block 43, describe how injur-
23 ies occurred, as I remember those words.

24 So that testimony is in evidence. As I recall
25 her testimony, she said those were her reports; that

1 she did have a conversation but that didn't cause her
2 to change her report.

3 I recall her testimony was that she talked to
4 someone with the Coroner's Office, not anyone with
5 the Sheriff's Office.

6 Obviously, our recollection may be incorrect, Mr.
7 Floyd, and the Attorney General's may be correct.

8 I would further note that block number 37, manner
9 of death, where she obviously had six choices, natural,
10 accident, suicide, homicide, pending investigation,
11 could not be determined.

12 On both of those forms it indicates homicide,
13 so the testimony is in the record.

14 You can certainly argue that to the jury, Mr.
15 Floyd.

16 Anything else you want to put on the record? You
17 may certainly do so.

18 MR. FLOYD: Just that, Your Honor, my responsibil-
19 ity is to convey to the jury what I want to convey on
20 that point.

21 She had a conversation -- no question she filled
22 out the form to start with, and had a conversation with
23 someone from Lexington County and she removed that.

24 Now, I asked her how she changed our opinion, and
25 she was pretty straight forward and said, well, I

1 could put head hits object or object hits head, and
2 on the second form where she eliminated the wording
3 is what I want to argue to the jury; that she was --
4 it was the impression they didn't want to hear the
5 truth, but they wanted their opinion of the case to
6 appear as it stands.

7 Therefore, in my opinion, they were trying to
8 prove that Lexie Dial did it.

9 THE COURT: You can argue that to the jury. It
10 is not that it is inarguable. That's my point.

11 It's in the record and then you take what appears
12 to -- not saying that is not good lawyering, Mr.
13 Floyd, and I don't mean it like that at all, but you
14 have a form up here that is -- well, it starts in
15 block number 32, so I guess there is 31 prior blocks.

16 The testimony is in the record, and you can ar-
17 gue all of that based on her testimony and based on
18 the recollection of the record.

19 I mean, it is clear those three words, head hit
20 object, is on State's 3 -- excuse me, on Defense 2,
21 and is not on Defense 3, and she testified to that.

22 MR. FLOYD: Thank you, Your Honor.

23 THE COURT: Yes, sir. Anything further?

24 MR. FLOYD: No, Your Honor.

25 THE COURT: Anything from the State?

1 MR. WATERS: Yes, Your Honor, as we discussed
2 yesterday, we have some requests to charge. I don't
3 know if you want to take them up at this time. The
4 Defense may still have some testimony and we can do
5 this afterwards.

6 I would go ahead and hand this up to you.

7 THE COURT: Thank you. All right, you do in-
8 tend to present testimony today?

9 MR. FLOYD: Yes, sir.

10 THE COURT: All right, then. Would that be the
11 Defendant?

12 MR. FLOYD: That's correct, Your Honor.

13 THE COURT: Do I need to interview him any fur-
14 ther, Mr. Floyd?

15 MR. FLOYD: I don't think so, Your Honor.

16 You talked with him yesterday, and we did dis-
17 cuss the matter last night.

18 THE COURT: So you had the opportunity to talk
19 to him over the evening hours?

20 MR. FLOYD: Yes, sir.

21 THE COURT: And based on our conversation, I yes-
22 terday spoke with Mr. Dial, and he said that he under-
23 stood his rights.

24 You have said this morning that he intends to
25 exercise his right to testify, and that's the decision

1 he's made after your conversation with him last night.

2 Thank you, Mr. Floyd.

3 Anything further before we bring in the jury
4 from the State?

5 MS. WEISS: Nothing further, Your Honor.

6 THE COURT: Defense?

7 MR. FLOYD: Nothing further, Your Honor.

8 THE COURT: Bring us our jury, please.

9 (Jury returned to Courtroom)

10 THE COURT: Thank you. Good morning, ladies and
11 gentlemen. Welcome back.

12 We are continuing the trial of the case by the
13 presentation of evidence and testimony by the Defense.
14 Mr. Floyd, you may call the next witness.

15 MR. FLOYD: Thank you, Your Honor. Defense calls
16 Lexie Dial, Third.

17 THE COURT: All right, Mr. Dial. If you'd come
18 around to be sworn, please.

19 LEXIE DIAL, THIRD, being
20 duly sworn, testified as follows:

21 CLERK: Please be seated and state your name for
22 the record.

23 WITNESS: Lexie Dial, Third. D I A L.

24 DIRECT EXAMINATION

25 BY MR. FLOYD:

DEFENDANT ON DIRECT

- 1 Q. Lexie, are you the father of Joshua Dial?
- 2 A. Yes, sir.
- 3 Q. How old are you, Lexie?
- 4 A. I'm nineteen. I just turned nineteen in January.
- 5 Q. And where did you grow up?
- 6 A. In Richland County and Lexington County.
- 7 Q. And where did you go to school?
- 8 A. I went to school in Richland County, and I came
- 9 over here and went to Swansea. I went to Airport,
- 10 and I was currently in the eleventh grade and I was
- 11 doing internet school at the time all of it happened.
- 12 Q. Now, was there a point in time that you met
- 13 Misti?
- 14 A. Yeah.
- 15 Q. When was that?
- 16 A. It was around July of 2008.
- 17 Q. And after you met her, was there a point where
- 18 the two of you started a relationship?
- 19 A. Yes.
- 20 Q. When would that have been?
- 21 A. A little bit after that.
- 22 Q. How old were you at that time?
- 23 A. I was sixteen.
- 24 Q. And did she know your age?
- 25 A. Yes, she knew my age.

DEFENDANT ON DIRECT

1 Q. Did you have anything to show your age?

2 A. Yes, I had a driver's license -- had it some-
3 where.

4 Q. Did she see that?

5 A. Yeah, she seen that.

6 Q. Now, was there a point in time when you discov-
7 ered that Misti was pregnant?

8 A. Yes.

9 Q. When would that have been?

10 A. That was in December of 2008.

11 Q. Who were you living with at that time?

12 A. With my dad and step-mom.

13 Q. And was Misti living there also?

14 A. Yes.

15 Q. Now, during the pregnancy, did something happen
16 to your mother?

17 A. Yes, she passed away in February.

18 Q. And that was February of -- what year did that
19 happen?

20 A. In 2009.

21 Q. How old was your mother?

22 A. She was thirty-seven.

23 Q. Were you close to your mom?

24 A. I was very close. We had just moved in with my
25 mom, because my step-dad had passed away in December.

DEFENDANT ON DIRECT

1 I was -- that was when we moved in with my mom. I
2 was staying there to help her. She was alone then,
3 so I . .

4 Q. So did you and Misti live with your mom at that
5 time?

6 A. Yes, we both moved in with my mom.

7 Q. How did that affect you?

8 A. It was devastating. It was -- it was hard. It
9 really messed me up, and I was just -- you know, it
10 was terrible.

11 Q. What about -- how did the pregnancy impact upon
12 that situation?

13 A. It helped it. It made me feel like I'd have a
14 purpose in life again, like I did, with my situation
15 I was in at the time when my mom just passed and every-
16 thing.

17 Q. Did you want a child?

18 A. Yes, I wanted a child. Me and Misti talked
19 about that and we both agreed we wanted a child and
20 all this, and I was ready for it. I wanted that.

21 Q. And when was the child born?

22 A. Josh was born in August of 2009, on the 22nd.

23 Q. Now, before he was born, did you participate
24 with Misti in going to the doctor?

25 A. Yes, I went to every appointment but-- I

DEFENDANT ON DIRECT

1 probably missed like one but I went to doctor's ap-
2 pointments and everything.

3 Q. Now, when was Josh born?

4 A. On the 22nd of August.

5 Q. And how did that make you feel?

6 A. I was excited. I was happy.

7 Q. And did you participate and help with him?

8 A. Yes, I did everything with him. I loved him.

9 Q. Okay. Tell the jury the types of things you
10 did with your son.

11 A. We would play together. I would feed him, give
12 him his bath, change his diaper -- everything a father
13 is supposed to do.

14 It was -- I loved him.

15 Q. Now, were you going to school during this parti-
16 cular point in time?

17 A. While she was pregnant?

18 Q. Yes.

19 A. No, I had started working and taking care of her
20 when she was pregnant. I did all the -- I started
21 back to school right after Josh was born.

22 Q. Going to school?

23 A. No, at home on the internet.

24 Q. Now, were you also contributing in other ways to
25 the financial support? Did you receive a check of

DEFENDANT ON DIRECT

1 some kind?

2 A. Yeah, when my mom passed away I started getting
3 a social security check, and that was -- I paid rent
4 and bills and stuff with that.

5 Q. Now, did Misti's work take her out of the home
6 at night?

7 A. Yes. It took her out at night.

8 Q. And when Misti would be gone, who would take
9 care of your son?

10 A. Me.

11 Q. And did you do all these things you told you
12 did by yourself?

13 A. Yes.

14 Q. Were there times you would like to leave the
15 house and visit with friends or go to Reba's house and
16 visit with her?

17 A. Yes. I took him there during the day sometimes,
18 or sometimes he would spend the night with her.

19 Q. You resent having to take care of him?

20 A. No, I -- I loved it. I wanted to take care of
21 him.

22 Q. Were you happy to be a father?

23 A. Yeah, I was very happy. I loved it.

24 Q. Did it give purpose to your life?

25 A. Yes.

DEFENDANT ON DIRECT

1 Q. I want to go to January 19th of 2010. You re-
2 member that day?

3 A. Yes, sir.

4 Q. What time did you get off that morning?

5 A. I got up at around eight, and Misti didn't want
6 to go to work that day. So I went to call her ride
7 to tell her that she didn't want to go.

8 Q. Okay. Now, did you all have a phone?

9 A. No, we didn't have no phone in the house.

10 Q. How about a cel phone?

11 A. No.

12 Q. So if you arranged for someone to come there and
13 pick Misti up, you would arrange the night before for
14 that?

15 A. Yes.

16 Q. So what did you have to do since she didn't want
17 to go to work? What did you have to do then?

18 A. I had to go to the pay phone and call and tell
19 her ride, don't come.

20 Q. Where was the pay phone?

21 A. The pay phone was at the gas station, the BP.

22 Q. And what time would you say you went there to
23 make that call?

24 A. At about eight o'clock or somewhere around in
25 there.

DEFENDANT ON DIRECT

1 Q. And how long would you say you were gone?

2 A. Probably about fifteen minutes.

3 Q. Now, did you come back home after that?

4 A. Yeah, I came -- I went straight home after that.

5 Q. Did you ever leave the home again?

6 A. Yes, I left home at twelve o'clock because she
7 decided she did want to go to work and we needed some
8 money. So -- and then I had to go and call her ride
9 and tell her ride that -- to go ahead and come on.

10 Q. And what time would that have been?

11 A. I left home at twelve o'clock or somewhere
12 around there.

13 Q. And where did you go to make that call?

14 A. At the same gas station.

15 Q. By the way, how did you get to the gas station?

16 A. Oh, I drove my grandmama's van. Our car had
17 broke down but she let me use that, and we had a
18 truck too but I didn't like putting the baby in the
19 truck.

20 We didn't have but one seat in it, and I didn't
21 like putting him in there because I know that was
22 dangerous like that.

23 You know, the baby is supposed to be in the back
24 seat, so that's what I did. I take him in the van.

25 Q. And your grandmama let you use the van?

DEFENDANT ON DIRECT

1 A. Yeah.

2 Q. Now, when -- let me back up for a second.

3 Did you ever go with Josh to the doctor when he
4 had to go?

5 A. I went a lot with him. I took him to get his
6 first shots. I took him there almost every time be-
7 cause I was the only one with a license. So I --
8 you know, I had -- I wanted to do it.

9 Q. Now, after you went to the BP for the second time
10 that day, what did you do then?

11 A. I called Christina but she wouldn't answer, so I
12 had to call my dad and tell him to get in touch with
13 her to come by.

14 So I called him and told him to tell her, and he
15 said, all right, he'd call me back in five minutes.
16 So I waited and then I called him back and he said,
17 yes, she was coming.

18 Then I went back on home.

19 Q. And when you got back who was there?

20 A. It was Misti and Joshua.

21 Q. And where was Joshua at that time?

22 A. He was in the bed -- in our bedroom in front of
23 the TV.

24 Q. Now, did -- was there a point in time where
25 Misti left?

DEFENDANT ON DIRECT

1 A. Yeah. She left about three thirty and went to
2 work.

3 Q. Christina come to pick her up?

4 A. Yeah, she was the one that took her to work.

5 Q. Now, did Christina come in the house at that
6 time?

7 A. No, she didn't come in. She stayed on the out-
8 side and blowed the horn and Misti came out there and
9 they left.

10 Q. Did they come back by and drop you off some cig-
11 arettes?

12 A. Yeah, they came back and dropped me off cigar-
13 ettes.

14 Q. Now, what time did he wake up?

15 A. He woke up about seven thirty, somewhere around
16 there.

17 Q. So he had been asleep?

18 A. Yeah, he had been asleep for about three or four
19 hours.

20 Q. And when he woke up, what did you do after that?

21 A. I was going to feed him. I changed his diaper,
22 and then I was playing with him, and then he was hun-
23 gry. So that's when I decided I was going to feed
24 him and daddy had come home around that time, and I
25 was in the middle of feeding him. That was when he

DEFENDANT ON DIRECT

1 came home, and he held him while I got the stuff ready
2 and all that.

3 Q. Now, when you say you played with him, tell the
4 jury how you played with Josh?

5 A. Oh, I played -- you know how you hold them and
6 walk with them and all of that, and I was playing with
7 his little airplane kind of thing.

8 I would, you know, just tickle his stomach, his
9 back, and just played with him like a normal parent
10 plays with a baby, you know.

11 Q. Now, could Josh walk?

12 A. No, he couldn't. I knew he couldn't walk. I
13 played with him every day and he never walked before
14 so I knew. It was common sense that he couldn't
15 walk.

16 And I know it was said that I got mad and I
17 choked him, but that never -- you know, that was just
18 -- that was blew way out of proportion.

19 Q. Now, tell us what happened. Did your father
20 leave at some point?

21 A. Yes, he left.

22 Q. All right, tell us what happened when you were
23 feeding him.

24 A. I was -- he had got a little bit of baby food on
25 his mouth and I had to wipe it off, so that's when I

DEFENDANT ON DIRECT

1 stood up and I went to walk towards our bedroom to
2 get something to wipe his mouth with, and we had just
3 recently moved him to another bedroom by himself and
4 his baby monitor was up and all this, and then that's
5 when I was turning around to walk back towards his
6 bedroom when I tripped over a steam cleaner and I had
7 fell into the coffee table with him.

8 Q. How were you holding him?

9 A. I was holding him around -- on the hips and
10 around the arms. Like that, like.

11 Q. And this steam cleaner -- when you fell, how did
12 it propel you?

13 A. I was -- it caught me in the middle of like the
14 step so I was -- I had weight going that way and
15 shifting with him and it kind of propelled me forward
16 when I went down because I had tripped.

17 So it propelled me forward.

18 Q. And what did you land on?

19 A. The coffee table.

20 Q. Did the coffee table break?

21 A. Yeah, it broke to pieces. It was a little Dol-
22 lar General coffee table, and it broke.

23 Q. Did you go onto the floor?

24 A. Yes.

25 Q. And where were you in connection with Josh?

DEFENDANT ON DIRECT

1 A. . .

2 Q. Where were you in connection with Josh when you
3 fell and struck the table?

4 A. We struck the table and the floor.

5 Q. But where was Josh?

6 A. I was holding Joshua. I was twisting because I
7 didn't want him to be hurt, so I was twisting like --
8 and it all happened like a second.

9 So I was trying my best to twist but it was just
10 too fast.

11 Q. And did he hit his head?

12 A. Yes, it hit the table.

13 Q. Did you land on top of him?

14 A. . .

15 MS. WEISS: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. FLOYD:

18 Q. What happened to you?

19 A. I fell but I hit the table too, but it was like
20 -- I hit too but it didn't hurt me.

21 Q. When you hit, where was Josh?

22 A. He was still in my arms. When I -- he fell with
23 me. He was on the floor with me.

24 Q. Who was on top?

25 A. It was me -- I was on top.

DEFENDANT ON DIRECT

1 Q. Now, once the fall occurred, Lexie, what happened
2 then?

3 A. That was when he seemed like he was real shocked.
4 I mean, he was just like gasping for breath, like he
5 couldn't catch his breath.

6 That's when I . .

7 Q. What did you try to do a that time?

8 A. I tried to get his attention and use CPR and
9 whatever I could. I really didn't know what to do.
10 I was just -- I couldn't think right. I didn't know
11 what was -- how to help him.

12 Q. Did you try?

13 A. Yes.

14 Q. Did you try to help him?

15 A. I tried my best.

16 Q. And was there a point when you realized you
17 couldn't do it by yourself?

18 A. I realized that because wasn't nothing helping
19 him. It was just -- I mean, . .

20 Q. Did you . .

21 MS. WEISS: Objection, Your Honor. Leading.

22 THE COURT: Go ahead and state your question, Mr.
23 Floyd. Finish your question.

24 MR. FLOYD: Well, . .

25 THE COURT: You can't start off -- the Prosecutor

DEFENDANT ON DIRECT

1 thought you were going to be leading, but state your
2 question.

3 BY MR. FLOYD:

4 Q. Lexie, would you please tell the jury what all
5 you tried to do to help Joshua?

6 A. I tried -- like the Doctor said, shaking will
7 get his attention, but it wasn't hard or nothing like
8 that. It was just to get his attention.

9 It was -- I never would shake him violently or
10 anything like that. That was -- it was not like that,
11 but it was -- you know, I was trying to get his at-
12 tention and it wasn't working and he was still not
13 breathing.

14 He was breathing but he wasn't breathing right,
15 and I knew he wasn't breathing right because he was
16 like (demonstrating), and that's when I tried CPR
17 to help him to breathe right, and that wasn't work-
18 ing either.

19 And it was just . .

20 Q. Would you describe for the jury how you did CPR?

21 A. I would push on him and would blow in his mouth.
22 I would do CPR this way. (demonstrating) I never
23 took a class on it, but I knew enough. Common sense
24 will tell you how it was done.

25 Q. Now, did you know when you tried to get his

DEFENDANT ON DIRECT

1 attention -- describe for the jury how you performed
2 that?

3 A. It wasn't -- I went like this. I was like try-
4 ing to get his attention and it wouldn't work.

5 Q. Were you angry with him?

6 A. No, I was not angry. I couldn't be angry with
7 him. He didn't do nothing for me to be angry about.

8 Q. Now, how long did all that go on before you
9 tried to get help?

10 A. Probably five minutes.

11 Q. So what did you do then?

12 A. I -- the first thing that came to my mind was
13 to get to a phone and get help. So I ran next door
14 and I asked to use his phone.

15 Q. And who did you call?

16 A. I called my dad. I was scared and I didn't know
17 what to do.

18 I wanted to call nine one one but I didn't know
19 what to do or -- and it was just -- my dad, I looked
20 up to him.

21 I thought he had done this. He raised me and my
22 brothers and sisters, and I knew he would know what
23 to do.

24 So I was -- you know, that was in my mind.

25 Q. And did your dad arrive -- well, what did you

DEFENDANT ON DIRECT

1 do after you made the phone call?

2 A. I told him -- he answered and I told him to come
3 here as fast as he can. He was like right around the
4 corner, like two minutes away.

5 So I was like, okay, that's good; come here real
6 quick, and I put the phone down and went straight
7 back next door where Joshua was.

8 Q. And what did you do when you got back?

9 A. I mean, I had started doing CPR again because
10 he wasn't breathing at all.

11 Q. And did your father eventually arrive?

12 A. Yes, he arrived.

13 Q. What happened when he got there?

14 A. He called nine one one, and he started doing what
15 the people was telling him. He told me to relax, to
16 just catch my thoughts to where I could think right,
17 and don't panic, and all this, and I was trying.

18 Q. What was your state like at that time?

19 A. I was like in shock. I was lost. It didn't
20 feel real.

21 Q. Now, did eventually other help arrived?

22 A. Yes, the Knine officer, he arrived, and then he
23 started doing CPR.

24 Q. And then did other people arrive?

25 A. Yeah, the EMS people arrived and all.

DEFENDANT ON DIRECT

1 Q. Did you leave? Did you leave the room?

2 A. Yes. The officer when he was doing the CPR he
3 was doing it like real rough, and like he was digging
4 his fingers down his throat and all like that, and I
5 had started getting a little angry and my dad said,
6 just leave the room; they know what they're doing, and
7 just -- you know, they know -- so he was like walk
8 with me outside and smoke a cigarette, and I said,
9 okay.

10 Q. So you were concerned that he might be hurting
11 Josh?

12 A. Yeah, it looked like he was hurting him because
13 it didn't seem right to stick his finger down his
14 throat, and it just seemed like it would make the
15 situation worse.

16 Q. Did EMS people arrive or did anybody else arrive?

17 A. Yes, a couple more officers arrived then.

18 Q. And did they eventually remove Josh from the
19 home?

20 A. Yeah, the EMS people took him. They said it
21 wasn't looking good. It was looking terrible, you
22 know.

23 They said his heart wasn't beating and he wasn't
24 stable.

25 Q. What did you do then?

DEFENDANT ON DIRECT

1 A. It hurt me real bad, and I didn't feel like I
2 had nothing to live for, so I went into the bathroom
3 and I tried to commit suicide by taking pills.

4 Q. Did they eventually take you out of the house?

5 A. Yeah. They eventually said nobody was allowed
6 in the house; that it was a crime scene.

7 Q. And where were you eventually taken?

8 A. I was put in a patrol car and I sit there for a
9 while and then they came and said was I under the in-
10 fluence or was I drinking, and I was like, no, I wasn't
11 -- like I never did that when I was watching Joshua.
12 I would never drink or do no alcohol. I mean, my
13 responsibility was -- you know, I had to keep sober
14 for him.

15 It was, you know, . .

16 Q. And did they -- they were accusing you of drink-
17 ing?

18 A. . .

19 MS. WEISS: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. FLOYD:

22 Q. Did the officers ask you about your condition?

23 A. They asked me was I under the influence, and I
24 kept telling them no, and they made it seem like I
25 was, and I offered to take, you know -- take me to do

DEFENDANT ON DIRECT

1 a drug test.

2 I wanted to get to Joshua as quick as I can, but
3 they said they had to do a couple of things, and I
4 was trying -- I told them go ahead and take me to do
5 a drug test because it would be a lot faster and I
6 could get there quicker.

7 So I was willing to get the drug test.

8 Q. Did they ask you what happened?

9 A. Yeah, they asked me what happened, and I said,
10 well, I tripped and fell, and they say my story
11 changes, but it don't change. It was like . .

12 THE COURT: No, sir. That's not responsive.
13 That's not responsive.

14 Ask your next question.

15 BY MR. FLOYD:

16 Q. Did you tell them the same every time they asked
17 you?

18 A. Yes. I told them the same every time they asked
19 me.

20 Q. Now, where did they take you?

21 A. They took me to the Lexington Medical Center.

22 Q. And when you got to the Lexington Medical Center,
23 what happened?

24 A. They had -- they did a drug test and they did --
25 they did a urine test and a blood test.

DEFENDANT ON DIRECT

1 Q. And did you cooperate with that?

2 A. Yes, I cooperated. I knew I wasn't under the in-
3 fluence of anything.

4 Q. And from there, did you -- were you allowed to
5 see Josh at the Lexington Medical Center?

6 A. No.

7 Q. And from there, where did you go?

8 A. I went -- a victim's assistant lady took me to
9 Richland, where they had took him.

10 Q. When you got there, were you allowed to see Josh
11 right away?

12 A. No, I wasn't allowed to see Josh right away.
13 They was doing a test or something, or visiting hours,
14 or something wasn't right, but they did take me in a
15 room with Misti. I seen her.

16 Q. And when were you allowed to see Josh?

17 A. The next morning.

18 Q. Where did you stay until . .

19 A. I stayed in the waiting room the whole night.

20 Q. And where was Josh when you finally saw him?

21 A. He was in this room where they were working on
22 him.

23 Q. Were you allowed to see him on a regular basis
24 after that?

25 A. No, there were certain hours and times, and they

DEFENDANT ON DIRECT

1 was doing a lot of tests or something.

2 Q. What was his condition that morning?

3 A. He -- he had a heart beat and he was breathing,
4 but they were working on him, doing some more tests
5 to see how his brain activity was.

6 Q. Now, what happened about two o'clock that after-
7 noon?

8 A. His heart had stopped.

9 Q. How did you all know that?

10 A. Because the loud monitor and everything just --
11 it was an alarm that said it or it was coming from
12 his room and I knew it couldn't have been good or --
13 it had to have been something wrong.

14 Q. What happened at that point?

15 A. It was -- one of the doctors came and told us
16 what it was and they had coded him and that meant
17 that he had passed away.

18 And they let us in there to see him, and we were
19 in there for like two minutes and then the officers
20 asked me to step outside.

21 Q. You said you were in there about two minutes and
22 then what happened when you stepped outside?

23 A. Then they had asked me some questions, and I
24 talked with them, and then they arrested me.

25 We walked into a little room that was right

DEFENDANT ON DIRECT

1 across the hall.

2 Q. And where were you taken from there?

3 A. I was taken to the Lexington County Jail.

4 Q. And what happened when you got there?

5 A. Then me and Detective Russell went into a inter-
6 rogation room.

7 Q. And what happened once you got in there?

8 A. Then he asked me what happened, and I told him
9 the same thing I had been telling everybody else.

10 Q. How many times did you tell him that?

11 A. Twice.

12 Q. Would he accept that?

13 A. . .

14 MS. WEISS: Objection, Your Honor.

15 THE COURT: Rephrase your question, Mr. Floyd.

16 BY MR. FLOYD:

17 Q. How did he react when you told him that?

18 A. He said I had to be lying.

19 Q. Did he say why?

20 A. Yeah, because the doctors said it couldn't hap-
21 pen like that.

22 Q. Did he tell you how they said it had happened?

23 A. They said it had to have come from shaking him.

24 Q. Did he tell you what kind of shaking had to hap-
25 pen?

DEFENDANT ON DIRECT

1 A. No, he didn't say what kind. He said it had to
2 have been that, but I didn't know what -- he was de-
3 scribing some terms that I didn't know, and I asked
4 him what it was and he said a retinal hemorrhage and
5 it had to come from shaking.

6 So I was . .

7 Q. Did you know what he was talking about?

8 A. No, I didn't know what he was talking about.

9 Q. Did he say anything to you about . .

10 MS. WEISS: Objection, Your Honor.

11 THE COURT: Rephrase your question.

12 BY MR. FLOYD:

13 Q. Were you ever told what you were being charged
14 with?

15 A. Yeah, they said I was charged with homicide by
16 child abuse, and he said it carries twenty to life.

17 Q. Did that scare you?

18 A. Yes. I was terrified, and I thought I couldn't
19 spend my life in prison. I'm young. I'm only nine-
20 teen, and that's a long time.

21 Q. Did he say there was anything you could do to
22 help yourself?

23 A. Yeah, if I cooperated it would help. It would
24 make things go easier.

25 Q. And what did you think you had to do to cooperate?

DEFENDANT ON DIRECT

1 A. I had to tell them what they wanted to hear.
2 They wanted -- that was what I thought cooperating
3 was.

4 Q. Had you told them what happened already?

5 A. Yeah, I told them what happened.

6 Q. And was that acceptable to them?

7 A. No.

8 Q. Did you at some point write a statement?

9 A. Yes, I had wrote a statement.

10 Q. The statement that we saw yesterday, did you
11 write that statement?

12 A. Yes, I wrote that statement.

13 Q. Is that statement true?

14 A. No, it was not true. It was, you know, . .

15 Q. What is not true about it?

16 A. The -- where they -- the shaking when he wouldn't
17 walk, about being angry. None of that was true.

18 Q. If it wasn't true, why did you write it?

19 A. Because it was what they wanted to hear.

20 Q. How -- what was your -- how did Josh's death af-
21 fect you?

22 A. I was shocked. I felt empty, like I had lost
23 everything, and I was just in shock. I wanted to be
24 by myself and, you know, get my thoughts together.

25 Q. How long were you in the room with Mr. Russell?

DEFENDANT ON DIRECT

1 A. About a hour and fifteen minutes.

2 Q. How did you -- what did you think you had to do
3 to end that interview?

4 A. I had to cooperate and tell them what they wanted,
5 and so they said something about shaking, and I fig-
6 ured it could have come from walking or -- not walk-
7 ing but playing like we're walking. Just playing in
8 general is what I thought because I never did no vio-
9 lent shaking or nothing like that.

10 Q. Were you in your right mind?

11 A. I wasn't thinking right. I was just thinking
12 about Joshua. I wasn't worried about nothing else.
13 I was -- I was, you know, in shock.

14 Q. Lexie, on January 19th of 2010, did you intend
15 to cause any harm . .

16 MS. WEISS: Objection, Your Honor. Leading.

17 THE COURT: I'll overrule that objection.

18 BY MR. FLOYD:

19 Q. Did you intend to cause any harm to Josh?

20 A. No.

21 Q. I want you to look at this jury. Are you sure
22 of that?

23 A. Yes.

24 Q. Did you ever hurt Josh?

25 A. No, I would never hurt Josh.

DEFENDANT ON DIRECT

1 Q. Okay.

2 A. He was my world. He was everything.

3 Q. Please answer any questions the A. G.'s Office
4 may have.

5 THE COURT: Thank you, Mr. Floyd.

6 Ms. Weiss?

7 MS. WEISS: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. WEISS:

10 Q. Lexie, being a young parent is hard, isn't it?

11 A. It is a little difficult, sure.

12 Q. Being the parent of a small child is hard?

13 A. Anybody with a family, with a small child, knows
14 it can be hard.

15 Q. Your grandmother provided you with someone to
16 call, somebody to come and take Joshua if you got
17 frustrated, didn't she?

18 A. No, not when I got -- when I -- whenever I was
19 necessarily frustrated. It was -- I didn't really
20 ever get frustrated where I would need somebody else
21 to take care of Joshua.

22 No, just sometimes he would cry, but it was
23 never-- it was nothing like that. I would keep try-
24 ing to calm him down. It wasn't nothing like that.

25 Q. Your grandmother would come over and either take

DEFENDANT ON CROSS

1 Joshua or give you some time to yourself, like any
2 parent would need?

3 A. Yeah, sometimes.

4 Q. She also provided you with help when your mother
5 passed away and your step-father? She provided you
6 with counseling, to help with that, didn't she?

7 A. Yes.

8 Q. So you were Joshua's father and you loved him.
9 No question about that?

10 A. Yes, maam.

11 Q. But you were a new parent, learning how to deal
12 with a baby?

13 A. Yes, maam.

14 Q. And you were with Misti for all of her appoint-
15 ments . .

16 A. Yes, maam.

17 Q. . . when she was pregnant?

18 A. Yes.

19 Q. You were in the hospital the day Joshua was
20 born?

21 A. Yes, maam.

22 Q. You were there to watch the video about shaking
23 babies?

24 A. No, we never watched the video.

25 Q. You talked to Misti about a parent -- that you

DEFENDANT ON CROSS

1 couldn't believe a parent could hurt a child?

2 A. Yes, that was discussed when they showed -- we
3 watched probably five minutes of the video and then
4 it was too disturbing, because I didn't know how a
5 baby could make somebody that mad to want to shake
6 them violently like that.

7 Because I -- you know, we did talk about that.

8 Q. The baby cried?

9 A. All babies cry.

10 Q. Sometimes you just needed a break?

11 A. Yeah, sometimes I would need a break.

12 Q. You took Josh to the doctor when he wasn't
13 feeling right and stuff? If he wasn't feeling right,
14 you would take him with Misti. Right?

15 A. Yes.

16 Q. You would get in the car and take him to Dr.
17 Cope, right?

18 A. Sure.

19 Q. And you knew -- common sense will tell you when
20 the baby is not feeling right that doctors are the
21 ones you need to go to. Right?

22 A. Yeah. Yes, maam.

23 Q. On January 19th, 2010, you were taking care of
24 Joshua?

25 A. Yes, maam.

DEFENDANT ON CROSS

1 Q. And Joshua had a traumatic injury. Right?

2 A. Yes, maam.

3 Q. Joshua wasn't breathing right?

4 A. Yes, maam.

5 Q. He couldn't breathe?

6 A. Uh uh.

7 Q. You spent five minutes in that house with your
8 baby boy who you loved, who couldn't breathe, and
9 you tried to do something?

10 A. Yes, maam.

11 Q. And you put him down . .

12 A. I didn't want to set him nowhere that -- that's
13 where I thought would be safe. He was moving and
14 stuff and wiggling, and he could fall off a bed, so I
15 -- I could have set him on the bed and put pillows
16 there, but I was in a hurry.

17 Q. He wasn't breathing. He wasn't moving and he
18 wasn't breathing. Right?

19 A. No, he was breathing. (demonstrating)

20 Q. Like that?

21 A. Yeah.

22 Q. You decided you needed to leave to go call for
23 help?

24 A. Yes.

25 Q. You needed help because your baby wasn't breathing,

DEFENDANT ON CROSS

1 so . .

2 A. Yes, maam.

3 Q. . . you didn't scoop up the baby and go get help
4 for him?

5 A. This was in January. It was cold outside and it
6 was nighttime, and when you have a child like that
7 -- I know from experience you don't move them. You
8 don't -- you can make it worse by moving them like
9 that.

10 You don't -- I ain't going to run with a baby
11 like that.

12 Q. So you didn't scoop up Josh and take him to get
13 help for him?

14 A. No, I didn't.

15 Q. You didn't take him anywhere?

16 A. No.

17 Q. And then you went outside and smoked a cigarette
18 because you needed to calm down?

19 A. No, I went next door. I lit a cigarette up on
20 his porch while he was answering the door, but I was
21 outside when I started smoking. I only went to next
22 door.

23 Q. You went to the house next door?

24 A. Uh hm.

25 Q. And you're telling us you ran out of the house,

DEFENDANT ON CROSS

1 ran next door, and then you pulled out a cigarette
2 and started smoking?

3 A. I knocked on the door and pulled it out.

4 Q. You knocked on the door? (demonstrating)

5 A. A little harder than that.

6 Q. But you waited to smoke a cigarette?

7 A. I had lit up and then he came to the door and
8 that's when I was going to walk on in and he said to
9 put it out so I put it out.

10 Then I went on in and used the phone.

11 Q. So when you went to -- that's your neighbor,
12 right?

13 A. Uh hm.

14 Q. And you didn't say, please, open up; I need help;
15 my baby is hurt; I need help. Right?

16 A. I said I needed to use the phone.

17 Q. You needed to use the phone and dropped the cig-
18 arette?

19 A. Yes.

20 Q. You didn't say to your next door neighbor, please
21 come help me, please come help me with my baby? Some-
22 thing is wrong with my baby?

23 A. No, I didn't say that.

24 Q. You said, can I use your phone?

25 A. Yeah. I mean, I don't trust people I don't

DEFENDANT ON CROSS

1 know. I just said I needed to use the phone.

2 Q. But you knew that if it involved a sick child in
3 an emergency that you needed to get him in a doctor's
4 care. Right?

5 A. Yes.

6 Q. So you picked up that phone and you phoned your
7 dad. Right?

8 A. Yes.

9 Q. To please come quick?

10 A. Uh hm. Yes, maam.

11 Q. And then you walked back next door?

12 A. No, I ran back next door.

13 Q. And then you waited on your dad?

14 A. No, I started trying to help Joshua again but it
15 wouldn't work, and that is when my dad came.

16 Q. And Joshua was still in the Packa Play?

17 A. Yes.

18 Q. And you were in shock at that point?

19 A. I . .

20 Q. And he told you to calm down and get your
21 thoughts together?

22 A. . .

23 Q. And he took over, and you laid down on the bed?

24 A. No, I knelt down beside him. I was trying to
25 help. I wasn't -- I didn't really know how to help

DEFENDANT ON CROSS

1 so I was just trying anything.

2 Q. You couldn't think about anything but Joshua. Right?

3 A. Yes.

4 Q. But yet you asked law enforcement and EMS, where
5 is Blue?

6 A. My dog.

7 Q. You asked them where Blue was?

8 A. I didn't want him to end up biting the officers,
9 and I got a little bit annoyed with -- I was trying
10 to help the officers when I said where was he. I was-
11 n't concerned about where he was. I was concerned to
12 try to help them by asking them that.

13 Q. You told them not to let your dog out. Right?

14 A. No, I never said that.

15 Q. And when EMS told you and you heard that Josh's
16 heart wasn't beating and he wasn't breathing, you went
17 and took a bunch of pills?

18 A. Yes.

19 Q. What pills did you take?

20 A. I don't know. I was crying and I wasn't think-
21 ing right. I don't know what it was. I was in
22 shock then.

23 Q. And when law enforcement asked you did you take
24 anything, were you on anything, you said no?

25 A. I said no.

DEFENDANT ON CROSS

- 1 Q. But you had just taken a bunch of pills?
- 2 A. Yes.
- 3 Q. And they took you to the hospital, and you went
- 4 to sleep. Right?
- 5 A. Which hospital?
- 6 Q. Richland Memorial.
- 7 A. Yeah, I was -- I did go to sleep there in the
- 8 waiting room.
- 9 Q. When you were hanging out, waiting in the offi-
- 10 cer's car, they asked you to write a statement?
- 11 A. Yes.
- 12 Q. About what had happened, so they could try to
- 13 figure out how to help Joshua?
- 14 A. Yes, maam.
- 15 Q. And this is what you wrote?
- 16 A. Yes, maam.
- 17 Q. I was feeding Joshua and I was getting something
- 18 to wipe his mouth and I fell on top of him on the
- 19 coffee table and he hit his head and neck.
- 20 He was gasping for air and his heart was beat-
- 21 ing and I did CPR?
- 22 A. Yes, maam.
- 23 Q. That's all the details you provided to law en-
- 24 forcement, right?
- 25 A. Yes, maam. I thought that was what they needed

DEFENDANT ON CROSS

1 to know, about he hit his head, and that's what I was
2 telling them about. If they needed to know what had
3 happened so they could help him, that's what I was
4 telling them.

5 Q. And when you went to the Sheriff's Department,
6 you talked to Detective Russell?

7 A. Yes, maam.

8 Q. And he went through each of these rights with
9 you. Right?

10 A. Yes, maam.

11 Q. And you told him you could read and write; that
12 you could read these rights?

13 A. Yes, maam.

14 Q. And he asked you -- he told you that you had a
15 right to a lawyer. Right?

16 A. Yes, maam.

17 Q. And he would stop questioning you right then if
18 you wanted a lawyer. Right?

19 A. Yes, maam.

20 Q. And you understood?

21 A. Yes.

22 Q. And he asked you what happened and you told him?

23 A. Yes, maam, I told him what happened.

24 Q. And he told you that didn't match what the doc-
25 tors were saying at the hospital?

DEFENDANT ON CROSS

1 A. . .

2 Q. You had been at the hospital and he had been
3 there and you knew what the doctors were saying?

4 A. No, maam. The doctors told me that it was the
5 -- the bleeding was from like going without oxygen
6 for some time or somewhere along that line.

7 They didn't say nothing about shaking or nothing
8 like that, the doctors.

9 Q. Neither did Eric Russell. He told you about the
10 retinal hemorrhages, and that is what you didn't un-
11 derstand. Right?

12 A. Yeah, when he told me about the retinal hemor-
13 rhages he said it comes from shaking.

14 Q. In fact, he just described for you what the ret-
15 inal hemorrhages looked like, is that right?

16 A. He didn't describe what they looked like.

17 Q. All right. He asked you to tell the truth,
18 didn't he?

19 A. . .

20 Q. That you obviously didn't tell the truth?

21 A. . .

22 Q. And you didn't. Right?

23 A. Yes, maam.

24 Q. And you told him about Josh, how you were try-
25 ing to teach him how to walk?

DEFENDANT ON CROSS

1 A. No, I had already told him what happened and he
2 kept on insisting I was lying, and he was wanting me
3 to say I was shaking him and I was angry, and I knew
4 I wasn't angry and I wouldn't shake him nothing like
5 that.

6 Q. But you knew at this point you were facing twenty
7 years to life for homicide by child abuse, and you
8 also are saying now you knew what he wanted to hear
9 from you; that you knew what Eric Russell wanted to
10 hear from you?

11 A. I knew then what he wanted to hear from me.

12 Q. He wanted the truth. Right?

13 A. No, he wanted what he wanted, and I wrote what
14 I wrote.

15 Q. Well, all you had to do was say I want an attor-
16 ney and you could have gotten up and walked out.
17 Right?

18 A. I wasn't thinking about that. I had just lost
19 my son, and I was thinking about my son and not about
20 nothing else because . .

21 Q. You were thinking about how cute he was? He
22 would do this and straighten out his legs and you'd
23 bounce him on the table. Right?

24 A. On my knees where . .

25 Q. Or you would stand him up and his reflexes were

DEFENDANT ON CROSS

1 cute?

2 A. He was, yes.

3 Q. He was a beautiful boy and cute when you did
4 that?

5 A. . . .

6 Q. And if you tried to lean him from side to side,
7 he would stop doing that. Right?

8 A. . . .

9 Q. He wasn't learning how to walk?

10 A. It wasn't nothing like that. I did with him
11 everyday the same thing. It was the same thing every-
12 day. It wasn't no different, you know.

13 Q. But those are your words right there, I was try-
14 ing to teach the baby -- the baby -- how to walk.
15 Right?

16 A. That's what it says.

17 Q. Those are your words. Right?

18 A. Yes.

19 Q. In your handwriting -- and I got angry?

20 A. Those ain't my choice of words but those -- I
21 did say that I was . . .

22 Q. You wrote that down?

23 A. Yes, I wrote that down.

24 Q. You said why won't you cooperate?

25 A. He said I had to be angry so I was saying what I

DEFENDANT ON CROSS

1 could be angry about.

2 Q. What you could be angry about -- you were angry
3 because he wouldn't cooperate? That's the statement
4 you signed. Right?

5 A. . . .

6 Q. And that's when you told the truth?

7 A. No, that wasn't. That was not the truth.

8 Q. Eric Russell told you it was a serious injury,
9 and you thought what did I do to cause a serious in-
10 jury, and that's when you wrote that statement?

11 That's when you realized from that video about
12 the shaking?

13 A. . . .

14 Q. You got angry because he wouldn't cooperate and
15 that's what you put in your statement, and you told
16 the truth?

17 A. . . .

18 MR. FLOYD: Is there a question there, Your
19 Honor?

20 THE COURT: Yes, sir, I think it was you told
21 the truth.

22 Did you understand the question?

23 WITNESS: Did I tell the truth then? No. It
24 wasn't the truth.

25 BY MS. WEISS:

DEFENDANT ON CROSS

1 Q. Is this your coffee table?

2 A. Yes.

3 Q. You tripped while cradling your child and you
4 landed against this table?

5 A. Yes, maam.

6 Q. You fell on the carpet?

7 A. After the table, and we did have carpet on the
8 floor.

9 Q. Holding your child, cradling him, and you trip
10 and fall and hit the table, holding your child?

11 A. I wasn't cradling him. I was -- I had him like
12 this. (demonstrating) I had him with my arm, ahold
13 of him, like this.

14 Q. And he fell against the table, and the table col-
15 lapsed?

16 A. Yes. We fell against the table.

17 Q. And you got up and walked away without a bruise?

18 A. I hit my shoulder but I wasn't thinking about
19 me. I was thinking about him.

20 Q. And that is what killed your child?

21 A. Yes, maam. Unfortunately, that is what did
22 happen.

23 Q. And you want this jury to believe that?

24 A. That is the truth.

25 Q. When you were asked to write the truth, that is

DEFENDANT ON CROSS

1 not what you wrote down, is it?

2 A. I wasn't asked to write the truth. I was asked
3 over and over, and I kept telling him the truth, but
4 the truth wasn't what he wanted.

5 And I was facing life, and I was trying to get
6 out of a life sentence, so that was when I wrote that
7 right there.

8 I didn't want to . .

9 Q. You said you were facing life, and that is when
10 you wrote that you got angry and shook your child be-
11 cause he wouldn't cooperate?

12 A. . .

13 Q. Is that what you're saying?

14 A. That's what I'm saying.

15 MS. WEISS: No further questions.

16 THE COURT: Redirect, Mr. Floyd?

17 MR. FLOYD: Just one question, Your Honor.

18 THE COURT: I don't allow people in or out of
19 the Courtroom until they are finished with a witness,
20 Mr. Sheriff. Whoever just left, make sure they are
21 advised of that if they ever attempt to return.

22 Thank you, Sheriff. You may continue, Mr.
23 Floyd.

24 MR. FLOYD: Thank you, Your Honor.

25 REDIRECT EXAMINATION

DEFENDANT ON REDIRECT

1 BY MR. FLOYD:

2 Q. Lexie, the statement that you gave and wrote
3 here for Eric Russell, is it the truth?

4 A. No.

5 Q. Did you tell him the truth earlier in the inter-
6 view?

7 A. I told him twice.

8 Q. And was that story that you told him earlier
9 that he wouldn't believe, was that similar to the
10 story you had already given to the police?

11 A. Yes, sir. I told the same story all the way
12 through.

13 Q. And is that the truth?

14 A. Yes, sir, that is the truth.

15 Q. What did you think might happen when you told
16 Detective Russell what he wanted to hear?

17 A. That he would help me get through. That if I
18 would help him, he would help me. That's what I was
19 thinking.

20 Q. Did you want to go home?

21 A. Yes, sir, I wanted to be home.

22 Q. What happened when you wrote the statement?

23 A. He took me to the jail and I was at the jail.

24 Q. Are you still there?

25 A. Yes, sir.

DEFENDANT ON REDIRECT

1 Q. Lexie, did you ever intend to cause physical harm,
2 to Joshua?

3 A. No, I never intended to hurt Joshua.

4 Q. Thank you, no further questions.

5 THE COURT: Recross, Madam Attorney General?

6 MS. WEISS: No, thank you, Your Honor.

7 THE COURT: Thank you, Mr. Dial. You may step
8 down.

9 (Witness excused from stand)

10 THE COURT: All right, Mr. Floyd. You may call
11 your next witness.

12 MR. FLOYD: Your Honor, the Defense rests.

13 THE COURT: Thank you, Mr. Floyd.

14 Madam Forelady and ladies and gentlemen of the
15 jury, we'll take about a fifteen minute recess.

16 I remind you during this recess that you are not
17 to discuss the case with anyone, even with your fellow
18 jurors.

19 If anyone tries to talk to you about the case,
20 please let me know.

21 Remember to keep an open mind and do not begin
22 your deliberations until you are instructed to do so
23 by the Court.

24 You can leave your notes upside down in your chairs.
25 You may leave. Thank you.

1 (Jury excused from Courtroom)

2 THE COURT: All right, the Court will be in re-
3 cess for fifteen minutes. Thank you.

4 (Whereupon, the Court stood in recess for a brief
5 period, after which the matter was resumed)

6 THE COURT: Mr. Floyd, do you have motions?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: All right.

9 MR. FLOYD: Your Honor, at this point we would
10 renew our motion for direction of a verdict.

11 It is our position that the Court, having heard
12 the evidence in the case and considering the evidence
13 produced by the State even in the light most favor-
14 able to the State, would agree that the evidence fails
15 to establish the guilt of the Defendant to the charge
16 of homicide by child abuse.

17 We would also renew all motions made prior to
18 trial and during the course of the trial.

19 THE COURT: All right. Thank you very much, Mr.
20 Floyd.

21 Ms. Weiss, Mr. Waters, do you care to respond?

22 MR. WATERS: Thank you, Your Honor.

23 Your Honor, I believe that believability and
24 credibility obviously of witnesses are issues for the
25 jury.

1 THE COURT: They are issues for the jury.

2 MR. WATERS: Yes, sir, and it is our position
3 that, taking the evidence in the light most favorable
4 to the State, we believe the motion for directed ver-
5 dict should be denied.

6 THE COURT: All right. I would, of course, re-
7 affirm all my previous rulings at trial in the matter.

8 Futher, I would respectfully deny the motion for
9 directed verdict of acquittal.

10 I find that there is, taking the evidence in
11 the standard I must apply, in the light most favor-
12 able to the State, the non-moving party, that there
13 is sufficient evidence, direct and substantial circum-
14 stantial evidence, that the Defendant caused the
15 death of the child under the age of eleven while
16 committing child abuse, and that the death occurred
17 under circumstances that manifested an extreme indif-
18 ference to human life.

19 So that would be denied.

20 Is there any reply testimony?

21 MS. WEISS: No, Your Honor.

22 THE COURT: All right. As to the requests to
23 charge, Mr. Floyd, the State's charge number one --
24 do you have a copy of that?

25 MR. FLOYD: Yes, I do, Your Honor.

1 THE COURT: Do you have a position in that mat-
2 ter?

3 MR. FLOYD: We would object to the charge. We
4 just don't think it is necessary or appropriate,
5 Your Honor.

6 THE COURT: Well, the issue came up about --
7 through the testimony of Mr. Lexie Dial, Junior, and
8 Mr. Rast, and a number of questions were asked, in-
9 cluding the fact that Mr. Rast was not allowed to
10 see the Defendant, and, further, that as I recall
11 Mr. Dial, Junior's testimony in front of the jury,
12 he told his son -- it was that he told his son that
13 he had a lawyer, Mr. Rast.

14 I recall his testimony differently in camera,
15 but I think that is the issue concerning this.

16 I may feather this in to my charge on voluntari-
17 ness of the confession and under totality of the cir-
18 cumstances that they wouldn't make their decision as
19 to whether or not he chose to speak to the police as
20 a personal decision of him alone.

21 In that regard, I thought that testimony was
22 relevant at the time because I thought perhaps Mr.
23 Dial, Third, would testify or comment on that, and
24 that's why I allowed that testimony.

25 I may not charge it in this exact manner, Mr.

1 Floyd, but I may put something in there as a part of
2 my charge on voluntariness of the statement.

3 Now, what about charge number two?

4 MR. FLOYD: I don't object, Your Honor, but I
5 assume Your Honor has a charge containing this lang-
6 uage and maybe in a little bit more detail.

7 THE COURT: Well, this is actually the language I
8 have out of -- that I looked at last night and this
9 morning.

10 I will place that in the charge during the ex-
11 planation of homicide by child abuse and the various
12 terms that I must advise of as a part of that ex-
13 planation.

14 MR. FLOYD: We have no objection to it.

15 THE COURT: Do you have any requests to charge,
16 Mr. Floyd?

17 MR. FLOYD: No, Your Honor, and I believe Your
18 Honor will give a charge generally on intent.

19 THE COURT: Yes, I will do a general intent charge
20 and I thank you for bringing that to my attention, Mr.
21 Floyd.

22 I do -- Madam and Mr. Attorney General, I do a
23 general intent charge that in order to establish crim-
24 inal liability criminal intent is required, and I go
25 through those -- it's about four or five paragraphs

1 in that regard -- that it can be proved by the to-
2 tality of the circumstances; does not have to be
3 proven by positive evidence but by circumstantial evi-
4 dence by the State.

5 I have added this language -- not all of this
6 language. Normally, I would charge criminal intent
7 arising from an action or a failure to act, and I
8 have added this language, an act may be excused on
9 the ground of accident if it is shown that the act
10 was unintentional and that the Defendant was acting
11 normally and that reasonable care was used by the
12 Defendant.

13 I think accident has been raised. Obviously,
14 if this was a murder case and it was a murder case or
15 homicide by the use of a firearm, this would be
16 charged, and then you would go on to say, if you are
17 lawfully armed and if it is accidentally discharged
18 -- that type of language I kind of extracted that.

19 Do you have a position on that, Mr. Waters, Ms.
20 Weiss or Mr. Floyd?

21 That is within the general intent charge.

22 MR. WATERS: I apologize, Your Honor, but you --
23 it sounds to me like that is a correct statement of
24 law.

25 THE COURT: You can look at it. I hope it's a

1 correct statement of the law. I just wanted to make
2 sure the correct statement of the law in this case --
3 you all can both look at this.

4 MR. WATERS: We have no objection to it.

5 THE COURT: That language, that particular lang-
6 uage, is not in the general intent charge but I just
7 added that.

8 (Brief pause in the proceeding)

9 THE COURT: Mr. Floyd, any objection?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Anything further, Mr. Attorney Gen-
12 eral?

13 MR. WATERS: Nothing from the State, Your Honor.

14 THE COURT: All right. Now, let me ask this.
15 How long do you need to argue, Mr. Attorney General?
16 Are you going to open on the law?

17 MR. WATERS: I will open on the law. It shouldn't
18 be longer than -- probably less than ten minutes, I
19 would think.

20 THE COURT: And Madam Attorney General, you're
21 going to close?

22 MS. WEISS: Yes, Your Honor.

23 THE COURT: I'm not holding you to it. I really
24 just . .

25 MS. WEISS: I'm not really good at guessing on

1 these things. Thirty to forty-five minutes maybe.

2 THE COURT: Well, when you say you are not good
3 at guessing, a great trial judge once told me, and I
4 am sure Mr. Floyd -- George Bell Timmerman -- a good
5 trial lawyer can't estimate time.

6 I hope I've found that true, and I hope that
7 applies to good trial judges too.

8 Mr. Floyd, how long do you think you'll be?

9 MR. FLOYD: Thirty to forty-five minutes, Your
10 Honor.

11 THE COURT: Well, depending on how long it is
12 -- of course, Mr. Waters will present first and we'll
13 go right in with Mr. Floyd. Depending on how long
14 Mr. Floyd is, we may break after that. We may not,
15 depending on how long.

16 The with the Attorney General or we may take a
17 break after that before charging the jury.

18 Based on our bench conference, I am going to
19 charge the State's request to charge number one and
20 number two. I've already covered number two, but I
21 didn't want to mislead Mr. Floyd or the Attorney
22 General.

23 I'm going to feather the first request to charge
24 into the voluntariness of the statement.

25 MS. WEISS: Your Honor, . . .

1 THE COURT: Yes, maam.

2 MS. WEISS: . . may I just inquire about the
3 light in the gallery?

4 THE COURT: Yes, maam.

5 MS. WEISS: It's a very bright light and . .

6 THE COURT: Well, I was fixing to review Rule
7 605 with the media. I'm sure -- your name, maam?

8 RESPONSE: Ashley Short.

9 THE COURT: I'm sure Ms. Short is familiar with
10 605 and the limitations as far as covering of pro-
11 ceedings, and, of course, specifically that members
12 of the jury may not be photographed if they happen to
13 be in the background of any subjects being photo-
14 graphed.

15 So I don't want any view facially of any of the
16 members of the jury. The light is pretty bright.

17 If you could go to the side or more over to my
18 front right? You lawyers help me with this. You
19 are the ones who will be standing in front of the
20 jury.

21 MS. WEISS: Your Honor, it was very distracting
22 to me, and I apologize.

23 You are looking right onto it.

24 THE COURT: I'm going to be watching you do your
25 closings to the jury, so -- but you trial lawyers

1 tell me how you want it, and I'll -- just so it is
2 not distracting to you all. It is an important part
3 of the process.

4 Mr. Floyd?

5 MR. FLOYD: It doesn't bother me, Judge.

6 THE COURT: All right. If you want it off,
7 Madam Attorney General, I'll have it off.

8 (Discussion in Courtroom between counsel and the
9 Court)

10 MS. WEISS: I would prefer to have it off, Your
11 Honor.

12 THE COURT: Then if you would leave it off at
13 least during the presentation of the closing argument
14 by Madam Attorney General, Ms. Short. Thank you.

15 Anything further before we bring in the jury,
16 from the State?

17 MR. WATERS: No, Your Honor.

18 THE COURT: Defense?

19 MR. FLOYD: No, Your Honor.

20 MS. WEISS: If it's going to be on for the other
21 two, I'd rather it be on for mine. I'm sorry I'm
22 being difficult.

23 THE COURT: That's not being difficult.

24 All right, we have an agreement.

25 Bring us our jury, please.

1 (Jury returned to Courtroom)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen.

4 As you know, prior to our recess, the Defense
5 rested. The State has the right to present evidence
6 or testimony in reply.

7 It is my understanding the State does not intend
8 to present any testimony or evidence in reply. Is
9 that correct, Mr. Attorney General?

10 MR. WATERS: Yes, sir, Your Honor.

11 THE COURT: All right. So the procedure we will
12 now follow is that you've heard all the evidence and
13 all the testimony you are going to hear in the trial
14 of this case from both parties.

15 We are now at the point in the trial where we
16 will hear closing arguments by the attorneys.

17 Closing arguments are different from the opening
18 statements. They are true arguments.

19 The attorneys may argue the facts and inferences
20 to be drawn from the facts and how that applies to
21 the law.

22 The procedure we follow in a case such as this
23 is, I believe, that Mr. Waters, the Assistant Attorney
24 General, will speak first in what is known as opening
25 on the law.

1 Thereafter, that will be followed by Mr. Floyd,
2 on behalf of his client, Lexie Dial, Third.

3 After Mr. Floyd's closing argument to you, de-
4 pending on how long we have been out here, we may
5 take a break prior to the Assistant Attorney General,
6 Ms. Weiss', closing argument on behalf of the State.

7 It just depends, and if at any time any of you
8 need a break for any reason raise your hands and we
9 will certainly take a break.

10 You see, I generally try to stay in the Courtroom
11 about an hour and fifteen minutes or something like
12 that, but if you need a break let me know.

13 After the closing arguments by the attorneys, I
14 will charge you or instruct you on the law that you
15 are to apply to the facts of this case, as you have
16 found the facts to be.

17 Please remember the State is the party that has
18 the burden of proving its case beyond a reasonable
19 doubt, and that a criminal defendant in South
20 Carolina is presumed to be innocent, regardless of
21 the seriousness of the charges placed against him or
22 her.

23 Further, please remember that the closing argu-
24 ments by the attorneys is not evidence. The evidence
25 is answers of witnesses who have testified under oath

1 from this witness stand, and any other documents or
2 evidence of that nature which has been introduced and
3 which you will have in the jury room with you.

4 As you have done throughout the trial, please
5 give the parties your complete and undivided atten-
6 tion.

7 With that being said, Mr. Waters?

8 MR. WATERS: Well, I realize it's been a really
9 long trial, and I appreciate all of you all's atten-
10 tion during the course of this week.

11 This is the time, as the Judge stated, for the
12 attorneys to present arguments on the evidence to
13 you, and, as explained to you, what I will do right
14 now is talk to you about the law.

15 I won't be very long, and after that Mr. Floyd
16 will have a chance to say his piece, and then Ms.
17 Weiss will finish up for us.

18 What I want to talk about is the same thing I
19 talked about with you in opening statement, the law
20 itself and the crime that is charged in this case.

21 We've got up here on the screen the statute on
22 homicide by child abuse. I went through this with you
23 all in the beginning, but I want to do one more time.

24 These are the three things which you need to
25 find in order to find the Defendant guilty of homicide

1 by child abuse.

2 The first thing is that he caused the death of
3 a child under the age of eleven.

4 The second one is that it was while he was com-
5 mitting child abuse or neglect.

6 Child abuse or neglect is defined as an act or
7 omission by any person that causes harm to a child's
8 physical health or welfare.

9 That is abuse or neglect.

10 Finally, the third element is that the death oc-
11 curred under circumstances manifesting an extreme in-
12 difference to human life -- extreme indifference to
13 human life.

14 Now, obviously there is no way the Judge will
15 tell you that you can dissect a person's mind and go
16 back and determine what thoughts were in their mind
17 at the time something occurred.

18 So to do that, you have to rely on circumstances
19 in the evidence and what that tells you about it,
20 and from those circumstances you can infer what the
21 Defendant's intent was at the given time.

22 The Judge is going to tell you that that sort
23 of intent can rise from negligence, recklessness,
24 from an indifference to a duty or consequences that
25 is considered by the law to be the equivalent of

1 criminal intent.

2 Duty or consequences that are considered by the
3 law to be the equivalent of criminal intent.

4 Extreme indifference to human life.

5 The Judge is also going to define extreme indif-
6 ference to you. He is going to define that as a
7 deliberate act that culminates in death or ends up
8 in death.

9 What that means is that the Defendant intended
10 to do the act that he did. It doesn't mean that he
11 woke up that morning and said, I'm going to kill
12 someone today.

13 All he had to do was intend to do the act that
14 he did, and that that action results in death. That
15 is the nature of the intent as he will define it for
16 you.

17 The Judge is going to also charge you on the
18 concept of accident as a defense in this case, but
19 in order for you to find accident you're going to
20 have to find three things.

21 The first thing you'll have to find is that what
22 the Defendant did was unintentional. You would have
23 to find that it was unintentional.

24 The second thing you have to find is that he was
25 acting lawfully when he did the act, and the third

1 thing is that -- and this is important -- the third
2 thing is you have to find that when he did the act he
3 was using reasonable care. He was acting as a nor-
4 mal and reasonable person would act, exercising rea-
5 sonable care.

6 All three of those things must exist for you to
7 conclude that what happened in this case was an acci-
8 dent.

9 Now, one thing you are going to have to determine
10 in this case is the voluntariness of the confession,
11 and how you do that is look at the totality of the
12 circumstances, all of the evidence in the case.

13 And things you can consider are whether he was
14 physically punished, whether he was denied basic com-
15 forts, or whether he was subjected to threats or
16 coercion or blatant promises, or whether he was sub-
17 jected to hours of questioning, whether he had a white
18 light in his face or things like that, or, on the
19 other hand, whether the confession was taken in a
20 reasonable and professional manner.

21 Look at all the circumstances, and ultimately
22 what you have to determine is -- you have to determine
23 whether the Defendant knowingly agreed to talk to the
24 police after an explanation of all his rights.

25 Now, one thing along these lines is that the

1 Judge is going to charge you that the Defendant's
2 decision to talk is his and his alone.

3 The police don't have to tell him if anyone else
4 is out there wanting to talk with him. The decision
5 is solely his to talk.

6 All right. The right to counsel is solely his
7 to assert, and your only job is to determine whether
8 he did so voluntarily. Right?

9 Voluntariness doesn't mean that it was a smart
10 decision, a good decision, whether you would have done
11 it if you were in the same circumstances. It doesn't
12 mean whether or not someone else would have told him
13 to do this or not to do this.

14 The only thing that matters is whether or not he
15 understood his rights and still decided to talk to
16 the police. That's the only thing that matters.

17 Not whether it was smart, not whether it was dumb,
18 or whether or not someone else would have told him
19 to do it or not do it.

20 Those things don't matter. If he was explained
21 his rights and whether he understood those rights and
22 decided to talk, without being forced. That it was
23 voluntary.

24 Now, the Judge has repeatedly told you during
25 the course of this proceeding something that is very

1 important. That your decision is not to be based on
2 passion, prejudice or sympathy for any party in this
3 particular case, and that is very important, because
4 it is supposed to be an objective process.

5 The facts plus the law equals the results in this
6 case, and, as the Judge told you, you cannot base a
7 decision at all on any sympathy, whether they be male
8 or female, whether they be old or they be young.

9 Who the person is is supposed to be out of the
10 equation. It is supposed to be an objective decision.

11 In this case, you all are very much like public
12 officials, because you took an oath of office in the
13 beginning of this case, an oath to well and truly try
14 this case.

15 Just like Ms. Weiss and I took oaths to become
16 attorneys, and Mr. Floyd took an oath as well to be-
17 come an attorney, or the Judge takes an oath, or the
18 law enforcement officers took an oath before they
19 could serve, you took an oath in this particular case.

20 Now, Winston Churchill once said -- and in case
21 you don't know who Winston Churchill was, he was the
22 leader of England during World War Two -- and he
23 wound that country back from the brink of an overrun
24 by the Nazis, and he said -- he said that jury ser-
25 vice was the highest duty that one could perform for

1 their country or their city or their state, other than
2 military service.

3 He brought his country back from being almost
4 overrun by the Nazis, so I would say he knows something
5 about public service.

6 What he has said here is that oath is very import-
7 ant, and in order to be true to the oath that you swore
8 to do, your duty is to make an objective decision and
9 to avoid any sympathy, any passion for any party in
10 this Courtroom.

11 Make that decision on this, that the facts plus
12 the law equals the result.

13 Once you determine the facts and add it to the
14 law, if it shows his guilt, it is your duty to be true
15 to your oath and find him guilty.

16 I'm about done, but what is the standard in order
17 to find him guilty? It is beyond a reasonable doubt,
18 and that is a burden that is on us, as the prosecution
19 in this case, which we welcomed, as I told you before.

20 It is a fundamental part of our system of fair
21 justice. It is a fundamental part and it is one that we
22 want.

23 Just because it is a high burden does not mean
24 it is an impossible burden. The emphasis is on reason-
25 ble. A reasonable doubt.

1 Not any doubt you can make up in your mind, not
2 anything you can pick out in isolation, some bit of
3 testimony or some other bit of testimony that is out
4 of context.

5 There is really nothing in life that is one hun-
6 dred percent certain. In order to have a reasonable
7 doubt, the emphasis is on reasonable.

8 Every case, every human endeavor, particularly
9 something like this, is going to have its little prob-
10 lems, its little inconsistencies, little things that
11 are not perfect, but, again, in assessing reasonable
12 doubt don't let anyone convince you that a mole hill
13 is a mountain.

14 You just have to be firmly convinced that he did
15 it, a strong conviction that he did it, in order to
16 convict.

17 I appreciate all of your attention this week.
18 Thank you very much.

19 THE COURT: Thank you, Mr. Waters.

20 Mr. Floyd?

21 MR. FLOYD: Thank you, Your Honor.

22 Madam Forelady and ladies and gentlemen of the
23 jury, this is the last opportunity I have to speak
24 to you on behalf of Lexie Dial, Third.

25 Before I start speaking to you about that, I

1 would like to thank you for the attention that you
2 have given us in this matter.

3 This is the most important day in the life of
4 Lexie Dial. The decision that you make about him
5 will affect him for a long time.

6 It is a most important decision that you make
7 about him because you are going to decide whether the
8 evidence proves his guilt to your satisfaction. A
9 very big decision.

10 Let me talk to you about something that I've al-
11 ready talked to you about in my opening statement,
12 and there's a reason I'm going to repeat it to you.

13 It is not that I think you have forgotten, but
14 it is just that it is the most important thing I can
15 tell you about considering this case.

16 It is about the burden of proof. Remember, as
17 Lexie Dial sits before you to be judged, you must
18 say in your hearts and in your minds that Lexie Dial
19 is innocent. That's right. You've got to sit there
20 and say, Lexie Dial is innocent and he remains inno-
21 cent unless the State proves -- unless the State proves
22 his guilt to each one of your satisfactions beyond a
23 reasonable doubt.

24 Now, what do we mean by that? A lot of people
25 define reasonable doubt as that doubt which would

1 cause a reasonable person to hesitate to act. That
2 doubt which would cause a reasonable person to hesi-
3 tate to act.

4 So if you can somehow take all of this evidence
5 that you have heard in this Courtroom and put it in
6 the shape of this piece of paper, and because of one
7 piece of that evidence or the lack of one piece of
8 that evidence you would hesitate before you would
9 vote to brand him a murderer of his son, then your
10 obligation as a juror is to return a verdict of not
11 guilty, even if there is other evidence in the case
12 that makes you suspicious.

13 Because, you see, when you vote guilty or not
14 guilty you are not voting on whether or not you think
15 Lexie Dial did it. What you are voting on is has the
16 State proven the guilt of Lexie Dial to my satisfac-
17 tion beyond a reasonable doubt.

18 That's what you've got to think about. Now,
19 let's talk about the case a little bit, about what
20 they've got to prove to you.

21 What they've got to prove to you is basically
22 this. That Lexie Dial intended to kill his son,
23 Joshua. That's basically what they have to prove to
24 you.

25 Now, what do we have by way of evidence in the

1 case?

2 First of all, let's talk about this alleged state-
3 ment form, because I'm sure they're going to argue to
4 you, wow, if he wrote this down, he must have done it.

5 Well, the Judge is going to charge you the law or
6 he's going to instruct you on the law, and let me cau-
7 tion you about one thing.

8 We lawyers mention the law to you, and when we
9 finish Judge McMahon is going to tell you the law or
10 as we call charge the law.

11 He will tell you what the law and you take what
12 he says. He is the Judge of the Law.

13 Now, you have to make a decision before you ac-
14 cept the alleged statement. You must decide whether
15 or not that statement was freely and voluntarily
16 given, and you may either accept or reject that state-
17 ment.

18 Let's talk about the statement a minute. What
19 were the circumstances around this statement?

20 It is undisputed within a matter of a couple of
21 minutes of the death of his son, who he loved, that
22 they took him out of that room, handcuffed him, and
23 put him in a police car, carried him to Lexington
24 County to the Sheriff's Department.

25 They put him in a room with a skilled

1 interrogator or investigator and tried to get a
2 statement from him.

3 They never once gave him the opportunity to grieve
4 the loss of his son. They wouldn't even wait until
5 he got home.

6 They get some guy to come over there who they say
7 can arrest anywhere in the State because they can't
8 arrest him but in Lexington County, and they take him
9 out of the hospital room before grieving for his
10 child, Joshua Dial.

11 What do you think Lexie Dial's mind was like at
12 that point?

13 They take him over there and put him in a room,
14 and they don't care there's a lawyer outside. They
15 put him in a room, and they ask him what happened.
16 Then he tells them again.

17 They tell him he's being charged with homicide
18 by child abuse. Tell us what happened, and he tells
19 them again.

20 You're being charged with homicide by child
21 abuse. You're facing twenty years to life imprison-
22 ment unless you cooperate with us.

23 We want the truth but we don't believe what you
24 say, so we're not going to accept your truth. He
25 puts the word shaking in there.

1 Read the statement. It doesn't make any sense.
2 He knows his child couldn't walk. He plays with his
3 child every day. It doesn't make sense.

4 You know, it would be very easy for us to under-
5 stand what went on in that room if they had recorded
6 it. Why didn't they record it?

7 Why don't they want us to know what they said to
8 Lexie to make him write this statement? You think
9 they have something to hide there?

10 If you tell a man he's facing twenty to life, and
11 they don't even record it so that we all know what
12 really went on in that room, that -- but, you know,
13 from the get-go the Sheriff's Department made a decis-
14 ion and that was to charge Lexie Dial.

15 And what did they think? They thought this man
16 was a drunk guy, intoxicated, lost his temper be-
17 cause he was drunk, and he purposely killed his child.
18 Because they didn't understand Lexie Dial. They didn't
19 know what his demeanor was normally like.

20 They didn't take into account that the man loved
21 his child and was in shock over what had happened.

22 Now, he's guilty, they say. He's guilty. He got
23 drunk and lost his temper and killed his child. Of
24 course, once they got the drug results back, what can
25 they say?

1 They were wrong. No drugs, no alcohol.

2 Now, you've heard a lot of testimony. I think I
3 counted six medical doctors that testified, and I am
4 not going to stand up here and try to tell you -- talk
5 about everything every one of those doctors said.

6 I'm going to tell you this. Yo listen to the
7 Judge, and the Judge will tell you about expert tes-
8 timony.

9 I think he told you that every time an expert got
10 up there and he qualified as an expert.

11 What this is is that they can give you an opin-
12 ion, but you on the jury don't have to accept that
13 opinion, and you can give it whatever weight you want
14 it to have.

15 We've heard from six different doctors, and some
16 of them said a couple of things the same, and some of
17 them said different things.

18 We spent a lot of time talking about retinal hem-
19 orrhaging which is not a life-threatening situation,
20 but we spent a lot of time talking about it.

21 Then some of them had to admit that retinal
22 hemorrhaging can occur from something other than a
23 shaken baby. CPR, or a child can be born with reti-
24 nal hemorrhaging.

25 A child can rebleed after being born causing

1 retinal hemorrhaging.

2 And, yes, the condition of coagulopathy, that can
3 cause bleeding continuously after the incident.

4 Increased pressure in the head from cerebral hemor-
5 rhaging -- the increased pressure applied can cause
6 retinal hemorrhaging.

7 How many different opinions did we hear about
8 that? How many different opinions did we hear about
9 -- well, let's see. One said, well, the incident
10 could occur eight to ten hours before significant
11 problem.

12 One said it was twenty-four to forty-eight hours
13 after the incident before you develop symptoms to an
14 emergency situation. Ninety-six hours.

15 That is why we don't convict people with scien-
16 tific expert opinions, because that's what they are.
17 They are opinions, and I believe one of them admit-
18 ted that the only person who really knows is a person
19 who was there.

20 All they are doing is speculating, and that's
21 why we use the jury system, because, you see, that
22 is a protection for us citizens.

23 Because it is not that somebody's expert opinion
24 can convince you, because you have seen how doctor to
25 doctor have differing opinions, but twelve members of

1 a community can take their combined experiences in
2 life and weigh the evidence and determine the true
3 facts in a case.

4 The question seems to be, what was the injury
5 that led to the death of Joshua Dial.

6 Did Lexie Dial trip while holding him and fall
7 into a table, or, as the State would say, what hap-
8 pened was he lost his temper and got angry at his
9 son, shook him violently, to the extent that it caused
10 his death?

11 The Judge will charge you on accident, and let
12 me tell you something about that too.

13 The Defendant doesn't have to prove to you an ac-
14 cident occurred. The State has to prove to you be-
15 yond a reasonable doubt that there was no accident.

16 The State must prove to you beyond reasonable
17 doubt that this was with the intention of Lexie Dial
18 to kill his son.

19 Now, I'm going to refer you to two of the doctors
20 who testified, and who I think were of importance in
21 the case.

22 You remember Dr. Shuler? He was an emergency
23 room doctor at the Lexington Medical Center.

24 And by the way, if I say something wrong about
25 the facts from your memory of it, you take your memory

1 and you rely on your memory of the testimony.

2 I've been doing this for twenty-some years, but
3 I can certainly misunderstand something that is said
4 or not remember it correctly.

5 Dr. Shuler said that the cerebral hemorrhages
6 he saw must have been from a fall and hitting the
7 child's head.

8 He was the first one who saw him. He was a man
9 with twenty-one years experience in the emergency room,
10 treating accidents, treating injuries.

11 He said, yes, it could have been from a fall,
12 and then let's go to the most important expert wit-
13 ness, and that is Dr. Janice Ross.

14 You see, all these other doctors can look at
15 tests and try to figure out what went on and give you
16 an opinion from those tests.

17 But Dr. Ross saw the real thing. Dr. Ross did
18 the autopsy, and I hate to say this, but she's the
19 one who takes a scapel and looks inside of the brain.
20 She's the one who actually had hands-on and could see
21 exactly what happened.

22 Not trying to determine from reading from some
23 test, but she sees the exact thing, and what does she
24 say?

25 Cause -- remember we asked her about this

1 subparagraph on her form, describe how injury occurred?
2 Remember me asking her that question?

3 It was kind of -- remember how it went? Because
4 there was one form that had the words, head hit object,
5 and there was another form that was blank. Hm, inter-
6 esting.

7 The first form, head hit object. Then she had
8 a conversation with somebody in Lexington County, and
9 she put a new form out that left it blank.

10 Why did anybody in Lexington County not want any-
11 body to know that? Because it was inconsistent with
12 their theory of the case.

13 Fortunately for us, she was truthful. She said,
14 well, I changed my mind.

15 She said, well, I would have changed it to head
16 hits object or object hits head. Remember that?

17 This was the forensic pathologist who has been
18 trained to determine cause of death. Someone who can
19 look and see everything.

20 She doesn't go by tests. She's looking right at
21 it, and she said, the cause of death was the head
22 hitting an object or an object hitting the head.

23 Just what Lexie Dial said happened. I did not
24 intend to harm my child. Not a shaken baby.

25 Now, I told you something at the outset that I

1 tried to show to you, and I think it's out there. It
2 has to do with how Lexie Dial felt about his son.

3 I hate to be morbid, but a man that young maybe
4 is too young to be a parent. What you saw was a
5 young man trying his best to be a good parent to his
6 child. You all heard him.

7 Lexie lost his mother at a pretty young age, and
8 it was extremely hard on him. He said Josh gave him
9 a purpose in life, and he tried his best to be a good
10 father to him.

11 He took care of him, kept him every day. He
12 took the child to the doctor when he needed to. He
13 fed the child, bathed the child, played with the
14 child. The child was his life.

15 I'm going to sit down shortly and Ms. Weiss will
16 speak with you. I won't have another chance to say
17 anything to you.

18 The Attorney General's Office will get up and
19 stand over here like I am. She will get to speak
20 to you like I'm speaking to you, and I'm sure they're
21 going to talk to you about the case for a long time.

22 Now, I wish the procedure was that if there was
23 some question you had in your mind that I could answer
24 it for you. I wish we had a procedure for doing that
25 but we do not.

1 The procedure doesn't allow for that, so I have
2 to kind of stand up here and hope that I have covered
3 everything that may become a question in your minds.
4 This is a very difficult case.

5 I appreciate the Attorney General talking about
6 the fact that you are not to base your decision on
7 sympathy, because I know it is human nature and I am
8 sure there is great sympathy for the child from every-
9 one connected with this case.

10 Maybe something is tugging at your heart and is
11 telling you to speak out for that child, but that is
12 not a part of your duty as a juror. You cannot make
13 your decision based upon sympathy or passion.

14 When you make your decision in this case, I ask
15 you to consider the evidence, the so-called confes-
16 sion and the evidence surrounding that confession.

17 Look at the document and see if it makes sense
18 to you. Think about why Lexie said he wrote it.

19 Dr. Ross at autopsy said the injury was caused
20 by something hitting the head of the child, and then
21 she said something hit the head or the head hit an
22 object.

23 This is not a case where there was regular abuse
24 on a child. The child was well cared for.

25 This is not a case of abuse, and think about the

1 testimony you heard about shaken baby. What is miss-
2 ing here? There was no other injuries to the child.
3 Whereas, when you normally have a severe shaking in-
4 cident, when the child is so young and fragile, there
5 are other injuries that occur. There may be cracked
6 ribs, dislocated shoulders, arms broken, legs broken,
7 other things, because of the kind of force in a shaken
8 baby incident.

9 With a young child like that, you would have
10 other injuries on the child. There were no other
11 injuries. No other injuries.

12 There was a bruise on the jaw but that could have
13 come from when they were treating him, EMS putting a
14 mask on the child.

15 They did skeletal x-rays all over the body, but
16 there were no other injuries on the child. I hope that
17 will help you make your decision.

18 Thank you very much for your attention. We do
19 really appreciate the attention you have given us. We
20 have noted that you paid very close attention, and
21 we appreciate that close attention that you gave to
22 us, to this important matter.

23 On behalf of Lexie, I thank you for being here.

24 You can be charged with a crime by the police,
25 arrested, handcuffed, and carried to jail, and sit

1 in jail until Court, but you cannot be convicted un-
2 less twelve members of the community agree that the
3 evidence proves the case beyond a reasonable doubt.

4 We appreciate your attention and your considera-
5 tion of the evidence.

6 THE COURT: Thank you very much.

7 All right, Madam Attorney General?

8 MS. WEISS: Your Honor, if I could have a couple
9 of minutes?

10 THE COURT: Why don't we take a recess so you
11 can set things up.

12 Leave your notes, please, ladies and gentlemen.
13 We'll take about a ten minute recess. Do not discuss
14 the case during this brief recess.

15 Thank you very much.

16 (Jury excused from Courtroom)

17 THE COURT: All right, we'll be in recess for
18 ten minutes.

19 (Whereupon, the Court took a brief recess, after
20 which the matter was resumed)

21 THE COURT: Are you ready?

22 MS. WEISS: Yes, sir.

23 THE COURT: Anything from the Defense before we
24 bring in our jury?

25 MR. FLOYD: No, Your Honor.

1 THE COURT: All right.

2 (Jury returned to Courtroom)

3 THE COURT: All right, welcome back, ladies and
4 gentlemen.

5 We will now hear the closing argument by Ms.
6 Weiss, the Assistant Attorney General, for the State.
7 Please give her your undivided attention, as you
8 have done for all the parties throughout the trial
9 of the case.

10 Madam Attorney General.

11 MS. WEISS: Thank you, Your Honor. May it
12 please the Court?

13 THE COURT: Yes, maam.

14 MS. WEISS: On January 19th, 2010, the Defendant,
15 Lexie Dial, killed his son, Joshua Dial. That is
16 why we're here today.

17 Lexie Dial, Third, committed homicide by child
18 abuse.

19 Before I go any further, I too, on behalf of the
20 State, want to thank you for your attention, and I
21 am sure there are other places you would rather have
22 been this week. But we can't do our jobs without you
23 being here. Oh behalf of the State, thank you for
24 your attention and thank you for a little bit more
25 attention to finish out the trial of the case.

1 As Mr. Waters talked to you about in the begin-
2 ning, we represent the State of South Carolina, and
3 it is our burden to prove to you beyond a reasonable
4 doubt that the Defendant is guilty of homicide by
5 child abuse.

6 Mr. Waters talked in detail about the charge so
7 I am not going to dwell on that, but there are only
8 three things that we must prove to you.

9 Those things are that the Defendant, Lexie Dial,
10 caused the death of a child under the age of eleven.
11 There has been no disputed evidence for you to con-
12 sider as to that, that Joshua Dial was injured by force
13 and that he died. That's the first thing proven.

14 Secondly, that the death was caused by committ-
15 ing child abuse or neglect. Then, third, under cir-
16 cumstances manifesting an extreme indifference to
17 human life.

18 We do not have to prove to you that Lexie Dial
19 intended to murder Joshua. That is not what the
20 State must prove.

21 We only have to prove to you that Lexie Dial com-
22 mitted child abuse that caused the death of this child.
23 That while he was doing that, it was under circum-
24 stances manifesting extreme indifference to human
25 life.

1 That once he committed that child abuse, that is
2 what caused the death of Joshua Dial.

3 I submit to you that those elements have been
4 proven.

5 You heard Dr. Susan Luberoff say to you that
6 there are only two people who could tell you what hap-
7 pened at around eight o'clock on January 19, 2010,
8 that caused Joshua Dial to stop breathing, caused his
9 heart to stop beating, cause him to go into brain
10 death, and eventually to die on January 20th.

11 Only two people, and the Defendant is one of the
12 two people who can tell you exactly what happened.
13 The other person is Joshua Dial. Joshua Dial obviously
14 can't sit here and talk to you, but his body, his
15 little five month old body, can show what happened to
16 him. It can show the experts what happened to him,
17 but they can't tell you exactly what that was, and
18 what they can do is give years of experience, with
19 their research and their findings, and tell you what
20 cannot have caused this injury and the kinds of force
21 necessary to cause those injuries.

22 So let's talk about the experts. The Judge did
23 charge you each and every time someone was qualified
24 as an expert. He gave that same charge each time we
25 would call another expert.

1 That was the important thing, that each expert
2 was qualified and accepted based on their training,
3 knowledge and experience.

4 The first expert who was qualified and the first
5 expert you heard from was Dr. Wesley Shuler, who was
6 qualified in emergency medicine. That is his exper-
7 tise.

8 In emergency medicine, he works in the E.R.
9 every day with children, infants, adults, old and
10 young, who are coming into the E.R. for immediate
11 care, immediate assessment, immediate care, and he
12 figures out what needs to happen. That is what he
13 testified to.

14 He said that Joshua Dial was brought in with
15 no pulse, not breathing, and he set up this team --
16 he brought his team in, and they awaited the arrival
17 of Joshua Dial.

18 When he got there, he was able to get a pulse
19 back. They were able to restore the pulse in Joshua
20 Dial. He needed immediate critical care and he got
21 that.

22 Then he took a head CT to get a baseline on what
23 caused this child to stop breathing, to stop his heart
24 from beating. They did a head CT and he knew there
25 was a subdural hematoma and he knew he had a child

1 with a restored pulse.

2 At that point he did say -- he said subdural
3 hematoma can be caused from hitting his head. That's
4 right. He said that.

5 He had a head CT, and he said this child needs
6 more care than we can provide for him here at the
7 Lexington Medical Center. This child needs to go to
8 the pediatric intensive care unit that is housed at
9 Richland Memorial.

10 He said that is where the pediatric intensive
11 care experts are, and that's what this child needs.
12 He is so critical, he is so unstable. We've got him
13 as stable as we can. We restored the pulse and did
14 the head CT, but he is very critical.

15 So Joshua Dial went to Richland Memorial, and
16 the next expert was Dr. Janice Ross, and she was
17 qualified as an expert in forensic pathology. She
18 told you about forensic pathology, and she told you
19 she does not treat living patients.

20 She doesn't see patients who survive, but she
21 only sees deceased patients.

22 She doesn't give medication, she doesn't see pa-
23 tients get better. Her job as a forensic pathologist
24 is to figure out what happened.

25 And that's what she did. Not how it happened,

1 but what caused the death of the child.

2 What did she tell you? She said there was a
3 subdural hemorrhage, as found in the CT done by Dr.
4 Shuler. Cerebral edema, bleeding on the brain, a
5 swelling of the brain, a closed head injury.

6 The cause of death, blunt force injury to the
7 head. Head hit object, or object hit head.

8 She had that in her report. She said that she
9 looked at her notes and she thought, I can't give a
10 description of how this happened. The block says de-
11 scription of how this happened, and I can't give that.
12 What I can say is it was from blunt force injury to
13 the head.

14 Subdural hemorrhage, bilateral hemorrhaging, and
15 we've heard talked about the arachnoidal hemorrhaging,
16 the subdural hemorrhaging from a back and force motion
17 of the brain. That's what causes that bleeding, the
18 back and forth motion of the brain, and that is what
19 she said.

20 Blunt force injury to the head, no accidental
21 explanation for the injuries that she saw.

22 She ruled it a homicide. She ruled out accident,
23 suicide, but she ruled it homicide. There is no ac-
24 cidental explanation.

25 When asked in her expert opinion could it be from

1 a fall? Yes, from a fall such as from a balcony on
2 the second floor to the floor.

3 Can it be from hitting a table, and that's when
4 you saw her use this picture. Well, the force would
5 have to be kind of like this. That is the force it
6 would take to cause the injury or cause this head
7 trauma.

8 That's what Dr. Ross said, blunt force injury
9 to the head, no accidental explanation. Homicide.

10 Now I'm going to turn to the pediatric intensive
11 care unit. He was seen -- he got there late at night
12 on January 19th, and he died around two o'clock on
13 January 20th.

14 On this unit you have the people who assessed
15 Joshua Dial. We have Dr. Sarah Webb-Wood, a pedia-
16 trician. She's a pediatrician now. She is in her
17 first year. Last year she was in her last year of
18 residency.

19 She had all the technical knowledge she received
20 as a student and she had three years of residency. She
21 was a third year resident.

22 She was the person to care for Joshua, the first
23 person. She is an expert in pediatrics. That's
24 what she is.

25 She also recognized a subdural hematoma when he

1 came in. She looked in Joshua's eyes and saw the
2 severe retinal hemorrhages. She said that was caused
3 by shearing of the blood vessels with a back and forth
4 motion of the brain.

5 She told you that this was not caused by non-
6 accidental trauma. She was a third year resident and
7 is now a first year pediatrician.

8 It was her expert opinion as a pediatrician that
9 this was not caused by a blow to Joshua's head.

10 Not only do you have experts in pediatric medi-
11 cine, but you have a Professor of Pediatric Medicine.
12 You have the person who created the pediatric intensive
13 care unit at Richland Memorial Hospital.

14 You have a Professor of Ophthalmology, a Profes-
15 sor of Pediatric Ophthalmology.

16 You have an expert on child abuse, and I suggest
17 to you that they have explained to you the injury to
18 Joshua's brain.

19 Dr. Edward Cheeseman is a pediatric ophthalmolo-
20 gist. Every day he comes in and it is his job to see
21 children. He sees children with severe injury and di-
22 seases to children's eyes.

23 He told you and showed you what you were looking
24 at. He showed you severe retinal hemorrhaging. Too
25 many to count.

1 Hemorrhages that are too numerous to count.

2 There were some discrepancy as to small hemor-
3 rhages bleed a little bit more, causing extra pres-
4 sure to the brain, and he told you they do not. He
5 told you basically they are going to tap themselves
6 off.

7 So it might seem to be a discrepancy, but there
8 is not a discrepancy there. Pressure in the brain
9 did not cause more hemorrhaging.

10 Coagulopathy occurring does not cause more ret-
11 inal hemorrhaging. A little bit more bleeding of
12 these tiny vessels, but that doesn't retinal hemor-
13 rhaging.

14 He looked in Joshua's eyes and saw so many
15 retinal hemorrhages that he could not count them.
16 They went from top to bottom, layer to layer.

17 This is important because it is related to se-
18 vere head trauma. He testified to you that when you
19 see this, you usually find a child who is critically
20 ill or brain dead, because there is so much damage.

21 He said when you find so much injury on so many
22 layers, you usually find a brain dead child or a
23 severely critical child; that it goes along with it.

24 Ninety-six hours for retinal hemorrhages to go
25 away. When you see them to when they go away is

1 ninety-six hours, but he didn't tell you it was
2 ninety-six hours from when these occurred. These in-
3 juries occurred with a severely critical child, Dr.
4 Cheeseman said, and, therefore, are a marker of what
5 is known as shaken baby syndrome, a back and forth
6 motion causing retinal hemorrhage, a non-accidental
7 mechanism of trauma. Non-accidental.

8 Then he took it a step further. In addition to
9 retinal hemorrhaging, he saw something more. Retino-
10 schisis.

11 Now, he's an expert for a reason because he was
12 able to explain a concept that many people would not
13 know about when they are looking at these pictures.
14 When they are looking at the eye of an infant.

15 I will show you retinoschisis. The head is
16 shaken so violently that this fluid that is supposed
17 to be right underneath the eye are underneath the
18 retina.

19 It pulled it all the way up -- pulling it up and
20 it's under the retina.

21 CPR doesn't explain that. No continuous bleed-
22 ing or coagulopathy explains that. You only see it
23 in a severe shaking of the eye back and forth, so
24 severe that that vitreous fluid pulls apart the
25 retina and goes underneath it.

1 Retinoschisis makes this even more clear, and
2 to Dr. Cheeseman this is a non-accidental mechanism
3 of trauma, of shaken baby syndrome.

4 Dr. Greta Harper, an expert pediatric intensi-
5 vist and critical care person -- she's the one who
6 started the pediatric intensive care unit. She's the
7 one who has been there for years, trained to care for
8 critically injured children, trained to see whether
9 the child is going to survive or not survive, and why.

10 Day after day, hour after hour, she's the one
11 who is there with these critically injured children,
12 and she is the one who makes a determination as to
13 them, and you heard her testify that it was non-
14 accidental trauma, formerly known as shaken baby
15 syndrome.

16 That these injuries occur with shaking and non-
17 accidental head trauma.

18 This is a picture of a severe injury, of non-
19 accidental head trauma, and she told you it was not
20 from a common fall, but this was caused from force
21 applied to a baby that was so severe -- you are look-
22 ing at a picture of subdural hematoma, subarachnoid
23 bleeding, severe retinal hemorrhaging and death.

24 This was not an accident. This was from a back
25 and forth severe motion.

1 Finally, you heard from an expert in child
2 abuse and pediatrics. She spent a career training on
3 child abuse, and she told you that she saw some
4 markers that may be child abuse. She didn't just
5 walk in and take a look at Joshua and say, this is
6 child abuse.

7 She looked at each individual marker. She looked
8 at the head, she looked at the retina, and she went
9 to get more background information.

10 She got birth records and pediatric records on
11 the baby to see if there was anything in the past
12 that could explain that. Is there anything in his
13 history to make him more vulnerable to this bleeding,
14 to subdural hematoma, retinal hemorrhaging, as she
15 said.

16 She is the only one who took the time to do all
17 of that, and she said there is no other explanation
18 because Joshua was smiling and happy and normal, a
19 healthy, beautiful, normal five month old child.

20 She said non-accidental blunt force trauma is
21 what happened to him.

22 We need to take it a step further. Dr. Luberoff
23 is the one person who explained what blunt force
24 trauma was. You remember her explanation of blunt
25 force trauma.

1 A baseball hitting the head would be blunt
2 force trauma. A child ejected from a vehicle and
3 landing on the cement is blunt force trauma.

4 A child hitting or being hit over and over
5 against a table is blunt force trauma, and the brain
6 inside the skull moving back and forth and hitting
7 in the head is blunt force trauma.

8 A blunt force trauma that causes interior dam-
9 age because the brain is going back and forth, causing
10 subdural hematoma, subarachnoid bleeding, retinal hem-
11 orrhaging, cerebral edema or swelling of the brain.
12 That is blunt force trauma, a non-accidental blunt
13 force head injury, and that is described over and over
14 by every expert.

15 Now, she said that shaking a baby usually produces
16 crying in the baby, and that causes frustration to
17 the person shaking the baby. The up and down motion
18 is blunt force head trauma, the brain going back and
19 forth. Blunt force head trauma.

20 The added back and forth motion, the added blunt-
21 ness, that all would explain injuries to Joshua Dial's
22 head. It could not be a one hit but is the back and
23 forth.

24 This is not the result of one back and forth --
25 that is what she said. It could not be.

1 It could not be a one hit is what she said. She
2 was asked, well, what if the head hit the table and the
3 table breaks and then the head hits the floor, and
4 she said, no, it's still one hit. It breaks the
5 energy so it could not be that.

6 In all of my years and all of my research and all
7 of my expertise, it cannot be a one back and forth.
8 It doesn't work that way. It's a repetitive back and
9 forth.

10 She said this is one injury. When we look at
11 each of the markers carefully, this is one injury by
12 one person.

13 She said the one injured would be immediately
14 symptomatic. The infant would have trouble breathing
15 and become unconscious.

16 That is what happened to Joshua's body, what
17 happened to Josh.

18 Lexie Dial wants you to believe that he tripped
19 and fell and the baby fell also, hitting the table.
20 He wants you to believe the table broke and the baby
21 then fell on the floor.

22 I ask you -- you'll have these pictures with you
23 -- look at these pictures. This is the area, the
24 table here.

25 You have heard from everybody who was on that

1 scene. You've heard from Lexie Dial, Third. You've
2 heard from Lexie Dial, Junior, and you've heard from
3 Courtney Dial. You've heard from EMS and Adam
4 Clayton, the crime scene investigator.

5 Not one person said they moved this table, and
6 you specifically heard Adam Clayton and EMS -- they
7 all said, no, we just stepped over it. We didn't
8 touch anything.

9 Look at that table. Does that look like it broke
10 apart from them hitting it? Use your common sense.
11 The legs are over here, over here. Stuff on top of
12 it that has been dumped out or over days has kind of
13 landed on there.

14 Is this what a table looks like when it falls?
15 You'll have the table back there. Is that what it looks
16 like?

17 That's the history that is given to the doctors
18 who are treating Joshua Dial, but the baby didn't hit
19 his head on the table. The baby didn't fall on his
20 head.

21 If there is any force from hitting the table,
22 he may have a small skull fracture, but that is not
23 what we have here. That would not injure the capil-
24 laries. Not what we have here.

25 Lexie is sitting afterward in the police car,

1 smoking a cigarette, and asking about his dog. They
2 didn't even know who Blue was at first. Where's my
3 dog? He didn't ask about his son.

4 He wrote this statement that he was holding his
5 son when he fell and the baby hit the coffee table
6 with his head and neck; that he's gasping for air;
7 his heart was beating, and I did CPR.

8 When he was describing it to you, he was motion-
9 ing like this.

10 He goes to the hospital and walks in the room to
11 see his child, and then he goes to the waiting room
12 while everyone goes in and out, and he goes to sleep.

13 They arrest the man, who is the only person who
14 can tell what really happened. He's the only person
15 who was with that baby, his father. They arrest him
16 for homicide by child abuse.

17 Now, he said he was in internet school although
18 his grandmother said he hadn't ever gotten started on
19 that.

20 You will have his statement with you. Eric
21 Russell has been a detective a long time, and he
22 goes over these rights with a lot of people.

23 You have the right to remain silent. Anything
24 I say can and will be used against me in a Court of
25 Law.

1 I have a right to talk to a lawyer before answer-
2 ing any questions, and have him and her present with
3 me during questioning.

4 If I have no money for lawyer's fees, the Court
5 will appoint one to represent me without cost.

6 If I decide to answer questions without a lawyer
7 present, I will still have the right to stop answer-
8 ing questions at any time. I also have a right to
9 stop answering questions at any time until I talk to
10 a lawyer.

11 He never said he wanted a lawyer. He's eighteen
12 years old. He's able to read that and to understand
13 it.

14 He grandmother took the stand and testified in
15 his behalf. She said he only answers questions when
16 he is asked. You ask him what happened and he writes
17 a statement.

18 He's told the doctors are saying there is
19 retinal hemorrhaging, and that is not consistent with
20 what you've told me. You need to tell us the truth.

21 Detective Russell told you he specifically didn't
22 say shaken baby to Lexie Dial.

23 Lexie Dial somehow wants you to believe that he
24 is given enough cues by Eric Russell that he writes
25 this statement.

1 I was trying to teach the baby to walk and he
2 wouldn't cooperate. I got angry and shook him.

3 I held him in front of me and I said, why won't
4 you cooperate? Why won't you cooperate, and then he
5 does exactly what Dr. Luberoff says happened.

6 Why won't you cooperate? What about Lexie? He
7 is frustrated because Joshua won't cooperate. Who
8 knows how deep that goes? He's shaking him and shak-
9 ing him, and then he stops breathing.

10 So he puts him down on the floor. The baby isn't
11 breathing. He doesn't know what to do.

12 But he knows exactly what he's doing. Even on
13 the stand, the Defendant said, okay, I didn't do it
14 that way -- but when I fell with him, the table fell
15 and he was kind of stunned so I shook him then.

16 Common sense, ladies and gentlemen. He shook him
17 then?

18 It doesn't make sense. The only explanation is
19 that Lexie Dial wanted him to cooperate but when he
20 starts getting tired and starts getting fussy and he
21 stops putting his legs down, what was it? Only Lexie
22 Dial can answer that question.

23 He had gotten frustrated at that point. He had
24 gotten frustrated before and his grandmother had come
25 and taken Joshua home with her.

1 Well, that happens to parents of young children,
2 of babies, but what you can't do is -- you cannot
3 shake the child, as he was shown on that video --
4 you cannot shake the child. That is the most important
5 thing.

6 From the testimony there was one injury, and you
7 will have these pictures with you back there. Bilateral
8 subdural hematoma. Joshua's brain is bleeding
9 on two sides of his brain. Blood all the way to the
10 front of the brain under the dura.

11 Not just subdural hematoma but subarachnoid
12 bleeding as well. Severe full quadrant, multi-layer
13 retinal hemorrhaging.

14 So many hemorrhages you couldn't count them, and
15 you have heard that it takes an extreme amount of
16 force to cause this severe injury, to cause death.

17 That power, whatever happened, whatever made
18 Lexie Dial, Third, angry -- Joshua was not cooperating
19 -- the frustration led to the baby's being unconscious,
20 not breathing, and he died as a result of
21 what happened.

22 The experts say it was non-accidental blunt
23 force trauma. No accident, intentional. Homicide
24 by child abuse. Child abuse resulting in death.
25 Lexie Dial got angry and he intentionally shook Joshua

1 because Joshua Dial wouldn't cooperate. He got frus-
2 trated and he shook him. He intentionally shook him,
3 and that is child abuse, resulting in death, under
4 circumstances manifesting extreme indifference for
5 human life.

6 I believe that we have proven beyond a reason-
7 able doubt that Lexie Dial is guilty. Go back into
8 the jury room and talk about the evidence, and find
9 Lexie Dial guilty of homicide by child abuse.

10 THE COURT: Thank you very much, Madam Attorney
11 General.

12 Would you secure the laptop, the screen and the
13 exhibits?

14 All right, ladies and gentlemen, I am now going
15 to charge you as to the law that you must apply to
16 the facts in this case as you find them to be.

17 The procedure that I follow in instructing the
18 jury is I give the general criminal law that applies
19 to all criminal cases in South Carolina. I will give
20 you a caption of the paragraph I am fixing to cover,
21 the particular area or subject.

22 When I change from one subject to another, I
23 will alert you by giving you the caption for that
24 next area.

25 If you would please give me your undivided

1 attention, once I give you the general law I will
2 then cover the specific charge of homicide by child
3 abuse, and, finally, the verdict.

4 Do you have the Indictment, please, Madam Clerk?
5 Thank you.

6 Charge; Arrest; Indictment not Evidence.

7 The Indictment charges the Defendant with homi-
8 cide by child abuse. I remind you that the fact that
9 this Defendant has been charged and indicted in this
10 case is not evidence and cannot be considered by you
11 as evidence in this case, nor does it create any pre-
12 sumption or inference of guilt.

13 This document -- this Indictment is simply the
14 formal written instrument which contains the charge
15 made against the Defendant. It is the formal document
16 which brings this case into Court.

17 Presumption of Innocence.

18 The Defendant has pled not guilty to the Indict-
19 ment, and that plea puts the burden on the State to
20 prove the Defendant guilty.

21 A person charged with a criminal offense in South
22 Carolina is never required to prove himself innocent.

23 I charge you that it is an important rule of the
24 law that the Defendant in a criminal trial, no matter
25 what the seriousness of the charge may be, will

1 always be presumed to be innocent of that charge for
2 which the Indictment was issued, unless guilt has
3 been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 This presumption of innocence does not begin when
6 you begin your deliberations but it accompanies the
7 Defendant throughout the trial until you reach the
8 verdict of guilt from evidence satisfying you of that
9 guilt beyond a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of a Defendant
12 which remains with the Defendant until it has been
13 stripped from the Defendant by evidence satisfying you
14 of the Defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere legal
16 theory. It is not just a legal phrase. It is a sub-
17 stantial right to which every Defendant is entitled,
18 unless you, the jury, are satisfied from the evidence
19 of the Defendant's guilt beyond a reasonable doubt.

20 What is a reasonable doubt? A reasonable doubt
21 is the kind of doubt that would cause a reasonable
22 person to hesitate to act.

23 The State has the burden of proving the Defen-
24 dant guilty beyond a reasonable doubt.

25 Some of you may have served on juries in civil

1 cases, where you were told that it is only necessary
2 to prove that a fact is more likely true than not
3 true, such as by the greater weight or the preponder-
4 ance of the evidence.

5 In criminal cases, the State's proof must be more
6 powerful than that. It must be beyond a reasonable
7 doubt.

8 Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of a Defendant's guilt.

10 There are very few things we know in this world
11 with absolute certainty, and in criminal cases the
12 law does not require proof that overcomes every possi-
13 ble doubt.

14 If in your consideration of the evidence you are
15 firmly convinced that the Defendant is guilty of the
16 crime charged, you must find the Defendant guilty.

17 If, on the other hand, you think there is a real
18 possibility that the Defendant is not guilty, you
19 must give the Defendant the benefit of the doubt and
20 find him not guilty.

21 Duties of Jury and Trial Judge.

22 I remind you that during this trial you and I
23 have certain duties to perform. As the Trial Judge,
24 it is my responsibility to preside over the trial of
25 this case, and I also have the additional duty to

1 rule on the admissibility of the evidence offered
2 during the trial.

3 You are to consider only the competent evidence
4 before you. If there is any testimony ordered to be
5 stricken from the record in the case during this
6 trial, you must disregard that testimony.

7 You are to consider only the testimony which has
8 been presented from the witness stand and any exhibits
9 which have been made a part of the record.

10 I have the additional duty to charge you the law
11 that applies to this case. As the Presiding Judge,
12 I am the sole judge of the law of this case, and it
13 is your duty as jurors to accept and apply the law
14 as I now state it to you.

15 If you already have any idea as to what the law
16 is, or what the law ought to be, and it does not agree
17 with what I tell you the law is, you must abandon your
18 idea because you are sworn, you have taken an oath,
19 to accept the law and apply the law exactly as I
20 give it to you.

21 In every case tried in this Court before a jury,
22 the jury becomes the sole and exclusive judge of the
23 facts in the case.

24 A Trial Judge cannot intimate, state, comment on,
25 or make any statement to a trial jury about the facts

1 in a case.

2 Since you, the jury, are the sole judge of the
3 facts in this case, you are not to infer from what I
4 have said during the progress of this trial in ruling
5 upon the admissibility of evidence or otherwise, or
6 anything that I now tell you during the course of
7 these instructions, that I have any opinion about the
8 facts of the case.

9 The law does not allow me to have an opinion as
10 to the facts in this case. That is a matter solely
11 for you, the jury, to decide as jurors.

12 It is your duty to determine the effect, the
13 value, the weight, and the truth of the evidence as
14 presented during this trial.

15 Direct and Circumstantial Evidence.

16 There are two types of evidence which are gen-
17 erally presented during the trial, direct evidence
18 and circumstantial evidence.

19 Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact such as an
21 eye-witness.

22 It is evidence which immediately establishes the
23 main facts to be proven.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of

1 a fact.

2 It is evidence which immediately establishes a
3 collateral fact from which the main fact may be in-
4 ferred.

5 Circumstantial evidence is based on inference
6 and not on personal knowledge or observations.

7 The law -- our law makes absolutely no distinc-
8 tion between the weight or the value to be given to
9 either direct or circumstantial evidence, nor is there
10 a greater degree of certainty required of circumstan-
11 tial evidence than of direct evidence.

12 You should weigh all of the evidence in the case,
13 and after weighing all of the evidence in the case
14 if you are not convinced of the guilt of the Defendant
15 beyond a reasonable doubt you must find the Defendant
16 not guilty.

17 Credibility of the Witnesses.

18 Necessarily as jurors, you must determine the
19 credibility of the witnesses who have testified in
20 this case.

21 Credibility simply means believability. It be-
22 comes your duty as jurors to analyze and to evaluate
23 the evidence and decide and determine which evidence
24 convinces you of its truth.

25 In determining the believability of witnesses

1 who have testified in this case, against the back-
2 drop of your good judgment and your common sense,
3 you may believe one witness over several, or several
4 over one.

5 You may believe a part of the testimony of a
6 witness and reject the remaining part of the testi-
7 mony of that same witness.

8 You may believe the testimony of a witness in its
9 entirety or reject the testimony of a witness in its
10 entirety.

11 You may consider whether a witness has exhibited
12 any interest, any bias, prejudice or other motive in
13 this case.

14 You may also consider the conduct or the appear-
15 ance, the manner of a witness while testifying on the
16 witness stand, known in the law as the demeanor of
17 the witness.

18 You have no friends to reward, no enemies to
19 punish. Your goal is to seek the truth and find the
20 truth, regardless of from what source it may come.

21 Expert Witnesses.

22 You have heard this several times throughout the
23 course of this proceeding.

24 I charge you again that the rules of evidence
25 do not ordinarily permit witnesses to testify as to

1 opinions or conclusions.

2 An exception to the rule exists for witnesses
3 that we call expert witnesses.

4 A witness who by education and experience is an
5 expert in some art, science, profession or calling
6 may state an opinion as to relevant and material mat-
7 ter in which the witness claims to be an expert, and
8 they may also state reasons for holding that opinion.

9 You should consider any expert's opinions re-
10 ceived in evidence in this case, and, like any other
11 evidence, you give it the weight that you think it
12 deserves.

13 If you decide the opinion of an expert is not
14 based on sufficient education or experience, or if
15 you conclude that the reasons given in support of the
16 opinion are not sound, or that the opinion is out-
17 weighed by other evidence, you may disregard the opin-
18 ion entirety.

19 An expert witness' testimony is to be given no
20 greater weight than that of other witnesses simply be-
21 cause the witness is an expert.

22 Further, you are not required to accept an ex-
23 pert's opinion even though it is not contradicted.

24 Statement of a Defendant.

25 A statement alleged to have been made by the

1 Defendant has been admitted into evidence in this
2 case.

3 While the Court or the Judge has determined that
4 the statement is admissible, I instruct you that you
5 make the ultimate decision as to whether or not the
6 Defendant made the statement.

7 If the Defendant did make the statement, you
8 must determine whether the statement was made freely
9 and voluntarily, of his own free will.

10 This means that the statement was not caused by
11 force, fear, threats, coercion or intimidation, or by
12 any hope or promise of leniency or a reward of any
13 kind.

14 In determining whether the statement was volun-
15 tary, you should consider both the characteristics of
16 the Defendant and the details of the questioning.

17 Some of the factors that you must consider are
18 the age of the Defendant, the Defendant's education
19 or lack of education, the Defendant's mental ability
20 or capacity, the Defendant's IQ or intelligence, the
21 Defendant's background and environment, the place and
22 length of detention, the nature of the questioning,
23 and the advice thereof or lack thereof to the Defen-
24 dant of his constitutional rights, including, but
25 not limited to, the right to remain silent; that any

1 statement could be used against him in a Court of Law;
2 the right to have a lawyer present, and if he could
3 not afford a lawyer that a lawyer would be appointed
4 to represent him without any cost; and that he could
5 stop making a statement at any time.

6 You must carefully consider all of the surround-
7 ing circumstances before you give any weight to any
8 statement.

9 Events occurring outside the presence of the De-
10 fendant and entirely unknown to him can have no bear-
11 ing on the capacity to comprehend and knowingly re-
12 linquish a constitutional right.

13 The decision whether or not to speak to the po-
14 lice is the Defendant's decision alone.

15 The State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was vol-
17 untary.

18 If you determine that it was, then you may give
19 the statement any further consideration that you deem
20 proper.

21 You must decide what weight, if any, should be
22 given to the alleged statement. If you determine the
23 alleged statement is not the free and voluntary state-
24 ment of the Defendant, you should not consider the
25 statement at all.

1 Intent.

2 In order to establish criminal liability, crim-
3 inal intent is required.

4 For example, the mental state required to be
5 proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness or criminal
7 negligence.

8 Criminal intent must be proven by the State be-
9 yond a reasonable doubt.

10 Criminal intent is always a matter that must be
11 determined by the jury from the circumstances sur-
12 rounding the situation.

13 Obviously, ladies and gentlemen, there is no way
14 to prove intent to a mathematical certainty. There
15 is no way that medical science can dissect a person's
16 brain to determine what that person had in mind.

17 So the law says that criminal intent may be in-
18 ferred from the circumstances shown to have existed.
19 This is how you make a determination of whether or
20 not the element requiring intent was present.

21 It is not necessary to establish intent by di-
22 rect and positive evidence, but intent may be estab-
23 lished by inference in the same way as any other fact
24 by taking into consideration the acts of the party
25 and all of the facts and circumstances of the case.

1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the
3 Defendant intended to do from the circumstances shown
4 to have existed.

5 Criminal intent can arise from actions or a fail-
6 ure to act.

7 An act may be excused on the ground of accident
8 if it is shown that the act was unintentional and that
9 the Defendant was acting lawfully, and that reasonable
10 care was used by the Defendant.

11 Criminal intent may arise from negligence, reck-
12 lessness, an indifference to duty or to the consequen-
13 ces. That is considered by the law to be the equiva-
14 lent of intent.

15 That is the general criminal law that applies
16 to this case. I am now going to cover specifically
17 the charge in the Indictment, homicide by child abuse
18 or neglect, which is a statute in South Carolina under
19 our Code of Laws.

20 I will read the statute.

21 A person is guilty of homicide by child abuse
22 if the person causes the death of a child under the
23 age of eleven while committing child abuse or neglect,
24 and the death occurs under circumstances manifesting
25 an extreme indifference to human life.

1 The State must prove beyond a reasonable doubt
2 that the Defendant caused the death of a child under
3 the age of eleven, while committing child abuse or
4 neglect.

5 Child abuse or neglect is defined as an act or a
6 failure to act which causes harm to the child's phy-
7 sical health or welfare.

8 Harm to the child's physical health or welfare
9 means that the Defendant inflicted on the child phy-
10 sical injury.

11 The State must also prove beyond a reasonable
12 doubt that the death occurred under circumstances
13 showing an extreme indifference to human life.

14 Extreme indifference to human life is a mental
15 state akin to intent, characterized by the deliberate
16 act culminating in death.

17 Again, the statute. A person is guilty of homi-
18 cide by child abuse if the person causes death of a
19 child under the age of eleven, while committing child
20 abuse or neglect, and the death occurs under circum-
21 stances manifesting an extreme indifference to human
22 life.

23 That is the charge on the law of homicide by
24 child abuse.

25 Now, ladies and gentlemen, as to the verdict,

1 and the form of the verdicts.

2 Again, as I have previously stated, you cannot
3 allow yourself to be governed by sympathy, by preju-
4 dice, passion, by public opinion, or any other arbi-
5 trary factor or potential.

6 Your duty is to determine whether the Defendant
7 is guilty or not guilty, based on your determination
8 of the facts in the case, applying those facts to the
9 law as I have instructed you the law.

10 Both the State and the Defendant have a right to
11 expect that each of you will carefully and impartially
12 consider all the evidence in the case and that you
13 will follow the law as I have explained it to you.

14 There are two possible verdicts which you may find
15 in this case, guilty or not guilty. There is abso-
16 lutely no significance whatsoever in the order in which
17 I stated these possible verdicts. It is simply that
18 one must be stated first.

19 Madam Forelady, ladies and gentlemen, you will
20 have in the jury room with you, along with all the
21 items of evidence that have been introduced, the docu-
22 ment entitled Verdict Form. It has instructions for
23 you. Please check and circle the appropriate verdict
24 and follow the accompanying instructions carefully.

25 It has the Indictment Number. As to homicide

1 by child abuse, We, the Jury, with unanimous consent,
2 find the Defendant -- and as I say, you have one of
3 two choices.

4 If based on your determination from the evidence
5 in the case, and applying the law, you find the State
6 has proved its case beyond a reasonable doubt, you
7 unanimously find the Defendant guilty, then, Madam
8 Forelady, I will ask you to check to the left of the
9 word guilty and circle both your checkmark and the
10 word guilty.

11 If based on your determination in your deliber-
12 ations, you determine the State has not met its bur-
13 den of proof beyond a reasonable doubt, unanimously
14 you find the Defendant not guilty, and I will ask you
15 to please check to the left of those two words, not
16 guilty, and circle both the checkmark and those two
17 words, not guilty.

18 There is a place for you to sign, to date and
19 also for the location, Lexington.

20 Again, ladies and gentlemen, the verdict must
21 be a unanimous one. All twelve of you must agree.

22 Madam Forelady, when the jury reaches the ver-
23 dict and you have properly filled out the form and
24 signed it, if you would then knock on the jury room
25 door and inform the bailiff that you have reached a

1 verdict.

2 At that time, we will receive you back into the
3 Courtroom.

4 The law requires that I meet with the attorneys
5 one final time outside of your presence prior to the
6 submission of the case to you for your deliberations
7 and your verdict.

8 What will happen is, A, I may have to bring you
9 back out here and give you further instructions, or,
10 B, if I do not, our alternate will step out and the
11 Exhibits and verdict form will be brought to you and
12 you will be informed by the Clerk to begin your delib-
13 erations.

14 If, during the course of your deliberations,
15 Madam Forelady, you or any members of the jury have
16 any questions, please write a note for me, knock on
17 the jury room door. A bailiff will be posted outside
18 and will bring it to my attention.

19 I assure you that we are not going to leave you
20 captive there and slip off somewhere. We'll be right
21 here as long as you are.

22 Now, of course, it's a few minutes to two and
23 you may want to go to lunch prior to beginning your
24 deliberations. If you decide that, let me know, and
25 I will allow you to go out to lunch and not begin

1 your deliberations until you all determine.

2 Let me know that. You may want to discuss it
3 with the members of the jury.

4 You may take your notes with you at this time,
5 but do not begin your deliberations until you are in-
6 structed to do so.

7 With that being said, you may now go with the bail-
8 iff.

9 (Jury excused from Courtroom)

10 THE COURT: Are there any additions or objections
11 from the State?

12 MS. WEISS: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. FLOYD: Your Honor, only on the issue of ac-
15 cident. I'm concerned or we're concerned that the way
16 accident was defined is almost like the Defendant has
17 to prove accident, as opposed to the State having to
18 prove it was not an accident.

19 THE COURT: Well, I -- that, of course, is part
20 of my general intent charge. The first part of that
21 charge is I advised the jury that criminal intent
22 must be proven by the State beyond a reasonable doubt.
23 I further advised them, of course, that it may be
24 proven by indirect or circumstantial evidence, and
25 then the accident part -- an act may be excused on

1 the ground of accident if it is shown that the act
2 was unintentional; that the Defendant was acting law-
3 fully, and that reasonable care was used by the De-
4 fendant.

5 I thought you all reviewed this charge. What
6 are you suggesting, Mr. Floyd?

7 MR. FLOYD: I would request a charge that the
8 burden is not on the Defendant to prove the act was
9 accidental, but the burden is on the State to prove
10 it was not an accident.

11 THE COURT: All right. Mr. Waters?

12 MR. WATERS: That is correct, that we did review
13 it before, and Mr. Floyd making the request now --
14 I think making a charge on that particular point would
15 obviously unduly emphasize that point.

16 We discussed the charge in camera and there was
17 no objection made at that particular time.

18 Of course, it was made clear to the jury that
19 the State has the burden of proving every element of
20 the offense.

21 THE COURT: I have initially advised the jury
22 before you all opened that the State has the burden
23 of proving the case beyond a reasonable doubt.

24 That the Defendant is presumed to be innocent
25 and has no burden. I hammered back to that throughout

1 the course of the trial so that they would understand
2 what party has the duty and responsibility of proving
3 the elements of the case; that the Defendant never has
4 to prove his innocence.

5 I won't bring them out just for that. I will
6 recharge them on homicide by child abuse and intent
7 and the additional request. I think it has got to be
8 encapsulated in the whole thing.

9 I will not bring them out just for that specific-
10 ally, since I have charged them.

11 MR. FLOYD: Your Honor, I don't think it will be
12 necessary to bring them back in and charge them all
13 that.

14 I withdraw my objection.

15 THE COURT: Thank you, Mr. Floyd.

16 All right, you all check the Exhibits, Madam
17 Attorney General, Mr. Floyd, and the form of the
18 verdict.

19 MS. WEISS: Yes, Your Honor.

20 MR. FLOYD: Yes, Your Honor.

21 THE COURT: Then we will be awaiting our jury.

22 (Whereupon, there was a brief pause in the pro-
23 ceeding)

24 THE COURT: I will bring our jury out and excuse
25 them for lunch at this time.

1 (Jury returned to Courtroom)

2 THE COURT: Madam Forelady, it is my understand-
3 ing that the jury would like to take a luncheon recess.
4 Is that right?

5 FORELADY: Yes, sir.

6 THE COURT: All right. Then let me advise you,
7 please, during this recess do not discuss this case
8 with anyone, including your fellow jurors, lunchmates,
9 anyone else.

10 Do not read, listen to or watch any news reports
11 about the case. Do not use your computer or cellu-
12 lar phone or other electronic device with communica-
13 tion capabilities to obtain or post any prohibited in-
14 formation which I have previously reviewed with you.

15 If anyone needs a refresher, I will be glad to
16 do so if you will raise your hand about the prohibited
17 information.

18 Do not do any research of any kind.

19 You will please be back at ten after two -- ex-
20 cuse me, ten after three.

21 Thank you very much. Ten after three. I will
22 be here and hopefully everyone will have returned.

23 Remember to keep an open mind and do not begin
24 deliberating until I instruct you to do so.

25 Please leave your pads and I will have the Clerk

1 secure the pads.

2 Enjoy your luncheon recess. If you all are back
3 early, just let me know. Have a pleasant lunch.

4 (Jury excused for the luncheon recess)

5 THE COURT: We'll take a recess until I would
6 say about three o'clock. Try to get back in a timely
7 manner. Thank you very much.

8 (Whereupon, the Court took a recess, after which
9 the matter resumed)

10 (The jury resumed deliberations at at 3:10 P.M.)

11 (Court was called to order at 4:15 P.M.)

12 THE COURT: The note from the jury reads, we
13 need the three reasons to prove homicide by child
14 abuse.

15 I assume they are talking about the elements,
16 and I will be glad to bring them in and recharge them
17 on that, but I will bring them out and ask them about
18 that.

19 I'll be glad to recharge them on that and I
20 don't have any objection to giving them a copy of the
21 charge if the parties don't have an objection.

22 I will only do it if there is no objection by
23 any party.

24 Do you have a position on that, Mr. Waters, Ms.
25 Weiss?

1 MS. WEISS: Your Honor, what would you give if
2 you just answered them?

3 THE COURT: It's basically the section -- I'd
4 have to clean it up a little bit to the extent that
5 I've written on it.

6 I charge them the Defendant is charged with homi-
7 cide by child abuse. The State must prove beyond a
8 reasonable doubt the Defendant caused the death of a
9 child under the age of eleven while committing child
10 abuse or neglect.

11 Child abuse or neglect is an act or failure to
12 act which causes harm to the child's physical health
13 and welfare.

14 Harm to the child's physical health and welfare
15 means that the Defendant inflicted or allowed to be
16 inflicted on the child physical injury.

17 The State must also prove beyond a reasonable
18 doubt that the death occurred under circumstances
19 showing an extreme indifference for human life.

20 Extreme indifference to human life is a mental
21 state akin to intent, characterized by a deliberate
22 act culminating in the death.

23 That's the extent of the charge.

24 MS. WEISS: No objection to that, Your Honor.

25 MR. FLOYD: No objection, Your Honor, but we

1 would ask that you just throw in accident.

2 THE COURT: Well, if I do that, that's an entirely
3 different section, so I have to give them the intent
4 also.

5 I usually -- well, I always just respond to the
6 questions they ask. That's what I'm trying to say.
7 You don't object to giving them the written . .

8 MS. WEISS: That's correct.

9 MR. FLOYD: That's correct, Your Honor.

10 THE COURT: Let me have my Law Clerk reprint it
11 out. I have written on it.

12 (Copy of instructions on the law were given to
13 the jury)

14 (Jury continued deliberations until 4:15 P.M.,
15 when the matter resumed)

16 THE COURT: I am advised that we have a verdict
17 in the case, and I would say to the persons in the
18 Courtroom, the spectators, to please recall my instruc-
19 tions to you earlier.

20 It has been my experience that the taking of a
21 verdict can be a very emotional time for one side or
22 the other, or for both.

23 If you do not think you can control your emo-
24 tions, I would ask you to leave the Courtroom at this
25 time.

1 All right, bring in our jury.
2 (Jury returned to Courtroom)
3 THE COURT: All right, Madam Clerk. Madam Fore-
4 lady, have you reached a verdict?
5 FORELADY: We have. Yes, sir, we have.
6 THE COURT: Would you pass it to the bailiff,
7 please?
8 (Verdict form exhibited to the Court)
9 All right, Madam Clerk, if you would publish that
10 verdict?
11 CLERK: Yes, sir. In the matter of the State
12 of South Carolina versus Lexie Dial, Third, Indict-
13 ment Number 2010 GS 32 1876, as to homicide by child
14 abuse, we, the jury, by unanimous consent find the
15 Defendant guilty.
16 It is signed by the Foreperson.
17 THE COURT: Thank you, Madam Clerk.
18 Madam Forelady, ladies and gentlemen of the jury,
19 if that be your verdict, so indicate by raising your
20 right hand.
21 (Jurors so indicating)
22 It appears all hands are raised. Thank you very
23 much. You may lower your hands.
24 Anything for the jury from the State?
25 MS. WEISS: No, Your Honor.

1 THE COURT: From the Defense?

2 MR. FLOYD: Your Honor, we would request polling.

3 THE COURT: All right. Madam Forelady and lad-

4 ies and gentlemen of the jury, the Clerk will do what

5 is called polling the jury. She will call your names

6 individually, and I would ask that when your name is

7 called you raise your right hand and answer two ques-

8 tions, is that your verdict, and is that still your

9 verdict.

10 Madam Clerk, if you would proceed?

11 (Whereupon, each juror was polled individually

12 by name, and each juror indicated it was their ver-

13 dict and was still their verdict)

14 THE COURT: All right, it appears that all jurors

15 have been polled and all have answered in the affirma-

16 tive.

17 Anything further for the jury from the State?

18 MS. WEISS: No, sir.

19 THE COURT: From the Defense, Mr. Floyd?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right, thank you very much.

22 Madam Forelady and ladies and gentlemen, I'm

23 going to ask that you again momentarily step to your

24 jury room at this time. If you would go with your

25 bailiff.

1 (Jury excused from Courtroom)

2 THE COURT: All right, Mr. Floyd. Do you have

3 any motions?

4 MR. FLOYD: Yes, Your Honor. I would ask that

5 the Court allow me some time to submit my motions in

6 writing.

7 THE COURT: Would you want to address those mo-

8 tions next week?

9 MR. FLOYD: That would be fine, Your Honor.

10 (Discussion between Mr. Floyd and the Court con-

11 cerning dates for hearing)

12 THE COURT: On Tuesday morning at nine thirty,

13 would that suit the Attorney General's schedule?

14 MS. WEISS: To hear motions, Your Honor?

15 THE COURT: Motions hearing and sentencing. Yes,

16 maam.

17 MS. WEISS: Let me check.

18 (Brief pause)

19 MS. WEISS: Yes, Your Honor, that is fine.

20 THE COURT: All right, then Tuesday morning at

21 nine thirty, Mr. Floyd.

22 MR. FLOYD: Thank you, sir.

23 THE COURT: Of course, Mr. Dial is remanded to

24 the custody of the Lexington County Sheriff, and we

25 will hear motions at nine thirty on Tuesday morning.

1 Thank you all very much. We'll be in recess at
2 this time.

3 (Whereupon, the Court stood in recess as to this
4 matter until April 19, 2011, at 9:30 A.M., when the
5 Defendant and counsel appeared before the Court)

6 THE COURT: All right, Mr. Floyd. Do you have
7 post-trial motions?

8 MR. FLOYD: Yes, sir. That's correct.

9 THE COURT: I will be glad to hear from you.

10 MR. FLOYD: Thank you, Your Honor.

11 Your Honor, at this time the Defense would move
12 for a new trial in connection with this matter.

13 First of all, we would renew all motions during
14 the trial, and then we would like to address some spe-
15 cific matters which we have raised with the Court.

16 First of all, Your Honor, it is our -- we move or
17 we argue that the Court erred when it admitted into
18 evidence this statement of the Defendant given to Eric
19 Russell, Officer Russell, at the Lexington County Sher-
20 iff's Department shortly after the death of his child.

21 It is our position that the statement should have
22 been suppressed at the Jackson v. Deno hearing before
23 the Court on the voluntariness of the statement.

24 Specifically, in that regard, it is our position
25 that the timing of the interrogation which was within

1 -- which started within minutes of the death of Joshua
2 Dial, at a time when the Defendant was in the griev-
3 ing process and was still in a mental fog from the
4 death of his child, depriving the statement of volun-
5 tariness.

6 That, furthermore, the Lexington County Sheriff's
7 Department failed to place Mr. Dial in contact with
8 his lawyer, Mr. Rast, who appeared at the jail at about
9 the time they were going through the reading of the
10 Miranda Rights.

11 Furthermore, we feel that the statement should
12 not have been allowed for other reasons which we have
13 raised.

14 It is our position that the arrest of Mr. Dial
15 for homicide by child abuse was not lawful in that the
16 warrant was not obtained until after he was placed in
17 arrest.

18 It has been established that he was arrested
19 within five minutes of the death of Joshua, and the
20 warrant was not obtained until ten to fifteen minutes
21 thereafter.

22 The warrant for homicide by child abuse was not
23 entered into NCIC until some forty minutes after the
24 death of Joshua Dial.

25 All of these matters become important because,

1 in effect, Mr. Dial was arrested without a warrant
2 in place.

3 Secondly, he was arrested in Richland County --
4 arrested for homicide by child abuse in Richland County.

5 There did come into play in this case an agree-
6 ment between the Sheriff's Department and the U. S.
7 Marshall Service, and it is our belief that this agree-
8 ment is invalid.

9 First of all, it would have to be authorized by
10 our South Carolina statutes to give extra-judicial or
11 extra-territorial types of arrest powers.

12 Those dealing with state agencies require any --
13 it is limited jurisdiction for any type of extra-ter-
14 ritorial jurisdiction and requires approval of govern-
15 ing bodies. (Reading rapidly from Code)

16 There was none of this in Lexington County or in
17 Richland County where all of this occurred, and it is
18 our position this agreement is invalid.

19 Furthermore, the agreement on its face is invalid
20 in that it is clear that Mr. Dukes was not a government
21 employee but an employee of the Lexington County Sher-
22 iff's Department. It specifically provides for that in
23 the agreement, and it specifically provides that the
24 Sheriff remains liable for the actions of his employ-
25 ees; that the Lexington County Sheriff's Department must

1 hold the United States Government harmless from any
2 acts of Mr. Dukes.

3 It specifically provides that local agencies can
4 bring them into play by placing the warrant, of course,
5 in NCIC, but it doesn't work in this case for two
6 reasons.

7 Mr. Dial was not placed in NCIC until sometime
8 after he was placed under arrest, and he was under the
9 control of the Lexington County Sheriff's Department
10 before the placing of his name in NCIC.

11 In any event, this agreement was not valid in the
12 matter, and for all these reasons we feel that the
13 statement should have been suppressed of Lexie Dial.

14 Secondly, it is our position that the Court erred
15 when it denied the motion to dismiss for prosecutorial
16 misconduct in two instances.

17 The first instance had to do with the jars and
18 the flyer that were placed in the community, with the
19 agreement of the Lexington County Sheriff's Department.
20 The flyer itself indicated the Defendant as being the
21 guilty party.

22 That was certainly prosecutorial misconduct, and,
23 secondly, the victim's mother cried before the jury,
24 and, third, the victim's mother came to the witness
25 standing carrying the urn with the ashes of Joshua.

1 These actions were meant to inflame the passions
2 and sympathy of the jury and deprived -- which deprived
3 the Defendant, Lexie Dial, of a fair trial.

4 We believe the motion to dismiss should have
5 been granted for those reasons in this case.

6 Further, Your Honor, it is our position that those
7 trial rulings were in error and demand a new trial.

8 Third, the Court granted the State's motion in
9 limine and prevented the Defendant from exploring the
10 relationship between the arresting officer and former
11 solicitor, which may have influenced the officer's tes-
12 timony.

13 There was testimony both in a Jackson v. Deno
14 hearing and testimony in the trial itself, and then
15 there was testimony by the State's Solicitor from the
16 arresting officer.

17 It is our position that for all of those reasons
18 we were prevented from exploring that issue before the
19 jury.

20 Lastly, as we told the Court earlier, the Court
21 denied the Defendant's motion to admit Defense Exhibits
22 2 and 3 which were documents filled out by Dr. Janice
23 Ross, the forensic pathologist, the first of which
24 described how the incident occurred and, of course,
25 she related the change she made and that she spoke

1 with someone from Lexington County.

2 The Court would not allow those documents into
3 evidence so that the jury could actually study them.
4 They were deprived of the visual impact of the docu-
5 ments.

6 For all of those reasons, we feel that Joshua
7 should be granted a new trial.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Floyd.

10 Mr. Waters?

11 MR. WATERS: Thank you, Judge. We would respect-
12 fully assert that the motions for new trial should be
13 denied and that the Court should reaffirm its prior
14 rulings made throughout the trial.

15 I don't know how much detail you'd like me to
16 go into. I would be happy, of course, to address --
17 with regard to the timing of the interrogation, cer-
18 tainly that could be a relevant factor but that is
19 only one of many factors brought out.

20 In fact, there were many factors supporting the
21 admission of the statement, and ultimately it goes to
22 weight rather than admissibility.

23 We have plenty of evidence supporting the waiver
24 of rights and the voluntariness issue.

25 Moving on to the arrest, of course, there was a

1 warrant for homicide by child abuse and also one for
2 great bodily injury in existence.

3 As Your Honor pointed out, the name doesn't mat-
4 ter. It was entered in NCIC at fourteen hundred and
5 Josh didn't die until fourteen O six, and his arrest
6 took place at some time after that.

7 We also, of course, have the agreement and there
8 is no question he was a deputized U. S. Marshall at
9 that time.

10 Under 566, of course, apprehension of fugitives
11 in this context means someone for which there is a
12 warrant, and that is our jurisdiction as well.

13 Then, finally, there is the concept of citizen's
14 arrest, and the knowledge of the officer would support
15 their actions or authority to make the arrest.

16 As far as the prosecutorial misconduct claims,
17 again, as to the jars, there was no fault in the pro-
18 secution.

19 Regardless of that, the jurors were not even aware
20 of it, much less prejudiced by it.

21 With regards to the mother crying, there was some
22 emotion but there was no wailing or such as that, and
23 after that every effort was made to see that there
24 was no further emotion displayed before the jury or
25 anything of that nature.

1 During the course of the testimony before she
2 became emotional she asked for a minute and left so
3 that she could collect herself without a display of
4 emotion, and she did that before she came back.

5 As Your Honor pointed out, the only real display
6 of emotion after that and for which the jury was pre-
7 sent was from the Defendant's father.

8 In the matter of the urn, it was a small object
9 and, as Your Honor pointed out, it was cupped in her
10 hand. Your Honor was able to correct that before any-
11 thing happened, so it is clear that was the correct
12 ruling.

13 As to the motion in limine, again, this was two
14 months later, under 403 and 608 C, and the limitations
15 placed thereon, and it was not relevant.

16 It was alleged that the officer had promised
17 things and suggested things to the Defendant in vio-
18 lation of the proper procedure for handling a state-
19 ment from the Defendant.

20 As far as the two -- as Defendant's 2 and 3,
21 the autopsy form, the doctor explained that on the
22 stand and went into detail as to how the documents
23 were prepared in her examination.

24 Mr. Floyd argued that to the jury, and although
25 it was not admitted during her testimony I cannot see

1 how it would have prejudiced the Defendant that they
2 were not admitted.

3 I believe I have covered all those grounds, and
4 we would assert the motion for new trial should be
5 denied.

6 Thankyou.

7 THE COURT: Thank you, Mr. Waters.

8 All right. On the first ground, under Jackson
9 versus Deno, the voluntariness of the statement given
10 to Lieutenant Russell at the Lexington County Sher-
11 iff's Department, the jury was fully charged as to
12 the law on voluntariness of the statement.

13 Further, the testimony is in the record as to
14 timing of the death of Joshua which, as I recall, was
15 fourteen O six.

16 Thereafter, the arrest of Mr. Dial, the transport
17 of Mr. Dial, the questioning of Mr. Dial -- as I recall,
18 I believe it began at fourteen fifty-nine hours and
19 ended at sixteen thirty-one hours.

20 Further, through defense witnesses it came out
21 from Mr. Dial, Junior, according to the testimony in
22 front of the jury, that he, Mr. Dial, Junior, told Mr.
23 Dial, Third, that he had a lawyer, Mr. Rast.

24 Mr. Rast also testified that as he was leaving
25 the Courthouse on that day one of the deputies informed

1 him that his secretary was trying to get in touch
2 with him, and after talking to his secretary he went
3 to the Lexington County jail or detention center in
4 an attempt to contact Lexie Dial, Third.

5 Clearly, under Moran versus Bowbine, if I have
6 pronounced that correctly, law enforcement had no duty
7 to advise Mr. Dial, Third, that Mr. Rast was trying
8 to get in touch with him.

9 Further, in the in-camera hearing, both Lieuten-
10 ant Russell and Sergeant Grant testified that Mr.
11 Dial, Junior, did not tell them anything about an
12 attorney, although Mr. Dial, Junior, in the Jackson
13 versus Deno hearing, testified specifically he did
14 tell those two officers.

15 His testimony was different in front of the jury
16 panel.

17 Further, I think the jury had all those factors
18 to take into consideration. If his will was over-
19 bore as a result of being arrested within however many
20 minutes -- Mr. Floyd says five minutes -- I don't re-
21 call all the testimony in that regard but it's clearly
22 in the record, and they could analyze that as far as
23 how it would affect the voluntariness of his statement.

24 I did not bring my copy of State versus Navy,
25 both the Court of Appeals and the Supreme Court decision,

1 and State versus Evans, but I would point out in Navy
2 as I recall the officer had Mr. Navy escort them from
3 the Olympia Section of Columbia to the Richland County
4 Sheriff's Department on the day of his child's funeral.

5 Although the Court of Appeals disallowed some of
6 the statements that day, the Supreme Court reversed.
7 As I say, I don't have those in my mind and my outline
8 right now because I did not recall that being argued
9 in the Jackson versus Deno hearing on those particular
10 issues.

11 All that being said, I would reaffirm my ruling
12 as to Jackson versus Deno.

13 Of course, when we go to number two, which is
14 really number one, the arrest. If the arrest isn't
15 any good then you go to the fruits of the poisonous
16 tree obviously.

17 The Court ruled initially that the arrest was
18 valid. There was an arrest warrant -- the testimony
19 is uncontradicted that there was an arrest warrant for
20 child abuse involving great bodily injury.

21 Under State versus Retford, if an officer arrests
22 someone for the wrong charge it does not invalidate
23 the arrest.

24 There was testimony that warrant was already in
25 NCIC.

1 Again, I listened carefully to the timing, and
2 Mr. Floyd has laid out the Defendant's position as to
3 the timing of the issuance of the homicide by child
4 abuse warrant, the entry of that warrant into NCIC,
5 and even if it was entered after the arrest, it is
6 this Court's position that the arrest is valid under
7 Retford.

8 The initial testimony from the officers at the
9 location of the arrest was that Sergeant Henry Dukes
10 of the Lexington County Sheriff's Department had State-
11 wide jurisdiction.

12 Upon the testimony of Sergeant Dukes, he presented
13 his credentials which are a Court's Exhibit under
14 seal.

15 Further, that he had been sworn in by United
16 States Marshall Johnny Mack Brown; that he was assigned
17 to the fugitive task force.

18 I reviewed the agreement as testified to by Ms.
19 Luvisi, and I found that that was valid in light of
20 there being no testimony and no evidence presented to
21 this Court that it was invalid in any manner.

22 So I would find the arrest is appropriate, and I
23 find under State versus Boswell, in which there was
24 no warrant -- there clearly was a warrant in this
25 case.

1 Further, I analyzed it under the appropriate
2 citizen's arrest statute if Mr. Dukes' jurisdiction
3 was not appropriate in Richland County.

4 As to the third ground that the Court erred in
5 failing to dismiss the case for prosecutorial miscon-
6 duct, I find as to A, the flyer, which is in evidence
7 with a picture of Josh -- as I recall there was no
8 name of Mr. Dial on that flyer, and when I say a flyer
9 I recall the testimony that there were only four or
10 five jars around and they raised money for other indi-
11 viduals that may have experienced similar types of
12 incidents within their family. One jar was missing so
13 there might have been four.

14 It was an idea of the grandfather, the maternal
15 grandfather, and that side of the family, and I do not
16 find there is any prosecutorial misconduct in that
17 regard.

18 Further, it goes back to jury qualifications, and
19 no juror indicated that they had ever seen the flyer.
20 They weren't specifically asked about the flyer, and
21 they perhaps could have been if there was appropriate
22 voir dire, but they were asked if they had seen, heard
23 or read anything, and I think there were only three.
24 The record will bear that out.

25 The victim's mother crying -- I find and reaffirm

1 my ruling as I stated in the past, and I have reaf-
2 firmed today, these are emotional cases for maternal
3 side and paternal side.

4 I did not find there was any prosecutorial mis-
5 conduct in that regard. It was not loud, it was not
6 frailing, and thereafter I did not notice any further
7 indication of crying by the mother.

8 However, I instructed the jury that they could
9 not return a verdict based on emotion, passion, preju-
10 dice, any other arbitrary factor not in evidence.

11 As to the urn, I would reaffirm my ruling in
12 that regard. The measurements of that item are in
13 the record again, and my observation as she approached
14 the bench -- I wasn't sure what the item was and I
15 had the jury go out at that time.

16 The Defendant is clearly protected in the record.
17 I find that that did not inflame the passions of the
18 jurors, even if they saw that. Again, the record will
19 bear that out.

20 As to the relationship between -- as Mr. Floyd put
21 it, the arresting officer and the former solicitor --
22 assigned to the case, as an initial matter Lieutenant
23 Russell is not the arresting officer, if that is who
24 you are referring to -- he may be the officer who took
25 the statement, a written statement at the -- well,

1 actually the second written statement. The first state-
2 ment was taken by Deputy Steele, a voluntary statement
3 in the back of the patrol car on Oakey Springs Drive
4 on the evening of the 19th.

5 But Lieutenant Russell was not the arresting of-
6 ficer but was one of the officers in the investigation
7 of the case and did take the statement.

8 Again, I find that is not relevant; that the in-
9 cident occurred January of 2010 as far as the incident
10 resulting in the death of Joshua Dial, and the event
11 that Mr. Floyd cross examined the officer about was an
12 event that occurred October of 2010, or thereafter,
13 some ten months after the death of Joshua Dial.

14 I don't see its relevancy at all. I find it is
15 not relevant. I think if it was under 403 allowances
16 it would be misleading to the jury.

17 As far as the officer's ethical obligation, I
18 think the question was as an officer, and I would
19 again reaffirm my ruling in that regard.

20 Finally, the Court's ruling as to Defense 2 and
21 3, a page from the autopsy, by Dr. Janice Ross, block
22 43 I believe it was. On Defense 2 it had hit on head.
23 Defense ID 3 had nothing in that block.

24 Dr. Ross clearly testified and all that testimony
25 is in the record. Mr. Floyd argued that to the jury

1 and he said, well, the visual impact of the document
2 -- I think that in and of itself shows that it would
3 be unduly highlighting that particular item in that
4 regard.

5 So I would deny the Defendant's motions or motion
6 for a new trial on all those grounds.

7 Any other motions, Mr. Floyd?

8 MR. FLOYD: Your Honor, one other matter. Also,
9 you are correct that Mr. Russell was not the arresting
10 officer.

11 THE COURT: I knew you were not trying to mislead
12 me. I just wanted it clear on the record.

13 MR. FLOYD: As an additional ground for our mo-
14 tion to suppress the statement because of an unlawful
15 arrest, we argue to the Judge that the affidavits to
16 secure the issuance of the arrest warrants were made
17 by an officer that had no personal knowledge of the
18 incidents.

19 I just wanted to renew that as a ground for our
20 motion to suppress the statement.

21 THE COURT: Mr. Floyd, you did argue that. Mr.
22 Waters, anything you'd like to add?

23 MR. WATERS: Just that it is customary for offi-
24 cers obviously to rely on information provided by
25 other officers at the scene in the procurement of

1 warrants.

2 THE COURT: Further, this is from our rules of
3 evidence, Rule 110 D three. The rules of evidence
4 would not apply to issuance of warrants for arrest
5 and other items.

6 Therefore, personal knowledge would not be the
7 basis. There are cases that may be cited in that
8 regard. I think State versus Sullivan is one. That
9 is a search warrant case, 230 Southeast Second 621,
10 1967, and there are other cases also.

11 But you did argue that, and I would deny a new
12 trial on that ground also.

13 Anything further, Mr. Floyd?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: Anything additional from the State
16 in regard to sentencing?

17 MS. WEISS: Thank you. May it please the Court?

18 Your Honor, as far as the case is concerned, I
19 believe you have heard all of the details. You have
20 seen the photos and you have heard from the witnesses
21 as to the homicide by child abuse.

22 As far as additional information, I would say for
23 the record that Lexie Dial had just turned eighteen.
24 He did have a minor juvenile record but his record did
25 not involve incidents of violence.

1 He was in the juvenile system as far as a theft
2 case and then a marijuana case, Your Honor, but they
3 did not involve any instances of violence which I
4 think would be of utmost importance in the sentencing
5 in this case.

6 Your Honor, the victim's mother would like to
7 address the Court.

8 THE COURT: All right. I'll be glad to hear
9 from Ms. Richard. Is that correct?

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: State your full name for the record.

12 MS. RICHARD: Misti Richard.

13 THE COURT: I'll be glad to hear from you.

14 MS. RICHARD: Thank you, Your Honor, for hear-
15 ing me. I just wanted to get a few things off my
16 chest.

17 THE COURT: Just -- I would advise you though,
18 however, to direct your comments to the Court and not
19 to the Defendant.

20 MS. RICHARD: Yes, Your Honor.

21 THE COURT: All right.

22 MS. RICHARD: I let Joshua and myself down. In
23 my heart, I didn't believe he could do something like
24 this. Joshua certainly didn't deserve it.

25 He was an innocent victim and I depended on Lexie

1 to take care of him and to love him.

2 He is not there waiting for me when I get up,
3 nor will I be able to hold him again. Lexie Dial has
4 robbed me of that.

5 Not only me and my family, but he has robbed
6 his family as well. He will have to think about this
7 every day of his life, and he will have to explain
8 what he has done to God when he faces him.

9 I hope he can live with himself with what he
10 has done.

11 THE COURT: Thank you, Ms. Richard.

12 MS. WEISS: Nothing further.

13 THE COURT: Thank you very much, Ms. Weiss.
14 Mr. Floyd?

15 MR. FLOYD: Thank you, Your Honor. I believe
16 some of his family members would like to speak for
17 Lexie if the Court will . .

18 THE COURT: Certainly. I'll hear from anyone you
19 want me to hear from.

20 MR. FLOYD: Your Honor, first I would ask you to
21 hear from Ms. Hill, Lexie's Grandmother.

22 THE COURT: Stand over here, Ms. Hill. This is
23 Reba Hill?

24 MR. FLOYD: That's correct.

25 THE COURT: All right, I'll be glad to hear from

1 you, Ms. Hill.

2 MS. HILL: Your Honor, Joshua's death was a loss
3 to both of our families. He was my great-grandchild.
4 Lexie has always been a good father, and I have never
5 seen him angry with Joshua.

6 I have allowed my grandchildren to go over to
7 his house and be with Joshie and play with him, and
8 all of my grandchildren have said that they have never
9 see him do anything out of bounds with Joshua.

10 He would feed him, he would bathe him, and he
11 would play with him, put him to bed at night, and he
12 never, ever laid a hand on Joshua.

13 I do understand that Lexie failed him this day,
14 but I do not feel like it was intentional. I do not
15 feel it was in his heart because the only thing he had
16 left of himself was in Joshua.

17 He had lost his mother before this, and he loved
18 his mother. I do not believe in my heart that Lexie
19 Dial, Third, could possibly be as cruel to his young
20 baby as they have said because he is not. He is not
21 that kind of person.

22 I love him with all my heart. I'll never turn
23 my back on him because I know he did not intentionally
24 try to hurt his child. That is what I wanted to
25 say, because he is a good person with a kind heart.

1 do. I'm an auto technician, and if someone sins
2 against me I go with my own self.

3 That's all I have to say.

4 THE COURT: Thank you, Mr. Dial. Good luck to
5 you.

6 MR. FLOYD: Your Honor, we know you've heard every-
7 thing in this case. I have suggested to Your Honor
8 what the evidence shows, that Lexie Dial loved his son
9 and tried to be a good father, and the evidence clearly
10 establishes that there had never been any instances of
11 abuse.

12 It is a most unfortunate thing that this child is
13 dead, and he was loved by many people. There is no ex-
14 cuse for that.

15 We aren't going to try to stand here and say there
16 is. It's a tragedy.

17 What we do know is that whatever happened on that
18 day in January of 2010, it was an isolated incident, an
19 anomaly. Something that happened -- as one of the doc-
20 tors said, nobody knows but the two that were there,
21 Lexie and the child.

22 The evidence though of this man's experience with
23 that child is that he would never do anything to inten-
24 tionally hurt the child. We would suggest the evidence
25 shows he never would have intentionally harmed the child.

1 I just ask you to take that into consideration.

2 THE COURT: Thank you, Ms. Hill.

3 MR. FLOYD: Your Honor, this is Lexie Dial, Jun-
4 ior.

5 THE COURT: All right, Mr. Dial, I'll be glad
6 to hear from you.

7 MR. DIAL: Yes, sir, Your Honor. I grieve for
8 my grandson, but I feel the party that hurt him is
9 not the party that's getting tried.

10 In my heart, I know -- sir, I know in my heart
11 that my grandson won't have peace because there was
12 more involved -- more people involved with my grand-
13 son than my son. I mean, that day, Your Honor.

14 THE COURT: I'm not sure I'm tracking you, Mr.
15 Dial, and I apologize.

16 MR. DIAL: Everybody that had contact with my
17 grandson should have been checked out, not just my
18 son.

19 I mean, I feel that my grandson is not at peace
20 with this, and that's how I feel. In my heart I feel
21 that my son couldn't have hurt him, because I've
22 raised my son all his life and I have three other
23 kids, and he's been around them for years. He has
24 never hurt them.

25 When I do my job, I am thorough on everything I

1 We ask that Your Honor keep that in mind when you
2 do the sentencing, and we ask Your Honor to have mercy
3 on him.

4 He has also lost his son, and he's got to live
5 with that for the rest of his life. He's got to live
6 with the fact that the child was in his care when he
7 suffered some injury that caused his death.

8 We ask for all the mercy you can give us. We
9 ask you consider suspending a portion of the sentence
10 under this particular statute and fashion a sentence
11 that would be appropriate.

12 THE COURT: Thank you very much, Mr. Floyd.

13 MR. FLOYD: I think Lexie would . .

14 THE COURT: Anything you would like to say, Mr.
15 Dial?

16 DEFENDANT: I don't want to repeat everything I
17 said when I was on the stand. I'm just sorry it hap-
18 pened, and it was never my intention to hurt my son.

19 I hope you will give me mercy.

20 THE COURT: All right, thank you, Mr. Dial.

21 Anything further, Mr. Floyd?

22 MR. FLOYD: No, sir.

23 THE COURT: All right. I think a great deal about
24 sentencing individuals, particularly after a long and
25 difficult trial.

1 I take a -- I try to take everything, the totality
2 of the circumstances into consideration. I take the
3 age of the victim, take your age into account, and I
4 take into account that you have no prior criminal record
5 of any acts of violence.

6 I take into account the lack of any prior instances
7 of child abuse.

8 I take into account the family support, both the
9 maternal family support and paternal family support,
10 the fact that your father, your grandmother, and I be-
11 lieve Courtney would have been your ex-stepmother, the
12 lady that worked for the school district, Ms. Sox, I
13 believe it was. I think that's very important.

14 Throughout the trial I don't know that anyone has
15 attacked your character. Your actions but not your
16 character.

17 I also take into account the extent of the injur-
18 ies. As part of my charge, I tell the jury on criminal
19 intent that there is no way for medical science to
20 dissect a person's brain and determine what that person
21 had in mind at the time they committed an act.

22 It is very unfortunate that they had to dissect
23 Joshua's and discover subdural hematomas, subarachnoid
24 hematomas, retinal hemorrhages too numerous to count,
25 in all quadrants, up, down, left and right.

1 All of these are signs of traumatic brain injur-
2 ies.

3 I also take into account the testimony in the
4 case that appears to this Court to be a lack of con-
5 cern for a child's condition after it was inflicted.
6 You go to the neighbor's house, light up a cigarette
7 waiting on him to answer the door, and you don't even
8 alert him -- say come help me.

9 You don't call nine one one. You call your
10 father, and I don't fault you for reaching out to your
11 father, but I don't understand when you had help there,
12 had emergency phones there, emergency number you can
13 call, but you don't seek help.

14 That infers to me that you were trying to help
15 yourself, not your child.

16 We have conflicting statements, and I've looked
17 back through the photographs that were introduced in
18 evidence about the steam cleaner, the broken table --
19 I looked at all of that -- tripping over the steam
20 cleaner -- walking back to get a wipe to wipe your
21 child's face while you're feeding him, and there is
22 absolutely no corroborating evidence of that. The pic-
23 tures don't bear it out, the autopsy doesn't bear it
24 out.

25 I take into account that Mr. Floyd is an excellent

1 attorney, an excellent individual and an excellent
2 trial lawyer. He pointed out that a child could get
3 hit on the back of the head and not get an underlying
4 bruise at autopsy.

5 But doctor after doctor after doctor said shaking,
6 and they also say something else. That children or
7 infants are very resilient which means the shaking has
8 to be violent, repetitive, with velocity.

9 Maybe you did love your child. I haven't seen one
10 ounce of remorse from you.

11 Your grandmother loves you, your family loves you,
12 your father loves you, but you let Joshua down, and he
13 didn't deserve it.

14 On 2010 GS 32 1876, Lexie Dial, Third, the jury
15 having found him guilty of homicide by child abuse,
16 the Defendant is committed to the State Department of
17 Corrections for the term of his life.

18 Thank you very much. You may take the Defendant
19 into custody.

20 Good luck to you.

21 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

22

23

24

25

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify the foregoing Transcript was prepared from the records of L. Coconut Pansari to the best of my ability, having been heard in the Court of General Sessions for Lexington County on April 11 through 15, 2011, with the sentencing proceeding being heard on April 19, 2011.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

This 28th day of July, 2011.

A handwritten signature in cursive script, reading "Harriet P. Bennett", followed by a checkmark-like flourish.

WITNESSES

Lexington County Sheriffs Department

Luis M. Rivera

Law Enforcement Case #: 10006135

DBM

ARREST WARRANT NUMBER

J840033

ACTION OF GRAND JURY

TRUE BILL

JM Yecw

Foreperson of Grand Jury

Date: 7/12/10

VERDICT

Guilty

* *Christy Spence*

Foreperson of Petit Jury

* Date: 4-15-11

DOCKET NO. 2010GS3201876

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2010

THE STATE

vs.

Lexie Dial III

CDR #: 2356

Indictment for

Murder/Homicide By Child Abuse

§ 16-03-0085(A)(1)

DONALD V. MYERS, SOLICITOR

00000000

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

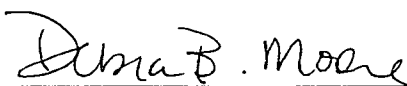
INDICTMENT FOR
Murder/Homicide By Child Abuse

§ 16-03-0085(A)(1)

At a Court of General Sessions, convened on July 2010, the Grand Jurors of Lexington County present upon their oath:

That **Lexie Dial, III** did in Lexington County, South Carolina, on or about January 19, 2010, cause injury to Joshua Dial, date of birth: August 22, 2009, a child who was under the age of eleven years at the time of his death on January 20, 2010, and that the defendant did cause the death of said child while committing child abuse or neglect, to wit: the defendant did violently shake the infant victim resulting in his death, and/or the defendant did violently assault the infant victim resulting in his death, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; in violation of Section 16-3-85, South Carolina Code of Laws (1976, as amended).

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



ASSISTANT SOLICITOR

ARREST WARRANT

J-840033

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
against

10006135

Lexie Dial, III

Address:

Gaston, SC 29053-

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 8 Weight: 170DL State: SC DL #: 101681831DOB: 1/11/1992 Agency ORI #: SC0320000Prosecuting Agency: Lexington County SheriffProsecuting Officer: L. M. Rivera - 2066Offense: Murder / Homicide by child abuse (20Y to Life)Offense Code: 2356Code/Ordinance Sec: 16-03-0085(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

AFFIDAVIT

DEFENDANT
COPYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant L. M. Riverabeing duly sworn deposes and says that defendant Lexie Dial, IIIdid within this county and state on or about 01/20/2010State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Lexington

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Homicide by child abuse (20Y to Life)I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On or about January 19, 2010 the defendant Lexie Dial III was home alone with the victim Joshua Dial, a five month old male child. During the time the defendant and victim were alone the victim suffered multiple injuries to include extensive brain trauma. The defendant has given more than one explanation as to how these injuries occurred. None of these explanations are consistent with the injuries according to Doctor SUSAN LUBEROFF, a pediatric specialist, and the staff at Palmetto Children's Hospital. Doctor LUBEROFF and the staff at Palmetto Children's Hospital have advised law enforcement that these injuries are consistent with non accidental blunt force head trauma formally known as shaken baby syndrome. On January 20, 2010 the victim died at Palmetto Children's Hospital as a result of his injuries. This incident took place at 317 Oakey Springs Road in the Gaston area of Lexington County SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-

Affiant's Telephone _____

ARREST WARRANT

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

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

on or about 1/20/2010defendant Lexie Dial, III

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

☒ County/ ☐ Municipality of Lexington

) as set forth below:

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

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

Sworn to and subscribed before me

on 01/20/2010

Signature of Issuing Judge

Brian W. Jeffcoat

Judge Code: 5058Judge's Address Lexington County Judicial CenterLexington, SC 29072-Judge's Telephone: (803)951-2595Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

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02/10/2010 Page 316 of 323



#1

• wouldn't violently shaking an infant break his/her neck, back and/or leave bruising from fingers on the chest & back?

• Isn't blunt force trauma physical trauma caused to the head by attack? isn't blunt force trauma produced by a

#2

variety of objects, hands, feet, or weapons?

• The effects of (BFT) include contusions (direct blunt force to the area), abrasions (wound caused by superficial damage to the skin), lacerations (a jagged cut or wound), bone fracture (a break in the continuity of the

#3

bone) & bruising (type of contusion, relatively minor hematoma of tissue in which capillaries & sometimes veins are damaged by trauma). So if Joshua had none of these, how was Lexie charged with SBS?

#4

• isn't it possible for a man of 5'7" & holding an infant at this height, when he & the infant surprisingly fall & spin around so the baby doesn't get squished to cause shaking? Couldn't the jerk of the fall & the infant's head not being supported cause the infant's

#5

brain to rattle in his skull & the bounce from falling cause more of a rattle in the skull? wouldn't this cause subdural hematoma

• If there were no bruising on the body of the infant, no fractures, contusions, abrasions or lacerations, how could

#6

my son have been killed by Blunt Force Trauma or Shaking baby syndrome?

• I have read & printed that subdural hematoma can be caused in cases of falling. I do strongly feel (the rest of the family who knows Lexie) ~~about~~ this

#7

was one of those cases.

• If this was a homicide by child abuse case & Josh was really abused wouldn't he have more injuries? like bruising or fractures?

• (For the chrs.) was everything possible done to help save

#8

Joshua?

• Could Joshua been saved if the neurologist had been contacted on arrival? Why did it take so long for the neurologist to examine our son? Would it have changed how long Joshua lived if the neurologist had examined

#9

him earlier?

• Lexie Dial III had never showed aggression towards Joshua, when Lexie's mom died last year I was pregnant with Joshua. he had brought more happiness to Lexie than anyone. Joshua had replaced the emptiness in his life & heart

#10

So, do you really think a loving father like this would purposely do anything to harm his son.

• If Joshua showed no other signs of SBS like fractures, or bruising why was Lexie arrested in the middle of grieving over our son for killing his own son?

#11

• The "authorities" kept saying Lexie's story changed numerous times, but "authorities" said on the news that 3 different things had happened in one broadcast. So was Lexie's story the one that kept changing or "the authorities"?

#12

• Lexie had fallen on the table with his shoulder, it then flipped up & hit Lexie in the head explaining the bruise on Lexie's head. Wouldn't there be dead skin or some kind of DNA or some thing on the table where his shoulder hit if he didn't have a shirt on? Has the

#13

coffee table even been checked for evidence?

• The jar of baby food & the spoon had been thrown on the kitchen floor as a result of him trying to protect our son from the fall. did anyone even look into that?

#14

• What "evidence" is it that the "authorities" have for them to keep saying Lexie "purposely abused & killed" our son?

• What evidence do they have to classify it as SBS & nothing else like an accident (what it really

#15

is R.

NAME OF DECEDENT: JOSHUA H. DIAL

DATE: 1/21/2010

AUTOPSY NUMBER: FA10-050 RACE: White AGE: 5 Months SEX: Male

PATHOLOGIST(S): Janice E. Ross, M.D.

Date of Death: 1/20/2010 County of Death: Lexington

CAUSE OF DEATH				Approximate interval: Onset to death
32. PART I. Enter the chain of events-diseases, injuries, or complications that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.				
IMMEDIATE CAUSE (FINAL) a. <u>SUBDURAL HEMORRHAGE & CEREBRAL EDEMA</u> Due to (or as a consequence of):				HOURS
b. <u>CLOSED HEAD INJURY</u> Due to (or as a consequence of):				HOURS
c. <u>BLUNT FORCE INJURY OF HEAD</u> Due to (or as a consequence of):				HOURS
d. _____ Due to (or as a consequence of):				
PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.				33. WAS AN AUTOPSY PERFORMED? ☒ Yes ☐ No
				34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☒ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☐ No ☒ Unknown		36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death. ☐ Unknown if pregnant within the past year.		37. MANNER OF DEATH ☐ Natural ☒ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Mo/Day/Yr) (Spell Month) January 19, 2010	39. TIME OF INJURY Approx 8:00 PM	40. PLACE OF INJURY (eg., Decedent's home, construction site, restaurant, wooded area) RESIDENCE		41. INJURY AT WORK? ☐ Yes ☒ No
42. LOCATION OF INJURY: Street and Number: <u>317 OAKIE SPRINGS DR.</u> State: <u>South Carolina</u> City or Town: <u>GASTON</u> County: <u>Lexington</u> Apartment Number: _____ Zip Code: _____				
43. DESCRIBE HOW INJURY OCCURRED: <u>HEAD HIT OBJECT</u>				44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)

Janice E. Ross, M.D.


01/21/2010 08:33:11

DeathCertRoss

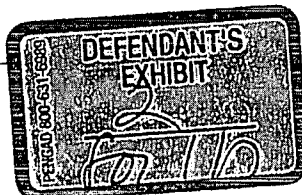
Forensic Pathologist
TitleNewberry Pathology Associates
185 Executive Dr., Newberry, SC 29108

Michael J. Panella, M.D.

Blank Signature-DeathCertSection

Forensic Pathologist
TitleNewberry Pathology Associates
185 Executive Dr., Newberry, SC 29108

Date Signed 1/21/2010



NAME OF DECEDENT: JOSHUA H. DIAL DATE: 1/21/2010

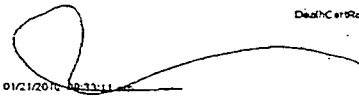
02/24/2010 Page 12 of 27

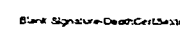
AUTOPSY NUMBER: FA10-050 RACE: White AGE: 5 Months SEX: Male

PATHOLOGIST(S): Janice E. Ross, M.D.

Date of Death: 1/20/2010 County of Death: Lexington

CAUSE OF DEATH				Approximate interval: Onset to death
32. PART I. Enter the chain of events-diseases, injuries, or complications that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.				
IMMEDIATE CAUSE (FINAL) a. SUBDURAL HEMORRHAGE & CEREBRAL EDEMA Due to (or as a consequence of):				HOURS
b. CLOSED HEAD INJURY Due to (or as a consequence of):				HOURS
c. BLUNT FORCE INJURY OF HEAD Due to (or as a consequence of):				HOURS
d. _____ Due to (or as a consequence of):				
PART II: Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.				
33. WAS AN AUTOPSY PERFORMED? ☒ Yes ☐ No				
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☒ Yes ☐ No				
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☐ No ☒ Unknown		36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death. ☐ Unknown if pregnant within the past year.		37. MANNER OF DEATH ☐ Natural ☒ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Mo/Day/Yr) (Spell month) January 19, 2010	39. TIME OF INJURY Approx 8:00 PM	40. PLACE OF INJURY (eg., Decedent's home, construction site, restaurant, wooded area) RESIDENCE	41. INJURY AT WORK? ☐ Yes ☒ No	
2. LOCATION OF INJURY: Street and Number: 317 OAKIE SPRINGS DR. State: South Carolina City or Town: GASTON County: Lexington Apartment Number: Zip Code:			44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)	
1. DESCRIBE HOW INJURY OCCURRED:				

Janice E. Ross, M.D.  Forensic Pathologist Title Newberry Pathology Associates
185 Executive Dr., Newberry, SC 29108

Michael J. Panella, M.D.  Forensic Pathologist Title Newberry Pathology Associates
185 Executive Dr., Newberry, SC 29108

State Signed 1/21/2010



WILLIAM G. TAYLOR, M.D., FAAP
KEVIN O. WESSINGER, M.D., FAAP
MICHAEL T. FINCH, JR., M.D., FAAP
LAURA M. LEDLIE, M.D., FAAP
R. TYE WHITAKER, M.D., FAAP
W. GRANT WILLARD, IV, M.D., FAAP
MELINDA L. O'LEARY, M.D., FAAP
THEODORE M. DuBOSE, V. M.D., FAAP
LAURA H. RICKENMANN, M.D., FAAP
BRUCE K. COPE, M.D., FAAP
CHRISTIE P. THOMAS, M.D., FAAP
MARC S. TODD, M.D., FAAP
ELIZABETH S. HAILE, M.D., FAAP
LEAH S. SMITH, M.D., FAAP

SANDHILLS PEDIATRICS

4568 Sunset Boulevard
Lexington, S.C. 29072
(803) 520-5144

1749 Marshall Street,
Columbia, S.C. 29203
(803) 252-1801

110 Summit Centre Drive
Columbia, S.C. 29229
(803) 744-9000

7941 Broad River Road
Irmo, S.C. 29063
(803) 407-0704

CHILD'S NAME

Dial
last

Joshua
first

Hunter
middle

Date of Birth

8 22 09
month day year

Lex
place of birth

Lexington, SC
(City, State)

male ☒ female ☐

Address

Lexington
street

Lexington
city

SC
state

29073
zip

Home Phone Number

803-753

Today's Date

Siblings Names (brothers and sisters)

Ages

Birthdate

(1) Dale Lee Rife

2

7/26/07

(2)

(3)

(4)

(5)

FATHER'S INFORMATION:

Name:

Lexie Dial II

Age:

17

Social Security

Occupation:

Student

Employer:

Work Number:

MOTHER'S INFORMATION:

Name:

Misti M. Rife

Age:

22

Social Security No.:

Occupation:

Employer:

Work Number:

In case of an emergency, please contact the following people (other than parents):

(1) Gina Geddings

(2) Reba Hill

Address:

21d Orangeburg Rd

Address:

Hwy #6

Lexington, S.C.

29073

Lexington SC 29073

Phone number:

803-351-7133

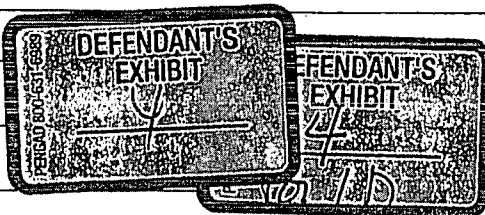
Phone number:

803-755-0357

Previous Physician

Referred By

Child's School



Insurance Company:

Subscriber Name:

Policy # & SSN:

Signature on File:

BIRTH AND DEVELOPMENT:

Born at Lexington

Birth weight 6-13

Labor and delivery Vaginal

Condition at birth good

Feeding problems bottle

Cyanosis Ø

Jaundice yes

Convulsions Ø

Sat up _____

Toilet trained _____

Walked _____

Words _____

Rollled over _____

Sentences _____

FAMILY HISTORY

Allergies/Asthma Ø pgf PCN

Diabetes pgm

Hypertension Ø

Convulsive disorders mom

Sickle Cell Ø

Cardiovascular Disease Ø

PREVIOUS HISTORY

Childhood -

Ear and throat -

Respiratory -

Gastroenteric -

Operations -

Asthma -

Allergies

ACUTE SELF-LIMITED (TEMPORARY) PROBLEMS													
PROB NO	PROBLEM DESCRIPTION	CODE	DATES OF OCCURRENCE										

ACTIVE (ON GOING) PROBLEMS					
PROB NO	DATE ENTERED	PROBLEM DESCRIPTION	CODE	OCI	DATE RESOLVED

MEDICATION TABLE		
MEDICATION	START DATE	STOP DATE

Salem Pediatric & Adolescent Clinic

Record of Immunization

Patient Name: Joshua Dial

Date of Birth: 8-22-09 Chart#

I hereby certify that I have read and understand the information about the diseases and the vaccines listed above. I believe I understand the benefits and risks of the vaccines cited, and ask that the vaccine(s) be given to me or the person named for whom I am authorized to make this request."

Vaccine	Date given	Age	Manuf.	Vaccine lot #	Site Given	Route	Vaccine Info sheet date	Nurse Initials	Parent Signature
Hep B 1						IM			
Hep B 2	10-22-09	2m	GSK	AH8V37W2CA	LT	IM	7-18-07	JHX LD	
Hep B 3						IM			
Pentacel/DTap 1	10-22-09	2m	SP	C3479AA	LT	IM	5-17-07	JHX LD	
Pentacel/DTap 2						IM			
Pentacel/DTap 3						IM			
Dtap 4						IM			
Dtap 5						IM			
Pentacel/HIB 1	10-22-09	2m			LT	IM	12-16-98	JHX LD	
Pentacel/HIB 2						IM			
Pentacel/HIB 3						IM			
HIB 4						IM			
Pentacel/IPV 1	10-22-09	2m			LT	IM SQ	1-1-00	JHX LD	
Pentacel/IPV 2						IM SQ			
Pentacel/IPV 3						IM SQ			
IPV 4						IM SQ			
Prevnar 1						IM			
Prevnar 2						IM			
Prevnar 3						IM			
Prevnar 4						IM			
Prevnar 5	10-22-09	2m	Wyeth	D90888	RT	IM	12-09-08	JHX LD	
otarix/teq 1	10-22-09	2m	GSK	A41FA818A	PG	PO	8-28-08	JHX LD	
otarix/teq 2						PO			
otarix/teq 3						PO			
IMR 1						SO			
IMR 2						SO			
arivax 1						SO			
arivax 2						SO			
ep A 1						IM			
ep A 2						IM			
PD						ID			
lap/Td						IM			
enactra						IM			
irdasil 1						IM			
irdasil 2						IM			
irdasil 3						IM			

Initials/Signature & Title of Nurse:

Christina Johnson, RN Erin Johnson, RN Michelle Johnson, RN
Christina Johnson, RN Erin Johnson, RN Michelle Johnson, RN

1749 Marshall Street
Columbia S.C. 29203

4568 Sunset Blvd.
Lexington, S.C. 29072

7941 Broad River Rd.
Irmo, S.C. 29063

110 Summit Centre Dr.
Columbia, S.C. 29229

NAME Joshua Dial

DOB 8/22/09

ALLERGIES

DATE 9-9-09 **2 weeks**
Length 20 3/4 Weight 8-2 HC 14

DEVELOPMENT

raises head prone ☒ responds to voice ☒
turns head side to side ☒

DIET breast

EXAM

Appearance	☒	Chest	☒	Lymph	☒
Head	☒	Lungs	☒	Neuro	☒
EENT/OC	☒	Abd	☒	Skin	☒
Neck	☒	GU	☒	Other	☒
CV	☒	MS	☒		☒

LABS

Newborn screens normal

ANTICIPATORY GUIDANCE

Sleep position prone Safety Shaken Baby
Diet breast 2 week h/o fever ☒
Car seat ☒

PROBLEMS/ PLAN/ IMMUNIZATIONS

DATE 10/22/09 **2 months**
Length 23 1/4 Weight 13-9 HC 15 3/4

DEVELOPMENT

Smiles ☒ Coos ☒
Follows past midline ☒ Lifts chest prone ☒

DIET breast

EXAM

Appearance	☒	Chest	☒	Lymph	☒
Head	☒	Lungs	☒	Neuro	☒
EENT/OC	☒	Abd	☒	Skin	☒
Neck	☒	GU	☒	Other	☒
CV	☒	MS	☒		☒

ANTICIPATORY GUIDANCE

Sleep position prone Safety Shaken Baby
Diet breast Other sleep issues ☒
Car seat ☒ 2 month h/o ☒

PROBLEMS/ PLAN/ IMMUNIZATIONS

4 months

DATE
Length Weight HC

DEVELOPMENT

Sleeps thru head steady reaches
rolls side to side coos responsively

DIET

EXAM

Appearance		Chest		Lymph	
Head		Lungs		Neuro	
EENT/OC		Abd		Skin	
Neck		GU		Other	
CV		MS			

ANTICIPATORY GUIDANCE

Safety Sleep tips Shaken Baby
Car seat Diet/solids
Sleep position 4 mo h/o

PROBLEMS/ PLAN/ IMMUNIZATIONS

6 months

DATE
Length Weight HC

DEVELOPMENT

sits briefly babbles looks for toy
grasps/transfers no head lag

DIET

EXAM

Appearance		Chest		Lymph	
Head		Lungs		Neuro	
EENT/OC		Abd		Skin	
Neck		GU		Other	
CV		MS			

ANTICIPATORY GUIDANCE

Safety Separation anxiety 6 mo h/o
Car seat TV
Stranger anxiety Sleep Shaken Baby

PROBLEMS/ PLAN/ IMMUNIZATIONS

00001010

1749 Marshall Street
Columbia, South Carolina 29203
(803) 252-1801

7941 Broad River Road
Irmo, South Carolina 29063
(803) 407-0704

110 Summit Centre Drive
Columbia, South Carolina 29229
(803) 744-9000

4568 Sunset Blvd.
Lexington, South Carolina 29072
(803) 520-5144

Name: Joshua DaniDOB: 8/22/09

Allergies:

Date: 8/26/09 Age: 4 days
Brought by: parents Wt. 6.9

Office
MAIN DF
NE (LEX)

Chief Complaint

Newborn, Bilirubin ✓

See C Leigh

37.4°C

O+ (-)

TC Bil: 12.9

Date: 8-28-09 Age: 6 days
Brought by: parents Wt. 6.11

Office
MAIN DF
NE (LEX)

Chief Complaint

Bilirubin check

Wt 12oz @ 2d.

3-4oz q 3-4°. Waking on his own to eat

yellow-green BM

Current Meds:

Bw 6# 13

Current Meds:

FPSHx

Subt: → Subt
C700D

FPSHx

⊕ Tobacco exposure

ROS

No Yes

ROS

? re circumcision

Physical Exam

Pertinent Positive / Negatives

General Appearance: Check in box means normal

☒ Head
☒ Ears
☒ Eyes
☒ Nose
☒ Throat
☒ Neck
☒ Chest
☒ Lungs
☒ CV
☒ Abd
☒ GU
☒ Lymph
☒ MS
☒ Skin
☒ Neuro

Heart
Jawline Subt

Physical Exam

Pertinent Positive / Negatives

General Appearance: Check in box means normal

☒ Head
☒ Ears
☒ Eyes
☒ Nose
☒ Throat
☒ Neck
☒ Chest
☒ Lungs
☒ CV
☒ Abd
☒ GU
☒ Lymph
☒ MS
☒ Skin
☒ Neuro

inc healing well,
mild jaundice

Labs: Time: 10:40 Initials: LB

Bil: 12.7 mg/dl

Labs: Time: 2:1 Initials: HH

T. Bil: 9.3 mg/dL

Diagnosis

① Jaundice
② Teenage Parent / Baby Caretaker by Mom / Grandmother

Diagnosis

Jaundice - improving
5 phototherapy

Treatment

Subt. TC 48°

Treatment

Still below BW -
Wake to feed q 3-4°
ATE Mom to visit

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(803) 407-0704

110 Summit Centre Drive
Columbia, South Carolina 29229
(803) 744-9000

4568 Sunset Blvd.
Lexington, South Carolina 29072
(803) 520-5144

Name: Joshua Dial

DOB: 8/22/09

Allergies: NADA

Date: 8/13/09 Age: 9d
Brought by: mom Wt. 7-2

Office
MAIN DF
NE ☒ LEX

Date: 11/30/09 Age: 3 months
Brought by: Parent Wt. 17.5

Office
MAIN DF
NE ☒ LEX

Chief Complaint

Billi FU - weight
20 g# 13

Silac Aor

17g f. 5 oz Q30

Chief Complaint

COUGH, IN FEV UP TO
100% CONGESTION IN CHEST.
WENT TO LMC TO BE TESTED
FOR BRONCHITIS (-).

Dog all like gl

Current Meds:

Current Meds:

Tylenol

Qid

FPSHx

↓ Dose ↓ Dose to 1/2
↓ Dose

FPSHx

↓ to 24h ↓ to 24h

ROS

ROS

Good po

Physical Exam

Pertinent Positive / Negatives

General Appearance: Check in box means normal

☒ Head
☒ Ears
☒ Eyes
☒ Nose
☒ Throat
☒ Neck
☒ Chest
☒ Lungs
☒ CV
☒ Abd
☒ GU
☒ Lymph
☒ MS
☒ Skin
☒ Neuro

(f) (f) (f)

jaundice free skin

Round loose skin
circ.

Physical Exam

Pertinent Positive / Negatives

General Appearance: Check in box means normal

☒ Head
☒ Ears
☒ Eyes
☒ Nose
☒ Throat
☒ Neck
☒ Chest
☒ Lungs
☒ CV
☒ Abd
☒ GU
☒ Lymph
☒ MS
☒ Skin
☒ Neuro

(f) (f) (f)

jaundice free skin

L. upper airway gl CTA

GO - Ben excellent Dr 2

Labs: Time:

Initials:

I. Billi myself

Labs: Time:

Initials:

c Sat. 12

Diagnosis

1) wt - 17g
Parvovirus - 24h
2) Acidic - 17g

Diagnosis

Chronic Den 3-4 URI

Treatment

all
24h - 17g

Treatment

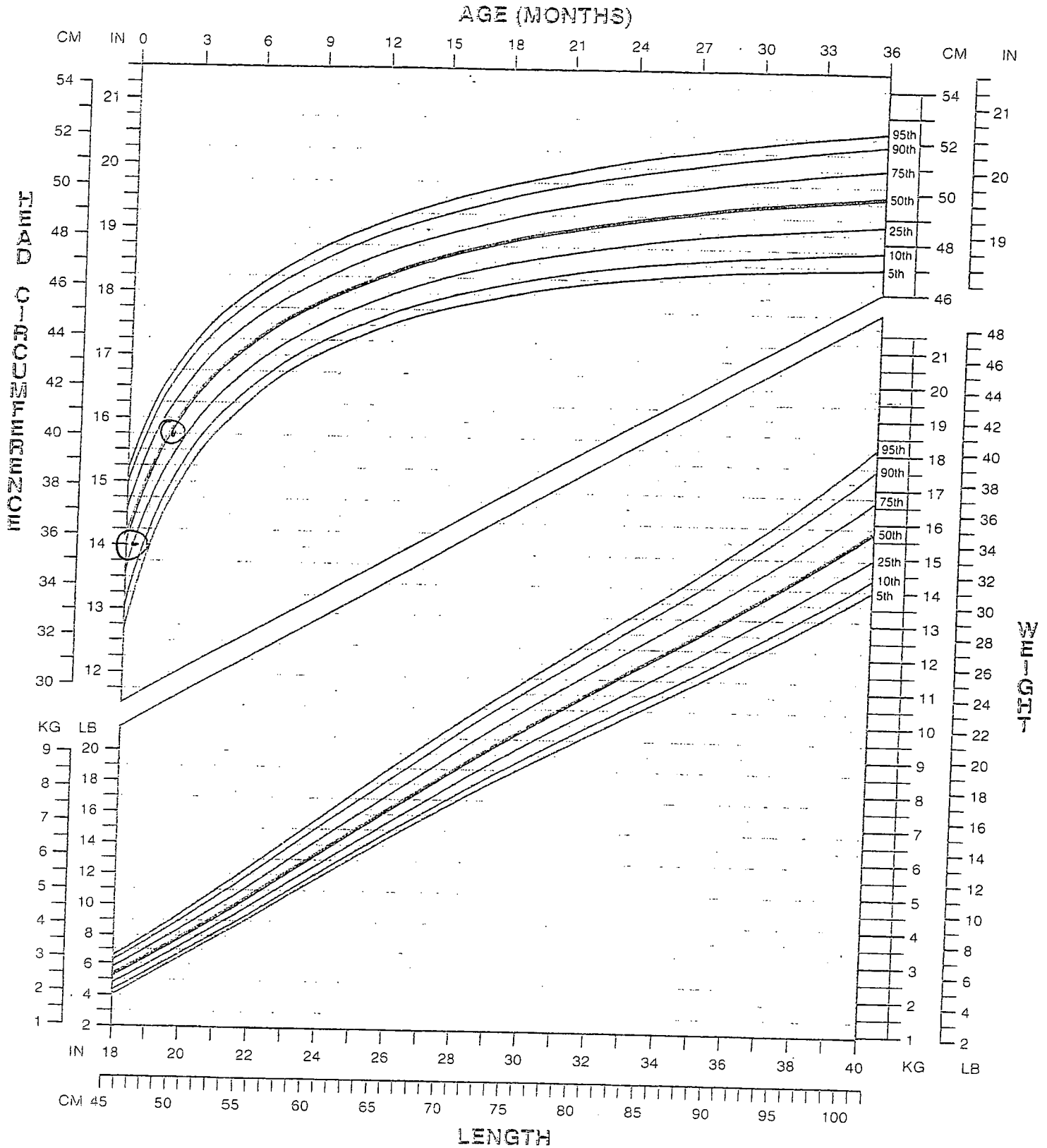
all looks good Nistata

00001012

BOYS: BIRTH TO 36 MONTHS
HEAD CIRCUMFERENCE FOR AGE
& WEIGHT FOR LENGTH

NAME Joshua Dial

RECORD # _____



Provided Courtesy of



Mead Johnson

BOYS: BIRTH TO 36 MONTHS

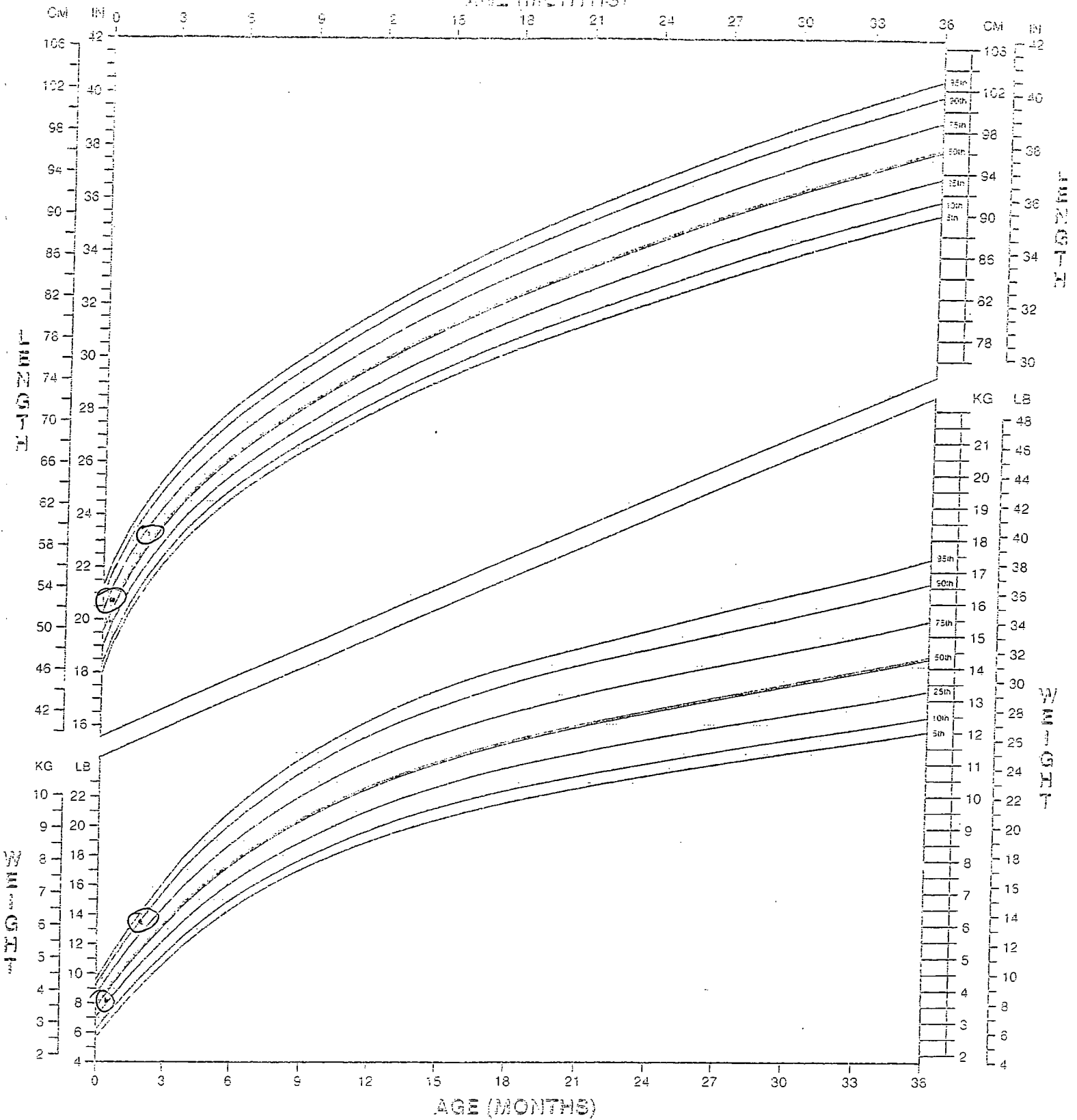
LENGTH FOR AGE &

WEIGHT FOR AGE

NAME Joshua Dial

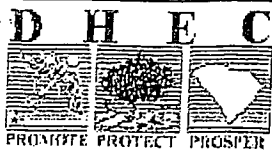
RECORD # _____

AGE (MONTHS)



Date	Age in Months	Recumbent Length	Weight	Head Circumference

Date	Age in Months	Recumbent Length	Weight	Head Circumference



S. C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LABORATORIES

TELEPHONE:
(803) 896-0800

8231 PARKLANE ROAD
COLUMBIA, S.C. 29223

33580 Bne
CLIA #42-D0658606

Submitter #
H00299

Physician #
G00221

CONFIDENTIAL LABORATORY REPORT

SUBMITTED BY: LEXINGTON MEDICAL CENTER

PHYSICIAN: SANDHILLS PEDIATRICS,
ADDRESS: SANDHILLS PEDIATRICS, 1749 MARSHALL STREET, COLUMBIA,
SC 29203-6952

INFANT NAME: RIFE

BIRTH: 8/22/09 3:04 am

RACE: White

SEX: Male

MED RECORD #: 000381719

FEED TYPE: Breast, Lactose, Combination

PARENT NAME: MISTI RIFE

ADDRESS:

BEAUFORT, SC 29906

PHONE: 803-

PRINT DATE: 08/27/2009

SPECIMEN #: 20092371377

TYPE: Blood Card Specimen

COLLECTED: 8/23/09 8:58 am

RECEIVED: 8/25/09

Assay	Result	Value	Units	Expected
17-OHP	Normal ✓		ng/mL	<75, Present Wgt >= 2500 g <125, Present Wgt <2500 g
Amino Acid	Normal Profile ✓		μM	Normal Profile
Acylcarnitine	Normal Profile ✓		μM	Normal Profile
Biotinidase	Normal ✓		ERU	> 10
GALT	Normal ✓		μM	> 60
GAO	Normal ✓		mg/dL	< 10
HB	No Variant Detected			No Variant Detected
IRT	Normal ✓		ng/mL blood	<100, Initial; <70 Repeat
SUAC	Normal ✓		uM	<5
T4	Normal ✓		μg/dL	>7, <=7 days old; >4, >=8 days old
TSH	Normal ✓		μIU/mL	< 23

17-OHP (17-Hydroxyprogesterone): marker for Congenital Adrenal Hyperplasia

Amino Acid: profile of several essential amino acids to detect Amino Acid metabolic disorders, including Phenylketonuria (PKU)

Acylcarnitine: profile of short to very long chain compounds to detect Fatty Acid Oxidation & certain Organic Acid Metabolism disorders.

Biotinidase: marker for biotinidase deficiency

GALT (Galactose Uridyl Transferase) & GAO (Total Galactose) : markers for Galactosemia

HB (Hemoglobin) No Variant Detected: only known normal hemoglobin(s) were detected on screening

IRT (Immunoreactive Trypsinogen): marker for Cystic Fibrosis

SUAC (Succinyl Acetone): marker for Tyrosinemia Type I

T4 (Thyroxine) & TSH (Thyroid Stimulating Hormone): markers for Congenital Hypothyroidism

NOTE: The purpose of newborn screening is to identify infants at risk & in need of more definite testing. As with any lab test, both false positive & false negative results are possible. Initial screening test results are insufficient information upon which to base definitive diagnosis or treatment. Unless a special request is made through Women's and Children's Services, only tests that are abnormal on the initial screen will be repeated on specimens that are marked for repeat.

LEXINGTON MEDICAL CENTER 2720 Sunset Blvd. West Columbia, SC 29169 * (803) 791-2000

ACCOUNT NO. H00041244401

ADMIT DATE 08/22/09 TIME 0304

UNIT NO. M000381719

PATIENT INFORMATION

NPP Received:

NAME RIFE ROY
ADDRESS BEAUFORT, SC 29906-8314
PHONE (803) 955-
SS NO

DIS DATE
DOB 08/22/2009
SEX M
RACE W
RELIGION NONE

TIME
AGE 30M 00D
MS S

PATIENT STATUS ADM IN
SERVICE/LOCATION NEW
ROOM/BED NUR-19
ADM/SOURCE/PRIOR / NB
ARRIVAL MODE

EMPLOYER INFORMATION

NAME
ADDRESS
PHONE

ADVANCE DIRECTIVES

ADVANCED DIRECTIVE
WHICH ONES:
LIVING WILL
HEALTH CARE POA

PHYSICIAN INFORMATION

ADMITTING PAI, SHARADA M, MD
ATTENDING PAI, SHARADA M, MD
FAMILY
OTHER

GUARANTOR INFORMATION

NAME RIFE MISTY M
ADDRESS BEAUFORT, SC 29906-8314
PHONE (803) 955-
SS NO
RELATION CHILD

EMPLOYER UNEMPLOYED
ADDRESS
PHONE

PERSON TO NOTIFY

NAME RIFE MISTY M
ADDRESS
PHONE BEAUFORT, SC 29906-8314
(803) 955-9644
WORK
RELATION MOTHER

INSURANCE INFORMATION

PRIMARY MEDICAID
ADDRESS P.O. BOX 1458
COLUMBIA SC 29202-
PHONE (803) 898-2683
CERT 6329009701
GROUP #
SUBSCRIBER RIFE, MISTY M 08/21/1987
AUTH Nbr:
REASON FOR VISIT

SECONDARY
ADDRESS

PHONE
CERT
GROUP #
SUBSCRIBER
AUTH Nbr:

TERTIARY
ADDRESS

PHONE
CERT
GROUP #
SUBSCRIBER
AUTH Nbr:
MORE INS: LOS:

MEDICAL HISTORY: MRSA: _ VRE: _ If yes, implement contact precautions

ADMIT COMMENT:

DIAGNOSIS

CODE NO

Term newborn

COMPLICATIONS

OPERATION/PROCEDURE

Circumcision w/mogen clamp
performed w/o difficulty
anesthesia 1% lidocaine

AUG 23 2009

physician signature

CONSULTATION WITH

DRG:

CAUSE OF DEATH

CODED BY

Shylor

Williams



MEDICAL RECORDS - DO NOT REMOVE FROM CHART

No. 4690 P. 2

00001016

haurpha

Aug. 24. 2009 10:34AM

LEXINGTON MEDICAL CENTER

MOTHER'S NAME Misti Rife AGE 21 G 3 P 2 AB L2 code # 26

BLOOD TYPE/RH Opos RPR NONR RUBELLA Imm GBS Neg

I Ag Neg HIV Neg PPD — Hb menudiprotein on 2/24/09 eyes: 0307

TOBACCO ☐ NO ☒ YES ALCOHOL ☒ NO ☐ YES Dr Cope spoke to: Tammy 6/5

RECREATIONAL DRUGS ☒ NO ☐ YES TYPE(S) @0455

OBSTETRICIAN Bullard VAGINAL ☒ S APGAR 8/9 CORD PH —

PRENATAL/LABOR HISTORY 0 ROM — HF

DATE & TIME OF DELIVERY 8/22/09 @ 03:04 OB GESTATION AGE 39 WI

☒ MALE ☐ FEMALE ☒ WHITE ☐ BLACK ☐ OTHER

BW 3090 GMS 6lb 13 LBS LTH 50.8 CM 20 INS HC 33.0 CM 13 INS Chest 12 1/2

BLOOD TYPE/RH O neg D COOMBS ☒ NEG ☐ POSITIVE DISCHARGE WT 6-8 ☐ BREAST ☒ FORMUL 31.8 cm

PEAK BILI — D/C BILI T. Bili 12-9 HEP B VACCINE ☒ YES DATE 8/23/09 ☐ N

COMMENTS: 8/22/09 - Mother & hx of tobacco use & dengue. Tolerating SN per dx. ✓ check infant VDS. Voided / stoolled. Upd ated mother in her room. 8/23/09 - Infant VDS - negative. Voided. Stoolled x1 since birth. Feeding - 1/2 - 102. Mother wanted to go home - will hold diaphragm. SN consult. Updated mother - 102.

Term newborn
Maternal To be on side

informed about AIDS & tobacco use.
 8/22/09
 Full & Dr. Lopez
 in am
 Bob check.
 (signature)

ADDRESSOGRAPH
 000041244401 08/22/09 00M
 RIFE, BOY
 M000381719 PAI, SHARADA M, MD
 HNTD, NHTD

000041244401 08/22/09 00M
RIFE, BOY
M000381719 PAI, SHARADA M, MD
HNUR NUR 19 W M 08/22/2009

NEWBORN HISTORY AND PHYSICAL ASSESSMENT

BiliTool™

An ounce of technology. A pound of prevention.™

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Hour-specific Nomogram for Risk Stratification

Infants age 51 hours
 Total bilirubin 12.9 mg/dl
 Risk zone **High Intermediate Risk**

Risk zone is one of several risk factors for developing severe hyperbilirubinemia.

AAP Phototherapy Guidelines (2004)

Neurotoxicity risk zone	Start phototherapy?	Approximate threshold at 51 hours of age
Lower Risk (≥ 38 weeks and well)	No	15.6 mg/dl
Medium Risk (≥ 38 weeks + neurotoxicity risk factors OR 35 to 37 6/7 weeks and well)	No	13.5 mg/dl
Higher Risk (35 to 37 6/7 weeks and neurotoxicity risk factors)	Yes	11.7 mg/dl

It is an option to provide conventional phototherapy in the hospital or at home at TSB levels 2-3 mg/dl (35-50 $\mu\text{mol/L}$) below those shown. Home phototherapy should not be used in infants with risk factors.

Recommended Follow-up

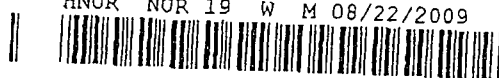
A follow-up visit and/or a recheck bilirubin value is recommended within 24-48 hours (*high-intermediate risk*)

References

- [Hour-specific nomogram](#)
- [Phototherapy nomogram](#)
- [Risk factors for developing severe hyperbilirubinemia](#)

Neurotoxicity Risk Factors

H00041244401 08/22/09 00M
 RIFE, BOY
 M000381719 PAI, SHARADA M, MD
 HNUR NUR 19 W M 08/22/2009



- Isoimmune Hemolytic Disease
- G6PD deficiency
- Asphyxia
- Significant lethargy
- Temperature instability
- Sepsis
- Acidosis
- Albumin < 3.0 g/dL



BiliTool is now available as a web application on the Apple iPhone or iPod Touch. No special download is required. Just point your iPhone or iPod Touch browser to bilitool.org.

Why does BiliTool have advertisements?

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H00041244401 08/22/09 00M
RIFE, BOY
M000381719 FAI, SHARADA M, MD
HNUR NUR 19 W M 08/22/2009



SANDHILLS PEDIATRICS

Main Office
1749 Marshall Street
Columbia, S.C. 29203
(803) 252-1801

Dutch Fork Office
7941 Broad River Road
Irmo, S.C. 29063
(803) 407-0704

Northeast Office
110 Summit Centre Drive
Columbia, S.C. 29229
(803) 744-9000

Lexington office
4568 Sunset Blvd.
Lexington, SC 29072
(803) 520-5144

PATIENT FINANCIAL POLICY

We are dedicated to providing you with the best possible care and service, and believe understanding our financial policy an essential element of your care and treatment. Annually, all patients must complete and update our "Information and Insurance Form." **Payment is required at time-of-service**. All co-pays must be paid at the time of service and payment on any patient balance is required at check out. We accept cash, checks, Discover, Visa, and MC. If major services result in a large balance a 0% interest installment plan can be arranged prior to treatment. Minimum payment amounts begin at \$25.00 per month. Installment pay back periods cannot exceed one year (12 months).

If you are a "no insurance" patient you must contact our office before seeing the doctor. To make health care more affordable for our patients that do not have any health insurance, Sandhills Pediatrics is willing to give you an adjustment on your office visit charge equivalent to the average adjustment of all of our insurance providers. We will adjust your office visit charge by 25% provided you pay in full at the time of service. If you do not pay at the time of service, the adjustment will not be applied and you will be billed for the entire amount. We must do this to cover our administrative billing expenses. We hope this offer will make health care a little more affordable to you.

REGARDING INSURANCE

By providing your insurance information, you have asked, and promised, to pay for services we provided with this information. **Your** insurance policy is a contract between **you** and **your** insurance company and we are not a party to that contract. Please know **your** benefits, limitations, and responsibilities of your plan. Your balance is your responsibility.

We participate with many health plans. We will bill those plans we have a contract with and will collect any required co-payment at the time-of-service. If your health plan determines a service to be "not covered," or you provided incorrect, or late, insurance information, you will be responsible for the complete charge. If this happens, we will bill you, and payment is due upon receipt of that statement. If you have insurance with a plan that we do not have a contract with, we require full payment at the time-of-service.

We charge what is usual and customary for our area. Regardless of any insurance company's arbitrary determination of usual and customary rates, or denial of coverage, you are responsible for payment. If you have a HSA/HRA, we require payment at time-of-service. We will provide all documentation and receipts necessary so you can be reimbursed by your account(s). Fraud laws prohibit us from changing your procedure and/or diagnosis codes "just to get your claim paid." We make every effort to code and file claims accurately according to the services rendered and your doctor's documentation.

OVERDUE PAYMENTS

Payment is "over due" when a balance exceeds 30 days from the date-of-service. If we have not heard from your insurance after 30 days, we will contact you for assistance and/or to make payment arrangements. After 30 days, a rebilling fee of \$5.00 will be added to your account each time we have to send you a bill. If your account is sent to a collection agency, the collection agency's fees, and any associated legal fees, will be added to your account. After 90 days from the date-of-service, unless other arrangements have been made with you, we will forward your account to our collections department and you may be discharged from the practice.

I have read and understand the financial policy of the practice and I agree to be bound by its terms. I understand that I am Financially responsible for all charges whether or not they are covered by insurance and agree that such terms may be Amended from time – to – time by the practice.

Misti Rife
Printed Name of Patient (or Responsible Party if a Minor)

[Signature]
Signature

8-26-09
Date

Chart#

00001020



South Carolina

HealthyConnections

JOSHUA H DIAL

DOB 08/22/2009

Medicaid Member Number:

9780850246

Eligible Reg DSS

BIC # 33580

Acet # 33580.1

#63



Lexington County Sheriff's Department Statement Form



DATE 1-20-10 PLACE LCSD TIME STARTED 1459 M

I, the undersigned, Lexie Dial III, am 18 years of age, my date

and place of birth being the 11 day of Jan, 1992, at Cola SC

My present address is BASTON SC

I completed current grade(s) in school. I can read and write. LD (Initials)

CONTACT NUMBERS: H) _____ W) _____ C) _____

ALTERNATE CONTACT: Name _____ Phone Numbers: _____

Before answering any questions or making any statements, DET ERIC RUSSELL

a person who identified him/herself as a LEX. CO. SHERIFF'S DET.

duly warned and advised me that:

- 1) I HAVE THE RIGHT TO REMAIN SILENT. LD
- 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. LD
- 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. LD
- 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. LD
- 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. LD

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. LD I MAKE THE FOLLOWING STATEMENT:

I was trying to teach the baby how to walk, and he wouldn't cooperate, and I got angry, and held him in front of me and said why won't you cooperate and shake him. the he wasn't breathing right I tryed cpr it didn't help I ~~went~~ went next door and ~~called~~ call my dad, I ~~told~~ told ~~them~~ him to get here fast. I whent and ~~countinved~~ continued doing cpr. My dad got there and he did cpr I called 911 and they said keep doing cpr. Then the police got there and started doing cpr. The the EMS people showed up.

LD.

Witness

Notary Public

Lexie Dial
Person giving Statement

1-20-10
Date

1/24/12
My Commission expires

00001022

STATEMENT

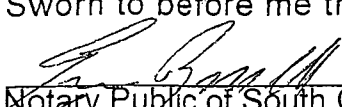
Page 2 of 2 pages.

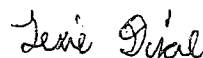
Q Why did you make up the story about falling with Joshua?
A So I wouldn't get in trouble and have to do all of the stuff
I am doing now. I just wanted things to go back to the way
it was.

Q Did I make any promises to you? NO

Q Is there anything you want to add to this statement?
A I am so sorry ~~it~~ wasn't thinking I wish
I could change it. I
L.D. L.D.

Sworn to before me this 20 day of Jan 2010.


Notary Public of South Carolina



Signature of person giving statement

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Lexington

THE STATE
against

Lexie Dial, III

Address:

Gaston, SC 29053-

Phone:

Sex: MRace: WHeight: 58Weight: 170DL State: SCDL #: 101681831Agency ORI #: SC0320000Prosecuting Agency: Lexington County SheriffProsecuting Officer: L. M. Rivera - 2066Offense: Murder / Homicide by child abuse (20Y to Life)Offense Code: 2356Code/Ordinance Sec: 16-03-0085(A)(1)This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality ofto be arrested and brought before me The accused
with according to the law. to be

Signature of Judge

(L.S.)

RETURN

Copy of this arrest warrant was delivered to

Defendant LEXIE DIAL
1/20/2010

Signature of Constable/Law Enforcement Officer

RECEIVED

JAN 20 2010

Lexington Co. Sheriff's Dept.

ORIGINAL

ORIGINAL

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

Lexington

☐ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant L. M. Riverabeing duly sworn deposes and says that defendant Lexie Dial, IIIdid within this county and state on or about 01/20/2010State of South Carolina (or ordinance of ☒ County/ ☐ Municipality ofLexington

violate the criminal laws of the

in the following particulars:

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

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

On or about January 19, 2010 the defendant Lexie Dial III was home alone with the victim Joshua Dial, a five month old male child. During the time the defendant and victim were alone the victim suffered multiple injuries to include extensive brain trauma. The defendant has given more than one explanation as to how these injuries occurred. None of these explanations are consistent with the injuries according to Doctor SUSAN LUBEROFF, a pediatric specialist, and the staff at Palmetto Children's Hospital. Doctor LUBEROFF and the staff at Palmetto Children's Hospital have advised law enforcement that these injuries are consistent with non accidental blunt force head trauma formally known as shaken baby syndrome. On January 20, 2010 the victim died at Palmetto Children's Hospital as a result of his injuries. This incident took place at 317 Oakley Springs Road in the Gaston area of Lexington County SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Lexington

Affiant's Address P O Box 639Lexington, SC 29071-

Affiant's Telephone



ARREST WARRANT

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

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

on or about 1/20/2010did violate the criminal laws of the State of South Carolina (or ordinance of Lexington) as set forth below.☒ County/ ☐ Municipality ofDESCRIPTION OF OFFENSE: Murder / Homicide by child abuse (20Y to Life)

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

Sworn to and subscribed before me on 01/20/2010

Signature of Issuing Judge

Brian W. Jeffcoat

Judge Code: 5058

(L.S.)

Judge's Address Lexington County Judicial Center
Lexington, SC 29072-Judge's Telephone (803)951-2595Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

00001000

Judge Mr. S. V.
on 1-21-2010
Type and Amount: 1st app
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

J840033

2010 JUN 26 11:10

The South Carolina Court of Appeals

The State of South Carolina, Respondent,

v.

Lexie Dial, III, Appellant.

Appellate Case No. 2011-190693

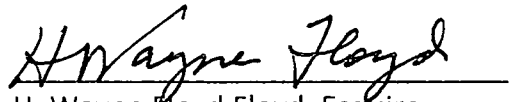
The Honorable R. Knox McMahon, Circuit Court judge

Lexington County

Trial Court Case No—2010-GS-21-1876

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



H. Wayne Floyd Floyd, Esquire

P.O. Box 3972

West Columbia, S.C. 29171

(803) 739-1824

Attorney for Appellant.

The only item designated by Respondent not included in this Record on Appeal was a bond form due to the fact that the Appellant was not ever granted bond.