

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Edward W. Miller, Circuit Court Judge

JOSHUA WARREN HOPKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000790

APPENDIX

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Trista Baird - Direct Examination by Ms. Mayes

1 And so when -- those two items were the closest things that
2 we could find that could possibly be the instrument that
3 caused those injuries and so we did request that they be
4 taken so that we could later compare them.

5 Q All right. And can you tell us whether or not
6 throughout your involvement in this case -- is this a
7 case -- Let me ask you this: As the case agent, have you
8 been involved beyond November of 2013 in this case?

9 A Yes, ma'am.

10 Q Okay. On a regular basis?

11 A Yes, ma'am.

12 Q And can you tell us whether or not medical experts
13 were consulted?

14 A They were. Various medical experts.

15 Q And did you do that personally?

16 A I did.

17 Q Did that include a consultation with a forensic
18 pathologist?

19 A It was.

20 Q And can you tell us whether or not that's including
21 consultation with a forensic pediatrician?

22 A I did speak with a forensic pediatrician.

23 Q Can you tell us whether or not you've shared that
24 photo with any of those medical professionals?

25 A I've shared the photograph with both of them, as

Trista Baird - Direct Examination by Ms. Mayes

1 well as the photographs of the two instruments that we
2 collected the eyebrow shearer and the hair trimmer.

3 Q All right. And to this date, based upon the
4 evidence that was actually seized from the house, has there
5 ever been a determination as to what caused that pattern
6 injury on Minor

7 MR. WILLIAMS: Objection to calling for hearsay,
8 Your Honor.

9 THE COURT: Overruled.

10 BY MS. MAYES:

11 Q You can answer.

12 A No, we were not able to determine what caused that
13 injury.

14 Q And so going back to the scene there on November
15 27th, there was a diaper seized that's been testified to
16 earlier.

17 A That's right.

18 Q Having been present at the autopsy, you were
19 familiar with the fact that Minor did have an open wound to
20 the buttocks?

21 A That's right.

22 Q Did you receive information from Captain Bice and
23 Agent Cauthen regarding that first initial interview with
24 Joshua Hopkins that occurred at Springdale Police
25 Department?

Trista Baird - Direct Examination by Ms. Mayes

1 A I did.

2 Q Did you also have his written statement?

3 A I did.

4 Q And then following the written statement, did you
5 also have a copy, as part of your case investigation of
6 that video reenactment that he did?

7 A I did.

8 Q Can you tell us once all of this information is
9 gathered and the various medical professionals are
10 consulted with, what, if anything, is the procedure in
11 trying to re-interview a suspect and renew contact with him
12 or her to followup on this information that you've obtained
13 along the way?

14 A It depends on the case, but in this situation, we
15 actually -- Captain Bice called the defendant and asked him
16 to come in and speak with us.

17 Q All right. And when did that occur?

18 A That was on April 17th of 2014.

19 Q And up until this point in time, April 17th of
20 2013, had the defendant Joshua Hopkins been arrested?

21 A 2014.

22 Q Up until that day, had he been arrested?

23 A No, ma'am.

24 Q Had the codefendant Sabrina Haynes been arrested up
25 until that day?

Trista Baird - Direct Examination by Ms. Mayes

1 A No, ma'am.

2 Q So between November of 2013 and April of 2014, what
3 was the status of the investigation?

4 A We were actively working it. We interviewed
5 numerous people, the medical professionals. We were
6 working on it.

7 Q And in addition to the medical component of this
8 case, can you tell us whether or not there were attempts to
9 obtain work records?

10 A There were.

11 Q Search warrants for phone records?

12 A There were.

13 Q Review of evidence collected at the crime scene?

14 A We did.

15 Q So once the decision is made to renew contact with
16 Mr. Hopkins for the point of a followup interview, who was
17 with you?

18 A Captain Bice with Springdale Police Department.

19 Q And where did that interview take place?

20 A At Springdale Police Department.

21 Q Was he in custody when you first brought him in for
22 that interview?

23 A He came in, his mom drove him to the police
24 department and he came in on his own free will.

25 Q All right. How do you actually go about making

Trista Baird - Direct Examination by Ms. Mayes

1 contact with a criminal suspect in order to bring them in
2 for a followup interview?

3 A In this case, Captain Bice called him and asked him
4 to come to the police department and talk to us.

5 Q And he did so?

6 A He did.

7 Q And you said he came, not by law enforcement, but
8 by his -- his mother brought him?

9 A That's right.

10 Q When it's time to start an interview and you know
11 that a suspect may potentially be taken into custody and be
12 arrested, what is the procedure for advising them of their,
13 what's known as Miranda Rights or Miranda Warnings?

14 A Because we knew that he -- we did have an active
15 arrest warrant and we were going to arrest him, we did
16 advise him of his Miranda Warnings before we began the
17 interview.

18 Q All right. And to clarify, did you actually have a
19 warrant in hand for Joshua Hopkins?

20 A Yes, ma'am.

21 Q Involving injuries to Minor [REDACTED]

22 A That's right. We had an active warrant for
23 unlawful conduct toward a child.

24 Q And can you tell us whether or not you also had an
25 active warrant for Sabrina Haynes?

Trista Baird - Direct Examination by Ms. Mayes

1 A We did have an active warrant for the same charge,
2 unlawful conduct toward a child.

3 Q And can you tell us whether or not she also agreed
4 to participate in a followup interview on that same day?

5 A She did.

6 Q Now, were these interviews done together or
7 separately?

8 A Separately.

9 (State's Exhibit Number 77 was marked for
10 identification.)

11 BY MS. MAYES:

12 Q Agent Baird, starting with the Miranda Warnings or
13 advise, I'm going show you a form and ask you whether or
14 not you recognize it.

15 A (Looking.) I do. This is the form that we used
16 that day. Captain Bice read it and then the defendant
17 signed it and I also witnessed it with my signature.

18 Q Now, what date is actually on the form?

19 A The date on the form is April 16th, 2014.

20 Q All right. But the interview was conducted on what
21 date?

22 A It was the 17th.

23 Q So that was an error on the form?

24 A It is.

25 Q All right. Now, when you go about reading a

Trista Baird - Direct Examination by Ms. Mayes

1 suspect their Miranda Warnings or rights, can you read it
2 to us exactly as you would have read it to Mr. Hopkins on
3 that date and time?

4 A Before we ask you any questions, you must
5 understand your rights. You have the right to remain
6 silent. Anything you say can and will be used against you
7 in a court of law.

8 You have the right to talk to a lawyer for advice
9 before we ask you any questions and to have him with you
10 during questioning. If you have no money to pay a lawyer's
11 fee, the Court will appoint one to represent you without
12 cost if you wish.

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

17 I have read this statement of my rights and I
18 understand what my rights are. And the defendant signed
19 below that.

20 Q All right. And you witnessed him sign it?

21 A I did.

22 Q Did that waiver of rights appear to be free and
23 voluntary?

24 A Yes, ma'am.

25 MS. MAYES: Beg the Court's indulgence.

Trista Baird - Direct Examination by Ms. Mayes

1 (There was a pause in the proceedings.)

2 BY MS. MAYES:

3 Q How is that recording -- how is a statement
4 recorded?

5 A In this case it was audio recorded by Captain Bice.

6 Q All right. And were you present for the entirety
7 of the interview?

8 A I was.

9 Q And was Captain Bice as well?

10 A He was.

11 Q And you have -- you've had an opportunity to listen
12 to an audio recording in this case?

13 A I have.

14 Q All right. The audio recording that -- recording
15 that you submitted as a case agent, can you tell us whether
16 or not it's a fair and accurate representation of that
17 original interview?

18 A It is.

19 MS. MAYES: Your Honor, at this time, the State
20 would offer the Miranda form.

21 MR. WILLIAMS: There's no objection, Your Honor.

22 THE COURT: 77?

23 THE COURT REPORTER: Yes, sir.

24 THE COURT: State's 77 is in evidence without
25 objection.

Trista Baird - Direct Examination by Ms. Mayes

1 (State's Exhibit Number 77 was entered into
2 evidence.)

3 MS. MAYES: And the audio interview, Your Honor, is
4 premarked as State's Exhibit 63.

5 THE COURT: 63?

6 MS. MAYES: 63 for evidence, Your Honor, the
7 recording.

8 THE COURT: All right.

9 MR. WILLIAMS: Without objection, Your Honor.

10 THE COURT: 63 is in evidence without objection.

11 (State's Exhibit Number 63 was entered into
12 evidence.)

13 MS. MAYES: Your Honor, at this time, it is 1:15.
14 The State would request permission to begin publishing the
15 audio recording.

16 THE COURT: Yes, ma'am, you may.

17 BY MS. MAYES:

18 Q Agent Baird, let me ask you one question before we
19 begin. What is your general approach to an interview with
20 a criminal suspect?

21 A In my investigations, I try to build -- in my
22 interviews, I try to build rapport. Just like in this
23 case, he's got his constitutional right to stop talking to
24 me at any time and so I'm not confrontational. A lot of
25 time, even if I realize that they're not being completely

Trista Baird - Direct Examination by Ms. Mayes

1 honest, then I just let them keep talking. I just want to
2 get as much information as I can from them and then later
3 on, I might go back and ask them about something. But I
4 generally am not confrontational.

5 Q All right. And the objective, can you tell us the
6 objective when you're doing an interview is what?

7 A The objective is for them to tell me exactly what
8 happened to that child. And so I just want them to keep
9 talking and feel comfortable and the end result, hopefully,
10 would be that we learn what happened and caused the child's
11 death.

12 (The audio statement of Mr. Hopkins was played for
13 the jury.)

14 THE COURT: Can we stop it, Madam Solicitor?

15 (The audio was turned off.)

16 THE COURT: Thank you, thank you, Solicitor.

17 Agent Baird, you may step down.

18 All right. Ladies and gentlemen of the jury panel,
19 we're now going take our recess for the day. I would, of
20 course, remind you -- you could probably repeat this back
21 to me -- do not discuss this case with others, including
22 your fellow jurors, family, friends, anyone else. Do not
23 read, watch, listen to any news reports about the case,
24 should there be any. Do not do any independent
25 investigation -- any investigation on the internet or

1 otherwise. Remember to keep an open mind and not begin
2 your deliberations until you've heard all the evidence, all
3 the testimony in this case, the closing arguments by the
4 attorneys, the instruction on the law by the Court and then
5 directed by the Court to begin your deliberations with your
6 fellow jurors in your jury room.

7 I do apologize for having to break court early this
8 afternoon. You may have noticed that the flag of our
9 country is at half-mast today and that is in honor of the
10 memory and public service of Judge Tanya Gee, a South
11 Carolina Circuit Court Judge. Her services are set for
12 this afternoon.

13 With that being said, thank you again for your
14 service, your attention, and your focus. I'll see you back
15 at nine a.m. -- did I say 9:30 or nine a.m.? Nine a.m. in
16 the morning. Please be back promptly at nine. Nine
17 o'clock in the morning. Please be back promptly. Hope
18 y'all have a pleasant afternoon and evening.

19 Thank you very much. If you'll leave your notes,
20 the clerk will secure them.

21 (The jury left the courtroom at 1:57 p.m.)

22 THE COURT: All right. Anything from the State,
23 Solicitor?

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

25 MR. WILLIAMS: Nothing from the defendant, Your

1 Honor.

2 THE COURT: How many more witnesses you think
3 you'll have, Solicitor? I'm trying to get an idea of when
4 you think you'll rest.

5 MS. MAYES: Yes, sir, Your Honor. We have three
6 physicians testifying tomorrow morning. I think the first
7 one is scheduled to be here at nine. We will finish with
8 Agent Baird and then go right into the medical testimony,
9 so my guess is we should be completed by midday tomorrow,
10 hopefully before lunch.

11 THE COURT: And you'll be -- of course, I'll hear
12 motions, but at the same time, unless those motions are
13 granted, obviously, you'll be prepared with your witnesses,
14 Mr. Williams?

15 MR. WILLIAMS: I will, Your Honor.

16 THE COURT: Any specific requests to charge, if
17 y'all would e-mail them to my law clerk.

18 MS. MAYES: Your Honor, I believe we had e-mailed
19 your law clerk last week and the automatic response was to
20 forward to the administrative assistant.

21 THE COURT: I'm sorry?

22 MS. MAYES: We had gotten a response last week from
23 the law clerk to forward e-mails to your administrative
24 assistant.

25 THE COURT: Anything that you e-mail to my law

1 clerk forwards to both of us. So if you e-mail it to my
2 law clerk, to Ms. Marsh, it automatically sends it to me
3 and Ms. Sinclair.

4 MS. MAYES: Okay.

5 THE COURT: Somebody should get it.

6 MS. MAYES: Thank you, Judge.

7 THE COURT: And as I say, I'd just like to get an
8 opportunity to look at any special requests.

9 All right. Thank y'all very much. Hope y'all have
10 a pleasant afternoon.

11 (Court was in recess for the day.)

12 THURSDAY, OCTOBER 6, 2016

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

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

16 THE COURT: Defense?

17 MR. WILLIAMS: Nothing from the defendant, Your
18 Honor.

19 THE COURT: Agent Baird, you can come on back up
20 here.

21 (The jury entered the courtroom at 9:06 a.m.)

22 THE COURT: Good morning, ladies and gentlemen. I
23 hope y'all had a pleasant evening.

24 All right. Solicitor.

25 ///

Trista Baird - Direct Examination Continued by Ms. Mayes

DIRECT EXAMINATION CONTINUED

(The audio recording was playing, continuing from the previous day.)

(The audio recording was stopped.)

BY MS. MAYES:

Q I'm going to stop right here and ask you, Agent Baird, specifically what photographs you began showing the defendant in this case during this section of the interview.

A They were the photographs that were taken at the hospital and also at the autopsy.

Q All right. I'll show you State's Exhibit 44, State's Exhibit 43, State's Exhibit 38, State's Exhibit 36, State's Exhibit 41, and State's Exhibit 51.

THE COURT: What number was that?

MS. MAYES: 51, Your Honor.

THE COURT: 51. Thank you.

BY MS. MAYES:

Q Can you tell us whether or not Mr. Hopkins is questioned specifically regarding the injuries depicted in those photographs?

A Yes, he was.

Q And the injury that you're questioning him about right now is which injury?

A It's the injury to his arm in Exhibit 43.

Trista Baird - Direct Examination Continued by Ms. Mayes

1 Q Is he also questioned about the pattern injury in
2 Exhibit 41?

3 A Yes, he was.

4 Q Injury in 53? Can you tell us whether or not
5 during this segment he will be questioned about the
6 bruising to the body and buttocks depicted in 36 and 51?

7 A He was, or he will be.

8 Q Also bruising to the hip depicted in 38 and 44?

9 A He was questioned about those as well.

10 (The audio recording was continued.)

11 (The audio was stopped.)

12 MS. MAYES: Your Honor, if we may request
13 permission, we can move it forward past the break.

14 THE COURT: You want to take a break right now?

15 MS. MAYES: Move the audio forward past the break,
16 Your Honor.

17 THE COURT: Oh, past the break in the audio. I'm
18 sorry, Solicitor. I wasn't tracking you.

19 MR. WILLIAMS: I don't have any objection to her
20 moving it forward.

21 (The audio was forwarded and continued to play for
22 the jury.)

23 (The audio was completed and turned off.)

24 BY MS. MAYES:

25 Q Now, Detective Baird, throughout this interview,

Trista Baird - Direct Examination Continued by Ms. Mayes

1 you're asking questions related to the timeline that
2 morning, correct?

3 A Yes, ma'am.

4 Q And we know from previous testimony in this case
5 that the defendant clocked out at McDonalds at 12:47 a.m.
6 from approximately one a.m. till 9:30 a.m., who is Minor
7 Swearington with?

8 A For that entire time, he's with the defendant. His
9 mother was also home a little bit. Priscilla was there for
10 a little bit and then Wilhelmina was in her bedroom.

11 Q All right. And we've also heard testimony
12 regarding that Sabrina Haynes clocked in at 6:01 a.m.,
13 correct?

14 A That's right.

15 Q Based on your interview with the defendant, Joshua
16 Hopkins, does he ever put Minor with anyone else from the
17 approximate time of 5:30 a.m. when Sabrina would have left
18 for work and 9:30 a.m. when EMS is called?

19 A No, ma'am. He says that he was with him the entire
20 time.

21 Q And during the course of the interview, he's
22 talking about a fall down the stairs is what he's reporting
23 to you. When did that fall alledgedly occur?

24 A That would have occurred after one a.m. on that
25 same day.

Trista Baird - Direct Examination Continued by Ms. Mayes

1 Q All right.

2 A The night before his death.

3 Q All right. And so his story that you're
4 questioning him about involves him returning back to the
5 home and then sometime after one a.m. he claims that Minor
6 fell down the stairs?

7 A That's right.

8 Q And he also makes reference to we took a diaper off
9 him. What was he referring to?

10 A He was referring to the diaper that Agent Johnson
11 collected at the crime scene the next day.

12 Q The diaper with blood in it?

13 A Yes, ma'am.

14 Q And then throughout the interview, you're asking
15 him specifically about the timeline of events that occurred
16 that morning with EMS being called at 9:30. Did you obtain
17 phone records in this case?

18 A I did.

19 Q And did that include phone records for the landline
20 at 718 Oakland Avenue, which is, of course, the incident
21 location?

22 A That's right, we did.

23 Q Okay. What is that phone number?

24 A 803-926-1070.

25 Q All right. And did you also obtain records for

Trista Baird - Direct Examination Continued by Ms. Mayes

1 McDonalds Oak Grove Location on Augusta Highway?

2 A We did.

3 Q What is that phone number?

4 A 803-808-6588.

5 Q All right. And then there's also a reference to
6 the defendant's mother. What is her name?

7 A Helen Hopkins.

8 Q Did you also obtain phone records for at least --
9 records for a phone associated with Helen Hopkins?

10 A We did. We obtained records from the telephone
11 number we were given as her cell phone number.

12 Q All right. And what was that number?

13 A 803-237-4749.

14 Q Okay. And based upon your investigation in that
15 time period between when Sabrina went to work at 6:01 a.m.
16 and when 9-1-1 was called at 9:30, how many phone calls --

17 MR. WILLIAMS: Objection to hearsay, Your Honor.

18 THE COURT: I sustain the objection the hearsay.

19 However, if it is based on an audio statement that has been
20 published, that's in evidence. I don't know if the
21 question is based on the audio statement or the records
22 that have not been produced. So if the solicitor assures
23 me that it's a question based on evidence already in the
24 record, I think she can ask questions about that,
25 Mr. Williams.

Trista Baird - Direct Examination Continued by Ms. Mayes

1 MR. WILLIAMS: I think that's true if that's what
2 it's based on.

3 THE COURT: Thank you for thinking --

4 MR. WILLIAMS: I'm sorry, Your Honor, I didn't mean
5 to be.

6 THE COURT: No, no, you weren't, Mr. Williams.
7 Thank you.

8 You understand my distinction -- well, I know you
9 understand my distinction, Solicitor.

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

11 THE COURT: All right.

12 BY MS. MAYES:

13 Q Agent Baird, you were questioning during the course
14 of the interview about phone calls that were being made
15 between these various parties and you were giving specific
16 times during the course of your questioning of the
17 defendant. What were you referring to?

18 A I was referring to the phone records that we
19 obtained through a search warrant for these telephone
20 numbers.

21 Q All right. And specifically as to time that is
22 Helen Hopkins phoned the landline --

23 THE COURT: Step up here a minute, Solicitor, Mr.
24 Williams.

25 MR. WILLIAMS: Same objection, Your Honor.

Trista Baird - Direct Examination Continued by Ms. Mayes

1 (There was a bench conference out of the hearing of
2 the jury and the Court Reporter.)

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

4 Thank you, Solicitor.

5 MR. WILLIAMS: Thank you, Your Honor.

6 MS. MAYES: Yes, sir, Your Honor, beg the Court's
7 indulgence.

8 THE COURT: Yes, ma'am.

9 BY MS. MAYES:

10 Q Just moving forward on that matter, I know you
11 indicated that various phone records were obtained. You've
12 been present in the courtroom. There's also a phone that's
13 described that Sabrina Haynes had in the parking lot at
14 McDonalds and in the ambulance with a touch -- a touch
15 screen. To your knowledge, was that phone recovered.

16 A No, we were not able to recover that.

17 Q Well, what about during the course of the interview
18 the defendant makes a reference to babysitters. Based upon
19 your investigation, did you interview any known babysitters
20 for Minor in the previous weeks?

21 A We did.

22 Q Okay. Was Minor in the presence of any person other
23 than the defendant or Sabrina Haynes in the final 24 hours
24 of his life?

25 MR. WILLIAMS: Objection, hearsay.

Trista Baird - Direct Examination Continued by Ms. Mayes

1 THE COURT: In the when now?

2 MS. MAYES: In the final 24 hours of his life.

3 MR. WILLIAMS: No objection to that.

4 THE COURT: Thank you. That's the best ruling I've
5 made all day, Mr. Williams.

6 MR. WILLIAMS: I'm sorry.

7 THE COURT: Go right ahead, Solicitor.

8 THE WITNESS: No, he was not in anyone else's
9 custody -- care or custody.

10 BY MS. MAYES:

11 Q Now, can you tell us based upon your investigation
12 what type of medical coverage [Minor] had?

13 A He had First Choice, which is Medicaid.

14 Q All right. And as a recipient of First Choice,
15 formerly known as medicaid, what does that entail?

16 A That entails free medical coverage at a hospital or
17 a physician's office or emergency room.

18 Q You mentioned that you were present at the autopsy
19 during the course of your interview with Mr. Hopkins, he
20 makes reference to [Minor] having his eyes opened that morning.
21 I'm going to show you a photo and ask you whether or not
22 you recognize it?

23 A I do recognize the photo.

24 Q What was the condition of [Minor's] eyes when he passed
25 away?

Trista Baird - Direct Examination Continued by Ms. Mayes

1 A His eyes were open.

2 Q And following -- first let me ask you this: Who
3 was the pathologist who conducted the autopsy?

4 A Dr. Spalding, at Lexington Medical Center.

5 Q All right. And following your consultation with
6 Dr. Spalding, can you tell us whether or not an additional
7 forensic pathologist was conferred with?

8 A We did. We conferred with Dr. Fulcher, who's with
9 the Greenville County Medical Examiner's Office.

10 Q And can you tell us during your experience and
11 training with the child fatalities division whether it's
12 common or uncommon to consult with additional medical
13 professionals in making a determination as to cause of
14 death or mechanism of death?

15 A It's very common for us to confer with multiple
16 medical doctors. We actually have a meeting every month
17 with a child abuse pediatrician just so that we can go over
18 cases and discuss facts of cases with her. But we also do
19 frequently consult with forensic pathologists because not
20 always are autopsies conducted by forensic pathologists.

21 Q Now, you were also at the scene on the date of
22 November 27th. Can you tell us whether or not based your
23 observations and knowledge of events at the scene, were the
24 stairs examined by CSI for any indications of blood as a
25 source of injury?

Trista Baird - Direct Examination Continued by Ms. Mayes

1 A They were looked at.

2 Q And during the course of that interview, the
3 defendant makes a reference to a banana. What, if any
4 significance does that have?

5 A The defendant stated that he went down -- after he
6 found Minor in the bathroom on all fours and having trouble
7 to breathe, he took him into the bedroom. He said that one
8 thing that he tried was he went downstairs and he got a
9 banana out of the kitchen and came backup stairs -- and he
10 got a banana and came back upstairs and tried to feed him
11 some of the banana. He thought that maybe if he got a
12 taste of banana in his mouth that that might help to
13 somehow get him to respond to him.

14 Q All right. Was a banana recovered in the home?

15 A It was. We found the banana in the bedroom, or the
16 master bedroom as Agent Johnson referred to it and it was
17 on the dresser.

18 Q And based on your interview with the defendant, did
19 that occur before or after calling 9-1-1?

20 A That was before.

21 Q Now, as to previous testimony in this case from
22 Priscilla Haynes that she is the one that arrived home at
23 some point that morning, the defendant instructed her to go
24 get Penny or Sabrina Haynes at McDonalds. There was a
25 reference to getting stopped by a train. What, if any,

Trista Baird - Direct Examination Continued by Ms. Mayes

1 investigation did you do in that regard?

2 A We contacted the special agent with the railroad
3 company and we did try to determine what time that train
4 came through that area.

5 Q All right. Were you able to determine whether or
6 not there had been a train in the area between the Oak
7 Grove McDonalds and the residence at 718 Oakland Avenue?

8 A We did confirm that a train came through the area.

9 Q Okay. And what time?

10 A Give me just one moment. (Looking.)

11 The times that we were given is 8:31 a.m. and 9:42
12 a.m.

13 Q Now, in your conversation with the defendant,
14 you're questioning about them being together since April,
15 what is the exact year that you're referring to?

16 A 2013.

17 Q Since April of 2013?

18 A Yes, ma'am.

19 Q And having been at the scene, Agent Baird, how many
20 toys did you observe for [Minor] in that home, including the
21 bedroom that he stayed in?

22 MR. WILLIAMS: Objection to relevance, Your Honor.

23 THE COURT: Restate the question, Solicitor.

24 MS. MAYES: Yes, sir, Your Honor. How many toys
25 did she observe in the home, including the bedroom that he

Trista Baird - Direct Examination Continued by Ms. Mayes

1 stayed in.

2 THE WITNESS: I observed two --

3 THE COURT: I would sustain the objection.

4 MR. WILLIAMS: The objection is the relevance in
5 the number of toys he had in his bedroom.

6 THE COURT: I would overrule that objection. You
7 may answer the question.

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

9 BY MS. MAYES:

10 Q Did you see any toys that could be the source of
11 injury in that home or bedroom?

12 A No, ma'am. The toys that I saw were two small
13 little cars and they were both in that master bedroom.

14 Q Now, as part of the autopsy, can you tell us
15 whether or not any samples were taken in the form of
16 microscopic slides.

17 A They were.

18 Q All right. And following the autopsy by Dr.
19 Spalding, did you deliver those slides to any other party?

20 A I did. I picked up the slides from Dr. Spalding
21 and I took them to Dr. Fulcher in Greenville County.

22 Q Okay. With the Greenville County Medical
23 Examiner's Office?

24 A Yes, ma'am.

25 Q And then in addition to that, can you tell us

Trista Baird - Direct Examination Continued by Ms. Mayes

1 whether or not you also were involved in the toxicology
2 sample that was taken from Minor at autopsy?

3 A I was. A toxicology sample was taken at autopsy
4 and I was the one that took custody of that after it was
5 sealed and then I later took it to SLED to the laboratory.

6 Q And finally Agent Baird, during the entire course
7 of that interview with the defendant or any other aspects
8 of your contact with him prior to the audio being started
9 in this particular interview, did he ever acknowledge how
10 Minor was injured or why he had so many bruises?

11 A The explanation that he gave us was that he fell
12 down the stairs, which was not consistent with his
13 injuries.

14 MS. MAYES: Nothing further at this time, Your
15 Honor.

16 THE COURT: All right. Thank you. Thank you,
17 Solicitor.

18 Mr. Foreman, ladies and gentlemen, perhaps now will
19 be a good time for us to take our morning recess. Just
20 leave your notes, we'll take about a 15 minute recess. Do
21 not discuss the case.

22 (The jury left the courtroom at 10:53 a.m.)

23 THE COURT: Agent Baird, you may certainly step
24 down. Do not discuss your testimony with anyone.

25 THE WITNESS: Yes, sir.

Trista Baird - Cross-Examination by Mr. Williams

1 THE COURT: Thank you.

2 Court will be in recess for 15 minutes.

3 (A brief recess was observed.)

4 THE COURT: Anything solicitor before we bring in
5 our jury?

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

7 THE COURT: Mr. Williams?

8 MR. WILLIAMS: Nothing, Your Honor.

9 (The jury entered the courtroom at 11:15 a.m.)

10 THE BAILIFF: All accounted for, Your Honor.

11 THE COURT: Thank you.

12 All right. Our jury is back in place.

13 Mr. Williams.

14 MR. WILLIAMS: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. WILLIAMS:

18 Q Good morning.

19 A Good morning.

20 Q You have been working for SLED for how long?

21 A About three and a half years.

22 Q And your position with SLED is what?

23 A In the child fatality unit.

24 Q And that's basically what -- everything you do
25 deals with child fatality cases?

Trista Baird - Cross-Examination by Mr. Williams

1 A That's right. We investigate all child deaths in
2 the state that are not natural and non-traffic fatalities.

3 Q And that means that you don't deal with any other
4 types of cases, normally, as it -- or do you?

5 A I typically only handle child death, but we do also
6 assist agencies with child abuse cases.

7 Q All right. And in this particular case, you became
8 involved, actually the date that the child died, which
9 would have been, what? November 26th?

10 A The 27th.

11 Q November the 27th, 2013?

12 A Yes, sir.

13 Q You're first involvement was middle of the day that
14 day?

15 A Roughly, yes, sir.

16 Q Okay. And when you got the call the come out and
17 handle the case, were you essentially -- we've heard some
18 testimony about it being a joint -- I guess a joint venture
19 or a joint investigation, if you will. But you essentially
20 were calling the shots, weren't you?

21 A SLED's an assisting agency and so we assisted
22 Springdale Police Department. And that's what we did the
23 entirety of the investigation.

24 Q All right. Well, I understand you're assisting,
25 but who makes the decisions in your investigation with

Trista Baird - Cross-Examination by Mr. Williams

1 regards to who you talk to, what information you get,
2 things of that nature?

3 A In this case, Captain Bice and I both decided what
4 to do.

5 Q All right. Well, if you would give a -- a listing,
6 because we've already heard that you've already checked
7 with the railroad and found out that the railroad came
8 through about -- the train came through about 8:30 that
9 morning, which means you basically have followed every
10 possible lead that you could follow with regards to talking
11 to witnesses in this case, haven't you?

12 A We did our best to talk to every single person that
13 we could to do the most thorough investigation that we
14 could.

15 Q All right. Would you please detail the people that
16 you have talked to in this particular case?

17 A By name?

18 Q Yes.

19 A The Deputy Coroner, Laura Grimes; the EMS workers;
20 the defendant; the codefendant; Sabrina Haynes; Priscilla
21 Haynes; Timothy Swearington, the father of the child;
22 Tarkie Reese; Shawn Robinson; Martha Bovain; Curtis Bovain;
23 Regina Washington; Ya'Nyia Daniels; Yantis Daniels; Helen
24 Hopkins; Justice Roundtree; Dr. Ragin Monteith; DSS;
25 detectives at West Columbia police department; employees of

Trista Baird - Cross-Examination by Mr. Williams

1 McDonalds, which is John Nobles, Patricia Lee and Tommy
2 Greer; Dr. Spalding; Dr. Platte; Dr. Fulcher; the fire
3 department -- the firefighters that responded; Shives
4 Funeral Home; the Guardian ad Litem.

5 Q I'm sorry, the Guardian ad Litem of whom?

6 A For the victim's brother, Curtis Bovain or PawPaw.

7 Q Okay.

8 A Little Curtis; gentleman at Wilpines Apartments;
9 Rachel Smith; Dr. Steven Schwab; Dr. Wesley Shuler;
10 Reverend Kenneth Taylor; Sergina White; Waysolbert Hopkins;
11 the agent with the railroad; Curtis Jamad Bovain, which is
12 we interviewed his father, Curtis Bovain and the child
13 Curtis Bovain; Dr. Susan Luberoft; and Dr. Susan Lamb. I
14 believe that's everybody.

15 Q Okay. Now, in that list of people that you have
16 talked to about this case, you obviously have focused on
17 the individuals who were at the house the day that the
18 child died, correct?

19 A Yes, sir.

20 Q And those individuals who were at the house on the
21 day that the child died would have been the deceased, my
22 client, his ex-girlfriend/girlfriend, her aunt, and the
23 aunt's mother; is that correct?

24 A That's right.

25 Q Now, you also -- correct me if I'm wrong -- you

Trista Baird - Cross-Examination by Mr. Williams

1 also focused on, you call it a codefendant, I guess she
2 would be since she's not being tried today, you focused on
3 that individual in regards to her prior history; did you
4 not?

5 A Her -- which history?

6 Q Referring to the fact that she had another child
7 who was not -- who was no longer staying with her?

8 A Right.

9 Q It was Curtis Bovain.

10 A Right. We did talk to him.

11 Q And you focused on where she resided, the various
12 locations; did you not?

13 A We did. And we focused on where the child -- or
14 **Minor** resided.

15 Q And you focused on where Curtis was residing during
16 those time spans, did you not?

17 A We did.

18 Q And the reason you did that was so that you could
19 glean information about the children while they were in the
20 care of the codefendant; is that correct?

21 A And the defendant, yes, sir.

22 Q Well, now, I think you've already established that
23 the children -- was it April of 2013 that he actually moved
24 in with **Minor** and Sabrina?

25 A Yes, sir.

Trista Baird - Cross-Examination by Mr. Williams

1 Q So for the limited time period of April of 2013 up
2 until November of 2013, that would have been the time span
3 which my client, Joshua Hopkins, had spent with Minor
4 Before that, she resided with other people, didn't she?

5 A Yes, sir.

6 Q And some of those individuals that she resided with
7 were whom?

8 A I believe she lived out of state for a while. And
9 how far back -- just throughout Minor's life?

10 Q Through -- yeah, through Minor's life.

11 A I believe he was born in Mississippi and so I'm not
12 sure who she resided with in Mississippi.

13 Q Okay.

14 A Though we did talk with Timothy Swearington who she
15 did live with for a little while there.

16 Q Right.

17 A And, give me one moment.

18 Q Now, he would have been the individual that we
19 heard on the tape, it was some records about him kicking in
20 the door or something like that? Is that the individual
21 you're talking about?

22 A That would be the incident that he was trying to
23 get Minor from Sabrina and so, yes, he did kick in the
24 door. That's Timothy.

25 Q Okay. And who else?

Trista Baird - Cross-Examination by Mr. Williams

1 A Give me one moment.

2 Q Okay.

3 (There was a pause in the proceedings.)

4 THE WITNESS: I -- if you need the exact date, I'll
5 continue to look for it --

6 BY MR. WILLIAMS:

7 Q I don't need the exact date.

8 A -- but she resided with Tarkie Reese and Justice
9 Roundtree and Kiara Ward, or they called her KeeKee; Martha
10 Bovain; Curtis Bovain; the defendant. She had resided with
11 Priscilla previously and then moved back in with Priscilla.

12 Q Okay.

13 A I believe that's everybody.

14 Q She wasn't -- she wasn't residing with Joshua
15 Hopkins during any of these time spans; is that correct?

16 A They told us from April 2013.

17 Q All right. So did you also check with the
18 Department of Social Services in reference to any
19 allegations involving either one of the children?

20 A We did.

21 Q All right. Now, was there a prior allegation
22 involving [Minor] that was filed?

23 A Involving [Minor] -- one second.

24 (There was a pause in the proceedings.)

25 THE WITNESS: There was a report made, November

Trista Baird - Cross-Examination by Mr. Williams

1 13th of 2013, involving Minor

2 BY MR. WILLIAMS:

3 Q All right. So November the 13th of 2013,
4 approximately two weeks before the child died, there was a
5 report which was filed with the Department of Social
6 Services dealing with Minor correct?

7 A Their was a report made by Martha Bovain and her
8 daughter Regina Washington. They did have concerns for
9 physical abuse, but the Department of Social Services
10 screened out that report and they did not investigate it.

11 Q Now, who was Martha Bovain?

12 A That is Curtis -- the child Curtis Bovain's
13 grandmother.

14 Q Now, was there a prior report filed with the
15 Department of Social Services in regards to little Curtis
16 Bovain?

17 MS. MAYES: Objection to relevance, Your Honor.

18 THE COURT: Step up here, please.

19 (There was a bench conference out of the hearing of
20 the jury and the Court Reporter.)

21 THE COURT: Thank you, Mr. Williams.

22 Thank you, Solicitor.

23 BY MR. WILLIAMS:

24 Q Now, the person you actually talked with at DSS,
25 would that have been Dale Driggers?

Trista Baird - Cross-Examination by Mr. Williams

1 A I talked to several people.

2 Q All right. Do you have -- you don't have the name
3 of the individual that you talked to at DSS?

4 A I do. Just a moment.

5 (There was a pause in the proceedings.)

6 THE WITNESS: We spoke with Jennifer Jeffcoat;
7 Angelica Williams; Shervon Banks. Also spoke with June
8 Skinner. Just a moment. There's more.

9 (There was a pause in the proceedings.)

10 THE WITNESS: And Janet Wiseman.

11 BY MR. WILLIAMS:

12 Q Okay. And in reference to these individuals with
13 DSS, were these -- were these in regards to Curtis or were
14 they usually in regards to Curtis and Minor

15 A They were in regards to Curtis, Minor and
16 Wilhelmina.

17 Q Wilhelmina?

18 A Yes, sir.

19 Q And who is Wilhelmina?

20 A Wilhelmina is Priscilla's mother.

21 Q Okay. And besides checking with DSS individuals,
22 on the welfare of these people, you also pulled, what, the
23 medical records, the Lexington County Hospital records and
24 you talked with all the doctors that had been involved with
25 Minor have you not?

Trista Baird - Cross-Examination by Mr. Williams

1 A I did.

2 Q All right. And you're aware of this hospital visit
3 of November 11, of 2013, were you not? With **Minor**

4 A I knew about that, yes, sir.

5 Q And you talked to that doctor about what he found,
6 what he saw?

7 A I did.

8 Q And about what he did to include taking x-rays and
9 things of that nature?

10 A Yes, sir.

11 Q Did you also talk to the -- **Minor's** pediatrician?

12 A I did.

13 Q And how long was that pediatrician **Minor's**
14 pediatrician?

15 A (Looking.) Specifically, Dr. Monteith or her
16 practice?

17 Q Her practice?

18 A I believe he began going to that practice, which is
19 Brookland Pediatrics about February of 2011.

20 Q All right. And how long was the child followup --
21 followed at that practice? At what period of time did that
22 child receive doctor visits at that practice?

23 A Each visit?

24 Q For what period of time? Meaning from the date
25 that the child started until when did the child cease going

Trista Baird - Cross-Examination by Mr. Williams

1 to that practice?

2 A That continued to be his pediatrician through his
3 death.

4 Q All right. And is there a record showing how often
5 the child is actually seen by the doctor?

6 A I have all the records right here from the
7 practice.

8 Q You can just give me the dates, if you know what
9 they are.

10 A September 9, 2013, August 14, 2014, April 9,
11 2013 --

12 Q Did you say August of 2014?

13 A '13, sorry. August is '13. I had misspoke.

14 Q Okay.

15 A August 14th, 2013.

16 Q Okay.

17 A April 9, 2013; December 27th, 2012; August 29th
18 2012; February 23rd, 2012; November 10th, 2011, June 21st,
19 2011. May 19th, 2011; February 9th 2011. I believe that's
20 all of them.

21 Q Suffice it to say, the child's seen at that
22 doctor's office a significant number of times; is that
23 correct?

24 A That's right.

25 Q How many hospital visits did the child have?

Trista Baird - Cross-Examination by Mr. Williams

1 Lexington County Hospital?

2 A One prior to his death and one the day of his
3 death.

4 Q So November 11th of 2013, and the date of his
5 death, which would have been November 27th of 2013?

6 A Yes, sir.

7 Q The -- I assume in looking at all the medical
8 records, there's an indication, obviously, that the child
9 was looked at or seen by a doctor on all those visits,
10 right?

11 A Yes, sir.

12 Q All right. And does it -- does it tell you on
13 November 11th of 2013, who the doctor was who saw him?

14 A Dr. Steven Schwab.

15 Q Okay. With Lexington County Hospital?

16 A That's right.

17 Q Now, is he -- he is not one of the doctor's who's
18 going to testify today, is he?

19 THE COURT: That's --

20 MR. WILLIAMS: Well I'm --

21 THE COURT: That's not a question for her.

22 BY MR. WILLIAMS:

23 Q In terms of the -- the investigation that you did
24 on the date that this happened, since you were working with
25 Springdale and you talked to the EMT workers and things of

Trista Baird - Cross-Examination by Mr. Williams

1 that nature, you actually got, I guess, reports and things
2 of that nature from the various people who showed up on
3 scene, didn't you?

4 A From EMS and fire?

5 Q Right.

6 A Yes, sir.

7 Q All right. And who was the first two individuals
8 who arrived on scene?

9 A Including Springdale?

10 Q Well --

11 A Or just EMS and fire?

12 Q Well, who was on scene first? Was it the EMT's or
13 was it Springdale?

14 A Just a moment.

15 (Looking.) That would have been EMS, Andrew Diehl.

16 Q Diehl?

17 A And Timothy Tucker.

18 Q All right. So the two of them arrived on scene
19 first. First two people to the crime scene, if you will,
20 correct?

21 A Correct.

22 Q And Diehl was actually the driver, was he not?

23 A I'm not sure who drove to the scene.

24 Q Well, did you not get a report from Lexington
25 County Emergency Medical Services by Andrew Diehl?

Trista Baird - Cross-Examination by Mr. Williams

1 A I did. Give me a moment.

2 Q You want me to hand you my copy?

3 THE COURT: Hand it to her, please.

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: Thank you.

6 THE WITNESS: Andrew Diehl would have been the
7 driver.

8 BY MR. WILLIAMS:

9 Q Okay. And actually, they had to wait a minute and
10 drive around because the muddy road to the back, didn't
11 they?

12 MS. MAYES: Objection, Your Honor. Outside the
13 knowledge of this witness.

14 THE COURT: I think that's hearsay. She wouldn't
15 have any personal knowledge of that.

16 BY MR. WILLIAMS:

17 Q Did you talk to Andrew Diehl about how -- about
18 what actually occurred at the scene?

19 A I did.

20 Q Okay. And you've read his statement, haven't you?

21 A Yes, sir.

22 Q Now, when you arrived at the house -- because you
23 don't know what happened before you arrived at the house --
24 at one o'clock, whatever you did to do the walk through and
25 did the video taping and everything like that?

Trista Baird - Cross-Examination by Mr. Williams

1 A I got there just before two.

2 Q Okay. So you got there before two. You'd already
3 been informed about what allegedly had happened on that
4 particular morning, if you will; is that right?

5 A I knew that we had a deceased two-year-old.

6 Q All right. And was it your idea to do the video
7 taping of the defendant going through the house and showing
8 you exactly what happened?

9 A That's standard protocol for our unit. I didn't
10 make that decision that day. That would have been Agent
11 Cauthen. She was interviewing the defendant with Captain
12 Bice.

13 Q And what is the purpose behind that?

14 A We do video doll reenactments in almost all child
15 deaths with very young children and that's because whenever
16 we're sitting down and we're talking to the caretakers who
17 have just experienced a death, they sometimes have a
18 difficult time explaining it in words. And then sometimes
19 we think we might understand what they're saying, but then
20 we ask them to show us, using a doll. We can actually
21 visualize it and it's a lot easier to understand.

22 And then we also have documentation of that on
23 video. And so for almost -- for any child death that we're
24 able to do a doll reenactment on video, we do.

25 Q And in that regard, is it more important that you

Trista Baird - Cross-Examination by Mr. Williams

1 do that video as soon as it happens or is it better to wait
2 and -- you know, wait a period of time to do that?

3 A Each circumstance is different.

4 Q Well, in terms of the ability of the person to
5 reenact or remember what happened, is it more important to
6 do it shortly after it happened, normally?

7 A Well, normally the caregivers are so upset that
8 they're actually not able to talk to us very much other
9 than give a little bit of detail, so it's usually better to
10 come back the next morning if we have to. In this case, we
11 went ahead and did it the same day, since he was able to
12 walk us through it and tell us what happened.

13 Q What about waiting four months to come out and do
14 the interview, would that have been as good as doing it the
15 day after or the day of?

16 A Doing a doll reenactment?

17 Q Right.

18 A I don't know why you would wait four months, but I
19 guess if you didn't have one the day of, then getting one
20 then would be better than not having one.

21 Q Well, I guess what I'm asking you is, most people
22 can remember things that occurred recently as opposed to a
23 long time ago, unless you're like me, maybe 65, that may be
24 different, but is that not normally true? People tend to
25 remember the things close in time?

Trista Baird - Cross-Examination by Mr. Williams

1 A I -- yes, sir.

2 Q Well, I mean -- that's normally why you get out
3 there and do that as quickly as you can, isn't it?

4 A Right. We try do it the same day or the next day,
5 fairly close the event, which in this case we did the same
6 day.

7 Q All right. And after you did the video
8 reenactment, four months later, you had him do some sort of
9 oral statement, wasn't it? Two-and-a-half hours at the
10 Springdale Police Department?

11 A Right. We interviewed him again.

12 Q Well, you already had a warrant for his arrest,
13 didn't you?

14 A Yes, sir.

15 Q Did you tell that him you had a warrant for his
16 arrest?

17 A After the interview we did.

18 Q Why didn't you tell him you had a warrant for his
19 arrest before you gave him the interview?

20 A Because if we would have told him that, then he
21 probably would have exercised his right to not speak to us,
22 so we went ahead and interviewed him prior to.

23 Q And -- and obviously, the statement he gave four
24 and a half months later was not exactly the same as the one
25 he gave earlier, was it?

Trista Baird - Cross-Examination by Mr. Williams

1 A No, sir.

2 Q And was that what you were attempting to do, to
3 have different information?

4 A We're actually trying to gain more information
5 because at the time of the second interview, we had not
6 consulted with Dr. Fulcher yet and did not have an exact
7 cause of death other than we knew that there were new and
8 old injuries over his entire body. And so what we were
9 hoping to gain was more explanation as to how **Minor** died.

10 Q Well --

11 A And that arrest warrant was for unlawful conduct
12 toward a child, which was for the abuse, not the death.

13 Q All right. When did he actually get charged with
14 the death?

15 A April 10th, 2015.

16 Q So he wasn't actually charged with the death until
17 a year after this happened?

18 A Yes, sir.

19 Q When was the codefendant charged with the death of
20 this child?

21 A The same day.

22 Q Did you interview anymore doctors between the time
23 period of 2014 and 2015?

24 A Yes, sir.

25 Q And who -- which doctors did you interview?

Trista Baird - Cross-Examination by Mr. Williams

1 A We spoke with Dr. Spalding several more times. We
2 talked with Dr. Fulcher, Dr. Luberoff, Dr. Lamb -- I --

3 Q Okay.

4 A -- believe that's probably all that we interviewed
5 between those dates.

6 Q All right. And based on that, that's why you went
7 back and charged him -- or charged them, I guess you should
8 say.

9 A We also continued our investigation outside of the
10 scope of just talking with doctors.

11 Q All right. The -- the items that were tested
12 inside the house, were you in charge of which items were
13 picked up and taken to be examined, things of that nature?

14 A I assisted with some of that and then I left and
15 went to the police department and began interviewing.

16 Q Well, in your conversation with the defendant, you
17 tell him that there were several other diapers that had
18 blood on them?

19 A I did. We have photographs of several diapers that
20 the crime scene unit opened. I'm not actually sure if it's
21 blood or feces, but I did tell him that at the interview.

22 Q So you don't know that he had blood on those
23 diapers, do you?

24 A I know there was on one. That's the one we
25 collected and tested.

Trista Baird - Cross-Examination by Mr. Williams

1 Q Why would you tell him that there was blood on
2 several other diapers?

3 A We were trying to gain as much information about
4 **Minor's** death as possible.

5 Q Well, you wouldn't be telling the truth, though,
6 would you?

7 A No, sir.

8 Q Well, let me ask you about the -- the testimony you
9 gave him in regards to what his body temperature was when
10 the EMT arrived on scene. You said the EMT registered his
11 temperature?

12 A The ER did. The nurse at the ER.

13 Q But you didn't tell the defendant that, did you?

14 A I don't remember who I said took it, but I --

15 Q Well, whoever it was would be in that recording
16 that we played, wouldn't it?

17 A Right. Whoever I said in the recording.

18 Q So if you said the EMT, would you have said that on
19 purpose?

20 A I don't think that was on purpose, no. I was just
21 trying to tell him the body temperature.

22 Q Right. Well, there would have been a time span in
23 between the EMT arriving and the time which the child
24 arrived at the hospital to have his temperature checked, if
25 it was checked, correct?

Trista Baird - Cross-Examination by Mr. Williams

1 A Right. It was checked at 10:20.

2 Q Well, do you know the person who checked the
3 temperature?

4 A It was a nurse. I could find her name in the
5 records..

6 Q Would you find her name in the records?

7 A Yes, sir.

8 (There was a pause in the proceedings.)

9 MS. MAYES: Your Honor, the State would have an
10 objection at this point because it's been asked and
11 answered previously be e by Dr. Platte.

12 THE COURT: That's a different witness, so it
13 wouldn't be cumulative. But, thank you, Solicitor. I
14 recall that.

15 (There was a pause in the proceedings.)

16 THE COURT: Do you know where in the record it
17 would be, Mr. Williams.

18 MR. WILLIAMS: Your Honor, it's on the Lexington
19 Hospital -- the second page of the Lexington -- I don't
20 have it in front of me, the Lexington Medical records.

21 THE COURT: All right. Then that would, perhaps
22 assist the officer with --

23 MR. WILLIAMS: But I don't know what the name is,
24 Your Honor.

25 THE COURT: No. I'm saying with the volume of

Trista Baird - Cross-Examination by Mr. Williams

1 paperwork, perhaps that would assist the agent.

2 MR. WILLIAMS: Yes, sir.

3 (There was a pause in the proceedings.)

4 THE WITNESS: It's not on the second page in my
5 records.

6 BY MR. WILLIAMS:

7 Q Okay. Well, maybe we'll short circuit this.

8 A Okay.

9 Q You didn't have conversations with anybody who told
10 you that they were the ones that did the -- that checked
11 the child's temperature, did you?

12 A I found it.

13 Q Okay.

14 A Okay. It was taken rectally by -- and it has her
15 initials and then it is Holly Lee McLauren Simmons and she
16 is an RN.

17 Q And did you talk to her?

18 A I did not. We spoke with Dr. Platte.

19 Q All right. So in terms of what the temperature is,
20 you didn't talk to the individual that has the initials
21 that is reflective of the same -- of that name that you
22 gave in regards to what the temperature was?

23 A No, sir.

24 Q All right. Now, the -- the marks on the child --
25 and you spent some time going over the mark on the child

Trista Baird - Cross-Examination by Mr. Williams

1 with the defendant about how he could have gotten those
2 marks, things of that nature. Did you talk to the
3 babysitter?

4 A Which babysitter.

5 Q How many babysitters did [Minor] have?

6 A None the last -- well, the last one that he had was
7 the Sunday before he left.

8 Q Okay.

9 A And we did talk with all of them.

10 Q Sunday?

11 A That's correct.

12 Q So the child died on Wednesday, so you had a
13 conversation with a babysitter on Sunday, right?

14 A The one that babysat him on Sunday, correct.

15 Q All right. And did you specifically talk to the
16 babysitter about marks and/or a bruise -- abrasions on the
17 child?

18 A We did. That was actually Regina Washington and
19 some of her, I believe they were her nieces. And Regina
20 Washington is also who made the report to DSS November
21 13th, I believe, the one that was made prior to his death
22 because her and her mother had discussed those injuries
23 that they had seen two weeks prior. And so we did actually
24 talk to her again about that.

25 Q All right. Any other babysitters that you talked

Trista Baird - Cross-Examination by Mr. Williams

1 to?

2 A We did. Tarkie Reese was a babysitter. You want
3 me go back through the list.

4 Q I just want to know how often the child was
5 actually being watched, I guess, by the defendant. Was
6 the -- the child obviously had several babysitters, didn't
7 he.

8 A He had several babysitters, but through our
9 investigation we learned that the defendant worked night
10 shift and the codefendant worked day shift and through our
11 investigation we learned that they would alternate who
12 would care for the child while each -- while the other was
13 at work.

14 Q And did you also know that the codefendant only
15 recently got a job at McDonalds that would have changed the
16 work schedule. She'd only been working there for two
17 weeks.

18 A Right. I don't remember the exact date, but right.

19 Q So before that two week time period, she wasn't
20 working at all, was she?

21 A I don't believe so, I'm not sure.

22 Q All right. So during that time span, either she --
23 would she have been watching the child the whole time or
24 did she have babysitters also?

25 A She had the babysitters because we talked to all of

Trista Baird - Cross-Examination by Mr. Williams

1 the individuals that she told us that watched him and so we
2 talked to those.

3 Q Even though she wasn't working?

4 A I'm -- I don't know if I know when she had her last
5 job. I believe that McDonalds said that she had worked
6 there and then came back -- quit and then came back.

7 Q All right. And did they tell you what time span
8 was involved in that?

9 A No, sir. I don't remember.

10 Q Now, obviously, you could secure that information
11 from her employment history since you were able to get the
12 time slots and everything, right?

13 A Yes, sir.

14 Q Well, in the -- you indicated that there were only
15 two toys found in the house; is that correct?

16 A That's all that I saw.

17 Q Okay. Could there have been more toys that you
18 just didn't see them, maybe in a closet or something like
19 that? They were picked up and put out to have way?

20 A That's possible. There were no photographs of any
21 of the other toys either.

22 Q No photographs of any of the toys?

23 A Any other toys there were no photographs taken by
24 the crime scene unit of any other toys.

25 Q So that would mean that they were not in the open

Trista Baird - Cross-Examination by Mr. Williams

1 area where the person could see them, correct?

2 A And in the areas that they searched, correct.

3 Q Well, actually, the photographs that were taken
4 indicate that house was well maintained and kept clean,
5 doesn't it?

6 A Fairly, yes, sir.

7 Q You took pictures of the stairway too, didn't you?

8 A I didn't take any photos.

9 Q Did you have pictures of the stairway?

10 A Yes, sir.

11 Q And what type of stairway was it?

12 A It was hardwood floors.

13 Q And was it -- did it have overlapping pieces of
14 wood -- did it -- did it -- did it have edges on it?

15 A I remember that it's hardwood and that it was kind
16 of awkwardly built, but I don't remember exactly how.

17 Q Okay. Now, the banana -- there's a question asked
18 you about the banana in reference to my client attempting
19 to give a banana to the child. That banana was found
20 upstairs; is that right?

21 A That's right.

22 Q And you found Gatorade downstairs in the -- in the
23 refrigerator in the kitchen, right?

24 A Right.

25 Q And you also found a McDonalds food bag downstairs

Trista Baird - Cross-Examination by Mr. Williams

1 in the kitchen, didn't you?

2 A In the refrigerator, yes, sir.

3 Q In the refrigerator. And when you were doing the
4 video taping, there was a black lady who was seated in the
5 kitchen. Who was she?

6 A I wasn't there, but that was Priscilla.

7 Q You weren't there?

8 A No, sir. Agent Cauthen is the one that did the
9 reenactment, along with Captain Bice.

10 Q Okay.

11 A He was present and Agent Johnson. I was at the
12 police department.

13 Q And you know that that's Priscilla because you've
14 observed Priscilla and looked at her and that's how she
15 looks?

16 A That's right.

17 Q Okay. Do you know -- you weren't there, so you
18 don't know how they gained entrance into the house, do you?

19 A I don't.

20 Q Okay.

21 MR. WILLIAMS: Beg the Court's indulgence one
22 minute, Your Honor.

23 THE COURT: Yes, sir, certainly.

24 (There was a pause in the proceedings.)

25 ///

Trista Baird - Cross-Examination by Mr. Williams

1 BY MR. WILLIAMS:

2 Q Was there anything interesting about the bedroom in
3 terms of was it a little bit different in regards to the
4 heating arrangements, the pictures of the master bedroom?

5 THE COURT: A little bit different in terms of
6 what? I just didn't understand.

7 BY MR. WILLIAMS:

8 Q Was there a portable heater upstairs in the master
9 bedroom?

10 A There was.

11 Q All right. It's one of those kind that you plug
12 in, even though there was heating in the other areas wasn't
13 there?

14 A I don't know. I mean, I do know that there was a
15 heater in that bedroom, but I don't know about -- I mean, I
16 assume so, it didn't seem really cold when I was in the
17 house.

18 Q All right. And in terms of that morning, do you
19 recall whether or not it was cold or hot that morning?

20 A I don't.

21 Q November 23rd --

22 A I know it was raining. I don't remember the
23 temperature.

24 Q It was raining?

25 A Or had just finished raining. I remember that it

Trista Baird - Redirect Examination by Ms. Mayes

1 was --

2 Q Do you know whether or not the driveway was muddy
3 or not?

4 A I don't remember.

5 MR. WILLIAMS: That's all the questions I have,
6 Your Honor.

7 THE COURT: Redirect, Solicitor?

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

9 **REDIRECT EXAMINATION**

10 BY MS. MAYES:

11 Q In response to some of Mr. Williams's questions,
12 you mentioned something regarding Wilhelmina Haynes and a
13 DSS report. Who made that report?

14 A Myself and Captain Bice.

15 Q All right. And was that precautionary in nature?

16 A It was. We just wanted to make sure she was okay
17 and so we had talked to DSS just to check on her.

18 Q Okay. And in addition, Mr. Williams was asking you
19 about a DSS report concerning **Minor** the victim in this case,
20 which was reported to DSS on November 11th, of 2013 -- I'm
21 sorry, it was reported to DSS on November 13th of 2013.
22 You mentioned that the reporter was Regina Washington?

23 A The reporter to DSS --

24 Q One of the reporters?

25 A That's right, one of them, yes.

Trista Baird - Redirect Examination by Ms. Mayes

1 Q Okay. And Regina Washington is the same person
2 that had been Minor's babysitter the previous Sunday?

3 A That's right.

4 Q And you mentioned to Mr. Williams that the report
5 was made. Did a DSS worker ever actually go to the home to
6 check on Minor

7 A They did not. When the report was made, the caller
8 explained the location of the house, but wasn't able to
9 give an actual address of the residence and so they did not
10 attempt to determine exactly which house it was. And so
11 there was never anyone that went out to the house. They
12 actually screened it out before accepting it as an
13 investigation.

14 Q All right. And you mentioned materials like screen
15 out, but just for our sake, did a DSS caseworker ever lay
16 eyes on Minor

17 A Not on that date, no.

18 Q So a report was made to DSS for suspected physical
19 abuse and they did not check on Minor in November
20 of 2013; is that correct?

21 A No, DSS did not check on him.

22 MS. MAYES: Nothing further.

23 MR. WILLIAMS: Nothing on recross, Your Honor.

24 THE COURT: Thank you, thank you very much, Agent
25 Baird, you may step down.

1 Solicitor, Mr. Williams, step up here for a moment.

2 (There was a bench conference out of the hearing of
3 the jury and the Court Reporter.)

4 THE COURT: Thank you for your patience, ladies and
5 gentlemen. I was trying to get a feel, kind of
6 administratively, where we're at. Our next witness in this
7 case to be called before you is the forensic pathologist.
8 I think his first name is John -- Dr. --

9 MS. MAYES: Spalding, Your Honor.

10 THE COURT: Spalding. He may be a lengthy witness
11 so -- I don't want him chopped up. I want to -- that
12 wasn't the right term to say for the forensic pathologist.
13 That was not intended, I assure you.

14 I want to go from direct to cross-examination. So
15 let's take our recess until about 1:15. Your lunch has
16 been ordered by our clerk. Rather than -- she's informed
17 me that it should be here between 12:30 and 12:45. If
18 y'all want to go out and take a break, walk around, what
19 have you, come on back upstairs.

20 Do not discuss the case, of course. Do not do any
21 investigation or watch or read any news, of course. And,
22 of course, you may see people in your going downstairs, in
23 your walking and such like that that's been witnesses in
24 the case or have been in the courtroom while this case was
25 being tried. I've advised all of them as I advise all of

1 y'all, do not speak to them. I advise them the same thing.
2 That's not to be unmannerly or rude, that's just to protect
3 the system.

4 So if you'll leave your notes -- and if you finish
5 before 1:15, just let me know and I'll try get everybody
6 else in place.

7 All right. Thank you, thank you very much.

8 (The jury left the courtroom at 12:16 p.m.)

9 THE COURT: Anything, Solicitor?

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

11 THE COURT: Mr. Williams?

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

14 THE COURT: I did notice I didn't get any specific
15 requests to charge. Just an observation.

16 MS. MAYES: Yes, sir, Your Honor. I do have a
17 request on the probable cause charge. I actually have a
18 copy of it downstairs. I can bring it back following the
19 break.

20 THE COURT: Just give it to me whenever. I just
21 wanted to make sure I didn't miss something.

22 Thank y'all very much. Y'all have a pleasant
23 lunch.

24 (A recess for lunch was observed.)

25 THE COURT: Anything from the State before we bring

1 in our jury?

2 MS. MAYES: Nothing from the State.

3 THE COURT: Mr. Williams?

4 MR. WILLIAMS: Nothing from the defendant, Your
5 Honor.

6 (The jury entered the courtroom at 1:32 p.m.)

7 THE BAILIFF: All present, Your Honor.

8 THE COURT: Thank you.

9 We're continuing the trial of the case by the
10 presentation of evidence and testimony by the State in its
11 case in chief, if you would please continue to give the
12 parties your complete and undivided attention, as you have
13 done throughout the trial of the case.

14 Solicitor, you may call your next witness.

15 MS. MAYES: The State calls Dr. John Spalding.

16 THE COURT: All right. Doctor, if you'd come
17 around and join us, please.

18 DR. JOHN SPALDING,

19 having been duly sworn, testified as follows:

20 THE CLERK: If you'll have a seat over here. State
21 your name, please and spell your last for the record.

22 THE WITNESS: Martin John Spalding,
23 S-P-A-L-D-I-N-G.

24 ///

25 ///

Dr. John Spalding - Direct Examination by Ms. Mayes

DIRECT EXAMINATION

BY MS. MAYES:

Q All right. And good afternoon, Dr. Spalding.
Could you give us some information about yourself, where
you are currently employed?

A I'm employed by Pathology Associates of Lexington.
We practice out of Lexington Medical Center. I've been
there since 2009.

Q All right. At LMC since 2009. And what type of
medicine do you practice?

A Anatomic and surgical pathology.

Q Tell us a little bit about the field of pathology
and how you became a pathologist.

A Pathology is basically divided into two subsets,
one of them, clinical pathology which has to do mostly with
blood, body, fluid analysis. Anatomic pathology, which
involves the fields of surgical pathology, autopsy
pathology, and cytopathology. And prior to going to
medical school, I worked in the field of laboratory
medicine for three years.

Q What can you tell us about your educational
background and training that led you to become a doctor?

A Bachelor's degrees in Natural Science, Chemistry
and Medical Technology. Grad school in Biology then
practiced as a medical technologist in a hospital

Dr. John Spalding - Direct Examination by Ms. Mayes

1 laboratory and then returned to med school, did my medical
2 school training at the University of Missouri, Columbia.

3 Also did my residency and fellowship training at the
4 University of Missouri, Columbia.

5 Q All right. And specifically in the field of
6 medicine, once you obtain a -- an M.D. degree and become a
7 medical doctor, what type of certification is required for
8 you to go on and become a pathologist?

9 A I did five years of post graduate medical education
10 dedicated to the fields of anatomic and clinical pathology
11 at the University of Missouri.

12 Q All right.

13 A And that's what's required to basically sit for the
14 boards to become board certified.

15 Q All right.

16 A And then you pass a board certification and
17 anatomic and clinical pathology.

18 Q And is it possible for you to estimate how many
19 autopsies you have conducted throughout your career
20 including medical school and training?

21 A More than 300, probably less than 400, somewhere in
22 between.

23 Q And has your experience in conducting autopsies
24 extended on into the present at Lexington Medical Center?

25 A Yes, it does.

Dr. John Spalding - Direct Examination by Ms. Mayes

1 MS. MAYES: Your Honor, at this time the State
2 would offer Dr. Spalding as an expert the field of clinical
3 and surgical pathology.

4 MR. WILLIAMS: Without objection, Your Honor.

5 THE COURT: All right. Thank you, Mr. Williams.

6 Again, ladies and gentlemen, normally a person
7 cannot give opinion testimony. Normally when a person
8 testifies, they must testify as to either what they saw,
9 heard, sensed by smell or something of that nature.
10 However, there is an exception when someone is qualified
11 because of education, training, and experience in a
12 particular field, art, science, or profession. They are
13 permitted to give their opinions in certain areas if the
14 Court qualifies them that way.

15 This witness, Dr. John Spalding will be qualified
16 in the areas of anatomical and clinical pathology to give
17 opinion testimony in those areas and the basis for holding
18 those opinions. That does not mean that you must accept
19 the opinion or opinions, but it is evidence for you the
20 jury to use in any way you see fit.

21 Thank you. Thank you, Solicitor, you may continue.

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

23 BY MS. MAYES:

24 Q And, just as a general question, can you describe
25 the role of a pathologist and how that differs from a term

Dr. John Spalding - Direct Examination by Ms. Mayes

1 such as coroner.

2 A The pathologist is -- actually basically aids the
3 coroner in determining cause and manner of death. Whereas
4 the coroner will do so, either based on opinions of other
5 physicians who have been treating a patient or of other
6 past medical history.

7 Q All right. And in Lexington County for example is
8 the coroner actually a medical doctor?

9 A They are not.

10 Q Now, moving forward to the situation in this case,
11 Dr. Spalding. I'm going to ask you whether or not you had
12 the opportunity to conduct an autopsy on a child by the
13 name of Minor

14 A I did.

15 Q What was the date of that autopsy?

16 A 11/28 of '13.

17 Q And where was it conducted?

18 A At Lexington Medical Center morgue.

19 Q And as part of conducting the autopsy, do you
20 prepare a report?

21 A Yes, we do.

22 Q And does the report -- can you tell us whether or
23 not the report captures your findings and observations
24 during the autopsy?

25 A It does.

Dr. John Spalding - Direct Examination by Ms. Mayes

1 Q Do you have with you today, Doctor, a copy of your
2 four page report?

3 A I do.

4 Q Exactly how old was Minor [REDACTED] on the date of
5 his death?

6 A Two years, eleven months.

7 Q And what was his date of birth?

8 A [REDACTED].

9 Q During the autopsy, do you weigh the body?

10 A We do.

11 Q What was Minor's weight?

12 A 26 pounds.

13 Q And then do you also have with you any notations
14 concerning your external examinations such as how the child
15 arrives to you?

16 A Yes, I do.

17 Q I'm going to ask you to refer to page two of your
18 report and ask you to share with us, what, if any notations
19 you made regarding how he arrived and whether or not there
20 was any type of clothing accompanying the body.

21 A Upon my arrival, the child was unclad. There was a
22 diaper that accompanied the body. It was not on the body
23 at the time.

24 Q All right.

25 A So no clothes.

Dr. John Spalding - Direct Examination by Ms. Mayes

1 Q Okay.

2 A Other than the diaper.

3 Q All right. And when a diaper accompanies the body,
4 why does that happen?

5 A It would happen with any clothing articles that are
6 either on or near a body or gathered up with the body and
7 delivered.

8 Q All right. What, if any, notation did you make
9 about the condition of the diaper upon observing it?

10 A There was some bloody, more serous type fluid on
11 the back part of the diaper.

12 Q All right. What, if anything, did that indicate to
13 you in accordance with your notes?

14 A It was likely drainage from wounds over the
15 buttocks region.

16 Q So the bloody stain that you observed in the diaper
17 that came with the body appears to be consistent with
18 injury you noted to the buttocks?

19 A Yes.

20 Q Doctor, once you began the autopsy, take us through
21 the general procedure -- what the objective of the autopsy
22 is and what areas you observe externally and internally.

23 A We observe the entire body. We do an examination
24 of all of the external surfaces: Front, back, genital
25 regions fingers, hands, toes, eyes, inside of mouth, ear

Dr. John Spalding - Direct Examination by Ms. Mayes

1 canals, nose, actually the naris, to see what -- for bloody
2 discharge, mucous, any of those types of things.

3 And then for the internal examination, a "y" shaped
4 incision is made to reflected back. The breast plate is
5 removed. We do examinations then to look for abnormal
6 accumulations of fluid, blood, abnormal organ orientation,
7 congenital defects, any signs of injury, or infection,
8 inflammation.

9 The organs are then removed. We then examine the
10 interior, looking for any signs of broken ribs, any signs
11 of skeletal abnormalities. The skin of the neck is then
12 reflected upward. We examine the soft tissues and
13 structures within the neck, the hyoid bone, the thyroid,
14 the trachea. Then an incision is made on the scalp. The
15 scalp is reflected, the cranium is open and we then examine
16 the inside of the cranial cavity and the brain.

17 Q All right. And are your findings photo documented?

18 A Yes.

19 Q Are tissues found and collected?

20 A They are.

21 Q And is blood drawn for the purpose of toxicology?

22 A Yes, and other testing if applicable.

23 Q What, if anything, did you note, Dr. Spalding
24 regarding the physical condition of **Minor**

25 A There were extensive areas of contusion or

Dr. John Spalding - Direct Examination by Ms. Mayes

1 bruising. Mostly on the buttocks's region, extending over
2 onto the sides of the hips. There was some associated skin
3 slippage and erosion, minor blistering of the skin. Did
4 not appear to be thermal type blistering. You know, it
5 wasn't -- it wasn't burns. Then there were bruises over
6 the arms, hands.

7 Q I'm going refer you, Dr. Spaulding to page 4 of
8 your report. To the first paragraph of your case summary.
9 What, if anything, Dr. Spalding was your interpretation
10 following the physical examination of **Minor**

11 A I'm sorry, could you repeat that last part.

12 Q Yes. What, if any observations and findings did
13 you make regarding his physical condition?

14 A It is my opinion that the pattern of the injuries
15 were related to abuse, physical trauma, and multiple
16 episodes of that.

17 Q All right. I'm going to ask you specifically, as
18 to the first paragraph of your case summary. Could you
19 read that to us, please.

20 A There are unequivocal signs of chronic, recent, and
21 even acute severe soft tissue trauma to the buttocks and
22 adjacent tissue regions. The patterns of injuries can only
23 be explained as abuse.

24 Q All right. So with that, I'm going to ask you what
25 is meant by the terms chronic abuse and acute abuse that

Dr. John Spaulding - Direct Examination by Ms. Mayes

1 you mention in your findings?

2 A From a medical standpoint, acute would loosely be
3 defined as something less than 24 hours. Chronic meaning
4 something at a period of time greater than that.

5 Q Were there various stages of healing in the
6 injuries that you observed?

7 A There were.

8 Q Okay. I'm going to show you some photographs and
9 ask you whether or not you can identify them.

10 I'm showing you now what is State's Exhibit 39, 40,
11 41, 42, 44, 45, 47, 48, 49, 43, 50, 51, 52, and 53.

12 Are you familiar with these photographs, Dr.
13 Spaulding?

14 A Yes, ma'am.

15 Q Can you tell us whether or not they represent a
16 fair and accurate representation of **Minor** as he
17 appeared during his autopsy?

18 A They do.

19 Q I'm looking here at State's 52, Doctor, and at 53.
20 What is it that we're seeing here on the back of the
21 buttocks?

22 A Those are extensive contusions, blunt force injury
23 to those areas. The scab or scaling that you see is
24 basically what happens with extensive damage to the soft
25 tissue underneath of it, the epidermis or the outer most

Dr. John Spalding - Direct Examination by Ms. Mayes

1 layer of the skin will actually blister, fluid will
2 accumulate under it and it will slough off and then you get
3 that scabbing and the little bit of drying that's occurring
4 there with it.

5 Q All right. And you mentioned blood in the diaper
6 that accompanied the body.

7 A That is the wound associated -- that -- yes.

8 Q What, if anything else, did you note looking at his
9 body in its entirety?

10 A The extensive bruising over the arms, swelling of
11 the hand, the right hand.

12 Q All right. I believe that is also depicted in some
13 of the photographs you have there?

14 A Yes, it is.

15 Q The swelling of the hand, for example, right hand,
16 State's Exhibit 43 and then also State's Exhibit -- that's
17 the underside of the hand. State's Exhibit 49, where, Dr.
18 Spaulding, do you see an indication of injury or swelling?

19 A It would be on -- here towards the back part of the
20 hand and on towards the first part of the knuckles.

21 Q Okay. And State's Exhibit 43?

22 A Same. Then there's additional bruising up on --
23 several somewhat patterned bruises up along the arm.

24 Q All right. And I'm going to hold this here.

25 You're referring to this pattern of bruises all along the

Dr. John Spalding - Direct Examination by Ms. Mayes

1 arm?

2 A Yes, yes.

3 Q Doctor, what if anything, does that indicate to
4 you?

5 A Certainly suspicion, defense type wounds, basically
6 that getting in between the impact.

7 Q All right.

8 A But other parts of that could easily be grip marks.

9 Q Is part of pathology -- does part of pathology
10 include homicide cases?

11 A Yes.

12 Q Can you tell us whether or not you're training in
13 that field includes defensive wounds, where a victim --

14 A It does.

15 Q -- a victim may, for example make an attempt to
16 defend one's self?

17 A It does.

18 Q Can you tell us whether or not what you're
19 observing here on his hand is consistent or inconsistent
20 with a child defending himself?

21 A It is consistent with.

22 Q What, if anything else, did you note?

23 A From the autopsy findings in particular?

24 Q Yes. Internally?

25 A Internally, I did not see any medical cause, such

Dr. John Spalding - Direct Examination by Ms. Mayes

1 as congenital heart problems, no other medical explanation
2 for the child's death.

3 Q What was most apparent to you in examination of the
4 body?

5 A The physical injuries to the posterior buttocks
6 region.

7 Q All right. And, Doctor, can you tell us whether or
8 not that constellation of injuries, including the buttocks,
9 including the arms, the legs, is that type of collection of
10 injury consistent with an accidental fall?

11 A It is not.

12 Q Such as a fall down the stairs?

13 A It is not.

14 Q Why or why not?

15 A First of all, the chronicity of these, basically,
16 even in the dead body, the way that a bruise looks changes
17 with time. We've all seen how our bruises -- first there's
18 nothing, then there's redness, and then if it's a good
19 enough bruise it will actually begin to change colors from
20 purple -- he had varying degrees of change of that, that
21 said this was not from a single incident.

22 It would also have -- there's no way that a fall
23 down a set of steps could explain that pattern of injuries
24 to that degree over that broad of an area of the buttocks
25 onto the sides of the hips, onto the arms and show what, in

Dr. John Spalding - Direct Examination by Ms. Mayes

1 my professional opinion, is injuries occurring over a
2 period of time.

3 Q All right. So, Doctor, if these are not accidental
4 injuries, how are they inflicted?

5 A As I stated in my report, I have no other
6 reasonable explanation other than abuse.

7 Q You mentioned the sides of the hips. I'm going to
8 show you an additional photograph. Here is State's 48.
9 The left side, State's 47, the right side, State's 44.

10 What, if anything, is significant regarding the
11 positioning of those injuries?

12 A They wrap over the entire sides and over the
13 backside. A fall would be one area. It wouldn't wrap
14 around left and right side, go up and down the inside of
15 the buttocks.

16 Q Including the left side and the right side?

17 A That's correct.

18 Q Doctor, I'm going to show you what is State's
19 Exhibit 40. What, if anything, is significant in that
20 regard?

21 A The fingers are swollen. You can also see some
22 minor abrasions to the skin.

23 Q What, if anything, would that indicate?

24 A Those are defense wounds. That's a hand that's
25 been smacked.

Dr. John Spalding - Direct Examination by Ms. Mayes

1 Q Once you are looking inside the body at the major
2 organs, are you able to actually observe the heart?

3 A Yes.

4 Q Are you able to observe for any evidence of
5 abnormality or congenital defects?

6 A Yes.

7 Q Did you observe anything of that nature concerning
8 Minor

9 A There was some consolidation in one of the lobes of
10 the lung that would -- could be explained as a resolving
11 pneumonia. The area of involvement and, again, this was
12 not -- this was something that was organizing, meaning that
13 he might have had a minor bout of pneumonia, cough, cold,
14 flu, respiratory infection sometime in the not so distant
15 past. I believe it had no bearing or significant medical
16 impact that would have resulted in his death.

17 Q All right. And do you also examine the brain for
18 evidence of stroke and tumor and things of that nature?

19 A We do. There were no abnormalities in the brain.

20 Q Okay. And is there also a review of toxicology
21 findings?

22 A We did submit toxicology. Those findings were
23 negative.

24 Q No evidence of poisoning or a drug overdose?

25 A No.

Dr. John Spalding - Direct Examination by Ms. Mayes

1 Q Now, as to -- as to the actual cause of death,
2 what, if any recommendation did you make to law enforcement
3 and/or the coroner's office in that regard?

4 A That this was a death related to traumatic injury.
5 There were signs of obvious abuse and also had suggested
6 additional investigation regarding some of the other
7 reports, such as the description of rigor set into the jaw
8 upon arrival of EMS and the recorded body temperature upon
9 arrival at the emergency room.

10 Q All right. And in that regard, have you had an
11 opportunity to meet with law enforcement regarding the
12 findings of the affixed jaw upon arrival of EMS at 9:42
13 a.m.?

14 A I did. We had -- we had a meeting with the first
15 responders on this case.

16 Q All right. Including those EMS workers and
17 firefighters at the scene?

18 A Yes, ma'am.

19 Q And you were present for that?

20 A I was.

21 Q And how much -- or -- and again, regarding the body
22 temperature of 89 degrees Farenheit, that in and of itself,
23 before I ask you specifically about rigor mortis, what is
24 it about a body temperature at death that may be
25 significant?

Dr. John Spalding - Direct Examination by Ms. Mayes

1 A Well, specific to that temperature, body
2 temperature as it relates to trying to give a time of death
3 is -- has many variables in it: Environment, size of the
4 body -- so despite what some of our shows might want to
5 tell us that a recorded body temperature and they give an
6 hour and 15 minute time, that's not the way it happens.
7 But 89 degrees for the core temperature from the period of
8 time at which the body was picked up, it -- the body had
9 been dead for a while to have cooled down to 89 degrees.

10 Q And specifically as to rigor mortis and the stages,
11 what can you tell us in that regard?

12 A Well, rigor mortis has to do with basically, as the
13 cells stop receiving -- the cells of the body and the
14 muscles stop receiving blood supply, those cells become
15 susceptible, the membranes, the coatings of each of the
16 individual cells, specifically the muscle cells, becomes
17 permeable to other electrolytes, ions, and such that it
18 then causes contraction of those muscles.

19 Full rigor mortis, again, some of it depending on
20 size, body mass, muscle mass, can take 12 to 18 hours to
21 set in fully, but it will begin to set in -- it takes an
22 hour or more before any of that would become noticeable.

23 Q Greater than one hour?

24 A Greater than one hour.

25 Q What, if anything, does the finding of the fixed

Dr. John Spalding - Cross-Examination by Mr. Williams

1 jaw by the EMS and first responders indicate to you
2 regarding the time of death for Minor

3 A He had stopped breathing more than an hour to their
4 arrival.

5 MS. MAYES: Beg the Court's indulgence.

6 Nothing further from Dr. Spalding at this time.

7 THE COURT: Thank you, Solicitor.

8 Mr. Williams.

9 MR. WILLIAMS: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q How are you Dr. Spalding?

13 A All right, sir. How about you?

14 Q I'm fine. I'm Theo Williams. The -- you're a
15 pathologist at the Lexington Medical Center. Is that only
16 for the Lexington Medical Center or do you do pathology
17 work in other locations?

18 A We do work for entities other than Lexington
19 Medical Center, but that is where we're housed.

20 Q Okay. And in your determination of cause of death
21 and -- correct me if I'm wrong, you did not determine what
22 actually caused Minor's death when you examined him and
23 went through all your medical examination. You didn't know
24 exactly what caused it, did you? His death?

25 A Beyond that it was a traumatic death?

Dr. John Spalding - Cross-Examination by Mr. Williams

1 Q Yes.

2 A No.

3 Q And let me clarify that question because that
4 may --

5 A Okay.

6 Q Because you're a doctor, you're used to dealing
7 with specifics.

8 A Right.

9 Q There was nothing in your consideration of his
10 internal organs, in your consideration of his blood, in
11 your consideration that indicated that -- that he was dead
12 because of a particular disease or the failure of the
13 system to work, whether it be respiratory or whether or not
14 it be cardiovascular or what have you, was it?

15 A I would say that's correct.

16 Q But you knew he was dead and you knew that there
17 was evidence of abuse?

18 A Yes.

19 Q And as a result of that, it's my -- I'm assuming
20 here, but I'm thinking I'm correct in regards to what
21 you've done or what someone has done, he was sent to
22 another type of pathologist to deal with perhaps the cause
23 of death -- that could be detailed as the cause of death?

24 A Tissue and slides were reviewed by another
25 pathologist; that is correct.

Dr. John Spalding - Cross-Examination by Mr. Williams

1 Q Did you review those tissues and slides?

2 A He actually reviewed my tissue and slides.

3 Q Okay.

4 A So, yes, I reviewed them before he did.

5 Q Okay. And when you reviewed those slides what did
6 you determine? Before you sent them to him?

7 A Before I sent them to him. In my review, I did not
8 find the specific entity to say that the soft tissue injury
9 led to this, which led to that.

10 Q Okay. Fair enough. Did you -- aside from having
11 the body present, which you, obviously, are going to cut
12 open and examine the systems and all that, did you examine
13 the medical report for the day that he actually was taken
14 to the hospital, but the doctor found -- I guess before
15 you -- before you --

16 A The emergency room report?

17 Q Right. Yes, sir. And did it make any difference
18 to you that in the medical record it indicated that his
19 neck was flexible? That it wasn't -- it didn't have any
20 evidence of rigor?

21 A Rigor can be released. And the report of the EMS
22 says that he had to release the neck and jaw to intubate,
23 so for the then receiving emergency room doctor to say that
24 he does not, you know, for him to not say that he saw stiff
25 neck and stiff jaw doesn't mean anything. Rigor can be

Dr. John Spalding - Cross-Examination by Mr. Williams

1 released.

2 Q Okay. So he may have had rigor at some point in
3 time when the EMS people were there; did not have rigor
4 when the emergency room doctor --

5 A It's not in the neck and jaw because he would have
6 to release the neck and jaw to intubate the child.

7 Q And when you examined the body, was there evidence
8 that he has rigor?

9 A By the time I do the examination, rigor mortis
10 actually is in the process of releasing. Rigor mortis does
11 not stay forever. It releases. So in doing the
12 examination -- when you do the examination the next day,
13 establishing whether there is or isn't rigor mortis the day
14 after death has no bearing on time of --

15 Q So, so, the determination of rigor doesn't assist
16 in terms of determining when the person died if it's beyond
17 24 hours. Is that what you're telling me?

18 A When you're doing the autopsy the day after the
19 death --

20 Q Right.

21 A -- saying whether there is or is not rigor mortis
22 at the time to have autopsy --

23 Q Right?

24 A -- does not tell you the time of death.

25 Q Okay.

Dr. John Spalding - Cross-Examination by Mr. Williams

- 1 A And the other part too, with rigor mortis, it's not
2 a light switch where it's on or off. So it's either
3 starting or it's not. In a large individual, rigor mortis
4 in a full grown adult would be a bit more difficult thing
5 to release and will also last for a longer period of time.
6 In a child, muscle mass is smaller, rigor mortis is easier
7 to extend arms, move fingers, so it's -- doing the autopsy
8 the day after death and establishment of whether there's
9 rigor mortis doesn't establish a time of death?
- 10 Q Is there anything unique about the body when
11 someone -- when a body is deceased or dead that would cause
12 blood to pool or blood to locate in a particular area of
13 the body that would change the appearance of the body?
- 14 A Yes, that's known as livor mortis and it has to do
15 with blood settling. When the blood isn't circulating,
16 it's going to be separated out. So if the body's been
17 laying on it's back, the body will look purple.
- 18 Q And what about the buttocks area, would it look
19 more purple also?
- 20 A Actually, no because it's a pressure point. So if
21 the body is laying on it's back, the area where the
22 pressure is, sitting down on there would actually have
23 clearing around it. So it would actually be paler.
- 24 Q So the area that would be purpler, if you could use
25 that word --

Dr. John Spalding - Cross-Examination by Mr. Williams

1 A Sure.

2 Q -- would be the area between the buttocks and the
3 shoulders; is that what you're telling me? Because if
4 you're laying flat, you have the high points --

5 A Except for the pressure points.

6 Q Right.

7 A Uh-huh. But that would be the external appearance.

8 Q All right. Was there any of that evidence when you
9 examined to body -- the body was laying on it's back,
10 wasn't it, when you examined him?

11 A When I first entered the room, I believe so, yes.

12 Q Was there any evidence that perhaps some of the
13 blood had settled into -- that may have increased the
14 coloring on him?

15 A Not particularly.

16 Q Okay. Does that change when you flip the body
17 over?

18 A Not really.

19 Q Because there's nothing to pump the blood, right.

20 A That's right. It will -- and it will actually
21 start to clot a little bit, so it's not still in a liquid
22 state.

23 Q Okay. Now, you're -- when you reviewed the -- I
24 don't know this -- was it the diagnosis of the ER doctor
25 that you reviewed?

Dr. John Spalding - Cross-Examination by Mr. Williams

- 1 A I believe the entire report.
- 2 Q And you noted that he had listed cardiopulmonary
- 3 arrest, nausea, and vomiting and diarrhea as being the
- 4 diagnosis for the deceased. Were you aware of that?
- 5 A I'm sure I read that report, but...
- 6 Q Would you like to see it?
- 7 A Sure.
- 8 Q Okay.
- 9 A (Looking.) Okay.
- 10 Q Does that -- does that in itself have, I guess, any
- 11 basis in your determination that he died from trauma?
- 12 A You mean does his diagnosis --
- 13 Q Right.
- 14 A -- support trauma.
- 15 Q Support any of your decision making?
- 16 A Well, I can tell you this, that in my examination
- 17 of the gastrointestinal track, the stomach, intestines,
- 18 there was no inflammation. There was nothing in there that
- 19 would tell me that this was someone who had diarrhea or
- 20 nausea so tremendous that it would result in death.
- 21 Q Well, when you examined the nose and the mouth was
- 22 there evidence of chapping or dehydration that might be an
- 23 indication that there was some vomiting or some sort of --
- 24 A The lips were very dry. The skin was very loose.
- 25 Q And is that an indication of vomiting or

Dr. John Spalding - Cross-Examination by Mr. Williams

1 dehydration?

2 A It would be of dehydration, yes. As was noted in
3 my report.

4 Q Okay. Now, when you -- when you looked at the
5 hands,, you noted that there was swelling; is that correct?

6 A Yes.

7 Q On the right hand?

8 A Yes.

9 Q Should that have been readily apparent to anyone
10 who was -- to an EMT worker in terms of something that is
11 obvious that you should notice?

12 A I'm not an EMT worker, so I wouldn't have, you
13 know, the general, you know, to know what their perspective
14 of stuff is, other than the -- their main thing for this is
15 that they're wanting to restore breathing.

16 Q Got you. Can you tell how long ago the hands would
17 have been injured to be in the condition that they were in?

18 A No.

19 Q Why not.

20 A Well, and let me ask it -- I guess clarify your
21 question when you say how long. You want to know did that
22 happen --

23 Q How long -- by looking at the body, when you looked
24 at the body --

25 A Uh-huh.

Dr. John Spalding - Cross-Examination by Mr. Williams

- 1 Q -- I'm asking if you can tell when this child's
2 hands would have been injured.
- 3 A It wasn't a year ago.
- 4 Q Okay.
- 5 A Within a couple of days --
- 6 Q Okay.
- 7 A -- would be my professional within.
- 8 Q Two days?
- 9 A Give or take a day.
- 10 Q Okay. So it could be three days, it could be one
11 day. Is that the way we're going? You said give or take a
12 day? Are we taking it on the upside or the low side?
- 13 A Well, more than a day.
- 14 Q Okay.
- 15 A Okay.
- 16 Q I'm going to pick two because it's more than one.
- 17 A Okay.
- 18 Q Now, can you tell from the buttocks, you said that
19 there was evidence of long-term abuse --
- 20 A Again chronic, more than a day.
- 21 Q And chronic -- what does the word chronic mean to
22 you in your medical profession?
- 23 A More than a day.
- 24 Q Okay.
- 25 A As it pertains to this.

Dr. John Spalding - Cross-Examination by Mr. Williams

1 Q So --

2 A More than a few days in some of the cases.

3 Q What about in this particular case. More than one
4 day, how many days would you estimate that abuse?

5 A The evidence of examination of the soft tissue of
6 the buttocks shows that there was injury, repair, and
7 varying degrees of organization of the soft tissues.

8 Q Okay.

9 A Which that doesn't happen as part of livor mortis
10 either. You don't see the extravasation or basically the
11 leakage of blood cells into the soft tissue as part of
12 livor mortis or just blood settling. You don't see the
13 cellular components of fat necrosis and organization
14 occurring in the buttocks tissue that -- that would not
15 happen in livor mortis.

16 Q So how many days?

17 A Well, more than three. How old is this scar? A
18 scar once it reaches a certain point, a scar is a scar.

19 Q So the injury should have been more than three
20 days?

21 A There were injuries there that were more than three
22 days. Okay?

23 Q All right.

24 A That does not mean that there are not injuries
25 there that are less than three days. That does not mean

Dr. John Spalding - Cross-Examination by Mr. Williams

1 that there are injuries there that are less than a few
2 hours.

3 Q You remarked on the diaper which was with the body
4 and indicated that it had blood on it. Do you know whether
5 or not that item of clothing was with the infant -- I call
6 it an infant, the child when he was delivered to the
7 hospital or do you know if that child had another article
8 of clothing on him when he was delivered to the hospital?

9 A I don't recall that.

10 Q Is it important to you? Does it have any bearing?

11 A Not that I can think of.

12 Q Would you check your Lexington Medical report that
13 you've got there and tell me if it contains the article of
14 clothing that the child had on him when he actually arrived
15 at the emergency room.

16 A Is there a particular spot in here?

17 Q I think it's in the very first where the nurses
18 talk about what he's got on and that kind of thing?

19 A It would not be uncommon for them to undress a
20 child when he came there, so that would not -- I can't
21 think of any way that would affect anything that I've said.
22 If he were wearing pajamas --

23 Q Okay.

24 A -- or not when he arrived at the --

25 Q And it should. I'm not saying it should. Is it

Dr. John Spalding - Cross-Examination by Mr. Williams

1 unique to you if someone sent you an article that was found
2 in the trash can that was not actually found on the body
3 when it was sent to you to be examined or another area of
4 the house? I mean, if the child doesn't have it on when
5 you're supposed to be examining the body --

6 A Uh-huh.

7 Q -- and someone sends you a diaper that's got blood
8 on it, you're connecting the two together because you find
9 that area on the body -- correct?

10 A Uh-huh.

11 Q -- that is damaged?

12 A Right.

13 Q That's why you made the statement that you made?

14 A Yeah.

15 Q Was there any attempt on your behalf to verify and
16 it probably -- I don't know if it does or doesn't verify
17 that the actual damage on the buttocks was the damage that
18 we're looking at on the diaper? Same low scale,
19 approximate size?

20 A It would be consistent with.

21 Q Okay. But there was no effort to particularly look
22 at that and say well, this is about the same size, it would
23 be the same location as the problem on the buttocks. If it
24 would have been any of that, you look at that, there's
25 blood here, he's got -- he's got issues on his buttocks.

Dr. John Spalding - Cross-Examination by Mr. Williams

1 A Well, I didn't need -- certainly did not use the
2 presence or absence of the diaper with a bloody serous
3 drainage on it to tell me that he had a wound on his
4 buttocks region.

5 Q What does the fact that he had a bloody buttocks
6 with drainage --

7 A Uh-huh.

8 Q -- what effect in terms of time of injury does that
9 have? I mean, obviously, it's been there for a while,
10 right?

11 A Well, from the appearance of that one, my
12 professional opinion would be that that is the erosion or
13 that that skin slippage is a day at most.

14 Q Okay.

15 A It did not have a fibrinous exudative, purulent
16 surface that basically any erosion would start to develop
17 after that period of time.

18 Q You determined, did you not, that there was some
19 evidence of necrosis -- and perhaps -- or maybe you didn't.
20 Was there any evidence of any type of necrosis in any of
21 the organs?

22 A No.

23 Q Was there any evidence of necrosis anywhere on the
24 body?

25 A Soft tissues of the buttocks region.

Dr. John Spalding - Cross-Examination by Mr. Williams

1 Q And that is the only area?

2 A It's the only area that I recall.

3 Q I think I handed you your report -- did I hand you
4 your report?

5 A No, sir.

6 Q Can I see what I handed to you?

7 A Sure. It should be it right there.

8 Q Thank you.

9 Did you examine the Lexington Medical records for
10 any other hospital visit other than November 27th of 2013?

11 A I'm sure I did.

12 Q Did you examine the medical records for November 11
13 of 2013?

14 A I'm sure I did.

15 Q And what did you examine when you examined those
16 medical records on this child for November 11th of 2013.
17 What did you -- how did you use that in your determination?

18 A I don't believe that they had any relevance to the
19 postmortem examination.

20 Q Okay.

21 A I mean is there some -- I'd be glad to -- if there
22 were a specific item from that report you would like for me
23 to address, but I'm not -- I guess I'm not following the
24 line of questioning.

25 Q Well, were you familiar that there was actually an

Dr. John Spalding - Cross-Examination by Mr. Williams

1 x-ray that was taken on that occasion?

2 A I do recall that.

3 Q And do you recall why the x-ray was taken?

4 A Not off the top of my head.

5 Q All right. Well, you remember there was a large
6 bruise which was found on the body -- on the chest of the
7 child?

8 A Okay.

9 Q You recognize that as being something that existed?

10 A I'm not recalling that part of the history, no,
11 sir.

12 Q All right. What do you recall about the x-ray?

13 A Nothing pertinent or as it related to my findings
14 that I'm recalling now.

15 Q Okay. What is -- what is the purpose of an x-ray?

16 A Basically determine if there's been skeletal
17 injury.

18 Q All right. Broken bones?

19 A Yes.

20 Q And do you recall whether or not there was any
21 evidence of broken bones?

22 A I do not recall there being any x-ray that said
23 there were broken bones.

24 Q And are you familiar with the disease known as --
25 it's given initials, I believe, FES? Is there a symptom or

Dr. John Spalding - Cross-Examination by Mr. Williams

1 some sort of disease that has to do with embolism that may
2 cause a person, I guess, have fat get into the circulatory
3 system and cause a break down perhaps --

4 A It's usually associated with fractures or --

5 Q It's usually associated with fractures?

6 A Uh-huh.

7 Q So you are familiar with that term?

8 A Fat Emboli Syndrome.

9 Q Right.

10 A Yes.

11 Q All right. Did you consider that as a cause of
12 death for this child?

13 A He did not have a fracture, so I specifically did
14 not.

15 Q And were you to make that determination today,
16 since he didn't have a fracture, you would say he does not
17 suffer from that disease?

18 A Well, I believe there have been fat emboli that
19 have been demonstrated in the vessels of the lungs, so --

20 Q So the answer is --

21 A It certainly sounds like that it's a reasonable
22 finding.

23 Q Even though there are no evidence of fractures in
24 the body?

25 A There are articles which basically describe this

Dr. John Spalding - Redirect Examination by Ms. Mayes

1 occurring with soft tissue injury.

2 Q But you certainly didn't believe it when you
3 examined the body, did you?

4 A I have never made that diagnosis in someone that
5 did not have fractures.

6 Q And how long -- how many years have you been a
7 pathologist?

8 A Since I finished my training. Sixteen.

9 Q And you in your sixteen years have never made that
10 diagnosis without having fractures?

11 A That is correct.

12 MR. WILLIAMS: That's all the questions I have,
13 Your Honor.

14 THE COURT: Redirect, Solicitor?

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

16 **REDIRECT EXAMINATION**

17 BY MS. MAYES:

18 Q Now, just to clarify, Dr. Spalding, Mr. Williams
19 was asking you about the color that a body may appear after
20 it's sat in a particular position postmortem. How does one
21 go about identifying or distinguishing bruising and injury
22 to the body as opposed to the pooling of blood postmortem?

23 A Well, in this case, that was readily apparent on
24 the microscopic examination of the soft tissue samples
25 taken from the buttocks region which show the organization

Dr. John Spalding - Redirect Examination by Ms. Mayes

1 that I spoke of, basically the necrosis of the adipocytes
2 or fat cells and the reaction that happens as part of that
3 organization or resolving the cell death that occurs to
4 those. Those items aren't there and livor mortis are just
5 blood pooled.

6 Q Okay.

7 A And also iron deposition and iron is in the blood
8 cells and as those break down, organize and such, iron is
9 left in the tissue. We did stains that showed that there
10 were iron depositions in there as well.

11 Q Okay. Let me ask you, you used the term necrosis,
12 but for our benefit, what are you referring to?

13 A Basically cell death.

14 Q Okay. So by necrosis, you mean there is death of
15 these skin cells and underlying soft tissue?

16 A That's correct.

17 Q What causes the death of that area of tissue?

18 A Well, in this case, it is my opinion that it is
19 from traumatic injury.

20 Q And when I go about identifying the bruising,
21 microscopically in your testimony, in your report, that
22 your findings of injury were both chronic and acute?

23 A That's correct.

24 Q And your definition of acute was?

25 A Within 24 hours.

Dr. John Spalding - Redirect Examination by Ms. Mayes

1 Q So within 24 hours can you tell us whether any of
2 the bruising that you observed was within 24 hours?

3 A I would say that it is.

4 Q And finally, let me ask you about the question that
5 he posed to you about an ER doctor, the emergency room who
6 is trying to revive a patient who comes to him deceased.
7 Is that patient able to provide any symptoms that would
8 lead to a cause of death?

9 A No.

10 Q All right. So how does one go about obtaining
11 history, medical history, and symptoms to put on a medical
12 form such as that?

13 A It would have to come from someone else.

14 Q Family members, for example, can provide a history?

15 A Yes, yes.

16 Q It is the role of an emergency room doctor who is
17 attempting to resuscitate a patient, is it the role of that
18 doctor to determine cause of death?

19 A No.

20 Q In a case such as this involving a child fatality?

21 A No.

22 Q And regarding the diaper, the diaper that
23 accompanied the body, tell us how and what circumstances an
24 article of clothing would accompany a body. Let me just
25 ask you this: If SLED is at the crime scene and has seized

Dr. John Spalding - Redirect Examination by Ms. Mayes

1 a diaper from a trash can and taken it into evidence, is
2 that the diaper you're talking about or are you talking
3 about a different article?

4 A Well, in this particular case, there -- there was
5 no crime scene investigation occurring that I'm aware of at
6 the time the child was being picked up. It was being
7 treated as a sick child.

8 Q So that diaper would have been on the child when he
9 was brought into the hospital, correct?

10 A I would have to say that is probably the most
11 likely explanation, yes.

12 MS. MAYES: Nothing, further, Your Honor.

13 MR. WILLIAMS: Nothing on recross, Your Honor.

14 THE COURT: Thank you. Thank you very much for
15 being with us. You may step down.

16 Any objections to the doctor being excused?

17 MS. MAYES: None from the State, Your Honor.

18 MR. WILLIAMS: None from the defendant, Your Honor.

19 THE COURT: You are excused now, Doctor.

20 All right. Your next witness, Solicitor.

21 MS. MAYES: Yes, Your Honor. The State calls Dr.
22 James Fulcher.

23 (The bailiff approached the bench to have a
24 discussion with the Court.)

25 THE COURT: Did one of the jurors have a question?

1 THE FOREPERSON: They had said during the
2 recording --

3 THE COURT: I'm sorry, hold on one second. Hold on
4 just one second.

5 Besides this gentleman on the end, y'all step out
6 to the jury room, please. Do not take your notes; do not
7 discuss the case during this brief recess.

8 (The jury left the courtroom at 2:28 p.m.)

9 THE COURT: I want you to understand you haven't
10 done anything wrong whatsoever. I just wanted to ask you a
11 question. What's your juror number.

12 THE JUROR: 42.

13 THE COURT: All right. And what were you fixing to
14 advise the Court?

15 THE JUROR: That the SLED agent, I can't remember
16 her name.

17 AGENT BAIRD: Trista.

18 THE JUROR: Trista said in the recording that body
19 temperature drops one natural degree an hour after death.
20 And I wanted to confirm with the doctor if that was true.

21 THE COURT: You wanted what now?

22 THE JUROR: To confirm that with the doctor.

23 THE COURT: Well, that's very, very astute.
24 However, in South Carolina our law was not developed to the
25 point that jurors can ask questions. I'm not giving my

1 evaluation of whether that's right or wrong, but that's a
2 statement of the law in South Carolina. So either, you
3 have to rely on the evidence and the testimony that has
4 been presented by the witnesses testifying under oath and
5 if the question isn't answered by a particular witness, it
6 just isn't answered.

7 And then, it's always up to the jury to determine
8 the facts in the case and the credibility of the witnesses,
9 the believability of the witnesses for that matter. So I
10 can't answer the question, obviously. I can't comment on
11 the facts and as I say again, if it wasn't asked,
12 obviously, it wasn't answered and again, there's no
13 mechanism for the jurors to ask questions.

14 THE JUROR: All right.

15 THE COURT: And as I said to start with, I didn't
16 want you to think I was fussing you in any manner. The
17 sheriff had just brought it to my attention that you had
18 raised your hand and I didn't notice at the time, but I
19 just wanted to clarify whatever issue you had.

20 THE JUROR: Thank you.

21 THE COURT: So you ready to press on? Bring your
22 colleagues back out.

23 MR. WILLIAMS: Your Honor, may I have just a
24 minute -- half a minute.

25 (A brief recess was observed.)

Dr. James Fulcher - Direct Examination by Ms Mayes

1 (The jury entered the courtroom at 2:37 p.m.)

2 THE COURT: All right. Our jury is back in place.

3 Solicitor, you may call your next witness.

4 MS. MAYES: The State calls Dr. James Fulcher.

5 THE COURT: All right. Doctor, if you would just
6 come around and join us.

7 DR. JAMES FULCHER,

8 having been duly sworn, testified as follows:

9 THE CLERK: If you'll have a seat over here. State
10 your name, please and spell your last for the record.

11 THE WITNESS: My name is Dr. James William Fulcher,
12 F-U-L-C-H-E-R.

13 **DIRECT EXAMINATION**

14 BY MS. MAYES:

15 Q All right. Dr. Fulcher, good afternoon. Could you
16 tell us a little bit about yourself, where you are employed
17 and what your position is.

18 A I'm a forensic pathologist. I'm the medical
19 examiner for Greenville County, South Carolina. My partner
20 and I are one of two medical examiners, who are actually
21 appointed officials for that County. I'm a board certified
22 forensic pathologist and I do autopsies in cases like this
23 for a living.

24 Q And, Doctor, tell us a little bit about your
25 educational and background and training that led you to

Dr. James Fulcher - Direct Examination by Ms Mayes

1 become, not only a medical doctor, but a forensic
2 pathologist?

3 A Sure. I'm from Virginia, so I went to University
4 of Virginia for undergrad. The Medical College of Virginia
5 for medical school. I completed a four year residency in
6 Anatomic and Clinical Pathology. I then worked at the
7 chief medical examiner's office in Richmond, Virginia doing
8 a fellowship.

9 I sat for the boards for forensics, anatomic, and
10 clinical pathology and have been employed with Greenville
11 County in Pathology Associates for the past about seven and
12 a half years now.

13 Q All right. Forensic Pathology, tell us the little
14 bit about that specific field of pathology and how it
15 varies or differs from other types of pathology or surgical
16 pathology.

17 A Sure, forensic pathology is the specialization in
18 autopsy. Particular autopsies and homicides for someone
19 dying by violent means. We are a medical legal experts of
20 the pathology community. Whereas someone who's practicing
21 pathology in a hospital might do a few autopsies a year,
22 15, 20, I do 300 autopsies a year, so I'm constantly in the
23 morgue.

24 I'm constantly testifying and I'm constantly doing
25 autopsies on homicides, child abuse cases, traffic

Dr. James Fulcher - Direct Examination by Ms Mayes

1 accidents, drug overdoses, domestic violence, et cetera, et
2 cetera.

3 Q Is it possible for you to estimate how many
4 autopsies you've done throughout your career?

5 A Approximately 2,500.

6 Q Now, Dr. Fulcher, you mentioned that you remember
7 with the Greenville County Medical Examiner's Office. What
8 Counties do you serve in the State of South Carolina.

9 A We service Greenville County, Pickens County,
10 Laurens County and occasionally on contract, we serve as
11 Spartanburg, Oconee and Anderson County. The entire
12 Upstate basically.

13 Q And you mentioned experience as specific to
14 homicide cases and autopsies in homicide cases. Can you
15 tell us whether or not that includes a homicide caused by
16 child abuse?

17 A Yes, I've done many of those, probably 30 to 40 in
18 my career, at least.

19 Q Can you tell us whether or not you testified
20 previously in a state court regarding not only the field of
21 forensic pathology, but the cause of death?

22 A Yes, approximately 30, 40 times.

23 Q And have you testified previously in a court of
24 this state regarding manner of death?

25 A Yes, the same number of times.

Dr. James Fulcher - Voir Dire Examination by Mr. Williams

1 MS. MAYES: Your Honor, at this time, the State
2 would offer Dr. James Fulcher as an expert in the field of
3 Forensic Pathology.

4 MR. WILLIAMS: Can I ask a couple of questions,
5 Your Honor.

6 VOIR DIRE EXAMINATION

7 BY MR. WILLIAMS:

8 Q Doctor, you said that you had testified in a court
9 of this nature approximately 30 to 40 times?

10 A Approximately, yes, sir.

11 Q And would that testimony be in terms of a criminal
12 trial?

13 A Yes, sir. Most all of our cases are criminal
14 trials. To be honest, I've only done a handful of civil
15 trials, most of those settle.

16 Q So on those particular cases, would you have
17 testified on behalf of the State versus on behalf of the
18 defendant?

19 A So in my world, we don't have a dog in the fight.
20 I don't care who wins or loses, it's totally irrelevant to
21 me. As long as I represent forensic science and pathology
22 during my testimony, I've done my job.

23 Q So in answer to those questions, those 30 times
24 that you've testified in a court of this nature would be at
25 the request of the solicitor or at the request of someone

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 at the solicitor's office?

2 A Generally, that is correct. Although I often say
3 things that upset both parties. I tell the truth.

4 MR. WILLIAMS: I don't have any further questions.

5 THE COURT: Any further questions, Mr. Williams.

6 MR. WILLIAMS: I don't believe so.

7 THE COURT: All right. Tell me, Dr. James Fulcher,
8 forensic pathology; is that correct.

9 MS. MAYES: Correct.

10 THE COURT: Ladies and gentlemen, you've heard that
11 instruction numerous times throughout the trial of this
12 case, so this witness, Dr. James Fulcher is qualified as an
13 expert in the field of forensic pathology to give opinion
14 or opinions in that area. It is up to you, the jury to use
15 those opinions in any way you deem fit and appropriate.

16 Thank you, Solicitor. You may continue.

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

18 **DIRECT EXAMINATION CONTINUED**

19 BY MS. MAYES:

20 Q Now, having testified previously in homicide and
21 murder cases, that includes cause of death, correct?

22 A Yes, ma'am.

23 Q Can you tell us whether or not you had an
24 opportunity to examine the autopsy findings, the
25 microscopic tissue slides and other tissue samples related

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 to Minor

2 A I did. This was requested of me by the SLED
3 Officer Trista Baird. She and I had worked some cases
4 previously and she wanted me to take a look at this case.

5 Q All right. And when we talk about the State Law
6 Enforcement Division, specifically the child fatality
7 division, can you tell us whether it's common or uncommon
8 that they may consult with professionals such as the
9 Greenville County Medical Examiner's Office for assistance
10 in determining a cause of death.

11 A Absolutely. We get this from time to time, usually
12 from other counties, usually closer than this. This is
13 kind of a long way for us to come, but generally we are
14 consulted on those these challenging cases, yes.

15 Q Do you have an opinion to a reasonable degree of
16 medical certainty regarding the results of the autopsy
17 concerning Minor

18 A Yes, I do.

19 Q To a reasonable degree of medical certainty, do you
20 have an opinion regarding cause of death?

21 A I do, yes, ma'am.

22 Q Tell us what your finding are in that regard?

23 A When reviewing -- I'll just tell you the whole
24 story. Trista came to me, told me the case. I hadn't seen
25 anything. I hadn't seen a single photo, I just knew there

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 were severe contusions on the seat of his buttocks. The
2 child died. I went into my partner, the chief medical
3 examiner's office that day and said would you take the case
4 and he said, yeah, this sounds like a pretty easy win.
5 Those kids always die of fat embolism syndrome. It's just
6 what happened physiologically. And I got the slides,
7 looked at them, looked at the report; 30 seconds later we
8 had the diagnosis. I showed him, he confirmed it. I
9 actually did get raw tissue, actually six tissues pieces of
10 this child and I actually did special studies on those to
11 verify the fact that we found.

12 So what we find in fat embolism syndrome is times
13 when, particularly children, suffer severe trauma to the
14 soft tissue, the fat in their buttocks gets damaged and
15 those small globules of fat embolize or move through the
16 damaged blood vessels and everything's okay because they go
17 up through the big vessels, the inferior vena cava into the
18 heart and the vessels keep getting bigger.

19 So this little bubble of fat in the big vessel,
20 it's just cruising right along. It goes to the right side
21 of the heart. It then gets pumped towards the lungs. And
22 that's when very bad things happen because in the lungs,
23 the vessels start getting smaller again and all of a sudden
24 this little globule of fat starts plugging up the vascular
25 of the lungs. So these small bubbles of fat are plugging

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 up the lungs and obviously if your lungs aren't working,
2 you're not breathing, you're not exchanging gas, you'll die
3 from that.

4 So in microscopic examination of this child's
5 lungs, we have enumerable, too many to be counted
6 microscopic globules of fat blocking his blood vessels and
7 of course, that precludes breathing.

8 Q All right. And are there symptoms associated with
9 this event?

10 A Yes, generally people exhibiting Fat Embolism
11 Syndrome will rapidly decompensate. The clotted, and kind
12 of milieu of the fat and the blood, it comes out of the
13 soft tissue into the bloodstream, it's almost like a log
14 jam, so when a few parts go, it all kind of goes and we
15 have this rush of fat into the lungs; thereby causing
16 sudden onset, shortness of breath. The people are usually
17 unconscious within minutes.

18 Q All right. And having considered those factors,
19 the finding of the fat embolization into the blood stream
20 directly from the damaged soft tissue, to a reasonable
21 degree of medical certainty, do you have an opinion
22 concerning manner of death?

23 A I do. Given my examination of the decedent's
24 buttocks, including microscopic examination of the soft
25 tissue revealed both acute and chronic injuries. That's a

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 problem for an accident unless the kid accidentally fell
2 down the stairs 15, 20 times, you know, over the span of a
3 couple of hours. That, for a forensic pathologist in the
4 setting of a dead child is diagnostic of abuse. You do not
5 get chronicity with accidents. You don't accidentally have
6 these accidents, these severe injuries.

7 Q The manner of death -- your medical opinion to a
8 reasonable doubt degree of medical certainty is what?

9 A The manner of death -- because Mr. Swearington died
10 from Fat Embolization Syndrome, which is a direct result
11 from the trauma to his buttocks which was a direct result,
12 it was inflicted by another individual, the manner of death
13 is best coded as homicide.

14 Q Regarding time of death, Dr. Fulcher, what can you
15 tell us in general -- I'm going to start by asking you what
16 can you tell us in general about body temperature and
17 changes within body temperature postmortem?

18 A Predicting the cooling rate of the body is
19 difficult. It's not an exact science. The general rule of
20 thumb for an adult is approximately one degree per hour and
21 it slows down after the first few degrees. In a child, it
22 could be slightly quicker than that, it depends on whether
23 the child's wet, so there's a lot of factors there.

24 Q All right. And what can you tell us about the
25 onset of rigger mortis. What that is --

1 A Sure.

2 Q -- why it occurs.

3 A Rigor mortis is a change -- rigor mortis is a
4 change in the body that occurs when someone dies. Your
5 muscles have sliding fibers like a zipper that goes back
6 and forth. It's what allows you to move your arms, your
7 legs. When you die the energy falls off. There's no ATP,
8 if you remember your high school Biology and those muscle
9 fibers lock together but that energy has to be exhausted.
10 That locking occurs over a fairly uniform time. Usually
11 smaller muscles like your jaw are things that have rigor
12 occur quicker than bigger muscles.

13 Generally speaking the larger muscles, it can take
14 several hours, five to six hours to set it, wherein the
15 smaller muscles, it might be an hour to an hour and a half,
16 maybe two hours, tops.

17 Q All right. What about the jaw? Would those be
18 considered smaller muscles?

19 A Yes, the masseter muscle of the masseter muscle of
20 the jaw is considered small. If I came to a scene and
21 found that there was rigor in the body, I would say the
22 body was at least an hour and a half dead.

23 Q All right. And in this case, Dr. Fulcher, your
24 familiar with the medical history of the first responders,
25 such as EMS giving report of finding the fixed jaw. Can

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 you tell us whether or not that is consistent with this
2 child being deceased greater than an hour or one -- were
3 one and a half hours from the time of their arrival?

4 A That is correct.

5 Q Dr. Fulcher, you mentioned that you reviewed the
6 microscopic slides. Can you tell us whether or not that
7 included various locations of the body and a bruising to
8 the body and if so, how do you go about doing the
9 microscopic examination?

10 A Sure, the microscopic slides were taken by the
11 previous pathologist and I received those, including
12 additional wet tissue. I looked at the slides. The most
13 pertinent findings were in the lungs, of course, as I just
14 described to you. Additionally there were a few and I'm
15 going to read from my notes, a small focus of fat in the
16 kidneys and I was interested in finding fat in the brain,
17 but I did not find fat in other organs.

18 Presumably in this case, the immense blood of fat
19 to the lungs prohibited the heart being -- basically the
20 decedent died before fat got elsewhere. If that makes
21 sense. Obviously, if the heart stops beating, the fat's
22 not going to be pushed anywhere else.

23 Q Once the fat gets into the bloodstream and reaches
24 the lungs, it would have been fatal for this patient?

25 A Absolutely.

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 Q And specifically as to the areas of the buttocks,
2 I'm going to show you a photograph and ask you whether or
3 not you also had an opportunity to review photographs,
4 contemporaneous with this autopsy?

5 A True. This is a large collection of photos. Yes,
6 I reviewed these photographs from autopsy.

7 Q All right.

8 (Showing the pictures on the overhead.)

9 MS. MAYES: Your Honor, if I may approach the
10 witness?

11 THE COURT: Yes, ma'am.

12 BY MS. MAYES:

13 Q The photographs that I are reviewed here, can you
14 tell us whether or not they are consistent with the
15 photographs that you examined?

16 A They are the same photographs.

17 Q I'm going to show you what's State's Exhibit 44?

18 A Yes.

19 Q State's Exhibit 47.

20 A Yes.

21 Q 45.

22 A Yes.

23 Q Did you have an opportunity to review those areas
24 of body samples from those areas microscopically?

25 A I did.

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 Q All right. What, if anything, did that tell you
2 regarding the timing of that injury? Is it one injury or
3 more than one injury?

4 A These injuries are inflicted over hours. So
5 there's both acute and chronic injuries.

6 Q It occurred more than one time?

7 A Oh, absolutely. This didn't occur all at once.
8 This was multiple episodes.

9 Q Can you tell us whether or not such injuries are
10 consistent with a fall down the stairs?

11 A Well, if you fall ten or fifteen times down the
12 stairs, then sure, but honestly is almost always indicative
13 of abuse in a child.

14 Q All right. What, if anything, about the pattern of
15 injury is significant to you?

16 A Generally when we see abuse cases, we do have a
17 buttocks being significantly injured. I assume they've
18 seen these and that's a prime target for abuse cases.
19 There are few very telling pictures -- well, you haven't
20 showed me though.

21 Q I will begin now.

22 A Okay, that's fine. There's abrasions which,
23 whether -- they may not show any pattern that could be
24 compared to an object, they do imply that there was some
25 trauma to the child's pelvis. We can see an abrasion,

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 by -- really what you want to look at is the color here and
2 the variations in the color. These are indeed tissue
3 injuries that looking at the microscopic tissue go nearly
4 to skeletal muscle. I recognize it's easy to look at these
5 and think this is -- this is discipline. This is not
6 discipline.

7 Q How much force is required to produce the type of
8 injuries that you have observed.

9 A Generally we see contusions like that with grown
10 men who have beaten each other with baseball bats.

11 Q Let me show you what is State's Exhibit 47.

12 A Once again, you see the contusions. I am
13 particularly alarmed by the contusions on the lateral
14 aspect or the ulnar aspect. That's the bone of the
15 forearm. Forensic pathologists are well versed in
16 defensive injuries and it is always alarming to see
17 injuries to the lateral aspect of the hands, fingers, and
18 that forearm because these are what you generally use to
19 fend off the assault. Think of you putting your hand up
20 and the whip coming down on that outstretched arm.

21 Q And you mentioned that the examination and
22 diagnosis of defensive wounds is something you're trained
23 on in forensic pathology?

24 A Yes, it's something very important to see because
25 what it shows you is that the person was trying to defend

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 themselves. This was not something where they -- it was
2 not like they were asleep or comatose, they were actively
3 trying to defend themselves.

4 Q State's Exhibit Number 47.

5 A And once again, as far as textbook quality, these
6 are very good textbook injuries. Dark contusions, the
7 abrasion on the upper buttocks, I'm not sure what that's
8 from. It's probably from some object abating the skin. I
9 would have to speculate as to exactly what that object
10 might be.

11 Q When you say object, is there any indication that
12 the child was assaulted by some type of weapon?

13 A Generally speaking, the severity of soft tissue
14 injury occurs with some sort of instrument. It can be done
15 with the hands, but that requires a particularly violent
16 attack. There was one picture I reviewed where there was
17 some tram tracking. I can't remember which one that was.

18 Q (Showing the witness an exhibit.)

19 A Perfect. I would probably argue that this picture
20 might be the best for that. And there's actually a good
21 one on that one too. That guy right there, if we could
22 blow up that -- I don't know, they might be able to zoom in
23 on that. That arm.

24 Q You're referring to this area of the upper arm?

25 A Yes, you'll see there, there are two parallel

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 contusions and there's two possibilities, both of which
2 imply a cylindrical weapon. One of which their impacts,
3 two separate impacts that occur near the same time. The
4 other's a phenomenon called tran track and that's if you
5 take a cylindrical object and hit the human skin, they'll
6 actually be a depression when it sinks in and the more
7 significant bruising occurs at the areas of greatest
8 depression on the skin, which is the edges of that
9 depression. So you could match that injury to the weapon.
10 It's not ideal in this case, but it certainly -- to me, I
11 would more be suspect of some long cylindrical weapon.

12 Q Let me show you what are State's Exhibits 42 and
13 43.

14 A Okay.

15 Q What, if anything, does that -- the appearance of
16 that injury indicate as to it's freshness or acuteness?

17 A These are all fairly acute injuries on the arms.
18 Very impressively on 43 is very significant injuries to the
19 back of the hand. Injuries to the back of the hand is not
20 an absolute, but are usually when the decedent has already
21 been beaten significantly, is wounded and making a more
22 feeble attempt to defend themselves.

23 Oftentimes, in the beginning you might try an open
24 palm and eventually, you know, you're just taking the blows
25 on top of the hand. It doesn't always work that way, but

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 clearly significant with the defensive injury.

2 Q And State's Exhibit 43, State's Exhibit 42.

3 A Once again, lots of injuries all over the hands,
4 elbows, lateral and posterior. You know if you're going to
5 argue that they fell down the stairs, you've got the
6 bruise, both the top and the bottom of the hand at the same
7 time. Tough to do. And, you know, once again deep soft
8 tissue contusions, extending into the flank also, which
9 probably implies that as the assault occurred various soft
10 elements were exposed as the decedent was moving around and
11 a new target was selected by the assailant as the
12 opportunity became available.

13 Q All right. And finally, I'm going to show you a
14 photograph and ask you whether or not you identify it.

15 (State's Exhibit Number 79 was marked for
16 identification.)

17 BY MS. MAYES:

18 Q This will be State's 79.

19 A I do recognize this photo.

20 Q Who actually took this photo?

21 A This is my art work, very exciting.

22 Q All right. Is this a fair and accurate
23 representation of what you observed microscopically?

24 A This is, this is a micrograph, a photo micrograph
25 of what I actually saw under the microscope, this child's

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 lungs.

2 MS. MAYES: Your Honor, this would be State's
3 Exhibit 79 for evidence.

4 THE COURT: Mr. Williams?

5 MR. WILLIAMS: Without objection.

6 THE COURT: State's 79 in evidence without
7 objection.

8 (State's Exhibit Number 79 was entered into
9 evidence.)

10 BY MS. MAYES:

11 Q Okay. Microscopically, take us through what we're
12 looking at. You mentioned this is a slide from the lung?

13 A That's correct.

14 Q You also previously testified the lung is where you
15 observed the collection of the failed fatty embolism?

16 A That's correct.

17 This is throughout the lung. This is only one
18 picture of enumerable pictures I could have taken, like
19 thousands and thousands of pictures I could have taken, in
20 is just an example, but I wanted to show it to you because
21 it was one of the few areas that the vessels were actually
22 normal. These are nice happy normal vessels. They're
23 filled with blood. This blood vessel is partially filled
24 with blood, but then you've got these big white globs.
25 That's your fat.

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 This guy, as you can see, used to be a blood
2 vessel. So did this guy and this guy and this guy and this
3 guy and this guy and all of these little guys in here. And
4 guess what. They're filled with fat. And if there's fat
5 in there, guess what's not going through. Blood. So it's
6 simple plumbing really. It's like you're blocking all the
7 plumbing. No more blood flows through the lungs.

8 Q And specifically in this photograph, where are --
9 can you identify for us the fatty cells?

10 A Here, here, here, here, here, and areas -- there's
11 a very nice one. There again. All of these should be
12 totally red. This red color should be throughout this
13 diagram. There's still a few smaller ones that do have
14 some blood, but generally speaking, these are all your
15 failing incident or injury if you will.

16 Q The large white cells are, if fatty cells?

17 A Yeah. That's liberated fat from those cells,
18 absolutely.

19 Q Okay. And to a reasonable degree of medical
20 certainty, those fat cells originated from what part of the
21 body?

22 A Well, they always originate from trauma, so in that
23 case, its from the buttocks.

24 Q Now, was there also an injury to the pancreas?

25 A There was. These photographs indicated pancreatic

Dr. James Fulcher - Direct Examination Continued by Ms. Mayes

1 contusion. The pancreas is deep here and it just implies
2 that one of these blows compressed the body enough to
3 actually injure the internal organ.

4 Q Dr. Fulcher having examined the tissue samples
5 microscopically, do you have an opinion as to whether or
6 not these injuries were chronic, i.e. more than 24 hours?
7 Some of these injuries?

8 A Some of the skin findings are. I believe the fat
9 is fairly acute, but certainly the skin findings indicated
10 that there is a chronicity of abuse here.

11 Q And can you tell us whether or not your microscopic
12 examinations revealed that there are also acute injury --
13 there is acute injury to this child?

14 A There is, yes. Both are present.

15 Q All right. And by acute, what general time frame
16 or timeline can you give us in that regard?

17 A Probably minutes to an hour prior to demise.
18 Everything kind of stops more or less once you die for
19 these changes. So...

20 Q Look at this time as a whole, Dr. Fulcher, can you
21 take us through what the mechanism is that actually causes
22 that distribution of fat emboli into the bloodstream and
23 then what -- what is the event that causes that to occur?

24 A Sure. In this case, the trauma to the cells of the
25 fat -- so fat's alive, it's not dead tissue. It's very

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 much alive. And there's blood vessels that feed it and
2 when I know it's severely injured and those vessels are
3 damaged and the fat cells are damaged, that fat eventually
4 ends up in those blood vessels. We often don't see this
5 happening because it's a fairly rare occurrence because the
6 abuse has to be quite severe. It takes a lot of fat to
7 kill somebody. It takes a lot of damage to that fat and
8 normal punishments certainly don't cause that, or none of
9 us would probably be here.

10 Q So to clarify the traumatic event occurs, if fat is
11 disbursed into the bloodstream and your opinion is that the
12 onset would then be within minutes to an hour?

13 A Yes.

14 MS. MAYES: Nothing further, Your Honor.

15 MR. WILLIAMS: May it please the Court?

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

17 **CROSS-EXAMINATION**

18 BY MR. WILLIAMS:

19 Q Doctor --

20 A Yes, sir.

21 Q -- a slide that we looked at from the lung.

22 A Yeah. I do not know. I got a section of wet
23 tissue from a jar that the other forensic -- of the other
24 pathologist took and I do not know what section it came
25 from. Let me look -- I don't remember which slide I

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 grabbed to take the photograph. I don't know if he labels
2 his sections right and left lung. I don't see that there
3 labeled. He describes them, but he doesn't give a summary
4 section, so I can -- no, no wait a second. There it is.
5 No, no, wait a second. It is actually from the left lung.
6 I can't answer that question, I'm sorry.

7 Q And were you aware that there was actually signs of
8 pneumonia in the left lung?

9 A Yes, yes.

10 Q Your slide, does it indicate where the pneumonia is
11 in the left lung?

12 A It does not. I did not take a picture of that.

13 Q And I believe there was no designation of any
14 damage to the right lung whatsoever, was there?

15 A Let's see, he does not mention any damage grossly,
16 no, sir.

17 Q All right. So on your slide, you can show the fat
18 in the tissue out of the left lung which had pneumonia, but
19 you can't actually see the pneumonia or is it -- the
20 pneumonia is there?

21 A I just didn't take a picture of it.

22 Q How would you take a picture of the pneumonia?

23 A With a microscope.

24 Q And how would it appear if you did take a picture
25 of the pneumonia?

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 A Inflammatory cells present throughout the lung
2 tissue, filling the ovular spaces, which are the other
3 spaces.

4 Q So are you saying that if you had done this
5 microscopic slide a different way, we would have seen a lot
6 of red dots on it.

7 A We would have seen acute inflammatory cells,
8 lymphocytes, other cells. There actually would have been
9 more -- they would have been blue cells and then another --
10 I mean, we can put this picture back up if you want. There
11 would have been more blue cells in the spaces that aren't
12 filled with the red blood cells.

13 Q Are you saying I can use contrast to emphasize what
14 you want to see on the slides?

15 A Yes. I took this picture to best illustrate the
16 fat, yes, sir.

17 Q So if we had taken another slide of the lung which
18 had pneumonia in it, it would indicate what you wanted to
19 see, which would be the inflammation on the slide and the
20 lung, right?

21 A But it would still show fat.

22 Q And is there normally fat in various parts of the
23 body to lung, heart.

24 A Not in blood vessels.

25 Q All right. So, let me ask you then about -- you

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 gave a diagnosis, did you not?

2 A I did, sir.

3 Q And the diagnosis that you gave was FES?

4 A Yeah, Fat Embolization. Some people refer to it as
5 Fat Embolization Syndrome. Some people just leave it as
6 fat embolization.

7 Q And what is a general characteristic of FES in
8 terms of when the symptoms would occur after traumatic
9 injuries? Is there a standard?

10 A There is and it depends on the injury and it's
11 chronicity and when it occurs. Generally, Fat Embolization
12 is seen with long bone fractures, like if someone actually
13 breaks an arm and that marrow cavity is exposed. That can
14 be hours after the break, so it's a variable term. It can
15 be minutes. But usually it's longer than that.

16 Q Perhaps maybe normally one to three days? Would
17 that be an accurate statement as to --

18 A It certainly can occur days afterwards.
19 Absolutely, that's correct.

20 Q And would there be other symptoms that are normally
21 accompanying this type of diagnosis such as shortness of
22 breath?

23 A Yeah, you would get shortness of breath in a case
24 like this with fat embolization.

25 Q And what about the neurological problems, would

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 there be neurological problems that accompanied this?

2 A Generally speaking, yes. In this particular case,
3 my examination of the brain did not show significant fat
4 embolization. I'm not sure that -- I don't think that the
5 child lived long enough with the lung damage to really
6 exhibit good neuro changes consistent with fat
7 embolization.

8 Q And is there normally some sort of rash that
9 accompanies that or I -- or is the bruising that we see an
10 indication of what the literature would call a rash?

11 A The bruising is not. The bruising is unique to
12 the -- to the injury. The rash, which I've seen on other
13 cases is fairly subtle in people of color. It can be
14 changing without picking that up on the skin surface.

15 Q And would that be one of the major four symptoms
16 for the diagnosis of FES, the fact that someone had the
17 rash -- and they call it -- what is P-E-T-E-C-H-I-A-L?

18 A Petechial, those are small hemorrhages in the skin
19 surface. They do look like a rash to the naked eye.
20 They're for very difficult to interpret. Like I said,
21 particularly in someone with a darker skin tone. To be
22 honest with the pictures, I didn't obviously do an autopsy.
23 There could have been a slight rash here. I wouldn't want
24 to speculate had I not had the body in front of me.

25 Q And the fourth symptom which is normally reflective

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 of that disease would be anemia?

2 A It can be. Unfortunately in this case, we do not
3 do hemoglobins and hematocrits on decedents, so we'll never
4 know.

5 Q Are you familiar with -- or, let me ask you this:
6 Is there -- is there some sort of schedule that would
7 indicate when you would diagnose FES such as one major
8 symptom with four minor symptoms or two major symptoms
9 before you diagnose this?

10 A If you're a clinician, yes. But if you're a
11 pathologist and have the ability to yank the lungs out of
12 the body and actually see the positive agent, you don't
13 need to worry about symptoms at all.

14 Q So if you were -- if you were a clinician, if you
15 were a doctor working in a hospital, then you would expect
16 to see two major symptoms and four minor symptoms if you
17 were going to this diagnosis.

18 A If I was a clinician.

19 Q Okay. And did you review the medical reports of
20 the doctor on 11/27 of 2013 as well as the medical reports
21 of 11/11/13 from the Lexington Medical Center?

22 A Maybe, I'll look. 11/11/13. Yes, I do have that
23 in here.

24 Q And what is the importance of the report of
25 11/11/13?

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 A Let's see here. The decedent has nasal congestion,
2 vomiting, sleeping all the time, times 3 days. Mother says
3 that the decedent, or the patient at this time, has red
4 clots on eyes, which I guess you could argue are petechiae.
5 Patient is lying in stretcher asleep, awakens to gentle
6 stimulation. Says the lungs sound clear, abdomen soft,
7 nontender, there's a large bruise to the sternal area per
8 his mother that's been there a month or more.

9 Q And that is the mother that is providing the
10 history on that particular visit?

11 A It appears so, yes, sir.

12 Q And was there an x-ray taken?

13 A I would assume so. I'll have to review this.

14 It appears there is a skeletal survey, which at
15 this time is documented as no injuries or deformities to
16 the skeleton.

17 Q And what was the clinical data to the -- why was
18 the x-ray taken? What was the thought behind taking the
19 x-ray?

20 A Generally a skeletal survey is done to rule out
21 abuse. Physicians are obligated reporters and they need to
22 take child abuse seriously. And if they suspect something,
23 certainly they would want to examine the body carefully and
24 generally that does include a skeletal survey to make sure
25 there's no occult fractures, unknown fractures.

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 Q And it actually states that on the report?

2 A Oh, yeah. No fractures.

3 Q No, no, and that's the reason why they took it
4 also, it states that on the report?

5 A Yes, yes, it is. That is correct. That is by Dr.
6 Schwab.

7 Q Okay. So then again -- and I'm just going to ask
8 you -- I'm not going to ask you a question -- but you did
9 review the 11/27/2013 Lexington Medical report?

10 A I have it in front of me, sir.

11 Q Okay. Is there a connection between sickle cell
12 and FES?

13 A Well, there can be. But, you have to -- to make
14 that connection -- the answer to your question is yes,
15 there is.

16 Q Okay.

17 A But there's also a connection with trauma,
18 obviously.

19 Q And now, do you know whether or not -- let me ask
20 you about sickle cell.

21 A Sure.

22 Q Is that normally associated with Caucasian or black
23 individuals?

24 A The majority of sickle cell is caused by the -- a
25 mutation of the 6th codon of the beta chain of hemoglobin,

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 so it is almost exclusive African Americans. There's a
2 large populations in Africa that have it as well.

3 Q Do you know whether or not there was any indication
4 in the medical records that the child had any type of
5 association with sickle cell?

6 A I do not see that a workup for sickle cell was
7 performed. And I am not aware of any association, no, sir.

8 Q Can you say that it doesn't exist?

9 A I did not see sickle cells in the microscopic
10 slides, so it's possible, but unlikely.

11 Q What about calcium reduction. Is there normally a
12 calcium reduction when your dealing with FES?

13 A There can be, but once again in my records -- if
14 any blood -- if any labs were drawn, I do not see them
15 here?

16 Q So you didn't have any labs to compare the, I
17 guess, minerals, what you call calcium or minerals?

18 A Sure you can call it an electrolyte in the blood --
19 oh, wait, there's a calcium.

20 Q Okay.

21 A No, no, they didn't do that. They just did a small
22 basic metabolic panel, so it did not include calcium. What
23 I can tell you from the basic metabolic panel is largely
24 everything is appropriate. Nothing is really terribly out
25 of whack?

Dr. James Fulcher - Cross-Examination by Mr. Williams

1 Q And you never viewed the body itself, did you?

2 A I did not. I was brought as a consultant after the
3 fact.

4 Q And can you testify from a -- with any degree of
5 medical certainty as to when all of this trauma was
6 impacted upon this child?

7 A I can tell you that it occurred at various stages.
8 I can't tell you to the minute when it occurred, but I can
9 give you a range.

10 Q A range, please.

11 A A range, I would say given the microscopic changes
12 in the soft tissue of the buttocks, we're talking about
13 hours prior to death and up to maybe 18 to a day -- 18
14 hours to a day."

15 Q All right. And that would be the top layer of the
16 bruising versus the old, old injuries?

17 A There are deep and there are fresh and chronic
18 injuries in all stages, so I would not say that there's any
19 one level of the skin surface. That's acute and one is
20 chronic. There's kind of spread throughout.

21 Q Thank you.

22 THE COURT: Thank you, sir.

23 Thank you, Mr. Williams.

24 Solicitor?

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

Dr. James Fulcher - Redirect Examination by Ms. Mayes

REDIRECT EXAMINATION

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BY MS. MAYES:

Q Just to clarify, when you refer to a fresh injury, you're referring to what?

A The fresh injuries are the injuries to the buttocks and some to the arm.

Q And in a case where a child actually arrives at the hospital and then went onto autopsy with a diaper that had blood in it, what, if anything does that indicate regarding the freshness of the buttocks injuries?

A Likely that one of them was still actively bleeding. Probably the one with the scab that we saw at the upper portion of the buttocks.

Q So that I understand your testimony correctly, there are injuries of various stages?

A Yes.

Q Including minutes to an hour?

A Yes.

Q Hours?

A Hours, yeah.

Q And some possibly older than a day?

A There are a few older than a day, yes, ma'am.

Q Mr. Williams, was asking you about sickle cell -- are things of that nature normally -- if they exist would that be part of the child's medical history?

Dr. James Fulcher - Redirect Examination by Ms. Mayes

1 A You would hope so.

2 Q And are children screened for diseases such as
3 sickle cell at birth?

4 A They are.

5 Q So children who are born at hospitals are normally
6 and routinely screened for those type of genetic disorders.

7 A In this country, yes.

8 Q And you would expect to find if there were any such
9 type of disease undiagnosed, you would expect to find it
10 microscopically, correct?

11 A Certainly autopsy is very good at finding
12 undiagnosed diseases, yes.

13 Q And finally, what is the difference between your
14 ability to actually look at the body tissues such as the
15 lung microscopically as opposed to a patient who presents
16 in a hospital and doctors are evaluating only symptoms?

17 A Certainly. So symptoms are -- all you have when
18 you're treating the living. I mean there's -- I won't go
19 there. I'm know one's there. I don't -- treat anybody,
20 but I'm a fact finder. And the reason I'm a fact finder,
21 is I get to examine everything. The patient is dead, I get
22 to see everything. So it doesn't really matter what the
23 symptoms are, they're an irrelevancy. Because I'm pulling
24 the smoking gun out of the body and holding it up in the
25 morgue, look at this. It's there, it's real, it's

1 physically present, everything is irrelevant.

2 MS. MAYES: Nothing further.

3 MR. WILLIAMS: I have no questions on recross, Your
4 Honor.

5 THE COURT: Thank you, Mr. Williams.

6 Thank you very much, Dr. Fulcher.

7 Any objections to the doctor being excused?

8 MS. MAYES: None from the State, Your Honor.

9 MR. WILLIAMS: No objection from the defendant,
10 Your Honor.

11 THE COURT: You may step down.

12 All right. Ladies and gentlemen of the jury let's
13 take about a 15 minute recess. Please leave your notes.
14 Please do not discuss the case during this brief recess.
15 Thank you. Thank you very much.

16 (The jury left the courtroom at 3:24 p.m.)

17 (A brief recess was observed.)

18 THE COURT: All right. Anything from the State?

19 MS. MAYES: Your Honor, at this time --

20 THE COURT: If court would come to order, please.

21 MS. MAYES: At this time the State is prepared to
22 rest when the jury reenters.

23 THE COURT: All right. Any objections to me
24 hearing any motions at this time, Mr. Williams?

25 MR. WILLIAMS: No objections to that, Your Honor.

1 THE COURT: The State is going to rest. What
2 motions would you -- what motions would you have,
3 Mr. Williams.

4 MID-TRIAL MOTIONS

5 MR. WILLIAMS: Your Honor, essentially, I would
6 have two motions, obviously, there are two indictments and
7 the first motion would deal with the sufficiency of
8 evidence. We would move to dismiss. The evidence taken in
9 the light most favorably to the State is insufficient as a
10 matter of law for the jury to return a verdict on either
11 one of the two indictments that my client is charged with.

12 And interestingly enough, Your Honor, the second
13 motion deals with a dismissal based on the failure of the
14 State to present evidence that this offense occurred in
15 Lexington County, South Carolina.

16 THE COURT: Mr. Casey, Solicitor Casey -- Caskey,
17 I'm sorry -- I was thinking of Cayce, South Carolina --
18 asked Sergeant Tucker, I believe, was this residence in
19 Lexington County. Is this location in Lexington County
20 because I thought what a way do it ask an EMT instead of
21 bringing it out through an officer.

22 Is that -- is my memory correct on that, Solicitor?

23 MS. MAYES: It is, Your Honor.

24 MR. WILLIAMS: Well, obviously, I never heard it
25 for the next four days and all I kept hearing was the

1 street and I said why --

2 THE COURT: It was -- and the question was
3 similarly put like that, is this location in Lexington
4 County. Even given that there's that old case of -- I'm
5 going to say State versus Horne. They didn't put up
6 evidence -- it was in Georgetown County where the
7 Georgetown County ambulance responded, Georgetown County
8 sheriff's deputy responded, so you could prove it directly
9 or circumstantially. But I think he directly -- I think
10 that question was directly asked of either Sergeant Tucker
11 or Lieutenant Munn. I think Sergeant Tucker.

12 MR. WILLIAMS: All right, sir.

13 THE COURT: All right. So it's insufficiency of
14 the evidence?

15 MR. WILLIAMS: Yes, sir, that would be the major
16 motion, Your Honor.

17 THE COURT: All right. Hang on just a minute.

18 (There was a pause in the proceedings.)

19 THE COURT: I apologize, Mr. Williams.

20 All right. Solicitor, if you will respond to the
21 directed verdict motion.

22 MS. MAYES: Yes, sir, Your Honor, as to the charge
23 of homicide by child abuse, the elements are a -- the death
24 of a child under the age of 11; that it occurred during the
25 commission or while committing a child abuse or neglect and

1 under circumstances manifesting in extreme indifference to
2 human life, whether by act or omission. The statute goes
3 on to define child abuse or neglect as harm to the child's
4 physical health or welfare and that can include physical
5 abuse, medical neglect and allowing another to inflict
6 injury, all of those are defined under that statute for
7 homicide by child abuse.

8 Here we have provided medical evidence to support
9 that the defendant was the sole person with the child at
10 the onset of symptoms and there has been testimony about
11 the time frame in that regard.

12 There's also been testimony that the defendant by
13 all accounts, would have been the only caregiver for the
14 child between the time period of 6:01 a.m. and the arrival
15 of EMS at 9:42 a.m.

16 THE COURT: All right. Mr. Williams, any response
17 to that?

18 MR. WILLIAMS: Nothing further, Your Honor.

19 THE COURT: Thank you.

20 MS. MAYES: As to the second charge, Your Honor,
21 the aiding and abetting, the State's feels in this case
22 that the jury could ultimately elect between these two
23 charges and that again is that whether there's any evidence
24 that he did knowingly aid and abet another person, being
25 Sabrina Haynes, to commit child abuse or neglect and it's

1 defined under the same statute, which would be infliction
2 of physical abuse, allowing another to inflict abuse and/or
3 neglect whether by act of omission. And here there is
4 testimony that the defendant would have knowingly been
5 aware of the child's condition and failed to seek help.
6 Whether the child was injured by his own actions or the
7 actions of another.

8 THE COURT: Is it the State's theory that the
9 injury occurred between 1 a.m. and sometime prior to 9:30
10 a.m.

11 MS. MAYES: Your Honor, the State's theory is that
12 the fatal injury happened minutes to hour -- minutes to an
13 hour from the time of death and that that would have
14 occurred during the onset of symptoms, which is between
15 6:01 a.m. and 9:30 a.m. when the child was alone in the
16 defendant's care. I believe his own statement referenced
17 that time period of being between 7:30 and 8 a.m. in his
18 written statement when he began giving the child a bath.

19 Now, we certainly could see that the child had
20 injuries that were sustained prior to that time period as
21 well.

22 THE COURT: Right. So the State, understanding
23 that there may have been injuries that occurred prior to
24 that time frame, then is it the State's theory that the
25 injury or injuries that led to the fatal injury occurred

1 between -- and even backing it up to 5:30 in the morning.
2 Because some of the testimony of when Ms. Haynes left to go
3 work, it would be between 5:30 in the morning and 9:30,
4 backing up minutes to hour before 9:30; is that correct.

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

6 THE COURT: Tell me, then -- tell me then,
7 Solicitor, or enlighten me, if that's the fatal time frame
8 so to speak, how -- how can it be aiding and abetting if --
9 if -- I mean he can't aid and abet himself. He couldn't
10 conspire with himself.

11 MS. MAYES: That is correct, Your Honor, from the
12 State's -- from the State's theory; however, there is some
13 evidence on the record that was brought out by Mr. Williams
14 to suggest that the injuries could be older than minutes to
15 an hour. I believe that was testimony brought out by his
16 questioning and the responses from Dr. Spaulding that if
17 the injuries could be hours or up to 24 hours then the
18 jury -- there would be some evidence in the light most
19 favorable to the State to suggest to the jury that he may
20 have aided and abetted another person who was committing
21 the injuries to the child.

22 THE COURT: Well, then if you take the
23 uncontradicted testimony in the record on the timeline,
24 Mr. Hopkins was at work when -- 5 o'clock?

25 MR. WILLIAMS: (Mr. Williams nodded his head.)

1 THE COURT: Five o'clock in the afternoon on the
2 26th, so that would get you to -- that would back you up --
3 let me think about twelve, twelve and a half hours now,
4 Aunt Priscilla said that that night before when he laid up
5 on her shoulder -- well, she didn't notice his hands -- I
6 didn't notice it; acted like he didn't feel well. All the
7 testimony is there's no testimony of any -- anybody hearing
8 any sounds that day or the night beforehand. Priscilla
9 said something about I heard some fussing one time and I
10 think she heard it between -- yeah, loud noises between
11 Ms. Haynes and Minor

12 I'm trying to clarify in my mind where is the
13 evidence of aiding and abetting. He said he -- through the
14 audio tape, he has said, you know, she might would pop him
15 or something like that, but -- I'm -- I'm trying to see --
16 I'm trying to get my mind where the two intersect, I guess
17 is somewhat my struggle and it may be my lack of clarity on
18 the evidence and, of course, that timeline on the injuries
19 are fluid, but I can't -- I don't know how I can assume
20 they were in each other's presence.

21 They were clearly in each other's presence in
22 points of time between the 11th of November and the 27th of
23 November, but there's really no testimony --

24 MS. MAYES: Yes, sir, Your Honor. I believe there
25 would be evidence on the record in the light most favorable

1 to the State that if they believed Mr. Williams theory that
2 someone else inflicted the injuries, arguably Sabrina
3 Haynes sometime before 5:30 and Mr. Hopkins was unaware of
4 that, there is still evidence on the record that he saw the
5 child unclothed, would have seen the child's injuries,
6 failed to act, and then failed to call 9-1-1 for medical
7 aid; which is also identified under the statute under the
8 health-care provision that he failed to take any of that
9 action until after the child was already deceased and in
10 rigor mortis, which would, in effect, be aiding and
11 abetting the actions of Sabrina Haynes; arguably in an
12 effort to conceal the child's abuse.

13 There's also testimony that the child was fully
14 dressed and had been fully dressed -- and had been fully
15 dressed once EMS arrives, although certainly at that point
16 his life is in danger and that act of dressing the child,
17 arguably is an act to conceal the child's abuse, so
18 therefore, his knowledge of these injuries was the factor
19 that prevented him from seeking help as he should have.

20 THE COURT: Well, couldn't it just have easily been
21 accessory after the fact as opposed to aider and abetter.
22 I can't --

23 MS. MAYES: This is a unique statute because it
24 does account for aiding and abetting as opposed to our
25 standard accessory after the fact, which we would

1 ordinarily use, but in how the statute is constructed, it
2 has all of the same elements except that he's knowingly
3 aiding and abetting another person. His statement, which
4 is in the record, is that he did not inflict the injuries
5 and he did not believe that she was being -- that the child
6 was being abused, but there is circumstantial evidence to
7 the contrary and we know that Sabrina Haynes is in the
8 timeline with access to the child between -- actually the
9 entire 24 hour period beforehand up until when she leaves
10 to work at approximately 5:30. And Mr. Williams did elicit
11 some testimony from Dr. Spalding that ultimately some of
12 the injuries, including arguably a fatal injury could have
13 occurred up to 24 hours beforehand.

14 I'll also add that had the defendant -- in evidence
15 the defendant also provided the explanation for the child's
16 history or findings as the fact that he fell down the
17 stairs and also offered that he witnessed that event the
18 night before while in the presence of the child and Sabrina
19 Haynes. The State has presented evidence that that is a
20 false history or certainly an inconsistent history to
21 explain the injuries which would also indicate that he is
22 to some degree aiding and abetting the concealment of the
23 child's abuse.

24 Finally, Your Honor, I would say that there's
25 always the possibility that the jury can completely

1 discount one witness's testimony while accepting the
2 testimony of another witness. So if the jury chose to
3 discount the testimony of Dr. Fulcher, they would be left
4 to consider the testimony of Dr. Spalding that the injuries
5 are somewhere within -- the most fresh injuries are
6 somewhere within 24 hours and they may still believe that
7 the child died as a result of the fatty embolism syndrome
8 but discount Dr. Fulcher's testimony regarding the actual
9 timeline of that event.

10 If they choose to believe that it happened by the
11 hand of Sabrina Haynes prior to her leaving at 5:30, the
12 defendant -- there's still ample evidence that the
13 defendant would have aided and abetted and concealed that
14 abuse which led to the child's death. The State's position
15 is that this would be a matter for the jury to elect
16 between the two charges, not that the jury could
17 necessarily find the defendant guilty of both charges.

18 THE COURT: Do what now?

19 MS. MAYES: The State's position is that the jury
20 would ultimately elect between these two charges --

21 THE COURT: I think there are cases they're found
22 guilty of both. You know -- I mean, I -- I don't know if
23 it's Smith or Fletcher, but I think there are homicide by
24 child abuse cases that they -- and aiding and abetting that
25 they found them guilty of both.

1 MS. MAYES: I think under the facts of this case,
2 Your Honor, an instruction to elect would be proper just
3 because of the unique facts of this case where Ms. Haynes
4 is absent from the child's care in the final -- what we
5 believe is the final four hours of the child's life.

6 THE COURT: All right. As a -- the -- you both
7 pointed out -- it's been pointed out as far as the directed
8 verdict motions that the Court must view the evidence in
9 the light most favorable to the State and if there is any
10 direct evidence or any substantial circumstantial evidence
11 reasonably tending to prove the guilt of the accused, the
12 case must properly be submitted to the jury.

13 In such a motion, the trial court is concerned with
14 the existence of the evidence, not at the weight. If the
15 State presents any evidence which reasonably tends to prove
16 this defendant's guilt or from which his guilt could be
17 fairly and logically viewed, this trial court must send the
18 case to the jury. The trial judge should grant a directed
19 verdict when the evidence merely raises a suspicion that
20 the accused is guilty. Suspicion implies a belief or
21 opinion as to guilt based on facts and circumstances do not
22 amount to proof.

23 The trial judge is not required to find that the
24 evidence and inferred guilt to the exclusion of any other
25 reasonable hypothesis. And I'm citing, actually, from 743

1 SE 124, a case on the charge of aiding and abetting under
2 the same statute as to one of the indictments in this case.

3 On the homicide by child abuse, it is -- there is
4 evidence that the defendant was at the home in the presence
5 of the victim. The evidence at this point is after he got
6 home from work and about 1 a.m. on the 27th, that he and
7 Sabrina were in the presence of the victim. There was
8 various facts put in the record concerning that
9 interaction. At least until 5:30 in the morning, no one
10 else except Mr. Hopkins and Ms. Haynes were in the presence
11 of the victim. After 5:30 a.m., I think the timeline was
12 that Ms. Wilhelmina Haynes was in the bedroom -- and
13 there's certainly an inference that she may have been
14 immobile and/or not competent.

15 Ms. -- Aunt Priscilla had already left for work an
16 hour earlier, so you had Mr. Hopkins at the home in the
17 presence of the victim and the only statement in the record
18 that the mother harmed the child in any manner was on the
19 audio tape as I recall of Mr. Hopkins's statement to Agent
20 Baird and Captain Bice on the same date that he was
21 arrested he got harmed and his -- paraphrasing his
22 terminology during that tape was -- she might pop him or
23 pop him on the leg or something of that nature.

24 There are obviously inconsistencies of the
25 defendant's steps, certain events took and there's, the way

1 in which they occurred, I guess I'd say from what in my
2 mind are given the totality there's no doubt in my mind
3 that the child was alive after Sabrina Haynes had left for
4 work.

5 Then looking at the interactions and tracking the.
6 phone timelines of -- I think there's: Aunt Priscilla
7 comes home and I believe the testimony is that Mr. Hopkins
8 had already called his mother but -- Aunt Priscilla comes
9 home, he doesn't say anything to her or alert her to the
10 condition of **Minor** at that time.

11 When I look at -- observe the number of injuries
12 and the severity of the injuries and the various stages of
13 healing and some of them not even beginning to heal and the
14 location to have injuries. I then look at who was the
15 victim with during that time frame that he received those
16 injuries. The cause of death, the manner of death, there's
17 no question that this was a homicide by child abuse.

18 I think there is direct and circumstantial evidence
19 as to the indictment for homicide by child abuse and will
20 deny the directed verdict motion.

21 I've read a couple of articles -- I want to read a
22 little bit further on the aiding an abetting this evening.
23 I'll take that under advisement.

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

25 THE COURT: I need a study it a little bit more.

1 All right. Would you have your client come around,
2 please, Mr. Williams.

3 Madam Clerk, would you please swear the defendant.

4 JOSHUA WARREN HOPKINS,
5 after being duly sworn, testified as follows:

6 THE COURT: Do you have one of the indictments at
7 least, Madam Clerk?

8 (The clerk handed the indictments up to the Court.)

9 **QUESTIONING OF THE DEFENDANT BY THE COURT**

10 THE COURT: Mr. Hopkins, I have to go over some
11 things with you. I do this with everyone on trial and I
12 require their responses to be under oath. That's why I had
13 you sworn. You understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Tell me your full name, please.

16 THE DEFENDANT: Joshua Warren Hopkins.

17 THE COURT: How old are you Mr. Hopkins?

18 THE DEFENDANT: 29, sir.

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

20 THE DEFENDANT: 11th grade.

21 THE COURT: We have reached the stage of the trial
22 where the State has rested and your side, the defense, now
23 has the opportunity to present evidence or testimony for
24 the jury to consider. Do you understand where we're at in
25 this trial?

1 THE DEFENDANT: Yes, Your Honor, I do.

2 THE COURT: In that regard, you may call witnesses
3 to testify on your behalf and if you choose to testify
4 yourself, you may do so, do you understand?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: No one can force you to testify. You
7 have an absolute right to remain silent. And if you choose
8 not to testify, I will tell the jury that they cannot hold
9 your silence against you in any way. I will tell them that
10 they are not to even discuss that in the jury room. Do you
11 understand?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: If your side offers no evidence at all,
14 in other words, if neither you nor anyone on your behalf
15 testifies or offers any exhibits, then Mr. Williams, your
16 attorney, will get to make the last argument to the jury
17 after the prosecutor has made her argument -- he or she has
18 made their arguments. Otherwise the prosecutor gets to
19 make the last argument. Do you understand?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Mr. Williams, Solicitor, does
22 Mr. Hopkins have any record that would subject to
23 impeachment under Rule 609.

24 MS. MAYES: Yes, Your Honor, he has multiple
25 convictions from magistrate's court, but the only two that

1 would be impeachable under 609 involved convictions for
2 shoplifting and breach of trust with fraudulent intent
3 which relate to acts of dishonesty.

4 THE COURT: You agree with that, Mr. Williams?

5 MR. WILLIAMS: I do, Your Honor.

6 THE COURT: And what that means, Mr. Hopkins, if
7 you were to testify, the law would allow prosecutors to ask
8 you in front of the jury about whether or not you have been
9 convicted of certain offenses in the past, that being
10 shoplifting and breach of trust with fraudulent intent.
11 They cannot go into the details of the prior offenses, but
12 they can ask you if you have been convicted of those
13 offenses. If that happens, I would tell the jury that they
14 can only consider that evidence against you, if they
15 consider it against you at all, on the issue of whether or
16 not your testimony is believable and for no other purpose.
17 Do you understand?

18 THE DEFENDANT: Yes, sir, Your Honor. I got a
19 question about that.

20 THE COURT: Yes, sir?

21 THE DEFENDANT: If that question's asked about that
22 charge, can I give an answer to the charges?

23 THE COURT: You want to answer that for him
24 Mr. Williams?

25 (The defendant conferred with his attorney.)

1 THE COURT: My cursory answer would be no, you
2 cannot because they can't ask you any details about what
3 happened; and therefore, you couldn't -- you couldn't
4 respond to that.

5 THE DEFENDANT: See the reason I was asking for
6 that is going towards my character that's what I'm saying.

7 MR. WILLIAMS: But if you don't plan on
8 testifying --

9 THE DEFENDANT: Right, I understand that part.

10 MR. WILLIAMS: -- that's not a deciding factor of
11 whether you testify or don't testify.

12 THE DEFENDANT: Right. I understand.

13 THE COURT: The decision about whether you testify
14 or not is your decision to make and yours alone. I expect
15 that you have conferred with your attorney and others whose
16 opinions you value on life's important decisions, but the
17 decisions about whether you testify or not is your call to
18 make, your decision. Do you understand?

19 THE DEFENDANT: Yes, sir, Your Honor.

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

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: Today are you under the influence of
25 any drugs, alcohol, medication or anything that negatively

1 affects your thinking ability?

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: Do you suffer from any physical or
4 mental problems that affect your thinking today.

5 THE DEFENDANT: No, sir.

6 THE COURT: Whatever decision you have made about
7 whether to testify or not to testify, is it your decision
8 made of your own free will and accord.

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Do you have any questions you want to
11 ask me about your right to testify or not testify.

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Do you need anymore time to talk with
14 your attorney about your right to testify or not testify?

15 THE DEFENDANT: No, sir, Your Honor.

16 THE COURT: Have you made your decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what is your decision then?

19 THE DEFENDANT: I do not.

20 THE COURT: All right. Thank you. Thank you very
21 much. You may return.

22 I find that Mr. Hopkins has had an opportunity to
23 talk with his attorney and I make the finding that the
24 decision of the defendant to not testify is his own
25 decision he made freely, knowingly and voluntarily.

1 All right. I'll bring the jury out. Solicitor,
2 you can rest. I'll say something like, thank you,
3 Solicitor, motions noted for the record. I'll say
4 something to the jury and then I'll recognize you,
5 Mr. Williams and you can rest.

6 (The jury entered the courtroom at 4:26 p.m.)

7 THE BAILIFF: All present, Your Honor.

8 THE COURT: Thank you, thank you very much.

9 All right. I apologize for the delay, ladies and
10 gentlemen. I had a matter to take up outside of your
11 presence. But we're back.

12 Solicitor, you may call your next witness.

13 MS. MAYES: Your Honor, at this time, the State
14 will rest.

15 THE COURT: Thank you, thank you very much.

16 Motions are noted for the record, Mr. Williams.
17 Consistent with my rulings.

18 Mr. Foreman, ladies and gentlemen of the jury, the
19 State has rested. You have heard all the evidence and all
20 the testimony you're going to hear in the trial of the case
21 from the State in its case in chief. The defendant now has
22 the opportunity to present any evidence or testimony if the
23 defendant, Mr. Hopkins, chooses to do so.

24 As you recall, in my opening remarks I told you
25 and it is the law that a criminal defendant, regardless of

1 the seriousness of the offenses that may be charged, is
2 always presumed to be innocent. A criminal defendant has
3 no burden of proof, has no burden to prove himself or
4 herself innocent. The burden of proof is on the State to
5 prove guilt beyond a reasonable doubt and always remains on
6 the State.

7 I recognize Mr. Williams and ask if the defendant
8 intends to present any evidence or testimony.

9 Mr. Williams?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: Does the defense intend to present any
12 evidence or testimony?

13 MR. WILLIAMS: We do not. We're prepared to argue.

14 THE COURT: All right. So the defense rests?

15 MR. WILLIAMS: We do, Your Honor.

16 THE COURT: All right. Thank you very much.

17 You have now heard all of the evidence, all of the
18 testimony you're going to hear in the trial of this case.
19 We're at the point in the trial time-wise,
20 administratively, where the attorneys now get to present
21 their closing arguments to you. The procedure we follow in
22 that, in a case such as this, the State, the solicitors
23 will close first on behalf of the State, being the party
24 bearing the proof. And thereafter followed by
25 Mr. Williams, the attorney for Mr. Hopkins. Thereafter

1 followed by my instructions to you, the case would then be
2 submitted to you for your deliberations.

3 That process can take several hours. With that
4 being said, I'm going recess court for the day, start back
5 at nine o'clock in the morning. Please remember my
6 instructions to you. Do not talk about the case to anyone.
7 That includes your fellow jurors, family, friends, anyone
8 else. Do not read, watch, listen to any news reports about
9 the case should there be any.

10 Do not do any independent investigation or any
11 investigation on the internet or otherwise in regards to
12 the case. Remember you decide the case based on the
13 evidence and the testimony presented to you in this
14 courtroom from the sworn witnesses testifying under oath
15 and any physical items of evidence that may be introduced,
16 any inferences you as the jury may properly be drawn, and
17 the law as I tell you the law is.

18 So I'm going excuse you for the remainder of the
19 day and ask you to please be back promptly at nine o'clock
20 in the morning. I know y'all just think, you know, that
21 judge doesn't know what promptly means and all, but I do.
22 And I appreciate y'all's focus and attention.

23 With that being said, please be back promptly at
24 nine o'clock in the morning.

25 Please leave your notes, they will be secured by

1 the clerk's office.

2 Thank you. Thank you very much, I hope y'all have
3 a very pleasant evening.

4 (The jury left the courtroom at 4:30 p.m.)

5 THE COURT: All right. Anything further from the
6 State?

7 MS. MAYES: Nothing at this time, Your Honor, other
8 than we will go ahead and submit our request for charge.
9 One is the probable cause charge and I believe Ms. Griggs
10 by is making a copy of that for the Court and for
11 Mr. Williams.

12 In addition, the State would request a charge as to
13 direct and circumstantial evidence.

14 THE COURT: Yes, ma'am.

15 MS. MAYES: And the statute itself, Your Honor -- I
16 apologize.

17 MR. WILLIAMS: Go ahead.

18 MS. MAYES: The statute itself has the definitions
19 for child abuse or neglect and harm to a child's welfare
20 and we would ask that all definitions applicable.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: Your Honor, I don't have any
23 specific items except maybe there should be a
24 lesser-included, conceivably about unlawful conduct towards
25 a child. That's what he was originally charged with.

1 THE COURT: I do not think it is. I think there
2 are different elements there.

3 Solicitor, do you have a position on that?

4 MS. MAYES: Yes, sir, Your Honor, it is not
5 lesser-included offense. The elements are different and
6 different standards of proof are required for the unlawful
7 conduct toward a child, including the requirement that we
8 prove a relationship that he must be personally responsible
9 for the child's care or welfare.

10 And under the homicide by child abuse statute,
11 there is no such provision. It can apply to anyone, a
12 daycare provider, a babysitter, even arguably a stranger.
13 And we believe there is case law on that as well. Which I
14 will get for the Court in the morning.

15 THE COURT: Be that as it may I don't think
16 unlawful conduct towards a child is a lesser included.

17 Anything else, Mr. Williams?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: I'll get my charge and I'll look at it
20 this evening. Just bring it up to my office.

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

22 THE COURT: Thank y'all very much. See you at nine
23 in the morning.

24 MS. MAYES: Thank you, Your Honor.

25 MR. WILLIAMS: Thank you, Your Honor.

1 (Court was in recess for the day.)

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3 THE COURT: All right. As to the matter under
4 advisement on the homicide and the aiding and abetting
5 hearing, I'm going to deny the motion for a directed
6 verdict. I think that the testimony is such that, at least
7 for a significant amount of time it puts the injuries, the
8 child abuse injuries were inflicted that lead to the fat
9 embolism that led to the death of a child, that the
10 defendant and the codefendant were present together, just
11 those two in the presence of this child, **Minor**
12 **[REDACTED]**; that those injuries were such, if inflicted by
13 the codefendant, the defendant should have been aware of
14 those injuries.

15 In fact, there is some testimony in the record that
16 the defendant changed the diapers and saw some blood in the
17 diaper and there's evidence in the record that he assisted
18 the child in getting undressed, or not getting undressed,
19 at least, putting him in a bathtub in a condition to where
20 he was unclothed and should have seen those injuries very
21 apparent on the child.

22 Thereafter, he -- the overt act would have been,
23 which is required under the aiding and abetting theory, in
24 State versus Palmer and State versus Lewis and the various
25 definitions: Child abuse means any act or omission by any

1 person which causes harm to a child's physical health and
2 welfare. Part of knowingly aid and abet another to commit
3 child abuse and negligent and the child abuse or neglect
4 results in the death of a child under the age of 11, under
5 (B)2 child abuse means -- excuse me 2(b) child abuse means
6 failing to supply the child, among other things, healthcare
7 and the failure to do so causes a physical injury or a
8 condition resulting in death. The defendant's statement in
9 the record alleges that the child was wheezing, not feeling
10 well, but breathing. And of course, the defendant's
11 statement has the child breathing upon the arrival of and
12 after the arrival of EMS.

13 That, therefore, is failure to do so -- given
14 the -- even if you look at the EMS testimony of rigor --
15 the infant being rigored in the child's neck area and being
16 unable to track him that there was a delay or a failure to
17 call 9-1-1. I also think it's significant, the timing of
18 the telephone calls appearing that it's an hour and some
19 change before he called 9-1-1, when made contact with the
20 codefendant at her job and that delayed reporting to 9-1-1.

21 All right. And Mr. Williams, you wanted to put
22 other motions on the record?

23 MR. WILLIAMS: I did, Your Honor. In that we have
24 rested our case, normally at the end of the defendant's
25 case, there would be a reconsideration of the motion for

1 directed verdict based on a different standard and that
2 would be based on the entire evidence that's in the record.
3 We would renew those motions, dealing with the evidence
4 that was presented, whether or not it was sufficient for a
5 jury to find the defendant guilty of the charges in which
6 he is charged with.

7 And I recall -- and I think we had discussed this
8 in chambers. I called the Court's attention -- you
9 indicated that you've already read this, State versus
10 Palmer, which is a case which deals with the sufficiency of
11 evidence. It's a 2015 -- it was heard by -- in 2015, I
12 think. I've got the appellate court's number which is
13 2014-001-008.

14 THE COURT: All right. And it's -- of course,
15 there's a Westlaw number now because I think it's been
16 partially reversed by the --

17 MR. WILLIAMS: But it would be State versus Robert
18 Palmer and State versus Julia Gorham that further dealt
19 with it. I just want that in the record.

20 THE COURT: All right. Yes, sir. I have those.

21 MR. WILLIAMS: That would be it, Your Honor.

22 THE COURT: Thank you.

23 MR. WILLIAMS: Thank you, Your Honor.

24 THE COURT: Anything before we bring in our jury?

25 MR. WILLIAMS: There is one last matter. Your

1 Honor, in regards to the charges, is there anything in your
2 charge about mere presence.

3 THE COURT: I can charge that language out of
4 Lewis, I think. I was not going to charge the hand of one
5 is the hand of all.

6 MR. WILLIAMS: I understand.

7 THE COURT: And that's generally where that
8 language comes from. But when I looked at Lewis, Lewis has
9 under accomplice liability theory -- and this is a
10 homicide -- aiding and abetting homicide by child abuse
11 case. A person must personally commit the crime or be
12 present at the scene of a crime and intentionally or
13 through a common design aid and abet and assist in the
14 commission of the crime through some overt act. In order
15 to be guilty as an aider or abetter, the participant must
16 be charged with the knowledge of the principal's criminal
17 conduct.

18 Prior knowledge that a crime is going be committed
19 without more is not sufficient to make a person guilty of a
20 crime. Mere presence at the scene is not sufficient to
21 establish guilt as an aider and abetter. However, presence
22 at the scene of a crime by prearrangement to aid, encourage
23 or abet in the preparation of the crime constitutes guilt
24 as a principal.

25 That's the language out of State versus Lewis that

1 had been -- cert having been denied by the Supreme Court on
2 a charge of aiding and abetting homicide by child abuse.

3 MR. WILLIAMS: All right, sir.

4 THE COURT: All right.

5 MS. MAYES: Judge, I just need a minute to set
6 things up.

7 THE COURT: Yes, ma'am.

8 (There was a pause in the proceedings.)

9 THE COURT: Ready, Solicitor?

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

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Yes, sir.

13 (The jury entered the courtroom at 9:48 a.m.)

14 THE BAILIFF: All present, Your Honor.

15 THE COURT: Thank you. Thank you, Mr. Bailiff.

16 Good morning, ladies and gentlemen. I apologize
17 for the delay. I assure you that it was not caused by the
18 parties whatsoever. They were not on time, they were
19 early. I had certain legal motions that I had to resolve
20 before we begin the closing arguments.

21 As I told you yesterday, the flow of the closing
22 arguments, closing argument will be presented on behalf of
23 the State first by one of the solicitors; thereafter
24 followed by a closing argument by Mr. Williams on behalf of
25 his client, Mr. Hopkins. After the closing arguments, I

1 will then instruct you or charge you on the law that is
2 applicable to this case. It will then be submitted to you
3 for your deliberations. I would ask you to -- as you've
4 done throughout the trial of the case, please give the
5 attorneys your complete and undivided attention. They can
6 argue the facts, the inferences to be drawn from the facts
7 and how those facts and inferences to be drawn apply to the
8 law that I will thereafter charge you.

9 Of course, you are the judges of the facts. You
10 will determine what the facts are in the case, apply those
11 facts to the law as I tell you the law is and reach those
12 true verdicts.

13 I remind those individuals in the courtroom, in the
14 gallery, that I do not allow movement in and out of the
15 courtroom while the attorneys are addressing the jury. You
16 may certainly leave between the solicitor's -- the
17 conclusion of the solicitor's closing argument and before
18 Mr. Williams begin s; or at the end of Mr. Williams's
19 closing arguments and before I begin charging the jury.

20 Depending on the timing of the closing arguments,
21 we may take a break after the closings and before my
22 instructions to you. We'll just see what the time is.
23 Again if at any time any of you needs to take a break, just
24 please raise your hand and we will do so.

25 All right. With that being said, Solicitor.

1 MS. MAYES: May it please the Court?

2 THE COURT: Yes, ma'am.

3 CLOSING ARGUMENTS

4 MS. MAYES: One of the most difficult things in
5 life is to accept things that you cannot change. And in
6 this case we can't change what happened to **Minor** What makes
7 it even more difficult is to accept humanity at its worse.
8 We've had to do that this week in this courtroom. Because
9 as the facts are laid there, it is undeniable that he was
10 beaten and battered.

11 (Playing the 9-1-1 call for the jury.)

12 MS. MAYES: And there you hear the complete apathy
13 in his voice. As he's telling that 9-1-1 operator that my
14 son just got out of the tub and I'm not really sure what's
15 going on, he's not responding. What we know unequivocally
16 from the testimony of those two EMS workers and that
17 firefighter, he was already dead and he'd been dead, and he
18 absolutely knew it.

19 He says in his statements that as this child is
20 gasping to take his final breath, he doesn't call 9-1-1,
21 what he does is he takes the time to put clothes on this
22 dying child. Not just clothes (showing an exhibit) from
23 the neck all the way down to bottom of the feet. Even his
24 feet are covered. Every single inch of this child is
25 covered in clothing. He puts a diaper on him. Anything he

1 can do at this point to conceal these injuries. He's
2 willing to do this because he's more concerned about saving
3 his own skin than saving this child.

4 Imagine, if you would, finding even a stranger's
5 child in distress, desperate to breathe, wheezing, gasping
6 for air. What would anyone do in that situation? Anyone
7 with a heart? Anyone would call 9-1-1, anyone would seek
8 help. But not Joshua Hopkins.

9 We know he makes multiple calls before he ever
10 calls 9-1-1. There's even a statement -- he says he goes
11 downstairs to get a banana to try and feed this dying child
12 a banana. He talks about moving his mouth because the
13 child can't move his mouth. And he's frantic for how long
14 trying to figure out how he's going to cover all this up.
15 Because he knows exactly what happened in that bathroom.

16 And this has been lie on top of lie on top of lie
17 on top of lie for how long? How long have these bruises
18 been covered up? Not only by him. We know full well
19 Sabrina Haynes knows what's going on in this case. Any
20 mother knows exactly what's been going on. So we know how
21 that timeline works.

22 At one o'clock in the morning, he's back home. One
23 o'clock in the morning Sabrina Haynes and he are together
24 with **Minor** The last night of **Minor's** life. You hear this big
25 elaborate story about that final night. He comes home from

1 work. He and Sabrina decide they're going to go downstairs
2 to get something to eat and oh, by the way, [Minor] falls down
3 the stairs. And so he and Sabrina change [Minor's] diaper and
4 [Minor's] bleeding. We know that's yet another lie to cover up
5 what's been going on. He knows full well why that child is
6 bleeding and it has nothing to do with the stairs. He
7 never fell down the stairs.

8 And he's been vomiting for how long without medical
9 care. How long? This child has full medical coverage:
10 Free pediatric visits, free ER visits, anything he needs.
11 All you've got to do is take him there. He won't take him
12 there because any doctor that looks at the child knows
13 exactly what's going on. It's all about saving himself.
14 And, of course, he's vomiting. How many days has he been
15 beaten to a pulp at this point?

16 With red on top of purple on top of black and blue;
17 and there's green. How many days? How many hours has he
18 been beaten? What's this all about? Potty training. And
19 that final timeline, 5:30 a.m. to 9:30 a.m., I submit he's
20 already been beaten that night after 1 a.m. He and Sabrina
21 Haynes know exactly what's going on. With that final
22 event, 5:30 to 9:30 a.m., Sabrina goes off to work. She
23 clocks in at 6:01.

24 According to his written statement, it's between
25 seven and eight, he decides he's got to give [Minor] a bath

1 because in his words, he peed his diaper. Why would he
2 need a bath for that? How many kids pee in their diaper?
3 You change the diaper and go back to bed.

4 This has always been an issue with him. So he
5 decides that this time he's going to get [Minor] up, he's going
6 to put him in the bath. We don't know if he ever got in
7 that bath or not. Something happened in that bathroom that
8 ended [Minor's] life.

9 That final event that Dr. Fulcher talked about,
10 that final traumatic event that led to [Minor's] demise within
11 minutes to an hour. The final blow that sent the fat, the
12 already breaking down fat from his buttocks area into his
13 bloodstream. In that bathroom he's wheezing, gasping for
14 air -- that goes on for how long? How long that morning
15 until he takes that final breath? If he ever put him the
16 tub at all, it was long before EMS got there. EMS gets
17 there, he's fully dressed, he's dry. His hair is dry,
18 there's no sign of water. The defendant's dry too.

19 We talk about all the different pointing of
20 corroboration in this case, corroboration this was homicide
21 by child abuse which occurred at the hands of this
22 defendant. What we know, there was a significant delay in
23 the 9-1-1 call. We know that 9-1-1 was called at 9:30.
24 EMS gets there within 12 minutes. By 9:42, there's already
25 rigor set in in the jaw, a stiff jaw that they can't even

1 open to do the intubation, observed by the firefighter.

2 By the time he gets to the hospital, there were
3 never any signs of life by EMS or by Dr. Platte. They did
4 everything possible to save his life, even knowing they
5 were dealing with a deceased child. Everything possible.
6 And after all those attempts by Dr. Platte to resuscitate
7 him, nothing worked. Dr. Platte pronounces him dead at
8 10:30 a.m.

9 We know his body temperature was already 89 degrees
10 Farenheit at 10:20. And you heard the testimony from every
11 physician in this case, Dr. Platte, Dr. Fulcher, and Dr.
12 Spalding. That drop in body temperature indicates he'd
13 long been dead. Greater than an hour and a half in time.
14 We know he was dry. And we know by the time that 9-1-1
15 call was made, we heard nothing but complete apathy in his
16 voice.

17 You heard the testimony from Firefighter Farley who
18 talked about the desperate attempts EMS is making in the
19 back of that ambulance after they managed to intubate him
20 and get an airway going, trying to pump some oxygen into
21 him. And as they're desperately working in the back of
22 that ambulance, Sabrina Haynes is sit in the front of the
23 ambulance and the defendant comes over to her and asks for
24 a cigarette. The very definition of apathy.

25 We know that once the child is undressed at the

1 hospital and Dr. Platte gets a chance to look at him, he's
2 covered in bruises. We know this defendant not only bathed
3 and changed him, but was potty training him. He talks
4 about that in the audio statement that you heard yesterday.
5 He says he's the one what teaches him to pee in the toilet.

6 How many times has he seen these bruises? How many
7 times has he seen [Minor] undressed? I submit to you it's
8 every single day. Every single day. We know the night
9 before he's the one that along with Sabrina Haynes changes
10 the diaper; the bloody diaper. We know he's got actively
11 bleeding wounds. You heard the testimony yesterday from
12 Dr. Spalding, the body arrived to him with yet another
13 bloody diaper.

14 So even his last diaper had blood in it. That's an
15 acute, fresh injury. If he ever gave him a bath at all,
16 he's still bleeding after that bath. That's because it had
17 just happened. Minutes to an hour. He was only with one
18 person in that time frame. Minutes to an hour from his
19 demise, he was only with that man.

20 Time and time and time and time again, he's given
21 an opportunity to tell us what really happened, explain
22 what really happened. And he gives the same explanation
23 over and over again: He fell down the stairs. The oldest
24 excuse in the world in a child abuse case. Other than
25 maybe he fell off his bike. [Minor's] too little to drive a

1 bike, so that leaves the stairs. That's the best he can
2 come up with.

3 Over and over and over again, he's not being
4 abused. I know he's not being abused. He's not being
5 abused. That's a straight-out lie. And now we're looking
6 at all of his attempts to conceal that abuse. Look at the
7 testimony of Priscilla Haynes. Priscilla Haynes, she
8 didn't really want them to come stay with her. That was
9 obvious from her testimony. She let Sabrina Haynes come
10 stay with her because Sabrina Haynes had Minor

11 She didn't want Minor to be without a home. So she
12 allows them to stay with her those final weeks. She's not
13 trying to protect anybody in this case. She said straight
14 up, she's heard Sabrina Haynes -- she's heard Sabrina
15 Haynes upstairs with Minor She knows something's happened.
16 It wasn't this day or the day before. She's not protecting
17 Sabrina Haynes.

18 And that final night she held Minor in her arms. How
19 exhausted by life he must have been at that point. Has
20 that child known a day of love or caring? He puts his arms
21 up to her neck. He didn't have those injuries on him.

22 This swelling to the hand, that hadn't happened
23 yet. How fresh was this? The redness there and that nick
24 of skin? Little piece of skin would fall right off. By
25 the next day, we're in the tub. This is as fresh as it

1 gets. This happened that morning in the final minutes to
2 an hour in [Minor]'s life.

3 Priscilla Haynes also told you that during the
4 night she didn't hear anything. She certainly didn't hear
5 a fall from the stairs. She's gone by 4:30. She opens
6 that restaurant that she cooks at. She's gone by 4:30 and
7 by 5:30, Sabrina Haynes was gone. And then Priscilla
8 Haynes comes back to the house that morning to check on her
9 mother. She gets there and the defendant's on the phone.
10 Where's [Minor] We know he's already dead now. What does he
11 say to her about [Minor] So you have a child who desperately
12 needed help or is dead. He doesn't say a word. He just
13 tells her to go get Sabrina. Does that make any sense at
14 all? No.

15 Again, this is all about covering up now. It's not
16 about helping [Minor] He knows full well that if Priscilla
17 Haynes walked through that door and saw [Minor] the situation
18 is now out of his hands and out of his control. It makes
19 no sense whatsoever.

20 So we know he sends Priscilla Haynes away, doesn't
21 even tell her anything is going on with [Minor] He says he's
22 already called 9-1-1, who knows if that's true or not. Who
23 knows in this time frame whether he had actually called
24 9-1-1 at that time or did he call 9-1-1 because he knew now
25 that he was going to have to make the decision. Priscilla

1 Haynes gone to get Sabrina, she's going to be coming back.
2 He's got to get some clothes on that child and get EMS
3 there and stage this whole scene. And then finally, as I
4 mentioned, we know by the time EMS gets there, he's covered
5 in those clothes.

6 These are not the actions of anyone other than
7 abuser. This is classic child abuse. There's no other
8 explanation for **Minor's** death.

9 The judge will charge you on the law momentarily
10 and before you is the charge of homicide by child abuse.
11 Homicide by child abuse is not murder. This is not a
12 murder case. This is a different kind of case than murder.
13 Murder is the kind of crime that requires malice
14 aforethought. Malice meaning ill will, hostility, some
15 intent to kill another. None of that's required in the
16 homicide by child abuse law.

17 This is about extreme indifference to human life.
18 That's the element here: Extreme indifference to human
19 life. That's the very essence of this case. A person is
20 guilty of homicide by child abuse if a person causes the
21 death of a child under the age of 11 while committing child
22 abuse or neglect. We know **Minor's** under 11. We know he was
23 the victim of child abuse or neglect.

24 And finally that the death occurs under
25 circumstances manifesting an extreme indifference to human

1 life. Everything about Minor everything about Minor is the
2 very definition of indifference when it comes to his
3 parents. There was no empathy in his voice when he spoke
4 of putting Minor in the tub and whether or not he would have
5 been in pain.

6 You heard Captain Bice asking him, all those
7 bruises on him, you saw them. Yeah, I saw them when he was
8 in the tub. Yeah, I saw him when I was dressing him that
9 morning. We knew he saw those bruises and knew they were
10 there.

11 But beyond that, even when he's confronted with the
12 fact that it would have been painful for a two-year-old to
13 endure those kinds of injuries, he offers up, well
14 everybody, everybody takes pain different. What type of
15 justification is that? There's no empathy. At this point,
16 he's talking about a child that he called his son.

17 Extreme indifference to human life.

18 Now, when we talk about the actual definitions as
19 the judge will charge you on momentarily, child abuse or
20 neglect means an act or omission by any person which causes
21 harm to the child's physical health or welfare. So let's
22 talk about that for a moment.

23 Child abuse can be an act or an omission, the
24 failure to act. Here we know he's done both. It can be
25 one or the other. But here, I submit, he's not only

1 harming the child, he's also failing to do anything to
2 provide aid for this child. The time frame for this
3 indictment is two weeks. Two weeks that [Minor] is eligible
4 for free medical coverage, any time, any where. But he's
5 doing nothing to intervene and nothing to provide medical
6 care for him. Even as he lays dying.

7 Harm to a child's health or welfare occurs when a
8 person inflicts or allows to be inflicted physical injury,
9 including injuries sustained as a result of corporal
10 punishment. Or fails to supply the child with adequate
11 food, clothing, shelter or healthcare and the failure to do
12 so causes a physical injury or condition resulting in
13 death.

14 So let's take a look at this: Did he cause harm to
15 [Minor] Absolutely, under this statute, whether you believe
16 he inflicted the injuries, he allowed them to be inflicted
17 by Sabrina Haynes or he failed to supply healthcare and the
18 failure to do so resulted in physical injury or the
19 condition resulting in death.

20 Well, we know [Minor] was being chronically abused, I
21 submit by this defendant. And if you believe he's abused
22 only at the hands of Sabrina Haynes, including the final
23 abuse that morning, he's with Sabrina Haynes from 1 a.m.
24 until she leaves for work, he'd be allowing the abuse to be
25 inflicted. And then significantly and separately, the

1 complete failure, act, or omission to provide healthcare
2 which ultimately results in his death.

3 As I said earlier, if you found a child even a
4 stranger's child in distress, anybody would call 9-1-1,
5 anybody to seek help. He doesn't do it until [Minor] is in
6 rigor mortis. Proof beyond a reasonable doubt of homicide
7 by child abuse.

8 The judge will also charge you on a separate count
9 which is aiding and abetting homicide by child abuse and I
10 submit that that charge is applicable only if you
11 believe -- only if you believe that Sabrina Haynes
12 inflicted these injuries and he was an aider and abetter.

13 But as we just took a look at the law, under
14 virtually every provision of homicide by child abuse, it
15 applies directly to this defendant: Inflicting the
16 injuries, allowing the injuries to be inflicted, after
17 1 a.m., or failure to provide healthcare resulting in his
18 death. That's fatal neglect. And as I said before, the
19 real motive here is to save his own skin.

20 If this was just about Sabrina Haynes doing
21 something, he would have long ago thrown her under the bus,
22 I submit. He would have thrown her under the bus that
23 morning because this is a child he calls his son, who lays
24 dying at that point, forget Sabrina Haynes. His only
25 priority at that point would be to save [Minor] This isn't

1 about him covering up for Sabrina Haynes, it's about him
2 covering up for himself and his own actions. He had every
3 responsibility, every duty, and every reason to protect his
4 son's life and he refused to do so.

5 And there's only one reason, only one explanation
6 for that, he did it. There's undeniable proof here of not
7 just recent abuse but chronic abuse, ongoing abuse, abuse
8 that happens over the course of hours and then those final
9 minutes, those final minutes in the bathroom. It is
10 inconceivable for a crime of this nature to happen anywhere
11 in this country but near Lexington County, it can't be
12 tolerated.

13 Let this be the last time that a child dies under
14 these circumstances, this be the last time that a child
15 dies in his care. This must be the last time. It is too
16 late to save **Minor** but it's not too late for Lexington.
17 It's never too late. The undeniable truth and proof in
18 this case is that he beat that child repeatedly until that
19 final event that morning and he tried so desperately to
20 cover up, as **Minor** tried so desperately to fight for his own
21 life.

22 You'll see those pictures and you heard that
23 testimony from both doctors about those defensive wounds on
24 his hands. This child wanted to live. He deserved to live
25 and he deserves justice.

1 The correct verdict in this case is guilty of
2 homicide by child abuse. Thank you.

3 THE COURT: Thank you, thank you, Solicitor.
4 Mr. Williams.

5 MR. WILLIAMS: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. WILLIAMS: I know y'all are tired. I am. I do
8 want to thank you for sitting through one of the most -- I
9 don't know, emotional, convoluted, stressful trials that we
10 normally have because this is as bad as it gets. I mean,
11 if you've never been on a jury, then you would like to have
12 a little bit to break into something if you get a chance so
13 that you can develop some sort of background or some sort
14 of line if you will. But you hit it right at the top. You
15 got the worse kind of thing to try because it touches upon
16 all of your emotions.

17 I always like to go back to what I normally say in
18 opening a little bit because I had an idea before the case
19 began what the case was going to be all about. Because
20 obviously, I knew that Sabrina Haynes was already indicted
21 and charged with the same thing. You can't help but look
22 at this case and glean through some of the facts and some
23 of the testimony and determine that obviously, she is
24 obviously a suspect in the death of this child.

25 And I always -- if you've ever been on a jury in

1 front of me, I always make the comment that I thought about
2 what I was going to say in closing argument when I was in
3 the shower this morning because I always do. I've been
4 doing this for 40 years and I always think of it. I don't
5 know if it's -- I guess water wakes you up and gives you
6 some idea about what the deal it.

7 This morning it was about -- about 4:30 this
8 morning, I was up early. And I don't know why it took me
9 so long to think about it because -- I don't know, I've
10 lived it 65 years. Should have been right on the top of my
11 head. Should have been something that should have been
12 obvious to me.

13 And that is, no child deserves to die. You're
14 saying, why is that defense lawyer saying that. Doesn't he
15 understand that by saying that, he's helping the other
16 side. It's not. No child deserves to die and any time you
17 have a child -- when you have a child, you give birth to a
18 child, you are the one who is responsible for that child
19 and if you can't take care of that child, then you need to
20 give that child up to someone to adopt. Obviously the
21 reason I know that so well is because I was adopted.

22 I've known it all my life. And when I talked about
23 my mother, you heard me say my mother died, I wasn't
24 talking about my natural mother, I was talking about my
25 adoptive mother. That's what -- that's what Sabrina should

1 have done when she gave birth to this child almost three
2 years ago. You learned a little something about this
3 child, went from pillar to post. Stayed here, stayed
4 there. She had had two guys who had fathered children with
5 her. **Minor's** father had actually broken in the door, had to
6 get him arrested for that.

7 Had one child that was taken away from her. That
8 child -- that child was -- this is what's really bad is
9 that that child was destined not to have some kind of good
10 future unless somebody stepped in; unless somebody came in
11 there and tried to change the events that were going on in
12 this child's life.

13 Well -- so that's where you get the difference
14 between criminal guilt for a criminal charge and
15 responsibility. I know. It's hard isn't it? It's hard.
16 Because when this case started, this was a criminal case,
17 we've got to find somebody guilty -- somebody guilty for
18 the death of that child. So we pick him. We pick Joshua
19 Hopkins over here. He's the last one there. It's like hot
20 potato, it's like musical chairs, he's the last one there.
21 Boyfriend.

22 And you've heard a lot of things in argument and I
23 would remind you that when two lawyers get up here and
24 start talking about facts, we don't know the facts of the
25 case. The only people who know the facts in a trial are

1 the twelve jurors that listen to the evidence, determine
2 the truthfulness of the evidence and determine what the
3 facts are in the case. So that particular case, whatever
4 spin is placed on the trial, it's not the facts of the
5 case.

6 Now, we can point fingers at a lot of people.
7 There are a lot -- and agencies, when it comes to who's
8 responsible -- maybe not criminally, but who could have
9 made a difference in **Minor's** life. Maybe DSS could have made
10 a difference. Maybe. If they'd actually gone out to the
11 house, checked on that child, maybe they could have made a
12 difference.

13 Maybe the doctor that examined him on November 11,
14 2013, he did what he thought was enough by doing the x-rays
15 to prove that the child was not suffering, didn't have
16 anything that would substantiate in his mind that there had
17 been child abuse going on. I mean, he did what he thought
18 he should do. What's interesting about that is that it was
19 the mother that brought the child into the hospital.

20 You remember the testimony about where Mr. Hopkins
21 was. He was in Winnsboro with his parents. But we've got
22 to find somebody and convict them of killing this child.
23 And you know, what? If we can't convict Joshua Hopkins for
24 killing that child, you know what we can do? Aiding and
25 abetting. He knew about it. He helped her. He did that.

1 And we've prove that, if you believe this testimony, by the
2 mere fact that the child has bruises. That's their story.
3 That's their story.

4 Well, if we're going to do that, who else could we
5 convict on that? I made a list of people. How about the
6 babysitter. Remember the babysitter who reported,
7 supposedly in the testimony about some kind of problems
8 with child abuse? We already got Joshua in there, we've
9 not Sabrina in there. We already talked about DSS and the
10 doctor.

11 How about Priscilla? Let's pick her out.
12 Priscilla held the child the day before. Didn't see
13 anything wrong with the child's hands. No, said the child
14 was very sick. You don't think Priscilla did anything
15 wrong do you? Because she's not the one that did that to
16 that child.

17 But she's just as guilty as Joshua Hopkins is. And
18 what we do is, you know, the solicitor would have you
19 believe that this is a slam dunk case, that all you have do
20 is look at these terrible pictures. You'll have them all
21 back there. Because part of these terrible pictures, you
22 know, it gets in your mind. You look at these terrible
23 things and say, well he must have done it.

24 You know if it was that apparent when it happened
25 November 27th of 2013, why did it take until April of 2014

1 to arrest anybody? And when you arrest them in April of
2 2014, you don't even charge them with the homicide until a
3 year later. Until September of 2015.

4 Now, there's a process which essentially a person
5 gets charged with something, gets arrested, then he gets
6 indicted and it goes for trial here for you to try his
7 case. Doesn't mean he's guilty in any of these stages, it
8 just mean there's a process by which that happens. He was
9 actually indicted for aiding and abetting last month.
10 Somebody's got to be convicted for the death of this child.
11 Well, let's go through just some of the facts that have
12 come out.

13 And we can start, I guess, with -- and you'll have
14 to excuse me for looking at some of my notes, but it's --
15 y'all made notes too. There's a lot of stuff going on
16 here. I got up this morning and tried to remember what
17 happened and I said oh, my gosh. You start trying to
18 figure out there. I'm glad y'all got a chance to use our
19 notes, even though, obviously, you don't get a chance to
20 really use those notes as much as you would like to, it
21 helps you keep some of the stuff in the back of your head.

22 You get Nikki Rogers who testifies. Essentially,
23 she's the 9-1-1 person. A lot of people were put up to
24 give you a little spin on the charge. The 9-1-1 person was
25 put up so that they could play the tape so that you could

1 here the voice of Joshua Hopkins so that you would think he
2 must be some cold, cold person. And then, you know, he
3 kept going away to hear the clicks on the phone. He must
4 have had something more important do.

5 Well, then we learn, that, you know, when you call
6 9-1-1, that if somebody else is calling in, you can't grab
7 them, particularly if you've called his mama. Because
8 remember, he's not the father of the child. Maybe he would
9 like to be. But he's not the father of the child. He's
10 not the father of the child. He didn't bring that child
11 into this world. Sure didn't adopt him.

12 But anyway, he's trying to get the mama, talking to
13 the mama, trying to get her, let her know what's going on.
14 And that's indifference?

15 Sergeant Tucker -- and if you really wanted to know
16 about that, why didn't you just introduce the CAD sheet?
17 Why didn't you just bring the person who actually took the
18 phone call in here? The person who was working 9-1-1.

19 We have Sergeant Tucker who comes in there and, you
20 know, it seems to me that I must be living on a different
21 plain, because I'm picking up that everybody should know
22 that this child is dead. We all should have known.
23 Everybody should have known. He should have known. He
24 must be an idiot, should have known.

25 Sergeant Tucker didn't know the child was dead.

1 That's the EMT guy who comes down there. Doesn't his --
2 his testimony is that he saw no evidence of trauma. Why
3 didn't he see his hands? Why wasn't there something about
4 his hands that would indicate he saw trauma? I mean lets
5 just point the finger at everybody because that's about as
6 much sense as it makes.

7 And the interesting thing is that he was asked by
8 the solicitor if he could pronounce death and he said yes.
9 That may not have been the answer that was expected, but he
10 said I am capable of pronouncing death. What's interesting
11 about his testimony is that he said that he came to the
12 door and then we learn that there was actually another
13 driver who drove the vehicle up there.

14 You remember him saying something about Diehl who
15 was the guy who actually drove the vehicle up there and I
16 indicated it wasn't right to the place, but he was out on
17 the road and Hopkins came out and tried to get him up.
18 Well, they didn't put him up.

19 Let's talk about Lieutenant Donde Munn, the
20 supervisor. Essentially his testimony was it took more
21 effort than he thought to bend his neck. But again, he
22 didn't see any evidence of trauma.

23 Allen Farley, firefighter, he says, well, you know,
24 it's not uncommon to use cross finger -- I don't know how
25 to do that -- unless the person the obviously dead, then

1 you wouldn't do that. Everybody is saying he wasn't
2 obviously dead. But the reason he really testified was to
3 testify that this codefendant, the callous codefendant who
4 is not here today, was texting on the ride there.

5 Well, you know, what are you trying to prove by
6 that testimony? Are you saying that she didn't care?
7 Well, if you think that she's texting to her buddies or if
8 you think she's texting admissions that she has done
9 something, why don't you get the texts? Why don't you get
10 the phone records?

11 I don't know if you picked up on it. They asked
12 the SLED officer about her cell phone. We were never able
13 to record her cell -- get her cell phone. Well, you know,
14 you don't have to have a cell phone. You heard all this
15 stuff about phone records. You remember all the phone
16 records -- the numbers and stuff? Did you see phone record
17 one about anything?

18 Doctor Steven Platte, he's the one who pronounced
19 the child deceased. And what's interesting, you know he
20 didn't do it, there was somebody at the hospital who
21 determined that the body temperature was 89 degrees when
22 they determined death. 89 degrees. Well, now, you've got
23 to have it one way or the other because later on, you'll
24 hear at least one doctor say that you lose one degree for
25 every hour. You remember that? And I bet you remember

1 hearing somebody saying something about an hour and a half
2 for every degree. Because I believe there was something
3 about an hour and a half for every degree somewhere in this
4 testimony.

5 You determine what the testimony is. Well, if you
6 take 98.6 and you subtract 89 from that, what's that 9 -- 9
7 or more hours, depending on whether it was one hour or an
8 hour and a half?

9 Well, see that doesn't fit with what we're trying
10 do here because if you do that, that would mean he's at
11 work. He comes home, he gets off at 12:42 and it takes it
12 a little while to get home, what do you think, maybe
13 twenty, maybe? You can do the math. Somebody said it was
14 an hour and a half -- I mean an hour and a half per degree.
15 And I want to say this pathologist said it was an hour.
16 But they want to indicate to you that he did something, I
17 don't know, after Priscilla went to work, which was 4:30,
18 and after Sabrina went to work.

19 She clocked in at 6, probably left at 5:30 to clock
20 in at six. Because what we're trying to do is we're trying
21 to put him alone with the child when death occurs. I mean
22 that's what we're trying do.

23 To do that, you have to ignore some of the
24 testimony from the experts. But, of course, you can. You
25 can take what witness -- what evidence you believe in and

1 ignore the other evidence that you don't believe in.

2 Anyway, his diagnosis was cardiopulmonary arrest,
3 nausea, vomiting, and diarrhea. And he did say that it
4 seemed to be more rigid, even though the hospital records
5 didn't back it up. And, of course, our excuse for that is,
6 well, you normally assume -- you push a button -- I don't
7 doubt that. You know, you push a button and it
8 automatically says you're fine or that your neck is not
9 stiff.

10 And one of the interesting things in his testimony
11 was he was talking about getting history about a patient.
12 Get it from the pharmacy, get it from the family. You
13 know, one of the big selling points I always heard about
14 Lexington Medical Center when you have a doctor who works
15 there, all your records are kind of easily accessible.
16 That your records from the doctor go -- you can get them
17 right there at the hospital.

18 Why wouldn't you look to a hospital visit two weeks
19 before? Lexington Medical Center, which the doctor was so
20 concerned that there was child abuse going on, in his
21 record he said take x-rays to confirm that child abuse is
22 not going on. Not even look at that.

23 Chief Cornett -- he's the head of Springdale, he
24 walked in there and he felt that something was wrong so he
25 locked everything down. The important part of that is that

1 he locked everything down. Nobody doesn't have access to
2 it, to the crime scene. And then you start with the
3 testimony of Captain Bice.

4 Well, I know nobody wanted to talk about Grandma
5 because she's dead. Grandma is dead and we all want to
6 leave you with the impression, because her daughter took
7 the stand and she said, well she was dead. Of course,
8 everybody feels bad about Grandma dying. But, you know,
9 Grandma didn't die for a year after this occurred. She
10 would have been a good potential witness about what she
11 heard and what she didn't hear.

12 Captain Bice talks about having a parallel
13 investigation. He didn't know what evidence was actually
14 returned to him. He interviewed Penny and Josh. He got
15 Josh to give a written statement. He got Josh to give an
16 oral statement. And I asked him about who normally
17 babysits Minor because it turns out that Minor was like most
18 latch-key kids, you know, he was staying with this
19 babysitter or he was staying with that babysitter.

20 Remember he actually stayed with a babysitter the
21 Sunday before the Wednesday that this occurred. He said he
22 didn't talk to the babysitter. But I believe he said that
23 somebody did. It would be nice if we had the babysitter
24 here, wouldn't it? I'd like to cross-examine that
25 babysitter. Maybe we ought to charge that babysitter.

1 He talked about Curtis Sr. He talked about young
2 Curtis, the child who was no longer with his mama. We
3 learned that DSS had been involved and who knows what.

4 And remember, there was also that family physician.
5 Who was it? Who was the family physician? We know from
6 the SLED officer, a lot about the fact that this child had
7 been to the doctor a lot. A lot. And she went through the
8 list of the visits and the visits and the visits. Well,
9 what do those visits show?

10 Agent Jamie Johnson, she testified about sketching
11 the house and all that. Maybe I gave her a hard time about
12 whether she measured things or not, but I was curious about
13 why she took certain items and she didn't take other items.
14 It turns out that there was no blood in the tub, there was
15 no blood on the handle. There was no blood on the bathmat.
16 You know the only blood that we had in this whole deal was
17 on the diaper. That was it.

18 The reason why that's a little bit important is
19 because if you did put the child in the tub and there was
20 blood, you would expect maybe to find blood -- I don't
21 know, I'm not the forensic scientist. Perhaps even maybe
22 somebody like that can even answer that question.

23 Checked on the foods -- see some of these things
24 just backup to story that Joshua said. Had the McDonalds
25 food in the refrigerator, had the Gatorade on the

1 refrigerator, had the banana on the bedside table. And
2 then she seized the eyebrow instrument and the trimmers
3 because of some marks on the arm. Well, if you're going to
4 do that, then you take that and you put it where the marks
5 are and see if it looks like that. Or maybe you check that
6 to see if there's any DNA on those items to indicate that
7 it had actually been on **Minor's** body. I don't know why you
8 don't do that. Why take it and not deal with it.

9 And remember the cell phone in the bed. Well, we
10 know that wasn't Sabrina's cell phone, though, because she
11 had her cell phone with her, texting. Unless she had more
12 than one cell phone.

13 And does that cell phone work? There are more
14 questions in this case than answers. You had Herrera who
15 testified about the blood. You had Jessica Heron. A
16 forensic serologist, Agent Leisey, the only thing she did
17 was prove that the blood that was on the diaper was **Minor's**

18 Then you have the McDonalds people and the reason
19 they testified is to give you a timeline. Joshua gets off
20 work the day before a little after five -- I'm sorry, he
21 comes to work a little after five and then he gets off that
22 morning, almost one o'clock in the morning. Sabrina goes
23 to work at six o'clock in the morning. That's what
24 Patricia testified to.

25 But what was interesting, and you didn't see it

1 coming, is that she testified about how long they had been
2 there. And see the theory here is that Joshua works some
3 hours, Sabrina works other hours. Well, it turns out that
4 she had just gone back to work there and she'd only been
5 working there for two weeks. So if she's only been working
6 there for two weeks then that was not the system that was
7 going on. That meant before two weeks that the mother
8 would have been with [Minor] all the time to include the time
9 when Joshua was at work.

10 You always get the little things when you don't
11 expect to see it, unless she's at the -- unless he's at the
12 babysitter.

13 Now, you had Nobles who essentially said he saw
14 Priscilla (sic) calling somebody on the cell phone. You
15 know, it would be nice if we had those cell phone records,
16 wouldn't it? We could fill in at least some of the gaps
17 here.

18 Priscilla, seemed like [Minor] was sick, never heard
19 him being spanked. The only time that [Minor] cried was
20 sometime when he was alone with his mother. But, this is
21 the person we're trying.

22 Agent Baird, she essentially testified that she was
23 at the autopsy on Thanksgiving Day. You know, I kind of
24 expected their to be a great State's argument about we were
25 doing an autopsy on Thanksgiving Day when most people are

1 having a family get together. That's a good argument.
2 That should get everybody all riled up. But you see this
3 is not an emotional case when it comes to your job. Your
4 job is to determine the facts and after determining the
5 facts, see if those facts indicate beyond a reasonable
6 doubt that my client committed the charges that he has.
7 Not based on emotion. It never is.

8 Anyway, he told the defendant to come in and I
9 always -- he gives a written statement. He gives an /ORPL
10 statement four months later -- four months later, he gets
11 him in for a two and a half hour ordeal in which she lies
12 to him. She tells him stuff which is not true. She
13 admitted that.

14 What did you pick up when you were listening to
15 that tape? You picked up two things: Number one, he can't
16 remember anything. Who can, I guess, after four months.
17 But the other thing I picked up was that, did she think
18 that he was the one who actually did the homicide? Oh,
19 come on. Do you think that maybe this is all about getting
20 the evidence on somebody else? If they can.

21 Now, I had something in the notes about -- and some
22 of this rambling on is that there was something about --
23 and I shouldn't say that because she wore him out. Two and
24 a half hours, I'm not sure if I could sit here two and a
25 half hours. He said that his mother disciplined him and

1 that some deal about the father of the child being on drugs
2 real bad. He put his hands on her, there's something in my
3 notes about that.

4 Also talked about the breathing problem. We went
5 back to that, back to that, back to that, about the asthma.
6 We told you about the child going to Lexington Medical
7 Center when he was at Winnsboro. He goes over and over and
8 over and over again about what he remembers happening.
9 I'll give you this, it's not consistent. But I bet you can
10 give me a story today and I come back four months later it
11 wouldn't be consistent.

12 Did talk about several people taking care of the
13 child. Where are those phone records. Everywhere I look
14 at my notes, I keep seeing phone records, phone records,
15 phone records. Remember the four diapers that had blood on
16 it, well, of course, there weren't four diapers that had
17 blood on them. There was one diaper. There was one
18 diaper.

19 Then we get to the experts and I think really
20 they're kind of important because you see they had the
21 pathologist who testified that the child had pneumonia in
22 the left lung, that the jaw was stiffer but even though the
23 report did say he had a stiff jaw. We had this discussion
24 about blood pooling wrote on his decision about what
25 happened to the child, it was diarrhea, cardiac arrest, and

1 vomiting. There was evidence that the child had been
2 vomiting because his lips were chapped.

3 I asked him, I said do you know why the EMS didn't
4 notice the hands. He says, no. He indicated the hands
5 might have been injured two days ago. He said the buttocks
6 could have been injured three days before. Well, you see,
7 that doesn't work. That doesn't work for my client. But
8 the interesting thing also is that he had never seen anyone
9 die from FES, which is Fat Embolism Syndrome without a
10 fracture. There was no fracture. There was no fracture.
11 Remember?

12 Go back and remember to 11/11/2013, there was no
13 fracture. Well, you see, they weren't content with that
14 because that doesn't get to the cause of death. So they
15 send it to Dr. Fulcher who is very vibrant, knows a lot of
16 stuff.

17 But he had to admit that there are four symptoms of
18 FES, pulmonary, neurological, dermatological, we talked
19 about the rash, and anemia. Well, unfortunately, there was
20 no evidence of the rash, there was no evidence of anemia.
21 There was evidence of pulmonary problems. There was no
22 evidence of neurological. And then I asked him -- I asked
23 him about well, is there a relationship with sickle cell
24 and he said yes, there is a relationship to FES with sickle
25 cell, but I can't tell you if he's got sickle cell or not.

1 Talked about low calcium, but what really got me
2 was when he brings the slide out. You know, they say a
3 picture is worth a thousand words. Well, he brings the
4 slide out and the slide -- he points to the fat in the
5 slide and everybody is saying that's amazing. That's
6 amazing. You can see the fat in the slide. Well, then we
7 learn, well, I don't know, it's kind of like in botany -- I
8 think it's botany where you can make the leaves and you can
9 make them look certain ways. Well, it depends on which dye
10 you use. I mean you could have shown the fact that the
11 child had pneumonia, depending on what dye you used.

12 And what's really interesting is that he did the
13 left -- the left lung, which had pneumonia in it. Why not
14 examine the right lung? Because -- I don't know. It does
15 take -- you got two lungs. He wasn't here for any reason
16 except to give you an answer. See that's what we're here
17 doing today. We're putting a period at the end of the
18 sentence. And the period that the State wants is a guilty
19 on my client.

20 But it's just like anything else in this world, if
21 it's not there, it's not there. You don't convict somebody
22 just because you want to have somebody convicted. That's
23 not the answer. You convict a person who's guilty. I am
24 truly sorry for y'all having to look at the pictures
25 because you may be blaming me for having to sit here and go

1 through this. But please don't convict my client of
2 something that somebody else did.

3 Thank you.

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

5 MR. WILLIAMS: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen, I'm now going to
7 instruct you on the law. I would advise you that this will
8 probably take about 30 minutes. So if anyone needs a break
9 now, raise your hand. If not, we'll press on.

10 (One of the jurors raised their hand.)

11 THE COURT: All right. You leave your notes upside
12 down on your chair. Do not discuss the case during this
13 brief recess. Thank you very much.

14 (The jury left the courtroom at 10:59 a.m.)

15 THE COURT: All right. We'll take about 10
16 minutes.

17 (A brief recess was observed.)

18 THE COURT: All right. Everybody in place?

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

20 THE COURT: All right. Anything else? Everybody
21 in place?

22 MR. WILLIAMS: Yes, sir.

23 (The jury entered the courtroom at 11:19 a.m.)

24 THE BAILIFF: All jurors are present.

25 THE COURT: Thank you. Thank you, Mr. Bailiff.

JURY CHARGE

THE COURT: Welcome back, ladies and gentlemen, if you would please give me your complete and undivided attention. The way I charge or instruct a jury is I charge the general criminal law that applies to all criminal cases in South Carolina first. When I go from one subject matter to the next, I will give you the caption of the subject matter I'm fixing to cover throughout that general criminal charge.

After the general charges or the general instructions, I will then charge the specific charges in the indictments. We'll go through the elements of those. After I finish that, I will then give you the form of the verdict.

Charge, arrest, indictment, not evidence: The defendant is charged with homicide by child abuse and aiding and abetting homicide by child abuse. I remind you the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case; nor does it create any presumption or inference of guilt. These documents, these indictments, again are the formal charging documents by which the individual is placed on notice of the charges that have been brought against him. They are the formal documents by which this case is

1 brought into this court.

2 The indictments in this case allege two different
3 offenses against the defendant. The charges are Indictment
4 Number one, homicide by child abuse and Indictment Number
5 two, aiding and abetting homicide by child abuse. Each
6 indictment charges a separate and distinct offense. You
7 must decide each indictment separately on the evidence and
8 the law applicable to it uninfluenced by your decision as
9 to the other indictment.

10 The defendant may be acquitted or convicted on any
11 or all of the indictments charged. You will be asked to
12 write a separate verdict of guilty or not guilty as to each
13 indictment.

14 Presumption of innocence: The defendant has pled
15 not guilty to these indictments and that plea puts the
16 burden on the State to prove the defendant guilty. A
17 criminal -- a person charged with committing a criminal
18 offense in South Carolina is never required to prove
19 himself innocent. I charge you that it is an important
20 rule of the law that the defendant in a criminal trial, no
21 matter what the seriousness of the charge may be will
22 always be presumed to be innocent of the crime for which
23 the indictment was issued unless guilt has been proven by
24 evidence satisfying you, the jury, of that guilt beyond a
25 reasonable doubt.

1 This presumption of innocence does not end when you
2 begin your deliberations, but it accompanies the defendant
3 throughout the trial until you reach a verdict of guilt
4 based on evidence satisfying you of that guilt beyond a
5 reasonable doubt. The presumption of innocence is said to
6 be like a robe of righteousness placed about the shoulders
7 of the defendant which remains with the defendant until it
8 has been stripped from the defendant by evidence satisfying
9 you of the defendant's guilt beyond a reasonable doubt.

10 The presumption of innocence is not a mere legal
11 theory. It is not just a legal phrase. It is a
12 substantial right to which every defendant is entitled
13 unless you the jury are satisfied from the evidence of the
14 defendant's guilt beyond a reasonable doubt.

15 What is a reasonable doubt in the law? A
16 reasonable doubt is the kind of doubt that would cause a
17 reasonable person to hesitate to act. The State has the
18 burden of proving the defendant guilty beyond a reasonable
19 doubt. Some of you in the past may have served as jurors
20 in civil cases where you were told that it is only
21 necessary to prove that a fact is more likely true than not
22 true, such as by the greater weight or the preponderance of
23 the evidence. In criminal cases, the State's proof must be
24 more powerful than that. It must be beyond a reasonable
25 doubt.

1 Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced of the defendant's guilt.
3 There are very few things in this world that we know with
4 absolute certainty and in criminal cases, the law does not
5 require proof that overcomes every possible doubt. If
6 based on your consideration of the evidence you are firmly
7 convinced the defendant is guilty of the crime or crimes
8 charged, you must find the defendant guilty.

9 If, on the other hand, you think there is a real
10 possibility that the defendant is not guilty. You must
11 give the defendant the benefit of that reasonable doubt and
12 find him not guilty.

13 Duties of the trial jury and trial judge: I remind
14 you that during this trial, you and I have certain distinct
15 duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case and I
17 also have the duty to rule on the admissibility of the
18 evidence offered during the trial. You are to consider
19 only the competent evidence before you. If there was any
20 testimony ordered stricken from the record in this case
21 during the trial, you must disregard that testimony. You
22 are to consider only the testimony that has been presented
23 from the witness stand, and any exhibits which have been
24 made a part of the record in this case.

25 I have the additional duty to charge or instruct

1 you the law applicable to this case. As the presiding
2 judge, I am the sole judge of the law of this case and it
3 is your duty as jurors to accept the law and apply the law
4 as I now state it to you. If you have any idea as to what
5 the law is or what the law ought to be and it does not
6 agree with what I now tell you what the law is, you must
7 abandon, you must set aside your idea because you have
8 sworn, you have taken an oath to accept the law and apply
9 the law exactly as I state it to you.

10 In every case tried in this court, the jury becomes
11 the sole and exclusive judge of the facts in a case. A
12 trial judge cannot intimate, state, comment on, or make any
13 statement to a trial jury about the facts in a case. Since
14 you, the jury, are the sole judges of the facts in this
15 case, you are not to infer from what I have said during the
16 progress in this trial in ruling on admissibility of
17 evidence or otherwise or anything that I say now during the
18 course of this instruction to you that I have any opinion
19 about the facts in this case. The law does not allow me to
20 have an opinion about the facts in this case. That is a
21 matter solely for you to determine.

22 As jurors, it is your duty to determine the effect,
23 the value, the weight and the truth of the evidence that
24 has been presented before you during this trial.

25 Direct and circumstantial evidence: There are two

1 types of evidence which are generally presented during a
2 trial, direct evidence, circumstantial evidence. Direct
3 evidence is the testimony of a person who claims to have
4 actual knowledge of a fact such as an eyewitness or an
5 earwitness, it is evidence which immediately establishes
6 the main fact to be proved.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a fact.
9 It is evidence which immediately establishes collateral
10 facts from which the main fact may be inferred.
11 Circumstantial evidence is based on inference and not on
12 personal knowledge or personal observation. The law, our
13 law, makes no distinction between the weight or the value
14 to be given to either direct or circumstantial evidence.
15 Nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 You should weigh all of the evidence in this case.
18 After weighing all of the evidence, if you're not convinced
19 of the guilt of the defendant beyond a reasonable doubt,
20 you must find the defendant not guilty. After weighing all
21 of the evidence, if you are convinced of the guilt of the
22 defendant beyond a reasonable doubt, you must find the
23 defendant guilty.

24 Credibility of witnesses: Necessarily, you must
25 determine the credibility of the witnesses who have

1 testified in this case. As you all know credibility simply
2 means believability. It becomes your duty as jurors to
3 analyze and to evaluate the evidence and determine which
4 evidence convinces you of its truth. In using your
5 individual and collective good judgment and common sense,
6 you may believe one witness over several witnesses or
7 several witnesses over one witness. You may believe a
8 part -- a part of the testimony of a witness and reject the
9 remaining part of the testimony of that same witness. You
10 may believe the testimony of the witness in its entirety or
11 reject the testimony of a witness in its entirety. You may
12 consider whether any witnesses exhibited to you any
13 interest, any bias, any prejudice or any other motive in
14 this case.

15 You are -- you may also consider the appearance,
16 the manner, the demeanor of a witness while on the witness
17 stand. You have no friends to reward, no enemies to
18 punish. You're sole goal is true and just verdicts, based
19 on the facts as you find them to be and the law applying
20 those facts to the law as I tell you the law is.

21 Expert witnesses: The rules of evidence ordinarily
22 do not permit witnesses to testify to opinions or
23 conclusions. An exception to this rule exists for
24 witnesses we call expert witnesses. A witness who by
25 education and experience has become an expert in some art,

1 science, profession, craft, or calling may state an opinion
2 as to relevant and material matter in which the witness
3 claims to be an expert and may also state the reasons, the
4 underlying basis for holding those opinions.

5 You should consider any expert opinions received in
6 evidence in this case. And like any other evidence, give
7 it the weight you think it deserves. If you decide that
8 the opinion of an expert witness is not based on sufficient
9 education or experience or if you conclude that the reasons
10 given in support of the opinion are not sound or that the
11 opinion is outweighed by other evidence, you may disregard
12 the opinion in its entirety.

13 An expert witness's testimony is to be given no
14 greater weight than that of any other witness's simply
15 because the witness is an expert. Further, you are not
16 required to accept an expert's opinion even though it is
17 not contradicted.

18 Intent: In order to establish criminal liability,
19 criminal intent is required. For example, in a particular
20 case, the mental state required to be proven by the state
21 for a particular crime might be purpose, done purposely,
22 intentionally, with knowledge, with recklessness, or with
23 criminal negligence. Criminal intent must be proven by the
24 State beyond a reasonable doubt. Criminal intent is always
25 a matter that must be determined by the jury from the

1 circumstances surrounding the situation. There's no way to
2 prove intent to a mathematical certainty. There's no way
3 medical science can dissect a person's brain and determine
4 what the person had in mind. So the law, our law, says
5 that criminal intent may be inferred from the circumstances
6 shown to have existed.

7 This is how you make a determination of whether or
8 not the element of intent was present. It is not necessary
9 to establish intent by direct and positive evidence, but
10 intent may be established by inference in the same way as
11 any other facts by taking into consideration the acts of
12 the parties and all the facts and circumstances surrounding
13 the case. Criminal intent is a mental state. A conscious
14 wrong doing." It is up to you to determine what the
15 defendant intended to do based on the circumstances shown
16 to have existed. Criminal intent can arise from action or
17 a failure to act, or an indifference to duty, or to
18 consequences that is considered by the law to be the
19 equivalent of criminal intent.

20 That concludes the general criminal law that
21 applies to all cases in South Carolina. I am now going
22 charge you homicide by child abuse; thereafter aiding and
23 abetting in homicide by child abuse.

24 A person is guilty of homicide by child abuse if
25 the person causes the death of a child under the age of 11

1 while committing child abuse or neglect and the death
2 occurs under circumstances manifesting an extreme
3 indifference to human life. Homicide by child abuse or
4 knowingly aids an abets another person to commit child
5 abuse or neglect results in the death of a child under the
6 age of 11.

7 There are certain definitions included within the
8 statute as to certain terms I have just read. The
9 following definitions apply.

10 The definition of child abuse and neglect means an
11 act or omission by any person which causes harm to the
12 child's physical health or welfare.

13 Harm: Harm to a child's health or welfare occurs
14 when a person inflicts or allows to be inflicted upon the
15 child physical injury, including injuries sustained as a
16 result of excessive corporal punishment. Harm to a child's
17 health or welfare can also occur when a person fails to
18 supply the child with adequate healthcare and the failure
19 to do so causes a physical injury or a condition resulting
20 in death.

21 Guilt as to homicide by child abuse requires
22 extreme indifference to human life. Guilt as to aider and
23 abetter requires knowingly aiding the perpetrator in the
24 act of abuse and neglect but that act need not have been
25 done with extreme indifference to human life. It's

1 knowingly and willingly aiding and abetting. Under our law
2 the term knowingly means with knowledge, consciously, not
3 accidentally.

4 So homicide by child abuse requires extreme
5 indifference to human life, aiding and abetting homicide by
6 child abuse requires knowingly aids and abets another
7 person to commit.

8 Under this theory of knowingly aiding and abetting,
9 a person must personally commit the crime or be present at
10 the scene of the crime and intentionally or through a
11 common design, aid, abet, or assist in the commission of
12 that crime through some overt act. In order to be guilty
13 as an aider or abetter, the parent must be chargeable with
14 knowledge of this principal's criminal conduct. Mere
15 presence at the scene is not sufficient to establish guilt
16 as an aider and abetter.

17 That is the charge of both homicide by child abuse
18 and aiding and abetting in homicide by child abuse. One
19 further term, ladies and gentlemen is the term probable
20 cause. Where a person inflicts a fatal injury on another
21 person and that other person dies at a later time, you must
22 be convinced beyond a reasonable doubt that the infliction
23 of the first injury was the probable cause of the victim's
24 death.

25 Probable cause is the direct cause. It is the

1 immediate cause. It is the efficient cause. It is a cause
2 without which the death of the victim would not have
3 resulted. There must be a chain of causation from the time
4 of the injury inflicted by the defendant until the time of
5 the victim's death. Probable cause does not necessarily
6 mean that it occurred immediately prior to death, although
7 it may have. There may be more than one probable cause.

8 Finally, ladies and gentlemen, I am going to charge
9 you the form of the verdicts. You will have two indictments
10 in there with you, the first 2015-GS-32-01395, it's an
11 indictment for homicide by child abuse. On the front or
12 the facing page, Mr. Foreman, ladies and gentlemen of the
13 jury, you will see the caption of the case, the charge and
14 over to the left, you will see the word verdict.

15 After your deliberations and your determination of
16 the facts in the case, as to homicide by child abuse, in
17 applying those facts to the law as I have instructed you
18 the law is, if you find the State has failed to meet its
19 burden of proving its case beyond a reasonable doubt, your
20 verdict would be not guilty, and you would write under this
21 word those two words, not guilty, Mr., Foreman and sign as
22 foreperson of our jury.

23 If you find after your determination as to the
24 facts in the case as to homicide by child abuse that the
25 State has met its burden of proving its case beyond a

1 reasonable doubt and your verdict is guilty, you would then
2 write, Mr. Foreman, the one word, guilty and sign as the
3 foreperson of our jury.

4 Ladies and gentlemen -- and I will cover aiding and
5 abetting in just a moment, but before that, I will say to
6 you that your verdict must be unanimous. All twelve of you
7 must agree on the verdict. The order in which I have
8 stated those verdicts has no significance whatsoever. One
9 must be stated first.

10 So as we go to aiding and abetting homicide by
11 child abuse, again, you consider these indictments
12 separately and distinctly. If after your consideration of
13 the evidence, your determination of the facts in the case,
14 applying those to the law as to this charge, you reach --
15 you find that the State has proven its case of aiding and
16 abetting homicide by child abuse and that is a unanimous
17 verdict, your verdict must be guilty. Write the word
18 verdict, sign in the foreperson's line.

19 If after your consideration of the facts, applying
20 the facts to the law as I have told you as to this charge
21 you find the State has failed to meet its burden, your
22 verdict would be not guilty. Write those words and sign as
23 foreperson of the jury.

24 And again, ladies and gentlemen, your verdicts must
25 be unanimous. All twelve of you must agree. The defendant

1 may be found guilty or not guilty as to one or both of
2 these indictments. Your decisions would focus on the law
3 as to homicide by child abuse and separately and distinctly
4 on the law of aiding and abetting in homicide by child
5 abuse.

6 Your verdicts in this case, Mr. Foreman, ladies and
7 gentlemen of the jury, may not be based on passion,
8 prejudice, emotion, sympathy, or any other motive that is
9 not in the record in this case. Once you have reached
10 those unanimous verdicts, Mr. Foreman, if you would then,
11 please, knock on the jury room door, inform the bailiffs
12 that the jury has reached those unanimous verdicts, we will
13 receive you back into the courtroom for the -- for the
14 presentation and pronouncement of the verdicts.

15 If at any time during your deliberations you or any
16 member of the jury, Mr. Foreperson, has a question, if you
17 would just write out a note, knock on the jury room door.
18 The bailiff will deliver it to me and I will respond to it
19 promptly in that regard.

20 I realize -- I think there's -- there's video in
21 this case, there's an audio in this case. I will make
22 arrangements for y'all to have the proper equipment to
23 operate those items of evidence in the case.

24 I'm going to ask you to go to your jury room at
25 this time. You may take your notes at this time, however,

1 do not begin your deliberations until you are instructed to
2 do so. The law requires I meet with the attorneys one
3 final time outside your presence as to the charges that I
4 have just instructed you in case I have to bring you back
5 out for any additional instructions.

6 If I do not have to bring you back out, everyone
7 looks great today. What will happen is our two alternates
8 will come out of the jury room. The evidence will be
9 delivered to you, then you will be instructed to begin your
10 deliberations. Thank you. Thank you very much for your
11 focus and attention. You may now go the jury room with
12 your bailiff and you may take your notes.

13 (The jury left the courtroom at 11:49 a.m.)

14 THE COURT: Any objections, Solicitor?

15 MS. MAYES: None from the State, Your Honor.

16 THE COURT: Mr. Williams?

17 MR. WILLIAMS: None from the defendant, Your Honor.

18 THE COURT: All right. If y'all would check the
19 exhibits.

20 And, oh, Mr. Williams, any objection to sending in
21 the indictments?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: I didn't do a form of verdict.

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: All right. Thank you.

1 (The attorneys were going through the exhibits with
2 the court reporter.)

3 THE COURT: We good?

4 MS. MAYES: Judge, we just need to verify that the
5 computer is clean if you want to send it back. Otherwise,
6 we can hold it out here and send all the evidence back and
7 then they can request it.

8 MR. WILLIAMS: I'm good with that, Judge.

9 THE COURT: What? About bringing it back or --

10 MR. WILLIAMS: I'm not sure about sending it --

11 MS. MAYES: Let's just hold it here and then if
12 they want it, I just have to verify that it is clean. It's
13 supposed to be clean, but --

14 MR. WILLIAMS: Well, I would like for it to be
15 clean --

16 MS. MAYES: Right that's what I want to make sure.

17 THE COURT: What do y'all mean clean? I thought
18 none of that stuff went away.

19 (Off the record discussion.)

20 THE COURT: All right. That's fine. I mean, we
21 can just let them flounder.

22 All the exhibits are in?

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: I have one question. Is 46 in
25 evidence?

1 THE COURT REPORTER: You want to know which ones
2 are not in evidence.

3 THE COURT: No, I just wanted to know about 46.

4 (The exhibits were sent back to the jury and the
5 deliberations began at twelve o'clock p.m.)

6 QUESTION FROM THE JURY

7 THE COURT: They want a copy on the law on homicide
8 and aiding and abetting.

9 MS. MAYES: No objection from the State, Your
10 Honor.

11 MR. WILLIAMS: No objection.

12 THE COURT: Now, y'all want me to give them
13 everything I charged on it or just the statute? Because if
14 I've got to give them everything I charged on it, which I
15 don't mind doing, I've got get some clerical assistance.

16 MS. MAYES: Okay.

17 THE COURT: Because I picked some of that stuff out
18 of a case and some of it out of an article. I read them
19 the statute. I got -- in other words, here's what I've got
20 from the statute.

21 MS. MAYES: What about this -- the entire statute,
22 which is section A.

23 THE COURT: And B.

24 MS. MAYES: Well, we would have to redact the
25 portion that has the sentence --

1 THE COURT: Right. That's what I'm saying. That's
2 what I've got. I've got this right here. And, of course,
3 where it says homicide by child abuse like C, we can just
4 copy over that.

5 MS. MAYES: Okay.

6 THE COURT: But if that's what you want -- now,
7 that doesn't have -- that's the statute.

8 MR. WILLIAMS: Did they say they want just is
9 statute or the charge? Because I kind of -- if they want
10 the charge, I want you to give them the charge, Judge.

11 THE COURT: Can we receive a copy of the law on the
12 two charges of homicide by child abuse --

13 MR. WILLIAMS: That would be the statute, I would
14 guess.

15 THE COURT: -- and aiding and abetting.

16 MS. MAYES: Okay.

17 MR. WILLIAMS: That would be the statute on it.

18 MS. MAYES: So we would just cut it off here at B
19 and everything from C down is redacted.

20 THE COURT: Just get somebody to put it -- do it on
21 this bigger thing --

22 MS. MAYES: We'll do that.

23 THE COURT: -- but don't cut mine off.

24 MR. CASKEY: I'll do it right here.

25 (The document was being prepared to go back to the

1 jury.)

2 (There was discussion off of the record.)

3 THE COURT: I think I'm not going give them the
4 charge. I'm just going bring them out and recharge that
5 whole section.

6 MS. MAYES: All right.

7 THE COURT: And then -- well, let's get Mr. Hopkins
8 in here.

9 (The defendant entered the courtroom.)

10 THE COURT: Y'all ready?

11 MR. WILLIAMS: Yes, sir.

12 (The jury entered the courtroom at 1:27 p.m.)

13 THE COURT: Your former colleagues wanted to join
14 you, so I'm waiting their arrival.

15 (The alternate jurors entered the courtroom.)

16 THE COURT: All right. Mr. Foreman, I received
17 your note, Can we receive a copy of the law on the two
18 charges of homicide by child abuse and aiding and abetting.
19 I will review these with you again and reinstruct you
20 verbally.

21 Homicide by child abuse is a statute in South
22 Carolina, 16-3-85. There's an A section of that statute
23 and there's a B section of that statute. The A section is
24 homicide by child abuse. And then the B section is
25 knowingly aid and abet another person.

1 The A section: A person is guilty of homicide by
2 child abuse if the person causes the death of a child under
3 an age of 11 while committing child abuse or negligence and
4 the death occurs under circumstances manifesting an extreme
5 indifference to human life.

6 The next section: Or knowingly aids and abets
7 another person to commit child abuse or negligent and the
8 child abuse or negligence results in the death of a child
9 under the age 11.

10 So guilt as the perpetrator under the first section
11 I read to you, requires extreme indifference to human life.
12 Guilt as an aider and abetter requires knowingly aiding the
13 perpetrator in the act of abuse or negligence but that act
14 need not have been done with extreme indifference to human
15 life.

16 Extreme indifference to human life, homicide by
17 child abuse, knowingly aid or abet is aiding and abetting
18 in homicide by child abuse.

19 I also in that statute defined certain terms that
20 are included within the statute, quote, child abuse or
21 negligence, unquote, means an act or omission by any person
22 which causes harm to the child's physical health or
23 welfare. The term, quote, harm, to a child's health or
24 welfare occurs when a person, A inflicts or allows to be
25 inflicted upon the child physical injury, including

1 injuries sustained as a result of excessive corporal
2 punishment; or fails to supply the child with adequate
3 healthcare and the failure to do so causes a physical
4 injury or condition resulting in death.

5 That is my charge to you in response to this
6 question. I guess my first response is no, you may not
7 receive a copy of the law, but my second response is that I
8 have recharged you verbally on homicide by child abuse and
9 aiding and abetting homicide by child abuse.

10 If you have any further questions, please -- I know
11 you know how to write out a note. Write me out a note.
12 Forward it to me and I will respond.

13 Thank you very much, y'all may return to your jury
14 room and continue your deliberations.

15 (The jury left the courtroom at 1:31 p.m.)

16 THE COURT: Any objection, Mr. Williams?

17 MR. WILLIAMS: No objection, Your Honor.

18 THE COURT: Madame Solicitor?

19 MS. MAYES: None from the State, Your Honor.

20 THE COURT: All right. Thank you. We'll be
21 awaiting our jury's verdict.

22 (Court was in recess while awaiting the jury.)

23 (It was reported to the Court that the jury had
24 reached a verdict at 4:20 p.m.)

25 THE COURT: All right. Are, Solicitor?

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

2 MR. WILLIAMS: We're ready.

3 (The jury entered the courtroom at 4:25 p.m.)

4 THE BAILIFF: All present, Your Honor.

5 THE COURT: All right. Thank you very much.

6 Madam Clerk.

7 **VERDICT**

8 THE CLERK: Mr. Foreman, have you reached your
9 verdicts?

10 THE FOREPERSON: We have.

11 THE CLERK: Please pass them up by the bailiff.

12 THE COURT: All right. The -- Madam Clerk, you may
13 publish our verdicts.

14 THE CLERK: Indictment 2015-GS-32-01395, State
15 versus Joshua Warren Hopkins, indicted for homicide by
16 child abuse, verdict guilty.

17 Indictment 2016-GS-32-02515, the State versus
18 Joshua Warren Hopkins, indicted for aiding and abetting
19 homicide by child abuse, verdict, guilty.

20 Both are so signed by the foreman, dated October
21 7th, 2016.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 this is your verdicts, please indicate, each of you, by
24 raising your right hand.

25 All hands raised, Your Honor.

1 THE COURT: Thank you. Thank you very much, Madam
2 Clerk.

3 Anything further from the jury from the State,
4 Solicitor?

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

6 THE COURT: From the defense?

7 MR. WILLIAMS: Yes, Your Honor, individual polling.

8 THE COURT: All right. Madam Clerk, would you
9 please explain that procedure to the jury and conduct the
10 polling.

11 THE CLERK: Yes, sir.

12 POLLING OF THE JURY

13 THE CLERK: As I call your number -- I don't call
14 by name, I call your juror number -- raise your hand where
15 I can recognize you. I will ask you as to the verdicts,
16 were these your verdicts and are they still your verdicts
17 and then respond at that time.

18 Number 126, as to the verdicts, were these your
19 verdicts and are they still your verdicts?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: 172. As to the verdicts, were these
22 your verdicts and are they still your verdicts?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: 192. As to the verdicts, were these
25 your verdicts and are they still your verdicts?

1 THE JUROR: Yes.

2 THE CLERK: 63. As to the verdicts, were these
3 your verdicts and are they still your verdicts?

4 THE JUROR: Yes.

5 THE CLERK: 58. As to the verdicts, were these
6 your verdicts and are they still your verdicts?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: 46. As to the verdicts, were these
9 your verdicts and are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: 153. As to the verdicts, were these
12 your verdicts and are they still your verdicts?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: 170. As to the verdicts, were these
15 your verdicts and are they still your verdicts?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: 129. As to the verdicts, were these
18 your verdicts and are they still your verdicts?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: 42. As to the verdicts, were these
21 your verdicts and are they still your verdicts?

22 THE JUROR: Yes.

23 THE CLERK: 109. As to the verdicts, were these
24 your verdicts and are they still your verdicts?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: 178. As to the verdicts, were these
2 your verdicts and are they still your verdicts?

3 THE JUROR: Yes.

4 THE CLERK: All jurors polled, Your Honor.

5 THE COURT: Thank you, thank you very much, Madam
6 Clerk.

7 Anything further from the jury from the defense,
8 Mr. Williams?

9 MR. WILLIAMS: Nothing from the jury, Your Honor.

10 THE COURT: All right.

11 All right. Mr. Foreman, ladies and gentlemen,
12 momentarily I'm going to release you from your jury
13 service, obviously, for the remainder of the week. I would
14 like to share just a very few brief comments with you.

15 I never criticize nor commend a jury for its
16 verdict, however, in my experience, I've not seen a harder
17 working, more focused, attentive jury panel than I have
18 seen you twelve exhibit this week. There are in this
19 building decisions made on every floor that affect people's
20 personal property, assets, family relationships, juvenile
21 services, family support matters, and people's freedoms.
22 So there very serious issues resolved between individuals
23 and individuals and businesses, and businesses and
24 businesses; than you see in this matter of the State and
25 its citizens.

1 And this -- these forums, excluding, of course,
2 family court where there's no jury trials, all has to be
3 resolved with jury trials. If an individual requests a
4 jury trial, which in criminal court, of course, they have a
5 constitutional right to, which makes our system the best
6 system in the world, quite frankly.

7 Without twelve people just like yourselves the last
8 true draftees of America, not volunteers, but showing up
9 for jury service and performing your civic duty, these
10 individuals, the participants, the parties, the staff, and
11 such would not be able to administer your, our civil and
12 criminal justice systems. It happens every day throughout
13 our courtrooms, not only in the 46 Counties of South
14 Carolina, but all across America.

15 My fondness, I guess you would say, part of what I
16 enjoy -- it's hard to say when you preside over certain
17 cases, but at the same time what I really appreciate about
18 being a circuit court judge is being able to see people
19 throughout South Carolina, jurors and the attorneys, the
20 Court staffs, bailiffs, security, such like that, we
21 couldn't do it without you, quite frankly. You see a lot
22 of diversity and conflict from time to time in our society,
23 but it appears in my vision from this bench that the
24 citizens, a group of twelve are always able to come
25 together and resolve conflicts.

1 Different personality, different backgrounds,
2 different histories and experiences, but the bottom line
3 is, I trust the American people.

4 I would like to, before releasing you, say that we
5 did have to get a special dispensation from our governor to
6 continue to operate court. The County was actually shut
7 down. We have a trial going on upstairs and this trial and
8 the matters both need to be resolved. The County
9 administrator assisted us in that in talking with the
10 governor's office. And the clerk of court -- the clerk of
11 court is actually in charge of the courthouse. She has the
12 keys to the courthouse and also stepped up and paid her
13 clerk -- there is a celebrity clerk here.

14 Our other clerk, although also a celebrity, but not
15 with quite the tenure this celebrity clerk has, was
16 scheduled to be out of town today. That's why she's not
17 with us and Ms. Frick, our celebrity clerk came in to be
18 with us today and she'll go back upstairs with Judge
19 Griffith. But it has been my pleasure, my privilege, my
20 honor to be with y'all this week.

21 I guess some good news for you, you can't be called
22 back -- in fact, you're disqualified for jury service in
23 the State Circuit Court of record for the remainder of the
24 year. So you've got a little under three months. You then
25 have two years in which you can exercise an exemption, '17

1 and '18, if you get called back to circuit court, State
2 Circuit Court of record. If you were to receive a jury
3 summons in 2017, go buy a lottery ticket, okay. I don't
4 condone gambling, but I do support education because the
5 odds of that are probably pretty slim.

6 With that being said, you're now excused. Thank
7 you, thank you very much for your service, it's been my
8 pleasure to be with you.

9 (The jury left the courtroom at 4:33 p.m.)

10 THE COURT: All right. Mr. Williams, any motions?

11 **POST-TRIAL MOTIONS**

12 MR. WILLIAMS: Yes, Your Honor, post -- the normal
13 post-trial motions, essentially that dealing with the
14 amount of the evidence and whether or not there's
15 sufficient evidence for the jury to return a verdict of
16 guilty, particularly considering that Palmer case, Your
17 Honor, it's essentially what we made at the end of the
18 State's case. That's it.

19 THE COURT: All right. Thank you. Thank you very
20 much.

21 Any response, Solicitor?

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

23 THE COURT: All right. Thank you very much,
24 Mr. Williams. I would respectfully deny the motion and
25 reaffirm all my previous trial and evidentiary rulings.

1 Any reason, Mr. Williams why sentence should not be
2 imposed at this time?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: All right. If you would come around,
5 please, Mr. Hopkins.

6 SENTENCE

7 THE COURT: All right. Solicitor, victim impact?

8 MS. MAYES: Your Honor, unfortunately, we do not
9 have -- we have tried -- we've made multiple attempts to
10 get ahold of Mr. Swearington, the biological father of
11 **Minor** We sent a letter to his last known address. And
12 I know that the State Law Enforcement Division also had an
13 officer go to the last known address and unfortunately,
14 we've been unable to locate him for purposes of this court
15 proceeding, although I will say that he was initially
16 involved and present at the bond hearing in this case.

17 I'll also say, Your Honor, that although not the
18 direct victim, there is a lady by the name of Martha Bovain
19 who is the grandmother of **Minor's** older brother, Curtis
20 Bovain. She is now the -- actually the custodian and
21 guardian for Curtis Bovain, who is nine years old now. She
22 is the person who saw bruises on **Minor** back
23 in November, early November of 2013 and reported that to
24 DSS, not just once, but twice. She made reports that she
25 had concerns about physical abuse and begged the DSS to go

1 check on him and the explanation we received from the
2 Department of Social Services is that they did not have an
3 address for the residence.

4 Be that as it may, we met with Ms. Bovain. She
5 told us that Curtis had to have therapy, that he has
6 suffered enormously by the loss of his brother and we ask
7 the Court to take that into consideration.

8 For prior record, Your Honor, he has a conviction
9 for trespassing from the year 2005; also simple assault and
10 battery from the year 2005; a conviction for possession of
11 marijuana from 2007, convictions for public disorderly
12 conduct, and driving under suspension from 2007; another
13 conviction for possession of marijuana in 2007; 2009,
14 another conviction for possession of marijuana; 2010, a
15 conviction for shoplifting; 2012, a conviction -- another
16 conviction for possession of marijuana, actually two
17 convictions in 2012 for possession of marijuana; 2012
18 conviction for breach of trust with fraudulent intent, less
19 than \$2,000. That was 2013; 2013 is when we see the
20 charges -- is when this incident occurred and then we see
21 the charges arise in 2014.

22 THE COURT: Thank you, thank you very much,
23 Solicitor. Anything further?

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

25 THE COURT: Okay. All right. Thank you,

1 Solicitor.

2 Mr. Williams?

3 MR. WILLIAMS: Your Honor, he's 29 years of age.
4 He is not married, has no children. He's been in jail for
5 six months on -- when he first was arrested and then
6 he's -- I think he's indicated he served another 18 months
7 for a total of two years that he's been in jail on these
8 charges.

9 Your Honor, his family is back there in the back
10 row. That's his father who has been on dialysis and
11 actually, I believe has cancer now.

12 That's his sister. That's his mother. And that's
13 a sister -- tell me if I'm wrong, sister to the mother. It
14 turns out that his mother has six sisters --

15 MS. HOPKINS: Nine.

16 MR. WILLIAMS: Nine sisters and seven brothers?
17 Large family, they've been very close and a very good
18 family, Your Honor. Obviously, we're not going to quibble
19 with the jury's verdict because I've been doing this a long
20 time and we're not going to do that.

21 I will tell you that its regretful that he has been
22 associated with the lady that he was associated with for
23 whenever reason that affects anything. No one can speak to
24 the injuries that that child suffered. I think in my
25 closing argument, I tried to touch on that, that it's a

1 real shame that that happens. I would at this time ask the
2 Court, even though we're looking at -- is to look upon this
3 29-year-old young man and whatever the Court can do to help
4 him so that he doesn't spend anymore time than he's got to,
5 that you give him whatever credit you can give him from
6 that, whatever consideration you can give him for that.

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

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: Mr. Hopkins, anything you would like
10 too say.

11 THE DEFENDANT: Yes, sir. I apologize for the
12 death of **Minor** but if I could have witnessed anything
13 before the incident, I would have reported it to law
14 enforcement in the case. I witnessed stuff that day.
15 That's when I called EMS. I'm sorry I should have been
16 paying more attention, been more observant, but that's what
17 I've got to say.

18 THE COURT: Well, thank you, thank you very much,
19 Mr. Hopkins, for making that statement.

20 The jury, of course, has found you guilty, as you
21 know, of homicide by child abuse and aiding and abetting
22 homicide by child abuse. There was -- I think there was
23 sufficient evidence in my mind as to both charges. I have
24 passed, spoken to your family because I walk the halls
25 during the breaks. They've been very respectful and

1 delightful and mannerly, as I hope I have been to them. I
2 hope I have had that same impression.

3 You know, many times individuals tried in our
4 criminal courts, they don't have anybody with them, family
5 members. Nobody whatsoever. I think -- I'm not
6 suggesting -- would never suggest that you respond to any
7 of the comments that I make. It's been my experience,
8 nobody has a good enough memory to be a successful liar.
9 In other words, you have different versions of the story,
10 the 9-1-1 call, the statement to Captain Bice, the audio
11 statement to Captain Bice and Agent Baird. Nobody has a
12 good enough memory to tell lies and keep those lies
13 straight.

14 And one witness that wasn't called to testify
15 because he wasn't here, but really is the part of the case
16 so to speak was **Minor** Because as one of the expert
17 witnesses says, the body tells a story, but it tells a
18 different story and it doesn't lie. And that story was
19 chronic and acute child abuse. Chronic and acute child
20 abuse in a 26 pound, two year, 11 month old child in a
21 onesie shorter than his legs. I didn't measure it, it's
22 not my place to measure it. Not only a chronic and acute
23 abuse, but defensive wounds.

24 How can a two-year-old defend himself or herself?
25 Ultimately, they can't. They cannot. There are just more

1 wounds inflicted on them, they're just as a result of them
2 trying to defend themselves which is a basic human
3 characteristic of survival, but they've never been
4 successful in doing it. Nobody stands up for him.

5 It seems like there's a lot of children and not
6 enough childcare. It's obvious to me with your relatives,
7 it appears you were raised in a very supportive, loving
8 family situation who not only was **Minor** not raised, he
9 was not raised with loving support in his family situation.
10 People have heard me say this before, it's my philosophy, I
11 believe homicide -- I believe stealing is the worst sin one
12 can commit. I believe that when someone's life is taken
13 from them in this manner, homicide, what you have done, is
14 you stole that person's life. Stole his childhood, his
15 adolescence, adulthood, middle age, his old age. He never
16 gets to live it. Never gets to live.

17 The statute as I understand it further directs the
18 judge in sentencing must review -- must consider any
19 aggravating circumstances, including but not limited to the
20 defendant's past pattern of child abuse or neglect of a
21 child under the age of 11 and any mitigating circumstances.
22 I think there was evidence that there was chronic child
23 abuse, however, there's obviously no prior criminal
24 convictions in that regard. And further I am to consider
25 any mitigating circumstances.

1 I consider that although he has a past criminal
2 history, it primarily appears to be magistrate court,
3 numerous simple possessions of marijuana, public disorderly
4 conduct, trespassing, breach of trust, trespassing,
5 shoplifting, simple assault and battery.. He has no prior
6 crimes or history of violence. And I'll take into
7 consideration the other factors that have been pointed out
8 to me by Mr. Williams.

9 All right. 2015-GS-32-01395, Joshua Warren
10 Hopkins, the jury having returned a verdict of guilty,
11 homicide by child abuse, the defendant is committed to the
12 State Department of Corrections for a determinate term of
13 life.

14 2016-GS-32-02515, Joshua Warren Hopkins, jury
15 having returned a verdict of aiding and abetting homicide
16 by child abuse, the defendant is committed to the State
17 Department of Corrections for the determinate term of 20
18 years. Those are concurrent.

19 Good luck to you, Mr. Hopkins.

20 MS. MAYES: Thank you, Your Honor.

21 THE COURT: Thank you, Solicitor.

22 Thank you, Mr. Williams.

23 * * * * * END OF TRANSCRIPT * * * * *

24

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 the 3rd through the 7th day of October, 2016.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 24th day of April 2017.

19
20
21
22
23
24
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
JOSHUA WARREN HOPKINS #361473	)	
Full name and prison number (if any) of Applicant.	)	
	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional, 386 Redemption Road, McCormick, SC 29899
2. Name and location of Court which imposed sentence Lexington County General Sessions Court, 205 E. Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-32-01395 - Homicide by Child Abuse
 - (b) 2016-GS-32-02515 - Homicide by Child Abuse
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) October 7, 2016 - Life
 - (b) October 7, 2016 - 20 years
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. SC Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 19, 2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2018-UP-464
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Robert Theo Williams, Esq., 206 E. Main Street, Lexington, SC 29072
 - ii. Susan Barber Hackett, Esq. Appellate Defense, 1330 Lady St., Columbia, SC

29201

- iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

A new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of Lexington

VERIFICATION

I, Tommy A. Thomas, Esq. for Joshua Warren Hopkins, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 4th
day of March, 2020.

James J. Miller (L.S.)
Notary Public

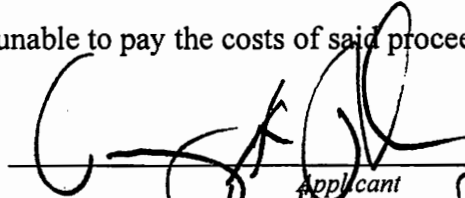
My Commission Expires: 5/1/26

Tommy A. Thomas, Esq.
attorney for Joshua
Hopkins

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

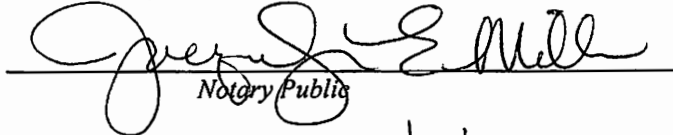
I, Tommy A. Thomas, Esq., for Joshua Warren Hopkins, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



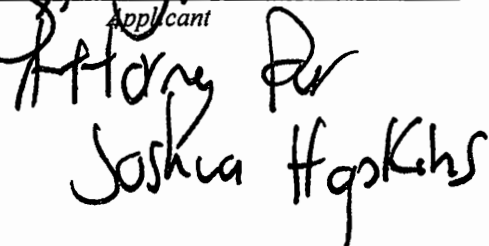
Applicant

SWORN or affirmed to and subscribed before me this
4th day of March, 2020



Notary Public

My Commission Expires: 5/1/24


Attorney for
Joshua Hopkins

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LEXINGTON	)	CASE NO.:
Joshua Warren Hopkins	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Taylor Smith, Esq. of the Attorney General's Office, at:

Taylor Smith, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549



Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 March 4, 2020

FILED

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2020 OCT 28

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUITLISA M. COMER
CLERK OF COURT
LEXINGTON, SC

Joshua Warren Hopkins, #361473,

Case No. 2020-CP-32-1523

Applicant,

v.

**RETURN AND MOTION TO DISMISS
(COUNSEL RETAINED)**

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) action commenced by Joshua Warren Hopkins (Applicant) on April 13, 2020, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on April 10, 2015, following an investigation into the death of a two-year-old child. During its June 2015 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-32-1395). Applicant was subsequently indicted for aiding and abetting homicide by child abuse (2016-GS-32-2515) in October 2016.

On October 3, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Robert R. Williams, Esquire (Counsel) represented Applicant. Assistant Solicitors Suzanne Mayes and Micah Caskey prosecuted the case.

On October 7, 2016, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to concurrent terms of life without the possibility of parole for homicide by child abuse and twenty years' imprisonment for aiding and abetting.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an *Anders*¹ brief and petition to be relieved as counsel with the Court of Appeals. Applicant did not file an *Anders* petition. The Court affirmed Applicant's convictions and granted appellate counsel's request to be relieved on December 19, 2018. *State v. Hopkins*, 2018-UP-464, (S.C. Ct. App. filed December 19, 2018). The case was remitted back to the circuit court on January 4, 2019. Applicant commenced this PCR action on April 13, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on ineffective assistance of counsel. Applicant requests relief in the form of a new trial. Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. MOTION TO DISMISS

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, the State requests this Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611

¹ *Anders v. California*, 386 U.S. 738 (1967).

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). In making its return in support of the motion for summary judgment, the State would respectfully show this court:

Statute of Limitations

This action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). S.C. Code Ann. § 17-27-10 to -160 (2014). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *See also Leamon*, 363 S.C. at 434, 611 S.E.2d at 495 (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief).

Applicant was convicted on October 7, 2016, and the remittitur from the direct appeal was issued on January 4, 2019. The application was therefore due on or before January 5, 2020. This application was filed on April 13, 2020, several months after the requisite filing period expired.

Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

IV. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

V. CONCLUSION

WHEREFORE, having made its return, the State moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

October 21, 2020

ORIGINAL

741

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JOSHUA WARREN HOPKINS, #361473

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2020-CP-32-01523

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2020 OCT 28 AM 9:27

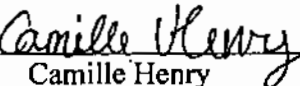
FILED

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire
7588 Woodrow Street
Irmo, South Carolina 29063

DATED this 21st day of July, 2020.


Camille Henry
Legal Assistant
For Respondent

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2020 NOV 30 PM 4:42 FOR THE ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON)

Joshua Warren Hopkins, #361472)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
)
 Respondent.) Case No.: 2020-CP-32-1523

Applicant, Joshua Warren Hopkins, in response to the conditional order of dismissal, would respectfully respond as follows:

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on April 10, 2015, following an investigation into the death of a two-year-old child. During its June 2015 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2015-GS03201395). Applicant was subsequently indicted for aiding and abetting homicide by child abuse (2016-GS-32-2515) in October 2016.

On October 3, 2016, Applicant proceeded to trial before the Honorable R. Knox McMahon. Robert T. Williams, Esquire ("Counsel") represented Applicant. Assistant Solicitors Suzanne Mayes and Micah Caskey prosecuted the case. On October 7, 2016, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life without the possibility of parole for homicide by child abuse and twenty years' imprisonment for aiding and abetting homicide by child abuse with the sentences to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an Anders¹ brief and petition to be relieved as counsel with the

¹ Anders v. California, 386 U.S. 738 (1967).

Court of Appeals on November 7, 2017. Applicant filed two *pro se* briefs, the submission of one contemplated by Anders, but they were never received by the court.² The Court affirmed Applicant's convictions and granted appellate counsel's request to be relieved on December 19, 2018. State v. Hopkins, 2018-UP-464 (S.C.Ct. App., filed December 19, 2018). The case was remitted to the circuit court on January 4, 2019. Applicant filed the current post-conviction relief application April 13, 2020.

Applicant's allegations are for ineffective assistance of counsel that, heretofore, had not been specified. Applicant hereby amends his application with the following allegations:

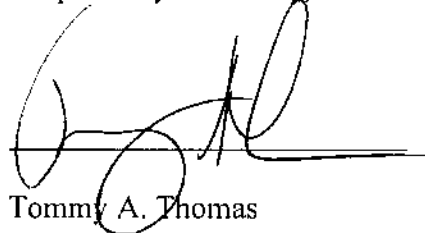
1. Ineffective assistance of counsel – failure to request a Jackson v. Denno, 378, U.S. 368 (1964) hearing regarding Applicant's statements.
2. Ineffective assistance of counsel – failure to adequately argue motion for directed verdict
3. Ineffective assistance of counsel – failure to object to graphic photos, including from autopsy and of bruising.
4. Ineffective assistance of counsel – failure to require the solicitor to elect a charge

Respondent has moved for dismissal based on two factors – that there is no issue of material fact or question of law to require a hearing and that the application was filed outside of the statute of limitations. With the above amendment, Applicant has resolved the first issue. Regarding the second issue, Applicant asserts and will testify to the fact that he was unaware that his direct appeal had been resolved. Applicant received no communication from either his appellate defender or the Court of Appeals regarding the conclusion of his direct appeal and believes that this was also a result of the lockdown.

² Applicant submitted both briefs when the South Carolina Department of Corrections was under a systemwide lockdown due to the riots at Lee Correctional. When Applicant did not receive confirmation from the court regarding receipt of his first brief, he filed another, yet did not receive confirmation regarding that submission, either. Applicant went through the SCDC grievance process to determine the whereabouts of his briefs or response from the court but was ultimately unsuccessful.

It was not until his father visited the Court of Appeals in early February 2020 that he was able to confirm Applicant's direct appeal was completed. As such, Applicant could not knowingly have missed the deadline for filing his post-conviction relief application because he was not aware that the deadline for filing had passed. As soon as Applicant was aware of the conclusion of his direct appeal, he and his family contacted undersigned counsel and an application for post-conviction relief was filed. Therefore, Applicant is informed and believes that he is entitled to equitable tolling of the statute of limitations to file his post-conviction relief application. In an extension of this, his application should be considered amended with the above allegations and Respondent's proposed conditional order of dismissal should be denied, thus requiring this action to go to an evidentiary hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

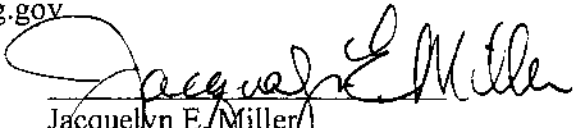
November 23, 2020

S.C. Bar No.: 5536
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CASE NO.: 2020-CP-32-1523
	)	
Joshua Warren Hopkins, #361472	)	
Applicant,	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Return to State's Motion to Dismiss, More Definite Statement of Facts and Motion to Strike Conditional Order of Dismissal by email to Taylor Smith, Esq. of the Attorney General's Office, at:

Taylor Smith, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549
 tsmith@scag.gov


 Jacquelyn E. Miller
 Paralegal to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 November 23, 2020

FILED

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2021 OCT 11 AM 9:37
 CASE NO.: 2020-CP-32-1523

Joshua Warren Hopkins, #361472)
 LISA M. COMER)
 CLERK OF COURT)
 LEXINGTON SC)

Applicant,)
 vs.) ORDER GRANTING EVIDENTIARY
) HEARING
 State of South Carolina,)
)
 Respondent.)

This matter comes before the Court by way of a Motion Hearing held on September 3, 2021 in front of The Honorable Donald Hocker. Present before the Court was the Applicant, represented by his Attorney, Tommy A. Thomas. Lillian L. Meadows, Esq., and Taylor Smith, Esq., both from the South Carolina Attorney General's Office was present on behalf of the State.

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on April 10, 2015. During its June 2015 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-03-01395). Applicant was subsequently indicted for aiding and abetting homicide by child abuse (2016-GS-32-2515) in October 2016.

On October 3, 2016, Applicant proceeded to trial before the Honorable R. Knox McMahon, Robert T. Williams, Esq. represented Applicant. Assistant Solicitors Suzanne Mayes and Micah Caskey prosecuted the case. On October 7, 2016 the Jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life without the possibility of parole for homicide by child abuse and twenty years' imprisonment for aiding and abetting homicide by child abuse with the sentences to be served concurrently.

#1
 10/3/21

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an Anders Brief. She also petitioned the court to be relieved as counsel. Applicant filed two *pro se* briefs when the South Carolina department of Corrections was under a systemwide lockdown due to the riots at Lee Correctional, but these were never received by the Court. The Court affirmed Applicant's conviction and granted Appellate Counsel's request to be relieved on December 19, 2018. State v. Hopkins, 2018-UP-464 (S.C. Ct. App., filed December 19, 2018). The case was remitted to the circuit court on January 4, 2019.

Applicant filed his current Post-Conviction Relief Application on April 13, 2020. The Respondent filed a Return and Motion to Dismiss filed October 28, 2020. The Respondent is moving for Applicant's action to be summarily dismissed for failure to comply with the filing procedure of the Uniform Post Conviction Relief Act, S.C. Code Ann. 15-27-10 – 160, 2014. More specifically, that the Applicant failed to file his Post Conviction Relief Action within one year after the entry of a Judgement or conviction or within one year after the sending of the remittitur to the lower court from an appeal. A Return to the State's Motion to Dismiss dated November 23, 2020 was filed with the Court.

TESTIMONY

The Applicant argued that he had not received any communication from the attorney representing him from Indigent Defense or the Court about his appeal being dismissed. He was on lock down, with limited access due to an institutional lockdown from a Lee Correctional riot and also COVID-19. Applicant was never informed about the status of his *pro se* Briefs.

Argument was further made that the Applicant's Father, Ways Hopkins went by and spoke with Attorney, Susan Hackett from South Carolina Appellate Defense and was informed in

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January or February, 2020 that Applicant's Appeal had been denied. He then went to the South Carolina Court of Appeals in February, 2020 and was told that the Appeal had been denied and that there was no further filing of any documents including an Application for Post Conviction Relief. Mr. Ways Hopkins then contacted Tommy A. Thomas, Esq. Counsel verified the Appeal had been concluded and filed his Post Conviction Relief Application. Counsel further argued that Mr. Hopkins was entitled to equitable tolling of the statute of limitations due to extenuating circumstances. Both Joshua Hopkins and his father, Ways Hopkins testified.

The Applicant testified that he had received no notice from counsel or the Court that his appeal had been denied. That he did receive notice from the Court that allowed him the opportunity to file *pro se* briefs. That an Anders Brief was filed by his Appellate Defender. Mr. Hopkins further testified that he did not know that his Appeal had been dismissed until his Father went by and spoke with Ms. Hackett and this information was verified by the Court of Appeals.

Mr. Hopkins testified that due to the Riot at Lee Correctional and COVID-19, that the institutions had been on virtually constant lock down and it was difficult for him to receive mail and it was required that he go to the mailroom to pick up legal mail, which required a signature. It was often weeks at a time where he was unable to receive any mail.

Two documents were shown to Mr. Hopkins by the Respondent. One being a Notice of Remittitur and the other was a Notice of denial of Appeal with an attached Order. These two documents were emailed to the Officer who was facilitating the WebEx meeting at the Department of Corrections. Both of these documents were printed and the Applicant was given the opportunity during Court recess to review both of these documents.

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10/3/21

After reconvening, Applicant was asked if he remembered receiving either or both of these documents for which he responded "no, that he did not remember receiving either one of these documents."

Mr. Ways Hopkins testified that upon the request of his son, he went by and spoke with Ms. Susan Hackett with the South Carolina Indigent Defense. That she indicated to him that his Appeal had been denied because of lack of merit. Mr. Hopkins testified that this was sometime between January and February of 2020. He further testified that he then went to the South Carolina Court of Appeals where he was informed that the Appeal had been denied and that there was no record of a Post Conviction Relief Action being filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing the testimony presented at the Motion hearing, finds and concludes that the statute of limitations for Joshua Hopkins Post Conviction Relief Action should be tolled and that Applicant is entitled to an evidentiary hearing.

Therefore based upon the foregoing, the Court grants an evidentiary hearing in the above referenced case.

AND, IT IS SO ORDERED this 30TH day of Sept, 2021.



The Honorable Donald Hocker
Presiding Judge
Eleventh Judicial Circuit

#4

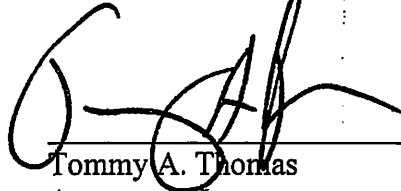
STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CASE NO.: 2020-CP-32-1523
	)	
Joshua Warren Hopkins, #361472	)	
	)	
Applicant,	)	
vs.	)	AMENDMENT TO POST-CONVICTION
	)	RELIEF APPLICATION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

That the Applicant would Amend his original Application for Post-Conviction Relief filed on April 13, 2020 as follows:

1. Counsel was ineffective in advising the Applicant not to accept numerous plea offers. The Applicant was offered a plea of 10 years to 20 years on several occasions. Trial counsel advised the Applicant not to accept the plea and told the Applicant that he could get a directed verdict after the State's case. That there was insufficient evidence to convict him.
2. Counsel was ineffective for not calling Applicant's father as a witness.
Applicant's father is Waysolbert Hopkins. Mr. Hopkins would have testified to the fact that he had taken the child to the emergency room a few weeks prior to his death. That at this hospital visit, there was no indication that there was any abuse to the minor child. In addition, Mr. Hopkins saw no signs or indication of abuse. The minor child was given medication and Mr. Hopkins was allowed to take the minor child home.

3. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Tommy A. Thomas', written over a horizontal line.

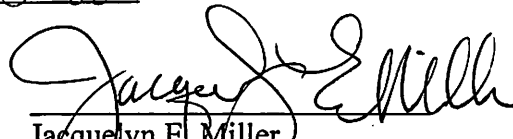
Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

October 4, 2022

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LEXINGTON	)	CASE NO.: 2020-CP-32-1523
	)	
Joshua Warren Hopkins #361472,	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, Jacquelyn E. Miller, paralegal to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail and emailed, a copy of an Amendment to Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Lillian L. Meadows, Esq. of the Attorney General's Office, at:

Lillian L. Meadows, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549
lillymeadows@scag.gov


 Jacquelyn E. Miller
 Paralegal to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 October 6, 2022

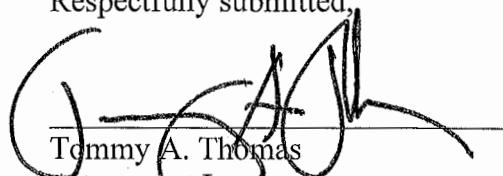
STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CASE NO.: 2020-CP-32-1523
	)	
Joshua Warren Hopkins, #361472	)	
	)	
Applicant,	)	SECOND
vs.	)	AMENDMENT TO POST-CONVICTION
	)	RELIEF APPLICATION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

That the Applicant would Amend his original Application for Post-Conviction Relief filed on April 13, 2020 as follows:

1. Counsel was ineffective for failure to properly investigate the case:
 - a. By failing to pursue speaking with potential witnesses including the victim's biological father and family members of the Victim's Mother who was providing day care to the child.
 - b. By failing to investigate the fact that the victim's Mother was under investigation by SC Department of Social Services.
2. Failure to properly investigate and present evidence at trial regarding a discrepancy in what the victim was wearing at the time of admission to the Emergency Room. Testimony was presented that the victim had on a bloody diaper upon arrival. The Applicant contends that this is not True and was prejudicial to him.

3. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,



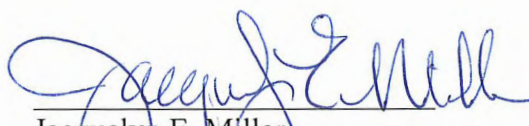
Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

June 15, 2023

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LEXINGTON	)	CASE NO.: 2020-CP-32-1523
Joshua Warren Hopkins #361472,	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, Jacquelyn E. Miller, paralegal to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail and emailed, a copy of a Second Amendment to Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Don Zelenka, Esq. of the Attorney General's Office, at:

Don Zelenka, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549
dzelenka@scag.gov


 Jacquelyn E. Miller
 Paralegal to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 June 15, 2023

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Joshua Warren Hopkins, #361473,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-32-1523

AMENDED RETURN

(COUNSEL RETAINED)

Yh
#1

The Respondent, through below-signed attorney, hereby makes an Amended Return to the post-conviction relief (PCR) action commenced by Joshua Warren Hopkins (Applicant) on April 13, 2020. The Applicant, through retained counsel Tommy Thomas, made an initial Amended Application dated October 4, 2022. On June 15, 2023, counsel advised below-signed counsel that a further amendment would be made. This matter is scheduled for a hearing before Judge Edward Miller on June 22, 2023. This amended Return follow:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on April 10, 2015, following an investigation into the death of a two-year-old child. During its June 2015 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-32-1395). Applicant was subsequently indicted for aiding and abetting homicide by child abuse (2016-GS-32-2515) in October 2016.

On October 3, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Robert R. Williams, Esquire (Counsel) represented Applicant. Assistant Solicitors Suzanne Mayes and Micah Caskey prosecuted the case.

On October 7, 2016, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to concurrent terms of life without the possibility of parole for homicide by child abuse and twenty years' imprisonment for aiding and abetting.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an *Anders*¹ brief and petition to be relieved as counsel with the Court of Appeals. Applicant did not file an *Anders* petition. The Court affirmed Applicant's convictions and granted appellate counsel's request to be relieved on December 19, 2018. *State v. Hopkins*, 2018-UP-464, (S.C. Ct. App. filed December 19, 2018). The case was remitted back to the circuit court on January 4, 2019. Applicant commenced this PCR action on April 13, 2020.

PRIOR PROCEEDINGS

Applicant filed his current Post-Conviction Relief Application on April 13, 2020. The Respondent filed a Return and Motion to Dismiss filed October 28, 2020. The Respondent is moving for Applicant's action to be summarily dismissed for failure to comply with the filing procedure of the Uniform Post Conviction Relief Act, S.C. Code Ann. 15-27-10-160, 2014. More specifically, that the Applicant failed to file his Post Conviction Relief Action within one year after the entry of a Judgement or conviction or within one year after the sending of the remittitur to the lower court from an appeal. A Return to the State's Motion to Dismiss dated November 23, 2020 was filed with the Court.

¹ *Anders v. California*, 386 U.S. 738 (1967).

A Motion Hearing held on September 3, 2021 in front of The Honorable Donald Hocker. Present before the Court was the Applicant, represented by his Attorney, Tommy A. Thomas. Lillian L. Meadows, Esq., and Taylor Smith, Esq., both from the South Carolina Attorney General's Office was present on behalf of the State. After hearing the testimony presented at the Motion hearing, Judge Hocker found that the statute of limitations for Joshua Hopkins Post Conviction Relief Action should be tolled and that Applicant is entitled to an evidentiary hearing. The order was dated September 30, 2021 and filed October 11, 2021.

ATTACHMENTS TO THE INITIAL RETURN AND MOTION TO DISMISS

Attached to the original return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

II. ALLEGATIONS

In his original application for post-conviction relief, though counsel Thomas, Applicant alleged he was being held in custody unlawfully for the following reason:

10(a) Ineffective assistance of counsel.)(no factual support listed)

In first amended application dated October 4, 2022, Hopkins alleged the following:

1. **[PLEA OFFER ADVICE]** Counsel was ineffective in advising the Applicant not to accept numerous plea offers. The Applicant was offered a plea of 10 years to 20 years on several occasions. Trial counsel advised the Applicant not to accept the plea and told the Applicant that he could get a directed verdict after the State's case. That there was insufficient evidence to convict him.

2. **[The Applicant's father Waysolbert Hopkins was not called as a witness]**

Counsel was ineffective for not calling Applicant's father as a witness. Applicant's father is Waysolbert Hopkins. Mr. Hopkins would have testified to the fact that he had taken the child to the emergency room a few weeks prior to his death. That at this hospital visit, there was no indication that there was any abuse to the minor child. In addition, Mr. Hopkins saw no signs or indication of abuse. The minor child was given medication and Mr. Hopkins was allowed to take the minor child home.

In a second amended application dated June 15, 2023, the Applicant made the following allegations:

1. Counsel was ineffective for failure to properly investigate the case:
 - a. **[Failed to Speak with Victim's biological father and family members of the victim's mother]**. By failing to pursue speaking with potential witnesses including the victim's biological father and family members of the Victim's Mother who was providing day care to the child.
 - b. **[Failed to investigate the victim's mother]** By failing to investigate the fact that the victim's Mother was under investigation by SC Department of Social Services.
2. **[Failed to Investigate what the victim was wearing at hospital admission]**
 Failure to properly investigate and present evidence at trial regarding a discrepancy in what the victim was wearing at the time of admission to the Emergency Room. Testimony was presented that the victim had on a bloody

diaper upon arrival. The Applicant contends that this is not True and was prejudicial to him.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

M
45. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors,

the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. However, it is impossible for Respondent to unequivocally refute these claims based on the record. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted,

V. CONCLUSION

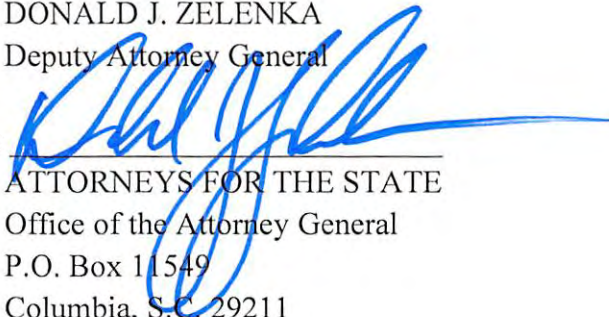
WHEREFORE, having made its amended return, the State requests a hearing be held .

3
#6

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 22, 2023

1 APPEARANCES:

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
 25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 MR. ZELENKA: Mr. Hopkins on October 4, 2022, filed
2 an initial application for post-conviction relief. On
3 June 15, 2023, he --- a further amendment was made.

4 He has basically three applications before the
5 Court. The first one, this alleged ineffective
6 assistance of counsel. The second one on October 4,
7 2022, made two separate allegations involving counsel's
8 ineffectiveness in advising the client not to accept the
9 offers that were made, including an alleged offer for a
10 plea of 10 years to 20 years, and advised him to not
11 accept the plea.

12 The second allegation is that his father was not
13 called as a witness and should have been called. His
14 father was Sober (phonetic) Hopkins.

15 Then he amended the application two weeks ago on
16 June 15, 2023, and alleges again, counsel was ineffective
17 in failing to properly investigate the cases by speaking
18 with potential witnesses, including the victim's
19 biological father and family members, also the victim's
20 mother who was providing day care. And that counsel
21 failed to investigate the fact that the victim's mother
22 was under investigation by the South Carolina Department
23 of Social Services.

24 And then additional allegation the counsel failed to
25 investigate and present evidence at trial over

Proceedings

1 discrepancy in what the victim was wearing at the time of
2 the admission to the emergency room. And particular
3 testimony that the victim had a bloody diaper on on
4 arrival, and the applicant contended that was not true
5 and was prejudicial to him.

6 We're prepared to go forward in this matter. Theo
7 Williams, the applicant's counsel is present.

8 The case before the Court involves an investigation
9 involving a death of a two-year-old child. During the
10 June 2015 term, the applicant was indicted for homicide
11 by child abuse, and then subsequently indicted for aiding
12 and abetting homicide by child abuse.

13 In 2016, proceeded to a jury trial before Judge
14 McMahon. Mr. Williams represented him at the time and
15 Susan Mays (phonetic) and Mike Ocowski were the
16 solicitors and prosecutor of the case.

17 On October 7, 2016, he was convicted. Judge McMahon
18 sentenced him to concurrent terms of life without
19 possibility of parole for a homicide by child abuse and
20 20 years for aiding and abetting.

21 The applicant appealed to the South Carolina Supreme
22 Court and it went --- was ordered back to the Court of
23 Appeals. He was represented at that time by Susan
24 Hackett who filed an Anders brief before the Court and a
25 request to be relieved as counsel.

Direct exam J. Hopkins

1 The Court of Appeals issued an order on December 19,
2 2018, and it dismissed the appeal, denied relief, and
3 remanded the case back. And the action here commenced on
4 a PCR on April 13th initially --- April 13, 2020.

5 THE COURT: Okay.

6 MR. THOMAS: Your Honor, if it please the Court just
7 in housekeeping, just to kind of shorten things up and
8 moving along, I often refer to transcript pages and lines
9 with testimony and that's just for the Court's
10 convenience, Your Honor.

11 THE COURT: Okay.

12 MR. THOMAS: Your Honor, if it please the Court, we
13 would call Mr. Joshua Hopkins to the stand.

14 THE COURT: All right.

15 (Witness sworn)

16 JOSHUA HOPKINS, HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS.

18 CLERK: Have a seat, state your full name for the
19 record, please.

20 THE WITNESS: Name is Joshua Hopkins.

21 DIRECT EXAMINATION

22 BY MR. THOMAS:

23 Q. Mr. Hopkins, you're currently incarcerated South Carolina
24 Department of Corrections?

25 A. Yes, sir.

Direct exam J. Hopkins

1 Q. And what type of sentence do you have?

2 A. A life sentence plus 20 years.

3 Q. And you received those sentences on what charges?

4 A. Aiding and abetting 20 years, and homicide by child
5 abuse, life.

6 Q. That's life without parole?

7 A. Yes, sir.

8 Q. Now, when you were arrested, do you remember roughly when
9 you were arrested?

10 A. I believe this was April '15.

11 Q. Of what year?

12 A. 2015.

13 Q. '15?

14 A. Yes, sir.

15 Q. Okay. And then what were you charged with at that time
16 that you were arrested?

17 A. I was charged with child neglect.

18 Q. Child neglect?

19 A. Yes, sir.

20 Q. And then were additional charges added?

21 A. Yes, there is. The charge of --- I bonded out and
22 the charges got upgraded.

23 Q. And do you remember roughly when that was?

24 A. That was 2016, June --- June.

25 Q. And what --- what were those charges? What were upgraded

Direct exam J. Hopkins

1 to be?

2 A. Homicide by child abuse and aiding and abetting.

3 Yes, sir.

4 Q. And what was the date of the child's death; do you
5 remember?

6 A. 2013, November.

7 Q. Okay. So and you went to trial when? Do you remember?

8 A. October 2016.

9 Q. Is there a --- so there was a gap before these charges
10 were upgraded?

11 A. Yes, sir.

12 Q. And how long was that gap?

13 A. Two and a half years possibly, sir.

14 Q. Now, you had an appeal; is that correct?

15 A. Yes, sir.

16 Q. And you were represented by Appellate defense?

17 A. Yes, sir.

18 Q. Do you remember what the issue was that was raised on
19 appeal?

20 A. The directed verdict. Direct verdict and I believe
21 on aiding and abetting.

22 Q. Abetting?

23 A. Yes, sir.

24 Q. And your appeal was not granted?

25 A. No, she filed --- filed for Anders brief and --- and

Direct exam J. Hopkins

1 that's when they wouldn't grant it. Yes, sir.

2 Q. Now, you --- I always ask these questions, you filed
3 post-conviction, and you understand that you --- (technical
4 difficulty) convictions (unintelligible)?

5 A. Yes, sir.

6 Q. Now, normally there is a risk that you would --- would
7 have because you could be --- if it is set aside, you could be
8 retried and your sentence could be enhanced, but in this case
9 your sentence really can't be enhanced?

10 A. Right. I understand.

11 Q. Life without parole?

12 A. Yes, sir. That's correct.

13 Q. (Technical difficulty) do you want to go forward?

14 A. I do.

15 Q. Now, you were arrested and you mentioned about a bond;
16 did you make bond?

17 A. Yes, sir. I did.

18 Q. Now, did you make bond on both --- on the original and
19 also on the enhanced?

20 A. No, just the child neglect.

21 Q. Just the child neglect?

22 A. Yes, sir.

23 Q. So you did go back into the --- the county detention
24 center?

25 A. Well, they did --- they did a thing where you call

Direct exam J. Hopkins

1 roll call and you have to go up every month for roll
2 call.

3 Q. Did you spend any time (technical difficulty)?

4 A. Not understanding you.

5 Q. Okay. Were you in the contact jail?

6 A. Oh, yeah. For the child neglect, yes, sir.

7 Q. How long were you in the (inaudible)?

8 A. I'll say six to eight weeks.

9 Q. I ask that because you had meetings with your lawyer; is
10 that correct?

11 A. That's correct. I had a public defender at the
12 time.

13 Q. All right. And you had a public defender and then you
14 retained Mr. Williams?

15 A. Yes, sir. That's correct.

16 Q. Do you remember roughly when that was?

17 A. I know it was after I --- after, I believe, they
18 upgraded --- after I bonded out and they upgraded the
19 charges.

20 Q. How much time did you have between when you hired Mr.
21 Williams and when you went to --- went to court --- you went
22 to trial?

23 A. Roughly, year and a half.

24 Q. Okay. So did you have time to meet with him?

25 A. Yes, sir.

Direct exam J. Hopkins

1 Q. And during the time that you were in the detention
2 center, a public defender came to see you?

3 A. Yes, he did.

4 Q. Okay. Now, talking about Mr. Williams, because he's the
5 one that represented you at trial ---

6 A. Right.

7 Q. --- you were on bond at that period of time?

8 A. No, sir, I was in the detention center.

9 Q. Okay. So he would come to see you?

10 A. Yes, sir.

11 Q. And what did y'all talk about? How did you prepare this
12 case?

13 A. We basically --- they had a plea offer where they
14 offered me a plea offer and he stated that we didn't want
15 to take the plea offer because they didn't have any
16 evidence to --- we was going to wait on a lesser plea.

17 Q. (Inaudible)?

18 A. 10 to 20 for aiding and abetting.

19 Q. Let's kind of go back (unintelligible) front of that if
20 we can. So you were meeting with Mr. Williams, and what
21 did --- what did y'all talk about as far as crime and how he
22 was going to defend you and those sort of things?

23 A. Basically he said it was two pathologic ---
24 pathologic --- I'm sorry. Pathologies that was ---

25 Q. (Inaudible)?

Direct exam J. Hopkins

1 A. Yes, sir. That --- little jittery, it's a little
2 cold over there.

3 Q. That's okay. I understand.

4 A. Basically he said he didn't want to hire another
5 expert --- expert witness because they was --- they was
6 diagnosing the two different claims of the death.

7 Q. Okay. Let's --- let's slow down just a little bit.
8 Okay?

9 A. Yes, sir.

10 Q. So when you met with him, did he show you what the
11 discovery was? What the State's evidence was against you?

12 A. I received a Rule 5.

13 Q. Received a Rule 5?

14 A. Yes, sir.

15 Q. Okay. And did you go through that Rule 5 with Mr.
16 Williams?

17 A. Not necessarily with him. I would more likely look
18 over it myself. I --- I mentioned some stuff to him.

19 Q. Okay. What's your education, if you don't mind me
20 asking?

21 A. I dropped out of 11th grade.

22 Q. 11th grade?

23 A. Yes, sir.

24 Q. Got your GED?

25 A. No, sir. I working on it.

Direct exam J. Hopkins

1 Q. Working on it. Okay. How long you been incarcerated?

2 A. Total with the county time, it would be eight --- I
3 mean eight years.

4 Q. So did you understand that was provided to you in the
5 Rule 5?

6 A. Not really, because I never had any family members
7 that deal with crimes or I never been in a situation to
8 have a Rule 5. So no. No, sir.

9 Q. Okay. Now, there was some technical information in
10 there. There was autopsies and medical reports; did you
11 review those?

12 A. I looked at them. I did look at them.

13 Q. Did you understand them?

14 A. Not really. Not most --- No, sir.

15 Q. Okay. And you mentioned --- and we'll talk a little more
16 about this later, you mentioned that there were some
17 discrepancies in cause of death in the two autopsy reports?

18 A. That's correct.

19 Q. Did you understand what those discrepancies were?

20 A. All I know they were saying that one --- one
21 diagnosis was --- was --- expert said it was a diagnosis,
22 but they said it never been diagnosed without fractures.

23 Q. Okay. So would it be fair to say the first one --- there
24 was really no determination as to cause of death?

25 A. That's correct.

Direct exam J. Hopkins

1 Q. And then the second one there was a determination of
2 case?

3 A. Right. Well, you can with the hospital. They got
4 a --- where is the third one if you put it like that.

5 Q. Okay.

6 A. With the doctor from the hospital give me his
7 diagnosis.

8 Q. All right. You're talking about the emergency room?

9 A. Yes, sir. Yes, sir.

10 Q. All right. What I'm --- what I'm interested in though at
11 this point in time is what did you understand? I mean, you
12 know, you've got some pretty serious charges and you met
13 with --- be with Mr. Williams, what did y'all talk about? I
14 mean what --- how was he going to defend you?

15 A. His whole point was that the expert --- the two
16 expert argued the facts, the cause of death. That them
17 arguing between each other, we don't --- do not hire
18 another expert because we're going to let them toggle
19 between the two experts that had different opinions.

20 Q. You're talking about he was going to use a discrepancy
21 with between the two diagnoses?

22 A. That's correct.

23 Q. Okay. Now, there's a lot of other stuff kind of going
24 around in this too as far as witnesses, and timelines, and
25 what you were doing during this period of time; did you

Direct exam J. Hopkins

1 discuss that with Mr. Williams?

2 A. Really the more --- more discussions we had was he
3 would give me a direct appeal, because I didn't ---
4 he --- he could give me a directed verdict.

5 Q. Why?

6 A. Because I didn't --- I didn't say I did anything and
7 they didn't --- didn't have any evidence that I did
8 anything incriminating myself.

9 Q. Would it be fair to say that you really didn't understand
10 much of anything?

11 A. That's correct.

12 Q. All right. And who were you relying upon to help you?

13 A. My --- my counsel.

14 Q. And that was Mr. Williams?

15 A. Yes, sir.

16 Q. Now, how many times --- do you remember how many times
17 you met with Mr. Williams before going to trial?

18 A. I only remember twice. I remember once when he was
19 telling me he was my lawyer, he's representing me. And
20 the second time when he came in and tell me about the
21 plea offer and we're not taking this until they come with
22 a lesser plea offer.

23 Q. Okay. All right. You may not know the answer to this
24 question, I don't know. Talking about theory of defense, do
25 you --- do you know what kind of theory or what --- what his

Direct exam J. Hopkins

1 plans were in regards to the big picture of defending you?

2 A. Basically all I --- from my --- from my

3 understanding was the directed verdict. You know, you

4 can get a direct verdict.

5 Q. All right. So let's talk about that. You had plea ---

6 you've had plea offers, how many plea offers did you have?

7 A. I had three.

8 Q. And what were those offers?

9 A. Aiding and abetting 10 to 20 years.

10 Q. 10 to 20?

11 A. Yes, sir.

12 Q. Okay. And when did those offers come to you, while you

13 had Mr. Williams, or while you had the public defender?

14 A. One was with the public defender, the other two was

15 with Mr. (Unintelligible).

16 Q. Okay. Now, did you talk about those plea offers with Mr.

17 Williams?

18 A. Yes, sir.

19 Q. And what did y'all talk about?

20 A. Basically he said we not going to take plea offers

21 till they offer --- they --- they going to come and offer

22 you something lesser --- a lesser plea offer.

23 Q. And you mentioned something about a directed verdict,

24 what --- what was that?

25 A. I couldn't tell you. My understanding was a

Direct exam J. Hopkins

1 directed verdict was saying that they directly had to put
2 every evidence --- every element of the crime on me.
3 That was my basically understanding of it.

4 Q. All right. So what did Mr. Williams tell you about ---
5 what do you remember about a directed verdict?

6 A. I just been told we was going --- he was going to
7 give me a direct verdict to take the --- don't accept the
8 plea offer.

9 Q. Okay. And did y'all talk about the evidence that he ---
10 that they had --- the State had against you?

11 A. Yes, sir.

12 Q. And what --- what, if anything, did y'all talk about?

13 A. Talked about the testimony. He said I didn't say
14 anything incriminating when I met with the officers ---
15 law enforcement.

16 Q. Okay.

17 A. He said I didn't say anything incriminating and they
18 never really had no evidence to prove my guilt.

19 Q. All right. Now, you did make statements?

20 A. Yes, sir.

21 Q. Can you tell us about those?

22 A. Yes, sir. Well, basically, they call me two years
23 later to the police station and questioned me. They had
24 me in there for two and a half hours. I kept saying I
25 don't know. I don't know. Say anything with --- I told

Direct exam J. Hopkins

1 them it was the previous --- my previous statement. And
2 so they kept dragging me on and on. We sat in there two
3 and a half hours.

4 My father was there, my mother was there. Had a
5 other couple family members there, but they kept dragging
6 it out to where --- so I kind of said some stuff I
7 probably wouldn't have said. They told me I was under
8 arrest. They never told me I was under arrest till after
9 the --- till after the statement was over.

10 Q. Did you ever tell them you did it?

11 A. No, sir.

12 Q. What did you tell them?

13 A. I basically told them that I seen him bruise the
14 baby for --- that day of the --- of the day he died. I
15 told them I seen bruises on him and --- and that's about
16 it.

17 Q. And you were there with him when he became very ill?

18 A. Yes, sir.

19 Q. And what did you do?

20 A. I tried to do everything I can to get him
21 responding. Get him to respond to me.

22 Q. Call 911?

23 A. I did.

24 Q. Did you call the baby's mama?

25 A. I did.

Direct exam J. Hopkins

1 Q. So the baby's mother --- that was not your child?

2 A. No, sir.

3 Q. Okay. And what was your relationship with the baby's
4 mother?

5 A. She was my girlfriend at --- at the time.

6 Q. Okay. And how long had you known her?

7 A. Probably eight --- seven --- I'll say seven months
8 to a year. Wouldn't say a year. Probably seven, eight
9 months.

10 Q. How long had you been living with her?

11 A. Actually she came and live with us -- me -- me and my
12 roommate. I had a roommates and they introduced me to
13 her. And we kicked it off. And she started --- end up
14 staying with us because she was having trouble with
15 housing with her previous --- her other baby's father had
16 a place together. He was kind of moving out and she need
17 somewhere to stay.

18 Q. And in regards to these plea offers, how did that work
19 for you?

20 A. Didn't work out. I mean, we came to the plea offers
21 was the time had expired it was time of --- we came and
22 say pick the jury and we got to go to trial.

23 Q. Had you known the information that was presented at
24 trial, would you have proceeded to trial or would you have
25 accepted the plea offer?

Direct exam J. Hopkins

- 1 A. Well, for me learning the law now and being
2 competent now, I probably would have accepted the plea.
3 Q. Was there a lot of evidence that the State used against
4 you?
5 A. I believe it was circumstantial. A lot of
6 circumstantial evidence. Yes, sir.
7 Q. But they were able to convince the jury?
8 A. Right.
9 Q. Now, you said that the plea offer --- the --- basically
10 expired, they took it off the table?
11 A. Right. And said it's time to pick --- pick the
12 jury.
13 Q. That happened right at the time of --- of going to trial?
14 A. I'm sorry?
15 Q. When --- when did that happen? That --- that plea offer
16 coming off the table and you going to trial? Was that close
17 together, far away, or what was up?
18 A. Say a couple months. About three or so months out
19 there.
20 Q. That it was withdrawn?
21 A. Yes, sir.
22 Q. So you felt you were locked in and going to trial at that
23 point in time?
24 A. Yes, sir.
25 Q. Okay. Did you testify at trial?

Direct exam J. Hopkins

1 A. No, sir. I didn't.

2 Q. Now, what did they --- just kind of briefly in summary,
3 what did they --- what --- what --- what did the State say
4 that you did?

5 A. Well, they basically said either I committed --- I
6 committed abuse, or either I aided and abetted, or didn't
7 go to 911 in time, or I neglected --- basically, I
8 neglected or either caused the death of him by not going
9 to 911.

10 Q. Okay. And they basically said that it was --- that you
11 were responsible for the death?

12 A. No, sir. Not at first.

13 Q. Not at first?

14 A. No, they was saying I either assisted her or trying
15 to cover up (unintelligible).

16 Q. Okay. But you were with the child that morning?

17 A. Yes, sir.

18 Q. And where was the mother?

19 A. She was at work.

20 Q. What time did she go to work?

21 A. She was supposed to be there at 5:00, 6:30, but
22 didn't have a ride for her. I was waiting on my mother
23 get off work and come get her.

24 Q. Okay.

25 A. And take her.

Direct exam J. Hopkins

1 Q. All right.

2 A. Because her license was suspended --- and she had a
3 permit and my license was suspended at the time.

4 Q. Now, you and I had talked quite a bit about this case.
5 And you know, early on you told me about your dad, and that
6 your dad was there and was willing to testify; did Mr.
7 Williams use your father to testify?

8 A. No, sir.

9 Q. And why did you want your dad to testify?

10 A. Because he was --- he was dealing was --- he was
11 giving us rides to the hospital for the child and help us
12 assist us with --- with transportation a lot.

13 Q. Okay. But he had actually taken the child to the
14 hospital prior to the child's death; is that correct?

15 A. He did.

16 Q. And how --- when was that? How --- what was the time
17 difference between that and when the child passed away?

18 A. I want to say a week before.

19 Q. Okay. But you felt like he had information that would
20 have been helpful for your trial?

21 A. Right.

22 Q. Did you talk to Mr. Williams about that? About him
23 testifying and what information he had?

24 A. Yeah, I talked to him about a --- a good bit of
25 people testifying for us.

Direct exam J. Hopkins

1 Q. Who was that? Who were those other people?

2 A. Ms. Bishop (phonetic). Well, she was --- Priscilla
3 Haynes was the --- she did testify, but not for --- he
4 didn't call her as a witness. Was the babysitters ---
5 couple babysitters that babysitted her. And not only
6 just them, but females that I deal with in the past help
7 raise their kids. I asked him can we use them too to
8 show my character.

9 Q. Prior. Prior to ---

10 A. Right.

11 Q. Tell us just briefly who --- who these people are? So
12 you are Mr. Hopkins, so you are a defendant?

13 A. Right.

14 Q. Who was the codefendant?

15 A. Sabrina Haynes.

16 Q. And she was your girlfriend?

17 A. That's correct.

18 Q. Okay. Who else was in the house?

19 A. Ms. Priscilla Haynes and her mother.

20 Q. Priscilla Haynes is who?

21 A. That's the auntie.

22 Q. Okay. That's ---

23 A. My girlfriend's aunt ---

24 Q. That's her aunt?

25 A. --- that we had moved in with.

Direct exam J. Hopkins

1 Q. Okay. And who else was in the house?

2 A. Her mother, Ms. Willa Mae Haynes.

3 Q. And Ms. Willa Mae was disabled?

4 A. Yes, she was.

5 Q. So was she able to get around in the house or was she
6 bedridden?

7 A. She would get up and try to go to the refrigerator
8 and to the bathroom. Sometimes with --- she had a walker
9 that she used sometimes to be mobilized, but most of the
10 time she would have to be helped.

11 Q. She was basically eliminated as suspect?

12 A. That's correct.

13 Q. All right. Now, you've also said that your codefendant
14 is Ms. Haynes?

15 A. That's correct.

16 Q. Now, your codefendant, Ms. Haynes, her case had been
17 reported to Department of Social Services?

18 A. Yeah. I believe it was --- I'm not exactly sure
19 which child it was, but she also have another son, but
20 I'm not sure exactly ---

21 Q. That --- that other son, was in the custody of somebody
22 else?

23 A. Right.

24 Q. Okay. Now, what did you talk about with Mr. Williams
25 about that information? Did he --- did he tell you how he was

Direct exam J. Hopkins

1 going to use it or did y'all discuss that at all?

2 A. Yeah. He said he would use it at trial to show that
3 DSS was called on her about abuse --- allegedly abuse of
4 her son.

5 Q. Okay. Now, you were also concerned about the issue of a
6 bloody diaper?

7 A. That's correct.

8 Q. Why are you --- why were you concerned about that?

9 A. Because I believe it was used to prejudice.

10 Q. And how so?

11 A. That she --- she presented testimony of a doctor
12 saying the body arrived with yet another bloody diaper.
13 Yeah, that kind of made it sound plural and it made it
14 seem like he arrive to the hospital wearing it.

15 Q. And why was that important that he would go to the
16 hospital with a bloody diaper?

17 A. Because she testified that if --- if the blood ---
18 if the diaper had --- it was bloody had --- he was had
19 actively bleeding wounds.

20 Q. When he went to the hospital?

21 A. That's correct.

22 Q. And so they were trying to --- to say that that was
23 during the period of time where you had custody of him ---
24 physical custody?

25 A. Yes, sir.

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1 Q. And, Mr. Hopkins, you feel like Mr. Williams could have
2 done a better job for you?

3 A. I believe so. Especially with not objecting to that
4 statement which clear and convincing evidence would have
5 showed that he arrived in underwear ---

6 Q. And ---

7 A. --- that --- that didn't have any --- I'm sorry.
8 That didn't have any blood in it.

9 Q. And but you're mainly concerned about the issue about the
10 plea offer?

11 A. Yes, sir. That's the main. Because if I would have
12 known I couldn't get a --- a direct verdict when it was
13 going to be granted, I would have never went to trial.
14 Not saying I was guilty, but just --- just not facing the
15 harsher, more severe sentence.

16 Q. Now, I apologize for saying this, but I'm not sure that
17 you understand completely my question. You feel like there
18 was information that you didn't know at the time that you
19 turned that plea offer down?

20 A. In a way, yes. So basically on the whole
21 investigation on the case. Yes, sir.

22 Q. You talked earlier about risk. We're talking about
23 filing your post-conviction (unintelligible)?

24 A. Uh-huh.

25 Q. Did you understand the risk of not taking that plea

Direct exam J. Hopkins

1 offer?

2 A. I really didn't. I --- I didn't. I wasn't
3 concerned after he had stated that he can get me a direct
4 verdict and they had no evidence.

5 Q. Do you understand or did you know that you potentially
6 could have gotten life without parole?

7 A. No, sir.

8 Q. Was that ever explained to you?

9 A. No, I don't recall it being.

10 Q. Mr. Hopkins, you and I have talked about this as well,
11 you've waited a long time to be in court today; is there
12 anything else --- something that I may have forgotten,
13 something that we've talked about that I have failed to raise,
14 or something that --- that you feel like needs to be brought
15 to the Court's attention?

16 A. It's a couple things. Like I said, the character
17 witness. I could have brought --- make my character show
18 that it wasn't a potty-training thing like the solicitor
19 made the theory out to be. Because I raise plenty of
20 kids that needed potty training. I help --- I help with
21 the kids that needed potty training. I stated he didn't want
22 any adult witnesses because it'll make it seem like
23 I knew how to deal with a child. And --- and basically
24 with the expert --- my own expert stating the cause of
25 death and he said didn't want another expert because he

Direct exam J. Hopkins

1 wanted the two experts to argue --- argue each other
2 diagnosis.

3 Q. Anything else?

4 A. There's one other --- with --- with the jury
5 selection, it was a jury member that was --- she was
6 selected and she was on the case --- another case with my
7 codefendant and her baby daddy. She was a --- a
8 paralegal with the other case.

9 Q. Who did --- who did she ---

10 A. She represented the other baby daddy.

11 Q. The other child --- her other child?

12 A. Yeah. Yes, sir. That's correct. I feel like
13 we --- we shouldn't have selected her as a jury member. He
14 said he wanted select her because he thought she could
15 help us in my cause.

16 MR. THOMAS: And, Your Honor, just for the Court's
17 information, that's page 51 of the transcript.

18 THE COURT: Pardon me.

19 MR. THOMAS: 51 of the transcript.

20 THE WITNESS: And also that same jury member a
21 witness start crying and --- and when she started crying
22 other jury members started crying also.

23 BY MR. THOMAS:

24 Q. All right, Mr. Hopkins, anything else?

25 A. I believe one other thing about the solicitor's

Cross-exam J. Hopkins

1 comments. They was kind of inflammatory and I think kind
2 of raised a lot of bias and prejudiced me a little bit by
3 her saying, oh he arrived in the Pamper, the bloody
4 diaper. He put --- he put the child in a diaper that had
5 blood in it and that wasn't the truth. She also
6 testified that another doctor said it, but he didn't say
7 it the way she say he arrived with it.

8 MR. THOMAS: All right. Your Honor, I have no
9 further questions.

10 THE COURT: Okay. Cross.

11 CROSS-EXAMINATION

12 BY MR. ZELENKA:

13 Q. Mr. Hopkins, just a few questions. After you were
14 charged and Mr. Williams began representing you, what did you
15 tell him your role was the night the child --- or the day the
16 child died? What were you doing?

17 A. I'm sorry, I --- I can't understand the question.

18 Q. What did you tell Mr. Williams you were doing the day the
19 child died?

20 A. Basically the same thing I told the police officer,
21 that I was trying to --- trying to rest --- make sure he
22 was breathing, make sure --- make sure he was getting the
23 air, make sure he responded to me.

24 Q. Okay. Had you fed the child earlier that day?

25 A. I don't know, sir. It was early morning.

Cross-exam J. Hopkins

1 Q. Okay. Had you fed the child that morning when the ---

2 A. No, sir.

3 Q. --- when the child got up?.

4 A. No, sir.

5 Q. What occurred to the child the day before; was he ill?

6 A. Yes, he was ill prior, they say he had --- was
7 diagnosed with --- he was vomiting, diarrhea, I can't
8 remember the other one. I know vomiting and diarrhea.

9 Q. Okay. Were you with the child then?

10 A. I was around, yes, sir.

11 Q. What do you mean, "around"?

12 A. His mother was actually the caregiver. I was
13 working and she wasn't working.

14 Q. Okay. So when you got back from work --- and you were
15 working at McDonald's?

16 A. That's correct.

17 Q. When you got home from work, that would have been roughly
18 what time?

19 A. I got up at 12:30. I probably got to the house
20 around 1:00, a little bit later.

21 Q. Okay. And then your girlfriend left at 5:30 in the
22 morning?

23 A. She was supposed to be gone at 5:30, but she didn't
24 have a ride. So she might have left around 6:00.

25 Q. Okay. And roughly sometime between when she left, when

Cross-exam J. Hopkins

1 you called 911 you found the child?

2 A. Sorry?

3 Q. You found the child?

4 A. No, sir. No, sir. That's not correct. We got up
5 and he had urine in his diaper, so I was changing the
6 diaper. I was taking the diaper off and taking --- let
7 him --- I got right brushing my teeth and was going to
8 let him take a bath.

9 Q. Okay. You put him in the bathtub?

10 A. (Inaudible).

11 Q. Was he vomiting, choking, breathing?

12 A. I didn't actually --- I didn't actually put him in,
13 he was --- he was mature enough to get in the tub his
14 self, undress his self, get in the tub his self.

15 Q. How old was the child?

16 A. He was almost three. Another month, he'll be three.

17 Q. All right. Was he potty trained?

18 A. In a sense, yeah.

19 Q. Diapers he was wearing were pull-up diapers?

20 A. Yes, sir.

21 Q. Roughly what time was that? The ---

22 (Simultaneous speaking)

23 A. Well, really, we ran ---

24 Q. --- was in the bathtub?

25 A. I don't know the exactly time. We --- we don't

Cross-exam J. Hopkins

1 have --- we have no clock (unintelligible) got the TV to
2 get the time.

3 Q. Okay. How was he acting when he was in the bathroom?

4 A. I mean, he had his little car, he was playing with
5 his little car --- little truck he had he get in the tub
6 with.

7 Like I say, I brush my teeth, I went downstairs to
8 check on her aunt, because her aunt was there too. We
9 used to have to check on her, make sure she was okay.

10 Q. Okay. What happened next?

11 A. I went --- I --- I went to smoke a quick cigarette.
12 Took a couple pulls off a cigarette. Then I walked back
13 upstairs, and he was on the --- he was on the ground
14 wheezing.

15 Q. Wheezing and coughing?

16 A. No, he wasn't coughing, he was wheezing-like.

17 Q. What was he wearing?

18 A. What was he wearing?

19 Q. Yeah.

20 A. He was in the tub, he was naked.

21 Q. Okay. What happened next?

22 A. I hurried up and picked him up with a towel and ran
23 to the bedroom. Like basically, I was just trying to
24 make sure he wasn't choking on nothing. Put him up and
25 making sure he wasn't choking on nothing, or you know,

Cross-exam J. Hopkins

1 catching air. And trying to --- I ran and got the ---
2 his little asthma pump that he used to have. Tried to
3 give him that, make sure he was good.

4 Q. Okay. What happened next?

5 A. I, you know, had to go downstairs and call the mom,
6 like, you know anything? What's going on with Tay? What
7 can I do to get him? Because he was wheezing, but he was
8 like --- he had stopped wheezing and he was just like
9 moaning like --- like --- so I called her and see
10 anything that she know I can do for him real quick.

11 Q. And how soon after that did you call 911?

12 A. I'm not exactly sure. I called my mother also to
13 come and try to assist. I'm not sure the exactly time
14 frame when I called 911.

15 Q. And then you called 911?

16 A. Yes.

17 Q. Minutes? Hours?

18 A. I'm not sure the exactly time frame. I know it
19 wasn't no hours.

20 Q. Okay. Let's back it up. It wasn't an hour, was it
21 15 minutes? 30 minutes? How long ---

22 A. Like I say --- like I say, I wasn't --- wasn't on
23 the time. I was making sure he was okay --- trying to
24 make sure he was okay.

25 Q. But he wasn't okay, so what did you do after you --- you

Cross-exam J. Hopkins

1 spoke to the mother?

2 A. Like I said, called 911 prior --- minutes after.

3 Q. Okay. Minutes after you called 911 -- well, that 911
4 call is at 9:30 in the morning?

5 A. Uh-huh.

6 Q. Okay. How long did it take EMS to get there?

7 A. I don't know. Maybe 15 minutes or so.

8 Q. About 12 minutes; does that seem right?

9 A. In a crisis, you don't look at time. You don't try
10 to see what time --- I mean.

11 Q. And when --- when EMS got there is it correct that you
12 had the child fully dressed, totally dry, with a diaper on,
13 and you hand him to the EMS ---

14 (Simultaneous speaking)

15 A. That's not ---

16 Q. --- EMS person?

17 A. That's not correct.

18 Q. Well, what is not correct about it?

19 A. I didn't have him at first. I ran into the road to
20 get the EMS to know what driveway, because at first it
21 sound like they was going to pass the house. When they
22 came back, I ran to the road to make sure --- because
23 like when you come in the driveway, there's no front ---
24 there's no front door. You don't go to the front, you
25 got to come to the back driveway.

Cross-exam J. Hopkins

1 Q. Did you have the child with you?

2 A. No, sir.

3 Q. Okay. When did you get the child?

4 A. I ran back in the house and picked him up and was
5 headed to ---

6 Q. The child was in the house alone during that period of
7 time?

8 A. Well, the grandmother was still in there too.

9 She --- she stays with him. But, yeah, he was put on the
10 chair.

11 Q. And is that the information you told law enforcement?

12 A. I'm not sure exactly what I said to law enforcement.
13 I --- I'm pretty sure that is though, because that's what
14 happened.

15 Q. Was the child injured the day before at all?

16 A. I was out of town. I left out of town two days and
17 was staying with my cousin.

18 Q. So you don't know?

19 A. No, sir. Like I said, I was gone for two days, came
20 back that night.

21 Q. All right. On November 11, 2013, the child was taken to
22 the hospital; is that correct?

23 A. Yes, sir.

24 Q. And you're saying your dad went with the child on that
25 day?

Cross-exam J. Hopkins

- 1 A. Yes. He took him.
- 2 Q. Sabrina along on that day?
- 3 A. Yes, sir. She ---
- 4 Q. They both went?
- 5 A. Yes, sir.
- 6 Q. Okay. And at that time he went to the hospital for a
- 7 fever, congestion, some eye pain; is that what --- do you
- 8 know?
- 9 A. I believe so. I was at work at the time.
- 10 Q. Okay. But you heard that before?
- 11 A. Yes, sir.
- 12 Q. Okay. He was released after that?
- 13 A. That's correct.
- 14 Q. And were you aware that on the 13th of November Sabrina
- 15 had an investigation begun by DSS?
- 16 A. No, sir.
- 17 Q. Okay. But did you hear that come out at the trial?
- 18 A. Yes. At trial. Yes.
- 19 Q. Okay.
- 20 A. Before trial, my Rule 5.
- 21 Q. All right. The information you told me, is that what you
- 22 told Mr. Williams?
- 23 A. That's correct.
- 24 Q. All right. When you went back in the house after EMS
- 25 arrived, did the child have a heartbeat?

Cross-exam J. Hopkins

1 A. I don't know. I'm rushing to get him to them. I
2 don't --- I didn't sit there just putting my finger and
3 see, you know.

4 Q. Was the child gasping? Talking to you?

5 A. Wasn't --- he wasn't saying anything.

6 Q. Wheezing?

7 A. He wasn't saying anything.

8 Q. Was he a dead weight?

9 A. Again, I don't ---

10 Q. Any movement in his arms?

11 A. Again, I don't know. I was just trying to make sure
12 the paramedics get to him as fast as they could.

13 Q. Okay. What caused you to call 911 15 minutes before?

14 A. You said what caused me to call 911 15 minutes
15 before?

16 Q. Did you think he was alive, or did you think he was dead?

17 A. I mean, I --- I know --- I didn't know either ---
18 I --- I knew he was alive, he was still breathing, and
19 that's ---

20 Q. Still breathing when you called 911?

21 A. Right. That's correct.

22 Q. Okay. In your meetings with Mr. Williams at --- at some
23 point in time there were plea discussions? And how did Mr.
24 Williams prepare you for the trial?

25 A. How did he prepare me?

Cross-exam J. Hopkins

1 Q. Uh-huh.

2 A. He basically said he could get me a direct verdict.
3 They had no evidence, I didn't incriminate myself. Was
4 basically what --- and then he --- he was going off ---
5 didn't really have a time frame. The warrant says 11th
6 through the 27th on the warrant. It didn't have a
7 actually of death --- of the death.

8 Q. We --- did he try to prepare you to testify?

9 A. No, sir.

10 Q. Okay. Let me back up a step. When you were given your
11 Rule 5s and your discovery, did Mr. Williams just hand you the
12 paperwork and say look at it? Or did he go over that
13 paperwork with you and --- and what the State was claiming?

14 A. I mean, really, I went over the paperwork --- I
15 received the paperwork in the mail and I basically went
16 over and gave him suggestions.

17 Q. You gave him suggestions?

18 A. That's correct, right.

19 Q. On what you read about what the State was going to
20 present against you?

21 A. No, this is about another case that I had received
22 from my brother, I was going over that. He was --- I
23 received in the county, it was Palmer versus --- State
24 versus Palmer case. I basically was going off of that
25 and giving up (unintelligible) that case law.

Cross-exam J. Hopkins

1 Q. You were doing some legal investigation yourself; is that
2 what you're saying?

3 A. I mean, just off that one particular --- because I
4 really wasn't competent at the time to really even do any
5 investigation myself or in law work.

6 Q. Now --- now, when Mr. Williams talked to you about what
7 he thought the State was going to prove or not prove, did you
8 react to that one way or the other? What was --- the State
9 was going to try to show that ---

10 A. Basic ---

11 Q. --- you were actually the perpetrator in the death of the
12 child?

13 A. Both of us was the perp --- they was saying both of
14 us was the perpetrator.

15 Q. (Unintelligible) the aider and abettor, but the State
16 went both ways on it at the time of trial, didn't they?

17 A. More towards at the end, but more towards the trial
18 they were saying that I probably assisted or probably do
19 something.

20 Q. Okay. So how many different --- you --- you said he had
21 three different plea offers?

22 A. Yes, sir.

23 Q. And one of them was with the public defender? Now, was
24 that plea offer on the homicide by child abuse, or was that on
25 aider and abettor; or do you remember?

Cross-exam J. Hopkins

1 A. I don't --- I don't actually remember if --- be
2 honest.

3 Q. And ---

4 A. I know --- because I know with the public defender,
5 I bonded out with the neglect charge. That's when I end
6 up later on hiring Mr. Theo.

7 Q. Okay. You hired Theo after you were charged with
8 homicide by child abuse?

9 A. Can't --- I can't exactly remember quite exactly the
10 time --- I believe --- I want to say that the public
11 defender that I had was the first offer.

12 Q. Okay.

13 A. The 10 to 20.

14 Q. Okay. What offers did you get when Mr. Williams was
15 representing you?

16 A. The same. Same 10 to 20, aiding and abetting.

17 Q. Aiding and abetting, and you were going to get sentenced
18 between what?

19 A. Ten and twenty.

20 Q. Okay. And was that offer made by the State to you, or
21 was it an offer you were trying to get ---

22 A. The offer mad ---

23 Q. --- the State to agree to?

24 A. It was a offer made by the State.

25 Q. And that same offer that you say Mr. Williams had in the

Cross-exam J. Hopkins

1 end just before trial?

2 A. Yes, sir.

3 Q. Okay. And then you said if the offer was --- had a time
4 on it and that time passed and you didn't accept it; is that
5 correct?

6 A. That's correct.

7 Q. And how soon before the trial did the plea offer end?

8 A. Like I said, I believe it was --- like I told my
9 client --- I mean my counsel, I'm sorry --- I believe it
10 was three months prior. I'm not exactly sure of the time
11 frame. I believe it was three months.

12 Q. Okay. You knew for the last three months you were
13 getting ready to trial the case, right? Three months, you
14 knew you were going to trial on homicide by child abuse; is
15 that correct?

16 A. I mean, I never --- never knew I was going to trial
17 until they said you going to trial you got to pick a jury
18 after I didn't accept --- after we didn't accept the plea
19 offer.

20 Q. Okay. Three months before you knew you weren't going to
21 have a plea offer (unintelligible) correct?

22 A. No, sir. That's correct not correct. I don't --- I
23 didn't know anything, but I'm --- I didn't know.

24 Q. Now, you talked about --- you gave Mr. Williams a --- a
25 number of witnesses. One of the witnesses being your father

Cross-exam J. Hopkins

1 who is here today, correct?

2 A. That's correct.

3 Q. And you anticipated that he was going to be able to
4 testify about taking the child to the hospital presumably on
5 November 11, 2013, correct?

6 A. That's correct.

7 Q. And the incident that you were on trial for occurred on
8 November 27, 2013, correct?

9 A. That's correct.

10 Q. So he wasn't there on that day, was he?

11 A. What you mean? On the November ---

12 Q. Didn't --- he didn't ride with the EMS, he didn't ---

13 A. He did.

14 Q. He was with the EMS?

15 A. He arrived the same time.

16 Q. Arrived. He didn't ride with the EMS?

17 A. No. No. No.

18 (Simultaneous speaking)

19 A. He didn't ride with EMS, no.

20 Q. All right. When they were doing their lifesaving on the
21 child, correct?

22 A. I believe, or they arrived to the --- I just know he
23 was at the hospital ---

24 (Simultaneous speaking)

25 A. --- when I was there.

Cross-exam J. Hopkins

1 Q. And you take issue with the testimony of one of the
2 doctors, Dr. Spangler, about of the existence of the
3 bloody --- bloody diaper that he saw in the hospital that
4 accompanied the child, correct?

5 A. Actually, you want to explain it --- put it like
6 that. He --- he didn't do --- he was the one that did
7 the autopsy. They didn't do the autopsy until two days
8 later, so that wasn't the same day. Dr. Spaulding was
9 the one who was there at the hospital.

10 Q. Dr. Spaulding testified about the bloody diaper that
11 accompanied ---

12 A. No, sir. He said he --- Mr. Williams stated when
13 did he arrive and he say he arrived in underwear. At
14 first he say he didn't know. He told him look back over "
15 his notes, and he stated he arrived in underwear.

16 Q. All right. So the transcript page 595, Dr. John
17 Spaulding said: So the diaper that would have been on the
18 child was --- when he was brought to the hospital correct?
19 And then he said, I would have to say that is most probably
20 the most likely explanation. That it was his testimony there.

21 A. I can't remember. It's Dr. Spaulding, Dr. ---
22 whichever one's with the hospital EMS --- EMS worker.

23 Q. But there was some evidence in the record that the
24 solicitor referred to about the bloody diaper being with the
25 child ---

Cross-exam J. Hopkins

1 A. Not ---

2 Q. --- at the hospital, correct?

3 A. No, sir. If you would look --- the --- the
4 emergency doctor who first seen the body, and was doing
5 CPR. He was the one who testified about the underwear
6 (unintelligible). He said what was under the --- the
7 clothing? He said underwear was under the clothing.
8 Never said a bloody diaper.

9 Q. Okay. But the --- he had a onesie on and had pull-up
10 diapers?

11 A. No, sir. He had a onesie on and underwear, is in
12 the --- is in the transcript.

13 Q. I see what you're saying.

14 Expert witnesses, is it your testimony you wanted Mr.
15 Williams to hire an --- an additional expert witness and he
16 refused to do so?

17 A. I don't know whether he refused to do, but I just
18 know I asked him the experts.

19 Q. Okay.

20 MR. ZELENKA: Court's indulgence. One moment.

21 No further questions.

22 THE COURT: Anything else?

23 MR. THOMAS: Yes, Your Honor. Just --- just a
24 couple, if I may.

25 REDIRECT EXAMINATION

Redirect exam J. Hopkins

1 BY MR. THOMAS:

2 Q. Joshua, I'm going to kind of work backwards from the
3 questions that were asked you. In talking about expert
4 witnesses, Counsel asked you about that and did you understand
5 the complexity of --- of these two pathologists, or these two
6 people that did the autopsy? Did you understand any of that?

7 A. No, I'm think --- I always thought that --- I always
8 thought that a coroner do autopsies and stuff like that
9 nature.

10 Q. All right.

11 A. And the coroner --- the coroner that actually did
12 the autopsy had --- had passed --- had passed from the
13 day of the trial --- before the trial.

14 Q. So did you under --- you understood there was a
15 discrepancy said earlier?

16 A. Yes, sir.

17 Q. But did you really know what that discrepancy was?

18 A. No, sir. I just know it was a different ---
19 different diagnosis for the cause of death.

20 Q. And Mr. Williams --- is your testimony that Mr. Williams
21 told you that you didn't need another expert, that that
22 discrepancy was going to work to your benefit?

23 A. That's correct.

24 Q. Okay. And that was also something that you used in
25 determining whether or not to accept the plea?

Redirect exam J. Hopkins

1 A. That's correct.

2 Q. Okay. All right. Now, this thing about the diaper, you
3 and I have --- have talked about this a lot, there were other
4 diapers that were found in the house?

5 A. That --- that's correct.

6 Q. And where was this --- the --- the bloody diaper? Where
7 was it found?

8 A. They said it was found in the downstairs trash can.

9 Q. Trash can. Okay. And you were where with the child?
10 Were you upstairs or downstairs?

11 A. We were both.

12 Q. Both?

13 A. Yes, sir.

14 Q. Okay. And but it was your contention that he didn't
15 leave the house with the bloody diaper?

16 A. That's correct.

17 Q. And you felt like that that wasn't sufficiently pointed
18 out?

19 A. Yes, by the doctor --- emergency room doctor.

20 Q. And on going to trial, again, you and I have spoken about
21 this. When did you find out that you were going to trial?

22 A. It was --- I can't --- I can't really say exactly
23 when I found --- I know it was after the --- the last
24 plea offer.

25 Q. Okay. But did you have a period of time? Was it like

Redirect exam J. Hopkins

1 the day before trial? Was it the week before trial? Or do
2 you remember?

3 A. Oh, it was --- it was --- I believe we had time
4 because matter of fact, yeah, we did. Because the
5 solicitor had recontinued the case. We were supposed to
6 go at another date and they continued.

7 Q. Now, when you knew that it was coming up for trial, did
8 you meet with Mr. Williams?

9 A. I can't --- I can't recall.

10 Q. You can't recall. All right. And I think you answered
11 to the Attorney General that you really are not --- remember
12 what you did to prepare for trial?

13 A. All I know is he told me that he can get me a direct
14 verdict, that they had no evidence. I didn't say I was
15 done doing anything.

16 Q. Do you know what a direct verdict is?

17 A. Like I said, I believe it's a direct verdict on all
18 the elements of the case; is that correct?

19 Q. And how much time did --- did your girlfriend get?

20 A. She took --- she took the plea. I believe she got
21 16 years. Yes, sir.

22 Q. And she pled after you?

23 A. That's correct.

24 Q. Was she a witness at your trial?

25 A. No, sir.

Redirect exam J. Hopkins

1 Q. Now, counsel also asked you about who you called, you
2 called the child's mother?

3 A. That's correct.

4 Q. Okay. You called her.

5 A. And my mother.

6 Q. And you call --- why did you call your mother?

7 A. I believe she know a lot about kids. She raise a
8 big family. She come from a big family, she raised a big
9 family.

10 Q. Did she know the child?

11 A. I mean, we --- you could say in a sense, yeah.
12 Because she used to give us rides and stuff like that.

13 Q. She'd been exposed to the child?

14 A. But she never really babysitted him or anything in
15 that case.

16 Q. All right. And it was your dad that took the child to
17 the hospital two weeks prior to his death?

18 A. That's correct.

19 MR. THOMAS: Your Honor, if I could beg the Court's
20 indulgence just for a second.

21 I have no further questions, Your Honor.

22 THE COURT: Okay. Thank you, sir. You may step
23 down.

24 THE WITNESS: Thank you.

25 MR. THOMAS: Your, if it please the Court, we'd call

Direct exam W. Hopkins

1 his dad, Mr. Hopkins, to the stand.

2 THE COURT: All right. Let him in.

3 (Witness sworn)

4 WADE ALBERT HOPKINS, HAVING BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS.

6 CLERK: You can have a seat, sir. State your full
7 name for the record, please.

8 THE WITNESS: My name is Wade Albert Hopkins.

9 DIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q. Mr. Hopkins, you're related to Joshua Hopkins?

12 A. Yes, he's my son.

13 Q. Okay. And you've been sworn to tell the truth?

14 A. Yes, sir.

15 Q. And you're here to tell the truth?

16 A. Yes, sir.

17 Q. All right. Now, Mr. Hopkins, you've heard testimony
18 about the child being taken to the hospital a couple of weeks
19 prior to his passing?

20 A. Yes.

21 Q. All right. Are you the --- the person that took him?

22 A. Yes, I'm the person that took him.

23 Q. Okay. And when you took him to the hospital, why did you
24 take him?

25 A. Because my wife called me. She was at work and she

Direct exam W. Hopkins

1 said that child been sick and I need to go get him and
2 take him to the hospital. So when I got him over to
3 the --- I guess a relative of them house. And I went
4 inside and the child was laying on the sofa, and he was
5 very listless and lethargic.

6 And then I called his name. They call him Tay. I say,
7 Tay. He looked at me. His eyes were bloodshot red. And he
8 had no movement. So I picked him up in my arms, put
9 him in my car and took him to Lexington emergency room.
10 Took him there.

11 Q. Now, when you took him, did you personally observe any
12 physical injury to the child?

13 A. No, sir. He had clothes on. I didn't see any
14 physical injuries to him.

15 Q. Now, when you got him to the hospital, what happened
16 then?

17 A. The nurse came in first and then the emergency
18 doctor came in. And, you know, I left out exam while he
19 looked over the child --- examined him and --- and the
20 nurse.

21 Q. Okay. And you saw the child in the room? In the ---

22 A. Yeah, I looked in the room and saw him.

23 Q. What was he wearing when he was in the examination room?

24 A. Well, he had clothes on, but I think they undressed
25 him, took his clothes off.

Direct exam W. Hopkins

1 Q. All right. Did --- did you ever see any physical
2 injuries on the child?

3 A. No, sir.

4 Q. And ---

5 A. I did not.

6 Q. --- was the child --- child released and allowed to go
7 home?

8 A. Yes. The doctor wrote a prescription to his mother,
9 she came and gave a prescription to --- to her. And she
10 took him home that day. And then I was wondering why,
11 why did you, you know, that child being sick like that
12 why didn't he keep him overnight? But they released him
13 to his mother the same day.

14 Q. Was there ever any mention of --- that you are aware of
15 any kind of physical abuse or any abuse to the child?

16 A. No, not none at all.

17 Q. Okay.

18 A. I had no knowledge of him being abused.

19 Q. Okay. And you and your wife were involved some ---
20 what ---

21 A. Somewhat ---

22 Q. --- in --- in kind of helping and I guess sitting with
23 the child?

24 A. Yes. Uh-huh.

25 Q. Okay.

Direct exam W. Hopkins

1 A. Mainly her --- mainly her.

2 Q. Her.

3 A. Yeah.

4 Q. Okay. So he wasn't a stranger to you, the child?

5 A. Yeah, I had seen him before. That was --- when I
6 went to get him, take him to the hospital, that wasn't
7 the first time I saw him.

8 Q. Okay.

9 A. I had seen him before.

10 Q. And so it wouldn't be unusual for Mr. Hopkins to have
11 called his mom?

12 A. No, it wouldn't.

13 Q. Okay.

14 A. Because he's very close to his mom. And like he
15 said she, you know, she comes from a big family. And she
16 had five children, so she know about babies.

17 Q. Yeah.

18 A. Children.

19 Q. Okay. Now, did you ever talk to Mr. Williams about you
20 testifying?

21 A. Did I talk to him about testifying?

22 Q. Yes, sir.

23 A. No, I didn't talk to him about testifying.

24 Q. Did you --- did you tell him what you knew?

25 A. Yeah, I did. I told him that I went and got the

Cross-exam W. Hopkins

1 child to the emergency room.

2 Q. Okay. And but he never asked you to testify?

3 A. No, he never --- he never called any witness to
4 testify. Me, my wife, matter of fact, we was sitting in
5 the courtroom. They asked me and my wife to get up and
6 leave. We --- they kept us out the courtroom the whole
7 trial. We didn't know what went on.

8 Q. You know if they were doing because you were
9 sequester ---

10 A. I don't know why.

11 Q. Okay.

12 A. Only thing I know we was sitting in the courtroom,
13 and the bailiff came and asked me and my wife to leave.
14 We had to stay out the courtroom during this whole trial.
15 We didn't even testify on his behalf of what I just told
16 you.

17 Q. Would you like to have been able to do that?

18 A. Yes, we would have.

19 MR. THOMAS: No further questions, Your Honor.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MR. ZELENKA:

23 Q. Mr. Hopkins ---

24 A. Yes, sir.

25 Q. --- when you had been with the child around that period

Cross-exam W. Hopkins

1 of time, what kind of clothes did the child wear?

2 A. Regular children's clothes.

3 Q. What type of underwear did the child wear?

4 A. Sir, I didn't go on in his clothes to see his
5 underwear.

6 Q. (Inaudible)?

7 A. I didn't go under his clothes to see his underwear.

8 Q. So you don't know if he was wearing potty training or
9 pull-up diaper?

10 A. I don't know. I said I didn't go in his clothes to
11 see his underwear. I say he had children's clothes on.

12 Q. Did --- when you took him to the hospital, did Sabrina go
13 with you?

14 A. Yes, sir.

15 Q. Okay. Was there anybody else in your car --- in your
16 vehicle?

17 A. No.

18 Q. Just the two of you?

19 A. Yes.

20 Q. You and the child?

21 A. Yes.

22 Q. Okay. When you --- well, how did the (unintelligible)
23 your discussion with Mr. Williams?

24 A. I go into his office a few times, to you know, make
25 payments on the case. On the --- you know, to defend

Cross-exam W. Hopkins

1 Josh and yeah, I talk with him.

2 Q. Okay.

3 A. But he say he told me he --- he think Josh was
4 innocent. But he never did tell me any, you know, his
5 defense --- his --- his plan of defending him. He say, I
6 think he innocent, but he never showed me, you know, the
7 plan that he had formulated to, you know, put before the
8 Court.

9 Q. And you weren't his client, your --- your son was?

10 A. Yeah, his client, but I was paying him.

11 Q. But you weren't his client were you?

12 A. No, I'm his father.

13 Q. With respect to the trial itself, did you receive a
14 subpoena?

15 A. No, sir. I never see --- receive a subpoena to
16 testify.

17 Q. But you were sequestered during the trial?

18 A. What do you mean, "sequestered"? What does that
19 mean?

20 Q. That means you can't be in the courtroom while witnesses
21 are testifying, because you're ---

22 A. There was no witness testifying.

23 Q. --- (unintelligible).

24 A. There wasn't any witnesses testifying. I thought I
25 made that clear when attorney Thomas asked me that. He

Cross-exam W. Hopkins

1 didn't --- attorney Thomas --- I mean, Williams didn't
2 call any witnesses to testify on his behalf.

3 . Q. Oh, that's correct. He did not.

4 A. Okay.

5 Q. Okay. I misunderstood you?

6 A. I just want to make it clear.

7 Q. I --- I was just asking you whether you were in the
8 courtroom when other witnesses testified?

9 A. What other witness are you speaking of? On the ---
10 you talking about the State witnesses?

11 Q. Yes.

12 A. No, sir. Like I told you before, they --- they
13 . called me and my wife out of the courtroom.

14 Q. That's what I meant.

15 A. Okay.

16 MR. ZELENKA: No further questions.

17 MR. THOMAS: No further questions, Your Honor.

18 THE COURT: You can get down. Thank you very much.

19 THE WITNESS: Okay. Uh-huh.

20 MR. THOMAS: Your Honor, if I can beg the Court's
21 indulgence just for a second.

22 THE COURT: Okay.

23 MR. THOMAS: Your Honor, if it please the Court, we're
24 going to call Mr. Williams to the stand.

25 THE COURT: Okay.

Direct exam Williams

1 (Witness sworn)

2 ROBERT THEODORE WILLIAMS, HAVING BEEN DULY SWORN,
3 TESTIFIED AS FOLLOWS.

4 CLERK: Please state your name for the record.

5 THE WITNESS: Robert Theodore Williams Senior.

6 MR. THOMAS: Please the Court.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q. Mr. Williams, you had a opportunity to represent Joshua
10 Hopkins?

11 A. I did.

12 Q. And you were retained?

13 A. I was.

14 Q. Do you remember how much time did you have before trial
15 to work on this case?

16 A. Loads.

17 Q. Loads.

18 A. Loads. It was Suzanne and we were getting discovery
19 every day for like months.

20 Q. And was Mr. Hopkins, was he in jail during any period
21 of --- any part of this period; do you remember?

22 A. He --- he was. And either I would go see him, or
23 Ben Stitely actually came and saw him some, because Ben
24 remembers him. He say what a nice gentleman he was.

25 Q. And did you --- so you had an opportunity to --- to talk

Direct exam Williams

1 with him about presenting his case kind of what the theory was
2 defense was going to be?

3 A. Yes. And I think he --- he touched on it, because
4 you see, he had already gone through all the discovery
5 when the public defender had the case. Then I guess the
6 only --- I don't know that we got that much more
7 additional discovery except maybe we might have gotten
8 the medical records from like the November date of what
9 occurred. As they fine-tuned everything down so, yes, we
10 brought --- we either mailed or hand --- or
11 hand-delivered copies of all the discovery.

12 Q. All right. All right. And I --- I don't mean to --- to
13 belittle Mr. Hopkins, but what we saw in the courtroom this
14 afternoon and the questions, was he that way when you spoke
15 with him, that it was difficult for him to understand? Or
16 what did you ---

17 A. I don't think it's difficult for him to understand
18 anything. I think --- I think he understands things.
19 And he was --- he was a gentleman the whole time and his
20 dad was always the gentle person that you saw on the ---
21 on the stand.

22 Q. Right.

23 A. I mean, they're both perfect gentlemen and they
24 understood, and they asked questions and he seemed to
25 understand what was going on.

Direct exam Williams

1 Q. Now, there were plea offers?

2 A. Ten to 20 is from what I remember.

3 Q. Okay. And was it made on two separate occasions, or do
4 you remember?

5 A. I don't know that they ever changed it.

6 Q. Okay. It was always 10 to 20?

7 A. Yeah. He kept saying he was not guilty of anything.

8 Q. Uh-huh.

9 A. And I certainly wouldn't have (unintelligible) with
10 Suzanne for a week-long trial if he wanted to take that
11 10-year plea --- 10 to 20 year plea.

12 Q. Right. What were the allegations against him? What did
13 they say that he did?

14 A. It's probably one of the most confusing situations I
15 think I --- I --- I have reread the entire transcript as
16 I told you earlier, probably about two days ago. And it
17 doesn't get any better because it --- it was --- it was a
18 strange situation, because they were --- they were
19 claiming that he was an aider and abettor, or he was
20 actually a principal in the death of the child.

21 And the entire --- the witnesses that they put up,
22 the doctors, the EMT people, his testimony, the
23 father's --- the --- the other witnesses that have
24 testified created a question in my mind, and I think it's
25 fairly clear as to when any type of abuse occurred and

Direct exam Williams

1 what was the causation of his --- of this child's death.

2 Q. (Inaudible)?

3 A. And I know you've read it too.

4 Q. I have (unintelligible)?

5 A. And if you --- it is --- if you watch Judge McMahon
6 go through him letting both of those things for a jury to
7 determine, as --- as lawyers and maybe even as judges,
8 you find it hard to understand how that type of principle
9 works, but it does. There's case law that says you can
10 do that and obviously it did.

11 Q. Because he was found guilty of both?

12 A. Because he was found guilty of both.

13 Q. Now, you objected to it. That objection was preserved,
14 it went up on trial?

15 A. It --- it was ---

16 Q. Made up on appeal. I'm sorry.

17 A. Well, on appeal and --- and I invite you to read the
18 brief that was done by the ---

19 Q. Yeah, I have.

20 A. It --- it's a brilliant --- it's a brilliant piece
21 of work, you know, to be a Anders brief, it was --- it
22 was very well done, but it didn't change anything.

23 Q. Right. And there were --- what was surprising to me is
24 that they tried Mr. Hopkins first and not the mother; do you
25 know what the purpose of that was?

Direct exam Williams

1 A. The reason, you know, I --- I don't know how ---
2 how --- and I call her Suzanne, I don't --- I don't ever
3 call her anything but Suzanne. I don't know why she
4 chose that route versus --- it would have been easier
5 in --- in my mind tried against the girlfriend.

6 Q. Yeah. It's her child?

7 A. It's her child, but I think she thought that
8 maybe --- you know, when you deal with jurors, and I ---
9 obviously I thought about this, why in the world she did
10 that. When you deal with jurors, they may --- they may
11 be more likely to believe that the last person with the
12 child was the one responsible for the death of the child.

13 Q. Which unfortunately was Mr. Hopkins?

14 A. Yes.

15 Q. Yeah. Yeah.

16 A. That's why I think they did --- they tried him
17 first, because he was the last person with the child.
18 And in all honesty, you know, you got the bloody diaper
19 which everybody's talked about which was actually, you
20 know, they checked it make sure it was the child's blood
21 versus anybody else's.

22 Q. Right.

23 A. It's just easier if he's the last one. And then he
24 had to explain, you know, why did you call
25 (unintelligible) first? Why didn't you just call 911?

Direct exam Williams

1 Suzanne turned that into a kind of a callous type of
2 questioning. And she --- in her closing argument, if you
3 . read her closing argument, it was kind of callous like,
4 you know, instead of calling 911, he's calling the
5 mother, as opposed to doing the thing that's more
6 important (unintelligible). It's --- it's --- it's more
7 of an emotional argument.

8 Q. What about the --- and that --- that just made me think
9 about this. What about that closing statement of hers about
10 Lexington County; do you remember that? We're going to ---
11 (unintelligible)?

12 A. I didn't remember until I read it.

13 Q. Yeah. You think that was objectionable?

14 A. I do now. It --- but it's one of those things, I
15 guess that probably if you --- if you --- I think it was
16 in poor taste, let's put it that way. Nobody in
17 Lexington County or any county thinks that children
18 should be ---

19 Q. All right. If I can find it.

20 A. I --- and I thought my closing argument was --- was
21 fairly caustic in terms of --- of that --- they just had
22 to pick Mr. Hopkins and they were going to choose him
23 because so-and-so and so-and-so.

24 Q. Right. And matter of fact, it seems like the biggest
25 piece of evidence in his favor was the timeline?

Direct exam Williams

1 A. The timeline was great I thought.

2 Q. And you did point that out?

3 A. I did.

4 Q. Because there was a lot of testimony about the --- the
5 child was cool when he came into the emergency room. He was
6 89 degrees?

7 A. The most important thing that came in, I thought,
8 was the temperature of the child. But, you know, that
9 wouldn't have saved him. The more I think about it, that
10 wouldn't have saved him in regards to what the judge was
11 instructing. Because if you did the hours, that looks
12 like maybe he had been dead for seven hours. It just
13 indicated people just didn't know when it happened.

14 Q. Actually nine hours.

15 A. Nine hours, that's right.

16 (Simultaneous speaking)

17 A. Nine hours if it was an hour and a half per degree.

18 Q. It was an hour and a half it would be even more?

19 A. It would be even more.

20 Q. All right.

21 A. So there was --- and there was discrepancies like
22 that throughout the whole thing with the doctors and
23 whatever. But his testimony was still alive and --- and
24 he was --- he was feeding him bananas and stuff like
25 that.

Direct exam Williams

1 Q. Yeah.

2 A. So none of that fit. I'm not really sure the
3 embolism argument is --- it's ---

4 Q. What did he die from? What was the testimony in regards
5 to ---

6 A. Well, remember he --- it --- he wasn't --- it wasn't
7 declared to be a homicide by child abuse originally.
8 With --- I think the --- the coroner, the --- the initial
9 deal was they thought it was like a heart attack or
10 something like that.

11 Q. Right.

12 A. And what they --- what they say --- what the experts
13 say happened is that some sort of embolism developed as a
14 result of physical abuse and traveled throughout the body
15 and somehow managed to get stuck in a vein and cause him
16 to die.

17 Q. Fatty embolism?

18 A. Fatty embolism, which is the weirdest thing I've
19 ever heard. And then that was where the thing --- that
20 the expert said, well, y'all never seen that without
21 having a fracture. Well of course the child didn't have
22 a fracture. They x-rayed, no fracture.

23 MR. THOMAS: So kind of getting back to this bloody
24 diaper situation. Your Honor, I have all those pages if
25 you're interested in that in regards to where it's cited.

Direct exam Williams

1 I'll be glad to give that to the Court.

2 THE COURT: What are you talking about, the bloody
3 diaper?

4 MR. THOMAS: Yeah, where it's mentioned in the Court
5 --- in --- in the trial. And it's ---

6 THE COURT: Do you object to that Mr. Zelenka?

7 MR. ZELENKA: No, it's part of the record. I mean,
8 it's just ---

9 (Simultaneous speaking)

10 MR. THOMAS: Your Honor ---

11 MR. ZELENKA: --- summary.

12 MR. THOMAS: And --- and just for the Court's
13 information, there --- it begin --- there is a testimony
14 about --- on page 5 --- 351, lines 19 through 20. There
15 is 400 lines 1 through 4; 405, lines 19 through 25; 421,
16 lines 14 through 16; and page 517, lines 8 through 13.

17 (Simultaneous speaking)

18 MR. THOMAS: I'm sorry.

19 BY MR. THOMAS:

20 Q. Mr. Williams, what was the confusion about the diaper?

21 A. I don't know that there was any confusion about the
22 diaper. They found a diaper that had blood in it and
23 that was just evidence that something had happened to the
24 child, because the child wouldn't have been bleeding had
25 it not --- you know, there --- if you --- if you looked

Direct exam Williams

1 at the abrasions and --- and the --- they testified to
2 abrasions and --- and sores or whatever on his fanny.
3 Shouldn't use the word, "fanny," but on his buttocks.

4 Q. Yeah.

5 A. So maybe the blood came from that.

6 Q. Right.

7 A. But it is what it is. It is --- it is blood in a
8 diaper.

9 Q. But it was --- it was important in regards to getting
10 back to that timeline as to when this quote/unquote fatal
11 injury could occur --- occurred?

12 A. I don't know about that.

13 Q. They were trying to pin it on him?

14 A. He was the last one with the child. It's like a hot
15 potato. I understand what you're saying ---

16 Q. Right.

17 A. --- and if you say that it goes back seven, eight,
18 nine hours, whatever it is, and maybe there was a diaper
19 in the trash can and it had blood on it, maybe it's from
20 a different time. And as you --- you probably noticed
21 when I was crossing those experts, I was trying to figure
22 out if they could testify as to how old the diaper was,
23 and that's where you're going, but they couldn't testify
24 how old the diaper was. And the way that --- that the
25 judge instructed --- the --- the way it was --- it was

Direct exam Williams

1 presented, it's like did he start --- did he start dying
2 early and he lingered, or did it happen all at once?

3 Q. And according to their expert witnesses and his body
4 temperature, he would have --- would have had to have died
5 nine hours prior to his entry into the emergency room?

6 A. Or if ---

7 (Simultaneous speaking)

8 THE COURT: Whoa. Whoa. Whoa.

9 A. --- I --- I don't think that's true.

10 (Simultaneous speaking)

11 MR. ZELENKA: That --- that's not the way
12 (unintelligible).

13 A. Yeah, that's --- that's not the way the
14 testimony --- I can answer that.

15 Q. Okay. All right. But they did testify ---

16 THE COURT: So you're withdrawing your objection
17 because everybody agrees with you?

18 MR. ZELENKA: Yes, sir.

19 THE COURT: Okay. Thank you.

20 MR. THOMAS: I'll --- I'll --- I'll ask a different
21 question, Your Honor.

22 BY MR. THOMAS:

23 Q. Mr. Williams, there was testimony, I think a number of
24 testimony in regards to how quickly the body would cool?

25 A. There was.

Direct exam Williams

1 Q. And what is your recollection of what that testimony was?

2 A. Well, it was that it was either a degree --- I'm ---I'm
3 sorry. For every hour -- an hour and a half, it would drop
4 one degree. And at the time that the child's temperature was
5 taken at the Lexington County Hospital, it was like 88, or 89
6 degrees.

7 Q. All right.

8 A. However ---

9 (Simultaneous speaking)

10 Q. Yeah.

11 A. If --- if I can go further?

12 Q. Sure.

13 A. The emergency room doctor that examined the child
14 said that the neck was supple. And there was much ado
15 about the supple, because everybody was thinking that
16 rigor mortis had already set in, but on the --- the
17 emergency room doctor said that the neck was supple,
18 meaning that it was bendable. That it wasn't --- it
19 wasn't stiff. And ---

20 Q. They talked about rigor as well?

21 A. Rigor, that's right.

22 Q. Yeah.

23 A. So I mean, that's --- that's --- that's exactly what
24 we're saying is that there was competing evidence as to
25 whether or not it had occurred all at once or if it

Direct exam Williams

1 occurred over several hours.

2 Q. Mr. Hopkins is concerned in his testimony about the
3 diaper. Was he --- he feels that you could done more to have
4 pointed out the fact --- or distanced himself with the other
5 evidence from that State trying to tie that bloody diaper to
6 him and the admission to the emergency room; that --- is that
7 a true statement?

8 A. I --- I don't know that bloody diaper is that
9 important in terms of tying him to the admission in ---
10 in the emergency room? It's just the child had a bloody
11 diaper.

12 Q. Right.

13 A. The child also had marks on his buttocks that
14 indicated that he'd had some sort of injury or abrasions
15 to his fanny. There were actually four other diapers
16 that were found in the --- in the apartment or that ---

17 Q. That had no blood?

18 A. That had no blood on it. So I don't know if it was
19 bleeding at a time and then it quit bleeding, or and
20 that's why I went in well, how old were the diapers, and
21 how can you tell how old the blood is? I think --- I
22 think the blood is a red herring is what I think
23 actually.

24 Q. Now, how about the witnesses? And if you look at page
25 529 --- do you got a copy of the transcript?

Direct exam Williams

1 A. Right down there. It's in that little ---
2 (Simultaneous speaking)
3 A. It's in that file.folder.
4 Q. This one?
5 A. No. No. God no. Don't give me that one. There
6 you go. See a skinny one?
7 Q. Yes, sir.
8 A. Yes. That's it. Okay. Let's see. Okay.
9 Q. It's on page 529 and 530.
10 A. Okay.
11 Q. And this is Trista Baird (phonetic); who is Trista Baird?
12 A. 529 and 530.
13 Q. Uh-huh. Bottom of the page beginning line 19. Picking
14 up on line 1.
15 A. On 529 or 530?
16 Q. On 529 starting on line nineteen. Actually, I think you
17 start on 15 with a question.
18 A. Oh that is --- would you please detail the people
19 that you've talked to in this particular case by name; is
20 that what you're talking about?
21 Q. That's what I'm talking about.
22 A. And they go through all the doctors, the DSS people
23 and all that?
24 Q. Right. Babysitters.
25 A. Right. She is --- I think that's the lady with

Direct exam Williams

1 SLED, isn't she?

2 Q. She is.

3 A. From eight years that's pretty good memory.

4 Q. Yeah, she is from SLED?

5 A. She --- she is like a child investigator. Any time
6 there's a death --- homicide of a child, she gets
7 involved in it, so she must have some expertise in that.

8 Q. Right. And she says that she did speak to all these
9 people?

10 A. Yes.

11 Q. All right. The question is, did you have an opportunity,
12 or did you take an opportunity to talk to these witnesses?
13 The babysitters, those folks that had some exposure to the
14 child prior to death?

15 A. I want to say that we had copies of statements ---

16 Q. Right.

17 A. --- from all of these people that was gathered.
18 Because one thing that Suzanne is good about is sending
19 out any and all statements whatever they may be, however
20 they be involved. So I'm sure we got that information
21 that way, if that's what you're referring to. Because I
22 obviously, I knew about the --- the other child, the ---
23 it's a stepbrother.

24 Q. Okay. All right.

25 A. Bovan, the child is --- there are actually two

Direct exam Williams

1 children --- two boys, I think, who are half brothers of
2 the deceased child.

3 Q. How about the DSS investigation?

4 A. Uh-huh.

5 Q. She had the mother --- had --- lack of a better word had
6 lost a child to the father, he had custody of the child?

7 A. Mr. Bovan?

8 Q. Yes. And then she was under investigation, or a
9 complaint had been called in about the --- the child that
10 died; do you remember that with DSS?

11 A. Not really, but I remember DSS and --- and that
12 there was complaints about that.

13 Q. Did you bring anything --- or could you have
14 (unintelligible) that information about the DSS complaint
15 against the mother?

16 A. I want to say the complaint --- I'm stretching my
17 brain a little bit, so it's not ---

18 Q. Right.

19 A. --- a hundred percent right. I want to say the complaint
20 was not about spanking or anything like that with that child.
21 I was thinking it had to do with like maybe substance abuse
22 or something like that. Now, this is --- this is an eight-
23 year memory.

24 Q. Okay. Yeah.

25 A. Right.

Direct exam Williams

1 Q. But I remember it was --- it was a --- it --- it's
2 mentioned in the --- in the transcript as abuse?

3 A. Uh-huh.

4 Q. If you had called someone from DSS that was involved in
5 that case, could you have put that testimony up?

6 A. Well, that's a good question. I --- I don't --- I
7 don't --- I don't know that it could have gotten in.
8 I --- I would have had to run it up in front of Judge
9 McMahon and see if it would have gotten in.

10 Q. Right.

11 A. But remember the --- she --- she was not --- she
12 wasn't having her case tried at that particular point in
13 time. And I'm not sure it was close enough for him on
14 that. I mean, I don't know.

15 Q. How are you restricted by him not ---

16 (Simultaneous speaking)

17 A. Shouldn't be.

18 Q. Yeah.

19 A. I'm cutting you off on your question.

20 Q. No. No. No.

21 (Simultaneous speaking)

22 A. We know each other so well. I don't think we are.

23 Q. Yeah.

24 (Simultaneous speaking)

25 A. The only thing that would have changed would

Direct exam Williams

1 have --- and I note that Mr. Hopkins was --- was
2 concerned about the fact that he was sitting out of the
3 room when the witnesses were testifying. And I don't
4 think he ever actually understood what the Attorney
5 General was asking him or why.

6 The reason he was seated out of the room was because
7 he was going to potentially be a witness. If we had to
8 call him to testify as to the trip to the hospital. But
9 we didn't need to because all of that got in.

10 And you note that this was eight years ago when the
11 procedure was that if you did not put up any evidence as
12 a defendant, you got the last closing argument as Judge
13 McMahon point --- pointedly brought out. It's not the
14 way it's --- as interpreted by the Supreme Court, it's
15 not that way now.

16 So there was nothing that would have benefitted him
17 testifying to what we already knew, because we already
18 had the medical reports. We already had the information
19 about prior Lexington Hospital visit. Nothing would have
20 benefitted by putting Mr. Hopkins up --- the father ---
21 by putting him up to testify. And there certainly was
22 nothing that would have benefitted by putting up the
23 defendant other than the fact that he took the stand.
24 Because there were already statements in that he had done
25 and as you can tell, sometimes he's not 100 percent

Direct exam Williams

1 consistent and Suzanne would have worn him out.

2 Q. I don't think that's intentional?

3 A. No. No. I don't think --- I --- you --- I probably
4 make inconsistent statements and I don't mean to. You
5 know, I'm under oath. I know what that means.

6 Q. Yeah. Yeah. Yeah.

7 A. But I don't mean to.

8 Q. Right.

9 A. You're right. Sometimes I just run my mouth too
10 much.

11 Q. The --- how about the --- the plea --- the plea offers,
12 do you think that he understood what he was looking at as far
13 as exposure? I mean, we know what exposure is ---

14 (Simultaneous speaking)

15 A. Sure --- sure he did.

16 Q. --- you know what risk ---

17 A. Yeah, he knew that. He knew it. He's not
18 unintelligent. I mean, he understands. He's had --- he
19 had several lawyers that's talked to him, you know. He's
20 had a public defender, he's had me.

21 Q. Really what this thing boiled down to was was it her?
22 Was it him? "Her," being the mama. Or was it someone that
23 babysits?

24 A. I don't believe it was any of the babysitters,
25 but --- I mean, that's --- you're asking ---

Direct exam Williams

1 (Simultaneous speaking)

2 A. --- me to speculate like everybody else. But ---

3 Q. All right. All right. But so in essence your job as a
4 defense attorney was to distance him from the child's death?

5 A. Put him in the best position I could put him in is
6 the way I like to look at that.

7 Q. All right.

8 A. And the best position I could put him in was to
9 discredit all of the doctors to make it look like the
10 damage might have happened to that child at some other
11 time, to --- no one --- no one could ever point to a
12 motive as to why he would not be a --- a wonderful
13 father. He did say --- he did say something a while
14 ago --- it's kind of struck me a little bit, is --- is
15 that he has lived with other people who had children, but
16 no one ever said that he was ever bad with children.

17 Q. No DSS reports ---

18 (Simultaneous speaking)

19 A. No DSS reports saying he's a bad person. Maybe he
20 didn't pick the best people to live with, but I can't
21 criticize that. I've been married before.

22 Q. I guess the --- the --- the question that kind of comes
23 forth out of all this, and this is one of the reasons I went
24 ahead and called you is --- is to try to fill in some of these
25 holes. Doesn't that put extra emphasis on distancing him from

Direct exam Williams

1 the bloody diaper? Distancing him, you know, in time from the
2 baby's death?

3 A. What does? What's the --- what does that?

4 Q. The --- the --- the --- the --- because my reading of the
5 transcript was the diaper was --- was used to put him ---

6 A. I disagree. I --- I don't think the diaper is used
7 as some sort of symbol to be run throughout the entire
8 trial. It --- I mean, he didn't need that because he was
9 the last person with the child. Bloody diaper just means
10 a bloody diaper.

11 Q. The bloody diaper also to me means that he had fresh
12 wounds on his buttocks?

13 A. I don't know that anybody said his wounds were fresh,
14 did they? "

15 Q. Yeah.

16 A. I thought they said he had ---

17 Q. Bleeding ---

18 A. --- sagging --- I thought they said that he had
19 sagging skin, which is normally an indication of being
20 there before. I think sloughing skin. And I interpret
21 that not to be like immediate.

22 Q. Right. And may --- could be wrong, but my reading of it
23 was they were talking about fresh wounds --- bleeding wounds,
24 and that's why there would have been blood in the diaper.

25 A. Or either came from the exterior buttocks, or it

Direct exam Williams

1 came from internal injuries. But --- but nobody
2 deciphered the type or the difference in the blood ---

3 Q. Yeah, because there was never any testimony about
4 internal other than the fatty embolism.

5 A. Was there something maybe about the left --- the
6 lung?

7 Q. They didn't look at the left lung?

8 A. They looked at the right lung.

9 Q. They looked at one lung and not the other. Yeah.

10 But following that chain of thought, wouldn't it have
11 been important to put Mr. Hopkins' dad up and also try to
12 distance him from, you know, injuries to this --- I mean, his
13 dad takes the child, there's no injuries that the physician
14 notices in the ER on that visit.

15 A. So that came in.

16 Q. Yeah.

17 (Simultaneous speaking)

18 A. But would it have come in that there was no injuries
19 on that visit?

20 Q. Right.

21 A. So I'm going to put him up to say he was a taxicab
22 driver? He had to get there somehow.

23 Q. Yeah. Yeah.

24 A. The medical report came in that there was no
25 injuries.

Direct exam Williams

1 Q. Right.

2 A. So now tell me why do I want to put him up?

3 Q. Well, you could have put a friendly face on it and
4 shown --- and had his testimony as well?

5 A. Okay.

6 Q. Yeah.

7 MR. THOMAS: Your Honor, let me beg the Court's
8 indulgence just for a second.

9 BY MR. THOMAS:

10 Q. The --- I think I had the last question was something
11 that Mr. Hopkins had raised was about the juror that had some
12 relations to the other child's father?

13 A. Actually the juror said that she was a paralegal for
14 Andrew Farley (phonetic) and that the name Bovan sounded
15 familiar to her. And then the follow-up question from
16 Judge McMahon was, what do you remember --- do you
17 know --- something about whether or not you --- you did
18 civil --- anything civil dealing with Bovan, or if it was
19 something criminal with Mr. Bovan? She says, I don't
20 know, it's been so long ago I just can't remember.

21 Q. So there's no direct tie to her?

22 A. No. That -- I think that's also included in the
23 transcript.

24 MR. THOMAS: Your Honor, beg the Court's indulgence
25 just for a second.

Direct exam Williams

1 Your Honor, I have no further questions.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MR. ZELENKA:

5 Q. Mr. Williams, just for clarity, when were you retained in
6 the case?

7 A. I guess that would have been 2016 maybe.

8 Q. And how soon after you (inaudible)?

9 A. Couple years.

10 Q. And ---

11 A. I could be off on that.

12 (Simultaneous speaking)

13 Q. --- that period of time, did you hire any expert
14 witnesses?

15 A. No.

16 Q. And your reason for that was?

17 A. Because I didn't know that the expert witnesses
18 could contribute any more for the confusion that was
19 already there.

20 Q. In your discussions with the State concerning potential
21 pleas, what was the plea offer (inaudible)?

22 A. As I recall, he think he's correct. I think it was
23 10 to 20. I mean he --- he --- he remembers that better
24 than I do I guess on that.

25 Q. Was that (unintelligible)?

Direct exam Williams

1 A. Yes.

2 Q. When did the State indicate to you that this was going to
3 go to trial for (unintelligible) homicide by child abuse ---

4 (Simultaneous speaking)

5 A. --- pull that out if I dug into that thick stuff
6 over there. It's probably like three months.

7 Q. Okay.

8 A. Maybe.

9 Q. But would you still have been able to plead guilty ---

10 A. Sure.

11 Q. --- even prior to that time?

12 A. I don't know that --- I don't know that they ---
13 that they --- probably if I went up and had said look,
14 you know, how about we go ahead and plead to something?
15 You know, as opposed to --- you know, how many witnesses
16 Suzanne had listed on that witness list? 74, I counted
17 them. I think before they wanted to go through a trial
18 and get prepared on 74 witnesses, they would have worked
19 a deal. I think they would have. But he kept saying
20 that he didn't do it and he wasn't guilty.

21 Q. So between you and your client this was (unintelligible)?

22 A. He never indicated to me he wanted to plead to
23 anything.

24 Q. Now, you indicated on direct examination there were a
25 series of diapers somewhere recovered in the trash can, at the

Direct exam Williams

1 home ---

2 A. Yes.

3 Q. --- on the seizure day. Then there was another that.
4 accompanied --- according to the doctor --- of the unclad body
5 when she came into the hospital?

6 A. Correct.

7 Q. And the --- the testimony will speak for itself on that,
8 but why don't you think that was as significant a factor to
9 the case as Mr. Hopkins (unintelligible)?

10 A. I have no idea. Because I mean, clearly, it was a
11 diaper which is on the child on the date that the child
12 was injured, so I don't know why you run from that. It
13 is what it is. I mean, I don't --- I don't think they
14 sat around keeping ---

15 Q. (Unintelligible)?

16 A. --- how do you find that diaper to throw it with the
17 child so that you can set him up? I mean, who believes
18 that?

19 Q. And there talk about rigor in the jaw?

20 A. Yes.

21 Q. Or --- or something like rigor in the jaw ---

22 A. They tried to pry the mouth open, used the hook,
23 used the fingers trying to pry it open, couldn't do it.
24 It was ---

25 (Simultaneous speaking)

Direct exam Williams

1 Q. When they were trying to intubate?

2 A. That's right.

3 Q. And making a determination is lot of this is about
4 the --- the time of death. There were many factors which ---
5 which play into that; isn't that correct?

6 A. That is correct.

7 Q. And ---

8 A. How the --- they didn't even go into the temperature
9 of outside versus the temperature inside the house.

10 Q. And --- and they didn't go into the whether in fact a
11 bath was given?

12 A. That's right. Remember the --- the water ---
13 the --- the someone remarked on the fact that there
14 was --- it was still wet --- the tub was still wet, but
15 there was no water in the tub. So some water had been in
16 the tub at some point in time.

17 Q. And --- and the impact on body temperature and rigor is
18 the body tries to get to the temperature that's in the area?

19 A. Correct.

20 Q. So if the --- if the bath was hot, if the bath was cold,
21 that would always have a difference from the time they would
22 be looking at the death.

23 A. That's why when we have children that are running
24 high fevers we put them in a cold bath to chill the
25 exterior part of their body.

Direct exam Williams

1 Q. And --- and time of death frequently is based upon
2 outside forensic information?

3 A. Yes.

4 Q. And the outside forensic information was clearly
5 inconsistent with what the defendant (unintelligible)?

6 A. It was.

7 Q. No matter what?

8 A. No matter what.

9 Q. Even under his version, it couldn't have happened that
10 way?

11 A. No.

12 Q. Had to be something different?

13 A. That child ---

14 (Simultaneous speaking)

15 Q. Including the way he testified today?

16 A. Chiefly with the banana. Nobody wants to talk about
17 the banana he was given. I think that's problematic.

18 Q. So was there a reason you didn't recommend your client to
19 testify?

20 A. Yeah. Because I --- I don't know how you go from
21 eating a banana to having been dead for about seven
22 hours. It just doesn't work that way.

23 Q. With respect to putting up the defendant's father, he was
24 there, he was available, he was still in your play book that
25 if circumstances occurred, you would have called him as a

Direct exam Williams

1 witness?

2 A. That's right. And --- and --- and I was not trying
3 to be mean to him when I set him outside there and told
4 him that he couldn't watch the trial of his son. Which
5 is what really bothers me. But he was a potential
6 witness. If I needed him to testify about what happened
7 at the hospital, I still had him in my pocket.

8 Q. And did you have other family members out there also?

9 A. He and his wife were both out there.

10 Q. Okay. Did you talk to family members of the victim's
11 mother to potentially testify?

12 A. I don't remember.

13 Q. Other individuals who would provide (unintelligible)?

14 A. I had the information on all those people, so I
15 don't remember who we talked to on that.

16 Q. And how much, if anything, did you investigate about the
17 investigation that DSS had started on Sabrina?

18 A. I --- I think they sent me copies of DSS items. And
19 I want to say that I had copies of all the medical
20 reports from the Lexington County Hospital on the child,
21 including the November date.

22 Q. Okay.

23 A. So I knew the child had been there obviously that
24 date.

25 MR. ZELENKA: Okay. I don't think I have further

Redirect exam Williams

1 questions, Your Honor.

2 THE COURT: All right. Anything else?

3 MR. THOMAS: Your Honor, let me --- I beg the
4 Court's indulgence just for a second.

5 REDIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q. I could be wrong, but I remember --- seemed like remember
8 in the transcript when he goes to the pathologist for the
9 autopsy, I don't know if was the first one or the second one.

10 A. Okay.

11 Q. They said --- he says or the doctor says, I received the
12 child with the diaper?

13 A. Yes.

14 Q. So ---

15 A. I --- I don't know why you send the diaper to the
16 pathologist.

17 Q. Yeah, that's --- I didn't know that either.

18 A. I don't know. I would have thought she would have
19 bagged that up, sent it to SLED or something.

20 Q. Yeah. And to me, I think you disagree with me, but with
21 me --- to me, it seems like the diaper is important because it
22 establishes fresh wound closer to the time of --- well, closer
23 to him going to the ER.

24 In other words, it had to be him because he was with the
25 child during this period of time, those two-hours span or

Redirect exam Williams

1 whenever it was prior to him calling 911. I thought that was
2 important because we're trying to decide --- prove to the jury
3 whether it was him or whether or not it was the mother.

4 A. So your question is?

5 Q. The question is, I think you testified that the diaper
6 wasn't important, but don't you think the diaper --- I mean,
7 under those circumstances it is important?

8 A. If you would like to testify to that, you may say
9 that. I don't.

10 Q. All right.

11 MR. THOMAS: And that's it. Let me look at my
12 notes. I may be done.

13 THE WITNESS: I --- I just said I don't know why it
14 went to the pathologist.

15 MR. THOMAS: Right. I --- I ---

16 THE WITNESS: Because I mean, it was going to come
17 out. The diaper --- the bloody diaper is going to come
18 out. They had people testifying that the blood in the
19 diaper belonged to the child.

20 MR. THOMAS: Right.

21 THE WITNESS: So you know it's going to come out.

22 MR. THOMAS: Yeah. Yeah.

23 THE WITNESS: And if it happened to have been there
24 when it went to the pathologist, somebody stuck it there
25 whether they should or shouldn't.

Redirect exam Williams

1 BY MR. THOMAS:

2 Q. And I mean, if there are other diapers that are there,
3 used diapers that are not bloody, I guess the question of what
4 you had mentioned earlier is age. How --- how old was that
5 diaper?

6 A. I don't think we lost this case over a bloody
7 diaper.

8 MR. THOMAS: All right. I have no further
9 questions, Your Honor.

10 THE COURT: Okay. Thanks, you can step down.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Are you on some more?

13 UNIDENTIFIED SPEAKER: (Unintelligible).

14 MR. ZELENKA: No further witnesses.

15 (Unintelligible) State's ---

16 THE COURT: They're not done with their case yet. I
17 believe they called Mr. Williams.

18 MR. ZELENKA: Oh.

19 THE COURT: Okay. It's been a while since you've
20 done this hasn't it?

21 MR. ZELENKA: (Unintelligible).

22 THE COURT: Anything else?

23 MR. THOMAS: No, Your Honor. That's the applicant's
24 case.

25 THE COURT: All right. State's (background noise).

Proceedings

1 MR. ZELENKA: State has no witnesses.

2 THE COURT: Okay. Anything y'all want to tell me?

3 MR. THOMAS: Your Honor, just very, very quickly.

4 I --- I will summarize what I think is one of --- is the
5 best argument in regards as far as post-conviction. We
6 all saw Mr. Hopkins on the stand. I don't think he
7 really understood and whether or not to accept this plea.

8 What was going on, I mean he has consistently told
9 me that, you know, these were the reasons, directed
10 verdict, no evidence, we were going to win this. And
11 clearly there was evidence that Mr. Williams had that
12 they did have evidence and they had some maybe
13 substantial evidence would have been in his best interest
14 to have accepted the plea.

15 So I think counsel was deficient in not providing
16 him with sufficient information or going over the
17 characteristics of and the facts of this case into --- to
18 a certain amount. It would have enabled him to make
19 a --- an informed decision to accept the plea. He
20 testified at this hearing that had he known and
21 understood what his risk was and exposure was, he would
22 have taken the plea.

23 THE COURT: Okay.

24 MR. THOMAS: Yes, sir.

25 THE COURT: Well, you want to --- okay.

Proceedings

1 MR. ZELENKA: Your Honor, briefly. (Unintelligible)
2 when they failed in their burden of proof, with respect
3 to the advice on the plea, it's clear the defendant knew
4 he was facing life in prison without parole if he chose
5 to go forward and --- and risk that. It --- at least on
6 the homicide by child abuse and the additional charges on
7 the --- the alternative later (unintelligible) verdict.
8 It's clear that those discussions were had with counsel.
9 Counsel left the determination to the defendant.

10 And the defendant was (unintelligible) he was not
11 guilty. He wasn't going to plead guilty. I think the
12 record is clear as to the (unintelligible) represented
13 the defendant and understood the potential testimony of
14 the applicant's father, and he was prepared to put him on
15 the witness stand if that case went the way that it could
16 have gone.

17 Similarly, the failure to investigate --- or
18 investigate the DSS investigation (unintelligible)
19 presented in the record in (unintelligible). Counsel was
20 not deficient on that. And the information about the
21 bloody diaper, although the record is somewhat confusing
22 (unintelligible) the --- the problem is, that at the time
23 the EMS people were trying to do lifesaving things. When
24 they cut the onesie off the victim he was wearing a
25 diaper at the time, all --- albeit a potty-training

Proceedings

1 diaper, it's not what some of us think (unintelligible).
2 It was a little bit different. It was connected to the
3 case as were the diapers that were located
4 (unintelligible) diaper was determined to have blood, but
5 the blood was not necessarily inconsistent but certainly
6 not surprising based upon the way the pathologist
7 testified about the wounds on the buttocks.
8 (Unintelligible) fat embolism syndrome.

9 So we think they failed in their burden of proof and
10 everything again with selection of --- of the juror as
11 set forth on page 51 through 52 was adequately addressed.

12 Theo Williams, I submit the statements of the
13 solicitor that they throughout that should have been
14 objected to concerning --- concern for the child death
15 occurring in Lexington County, wasn't so obviously
16 objectionable that counsel is acting either through
17 neglect or ignorance (unintelligible) that's the State's
18 case, Your Honor.

19 THE COURT: Okay. All right. Well, Mr. Hopkins, I
20 could take this under advisement, so I wouldn't make a
21 ruling be easier for --- maybe that you hear about it
22 later, but I'm going to just go ahead and do it now.

23 It seems clear to me --- let me back up little bit.
24 The --- the --- you don't have --- he can --- whatever
25 you're comfortable doing.

Proceedings

1 It's clear to me that the law is clear that you have
2 to --- you have to show, because you're the moving party
3 that the --- the conduct of your lawyer fell below a
4 reasonable objective standard. And I don't find that
5 that happened in this case. And even if it did, I don't
6 think that any --- any mistake has been pointed out would
7 necessary --- would require a different outcome from a
8 jury. So it's a tough --- it's a tough spot you're in.

9 You do as everyone has pointed out, you --- every
10 bit a gentleman along with your father. You know, it's a
11 shame that back in those days when this was going on
12 that --- that now with hindsight you would consider that
13 deal and take it, but we can't go back. We can't unwind
14 the clock. Nobody has a crystal ball.

15 So I'm --- I'm going to wish you the best and but I
16 am going to deny your application and request that the
17 State prepare an order reflecting the arguments that he
18 has laid out today and share it with your lawyer before I
19 see it.

20 And I wish you the best of luck. Where --- where
21 are you? Where do they have you?

22 MR. J. HOPKINS: (Unintelligible).

23 THE COURT: All right. Well, again, I wish you the
24 best. Thank you very much.

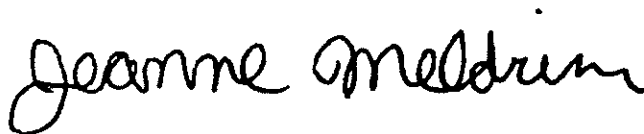
25 (PROCEEDINGS CONCLUDED AT 4:06 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 11 for LEXINGTON COUNTY, South Carolina, on the 23rd Day of June, 2023.

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

September 2, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a small dot above the 'i' in "Meldrim".

Jeanne Meldrim
Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Joshua Warren Hopkins, #361473,	)	Case No. 2020-CP-32-1523
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
2024 JUN 31 AM 11:06
CLERK OF COURT
LEXINGTON SC

This matter comes before this Court to the post-conviction relief (PCR) action commenced by Joshua Warren Hopkins (Applicant) on April 13, 2020. The Applicant, through retained counsel Tommy Thomas, made an initial Amended Application dated October 4, 2022. On June 15, 2023, the Applicant made a second amended application. The Respondent made an Amended Return on June 22, 2023.

On June 23, 2023, the matter was called for an evidentiary hearing before this Court. The Applicant was present at the hearing and represented by retained counsel, Tommy Thomas, Esquire. The Respondent was represented by Donald J. Zelenka, Deputy Attorney General. During the hearing testimony was received from the Applicant, Waysolbert Hopkins (the Applicant's father), and Robert "Theo" Williams (the Applicant's trial counsel).

At the conclusion of the hearing, the Court indicated that it was denying relief. This written order follows pursuant to S.C. Code §17-27-80 (1976) and Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) (trial court's duty to make findings of fact and conclusions of law on duly raised postconviction claims of ineffective assistance of counsel).

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on April 10, 2015, following an investigation into the death of a two-year-old child. During the June 2015 term, the Lexington County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-32-1395). Applicant was subsequently indicted for aiding and abetting homicide by child abuse (2016-GS-32-2515) in October 2016.

On October 3, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Robert R. Williams, Esquire (Counsel) represented Applicant. Assistant Solicitors Suzanne Mayes and Micah Caskey prosecuted the case.

On October 7, 2016, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to concurrent terms of life without the possibility of parole for homicide by child abuse and twenty years' imprisonment for aiding and abetting.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing an *Anders*¹ brief and petition to be relieved as counsel with the Court of Appeals. Applicant did not file an *Anders* petition. The Court affirmed Applicant's convictions and granted appellate counsel's request to be relieved on December 19, 2018. *State v. Hopkins*, 2018-UP-464, (S.C. Ct. App. filed December 19, 2018). The case was remitted back to the circuit court on January 4, 2019. Applicant commenced this PCR action on April 13, 2020.

PRIOR PCR PROCEEDINGS

Applicant filed his current Post-Conviction Relief Application on April 13, 2020. The

¹ *Anders v. California*, 386 U.S. 738 (1967).

Respondent filed a Return and Motion to Dismiss filed October 28, 2020. The Respondent initially moved for Applicant's PCR action to be summarily dismissed for failure to comply with the filing procedure of the Uniform Post Conviction Relief Act, S.C. Code Ann. 15-27-10-160, 2014. More specifically, that the Applicant failed to file his Post Conviction Relief Action within one year after the entry of a Judgement or conviction or within one year after the sending of the remittitur to the lower court from an appeal. A Return to the State's Motion to Dismiss dated November 23, 2020 was filed with the Court.

A Motion Hearing held on September 3, 2021 in front of The Honorable Donald Hocker. Present before the Court was the Applicant, represented by his Attorney, Tommy A. Thomas. Lillian L. Meadows, Esq., and Taylor Smith, Esq., both from the South Carolina Attorney General's Office was present on behalf of the State. After hearing the testimony presented at the Motion hearing, Judge Hocker found that the statute of limitations for Joshua Hopkins Post Conviction Relief Action should be tolled and that Applicant was entitled to an evidentiary hearing. The order was dated September 30, 2021 and filed October 11, 2021.

II. ALLEGATIONS

In his original application for post-conviction relief, though counsel Thomas, Applicant alleged he was being held in custody unlawfully for the following reason:

10(a) **Ineffective assistance of counsel.)(no factual support listed)**

In first amended application dated October 4, 2022, Hopkins alleged the following:

1. **[PLEA OFFER ADVICE]** Counsel was ineffective in advising the Applicant not to accept numerous plea offers. The Applicant was offered a plea of 10 years to 20 years on several occasions. Trial counsel advised the Applicant not to accept the plea and told the Applicant that he could get a directed verdict after the State's case. That there was insufficient evidence to convict him.
2. **[The Applicant's father Waysolbert Hopkins was not called as a witness]** Counsel was ineffective for not calling Applicant's father as a witness.

Applicant's father is Waysolbert Hopkins. Mr. Hopkins would have testified to the fact that he had taken the child to the emergency room a few weeks prior to his death. That at this hospital visit, there was no indication that there was any abuse to the minor child. In addition, Mr. Hopkins saw no signs or indication of abuse. The minor child was given medication and Mr. Hopkins was allowed to take the minor child home.

In a second amended application dated June 15, 2023, the Applicant made the following allegations:

1. **Counsel was ineffective for failure to properly investigate the case:**
 - a. **[Failed to Speak with Victim's biological father and family members of the victim's mother].** By failing to pursue speaking with potential witnesses including the victim's biological father and family members of the Victim's Mother who was providing day care to the child.
 - b. **[Failed to investigate the victim's mother]** By failing to investigate the fact that the victim's Mother was under investigation by SC Department of Social Services.
2. **[Failed to Investigate what the victim was wearing at hospital admission]** Failure to properly investigate and present evidence at trial regarding a discrepancy in what the victim was wearing at the time of admission to the Emergency Room. Testimony was presented that the victim had on a bloody diaper upon arrival. The Applicant contends that this is not True and was prejudicial to him.

Brief Statement of the Trial Facts

This case concerns the November 27, 2013 death of a two year old child. The cause of death given varied from death related to traumatic injury by Dr. Spalding, Lexington Medical Center pathologist (Tr.p. 574), fat embolism syndrome caused as a direct result of trauma to the buttocks inflicted by another individual by Dr. James Fulcher, a forensic pathologist, and cardiopulmonary arrest, nausea, and vomiting by Dr. Stephen Platte, the emergency physician at Lexington Medical Center. (Tr.p. 227).

The State's theory of the case was that either the Applicant was either the principal in the homicide through child abuse due to the timeline or an aider and abettor with his girlfriend Sabrina Haynes. The state's theory was "that the fatal injury happened minutes to hour - - minutes to an hour from the time of death and that would have occurred during the onset of symptoms, which is between 6:01 a.m. and 9:30 a.m. when the child was alone in the defendant's care." Tr.p. 634, 11. 11-16.. The evidence was that that he was the last person with the victim while he was alive and that his attempt at an exculpatory claim that the injury occurred by the child falling done the steps was not supported by the physical evidence of the trauma to the body, both chronic (over time) and acute (less than 24 hours). Tr.p. 567.

In the Applicant's November 27, 2013 statement to law enforcement, he suggested the following concerning the events of November 26-27, 2013. Applicant went to work at McDonald's at 5:00 p.m. on November 26, 2013. Tr.p. 285, 1. 11- Tr.p. 287, 1. 12. He got off at 12:30 a.m. on November 27. Tr.p. 285, 1. 11 – p. 287, 1. 12. When he arrived home to Sabrina "Peggy" Haynes, his girlfriend, and Minor, they ate some food that Applicant had brought home with him from work. Tr.p.287, 1. 23 – p. 288, 1. 10. While walking down the stairs, Minor slipped down the steps on his rear end. Tr.p. 288, 11. 2-4. Although Minor tried to eat, he was unable to keep any of the food or drink down. Tr.p. 288, 11. 10-16. Between 5:30 a.m. and 6 a.m., on November 27, 2013, Sabrina Haynes left for work at McDonald's. Tr.p. 266, 11. 1-6. Applicant and Minor continued sleeping until sometime later in the morning. Tr.p. 267, 1. 13; Tr.p. 290, 11. 3-12. Due to Minor soiling himself during the night, Applicant cleaned him and ran a bath for him. Tr.p. 267, 11. 13-15.² Applicant went downstairs to heat some food for them. Tr.p. 267, 11. 15-16. When Applicant

² It was indicated to law enforcement that the child was found near the tub by the Applicant and they were anticipate it was possibly a drowning situation. They were surprised that he was dry haired in dry clothes when they arrived within 10 minutes of the 911 call.

returned upstairs to Minor, he found Minor "on his hands and knees facing towards the door gasping, making a moaning and groaning noise." Tr.p. 267, 11. 16-19; Tr.p. 291, 11. 1-5. Applicant attempted to assist Minor by tapping on his chest and blowing into his mouth. Tr.p. 268, 11. 14-16. Applicant claimed he called Sabrina Haynes at work to seek advice on how to best care for Minor. Tr.p. 292, 11. 3-6.³ At 9:30 a.m., Applicant called 911 because Minor was unresponsive. Tr.p. 89, 11. 13-25; Tr.p. 292, 1. 12.

The first EMS unit arrived at 9:42 a.m. Tr.p. 90, 11. 20-23; Tr.p. 109, 11. 20-21. Applicant met the EMT at the door with Minor in his arms. Tr.p. 110, 11. 15-21. Minor was wearing pajamas. Tr.p. 111, 11. 19-22. Minor had no heartbeat. Tr.p. 114, 11. 5-11; Tr.p. 116, 11. 7-19. The EMT began CPR. Tr.p. 114, 1. 12 – Tr.p. 115, 1. 21. Additionally, the EMT drilled a hole in Minor's knee to administer drugs using an intraosseous infusion. Tr.p. 117, 1. 3 – Tr.p. 118, 1.1. Next, the EMT attempted to intubate Minor. Tr.p. 119, 1. 4 – Tr.p. 120, 1. 3. He was unsuccessful after two attempts. Tr.p. 120, 11. 4-6; Tr.p. 121, 11. 1-12. However, his supervisor was able to successfully intubate Minor in the ambulance. Tr.p. 125, 1. 25; Tr.p. 159, 11. 15-17. The EMT claimed Minor's mouth was hard to open. Tr.p. 120, 1. 13; Tr.p. 120, 11. 20-25. In retrospect, the EMT decided the stiffness of the jaw was "rigor." Tr.p. 125, 11. 17-20; Tr.p. 126, 11. 17-20. While the supervising EMT was intubating Minor, the original EMT declared Minor was dead. Tr.p. 125, 1. 16. The

³ This call was made around 8:21 am. This was a call received at McDonalds. As a result of the call, she checked out of work. Tr.p. 444-445. She was seen pacing back and forth while talking on the telephone outside of McDonald's while she waited for Priscilla to pick her up. Tr.p. 445. Priscilla Haynes, who had returned home from her job around 8:30 am and saw Applicant talking to Peggy (Sabrina Haynes) on the telephone. The Applicant told her to go pick up Sabrina at her job and bring her home, sending her away from the house. She was told anything at that time about the child's condition. She went and picked up Sabrina. By the time they returned, EMS had already arrived. EMS was called at 9:30 and arrived at 9:42. Tr.p. 90, 109. Priscilla inquired with the Applicant why he never told her anything was wrong with the child. Tr.p. 461. It was estimated by the pathologists that the time of death was greater than 1 to 1 ½ hours before the time of arrival due to the rigor mortis and body temperature. Tr.p. 574 608.

EMTs transported Minor to the emergency room, arriving at 10:16 a.m. Tr.p. 127, 11. 1-10. Neither the original EMT nor the supervising EMT noticed any trauma to Minor. Tr.p. 137, 11. 9-16; Tr.p. 169, 11. 3-12. A firefighter arrived at the scene to assist the emergency medical personnel with driving the ambulance. Tr.p. 175, 11. 1-11; Tr.p. 176, 11. 7-12. Minor's mother, Sabrina Haynes, arrived, and the firefighter placed her in the passenger seat of the ambulance to accompany Minor to the hospital. Tr.p. 184, 11. 3-13. While en route to the hospital, Sabrina was "either texting people or talking to them" on her phone. Tr.p. 185, 11. 20-21. An emergency room physician pronounced Minor dead at 10:38 a.m. Tr.p. 211, 11. 13-15. According to the doctor, Minor's temperature was 89 degrees at 10:20 a.m. Tr.p. 210, 1. 25 – Tr.p. 211, 1. 2. The doctor noticed bruising and abrasions on Minor's buttocks and extremities. Tr.p. 213, 1. 25 – Tr.p. 214, 1. 8. However, he made no determination regarding the bruising on the buttocks and Minor's death. Tr.p. 227, 11. 19-22. The doctor explained the bruising was "dark purple," which "[t]ypically" indicates the injury that caused the bruise occurred a "few days" prior. Tr.p. 228, 11. 1-10.

Dr. James Spalding, the Lexington Medical Center pathologist, performed the autopsy on Minor on November 28, 2013. Tr.p. 563, 11. 15-16. He noted there were extensive areas of bruising mostly on the buttocks extending onto the sides of the hips. Tr.p. 566, 1. 25 – Tr.p. 567, 1. 2. He found "some associated skin slippage and erosion, minor blistering of the skin," and some bruises on his arms and hands. Tr.p. 567, 11. 2-6. The doctor concluded the injuries were from "abuse, physical trauma, and multiple episodes of that." Tr.p. 567, 11. 12-16. He found "unequivocal signs of chronic, recent, and even acute severe soft tissue trauma to the buttocks and adjacent tissue regions." Tr.p. 567, 11. 20-22. The pathologist was familiar with fat emboli syndrome, but he did consider that as causing Minor's death because the syndrome is associated with fractures and Minor did not have a fracture. Tr.p. 591, 11. 7-14.

Dr. James Fulcher, a forensic pathologist, explained that a SLED agent told him initially about the case. Tr.p. 603, 1. 24. He had not "seen anything," "not "a single photo." Prior to his initial assessment Tr.p. 603, 11. 24-25. He only knew there were contusions on the buttocks. Tr.p. 603, 1. 25 – Tr.p. 604, 1. 1. He consulted with his partner who said the case sounded like "a pretty easy win" because "[those kids always die of fat embolism syndrome." Tr.p. 604, 11. 2-5. According to Fulcher, after he "got the slides, looked at them, looked at the report; 30 seconds later [they] had the diagnosis." Tr.p. 604, 11. 6-8. Fulcher explained he "actually did get raw tissue, actually six tissue pieces of this child and [] actually did special studies on those to verify" his conclusions. Tr.p. 604, 11. 8-11. Regarding those findings, Fulcher told the jury:

So what we find in fat embolism syndrome is times when, particularly children, suffer severe trauma to the soft tissue, the fat in their buttocks gets damaged and those small globules of fat embolize or move through the damaged blood vessels, the inferior vena cava into the heart and the vessels keep getting bigger. So this little bubble of fat in the big vessel, it's just cruising right along. It goes to the right side of the heart. It then gets pumped towards the lungs. And that's when very bad things happen because in the lungs, the vessels start getting smaller again and all of a sudden this little globule of fat starts plugging up the vascular of the lungs. So these small bubbles of fat are plugging up the lungs and obviously if your lungs aren't working, you're not breathing, you're not exchanging gas, you'll die from that. So in microscopic examination of this child's lungs, we have enumerable, too many to be counted microscopic globules of fat blocking his blood vessels and of course, that precludes breathing.

Tr.p. 604, 1. 12 – Tr.p. 605, 1. 7. The symptoms associated with fat embolism syndrome are rapid decompensation due to the rush of fat into the lungs causing "sudden onset, shortness of breath." Tr.p.605, 11. 8-16. "The people are usually unconscious within minutes." Tr.p. 605, 11. 16-17. Fulcher found "both acute and chronic injuries" to Minor's buttocks. Tr.p. 605, 11. 23-25. He opined that Minor died from fat embolization syndrome, which was a "direct result from the trauma to his buttocks which was a direct result, it was inflicted by another individual." Tr.p. 606, 11. 7-13. In an effort to determine when Minor died, Fulcher explained that generally, the body cools

slightly quicker than one degree per hour after death. Tr.p. 606, 11. 14-22. Based upon the stiffness of Minor's jaw per the EMS workers, Fulcher estimated Minor had been dead an hour and a half prior to the arrival of the ambulance. Tr.p. 607, 1. 17 – p. 608, 1. 4. Finally, Fulcher opined that Minor suffered injuries "minutes to an hour prior to demise." Tr.p. 617, 11. 15-19.

Brief Summary of PCR Testimony

The Applicant was the initial witness to testify at the hearing. He stated he was arrested in April 2015 for child neglect. He stated additional charges were added after he bonded out. The incident occurred in November 2013 and the trial was in October 2016. He stated he initially made bond on the child neglect charge, but not on the later charge of homicide by child abuse. He was initially represented by the public defender but subsequently retained Theo Williams.

The Applicant stated in his meetings with Williams during the representation, Williams told him to not take the plea offer of 10 to 20 years.

The Applicant stated he received his Rule 5 material and looked over them. He stated he had dropped out of high school in the 11th grade and did not understand the Rule 5 material, which included the autopsy report and medical report. He learned that there was a discrepancy in the cause of death in the reports. He stated that his counsel advised him that he thought that he would get a directed verdict. He relied upon counsel to make the decisions on whether to plead guilty or go to trial.

The Applicant stated he met with Williams two times before the trial. The first time they discussed the case. The second time he learned of the plea offer. He claimed he received plea offers three times for aiding and abetting for 10 to 20 years. The first time was with the public defender

and second and third times were with Williams. He claimed Williams said to him that he would get a directed verdict and to reject the plea offer.

The Applicant claimed he did not say anything incriminating to the police. He said when he made statements and was there 2 ½ hours. He declared his parents were there and they never told him he was under arrest. He described the day the child died. He said he tried to get the child to respond and called 911. He also stated that he called the mother of the child who was his girlfriend at the time. The Applicant stated in hindsight he should have accepted the plea offer.

He stated the case was based upon circumstantial evidence. He stated he did not testify at trial. He stated the state's case was either he actually committed the act or that he was an aider and abettor initially assisting or covering up.

Hopkins testified that his father had taken the child to the hospital a week before and he told Williams about him. He said potential witnesses for the defense were Priscilla Haynes, his girlfriend's aunt and Wilhelmina Haynes, Sabrina Haynes's mother. He said his co-defendant, Sabrina (the victim's mother) reported to DSS on a child.

He stated a doctor prescribed evidence of bloody diaper at trial. He said there was an issue of an active wound at hospital. He claimed this was at a time of physical custody of her. He thought Williams should have challenged this. He also thought he should have prevented the harsher sentence. He claimed he did not recall any discussion of LWOP (life without parole).

The Applicant claimed counsel could have brought character witnesses to discuss potty trainings. He claims he could have also presented an expert.

The Applicant claimed that during jury selection there was juror (Tr. p. 38-39, 50-52) who was a paralegal in The Farley Law Firm a case involving Mr. Bovain as a client related to the other child. He stated that he wanted her.

The Applicant claimed the solicitor's comments concerning the bloody diaper were inflammatory.

The Applicant called his father, Waysolbert Hopkins to testify. His father testified that he was called by his wife a few weeks before the incident and told to take the child to the hospital because the child was sick. He said when he arrived the child was soaked and listless. He then carried the child to Lexington Hospital. He said at the hospital he observed a nurse come into the room and undress the child. He stated the doctor wrote a prescription and released the child, though he did not know why the child was not kept overnight. He stated that there was no mention of physical abuse. He stated he had seen child before.

He claimed he never talked to Williams about testifying and that he was sequestered during the trial. He was further upset that he was sequestered from the courtroom during the trial of his son.

Theo Williams, his trial counsel, was called by the Applicant. He stated he was retained by the Applicant. Counsel testified that the months before the trial in October 2016 trial date either he or Ben Stitely would go see him at the jail. Williams stated he spoke with him about the case. He said Hopkins had already gone through the discovery when the public defender had the case. He indicated he has the November records.

Counsel stated that it was not difficult for Hopkins to understand, as well as his father. Counsel recalled that these were plea offers for 10 to 20 years that he advised his client about. Williams stated his client stated to him that he was not guilty, so they prepared for trial.

Counsel indicated that he had reviewed the trial transcript and recalled this was a confusing situation because the state was pursuing two separate theories. He said that state claimed he was either an aider and abettor, or that he acted as a principle. He stated other witnesses created a question as to where the abuse occurred. Judge McMahon sent both charges to the jury.

Counsel stated he reviewed the Anders brief and thought it was a brilliant piece of work.

Counsel stated an issue for him was why try Hopkins first rather than the mother. He claimed that the assertion was that he was the last person with the child was the cause of death, the bloody diaper, and his failure to call 911.

Counsel questioned the adequacy of his closing argument in hindsight upon review. He stated the biggest piece of evidence was the timelines. He further learned about "fat embolism syndrome" and had concerns about the allegedly bloody diaper.

When asked if he had talked to the baby sisters, counsel stated that he had copies of statements from others and the stepbrother. He stated he was aware of the DSS investigation where the mother had lost control of her child and complaint about the child that died. He said the complaint was not about spanking, but it mentioned abuse. Williams was not sure it would have been admissible in Hopkins case.

Counsel stated that Waysolbert Hopkins was sitting outside the court due to sequestration. Williams stated he was going to be a potential witness in their defense about his earlier trip to the hospital.

Counsel stated that the decided not to call his father because there was nothing to benefit from in hearing him testify about what we already knew about a number of hospital visits including November 11, 2013 visit. By not calling Mr. Hopkins, as well as the Applicant, the benefit was that they would get the last closing argument, which Williams thought was Strategically important. He opined that the benefit of testimony was limited because his statements about his version, which was consistent with his testimony would be already in evidence. However, Williams declared it was up to Hopkins to make the decision.

As to the plea offers, Williams stated that Hopkins understood the risks. He stated it was either her or him, but not the babysitter. Under his defense theory he had to attempt to discredit the doctor and that the child had been damaged before and there was no motive while alone with the child. There was no DSS report against him. Further, Williams asserted they had to distance Hopkins from the bloody diaper.

General Law

This Court must find that the Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386

S.E.2d 624, 625 (1989). First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Allegation One - Plea Offer Advice

In his first allegation of ineffective assistance of counsel he claims that trial counsel Theo Williams was ineffective in not advising the Applicant to accept the plea offers that were made to him prior to trial. This Court finds that counsel was not deficient concerning his advice. The record supports that prior to trial the Applicant was facing two indictments arising from the death on November 27, 2013 of the child of Sabrina Haynes, the Applicant's girlfriend at the time, including activity from November 12, 2013 through November 27, 2013. The initial indictment was for Homicide by Child Abuse as a principal true billed on June 1, 2015. The second indictment for Aiding and Abetting Homicide by Child Abuse asserting he aided and abetted his girlfriend,

Sabrina Haynes to commit child abuse and neglect resulting in the child's death.⁴ It is undisputed that the State made a plea offer to the Applicant to plead on the charge of aiding and abetting the homicide by child abuse and a sentence between 10 to 20 years. The same offer was presented by counsel Williams, as well as his earlier public defender previously. It is undisputed that each time Hopkins rejected it.

The Sixth Amendment guarantees a criminal defendant effective assistance of counsel during all critical stages of the criminal process, including plea negotiations. The Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process, even if they reject the offered pleas. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000) (on other grounds). Lafler v. Cooper, 566 U.S. 156, 162–63, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012), citing Missouri v. Frye, 566 U.S. 134, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012). During plea negotiations defendants are “entitled to the effective assistance of competent counsel.” McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). In Hill v. Lockhart, the Court held “the two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel.” 474 U.S., at 58, 106 S.Ct. 366. The performance prong of Strickland requires a defendant to show “‘that counsel's representation fell below an objective standard of reasonableness.’ ” 474 U.S., at 57, 106 S.Ct. 366 (quoting Strickland, 466 U.S., at 688, 104 S.Ct. 2052). “Because an intelligent assessment of the relative advantages of pleading guilty is frequently impossible without the assistance of an attorney, counsel have a duty to supply criminal

⁴ This Court can take judicial notice of Lexington County Clerk of Court records that on October 20, 2016, Sabrina Haynes pled guilty to aiding and abetting homicide by child abuse on Indictment 2016-GS-32-2514, before the Honorable Eugene C. Griffith, Jr. She was sentenced on November 14, 2016 to sixteen (16) years imprisonment.

defendants with necessary and accurate information.” Iaea v. Sunn, 800 F.2d 861, 865 (9th Cir.1986) (internal citation omitted).

Although “[c]ounsel cannot be required to accurately predict” the outcome of rejecting a plea offer, trial counsel “can be required to give the defendant the tools he needs to make an intelligent decision.” Turner v. Calderon, 281 F.3d 851, 881 (9th Cir.2002).

The Supreme Court addressed the reasons for a “most deferential” standard for judging counsel’s performance:

Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge.

Premo v. Moore, 131 S.Ct. 733, 739–40, 178 L.Ed.2d 649 (2011). The Court also recognized that “[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks” of a plea. Id. at 741. Considerations surrounding these strategic choices in the pre-trial context “make strict adherence to the Strickland standard all the more essential when reviewing the choices an attorney made at the plea bargain stage.” Id.

To establish Strickland prejudice a defendant must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id., at 694, 104 S.Ct. 2052. In the context of pleas, a defendant must show the outcome of the plea process would have been different with competent advice. See Frye, post, at 1410, 132 S.Ct. 1399 (noting that Strickland’s inquiry, as applied to advice with respect to plea bargains, turns on “whether ‘the result of the proceeding would have been different’ ” (quoting Strickland, supra, at 694, 104 S.Ct. 2052)); see also Hill, 474 U.S., at 59, 106 S.Ct. 366 (“The ...

‘prejudice ...’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process”). In Hill, when evaluating the petitioner's claim that ineffective assistance led to the improvident acceptance of a guilty plea, the Court required the petitioner to show “that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Ibid.

In contrast to Hill, here the alleged ineffective advice led not to an offer's acceptance but to its rejection. Having to stand trial, not choosing to waive it, is the prejudice alleged. In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Lafler v. Cooper, 566 U.S. 156, 163–64, 132 S. Ct. 1376, 1384–85, 182 L. Ed. 2d 398 (2012). See Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (explaining that a PCR applicant alleging counsel was ineffective in handling a plea offer must prove prejudice by “demonstrat[ing] a reasonable probability that: (1) he ‘would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time’ ” (quoting Missouri v. Frye, 566 U.S. 134, 147 (2012))).

This Court finds that the Applicant has failed to prove deficiency under Strickland. The evidence before this Court is that the Applicant was informed by counsel on at least two occasions

of the plea offer of a recommended sentencing range between 10 to 20 years for the crime of aiding and abetting the homicide by child abuse and dismissing the homicide by child abuse charge. Counsel Williams, contrary to the Applicant's testimony, did not indicate that Applicant should reject the plea because they would allegedly get a directed verdict in the case. Counsel was aware of the nature of the State's case and the Applicant's assertion is not credible. Counsel Williams credibly declared the Applicant understood the risks he was facing by rejecting the plea offer upon their understanding the nature of the state's case against him as either being the principal or as an aider and abettor, which included the possibility of a life sentence for Homicide by Child Abuse, under S.C. Code §16-3-85(A)(1) (which carries a minimum of 20 years) in contrast with aider and abettor under §16-3-85(A)(2) (which carries a potential sentence of 10 to 20 years. Counsel had made the Applicant aware of the offer and the risks if he failed to accept the offer. The Applicant asserted his desire to go to trial and that he was not guilty and would not plead guilty. The Applicant has failed to show he was deficient in any manner concerning the plea offer. Since deficiency was not proven by the Applicant, this Court does not need to address the prejudice prong.⁵

Allegation Two – Failure to Call Waysolbert Hopkins

In his second allegation, the Applicant contends that his counsel was deficient in failing to call Waysolbert Hopkins to testify. In particular, he contends that his father could have testified

⁵ During the PCR hearing, the Applicant, now serving a life sentence, stated in hindsight that he wished he would have accepted the plea offer of 10 to 20 years. However, at his sentencing, Applicant indicated in an apology for the death that he had not witnessed anything before the incident and would have reported it to law enforcement in he had. Tr.p. 723, l. 11-4. However, related to the day of the incident, he stated he “witnessed stuff” and then he claimed he called EMS. Tr.p. 114-16. However, he ignores that he made multiple calls prior to calling 911 and failed to take appropriate steps rather than attempt to cover up, not taking responsibility for what the evidence showed.

that when he carried the child early November, weeks prior to the critical incident on November 27, 2013, he did not see any marks on the child. This Court must find that the Applicant failed in his burden of proof.

In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis - and the analysis by the appellate court - is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks. See, e.g., Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011) (deferring to trial counsel's strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71 (1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same). A PCR court's analysis of counsel's strategic decisions must be "highly deferential" to counsel's judgment, and "a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. See Buckson v. State, 423 S.C. 313, 320-21, 815 S.E.2d 436, 440 (2018).

The Applicant claims counsel should have had his father's testimony presented about the testimony from a November 11 hospital visit in which he drove the victim and viewed the child at the hospital. He claimed at the time he did not see any injuries on the child. The Applicant believes this testimony was important to his defense. However, this argument ignores the credible testimony of counsel. First, counsel was aware of Waysolbert Hopkins testimony about the earlier event. He had him on the witness list for this reason. See Tr.p. 36, l. 4 – Waysolbert Hopkins name on the witness list submitted to the jury). Counsel Williams stated that the reason he was on the list was to be a potential witness about the trip to the hospital.

Second, counsel Williams presented through his cross-examination of SLED Agent Teresa Baird, evidence that the child was taken to Lexington County Hospital on November 11, 2013, and was seen by Dr. Stephan Schwab, consistent with what would be Waysolbert's testimony about the fact of the hospital visit. Tr.p. 536, 538. Counsel further developed the significant number of dates that the child had been seen by a doctor over the period from 2011 through November 11, 2013. At the November 11, 2013 hospital visit, he was developed that the child was looked at by a doctor and the visit included taking x-rays. Tr.p. 536. Third, there was no evidence of injuries to the buttocks presented concerning the time frame of the November 11, 2013 hospital visit by either the State or the defense.⁶ Fourth, the time frame for the charges began on November 12, 2013, after the November 11, 2013 hospital visit. Fifth, as important, in making his determination of cause of death, Dr. Spalding determined that the November 11, 2013 hospital records did not have any relevance to his postmortem examination concerning the November 27, 2023 cause of death or status of the injuries. Tr.p. 589, l. 12-19.

The decision not to call Waysolbert was strategic decision which this Court must find was an informed strategic decision. Counsel testified that there was nothing to gain from the testimony of the Applicant's father. The record shows that during the trial, the defense introduced evidence through cross-examination about significant number of hospital visits and also a visit on November 11, 2013 that included x-rays. On cross-examination of Dr. Stephan Platte, he developed that on the November 11, 2013 hospital visit the complaint was for fever and nasal congestion and eye pain. Tr.p. 224. However, the hospital notes indicated a large bruise on the anterior chest wall.

⁶ On cross-examination of Dr. Spalding by the defense, counsel Williams suggested to Dr. Spalding that x-rays were taken on November 11, 2013 by the hospital because there was a large bruise on the chest of the child. Tr.p. 590, l. 5-8. However, Dr. Spalding did not recall that part of the history. Tr.p. 590, l. 10-11.

Tr.p. 225. Counsel suggested to Dr. Platte that law enforcement should have been notified, but Dr. Platte indicated he had not reviewed the records sufficiently to make the assessment and asserted this was the first time he had reviewed the actual November 11 records. Tr.p. 225-227. However, he did not see evidence in the November 11, 2013 records that reported bruising on the buttocks. Tr.p. 229. On cross-examination of Dr. Spalding, the pathologist, he confirmed that there were x-rays done on the child on November 11, 2013 visit probably checking for skeletal injury, but he did not find there being an x-ray that showed any broken bones on November 11, 2013. Tr.p. 519-520.⁷ Importantly, at the hospital visit, as Waysolbert testified in the PCR hearing, it is clear the child was returned to the custody of the family.⁸ It is apparent that trial counsel references at trial concerning the bruise on the child was to create an argument that abuse may have been occurring to the child prior to the incident, yet DSS had not been called by the hospital as a result. Counsel further testified that by not calling Hopkins with his limited value, he was able to secure the final closing argument, which he believed was a benefit, particularly when the Applicant's statements about the version of the incident were already in evidence,⁹ which was generally consistent with his version.¹⁰

⁷ Dr. Spalding testified that the November 11, 2013 hospital records "did not have any relevance to his postmortem examination. Tr.p. 589.

⁸ However, it is also clear that there was a DSS report made on November 13, 2013 by Regina Washington, who had been a babysitter and was an aunt, and the Martha Bovain, the child's grandmother. Tr.p. 534, 549, 555-556. The report was based upon their concerns for physical abuse.

⁹ The Applicant's initial statement on November 27, 2013. Tr.p. 285-295. State Exhibit 67. The State also introduced a statement made on April 7, 2014. with Agent Trista Baird of SLED and on a that date he continued to contend that the bruises were from a fall down the steps that allegedly occurred after he had come home from work at McDonalds. Tr.p. 296-297, 319.

¹⁰ Although not related to the factual basis of the allegation, there was testimony from his father that suggested he was at the home after the November 27, 2013 incident. This was not consistent

This Court finds that the Applicant has failed to prove that counsel was deficient in not calling Waysolbert Hopkins. Mr. Hopkins had a limited role in the possible presentation. It did allow him to have the advantage of final argument, which would have been lost if this evidence had been introduced. A strategic decision to not call a witness can furnish a reasonable basis for the failure to do so, provided it is an informed strategic decision. The Applicant has failed to show this was deficiency on counsel's part and not the result of neglect or ignorance.

The Applicant has also failed to show the existence of Sixth Amendment prejudice. His absent testimony had limited probative value as it related to the November 27 event. First, the pathologist saw little significance in the November 11 event to the November 27 cause of death. Further, the indictment did not include the November 11 date as part of the crime frame. The failure to present further and potentially inconsistent defense evidence through the father did not undermine confidence in the verdict. The Applicant has failed to show a reasonable probability the result of the trial would have been different.

Allegation Three – Failed to Speak to Speak With Victim's Biological Father and Family Members.

In his amended application, the Applicant contended that counsel was ineffective in failing to speak with the biological father and other family members who provided care for the child. During the proceeding before this Court, neither the biological father nor the family members of the victim's mother testified. As noted above, a family member of the victim's mother testified at

with the evidence from EMS that the Applicant was the only male at the scene. Tr.p. 200-201. Other testimony from Springdale Chief of Police Kevin Cornett revealed when he arrived while the ambulance was still on the scene. Tr.p. 244-245. He identified the individuals on the scene at that time as Priscella the homeowner, her mother, the defendant and Sabrina the co-defendant. Tr.p. 246-254.

trial, Priscilla Haynes. Tr.p. 447-487. At the time of the trial, her mother and the victim's great-grandmother, Wilhelmina Haynes had died two years before. Tr.p. 450-451. The record of the trial further reflects that SLED had interviewed the biological father, Timothy Swearington, on November 27. Tr.p. 497-498. It was indicated by Swearington to SLED that he was not actively involved in his child's life in November 2013 and that his last contact had been in May 2013. Tr.p. 498.

Counsel Williams testified that he had copies of the statements of the family members that were interviewed by SLED, which included the mother's family members and individuals who cared for the child. Tr.p. 529-530. The record indicates that counsel was aware of Priscilla Haynes' information about the family during his cross-examination. This included the fact that the mother's mother and Priscilla's sister, Helen Haynes lived in Miami and Priscilla did not keep up with her. Tr.p. 466. Counsel was also aware of the existence of the DSS reports that had been made by the nieces Regina Washington and had noticed some injuries two weeks prior and Tarkie Reese, who was also a babysitter. Tr.p. 549-551.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). "A PCR court's analysis of counsel's strategic decisions must be 'highly deferential' to counsel's judgment, and 'a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.' " Buckson v. State, 423 S.C. 313, 320–21, 815 S.E.2d 436, 440 (2018) (quoting Strickland, 466 U.S. at 689). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported *only by mere speculation as to result*." Porter v. State, 368 S.C. 378, 385, 629 S.E.2d

353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. at 181 n.2, 810 S.E.2d at 839 n.2 (*emphasis added*). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

The Applicant failed to present at the hearing any particular item of evidence from any of the mother’s family or the victim’s biological father that either the defense counsel was unaware and would have impacted upon his investigation or would have possibly been presented in court. It remains unclear what he needed to additional investigate. Further, the Applicant has not shown what further investigation would have revealed.

Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 495 S.E.2d 20 (1992)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. *Id.* (citing Glover, 318 S.C. at 498-99, 458 S.E.2d at 540). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 (“So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient.”); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) (“Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”).

This Court must find that counsel Williams investigation was not deficient. His reliance on the records, including the family member witness statements, and understanding were revealed in his defense presentation where he tried to shift the blame to the mother, as well as failing by the hospital to report possible abuse. The Applicant has not shown any information nor presented any witness from the victim's mother's family or Mr. Swearington in this proceeding.

For the same failings, this Court must conclude the Applicant also failed in his burden to show deficient performance. Ultimately, the Applicant has failed to produce the putative witnesses and present their purportedly beneficial testimony at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 20 (1992)). This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to investigate and subpoena potential witnesses.

Allegation Four - Failure to Investigate the Victim's Mother Being Under Investigation by DSS.

In his fourth allegation, he contends that counsel failed to investigate the fact the victim's mother was under prior investigation by DSS. This was essentially addressed in the prior allegation. During the testimony, counsel Williams testified that he was aware of the DSS investigations. In addition, he had indicated that he had reviewed the DSS complaints and determined they were not about spanking – the operative potential issue in this matter due to the fatal injury caused to the victim's buttocks. Counsel, in fact, brought out the existence of the recent complaint during his own examination. Tr.p. 226, 534-535, 549.

This Court must find that the Applicant has failed to show deficient performance by defense counsel related to his understanding of the DSS involvement with the mother. The Applicant has

not presented any additional evidence in this proceeding which would show that counsel acted neglectful in his investigation and preparation concerning the DSS matter. The Applicant simply made no showing other than the fact that counsel was aware of DSS investigations. He has failed in his burden of proof to show either deficiency or prejudice under Strickland.

Allegation Five - Failed to Investigate What the Victim Was Wearing When He Entered the Hospital – Bloody Diaper on Arrival.

In his final allegation, the Applicant claims that counsel was deficient in allegedly failing to show that when the victim arrived at the hospital he did not have a bloody diaper. He claims this was prejudicial to his case. The Court must conclude that the Applicant failed in his burden of proof of either deficiency or prejudice on this ground.

The record reveals that the State introduced State Exhibit 71 the alleged bloody diaper (Tr. P 353) and State Exhibit 71 which were cuttings from the diaper (Tr.p. 403)., Evidence was presented at trial that the type of diaper the victim was wearing was a potty training type diaper. Tr.p. 180. Evidence also from Allen Farley was inconsistent on whether he was aware if the child still had his diaper on when he was in the ambulance because he was covered with a blanket. However, while doing CPR in the house, the diaper the victim was wearing was not taken off the child at the crime scene. Tr.p. 198.

Joseph Bice indicated when he was at the scene there were three diapers present according to his information. Tr.p. 316. However, Bice was aware that the most obvious thing about the victim's photographs was the evidence of bruising on the child's buttocks. Tr.p. 317. Agent Jamie Johnson indicated that they collected evidence at the crime scene including one diaper from the kitchen trash can (Item 4) which she identified as State's Exhibit 71. Tr.p. 354-355, 359 - 360.

State Exhibit 10 was a photograph of a diaper identified as the State Exhibit 71 and showed a stain on it which they considered suspected blood. Tr.p. 372, 397.

Defense counsel had the agent confirm that State Exhibit 71 was the diaper found in the kitchen trash can. Tr.p. 383. He pointed out that there were additional used diapers found upstairs that were photographed, but not secured or collected as evidence. Tr.p. 383, 387. Those items did not appear to have stains consistent with the stain found in the kitchen. Tr.p. 384. Agent Johnson was advised that the other diapers were tested to see if they indicated the possibility of blood, but Johnson did not test them. Tr.p. 384.

SLED Agent Herrera indicated she received State Exhibit 71 and it tested presumptive positive for blood. Tr.p. 402-403, 405. Items were then cut from the diaper and submitted to the SLED DNA section which she identified as State Exhibit 75. Tr.p. 403. Defense counsel questioned Herrera and developed that there was no test to determine how long the blood had been on the item. Tr.p. 406. SLED Analyst Leisy tested the items in State Exhibit 75 as the items from the kitchen trash can and determined that the items matched the DNA from the buccal swab from the victim. Tr.p. 421-423.

It was further developed that the other son "Little Kurt" was too old to wear diapers. Tr.p. 449.

SLED Agent Baird indicated that that she was aware of the diaper seized on November 27. She attended the autopsy and was aware of the open wound on the buttocks. Tr.p. 502. She was also aware when confronted, the Applicant claimed the wound must have happened when the victim allegedly fell down the stairs after he returned home at 1 a.m. referring to the diaper that was taken at the crime scene. Tr.p. 517. On cross-examination, Agent Baird indicated to the

Applicant in questioning him that blood was found on other diapers which she agreed was incorrect. Tr.p. 545-546.

Dr. Spalding indicated when the victim arrived at the autopsy, he was unclad, but a diaper accompanied the body. Tr.p. 564. Dr. Spalding indicated that the diaper that accompanied the body had some bloody, some serious type of fluid on the back part of the diaper. He opined it was consistent with the type of injury that he was seeing in the buttocks. Tr.p. 565, 569. Counsel Williams cross-examined Dr. Spalding about the diaper who indicated he was not aware if another item of clothing was also with the infant when he arrived. Tr.p. 586.

Importantly, Dr. Spalding testified that the presence or absence of blood on the diaper was not used to determine that there was a wound in his buttock region. He opined that the wound he reviewed would have occurred a day at the most. Tr.p. 588. He clarified on redirect that the wound occurred within 24 hours. Tr.p. 593. Further, the damage occurred from a traumatic injury. Tr.p. 593- 594. As far as the clothing that accompanied the child was concerned, it was most probably on the child when he was brought to the hospital.

Counsel Williams testified at the PCR hearing that he was aware of the issue related to the diaper and some confusion about it at the time of trial.

This Court must find that the Applicant has failed to show deficient performance in his investigation and presentation concerning the diapers. This Court must concluded that State Exhibit 71 was not the diaper that accompanied the victim to the hospital but was seized at the home in the kitchen at a later time. However, Dr. Spalding's testimony was that there was a different diaper that had what appeared to be a blood like substance on it consistent with the damage to the buttocks that accompanied the child's body. These two facts are not inconsistent.

The Applicant before this Court appeared to suggest that no diaper accompanied the body. He has failed in his burden of proof on that assertion based upon the nature of Dr. Spalding's testimony. However, what is important to the Court is that it was not the diaper that accompanied the child that caused the pathologist to conclude the nature of the damage to the buttocks were both chronic and acute, it was the examination of the buttocks themselves.

Even if we assumed *arguendo* that Dr. Spalding was mistaken about a diaper accompanying the body, he has failed to show that there is a reasonable probability the result of the proceeding would have been different, State Exhibit 71 would still be admissible as it was an item seized at the crime scene and its chain of custody was never at the hospital. It had the victim's blood. In addition, even if the alleged hospital diaper was not there, the buttock damage was still consistent with blood being on a diaper. He has failed in his burden of proof of showing prejudice.

CONCLUSION

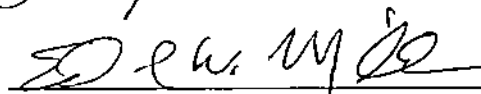
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of January, 2023



EDWARD W. MILLER
Presiding Judge
Eleventh Judicial Circuit

Summerville, South Carolina

WITNESSES

Springdale Police Department

J Bice

Law Enforcement Case #: 201311829

LSM1

ARREST WARRANT NUMBER

2015A3220900040

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 6/1/15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS3201395

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

vs.

Joshua Warren Hopkins

CDR #: 2356

Indictment for

Homicide by Child Abuse

§ 16-03-0085(A)(1)(B)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
Homicide by Child Abuse

§ 16-03-0085(A)(1)(B)(1)

At a Court of General Sessions, convened on JUNE 2015, the Grand Jurors of Lexington County present upon their oath:

That **Joshua Warren Hopkins** did in Lexington County, South Carolina, on or about November 12, 2013, through November 27th, 2013, cause the death of a child who was under the age of eleven years at the time of his death, and that the defendant did cause the death of said child while committing child abuse or neglect, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; such being an act or omission which caused harm to the child's physical health or welfare, such act or omission including: child physical abuse and/or medical neglect and/or failure to protect child from harm; the aforesaid child abuse or neglect caused the death of [REDACTED], date of birth [REDACTED] in violation of Section 16-3-85(A)(1) and (B), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayes
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

887

COUNTY OF Lexington
STATE VS.
Joshua Warren Hopkins

AKA:

Race: Sex: M Age: 29DOB: SS# Address: DrCity, State, Zip: Columbia, SC 29210DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Homicide by child abuse (20Y to Life)

INDICTMENT/CASE#: 2015GS3201395A/W#: 2015A3220900040Date of Offense: 11/12/2013 - 1/2/2014S.C. Code §: 16-03-0085(A)(1)(B)(4)CDR Code #: 2356

SENTENCE SHEET

OCT 17 2016
SC Court of Appeals☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0085(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge Judge Code: Sentence Date: 7 OCT 16

AT TRUE COPY
Let Co. C.O.P., G.S. & F.C.

WITNESSES

Springdale PD
Rice

Law Enforcement Case #: 201311829

LSM

ARREST WARRANT NUMBER

16-STR-00072

ACTION OF GRAND JURY

*Foreperson of Grand Jury
Date:*

VERDICT

*Foreperson of Petit Jury
Date:*

DOCKET NO. 2016GS3202515

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2016

**THE STATE
vs.**

Joshua Warren Hopkins

CDR #: 2357

Indictment for

**AIDING AND ABETTING HOMICIDE BY
CHILD ABUSE**

§ 16-03-0085(A)(2); (B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 AIDING AND ABETTING HOMICIDE BY CHILD
 ABUSE
 § 16-03-0085(A)(2); (B)

At a Court of General Sessions, convened on SEPTEMBER 2016, the Grand Jurors of Lexington County present upon their oath:

That Joshua Hopkins did in Lexington County, South Carolina, between November 12, 2013 and November 27, 2013, knowingly aid and abet another person, Sabrina Haynes, to commit child abuse or neglect, and the child abuse or neglect, whether by act omission, resulted in the death of a child under the age of eleven, to wit: [REDACTED], date of birth, [REDACTED], furthermore, the aforesaid child died on November 27, 2013, as a result of child abuse or neglect, whether by act or omission, and such child abuse or neglect caused harm to the child's physical health or welfare, in violation of Section 16-3-85 (A) (2) and (B), S. C. 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

890
STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Joshua Warren Hopkins

AKA:

Race: Sex: M Age: 29

DOB: SS#:

Address: Dr

City, State, Zip: Columbia, SC 29210

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Homicide by child abuse, aiding and abetting (10Y to 20Y)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3202515

A/W#: 16-STR-00072

Date of Offense: 11/12/2013

S.C. Code § : 16-03-0085(A)(2)(B)(2)

CDR Code #: 2357

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0085(A)(2)(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2357

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$ 125

Clerk of Court/ Deputy Clerk Beth Caprice

Court Reporter: B. Sigwald

SCCA/217 (07/2016)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge Timothy

Judge Code: 2145

Sentence Date: 7 04 16

AT TRUE COPY
16-03-0085(A)(2)(B)(2)
J. W. HOPKINS
11/12/2013
2016GS3202515