

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge

MARK ANTHONY MARTUCCI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000178

APPENDIX

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

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

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

25 "I stopped going to church because my mom was

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

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

4 THE COURT: No.

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

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

23 "I then had Bobby, who I called Mino in January 2000.
24 It was at that time I gave birth to Mi that my mother
25 started to take over. My mother tried to dictate to me

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

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

12 "After I walked around for an hour, they checked me
13 and they decided at the hospital to keep me. I delivered
14 Bobby at 3:22 a.m. on January the 3rd, 2000. I officially
15 went into hard labor at 3:00 p.m." -- I'm sorry -- "at
16 3:00 a.m. on January 3rd, 2000. I pretty much delivered
17 Bobby naturally because they didn't have enough time to
18 give me anything."

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

1 "Bobby did real good at home and I took him to his
2 ten-day checkup, and he was fine. That was at the
3 Greenville Memorial Clinic because, at that time, I was on
4 Medicaid. I took him to all of his follow-up visits and
5 vaccinations at the clinic and at North Hills on Highway
6 14, which Dr. Bethy took care of Bobby. When North Hills
7 stopped seeing babies there, I started taking Bobby to the
8 health department in Greenville for his shots."

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

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

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

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

5 "I got married September 16th, 2000, to James Darren
6 Turner, which I call him Darren. I met Darren in March of
7 2000 at a hockey game in Florence, South Carolina. The
8 night that I met him was the first time I had been out of
9 the house since I gave birth to Bobby. I met Darren at
10 the hockey game and we started seeing each other shortly
11 after that. After about a month, Darren and I started
12 seeing each other on a one-on-one. My mom would not let
13 me take Mi on any dates with me. Darren and I dated and
14 got engaged and were planning a wedding, but my mom raised
15 such a fit because she didn't like Darren. Darren and I
16 then got married by a justice of the peace about one month
17 after we got" -- "after the engagement."

18 "After we married, we moved into 458 Becky Gibson
19 Road in Greer, which we got that trailer about a week
20 before we got married. We got married in Greenville
21 County, South Carolina, and obtained our marriage license
22 at the Greenville County Marriage Licensing Department."

23 "Darren got along fine with the baby and had been
24 around Bo since he was two months old. About five or six
25 months after living at 458 Becky Gibson Road, our storage

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

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

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

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

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

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

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

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

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

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

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

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

24 "My son, [Mino] and I moved out of my parents house the
25 first weekend in March of 2002. We moved in with him at

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

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

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

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

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

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

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

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

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

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

22 THE CLERK: He's outside now with menus.

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

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

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

3 Paul, you can step down.

4 THE WITNESS: Thank you, sir.

5 THE COURT: We'll take a short recess.

6 (WHEREUPON, a break was taken.)

7 THE COURT: Bring the jury back in.

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

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

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

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

25 "Some of our friends came over Sunday with a

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

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

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

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

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

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

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

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

22 "Early yesterday, he, [Mino] John, and myself left about
23 11:00 a.m. and we went to Carpets One because he's
24 supposed to start working there next week. Then we went
25 to Haywood Road to Alltel Cellular because his cell phone

1 was messing up and then went to the Wal-Mart on Wade
2 Hampton in Greer and bought a scanner and a mouse for the
3 computer. He bought [Mi] a racetrack for his Hot Wheels and
4 then we went home."

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

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

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

25 "[Min] came home with a soda and a pack of shock tarts.

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

7 Min said that he had to go potty. And he (not Mino
8 took his pants down and Mi was now in the bathroom because
9 we were trying to potty train him. Mi all of the sudden
10 threw up in the toilet. It was blue and the macaroni and
11 cheese. And the blue was from the Kool Aid that he had
12 had."

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

21 Min fell asleep laying on his chest in Minor bedroom.
22 Mi slept good last night and slept on his chest the whole
23 night. I got up this morning from my bed because I had
24 fell asleep on the floor in Minor room. But after it was
25 hurting my back, I got in my bed."

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

9 "After he gave him a bath, [Mi] was whimpering a little
10 and he was telling him that it was okay. He (not [Mino] and
11 I have had diarrhea and thought then that it had to be
12 from something we ate."

13 "I went on to work at about 9:20. I got to work
14 about 10:00 a.m. this morning. [Mi] was not running a fever
15 when I left and his temperature when I checked it before I
16 went to work this morning was '98.6.' [Min] was talking and
17 ready to play. And I told him that I was going to work
18 and he said, 'Bye, mamma.'"

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

1 his bottle.'"

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

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

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

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

1 screaming and crying."

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

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

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

1 Allen Bennett Hospital."

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

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

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

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

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

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

6 End of statement.

7 THE COURT: All right. Solicitor.

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

10 THE COURT: All right.

11 MR. BYRHOLDT: Same objection, Your Honor.

12 THE COURT: Same objection is noted.

13 MR. BYRHOLDT: Thank you.

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

16 The rights form, again, do you want read?

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

18 THE WITNESS: "I want to correct the first formal
19 statement that I have given this evening with the truth
20 about what has happened to my son, Bobby Pressley Holder."

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

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

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

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

16 "He (not Min) has never hit him. He (not Mino) has been
17 verbally abusive to me in the past, but lately we have
18 been getting along. The last time that I recall him being
19 abusive to me was when his nephew came up. His nephew is
20 14 and said he did not want to stay with us because he was
21 yelling at us and he wanted to stay with his grandparents.
22 I don't remember what the yelling was about. He has
23 raised his voice a lot and has not yelled in a hurtful
24 manner for me to cry. He has never threatened to beat
25 me."

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

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

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

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

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

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

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

1 penis."

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

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

25 "I have noticed that Minor right ear was bruised

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

9 "Last night, **Mi** threw up. He (not **Mino** said he wanted
10 to know what I fed him. He started cleaning the vomit up
11 and said, 'I'm just not daddy material.' He cleaned up
12 the vomit and gave **Mi** a bath and then took him to his
13 bedroom. I heard a couple of thuds thinking that it was
14 **Minor** head. I walked into **Minor** bedroom and he was putting
15 a diaper on **Mi** and it looked like **Mi** was pushed back on
16 the floor. I asked if **Mi** was all right. And he said that
17 he was fine and put a movie in for **Mi** and closed his
18 door."

19 "He went back outside and I went to the bedroom. I
20 fell asleep and woke up about 1:00 a.m. this morning and I
21 went into **Minor** bedroom and saw that **Mi** was lying asleep on
22 **Minor** chest. I laid down with them for a little while and
23 the floor was hurting my back so I went back to my
24 bedroom."

25 "I woke up this morning and was getting ready for

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

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

15 "Starting about a month ago, I noticed bruises on
16 Bo's facial cheeks which are the exact size of the way I
17 have seen him squeeze Minor cheeks with his hands. He only
18 does this when he is pissed off at Min and he wants Min to
19 listen to him. In the past month, I have seen him squeeze
20 Minor cheeks, at least, four different times. I told him
21 to stop. He kept asking me how the bruises got on Minor
22 face and I told him that he will bruise from squeezing his
23 cheeks. He said that he could not take Mi out in public
24 like that."

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

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

10 "Yesterday, while John and I were working on the
11 scanner for the computer that I mentioned in my first
12 statement to you, **Mi or** was sitting in the recliner crying.
13 He (not John) took a piece of scotch tape and put it
14 across **Minor** mouth and then started laughing about it. I
15 told him that that was uncalled for and I removed the tape
16 from **Minor** mouth."

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

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

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

24 "Last week was when I noticed the scratches on Minor
25 penis. I saw that he was having Min pull on his bird which

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

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

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

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

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

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

21 "I am in love with him and tried to correct the abuse
22 he was inflicting upon my son. I thought I could change
23 him and teach him to better handle his temperament with

24 Mino It just got worse and worse and now my son is dead."

25 End of statement.

1 THE COURT: All right. Solicitor.

2 MS. SEAY: No further questions for Investigator
3 Silvaggio.

4 THE COURT: Mr. Byrholdt or Mr. Phillips.

5 MR. BYRHOLDT: May it please the Court?

6 CROSS-EXAMINATION

7 BY MR. BYRHOLDT:

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

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

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

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

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

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

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

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

1 would have asked her to describe the injuries to me.

2 Q Do you know if Officer Kelly described the bruises to
3 her?

4 A He confronted her with the injuries that he observed,
5 so.

6 Q Because today, this court reporter is taking down the
7 questions I ask you and your answers so we know what has
8 been said by you verbatim by a reporter.

9 A In a courtroom setting, that is correct.

10 Q But we don't have that information, other than what
11 you typed out that night. We've got your typed summary.

12 A No. You have her typed statements is what you have
13 with -- that has been approved and signed by her.

14 Q Do you recall what she was wearing that night?

15 A I don't recall, sir. I know she was cold and I
16 offered her a blanket up there in the office.

17 Q When you first came into contact with Brandi, was she
18 in the waiting area with her parents?

19 A I believe she was with somebody. I don't know who
20 the people were that she was with.

21 Q Did you invite anyone to come back with her to
22 observe this statement being taken?

23 A No. And that's not customary. We would not do that.

24 Q And it's always customary for you to have, at least,
25 a minimum of two officers when you interview; correct?

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

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

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

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

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

16 A Yes, sir.

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

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

24 Q The first statement you think is untrue; correct?

25 A I think the facts related to what happened to Bobby

1 Holder are untrue.

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

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

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

11 A I have absolutely no idea.

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

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

16 Q DNA, you don't have that?

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

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

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

1 injury nature.

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

4 A On the person I'm interviewing --

5 Q Sure.

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

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

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

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

13 (Pause.)

14 MR. BYRHOLDT: Thank you, Officer.

15 THE COURT: Mr. Quinn.

16 MR. QUINN: No questions.

17 Thank you.

18 THE COURT: Thank you.

19 Step down.

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

23 THE COURT: They are in evidence.

24 MS. SEAY: The State rests.

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

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

3 MOTIONS

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

6 Mr. Byrholdt.

7 MR. BYRHOLDT: May it please the Court?

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

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

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

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

9 Why --

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

15 THE COURT: Solicitor.

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

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

25 MR. BYRHOLDT: Thank you, Your Honor.

1 THE COURT: Mr. Sumner.

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

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

7 Thank you.

8 Your motion is denied.

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

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

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

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

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

18 (WHEREUPON, a break was taken.)

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

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

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

1 street?

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

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

6 MR. BYRHOLDT: Sir?

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

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

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

14 (WHEREUPON, a lunch break was taken.)

15 (WHEREUPON, Defendant Holder's Exhibit Nos. 1, 2, 3,
16 4, 5, 6, 7, and 8 were marked for identification
17 only.)

18 THE COURT: Mr. Byrholdt.

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

21 THE COURT: Anything before I bring in the jury?

22 (There was no response.)

23 THE COURT: Okay. Bring the jury in.

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

1 THE COURT: All right. Mr. Byrholdt.

2 MR. BYRHOLDT: May it please the Court?

3 We call Brandi Holder to the witness stand.

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

6 WHEREUPON,

7 BRANDI LYNN HOLDER,

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

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

10 THE WITNESS: Brandi Holder.

11 THE CLERK: Thank you.

12 Be seated.

13 DIRECT EXAMINATION

14 BY MR. BYRHOLDT:

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

17 Give us your full name, please.

18 A Brandi Lynn Holder.

19 Q And where do you live?

20 A 351 Anderson Ridge Road.

21 Q How old are you now?

22 A I'm 24.

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

24 A I was 21.

25 Q How old were you when you got pregnant?

1 A 18 years old.

2 Q Tell us about Mino

3 A He was my little boy, always laughing from the time
4 he was a little baby, always playing. We lived with my
5 parents. He was our baby.

6 Q What do you mean "our baby"?

7 A All of us took part in raising him. And he was ours.
8 There was no father involved. And he just loved to have
9 fun. He loved to laugh. And he was the best thing that
10 ever happened to me.

11 Q Was there a period of time when you did not get along
12 with your parents and moved out?

13 A Yes.

14 Q Can you tell us about that?

15 A I'm sorry. .

16 Q Would you like some water?

17 A Please.

18 Q Brandi, was there a time when you and your parents
19 did not get along after you had Minor

20 A Yes. There came a point in time where my mom and I
21 didn't see eye to eye on raising him. She would give him
22 everything that he wanted. And I couldn't live up to
23 those standards.

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

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

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

8 A Yes, I did.

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

10 A I did.

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

13 A That's true.

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

16 A I was.

17 Q Did you get a phone call?

18 A I did.

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

20 A I was told that **Mr** was sick and that he was throwing
21 up. And he said, What should I do? And I said, I will
22 call the doctor.

23 Q All right. Did you call the doctor?

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

1 Q From who?

2 A From Mark.

3 Q And what was the basis of that conversation?

4 A He said that something wasn't right, that Mi wasn't
5 acting right. And he wanted me to talk to him.

6 Q Did you speak into the phone?

7 A I did.

8 Q Did you get any response at all?

9 A No.

10 Q All right. What did you then do?

11 A Mark got back on the phone and he said that he was
12 taking Mi to the hospital.

13 Q What did you say?

14 A I said, Why? And I got no response. And then the
15 phone went dead. He just hung up.

16 Q Earlier that morning, what time did you get up on the
17 17th?

18 A Somewhere around 8:00.

19 Q All right. And did you shower and get ready for
20 work?

21 A No. I showered the night before. I did get ready
22 for work.

23 Q All right. What did you do when you got up around
24 8:00 that morning?

25 A I got up, went to the bathroom, got everything laid

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

5 Q Did you see [Mi] that morning?

6 A I didn't.

7 Q Did you see Mark Martucci that morning?

8 A Yes, I did.

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

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

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

15 A He did.

16 Q What did he say?

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

21 Q All right. Did you check on [Mi] that morning before
22 you left for work?

23 A No, I didn't.

24 Q When was the last time that you saw your son, [Mi]
25 Holder?

1 A The night before.

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

3 A Yes.

4 Q How late during the 16th did you see Mino

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

6 Q And when you went to check on him; where did you go
7 check on him?

8 A I went to his bedroom.

9 Q All right. Was Bo in his bedroom?

10 A He was.

11 Q Was anybody with him?

12 A Mark was in there with him.

13 Q Was Mi all right at that time?

14 A He was asleep.

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

16 A Yes, he did.

17 Q About what time was that?

18 A Probably 10:00 or so.

19 Q All right. Had you, on the day of the 16th, gone out
20 in public with Mino

21 A Yes, we did.

22 Q Tell the jury where -- well, who was together on the
23 16th? What people were around you and Mino

24 A It was myself, Min Mark, and John.

25 Q Do you mean Mark Martucci and John Parker?

1 A Yes.

2 Q And where in public did you go on the 16th?

3 A We went to a carpet store where Mark was going to put
4 in a resume.

5 Q All right. About what time of day was that?

6 A Around lunchtime, 11:30, 12:00.

7 Q All right. After you left the carpet store, where
8 did you guys go?

9 A We went to Alltel on Haywood Road. It's a cell phone
10 place.

11 Q All right. Did all of you go in the store?

12 A Yes.

13 Q Was Mi visible to be seen by anyone in that store?

14 A Yes.

15 Q Where did you go after you left Alltel?

16 A We went to eat lunch at China Garden buffet.

17 Q All four of you?

18 A Yes.

19 Q Any problems at the China Garden?

20 A He wanted to flirt with the waitress.

21 Q After you left China Garden, where did you guys go?

22 A We went to Wal-Mart.

23 Q Was Mi with you?

24 A Yes.

25 Q Did anybody say anything unusual to you at Wal-Mart?

1 A No.

2 Q Did Min leave without you at any time the evening of
3 July 16th?

4 A Yes, he did.

5 Q When he left your side, who did he go off with?

6 A Mark and John.

7 Q Do you know how long they were gone?

8 A Probably two hours, two and a half hours.

9 Q What were you doing while they were gone?

10 A I was cooking dinner.

11 Q All right. Did you feed Mi when he got home that
12 night on the 16th?

13 A I did.

14 Q Did he eat very much?

15 A He ate all of his macaroni and cheese, and he ate a
16 few pieces of steak.

17 Q Did he get sick after that?

18 A Yes, he did.

19 Q All right. At any time on the 16th or 17th, did you
20 see any marks of abuse on Minor

21 A No.

22 Q Prior to the 16th, while you lived with Mark
23 Martucci, did you see any indications that Min was being
24 abused by anyone?

25 A No.

1 Q And you were here when they -- you heard people say
2 that on the weekend of -- I think it was the 4th of July
3 that [Min] had bruises on him?

4 A Yes.

5 Q Let me hand you what's been marked for identification
6 purposes as Defendant Holder's Exhibit Nos. 1 through 8.
7 And just, at this time, I ask you to review those and ask
8 you if you can identify those?

9 A Yes.

10 Q Do you know who took those photographs?

11 A Yes.

12 Q Who?

13 A Me.

14 Q Do they accurately portray [Minor] condition at the time
15 those pictures were taken?

16 A Yes.

17 Q And what time were those pictures taken?

18 A At different times.

19 Q But what dates?

20 A These were taken 4th of July weekend at the lake.

21 Q At which lake?

22 A Lake Keowee.

23 MR. BYRHOLDT: Your Honor, I'd move Defendant
24 Holder's Exhibit Nos. 1 through 8 into evidence.

25 THE COURT: Any objection?

1 MS. SEAY: No, sir.

2 THE COURT: No objection. Put them in.

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

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

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

8 (Pause.)

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

10 MR. BYRHOLDT: May it please the Court?

11 BY MR. BYRHOLDT:

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

14 A No.

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

17 A Yes.

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

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

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

24 A Yes, I did.

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

1 and --

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

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

5 BY MR. BYRHOLDT:

6 Q What did he tell you?

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

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

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

12 Q At any time up until July the 17th, when you went to
13 Allen Bennett Hospital, were you concerned about **Minor**
14 safety?

15 A No.

16 Q If you had been concerned about **Minor** safety, what
17 would you have done?

18 A I would have left.

19 Q Where would you have gone?

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

22 Q Could you have gone home?

23 A Yes.

24 Q Have your parents ever turned you away?

25 A No.

1 Q When you got to the hospital, at Allen Bennett, were
2 you allowed to see Mino

3 A No, I was not.

4 Q And you tried?

5 A Yes, I did.

6 Q What happened?

7 A I was pushed away.

8 Q Did you ever get to say good bye to Minor

9 A No.

10 Q When you were at the hospital, did you tell anyone at
11 the hospital that there had been an accident on an ATV?

12 A I only repeated what I was told.

13 Q And who told you that?

14 A Mark.

15 Q When did you find out that Mi had died?

16 A The doctor came out and said he was sorry, there was
17 nothing more he could do.

18 Q And what did you do?

19 A I screamed and tried to climb the wall. I fell on my
20 knees. I couldn't get back up.

21 Q At some point, did someone approach you and ask you
22 to go to the law enforcement center?

23 A Yes.

24 Q Who approached you?

25 A It was one of my family members told me that I needed

1 to go with my uncle, David, to the law enforcement center.

2 Q Did you ask why?

3 A No.

4 Q Did you go?

5 A I did.

6 Q Do you recall about what time you got to the law
7 enforcement center?

8 A Between 4:30 and 5:00. I don't know.

9 Q And did you sit with your family?

10 A I did.

11 Q At some point, did you leave your family and go back
12 to where the detectives were?

13 A Yes.

14 Q Who took you back there?

15 A One of the officers.

16 Q And you were given your Miranda warnings, your rights
17 form?

18 A Yes.

19 Q Do you recall that?

20 A No, I don't.

21 Q Well, what was your emotional condition at that time?

22 A I was crying. I was in shock. I wanted to go home
23 with my family.

24 Q Did you ever ask -- well, Officer Silvaggio, was he
25 the one that conducted the interview?

1 A Yes.

2 Q Did you ever ask him for anything during the
3 interview?

4 A I asked several times if I could go to the bathroom.
5 And I was told to wait a minute.

6 Q Is that the only thing you asked for?

7 A No. I begged to go home. I wanted to go home with
8 my family.

9 Q Were you allowed to go home?

10 A No, I was not.

11 Q You gave a statement?

12 A Yes.

13 Q The first statement?

14 A Yes.

15 Q State's Exhibit No. 18, if I recall right, an
16 eight-page statement?

17 A Yes.

18 Q There's a lot of personal information in it?

19 A Uh-huh.

20 Q Did you provide that information?

21 A I had to have.

22 Q All right. A few hours later, you gave a second
23 statement?

24 A Yes.

25 Q Do you know how long you had been in the interview or

1 interrogation room before you gave your second statement?

2 A At least, two or three hours.

3 Q All right. Did they provide you a blanket?

4 A They did.

5 Q Other than that, did they provide anything else for
6 you?

7 A No.

8 Q After you gave your first statement, did any other
9 officers come in and talk with you about your statement?

10 A Yes.

11 Q Who?

12 A Mr. Kelly.

13 Q And when he came in, tell the jury what happened.

14 A When he came in, I was sitting at the end of
15 Mr. Silvaggio's desk in a chair. I had my head laying on
16 a table and I was crying. And Mr. Silvaggio told me when
17 I got done that I could go. And I thought it was getting
18 that time.

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

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

4 Q In your second statement --

5 A Yes.

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

8 A Not completely, no.

9 Q Well, did you know of any abuse going on between Mark
10 and Mino or between anybody and Mino

11 A No.

12 Q Were you abusing Mino

13 A No, I was not.

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

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

21 Q And what did you do?

22 A I did what he asked me to do.

23 Q Did you ever ask for your parents?

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

1 Q So statement number one, State's Exhibit No. 18, is
2 not accurate?

3 A No.

4 Q The second statement is not accurate?

5 A No, not in entirety.

6 Q Why would you initial every paragraph and sign your
7 name to all these pages?

8 A My son had just died and I wanted to go home. I was
9 promised I could go home. And he said if I did it that I
10 could. And he pointed and he told me where to sign.

11 Q Brandi, could you explain to me and this jury how the
12 horrible injuries that Min suffered could have happened and
13 you not know about it?

14 A No, I can't.

15 Q When you last saw him early in the morning of the
16 17th, did he have any injuries like that?

17 A On the 16th?

18 Q No. The early morning of the 17th, you said you
19 checked on him?

20 A I didn't check on him.

21 Q You didn't get up in the middle of the night and
22 check on him?

23 A In the middle of the night. I thought you were
24 talking about --

25 Q Did you see anything out of the ordinary?

1 A No. He was laying on top of Mark's chest and he had
2 his pajamas on.

3 Q What was he wearing?

4 A He was wearing a little baseball top that was
5 striped. It was unbuttoned in the front and a diaper.
6 That was it.

7 Q It's been three and a half years since this happened,
8 you've been waiting for this week?

9 A Yes.

10 Q Is there anything that made you aware that your son
11 was at risk for being hurt?

12 A Looking back in hindsight, there were things that I
13 wish I had questioned that I didn't at the time. I wish I
14 had checked on him that morning. And I have to live with
15 that for the rest of my life that I didn't go -- that I
16 was running late for work and I didn't go and check on my
17 baby. And, now, all I've got are pictures of him.

18 Q The State asked your former husband, David [sic], if
19 he got a call from you, you know, telling him about Minor
20 death. Were you -- what happened to you later on the
21 night of the 17th?

22 A They arrested me.

23 Q I thought they promised you that you could go home?

24 A He did.

25 Q You went to jail?

1 A Yes.

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

4 A No.

5 Q Were you allowed to call your former husband to tell
6 him about Mino

7 A No.

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

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

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

13 A Absolutely not.

14 Q Did you ever allow anybody to hurt him?

15 A No, I did not.

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

18 A No.

19 MR. BYRHOLDT: Brandi, thank you.

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

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

24 MR. QUINN: I do, Your Honor.

25 My understanding was that the Solicitor would go

1 next. Am I wrong in terms --

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

3 MR. QUINN: Okay.

4 CROSS-EXAMINATION

5 BY MR. QUINN:

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

8 A No, it's not.

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

11 A Yes, I did.

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

14 A Yes.

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

17 A No.

18 Q You didn't have any difficulties with him?

19 A No.

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

22 A Yes.

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

1 A No, sir. He approached me on numerous occasions.

2 Q Okay. And you don't remember the Veneskys taking
3 these pictures when you were there?

4 A It's been a long time ago. And it's very possible I
5 was there. I don't deny that.

6 Q Do you deny getting angry about it and having an
7 argument with Ms. Venesky on the phone?

8 A I remember getting angry with her. Because I went
9 and told her what was going on with her and her husband --
10 with myself and her husband.

11 Q You remember getting angry with her because you told
12 her about her husband, is that what you said?

13 A (Witness nodded.)

14 Q Okay. So you didn't get angry about the pictures?
15 You didn't say to her, Who gave you permission to take
16 those pictures?

17 A I talked to her husband. I had caught her husband
18 taking pictures of me and other things in the past,
19 looking in the windows.

20 Q And did you report that to the police at any point?

21 A No, I did not.

22 Q To your landlord?

23 A No.

24 Q To any of your neighbors in case they had those same
25 sort of difficulties?

1 A She was the only neighbor at the time.

2 Q Did you put it in either of the statements you gave
3 to the police?

4 A No.

5 Q Did you go back after you found out that Ms. Venesky
6 had given a statement against you and correct it with the
7 police and tell them what the problems were?

8 A I didn't find any of that out in time to go to the
9 police and tell them anything.

10 Q Ms. Venesky gave a statement in July of 2002, so you
11 haven't had the opportunity in the last three years to go
12 back and correct it?

13 A Not until the approach of this trial.

14 Q Okay. And do you agree that Ms. Venesky -- as
15 Ms. Venesky testified, that Mi would go straight to men?

16 A No. I do not agree.

17 Q Okay. The other witnesses that said he would go to
18 men, but he was a little leery of women at the 4th of July
19 party and things like that, is that accurate or not?

20 A No, it is not.

21 Q In your testimony, as well as the testimony of
22 others, that Mark loved Mino taught him how to fish, is
23 that accurate?

24 A He taught him how to fish. He said that he loved
25 him.

1 THE COURT: Hold on just a minute.

2 Get the phone, please.

3 THE BAILIFF: Yes, sir.

4 THE COURT: All right. Go ahead, sir.

5 BY MR. QUINN:

6 Q That Mark bought this four-wheeler and called it Bo's
7 four-wheeler?

8 A Yes.

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

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

14 Q Which one did he take from the Veneskys boy?

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

18 Q And when was that --

19 A I don't --

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

21 A This was probably during.

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

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

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

1 that what you're telling this jury?

2 A Yes.

3 Q So tell the jury then why if you had \$3,700 of your
4 money in an account that you couldn't leave.

5 A I did not have that money in an account. He had
6 asked me to get a loan.

7 Q I'm sorry. What was the last part about a loan?

8 A He had asked me to get a loan for him.

9 Q Did you not in your statement to the police tell them
10 that you had \$3,700 and that you, in fact, had purchased
11 the trailer next door?

12 A I had to get a loan to do that.

13 Q Okay. However you obtained that money, you had
14 \$3,700 of your money; isn't that right?

15 A To purchase the trailer.

16 Q That you took Mi and lived in?

17 A No. It was not livable at that time. There was a
18 lot of work that had to be done.

19 Q So you didn't leave Mark Martucci at any point, did
20 you?

21 A No.

22 Q That's because Mark Martucci was not abusing Mi at
23 all, was he?

24 A I don't know that.

25 Q You knew that Min had been sick throwing up; isn't

1 that right? And we're talking about the day of the 16th.

2 A He threw up that night.

3 Q You, in fact, either saw or saw the aftermath of him
4 throwing up that Mark Martucci was cleaning up; isn't that
5 right?

6 A Mark had informed me.

7 Q And Mark took Mi to the bathroom and cleaned him up;
8 isn't that right?

9 A Yes.

10 Q On more than one occasion that night?

11 A Only the one that I knew of.

12 Q Did you leave, at any point, during the night?

13 A I left and went to the bedroom and took my shower and
14 went to bed.

15 Q Okay. And at what time would that have been,
16 roughly?

17 A 11:00.

18 Q And when you checked on Bo, Mark is laying with Mi in
19 his room; isn't that right?

20 A Yes.

21 Q And you go to your bedroom in another part of the
22 trailer; isn't that right?

23 A Yes.

24 Q And then the next morning, you get up and you don't
25 even go check on Min do you?

1 A No, I didn't.

2 Q You leave and go to work?

3 A Yes, I did.

4 Q To your job at Capelli's?

5 A Yes.

6 Q Where you had no appointments that day?

7 A I can't say that for sure.

8 Q But you can say for sure to the jury you were running
9 late to an appointment that did not exist? How were you
10 running late?

11 A Appointments can be erased out of the appointment
12 book that I had. If they call and cancel and I'm not
13 there, someone else could have erased my appointments.

14 Q And you called in Monday, I think it was, because you
15 were ill; isn't that right?

16 A No, sir, Tuesday.

17 Q Tuesday. I'm sorry.

18 Thank you.

19 And so you didn't take the time to check on your son
20 who you thought you were leaving with a child abuser
21 before you left?

22 A I never thought I was leaving him with a child
23 abuser.

24 Q And, in fact, you weren't because when you walked out
25 the door, the child abuser walked out the door; isn't that

1 right?

2 A No. That is not right.

3 Q Because you're the one who picked up [Mi] by his arm in
4 front of witnesses and would drag him down the hall and
5 throw him in his room; isn't that right?

6 A I have never picked my child up and dragged him
7 anywhere. That was my baby.

8 Q Because [Min] was a problem for you and Mark, wasn't he?

9 A No, he was not.

10 Q You were jealous of his relationship with Mark; isn't
11 that right?

12 A Absolutely not. He was a momma's boy. There was not
13 a day that I came home from work that he didn't sit in my
14 lap and hug me.

15 Q And the momma's boy you just walked out on that
16 morning when he was still sick and left him home with
17 Mark; right?

18 A Yes, I did.

19 Q And so it was Mark that had to take him to the
20 hospital; isn't that right?

21 A He could have called an ambulance. He could have
22 called me. I would have done it. That was his decision,
23 not mine.

24 Q Because he was there with the child to make those
25 decisions; isn't that right?

1 A Yes.

2 Q All right. So it's your testimony that since you
3 didn't do it, it has to be either Mr. Parker or
4 Mr. Martucci; is that right?

5 A Yes.

6 Q Okay. There was no one else available to injure Mino
7 was there?

8 A No.

9 Q Now, you have told this jury that the first statement
10 you gave the police is a lie; isn't that right?

11 A It is not 100 percent correct.

12 Q Now, most people would call that a lie. Is there a
13 different word that you'd like to attribute to it? And
14 I'll use whatever word you prefer.

15 A There are portions of it that are incorrect. There
16 are portions of it that are very accurate.

17 Q All right. So you gave a first statement that is
18 somewhat accurate and somewhat inaccurate?

19 A Correct.

20 Q You gave a second statement that, I believe, you have
21 described in your direct testimony as not accurate; isn't
22 that right?

23 A Yes.

24 Q Did you ever offer to give a third statement and
25 correct whatever inaccuracies there might have been?

1 A I was never given a chance to. I was immediately
2 arrested and placed into custody.

3 Q And do you agree that some people would call what you
4 describe as an inaccurate statement a lie?

5 A Yes.

6 Q Okay. Your testimony today about the police and the
7 manner in which they treated, your testimony is they
8 just said, Sign this and you can go home when you sign
9 it?

10 A Absolutely.

11 Q Don't you agree you went through and corrected errors
12 in it?

13 A He pointed out errors. He misspelled Minor name and
14 pointed it out to me, oops.

15 Q So all of this was Mr. Silvaggio's doing?

16 A Yes.

17 Q He came up with all this information?

18 A He didn't come up with all of it. He asked me
19 questions. He initiated everything.

20 Q But they were your answers he put down; isn't that
21 right?

22 A Some of them were. Some of them were taken after
23 Mr. Kelly and other investigators came in.

24 Q And they confronted you and said, You have given us
25 inaccurate information; isn't that right?

1 A Yes.

2 Q Now, your testimony also today is that you never saw
3 marks on Mino

4 A No.

5 Q No, that's not your testimony or you did not see
6 marks on Mino

7 A See Mark?

8 Q Marks.

9 A Marks on Mino Oh, I thought you said see Mark with
10 Mino

11 Q No. I'm sorry.

12 Is it your testimony today to this jury that you
13 never saw marks on your child, Mino

14 A In his lifetime as a two-and-a-half-year-old little
15 boy, he had marks.

16 Q Did you ever see the bruises that were in the
17 pictures that the Veneskys took?

18 A (There was no response.)

19 Q And you can answer. You don't have to wait for me.
20 I'm sorry.

21 A Oh, I thought you were going to show me.

22 Q Well, I will. I'll show you what are State's Exhibit
23 Nos. 17 and 16, which are photographs reported to be taken
24 by the Veneskys.

25 A Yes. I have seen that one.

1 Q All right. And the witness has indicated she saw the
2 mark in State's Exhibit No. 17; is that right?

3 A Yes.

4 Q But you did not see the marks in State's Exhibit
5 No. 16?

6 A No.

7 Q So Mark bathed Mino

8 A Yes.

9 Q Mark dressed Minor

10 A Yes.

11 Q Mark took care of Mi to the extent that if there were
12 marks on his shoulders, you would not even have seen them?

13 A It's very possible, yes.

14 Q Okay. Let me show you State's Exhibit No. 5. Is it
15 your testimony that you did not see any of those marks on
16 your son?

17 A My child has never looked like that.

18 Q Is it your testimony that you never saw those marks?

19 A I have never seen those marks.

20 Q That you never saw the marks in State's Exhibit
21 No. 9?

22 A No.

23 Q The injuries to the back and to the arms, you never
24 saw that?

25 A No.

1 Q Was Mi covered from head to toe whenever he was with
2 you?

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

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

6 A Yes.

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

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

11 Q Did you?

12 A No.

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

16 A No.

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

19 A Yes.

20 MR. BYRHOLDT: Objection.

21 THE COURT: Hold on.

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

23 MR. BYRHOLDT: Okay.

24 THE COURT: All right.

25 THE WITNESS: Yes.

1 BY MR. QUINN:

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

4 It's your testimony here today that you didn't put
5 any of these marks on Mino

6 A No, I did not.

7 Q And is that testimony as accurate as your first
8 statement, your second statement, and your testimony about
9 not seeing these marks on Mino

10 A It's the truth.

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

13 A I am under oath.

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

15 THE COURT: All right. Solicitor.

16 CROSS-EXAMINATION

17 BY MS. SEAY:

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

20 A Yes.

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

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

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

1 A Yes.

2 Q And so now, these are not true?

3 A I didn't get to read them until after all this had
4 happened. My child had just died. And I was promised I
5 could go home.

6 Q So you maintain that you did not read these documents
7 that you signed your name to?

8 A No, I did not.

9 Q You have a high school education, you have training
10 in cosmetology, you have held competitive employment, and
11 you're telling me that you would sign documents that might
12 limit your freedom without reading them --

13 A I didn't know --

14 Q -- is that what you're telling me?

15 A I didn't know that my freedom was at jeopardy. No, I
16 didn't read them. He told me I could go home.

17 Q You wanted to go home?

18 A I asked to go home. My child had just died. Anyone
19 in that state would want to be with their family.

20 Q Let's go through a couple of things I want to ask you
21 about. In your first statement, of course, after you had
22 been advised of your rights on a separate rights waiver
23 that I'll show you, State's Exhibit No. 2, is that your
24 signature?

25 A Yes.

1 Q And is that your signature?

2 A Yes.

3 Q And are these your initials indicating that you
4 understand that you have all these rights?

5 A Yeah.

6 Q "You have the right to remain silent. You have the
7 right to talk to a lawyer for advice before we ask you any
8 questions and to have him with you during questioning.
9 You have the right to stop answering at any time."

10 All that was explained to you, wasn't it?

11 A No. It was not explained.

12 Q They didn't explain any of it to you?

13 A No. He told me that I had to sign it, that we would
14 go on with the questioning, and then I could go home.

15 Q So you were forced to sign your initials one, two,
16 three, four, five, six, seven, eight, nine times -- no,
17 ten, 11 times, 12 times, and put your signature under a
18 Waiver of Rights that said, "I have read this statement of
19 my rights and I understand what my rights are. I am
20 willing to make a statement and answer questions. I do
21 not want a lawyer at this time. I understand and know
22 what I am doing. No promises or threats have been made to
23 me. And no pressure or coercion of any kind has been used
24 against me."

25 You signed that?

1 A And, at that point, no coercion or pressure had been
2 used.

3 Q And you knew what all that meant --

4 A No, I did not.

5 Q -- and you knew what your rights were?

6 A I did not read them.

7 Q So you just signed this?

8 A Yes, I did.

9 Q And you expect everybody to believe that you didn't
10 read this and that it wasn't read to you as has been
11 testified to by the law enforcement officers?

12 A When they put themselves in that situation that day,
13 yes, I do.

14 Q What was the answer to my question?

15 A Yes.

16 Q All right. Going to the first statement that has now
17 been described by you as partially correct?

18 A Yes.

19 Q Would you kindly point out for us what the correct
20 parts of this statement are?

21 A Everything but the four-wheeler.

22 Q Everything is correct, except for this four-wheeler?

23 A (Witness nodded.)

24 Q So you acknowledge and have acknowledged prior to
25 today that this four-wheeler accident that Mi was

1 supposedly injured in did not happen; is that correct?

2 A Yes.

3 Q And why don't you explain to us why you would go to
4 such lengths to give such an elaborate description of an
5 event that didn't happen, if you didn't know about your
6 child being abused? Please explain that.

7 A When I got to the hospital that day, I asked -- I
8 questioned both John and Mark about what happened. And
9 John never said anything. And Mark just kept saying, That
10 damn four-wheeler, that damn four-wheeler. And he went
11 into that. My state of mind -- you just get a phone call
12 that your child has been taken to the hospital, you're
13 very hysterical.

14 Q And so at what point did you say, no, all the nurses
15 and doctors who are asking me what happened, no, that's
16 not what happened, there was no four-wheeler, let me tell
17 you what happened so that you can help my child? When did
18 you do that?

19 A The nurses and doctors never asked me. And I never
20 witnessed anything. I was not there. I didn't know what
21 had happened. I had just been called to the hospital.

22 Q Did you think it would have been important for you to
23 let them know that your son had been being abused for
24 weeks?

25 A I didn't know that he had been being abused for

1 weeks.

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

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

7 Q So you expect us to believe that he made this up,
8 Mr. Silvaggio made all this up, based on some stick
9 diagram where you said [Mi] had had bruises?

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

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

16 A Yes.

17 Q Page 6, "I noticed Monday night that [Mi] had bruises
18 on his body" --

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

21 THE COURT: Yes.

22 MR. BYRHOLDT: I've got one here.

23 THE COURT: All right.

24 MR. BYRHOLDT: Statement one?

25 MS. SEAY: Yes.

1 BY MS. SEAY:

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

4 A Where are the pages listed?

5 Yes.

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

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

14 Q So that is a lie, too?

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

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

22 A He ate his food.

23 Q Do you deny --

24 A He also had a popsicle afterwards.

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

1 , box because he didn't eat it?

2 A I took my leftovers home in a to-go box.

3 Q All right. Let's see. So then you cooked the dinner
4 on Tuesday night, that's Tuesday after you called in sick
5 to work and you all ran around doing errands all day;
6 correct?

7 A Yes.

8 Q You were not too sick to go to the carpet store for
9 the interview, Alltel to get the phone fixed, and Wal-Mart
10 a couple of times, were you?

11 A It was later on in the afternoon around lunchtime.
12 And Mark said he was taking my car and they were going to
13 go, did I want to go?

14 Q And you went?

15 A I went.

16 Q You weren't too sick to do all that?

17 A It was my vehicle. I did not feel well, but I was
18 feeling better than I did that morning.

19 Q The toys that were bought for Min that night at
20 Wal-Mart, those were gifts of a guilty conscience by you
21 and Mark, weren't they?

22 A No, ma'am, they were not. I always -- I never went
23 anywhere -- he always wanted gum. He always got
24 something. That was my baby and I spoiled him. That was
25 my privilege to do.

1 Q So everything else in here is true, everything that
2 I'm reading, except anything to do with the four-wheeler?

3 A Down at the bottom, that was relayed information.

4 Q Would you tell me what you're pointing to?

5 A Where it starts there, that was relayed to me by
6 Mark.

7 Q What page are you on, the same page?

8 A Yes.

9 Q Read the part you're saying is -- is that a true part
10 or an untrue part?

11 A It's relayed information so I can't verify its truth.
12 It's just what was told to me.

13 Q Okay. Well, read me that so I can find that here.

14 A 'Min said that he had to go potty. And he (not Mino
15 took his pants down and Mi was now in the bathroom because
16 we were trying to potty train him. Min all of the sudden
17 threw up in the toilet. It was blue and the macaroni and
18 cheese and the blue was from the Kool Aid that he had."

19 Q Okay. So what's not true?

20 A I just can't verify its truth because it was relayed
21 information. That is what Mark told me.

22 Q Okay. And so Mi is continuing to throw up, and Mark
23 relays you this information, and you just go on about your
24 business without concern for what's going on with Minor

25 A No. I was concerned. And I went in there. Mark

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

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

6 A Yes.

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

12 A I didn't check on him that morning.

13 Q So that's a lie?

14 A Yes.

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

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

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

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

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

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

3 A I didn't type my statement.

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

7 A I did not read my statement, though.

8 Q You didn't?

9 A No.

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

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

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

18 Q I want to talk about the second statement for a
19 minute. "I started noticing injuries on [Min] right before
20 Father's Day."

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

23 A Yes.

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

1 cheek, and it was a big bruise."

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

3 A Yes, it would have been..

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

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

11 A Yes.

12 Q "I noticed injuries on [Mi] when I was getting him
13 dressed for bed. I saw a bruise on [Minor] back, a real
14 skinny thin bruise from the mid-section of [Minor] back up to
15 his shoulder on his spine."

16 So you noticed that?

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

19 Q So that's a lie?

20 A I didn't date these.

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

24 A He did.

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

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

3 Q And what did you do about that injury?

4 A I doctored it.

5 Q How did you doctor it?

6 A Triple antibiotic ointment and a Band-Aid.

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

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

16 A Yes.

17 Q And you saw all that?

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

21 Q Did Mi just --

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

1 Q So these were all injuries that little Mino being a
2 toddler, just got on himself at times just being a
3 toddler?

4 A Yes.

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

8 A I can't explain what happened.

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

14 And you saw that?

15 A No, I did not.

16 Q You didn't?

17 A No.

18 Q This is a lie, too?

19 A Yes.

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

22 A Yes, I do.

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

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

1 BY MS. SEAY:

2 Q [Min] was crying about something and I was folding
3 clothes in the bedroom on the other side of the trailer.
4 I could hear [Mi] crying. He was grabbing [Minor] hand and
5 pulling [Min] into [Minor] bedroom. And then I saw him hit [Mino]
6 at least, ten times on his legs. [Mi] was kicking and
7 crying trying to get away from him. And he would front
8 hand his legs and then back hand his legs. [Mi] was crying
9 for me."

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

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

13 THE COURT: Rephrase the question, please.

14 BY MS. SEAY:

15 Q Did that happen?

16 A No.

17 Q No?

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

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

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

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

7 Q You only know what was done to you.

8 "I noticed a small pale yellow bruise on [Minor]
9 forehead that I noticed once [Mi] started sleeping in his
10 own bed in his room." You say he rose up and hit his head
11 on the bookcase. "I figured that was where the bruise
12 came from."

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

19 A No.

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

22 A It's the truth.

23 Q "He came back in the bedroom and asked where [Min] was
24 at. He went back in there and found him hiding under the
25 bed. I told him that [Mi] was probably scared to death of

1 him. And he called me a bitch and said that he was,
2 actually, starting to feel sorry for Minor

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

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

7 BY MS. SEAY:

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

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

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

14 A I had not for weeks being seeing those.

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

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

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

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

1 Isn't it true that you stayed home that day because
2 you knew something horrible had happened to [Mi] and was
3 happening to [Mino]

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

6 Q "Starting about a month ago, I noticed bruises to
7 [Minor] facial cheeks which are the exact size of the way I
8 have seen him squeeze [Minor] cheeks with his hands. In the
9 past month, I have seen him squeeze [Minor] cheeks, at least,
10 four different times."

11 You saw those bruises, didn't you?

12 A No.

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

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

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

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

25 Q You questioned stuff. When did you question it?

1 A After the Veneskys, I questioned.

2 Q You questioned, but then isn't it true that you
3 called the Veneskys all bent out of shape and mad asking
4 them who gave them permission to take a picture of your
5 child?

6 A And of myself. They were taking pictures of me. I
7 caught him sneaking around the house peeping in.

8 Q So you were worried about something about you and not
9 these injuries on Mino

10 A I was worried about my child. But, at the same time,
11 I didn't want a drunk neighbor going around taking
12 pictures of me.

13 Q You were worried that they were going to turn those
14 photographs over to somebody that might come and try to
15 help your child, weren't you?

16 A No, I was not.

17 Q You weren't worried about that?

18 A If my child needed help and they thought that and I
19 did not recognize it, then I would have been glad for them
20 to have called.

21 Q Do you deny that person after person after person
22 told you, this child is being abused, you need to get out
23 of this situation, you need to get help? Do you deny that
24 people told you that?

25 A Yes, I do.

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

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

7 Q You noticed scratches on his penis the week before?

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

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

19 And you didn't do anything, did you?

20 A Where are you at?

21 Q The last page.

22 You didn't do anything, did you?

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

1 Q So they are just all lying about that?

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

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

10 A We discussed several matters that night.

11 Q Did you discuss that [Mi] was being abused?

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

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

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

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

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

1 every morning.

2 Q The reason you got up every morning, got in your
3 personal vehicle, and drove to your job where you stayed,
4 at least, eight hours, and left your child at home to be
5 tortured?

6 A I didn't know that, because I was at work trying to
7 support my son as a single mother.

8 Q After all these bruises, all these bruises, after
9 people telling you, there's -- you know, there's a
10 problem. I see bruises on his face. I see bruises on his
11 back. I see bruises on his legs, everywhere imaginable.
12 And you're telling me that you did not know anything was
13 going on?

14 A Not all that was mentioned to me. No, I did not know
15 anything was going on. Nothing was done in my presence.

16 Q Isn't it true that you were angry with your parents
17 because they didn't like Mark and you were really in love
18 with him? Is that true?

19 A I was not really in love with him. I got irritated
20 with my parents because they didn't like anybody that I
21 dated.

22 Q Well, in fact, you got so irritated that you refused
23 to let them see Bo for, at least, six weeks or more before
24 he died; isn't that correct?

25 A No. That is not correct.

1 Q Are you sure about that?

2 A They could come and get him any time they wanted to.

3 Q You and Mark decided that they couldn't see him
4 because it was some kind of a contest about them and him,
5 and y'all being mad at each other. And so when you had an
6 opportunity to take your child to a safe place, you were
7 too selfish because of your own anger to do it; isn't that
8 right?

9 A No. That is not true.

10 Q You could have moved in with your parents with Min at
11 any time; isn't that right?

12 A Yes, I could have.

13 Q You had lived with them before, Mi had lived with
14 them before?

15 A Yes.

16 Q They cared for Mino Did Mi ever have any injuries
17 when he was living there with your parents?

18 A Yes, he did.

19 Q Injuries that killed him?

20 A No.

21 Q Okay. So when -- during this time where you're
22 starting to notice these problems of abuse, when do you
23 call your mom and go, mom, it's just not working out over
24 here. I need for you to take Mi for a while because I
25 want him to be safe. I don't want him to be hurt. When

1 did you make that call?

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

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

8 **Minor**

9 A No.

10 Q Would that be more accurate?

11 A No, it would not.

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

13 A No, I was not.

14 Q You lied in your statement about that?

15 A No. Mr. Silvaggio put that in there.

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

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

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

22 A What --

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

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

1 Q Well, you've been out on a bond where you could have
2 done whatever you needed to do.

3 A And I've talked to my attorneys about it. I was not
4 instructed that that's what I needed to do.

5 Q Did you ever not feel even the least bit guilty when
6 your child is crying for you when he's being hit by adult
7 male hands and he's saying, Mommy, mommy? Did you not
8 ever feel the least bit of guilt to try to help him?

9 A None of that went on when I was there. I never
10 witnessed anything like that.

11 Q You said you did in your sworn statement.

12 A I didn't say that. I was not sworn under oath.

13 Q How about when you said you observed Mark dunking
14 **Minor** head under the water until he gasped for air and
15 couldn't come up, and then would make him drink the water
16 and then bring him up and push him right back down?

17 A I didn't say that. I believe Mr. Parker did.

18 Q You walked in and you said, That's just going to make
19 it worse. That was your response.

20 A No.

21 Q It's what's in your statements. Why didn't you do
22 something then? That was terrible mistreatment of your
23 child, don't you agree?

24 A If it had happened.

25 Q So none of this happened. None of this happened, is

1 that where we are right now?

2 A I'm not saying none of it happened. My child is dead
3 so something did happen.

4 Q Oh, yes. He is dead. He is, in fact, dead. He
5 might not have been dead had somebody taken the time to
6 get some treatment for him when there was still hope,
7 would he?

8 A He was fine the day before.

9 Q He was not fine and you know it.

10 A Yes, he was.

11 Q And that is why you stayed out of work on Tuesday.

12 MR. BYRHOLDT: Your Honor, I'm going to object.

13 That's argumentative --

14 THE WITNESS: No, it's not --

15 THE COURT: Hold on.

16 Now, rephrase your question, Solicitor.

17 BY MS. SEAY:

18 Q You stayed out of work Tuesday because you knew
19 something was wrong; isn't that right?

20 A No, it is not.

21 Q And you said in your statement that Mark was in a bad
22 mood and you were nervous to your stomach. There was a
23 problem, wasn't there?

24 A No, there wasn't.

25 Q Okay. So, on Wednesday morning, you get up and you

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

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

5 THE COURT: I sustain the objection.

6 BY MS. SEAY:

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

8 A No, I did not.

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

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

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

15 Go ahead.

16 BY MS. SEAY:

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

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

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

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

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

1 refresh your memory?

2 A It could.

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

5 MS. SEAY: Yes.

6 (Pause.)

7 MR. BYRHOLDT: Here you go.

8 THE COURT: All right. Solicitor.

9 BY MS. SEAY:

10 Q I believe the day in question is Wednesday, July
11 17th. Does that refresh your memory?

12 A Anybody could have erased that.

13 Q Are there any appointments on that date written down?

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

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

24 A No. It is not right.

25 Q And so you independently give the story about the

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

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

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

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

10 THE COURT: No. That's a fair question.
11 Go ahead.

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

16 BY MS. SEAY:

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

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

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

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

3 A Yes.

4 Q You were trying to conceal what had really happened
5 to Min weren't you?

6 A I didn't know what had really happened to Mino

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

9 A I only know what I am told.

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

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

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

16 Go ahead.

17 THE WITNESS: I did not know what was going on.

18 There's a lot of motherly instinct. I called and checked
19 on him every chance that I got. I always asked to speak
20 to him on the phone. I loved that baby more than
21 anything.

22 BY MS. SEAY:

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

25 A No.

1 Q Ms. Holder, when is your birthday?

2 A March 24th.

3 MS. SEAY: I didn't have this marked for ID. I
4 apologize.

5 (WHEREUPON, State's Exhibit No. 20 was marked for
6 identification only.)

7 BY MS. SEAY:

8 Q Okay. Let me direct your attention to March 24th on
9 your appointment book. That's a Sunday; right?

10 A Yes.

11 Q Okay. And it notes that that is your birthday. Is
12 that your handwriting?

13 A Yes.

14 Q So you wrote your birthday here on Sunday, March
15 24th?

16 A Yes.

17 Q And **Minor** birthday was January 3rd; is that correct?

18 A Yes.

19 Q Show me on here where you noted his birthday.

20 A I didn't because I got the book and I didn't start
21 work until later. And I just used that for notes. I
22 would have marked it on the next year.

23 Q Okay. So instead of marking his birthday here, you
24 used this page to fill it up with "Mr. and Mrs. Mark
25 Martucci. Brandi Martucci. I love Mark Martucci"?

1 A I doodled when there was nothing to do.

2 Q And so it would have been noted on the next year.

3 Okay. Here we are, January 3rd of 2003, have you noted it
4 there?

5 A No.

6 Q But, interestingly, I will ask you why it was
7 imperative to --

8 MS. SEAY: Bear with me just a minute.

9 THE COURT: Are you going to be much longer,
10 Solicitor?

11 MS. SEAY: No, sir.

12 THE COURT: I can give the jury a recess.

13 MS. SEAY: No. I think I know where -- right where I
14 need to be. But I don't object to a recess, if you'd
15 prefer to do it that way.

16 THE COURT: Well, are you -- is this your last
17 question or do you have more?

18 MS. SEAY: I may have a few more.

19 THE COURT: Okay. Take the jury out for a recess.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 3:50 p.m.)

22 THE COURT: All right. We'll take a short recess.

23 You can step down, Ms. Holder. Don't discuss your
24 testimony with your lawyers.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Bring the jury in.

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

4 THE COURT: Solicitor, you may continue.

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

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

9 MR. BYRHOLDT: Just a couple, Your Honor.
10 May it please the Court?

11 REDIRECT EXAMINATION

12 BY MR. BYRHOLDT:

13 Q The photographs that you were shown on
14 cross-examination of [Min] did you ever see [Mi] in that
15 condition?

16 A No. I've never seen [Mi] in that condition.

17 Q When they showed you your appointment book -- you
18 went to work at Capelli's when? Was it after [Minor]
19 birthday?

20 A Yes.

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

25 A Yes, it does.

1 Q Did you erase that appointment?

2 A No.

3 Q Do you recall that you thought you had an appointment
4 that morning?

5 A Yes, I did.

6 Q And you were the sole support of Mino

7 A Yes.

8 Q You weren't getting any money from anybody else?

9 A No.

10 Q Did you hurt Mino

11 A No, I did not.

12 Q Did you know Mi was being hurt?

13 A I would have never let it happen.

14 MR. BYRHOLDT: Thank you.

15 THE COURT: Anything else, Mr. Quinn?

16 MR. QUINN: No, Your Honor.

17 Thank you.

18 THE COURT: Anything else, Solicitor?

19 MS. SEAY: No, Your Honor.

20 THE COURT: Thank you.

21 Step down.

22 MR. BYRHOLDT: I call Mr. Holder to the stand,
23 please.

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

1 WHEREUPON,

2 BENJAMIN L. HOLDER, SR.,

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

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

5 THE WITNESS: Benjamin L. Holder, Sr.

6 THE CLERK: Thank you.

7 Be seated.

8 DIRECT EXAMINATION

9 BY MR. BYRHOLDT:

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

12 Can I get your full name, please?

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

14 Q And your relationship to Brandi?

15 A I'm her father.

16 Q And **Min** was your grandson?

17 A That's correct.

18 Q Did you ever see any evidence of abuse on your
19 grandson, **Mino**

20 A No.

21 Q On the 17th of July, 2002, did you get a call that **Mi**
22 had been hurt?

23 A Yes, I did. It was shortly after my lunch period
24 ended. It ends at 1:00. I'm going to guess it was around
25 1:15 or 1:30 when I received a call from my son at home

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

3 Q And where were you at?

4 A I was at work.

5 Q Where do you work, sir?

6 A General Electric.

7 Q Where is that located?

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

10 Q And how far is that from Allen Bennett Hospital?

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

13 Q Did you go to Allen Bennett?

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

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

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

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

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

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

8 Q Describe to the jury what her condition was.

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

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

14 A No, I was not.

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

17 A Yes, I was.

18 Q All right. How did you get there?

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

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

1 vehicle?

2 A No, sir, absolutely not.

3 Q Did you go to the law enforcement center that
4 afternoon?

5 A Yes. My oldest brother and my sister-in-law were at
6 the hospital. They came to the hospital. At about the
7 time that they arrived, we were -- that was about the time
8 we were asked to leave. And so my oldest brother decided
9 that, you know, he would take me and Marie to the law
10 enforcement center.

11 Q When you got to the law enforcement center, did you
12 see Brandi?

13 A Brandi came -- as she walked in -- as a matter of
14 fact, we parked in the parking lot. And she and David got
15 out of his vehicle, we got out of my brother's vehicle and
16 we walked in together, yes.

17 Q All right. Where did you go inside the law
18 enforcement center?

19 A To the little foyer or whatever when you first walk
20 in the front door. And we told them who we were and then
21 they escorted us up to the second floor.

22 Q What was Brandi's condition when you got up to the
23 second floor of the law enforcement center?

24 A When we went into the little waiting room there, she
25 was, basically, lethargic. She was very pale, white

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

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

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

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

14 A Absolutely.

15 Q How long did you stay there?

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

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

22 A Yes.

23 Q Did you make any inquiries of your daughter?

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

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

3 Q What were you told?

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

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

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

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

18 A No, sir.

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

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

25 There was another time when he came out. He had

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

5 Q Who was going to hit who?

6 A Mark was going to hit Mr. Kelly.

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

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

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

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

20 Q All right. And did you wait there?

21 A Yes, we did.

22 Q Did Detective Kelly come out later on?

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

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

4 Q That she pleaded guilty?

5 A Yes.

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

8 A Yes, sir.

9 Q Did you talk to your daughter?

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

17 Q Do you think your daughter hurt Mino

18 A Absolutely not.

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

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

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

25 (Pause.)

1 BY MR. BYRHOLDT:

2 Q Would Brandi let you, as a grandfather, discipline

3 Mino

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

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

15 A I thought she was almost in shock.

16 MR. BYRHOLDT: Thank you, sir.

17 THE COURT: Mr. Quinn.

18 CROSS-EXAMINATION

19 BY MR. QUINN:

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

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

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

1 doctor before she left the hospital?

2 A No. She was in no condition to talk. She said very
3 little at the hospital to me.

4 Q You recognized that somebody had to tell her that **Mi**
5 had passed away; isn't that right?

6 A That's correct.

7 Q Do you disagree that it was the doctor who was
8 treating **Mi** who came and told her that her child had
9 passed away?

10 A No. I do not disagree with that.

11 Q Don't you agree that a doctor would be able to
12 recognize the signs of shock?

13 A Yes.

14 Q Did the doctor or anyone at the hospital treat her
15 for shock?

16 A To my knowledge, no.

17 Q Now, I understand you're saying that Brandi would not
18 let you discipline **Mino**

19 A That is correct.

20 Q That she handled all the discipline herself?

21 A She would handle the discipline herself.

22 Q Do you know if that was different in any of her other
23 relationships?

24 A To my knowledge, no. I remember when she first got
25 married to Darren that Darren made some statements that,

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

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

6 THE COURT: Solicitor.

7 CROSS-EXAMINATION

8 BY MS. SEAY:

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

13 A Aggressive towards her son, yes.

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

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

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

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

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

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

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

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

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

19 Q Is it possible your wife saw them?

20 A That could be possible.

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

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

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

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

3 A Yes.

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

7 A Yes.

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

9 A Because we love her, yes.

10 MS. SEAY: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. BYRHOLDT:

13 Q Did Brandi use -- if she was the disciplinarian, did
14 she use corporal punishment and hit [Mi] or did she do other
15 things?

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

20 MR. BYRHOLDT: Thank you.

21 Nothing further.

22 THE COURT: Thank you.

23 Step down.

24 MR. BYRHOLDT: One more short witness.

25 David Kelly.

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

3 WHEREUPON,

4 DAVID SCOTT KELLY,
5 after first having been duly sworn, testified as follows:

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

7 THE WITNESS: David Scott Kelly.

8 THE CLERK: Thank you.

9 Be seated.

10 DIRECT EXAMINATION

11 BY MR. BYRHOLDT:

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

14 A David Scott Kelly.

15 Q And where do you live?

16 A I live at 107 Angie Lane, Simpsonville.

17 Q And what do you do, sir?

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

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

23 A Yes, sir, I was.

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

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

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

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

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

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

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

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

24 Q Lost?

25 A That would be a good description.

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

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

6 Q Did you stay at the hospital that night?

7 A I did.

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

10 A I did.

11 Q Was it around midnight when you guys finally left?

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

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

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

21 MR. BYRHOLDT: Thank you, sir.

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

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

25 THE COURT: Solicitor.

CROSS-EXAMINATION

BY MS. SEAY:

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

A Yes.

Q What is the relationship?

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

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

A Yes.

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

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

MS. SEAY: That's all I have.

Thank you.

THE COURT: Thank you.

You can step down.

MR. BYRHOLDT: Nothing further, Your Honor. That

1 would be the Defense's case.

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

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

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

7 MS. SEAY: No, sir.

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

13 I'll ask that you report back to your jury room at
14 9:00 tomorrow morning. And, please, remember my other
15 admonitions about keeping your badges on, and not
16 discussing the case, or reading or viewing any media
17 coverage of the case.

18 So be back at 9:00 in the morning.

19 Thank you.

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

22 MOTIONS

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

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

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

7 THE COURT: And I would deny that motion.

8 MR. SUMNER: Likewise.

9 THE COURT: And I deny your motion, too.

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

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

15 MR. BYRHOLDT: I think we are.

16 THE COURT: -- A and B?

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

18 THE COURT: Why?

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

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

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

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

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

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

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

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

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

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

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

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

10 I think --

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

14 THE COURT: All right.

15 (Pause.)

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

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

24 THE COURT: And I will deny that.

25 All right. Any other requests to charge?

1 (There was no response.)

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

3 (WHEREUPON, the proceedings were concluded at

4 approximately 4:39 p.m., to be reconvened on

5 Thursday, February 9, 2006.)

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1 THURSDAY, FEBRUARY 9, 2006

2
3 THE COURT: Anything before I bring in the jury?

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

5 THE COURT: All right.

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

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

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

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

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

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

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

13 MR. QUINN: Thank you, Judge.

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

16 MS. SEAY: Yes, sir.

17 MR. BYRHOLDT: May it please the Court?

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

24 THE COURT: Yes.

25 MR. BYRHOLDT: Thank you, Judge.

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

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

5 MR. BYRHOLDT: Mr. Phillips.

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

8 MR. BYRHOLDT: She is.

9 MS. SEAY: Yes.

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

12 MR. SUMNER: Yes, sir.

13 THE COURT: All right. Bring the jury in.

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

16 THE COURT: Yes, sir.

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

19 THE COURT: Good morning.

20 All right. Mr. Phillips.

21 CLOSING ARGUMENTS

22 MR. PHILLIPS: Thank you, Your Honor.

23 May it please the Court?

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

1 by child abuse, which the Judge will instruct you is that
2 she must have caused -- beyond a reasonable doubt caused
3 the death of a child under the age of 11 while committing
4 child abuse or neglect, and the death occurs under
5 circumstances manifesting an extreme indifference to human

6 life. That's one option. Under that option, extreme
7 indifference is defined as a culpable mental state akin to
8 an intent. And the Judge will also instruct you on that.

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

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

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

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

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

11 All the evidence -- who killed [Minor] then? All
12 the evidence, in this case, points to Mark Martucci. Mark
13 watched [Min] during the day while Brandi worked starting in
14 June of 2002. Now, that's the time period that we're
15 looking at. That's when the death occurred. That's what
16 the State has charged her with. All these actions
17 occurred between June the 1st of 2002, and July 17th of
18 2002. More than coincidentally, that's when Mark Martucci
19 began watching this child during the day.

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

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

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

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

17 Those photographs were taken in June of 2002, around
18 June the 20th. Min died July 17th, 2002. Dr. Ward
19 testified -- and I'm coming back to him. Dr. Ward
20 testified that the bruises that were visible on Minor body
21 could have come from trauma that happened only one and a
22 half to 12 hours before Min died at 1:10 p.m. on July 17th,
23 2002. Mi died at 1:10 p.m., one and a half hours before
24 that would get us back to just before 12:00.

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

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

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

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

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

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

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

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

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

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

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

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

22 Now, even on the autopsy photos, there's no bruise on
23 his stomach. There's no bruise here. All the other
24 bruises, he said, happened between one and a half hours to
25 12 hours later. The stomach injury may have happened

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

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

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

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

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

8 The bite mark on [Minor] arm, no measurements were taken
9 of the bite marks or comparison to any of the people
10 charged with this crime. The only thing the evidence, in
11 this case, has proven is that Mark Martucci snapped the
12 morning on July 17th, 2002, while Brandi was at work and
13 beat [Min] to death.

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

19 Let's think about that three-and-a-half hour window,
20 9:00 to 12:30 a.m. on July 17th of 2002. Brandi was at
21 work during that time. Only John Parker and Mark Martucci
22 were in that residence to know what was going on. John
23 told us what he heard again. It was crying and sounds
24 that morning after Brandi went to work. That's what
25 happened, Mark killed [Mi] that morning. John Parker was

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

8 Thank you.

9 THE COURT: Mr. Sumner.

10 MR. SUMNER: May it please the Court?

11 Good morning. Hello.

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

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

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

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

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

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

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

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

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

19 Because Mr. Quinn asked Dr. Ward and he did hedge a
20 little bit, but he said, well, 48 hours, you know, maybe
21 72 at the outside, maybe two to 12. I mean, he was -- and
22 I'm certainly not being critical of Dr. Ward's testimony
23 or him whatsoever. But he said, I would say two to 12,
24 but 72 hours at the outside. You all probably remember
25 that as to when the initial blow or the fatal blow, one of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Now, does it make sense? If you take her testimony,
13 does it make sense that all of the sudden within a 48 to
14 72 -- within a two- to 72-hour period that Mark Martucci
15 is going to all of the sudden beat this child to death
16 when she says, I never saw anything for six months? It
17 wasn't like she lived there for a couple of weeks. I
18 mean, we're talking about, basically, a six-month time
19 frame here. Okay.

20 She also talked about how Mark took Mi fishing, I
21 believe. She talked about swimming, four-wheeling. You
22 all heard that testimony. He, basically, took on the role
23 of a father figure for Mino

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Interestingly, Dr. Ward -- I go back to his testimony
22 because his testimony is real critical. He gives it this
23 2-hour to 72-hour window. The only persons testimony that
24 we have to show -- that I heard to show that Brandi Holder
25 was not in and around Mi during that time frame was hers.

1 I don't recall anybody else.

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

12 Thank you.

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

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

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

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

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

21 Thank you.

22 THE COURT: Solicitor.

23 MS. SEAY: Thank you, Your Honor.

24 May it please the Court?

25 Ladies and gentlemen, good morning.

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

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

15 First of all, we know from the witnesses that you
16 heard from, beginning with Ms. Venesky, I believe, that
17 she saw bruises and what she thought might be a possible
18 burn on little Mino And she knew that it was between June
19 17th -- or the week of June 17th, because that was their
20 Bible school week. And that was the week that he was
21 there and he went with them. So that stands out in her
22 mind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 And then, you know, she asked him, can I, please, see
25 **Mino**. I'm concerned about him. I kept him the other day

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 John Parker was able to tell you that on the Sunday
2 prior to [Minor] death on Wednesday that there had, in fact,
3 been no four-wheeler accident. And he did note that on
4 Tuesday that he knew that Bo was sick, that [Mi] was
5 throwing up. And he was in and out of the house, as I
6 recall his testimony, during the night. And then he and
7 some others were playing on the computer for a while and
8 that type thing.

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

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

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

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

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

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

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

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

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

6 So, apparently, then **Mi** was told that they would look
7 for another four-wheeler for him. Okay. So here is where
8 this explanation of **Minor** injuries comes in, the
9 explanation given by the mother who knew nothing, saw
10 nothing.

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

19 **Min** had his butt on the seat of the four-wheeler and
20 was holding on to the handle bars while Matt was sitting
21 behind him. Matt and **Mi** were riding. And me, him,
22 Miranda, and John were sitting in the grass watching them.
23 Matt was driving through the yard and then went up a ditch
24 and the right front wheel caught the sand in the ditch and
25 the four-wheeler started to slide to the right."

1 "Matt took Mi and tossed him to the left and then
2 Matt jumped off to the left. We ran to Mino who fell in
3 the ditch on the ground. The ditch is made of grass and
4 tree branches out there. Mi was not crying. And I asked
5 him if he was okay. And he said he was fine and said, 'Do
6 it again.' I told Mi to give it a break and we would try
7 it later."

8 So that's pretty elaborate for what turned out to be
9 a lie. This illustrates the intent that she had to
10 cover-up what was really happening.

11 And, again, I point out that the four-wheeler story
12 is given independently by Mark and by Brandi, which would
13 lead one to believe that they had a prepared scenario to
14 present when, and if, Mi was seen by any doctors.

15 You heard from the law enforcement officers who were
16 involved in the case, some of them more extensively than
17 others. So that's what I want to focus on. But you know
18 from the testimony that several of them became involved
19 because there were several people who needed to be
20 interviewed to find out what had happened to little Mino

21 All of them described to you the procedure that they
22 use and are required to use to advise people of their
23 rights and to make sure that they are talking freely and
24 voluntarily to law enforcement. And you heard the
25 testimony. And you heard the extensive lengths that they

1 went through to advise Ms. Holder of her rights. And the
2 fact that she not only signed it at the bottom saying that
3 she has read it and wants to make a statement and answer
4 questions and understands and knows what she's doing, and
5 no promises or threats have been made to her, and no
6 pressure or coercion has been used against her. She signs
7 her signature. She also initials all of the rights as the
8 investigator is explaining them to her. She signs her
9 signature there.

10 Now that the buck has stopped here, that waiver is
11 very inconvenient for her. Because, I think, what was
12 attempting to be established is that she was just so
13 overwrought with emotion and trauma that she was just
14 acting out of her mind or something. But that's not what
15 you heard described by the law enforcement officers.

16 And so, I guess, in an effort to attempt to negate
17 the fact that she signed this Waiver of Rights and that
18 she then gave an eight-page statement and a five-page
19 statement, they had to try to imply that there was some
20 huge law enforcement conspiracy to frame Brandi Holder.
21 And then all these unknown neighbors and people like that
22 came into it and they were all part of it. I mean, it's
23 totally ridiculous. It's just totally ridiculous.

24 She gave them this information. When you have a
25 chance to sit down with these statements and you can go

1 over it again and see what's contained in here, you'll
2 know that Investigator Silvaggio didn't make up, you know,
3 where she -- when she lived with so and so at Apartment
4 122, and, you know, the details of her labor and delivery
5 of Mino He didn't make all that up. He didn't know that.
6 She gave him the information.

7 And then in the second statement, when she finally
8 tells the truth, now, she says it's not the truth. Right
9 in the -- flying in the face of a -- she's been advised of
10 her rights on every single page. They've told her her
11 rights. She's signed a rights waiver. She's initialed
12 the beginning and end of every single paragraph. She's
13 been allowed to read through it and make corrections.
14 But, now, it's not true because that does not fit into the
15 plan of, see no evil, hear no evil, I know of no evil.
16 This statement will be very important to you as you review
17 the evidence in the case.

18 The last things that I want to talk to you about are
19 the final days of Minor life. And then I want to talk a
20 little bit about the statute, the law that you're going to
21 be given to apply to the case.

22 Brandi Holder did not work on Sunday. The salon was
23 closed on Monday, you heard that. So she didn't work on
24 Monday. She was home. On Tuesday, she called in sick.
25 And the reason, according to her, that she called in sick

1 was because, "I was really nervous to my stomach. He was
2 in a bad mood. And I felt like I better stay home."
3 Something terrible had already happened or was getting
4 ready to happen. And she knew she better be there. And
5 so she was there for all these days.

6 And Dr. Ward talked to you about -- in addition to
7 all the just various bruises all over the child's body, he
8 talked to you about the internal damage, which is what,
9 actually, killed this baby. He talked to you about that
10 there was one episode of blunt force trauma to the child's
11 abdomen that happened well before the final one. And I
12 noticed that the Defense just forgot about that one.
13 Because that doesn't fit into Brandi's defense at all.

14 There was one horrible blow to this child that could
15 have been as far out as three days from the day that he
16 died. It happened somewhere in there. Dr. Ward said he
17 wasn't willing to go past three days. So that takes us to
18 Sunday, Monday, Tuesday, when she was there.

19 And he said in addition to just the pain that one
20 would feel in taking such a blow that it would be
21 horrible. It would be horrible afterwards. And he said
22 **Mi** would not be acting like his normal self. He would be
23 hurting. He would be whiny. He would be crying. He
24 might not be able to eat because his intestines are all
25 severed and messed up such that he's not functioning

1 properly. And he knew that this was an older episode
2 because some of those tissues that he observed had already
3 begun healing.

4 Well, then we get to Wednesday morning. And **MI** had
5 been sick all night throwing up, throwing up, throwing up.
6 And Brandi still wants you to believe that she had no
7 reason to think that anybody was in danger or anything was
8 going wrong. And she gets up and goes to work. She has
9 no clients scheduled that day. She has a terribly sick
10 child at home. And she gets in her car and goes to work.
11 She consciously made the decision to leave **Min** there
12 knowing what probably would happen to him.

13 Shortly after noon that day, Mark and John Parker
14 realize that this baby has -- he's dying. He's that sick
15 that he's dying. And they call Brandi -- Mark calls
16 Brandi and says, Meet me at the hospital. Maybe when you
17 look at all the facts together, maybe you'll decide that
18 perhaps that was the way they had it planned, that they
19 all couldn't be there at one time and so she would go to
20 work and he would call her and they would meet at the
21 hospital where they would both independently give the
22 four-wheeler story. I think it's something for you to
23 consider.

24 I want to talk to you just a minute about the
25 homicide by child abuse statute. And this is the law that

1 you will be given in order to decide this case. Both of
2 these people are charged with homicide by child abuse.
3 And our law says that you are guilty of homicide by child
4 abuse if you --

5 MR. BYRHOLDT: Your Honor, I'm going to object to her
6 using the statute, because it leaves off a section of the
7 statute. She's got a partial statute printed out, which
8 is totally incorrect.

9 THE COURT: Well, I'll allow it.

10 Go ahead.

11 I'll charge the law, Mr. Byrholdt.

12 MR. BYRHOLDT: Okay.

13 MS. SEAY: "If you cause the death of a child under
14 the age of 11 while committing child abuse or neglect and
15 the death occurs under circumstances manifesting an
16 extreme indifference to human life." And then it goes on
17 to define what it means by child abuse or neglect. It
18 goes on to define what it means by harm. And child abuse
19 or neglect means an act or omission by any person which
20 causes harm to the child's physical health or welfare.
21 And harm occurs when a person inflicts or allows to be
22 inflicted upon the child physical injury.

23 The evidence, in this case, has clearly shown that
24 Mark Martucci and Brandi Holder committed child abuse or
25 neglect. There were plenty of acts and omissions to talk

1 about. And the harm -- obviously, there was severe
2 physical harm to this child resulting in his death.

3 And, like I told you, the law holds you equally
4 responsible whether you inflict the blows or whether you
5 allow them to be inflicted. Acts -- when we talk about
6 acts or omissions, acts are not limited to hitting a child
7 or kicking a child. An act can be a conscious decision by
8 a person to place their child in harms way. An act can be
9 deciding to ignore what is, obviously, really going on and
10 do nothing.

11 One of the things that I think I need to acknowledge,
12 in this case, is it is so hard and very, very difficult
13 for you, me, other people to fathom that a mother would
14 injure her child or allow her child to be injured and
15 killed. That's really hard to fathom. But it happens.
16 And you cannot ignore the evidence of it.

17 Did we ever hear evidence, in this case, indicating
18 that Brandi Holder ever, ever placed **Minor** interest above
19 her own? Did we ever hear any evidence that, as the
20 mother of this baby, she nurtured him or comforted him?
21 He's throwing up violently and he keeps being sick. And
22 all you hear about is Mark dealing with him and cleaning
23 it all up.

24 And, you know, children -- and you know this from
25 being a child and you know this from if you have a child

1 or children, when children are hurt, they want their
2 mommy. And Mi didn't have his mommy. All he had was
3 terror every single day. I cannot imagine the life that
4 he lived in those last few weeks, particularly, when you
5 get down to the last days of his life.

6 And you heard Dr. Ward talk about the pain that that
7 child would have felt as his intestines have been severed
8 and his abdomen is filling up with blood. And no one
9 would help. His mommy wouldn't help him. Mark wouldn't
10 help him.

11 Dr. Ward told you that had someone sought medical
12 treatment for him after the first episode that he might
13 have had to have some surgery, obviously, for his
14 intestinal damage, but that he could have been fixed. He
15 could have been okay. But nobody did that. She didn't do
16 it. And he didn't do it. And John Parker didn't do it.
17 John Parker was there and he didn't do it.

18 And that's the next thing I want to tell you is, he
19 has pled guilty to aiding and abetting homicide by child
20 abuse. And I think Mr. Phillips mentioned to you that
21 aiding and abetting is to assist, to offer assistance, to
22 help, that kind of thing. Well, that's what he pled to.
23 Because that's, I believe, what the evidence shows is he
24 was minimally there in comparison to the two primary
25 people responsible for Mino his mother and Mark Martucci.

1 And the Judge is going to give you an opportunity
2 when he charges you on the law. He's going to charge you
3 on this law, but he's also going to give you an additional
4 charge called aiding and abetting homicide child abuse,
5 and give you an option to consider that as to both of
6 these defendants.

7 Well, aiding and abetting is what John Parker did.
8 Aiding and abetting is not what she did. What she did,
9 she allowed this. She knew about it and she let it go on.
10 And it was as if she cared not a bit. She ran around
11 doing her thing, getting in her vehicle, going to work,
12 leaving Mi there to be beaten and abused, emotionally as
13 well. And then she'd come home and she would witness what
14 she describes in these statements. And then she would
15 just get up the next morning and go to work again. That's
16 not aiding and abetting. That's allowing it to happen.
17 And allowing it to happen is what caused his death.

18 And they both allowed it. You don't have to decide
19 who did what. You may decide, well, both of them either
20 inflicted or allowed it to be inflicted to find them
21 guilty of that offense. And I submit to you that the
22 evidence shows that that's what they are both guilty of,
23 an extreme indifference to human life. If that isn't
24 extreme indifference to human life, I don't know what is.

25 A defenseless vulnerable child, two years old. He

1 can't fend for himself. He depends on adults for
2 everything he needs, everything, food, a roof over his
3 head, clothes for his body, diapers. And this is what he
4 gets. It is such a tragedy of magnitude that you can't
5 even hardly look at it and believe that it's real. But it
6 is real. And this was a real child born on July [sic]
7 3rd, 2000. He died on July 17th, 2002. He died a
8 horrible tortious death at the hands of people who were
9 supposed to love and care for him.

10 I urge you to find a verdict of justice in this case.

11 CHARGE ON THE LAW

12 THE COURT: All right. No one in or out of the
13 courtroom during my charge. So if anyone needs to leave,
14 now is the time to go.

15 Now, ladies and gentlemen of the jury, as you know, /
16 the Defendants, in this case, are each charged with
17 homicide by child abuse. This is a statutory offense and
18 Section 16-3-85 of our Code of Laws reads in part as
19 follows: "A person is guilty of homicide by child abuse
20 if the person, one, causes the death of a child under the
21 age of 11 years while committing child abuse or neglect,
22 and the death occurs under circumstances manifesting an
23 extreme indifference to human life. Or, secondly,
24 knowingly aids and abets another person to commit child
25 abuse or neglect, and the child abuse or neglect results

1 in the death of a child under the age of 11."

2 For purposes of this section, the following
3 definitions apply, "Child abuse or neglect means an act or
4 omission by any person, which causes harm to the child's
5 physical health or welfare. Harm to a child's health and
6 welfare occurs when a person, (A) inflicts or allows to be
7 inflicted upon the child physical injury, including injury
8 sustained as a result of excessive corporal punishment,
9 or, (B) fails to supply the child with health care, and
10 the failure to do so causes a physical injury or condition
11 resulting in death."

12 Now, ladies and gentlemen, I charge you that the term
13 "extreme indifference" as used in the statute, is a mental
14 state akin to intent characterized by a deliberate act
15 culminating in death. With respect to the term "aids and
16 abets," as used in the statute, I charge you that when one
17 does an act in the presence of and with the assistance of
18 another, the act is done by both.

19 However, proof of mere presence at the scene of a
20 crime is not sufficient. Because intent to commit a crime
21 is a necessary element of aiding and abetting. And the
22 crime must have been committed with the person aiding and
23 abetting by some overt act. The presence at the
24 commission of a crime means to be sufficiently near so as
25 to be able to aid and abet in its commission.

1 So, ladies and gentlemen, with respect to this
2 statute, what the State must prove beyond a reasonable
3 doubt is, first of all, the death of a child under the age
4 of 11 years of age, in this case, Minor [REDACTED] And,
5 secondly, that Minor [REDACTED] was subjected to child abuse,
6 as I have defined that term to you, by a parent, guardian,
7 or a person responsible for his welfare.

8 Ladies and gentlemen, in the trial of a case, the
9 State can rely on direct evidence or circumstantial
10 evidence, or on a combination of the two as here.

11 Now, direct evidence proves the existence of a
12 disputed fact by using one or more of our five senses
13 without the aid of any inferences. For example, the
14 testimony of a person who asserts or claims to have actual
15 knowledge of a fact, in other words, an eyewitness, that
16 is direct evidence.

17 Circumstantial evidence, on the other hand, is where
18 certain facts known through using one or more of our five
19 senses produces a logical inference that other facts exist
20 without directly proving those facts. Circumstantial
21 evidence is the proof of a chain of facts and
22 circumstances indicating the existence of a fact.

23 Now, as I've said, the State may rely on either or
24 both of this type evidence, direct or circumstantial. And
25 neither is inferior to the other. The one is as good as

1 the other if equally convincing to you, the jury. They
2 are each entitled to the same weight.

3 Now, you should weigh all the evidence in this case.
4 And after doing so, if you're not convinced of the
5 Defendants guilty beyond a reasonable doubt, then you must
6 find them not guilty.

7 Ladies and gentlemen, no statement may be considered
8 by you, the jury, unless you find beyond a reasonable
9 doubt that the statement or statements, under the totality
10 of the circumstances, was or were freely and voluntarily
11 given. And if given while in custody that it or they were
12 given after an explanation of his or her Miranda rights,
13 which must have been understood by them. In other words,
14 I charge you that a statement of a defendant cannot be
15 considered against him or her unless he or she was first
16 advised of his or her right to remain silent, of the right
17 to counsel, and of the fact that any statement by him or
18 her could be used against them. All of which must have
19 been understood by him or her.

20 A statement cannot be considered against a defendant
21 if it was made through force, or fear, or under duress, or
22 compulsion of any kind, or if it was induced by any
23 promise of leniency or reward of any kind. I further
24 charge you, ladies and gentlemen, that a defendant's
25 mental capacity or condition alone is not sufficient to

1 render a statement involuntary, but is a factor to be
2 considered along with all the other attending facts and
3 circumstances in the case in determining the voluntariness
4 of the statement.

5 Now, the oral and written statements entered into
6 evidence, in this case, must be disregarded by you and not
7 considered against a defendant unless the State has
8 satisfied you from the testimony beyond a reasonable doubt
9 that they were, actually, made by the Defendants.

10 And even if you find that the statements were made by
11 the Defendants, it still must be disregarded by you and
12 not considered against the Defendant or Defendants unless
13 the State has also satisfied you from the evidence beyond
14 a reasonable doubt that they were not extorted by force,
15 or fear, or induced by promise, but that it was free and
16 voluntary in every respect. And, of course, in order to
17 constitute any evidence, the statements must be believed
18 by you, the jury.

19 Ladies and gentlemen, with respect to the statements
20 introduced in evidence, in this case, I charge you that
21 you can consider each Defendants statement only against
22 the one who made it. In other words, I charge you that
23 the statement of Ms. Holder can be considered by you only
24 against her. And the statement of Mr. Martucci only
25 against him. In no way can they be considered as evidence

1 of guilt of the co-defendant.

2 Ladies and gentlemen, the rules of evidence
3 ordinarily do not permit witnesses to testify as to
4 opinions and conclusions. Now, an exception to this rule
5 exists as to those whom we call "expert witnesses."
6 Witnesses who by education and/or experience have become
7 an expert in some art, science, profession, or calling may
8 state an opinion as to relevant and material matter in
9 which they profess to be expert, and they also state their
10 reasons for their opinions.

11 Now, you should consider the expert opinion received
12 in evidence, in this case, and give it such weight as you
13 think it deserves. If you should decide that the opinion
14 of an expert is not based upon sufficient education or
15 experience, or if you should conclude that the reasons
16 given in support of that opinion are not sound, or that
17 the opinion is outweighed by other evidence, then you may
18 disregard the opinion in its entirety. An expert's
19 testimony is to be given no greater weight than that of
20 other witnesses simply because that person has been
21 declared to be an expert.

22 Ladies and gentlemen, our law does not compel a
23 defendant in a criminal case to take the witness stand and
24 testify. And no presumption of guilt may be raised and no
25 inference of any kind may be drawn from the Defendant

1 Martucci's decision not to testify. Our law never imposes
2 upon a defendant in a criminal case the burden or duty of
3 calling any witnesses, or producing any evidence, or
4 testifying. Therefore, the decision of this Defendant not
5 to take the stand and testify in his behalf cannot be
6 taken, held, discussed, or considered against him in any
7 manner whatsoever.

8 Now, ladies and gentlemen, as jurors, in this case,
9 you have a function or a responsibility that is entirely
10 separate and distinct from my function in the case as the
11 trial judge. The Constitution of our state does not allow
12 me to charge you on the facts of this case or to discuss
13 the facts with you, or in any way or manner let you know
14 what my personal feelings, if any, are about this case.
15 That is because you, and you alone, are the judges of the
16 facts. Therefore, if during the course of this trial or
17 if during the course of my charge, you have a feeling or
18 you have been left with the impression that I have a
19 personal feeling about this case one way or the another,
20 then you disregard that feeling or that impression.

21 Now, it's your duty and your duty alone to weigh the
22 testimony and evidence presented, in this case, and to
23 pass upon the credibility or the believability of the
24 witnesses you heard testify. In this connection, you have
25 the right to believe all that a witness told you, or you

1 can disbelieve all that a witness told you. You can
2 believe a part of what a witness told you and disbelieve a
3 part of what a witness told you. You can believe one
4 witness as against several, or you can believe several as
5 against one. You also have the right to take into
6 consideration any bias, or prejudice, or interest you feel
7 a witness in the case might have.

8 I am the judge of the law in this case. And it is my
9 duty to charge you the law that applies to the facts. It
10 is not a question of what you feel the law might be or
11 what it should be. It is not necessarily what the lawyers
12 may have told you it is. Because, under your oath, you
13 are required to take the law as I give it to you, apply
14 that law to the facts, as you determine those facts to be,
15 and to write your verdict accordingly.

16 It is also my duty to see that this trial is
17 conducted according to the rules of court and the rules of
18 evidence that apply to the admissibility of testimony and
19 evidence, as I understand those rules to be. And,
20 therefore, you are not to consider in any way or manner
21 testimony or evidence that was ruled out by me as being
22 not admissible.

23 Now, ladies and gentlemen, in this case, as in all
24 criminal cases, these defendants come into this courtroom
25 presumed to be innocent. And this presumption continues

1 and carries through the entire trial until and unless it
2 is removed by evidence that satisfies you of their guilt
3 beyond a reasonable doubt.

4 The burden is on the State, in this case, to prove
5 these Defendants guilty and to prove each and every
6 element of the offense with which they are charged beyond
7 a reasonable doubt.

8 Now, some of you may, in the past, have served on
9 civil jury cases. And, if so, you were probably told it
10 was only necessary to prove that a fact was more likely
11 true than not true. But in criminal cases, the State's
12 proof must be more powerful than that. As I have told
13 you, it must be beyond a reasonable doubt.

14 Now, proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of these Defendants guilt.
16 There are very few things in this world that we know with
17 absolute certainty. And in criminal cases, our law does
18 not require proof that overcomes every possible doubt.

19 If, based on your consideration of the testimony and
20 evidence, in this case, you are firmly convinced that
21 these Defendants are guilty, then you must find them
22 guilty. If, on the other hand, you think there is a real
23 possibility that they are not guilty, then you must
24 resolve that doubt in their favor and find them not
25 guilty.

1 Ladies and gentlemen, under the oath you took, in
2 this case, you swore to try this case based only and
3 solely on the testimony and evidence presented in this
4 courtroom. I tell you that it is your duty to lay aside
5 all outside opinions, bias, prejudice, or sympathy you may
6 have in reaching your verdicts.

7 The word "verdict," ladies and gentlemen, is taken
8 from the Latin word "veredicto." That means to speak the
9 truth. You have no friends to reward, in this case, or
10 enemies to punish. I charge you to abide by your oath and
11 return verdicts that speak the truth.

12 Now, you'll have in the jury room with you, ladies
13 and gentlemen, the indictments in this case. These
14 indictments do not constitute evidence. They simply set
15 forth the allegations by the State. These indictments are
16 the legal documents that bring this case into the
17 courtroom and presents it to you for your determination.

18 Ladies and gentlemen, there are one of three possible
19 verdicts in this case. The first possible verdict is
20 guilty of homicide by child abuse under circumstances
21 manifesting an extreme indifference to human life. The
22 second possible verdict is guilty of homicide by child
23 abuse by knowingly aiding and abetting another person to
24 commit child abuse or neglect. The third possible verdict
25 is not guilty.

1 Ladies and gentlemen, whatever your verdict is on
2 each of these two indictments, it must be unanimous. That
3 is, all 12 of you must agree.

4 Madam Forelady, I have written out on a separate
5 sheet of paper the three possible verdicts in this case.
6 I do that simply to assist you in writing out whatever the
7 unanimous verdict of the jury is. You should attach no
8 significance to the sequence in which I have listed these
9 verdicts. I have to put them in some sequence. And I do
10 that simply because that's the sequence that arises out of
11 the testimony and evidence presented in the case.

12 Madam Forelady, whatever the unanimous verdict of the
13 jury is, you'll find a place on the back of each
14 indictment where it says, "Verdict," please write out that
15 verdict in the space provided. And then sign your name on
16 the line where it says, "Foreperson of the Petit Jury."

17 Now, at this time, I'm required to go over my charge
18 with the lawyers. I need you to go back into the jury
19 room, but do not begin deliberating until I send word in
20 for you to do so.

21 Thank you,

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:53 a.m.)

24 THE COURT: Anything further from the State?

25 MS. SEAY: No, sir.

1 THE COURT: Anything further from the Defense?

2 MR. PHILLIPS: No, sir.

3 MR. BYRHOLDT: Yes, sir. I don't believe I heard
4 that the verdict must be unanimous.

5 THE COURT: Yes, I did.

6 MR. BYRHOLDT: Okay. Then I missed it. I'm sorry.

7 MR. SUMNER: Nothing from the Defendant Martucci.

8 THE COURT: All right. Do you have all the exhibits
9 together?

10 Tell them to deliberate, please. And bring my
11 alternate in.

12 MR. BYRHOLDT: Defendant Holder has reviewed the
13 evidence and no objection to the evidence.

14 MR. SUMNER: Same for Martucci. No objection to the
15 evidence.

16 (Brief recess.)

17 THE COURT: Ms. Sullivan, since our 12 jurors have
18 made it through this case, this will conclude your service
19 on this case. And I have the pleasure of telling you that
20 you're through for the week. You don't have to come back
21 today or tomorrow.

22 The clerk will mail a voucher to you for your service
23 and attached to that will be a slip for you to give to
24 your employer, if you need that. If you should need one
25 of those slips today, then the bailiffs can arrange to get

1 one for you.

2 JUROR #168, KATHY P. SULLIVAN: Okay.

3 THE COURT: Any question I can answer -- try to
4 answer for you before I let you go?

5 JUROR #168, KATHY P. SULLIVAN: No, sir.

6 THE COURT: If you want to hang around and wait and
7 see what the verdict is, on this case, you're certainly
8 welcome to do that. You can remain in the courtroom. If
9 you don't want to do that, you're free to go.

10 Thank you so much.

11 I appreciate your service.

12 JUROR #168, KATHY P. SULLIVAN: Thank you.

13 THE COURT: All right. Folks, if you'll be at ease,
14 please.

15 (WHEREUPON, the proceedings were recessed at
16 approximately 10:56 a.m.)

17 QUESTION FROM THE JURY

18 THE COURT: The jury has a question.

19 Now, the jury wants a copy of the statute. And they
20 also have a question: "Does one verdict apply to
21 both Defendants or could we render two different
22 verdicts?"

23 I am aware of an opinion out of the Court of Appeals
24 concerning providing a jury with a statute. I do that
25 routinely. I think if there was any error at all in that

1 opinion, it was including the sentence. I think that was
2 the objection. I will certainly not do that.

3 Is there any objection if I have Caroline run a copy
4 of the statute and just let me simply black out the
5 inapplicable portions that I did not read?

6 MS. SEAY: No objection from the State.

7 MR. BYRHOLDT: No objection, Your Honor.

8 And I've got a copy of the statute that we can just
9 cut off.

10 THE COURT: All right.

11 MR. SUMNER: We'd like to see it, Your Honor, before
12 it goes back.

13 THE COURT: Sure.

14 MR. BYRHOLDT: Judge, at the end of the first page,
15 it leaves out the sentencing portion. You may want to
16 delete "C." It just says it's a felony.

17 THE COURT: All I have done is strike out the part of
18 Section B that says, "Failing to supply adequate food,
19 clothing, and shelter." The only part of that section
20 that would apply would be health care.

21 Do you want to take a look at it, Mr. Sumner?

22 MR. SUMNER: Yes, sir.

23 No objection, Your Honor.

24 MS. SEAY: No objection.

25 THE COURT: Okay. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:25 a.m.)

3 THE COURT: Now, Madam Forelady, you've asked for a
4 copy of the statute that I read to you and I'm going to
5 provide that for you. I have blacked out or deleted the
6 inapplicable sections that don't apply to this case. So
7 I'm giving you verbatim what I read to you from the statute.

8 Your next question, "Does one verdict apply to both
9 Defendants or could we render two different verdicts?"

10 The answer to that question is, yes, you can find
11 each Defendant guilty under Section A, or you can find
12 them both under -- A(1) or both under A(2), or you can
13 find one guilty of one and one the other.

14 Does that answer your question?

15 (All jurors said yes.)

16 THE COURT: Okay. If you'll retire and continue with
17 your deliberations.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 11:26 a.m.)

20 THE COURT: All right. Thank you.

21 If you all will be at ease and stay close, please.

22 (WHEREUPON, Court's Exhibit No. 3 was marked for
23 identification and admitted into evidence.)

24 (WHEREUPON, the proceedings were recessed at
25 approximately 11:27 a.m.)

1 THE COURT: Now, ladies and gentlemen, I am informed
2 that we have a verdict in this case. And, obviously, we
3 do not know what that verdict is. But I need for everyone
4 in the courtroom to understand that regardless of what the
5 verdict is that I will not permit or condone any displays
6 of emotion, no outbursts of any kind. Should there be
7 any, that will constitute contempt of court. And I assure
8 you that I will punish accordingly.

9 All right. Now, does anyone in the courtroom not
10 understand what I just said? If so, stand and give me
11 your name.

12 (There was no response.)

13 THE COURT: All right. If anyone does not believe
14 they can accept the verdict without displaying emotion,
15 then now is the time to leave the courtroom.

16 MR. BYRHOLDT: Can we have one minute, Your Honor?

17 THE COURT: Sure.

18 (Pause.)

19 MR. BYRHOLDT: Thank you, Judge.

20 THE COURT: I see someone just walked in the
21 courtroom and did not hear my comments.

22 No one else in the courtroom.

23 Bring the jury in.

24 (WHEREUPON, the jury came into open court at
25 approximately 11:57 a.m.)

VERDICT

THE COURT: Madam Forelady, if you've reached a verdict, would you hand it to the bailiff, please, ma'am.

Would you, please, publish the verdicts?

THE CLERK: Your Honor, case number 2003-GS-23-1307, the State v. Brandi Lynn Turner Holder, also known as Brandi Lynn Turner, indicted for homicide by child abuse, the verdict is guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life, signed Elaine B. Cross, Forelady.

2003-1312, the State v. Mark Anthony Martucci, indicted for homicide by child abuse, the verdict is guilty of homicide by child abuse under circumstances manifesting an extreme indifference to human life, signed Elaine B. Cross, Forelady.

If these are your verdicts, then, please, raise your right hand.

(All jurors raised their hand.)

THE COURT: All right. Anything further from the jury from the State?

MS. SEAY: No, sir.

THE COURT: From the Defense?

MR. SUMNER: No, sir.

MR. BYRHOLDT: No, Your Honor.

THE COURT: Thank you, ladies and gentlemen, for your

1 service on this case. And thank you for your service this
2 week. Insofar as you're concerned, you're through. You
3 don't have to come back today or tomorrow.

4 So let me take this opportunity to thank you for
5 coming and serving. I want you to know that we're well
6 aware of the fact that jury service is a burden to you.
7 We know that it's difficult for you to take time off from
8 your jobs and families and spend it with us on jury duty.

9 I do hope you understand the importance of being here
10 this week. For without your presence, we could not get
11 off from our docket the cases that we do. It is a very
12 important service that you've performed this week. And I
13 thank you very much for that service.

14 Now, the clerk will mail vouchers to you for your
15 service this week. And attached to that voucher will be a
16 slip for you to give to your employer should you need one.
17 And should you need one of those slips today, then the
18 bailiffs can see that you get one.

19 Now, do I have any questions from any member of the
20 panel that I can try to answer for you before letting you
21 go? Any questions?

22 (There was no response.)

23 THE COURT: I enjoyed working with you so much.

24 Thank you.

25 You're free to go.

1 (WHEREUPON, the jury exited the courtroom at
2 approximately 12:00 p.m.)

3 MOTIONS

4 THE COURT: Any motions?

5 MR. SUMNER: One second, please, Your Honor.

6 MR. BYRHOLDT: Your Honor --

7 THE COURT: Mr. Byrholdt.

8 MR. BYRHOLDT: -- on behalf of Ms. Holder, I

9 understand it's a determination for the jury to make, but
10 we think the evidence, in this case, at best, supported a
11 finding that she aided and abetted under Section 2 of the
12 statute, Your Honor. And we'd ask the Judge to set aside
13 the verdict.

14 THE COURT: And I'd have to deny that motion.

15 MR. BYRHOLDT: I understand, Your Honor.

16 Thank you.

17 MR. SUMNER: No motions.

18 THE COURT: All right. Do you have the sentencing
19 sheets, Solicitor?

20 MS. SEAY: Your Honor, they are in another folder. I
21 can be back in just a moment.

22 THE COURT: Okay. Please hurry.

23 MR. BYRHOLDT: Your Honor, can I step out and explain
24 what happened to the family?

25 THE COURT: Yes, you can.

1 (WHEREUPON, Court's Exhibit Nos. 4 and 5 were marked
2 for identification and admitted into evidence.)

3 (Brief recess.)

4 THE COURT: All right. Come around, please.

5 Mr. Sumner, and, Mr. Quinn, do you want to come
6 around and let me hear from you first since this will be a
7 sealed sentence?

8 MR. SUMNER: Yes, sir, Your Honor.

9 Give me just one second. I didn't -- I was unaware
10 of whether or not we would argue now or -- I was incorrect
11 on that point. Give me just one second on that.

12 THE COURT: Okay.

13 MR. SUMNER: Your Honor, the only thing I want to
14 bring to the Court's attention, I'm unaware of any prior
15 record that Mr. Martucci had. I think the facts of the
16 case, certainly, speak for themselves. You've heard it
17 for the last four days. So that's all that we -- I don't
18 know of anything else I need to say.

19 THE COURT: Thank you.

20 All right. Come around.

21 Now, Ms. Holder, you have a perfect right, at this
22 time, to address the Court with respect to sentence.
23 Anything now that you would like to say before I sentence
24 you?

25 DEFENDANT HOLDER: Yes, Your Honor.

1 I'm sorry that I didn't protect Mi with my full
2 power. And I live with that every day of my life.

3 THE COURT: All right. Mr. Byrholdt.

4 MR. BYRHOLDT: May it please the Court?

5 We've got her father and her fiance would like to
6 speak. I ask them to identify --

7 Mr. Holder, do you want to speak first?

8 THE COURT: You can come around, Mr. Holder. You can
9 come up.

10 MR. BYRHOLDT: And give us your full name so the
11 court reporter can take it down.

12 MR. BENJAMIN HOLDER: Benjamin L. Holder, Sr.

13 THE COURT: All right. Mr. Holder.

14 MR. BENJAMIN HOLDER: First of all, Judge, I'd like
15 to thank you for the courtroom that you've conducted this
16 week. As a concerned parent, that means a lot to me.

17 THE COURT: I understand that.

18 MR. BENJAMIN HOLDER: And I thank you.

19 Next, I would like to say that the happiest day of my
20 life was the day that my daughter was born. She's been a
21 perfect child. And we have a special bond that I just
22 can't imagine living the rest of my life without her. And
23 I plead for mercy from the Court.

24 THE COURT: Thank you, sir.

25 Yes, sir.

1 Do you want to come around, please, sir, and give me
2 your name?

3 MR. BYRHOLDT: Give your full name, please.

4 MR. STEVEN PATRICK KING: Steven Patrick King.

5 THE COURT: All right. Mr. King.

6 MR. STEVEN PATRICK KING: I, unfortunately, never had
7 the opportunity to meet Mino from what I've been told,
8 was the most wonderful, precious thing Brandi ever has had
9 in her life.

10 And I just beg you, she has lost one child. She's
11 carrying my child right now. And I beg you for mercy on
12 her. Her family has been tragically through enough as it
13 is. The death of Mi was a very unfortunate event. And I
14 just beg for mercy.

15 MR. BYRHOLDT: Thank you, Steve.

16 THE COURT: Mr. Phillips.

17 MR. PHILLIPS: Your Honor, Brandi is here today. She
18 has no prior record. She was very young when all this was
19 going on. I just ask the Court to consider all the
20 mitigating circumstances that you've heard over the last
21 three and a half, four days. And we'd ask you for mercy
22 on Brandi.

23 THE COURT: Mr. Phillips, I'll have to say, I haven't
24 heard very many mitigating circumstances. You know, we
25 tried this case. And we have officers with 30 years

1 experience testifying as to what occurred during the
2 statement. We have witnesses who have no reason to come
3 into the Court and lie, testify against Ms. Holder. We
4 have had coworkers to come in and testify. And, yet, she
5 denies all of this. She says it never happened.

6 I just -- I don't know what went wrong with you,
7 young lady.

8 MR. BYRHOLDT: Your Honor, may I be heard briefly?

9 THE COURT: Oh, yes, sir. I'm sorry, Mr. Byrholdt.
10 You certainly may.

11 MR. BYRHOLDT: I apologize, Your Honor.

12 The questions that bother you at this moment, I've
13 been wrestling with since I got involved, in this case,
14 back in November. And I can't give you an explanation of
15 that. I've asked her, Why are you telling me that you
16 didn't know these things? And that is the story that she
17 has stuck with since I first met her. I told her, it's
18 not -- as, you know, it's not one that we would make up
19 because --

20 THE COURT: Oh, I understand that.

21 MR. BYRHOLDT: -- it's very hard to fathom. I don't
22 know if it's the three and a half years while this is
23 pending that you deal with this on a daily basis that you
24 just can't make yourself believe that this happened.

25 THE COURT: I suspect she's probably in a period of

1 denial.

2 MR. BYRHOLDT: And that was my -- what we talked with
3 her about. My only concern, Your Honor -- in the 25 years
4 I've been doing this, we have, essentially, a 21-year-old
5 lady that made wrong decisions. We've lost Mino Putting
6 her in jail for the rest of her life will never bring back
7 Mino It may send a message. But I think the statute does
8 give you leeway of 20 years to life.

9 We attempted to resolve this matter. I would just
10 ask the Court in your wisdom, your discretion, and your
11 mercy to fashion a sentence which speaks justice, but
12 which is tempered with mercy.

13 This family has lost a grandson. This man that took
14 a child into his life, not legally, but through love has
15 lost a child. Now, they're in the process of losing their
16 daughter for the rest of their lives. And I would just
17 ask you to temper your sentence with mercy, sir.

18 THE COURT: Thank you.

19 Solicitor, anything?

20 MS. SEAY: Nothing further from the State.

21 SENTENCING

22 THE COURT: All right. Now, with respect to
23 Mr. Martucci, since he did not participate in his trial,
24 this sentence will be sealed. A bench warrant will be
25 issued for his arrest. And when he is apprehended, he

1 will be brought into court and the sentence imposed.
2 Ms. Holder, the sentence of the Court is you be
3 committed to the Department of Corrections for a period of
4 25 years.

5 MR. BYRHOLDT: Thank you, Your Honor.

6 THE COURT: All right. That will conclude this case.

7 *****END OF TRANSCRIPT OF RECORD*****
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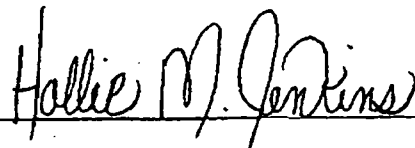
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th, 7th, 8th, and 9th days of February, 2006.

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

July 18, 2006



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2003-GS-23-1312

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

MARK ANTHONY MARTUCCI,
DEFENDANT.)

ORIGINAL

March 6, 2006
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE.

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

BRYNA S. SEAY, ESQ.
Assistant Solicitor

STEVEN W. SUMNER, ESQ.
THOMAS J. QUINN, ESQ.
Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1 THE COURT: Mr. Sumner, are you ready to proceed?

2 MR. SUMNER: Yes, sir.

3 I'll ask Mr. Quinn and Mr. Martucci to step around
4 with me.

5 Your Honor, may it please the Court?

6 Prior to Ms. Seay speaking, Mr. Martucci turned
7 himself in seven to 14 days ago, something roughly in that
8 area, in Florida and, obviously, has made the trip here
9 and we're present for sentencing at this time.

10 THE COURT: Mr. Martucci, a couple of weeks ago, you
11 were tried along with your co-defendant. And you
12 exercised your Constitutional right not to participate in
13 your trial. And I fully explained that right to the jury.
14 You were found guilty by the jury. And the purpose of
15 your being here today is for sentencing.

16 Now, you have a perfect right, at this time, to
17 address the Court concerning your sentence.

18 Is there anything that you'd like to say now before I
19 sentence you?

20 DEFENDANT MARTUCCI: Yes, sir.

21 I just wanted to say that I was not here and that I
22 was with my brother down there. He got sick. But I did
23 turn myself in because I knew I wanted to come back and
24 face this. That I -- before God, I am innocent. I have
25 never hurt anybody in my life. And I've never been in no

1 trouble before. And I didn't do this. And I swear to you
2 I didn't. That's --

3 THE COURT: Well, now, Mr. Martucci --

4 DEFENDANT MARTUCCI: I have never been in -- I come
5 from a good family and --

6 MR. SUMNER: Don't --

7 THE COURT: Now, I told you, sir, you've been found
8 guilty by the jury.

9 DEFENDANT MARTUCCI: Yeah.

10 THE COURT: And you've got a perfect right to appeal
11 your case to the appellate courts. And I'm sure your
12 attorneys have made you aware of that fact.

13 DEFENDANT MARTUCCI: Yes, sir.

14 THE COURT: As I told you earlier, the purpose of
15 being here today is for sentencing.

16 DEFENDANT MARTUCCI: Okay.

17 THE COURT: Now, do you have anything that you'd like
18 to address the Court with respect to what sentence you
19 receive?

20 DEFENDANT MARTUCCI: Yeah.

21 I've never been in trouble before. I don't know -- I
22 never have.

23 THE COURT: All right, sir.

24 DEFENDANT MARTUCCI: I don't know what else to say.
25 I'm sorry.

1 THE COURT: All right. Solicitor, anything you have?

2 MS. SEAY: Your Honor, I don't know what sentence,
3 obviously, that you've imposed upon the Defendant. But on
4 behalf of the victim, at this time, I would just like to
5 say that I know that you heard the evidence, and in
6 particular the pathologist's testimony, in this case, as
7 to the systematic torture of this child that resulted in a
8 slow horrible death for this two-year-old little boy. And
9 I'm confident that your sentence will be just in that
10 regard.

11 THE COURT: All right. Mr. Sumner, Mr. Quinn,
12 anything?

13 MR. SUMNER: Well, Your Honor, we would simply ask
14 that the Court feed both Defendants out of the same spoon.
15 You heard the testimony. I'm not going to, certainly,
16 rehash that. The case went on for several days. You
17 presided over it, of course.

18 And I would just ask that both defendants, since they
19 were both found guilty by the jury of the same crime, that
20 they both be treated in the same manner and that
21 Mr. Martucci not be penalized for exercising his
22 Constitutional rights, which you've already touched on at
23 this hearing today. And that they be sentenced in the
24 same manner since the jury found them guilty of the same
25 crime.

1 THE COURT: All right. Anything else, Solicitor?

2 MS. SEAY: No, sir.

3 THE COURT: Mr. Martucci, the sentence of the Court
4 is you be committed to the Department of Corrections for
5 life.

6 *****END OF TRANSCRIPT OF RECORD*****
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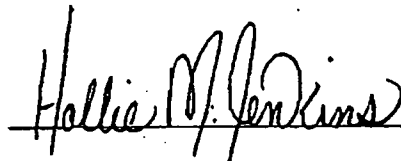
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th day of March, 2006.

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

July 19, 2006



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Greenville)

2010 SEP 24 P 2:16

MARK Martucci #314148)

Full name and prison number (if any) of Applicant)

2010-CP-23-7981

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Attorney General office)Respondent)**INSTRUCTIONS B 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 Corrections Inst 386
Redemption Way McCormick SC 29899
2. Name and location of Court which imposed sentence Greenville
County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) John Allen PARKER
Brandi Lynn Turner Holder
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2003-GS-23-1307 / 2003-GS-23-1312

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 6, 2006 Life without Parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept 16, 2008
- ii. Sept 24, 2008
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OPINION NO 4438
- ii. _____
- iii. _____
9. If you answered Ano@ 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) 5th amendment
- (b) 6th amendment
- (c) 14th amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see Attachment's Memorandum of Law
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction: N/A
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Notice of Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. Affirmed
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. Sept 16, 2008
- ii. Sept 24, 2008
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Opinion No 4438
- 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?

N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- 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) see Attachment support of memorandum
 (b) of Law.
 (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? YES

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Steve Sumner 114 mainly street
Greenville, South Carolina 29601

ii. _____

iii. Eleanor Duffy Cleary 1330 Lady St Suite
401 P.O. Box 11589 Col, SC 29211-1589

(b) the proceedings at which each such attorney represented you:

i. Bond Hearing

ii. Trial Hearing

iii. Sentencing

19. State clearly the relief you seek in filing this application:

Granted New Trial; and vacate conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/200

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, MARK MARTUCCI # 314148, 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.

Mark Martucci

SWORN to and subscribed before me this 17
day of September, 2010.

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, MARK Martucci 314146, 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.

Mark Martucci
Applicant

SWORN or affirmed to and subscribed before me this
17 day of September, 2010.

J. C. Rankin
Notary Public

My Commission Expires: 12-16-2019



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1013 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 15, 2009

REMITTITUR

The Honorable Paul B. Wickensimer
305 E. North Street
Greenville, SC 29601-2120

Re: The State v. Martucci, Mark A.
2003-GS-23-01312

H149223

Dear Mr. Wickensimer:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Enclosed are the following exhibits filed in this case:

State's Exhibits

- 1 Waiver-Mark Martucci
- 2 Waiver - Brandi Holder
- 5-17 Photos
- 18 Redacted Statement of Brandi Holder
- 19 Redacted Statement of Brandi Holder

Defendant's Exhibits

- 1-7 Photos

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

MARK ANTHONY MARTUCCI
Applicant,

CASE NO. _____

vs.

MEMORANDUM OF LAW IN SUPPORT OF

STATE OF SOUTH CAROLINA
Respondent.

POST-CONVICTION RELIEF APPLICATION

To Respondent:

Statement of the Case

Appellant Mark Martucci was indicted by the Greenville County Grand Jury for homicide by child abuse. He was tried, along with co-defendant Brandi Holder, before the Honorable C. Victor Pyle, Jr. on February 6-9, 2006. Martucci did not appear for trial. Both were found guilty and Holder was sentenced on February 9, 2006 to twenty-five years in prison; Martucci's sentence was sealed.

Martucci was sentenced on March 6, 2006 to Life in prison; appeal was filed
Notice of Intent:

Argument 1

Trial counsel was ineffective for failure to Request Autopsy Report in violation of the Applicant's 5th Amendment right and 6th Amendment rights and 14th Amendment rights Due Process:

In the Applicant's case Respondent had excluded evidence of the Autopsy Report of the victim showing the cause of death which was prejudice and under fair trial.

A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused (2) it was in possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment "Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324(1999) citations omitted, "exculpatory evidence is that which creates a reasonable doubt about the defendant's guilt. State v. Forney, 321 S.C. 353, 360, 468 S.E.2d 641, 645(1996) exculpatory evidence is material only if there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. Fradella v. Town of Mount Pleasant 325 S.C. 469, 479, 482 S.E.2d 53, 58(ct, App 1997). A Brady violation occurs if a defendant can demonstrate "that favorable evidence could [have been presented] to put the whole case in such a different light as to undermine confidence in the verdict". Id.(citation omitted).

Argument 2

This Applicant contends that his counsel was ineffective for failing to litigate a Fourth Amendment violation of illegal search and seizure, which stands against Federal and South Carolina Constitutions.

The State of South Carolina's Constitution explicate in words similar to those of the Fourth Amendment. Article 1 § 10 of the South Carolina Constitution provides:

"The right of the people to be secure in their persons, house papers, and effects against unreasonable searches and seizures and unreasonable invasion of privacy shall not be violated..."

Counsel was egregiously ineffective for his failure to motion and object to Applicant's illegal seizure.

On Cross examination, Officer Doug Kelly, Mr. Byrholdt, ineffectively asked the officer did you conduct a search warrant at the time of search.

In the Applicant's case, on trial transcript pg. 424 Line 25 A. We conducted a search warrant at the scene -- at the trial transcript pg. 425 Line 1 -- trailer, yes sir.

Also in the Applicant's case Landlord of the residence was not served with a copy of the search warrant 'Ms. Brenda Carter' and officer Doug Kelly did not obtain a legal search warrant to enter the residence of the defendant.

His failure to cross-examine the officer on whether he obtained a search warrant for invading Applicant's home was a fatal mistake. The United States and South Carolina Constitutions require the "police to obtain a warrant to enter a home in order to arrest or seize person(s), unless there are exigent circumstances." Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment.

Respondent must pursue authority to statute S.C. Code Law Ann §17-13-141. In regard to section 17-13-141, and that is a statutory section. It is entitled records to be kept by judiciary officers authorized to issue search warrants. Indeed, as Mr. Justice Powell noted in his concurrence in United States v. Watson, 423 U.S., at 428, 96 S.Ct. at 830, the arrest of a person is "quintessentially a seizure". The simple language of the Amendment applies equally to seizures of persons and to seizures of property.

In the present case, the Respondent's clearly admitted the conducted of search; yet, omitted the seizure segment of it.

The prosecutor clearly admitted that the conducted a search warrant to enter the residence of Mark Anthony Martucci. This Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the defendant of the search. Cite as Wong Sun v. United States, 83 S.Ct. 407(1963).

We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal action of the police rather, the more apt question is such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or

instead by means sufficiently distinguishable to be purged of primary taint", maguire evidence of guilt, 221(1959), we think it clear that the narcotic were "come at by the exploitation of that illegality" and hence that they may not be used against toy.

Cross-examination Doug Kelly — cross by Mr. Byrholdt pg. 424,
Line -25 A. We conducted a search warrant at the scene — at the trailer, yes sir.

Cross-examination Doug Kelly — cross by Mr. Byrholdt pg. 425,
Line - 13 From them, we didn't look in the van, but it was
Line - 14 cluttered.

In the Applicant's trial transcript on records; Respondent did search to the defendant's home and the defendant's van which is his property; laid to an illegal search without a search warrant given the Respondent's right to enter the property.

Trial counsel was ineffective for not moving for a mistrial based on that a wowal, as can be acknowledged, the court in Payton v. New York, 100 S.Ct. 1371(1980); focused on the long-settled premise that, absent exigent circumstances, a warrant -- less entry to search for evidence or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within. The Court further summarized it's position by stating:

"To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances even when it is accomplished under statutory authority and when probable cause is truly present." United States v. Reed, 572 F.2d 412, 423(1978). Goldsmith v. United States, 439 U.S. 913, 99 S.Ct. 288, 58 L.E.2d 259. The Fourth Amendment protects the individual's privacy in a variety of settings, in none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home a zone that finds its roots in clear and specific constitutional terms: "The right of people to be secure in their...house...shall not be violated."

In the Applicant's case on cross-examination Doug Kelly -- cross by Mr. Byrholdt on pg. 428 trial transcript:

Line 10 Q. Did you -- are you aware of any blood evidence or
Line 11 physical evidence being found at home located in the
Line (12) Greer area?

Line (13) A. No sir. The items that were collected were checked
Line (14) and I don't believe anything was come out of SLED, I
Line (15) haven't seen the SLED reports. It's been a while so I
Line (16) would have to look at those.

In the Applicant's case the Respondents enter into the defendant's residence and collected evidence "without a search warrant which laid to a fruit of the poisonous tree" cite at Wong Sun v. United States, 83, S.Ct. 407(1963).

That language unequivocally establishes the proposition that "[A]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion". Silverman v. United States, 365 U.S. 505, 511, 81 S.Ct. 679, 683 S.L.Ed2d 734. In terms that apply equally to seizures of property and to seizures of person, the Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. Applicant claims that the verdict in this case would have been different had trial counsel been effective by litigating the illegal seizure pursuant to the Fourth Amendment.

Accordingly, Applicant was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed 2d 674(1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813(1985) cert. denied, 474 U.S. 1094, 106 S.Ct. 869, 88 L.Ed2d 908(1986). In addition, the court has ruled that, "Violation of laws must be dealt within the framework of constitutional guarantees." Lo-ji Sales, Inc. v. New York, 99 S.Ct. 23, 26(1979).

Therefore, in the instance case, there is prevailing evidence that the counsel for the defense did not provide the effective assistance of counsel in that: defense counsel did not provide informative, competent and independent

representation that can pass the two-pronged standard set forth in the case of Strickland v. Washington 104 S.Ct. 2040. Counsel's performance was deficient and such deficiency did, in fact, prejudice the Applicant and, if not for counsel's errors, there is a substantial and likely possibility that the Applicant would have been found not guilty. Hill v. Lockart, 474 U.S. 52(1985). The Sixth Amendment guarantees the right to effective assistance of counsel. In Strickland v. Washington, 466 U.S. 668(1984), the Supreme Court established a two-pronged standard governing ineffective claims. To obtain reversal of a conviction for ineffective assistance of counsel, the defendant must show both that his counsel's performance fell below an objective standard or reasonableness and that there is a reasonable possibility that the result of the proceeding would have been different, but for counsel's performance. See also, Butler v. State, 286 S.C. 441, 334 S.E.2d 813(1985). The Applicant herein has shown a prima facie account that his counsel did not meet the aforementioned standard set forth in Strickland.

The Court explained that the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the proceeding cannot be relied on as having produced a just result. The Applicant here has satisfied both the performance prong and the prejudice prong of the Strickland standard; and, therefore, he should prevail in this claim of ineffectiveness.

Having failed to litigate the facts and the law in accordance with the 4th Amendment, Applicant finds it critical that this be corrected by Applicant's Post-Conviction Relief Application. Wherefore Applicant prays that this Court would grant the Application by vacating the judgment of conviction, based on illegal search and seizure.

Argument 3

Trial counsel was ineffective for failing to conduct a proper pre-trial investigation.

The Petitioner submits that he received ineffective assistance of counsel prior to and during his trial. The Sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the

effective assistance of counsel in presenting their defense. See also, S.C. Const., Art 1 Section 14. The Supreme Court has stated, "The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." Kimmelman v. Morrison, 477 U.S. 365(1986). Furthermore, The Supreme Court has recognized that "the right to counsel is the right to effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771(1970).

To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the Sixth Amendment to the Constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 668, 688-694(1984). The Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

- 1) Counsel's performance must have fallen below an objective standard of reasonableness; and
- 2) There must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland standard. cite at e.g. Cherry v. State, 386 S.E.2d 624(1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial Murray v. Carrier, 477 U.S. 478(1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." Frazer v. United States, 18 F.3d 778, 785(9th Cir 1994). Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." United States exrel partee v. Lane, 926 F.2d 694, 702(7th Cir 1991).

(A) Counsel was ineffective for failing to conduct an adequate pretrial investigation.

As the Supreme Court also recognized in Strickland, "counsel bears a duty to make a reasonable investigation of the law and facts in his client's case." Strickland 466 U.S. at 691. Additionally, the A.B.A. 'standards' relating to the administration of criminal justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exist regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Cobbs v. State, 408 S.E.2d 223(1991).

Pre-trial preparation, principally because it provides a basis upon which most of the defense case must rest, is, perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that, would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

In the instant case, defense counsel failed to investigate the laws and facts of the Petitioner's charges (1) trial counsel was ineffective for failure to investigate the victim's DSS Records and the defendant's DSS records; (2) trial counsel was ineffective for failure to investigate and request for a copy of the defendant's phone records; and co-defendant's phone records; (3) trial counsel's failure to investigate defendant's medical history with mental health. (4) trial counsel's failure to investigate witnesses certain statements from individuals Ann Pruitt; and Britany Green; Jamie Anders; Brandon Anders.

Argument 4

Respondents have violated the Applicant's 14th Amendment rights in violation of S.C. Code Ann §17-25-45(H); where the Solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the Solicitor to the defendant and the defendant's counsel not less than ten days before trial.

The Petitioner alleged that the State never served defense counsel or defendant written notice of its intent to seek a Life sentence in this case; during his 2002 Homicide by child abuse; definitions; penalty; sentencing. The trial Court erred in finding it did not give sufficient notice under the statute S.C. Code Ann §17-25-45(H) under these charges.

Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for Life without the possibility of parole if that person has more prior convictions for; See cite at State v. Johnson 552 S.E.2d 333 S.C.(2001).

(1) A most serious offense;

S.C. Code Ann §17-25-45 (A) Supp. 2001 paragraph (c) of the statute includes Homicide by child abuse; definitions; penalty; sentencing, as a "most serious offense" Id §17-25-45 (c).

The General Assembly has made the sentencing provisions of section 17-25-45 (A) mandatory. Id §17-25-45 (G) regarding the notice requirement, the statute provides:

Where the Solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the Solicitor to the defendant and defendant's counsel not less than ten days before trial. Id. §17-25-45 (H)(emphasis added).

It is well established that in interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the Court must apply them according to their literal meaning. Furthermore, in construing a statute, word must be

given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662(1991); accord Kerry v. State, 345 S.C. 183, 547 S.E.2d 494(2001).

The South Carolina Constitution gives sole Legislative Power to the General Assembly S.C. Const. Art. III, §1 C The Legislative Power of this State shall be vested in two distinct branches the one to be styled "A" 'Senate' and the other the House of Representatives and both together the General Assembly of the State of South Carolina. By its words in the Recidivist Statute the General Assembly has mandated that the Solicitor, if the Solicitor intends to seek a Life sentence without the possibility of parole. For this Court to dismiss the clear and unambiguous language of the statute merely require the defendant's counsel to have actual notice of the Solicitor's intent to seek a Life sentence without parole would have the effect of Amending the statute. In our view, actual notice under section 17-25-45 (H) is insufficient unless and until the General Assembly decides otherwise and Amends the statute itself.

On appeal, the State has attempted to convince this Court of the "obvious purpose" of the notice provision and the "clear intent" of the General Assembly.

However, we refuse to deviate beyond the clear and unambiguous words of the statute. This notice provision is clearly for the benefit of the defendant. If the General Assembly had not intended for the defendant's counsel to receive written notice, it would not have so provided.

In the present case, the trial Judge found defendant's Attorney never received written notice of the Solicitor's intent to seek Life imprisonment without parole as required under section 17-25-45 (H).

We do not believe the Supreme Court intended to adopt a broad rule that, regardless of the circumstances of the particular case, all notice requirements in criminal statutes are satisfied by actual notice, notwithstanding the General Assembly's legislative mandate to the contrary.

In the Applicant's case co-defendant's Brand Lynn Turner Holder A/K/A Brandi Lynn Turner / and John Parker; was given immunity for his testimony.

According to U.S. v. Havens, 446 U.S. 670, 626; U.S. v. Lord, 711 F2d 887 and Lawson v. Murray, 837 F2d 653; Applicant has been prejudiced and denied a right to a fair trial which is a fundamental miscarriage of justice.

In the Applicant's case the Respondents summed up that co-defendant Brandi Lynn Turner did cause the death of victims and gave confession admitting to the death; See cite at Martin v. State, 533 S.E.2d 575. See trial transcript pg. 612 / 613:

Direct Examination Benjamin . Holder, Sr. -- Direct by Mr. Byrholdt.

Pg. 612 Line (24) that Brandi

Pg. 612 Line (25) had admitted that she was guilty. And on that remark, I

Pg. 613 Line (1) stood up and I asked Mr. Kelly, I said, surely to God, you

Pg. 613 (2) can't be telling me that my daughter has pleaded guilty to

Pg. 613 Line (3) doing this. And he said, yes.

Pg. 613 Line (4) Q. That she pleaded guilty?

Pg. 613 Line (5) A) Yes.

Conclusion

Wherefore Applicant should be Granted a New Trial or Vacate Conviction and Sentence.

Date 9/17 2010

s/ Mark Martucci
386 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Mark Anthony Martucci)
 S.C.D.C. No. 314148,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-7981

RETURN

In response to the post-conviction relief application filed September 24, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2005 term of General Sessions for homicide by child abuse (2003-GS-23-1312). Steven W. Sumner, Esquire represented the Applicant.

After the State called the case to trial, it proceeded in absentia.¹ On February 9, 2006, the Applicant was found guilty and the Honorable C. Victor Pyle, Jr. sealed the sentence. The Applicant appeared before Judge Pyle on March 6, 2006 and received a sentence of life imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Eleanor Duffy

¹ The Applicant was tried with his co-defendant, Brandi Holder.

Cleary, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on September 24, 2008. State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008). Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari at the South Carolina Supreme Court. The Supreme Court denied the petition by order dated October 7, 2009.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to request autopsy report.
 - b. Failed to argue illegal search and seizure.
 - c. Failed to conduct proper pre-trial investigation.
2. The State never provided written notice of intent to seek life imprisonment without parole.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

February 4, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MARK ANTHONY MARTUCCI, 314148

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-23-7981

AFFIDAVIT 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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mark Anthony Martucci, 314148
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 4th day of February, 2011.


Judy A. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2) 2010-CP-23-7981

3 COUNTY OF GREENVILLE)
4)

5 Mark Anthony Martucci)

TRANSCRIPT RECORD

6 -vs-)
7)

8 State of South Carolina)
9

November 1, 2012
Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE MARKLEY DENNIS, Judge.

12 A P P E A R A N C E S

13 Thomas Armstrong, Esquire
14 Attorney for the Plaintiff

15 Karen Ratigan, Esquire
16 Assistant Attorney General
Attorney for the State

17
18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

WITNESSES

DIR

CROSS

RED

Thomas Quinn

4

13

17

Steven Sumner

18

28

30

Dela Ann Pruitt

32

35

Mike Martucci

36

41

Mark Martucci

42

52

55

E X H I B I T S

Applicant's

ID

IN EVD

1 Search Warrant

9

9

2 Statement

13

13

Thomas Quinn - Direct Examination

P R O C E E D I N G S

MS. RATIGAN: This is the State versus Mark Martucci, Case No. 210-CP-23-7981. Mr. Martucci was indicted for homicide by child abuse. He actually had a trial in absentia February of 2006 before Judge Pyle. On February 9th of 2006 the jury found him guilty and Judge Pyle sealed the sentence. On March 6, 2006, Mr. Martucci appeared in court for sentencing. The sentence was unsealed and a life sentence was imposed at that time.

A notice of appeal of filed on his behalf. The Court of Appeals affirmed his conviction and sentence in opinion on September 24th, 2008. The appellate counsel did attempt to a petition before the Supreme Court. The Court denied that petition in October of 2009. The State is ready to proceed.

THE COURT: Very well.

You are Mr. Martucci?

MR. MARTUCCI: Yes, sir.

THE COURT: Good afternoon, sir. This is your application and you are ready to proceed?

MR. MARTUCCI: Yes.

THE COURT: Very well.

Mr. Armstrong, are you ready to proceed, sir?

MR. ARMSTRONG: Yes, sir.

THE COURT: Very well. Call your first

Thomas Quinn - Direct Examination

1 witness, sir.

2 MR. ARMSTRONG: We would call Mr. Quinn to
3 the stand.

4 THE CLERK: Mr. Quinn, please place your left
5 hand on the Bible and raise your right hand.

6 THOMAS QUINN, having been duly sworn,
7 testified as follows:

8 Thank you. You may be seated. State your
9 name for the record.

10 THE WITNESS: Thomas Quinn.

11 DIRECT EXAMINATION

12 BY MR. ARMSTRONG:

13 Q. Good afternoon, Mr. Quinn.

14 A. Good afternoon.

15 Q. Did you have occasion to represent Mr. Martucci
16 regarding this matter?

17 A. Yes, I did along with Mr. Sumner.

18 Q. And how old was this case by the time you were
19 retained by Mr. Martucci, do you know?

20 A. I wasn't retained, Mr. Sumner was. I worked on
21 an hourly basis with Mr. Sumner and, no, I don't remember
22 how old the case was.

23 Q. With regard to the case, I have two folders here.
24 Did I get those folders from you?

25 A. Yes, you did.

Thomas Quinn - Direct Examination

1 Q. With regard to this case, do you recall what the
2 issues were in the case? Were there any key issues
3 related to timing or events or witnesses?

4 A. There were.

5 Q. Specifically on the day of the incident, were
6 there any issues related to whether Mr. Martucci was
7 actually present at the residence on the morning that the
8 incident occurred?

9 A. I don't remember if the issue was he was there at
10 all or whether he was there during the moderate time.
11 There were issues because the co-defendants supposedly had
12 gone to work and returned and there were questions about
13 who had the child and at what times.

14 Q. And there were actually three players that were
15 involved with the child during the relevant time period;
16 is that correct?

17 A. That's correct.

18 Q. Mr. Parker, Ms. Holder, and Mr. Martucci.

19 A. That's correct.

20 Q. And I believe the record reflects, and tell me if
21 this is your recollection, that Mr. Parker was present at
22 the residence on that morning.

23 A. He was.

24 Q. And you were, obviously, in the courtroom during
25 his testimony about the events that day?

Thomas Quinn - Direct Examination

1 A. Yes.

2 Q. And do you recall if Mr. Parker testified that
3 when he woke up that morning, Mr. Martucci was there that
4 morning?

5 A. I don't remember, I'm sorry.

6 Q. Do you remember Mr. Martucci or his family ever
7 requesting you guys getting phone records related to the
8 events that transpired that day?

9 A. I remember we obtained some records.

10 Q. Do you recall why?

11 A. No, not specifically.

12 Q. Do you recall if it was a dispute between
13 Mr. Martucci and Mr. Parker about whether Mr. Parker was
14 alone at the residence that day with the child prior to
15 Mr. Martucci returning?

16 A. There was.

17 Q. And could the phone records have born on whether
18 Mr. Parker's testimony was true or not?

19 A. It could have.

20 Q. And I believe that Mr. Parker was the only one
21 that placed Mr. Martucci at the residence on that day.
22 Does that sound right?

23 A. As I remember.

24 Q. Do you recall if y'all did subpoena phone
25 records?

Thomas Quinn - Direct Examination

1 A. I assume we subpoena's them. We did have phone
2 records. I don't remember if we obtained them through
3 discovery or if we subpoena.

4 Q. If I told you that in the record pages 368 to 371
5 Mr. Parker's testimony about what transpired that morning
6 and that he said Martucci was there for the entire morning
7 from the time Parker woke up until they took the time to
8 the hospital, would that confirm or be consistent with
9 your recollection?

10 A. I certainly don't dispute that you've noted the
11 page numbers correctly, but I have not reviewed his
12 testimony so I'm not certain.

13 Q. Do you recall whether Mr. Martucci's residence
14 was ever searched by the police and investigated by the
15 police?

16 A. I believe it was.

17 Q. If I could show you a document I got from your
18 file, does this appear to be the search warrant that was
19 issued and executed in this case?

20 A. It does.

21 Q. Do you recall if anything was obtained from that
22 search warrant?

23 A. There's a return listing a number of items that
24 were seized. I don't remember that they had any
25 evidentiary value.

Thomas Quinn - Direct Examination

1 Q. Do you recall if any were introduced into
2 evidence at trial?

3 A. I don't recall, I'm sorry.

4 Q. I believe the record will reflect that you
5 actually cross-examined the investigator and were able to
6 elicit that there was no blood or anything that could be
7 used against Mr. Martucci at trial.

8 A. As I remember there was no physical evidence.

9 Q. Do you know if y'all requested SLED's forensic
10 evaluation of the evidence that y'all received?

11 A. Again I don't remember if we requested or if it
12 was provided in discovery or if the items were even
13 submitted to SLED. I'm sorry I don't remember.

14 Q. Do you know if the issue of the warrant not being
15 served on Mr. Martucci before it was executed?

16 A. The warrant would not have to be served on it and
17 I can see that I have a note, and it's my handwriting, on
18 the return that indicated Mr. Martucci was never provided
19 a copy of the return. That could have been an issue that
20 was raised. I do not believe we raised it because I don't
21 believe there was anything of any evidentiary value that
22 could be used against him.

23 Q. But if there's nothing in your file showing what
24 SLED's results were from their analysis of the items,
25 would that indicate to you that you guys never received

Thomas Quinn - Direct Examination

1 it?

2 A. No, because Mr. Sumner kept his own separate
3 file. All that would indicate is I don't have a copy of
4 it in my file.

5 MR. ARMSTRONG: I'd like to have that
6 introduced as Applicant 1.

7 MS. RATIGAN: I have no objection to that,
8 Your Honor.

9 THE COURT: Very well. It would be Applicant
10 1 without objection.

11 (Search Warrant marked as Applicant No. 1 for
12 identification and admitted into evidence.)

13 BY MR. ARMSTRONG:

14 Q. Do you recall if you guys had a great deal of
15 interviews that were done along with the investigation in
16 this case?

17 A. Do you mean witnesses?

18 Q. I mean of witnesses.

19 A. No.

20 Q. If your file reflect that there were some 15 or
21 so statements given or maybe 17 statements given, you
22 wouldn't deny that?

23 A. I wouldn't deny it but I don't think we took
24 those statements. I think those statements may have been
25 produced by the police.

Thomas Quinn - Direct Examination

1 Q. Correct. And do you recall viewing those
2 statements?

3 A. I'm certain I did.

4 Q. Do you recall if any of those statements
5 presented Mr. Martucci in a good light?

6 A. Some of them did.

7 Q. Do you recall if any of those statements may have
8 presented some of the co-defendants in a bad light?

9 A. They did.

10 Q. Did you guys seek to have any of those witnesses
11 called to trial?

12 A. I'm sorry, I don't recall. I assume by your
13 question we did not, but I don't recall.

14 Q. Do you remember if you guys put in any evidence
15 at trial?

16 A. I don't recall.

17 Q. Do you recall if an autopsy was performed in this
18 matter?

19 A. It was.

20 Q. And did you guys hire an expert to review that
21 autopsy?

22 A. I don't recall. I know we talked about it. I
23 don't know if we did or not.

24 Q. You recall if the case was largely circumstantial
25 against Mr. Martucci?

Thomas Quinn - Direct Examination

1 A. It was.

2 Q. By circumstantial was it mainly he said she said?

3 A. Yes.

4 Q. And did Mr. Parker appear to be the main culprit
5 pointing the finger at Mr. Martucci?

6 A. He was certainly the State's strongest witness.

7 Q. Now, did you have any discussions with
8 Mr. Martucci about the crime charged and the potential
9 sentences?

10 A. I'm sure we did.

11 Q. Now, it's my understanding that he was charged
12 under 16-385(a)1 which is homicide by child abuse?

13 A. I don't know the code section off the top of my
14 head but homicide by child abuse was the charge.

15 Q. (A)2 would have been the aiding and abetting?

16 A. I'm sorry, I certainly don't disagree. I don't
17 have it in front of me.

18 Q. Do you have any recollection of whether you
19 discussed whether there would have been a difference
20 between the sentences for (a)1 and (a)2?

21 A. With Mr. Martucci?

22 Q. Yes.

23 A. No, we would not have had that conversation.
24 Mr. Martucci always denied being involved.

25 Q. Okay. Were you ever present when any discussions

Thomas Quinn - Cross-Examination

1 were made with Mr. Martucci about whether he had to be
2 present for trial?

3 A. No, I don't believe we discussed that.

4 Q. Was Mr. Martucci present for trial?

5 A. He was not.

6 Q. Did your office send out any information or any
7 correspondence to Mr. Martucci requesting him be present
8 at trial?

9 A. I don't remember. My office did or Mr. Sumner's
10 office did, I'm sorry.

11 Q. Let me show you a document that is signed by Ann
12 Pruitt and a Britney Green, it appears to be. I represent
13 to you that I retrieved that from your file and it appears
14 to be received from the Greenville County Sheriff's
15 Office. Does that appear to be a statement that may have
16 been received in your file?

17 A. It is.

18 Q. And in this statement, it obviously speaks for
19 itself, but it would have been one that would cast light
20 poorly upon the co-defendant, Ms. Holder?

21 A. Yes, it does.

22 Q. Would there have been any reason why you wouldn't
23 have called Ms. Pruitt or Ms. Green as a witness at that
24 trial?

25 A. Sitting here I don't recall. I don't remember if

Thomas Quinn - Cross-Examination

1 there was or was not a reason.

2 MR. ARMSTRONG: I would like to have that
3 moved at Applicant's 2.

4 MS. RATIGAN: No objection.

5 THE COURT: Without objection Applicant's 2
6 is admitted.

7 (Statement marked as Applicant's No. 2 for
8 identification and admitted into evidence.)

9 BY MR. ARMSTRONG:

10 Q. Do you ever recall any issues regarding
11 subpoenaing DSS records or whether DSS records of
12 Ms. Holder should have been subpoenaed?

13 A. I'm sorry, I don't remember.

14 MR. ARMSTRONG: That's all the questions I
15 have. Please answer any questions the Attorney General
16 may have.

17 THE COURT: Cross.

18 MS. RATIGAN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. RATIGAN:

21 Q. So would Mr. Sumner have already filed discovery
22 motions by the time you were brought on?

23 A. I believe he had.

24 Q. And did you review what you got from the State
25 with Mr. Sumner?

Thomas Quinn - Cross-Examination

1 A. We did.

2 Q. Did you review those materials with Mr. Martucci?

3 A. We did.

4 Q. I know it's been six years, but can you remember
5 how many times you would have met with the defendant?
6 More than 10 times?

7 A. I don't know if it was more than 10 times. I was
8 going to say 10 or 12 times would probably be a good
9 guess. It was difficult to get Mr. Martucci in sometimes.

10 Q. And obviously he was out on bond?

11 A. During most of the case he was out on bond.

12 Q. And Mr. Martucci he kind of told you his view of
13 the evidence against him?

14 A. Yes.

15 Q. And I believe you testified that he maintained
16 his innocence from the start, is that fair to say?

17 A. He did.

18 Q. In the statements that you were provided from the
19 State were there statements from witnesses saying that
20 they observed the victim with bruises over an extended
21 period of time?

22 A. There were.

23 Q. And you had reviewed all those statements with
24 Mr. Martucci?

25 A. We did.

Thomas Quinn - Cross-Examination

1 Q. And the primary co-defendant in this case was
2 Ms. Holder; is that correct?

3 A. She was.

4 Q. And she was the victim's mother?

5 A. She was.

6 Q. And Mr. Martucci was Ms. Holder's boyfriend; is
7 that correct?

8 A. That's correct.

9 Q. And Mr. Parker, do you remember his relationship
10 to Mr. Martucci and Ms. Holder? Was he a friend or
11 family?

12 A. He was a neighbor and a friend, much more to
13 Ms. Holder's than to Mr. Martucci.

14 Q. Do you remember if he was charged in this case?

15 A. I don't believe he was.

16 Q. And Ms. Holder gave two different statements; is
17 that correct?

18 A. I don't remember. I know she gave multiple
19 statements.

20 Q. I know it's been a long time but you attempt to
21 impeach her testimony with these statements during trial?

22 A. We did. I cross-examined her, I believe.

23 Q. And do you believe that your cross-examination of
24 her was successful?

25 A. We lost so it wasn't successful.

Thomas Quinn - Redirect Examination

1 Q. But you believe you successfully impeached her
2 credibility to a certain point?

3 A. Not a good enough point, we lost.

4 Q. And you had reviewed with Mr. Martucci the
5 statement that he had given police?

6 A. Yes.

7 Q. Had you reviewed with your client the elements
8 the State would have to prove under the section of the
9 homicide by child abuse statute that he was charged with?

10 A. I don't remember if we reviewed the specific
11 elements with him. He understood what he was charged
12 with.

13 Q. And what was the defense theory at trial; just
14 straight up he didn't do it?

15 A. That's correct, Ms. Holder did it.

16 Q. And you had reviewed with Mr. Martucci that was
17 going to be the defense at trial?

18 A. It was.

19 Q. How far in advance of the trial date would you
20 have put on notice that it was on the trial docket?

21 A. A long time because it had already been scheduled
22 the trial maybe three months before and it had gotten
23 pushed off. As I remember it was scheduled in November
24 and got pushed off and rescheduled into February so we had
25 quite a bit of time remembering when the case was going to

Steven Sumner - Direct Examination

1 be.

2 Q. And Mr. Martucci, to the best of your knowledge,
3 was aware of the trial date?

4 A. Yes.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE COURT: Any redirect?

7 MR. ARMSTRONG: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. ARMSTRONG:

10 Q. The prior times that this case was called to
11 trial, did Mr. Martucci show up?

12 A. He did. And I'm not sure it was actually -- it
13 wasn't called. I remember we had been notified of it and
14 yeah, in November he was present and accounted for.

15 Q. Do you remember issuing any subpoenas to any
16 witnesses?

17 A. I don't.

18 MR. ARMSTRONG: That's all I have.

19 THE COURT: Recross?

20 MS. RATIGAN: No, Your Honor.

21 THE COURT: You may come down.

22 Call your next witness, Mr. Armstrong.

23 MR. ARMSTRONG: We'd ask that Mr. Quinn be
24 excused.

25 MS. RATIGAN: I have no problem with that,

Steven Sumner - Direct Examination

1 Your Honor.

2 THE COURT: Mr. Quinn, you're free to leave
3 if you like, sir.

4 MR. ARMSTRONG: We would call Steve Sumner to
5 the stand.

6 THE CLERK: Mr. Sumner, place your left hand
7 on the Bible and raise your right hand.

8 STEVEN SUMNER, having been duly sworn,
9 testified as follows:

10 Thank you. You may be seated and state your
11 full name for the record.

12 THE WITNESS: Steven Wayne Sumner.

13 DIRECT EXAMINATION

14 BY MR. ARMSTRONG:

15 Q. Good afternoon, Mr. Sumner.

16 A. Good afternoon.

17 Q. Mr. Sumner, you represented Mr. Martucci in this
18 matter.

19 A. Along with Mr. Quinn, yes.

20 Q. Did you have an opportunity to interview and meet
21 with Mr. Martucci?

22 A. Multiple.

23 Q. Multiple times. And during that interviews,
24 would Mr. Martucci have family members with him?

25 A. Often times he did.

Steven Sumner - Direct Examination

1 Q. And how would you describe your relationship with
2 Mr. Martucci?

3 A. I thought it was a normal attorney/client
4 relationship. I don't recall Mr. Quinn and I having any
5 difficulties with him other than not making appointments
6 sometimes, but directly, no.

7 Q. I'm going to jump around here a little bit.
8 You've heard my questions to Mr. Quinn. At trial,
9 Mr. Martucci was not present?

10 A. Correct.

11 Q. Have you had an opportunity to review your file
12 before you came here today?

13 A. Not fully, but, yes.

14 Q. Did you send Mr. Martucci correspondence or
15 anything regarding the trial appearance which he failed to
16 show?

17 A. Give me just one second.

18 Q. Sure.

19 A. Just let the record reflect that I'm now looking
20 at my correspondence section of the file.

21 THE WITNESS: Judge, if you would give me a
22 second.

23 THE COURT: Take your time.

24 THE WITNESS: Yes. A letter dated January
25 16th to him references a copy of the formal trial notice

Steven Sumner - Direct Examination

1 in a letter dated January 16, 2006.

2 BY MR. ARMSTRONG:

3 Q. And that was to the best known address that you
4 had for him?

5 A. Yes.

6 Q. Do you have any recollection or any file notice
7 that any phone calls were made, follow ups or anything
8 along those lines?

9 A. Yes, I do. I have two memos, one from Celeste
10 Murray who at that time was an assistant for Mr. Quinn
11 stating that she had received a call from Mr. Martucci on
12 November 29th. That he claimed that he missed his
13 appointment due to his truck's transmission going out on a
14 cell phone number. He stated he had information for me,
15 meaning Steve, and would get back with us as soon as
16 possible.

17 There's another memorandum from Celeste again
18 dated December 7th of 2005 referencing a call from Mark
19 canceling his appointment due to, "either himself or
20 another person that cut themselves." The person did not
21 know if it was Mark who cut himself or another person and
22 they were at the emergency room and he would call when he
23 was finished at the emergency room.

24 Q. So do you believe he knew that the trial was
25 coming up?

Steven Sumner - Direct Examination

1 A. I do.

2 Q. And Mr. Martucci did not show up at trial?

3 A. Correct.

4 Q. Did you ever tell Mr. Martucci he did not have to
5 be present at trial?

6 A. I don't believe his attendance at trial, to my
7 knowledge, Mr. Armstrong, was not discussed because my
8 memory -- I'm just going from my memory because it's been
9 a long time --

10 Q. Long time, yes, sir.

11 A. -- was that he did show up in November when it
12 was originally scheduled and that's just what I remember
13 and he didn't show up in February of the next year.

14 Q. Is it possible that this case was called three
15 times before this time and that Mark showed up all three
16 times before but not this time?

17 A. I don't recall but that could be correct.

18 Q. Did you ever discuss with -- let me be a little
19 broader. Do you recall putting on any evidence on
20 Mr. Martucci's behalf at trial?

21 A. I would have to defer to the transcript on that
22 but I don't believe or recall that either Mr. Quinn and I
23 put in evidence on his behalf at the trial. I can't
24 recall if it was a pretrial motion where we made a request
25 for either a continuance or something along that line and

Steven Sumner - Direct Examination

1 I can't recall if we might have put something in at that
2 point, I don't know, but I don't believe we put anything
3 in at trial.

4 Q. Nothing in front of the jury?

5 A. I don't believe so.

6 Q. No case in chief?

7 A. Not to my recollection, no.

8 Q. Do you recall in any of the trial you subpoenaed
9 any witnesses to be present?

10 A. I do not believe that we did.

11 Q. Did you understand that the trial was going to be
12 sort of a he said, she said type trial?

13 A. Yes, I think that both Tom and I felt like we had
14 a good clear understanding of what their primary case
15 would be, "they" meaning the State.

16 Q. And I questioned Tom earlier about Mr. Parker's
17 testimony the day of the incident that he woke up, that
18 Mark was there, the child was crying, Mark was giving CPR
19 to the child and then they took the child to the hospital
20 where the child was ultimately deceased. Do you recall
21 any issue regarding whether the family or Mark wanted to
22 give you phone records or have you subpoenaed phone
23 records to prove that Mark was not there that morning?

24 A. I recall some discussion about phone records. I
25 was here for Mr. Quinn's testimony and I would have to

Steven Sumner - Direct Examination

1 echo that. I can't be more specific than that. I know
2 there was some discussion about it.

3 Q. Would you also agree with Mr. Quinn that
4 Mr. Parker's testimony was the most damaging to
5 Mr. Martucci?

6 A I know that he was an important witness for the
7 State.

8 Q. Do you recall any issues regarding DSS and DSS
9 records for Brandi Holder?

10 A. I recall there was discussion between Tom and
11 myself about DSS and their involvement with the deceased
12 child's mother, but just like the phone records I don't
13 recall exactly what we determined in the trial strategy.

14 Q. Do you recall whether any of the interviews or
15 any of the statements or any of the witnesses would have
16 corroborated Mr. Martucci's assertion that he was not
17 there that morning in contravention to John Parker's
18 testimony?

19 A. I'm going to have to give you a broad answer to
20 that one. I'm not going to go all the way through the
21 file here.

22 Q. Yes, sir.

23 THE WITNESS: Judge, Mark's family was very
24 supportive of him throughout this entire process.
25 Candidly I remember that Mark would mention witnesses and

Steven Sumner - Direct Examination

1 would rattle off 5, 6 or 8 or 10 people and not produce
2 them and my file can back that up. I'm probably looking
3 at at least 10 or 15 letters that I had to write Mark
4 saying it's critical and critical underlined again trying
5 to get him in. To my recollection Tom and I could never
6 verify there were any witnesses that would actually
7 support what Mark said. We did continue to ask him to do
8 it and unfortunately where we got to a point where he
9 wouldn't show for appointments and things like that.

10 To my knowledge, I don't believe that Tom and
11 I ever felt comfortable subpoenaing a witness or calling
12 someone on his behalf to corroborate his version.

13 Q. Did you hire your own investigator to go out and
14 interview witnesses?

15 A. I believe that we did. I'm seeing a report from
16 Betty Bergus, Bergus Investigations. I have no reviewed
17 this but to my knowledge initially we did have
18 investigator work performed when we first got involved in
19 the case. I got Tom involved in the case shortly after I
20 got involved to my recollection and we did do some
21 investigative work and we have a report.

22 Q. Would you agree with Tom that certainly some of
23 the witnesses that were investigated would have been good
24 character witnesses on Mr. Martucci's behalf and some
25 wouldn't?

Steven Sumner - Direct Examination

1 A. Potentially.

2 Q. Do you recall and I don't know if you've read the
3 appeal in the matter, whether the character evidence that
4 came in for Mr. Parker was negative on the case or was it
5 issued on appeal?

6 A. I don't recall.

7 Q. And certainly the Court of Appeals opinion speaks
8 for itself.

9 A. Yes. I will refer to that and certainly refer to
10 the briefs and arguments by the attorneys as to that
11 portion.

12 Q. Did you ever have any discussion with
13 Mr. Martucci, not necessarily about not showing up for
14 trial but about not testifying?

15 A. I don't have a specific recollection that I can
16 see right now about what I remember about those
17 conversations. To the best of my memory we did discuss
18 trial strategies and the basic issues about whether or not
19 we would put up a defense, what happens if we do put up a
20 defense, cross-examination determination. My recollection
21 is Tom and I did have that discussion more than one time
22 with Mark but it's been a long time ago.

23 Q. Would you agree that based upon your recollection
24 that Mr. Martucci did not have a very extensive criminal
25 record at all?

Steven Sumner - Direct Examination

1 A. I don't believe he had any.. If he had a criminal
2 record, I don't recall it being extensive.

3 Q. Did you discuss with him then that this going to
4 be a circumstantial case and how important it is he come
5 in to testify?

6 A. I don't remember having that conversation with
7 him Mr. Armstrong because I think, and again, my file
8 reflects that sometime after the trial date of November of
9 that proceeding year that we didn't see him any more much
10 after that.

11 Q. With regard to the charges against Mark, did you
12 have discussions about the sentences related to that
13 charge and proof that was necessary?

14 A. To my recollection we did and that would have
15 been early on. I think Tom and I went through the
16 discovery with him which we received all the discovery
17 from the Solicitor's Office and reviewed all the basic
18 elements and what we felt like the State would have to
19 show and how we felt like they would probably try to do
20 that.

21 Q. With regard to the homicide by child abuse
22 statute did you discuss the length of time that Mark was
23 facing?

24 A. Yes.

25 Q. Did you tell him that he was facing life without

Steven Sumner - Cross-Examination

1 the possibility of parole?

2 A. Yes. To my recollection, yes, we did.

3 Q. Now the statute says life. Is it your
4 understanding that that means life without the possibility
5 of parole?

6 A. I do not recall covering that specifically with
7 him. I'm sure Tom and I said that potential sentence is
8 life in prison. Whether or not we actually said life
9 without parole, I couldn't say.

10 Q. Is it your understanding that those two sentences
11 are different?

12 A. Yeah. I guess parole eligibility versus no
13 parole eligibility is a significant difference.

14 Q. Did you discuss with him that he could
15 potentially be convicted under the aiding and abetting
16 portion of the homicide by child abuse statute?

17 A. I do not recall.

18 Q. Do you understand or no if (a)2 of that statute
19 carries a lesser sentence? I know I'm asking you to
20 remember ---

21 A. I'll refer to code, but I believe that it carries
22 a lesser sentence. I believe that Tom and I discussed
23 with Mark on multiple occasions what he was charged with,
24 the basics of the statute, what other people could be
25 charged with because as you mentioned there was more than

Steven Sumner - Cross-Examination

1 one -- there were co-defendants.

2 Q. That's all the questions I have. Please answer
3 any questions the State may have for you.

4 THE COURT: Cross-examine.

5 CROSS-EXAMINATION

6 BY MS. RATIGAN:

7 Q. Mr. Sumner, I'll ask you the same questions I
8 asked Mr. Quinn. You received those discovery materials
9 from the State?

10 A. We did.

11 Q. And you reviewed those with both Mr. Quinn and
12 your client?

13 A. Yes, ma'am.

14 Q. And would it be fair to say you had numerous
15 meeting with your client prior to trial?

16 A. Yes.

17 Q. Did you review with him both the statement that
18 he gave to police and the statement that Brandi Holder
19 gave to police?

20 A. To the best of my recollection we reviewed all
21 the statements.

22 Q. In reviewing those statements would you kind of
23 explain to Mr. Martucci the impact that they would have on
24 the defense case?

25 A. Yes.

Steven Sumner - Cross-Examination

1 Q. And Mr. Quinn testified that Mr. Martucci always
2 proclaimed his innocence, does that purport with your
3 recollection?

4 A. My recollection is that is correct.

5 Q. What was the trial strategy in this case? Was it
6 simply to argue he was 100 percent innocent?

7 A. It was. Tom and I, I think we realized it was a
8 strong possibility as we got closer to trial that Mark
9 would not be present so we sat down and talked about it
10 and came up with the best strategy that we could. We felt
11 pretty sure that there was a real possibility that he
12 would not be present so we prepared the motions to make
13 before trial and we decided what the strategy would be in
14 order to get an acquittal.

15 Q. Was it part of your strategy would have been to
16 paint the mother, Brandi Holder as the perpetrator of the
17 crime?

18 A. I believe so and I believe that Tom and I divided
19 up responsibilities. My recollection is that Tom did most
20 of the cross-examination on that and I made as many points
21 as I felt like he could.

22 Q. Johnny Parker, when he testified at trial did he
23 give damaging testimony against both your client and the
24 co-defendant or was it primarily against your client? Do
25 you recall?

Steven Sumner - Redirect Examination

1 A. I think it was primarily against Mark. That's my
2 recollection as we sit here today.

3 Q. And the State's theory that day was that Brandi
4 had left go to go work and left the victim with your
5 client; is that correct?

6 A. I believe so. I believe she was a cosmetologist.
7 I believe she had gone to work that morning and the child
8 was left in the care, allegedly of Mark, and potentially
9 another person.

10 Q. And your testimony today is you're confident that
11 Mr. Martucci knew the date his trial was scheduled to go
12 forward?

13 A. I believe that he did. I think that we did
14 everything we could professionally to convey it to him.

15 MS. RATIGAN: That's all I have, Your Honor.

16 MR. ARMSTRONG: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. ARMSTRONG:

19 Q. Do you recall or have any recollection of whether
20 you called his family members or told his family members
21 to tell him to get in here or did his family members even
22 knew that he was having a trial?

23 A. I do not recall.

24 Q. Now, I believe the attorney general had asked you
25 if you reviewed Mr. Martucci's statement. Are you sure

Steven Sumner - Redirect Examination

1 Mr. Martucci even gave a statement?

2 A. I am not. I am sure that -- my recollection is
3 that we reviewed all of the statements with him in a
4 general meeting like here's the discovery, here are the
5 statements given, this is the forensic evidence or lack of
6 it and this is the search warrant. My recollection is we
7 did go through the discovery with him. I don't recall
8 right now what all that comprised of.

9 MR. ARMSTRONG: That's all I have, Your
10 Honor.

11 THE COURT: Recross.

12 MS. RATIGAN: No, Your Honor.

13 MR. ARMSTRONG: We'd ask that Mr. Sumner be
14 excused, Your Honor.

15 MS. RATIGAN: No objection.

16 THE COURT: You're free to leave, sir.

17 MR. ARMSTRONG: We call Ms. Pruit to the
18 stand.

19 THE CLERK: Ms. Pruit, place your left hand
20 on the Bible and raise your right hand.

21 PRUIT, having been duly sworn, testified
22 as follows:

23 Thank you. You may be seated. Please state
24 your full name for the record.

25 THE WITNESS: Dela Ann Pruit.

Dela Ann Pruitt - Direct Examination

1 DIRECT EXAMINATION

2 BY MR. ARMSTRONG:

3 Q. Ms. Pruitt, where do you live?

4 A. In Campabello.

5 Q. Did you have occasion to know Mr. Martucci?

6 A. Yes.

7 Q. How did you know him?

8 A. From church.

9 Q. Did you also know Brandi Lynn Holder and
10 Mr. Parker that we've been talking about?11 A. I didn't know them a whole lot but I was over
12 there.13 Q. When you say that you were over there, do you
14 mean you were at the home of Mr. Martucci while both
15 Brandi Lynn Holder and Mr. Parker were present?

16 A. Yes.

17 Q. And what's been introduced as Applicant's Exhibit
18 No. 1, is that a statement that you gave to the Greenville
19 County Sheriff's Office?

20 A. Yes.

21 Q. Is that your signature on there?

22 A. Yes.

23 Q. On the morning of the incident when the child
24 perished, did you have occasion to speak with Mr. Parker?

25 A. Yes.

Dela Ann Pruitt - Direct Examination

1 Q. And how did talk to him?

2 A. On the telephone.

3 Q. You called him on the telephone?

4 A. No, he called me.

5 Q. He called you on the telephone. Why did

6 Mr. Parker call you on the telephone?

7 A. So me -- me and my niece was coming over there to
8 go swimming.

9 Q. Come over there to go swimming. Was it a
10 swimming pool or a lake?

11 A. It was just an above the ground pool.

12 Q. Okay. And on that day based upon your
13 conversation with Mr. Parker, do you believe that
14 Mr. Parker was alone with the deceased?

15 A. Yes.

16 Q. Did you make any other phone calls that morning?

17 A. Yeah, I called Mark.

18 Q. Why did you call Mark?

19 A. To see if it would be alright if we could go
20 swimming. Without him not being here, I didn't want to go
21 over there.

22 Q. Was Mark at home that morning?

23 A. Nope.

24 Q. Did you go over there that morning?

25 A. No.

Dela Ann Pruitt - Direct Examination

1 Q. Did you later hear where they went?

2 A. Yeah. After we got over there, I called Mark and
3 he said they was on their way to the hospital. They said
4 they was taking Min to the hospital. So we met them at the
5 hospital.

6 Q. I believe you were interviewed by the Greenville
7 County Sheriff's Department; is that right?

8 A. Yes.

9 Q. You were interviewed by Mr. Sumner's
10 investigator; is that right?

11 A. Doug Kelly.

12 Q. Just Doug Kelly?

13 A. (Witness nods.)

14 THE COURT: You need to answer yes for the
15 court reporter.

16 THE WITNESS: Yes.

17 BY MR. ARMSTRONG:

18 Q. Would you have testified at trial?

19 A. Yes.

20 Q. Did you give a trial statement to anyone?

21 A. No, sir, I sure didn't.

22 Q. Thank you. Please answer any questions the State
23 may have.

24 THE COURT: Cross-examine.

25 CROSS-EXAMINATION

Michael Martucci - Direct Examination

1 BY MS. RATIGAN:

2 Q. So you never ended up going out to Mark's house
3 that day?

4 A. Not that morning, no.

5 Q. And you didn't see either Mark or Johnny Parker
6 that day until you went to the hospital?

7 A. No.

8 MS. RATIGAN: Thank you, Your Honor.

9 THE COURT: Any redirect?

10 MR. ARMSTRONG: No.

11 THE COURT: Thank you. You may come down.

12 Call your next witness.

13 MR. ARMSTRONG: We would call Mark Martucci
14 to the stand.

15 THE COURT: Mr. Armstrong, do you need any
16 time before you appear before Judge Simmons?

17 MR. ARMSTRONG: I should be able to do this,
18 Your Honor.

19 THE COURT: That's fine but we can stop any
20 time so that you can be there because I assured them you
21 would be available I think 3:15.

22 MR. ARMSTRONG: I think we should probably be
23 done.

24 THE COURT: That's fine. I'm just telling
25 you I can break this and come back later and finish it if

Michael Martucci - Direct Examination

1 that is necessary. We'll take as much testimony until you
2 say you need to go.

3 MR. ARMSTRONG: Thank you, Your Honor.

4 THE CLERK: Please raise your right hand.

5 MICHAEL JAMES MARTUCCI, having been duly
6 sworn, testified as follows:

7 Thank you. You may be seated. State your
8 full name for the record.

9 THE WITNESS: Michael James Martucci.

10 DIRECT EXAMINATION

11 BY MR. ARMSTRONG:

12 Q. Mr. Martucci, where do you live?

13 A. In the Statesboro, Georgia.

14 Q. And what do you do down there?

15 A. I'm the owner of Mastery Mason and Tile.

16 Q. And what's your relationship with Mr. Mark
17 Martucci?

18 A. That's my younger brother.

19 Q. When your younger brother was charged with this
20 crime, did you and your family have occasion to go with
21 him and meet with attorneys regarding representation?

22 A. Yes, sir.

23 Q. Did you have occasion to be present in the room
24 when Mark and Steve were discussing the case?

25 A. Yes, sir.

Michael Martucci - Direct Examination

1 Q. Did you hear or were there any statements
2 regarding Mark and his necessity to be at trial?

3 A. Yes, sir.

4 Q. Tell me about that.

5 A. At our first meeting Mr. Sumner made a statement
6 that by law Mark did not have to be present at the trial
7 which, you know, kind of got me a little upset. I think I
8 confronted him after the meeting and told him that was not
9 an option. We weren't even going to go that route. Mark
10 is to understand that he is to be at the trial period.

11 Q. What was Mr. Sumner's reaction?

12 A. Basically no reaction. He was saying he was
13 letting us know by law Mark did not have to be at trial.

14 Q. And why did that upset you?

15 A. You got a guy that's on trial for possibly his
16 life, would you not think it is imperative for him to be
17 in court.

18 Q. Did Mr. Sumner or staff ask you to provide them
19 with any documentation, any evidence, that may help them
20 that may help them in their investigation and defense of
21 Mr. Martucci?

22 A. Yes, sir. He asked everyone at that meeting to
23 go home and write down everything that they could possibly
24 put together for him for each and every time that we had
25 met Ms. Holder.

Michael Martucci - Direct Examination

1 Q. Did he ask you to produce any evidence?

2 A. Well, I went home and within two weeks I had
3 written him a small book on the six times I had met Brandi
4 and I also provided him with a phone record where I made a
5 phone call to Mark's house the night before Mino the
6 deceased, and what took place during that phone call. And
7 I think I also provided him with a couple of ticket stubs
8 from where my wife and I and my youngest son Nicholas came
9 up to go to a hockey game with Mark and Brandi and little

10 Mino

11 Q. Without going into a litany of testimony, the
12 night before you spoke to Brandi, why did you think that
13 that was important that he know that?

14 A. Well, Mark was setting up a meeting with myself
15 and the gentleman from Greer Flooring. I had spoke to him
16 that weekend and I had told him I would give him a call
17 back earlier in the week. I got home Tuesday night, I
18 called Mark's house, Brandi answered and she was pretty
19 irate using some serious profanity. She said that her and
20 Mark had went to Walmart, bought a scanner. The scanner
21 didn't work so she was sending Mark and John back to
22 Walmart to make sure they came back with a scanner. I
23 think there was a problem with her and the lady from
24 Walmart on the phone. She was upset about that.

25 Q. Did you hear any interaction between her and Minor

Michael Martucci - Direct Examination

1 A. Her and Min were just, I guess, having a knock
2 down drag out brawl where she threw him in his room,
3 slammed the door, and told him if he came out she was
4 going to tear his you know what up and at that time I
5 said, hey, I think I caught you had a bad time, I'm going
6 to go and if it ain't too late have Mark call me.

7 Q. So Mark wasn't there when you made the phone
8 call?

9 A. No, sir.

10 Q. This is the night before the day Min died?

11 A. The night before.

12 Q. And you provided Mr. Sumner with phone records to
13 prove you actually called there that day. Did you provide
14 Mr. Sumner with any other types of records related to
15 where your brother had been either the night before or the
16 morning of the incident in question?

17 A. Yes, sir. My brother Chris and I took receipts
18 from that morning Mark went -- he got gas. He went to
19 Waffle House for breakfast, went to Walmart and I think
20 Home Depot and at that time John had called him a number
21 of times and he felt he needed to go to the house. That's
22 when he went to the house and that's when he discovered Min
23 was not doing well, put him in the van and took him to the
24 hospital.

25 Q. Did you know that Mark was having a trial when he

Michael Martucci - Cross-Examination

1 was tried?

2 A. No, sir.

3 Q. Were you ever asked to be present to testify
4 regarding the co-defendant's behavior the night before
5 when Mark wasn't present?

6 A. Well, I knew that I was going to be a witness in
7 the trial and that I would be notified, that I could not
8 be subpoenaed because I lived out of state but that I
9 would be notified so that I could be present.

10 Q. Were you present when there were any discussions
11 regarding potential penalties that Mark may face if he is
12 convicted of homicide by child abuse or the lesser
13 included offense of aiding and abetting?

14 A. I think I was present the first meeting. Some of
15 that was discussed.

16 Q. Do you recall any discussion or ever hearing life
17 without the possibility of parole?

18 A. No, sir.

19 Q. Thank you. Please answer any questions the State
20 may have.

21 THE COURT: Cross-examine.

22 MS. RATIGAN: Just a couple of quick ones.

23 CROSS-EXAMINATION

24 BY MS. RATIGAN:

25 Q. So you were not there that day, you were at your

Mark Martucci - Direct Examination

1 home in Georgia?

2 A. Yes, ma'am.

3 Q. And your brother told you he was out running
4 errands without the victim and had just left him at home
5 with Mr. Parker?

6 A. I was told that on the morning that **Min** died that
7 Mark got up and went to work, Brandi got up and went to
8 work, and that John was left at the house to watch **Mino**

9 MS. RATIGAN: That's all I have, Your Honor.

10 THE COURT: Redirect?

11 MR. ARMSTRONG: None, Your Honor.

12 THE COURT: You may come down, sir.

13 MR. ARMSTRONG: Your Honor, I only have
14 Mr. Martucci left and I'm concerned he may take more than
15 15 minutes.

16 THE COURT: We'll recess this and resume it
17 when you finish.

18 MR. ARMSTRONG: Thank you, Your Honor.

19 (Whereupon, there was a recess.)

20 THE COURT: Are you ready to continue, sir?

21 MR. ARMSTRONG: We're ready, Your Honor.

22 THE COURT: You may call your next witness.

23 MR. ARMSTRONG: We would call Mark Martucci
24 to the stand.

25 THE CLERK: Mr. Martucci, please place your

Mark Martucci - Direct Examination

1 left hand on the Bible and raise your right hand.

2 MARK MARTUCCI, having been duly sworn,
3 testified as follows:

4 Thank you. You may be seated. Please state
5 your full name for the record.

6 THE WITNESS: Mark Anthony Martucci.

7 DIRECT EXAMINATION

8 BY MR. ARMSTRONG:

9 Q. Good afternoon, Mark.

10 A. Good afternoon.

11 Q. Mark, you've been present in the courtroom and
12 heard the testimony of Mr. Quinn, Mr. Sumner, Ms. Pruitt
13 and your brother.

14 A. Yes, sir.

15 Q. Where are you currently an inmate?

16 A. I am at McCormick Correctional Institute, South
17 Carolina.

18 Q. How long have you been there?

19 A. It's almost seven years this March.

20 Q. You were obviously charged with homicide by child
21 abuse, do you recall that?

22 A. Yes.

23 Q. And at some point you and or your family retained
24 Mr. Sumner.

25 A. That's correct.

Mark Martucci - Direct Examination

1 Q. When you retained Mr. Sumner, did you and
2 Mr. Sumner discuss what possible sentencing that you may
3 receive relative should you have a guilty verdict?

4 A. At one time he had asked me to give him a number
5 and we squabbled over that for a little while because I
6 didn't know what he meant but he wanted a number. I guess
7 that was something that he was getting a feeling of what I
8 was going to do if this came to a point where they found
9 me guilty.

10 Q. And by number, can you give me a range of numbers
11 that you were talking about?

12 A. I took it at that point that he was talking with
13 the solicitor and I believe he was trying to make a deal
14 so he was going to speak with her about making an
15 arrangement on a deal of how much time that I was willing
16 to go.

17 Q. Are we talking 10 years, 20 years, 25?

18 A. I remember I gave him one and he just said give
19 me another one.

20 Q. Did you ever have any discussions that should you
21 be convicted that you would get life without the
22 possibility of parole?

23 A. No, sir. That never came up.

24 Q. When did you find out that your sentence was life
25 without the possibility of parole?

Mark Martucci - Direct Examination

1 A. When I came back.

2 Q. And you say when you came back. You were tried
3 in your absence, correct?

4 A. Yes, sir.

5 Q. And Judge Pyle, I believe the record will
6 reflect, sealed it and unsealed it when you came back in
7 maybe the next week or so?

8 A. Yes, sir.

9 Q. Do you understand that there's a difference
10 between life and life without the possibility of parole?

11 A. I do now.

12 Q. And what is your understanding on that?

13 A. One you can get parole and the other one you
14 can't.

15 Q. Would that have been important for you to know
16 that you could get life without the possibility of parole
17 if convicted?

18 A. Yes.

19 Q. Did Mr. Sumner ever discuss with you that there
20 was a possibility you could have been found guilty of the
21 lesser included defense of aiding and abetting?

22 A. No, sir, it never came up.

23 Q. Did he ever discuss with you a guilty conviction
24 to the lesser included offense of aiding and abetting
25 could carry a substantially lower amount of time if

Mark Martucci - Direct Examination

1 convicted?

2 A. He never brought it up, never discussed it with
3 me.

4 Q. You've heard your brother testify that Mr. Sumner
5 indicated that you didn't have to be present at trial. Do
6 you recall that conversation and if so, what do you
7 recall?

8 A. I believe I remember in the beginning when he had
9 told us how the courts work and how he would defend you
10 and whether you're there or not, he still has to fight to
11 case to his best of ability.

12 Q. How long was it between the time you were
13 arrested and the time you actually went to trial?

14 A.. It was over three-and-a-half years.

15 Q. During that time you were out?

16 A. Yes.

17 Q. And you were having to make contact with the
18 State?

19 A. Yes.

20 Q. On a periodic basis?

21 A. Yes, every month.

22 Q. Every month?

23 A. Yes.

24 Q. And you'd actually got permission to live out of
25 State and work out of State; is that correct?

Mark Martucci - Direct Examination

1 A. I didn't move, I just went to work but they had
2 my brother's address and phone numbers. As a matter of
3 fact he had both my brothers, Chris and Mike, because we
4 all worked together as a family.

5 Q. They being who?

6 A. My brothers.

7 Q. Who had the phone numbers?

8 A. Bail bondsmen.

9 Q. There's been some discussion today about
10 Mr. Parker's testimony in the record that he woke up that
11 morning and you were there the entire morning until Bo was
12 taken to the hospital.

13 A. I heard that.

14 Q. Did you discuss with Mr. Sumner where you were
15 the morning of the incident prior to you taking Min to the
16 hospital?

17 A. Yes. He knew I was gone. I was gone that
18 morning and we had to give him the receipts and places
19 that I had gone to. There was the phone records that we
20 had spoken about to show that I wasn't there and the
21 people who were calling the house and calling my cell
22 phone at that point.

23 Q. And you had told Mr. Sumner about these records?

24 A. Yes, sir.

25 Q. And I believe Mr. Quinn had testified that

Mark Martucci - Direct Examination

1 records were in his file that had been subpoenaed.

2 A. Yes, sir.

3 Q. Did you tell Mr. Sumner about witnesses who may
4 be good character witnesses for you?

5 A. Yes, sir.

6 Q. Did you tell Mr. Sumner about Ms. Pruitt?

7 A. Yes, I did.

8 Q. And Ms. Pruitt could verify that you were not
9 there that morning?

10 A. Yes, sir.

11 Q. Did you discuss with Mr. Sumner about any pleas?
12 Did he ever tell you that there was a plea offer on the
13 table?

14 A. The only conversation that I can recall was at a
15 meeting he kept asking to give him a number and basically
16 that went on for quite a while. Every number I give him
17 he didn't seem to like what he was hearing.

18 Q. Now not only did you request -- talk to him about
19 your phone records, did you talk to him about getting
20 anybody else's phone records?

21 A. We had spoke about getting my phone records, my
22 home records, and Brandi's cell phone records.

23 Q. And what is it that you thought those records
24 would show?

25 A. Well, basically every time John had called me to

Mark Martucci - Direct Examination

1 report that John was ill, he was saying I said well did
2 you call his mother and he said I've been calling
3 constantly and he's not answering.

4 Q. This being John Parker?

5 A. Right. When he had first called me it was a
6 matter of he was ill and not feeling well and I said did
7 you contact her and he said I did but she's not answering.
8 Then later on I got some more phone calls and the last one
9 was very hysterical so I just went ahead when I left Home
10 Depot and went straight home.

11 When I walked in I saw John in the bedroom
12 kneeling up and down on **Min** and when I saw him I said, hey,
13 what are you doing and I told him to stop that and I
14 looked at **Minor** **■** didn't look good, he was discolored. I
15 picked him up and I told John let's go we're going to the
16 hospital.

17 Q. Did you know you had a trial coming up that day?

18 A. All I knew is the phone call that he had called
19 my brother Friday prior to that Monday saying that we had
20 to be there Monday.

21 Q. Had you been told that before?

22 A. Yes.

23 Q. How many times over the three-and-a-half years?

24 A. I believe it was about three times that I showed
25 up and the trial was cancelled. I'm not sure if you can

Mark Martucci - Direct Examination

1 quote me on it but I believe the solicitor was quitting or
2 something. Then I believe she got pregnant and then I
3 believe Brandi got a new attorney and all three times I
4 did show up. Yes, sir.

5 Q. And this time where were you when you got that
6 phone call late that Friday night?

7 A. I was working in West Palm Beach at my job.

8 Q. I want to be clear about this. Did Mr. Sumner
9 ever tell you that you didn't have to show up for trial?

10 A. He didn't mention it back in the beginning when
11 we hired him but he never said nothing that day -- I mean
12 prior to his phone call.

13 Q. Did he ever discuss with you or tell you that you
14 didn't have to testify at trial?

15 A. At first the strategy was he didn't want me to
16 get on the stand.

17 Q. Did he tell you he was going to put no evidence
18 in?

19 A. No, he didn't tell me anything like that.

20 Q. Did he discuss with you the circumstantial nature
21 of the State's case and the fact that the State had no
22 witness to who struck the fatal blow to the child?

23 A. Well, the question came up and basically it was
24 hearsay, circumstantially originally brought up and we had
25 talked about the length of it and he said the longer it is

Mark Martucci - Direct Examination

1 the better it is.

2 Q. The longer what is?

3 A. The trial. He was making it sound like he had
4 never seen it go three and a half years like this. He
5 kept telling us that the longer it goes, the better it is
6 for you. Obviously they don't have anything against you.

7 Q. Did he discuss with you what circumstantial
8 evidence is, what it consists of?a

9 A. No. He explained the circumstantial and he said
10 that everything they had was just basically he said she
11 said.

12 Q. And he never told you that he thought it was
13 important that you tell your side of the story as to what
14 happened that morning?

15 A. No, because originally he wasn't going to put me
16 on the stand. He wasn't going to have me testify.

17 Q. You think he was going to have someone else to
18 testify to contradict John Parker's statement and Brandi
19 Holder's statement?

20 A. I don't know how he was going to do that.

21 Q. It's my understanding that John Parker gave
22 conflicting statements, is that your understanding?

23 A. Pardon me?

24 Q. Conflicting written statements to the police.

25 A. Yes, sir. He gave I believe it was more than

Mark Martucci - Cross-Examination

1 three.

2 Q. The first one being that you did nothing.

3 A. The first three was that I was good to them, I
4 gave them a place to live, took them in when they had no
5 place to go, fed them, bought Min his first bike, bought Min
6 a swimming pool.

7 Q. Just for the record, how long had Brandi Holder
8 lived with you prior to Bo passing?

9 A. I believe it was about three months.

10 Q. How long had John Parker lived with you prior to
11 Min passing?

12 A. Two to three weeks but he had been there off and
13 on for about four years. He lived next door and every
14 time he got into it with his father, his father would kick
15 him out he's come stay at my house.

16 Q. Did you provide Mr. Sumner with all evidence that
17 he asked you to provide, all witness names?

18 A. Yes, sir, I did.

19 Q. Do you recall any issue about an autopsy one way
20 or another?

21 A. In the beginning there was talk about he was
22 going to get a specialist but then for some reason the
23 family rushed to cremation and they couldn't have their
24 own specialist do an autopsy.

25 Q. Do you know if the record reflects any motions

Mark Martucci - Cross-Examination

1 were made regarding the rush to cremation or anything like
2 that?

3 A. That I don't know. I do believe that Mr. Sumner
4 felt it was kind of weird that they had done that so
5 quickly.

6 Q. Were you ever provided a document, a letter, or
7 anything from anybody, Mr. Sumner, the State, or anyone
8 indicating that life without parole is what you faced?

9 A. No, I never received any notification?

10 Q. Would you like to have a new trial to be able to
11 testify?

12 A. Yes, sir, I would.

13 Q. Would you like to present witnesses into evidence
14 that you were not even at the house that day as is
15 testified by Mr. Parker?

16 A. Yes, sir.

17 Q. Please answer any questions the State may have.

18 A. Yes, sir.

19 THE COURT: Cross-examine.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q. So you and your family hired Mr. Sumner for this
23 case?

24 A. Yes.

25 Q. And eventually Mr. Quinn started working on the

Mark Martucci - Cross-Examination

1 case as well?

2 A. Yes, ma'am.

3 Q. Did you review all the State's evidence with your
4 attorneys every time?

5 A. Not all of it, no.

6 Q. Did you review the various witness statements?

7 A. I believe the only one he had at that point was
8 John Parker's.

9 Q. Did you review the two different statements that
10 Brandi had been given?

11 A. He said that they had been given and they were
12 both good and then a bad one.

13 Q. But you ever got a chance to look at it, just let
14 Mr. Sumner tell you?

15 A. Yes, ma'am. I don't believe I read it. I have
16 now in the transcripts.

17 Q. At some point you went down to the LEC and you
18 gave a statement in this case, do you remember?

19 A. I went down there but I didn't give no statement.

20 Q. Okay. You didn't go down there and deny every
21 abusing **Minor**

22 A. I did tell them I wasn't there.

23 Q. Did you tell the officers when you went down to
24 the LEC that you thought that Brandi may have done
25 something to **Minor**

Mark Martucci - Cross-Examination

1 A. I said that I had seen her strike him a few times
2 but nothing that would have been like threatening.

3 Q. In terms of the State's evidence, did you and
4 Mr. Sumner and Mr. Quinn talk about the autopsy results an
5 the injuries that Min had?

6 A. I believe there was a broken rib or something.

7 Q. And did you ever discuss with them that Min had a
8 series of different types of injuries? Did you ever talk
9 about that with them?

10 A. Bruises, yes.

11 Q. Some where a little bit older than others.

12 A. Yes, ma'am.

13 Q. Did your attorneys tell you that you could get a
14 life a sentence just not a life without parole sentence,
15 is that what you're testifying too?

16 A. No, they never considered life.

17 Q. They never told you you were facing life?

18 A. No.

19 Q. What did they tell you you could possible get?

20 A. Twenty to twenty-five years if I was guilty.

21 Q. Mr. Sumner called your brother the Friday before
22 trial; is that correct?

23 A. Yes, ma'am.

24 Q. And you were on a job down in Florida?

25 A. Yes, ma'am.

Mark Martucci - Redirect Examination

1 Q. So you knew the trial was coming up on Monday?

2 A. Yes, ma'am.

3 Q. Why didn't you show up for trial?

4 A. I had gotten scared. Basically the three times I
5 didn't show up none of my witnesses were called, no one
6 was subpoenaed. My family wasn't even called but he said
7 that he was going to fight this case for me and I just
8 didn't believe he was as serious as he was when he first
9 took the case.

10 Q. Did you call Mr. Sumner and Mr. Quinn and tell
11 them that you weren't going to show up for trial that day?

12 A. No, ma'am.

13 MS. RATIGAN: That's all I have, Your Honor.

14 THE COURT: Redirect.

15 MR. ARMSTRONG: Very briefly.

16 REDIRECT EXAMINATION

17 BY MR. ARMSTRONG:

18 Q. When you heard the case had ended, did you turn
19 yourself in?

20 A. Yes, sir.

21 Q. Where did you turn yourself in.

22 A. I guess that's my sister-in-law's brother who is
23 a detective for West Palm Beach Police Department.

24 Q. You heard that you had been convicted, correct?

25 A. No, not convicted. I knew the trial was in the

Martucci versus State of SC

1 process and I turned myself into Detective Ron
2 Surhouse(ph).

3 Q. While the trial was in process?

4 A. Yes, I believe it was towards the end of it. It
5 might have been over at that time. I believe it was a
6 Thursday or a Friday. It was a very quick case they said.

7 Q. You believe it was the same week of the trial?

8 A. Yes.

9 MR. ARMSTRONG: That's all I have, Your
10 Honor.

11 THE COURT: Recross?

12 MS. RATIGAN: Nothing, Your Honor.

13 THE COURT: Thank you. You may step down,
14 sir.

15 Call your next witness.

16 MR. ARMSTRONG: Mr. Martucci has no further
17 witnesses, Your Honor. We would ask the Court to take
18 judicial notice that Mr. Parker at trial the jury was
19 informed that he was charged with homicide by child abuse;
20 however, as best I can collect from the records I reviewed
21 from the South Carolina public web site that charge was
22 dismissed the next month.

23 That would be Mr. Martucci's case, Your
24 Honor.

25 THE COURT: Any additional witnesses the

Martucci versus State of SC

1 State wishes to present?

2 MS. RATIGAN: No, Your Honor. The solicitor
3 that actually tried the case is here and present. I would
4 just put on the record she's informing that Mr. Parker
5 pled guilty and got a suspended sentence. If you would
6 like to have her testify, but other than that, Your Honor,
7 we ---

8 THE COURT: That information is received and
9 I'll give it the weight I think it needs. Thank you.

10 I'll be happy to hear from your,
11 Mr. Armstrong.

12 MR. ARMSTRONG: Thank you, Your Honor.
13 Pursuant to Mr. Martucci's petition, he basically raised
14 the issue of failure to request and autopsy, failure to
15 raised issues with the illegal search and seizure, and
16 improper pretrial investigation which he maintains
17 constitutes ineffective assistance of counsel. We would
18 respectively submit that failing to put forth any
19 witnesses in a situation where circumstantial evidence is
20 so important and the conviction on the lesser including
21 offense of aiding and abetting would be reasonable under
22 professional laws particularly in a situation where you
23 had witnesses that is willing to testify that the
24 testimony of John Parker who is the key witness in the
25 case and who was the key finger pointer at Mr. Martucci is

Martucci versus State of SC

1 that Mr. Martucci -- he woke up, Mr. Martucci was there,
2 the child was screaming, he and Mr. Martucci took the
3 child to the emergency room.

4 Putting forth the evidence that Mr. Parker's
5 testimony was blatantly incorrect, we believe any ligating
6 defense lawyer should have put that forth, particularly in
7 light of the fact that Mr. Parker gave three convicting
8 statements to the police as is Ms. Holder and that the
9 initial statements was given by Mr. Parker and Ms. Holder
10 is that Mr. Martucci would never hurt the child and never
11 hurt the child.

12 The only other evidence of pattern or conduct
13 in the past did not indicate any hitting or bruising or
14 anything like that or any substantial damage.
15 Additionally, Mr. Parker took the opportunity, if the
16 Court has an opportunity to read the Court of Appeal
17 opinion in this case, provide a great deal of damning
18 character evidence against Mr. Martucci and there were
19 plenty of witnesses in the defense file that the defense
20 could have called that would have rebutted that negative
21 character testimony.

22 Respectfully, Your Honor, we would submit
23 that the failure of the defense to put forth any evidence
24 whatsoever in light of the fact that they had compelling
25 evidence that Mr. Parker was giving a falsehood should

Martucci versus State of SC

1 allow Mr. Martucci to have a new trial in this matter.

2 THE COURT: Thank you.

3 MS. RATIGAN: Your Honor, the State presented
4 a cluster of evidence against both Ms. Holder and
5 Mr. Martucci. They were the adults living in that house
6 and were responsible for the care of the victim. The
7 victim was about two-and-a-half years old when he died.
8 The evidence presented that Mr. Martucci was the primary
9 caregiver.

10 The autopsy revealed a variety of injuries of
11 different ages, bruises, internal injuries, fractures,
12 bite marks and tears near the child's penis of various
13 ages. Furthermore, at least four witnesses and three of
14 Ms. Holder's co-workers testified at trial of seeing a
15 variety of injuries on the child over time. I don't believe
16 Mr. Martucci has produced any evidence today to subvert
17 that.

18 The fact that Mr. Parker may or may not have
19 been there that day or that morning ^{Min} died doesn't change
20 Mr. Martucci's involvement in the progressive nature of
21 the injuries over time.

22 I don't believe they produced any evidence
23 that any amount of character testimony could have changed
24 the nature of the State's case against Mr. Martucci.

25 Furthermore, he admitted today that he knew

Martucci versus State of SC

1 the date of trial and simply chose not to appear. I don't
2 believe Mr. Sumner was incorrect when he said you don't
3 have to come to trial if you don't want to, I'm going to
4 defend you either way. That's a true statement of the
5 law. I don't believe the burden has been met today under
6 Stricklin and I would ask Your Honor to deny the petition.

7 THE COURT: Response?

8 MR. ARMSTRONG: Briefly, Your Honor,
9 particular as to the aiding and abetting charge and the
10 fact that that was charged to Mr. Martucci, I believe that
11 the (a)2 of the statute, I believe, that it would have
12 been very difficult for the State to prove that
13 Mr. Martucci actually participated in the homicide by
14 child abuse. The vast majority of this was that
15 Ms. Holder was the perpetrator.

16 THE COURT: The medical testimony doesn't
17 agree with that and in fact we just tried one a month ago
18 with a similar situation. It's the cumulative issue,
19 that's the problem. Everybody wants to focus on the day
20 that the child died and that's not the thrust of it. The
21 thrust of these cases are what's going on before that.
22 That's what's clear. The evidence is overwhelming. I
23 think Judge Addison when he was responding to one of the
24 issues as harmless error cognitive about the overwhelming
25 testimony indicating the guilt of the advocate. That's

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1 just his opinion but I think that's certainly clear in my
2 review of the medical testimony.

3 It is a circumstantial case.. There is an
4 over abundance of circumstances that links Mr. Martucci
5 with the death of the child under that statute because
6 that statute is extremely broad and that's the intent of
7 it. He sat by and didn't do anything. He's technically
8 -- it makes him liable under (a). There's no question
9 that (b) comes into play but the jury had that issue and I
10 don't see where defense counsel failed -- I think it looks
11 like two notebooks that you received from Mr. Quinn's file
12 and Mr. Sumner's file is equally large. The Court noted
13 that.

14 The Court has noted and it seems to be a
15 theme this week that people who are accused of crimes
16 think that once they hire a lawyer they don't have a duty
17 to do anything and not be available. This is a case --
18 and I would agree that there were times when a lawyer
19 would have called one of the family members, I don't
20 disagree with that, but the bottom line is this
21 unfortunately contradicted the brother's testimony that he
22 did know of the trial. He made a choice for himself.

23 The important thing about any advice of an
24 attorney it has to be -- I'm sure that in talking about it
25 and the bond responsibility I think it would be advisable

Martucci versus State of SC

1 to say to him numerous times if you chose not to come
2 that's not going to stop this case from going forward.
3 It's going to go forward without you being present. There
4 is nothing wrong with that legal advice. I think his
5 brother said it best, that's just common sense.

6 He knew and I think his testimony was, and
7 I'm paraphrasing here, is I got scared. I think that's a
8 very human response especially in a criminal proceeding.
9 There are a lot of inferences to be drawn from that
10 statement, too. I was there, I know what was going on, I
11 got scared and I'm about to be convicted, my time is up or
12 I got scared because I don't want to face it or I got
13 scared because I don't know what's going to happen.

14 You interesting you talked about life and
15 whether the defendant recalled that, I don't know what you
16 tell somebody that said I didn't do anything I'm innocent.
17 Why do they need to know other than to be informed and I
18 can certainly understand that but assuming that was a
19 departure, I don't think that had anything to do nor would
20 it change the outcome because he's maintained his
21 innocence the entire time. There is no reason anybody to
22 talk about guilty pleas until he changes his position and
23 there was never a change of position. So clearly I think
24 it would be inappropriate for counsel to start threatening
25 him, start talking about that.

Martucci versus State of SC

1 We talked about that today. Those of us who
2 had done criminal defense work, we'd like so many times to
3 just to try to prevail upon them that it's a big risk that
4 you're taking but we can't force the person to enter a
5 guilty plea. That would be totally wrong and that would
6 greivable under the PCR statute right off the bat because
7 you'd have the issue I wouldn't have pled guilty but for
8 my attorney threatening me. So it's a catch 22 in that
9 situation.

10 I don't find that the attorneys did anything
11 inappropriate. I think the consider the evidence I would
12 agree with counsel in argument that the burden was not met
13 on either prong and I will dismiss the application.

14 Thank you, Mr. Armstrong.

15 Good luck to you, Mr. Martucci.

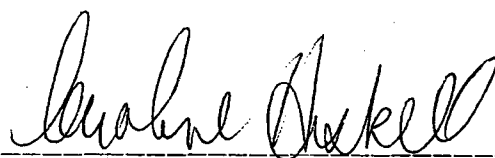
16 MR. ARMSTRONG: Thank you, Your Honor.

17 ---END OF TRANSCRIPT RECORD---

Martucci versus State of SC

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of Common Pleas Session, Greenville, South
8 Carolina on the 1st day of November, 2012.

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

11
12
13 

14 Caroline Hiskell
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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

Personally appeared before me, one INVESTIGATOR A.L. BAILEY
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

DIAPER, HAIR, BODY FLUIDS, BLOOD, FIBERS, CLOTHING, STRAPS, PHOTOGRAPHS OF BOTH INTERIOR AND
EXTERIOR OF THE RESIDENCE, LATENT PROCESSING ANY ITEMS USED TO CONFLICT BLUNT FORCE TRAUMA AND
ATV, MINI BIKES OR ANY MOTORIZED CHILDRENS TOYS THAT RELATE TO THE DEATH OF Minor [REDACTED]

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A SINGLE WIDE WHITE IN COLOR MOBILE HOME WITH A WOODEN FRONT PORCH LOCATED AT [REDACTED] JUG
FACTORY ROAD AND 4-TENTHS A MILE FROM LINE ROAD. THE SINGLE WIDE TRAILER HAS A 2001 BLUE & WHITE
GREENVILLE COUNTY DECAL WITH #8908. FACING FROM THE FRONT OF THE TRAILER THERE IS METAL FRAME
BUILDING WITH A TARP ON IT. A MAIL BOX IS LOCATED ACROSS THE STREET WITH [REDACTED] ON IT.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON JULY 17, 2002 DEPUTIES WITH THE GREENVILLE COUNTY SHERIFFS OFFICE RESPONDED TO ALLEN-BENNETT
 HOSPITAL TO MEET WITH ASSISTANT CORONER LINDA HOLBROOK IN REFERENCE TO A 2-YEAR OLD CHILDS DEATH.
 THE CHILD HAS MULTIPLE BRUISES ON HIS ENTIRE BODY. IT WAS FURTHER LEARNED FROM THE MOTHER BRANDY
 HOLDER WAS AT HOME LOCATED AT [REDACTED] JUG FACTORY ROAD WHERE MARK MARTUCCI RESIDES. ON JULY 17, 2002
 THE CHILD Minor [REDACTED] DO [REDACTED] WAS TRANSPORTED TO THE HOSPITAL BY MARK MARTUCCI AND JOHN
 BARKER ALL OF WHICH RESIDE AT THE RESIDENCE LOCATED AT [REDACTED]

Sworn to and Subscribed before me

this 17 day of July, 20 02
[Signature] (L.S.)
 Signature of Judge

Investigator A.L. Bailey
 Affiant

Address 4 MCGEE STREETGREENVILLE, SC 29601Phone 467-5384

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF GREENVILLE

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)

TO BE SEARCHED

A SINGLE WIDE WHITE IN COLOR MOBILE HOME WITH A WOODEN FRONT PORCH LOCATED AT [REDACTED] AND 4 TENTHS A MILE FROM LINE ROAD. THE SINGLE WIDE TRAILER HAS A 2001 BLUE & WHITE GREENVILLE COUNTY DECAL WITH #8908. FACING FROM THE FRONT OF THE TRAILER THERE IS A METAL FRAME BUILDING WITH A TARP ON IT. A MAIL BOX IS LOCATED ACROSS THE STREET WITH # [REDACTED] ON IT. AND TO INCLUDE ANY AND ALL OUT HOUSES ON THE PROPERTY OF [REDACTED].

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

DIAPER, HAIR, BODY FLUIDS, BLOOD, FIBERS, CLOTHING, STRAPS, PHOTOGRAPHS OF BOTH INTERIOR & EXTERIOR OF THE RESIDENCE, LATENT PROCESSING & ANY ITEMS USED TO INFLECT BLUNT FORCE TRAUMA. ANY ATVS, MINI BIKES OR ANY MOTORIZED CHILDRENS TOYS THAT RELATE TO THE DEATH OF Minor [REDACTED]

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

GREENVILLE

, S. C.

7-17-

pg 2002

[Signature]

(L. S.)

Signature of Judge

RETURN

I received the attached Search Warrant JULY 17, 19 2002, and have executed it as follows:

On JULY 17, 19 2002 at 1932 o'clock P. M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with AT RESIDENCE
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

1- WHITE IN COLOR T SHIRT FROM TOP OF WASHING MACHINE
1- BLUE IN COLOR T SHIRT FROM TOP OF WASHING MACHINE
1- SOILED DIAPER FROM GREEN TRASH CAN IN KITCHEN
2- SOILED DIAPER FROM BROWN WICKER TRASH CAN IN BATHROOM
1- BIRTH CERTIFICATE
1- SOILED DIAPER IN BLUE PLASTIC BAG FROM FRONT PORCH
1- WHITE IN COLOR PILLOWCASE FROM DRYER
1- WOOD STICK FROM HALL
1- CLOTHES HANGER FROM BACK OF TOILET
1- MULTI COLOR BEDSPREAD FROM DRYER
1- PILLOW FROM KITCHEN FLOOR
1- BOTTLE CONTAINING CLEAR LIQUID FROM KITCHEN COUNTER
1- VIVITAR "BIG VIEW" 35 mm CAMERA FROM COMPUTER DESK
1- KODAK CAMEO CAMERA FROM COMPUTER DESK
PHOTOGRAPHS OF SCENE

This inventory was made in the presence of SGT M. BROWN
AND MIKE ELLIS

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 18
day of July, 19 2002

[Signature] (L.S.)
Signature of Judge

[Signature] HILDEBRAND
(Signature of Officer Executing Warrant)

A NEVER GOT
COPY

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 02-110972Date July 19, 2002

DELA ANN FRUIT CAMP AND BRITTANEY NICOLE

I, GREEN

, do hereby give freely and voluntarily this statement to
INV. DOUG KELLY and _____ who have identified themselves to
me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am 36 & 16 years old and I reside at _____ S.C.

THIS STATEMENT IS BEING TAKEN WITH BOTH LISTED WITNESSES PRESENT IN THAT BOTH WERE PRESENT
DURING THE TIME THE INCIDENT OCCURRED THAT STATEMENT IS BEING TAKEN FOR.

I MET MARK MART MATUCCI ABOUT THREE YEARS AGO AT A PARTY BUT HAVE NOT BEEN TO HIS TRAILER UNTIL
RECENTLY. BRITTANEY AND I JUST WENT BY TRAILER ONE DAY ABOUT THREE OR FOUR WEEKS AGO. WE WENT
FOR NO REAL REASON, WE JUST STOPPED BY. MARK AND JAMIE ANDERS WERE THERE WITH THE BABY, Min
BRANDI, THE BABY'S MOTHER WAS NOT THERE. BRITTANEY AND MYSELF SAW THAT THE BABY HAD SOME
BRUISES UNDER HIS CHIN. IT LOOKED LIKE SOMEONE HAD GRABBED HIM BY THE HAND TO TRY AND MAKE HIM
SHUT UP. HE HAD BRUISES, AOUT FOUR OF THEM, JUST UNDER HIS CHIN. I ASKED MARK ABOUT WHAT HAD
HAPPENED TO THE BABY AND HE SAID THAT EVERYTIME THAT BRANDI LEFT WITH THE BABY AND CAME BACK
HE WAS ALWAYS BRUISED. WE TRIED TO GET MARK TO TURN HER IN ABOUT AND I GUESS HE DIDN'T. I STARTED
TO MYSELF BUT DIDN'T. I FIGURED THAT DSS WOULDN'T DO ANYTHING ABOUT IT SO I DIDN'T CALL THEM.
AFTER THAT TIME BRITTANEY AND I WENT BACK OVER TO MARK'S TRAILER ABOUT TWO WEEKS LATER. MARK
WAS THERE, DUSTIN AND JAMIE ANDERS, THEY ARE BROTHERS, AND DOUG VALEZ. WE WERE ON THE
COMPUTER BECAUSE JAMIE WAS LOOKING FOR SOMETHING FOR HIS CAR. BRANDI AND THE BABY WERENT
THERE AT FIRST BUT SOME TIME LATER SHE CAME IN AND WAS HOLDING THE BABY UNDER ONE ARM. THE BABY
WAS CRYING AND SCREAMING. BRANDI WENT STRAIGHT TO THE RIGHT SIDE BEDROOM OF THE TRAILER AND
WE DONT KNOW IF SHE THREW THE BABY ON THE BED OR WHAT BUT SHE CAME OUT OF THE BEDROOM REAL
QUICK AND CAME BY US. SHE SAID "DON'T FUCKING TOUCH HIM, HE IS BEING PUNISHMENT." SHE THEN WENT
INTO MARKS BEDROOM ON THE LEFT SIDE AND SLAMMED THE DOOR. IN JUST A LITTLE WHILE MARK WENT AND
GOT THE BABY FROM THE BEDROOM AND BROUGHT IT INTO THE LIVING ROOM AND SAT HIM IN A RECLINER. WE
DIDN'T SEE ANY BRUISES ON HIM THEN. THIS WAS AFTER THE 4TH OF JULY WHEN THIS HAPPENED. BRITTANEY
GO THE BABY AND WAS HOLDING HIM. BRANDI LOOKED OUT THE BEDROOM AND WANTED TO KNOW WHO HAD
GOTTEN THE BABY OUT. MARK TOLD HER HE HAD. WE ALL WENT OUTSIDE TO SHOOT POOL AND BRANDI CAME
OUT A LITTLE LATER WITH THE BABY. SHE JUMPED IN THE CAR WITH HIM AND LEFT. END OF STATEMENT*****

I have read the above statement of 1 pages and it is true and correct as best as I recall.

WITNESS:

Doug Kelly

Don Pruitt Brittaney Mc
I have received a copy of this statement.

Don Pruitt Brittaney Mc

Sworn before me this 19 day of JULY, 2002

Michael E. Archer 02-13-12
NOTARY PUBLIC FOR SOUTH CAROLINA



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Mark Anthony Martucci)
S.C.D.C. No. 314148,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-7981

ORDER OF DISMISSAL

2012 DEC 17 AM 11:41
FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL R. WINTERKING

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 24, 2010. The Respondent made its return on February 4, 2011. An evidentiary hearing into the matter was convened on November 1, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Joseph G. Armstrong, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Anne Pruitt, Mike Martucci, and the Applicant's trial counsel, Steven W. Sumner, Esquire and Thomas J. Quinn, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Respondent's return, the appellate records, and the Applicant's exhibits from the PCR hearing.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

RWJ/TJL

at the December 2005 term of the Greenville County Grand Jury for homicide by child abuse (2003-GS-23-1312). He was represented by Steven W. Sumner, Esquire and Thomas J. Quinn, Esquire.

After the State called the case to trial, it proceeded in absentia.¹ On February 9, 2006, the Applicant was found guilty and the Honorable C. Victor Pyle, Jr. sealed the sentence. The Applicant appeared before Judge Pyle on March 6, 2006 and received a sentence of life imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Eleanor Duffy Cleary, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on September 24, 2008. State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008). Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense filed a petition for writ of certiorari at the South Carolina Supreme Court, which was denied by order dated October 7, 2009.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to request autopsy report.
 - b. Failed to argue illegal search and seizure.
 - c. Failed to conduct proper pre-trial investigation.
2. The State never provided written notice of intent to seek life imprisonment without parole.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

¹ The Applicant was tried with his co-defendant, Brandi Holder.

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he and his attorneys reviewed his statement, as well as those from his co-defendant and John Parker. The Applicant stated he was told he would receive a 20-25 year sentence if he was found guilty but was never advised he could receive a life sentence. The Applicant stated he told one of his attorneys (Sumner) that he was not with the victim the

KMD/r/b

morning he died. The Applicant stated he and Sumner discussed obtaining his (and his co-defendant's) cell phone records. The Applicant stated Sumner had explained how the court system worked and noted he would defend the Applicant whether or not he appeared for trial. The Applicant admitted on cross-examination that he was aware of the trial date but that he did not appear for trial because he was scared. The Applicant stated that, while they had discussed that he would not be testifying at a trial, his trial attorneys never told him that they would not present a defense case at all. The Applicant stated he gave his attorneys names of several witnesses (including Arine Pruitt).

Anne Pruitt stated she was the Applicant's friend. Pruitt stated she believed the victim was home alone with John Parker the day he died. Pruitt admitted, however, that she did not see either the Applicant or Parker that day.

Mike Martucci, the Applicant's brother, stated he was present at some meetings between his brother and his attorneys. Martucci stated one of the Applicant's attorneys (Sumner) said "by law" the Applicant did not have to be present at his trial. Martucci stated he told the Applicant's attorneys about his observations of the co-defendant. Martucci stated he believed Parker was alone with the victim the day he died but admitted he was not there. Martucci stated he was not told the trial date.

The lead trial attorney in this case, Steve Sumner, testified he filed discovery motions after he was retained in this case. Sumner testified he reviewed the State's evidence (including the various statements from the Applicant and co-defendants) with both the Applicant and co-counsel and had numerous meetings about this case. Sumner testified they discussed the sentencing range of the charge and the elements of the offense. Sumner testified the Applicant was advised the maximum sentence was life imprisonment. Sumner testified that, while the

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Applicant would mention that witnesses could confirm he was not with the victim on the morning he died, the Applicant failed to produce these individuals. Sumner testified he did not subpoena these alleged witnesses for trial because he had never spoken with them. Sumner testified the Applicant knew about the trial date. Sumner testified they never discussed the Applicant's attendance at trial because he had always shown up to court.

The second attorney in this case, Thomas Quinn, testified he worked this case on an hourly basis. Quinn confirmed they had numerous meetings with the Applicant and reviewed the discovery materials and the elements of the charge. Quinn testified the case was largely one of circumstantial evidence. Quinn testified he was certain they discussed the possible sentencing range for the offense. Quinn testified that, based on their discussions, there was a question of whether the Applicant or Parker was with the victim the morning he died. Quinn testified they obtained cell phone records but could not remember for what purpose. Quinn testified he did not recall why they did not call Anne Pruitt as a witness at trial. Quinn testified the Applicant was well aware of the trial date.

This Court finds the Applicant's testimony is not credible, while also finding trial counsels' testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and were thoroughly competent in their representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not advise him that he could receive a life sentence. The Applicant stated he was told that he could receive a 20-25 year sentence if he was found guilty. Sumner testified the Applicant was advised the maximum sentence was life imprisonment. Quinn testified he was certain they advised the Applicant of the sentence range for the offense. This Court notes trial counsel are experienced

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criminal defense attorneys. This Court finds their testimony is more credible than the Applicant's on this issue. This Court finds the Applicant was advised he could receive a life sentence if convicted of the offense of homicide by child abuse. This Court further finds the Applicant has failed to demonstrate any prejudice suffered as a result of allegedly not being informed of the maximum sentence for the offense. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not investigate evidence and witnesses that would have shown he was not with the victim the morning he died. The Applicant, his brother, and Anne Pruitt all testified that Parker was with the victim on the morning of his death. Sumner testified, however, that the Applicant failed to produce names of witnesses who could testify to such at trial. This Court finds Sumner's testimony is more credible on this point. Regardless, this Court finds the testimony at the PCR hearing would likely not have changed the outcome of the Applicant's trial. The State presented overwhelming evidence of the Applicant's guilt. Whether or not the Applicant was with the victim on the morning of his death is not exculpatory. The medical evidence presented at the trial indicated the victim had bruises of various ages, as well as internal injuries, a fractured rib, and a tear near his penis. In addition, numerous witnesses testified to seeing the victim's injuries over a span of time. The homicide by child abuse statute is broadly drafted. To be found guilty of the offense, it is not necessary to for the State to prove the defendant administered the fatal blow. The Applicant has failed to prove either that trial counsel failed to investigate the events on the morning of the victim's death or that such investigation would have changed the outcome of the trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation

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would have had any possible effect on the result at trial); see also Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly advise him about the trial. The Applicant and his brother testified Sumner advised that he would defend the Applicant at the trial even if he did not appear. The Applicant, however, failed to present any evidence or testimony that trial counsel in some way advised or recommended the Applicant not appear at his trial. Instead, the Applicant testified he was aware of the trial date and chose not to appear because he was scared. This Court finds the Applicant was advised of the trial date and simply chose not to appear. This Court also finds it was not improper for trial counsel to advise the Applicant that his case could proceed even in his absence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsels' performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

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present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

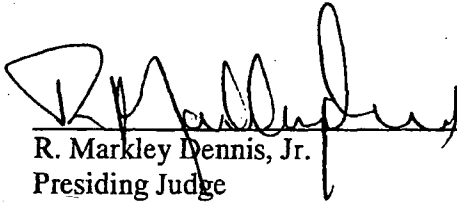
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsels' representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of December, 2012.


R. Markley Dennis, Jr.
Presiding Judge

Moncks Corner, South Carolina.

Rm 07/18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C. A. No. 2010-CP-23-7981
	)	
Mark Anthony Martucci, 314148	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

2012 DEC 27 PM 1:50
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSHER

Plaintiff, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby moves for the Court to alter or amend this judgment on one or more of the following particulars, to-wit:

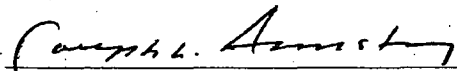
1. The Court makes a finding of fact that Plaintiff's trial counsel, Sumner, testified that he had discussed that the sentence for Plaintiff could be life. This Plaintiff respectfully submits that his recollection of the testimony at the PCR hearing was that Sumner could not recall whether he had discussed a life sentence with the Plaintiff.
2. Plaintiff respectfully submits that the testimony of the counsel, Sumner, was that he was produced names of witnesses that could testify at trial and that phone records obtained, but not submitted to the trial Court, would have proven that the Plaintiff was not present on the morning the victim received his fatal injury.
3. When considering the fact that the States only evidence at trial of Mr. Martucci's presence on the morning of the fatal injury, was the testimony of John Parker who testified that he woke up the morning of the victim's death and found the Plaintiff "yelling and carrying on" with the victim and that he saw the Plaintiff giving the victim CPR. (See Exhibit A attached hereto testimony of Parker from trial transcript.) The testimony of Mr. Parker was compelling on the issue that Mr. Martucci had control of the victim on the morning of his fatal injury.
4. Contrary to Mr. Parker's testimony, the testimony of Ann Pruitt, a witness disclosed to Martucci's trial attorney, testified at the PCR Hearing, her interaction with Parker on the morning of the fatal injury, indicated she felt Parker was along with the victim at the time of his fatal injury. Her testimony would

completely contradicted the testimony of Mr. Parker and undermined his credibility. Thomas Quinn, Esquire, testified that there was a question whether Applicant or Parker was with the victim the morning he died and that they did take the steps to obtain telephone records to prove that Plaintiff was not with the victim on the morning that he died. Despite the acknowledgement of this important fact and the acknowledgement that the attorneys for Applicant did possess statements from Ms. Pruitt and telephone records on this issue, no evidence was presented at trial to contradict Mr. Parker.

Based upon the foregoing, Applicant respectfully submits that counsel was deficient in failing to present this contradictory and easily admissible evidence regarding Mr. Parker's credibility and the events on the morning of the child's death.

Accordingly, Applicant respectfully requests the Court reconsider its ruling in this regard.

Respectfully submitted,



Joseph G. Armstrong, SC Bar #6814
601 E. McBee Avenue, Suite 104
Greenville, SC 29601
Telephone: 864-242-6200
Facsimile: 864-233-0290

Dated: 12-21-12

EXHIBIT A

1 Q Did you hear or notice anything unusual during the
2 night?

3 A Nothing during the night, no, ma'am.

4 Q Were you aware of any -- of Mi or anyone being sick
5 during the night?

6 A There was a time when he threw up. And Mr. Martucci
7 carried him to the bathroom and -- or because he threw up,
8 Mr. Martucci carried him to the bathroom. And he cleaned
9 him off and went back into the bedroom and laid back down
10 with him.

11 Q Do you know where Ms. Holder was at that time?

12 A At some point in time, I don't remember when exactly,
13 she went into the -- to the back bedroom to her and Mark's
14 bedroom.

15 Q After the -- after Tuesday night -- or during Tuesday
16 night, you played on the computer most of the night, you
17 said. When did you next see Mino

18 A That following morning when I woke up.

19 Q Describe what happened.

20 A I woke up to Mark yelling and carrying on just
21 babbling, He's throwing up everywhere, and he didn't know
22 what to do. And he had him in the bathroom. And I guess
23 he had thrown up again. And Mark had him in the bathtub
24 trying to clean him off.

25 Q Did you see -- did you go in there and see?

1 A Yes, ma'am.

2 Q What did [Mi] look like?

3 A He had a lot of bruises on his face. He didn't -- he
4 wasn't himself at all. I asked Mark what was wrong. He
5 said that he got sick through the night. And that was
6 about all he said. And I asked him if he had -- I asked
7 him if he had taken out his dog. And he said, No.

8 So I took out the dog. And I went outside and I
9 smoked a cigarette. When I come back in, Mark had [Mi] on
10 the floor trying to give him CPR it looked like. And when
11 I looked at him, he wasn't himself at all.

12 Q What do you mean by that?

13 A He was -- his eyes were almost closed. He was real
14 pale.

15 Q Was he moving? Was he conscious?

16 A He didn't appear to be conscious at all. He -- Mark
17 was pinching his nose and trying to blow in his mouth.
18 And he would push on his stomach and -- I guess trying to
19 give him CPR or something. I'm not exactly sure. But he
20 was -- every time Mark Martucci would push on his stomach,
21 he would -- like bloody saliva would come out of his
22 mouth. And I -- as soon as I seen him laying on the
23 floor, I knew something wasn't -- he just wasn't right.

24 Q What, if anything, did you say to Mark?

25 A I almost kind of lost it myself. I was just asking

1 him, what is wrong? What is wrong? What's the matter
2 with him? And Mark wasn't saying anything. He just
3 kept -- continued doing what he was doing. And I was
4 telling him that we needed to take him to the hospital or
5 call an ambulance. And he wasn't doing nothing. He said,
6 No.

7 Q Did he call Brandi at some point?

8 A I believe he did call Brandi at one point and --
9 while he was trying to do that, yes, ma'am.

10 Q Could you overhear the conversation --

11 A No.

12 Q -- as far as what they were saying to each other?

13 A I heard that he was saying that he wasn't right that
14 we needed -- that she needed to come home.

15 Q Was **Mi** able to speak to his mother on the phone at
16 that time?

17 A No, ma'am.

18 Q Okay. Would it be fair to say that he was,
19 basically, unconscious?

20 A Yes, ma'am.

21 Q And were you worried about that?

22 A Yes, ma'am, very much.

23 Q And so what did you do?

24 A I continued trying to tell him to call an ambulance,
25 not to worry about her at the moment that it was -- he

1 needed to get help. And he wasn't -- he didn't want to
2 call the ambulance.

3 Q So what did you do?

4 A I kept trying to get the phone. He had both of them
5 with him. And, finally, I think -- I can't remember if he
6 dialed the number or I dialed the number to Brandi. I
7 think he dialed the number to Brandi. And then he told
8 her to -- that we're taking Mi to the hospital. And then
9 he handed the phone to me. And I told her that we're
10 taking him to Allen Bennett that he's just not right,
11 something bad is wrong with him.

12 Q Okay. So y'all took him to Allen Bennett?

13 A Yes, ma'am.

14 Q Who drove?

15 A I did.

16 Q What did you drive?

17 A I drove Mr. Martucci's van.

18 Q And where did he ride?

19 A He was in the passenger seat.

20 Q Where was Mino

21 A In his arms.

22 Q Had he put clothes on Mi since he had had him in the
23 bathtub earlier?

24 A No, ma'am. He had -- I believe he had a diaper on
25 and that was it.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Mark Anthony Martucci)
S.C.D.C. No. 314148,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-7981

**RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL**

2013 JAN - 3 A 10:24

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

TO: JOSEPH G. ARMSTRONG, ESQ., ATTORNEY FOR THE APPLICANT

Respondent, by and through undersigned counsel, making Return to Applicant's Motion to Alter or Amend, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief application filed September 24, 2010.
2. An evidentiary hearing was convened on November 1, 2012 at the Greenville County Courthouse.
3. Applicant was present at the hearing and represented by Joseph G. Armstrong, Esquire. Applicant testified in his own behalf. Also testifying were Anne Pruitt, Mike Martucci, and the Applicant's trial counsel, Steven W. Sumner, Esquire and Thomas J. Quinn, Esquire.
4. After a full review of the evidence presented at the evidentiary hearing, the post-conviction relief court issued an order filed December 17, 2012 denying the application for post-conviction relief.
5. Applicant – through counsel – filed a Motion to Alter or Amend Judgment dated December 21, 2012 (which was received by Respondent on December 27, 2012). Applicant

moves this Court to reconsider its decision to deny post-conviction relief.

6. Respondent submits Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCR must be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

Respectfully submitted,

ALAN WILSON
Attorney General

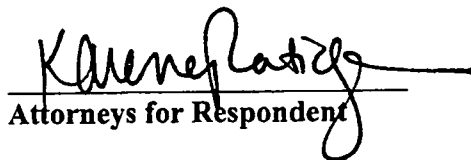
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 28, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010-CP-23-7981

MARK ANTHONY MARTUCCI, 314148)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2013 JAN - 3 A 10:24

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 to Motion to Alter or Amend the Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Joseph G. Armstrong, Esquire
601 East McBee Avenue; Suite 104
Greenville SC 29601

DATED this 28th day of December, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-23-7981

Mark Anthony Martucci, SCDS #314148

Applicant/Plaintiff

ORDER

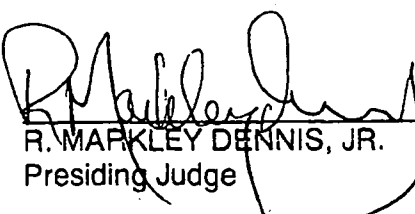
State of South Carolina,

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/MLR
2013 JAN - 8 P 3:40

This matter comes before me upon Motion for Reconsideration filed by Joseph G. Armstrong, Esquire, Attorney for Applicant/Petitioner, Mark Anthony Martucci, on December 21, 2012. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is denied;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

January 4, 2013

WITNESSES

DOUG KELLY

GCSO

07/18/02

ARREST WARRANT NUMBER

H 149223

DOCKET NO. 2003-GS-23-001312

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

vs.

MARK ANTHONY MARTUCCI

Guilty
GUILTY

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of homicide by child

abuse under circumstances
manifesting an extreme indifference

to human life

Foreperson of Petit Jury

Elaine B. Cross

Date:

2-07-06

AMENDED

Indictment for

2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-3-85

503

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on FEBRUARY 25, 2003 the

Grand Jurors of Greenville County present upon their oath:

That MARK ANTHONY MARTUCCI did in Greenville County, on or about the 17th day of July, 2002, during the commission of child abuse, or neglect, accompanied by circumstances manifesting an extreme indifference to human life, cause the death of MIN
OR [REDACTED], a child under the age of eleven.

This is in violation of §16-3-85 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Angela S. Seay
SOLICITOR

ARREST WARRANT

H-149223 CASE #02-110972

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLETHE STATE
against

MARK ANTHONY MARTUCCI

Address:

GREER, S.C. 29651

Phone:

SSN: 29651

Sex: M Race: W Height: 6'1 Weight: 172

DL State: DL #:

DOB:

Agency ORI#:

Prosecuting Agency:

GREENVILLE COUNTY

Prosecuting Officer:

INV. DOUG KELLY *195

Offense:

HOMICIDE BY CHILD ABUSE

Code/Ordinance Sec.:

16-3-85

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

on

defendant

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MAGISTRATE ETTA REID

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

AFFIDAVIT

Personally appeared before me the affiant INV. DOUG KELLY

being duly sworn deposes and says that defendant MARK ANTHONY MARTUCCI

did within this county and state on OR ABOUT JULY 17, 2002

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of GREENVILLE)

in the following particulars:

DESCRIPTION OF OFFENSE: HOMICIDE BY CHILD ABUSE

16-3-85

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: ON JULY 17, 2002, BOBBY PRESSLEY HOLDER, A CHILD OF THE AGE OF TWO YEARS AND SIX MONTHS, DID DIE AT THE ALLEN BENNETT HOSPITAL IN GREER, S.C. THE AFFIANT HAS SWORN STATEMENTS FROM TWO CO-DEFENDANTS WHICH STATES THAT THE VICTIM WAS WILFULLY AND MALICIOUSLY ABUSED BY THE DEFENDANT WHICH DID CAUSE GREAT BODILY HARM AND EVENTUAL DEATH OF THE VICTIM. THIS OFFENSE DID OCCUR ON OR ABOUT JULY 17, 2002 WHILE THE DEFENDANT AND TWO CO-DEFENDANTS WERE RESIDING AT [REDACTED] ROAD WHICH IS IN GREENVILLE COUNTY.

Sworn to and subscribed to before me on

Signature of Affiant

Signature of Issuing Judge

(L.S.)

Affiant's Address

467-5103

GREENVILLE, S.C.

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GREENVILLE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on OR ABOUT JULY 17, 2002 defendant MARK ANTHONY MARTUCCI

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of GREENVILLE

) as set forth below:

DESCRIPTION OF OFFENSE: HOMICIDE BY CHILD ABUSE

16-3-85

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code

Judge's Address

467-5302

GREENVILLE, S.C.

Signature of Magistrate

Issuing Court:

X Magistrate

Municipal

Circuit

ORIGINAL