

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Newberry County
Honorable , Circuit Court Judge

RECEIVED

Oct 10 2025
S.C. SUPREME COURT

THEIA DARION MCARDLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000352

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED APRIL 4-8, 2016 1

APPLICATION FOR POST-CONVICTION RELIEF 1173

RETURN AND MOTION TO DISMISS 1180

AMENDED APPLICATION FOR POST-CONVICTION RELIEF 1186

EVIDENTIARY HEARING TRANSCRIPT DATED AUGUST 2, 2022 1190

ORDER OF DISMISSAL 1240

INDICTMENT 1263

SENTENCE SHEET 1264

THEIA MCARDLE: DIRECT EXAMINATION

1001

1 A Yes. Those are considered out calls.

2 Q How long have you -- prior to December 30th -- when do
3 you think you moved into the mobile home?

4 A I want to say it was at the beginning of November.

5 Q So you'd been in the home about a month or two months?

6 A Yes.

7 Q Is it fair to say you had -- other than just two
8 mattresses and various scant furniture it wasn't very
9 furnished?

10 A Yes. There was no place that delivered furniture and
11 you can't put a couch or a mattress or anything on top of a
12 Chevy Malibu.

13 Q Well, you had another car, didn't you, when you first
14 over, didn't you?

15 A Yes, but that one was immensely smaller. Yes.

16 Q Did you have another car?

17 A Yes, I did.

18 Q What was that?

19 A It was a '93 Nissan Sentra.

20 Q What happened to the Sentra?

21 A At a point Richard and I had argued and I told him he
22 was not taking off in my car, and he unplugged the
23 distributor cap which connects to the spark plug, I believe
24 is what it's signal or electricity into the engine itself.
25 And when he did that and proceeded to start the car, I guess

1 he forgot he unplugged it or something, the pistons smashed
2 in the engine which disabled it.

3 Q That was Richard who did that, not you?

4 A Yes.

5 Q Have you ever seen Richard beat the child prior -- had
6 you ever seen Richard beat the child, **Minor**

7 A I had not seen him beat him, per se, but I had seen him
8 be very harsh in words with him.

9 Q And you had an incident in April of 2013 when you
10 slapped him across the face, didn't you?

11 A Yes, I did.

12 Q And DSS intervened --

13 A Yes.

14 Q -- in North Carolina?

15 A Yes.

16 Q Was Richard with you at that time?

17 A Yes, he was.

18 Q And for some period of time the child was removed from
19 your custody?

20 A Yes.

21 Q And when did **Minor** come back to your custody?

22 A May of 2014.

23 Q And he'd been in your custody ever since?

24 A Yes.

25 Q Again, I'm not sure you answered my question. Had you

THEIA MCARDLE: DIRECT EXAMINATION

1003

1 seen Richard strike or physically harm the child?

2 A No.

3 Q If you had seen that what would you have done?

4 A I probably would have struck him.

5 Q Tell me about the day December 29th, 2014.

6 A December 29th --

7 Q You still have a memory of that -- the night Minor
8 died? A pretty clear memory?

9 A Unfortunately, yes. I don't think I will ever forget
10 that.

11 Q You've had a lot of time to think about it?

12 A Not just that, but I lost the only good thing I was
13 able to do in my life.

14 Q How did the day December 29th -- do you remember what
15 day of the week that was?

16 A Monday, I think.

17 Q Tell me what --

18 A We had started off the morning -- I had woke up
19 approximately 9:00-ish and I had -- I had made a call -- a
20 couple calls to a couple different Internet providers trying
21 to sustain Internet service for the trailer, because one of
22 the main things we did, because it's in rural -- very rural
23 area was watch movies, which I downloaded illegally off of a
24 website called Utorrent. So my intent was that day to try
25 to establish some sort of Internet to be installed into the

1 trailer. I was the one who got up and made breakfast for

2 **Minor** Not Richard. Richard was, I think --

3 Q Let me stop you. You and Richard had your own bedroom?

4 A Yes.

5 Q Was it a posted bed or was it a mattress on the floor?

6 A It was just a mattress on the floor. We didn't even
7 have a box spring.

8 Q What else is in the master bedroom?

9 A A coffee table which supports a pretty large flat
10 screen TV, a laptop computer and various clutter.

11 Q What's in the livingroom?

12 A **Minor's** air mattress and a lamp, and a vacuum.

13 Q What's in the far room, what we've heard as the cats'
14 room?

15 A There's -- a lot of his toys were stored in the closet
16 itself just to be kind of out of the way so that, you know,
17 like -- I mean, he could always take them out and play with
18 them. It wasn't like to keep them away from him. It was
19 just to keep them kind of like from being strung all over
20 the place.

21 Q The toys were in the closet?

22 A Yes.

23 Q What else was stored in that room?

24 A Just the litter box, because it emits a smell, clearly,
25 and that was to keep it out of the main part of the house.

THEIA MCARDLE: DIRECT EXAMINATION

1005

1 Q Did the cats sleep in that room?

2 A The cats slept wherever they wanted to, unless we were
3 going out of town.

4 Q If you were leaving out of town what did you do?

5 A We shut them in there because of two different reasons.
6 Number one, they were indoor cats. Number two, they kind of
7 like -- there were two instances which we came back and the
8 cats had tore up not only -- it had knocked off a big vase
9 full of colorful beads that I had as a decoration and they
10 were strung all over the place. And there was another time
11 we came back and my son's diapers were ripped all to shreds.

12 Q So when you left you kept the cats in that room?

13 A Yes.

14 Q Was there any other furniture in that room?

15 A Not to my knowledge.

16 Q How was the mobile home heated?

17 A There was one central air, slash, heat unit, and that
18 was a window unit and that was in the kitchen.

19 Q Did that heat the entire mobile home?

20 A Yes. Not well, but yes.

21 Q Why was **Minor** sleeping in the air mattress in the
22 livingroom?

23 A I couldn't hear him, number one, from the -- way on the
24 other side of the trailer, and that was disturbing to me
25 because I want to know, if he wakes up before me, if he's

1 getting into something, what he's getting into, because the
2 trailer is not baby-proofed. And when it's that time of
3 year it's very cold. And even our bedroom, which was
4 slightly close to the window unit, with the door open was
5 not heated all the way. So it was easier for him to be
6 closer to the heat and on -- just on the other side of the
7 wall with the door open so that I could hear him.

8 Q So it was to put him in the room where the heat was?

9 A Yes.

10 Q And it was to put him close to your bedroom?

11 A Yes.

12 Q It wasn't -- how many cats did you have living in the
13 mobile home?

14 A At that time we had -- well, including -- minus the one
15 that I had brought later that night we had four. Two which
16 were kittens that you could fit in the palm of your hand.
17 They were not entirely potty trained.

18 Q Was the reason to give the cats their own room or was
19 -- that **Minor** slept in the livingroom, or was --

20 A No.

21 Q I think you indicated you woke up and you made **Minor**
22 breakfast --

23 A Yes.

24 Q -- on the 29th?

25 A Yes.

THEIA MCARDLE: DIRECT EXAMINATION

1007

1 Q What happens next?

2 A I mean, at one point -- at one point I had gone to
3 Dollar General to obtain a Green Dot card, which --

4 Q Can you just quickly tell us what a Green Dot card is?

5 A A Green Dot card is a prepaid Visa card which can be
6 used for online shopping, online bill pay, or just as a Visa
7 debit card. The reason --

8 Q So you -- where did you go to get the Green Dot card?

9 A I believe it was Family Dollar in Laurens.

10 Q At some point there was a receipt in your car?

11 A Right.

12 Q For what time did you go to --

13 A I can't give you an exact time. I know it was that
14 morning. I'm sorry.

15 Q And what store did you go to?

16 A Family Dollar, I believe.

17 Q Where's Family Dollar? How far away from the home was
18 that?

19 A I think it was about 13 miles. Thirteen, 14, something
20 like that.

21 Q In what town?

22 A Laurens.

23 Q Are you closer to Laurens than you are Spartanburg?

24 A Immensely.

25 Q Who goes with you to the Family Dollar?

1 A Minor and Richard both.

2 Q Then what do you all do after that?

3 A From there we went back to the house. I was on the
4 phone with --

5 Q Let me ask you this. Did Richard have a phone? A cell
6 phone?

7 A No, not at that point.

8 Q Did you let him use your phone?

9 A No.

10 Q What happens after Family Dollar?

11 A We went back to the house. I had been on the phone
12 with, I think, Direct TV and -- because they said it would
13 be a \$21 charge, I think, via credit card to install -- have
14 services installed -- I think the day was the following
15 Wednesday. So that was what the Green Dot card was to
16 secure.

17 Q So you were trying to get Internet put in the house?

18 A Yes.

19 Q I assume you needed that for your business and maybe
20 for personal reasons, too?

21 A Among other things, yes. I mean, my phone had
22 Internet. So, I mean, it wasn't just sole purpose.

23 Q Did you do anything after that time up until about
24 lunchtime?

25 A I mean, mainly we were just watching movies. It was a

1 very boring day.

2 Q And the only TV set in the house was the bedroom?

3 A Yes.

4 Q Where do you guys eat meals?

5 A Typically in the bedroom. We didn't have a table. We
6 didn't have chairs.

7 Q And, in fact, in one of the photographs of your mobile
8 home it appears that you're using like school trays to eat
9 on? Was that --

10 A It depends on like if I was in the mood to actually
11 wash dishes, or if we had something that needed to be cut
12 with a knife. Sometimes we would use Styrofoam trays
13 because it was more efficient just for time purposes and it
14 was less to clean up. But if we had something that you
15 actually had to cut up, like chicken or steak or something,
16 we had actual plates. That was more just for convenience
17 purposes.

18 Q Do you remember eating lunch that day?

19 A Vaguely. I'm pretty sure it was just sandwiches. We
20 had a lot of cold cuts. That was generally what -- it was
21 just an easy fix.

22 Q Did Richard cook the meals?

23 A Richard can burn water. I cooked.

24 Q So the answer is no?

25 A Yes. No.

1 Q Did Richard clean the house as part of his living
2 there? Did Richard clean the house as part of his living
3 there?

4 A No.

5 Q What chores in the home did Richard do?

6 A The only thing that Richard really did was babysit.
7 God's honest truth.

8 Q Did Richard drink? By drink I mean, alcoholic drinks.

9 A No.

10 Q What would Richard do during the day while you were
11 with him?

12 A Typically if -- if I didn't have a call, he would watch
13 movies with us, take God knows how long frickin baths. Just
14 kind of dawdle around the house, you know. I mean, he
15 didn't really have a life, per se, I mean, outside of --

16 Q Were you sick that day?

17 A No.

18 Q Were you vomiting?

19 A No.

20 Q Do you remember Richard being sick that day?

21 A Richard is bulimic. He was sick every day.

22 Q What do you mean by that?

23 A Richard has -- I'm not sure why he didn't tell you
24 this. But he has an eating disorder known as bulimia where
25 he gorges --

THEIA MCARDLE: DIRECT EXAMINATION

1011

1 Q I know what bulimia is. Just answer what are the
2 symptoms of that, Theia?

3 A He gorges himself on food and makes himself vomit.

4 Q Why?

5 A Could be a mental thing. I'm not sure exactly why.

6 Q How long had he been doing that?

7 A Ever since I met him.

8 Q Was that to keep in shape or was that just for health
9 reasons?

10 A It could be. In the Army I know there are certain
11 standards that you have to have weight-wise. And I guess
12 the way he eats, you can't really eat like that and meet
13 those standards.

14 Q Well, I mean, which toilet would he go throw up -- I
15 assume he's throwing up in the toilet.

16 A Both boys, unless **Minor** was in the room with us
17 watching, you know, TV would use the bathroom down the hall
18 simply because men don't like to put the toilet seat back
19 down. Sorry guys. You don't.

20 Q So you'd use the one in the bedroom the most? You used
21 the bathroom?

22 A Yes.

23 Q What about to take baths that we've heard about and the
24 shower?

25 A To take baths they used -- both of them, again,

1 typically **Minor** bathed with Richard and they used the one
2 down the hall, because the bathtub in the master bedroom is
3 -- it's not a garden tub, but it's like over two feet deep.
4 So if the tub is filled up even halfway it's almost over
5 **Minor's** head, and he can't get in and out of that tub by
6 himself.

7 Q Well, did **Minor** take showers or -- I mean, did
8 Richard take showers with the child or did they bathe
9 together?

10 A Typically it was baths. I don't think I've seen
11 Richard take a shower except for like maybe twice when we
12 were running late.

13 Q How long would Richard sit in the bathtub?

14 A It would be anywhere from 45 minutes to an hour and
15 some change.

16 Q Well, I mean, I'm sure -- is **Minor** sitting in there
17 with him the whole time?

18 A I honestly don't know. To be honest, that's probably
19 bad parenting, but I didn't pay attention.

20 Q Was that every day that the child would bath --

21 A Virtually, yes.

22 Q So part of Richard's home responsibilities were he'd
23 bathe **Minor** Did **Minor** bathe in the morning or at
24 night?

25 A I can't -- I don't know. Just whenever -- whenever

THEIA MCARDLE: DIRECT EXAMINATION

1013

1 Richard decided to get in there with him.

2 Q Well, I mean, how often are you on calls? I mean, it's
3 not a 9:00 to 5:00 job, is it?

4 A No. But generally whenever I do have to respond to the
5 calls it's whenever they set the time. So it could be are
6 you available now, or are you available in 15 minutes, or
7 are you in -- and sometimes I would literally wake up, brush
8 my teeth and take a call.

9 Q So you would take -- I don't know. But the calls start
10 in the morning?

11 A Whenever I wake up and start answering them, yes.

12 Q I would think traditionally calls would be in the
13 evening, wouldn't they?

14 A Calls from Back Page run at any time of day because you
15 also have truckers which are at any given point in time
16 traveling down I-26, or 385 which is a few miles down the
17 road.

18 Q Did you have a client, or a patron named Papi Chulo?

19 A That was my nickname for him, yes. Papi Chulo which
20 means beautiful papi in Spanish.

21 Q How long had you been seeing him?

22 A Ever since I first moved to Spartanburg. He --

23 Q A couple of months?

24 A Yes. He was a very, very good -- he was very good to
25 me.

1 Q In fact, had you all made plans to move in to his
2 place?

3 A We had definitely -- we were on the cusp of becoming
4 together. He talked to me the day before the 29th and said
5 why don't you let me take you away from this life. And I
6 said, well, I have a son, and he said I don't care, you
7 know. And I was like, well, what are we going to do about a
8 place. And he said I'll have to put it in your name, but as
9 long as it's \$1,000 a month, you know, I can pay the rent,
10 and you have a car and we get it legal, and I said okay. I
11 said, well, let me get my stuff together and make a way.

12 Q Well, I mean, it sounds to me like you're not really
13 romantically involved with Richard.

14 A No. The only reason at that point that I was still
15 with Richard was because I had to have someone to watch my
16 son while I made the calls to pay the bills.

17 Q Well, was Richard still attracted to you, or was he
18 pretty much self -- moved on, too?

19 A I'm not -- he claimed he cared. But if somebody bought
20 me anything I wanted, and paid for everything I asked for,
21 no matter how stupid it was, I'd probably say I cared about
22 them, too.

23 Q So you're saying basically he was just staying with you
24 because you were paying for everything?

25 A Yes. That was my belief.

THEIA MCARDLE: DIRECT EXAMINATION

1015

1 Q What happened after lunch on December 29th?

2 A After lunch Richard and I were fighting. I had gone
3 the previous night and bought new clothes for myself and
4 **Minor** and shoes, and other things I really hadn't had the
5 time or, you know, the expenses to do because -- Richard
6 said you already have clothes. And he was very controlling
7 about the finances.

8 Q What did you do after lunch, Theia?

9 A After lunch I was very much so arguing with Richard,
10 the greater part of the rest of the day up until **Minor** and
11 I made dinner. And the argument was -- and I had told him
12 several times I hate you. There is no love left for you.
13 I'm tired of your cheating. I'm tired of your lies. I'm
14 tired of your abuse. I'm tired of your verbal abuse, you
15 know. And I pretty much made it clear that there was no
16 love left for me. I didn't tell him that I was leaving,
17 because every time I brought up the issue of leaving some
18 thing, including myself, would get harmed in the process.
19 So --

20 Q So he would damage property sometimes?

21 A Damage property, damage me. He destroyed the car.
22 Destroyed, you know, various items of clothing, electronics.
23 There were holes all in my old apartment in Asheville.

24 Q Did you leave the house after lunch?

25 A If I did, I don't remember. I'm sorry.

1 Q Well, I mean, did you -- between lunch and dinner do
2 you remember whether you left?

3 A I'm sorry. I really -- I don't remember.

4 Q Do you remember making dinner the night of --

5 A Yes, because **Minor** and I cooked together.

6 Q What do you mean? He's only three, or not quite three.
7 So what do you mean you cooked together?

8 A He had a little stepping stool, which if you put -- if
9 you put it close enough to the counter he could be at eye
10 level, literally. But he could reach up over the counter
11 and sprinkle on the seasoning for the steak. And I
12 tenderized it, which was the process of taking the fork and
13 stabbing it repeatedly. And **Minor** put the seasoning on
14 while I, you know, tenderized the steak. And, you know, I
15 let him, you know, stick it a couple of times with the fork
16 because he was like I want to do it, I want to do it, and,
17 you know, I let him. And the corn was on the back burner
18 boiling, so he had absolutely nothing to do with that.
19 Besides, I wouldn't let him near the stove anyway. And as
20 far as just the bread, I was like, here, open this. And he
21 was standing on the ground at that point. And he knew how
22 to open like bags of chips. And the bread itself was a
23 Pepperidge Farm loaf, which is just in a plastic container
24 that you can just open very easily. So that was -- I mean
25 it --

THEIA MCARDLE: DIRECT EXAMINATION

1017

1 Q Let me back up, Theia. It appears that you made a call
2 at 1:54 from a -- that hit a cell tower that was no longer
3 at your home. Do you know where you went around 2:00? And,
4 in fact, you made another call around 2:25, or someone using
5 your phone? Did anybody else use your phone that day other
6 than you?

7 A Richard did not have my password to my phone.

8 Q Was that for a reason? I don't need the reason. Just
9 was that --

10 A Yes, it was.

11 Q It appears you made you a call at 1:54 and at 2:25 from
12 locations that were outside of the home. Do you remember
13 where you went slightly after lunch?

14 A To be honest with you, I don't know. If I could see
15 the contact numbers I could possibly tell you, but I don't
16 -- I don't know. I'm sorry. I really don't.

17 Q But it appears you had gotten home by at least 3:53
18 because there's a call at your home. And so, what time do
19 you all normally eat dinner?

20 A It can be between 6:00 and 8:00 generally is when
21 there's, you know, a slow period where I definitely don't
22 have calls, or if I do it's like in preparation for the next
23 hour or so, you know. So I had that time to actually make
24 dinner, or whatever it is we're going to do for dinner, even
25 if it's going out. So between 6:00 and 8:00.

- 1 Q Between 6:00 and 8:00?
- 2 A Uh-huh.
- 3 Q Would you all have eaten as early as 5:00?
- 4 A No.
- 5 Q Did you see **Minor** throwing up?
- 6 A No.
- 7 Q Do you remember going the day beforehand to a guy named
- 8 David Moscerelli's house?
- 9 A David and I were not in --
- 10 Q It's just a yes or no question --
- 11 A No.
- 12 Q -- Theia.
- 13 A No.
- 14 Q You deny that you went to David's house the night
- 15 before?
- 16 A Yes.
- 17 Q Now you can tell me why.
- 18 A David and I have not spoken at all since the day that
- 19 the -- the Sentra was disabled, which was at his house. Do
- 20 you want the reason why?
- 21 Q How long was that prior to December --
- 22 A Huh?
- 23 Q How long had that been prior to December 29th?
- 24 A It would have been way -- two weeks at least, more.
- 25 Like it would have been before the 12th, that's for sure.

THEIA MCARDLE: DIRECT EXAMINATION

1019

1 Q So you would not have gone to David's house the day
2 beforehand?

3 A No.

4 Q But you did go to Asheville on the 27th?

5 A Yes.

6 Q Did you go to court?

7 A On a Saturday? No.

8 THE COURT: Hold on.

9 (Whereupon, a brief pause was held.)

10 Q So I asked you what time you normally ate dinner and
11 you said between 6:00 and 8:00.

12 A Yes.

13 Q That's every day?

14 A Virtually, yes.

15 Q Do you remember making dinner -- well, what's the
16 latest you all typically eat dinner?

17 A If a call could get in the way, or if travel could get
18 in the way, 9:30 at the latest.

19 Q But ordinarily 6:00 to 8:00?

20 A Yes.

21 Q Who made dinner?

22 A Me, or sometimes restaurants, but --

23 Q Or sometimes you'd go out to restaurants --

24 A Yes.

25 Q -- sometimes you'd make it. Were these cooked meals or

1 were these also cold cuts?

2 A No. No, no, no. I typically cooked either breakfast
3 and dinner, or breakfast, lunch and dinner. It just depends
4 on the day.

5 Q Do you remember what time you had dinner on the evening
6 of December 29th?

7 A I want to say I started cooking at either 6:30 or 7:00.
8 With all total of every -- the preparation, the
9 tenderization, thawing out the steak, I think we got done at
10 like 7:00 --

11 Q By done you mean cooking dinner or eating?

12 A Yes. Cooking dinner and started to eat at about 7:30,
13 7:40.

14 Q Who ate dinner that night?

15 A All three of us, **Minor** Richard and myself.

16 Q In the bedroom --

17 A Yes.

18 Q -- on the bed?

19 A Yes.

20 Q Did you all typically eat while you all watched TV
21 together?

22 A Yes.

23 Q Were there any marks apparent on **Minor** at that time?

24 A None.

25 Q Was he acting abnormal?

THEIA MCARDLE: DIRECT EXAMINATION

1021

1 A Not at all.

2 Q At some point you had to leave, didn't you?

3 A I barely even finished my own food, and **Minor** was, I
4 think, still eating like the last couple of bites of his
5 food.

6 Q So **Minor** was eating dinner?

7 A Yeah. He had finished almost everything on his plate
8 by the time that I left.

9 Q What did you all have for dinner?

10 A Steak, corn, garlic bread.

11 Q Where did you go -- did you clean up the meal or --

12 A No. I left that to Richard because I had to go.

13 Q Were they still eating or had they finished their meal,
14 too?

15 A **Minor** was still eating. Richard and I were
16 bickering. I don't -- I don't know if he had finished his
17 food or not. He -- you know, the last thing that I had said
18 to him before I walked out of the trailer was I hate you.
19 Don't touch me, because he tried to grab me. And he was
20 like, but -- and I'm like no, don't touch me. I have a call
21 to go to. And I looked at my son and I was like I love you
22 baby, mommy's got to go get this money. And those were the
23 last words that I spoke to my son, as he sat on the bed with
24 his plate still in front of him.

25 Q Where did you go?

1 A I went -- well, I had to stop and get gas at the Valero
2 station which is exit 44, 41.

3 Q How far is that from your home?

4 A Two, three miles.

5 Q Do you remember what time you left? Could it have been
6 by 8:11 p.m.?

7 A It could have been.

8 Q Well, we know that --

9 A It was around 8:00. I do know that much.

10 Q We know there was a phone call made outside of the home
11 at 8:11.

12 A Right.

13 Q So is it possible that you had left by 8:11?

14 A It's very possible.

15 Q How long were you at the gas station?

16 A I was there -- I think I might have picked up a pack of
17 cigarettes, too. But when I came out there was a little cat
18 and it came up to me and started rubbing around my leg and I
19 was like, awe, you're so cute. And then it like -- it
20 rolled around on the ground and dropped down in like a
21 puddle of oil, and I was like, okay. So I asked the guy, I
22 was like who's cat is this outside. The clerk. And he was
23 like it's a stray. If you want to take it, take it. And
24 I'm like, well, do you have anything in can put it in. So
25 he gave me a cardboard box to put the cat in. And I ended

THEIA MCARDLE: DIRECT EXAMINATION

1023

1 up taking it back to the house.

2 Q So you went straight back to the house?

3 A Uh-huh. After getting gas, yes.

4 Q And there appears to be a phone call from your house at
5 about 8:35 p.m.

6 A Sounds about right.

7 Q Do you know who you were talking to?

8 A Could have been Papi. I don't know.

9 Q What was the purpose of going out and getting gas?

10 Were you just getting it for the week or had you already had
11 a call to go out?

12 A No. But I wanted to make sure I had enough to get to
13 Spartanburg and back.

14 Q Had you had a preset arrangement to go to Spartanburg
15 that day?

16 A I had spoke to him like right before cooking dinner.

17 Q Who is him?

18 A Papi Chulo.

19 Q Did you know this man's real name?

20 A I can't remember it. I'm sorry.

21 Q Where did you -- well, I mean, how did you -- you came
22 back from the gas station with the cat in the box.

23 A Well, when I came --

24 Q Describe --

25 A When I came back Richard swung open the back door. He

1 was like, what are you doing. And I was like, here, take
2 this inside. He was like, what the hell is this. I was
3 like, it's a cat. And he was like, why did you bring back
4 another cat. And I was like, because it was rolling in a
5 puddle of oil and I felt bad for it, and we have enough food
6 and liter, you know, so. And he was like, okay. And I was
7 like I've got to go, you know, Papi's waiting. And I went
8 back to the car and drove off.

9 Q And where did you meet Papi Chulo?

10 A I had to drive to the Royal Inn off of Boiling Springs
11 Road which is, I think, exit 19 off of I-26.

12 Q And how far is that from your home?

13 A It's about almost 30 some odd minutes away.

14 Q So it's about a 30 minute drive from your mobile home?

15 A Give or take, depending on traffic.

16 Q Well, we know there's a call from your phone at 9:52
17 p.m. that's away from your home. Was that while you were
18 with -- at 10:00 in the evening would you have been with
19 Papi Chulo?

20 A Yes.

21 Q There's also a call at 11:00 p.m. that's also, as I
22 think you heard the SLED agent, in the Spartanburg area.
23 Was that the same?

24 A I don't know if I was in the vicinity.

25 Q How long did you stay with Papi Chulo that night?

THEIA MCARDLE: DIRECT EXAMINATION

1025

1 A I'd say for a good little minute. It was maybe an hour
2 or two, possibly two and a half. I'm not --

3 Q And this was a sexual encounter with Papi, or was --

4 A It was not.

5 Q -- it just to talk, or what was it?

6 A It was not. Like I said, he was very good to me. When
7 he paid for my time he would give me body massages and
8 everything, but it didn't always result in sexual
9 intercourse. He actually cared about me, which is very rare
10 for any prostitute to experience. I don't even experience
11 that in my home with my boyfriend, so...

12 Q How long did you stay with Papi Chulo, as best you
13 remember.

14 A It could have been an hour to two and a half. I don't
15 remember. It seemed like a while, but --

16 Q So at 10:00 -- how long would it take you to drive home
17 again? About 30 minutes?

18 A Give or take depending on traffic.

19 Q At 11:19 it appears you're home because that's when
20 your home cell tower pings again.

21 A Uh-huh.

22 Q So were you home by 11:19?

23 A Sounds about right, yes.

24 Q I assume that at 11:19 at night it's pretty dark by
25 then?

1 A Very.

2 Q You all typically leave the lights on in the home in
3 any particular rooms?

4 A No. We sometimes leave an outside light on. And when
5 I came in that night the TV in the bedroom -- master bedroom
6 was on, but that was the only light.

7 Q There's no TV in the living room where the child slept,
8 was there?

9 A There's nothing in the livingroom besides a lamp that
10 wasn't on.

11 Q Does the lamp stay on when that child sleeps?

12 A No. No.

13 Q After it gets dark how is the master bedroom usually
14 lit?

15 A If we're still awake there's the TV and the laptop on.

16 Q The TV and the laptop are generally the lights?

17 A Yes.

18 Q **Minor** sleeps -- doesn't sleep with the lights on in
19 the house?

20 A No.

21 Q Do you remember coming home from the Spartanburg motel?

22 A I do.

23 Q Tell me -- had you received any other calls from
24 people?

25 A I had -- I had received a call. I had texted going

THEIA MCARDLE: DIRECT EXAMINATION

1027

1 down the highway, but when I stopped to -- I stopped to get
2 something to drink and I stopped -- I got a Peace Tea and a
3 bag of lifesavers -- gummy lifesavers for Richard Bowman.
4 And I had received a call, which the guy was like, you know,
5 I live in Newberry. And I'm like, well, how are the police
6 because my car's not legal.

7 Q What time did he call you?

8 A I couldn't tell you.

9 Q We know he'd been texting. From the cell phone records
10 he had texted you as early 2:00 that day, hadn't he?

11 A Right. Honestly if I text somebody and they break --
12 they take a break in texting between like 20 and 30 minutes
13 and they haven't set an appointment I usually erase the text
14 messages because they a lot of times won't followup with an
15 appointment.

16 Q But it still shows up on your -- the phone company
17 does. It might not show up on your phone.

18 A Yeah, that's what I'm saying.

19 Q So you don't remember him texting you as early as 2:00?

20 A He could have is what I'm saying. Because I erased the
21 text messages doesn't mean I didn't text him. It means that
22 I probably had erased those messages because he had more
23 than 20 to 30 minute break in texting me.

24 Q Do you remember when the man from Newberry first called
25 you?

1 A The first time that I remember when I was actually
2 considering going up there -- up here would have been on the
3 way back from Spartanburg. Because I was like, well, I'm
4 free. I need the money for the move tomorrow.

5 Q Is it possible he had texted you as early as 12:53?

6 A Could be.

7 Q But when did you make arrangements or decide that you
8 were going to -- well, I guess back up. When did he contact
9 you by telephone that you remember?

10 A The first time that I spoke on the telephone with him
11 that I recall was when I was at the gas station. And I told
12 him, I was like, well I have GPS on my phone but I need to
13 make sure that I'm not going to get stopped because, again,
14 I have no license. Don't recall if I had insurance. And
15 the tags were stolen. They belonged to a Tahoe. A very
16 much different car than a Malibu.

17 Q So he called you while you were at the gas station?

18 That's at the Valero gas station?

19 A Yes.

20 Q And you all spoke?

21 A Yes.

22 Q I mean, what kind of conversation do you have when
23 somebody calls and asks for --

24 A He said are you available to come to Newberry and I
25 said, boy, where is that, you know, because I'd never of it.

THEIA MCARDLE: DIRECT EXAMINATION

1029

1 It sounded like Mayberry. And, you know, I asked what's
2 your age, what's your age, you know, what -- what language
3 do you speak. Clearly English. But, you know, just get a
4 little bit of feel for who it is I'm going to meet. And the
5 red flag when he popped up when he contacted me was she said
6 I'm 26. Anybody who is under 30, by my standards, is
7 dangerous, because they're young and reckless and they're
8 male.

9 Q So what does that mean? I mean, that he's younger?

10 A That means that any time I feel that I might be in a
11 predicament where I could either be robbed, beat, raped,
12 something of the sort I will usually take Richard Bowman
13 with me. I mean, he has no problems beating the crap out of
14 me. He can beat the crap out of somebody else, too.

15 Q I didn't ask you that. You would take Richard with
16 you?

17 A For protection, yes.

18 Q That wasn't something he just did once or twice, was
19 it?

20 A No. That was quite often if I felt I was in danger.

21 Q I'm assuming he doesn't go and introduce himself?

22 A Typically he'll stay --

23 Q Or does he?

24 A No. Typically he'll stay with himself in the backseat
25 so that the client can't see him, but he's within earshot

1 should I meet him.

2 Q Well, are there ever times when he kind of comes and
3 meets the guy first just to let the other guy know --

4 A No. God no.

5 Q Why not? That would just kind of intimidate the other
6 man, or what?

7 A Yes, extremely.

8 Q So Richard would provide protection?

9 A Yes.

10 Q You didn't pay him for this though, did you?

11 A I paid all his bills.

12 Q Not directly though?

13 A No.

14 Q But that was one of the things he did for you?

15 A Uh-huh.

16 Q What would you do about the child if you were going on
17 a call like this after dark and Richard was with you?

18 A We would always take **Minor** with us when both of us
19 had to leave. There was never a point in which I would
20 leave my child by himself. He's three.

21 Q And it appears the man from Newberry called you about
22 8:04 p.m.?

23 A Could have been. I'm not --

24 Q If the phone records show that there was a call in from
25 his number about 8:04 would you agree it's possible that's

THEIA MCARDLE: DIRECT EXAMINATION

1031

1 when he called you?

2 A Yes.

3 Q How many times did you speak to him before you made an
4 agreement to come down to Newberry?

5 A That I remember, once.

6 Q So you -- it appears to be that there were several,
7 several text messages but only one real phone call that you
8 recall.

9 A But he could have -- that could have been when he
10 called and said will you be available later tonight, because
11 a lot of people will call and they'll say are you available
12 between such and such time and such and such time, and
13 they'll lay a base foundation for an appointment.

14 Q And it appears that you called him about 11:30 --

15 A Yes.

16 Q -- that night?

17 A Yes. That was then to let him know that I am, in fact,
18 underway. However, can you trail me, you know, once I reach
19 the Newberry exit so that, you know, I don't get pulled and
20 my tag doesn't get run by the police, to which he responded
21 I don't have a car.

22 Q So he wouldn't meet you and show you the way in?

23 A No.

24 Q And then what was the point -- you also called him at
25 12:22?

1 A At that point my GPS had started to go haywire and it
2 was -- it wouldn't say anything at all. And I couldn't see
3 the numbers on the houses because I'm supposed to wear
4 corrective lenses. And so, I called him and I was like, you
5 know, where is your house. And he was like are you on
6 Bedenbaugh, and I was like, I think so. And he's like, is
7 that you. You just went around a sharp curve. I'm like
8 yes. And he's like you just passed my house. I'm like,
9 crap. So I turned around and he was like right here. And
10 he was like -- I stopped when he said here, and I saw the
11 camper and I parked beside it.

12 Q So you apparently made a call from your house about
13 11:41 p.m.?

14 A Uh-huh.

15 Q No, I'm sorry. That was -- you made a call from your
16 house at about 11:41 p.m. to a number 864-327-6269. But
17 then -- but your last call to this guy was about 11:30 in
18 the evening, and that was to say that you're coming?

19 A I think so, yeah.

20 Q And asked him if he could meet you?

21 A Yes.

22 Q And then you called him at 12:22 when you were in
23 Newberry to --

24 A Yes.

25 Q -- find the address? What happened when you

THEIA MCARDLE: DIRECT EXAMINATION

1033

1 approached?

2 A When I approached --

3 Q But we know you would have been home from 11:19 p.m. to
4 11:41 p.m.?

5 A Right.

6 Q Because there are two phone calls made from your house
7 --

8 A Right.

9 Q -- between 11:19 and 11:41. What were you doing in
10 your home?

11 A When I came in I walked by **Minor** **Minor's** bed, and
12 straight into the master bedroom. And I flung the Peace Tea
13 and the lifesavers on top of him and I was like, get up. I
14 need you to come with me.

15 Q Pasty?

16 A Peace Tea. It's Arizona brand.

17 Q Tea, okay. I'm sorry.

18 A And I slung them -- he was sleeping on his back, and I
19 slung them on top of him and I was like get up. I need you
20 to come with me. And -- because he was used to me just
21 being like, yo, get up. Come on. I was like I need you to
22 come with me. And he was like, why. Where are we going.
23 And I was like Newberry. And he was like, why. And I was
24 like, because the guy's young and I've never been there and
25 I don't know the lay of the land. Plus, you don't have a

1 phone. You don't have a car. It's like 11:00 at night.

2 And, you know, should anything happen. So --

3 Q You had no way to call him because Richard didn't have
4 a phone?

5 A Exactly. So he said --

6 Q And he was a young clientele?

7 A Yes. And I was like, go ahead get **Minor** ready. Put
8 him in the carseat. I've got to go wash up, because I had
9 just come from another call.

10 Q Well, did you -- when you came home you didn't -- the
11 first thing wasn't how's **Minor** doing, or how was your
12 evening, like that?

13 A I mean, my son as asleep, so I assumed -- I assumed he
14 was asleep. I assumed he was fine.

15 Q I mean, it's not typically what you would come home and
16 say is how's everybody doing?

17 A No.

18 Q Did you all do any -- like I come home from work and
19 say, you know, did you all have any kind of -- what did you
20 all kids do. That's not how you greeted Richard?

21 A No.

22 Q Then what else did you do? You just basically said,
23 Richard, you're coming with me to Newberry?

24 A Right. I washed up. He -- he went to go and, I guess,
25 get **Minor** up and put him in the carseat. I washed up and

THEIA MCARDLE: DIRECT EXAMINATION

1035

1 freshened up my makeup and proceeded out to the car.

2 Q I'm assuming that at times you can come to a client and
3 if you look grungy or bad that the client might not want to
4 use your services?

5 A The client will typically say something to the effect
6 of you don't look like your pictures. Thanks, but no
7 thanks.

8 Q So part of your job is you have to come across --

9 A To keep up appearances.

10 Q -- as attractive as you can?

11 A Yes.

12 Q So did you -- did you wear the same outfit that you had
13 worn with Papi Chulo? And that was that pink outfit that we
14 saw?

15 A Yes.

16 Q What were you doing -- I understand you wake Richard up
17 and say, come on. We're going to Newberry.

18 A Right.

19 Q But when you and Richard travel who drives?

20 A I do.

21 Q Does Richard ever volunteer to drive?

22 A He has before.

23 Q But typically when you get to a scene anyway he has to
24 sit in the backseat to avoid --

25 A Yes.

1 Q Does he ever sit in the front seat with kind of a dark
2 coat?

3 A No. Because my -- my side and back window are tinted
4 on the Malibu but the front is not, to my knowledge.

5 Q Did he -- what did you do when you came home? It would
6 have to be after 11:00 at night, because we know you're not
7 at home at 10:58.

8 A Uh-huh.

9 Q But we know you're home by 11:19.

10 A Uh-huh.

11 Q So between 11:19 and when you left at 11:41 what were
12 you doing?

13 A As I said, I was cleaning up, freshening up my makeup
14 in the master bath.

15 Q What do you mean master bath? You actually took a bath
16 or you just --

17 A No. At the -- in the master bathroom.

18 Q But just kind of --

19 A Washing up what I do, would be the best term to put it
20 without saying --

21 Q Putting on makeup and stuff like that.

22 A -- what I want to say.

23 Q I understand. Just kind of cleaning up and putting on
24 makeup?

25 A Yes.

THEIA MCARDLE: DIRECT EXAMINATION

1037

1 Q I think we understand. And I guess you were cleaning
2 up your private parts, too, to put it --

3 A Essentially, yeah. Don't really want to go there,
4 but...

5 Q How long does it take you to drive down from Enoree to
6 Newberry?

7 A I think the GPS said 38 minutes. But again, I had
8 trouble finding his house. So probably would have been
9 slightly more than that.

10 Q Who put -- did you wake up the baby --

11 A No.

12 Q -- or **Minor**

13 A No.

14 Q How did **Minor** get in the car?

15 A Richard. I told him when I came in, I was like, get
16 up. Get **Minor** ready, you know. And he said, fine. You
17 know, that was his typical response.

18 Q And then you went to the master bathroom?

19 A Yes.

20 Q Was there a carseat in the home that you just -- I've
21 seen some of these seats that they've got little carry on
22 and you can take it and walk around with it and kind of flip
23 it in a seat.

24 A The carseat was already in the car.

25 Q So you had the -- so that's more for like a baby, isn't

1 it, when you carry them around?

2 A Yeah, that's -- I think that's for like newborn through
3 nine months maybe.

4 Q So you didn't -- ordinarily **Minor** would get in the
5 car, or walk in, I would assume, if this was daytime?

6 A Typically, yes.

7 Q And then what kind of carseat - well, we've all seen
8 the carseats.

9 A It was just a -- I would consider it a regular sitting
10 up restraint seat. I mean, it had the buckle right here and
11 the buckle in the crotch area.

12 Q There's a buckle in the crotch area and there's a
13 buckle across the chest?

14 A Yes.

15 Q It's not like a booster, is it?

16 A No. No it is not. He wasn't big enough for one of
17 those, I don't think.

18 Q Was your carseat buckled in?

19 A To my knowledge, the last time that he was riding in
20 it, it was. Now, that's not to say that it could have been
21 -- it couldn't have been unbuckled. You know, it could have
22 or couldn't have. I didn't honestly check. That would have
23 been Richard's job as he was the one putting him in there.

24 Q Well, I mean, when you go on a call do you unbuckle the
25 carseat so the client can't see it, or --

THEIA MCARDLE: DIRECT EXAMINATION

1039

1 A No. It doesn't matter if they see the carseat.

2 Q Did you go and make sure **Minor** was properly clothed,
3 or what did you do?

4 A No. I just sat in the car.

5 Q And how did you find the location?

6 A I had typed -- I copy and pasted the address from the
7 text message into my GPS, which you can do on BLU Studio,
8 and pulled it up by a -- I think it was --

9 Q Did you use your cell phone?

10 A Yes. It was the Google Maps application.

11 Q So you were driving while you were holding your cell
12 phone?

13 A No. I had the cell phone -- I think there was a center
14 console, if I'm not mistaken.

15 Q Well, what's the -- what are you all doing during the
16 car ride to Newberry?

17 A He was just still on the same subject as earlier, you
18 know. I care about you but, you know, you got to understand
19 I have friends and I have needs. And it was just --

20 Q So you all were having kind of a relationship talk down
21 this -- was it argumentative or unpleasant, or was it just
22 --

23 A I mean, I really just kept telling him I don't want to
24 hear this, you know. And at one point I tried to turn on
25 music to tune him out and he turned it back down. And I was

1 just like, okay. So, I mean --

2 Q What was the baby doing during the car trip, Theia?

3 A I had heard him snoring, you know, or at least making
4 sleep sounds at that point, you know.

5 Q You heard noises coming from the --

6 A Yes.

7 Q Did you ever see any bruising on the baby?

8 A I didn't look.

9 Q Did you examine him when he was in the bed when he came
10 home?

11 A No. I walked right past him.

12 Q Was he clothed?

13 A To my knowledge, yes.

14 Q Did you turn on the lamp in the livingroom when you
15 came home?

16 A No. I did nothing. I walked literally through the
17 kitchen, through the livingroom, into the master bedroom
18 throwing the crap on top of Richard.

19 Q Was the light even on in the master bedroom? Was the
20 TV still running?

21 A The TV was on, but not the light.

22 Q Well, what happens when you get to the John's house?

23 A Once I finally figured out where it was I got out of
24 the car. I went to meet the John, who was standing just at
25 the very back of the camper itself. And I walked into the

THEIA MCARDLE: DIRECT EXAMINATION

1041

1 house with him. We -- I asked him for some water. And we
2 stood talking for a good amount of time, 15, 20 minutes.

3 Q Is that typical?

4 A Yes.

5 Q You don't just meet somebody and rush into the bedroom
6 and kind of --

7 A No. Part of what my services entail is not just being
8 a prostitute, which is why I say there's a difference
9 between an escort and a prostitute. But typically --

10 Q Nobody appreciates it. You talk to people before to
11 break the ice?

12 A Yes.

13 Q And I don't want to be rude. But, I mean, it's still
14 ultimately prostitution, but part of your services are to be
15 friendly and entertain the man?

16 A Yes.

17 Q We understand that, Theia. But you don't just go into
18 a back room with a man -- well, I guess some people might
19 get straight to business, wouldn't they?

20 A Some people. Not many.

21 Q Not usually?

22 A No.

23 Q But usually there's a little bit of getting to know
24 each other beforehand?

25 A There's conversation. What do you like. What do you

1 not like. What do you do, you know. You know, just general
2 small talk, you know.

3 Q How long do you think you were with the man?

4 A I can't give you an exact timeframe.

5 Q There's no clock that gets set or anything like that?

6 A No. No.

7 Q Could it have been -- how long did he pay you to be
8 with him?

9 A The session for the sex itself was 30 minutes. It does
10 not include talking. This does not include cleanup. This
11 is not --

12 Q You charge for talking or anything like that?

13 A No, I do not.

14 Q So that -- he's not on the clock while you're just
15 getting to know him or having a drink?

16 A No.

17 Q But he paid for 30 minutes with him?

18 A Yes.

19 Q Did you all spend 30 minutes together?

20 A In actual sex or just with small talk?

21 Q In actual sex.

22 A I would have said it would have been close to it.

23 Q Maybe not 30 minutes but --

24 A Roughly 25. I mean, it wasn't off by far.

25 Q And how long do you think you spent talking with him?

THEIA MCARDLE: DIRECT EXAMINATION

1043

1 A Before or after?

2 Q Before.

3 A Like I said, roughly 15, 20 minutes.

4 Q How long after?

5 A That's hard to estimate, because I did end up cleaning
6 up in his bathroom, as did he.

7 Q So after sex you go to his bathroom and kind of --

8 A Yes.

9 Q -- clean up?

10 A Yes. I also stayed in the kitchen, and I had noticed
11 he had some Straw-Ber-Ritas and I was like, can I buy some
12 of those off of you for when I get home, because I don't
13 drink and drive. And he was like, yeah, sure. And I was --
14 I told him, you know, these are my favorites, et cetera, and
15 we discussed, you know, what types of Ritas that they had,
16 and a few other things before I left.

17 Q Were you aware prior to arriving at the man's house
18 that **Minor** was hurt?

19 A No.

20 Q Were you aware at the time you arrived at the man's
21 house that **Minor** was hurt?

22 A No.

23 Q Did you ever hear Richard honking the horn out in the
24 driveway?

25 A No.

1 Q When is the first that you learned that **Minor** wasn't
2 right?

3 A The first time that I had learned that something was
4 not right with my son was when I got into the car and
5 Richard said, and I quote, "Does your son have sleep apnea?"
6 I said, no. Why would you ask that. Not that I'm aware of.

7 Q Where is Richard when -- where is Richard?

8 A In the backseat. And at that point I'm backing out of
9 the John's house and he -- you know, he's telling me, he's
10 like, because he stopped breathing in his sleep. And I do
11 that sometimes and I have sleep apnea. And I'm like, he's
12 never done that before. And, you know, he's like, well,
13 he's not breathing right now. And I'm like, okay, well try
14 to shake him, tickle him, get a response from him,
15 something. And meanwhile I'm trying to pull up on my phone
16 the address to what I presumed was the nearest hospital,
17 which would have been Laurens County, to my knowledge.

18 Q Why didn't you call 911?

19 A Honestly, I really didn't think about it. I didn't
20 think -- before I saw the vomit come out of his nose, which
21 would have been mid-drive, I didn't --

22 Q Well, you started looking for directions to a hospital
23 -- you started looking for the directions to a hospital
24 before you saw the vomit or --

25 A Yes. Yes, I did.

THEIA MCARDLE: DIRECT EXAMINATION

1045

1 Q Just when he said he'd been --

2 A He had stopped breathing, yes.

3 Q Was it raining this night, Theia, or was it just
4 overcast?

5 A I don't remember. Sorry.

6 Q Was there trouble getting a signal on your phone?

7 A Extremely.

8 Q Now, you heard the SLED agent say you didn't have like
9 a familiar model of phone. What kind of phone did you have?

10 A It was a BLU Studio 5.5. The electronic equivalent of
11 a Galaxy Note 4.

12 Q So it's a Smart Phone?

13 A Yes.

14 Q Do you pay a plan every month or do you have to kind of
15 prepay?

16 A Yes. It was T-Mobile prepared service.

17 Q It was prepared?

18 A Uh-huh.

19 Q So it's a prepaid qualify phone? It's not one of the
20 nicer end --

21 A I mean, it was a very nice phone. The service just
22 sucks because it's Newberry.

23 Q You're looking for the hospital on your phone.

24 A Yes.

25 Q Richard tells you the baby's not breathing?

1 A At that point I do spot a hospital this away sign in
2 the middle of the road and I begin to follow the signs.

3 Richard then --

4 Q Had you ever been to Newberry before?

5 A No.

6 Q What time did you arrive to Newberry? This was after
7 midnight?

8 A Yes.

9 Q Do you know what time you left the man's house?

10 A I couldn't tell you.

11 Q Is there a clock -- digital clock or some --

12 A There's a clock in the car, but I didn't really see the
13 necessity to --

14 Q You don't remember seeing --

15 A -- note the time. At that point Richard, in his
16 responses with **Minor** when I keep telling him to try to
17 get a response from him, he's trying to get a response from
18 him. And he asked me, he's like, should I try CPR. And I
19 said, do you know how to do CPR. And he said no. And I
20 said no, because you can break his sternum or his ribs if
21 you don't know what you're doing.

22 Q And you're driving?

23 A Yes.

24 Q And the baby's directly behind you in the --

25 A Yes.

THEIA MCARDLE: DIRECT EXAMINATION

1047

1 Q Was that still where the baby was sitting at the time

2 --

3 A Yes.

4 Q Was he still in his carseat?

5 A Yes. Because I told Richard not to take him out of his

6 carseat. You can --

7 Q Was he wearing a shirt or --

8 A I think he was wearing a shirt at that time.

9 Q So you talked about CPR?

10 A Uh-huh.

11 Q And then you see the hospital sign and you start

12 following the signs?

13 A I had -- yes. I had already been following the signs

14 after I had first seen it, maybe --

15 Q But your plan was to go to the Laurens Hospital first?

16 A Yes.

17 Q And that's the hospital that you were familiar with?

18 A Yes.

19 Q Did you -- did you notice that Newberry had a hospital

20 sign when you came in on the interstate?

21 A I honestly wasn't looking for the sign. I was

22 following the GPS. Why would I look for a hospital if I

23 don't think that I need a hospital.

24 Q How long did it take you to -- how fast did you drive

25 to the hospital?

1 A I broke a few laws. I actually ended up flipping a
2 left turn and running a red light, and thank God nobody hit
3 me when I reached -- I can't tell you exactly where it's at,
4 because again, I don't know about anything in Newberry. But
5 there was a point in which I had flipped a left turn running
6 a red light.

7 Q Were you handling this pretty calmly or how were you
8 handling this?

9 A I was trying. I didn't really start freaking, freaking
10 until Richard was like what is this brown shite, but he
11 didn't say shite, coming out of his nose. And being that I
12 was driving, I did just like this and glanced, all of one
13 second or two, and saw that there was ooze coming out of his
14 nose. And at that point it registered in my brain --

15 Q Minor's nose?

16 A Yes. At that point it registered in my brain something
17 is seriously wrong because his airway is blocked. At that
18 point I think I broke a couple of speeding laws.

19 THE COURT: Mr. Verner, let me interrupt. About how
20 much longer do you think you're going to be on direct?
21 Really it's going to be necessary that we take a break
22 before cross.

23 MR. VERNER: Judge, I thought I'd be through by now.
24 Just a few more minutes. We're at the hospital.

25

THEIA MCARDLE: DIRECT EXAMINATION

1049

1 Q You get to the hospital. Is there a decision made on
2 whether Richard should take him out, or how do you all make
3 the decision who --

4 A I had already told Richard go ahead -- as we were
5 pulling in. I was like, go ahead and take him in. I will
6 park the car. Because to my knowledge every hospital has a
7 sheriff on duty. Sheriff in North Carolina run license
8 plates for out of state cars. Hence why I parked away from
9 -- with stolen tag, no insurance, no license, away from the
10 entrance, backed in.

11 Q Did you know **Minor** was dying or dead at the time you
12 parked backwards in the lot?

13 A I did not. I knew that something was obstructing his
14 airway, but I didn't know that it was a life or death
15 situation. I knew it was a serious situation. Hence why we
16 were at the hospital.

17 Q When did you first learn it was a life-threatening?

18 A As soon as I walked in.

19 Q Did you cause any of those bruises on **Minor**

20 A No, I did not.

21 Q Did you see Richard cause any of those bruises on
22 **Minor's** body?

23 A Honest to God, I did not. I did not even know he had
24 struck him back at the house.

25 Q If you had seen Richard cause those bruises, what would

1 you have done?

2 A Hit him and probably got the tar beat out of me again.

3 Q Well, did you see Richard inflict those bruises and not
4 get involved because you didn't want to get beat up?

5 A No.

6 Q Did you see Richard in this condition and then just
7 decide to go out on a prostitution run knowing that **Minor**
8 -- I'm sorry. Did you see **Minor** hurt like this and decide
9 I'm just going to go prostitute while this baby was in this
10 condition?

11 A No, I did not.

12 Q Would you have gone on this call had you seen **Minor**
13 in this condition?

14 A I would have gone nowhere but the hospital had I seen
15 **Minor** in this condition. I wouldn't have gone anyway.
16 Actually then I would have called 911 had I seen **Minor** in
17 this condition.

18 Q If you were at home you would have called 911?

19 A Yes. Had I realized anything -- anything like what I
20 have seen in the last few days was wrong with him, I would
21 have called 911.

22 Q Did you see the child get hurt accidentally that might
23 have caused injuries like this?

24 A No. No. There is no accident that could cause
25 anything like this.

THEIA MCARDLE: CROSS-EXAMINATION

1051

1 Q You would agree that somebody beat **Minor** to death?

2 A This is a homicide. There is no doubt in my mind that
3 this is a homicide.

4 Q Did you participate in any way in the beating of that
5 child?

6 A No, I did not.

7 MR. VERNER: I'm sure the Prosecutor is going to have
8 questions for you.

9 THE COURT: Ma'am, you can step down. Don't discuss
10 your testimony with anyone. We're going to go ahead and
11 take a lunch break. Sorry about lying to you about having
12 this case to you by lunch. I was more optimistic perhaps
13 that I should have been. Don't discuss the case. If you
14 would, be back in an hour at 2:15 and we'll resume with Ms.
15 McArdle's testimony. Have a pleasant lunch. We'll see you
16 in an hour. Thanks.

17 (Whereupon, the jury exited the courtroom at 1:15 p.m.)

18 THE COURT: The jury is out. We'll be at ease for an
19 hour. See you all at 2:15.

20 (Whereupon, a lunch recess was held from 1:15 p.m. to
21 2:15 p.m.)

22 THE COURT: We'll go back on the record. We were in
23 the middle of the testimony of Ms. McArdle. Is there
24 something you need to bring up?

25 MR. STUMBO: Just briefly, Judge. We put a copy of

1 this on Charles' -- Mr. Verner's desk as well. Mr. Scott
2 did a little bit of legal research. We have a written memo
3 on the lesser included. And regarding the application of
4 unlawful conduct there's a lesser conduct of child abuse.
5 It's actually a written memorandum of law that relates back
6 to the motion -- or not the motion made earlier but --

7 THE COURT: Let me review it actually -- this at lunch.
8 I have given it more consideration I had a chance to talk
9 with Judge Griffith. After our conversation, I'm sort of
10 leaning away from charging unlawful conduct. But I'll look
11 at the memorandum for some more consideration while Ms.
12 McArdle is testifying.

13 MR. STUMBO: Thank you, Judge.

14 THE COURT: And we'll see where we are after that.
15 Ma'am, if you'll come on back up, please, and have a seat.
16 And let's have the jury out, please.

17 (Whereupon, the jury entered the courtroom at 2:25
18 p.m.)

19 THE COURT: The jury is back and seated, ladies and
20 gentlemen. We're still in Ms. McArdle's testimony. Ma'am,
21 I'll remind you you're still under oath. Solicitor, your
22 cross, sir.

23 MR. STUMBO: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. STUMBO:

THEIA MCARDLE: CROSS-EXAMINATION

1053

1 Q Now, Theia, you all talked several times about
2 Richard's phone being broken during this time period.

3 A Yes.

4 Q It's broken because you broke it, right?

5 A That is correct.

6 Q You broke it because you were furious at him and you
7 lost your temper, right?

8 A I was irritated. I didn't lose my temper.

9 Q You were just irritated and you broke his phone as a
10 result, is that what you're saying?

11 A I threw it in the toilet.

12 Q You broke it because you were mad?

13 A Yes.

14 Q Now, you indicated that you had already been
15 considering going on the cusp of having a relationship with
16 this Poppy Chula up in Spartanburg, right?

17 A Yes.

18 Q You were ready to go move in with him?

19 A Yes.

20 Q And you can't even remember his name today?

21 A He was not legal.

22 Q So, ma'am, you didn't even know his actual name and you
23 were ready to go move in with him and start a new life with
24 your son, **Minor**

25 A Yes.

1 Q So you hated Richard at the time, right? That's your
2 -- that's what you're telling this jury here today. You
3 said I hate you, I don't want anything to do with you?

4 A At that point in time, yes, I could -- I could compare
5 what I felt toward him as hate.

6 Q But since you -- since then -- since you've been
7 charged with this together you love him again, right?

8 A No.

9 Q Well, you wrote him a letter saying -- called him my
10 beloved, right?

11 A Staying in good graces with your co-defendant is
12 usually a good idea, especially when they're a notorious
13 liar.

14 Q So you just called him my beloved and wrote him a five
15 page letter to stay in his good graces --

16 A Yes.

17 Q -- is that what you're saying? That is your
18 handwriting, correct?

19 A Yes.

20 Q But in actuality, even though you said you loved him,
21 my beloved, you really hated him?

22 A Yes.

23 Q So you were lying to him?

24 A Absolutely.

25 Q You told him at the time you were tired of his cheating

THEIA MCARDLE: CROSS-EXAMINATION

1055

1 and manipulation, right? You said you screamed that at him
2 that day on the 29th?

3 A I don't think I said manipulation but I did say
4 cheating, yes.

5 Q Tired of his cheating. And you're about to split with
6 him to end up with Papi Chulo, right?

7 A Yes.

8 Q So you're cheating, too?

9 A Essentially, yes.

10 Q So hold on a second. Straighten this out of me. You
11 are mad at him for cheating on you --

12 A Yes.

13 Q -- but you're ready to leave him anyway?

14 A Yes.

15 Q Well, why did it matter that he was cheating on you?

16 A I cheated for money.

17 Q Not just money. You were going to live with Papi
18 Chulo, right, and take **Minor** with you?

19 A Yes.

20 Q That wasn't just for money. You were going to go live
21 with him permanently.

22 A It had occurred yet.

23 Q It would be fair to say your and Richard's -- your
24 relationship with Richard Bowman was extremely toxic,
25 correct?

1 A I believe that's a fair statement.

2 Q You all had had incidents where you had mutual combat
3 with each other, right?

4 A Incident.

5 Q What's that?

6 A Incident, singular. Yes.

7 Q So one time. One in Spartanburg when you all were in
8 the hotel, right?

9 A No, sir. In Asheville. The one in Spartanburg was
10 completely fictitious.

11 Q So it's fictitious that the police came out and Richard
12 had had a cut on his hand?

13 A He had a cut on his hand but it wasn't me. I was
14 rendered unconscious at the time.

15 Q Where was **Minor** while all this was going on?

16 A When I woke up, when I came back to consciousness after
17 he had knocked me out, my son was cowering in the corner of
18 the hotel room.

19 Q He was in the hotel room?

20 A Yes.

21 Q So it wasn't true that he was outside --

22 A No.

23 Q -- and being observed by the hotel staff --

24 A No.

25 Q -- running around the parking lot?

THEIA MCARDLE: CROSS-EXAMINATION

1057

1 A At the point in time which I woke back up, no. He was
2 in the hotel room.

3 Q You testified earlier that Richard was harsh towards
4 **Minor** You saw him be harsh towards him, right?

5 A Yes.

6 Q Well, that's not what you told the officers, Detective
7 Moore and Agent Williams? You didn't tell them that, did
8 you?

9 A I don't recall, honestly.

10 Q I believe you told them, when they asked you how did
11 Bowman treat **Minor** you said always kind. He treated him
12 no different than his own. Do you remember telling them
13 that?

14 A It's possible I could have said that.

15 Q So you're not disputing that you said that?

16 A I said it's possible I could have said that.

17 Q Why didn't you tell them that he had treated him harsh?

18 A Because it really didn't seem pertinent at the time. I
19 didn't know this was actually a homicide.

20 Q Didn't seem pertinent after **Minor** was dead?

21 A Again, I did not know the details. I did not know it
22 was a murder at that point.

23 Q But at that point you told them repeatedly that you had
24 never -- you had always -- you had seen him be kind of

25 **Minor** correct?

1 A If that's what the statement says.

2 Q And that you did not ever see him lay hands or hit him,
3 right?

4 A That is true.

5 Q Let's go back to the day of the 29th of -- say after
6 breakfast that morning you all end up going to Laurens to
7 Family Dollar, right?

8 A Yes.

9 Q And you said that was in the morning time, right?

10 A I'm fairly certain it was.

11 Q But, in fact, the receipt shows you all going there
12 about 1:00 in the afternoon, correct?

13 A Could be.

14 Q You wouldn't dispute you all went early afternoon and
15 not in the morning as you testified earlier?

16 A It seemed like morning time to me, because that's when
17 I was on the phone with the actual company that provided the
18 Wi-Fi. I think it was Direct -- or, God dammit. Direct TV,
19 excuse me.

20 Q And you went there to get Internet service; is that
21 right?

22 A To try and get Wi-Fi connected to the trailer, yes.

23 Q How much money was that going to cost?

24 A All I knew was a \$20 deposit. I believe that's what
25 they said. It might have been 20 and some change. I don't

THEIA MCARDLE: CROSS-EXAMINATION

1059

1 remember exactly. I remember it was about \$20 for a deposit
2 for them to come and do the installation, I believe it was
3 the following Wednesday.

4 Q When did you buy that big flat screen TV?

5 A The actual purchase itself would have been made on
6 Black Friday. As to when it was picked up, that was a
7 different day.

8 Q Black Friday, meaning the day after Christmas?

9 A No. The day after Thanksgiving.

10 Q How much money did you spend on the flat screen?

11 A Two hundred without tax.

12 Q You decided that was a better purchase than maybe
13 buying a real bed for **Minor**

14 MR. VERNER: Your Honor, objection, the point of
15 relevance.

16 MR. STUMBO: Judge, I think it's relevant as to how
17 this child was treated in the house. That's what this is
18 about.

19 MR. VERNER: If she's charged with child neglect, I
20 would agree. She's charged with killing the child.

21 THE COURT: Sustained.

22 MR. STUMBO: I can move on, Judge.

23 Q What did you spend the money on? How much did you
24 spend? You said \$200?

25 A Yes, sir.

- 1 Q How much did you spend on the laptop?
- 2 A That was actually a gift from Papi Chulo.
- 3 Q Throughout the day when you would go to Family Dollar
- 4 how's **Minor** acting at that point?
- 5 A He's actually very energetic.
- 6 Q He was normal?
- 7 A He's his normal chipper self.
- 8 Q What did he eat for lunch?
- 9 A I believe cold cuts.
- 10 Q When was that, before or after you left?
- 11 A I honestly can't remember.
- 12 Q You said he's energetic and happy and trying to help
- 13 you cook while you're cooking steak?
- 14 A Uh-huh.
- 15 Q Had no problem eating his dinner, and that was sometime
- 16 between 6:30 and 7:30 when you all were cooking and eating
- 17 dinner, right?
- 18 A I believe we would have finished cooking around 7:30,
- 19 7:45.
- 20 Q Now, you told the officers the day after this happened
- 21 that you went to your call in Spartanburg to Papi Chulo.
- 22 A Uh-huh.
- 23 Q Then you came back and cooked dinner for **Minor**
- 24 A That is not correct.
- 25 Q But you told the law officers that.

THEIA MCARDLE: CROSS-EXAMINATION

1061

1 A If that was said, it was probably mixed up. That was a
2 very traumatic day for me.

3 Q That you got back from the prostitution call and made
4 dinner.

5 A That's not right.

6 Q So it was earlier --

7 A Yes.

8 Q -- that you made dinner --

9 A Yes.

10 Q -- and then you went to Spartanburg later?

11 A Yes.

12 Q You also testified earlier that **Minor** never threw up?

13 A No.

14 Q Never got sick?

15 A No.

16 Q Never observed **Minor** sick whatsoever?

17 A No.

18 Q That's not what you told your mom when you called her
19 after **Minor** passed away in the hospital, right, that
20 night?

21 A I believe my exact words to her were that **Minor** was
22 sleeping and Richard went to check on him. I did not say
23 where we were. I did not say where he had to go to check on
24 him. But I also didn't want to elaborate on the fact that
25 while my child had stopped breathing I was having sex with a

1 man for money while my child was in the car in the middle of
2 the night in a very strange town. It's not something you
3 want to admit to your parent.

4 Q But you told her that he had been throwing up and was
5 sick at the Enoree house, correct?

6 A No, that's not what I said. What I said was he had
7 stopped breathing -- he had suffocated on his vomit, which I
8 had learned at that point. I said that Richard had gone to
9 check on him. I did not say where we were. I did not say
10 where he had to go to check on him. That is what I said.

11 Q So what you told your mom was just stuff you learned
12 later on, right? And this was just shortly after the
13 doctors told you that he was deceased?

14 A I believe that is the timeframe. I am not entirely
15 sure. Again, that night was very traumatic.

16 Q But you're testifying here today you never witnessed
17 him sick at all? When you witness the house he's happy,
18 he's --

19 A The only time that I witnessed vomit coming out of him
20 was coming out of his nose when he was in the car. When
21 Richard said was is this brown shite coming out of his nose,
22 and I turned around for all of two seconds, just like that,
23 and witnessed him coming out of his nose and oozing down his
24 chin.

25 Q You didn't leave for Spartanburg until around closer to

THEIA MCARDLE: CROSS-EXAMINATION

1063

1 9:00, correct?

2 A That is very incorrect.

3 Q Well, tell me what is correct?

4 A I left shortly after 8:00.

5 Q What time exactly?

6 A I would venture 8:10, 8:15.

7 Q How is your phone pingging off the tower by your house
8 at 8:35 then?

9 A Because again I had to stop to go -- well, when I first
10 initially headed toward Spartanburg I stopped at the gas
11 station. Got gas. Picked up the cat. I had to coax the
12 cat into getting into the box. So that in itself was a
13 feat. Mind you, the gas station is only maybe two miles
14 from my house, which neither side has yet to prove whether
15 or not it could still be the same cell tower.

16 Q Well, hold on a second. But you don't dispute that you
17 were using the phone at your house at 8:35, correct?

18 A What I am letting you know is, once I had gotten the
19 gas and the cat, went back to the house to drop the cat off,
20 I believe I did call Papi Chulo at some point to let him
21 know I am now on my way. Sorry, I had to make a pit stop.

22 Q And that was after you brought the one-eyed cat back to
23 the house, right?

24 A Very certain that was.

25 Q You brought the cat into the house?

1 A I did not bring the cat into the house. I brought the
2 cat to the house. Richard was the one who had swung open
3 the back door when he heard the car come back up and he was
4 like, what are you doing. And I had got out and handed him
5 the box. And he said, what is this. And I'm like, it's a
6 cat, and I explained.

7 Q So what's **Minor** doing at that point? Is she still
8 fine?

9 A I have no idea. I didn't see **Minor** at that point. I
10 didn't even see **Minor** at that point. So I assumed he was
11 still in the bedroom.

12 Q So between 8:35, when the phone's hitting at the house,
13 and sometime before 9:00 you're on your way to Spartanburg?

14 A Yes.

15 Q You return. The phone's hitting off a tower very close
16 to your house in Spartanburg around 10:52 p.m., correct?

17 A If that's what the phone records show, yes.

18 Q So you get home there around 11:00, correct?

19 A Sounds fairly correct, yes.

20 Q And your testimony is that you come in the house. You
21 immediately throw this drink down on the bed at Richard
22 Bowman. And you say, come on. Get up. Let's go. Get
23 **Minor** up. We're going to Newberry. Is that how you did
24 it?

25 A I think what my words were is I need you to get up. I

THEIA MCARDLE: CROSS-EXAMINATION

1065

1 need you to come with me. And he's like, where are we going
2 and why. And I said Newberry. I have a call there and the
3 guy is young. I don't want to go by myself. I'm
4 unfamiliar, and you don't have a phone or a car that works.

5 Q This is a man you've described as being controlling and
6 domineering towards you, right?

7 A At times, yes.

8 Q But here you are barging in the house telling him he's
9 got to get up, get **Minor** up. We're going to Newberry
10 right now. You're demanding it?

11 A You see, when it came to making money he didn't put up
12 too much of a fight.

13 Q But you're telling him? You're not asking him? You're
14 telling him you're going to Newberry with me?

15 A Yes.

16 Q Did he argue with you at all?

17 A He grumped and grumbled just a little bit. But finally
18 he was like fine. That was, you know, his response.

19 Q So sometimes he was the controlling and domineering one
20 and then sometimes you were?

21 A Some of the rare instances I was adamant because I
22 needed the money to get away.

23 Q And you testified earlier -- Mr. Verner asked if you
24 need to go clean off your private parts when this call
25 occurred.

1 A Uh-huh.

2 Q Didn't you say you didn't have sex with Papi Chulo?

3 A It doesn't mean I didn't get fluids on them. It could
4 be lotion. It could be oil. I did say that I do erratic
5 massages. That does not qualify as sexual intercourse.

6 Q So what did you all do? You and Papi Chulo?

7 A An erratic massage is what he gave me.

8 Q And that doesn't qualify as sexual activity to you?

9 A No, because there is no penetration.

10 Q But you still needed to clean up your private parts to
11 go to your next call?

12 A Yes.

13 Q Because you had lotion down there?

14 A Oil.

15 Q Well, during this time you never once even look at
16 **Minor** or even check on him?

17 A No.

18 Q You just walk right by him?

19 A He had been fine. You know, I didn't feel like there
20 was a need for me to check on him. I didn't feel like an
21 instance like this would ever arise in my or my child's
22 life.

23 Q So you had never seen him abused or struck
24 traumatically?

25 A No.

THEIA MCARDLE: CROSS-EXAMINATION

1067

1 Q Not even when you did it?

2 A It was not traumatically, but it was a strike.

3 Q Explain to me what you did to get arrested and
4 convicted for that?

5 A It was a slap.

6 Q Just a slap?

7 A Yes.

8 Q Didn't roll up a newspaper or a magazine and beat him?

9 A No.

10 Q And there were people that witnessed that, right?

11 A There were no people there besides Richard and one
12 other girl.

13 Q Justin Madore wasn't there?

14 A No.

15 Q Megan Cody didn't witness that?

16 A Megan Cody, who is Richard Bowman's ex-lover, was not
17 speaking to me at that point because he had left her for me.

18 Q So that's the only time you ever laid your hands on

19 **Minor**

20 A That is the only time since the DSS call itself that I
21 had used any type of punishment even similar to that. I
22 have -- I have popped him on his butt maybe once or twice
23 since then.

24 Q So what's your philosophy of corporal punishment then?

25 Tell us, Ms. McArdle?

1 A I'm still not even sure -- I don't understand what
2 corporal punishment is. I've never heard this term before.

3 Q Discipline. Disciplining your child. How do you do
4 that?

5 A Stick him in a corner. Depending on where we're at.
6 You know, I mean, if we're in the car then there's not
7 really much I can do.

8 Q Stick him in a corner how? Describe that to me.

9 A Stick him in a corner.

10 Q Stick him in a corner. Is he facing the wall in the
11 corner --

12 A Yes, facing the corner. Facing the corner.

13 Q What else? You ever use your hands?

14 A There's only once or twice that I've actually had to
15 pop his butt since the DSS case.

16 Q You were convicted of that, of abusing **Minor** right?

17 A I pled guilty.

18 Q He was gone from you for how long? A year?

19 A A year, yes.

20 Q And Ms. Janice Hollaway had him for that time, right?

21 A Yes.

22 Q When you get him back that's when you move to South
23 Carolina?

24 A It was a few months after that.

25 Q And you believe the best way to support him and your

THEIA MCARDLE: CROSS-EXAMINATION

1069

1 all's family was for you and Richard to be escorts on Back
2 Page dot com?

3 A I did not make Richard become an escort. I decided to
4 become an escort because the money was exactly what I was
5 able to do to support not only us, but the bills, the car,
6 food, shelter, clothing. Everything that we needed. It was
7 fast money. It was easy. And when you don't have any proof
8 of identification of who you are, you don't really have to
9 have that to do something illegal.

10 Q And **Minor** was in the room with you at times? These
11 hotel rooms as you were having sex with these men?

12 A No. That is completely fictitious.

13 Q You know you talked -- testified earlier, Ms. McArdle,
14 Richard never did anything, is that right, at the house? He
15 just sat around and hung out, right?

16 A I mean, for the most part, yes.

17 Q And then you proceeded to talk about how you left him
18 to clean the dishes that night when you went to Spartanburg,
19 correct?

20 A That is correct.

21 Q So he did do stuff around the house?

22 A The dishes were still there the next day.

23 Q And then you also described about how you didn't really
24 know about **Minor** taking baths because Richard was always
25 the one that he took a bath with?

1 A But I did say his only job was to babysit **Minor**

2 That, in my opinion, entails childcare.

3 Q And that qualifies as nothing? Earlier you said he
4 didn't do anything to help in the house? He just hung out?

5 A Okay. Let me rephrase what I said.

6 Q Sure, explain.

7 A The only thing, generally, which he would do is help
8 take care of **Minor** Mainly when I was working. Sometimes
9 just because.

10 Q You talked about this letter you sent Richard earlier.
11 You remember telling him that you're going to get back into
12 the game and start stacking as much money as you can when
13 you get out?

14 A Yes, I do.

15 Q I think throughout this letter you talk about sexual
16 fantasies that you were having?

17 A I don't honestly remember what all I put into that
18 letter.

19 MR. VERNER: Your Honor, one -- I object for one on
20 relevance. Two, I don't think she was talking about sexual
21 fantasies with Richard in the letter. Three, it's been
22 asked and answered that she wrote him a letter. We don't
23 know the date of the letter --

24 MR. STUMBO: Judge, I'm about to wrap up on this point.

25 Q Five pages of this letter, and not until the very end

THEIA MCARDLE: CROSS-EXAMINATION

1071

1 you mention anything about your son who had been killed,
2 correct?

3 A Again, trying to stay in the good graces of the man who
4 could have possibly murdered him. At that point hadn't seen
5 the Rule 5. Didn't know what exactly the details of the
6 case was, was something that I was trying to do. Clearly he
7 still shows no remorse whatsoever for actually murdering
8 him.

9 Q You're pretty good at putting on acts, aren't you?

10 A Can I ask what you're referring to?

11 A Isn't that what you told the investigators, that you
12 could -- if you wanted to emotionally move them you could
13 put on act and put them on their f-ing feet, right?

14 A Meaning, if I wanted to lie, I could. Yet I had no
15 reason to. It could have been said better, admittedly.

16 Q And that's the same act that you're putting on for this
17 jury today, right?

18 A No, sir.

19 Q So today, unlike what you told the investigators,
20 you're not explaining these injuries by **Minor** falling down
21 on his skates in Asheville a couple days before, right?

22 A There is no way that these injuries could have been
23 created by anything accidental.

24 Q Nor Richard doing CPR on him in the car? Because that
25 was the only explanation to the investigators the day after

1 when it happened, correct?

2 A That is correct.

3 Q It's your theory today that you're still clueless and
4 absolutely have no knowledge of how these injuries occurred
5 to **Minor**

6 A My theory today is that my statements to Richard of I
7 hate you was enough to drive him over the top and for some
8 reason he took it out on my child while I was gone.

9 Q But you're just speculating that, right?

10 A Absolutely.

11 Q You have no idea that that happened?

12 A No. But I wasn't there and my son didn't harm himself.

13 Q And for a man who had been living with you and **Minor**
14 for the last almost year, going back to May of 2014, or at
15 least multiple months, you had never seen him lay his hands
16 on this child, correct?

17 A Just because I had never seen him doesn't mean he never
18 did.

19 Q There was never any concern with you leaving your child
20 with him?

21 A No.

22 Q And then all of a sudden because you get mad with him
23 one night -- and he had already been talking with another
24 girl anyway, right, in Asheville?

25 A That was throughout the entire relationship.

THEIA MCARDLE: CROSS-EXAMINATION

1073

1 Q You were ready to leave at that point?

2 A Yes.

3 Q So you're telling me in that entire time you've never
4 seen Richard be violent whatsoever toward your son?

5 A Toward my son, no.

6 Q To the point where you had no problem leaving **Minor**
7 with him multiple times?

8 A That is correct.

9 Q And then all of a sudden one night, because you get mad
10 at him and tell him you hate him, he beats **Minor**
11 inexplicably to death?

12 A I can't tell you for sure that that is why he did it.
13 I can only speculate.

14 Q And the only time you ever laid your hands on him was
15 when you slapped him when he was a little baby, hardly
16 walking yet? One-year-old, right?

17 A He was walking.

18 Q He was walking. He was one year and what, three, four
19 months? April --

20 A He was walking.

21 Q Okay, walking. But he's a toddler. He's just starting
22 to walk, right?

23 A Uh-huh.

24 Q You slap him like a grown man as hard as you can across
25 his face, right?

1 A That is incorrect.

2 Q You didn't do that?

3 A The force which you are trying to describe is
4 incorrect. Was it a slap? Absolutely. Was it that hard of
5 a slap? No.

6 Q Well, explain to me just with your hand how hard you
7 hit him.

8 A (Demonstrating.)

9 Q That's it? For that you pled guilty to abusing your
10 child and had your child taken away from you for over a
11 year?

12 A Yes.

13 Q But now these injuries have nothing to do with you --

14 A That is correct.

15 Q -- today? That's what you're telling this jury?

16 A That is correct.

17 MR. STUMBO: No further questions, Your Honor.

18 THE COURT: Redirect?

19 MR. VERNER: Your Honor, if it may please the Court.
20 Just a few to clarify.

21 THE COURT: Certainly.

22 REDIRECT EXAMINATION

23 BY MR. VERNER:

24 Q What you -- this charge you were charged with at DSS,
25 or the North Carolina equivalent invested in April of 2013

1 for slapping **Minor**

2 A Yes.

3 Q You participated in their plan? Their family plan?

4 A Yes.

5 Q And you also pled guilty to a charge of child abuse?

6 A Yes.

7 Q Was that a court like this or was that like a traffic
8 court?

9 A It is the equivalent of driving without a license,
10 pretty much.

11 Q It wasn't a felony conviction. It was a traffic court
12 conviction?

13 A It was a misdemeanor, yes.

14 Q And that's the only time you've been in trouble with
15 **Minor**

16 A Yes.

17 Q And was one of the reasons DSS wouldn't return the
18 child to you because they were worried that Richard was
19 living with you?

20 A Yes. Actually, that would have been the reason for
21 which **Minor** was actually put into kinship. Originally he
22 was only supposed to be supervised until the investigation
23 was over, at which point they would allow me to resume
24 parenting. When the woman who was supposed to be watching
25 us saw that Richard was coming back because he had nowhere

1 to go, that is when she left and called DSS and said I don't
2 feel comfortable while this man is here watching over her
3 and **Minor**

4 Q And that is in the North Carolina DSS file?

5 A Yes.

6 Q Which you've had access to and the state provided to
7 you?

8 A Yes.

9 Q And when you say the term Rule 5, you're basically
10 talking about the evidence --

11 A The motion of discovery.

12 Q -- in the case?

13 A Yes.

14 Q My understanding is the only time you've spoken to the
15 police was not the day after **Minor** died, the day --

16 A Yes.

17 Q -- in fact within hours after **Minor** died?

18 A That is correct.

19 Q And the Solicitor indicated you made dinner after the
20 run with Papi Chulo, but didn't you actually say on the way
21 back I stopped by and got gas, picked up a stray cat and went
22 back home. There **Minor** helped McArdle cook supper which
23 consisted of steak, corn on the cob and garlic bread. So
24 that is, you're saying, after you got gas you cooked dinner.

25 A I honestly --

THEIA MCARDLE: REDIRECT EXAMINATION

1077

1 Q I'll hand you your statement to the -- is that not what
2 you told the -- on the way. That's what you told Officer
3 Moore on the day **Minor** was killed.

4 A That is what it appears to say.

5 MR. VERNER: Your Honor, I would -- not in this form,
6 but I would offer that statement as a prior consistent
7 statement for the jury, in that redacted form.

8 MR. STUMBO: Judge, I would say instead of that form,
9 we -- he could go to the police -- in the transcript. We
10 have it on audio. We can go to that tape and just play it.
11 It's already in evidence, State's 1. The recording.

12 THE COURT: We have the entire statement on the record.
13 If you want to reference that particular part of the
14 statement --

15 MR. VERNER: I have no idea where it is in the audio.
16 I'll just leave it at the fact that --

17 Q Would you agree that her statement reflects that you
18 said you cooked dinner after you got back home from the gas
19 station, or do you remember? If you don't remember --

20 A I agree that it reflects that it was before the actual
21 call itself.

22 Q Now, the Solicitor says you made a call at 10:52 p.m.
23 but that -- the cell phone records would agree that you
24 weren't home until 11:19 p.m.? If the cell phones records
25 are accurate?

- 1 A That sounds correct.
- 2 Q And if the records indicate that you were out of the
3 home between 8:11 to 8:35 where were you at that time?
- 4 A Could have been the gas station.
- 5 Q The run prior to going to see Papi was --
- 6 A Yes.
- 7 Q -- the gas station run?
- 8 A Yes.
- 9 Q And then you dropped the cat back off and then you left
10 again to go see --
- 11 A Papi Chulo, yes.
- 12 Q -- Papi Chulo.
- 13 A Yes.
- 14 Q And then you got -- you came back home to clean up and
15 then went back to Newberry?
- 16 A Yes.
- 17 Q You agree you were the only one using that cell phone?
- 18 A Yes.
- 19 Q On December 30th were you aware, even after you had
20 gone to the hospital and taken the child off -- when the
21 child was delivered to the hospital **Minor** was still
22 clothed, wasn't he?
- 23 A I'm fairly certain he was, yes.
- 24 Q When did you first become aware that **Minor** had
25 suspicious bruises on him?

THEIA MCARDLE: REDIRECT EXAMINATION

1079

1 A I didn't know that he had any bruises at all until the
2 time when -- which Ms. Moore took me into the police station
3 and began to question me. A few hours later she said there
4 are some bruises. She did not say what. She did not say
5 where. She did not say to what extent. She never --

6 Q And you never had any pictures or anything?

7 A No. And she never actually said to what extent.

8 Q How long were you in jail before you actually got some
9 of the evidence that you could go over it yourself?

10 A I never got the -- I never seen the pictures until just
11 the other day. But as far as actual autopsy report,
12 findings, et cetera, that would have been September.

13 Q So you had been in jail for a couple of months?

14 A I had been in jail for a year.

15 Q And during that time you wrote Richard a letter before
16 you had seen anything?

17 A Yes.

18 Q By the way, has he been sending you letters, too?

19 A He has sent me a total of three, one of which I could
20 not find. Actually, he's passed me a few notes, too, that
21 --

22 Q I didn't ask you that.

23 MR. VERNER: I'll rest with that. Thank you.

24 MR. STUMBO: Just one, Your Honor.

25 THE COURT: Yes, sir.

1 I'm going to instruct you on. This is actually something
2 that we have been working on the last couple of days and my
3 law clerk emailed our instructions to them last evening.
4 I've been getting feedback on that throughout the morning,
5 last night and even before we resumed at lunchtime. So I
6 need to clarify just a few points of those instructions with
7 the attorneys, and at that point in time we'll be in the
8 position to proceed with the closing arguments and my
9 instructions to you on the law. I am presuming that even
10 though it is 3:00 you all would much rather go ahead and
11 begin deliberations. The lawyers are going to be limited to
12 about 30 minutes each, if they actually use that much time,
13 in their closings. My instructions will take 15 minutes.
14 That'll put us to right around 5:00 when you all receive
15 this case. But I'm assuming that you all would rather
16 deliberate today than come back tomorrow or Monday. Am I
17 seeing anyone wanting to come back Monday? No, I am not.
18 Okay. You all go back to the jury room or step outside.
19 Well, I tell you what. You all just adjourn to the jury
20 room for a few moments. Let me see if I can get this
21 squared away. And if it takes longer than five minutes I'll
22 let you all move outside if you want to. Okay? Don't talk
23 about the case yet. Thank you.

24 (Whereupon, the jury exited the courtroom at 3:02 p.m.)

25 THE COURT: Housekeeping matters. I want to go ahead

1 and address those. The Solicitor suggested calling the two
2 witnesses from yesterday who were proffered in light of the
3 testimony of Ms. McArdle. Obviously those witnesses are not
4 here at this particular point in time. The transcript of
5 their testimony has not been prepared. And quite honestly,
6 I think that their testimony may be too remote. We have
7 gone into -- we have gone into the North Carolina incident
8 at least a couple of times each and every day, and anything
9 that they have to offer, even though their details were --
10 they detailed a few other incidents that weren't in the
11 official report, I'm ruling that that information is simply
12 too remote. It's cumulative to other evidence that we've
13 had. And most importantly the State's case does not rise or
14 fall based on their testimony. And Solicitor is nodding.

15 MR. STUMBO: Yes, sir.

16 THE COURT: He may disagree with me on the record, but
17 he knows where I'm coming from.

18 MR. STUMBO: I agree with that assessment, Your Honor.
19 Because it's relatively collateral as to a cross-examination
20 impeachment matter. Yes, sir.

21 MR. VERNER: And I would also note the DSS file itself
22 would be available to be introduced if the parties were
23 interested.

24 THE COURT: My clerk will be handing you the
25 instructions. I want, if you would, please, and I'll take a

1 brief break while you all have a chance to review these.
2 But the most pertinent language that I want you all to look
3 at and give me your thoughts on would be on pages 12 through
4 13 where it really defines homicide by child abuse. And
5 I've added knowing requirement as it relates to a defendant
6 having actual knowledge of the injuries sustained by the
7 child. Otherwise, the charge contains the standard language
8 about abuse or neglect, failure to act, et cetera. It's
9 pretty much stock. But I think we agree that a defendant
10 cannot be held responsible for failure to take a kid to a
11 doctor for injuries that the Defendant was unaware of. That
12 simply seems reasonable to me.

13 I also eliminated kind of that other verbiage about
14 abandoning a child, because that's not alleged here. And
15 also failure to provide food, clothing or shelter for the
16 child, because obviously that's not alleged here. This is a
17 physical assault as opposed to more passive conduct. So I
18 just pulled that from the instruction to prevent confusion
19 to the jury.

20 I see you getting up. I did not charge -- or I've
21 asked my law clerk to remove the unlawful conduct toward the
22 child charge. I do not believe that's a lesser included.
23 After speaking with Judge Griffith and giving it some more
24 thought and some more reflection, I concur with the State
25 that that is not a proper lesser included to charge in this

1 case.

2 MR. STUMBO: Judge, I would agree with you on the
3 abandonment. I think it's a subsection ©.

4 THE COURT: Right.

5 MR. STUMBO: But I would prefer if you did read
6 subsection (b). I think it's -- in its entirety. I mean, I
7 --

8 THE COURT: Just to give it the flavor of the statute?
9 What it's getting at?

10 MR. STUMBO: Yes.

11 THE COURT: Is that what you're thinking?

12 MR. STUMBO: Yes. I think that is the law as a
13 statute. We just ask that if subsection © is not
14 applicable, but --

15 THE COURT: Do you feel strongly about that either way,
16 Mr. Verner?

17 MR. VERNER: I don't think it's alleged in the
18 indictment, Your Honor. If the Court's inclined to do it,
19 it would be over my objection. But it's part of the statute
20 --

21 THE COURT: I'm not charging accomplish liability or
22 aiding and abetting. But I think that under the definition
23 under 85(b), 85(b) sub(2), sub(b), "Fails to supply the
24 child with adequate food, clothing, shelter," et cetera. So
25 I think it would be contained in the indictment, because

1 they did specifically reference 16-3-85 capital B in the
2 indictment.

3 MR. VERNER: The Court has spoken.

4 THE COURT: They're a smart jury. They've been paying
5 attention. I'll do it the way that you suggested,
6 Solicitor.

7 MR. STUMBO: Thank you, Judge.

8 THE COURT: I'll need to modify the charge or have my
9 clerk do it one more time. But that language will be added.
10 And go ahead and --

11 MR. STUMBO: Judge, and I don't if this is appropriate
12 for -- this has just kind of come to us today. Mr. Daniel
13 just reminded me of this. There was a question asked in
14 exchange between Mr. Verner and the Defendant's mother when
15 she was on the stand about the death penalty. I didn't
16 really address that in redirect at cross. I don't know
17 though that that being out there, maybe there needs to be a
18 curative instruction at the time.

19 MR. VERNER: Your Honor, it's going to be -- I
20 understand the Solicitor's concern. I think the mother
21 backed away from that. But regardless --

22 THE COURT: I think with the co-defendant, Mr. Bowman,
23 Mr. Verner, if I'm not mistaken --

24 MR. VERNER: Precisely.

25 THE COURT: -- you did speak to him about the penalty

1 range on this. That it carries --

2 MR. VERNER: Twenty to live.

3 THE COURT: -- 20 to live, and --

4 MR. VERNER: And I was probably going to bring that in
5 my closing that not that she faces it, but one reason for
6 him cooperating might be that he's facing 20 to live.

7 MR. STUMBO: Once upon a time I would have objected to
8 the sentencing range of the co-defendant, but there's a case
9 right on point on that --

10 THE COURT: Right.

11 MR. STUMBO: -- that was reversed. So that's --

12 MR. VERNER: That's why -- that's why I took that door,
13 Your Honor. I agree with the Solicitor. The Appellate Court
14 has opened that door when a co-defendant testifies. I put
15 it out there for purposes of showing what the co-defendant
16 was facing and, as the Court noted, it's a smart jury.

17 THE COURT: My clerk is emailing this to Judge
18 Griffith's assistant asking her to print out a couple more
19 copies. And the really relevant portion that I'm giving you
20 all, or that I'm going to let you all take a look at and
21 share, are pages, again, 12 and 13 of the old copy. The new
22 copy will say, "Knowingly failed to supply the child with
23 food, clothing, shelter or adequate healthcare, and that
24 this failure caused physical injury or condition which
25 caused death." Okay? So you all take a quick look at the

1 knowing definition that I've added in there. You all can
2 ruminare on that for a few moments while we get those copies
3 made for you.

4 MR. VERNER: Are you going to make extra copies?

5 THE COURT: Yes, I am. We'll be at ease for a few
6 moments while you all just look at that.

7 MR. VERNER: I have looked at the email version, Judge,
8 but I didn't have access to print one out. Although they're
9 -- 90 percent of it is pretty --

10 THE COURT: The emailed version does not include -- the
11 emailed version does not include the knowingly part. That
12 was added either last night or this morning.

13 MR. STUMBO: Judge, just out of curiosity -- we don't
14 have to be on the record for this. But the knowingly
15 definition, is that in the charge book? Is there a case on
16 point for that or is that -- I'm just asking where that's
17 coming from.

18 MR. VERNER: There were a couple of cases on -- is that
19 -- the knowingly is when you have the duty to take the child
20 to the hospital after injury?

21 THE COURT: Right. And we'll need to do this on the
22 record, guys. But you all look at it, think about it, and
23 let Mr. Verner show you -- he's probably looking at what I'm
24 looking at. I was looking -- I think --

25 MR. VERNER: The cases I saw said ordinarily there

1 wouldn't be a legal duty to take the child to get medical
2 care or to prevent further abuse unless you had the mens rea
3 of --

4 THE COURT: Actual knowledge. That's what I found last
5 night. I'm not -- I can't cite the chapter and verse, and I
6 was actually looking for it here, but the code isn't quite
7 up-to-date upstairs. But you all just think about that and
8 we'll talk about it in a sec.

9 MR. STUMBO: Sounds good.

10 MR. VERNER: One of the cases I'm talking about, Your
11 Honor, is *State vs. Smith* where they refer to the -- that
12 you had to prove beyond a reasonable doubt that he knew
13 about the injuries and failed to seek the medical care. And
14 then there's another case. But the --

15 THE COURT: Is that the Smith case of 2008 or the one
16 from 2015?

17 MR. VERNER: 2011 is when it went through the Court of
18 Appeals.

19 THE COURT: That's the 2014 case.

20 MR. VERNER: There's a *State vs. Smith*, I'm sorry, from
21 2013. And then there's a *State vs. Smith* from 2011. I'm
22 not sure --

23 THE COURT: The one from -- there's a *State vs. Smith*
24 from 2015 that came out in -- it came out last year that
25 deals with the appeal -- Court of Appeals' decision in 2013

1 I thought.

2 MR. VERNER: I think there are two different Smith
3 cases, because one talks about chest injuries and the other
4 talks about an overdose of medicine or --

5 THE COURT: The four times the adult dosage of --

6 MR. VERNER: Pseudoephedrine.

7 THE COURT: Yeah. Talk to the Solicitor about those
8 and we'll be back in a moment.

9 MR. STUMBO: Yes, sir.

10 (Whereupon, a recess was held 3:24 p.m.)

11 THE COURT: We are back on the record. Have you all
12 had a chance to review the pertinent instruction, or the
13 primary one that I was asking you to draw your attention to?

14 MR. STUMBO: Yes, sir. We did. And were you able to
15 find where you pulled that from, Judge, to --

16 THE COURT: I actually was not. I just -- based on the
17 stuff I looked at last evening and some of the material this
18 morning, I cobbled it together. There is not a -- there is
19 not a stock actual knowledge charge in the bench book with
20 the exception of in the context of constructive possession
21 of drugs and that kind of a thing. And so, I just used
22 somewhat of an amalgam of the actual knowledge from the
23 civil bench book and --

24 THE STUMBO: And what case was it -- that was the only
25 thing. One is I've got a case on point that requires actual

1 knowledge, because --

2 THE COURT: Well, you read the language from Smith, Mr.
3 Verner, on the healthcare issue.

4 MR. VERNER: Judge, and again, I printed up the Westlaw
5 that's kind of the synopsis points and not the actual text.
6 But the *State vs. Smith*, which is 391 S.E. 353, 705 S.E.2nd
7 491 Court of Appeals 2011 the State could still find the
8 Defendant guilty if the State proved beyond a reasonable
9 doubt that he knew about the injuries or about the
10 pseudoephedrine but failed to seek medical attention for the
11 victim. There was an actual -- the other case was the
12 Palmer case, which is apparent that the -- where they talk
13 about that the co-defendant, or the defendant, may not have
14 seen the injuries because the sleeping victim's injuries
15 would not have been immediately apparent. 776 S.E.2nd 558.
16 And that's 2015. But the only way you can logically read
17 that, that the injuries were not readily apparent to seek
18 medical attention is knowledge of the injuries. And I will
19 -- you know, I went through a bunch of cases. Some of them
20 I read portions of and some of them I just looked at the
21 Westlaw summaries of. But there's no question that it
22 requires the knowledge. The only issue in my mind, would it
23 be circumstantial or constructive knowledge or actual
24 knowledge. But that's really more of a drug possession type
25 differentiation. And because of the criminal standard of

1 mens rea required, that the guilty knowledge, Your Honor,
2 that the -- you know, the mens rea itself would require
3 guilty knowledge.

4 THE COURT: Well, the mens rea under subsection (2)
5 where you're talking about aiding and abetting of that
6 statute, that clearly requires that someone knowingly -- and
7 as I think I've explained, I don't see how if -- let's
8 assume for the moment that we have one parent that's aware
9 of a physical condition which is serious and likely
10 threatens the health or well being of the child and the
11 other parent is oblivious simply because they both have
12 custody of the child, it's the knowing parent who would be
13 legally culpable as opposed to the parent that does not
14 know. And that's kind of where I get the knowingly from. I
15 think it was Palmer that I was thinking about when I said it
16 was Smith. The 2015 Smith decision which had been appealed.
17 Smith went through the Court of Appeals and it was reversed
18 in part by the Supreme Court, or at least what I'm thinking
19 of. And my clerk is pointing at something. Hold on.

20 MR. VERNER: And it stands to reason, Your Honor, that
21 I find it hard to believe that you could be found guilty of
22 a crime if you didn't have actual knowledge of the
23 underlying crimes.

24 MR. STUMBO: Well, Judge -- and I understand Your
25 Honor's logic on this, and we'll trust the Judge's ruling.

1 Typically if the statute itself is silent as to the mens rea
2 it falls back to the default of the general criminal intent.
3 I think I remember -- I know -- I can't --

4 THE COURT: That is -

5 MR. STUMBO: -- the case, chapter and verse. The cite.
6 But because the statute doesn't really address that here, I
7 don't know if we're adding an additional burden on the State
8 here that's not in the law. But --

9 THE COURT: I'm only adding it with -- if the jury
10 believes that she assaulted that child, I'm not -- you know,
11 that's an independent -- you don't have to demonstrate that
12 you knowingly. That's an intention tort. I mean, you're
13 doing what you intend. I'm only adding the knowingly aspect
14 of it to the healthcare, shelter portion --

15 MR. STUMBO: To the subsection --

16 THE COURT: To the subsection, yes. Because it makes
17 no sense that you could be held criminally responsible for
18 something that you have no direct knowledge of. And that
19 becomes a jury issue where -- I don't know what you guys are
20 intending to argue. I was halfway assuming that you were
21 going to argue that no reasonable parent could allow those
22 injuries to go unnoticed. I was thinking that might be
23 where you were going on your argument. But some of the
24 questions we heard from yesterday, that any reasonable
25 parent -- or that those injuries would have been readily

1 apparent to any reasonable parent and that's where the
2 knowing aspect -- that's when I started playing with that in
3 my mind. I am fairly confident that that is a correct
4 statement of the law as it related to that second section
5 under the definition of it. But obviously the knowingly has
6 no bearing whatsoever. General criminal intent is
7 sufficient for the first part, if she actually did inflict
8 the injuries. I think that's where we're at.

9 Final housekeeping matter before we begin closings.
10 Exhibit 148 was the one that I promised that I'd rule on the
11 403 objection to. Page 359 is a profile picture of the
12 Defendant with pink hair and a leopard outfit. Page 344 is
13 money that is placed on a bed to spell out "Look at me now."
14 278 is apparently taken of what looks like a hotel bathroom
15 with the Defendant with her hand on her hip. And 281 is the
16 same hotel bathroom with the Defendant facing away from the
17 camera and then looking over her left shoulder. And 161 is
18 just a pile of money. Page 145 is a picture of the child in
19 the backseat of the car. I'll be sustaining the relevancy
20 objection concerning pages 259 through 161, the piles of
21 money and the Defendant posing. I really can't see where
22 there's -- perhaps there is something relevant. But the
23 prejudicial affect of the posing, et cetera, in my opinion
24 outweighs the probative value of those photographs. And
25 money spelling out "Look at me now," and just a pile of

1 cash, quite honestly I don't see what's terribly relevant
2 about those. Her vocation is not an issue in this case. So
3 the Court will sustain the Defendant's objection with regard
4 to those pages. And 141 will constitute the cover page of
5 the Facebook, the next page which has already been shown to
6 the jury, and then the final page showing **Minor** in the
7 back of the red car in his carseat. So that's where I am on
8 those.

9 MR. STUMBO: And, Judge, I believe Mr. Verner and I
10 discussed this. I know we're still under the common law
11 rule. I think there's been a proposed rule change that's
12 being debated in the Legislature this session. I'm
13 perfectly content to open on the law and close on the facts,
14 kind of under the traditional rule. I've talked to Mr.
15 Verner. He said he doesn't -- it's not requiring the first
16 and the second. And I have no problem with him just going
17 first and me going last. That would help us be more
18 efficient.

19 MR. VERNER: I will go on record, Your Honor. In no
20 case from now until through the future, I'll be bound by
21 this in the future, I will never require the Solicitor to
22 open on the law in any case that I intend to be part of.

23 MR. STUMBO: But we do intend to discuss the law in our
24 closing.

25 THE COURT: Certainly.

1 MR. VERNER: And I understand the Court said about 30
2 minutes?

3 THE COURT: Actually precisely 30 minutes.

4 MR. VERNER: Is there some way, Your Honor -- I don't
5 intend to hit that mark. But is there some way maybe your
6 clerk could cough or hit on the table or something like
7 every 15 minutes, or the Court could even call out a time.

8 THE COURT: We're going to let the Solicitor's office
9 investigator, since he's already sitting kind of close to
10 the jury. He'll be our official timekeeper. He and I will
11 keep time together and --

12 MR. VERNER: He can just kind of clear his throat or --

13 THE COURT: Yeah. When you're at five minutes he's
14 going to give you the five minute thing like this. And he
15 can sort of sit over -- once the jury comes in he'll sit
16 over next to the bailiff and be the official timekeeper.

17 Both of you all are very brief normally in your
18 closing, so I don't think it's going to be a problem. But
19 I'm still going to limit you to 30 minutes nonetheless.

20 Let's have the jury, please.

21 (Whereupon, the jury entered the courtroom at 3:35
22 p.m.)

23 THE COURT: Ladies and gentlemen of the jury, thank you
24 very much for your -- one other housekeeping matter, Mr.
25 Verner, for the record. You review all previous motions as

1 well as the DV, correct? You review all previous motions --

2 MR. VERNER: Yes, sir. I apologize.

3 THE COURT: -- including the motion for directed
4 verdict?

5 MR. VERNER: I do.

6 THE COURT: All right. Same rulings as before.

7 Ladies and gentlemen of the jury, we've reached that
8 portion in the trial where the attorneys will give you their
9 closing arguments. I'll let you know that it's pretty
10 normal, it's pretty customary for the attorneys to reference
11 facts or testimony or evidence during the course of their
12 closings. Obviously, ladies and gentlemen, since you are
13 the judges of the facts, if anything that they say about the
14 facts differs from what you recall those facts being,
15 whether that's testimony, exhibits, what have you, go with
16 your recollection, because obviously you are the judges of
17 the facts. For example, if the attorneys were to say that
18 yesterday they recall the weather being cold and wet and
19 miserable and rainy, and yet you recall that weather
20 yesterday being a perfect -- picture perfect screen day, go
21 with your recollection of the weather as opposed to what
22 they say it was. All right?

23 Each side is being limited to 30 minutes. Mr. Verner
24 is not requiring the State to open on the law. So Mr.
25 Verner will proceed first and the Solicitor will have the

1 final argument in this particular case. Okay?

2 Mr. Verner, at your leisure, are you recognized for
3 your closing, sir.

4 MR. VERNER: It's not at my leisure. It's 30 minutes,
5 Judge.

6 THE COURT: Very good.

7 MR. VERNER: If it please the Court.

8 THE COURT: Yes, sir.

9 MR. VERNER: May it please the Court.

10 THE COURT: Very good.

11 MR. VERNER: Solicitor Stumbo.

12 CLOSING ARGUMENT

13 BY MR. VERNER: If I could, I'm just going to briefly
14 open on the law. This is a homicide by child abuse case.
15 It's not a DSS case. It's not a neglect case. This is you
16 kill your baby case. Those are the consequences of the
17 case.

18 Theia is 22. She's had a lot of time since she's been
19 in custody since December 30th to finally have her day in
20 court, and we hope it's going to end here one way or the
21 other. And I will tell you, I've been a public defendant,
22 or a lawyer here in Newberry since '99. I've tried a lot of
23 cases. I've never held a verdict against a jury guilty or
24 not guilty. You've got no friends to reward. No enemies to
25 punish. They try a lot of cases. They move on, too.

1 You've just got to decide the right verdict without worrying
2 about criticism.

3 Homicide by child abuse. This is how it's divided.
4 This is how it's charged by the State. This is the
5 indictment. The indictment is just written notice that
6 they're going to trial. That's all it means. It comes from
7 the prosecutor to the Defendant. It's not evidence. It's
8 just basically you're going to trial for this crime on this
9 day, and it's just giving the Defendant fair notice for
10 whichever crime.

11 "Theia McArdle, on December 29th, 2014 to December
12 30th, 2014 in Newberry County willfully and unlawfully
13 caused the death of a child under the age of 11, to wit, one
14 **Minor** date of birth **Minor's**, while committing
15 child abuse or neglect as defined by the section 16-3-85(b)
16 as amended, and that the death occurred in circumstances
17 manifesting extreme indifference to life -- human life."
18 That's basically just a looking of the statute. They're
19 just defining the dates and the Defendant's name. Homicide
20 by child abuse. All our crimes in South Carolina, some are
21 more complicated than others, but they all require kind of
22 what they're called elements. The State has to require
23 whatever the elements are. Like grand larceny. You have to
24 prove that someone stole property from another and it had to
25 be of a certain value. All four of those targets have to be

1 hit by the State. If one of them is not met, it's not
2 guilty of that child. Here it is homicide by child abuse.
3 A person is guilty of homicide by child abuse if the person
4 causes the death of the child under the age of 11 while
5 committing child abuse or neglect and a death occurs under
6 circumstances manifesting in extreme indifference to human
7 life. And child abuse or neglect is specifically defined.
8 It means you act -- it's the act or omission by a person
9 which causes harm. It's the omission which causes harm, or
10 the act which causes harm to the child's physical health or
11 welfare. And harm is defined as inflicting or allowing to
12 be inflicted upon the child physical injury or injury
13 sustained as the result of excessive corporal punishment
14 that results in death.

15 In one regard this is a very simple case. This is the
16 easiest case that I can think of in this regard. If you get
17 back there and you think -- you are certain that this child
18 was killed by Richard Bowman, she's entitled to a not guilty
19 verdict on that portion of causing the child's death. If
20 you think it's more likely than not that the death was
21 caused by Richard Bowman, she's entitled to a not guilty
22 verdict. If you think even if it's less likely than not
23 that the child was killed by Richard Bowman, but it is still
24 reasonably probable -- possible, she's still entitled to a
25 not guilty verdict on that portion of the statute. And I

1 think it's clear to you Richard Bowman killed that child. I
2 don't even think that's really going to be seriously argued
3 anymore. I think there are going to be insinuations that
4 now maybe she let it happen or maybe she didn't take him to
5 the hospital soon enough. I think they're going to be,
6 well, maybe she did it, too. But I think the case has
7 shifted to Richard Bowman. There's no question about that.
8 He as much admitted on the day the child died -- I don't
9 know how many different stories he gave just the Solicitor.
10 You remember when Richard Bowman testified? You know,
11 you're facing 20 years to life, Richard, and you talked to
12 us on March 10th, but here's two other injuries you didn't
13 even bother to mention today. And the Solicitor reminded
14 Richard Bowman of what Richard Bowman said that Theia had
15 done to the child, because Richard has given so many
16 contradictory accounts that he can't even remember. Even
17 when prepped for a trial he still had to be reminded. Well,
18 what about this? What about this? And even with all of
19 Richard's stories, medically none of them could have
20 resulted in the death of the child. He says that some
21 incidents she hit him in the groin at some guy named David's
22 house the day beforehand. You know, just David can't be
23 here at trial. No way to prove that. Even if that were
24 true -- and it's not because he's a liar. But even if it
25 was true, the pathologist said, huh-uh. That child wasn't

1 hit the day before, or two days before, or three days
2 before. Both pathologists and the doctor -- well, I'll come
3 back to the doctor in a second. The State's pathologist,
4 Dr. Ross, and the doctor today, Dr. Riemer of MUSC, both
5 testified that that child was killed the day after -- but
6 the same day that he had eaten his last dinner, which was
7 the same day he got taken to the hospital.

8 Richard Bowman might be a bright guy, but you've got
9 two pathologists saying that even if Richard had told one
10 ounce of truth, none of his stories can be medically true.
11 And I promise you, at some point I had to just stop reading
12 the inconsistent statements. He gave 72 pages less than a
13 month ago of testimony. At some point even the prosecutors
14 had to say, huh-uh. Stop it. Go away. And he came back
15 yet with more stories. And none of it just magically
16 implicates himself. And he basically -- Richard -- they're
17 saying he's putting himself in danger, but he's not. He's
18 -- oh, well, you might get in trouble for hindering an
19 investigation, or maybe you didn't report this abuse soon
20 enough. No. Richard's not scared of those charges.
21 Richard's scared of going to jail for homicide by child
22 abuse. You think for a fact, for just one second he's
23 scared of obstructing a police investigation case? You
24 think that's what's kept him in jail for a year up at night
25 wondering and waiting? No. It's 20 years to life for

1 homicide of that child. You think that might make somebody
2 -- and he said I've been trying to protect Theia, but he
3 didn't. Even from the beginning he's been implicating Theia
4 as soon as he knew something was wrong he started saying,
5 well, maybe -- maybe she did things. And he's just added to
6 them over time where you've just got multiple stories that
7 just can't be -- well, he hit her in the store, I think, a
8 couple days before, or he hit her when we were going to
9 Asheville for court on Saturday a couple days before. No.
10 Even if they were true they medically didn't cause the
11 death. Richard -- he doesn't know anything more about the
12 injuries in the beginning than anybody does. They're saying
13 how did these bruises happen and he starts, well, maybe she
14 hit her head on the coffee table. Yeah, I saw that. Or
15 maybe she pushed him down or hit him in the stomach a couple
16 days ago when he scared her with the cap gun. They can't be
17 medically true if you believe either or both of those
18 pathologists. But he's going to sing.

19 I said Richard in the beginning might be -- you know,
20 before he testified I said he's the witness of the case. I
21 take that back. You know, the witnesses of the case was the
22 two pathologists. Is there any question whatsoever Dr.
23 Riemer and Dr. Ross both said that that child could not have
24 eaten -- the food in that child's stomach was no more than
25 an hour after that child was beaten to death. It just would

1 have dissipated in that child's stomach. Now, Dr. Riemer
2 said it could have been up to two hours after that child's
3 death. It's not a magical hour. I think Dr. Ross was
4 pretty sure that she thought it would have been 30 minutes
5 out of his system. But the other doctor said, you know,
6 food can -- if it's like thick steak it can go around for
7 two hours. They were both clear that dinner that night was
8 that child's last meal. Dr. Riemer made it clear, that
9 child in that condition could not have eaten that meal if he
10 had been beaten at that point. That is the medical
11 testimony from two pathologists. That child could not have
12 eaten that meal that night. So the question becomes what
13 time was that meal that night. That child's death was
14 between the meal, whenever that child at dinner on the night
15 of 12/29, and at some point prior to being taken to Newberry
16 County Hospital. The question is when.

17 I was going to prepare last night for you a big fancy
18 chart. I just didn't have time. I fell asleep. If I had a
19 graph for the time that Richard Bowman had been with that
20 child prior to that child's death the day beforehand, big
21 round graph, I was going to have like one color time when
22 Richard was with that child for the last 24 hours, and the
23 graph was going to be entirely that color. And the second
24 color was going to be times when Richard Bowman was not with
25 that child for that 24 hours prior to that child's death,

1 and that color would not be on the map at all because it is
2 conceded by them that Richard Bowman was with that child for
3 at least 24 hours prior to the beating. There was no other
4 person who was with that child constantly. So the question
5 really becomes whether Richard Bowman is the kind of guy who
6 would beat a child like that.

7 This is my first case in 15, 20 years where somebody's
8 alibi was a John, or a prostitute, but we'll take them where
9 we can get them. These are times when we know that Theia
10 was not in the home on December 29th, because the cell phone
11 records that the State introduced. You'll have them in your
12 evidence. You all can take them back and look at them
13 yourself. We know the tower pinged at her house when she
14 was making calls from home, and we know when she was not at
15 home making calls from other distant locations. On December
16 29th between the hours of 1:13 in the afternoon and 3:53.
17 I'm not saying that full time period. But between 1:13 and
18 3:53, or at least part of that time we know Theia's gone
19 because the phone towers in distance locations are reading
20 off it. 1:13 to 3:53. Then there are no other phone calls
21 outside of the home until -- we know Theia's out of the home
22 sometime between 8:04 p.m. and 8:35 p.m., because we know
23 distant towers read between those times. So I'm not saying
24 Theia's out of the home that full time, but we know she
25 left. She says she went to the gas station. She told that

1 to Officer Moore the day Officer Moore met her which was the
2 day the child was killed. Before Theia knew the charges
3 were coming, before Theia even know the child was beaten,
4 she said I went to the gas station, I came back home and I
5 made dinner. It's in the Officer's testimony, which I'll
6 come back to. It's in the records that you'll listen to. I
7 went and got gas and I came home and we made dinner for the
8 child. But we know Theia is out of the home from 8:04 p.m.
9 to 8:35 because distant phone towers are in. We know -- she
10 says that at that point she came back home to drop off that
11 cat, which Richard admitted she brought home a cat that I
12 didn't want. The cat had a bad eye. It was a stray cat. I
13 put it in the room with the other cats. That's the same
14 story she told the police from day one. And she said I went
15 back out to meet the man for the prostitution call. The
16 Hispanic man, Papi Chulo. So Theia's back home sometime
17 around 8:35. She's not back home until about 11:19 p.m. We
18 know that because the cell phone records show that at least
19 twice she's in Spartanburg. The motel which people
20 testified is about 30 minutes away from her home. There are
21 two phone towers that signal between 8:35 and 11:19. Theia
22 is not at home. Richard is at home with the child. We know
23 from the pathologist that child was not beaten until after
24 dinner. As the pathologist says, at least 30 minutes, as
25 much as an hour. So that would be the -- if Theia wasn't

1 home -- and we know she's home at 8:35, and the pathologist
2 says it's an hour, 35 minutes up to an hour after that
3 dinner. That child wasn't beat until after 9:00 that night.
4 I'm not saying Theia was gone that full time. But we know
5 from the distant tower readings that from 8:00 -- sometime
6 between 8:35 and sometime a lot closer to 11:19 she's gone.
7 And we know that's also precisely the same peek hours that
8 both pathologists testified the child was beaten. Theia
9 comes back. She's got a call that she has to come back to
10 Newberry. It's 11:19 at night. Is it reasonable that house
11 was dark? When I work late and my kids are asleep, and when
12 any reasonable people comes asleep do you turn on the lights
13 in the home? Wake everybody up. Come on everybody, we've
14 got to go. No, you don't. You go into your room. She
15 testified the TV was already in there. We know they had
16 left about 11:41. So from 11:19 to 11:41 Theia's back at
17 the home. That's a little over 20 minutes. That's a little
18 over 20 minutes. Is it possible her story is true that she
19 went and cleaned up. Told Richard -- who, by the way, the
20 same day the child was killed also said I picked the child
21 up and I put the child in the bed. Now, from 11:41 on it's
22 a 35 minute drive from -- 30 minute drive from Enoree to
23 Newberry. We know for a fact that beating couldn't have
24 occurred during the car ride while Theia's driving and that
25 child is sitting directly behind her. And we know it didn't

1 happen in Newberry because we got -- Justin Holmes might not
2 be the brightest young man here in Newberry, and I'm sorry
3 he's in this case, but he appeared to be a credible witness.
4 He was the young man she met down here. He said she came --
5 she called me about 12:22, said she can't find my house.
6 That's she on the street. And then she pulled in and came
7 in. Despite the attempts of the prosecutor to make them
8 leave earlier. And the reasons -- why do you think the
9 prosecutor is trying to Theia out of that house sooner?
10 Because that's going on this prong, too, that she knew about
11 the injuries and she just dilly-dallied about taking that
12 child to the hospital, and that's not true. This witness
13 said she was in my home until at least 11:15. Never been to
14 Newberry before. It's midnight. We know it's rainy or
15 overcast. You've got a cell phone that's not getting full
16 coverage. Could it take somebody 15 minutes to get from the
17 far side of Nance Street to the hospital who's never found
18 that hospital before. I submit that's accurate, a fairly
19 fair time. What we've really got here is a case where the
20 child's been beaten to death. The police know somebody's
21 done something wrong. But they don't know if it's him, or
22 her or both of them, and they charge them both. And then
23 they start investigating the case from that point on. And
24 really the only hard evidence that they've got against Theia
25 -- well, this is -- I won't call it hard. But the only

1 evidence against Theia is the receptionist there said, well,
2 she didn't seem like she was hustling in. I didn't feel
3 like she came in until about -- it took her, what did she
4 say, 1:44 before Theia came in. When the actual time lapse
5 -- and I was wrong about how -- for saying they weren't
6 running it at the right time. But the time lapse still had
7 a clock on it. It took Theia just slight over two minutes
8 to get in that hospital room. Is it possible that a woman
9 who didn't know her child was dying would go ahead and park
10 her car carefully. I understand it's serious. She doesn't
11 feel like she's taking any extra time. She's just parking
12 discretely on one end of the parking lot. It's only four
13 rows from the front door. You've got illegal tags. You're
14 in here doing something illegal. There's no evidence, other
15 than from Richard Bowman, that she knew anything was wrong.
16 Is it possible she might want to discretely park her car and
17 then -- it took her two minutes. And they want to say that
18 that's prove that she's guilty of beating that child to
19 death. You've got some testimony from some of the officers
20 who just said, well, she didn't look like she was crying
21 enough. And they want you to base a conviction on that for
22 killing a child. We saw this mother and she just -- just
23 something just wasn't quite right, which we think that means
24 she killed the child. It doesn't. And you've seen the
25 video. You saw Theia's reenactment. I ask you, you've got

1 medical records all that say that Theia was distraught.
2 You've got Dr. Holaday's records saying that she was sitting
3 at the foot of the bed saying keep working on him. Keep
4 working on him. He had to console her. And they quibbled
5 about what console means. You've got several medical
6 records saying they were all frantic. And then you can
7 watch Theia for yourself shaking while she's doing that
8 demonstration. And they want you to somehow think that
9 she's just indifferent to that child's death, and it's just
10 not true. And it's not in evidence. It's just a hunch.
11 You've seen the photographs. We've introduced Facebook
12 photographs of that child within the last month on Theia's
13 Facebook of what that child looked like in the last month of
14 his life and you don't see any injury. You don't see
15 anything distressing in the photographs of that child prior
16 to that child's death. God Almighty. Just within this
17 child's last few days -- I mean, within a month of this
18 child being killed, Richard Bowman -- that's a picture of
19 Richard Bowman. His Facebook. Within a month of this child
20 being killed he starts posting pictures like that, like
21 that, like that. A child with his face ripped open.
22 Killing with knives. "I just met you. This is crazy. My
23 name's Slender. I take your babies." And probably this one
24 is the most chilling, which is a -- the monster looking at
25 the screaming child in its bed, and just a chilling thing

1 that momma's you need to be careful because people will take
2 your babies. I think maybe he's sending these messages to
3 Theia. I think he had an intended audience. I think he was
4 -- I submit to you the evidence shows that that was one of
5 the ways Richard was controlling Theia. He's absolutely the
6 worst boyfriend you can have. He's violent. He beats you
7 up. And then he -- he'll do things. He'll break furniture.
8 He's a car mechanic, but he can't fix spark plugs on a car.
9 He doesn't want to fix spark plugs on a car he pulled out,
10 because she'll leave him and he knows it. Mom buys her a
11 new car. She buys him a new -- she buys her daughter a new
12 car. At least gives her \$1,000 to get her a new car.
13 Richard keeps the baby seat from her. They have to buy a
14 new baby seat for the car. Does it sound like he's a
15 controlling boyfriend? Does he sound -- I don't know if
16 he's a pimp or not, but does he sound like he was a credible
17 witness to you? You saw him testify. Did he even look
18 believable? I'm just submitting to you that it is
19 absolutely possible that Richard, because that child threw
20 up while he was eating, or after dinner, or that child
21 defecated in the bathtub -- Richard admits, I'm the one who
22 threw up in that toilet, as we learned. Why didn't you
23 flush that? Because he does that a lot. He's bulimic. He
24 loses his temper with that child. Maybe he's stressed out.
25 Maybe he's angry at Theia. I don't -- I'm not arguing he

1 meant to kill that child. I am arguing he meant to whoop
2 that child good, and he did, and he killed the child. And
3 the child either on his own he said get in your bed, or he
4 put the child in bed. It's dark. Richard goes back to bed.
5 Theia comes in. She's only home for 20 minutes. Is it
6 possible she didn't see -- with all the doctors said until
7 you took the clothes off of that child you would not have
8 seen those injuries. And this is a child at dark in its
9 bed. I submit to you is it realistically possible. She had
10 another call she had to go out for. Even if she was going
11 to sleep in her own home that night she might not have seen
12 those injuries until the next day. But she would have seen
13 them the following day. And then when they go down there
14 and the child starts oozing stuff out of his mouth during
15 the drive down there and Richard mentions it, he gets
16 scared, and then he says something dumb like, well, does
17 this child have sleep apnea, because I can't wake the child
18 up. And she says -- this is by his statements. What do you
19 mean you can't wake the child up. Wake the child up. And
20 Richard even says that the first moment she saw the brown
21 stuff on the child's face she started crying and trying to
22 get the hospital on her cell phone. Is there any evidence
23 that she looked like the kind of girl or sounded like the
24 kind of girl who would have seen that child get beat up and
25 not get in Richard's face? You all know for a fact there

1 would have been another sheriff's call out there where
2 they'd gotten into a fighting incident between them. She
3 would have stood up to him.

4 Here's the worst thing about this case is the
5 Solicitor's really only evidence is that Theia got in
6 trouble for slapping that child in April of 2013. April of
7 2013. The death happened December of 2014. They want to
8 show that somehow the slapping incident led to the death. I
9 would agree with them. That's absolutely fair if there was
10 evidence of this. If there was any evidence in the file of
11 any old injuries. Two pathologists, the doctor looked at
12 the child. The child has been in the morgue, examined
13 multiple times for a crime investigation. If you all had
14 heard any testimony about we saw old injuries on this child,
15 we saw old bruises on this child. You don't think they were
16 looking for them? You don't think that there would have
17 been filed a report if they saw old spanking marks, old slap
18 yellow bruises, broken bones, damaged teeth? You don't
19 think that the doctor would have noticed -- I saw evidence
20 of other bruising or other injuries in the file it would be
21 in there? It's not. The only injuries those doctors saw,
22 two of them, were bruises they both say happened at the same
23 time. It was part of one beating. They both said that, and
24 they both said it happened after dinner because that child -
25 - it would have stopped that child from eating, digesting.

1 The injuries to the groin would have stopped that child from
2 eating food. That child would not be in a good humor.

3 If you find that this is evidence of ongoing abuse you
4 got a duty to convict her. But if you don't, you've got a -
5 - you don't have to like Theia McArdle. You don't have to
6 like somebody to say they're right, or to say they're not
7 guilty. If somebody comes to you after the case and asks
8 why you didn't find her guilty, it's easy. I think the
9 answer is easy. If the prosecutors had shown me one
10 picture, one slide, one exhibit of old injuries on that
11 child, I would have found Theia guilty of child abuse. We
12 didn't. Two pathologists examined that child. There were
13 no old injuries. There's no cracked knuckles. There's no
14 broken bones. They did -- they did the bone scans. They're
15 in the record. There are no old bruises. But they want you
16 to think that this is ongoing abuse because that's the only
17 evidence they have in the case. They got that the car was
18 parked backwards, she didn't cry enough, and the testimony
19 of Richard Bowman. They have made a mistake. They charged
20 -- well, they charged the right person, but they've also
21 charged the wrong person. They charged the mother who's
22 living a prostitute lifestyle. I mean, nobody disputes
23 that. But she ain't guilty just because she's a prostitute.
24 If there was any evidence -- any evidence from any
25 legitimate witness in this case you would have it. I

1 promise you.

2 How much time I got left, Judge?

3 THE COURT: Twenty seconds, but I'll give you an
4 additional two minutes. And I'll give you two minutes,
5 Solicitor, as well.

6 MR STUMBO: The nurse, two minutes and 21 seconds is
7 how long it took Theia to get in the hospital after the
8 child came in. Dr. Holaday estimated that the child had
9 been dead at least two hours. Was it unusual for parents to
10 bring the child in directly and not call an ambulance? He
11 said 90 percent of people bring their kids to the hospital
12 themselves and not use ambulances. The child was dead, the
13 child was cold, the nurses and the doctor say when the child
14 came to the hospital. Got Justin Holmes saying they
15 wouldn't have left my home -- she was with me until about
16 1:15 or so. Quiet street. If Richard had been honking the
17 horn. Quiet street. Knife in the car. Whose knife do you
18 think that is? Told the Officer -- you all look at your own
19 notes. You don't have to go by mine. Told Officer Moore
20 the day of the killing we had supper between 6:00 to 8:00
21 p.m., came back from gas, started dinner around 8:30. Theia
22 told that to them the day -- just a couple of hours after
23 her child was born (sic), not seeing bruises, not knowing
24 she's being charged. Which just happens to fall in the
25 timeline of the pathologist of when that child would have

1 been beaten, because we know Theia is out of that house.
2 Sometime between 8:35 and 11:19 we know Theia's gone,
3 because there are phone calls somewhere else, and that just
4 is precisely when both pathologist indicate they think that
5 child was killed. Just no evidence in the record at all
6 that Theia was aware of these injuries and refused to take
7 the child to the hospital. In fact, the opposite. She took
8 the child to the hospital straightaway. She might not be a
9 great a mother. Is the house without any furniture. If
10 there was any evidence that the child wasn't being
11 adequately cared for this might be a good case, but there's
12 not even that. It's just this insinuation that she's not a
13 good mother and therefore we think she might have had
14 something to do with killing her child. And just the
15 medical testimony does not bear that out. And this is a
16 case you are just obligated to find the Defendant not
17 guilty.

18 THE COURT: Thank you, Mr. Verner. Mr. Stumbo, by my
19 watch you will have 32 minutes and 30 seconds, sir.

20 MR. STUMBO: Thank you, Judge. If it please the Court.

21 THE COURT: Yes, sir.

22 CLOSING ARGUMENT

23 BY MR. STUMBO: I want to thank you all for your
24 patience this week. I know this has been probably one of
25 the most difficult things you've experienced, having to look

1 at this evidence. I know it's been as hard for you all as
2 it's been for myself and Mr. Daniel and others involved in
3 this case, even Mr. Verner. You probably never expected
4 that you'd be coming in here to this courtroom this week and
5 have to look at some of the stuff that you've seen. And I
6 apologize that we had to show it to you. I do. But why
7 we're here, and Mr. Daniel talked to you about this in
8 opening he actually said **Minor** would be three-
9 years-old right now. Actually, that was a little bit
10 incorrect. He never made it to his third birthday. He came
11 up a few hours short. And I know you just heard that
12 accusations that us as the prosecutors that we want to
13 convict Theia McArdle because she's a prostitute. Theia
14 McArdle is a child abuser. Theia McArdle had a boyfriend,
15 Richard Bowman, that she brought into the house who is a
16 child abuser. Now, the jury system is one of the greatest
17 things ever invented in the legal system and here's why.
18 Because 12 regular citizens to come in and listen to
19 evidence and determine what the truth is. And that's what
20 we're here for. And Mr. Daniel told you that in opening,
21 that to the dead we owe the truth. And that's why we're
22 here. And quite frankly, ladies and gentlemen, what we just
23 heard from Mr. Verner -- he's a fine lawyer. We've worked
24 with him many times. He's very good at what he does
25 representing his clients. But it reminds me of a story I

1 once told you about two men standing there near a puddle.
2 At the bottom of the puddle is a shiny gold coin sitting
3 there at the bottom of that puddle. One man says the other
4 -- the older fellow says to the younger fellow, thinking he
5 was real smart, bet you 20 bucks I can make that little gold
6 coin down at the bottom of the puddle disappear without
7 touching it. The young man says, sure I'll take that bet.
8 No way you can make it disappear without picking it up.
9 Takes the bet. The older fellow goes over, reaches down,
10 grabs a stick, starts scribbling up the mud stirring it up
11 around that coin. That puddle muddies over. Clouds up.
12 And guess what? That gold coin disappears at the bottom of
13 that puddle without him touching it. That's exactly what we
14 just heard from Mr. Verner, not only from opening
15 statements, but all the way through his closing. He made
16 two statements to you all when we first started this case in
17 his opening statement that he has utterly failed to deliver
18 on to you folks. He's utterly failed at two things he told
19 you in opening.

20 The first thing Mr. Verner said is that if Theia
21 McArdle was convicted of this crime, homicide by child
22 abuse, that Richard Bowman would walk. That he'd be free.
23 Not only did he fail to deliver that to you, he doesn't have
24 the ability to deliver that to you. Richard Bowman is still
25 charged with homicide by child abuse. And I will submit to

1 you, ladies and gentlemen, what he did on this stand this
2 week -- and we'll go to the law in a second so we can
3 demonstrate this to you how two people can be guilty of this
4 crime. The same crime. But he told you Richard Bowman
5 would walk. I submit to you he came in this courtroom under
6 oath this week and essentially hung himself. He confessed
7 to the crime of homicide by child abuse. And here's the
8 thing -- we're going to go to the law in a second. I
9 challenge you -- and if you hear something different from me
10 or Mr. Verner on the law, and you hear from the Judge, the
11 Judge is the judge of the law in this case. He's going to
12 instruct you on what homicide by child abuse is. But I
13 challenge you to try to hear from him that it's required
14 that you figure out which person struck the fatal blow on
15 the child. We've heard a lot from Mr. Verner all about
16 Richard Bowman in this case. That you have to find that
17 Richard Bowman struck the fatal blow, or that Theia McArdle
18 struck the fatal blow. When you see the law in a second,
19 you listen to it from the Judge, you do not have to find
20 that. And the law actually contemplates the fact that
21 multiple parties can be guilty of homicide by child abuse,
22 even if only one of them struck the fatal blow. And we're
23 going to go over that in a second. So Mr. Verner failed on
24 promise number one that if Theia McArdle is convicted this
25 week then Richard Bowman walks. I will submit to you that

1 he's trying to put Richard Bowman on trial. And the 12 of
2 you are here to try the case of Theia McArdle. And there
3 will be a day in court for Richard Bowman. As the
4 prosecutor of the Eighth Circuit, I can assure you that
5 there will be a day in court for Richard Bowman. And that
6 will be a day in court where he answers for his
7 responsibility in this case. But that's not the question
8 for today. The Judge is going to instruct you on the law
9 and you'll see that. But Mr. Verner has swirled the mud
10 around the coin to try to get you all to take your eye off
11 the ball to say it's all about whether Richard did this or
12 Theia did the actual punching. I submit to you, ladies and
13 gentlemen, based on what I've heard about the testimony, and
14 we'll go over that in a second, too, that both of them --
15 both of them could have struck blows on this child and
16 inflicted the horrific injuries that we've seen. I'm not
17 going to put the picture back up there, folks. You all will
18 have those pictures in the jury room during your
19 deliberations. Horrific, horrific injuries.

20 I'm going to talk about the law here. What does beyond
21 a reasonable doubt mean? The burden of proof under our
22 system of justice is always on the State, never on the
23 Defendant. There's a presumption of innocence. The Judge
24 is going to talk to you about that. The burden of proof is
25 beyond a reasonable doubt. Proof beyond a reasonable doubt.

1 And I want you to listen to this when the Judge says this.
2 This is not a magical formula what proof beyond a reasonable
3 doubt is. It's not proof beyond all doubt. But it's proof,
4 the burden is on us to ask you this question when you are
5 reviewing the evidence. Are you firmly convinced. Firmly
6 convinced of applying the law to the facts of this case that
7 Theia McArdle is guilty of homicide by child abuse.

8 Now, what is homicide by child abuse? The Defendant
9 caused the death of a child under the age of 11 while
10 committing child abuse or neglect. And I'm going to define
11 child abuse or neglect under the law. When the death of a
12 child occurs under circumstances manifesting in extreme
13 indifference to human life. Those are the elements of the
14 crime. Not who struck the fatal blow. That's not what the
15 law says. The law says child abuse or neglect. And I want
16 you to pay close attention to what the law -- and the Judge
17 is going to instruct you on these very words what child
18 abuse or neglect is. An act or omission by any person which
19 causes harm to the child's physical health or welfare. Act
20 or omission. Do you see anywhere in there where it says you
21 have to -- we have to know who struck the fatal blow? These
22 two were both around this child virtually all day with the
23 exception of the time that she goes to the call in
24 Spartanburg. We're going to talk about those timeframes
25 that Mr. Verner gave you all a second ago and I think you're

1 going to see that they're not as accurate and clear as he is
2 proposing. What is harm to the child's physical health and
3 welfare mean? This is what the law says. That it either
4 inflicts or allows to be inflicted upon the child physical
5 injury, including injuries sustained as a result of
6 excessive corporal punishment, or B, fails to supply the
7 child adequate food, clothing, shelter or health care, and
8 the failure to do so causes physical injury or condition
9 resulting in death. Fails to supply the child with adequate
10 healthcare. Remember it says acts or omissions. The Judge
11 is going to tell you what direct or circumstantial evidence
12 means. Direct evidence is evidence of an eyewitness. And I
13 would submit to you, ladies and gentlemen, Richard Bowman is
14 the only person other than Theia McArdle in this case who
15 witnessed what happened to **Minor** that day. He's the only
16 one. Be very clear, ladies and gentlemen, do we believe
17 that by putting him on that stand that everything that he
18 told you was the gospel truth and the entire truth? We
19 still don't believe that either Theia McArdle, who testified
20 this week, or Richard Bowman, is giving us the whole truth
21 of what happened in this case. They're both minimizing.
22 They're both trying to cover their own rear end. Richard
23 Bowman, too. You saw that. You saw how evasive he was.
24 But I will say this. The only person to have given any kind
25 of consistency as far as what happened came right after --

1 when they were interviewed by law enforcement to now, has
2 been Bowman. He said he spanked **Minor** in the tub which
3 caused him to fall down and hit his head. He told Chief
4 McClurken that the day after this happened. He said it a
5 few weeks ago in the interview in here for trial, and he
6 said it on the witness stand. He admitted that. So it's
7 obvious that he was part of the problem here, and part of
8 the reasons why **Minor** went from this young boy,
9 who his grandmother described as a sweet, polite, respectful
10 young man. He went from this energetic young man to dead on
11 a table in the hospital on this third birthday. It's not an
12 either/or here folks. You saw this in the record. It's a
13 both/and. It contemplates that, and that's exactly what
14 happened in this case.

15 First promise that Mr. Verner failed to deliver on was
16 that Richard Bowman will walk, and we've laid that out. The
17 law does not say that. That is absolutely 100 percent is
18 not true. Richard Bowman is going to have his day in court.

19 Secondly, he said it was medically impossible for Theia
20 McArdle to have inflicted any of these blows on **Minor**
21 Medically impossible. I don't know if you all caught that
22 in his opening statement. He said it was medically
23 impossible. And we heard a lot of medical testimony, folks,
24 and I know it can be very confusing. It can be very tedious
25 here and all the scientific terminology. Dr. Ross testified

1 to these causes -- the cause of death being subdural
2 hemorrhage, but on the same page -- you'll have her report,
3 bruising on the stomach and pancreas, hemorrhage around the
4 bladder, perforation of the duodenum, the small intestine.
5 He was so beat up on the inside of him that that could have
6 caused his death, too. They -- well, Dr. Ross said -- you
7 heard her. She said there's one line on the coroner's form
8 she has to give a cause of death and she's got to give one
9 or the other, and here she chose the head.

10 But I don't know if you noticed how hard Mr. Verner
11 tried to get Dr. Ross and the doctor from Charleston today
12 to age these injuries. Remember that? Remember how hard he
13 tried to get them to say this happened in an hour or less?
14 And any time I got back up and talked to the doctors and I
15 said it's not scientifically or medically possible to age
16 these things is it, and both of them agreed with me. They
17 said no, it's not. Dr. Ross, in fact, I said if it's 60
18 minutes or an hour could that have been 120 minutes. She
19 said yes. Could it have been 180 minutes. She said yes.
20 240, 360, every time she said these injuries and bruises
21 could have been any of those. It's medically possible. And
22 Mr. Verner told you it was medically impossible. There
23 again, he failed to deliver on promise number two. And I
24 will submit to you, ladies and gentlemen, if you look at
25 that picture of the severe bruising around **Minor's**

1 genitals, of which is unlike anything I've ever seen in my
2 life, that if you think that happened within an hour of his
3 death and it was already revealing that much bruising, we
4 know by common experience that that's not how bruises show
5 up. And they admitted it. The doctors told us as much on
6 the stand. They said we can't age these injuries. Mr.
7 Verner wants to be able to age them in an hour or less
8 because it's convenient for his defense to show that Theia
9 was somehow gone on her call in Spartanburg when it
10 happened. He said it's medically impossible. Not true. So
11 let's try to uncloud the puddle and get to that coin at the
12 bottom. And I encourage you, keep your eye on the ball as
13 you're deliberating here. It's going to be real easy to
14 have this case be all about Richard Bowman. But it's about
15 Theia McArdle, and that's the decision you all have to make
16 today. And Richard Bowman is obviously a part of that story
17 and he's going to have his day in court later as well.

18 Let's look at the timeline here. And this is obviously
19 -- you'll have to piece here today as the jury here trying
20 to figure out all the evidence that's in the record what
21 happened on these days and hours leading up to his death.
22 And that's to say it's the final hours of a two-year-old boy
23 who didn't make it to his third birthday. The [REDACTED], we
24 heard testimony from McArdle, Bowman and Theia's mother
25 about them coming up to the park incident with the skates.

1 There was direct evidence in the record of a punching by
2 Theia on **Minor** Again, the Judge is going to instruct you
3 as far as Richard Bowman and Theia McArdle, you can believe
4 all of the witnesses testimony, none of it, or you can
5 believe any part of it you want to. And so, if there's any
6 part of either one of their testimony that matches with the
7 physical evidence, that's what you need to piece together in
8 this case. And evidence of Theia punching **Minor** before
9 they left for putting his shoes on improperly. And there's
10 also evidence on the 27th of her striking **Minor** as well.
11 And Mr. Verner said there's no evidence in the record. It's
12 your job as the jury to determine what you've heard from
13 Theia McArdle and what you've heard from Richard Bowman, if
14 anything, that's consistent with the physical evidence in
15 this case being injuries, the phone records, the DNA
16 reports. All the other evidence we've heard.

17 The 28th, they're all consistent that there's a trip to
18 McDonald's that day to download a movie, to get Internet
19 access. According to Richard Bowman, that there was a punch
20 from McArdle to **Minor** in his genitals because he mimicked
21 Bowman by saying I got bigger balls than you, mom.

22 The 29th, and this is the day, and I'm going to try to
23 go through this quickly. The last day of **Minor's** life.
24 He wakes up and eats breakfast. Richard says he feeds him.
25 Theia says she feeds him. So we've got a conflict there in

1 their testimony. Around 11:00 Richard says that Theia gets
2 woke up by a toy gun of some sort. She wakes up and she
3 smacks **Minor** in the abdomen and he cries. The late
4 morning that he takes a shower, **Minor** takes a shower after
5 him. Theia indicates they get ready to go to Laurens and go
6 to the Family Dollar. Here's a specific timeframe, 1:13 to
7 1:53 p.m. where they take a trip to Laurens to go to Family
8 Dollar, and they're gone from the house during that time.
9 The phone records. And you'll find that they're hitting off
10 of different towers during that timeframe. They get back
11 late afternoon. This will be after 3:53. Sometime after
12 3:53 -- 3:53 is the first call that's made from her phone at
13 the house. And that's not exact time in that -- that's the
14 first call she makes, but sometime before or after that they
15 get home. **Minor** indicates -- or **Minor** was screaming in
16 the bedroom, Bowman says. And there again, folks, he
17 indicates there's some incident where he sees Theia punching
18 **Minor** because of a laptop getting knocked off a table. He
19 says at some point that he gets a complaint from **Minor**
20 about his penis hurting, and he tells **Minor** go talk to
21 your mom about that. Between 6:00 and 8:00 p.m., and this
22 has been consistent -- one thing consistent we've heard from
23 Theia McArdle from the beginning is that she made dinner
24 that night of steak and corn, either potatoes or garlic
25 bread, and that Richard Bowman indicates that **Minor** vomits

1 on himself while he's trying to eat. And Bowman takes
2 **Minor** after this to the bathroom to clean up and he throws
3 up on himself in the toilet. He says that Theia's at home
4 when he throws up. Theia, of course, says I never seen
5 **Minor** throw up. Now, it's interesting that she calls her
6 mother from the hospital right after **Minor** dies and tells
7 her mother that **Minor** had been throwing at the house in
8 Enoree earlier. Of course, she tells law enforcement later,
9 no, I never knew anything. I never saw **Minor** sick. Well,
10 why would she tell her mother that right after she found out
11 that **Minor** had passed? There again, I submit to you that
12 she's being evasive and she's lying. There again, I submit
13 to you that she's being evasive and she's lying. **Minor**
14 based on the -- and this is the one piece of the medical
15 evidence where the doctor seems to be able to get down to a
16 more specific timeframe because of the food in the stomach.
17 You all remember this? Both doctors testified that these
18 injuries, some of these severe injuries occurred to cause
19 his body to shut down within -- Dr. Ross said within 30
20 minutes of the time he ate dinner. Now, as much as Mr.
21 Verner has tried to stretch out this time where she's gone
22 to Spartanburg, it's very clear that between 6:00 and 8:00
23 sometime, and even by Theia's own admission, she makes
24 dinner and they eat, sometime between 6:30 and 7:30. But
25 within 30 minutes of **Minor** eating that corn, folks, he's

1 being beaten and abused. Was it Theia McArdle? Was it
2 Richard Bowman? Was it both of them? They were both at
3 home. That's the best medical testimony we were able to
4 ascertain as far as the timeframe of the assaults on
5 **Minor** because of what we know about the digestive system
6 and the fact that his food did not digest. They said that
7 there was enough food with corn kernels in the stomach to
8 indicate that, that this happened right around dinnertime.
9 The time when Theia McArdle and Richard Bowman were both at
10 home. When did she actually leave to go service Papi Chulo
11 is the only name we have, but apparently Ms. McArdle was
12 going to run off with him later and take her son with her
13 but she didn't even know his real name. But when did she
14 actually leave to go see him that night? If you look -- and
15 there again, there's vomit on the pillow case which would
16 seem to indicate there's vomiting at the house in Enoree.
17 That he had gotten sick there. You'll have the phone
18 records, ladies and gentlemen, in Exhibit 44 which shows the
19 tower locations and the times that they hit off the tower.
20 But what you'll see there, and it's not so simple, is Mr.
21 Verner telling you that she was only -- she was gone between
22 8:35 and 11:19. The reason we say that is those are the
23 times she actually makes calls. So we know at 8:35 she's at
24 home. 8:52 is the first time her phone hits off another
25 tower and it's going up to Spartanburg. So 8:52 is the

1 first time we can confirm she's away from the house. 10:52
2 she hits on a tower very close to the one near the house.
3 And the first call that she makes at home is 11:19. So she
4 was gone, ladies and gentlemen, sometime in this time range
5 for about two hours. There again, as much as Mr. Verner
6 wants to tell you that it's medically impossible for these
7 injuries to have occurred and that they all happened at the
8 same time -- I don't know if you all noticed this today, but
9 the expert that they brought and paid to come up here and
10 testify said that in her opinion all these injuries happened
11 at the same time. But, of course, when we start looking at
12 the injuries to the swollen genitals and the abdomen she
13 backs off of that. You all notice that, how she said, well,
14 no. I can't really say they all happened at the same time.
15 It's very possible that they could have happened throughout
16 the course of the day. But, of course, initially she wants
17 you all to believe this is one beating that happens at one
18 time while Theia's gone to Spartanburg. It's a very
19 convenient defense. But if you read the records, it's not
20 accurate, and it is not medically impossible for Theia to
21 have been at the house when this happened.

22 They go to Newberry. **Minor** apparently is in the
23 carseat. She thinks he's sleeping. Richard Bowman says
24 that they hear him snoring. He's in a Puma tee shirt and
25 shorts. Just to let you know, he's in a tee shirt and gym

1 shorts and it's December the 29th right around
2 Christmastime. They depart sometime after 11:41 and they
3 get to the John's house on Bedenbaugh Street 12:22 a.m.
4 December 30th. She's inside for about 30 minutes at the
5 house. And I would submit to you, folks, that the injuries
6 to the head are not consistent with someone being able to
7 hit -- you saw where he was sitting in the car on this side.
8 Supposedly Richard Bowman is in the front passenger seat.
9 But the one major bruise to the head is on the left side of
10 his head and that's where the subdural hematoma is on the
11 left side. Well, if that happened in the car at the hands
12 of Mr. Bowman, where the child is here and to his right
13 front was Richard Bowman in the passenger seat, that's
14 physically impossible for him to get to that side. There
15 again, inconsistent with the theory that they want you to
16 believe that these assaults occurred in the car while --
17 while Ms. McArdle was in the house in Newberry. He's
18 covered up in the seat so that the John wouldn't see. At
19 some point he wakes up and **Minor's** not breathing. He
20 informs Theia of this when she gets back to the car. And
21 according to Bowman, he says we need to get to the hospital.
22 She says why don't we just go back to Laurens. And clearly,
23 folks, if you look at the timeframe, the young man from
24 Newberry did not say 1:15. You can run this back. He said
25 sometime between 1:05 and 1:15. And then they don't get to

1 the hospital in Newberry, which is less than two miles away,
2 until 1:35. You say that on the surveillance tape. Not in
3 any apparent hurry to get there. And Theia McArdle clearly
4 is driving the car by her own admission. And folks, Mr.
5 Verner may minimize the fact that when they get to the
6 hospital she slowly creeps the car over and backs into a
7 parking place 200 to 250 feet away. What's human nature if
8 you're really concerned about a child? I'll leave that for
9 you all the jury to decide what the relevance of that is.
10 Did she seem concerned talking about the death of her child
11 up here today to you all? You all saw her. You saw her.
12 He's pronounced dead at 2:06 a.m. Of course, the
13 pathologists had said several times, and we asked this, when
14 did he actually die. And they couldn't really say. That's
15 just the legal term. They said when he got to the hospital
16 he was cold to the touch. He's probably deceased then, but
17 we can't give you a firm time of how long he was dead before
18 he got there. We know it was long enough for the vomit that
19 was lodged in his esophagus to congeal and harden. So it
20 had been some -- a matter of time. Very possible, ladies
21 and gentlemen, that he could have died at the house, he
22 could have died on the ride there, he could have died in
23 Newberry. I don't think based on any of the medical
24 testimony, ladies and gentlemen, they're going to be able to
25 tell you the exact moment **Minor** passed away.

1 I hope you know that this three hour interview from
2 Theia McArdle, it's State's Exhibit No. 37 and it's about
3 three hours. We're already here on a Friday afternoon
4 folks. It's not that we didn't play it for you because we
5 didn't know -- it's in evidence. You can listen to it
6 during deliberations. But I would submit to you it's the
7 same self-serving lies that you heard from the witness stand
8 today. Denials. She makes a comment at one point in her
9 interview with law enforcement that well -- she talks to
10 talk about him falling on the skates and the CPR. But
11 doesn't cover all the injuries. At that point she didn't
12 even know what the injuries supposedly were, according to
13 her. That was a very interesting statement that you may
14 want to zero in on. It's in the record. Did she say
15 anything in her written statement to law enforcement about
16 anything remotely explaining why her young son was dead?
17 She didn't. You have that in the record.

18 Mr. Daniel talked to you about the truth in the case,
19 and I want you all know when you go back to the jury room
20 you're going to have a verdict form. You've heard the word
21 verdict before, I'm sure. The word verdict is made up of
22 two Latin words. It's verus dictum. And all that means,
23 the word verdict, all it means is to speak the truth. To
24 speak the truth. And so, that's what Mr. Daniel and I would
25 ask you to do in this case. Focus on the law in this case.

1 The fact that no one in this courtroom on the State's side
2 is alleging that Richard Bowman is innocent. In fact, he
3 got up on that stand and hung himself and made himself
4 guilty of homicide by child abuse, even if he didn't strike
5 the fatal blows. And why is that? Because that little
6 beaten, broken body of **Minor** as it rode in the car
7 from Enoree, South Carolina to Newberry was dying. The
8 people in that car, folks, were Theia McArdle and Richard
9 Bowman. And instead of getting medical help that he might
10 need to maybe save him, they omitted to do that. And what
11 did they do? They thought it was more important for Theia
12 to make her prostitution call in Newberry while **Minor**
13 McArdle was dying in that backseat. The two of them were in
14 that car more concerned with her getting to her call in
15 Newberry.

16 What's the truth in this case, ladies and gentlemen?
17 That Theia McArdle and Richard Bowman committed acts or
18 omissions on December 29th, 2014 that caused the death of
19 this little boy.

20 Thank you for your attention this week. Thank you for
21 your diligence. We appreciate that. Your service as
22 citizens here in Newberry, and that's what y'all are. The
23 consciousness of this community that this type of abuse is
24 not going to be tolerated. I'm going to ask you to go back
25 in the jury room and consider all of this mountain of

1 evidence that we have that you've heard this week and find
2 Theia McArdle guilty. Thank you.

3 JURY CHARGE

4 THE COURT: Thank you very much, sir. Ladies and
5 gentlemen, these instructions should take about 15 minutes
6 for me to give to you. Does anybody need a quick break
7 before I do that? Everybody good? Raise your hand if you
8 need a break. Going once, going twice. Okay.

9 Now, ladies and gentlemen, just a few caveats. At this
10 point in time the record in this case is closed, and what
11 that means essentially is that it's not possible to reopen
12 the record and take additional testimony. So you'll have to
13 decide this case based upon the evidence that has been
14 presented to you thus far. It's simply not possible to
15 introduce additional evidence. So if you have any questions
16 about the facts in the case, or the evidence in the case,
17 you're going to need to rely upon your recollection to the
18 extent that you can, and certainly reference any exhibits
19 that you may want to. However, if you have any questions
20 about the law that applies, simply write that question down
21 on a note and send it out and I will try and help you. I
22 can help you on any legal issue. On any question concerning
23 the law. Factually though I'm not permitted to answer any
24 factual questions. All right?

25 Now, ladies and gentlemen, I'll tell you that when I

1 first started practicing law 23 years plus ago the way that
2 judges would instruct a jury is that they would basically
3 sit up here and they would read you 15 pages of the
4 applicable law taken from various law books and the jury was
5 supposed to just basically sit there, absorb it all, take it
6 all in, and then take it back to the jury room and get it
7 right the first time. Well, I always found that a little
8 bit unreasonable, ladies and gentlemen, because like most
9 people, it took me three years to get through law school and
10 I don't think it's fair to ask you to learn in 15 minutes
11 what it took me three years to learn. Long story short, you
12 will have a copy of these jury instructions that you can
13 refer to if you need to in the jury room. And again, I'm
14 happy to answer any legal question that you may have.
15 Please pay attention to the instructions as a whole. Don't
16 simply pay attention to part of them to the detriment of
17 some other portion of the instructions. And, of course,
18 once you're done, please return these to the Court.

19 Now, ladies and gentlemen, I instruct you that the
20 indictment in this case charges Ms. McArdle with the offense
21 of homicide by child abuse. I remind you that the fact that
22 Ms. McArdle was arrested, charged and indicted in this case
23 is not evidence and cannot be considered by you as evidence
24 of guilt in this case, nor does this indictment create any
25 presumption or inference of guilt. This document is simply

1 the formal written instrument which contains the charge
2 against her. It's the formal document by which this case is
3 brought into court.

4 Now, in this case Ms. McArdle has pled not guilty to
5 this charge and that plea puts the burden on the State to
6 prove the Defendant guilty. I instruct you that a person
7 charged with committing a criminal offense in this state is
8 never required to prove herself innocent. It's an important
9 rule of law that the Defendant in a criminal trial, no
10 matter what the seriousness of the charge may be, will
11 always be presumed to be innocent of the crime to which the
12 indictment was issued unless guilt has been proven by
13 evidence to satisfy you of her guilt beyond a reasonable
14 doubt. This presumption of innocence does not end when you
15 begin your deliberations, but it accompanies the Defendant
16 throughout the trial until you, the jury, reach a verdict of
17 guilt based on evidence satisfying you of that guilt beyond
18 a reasonable doubt. The presumption of innocence is like a
19 robe of righteousness. It's placed about the shoulders of
20 the Defendant and it remains with her until it has been
21 stripped from her by evidence satisfying you of her guilt
22 beyond a reasonable doubt. Ladies and gentlemen, the
23 presumption of innocence is not merely a legal theory. It's
24 not a legal phrase. It's not just a legal phrase. It is a
25 substantial right to which every Defendant is entitled

1 unless you, the jury, are satisfied from the evidence of the
2 Defendant's guilt beyond a reasonable doubt.

3 Well, what is a reasonable doubt in the law? A
4 reasonable doubt is the kind of doubt that would cause a
5 reasonable person to hesitate to act. The State has the
6 burden of proving the Defendant guilty beyond a reasonable
7 doubt. And some of you may have served as jurors in civil
8 cases where you were told that it's only necessary to prove
9 that a fact is more likely true than not true, such as by
10 the greater weight or the preponderance of the evidence. In
11 criminal cases the State's prove must be more powerful than
12 that. It must be proof beyond a reasonable doubt. Proof
13 beyond a reasonable doubt is proof that leaves you firmly
14 convinced of the Defendant's guilt. Now, there are very few
15 things that we now in this world with absolute certainty and
16 in criminal cases the law doesn't require proof that
17 overcomes every possible doubt. If, based on your
18 consideration of the evidence, you're firmly convinced that
19 the Defendant is guilty of the crime charged, you should
20 find her guilty. If, on the other hand, you think there's
21 the real possibility that the Defendant is not guilty, you
22 must give the Defendant the benefit of the doubt and find
23 her not guilty.

24 Now, ladies and gentlemen, during this trial I remind
25 you that you and I have certain duties to perform, and as

1 the trial judge it's been my responsibility to preside over
2 the trial of this case and I have a duty to rule on the
3 admissibility of evidence offered. You have to consider
4 only the competent evidence before you. So any testimony
5 which was ordered stricken from the record you must
6 disregard that testimony because you're to consider only the
7 testimony which has been presented from the witness stand,
8 as well as any exhibits which have been made a part of the
9 record in this case.

10 Now, I have the additional duty to charge you the law
11 applicable. And as the presiding judge, I am the sole judge
12 of the law. It's your duties as jurors to accept and apply
13 the law as I now state it to you. So if you already have
14 any idea as to what the law is or what it should be and it
15 doesn't agree with what I now tell you the law is, you must
16 abandon this idea because you're sworn to accept and apply
17 the law as I state it to you.

18 Again, ladies and gentlemen, in this case, or in every
19 case tried in this court before a jury, the jury becomes the
20 sole and exclusive judge of the facts of the case. A trial
21 judge cannot intimate, state, comment on or make any
22 statement to a trial jury about the facts in a case. Since
23 you, the jury, are the sole judges of the facts, you're not
24 to infer from what I've said during the progress of this
25 trial in ruling upon the admissibility of evidence or

1 otherwise, or anything that I say to you know during the
2 course of this instruction to you that I have any opinion
3 about the facts in this case. Ladies and gentlemen, the law
4 does not permit me to have any opinion about the facts in
5 this case. This is a matter solely for you, the jury, to
6 determine. As jurors it's your duty to determine the
7 weight, value, effect and truth of the evidence presented
8 during the trial.

9 Now, typically, ladies and gentlemen, there are two
10 types of evidence presented during the course of a trial,
11 direct evidence and circumstantial evidence. Direct
12 evidence directly proves the existence of a fact and does
13 not require deduction, such as testimony by an eyewitness.
14 Circumstantial evidence is proof of a chain of facts and
15 circumstances indicating the existence of a fact. I
16 instruct you that crimes may be proven by circumstantial
17 evidence. The law makes no distinction between the weight
18 or value to be given to either direct or circumstantial
19 evidence. However, to the extent the State relies upon
20 circumstantial evidence, all the circumstances must be
21 consistent with each other, and when taken together, point
22 conclusively to the guilt of the accused beyond a reasonable
23 doubt. If these circumstances merely portray the
24 Defendant's conduct or behavior as suspicious then the proof
25 has failed. The State has the burden of proving the

1 Defendant's guilt beyond a reasonable doubt and this burden
2 rests with the State regardless of whether the State relies
3 upon direct evidence, circumstantial evidence, or some
4 combination of the two.

5 Now, necessarily, ladies and gentlemen, you have to
6 determine the credibility of witnesses who have testified.
7 And again, credibility simply means believability. It
8 becomes your duty as jurors to analyze and the evaluate the
9 evidence and determine which evidence convinces you of its
10 truth. In determining the believability of witnesses who
11 have testified in this case, you may believe one witness
12 over several witnesses or several witnesses over one
13 witness. You may believe a part of the testimony of a
14 witness and reject the remaining part of the testimony of
15 that same witness. You may believe the testimony of a
16 witness in it's entirety or reject the testimony of a
17 witness in its entirety. You may consider whether any
18 witnesses has exhibited to you any interest, bias,
19 prejudiced or other motive in this case, and you can also
20 consider the appearance and manner of a witness while on the
21 witness stand.

22 Now, as I have explained yesterday and today, and maybe
23 even on Tuesday, normally the rules of evidence don't permit
24 witnesses to testify as to opinions or conclusions, but an
25 exception to this rule exists for expert witnesses. A

1 witness who by education and experience has become an expert
2 in some art, science, profession or calling may state an
3 opinion as to relevant and material matters in which the
4 witness claims to be an expert, and they also state the
5 reasons for that opinion. You should consider any opinion
6 given in this case, and like any other evidence, give it the
7 weight you think it deserves. If you decide that the
8 opinion of an expert is not based on sufficient education or
9 experience, or if you concluded that the reasons given in
10 support of the opinion are not sound, or that it's
11 outweighed by other evidence. You may disregard the opinion
12 entirely. An expert witnesses testimony is to be given no
13 greater weight than that of any other witnesses simply
14 because the witness is an expert. Further, you're not
15 required to accept an expert's opinion even though it's not
16 contradicted.

17 Now, ladies and gentlemen, during the course of this
18 trial there has been evidence presented that witnesses have
19 made prior statements which are not consistent with the
20 witnesses present testimony. You may use this evidence to
21 decide whether or not to believe the witness. You may also
22 use the evidence of the earlier contradictory statement to
23 determine the truth of those statements. It's up to you to
24 decide whether to believe the earlier statement or the
25 testimony given at trial. I instruct you that if a witness

1 has shown to have knowingly testified untruthfully
2 concerning any material matter, you may consider this in
3 determining whether to trust the witness's testimony as to
4 other matters. You may reject all the testimony of that
5 witness or give all or part of the testimony the weight you
6 think it deserves.

7 I instruct you, ladies and gentlemen, that under the
8 law of this state, if a person is fatally injured by an
9 individual in one county but ultimately dies or passes away
10 in another county, the indicted individual can be tried by
11 this court in either county. The county of the injury or
12 the county of death.

13 In this case, ladies and gentlemen, the Defendant is
14 charged with the offense of homicide by child abuse.
15 Therefore the State must prove beyond a reasonable doubt
16 that the Defendant caused the death of a child under the age
17 of 11 while committing child abuse or neglect. Child abuse
18 or neglect is an act or failure to act which causes harm to
19 the child's physical health or welfare. Harm to the child's
20 physical health or welfare means that the Defendant either,
21 one, inflicted or allowed to be inflicted in the child,
22 physical injury or, two, knowingly failed to supply the
23 child with adequate food, clothing, shelter or healthcare,
24 and this failure caused a physical injury or condition which
25 then caused death. I instruct you that knowingly means that

1 the Defendant had actual knowledge of infliction of physical
2 injury or actual knowledge of the existence of the child's
3 injuries and that failure to provide the child with adequate
4 healthcare could reasonably lead to the child's death. The
5 State must also prove beyond a reasonable doubt that the
6 death occurred under circumstances showing an extreme
7 indifference to human life.

8 Now, ladies and gentlemen, there are two possible
9 verdicts that you can find in this case. And Madam
10 Forelady, I've worked up this verdict form which is about as
11 simple as I can possibly make it, that you can use to
12 deliver your verdict and perhaps guild your deliberations.
13 The verdict form makes the following statement. "We, the
14 jury in the above-captioned case, on the charge of homicide
15 by child abuse unanimously find Theia McArdle," and then it
16 has two blanks for you to -- where you can initial, Madam
17 Forelady, either not guilty or guilty. If you find the
18 State has met its -- has failed to meet its burden of
19 proving the Defendant's beyond a reasonable doubt, and all
20 12 of you agree on that, you would initial here next to not
21 guilty, knock on the door, let the bailiff know and we'll
22 bring you back in here. If you find, however, that the
23 State has met its burden of proving the Defendant's guilt
24 beyond a reasonable doubt and all 12 of you agree, you would
25 then, of course, initial next to guilty, sign your name,

1 knock on the door and we'll get you back in here.

2 Now, ladies and gentlemen, I instruct you that if any
3 member of the jury panel has any issue or question about the
4 law, simply bring it to the Court's attention and do so by
5 way of writing a note. But, Madam Forelady, at no time
6 should any member of the jury panel, or at no time should
7 you, indicate or communicate with the Court concerning any
8 numerical division as a result of your deliberations. Okay?
9 I don't want to know -- if you have to communicate to me,
10 the last thing I need to know, the last thing I want to know
11 is okay, well, we're seven/five, or the vote is six/six, or
12 the vote is 11/1. Okay? So just never give me that
13 information ever. If you have any other questions about the
14 law though, I'm all ears. But please, just never provide me
15 with any kind of numerical division about your
16 deliberations.

17 Now, ladies and gentlemen, I remind you that you have
18 been chosen as fair and impartial jurors in this case. In
19 other words, ladies and gentlemen, you've got no friends to
20 reward. You have no enemies to punish. Your job is to
21 render a verdict based solely upon the evidence as you find
22 it to be and the law as I've instructed you.

23 Now, in a moment, ladies and gentlemen, I'm going to
24 ask that you go ahead and take a break. The purpose -- but
25 don't start your deliberations yet. The purpose of the

1 break is that we have to make sure that everything that's in
2 evidence is altogether and put together and then we'll get
3 it back to the jury room to you. I know that you've all
4 been going collectively outside to get a breath of fresh
5 air. So that's probably what you should do this time and
6 just take a 10 minute break. But again, the purpose of the
7 break is to gather up all the evidence and to also allow the
8 attorneys to object to any of the instructions that I've
9 given you on the record with regard to these instructions.

10 Additionally, ladies and gentlemen, there is -- I think
11 there is a CD ROM in there which contains a three or four
12 hour interview. If you need to listen to that interview or
13 access any other CD ROMs or gig chips that may have been
14 made a part of the record in this case, just ask us for a
15 computer and we'll send one in there. It will probably be
16 mine or my law clerk's. Okay? One of you I'm sure knows
17 how to pop a CD in. Probably the youngest of you knows how
18 to put a CD in and hit Media Player. But obviously whatever
19 computer we send in is also going to contain other material.
20 So simply use it as a record player or a CD player and don't
21 go through snooping through the other stuff that's on the
22 computer screen, please.

23 Additionally, just a few quick other rules that I have.
24 Smoke breaks once a case starts deliberating, I usually
25 limit it to about one every hour and a half, and I did that

1 because I ended up trying a case up in -- all 12 of you have
2 to be present while deliberating, and if four or five pop
3 outside to smoke then the deliberations have to stop. And I
4 actually tried a case where a guy was a chain smoker and it
5 was like every five minutes we were stopping deliberations
6 because he couldn't take it. So smoke breaks are every hour
7 and a half. Once the case is submitted to you however long
8 you deliberate is entirely up to you. Okay? There is no
9 set time for deliberation. If it takes you 10 minutes,
10 that's fine. Ten hours, that's fine. I've never seen one
11 take 10 days, but that is also fine. So it is entirely up
12 to you all how long you choose to deliberate. If you find
13 yourself getting tired for the evening and feel like coming
14 back later tomorrow, Monday, whatever, I'm all ears. What
15 I'm getting at though is once the case is submitted to you,
16 you control the watch 100 percent. I do not. You do.

17 With that, pop outside. Get some fresh air. Have a
18 smoke if you are so inclined, and we'll get the evidence
19 together and I'll handle any objections or exceptions and
20 then we'll get the case to you. Okay, Madam Forelady?
21 Thank you.

22 (Whereupon, the jury exited the courtroom at 5:00 p.m.)

23 THE COURT: The Defendant objects to my failure to give
24 a lesser included on unlawful conduct towards a child; is
25 that correct?

1 MR. VERNER: Yes, sir. And -- yes, sir. But I
2 understand the Court's ruling.

3 THE COURT: Very good. Aside from a quasi objection on
4 the Court charging the knowingly aspect of this, any other
5 objections or reservations?

6 MR. STUMBO: Just that, Judge. We take exception to
7 that.

8 THE COURT: Okay. If you --

9 MR. VERNER: I had -- actually, Judge, I wanted to be
10 heard.

11 THE COURT: Yes, sir.

12 MR. VERNER: I didn't -- it's been -- I didn't -- I got
13 the jury -- the jury instructions. I got the jury
14 instructions. I didn't get a copy of the verdict form prior
15 to. I was going to propose prior to it, and it just didn't
16 pop in my head when the Judge was talking about the
17 instructions, I was asking, because of the way the State's
18 presenting its charge, for a more individualized verdict
19 form. It's either that she caused the death, or under the
20 other -- not guilty or -- but they would have -- I wanted an
21 interrogatory in the jury under which section --

22 THE COURT: Specific that either she acted as the
23 principal and actually inflicted the injuries herself or
24 that she knew of the injuries and failed to seek medical
25 care?

1 MR. VERNER: Yes, sir. And I was also asking for a
2 special interrogatory on the verdict form that the child
3 died in Newberry. I understand the Court charge that it's
4 possible for the trial to, you know, be tried in a separate
5 county if a crime happens in another one and does. But
6 because the vast majority of the -- substantial majority of
7 the information talks about the beating likely occurring in
8 Spartanburg, the pathologists testifying, if they're
9 testimony is believed, the death would have had to occur in
10 Spartanburg, I would ask for a special interrogatory in
11 which county do you find the child died.

12 THE COURT: I doubt I'm going to give that to you.
13 That's a venue issue that should have been raised pretrial,
14 quite honestly, in my opinion. I know that you're probably
15 going to argue that it's a subject matter jurisdiction
16 issue. I don't believe it is. So I'm not going to really
17 inquire about that. The case has to be tried somewhere, and
18 under the law as I read it it can be tried here.

19 MR. VERNER: Oh, I understand that, Judge, but --

20 THE COURT: Does the State have any position on the --
21 his suggestion is somewhat curious.

22 MR. STUMBO: I don't know that I've ever seen that,
23 Judge. I don't know that there's any precedent for it. And
24 quite frankly, I don't think that's -- the law requires the
25 jury to make such a distinction. I know there's times when

1 the law does require the jury to make a distinction, say, in
2 a --

3 THE COURT: Value of goods for a grand larceny.

4 MR. STUMBO: Right, exactly. Or a CSC case, I think,
5 for purposes of the sex offender registry. Or for repeat
6 offenses later I believe there's a finding of whether there
7 was an intrusion or something of that degree. And I want to
8 say, Your Honor, there again, my mind is kind of frazzled on
9 a Friday afternoon at 5:00.

10 THE COURT: I think you're talking about a kidnapping,
11 whether it was sexually related. Whether that would kick
12 you onto the sex offender registry. That's what you're --

13 MR. STUMBO: That's one. But there's also -- I know
14 I've seen it CSC with minor cases, what type of sexual
15 battery was at play.

16 THE COURT: Right. Right. I know what you're talking
17 about.

18 MR. STUMBO: It's under the new law. So I don't know
19 if there's any provision for that here, Judge. It's all --

20 MR. VERNER: Well, Judge, if it's venue it would be a
21 harmless error. If it's subject matter then, of course, it
22 can be raised at any time. So if the State's right it's a
23 venue -- and the Court's right, it's a venue issue, even if
24 the jury ruled Spartanburg, it would be a harmless error.
25 But -

1 THE COURT: Well, it's being brought by the State of
2 South Carolina, and the State of South Carolina is
3 represented throughout the state by various Solicitors. So
4 I respect your position and will decline to -- if that was a
5 factual issue, that's a factual issue to be determined by a
6 court as opposed to a jury trial. If the Court were to make
7 a habit of inquiring of the jury after the case has been
8 presented, obviously you have to try a case somewhere, and
9 if the Court were to inquire of the jury after it was
10 presented and then find out that the trial has taken place
11 in the wrong county, and if that's the grounds to then retry
12 it in the correct county -- no, we're not going to do that.
13 That's why -- that's why you've got 17 dash whatever,
14 whatever, that we talked about earlier.

15 MR. VERNER: I understand the practical difficulty of
16 it, Judge.

17 THE COURT: Sure.

18 MR. VERNER: But is that on both motions then? Because
19 I also had the motion for the first interrogatory --

20 THE COURT: Is your thinking just because it could
21 guide the Court in terms of sentencing and in terms of
22 culpability or -- I mean, I'm really -- my initial -- my
23 default setting --

24 MR. VERNER: My thinking was more --

25 THE COURT: Here's what I'll do, Mr. Verner. I'll

1 submit it like this. If the verdict comes back as guilty I
2 will consider -- if the Court feels like it will help the
3 Court, I will consider a special interrogatory of the jury
4 under which theory that they found.

5 MR. VERNER: One of the reasons was is that Solicitor
6 in his closing mentioned several times they did this
7 together, which, of course, was the -- he was dancing on the
8 aiding and abetting language.

9 THE COURT: You can only aid and abet a principal. I
10 mean, you can have two people acting in concert, and if it's
11 an agreement to inflict the injury or commit the crime then
12 they're both liable as principals.

13 MR. VERNER: Well, I understand the Court's ruling that
14 it would be practical for the -- possibly sentence purposes
15 if -- depending on the verdict, I guess.

16 THE COURT: Very good. I'm going to submit it as I
17 read it. If y'all want to inspect it, that's perfectly
18 fine. But --

19 MR. VERNER: It's just a simple verdict form? Well,
20 I'd still like to look at it.

21 THE COURT: Yeah. Other than that, you all inventory
22 the exhibits, help Tara out in the regard. And I have the
23 photos from Exhibit whatever that I did not include on that
24 exhibit.

25 MR. VERNER: Your Honor, my position -- my second

1 position is if the Court's going to use a simple verdict
2 form --

3 THE COURT: Yes, sir.

4 MR. VERNER: -- my preference, and it's because of a
5 recent Court of Appeals case that I was in, is that the
6 verdict form would be on the indictments itself. The -- or
7 submitted with the indictments.

8 THE COURT: You want me to send the indictment back?

9 MR. VERNER: My take from a recent -- from the Mandy
10 Smith Court case was that it was the general consensus of
11 the Appellate Court that they thought it was appropriate for
12 the verdict form to be submitted on the indictment because
13 that would show the allegations. But in case, Your Honor, I
14 would ask for the indictment to be sent back. I mean, I
15 understand I might not what that in every case. But were
16 it's a simple verdict form --

17 MR. STUMBO: I don't really have a position on that,
18 Judge. I've seen it done both ways.

19 THE COURT: I've never sent the indictment back and
20 I've never really wanted to. But if Mr. Verner wants it in
21 this case and you don't care, I'll send it back.

22 MR. STUMBO: I've had Judges do it.

23 MR. VERNER: Maybe I need to double check the language
24 of it. But at the Mandy Smith trial the --

25 THE COURT: My understanding is, and I've never seen a

1 Judge actually send the indictment back, even when I first
2 started practicing. What I was told is that because the
3 indictment was conclusory and because it was an allegation
4 that it should not be submitted to the jury, because it's
5 prepared by the Solicitor. It's -- I forget Judge Johnson's
6 reasoning on it, but he explained it to me.

7 MR. VERNER: Well, the reason for the thinking in the -
8 - why the Court of Appeals did it was because, I think, part
9 of their reason was that the State would be bound by the
10 allegations of the indictment and surely the jury would know
11 the allegations of the indictment.

12 MR. STUMBO: Judge -- just correct me if I'm wrong,
13 Charles. I know we were both at the Appellate --

14 MR. VERNER: -- had a better seat--

15 MR. STUMBO: -- argument, but I don't know that that
16 was the issue they ultimately --

17 MR. VERNER: -- just one of them --

18 MR. STUMBO: It may have been in one of the briefs, but
19 --

20 MR. VERNER: It was actually in some of the questions
21 from Justice Few.

22 THE COURT: The Solicitor does not object. I will
23 leave it in your discretion, Mr. Verner. If you want it to
24 go back, it can go back. You make the decision.

25 MR. VERNER: I this case, I would ask that it be sent

1 with the verdict form.

2 THE COURT: We shall send it back with the verdict form
3 and the instructions then.

4 MR. STUMBO: That's fine, Judge.

5 MR. VERNER: And I understand the Court's tactical
6 concern as a former public defender.

7 THE COURT: And as a former Solicitor. I tried to send
8 it back one time. Jim Johnson said no.

9 MR. STUMBO: Judge, just off -- are we off the record?

10 THE COURT: Let's go off the record.

11 (Whereupon, a brief recess was held.)

12 THE COURT: Gentlemen, you all compare notes on the
13 exhibits. I'm going to take a brief break. And for what
14 it's worth, it's been a pleasure trying this case with you
15 all. I'm very, very impressed and both sides did a good job
16 prepping this case.

17 MR. STUMBO: It was a long week.

18 THE COURT: Ms. McArdle, pleasure to meet you, ma'am.

19 (Whereupon, the jury began deliberations at 5:22 p.m.)

20 VERDICT

21 THE COURT: We'll go back on the record. The record
22 should reflect that Ms. McArdle is present along with
23 counsel. I am informed that the jury has reached a verdict.
24 Anything before receiving the jury back in the courtroom
25 from the State?

1 MR. STUMBO: Nothing from the State.

2 THE COURT: From the Defense?

3 MR. VERNER: No, Your Honor.

4 THE COURT: Very good. Let's have the jury, please.

5 (Whereupon, the jury entered the courtroom at 6:07

6 p.m.)

7 THE COURT: All right. Madam Forelady, I'm told that
8 the jury has reached a verdict; is that correct?

9 MADAM FORELADY: That's correct.

10 THE COURT: All right. And all 12 of you all agree on
11 that verdict?

12 MADAM FORELADY: Yes, sir.

13 THE COURT: All right. If you would, hand the verdict
14 form, please, to the bailiff. Madam Clerk, you may publish.

15 MADAM CLERK: Yes, sir. Indictment 2015-GS-36-0133,
16 *State of South Carolina vs. Theia McArdle*. We the jury in
17 the above-captioned case on the charge of homicide by child
18 abuse unanimously find Theia McArdle guilty. Signed Kelly
19 P. Ringer, Foreperson.

20 Ladies and gentlemen of the jury, if this is your
21 verdict, please indicate by raising your right hand.

22 THE COURT: Let the record reflect that all 12 members
23 of the jury have raised their hand. Anything prior to
24 discharge of the jury from the State?

25 MR. STUMBO: Nothing from the State, Your Honor.

1 THE COURT: From the Defense?

2 MR. VERNER: I would like them polled, Your Honor.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, the Clerk of Court will call your name in just a
5 moment, and she will ask you basically two questions; is
6 this your verdict and is it still your verdict. Just answer
7 appropriately, okay, to those questions.

8 Go ahead, please.

9 MADAM CLERK: Yes, sir. Kelly P. Ringer, is this your
10 verdict and is still your verdict?

11 JUROR: Yes.

12 MADAM CLERK: David Alexander, is this your verdict and
13 is still your verdict?

14 JUROR: Yes, ma'am.

15 MADAM CLERK: Michelle Mosley, is this your verdict and
16 is still your verdict?

17 JUROR: Yes, ma'am.

18 MADAM CLERK: Elenita Young, is this your verdict and
19 is still your verdict?

20 JUROR: Yes, ma'am.

21 MADAM CLERK: Teresa Wise, is this your verdict and is
22 still your verdict?

23 JUROR: Yes, ma'am.

24 MADAM CLERK: Robert Icard, is this your verdict and is
25 still your verdict?

1 JUROR: Yes, ma'am.

2 MADAM CLERK: Cynthia Stefanini, is this your verdict
3 and is still your verdict?

4 JUROR: Yes, ma'am.

5 MADAM CLERK: Mason Scott, is this your verdict and is
6 still your verdict?

7 JUROR: Yes, ma'am.

8 MADAM CLERK: Mallory Matthews, is this your verdict
9 and is still your verdict?

10 JUROR: Yes, ma'am.

11 MADAM CLERK: Abby Kesler, is this your verdict and
12 still your verdict?

13 JUROR: Yes, ma'am.

14 MADAM CLERK: James Chaffins, is this your verdict and
15 still your verdict?

16 JUROR: Yes, ma'am.

17 MADAM CLERK: Donnie Lominack, is this your verdict and
18 is still your verdict?

19 JUROR: Yes, ma'am.

20 THE COURT: Ladies and gentlemen of the jury, I want to
21 thank you for your service here this week. I know that we
22 have kept you and we have inconvenienced you and in all
23 likelihood we have exposed you to stuff that you would have
24 not rather been exposed to or seen, and for that I am truly
25 sorry and I truly apologize. I will tell you that jury

1 service is never, never easy. I've often felt like this is
2 an imposition, and I know it is an imposition. But I
3 promise you, your service here was absolutely necessary and
4 I sincerely, sincerely, sincerely appreciate your all's hard
5 work and your patience with us here this week. I will let
6 you know that you will receive a letter from me thanking you
7 for your jury service. The purpose of that letter is really
8 twofold. It won't probably go out until Monday at the
9 earliest because I've got to get by the office and do it
10 this weekend. But the purpose is twofold. To thank you, of
11 course, for your jury service. It's also to solicit
12 feedback. So if there's anything that you did like about
13 jury service, let us know. Anything you didn't like about
14 it, definitely let me know. Okay? Please. Because I've
15 changed the way the court operates based on feedback from
16 folks like you all.

17 With that, at this point in time, the only thing that
18 remains to be done is sentencing of the Defendant and
19 entertaining some post-trial motions. If you want to stick
20 around for that, that's perfectly fine. If -- otherwise you
21 are absolutely 100 percent free to go. Okay? If you want
22 to stay for sentencing, what I will ask is that you take one
23 of the seats over here to the back of the courtroom. We'll
24 just take a few moments break while I get the Foreperson to
25 sign the indictment and you can collect whatever items you

1 left in the jury room and just, you know, go downstairs and
2 then just come up the other way would be the best way for
3 you to access that. So if you want to stay, you are free to
4 do that.

5 You had something else, Mr. Verner?

6 MR. VERNER: Yes, sir. I'll promise I'll be brief.

7 THE COURT: Yes, sir.

8 MR. VERNER: But the item we mentioned prior to the
9 deliberations about the interrogatory. I'll be less than
10 five minutes, if the Court will hear me.

11 THE COURT: Approach, please. I might not be releasing
12 you all quite yet. Hold on one second.

13 (Whereupon, a sidebar was held.)

14 THE COURT: Before I release you all, and this is
15 actually a question that I do have, I'm going to ask that
16 you all return and deliberate one more time on this
17 particular question. And, Madam Forelady, you can feel free
18 just to write this -- the answer to this question on a piece
19 of paper. It's not -- it's not a terribly complicated
20 question, so I'm just going to ask it of you and you can
21 write your answer down. Based upon the verdict that was
22 rendered, the verdict of guilt in this particular case, is
23 that verdict based on the jury's finding that the Defendant
24 acted alone or that she acted with the co-defendant in this
25 case, or is it based upon the fact that she knew of the

1 injuries and should have provided medical care to the child
2 involved. Okay?

3 So if you would, just adjourn to the back. I know that
4 you all have already figured that out. Adjourn to the back,
5 write that down, and then come back out as soon as you're
6 ready. Okay? We'll remain here at ease.

7 (Whereupon, the jury returned to the jury room.)

8 THE COURT: While they're doing that, if one of the
9 Solicitors wouldn't mind going ahead and preparing a
10 sentencing sheet for me. And, Mr. Verner, you also wanted
11 the Court to inquire of the jury concerning the McCloud
12 case. You wanted the Court to ask specifically where the
13 death of the child took place or --

14 MR. VERNER: In which county.

15 THE COURT: -- in which county it took place; is that
16 correct, sir?

17 MR. VERNER: Yes, sir. I would argue under the McCloud
18 case that if at all -- if the child was killed -- under any
19 theory that she would be convicted, if the child was killed
20 in Spartanburg County, because she has the right to be tried
21 in the county where the crime happened, then the subject
22 matter jurisdiction would be in Spartanburg County. My
23 understanding is -- from reading the McCloud case, is venue
24 is proper if there is any evidence that the crime happened
25 in more than one county. Obviously if the jury finds that

1 the child was dead in Spartanburg there would be no venue
2 issue, because if the child is dead in Spartanburg, taking
3 it to Newberry for hospital care would be pointless. If
4 it's a venue issue then it would be proper for the case and
5 harmless error for this case to go forward. If it's
6 jurisdictional, then that would speak for itself, Your
7 Honor.

8 THE COURT: Solicitor, you at the sidebar opposed that
9 motion. You concurred with the Court that it would not be
10 appropriate, and under the South Carolina law --

11 MR. STUMBO: Under the statute, Judge, I think that
12 it's pretty clear that it can be tried in either county.
13 Based on the facts of the case as they played out, I think
14 that's true. If the case had been tried in Spartanburg -- I
15 think there was a better case for trying it in Newberry
16 because that's where he was declared decease.

17 THE COURT: Certainly.

18 MR. STUMBO: But that's why we took the case,
19 obviously, instead of Solicitor Barnett.

20 THE COURT: Very good. And for the record, Mr.
21 Verner, you would renew all motions and also request a -- or
22 move for a new trial at this particular point in time?

23 MR. VERNER: Yes, Your Honor.

24 THE COURT: Very good. The Court will take the new
25 trial motion under advisement. The other motions, same

1 rulings as before.

2 MR. STUMBO: Judge, and just for the record. I know we
3 discussed this at sidebar. We object -- we do object to
4 this interrogatory on the basis that I don't know that the
5 law requires the jury to unanimously find which elements of
6 subsection (a)(1) that they feel like were applicable.
7 Maybe -- I know Your Honor said you may want it for purposes
8 of the sentencing decision. But I don't know that legally
9 --

10 THE COURT: I would tend to agree with you -- Well, I
11 would tend to agree with you, Solicitor. Quite honestly,
12 one of the reasons, because sentencing is in the sole
13 province of this Court, one of the reasons I am curious
14 about it, and I think you would agree certainly, at least in
15 my mind, one who actively beats or assaults a child
16 intentionally, kills a child, in my mind there's a greater
17 level of culpability for that person than perhaps another
18 person who engages in passive conduct which results in the
19 death of a child. Maybe they should have known or did know
20 of a serious medical condition, but for whatever reason they
21 failed to get treatment for that child. So that, in my
22 mind, plays into sentencing. And that's one of the reasons
23 -- that's probably the primary reason I asked that
24 interrogatory of the jury. They are the finders of fact and
25 it would be inappropriate for me to speculate on whether Ms.

1 McArdle is guilty as a principal. The principal one that
2 assaulted the child, or whether she did it in concert with
3 the co-defendant, or whether it's a more passive conduct
4 that is being criminalized in this case.

5 MR. STUMBO: And, Your Honor, if it's only being used
6 for your guidance in sentencing, I don't have any problem
7 with that.

8 THE COURT: I understand.

9 MR. STUMBO: I just think I needed to preserve that for
10 the record if it were to affect, I mean, the legal outcome,
11 Judge. Maybe I didn't artfully put that --

12 THE COURT: I don't know that it necessarily
13 jeopardizes the outcome. I suppose we're about to see.
14 Perhaps I should not have asked that question, but we will
15 see in a few moments.

16 And you all have prepared a sentencing sheet?

17 MR. STUMBO: I do, Judge.

18 MR. DANIEL: Yes, sir.

19 (Whereupon, a brief recess was held.)

20 THE COURT: If we may, let's go back on the record. My
21 law clerk just brought a very valid point that had not
22 occurred to me. The jury may very well be under the
23 impression that they have to be unanimous as to the
24 underlying theory. It's possible that some of the jurors,
25 four of the jurors, felt that the first scenario was

1 correct, another four thought the second scenario was
2 correct, and then another four concluded that the third
3 scenario was correct. And if that's what's taking them
4 longer than what I thought it would take them, that might be
5 why they're still back there. I realize they've only been
6 there for 10 minutes. I think I need to clarify that.

7 MR. STUMBO: Well, Judge, I don't have a problem with
8 maybe Mr. Verner, if you want to walk back there and just
9 tell them that, or have your law clerk say this part's not
10 the verdict. The verdicts done. This doesn't have to be
11 unanimous.

12 MR. VERNER: I guess the point of me asking for the
13 interrogatory in the first place prior to going back was
14 because the State has presented two different possible
15 factual scenarios of guilt, so I did think that the jury
16 would have to find them unanimously guilty of either one
17 side. That was what I had contemplated for was if he had
18 beat him to death, all 12 of you agree that it would be this
19 one. If you think it's the lack of -- it's odd that that a
20 statute that, you know -- I understand it's one statute for
21 one offense for the same punishment, but there are entirely
22 different factual findings that the jury would have to find
23 to get you to punishment.

24 MR. STUMBO: Well, and that was, I think, one of my
25 issues, Judge. And I indicated to you for sentencing

1 purposes that's one thing. For your guidance. But for this
2 purpose I think it's wholly inappropriate, because what
3 we're doing at that point is, I guess, telling the
4 Legislature that they need to add elements to this crime. I
5 don't know. I mean, the law is what it is and it's written
6 as it's written, but we can have our opinion of that one way
7 or the other.

8 MR. VERNER: But this is just a case where there are
9 factually two --

10 THE COURT: I understand.

11 MR. VERNER: -- entirely inconsistent ways to find
12 somebody guilty of the same crime. I don't think we're
13 going to --

14 THE COURT: I appreciate your position. Apparently we
15 have an answer.

16 MR. STUMBO: Thank you, Judge. And quite frankly, for
17 those reasons, Judge, we would ask that it not be published
18 necessarily. But you can -- certainly we believe that it's
19 appropriate for you to use as you feel necessary for
20 sentencing.

21 THE COURT: The question they just passed to me, "We
22 are getting different interpretations of the questions. Can
23 you clarify acting together." The second question I asked,
24 "Does this mean that they were together beating the child?
25 Can you clarify neglect without knowing."

1 At this point in time, subject to the Defendant's
2 objection which I know is going to be made here shortly, the
3 verdict of guilt has been found. Just ask the jury to cease
4 their deliberations and come on out, please. I understand
5 your desire and your reasons for wanting it, Mr. Verner, but
6 in my discretion, I'm not going to have them struggle with
7 this any longer.

8 (Whereupon, the jury entered the courtroom.)

9 THE COURT: Ladies and gentlemen, again, I appreciate
10 your efforts. I'm not going to ask you all to struggle with
11 this question any longer. The verdict has been rendered and
12 the verdict stands. Okay? So I'm not going to impose upon
13 you all any further. Again, I do appreciate your hard work.
14 I do appreciate your dedication on this case. And the Clerk
15 informs me that your checks for your jury service this week,
16 although it will not come close to compensating you for the
17 inconvenience and for the service that you have provided the
18 state, your checks are, in fact, ready. They are at the
19 security desk downstairs. If you want to stick around for
20 jury deliberations, don't worry about going downstairs
21 because -- if you want to stick around for sentencing, don't
22 worry about going downstairs. You can feel free to grab
23 whatever items you have out of there and simply have a seat
24 over in the gallery. You may have to go around that way
25 yet. Go around the back hallway. The deputy or the bailiff

1 will show you how to move kind of around this way. And with
2 that, you have my thanks, and I hope you have a lovely
3 weekend if you choose not to stick around. Okay? Take
4 care. Thank you.

5 (Whereupon the jury was released at 6:31 p.m.)

6 SENTENCING

7 THE COURT: Solicitor, aside from the information
8 that's already been imparted to me about the conviction in
9 North Carolina for the misdemeanor offense, any additional
10 criminal history that the Court wants to apprise me of?

11 MR. STUMBO: Your Honor, there was a larceny conviction
12 in North Carolina in 2013 and it looks like a breaking and
13 entering in 2014.

14 MR. VERNER: It says dismissed with leave.

15 THE COURT: All right. The Court won't consider it.

16 MR. VERNER: And it shows that it was a misdemeanor
17 charge anyway.

18 THE COURT: Very good. The Court won't consider that.

19 MR. STUMBO: I'm sorry. I'm showing Mr. Verner the
20 wrong thing. July 15th, 2014. It was trial by judge,
21 guilty verdict in North Carolina for breaking -- breaking or
22 entering.

23 MR. VERNER: It appears to be a misdemeanor magistrate
24 -- or at least a misdemeanor --

25 MR. STUMBO: A misdemeanor breaking or entering.

1 THE COURT: All right. Anything further from the
2 State? Obviously the Court is very familiar with the
3 evidence in this case, and certainly this was an extremely
4 aggravated assault on this child. But anything further from
5 the State, Mr. Stumbo?

6 MR. STUMBO: Judge, just that we intend to pursue
7 Richard Bowman, and, you know, we've never believed in this
8 case that we need to choose one or the other here, quite
9 frankly. We think they're both responsible for this young
10 man's death. Judge, it's horrific. I don't even think I
11 need to elaborate on that. It's something that we take very
12 seriously. We'll leave sentencing in your discretion.

13 THE COURT: Certainly. Thank you, Solicitor.

14 MR. STUMBO: Thank you.

15 THE COURT: Mr. Verner, I'm happy to entertain anything
16 that you want to say in mitigation. Obviously, anything Ms.
17 McArdle might want to tell me.

18 MR. VERNER: Just, Judge, the -- not so much -- she's
19 22. She was living on her own at the age 16. She was
20 pregnant at 17. I think because of her circumstances fell
21 into the lifestyle. And I do think Richard Bowman was a
22 negative influence on her, Your Honor. My only point is --
23 she's been in jail since December 30th of 2014. The crime
24 is 20 years, violent non-paroleable at a minimum to life.
25 My position was that because the State indicted her as the

1 one who beat the child to death that there would have to be
2 unanimous finding either of that or of failing to provide
3 care for the child after the beating. It is our position,
4 Your Honor, that the child was beat to death by Richard
5 Bowman in a violent type relationship. Twenty years without
6 parole is a lengthy sentence. I don't think that that is
7 what the crime -- I think the crime deserves more than that.
8 I just want to make sure the right person pays that -- the
9 time for it, Judge. But we would ask for a 20 years
10 sentence. It is violent non-parolable.

11 THE COURT: Ms. McArdle, anything you want to say,
12 ma'am?

13 THE DEFENDANT: They just found the wrong one guilty.

14 THE COURT: I understand that. I appreciate your
15 position.

16 MR. VERNER: The only other -- I apologize, Your Honor.

17 THE COURT: No, not at all.

18 MR. VERNER: We introduced evidence. She does have the
19 bipolar diagnosis. That could be a factor in whatever
20 happened, Judge.

21 THE COURT: Ms. McArdle, it is -- I'm truly sorry to
22 have made your acquaintance under these circumstances,
23 ma'am, and I have no doubt that you've had a tough life and
24 that you've had a tough time of things and that you've
25 struggled, and that perhaps in many respects you did as best

1 you could. And so, I do appreciate that. And I also
2 believe that your co-defendant, of course, based on what's
3 been presented here today and based on his testimony,
4 basically accepting that he is also culpable in this case, I
5 do believe that he shares blame with you.

6 Ms. McArdle, I've said it before, and I'm somewhat
7 compelled to say it again. The first obligation of the law,
8 ma'am, is to protect those who can't protect themselves, and
9 a three-year-old child clearly, clearly falls into that
10 category. And you and your co-defendant were supposed to be
11 the first line of defense for that child. And by this
12 verdict, the verdict rendered today, clearly you have failed
13 in that regard and the life of a three-year-old -- life of
14 anyone, that's something that's irreplaceable. I think you
15 understand that. I do believe you appreciate that. The
16 Court has taken everything into consideration, and the Court
17 would have to believe that a life sentence would be more
18 appropriately reserved for individuals how have an extensive
19 substantial criminal -- prior criminal history, or who
20 perhaps commit the homicide in a more brutal fashion through
21 shooting or perhaps some other method. I've taken
22 everything in account, Ms. McArdle, and the sentence of the
23 Court, ma'am, is that you be committed to the Department of
24 Corrections for 30 years. You'll receive credit for the
25 time that you have served since December the 30th of 2014.

1 And I do wish you luck, ma'am. Take care.

2 This matter is concluded except for the fact I need the
3 Forelady to sign the indictment itself. So everyone else is
4 excused. And I forgot to tell the jury, who is still here,
5 but you all are now free to speak to anyone you want to
6 about any aspect of this case. Pleasure to meet you all.

7 (END OF REQUESTED TRANSCRIPT OF RECORD.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Newberry County, South Carolina, on the 4th-8th day of April, 2016.

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

Tara T. Scott



Tara T. Scott, CVR
Circuit Court Reporter
Abbeville, South Carolina
July 24, 2016

STATE OF SOUTH CAROLINA)
)
 County of Newberry, South Carolina)
Theia Darion McArdle 367770)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS
2019-CP-36-00466

v.

State of South Carolina


**APPLICATION FOR
 POST-CONVICTION RELIEF**

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention 

2. Name and location of Court which imposed sentence Newberry County Court
1226 College St. Newberry, SC 29108

3. Name(s) of co-defendant(s) (if any) Richard Frank Bowman III

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) Homicide by child abuse; indictment number 2015-GS-36-133
- (b) _____

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 8th 2016; 30 years 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

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of appeals

ii. South Carolina state supreme court

iii.

(b) the result in each such Court to which you appealed:

i. Denied

ii. Denied

iii.

(c) the date of each such result:

i. December 5, 2018

ii. June 28, 2019

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No. 2018-UP-439

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Richard Bowman was with minor alone during fatal assault
- (b) GPS records place me in another city during the fatal assault hours
- (c) Bowmans original confession stated his assault on minor was while I was gone and that he never told me.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Bowman was alone during time narrowed by Janet Ross and Ellen Reimer (M.D.s)
- (b) Transcripts p. 764-10-25, 765 2-4, 768 2-13, 769 9-11
- (c) Although Bowmans original Confession was recanted, his later testimony was proved fictitious by both pathologists ruling injuries were

12. Prior to this application have you filed with respect to this conviction: contemporaneous and within minutes of causing death

- (a) any petition in a State Court under South Carolina Law? yes (direct appeal)
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? (writ of certiorari state supreme court)

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Direct appeal & Request for acquittal
 - ii. Writ of certiorari & Request for acquittal
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. South Carolina Court of appeals p.o. Box 11589 Columbia, SC 29211
 - ii. South Carolina State Supreme court p.o. Box 11589 Columbia SC 29211
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. Denied

ii. Denied

iii.

iv.

(d) the date of each such disposition:

i. December 5, 2018

ii. June 28, 2019

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. opinion No. 2018-UP-439

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?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. That Richard Bowman was alone with the minor during fatal assault

ii.

iii.

(b) the proceedings in which each ground was raised:

i. Direct appeal

ii. state supreme court writ of certiorari

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes, _____
 (b) your trial, if any? yes _____
 (c) your sentencing? yes _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Charles Verner, Esquire _____

 ii. John H. Strom, Appellate Defender South Carolina Commission on Indigent Defense Division of Appellate Defense P.O. Box 11589 Columbia SC 29211
 iii. Wanda H. Carter, Deputy Chief Appellate Defender, South Carolina Commission on Indigent Defense Division of Appellate Defense P.O. Box 11589 Columbia SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment, trial, sentencing and filing of appeal. _____
 ii. Direct appeal until transferring to D.C. - at that point the case was handled by Carter throughout Supreme.
 iii. finality of Direct appeal and writ of certiorari in State Supreme, sending me the application for post conviction relief.

19. State clearly the relief you seek in filing this application:

I am seeking a reduction to ten years violent with credit time served from arrest date December 30, 2014. Richard Bowman, who pled out, recieved only 15 years for the murder of my son. I have to face knowing I left my son for the last time each day and that I wasn't there to protect him

20. Are you now under sentence from any other court that you have not challenged? or that I would never see him alive again.

No

STATE OF SOUTH CAROLINA)
County of Newberry)

VERIFICATION

I, Theia McArdle, 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.

Theia McArdle

SWORN to and subscribed before me this 9th day of September 2015.

Janelle Spearman (L.S.)
Notary Public

My Commission Expires:

Notary Public - State of South Carolina
My Commission Expires August 26, 2025

JANELLE T. SPEARMAN
Notary Public - State of South Carolina
My Commission Expires August 26, 2025

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Theia McArdle, 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.

Theia McArdle
Applicant

SWORN or affirmed to and subscribed before me this
9th day of September, 2019.

Janelle T. Spearman
Notary Public

My Commission Expires:

JANELLE T. SPEARMAN
Notary Public-State of South Carolina
My Commission Expires
August 26, 2025

2019 SEP 16 11:27
NOTARY PUBLIC

STATE OF SOUTH CAROLINA)
 COUNTY OF NEWBERRY)
)
)
 Theia McArdle, #367770)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019-CP-36-00466

RETURN AND MOTION TO DISMISS

FILED
 NEWBERRY COUNTY
 CLERK OF COURT
 ELIZABETH R. FOLK
 2019 DEC 23 AM 10:44

The State (“Respondent”), making its Return to the application for Post-Conviction Relief filed on September 16, 2019, would respectfully show this Court:

I. Procedural History

Theia McArdle (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. During the April 2015 term, the Newberry County Grand Jury indicted Applicant for homicide by child abuse (15-GS-36-0133). Charles V. Verner, Esquire (“Counsel”) represented Applicant. Solicitor David Stumbo and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor’s Office prosecuted the case.

On April 4-8, 2016, Applicant’s jury trial commenced before the Honorable Frank R. Addy, Jr. The jury convicted Applicant as indicted and Applicant was sentenced to thirty years’ imprisonment. Applicant timely appealed her conviction. By an unpublished opinion filed December 5, 2018, the South Carolina Court of Appeals affirmed Applicant’s conviction. State v. McArdle, Op. No. 2018-UP-439 (S.C. Ct. App. filed December 5, 2018). Applicant subsequently filed a petition for a writ of certiorari in the South Carolina Supreme Court. By Order dated June

SCANNED

28, 2019, the South Carolina Supreme Court denied Applicant's petition for a writ of certiorari.

III. Allegations Raised and Relief Sought

In her application for post-conviction relief, Applicant alleges she is being unlawfully confined for the following reasons:

- (1) "Richard Bowman was with minor alone during fatal assault."
- (2) "GPS records place me in another city during the fatal assault hours."
- (3) "Bowman's original confession stated his assault on minor was while I was gone and that he never told me."

As requested relief, Applicant requests "a reduction to ten years violent with credit time served from arrest date December 30, 2014..."

Attached to this Return and incorporated by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the appellate record, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

VI. Summary Dismissal of Applicant's Allegations

Applicant's allegations should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel.”); State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Applicant’s allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant merely alleges direct appeal issues that could have been alleged by way of a direct appeal. Applicant does not assert any claims of ineffective assistance of counsel or otherwise proper allegations under the Uniform Post-Conviction Procedure Act. Therefore, the application should be dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

VI. Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for Summary Dismissal

WHEREFORE, having made its Return, Respondent requests that Applicant's allegations be dismissed for failing to state cognizable claims under the Post-Conviction Procedure Act.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 18th, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
)
)
)
 THEIA MCARDLE, #367770)
)
)
)
)
)
 Applicant,)
)
)
)
)
)
 vs)
)
)
 STATE OF SOUTH CAROLINA,)
)
)
)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2019-CP-36-00466

AFFIDAVIT OF SERVICE BY MAIL

FILED
 NEWBERRY COUNTY
 2019 DEC 23 AM 10:44
 ELIZABETH P. FOLK
 CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

The Honorable Elizabeth P. Folk
Clerk of Court, Newberry County
Post Office Drawer 10
Newberry, South Carolina 29108

DATED this 17th day of December, 2019.



 John Grzymalski, Legal Assistant



ALAN WILSON
ATTORNEY GENERAL

December 18, 2019

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York, South Carolina 29745-0649

FILED
NEWBERRY COUNTY
2019 DEC 23 AM 10:44
K. J. ZABETH R. FOLK
CLERK OF COURT

Re: Theia McArdle, #367770 v. State of South Carolina
2019-CP-36-00466

Dear Mr. Hamilton:

Enclosed please find the original **Return and Motion to Dismiss** in the above-captioned case for filing in your office.

Sincerely,

Brianna L. Schill
Assistant Attorney General

BLS/jpg
Enclosure

cc: Nancy C. Fennell

Copy mailed 12/27/19

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
)
 Theia Darion McArdle, #367770)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 CASE NO. 2019-CP-36-00466

AMENDMENT TO PCR APPLICATION

FILED
 NEWBERRY COUNTY
 2021 JUN 28 PM 2:10
 CLERK OF COURT

The Applicant, by and through appointed counsel below, hereby amends her PCR application filed on September 16, 2019, to add the following grounds and/or facts on which Applicant bases her allegations that she is being held in custody unlawfully:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Ineffective assistance of counsel for failing to provide Applicant with the entire contents of her discovery motion prior to proceeding to trial. Specifically, trial counsel did not provide Applicant any photograph evidence that was ultimately used during her trial.

Ineffective assistance of counsel for failing to provide Applicant with the evidence relevant to the nature of the injuries sustained by the child. Counsel failed to provide that information to Applicant prior to proceeding to trial and failed to discuss issues related to that evidence with Applicant prior to proceeding to trial.

Ineffective assistance of counsel for failing to cross-examine or impeach co-defendant Bowman with prior inconsistent statements. Counsel failed to use handwritten notes provided to counsel by Applicant at the trial.

Ineffective assistance of counsel for failing to present evidence of co-defendant's conduct related to specific carvings co-defendant made in the wall related to the child while in a holding cell.

Ineffective assistance of counsel for failing to discuss with Applicant any potential defenses related to her prior mental health diagnoses.

Ineffective assistance of counsel for failing to pursue a change of venue despite the publicity the case received in the community.

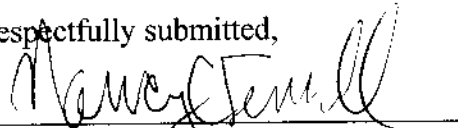
Ineffective assistance of counsel for failing to fully prepare with Applicant all defenses available to her.

Ineffective assistance of counsel for failing to use Applicant's prior mental health diagnoses as mitigation during sentencing.

The Applicant further amends her PCR applicant as follows:

19. State clearly the relief you seek in filing this application: Applicant seeks to have her conviction overturned and seeks a new trial.

Respectfully submitted,


Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772

Columbia, SC
June 18, 2021

SC Bar No. 69729
Attorney for Applicant

CERTIFICATE OF SERVICE

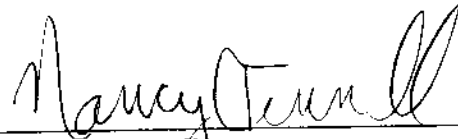
The undersigned hereby certifies that a true and correct copy of this Amendment to PCR

Application was served upon the following this 18th day of June, 2021 via email to:

Megan Jameson
Senior Assistant Deputy Attorney General
mjameson@scag.gov
P.O. Box 11549
Columbia, SC 29211

Michael Neubauer
Assistant Attorney General
michaelneubauer@scag.gov
P.O. Box 11549
Columbia, SC 29211

FILED
RECEIVED
2021 JUN 28 PM 2:11
CLERK OF COURT
SOUTH CAROLINA



Nancy C. Fennell
Attorney for Applicant

LAW OFFICE OF NANCY C. FENNEL, LLC**P.O. Box 2176
Irmo, SC 29063****nancyfennell1@gmail.com****(803) 553-1772**

June 18, 2021

Elizabeth P. Folk, Clerk of Court
Newberry County Courthouse
1226 College Street
Mailing Address: P.O. Drawer 10
Newberry, South Carolina 29108

Re: Theia Darion McArdle, #367770 v. State of South Carolina
2019-CP-36-00466

Dear Ms. Folk:

Please find enclosed for filing Applicant's Amendment to PCR Application.

Thank you in advance for your assistance.

Sincerely,



Nancy C. Fennell

FILED
NEWBERRY COUNTY
2021 JUN 28 PM 2:10
ELIZABETH P. FOLK
CLERK OF COURT

1 STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT OF
 2) THE EIGHTH JUDICIAL CIRCUIT
 3) 2019-CP-36-466
 4)
 5)
 6)
 7)
 8)
 9)
 10)
 11)
 12)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

Theia D. McArdle,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

TRANSCRIPT OF RECORD

August 2, 2022

Newberry, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, JUDGE

A P P E A R A N C E S:

Nancy C. Fennell, Esquire
Attorney for the Applicant

Zachary W. Jones, Esquire
Attorney for the State

Lisa G. Amick
Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

Ms. McArdle

Direct examination by Ms. Fennell: 7
Cross examination by Mr. Jones: 27

Mr. Verner

Direct examination by Mr. Jones: 30
Cross examination by Ms. Fennell: 36
Redirect examination by Mr. Jones: 44
Recross examination by Ms. Fennell: 47

Certificate of Reporter 49

EXHIBITS

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
------------	--------------------	-----------	-----------	---------------

(NO WITNESSES CALLED.)

1 THE COURT: Yes, sir.

2 MR. JONES: Thank you, Your Honor, may it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. JONES: My name is Zachary Jones and I'm here
6 representing the State of South Carolina. This is the matter
7 of Theia McArdle versus State, case number 2019-CP-36-466.
8 During the April 2015 term, the Newberry County Grand Jury
9 indicted Ms. McArdle for homicide by child abuse, that's
10 indictment number 2015-GS-36-133. Charles Verner represented
11 Ms. McArdle and Solicitor David Stumbo and Assistant Solicitor
12 Taylor Daniel of the Eighth Circuit Solicitor's Office
13 prosecuted the case.

14 THE COURT: Okay.

15 MR. JONES: From April 4th to 8th, 2016, the jury
16 trial was held before the Honorable Frank R. Addy, Jr. The
17 jury convicted Ms. McArdle as indicted, and she was sentenced
18 to 30 years imprisonment.

19 THE COURT: Okay.

20 MR. JONES: She filed a timely appeal. The South
21 Carolina Court of Appeals affirmed her convictions and
22 sentences in an unpublished opinion that's State v. McArdle,
23 opinion number 2018-UP-439 filed December 5th, 2018. She later
24 filed a petition for writ of certiorari which was denied by the
25 South Carolina Supreme Court. On September 16th, 2019, Ms.

1 McArdle filed her application for post conviction relief and
2 the State filed a return and motion to dismiss for failure to
3 state a cognizable claim. Then on June 18th, 2021, through
4 counsel, Ms. McArdle amended her application to include
5 allegations of ineffective assistance of counsel. Your Honor,
6 it's my understanding that Ms. McArdle is not going forward on
7 all of the claims raised in her amended allegation today. So
8 with Your Honor's permission, I'll turn it over to her
9 attorney, Ms. Fennell to explain what is going forward and put
10 that on the record. Thank you.

11 THE COURT: Yes, ma'am.

12 MS. FENNEL: Good morning, Your Honor, thank you.

13 THE COURT: Good morning.

14 MS. FENNEL: So we did file the amendment, and I
15 think we'll, I'll just go through each of them and tell you
16 whether we're going forward on that allegation or whether we're
17 withdrawing that allegation. The first one is ineffective
18 assistance of counsel for failing to provide Applicant with the
19 entire contents of her discovery motion prior to proceeding to
20 trial, we are moving forward on that allegation. Ineffective
21 assistance of counsel for failing to provide Applicant with the
22 evidence relevant to the nature of the injuries sustained by
23 the child, we are moving forward on that allegation. The next
24 one is ineffective assistance of counsel for failing to cross
25 examine or impeach codefendant by way of prior inconsistent

1 statements, we are withdrawing that allegation. The next one
2 is ineffective assistance of counsel for failing to present
3 evidence on codefendant's conduct related to specific carvings
4 codefendant made on the wall, related to the child while in a
5 holding cell, we are withdrawing that allegation. The next one
6 is ineffective assistance of counsel or failing to discuss with
7 Applicant any potential defenses related to her prior mental
8 health diagnoses, we are moving forward with that allegation.
9 The next one is ineffective assistance of counsel for failing
10 to pursue a change of venue despite or change in venue, I
11 apologize, it's misworded in the application, due to the
12 publicity of the case received in the community, and we are
13 moving forward on that allegation. The next one is ineffective
14 assistance of counsel for failing to fully prepare the
15 Applicant all defenses available to her, we are moving forward
16 on that allegation. And the final allegation is ineffective
17 assistance of counsel for failing to use Applicant's prior
18 mental health diagnoses as mitigation during sentencing, we are
19 withdrawing that allegation.

20 THE COURT: Okay. Alright, then. We ready to
21 proceed?

22 MR. JONES: Yes, Your Honor.

23 THE COURT: Alright.

24 MS. FENNEL: Thank you, Your Honor, I would call
25 Theia McArdle to the stand.

1 Q And you understand what I've just described to you about
2 the potential outcome?

3 A Yes.

4 Q Okay.

5 THE COURT: Okay. Ma'am, I'm sorry, but you've got a
6 soft voice, I'm going to ask you to please speak up if you
7 would. There we go. Alright.

8 A Yes, I understand the implications that I'm risking.

9 Q Okay. And you want to move forward?

10 A Yes.

11 Q Okay. Now, you were indicted on April 6th, or April 2nd,
12 2015 for homicide by child abuse, is that correct?

13 A Yes.

14 Q And when were you arrested?

15 A December 29th, 2014.

16 Q And was that the day of the incident?

17 A To my best recollection, yes.

18 Q Okay. And have you been in jail since the time that you
19 were arrested?

20 A Yes.

21 Q Okay. And who represented you on that charge?

22 A Charles Verner.

23 Q And was he appointed to represent you?

24 A Yes.

25 Q Okay. And when was he appointed to represent you?

1 A After the arraignment.

2 Q Okay. And so how long were you incarcerated prior to
3 going to trial?

4 A A year and four months.

5 Q Okay. And during that year and four months, did you meet
6 with Mr. Verner?

7 A Yes.

8 Q And about how many times did you meet with him?

9 A Sparsely, not very often.

10 Q How many times overall do you think that you met with him?

11 A Less than 10.

12 Q Pardon?

13 A Less than 10.

14 Q Less than 10 times? Okay. And when you met with him, did
15 you meet with him in person or on the phone?

16 A It was in person.

17 Q Okay. And when he came to meet with you, what kinds of
18 things did you discuss with him?

19 A Usually, at first it was when, the actual charge was
20 towards the beginning, and the only plea that they gave was 20
21 years. I, more towards, usually there was only a notepad that
22 he had with him and I remember, I remember that more towards
23 the actual trial was approaching, that is when he had told me
24 that Bowman had recanted his original statement slash
25 confession and was trying to place blame on me and that was

1 when, that was when it became clear that this was really going
2 to become more serious.

3 Q Okay. Well, let me, let me stop you there. So Bowman, he
4 was your codefendant in this case?

5 A He was the man who murdered my son, yes.

6 Q Okay. And who is Mr. Bowman to you?

7 A He was my ex. He was also very abusive to me; I got with
8 him in 2013 when he had just gotten out of the Army. He had
9 done an Iraqi tour.

10 Q Okay. And so, so let's move to the first allegation that
11 we're moving forward on which is ineffective assistance of
12 counsel for failing to provide Applicant with the entire
13 contents of her discovery motion prior to proceeding to trial.
14 We included specifically trial counsel did not provide
15 Applicant any photograph evidence that was ultimately used
16 during her trial. So when did Mr. Verner provide you with your
17 discovery file?

18 A After a few months of being locked up in county, I
19 received a mail package, it was what they call a Rule 5 or
20 something like that. I've never been in trouble with the law
21 before on any large degree or anything like that so this was
22 all new to me. The envelope containing a bunch of paperwork
23 that I had to go through and read, a lot of it had medical
24 jargon which I was not familiar with which I read and wasn't
25 able to understand. I, at this point I was still in shock, too

1 because violence was not part of my upbringing, so being able
2 to, being able to think that something like this could actually
3 happen, it wasn't really understandable at this point. Seven
4 years later it is now that I've been in prison, but, surrounded
5 by killers.

6 Q So he mailed your discovery motion to you, your discovery
7 file to you?

8 A Yeah, yes.

9 Q He didn't bring it to you in person?

10 A No.

11 Q Okay. Did you, so you reviewed it on your own after he
12 mailed it to you?

13 A Yes.

14 Q Did you ever have an opportunity to go through the file
15 and list specific documents contained in the file with Mr.
16 Verner?

17 A Every bit of it that I did was the reading in the actual
18 pod of Newberry County.

19 Q Okay. And did, did that discovery file that he sent to
20 you contain any photographic evidence, any photographs?

21 A No. All of the photographs were removed.

22 Q Okay. And did you have an opportunity, you said there was
23 medical documentation. What kind of medical documentation?

24 A There, well, I'm not really sure. It was some that
25 referred to, the jargon which referred to respiratory

1 depression, things like, things of that nature, I wasn't
2 familiar with it, and I was trying to actually look it up by a
3 dictionary and thesaurus, trying to piece together what it
4 meant. I mean, I'm extremely intelligent, but I still don't
5 have a medical degree in that to understand what all of that
6 meant.

7 Q Okay. And what is your highest level of education?

8 A I got a GED after being thrown out of the mental
9 institution in the 10th grade because they said that because of
10 my failure to complete the last mental institution I was in, I
11 couldn't go back to the actual public high school, I was still
12 technically a danger to myself and society, so I would have to
13 get a GED at the community college.

14 Q Okay. So you completed the 10th grade and then got your
15 GED after that?

16 A Within two weeks from Buncombe Technical Community
17 College.

18 Q Okay. So you had all of this information in front of you,
19 medical documentation, but you didn't really know what it was,
20 what you were reading?

21 A No, ma'am.

22 Q Okay. So at that point in time, did you know what the
23 cause of death was?

24 A I could not ascertain even though there were a lot
25 of different terminology pieces in front of me, what it

1 actually led up to, no.

2 Q Okay. And so you went to trial knowing that they had
3 charged you with homicide by child abuse knowing that your
4 codefendant was also looking at that same charge but not really
5 understanding what the cause of death was?

6 A Yes, ma'am.

7 Q Okay. And then going to the, the second allegation of
8 ineffective assistance of counsel for failing to provide
9 Applicant with the evidence relevant to the nature of the
10 injuries sustained by the child. Counsel failed to provide
11 that information to Applicant prior to proceeding to trial and
12 failed to discuss issues related to that evidence with
13 Applicant prior to proceeding to trial. So your, Mr. Verner
14 never went over the medical documentation with you before going
15 to trial?

16 A No, ma'am.

17 Q Did he ever show you any photographs that were introduced
18 at trial regarding the particular injuries the child
19 sustained?

20 A No, ma'am.

21 Q If you had, had that information and had that
22 understanding of what the actual cause of death was, what
23 injuries actually caused the child's death, would that have
24 impacted your decision to go on to trial?

25 A I believe so, yes.

1 Q Okay. And that information would have been necessary for
2 you to make an informed decision on whether to proceed to
3 trial?

4 A Yes. Especially with my never having dealt with anything
5 to do with being in a Courtroom before.

6 Q Okay. And this is your child we're talking about?

7 A Yes.

8 Q And so even at that point when you're entering the
9 Courtroom to go to trial that day, you didn't have an
10 understanding of what the particular injury was that caused his
11 death?

12 A No. Because the first time I had seen the extent of
13 anything, the first time I had seen on a widescreen monitor
14 posted in front of God and everyone anything that was posted up
15 was when it was displayed in front of the Courtroom.

16 Q Okay.

17 A And that was literally mind numbing to have to see it for
18 the first time in front of the jury, in front of God and
19 everyone. That was the first time when I really began to
20 understand was when it was put on broad display, when
21 everything was broken down by the technicians, by the
22 pathologists, that was when it began to come together was at
23 the trial, that's when I began to understand. I didn't until
24 that point when they broke it down for the jury in layman's
25 terms, and I was in tears the entire time during my trial

1 because I felt so pathetic that I didn't know, that I didn't
2 understand, that I wasn't there, that I felt so stupid for not
3 knowing, for not understanding what literally I had held the
4 entire time, that I left him in the hands of a murderer, of
5 someone who was beating me but had never put his hands on my
6 child until that day, but I didn't know.

7 MR. JONES: Objection. I just want to focus on the
8 content of the question, that's all.

9 THE COURT: Alright. Sustained.

10 MS. FENNEL: Okay.

11 Q And when you, so sitting here today after having gone
12 through the trial and having reread the transcript, what is
13 your understanding of the actual cause of death?

14 A Blunt force trauma to the head.

15 Q Okay. And prior to proceeding to trial, you weren't
16 certain that that was the cause of death?

17 A No.

18 Q And the child had sustained other injuries in addition to
19 the head trauma?

20 A That was what the autopsy report had read.

21 Q Okay. And why was the particular injury that caused the
22 death important in your case and in your mind for determining
23 how to proceed with your case?

24 A Because that is what would have actually stopped his
25 entire system.

1 Q Okay. And was it important to you, based on the testimony
2 that you heard at trial, did it indicate at what time of day
3 the child was injured?

4 A Yes.

5 Q And why was that important to you?

6 A That literally delineates along with both pathologists and
7 lines up with the GPS records, and it coincides with his
8 original confession.

9 Q Whose original confession?

10 A Richard Bowman.

11 Q Okay. And was that important because there were time
12 periods during the day of the incident that Mr. Bowman was
13 alone with the child?

14 A Yes.

15 MR. JONES: Objection. Leading the witness.

16 THE COURT: Sustained.

17 Q So let me go back to, all of this is testimony and
18 evidence that you learned during trial?

19 A Yes.

20 Q Okay. And you had never discussed any of that with Mr.
21 Verner?

22 A No.

23 MR. JONES: Objection. Asked and answered.

24 MS. FENNEL: I'm sorry.

25 THE COURT: Overruled. That's fine. Go ahead.

1 Q Had you discussed any of that with Mr. Verner prior to
2 trial?

3 A The only thing that I discussed with Mr. Verner is the
4 fact that Richard Bowman had changed, and he had given a new
5 series of summary events that had supposedly happened that day
6 and the days prior that did not include his putting his hands
7 on my son as was originally in that, in his written confession
8 as was given three hours after his murdering my son. And he
9 said it was in quotes, to protect me. But after ---

10 MR. JONES: Objection. Once again, I'd like to ask
11 the witness be confined to answering counsel's question.

12 A If you'll let me finish ---

13 THE COURT: I think she was headed there. Alright,
14 go ahead. Go ahead.

15 A Thank you. After literally a year of having the living
16 crap beat out of me and being told that if I can't have you, no
17 one can, after being beaten to the point where my face was
18 split open, I don't think he was trying to protect me, I think
19 he was making sure that just like he always did if he couldn't
20 have me, no one could. And for seven years, that's exactly
21 what I've been is his doll on a shelf.

22 Q And you're referring to the inconsistent statement that
23 Mr. Bowman had submitted to law enforcement versus the
24 testimony that he provided at trial?

25 A Yes.

1 Q Okay. Okay. Now, during the times that Mr. Verner came
2 to meet with you, did you discuss with him any plea deal that
3 had been offered?

4 A The only plea deal that he had ever told me about was the
5 one offered for 20 years.

6 Q And when was that offer made?

7 A The only time that it was ever mentioned was, I want to
8 say, a few months after I had been locked up and then once
9 again, I believe the first day of trial.

10 Q And so what did Mr. Verner tell you about the plea offer?

11 A I mean, it was just that it, kind of like a sidebar
12 mention, it wasn't even really like a grand presentation or
13 anything.

14 Q And when he offered, when he presented that plea offer to
15 you, did you know what potential maximum sentence you could
16 receive with the charge that you were looking at?

17 A I really wasn't even, I really wasn't even thinking I
18 would be charged for a crime I didn't commit, I mean, the
19 reality of being sentenced wasn't there.

20 Q Okay.

21 A So no, I'm sorry.

22 Q So did you decide at that time to reject the plea offer?

23 A Yes.

24 Q Okay. And at that time that you rejected the plea offer,
25 did you have all of the evidence from your discovery file?

1 A Not all of it, no.

2 Q Okay. And at the time that you rejected that plea offer,
3 did you have an understanding of what the actual cause of death
4 was?

5 A No. I never did until the end of the trial.

6 Q And would that, having that information, would that have
7 impacted your decision on whether to accept that plea offer or
8 to proceed to trial?

9 A Yes, ma'am.

10 Q Now, you've alleged that Mr. Verner failed to discuss with
11 you any potential defenses related to your prior mental health
12 diagnoses. What prior mental health diagnoses are you
13 referring to?

14 A I've been diagnosed with post traumatic stress disorder
15 because of abuse in my past. I've also been diagnosed with
16 depression, and social anxiety as well as anxiety.

17 Q Okay. And did he know that?

18 A Yes.

19 Q Okay.

20 A I was hospitalized as a child from ages 11 to 16.

21 Q Okay. And did he, when you told him about that, did he
22 have any response?

23 A If there was, I can't remember, and I don't want to
24 perjure myself, I'm sorry.

25 Q Okay. But that's something that you all didn't

1 really discuss ---

2 A (Nonverbal response).

3 Q Okay. You've also alleged ineffective assistance of
4 counsel for failing to pursue a change in venue because of the
5 publicity this case received. When you were arrested, kind of
6 describe the publicity that you're referring to.

7 Q At my arraignment there were cameras all inside of the
8 Courtroom, there was not a gag order that was issued
9 whatsoever. They left the TV on over top of the holding cell
10 where I laid on the floor in a turtle suit in crisis with not a
11 mat or a suicide blanket as my case was played over, and over,
12 and over on the newsreel. At the actual Court hearing, they
13 were allowed to tape it freely.

14 Q And did you ever discuss with Mr. Verner that you, that
15 you would like to pursue a change in venue?

16 A I've never been in trouble; I didn't know that these
17 things were possible.

18 Q Okay. And now, this case was tried in Newberry, were you
19 a resident of Newberry?

20 A I'm a resident of North Carolina.

21 Q Okay. Where did you reside at the time the incident
22 occurred?

23 A I was, I had just got a two bedroom trailer in Enoree just
24 off of exit 44 on I26.

25 Q Okay.

1 A Closer to Laurens.

2 Q Were you familiar with Newberry at all?

3 A I had never been to this town before.

4 Q Okay. Do you believe that the publicity of this case in
5 Newberry led to you having an unfair trial?

6 A Very much so along with several prejudicial factors of the
7 case.

8 Q Okay. What do you mean by prejudicial factors of the
9 case?

10 A There was a multiracial couple, multiracial child, there
11 was an illicit illegal job factor and there was the death of a
12 child in the end, plus a salute the troops wild foreigner army
13 man, whether he was a woman beater or not, it was a fact, yes,
14 I believe it was a very biased trial.

15 Q And by a former military, you're talking about your
16 codefendant, Mr. Bowman?

17 A Yes.

18 Q Okay. And so you believe those factors led to you being
19 prejudiced at trial?

20 A He got 15 years for murdering my son, pleaded guilty, yes,
21 I believe it was very, very prejudicial.

22 Q Okay. And you were, did you rely on Mr. Verner and his
23 experience, his legal experience to, to determine whether to
24 file such a motion for change of venue?

25 A I was looking for guidance, yes, ma'am.

1 Q You've also alleged ineffective assistance of counsel
2 failing to fully prepare with you all the defenses available to
3 you. So when you moved forward to proceed to trial, did you
4 have, were you aware of what Mr. Verner's defense strategy was?

5 A No.

6 Q Had you ---

7 A I just trusted him.

8 Q Okay. I think you've already testified that you hadn't
9 discussed your defenses?

10 A I mean...

11 Q So when you went into trial that day, you didn't have any
12 understanding of what Mr. Verner's strategy was to defend you
13 against the allegations?

14 A (No answer).

15 Q It's a yes or no, you can answer yes or no. Did you
16 understand what his strategy was or did you not?

17 A Did I know exactly what he was going to say, is that what
18 you're asking?

19 Q Well, did you have, do know what a strategy is? Like a
20 strategy as far as like this is how I'm going to move forward
21 to address something.

22 A No.

23 Q Do you understand what a strategy is?

24 A Yeah, I mean, I do understand what a strategy is, but I
25 didn't know what exactly ---

1 Q His strategy was for the defense?

2 A No.

3 Q Okay. Now, you mentioned that your codefendant, Mr.

4 Bowman, was former military. And was there testimony during
5 the trial regarding his prior abuse of you?

6 A If there was, I don't recall it.

7 Q Is that something that you had discussed with Mr. Verner
8 prior to trial?

9 A Yes.

10 Q And what did you discuss with Mr. Verner regarding the
11 abuse between you and your codefendant, Mr. Bowman?

12 A I do believe I told him about him having put me in the
13 hospital, I had to have stitches in my face where he had
14 literally hit me in the temple before. And I had admission in
15 St. Joseph Hospital in North Carolina where I had to have the
16 stitches put in place, my nose is still crooked from having to,
17 having been broken and never having it reset. He had thrown me
18 on the ground, stomped on me and tried to run over me with my
19 own car. And literally when I jumped behind the guardrails to
20 avoid being hit, he had drug me by my ankles and I had gotten
21 road rash on my thigh and my stomach where he had drug me back
22 to the car, he was like get in, you're not going anywhere
23 because he was driving erratically, and I was like I'm not
24 going to die from your driving, you know, you're not going to
25 kill me in this car. And he literally was like I will kill you

1 rather than let you be with somebody else, you know, he was
2 like ---

3 MR. JONES: Objection, Your Honor. This goes beyond
4 answering the question which was whether this was discussed
5 with Mr. Verner.

6 THE COURT: Sustained.

7 Q So you raised the issue with Mr. Verner prior to trial
8 that there was domestic violence between the two of you ---

9 A Yes.

10 Q --- is that your answer? Okay. Now, going back to Mr.
11 Bowman's military training, did you discuss that with Mr.
12 Verner?

13 A To the degree, I don't know what, but yes.

14 Q Okay. And did you discuss with him using the fact that
15 Mr. Bowman had this military training to defend against any of
16 the allegations regarding, or not allegations, but to bolster
17 any of the cross examination of Mr. Bowman regarding his abuse
18 of you?

19 A I'm sorry ---

20 Q Do I need to repeat that?

21 A --- say again.

22 Q I know that was a long question. Did you discuss with Mr.
23 Verner using Mr. Bowman's prior military training to cross
24 examine him regarding the abuse between the two of you?

25 A I don't recall, I'm sorry.

1 Q Okay. Did you feel like you were in an inferior position
2 as to Mr. Bowman because of his military training?

3 A Most definitely.

4 Q Okay. And do you think that you discussed that with Mr.
5 Verner?

6 A Yes.

7 Q Okay. Was that important, an important part of the case
8 to you?

9 A Yes.

10 Q Okay. And did Mr. Verner use that information at all
11 during the trial?

12 A No.

13 Q Okay. Okay. Ms. McArdle, I think we have covered all of
14 the specific allegations. Is there anything that you and I
15 discussed that we were going to move forward on that we have
16 not discussed today and not presented to the Court?

17 A My mental health was used patently, but he had a diagnosis
18 of intermittent explosive disorder which is a very dangerous,
19 very carefully guarded psychiatric disorder which is something
20 obtained that was diagnosed while he was in the military, so I
21 want to know why this was never brought up during trial or used
22 at all.

23 Q And he being your codefendant, Mr. Bowman?

24 A Yes. Richard Bowman.

25 Q And Mr. Verner did not raise that issue at all at trial?

1 A Not whatsoever.

2 Q Okay. Did you inform Mr. Verner about that?

3 A Yes.

4 Q Okay. So he could have done an individual investigation
5 into anything like that?

6 A I mean, that's on the record from the actual army itself
7 where he had been diagnosed, that could have been subpoenaed.

8 Q Okay. And then going back to the plea offer. That offer
9 was, the 20 year offer, was that, you were offered it while you
10 were at the county. Were you offered that plea offer
11 again?

12 A I want to say it was like said in passing on the first day
13 of the trial, almost like a by the bye type thing, but it
14 wasn't really like brought to you like..

15 Q Okay. And when you went to trial, did you understand that
16 you were looking at up to a life sentence at that time?

17 A Not formally, no.

18 Q Did you understand the elements of the crime that you were
19 accused of?

20 A No.

21 Q Did you understand that the State would have to prove
22 beyond a reasonable doubt each element of that crime?

23 A No.

24 Q So ---

25 A Because I'm not a murderer.

1 Q So those are things that Mr. Verner never explained to
2 you?

3 A No.

4 Q Okay. Do you have anything further you'd like the Court
5 to know?

6 A I just want to be a regular human being again.

7 MR. JONES: And Judge, if there are any other
8 questions, we'd just ask that the witness be reminded to speak
9 up.

10 THE COURT: Alright. Yeah. They're just having a
11 little trouble hearing you, that's all.

12 A Oh, sorry.

13 THE COURT: That's okay, that's okay.

14 Q I have no further questions, so please answer any
15 questions the attorney general has for you.

16 THE COURT: Thank you, ma'am. Yes, sir?

17 MR. JONES: Thank you, Your Honor.

18 **CROSS EXAMINATION**

19 BY MR. JONES:

20 Q Thank you, Ms. McArdle. I only have one issue I want to
21 go over again and that's regarding Mr. Verner's explanation or
22 lack thereof of the, of the maximum sentence and elements of
23 the crime prior to trial. Is your position, I believe you said
24 that at the time you received the first plea offer you weren't
25 aware that you were going to be charged?

1 A I'm sorry?

2 Q And I may have misheard you, but could you go over when
3 you received the plea offers once again?

4 A The first plea offer that I was given was a few months
5 into my stay at the county, and then it was the offer for 20
6 years, but it, again, I wasn't really like never having had to
7 deal with the law, I never like not really comprehend, I was
8 still in shock, too, so none of that was really like mentally
9 clicking at all. So like never having been charged, never like
10 having been charged before, never having dealt with like a
11 Courtroom or a trial or anything, like watching Law and Order
12 and then being in an order of law is entirely different. So do
13 you understand?

14 Q Yes. So did Mr. Verner at that point explain to you the
15 maximum possible sentence that you would be facing if he
16 proceeded to trial instead of taking the 20 year plea offer?

17 A It wasn't, it, when I said that I wasn't taking the plea,
18 we went on to discuss the things about the trial, what, like
19 that we still weren't actually looking at the trial itself. We
20 went on to discuss that there would still be some time before
21 that and yada, yada, yada, and that we still had Bowman's
22 confession at that point, and I want to say that that was when
23 he was still asking me information about what had gone on and
24 so that was the initial few months. And I was still like, I
25 still don't understand what happened, you know, because I had

1 never dealt with violence, I've never held a gun, I've never
2 used knives, I've never, nothing, that's not part of my
3 background.

4 Q Thank you. So just to get the timeline clear for me. Was
5 the plea offer made before or after you had learned that Mr.
6 Bowman had changed his story?

7 A He didn't change his story until about three weeks before
8 the trial.

9 Q Alright. Thank you, Ms. McArdle.

10 THE COURT: Any other questions for this witness?

11 MS. FENNELL: No, Your Honor.

12 THE COURT: Alright. Thank you. Ma'am, you can step
13 down.

14 MS. FENNELL: Applicant rests at this time.

15 THE COURT: Alright. Thank you so much.

16 MR. JONES: Thank you, Your Honor. The State would
17 call Charles Verner to the stand.

18 THE COURT: Alright.

19 CLERK: Place your left hand on the Bible, raise your
20 right hand. Do you solemnly swear or affirm that the testimony
21 you give this Court will be the truth, the whole truth, and
22 nothing but the truth so help you God?

23 MR. VERNER: Yes.

24 CLERK: Thank you. And please have a seat and state
25 your name for the record.

1 MR. VERNER: Charles Verner, V-e-r-n-e-r.

2 DIRECT EXAMINATION

3 BY MR. JONES:

4 Q Thank you, Mr. Verner, thank you for being here.

5 A You subpoenaed me.

6 Q Excuse me?

7 A You subpoenaed me, but you're welcome.

8 Q How long have you been practicing law?

9 A I graduated from USC Law School in 1995. November 1995 I
10 was licensed and so then, November of 1995 I've been an
11 attorney.

12 Q And how much of your practice has been criminal?

13 A The, virtually all of it. I've been a full time public
14 defender in Newberry or Greenwood since the year 1998.

15 Q And do you remember how you became involved in this
16 case?

17 A Public defender.

18 Q Alright.

19 A A criminal case occurring in Newberry County.

20 Q Do you remember what you got in discovery?

21 A It is a very voluminous case, hundreds and hundreds of
22 pages. The autopsy reports, SLED was involved, so I've had,
23 this is the four, I mean four trial notebooks which are
24 basically independent binders and then I would have had
25 documents that came after that, so..

1 Q And did you present a copy of this discovery to the
2 Applicant?

3 A I did. She got, I went to Kinkos and I individually
4 binded the discovery by category, kind of annexed up front
5 where everything was. I even put the little tab markers
6 sticking out by chapter, and Theia would have been given
7 everything I had other than photographs which they don't allow
8 you to have in jail.

9 Q So they did not permit photographs to be introduced, or to
10 be brought to the Applicant in the jail?

11 A Generally, the jail policy is they can't be graphic
12 photographs in jail but those would have been provided by
13 discs.

14 Q Alright. Did you include any evidence related to the
15 nature of the victim's injuries?

16 A She would have had the autopsy reports as well as the
17 emergency room reports. She would have reviewed photographs
18 with me, and we would have certainly talked about Gabriel's
19 injuries.

20 Q Alright. So you did discuss this evidence with her prior
21 to the trial?

22 A Yeah. And we actually hired our own pathologist in this
23 case to do an independent review of the autopsy and that was
24 also gone over with Theia.

25 Q And you discussed the results of that review with

1 your client as well?

2 A We did.

3 Q Alright. And the, did you discuss with your client any
4 defenses related to her prior mental health diagnoses?

5 A Yeah, I, any defenses is a little bit broad, but ---

6 Q Yeah. Could I clarify, like, what possible criminal
7 responsibility or guilty but mentally ill or somewhat kind of
8 defenses?

9 A She did raise with me that she had suffered from PTSD from
10 I guess spousal type abuse. She had had mental health issues
11 as early as her teenage years, and I did ask the Court for her
12 to be evaluated, and we did send her to the department of
13 health for evaluations. Never any question about competency as
14 far as trial, she's very bright, but we did send her for an
15 evaluation March 21st of 2016, and she of course came back
16 competent.

17 Q Thank you. Did the Court, do you remember if prior to
18 proceeding with the trial the Court voir dired the jurors about
19 their exposure to this case in the media?

20 A Yeah. I'm sure that was voir dired.

21 Q Alright. And I have a copy of the transcript if that
22 would help refresh your memory.

23 A I remember they were voir dired about exposure to ---

24 Q Right.

25 A --- the case.

1 Q And do you remember any jurors who indicated they had a
2 problem being seated on the jury?

3 A When Theia was first arrested, at the first General
4 Session appearance, and I think at bond Court there was some
5 television coverage from either the Columbia or Greenville,
6 probably both stations. And for the trial there was a
7 television camera, but I don't think that they actually were
8 full time until kind of the end of the case. They were there
9 certainly for the verdict watch, but it's, so there was some
10 Greenville, Columbia coverage of the case that we were aware
11 of. And Newberry has a local paper too that I'm sure actually
12 covered the case, it's not a daily, so there was more than the
13 average news coverage of Theia's situation, case.

14 Q And ---

15 A And we were aware of that because I saw the cameras.

16 Q Right. Would you have moved to exclude any jurors who
17 indicated they could not be impartial because of this
18 coverage?

19 A I would not have sat anybody who knew anything about the
20 case. So the, if any juror indicated that they knew anything
21 about the case or knew close parties to the case I would have
22 excluded them.

23 Q Alright.

24 A And of course, I sat down during their voir dire, I was
25 there when they gave their answers, I made notes, so...

1 Q So do you remember what defenses you discussed proceeding
2 with that trial?

3 A Our theory pretty much all along was that Richard Bowman,
4 the codefendant, Theia's boyfriend was the one who beat the
5 child to death, and that Theia was in an abusive relationship
6 with Richard, but, that the statements from the codefendant and
7 the medical evidence in my opinion clearly shows that Richard
8 Bowman killed the baby. Now it's a question of whether she was
9 there when it happened or other problems, but I don't have any
10 doubt that Richard Bowman was the one who beat the child to
11 death.

12 Q And that was the substance of the defense at trial?

13 A That's right. That it happened while Theia was not at
14 home and Theia would not have reason to be aware that the child
15 had been beaten by Richard until she responded like when she
16 was first aware of the child's injuries, she took the child to
17 the emergency room.

18 Q So the medical evidence that you received and you did
19 discuss with the Applicant, that was the basis for establishing
20 those injuries were caused by her codefendant?

21 A Well, her testimony and the codefendant's statements.

22 Q Alright. Was there any, was there any other discussion of
23 potential defenses or...

24 A We argued that the child was killed in Spartanburg County,
25 but it was essentially that the codefendant was responsible for

1 the death of the child. They had sort of alibis in a sense
2 that, you know, for part of the time that the child was
3 injured, Theia would not have been in contact with the child.
4 I think I do have a chart showing the only possible time that
5 she was even with the child and the time of the beatings.

6 Q And you discussed all of this prior to trial with the
7 Applicant?

8 A Yes.

9 Q As well as all the discovery?

10 A Theia's very bright; she participated in everything. We
11 would have already gone over all of the discovery before I gave
12 her copies of it, and I would have gone over pretty much page
13 by page of discovery. The, I would have, and I do remember
14 showing her some of the autopsy pictures of Gabriel,
15 particularly the injuries to his belly, but I would not have
16 given her the actual autopsy photographs even if she was not in
17 jail.

18 Q Oh, so you were able to show her some of the photographs
19 prior to the trial?

20 A I mean, I'm sure I showed her just about everything I had.
21 Now, I did see a note that she had given me during trial that
22 she indicates that she was seeing pictures for the first time.
23 I don't have any way to correlate that note to which exhibits
24 were at the time, but the sum and substance of the photographs
25 would have been disclosed prior to trial.

1 Q So did you feel that there was any surprise to your
2 client, any prejudicial surprise that is prejudicial to your
3 defense from seeing any of the photographs at trial that
4 perhaps hadn't been shown?

5 A No.

6 Q I suppose I'm asking if the substance was the same?

7 A Right, I understand. I think it would be cumulative type
8 photographs, or they were fairly benign photographs, maybe like
9 overheads of maps, time situation, but nothing that would
10 really change the theory of the defense.

11 Q Alright. Thank you.

12 MR. JONES: No further questions of this witness.

13 THE COURT: Ms. Fennell?

14 CROSS EXAMINATION

15 BY MS. FENNELL:

16 Q Mr. Verner.

17 A Hello.

18 Q Going back to the photographs, so did you actually send
19 her any photographs or did not send her any photographs?

20 A Theia, if I had printed out, I'm sure I did print out some
21 photographs, but, I'm sure the bulk of the photographs she
22 would have seen would have been on my computer.

23 Q Okay. And so when you're determining which photographs to
24 print out to send to her, how do you discern which ones you're
25 going to print to send and which ones you're not going

1 to?

2 A Well, I don't recall sending her any, I don't see where I
3 sent her any photographs beyond the basis of those that were in
4 the State's discovery. The, I do remember there were a lot of
5 photographs, and we would have gone over them, but by the time
6 we got to the third or fourth basically same photograph I'm
7 sure I would have moved on ahead to new photographs. I
8 wouldn't, you know, there are hundreds of photographs and 10 of
9 them are the outside of the front door of the house, I'm sure
10 we would have sped up after we saw one or two of them.

11 Q Okay. Now, did you send her any photographs of injuries
12 of the child?

13 A Again, if they weren't in the State's autopsy report, I
14 don't recall sending Theia any photographs, autopsy type
15 photographs of the child.

16 Q Okay. So were there two different types of photographs of
17 the child? Autopsy, when you, well, strike that. When you say
18 autopsy photographs, what are you referring to?

19 A The, the, well, the child was only autopsied one time so
20 the photographs from the autopsy are pre-autopsy that were
21 provided.

22 Q Okay. Pre-autopsy meaning the pictures taken prior to
23 actually engaging ---

24 A Immediately before the child is disrobed and there's
25 pictures of the body of the child from the outside.

1 Q Okay. Did you share or did you send to her any of those
2 pictures?

3 A I shared some, in fact, I shared, if I had them, I showed
4 Theia all of them. And I do remember the bruises on the belly
5 were, that she was crying, and I don't have a crisp memory of
6 showing her each individual picture that I showed her, but I
7 do remember we would have shown her pictures on several
8 occasions.

9 Q Okay. And those would have been on a DVD that you would
10 have shown to her while you were there?

11 A The only way I would have, I'm sure I printed out some of
12 them, but probably most of them were on a DVD on the computer
13 and showed to her.

14 Q Okay.

15 A From my computer, and she would not have been able to take
16 those back in her possession.

17 Q Okay. And so what, do you recall what the actual cause of
18 death was according to the autopsy report?

19 A The direct cause off the top of my memory, I've got the
20 autopsy report, I can look it up, but basically the child was
21 beaten violently, had hemorrhages in the head from the beating
22 and also severe injury where the child was hit in the groin,
23 and it just shut down the, the overall beating of the child
24 shut down the child's organs. And I think that the pathologist
25 testified that several of the blows to the child would have

1 been the death stroke, but there was no way to really determine
2 which one ultimately caused the death of the baby because there
3 were many bruises, and I think the doctor testified several of
4 them could have been fatal.

5 Q Okay. And so Dr. Ross testified at trial that the child
6 died from respiratory depression caused by a subdural hematoma
7 putting pressure on the regions of the brain responsible for
8 regulating breathing and blood flow. Would you agree that that
9 statement is significantly different from the child died from a
10 severe beating?

11 A Well, the blood, the bleeding in the brain would be from
12 the beating. I think there was also evidence that the child
13 was choking on the vomit or having trouble breathing. So the,
14 I do think that the bleeding on the brain was caused by the
15 beatings, so I think that's consistent with what was ---

16 Q Okay. So that, that information was contained in the
17 autopsy report, is that right, that it was respiratory
18 depression caused by a subdural hematoma?

19 A I'll take your word for it, that's consistent with my
20 memory.

21 Q Okay. Would you expect that Ms. McArdle would understand
22 reading that without any further information, that she would
23 understand what the actual cause of death was?

24 A In layman's terms, the actual cause of death was severe
25 beating of the head that caused the brain to swell, with the

1 blood to swell in the brain as well as I think, I do remember
2 the secondary cause, the beating in the abdomen would have
3 caused the child's internal organs to stop working too, which
4 could have led to death as well. In a layman's terms, they
5 understood that the beating of the child in the head and groin
6 caused the child's death, and I guess particularly in the head
7 which would have been the hematoma, and she understood that
8 really as well as I would have in terms of the cause and effect
9 that the child was beaten to death and bled internally.

10 Q Okay. And so you said your defense strategy was that the
11 codefendant, Mr. Bowman, actually committed the murder ---

12 A That's correct.

13 Q --- the homicide. And that there was an abusive
14 relationship. So how did you intend moving forward to actually
15 present that defense?

16 A The, well, I mean, we presented the case by, and I had my
17 opening argument written out, but the statements that the
18 codefendant gave where he admitted beating the child, but just
19 the, I think he minimized it at trial and maybe before trial,
20 but he admitted beating the child. The, he was impeached
21 vigorously and in fact, I think as I recall he was impeached
22 where Judge Addy told the jury as a matter of law that they
23 could find that the codefendant was not credible. The, the
24 Judge actually ruled as a matter of law that the Defendant had
25 clearly been untruthful during testimony, and somewhere in the

1 testimony there should be something where the Judge charges the
2 jury that they were free to disregard his testimony, that the
3 Court has found as a matter of law that he was being
4 inconsistent and untruthful. We impeached him with prior
5 convictions. He had graphic, gruesome photographs of dead
6 babies on his Facebook page, dead babydolls that he was posting
7 on his Facebook page. There were infants that had, were being
8 tortured or beaten to death to indicate that he was a sick
9 fella, that he, but our argument from the beginning was that.
10 And of course, the timeline only fit in where he would have
11 been the one in the proximity of the child to inflict the harm.
12 So it was Theia's testimony, vigorous cross examination, and
13 the diagram showing who had the opportunity to be with the
14 child when the injuries were inflicted, and impeachment,
15 everything we had was basically in the arguments.

16 Q And did you explore in any way Mr. Bowman's dishonorable
17 discharge from the military?

18 A I cannot a hundred percent remember, but I do believe
19 it came up that he had a less than honorable discharge, but
20 I think it was like some kind of drug possession type
21 reason. I would defer to the transcript. I know that he was
22 less than honorably discharged, and I'm pretty sure it came
23 up during impeachment, but I'm not a hundred percent
24 certain.

25 Q And did you, did you explore with him during cross

1 examination his extensive military background
2 training?

3 A I doubt it.

4 Q Okay.

5 A I know it came up that he was formerly in the military, he
6 may have brought that up himself. I don't recall giving him
7 questions about what he did in the military.

8 Q Okay.

9 A Other than his discharge.

10 Q And so a plea offer was made for a 20 year plea offer?

11 A I'm thinking that's what it was, I can't remember the
12 exact number off the top of my head, and I can't see my notes
13 where I wrote it down, but I'm sure there was a plea offer
14 where it was a violent 85 percent plea offer that we turned
15 down.

16 Q But you don't recall the terms of that plea offer?

17 A Not off the top, if Theia remembers it as 20 years, I'm
18 sure that's correct.

19 Q Okay. And when you have a Defendant who's looking at a 20
20 year to life sentence and they get a 20 year plea offer, how do
21 you generally go about presenting that offer to them?

22 A The, you know, first and foremost I explained that I'm not
23 the one who has to serve the sentence, but, you know, it's
24 their decision, I respect my client's decision to take it or
25 not. Theia was adamantly against accepting the offer, I don't

1 believe I would have strongarmed her either way. But you know,
2 it was a scary case, so, a dead baby, again, less than
3 wholesome circumstances, and I would not have told her not to
4 take the 20 year offer, but if she said I'm not going to take
5 it, I would not have, I would have brought up the problems in
6 the case which were clear, but I would have not, once she makes
7 a decision. I generally tell her, you know, these are the
8 problems, and these are the risks that you're taking, but I
9 mean, ultimately it would have been, and I do remember it was
10 Theia's decision.

11 Q And do you recall what risks specifically you reminded her
12 of when you were explaining the offer to her?

13 A It was basically a murder charge. It's a baby who'd been
14 beat to death, some prior DSS history, a codefendant testifying
15 against her, the, her career as a prostitute was not helpful,
16 and all that was at one point or the other gone over. This was
17 a case, you know, it wasn't just a one day, meet, talk to type
18 relationship, I mean, it would have been discussions over weeks
19 and months as opposed to just a onetime major sit down
20 situation.

21 MS. FENNEL: I beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. FENNEL: I don't believe I have any further
24 questions, thank you.

25 THE COURT: Any follow up?

1 MR. JONES: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. JONES:

4 Q Just briefly, Mr. Verner, going back to that plea
5 agreement. So to clarify, you leave that discussion to, you
6 left that discussion to Ms. McArdle, or that decision, sorry,
7 to Ms. McArdle after discussing it with her?

8 A I would have explained what she could get at trial, and I
9 would not, we would not have gone over that without having a
10 good idea of what our defense was. The, if I think it is a
11 hopeless case, I would certainly tell somebody I think, I'm
12 pretty sure you're going to get convicted.

13 Q And did you think this was a hopeless case?

14 A I thought she had a fair shot at being found not guilty.
15 The, no question in my mind that the evidence only supports
16 that the boyfriend is the one who killed the baby, I just think
17 it's theoretically impossible to review that file and not make
18 that determination. The, it just kind of fell into the
19 accomplice or the aider or abettor situation for Theia, some
20 evidence that she could have been the one who inflicted some of
21 the injuries. And I think that there was some prior injuries
22 of the child that were a little bit concerning, but no, I
23 thought that there was a fair chance that Theia could be found
24 not guilty.

25 Q And did you apprise your client of that, of your belief?

1 A I did. I think she was aware of it, you know, I did feel
2 like she had, I don't think that it was a, it was definitely a
3 gray area case. The, and of course, the, our pathologist did a
4 good report for us that made us hopeful, but that was months
5 after we had the meeting on the case. The, I mean, no question
6 Theia knew if she lost, she would lose big, you know, whether,
7 it was a question of whether she wanted to cut her losses.

8 Q And did you discuss, as you said, a favorable autopsy
9 report with Ms. McArdle?

10 A And again, that was months and months into the case, but
11 yes, when we had the favorable autopsy report, and by
12 favorable, I just mean that our autopsy indicated that the
13 child was beaten in Spartanburg just so I'm clear, there's
14 evidence on how long it took the organs to shut down and digest
15 food and whatnot. The, and the child being beaten in
16 Spartanburg would help Theia too, but, the, so I mean, it
17 wasn't a clear exoneration of Theia, but it was just that the
18 cause of death was probably from Spartanburg, not Newberry. Of
19 course, Theia had a clear alibi when she arrived in Newberry
20 because she had a customer who testified at trial that she was
21 with him.

22 Q So I want to discuss, talk about Mr. Bowman's confession.
23 Is that what you understood it to be prior to the trial?

24 A Bowman gave a statement to the police initially, and then
25 he, Bowman gave multiple, multiple inconsistent statements.

1 Shortly before trial, the State basically subpoenaed, I mean
2 deposed him and they printed up a 75 page, give or take,
3 transcript with his pre-testimony, and I mean, I turned that
4 over also to Theia, as you can see, she has notes on almost
5 every single page of his deposition. Theia was very active in
6 her own defense, she is very bright, the, if I could show the
7 Court, Theia would have had 75 pages of notes throughout on the
8 entire Bowman statement, and I want to say he gave one more set
9 of statements. But he certainly gave statements of when he was
10 initially arrested, he gave statements to the prosecutor when
11 they deposed him, and I would think there were some other
12 statements he made as well, and they were all just clearly self
13 serving and contradictory.

14 Q Alright. So the fact that at the time of trial he made
15 some minimizing statements about his own involvement, did you
16 believe impeachment efforts were successful?

17 A Well, again, the Court ruled as a matter of law that the
18 witness was untruthful and that the jury could find that he was
19 untruthful. The, I think he was impeached vigorously and I
20 don't think there's any question that the jury did not believe
21 that he was not involved in it. I'm sure the jury believed
22 that he was the one who delivered the blows that killed the
23 child.

24 Q Alright. Did you consider his military training to be
25 relevant to any issue in the case?

1 A No. I mean, I think, the only thing I would have focused
2 on was the dishonorable discharge, the less than honorable
3 discharge. But anything beyond that, and I don't know how much
4 I knew of what he actually did in the military. I think I knew
5 what basically MOS was, but actually where he was stationed and
6 whatnot, I don't think I would have had in depth knowledge of,
7 and I wouldn't have asked questions that would have made him
8 look, in my opinion, better to the jury.

9 Q Alright.

10 MR. JONES: No further questions, thank you.

11 THE COURT: Anything else?

12 MS. FENNELL: One question on recross.

13 THE COURT: Certainly.

14 **RECROSS EXAMINATION**

15 BY MS. FENNELL:

16 Q Now, Mr. Verner, you testified that there was a prior DSS
17 involvement, but isn't it true that any of the injuries that
18 were related to the death were actually, all the testimony
19 indicated that those happened not exactly contemporaneous, but
20 all around the same time period?

21 A I think that is completely correct.

22 Q Okay. So ---

23 A All the injuries were basically what contributed to the
24 child's death were within hours of ---

25 Q Okay.

1 MS. FENNEL: No further questions, thank you.

2 THE COURT: Alright. Anything else?

3 MR. JONES: Nothing, Your Honor.

4 THE COURT: Alright. Sir, you can step down.

5 Anything else?

6 MR. JONES: No, the State rests.

7 THE COURT: Alright, then, very well. Anything else?

8 MS. FENNEL: Nothing further.

9 THE COURT: Very well. Well, ma'am, let me just tell
10 you kind of how this goes. I'm going to, I've heard a lot of
11 information today and, of course, have been provided a good
12 number of documents. I'm going to need to take this matter
13 under advisement which I'll do, I'll think about it, and I'll
14 be issuing a decision. I would say I would be issuing a
15 decision within the next couple of weeks, alright? Thank you
16 so much, and thanks for your cooperation today.

17 (Whereupon the hearing ended at 11:12 am.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
)
)
)
COUNTY OF NEWBERRY)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Newberry, South Carolina, on the 2nd day of August 2022.

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

May 6, 2025

Lisa G. Amick

Lisa G. Amick
Court Reporter

My commission expires: June 30th, 2025

STATE OF SOUTH CAROLINA)
 COUNTY OF NEWBERRY)
)
 Theia Darion McArdle, #367770)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2019-CP-36-00466

ORDER OF DISMISSAL

NEWBERRY CP/GS COUR
FEB 3 '25 AM 11:00

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Theia Darion McArdle (“Applicant”) on September 16, 2019, and amended on June 18, 2021. The Court convened an evidentiary hearing into the matter on August 3, 2022, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Nancy c. Fennell, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Applicant’s trial counsel, Charles V. Verner, Esquire (“Counsel”), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant has not met her burden of proving she is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. During the April 2015 term, the Newberry County Grand Jury indicted Applicant for homicide by child abuse (2015-GS-36-00133). Charles V. Verner, Esquire (“Counsel”) represented Applicant.

Solicitor David Stumbo and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On April 4–8, 2016, Applicant's jury trial was held before the Honorable Frank R. Addy, Jr. The jury convicted Applicant as indicted, and Applicant was sentenced to thirty years' imprisonment. Applicant timely appealed her conviction. By an unpublished opinion filed December 5, 2018, the South Carolina Court of Appeals affirmed Applicant's conviction. *State v. McArdle*, Op. No. 2018-UP-439 (S.C. Ct. App. filed December 5, 2018). Applicant subsequently filed a petition for a writ of certiorari in the South Carolina Supreme Court. By order dated June 28, 2019, the South Carolina Supreme Court denied Applicant's petition for a writ of certiorari.

Factual Summary

At 1:35 a.m. on December 30, 2014, Richard Bowman walked into the Newberry County Memorial Hospital Emergency Room (ER) carrying Victim. Victim was unresponsive, not breathing, and leaking brown vomit from his nose and mouth. Medical staff grabbed Victim and attempted resuscitation in a nearby room. Moments later, Applicant walked into the ER. Lisa Frick, the ER's on-duty registration clerk, attempted to collect information about the incident from Applicant and Bowman. Applicant claimed Bowman was Victim's biological father. Bowman disputed the claim which led to a verbal altercation between the two. Applicant eventually conceded the point, but claimed Bowman was "the only father [Victim's] ever had." Applicant also provided Frick with an incorrect address and claimed she did not possess a photo ID or Victim's Medicaid card because her purse had been stolen. (R.p.26, line 9 –R.p.37, line 2).

Meanwhile, Dr. Duncan Holaday, an emergency physician at the hospital, began treatment on Victim. Immediately, Dr. Holaday knew Victim's condition was dire after observing: (1) Victim was not breathing; (2) he did not have a pulse or neurological activity; (3) his skin was cold

to the touch and discolored; and (4) the vomit around his nose and mouth had dried and congealed. Dr. Holaday and the nurses in the room attempted to restart Victim's breathing but found large amounts of brown, congealed material obstructing his airway. Dr. Holaday knew his chances of resuscitating Victim at this point were "nearly zero," but continued emergency treatment for approximately thirty minutes until he finally pronounced Victim dead at 2:06 a.m. After informing Applicant of Victim's death, he went back and reviewed Victim's body and noticed severe bruising around his abdomen, genitals, and his head. Dr. Holaday concluded Victim's injuries were likely the result of "non-accidental," blunt force trauma. (R.p.66, line 12–R.p.78, line 9).

Shortly after Victim's death, deputy coroner John Pollard arrived at the hospital. Dr. Holaday and the head nurse briefed Pollard on Victim's apparent injuries. After viewing Victim's body himself, he determined Victim's death was likely the result of criminal behavior and notified law enforcement of the situation. He also separated Applicant and Bowman for future police questioning. After SLED arrived and took pictures of Victim's injuries, he took the body to Dr. Janice Ross for an autopsy. (R.p.51, line 4–R.p.56, line 25).

Later, in an investigation of Applicant, Bowman, and Victim's home, officers found vomit stains on Victim's tee shirts and a pillow in his bed. Forensic analysis of the items identified the DNA in the stains as Applicant's. (R.p.171, line 1–R.p.177, line 25; R.p.772, line 10–R.p.774, line 16; R.p.1073; R.pp.1074–80).

Medical Testimony

Dr. Holaday testified he believed Victim had been dead before arriving at the ER that night, but he was unsure of exactly how long Victim had been beyond resuscitation. However, based on his review of the autopsy report and his own recollection of that night, he estimated Victim had succumbed to his injuries less than two hours before his arrival because rigor mortis/stiffness had

not yet occurred in Victim's body. Dr. Holaday further testified he believed Victim's head injury was likely the result of abuse and it did not occur immediately before death: he explained the bleeding on Victim's brain, a subdural hemorrhage¹, occurred over some period of time, possibly as a result of multiple head injuries, and once the build-up put enough pressure on the brain Victim's respiration processes would have slowly shut down over an additional period of time. (R.p.70, line 8–R.p.71, line 25; R.p.78, line 25–R.p.83, line 15; R.p.95, lines 7–9; R.p.99, line 18–R.p.100, line 25; R.p.104, line 13–R.p.108, line 9).

Dr. Holaday also discussed Applicant's other injuries. According to Dr. Holaday, the bruises, including the one on Victim's forehead, were readily observable and incurred some period of time before Victim was brought to the hospital. Additionally, the autopsy had discovered Victim had extensive internal injuries, a ruptured small intestine, which Holaday opined would have killed Victim within days. (R.p.75, line 21–R.p.77, line 23; R.p.89, line 22–R.p.95, line 23).

Dr. Janice Ross also testified at trial and described the numerous injuries she found during Victim's autopsy. She agreed with Dr. Holaday's assessment that Victim experienced bleeding in his brain area which created pressure and ultimately led to the cessation of his respiratory functions. She added that Victim also experienced cerebral edema, in which the brain itself swells in reaction to blunt force trauma as well as the subdural hemorrhage. She was unable to determine how long the subdural hemorrhage and been pooling in Victim's brain area, noting she could not determine with certainty how long before the Victim's death he suffered the blow which caused the bleeding, but that the pooling blood reached critical levels up to an hour before Victim's death. Similarly, she could not determine whether the fatal head trauma occurred before or after the

¹ At trial, Dr. Ross explained a subdural hemorrhage involves bleeding in the subdural space, an area located between the membrane covering the brain and the skull. Once the blood pools, it is classified as a subdural hematoma. (R.p.721, line 23–R.p.722, line 8).

remainder of Victim's injuries. She also claimed Dr. Holaday's calculation of Victim's death as occurring up to two hours before his arrival at the hospital could have been correct, but rigor mortis is inexact and factors such as sleep may extend the process of rigor mortis by hours. (R.p.721, line 8-R.p.724, line 20; R.p.726, lines 16-24; R.p.728, line 15-R.p.730, line 10; R.p.734, line 2-R.p.735, line 2; R.p.740, line 17-R.p.742, line 4; R.p.754, lines 7-16).

The only metric Dr. Ross could use to roughly determine Victim's time of death or time of injury was the fact he had food in his stomach, which indicated he suffered an injury sufficient to stop digestion within an hour of eating. She explained a head injury or a traumatic injury in the abdomen could both cause this effect and there was no way to tell whether the head injuries, internal organ injuries, or some combination thereof caused the cessation of digestion. However, she admitted the abdominal injury was probably the sole or primary cause of the cessation of Victim's digestive functions based on the speed at which they shut down. Thus, it was possible the head trauma occurred earlier in the day than the blow which ruptured the small intestine. She opined Victim could have been healthy enough to eat at least as early as 5:00 p.m. Additionally, Dr. Ross agreed Victim's severe stomach injury would have killed him within one or two days. (R.p.724, line 20-R.p.726, line 3; R.p.730, lines 11-25; R.p.737, line 2-R.p.738, line 3; R.p.745, lines 4-23; R.p.755, line 8-R.p.757, line 20).

Dr. Ross noted Applicant's subdural hemorrhaging could have been caused by a single or multiple blows and the bruising on the exterior of Victim's head indicated the locations of the blow(s) which killed him, and Victim could have been injured over a period ranging from minutes to numerous hours. (R.p.738, line 13-R.p.739, line 19).

Dr. Ellen Riemer, a forensic pathologist with the Medical University of South Carolina, testified for the defense. She agreed Victim's death resulted from the blunt force injuries to the

head and noted Victim had at least three to four “impacts” in that area, of which any single or combination of blows may have contributed to the sum total of bleeding on the brain. She also concurred with the earlier testimony claiming: (1) Victim’s bruises indicated injuries that occurred in the same general timeframe, but specified this timeframe could have been between zero and thirty-six hours of his death; (2) the injury to Victim’s small intestine would have killed him within a matter of days; (3) the subdural hematoma could have built up over several hours and would have killed Victim within an hour after forming by causing his physiological functions to slowly shut down over that period; and (4) she could not definitively determine the time at which Victim died. (R.p.841, line 6–R.p.851, line 6; R.p.857, line 4–R.p.860, line 18; R.p.868, lines 10–22; R.p.890, line 24–R.p.892, line 24).

Dr. Riemer claimed Victim’s various injuries occurred in the same timeframe, which she further defined as “a series of hours.” She concluded the final head injury likely occurred after dinner because Victim would not have ate while under the effects of the head injury, but admitted the stomach injury may have caused the cessation of digestion. She also conceded Victim may have suffered his injuries before eating dinner, which could have led to a loss of appetite or vomiting afterwards. (R.p.852, line 4–R.p.856, line 19; R.p.870, line 4–R.p.871, line 20; R.p.872, line 8–R.p.874, line 4; R.p.879, line 6–R.p.881, line 18).

Bowman’s Testimony

Bowman testified as a State’s witness. He met Applicant in March 2013, after he was discharged from the military. Within weeks they began dating and moved in together. On or around November 8, 2014, Bowman, Applicant, and Victim moved from Ashville, North Carolina to Enoree, South Carolina. By the time they arrived in South Carolina, Applicant through prostitution, became the sole breadwinner for the family. The three lived in a trailer, with Bowman

and Applicant sharing a bedroom and Victim sleeping on an inflatable mattress in the living room. The other bedroom was given to various cats Applicant brought into the home. (R.p.336, line 15–R.p.345, line 17).

Bowman claimed Applicant routinely hit Victim as a form of corporal punishment and recalled numerous instances of such that in the days leading up to Victim's death. On the morning of December 27, Applicant hit Victim on the back of the head several times because he put his shoes on incorrectly, with one of the blows causing Victim to fall and hit his head on a coffee table. Later, she punched him in the chest when he had difficulty buckling his seatbelt and punched him again when he made a comment about Applicant being a prostitute. On December 28, Applicant hit Victim in the chest because he shot her with a toy gun while she was asleep. She hit him yet again because he played too roughly with another child at a local McDonald's. That night, Applicant punched Victim in the genitals after he mimicked Bowman taunting Applicant and grabbing his own genitals. (R.p.347, line 14–R.p.356, line 24).

Bowman further recalled several instances of abuse which occurred on December 29. Applicant struck Victim for the first time that day with a punch to his chest when he woke her up. Later that morning, Victim bit Applicant and in response she spanked him and bit him back. Around lunchtime, Applicant punched Victim in the stomach several times after he knocked a laptop computer off a coffee table. One of the blows caused Victim to fall to the ground and hit his head. That afternoon, while in the car, Applicant struck Victim again over frustration with his inability to properly dress himself, spanking him and "popp[ing]" him on the back of the head several times. She punched his chest twice later that evening, sometime before dinner, when he repeated comments made by Applicant while she was on the phone. (R.p.358, line 16–R.p.363,

line 15; R.p.365, line 7–R.p.366, line 18; R.p.573, line 1–R.p.574, line 8; R.p.586, line 13–R.p.587, line 10; R.p.590, line 17–R.p.591, line 12).

Later that night, Victim was unable to finish his dinner. After a few bites of food, he vomited. Victim appeared very ill and unable to “communicate anything at the time.” Applicant witnessed Victim get sick. Bowman gave Victim a bath to clean the vomit on him and noticed the bruising on his testicles. He informed Applicant of the bruising but she was dismissive of the injury. Victim defecated in the bathtub and Applicant told Bowman to spank him. Bowman did, and Victim hit his head on the side of the tub. Bowman claimed Victim’s head did not hit the tub hard. After the bath, Bowman put Victim to bed on the air mattress and fell asleep in his room. Applicant went to Spartanburg to meet with a client. After Applicant got home, she asked Bowman to accompany her on her next call due to her lack of familiarity with Newberry and the client. Victim, who woke when Applicant returned home, was brought along for the trip. He was upset, tired, and unable to speak clearly. Applicant struck him two additional times after placing him in his carseat. The trio left for Newberry sometime after 11:00 p.m. Throughout the drive, Victim was “whining,” but fell asleep when they neared their destination. After Applicant exited the car for her appointment, Victim and Bowman fell asleep. Bowman woke up at one point and noticed Victim was not snoring. He shook him, and Victim mumbled a response. Bowman went back to sleep until Applicant returned, at which point he informed her he thought Victim might have sleep apnea. They tried to wake Victim, but he was unresponsive. They noticed “brown stuff” coming out of his nose and mouth and took him to the local hospital. (R.p.363, line 16–R.p.365, line 6; R.p.367, line 1–R.p.383, line 23; R.p.581, lines 16–22).

Applicant’s Testimony and Statements

Applicant testified she had never seen Bowman strike or physically harm Victim, but had seen Bowman use “harsh [] words” with him. She acknowledged that North Carolina DSS had temporarily removed Victim from her custody from April 2013 until May 2014, after an incident in which she struck Victim. She also explained Bowman and Victim had their own bathroom on the other side of the house. She was not aware of Victim’s bathing habits and claimed Bowman bathed Victim. (R.p.902, line 5–R.p.903, line 4; R.p.911, line 16–R.p.913, line 1).

Applicant’s description of December 29th differed in several respects from Bowman’s. That morning, she woke up around 9:00 a.m. and called internet providers in an attempt to obtain internet service for the trailer. She woke up and made breakfast for Victim. Later that morning, she went to a Family Dollar store in Laurens, South Carolina to obtain a prepaid Visa card so she could pay for various things, including internet installation, in the coming weeks. She, Victim, and Bowman spent the rest of the morning watching movies. After lunch, Applicant and Bowman argued over finances, an argument which lasted most of the afternoon and concluded with Applicant telling Bowman she hated him. She did not tell Bowman of her plans to leave him, for fear he would damage property in an explosive rage. (R.p.903, line 5–R.p.904, line 2; R.p.906, line 21–R.p.915, line 23)

Victim helped Applicant prepare dinner, with meal prep beginning around 6:30 p.m. Applicant, Victim, and Bowman began eating around 7:30 p.m. Applicant left to get gas around 8:00 p.m., returned briefly around 8:30 p.m. to drop off a stray cat she obtained and immediately left again for an appointment with a prostitution client in Spartanburg. She stayed with the client at least an hour, and returned home sometime before 11:19 p.m. When she entered the trailer, she saw Victim asleep in his bed. She found Bowman asleep in their bed, and demanded he accompany her to her next call because it involved a client and location with which she was unfamiliar. While

she freshened up, she ordered Bowman to put Victim in his carseat. She left for her appointment around 11:41 p.m. and arrived at the home in Newberry sometime around 12:30 a.m. Throughout the car ride, Applicant heard Victim snoring and making other "sleep sounds." After finishing her appointment, Applicant returned to the car. Applicant's testimony regarding the events from this point onward mirrors Bowman's. Although she admitted she paid little attention to Victim after her return from Spartanburg, she claimed she did not see any bruising or other indications Victim was injured until she finished her appointment with Holmes, which was sometime around 1:00 a.m. (R.p.916, line 4–R.p.949, line 24).

However, Applicant's testimony differed in several respects to the statements she made in the hours after Victim's death. Immediately after Victim was pronounced dead, Applicant called her mother, Patrice McArdle ("Patrice") and told her she and Bowman were at home when Bowman had found Victim unconscious in his bed and that they believed he had aspirated on his own vomit and died of asphyxiation. (R.p.613, line 6–R.p.614, line 17; R.p.618, lines 1–13; R.p.619, line 3–R.p.620, line 2).

Several hours after her phone call to her mother, Applicant met with Detective Allison Moore of the Newberry Police Department and SLED Agent Kellie Williams and provided written and oral statements regarding the events leading up to Victim's death. Notably, Applicant told the officers: (1) Bowman was "always kind" to Victim and treated him "no different than his own [child]"; (2) she loved Bowman; (3) Applicant's first prostitution call of the day occurred near dusk, around 5:00 p.m., after which she returned home and made dinner with Victim's help; (4) prior to her Newberry prostitution call, she was only away from Victim and her home for approximately an hour and a half to two hours that day; (5) Applicant, Bowman, and Victim ate around 8:30 p.m.; (6) Victim ate most of his dinner that night; (6) Victim could use the restroom

on his own, but she and Bowman would help Victim wipe himself afterwards; (7) she had helped Victim pull down his training diaper and use the bathroom that day; (8) there was “[n]o way in hell” the bruising observed by Detective Moore represented every one of Victim’s injuries; (9) the only time Victim could have received his injuries was on December 27, three days before his death, when Applicant, Bowman, and Victim visited Patrice and Victim fell while skating; (10) Applicant had no knowledge of any of Victim’s bruises; and (11) Victim often used her bathroom. (R.p.216, line 14–R.p.220, line 9; R.p.225, line 11; R.p.226, line 16–R.p.255, line 3; R.p.302, line 9–R.p.313, line 3; R.p.317, line 2–R.p.318, line 15; R.p.613, line 6–R.p.614, line 17; R.p.618, lines 1–13; R.p.619, line 3–R.p.620, line 2).

Present Application

On September 16, 2019, Applicant filed her initial PCR application, raising the following allegations:

- (1) “Richard Bowman was with minor alone during fatal assault.”
- (2) “GPS records place me in another city during the fatal assault hours.”
- (3) “Bowman’s original confession stated his assault on minor was while I was gone and that he never told me.”

As requested relief, Applicant requests “a reduction to ten years violent with credit time served from arrest date December 30, 2014.”

On June 18, 2021, Applicant amended her application to include the following allegations of ineffective assistance of counsel:

1. Counsel failed to provide Applicant with the entire contents of her discovery motion prior to proceeding to trial; specifically, Counsel did not provide photographic evidence that was used against her at trial.
2. Counsel failed to provide Applicant with evidence regarding the nature of the injuries sustained by the child and to discuss issues related to that evidence prior to proceeding to trial.
3. Counsel failed to cross-examine or impeach Bowman with prior inconsistent statements or to use handwritten notes provided by Applicant.

4. Counsel failed to introduce carvings made by Bowman in the wall of his holding cell related to the child.
5. Counsel failed to discuss potential defenses related to Applicant's prior mental health diagnoses.
6. Counsel failed to pursue a change of venue despite the publicity the case received in the community.
7. Counsel failed to fully prepare with Applicant all the defenses available to her.
8. Counsel failed to use Applicant's prior mental health diagnoses as mitigation during sentencing.

At the evidentiary hearing, Applicant proceeded only on Allegations 1, 2, 5, 6, and 7 from her amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of Counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as

having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced 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. “This does not require

a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Allegation 1: Failure to provide discovery

Applicant argues Counsel was ineffective for failing to provide the entire contents of the discovery file to her prior to trial. Specifically, Applicant contends that there were photographs shown at trial that were not provided to her in discovery. The Court finds this allegation meritless.

At the evidentiary hearing, Applicant testified she was mailed a copy of the discovery materials, but that all the photographs had been removed. She also claimed Counsel never brought the discovery to her in person or went over it with her prior to trial.

Counsel testified he had given Applicant a bound copy of the discovery, with pagination and a table of contents. Counsel acknowledged that he was not able to include graphic photographs in the copy of discovery he sent to Applicant because of the policies of the detention center; however, he was able to bring the photographs with him and review them in person with Applicant, along with the rest of the discovery. Counsel testified he would have gone through the discovery page-by-page with Applicant. Counsel recalled that Applicant passed him a note claiming that she had not seen some of the photographs presented at trial, but he testified those photographs were fairly benign or substantially the same as other photographs he had already reviewed with her;

therefore, there was no prejudicial surprise to the defense from any photographs not shown prior to trial.

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue. The Court finds Counsel adequately provided and explained the discovery materials to Applicant prior to trial; therefore, Counsel's performance was not deficient. In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant has failed to specifically identify *which* photographs she was allegedly not provided prior to trial, and she has not explained how seeing those photographs earlier would have affected the outcome of the proceeding.

For these reasons, the court finds Applicant has not met her burden of proving Counsel was ineffective as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRCP. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 2: Failure to provide and review evidence of Victim's injuries

Applicant argues Counsel was ineffective for not going over the medical evidence related to Victim's injuries with her prior to trial. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant acknowledges she received medical documentation and autopsy reports related to Victim's death prior to trial; however, she testified she found the medical jargon confusing and was not able to understand which of Victim's injuries resulted in his death. She claimed Counsel never went over the medical documentation or photos of Victim's injuries with her. Applicant testified she did not fully understand the medical evidence until it was broken down into layman's terms by the pathologist at trial.

Counsel testified he provided all the autopsy reports in the copy of the discovery materials he sent to Applicant. He also testified he went over the discovery and photographs with Applicant, including any autopsy photos. Counsel hired his own expert witness, Dr. Ellen Riemer, to review the autopsy, and he testified that he discussed the results of that independent report with Applicant. Counsel testified the autopsy showed the child had bleeding in the brain and choked on vomit, and that there were multiple blows to the child that could have been independently fatal. Counsel testified that, in layman's terms, Victim's death was caused by a severe beating, and he believed Applicant understood that. Counsel testified the theory of the defense was that Bowman inflicted the fatal beating while Applicant was not at home and that Applicant would not have noticed anything wrong with Victim until later that night. Counsel testified the medical evidence regarding Victim's time of death tended to line up with Applicant's alibi, and he was able to use that timeline in his closing argument to the jury.

The Court finds Counsel's testimony credible as to this allegation, and Applicant's contrary testimony not credible. Accordingly, the Court finds Counsel adequately went over the State's medical evidence with Applicant and even obtained an independent review of the autopsy report, which he also discussed with Applicant; therefore, Counsel was not deficient. Furthermore, the Court finds Applicant has not shown how she was prejudiced by her alleged failure to understand

the medical evidence. Based on the Court's review of the record, and Counsel's testimony at the evidentiary hearing, the Court finds the medical testimony in this case arguably supported Counsel's strategy of arguing the fatal beating occurred while Applicant was out of the house and Victim was alone with Bowman.

Because Applicant has failed to prove either deficiency or prejudice as to this claim, this allegation is denied and dismissed with prejudice.

Allegation 5: Failure to discuss mental health-based defenses

Applicant alleges Counsel was ineffective for failing to discuss the possibility of a mental health-related defense. The Court finds this allegation to be meritless.

At the evidentiary hearing, Applicant testified that she has in the past been diagnosed with PTSD, anxiety, social anxiety, and depression. Counsel testified he was aware of Applicant's mental health problems dating back to her teen years, as well as her PTSD from prior spousal abuse. He testified that, despite her mental health history, Applicant appeared to be very bright, and she was very active in her own defense; Counsel did not have any concerns about her competency. Nevertheless, a mental health evaluation was performed, which found Applicant criminally responsible and competent to stand trial. (Trial Tr.p.39, lines 6-24).

Applicant has not met her burden of proving Counsel was ineffective as to this issue. Counsel credibly testified, and the record of Applicant's trial confirms, that a mental health evaluation was performed and that Applicant was found competent and criminally responsible. Therefore, the Court finds Counsel was not deficient for failing to adequately pursue Applicant's mental health issues. Furthermore, Applicant has failed to present or argue any defenses related to mental health that could have been raised at trial. The mere fact that a defendant has been diagnosed with PTSD, anxiety, social anxiety, depression, or other mental illnesses does not, by

itself, establish a valid mental health defense. In order to prove prejudice from Counsel's alleged deficiency, Applicant must at least explain how further discussion of her mental health issues might have resulted in a different outcome at trial; Applicant has not offered any such explanation. Therefore, the Court also finds Applicant has not established any prejudice from Counsel's conduct as to this issue. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 6: Failure to pursue a change of venue

Applicant alleges Counsel was ineffective for failing to pursue a change of venue, which Applicant claims was required because of the publicity her case received in the community. Applicant claims the publicity could have biased the jury against her. The Court finds this allegation to be meritless.

Counsel credibly testified—and the transcript of Applicant's trial confirms—that members of the jury pool were questioned about whether they had any prior knowledge or had seen or read anything in the news about Applicant's case. Four jurors answered that they had. Of those jurors, two were removed by the trial court. Another, Juror No. 10, was struck by Counsel. The fourth, Juror No. 170, informed the court that she had not heard anything "intimate" about the case and that she was willing to put aside anything she had heard and judge the case solely on the evidence presented at trial. (Trial Tr.p.13, line 24–p.18, line 4; p.26, lines 3–8). The Court finds that a change of venue based on the jury's exposure to publicity concerning the case was unnecessary because the issue was adequately addressed on *voir dire*. Furthermore, Applicant has not produced any evidence to substantiate her claim that the jury was improperly influenced by media coverage of the case.

Accordingly, the Court finds Counsel's performance was not deficient and Applicant was not prejudiced as to this issue. This allegation, therefore, is denied and dismissed with prejudice.

Allegation 7: Failure to prepare all available defenses

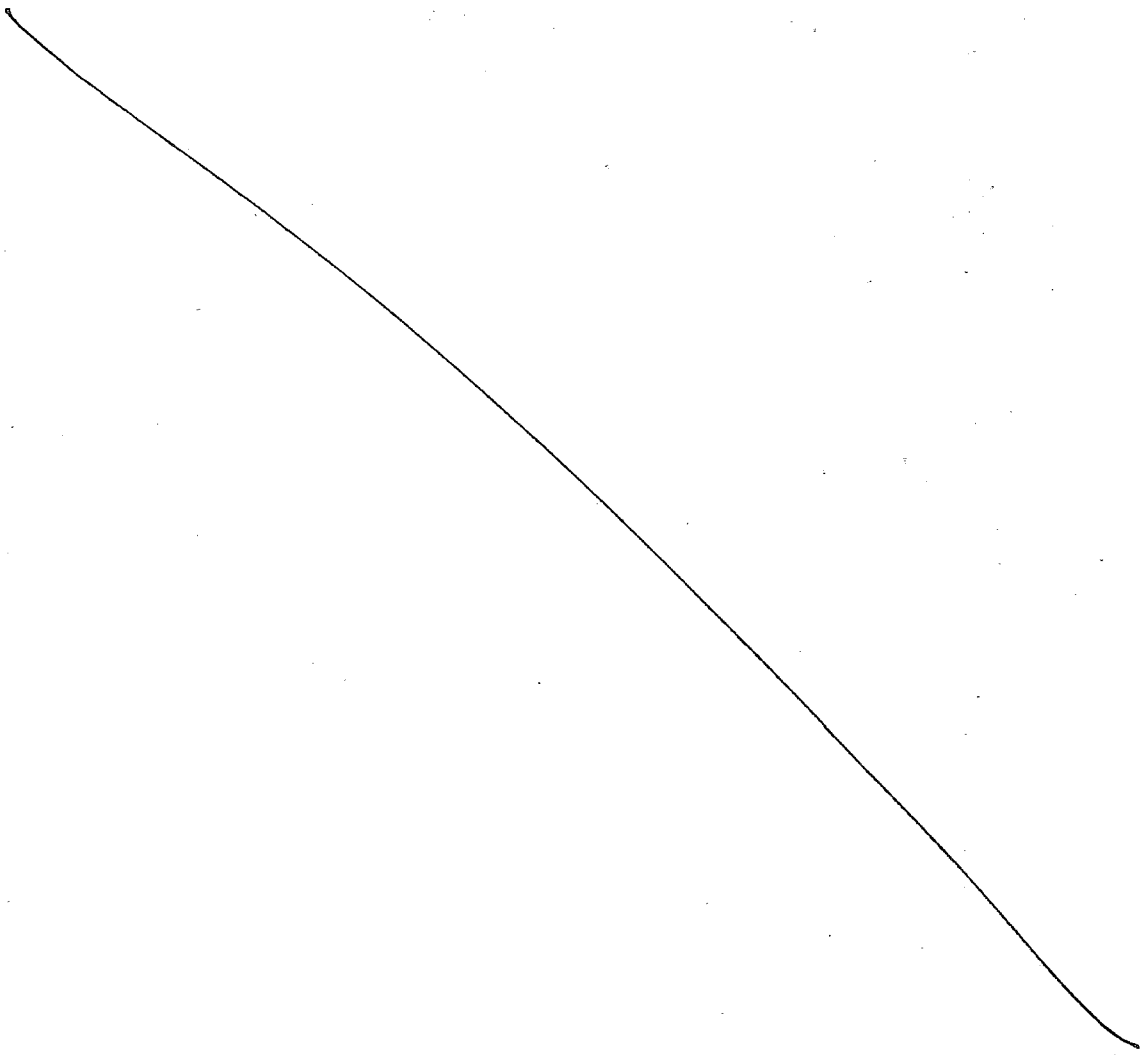
Applicant alleges Counsel was ineffective for failing to prepare all available defenses. The Court finds this allegation to be meritless.

At the evidentiary hearing, Applicant did not specify which additional defense theories Counsel allegedly should have presented, nor did she argue how those theories would have resulted in a different outcome at trial. However, Applicant complained that Counsel failed to adequately explore Bowman's dishonorable discharge from the military, his military training, and his abuse of Applicant.

The transcript shows that Counsel did elicit from Bowman, on cross-examination, that he had been other-than-honorably discharged from the military after he "got in trouble." (R.pp.414-15). In addition, both Applicant and her mother, Patrice McArdle, testified that Bowman had often beaten, controlled, and abused Applicant during their relationship. (R.p.614, lines 20-23; p.617, lines 7-21; pp.639-49; p.915, lines 2-23; p.955, line 23-p.956, line 18). Counsel used the evidence of Bowman's abusive behavior in his closing argument to attack Bowman's credibility and to claim Bowman was responsible for inflicting the injuries that killed Victim. (R.p.1010, line 4-p.1011, line 2). Concerning Bowman's military training, Counsel testified at the evidentiary hearing that he did not see how it was relevant.

The Court finds Counsel was not deficient because he adequately explored the evidence that Bowman was abusive and untrustworthy. In addition, the Court finds Applicant has not met her burden of proving that additional development of this well-trod ground would have changed the outcome of her trial. The Court also finds Applicant has failed to establish that Bowman's military training was relevant to the case or that additional exploration of that fact would have

influenced the result of the trial. Therefore, the Court finds this allegation is meritless and must be denied and dismissed with prejudice.



III. CONCLUSION

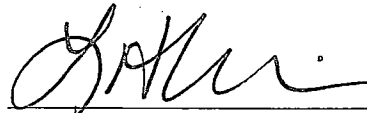
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of Jan, 2023.



LETITIA H. VERDIN
Presiding Judge
Eighth Judicial Circuit

Newberry, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP3600466

Theia Darion Mcardle		State Of South Carolina	
----------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Zachary W. Jones	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Letitia H. Verdin	4150	01/29/2023
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **02/03/2025**, and a copy mailed first class or placed in the appropriate attorney's box on **02/03/2025**, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Elizabeth P. Folk - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR

Homicide by Child Abuse

§16-03-0085

At a Court of General Sessions, convened on the 2nd day of April, 2015, the Grand Jurors of Newberry County present upon their oath:

That Theia Darion Mcardle did, on or about December 29, 2014 to December 30, 2014, in Newberry County, willfully and unlawfully cause the death of a child under the age of eleven (11) years, to wit: one **Minor** (DOB: [REDACTED]), while committing child abuse or neglect as defined in Section 16-3-85(B) of the South Carolina Code of Laws, 1976, as amended, and the death occurred under circumstance manifesting an extreme indifference to human life, in violation of Section 16-3-85(A)(1) 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 cases made and provided.



Assistant Solicitor

STATE OF SOUTH CAROLINA

RECEIVED IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry VS. Theia Darion Mcardle

APR 20 2016

INDICTMENT/CASE#: 15GS36-0133

AKA: Race: CAUCASIAN Sex: F Age: 22 DOB: SS#: Address: City, State, Zip: Enoree, SC 29335 DL#: SID#:

A/W#: 2014A3620200467 Date of Offense: 12/30/2014 S.C. Code §: 16-03-0085 CDR Code #: 2356

SENTENCE SHEET 20 years - life

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Murder / Homicide by child abuse (20Y to Life)

CONVICTED OF or PLEADS

in violation of § 16-03-0085 of the S.C. Code of Laws, bearing CDR Code # 2356 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Stumbo, David M. SC Bar# 72105 Defendant Attorney for Defendant Charlyke 10033 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 12-30-2014 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.

SCANNED

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Elizabeth O. J. Court Reporter: Tara Scott

Presiding Judge Judge Code: 2157 Sentence Date: April 7, 2016 April 8, 2016