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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID EUGENE BAYNARD,

APPELLANT

APPELLATE CASE NO. 2024-002185

RECORD ON APPEAL

GARY H. JOHNSON
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

BARRY JOE BARNETTE
Solicitor, Seventh Judicial Circuit
Seventh Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

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October 28th - 31st, 2024

B E F O R E:

THE HONORABLE R. KEITH KELLY, Judge; and a jury.

A P P E A R A N C E S:

BARRY BARNETTE and JENNIFER JORDAN
SOLICITOR and ASSISTANT SOLICITOR
Attorneys for the State

ROBIN FILE
ESQ.
Attorney for the Defendant Bobbie Jo Baynard

TRACY RACINE and RUSS RACINE
ESQ.
Attorneys for the Defendant David Eugene Baynard

MICHAEL MORIN, ABIGAIL GOWDY, and EVA WASZAK
PUBLIC DEFENDER AND ASSISTANT PUBLIC DEFENDERS
Attorneys for the Defendant Edward Vincent Baynard

Pamela E. Green
CIRCUIT COURT REPORTER

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PROCEEDINGS

(WHEREUPON, State's Exhibit Nos. 1 through 126 were marked at this time. Court's Exhibit Nos. 1 through 5 were marked at this time. All of the above exhibits were for identification purposes only at this time.)

THE COURT: Ladies and gentlemen, we are about to select a jury in a criminal case in the case of 2022-GS-11-1296. It is alleged that David Eugene Baynard in -- did, in Cherokee County, South Carolina, on or about April 11 of 2022, commit the criminal offense of -- known as murder. It has been true billed by the Grand Jury.

In 2024-44 -- 0447, it is alleged that the defendant, David Eugene Baynard, committed the criminal offense known as unlawful conduct towards a child.

In 2024-GS-11-0448, it is alleged that the defendant, David Eugene Baynard, committed the criminal offense known as child abuse with great bodily injury.

And, in 2022-GS-11-1299, the State -- as to Mr. Baynard, Mr. Baynard has entered pleas of not guilty to these indictments and he is presumed innocent of the crimes alleged to have occurred. Again, he has -- he is presumed to be innocent and the burden is on the State to prove his guilt beyond a reasonable doubt.

In 2022-GS-11-1299, it is alleged that the defendant,

Bobbie Joe Baynard, in Cherokee County, South Carolina, on or about April 11 of 2022, committed the criminal offense known as murder.

In the Indictment 2024-GS-11-0449, it is alleged that she committed the offense of unlawful conduct towards a child between the dates of October 2 of 2020 and April 11 of 2022.

In 2024-GS-11-0450, it is alleged that the defendant, Bobbie Joe Baynard, committed the offense known as child abuse with great bodily injury between October 2 of 2020 and April 1 of 2022.

She has entered a -- pleas of not guilty to the indictments and she is presumed innocent of the allegations contained in those indictments. The burden is on the State of South Carolina to prove her guilt beyond a reasonable doubt.

In 2022-GS-11-1304, it is, it is alleged that Edward Vincent Baynard committed the criminal offense known as murder in Cherokee County, South Carolina on or about April 11 of 2022.

In the Indictment 2024-GS-11-0451, it is alleged that he committed the criminal offense known as child abuse with great bodily injury between the dates of October 2, 2020, and April 11 of 2022.

In the Indictment 2024-GS-11-0452, it is alleged that

Edward Vincent Baynard committed the criminal offense known as unlawful neglect or conduct towards a child between the dates of October 2, 2020, and April 11 of 2022.

He has entered a plea of not guilty to all indictments and he is presumed innocent of all the allegations made in the indictments. The burden is on the State of South Carolina to prove his guilt beyond a reasonable doubt.

They're certain questions that I'm required, I'm required to ask and they're certain questions that I have been requested to ask.

Is there any member of this jury panel who is now or ever has been related to David Eugene Baynard and/or Bobbie Jo Baynard and/or Edward Vincent Baynard, if so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Is there any member of this jury panel who has a social or personal relationship with any of these three individuals?

You know them on Facebook. You know them at church. You know them at work, recreation, whatever it might be, have some relationship.

If so, please stand.

(WHEREUPON, there was no response.)

Okay. Mr. Foreman, if you'd take your jury out and follow the bailiff.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Okay. We want to take up some things real quick or --?

SOLICITOR BARNETTE: Yes, sir, we can. I know they have some motions, Your Honor.

We have two motions I'd like to put on the record---

MR. MORIN: Your Honor?

SOLICITOR BARNETTE: ---for a sec.

MR. MORIN: I'd like to take up something outside real quick in the back.

THE COURT: Take up something?

MR. MORIN: Yes.

THE COURT: With---

MR. MORIN: I need to be -- no, I need to be excused.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: I guess we'll wait a second, Your Honor. I do have some exhibits. But I guess the other two attorneys can stand in.

I can just put this on the record, Your Honor?

I got Court Exhibits 1 through 5.

If I can get those real quick and put those in the record?

Your Honor, Court Exhibit 1 is the photographs from the coroner's investigative photographs, scene, contact sheets only. It's 236. This including pictures of H.B. at the hospital and things like -- these are un -- these have not been changed at all. There's gonna be Court Exhibits 1 for the Court's view to -- concerned to other pictures if it needs to as well as an -- appellate courts down the road.

Court Exhibit 2, Your Honor, is actually the coroner's autopsy photos of -- in this case.

Court Exhibit 1, Your Honor, has 236 page -- pictures in it.

Court Exhibit 2 has 60 coroner and autopsy pictures in there, Your Honor, and these are the colored full photographs, Your Honor, showing everything.

Court Exhibit 3, Your Honor, is actually a thumb drive that has all these pictures on that. Then has Court Exhibits 3, Your Honor.

Then Court Exhibit 4, Your Honor, is actually a mental evaluation. That was one on David Baynard in this case, Your Honor.

And then Court Exhibit 5, Your Honor, is also a mental health evaluation that was done on Bobbie Jo Baynard in this case, Your Honor. Both of them was found competent to stand trial and so forth on those

examinations, Your Honor.

Like to move all these as Court Exhibits in at this time, Your Honor, for the record.

THE COURT: Any objection?

MR. FILE: No objections subject to the pretrial motions on it.

THE COURT: Yes, sir, these are Court Exhibits.

MR. FILE: Yes, sir.

SOLICITOR BARNETTE: Court Exhibits.

THE COURT: Any objection?

MRS. RACINE: As long as these are Court Exhibits I don't have any objection.

THE COURT: Yeah, they're Court Exhibits in, in, in the event somebody in Columbia needs to take a look at them.

Anything from --?

MR. MORIN: No objection.

THE COURT: Okay. Without objection, they are Court Exhibits. They are not in evidence.

Okay. Next thing, solicitor.

SOLICITOR BARNETTE: Your Honor, we have two motions from the State, Your Honor.

The first motion is a motion in limine to keep out all of the prior DU -- SS information. There's a history with DSS between this I believe family, Your Honor.

Obviously it's just prior information. There is a mention -- one thing that -- into evidence that we've looked at and everything, they were concerned about DSS coming into, taking H.B. from them at this -- at some point because of this. But any prior instances involving Edward as well as H.B., that was back prior to and this offense occurring, Your Honor.

We'd ask to keep those out as a motion in limine. Say just prior instances. Any mention of what could of happened, we feel like that's fair evidence in this case.

I do have a motion, Your Honor, that I filed and hopefully you've got a copy of it, Your Honor. I gave a copy to the defense.

Do you have a copy of this, Your Honor?

THE COURT: Um.

SOLICITOR BARNETTE: I can pass it up to Your Honor.

THE COURT: I do have it.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: I have a motion here to exclude prior allegations involving DSS under 401 and 403.

SOLICITOR BARNETTE: Yes, sir.

We would first say, say it's not relevant. If the Court decides it is relevant, we would say it's highly prejudicial and would be more prejudicial than probative, Your Honor.

THE COURT: Mr. File, anything?

MR. FILE: Your Honor, we would object to that.

I, I, I think the -- I think the history, their history on past contacts with DSS would be relevant as far as them being concerned with what might happen in the, in the future and, and all. And so if, if my client chooses to testify at some point, that her testimony may involve some of that past history as far as explaining.

THE COURT: Okay. Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

I also oppose this motion. I believe this would go to their state of mind in making the decisions they made and it could be part of a valid defense. So, I would ask that any reference to DSS be able to be included in my client's testimony.

THE COURT: Mr. Morin.

MR. MORIN: Your Honor, my client's the victim in those DSS actions as recently as 2016.

The State's position is, I believe, is gonna be my clients should of known and those DSS records and the references to those DSS records shows why he lived in the conditions he was in and that's relevant.

THE COURT: How about that, solicitor?

SOLICITOR BARNETTE: Your Honor, if they testify, it's a different story. I don't think they can bring it

out in the State's case from that standpoint through witnesses. But if they want to testify about that, that's up to them. I think they can bring it in for their state of mind from that standpoint.

But to bring it up in our case through questioning, I would definitely object to that and say it's not relevant, not probative in that situation. But if they're actually putting up through testimony through their own witnesses, through their defense, through the defendants' state of mind, and it'd have to be the defendants testifying to that state of mind. It can't be somebody else testifying to it.

I think that it could become relevant in that situation.

MR. MORIN: Okay. Your Honor?

THE COURT: Yes, sir.

MR. MORIN: If they open the door and talk about my client's state of mind, I should be able to question them about what they knew.

THE COURT: I'm gon' explain -- Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

I would just like to join in with Mr. Morin when he said -- I agree to what he said.

THE COURT: Mr. File.

MR. FILE: I concur with Mr. Morin on this.

THE COURT: Anything?

SOLICITOR BARNETTE: Well, here's the problem.

How can our witnesses know their state of mind?

That's the reason why I think it -- you know, it should be unless -- until they testify, they open the -- I -- he's saying open the door.

I can't open more than their state of mind. There's no witnesses that can do that. Only they can testify to that, Your Honor, and I'd object until that point.

At that point, once they bring in -- since their state of mind, it's sort of like self-defense from that standpoint. When they allege self-defense, a lot of times they have to testify and establish that defense.

One thing in this situation. They're gonna try and use DSS to show state of mind. They're gon' have to testify to it before it can be used from that standpoint.

That would be our position.

THE COURT: Well, how about that, Mr. Morin?

MR. MORIN: They have -- they, they are gonna prove criminal intent. They're gonna base it on something. They're gonna base it on the condition of the house.

There's about 150 pages they've already put in as Court's Exhibit. If they're gonna say that that kind of -- conditions in the house should of told my client something, then I should be able to ask them why they

think he should of known that and it's gonna involve DSS or what happened when DSS was there in 2002 and 2006 and 2016 and the three times he was removed from the house for bad conditions.

SOLICITOR BARNETTE: Your Honor, I don't know how he's gon' establish that through the witnesses. I'll have to see how the testimony develops. But I don't see how without his client's testimony -- with one of their clients or more of them testifying from there to establish that state of mind.

There's no way. They can say well, they shouldn't known or whatever -- or whatever cause the pictures speak for themselves in this situation. And, like I said, I don't think they're gonna be testifying about what -- I mean they're gon' be testifying what they found at the scene and things like that.

But I would object at this point unless, you know, unless their clients develop that state of mind defense in their mind.

MR. MORIN: Your Honor, I'm just gonna have to see what it is they're doing to prove that my client had criminal intent and intentionally did these things that he's accused of.

SOLICITOR BARNETTE: Well, they---

MR. MORIN: They're gonna rely on the conditions that

were in his parent's home. They're going to suggest that my client didn't do something he should of done based on the conditions. Those are the conditions he's lived with since he was two.

SOLICITOR BARNETTE: Can I respond one time, Your Honor?

THE COURT: Yes, sir.

SOLICITOR BARNETTE: His client got paid to take care of the victim in this case and the evidence will show that. Being paid will be shown through there. They should of been taking care of her from that standpoint.

That's what the Axcess records will show, the payments that he received, and the training he received from them.

THE COURT: Okay.

MR. MORIN: That's all I have for right now, Your Honor. It might come up when we get there.

THE COURT: All right. What's the second one, solicitor?

SOLICITOR JORDAN: Your Honor, our sec -- our second motion is based on 10 -- 401 and 402 and 403 as well. It is a motion in limine to keep out any reference to the ongoing civil action in this case against I believe it's DSS, Axcess Health, and maybe some other defendants.

We don't believe it's relevant to the criminal

charges here and we'd ask that the Court exclude it.

THE COURT: Okay. How about that, Mr. File?

MR. FILE: We don't intend to go into that, judge.

THE COURT: Mrs. Racine.

MRS. RACINE: Your Honor, I believe there was maybe some discussion of that in a video interview. So, if that doesn't come in, I think that would need to be redacted from the video. But we don't plan to bring that up in our case.

THE COURT: Well, they're saying they want to exclude that anyway. I mean anything that has to do with the civil case.

SOLICITOR BARNETTE: Yes, sir.

MRS. RACINE: No objection to that.

THE COURT: Okay.

MR. MORIN: No objection.

THE COURT: Okay. That's without objection.

SOLICITOR JORDAN: Thank you, Your Honor.

SOLICITOR BARNETTE: That'd be the State's motions at this point, Your Honor.

THE COURT: Okay. Defense.

Mr. File.

MR. FILE: Your Honor, I had filed a motion to exclude the video and testimony of -- they have some video and testimony from the Miyabi Restaurant that took place

after, after H.B.'s death.

There's a witness named Virgina Looney who gave a statement basically saying that my client was happy-go-lucky at the restaurant and, and did a -- did what they call a chicken dance and that she didn't appear to be remorseful of, of anything following this -- following the death of their daughter.

It'd be my argument that it's, that it's prejudicial and would cause confusion on the part of the jury under Rule 401, 402, and 403. Different people react to grief different ways, judge, and, and, and I don't think that this would serve any purpose to, to go into this and we would ask that this testimony and/or video -- there was a video taken I believe on a cellphone and we would ask that the jury not be allowed to see that, you know, and it be excluded.

THE COURT: How about that, solicitor?

SOLICITOR BARNETTE: Your Honor, I'm gonna mark it as Court Exhibit 6, Your Honor, at this point.

(WHEREUPON, the Miyabi video was marked as Court's Exhibit No. 6 for identification purposes only at this time.)

MR. FILE: The whole family was actually at the restaurant too at the time. Only my client was the one that was dancing.

SOLICITOR BARNETTE: Your Honor, for the record, this occurred two days afterwards.

What happened was Ms. Looney was the witness that actually took the videotape. We've talked to her.

I don't plan to introduce her state -- you know, in your case unless some things comes up and opens the door. The issues gon' be of state of mind. If they testify, now I do think it becomes relevant and very probative at that point from that standpoint.

So, I'm just entering it as Court Exhibit 6 for the record. We don't intend to introduce it at this point. But, obviously, through their testimony, may definitely open the door from there and I just warn them from that stand -- especially on the state of mind issues because obviously that goes to state of their mind, how they felt two days after H.B. died from that standpoint. It may become relevant and probative at that point.

THE COURT: Okay. Mr. File, he says it's not in unless it becomes relevant.

MR. FILE: Okay.

SOLICITOR BARNETTE: That be for all three defendants, Your Honor---

THE COURT: All three of them.

SOLICITOR BARNETTE: ---cause all three of them are in the video itself.

THE COURT: Oh, okay. I haven't seen it. So all three---

SOLICITOR BARNETTE: Yes, sir.

THE COURT: ---are on the video.

Okay. All right.

Okay. Mr. File.

MR. FILE: And then my other motion had to do with the autopsy postmortem photos.

From our standpoint, we don't intend to contest the cause of death in this case, and, under State v. Nelson and State v. Middleton, we are arguing that the, that the autopsy photos should not come in in that they're prejudicial. In fact, outweighs their probative value.

They can establish the cause of death uncontested in the case by the testimony of other means and be our position that those photos should not be seen by the jury. I think they will inflame the jury.

THE COURT: Solicitor.

SOLICITOR BARNETTE: I didn't know if you want to hear from all the first of them---

THE COURT: Well---

SOLICITOR BARNETTE: ---Your Honor.

THE COURT: We can do that.

Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

Your Honor, these -- there's case law that describes certain photos as gruesome and horrific stating they should be kept out.

Your Honor, the autopsy photo's definitely gruesome and horrific. But I think the photos from the hospital qualify as that too. I think they are equally bad.

The main difference is, you know, she has no clothes on in the hospital. She doesn't have her clothes on at the autopsy.

Also, Your Honor, there is a case, I believe it is State versus Nelson, where if the State -- if the defense stipulates to any relevant information contained in photographs, then there's no factual dispute related to the deceased cause of death. We don't plan to challenge the final results of the autopsy diagnoses, Your Honor.

I believe that the -- Doctor Rose will be able to explain the condition of H.B. when she testifies. I believe her, her report is very thorough as to the, the damages that H.B. or the injuries that H.B. had and the condition of her body.

Therefore, Your Honor, I would ask that these gruesome and photos -- gruesome and horrific photos be kept out.

Your Honor, I think the only reason that they would go in is to just inflame the, the emotions of the jury,

Your Honor. I -- as bad as these pictures are, I don't see any with -- they would do anything other than to inflame the emotions of the jury and lead them to convict based on those emotions rather than the facts of the case.

THE COURT: Mr. Morin or Mr. --.

MR. MORIN: Your Honor, Supreme Court Chief Justice Few wrote an opinion in October of last year, just a little over a year ago, State versus James B. Heyward, they stated we have recently discussed a long line of cases which would criticize the casual admission of gruesome autopsy photographs because the emotional reaction they tend to cause.

We strongly encourage solicitors to refrain from doing so. The potential for emotional reaction is the essence of the danger of unfair prejudice. The photographs are unfairly prejudicial. They create a tendency to suggest the decision on an improper basis commonly known as an emotional one.

And then Chief Justice Kittredge, in a footnote, goes on to cite Nelson and says we have said in previous cases that the autopsy photographs always carry the inherent danger of unfair prejudice.

Our position is, is that these photographs are an attempt to create malice, and, in that same case, the Court said there's only one malice. There's not degrees

of it. There's not, there's not more malice or less malice. There's just malice and we stand on that case to say that these should not come in.

THE COURT: Solicitor.

SOLICITOR BARNETTE: A couple points, Your Honor.

I -- obviously we're familiar with State v. -- do you have a copy of it, Your Honor?

THE COURT: I think I do.

SOLICITOR BARNETTE: I believe all the defendants got copies of them. So, I won't pass along, Your Honor.

But one of two things in this situation.

One, you got to remember we're also trying the felony child abuse case as well as unlawful neglect.

So, obviously we have to show the child abuse. We have to show, you know, the neglect in this situation as well as the mal -- malice of murder in that situation.

I think this case is different from that point. It's not your normal murder case.

To be frank with the Court, if homicide by child abuse was available for a 14 year old, that would be the charge in this case. Unfortunately, that law's not been passed and it's up to the age of 11 at that point. It does not cover from 11 to 18. We have an elder abuse for 18 and above.

So, the murder is the most appropriate thing we could

find to answer for the death of H.B. in this case. But we do have the other two charges that are with that, Your Honor, and we have to also show that, in those cases from that standpoint, and the pictures in this situation show that child abuse.

Also, in this situation, Doctor Rose -- and what I did was I -- let me hand the pictures and I know the Court will look at them. I basically broke the pictures up into different groups from there, and in meetings with the Court, Your Honor, we talked about how to handle Doctor Rose's testimony.

Her testimony will corroborate the autopsy as well as the pictures at the hospital, Your Honor, in this case, that State's Exhibits 2 through 27, which is gon' be made for ID purposes only.

So, I'll share that with them and they're not gonna be introduced. They're gonna be shown to the witnesses so they can clearly see the pictures and see -- and recognize that that's the situation they saw.

State Exhibit 20 -- that's 2 through 27, Your Honor, just for ID purposes only. They'll only be showed in that.

From State Exhibits 28 through 93 is pictures from the scene at the house in this case. I've separated those in the different packet.

And, Your Honor, State Exhibits 100 through 117, Your Honor, in this case is from the actual hospital photos as well as the autopsy photos in this case, Your Honor. They will be shown to witnesses like Dennis Fowler that appeared and he actually went to the hospital, went to the house, the residence, [redacted] Road here in, in Gaffney in Cherokee County as well as the autopsy, Your Honor.

So, I'll be showing those and then marking them as ID and they're 100 through 117, Your Honor, I've made them black white or grayscale, Your Honor, in this case trying to limit the obviously -- to let her describe what this is from that standpoint and be able to explain to the jury and she'll feel -- and we've talked to her. She feels like the pictures will be needed to show that to the jury to explain her findings in this case and explain the cause of death and everything that occurred.

So, I just want to put that on the record, Your Honor. We eventually want to entered (sic) all these pictures as Court Exhibits. We are not doing this to shock the jury. We're just trying to educate the jury to show them what this poor girl went through and what it was is horrific. And, believe me, these pictures are horrific in trying to, to obviously limit that prejudicial effect and we are trying to do that.

We feel like it's gonna be more probative and I think, in talking in chambers, we was gonna say -- we were not gonna introduce any of the autopsy or the hospital pictures until Doctor Rose testified. I will be showing them to the witnesses for ID purposes and let them identify that these picture fairly represent what they saw that night or that day from that standpoint. And that would include Dennis Fowler as well as Doctor Rider, the ER Doctor. Dennis Fowler's the coroner in this case.

And, like I say, Doctor Rose will testify at that appropriate time. I don't know if you want to do a proffer first to go ahead and weigh if the pictures will come in at that point or not and then actually have her testimony concerning that.

But I don't think that they're -- they're not conceding child abuse and neglect in this case I don't think. So, if they're not -- that's another part that's a factor in this case that I'd just like to bring to the Court's attention. We showed these exhibits to everyone and we can bring them up.

And, Your Honor, I'm trying to take a measure approach with this. I'm not trying to just say I'm gon' need these pictures that are in color and everything else.

We're doing it in a way we feel like it can educate the jury to teach the jury about what happened to H.B.

[redacted] and what caused all this and we think we need to do that from that standpoint. And we feel like the pictures will do that especially the way the black and whites with the autopsy and with the pictures at the hospital.

And I've used this approach in other cases as well, State versus Blackwell, the last death penalty case I did. I used black and whites in that cause I don't want to shock the jury. But I want to educate them.

Thank you, Your Honor.

THE COURT: Mr. File, anything at this point in time?

MR. FILE: Your Honor, we are -- we're conceding the neglect in this case and that's, that's just -- they're admitting to this. Should -- it's been admitted to all along.

SOLICITOR BARNETTE: Well, the homicide by child abuse?

I mean the child abuse also, Your Honor, as well as the neglect?

MR. FILE: Yes, judge. She's conceding to the abuse and neglect.

THE COURT: Okay. Well, procedurally is that turned -- is that part turning into a plea?

SOLICITOR BARNETTE: May we approach for a second?

THE COURT: Yeah.

(WHEREUPON, a bench conference was held at this time.)

THE COURT: Okay.

SOLICITOR BARNETTE: Your Honor, if I can put on the record what objection -- and, like I say, 2 through 27 is not coming in. That's just for ID purposes because they're the colored pictures that showing the, the witnesses that --.

Is there any objections to 20 -- State's Exhibit 28 through 93 if I can ask that on the record?

That's actually the scene of the house.

MRS. RACINE: No objection to those photos, Your Honor.

THE COURT: Okay. So 28 through 93, no objection---

MRS. RACINE: No objection.

THE COURT: ---to those?

MR. FILE: None.

THE COURT: None.

SOLICITOR BARNETTE: That's the crime---

MR. MORIN: The crime---

SOLICITOR BARNETTE: The scene---

MR. MORIN: ---house -- I, I don't have any objection to that.

THE COURT: Okay. So, 28 through 39 are without objection.

(WHEREUPON, State's Exhibit Nos. 28 through 39 were received into evidence at this time.)

SOLICITOR BARNETTE: And I'm assuming, Your Honor, a hundred to a hundred -- 117, which is the autopsy and the hospital pictures I can represent -- I didn't know if there's any of them that they could agree to and -- or not agree to?

MRS. RACINE: Your Honor, I do not agree to any of them. But specifically I believe it's ex -- Exhibit 108 that actually shows her, her private areas and I do not believe that the jury needs to see that at all.

Your Honor, in State versus Nelson, the, the, the Court said it is well established that photographs calculated to arouse the sympathies, capriciousness of the jury are to be excluded if they are irrelevant or unnecessary and then they further go on to quote State v. Kornahrens. In the guilt phase of a trial, photographs of the murder victim should be excluded where the facts they are intended to show have been fully established by competent testimony.

Your Honor, unless Mr. Barnette's willing to admit that Doctor Rose is not competent to testify, then I think that that case supports the idea that that -- photos should be, should be left out based on her testimony.

SOLICITOR BARNETTE: Your Honor, I think State versus

Heyward basically says the opposite from that standpoint if there's a basis for it and the pathologist -- obviously you have to rule on each picture separately from a hundred to 117 from that standpoint. I didn't know if there's any pictures they would agree to. Now I know 108. I understand their position on that.

THE COURT: Okay.

MR. MORIN: Your Honor, they chose to try these this way. They should -- we should not be placed in the position where we have to choose whether we're going to admit to -- stipulate to things or if he's gonna be allowed to do it because he's choosing to do those together.

As far as I'm concerned, my client's charged with murder and the addition of the other charges should not result in him having to make a decision about whether he should stipulate to something or allow unfairly prejudicial photos to come in. I join with Mrs. Racine.

If Mr. Barnette needs to show the pathologist the pictures so she can explain -- but the question we're having here and the question I still don't quite get is what pictures are they intending to put in evidence with the doctor.

SOLICITOR BARNETTE: We're---

MR. MORIN: I suspect I know. But he's given me all

of those. But I'm objecting to those pictures. If she gets up there and she, for some reason, can't explain or says I need to see it so I can explain what happened, that's one thing. To put them into evidence and to publish them to the jury, that's a different thing.

SOLICITOR BARNETTE: Your Honor, I'm gon' -- like I said, we're gon' have a hearing prior to that and I'm trying to be out of an abundance of caution with these pictures. It's like when I give it to Madam Court Reporter. I made sure we did it outside the courtroom to make sure nobody ever saw those photographs from the jury to take any chances on that.

So, that's the reason why this a hundred to 117, I just showed it to them. They've got those pictures in evidence. These are black and whites of that.

So, obviously we'll deal with it at that time. But I plan not to introduce them till Doctor Rose to give them plenty of time to object and give them plenty of time for the Court to review before we get into that point.

THE COURT: Okay.

SOLICITOR BARNETTE: And, Your Honor, the, the other thing may by a comment that she made to us talking to her. Well, she can't -- you can't put some of this into words and, unfortunately, you can't and the private area will go to the UTI from that standpoint and we'll talk about that

during her testimony.

THE COURT: Anything else from Mr. File --

MR. FILE: No.

THE COURT: -- before I move to---

MRS. RACINE: Just---

MR. FILE: No, Your Honor.

MRS. RACINE: I'm sorry.

Briefly, Your Honor, if she can't put it into words, then how can she do it in an autopsy report?

THE COURT: Okay. Mr. Morin, anything?

MR. MORIN: No, sir, that's all I have.

THE COURT: Okay. Anymore, anymore motions from Mr. File?

MR. FILE: No, Your Honor.

THE COURT: From Ms. Racine?

MRS. RACINE: I just have one motion, Your Honor, and that would be just to ask the State to refer to H.B. as either H.B. or the decedent rather than calling her the victim. I think calling her the victim just reinforces over and over again that some crime was committed against her.

THE COURT: How about that, solicitor?

SOLICITOR BARNETTE: Your Honor, she's the victim. I mean I'm gon' call her H.B. if that's okay. I mean I'm gonna---

THE COURT: Call her -- if he calls her H.B. , is that okay?

MRS. RACINE: H.B.'s fine, Your Honor.

SOLICITOR BARNETTE: Okay.

THE COURT: H.B. it is.

Anything, Mrs. Racine?

MRS. RACINE: Nothing, Your Honor.

THE COURT: Mr. Racine.

MR. RACINE: No, Your Honor.

THE COURT: Mr. Morin.

MR. MORIN: No, sir.

THE COURT: Anybody?

MISS GOWDY: No, Your Honor.

MISS WASZAK: No, judge.

THE COURT: Okay. Let's stand down for a little bit. We'll be back here at about 2:15 and I know you've got that hearing. So, don't be---

MRS. RACINE: I'll be back---

SOLICITOR BARNETTE: Can we approach the bench for one second?

THE COURT: Sure.

(WHEREUPON, a bench conference was held at this time and Court was in recess for the lunch hour.)

THE COURT: Okay. We've got Juror 181 segregated and bring her in.

try these cases.

(WHEREUPON, the jury was placed under oath at this time.)

THE COURT: Juror Number 80, Mr. Jack Harris, sir, will you be the foreperson for the jury?

THE FOREMAN: Yes, sir.

THE COURT: Thank you. You are so appointed.

Ladies and gentlemen of the jury, you are now the jury in this case and I will take a few moments to tell you something about your duty as jurors and provide instructions for you. At the end of the trial, I will provide more detailed instructions and those instructions will control your deliberation.

These criminal cases, pleural, have been brought by the State of South Carolina. Sometimes I refer to the State as the prosecution or the government -- of the government.

The State is represented by the solicitor and his assistant solicitor and the defense -- the defendants are represented by their respective lawyers, all of whom introduced themselves earlier this, this morning.

Now, these defendants have been charged by the State with various crimes.

The defendant, David Eugene Baynard, is charged with the criminal offense known as murder in that it occurred

in Cherokee County, South Carolina, on or about April 11 of 2022. He is also charged with unlawful conduct towards a child in -- between the dates of October 2 of 2020 and April 11 of 2022. He is also charged with child abuse with great bodily injury that occurred between October 2 of 2020 and April 11 of 2022. He has entered not guilty pleas to each of these indictments and he is presumed innocent of the allegations contained in the indictments.

The defendant, Bobbie Jo Baynard, is also charged in an indictment with the offense of murder, of murder and that it occurred in Cherokee County, South Carolina, on or about April 11 of 2022. She is also charged with unlawful conduct/neglect of a child that occurred between the dates of October 2, 2020, and April 11 of 2022. She is also charged with child abuse with great bodily injury in that it occurred between the dates of October 2, 2020, and April 11 of 2022. All occurring in Cherokee County, South Carolina.

She has entered pleas of not guilty to the indictments and she is presumed innocent of the allegations contained in the indictments.

The defendant, Edward Vincent Baynard, is also charged with murder in an indictment in that it occurred in Cherokee County, South Carolina on or about April 11 of 2022. He is also charged with unlawful conduct towards a

child and that it occurred in Cherokee County, South Carolina between the dates of October 2, 2020, and April 11 of 2022. He is also charged with child abuse with great bodily injury that occurred between the dates of October 2, 2020, and April 11 of 2022.

He is pre -- he has entered a plea of not guilty to all indictments and he is presumed innocent of all charges contained in the indictments. The burden is on the State of South Carolina to prove guilt beyond a reasonable doubt as to each defendant on each indictment.

Now, South Carolina law makes the -- makes you the judge of the facts. You 12 alone will decide what the facts are from the evidence and -- presented. You will hear the evidence, decide what the facts are, and apply those facts to the law that I provide and give to you at the close of this trial and that is how you 12 will reach a verdict. In doing so, you must follow the law whether you agree with it or not.

Ladies and gentlemen, evidence will consist of testimony of witnesses, documents, and other items received into evidence as exhibits and any facts on which the lawyers agree are stipulated.

Now, the same law of South Carolina that makes you 12 the finder of facts makes me the judge of the law. Our rules of evidence control what can be received into

evidence, and when a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side believes it is not permitted by our rules, the lawyer may object. This simply means the lawyer is requesting I make a decision on whether a particular rule of evidence applies.

State law forbids a trial judge from making a comment to you, a jury, about a fact in a case and because it may be necessary for me to comment on a fact in applying our rules of evidence, it may be necessary for me to speak with the lawyers outside of your hearing by having what's known as a bench conference while you are present or by excusing you from the courtroom.

You have already seen that today when I would motion the lawyers up and we would come over and stand on this side. And now that you're here, we would have our bench conference on this side to keep you from hearing about what the rule is or what comment I might make. Again, the purpose of the conference is to decide how certain evidence is to be treated under our rules and to avoid confusion and error.

Now, certain things, ladies and gentlemen, are, are not evidence. Statements, arguments, questions, and comments by lawyers representing the respective parties in this case are not evidence. Objections are not evidence.

A lawyer has a duty to a client to object if the lawyer believes that something is improper under one of our rules. You should not be influenced by an objection. If I sustain the objection, you must ignore the question or the exhibit and you must not try to guess what the answer might have been or what the exhibit might have contained.

If I overrule the objection, the evidence will be admitted. But do not give it special attention because it drew an objection.

Any testimony I ordered stricken from the record or tell you to disregard is not evidence and must not be considered and anything you 12 see or hear about this case outside of this courtroom is not evidence.

Now, some of you have may heard -- have heard the term direct evidence and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is indirect evidence. It is proof of one or more facts from which one can find or infer another fact.

You may consider both direct and circumstantial evidence. Our law permits you to give equal weight to both. But it is for you 12 to decide how much weight to give any evidence.

In deciding what facts are, you may have to decide

what testimony you believe and what testimony you do not believe. You may believe everything a witness says or part of what a witness says or none of what a witness said.

In deciding what to believe, you may consider a number of factors including, but certainly not limited to, the witness' ability to see or hear or know the things that the witness testifies to, the quality of the memory of that witness, the manner in which the witness testified, whether or not the witness has an interest in the outcome or any motive, bias, or prejudice, whether the witness is contradicted by something another witness said or the same witness said before trial or other evidence, and how reasonable the testimony is when considered in the light of all other evidence.

It is my responsibility to rule as a matter of law as to whether certain testimony is admissible. But, ladies and gentlemen, once the testimony is admitted, whether or not you believe it is solely for you 12.

Now, to ensure fairness, you, as jurors, must, must not talk among yourselves about the case or about anyone involved in the case until the end of the case when you go to the jury room to decide your verdict. Do not talk with anyone about the case or about anyone who has something to do with it until the trial has ended and you have been

discharged as a juror. Anyone includes members of your family and your friends.

You may tell them that you are a juror. But do not tell them anything about this case until after you have been discharged as a juror.

Ladies and gentlemen, after the case has ended and you are -- have been discharged, you may talk as little or as much about it as you choose but not until then.

Do not let anyone talk to you about this case or anyone who has something to do with it. And if someone should try to do so, please report that to Mr. Foreman and Mr. Foreman would then pass that to -- on to me.

During the trial, do not speak with or talk with any of the parties, the lawyers, or witnesses not even to pass the time of day because it is important that not only do you do justice but that you also give the appearance of doing justice. And if a person from one side of this case sees you speaking to a person on the other side, even if it's simply to pass the time of day, an unwarranted and unnecessary suspicion about fairness might be aroused. If you see any of the lawyers, parties, or witnesses in always -- in a parking lot, do not talk with them.

Do not read any news stories or articles about the case or about anyone involved with it. Do not listen to radio or television if any reports about the case are on

the news. That also includes social media.

Do not do any research on the Internet about the case. Do not consult a blog, a dictionary, or other reference materials and do not do any investigation on your own. Do not make up your mind about what the verdict should be until you have gone to the jury room to discuss this case with your fellow jurors. Until then, keep an open mind.

I am often times asked about note taking. You are not to take notes during the trial and the reason is we want you to pay close attention to what each witness says as they testify and not fixated on making notes.

Now, the first step in the trial will be known as opening statements. The State, in opening, will tell you about the evidence that it intends to put before you so that you will have some idea of what the case is about.

Just as the indictments is not evidence, neither is the opening statements. Its purpose is to help you understand what the case will be about and what the case -- and what the State will try to prove.

After the State's opening statement, the lawyers for the, the defendants may, if they choose, make an opening statement, and, at this point in the trial, no evidence will have been offered.

Next, the State will offer evidence that it says will

support the charges made against each of these defendants. In this case -- the State's evidence in this case will consist of testimony and it may include documents and other exhibits. I remind you again that each defendant is presumed innocent and the State must prove guilt of -- beyond a reasonable doubt as to each defendant. Neither of the defendants has to prove his or her innocence. And after you have heard all evidence, the State and the defense will be given time for a final argument, and just as I told you about opening statements, the lawyers, in their closing statements, is not evidence before you.

The final part of this trial will occur when I instruct you about the rules of law and that you are to use in reaching your verdict, and after hearing my instructions, you will leave the courtroom together as a body of 12 to make the -- your decision.

Anything from the State as to what I told the jury?

SOLICITOR BARNETTE: None from the State, Your Honor.

THE COURT: Mr. File.

MR. FILE: None.

THE COURT: Mrs. Racine.

MRS. RACINE: No, Your Honor.

THE COURT: Mr. Morin.

MR. MORIN: No, sir.

THE COURT: Okay. Mr. Foreman, ladies and gentlemen,

please give your attention to the solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor?

THE COURT: Yes, sir.

SOLICITOR BARNETTE: Mr. Foreman, ladies and gentlemen, I want to take you back to April 11th of 2020. That night, our coroner, Dennis Fowler, you'll be hearing from here shortly, he's in the second row there, got a phonecall about a child's death. Her name is -- was H.B. [redacted]. She was 14 years old and she's a special needs child, a special child.

It's always sad when the coroner gets a phonecall like that. I'm sure he will tell you that. But what he went and saw in that hospital room is something he'll describe to you. When he got there to see the condition that H.B. [redacted] was in, he'll describe what was determined from there.

When he arrived there, Doctor Rider, which you'll be hearing from shortly, was the ER doctor there. Amy Vinesett was actually the patient representative that had their first contact with H.B. [redacted] as her father carried her in like a sac of photos over her shoulder -- his shoulder.

You'll also hear from Gary Foster. He's the security officer that was in charge of security there at Regional in Spartanburg Regional and he'll be -- he'll be showing

you a video where they actually pull up in the van.

No rush whatsoever. No urgency whatsoever. You're gonna see this for yourself off the video.

They walked in. Like I said, Mr. Baynard pulls her out of the van. Just literally throws H.B. over his shoulder. Ms. Vinesett had actually walked by him then and they walked in there and everything from there.

So, he walks over to the front door and he just points. She touches him or touches her. She's gray and blue. Very cold to the touch.

She's taken over to Doctor Rider. Doctor Rider will tell you what he saw. Basically she was dead on arrival. They'll tell you what her injuries or what her body looked like. Just raw meat on her legs like an old man.

Dennis Fowler arrived there with law enforcement. Like I said, I'll let him describe what he saw too.

After he talked briefly to the three parties there that's involved in this case, he went to that residence at [redacted] Road here in Gaffney in Cherokee County. He went over there with law enforcement. They got a search warrant. Went in the residence.

You're gonna see that residence. They're gon' describe to you -- he will describe what he saw. Brian Burrell, one of the investigators, will tell you what he saw when he got to the residence, the conditions and

everything that H.B. had to live in as a special needs child.

She had a feeding tube. She had a trach. In this residence, you can not see the floor. It's actually filthy. The crib that she stayed in in the bedroom was filthy. Fee -- I mean you can't describe it. Like I said, you're gonna see it. Roaches, flies, cats, dogs, feces, and urine, everything you can imagine or can not imagine.

Law enforcement kept doing their investigation. Dennis Fowler went to the autopsy. He'll tell you what he saw at the autopsy too.

Through the investigation of law enforcement and everything, they found out that H.B. was being taken care of by three people, her mom, Bobbie Baynard, David Baynard, her father, and Edward Baynard, her brother, and he was getting paid to be her -- resting her -- her respite nurse.

All three of these individuals here are responsible for what happened to H.B. over a period of time. You'll hear from Axcess Health that was paying for them to take care of her -- for Edward to take care of her.

You'll even hear from Doctor Parra, which is her nurse or her doctor that treated her over the years since she was the age of four where they quit taking her into

visits to Doctor Parra. Doctor Parra called numerous times to get them to come back to take her but they wouldn't. The last time she saw H.B. was January 1st, 2021, and she'll talk to you about that.

But, at the autopsy, Doctor Rose, which is a pathologist down in Newberry, will come tell you what her findings is and her death was from chronic neglect. She will tell you that horrific injuries that she received and remember all three of them are charged with neglect of a child, felony child abuse with great bodily injury, and murder for the death of H.B..

You'll see where the neglect basically starts with the home. It's absolutely neglect whatsoever. You'll see the injuries and you'll hear the -- Doctor Rider will come and help describe.

These didn't happen one day. This happened over a long period of time which led to her great bodily injury just from what she was exposed to and, ultimately, the way she treated by them led to her death.

And when we're talking about death, ladies and gentlemen, it's malice aforethought that can be that quick and this was not quick. Like I said, this was over a period of time and the way that she was treated and left, the way she was left, and the way she was found, that's malice, ladies and gentlemen.

That's what led to her death, and then after you hear all the evidence when we come back to talk to you, I'll ask you to consider all three sets of changes against all three of these defendants.

Again, I thank you for coming, being a part of this. I know you didn't volunteer for this. But please give us some time and listen to the evidence and we'll come back to you at the end of it.

Thank y'all very much.

THE COURT: Yes, sir.

MR. FILE: Please the Court.

Ladies and gentlemen of the jury, my name's Robin File. I'm Bobbie Baynard's lawyer and, of course, the solicitor has spoken to you about -- told you what he anticipates the evidence in this case to be. Of course, that will be up for you to decide.

Mrs. Baynard has pled not guilty. She is not guilty until you make a decision about that this week.

Okay. She is innocent of the charges and it's up to the solicitor and the State of South Carolina to prove she is guilty and to take that cloak of innocence off, off of her.

Now, she is charged with murder. She is charged with unlawful conduct toward a child and child abuse involving great bodily injury.

Mrs. Baynard, I'll, I'll tell you from the outset, Mrs. Baynard admits that she was neglectful. I mean they were all living in this house with all this filth. They were living in a house with, with a lot of fifth, all three of them, and H.B., and that's admitted. They lived for a number of years that way unfortunately.

And so it's probably a product of, of, of not having enough income or perhaps pure laziness. But, for whatever reason, they were living this way.

However, the solicitor and I differ in this case in that it's, it's our position that this -- neither Mrs. Baynard nor anyone else in this case acted willfully or with malice in causing H.B.'s death. I mean she'll admit all day that, that she was neglectful in this case, that, that, that she and her family were neglectful to the extent that it caused her daughter to get sick and, and cause her daughter to eventually die.

But she did not have the malice that the solicitor wants to prove to you in this case. And so you need to listen to the evidence in this case and decide for yourselves about that.

She was a special needs child. She had a medical condition. Bobbie was familiar with her medical condition, and, and, and was treating her whenever she needed feeding or whenever she needed other things that

were required during her medical -- with, with -- for her medical condition. For 14 years Bobbie Baynard tried or, or did what she could do to take care of her.

So, listen to the evidence in this case and you, and it will be up -- it will be your decision on what Bobbie is, is, is guilty of and I, I would submit to you that she's guilty of neglect in this case. Gross neglect, however you want to call it, she's guilty of that. But she's not guilty of murder.

Thank you.

MRS. RACINE: Thank you, Your Honor.

May it please the Court?

Good afternoon, ladies and gentlemen.

My name's Tracy Racine and I represent David Baynard who's sitting there in the striped shirt. He's the father of H.B. [redacted].

As the solicitor told you, he's being charged with three charges, unlawful conduct toward a child, child abuse with great bodily injury, and murder.

David admits he's guilty of unlawful conduct of a child, which is basically neglect. That's another way to say it. He's not guilty of child abuse with great bodily injury and he's not guilty of murder.

Over the next few days you're gonna see some pictures and they will probably cause a very strong emotional

reaction with you. You may feel sad. You may feel rage. You may feel something in-between and that's okay. It's okay to feel that way.

But what I need for you to do, as this week goes on and you listen to the facts of the case, I need you to take your emotions and separate them from the actual facts because there's a lot more to the story than just what the pictures show.

You've already heard some things about David and the state of his house and, and how things were and you're gonna hear some nasty things about the house. You'll probably dislike him. You may even hate him and that's okay.

It's okay to hate him. It's okay to think he was a bad parent. It's okay to think he has the filthiest house you've ever seen. It's okay. But, again, I need you to separate the emotion that you feel from the actual facts of the case and I need you, no matter how much you hate him, I need you to keep an open mind.

He's going to take the stand later this week and he's gonna tell his side of the story. And, when he does, you're gonna hear from a father who loves his daughter, a husband who trusted his wife to tell him the truth. What you're not going to find is a murderer to have any ill will toward his daughter or wished to cause her any great

bodily injury or death.

I'll get a chance to talk to you again in a few days, and, when I do, I'm gonna ask you to carefully consider the charges against David.

The first charge, as we discussed, is unlawful conduct toward a child. He admits that he's guilty of this charge. However, he disputes this charge. Even though the State will try to convince you that David did inflict great bodily injury upon H.B., I'll ask that you find that he did not inflict great bodily injury upon H.B. and is not guilty of this charge and then finally he's charged with murder.

The State is going to try to convince you that David acted feloniously, willfully, and with malice aforethought, express or implied, to cause the death of H.B.. Willfully and with malice, remember those words as you listen to the facts of this case.

At the end of the case, you'll see that the State can not prove these elements beyond a reasonable doubt and, therefore, David can not be found guilty of this charge.

Thank you.

MR. MORIN: I'm gonna try to negotiate over here as best I can. Sometimes my balance isn't what it used to be.

When I first got this case I didn't understand. It's

my understanding that a mother and a father are responsible for the health and welfare of their children.

What nobody said yet, but I'm gonna say, is H.B. slept in a bed in the main bedroom next to her parents every night. My client, Edward, is the parent -- his parents are the same people.

Okay. Now, back when the -- two years before this happened, June of 2020, my client graduated from high school. He didn't have a driver's license. He doesn't have a car. He never had a job. He came in with Axcess Home Care. Not health care. That's important. Home care.

They gave him four hours of training. Four hours. As the government lawyer's already told you, H.B. had a feeding tube, had a trach to breathe, was staying in his parent's bedroom, and when they got arrested, in April of that year, when H.B. died, my client went to live with some friends.

He was not charged. He wasn't charged with murder. He wasn't charged with unlawful neglect to a child. He wasn't charged with anything.

But then government investigators found out that he got a check from Axcess Home Care and he went from not charged to charged. They're gonna call Axcess up here to testify in this witness stand and I got questions cause

the bottom line is his job as a personal care assistant was to do the things to help the caregiver.

There they are, Bobbie and David Baynard, the parents, the caregivers. And he did it at their house that the government has said yes, it's terrible out there. It's terrible.

Let's see if they know how long it was terrible. Let's see how long my client had lived in it.

The government has decided everybody goes to jail. I am outraged at the death of H.B. . I am outraged as a parent. That's your job.

Edward was five and a half years older than her and they want to blame him for his sister's death.

No, ma'am. No, sir. That's not right. They can't prove it. Even if they could, it's not right.

Thank you.

THE COURT: Solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

I'd like to call Gary Foster to the stand please.

THE CLERK: Please raise your right-hand.

GARY FOSTER, being first duly sworn, testified as follows:

THE CLERK: Okay. Watch your step.

THE BAILIFF: Watch your step.

THE COURT: Sir, tell us who you are and spell your last please. Adjust that microphone to suit you.

THE WITNESS: Gary Foster. Last name, F-O-S-T-E-R. I'm an officer with Spartanburg Regional Medical Center and I'm a supervisor with them, and the night that this happened, I happened to be watching the video cameras and also was able to provide video for the Court.

THE COURT: Okay. Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. I, I think you answered a lot of the questions I already wanted to ask you, off---

A. Sorry about that.

Q. ---officer. Appreciate you doing that.

But you was working at Spartanburg Regional in, in security.

Is that right, sir?

A. Yes, sir.

Q. And on April 11th of 2022, was you working that evening?

A. Yes, sir.

Q. And is there video cameras at the ER?

A. We have multiple cameras, yes, sir.

Q. And did you -- did -- once -- law enforcement, did

they ask you for a copy of some of those videos?
A. Yes, sir, they did.
Q. And did you download those for them?
A. Yes, sir.
Q. Let me show you what's been marked as State Exhibit No. 1.
Have you reviewed this, sir?
Would you like to use my glasses?
A. I'm getting -- yeah, let me borrow yours for a second---
Q. Yes, sir.
A. ---if that's all right.
Q. No, you're good.
A. Yes, sir.
Q. Okay. And does that fairly represent what the form -- the video from the Spartanburg Regional Medical---
A. Yes, sir.
Q. ---Center?
Your Honor, I'd like to move State Exhibit 1 into evidence at this time.
THE COURT: Any objection?
MR. FILE: Without objection.
MRS. RACINE: No objection.
MR. MORIN: No objection.
THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 1 was received into evidence at this time.)

SOLICITOR BARNETTE: Your Honor, permission to publish to the jury?

THE COURT: Yes, sir.

Q. If you would, sir, come on down if you would?

It'd be hard for you to see from there.

(WHEREUPON, the witness comes down from the stand.)

Q. If you would, sir, please tell us what we're looking at right now. This is one of three videos. This is---

A. That's Spartanburg Regional Medical Center, the Church Street campus, emergency room entrance. It's the camera that's underneath the covered area looking at the main slider doors just before the security checkpoint.

Q. And, right here, did you see this car actually pull up at the---

A. I could see a car pull on -- from the other one, other video in this.

Q. And did you find out later this was the Baynards when you pulled up?

A. I didn't know who they were at the time. But I did think it was odd cause they came in in the wrong direction.

SOLICITOR BARNETTE: Okay. Your Honor, permission to play it to the jury?

THE COURT: Yes, sir.

(WHEREUPON, a portion of the video was played for the jury at this time.)

Q. Can you tell us where this location is from?

A. This is the main entrance, the same sliding doors we saw just a moment ago. That's the security checkpoint and just to the right of there's where the check-in on patients at Spartanburg Regional main campus.

Q. Can this -- it takes from April 11th of 2022?

A. Yes, sir.

Q. And this is after 9:00PM obviously?

A. Yes, sir.

(WHEREUPON, a portion of the video was played for the jury at this time.)

Q. And what location is this, sir?

A. This is just past the security checkpoint there at Spartanburg Regional and Church Street in Spartanburg where the patients come right after they come in the metal detector area there and you saw them there.

Q. Okay. Thank you, sir.

If you would, please have a seat.

(WHEREUPON, the witness returns to the stand.)

Q. Sir, if you would, please answer any questions the defense may have for you, sir.

THE COURT: Mr. File.

MR. FILE: I, I have no questions.

THE COURT: Mrs. Racine.

MRS. RACINE: Just a few questions.

CROSS-EXAMINATION

BY MRS. RACINE:

Q. Officer, officer, did you, did you actually talk to David that night?

A. No, I didn't talk to anybody about this that night.

Q. So, you have no idea what his state of mind was when he came in the hospital.

Is that right?

A. No.

MR. FILE: No further questions.

MR. MORIN: I have no questions.

THE COURT: Sir, you may step down. Please be careful.

THE WITNESS: Good to see you, sir.

SOLICITOR BARNETTE: Your Honor, could we have your permission for him to be excused, Your Honor?

THE COURT: Any, any objection?

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No objection.

THE COURT: Without objection, you may stay or go. Thank you, officer.

SOLICITOR BARNETTE: Your Honor, I'd like to call Amy Vinesett to the stand please.

THE CLERK: Please raise your right-hand. Place your left-hand on the Bible.

AMY VINESETT, being first duly sworn, testified as follows:

THE COURT: Okay. Watch your step.

Ma'am, if you'll adjust the microphone to suit yourself. Tell us who you are and spell your last name please.

THE WITNESS: Okay. My name is Amy Vinesett. Spelling V-I-N-E-S-E-T-T.

THE COURT: Thank you.

Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Ms. Vinesett, where do you work at, ma'am?

A. I, I work at Cherokee Medical Center.

Q. Okay. What is your position there, ma'am?

A. Patient access supervisor.

Q. Okay. And back on April 11th, 2022, where was you working at then, ma'am?

A. Spartanburg Regional.

Q. And what was your position there, ma'am?

A. I was a patient access representative.
Q. Okay. I know you just got to see the videos just like the jury did from there.
Are you actually in the video?
A. I am.
Q. And let me show you the first video here and this is State Exhibit No. 1 we're gonna publish here. You may want to step down.
Why don't you come down here and stand beside me so you can see the video okay?
(WHEREUPON, the witness comes down from the stand.)
Q. On this video, are you the lady that actually walks in the door?
A. I am.
Q. At that time, did anybody, did anybody say anything to you as saying I need help or anything like that?
A. No, sir.
(WHEREUPON, the video was played for the jury at this time.)
Q. Is that you walking in, ma'am---
A. It is.
Q. ---at that point?
You went to the trashcan right there, didn't you?
A. I did.
Q. Did they, they ever speak to you outside?

A. Never.
Q. Let's slow it down.
If you would, ma'am, as the video's playing, tell us what happened.
A. So, after I came back in, I was going over to the area over there and there was a WOW over there, which is a workstation on wheels. As they were coming in, I noticed that the child had blood on her back and I immediately, you know, went over and he kind of just points to the child. You know, no sense of urgency or anything. He did tell me she was unresponsive.
Q. When you touched her hand, what did you feel?
A. She was cold.
Q. What was the color of her skin at the time?
A. She was blue and gray.
Q. If you would, tell us what's going on in this video.
A. As we come up here, we were getting the name and date of birth of the patient to get them checked in. Again, I reach over to her and she's cold, and, as you can see, as he walks by, I'm leaning over looking at her face area cause she's -- yeah.
Q. In your opinion, what was her condition?
A. It -- she was dead.
Q. Let me take you back in the video for a second here, ma'am. You was talking about the blood.

Was that the spot that you saw on back here where the arrow is?

A. If you bring it up a little bit more you can see it better I think.

Q. You tell me when to stop.

A. Keep going.

Q. I don't know if I can get it that way. Go back here. You tell me when to stop.

A. Right there. That area along her -- the back of her pajamas.

Q. Go back.

A. Right there.

Q. Is that the spot you're talking about?

A. Yes.

Q. If would, ma'am, please have a seat. Thank you.

A. Here?

Q. Yes, ma'am.

(WHEREUPON, the witness returns to the stand.)

Q. Did you actually check her in as part of the patient -- I mean put her information in?

A. I did not. I relayed that information to the lady sitting at the desk.

Q. Okay. And in talking to -- did you meet Mr. Baynard obviously first?

A. I did.

Q. Did he show any emotion or anything?
A. None.
Q. Later on did you meet Bobbie Baynard, the mother?
A. I did.
Q. And do you see David Baynard in the courtroom here today as you saw him?
A. I do.
Q. Could you identify where he's at, what he's wearing?
A. He's in the striped shirt with the glasses on.
SOLICITOR BARNETTE: And, Your Honor, I'd like the record to reflect she's identified David Baynard, the defendant.
THE COURT: So noted.
Q. Did you also meet Bobbie Baynard that night?
A. I did.
Q. Do you see her in the courtroom today?
A. I do.
Q. Can you just point where she's at, describe what she's wearing?
A. The later -- lady in purple.
SOLICITOR BARNETTE: And, Your Honor, I'd like the record to reflect that she's identified Bobbie Baynard, the defendant.
THE COURT: So noted.
Q. Did you get to meet her also?

A. I did.
Q. In talking to her, did she show any emotion or anything?
A. No.
Q. Did you talk to them separately or together?
How did you talk to them?
A. I talked to the father first. As we were coming back from major care, we had some conversation and then, when we went back to the lobby, I also registered the patient with Bobbie and spoke with her as well.
Q. Okay. And when you were talking to both of them, what was David doing at the time?
A. Well, when he came back from major care to sit down beside his wife, he pulled out his cellphone and immediately started scrolling through it. Didn't say---
Q. Did you---
A. ---anything to Bobbie.
Q. Didn't say anything?
Didn't change emotion or anything?
A. No.
Q. Now, Bobbie show any emotion?
A. No.
Q. Did you get the information from her --
A. I did.
Q. -- from there?

Did you ask any information about what happened or anything from there?

A. I did.

Q. What did you ask?

A. Is her visit today accident related.

Q. And what -- did you answer that?

Who answered that for you?

A. Bobbie did.

Q. What did she say?

A. Absolutely not.

SOLICITOR BARNETTE: Okay. One moment, Your Honor, please.

(Pause.)

Q. Please answer any questions the defense may have for you, ma'am.

A. Okay.

Q. Thank you.

THE COURT: Mr. File.

CROSS-EXAMINATION

BY MR. FILE:

Q. You, you indicated that you talked with both David and Bobbie?

A. Yes.

Q. Okay. And did you know anything about them or their lives or anything?

A. No, I did not.
Q. And so you don't know, know -- you didn't know anything about H.B.'s medical history or anything like that---
A. No, sir.
Q. ---did you?
Okay. You don't know anything about their state of mind, how they dealt with things, or, or how they dealt with stress or anything like that, did you?
A. No.
Q. That's all.

CROSS-EXAMINATION

BY MRS. RACINE:

Q. Ms.---
THE COURT: Mrs. Racine.
MRS. RACINE: Thank, thank you, Your Honor.
Ms. Vinesett, are you a trained medical doctor?
A. I am not.
Q. Okay. Cause you said that it appeared to you that H.B. was dead when she got into that emergency room.
Is that correct?
A. Yes, ma'am.
Q. You have no medical training to make an accurate assessment of that.
Is that correct?

A. I do not.
Q. Thank you.
No further questions.
THE COURT: Mr. Morin.
MR. MORIN: I have no further -- no questions.
THE COURT: Thank you.
Anything as to that?
SOLICITOR BARNETTE: Nothing. I would ask the witness be excused.
THE COURT: Ma'am, you may step down and be excused. You can stay with us or go---
THE WITNESS: All right.
THE COURT: ---whichever you choose.
THE WITNESS: Thank you.
THE COURT: Thank you.
SOLICITOR BARNETTE: Your Honor, the State would like to call Doctor Rider to the stand.
THE CLERK: Please raise your right hand. Put your left-hand on the Bible.
DOCTOR RYAN RIDER, being first duly sworn, testified as follows:
THE CLERK: Okay.
THE BAILIFF: Watch your step.
THE COURT: Doctor, adjust the microphone and tell us who you are and spell your last name please.

THE WITNESS: Yes. Doctor Ryan Rider. R-I-D-E-R.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Excuse me, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Doctor Rider, if you would, give your full name for the record please.

A. Yes, Ryan Kevin Rider.

Q. And what kind -- what do you do, sir, for, for a living?

A. I'm an emergency physician.

Q. And where do you work at, sir?

A. Spartanburg Regional.

Q. How long have you been in the medical field, sir?

A. Outside of residence or outside of my training, I've been doing this for 27 years with four years of trainings. So, a total of 21 years.

Q. Where do you go to school at, sir?

A. Mackel (phonetic) College, Ohio.

Q. And through your training and everything, are you qualified as an ER doctor, sir?

A. Yes, I'm board certified.

SOLICITOR BARNETTE: Your Honor, I would move him as an expert in ER, emergency, Your Honor---

THE COURT: Okay.

SOLICITOR BARNETTE: ---from that point?

THE COURT: Any questions?

MR. FILE: No questions.

THE COURT: Any questions?

MRS. RACINE: No question.

THE COURT: Any questions?

MR. MORIN: Yes, sir.

THE COURT: Okay. Give your attention to Mr., Mr. Morin.

VOIR DIRE

BY MR. MORIN:

Q. You went to a medical college of Ohio?

A. Yes.

Q. Where did you go before that?

A. Allegheny College.

Q. Is that where you went and graduated from high school?

A. Yes.

Q. How long were you at Allegheny College?

A. Four years.

Q. How long were you at Ohio medical school?

A. Four years.

Q. After that, did you get further education?

A. Yes.

Q. What was that?

A. I did a transitional year at Mount Sinai Medical Center and then three years of emergency medicine residency at St. Vincent's in Toledo, Ohio.
Q. Okay. So four more years after medical college?
A. That's correct.
Q. So, you had 12 years of post second -- post high school training, four undergraduate, four medical, and then four --?
A. Yes, sir.
Q. Okay. Did you seek -- receive any other training?
A. No, sir.
MR. MORIN: Okay. That's all the questions I have. Thank you.
THE COURT: Any objection from anybody?
MRS. RACINE: No objection.
SOLICITOR BARNETTE: Is there any objection from Mr. Morin since he asked---
THE COURT: Is there any objection, Mr. Morin?
MR. MORIN: No. No objection.
THE COURT: Okay. He is so qualified as an expert ER doctor.
Ladies and gentlemen, a person normally can not give opinion testimony. They can only testify to something they see, hear, or by smell or do. But our, our law allows some -- for someone to be qualified as an expert in

their field of study or practice. He is now certified. Does not mean you have to accept his opinion. Give it whatever weight you deem advisable.

Solicitor.

CONTINUED DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Thank you, doctor.

The night of April 11th of 2022, approximately after 9:00PM that day, did you treat H.B. , H.B. ?

A. I did.

Q. Could you tell the jury -- tell them how you -- obviously when you were called into the ER room to treat her?

Can you tell the jury about that?

A. Yes.

When I got called into the room by the nursing staff, I walked in the room and I was shocked by what I saw. I -- the -- there was a PEG tube. There's a tracheostomy tube and the, the patient was gray and listless and lifeless and we started medical therapy at that time to include medications to try to jump start the heart and CPR.

Q. What did you observe about her body and would the -- would some pictures help with that your---

A. Please.

Q. Doctor, let me show you what's been marked for ID purposes State Exhibit 2 through 18, and if you would just look at them yourself if you would, sir?
A. Yes.
Again, when I entered the room, I saw a -- someone's lifeless with the -- had noted a PEG tube, tracheostomy tube. There's no purposeful movements. There's no respirations.
I'll be honest with you, it's something I've never seen in 30 plus years. The lower extremities, there was, you know, essentially lack of skin. There was just red flesh and the extremities were -- just the total body was something I've never seen before. I'm sorry.
Q. Now, when you were talking about there was no skin on the legs --
A. Yes.
Q. -- how would, how would you describe raw meat or raw skin?
I mean how would you describe it?
A. Again, there, there wasn't the normal -- there wasn't skin covering it. It was literally like raw meat, I'm sorry, and --.
Q. Did you notice other things that was wrong with her?
A. Yes, there was what's called mottling, which is where the -- when the tissue doesn't get oxygen and blood flow,

it turns -- like you have bruising all over your body. There was bruising all over her backside.

Again, her extremities were raw meat like hamburger. I apologize.

The, the face, it was grayish, purple from lack of oxygen and blood flow.

Q. What was the conditions of her -- like her teeth and things like that, sir?

A. Extremely poor.

Q. Was she -- was she dead when she arrived at the ER?

A. Yes, sir.

Q. And obviously did y'all try to do anything you could?

A. Yes, sir.

Q. And you said you had never seen anything like this before?

A. I've never seen anything like this before.

Q. Would this happen overnight?

A. No, this is not something that happens overnight.

SOLICITOR BARNETTE: One moment, Your Honor, please.

(Pause.)

Q. And please use the pictures if you need to refresh your -- do those pictures fairly represent what you saw that night?

A. Yes, sir.

Q. On her back, can you describe the back of her to the

jury please?
A. Yes.
The, the back, again, was much like her legs. The legs, again, significant amount of skin loose to the point where it was just like exposed muscle kind of giving that, that red beef appearance, if you will, beefy, meaty appearance.
On her back, there was this dark ruby bruising. Again, that's something that takes time, and, again, this is -- there were sores and it's, again, what we call deep mottling where there's just not accurate blood flow. And when the body and the skin and the tissue doesn't get adequate blood flow or oxygen and it's been compressed for a long time, you'll get this deep purple mottling.
Q. Basically what happens when your legs -- does your body -- does it start shutting down to help protect the rest of the body?
What happens to that?
MR. MORIN: Objection, Your Honor. I'd ask that he not lead the witness.
THE COURT: Rephrase it please.
SOLICITOR BARNETTE: I'll rephrase the question.
From the loss of skin, what happened?
What did that show you what happened?
A. So, that tells us that the, that the -- what happens

is -- the initial kind of state of shock or sepsis or shock, the body will -- is, is smart on its own and it will shut down blood flow to the extremities and it will shut the blood flow, the oxygenated blood flow, to the core of the body to try to preserve the heart and lungs to pump oxygenated blood to the brain to preserve the, the crucial elements of the body, the heart and lungs and the brain. And it will -- and then what happens over time when the extremities, arms, legs, do not get blood flow, then the skin starts to break down, sluff off, and it's no longer viable.

SOLICITOR BARNETTE: One moment, Your Honor, please.

(Pause.)

Q. Doctor, if you would, answer any questions the defense may have for you, sir. Thank you.

THE COURT: Mr. File.

CROSS-EXAMINATION

BY MR. FILE:

Q. Doctor, you, you said you did do CPR though and gave her medications to try to start, start her heart back?

A. Yes, I'd have to refer to my record exactly. But I believe there was CPR and more forms of medication given.

Q. Okay. That's all I have.

THE COURT: Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MRS. RACINE:

Q. Just one question, Doctor Rider.

If she was already dead, why did you try CPR?

A. In emergency medicine, you never know the scenario. You try anything and everything particularly with a child.

Q. Okay. Thank you. No further questions.

A. You welcome.

THE COURT: Mr. Morin.

MR. MORIN: I have no questions.

THE COURT: Anything, solicitor?

SOLICITOR BARNETTE: No, sir, I'd like to ask the witness be excused, Your Honor.

THE COURT: Sir, you may be -- any, any objection?

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No objection.

THE COURT: Without objection, you may stay or go. You're released from your subpoena. Thank you.

SOLICITOR BARNETTE: Your Honor, may we approach for a second?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Mr. Foreman, ladies and gentlemen, it is

usually my custom to not break up testimony and, and we're at that point and it's 3:30, which is about a good time as any to take our afternoon break.

So, we're gonna break now for a good 15, 17 minutes, something like that. Again, facilities are in here, coffee, water, if anything that you might require is, is also back there for you.

I'm gonna ask a question. I hope the answer to it is no.

But is there a juror who is a smoker and you wish to smoke?

If so, I have to send a deputy with you outside. There's no smoking in the building.

Anyone?

(WHEREUPON, there was no response.)

THE COURT: All right. I'm certainly glad to know. It's personal to me. My sister was 48 years of age when she died of lung cancer and she was a degreed RN and the only smoker in our family.

Mr. Foreman, take your jury out please. Don't talk about the case. You're on break.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. We'll be in recess for about 15, 16 minutes.

(WHEREUPON, Court was in recess for a short break.)
THE COURT: Thank you. Please be seated. Thank you. Everybody ready?
SOLICITOR BARNETTE: State's ready, Your Honor.
MR. MORIN: We're ready.
MRS. RACINE: We're ready.
THE COURT: Okay. We'll have the jury.
(WHEREUPON, the following takes place within the presence of the jury.)
THE COURT: Mr. Foreman, everybody good?
THE FOREMAN: Everybody's good, sir.
THE COURT: Ready to work?
THE FOREMAN: Yes, sir.
THE COURT: Solicitor.
SOLICITOR BARNETTE: May it please the Court, Your Honor.
Like to call Dennis Fowler to the stand please.
THE CLERK: Please raise your right-hand. Place your left-hand on the Bible.
DENNIS FOWLER, being first duly sworn, testified as follows:
THE CLERK: Okay.
THE COURT: Good afternoon, coroner.
THE WITNESS: Good afternoon, sir.
THE COURT: Tell us your name. Spell your last name

and tell us who you are please.

THE WITNESS: Dennis Fowler. F-O-W-L-E-R. I'm the Cherokee County Coroner.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Thank you, Your, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Mr. Fowler, how long you been our coroner here in Cherokee?

A. Since January 1st, 2007.

Q. And how many cases have you worked as coroner?

A. Over 6,000.

Q. And going back to April 11th, 2022, was you called to a death call at Spartanburg Regional---

A. I was.

Q. ---Hospital?

If you would, tell the jury a little bit about that, sir.

A. I was notified by my Cherokee County dispatch to contact Spartanburg Regional Medical Center in reference to a death in the emergency department, which is common procedure. Anytime someone passes away within 24 hours of going through the doors of a medical facility, they must call the coroner.

So I, I responded by making that call to the nursing

staff and I was advised by the nursing staff that there was a death in the emergency department involving a 14 year old special needs child.

Q. And those are always sad cause I know you've gotten more than one call on that unfortunately?

A. Yes, sir.

Q. Was this like those calls though?

A. Different from all the rest.

Q. If you would, tell the jury about when you arrived there and what happened, sir.

A. When I arrived, security directed me to Room 63, which was one of the treatment rooms and that's where the, the subject was, the decedent was, and had been treated obviously and then pronounced by Doctor Rider as deceased.

Q. Let me show you State's Exhibits 22 through 27. I'll turn them -- just look at them yourself.

If you would, take a look at those pictures -- and you also went to the autopsy.

Is that right, sir, from there?

A. That is correct.

Q. If you would, look at those pictures 2 through 27 just for ID purposes and see if those photographs represent what you saw at the hospital or at the autopsy?

A. Yes, sir, exactly what I saw.

Q. Thank you, sir.

And just for a housekeeping measure, can I show you State's Exhibit 100 through 117?

These are just marked for ID purposes. See if those pictures fairly represent what you saw at the hospital or at the autopsy.

A. Yes, sir, exactly what I saw.

Q. All right. Thank you.

Sir, going back to the ER, if you would, tell the jury what you saw when you saw H.B. [redacted].

A. I saw a -- obviously a special needs child that was in very poor condition. Obviously not well taken care of.

There were lesions on both legs. Skin was very, very thin. There were a number of marks, what appeared to be bites or maybe insect bites or animal bites on the legs. The feet are swollen. There is -- genitalia is very, very swollen.

There's redness all over the body. The, the head is -- has a stocking, white stocking cap, like on the, on the head that is -- it's blood stained. The hair is wet. The -- there's a diaper that's on the, the child, which is soaked with urine and that has a -- the entire body has a stench.

Q. How old was H.B. [redacted] at the time?

A. Fourteen.

Q. Do you remember what her date of birth was?

A. Yes, sir. It was [redacted].
Q. In looking at the body and everything, did you notice any cuts or anything on it from that standpoint?
A. Yes, sir. Appeared to be some, some cuts on the, on the head.
Q. Okay. And based off that, did you go talk to the parents in this case?
A. I did.
Q. And who was actually the first person you talked to before when you got out of the, out of the room?
A. Actually talked to the brother, Edward, who was standing in the hallway.
Q. Okay. Do you see him in the court here today, sir?
A. Yes, sir, I do.
Q. Can you point at him and identify what he's wearing, sir?
A. He is seated in the far right in the white shirt.
SOLICITOR BARNETTE: Your Honor, I'd like the record to reflect that he identified Edward Baynard, one of the defendants in the case.
THE COURT: So noted.
Q. After talking to him, did you talk to the parents too, sir?
A. I did.
Q. And in talking to Bobbie Baynard, did she talk about

the cut on the hair or anything like her about her hair?
A. Well, she had told me, when I asked her about that, she told me that she had put her into a bathtub to try to stimulate her because she had been found with her oxygen tube off of her face. She checked her oxygen level, which was like 30 percent, and that was around 7:00PM on that evening.

And so she put her in the bathtub to stimulate her. And once she got her out, she -- the hair was, was wet. She noticed it was matted. So, she was trying to cut the mats out of the hair and she cut her with the scissors.
Q. When you talked to all -- any of the three, Edward, David, or Bobbie, did they show any emotions or anything like that?
A. None whatsoever.
Q. So, after you started talking to them and everything, did y'all go to their house?
A. We did.
Q. Is the house located at [redacted] Road here in Cherokee County?
A. Yes, it is.
Q. So, that location's Gaffney, South Carolina in Cherokee County---
A. Yes, sir, it is.
Q. ---right?

If you would, tell the jury about going to that residence.

A. Well, once I arrived at their location, there was a, a chain across the driveway and -- which said no trespassing and the chain was unlocked by, by Mr. Baynard who was there. We went into the actual location---

MR. MORIN: Your Honor, if I may?

I'm gonna ask the witness to identify David or Edward so I can follow which Baynard he's talking about.

THE COURT: Yes, sir.

THE WITNESS: Edward's the far right --

MR. MORIN: Yes.

THE WITNESS: -- sitting at the table in the white shirt. David's in the, the striped shirt seated in the ponytail.

MR. MORIN: I'm---

SOLICITOR BARNETTE: I'll follow-up with a question, Your Honor, if I may --

THE COURT: Okay.

SOLICITOR BARNETTE: -- from there.

If you would, you did talk to David Baynard and/or met him at the ER.

Is that right, sir?

A. I did.

Q. Can you identify him who he is?

A. He is the gentleman sitting there in the stripped shirt with the glasses and the ponytail.

SOLICITOR BARNETTE: And, Your Honor, we'd like the record to reflect that's David Baynard, the defendant's---

THE COURT: So---

SOLICITOR BARNETTE: ---been identified.

THE COURT: So noted.

Q. And do you see Bobbie Baynard in here?

A. Yes, I do. She's seated at the first table and she has on a purple shirt wearing glasses.

SOLICITOR BARNETTE: And, Your Honor, I'd like the record to reflect that he's identified Bobbie Baynard, Bobbie Jo Baynard.

THE COURT: So noted.

MR. MORIN: I appreciate that. Perhaps I wasn't clear.

When he said he went to the gate and was met by Mr. Baynard, I would appreciate it if he would say. I met David Baynard. I was met by Edward Baynard so I can understand that part.

Q. Okay. Do you remember who opened the gate, sir?

A. David Baynard.

Q. David Baynard did.

Going on to the residence, was there several pictures taken, sir?

A. Yes, sir.
Q. Okay. Matter of fact, the pictures that you looked at earlier, 2 through 27, 100 to 117, is those taken by you, sir?
A. Yes, sir.
Q. Okay. Let me show you what's been marked State's Exhibit 28 through 93. I think they already been entered as evidence. But let me look through, let you look through as taken that, sir, and see if those pictures fairly represent what you saw that night.
A. Yes, sir.
Q. Okay.
A. Exactly what I saw.
SOLICITOR BARNETTE: Your Honor, I'd like to move State's Exhibit 28 through 93. I don't think there's any objection. Move those into evidence and publish them to the jury.
THE COURT: Any objection to 28 through 93?
MR. FILE: No objection.
MR. MORIN: Can I just make a quick view to make sure---
THE COURT: Sure.
MR. MORIN: I believe that is correct.
(WHEREUPON, Mr. Morin was reviewing the exhibits.)
MR. MORIN: No objection from Edward Baynard.

MRS. RACINE: No objection.

MR. FILE: No objection.

THE COURT: Without objection, 28 through 93 -- what exhibit is that, solicitor?

SOLICITOR BARNETTE: It's gon' be State's Exhibit 28 through 93, Your Honor.

THE COURT: State's -- oh, 28 through 93.

SOLICITOR BARNETTE: Through 93, yes, sir.

THE COURT: Through 93.

(WHEREUPON, State's Exhibit Nos. 28 through 39 were previously received into evidence. State's Exhibit Nos. 40 through 93 were received into evidence at this time.)

SOLICITOR BARNETTE: And, Your Honor, we do have them on a digital formal. We're gonna -- can I ask the, the coroner to step down now so he can describe those as we go through the pictures if you would, sir?

THE COURT: Certainly.

(WHEREUPON, the witness comes down from the stand.)

THE COURT: What we did was we put the exhibit numbers with the pictures to see if there -- if you would, just describe -- did the Sheriff's Department get a search warrant before y'all went on the property, sir?

A. They did.

Q. And that was executed before y'all went with the search warrant?

A. That is correct.
Q. Who was present at the residence when y'all got there?
A. You mean from the family or anybody?
Q. From the family.
A. From the family, David Baynard, Bobbie Jo Baynard, and Edward Baynard.
Q. They were all present there---
A. Yes.
Q. ---at the residence?
If you would explain -- this is State Exhibit 28.
Can you describe that for us?
A. Yes, sir. This is the chain that was across the driveway leading from the roadway into the residence.
Q. Go to the next one, State Exhibit 29.
Can you describe this for us, sir?
A. Yes, sir, this is walking up the driveway. This is, as you start up the driveway, you can see a lot of debris, trash, et cetera.
Q. And a lot of them you have like diapers and stuff like that?
A. Yes, sir, there's a lot of soiled diapers, other trash, feces.
Q. We'll go on to State Exhibit 30.
If you would, describe that, sir?

A. This is getting a little closer to the residence. As you see, there's -- again, there's a lot of diapers there that's been soiled, that's been thrown out. There's also old lawn mowers, other general trash there.
Q. Okay. We'll go to State Exhibit 31.
Can you tell us what that is, sir?
A. Yes, sir, here again, that's, that's more trash stacked up, diapers, soiled diapers.
Q. We'll go to State Exhibit 32.
Tell us what this is, sir.
A. Yes, sir, that's a continuation of what we were seeing before, more old trash and just debris just thrown out in the roadway -- in the driveway.
Q. Go to State Exhibit 33.
The blue thing right there at the very bottom there --
A. Yeah.
Q. -- is that diapers, just a pack of diapers?
A. That's just -- yes, that's just a pack of diapers there.
Q. Okay. And we can actually go and there's other packs of diapers---
A. Yes.
Q. ---there too?
A. Yes, sir.

Q. Okay. In that -- as you're going up there -- well, we'll keep going.

State Exhibit 33, if you would just describe that, sir.

A. More, more yard trash, more just used rags.

Q. Did they have a lot of animals and dogs and cats there also?

MR. MORIN: Objection, Your Honor. The coroner's done 6,000 cases. He can testify as to what he saw---

SOLICITOR BARNETTE: I just said did---

MR. MORIN: ---without his assistance.

THE COURT: It's, it's---

SOLICITOR BARNETTE: Your Honor, I'm not leading him. I asked just did you see any dogs or cats.

THE COURT: Yeah, answer the question.

It's overruled.

SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

A. Yes, I did.

Q. Okay. Going to the next picture, State Exhibit 34.

All right. Go to the next one.

State Exhibit 35, what is that a picture of?

A. More diapers.

Q. Okay. State Exhibit 37, what is that a---

A. More---

Q. ---picture of?

A. More diapers, more trash.
Q. Going to State Exhibit 37, is that more diapers?
A. More diapers, correct.
Q. What is that a picture of?
A. More, more used diapers and generally trash.
Q. Okay.
A. Continuation of the same thing, trash, diapers.
Q. And State Exhibit 39, is that the ramp going up to the house?
A. Yes, sir, that's leading into the, the residence itself.
Q. State Exhibit 40.
A. Just a wide shot of the, the ramp.
Q. State Exhibit 41.
A. As you can see, there's more used diapers.
Q. What is that one item that's on the ramp there, sir?
A. The diapers.
Q. Can you see something else?
What are those?
A. Can I get a little closer here?
Q. We can actually pull it up.
A. Yeah. Yeah. More, more diapers, more used items, yes, sir.
Q. What's the green and silver thing, sir?
A. That's a used oxygen tank.

Q. Going to State Exhibit 30 -- or State Exhibit 42.
Is this a wider angle of the ramp?
A. This is a longer range view as you walk up the ramp.
Q. And what is this, State Exhibit 43?
What is that a picture of?
A. That's the actual front door. You can see a propane tank outside.
Q. Showing you State Exhibit 44, can you tell us what that is?
A. This is looking into the door after the door is opened into the actual residence.
Q. What's on the floor?
A. Feces, feces and general trash. Some of the trash is 2-feet deep.
Q. Going to State Exhibit 45, what's this a---
A. Looking---
Q. ---picture of?
A. Looking into the room. This is a lot of feces. Here's -- you can not only see feces. But there's urine soaked floors.
Q. Was there any insects in there?
A. Yes, sir.
Q. What kind of insects did you have?
A. Roaches.
Q. Was there any smell in the residence?

A. Oh, yes, sir. It, it smelled unlike any smell I've ever smelled before. But it's urine and feces and ammonia, ammonia type smell.
Q. Going to State Exhibit 46, can you tell us what we're seeing here, sir?
A. Well, you're seeing cobwebs that hang from the ceiling.
Q. What -- what's in the cobwebs and we can make it a little bit closer?
A. Well, you're gonna see a lot of bugs in there as well. Insects.
Q. What kind of insects are there if you can tell?
A. Appear to be flies and fleas.
Q. And what -- is the cobwebs, what color are they, sir?
A. What color are they?
Q. Yeah.
A. They're grayish.
Q. Okay. What about the fan going up?
A. The fan's coated with bugs, coated with cobwebs as well.
Q. We'll go to State Exhibit 47 and these are different rooms in the house?
A. Yes, sir.
Q. Is that right?
A. This is, this is different rooms looking, you know,

from the front door over to the left into the living room if you will.

Q. Go to State Exhibit 48.

Is this a picture through -- to which side of the house or towards what area of the house?

A. It's toward the left side of the house.

Q. And is there stuff stacked everywhere?

A. Yes.

Q. We'll go to State Exhibit 49.

Is this another part of the house we're going toward that direction?

A. Yes, sir.

Q. And this is -- what condition you saw that night?

A. Yes.

Q. Going to State Exhibit 50, and was there dogs -- and when y'all went in, was there somebody suppose to get the dogs out of the house before y'all went in there, dogs and cats?

A. Yes, sir.

Q. Was anyone getting them out of there?

A. Not all of them.

Q. Okay. So, go to State Exhibit 51.

Is this the floor like in the living room towards the right of the door on right side of the door?

A. Yes, sir, it's hard to see the floor. But the floor

is there.
Q. Okay. And is that like a -- I guess a baby chair?
A. Highchair.
Q. Highchair?
A. Yes, sir.
Q. And how deep was the stuff on the floor?
A. Three to four feet deep.
Q. Okay. And State Exhibit 52 here, getting a little bit closer in there, was there a flycatcher for flies?
A. Yes, there was.
Q. When was it -- what kind of condition was it in?
A. It was full.
Q. Again, the webbing over it -- on the curtains and things like that, what was in those?
A. Fleas, flies, bugs.
Q. Going to State Exhibit 53, is this just showing the conditions there on the floor and everything?
A. Yes, sir.
Q. Okay. Was there a Coke bottle there, Coke bottles that was just not opened?
A. Unopened Coke bottles, yes.
Q. Was there an oxygen tank in there?
A. Yes, there was.
Q. And was there a shovel actually there?
A. Yes, sir.

Q. Going to State Exhibit 54, can you tell what -- the jury what we're looking at here?
A. This is just another, another area in the house. I think it's commonly called the kitchen.
Q. What is that?
Let me ask you a question.
Are those diapers or whatever---
A. Yes.
Q. ---on there?
A. Yes, over toward the left of the kitchen, yes.
Q. Okay. All through there and cobwebs all over---
A. Yes, sir.
Q. ---and things?
Showing you State Exhibit 55. This is a wider angle of that -- in the living room area.
A. Yeah.
Q. Showing you State Exhibit 56, is that the general area again?
A. General, general area of, of the home.
Q. What was in the middle?
What did it appear to be in the middle of all that in there, that red thing?
A. Bring it up a little bit closer.
It appeared to be some kind of table or something.
Q. Okay. Going to State Exhibit 57, is this just now

part of the, the house?
A. Yes, sir.
Q. State Exhibit 58, can you describe what's on this desk or whatever, the materials on it?
A. Looks like more diapers, feces. A lot of feces and this is feces from animals.
Q. Let's go to State Exhibit 59.
Okay. Is this the---
A. This is looking at -- yes, this is looking into the kitchen from the living room area.
Q. And we'll go to State Exhibit 60.
Is that the floor in the kitchen area?
A. That, that is the floor.
Q. Is that the refrigerator over there?
A. Appears to be.
Q. Going to State Exhibit 61, is this another picture of the other side of the kitchen?
A. Yes, sir.
Q. Is that the conditions that you saw that night?
A. Yes, sir.
Q. State Exhibit 62, is this going into the master bedroom?
A. Yes, sir, it is.
Q. Did y'all have to basically force the door kind of to go in there?

A. Yes, we did.
Q. Okay. Is that where it's kind of bent?
A. Yes, sir.
Q. Okay. Is this the master bedroom?
A. Yes, sir, this is the master bedroom.
Q. Where it -- was her crib to the left?
A. To the left.
Q. All right. Can you see part of it in the picture?
A. Just the small part to the left---
Q. What---
A. ---yes.
Q. And that's where she slept?
A. Yes, sir.
Q. And then I guess there's a bed on the other side.
Could you tell where the bed began or ended?
A. Well, it's really hard to tell where it was beginning or ending because of the trash. We had to move some trash around off the bed just to, to find out where the bed was.
Q. State Exhibit 64. State Exhibit.
Is this a---
A. It's a---
Q. ---picture---
A. ---a wider shot.
Q. Okay. And you just -- you see the crib in there---
A. Yes, sir, to the left.

Q. To the left.
What's it got -- what kind of light's on it?
I see -- is there a cat on top of it?
A. There is.
Q. Okay. Go to State Exhibit 65.
Well, let me ask you one question.
Is that a radiator in the middle, a heater radiator --
A. Yes.
Q. -- in that picture?
How deep is that trash in there?
A. About four to five feet.
Q. Okay. Okay. State Exhibit 65.
Is this a picture of the other side of the bedroom?
A. Yes, sir.
Q. And was there a bathroom in-between these that you couldn't get into?
A. Could not make our way to it.
Q. And is there dust in that fan or what is in that fan?
A. It's dust and dirt and bugs and fleas.
Q. Okay. Going to State Exhibit 66.
Is this a picture of the kitchen going into the washroom area?
A. Yes, sir.
Q. Going to State Exhibit 67.

Is that the picture of the sink in the kitchen?
A. A wide shot of the kitchen.
Q. State Exhibit 68, is this the washroom back here?
A. Yes, we determined that that was probably both -- the wash room based on what was there along with other things. But yes.
Q. And how deep was the trash and stuff in there?
A. About four and a half feet.
Q. Going to State Exhibit 69.
Is this a -- like the back area near the kitchen going into another room?
A. Yes.
Q. Look -- is that like a firewood heater or electric heater right there in the middle?
A. Appears to be, yes.
Q. What is on that item and we can go a little bit closer?
What kind of insects appear to be on there?
A. Those are roaches and fleas.
Q. Are they -- appear to be live at the time?
A. They were.
Q. And was there dead roaches also?
A. Yes, sir.
Q. And when y'all went in, did you initially have equipment on you when you initially went in?

A. I did not but, but some did.
Q. And did you go back and get any more -- did you go back and get any more equipment on them?
A. Yes.
Q. Okay. Okay. Going to State Exhibit 70.
Can you describe this to us?
A. This is, again, just more piled up trash in the house.
Q. Okay. Going to State Exhibit 71.
Is that just another picture on the other side of the room?
A. Yes, sir.
Q. State Exhibit 72.
Is this going back towards the bathroom area?
A. Yes, sir, this is looking down that hallway.
Q. Okay. State Exhibit 73.
Is that the floor going back to that -- was there only one functioning bathroom in the house?
A. Yes, sir, but I couldn't confirm that it was functional.
Q. I understand it. We'll let you describe that in a minute.
State Exhibit 74.
Is this a picture of the ceiling in the area going back to the bathroom?

A. It is.
Q. And then what's on the ceiling or on the walls going to the ceiling?
A. Cobwebs. Deep cobwebs.
Q. State Exhibit 75.
Was that the bathroom?
A. Yes, sir.
Q. Was that the functioning or I -- was that the only bathroom that you could get into?
A. Yes, sir.
Q. Okay. State Exhibit 76.
A. Another, another picture of the bathroom.
Q. How deep was the -- what was on the floor?
A. Feces, urine, trash.
Q. Looking to the right there, was there a bag of diapers opened?
A. There was.
Q. Did that appear -- been the like clean thing that appeared to be in there?
A. In the bathroom, yes.
Q. Okay. Going to State Exhibit 77.
Can you tell us---
A. It's the crib.
Q. ---what this is?
A. It's the crib.

Q. In the crib, did there appear to be animal feces or anything in there?
A. There was animal feces. It is soaked in urine which appears to be human urine as well along with animal.
Q. Going to State Exhibit 78.
She had medical equipment in her room?
A. She did.
Q. Was that the medical -- part of the medical equipment that she had?
A. Yes, sir.
Q. And is that her crib to the right of it?
A. Yes, it is.
Q. Is those the conditions you saw?
A. They are.
Q. State Exhibit 79.
Was that the bags of medicine that was for her?
A. Yes, sir.
Q. Does there appear to be a cat right behind it?
A. There was.
Q. And what kind of condition was those medicine in?
A. Deplorable condition.
Q. State Exhibit 80.
Did you -- they told you that -- Bobbie told you she, she cut some hair off her?
A. She did.

Q. And did y'all find hair in the bedroom?
A. We did.
Q. And is that a picture of the hair that was in there?
A. It is.
Q. Going to State Exhibit 81.
Is that a closer picture of it, sir?
A. It is.
Q. Okay. State Exhibit 82 next.
Is that showing where they couldn't get in the room to the bathroom by the bedroom?
A. Right, yes, sir.
Q. State Exhibit 83.
Is that another picture---
A. A wider shot of her crib.
Q. State Exhibit 84, how far was this trash and everything up to her crib?
A. Pit was all the way up to the crib in the crib.
Q. And this is all kinds of stuff?
A. Yes, sir.
Q. And was there stuff crawling through that stuff?
A. Yes, sir.
Q. Insects, things of that nature?
A. Yes, sir.
Q. Going to State Exhibit 85.
Is that what's beside her crib?

A. It was.
Q. State Exhibit 86.
Is this just a wider angle of the area --
A. A little further back, yes, sir.
Q. -- kind of off everything there.
State Exhibit 87.
Is this another picture of the bedroom area with her crib in it?
A. It is.
Q. And did -- is that the radiator heat that we showed earlier?
A. It is.
Q. And is this showing everything -- is that the gauze that was found with blood on it?
A. It did have blood on it, yes, sir.
Q. And then she had said that she'd cut her hair I guess from that standpoint?
A. Yes, sir.
Q. And there was a cut on her hair or her head afterwards?
A. Yes, sir.
Q. Going to State Exhibit 88.
Is this a picture of what area of the bedroom?
A. This is toward the left side of the bedroom over here.

Q. Did they have beer in there -- appears to be?
A. Yes, sir.
Q. Okay. State Exhibit 89.
Is that another picture of the gauze?
A. It is.
Q. State Exhibit 90.
Was there a pair of scissors that was also found in that area?
A. Yes, sir.
Q. And is this the -- I guess that was the pillow we saw earlier once it's kind of blood or stained I should say?
A. Yes, sir. That's right.
Q. Okay. State Exhibit No. 91.
Is that a close-up of the scissors that was found?
A. It is.
Q. And did the Sheriff's Department collect the scissors, the hair, and the gauze from the scene?
A. Yes, they did.
Q. Okay. State Exhibit 92.
What is the -- does that appear to be the machine?
A. Yes, sir, it does.
Q. That was used for medical, as far as you can tell, for medical purposes?
A. Yes.
Q. What kind of conditions was around it?

A. A lot of feces, a lot of bugs, a lot of fleas, a lot of trash.
Q. And is that also another oxygen tank?
A. It is.
Q. Okay. It goes to State, State Exhibit 93.
Are these part of the cobwebs in the house --
A. Yes, sir.
Q. -- on the ceiling?
A. Yes, sir.
Q. What's in those cobwebs and we can get a little bit closer into it?
A. Bugs, flies, fleas.
Q. Did you also have cockroaches too?
A. And rock -- and, yes, sir, and roaches.
Q. Okay. If you'll please have a seat, sir. Thank you.
A. Sure.
(WHEREUPON, the witness returns to the stand.)
Q. Oh, I'm sorry.
Did you attend an autopsy for H.B. ?
A. I did.
Q. And who performed the autopsy?
A. Doctor Kelly Rose, forensic pathologist.
Q. And you went to the autopsy.
Is that right, sir?
A. Yes, sir, I did.

Q. And you took some of the pictures that we've looked at from me that you looked at earlier.

Is that right?

A. Yes, sir, I did.

Q. Okay. And all these -- look -- pictures represent what you saw or what you saw --

A. Yes, sir.

Q. -- from there?

In there, during the autopsy and everything, what was her findings on the autopsy or tell, in gen -- general, what was her diagnosis if you would, sir?

MR. MORIN: Objection, Your Honor. There's gonna be an expert on this unless he's gonna establish the coroner is an expert on medical diagnoses.

SOLICITOR BARNETTE: I'll rephrase the question, Your Honor, from that standpoint.

Q. Did Doctor Rose do an -- a full examination upon H.B. ?

A. It was full post, yes, sir.

Q. Based off that autopsy and everything, did you see a scalp incision or two scalp incisions at the time?

A. Yes, sir, I did.

Q. And what did she determine that to be---

A. Some---

Q. ---that---

A. Some type of laceration which would of -- which she said was postmortem.
Q. And based off her examination and everything from the information you had, did you determine a cause of death in this case?
A. I did, sir.
Q. And what was that cause of death?
A. Determination of the cause of death was complications of acute and chronic medical neglect.
Q. And the matter of death, what did you assign this as?
A. Homicide.
SOLICITOR BARNETTE: One moment, Your Honor, please.
(Pause.)
Q. During the autopsy, and what you say what -- I know you got to see more of the body at the autopsy as you went to the hospital unfortunately.
Where did -- I don't know -- it's a tough question to ask.
Where did the injuries from her lower body start at?
A. The abdomen.
Q. Okay. And did it go all the way down her lower body?
A. Well, the feet were swollen and, of course, the legs had been infected with injuries or inflicted with injuries from fleas and bug bites.
Q. Was there hardly any skin on the legs?

A. Oh, there's very little skin.
Q. And in all the years that -- all the case (sic) you worked, have you ever worked a case like this?
A. I've never seen anything like it.
SOLICITOR BARNETTE: One moment.
(Pause.)
Q. Please answer any questions the defense may have for you, sir.
A. Yes, sir.
Q. Thank you.
THE COURT: Mr. File.

CROSS-EXAMINATION

BY MR. FILE:

Q. Doctor, you had -- when you initially went to the hospital, you had written in your report that you suspected medical neglect.
Is that right?
A. I was told by the nursing staff that they suspected medical neglect.
Q. Okay. And that's -- that was the finding you made and ended up may -- making with medical neglect, is that right, complication from medical neglect?
A. Yes, sir.
Q. Correct?
A. Yes, sir.

Q. Okay. And you, you noted that her skin was very thin and she was red or there was redness on her skin all over her body or lower body?
A. Yes, sir.
Q. Okay. You told Mr. Barnette that, that she -- they told you that she had pulled the oxygen tube off her face?
A. That's what I was told.
Q. Okay. They---
A. I was told it was off. I wasn't told that she pulled it off. I was told that it was discovered off the face.
Q. But yet she had a tracheotomy?
Did you not know that?
A. I'm just relaying what was told to me.
Q. You said Edward came to the ER?
A. Yes, sir.
Q. Okay. You don't know -- if he got there before or after.
Is that correct?
A. I do not know.
Q. Before or after Bobbie and David?
A. I do not know that. I know he was there when I was there.
Q. Now, you went to the house too?
After your investigation at the hospital, you went to the house, correct?

A. Yes, sir.
Q. Okay. And did you have to wait for, for David Baynard to arrive and let you in?
A. He was there when I got there.
Q. Okay. And did -- you said -- you described in some of the pictures or you pointed out some of the pictures there were a number of, of diapers around the house --
A. Yes.
Q. -- laying around.
Those are soiled diapers, weren't they?
A. Yes, sir.
Q. They weren't clean diapers?
They were soiled diapers?
A. Correct.
Q. So obviously somebody'd been changing diapers and just throwing them out there.
Is that correct?
A. I don't know how they got there.
Q. You didn't, you didn't see any signs of, of Bobbie or David or Edward that -- wearing diapers, did you?
A. No, sir.
Q. Okay. And you said there was oxygen tanks there at the house or used oxygen tanks?
A. Correct.
Q. And you described a bag of, of medication.

Were you aware that she had a feeding tube in her stomach?
A. I was told she did, yes.
Q. Okay. And what you've described as medication, could that not have been feeding her food for, for her?
A. It could of been but it was so dirty I couldn't tell what it was.
Q. Okay. And there was medical equipment you've described as being there in the house---
A. What appeared to be---
Q. ---amongst the trash.
A. What appeared to be.
Q. Okay. All right. That's all I have.
THE COURT: Mrs. Racine.
MRS. RACINE: I have no questions for this witness, Your Honor.
THE COURT: Counsel, Mr. Morin.

CROSS-EXAMINATION

BY MR. MORIN:

Q. Mr. Fowler, you are the Cherokee County coroner, correct?
A. Correct.
Q. And you are elected by the people of Cherokee County.
Is that correct?
A. Correct.

Q. H.B. was in Spartanburg at the time.
Is that correct?
A. That's correct.
Q. H.B. died in Spartanburg.
Is that correct?
A. That's correct.
Q. True?
Why were you called to Spartanburg?
A. Because the incident began here in my county.
Q. And how was that determined before you arrived?
A. Because the medical staff at Spartanburg Regional told me that she came from Gaffney.
Q. Okay. And that was [redacted] Road -- [redacted] Road.
Is that right?
A. That's correct.
Q. Who owns [redacted] Road?
A. I have no idea.
Q. How is Edward Baynard related to Bobbie and David Baynard?
A. Son.
Q. When you were in the house, you say that in some places the trash was four and a half to 5-feet deep.
Is that correct?
A. That's correct.

Q. So, it came up almost at least to your chest if not your shoulders.
Is that correct?
A. That is correct.
Q. Okay. Now, when you go to the house, and you go into the -- where -- the main bedroom, you had to force the door open, correct?
A. Yes.
Q. Okay. And once you got it forced open, and you're standing in the doorway, and you're looking into the master bedroom, can you see the crib?
A. Yes.
Q. All of it or part of it?
A. Part of it.
Q. Okay. Because when you go in, isn't there like a cabinet or something right there on the left?
A. There was.
Q. And then next to that was that medical stuff and then the crib?
A. Yes.
Q. Now, if you were in that day, such as it is, in the main bedroom and you were laying or sitting on it, you'd have a clear view of the crib as best you can given the conditions?
A. So long as the trash wasn't in the way.

Q. Correct.

Now, when you talked to the people at the hospital, that was the beginning of your investigation into it, correct?

A. That's correct.

Q. And during that investigation, isn't it true that you learned that both H.B. and Bay -- and Edward had been removed from the house?

SOLICITOR BARNETTE: Objection, Your Honor. We got a matter of law to deal with right now.

THE COURT: Mr., Mr. Foreman, ladies and gentlemen, we have a matter that I'm gon' have to take up outside of your presence. We got a, we got a objection on the table.

So, don't talk about the case. Don't do speculation about what the objection is and please, Mr. Foreman, take them out.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Mr. Solicitor, the objection.

SOLICITOR BARNETTE: My objection, Your Honor, I made a motion in limine before the trial started about DSS information. That's what he's going into about removal of the children out of the home -- out of the house.

I've been good about making sure I don't step over the line and ask questions before making somebody object

SOLICITOR BARNETTE: No, not making the point. The problem is April 11th, 2020, is when this happened from that standpoint.

Looking at all the -- and saying -- like 2016, it was perfectly clean. This kid graduated from high school, was getting paid to take care of H.B. [redacted] and, of course, we'll go into that I know. We'll go through all that.

THE COURT: I understand.

SOLICITOR BARNETTE: But I think, for the purpose of this, I think it's not proper pertaining to this witness.

THE COURT: Okay. At this point, the Court's not gonna allow those questions to be asked and under that investigation, which I used to have to fight all the time and I understand that, there is -- that is based on hearsay and it is hearsay.

MR. MORIN: Thank you, Your Honor. I'll stand over here cause I don't have any other further questions at this time. But --.

THE COURT: We ready for the jury?

SOLICITOR BARNETTE: State's ready, Your Honor.

THE COURT: Bring the jury back.

(WHEREUPON, the following takes place within the presence of the jury panel.)

THE COURT: Thank you, Mr. Foreman, ladies and

gentlemen.

Mr. Morin.

MR. MORIN: One more question.

CONTINUED CROSS-EXAMINATION

BY MR. MORIN:

Q. Again, when you say that the debris was four or five -- in places it was that high, in some places it was just on the floor and a smaller amount that allowed you to walk.

Isn't that correct?

A. Well, we had to move it out of the way so we could walk.

Q. Uh-huh. (Affirmative).

How many feet did you bring -- to move?

A. How many what?

Q. How many feet did you---

A. Sometimes two or three people.

Q. Okay. All right. That's all the questions I have, Your Honor.

THE COURT: Okay. Anything from the State?

SOLICITOR BARNETTE: A few on redirect, Your Honor, for a second.

REDIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Sir, as coroner in Cherokee County, have you had

people die in Cherokee County that's pronounced dead at Spartanburg Regional?
A. Yes, sir.
Q. So that's not uncommon from that standpoint?
A. Not uncommon.
Q. And based off the information you received, basically the hair was cut in Cherokee County at the residence?
A. Yes, sir.
Q. Is that right?
And was it cut postmortem that was on her head?
A. Yes, sir.
Q. Does that show that it occurred in Cherokee County when she died?
A. Yes, sir.
Q. She didn't die in Spartanburg.
Is that right?
A. That's correct.
SOLICITOR BARNETTE: One moment, Your Honor, please.
(Pause.)
Q. Thank you, sir. Please answer any other questions the defense may have for you.
THE COURT: Any, any -- anything as to those questions?
MR. FILE: No additional.
MR. MORIN: Yes, Your Honor.

THE COURT: Well let's see if Mrs. Racine -- Mrs. Racine?

MRS. RACINE: Mr. Morin's fired up, Your Honor. I'll defer to him for the time, the time being.

THE COURT: Mr. Morin.

MR. MORIN: Let me mark this for the defense. Well --.

(WHEREUPON, the death certificate for H.B. was marked as Defendant's Exhibit No. 1 for identification purposes only at this time.)

RECROSS EXAMINATION

BY MR. MORIN:

Q. You've testified that the location of H.B.'s death was Cherokee County.

A. That's correct.

Q. And you have to sign off on the death certificate.

Is that correct?

A. That's correct.

Q. I'm gonna show you what's marked as State's Exhibit No -- Defense Exhibit No. 1.

Do you recognize what that is?

A. I do.

Q. It's a death certificate, correct?

A. That's correct.

Q. It bears your signature, correct?

A. That's correct.
Q. What county does it say that they or the death was in?
A. Well, it says Spartanburg County. But that's when she was pronounced dead.
Q. You signed it as well.
No further questions.
THE COURT: Coroner, you may step down. Please be careful, sir.
SOLICITOR BARNETTE: May I ask that the witness be excused if he wants to be, Your Honor?
THE WITNESS: Thank you.
THE COURT: Any objection to him being excused?
MR. FILE: No objection.
MRS. RACINE: No objection.
MR. MORIN: No objection.
THE COURT: Hearing none, sir, you're excused from your subpoena.
THE WITNESS: Thank you, sir.
SOLICITOR BARNETTE: I'll leave it up to the Court, Your Honor.
THE COURT: Yes, sir.
Okay. Mr. Foreman, ladies and gentlemen, we're at five o'clock. It's a good time to stop. We'll begin tomorrow morning at 9:30, at 9:30.

In conferring with Madam Clerk, there's a little matter I got to take care of at 9:00. It will only take a couple of minutes, five, 12, maybe 15 minutes. It won't take long at all.

Has zero to do with this case. It was something scheduled weeks ago in front of me. So, it has nothing to do with this case.

Be here about 9:15'ish.

Now, I will tell you before you leave cause you might want to come earlier than that, the courthouse opens at 8:30?

THE CLERK: Yes, sir.

THE COURT: People with the blue coats on here make some of the best coffee in Cherokee County. If you'll get on over here, they'll have a good, hot pot of coffee for you. I get here every morning about eight o'clock or so and get the coffee and I catch up on the news and, and I -- and so I encourage you to. But you don't have to be here that early. But I will be ready to work.

I'll already be on the bench at 9:00 and I'll take care of that small matter and then we'll be ready for, for you.

Okay. Nine thirty. Do not do any investigation. Do not try to learn anything about the case whatsoever. You and I must learn about this case in this courtroom.

Mr. Foreman, take your jury out for the evening.

THE FOREMAN: Thank you, sir.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Anything from the State or defense before we recess?

SOLICITOR BARNETTE: None from the State, Your Honor.

THE COURT: Anything?

MR. FILE: I don't have anything from me.

THE COURT: Mrs. Racine.

MRS. RACINE: None, Your Honor.

MR. MORIN: Your Honor, I just want to state my objection to your ruling and with not permitting me to submit that testimony in front of the jury.

THE COURT: Yes, sir. You're protected on the record.

MR. MORIN: Thank you, sir.

THE COURT: Anything?

(WHEREUPON, there was no response.)

THE COURT: All right. Nine thirty on this case. If anybody needs me, everybody here has my cellphone number I'm sure. Just don't ex parte.

So, see you, see you at 9:30 on this case.

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(WHEREUPON, Court was in recess for the evening.)

Tuesday, October 29th, 2024

(WHEREUPON, a flash drive was marked as Court's Exhibit No. 7 for identification purposes only at this time.)

SOLICITOR BARNETTE: I just need to put something on the record very short -- for very short.

THE COURT: Okay. Yes, sir.

SOLICITOR BARNETTE: Your Honor, I marked Court Exhibit No. 7. These are the digital photographs that we were showing to the jury yesterday. It's actually part of the exhibits, the paper exhibits and everything. Just gonna make that Court Exhibit 7. I've told defense counsel. Wanted to just make sure that (sic) in the record.

THE COURT: Okay. Any objection?

MR. FILE: No.

MR. MORIN: No, sir.

MRS. RACINE: No, Your Honor.

SOLICITOR BARNETTE: We're ready to go, Your Honor, when you are.

THE COURT: Okay. Everybody ready?

MR. MORIN: Yes, sir.

THE COURT: We'll have the jury.

(WHEREUPON, the following takes place within the

presence of the jury.)

THE COURT: Good morning, Mr. Foreman, and ladies and gentlemen.

Mr. Foreman, everything good?

THE FOREMAN: Yes, sir.

THE COURT: Got some good coffee this morning?

THE FOREMAN: We did.

THE COURT: All right.

THE FOREMAN: Thank you, sir.

THE COURT: Solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

I'd like to call Brian---

THE COURT: Yes, sir.

SOLICITOR BARNETTE: ---Brian Burrell to the stand please.

THE CLERK: Will you please raise your right-hand. Place your left-hand on the Bible?

BRIAN BURRELL, being first duly sworn, testified as follows:

THE CLERK: Okay.

THE BAILIFF: Watch your step.

THE COURT: Sir, adjust the microphone to suit, to suit yourself. Tell us who you are and spell your last name for Madam Court Reporter please.

THE WITNESS: Hi. My name is Brian Burrell. Last name spelling, B-U-R-R-E-L-L.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Sir, where do you work at?

A. Currently I work with Cherokee County Sheriff's Office crime scene division.

Q. And how long have you been in that position?

A. I've been with the Sheriff's Office for six years. Been with the crime scene division for four years.

Q. And how long you been in law enforcement, sir?

A. I been in law enforcement for 23 years.

Q. Going back to April 11th of 2022 or April 12th, 2022, was you called to a crime scene at [redacted] Road here in Cherokee County, Gaffney?

A. Yes, sir. I was called there on that evening in the capacity as the time I was a sergeant with crime scene division. I was called there and arrived at approximately 3:09AM.

Q. And was the search warrant gathered by the Sheriff's Department before you went in the residence?

A. Yes, the search warrant was obtained by John -- Detective John Underwood who gave it to me at 4:12AM.

Q. Okay. And did y'all execute that search warrant?
A. Yes, sir, that execution was done on David Baynard. At the time I was given the crime certainly.
Q. And his residence is in Cherokee County.
Is that right?
A. It is.
Q. If you would, tell the jury, as you executed the search warrant, what y'all did while, while -- from that standpoint.
A. After the execution of the search warrant, myself, Deputy Heflin, Coroner Dennis Fowler, and Special Agent Agrawal with SLED proceeded up to the residence after David Baynard took down the chain across the driveway at which point we started making our way up the driveway.
I started taking photographs as I went up the driveway noticing several things along the way of interest that I started taking photographs of including there was a large number of chewy.com boxes for pet supplies at the side of the road in different states of breaking down. Some new ones on top and ones that you know had been there for a very long time.
As we went up further up the driveway, we could hear dogs barking, a lot of movement. There was open pens or like gated off makeshift gates around like dog pens that had been made with camper tops or shell top of trucks and

things like that.

The -- as you approach, you could smell the dogs, the dog feces, and start observing more and more trash, more and more mechanical items like lawn mowers and push mowers and, like I said, riding lawn mowers and broken down, sitting in the yard. Started seeing packs of adult diapers, some opened and some unopened, some used, some unused, discarded in various ways around the residence.

At one point we actually thought there was a dog loose outside of one of the pens. It turned out to be a, a fairly large rat that ran across the front of the residence. You could hear running water to the right side of the residence.

There was so much overgrowth over there it was kind of hard to get back to that area to find out where the water was coming from. But that water apparently was supplying that overgrowth making it hard to get back there.

There seemed to be some type of detached porch that possibly was part of the residence at one point but was set off to the side. And as we went up the, the ramp and got closer to the house, you could definitely, definitely start smelling more of an ammonia smell like old, old cat urine, more dog feces. We could hear dogs inside as well.

Once we found out that there were dogs inside, we

actually went back down to the road and spoke with both David and Edward Baynard and they said that there was approximately five dogs inside the house. So, we told them that they needed to come up and get the dogs, secure them, so that we could continue inside the residence so that I could continue processing the, the scene.

Once we actually got up to the porch, there was, like I said, more used diapers, unused diapers on the porch. There's an oxygen tank that was discarded on the front porch as well.

Once we got to the front door, and the front door was opened and we could see inside, there was, at that point -- something I did fail to mention. I do apologize. Myself and Deputy Heflin, we, at the time, had respirators that we were actually equipped with. He was shadowing crime scene to get in full-time and I had one because I was already in.

Once the door was opened, it became necessary for us to put on those respirators because it became difficult to kind of breath with all that, like I said, ammonia smell and part of the feces.

Once the door was actually opened, we could tell that there were way more dogs than five inside the residence at which point I told David and Edward to back out and just go back down to the end of the road with the rest of the

deputies and that we would proceed without their, without their help and that's up to the point where we got to the residence itself.

Q. If you would, describe to them the residence as you went through it and everything from there.

A. Once they backed -- once they backed out, we had only put on foot coverings, gloves, and the respirators and we started into the residence and we could immediately tell that there was not any part of the floor that was not covered with some type of animal feces, whether it was cat, whether it was dog.

The trash was in parts from knee deep to almost hip deep depending on where in the residence you tried to go. There was a layer of both dirt and a combination of the animals' feces on everything. That would include the, the cobwebs that were full of flies, full of roaches.

The floors, as you moved, we could tell stuff was jumping on us as we were doing it. I then stopped what we were doing. I told everybody that we needed to back out and that I had Tyvek suits for everybody to wear so that we could incapsulate ourselves and create a barrier between what all was in the residence, bug, filth, feces, urine, whatever was in there we could barricade ourselves from that.

Q. Can you tell me about -- what about that suit please?

A. Tyvek suit is a suit that, like I said, is lined with plastics and other things, other materials. I don't know the exact materials. But I do know that, once you put them on, zip them up, close up the hood, you're creating a barrier as best you can against what you have from the outside from coming in and also -- it also helps for you to not contaminate the scene as well.

So, myself, Special Agent at SLED, and Deputy Heflin, we went and put on the full Tyvek suits with, with our respirators. Unfortunately, a couple people did not have respirators and we returned back to the house where I continued taking pictures throughout the house.

As I continued taking pictures, there were, there was one room that, as soon as you opened the door, it was piled up with boxes. I maybe got three pictures in the room. There was no way to get into the room any further and that is as far as we went with that one room.

The next was a bathroom. Sorry.

Q. Let me do this.

Did you do a diagram for us here?

A. I did.

Q. Let you show you State Exhibit 99. I know this is a rough sketch.

Is that a rough sketch of the residence?

A. Yes, it is, sir.

SOLICITOR BARNETTE: Okay. Your Honor, I'd like to move this into evidence at this time.

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No, sir.

THE COURT: Ninety-nine, solicitor?

SOLICITOR BARNETTE: Ninety-nine, yes, sir.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 99 was received into evidence at this time.)

Q. What I'd like to do is let you come down and show the diagram to the jury so you can describe each room in detail from that standpoint --

A. Yes, sir.

Q. -- and tell us what is there.

(WHEREUPON, the witness comes down from the stand.)

Q. And, if you would, using -- by using this, show which room you were describing that had the boxes in it, sir.

A. This, this room right here, as you, as you opened this door, this, this room, like I said, is -- that's as good as I can draw it or as good as I can draw it cause I don't know the exact dimensions or what, or what all was in there, where a closet was. This room right here I was unable to get into.

Q. And, the front door, can you show the jury where

that's at.
A. This is -- the front door's right here. The front of the front steps and then this is the long handicap accessible room. That right there.
Q. Let me let you go ahead and describe everything to the jury if you would, sir.
A. All right. After, after taking, like I said, just two or three pictures from the outside in of this room, I then moved to this which what I consider the -- I guess the guest bathroom.

Once the door was opened, there was I believe one dog that appeared to have one eye and had mange in the bathtub trying to -- it was scared, trying to get away from us, and it was in the tub. Everything in this room also had a layer of filth, dog feces, animal, and possible cat feces as well as I found the source of the running water. It appeared to be the toilet that had -- it was possibly leaking outside.

So, this, this bedroom, moving on, appeared to be lived in. There was a path going to a bed. Still the same thick black cobwebs, the thing -- the same layer of feces on the floor, flies, roaches, and open and crawling over everything, the bed, the containers. Just anything in that room had bugs of type -- type on it.

Coming back doing a sweep of the living room, there

was a couch. Numerous dogs, everything, again, covered, covered in dirt. Even through the -- unfortunately, even through the respirator, it, it was not a full face respirator. So our eyes were still stinging while we were in there. We did have to, from time to time, come out the front door for a second before going back in.

I couldn't honestly not find a clean spot or a place that anybody would sit on this couch. Everything, wherever you step, was trash.

Coming into what I believe is like used to be a former like dining room area, there were broken down appliances. Everything, everything in this front room was also covered in dirt. There was a -- right here against this wall were -- looked like a cover that had adult diapers that had never been opened in them. But they were covered in -- if you leave something sitting for years, like a layer of dirt and dust laying on them. You could not tell where the carpet began or, or you could not tell whether it's carpet or tile in this house at all cause everything was covered in feces.

This T-wall right here separated the kitchen, this dining room, living room, kind of what I believe to be like a breakfast nook and in the rest of the kitchen. This has cords hanging from the ceiling of some sorts and the cords themselves were covered in hundreds of roaches.

Everything you hit on the walls you knocked roaches off the wall and onto you when you were moving around inside the house.

None of the appliances in the kitchen appeared to be working. Did not open the refrigerator to find out.

Everything in the kitchen, including the sink, the countertops, nothing was clean. Nothing had -- was untouched by animal feces, filth, and the smell of ammonia that was stinging our eyes.

The laundry room was piled up. I believe the backdoor was here. I can not say. But the laundry room was piled with trash. You could not reach a washer or a dryer and it was also, it was also filthy, covered in a layer of dirt and feces and a combination of that.

This was the -- what we believed to be the master bedroom. But the door we could not open all the way originally. Once we forced the door open more, there was a -- like a three tiered shelf of some kind right here that was obviously more covered with cat feces and urine than anything else because there was approximately four to five cats, most of them with one eye and ill taken care of, looking at us as we opened this door. And that was the strongest area of ammonia that we found in the entire house.

This is only a speculation of this area because this

door was piled up at least waist high with trash. We could not get to nor even attempt to open this door. So, to this day, I do not know what was in this bathroom. I assume it was a bathroom.

The crib where H.B. was here on in this corner, you could not tell where the floor was and the trash began. It came up to the side of the crib and went even with the bed and was on the bed and seemed to be part of the bed.

After photographing all of this room, and obtaining all of my photographs, overall photographs, we then backed out and spoke with the coroner, the SLED agent, and wanted further instructions on what we needed to do after photographing the entire scene.

Q. Later on did you find that H.B.'s hair had been cut before she went to the ER that night or before she was taken to Spartanburg Regional?

A. When---

Q. Go ahead.

A. When, when I was backed out, and, as I said, spoke with the coroner and the SLED agent, they asked me if I saw anything in that room that looked like her hair had been cut. So, I said well, I was not looking for anything specific. But I will go back in and I will check.

When I returned to the room and began scanning the

bed, began scanning the crib, and the trash along the way, I found a pair of scissors. I found a clump of hair. I found a bloody gauze, bloody gauze and then, as I kept standing, I found two more clumps of hair. They requested that I collect those items as evidence.

Q. And did you collect those items?

A. I did collect those items.

Q. Let me show you what's been marked as State's Exhibit 94, 95, 96.

Is those the three clumps of hair that you collected, sir?

A. Yes, they are.

Q. All right. Let me show you State Exhibit 98.

Is that the bloody gauze that you collected, sir?

A. Yes, it is.

Q. And let me show you State Exhibit 97.

Was that the pair of scissors that you collected, sir?

A. Yes, it is.

(WHEREUPON, the witness returns to the stand.)

SOLICITOR BARNETTE: Okay. Your Honor, I like to move these into evidence, these into evidence at this time.

THE COURT: You got the numbers?

SOLICITOR BARNETTE: I believe it was 94, 95, and 96,

97, and 98, Your Honor.

THE COURT: Any objection from anyone?

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No, sir, no objection.

THE COURT: Without objection, they're admitted.

SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

(WHEREUPON, State's Exhibit Nos. 94 through 98 were received into evidence at this time.)

Q. If you would, sir, I'd like to show you just a couple of pictures. I know the jury has seen these pictures. But I want to show you just a couple specific ones showing like the hair and the scissors and so forth.

(WHEREUPON, the witness comes down from the stand.)

Q. Let you use this again for a pointer if you will.

A. Okay.

Q. Let me get them or show them to the jury.

Okay. If you would, sir, show us where you found the scissors in this case. It might be easier to use this.

A. Obviously next to this, next to this pillow that had some type of blood like stain on it, it -- they were found down between two pillows.

Again, I, I do apologize. I just can not tell you where the bed begins and the trash is. I just knew that, once I started moving around, that it became apparent,

because of having to step actually on the bed at some point as well, that it became apparent that when they were down between these, these two pillows and like guard -- like a blanket here.

Q. And that's State Exhibit No. 90. Go to the next one here.

Is that just a close-up picture of the scissors that you gathered?

A. That, that is a close-up picture of the same scissors.

Q. State Exhibit 91.

Let me show you State Exhibit 89.

Can you tell the jury what you're seeing there, sir?

A. That is the -- that's a picture of the gauze with blood like stains on that that was collected as well.

Q. Okay. And then go right there and then right up here.

Is this some of the hair that you collected, sir?

A. Yes, just on that leopard print, leopard print sheet or something.

Q. And this is the master bedroom.

Is that correct?

A. Yes, this is in that master bedroom.

Q. And that's the leather print down there where the hair was found on the bed.

Is that right, sir?
A. Yes, that would be the edge of the bed closest to the, the crib area.
Q. Okay.
MR. MORIN: Your Honor, if I may?
Can you tell me what exhibit that was he just referred to?
SOLICITOR BARNETTE: I did. I stated it earlier. I think it was---
MR. MORIN: Okay. The one -- the last one -- this one. Not that one. This one.
SOLICITOR BARNETTE: That's State's Exhibit 88.
MR. MORIN: Thank you.
Q. Showing you State Exhibit 84, what -- can you tell me what that was?
A. This, this was the crib area. It had numerous adult diapers, used, just discarded in the crib. Also it -- what I would describe as the puppy pads that you would lay down for cats or dogs that are being potty trained or house trained and it looked to be layers and layers of those. Again, that was compacted smell of, of different kind of feces altogether to potentially include human in this one.
Q. Let me ask you about an area right here and we might -- well, get closer. Right in that area right

there.

What did that appear to be inside that big crib in that area?

A. In -- inside the crib there were numerous flies and roaches both dead and alive.

Q. Did there also appear -- let me move a little bit closer in that, sir.

What else did that appear to be in this area right in here?

A. Are you talking about the, the fecal stains or possibly the---

Q. No, the item---

A. ---other---

Q. The item that's inside the -- right there. The dark area.

A. I, I can't tell.

Q. Okay. But obviously it, it was all kind of different things in there?

A. Yes, unfortunately, urine and feces compacted in there and just layers of those puppy pads.

Q. Could you tell if it was human or, or animal or --?

A. I, I could not tell. I just -- that is an assumption.

Q. Let me look here for a second.

Agent, State Exhibit 81, is that a close-up of some

of the hair that you found?
A. That is, that is a close-up of more hair on that -- with the print blanket on there, yes.
Q. Showing you State Exhibit 79, is this the area you was talking about as you went into the master bedroom that you was talking about with the cats and so forth?
A. Yes, ah -- originally that is the bedroom to the doors to the left of, of that and, like I say, the shelving there. That seemed to be a quiet resting place for numerous cats. They did kind of run away, of course, when we got closer. But there were two cats that remained up there both in poor condition.

That top layer was very slick and I believe that that was cat urine because that was where the strongest smell was coming from. And the bottom shelf was cat feces because that's where they seemed to hop down to to use the restroom.
Q. And that is where the -- her, her crib was right at the corner of her room I guess?
A. Yes, it was.
Q. And it's just -- State Exhibit 78, that's just a picture lower of the area.

Is that right?
A. Yes.
Q. And that's where are the -- where her medical

supplies were I guess?
A. Yeah, there seemed to be an oxygen tube and some type of IV tube that was there and they, they themselves were also covered with bugs and roaches and you can see a few of them in the pictures as well.
Q. Going back to this, State Exhibit No. 75, is this the -- was it the only working bathroom that you saw in the house or I guess -- I---
A. After---
Q. This is gonna be accessible too I guess.
A. The bath -- yes, this was the only accessible bathroom that we could get to and this is the one where I could hear the running water both inside and outside from it. So, this would of been on the right-side of the residence from there.
Q. Was this the, the dog you was describing in the bathtub too?
A. Yes, this was a dog that was hiding from us. Seemed to appear to be suffering from mange, and, as you can see, everything in the bathroom is covered in a layer of, like I said, feces, filth, roaches. Just flies, fleas, any kind of bugs.
Q. Showing you State Exhibit 76.
Is that just another picture of another area of the bathroom?

A. That is the, that is the closer down of the, of the floor, yes.
Q. Was that the only thing -- the package of diapers, was that the only thing that looked clean at the point?
A. That and the one pad that looked like it had just been moved off the side behind the toilet. Those are the only things that looked clean and had recently been, I guess you would say, added to the bathroom.
Q. Let me show you what's been part of State's 69.
Can you tell us what that area is, sir?
A. That is directly kind of -- it -- it's between the T-wall I described and the kitchen and that breakfast nook that I would describe it as. That seemed to be a portable like stand-alone heater covered in roaches, hundreds of roaches, both dead and alive, and in and out of the actual heater itself.
Q. And a close-up into that.
Is that what you are describing, sir?
A. Yes. Yes, it is.
Q. And you said there's live and dead?
A. Yes.
Q. Showing you State Exhibit 67.
Is this the kitchen that you saw that night?
A. This was the kitchen. This was I believe how I described no working appliances that appeared -- like the

oven didn't appear to be in working order. There was another oven in the front room that did not appear to be in working order.

All of the countertops were covered, including the table that's off to the right, all of it was covered in some, some layer of filth, some layer of dirt, some layer of feces, bugs, roaches, and just the smell was particularly bad in the, in the kitchen floor area and the countertops depending how thick it was.

Q. And then State Exhibit No. 64, that's just a general picture of the whole master bedroom.

Is that right?

A. Yes.

At this time there were approximately three dogs on the bed and one cat and this, as I said, was us having to force the master bedroom door open and, again, not being able to tell where the floor was suppose to be and where the bed began.

Q. Let me ask you a question.

Did you open the door to discern or in order to get in -- to fully get into the -- force it open?

A. We did have to force it open and we actually had to step up onto the trash to get in and it was only one at a time. Somebody had to hold the door for the next person to come in.

Q. But could you open it in any amount of time?
A. Oh, no, like I said, every time you opened it it would come back because, to the right, that pile of trash would come back on -- onto the door.
Q. Okay. But it could be opened?
A. It could be. It could be opened but with the help if you definitely want to open in.
Q. That's the door we're talking about, State Exhibit 62.

So there is a spot that you can get through to get into the bedroom?
A. Yes, sir, you can actually tell the -- you may not be able to tell with this. But the door's actually bowed from having to be forced open by so many people.
Q. Showing you State Exhibit 58.

Was this just what you're talking about the surfaces are just generally in this condition?
A. Yes, they were. Like I said, they had, they had the layer of whether it was filth or feces compacted from a long standing period of just repeated use and not cleaning.
Q. Okay. Showing you State Exhibit 54, can you tell what -- describe -- I think you described this but if you'd tell us again what this is.
A. This is that front room. On, on the other side of

the window you can see the handicap rail going down too. So this is the front room to the left that you have -- you walk in the front door. I'm working---

MR. MORIN: Your Honor, I have a motion.

Can we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

Q. If you'd have a seat.

(WHEREUPON, the witness returns to the stand.)

Q. With the pictures you saw and everything, they show it -- that's what you saw that night from there?

A. That, that is correct. Those are the conditions of the house as we found them that evening.

Q. And then you took the evidence and obviously put it into evidence at the Sheriff's Department.

Is that right, sir?

A. Yes, it was taken back to the Cherokee County crime lab where it was packaged, sealed, and placed in our evidence vault.

SOLICITOR BARNETTE: Okay. One moment, Your Honor, please.

(Pause.)

Q. If you'll please answer any questions the defense may have for you, sir. Thank you.

MR. FILE: No questions.

MRS. RACINE: I have no questions for this witness.

THE COURT: Mr. Morin.

MR. MORIN: I have a few questions.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MORIN:

Q. You served a search warrant on David Baynard.
Is that correct?

A. I did, sir.

Q. Is it your understanding that he was the homeowner?

A. It was my understanding that he was the homeowner.

Q. Is it your understanding there were three adults living there?

A. At the time I was not aware of the son's age. So I was only aware of two adults. At the time I just know it was two adults and a son. So, I was not aware of his age at the time.

Q. Okay. I need to -- I'm sorry, Your Honor. I don't -- I'm not familiar with this ELMO system.
Can I get someone to help turn on this diagram?
I need State's Exhibit No. 99.
Your Honor, may he step down for a moment?

THE COURT: Sure.

(WHEREUPON, the witness comes down from the stand.)

Q. And I don't have this pointer. But I think we can cover it.

You referred to -- well, let me just come over here.

This area right here is the main master bedroom, correct?

A. From my understanding it was.

Q. Okay. And this is also where the crib was?

A. It -- yes, it was.

Q. And you've marked the doorway and entryway on the diagram where there was a door that you could not open.

Is that right?

A. No, you could, you could open the door.

Q. Well, I mean---

A. But, again, you had to force the door open to get in.

Q. I'm sorry. My bad description. Had to force it open.

All right. And there's also another bed in here that you could -- stood on I think at one point?

A. That's what they -- yes, at some point I had to stand on it and it was a more solid surface than the trash I was on.

Q. Sure.

And then the other bedroom is all the way over there.

Is that right?

A. Yes, the far right bedroom, yes.

Q. That's right.

And that door faces out into what I would call a small hallway.

Is that correct?

A. Yes.

Q. Okay. That's all. You can --.

(WHEREUPON, the witness returns to the stand.)

MR. MORIN: That's all the questions I have.

THE COURT: Anything?

SOLICITOR BARNETTE: Nothing else from the State, Your Honor. We ask him to be excused, Your Honor.

THE COURT: Any objection to him---

MR. FILE: No objection.

THE COURT: ---being excused?

MRS. RACINE: No objection.

MR. MORIN: No, sir.

THE COURT: Sir, you may step down and be excused. Stay with us or go, whichever you choose.

THE WITNESS: Thank you, sir.

SOLICITOR JORDAN: Thank you, Your Honor.

State calls Melissa Patton.

THE CLERK: Raise your right-hand. Place your left-hand on the Bible.

MELISSA PATTON, being first duly sworn, testified as follows:

THE CLERK: Watch your step.

THE BAILIFF: Watch your step.

THE COURT: Ma'am, tell us who you are and spell your last name for my court reporter please.

THE WITNESS: My name is Melissa Patton. Last name is P-A-T-T-O-N.

THE COURT: Thank you.

Solicitor.

SOLICITOR JORDAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR JORDAN:

Q. Ms. Patton, where are you employed?

A. I work at Axcess Home Care.

Q. Okay. For the record, can you just spell Axcess cause I know it's different?

A. It is. It's A-X-C-E-S-S.

Q. Okay. What, what services does Axcess provide or what services did Axcess provide in this case involving H.B. [redacted]?

A. We provided CPCA and respite for medically complex children.

Q. Okay. Could you tell the jury what CPCA is?

A. The CPCA is a children's personal care aid.

Q. Okay. I'm gonna go back just for a minute.

Can you just tell the jury what your background is?

A. I'm---
Q. What---
A. ---mainly a pediatric nurse.
Q. Did you go---
A. I was---
Q. ---to college?
A. I did. I went to USC-Upstate.
Q. Okay. What did you finish with?
A. A bachelor's of science in nursing.
Q. Okay.
A. And then I did further my education and received half of my masters for when I taught at Gardner-Webb.
Q. Okay. How long have you been at Axcess Health?
A. I have been there eight years.
Q. Okay. What was your position in 2020?
A. In 2020 I am the -- was the or I am the nurse director and the head of the education.
Q. Okay. And you mentioned just a moment ago that you also taught in addition to nursing?
A. I did.
Q. Where did you teach?
A. At Gardner-Webb University. I taught the nursing program.
Q. Okay. What were your duties as the nursing director/educator?

What -- I'm sorry.

What your title was again.?

A. It is director -- the director of nursing but I also -- and educator.

Q. Okay.

A. As the educator, it is my responsibility to provide all of the education that the State requires. They require us to do so much in their policy. So, my job is to ensure that all of our aids are equipped with those tests, with those pamphlets we use on multiple PowerPoints, handouts, videos.

Q. Okay. And those trainings are done with every employee who is a children's personal care aid or respite aid?

A. And a PCA, which is just personal care aid, yes, ma'am.

Q. Okay.

A. Every employee.

Q. How are -- how does a person come to -- how does the caregiver or a parent come to you to retain the services of your agency?

A. The parents are -- when they are part of the waiver, there's different waivers that they would be on. The -- their caseworker would give them a whole list of different providers that could provide those services and the parent

or responsible party would choose which agency they wanted to use and their caseworker would send us what's called an authorization.

Q. Okay. And when -- who picks the person that would be the CPCA or the respite aid?

A. We allowed the responsible party to do that.

Q. Okay. And, in this case, it would be the parents of H.B. ?

A. Yes, ma'am.

Q. Okay. Who did the parents pick?

A. They chose their son, Edward --

Q. Okay.

A. -- Baynard.

Q. I want to show you some documents.

MR. MORIN: Your Honor, I may have a motion.

THE COURT: Okay.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

Q. Ms. Patton, I'm gonna start with what's been previously marked as State's Exhibit No. 126 and ask you to review this?

A. Okay.

Q. Do you recognize what that exhibit is?

A. Yes, ma'am, it is our employee handbook.

Q. Okay. And is that kept in the normal course of your

business?
A. Yes, ma'am.
Q. Okay.
A. It is required.
SOLICITOR JORDAN: Okay. Your Honor, at this time we would move State's No. 120 -- I'm sorry. I forgot the number already.
THE WITNESS: One twenty-six.
SOLICITOR JORDAN: One twenty-six into evidence.
THE COURT: Any objection?
MR. MORIN: No, sir.
MRS. RACINE: No objection.
MR. FILE: No.
THE COURT: Okay.
MR. FILE: No.
THE COURT: Without objection.
(WHEREUPON, State's Exhibit No. 126 was received into evidence at this time.)
Q. Okay. I'm also going to -- got it over here.
Show you what's been previously marked as 119 and ask if you recognize those documents.
I'll take that.
Do you recognize what's in State's Exhibit 119?
A. Yes, ma'am, this is part of his application.
Q. Okay. And as part of his applica -- I'm sorry.

As part of his application, is that kept in the normal course of ordinary records within your agency?

A. Yes, ma'am, it is kept in his file.

SOLICITOR JORDAN: Okay. Your Honor, at this time I would move 119 into evidence.

MR. MORIN: No objection.

MRS. RACINE: No objection.

MR. FILE: None.

THE COURT: Very well. One nineteen's without objection.

(WHEREUPON, State's Exhibit No. 119 was received into evidence at this time.)

Q. Well, also gonna hand you what's been previously marked as 120.

Do you recognize what's in 120?

A. Yes, ma'am.

Q. Okay. What is that?

A. It is a combination of the different educations that Edward had completed.

Q. Okay. And those are also kept in the normal course of your ordinary business --

A. Yes, ma'am.

Q. -- records?

Your Honor, I move that -- State's 120 into evidence.

MR. MORIN: No objection.

MRS. RACINE: No objection.

MR. FILE: None.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 120 was received into evidence at this time.)

Q. Can you tell the jury what is the first step that a -- an employee who's gonna be a respite or CPCA, what is one of the, the first steps that they do?

A. They would get an application. So, we send that through a program could ApplicantStack.

Q. Okay. In addition to that, are they also given a list of things that are required?

A. Yes.

Q. Okay. And is that's what's contained in State's Exhibit No. 119?

A. Yes, ma'am.

Q. I'm gonna hand you 119 and just ask you about a couple things once I pull a copy up for myself.

In 119, in addition to the application -- and on the application, does it give you Edward's date of birth?

A. It does.

Q. Okay. What is that?

A. His date of birth is [redacted].

Q. Okay. Does it also give you his phone number?

A. It does.

Q. What is his phone number?
A. The phone number. There it is. Sorry.
[redacted]-5299.
Q. Thank you.
If you will fast forward.
Are there documents in here that contain with -- that cover confidentiality---
A. We're---
Q. ---standard of conduct agreement --
A. Yes, ma'am.
Q. -- as well as information indicating that he has received the information that's provided on what's -- if -- can you look at the very bottom?
There's a 26 at the very bottom of the page---
A. Yes, ma'am.
Q. ---on that.
Does that also indicate that he has received the documents that are contained there?
A. Yes, ma'am, it does.
Q. Okay. And he has an e-Signature on this?
A. He does.
Q. And what is the date?
A. 9/14/2020.
Q. Okay. And does it -- some of the issues -- what are some of the things that are in there that he is stating

that he received?
A. Ah, our confidentiality, the documentation on recordkeeping, infection control, patient hygiene and skincare, lifting and transferring, meal preparation, substance abuse, abuse policy, dress code, and call-in, the job description of the PC 1 and 2 or CPCA.
Q. Okay. He also on -- if you look at that State's Exhibit, the little number at the bottom, 28, did Edward also complete a skills assessment?
A. A self. It's a self-assessment for unskilled.
Q. Okay. Did he state things that he had done versus things he had never done?
A. Yes.
Q. Okay. On Number 30 at the bottom of that exhibit, very tiny bottom, is there -- is that just the dress code for your agency?
A. Yes, ma'am.
Q. Okay. And Number 52 -- I'm sorry. I'm gonna skip number -- I'm gonna skip that one for right now.
Let me ask you this.
When did you first come into contact with Edward?
What was the date?
A. I -- it would of been when he came into the office for the first time to complete his health assessment and drug test.

Q. Okay. And that drug test is referenced -- and it was a negative drug test?
A. Yes, ma'am.
Q. Okay. And that drug test is referenced on the bottom of the little, little Numbers 54 as September the 23rd of 2020?
A. Yes, ma'am.
Q. Okay. So you met with Edward in person that day?
A. Yes, ma'am.
Q. Okay. How did Edward arrive at your office?
A. His father brought him to the office.
Q. Okay. And where is your office located?
I should of asked you that earlier?
A. We're located at 110 Garner Road. It's close to the hospital.
Q. Okay. In Spartanburg County?
A. In Spartanburg. I apologize.
Q. Okay. So when you met with him in person, did his father stay for the whole time?
A. He did.
Q. Did he stay in the same room as y'all?
A. No, ma'am. I met them in the lobby and then me and Edward went into the nursing office.
Q. Okay. And while in the nursing office, did you fill out with Edward the forms that are contained within this

that have an, an actual physical sig -- signature on them?
A. Yes.
Q. Okay. Did you also, in addition to that, complete a -- and his signature's contained on Number 54 at the bottom of that exhibit as well as in other places?
A. Yes, ma'am.
Q. Okay. So, when you met with him that day, did you also go through the training materials that were contained in the employment handbook?
A. Yes, ma'am.
Q. Could you explain to the jury how 126 is tested in relationship to what's on 120 and I'll give these to you?
I'll take that one and hand it back.
A. So, on 120 is the training guide competency test. When he was filling out the application from applicant's stack, he was given 126, which is the handbook, and then there were test questions that he was given to go through and he would have to answer each one of those.
Q. Okay. So, he answered that before he met with you on September the 23rd of 2020?
A. Yes, ma'am.
Q. Okay. But what did you do with that test when he came into the office?
A. So, what I do when I'm doing -- we call it on-boarding. So, when we're completing his new hire, I

will look at this competency test, and anything that he has wrong, I'm gonna find out why he got it wrong. Did he just misunderstand the question or just explain what the correct answer would be.

Q. Okay. And he did get multiple questions correct?

A. Yes, ma'am.

Q. Okay. Including -- can you tell the jury about the question on Number 10?

A. Question 10 is what is one early sign of a pressure sore.

Q. Okay. I'm gonna put it -- if you'll bring that and come down here with me. We're jut gonna go through a couple of these questions, not all of it, cause the jury will have it.

(WHEREUPON, the witness comes down from the stand.)

Q. Okay. So, 110 deals with pressure sores?

A. Yes, ma'am.

Q. Okay. Eleven, could you tell the jury what that question is and what the answer was?

A. The question is whose responsibility is it to report suspected abuse or neglect and the answer is everyone.

Q. Okay. Number 12.

A. Number 12 is true or false. Neglect is a type of abuse.

Q. Number 13.

A. What is the number one way to prevent an infection is hand washing.
Q. Okay. I'm just gonna refer to my notes briefly.
Okay. You can have a seat. Actually just -- actually if you'll remain right here.
Did -- of State's Exhibit No. 120 of the small letters, 59, small numbers, 59 at the bottom, what is that?
A. That is our competency evaluation documentation.
Q. Okay. Did you document that Edward either passed or failed those items?
A. Yes, ma'am.
Q. Okay. What would of happened if he failed the items?
A. Then he would of been given additional education.
Q. Okay. How much -- if you'll have a seat.
(WHEREUPON, the witness returns to the stand.)
Q. How much training do you do initially when you're at the on-boarding process?
A. How much education do they do?
Q. Yes, ma'am, at the on-boarding process.
A. When they're on-boarded, they will go through the training guide and do the competency test. So, that's one form of education.
Q. Okay.
A. Then the State requires us to do 10 units of

education per year for them in person and then six can be independent. Normally, at the on-boarding, we definitely complete the in-person education and it depends on how we do the, the rest.

Q. And when you say units, what do you mean?

A. That -- hours.

Q. Okay. And so---

A. Sorry.

Q. You, you document it in a client's or rather an employee's file that that is completed?

A. Yes, ma'am.

Q. Do you---

A. We use an in-service document.

Q. And I don't know if you'll get to see this or not from there but this is 120, little 62 at the bottom. I'll zoom out.

Can you see that from there?

A. Yes, ma'am.

Q. Okay. Does that indicate that he did complete training in 2020?

A. Yes, ma'am.

Q. Okay. Do you -- do -- you mentioned yearly.

Do y'all also do training the following year if he's still employed?

A. Every year that you are employed we complete the 10

of education.
Q. Okay. And this notes that these items were completed on four different days, I'm sorry, three different days?
A. Yes, ma'am.
Q. Okay. For 2021, which this is State's 120, 61, was training also completed in 2021?
A. Yes, ma'am.
Q. Okay. I see the 5/12 and did you meet with Edward in person on that date?
A. Yes, ma'am, I did.
Q. Okay. So, you met with Edward at your office?
A. Yes, ma'am, he came in.
Q. Okay. Who brought him?
A. His father again.
Q. Okay. Did his father come back into the office with you for training or wait in the lobby?
A. He stayed in the lobby.
Q. Okay. So he was by himself with you for training in 2020 and in 2021?
A. Yes, ma'am.
Q. Okay. In addition to the in-person training that you completed with Edward, did you also have other trainings throughout that year?
A. We did.
Q. How do y'all do those?

A. So, at the time that Edward was with us, we used an app called Kaizala. It's -- through Microsoft.

You are able to create the different trainings done by either PowerPoint, a hand-out. I've done several videos that will go over different things and you would actually send that through the app. And after they watched or read the material, then they would answer the following questions or the questions that go with it and we would grade each one that came in.

Q. I'm gonna show you what's marked as State's Exhibit -- on State's 120, the little bottom, 74, and ask if this is an example of the Kabala (phonetic)?

A. Kaizala.

Q. Kaizala training.

Is that an example of the training through the app?

A. That is an example of the questions, the test portion of it, yes, ma'am.

Q. Okay. And what phone number is notated on that?

I'm sorry. You can step down if you need to.

A. All right.

(WHEREUPON, the witness comes down from the stand.)

A. [redacted]-1529.

Q. Okay. And what is number one?

What is the, the question and answer to number one?

A. The answer is true. Our goal is to prevent the

client from getting bed sores and to keep them comfortable.

Q. Okay. If you'll have a seat back --.

(WHEREUPON, the witness returns to the stand.)

Q. So you did training with him in 2020.

Also in 2021?

A. Yes, ma'am.

Q. And that training is do -- is documented in 120 --

A. Yes, ma'am.

Q. -- State's 120?

In the employee handbook -- that's it.

A. Sorry.

Q. That's okay.

One twenty-six -- does 126 also dock -- reference neglect and give examples of that?

A. It does.

Q. Okay. In addition to that, does it also talk about -- in that example that you have, I'm looking at what's at the bottom that's marked 431 or Page 10 of the employee handbook.

A. Yes, ma'am.

Q. Does it give examples of physical abuse?

A. It does.

Q. The -- what is the last dot under physical abuse?

A. Injuries from which the explanation given is

incorrect or inadequate. Excuse me.
Q. Okay. And that's in addition to other, other stuff on there including bruises of different colors, bruising in different areas?
A. Yes.
Q. Okay. So, this is this try -- this is a book that Edward had and took a test on?
A. Yes, ma'am.
Q. Also, on Page 11 of that, does it also cover neglect?
A. It does.
Q. And what is the fourth dot down under neglect?
A. Demonstrates poor hygiene or smell of urine or feces.
Q. And going two down, what is that one?
A. Appears excessively tired.
That one?
Q. No. Six. The sixth one down. Starts with have.
A. Oh, have unattended medical or dental problems such as infected sores or badly decayed teeth.
Q. Okay. And at the -- can I see yours for just a moment?
A. Yes, ma'am.
Q. At the bottom of 11, does it also give numbers to call?
A. It does.
Q. So, in addition to 9-1-1, does it give other help for

people who need to report abuse or neglect?
A. Yes, ma'am, it is the hotlines, American help lines.
Q. Okay. And, on Page 12, is there a section on there about caring for the client?
A. Yes, ma'am, there is.
Q. And what is the number one way to prevent infection?
A. Always wash your hands.
Q. And I believe we also saw that on the exam?
A. Yes, ma'am.
Q. Did Edward -- in addition to the training, what were your other responsibilities as far as time management, time documentation?
A. The -- yes. How you turn in your hours worked.
Q. Okay.
A. Your activity and time sheet.
Q. I'm gonna show you 123 and 122 and ask if you can identify -- well, first we'll start with 122.
Okay. Do you recognize what's contained in State's 122?
A. Yes, ma'am, these are his activity and time sheets for his respite hours.
Q. Okay. And are those kept in the normal course of your ordinary business?
A. Yes, ma'am.
SOLICITOR JORDAN: Your Honor, I would move, at this

point, 122 into evidence.

MR. MORIN: No objection.

MRS. RACINE: Without objection.

MR. FILE: No objection.

SOLICITOR JORDAN: Permissions---

THE COURT: Without objection, 122.

SOLICITOR JORDAN: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 122 was received into evidence at this time.)

Q. I'm gonna show you 123 and ask you to do the same.

A. They are his time records for his CPCA hours.

Q. Okay. Can you tell the jury, in Edward's case, what hours he was allowed to work?

How many number of hours a week was he allowed to work?

A. What they're allowed is what the authorization says and, for H.B., she I believe got 28.

Q. Twenty-eight---

A. CPCA hours --

Q. Okay. And---

A. -- and 68 respite hours per month.

Q. Okay. Did he---

A. CPCA's per week.

Q. Okay. CPCA's weekly and that was 28?

A. Yes, ma'am.

Q. And the other was respite and that was 68 per month?
A. Per month.
Q. Is that why it's documented separately?
A. Yes.
SOLICITOR JORDAN: And, Your Honor, did I move 123 into evidence?
THE COURT: You have not.
MR. MORIN: No objection.
MRS. RACINE: No objection.
MR. FILE: No objection.
THE COURT: Without objection.
SOLICITOR JORDAN: Thank you, Your Honor. I apologize for that.
(WHEREUPON, State's Exhibit No. 123 was received into evidence at this time.)
Q. I'm gonna just put an example up up here. If you'll just step down with me.
(WHEREUPON, the witness comes down from the stand.)
Q. I just want to show the jury what's contained in these. So, I'll start out with the 120 -- I'm sure -- I'll start out with 123. I am just going to, to pick a date. In 123 at the bottom it says 170.
Tell the jury -- can you explain to the jury what is on this page?
Let me zoom out.

A. So, on this page, it consists -- it says the client's name, which is H.B. , her client number, which is the number that is her -- normally it's the Medicaid number. But it's the number that the state gave her.

Below that is a graph that shows the day of the week that they worked. The end time is the time that they clocked for -- put down that they started work. The out time is the time that they quit -- stopped.

The first set of initials, the initials underneath, one set is for the aid, which would of been Edward, and the other set is of a parent or the responsible party that shows that they agreed with the -- of times that they worked.

Underneath that you would have Edward's signature for the home health and then you would have the client's or the responsible party, the guardian, signature.

Below that we do personal care. So this would be their activities, what they -- what activities they provided that day.

Q. Okay. What is at the bottom of client observations?

A. The client observations, the way we explain it is that the observations is the reason we did the activity.

Q. Okay. And how is this submitted to Axcess?

A. These forms are on an app that they would have on their phone. It's called doForms.

So, it -- they actually pull it up on their phone. They would put in -- log in their time in, time out, the days of the week, the weekend, and, and you can actually hit the little pencil and it would open up and you would sign your name with your number.

Q. Okay. And then that was submitted to you?

A. Once they completed it for the week, they submit it and it goes to our main system. And, on Monday mornings, I would go into the system, pull up his sheets. We check the sheets just to make sure that they have their dates on them, the AM and PMs are not mixed up. If we do see something wrong, we would contact them to fix it cause we can send it back to their phone and then we print them out and log those onto a separate spreadsheet for available.

Q. Okay. And do you see the initials for the client or guardian of H.B. ?

Can you read those from there?

A. On that one, on that one it looks like the second set is -- is it Bobbie's?

Yes. The client bar name is the second set.

Q. Okay. Pull this out and we'll flip for a moment.

Let me ask you if you can identify the, the initials for the client or guardian there.

A. Again, it appears that Edward's is the first set of initials under the time and this one looks like it is

David's---
Q. Okay.
A. ---initials.
Q. Did it matter which parent signed?
A. No, ma'am, it doesn't.
Q. Okay.
A. It's the responsible party.
Q. And they were able to pick and choose the dates and the -- how to use the 28 hours or the 68 hours?
A. Yes. In children, they get to do their flex of the schedule.
Q. Okay.
A. It's not a set schedule.
Q. So, for this one, which is on State's 123, 172 at the bottom little numbers, they chose Monday, 12:00 to 21:30?
A. Yes, ma'am.
Q. Tuesday, 12:00 to 21:30?
A. Yes, ma'am.
Q. And Wednesday, 12:00 to 21:00?
A. Yes, ma'am.
Q. Which totals to 28?
A. Yes, ma'am.
Q. Okay. So, if we are going to look at State's No. 122 for that same week, is there also documentation on State's 26?

A. Yes, ma'am, there is.
Q. I'm sorry. State's 126, little letter -- little numbers two down at the bottom.
A. Yes, ma'am.
Q. Okay. Does that indicate that on Thursday of that same week Edward worked 12:00 to 20:30?
A. Yes, ma'am.
Q. And the same the next day on Friday?
A. Yes, ma'am.
Q. Okay. And so if you put those two together, that shows that he worked five days?
A. Yes, ma'am.
Q. And that's how these two exhibits would go together to show his work week?
A. Correct.
Q. Okay. I'm gonna flip.
So y'all work week starts on Sunday?
A. Yes, ma'am, it goes Sunday through Saturday.
Q. Okay. And occasionally there's blank sheets in here.
What does that mean?
Find one over here.
A. There would be more blank sheets in the respite because, again, he only got 68 a month and they can divide that up however they want as long as her employee don't exceeds more.

Q. Okay.
A. So he -- if that's what's in there, he could show that.
Q. Okay. And I'm gonna go to staying with State's 123.
Can you tell the jury on this one, which is the second page of that exhibit, what is the date of service for that Sunday?
A. Four ten.
Q. Okay. And what are the hours that is placed on there?
A. 8:00AM to 22 PM, which would be 8:00 to 10:00 at night. Eight in the morning until 10:00 at night.
Q. Which, if my math is correct, is 14 hours?
A. Yes.
Q. Okay. Well, how about on Monday, Monday, April 11th, 2022?
A. It's from 6:00 in the morning to 20 at night, which is eight o'clock at night.
Q. Okay. Is that an additional 14 hours?
A. It is.
Q. Okay. For a total of 28?
A. Yes, ma'am.
Q. If you will have a seat.
(WHEREUPON, the witness returns to the stand.)
Q. Did you see Edward again in 2022?

A. Yes, ma'am, I did.
Q. Okay. And when did you see Edward again roughly?
A. I believe it was the Monday of the 18th.
Q. Okay. Of what month?
A. Sorry. Of April.
Q. Okay. So, this was after H.B. passed?
A. Yes.
Q. Okay. And where did you see him?
A. Him and his father actually came to the office --
Q. Okay.
A. -- because he had requested a copy of his W-2 so he could go file his taxes.
Q. Okay. So, he appeared in the office again that day?
A. Yes.
Q. Okay. I'm gonna show you -- oh, I'm sorry. I put it on the bar.
I'm gonna show you State's 124 and ask if you recognize this.
A. Yes, ma'am.
Q. Okay. What does State's 124 show?
A. This is a text thread between me and Edward Baynard.
Q. Okay. Is, is anyone else also included in the first screenshot?
A. Sorry. In the first one, his mother, Bobbie, was also there.

Q. Okay. Is that a fair and accurate representation of those -- that set of text messages?
A. Yes, ma'am.
SOLICITOR JORDAN: Your Honor, at this time we move that exhibit into evidence.
MR. MORIN: No objection.
MRS. RACINE: Without objection.
MR. FILE: No objection.
THE COURT: Without objection, 124 is admitted.
(WHEREUPON, State's Exhibit No. 124 was received into evidence at this time.)
Q. So, you communicated with Edward --
A. Yes.
Q. -- on this via text?
You also communicated with Bobbie?
A. Yes, ma'am.
Q. Okay. On State's 124 is the first -- a text message between you and Bobbie?
A. Yes.
Q. You can step down if you need to. I know it's small writing.
A. Yes.
Q. And is Edward also on that?
A. He is.
Q. Okay.

A. The first---
Q. But didn't respond but he's on it?
A. Right.
Q. Okay. But the next one, the second page -- part of that is just with Edward?
A. Yes, ma'am.
Q. Okay. In the first one with Bobbie, is she confirming -- are you confirming the numbers of hours?
A. I am. So, each week we confirm the hours worked with the responsible party.
Q. Okay. And in the other one, are you just going through with Edward about his timecard?
A. Um.
Q. You can come down if you can't see it.
A. I was gonna say is that not the one I've said as per our conversation?
(WHEREUPON, the witness comes down from the stand.)
Q. At the very top, what does that bubble say?
A. Oh, sorry. Do you want me to do the hours as a time sheet though.
Q. And your response?
A. Yes. Please.
Q. Okay. Then you, then you discussed his last date with Axcess and expressed your sympathy for---
A. Yes, ma'am.

Q. ---the loss of H.B. ?
And did he also ask when he started working for Axcess?
A. He did.
Q. Okay. And that date again was?
A. 9/23 of 2020.
Q. And that was one of the dates you met him in person?
A. Yes.
Q. And you trained Edward?
A. Yes, ma'am.
SOLICITOR JORDAN: Your Honor, may I have a moment?
THE COURT: Yes.
(Pause.)
Q. The services that are provided by Axcess, who pays for that?
A. Who pays Axcess?
Q. Yes.
A. Medicaid does.
Q. Okay. Please answer any questions these three may have.
THE COURT: We're gon' take a break.
SOLICITOR JORDAN: Okay. Sorry.
THE COURT: Ma'am, we're gonna take a break and I'm gonna allow you to leave the stand. But you can't talk to anyone.

Okay?

THE WITNESS: Can I use the restroom?

THE COURT: Yeah, you can refresh yourself and so forth and let the jury go out and do likewise.

Mr. Foreman, ladies and gentlemen, you've been running a good hour and a half here. But we've been going two hours cause I had 30 minutes or so to take care of this morning. So we're gonna take a break, our staff here.

This will be our, our morning break for 15, 17 minutes. Coffee, water, whatever you might need, will be available for you.

Okay. And, Madam Alternate, if you would stay with me just one minute please?

Thank you.

Mr. Foreman, if you'd take the jury out.

(WHEREUPON, the following takes place outside the presence of the jury with the exception of the alternate juror.)

THE COURT: You may step down.

Ma'am, you're having, you've having trouble staying awake and I'm gon' invite you to stand if you need to.

Okay?

THE JUROR: Ma'am?

THE COURT: You, you are having trouble staying

awake.

THE JUROR: Excuse me. I didn't mean to say ma'am.

THE COURT: You're having trouble staying awake. So -- but I need you to stay awake.

Okay. So do you -- I'm gon' invite you to stand if you want to stand some.

THE JUROR: Oh, okay.

THE COURT: If you get sleepy, just stand.

Okay?

THE JUROR: All right.

THE COURT: Thank you, ma'am.

(WHEREUPON, the following takes place outside the presence of the alternate juror.)

THE COURT: Anything from the State or defense?

SOLICITOR JORDAN: No, sir, Your Honor.

THE COURT: Okay.

MR. MORIN: Your Honor, I'm obligated to say there's another juror who's also falling asleep and she's an active juror. I believe she's sitting in the third seat, African-American, in the front and at least three times she jerked her head back up when we -- Mr. Barnette was talking. I think she's woke up now but --.

THE COURT: I'll be looking for her.

MR. MORIN: Thank you.

THE COURT: Thank you.

Let's take a break.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Thank you. Please be seated. Thank you. Everybody ready?

SOLICITOR BARNETTE: State's ready, Your Honor.

MRS. RACINE: Yes, sir.

THE COURT: We'll have the jury.

Where's my -- come on up, ma'am.

(WHEREUPON, the witness returns to the stand.)

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Mr. Foreman, everybody good?

THE FOREMAN: Yes, Your Honor.

THE COURT: All right.

MR. FILE: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FILE:

Q. I just have one question.

I'm assuming you didn't do any home visits yourself, did you?

A. Did I do what?

Q. No home visits.

A. Not for Edward or not for H.B., no.

Q. Okay. Thank you.

CROSS-EXAMINATION

BY MRS. RACINE:

Q. Hi. I have two questions for you.

It looked from here like the timecards were electronically signed.

Is that correct?

A. No.

Q. They have physical signature's on them?

A. Yes.

Q. Okay.

A. They are -- what it does is the app will open up a signature box.

Q. Okay.

A. And just like when you go places and you use a PIN or your finger to sign your name. So, it is their signature.

Q. Okay. But you can't verify that David is the one who actually signed his name on the, the box, can you?

A. Can I verify that that's his---

Q. Were you there when he signed?

A. No, I am not there when he signs an app.

Q. Okay. So, you can't say for sure that that signature's actually his?

A. Correct.

Q. No further questions. Thank you.

THE COURT: Okay.

MR. MORIN: Okay.

THE WITNESS: Can I say anything else with that one question?

MR. MORIN: No. I mean I'm not the judge but --.

THE COURT: Do you need, do you need---

MR. MORIN: Right.

THE COURT: ---to fully explain that question?

THE WITNESS: I was just gonna put that we are able to have electronic signatures. We are verified through the state. That does allow it.

THE COURT: Okay. All right. Thank you.

CROSS-EXAMINATION

BY MR. MORIN:

Q. Axcess Home Care has contracts with the state.
Isn't that correct?

A. Yes.

Q. Okay. And that includes the Department of Special Needs.
Is that correct?

A. Yes.

Q. I believe health and human services or South Carolina's version of it you also have a contract with?

A. With DHEC.

Q. Yes.

A. Yes.

Q. Okay. Now, Axcess Health Care is a for profit corporation?
A. Correct.
Q. And they're -- primarily get their income from these contracts.
Is that correct?
A. That is correct. We are paid for a service --
Q. Okay.
A. -- that we bill.
Q. All right. Now, so, what happens is government money goes to Axcess, correct, and then Axcess takes some of that money for administrators and trainings and that sort of thing, correct?
A. Do we just take money?
Q. No.
You charge -- part of the money you get to run the service. You just testified you're a for profit corporation.
A. Yes, Axcess is paid a specific amount --
Q. Uh-huh. (Affirmative).
A. -- that is across the board that the state does. Axcess takes that money --
Q. Uh-huh. (Affirmative).
A. -- that we're paid and --
Q. Uh-huh. (Affirmative).

A. -- provide the services to our employees.
Q. Right.
And the company---
A. Our clients.
Q. ---makes money too?
A. Yes.
Q. Okay.
A. You have to, to survive.
Q. Right.
Now, does Axcess get like a block grant at the beginning of the year or are you paid by the client?
A. We are paid per hour billed.
Q. Per hour billed.
Okay.
A. So that would be that the aid --
Q. Uh-huh. (Affirmative).
A. -- either clocks in or sends in their time, the hours that they worked, we then bill Medicaid for that time that they have said they worked.
Q. All right. So, in other words, and let me make sure I got this straight, you hire aids, correct?
A. That is part of it.
Q. Okay. And you have clients?
A. We do.
Q. And, in this particular case, H.B. is a client?

A. Yes, H.B. was the client.
Q. And Edward was the aid?
A. Yes, that the parents requested to be hired.
Q. Correct.
And the parent is the caregiver?
A. No.
Q. Okay. I'm gonna show you what's marked as State's Exhibit 126, the employee handbook.
A. Yes, sir.
Q. I'm gonna ask you to look at Page 4 I believe. Make sure I've got it right.
All right. I'm sorry. Yes, Page 4.
Do you see that right there at the bottom in bold type?
A. (WHEREUPON, the witness nods affirmatively.)
Q. What does it say?
A. The vital signs is the very last---
Q. Up above that.
A. ---bold statement.
Q. Up above that.
A. Observations that need to be reported to the caregiver.
Q. To the caregiver.
This is what you gave Edward to, to go by, correct?
A. Correct.

Q. And it says right here observations he's suppose to give to the caregiver?
A. Which is the responsible party.
Q. Okay. The responsible party.
A. The person who is going to resume care of the client after the aid is finished.
Q. All right. And, in this case, that caregiver or responsible party is who?
A. The parents.
Q. Bobbie Jo Baynard and David Baynard?
A. Yes, the parents of the client.
Q. And, of course, they're also just happened to be Edward's parents.
Is that right?
A. They are Edward's parents.
Q. Okay. Now, are your aids authorized to do things not directed by the caregiver?
A. Can you say that again?
Q. Well, can an aid do something that hasn't been directed by the caregiver?
Can they just take it on their self to do something, whether it's feed them some sort of food, whether it's take them out of their bed?
I mean they work for you, correct?
A. They do.

Q. But they work at the direction of the parents, correct?
A. To an extent.
Q. All right. Well, let me ask you this.
Isn't it true that Axcess contacts the parents/caregivers while aids are working for you to check on how they're doing?
A. Correct.
Q. All right. So, Axcess calls -- we'll go with parent for you.
Okay. Axcess calls the parent and says how is your aid doing.
Is that right?
A. The only reason that we were calling them to do that --
Q. Uh-huh. (Affirmative).
A. -- was because of Appendix K which was added to the Medicaid guidelines for COVID. Normally we go to the homes to do visits, which the State requires us to do. So, in this case, it was telephonic because of the Appendix K.
Q. Right.
And you spoke to Bobbie Jo?
A. No, sir, I did not.
Q. Someone in your office spoke to Bobbie Jo?

A. One of our employees did, yes.
Q. Okay. And that was over the phone?
A. Correct.
Q. And part of the reason -- the reason was to see how the aid was doing.
Is that right?
A. We asked the parents are they satisfied with their service.
Q. That's not gonna stay.
And his mother said he was doing fine?
A. The responsible party did, yes, sir.
Q. Well, you can call it the responsible party but that's who it was.
Now, let me ask you this. You went over it briefly and I may have to make you repeat some things cause I want to make sure I got it clear.
A. Okay.
Q. H.B. had a caseworker?
A. Yes.
Q. Is that with DDSN?
A. Yes.
Q. Okay. Department of Special Needs. I didn't want to -- make sure the jury understands the terminology I'm using.
A. Yes, that is a Medicaid caseworker --

Q. Okay.
A. -- and it goes by which service they have.
Q. Right.
And there's waivers.
Can you tell me what those waivers are that you referred to?
A. There are multiple kind. There are medically complex children's waiver.
Q. Uh-huh. (Affirmative).
A. There's the --.
Q. Well, do you know which one H.B. was?
A. Not without looking at her authorization.
Q. Do you have her authorization?
A. I believe.
Q. You don't?
A. It was in her file, yes.
Q. Do you have her file?
Ma'am, do you have her file?
A. Not sitting up here with me, no, sir.
Q. Did you know you were gonna be testifying about this today?
A. I knew I was called, yes.
Q. All right. So you don't know what exactly it was---
A. She was---
Q. ---that---

A. ---part of the DDSN.
Q. That's what you---
A. So we have CLTC and DDSN.
Q. Right.
Well, I understand you saw your duty and be done. But I'm asking you what you have -- I'm asking you what -- I'm asking you how things went along.
A. Okay.
Q. Now, just to get it out of the way, no one from Axcess ever saw H.B. ?
SOLICITOR JORDAN: Objection, Your Honor. He's---
Q. Is that true?
SOLICITOR JORDAN: Objection, Your Honor. She can't speak as to what other people saw or did.
MR. MORIN: Okay. Let me, let me -- I'll rephrase.
THE COURT: Okay.
Q. You were working at Axcess the entire time H.B. was a client?
A. Correct.
Q. Okay. And during the time, the entire time they would -- that H.B. was a client, did you ever see her?
A. I did not.
Q. You were never in her presence---
A. Not---
Q. ---correct?

A. ---that I can recall.
Q. You never saw her on any kind of video?
A. No, sir.
Q. Now, H.B. had a feeding tube.
Is that correct?
A. Of what I've read, yes.
Q. So, Axcess was aware of that?
A. Yes.
Q. And H.B. had a trach to give her oxygen, correct?
A. As, again, what I've read.
Q. Okay.
A. I've never seen her though.
Q. Correct.
When you trained her 18 year old brother to assist his parents taking care of her, did you know that?
A. Yes.
Q. In fact, the handbook --.
A. I still have it.
Q. Uh-huh. (Affirmative).
I got a copy---
A. Oh, okay.
Q. ---so we can both look.
All right. The handbook has a medical conditions overview. That's on Page 23.
A. Okay.

Q. And it says medical conditions overview, right?
A. It does.
Q. And it lists asthma, cerebral palsy, turn over to the next page---
A. Autism is on that page as well.
Q. Okay. Cystic fibrosis, diabetes, seizures or epilepsy, right, and then it goes on and it even says traumatic brain injury.
Now, my question is, when Axcess hires a personal aid, do they, in any way, match up the skills of the applicant to the client's needs or they just say anybody who wants to be an aid and we just put them in?
A. One, these are not -- we don't provide skilled services. These are unskilled.
Q. Yes, ma'am, unskilled.
A. So that GT, that trach, Edward would of never have touched or never been trained to.
Q. Never been touched?
A. From our standpoint, yes, sir.
Q. From Edward's---
A. We did not---
Q. ---standpoint?
A. No.
Q. He should know---
A. I can't tell you what he did on his own.

Q. Well, I understand that.

But he -- Axcess didn't train him for those things, did they?

A. No, because they're not allowed. The State specifically tells us that they can't.

Q. Okay. Now, I also note that they're several pages in here about lifting and moving clients.

A. Yes.

Q. However, and correct me if I'm wrong, this directions about movement is more about making sure that the aid doesn't hurt themselves --

A. Or the clients.

Q. -- or the client.

But, again, he wouldn't of been moving someone if he did with these op -- with these two -- with the feeding tube and the oxygen?

A. Yes.

Q. He's not suppose to touch them --

A. No.

Q. -- according to Axcess, right?

A. Correct.

Q. All right.

A. But there -- if you look, there are other educations that show care of the bed bound clients --

Q. Uh-huh. (Affirmative).

A. -- the different areas. There are educations and we show how to safely move, roll, or lift the client. But, like I said, the State does not allow us to do that unless they are on a certain waiver and they have nursing services --

Q. Right.

And that wasn't---

A. -- and the parents -- the way we've (sic) operate---

Q. Uh-huh. (Affirmative).

A. -- is the parents, when they are given that list of the different providers, they choose which provider they want to use and we -- they get to choose what employee.

In this case it was the son. In other cases it may be a friend or it may be one that we are staffing for. But they have to meet the -- all of the qualifications. There's, of course, Medicaid handbook or policy and they have to be able to qualify and meet all of those requirements.

Q. Now, do you know if Axcess has changed the requirements for someone to have this job since Edward was hired?

A. To my knowledge, I don't know.

Q. Well---

A. It's all based on the policies. So, I haven't seen the policies change.

Q. Okay. But you're in charge of intake, right?
A. For parts of it, yes.
Q. Okay.
A. I don't and -- do everyone.
Q. Edward didn't have a driver's license. Here's my question.
A. Correct.
Q. But now the driver's license is listed as a requirement or -- is that true?
A. No, that is not true.
Q. Okay. So, when you say he doesn't have a license or he has to have an ID?
A. No, sir.
Q. Okay. So---
A. We have to have something that verifies, their social security card, their birth certificate.
Q. So, he doesn't need---
A. We have some passports or actually---
Q. Yes.
A. I believe I did misspeak.
Q. Yeah.
A. I think you do have to have an ID.
Q. Right.
A. Because we have to have something that we can run a background check.

Q. Okay.
A. That's what Medicaid makes us do.
Q. Okay. Where is this application that we -- that's what's I'm looking for.
Do you have it up there that you -- State's 119.
Okay. It's part of this.
All right. So, he's an unskilled worker, correct?
A. Correct.
Q. Unskilled person, aid?
A. He is an aid, yes.
Q. All right. And he's listed as unskilled, correct?
A. He's listed as a personal caregiver --
Q. Okay.
A. -- or a children's personal care aid.
Q. All right. Well, I'm referring to this document. This is State's No. 119.
Are you familiar with this?
A. Yes.
MR. MORIN: All right. May I approach the witness, Your Honor?
THE COURT: Yes, sir.
SOLICITOR JORDAN: Your Honor, can we get Mr. Morin to tell us the page number of that exhibit cause I -- it's at the very bottom.
MR. MORIN: Twenty-eight.

SOLICITOR JORDAN: Thanks.
Q. Just let me -- well, I'm -- this lists what he has never done before and what he has done.
Is that correct?
A. No.
Q. Well, there's a column that says --.
A. Can easily do.
Q. And have never done.
A. And has never done.
Q. That's right.
Now, one of the things that he lists as never done is care for bed sore.
Is that correct?
A. Sorry. I'm reading too fast.
Yes.
Q. All right. So, you've testified that he received four hours of training from you.
Is that correct?
A. Yes.
Q. Now, isn't it true that that training is basic first aid for the most part?
A. No.
Q. Okay. Did you train him on how to deal with bed sores?
A. No.

Q. No.

Were you aware that H.B. was bedridden?

A. No, cause she was able to get in that chair as well, right?

Q. Well, you've never seen her and I've never seen her.

A. Oh.

Q. But that wasn't provided to me.

Now, is the aid -- does the aid have access or permission to go anywhere in the parent's home?

A. That the client is.

Q. Okay.

A. They can go anywhere the client goes.

Q. Okay. So, the parent can not prevent the aid from going anywhere he's -- needs to go where the client is?

A. If the client in there and they are scheduled and are working on the clock, then, yes, the client or the aid goes with the client.

Q. The aid can override the parent?

A. Can the aid override a parent?

Q. Uh-huh. (Affirmative).

A. No.

Q. No.

So, if the parent says don't go in my bedroom, the main bedroom, the master bedroom --

A. Uh-huh. (Affirmative).

Q. -- the aid's not allowed to go in there?
A. If the client is in -- if the client is there --
Q. Yes.
A. -- the aid is allowed to go. If as instance did happen that the parent or the responsible party said do not, it would be the aid's responsibility to call his supervisor nurse or call the office --
Q. Okay.
A. -- and say I'm here working with so and so and they say I can't go do something.
Q. Is that---
A. What do I need to do.
Q. And what does the handbook say about that?
A. What?
Q. About what you just said.
Does that appear in the handbook?
A. No.
Q. No.
A. But it does say to any concerns arise.
Q. Correct.
But, in this case, we have a parent of both the client and the aid, correct?
A. Correct.
Q. So, the aid has to decide whether he's gonna override his mother's direction and go with Axcess' directions,

correct?
A. I can't speak to what he thinks.
Q. All right. Well, the -- he doesn't get any guidance from the handbook, does he?
A. The handbook explains how to do things safely. It also goes into what abuse is.
Q. Uh-huh. (Affirmative).
A. It goes by burns, minor injuries, what you need to do.
Q. Uh-huh. (Affirmative).
But you don't give aids direction when their -- when the parent of the -- I mean --.
A. They are told to call us with any concerns.
Q. Right.
A. Problems or concerns. They're told multiple times to reach out to us.
Q. Correct.
But if the -- if a parent tells his child not to come in her bedroom, is that some reason concerning?
A. Yes.
Q. I see.
So---
A. Because our aids are there to provide a service for the client.
Q. Okay. Now, when you hired Edward, had he ever worked

anywhere before?
A. I believe on his application he had said no.
Q. Never worked, 18 years old, no driver's license, and you hired him to be an aid in his parent's home?
A. He met all of the requirements that -- Medicaid, they have an entire list of what -- the criteria that they can have no record.
Q. Okay. So---
A. We do a background check. They -- as long as they have met all of the qualifications that are set by Medicaid, then, yes, we can hire them --
Q. Well, I know you---
A. -- and most want a family member of medically complex children --
Q. Uh-huh. (Affirmative).
A. -- instead of a stranger.
Q. Fair enough.
But my question---
A. Uh-huh. (Affirmative).
Q. I understand there's, there's the level down here that the State reminds -- requires you to do and that you met those.
But my question is that's all you do.
Axcess just makes that bottom line and you're like let's go, right?

A. No.
Q. Well, 18 years old, no driver's license, no job, no kind of training other than your four hours, right?
A. No.
Q. Okay. But---
A. It's ten.
Q. That -- I'm sorry. I didn't mean to cut you off.
A. It's 10 hours that the state requires per year. It is prorated based on the first year of hire.
Q. Right. But in person---
A. Correct.
Q. ---for us?
A. That's what the state requires.
Q. Again---
A. No, sir, I would not put the state that low.
Q. Well---
A. They require a lot.
Q. I see.

All right. Well, tell me.

During the four hours you were training him, tell me what you went over with him.

Tell me what training you gave him in general. You don't have to tell me everything you did in four hours.

A. We went over the self-assessment that he filled out, ones that he had never done. That was on the client's

task list that he would be providing, which is given by the parents or the responsible party. Then you have a task list that okay, we would go over---

Q. Uh-huh. (Affirmative).

A. ---all of those---

Q. Uh-huh. (Affirmative).

A. ---making sure that he understands. There are several different educations and I would have to look at the form again to know exactly which ones were in 2020 --

Q. Okay.

A. -- cause I do not know right off --

Q. Well, let's go back---

A. -- cause we do multiple.

Q. Okay. Well, let's talk about task lists.

The task list comes from the parent, correct?

A. No.

Q. Okay. Well, can you tell me where they come from cause I could of sworn you just said the task list that's given by the parents?

A. I apologize if that's what it seems.

So, our supervising nurse does an initial visit. As, in this case, because we didn't go to the home, a telephone visit. They get all the information, what's wrong with the child, can they do the different things, move, can they eat, do they talk, do they wear diapers.

We get all the information and, from that, there is a task list cause we also ask what is it you would like the aids to help you with or help provide service for for the client.

Q. Right.

A. And then the supervising nurse creates that task sheet.

Q. Okay. Do you have that task sheet?

A. It is in his files.

Q. But you don't have the file?

A. No, I don't. Not on me.

Q. The -- and you weren't that nurse that did that.

Is that correct?

A. No.

Q. Do you know what her name was?

A. I do.

Q. Well, what's her name?

A. Abby.

Q. Abby Humphries?

A. Yes, she is one of our nurses.

Q. And she's the one who had the telephone conversation, correct?

A. Correct.

Q. Now, let's talk about personal aid.

That's what -- he's an aid, right?

A. Correct.
Q. He's not a healthcare provider. He's an aid.
A. Correct. We don't do -- we're not a home health agency.
Q. Right.
And he has a client, in this case H.B., but he's actually aiding the parent with the routine things that they have every day.
Is that correct?
A. He is there to aid H.B.. Provide care for H.B..
Q. Right.
But not anything beyond what the parent does?
A. I wouldn't say that.
Q. Okay. So---
A. Cause the parents do the trach -- G-Tube, the trach, wounds. They can do all of that.
Q. Right. Okay.
A. An aid can not.
Q. Well, let me ask you this.
A. All right.
Q. If the parents says I don't want my 14 year old daughter being bathed by her brother or whoever and I'm gonna do it all the time, all right, that's okay. That would, that would be a thing that Axcess would say okay.

A. Yes.
Q. Okay. And if the parent says I'm going to change the diaper, again, I don't want my, my child to be changed by anybody but me, that would be okay?
A. Yes.
Q. Okay. That's my point. The parent's in control.
A. To an extent, yes, cause it's their child. But if -- they're also in control of who their aid was.
Q. That's right.
A. So, they chose Axcess to provide -- be the provider and they chose Edward to be the aid.
Q. And Edward lived with them?
A. Yes.
Q. You knew that too, right?
A. Yes.
Q. And if they didn't get an aid, their waiver would be in jeopardy, correct?
A. I can't speak to that.
Q. Well---
A. I don't work for the waivers.
Q. Right.
But they have to have a waiver to come there, right?
A. Correct.
Q. All right. You got the application up there with you?

A. Uh-huh. (Affirmative).
Q. Can I see that?
Just a moment, Your Honor.
(Pause.)
Q. There we go. This is on the application. This is Page 22 of State's 119.
That's Edward's signature, is it not?
A. It is.
Q. Other than this Page 22, which is -- does this signature a page -- appear anywhere else?
I'm gon' give it back to you.
Anywhere else, that signature?
Not the electronic one. That one.
A. Yes.
Q. Let me see it please.
A. So, it is on his drug screen that he took.
Q. Uh-huh. (Affirmative).
A. It is on his second health assessment in '21 when he came into the office --
Q. Uh-huh. (Affirmative).
A. -- and it was also on that drug screen and I was the one with him when he signed it.
Q. All right. This is Page 55.
Do you see Edward -- right here it says donor's signature and you made him sign it, didn't you?

A. Yes.
Q. And he's sort of up here I think, this top part.
Can you see that?
Do you need to step down?
(WHEREUPON, the witness comes down from the stand.)
Q. This is his handwriting right here, ain't it, employee contact information?
Is that right?
A. Correct.
Q. Okay. And then there are -- so, the -- he came in once a year for you.
Is that correct?
A. Correct.
Q. And those were the times he signed his name, correct?
A. In front of me, yes.
Q. All right. Now, the other times he signed an electronic signature from his home?
A. Through the app.
Q. Okay. And you've referred to he went on an app to receive further trainings. I forgot what you called it.
A. Kaizala.
Q. All right. And those further trainings, he would fill out -- he -- you -- explain that to the jury.
How does that go?
He's gonna get trained. There's a thing he goes on

where he answers some questions or gets some training.

How does that work?

A. So, the state requires the 10 hours, correct. Four in-person and then four they call independent study.

So, what I've done is, at the time, the Kaizala app. So, I would have a PowerPoint. We had videos that would show how to move people and those would be sent through the app to them and they would go to it first. And they would have to watch or read the information and then follow-up questions would be there. Once they filled it out and hit submit, it would go through the system and that's what, what would be printed. It's just the test questions. But it said what the training was on.

Q. So, basically it's what we call an open book test?

A. Correct.

Q. And he can receive -- he can receive help from any avenue he needs to?

A. Correct.

Q. Does it at least do a timer and what I mean by that is, is occasionally I have to take a training by video and it has a little thing on top occasionally and say are you still there, are you watching this video.

Do you have that in Kaizala?

A. Kaizala, no.

Q. So, he could of hit play. He can walk, walk away and

come back, whatever.

Is that right?

He could do that, right?

A. I guess.

Q. He'd be a bad employee?

A. Correct. But you'd still have to answer the questions.

Q. Yeah.

But you could do that over time or it would be possible, wouldn't it, for someone else to do it?

A. It is on his---

SOLICITOR JORDAN: Objection, Your Honor. She can't testify as to what was done at the house.

MR. MORIN: The question was could they.

THE COURT: It's overruled.

Go ahead. Answer the question.

A. Yes, sir, it's on his phone and that was verified by him, his name being printed on it, and the phone number he used.

Could someone else pick up their phone?

Sure. My children steal mine all the time.

Q. Now, are you aware that initially Bobbie Jo applied for this position?

A. She couldn't.

Q. All right. Why not?

A. Because she is the parent --
Q. Okay. Well why---
A. -- and Medicaid will not allow that.
Q. Medicaid won't allow the parent, either parent?
A. No.
Q. Do you know why that is?
If you don't, that's fine.
A. It's --.
Q. They just don't allow it?
A. That's part of --
Q. That's right.
A. -- Medicaid.
Q. Getting back to my question about when Medicaid started making you -- well, the phonecall that was made to the house, did you say that there was a change in the policy and it required you to contact the parent?
A. No.
Q. Okay. So, Axcess always contacted the parent annually?
A. No, the -- we were -- we contact the responsible party every four months by the end of that fourth month.
Q. Okay.
A. What Appendix K did was, instead of us physically going to the homes, it brought us out of the homes because of COVID because we are dealing with medically complex

kids and adults. You wouldn't want someone to come in your house sick with your child there.

Q. Uh-huh. (Affirmative).

So, when he was hired in 2020, I believe that's correct?

A. Yes.

Q. We were in COVID?

A. Yes, sir.

Q. And normally Axcess would contact the parents. I'm gonna say parents cause we're talking about this case.

A. Correct.

Q. Okay. Contact the parent and see how things were going.

One of the questions would be how -- how's the aid doing, correct?

A. Is the aid providing the services.

Q. Exactly.

Now, if the parent says the aid is not doing well, what's Axcess' response?

A. Our response is that we will contact -- we will get more information, get the examples of what they were talking about. We would call the aid and actually ask them what their response to it is.

Q. Uh-huh. (Affirmative).

A. If it ends up being where they're just not working

well together --
Q. Uh-huh. (Affirmative).
A. -- we would pull the aid out.
Q. Okay.
A. But additional education would be given first.
Q. Okay. Is it like --.
THE COURT: Let me have -- stop there just for a minute.
Let's -- all jurors, let's do a seventh inning stretch right now. Everybody stand up and stretch.
(WHEREUPON, all the jurors stand.)
THE COURT: Okay. I, I got a couple people that are a little bit sleepy.
Okay. And if you are, and I'm not gon' embarrass anyone, but if you are, you are welcome to stand.
Okay. Please stand. Can not have a sleeping juror or somebody who's fighting that.
Okay. Everybody, everybody ready now?
(WHEREUPON, the jurors nod affirmatively.)
THE COURT: Okay. We'll all have a seat now.
Mr. Morin, continue.
MR. MORIN: Thank you.
Your Honor, I'd like to have this marked as -- for identification as Defendant's No. 2.
THE COURT: Defendant's 2.

SOLICITOR JORDAN: If I can see it just briefly to look at the number?

MR. MORIN: Uh-huh. (Affirmative).

(WHEREUPON, Axcess records were marked as Defendant's Exhibit No. 2 for identification purposes only at this time.)

Q. I'm gonna show you what's number -- been marked as Defense, Defense Exhibit No. 2 for identification.

My question is is this a document that you completed?

A. It has Abby's signature.

Q. All right. That's Ms. Humphries?

A. Yes.

Q. All right. So, you mentioned that in 2022, even after H.B. had passed, right, that Edward and his father came by to deal with a W-2 and notifying that -- do you remember that?

A. I do.

Q. Is that one Axcess -- did they also inform you and Axcess that H.B. had passed?

A. Yes, they informed me.

Q. Okay. Did you later meet with a SLED agent by the name of Glover?

A. I met with SLED, yes.

Q. Okay. Do you recall telling the SLED agent that Edward appeared to be sad and devastated at his sister's

passing?
A. I would have to reread my statement to tell you exactly what I said.
Q. All right. Do you recall saying that Edward was slower than most taking the exam?
A. I do not believe I worded it like that.
Q. Okay. All right. Do you recall telling the agent that Edward had a mixture of body odor and cat pee?
A. I believe I did say that. I said not -- don't know exact words --
Q. Uh-huh. (Affirmative).
A. -- but I could read it. But, yes, there was something to that extent.
MR. MORIN: May I have just a moment, Your Honor?
(Pause.)
Q. The employee handbook suggests that employee's wear medical scrubs and be in professional attire suggests -- doesn't say that but it suggests it.
Is that correct?
A. It says to be professional.
Q. Okay. Does Axcess do background checks of the parent?
SOLICITOR JORDAN: Objection, Your Honor. They're not employees of Axcess.
THE COURT: I'm gonna let her answer the question if

she knows or not.

Q. If you don't know---

THE COURT: Go ahead.

A. We don't because they're not our employees. They're our clients.

Q. Well, actually H.B.'s the client.

A. Correct.

Q. The parents aren't your client?

A. No.

Q. Okay. I want to make sure that we keep everything---

A. Separate---

Q. ---who's, who's doing what.

You still have the application up there?

A. I believe that is it.

Q. Is Axcess Healthcare Services, LLC a different company than Axcess Home Care?

A. I don't know the answer to that.

Q. Well, I'm just asking because this application says Healthcare, LLC at the top, correct?

A. It does.

Q. This is State's Exhibit No. 119. It's Page 54.

But, again, you're not alleging at any point that he was a healthcare provider?

A. Correct.

Q. Last question.

During his training, Edward's training, was he ever asked to demonstrate anything he might have to do with a client?

A. No.

MR. MORIN: That's all the questions I have at this time, Your Honor.

THE COURT: Solicitor, anything?

SOLICITOR JORDAN: Yes, sir, just a couple quick follow-up questions.

REDIRECT EXAMINATION

BY SOLICITOR JORDAN:

Q. Mr. Morin referenced the government money that Axcess received.

Who else received government money in this case?

A. Edward.

Q. Okay. They -- the aids are chosen by the family?

A. Correct.

Q. And then the aid chooses to also work for Axcess?

A. Correct.

Q. So, it's not a one way street of just one person deciding it. It's both.

A. Yes, ma'am.

Q. Okay. And he came to your office at least three times?

A. Yes, ma'am.

Q. You gave him training on abuse and neglect?
A. Correct.
Q. And how to report that?
A. Correct.
Q. That included calling 9-1-1 if needed?
A. Yes.
Q. Okay. So, he had training in that area?
A. Yes, ma'am.
Q. And if we look at State's Exhibits that contain the time sheets, the only thing, for the most part that I recall, is that he was paid or he claimed to do meal prep and set-up --
A. Correct.
Q. -- for the majority of the time, if not all. I'm not, not sure.

You also trained or he received training on bed sores or on pressure sores?
A. Yes.
Q. And how to identify those?
A. Yes.
Q. Okay. You never received complaints from Bobbie that she never allowed him into her room, did you?
A. No.
Q. Did you receive complaints from David that she -- he wasn't allowed in their room?

A. No, ma'am.
Q. Did Edward tell you that he wasn't allowed into that room?
A. No, ma'am.
Q. That he was blocked access, access to H.B. ?
A. No.
Q. Okay. No one made any complaints about access to H.B. ?
A. Correct.
Q. Appendix K that you mentioned, that came about during COVID?
A. Yes, ma'am.
Q. And what was the big thing with Appendix K?
A. That they -- we'd no longer have to go to the homes.
Q. So that was a choice by the government?
A. Yes.
Q. Mr. Morin talked about them or asked about the care and at the direction of the parents.
In addition to the care, it was also respite?
A. Correct.
Q. And what is respite?
A. Respite is also a form of care. But it's to give the parents rest.
Q. Okay. To give them rest to take --?
A. Responsibility of the caring.

Q. Okay. And he was paid how much or he was paid for how many hours a month for that?
A. Sixty-eight.
Q. No complaints from either three of them during this entire time period?
A. No, ma'am.
Q. Mr. Morin made comments about the fact that you did not lay eyes on H.B. .
Is that a part of your job in what, what you do?
A. It is not.
Q. Okay. You're the coordinator and the trainer?
A. Yes, ma'am.
Q. Nothing further.
MR. MORIN: Your Honor, I have a few on re -- if I may?
THE COURT: Let's see where it is -- anybody else -- well, that's fine.
Go ahead.

RECROSS-EXAMINATION

BY MR. MORIN:

Q. Edward lived with his parents.
Is that right?
A. To my knowledge, yes.
Q. And the money that was being paid for him was flowing into their home.

Is that right?
A. It was paid to Edward.
Q. All right. You say it was paid to Edward.
Now, if I understand correctly, you made direct deposits.
Is that correct?
A. We made a deposit to the information that Edward provided us, the account he gave us.
Q. Okay. So, Edward gave you an account number and that's where the money went --
A. Correct.
Q. -- for him, what he was doing for y'all?
A. Yes, we paid---
Q. But---
A. ---for service.
Q. But you don't know where that account was or who it belonged to. You just know that's the account number he gave.
Is that correct?
A. He fills out the application and puts down how he wants to get paid.
Q. Right.
Puts down an application -- puts down an account number.
A. He did, yes.

Q. Right.

But Axcess doesn't know whose account number that is and you don't care, do you, as long as you're paying, right?

That's where he said to send it.

Is that correct?

A. It's where the employee wants to receive their paycheck.

Q. Okay. And, in this case, he was a cash app card, was it -- wasn't it?

A. I'm -- I would have to look. I believe so.

Q. You have -- she -- no.

Okay.

A. It would be---

Q. No further---

A. ---the account they wanted.

MR. MORIN: No further questions.

THE COURT: Okay. Ma'am, you may step down. Please be careful.

SOLICITOR JORDAN: Your Honor, may this witness be excused?

May Ms. Patton be excused?

THE COURT: Any objection?

MR. FILE: No objection.

MR. MORIN: No objection.

MRS. RACINE: No.

THE COURT: Ma'am, you're released from your subpoena. You may stay or go, whichever you choose.

SOLICITOR JORDAN: Thank you, Your Honor.

THE COURT: Okay. We're gon' break for lunch at this point in time.

Let me see the lawyers real quick.

You got anybody coming in at a certain time?

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Mr. Foreman, ladies and gentlemen, we're gon' break. Be back at 2:30, 2:30. At 2:30 be in place for us this afternoon.

We're gonna be here a few minutes before that. We got a little work to do outside of your presence anyway.

So if you'll be back in place at 2:30. Don't talk about the case. Don't try to learn anything about it. You're on break now.

So, Mr. Foreman, if you'd take the jury out.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: We'll be in recess until---

MR. MORIN: Your Honor, I have something.

THE COURT: Okay. Close the door.

Okay.

MR. MORIN: Your Honor, I appreciate the Court's efforts to get certain jurors to wake up. One of them is an alternate. So I'm not concerned. However, there's one that missed a good bit of the cross and I'm asking that she be relieved.

THE COURT: Solicitor, do you want to be heard on that?

SOLICITOR BARNETTE: Your Honor, I don't know. I know you asked them to stand up at some point to make sure that they're all awake. I know that juror was not identi -- I don't think you identified him at that point. I don't know if that was the juror. But he's talking about an alternate from that standpoint.

THE COURT: It's the lady on the front with the white shirt, the African-American lady. She's fighting sleep hard.

MR. MORIN: She's been doing that all morning.

MRS. RACINE: I'll just weigh in with Mr. Morin on that. But, Your Honor, she's been dosing off most of the day.

SOLICITOR BARNETTE: Your Honor, here's the problem we come into is we -- we're, we're gonna be down to one alternate. I'm assuming the -- you're gonna put on is the one that was not cautioned earlier this morning.

THE COURT: Well, I don't know who it would be

because, in a criminal case, I don't get to -- I have to put the lady's---

SOLICITOR BARNETTE: You used at trial---

THE COURT: ---name in a cup and shake it up. So, I don't know who it is. I'm gonna -- I'll tell you what.

I'm gonna take that motion -- I'm gonna take that under advisement until I -- I'm gon' wait a little bit and see what happens in the afternoon.

Okay?

MR. MORIN: Just---

SOLICITOR BARNETTE: Yes, sir. Thank you.

MR. MORIN: Just to be clear on the record, Your Honor, she's already missed, she's already missed the testimony.

SOLICITOR BARNETTE: I know that's their position, Your Honor. I don't know what she's missed or what she hasn't missed.

THE COURT: Okay. Well, I'm, I'm gon' take it under advisement right now.

Now, I understand the pathologist is coming at 2:00?

SOLICITOR BARNETTE: Yes, sir.

THE COURT: That's Doctor Rose.

SOLICITOR BARNETTE: Doctor Rose. I don't have a choice, Your Honor, cause -- and we still have Doctor Parra to testify too this afternoon.

THE COURT: Okay. I thought Doctor Rose was coming later.

She's coming now?

SOLICITOR BARNETTE: No, she's coming at 2:00, which I don't mind calling her at 2:00. I don't think she'll be as long as Doctor Parra to be honest with you.

THE COURT: Okay. All right. She's coming at 2:00 and those pictures that are under ad -- the subject of the motion, they're -- you have them?

THE COURT REPORTER: Yes, sir.

MR. MORIN: Yes, sir.

THE COURT: Okay. Well, I, I brought my lunch. So I'll be here and I can look at them.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: We, we have them here.

SOLICITOR BARNETTE: Yes, sir, I understand. It will be 100 through 117. I believe---

THE COURT: Yes, sir.

SOLICITOR BARNETTE: ---that's the one that's marked.

THE COURT: Okay. All right. Two o'clock for everybody else.

(WHEREUPON, Court was in recess for the lunch break.)

MR. RACINE: Your Honor, we seem to be missing our clients.

THE COURT: Oh, okay.

(WHEREUPON, the defendants come into the courtroom at this time.)

THE COURT: Okay.

SOLICITOR BARNETTE: Your Honor, we -- we're ready to go, Your Honor.

THE COURT: Yeah, we're waiting on --.

MR. MORIN: No, we're---

MS. WASZAK: No, this is---

MR. MORIN: That's my chair.

THE COURT: Oh, I'm sorry. I thought we were waiting. He was in the restroom.

Okay. Yes, we're ready. I'm sorry.

SOLICITOR BARNETTE: Your Honor, may it please the Court.

Your Honor, I'm gonna call Doctor Rose to the stand. We're gonna do a proffer, Your Honor, concerning the pictures that the State is moving to introduce at this tie. Specially State's Exhibits 100 to 117.

DOCTOR KELLY ROSE, being first duly sworn, testified as follows:

THE COURT: Doctor, adjust the microphone to suit yourself please and tell us who you are and spell your last name for Madam Court Reporter.

THE WITNESS: I am Kelly Rose. My last name is R-O-S-E like the flower. I am the forensic pathologist at

Newberry Pathology Group.

THE COURT: Thank you.

Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

Your Honor, I know we had a meeting in your chambers back in there. I think, for purposes of this, all three defendants agreed to qual -- stipulate to her qualifications as a forensic pathologist.

THE COURT: For the purposes of the proffer, yes, sir.

SOLICITOR BARNETTE: Okay. And I believe that's -- you may want -- is that correct, from all the defendants?

MR. FILE: That's correct.

MRS. RACINE: That's correct.

MR. MORIN: That's correct.

SOLICITOR BARNETTE: Thank you.

THE COURT: Thank you.

SOLICITOR BARNETTE: Thank you.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Doctor, in this case, did you perform an autopsy on H.B., H.B. in this case?

A. I did.

Q. And, in that autopsy and everything, was there photographs taken from those?

A. Yes.
Q. Now, I'm just gonna show you -- and we're not asking to enter these. Let me show you State Exhibits 2 through State Exhibit 27.

Do those pictures fairly represent what you saw from the autopsy as well as pictures that was taken from the ER earlier?
A. Yes, they do.

SOLICITOR BARNETTE: Your Honor, I'm not moving these into evidence. This just shows what we could move into evidence as part of the evidence in this case and I'm trying to lower any kind of prejudice in this situ -- obviously these pictures are prejudicial but create the probative value over the top of the prejudicial. I've taken the colored photos out of this scenario, Your Honor, from that standpoint.

Let me show you State Exhibit 100 through 117 to see if those pictures fairly represent -- and some of those are some of the pictures we had earlier in the ones from 2 to 27.
A. Yes, they do.
Q. Okay. If you would, tell the Court a little bit about the autopsy and the -- what your findings was in this autopsy, doctor, if you would.
A. If this case -- you know, I've testified in front of

you before, judge. I will usually prepare a body diagram to help with educating the jury as to the injuries that I saw.

In this case, I was unable to do a body diagram because what I saw was so extensive that I couldn't capture it in a diagram. So, that's why the pictures are so important to me to be able to explain to the jury what I actually saw.

Do you want me to go into further detail about everything---

Q. Yes, ma'am.

A. ---that I saw?

Q. Yes, ma'am. Please do because he has to base his opinion off this information we're giving to him and let me do this too.

We've also did State Exhibit 18 which is your summary of this.

Is that correct?

A. One eighteen, yes.

Q. Or 118. I'm sorry. State Exhibits 118.

A. I saw -- and I'm gonna probably get choked up.

I saw a child that looked like she had cerebral palsy. It -- the contractures of their arms and legs, the underdevelopment of the skeletal muscles, you could tell that the child, the child was profoundly disabled at least

physically.

And then on her outsides it looked like she had been dropped in acid from her buttock to her toes. Her skin was raw, red. In areas it had actually almost appeared to have dissolved. Now, that's not exactly what happened to it. But it looked as it had. It was absent.

This is from the -- you know, urine has ammonia. It's a chemical one. Feces is very -- poo is very irritating to the skin and she -- you get these kind of marks on the skin when you -- someone is exposed to urine and feces chronically.

Your skin is a good barrier it -- for most things. But it can not withstand that type of chemical burn.

Her teeth were in a -- were in terrible shape and she appeared just with her -- the muscles in her arms and legs, she would not have been able to care for her own oral hygiene. Her teeth were rotten.

She had so much earwax in her ears that I doubt she heard anything in a long time. Like she would of been deaf. The amount of earwax in her ears was similar to what you take out of a very elderly, old patient that comes to you and the wife's been complaining he hasn't heard anything for a month because they have so much earwax.

Her hair looked like -- it was short, irregular in

patches. It looked like it had been cut by a child or she was recuperating from some sort of a -- like grave illness. It did -- it was not healthy.

Within the short hair I found cuts that appeared to have been made from scissors and there was no vital reaction to those cuts so that her scalp had been cut and her hair had been cut after she had died. That was just that the -- what I saw on the outside.

On the inside -- oh, down her little bottom was so swollen -- I've never seen that -- a diaper -- you see diaper rash on babies. She was 14. But I've never seen anything that comes close to that on, on any of my autopsies or any of the people that I saw in med school.

Then, on the inside, she had horrific pneumonia. Both lungs were -- had areas of pus. She obviously was septic. The bacteria had gotten into her blood, seated her lungs, and I ran a culture and that was a urinary tract infection. So, she had been sitting around in the urine and feces so long that it had gotten access to her bladder, then her bloodstream, and then it seated her lungs.

Q. In talking about the bacteria and everything, through the wounds in her legs, things like that, through her vagina, her genital area, would that be where the UTI or where the bacteria came through those different areas?

A. Yeah, sitting in that -- any of the open wounds on her legs and just her little privates were raw sitting in it and then it gains entry that way.

Q. And it could -- and these, these pictures would help show the entry that it came into --

A. A hundred percent.

Q. -- from there?

Plus -- and I'm gon' go through each picture with you one by one here in a second, doctor, from that standpoint and there was also an impaction.

Is that correct too?

A. Yes.

She had -- was so constipated that we call it, once you're past constipation, you're impacted. There's no way she could of moved -- had that -- a bowel movement with that there. What usually happens in, in patients is they'll have diarrhea around it because they can't pass the big, rock hard stool. It was at least the size of my hand.

Q. And was this all be -- just -- would this also be evidence of child abuse and neglect?

A. A hundred percent.

Q. So that would also go to that?

Just not for the murder charge itself?

A. Correct. When I've done elder abuse cases, it --

similar findings of that stool, that is evidence of the neglect.

Q. Okay. And all these pictures -- let's go through the pictures one by one very quick.

I'm gonna show you State Exhibit 100, and if you need to come down, doctor, you can if you want to face and talk to the judge there.

(WHEREUPON, the witness comes down from the stand.)

Q. Go to State Exhibit 100.

Judge, can you see it on your screen?

THE COURT: I can.

Q. If you would, this is State Exhibit No. 100.

MRS. RACINE: Your Honor, I, I hate to interrupt. But is the video camera running capturing this?

If so, I object.

THE COURT: I don't know.

Is that -- your camera running?

UNIDENTIFIED SPEAKER: No.

THE COURT: No. Thank you.

Q. If you would -- if you could, describe what, what we're seeing in this to the Court if you would and how this would assist you in, in educating the jury about this.

A. These are her little legs and they have those contractures that I was talking about. So, her knees are

bent and her hips are rotated out and you could see the diaper. And then the -- you can see each leg that comes out of the diaper and the -- it looks as if she had, had been lavished with a switch.

The skin there was red. There were -- it was -- they're literally like superficial cuts in it that -- we call those excoriations. That is from the irritation of the urine and feces on the legs.

Q. And was that part of the infections and everything that could of led to her death too?

A. Oh, correct.

Q. Let me show you State Exhibit No. -- of course, that's State 101 in this case and, particularly, I guess down in this area too with the one on her knees and everything.

Can you describe that please?

A. Her little knees on that anterior aspect of them, the skin was pretty much gone. You could see the underlying tissue under the skin and you can see that there in those pictures.

Q. In the -- another thing too, when these -- when this happens to the leg there, does the blood supply go somewhere else to help protect the body before it dies?

A. The blood is still gonna have to run -- be running to the legs. She would of still had blood, you know, in the

legs. Especially in the deeper tissues. You -- ch -- her -- the little superficial vessels in the skin itself were probably involved in all this and that's why it, in real life, they were so red.

Q. So, obviously it's the urinary -- these are like chemical burns?

A. Yeah, that's the best way to kind of try to capture it in a description. It's a chemical burn.

Q. And the legs -- and the, and the child abuse led to this also or the abuse?

A. One hundred precent. That is a child who has not been bathed or changed or picked up or had their clothes removed, their bedding replaced in a very long time.

Q. And how long would this occur?

How long --?

A. At a minimum, I would say weeks.

Q. So, it happened over weeks, this period of time?

A. Yes.

Q. So, this is something -- this is not a merely medical event?

A lot of people think---

A. No.

Q. ---when a child dies, it's like a -- just sudden like this but it's not a medical event, and would those pictures help educate the jury on that?

A. Yes.
Q. Let me show you 102.
Can you tell the judge what that is?
Tell the Court please.
A. That is a closer picture of the knee. You can actually see the skin is gone there now. That circle of the -- the darker circle on the knee, anterior knee near the kneecap, tissue's gone, the skin and subcutous (phonetic).
Q. So, the -- obviously this leads to sepsis and everything else?
A. Oh, yeah, any open wound on anyone's body, let alone the, the number of open wounds she had.
Q. And this could show evidence of abuse that occurred---
A. Oh, yes.
Q. ---over weeks at least?
A. Yes, the chronic nature of them.
Q. Let me show you State Exhibit 103.
Can you tell us what that picture is, ma'am?
A. That is a thigh. That is her thigh and that shows you more of where the, the -- this top layer of skin is gone and then like it was red as that number down there, 103, and moist -- you almost -- you'd say gooey and those are from the -- that is from the urine and the feces on

her skin.
Q. And, like I said, that's evidence of the, of the---
A. Of---
Q. ---abuse and everything else?
A. Yes, that is evidence of how chronic nature. That doesn't happen that -- I, I do autopsies on a lot of elderly individuals that do sit around in, you know, their urine and feces. I've never seen this degree.
Q. Looking at 104, can you tell us what that is a picture of for the Court?
A. That is a -- just more of her leg. You can see a little bit of back there.
Q. Okay. And is that also -- the back, does that show the sores and the injuries that she had in her back?
A. Yes.
Q. And that occurred from, from lack of care from there?
A. That does. That's just more of the urine seeping up.
Q. One hundred five, can you describe that for the Court please?
A. These are her little legs, different view.
I remembered -- I think she had on like -- which -- I'll have to look at my report.
There were tights. I want to say it looked as if the pattern on her legs looked as this. She'd had been in tights or like leggings and had just -- and that -- those

clothes being soaked with the urine and the feces were -- clung to her legs and caused the burns to be that severe.

So, not only is she laying around in feces and pee, but her clothes are not being changed, and that's adding to the injuries and the chronic --.

Q. Let me go to the other knee from there.

Did it show the similar damage to it on the---

A. It---

Q. ---other knee too?

A. It did.

Q. And is that caused from the abuse and the, the -- over the weeks that it occurred?

A. Yes.

Q. Show you State Exhibit 106.

A. That's on -- a picture of her back. Those are more scratches and irritation from the urine --

Q. Could that be---

A. -- and filth.

Q. Could that be scratches from animals or from---

A. Yeah. See, at the time, I wasn't aware. But it does look a little like what I see with roach activity on bodies. I've seen -- looks like that with roach -- roaches on other bodies that I've had autopsy. That could be it in part, insect activity.

Q. And so that could be part of the neglect---

A. And filth.
Q. ---as well as the abuse in this case --
A. Yes.
Q. -- where she was exposed to over weeks?
A. Yes.
Q. State Exhibit 107.
Can you tell us what that is a picture of, ma'am?
A. That is a picture of her ears. A little hard to tell in this picture. But down where you -- inside her little ear canal there, the -- what you're seeing is earwax that it was just thick and it's hanging out of the ear nearly at this point.
Q. And, like I said, a colored picture would actually show this better?
A. Yeah, a hundred percent.
Q. State Exhibit 108.
If you could, tell us what this is, ma'am.
A. Those are her little genitals. That is how swollen her little bottom was and bright red. Where you see it dark, it was actually an angry red color and it's just completely swollen.
Q. Okay. And is that signs of the, the abuse and the---
A. Yes.
Q. ---neglect that they left her -- left her in?
A. I mean yes.

Q. And is this part of what led to her death too?
A. It -- one hundred percent did.
Q. And the -- to show the jury, that would educate them concerning the -- what happ -- the manner of death in this case?
A. Correct.
Q. And it'd show them where the -- they -- the bacterias and everything that led to the UTI that led to her sepsis?
A. Correct. As bad as it is on the outside, that's how bad it had gotten on the inside.
Q. Okay. And, of course, across here, is that the area basically you said below that from that standpoint is like the chemical burn from that standpoint?
A. One hundred percent.
Q. Let me show you State Exhibit No. 109 I believe.
Can you tell us what -- tell the Court what this is, ma'am?
A. This is a picture of her torso, which is just her chest and abdomen. You can see she has a feeding tube in place and you can see how her chest is a little bit bigger, a little misshapen, and how thin her left arm is in this picture. So, you can see how she was debilitated and couldn't at all care for herself. And then, in the lower abdomen, you see more of the areas of irritation.
Q. Could that be from the insects and other things too?

A. Correct. Yeah, non natural irritation. Insects, urine, feces.
Q. And then also be evidence of the abuse as well as the neglect in this case?
A. Correct.
Q. As well as a matter that led to her death?
A. Correct.
Q. And this will be impossible to describe to the jury. Is that right?
A. It would -- it's -- it would be impossible, yes.
Q. Without these pictures?
A. Without help from these pictures.
Q. One ten, if you would, explain to the Court what this is, ma'am.
A. That -- that's her little buttock and the back of her legs and the thing in the middle that looks so swollen, that's her little bottom.
Q. Is that her genital area right there?
A. Yes.
Q. Okay.
A. That is her genitals, her vagina -- well, her vulva and labia.
Q. And obviously all this was the chemical burn, from things like that --
A. Yes.

Q. -- and showing the signs of abuse and neglect --
A. Yes.
Q. -- over a period of time that also led to her death?
A. Yes.
Q. And is there any way, without this picture, you could educate the jury about this?
A. Not, not -- I don't think I personally could, no.
Q. Starting with State Exhibit No. 11 (sic), I suspect we're looking at the foot.

Can you describe that to the jury -- for the judge please?
A. It does -- this picture does a couple things. You can see her little deformed feet. They were kind of rocker bottom. So, you know she wasn't walking -- able to walk and then you see that her heel is starting to lose its tissue from having to be soak -- just soaking in the urine.

The word we use in medicine is called maceration and it means to soften -- from being in something liquid. In this case, the liquid was also a chemical. It was urine. So, her tissue's softening and getting soft from soaking in the urine.
Q. And would this picture educate the jury on what was happening to her foot?
A. This -- a hundred percent it would. It shows the

extent of it.
Q. And that's something you really can't describe without the help of the picture.
Is that right?
A. I, I don't see how I could.
Q. State Exhibit 112.
A. It's just another picture of her legs now without the diaper to show. You know, it's till -- telling that the area that, because of her little deformities in her legs, there was a -- kind of up in the air that wasn't soaking as much as the backside of them. You can still see a little bit of skin. It looks normal there. But in the areas that were constantly exposed to the urine, you don't.
Q. And that would show us what you've testified before?
A. Yes, that she laid there for a long time in her own urine and feces.
Q. And, like I said, this wasn't an overnight process?
A. This---
Q. This was weeks and weeks?
A. Weeks.
Q. Let me show you State Exhibit 13.
Call you tell us what that is, ma'am?
A. Those are her teeth. The -- there was a film on them and at the tips you see the cavities. They're rotten. I

see teeth like this in people that are, you know, on the street drug addicts.

Q. Is this evidence of obviously the neglect and abuse that occurred?

A. Obviously. She's -- could not brush her own teeth.

Q. State Exhibit 14 (sic), if you would, tell us what this is, ma'am.

A. These are the cuts that I found in her hair and in her scalp, in her short hair, and, these cuts, they're two of them. They're parallel. That's consistent with scissors, two, two blades, parallel, and there's no reaction to that.

So, she has -- was dead and they cut her hair after she was deceased. Who knows what was there before they cut her hair.

Q. And, in this case, this would be, for example, to show when she died or where -- when she would of been dead being testified to when they cut her hair, that would show that she was dead prior to that?

A. Correct. The---

Q. That'd be highly probative for that for---

A. Correct.

Q. ---information.

Is that right?

A. Correct.

Q. State Exhibit 15 (sic), I believe this is the right knee with -- on it.

If you could, tell the Court about that.

A. That's more of the chemical burn that open -- how the skin was so soft from soaking in that urine and feces that it was just dissolving.

Q. And would this help educate the jury or to, to show -- obviously you could describe it.

But does the pictures help educate the jury---

A. Yes.

Q. ---on that?

It will be very similar to your testimony in other---

A. Yes.

Q. ---from there?

State Exhibit 16 (sic), if you can tell us what that is, ma'am?

A. That was the actual -- what we call a fecalith or it was a big hard stone of stool that was down in her, her -- the -- her distal or the end of her colon, her large intestine. That was blocking her from being able to have a normal bowel movement. And that is -- I see stuff like that with elder abuse cases as well. I've yet to see it on a child but -- except for this one.

Q. And would this be signs of abuse and neglect that we talked about earlier?

A. One hundred percent.
Q. And could that have led to her death at some point?
A. At some point, yes, and pain.
Q. And pain.
Obviously she -- did you feel pain from all of this?
A. One hundred -- yes, she felt pain.
Q. Let me show you State Exhibit 17 (sic).
Can you tell us what that picture is?
A. That is a colored picture of the fecalith or the, the big hard stone of poo.
Q. And down here, it is actually a measurement to it --
A. Yes.
Q. -- showing -- and, and obviously to show the scale?
A. Correct. So that's one -- that's an inch.
Q. And that can show how big this is---
A. Yes.
Q. ---to the jury to make sure they understood why it couldn't be---
A. Correct.
Q. ---passed through?
If you would, ma'am, please have a seat.
(WHEREUPON, the witness returns to the stand.)
Q. Doctor, I know I've asked this but I just want to make sure it's clear for the record.
These pictures, would they aid in you telling the

jury what happened in this case?
A. Yes.
Q. Okay.
A. One hundred percent.
Q. Without these pictures, how would it affect you?
A. I don't think that I would be able to describe the injuries.
Q. To the extent that's shown by these?
A. To the extent of the truth, which is what I mean to do.
Q. And, in this case, the cause of death, what was in this case?
A. She died of sepsis due -- she had pneumonia and from a UTI. So from a -- urinary tract infections.
Q. And all these things that we showed to the Court here lead to that?
A. One hundred percent, yes.
Q. And obviously this, like you said, didn't happen -- this is not an event?
This is not one night?
This happened over weeks?
A. Weeks. The pneumonia itself, the infection in her lungs was weeks. So, for it to even get there, we're talking multiple weeks, many weeks.
Q. I see. Please answer any questions the defense may

have for you or the Court. Thank you, ma'am.

MR. FILE: No questions.

MRS. RACINE: No questions.

THE COURT: Mr. Morin.

MR. MORIN: No, sir.

THE COURT: Okay. Thank you, ma'am.

Anything else, solicitor?

SOLICITOR BARNETTE: No, sir, not on this point. Not for the proffer.

THE COURT: What about pictures 2 through 27?

SOLICITOR BARNETTE: We're not entering -- I just marked those for ID, Your Honor. I'm not entering those cause obviously I'm trying to not prejudice the jury. I'm trying to show this for the probative value and that's the reason why I'm introducing the black and whites except for the one color picture where you have the scale cause it's much easier to see obviously.

THE COURT: Okay. You want to be heard?

MR. FILE: Your Honor, again, we would just renew our motion in regarding pictures. I think, I think she can testify adequately without the pictures and I think that, to show those pictures to the jury, would, would inflame the jury. I don't think there's any, any real reason for it other than just to try to establish malice.

THE COURT: Let me ask this question, Mr. File.

In your opening statement, I think I, I understand that your client admits unlawful neglect and abuse?

MR. FILE: Yeah, she -- well, she's admitting neglect, Your Honor.

THE COURT: Just, just neglect?

MR. FILE: Neglect.

THE COURT: Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

I'd like to renew my motion from earlier regarding these photographs. It's obvious by the emotion that Doctor Rose expressed when she was trying to describe this that this is an emotional case. The pictures are emotional, and if it puts her in tears, I think the gruesome nature of the photographs would obviously inflame the passions of the jury. They would be more finding like an emotional decision rather than a decision based on the, the facts in the case.

Again, I would go back to State versus Nelson where the photos should be excluded where the facts attempted to show and fully establish by competent testimony. I believe Doctor Rose's contact -- testimony to all the injuries and I think she did a fine job before she stepped down enough to see the pictures.

I would ask that those pictures be excluded.

THE COURT: Mr. Morin.

MR. MORIN: Doctor Rose has done I don't even know how many autopsies. A lot.

Her initial testimony prior to any photographs, she was having an emotional response and she's (sic) does this for a living. The State wants to put these pictures in on top of that.

Chief Justice Kittredge who in his, in his concurring opinion in Heyward says in acting -- and he even cites Kornahrens where the State brought two pictures in and they're trying to put in like seven.

On top of that, there is absolutely no doubt I would argue that these are going to unfairly prejudice the defendants by their very nature. Doctor Rose -- clearly I wanted to object to her verbal rendition of what happened as she was having an emotional response to it and now the State says well, yeah, but it's important for us to -- she did a very good job of painting that picture before they even brought a picture in.

She is well versed in how to describe these injuries. They don't need any more help. They can say well, would it help, would it help. It might help their case. But the unfair prejudice is overwhelming. And, in Heyward, the chief justice wrote I find, as a matter of law, the probative value of the autopsy photographs is substantially outweighed, two pictures, to the danger of

the unfair prejudice and then he goes on and says some other things.

But there's no doubt that these are overwhelmingly emotional, overwhelmingly shocking. There's no doubt about it and Doctor Rose is an -- is, is well educated to explain these injuries.

In addition to that, the causes of death are not reflected, the sepsis, those things. We're not talking about gunshot wounds or other things and I understand she's got some injuries. But Doctor Rose can -- is well capable of explaining that to a jury. I have no doubt.

SOLICITOR BARNETTE: May I be heard, Your Honor?

THE COURT: Yes, sir.

SOLICITOR BARNETTE: The first thing, they keep saying malice and everything. No, this is to educate the jury of what happened to this young girl.

This is not your normal murder case. This is not a gunshot. This is not a strangulation. This is not a stabbing.

This is a situation where her body is circumstantial evidence of what happened in this case and these pictures help supplement Doctor Rose's testimony like in Heyward. I know what the Chief Justice says. That's the reason why I'm trying to balance this as much as I can from that standpoint and I think I went overboard to try to balance

this.

I'm not introducing the Court Exhibits. I'm not introducing Exhibits 2 through 27. I'm going to move straight to this where this is pertinent showing the abuse that has not been conceded in this case by any one of the three parties in this situation.

That has not been conceded in this case. This is something that we have to show as well as the murder case from that standpoint. And, in this situation, these pictures help.

Like she said, you can't describe this. I've done this for a long time. I know the Court's done it for a long time. I know these defense attorneys have done it a long time. Doctor Rose has done it a long time.

Nobody has seen anything like this. You heard Doctor Rider testify to that earlier. That's the reason why the pictures are needed to educate this jury because you can imagine this as is this happened. You can't describe it. Once you see it, it will match it up.

We're using black and white photos. We're trying to limit this here. Her testimony, like in Heyward, in the majority opinion, they talk about, I think it's Justice Few wrote the jo -- said Doctor Royals (sic) testimony from her observation reflected the scalp. The autopsy photographs corroborated Doctor Grose's (sic) testimony.

And then, in here, it was -- it also -- while the head injuries were not the direct cause of Tollison's death, these injuries independently support Heyward's conviction for assault and battery in the first degree. Heywood (sic), the majority opinion, supports this kind of testimony and supports presenting these kind of pictures.

I understand what was said from the dissent. But the majority of -- that's what they've done.

We have followed that. We have tried to follow that to the tee as much as I can, and, like I said, I feel like these photographs, they are preju -- any evidence will be introduced in a case that prejudices the defendant. But the probative value outweighs based off her testimony, based on what the State has done to try to eliminate that issues (sic).

We have tried to follow the law that's been given to us by our Supreme Court and I ask for all the pictures to be introduced. If the Court wants to do them one by one, we can go through one by one from that standpoint. But I feel like these pictures are needed in order to supplement and to show that jury what happened to H.B. [redacted] that night. Her body is the evidence in this case.

MR. MORIN: First of all, Judge Kittredge didn't dissent. He concurred.

SOLICITOR BARNETTE: Oh, concurred. Excuse me. I'll

brief---

MR. MORIN: The State kept it out.

Secondly, whether or not the State has other pictures that they might want to ask for has no bearing on what we're talking about here.

The question is the pictures that they're presenting to the jury are unfairly prejudicial. They are, in Mr. Barnette's words, horrific and the question is whether or not, and he made it clear and I'll probably object to it when he does it, made it clear that he's gonna ask the pathologist repeatedly is this evidence of abuse and neglect.

I mean that's what the jury has to decide. But he's gonna have her testify to it as many times as he can get her to say it. They don't need pictures for that. Oops. Excuse me. My anger came out.

That's my position, Your Honor.

SOLICITOR BARNETTE: Just one last thing and I, I agree. It's concurrent. He -- that was one issue that he disagreed with the majority on it. But understood correctly.

But the second thing, Your Honor, we're trying to measure a response here because based off the case law given to by the Supreme Court, and the State believes they've done it in this case. And, like I said, if we

need to take one picture by one we can or put them in as a group. I'll leave it up to the Court.

THE COURT: I know what he said too, Mr. Morin, and the very next sentence, which you left out, is I respectfully urge our State's fine prosecutors and trial judges to heed my admonition.

MR. MORIN: I didn't know that.

THE COURT: Okay. Well, we're gonna stand at ease for a few minutes.

So everybody knows, I brought my lunch. And, and, and so I was here with Madam Court Reporter. So, I have reviewed those pictures one by one and considered them and I got to go back here and put a few thoughts together now after -- cause I didn't know what Doctor Rose was going to say and that's the missing piece and I needed to hear that before I can make a decision.

So, we'll stand at ease for a few minutes.

SOLICITOR BARNETTE: Your Honor, do you need these back?

THE COURT: I don't. Thank you though.

SOLICITOR BARNETTE: Okay.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Thank you. Thank you. Please be seated.

Doctor Rose testified the Pictures 100 through 117 would educate the jury and, without them, she can not

fully describe the scene conveyed by the pictures. She said the pictures were necessary. The photos corroborate the testimony previously given by Doctor Rider, I believe it was Ryan Rider, yesterday.

He testified H.B.'s skin was literally missing, like raw meat, something like hamburger. After 30 years as an emergency room doctor, he had never seen anything like this in his experience or in his training.

Doctor Rose herself stated to this Court that she would try not to become emotional by describing each picture. This Court is familiar with Doctor Rose and her qualifications. Many times she has been qualified as an expert in this courtroom by this Court. She is a consummate professional.

This Court must balance relevant evidence and exclude it if its probative value sub -- is substantially outweighed by the danger of unfair prejudice under Rule 403. This Court finds the pictures relevant under Rule 401.

Gruesome autopsy photographs carry the inherent tendency to cause an emotional reaction on the part of the jury, State v. Middleton, 288 S.C. 21, and have the potential to arouse sympathies and prejudices of the jury.

This potential for an emotional reaction is the essence of the danger of unfair prejudice, State v. Jones

at 440 S.C. 214, because photographs are unfairly prejudicial if they create a tendency to suggest a decision on an improper basis commonly, though not necessarily, an emotional one.

Unfair prejudice can lure the fact finder into declaring guilt on a different -- on a ground different from proof specific to the offense charged. The fact finder, in, in every -- in every case -- in -- in every case in which the State seeks to introduce gruesome autopsy photographs, the trial court must acknowledge the significant danger the photo -- photographs will cause unfair prejudice.

In two recent cases, our, Jones and Nelson, our Court found that the trial court erred in admitting gruesome photos because the inherent tendency of the photos to cause unfair prejudice substantially outweighed what our Court found was very little probative value.

Here, the information gained from the autopsy photographs is not in question and the facts evidenced by the autopsy photographs are not in dispute. They're not challenged by the defendants.

In Heyward, he specifically denied that the victim suffered those injuries during the crime sequence. That is not here. She was the -- in -- their daughter and in their care and the sister.

Rule 403 requires this Court to balance the probative value of the evidence against the danger of unfair prejudice and our Supreme Court has scrutinized the admission of gruesome autopsy photographs more and more closely and our Supreme Court has recently said they will continue to do so. This Court must balance the inherent danger of unfair prejudice posed by these photographs against high probative value.

Doctor Rose testified in great detail as to the victim's injuries and graphically described the nature and extent of the injuries. Given the graphic and detailed testimony of the pathologist, the horrific autopsy photographs are unnecessary under State v. Kornahrens. That's 290 S.C. 281. Photographs of a murder victim should be excluded where the facts they are intended to show have been fully established by competent testimony.

This Court finds, as a matter of law, that the pictures are so horrific that the danger of unfair prejudice to the defendants outweigh their limited probative value and must be excluded from the trial of this case.

Solicitor.

SOLICITOR BARNETTE: Your Honor, can you look individually at the different pictures?

I know you took as a group but I think, obviously,

there's pictures that are not, I would think, be highly more probative than prejudicial --

THE COURT: Yes, sir.

SOLICITOR BARNETTE: -- from that standpoint.

THE COURT: I, I, I did do that, solicitor. I came in here -- as I said, I stayed here at lunch and I came in and I went over with them one by one. Madam Court Reporter was seated there and I, I was in here several minutes looking over those photographs and that's not the first time I've seen them anyway. But I did.

But I'm happy to hear any -- anything you want to put on the record.

SOLICITOR BARNETTE: Your Honor, the, you know, just for appellate reasons --

THE COURT: Yes, sir.

SOLICITOR BARNETTE: -- from this, I don't know when an autopsy picture may be entered if under this logic from that standpoint. I think we've went way too far cause obviously the State needs to be for the victim in this case.

I know you have to weigh and you've made your ruling and obviously I take exception to it because it's a situation where her body is evidence in this case. And I know Doctor Rose is going to do the best job she can describing it and everything. But there's no way she can

describe what those pictures show. There's no way and she's testified to that.

And, to me, I think it becomes highly -- it's -- you can take away several pictures, I understand that, but I think that certain pictures, especially showing the skin, the condition it was in, it's more probative than prejudicial in this case from that standpoint. Without those pictures, we won't be able to show -- and, of course, it goes to the abuse as well as the -- obviously the murder charge and I just want to state that on the record for appeal.

I think our Supreme Court needs to relook at this cause I -- this is a ruling that, that could have high, high reaching effects especially in this circuit because when will autopsy pictures not meet that burden. And that's the problem we're looking at. I think the pendulum has swung too far to the -- to that direction.

I just want to put that on the record.

THE COURT: Yes, sir, you're protected, solicitor.

Anything from you, Mr. File?

MR. FILE: No, Your Honor.

THE COURT: From Mrs. Racine?

MRS. RACINE: No, Your Honor.

THE COURT: Mr. Morin.

MR. MORIN: No, sir.

THE COURT: Okay.

SOLICITOR BARNETTE: Your Honor, I do plan to show the pictures to Doctor Rose --

THE COURT: Absolutely.

SOLICITOR BARNETTE: -- like I been doing with other witnesses and I'll probably show State Exhibits 2 through 27 to her as well as --.

THE COURT: Yes, sir, solicitor.

SOLICITOR BARNETTE: -- from there.

Thank you.

THE COURT: Yes, sir.

Okay. I have another matter I have to deal with.

Do you have my note on that?

I don't know who that -- I don't know the name or the number of the juror. It's the lady on the front.

THE BAILIFF: Yes.

THE COURT: The lady in white.

THE BAILIFF: I have the name and number here.

THE COURT: You have?

Has the white --?

THE BAILIFF: Ashley Smith.

THE COURT: Ashley Smith.

THE BAILIFF: Her number is 168.

THE COURT: One sixty-eight. Ashley Smith.

Okay. We need, we need her please.

THE COURT: You remain my alternate.

THE JUROR: Oh, okay.

THE COURT: All right. Everybody ready, Mr. Foreman?

THE FOREMAN: Yes, sir.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Your Honor, I'd like to call Doctor Rose to the stand please.

THE CLERK: Please raise your right-hand. Place your left-hand on the Bible.

DOCTOR KELLY ROSE, being first duly sworn, testified as follows:

THE COURT: Doctor, if you'll position that microphone to suit yourself and tell us who you are and spell your last name please.

THE WITNESS: I am Kelly Rose like the flower. R-O-S-E. I am the forensic pathologist in Newberry, South Carolina, and I cover Cherokee County cases.

THE COURT: Solicitor.

SOLICITOR BARNETTE: And -- thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q. Doctor Rose, tell the jury a little bit about your position and what you do, ma'am.

A. I am the, the only forensic pathologist there. It's a group and I do autopsies for 16 of South Carolina

counties, for the South Carolina Department of Corrections, and the Federal Bureau of Prison. I do a -- about a thousand -- 900 to a thousand autopsies a year.

Q. Can you tell what a forensic pathologist does, ma'am?

A. Yes.

So, a forensic pathologist is a medical doctor. I get asked that a lot, are y'all doctors. We are medical doctors.

So, I went to medical school and then I decided I wanted to go into pathology, which is the study of disease. Once I did my residency in pathology, and you're learning how to diagnose diseases, you can then subspecialize or get extra training and I decided to do that in forensics. And a forensic pathologist does autopsies to determine the cause and manner of death.

So what you're diagnosing as a forensic pathologist is how the -- did the person die and what was that manner. So it's a little bit of the circumstances in which the death occurred and you do that using an autopsy.

Q. If you could, tell the jury a little bit about your education, your background, ma'am.

A. I went to college at the College of Charleston. I got my bachelor of science in biology. I then went to the Medical University of South Carolina where I got my medical doctorate.

I finished my residency training in pathology at Emory in Atlanta and I stayed on for an extra year to do a -- their forensic fellowship at Emory and that is in downtown Atlanta, Fulton County, medical examiner's office.

Q. And how many autopsies have you performed, ma'am?

A. It's in-between 6,500 and 7,000. I haven't finished tallying it. But it's in-between that.

Q. And how many times have you been qualified as an expert in forensic pathology, ma'am, in state court?

A. There -- around 65. So, it could be a little -- plus or minus one or two. Sixty-five.

SOLICITOR BARNETTE: Your Honor, I would move her as an expert in forensic pathology at this point.

THE COURT: Any questions, Mr. File?

MR. FILE: No questions.

THE COURT: Mrs. Racine.

MRS. RACINE: No questions.

MR. MORIN: No questions.

THE COURT: Okay. Ladies and gentlemen of the jury, again, most witnesses have to testify to something they have seen, heard, or know of in their personal knowledge. But someone can be qualified in their field of training and she is now qualified as an expert in forensic pathology.

So, you do not have to accept her opinion. You give it whatever weight you deem advisable.

Solicitor.

SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

In this case, Doctor Rose, did you do an autopsy on H.B. in this case, H.B.?

A. I did. It was in 2022. April the 14th.

Q. If you would, tell the jury about the findings -- let me ask you a question. I think there was some pictures that you did that was taken at the autopsy as well as the ER.

Let me show you State's Exhibits 2 through 27.

Without showing the jury, if you would, just mark for ID purposes, do those pictures fairly represent what you saw and what you understand from her case?

A. They do.

Q. And I'll let you keep those with you if you want to from that standpoint.

If you would, tell the jury what you observed and what you found, ma'am.

A. So, an autopsy is broken into several parts. And so the first part is the external examination.

So, in this case of H.B., I -- we unzipped the bag that she was in, the body bag, and we took pictures. I looked at her from head to toe and what I'm doing, when

I'm looking at a body, is I'm looking for signs of disease, signs of injury, anything to help me figure out why did, in this case, did this little girl die.

She -- her body, and the way her arms and legs were positioned, there was obvious that she was disabled. It looked like she couldn't walk. She had really underdeveloped muscles in her arms.

She -- her spine was at a position that you see in profound disabled children and I've seen -- I've done many autopsies on profoundly disabled children. Someone who's had that problem since birth is generally what gives you that -- the picture of her little body.

And then, superimposed on that, she had -- it appeared -- looked as if she -- her lower body had been dipped in acid. It was moist. It wasn't dry like your skin's suppose to be.

It was bright red, as red as that gentleman's shirt. It looked raw. There were areas on her skin that it almost looked as if someone had switched her or flogged her. The skin on both of her knees was -- it looked dissolved.

Now it wasn't dissolved because your skin doesn't dissolve but it can break down if it's exposed -- constantly exposed to an irritant. And when I see findings like this -- I've never seen findings this bad,

this extensive. But I have seen these before. It's from prolonged exposure to urine and feces.

So, if you can imagine you can not walk. You can not tell someone that you need to use the bathroom and you are lying in your own filth, urine, and feces for weeks and what it might do to your skin. I mean I don't know if many of you have children. But you know a regular diaper rash, if you don't change a diaper, quickly what it can look like, what it can do, and now imagine what it might look like if that had been going on for weeks.

Her little privates, her, you know, vulva and the labia to her privates were so swollen and red. I've yet to see anything even remotely close to that.

Being a woman, I know how if you have a little irritation down there, the pain that you experience. I can't -- I don't think I can fathom the pain that she was probably experiencing from what I saw on her bottom.

She had rotten teeth. It was obvious to me that she couldn't brush her own teeth. She was a help -- she was a helpless child and her teeth were rotten. So, her teeth had been neglected.

I remember around her eyes were even red, and, at the time, I was trying to make sense of why are -- is it -- are her eyes red. It's, to the best of my knowledge and from my experience, I believe that it's likely from the

urine and the ammonia smell and it was irritating her eyes. So, not only was she getting a, a type of chemical burn coming in contact with her skin but the fumes were irritating her eyes.

And there were areas that were of similar changes that involved her lower back and her lower belly, which would be consistent with if your pants or whatever you're wearing, it's soaked in urine, it starts to creep up. So soaked with urine it spills over out of your pants onto your -- the lower back and belly. And that was just what I saw on the outside.

Q. If I can ask you, on her back, upper back area, what did you see to -- from your examination from looking at her body?

A. There were abrasions and areas of irritation that resembled what I see with insects when insects will get on people's skin. If you are around enough inspects, roaches in particular, they will irritate your skin. It's as almost as if they've chewed on your skin. I don't know, I'm not an insect person, what exactly they're doing. But that is -- it looked like that to me.

Q. In talking about her scalp area, if you can talk about her hair and everything?

A. She had really short hair and it wasn't short like a style. It looked irregular and patchy like as if, you

know, maybe when you're a little kid, try to cut your own hair. But it was her entire scalp.

So, almost like in cancer victims, hair grows back, it will grow back in patches. That's what her hair looked like and she had a fungal infection of her scalp.

Y'all've all heard of athlete's foot. You can get those same types of changes in your -- the skin of your scalp if you are not clean, not taken care of, and she had -- we -- the word we use is diffuse. Her entire scalp was involved by this fungus infection.

And then I noticed two parallel cuts above her ear on her scalp and that struck me as odd because they were very parallel like what you get if you've ever cut yourself with scissors.

So, she had two cuts that appeared like they were made, made from scissors and what would the -- the most significant finding was there's no reaction to them. So someone had cut her scalp after she died trying to cut her hair and she was already dead and they were cutting her hair. I don't know why. But that was what I saw and I even took that tissue and looked at it under the microscope and there's no reaction to it.

So, what -- a hundred percent she had her hair cut in a very haphazardly way after she was dead. It's hard -- really hard for me to put into words what I saw.

Q. Had you ever seen anything like this in your career?
A. I have never seen anything like this in my career before or since. I do examinations of prisoners who have a cancer and they send them to me to do an examination.

So, people that -- with in-stage cancer that have some skin -- problems with skin breakdown did -- none of their findings compare to what I saw on this little girl. It was by far the most horrific thing I've seen and, as I described earlier, she was disabled. You could tell she was disabled.

But you still have pain receptors in your skin. I can't imagine the level of pain that she would of been in.

Additionally, in her ears, there was such thick wax. I've never seen wax that thick other then when I was going through training and we would have to clean out people's ears. I've never seen wax that thick. It was so thick that I don't think she was able to hear.

So she was in pain in the -- and not able to hear anything and suffering for weeks before she died. At -- minimum of weeks before she died.

Q. So, this condition on the outside of her body, would -- how long would it take to get in that kind of, kind of condition?
A. Eight weeks minimum.
Q. All right. Let me ask you, on the internal part of

her body, if you would, talk about what you found, doctor.
A. So, she had pneumonia in her lungs and sometimes someone could have pneumonia and you don't really see it at the time of the autopsy. You have to look at it under the microscope.

But I -- she had pus in her -- both of her lungs, her right and her left lungs. There was just frank, consolidated pus in her lungs and that's what we call low bar pneumonia, and that is indicative of a process that's been going on for a long time. This is not a quick process. That -- the bugs, the bacteria were able to fester in her lungs long enough for it to cause pus to be seen with the naked eye.

I did blood cultures on her and blood cultures are just you take a sample of blood and you send it to the lab to see what's growing in it, what kind of bacteria or bug is there and that you should not have.

She -- the -- what it grew out were two bacteria, bugs that are very common with a -- urinary tract infections. So, I see that in really old, elderly people and, in her case, that indicated to me that she sat in her own urine and feces with open sores on her legs and the bacteria was able to gain access to her blood, travel to her lungs, set up pneumonia, and the pneumonia sits there and develops and festers for weeks.

Q. This led to what we call sepsis in her also?
A. Yes.
Sepsis is when the bacteria actually gains access to the blood and it, it causes a set of symptoms because your body's trying to fight the, the bacteria in the blood. The -- they're growing so much and they're rapidly growing and multiplying and it's -- your body's trying to fight it off and it causes symptoms.
Q. In her colon, her intestines, did you find something else?
A. So, in her colon, what was a large, hard piece of stool. So we call those fecaliths. That is indicative of what we call impaction.
So, once you are pass the point of being constipated, you can not physically pass that stool. It's too big. It's too hard. It was the size of my hand. So, the only option your body has at that point is to have loose stools, diarrhea around it. But you can't get that out on your own. You have to have procedures. They have to go in and actually break that up to get that out. So that was there.
Q. So, this -- was this signs of abuse in your opinion?
A. Yes.
This surpassed neglect and I've done many neglect cases. This -- you would have to not care at all and

all -- almost have malice or a hardened, very hardened heart to allow someone to suffer like that.

Q. And, in your opinion, obviously the neglect and abuse, would it lead to great bodily injury first before death?

A. Yes, which is what made this case so hard. I'm trying not to get emotional and I've seen a lot of cases and usually I can distance myself. But it's been very hard with this case. It would of been more kind for her to have been shot in the head. She suffered tremendously before she died.

Q. So, obviously serious or permanent impairment occurred before death in this case?

A. Yes.

Q. Obviously this abuse led to her death.

Is that right --

A. Yes.

Q. -- from there?

And would you say that the, the way she was treated, would that show wantonness or reckless disregard for human life?

A. Yes, and that's putting it mildly in my opinion.

Q. What was the cause of death that you found, ma'am?

A. It was complication of acute and chronic medical neglect and, by that, that encompassed all the findings

that were -- she was allowed to suffer which that led to her death.

Q. The problem is a lot of these things was totally preventable, is that -- or all preventable---

A. One hundred percent---

Q. ---correct?

A. ---preventable. And that's why I -- said the manner of death in this case was a homicide. This was murder.

SOLICITOR BARNETTE: One moment, Your Honor, please.

(Pause.)

Q. Just a couple more questions real quickly, ma'am.

Her knees, if you would, describe those to the jury if you could?

A. Her knees were so involved by the chemical burns and the issues that she would of had from the -- her feces, the liquid stool that she was probably passing, diarrhea, that -- the word we use in medicine is called macerated and that means to soften from soaking in water, that it was so softened that it was gone. It -- and I could see past her skin to the tissue underneath from where -- what your skin is on her knees.

Q. How many open wounds could you see?

A. There was so many I, I couldn't count them. I usually try to do a diagram for all the pertinent findings. There were too many. I couldn't.

Q. And did you do a summary of your autopsy in this case, ma'am?
A. I did.
Q. Let me show you what's been marked as State Exhibit 18.

Is that a summary of your autopsy, ma'am?
A. Yes.

SOLICITOR BARNETTE: Your Honor, I'd like to move this into evidence at this time.

THE COURT: Any objection?

MR. MORIN: Need to approach.

THE COURT: Sure.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

Q. Doctor, thank you for testifying. Please answer any questions the defense may have for you, ma'am. Thank you.

THE COURT: Mr. File.

MR. FILE: No questions.

THE COURT: No questions.

Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

May it please the Court?

CROSS-EXAMINATION

BY MRS. RACINE:

Q. Doctor, I just have a couple questions for you.

A. Okay.
Q. I believe you testified that H.B. got a UTI, which led to sepsis, which led to pneumonia?
A. Yes, that's -- she had that.
Q. Okay. Can you tell by looking at someone that they had a UTI just --?
A. No.
I was able to tell she had it -- a UTI, from, A, the fact that her body, which was red as it was, that she'd been sitting in her feces, her stool, and her urine, and then I did a blood test and the bugs that grew out are common bacteria that cause UTIs, and in all the cases that I've done of elderly women, to get this situation is the same exact pattern.
So, you learn all of that in med school and then it's been reinforced with all the autopsies that I've seen. That's how I diagnosed that.
Q. How about sepsis?
Can you tell from looking at somebody if they have sepsis?
A. No, that's an inference. You infer it from all your findings. It doesn't mean they don't have it. It's inferred based on the facts.
Q. Okay. And, finally, the pneumonia, would, would a parent be able to look and tell their child has pneumonia

just by looking at them?
A. This child -- I've seen live parents bring their children in cause they're coughing. They have a fever. They seem ill. They don't eat. They're -- they don't seem normal. Her baseline was a little different.
Yes, I can tell when my cats are sick. Parents can tell when their kids are sick and she wasn't just a little sick. She was acutely sick. She was terminally sick, yes.
Q. I'm sorry.
A. Yes to your answer. Parents can tell when their children are sick and pneumonia is a very grave illness.
Q. But can they tell, just by looking, that it's pneumonia?
A. No, you would not know what---
Q. Thank you.
A. ---exactly the problem is.
Q. Thank you, Doctor Rose.
No further questions.
MR. MORIN: I have no questions.
THE COURT: Thank you.
Doctor -- anything?
SOLICITOR BARNETTE: Your Honor, I just have one matter I'd like to take up with the Court at this time real quick.

THE COURT: Okay.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Anything, solicitor?

SOLICITOR BARNETTE: Other than the matter I took up at the side---

THE COURT: Yeah, we'll put that---

SOLICITOR BARNETTE: ---I'd like to be heard on that.

THE COURT: We'll put that -- we'll put that on the record.

Doctor, you may step down.

Is she excused?

SOLICITOR BARNETTE: She will be once I put my matter on the record, Your Honor.

THE COURT: Oh, okay.

SOLICITOR BARNETTE: Well, she can step down at this point. But I would ask her not to be excused at this point.

THE COURT: Okay. Any, any objection to her being excused?

MR. MORIN: No.

MRS. RACINE: No, Your Honor.

MR. FILE: None, Your Honor.

THE COURT: Okay. Thank you, doctor.

You need to send them---

SOLICITOR BARNETTE: Yes, sir, if we could be heard on that, what we talked about.

THE COURT: Okay. Mr. Foreman, ladies and gentlemen, we'll let you take a real quick break. He's gon' put something on the record and, quite honestly, I'm gon' get a little glass of ice water.

So, if you take a -- just about a five minute break here, 10 minute break.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

May it please the Court.

The reason why I asked for the side bar before the jury was excused, Your Honor, I know they're not here now, the pictures that we moved in, Your Honor, I think they become more relevant that -- in this case and then very probative in this cases especially on the question Mrs. Racine just asked if a parent could recognize this situation.

If you look at these pictures, there's no question about it. That's the whole problem with the way the case has gone.

A lot of people think this is just a medical event. This is not a medical event. This happened over weeks

from that standpoint.

We've had two doctors testify about the injuries and so forth. And for her to ask that question, can you tell by seeing or whatever, Doctor Rose tried to answer the question but the pictures would answer that question.

THE COURT: Okay.

SOLICITOR BARNETTE: There's no question about the injuries that occurred. It becomes a lot more probative in this case and relevant than any prejudicial because now they've put in the mind that these were injuries that possibly a parent couldn't see from that standpoint and I think that's -- that's the reason I'm making the motion to renew my motion to enter these pictures. That's State Exhibits 100 through 117.

Thank you.

THE COURT: Mr. File.

MR. FILE: No, Your Honor. We stand by our motion and your ruling on that. I think it's still -- your ruling is still correct. So --.

THE COURT: Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

Very briefly, Doctor Rose began her testimony -- testified that in order to identify the UTI, she had to do blood cultures. She also said she had to do -- she had to cut H.B. open to look at her lungs to see that the

pneumonia was there.

The question I asked was simply could she tell by looking and how -- she already answered -- well, she did answer about it that she had to do cultures.

I didn't ask anything that was outside the scope of her autopsy report or anything that she already testified to. I just wanted to clarify a parent would be unable to do that or see that. But she wasn't even able to do that or see that by simply looking at her. She had to perform the autopsy in order to do that.

I ask that your ruling still stand and the photographs will still be excluded at this time.

THE COURT: Mr. Morin.

MR. MORIN: I think Doctor Rose's response that a parent can tell, based on what she's testified to, is sufficient.

THE COURT: Okay. Okay. The -- you're protected on the record. But it's denied again, solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

We'd ask that Doctor Rose be excused then, Your Honor. I appreciate you letting me put that on the record.

THE COURT: Yeah. Certainly. Absolutely.

Any objection to her being excused?

MR. FILE: No, Your Honor.

THE COURT: Thank you.

MRS. RACINE: No, Your Honor.

THE COURT: Let's, let's all take a, a quick five to six minute break. I'm gon' get some, some more water for me.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Thank you. Thank you.

Everybody ready?

SOLICITOR JORDAN: I'm, I'm gon' -- I lost Barry.

THE COURT: Okay.

MR. MORIN: I lost my assistants.

SOLICITOR JORDAN: I think he went to the restroom.

MR. MORIN: Yeah, I think that's where they are.

(Pause.)

SOLICITOR JORDAN: Your Honor, if I can have one moment to find the right notepad?

THE COURT: Sure. Sure.

SOLICITOR JORDAN: I seem to have selected too many of them.

(Pause.)

THE COURT: You ready?

SOLICITOR JORDAN: Yes, sir.

THE COURT: Everybody ready?

(WHEREUPON, there was no audible response.)

THE COURT: We'll have the jury.

(WHEREUPON, the following takes place within the

presence of the jury.)

THE COURT: Mr. Foreman, everybody, everybody good?

THE FOREMAN: Yes.

THE COURT: Solicitor.

SOLICITOR JORDAN: Thank you, Your Honor.

State calls Alicia Dunnaway.

THE CLERK: Please raise your right-hand. Place your left-hand on the Bible.

ALICIA DUNNAWAY, being first duly sworn, testified as follows:

THE CLERK: Watch your step.

THE COURT: Ms. Dunnaway, tell us who you are and spell your last name for the court reporter please.

THE WITNESS: I'm Alicia Dunnaway. Dunnaway is D-U-N-N-A-W-A-Y.

SOLICITOR JORDAN: Thank you.

DIRECT EXAMINATION

BY SOLICITOR JORDAN:

Q. Ms. Dunnaway, where are you, where are you currently employed?

A. Axcess Healthcare.

Q. Were you employed there in 2020 through 2022?

A. Yes, ma'am.

Q. Okay. How long have you been employed at Axcess?

A. Eight years.

Q. What is your title?
A. Administrator.
Q. Okay. Just a little bit about your background.
What, what education level do you have?
A. I have a bachelor of science in nursing from USC-Upstate.
Q. Okay. And you said you've been with Axcess for eight years?
A. Yes, ma'am.
Q. As part of your job, do you keep up with information in, in regard to payments to employees with Axcess?
A. Yes, ma'am.
Q. Okay. I'm gonna show you what's previously been marked as State's Exhibit No. 121 and ask if you recognize these three pages.
A. Yes, I do.
Q. And is -- are these records kept in the ordinary course of your business?
A. They are.
SOLICITOR JORDAN: Okay. Your Honor, at this time, the State, the State would move 121 into evidence.
MR. MORIN: I --.
THE COURT: Any objection?
MR. FILE: No objection.
THE COURT: Any objection?

MRS. RACINE: No objection.

MR. MORIN: I've seen them. No objection.

THE COURT: No objection. They're admitted.

(WHEREUPON, State's Exhibit No. 121 was received into evidence at this time.)

Q. Ms. Dunnaway, if you will, just come down so you can see the TV on the wall?

Come around.

(WHEREUPON, the witness comes down from stand.)

SOLICITOR JORDAN: Your Honor, is it okay if I publish it to the jury?

THE COURT: Yes, ma'am.

SOLICITOR JORDAN: Thank you.

Okay. Could you just explain to the jury what each one of these columns is, is stating?

A. So, the date column is the pay date. You will see Edward Baynard's name on there. This is his records for payroll. The number is just the paycheck number. But we do do direct deposit. It's -- type is paycheck. Axcess Healthcare's the company and the amount is what he was paid. That was his net amount, not his gross amount.

Q. So the gross is the higher amount?

A. Right.

Q. Okay. And this is for what period of time?

A. Paycheck is 10/2/20 -- 2020. I don't know when the

last paycheck was.
Q. Up at the very top on that third page.
A. Oh, September 1st, 2020, through January 1st, 2022.
Q. Okay. He was also employed in 2022?
A. Yes.
Q. And is that reflected on Page 3?
A. Yes, January 13, 2022.
Q. Okay. So looking at Page 1 and 2 -- I am so sorry I'm making this more complicated.
Those are all the weeks he was paid?
A. Yes, ma'am.
Q. And we've heard from other witnesses -- from Ms. Patton from Axcess that he was a respite and also a CPCA.
Was he paid in one check for both of those jobs?
A. Yes.
Q. Okay. And he was paid weekly?
A. Yes, that's that.
Q. Okay. So, at the bottom, I'm sorry, the top of Page 2 of this exhibit, what does it state that Edward received as his net pay for September 1st, 2020, through January 1st, 2022?
A. 20,700 and -- I don't know if that's an eight or a seven.
Q. I can hand it to you just to make it easier.
A. $20,788.52.

Q. Okay. And for the period or through the time he was employed in 2022, how much did Edward make?
A. It was like $4,801.36.
Q. Okay. Is that roughly $25,000?
A. Yes, ma'am.
Q. Okay. If you'll have a seat.
(WHEREUPON, the witness returns to the stand.)
Q. I'm gonna hand this to you or actually if you'll come down again?
(WHEREUPON, the witness comes down from the stand.)
Q. And just review the last couple of weeks of pay. I'm assuming, when on weekends, that there's a little lapse and that he received a paycheck.
A. You receive your paycheck on Friday for the Sunday through Saturday before.
Q. Okay. And so Edward was paid, based on this, through April of 2022?
A. Correct.
Q. His last paycheck date was 4/22/22?
A. Yes.
SOLICITOR JORDAN: Okay. Nothing further, Your Honor.
Please answer any questions they may have.
THE COURT: Thank you.
SOLICITOR JORDAN: Have a seat. Sorry.

(WHEREUPON, the witness returns to the stand.)

CROSS-EXAMINATION

BY MR. FILE:

Q. Okay. You're a nurse?

A. I am.

Q. A trained nurse?

A. I am.

Q. Did you, did you compile these payroll records?

A. I did not compile payroll records.

Q. Were you the---

A. That's the HR department.

Q. Okay. And how are you connected to these payroll records?

A. I oversee all operations at Axcess.

Q. Okay.

A. Every department.

Q. But you, you didn't visit the Baynard home or---

A. No.

Q. ---the Baynard household or --

A. No.

Q. -- or any of the folks?

A. No.

Q. Have you ever met them before?

A. I have seen Edward at the office. But it was just in passing when he was there doing his education analysis.

Q. All right. That's all I have.

MRS. RACINE: No questions, Your Honor.

THE COURT: Okay. Mr. Morin.

CROSS-EXAMINATION

BY MR. MORIN:

Q. Ma'am, it's my understanding that direct deposit's done by Axcess, correct?

A. Correct.

Q. And State's Exhibit No. 121 shows payments that were made --

A. Correct.

Q. -- in his name?

A. Uh-huh. (Affirmative).

Q. And they would have been sent to the account that he wrote when he onboarded?

A. Right.

Q. And Axcess doesn't have any way to know whose account that is. It's just that's where he said send it.

A. Correct.

Q. I notice on this it's listed as Axcess Healthcare Services, LLC.

A. Uh-huh. (Affirmative).

Q. Now, is that the name of -- because I've also seen Axcess Home Care.

A. Right.

Q. Are those two different things or are they the same thing?
A. So, our services are conducted under Axcess Healthcare Services. To the state, to DHHS, DDSN, we're Axcess Healthcare Services. It's more of a payroll problem we had because we outgrew -- we outgrew QuickBooks. We had more employees than QuickBooks could handle.
Q. Okay.
A. So, Axcess Home Care Spartanburg, Axcess Home Care Columbia, and Axcess Home Care Greenville were created as QuickBook LLCs so that they could handle our payroll.
Q. Okay. And so Axcess Healthcare Services is like the umbrella over the whole thing?
A. Correct.
Q. Thank you.
SOLICITOR JORDAN: Your Honor, may this witness be excused?
THE COURT: Anything?
MR. FILE: No objection.
MRS. RACINE: No objection.
SOLICITOR BARNETTE: Your Honor, we---
THE COURT: Ma'am, you may step down and be excused if you choose.
SOLICITOR BARNETTE: May we approach for a second,

Your Honor, over on the side?

THE COURT: Uh-huh. (Affirmative).

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: Mr. Foreman, and ladies and gentlemen of the jury, I'm told by the lawyers -- they wanted to talk about timing here.

I'm, I'm told that the next witness will be a longer witness and it's a little short of five o'clock here. But I despise breaking up testimony. Somebody starts testifying and, and I didn't like it as a lawyer and I don't like it as a judge. So -- and they agree.

So, we're gonna break early today. We'll start at 9:00 tomorrow. I don't have anything first thing in the tomorrow. We'll start at 9:00AM.

Be here about 8:30 when the courthouse opens. Get some coffee. These fine folks with the jackets make some good coffee. Chat with each other. Stow your belongings, whatever you might need to do. Use the facilities and then we'll start promptly at 9:00.

Again, don't try to learn anything about the case. Don't do any homework on it. You're off-duty now. So the last thing you want to do is go home and work.

Mr. Foreman, if you'll take your jury out. I'll see everybody at nine o'clock tomorrow morning.

(WHEREUPON, the following takes place outside the hearing of the jury panel.)

THE COURT: Okay. Solicitor.

SOLICITOR BARNETTE: Judge, one thing I need to put on the record.

I think -- I know you did the sidebar on Exhibit 118 which was the autopsy report. I know we put -- and I think you sustained their objection and we just got it for ID purposes only---

THE COURT: Yes, sir.

SOLICITOR BARNETTE: ---at that point.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: I just want to make sure that was on the record from that standpoint.

Can we meet with you in chambers just for scheduling for the rest of the trial?

THE COURT: Sure. We'll go back there and talk about scheduling.

We'll see everybody in the morning. We're in recess until -- anybody need anything before I go in recess?

(WHEREUPON, there was no response.)

THE COURT: Otherwise, we're in recess until 9:00 in the morning and we'll, we'll talk about scheduling and see where we are.

Ms. Brandy, I'm gon' give these to you before I

leave.

THE CLERK: Yes, sir.

(WHEREUPON, Court was in recess for the evening.)

Wednesday, October 30th, 2024

THE COURT: Everybody ready to go, solicitor?
SOLICITOR JORDAN: Yes, Your Honor.
SOLICITOR BARNETTE: Yes, Your Honor.
THE COURT: Everybody?
MRS. RACINE: Yes, sir.
THE COURT: Okay. We'll have the jury.
(WHEREUPON, the following takes place within the presence of the jury.)
THE COURT: Good morning, ladies and gentlemen.
THE JUROR: Good morning.
THE COURT: Mr. Foreman, everybody good?
THE FOREMAN: Yes, sir.
THE COURT: Thank you.
THE FOREMAN: Thank you.
THE COURT: Solicitor.
SOLICITOR JORDAN: Thank you, Your Honor.
The State calls Doctor Marcia Parra.
THE CLERK: Please raise your right-hand. Place your left-hand on the Bible.
MARCIA PARRA, being first duly sworn, testified as follows:
THE CLERK: Okay. Watch your step.
THE WITNESS: Thank you.

THE COURT: Good morning, doctor.

THE WITNESS: Morning.

THE COURT: Tell us who you are and spell your last name for Madam Court Reporter please.

THE WITNESS: Sure.

I'm Marcia Parra. P-A-R-R-A. I'm a board certified pediatrician. I've been employed with Spartanburg Regional since 2006.

THE COURT: Thank you.

Solicitor.

DIRECT EXAMINATION

BY SOLICITOR JORDAN:

Q. I'm gonna go back a little further than 2006 and have you tell the jury a little bit about your education, where you went to undergrad, and where you went to medical school.

A. Sure.

Attended Vanderbilt University. I was -- obtained a B.S. in chemistry and Spanish literature. I then attended Emory Medical School in Atlanta, Georgia where I received my doctorate of medicine.

Q. Okay. After that, what did you do professionally?

A. I -- in order to attend medical school, I commissioned in the United States Navy. I completed my pediatrics residency at Naval Medical Center Portsmouth in

Portsmouth, Virginia and then, after that, I finished my residency program in 2000.

I went down to Beaufort, South Carolina where I was a general pediatrician for Army and Marine Corps families at Naval Hospital Beaufort. After that, in 2004, I went to AnMed Medical and AnMed in Anderson, South Carolina where I worked with the training hospital -- a residency program there where I was a general pediatrician. And, after that, in 2006, I moved to the Upstate to further -- the Upstate to, to Spartanburg.

Q. Okay. And you work at Spartanburg Regional?

A. I do.

SOLICITOR JORDAN: Your Honor, at this time -- as part of your license to practice medicine, do you also have to contend -- you have to do continuing medical hours yearly?

A. I have a current South Carolina medical license. So I have to obtain a certain number of hours of continuing medical education.

SOLICITOR JORDAN: Your Honor, at this point in time I would move to admit Doctor Parra as an expert in the field of pediatrics.

THE COURT: Any questions?

MR. FILE: No questions.

THE COURT: Questions?

MRS. RACINE: No questions.

THE COURT: Mr. Morin.

MR. MORIN: No questions.

THE COURT: She is so certified as a pediatric medical doctor.

Well, ladies and gentlemen, once again, she's qualified as an expert witness and you give what weight to her testimony you deem advisable.

Solicitor.

SOLICITOR JORDAN: Thank you.

Did you have an occasion to become the pediatrician for H.B. in this case?

A. I did.

Q. And when did you start treating H.B.?

A. Around 2012 between the ages of four and five years of age.

Q. Okay. What, what or were H.B. diagnosis then and throughout her life?

Tell the jury about H.B..

A. Right.

So I -- H.B. came under my care around, as I said, age four to five. She was a medically fragile child who had -- born prematurely at 28 weeks and ended up having an intraventricular hemorrhage during her neonatal intensive care stay. That is not, unfortunately, uncommon due to

just the fragility of newborn infants born so early.

She also had complications of chronic lung disease which required her to have a tracheostomy in order to, to be able to continue to breathe.

Q. Did she also have a, a diagnosis of cerebral palsy?

A. She had the diagnosis of cerebral palsy, chronic lung disease. She also had a seizure disorder technically termed Lennox-Gastaut which made it a much more complicated seizure disorder.

Q. Can you describe to the jury just H.B.'s overall body in the normal situation?

A. H.B. was definitely alert, interactive. However, nonverbal. Was dependent on all of her care. Was unable to walk. Needed to be positioned and moved. She had also a gastrostomy tube, which is direct -- a feeding tube basically directly into the stomach. So she could not eat orally and received her, her nutrition via enteral feeds through, through the G-Tube.

Q. I'm gonna jump ahead to just starting in 2000 and -- did you see H.B. in 2017?

A. I did.

Q. Okay. And how often would you see H.B.?

A. We usually see -- I usually saw H.B. at least -- typically about once a year. Maybe an occasional sick visit that required more immediate care. But typically

about a 30 minute what we deemed a well childcare, a most adjusted visit, to see what the other -- she had several other doctors, subspecialists, neurologists, feeding specialists, surgeon, pulmonologist.

And so my role, as her general pediatrician, was basically just to be kept up to speed on, on those things that were going on. And so typically about once a year for about a 30 -- typically about 30 -- 30 plus minutes.

Q. Okay. Did -- was H.B. -- how were H.B.'s appointments paid for?

A. H.B. received Medicaid. And so those visits were covered by that.

Q. Okay. Were -- as, as a Medicaid patient, were her supplies also covered?

A. A hundred percent, yes.

Q. And was that part of your visit to make sure that the supplies were ordered that she may need?

A. They were. These, these visits were, were kind of business visits. There was a lot to go over, a lot of paperwork involved.

She had home, home health or she had a, a medical supply company that required all the supplies that she needed in order to be fed, to take care of her tracheostomy, to receive oxygen, diapers, things to take care of her -- when she went to the bathroom, those types

of things.

So, yes. So it's a, a lot of paperwork involved, a lot of prescriptions involved for, for medical supplies.

Q. Okay. And when you say it was a business visit, visit, you also physically examined H.B. ?

A. I absolutely did, yes.

Q. Okay.

A. Yes. There was a lot of discussion though as a part of just being, again, brought up to speed on things. But the, the physical exam was a part of that visit, yes. And so all my visits with her were where I would also examined (sic) her, yes.

Q. Okay. And who -- well, who brought her to most of these visits?

A. Her parents, Bobbie and David. Bobbie did not drive. And so David was, was often, often times -- was, was a way she was transported there.

Q. Okay. And there's also -- is there also a service out there that provides medical transport if a patient needs it?

A. There is, yes.

Q. And was---

A. And that gets covered also.

Q. Covered by --?

A. By Medicaid. So, there's not a direct expense to the

family.
Q. Okay. And was that offered in this case as well?
A. It was.
Q. Do you recall if it was utilized or was it just offered?
A. I, I think it was utilized. I don't think that was the only way they got there though.
Q. So, you saw H.B. in 2017?
A. Yes.
Q. You then did not see her again until 2019?
A. Yes.
Q. Were there canceled visits in-between those -- that visits (sic)?
A. Not that I was aware of. We don't get notified with the medical records system because we -- Spartanburg Regional's been on Epic since 2016. And so I don't get notified directly of cancellations. You have to go looking for them.

So, if a patient cancels an appointment, they go off the schedule and I don't get any sort of flag or anything like that. So --.

Q. Did you look in this case to see if H.B. had missed any appointments in 2018?
A. I, I don't recall. I don't recall.
Q. Okay. You did have a visit with H.B. in 2019?

A. I did.
Q. Okay. And, in that, you discussed just her general care?
A. General care. Again, prescriptions, medical supplies, changes in her integral health. We go over to see if there were emergency room visits, hospitalizations, and just getting caught up with her subspecialty care also, yes.
Q. Okay. Thank you.
Did you have any visits with H.B. in 2020?
A. I did not have an actual physical visit with her in 2020. There was communication in 2020 but not an actual visit.
Q. In reviewing your records, did you note that there were missed appointments in 2020?
A. At that point in time I did. The first part of 2020, as in terms of communication with the medical supply company, getting all those things sorted out, taking care of -- to her -- her birthday was in June. So, at my visit in 2019, we talked about a visit in six to 12 months. That was July of 19 -- 2019.
So, in the Summer of 2020, it was about that one year mark. And so I started mentioning that we needed to have some, some visits. I, I -- we needed, excuse me, to establish a visit in person as I have it.

Q. Okay. And were visits scheduled?
A. Visits were scheduled and then I became aware of cancellations in the later part of 2020 when I was receiving documentation and needs for prescriptions and paperwork to be completed from the medical supply company.
Q. Okay. And did you, did you -- based upon the canceled appointments, did you have your office reach out to Bobbie and David or Bobbie or David?
A. We, we tried both of them to call. And so, often times, what was happening if a canceled appointment -- if an appointment was canceled, another one was booked. And so, in communication with the home health or, excuse me, with the medical supply company, we would let them know hey, they've canceled this appointment. But there's a pending appointment coming up in the next month.

And then I would get, again, notification or needs for prescriptions and paperwork to be completed and then would go back and look and realize that they had again canceled an appointment and rebooked an appointment.
Q. Okay. So did they cancel an appointment on -- in July -- on July 22nd of 2020?
A. Yes.
Q. Did they also cancel an appointment, and by they I mean her -- the people who make the appointments were her mom and her dad.

They canceled an appointment on August 31st, 2020?
A. Yes.
Q. December 4th, 2020?
A. Yes.
Q. December 30th of 2020?
A. Yes.
Q. Okay. Did you, did you let them know that you would be open to work her in?
A. Absolutely.

We -- I, I, myself and my office, really did our best to provide a medical home for H.B. . And what that means is that they knew the staff. They could call. We would work them in.

So, scheduling and being booked out two months for a well visit or something like that, that, that just didn't apply to them and it doesn't apply to our other special needs patients in the practice. So, I absolutely made, made it known that I would be able to work them in at, at their convenience. But they needed to be worked in and they needed to come.

Q. Because -- and you needed to see H.B. ?
A. Yes, I needed to see H.B. and the other thing is, with these -- with the medical supply companies, very appropriately so, they need documentation and a part of this documentation, also for reimbursement, goes -- the

patient needs to be seen within a certain period of time and that's on those -- these direct certificate of medical need documentation paperwork that needed to be completed.

Q. After the visit was canceled in December of 2020 twice, when did you finally see H.B. ?

A. I believe January the 11th in 2021.

Q. Okay. Do you recall who brought H.B. to your office?

A. I remember both Bobbie and David being there.

Q. Okay. And, Bobbie and David, they knew how to care for H.B. ?

A. Yes, I felt very comfortable. In the eight plus years that I took care of her, granted these visits were yearly, not prolonged visits, but I always felt very comfortable that they were providing adequate and appropriate care for her.

Q. Okay. Tell us about the visit on January the 11th of, of 2021.

A. So, again, we went over all the interim things that happened that -- this was during COVID. To some degree at, at the height of COVID as in terms of, you know, being conscience of that and especially in an adequate -- medically fragile child.

So, we went through just all the things that kind of transpired in the, in the year and a half that I'd seen

her. I became aware that Axcess Health had become involved. They were now providing both respite care and a personal care, care aid. I did learn that it was Edward and that I got both the names of their Axcess care case coordinator and the DDSN, which is the Department of Disabled and Special Needs. I got the information of their case manager for that also.

So, we went over medications. There were multiple appointments coming up that they had already booked in anticipation -- with the pulmonologist, with her dietician, with her neurologist. And so we went over all of those things.

Q. Okay. Were some of those appointments Telehealth appointments?

A. So, she had one Telehealth appointment with her neurologist in August of 2020. And so one of the pending appointments coming up with her nutritionist was in -- at MUSC in Charleston. And so there was a Telehealth medicine appointment that was booked --

Q. Okay.

A. -- where they were -- that we were anti -- that they were anticipating.

Q. And in that meeting or that visit -- doctor's appointment, did you, did you view H.B.'s body?

A. I fully examined H.B. from head to toe.

Q. Okay. Can you tell the jury what you saw?
A. So, she, she was dressed and dressed appropriately. She had on clothes with -- she did have on tights. It was January. She had on socks.

She came in in a wheelchair and I put her out of her wheelchair onto -- to the table to better undress her and to better examine her.

So, so I not -- she was well kept, clean, hair done in a bow in a, in a ponytail. She -- her tracheostomy site looked fine. Her G-Tube site did have some, some kind of little bit of inflammation around or just signs of -- that there had been some inflammation there.

The thing that we -- so she -- as I mentioned, she was non-ambulatory. Because of her cerebral palsy, she was in contractures and, and what we mean by that is that her tone is really high and stiff. And so she does not move fluidly at all. So she's very tight.

And so all that seemed to be really unchanged. I do think the only thing -- so the, the only thing of note was that I did notice some skin findings on her arms, upper extremities, and legs, lower extremities, that were just a little bit darkened. But nothing that was open.

No ulceration. No bruise. No scratch. No cut.
Q. And did you also note that her back and buttock had no lee -- lesions?

A. I did -- I looked in her, her diaper area. I took down her diaper. I looked at her in the front, her female genitalia, and I also looked -- rolled her on her side to look at her back, to look at her buttock, and look at her back, yes.

Q. Okay. Doctor Parra, you have seen photographs that were taken of H.B. the date of her death and at her autopsy?

A. Yes.

Q. Did you see any indications of that when you last saw her on January the 11th of 2021?

A. Absolutely not.

Q. Okay. Did -- would H.B. have any reaction to you if you communicated with her?

A. Yeah, I think she did and smiled and I, I -- as a pediatrician in working with medically fragile children, she is awake and she is alert and she can show happiness and she can show sadness. And so it's very important that I -- I realized that the, the main relationship was with the family with these individuals. But I absolutely addressed her, spoke with her, talked to her, and she seemed -- she responded. She responded.

Q. At that appointment, was there a change made in how often you would see H.B.?

A. So, we brought up my concerns over the past 18 months

that I had not seen her and the fact that we -- my office and myself spent a lot of time really trying to, to, to chase them down, to bring them in. And, again, in the, in the context of COVID, we wanted to be somewhat cognizant of that.

But the reality is, is that, in order to continue to maintain our care for her, she needed certain supplies. She needed things to be taken -- she needed things to be taken to the house and all. And so, at that point in time, we mentioned that I wanted to start seeing her every six months.

Q. Okay. Did you see H.B. again?

A. I never saw her again.

Q. Okay. Were appointments scheduled with Bobbie and David to see H.B.?

A. Yes, there were.

And so the first part of 2021, again, good communication as in terms of talking to, talking to them, providing the supplies. I reached out to DDSN to touch base with them, make sure they knew that I was aware of who they were and that they were able to contact me. She did have several subspecialty appointments after that.

And so, again, for the first six months of 2021, very -- was, was communication and there was things that were being provided and things were being done.

And so, in August, which would of been just after that six month mark, I got something from the home health company or, excuse me, the medical supply company asking for paperwork to be completed and I met -- said sure. I'm happy to go ahead and do the paperwork and make sure the company was okay with that. But I said hey, it's time to go ahead and come in again---

Q. Did you---

A. ---as we had previously discussed.

Q. Did your office schedule an appointment?

A. They did.

Q. On August the 31st of 2021, did H.B. appear for that appointment?

A. She did not.

Q. On September the 8th of 2021, did H.B. appear for that appointment?

A. She did not.

Q. September 4th, 2021, did she appear?

A. No.

Q. October 8th of 2021?

A. She did not come.

Q. And in-between these visits, would contact be made -- I'm sorry.

December 27th of 2021, did she appear?

A. She did not.

Q. January 24th, 2022?
A. She did not.
Q. February 22nd, 2022?
A. No.
Q. Okay. And between some of these appointments, were contact -- was contact made with the parents to bring her in?
A. Attempts were made multiple times and actual direct contact was made multiple times, yes.
Q. Okay. I'm gonna switch topics real quick from the missed appointment to O2 levels.
A. Sure.
Q. Can you just tell the jury what is a proper O2 level for someone without medical conditions and then someone in H.B.'s position?
A. So, a normal oxygen level, realistically, is gonna be anywhere between 97 and a hundred percent.

And so, if a, a child has asthma and is wheezing or has something pulmonary going on, something lung wise going on, those oxygen levels can be lower. Ninety-two is typically what we deem as fine to be able to maintain care at home for a child that does not have chronicle (sic) medical conditions, and anything under that, the thought is they need supplemental oxygen, which, often times, will get provided in the -- not off a tank but will get

provided in the hospital.

So H.B., because of her chronic lung disease and her tracheostomy, had oxygen at home which she used and used all the time. And so oxygen levels for her, realistically, we accepted a little bit lower. About 90 percent.

Q. Okay. But anything lower than 90, what -- were -- was the family told to -- what was -- what was the family told to do if---

A. So, she saw pul -- pulmonology and very much at -- with all their visits and we would go over these things too. But the pulmonologist specifically, as in terms of what to seek care for, signs of respiratory distress, respiratory distress, acknowledging that these children with chronic lung disease and tracheostomies are at much greater risk for developing pneumonias.

Q. And so the family is -- you, you -- you've talked to the family and, and other doctors, through the records, have talked to the family as far as low O2 levels and what should be done?

A. What to seek care for, yes.

Q. Okay. And you stated H.B. should be at a 90 or above?

A. Ninety and above when awake. Eighty-eight and above when asleep, resting. But 88 to 90 percent are the lower

limits.
Q. And below that would be a time to seek treatment?
A. Yes.
Q. Okay. And the tracheostomy, where does that -- just -- where does that take the -- what, what is the purpose of the tracheostomy?
A. So, the reasoning for the tracheostomy back in the neonatal intensive care unit is that they were not able to extubate, meaning taking out the breathing tube permanently, without her needing additional support. And so what the tracheostomy does is it goes directly into the trachea, which is the big airway that goes directly down into the lungs.

And so you can provide oxygen that way. You can help clear secretions that way. If she did need mechanical ventilation, which would be in the hospital, then you would have -- she would need to be intubated in the traditional sense through the mouth. It could go straight there.
Q. Okay.
A. And she -- oh, I'm sorry.
Q. Go ahead.
A. No, she did -- she didn't -- she was not mechanically ventilated. She just had the tracheostomy. So she was not on a mechanical ventilator at home.

Q. Okay. And the tracheostomy is how she would get O2 or oxygen?
A. She -- yes, she would get -- so that's how we gave her -- that's how we did the supplemental O2. And so she could breath. And so she was getting some oxygen from her nose, from her mouth, and all but, but needed that maintained in order to continue to, to breathe appropriately.
Q. Can you tell the jury what pulse -- a pulse oximeter is?
A. So, a pulse oximeter is a direct way to get an oxygen level without needing to take blood. More specifically, arterial blood, which is the blood that takes oxygen to the rest of the body. And so it's a noninvasive way to check oxygen levels to give you a general idea of where those levels are.
Q. And did H.B. have that?
A. She did.
Q. And where does -- where on the body does that go?
A. So, I -- we traditionally think of on the finger. But you can put a pulse oximeter on a toe. You can wrap it around their wrist. They're, they're various ways to, to measure that. So, the traditional pulse oximeters are on a finger or you can use it -- the toe.
Q. So she was provided with one to measure that---

A. She definitely had one, yes.
Q. I want to go back to the photograph or I'm gonna ask you this.
Did you -- were you here yesterday when Doctor Rose testified as to her findings at the autopsy?
A. I was.
Q. Tell the jury what signs would you have seen with the description that Doctor Rose had of this visible pus in her lungs.
What outward signs would have been seen with the level of pneumonia that Doctor Rose spoke about in addition to the other issues and neglect that she had?
A. You know, Doc -- Doctor Rose answered the question are there overt signs of or outward signs of pneumonia and her response was no because we don't have direct visualization of her lungs. However, pneumonia just doesn't happen like that.
There are signs before that as in terms of increased respiratory rate, their breathing levels. They will be struggling. They will be using their accessory muscles, meaning their chest wall muscles, to, to work harder to breathe.
Because H.B. did have a tracheostomy in place, those secretions would of gotten much thicker, more purulent, which is suggest -- suggestive of pus. Those

secretions would of increased. She -- temperature instability.

We typically will have fever. Children that are neurologically impaired, their blood -- their temperature levels may be actually low. But you can see also fluctuations in heart rate, which her pulse oximeter will also measure. Not just oxygen level but also heart rate.

And so, often times -- so, again, all these are signs and symptoms supporting a diagnosis of, of potential for pneumonia.

Q. Would you, would you also note that -- would her pulse ox note differences with the oxygen level in her?

A. Can you rephrase that?

Q. Is that---

A. No, I'm sorry.

Can you rephrase that?

Q. What is---

A. I'm sorry.

Q. Would, would those signs of issues in her lungs show on the pulse ox?

A. Oh, yes, of course. Yes. I'm sorry. Yes.

Q. Going back to the photographs that you've seen of the day that H.B. passed and the -- her autopsy, do you -- based of your view of those photographs, that I -- and I can show you again if needed what's been marked for

identification only. If you need those or if you don't.

But did -- in viewing those, and as a pediatrician, do you believe that that creates the, the injuries that she has, creates a substantial risk of death or which causes serious or permanent disfigurement or protracted loss or impairment of the function of the body or an organ?

A. Yes.

And I, I don't need to look at those pictures. They are ingrained. But what I do want to say is that this just did not happen acutely. We -- they talked yesterday about it being an event. This was a pro -- very prolonged process that occurred and -- yes.

Q. When you say it was a very prolonged process, what are you -- what are you speaking about, the, the injuries that you viewed?

A. The injuries that I viewed, the state of her body, all, all that led to her diagnoses of, of sepsis, pneumonia, urinary tract infection. But, but that did not occur overnight and, and these children with chronic medical conditions, lung conditions, seizure disorders and all, there can be an event that occurs as in terms of status epilepticus as meaning seizures that can not be broken, a mucus plug that, that blocks their airway and all. But that was not the case looking at the state of

her body.
Q. And the conditions that Doctor Rose told the jury about, could those, if treated early, could they have been treated?
A. At a very preliminary state. But those, those visualizations and the state of her body were just -- there was no turning back. There were -- had to have been a point in time where it could of been.
Q. And they had --
A. We---
Q. -- supplies?
A. Supplies, access to care, ability to reach out if they needed help.
SOLICITOR JORDAN: If I may have a moment, Your Honor?
(Pause.)
Q. And they could have called to use an ambulance to transport H.B. ?
A. 9-1-1 is a part of the instructions on, on what to call for, yes.
Q. Okay. In addition to the medical transport that we've also previously talked about?
A. Yes.
Q. Please answer any questions the other three may have.
THE COURT: Mr. File.

CROSS-EXAMINATION

BY MR. FILE:

Q. Okay, doctor.

You said H.B. was born at 28 weeks?

A. Yes.

Q. And she had a chronic lung disease?

A. Yes, sir.

Q. And a tracheostomy?

A. Yes.

Q. Okay. She got that at a -- about two years old.

Is that correct?

Do you know or --?

A. I, I, I don't. I'm, I'm sorry. I don't know the exact---

Q. Okay.

A. ---timeframe of that, no.

Q. All right. And she had cerebral palsy?

A. She did, yes, sir.

Q. And a seizure disorder?

A. She did.

Q. What was the seizure disorder?

Can you tell, tell us about that a little bit more?

A. So, she would lose -- develop an altered state of consciousness. Her tone would change. She would have, you know, difficulty breathing and all.

There are various types of seizures. Some are small. Some are large events and all that can cause oxygen levels to really go down, for them to stop breathing. So, the goal with such a complicated seizure disorder is you try to minimize the number of seizures that she has.

Q. All right. Did she ever have a seizure in your presence?

A. Not in front of me, no.

Q. Okay. So --.

A. Well, sir, I -- I'm sorry. I take -- I, I do -- I feel like there were brief moments where her eyes would flutter and we thought maybe that was a seizure. But a brief one that did not result in anything prolonged.

Q. Okay. So, how did -- I assume then Bobbie Jo and David probably told you about what her manifestations with the seizure were?

A. Sure.

Q. Did they---

A. Yes.

Q. Okay. So they were aware of her seizures---

A. Yes.

Q. ---and---

A. She had a neurologist that she saw.

Q. What she was having one?

A. Yes, and I had a specialized diet for her seizure

disorder also.
Q. Okay. And from what you could see, when, when she was visiting with you, they were following the diet and they were following the medication and the treatment and you said she -- I believe you said she was -- appeared to be well cared for.
Is that correct?
A. She was, I believe, drinking and receiving appropriate and adequate care in her visits with me, yes.
Q. Okay. And then, in 2020, COVID hit.
Is that correct?
A. Yes, sir, it did.
Q. And I assume you probably had a lot of cancellations from different people or different patients?
A. Of course. The first three weeks. I -- yes, we did. I was out the first three weeks. My husband had a severe case of COVID. But I did take great pride in my practice being really very much maintaining in-person visits.
We never got a tent outside. We didn't convert over to Telemedicine. So, there were definitely individuals that did want to come in. But we were open for our, our patients.
Q. Okay. Now, as far as -- you said H.B. was capable of, of moving a little bit as far as moving her arms---
A. Minimally.

Q. ---that type of things?
A. Yes.
Q. And, and with all these disabilities, she was high maintenance, wasn't she---
A. Very much so, yes.
Q. ---as far as -- I mean she needed somebody there about 24 hours a day I guess to, to look after her?
A. I -- she -- yes, I mean she, she required a -- yes, she required a lot of care, yes.
Q. Okay. And -- that's all, that's all I have. Thank you.
A. Thank you.
THE COURT: Mrs. Racine.
MRS. RACINE: I have no questions for this witness, Your Honor.
THE COURT: Okay.

CROSS-EXAMINATION

BY MR. MORIN:

Q. Doctor Parra?
A. Yes, sir.
Q. Do you know Edward Baynard?
A. I do.
Q. Do you -- how do you know him?
A. I was Edward's pediatrician for a period of time.
Q. Okay. Now, you have, on several occasions, referred

to H.B. as having -- being a medically fragile child or---
A. Can you, can you say that a little bit louder?
Q. Okay.
A. I'm sorry. I'm sorry.
Q. Medically fragile child --
A. Yes.
Q. -- that was how you described her?
A. Yes.
Q. And because she had the trach and because she had the feeding tube, there were specialized training for the parents, is that correct, on how to handle those things?
A. Along the way, yes. Over the years, yes.
Q. Over the years.
And it's important to be able to know not just how to handle those things, but you're moving and those things have to be kept in mind.
Is that correct?
A. Yes.
Q. And, to your knowledge, was Bobbie Jo, Jo Baynard trained in that?
A. When I took over H.B.'s care, I did not look into getting her more training at all because I felt, at that point in time, that she had been trained on how to do that.

Q. Yes, ma'am, I didn't mean to---
A. Yes.
Q. ---suggest that she had further training.
A. Oh, okay.
Q. But you were aware that she had been trained?
A. She was able to take care of H.B., yes.
Q. Okay. And the same goes for Mr. Baynard, David Baynard?
A. Yes.
Q. Are you aware of any training Edward would of had to deal with that?
A. No, not until I -- he became the PCA as in terms of the requirements that were given by Axcess Health. But prior to that, no.
Q. Okay. Now, the parents were also told or, if you, if you know, that animals in their home, things like that, would endanger her because of that.
Isn't that correct?
A. I don't -- I -- our patients have animals in the homes. So I don't --.
Q. But they have to be cared for?
A. Well sure.
Q. Okay. Now, did you ever advise the parents that someone with training on trach and these devices needed to be with her all the time?

A. Well, I -- at, at -- in, in that 2021 visit, and how we learned about the additional care that was being given, I -- when I made the phonecall to DDSN, I did put it -- I did mention that I had concerns that she needed -- they needed more skilled nursing.

Q. Needed more skilled nursing?

A. Yes.

Q. And again -- and, again, you, you know, from treating H.B., you know how he is on how he -- how he relates to his parents and that kind of thing when they come in?

A. I don't, I don't know if I understand your question.

Q. Yes, it was bad. It was one question.

How about this?

Was Edward ever present in any of your discussions regarding what his sister needed as far as care?

A. Not that I can recall.

Q. Okay. The times that you treated Edward as a patient, did you ever observe an ammonia smell?

A. I did not.

Q. Okay. Now, you also, when Ms. Jordan asked you, discussed and made sure that the parents were aware of the things that they needed to look for.

Is that right?

A. Yes.

Q. And just, in general, whatever parent, I mean -- I

take my six year old, who's got lice, the doctor tells me what I need to do, correct?
A. Yes.
Q. This is what you had to watch out for. This is what you need to clean up for. This is how you need to address this.
A. Yes.
Q. And that's what you did with the parents?
A. Yes.
Q. But not Edward?
A. No.
Q. You asked DDSN or you thought that they needed more skilled care than Edward.
Is that fair?
A. In, in addition.
Q. In addition.
Okay. When you saw Edward as a patient, was he brought in by his mother as well?
A. Yes.
Q. The visits to the doctor that they've gone into about being canceled, those cancellations, could they be made by anybody or did they have to be made by the parents?
A. Well, we have HIPAA forms --
Q. Uh-huh. (Affirmative).
A. -- on, on, on file.

Q. Uh-huh. (Affirmative).
A. And so it would have to be somebody on their HIPAA form that was taking care of the patient. And so my staff who, for the most part, had been there for several years, on continuity and all, they, they knew the Baynards.
Q. Okay. And when you say the Baynards, you're talking about --?
A. I'm sorry. I'm talking about Bobbie and David, yes.
Q. Okay. And I believe the -- when discussing the oxygen levels, the State framed it what was the family told.

But given what I've already asked you, Edward wasn't told anything by you about assisting or treating anything his sister was dealing with?
A. No.
Q. In your understanding of the respite care person, isn't that a person that gives the parent a break while they take care of some personal thing?
A. It is, yes.
Q. And, to your knowledge, Bobbie didn't work?
A. She did not, no.
Q. So she was home?
A. She did not work outside the home, no.
Q. Right.

She was at home all the time?

A. Yes.
Q. And on that January 11th visit, did, did you say or review with Bobbie Jo the need for intense vigilance for monitoring of her trach tube at home?
A. I, I don't know if I just concentrated on that part of her.
Q. Right.
A. But we went over care of the trach, care of the GT, need for integral feeds --
Q. Okay.
A. -- medication administration.
Q. And you did that -- even though she had prior training on it, you were almost giving her a refresher or a reminder?
A. All that's reinforcement and, again---
Q. Yes.
A. ---going to the supplies so then that way we could maintain her care.

MR. MORIN: All right. If I may have just a moment?

(Pause.)

MR. MORIN: That all the questions I have, Your Honor.

THE COURT: Solicitor.

SOLICITOR JORDAN: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY SOLICITOR JORDAN:

Q. Mr. File spoke to you about the seizures H.B. would have.

A. Yes.

Q. And you saw the pictures when she passed.

A. Yes.

Q. Would a seizure cause that?

A. Absolutely no.

Q. Okay. Have you ever seen a seizure cause the injuries that H.B. had?

A. No.

Q. And then Mr. Morin spoke to you about the training or the conversation that you had with Bobbie on January the 11th.

Was David also present on January 11th?

A. I, I believe he was.

Q. And those injuries, have you ever seen anything like those injuries?

A. Never.

SOLICITOR JORDAN: Your Honor, I have no further questions.

THE COURT: Anything at all?

MR. FILE: None, Your Honor.

THE COURT: Mrs. Racine.

MRS. RACINE: No, Your Honor.

MR. MORIN: No, sir.

THE COURT: Thank you, doctor. You may step down. Please be careful.

SOLICITOR JORDAN: Your Honor, may she be excused?

THE COURT: Any objection to being excused?

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No objection.

THE COURT: Doctor, you may stay or go, whichever you choose.

THE WITNESS: Thank you, sir.

SOLICITOR BARNETTE: Can I check with the court reporter on something, Your Honor, just to make sure what's in and what's not?

(Pause.)

SOLICITOR BARNETTE: Your Honor, thank you for a minute to check with the court reporter and then, Your Honor, the State would rest at this time.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, the State has now rested is what's known as its case in chief. And that means that the State does not intend to call another witness, put up another picture, or a document, a report, anything whatsoever, which now brings us to some matters of law that I have to take up on motion practice.

So, I'm gonna excuse you from the courtroom. Don't talk about the case back there. You're gonna be on a, a break and this is gon' take a little bit.

If you need some coffee, water, restrooms are back there. Whatever you need, if you allow the -- let the bailiffs know, we're happy to try to find it.

Okay. Mr. Foreman, if you'd take your jury out please.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Okay. The State has now rested.

Any matters from the State?

SOLICITOR BARNETTE: None at this time, Your Honor.

THE COURT: Okay. Mr. File.

MR. FILE: Your Honor?

THE COURT: Mr. File.

MR. FILE: Your Honor, we would make a motion for a directed verdict of -- against our---

MR. RACINE: I'm sorry to interrupt.

Can we have a two minute comfort break before we start arguing directed verdict motions so we don't have to split it up?

THE COURT: We can do that.

MR. RACINE: Thank you, Your Honor.

THE COURT: Okay. We'll take a quick, quick five

minutes or so.

How about that?

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Thank you. Thank you. Please be seated. Thank you.

We can go in any order you want to go in.

Okay.

MR. RACINE: May I approach the bench?

THE COURT: Okay. Mr. -- you gon' argue?

MR. RACINE: I'm gonna go first.

THE COURT: All right. Mr. Racine.

MR. RACINE: Thank you, Your Honor.

May it please the Court.

Your Honor, I passed up an exhibit that I'm gonna refer to periodically through this. I've numbered the pages 1 through I believe 45 at the bottom right.

Your Honor, we have two motions, directed verdict, for child abuse with great bodily injury and directed verdict on the murder charge. Happy to take those in either order, do them both, or do one, let everyone argue that, and then do the next one.

How do you want to do that?

THE COURT: One at a time---

MR. RACINE: One at a time.

THE COURT: ---and then let them respond.

MR. RACINE: All right. Then I'll start with child abuse with great bodily injury, Your Honor.

That charge, as indicted, or on Page 1 of the exhibit, requires three elements for the State to prove. The first is inflicting. The second is great bodily injury and the third is on a child.

Your Honor, we'll concede that the second element and the third element, great bodily injury and a child, are proven. The issue we have is with the first element, inflicting.

Your Honor, if you flip to Page 2?

This is a definition of the term inflict.

Your Honor, the definition says to impose, to impose, and to deal. Each one of those definitions are an action verb.

The importance of that, Your Honor, is the action verb connotates a level of knowledge related to the term inflict.

If Your Honor will turn to the second, excuse me, the third page, DV-3?

This is a copy of the session law when the great bodily injury statute was passed in the Legislature in 2000.

If you would turn to DV-4?

The actual statute appears, 16-3-95. The importance

of this, Your Honor, is that statute, 16-3-95, was created in this legislative session, and immediately on doing so, the Legislature amended the violent crime statute, which is set forth below it, 16-1-60.

Your Honor, in the violent crime statute, the Legislature sets forth numerous violations that constitute a violent crime. If Your Honor looks at each of those criminal acts that constitute violent crimes, each one of those has a element of knowledge meaning the defendant, to be convicted of a violent crime, must have some kind of knowledge. There must be intent.

Your Honor, that's evidenced that the term inflict requires intent and the State must prove that beyond a reasonable doubt.

Your Honor, if you would flip to the next page?

It's DV-6.

This is the printout of the actual statute that was passed in 2000 and is charged against David Baynard, infliction or allowing infliction of great bodily injury upon a child.

Your Honor, the State is proceeding under Section A where it says it is unlawful to inflict great bodily injury upon a child. Again, this is a knowledge requirement for the statute and the term inflict requires the State to prove that the defendant had some element of

knowledge or intent.

Your Honor, there are a limited number of cases that have addressed this statute over the course of its existence. One of which is State versus Ledford. This is page DV-17.

Your Honor, in State versus Ledford, a defendant was charged with great bodily injury to a child and the importance of Ledford is the defense asked that the jury charge include the word willful. The reason the defense asked that is that, in the indictment, the State charged the defendant with willfully inflicting great bodily injury on a child.

Now, that's not in the statute. But, in this particular case, the trial judge allowed that jury instruction and included the term willful.

The importance of this case is the State immediately appealed that and the Court of Appeals said you don't have the right to immediately appeal. What the Appeals Court did not do is say there is no willful element to the statute. They, they let that through.

Your Honor, the next case I'm, I'm gonna point to is an unpublished opinion. It is State versus Tyree. It is DV-21.

The, the only reason I direct Your Honor I talk -- Your Honor's attention to this is, on Page 2, the -- DV,

excuse me, DV-22, under Note 2, the Court says further, we reject appellate's implication that the State was required to prove the intent element of infliction of great bodily injury on -- upon a child before two charges could be tried together.

The importance of that, Your Honor, is it appears that the Court of Appeals is recognizing that there is, in fact, an intent element to infliction of great bodily injury.

Your Honor, the next exhibit is again an unpublished case. It's at DV-24 and this is State versus Johnson.

Again, Your Honor, if you would turn to Page DV-31?

In this case, the State, excuse me, the Court of Appeals says that a defendant is entitled to a directed verdict when the State fails to prove evidence of the offense charged.

Your Honor, they, in this case, point to that statute and basically say that the trial judge should grant directed verdict when the evidence merely raises the suspicion that the accused is guilty. Then they say suspicion implies a belief or an opinion as to guilt based on factual circumstances which, which do not amount to proof.

Your Honor, that is important for several reasons. First, again, the State must show an intent to cause great

bodily injury in order to convict the defendant of, of this charge.

So, what's the evidence that the State has of intent?

Your Honor, it's our per -- it's our argument they don't have it. Essentially what the State has put forth in this case, through all of its witnesses, is photographs of a dirty house and testimony about medical injuries that essentially arose through negligence. What they have shown is neglect.

Your Honor, Mr. Baynard has already conceded guilt to the neglect charge. We're not arguing that. That's been, that's been proven.

But the State's evidence is solely dependent on the results of neglect. They have no evidence of intent, either specific or general, to cause great bodily injury to H.B. [redacted].

The problem with that, Your Honor, is their evidence is circumstantial. In fact, there's, there's no evidence at all to suggest that there was any actual intent to cause injury. The, the evidence presented is simply criminal negligence. You know, the evidence presented by the State is these defendants neglected their house, neglected their child, and it got filled with trash and debris and, and other items.

What it does not show at all is actual intent to

inflict great bodily injury and that's what they need to sustain a conviction for this charge. And it's that element of inflict that they can't prove.

The evidence that they presented, if it does anything, is only point to a suspicion of guilt on intent to cause great bodily injury and suspicion is not enough and, therefore, we ask Your Honor direct a verdict of dismissal on that charge.

Thank you.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

Kind of an interesting thing in this thing was, in looking at the case law, I don't know if I agree with his summarization of the case from that standpoint.

Ledford was not decided. If you look at it, they just said the State couldn't appeal that issue. They didn't decide anything on that case other than that. That's what usually Courts do when they decide it. It shouldn't of been appealed to start with at that, at that point.

Tyree talks about infliction.

Well, that's talking about a joinder case. It's actually a case that I tried with Solicitor Trey Gowdy. I think it was the last case we tried together in Spartanburg County from that standpoint, and just talking

about there, it just says we object that appellants in the case and the State was required to prove inflict element, infliction of great bodily injury towards the -- before the two charges could be tried together.

But infliction is a situation where they neglected her totally from that standpoint. Exposed her to all kinds of things.

I remember Doctor Rose's testimony. Insect bites, the infection that was caused from all the things she was exposed to from insects, animals, feces, urine, all through there, and David Baynard was the one that actually carried her and we saw that on the video. Carried her up to the ER from that standpoint in no rushing manner.

They knew they called 9-1-1. They been instructed by numerous people they could call 9-1-1. They could do these things.

The neglect, the great bodily injury, led to that and then the death led from those injuries those from all that. And it was inflicted by these three individuals that was in charge of her care.

She couldn't do anything else. She was dependent totally on them in this situation. And to argue that -- and, of course, it's a general intent crime from there.

It's kind of interesting. When he's talking about the violent crime cases or whatever, homicide by child

abuse is included with that with violent crimes. I know the Court knows that.

It's a statute right before this statute that we're trying here. And, in that case, it's indifference to human life from that standpoint.

And obviously this is the -- the way they treated her, the way they didn't do things for her or did do things to her from that standpoint is the -- basically the infliction that occurred in this case. And then, like I said, it's a general intent crime and I don't see anything specific intent in there.

So, if a general crime, basically if you look at the Mouzon, and I know we're gonna get into that in the murder cases and other cases from there, you can prove that through there and you can tell the actual evidence. And the Court had ruled against us on pictures we wanted to show to the jury obviously. I know the Court has seen those pictures.

There is no question there is unbelievable circumstantial evidence, and, of course, looking in the light most favorable to the nonmoving party in this case, we have total evidence that shows infliction that occurred in this case. Basically that child abuse was caused in this, in this case cause she suffered immensely.

You've heard the testimony of Doctor Rose. You've

heard the testimony of three doctors now that is never seen anything like this in their careers from that standpoint. And these individuals, including the defendant who just argued for that, David Baynard, is responsible for all that.

If I could have a moment for a second, Your Honor?

(Pause.)

SOLICITOR BARNETTE: And, Your Honor, they didn't do what they were required to as parents in this situation in taking care of that child as well as the caregiver of the brother in this case. I don't know if that's gon' spill into his argument or not.

But, like I said, I'd ask you deny the motion. I think there's plenty of evidence to support that in the record. I don't think these cases change anything from that standpoint and I don't think they stand for some of the prepositions (sic) that's been supported by the Court to be honest with you.

THE COURT: Thank you.

Yes, sir.

MR. RACINE: Your Honor, may I respond briefly?

Your Honor, he's not charged with homicide by child abuse. That's failure of the Legislature to get a, a proper charge. He's charged with infliction of great bodily injury.

What the solicitor just said is that, essentially, they neglected her to death. But these facts, as bad as they are, they showed criminal negligence. They, they don't show intent. There's, there's nothing that shows an intent to inflict great bodily injury.

Yes, their negligence resulted in great bodily injury. But the charge they're facing on this particular indictment is, is not criminal negligence. It has a knowing element that requires the State to prove that they had intent to cause these injuries and, and they don't have that.

They have criminal negligence, and as bad as these are, that's all they have. It simply does not support the element necessary to show that they had intention to create these injuries.

SOLICITOR BARNETTE: One short response, Your Honor.

He says we haven't shown intent. Intent is when you let a child for weeks, from the testimony of Doctor Rose and from the other doctors that support this, didn't happen overnight.

He had to see this and didn't do anything for her. Let her go through the pain and suffering and everything. That's intent cause, like I said, to let her do that -- they say it's neglect. No, that's more than neglect.

Neglect is letting the dirty house and the bugs run

around and neg -- when you're letting somebody suffer and go through what that poor girl went through, that's intent and it's general intent if they -- being specific intent as far as I'm concerned.

THE COURT: Okay. All right. As to the murder.

MR. RACINE: You want to forward with the other folks?

THE COURT: Well, anybody want to -- well, you, you gonna do -- you gonna argue both your motions?

You said you have two.

One on the murder?

MR. RACINE: I do. Yes, Your Honor.

THE COURT: Okay.

MR. RACINE: I can go ahead.

All right. Your Honor, if you would flip to Page DV-34?

This is the indictment charging murder against David Baynard.

Your Honor, in this indictment, what the State says is defendant, David Eugene Baynard, did, in Cherokee County, at their home located in -- at [redacted] Road, Gaffney, South Carolina on or about April 11th, 2022, and here are the elements:

Felonious, willfully, and with malice aforethought, expressed or implied, cause the death of one H.B. [redacted]

[redacted].

What the State has done with this indictment, Your Honor, is set forth four elements that the State must prove to sustain a conviction against David Baynard for murder.

Those four elements are, number one, feloniously.

Number two, willfully.

Number three, with malice aforethought, express or implied.

And, number four, cause the death of H.B. [redacted].

The problem with the State's proof is in element number two and three. They have feloniously because, which is element number one, because Mr. Baynard admits to the neglect charge. However, the State must also prove elements two and three. Element two is willful.

The State included that in their indictment and there is no evidence of that. Under State versus Green, which is DV-35, that case held that the State is bound by the language of their indictment.

If Your Honor looks at Page DV-37, at the top of the page, the Court says, in South Carolina it is a rule of universal observance, in administering the criminal law, that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.

Here, Your Honor, the particular offense charged in the bill of indictment includes the term willfully. Therefore, under the case law, in order to sustain a conviction for murder in this case, the State must prove willfully.

Your Honor, that brings up the question well, what is, what is willfully?

If Your Honor will turn to Page DV-39?

This is the case State versus Sowell.

Your Honor, on Page DV-40, the Court, I believe the Supreme Court, defines a willful act and what they say is a willful act is defined as one "done voluntarily and intentionally with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose, either to disobey or disregard the law."

Your Honor, what they're saying is in order to be willful, it's got to be voluntarily or -- and intelligently -- intentionally done. In this particular case, Your Honor, again, the State does not have any evidence that David Baynard voluntarily, intentionally, or with specific intent caused the death of H.B. [redacted]. In contrast, what they have is evidence of neglect.

Now, the solicitor pointed out the fact that it is extreme neglect and I don't think anyone challenges that.

But, again, intent to neglect is not the same as intent to commit murder.

Here they must show that there is a willful element to the charge of murder in order to make it stand and they simply can't do that.

Again, their evidence is evidence of criminal negligence. The solicitor said well, our intent is them ignoring the conditions.

Well, ignoring conditions is negligence. It may be, you know, gross negligence and it may lead to horrible conditions. But, again, it is -- it's negligence. It's not specific intent to, to murder.

In this case, Your Honor, they are bound by the indictment. They must show willfulness and, and they have no evidence of willfulness related to David Baynard in this, in this action.

Your Honor, also, David Baynard is entitled to directed verdict on the charge of murder because what the State has done is proved a different charge. What they have proved is involuntary manslaughter.

In this case, as I said, there is no evidence of a knowing intent to commit murder. Therefore, involuntary manslaughter applies because the elements of in -- involuntary manslaughter are shown.

You know, the State has repeatedly said that the

neglect and the conditions of the house led to the death of H.B. . There's no intent. There's no willfulness. The conditions resulted in her death. That's involuntary manslaughter.

Your Honor, they didn't charge involuntary manslaughter but they should have. With respect to the indictment on murder, because the State can not prove the elements, we are entitled to a directed verdict.

Thank you.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Thank you, Your Honor.

The first thing I want to point out, the Sowell case, Your Honor, that's a contempt of Court case. I think you probably saw that. I mean that -- I mean that's a willful -- obviously that's a direct order from the Court. That doesn't apply in this case. This is a general intent statute, the murder statute is.

So, I'd ask the Court just to totally disregard that case cause it's not standing for the proposition in this case from there.

And I know I've handed up case law earlier to Your Honor. I believe the defense has that for my jury charges. But basically, in this situation, you have indifference to human life. You have the situations that show that intent or that willful intent from that

standpoint is to willfully let somebody go through these conditions and knowingly see them from there.

He lived in this residence. All of them lived in this residence and they had to see these conditions and see what that girl went through and see from there.

I wish we had homicide by child abuse statute but we don't. Our Legislature has not passed that.

But murder, to me, fits in this case because the willfulness in this situation is the willfulness that led to -- led her watching deteriorate over this period of time from that standpoint.

And they keep talking about criminal negligence and things like that. I don't see how that fits in this. This is beyond criminal negligence, what happened in this situation.

He has a duty to report in this situation to show that, obviously, as a caregiver and everything, he would report to authorities when something like this happens. All three of them, in our position, has that duty from that standpoint.

One other thing, Your Honor. He keeps talking about involuntary manslaughter. Well, it has to be a lawful act that with a reckless disregard of the safety of others.

This ain't a lawful act. That's one thing, an unlawful act not, not amounting to a felony.

Well, unlawful neglect is a felony in our state I believe. It carries up to that and not -- and basically they say involuntary manslaughter. It's either an unlawful act, unlawful act not amounting to a felony or not intending to cause the death or serious bodily injury or law acting on reckless regard or safety of others.

So, it doesn't really apply in this case. We will ask you later, if they ask you for a lesser included charge, we will ask you obviously to deny that charge based off that law.

So, that would be our position, Your Honor. We believe there's ample evidence to show, and, like I said, it's a general intent. I don't think Sowell even covers this cause, like I said, it's a totally different charge too. There was a contempt charge. It's not even enough to make allegedly a criminal charge.

And, Your Honor, State versus Wilds, and I believe I handed up to that, it's 355 S.C. 269, 584 S.E.2d 338, Your Honor, Court of Appeals case, (2003). That was actually tried in Spartanburg County too.

Judge Clary was the circuit judge. It's still good law in our state, Your Honor, and basically it talks about expressed -- when there's deliberate intention to take the law -- the life of another. Implied malice is when circumstances demonstrate a wanton and reckless disregard

for human life or if a reasonably pert -- person would have known that, according to common experience, that the plain, strong likelihood that death would follow the contemplated act, Your Honor, and that is letting her go through what she went through and through the testimony that supports that.

Thank you, Your Honor.

THE COURT: Okay. That's it?

MR. RACINE: Briefly?

THE COURT: Yes, sir.

MR. RACINE: Just briefly, Your Honor.

They still have to prove an intent to cause the death and, and they have not. There's no intent to cause the death. There's no evidence that they intended to cause the death in this case.

Even if they have evidence that they ignored the conditions of their house, that's evidence of negligence. It's after -- it's not evidence of an intent to commit the offense of murder.

Your Honor, the, the -- involuntary manslaughter is, is a lesser included of murder. They certainly could of charged that but they didn't.

They specifically charged murder and they, and they have no evidence of any willfulness to cause the death as, as required. Their argument about malice, again, they,

they don't have proof of implied malice.

They have proof of criminal negligence. They have proof that they let the conditions get to where they are. But they have no proof that these people believed that those conditions would result in death. In fact, their proof teaches the opposite.

What it says -- what the proof is is that these conditions existed for 14 years and, and H.B. lived in these conditions, as horrible as they are, for 14 years. And then, for some reason that may come out later, but the State didn't put it in, she, she died.

So, the fact that they have no evidence of the defendant, David Baynard, changing something, taking some act, doing something to show that he had implied malice or he had the willful intent necessary to cause the death makes their indictment fail. Again, they have no evidence that there was any intent because these conditions were there -- the way they were for 14 years. They don't have any evidence showing any intent of willful or implied malice. And so their indictment fails as a matter of law.

THE COURT: Anything further?

SOLICITOR BARNETTE: Yes, sir, can I briefly just respond, Your Honor?

He saw the house. It's her body that's evidence of this. The house is just part of the neglect that led to

all this. But her body alone is in that situation and the representation that their house was like 14 years, the discovery shows differently.

In 2016, DSS went out there. We have pictures showing that house clean. So, she didn't live in this---

MR. RACINE: Your Honor, that's not in evidence.

SOLICITOR BARNETTE: I understand. But to make that representation, they have that discovery, and I want to put that on the record, Your Honor.

Thank you.

THE COURT: Okay. Those are the two motions for Mr. Baynard.

Okay. Mr. File.

MR. FILE: Your Honor, we would just join in the motions already argued by, by Mr. Racine. We would join in the same motion.

As far as the child abuse, great bodily injury indictment on Mrs. Baynard and the murder indictment on Mrs. Baynard, we would join in that motion with similar argument as to any -- the intent. I think there is in, in -- the word -- using the word inflict I think does connotate a -- an, an intent element there.

And, and as far as the murder indictment, it does -- the State is bound by the language of the indictments which requires a willful act and it'd be our argument that

they have failed -- the evidence, as presented by the State, has failed to prove those elements and, therefore, a directed verdict should be had as to those two indictments on Mrs. Baynard.

THE COURT: Solicitor.

SOLICITOR BARNETTE: Your Honor, as I stated before just briefly, circumstantial evidence in this case shows them inflict, shows the willfulness in this situation. There's abundance of evidence in this that, that would support denying the directed verdict motion on both those counts.

THE COURT: Mr. Morin.

MR. MORIN: Your Honor, I believe, in the light most favorable to the State, they've proven that Edward Baynard is two things. He's H.B.'s brother and he's a part-time employee. They are attempting to accuse him of murder, unlawful neglect, all three charges, as a part-time employee.

I asked agent from Axcess when she was on there, I said well, if he didn't follow the handbook, that would make him a bad employee and she said yes. The State has no evidence in any way to say that he entered that bedroom at anytime. They've been able to show that perhaps Axcess wanted him to.

But they're asking you to find him guilty of the

infliction of great boldly injury without even proving that he had eyes on her, and they put in ample evidence to show she was in that bed for a long time.

Now, I'll also say, and I may proffer of it, that my client is a victim of his parents. And since we're, we're doing this, to say it's unreasonable for him not to do something, that's what it's been and I know we're talking about 2016. But Edward Baynard, in October 6th of 2004 at age 2, was removed from the house for deplorable conditions and then he stayed in foster care and then they returned him.

And then, in 2006, he was removed with his one year old sister, H.B., for deplorable conditions. And then, in 2016, they were told they couldn't live at [redacted] because of deplorable conditions and they went and lived with another family member who then asked them to leave because H.B. wasn't being treated.

He is not covered under unlawful neglect. He is not a parent. He is not a guardian. He was not in charge of her. He's a part-time assistant most of what is respite care, which means he sits there while his mother can take care of her issues.

And, keep in mind, the State is presented evidence that they actually had to force the door open stepping back from the fact that they are trying to argue he should

have gone in there, he should have entered his parent's bedroom. On top of that, he should of forced his way in, which is what all the evidence is.

In addition to that, she got in -- illnesses, some of them, as a result of the things that were going in her lunges, that trach. Doctor Parra, today, he should not move her if he doesn't have training. They should have training if they're with her and that -- when I asked Axcess is he allowed to do anything with that, they said no and I asked her twice on that.

Because he's not a parent, he's not a guardian, he's not a person in charge, he -- none of those things under the statute, that can't be unlawful neglect of a child. Might be unlawful neglect of a sister and it might be unlawful neglect of a part-time employee.

But to raise him up to that level, based on that handbook, based on what he was told when he was 18, after and they know, the abuse and the situation he's been in during his entire life to just say well, he got $20,000 over however long it was, and he should of known better, that was my point in making the proffer that I did. And that just carries over to, to the murder.

The murder requires him to have -- them to show he had malice in not entering and not forcing his way into his parent's bedroom to see her. That's not even --

the -- that's not even in dispute. They were glad to say it.

So, here we are. Mr. Baynard starts out as an 18 year old. No driver's license. No training. None.

They can say well, we gave him four hours of basic first, first aid but that's not what it is. He's sitting here with his parents, his parents, who as Doctor Rose said, a parent knows when their child is sick.

She was in the room with them every day and I don't think a more truthful thing has been said in here than that. But to say well, he was in the house and it was dirty and he was a part-time employee and he should have gone in there, they haven't presented any evidence on that. None.

They -- they've proven that he lived in the house. But the question is did he see her and did they -- and that's -- they have the burden of proof. I submit they don't have -- they haven't carried that. Because in order for them to have that, he would of had -- they would of had the same evidence that he was in the room with her.

They've done that for the parents. They haven't done that for him.

I submit that we're entitled to a directed verdict on all three counts. He's not covered by the statute as a person responsible. He's simply a part-time employee.

He's not committing murder if he doesn't have the malice aforethought and they're relying on he was in the house.

And, finally, like to point out, the Court has said they're not degrees of malice and that's been turning around in my head this whole trial. When they're trying to put him with -- pictures, when they're talking about him, when they're talking about the devastation to this child, and I don't disagree that it was, but that's degrees of malice.

He has -- they have to show malice on my client's part and I submit they haven't shown that he was aware of it. They might have shown he should have been aware of it as a part-time employee for Axcess.

They might of -- their argue -- they like to argue that well, anybody in that house should have been. He'd been in that house and it's just a rollercoaster ride as you go through there and they know it. They got their discovery.

2004, take them away. 2005 or six -- 2002, taken away. 2006, bring them back a year later. Then put them, put them -- take them away. Then bring them back. They clean it up. They get it certified. DSS says well, now they're good. Then they're bad. And it even came out today with Doctor Parra.

In 2021, they're good. Obviously, in 2022, they're

not, because if they're not watched as parents, they don't know what they're doing and they fought for the right to get these children back when they knew they weren't.

So, from that standpoint, I would argue the State, in the light most favorable to them, hasn't proven any of those cases, any of those charges.

THE COURT: Solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

State Exhibit 121, this man was paid two -- $25,589.88 for the care of H.B. [redacted]. He took care of her 14 hours on that Sunday, April 10th, 2022. That's from State Exhibit 123.

On Monday, the day she died, she took -- he took care of her 14 hours supposedly. But that's what he reported to Axcess and was reported to them.

He was in charge of her. If he's spending that much time with her, and you can go through these records, Your Honor, in State Exhibit 123 as well as 121, he -- and then he basically has been tested on. He, he, on a test, and I think you saw this evidence, Your Honor, where he said if you suspect abuse, you call and everything.

He is an employee for this company from that standpoint. Even -- let's say in working for the parents, from that standpoint, he's taking care of her. That's

what the evidence shows in the most light favorable to the State.

He's in charge of her 14 hours working with her. I mean this is the information they -- I mean this is the State's evidence. All the money he was paid for. the training, I know they keep saying, well, she (sic) didn't get a whole lot of training.

Well, he went through a test. He knew he called 9-1-1. Knew there was an abuse hotline. He knew all that from that standpoint and did not do anything from that standpoint.

I know what his argument is. I understand that. But that evidence, like I said, like I was told earlier, was not -- it's not in front of this Court right now. It's being argued right now from that standpoint.

But the evidence in front of this Court shown by the Axcess records shows that he was in charge of her under the unlawful neglect statute cause obviously he spent a lot of time with her according to the information that was given and what he was paid for in this situation.

The great bodily injury, to not -- to just let her lay there and go through there and let -- basically watch from there and, like I said, I stated the Wilds case. I could repeat it again, Your Honor. But from that standpoint, you knew the consequences from watching what

happened to her.

If he spent 14 hours a day with her, and he didn't see this, it's been going on for weeks, he's in charge of her. That covers the neglect statute.

The infliction of that, he's suppose to be taking care of her. Even though a respite nurse, that's suppose to give a break for the parents and the parents are not with her at that time from that standpoint and he started working -- January 11th 2021, Doctor Parra saw that and had some concerns and addressed them from very minor from that standpoint compared to what happened.

He's taking care of her. They're reported in the information that was given from the Axcess records.

I think there's plenty of evidence in this, Your Honor, like I say, circumstantial evidence and her body speaks the truth of it from that standpoint.

The other thing is she couldn't leave. They all three could including Edward. Could leave at anytime and did leave I'm sure at times all the time. She couldn't.

Thank you, Your Honor.

THE COURT: Anything, Mr. Morin?

MR. MORIN: Just one moment, Your Honor.

Can I see 121?

(Pause.)

MR. MORIN: I need to just look at something, Your

Honor.

(Pause.)

MR. MORIN: Your Honor, on State's 121, I've gone through them and he's reporting problems doing the food every single day. Every single day. Every single day. Every single page that he did report says I'm having trouble with the food.

Axcess never said anything. Well, if he's said something, he filed it, it's on every page.

The law's clear on unlawful neglect of a child and neglect. It defines who is covered.

It does not say part-time employee and the fact that they have some records where he said that is not evidence of anything. The evidence is what they showed when they couldn't get in the room where she was.

Even if he saw it, and I'm gonna go out -- even if he did see it, he's not covered under either one of those statutes and it doesn't include a part-time person that's doing respite care. It might make him a liar on his billings and it might make him a bad employee. But it doesn't make him a murderer or unlawful neglect or neglect of a child.

No different than anybody else. That's why the Legislature put in there who is covered. A person in charge of or custody of a child is a parent or a guardian

or a child. I'm reading 63-5-70 or a person responsible for the welfare defined on 63-7-20. And that goes into child, parent, guardian, foster parent, operator, employee, or caregiver as defined by 16-13-20 and that goes into residential care.

They don't get to expand it because they don't like how his 20 hours a week came out. And they don't get to put a new thing on top of it because he was in his parent's house, and, for that reason, I -- that's all I'm gonna say about it.

I'm sure Mr. --.

THE COURT: Anything?

SOLICITOR BARNETTE: Yes, sir, I'd like to respond.

If you look at the statute, Your Honor, 63-5-70, it say unlawful person who has charge or custody of a child or who is a parent, guardian of a child who is responsible for the welfare charge as stated in 63-7-20.

You give a child -- you give your child to take care by, you know, whoever, you put them in charge of that and he's in charge. He actually signed and initialed all these check -- all these paystubs or whatever through the app or on card of what is it?

SOLICITOR JORDAN: Timecard.

SOLICITOR BARNETTE: Timecards.

So, he's the one that -- responsible for this. He

was getting paid for it. He documented, documented that he went ahead and did that from there.

So, we think the statute does apply, judge, cause he's in charge at that point when he's taking care of her. And I think it's an or. That's the reason why the Legislature did it the way they did it.

Thank you, Your Honor.

MR. MORIN: I said I was gonna stop but there is one thing.

He wasn't arrested in April with his parents. He wasn't arrested in May, June, and July.

There was no malice. There was no unlawful neglect. There was no negligence. He lived there, which is what -- one of the things -- but they're saying, magically, when he became this part-time employee, he, all of a sudden, met all that criteria.

SOLICITOR BARNETTE: And he's right, Your Honor. We didn't charge him. I'll tell you why it was not charged by SLED or by the Sheriff's Department from that standpoint.

We're not charging him because he just lived in the house. We're charging him when they found out, through information through their investigation, that he was an Axcess employee, a resident nurse, that was in charge of her care just like the statute says.

That's why he wasn't arrested, I don't think, until August 8th, 2022, and that's the reason why cause law enforcement did the investigation, did what proper they should do.

They just didn't charge him cause he was in the house. They charged him because of this.

Thank you, Your Honor.

THE COURT: Thank you.

Okay. Obviously it's under advisement. I got plenty of reading and studying to do.

I'm gonna release the jury.

Any objection to me releasing them through a bailiff or you want me to bring them back in?

SOLICITOR BARNETTE: What time will you be brining them back, Your Honor?

I guess that's the question.

THE COURT: I'm considering bringing them back about 2:30.

SOLICITOR BARNETTE: Okay. Will we be dealing with any other matters prior to it going in front of them?

MR. RACINE: We, we need to have---

SOLICITOR BARNETTE: I know that -- I know it caught -- I mean we, back in chambers, all the parties did, and spoke to you.

THE COURT: Yeah, we, we got to deal with some other

matters too or I can bring them back at 3:00.

SOLICITOR BARNETTE: Yeah, I don't know. I didn't know how we were gonna handle this other. I, I know you got to deal with the directed verdict motion and there may be some other matters depending on those.

THE COURT: I, I know they're some other matters.

So you want me to bring them back at 3:00?

I mean I don't want them to sit back there, right, cause we got some---

MR. FILE: I'll leave that to your discretion, judge.

SOLICITOR BARNETTE: I don't know how long the proffer would take, Your Honor, from that standpoint if there is a proffer. I don't know. I don't know.

MR. RACINE: If, if there's a proffer, it could take -- it could take up to an hour and that's the length of the videos. So --.

SOLICITOR BARNETTE: Well, I'm not gon' -- I don't -- he can watch the video. I mean but the problem you're gon' have is you got four other -- you got the other statements and we're gon' ask to be entered if you're gon' do that.

MR. RACINE: Those are written. We can just pass those up.

THE COURT: Yeah, we still gonna have time to read them and look at them and think about them---

MR. RACINE: Yes, sir.
THE COURT: ---and argue about it a little bit.
Let's all talk over here.
(WHEREUPON, a bench conference was held at this time.)
THE COURT: Okay. We're gonna stand in re -- recess until 1:45, 1:45 and then we'll reconvene or something if you want to say.
(WHEREUPON, Court was in recess for the lunch break.)
THE COURT: Thank you. Please be seated.
Okay. Before lunch we had some motions and I got some rulings here for us.
The first one is to -- I thought I got the indictments.
Mr. Racine argued the motions on behalf of David Eugene Baynard and the first one is the child abuse with great bodily injury.
I got that right, Mr., Mrs. Racine?
MR. RACINE: Yes, judge.
THE COURT: Okay. And it's up -- and this is joined into by, by the, the other defendants?
MR. MORIN: For different reasons but yes.
THE COURT: Yes, sir.
Counsel contends that one of the elements of the child abuse with great bodily injury is, is inflict and

that the State has presented no evidence to that element of the crime charged. Counsel further contends that inflict is affirmative or overt act such as a strike or a blow under number three definition in what he presided -- provided to the Court. But counsel reads his own definition to narrow it.

Under, under the definition that was provided to the Court, number two -- number one is impose as something that must be borne or suffered, to inflict punishment.

Number two is to impose anything unwelcomed and this Court managed to pull two other definitions, to force someone to experience something very unpleasant or to cause something very unpleasant to be endured and also to cause something unpleasant to be endured, which is also matched up with counsel's definition.

This Court does not weigh the evidence. That is for the jury to decide. This Court must view the evidence in the light most favorable to the nonmoving party, here the State, and if there is any evidence supporting the indictment, must deny the motion and send the matter to the trier of fact.

Here, the Court finds there is some evidence and hereby denies the motion for directed verdict as to David Baynard, Bobby Jo Baynard, and Edward Baynard.

As to the murder charge, this Court, again, does not

weigh the evidence but views the evidence in the light most favorable to the State, which is the nonmoving party, and this Court finds there is sufficient evidence and denies the domestic, I'm sorry, the, the, the directed verdict motion.

And as to Edward Baynard, counsel argues that, under 63-5-70, that it does not meet the definition. But, again, counsel contends that the unlawful conduct must be dismissed because he does not meet the definition of the statute. But, again, that is read too narrowly and this Court does not weigh the evidence. And if there's any evidence in the matter to -- it is to be submitted to the jury, which is the finder of fact.

Here, there is some evidence that he was spending hours with H.B. and a motion is denied. I think it comes under the responsible party at that point responsible for the welfare.

Anything from the State?

SOLICITOR BARNETTE: None from the State, Your Honor.

THE COURT: As to Mr. Racine?

MR. RACINE: No, Your Honor.

THE COURT: As to -- Mr. File, you were second in that.

MR. FILE: None. None, Your Honor.

THE COURT: And Mr. Morin.

MR. MORIN: That last part you said, something about he became responsible, is that---

THE COURT: It---

MR. MORIN: ---is that what you said---

THE COURT: It's---

MR. MORIN: ---Your Honor?

THE COURT: It's, it's -- the definition is -- the definition, the statute says, under 63-5-70, responsible for the welfare and then, Subsection 2, or maliciously. So, the Court believes that was read a little bit too narrow there. 63-5 -- here you go.

You want the statute?

MR. MORIN: I just want to be clear on something, Your Honor. Don't mean to argue with the Court.

THE COURT: Oh, you're not.

MR. MORIN: Sixty-three---

THE COURT: Here it is if you want it.

MR. MORIN: Yeah.

THE COURT: Top of the page.

MR. MORIN: I'm gonna renew my motion after we get done and I'm, I'm gonna look at it. I may --.

THE COURT: Hang on to that if you want to.

MR. MORIN: Okay.

THE COURT: Okay. Okay. Anything else as to the motions?

SOLICITOR BARNETTE: Not from the State, Your Honor.

THE COURT: Okay. All right. And the State has rested.

So, we'll go, Mr. File, does your client desire to testify?

MR. FILE: He -- she is decided not to testify the time -- last time we spoke. So --.

THE COURT: Okay. I'm gonna take these individually because I think it's that important in this case.

Mrs. Baynard, I'm gon' ask that you stand and be sworn.

THE CLERK: Please stand. Raise your right-hand.

(WHEREUPON, Defendant Bobbie Jo Baynard was placed under oath at this time.)

THE CLERK: You can lower your hand.

THE COURT: Mrs. Baynard, we have reached the stage of this trial where you may present a defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States, which states, in part, no person shall be compelled in any criminal case to be a witness against herself.

Additionally, you have the right to claim, claim the protections given to you by Article 1, Section 12 of the South Carolina Constitution, which states, in part, no person shall be compelled in any criminal case to be a

witness against herself.

This means that you can not be required to testify. You have the right to do so. But no one can make you testify. This is a personal right and no one except you can make this decision.

If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year, and this Court determines the probative value of admitting the evidence outweighs its present -- prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, the decision on your part must be freely, intelligently, and voluntarily made with knowledge of the protections given to you by the Constitutions of the United States and the State of South Carolina and the consequences of your decision.

If you decide not to testify, I will instruct jurors they can not give the fact that you did not testify any consideration and there is to be no prejudice to you because you did not testify. The decision is entirely up to you as to whether or not you choose to testify.

Have you discussed this matter with your lawyer?
THE DEFENDANT: Yes, sir.
THE COURT: Have you discussed it with anyone else that you need to talk with before you make your decision?
THE DEFENDANT: Yes, sir.
THE COURT: Do you understand what I have explained to you?
THE DEFENDANT: Yes, sir.
THE COURT: Do you have any questions about what I have explained?
THE DEFENDANT: No, sir.
THE COURT: Do you wish to talk any -- with your lawyer any further at this time?
THE DEFENDANT: No, sir.
THE COURT: Ma'am, do you wish to testify?
THE DEFENDANT: No, sir.
THE COURT: Thank you. You may be seated.
Now, Mr. Baynard, if you would stand please and I'm gonna ask you the same questions.
THE CLERK: Please raise your right-hand.
THE COURT: Sir---
(WHEREUPON, the defendant, David Baynard, was placed under oath at this time.)
THE CLERK: You can lower your hand.
THE COURT: Mr. Baynard, again, I'm gon' read these

individually to all three of you.

We have reached the trial stage where you may present a defense. You have the right to claim the protections given to you by the Fifth Amendment to the United States Constitution, which states, in part, no person shall be compelled in any criminal case to be a witness against himself.

Additionally, you have the right to claim protections given to you by Article 1, Section 12 our -- of our State Constitution which says no person shall be compelled in a criminal case to be a witness against himself.

This means you can not be required to testify. You have a right to do so and -- but no one can make you testify. This is a personal right and no, no one can waive the right except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year, and this Court determines the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, the decision must be made freely, intelligently, and voluntarily with the knowledge of the protections given to you by the Constitutions of the United States and the State of South Carolina and the consequences of your decision.

If you decide not to testify, I will instruct jurors they can not give the fact that you did not testify any consideration and there will be no prejudice to you because you did not testify. The decision must be yours and yours alone.

Do you understand what I have told you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I have told you?

THE DEFENDANT: No, sir.

THE COURT: Have you discussed this matter with your lawyer?

THE DEFENDANT: I have.

THE COURT: Do you wish to speak with your lawyers about this subject any further?

THE DEFENDANT: No, sir.

THE COURT: Sir, what is your decision?

THE DEFENDANT: I've been advised to -- not to testify. That really it's in my best interest not to testify.

THE COURT: Thank you so much, sir. You may be seated.

Mr. Baynard.

THE CLERK: Raise your right-hand.

(WHEREUPON, the defendant, Edward Baynard, was placed under oath at this time.)

THE COURT: Mr. Edward Baynard, we have reached the trial stage of this trial where you may present your defense. You have a right to claim protections given to you by the Fifth Amendment of the -- to the Constitution of the United States which says, in part, no person shall be compelled in any criminal case to be a witness against himself.

Additionally, you have the right to claim the protections given to you by Article 1, Section 12 of our, of our State Constitution which says no person shall be compelled, in any criminal case, to be a witness against himself.

Sir, this means that you can not be required to testify. You have a right to do so. But no one can make you testify. This is a personal right and no one except you can make this decision. If you decide to testify, you will be subject to the same rules that govern the other witnesses and you may be examined and cross-examined on any relevant issue.

Additionally, if you have any convictions involving dishonesty or false statements or for crimes punishable by imprisonment for more than one year, and this Court determines the probative value of admitting the evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, the decision on your part must be freely, intelligently, and voluntarily made with the knowledge of the protections given to you by the Constitution of the United States and the State of South Carolina and the consequences of your decision.

If you decide not to testify, I will instruct jurors they can not give the fact that you did not testify any consideration and there is to be no prejudice to you because you did not testify. The decision is left up to you.

Sir, you, you have spoken with your lawyer about this matter?

THE DEFENDANT: I have.

THE COURT: Do you understand what I have explained to you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I have told you?

THE DEFENDANT: No, sir.
THE COURT: Do you wish to speak to your lawyer any further about this matter?
THE DEFENDANT: No, sir.
THE COURT: Sir, what is your decision?
THE DEFENDANT: I won't testify.
THE COURT: You will not?
THE DEFENDANT: Yes, sir.
THE COURT: Thank you, sir. You may be seated.
MR. MORIN: Your Honor, I'm ready to give your book back and clarify what you're trying to say.
THE COURT: Okay.
MR. MORIN: I guess -- and let me hand your book back to you, Your Honor.
I just need the record to be clear, Your Honor, and what I'm concerned about is what I just wrote. Section 63-7-20. In Subsection 6, it says child abuse or neglect occurs and then goes on to define who the people are.
Subsection 19 says person responsible for child's welfare includes, and I want to be clear if you are finding he falls under one of those subsections, both of them?
THE COURT: No, sir.
MR. MORIN: No?
THE COURT: I'm not looking at 63-7-20. When used in

this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise. I'm looking under 65 -- I'm sorry. 63-5-70.

MR. MORIN: Yes, Your Honor, and it goes on, and even in their indictment, it says welfare of child defined as 63-7-20 of South Carolina Code of Laws.

So, my position is, in that section that you're looking at, refers us to 67 -- 63-7-20 and the definitions therein.

THE COURT: Solicitor, you want to be heard?

SOLICITOR BARNETTE: Yes, sir, I, I don't even think we get to that part, Your Honor. I completely understand the Court's ruling on that.

My argument is it's an unlawful person who has charged -- has charge and then it says or custody of child or the parent, guardian, or child or who's responsible for the welfare of the child defined in Section 63-7-20.

We're at charge right there. That was our position starting with -- I do understand the Court's position that's -- or that can be a second position on this, Your Honor. But I believe there's no question.

I think it's enough evidence beyond a directed verdict that he, he was in charge of her care when he was working those hours and that's part of a respite nurse to take care of that child during that time.

THE COURT: Mr. Morin.
MR. MORIN: We're asking---
SOLICITOR BARNETTE: Not, not really---
MR. MORIN: Really I just want to be clear cause I need to know what's going on.
THE COURT: Yeah, I, I, I don't think I get to 63-7-20. It stays with 63-5-70.
MR. MORIN: Okay.
THE COURT: Yes.
Okay. Having said all that, now, while the jury is not with us, and they'll be reporting -- they're already reporting---
SOLICITOR BARNETTE: Three o'clock.
THE COURT: Three -- at three o'clock. So some of them might be coming in now.
Just nuts and bolts here, is there gon' be a, a case for the defense?
MR. FILE: We -- we're gon' rest our case and as far as --.
THE COURT: Okay.
MRS. RACINE: Defense rests, Your Honor.
THE COURT: Okay.
MR. MORIN: Edward is resting.
THE COURT: Okay. Well, you have rested -- all three of you have rested on the record now and I'll let you do

that in front of the jury when the jury reassembles.
All right. Any -- let's go to motions.
Anything from the State?
SOLICITOR BARNETTE: None from the State, Your Honor.
THE COURT: And Mr. File?
MR. FILE: None, Your Honor.
THE COURT: You want to renew your motions, correct?
MR. FILE: Yes. Yes, sir, judge, we do.
THE COURT: Okay. And they are denied for the reasons heretofore enunciated.
Mr. Racine or Mrs. Racine, somebody?
MRS. RACINE: Your Honor, just like to renew my previous, previous motions that we made.
THE COURT: Yes, ma'am, and you're protected. They're denied for the reasons heretofore enunciated.
Mr. Morin.
MR. MORIN: We renew my motions and take exception to your ruling on unlawful conduct.
THE COURT: Yes, sir.
Okay. And you are protected. They'll be denied again for the reasons heretofore enunciated by the Court. But I'll let you do -- rest in front of the jury and I will tell the jury that they're done for the afternoon. I'll have them come back at nine o'clock tomorrow morning and then we can spend some time this afternoon with a

charge conference.

SOLICITOR BARNETTE: If I understood right, we'll do charge -- and we need to do the arguing and then the charge again starting at 9:00 tomorrow.

THE COURT: Yes.

SOLICITOR BARNETTE: Is that right?

THE COURT: Yeah, we'll spend, we'll spend some time this afternoon going over the proposed jury charge so we'll be ready to go first thing in the morning.

How about that?

MR. RACINE: Your Honor, I apologize. But I, I thought yesterday we had decided that we would handle the jury charges tomorrow. I believe -- I thought your law clerk instructed us to send the charges by tonight.

SOLICITOR BARNETTE: But I thought---

MR. RACINE: So---

SOLICITOR BARNETTE: ---we could get them in today cause we all know that we were gon' be arguing and charging in the morning.

THE COURT: Do you have something you want us -- specifically?

MR. RACINE: I -- I'm sure we will. I mean I can try to create it real quick. But I, I---

SOLICITOR BARNETTE: That's my---

MR. RACINE: I thought we were gonna submit all that

and---

SOLICITOR BARNETTE: Well, I got mine done yesterday.

MR. RACINE: We were told tomorrow -- tonight. Tonight, to have everything in by tonight.

THE COURT: Okay. Well, if you still have anything, we can talk about it first thing in the morning. But I -- I'd love to get started first thing in the morning.

MR. RACINE: All right.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: But we'll have 90 percent of it done. How about that?

SOLICITOR BARNETTE: May I speak to one witness back there and let her go---

THE COURT: Certainly.

SOLICITOR BARNETTE: ---at this point?

THE COURT: We, we can be in recess right now until three o'clock and then the jury will be here at 3:00.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Please be seated. Thank you. Okay. The jury's here. We'll get them in and get them out.

SOLICITOR BARNETTE: State's ready, Your Honor.

THE COURT: Everybody?

MR. FILE: We're ready.

MRS. RACINE: Yes, sir.

THE COURT: We'll have the jury.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Okay. Mr. Foreman, the jury -- everybody ready?

THE FOREMAN: Yes, sir.

THE COURT: Okay. Mr. File.

MR. FILE: The State rests. I mean the defense rests. Sorry.

THE COURT: Okay. Mrs. Racine.

MRS. RACINE: Defense rests, Your Honor.

THE COURT: The defense rests?

MRS. RACINE: Yes, sir.

THE COURT: Mr. Morin.

MR. MORIN: The defense rests.

THE COURT: Okay. Mr. Foreman, ladies and gentlemen, what that means is that none of the defendant's intend to put up a case as, as is their right. The State must prove their guilt. They do not have to prove their innocence.

Having said that, I will now be releasing you for the day not to -- and tell you and charge you not to do any research or read any news article or so forth and be here in the morning at 9:00AM.

The lawyers will then make their closing arguments to you after which I will then charge you the law in this

case. And then this case will be coming to you for your decision.

Madam Clerk, we will order lunch for tomorrow for the jury so they will not have to make their way out and interrupt your deliberations tomorrow.

Okay. So you can expect to have this case tomorrow morning in, in your jury room.

Anything from the State?

SOLICITOR BARNETTE: Nothing from the State, Your Honor.

THE COURT: Defense?

MR. FILE: Nothing.

THE COURT: Defense?

MRS. RACINE: None, Your Honor.

MR. MORIN: None.

THE COURT: Okay. The case is over as far as the testimony. They'll be no other evidence introduced. No other picture. No other diagram. Nothing. It's gonna be in your hands tomorrow.

Okay. Mr. Foreman, take your jury out and be, be back in the morning.

THE FOREMAN: Yes, sir.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Okay. We had already, already done that

and already done our motions and already renewed our motions. So everybody's protected on the record and it's got to be that in front of the jury.

We'll be in recess until tomorrow morning at 9:00 and Wade is got the jury charge basically done. So, we can go talk a little bit about that if you want to and we'll reconvene in the morning.

SOLICITOR BARNETTE: Thank you, Your Honor.

(WHEREUPON, Court was in recess for the evening.)

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THE COURT: Thank you. Thank you. Please be seated. Good morning, everyone.

Okay. Anything before we start?

SOLICITOR JORDAN: Yes, Your Honor.

We sent an email last night to all the parties involved, including Your Honor and the law clerk, requesting changes to the proposed charge. It's my understanding that those changes have been made and I apologize for sending three separate emails, and it's also my understanding that the three parties do not have any objection to the changes that we requested.

THE COURT: Okay.

MR. FILE: No objection.

MRS. RACINE: No objection.

MR. MORIN: No objection.

THE COURT: Okay.

SOLICITOR JORDAN: That's all, Your Honor.

THE COURT: Thank you.

Anything at all before we start?

SOLICITOR BARNETTE: And my -- the way I understand, Your Honor, I'll fully open here and they'll get last arguments, the three of them.

Is that right?

I don't have any reply in this case cause I don't think they put any evidence in.

MR. MORIN: That's right.

SOLICITOR BARNETTE: I just wanted to make sure I'm clear on that.

THE COURT: I, I know they marked a couple things. But it was for ID purposes.

SOLICITOR BARNETTE: I don't think they ever entered it into evidence.

MR. MORIN: No. But I---

SOLICITOR BARNETTE: I just wanted to make sure that---

MR. MORIN: I marked them but I didn't enter them.

SOLICITOR BARNETTE: That's why I want to handle it. Obviously I'll get the one opening or the one closing.

THE COURT: One opening and one -- I mean one -- yeah.

SOLICITOR BARNETTE: Obviously---

MR. MORIN: Everybody goes once.

THE COURT: Everybody goes once.

SOLICITOR BARNETTE: Your Honor, is it okay if Ms. Jordan might get up if she moves over there to help me with the ELMO to show the exhibits?

THE COURT: Sure.

SOLICITOR BARNETTE: Thank you.

MR. MORIN: I, I plan to do that as well with Miss Gowdy.

THE COURT: Anybody need anything before we get the jury?

(WHEREUPON, there was no response.)

THE COURT: We'll have the jury.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

Mr. Foreman, everybody good?

THE FOREMAN: Yes, sir.

THE COURT: Please give---

THE FOREMAN: Thank you.

THE COURT: ---your attention to the solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

Mr. Foreman, ladies and gentlemen of the jury, H.B. was a 14 year old child.

MR. MORIN: Hey, stop.

I'm trying to get him -- I apologize to the State.

SOLICITOR BARNETTE: She is a special needs child. She has a soul like every other human being in this world does and Doctor Parra, yesterday from this witness stand, gave you insight to her soul.

She said she couldn't speak, that she could show

emotion. She could smile. She could show unhappiness and just to show you what kind of person that little girl was.

And Doctor Parra, that last time she saw her, January 11th, 2021, she noticed things about her, you know, around the feeding tube, certain things -- blemishes maybe on her skin. She said well, we're gon' -- we're -- maybe need to do this every six months.

She talked to her parents again, reiterate, you know, all the emergency procedures, what they need to do, went through all that with them. Six months later, they missed their appointment.

Doctor Parra's office keeps calling and you heard all the dates that they called. Got to February 22nd of 2022. Canceled that last appointment.

What Doctor Parra didn't know. I mean she's trying to reach them, her office is, is the way H.B. is living. You heard the testimony. This happened over weeks.

She couldn't imagine her laying in the urine, with feces, the insects, the ammonia smell, the everything. She's in her crib. It's like she was put into acid and remember Doctor Parra's testimony.

She had emotions. She could feel pain. She had to stay in that crib. She couldn't go anywhere. They could and they could drive anywhere, make phonecalls.

She stayed in that crib. Just unimaginable. The teeth, rotten, and you got to remember, Doctor Parra saw her January 21st, '21. She didn't notice anything except the blemishes and things that gave her concern.

She gave her a full body check. The teeth, everything, the scalp, the way it was as Doctor Rose described it to you. Her back, talking about the insect bites, the sores, everything, obvious to them.

Doctor Rose and Doctor Rider telling you about the legs. Just like raw hamburger meat. No skin hardly on them. It's been -- it's dissolved by the -- where the urine just turned into -- like an acid where she has just a lump of whatever you want to call it inside of her she can't pass.

The diarrhea has to go around it to get there and it just keeps going in the bed on her legs and everything else. The suffering that she went through not for a minute, not for an hour, not for a day but for weeks.

Ladies and gentlemen, if that's not malice I don't know what is. Malice is malice. It's ill-will. It's just total disregard and to have that little girl in that situation where she can't escape. She's totally dependent on them.

I'm briefly gonna show you the video and think about this. The night that she died, they find her in distress

supposedly and they go to revive her, to put her into the, the washer. I don't know where you could wash her in this house and y'all've seen the pictures.

Then they cut her hair. I mean she's in distress.

Why aren't you calling 9-1-1?

Why aren't you getting EMS here?

Why aren't you doing something other than trying to wash her and cut her hair?

And when they cut her hair, these are two cuts. You heard Doctor Rose. She's dead. She's dead at their house when they cut her hair.

They don't call anybody. They just put her into the van. They drive down. I'm gonna show you State Exhibit 1 again. I know y'all've seen it. We'll watch it here. But no urgency whatsoever.

There's Amy Vinesett walking by. Didn't yell for her. Didn't scream for help. Didn't ask for anything. He throws her over his shoulder like a sack of potatoes. He just points and Amy Vinesett feels the arm. Cold to the touch. H.B. was blue grayish and then that's when it starts rushing and then she evens notices the blood in her back.

Show the third video if you would or the second video.

You notice how fast she moves. As soon as she

touched her she knew and she's taken straight on back and then we're gonna show you the third video.

You see the bloody spot on her back. Ms. Vinesett's waiting on the mother. Amy Vinesett meets with them, is going through it with them, and she says -- sits down and David just scrolls through his phone showing no emotion whatsoever. Talking to Bobbie Baynard saying she's showing no emotion and she asked her -- she wants to know what happened.

She said was this an accident. She said absolutely not an accident. This is not an accident. That's one thing I do agree with.

You heard Doctor Rider and this is a man that's worked in the ER for 31 years. He -- you saw him. You saw his testimony.

The one thing you bring to this, to this courtroom is your common sense, the way you dealt with people, seeing people. You bring that to the courtroom and you weigh the credibility of these witnesses.

He had never seen anything like this in his career. He described it to you and like he was talking about the hamburger like legs and this man's seen a lot. You could tell by just him talking to you.

And then you heard from Dennis Fowler, our coroner. He comes to the ER once he's called and he has seen a lot

and he's never seen anything like it in his life.

He gets with law enforcement. They actually go to the house. When they arrive at the house, they have to take the gate, you know, take the chain down, go through.

I'm not gonna go through every picture with you. Y'all've seen those. I'm gonna go through a few with you.

But when they get to the house, it is so bad they have to go out and then come back and get protective equipment cause he says that insects are jumping on them. He talks about the rats outside. He talks about the cockroaches, the flies, the ammonia smell, the smell from the feces coming in. I mean they let animals just run and you can see that.

Even in the room that H.B. was in, there's cats, all kind of stuff, and they had talked about cutting the hair and everything. You heard Brian Burrell. He actually collected the scissors as well as the hair from there as well as the gauze too that they found in that bedroom.

He described to you what that house was like. It was like a horror house. It's something that you may want to see on Halloween. But this wasn't that, ladies and gentlemen. This is real and this is the environment that H.B. lived in.

I just want to show you a couple of pictures real

quick. Show you State Exhibit 69 and 70. Like I said, you saw these pictures. You saw the absolutely (sic) fifth, live and dead cockroaches on them, just all through the house.

Showing you State's Exhibit 75 and 76, the ones come from the bathroom, the way they treated the house and everything in it including H.B. .

In State Exhibits 83 and 84, look at where she stayed. Look at the walls. Look in the crib. Look all around the crib where she basically rotted to death.

Through investigation, they found Edward was being paid to take care of her. He went to actually meet and got training on it. He actually went through a test.

Showing State Exhibit 120 and they asked him questions there.

What is one early sign of pressure sore?

He answered. Slightly red in the skin over a bony area.

You remember Doctor Rose's descriptions about the knees, the absolute holes in them, the dead skin and everything, all the sores, and she said it's so numerous she couldn't even remember -- she couldn't tell you the number that was on there.

And whose responsibility is it to report the abuse and neglect?

He marks everyone's.

Is neglect a type of abuse?

True.

And they keep going through there talking about sponge baths. Goes through and have -- you'll have all this. I'm not gon' go through every question. She'll have these available to you back there.

They found out he was getting paid. Look at State Exhibit 121 and you'll have these documents back with you and the total amount that he got paid was $25,589.88. We're starting from October 2nd, 2020, to April 11th, 2022, the day she died.

And, on the day she died, I'm gonna show you exhibit, exhibit -- State Exhibit 123. And the day before she died, Edward reported that he worked 14 hours that Sunday before and 14 hours that Monday that she died. They wanted to make sure they got every dollar out of her and they did.

And then, on April 7th and April 8th, State Exhibit 122, remember he's paid for two different types of treatment or care, he turns in hours April 7th, 2022, as well as April 8th, 2022, that he cared for her.

There is no way I submit to you the evidence shows, and you've seen all the evidence, there is no way you couldn't tell that she was in the condition she was if you

were taken care of her and getting paid for it.

I want to go back to Doctor Parra for a second cause I think y'all heard -- you weigh her credibility. I think she loves working with special needs kids. She expressed that to you and she cared for H.B. .

But one of the things she said was about the ammonia. You remember Doctor Rose talking about the pus in the lungs. She said you would of seen obvious signs of that. You would see the raising in her chest. You'd see the increased mucus coming out. You would see a raise in temperature. You would see the O2 levels, the oxygen levels in her that's measured by the device that's on her, go drop down. It would of been obvious.

And the other thing Edward, and both parents, David and Bobbie was, they were both told how to call, how to get help. Remember Medicaid, and Doctor Parra told you this, pays for 100 percent of everything for H.B. . They didn't pay one dime.

But it paid for her care. They would pay for transportation to get her for that care. Anything she needed.

They show how much she cared, y'all saw the diapers. You saw how they used them, didn't use them, threw them everywhere. Oxygen tanks. Those are needed supplies that that little girl needed and they could care less.

And she even told you, when she saw the pictures of H.B., what happened to her. She didn't need to see them again. They are ingrained in her mind.

Let me talk to you a little bit about the jury charges the judge will give you and we're submitting they're all guilty of three charges.

The first one is neglect. Obviously no question about neglect. I mean you got it everywhere in this case.

No question she receives great bodily injury cause it gets to a certain part when her injuries are not treated, it's -- I mean it's -- her legs, at a certain point, could never been treated and taken care of. At a certain point, items on her back, inside of her, could not be fixed.

So, it's definitely great bodily injury and this is child abuse, ladies and gentlemen, plain and simple and these three people that are responsible for it.

And let me talk about murder, and, like I said, malice is malice. There's not different types of malice. There's only one malice. But there's different descriptions for it. I can put this up on a screen.

And in murder cases in South Carolina, we just have to prove that the person died from the actions with malice aforethought. It could be expressed or implied and it could be that quick, which did not happen in this case obviously. Sat there for weeks.

So, malice is agreeing -- it doesn't say that it will but right -- signifies a general, malignant, recklessness of lives and safety of others. It's a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief and malice can be expressed or implied and, and we're not saying it's expressed in here. But it's definitely implied from that standpoint.

Implied malice is when circumstances demonstrate a wanton or reckless disregard for human life and I submit to you this is reckless disregard for the human life of H.B. or a prudently person, man or person, would have known that, according to common experiences, that were the plain, strong likely that death would of follow the contemplated act.

What do you think when you let somebody lay for weeks what's gonna happen to them in the condition she was living?

Although must be at fault, there's no required for how long that it lasts, and, like you said, this lasted for weeks. And, like I said, malice is abundantly clear through the actions and through all the evidence that you have in front of you.

One thing the judge is gonna charge you, and this is absolutely not what it is, he's also gonna charge you what we call lesser included offense of involuntary

manslaughter. The defense unintentionally killed the victim without malice, acted -- unlawful activity did not naturally tending the cause of death or great bodily harm to somebody.

This is not what this is, ladies and gentlemen. It's not that. Then unintentionally killing the victim without malice while engaged in a lawful activity.

You let your house get like this. You let her get in this situation. That's totally unlawful. It's not involuntary manslaughter, ladies and gentlemen. This is murder as well as the felony child abuse with great bodily injury as well as the neglect.

One thing the judge will charge you is reasonable doubt and we're -- I'm gon' give you part of that charge right now. After you consider the evidence that's been presented to you in this case, if you're firmly convinced the defendant is guilty of the crime charged, then you must find him or her guilty. If, on the other hand, you think there's a real possibility that the defendant is not guilty, you must give him or her the benefit of the doubt and find them not guilty.

Ladies and gentlemen, this evidence leaves you firmly convinced. No question about it. There's no real possibility of not guilty in this case I'd submit to you.

They are guilty of this and we've proven this case

beyond a reasonable doubt based on all the evidence you saw.

One thing. We don't have to prove everything in a case. We just have to prove enough to show you -- to be firmly convinced, and, like I say, we may not have every piece of the puzzle. But you definitely have enough pieces of the puzzle to know what this is. It's unlawful neglect, unlawful conduct towards a child, felony child abuse which occurred after the neglect occurred, and then the death that was caused by everything that happened.

It's like this puzzle I show you. We don't have all the pieces of the puzzle. But you got enough to know what it is and that's what we got here, ladies and gentlemen of the jury.

That's the last place she was alive. Her soul left her that night thank God because imagine what she lived through for weeks. Imagine, you know, a human being lived in there and lived through that and the people that are responsible for that are these three right over here.

They could of called. They could of done anything. Doctor Parra would of done anything for that girl. They didn't do nothing but decided to clean her up, cut her hair, and they took her to the ER just in -- and just carried her in like a sack of potatoes.

She's not a sack of potatoes, ladies and gentlemen.

She's a human being. Every person in this world's a human being and every person -- and, like I said, we might have different ways we live, different situations. But this was not right. This is not right what happened.

She couldn't leave. She couldn't call anybody but they could. They didn't do it. They let her die and what I'm asking you to do is hold them responsible and find them guilty of all charges.

Thank you very much, ladies and gentlemen, for your time.

MR. FILE: May it please the Court?

THE COURT: Yes, sir.

MR. FILE: Ladies and gentlemen of the jury, I'll be brief. I'm not going a long winded -- one of these long winded lawyers that -- certainly not a preacher. So --.

But one thing I do -- I do have some things to say and about this case.

One thing that jumps out to me in this case is that if, if Bobbie Baynard really wanted to murder her daughter, I can think of about a half a dozen ways or more that she could of done that and accomplish that with less scrutiny, less investigation, less exposure of their, of their living situation, the filth that they were living in, and less exposure of everything about the way that H.B. died. I think that needs -- I think you need to

think about that.

You know, they, they, they took her to the -- take her to the hospital in the condition that she's in, any reasonable person would know that there's gon' be a lot of questions asked and, and a lot of answers -- questions to answer and that's gon' call attention to the situation -- whole situation. So, if they really wanted something to happen to their daughter, there's a, a half a dozen other ways that that could of happened.

They were, they were even, you know, as much as I hate to say this, it sounds cold, but they were even drawing money from the government for their daughter.

Why would they intentionally kill their daughter and, and lose that money if they're that cold?

I propose and submit to you that this is, as I told you at the beginning of the trial, that this is a case of neglect. It -- yes, and it's neglect that steamrolled out of control.

You know, one, one neglectful situation, especially with a special needs daughter that has about four or five different afflictions to her lungs, her, her cerebral palsy, her, her, her seizures and everything, that any number of things could of happened and neglect can happen and then one thing leads to another and, and, like a bad loan with high interest, you're in over your head. And,

and then you become embarrassed or, or, or depressed about it to the point that you start thinking about, you know, what you're gon' do and you don't start thinking right.

I submit to you that, that there is not any malice in this case for murder and I submit to you that what I propose to you is and should be reasonable doubt about -- for a murder charge.

Call it whatever you want but don't call it murder. You know, maybe it's voluntary manslaughter.

SOLICITOR BARNETTE: Objection, Your Honor.

MR. FILE: You make the call.

SOLICITOR BARNETTE: Objection, Your Honor.

THE COURT: What's the objection?

MR. FILE: I mean involuntary. I'm sorry.

SOLICITOR BARNETTE: Yeah.

MR. FILE: I correct myself. Involuntary.

SOLICITOR BARNETTE: Thank you.

MR. FILE: You make the call.

As finders of fact, it's, it's your, your call on this, okay, and we respect that.

The State brought all their resources in and called this murder. However, they have to prove murder and they have to prove that it was willful and they have to prove that it was with malice.

But they, they are the ones that have to prove that

and I think the facts of this case and the, the situation would lead a reasonable person to believe -- you didn't, you didn't check your common sense at the door when you came in here to serve as jurors. That's why we want you as jurors.

I think a reasonable person would believe that a, a person like the Baynards could not have the malice to kill their daughter. Therefore, it's, it's my belief that there is reasonable doubt in this case for a murder charge.

Yes, it's neglect. We admit to neglect. We admit to an aggravated case of neglect. But it's not murder. There's no, no way -- any way that you can make this murder.

Thank you.

MRS. RACINE: May it please the Court?

THE COURT: Yes, ma'am.

MRS. RACINE: On April 11th, 2022, H.B. was found unresponsive by her parents who took her to the hospital for help.

The State will try to convince you they're bad parents but bad parents, parents who have malice, don't try to save their children. Unfortunately we know she couldn't be saved. But the fact that she died doesn't make David a murderer.

The State's also gonna try to convince you that the condition of the Baynard home proved that David had malice. Don't let the way the Baynards live convince you that David had malice toward H.B. .

Yes, that house was absolutely, completely the worst, nastiest, most disgusting house most of you will ever see in your lifetime. However, despite that, Doctor Parra who last saw H.B. a year or so before she died, testified that it appeared to her that H.B. was receiving appropriate and adequate care.

Although the State has shown you a filthy house and a death that occurred, it hasn't shown you that that death occurred because of the filthy house or because of any malice H.B. -- David had for H.B. . Having a filthy house, no matter how disgusting it may be, is not a crime nor does it show malice beyond a reasonable doubt.

When I first talked to you a few days ago, I told you you're probably gonna dislike David and that was okay and it's still okay. It's okay to think he's a slob. It's okay to think he's the worst person in the world. But it's not okay to convict him on just those feelings alone.

The State must convince you, beyond a reasonable doubt, that he's guilty. Dislike or disgust, they're not enough.

I also told you you're gonna be asked to determine if

David was guilty of any or all three charges. The first was unlawful conduct toward a child also known as neglect. I told you that's the charge he was guilty of.

He's also charged with infliction of great bodily injury upon a child and murder. Well, you now have a fourth option which is involuntary manslaughter.

The judge will tell you each charge and its elements, and I think, after you hear those charges and those elements, you'll agree that involuntary manslaughter is the appropriate charge in this case.

The judge is also gonna instruct you on a definition of beyond a reasonable doubt. You must follow the judge's instruction. Judge Kelly will mostly likely tell you that beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

He may also instruct you that reasonable doubt can arise from evidence which is in the case or it can arise from evidence that is not in the case and here I want you to focus on the evidence that's not in the case and what evidence is that?

Evidence of malice.

The State is attempting to convict murder -- David of murder by arguing malice can be inferred from the conditions of the house and the condition of H.B.'s body. But that's not enough.

You may even think that because the house was filthy and H.B. was in extremely poor condition that maybe David had malice or that maybe these facts could show malice. That isn't enough. That's not proof beyond a reasonable doubt.

To find proof beyond a reasonable doubt, you must be firmly convinced of David's guilt. The State has simply failed to establish, beyond a reasonable doubt, the elements of malice necessary to convince (sic) David of murder.

And why is that?

Because David had no malice, and if he's guilty of anything, it's involuntary manslaughter and that's the verdict I'm asking you to return.

Thank you.

MR. MORIN: I represent Edward Baynard. Those are his parents.

You know, this case -- and I'm gonna tell you now. I, I don't know how I'm gonna do on this.

My job is to make the State prove the evidence against my client and most of the time, during my long career, it's not a problem. But this case takes me from mad to sad all the time. All the time.

I'm mad at those parens over there. Now I sit over there with them. But you might of noticed during this

trial I ain't with them.

I told you at the beginning, and most of you nodded and agreed, a parent is responsible for the health and welfare of their children. And when you look at those pictures of that house, you're not just looking at H.B.'s environment. You're looking at my client's. You're looking at his life from these people and they know it.

I'm mad at the unnamed DS -- Department of Disability and Special Needs caseworker and we don't know -- I'm mad at them. I'm mad at Axcess Healthcare.

My client had just turned 18. They hired him and they said here's a handbook. Go out and do that thing and they showed -- they spent a lot of time explaining to him about how to fill his time.

I'm mad. They said it doesn't matter what kind of healthcare -- the, the person -- the client, as they called H.B., the client, it doesn't matter what kind of healthcare she needs. Everybody gets the same four hour, no demonstration of anything.

And they brought in Doctor Rose and Doctor Parra and both of them, both of them said should not be dealing with those things if you haven't had training on them. Should not be moving, Doctor Parra, should not be moving people who had GI tracts and, and trachs unless they have it,

that training.

Who had that training?

They did.

Her parents had that training.

How do we know?

Well, because Doctor Parra said she did and Doctor Parra saw her and it was clear that they were doing what they were suppose to. Those two knew what to do and they didn't do it. They didn't do it.

Axcess Healthcare, who were they calling to see how things were going?

Calling my client?

No.

Calling mama and their own lawyer says well, they were getting money. Yeah, they were getting money. They were getting it.

Now, we're very excited about the time sheets. You got them. We're, we're very excited about it. It is the only, I submit the only link to my client being in any way responsible for any of this. And, remember, before I point this out, this appears on every single page.

Remember when the -- when I was through -- when the lady from Axcess was here and said well, you know, sometimes you have these things where they submit the time wrong where they put AM instead -- they don't put PM.

Right here. Issues feeding and reheating food. He checked yes. He checked yes on every one and Axcess wants you to say well, we review these and we see if there's any problems and we'll go through everything and we'll let him know what was -- changes need to be done. Every one.

You're gonna have it back there with you. Turn it to any page. There it is. Keeps doing it. Nobody's saying anything.

I said to him you got a handbook that says the things he's suppose to report to the caregiver. You'll have that back there too. The caregiver.

She said well, I don't know what you mean by that. It's their handbook. You're gonna -- she's a nurse. She's been working there nine years. She's talking to a teenager.

Remember when you had your first job when you were 18?

This was his.

And I said and guess who picked him?

Guess who picked him?

His parents picked him.

You know why?

Because if anybody had ever seen anything like what was going on in that house, that would of been the end of the meal ticket. That would of been the end of it. And

there's only one person in this world that would go into that house and say yeah, this is all right and it's my client and it's sad. It's sad. That's what his environment was normalized to.

The solicitor said multiple times the only reason those three are alive is cause they -- because they can move.

No, the Baynards had two children. One of them could move and one of them couldn't. And the only reason one of them lived is because they could move.

I'll agree with the State on that. Because if Edward had been in his sister's shoes, I wouldn't be here because he wouldn't be here because he would of suffered the same fate with these parents.

I can't -- I get mad when we're talking about medical professionals saying you need specialized training to deal with this and the State comes in here -- the government comes in here and says well, he passed this multiple choice test.

You heard that fragile, medical condition his sister was in and they're like well, he, he passed this multiple choice test.

That poor child was in the same room every single night with those two. They looked at him and those of who are parents know what I'm talking about. When your child

makes a noise in the night, they might as well have another hurricane come through here. You're up and moving. Not them.

They knew and they let it happen and they're trying to lump a teenager in with them that this is what he's seen. They're trying to lump him in and I asked her. I said well, if he filled out these things and he didn't do that job, he'd, he'd be a bad, bad employee and she said yeah.

They say that makes him a murderer. A part-time, teenage aid, with no training and their medical doctors say should not be doing that if you don't have training about this, murder, and that makes me mad cause they know.

You might say to yourself well, he should of done something and I thought that many times myself coming through this case. But then, when we got to these pictures of the house and they talk about how long this happened and I don't disagree with it, this house was putting at that -- has been in a bad situation for more than a year and more than two years and more than before he even started.

He was 18 years old. Just a few months passed when he was -- started this job and he was -- only two years later he was in jail. He lived in that jail with those two jailors for 18 years and then we wonder why he would

say he wouldn't do those things.

Why wouldn't he call?

And the other thing about it is and this is a couple other things that troubles me. Every one of us has got a parent or parents. Every one of us, they have a bedroom and I've never seen anybody say they can just go into their bedroom at anytime. That is not allowed in pretty much anybody's house.

And I asked Axcess, I said well, when, when you trained him, is the parent in charge or is he in charge and she said it depends and I said well, what if the person that's in charge is also his parent?

Did you tell them anything about how they're to resolve that kind of conflict?

No.

We just, we just get paid by Medicaid for every client we have and we take some and we do this fancy training. That makes me mad.

What happened to H.B. makes me sad. What's happened to my client makes me sad because, as the solicitor likes saying to all these people, well, I'll start with Ms. Jordan and go all the way down to Mr. Baynard, they all know and they ignored it and they continued to ignore it.

My client is not guilty of murder. He's not guilty

of great bodily injury for child, for child neglect.

Is he -- if you had to, is he guilty of unlawful conduct to a child?

I'm not gonna say no. Well, well, maybe.

Is he guilty of involuntary manslaughter, which the State says it can't be?

But the judge is gonna tell you that if a defendant is unintentionally killed -- I mean if a defendant unintentionally kills the victim without malice while engaged in lawful activity, getting paid by a home care or medical, we don't know -- Axcess is both but it's neither, with reckless disregard to for the safety of others, and if you want to say he was working there and he recklessly disregarded the safety of his sister, that's un -- that is man -- that is un -- involuntary manslaughter.

But what it is not is having parents who have this kind of house, who have this kind of children, who have them in there, in there and they know it and they ignore it. He is separate from him -- them down there at the end.

And I switch back and forth between understanding what Doctor Parra and understanding what Doctor Rose has said and struggled with how a person, a parent would put their children, and the government lawyer likes to lump my client in when he's talking bad about him, but my client's

a victim of these parents as well and they're prosecuting him for it.

He's not guilty of murder and you can -- by their -- there's been arguments about what malice is, about what malice isn't, about what willful is, about what willful isn't. But these are the facts and y'all've heard it and I asked these questions of these people to show what we're really talking about when it comes to him. And I submit to you he is not guilty of murder.

I even go so far as to say he's a victim of those two right over there. They put him right into this.

Do you know who we want our caretaker to be?

This person.

And, as I said earlier, you know why we want him?

Because if you go in there, you're gon' come out and then children are gon' -- that child's gon' come out.

I appreciate the attention you've given me. I hope you understand my emotions on this case. I'm sure you have your own.

Thank you.

THE COURT: Mr. Foreman, and ladies and gentlemen of the jury, you have seen and heard the evidence presented as well as the arguments of the lawyers, and it is now my duty and my obligation to instruct you on the law. It will then be your duty and your obligation to begin your

deliberations through which process you will decide the facts and apply the law as I now in -- instruct it to you and render a fair and impartial verdict.

It is your exclusive duty to determine what the facts are in this case and you will do that based on your own common sense evaluation and examination of the testimony and the evidence received during this trial.

You 12 alone will decide what effect, value, and weight is to be given to any particular testimony or evidence received. Quite simply, your job and your obligation, as jurors, is to give both the State and this defendant a fair and impartial trial based on the evidence presented and the law in this case that I now charge you.

The indictment ending in 129, I'm sorry, yes, 1296 charges the defendant, David Eugene Baynard, with the offense of murder.

Specifically the State alleges that he did, in Cherokee County, South Carolina, on or about April 11 of 2022, feloniously, willfully, and with malice aforethought, either expressed or implied, cause the death of H.B. [redacted] in violation of our law.

The indictment ending in 0447 charges the defendant, David Eugene Baynard, with the offense of unlawful conduct towards a child.

Specifically, the State alleges that he did, in

Cherokee County, South Carolina, between the dates of October 2, 2020 and April 11, 2022, willfully and unlawfully have charge -- having charge or custody and/or being the parent or guardian of a minor child or who is responsible for the welfare of a child as defined by our state law, placed that child in unreasonable risk of harm affecting the child's life, physical or mental health or safety, and/or did do or cause to be done, unlawfully or maliciously, any bodily harm to the child so that the life or health of the child was in danger or likely to be in danger in violation of South Carolina law.

The indictment ending in 0448 charges the defendant, David Eugene Baynard, with the offense of child abuse with, with great bodily injury.

Specifically, the State alleges that he did, in Cherokee County, South Carolina, between the dates of October 20 -- 2 of 2020 to April 11, 2022, inflict great bodily injury upon H.B. [redacted], a child under the age of 18 years, in violation of state law.

The indictment ending in 1299 charges the defendant, Bobbie Jo Baynard, with the offense known as murder.

Specifically the State alleges that she did, in Cherokee County, South Carolina, on or about April 11 of 2022, feloniously, willfully, and with malice aforethought, either expressed or implied, cause the death

of H.B. [redacted] in violation of South Carolina law.

The indictment ending in 0449 charges the defendant, Bobbie Jo Baynard, with the offense of unlawful conduct towards a child.

Specifically, the State alleges that this defendant did, in Cherokee County, South Carolina, between the dates of October 2, 2020, up to April 11, 2022 -- October 11 -- 2 of 2020 up to April 11, 2020, willfully and unlawfully, having charge or custody, and/or be the parent or guardian of a minor child, or who was responsible for the welfare of a child as defined by state law, did place the child at unreasonable risk of harm affecting the child's life, physical or mental health or safety, and/or did do or cause to be done, unlawfully or maliciously, any bodily harm to the child so that the life or health of the child was endangered or likely to be endangered in violation of South Carolina law.

The indictment ending in 0450 charges the defendant, Bobbie Jo Baynard, with the offense of child abuse with great bodily injury.

Specifically, the State says that this defendant did, in Cherokee County, South Carolina, between the dates of October 2, 2020, up to April 11, 2022, inflict great bodily injury upon H.B. [redacted], a child

under the age of 18 years, in violation of state law.

The indictment ending in 1304 charges the defendant, Edward Vincent Baynard, with the offense of murder.

Specifically the State alleges that he did, in Cherokee County, South Carolina, on or about April 11 of 2022, feloniously, willfully, and with malice aforethought, either expressed or implied, caused the death of H.B. [redacted] in violation of state law.

The indictment ending in 0452 charges the defendant, Edward Vincent Baynard, with the offense of unlawful conduct towards a child.

Specifically, the State alleges that he did, in Cherokee County, South Carolina, between the dates of October 2, 2020, up to April 11, 2022, willfully and unlawfully, having charge or custody and/or being the parent or guardian of a minor child, or was responsible for the welfare of a child defined by state law, did place that child at unreasonable risk of harm affecting the child's life, physical or mental health or safety, and/or did do or cause to be done, unlawfully or maliciously, any bodily harm to the child so that the life or health of the child was endangered or likely to be endangered in violation of South Carolina law.

The indictment ending in 0451 charges the defendant,

Edward Vincent Baynard, with the offense of child abuse with great bodily injury.

Specifically, the State alleges that he did, in Cherokee County, South Carolina, between the dates of October 2, 2020, up to April 11, 2022, inflict greater -- great bodily injury upon H.B. [redacted], a child under the age of 18 years, in violation of state law.

I remind you that the fact that these defendants were arrested, charged, and indicted is not evidence in the case and can not be considered by you as evidence of guilt nor does it create a presumption or an inference of guilt. The indictments are simply written instruments which contain the charges made against each defendant. They are the formal documents by which this case is brought before this Court.

Each defendant has pled not guilty to the indictments against them and that plea puts the burden on the State of South Carolina to prove each defendants' guilt beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent.

I charge you it is a cardinal, important, and vital rule of law that, in a criminal trial, no matter what the seriousness of the charge may be for which he or she

stands charged, the -- each defendant is always presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations. It accompanies each defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of guilt beyond a reasonable doubt.

The presumption of innocence has been described as being like a robe of innocence placed about the shoulders of the defendant which remains with that defendant from the moment of his or her arrest and it continues until it is stripped from his or her shoulders by evidence satisfying you of that defendant's guilt beyond a reasonable doubt.

Ladies and gentlemen, the presumption of innocence is not a legal theory. It is not a legal phrase. It is a substantial right to which every defendant is entitled unless you 12 are satisfied from the evidence of that defendant's guilt beyond a reasonable doubt.

I remind you that, during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over this case and I have the duty to rule on admissibility of evidence offered during a

trial.

You are to consider only the evidence before you. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record, and any stipulations by the lawyer.

Additionally, I have the duty to charge you the law applicable to the case. As the presiding judge, I am the sole judge of the law and it is your duty to accept it and apply it as I now state it to you. If you have any idea as to what the law is or what the law should be or ought to be and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept it and apply it as I now state it to you.

In every case tried in this courtroom before a jury, you 12 become the sole and exclusive judge of the facts. A trial judge, in South Carolina, can not make a comment or a statement to a trial jury about a fact. You 12 are the sole judge of the facts and you are not to infer, from anything that I might have said during the progress of this trial, any ruling upon admissibility of evidence, that I have an opinion about a fact in this case.

I tell you and I charge you that South Carolina law does not allow a trial judge to have an opinion about a fact. This is -- matter is solely for you 12 to

determine.

Now, the State has the burden of proving each defendants' guilt beyond a reasonable doubt.

Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt. There are very few things in this world that we know with absolute certainty, and, in criminal cases, our law does not require proof that overcomes every possible doubt.

A reasonable doubt has also been described as the kind of doubt that would cause a reasonable person to hesitate to act. If you have such a doubt as to the guilt of a defendant, then he or she is entitled to a verdict of not guilty.

Reasonable doubt may arise from evidence in a case or from absence or lack of evidence. If, based on your considerations of the evidence, you are firmly convinced that a defendant is guilty of, of an indictment as charged, you must find him or her guilty. But if you believe there is a real possibility that defendant is not guilty, you must give him or her the benefit of the doubt and find him or her not guilty. You alone must make this determination as to whether or not reasonable doubt exists as to the guilt of each defendant.

Now there are two types of evidence that are

generally presented during a trial and they are known as direct evidence and circumstantial evidence.

Direct evidence is testimony of a person who claims to have actual knowledge of a fact such as an eye witness. It is evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference, not on personal knowledge or observation.

Our state law makes no distinction between the weight or value to be given either direct or circumstantial evidence. Nor is a great degree of certainty required for circumstantial evidence. You 12 should weigh all evidence, and, after doing so, if you are not convinced of the guilt of a defendant beyond reasonable doubt, you must find that defendant not guilty.

Now, under our Constitution, you 12 are the finders of facts and, necessarily, you must determine the credibility of witnesses who have testified.

Ladies and gentlemen, credibility simply means believability. It is your duty, as jurors, to analyze and to evaluate the evidence and determine which evidence is

convincing to you.

In determining believability of witnesses, you may believe one witness over several or several over one. You may believe part of a witness' testimony and you may reject the remaining part of that testimony. You may believe the testimony of a witness in its entirety or you may reject it in its, in its entirety.

You may consider whether any witness has exhibited any interest, bias, prejudice, or motive in this case. Whatever your good judgment and common sense tells you is the most believable is the testimony you should accept and reject all other testimony that you find not to be credible.

Now, our rules of evidence ordinarily do not permit witnesses to testify to opinions or, or conclusions. But an exception to this rule exists for what we call an expert witness.

A witness, who by their education or experience or training, has become an expert in some science, profession, or calling may give an opinion as to relevant matters in which that witness claims to be an expert. You should consider the expert opinion received in evidence in this case like all other evidence. You give it the weight you believe it desires.

If you decide that the opinion of that expert witness

is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Ladies and gentlemen, an expert witness' testimony is to be given no greater weight than that of other witnesses simply because they were qualified as an expert.

I instruct you and emphasize the fact that the defendants in this case did not testify is not a factor to be considered in anyway and should not be considered and talked about in the jury room. Each defendant has a constitutional right to remain silent and the assertion of this right must not be considered by you in deliberations. The fact that each defendant did not testify should not be discussed.

The burden of proof, as I have previously said, is on the State. The defendants are not required to prove their innocence. The burden re -- of proof remains on the State to prove each defendant guilty beyond a reasonable doubt.

Now, criminal intent is a necessary element of each crime that must be proven by the State beyond a reasonable doubt. Criminal intent is a matter that must be determined by you 12 from the circumstances surrounding this situation.

There is no way to prove intent to a mathematical

certainty. Medical science can not dissect a person's brain and determine what he or she had in mind. So, our law says that criminal intent may be inferred from the circumstances shown to have existed and this is how you, the jury, makes a determination of whether or not the element requiring intent was present.

Criminal intent has been defined as a state of mind which operated jointly with the act is the commission of a crime. It is a mental state. It is a conscience wrongdoing.

So, it is up to you 12 to determine what each defendant intended to do based on the circumstances shown to have existed. I tell you the State must prove criminal intent beyond a reasonable doubt just as the State must prove every element beyond a reasonable doubt.

It is not necessary to establish intent by direct and positive evidence. It may be established by inference the same way any other fact -- by any other fact by taking into consideration the acts of the parties and all the facts and circumstances. While the State may prove motive, it is unnecessary for the State to do so. But they must, must prove criminal intent.

Now, unlawful conduct toward a child has been, has been defined as against -- each defendant is charged with unlawful conduct toward a child and it is unlawful for a

person who has charge or custody of a child or who is the parent or guardian of a child or his -- or who is responsible for the welfare of that child, as defined by state law, to place that child at an unreasonable risk of harm affecting the child's life, physical, or mental health or safety, or to do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered.

Each defendant is charged with infliction of great bodily injury upon a child. Great bodily injury is bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Each defendant is charged with murder. In order to prove this crime, the State must prove each defendant killed another person with malice aforethought either expressed or implied.

Ladies and gentlemen, malice, as an ess -- is an essential ingredient of murder. It does not necessarily import ill will toward the individual injured but signifies rather a general, malignant, recklessness of the life and safety of others or a condition of the mind which shows a heart regardless -- a heard regardless of social

duty and fatality (sic) bent on mis-child -- on mischief, mischief.

Malice may be expressed or, expressed or implied. The words expressed or implied add nothing to the meaning of the word malice. They do not imply different kinds of malice but merely the manner in which the only kind known to the law may be shown to have, have existed. That is either by positive evidence or inference.

Expressed malice is when there is a deliberate intent to unlawfully take the life of another. Implied malice is when circumstances demonstrate a wanton or reckless disregard for human life or a reasonably prudent person would have known that, according to common experience, there was a plain and strong likelihood that death would follow the contemplated act.

Although malice must be aforethought, there is no requirement that it must exist for any appreciable length of time before the commission of the act.

Now, if you find that the State has failed to prove that a defendant is guilty of the murder of H.B. [redacted], you must find the defendants not guilty of murder and then you must consider whether the State has proven that a defendant is guilty of voluntary manslaughter.

To convict for involuntary manslaughter, the burden

is upon the State to prove, beyond a reasonable doubt, a defendant unintentionally killed the victim without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm or that the defendant unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others.

Now, there are three defendants in this case. Each is charged with three separate indictments. Whatever verdict you find, it does not have to be the same as to each defendant. You take each defendant, consider the evidence as to him or her, and write the verdict in accordance and in conformity with the evidence in the case and the instructions that I have provided.

Where more than one person is charged with a crime, if the evidence, evidence warrants it, you make convict one and acquit others or you may acquit all three or you may convict all three. It will depend upon your view of the testimony and the evidence which you 12 alone are to pass on.

Again, Mr. Foreman, ladies and gentlemen, you must consider each defendant separately and each indictment separately as to each defendant.

You 12 have been selected as fair and impartial jurors sworn to impartially try and determine the facts in

this case and you are to decide this case according to the testimony you have heard from the witnesses along with all other evidence that has been introduced.

Now, during your deliberations, you may only discuss this case in the jury room with fellow jurors because they have seen and heard the same evidence you have seen and heard. You must not discuss this case with anyone else until you have returned verdicts in this case and the case is ended.

Whenever a member of the jury requires a break, restroom or otherwise, Mr. Foreman, please discontinue the deliberations until that juror returns. All 12 must be together during deliberations.

After your service in this trial has ended, you have the right to either refuse to discuss the case or talk about it as much as you choose.

Ladies and gentlemen, your verdict must be unanimous.

Mr. Foreman, when the jury agrees on the various verdicts, you will indicate the verdicts in the space provided on a verdict form that I'm gonna discuss in just a moment and sign your name as the foreman of the jury. You would then knock on the jury room door and tell the bailiff that a verdict has been reached and we would return you into this courtroom to receive the verdicts of the jury.

Again, you must all 12 be together during the deliberations.

Mr. Foreman, there are nine verdict forms that's going back. Three for each, for each defendant.

This is the verdict form of which I speak. My law clerk, who's been seated with me all week, prepares these in every case.

It has the caption of the case here and it has a number. That just tells the clerk and me which case is the -- matches up to which indictment and here it says State of South Carolina versus David Eugene Baynard.

We, the jury, unanimously find the defendant, David Eugene Baynard, on the charge of murder, not guilty or guilty. I tell all of you there is no significance to which -- not guilty being first and guilty being second. They have to be in some order and I've put them in this order every case that I try.

You will answer that, that the jury, 12 jury unanimously, will answer that guilty -- not guilty or guilty.

And it says, Mr. Foreman, if the answer to the question one is guilty, stop here and sign your name at the bottom. It also says if the answer to question one is not guilty, please answer question two.

Question two, we, the jury, unanimously find the

defendant, David Eugene Baynard, on the charge of involuntary manslaughter, not guilty or guilty. So, it's guilty on one, stop, sign your name. If it's not guilty on one, answer question two and sign your name.

The other one, again, State of South Carolina versus David Eugene Baynard. We find, the jury -- we, the jury, unanimously find the defendant, on the charge of unlawful conduct toward a child, not guilty or guilty.

And the third one, on infliction of great bodily injury upon a child, not guilty or guilty and sign your name.

The other, the other jury forms are identical except they are to -- of the two other defendants in this case.

I'm getting ready to send all 13 of you to the jury room. Please do not begin your deliberations.

I practiced law in this courthouse and others across the state for many years before I came up here on this bench. It is so very easy to be practic -- when you're practicing law to pick up an -- a piece of evidence down there and be talking to the jury about it and then go back to my table and sit down and I lay it down and now it's missing.

When you leave the courtroom, all 13 of you, I'm gonna ask the lawyers to gather up with Madam Court Reporter. She's been putting stickers on all of these and

you're gonna have them and she's gonna verify -- they're gonna verify that everything is there. That will take four or five minutes.

In a medical malpractice case, I've seen it take an hour and a half cause we had boxes of, of documents.

Okay. It will take a few minutes.

Once they confirm that everything is there, my bailiff is gonna bring that evidence to you. It's yours. It belongs to you. That -- the bailiff will bring it to you along with these verdict forms.

When the bailiff delivers that to you, Mr. Foreman, Madam Alternate, you will then leave with the bailiff.

Okay. It would not be proper for you to be with the, with the 12.

Okay. You will come back with him and I will release you for your service here in the courtroom on the record.

Okay. So 13 are going out and you'll come back with the bailiff with -- once he delivers these. When he delivers that and removes the alternate, that will be your signal to begin your deliberations.

Mr. Foreman, if you'll take all 13 out.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: Anything from the State?

SOLICITOR BARNETTE: Nothing from the State, Your

Honor.

THE COURT: From defense.

MR. FILE: None, Your Honor.

THE COURT: Defense.

MRS. RACINE: No, Your Honor.

THE COURT: Defense.

MR. MORIN: No, Your Honor.

THE COURT: All right.

(Pause.)

THE COURT: We got everything?

We need to, we need to go back here real quick, Ms. Brandy, before we sent it out.

(WHEREUPON, an out-of-court conference was held at this time.)

THE BAILIFF: Remain seated.

THE COURT: Okay. You got everything, Mr. Bailiff?

THE BAILIFF: Yes, sir.

THE COURT: All right. If you'll bring our alternate back.

(WHEREUPON, the alternate juror enters the courtroom at this time.)

THE COURT: Madam Alternate, come on up next to, to the microphone.

Ma'am.

SOLICITOR BARNETTE: Right here, ma'am. Right here.

THE COURT: Right, right up here.

The, the jury is now deliberating. And so your service has now ended.

(WHEREUPON, the juror nods affirmatively.)

THE COURT: Thank you so very much.

THE JUROR: All right.

THE COURT: Turn, turn your badge in.

THE JUROR: All right. Y'all have a good day.

THE COURT: Yes, ma'am. Thank you. You too.

(WHEREUPON, the jury began with deliberations at 10:48AM.)

THE COURT: Okay. Ms. Brandy, let's put, put that on the record.

THE CLERK: It come to my attention that Juror 20, who was seated as a juror, her juror information card was not keyed in on the report that was handed out to the -- all the attorneys. It was keyed in under Juror 19. However, that juror was noted not here, was unable to locate.

But Ms. Bright I think did stand during, when I called the roll, they are advised to stand, state where you work, what you do there, where your spouse works, and what he or she does at their place of business.

They don't take that down. But I think Pam did say she had that recorded if it needs to be verified.

SOLICITOR BARNETTE: Your Honor, my understanding was she identified herself as a wife of a sheriff's deputy at the Cherokee County Sheriff's Department.

THE COURT: I think that's correct.

SOLICITOR BARNETTE: She did identify herself during the questioning.

THE COURT: Anything, Mr. File?

MR. FILE: None, Your Honor.

THE COURT: Mrs. Racine.

MRS. RACINE: No, Your Honor.

THE COURT: Mr. Morin.

MR. MORIN: No, sir.

THE COURT: Okay. All right. Well, we put it on the record anyway. Everybody's satisfied with the jury.

Okay. We'll stand at ease and everybody be --.

MR. FILE: Yes, sir.

MR. MORIN: While we're doing that on the record, I think I should also say on the record that I'm confident that the alternate slept through at least half of the entire days proceedings and would not have been functional.

THE COURT: Yeah.

Anything else?

(WHEREUPON, there was no response.)

THE COURT: Okay. We'll kind of stand at ease then

and, and if they have a question. So nobody go very far anyway. We'll take a break.

(WHEREUPON, the jury sent out a question and, at 11:50AM, the jury charge was sent back to the jury.)

(WHEREUPON, the jury charge was marked as Court's Exhibit No. 9 and received into evidence at this time.)

(WHEREUPON, the jury returned with a verdict at 12:49PM.)

THE COURT: Please be seated. Thank you.

I'm told we have a verdict. I'm gonna ask everyone to talk to your respective people here. We're not gon' have any celebrations one way or the other no matter what it is. No outburst. If there's gon be an outburst, somebody will be in custody.

So if you need to leave, please leave now.

Okay. We ready, solicitor?

SOLICITOR BARNETTE: State's ready, Your Honor.

THE COURT: Defense?

SOLICITOR BARNETTE: Thank you.

MRS. RACINE: Ready, Your Honor.

MR. FILE: Ready.

MR. MORIN: We're ready.

THE COURT: We'll have the jury.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Mr. Foreman, has the jury reached its verdicts?

THE FOREMAN: Yes, sir.

THE COURT: Please give that to Mr. Bailiff.

(WHEREUPON, the foreman complies.)

THE COURT: Madam Clerk will publish.

THE CLERK: 2022-GS-11-1299, State of South Carolina versus Bobbie Jo Baynard. We, the jury, unanimously find the defendant, Bobbie Jo Baynard, on the charge of murder, guilty. Signed by foreperson, Jack Harris, Junior.

Indictment 2024-GS-11-449, State of South Carolina versus Bobbie Jo Baynard. We, the jury, unanimously find the defendant, Bobbie Jo Baynard, on the charge of unlawful conduct towards a child, guilty. Signed by foreperson, Jack Mr. Harris, Jr.

2024-GS-11-450, State of South Carolina versus Bobbie Jo Baynard. We, the jury, unanimously find the defendant Bobbie Jo Baynard, on the charge of infliction of great bodily injury upon a child, guilty. Signed by foreperson, Jack M. Harris, Jr.

2022-GS-11-1296, State of South Carolina versus David Eugene Baynard. We, the jury, unanimously find the defendant, David Eugene Baynard, on the charge of murder, guilty. Signed by foreperson, Jack M. Harris, Junior.

2024-GS-11-447, State of South Carolina versus David

Eugene Baynard. We, the jury, unanimously find the defendant, David Eugene Baynard, on the charge of unlawful conduct towards a child, guilty. Signed by foreperson, Jack M. Harris, Jr.

2024-GS-11-448, State of South Carolina versus David Eugene Baynard. We, the jury, unanimously find the defendant, David Eugene Baynard, on the charge of infliction of great bodily injury upon a child, guilty. Signed by foreperson, Jack M. Harris, Jr.

2022-GS-11-1304, State of South Carolina versus Edward Vincent Baynard. We, the jury, unanimously find the defendant, Edward Vincent Baynard, on the charge of murder, guilty. Signed by foreperson, Jack M. Harris, Jr.

2022-GS-11-452, State of South Carolina versus Edward Vincent Baynard. We, the jury, unanimously find the defendant, Edward Vincent Baynard, on the charge of unlawful conduct towards a child, guilty. Signed by foreperson, Jack M. Harris, Jr.

2024-GS-11-451, State of South Carolina versus Edward Vincent Baynard. We, the jury, unanimously find the defendant, Edward Vincent Baynard, on the charge of inflict -- infliction of great bodily injury upon a child, guilty. Signed by foreperson, Jack M. Harris, Jr.

Mr. Foreman, ladies and gentlemen of the jury, if this is the verdict of you-all, please indicate by raising

your right-hand.

(WHEREUPON, all jurors raise their hands at this time.)

THE CLERK: Thank you.

THE COURT: Polling of the -- polling of the jury by the State?

SOLICITOR BARNETTE: Not from the State, Your Honor.

THE COURT: From defense?

MR. FILE: Yes, Your Honor.

THE COURT: Okay. Madam Clerk.

THE CLERK: When I call your name, please raise your right-hand, please leave your hand remaining until I ask you the question. Then you will respond yes or no.

THE CLERK: Juror 80, Jack M. Harris, Jr., is this your verdict?

THE JUROR: Yes.

THE CLERK: Juror 124, Michael Murray, is this your verdict?

THE JUROR: Yes.

THE CLERK: Juror 96, Dylan Leagon, is this your verdict?

THE JUROR: Yes.

THE CLERK: Juror 20, Tina Bright, is this your verdict?

THE JUROR: Yes.

THE CLERK: Juror 2, Jessup Allison, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 78, Virginia Hamwright, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 182, Bryan Thomas, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 15, Tonja Blackwell, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 181, Ashley Thomas, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 89, Imani Jefferies, is this your verdict?
THE JUROR: Yes.
THE COURT: Juror 56, John D. Falls, is this your verdict?
THE JUROR: Yes.
THE CLERK: Juror 187, Hunter Vinesett, is this your verdict?
THE JUROR: Yes.
THE COURT: Anything from the State regarding the

jury?

SOLICITOR BARNETTE: Nothing from the State, Your Honor.

THE COURT: From defense?

MR. FILE: Nothing.

THE COURT: From defense?

MRS. RACINE: Nothing, Your Honor.

THE COURT: From defense?

MR. MORIN: No, sir.

THE COURT: Okay. We need Mr. Foreman to sign.

THE CLERK: Yes, sir.

(Pause.)

THE CLERK: Judge, while he's doing that, may I pass out their work excuses?

THE COURT: Yes, ma'am.

(Pause.)

THE COURT: Okay. Mr. Foreman, and ladies and gentlemen, this concludes your service on jury this week on jury duty. I thank you very much for, for serving and, and being with us.

It's been a long case. It's been a tough case. But thank you again so much.

I'm gon' excuse you at this point.

Mr. Foreman, I'm gon' let you take the jury out and I think the bailiffs will collect the badges and you can

exit the courthouse through the side door if you choose or, a lot of times, the jury wants -- we're gonna proceed to sentencing here just in a few moments and a lot of times the -- members of the jury want to see that.

You're more than welcome to do that. And once you go down the steps, if you just take the -- I guess it's the second floor there all the way up to the other end and you have to be seated in the gallery out here instead of where you are if you choose to stay. Otherwise you're free to go.

Mr. Foreman, if you take the jury out. Thank you so much.

(WHEREUPON, the jury leaves the courtroom at this time.)

THE COURT: Matters from the State?

SOLICITOR BARNETTE: None from the State. You're not -- Your Honor, we're doing the sentencing sheets right now.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: I can get those to you.

THE COURT: Matters for the defense?

MR. FILE: Your Honor, we renew our motions.

THE COURT: You're renewing your motions?

MR. FILE: Previous motions, yes.

THE COURT: Yes, sir, and they are -- you are renewed

and they are denied for the reasons heretofore enunciated.

MRS. RACINE: Your Honor, we also renew our previous motions.

THE COURT: Yes.

And they are denied for the reasons heretofore enunciated.

Mr. Morin.

MR. MORIN: We renew our motions, Your Honor.

THE COURT: Yes, sir, you're protected on the record and they are denied for the reasons heretofore enunciated.

Anything else from anyone at this point?

SOLICITOR BARNETTE: No.

THE COURT: Okay.

(Pause.)

THE COURT: Solicitor.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

We shouldn't be put in this position. They should of took care of her. They should of protected her. They didn't.

I actually went out to the crime scene. I saw what that girl had to live through and I've seen the pictures. They're horrific what that poor girl suffered through for weeks.

Nobody should have to go through that. No child. No

person and you've seen the evidence. I know you have. You've heard it. They deserve the maximum for what they've done.

We can't have this. We got to protect our children and I ask for a sentence for what they've done in this case.

Thank you, Your Honor.

THE COURT: Thank you, solicitor.

Mr. File.

MR. FILE: May it please the Court, Your Honor.

Bobbie is 45 years old. She actually turned 45 the day before yesterday during the trial in this case.

She went to Landrum High School and graduated in 1998. She had one year of college at Spartanburg Tech.

In the -- I'm, of course, her third attorney that was appointed to represent her. In my dealings with her, just in talking with her and, and my developing a rapport with her and all this, it's, it's very hard for me to comprehend how she could get tied up in all this.

It's just a very sad situation. She has expressed remorse to me about the situation. She is especially remorseful about losing her child, believe it or not, and she, she also realizes and knows that she can -- should of -- should have and could have done things differently.

She does have a family -- she does have a friend here

who went to school with her, Mr. Gabriel Penfield, and he would like to speak on her behalf if you would allow it.

THE COURT: I will.

MR. FILE: He's known her much longer than I have.

THE COURT: Sir, just stand wherever the officer asks you to stand.

Tell me your name for my court reporter please.

MR. PENFIELD: My name's Gabriel Penfield.

THE COURT: Yes, sir, Mr. Penfield.

MR. PENFIELD: I serve on the Irmo Town Council. I'm reluctant to speak against the efforts of the State.

I haven't been here for the entirety of the trial. But I feel she was under-resourced at this stage of her life. I'm personally aware that she had suffered abuse both in childhood, adolescence, adulthood, in her marriage. It's no excuse for what has happened. But I'm asking for grace in her sentencing.

THE COURT: Thank you, sir, for coming.

MR. FILE: I don't know if she wishes to address the Court.

THE COURT: Ma'am, would you like to speak?

THE DEFENDANT: Yes, sir.

THE COURT: Yes, please.

THE DEFENDANT: Your Honor, I understand if you don't want to give me leniency. I wouldn't either.

My son was a victim and I don't understand why he was con -- even charged. I loved my children. But I failed them both and I have been trying to take responsibility since my bond hearing in May of 2022.

I tried to come to agreement with Mr. Barnette to take responsibility for my part. Not my husband's responsibility like I've been asked to by him multiple, multiple, multiple times.

I am a survivor of abuse as a child and through our marriage. My husband mentally and emotionally abused me and I just got to a point I couldn't do anything anymore.

It doesn't excuse what I did. I can't change it. All I can do is be the best person I can be and try to make changes in the law and everything else.

I understand, I understand y'all are angry at me. I'm angry too.

I rededicated my life to God September 15th of 2022. I lost everything. I only have -- I don't even have my -- I, I didn't -- I haven't seen my son from now until the last two years. I don't have any family anymore. Only my son.

I don't have but two friends and then the church ladies that I have been in contact with. I have been in lockup for 21 months and I have been in therapy as much as I possibly can since then.

I am in -- when I go back, I'll have to go back into lockup and hopefully will be able to continue, continue to have church until wherever I go.

But I do understand. I fucked up. I told them that that night and please pardon the language. I'm sorry.

My husband asked me to help him cover it up. Every other time we were involved with DSS, I had to take the fall. I had to manage everything for him. Not him.

He worked, he drank, and he slept. He didn't do shit.

My son, he wasn't suppose to have that job. My sisters were. The only reason why we had it was to keep that Medicaid waiver because the one that she was on, the children's waiver, was not gonna follow her for life and we could only refuse it so many times before they would take away the one that would follow her for life.

At the time, yeah, I should of known she was that bad. I don't lie. But I couldn't go against my husband to give her up.

I was trying to make arrangements to leave my husband but she died before I could because I had to figure out what to do with her because there was no way I'd be able to work. No one to take care of her.

None of our family was there to support us through birth or, you know, Edward and I mean none of our family.

All of our family knew where we lived. Nobody come by. I had to chase them down.

I chose not to testify so things that didn't belong in court didn't get brought up in court.

That's all.

THE COURT: Thank you, ma'am.

THE DEFENDANT: Do I stay standing or sit?

THE COURT: You, you may sit. Thank you.

THE DEFENDANT: You're welcome.

THE COURT: Anything else, Mr. File?

MR. FILE: No, Your Honor.

THE COURT: Mrs. Racine.

MRS. RACINE: Thank you, Your Honor.

Please the Court.

Mr. Baynard's 55 years old, Your Honor. He has a GED. He tells me he had an extremely difficult childhood. He moved about every six months for the majority of his life. He suffered by a lot of abuse as a child and he would never want his children to go through that and yet they did.

Your Honor, basically what had happened is he had been assisting and caring for H.B. and he was working third shift and sleeping most of the day. And then he was also in therapy where he had hurt his shoulder and his mother was in hospice care. So, he was, he was taking

care of a lot of other people and he did leave the care to Bobbie. She was taking care of her most of the time.

Part of the limitations when he hurt his shoulder at work was, was he could pick up no more than 10 pounds. So, he wasn't able to help pick her up, change her diaper, bathe her, or any of that kind of stuff. So that was one of the reasons that he ended up not able to do the things that he had been doing.

He -- Your Honor, there was a videotaped confession from Mrs. Baynard and, at one point, she said that it wasn't anyone's fault basically but her own.

David, he does take responsibility for his failures. He has failed her and he's very remorseful for that and I, I would ask that you would consider concurrent sentencing. He's already 55 years old. Even with the other sentences, it's basically a life sentence for him. If you can't do that, I'd ask that you just be lenient as possible.

THE COURT: Sir, would you like to speak?

THE DEFENDANT: Yes, sir, I would.

I understand the charges that I've been brought here on today. I've been in jail for the past 30 months.

I've had a lot of time to reflect on a lot of things, and come to grips with a lot of things.

I know I messed up. I failed my whole family. I didn't just fail my kids. I failed my wife. I failed my

family. I failed the people that were suppose to be my friends as this is come down and they just, they just turned against us and everything else.

I understand I've messed up.

Can you see -- if you see fit not to give me an opportunity, I understand that also. I don't find any fault of yours. You're doing a job that you have to do. I understand that for a life you could do. You know, I understand that.

You know, that's it, that's it. I would like to say sorry to H.B. cause she didn't have nothing. I think we all deserve -- especially Edward cause he didn't, he doesn't deserve any of this. He didn't do anything wrong. He didn't.

When he's told not to do something, as, as a child, you took on -- you obey your parents one way or the other. You do it and you listen to your parents. He listened to his parents. Just keep that in mind.

Thank you, sir.

THE COURT: Thank you.

Mr. Morin.

MR. MORIN: I agree with the solicitor.

We do have to protect the children. My client was removed from the -- his parent's home when he was two years old. Deplorable conditions. Animals in the house.

He stayed away for two years.

When he was six and he had a sister who was one, they were removed from the house. Deplorable conditions. Animals in the house, feces, bugs.

A few years later they were returned again. When he was six -- when he was 16 and H.B. would of been nine or ten, Department of Social Service come around a third time.

You have to leave the house. You can't be at [redacted] anymore. Deplorable conditions. We can't have these children in this house -- in this living situation.

DSS records show that, when he was six and they told him he was going home, he said I'm scared to. Went back anyway.

So, the parents took advantage of them so they could keep money flowing into the house. Twenty years of his life, that's what he had. They ruined it all.

He has no one. The closest thing he had to anything was his sister. He has no friends. He had no family and he's gonna have to spend the next 30 years of his life in prison at least because of what his parents have done. There's no denying that.

I understand this Court's position when it comes to children and injuries and damage to children. Mr. Baynard, Edward Baynard's been damaged by these people

his entire life, and, if he's lucky, when he turns 50, he might be able to have a life. He might be able to, and if he can't because of what happened in the last 20 years -- the first 20 years of his life.

He, he said he can't speak without getting emotional. I'm gonna try to read what he had written.

One of the first things he says is, is I can't speak without breaking down. I've missed my sister this whole time. I wish I didn't, didn't put -- align with my parents and I think he longed (phonetic) but I'm not sure.

My whole life is been controlled by my -- by others. My parents -- my -- for my personal choices, it's simply won't -- I'm sorry. I can't read it.

All right. I'm gonna try but -- he's gonna try, Your Honor.

THE DEFENDANT: I missed my sister this whole time. Every day.

Most of my life I've been living by the guidance of others if you can call it that.

I want the last few personal choices before you sentence me to be that one day I will find peace away from the influence of others and make my own decisions. But that will not be, not be today.

MR. MORIN: I---

THE DEFENDANT: That's all.

MR. MORIN: I -- and I, and I would ask the Court consider a concurrent sentence on this given his age and what have -- have happened to him over the last two decades.

Thank you, Your Honor.

THE COURT: It's a horrific case. It's a sad case. No winners here. Only losers.

In 2022-GS-11-1299, Bobbie Jo Baynard, you are confined to the Department of Correction on the murder charge for life.

2024-0450, Mrs. Bay -- Bobbie Jo Baynard, you are confined, on the child abuse with great boldly injury, to the Department of Corrections for 20 years. It is consecutive to all indictments. Credit for time.

2024-0449, on the unlawful conduct, 10 years. It is consecutive to all indictments. Credit for time.

Mr. David Eugene Baynard, Baynard, on 2022-1296, on the murder, you're confined to the Department of Corrections for life. Credit for time.

2024-0448, that is the great bodily injury, 20 years consecutive to all indictments. Credit for time.

2024-0447, unlawful conduct, 10 years Department of Corrections. Consecutive to all indictments. Credit for time.

Mr. Edward Vincent Baynard, on 2022-1304, murder,

you're confined in the Department of Corrections for a period of 30 years. Concurrent with credit for time.

2024-0452, unlawful conduct, 10 years. Concurrent. Credit for time.

2024-0451, great bodily injury, 20 years in -- 20 years Department of Corrections. Concurrent. Credit for time.

Very best of luck to everyone.

SOLICITOR BARNETTE: Thank you, Your Honor.

MR. FILE: Thank you, Your Honor.

SOLICITOR JORDAN: Thank you, Your Honor.

MR. FILE: Thank you, Your Honor.

(Pause.)

SOLICITOR BARNETTE: Your Honor, can we put one more thing on the record real quick?

THE COURT: Sure.

Hang on. We got something for the record.

SOLICITOR BARNETTE: Exhibits 2 through 27 and 100 to 117, we ask the Court to seal those records.

THE COURT: Any objection to me sealing those records, Mr. File?

MR. FILE: We have---

SOLICITOR BARNETTE: Those are the pictures that we, we moved to get in and the -- I know the Court's ruled on that. But I feel like we probably need to seal those.

THE COURT: Yes, we'll seal those. They're horrific pictures.

We're gonna stand in recess.

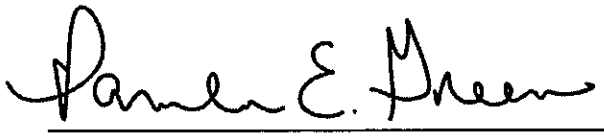
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 28th through 31st days of October, 2024.

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

January 16th, 2025



PAMELA E. GREEN, Court Reporter

WITNESSES

CHEROKEE COUNTY SHERIFF'S OFFICE

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Guilty

TRUE BILL

Foreperson of Grand Jury

Date: 3/25/24

VERDICT

Guilty

474

Foreperson of Petit Jury

DOCKET NO. 24-GS-11- 447

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

March 25, 2024 TERM

THE STATE

vs.

DAVID EUGENE BAYNARD

Indictment for

UNLAWFUL NEGLECT / CONDUCT TOWARDS CHILD

SC Code: 63-5-70
CDR Code: 2481
Class FFI/F

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2024 MAR 25 A 11:11

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on March 25, 2024 the Grand Jurors of Cherokee County present upon their oath:

UNLAWFUL CONDUCT TOWARDS CHILD

That the Defendant, David Eugene Baynard, did in Cherokee County, between the dates of October 2, 2020 to April 11, 2022, willfully and unlawfully, having charge or custody, and/or being the parent or guardian of a minor child, or who is responsible for the welfare of a child as defined in §63-7-20 of the South Carolina Code of Laws, did (1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, and/or (2) did do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child was endangered or likely to be endangered, in violation of §63-5-70, *OF THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

WITNESSES

CHEROKEE COUNTY SHERIFF'S OFFICE

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 3/25/24

VERDICT

Guilty

476 Jack M. Harris, Jr.
Foreperson of Petit Jury
Date: 10/31/2024

DOCKET NO. - 24-GS-11- 448

The State of South Carolina

County of Cherokee

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

March 25, 2024 TERM

THE STATE

vs.

DAVID EUGENE BAYNARD

Indictment for

CHILD ABUSE WITH GREAT BODILY INJURY

SC Code: 16-3-95
CDR Code: 2766
Class FEL-C

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2024 MAR 25 A 11:11

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on March 25, 2024 the Grand Jurors of Cherokee County present upon their oath:

CHILD ABUSE WITH GREAT BODILY INJURY

That the Defendant, David Eugene Baynard, did in Cherokee County between the dates of October 2, 2020 to April 11, 2022, inflict great bodily injury upon H.B. [redacted], a child under the age of eighteen (18), as defined by §16-3-95 of the *SOUTH CAROLINA CODE OF LAWS*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

DOCKET NO. 22-GS-11- 01296

FILED IN THE OFFICE
CLERK OF COURT
2022 SEP 19 A 10:50
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2022A1110100495

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 9-19-2022

VERDICT

Guilty

TRUE BILL

Foreperson of Petit Jury
Date: 10/31/2024

The State of South Carolina

County of Cherokee

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 19, 2022 **TERM**

THE STATE

v.

DAVID EUGENE BAYNARD

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

478

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 19, 2022, the Grand Jurors of Cherokee County present upon their oath:

MURDER

That the Defendant, David Eugene Baynard, did in Cherokee County at their home located at [redacted] Road, Gaffney, South Carolina on or about April 11, 2022, feloniously, willfully, and with malice aforethought, expressed or implied, cause the death of one H.B. [redacted], all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
STATE)
VS.)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2024-GS-11-00447

David Eugene Baynard)
AKA:)
Race: White Sex: Male Age: 55)
DOB: [redacted] SS#: [redacted])
Address: Homeless)
City, State, Zip:)
DL#* SID#)

A/W#: Direct Indictment
Date of Offense: October 2, 2020 - April 11, 2022
S.C. Code §: 63-5-70
CDR Code #: 2481

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Unlawful Conduct Towards a Child 0-10 years
In violation of § 63-5-70 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ (CSC w/minor 1st or CSC w/minor 3rd) Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barry Barnette 1303 [redacted] David Baynard. Tracy Racine 68415
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #
Barry J. Barnette 69423 Tracy Racine

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of 10 days/~~months~~/years/~~Time Served~~ ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: all indictments

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
__ days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. David Eugene Baynard INDICTMENT/CASE#: 2024-GS-11-00447

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§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	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Brandy W. McBee
Court Reporter: Pam Green

Presiding Judge: R. Keith Kelly
Judge Code: 365
Sentence Date: 31 October 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS

STATE)
VS.)

INDICTMENT/CASE#: 2024-GS-11-00448

David Eugene Baynard)
AKA:)
Race: White Sex: Male Age: 55)
DOB: [redacted] SS#: [redacted])
Address: Homeless)
City, State, Zip:)
DL#* SID#)

A/W#: Direct Indictment
Date of Offense: October 2, 2020 - April 11, 2022
S.C. Code §: 16-3-95
CDR Code #: 2766

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Child Abuse with Great Bodily Injury 0-20 years
In violation of § 16-3-95 of the S.C. Code of Laws, bearing CDR Code # 2766

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ (CSC w/minor 1st or CSC w/minor 3rd) Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barry J. Barnette 13039 / Joseph Jordan 69423 / David Eugene Baynard / Tracy Racine 68415

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

Barry J. Barnette Tracy Racine

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of 20 ~~days/months/years/Time Served~~ ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: All indictments

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
__ days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. David Eugene Baynard INDICTMENT/CASE#: 2024-GS-11-00448

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§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	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Brandy W. McBee
Court Reporter: pam Green

Presiding Judge: A. Kurt Kelly
Judge Code: 2465
Sentence Date: 31 October 2024

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

STATE)
VS.) INDICTMENT/CASE#: 2022-GS-11-01296

David Eugene Baynard) A/W#: 2022A1110100495
AKA:) Date of Offense: April 11, 2022
Race: White Sex: Male Age: 55) S.C. Code §: 16-3-10, - 20
DOB: [redacted] SS#: [redacted]) CDR Code #: 0116
Address: Homeless)
City, State, Zip:) **SENTENCE SHEET**
DL#* SID#)

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder 30 – LIFE
In violation of § 16-3-10; -20 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ (CSC w/minor 1st or CSC w/minor 3rd) Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor Barry J. Barnette 13038 SC Bar # 69423 | Defendant David Baynard | Attorney for Defendant Tracy Racine 68415 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of Life days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run
☐ 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 SCDOC.
___ days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. David Eugene Baynard INDICTMENT/CASE#: 2022-GS-11-01296

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§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	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$

Clerk of Court/Deputy Clerk: Brandy W. McBee
Court Reporter: pam Green

Presiding Judge: R. Keith Kelly
Judge Code: 2165
Sentence Date: 31 October 2024

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
Jan 23 2026
SC Court of Appeals

Gary H. Johnson
Appellate Defender
Sc Bar #8898

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of January, 2026.

RECEIVED
Jan 23 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

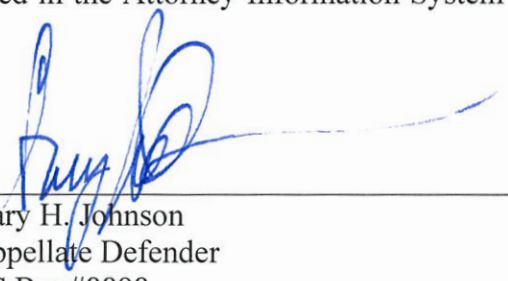
DAVID EUGENE BAYNARD,

APPELLANT

APPELLATE CASE NO. 2024-002185

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 23rd day of January, 2026.



Gary H. Johnson
Appellate Defender
SC Bar #8898

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT