

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

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S.C. SUPREME COURT

The State of South Carolina,

Respondent,

v.

Rita M. Pangalangan,

Petitioner.

APPENDIX

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1 forensic pathology at the Dallas County Medical
2 Examiner's Office in Dallas, Texas, where we
3 spent that one year just focused on forensic
4 pathology.

5 Again, at the end of that year passed a
6 national examination to become board certified
7 in forensic pathology, and at that point I took
8 my current position.

9 Q. So as a board-certified Forensic
10 Pathologist, have you testified in Court as an
11 expert in that field?

12 A. I have. It's over 100 times now in
13 South Carolina, and I believe twice in Texas,
14 and twice in North Carolina.

15 MR. STONE: Your Honor, at this time we
16 offer Dr. Nicolas Ike Batalis as an expert in
17 forensic pathology.

18 THE COURT: Says the defense?

19 MR. PHILLIPS: No objection.

20 MR. LOY: I'm sorry, no objection, Your
21 Honor.

22 THE COURT: He is so qualified in the field
23 of forensic pathology.

24 BY MR. STONE:

25 Q. Dr. Batalis, I want to talk to you now

1 about **Child**. Did you perform the
2 autopsy on this individual?

3 A. Yes, I did on August 7th of 2019.

4 Q. Can you tell me about, from the
5 standpoint, what do you know about the decedent?

6 A. Sure. So just a little bit of
7 background. So at UMC in Charleston, we perform
8 autopsies for a number of counties across the
9 state, as needed by the Coroners.

10 So with the information provided to us in
11 this case, the decedent was a 13-year-old
12 individual, who was found unresponsive after
13 being placed in a vehicle for several hours
14 during very high temperatures.

15 Q. Did you receive information that
16 assisted you in what her body temperature was at
17 the time at the scene?

18 A. Yes. The Coroner in this case reported
19 that the body temperature at the -- when he
20 examined the body was 109.9, which, I believe,
21 was the maximum amount that the thermometer
22 would read.

23 Q. How is 109.9 relative to you in your
24 determination?

25 A. When we're determining a cause of

1 death, we've got to -- we have to determine a
2 number of different factors. And certainly in a
3 case like this, if we're considering whether the
4 heat play a role, hyperthermia, we want to have
5 some indication of what the body temperature
6 was.

7 And a fatal body temperature, the body will
8 start to shut down around 105 to 106 degrees, so
9 certainly having the information at the scene,
10 the body was at least 109, 110 degrees would
11 indicate that there was, you know, evidence of
12 severe hypothermia.

13 Q. When the body starts showing down -- a
14 normal body temperature is what?

15 A. There's going to be a range. I mean
16 the most classical quote would be 98.6, some
17 people would be 98, some people would be in the
18 99 area, but some are just under 100.

19 Q. Okay, and so when does the body start
20 shutting down?

21 A. About 105 or so, and with heavy
22 exercise, the weather we've been dealing with,
23 it's not uncommon, people have fevers at times
24 that get up to 102, 103, 104, but there seems to
25 be a critical line somewhere around 105, 106,

1 where the body will start to shut down.

2 Q. And when we say the body is shutting
3 down, exactly, from your standpoint, what does
4 that mean?

5 A. So, again, our bodies are really
6 designed to really function within a certain
7 temperature range, and so all of the organs will
8 eventually shut down, if we are too cold, or if
9 we're too hot.

10 Regarding the most immediate threats with
11 heat, would be the effect on the brain. And so
12 if the brain gets out of its normal temperature
13 range, it's not gonna be able to function very
14 well, and, again, our brains are the driving
15 force, it's going to drive our other organs
16 signaling those to function, and that sort of
17 thing.

18 Q. And in this particular case, I know you
19 were called upon to develop a manner of death,
20 as well as a cause of death.

21 What is the difference between those two
22 things?

23 A. Sure. So a cause of death is, simply
24 put, how the person died. So, for example, a
25 gunshot wound, a heart attack. The manner of

1 death would be how that cause of death came
2 about, so to use a gunshot, for example, and
3 I'll step back for a second, for the manner of
4 death we have five choices, essentially.

5 We have homicide, which would be the death
6 at the hands of another individual. We have a
7 suicide, which would be somebody intentionally
8 taking their own life.

9 Accident, which is fairly self-explanatory,
10 with the death due to some sort of unpredictable
11 measure.

12 Natural death due to natural disease, or
13 the aging process, or undetermined, where we
14 can't figure it out.

15 So a gunshot wound, for example, could be a
16 homicide, if you were to shoot somebody, that
17 you shoot someone else. If you're to shoot
18 yourself, that could be a suicide.

19 If you're out hunting with some friends and
20 there's an unfortunate circumstance, it could be
21 an accident. So a single cause of death could
22 have multiple manners of death, depending on the
23 situation.

24 Q. All right, so --

25 MR. PHILLIPS: And, Your Honor, objection

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THE COLLETON
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10-11 (PHOTOS) AND STATE’S EXHIBIT #40 (FLASH DRIVE)**

1 as to what I think is coming next, could be the
2 ultimate issue here.

3 THE COURT: Okay.

4 MR. PHILLIPS: What I believe is coming in
5 his testimony. Obviously, I know I can cross-
6 examine, but my objection is to what I believe
7 is opinion testimony.

8 THE COURT: Okay.

9 MR. STONE: Sorry, Your Honor, he was
10 called upon to determine the manner of death and
11 cause of death, and that's the normal pathology
12 testimony under 73, and that's exactly what
13 we're gonna ask him, so that's the intent.

14 BY MR. STONE:

15 Q. So from the standpoint of manner and
16 cause, and manner of death and cause of death,
17 what were your determinations?

18 A. My determination for the cause of death
19 in this case was hyperthermia, due to neglect,
20 and the manner of death was homicide.

21 Q. Now, let me start with, if I could, did
22 you -- when you perform an autopsy, do you also
23 do a chart sort of contemporaneous with your
24 autopsy?

25 A. Yes, we have a body diagram that we'll

1 use to take notes and note our findings during
2 the course of the examination, to help us with
3 compiling our report.

4 Q. Let me show you what has been marked as
5 State's Exhibit Number 24, is this the chart
6 that you created?

7 THE COURT: Is it in evidence?

8 MR. STONE: No, sir, not yet.

9 BY WITNESS:

10 A. Yes, this is a reproduction of the body
11 diagram that I -- that we used when we were
12 examining the body and generating the report.

13 Q. Okay. Would that assist you in your
14 testimony today?

15 A. Yes.

16 Q. All right.

17 MR. STONE: And, Your Honor, at this point,
18 none of these writings --

19 BY MR. STONE:

20 Q. These are your writings?

21 A. These are a combination of my writings.
22 I also performed this examination with what we
23 call a fellow, so another pathologist, who was
24 in doing their fellowship training, their
25 forensic pathology training, who I was

1 overseeing, we did this case in concert, so some
2 of the handwriting is hers, some is mine.

3 Q. Okay, and all of that is under your
4 supervision?

5 A. Yes, I was present for the entire
6 examination.

7 MR. STONE: At this time, Your Honor, we
8 move State's Exhibit 24 into evidence.

9 THE COURT: Says the defense?

10 MR. LOY: No objection, Your Honor.

11 MR. PHILLIPS: I don't have a problem if it
12 is demonstrative, but I do have an objection to
13 its admissibility.

14 THE COURT: Any response?

15 MR. STONE: He's testified to that this is
16 the chart that he created in his performance
17 with the autopsy. These are notes that were
18 taken by him and his team during his
19 supervision. It's authentic, it is relevant.
20 Your Honor, we'd move it into evidence.

21 MR. PHILLIPS: I have no problem with this,
22 he can tell him all about it, they can see it.
23 I just don't think it's proper, as far as
24 admissible into evidence.

25 They can absolutely see it, he can tell

1 them, and they can review it right there in
2 front of them.

3 THE COURT: We'll rule later as to whether
4 it goes to the jury room, but it's admissible at
5 this time --

6 MR. STONE: All right.

7 THE COURT: -- for demonstrative purposes.

8 MR. STONE: Yes, sir.

9 (State's Exhibit 24 was marked for
10 identification.)

11 Now, I want to make sure everybody can see
12 it.

13 BY MR. STONE:

14 Q. Now, Dr. Batalis, I've now put this in
15 a position where you can't see it. Let me ask
16 you, if you can keep your voice up, could you
17 come down and describe to us what you have on
18 this drawing?

19 A. Sure. So what we have here is a
20 generic body diagram.

21 At the top there's just some general things
22 that we're gonna examine on every case. When
23 we're performing an autopsy, again, our goal is
24 to determine the cause and manner of death.
25 That being said, we start with an external

1 examination, where we examine the body from head
2 to toe, such as a physical examination your
3 physician would perform.

4 So we're noting the height, weight, eye
5 color, hair color, all those sorts of things,
6 and those are noted up top. We then have a body
7 diagram that we use to note any findings on the
8 body.

9 Again, it could be a scar, it could be a
10 tattoo, or any sort of abnormal findings that we
11 see here through the course of the examination.

12 Q. And what is the height and weight on
13 this diagram?

14 A. This individual was 58 pounds, and
15 measured 56 inches in length, so I believe that
16 would be 4'8" approximately.

17 Q. All right, and you have also -- you've
18 studied the medical records on this individual
19 as well; did you not?

20 A. I read through the records that were
21 provided to me.

22 Q. Okay. And could you tell us from the
23 standpoint -- she suffered from cerebral palsy;
24 is that correct?

25 A. Yes, that was part of her medical

1 condition.

2 Q. All right, and so from that standpoint,
3 does that have anything to do with weight, or is
4 that something that's standard for a 13-year-
5 old?

6 A. No, this individual is certainly
7 shorter than you would expect for this age, and
8 definitely weighed much less than you would
9 expect for a "normal" 13-year-old.

10 Q. Okay, go ahead, I'm sorry to interrupt
11 you.

12 A. I believe I was finished.

13 Q. All right. So after you get the
14 general information, then these other drawings
15 on the body, what do these indicate?

16 A. Sure. So the main findings externally
17 on this, the decedent, where these areas we kind
18 of have these kind of ragged outlines here,
19 there's one on the right elbow, which would be
20 the right side of the abdomen.

21 You'll see there's some on the right side,
22 some on the left side. Also there's some on the
23 left knee and on the right back, left arm, right
24 side. So these were areas of what we would call
25 skin slippage, so the skin, you know,

1 essentially, started to blister or pull away
2 from the body.

3 Some of these areas also had a really dry,
4 yellow, orange kind of leathery type of
5 appearance, so it's certainly nothing we'd see,
6 you know, on a normal examination.

7 Q. So in the context of those two, you've
8 got the skin slippage and the blisters, and
9 you've got the leathery, what's the difference
10 between the two?

11 A. So with skin slippage we typically
12 think that's part of the breakdown process of
13 the body, what we call decomposition. And so
14 that's going to be determined on -- based on how
15 long an individual has been dead but is also
16 really driven by the temperature.

17 So when temperatures are high,
18 decomposition is going to ensue much quicker
19 than if the temperature is much lower.

20 When we start to see the more leathery type
21 of lesions, that tells us there was some sort of
22 injury to the body, some sort of actually burn
23 to the body.

24 In this case the reason it had more of a
25 leathery appearance is because the body wasn't

1 truly functioning well at that time. You know,
2 if somebody really has a burn, their heart is
3 still beating, everything is vital, it's going
4 to really have more of a reddish appearance,
5 kind of more angry type of appearance. So when
6 we see that leathery appearance, we know there's
7 been an injury to the body, but likely kind of
8 during the dying process, or even after death.

9 Q. So what do those two tell you from the
10 standpoint of the manner of death and cause of
11 death?

12 A. The fact that the -- we have the
13 blistering on the body, again, it attests that
14 there was increased temperature for an
15 individual that's been dead for, you know, a
16 limited amount of time, a number of hours, you
17 would not expect to see this skin slippage and
18 blistering on somebody who was found dead in
19 ambient temperature like we are here today.

20 That's something that would really take,
21 you know, probably days to start developing that
22 slippage. So the fact that we saw that skin
23 slippage would indicate that they were at a
24 higher temperature, and, again, with the more
25 leathery appearances, that's probably likely

1 the body was in contact with something that,
2 again, caused more of a surface burn to the
3 skin.

4 Q. All right. Where are the exhibits?

5 A. Oh, they are, they're in the defense
6 file, sorry about that.

7 MR. STONE: Excuse me, Your Honor.

8 BY MR. STONE:

9 Q. Doctor, I want to show you what's been
10 marked as State's Exhibit -- actually entered
11 into evidence as State's Exhibit 3, and actually
12 I'll put it up on the monitor.

13 Is this what you're talking about? These
14 are pictures at the -- that have been testified
15 at the crime scene of **Child's** leg; is that
16 what you're talking about? What can you tell me
17 about those?

18 A. Yes, so may I point --

19 Q. Can you see well enough from here?

20 A. I can see them, but is there kind of a
21 pointer, or --

22 Q. I'll tell you what, why don't you come
23 down, and just keep your voice up where
24 everybody can hear you, and we'll do it that
25 way. Can you stand here? Would that be all

1 right?

2 A. Sure.

3 Q. Great. I don't want to get in your way
4 either, so am I out of your way?

5 THE COURT: Yeah.

6 BY WITNESS:

7 A. So this photograph here illustrates the
8 kind of two different lesions that we're talking
9 about. So up on the upper aspect of the left
10 thigh here, you can see that there's a very
11 thin appearance, kind of a wispy appearance to
12 the skin. That would be more what I'm speaking
13 of as skin slippage, so part of the breakdown
14 process of the body.

15 But in addition to just that, you can see
16 here on the lower part of the left leg we have
17 this lesion, where the skin was more ulcerated
18 away. You can see some areas on the knee on the
19 leg that appear different than up here, where we
20 don't have an appearance of it.

21 So, again, to me that would say these areas
22 were likely in contact with something in the
23 area that caused a direct burn or injury to the
24 skin, and we also have areas that show that
25 decomposition is there now.

1 Q. All right, and then the -- can you tell
2 any part of the timing on any of that? You'd
3 mentioned earlier something about you would
4 expect it a quick -- or I'm not sure, I don't
5 want to mischaracterize it.

6 A. Could you repeat the question? With
7 respect to what the timing was?

8 Q. Yeah, the timing of -- in other words,
9 how long does it take for a body to do this?
10 How long -- does it give you any indication of
11 anything like that?

12 A. The timing's going to be unpredictable,
13 because it's going to be heavily dependent on
14 the temperature.

15 So, again, in a temperature like this in
16 the courtroom, you may see these types of
17 changes, or, again, in possibly a day or two;
18 but if there is a very high temperature in the
19 environment, you can see this then, you know,
20 hours until death.

21 Q. Okay. And these other things that
22 you've noted too, do they kind of fall under
23 that same category as well?

24 A. Yes, most of what's charted on -- it's
25 showing these different areas where we had these

1 areas of the burn areas, and there's the
2 slippage.

3 The other thing that's noted on the chart
4 is that there were contraction of the knees, and
5 so that was more part of her development. I
6 don't have issues with the knees because she was
7 not able to walk around and use her legs like
8 most folks, and then the legs become stronger,
9 so that's one of the things noted in the
10 background.

11 Q. Okay. I'll let you get back to your
12 seat, thank you. Any other determinations, as
13 far as the external part of the body?

14 A. I don't believe so. I believe those
15 were the main findings, the different areas of
16 the skin slippage, the burns, and then the
17 contraction of the knees.

18 Q. Okay. All right, now, let's go to --
19 I'm trying to determine -- let me stay on the
20 blisters just briefly.

21 Some of that is -- can you tell us if some
22 of that is caused internally, as well as
23 externally?

24 In other words, is there a difference
25 between the internal heat causing some of the

1 damage, versus the body coming in contact with
2 another hot item, and things like that?

3 Is there any way to tell that from those
4 injuries?

5 A. Yeah, if the body's just heated
6 internally, you're not necessarily going to see
7 external areas like we saw on the leg, where we
8 had the -- where the skin was missing, we had
9 that more kind of reddish, yellow appearance.

10 Again, if the body is just overheating, you
11 can get some of the more skin slippage.

12 Again, usually, that's going to occur after
13 you die, and when the body's just overheating,
14 typically, you're not gonna have the change in
15 the skin. So what we saw, again, would be more
16 varied.

17 On the lower leg that would have been more
18 of a burn that was in contact with something, so
19 it's something more from the outside than from
20 inside.

21 Q. Okay. Now, let me talk about, if I
22 could, the internal -- your internal body
23 temperature what are those?

24 A. Sure. So the major internal finding in
25 this decedent was an abnormality in the brain,

1 it's called polymicrogyria.

2 So our brain has multiple kind of folds to
3 it. And polymicrogyria is a descriptive term,
4 so poly means multiple, and micro means small,
5 and gyria is basically the grooves of our brain.
6 And so she had too many of these grooves that
7 were very small.

8 So the Solicitor mentioned earlier that she
9 had a diagnosis of cerebral palsy. So cerebral
10 palsy can be a condition from a number of
11 things, but basically when the brain is starved
12 of oxygen, while the baby is with mom -- inside
13 mom, or kind of immediately after birth, so it
14 can be caused by a number of different things,
15 prematurity, and, you know, various disease.

16 In this case, the polymicrogyria with her
17 kind of initiating condition, so she developed
18 that, you know, while she was in utero, or
19 inside mom, that led to oxygen deficiency at
20 birth, or around the birth period that led to
21 the cerebral palsy.

22 So certainly at the examination the brain
23 was abnormal, and it did show that finding.
24 Otherwise, the -- probably most the organs, or
25 all the organs I should say, were well

1 developed. There was no evidence of any severe
2 natural disease of the heart, lungs or any other
3 organs. The other notable finding we did see as
4 part of our examination of internal organs was
5 that she did have gastric contents or vomit that
6 was aspirated down into her airways and then to
7 the lungs.

8 Q. All right, and can you tell us if that
9 took place while she was alive, or after she was
10 dead?

11 A. That would have occurred probably
12 during the dying process, after her brain had
13 started to dysfunction and shut down. Some
14 individuals lose the bowel and bladder function.
15 Another thing would be she'd start vomiting.
16 And so in this case she would have vomited
17 during the dying process, regurgitating some of
18 that into the lungs.

19 Q. You are finding hyperthermia; did I get
20 that right?

21 A. Yes.

22 Q. What exactly is hyperthermia?

23 A. Hyperthermia is a condition in which
24 the body shuts down due to extreme heat.

25 Q. And when -- and I think you testified

1 earlier that begins at -- somewhere between 105
2 and 106 degrees; is that correct?

3 A. Certainly. And any time you're above,
4 you know, 101 you can be considered
5 hyperthermic, but what we consider a life-
6 threatening condition, 105 to 106 would be
7 considered a fatal temperature.

8 Q. And her internal was 110?

9 A. At least 110, based on the thermometer
10 reading.

11 Q. The testimony previous in this
12 courtroom is that the internal car temperature
13 reached a maximum of 118 degrees, and a heat
14 index of 135 degrees.

15 How long would it take somebody to die in
16 that particular environment?

17 A. There's gonna be some variability from
18 individual-to-individual, but once the
19 environment had reached that temperature, the
20 individual would not live more than an hour.

21 Q. I don't have any further questions. If
22 you'll answer any questions the defense might
23 have.

24 THE COURT: Yes, sir.

25 MR. LOY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LOY:

Q. And, I'm sorry, Doctor, what was your last name?

A. Batalis.

Q. Batalis? Dr. Batalis, as a doctor of pathology, you're a medical doctor also, correct?

A. Yes, I am.

Q. And that's pretty much akin to being a scientist; is that fair to say?

A. Yes.

Q. Now, as a scientist here to testify, excuse my language, you don't have a dog in the fight, you're just here to say what the scientific results are and your findings; is that correct?

A. As a forensic pathologist I view my role as being here to speak for those that aren't able to speak for themselves. I'm able to -- I'm here to explain the findings in this individual to show why they died.

Q. And you're sharing with us the results of your scientific investigation or testing; is that correct?

1 A. Correct.

2 Q. And how many times did you say that
3 you've been qualified as an expert to testify in
4 court?

5 A. Somewhere over 100 times in South
6 Carolina, and a couple times in Texas and North
7 Carolina.

8 Q. Let's just talk about South Carolina.
9 Were the hundred times that you've been
10 qualified, were they in Court of General
11 Sessions? And if I say Court of General
12 Sessions, do you know what I mean?

13 A. Yes, they've all -- well, there may
14 have been on or two that were in Federal Court,
15 but the vast, vast majority are in General
16 Sessions Court, as we're here today.

17 Q. And out of those hundred times that
18 you've been qualified as an expert to testify by
19 scientist, how many times have you been called
20 to testify that for the defense?

21 A. As part of my work as a forensic
22 pathologist, I -- there have been times when
23 I've been subpoenaed by both sides, by the
24 prosecution and defense, but, again, the vast
25 majority, if not every time when I've testified,

1 it's been at the request of the Solicitor.

2 Q. So we've gone from the vast majority to
3 every time. Every time you've been qualified to
4 test in Court you've testified for the State; is
5 that correct?

6 A. As I said, I believe so. There have
7 been times where both sides had subpoenaed me,
8 and, again, since the prosecution goes first, I
9 was called first by the Solicitor, but then
10 could also have been subpoenaed by the defense.

11 Q. Okay. And for the last time, I don't
12 want to know how many times you've been
13 subpoenaed, or who subpoenaed you.

14 Certainly, there's been times for a defense
15 witness, but every time your name got called to
16 the witness stand, it was to prosecute a cause,
17 yes?

18 A. I believe so, yes.

19 Q. Thank you. Now, you talked about
20 determining manner of death and cause of death;
21 is that right?

22 A. Yes.

23 Q. And when you talked about the manner of
24 death, and I was trying to listen, I think,
25 basically, I'm sorry, I want to talk about the

1 cause of death. Cause of death is just a cold
2 hard science; is that right? This person died
3 of bleeding to death, or this person died
4 because he was shot in the head, or this person
5 succumbed to the moment; is that correct?

6 A. Yes, the cause of death would be,
7 simply put, the main reason, the condition that
8 led to the death.

9 Q. And as far as cause of death goes, I
10 mean would it be fair to say that most of the
11 time, as a scientist, I mean you could do this
12 effectively in the back.

13 What I mean by that is, a deceased person
14 is brought in on a stretcher, and they -- you're
15 asked to determine how this person died, the
16 cause of death.

17 You don't really need a lot of other
18 information to do that, do you?

19 A. We certainly do in some cases. The way
20 I would relate that would be, if you went to
21 your physician and you say, "Examine me," you're
22 not likely to get as detailed of an examination,
23 you're not likely to get the entire treatment,
24 the entire findings; whereas, if you were to
25 actually report what your conditions are, "I

1 have a headache, I have chest pain," the
2 physician would focus their examination and
3 tailor as such.

4 So there is some cases, if somebody's shot
5 15 times, I would agree --

6 Q. Wait one second.

7 MR. LOY: I talk loud, but do I need a mic?

8 THE COURT: You need to talk louder.

9 MR. LOY: I will talk louder.

10 BY MR. LOY:

11 Q. And I'm sorry to interrupt you, I can
12 rephrase my question, if you need to, or you can
13 pick up where you left off, sir.

14 A. I would like to continue. So there are
15 certain cases, if somebody's shot ten or 15
16 times, it's -- the history is not gonna be as
17 important in that case.

18 I'm gonna understand that, you know, except
19 in a very rare circumstance, an individual's not
20 gonna shoot themselves that many times; but
21 there are a number of other deaths, you know, I
22 can't put a percentage on it, but a large amount
23 of it will be examined, the history that's
24 provided to us, the circumstances of the death,
25 the scene investigation are critical as to

1 determining our cause and manner of death.

2 Q. So I stand corrected then. You may be
3 presented with a body, and the body was
4 discovered somewhere with no history whatsoever
5 dead on the table, and say, "I have no idea why
6 this person died," without someone else telling
7 you, and giving you more information.

8 I can't say physically why this person is
9 now dead.

10 A. I'm sorry, could you say that again?

11 Q. Yes, sir. You seem to be telling me
12 that despite the scientific training that you've
13 had and the experience that you've had, being a
14 medical doctor, specializing in autopsies -- how
15 many autopsies have you performed?

16 A. Somewhere between three and 4,000 at
17 this point.

18 Q. Three to 4,000 autopsies. That without
19 someone else telling you how this person was
20 killed or passed away, you can't scientifically
21 look at and perform your autopsy and say this
22 person died of a heart attack, or this person
23 died of pneumonia, or this person died of being
24 shot; is that correct?

25 A. That's not correct.

1 Q. Explain it to me.

2 A. There's mainly information provided
3 from the scene that we're not able to determine
4 through the course of examining the body that
5 would be critical in determining the cause of
6 death.

7 Again, we can look at the body, and we can
8 look at toxicology, we can look at all sorts of
9 different things as part of our examination that
10 we're doing as part of the autopsy, but
11 sometimes there are findings based on the
12 history or the circumstances that reveal the
13 critical cause of death.

14 Q. Thank you very much. Now, let me ask
15 you about this case, and you can look at the
16 chart, if you need to, but you were presented
17 with what you were presented here, the deceased
18 child, and said, "Can you determine how this
19 child died?" And no one else gave you a sheet of
20 paper with their opinions, their findings, or
21 the police reports, or etcetera, but you can
22 look at this child and say, "Yes, she died of
23 heat."

24 A. It's hard to imagine a hypothetical
25 examination, which I would examine a body with

1 no history whatsoever.

2 Q. Well, let's take a moment and try to do
3 that.

4 A. Okay, could you -- again, could you
5 rephrase?

6 Q. If you were presented with the corpse
7 of this child and no other information, and
8 said, "It's critically important that you look
9 at this deceased person, and tell us how they
10 died," would you be unable to determine that
11 they died from heat?

12 A. With no information based on the scene
13 and circumstances and just examination of the
14 body by itself --

15 Q. Yes, sir.

16 A. -- is that your question?

17 Q. Yes, sir.

18 A. Is that including no history, as far as
19 how long the decedent had been dead, where they
20 were found?

21 Q. Yes.

22 A. It's just I've never experienced this
23 in medicine, where you're not provided any
24 history, so it's hard to answer your question.

25 Q. If you can't answer the question, you

1 can't answer the question, but I'll try one more
2 time. This is assuming that you have never met
3 this person, you have no paperwork in your hand,
4 you've been beamed to another planet and
5 presented with this child, with nothing else,
6 and said, "Can you tell us what this person
7 succumbed to?"

8 A. So with no history whatsoever I
9 examined this body, I'd be concerned that there
10 were the burn marks on the extremities that was
11 shown.

12 Externally that would definitely be a
13 concern that there was some sort of, again,
14 burns, some sort of environmental condition that
15 could have contributed to the death.

16 I examined the body internally, certainly
17 the brain disorder. Seeing that polymicrogyria
18 would indicate that there was some natural
19 disease that possibly could explain the death,
20 but, again, the circumstances would be critical
21 in this case.

22 Q. Is that yes or no?

23 A. I believe I explained myself as clearly
24 as I possibly can.

25 Q. Can you answer yes or no?

1 A. Can you ask it again?

2 Q. No. Thank you. Do you have any other
3 causes of death? Because you spoke about
4 suicide or homicide. I think you referenced
5 some natural cause of death.

6 Do you ever have -- and I'm sorry, manner,
7 a manner of death; do you ever have an
8 undetermined?

9 A. Yes.

10 Q. And tell the ladies and gentlemen what
11 that is.

12 A. So underdetermined would be the manner
13 of death, where simply put, after the end of the
14 examination or autopsy all the known facts of
15 the scene, the circumstances, despite all that
16 information we have, if we're not able to
17 specifically determine which category, whether
18 it's homicide, natural, accident, suicide, and,
19 again, the one that we previously described, if
20 we don't feel we have enough information for
21 that, in some cases we will determine to be
22 undetermined.

23 Q. And I don't want to put words in your
24 mouth, but it sounds like unless someone else
25 gives you a bunch of information, based on their

1 experience or opinion, it's quite likely you
2 can't determine the cause of death or manner of
3 death; is that correct?

4 A. I don't believe so concerning cause of
5 death. Again, regarding this case, the
6 circumstances that the decedent was found in a
7 vehicle with very hot temperatures, I don't need
8 some expert to determine that.

9 Again, that's an indicator that there is
10 going to be hyperthermia, we have burns on the
11 body. Cause of death, no. Manner of death is
12 gonna be more critical depending on the
13 information that's provided.

14 Q. Well, that's the answer I was trying to
15 get. So as far as cause of death, in the
16 absence of any other information, you could
17 determine that?

18 A. Yes.

19 Q. Thank you very much. So when you're
20 going from an underdetermined cause of death
21 saying a homicide, what you're doing is
22 reviewing all the information that's provided to
23 you. And factoring that into your opinion and
24 relying on it; is that correct?

25 A. Yes.

1 Q. And in this case the information that
2 was provided to you was provided to you by -- or
3 from the various agents of the State; is that
4 right?

5 A. Yes, the majority of it was provided by
6 the Coroner, and, again, I did review some
7 medical records. I don't know what provider,
8 but there was some healthcare records from a,
9 you know, hospital and medical provider.

10 Q. Okay, but it came from the Coroner and
11 police officers, as far as that goes, the
12 various other agents of the State; is that
13 correct?

14 A. Correct.

15 Q. And how long did it take you to review
16 the information that you had before you went in
17 to do your autopsy?

18 A. I don't recall, it's been it looks like
19 four years. I don't recall exactly how long
20 that would have been.

21 Q. Generally speaking, would it be an
22 hour, two hours?

23 A. Sometimes just a matter of minutes,
24 sometimes it's a couple hours. I don't remember
25 in this specific case.

1 Q. Okay, so at the outside a couple of
2 hours?

3 A. Probably was the case, yes.

4 Q. Okay. And you don't have some sort of
5 a litmus test, where you can run a graph or a
6 test and it pops up homicide, and your opinion
7 based on the information you had received at the
8 time you did the autopsy; is that correct?

9 A. Not only at the time of autopsy, but,
10 again, our reports are issued somewhere between
11 -- usually weeks, and sometimes months after we
12 complete our examination, where we have all the
13 information, including our autopsy findings, and
14 any other information outside the autopsy, so
15 sometimes it's gonna take several weeks or
16 months after the autopsy.

17 Q. Well, what information did you receive
18 after the autopsy in this case, sir?

19 A. I don't recall the specific timeline.

20 Q. Did you receive any information, you
21 can look at your notes and report, did you
22 receive any information subsequent to the
23 autopsy; or did you do the autopsy, prepared
24 your report, write your opinion down, and move
25 onto your next case?

1 A. No, and with this case the initial
2 ruling on the -- regarding the death, there was
3 a pending cause of death, and a pending manner
4 of death.

5 So, again, after completion of the autopsy
6 that day on August 7th, 2019, we're still
7 considering. We want to see everything that was
8 in play.

9 We want to see the toxicology testing to go
10 over it, as part of the autopsy. We wanted to
11 see the microscopic findings under the
12 microscope, and the investigating results. So
13 it wasn't until everything else had come back,
14 in this case it looks like it was approximately
15 a month to six weeks later until the ultimate
16 ruling was made.

17 Q. Okay, so in your opinion, as far as
18 manner of death, you said homicide.

19 A. If you could rephrase, please.

20 Q. In your opinion, as far as cause of
21 death, this is what you described an opinion,
22 that is to receive more information today or
23 next week, it's subject to change; is that
24 right?

25 A. Certainly. When we issue rulings,

1 again, whether it's undetermined homicide,
2 suicide, things could be altered later on, if
3 additional information comes out that we didn't
4 have at the time we made that ruling.

5 Q. And you had reviewed notes, I think you
6 said, anywhere from five minutes to two hours
7 and perform the test, and that's what your
8 opinion is based upon, as well as the toxicology
9 results that you received; is that right?

10 A. And a review of everything after-the-
11 fact. Again, I reviewed, you know, from minutes
12 to an hour before the case. Again, after I did
13 the case, again, would have re-read the records,
14 discussed it in peer review within our division,
15 for much more thought going into the case before
16 the ruling is issued.

17 Q. I think I understand. So if you were
18 to sift through a week's worth of information,
19 and hear the various points and all that, as
20 well as the law enforcement, et cetera, cross-
21 examination, weave together more information,
22 more examination, your opinion might change; is
23 that right?

24 A. If I could rephrase it? Are you saying
25 if I was provided additional information

1 | regarding the death, could my opinion change?

2 Q. So say you have another week's worth,
3 and you hear from all sides, and all the
4 parties, and all the decisions, it's possible
5 your decision might change?

6 A. Certainly. As part of my examination,
7 I take into account any information provided to
8 me and make my rulings.

9 Q. Thank you.

10 MR. LOY: No more questions.

11 THE COURT: Mr. Phillips?

12 **

13	CROSS-EXAMINATION

14 BY MR. PHILLIPS:

15 Q. Good morning, Dr. Batalis.

16	A. Good morning.

17 Q. And I guess to be clear, we know each
18 other.

19 A. Yes, we do.

20 Q. We have worked together before?

21	A. Correct.

22 Q. And I just want to say I don't question
23 your credibility at all. And I think based on
24 your testimony I can clarify that. I called you
25 as an expert witness before. You might not even

1 remember, but I have.

2 A. I know I've done some consulting for
3 you. I can't remember the exact testimony, but,
4 yes.

5 Q. So I'm not questioning your
6 credentials. I'm not questioning anything
7 regarding your opinions. And we don't dispute,
8 from our side, I can't speak for the other, we
9 don't dispute how she died. We don't dispute
10 anything.

11 THE COURT: Is that a question?

12 MR. PHILLIPS: Getting ready, Your Honor.

13 BY MR. PHILLIPS:

14 Q. And with that, when you find homicide,
15 that's not the same as the legal definition of
16 murder, because there are different type of
17 offenses, like accident, or mistake, or even
18 voluntary manslaughter.

19 There's different types of homicide; is
20 that right?

21 A. Correct. When we speak of homicide in
22 a medical term, it's death due to the hands of
23 another individual.

24 So an example of a homicide, if there was
25 a, you know, somebody illegally shoots another

1 individual, that would be a homicide. If
2 somebody was being attacked in self-defense,
3 they could kill another individual, that would
4 still be a homicide, where that may not be
5 considered murder.

6 Q. Right, so it's self-defense in the
7 shooting example you just gave, it's not murder,
8 because it was self-defense, but you would still
9 have homicide listed as a manner of death?

10 A. I would leave the murder determination
11 up to the legal system, but, yes, that would be
12 a determination of homicide.

13 Q. So your testimony today here, a finding
14 of homicide, it's not the legal definition of
15 murder, that's what we're here for, that's what
16 they're here for; is that fair to say?

17 A. Correct. There's a difference between
18 homicide, right?

19 Q. Right, because the manner of homicide,
20 it doesn't say whether it's a reckless homicide,
21 or involuntary manslaughter, or anything, it's
22 just based on from a scientific standpoint a
23 homicide?

24 A. Correct. When I say homicide, it means
25 the death due to the actions or the hands of

1 another individual.

2 Q. It doesn't deal with any potential
3 method, or the type of homicide, like a reckless
4 homicide?

5 A. I'm not aware of all the legal
6 variations of homicide, so I think we're in
7 agreement, but I am specifically referring to a
8 medical definition, which is my background.

9 Q. Right.

10 A. Correct. When we go to fill out --
11 yeah, it's either homicide or suicide.

12 Q. Okay, good to see you.

13 THE COURT: Anything further?

14 MR. STONE: Thank you, Doctor.

15 THE COURT: Redirect?

16 MR. STONE: Nothing further, Your Honor.

17 THE COURT: Thank you, sir.

18 WITNESS: Thank you, Your Honor.

19 MR. STONE: With that, Your Honor, the
20 State rests.

21 **

22 **STATE RESTS**

23 THE COURT: All right, ladies and
24 gentlemen, that's the State's case. We'll give
25 you a break now. If you'll go to the jury room,

1 please? Please do not discuss the case.

2 (Jury exits the courtroom.)

3 THE COURT: Are there any matters of law?

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: Yes, sir.

6 MR. LOY: This is a motion for a directed
7 verdict, as far as conspiracy goes. There's
8 simply no evidence of conspiracy between the
9 parties to show conspiracy. As a matter of
10 fact, the evidence --

11 THE COURT: The evidence would indicate
12 what?

13 MR. LOY: That they did not come together
14 to create a conspiracy, that is a criminal act

15 As far as the murder goes, a direct act on
16 part of the Defendant would indicate malice, and
17 support of finding of malice, put the child in
18 the car, puts the child in the care of his
19 mother. He has no legal obligation. He is a
20 legal stranger.

21 THE COURT: He's a legal stranger, is that
22 what you said?

23 MR. LOY: To the child, yes, sir.

24 THE COURT: A legal stranger?

25 MR. LOY: Yes, sir.

1 THE COURT: What is a legal stranger?

2 MR. LOY: A legal stranger is a person who
3 has no rights to the child, no rights to
4 visitation to the child, no rights whatsoever,
5 as well as no obligations to pay child support,
6 he's not obligated to provide care or the
7 custody, etcetera.

8 If there are problems within the family,
9 DSS doesn't investigate him. Legally, he's a
10 person who has never met or engaged in --

11 THE COURT: Is that a term of art, or one
12 that you created, a legal stranger?

13 MR. LOY: Your Honor, it's a term, as I
14 recall from my Family Court days, that we
15 used It would be a legal term.

16 THE COURT: All right.

17 MR. LOY: So I believe the child at the
18 time -- there's evidence to show that at the
19 time he placed this child in the car, he did it
20 without malice, and the video clearly shows he
21 didn't mean to cause her injury. He walked
22 away, and left her in the arms of the mother.
23 There's nothing beyond a reasonable doubt he was
24 acting with malice.

25 Subsequent to that, he had no obligation.

1 I don't believe it's failure to perform.

2 This child was not his own, not under his
3 care, not of his physical custody, he just
4 walked away. She was in the arms of the mother.
5 The same argument. Thank you.

6 THE COURT: Yes, sir. Mr. Phillips?

7 MR. PHILLIPS: Thank you, Your Honor. I'll
8 be very brief. Your Honor, specifically, we
9 would move for a directed verdict on the
10 charges. I will renew all pretrial motions,
11 specifically outlining 404(b), 403, related to
12 Brittany Huneycutt and Lindsey Lewis. I follow-
13 up with a motion for mistrial.

14 It rose to the level of manifest necessity,
15 to where Ms. Pangalangan was not -- has not
16 received a fair trial, and we would ask for a
17 mistrial. So at this point we would not move
18 for a directed verdict.

19 Renew all the pretrial motions and
20 arguments and objections that were made
21 throughout this case.

22 Specifically, as far as the directed
23 verdict motion, or as far as the conspiracy
24 part, the law is that the State's case has to
25 rise to a level of substantial circumstantial

1 evidence, and that burden should go to the jury.

2 As to what's been presented to conspiracy,
3 the State has not presented substantial
4 circumstantial evidence of a conspiracy. It
5 hasn't crossed that threshold. And for that
6 matter, for conspiracy we would specifically
7 make that argument on that.

8 THE COURT: Thank you. Says the State?

9 MR. STONE: Very briefly, Your Honor, I
10 think the video itself establishes the elements
11 that are needed for conspiracy.

12 You've clearly got two people involved in
13 putting the child in the car, with the
14 temperatures, from testimony, it's been clear of
15 that in itself, is a reckless act. You move
16 past that to four or five hours and 42 minutes,
17 where they leave that child in the car.

18 You see on the video both of them going in
19 or near the car, or around the car throughout
20 that five hours and 42 minutes. The infliction
21 of injury to the child is more than obvious from
22 not only the pathology testimony, but also what
23 you actually see in the crime scene photos from
24 the standpoint of murder.

25 Again, this is malice under the law from

1 the standpoint of whether you even use the
2 language that the defense has offered as
3 reckless, excuse me, extreme recklessness. I
4 think you see that, as you were watching the
5 video.

6 You see two people that literally do not
7 break the window to get the child out of the
8 car. They put the child in the car in this type
9 of temperature and leave them there. You're
10 talking about temperatures that have exceeded
11 what most people can't even imagine. Throughout
12 the entire time these two people were absolutely
13 showing no care for that child, as the child
14 literally cooks to death.

15 And it's also clear they did it together,
16 when you actually watch them on video. So I
17 think even from just the very basic standpoint
18 from the video itself, I think it establishes
19 every element.

20 THE COURT: Any response

21 MR. LOY: Yes, Your Honor. Our position is
22 that you don't have a negligence conspiracy.
23 The State's theory is that it was a reckless
24 disregard for human life, and with that
25 conspiracy is an intentional act. There are --

1 under the true statement of law, it's a true
2 disregard for human life in the Watson case, but
3 wanton disregard, recklessness, negligence, and
4 then conspiracy and intentional act. Those
5 don't marry the other. That's the basis for
6 this.

7 THE COURT: Under Rule 19 of the South
8 Carolina Rules of Criminal Procedure on the
9 motion of Defendant, or the Court shall direct a
10 verdict in charging the indictment after the
11 evidence -- there is a failure of competent
12 evidence pending through the charge of the
13 indictment.

14 In ruling on the motion, the Court shall
15 consider only the existence or non-existence of
16 the evidence and not its weight. In this case
17 there is testimony, if believed by the jury,
18 that establishes that it was caused by the
19 willful conduct, wanton and extreme reckless
20 conduct, and by extreme, the conduct that
21 totally shows a willful and absolute disregard
22 for human life by the jury that that conduct and
23 the cause of death was the combined actions of
24 both Defendants.

25 There is evidence of voluntary

1 intoxication, which is not a defense.

2 As it relates to conspiracy, there's a --
3 the evidence shows that the parties were -- the
4 Defendants were working in concert with each
5 other, and to the extent that the conspiracy
6 charge, as to great bodily injury on a child.
7 Whether or not the death of the child the
8 conduct of the parties, and the testimony
9 establishes the bodily injury, based on the
10 autopsy, all of which is sufficient for the jury
11 to consider.

12 Therefore, the motion for a directed
13 verdict as to each party is denied.

14 MR. PHILLIPS: And, Your Honor, to go back
15 --

16 THE COURT: And all Court's rulings during
17 the course of the trial are the same with
18 evidence presented in the State's case.

19 So we'll take a few minutes, and are you
20 ready to go with your defense?

21 MR. PHILLIPS: Candidly, Your Honor, we
22 were told, and I hope the State will agree that
23 they thought they would take up all morning.
24 The State didn't indicate they would rest today.

25 THE COURT: Candidly, the Court inquired as

1 to whether you'd be ready to go, and the State
2 is finished.

3 MR. PHILLIPS: Once we do the inquiry, as
4 far as speaking to the Defendants to see if they
5 want to testify.

6 THE COURT: Says Mr. Loy?

7 MR. LOY: Your Honor, my experience was the
8 same, and the answer is the same. I did tell my
9 client ahead of time we would have an
10 opportunity to have a meaningful conversation
11 before he made a final determination, as to
12 whether or not he chose to testify.

13 I would ask the Court that if he does, his
14 testimony on direct would be relatively brief, I
15 don't think more than 35, 40 minutes.

16 I think --

17 THE COURT: I'm not trying to rush anyone,
18 except the State indicated they had a few more
19 witnesses. It's not for the defense to object
20 to how long the witness' testimony will be, how
21 long the cross-examination would be.

22 MR. LOY: Well, Your Honor, I'd ask for 30
23 minutes so that I can confer with my client, and
24 determine his decision, as to whether or not --

25 THE COURT: You are going to confer with

1 your client, and I am required to ask that each
2 Defendant, as to whether they want to testify,
3 not testify, and confer with counsel on the
4 issue. My point simply is, when the Court gives
5 an instruction, don't rely on what the other
6 side says, because you can't.

7 I called other witnesses too. We're here
8 ready to go.

9 MR. LOY: I understand.

10 THE COURT: We're gonna be leaving at noon,
11 so --

12 MR. LOY: I would request 30 minutes for my
13 client to make a final determination in his most
14 grave decision in his life.

15 THE COURT: It might take you 30, it might
16 take you less.

17 MR. LOY: It might well take me less, but
18 it will not take more.

19 MR. PHILLIPS: If I may, Your Honor, we got
20 a text from my investigator, he was told to be
21 here this morning.

22 My Paralegal's gonna step outside and make
23 a phone call. I just didn't want to speak out
24 of turn, as far as making sure what we are
25 doing.

1 THE COURT: Well, it will be one at a time.

2 MR. PHILLIPS: Thank you.

3 THE COURT: All right. If the parties will
4 stand to be sworn. And we'll take a few minutes
5 before I ask them questions. We'll take a few
6 minutes at this time.

7 MR. LOY: Thank you, Your Honor.

8 (RECESS)

9 **

10 PROCEEDINGS CONTINUED

11 THE COURT: All right, you may be seated.

12 BY THE COURT:

13 Q. Mr. King, if you would stand up for me?
14 At this time I'm going to explain to you your
15 rights. If you do not understand anything that
16 I say, please let me know, I will explain it in
17 any further details that I need to?

18 Do you understand that we have now reached
19 the stage of the trial, where you may present
20 your defense. You have the right to claim the
21 protections given to you by the Fifth Amendment
22 to the Constitution. This amendment in part
23 says in any criminal case a person cannot be a
24 witness against himself.

25 This means that you cannot be compelled or

1 required to testify, but you do have the right
2 to testify on your own behalf, but no one can
3 make you testify. This is a personal right, and
4 no one can waive this right except you; do you
5 understand?

6 A. Yes, sir.

7 Q. If you decide to testify, you will be
8 subject to the same rules that govern other
9 witnesses, and you may be examined, cross-
10 examined on any relevant issue in the case.

11 In addition, if you have any convictions
12 involving dishonesty or false statements for
13 crimes punishable by imprisonment for more than
14 one year. And I determine that, the Court will
15 The Solicitor will then be able to introduce
16 your record to attack your credibility.

17 If you decide to testify, this decision
18 must be freely, intelligently, and voluntarily
19 made, with the knowledge of the protections
20 given to you by the Fifth Amendment, and the
21 consequences of your decision to testify.

22 If you decide not to testify, I will
23 instruct the jury that they cannot give the fact
24 that you did not testify any consideration
25 whatsoever, and that there is to be absolutely

1 no prejudice to you because you did not testify.
2 It's left entirely up to you whether or not you
3 testify. You may talk to your lawyer, family,
4 friend, or anyone else, but the final decision
5 will be left entirely up to you.

6 Do you understand what I have explained?

7 A. Yes, sir.

8 Q. Do you have any questions about what
9 I've explained?

10 A. No, sir.

11 Q. Have you discussed with your lawyer
12 whether or not you should testify?

13 A. Yes, sir.

14 Q. Do you wish to talk to him some more at
15 this time?

16 A. Yes, sir.

17 THE COURT: And, Mr. Loy, you said you
18 wanted up to half an hour?

19 MR. LOY: Yes, sir.

20 THE COURT: Has the half an hour started --

21 MR. LOY: No, sir.

22 THE COURT: -- with our break? It hasn't
23 started yet?

24 MR. LOY: No, Your Honor.

25 THE COURT: All right, very good. Well, we

1 will give you an opportunity to speak to your
2 client, and we will resume after that.

3 MR. LOY: Thank you, Your Honor.

4 THE COURT: Mr. Phillips, are you ready?

5 MR. PHILLIPS: Yes, Your Honor.

6 BY THE COURT:

7 Q. Ms. Pangalangan, if you will stand for
8 me? If you will stand for me? Ms. Pangalangan,
9 at this time I'm going to explain to you certain
10 of your rights, regarding your right to testify.
11 If you do not understand anything that I say,
12 please let me know and I will be happy to
13 explain further.

14 Do you understand what I mean?

15 A. Yes, sir.

16 Q. We now have reached the stage of the
17 trial where you may present your defense. You
18 have the right to claim the protection given to
19 you by the Fifth Amendment to the Constitution
20 of the United States

21 This amendment states, in part, that no
22 person shall be compelled in any criminal case
23 to be a witness against herself or himself.
24 This means that you cannot be required to
25 testify, however, you do have the right to

1 testify, but no one can make you testify.

2 This is a personal right of yours, and no
3 one can waive this right except you; do you
4 understand?

5 A. Yes.

6 Q. Now, if you decide to testify, you will
7 be subject to the same rules that govern other
8 witnesses, and you may be examined and cross-
9 examined on any relevant issue in the case.

10 In addition, if you have any convictions
11 involving dishonesty or false statements, or for
12 crimes punishable by imprisonment for more than
13 one year, and I determine the probative value of
14 admitting this evidence outweighs the
15 prejudicial effect to you, the Solicitor will
16 then be able to introduce your record to attack
17 your credibility.

18 If you decide to testify, this decision
19 must be a free, intelligent, and voluntary
20 decision made by you, with the full knowledge of
21 the protections given to you by the Fifth
22 Amendment, and the consequences of your decision
23 to testify.

24 If you decide not to testify, I will
25 instruct the jurors that they cannot give the

1 fact that you did not testify any consideration
2 whatsoever, and that there is to be absolutely
3 no prejudice to you because you did not testify.
4 It's left entirely up to you whether or not you
5 wish to testify.

6 You may talk to your lawyer, Mr. Phillips,
7 family, friends, or anyone else, but the final
8 decision will be left entirely up to you.

9 Do you understand what I have explained?

10 A. Yes, Your Honor.

11 Q. Do you have any questions about what
12 I've explained?

13 A. No, sir.

14 Q. Have you talked to Mr. Phillips about
15 whether or not you should testify?

16 A. Yes.

17 MR. PHILLIPS: We have discussed it Your
18 Honor.

19 BY THE COURT:

20 Q. All right, do you wish to talk with him
21 any more at this time about whether or not you
22 should testify?

23 A. Yes.

24 Q. All right.

25 THE COURT: Solicitor, with regard to

1 possible impeachable criminal behavior, do you
2 have anything?

3 MR. STONE: No record at all on Ms.
4 Pangalangan.

5 On Mr. King there's some record, but
6 nothing that I believe would be proper to
7 impeach him on.

8 THE COURT: Okay. We will give you an
9 option.

10 MR. PHILLIPS: I know we had at least one
11 here.

12 THE COURT: We're going to recess. We're
13 waiting for the jurors.

14 (RECESS)

15 **

16 **PROCEEDINGS CONTINUED**

17 (Jury enters the courtroom.)

18 THE COURT: Madam Forelady --

19 FORELADY: Yes, sir.

20 THE COURT: -- how is the jury doing?

21 FORELADY: Doing well, Your Honor.

22 THE COURT: Very good. You have heard the
23 State's case. It's now the defense's turn.

24 Mr. Loy?

25 MR. LOY: thank you, Your Honor. Your

1 Honor, we'd call Larry King to the stand.

2 ***

3 LARRY KING,

4 BEING DULY SWORN TESTIFIED AS FOLLOWS:

5 ***

6 DIRECT EXAMINATION

7 BY MR. LOY:

8 Q. And, Mr. King, where are you from, sir?

9 A. From Walterboro, South Carolina.

10 Q. How long have you been -- are you
11 originally from Walterboro?

12 A. Yes, sir.

13 Q. And how old are you, sir?

14 A. 46-years-old.

15 Q. If you would, tell the ladies and
16 gentlemen of the jury a little bit about where
17 you work. Do you have children?

18 A. Yes, sir, I have two sons, 23 and 21.
19 I have a four-year-old grandson. I am now
20 employed in Spartanburg for Renfrow Brothers.
21 I've been up there for two years.

22 Q. Thank you, sir. You're supported by
23 people who are in Court today?

24 A. Yes, sir. I have my son over here on
25 the far side, next to my uncle, my mom's

1 brother, his wife, my cousin and my ex-wife.

2 Q. All right, thank you, sir. And you
3 said that you have children, two children; is
4 that right?

5 A. Yes, sir.

6 Q. Were you involved in their lives as
7 they were coming up?

8 A. Me and my wife got divorced, but, yeah,
9 I was absolutely into it. In 2014 they came and
10 moved in with me, and they stayed with me on up
11 until they got moved out of the house.

12 Q. So from 2014 on you say you raised
13 those children?

14 A. Yes, sir.

15 Q. And you were involved in their life up
16 until then?

17 A. Yes, sir.

18 Q. Did you have problems related to that,
19 anything?

20 A. No, sir.

21 Q. Mr. King, are you employed now? I
22 think you said you were.

23 A. Yes, I work for Renfrow Brothers in
24 Spartanburg, South Carolina.

25 Q. And do you have a pretty steady history

1 of employment?

2 A. Yes, sir.

3 Q. What do you mean by that?

4 A. I've had five jobs all my life.

5 Q. And have there been gaps where you
6 didn't have one, or have you always worked?

7 A. I always worked.

8 Q. There's been a whole lot of talk during
9 this trial about the drugs, methamphetamine.
10 You sat through it all, have you heard that?

11 A. Yes, sir, I have.

12 Q. Well, you're not charged with a drug
13 offense. You're not charged with anything to do
14 with methamphetamine, but the State's gonna talk
15 about it a lot, so I'm gonna ask you a couple
16 questions about that, all right?

17 A. Yes, sir.

18 Q. Are you doing okay? You all right?

19 A. Yes, sir, I'm okay.

20 Q. Do you need a drink or anything? Do
21 you need some water up there with you?

22 A. I'm okay.

23 Q. If you decide you do, let me know, I
24 think the Court will indulge us on that, all
25 right? They talked about this methamphetamine.

1 Have you ever used methamphetamine, sir?

2 A. Yes, sir, I have.

3 Q. Okay. And the Judge -- excuse me, the
4 witness talked about various uses. In the past
5 have you had a problem with methamphetamine.

6 A. I did.

7 Q. And what do you mean -- how do you
8 define a problem?

9 A. I was a drug addict.

10 Q. You were addicted to methamphetamine,
11 is that --

12 A. Yes, sir.

13 Q. -- what you needed?

14 A. I was addicted to methamphetamine.

15 Q. Okay. And early on during the
16 selection of this jury, one of the jurors said
17 they knew you, and stood up and said they -- I
18 guess they missed the anonymous part about it.

19 A. Absolutely.

20 Q. But one of them stood up and said they
21 knew you from the 12-step program; do you
22 recall?

23 A. Yes, sir.

24 Q. Have you in the past struggled with
25 your addiction? Have you sought help? Have you

1 tried to get help?

2 A. I did, and the last two years I went --
3 I moved to Spartanburg and in recovery -- a
4 Christian recovery based center, and have been
5 in the program up there, and I've worked and
6 lived in a recovery house, you know, with other
7 clean guys that were trying to, you know, has
8 been where I've been, trying to put the Lord
9 first, and do the next right thing.

10 Q. All right, sir. You look a little
11 different today than what you did in the video
12 that most of us watched, even though you didn't
13 watch it, but you look like you put on some
14 weight and some size; is that right?

15 A. Yes, sir.

16 Q. And did that have anything to do with
17 your recovery?

18 A. Yes, sir, just putting God first,
19 getting clean, and trying to be more of a family
20 man, and doing the next right thing.

21 Q. When the doctor was talking, she said
22 methamphetamine has sometimes been prescribed
23 for weight loss. Like I say, you don't look
24 like you've lost any weight since then.

25 Have you put weight on?

1 A. Yes, sir.

2 Q. Are you healthy today?

3 A. Yes, sir.

4 Q. Are you clean today?

5 A. Yes, sir.

6 Q. How is it that you can tell the ladies
7 and gentlemen of the jury that you've always
8 worked, and had five jobs your whole life, and
9 always been gainfully employed, and in the same
10 breath tell them that you were a drug addict, a
11 methamphetamine addict?

12 A. I was a functioning addict. I used
13 daily to function.

14 Q. All right.

15 A. It was just a part of my life.

16 Q. When you say you used as a functioning
17 addict, tell me what you mean.

18 A. I had to have it to go. I had to have
19 it to work. I used it to do anything and
20 everything every day.

21 Q. And were you able to work when you used
22 this substance?

23 A. I was.

24 Q. Were you able to drive, and to meet
25 your own obligations?

1 A. I did.

2 Q. And she was talking about tolerance,
3 and you used enough of this stuff to develop a
4 tolerance to it?

5 A. Absolutely.

6 Q. And you said day-to-day as a
7 functioning drug addict, you used enough of this
8 substance to keep you going, and allow you to
9 function normally?

10 A. I did.

11 Q. And in that condition, and I understand
12 you said you've been in the 12-step program, and
13 you had sought some help prior to that, but did
14 that condition continue at least off and on up
15 until the day we're here to talk about?

16 A. Yes, sir.

17 Q. Okay. And subsequently you got to
18 where you described?

19 A. Thank God, yes, sir.

20 Q. All right. Do you know the lady seated
21 at that table over there, Ms. Pangalangan?

22 I think I'm saying it right.

23 A. I do.

24 Q. Okay, and how do you know her?

25 A. We used to date.

1 Q. And when did you'all first start to
2 date?

3 A. 2015.

4 Q. And did that last as a continuous
5 relationship up until the day on this, or had
6 you'all had times apart?

7 A. No, we dated for a few years. And we
8 had broke up six months prior to -- we started
9 back talking about five weeks until this
10 happened, yes, sir.

11 Q. So you'all had started back talking
12 about five weeks prior to this day?

13 A. Yes, sir.

14 Q. The day in question?

15 A. All this stuff, yes, sir.

16 Q. Did you'all live together?

17 A. No, sir.

18 Q. And you know where her home was?

19 A. Yes, sir.

20 Q. About how far was that from your home?

21 A. 15 miles.

22 Q. 15 miles you said?

23 A. Yes, sir.

24 Q. And you knew this little girl?

25 A. Yes, sir.

1 Q. As far as the child goes, had you
2 observed the other defendant, I'm not even gonna
3 try her name, but had you observed the other
4 defendant her interactions with this little
5 girl?

6 A. I did.

7 Q. Okay. Was there anything that you saw
8 with the way she treated the child, took care of
9 the child that caused you concern?

10 A. No, sir.

11 Q. If you had seen things like that, where
12 you thought -- caused you concern, what would
13 your reaction have been?

14 A. I would have got away from it. I would
15 have reported it.

16 Q. Were you in a position where you did
17 observe the child, but someone else abusing the
18 child was treated bad at the hands of another
19 person, man or woman, what would you reaction
20 be?

21 A. I would address it immediately.

22 Q. What do you mean by that?

23 A. It depends. If I'd seen a man abusing
24 a child, I'd stop it.

25 Q. All right. On this particular day you

1 didn't watch -- I noticed you didn't watch this
2 tape recording; is that right?

3 A. I didn't.

4 Q. Have you ever watched it?

5 A. No, sir.

6 Q. Your lawyers had it, but why didn't you
7 watch it?

8 A. I couldn't.

9 Q. Even prepping to come here today, did
10 you watch it?

11 A. No, sir.

12 Q. The State, excuse me, the witnesses for
13 the State have contributed the statements to you
14 from the other defendant, which stated that you
15 spent the night before this child died at your
16 home; is that correct?

17 A. Yes, sir.

18 Q. And the -- was **Child** there also?

19 A. Yes, sir.

20 Q. Okay. And you said that you had talked
21 to or been involved with Ms. Pangalangan in the
22 past.

23 What was your relationship with this child?

24 A. She was my girlfriend's daughter.

25 Q. Did you -- this is a child who has

1 special needs and needed special care.

2 Did you wash this child? Did you bathe
3 this child? Somebody did, did you?

4 A. No, sir.

5 Q. And this child was in a diaper, this
6 young girl wore a diaper, wasn't able to clean
7 herself. Did you clean this child? Had you
8 changed her diaper? Were you responsible for
9 things like that?

10 A. No, sir.

11 Q. Did you feed this child?

12 A. No, sir.

13 Q. Did you put her to bed or get her up in
14 the morning?

15 A. No, sir.

16 Q. Were you financially responsible, did
17 you pay any child support or anything for this
18 child?

19 A. No, sir.

20 Q. And this may have been answered, but
21 did you help dress her, or anything like that?

22 A. No, sir.

23 Q. Regardless, the night before they spent
24 the night at your home; is that right?

25 A. Yes, sir.

1 Q. And tell me in the morning you got up,
2 and you and Ms. -- oh, I'm sorry, did you go to
3 bed that night?

4 A. No, sir, I'd been up all night.

5 Q. I mean was that partly due to that
6 methamphetamine use?

7 A. Yes, sir.

8 Q. And when you got up in the morning, did
9 you and the other defendant have a conversation,
10 which led to what we saw on the video, that is
11 you carrying the child out?

12 A. Yes, sir.

13 Q. Okay.

14 A. Yes, sir.

15 Q. Tell the ladies and gentlemen, I don't
16 want you to quote, but just tell them what the
17 conversation was about.

18 A. Just about her being somebody else, and
19 we talked about it. Some things broke my heart
20 to think about.

21 Q. All right, so it was about, basically,
22 what you would call a friendship; is that right?

23 A. Yes, sir.

24 Q. Okay. And did -- in the course of that
25 conversation, did she confirm that, yes, in

1 fact, that had happened?

2 A. Yes, sir.

3 Q. And when she said, yes, that had
4 happened, what was your reaction?

5 A. Just hurt.

6 Q. You were hurt?

7 A. I was hurt.

8 Q. And that was your reaction, what did
9 you do, man? I mean what did you say or what
10 did you do?

11 A. I asked her to leave. I told her I'd
12 call her later.

13 Q. Okay. Did you lose your temper? Did
14 you smash anything?

15 A. Absolutely not.

16 Q. You're a big fella?

17 A. Absolutely not.

18 Q. Did you break anything in the house?
19 Did you grab her and shake her or anything?

20 A. No, sir.

21 Q. Okay. You asked her to leave?

22 A. Yes, sir.

23 Q. And did she agree to leave?

24 A. Yes, sir.

25 Q. And then what happened next?

1 A. I put the child in the car.

2 Q. All right. When you say you put the
3 child in the car, did you carry her out?

4 A. Yes, sir, I did.

5 Q. Okay. And why were you the one to
6 carry her out?

7 A. Rita has had kidney, has a lot of
8 trouble -- health trouble, and her daughter was
9 getting heavy for her, so she asked me to carry
10 her.

11 Q. Okay. And thinking back, and I know
12 you say you remember that day, but thinking back
13 would there have been anything inappropriate,
14 wrong or rough by the way you were treating that
15 little disabled girl?

16 A. No, absolutely not, no.

17 Q. Can you imagine a circumstance where
18 that would be your reaction?

19 A. No, sir.

20 Q. So you stated you carried the child
21 out, and we can see in the tape, placed her in
22 whose car?

23 A. Rita's car.

24 Q. Okay, and where did you put her in the
25 car, if you recall?

1 A. Behind the driver's seat on the
2 driver's side in the rear.

3 Q. Okay, and you stepped away, and then
4 did mom come and like get her settled with the
5 seatbelt, or something like that?

6 A. I think so, yes, sir.

7 Q. And think carefully, if you need to,
8 was the car running when you put the little girl
9 in?

10 A. Absolutely.

11 Q. You say you're from Walterboro; is that
12 right?

13 A. Yes, sir.

14 Q. We know you've heard and everybody else
15 knows, it gets hot in Walterboro, yes?

16 A. Yes, sir.

17 Q. And you grew up here. I know the State
18 went to great lengths to prove to the ladies and
19 gentlemen of the jury that if you park the car
20 in the sun in the summertime in Walterboro, it
21 gets really hot, it gets too hot.

22 Were you aware of that before scientists
23 testified?

24 A. Yes, sir.

25 Q. Do you figure everybody in Walterboro,

1 who's got a car knows that that happens, whether
2 or not they hear from that scientist?

3 A. Absolutely.

4 Q. All right. Would you have left that
5 little girl in the car, if the engine wasn't
6 running and the A/C wasn't on?

7 A. Never, never.

8 Q. Never.

9 A. Never.

10 Q. All right. So you put the little girl
11 in the car, you say the engine was running.

12 Can you tell me what happened next, just
13 next?

14 A. We went back inside.

15 Q. Okay, did you and she have a -- let me
16 ask you this, up until the time you'all
17 discovered that little girl was deceased, was
18 there anything unusual or scary about this day?

19 A. No, it was another normal day. I
20 thought everything was -- I had no idea that
21 anything was wrong.

22 Q. Were you trying to memorize the events
23 moment-by-moment?

24 A. No, sir.

25 Q. Are there things about that day that

1 you may be a little unclear on or foggy, at this
2 point, four years down the road?

3 A. Absolutely not.

4 Q. Well, if somebody told you they watched
5 that tape, and you agreed to have a conversation
6 in the yard, after that child was put in the
7 car, is that something you would deny, or you
8 would say I don't recall?

9 A. No, I remember.

10 Q. Okay. Well, tell me, I'm asking you
11 about that conversation.

12 A. I was asking her -- I just asked her to
13 leave, and told her I would call her later,
14 that's all I said.

15 Q. And did she, in fact, get in the car
16 and leave?

17 A. No, sir.

18 Q. Excuse me?

19 A. No, sir.

20 Q. What did happen?

21 A. She followed me back inside.

22 Q. And what were you'all talking about?
23 You asked her to leave, she didn't leave, what
24 was going on between you?

25 A. She was just trying to plead with me

1 and talk to me, and just trying to make things
2 right.

3 Q. And did you'all talk back and forth
4 about it?

5 A. A little bit, yes, sir.

6 Q. And you said you had your feelings
7 hurt?

8 A. Yeah.

9 Q. Well, you said your heart broke.

10 A. Yeah.

11 Q. And while you'all were in the house,
12 let's just put the cars on the table, did you
13 make up?

14 A. We didn't.

15 Q. Okay, you decided to move on?

16 A. Yes, sir.

17 Q. At some point in time, and you don't
18 have to give me minute-by-minute, because the
19 ladies and gentlemen of the jury have seen the
20 tape, they know how long things took, but at
21 some point in time, did the defendant at the
22 other counsel table, did she attempt to leave?

23 A. Yes, sir.

24 Q. Okay, and what happened when she tried
25 to leave?

1 A. She came back in and told me her keys
2 were locked in her car.

3 Q. That keys were locked in the car?

4 A. Yes, sir.

5 Q. And what was your reaction to that?
6 You cheated on me, get out of here?

7 A. No, I tried to help her get in the car.
8 I didn't know that anything other than that was
9 wrong to be honest.

10 Q. Was the car still running?

11 A. The car was running.

12 Q. Were you worried about the situation?

13 A. No, sir, not really.

14 Q. Okay, and if you had known, and I know
15 you've seen what we've all seen, and if you had
16 any inkling that that's what was gonna happen or
17 had happened, what would your reaction have
18 been?

19 A. I would have knocked that window of
20 that car and got the child.

21 Q. So you made an effort to get the child
22 out of the car; is that right?

23 A. Yes, sir.

24 Q. Or to get the car open, were you
25 successful in that?

1 A. Not right away I wasn't.

2 Q. And how you tried is not important, but
3 do you recall what you did to try to get into
4 the car?

5 A. Some, yes, sir.

6 Q. What did you do?

7 A. I tried to get in -- like I tried to
8 pry the door, tried to hopefully knock out the
9 sunroof. Rita didn't want me to do that.

10 Q. You say you'all knocked out the
11 sunroof?

12 A. No, sir, I didn't.

13 Q. It's not your car?

14 A. It's not my car.

15 Q. Okay, but you offered to knock out the
16 sunroof, she said, "No?"

17 A. Yes, sir.

18 Q. Do you recall what you did say other
19 than just no? It's four years later, I know you
20 can't remember everything.

21 A. No.

22 MR. STONE: Objection, hearsay.

23 THE COURT: Repeat the question.

24 BY MR. LOY:

25 Q. Did you ask her if you want -- your

1 answer was, excuse me, earlier --

2 THE COURT: The question, repeat the
3 question.

4 MR. LOY: I'm gonna take a different
5 question.

6 THE COURT: Pardon?

7 MR. LOY: I'm gonna take a different
8 question, if it's okay, Your Honor.

9 THE COURT: All right.

10 BY MR. LOY:

11 Q. Your answer earlier was, you offered to
12 knock out the sunroof; is that right?

13 A. I did.

14 Q. After offering to knock out the
15 sunroof, did Ms. Pangalangan respond?

16 MR. STONE: Objection, hearsay.

17 MR. LOY: No, I'm not asking what her
18 response was, I'm asking did she respond?

19 BY WITNESS:

20 A. She did.

21 Q. And after her response, did you knock
22 out the sunroof?

23 A. No, sir.

24 Q. All right. Did you'all then come up
25 with a different plan?

1 A. Yes, sir.

2 Q. And what was that?

3 A. She said she had a spare key at her
4 home.

5 Q. Okay, and were you, at this point, just
6 done with the operation, or did you continue to
7 try to help?

8 A. I continued to try to help.

9 Q. What did you do to try to help?

10 A. I went and took her to get a spare key.

11 Q. All right, when you left, was the
12 engine running?

13 A. Yes, sir.

14 Q. And was it running when you got back?

15 A. Yes, sir.

16 Q. And did you think that A/C was on?

17 A. Yes, sir.

18 Q. When you got back and you had that key
19 fob, and did you go retrieve the key fob?

20 A. She did.

21 Q. Okay. And when you'all got back, were
22 you able to pop the -- just go -- did that solve
23 the problem?

24 Did you go up, hit the fob and unlock the
25 door?

1 A. No, sir.

2 Q. Why not?

3 A. I think the batteries were weak and it
4 wouldn't work.

5 Q. Okay.

6 A. It wouldn't unlock the door.

7 Q. So you hit lock/unlock and it wouldn't
8 unlock?

9 A. No, sir.

10 Q. You have a real problem now, or at
11 least she had a real problem; is that fair?

12 A. Yes, sir.

13 Q. What did you do to address that?

14 A. I called Robert Stokes at Lock and Key.

15 Q. Do you know someone there?

16 A. Yes, sir, Robert, the owner.

17 Q. Okay. So you called the owner of
18 Stokes Lock and Key, and what was the purpose of
19 that call?

20 A. So he could help me get in the vehicle.

21 Q. And if, in fact, you made that call,
22 would that be reflected on the videotape? Were
23 you in the yard doing this?

24 A. Absolutely, yes, sir.

25 Q. Okay, so you called Stokes Lock and

1 Key, and you spoke with a person you knew there,
2 and asked how to get in the car; is that your
3 testimony?

4 A. Yes, sir.

5 Q. And what did he tell you?

6 A. He told me there's an emergency key in
7 the key fob.

8 Q. Okay, and the emergency key in the key
9 fob, people may know what that means, but,
10 apparently, you didn't at the time, so what does
11 that mean?

12 A. There's a key inside the fob separated
13 from the key.

14 Q. And you were never able to unlock it
15 automatically?

16 A. Never, never.

17 Q. All right, but after speaking with the
18 gentleman at the locksmith company, what did you
19 do?

20 A. He told me to pop off -- he told me to
21 retrieve the key, I got the key and he told me
22 to pop off the face off the door handle, so I
23 could unlock the car.

24 Q. And were you eventually able to unlock
25 the car?

1 A. Yes, sir, I did.

2 Q. And it wasn't with that key fob?

3 A. No, sir.

4 Q. It was just old-fashioned stick it in
5 and turn?

6 A. Yes, sir. Yes, sir.

7 Q. And I'm not gonna ask you what you saw
8 when you got in the car, people saw that on the
9 video and witnessed it themselves; but when the
10 child got out, when the child was taken from the
11 car, and you knew she was deceased, what was
12 your immediate reaction?

13 A. Call 911.

14 Q. Did it occur to you that maybe you were
15 in trouble?

16 A. No, sir.

17 Q. Any time up until -- I mean any time
18 during the course of this investigation,
19 speaking with police officers, speaking with
20 anybody else, and talking about it, were you
21 like "Oh, my goodness, I need to cover something
22 up?"

23 A. Never had an idea.

24 Q. Excuse me?

25 A. No, sir. No, sir.

1 Q. Okay. So you called 911 and the
2 information you gave them, was it correct?

3 A. Yes, sir.

4 Q. And when law enforcement arrived, did
5 you talk to them?

6 A. Yes, sir.

7 Q. And was the information that you gave
8 them correct?

9 A. Yes, sir.

10 Q. Before law enforcement arrived, and
11 from watching that video, it looks like the
12 front door's open and you reach in the car.

13 Are you grabbing something out of that
14 front seat of the car?

15 A. No, sir, I reached in to turn that car
16 off.

17 Q. How did you turn it off?

18 A. A button.

19 Q. It's got a pushbutton on it?

20 A. Yes, sir.

21 Q. When we watched that tape, we should
22 see you reaching in and turning that car off?

23 A. Yes, sir.

24 Q. The vehicle itself, are the windows
25 tinted in that car?

1 A. Yes, sir.

2 Q. Are they a dark tint, or just like --

3 A. Very --

4 Q. -- it comes from the factory?

5 A. Very dark.

6 Q. Can you see in that car?

7 A. No, sir.

8 Q. When law enforcement got there, and
9 later they took you down to the Police Station;
10 is that correct?

11 A. Yes, sir.

12 Q. Did anybody ever tell you, you don't
13 have to talk to us, you've got a right to remain
14 silent, and all that sort of thing?

15 A. Yes, sir.

16 Q. Okay, did you sign the form and say, "I
17 understand?"

18 A. Absolutely.

19 Q. And then did they keep talking to you
20 for several hours?

21 A. Yes, sir.

22 Q. Did you talk until they said, "You
23 don't need to talk anymore?"

24 A. Yes, sir.

25 Q. All right. Did you ever lie to try to

1 cover up --

2 A. Never.

3 Q. -- for yourself?

4 A. Never.

5 MR. LOY: One moment, Your Honor.

6 BY MR. LOY:

7 Q. You've been charged with murder.

8 Did you murder the child?

9 A. No, sir.

10 Q. You carried that child to the car and
11 put her in the car. You've been accused of
12 causing great bodily injury to this child.

13 Do you feel like you handled her correctly
14 and appropriately?

15 A. Yes, I did.

16 Q. And I asked you earlier, is there any
17 way you would cause harm to any child?

18 A. Never, I love children.

19 Q. And for some odd reason, I have no idea
20 still, you're charged with conspiracy; you're
21 aware of that?

22 A. Yes.

23 THE COURT: Jury, disregard the comment of
24 counsel. Pose the questions.

25 MR. LOY: All right.

1 BY MR. LOY:

2 Q. You're also charged with conspiracy; is
3 that correct?

4 A. Yes, sir.

5 Q. Did you and Rita -- no disrespect, did
6 you and Rita get together, and plan some way to
7 kill this child?

8 A. Absolutely not.

9 Q. Did y'all get together and plan some
10 way to hurt this child?

11 A. No, sir.

12 Q. Can you go back to the circumstances
13 that could have occurred?

14 A. No, sir.

15 Q. Mr. King, these other lawyers have
16 probably got some questions for you.

17 Try to answer them the best way you can,
18 all right?

19 A. Yes, sir.

20 Q. And, again, are you good?

21 A. Yes.

22 Q. Okay.

23 THE COURT: I say in the order with cross-
24 examination who goes first?

25 MR. STONE: Which way do you want to go,

1 Your Honor?

2 THE COURT: I don't know, I suppose Mr.
3 Phillips.

4 Do you have cross-examination?

5 MR. PHILLIPS: I can go last.

6 MR. STONE: I'll be glad to go, Your Honor.

7 THE COURT: All right, just --

8 **

9 **CROSS-EXAMINATION**

10 BY MR. STONE:

11 Q. Let me make sure I understand your
12 testimony, and I guess it's either based on your
13 memory of the event, or your comprehension of
14 the event at the time, right, your testimony
15 today? You haven't looked at the video, you --

16 A. No, sir.

17 Q. -- haven't done anything? This is
18 either from your memory of what happened, or
19 from your comprehension of that while it was
20 happening; is that fair?

21 A. Yes, sir.

22 Q. You would agree that everything that
23 was done to that child was done with you and
24 Rita; is that fair?

25 A. Yes, sir.

1 Q. You put the child in the car, and Rita
2 was standing there when you did, correct?

3 A. Yes, sir.

4 Q. You were standing around the car with
5 Rita when the child was inside the car, correct?

6 A. Yes.

7 Q. You went inside and --

8 MR. LOY: Your Honor, I ask the witness be
9 allowed to answer.

10 MR. STONE: He did.

11 BY MR. STONE:

12 Q. You went inside with Rita inside the
13 front porch together; did you not?

14 A. We did.

15 Q. Pardon me?

16 A. I did.

17 Q. And while you were in there the child
18 was still out in the car, correct?

19 A. She was.

20 Q. Now, is it fair to say, and I know
21 we've had some testimony, it was a pretty hot
22 day, it's in August, your house -- correct?

23 A. Yes, sir.

24 Q. And your house is -- outside the car
25 was parked actually -- it wasn't under shade, it

1 was in direct sunlight; is that fair?

2 A. Yes, sir.

3 Q. Okay. Now, when you called 911 as you
4 did, first of all I want to make sure I'm clear
5 about this, you say that from the standpoint of
6 turning on and off the car, when you put the
7 child in the car, the car was on, but you turned
8 the car off after you got the child, correct, or
9 both of you got the child out of the car; is
10 that correct?

11 A. Yes, sir.

12 Q. Okay. And you're sure about that?

13 A. Absolutely.

14 Q. Again, based on either your memory or
15 your comprehension of the event that day, right?

16 A. I'm sure about that.

17 Q. Okay. You've got a security system
18 that works pretty well at that house; do you
19 not?

20 A. Yes, sir.

21 Q. It's actually pretty sensitive; is it
22 not?

23 A. Yes, sir.

24 Q. It's got some infrared, it's got some
25 other stuff, it's picking up everything, and all

1 those are run cameras around your house, right?

2 A. Yes, sir.

3 Q. In fact, I think at one point in time
4 you can actually see a bug fly by and set the
5 camera off, right?

6 A. Yes, sir.

7 Q. And it was motion detected, correct?

8 A. Yes, sir.

9 Q. So if there's any motion around your
10 house, it's gonna pick that up, right?

11 A. Right.

12 Q. Okay. Let me go to --

13 MR. STONE: If you can go to 11:15 on the
14 camera.

15 BY MR. STONE:

16 Q. Rita came back to your -- all right,
17 first of all, you were with Rita --

18 MR. LOY: Wait for 11:15.

19 BY MR. STONE:

20 Q. You were aware --

21 MR. LOY: Your Honor, can I get a ruling?

22 THE COURT: Overruled, proceed.

23 MR. STONE: Thank you, Your Honor.

24 BY MR. STONE:

25 Q. You were with Rita starting that

1 Friday; is that right?

2 A. Yes, sir.

3 Q. In fact, you went over to your house
4 just like I think Ms. Huneycutt or Ms. Lindsey
5 said, you went over to the house and picked her
6 up in your truck, right?

7 A. Yes, sir.

8 Q. Took her back over to your house, and
9 she was with you, that would have been Friday,
10 Saturday and Sunday, right?

11 A. Yes, sir.

12 Q. And then at some point in time on
13 Sunday she went back and got the child, I guess
14 it was in the afternoon, because you had to take
15 her back over there.

16 A. Yes, sir.

17 Q. And that was later in the afternoon,
18 right?

19 A. Yes, sir.

20 Q. So she was with you that entire time?

21 A. Yes, sir.

22 Q. This is at the same time that I think
23 you also said you were on pretty much a meth
24 bender; were you not?

25 A. I was.

1 Q. You were?

2 A. I was.

3 Q. In fact, you were using constantly;
4 were you not?

5 A. I was.

6 Q. And, in fact, you also said you hadn't
7 slept in a couple days at that point, right?

8 A. Yes, sir.

9 Q. Do you even remember the last time you
10 slept up until that point?

11 A. I can't recall. I think it was
12 Thursday or Friday.

13 Q. Okay, so for Friday, Saturday, Sunday
14 you are doing meth all three of those days, and
15 you're staying up; is Rita doing that with you?

16 A. I don't recall.

17 Q. Are you sure?

18 A. Yes, sir.

19 Q. You're gonna stick with that?

20 MR. LOY: Your Honor, asked and answered,
21 let's move forward.

22 THE COURT: Objection --

23 MR. STONE: I apologize -- I apologize.

24 THE COURT: -- overruled. I mean go ahead.

25 MR. STONE: Yes, sir, I'll rephrase it.

1 BY MR. STONE:

2 Q. Did you not tell law enforcement that
3 Rita, in fact, likes to put her meth in her
4 coffee and drinks it that way; did you not tell
5 them that?

6 A. I may have, yeah.

7 Q. You may have mentioned that? Okay.
8 She's with you the entire time on this three-day
9 bender, you're using meth, your testimony you
10 don't remember if she was using it or not, but
11 you know that when she does use it, she puts it
12 in her coffee; is that your testimony?

13 A. I speak for myself, sir.

14 Q. Well, unfortunately, you answered my
15 question, sir. So my question was, when you're
16 doing the meth, is Rita doing it with you?

17 A. She was using.

18 Q. Thank you, sir.

19 So on this three-day bender that you and
20 Rita are on, did she sleep at all, or were you
21 both up the whole time?

22 A. No, she slept.

23 Q. Okay. So you heard the testimony from
24 the -- actually, the toxicologist, that talks
25 about -- and she actually talked about you're

1 under the influence going up and coming down,
2 and, in fact, I think she even actually
3 mentioned that while you're on it and taking it,
4 you're staying up, that's not unusual.

5 So that's pretty consistent with your
6 testimony of what happened to you; is that
7 right?

8 A. Yes, sir.

9 Q. Would you also agree that when you're
10 on meth, and I know you're not on it today, but
11 let's make sure you were on it these days,
12 right?

13 A. Yes, sir, I was.

14 Q. Is it fair to say that you had problems
15 with your decision-making, your critical
16 judgment, your cognitive abilities?

17 A. Yes, sir.

18 Q. Is there anything she testified to, as
19 to the effect of methamphetamine, is pretty much
20 what you were experiencing; is that correct?

21 A. Yes, sir.

22 Q. And, in fact, including the increased
23 libido?

24 A. Yes.

25 MR. LOY: Objection, it's irrelevant.

1 MR. STONE: I'm getting there.

2 THE COURT: Objection is overruled.

3 BY MR. STONE:

4 Q. In fact, when you went into the house
5 with Rita for about an hour or so like this, I
6 think you told counsel you'all were making up.

7 You were going inside to have sex; were you
8 not?

9 A. We did.

10 Q. And that's why the child was still out
11 in the car?

12 A. In the air conditioning with the car
13 running.

14 Q. Okay, well, let me go back now to, the
15 car was on when you put the child in the car?

16 A. Absolutely.

17 Q. And you turned it off before law
18 enforcement got there?

19 A. Yes, sir.

20 MR. STONE: Could you go to 11:15?

21 BY MR. STONE:

22 Q. Can you see the monitor from where
23 you're sitting?

24 A. Yes, sir.

25 Q. That's the car we're talking about,

1 correct?

2 A. Yes, sir.

3 Q. This is your front porch?

4 A. Yes, sir.

5 Q. And speak into the microphone so
6 these --

7 A. Yes, sir.

8 Q. And you also testified that your
9 monitor is pretty sensitive, so it's picking up
10 -- I was just picking up motion now that we
11 really can't even see. I guess that is from the
12 moth, or anything like that? Any of that stuff
13 that could have set it off? It's pretty
14 sensitive.

15 A. Yes.

16 Q. Okay, and were you hear when the
17 officer testified that up until this point,
18 there had been no motion around that car?

19 A. No.

20 Q. Of course, you picked her up from the
21 house -- you took her back to the house, and she
22 came back? What time did she come back?

23 A. I don't know.

24 Q. I mean it was at night though, right?

25 A. Yes.

1 Q. Like Sunday night?

2 A. I think so, yes.

3 Q. Okay. I'm just gonna ask you while
4 we're waiting on that, the car's not on now, is
5 it?

6 A. I'm not sure.

7 Q. This is you and Rita coming out of the
8 front door?

9 A. Yes, sir.

10 Q. This is you carrying the child?

11 A. Yes, sir.

12 MR. STONE: Pause it right there for a
13 minute, please. Thank you.

14 BY MR. STONE:

15 Q. When Rita came back to your house that
16 Sunday night, did she have her child with her?

17 A. Yes, sir.

18 Q. Did she bring the child inside the
19 house?

20 A. Yes, sir.

21 Q. Would this have been sometime around
22 8:00 or 9 o'clock that Sunday night?

23 A. I don't recall, sir.

24 Q. It wasn't midnight, was it?

25 A. No, sir.

1 Q. And she brings the child in with her;
2 does she not?

3 A. Yes, sir.

4 Q. Does she go back to the car after that,
5 or did she just stay with the child and you?

6 A. I don't remember, sir.

7 Q. When did -- that Friday night, did she
8 go to sleep?

9 A. Did she got to sleep?

10 Q. Yeah.

11 A. Yes, sir, she laid down.

12 Q. What time did she go to sleep?

13 A. I don't recall.

14 Q. All right.

15 MR. STONE: If you can play it.

16 (Video being played for the jury.)

17 BY MR. STONE:

18 Q. This is you and Rita in the back of the
19 car; is that correct?

20 A. Yes, sir.

21 Q. Pardon me?

22 A. Yes, sir.

23 Q. The back door's open, correct?

24 A. Yes, sir.

25 Q. The front door's not open, is it?

1 A. No, sir.

2 Q. The first time you and Rita had gone
3 out to the car that day?

4 A. That I'm aware of, I think so. It's
5 the first time I did.

6 Q. Just you and Rita together?

7 A. Yes, sir.

8 Q. And I'm assuming this is when you guys
9 -- when you were upset with her, because she's
10 cheated on you, right?

11 A. Yes, sir.

12 Q. Pardon me?

13 A. Yes, sir.

14 Q. What I'm gonna do is, I'm gonna fast
15 forward this, and I'd like you to just keep
16 watching it.

17 MR. STONE: Let's fast forward the speed
18 since we already know what's on it. Go ahead
19 and move it up three or four times.

20 (Video being played for the jury.)

21 BY MR. STONE:

22 Q. If you can't see this, or if this goes
23 too fast, you let me know, sir, please?

24 A. Yes, sir.

25 Q. Okay. By the way, while we're watching

1 this, when you called 911, you actually said
2 that Rita put the child in the car; did you not?

3 A. I don't remember, sir.

4 Q. No question, you're the one that put
5 Rita in the car, correct?

6 A. **Child**, yes, sir.

7 Q. You also told the 911 operator she'd
8 been in the car maybe one, maybe two hours?

9 A. Yes, I wasn't sure. I looked at Rita
10 when I was asked that question, as you can see
11 on the video, and she gave me that time.

12 I had no idea how long she'd been in there.

13 Q. Do you think that's the effect of meth,
14 or were you just trying to minimize it?

15 A. I had no idea, sir.

16 Q. Okay. What were you talking about; do
17 you remember?

18 A. Not everything. I was exhausted that
19 morning, sir.

20 Q. Do you recall if you were arguing at
21 this point, or making up, or anything?

22 A. No, sir. No, sir. I was asking her to
23 just go and I would call her later.

24 MR. LOY: Your Honor, can you ask the
25 witness to speak up just a little, I'm having

1 trouble hearing him.

2 THE COURT: I need you to speak up, sir.

3 BY WITNESS:

4 A. Yes, sir. At that point, I was still
5 asking her to leave, and trying to convince her
6 that I would call her later. I was exhausted, I
7 just didn't want to deal with her at that
8 moment.

9 Q. Okay. 11:43 or 11:44,, you both go
10 inside; is that right?

11 A. Yes, sir.

12 Q. Okay, and I know you haven't seen the
13 video, but would it surprise you that you stay
14 inside the house for about 30 minutes or so
15 after that?

16 A. Yes.

17 Q. Okay, and you don't come back out for a
18 while, going back out there at all, do you?

19 A. No, sir, I laid down.

20 Q. Okay, well, the video will speak for
21 itself on that, you laid down.

22 When you'all were going back in just now,
23 were you'all going back in to have sex?

24 A. We went in I think to make up.

25 Q. Pardon me?

1 A. We went back into make up, yes, sir.

2 Q. When you turned the car, according to
3 your memory, when you turned the car off,
4 according to you, before the police got there,
5 you reached in the front door and pushed the
6 button?

7 | A. Yes, sir.

8	Q. Did you watch this video?

9	A. No, sir.

10 Q. You've got a sensitive motion sensor
11 camera that picks up everything with infrared
12 lighting and the whole bit, in fact, bugs could
13 come up and pick it up.

14 There was no motion on the camera up until
15 11:15, which the motion that was set off is by
16 you and Rita walking to the car.

17 Did you see anybody go into the front door
18 of that car during this time that we just looked
19 at?

20 A. No, sir.

21 MR. STONE: Nothing else.

22 THE COURT: Mr. Phillips?

23 * *

24	CROSS-EXAMINATION

25 BY MR. PHILLIPS:

1 Q. Mr. King --

2 A. Yes, sir.

3 Q. -- when you called 911 your immediate
4 response was, "Oh, my God."

5 A. Yes, sir.

6 Q. You were in a state of absolute shock?

7 A. Absolutely.

8 Q. Their next response, they said, "What
9 is your -- what is the address of your
10 emergency?" "Hey, man, I've got an emergency I
11 mean real quick." There wasn't any intent to
12 cover up anything

13 A. No, sir.

14 Q. Because there wasn't a plan to do
15 anything?

16 A. No, sir.

17 Q. So your initial response was to call
18 911, your initial response to the operator
19 answering your call was to say, "Oh, my God?"

20 A. Yes, sir.

21 Q. Your next response, "My daughter was
22 locked in a car, she had the A/C on, my girl
23 locked her keys in the car, we had to run to her
24 house to get the key fob and come back?"

25 A. Yes, sir.

1 Q. All right.

2 MR. PHILLIPS: If you'all will pull it up
3 to, what is it, 12:29.

4 MR. HIGHTOWER: Sure.

5 BY MR. PHILLIPS:

6 Q. Now, Mr. King, I understand you didn't
7 come back outside --

8 A. Uh-huh.

9 Q. -- but Rita did?

10 A. Yes, sir.

11 Q. I'm not trying to excuse what happened,
12 but Rita did come back outside?

13 A. Yes, sir.

14 Q. Rita came out of your house?

15 A. Yes, sir.

16 Q. Does Rita open the back door to check
17 on her, or, excuse me, that's the next one.
18 That's actually Rita sitting down in the front
19 seat of the car. Now you see a time where there
20 wasn't any motion.

21 MR. PHILLIPS: Do you want to go back?

22 Okay.

23 (Video being played for jury.)

24 BY MR. PHILLIPS:

25 Q. So 12:29 Rita comes out and sits in the

1 front seat of that car, and she doesn't,
2 obviously, get out immediately, because the
3 camera skips, because it's a motion sensor
4 camera, so she stayed in the front seat of that
5 car for a period of time. You don't know
6 whether she cut on the car at that point, right?

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

8 Q. 'Cause she went out and checked on
9 **Child** ?

10 A. Yes, sir.

11 Q. All right, now she comes back, she's
12 been out of the front seat, she opens the back
13 door, she says something to **Child** Looks at
14 the gages of the car, do you see her pausing and
15 looking up front --

16 A. Yes, sir.

17 Q. So we have Rita sitting in the front
18 seat for a period of time, and Rita getting out,
19 and Rita opening the backseat, and then in the
20 front looking at the gages, and walks back in.

21 A. Yes, sir.

22 Q. That's what the video shows?

23 A. Yes, sir.

24 Q. Again, I'm not -- this should have
25 never happened.

1 A. Absolutely.

2 Q. Mistakes were made.

3 A. Yes, sir.

4 Q. You both should have done things
5 differently?

6 A. Yes, sir.

7 Q. Now you told Officer Varnadoe that Rita
8 loved her to death.

9 A. She did.

10 Q. Is that true?

11 A. It is.

12 Q. Is that your hand on the Bible to God
13 that she loved her daughter?

14 A. It is.

15 Q. And that's your statement here today as
16 it was then --

17 A. Yes, sir.

18 Q. -- on the scene to the police?

19 A. Yes, sir.

20 Q. You saw how she acted with her
21 daughter?

22 A. Yes, sir.

23 Q. Would Rita have wanted **Child** to die
24 in any way, shape or form?

25 A. Absolutely not.

1 Q. Now, there was a phone call made during
2 this time and who did you call?

3 A. Stokes Lock and Key.

4 Q. Two different people. So, again, you
5 had -- well, I guess that's where you called.

6 A. Yes, sir.

7 Q. You called Stokes Lock and Key?

8 A. Yes, sir.

9 Q. And what did -- how did that go?

10 A. The key fob wouldn't unlock and it
11 wouldn't work, and I guess the batteries were
12 weak, so he gave me instructions, and told me
13 where the emergency key was, and told me what to
14 do to get inside the car.

15 Q. Now, the jury saw yesterday you'all
16 shaking the car.

17 A. Yes.

18 Q. There hasn't been any explanation for
19 that, because that seems strange. You found
20 that out through --

21 A. I'm thinking so, yes, sir.

22 Q. Well --

23 A. I didn't remember really shaking the
24 car, but my attorney had addressed that.

25 Q. It's in the --

1 A. So I'm assuming that maybe he might
2 have said something to maybe reset, I don't
3 know.

4	Q. Is that right?

5 A. Yes, sir, yes, sir.

6 Q. Now, with that, at this point your
7 position clearly is that Rita loved her daughter
8 to death?

9	A. She did.

10 Q. And there was absolutely no position on
11 you'all's part, in terms of wanting Rita to die,
12 that's clear?

13 A. **Child**, absolutely not.

14 Q. **Child** Now, as far as her being in
15 that car, it was your belief the car was
16 running?

17 A. Yes, sir.

18 Q. Would you or Rita have ever left her in
19 that car if you'all thought it was not on?

20	A. Never.

21 MR. PHILLIPS: No further questions.

22 THE COURT: Anything further, Mr. Loy?

23 MR. LOY: Just one or two.

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REDIRECT EXAMINATION

BY MR. LOY:

Q. I don't think I asked you this earlier.
Are you and Rita in a relationship now?

A. No, sir.

Q. Have you been in a relationship since
that day?

A. No, sir.

Q. Thank you.

MR. LOY: No more questions.

THE COURT: By the Solicitor?

MR. STONE: Thank you.

RECROSS-EXAMINATION BY MR. STONE

BY MR. STONE:

Q. So first of all, you weren't out with
Rita at 12:30, when she walks back out to the
car were you?

A. No, sir.

Q. In fact, it doesn't even look like you
were on the porch or anything, right?

A. That's right.

Q. You don't know what she did, correct?

A. Correct.

Q. So your opinion about the car being on

1 or off at this point, you don't know one way or
2 the other, do you?

3 A. Actually, I don't.

4 Q. Your testimony is, the car was already
5 on?

6 A. Yes, sir.

7 Q. Okay, and you're gonna stick with that,
8 or are we changing now to Rita starting the car?

9 A. Rita did start the car.

10 Q. What now?

11 A. Rita did turn the car on, I didn't turn
12 the car on.

13 Q. When did Rita turn the car off?

14 A. On.

15 Q. Oh, I'm sorry, Rita turned the car on.
16 When did she do that?

17 A. To be honest, I'm not sure, so I mean
18 when she tried to start --

19 Q. All right.

20 A. -- the car.

21 Q. You didn't go out here up to this
22 point, so you don't know if the car is on at
23 this point or not, one way or the other, right?

24 A. No, sir.

25 MR. STONE: All right, let me go to exactly

1 12:30:25, please.

2 BY MR. STONE:

3 Q. And is it fair to say, sir, that if
4 she's turning the car on now, the child has
5 still been in the car for at this point an hour
6 and 15 minutes?

7 A. The car was running when I put the
8 child in the car.

9 Q. Okay, okay. So that's not her turning
10 the car on --

11 A. I --

12 Q. -- 'cause it's already on, right?

13 A. I don't know what Rita's doing right
14 now, I wasn't outside.

15 Q. Right. Okay. Is it fair to say she's
16 opening both doors at the same time?

17 MR. STONE: Go back to that, again, please,
18 sir.

19 BY MR. STONE:

20 Q. Is it fair to say she's opening the
21 front door? Sir?

22 A. Yes, sir.

23 Q. All right, this is the first time, I
24 was talking about the second one. Okay, it's
25 12:30, she walks back to the car, is it fair to

1 say she's opening the front door --

2 A. Yes, sir.

3 Q. -- and the backdoor at the same time?

4 A. Yes, sir.

5 Q. I'm wondering why you would do that,
6 unless you were airing out the car.

7 MR. LOY: Your Honor, I don't have any
8 further questions. The Solicitor's asking --

9 MR. STONE: I'm sorry, I should have put
10 that in the form of a question.

11 BY MR. STONE:

12 Q. Do you have any idea why somebody would
13 open both doors at the same unless they were
14 trying to air the car out?

15 MR. LOY: It calls for speculation, Your
16 Honor.

17 MR. STONE: I'm asking --

18 THE COURT: What?

19 MR. LOY: I'm objecting, that it calls for
20 speculation, and I'd ask for it to be stricken.

21 THE COURT: Objection is overruled.

22 MR. STONE: Thank you, Your Honor.

23 THE COURT: Anything further, Mr. Phillips?

24 MR. PHILLIPS: Just one question.

25 **

1 **RECROSS-EXAMINATION BY MR. PHILLIPS**

2 BY MR. PHILLIPS:

3 Q. When you watch that video -- we can
4 pull it up again -- because this is mainly for
5 the jury.

6 MR. PHILLIPS: Go back to I guess their
7 contention that the two doors are open.

8 (Video being played for the jury.)

9 BY MR. PHILLIPS:

10 Q. When you watch this video, because
11 there's really two interactions.

12 The first sitting down in the driver's seat
13 for a period of time, and then the second one
14 where she goes back to the car and opens both
15 doors. She peeks her head in and looks at the
16 gages of the car, specifically, looked at the
17 front part of the -- at what I assume to be the
18 gages of the car.

19 A. Yes, sir.

20 Q. She says something, and then she sticks
21 her head in the car. That's what you see?

22 A. Yes, sir.

23 Q. It's not that she just opens two doors?

24 A. Yes, sir.

25 MR. PHILLIPS: Thank you.

1 THE COURT: Anything further?

2 MR. STONE: No, Your Honor, thank you.

3 MR. PHILLIPS: No, sir.

4 THE COURT: You may step down.

5 Call your next witness.

6 MR. LOY: Your Honor, the defense rests.

7 **

8 **DEFENSE RESTS**

9 THE COURT: Okay. Per the defense King's
10 case, Mr. Phillips, you may proceed.

11 MR. PHILLIPS: Thank you, Your Honor.

12 Ms. Pangalangan, we will call Robert
13 Arabis.

14 THE COURT: Mr. Arabis.

15 ***

16 **ROBERT ARABIS,**

17 **BEING DULY SWORN TESTIFIED AS FOLLOWS:**

18 ***

19 BY MR. PHILLIPS:

20 Q. Mr. Arabis --

21 A. Yes, sir.

22 Q. -- if you could, please introduce
23 yourself to the jury.

24 A. Hi, name is Robert Arabis.

25 Q. And where did you work?

1 A. I work at Stokes Lock. I am the owner
2 of Stokes Lock and Key.

3 Q. How long have you owned and operated
4 that business?

5 A. I've worked there for 38 years, and
6 I've owned it for 36 years.

7 Q. And I would say from your training and
8 experience with that many years, you know
9 everything about unlocking vehicles?

10 A. Not everything, but a good bit, yes.

11 Q. You would consider yourself well-versed
12 in unlocking not just homes and different locks,
13 but vehicles?

14 A. Yes, sir.

15 Q. How many vehicles do you think you've
16 been called to help unlock?

17 A. I've thought about that the other day,
18 thousands, like, two or 3,000.

19 Q. And I notice when I come into town, I
20 see Stokes Lock and Key, so I mean you're a
21 staple here right local in the community; is
22 that fair to say?

23 A. Yes, sir.

24 Q. And with serving the community total in
25 your 36 years, again, do people call you to ask

1 you for help randomly as well kind of?

2 A. Sometimes, like, advice help?

3 Q. Yes.

4 A. Yes.

5 Q. And on August 5th of 2019 did you get a
6 phone call?

7 A. Yes.

8 Q. Related to this case?

9 A. Yes.

10 Q. If you could, explain to the jury what
11 happened.

12 A. I got a phone call from a person that I
13 knew named Larry King. He sounded very
14 frustrated and told me that he was trying to get
15 into a car.

16 And I don't remember if at that time it was
17 mentioned there's a child in the car, and I
18 said, "Well, where are the keys? Are they
19 locked in the car?" And he said, "No, I have
20 it, but this isn't like a normal key."

21 So he probably told me the year, make,
22 model, it comes through on the computer to make
23 sure I knew exactly what I was working with over
24 the phone. And I realized it was a push to
25 start vehicle, and that inside what I call a

1 transmitter, it's not really a key, there is an
2 emergency key in there.

3 Sometimes you press the little button with
4 your fingernail or a pen, or you slide
5 something, depending on the year, make and
6 model, you pull this emergency key out. Now, it
7 usually goes only into the driver's door lock,
8 but sometimes that driver's door lock is not
9 visible.

10 It's where the handle would be and there's
11 a cover, where your cylinder would normally be,
12 and that cover has to -- you actually take the
13 blade of the key underneath it and pop that
14 little cover off, and stick the key in, and
15 that's how you unlock the door.

16 Q. And so you explained that process to
17 him?

18 A. Well, again, he sounded very
19 frustrated, and I could hear him like -- how do
20 I describe this? Like trying to -- I don't know
21 if he was kicking the car, or if he had been
22 working with a coat hanger, or something like
23 that, but he was very frustrated, and said, "You
24 don't understand, this car doesn't take a key."

25 And I said, "No, I do understand." And he

1 mentioned something about somebody going to get
2 another transmitter. And I said that's not
3 necessary. The transmitter you have use it.

4 So once he got the key out, I told him,
5 "Although there's no keyhole on the driver's
6 door handle, you've got to come up underneath,
7 pry the cap off that conceals it," it must have
8 been a higher-end vehicle, "and then just turn
9 the key." So we're doing all this, and it's
10 happening pretty rapidly, and we get --

11 Q. To the best of your ability, take your
12 time.

13 A. Uh-huh. So after the conversation with
14 him, I never really heard another voice, and I
15 hear voices when I'm talking to Larry in the
16 background, and he had to have gotten in the
17 car.

18 He described like pick up a brick and throw
19 it through the window. Again, he didn't sound
20 like the Larry King that I knew, this is
21 something different. He was very frustrated.

22 And I heard they obviously got in the car,
23 and there was obviously a female there, because
24 I heard, and this was how the phone call pretty
25 much ended, I heard a female say, "Larry --

1 MR. STONE: I object, Your Honor, I think
2 that's hearsay.

3 BY WITNESS:

4 A. So don't --

5 Q. He's objecting.

6 A. Okay, so after I -- okay, then the
7 phone made a sound as if it was dropped, and I
8 heard just sounds in the background, including
9 -- well, I can't -- you said I can't say that.

10 Q. But based on what you heard, what did
11 you do then? Because I think at that point
12 you --

13 A. The phone went clickety-click, as if it
14 had landed somewhere, and then the phone call
15 got disconnected.

16 Q. And at that point you believe there was
17 definitely an emergency involved, based on what
18 you heard?

19 A. I knew there was an emergency involved
20 because of -- well, I'm not being allowed to say
21 what I overheard on the conversation. So I said
22 to a friend customer, who's a friend of mine
23 outside of the business, and another customer,
24 because I'm right there on the phone, "You're
25 about to see more fire trucks, ambulances,

1 police cars then you've ever seen in your life
2 come flying by here at maybe 90 miles an hour,
3 any moment now."

4 And I would say within four to five minutes
5 of that, every fire truck, EMS, police car
6 weren't even doing 70, were doing like more than
7 90. 'Cause it's 35 out there, you know when
8 somebody's speeding.

9 And I said that again to this friend, and
10 this customer, and a customer there, and they
11 asked me, "What happened?" And I told them
12 pretty much everything here, because one of them
13 knew Larry.

14 Q. You knew something shocking had
15 happened?

16 A. Oh, I'm certain, because of what --

17 Q. I understand.

18 A. Yes, sir.

19 MR. PHILLIPS: No further questions, Your
20 Honor.

21 MR. STONE: I don't have any questions.

22 MR. LOY: Nothing, thanks for coming.

23 THE COURT: All right, thank you, sir.

24 WITNESS: Thank you.

25 THE COURT: Your next witness?

1 MR. PHILLIPS: Your Honor, defense calls
2 Nancy Carter.

3 THE COURT: Nancy?

4 MR. PHILLIPS: Carter.

5 THE COURT: All right.

6 ***

7 NANCY CARTER,

8 BEING DULY SWORN TESTIFIED AS FOLLOWS:

9 **

10 DIRECT EXAMINATION

11 BY MR. PHILLIPS:

12 Q. Hey, Ms. Carter.

13 A. Hello.

14 Q. If you could, give a little background
15 about yourself, and then how you know Ms.
16 Pangalangan.

17 A. Okay, I'm a retired educator. I've
18 spent all my years in Colleton County. I
19 started in 1976, was a classroom teacher, and
20 then I became Administrator.

21 And in 1987 I became Principal of Black
22 Street Elementary School, and during that time
23 Ms. Pangalangan became a student teacher. And
24 then she became -- I was able to hire her as a
25 classroom teacher, and she was a first-grade

1 teacher. So all my experience has been in
2 education.

3 Q. And how long did she teach?

4 A. Her student teaching was in the years
5 '92 or '93, and we were together three years at
6 Black Street. And then when they built
7 Northside Elementary, I was transferred there as
8 the Principal.

9 And then about half of the teachers at
10 Black Street were transferred to Northside with
11 me, and then some other teachers came, so we
12 were there together for five years, so together
13 about eight years we were coworkers.

14 Q. And so not only as coworkers, would you
15 describe yourselves as friends?

16 A. Not personal friends, but professional
17 friends.

18 Q. Okay, and as far as work and show she
19 interacted day-to-day?

20 A. Correct.

21 Q. Okay, and how would you describe her as
22 a coworker?

23 A. One word that comes to mind is
24 passionate. She was very passionate about what
25 she was doing. She was an excellent first grade

1 teacher. You knew that she loved what she was
2 doing, that that was obvious.

3 It was one of those teachers, which
4 sometimes you had to wonder when the door was
5 closed, if they were continuing their job,
6 that's not anything I had to worry about in her
7 particular situation. She was always doing what
8 she needed to be doing. I would consider her
9 reliable, dependable, helpful.

10 There were times if we needed -- if other
11 teachers needed help, or if I needed additional
12 help, she would definitely jump in and help.
13 One situation comes to mind, which I had a new
14 art teacher, who could not always show up for
15 bus duty on time in the morning, so Ms.
16 Pangalangan would go down every morning and
17 check to see if the teacher was there. If the
18 teacher wasn't there, then she would take the
19 place until the teacher arrived.

20 And then there was another situation about
21 being helpful, in which the School District has
22 required that we keep track of all our
23 professional development, and any kind of
24 activities like that that we have. And so at a
25 faculty meeting at the end of the year, we were

1 talking about that, and I had a teacher raise
2 her hand, and she did not have some of the
3 information she needed.

4 Well, Ms. Pangalangan had everything
5 written in detail, so everybody started writing
6 down the details, so, you know, everybody was
7 appreciative of her helpfulness then.

8 Q. Let me stop you there.

9 A. Okay.

10 Q. You knew **Child**, right? You knew how
11 she had sometimes brought her to work, you had
12 seen her interact?

13 A. **Child** was born after I left
14 Northside.

15 Q. But you stayed in contact?

16 A. We would run across each other every
17 now and again, but my contact with Ms.
18 Pangalangan and **Child** actually appeared on
19 Facebook. I would keep up with the things they
20 were doing on Facebook, so I kind of kept up
21 with **Child's** life and Ms. Pangalangan's life
22 on Facebook.

23 Q. And you end up going, I think, to --
24 you did -- your time of work at the School
25 Board; is that right?

1 A. I officially or technically retired in
2 2005, and then I went back to the School
3 District and worked part-time until 2013.

4 Q. And --

5 A. I think that's when I turned 62, and I
6 said that was it.

7 Q. And with that, you'all have stayed in
8 touch randomly, you'all had conversations
9 between them, enough so that when all this
10 happened and she was arrested, you visited her
11 right after she was arrested?

12 A. Yes, I did.

13 Q. Would you describe her as remorseful?

14 A. Yes, she was very upset.

15 Q. Genuine?

16 A. It appeared that way.

17 Q. But you felt so compelled in knowing
18 her, that you still after all that time wanted
19 to visit her to see how she was doing?

20 A. Yes.

21 Q. And you're here on her behalf, not to
22 talk about anything that we're -- the specific
23 allegations, but talk about her character?

24 A. Correct.

25 Q. And you would describe her character,

1 specifically -- I don't want to put words in
2 your mouth. How would you describe her
3 character?

4 A. I feel like she's very caring. When
5 she was a classroom teacher with her children,
6 she worked with them. She had children who were
7 above average, average, below average, it didn't
8 matter, she was able to work with them.
9 Discipline problems, she was able to take care
10 of those.

11 If somebody went over the top, she would
12 bring them to the office for assistance from one
13 of the Administrators, but from my recollection,
14 that did not happen very often.

15 Q. Is there anything else from a character
16 standpoint, or who she was, as far as you know
17 her, that you would like to tell the jury about
18 her?

19 A. Ms. Pangalangan, when we worked
20 together she was a very caring person, a very
21 honest person, and it was somebody I could count
22 on whenever I needed anything.

23 Q. Thank you.

24 MR. PHILLIPS: No further questions.

25 THE COURT: By the State?

1 MR. STONE: Yes, sir.

2

3

4

CROSS-EXAMINATION BY MR. STONE

5

BY MR. STONE:

6

Q. Ms. Carter, just a few questions.

7

8

So this is how you would describe her when
you worked with her; is that right?

9

A. Yes.

10

11

Q. And I'm trying to get my timeframe, so
please correct me if I'm wrong.

12

A. Okay.

13

14

Q. You guys actually stopped working
together in what year?

15

A. 2001.

16

Q. 2011?

17

A. I went to Northside, yes.

18

19

20

Q. Okay, so 2001. And then after that
Facebook, but no direct contact, that type of
thing, right?

21

22

23

A. We would maybe see each other
occasionally somewhere, but not as far as
coworking.

24

25

Q. Okay, so the coworking itself that
you're talking about for 18 years were before

1 this happened?

2 A. Correct.

3 Q. Thank you.

4 A. Correct.

5 Q. Thank you, ma'am. As far as your
6 relationship, and even in that timeframe, you
7 were professional friends and not personal
8 friends; is that right?

9 A. Correct.

10 Q. I assume you didn't socialize very
11 much, go out with her, or anything like that?

12 A. No.

13 Q. You never went on any kind of date?
14 Were you around her when she was with Larry?

15 A. No.

16 Q. Okay. Were you ever with her when she
17 was with Larry?

18 A. No.

19 Q. Did you know Larry?

20 A. No.

21 Q. Okay.

22 MR. STONE: No further questions.

23 THE COURT: Mr. Loy?

24 MR. LOY: Nothing, Your Honor, thank you.

25 THE COURT: Mr. Phillips?

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q. Even beyond your retirement, when she was a teacher, you also oversaw that as well?

A. I would run across her occasionally, but her supervisor was the Principal at that particular school.

Q. Right, but she wasn't a stranger to you. When you and I spoke, you certainly made it clear --

A. Yes, she was not a stranger to me.

Q. And you said that you had kept up with her, and you felt so compelled by the relationship you'all had, you went and saw her right after?

A. Yes. I -- and I don't remember whether I said this earlier, but **Child** was not one of her children that I knew; however, with Facebook I kept up with **Child** and Ms. Pangalangan's relationship on Facebook, because she would post pictures of **Child** in her house, or **Child** especially swimming, and they were just cute pictures of their relationship.

Q. How would you describe that relationship from the pictures I mean as you

1 just said?

2 A. It appeared to be a very caring
3 relationship.

4 Q. All different kinds of things -- or
5 Special Olympics.

6 A. I think I do remember pictures of
7 Special Olympics, yes.

8 Q. And different places?

9 A. Yes.

10 Q. And stuff like that?

11 A. Yes, especially the swimming, those
12 were just very cute.

13 MR. PHILLIPS: Thank you, Your Honor.

14 THE COURT: Anything further?

15 MR. STONE: No, sir.

16 THE COURT: Thank you, you may step down.

17 All right, so it's 11:59, that means we're going
18 to stop for the day, and we're gonna want to
19 start back at 9:00 a.m. Friday morning.

20 We'll be -- hopefully, everything will be
21 fine, and we can get here at 9:00 a.m.

22 Is there anyone who cannot be here at 9:00
23 a.m. on Friday morning? From Jackson -- is it
24 Jacksonboro?

25 JUROR: I'll call.

1 THE COURT: Pardon?

2 JUROR: I'll call if I can't.

3 THE COURT: You'll call if you can't, all
4 right. When are you gonna call?

5 JUROR: The night before.

6 THE COURT: The night before, very good.
7 Well, thank you very much. We'll see you all at
8 that time. Please do not discuss the case with
9 anyone, while you're gone. Friday morning, 9
10 o'clock.

11 (Jury exits the courtroom.)

12 THE COURT: We'll take just a couple of
13 minutes to discuss jury charges, if you'all have
14 anything?

15 MR. PHILLIPS: I can email mine.

16 THE COURT: All right. So tell me what's
17 in your requested charges.

18 MR. PHILLIPS: On specific would be under
19 the Watson case, that malice and reckless are
20 not the same, but that extreme reckless
21 disregard for human life is the proper statement
22 of all, so I have that.

23 Also what I've discussed with Your Honor
24 earlier was that for reasonable doubt, my
25 personal preference Your Honor has charged that.

1 THE COURT: There's a charge with a
2 combination of firmly convinced and hesitation.

3 MR. PHILLIPS: You did do both?

4 THE COURT: Yes.

5 MR. PHILLIPS: And so, some of them that I
6 have are included are general ones that are
7 probably already included in your standard
8 charges. Always make sure to have them -- one
9 second, Your Honor.

10 THE COURT: Even though you have not seen
11 the wording of Mr. Phillips' requested charge,
12 but is there a conflict in what he just said
13 with?

14 MR. STONE: Your Honor, I don't think there
15 is. I was kind of going through that in my
16 head. I think, in fact, I think we could
17 probably if we just add it to the State's
18 request for charge are put in there as well.

19 I think it's the same thing. It's very
20 interesting, but I think, basically, what he's
21 saying is, the only change in language is the
22 additional word of extreme recklessness; is that
23 right?

24 THE COURT: He loves the word extreme.

25 MR. STONE: And I think that's consistent

1 with the request that I made. The specific
2 language I have listed is malice and
3 recklessness are not equivalent.

4 Extreme recklessness can lead to an
5 inference of malice. And then giving the State
6 malice may be inferred from an act so reckless
7 as to manifest ill-will and disregard of human
8 life.

9 THE COURT: All right, so you'all will look
10 at each other's --

11 MR. STONE: Yes, sir.

12 THE COURT: -- tweaks, comments, whatever,
13 and then we'll decide --

14 MR. STONE: Yes, sir.

15 THE COURT: -- in the end.

16 THE COURT: Yes, sir.

17 MR. PHILLIPS: Near suspicion, there's not
18 enough to sustain a conviction.

19 THE COURT: Yes, sir. And you have all
20 this written out in a requested charge?

21 MR. STONE: Yes, Your Honor. I'll email it
22 to you. Of course, the other standard
23 presumption of innocence, all the other
24 standards.

25 And the only other matter that I have is,

1 as to State's request to charge two, there
2 hasn't been a defense that I'm aware of. The
3 State has requested a charge of voluntary
4 intoxication but that does not constitute an
5 offense or a crime. That has not been presented
6 by the defense, and so this request, at this
7 point, is not proper. The standard for jury
8 instruction as any evidence, and I don't think
9 there has been evidence that voluntary
10 intoxication.

11 THE COURT: Yes, sir.

12 MR. STONE: Thank you, Your Honor. So
13 certainly there's been testimony of voluntary
14 intoxication, and I want to make sure,
15 especially when we're talking about extreme
16 recklessness and the other standards, about the
17 mental state, which is really what this whole
18 case is about.

19 That there's no confusion with the jury
20 that, oh, well, he -- they were hyped up on
21 meth, so that's an excuse. That's why I offered
22 it, because I know the state-of-mind is the
23 crucial instrument of this case, and there's
24 clearly been testimony about voluntary
25 intoxication.

1 In fact, that's why I actually used the one
2 that said voluntary intoxication and the use of
3 drugs, that's the reason that's in there.

4 So I think it is relevant. I do think it's
5 important in this matter.

6 THE COURT: Mr. Loy?

7 MR. LOY: A mere presence charge.

8 THE COURT: Yeah, we -- yeah, there is a
9 mere presence charge, that's --

10 MR. STONE: I'm requesting that.

11 THE COURT: Generally, yeah, it will be
12 charged.

13 MR. LOY: Thank you.

14 THE COURT: Must be participating,
15 basically.

16 MR. LOY: Thank you, Your Honor.

17 THE COURT: So this -- whether you call it
18 a defense or not, but the defense is an
19 acknowledgement mistakes were made, she'll have
20 to pay a price, but it's not murder.

21 MR. LOY: That's right.

22 THE COURT: So is that a defense, when you
23 say to the jury, "Well, we made some mistakes,
24 we're not totally innocent, we are guilty, but
25 we're not guilty of murder?"

1 MR. LOY: Voluntary intoxication is very
2 specific. His charge of voluntary intoxication
3 and use of drugs, does not constitute a defense.

4 We have not presented a defense of
5 voluntary intoxication. Without there being any
6 evidence, the defense of voluntary intoxication,
7 this charge has been dropped.

8 THE COURT: Well, there is evidence of
9 voluntary intoxication.

10 MR. STONE: A defense of voluntary
11 intoxication. I've objected to every bit of the
12 testimony and toxicology related to
13 intoxication. That's been a thread throughout
14 this whole trial, even pretrial.

15 THE COURT: Well, you've objected, but King
16 has introduced evidence up to this point saying,
17 "Well, I used crack all night, I hadn't slept in
18 three days," not crack but meth.

19 MR. STONE: But they haven't raised a
20 defense of --

21 THE COURT: All right.

22 MR. STONE: -- voluntary intoxication.

23 THE COURT: So the question is whether or
24 not something has to be raised as a defense, in
25 order for the Court to charge it?

1 MR. STONE: That would be one thing,
2 because if Your Honor --

3 THE COURT: Well, that's the question.

4 MR. STONE: That's correct.

5 THE COURT: And both sides have to weigh in
6 on that question.

7 MR. PHILLIPS: My position as far as --

8 THE COURT: But the Court can charge
9 anything that is raised, based on the evidence,
10 whether it's requested or not. Go ahead.

11 MR. PHILLIPS: My position is that we
12 absolutely have to raise that defense for it to
13 be in the jury charge.

14 THE COURT: Yeah, and I'm the same -- based
15 -- give me some authority for your position.
16 That it absolutely has to be raised as a
17 defense.

18 MR. LOY: And there's certainly -- unless
19 there's something, I don't believe there's any
20 authority saying that I'm wrong.

21 THE COURT: Well, that's the question for
22 you'all to muse on and think about.

23 MR. STONE: And I think the case actually
24 handed up is actually -- it's a question that's
25 raised on the appellate level, and -- concerning

1 whether or not they could have. I don't -- and
2 I think it might even be part of the PCR. I'll
3 research it, but I don't --

4 THE COURT: Yeah, of course we always over
5 emphasize what the jury charge versus argument
6 and --

7 MR. STONE: Yes, sir.

8 THE COURT: -- jurors get that and can
9 decide the case based on the evidence.

10 MR. STONE: Under that theory, they also --
11 the State hasn't raised the accusation of mere
12 presence either, but I have acknowledged that
13 that needs to be charged to the jury.

14 There's a lot of stuff that we don't
15 necessarily raise as either part of the State's
16 case, the case-in-chief, or the defense, and yet
17 there's still a law that needs to be charged to
18 the jury to clarify any issues.

19 So I still think that because of the
20 particular nature of this case, and the mindset
21 of these two Defendants, and an abundance, at
22 this point, of testimony, concerning voluntary
23 intoxication and the use of drugs, I think it's
24 an appropriate charge.

25 THE COURT: Yes, sir?

1 MR. LOY: And, specifically, it's Your
2 Honor's position --

3 THE COURT: I have no position.

4 MR. LOYD: Okay.

5 THE COURT: I'm posing questions.

6 MR. LOY: Thank you.

7 THE COURT: I'll have one when I make the
8 decision.

9 MR. LOY: Perfect. And, eventually, if
10 Your Honor rules that the co-Defendant, his
11 testimony triggered this specific charge, that
12 he presented that evidence, then we have
13 potentially a direct conflict between the rights
14 of one defendant and another, and I, at the
15 appropriate time, just to give you a heads-up
16 will move for a mistrial.

17 THE COURT: Yeah.

18 MR. PHILLIPS: And they would have been in
19 there --

20 THE COURT: We haven't -- we're talking
21 possible jury charges, you haven't finished your
22 case yet.

23 MR. PHILLIPS: That's true.

24 THE COURT: Yeah, we haven't heard from
25 your client. You indicate she's gonna testify.

1 I don't know what she's gonna say.

2 MR. PHILLIPS: That's fair.

3 THE COURT: All right, okay. All right,
4 well, we have a day and-a-half almost --

5 MR. STONE: Yes, sir.

6 THE COURT: -- before being concerned about
7 that, maybe two days.

8 MR. STONE: From what I'm understanding is
9 the storm surge at my house, I'm not sure I have
10 a day and-a-half, but I appreciate the optimism.
11 I hope I have a day and-a-half.

12 THE COURT: Okay, well, hopefully, everyone
13 will be safe, and we can reconvene at 9:00 a.m.

14 MR. LOY: Thank you, Your Honor.

15 MR. STONE: Thank you, Your Honor.

16 THE COURT: Right, thank you all.

17 (At 12:40 p.m. the proceedings were
18 continued to Friday without interruption.)

19 **

20 **END OF VOLUME III**

21

22

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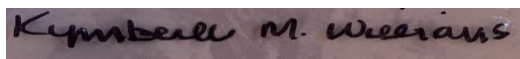
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CERTIFICATE OF REPORTER*******

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 30th Day of August 2023.

I do further certify that I am not related, of counsel, or interest to any party hereto.

This, the 29th day of March 2024.



Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA	IN GENERAL SESSIONS COURT
COUNTY OF COLLETON	FOR THE 14 TH JUDICIAL CIRCUIT
	2019-GS-15-00780, -781
	2022-GS-15-00710, -709

-----)	
State of South Carolina)	
)	
)	
Plaintiff,	)
vs.	)
	)
Rita M. Pangalangan,	)
And Larry King.	)
)	
Defendants.)	

**TRANSCRIPT OF JURY TRIAL
VOLUME III
(PAGES 636 - 811)**

September 1, 2023
Walterboro, South Carolina

B E F O R E:

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PROCEEDINGS**FRIDAY, SEPTEMBER 1, 2024****BEAUFORT, SOUTH CAROLINA*********

(The following proceedings were held in open court. All parties were present.)

THE COURT: Any matters before we bring in the jury?

MR. STONE: Nothing for the State.

MR. PHILLIPS: No, Your Honor.

MR. LOY: No, Your Honor.

THE COURT: Bring in the jury.

(Jury enters courtroom.)

THE COURT: Good morning. Welcome back.

Day Number 4. We are on the defense's case. You may proceed.

MR. PHILLIPS: The defense will call Jason Chapman.

JASON WALKER CHAPMAN,
being first duly sworn testified as follows:

*** * *****DIRECT EXAMINATION**

BY MR. PHILLIPS:

Q Officer Chapman. Good morning.

1 A Good morning. Again, my name is Captain
2 Jason Walter Chapman. Last name C-H-A-P-M-A-N.

3 Q Officer Chapman, you testified previously
4 to the jury -- well, on the first day of trial.
5 Is that right?

6 A Yes, sir.

7 Q You were sworn under oath?

8 A I was.

9 Q You specifically under oath told the jury
10 that you cannot get that vehicle to flash the
11 park lights when the vehicle is running. End of
12 story. That's your testimony in court.

13 A Cannot get the vehicle to flash the park
14 lights when selecting "lock" or "unlock." Those
15 were my words.

16 Q Okay. I went and watched the video, so I
17 know you don't say lock or unlock. Quote, you
18 cannot get the vehicle to flash the lights when
19 the vehicle is running, end of story.

20 You said, we ran the test many times, quote, if
21 the lights are flashing, it can't be from that
22 key fob. Those are your words.

23 A If you say they are. I know that during
24 that testimony at some point in time, I was very
25 specific about the fact that that's in regard to

1 lock or unlock.

2 Q All right. Well, let's go through that.

3 A Okay.

4 Q You all spent painful detail to show this,
5 and I know that is part of the argument.

6 A Sure.

7 Q Go to 1645:33. To give kind of an overview
8 on what we will see in the video, essentially,
9 they will run through the video after you watch
10 the full surveillance cam, that Night Owl DVR.

11 THE COURT: Mr. Phillips, are you posing a
12 question?

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: You must pose it in a question.

15 MR. PHILLIPS: Yes, Your Honor. It's
16 context form so they understand what I am
17 asking.

18 THE COURT: Well, you must pose a question.

19 MR. PHILLIPS: Yes, Your Honor.

20 BY MR. PHILLIPS: This is 1645. Go ahead and
21 play it. So whenever Solicitor Stone played
22 this video for you, we are seeing both Rita and
23 Larry trying to open the vehicle. They have the
24 key fob.

25 As Rita comes around the vehicle, she has the

1 key fob, and she is hitting it towards the car,
2 and you see that around 1645:33. Basically,
3 nothing happens.

4 In other words, like you said that it won't
5 flash when you are hitting unlock or lock.

6 A I didn't understand your question.

7 Q Right here. You see hitting the key fob?

8 A I see her holding the key fob in her hand,
9 but I can't testify that she is pushing the
10 buttons.

11 Fair enough.

12 A Thank you.

13 Q So she comes back. Again, you can see her.
14 She is pointing it. The jury can make up their
15 own mind. They can see her doing what she's
16 doing. They will have the opportunity to
17 stand --

18 THE COURT: Mr. Phillips, you must ask
19 questions and not give commentary.

20 MR. PHILLIPS: Yes, Your Honor.

21 BY MR. PHILLIPS:

22 Q At 1646:08, Solicitor Stone asked you to go
23 to 1646. That is when Rita hands Larry the key
24 fob. He is hitting the key fob repeatedly.
25 Your testimony was, quote, "Cannot get the

1 vehicle to flash the lights when the vehicle is
2 running. End of story."

3 Then you say, "We have tested it many
4 times, and I can't recreate it. If the lights
5 are flashing, it can't be from that key fob."
6 That's your testimony. Those are your words.

7 A If you are saying that that is exactly what
8 I said without any of the context or post-
9 comments, then so be it, but I stand by the fact
10 that you cannot -- if the vehicle is running in
11 direct relation with lock or unlock, you cannot
12 get the vehicle to flash the lights.

13 Q So you will concede that it will flash
14 while the vehicle is running.

15 A There are ways to make the lights flash
16 with that key fob, but not in regard to pushing
17 the lock or unlock buttons.

18 Q We are about to see it in a second. We
19 will get there.

20 A Are you asking me if we are going to see
21 it?

22 Q Yes, sir. I promise.

23 A Okay.

24 Q 1646:08. This is where you said, "look the
25 lights are flashing." The lights won't flash if

1 the vehicle is running.

2 So the key fob gets handed to Larry. Larry
3 is fooling around with the key fob and hitting
4 all the buttons there or maybe they have not.
5 They will fight with me on that.

6 There are the lights flashing. You are saying,
7 there is no way those lights were flashing like
8 that if the car is running.

9 A Right there is not the same point in time
10 that Solicitor Stone and I discussed.

11 Q We will get to it.

12 A You can't ask me something and then run off
13 on me. Do you want me to answer that question?

14 Q Go for it.

15 A All right. Right there (indicating), those
16 lights are not flashing in response to pushing
17 the lock or unlock buttons. They are flashing a
18 response to pushing the panic button on the side
19 of the key fob.

20 The difference is the style of flash and
21 the pattern. The key fob -- when the panic
22 button is pressed, it will flash regardless of
23 whether the vehicle is running or not running,
24 as long as the vehicle has power.

25 The difference is it is a very patterned,

1 systematic flash. No matter how many times you
2 press that panic button, it will flash in this
3 pattern. You can't hit it three times and get
4 the start and stop again real quick. It will
5 stop at the end of that pattern and pick up
6 again at the next pattern.

7 What you saw there was 1, 2, 3. I can't
8 remember if it's 3 and 3 or 4 and 4. Those are
9 responses from the vehicle and the fob to the
10 panic button being pushed, not the lock or
11 unlock.

12 Q That's what you told this jury? I'm going
13 to pull the video up of you testifying.

14 A No one asked me that question. We were
15 talking in regards to lock and unlock. I
16 encourage you to pull the video, because I am
17 very confident about what I said.

18 Q Okay. The other time it flashes is when
19 they pop off the handle when they are on with
20 Stokes Lock and Key and manually turn it.

21 A There is another set of flashes between
22 this set and when they actually get the door
23 unlocked.

24 Q Your position is it's not the panic button.

25 A The series after this and prior to the

1 final set of flashes when the vehicle was
2 unlocked. You can physically put the key in the
3 lock. When you lock or unlock the vehicle, it
4 will flash, but that is not in response to
5 pushing the lock or unlock button. That is
6 physically turning the key.

7 We know that by what they have stated and
8 from what we see on the video that the only time
9 the key was actually placed into the key on the
10 door -- that is the only key location on that
11 2012 Volkswagen. If you turn it left or right,
12 yes, it will flash in correlation to lock or
13 unlock.

14 The series after this and prior to that, my
15 testimony was that that cannot be done with the
16 key fob because it is not the same systematic
17 patterned flash that the panic button shows.

18 Q Let's mark this as an exhibit.

19 MR. PHILLIPS: Your Honor, what I have
20 marked is a flash drive. It appears to be
21 Defendant's Exhibit 13.

22 BY MR. PHILLIPS:

23 Q You were there when these tests were
24 conducted. That is what you testified to.

25 A That's correct.

1 Q And you-all made a video of those tests?

2 A We did.

3 Q (Video playing.)

4 So you see how -- this right flash car light
5 after. It's not on.

6 A Agreed. The daytime running lights.

7 Q It's out on this side, right?

8 A It is.

9 Q So this is the test you-all did on the
10 video?

11 A Yes.

12 Q The vehicle is running?

13 A Yes, it is.

14 Q You see one light is out and one light is
15 on. It appears to be a hard reset. It says 12
16 a.m. on the clock.

17 A Dead battery.

18 Q That is what you just testified to. If you
19 try to unlock or lock it, it won't flash while
20 it's running.

21 A That's correct. With the fob and not using
22 the hard key.

23 Q That's right. Let's make sure that
24 everybody kind of understands.

25 So while the car is running and you get the

1 key fob, lock or unlock it, it's not going to
2 blink?

3 A That's correct.

4 Q Not going to flash.

5 A That's correct.

6 Q When you hit the panic button, it will
7 flash.

8 Q Yes, regardless of whether it's running or
9 not.

10 Q When you turn it manually, it flashes.

11 A That's correct.

12 MR. PHILLIPS: Your Honor, at this time I
13 would move to admit Defense Exhibit 13.

14 MR. THORNTON: Without objection, Judge.

15 THE COURT: It's admitted.

16 (Defendant's Exhibit 13 admitted into evidence.)

17 BY MR. PHILLIPS:

18 Q There is you, this is the testimony?

19 A Yes, sir.

20 Q We had that from, their statement and from
21 the fact that they couldn't unlock the vehicle.
22 We know that from their statement and the fact
23 that -- he is pushing the key fob and the park
24 lights are flashing indicating -- you can see
25 the lights flashing here.

1 So obviously the key fob is working. The
2 vehicle is receiving a signal from the key fob.
3 I am not an expert, but I can tell you that I
4 can replicate a standard. When we put that
5 vehicle inside the process we did and we
6 attempted to replicate that, you cannot get the
7 vehicle to flash any park lights if the vehicle
8 is running.

9 We also then contacted Volkswagen. We did
10 it over and over and over again. If those
11 lights were flashing from that key fob, the
12 vehicle is not running. It can't be just the
13 AC.

14 Q A minute ago you just --

15 A Do you want to go a little further?

16 Q Sure.

17 A Because I know what you are going to ask
18 me. What I am am trying to explain to you is
19 you are not showing the same video clip. In
20 that clip that the Solicitor showed you that
21 time is not the same one where we are seeing the
22 pattern flash.

23 Yes, I see what you are asking me, but you
24 are leaving out the pretext of this conversation
25 and whatever else was said where I specifically

1 mentioned with regard to the lock and unlock.

2 MR. LOY: Objection. The witness has not
3 been questioned. They know what he said.

4 THE COURT: The objection is sustained as
5 to commentary. The lawyer needs to ask a
6 question and give the witness an opportunity to
7 respond to the question. It's not the time to
8 do speeches in the middle of a question or a
9 commentary in the middle of a question.

10 Proceed.

11 MR. PHILLIPS: Thank you, Your Honor.

12 BY MR. PHILLIPS:

13 Q Your quote -- and I understand you
14 disagree with me. Your quote is you cannot get
15 the vehicle to flash the park lights when the
16 vehicle is running, end of story. Your Words.

17 A I can't argue that in that particular
18 vehicle right there at that moment, yes.

19 Q Your words, if the lights are flashing, it
20 can't be from that key fob.

21 A I will answer it again. Yes.

22 Q Thank you.

23 A You are welcome.

24 MR. PHILLIPS: No further questions.

25

1 THE COURT: Mr. Loy.

2 BY MR. LOY:

3 Q Captain, I don't have any questions for
4 you.

5 A Thank you, sir.

6 THE COURT: For the State.

7 **

8 CROSS-EXAMINATION

9 BY MR. THORNTON:

10 Q Captain Chapman, one of the things you said
11 was that you've said on that clip -- well, first
12 of all, was that the only time that you
13 testified that day?

14 In other words, that clip, did that
15 encompass all of your testimony.

16 A It is not. I think I was on the stand for
17 six hours.

18 Q During that six hours of video and watching
19 and testimony, just to clear this up for the
20 jury, at some point did you specifically say --
21 you did specifically say that that was with
22 regard to lock and unlock.

23 A I did.

24 Q To clear up any confusion, that is what
25 your testimony is today, correct?

1 A That's correct.

2 Q When you said, I couldn't replicate it, you
3 are talking about the pattern, aren't you?

4 A Why I answered that question at that
5 moment, it was in reference to the video that
6 was being shown in that moment in which -- and
7 you heard me discuss it that day where you had a
8 quick flash, two flashes, followed by a separate
9 single flash. That is what I referring to. I
10 cannot replicate that, which is significant,
11 that employs lock or unlock if the vehicle is
12 running.

13 Q In other words, you can't replicate that
14 pattern on a panic button.

15 A No, I cannot.

16 Q So let me ask you something else. The
17 video that Mr. Phillips just introduced, were
18 you present when that video was created?

19 A I was.

20 Q Was that video then turned over to my
21 office?

22 A Immediately.

23 Q Did I, to your knowledge, turn that video
24 over to Mr. Phillips?

25 A Immediately.

1 MR. THORNTON: Your Honor, Court's
2 indulgence for just a second.

3 BY MR. THORNTON:

4 Q Captain Chapman, I am going to ask you to
5 review this section of the video.

6 A (Video playing).

7 Q So are those the flashers, the later ones
8 that you are referring to?

9 A The series that Mr. Phillips showed and
10 then the series that were previously shown to me
11 on Wednesday.

12 Q Just to be clear, it's your testimony that
13 when you press the lock and unlock button --

14 MR. LOY: He is leading, Your Honor.

15 MR. THORNTON: Judge, I am on cross-
16 examination. I am allowed to lead.

17 THE COURT: Continue.

18 BY MR. THORNTON:

19 Q Your testimony is that when you press the
20 lock or unlock button, it will not light -- for
21 lack of a better word -- park lights if the car
22 is running?

23 A If the vehicle is running or if the
24 accessory switch is turned on.

25 Q Your testimony is that based on all the

1 things that you just saw, that during that
2 series of flashes, you could not replicate that
3 pattern, that initial pattern, of the same
4 flashes when you press the panic button?

5 A That's correct. The last ones we saw
6 there, we can't replicate that pattern. We can
7 replicate the pattern shown by Mr. Phillips or
8 the beginning of that series where you see three
9 and then it stops and then you see three.
10 That is the standard flash pattern for pushing
11 the panic button. The third or fourth volleys
12 you see where you had the quick flash and a
13 pause and a flash. That signifies unlock and
14 locked.

15 Q Is that what you are talking about when
16 testified. I think Mr. Phillips played this
17 clip. You said you couldn't replicate. Are you
18 talking about replicating that pattern with lock
19 or unlock or replicate the pattern with the
20 panic button?

21 A That's correct.

22 MR. THORNTON: I don't have any further
23 questions.

24 THE COURT: Mr. Phillips.

25 MR. PHILLIPS: Thank you, Your Honor.

* *

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q The other night I asked you about that there is no report this case and notes. You said you had notes. They never gave me any notes. They said the video was the notes. You are testifying to all of this now about all this other stuff, but there is no documentation that has been provided to us to substantiate anything you have said.

A Are you asking me --

Q Did you give them the notes?

A I gave them the video. You asked me specifically on the stand that you ran through. Did you do a report? Did you write notes?

I said, yes. As a matter of fact, we did that three times because I had to say that I am going to keep answering the same question.

Q Yes.

A Then we got very specific. We said we videotaped it. You told me that you didn't have it. That is not on me. The video as we just explained was filmed. I was present. It was turned over to the Solicitor. As far as I know,

1 they immediately turned it over to you. That is
2 my documentation.

3 Q That is not the way it worked when I said,
4 notes. Not a video. You all did that last
5 Friday on August 18.

6 A That was the final time that it was done.
7 That was the time when we did the notes.

8 Q Did you do handwritten notes?

9 A I didn't do handwritten notes on the 18th.
10 I did not.

11 Q Did you do a report?

12 A The video is the report.

13 MR. PHILLIPS: No further questions, Your
14 Honor.

15 THE COURT: Anything further?

16 MR. THORNTON: Briefly, Your Honor.

17 MR. LOY: I don't have any questions.

18 THE COURT: Proceed.

19 **

20 RE CROSS-EXAMINATION

21 BY MR. THORNTON:

22 Q When you got to the scene, was the air-
23 conditioner on the car running? Was the car on?

24 A The car was on. The air-conditioner was
25 running, and the air-conditioner was cut on.

1 The ambient temperature inside the car was not
2 cold.

3 Q The was running. The air-conditioner was
4 blowing cold, but the car was hot.

5 A That's correct.

6 Q Like it just been turned on?

7 MR. PHILLIPS: Speculation.

8 MR. THORNTON: Withdrawn, Judge.

9 THE COURT: The jury is to disregard the
10 comment. You may step down.

11 ELIZABETH CLYDE,
12 being first duly sworn testified as follows:

13 * * *

14 DIRECT EXAMINATION

15 BY MR. PHILLIPS:

16 Q State your name again Elizabeth Clyde.

17 Q Tell the jury about yourself?

18 A I am a high school teacher in the Berkeley
19 County School District, which is about 50
20 minutes away from Walterboro.

21 I grew up here. I am happily married to my
22 husband. Together we are pastors at our faith
23 of church. We don't have kids yet.

24 Q What is your relationship with Rita?

25 A My mom.

1 Q How you are how old?

2 A I'm 31.

3 Q Tell us a little bit about your mother.

4 A Born and raised in Walterboro. She raised
5 me and my younger sister, so I was in the house
6 for a very long time.

7 When we brought **Child** home from the
8 hospital, she was the miracle that we had been
9 praying for.

10 It was very hard for my mom to get pregnant
11 again after me. It was a little complicated. I
12 stayed home, went to a local college. After I
13 married, I kept a strong relationship with my
14 mom. Coming home on the weekends or holidays we
15 would go back and forth to see each other so I
16 would hang out with her.

17 Q You were around **Child's** whole life.

18 A She was my special person.

19 Q You were around for **Child** her whole
20 life?

21 A Yes. I was .

22 Q What is the age difference.

23 A Thirteen, fourteen years.

24 Q Would you consider yourself part of a
25 caregiver for her as an older sister?

1 A Yes. We had to plan a place when she got
2 too old to care for **Child**, we already had a
3 plan in motion where I would take over.

4 Q Can you describe your relationship with
5 **Child**?

6 A Loving. **Child** never heard the word,
7 No. Every single month or every single time we
8 went out to eat, we lied and said it was her
9 birthday because she loved being the center of
10 attention. She loved music, so we always liked
11 to get the happy birthday songs.

12 Q How would you describe your mother's
13 parenting style?

14 A She was a great parent. She was the one I
15 went to with all of our problems. She cared for
16 us so much. Dad worked all the time. With her
17 being a school teacher, we got to go to any of
18 the sporting events she wanted to try, she
19 always encouraged us for any sports and to try
20 out new things.

21 Q What kind of special accommodations had
22 your mother made for **Child**?

23 A We always joked that **Child** was the calm
24 one in the family.

25 We had to get bathroom widened. She was

1 getting so big and so heavy to pick up. We had
2 to that special tub to slide in from the
3 wheelchair into the tub, hardwood floors all
4 throughout the house, so she could use her
5 walker. She was getting finished for a new
6 wheelchair.

7 Q How soon was she -- when this tragedy
8 happened, how soon before was she fitted for
9 that wheelchair.

10 A We were supposed to pick it up in a week or
11 two right before school started. It was done a
12 month or so prior. Custom fitted. Mom was
13 saving up for a new van, because in ours the
14 transmission just went out.

15 Q How would you describe your mom's care?

16 A She was my role model.

17 After I had got married, she would send
18 care packages and coming back and forth to the
19 house. She always made sure I had everything I
20 needed. She is just so kind and caring and
21 loving.

22 Q After you moved out, how often did you
23 visit?

24 A Very often. Since it was only like a 45-
25 minute drive. I would come home on the

1 weekends. She would also -- I would come home
2 for church with her. And attend for Mother's
3 day. Or if we had a special event at church,
4 she would come to church with me.

5 Q Defendant's Exhibit 5. Elizabeth, what are
6 you looking at?

7 A That's my mom my sister.

8 Q How would you describe what was going on in
9 that picture?

10 A It was hard for us to get her to smile for
11 a picture. She was not photogenic at all. I am
12 sure it's my husband behind the camera doing a
13 stupid dance or trying to get her to smile for
14 the picture to be taken. She was mom 's whole
15 world.

16 MR. PHILLIPS: Your Honor, at this time we
17 would move Defense Exhibit 5 into evidence.

18 MR. THORNTON: I don't have any objection.

19 THE COURT: Do you have additional photos that
20 you are going to propose.

21 MR. PHILLIPS: I have provided a flash
22 drive.

23 THE COURT: I understand. Would you let
24 them see all of them now.

25 MR. PHILLIPS: Yes, Your Honor.

1 MR. THORNTON: I don't have any objection,
2 Your Honor.

3 THE COURT: Each of the photographs are
4 admitted without objection.

5 Defendant's Exhibits 3 through 12.

6 (Defendant's Exhibits 3 - 12 admitted into
7 evidence.)

8 THE COURT: You may proceed.

9 MR. PHILLIPS: Thank you, Your Honor. I
10 will go through the pictures.

11 A This picture was at **Child's** Special
12 Olympics. Mom and her actually won the
13 wheelchair race.

14 This was after church one Mother's Day.

15 This was taken at my in-laws in the back
16 yard. We had just got done with family lunch.

17 This is when we went to the parade
18 together.

19 Q How would you describe your mom's house?
20 Was it dirty?

21 A No. She was a clean freak.

22 Q Did she provide food for her sister?

23 A Yes.

24 Q Brittany was a former roommate of your
25 mother. Did you know her?

1 A I knew her a little.

2 Q Could you describe how you know her.

3 A I know she rented a room with mom just for
4 a small season.

5 I didn't have that much interaction with
6 her. She didn't stay very long.

7 Q Why didn't she stay she very long?

8 A There was a lot of fighting. Mom quickly
9 realized that it's very hard to find a good
10 roommate to pay on time.

11 Q The main issue was that she wasn't paying
12 her rent when she moved in. Do you know about
13 that?

14 A Yes, sir.

15 Q Then they trashed the room when they were
16 gone too. She had to fix damaged walls. I
17 can't remember if there was hardwood or carpet
18 on the floor.

19 Q She didn't just move in. Some people came
20 with her?

21 A She was supposed to move in. She brought
22 her friend, and that caused a lot of drama.

23 Q So just to make clear as far as your
24 mother's house was it fit for **Child**

25 A Yes. We got the walker for her. Even

1 though they said it was cosmetic and they
2 wouldn't pay for it, she did two different jobs
3 to pay for it.

4 Q Did your mother have a lot of support?

5 A No. After the divorce and my dad left, the
6 money left too. A lot of people went team dad.

7 Q As far as you can describe your
8 relationship with your mother, has that changed
9 at all?

10 A No.

11 Q Leading up to this tragedy, was there any
12 red flags, anything that was out of the
13 ordinary?

14 A No. Not at all. We were excited for
15 **Child** to start school.

16 Q Would you have known your mother to leave
17 **Child** in the car?

18 A No.

19 Q You have never seen that?

20 A No.

21 Q Never heard of it?

22 A No, sir.

23 Q Final opportunity. Tell them you want them
24 to know about your mother.

25 A My mom loved **Child** so much. She was a

1 good mom.

2 MR. PHILLIPS: Thank you. No further
3 questions, Your Honor.

4 THE COURT: Yes, sir.

5 MR. LOY: I have no questions for this
6 witness.

7 THE COURT: From the State.

8 **

9 CROSS-EXAMINATION

10 BY MR. STONE:

11 Q Do I call you Reverend?

12 A No, sir. Just Elizabeth.

13 Q Thank you for being here. I saw from the
14 photographs that you have been out of the house
15 since you were in high school?

16 A I went to college about 20.

17 Q You have been married for how long?

18 A Ten years.

19 Q You live where?

20 A I live in Summerville. 45 minute away.

21 Q I went through the photographs, and I did
22 not see any pictures in the photographs of Larry
23 King.

24 Did you spend any time with your mom when
25 she was with Larry King?

1 A Yes, sir. We went to church together as
2 well some.

3 Q Did you ever spend any time with your mom
4 when she was doing meth?

5 A No. She didn't even drink alcohol.

6 Q So you didn't know she used meth?

7 A By use, what do you mean? I know her
8 character. That was one of the main reasons why
9 she and my dad got divorced because of drugs.
10 She never used them. She likes her cigarettes,
11 but she wouldn't touch alcohol at all.

12 Q The house that you talk about, your house
13 was appropriate for **Child**. What about
14 Larry's house?

15 A I never went to Larry's house.

16 Q You don't know where **Child** slept or
17 anything like that when she was at Larry's
18 House.

19 A I would never ask those questions. It
20 never came up in conversation.

21 Q As far as you know, you don't know what
22 goes on in Larry's house when your mom was over
23 there, and you don't know anything about her
24 using meth?

25 A No, sir.

1 MR. STONE: Thank you, ma'am.

2 THE COURT: Mr. Phillips.

3 **

4 REDIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q Do you think your mother would do anything
7 to kill **Child**?

8 A No.

9 Q She loved her?

10 A Yes, sir.

11 Q You wouldn't be up here if you thought she
12 intentionally did something?

13 A No. I stand by my mom.

14 THE COURT: Anything further.

15 MR. LOY: No, Your Honor.

16 THE COURT: Thank you, you may step down.

17 Ladies and gentlemen, we will take a break
18 now. Please do not discuss the case.

19 (Recess).

20 **

21 PROCEEDINGS CONTINUED

22 THE COURT: Mr. Phillips, who is your next
23 witness?

24 MR. PHILLIPS: Defense rests, Your Honor.

25 THE COURT: We will take a few minutes to

1 discuss the jury charge. We will have you rest
2 in the presence of the jury.

3 Does the State intend to offer any reply
4 testimony?

5 MR. STONE: No, sir.

6 MR. PHILLIPS: Your Honor, for the record,
7 I will renew all prior motions, the mistrial
8 motion and all the pretrial motions.

9 THE COURT: Objections noted.

10 Any from Defendant King?

11 MR. LOY: Likewise, we would renew our
12 previous motions.

13 THE COURT: Anything further?

14 MR. STONE: No, I think we have covered it.

15 THE COURT: The motions are denied.

16 Any request for charges from the State?

17 MR. THORNTON: Your Honor, we had
18 previously handed up State's request to charge,
19 one as to malice. A second one as to voluntary
20 intoxication.

21 If I can take a brief pause on that one.
22 Your Honor had asked us to find case law one way
23 or the other.

24 I would hand up State v. Todd, Supreme
25 Court case from 1986. It's a shooting case

1 where there was evidence introduced that the
2 defendant had consumed alcohol.

3 It's pretty much the exact same argument
4 made in this case by Mr. Phillips. I think it
5 was joined in by Mr. Loy on behalf of Larry
6 King. We didn't raise that as a defense, so
7 it's not a proper charge. What State v. Todd
8 says that --

9 THE COURT: If you don't mind, give me a
10 moment to look at it.

11 You may continue.

12 MR. THORNTON: Thank you, Your Honor.

13 As Your Honor saw, it's ON page 4 of four.
14 On the last page, Todd, trial court erred on
15 charging the jury on the law of voluntary
16 intoxication because intoxication was not a
17 defense.

18 The law to be charged is determined from
19 the evidence presented at trial. Since there
20 was some evidence that the defendant had been
21 drinking prior to the shooting. Therefore,
22 there was no error in charging the jury as to
23 voluntary intoxication.

24 Your Honor, I would request the Court to
25 consider this. Otherwise, there would be no

1 reason for that jury charge.

2 No lawyer is going to get up and argue that
3 is a defense because it isn't a defense in South
4 Carolina.

5 What we have to do is make sure the jury
6 understands that as a matter of law so that they
7 don't make an incorrect ruling.

8 I would respectfully as based on State v.
9 Todd and the other reasons cited to respectfully
10 deny the motion by defense counsel that that not
11 be charged to the jury.

12 THE COURT: All right.

13 Mr. Phillips.

14 MR. PHILLIPS: Thank you, Your Honor. The
15 charge in this case wasn't actually listed in
16 the specific language, the Court does say they
17 find no prejudicial error that the trial Court
18 charged the jury on the law of voluntary
19 intoxication.

20 THE COURT: Mr. Loy.

21 MR. LOY: I don't need to be heard.

22 THE COURT: I find that it's a proper
23 charge given the evidence presented in the
24 trial.

25 MR. THORNTON: Thank you, Your Honor. Your

1 Honor, we have two others that were State's 3,
2 which was the law of conspiracy, State's 4,
3 which is a combination of the defense's mere
4 presence at the scene at the crime is not
5 sufficient someone guilty.

6 It then goes into the law of the hand of
7 one is the hand of all.

8 We would renew our request for Your Honor
9 to charge those four.

10 THE COURT: For the defendant.

11 MR. LOY: As to the conspiracy, I think
12 it's a correct statement of the law, Your Honor.

13 THE COURT: Mr. Phillips.

14 MR. PHILLIPS With the malice charge,
15 specifically looking at it, again, I presented
16 what I believe to be the proper malice charge.

17 THE COURT: So charge number 3 is
18 conspiracy as requested.

19 THE COURT: I will charge the standard
20 definition of malice.

21 Let's take a short recess.

22 (Recess.)

23 PROCEEDINGS CONTINUED

24 **

25 THE COURT: You may bring in the jury.

1 (Jury enters courtroom)

2 Welcome back. You may call your next
3 witness.

4 MR. PHILLIPS: Defense rests, Your Honor.

5 THE COURT: Ladies and gentlemen, you have
6 heard the defense's case.

7 Any reply by the State?

8 MR. STONE: No, sir.

9 THE COURT: Ladies and gentlemen, you have
10 now heard all of the testimony, and you have now
11 received all of the evidence. It's now time for
12 closing arguments. If you will give counsel
13 your attention.

14 First by the State.

15 **

16 CLOSING ARGUMENT BY MR. STONE

17 MR. STONE: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. STONE: I am going to talk to you very
20 briefly today about what we know, what evidence
21 we have heard, what testimony you have heard,
22 and what you have seen, from everything on the
23 video to the chemical analysis, to the experts,
24 to everything.

25 What I want to talk about right now is just

1 what know. We start with **Child**.
2 was a child born with cerebral palsy. She could
3 not walk. She couldn't grasp. She could not
4 talk. But she show emotions. You can see the
5 child can show emotions. That is going to be
6 relevant in a few minutes to what I am talking
7 about.

8 **Child** was not like other girls. She
9 was totally dependent, 100% on other people.
10 She was dependent on somebody to take care of
11 her. Somebody to give her food. Somebody to
12 give her water. Somebody to keep her safe.

13 **Child** was totally dependent on Rita to
14 do all of those things, every day, every day,
15 not just on Rita's good days. Not just on days
16 when Rita is posing for photographs. Not just
17 when Rita is sober.

18 Even on the days when Rita chooses to go
19 hang out with Larry and get high on meth,

20 **Child** was dependent on her then too.

21 She was wholly dependent on her then too,
22 even whether when Rita was high. You heard
23 testimony from defense witnesses. They came
24 here today and told you what they knew.

25 One of them hadn't had much contact with

1 her for 18 years except for Facebook. Her
2 daughter came in and said what a daughter should
3 say; that she is a good mother. But neither one
4 of them knew about the meth. Neither one of
5 them.

6 We know on that day where none of those
7 witnesses were. They didn't know what was going
8 on. On that day. On that weekend. On that
9 Friday, that Saturday, that Sunday and Monday.

10 We know that they were on a meth bender.
11 We know it because we took their blood. You
12 know it because you had a chemists, 1, 2, 3
13 chemists come in and tell you that.

14 Methamphetamine in Rita's blood as well as
15 Larry and well over the limit that would make
16 them high. If you didn't for whatever reason
17 think that isn't enough, Larry told you the same
18 thing. He didn't want to, but he did. He
19 hadn't slept in three days. He and Rita had
20 been doing meth. She liked to put it in her
21 coffee.

22 He didn't want to tell us that, but he did.
23 We know that. That little girl was dependent on
24 Rita to take care of her. To keep her safe.
25 Rita was high. Neither her daughter knew about

1 that nor the other lady. But we know that
2 beyond a shadow of a doubt.

3 What else do we know? We know that Larry
4 had -- first of all, we know that in the middle
5 of that bender, Rita and Larry get in Larry's
6 truck and go get the child and bring her into
7 that environment where they are getting high.

8 They go in and they stay the night. We now
9 know that Larry had a security system. A very
10 good one. A very sensitive one. The one that
11 will pick up any type of motion going in and
12 around the car, and we know because there is
13 video testimony that there was motion at all
14 around that car until 11:15.

15 At 11:15, the motion we saw were these two
16 going to the car. What do we know? The car is
17 not on. There so air-conditioning. Nobody has
18 been near that car, unless the angle was that
19 they parked the night before and left the car
20 running with the air-condition on. Nobody said
21 that.

22 Larry said, the car was running when I put
23 the child in because Larry needed to say the car
24 was running when he put the child in there and
25 not because it was true.

1 You know because you could see it. The car
2 wasn't on. There was no air-conditioning on.
3 They left the child in that car for one hour and
4 15 minutes, before there was any more motion,
5 before there was any more interaction with that
6 car.

7 We know because about 12:00 is when the
8 heat starts spiking inside a car. We know that
9 because we brought an expert, Dr. Grunstein, to
10 come testify to you about what happens inside a
11 car when it's that hot outside in August in
12 South Carolina.

13 This spike starts right after 12:00. Until
14 then, it's about the same as the car.
15 You are talking about 80, 90 degrees to begin
16 with. By the time they go back to the car at
17 12:15 -- Larry doesn't go back to the car, but
18 Rita does. We are already over here. The heat
19 inside that car is now approaching 100 degrees.

20 Now we will go back to this. First of all,
21 let's just stop here. If all they had done was
22 put that child in a hot car in the middle of
23 August and left that child there for an hour and
24 15 minutes, in some way miraculously somebody
25 had come by and gotten the child out, I submit

1 to you they still would have inflicted serious
2 bodily injury on that child. The definition of
3 seriously bodily injury is the likelihood it
4 could cause serious impairment or death. I
5 don't there is any question at all what the end
6 result way.

7 If we stop there, you have that.

8 Did they do it together Absolutely. Even
9 Larry testified to that. They did everything
10 together. Put her in the car together, and you
11 see that, and left her in the car to die. There
12 is your conspiracy. That is not all we have.
13 Unfortunately, it didn't stop there.
14 Unfortunately, the child was not able to speak
15 from the people she depended on or anybody else.

16 So now we are at 12:30. The child is now
17 in the car for an hour and 15 minutes. No air.
18 No wind. Not even a cracked window.

19 Rita goes back to the car. She opened both
20 doors. She looked inside the car.
21 Why did she open both cars doors. She can't
22 scream. She can't talk. She can show emotion.
23 You can see it in her face.

24 What did she look like when her mom was
25 looking at her after being left in a hot car by

1 herself in 100% heat for an hour and 15 minutes.
2 What did Rita see when she looked in the car?
3 The child has to be going, help. That is not a
4 happy face in this car after an hour and 15
5 minutes in this heat in her car by herself. A
6 child who is totally dependent on others. She
7 is betting for help.

8 What does Rita do? She goes back inside
9 with Larry.

10 Then the first time she and Larry put the
11 child in the car and they go inside to make up,
12 to have sex. While they were inside having sex,
13 the child is out in the car.

14 She comes back out, looks at the child.
15 The child at this point had to be begging. She
16 closes the door and goes back inside to spend
17 some more time with Larry. Which by the way is
18 the last time anyone approaches that car to look
19 after that girl until 3:00 in the afternoon.

20 They go back on the porch about an hour-
21 and-a-half later. They don't actually walk out
22 into the car. They didn't go see the car. They
23 stood another hour and 15 minutes. They go back
24 on the porch. They hang out on the porch, and
25 now it's 2:02. Neither one of them approach the

1 car. The girl is still in there. What is going
2 on inside that car now? Now it's 2:00.

3 Take a look at that temperature inside that
4 car now. It's now reached that maximum
5 temperature and it's well over 110, 115 degrees
6 inside that car.

7 They come back out. Did they even check on
8 her? No. What did they do? They hugged. They
9 kissed and then they go back inside for another
10 hour and 15 minutes.

11 The child is literally cooking to death in
12 the car, and they go back inside. They stay for
13 another hour and 15 minutes. This time Rita
14 actually walks to the car. This is when she
15 finds that the keys are locked in the car. Pay
16 very close attention to this. Where does Rita
17 walk when she walks out of the house. It's now
18 3:00. The child has been in the car since
19 11:15. The heat is now well over 118 degrees.

20 Where does Rita go? Did she go on the side
21 that the child is on to check on her? Is she
22 trying to get in the car and to drive? No.
23 What is she doing? She is going to get her
24 cigarettes. In the back seat of this car where
25 they put this child at 11:15, there was a bag on

1 the back seat right beside the child. Inside
2 that bag was this. A gun.

3 MR. LOY: Renew objection, 401, 403.

4 THE COURT: You may proceed.

5 MR. STONE: Not only was it a gun, but it
6 was also a loaded gun.

7 Again, in a bag right beside this child.
8 And right there also are the cigarettes. When
9 she walks back to the car at 3:00 she is still
10 not going to check on the child.

11 She is not even going to drive away. She is
12 going to get some cigarettes. She finds that
13 the car is locked. So what do they do?

14 The car is locked. The child has been in
15 the car since 11:15. It is now 3:00 in the
16 afternoon. Well over 118 degrees inside that
17 car. It feels like 135. They have found that
18 the keys are locked in the car. What did they
19 do? Naturally, they break a window. No, they
20 don't.

21 Rita says it's too expensive if I break a
22 window.

23 MR. PHILLIPS: Objection. Hearsay

24 THE COURT: Overruled.

25 MR. STONE: Break the window? No. What do

1 they do? They hang out. They get on the swing
2 and start swinging back and forth. It's now
3 3:19, 19 minutes after they found that the child
4 was locked in the car with the keys. 19 minutes
5 after we know for a fact it's already 118
6 degrees inside the car.

7 Is there any sense of urgency here? At any
8 time point in time, are they going to say need
9 to take care of this child? No. They are
10 swinging.

11 Then what do they do? They eventually go
12 to Larry's truck parked out back. Now what they
13 are doing? It is now 39 minutes later at 3:39.
14 They are still at the house and they are
15 kissing. They are not taking care of the child.
16 They are not even thinking about the child.
17 They are thinking about themselves.

18 Let's go get a spare key. This is where
19 the child is, and this is where Larry and Rita
20 go. To go get a spare key, which is why they
21 don't get back for 52 minutes. The child is
22 locked in the car at 3:00 and they don't get
23 back until 4:00. Any sense of urgency there?
24 Any concern for the health and welfare of that
25 child? Did the child even cross their minds?

1 No because they were high.

2 They were interested in each other and they
3 were interested in kissing and hugging and
4 spending time with each other. They were having
5 sex. Even the doctor talked about increased
6 libido as a result of being high on meth. You
7 see it in all of these pictures, because that is
8 what they are concerned about. Not an ounce of
9 concern for that child. 52 minutes. Then when
10 they get back, they arrive, 4:40.

11 When they get back to the house at 4:40,
12 they are in Larry's truck. Thank goodness.
13 They have got a key. They can come rescue this
14 child now. When did they get out of the truck?
15 They don't open the door until 4:44. They sit
16 in the truck for four minutes talking and
17 hanging out.

18 Again, no concern for the child whatsoever.
19 They are just hanging out in the truck.
20 Eventually, they get out and they approach the
21 car. When they do, neither one of them are
22 sober enough to even figure out how to unlock
23 the car. Larry testified, I am pushing the
24 unlock button, but it's not unlocking. The
25 testimony that you heard from Captain Chapman

1 and even from Larry, push the button and the
2 lights come on when I pushed the button but it's
3 not unlocking.

4 What you know is when you see the emergency
5 flasher, it's going flash, flash, but at the end
6 when it goes blink blink, that is hitting the
7 off and the unlock. The point is, you can't do
8 that when the car is on. But we already knew
9 that. You know how you know that? Because
10 otherwise if you spend 5 hours in a car in South
11 Carolina driving around with your air-
12 conditioning on, we would all be dead.

13 Clearly, the air-conditioning wasn't on.
14 They may have thought it was, but clearly the
15 car wasn't on. The air-conditioning wasn't on.
16 Why do we know that? Because the child cooked
17 to death. That's why.

18 Also, something else. There is not one
19 piece of testimony, not one person, not one came
20 in her and said, they turned the car on. Larry
21 said, it was already on when I put the child in
22 there. We know that's not true.

23 Did Larry say he turned the car on? No.
24 What did Larry say? I turned the car off. We
25 will get to that in just a second. They get the

1 child. They pulled the child out of the car.
2 What happens then?

3 By the way -- they haven't gotten the car
4 out of the car yet. They can't figure out how
5 to unlock it. It's now 4:47, and they are back
6 to hugging again. That's not a distraught
7 picture because they haven't pulled the child
8 out of the car yet. They are still hugging and
9 kissing. They still haven't focused on the
10 child.

11 Eventually, they did get the child out of
12 the car What happens after that?

13 They pull the child out. State's 35. They
14 pull the child out. Larry calls 911. What does
15 Rita do? She leaves. When Hallie Godley gets
16 there, Rita is nowhere to be found. She is
17 inside the house. That is particularly relevant
18 to what we will talk about in just a second.

19 He called 911 before the police get there.
20 What does he say? I reached in and turned the
21 car off. Why would you do that? Think about
22 it. They just pulled a dead child out of the
23 car, and he is calling 911. The police are on
24 the way. Why does he reach in the car and turn
25 it off? Didn't want to waste gas? What? Why

1 would you in any way, shape, or form stop what
2 you are doing when there is a dead child on the
3 ground to go reach in and turn the car off? He
4 wouldn't. There is no reason for that.

5 But there is a really good reason to reach
6 inside that car and turn it on. What you heard
7 Captain Chapman say today is, when we got there,
8 the car was running. The air-conditioner is
9 working, just like it was working 3 days ago.
10 There was no compression issue with that car.
11 It works. The air was on and the car was
12 running, but it wasn't cold inside.

13 The air-conditioning was blowing cold, but
14 it wasn't cold inside that car. Why? Because
15 Larry had just turned it on right before the
16 police got there. Why? Because he knew they
17 had just murdered that child. That's why.

18 What did Rita say when they finally got
19 Rita out of the house and brought her out? What
20 did she say?

21 Hallie Godley testified to this on Monday.
22 The very first witness. She said, I brought
23 Rita out and Rita said, we put the child in the
24 car, I went inside to get cigarettes. I came
25 back out and the car was locked. That was her

1 description of what happened. Even Rita didn't
2 say the car was on with the air-conditioner
3 running.

4 That would have been the very first thing
5 out of her mouth if that was true. Instead, it
6 was just a matter of seconds. I went inside to
7 get cigarettes. I came back out and the car was
8 locked. That was it. Rita didn't know they had
9 the camera system. Thank goodness they did
10 because we wouldn't have known any better. But
11 we did know that she wasn't in the car for just
12 a split second. The child was in the car for
13 five hours and 42 minutes. That is an awful
14 long time.

15 Everything I have told you so far you know.
16 There is no issue about it. We know.

17 So we know what happened. The question
18 before you now is, what do you call it? What is
19 it? You know what it is. You have seen it.
20 You have heard the testimony.

21 Putting that child in that car to begin
22 with and leaving that child in the car, exposing
23 that child to potential death was the infliction
24 of injury to that child that rose to the level
25 of danger of death.

1 The first charge, they did that early. The
2 conspiracy, they did everything together. The
3 rest of the four hours the child was in the car
4 and the suffering that child had to endure as
5 Dr. Batalis testified to you. You expect that
6 105 degrees that people start dying. We have
7 all had fevers. You know how bad you feel with
8 100-degree fever or 101.

9 That child's temperature was 110. Dr.
10 Batalis said, I will be honest with you, I think
11 at 104 or 105 the brains stops working and the
12 organs start shutting down. She vomited into
13 her throat. She defecated in her diaper, and
14 you see that in the crime scene pictures. Her
15 whole body just stopped working. I will be
16 honest with you,
17 I wouldn't expect her to last more than an hour
18 in those conditions. They put her in those
19 conditions for five hours and 42 minutes.

20 We know about the infliction of serious
21 bodily injury. We know about the conspiracy.

22 What do you call the child's death?

23 Murder is the unlawful killing of another
24 with malice. What does that mean?

25 Unlawful killing of another, that's pretty

1 easy. What is malice? Two ways to show malice.
2 One is express. If you walk up to somebody and
3 said, I hate you. I'm going to kill you. I
4 don't care if you live or die. You shoot them
5 in the head. That is express malice.

6 This case is about implied malice. What is
7 implied malice? Implied malice is that you can
8 take your facts and circumstances of the case,
9 what you have seen, what you have heard, what
10 you know about this case.

11 That someone is so extremely reckless that
12 they had a wanton disregard for human life.
13 They may not even have direct, ill feelings
14 toward that one individual, but their attitude,
15 their actions. All of the things that they
16 chose to do. All the way they chose to act all
17 lead back to a conscious disregard for the lives
18 of others. In this case the other person was
19 **Child** a child totally dependent on them for
20 safety.

21 The wickedness, the depravity, malicious.
22 We know what malicious is. So I ask you as you
23 go back and look at all of this, at one point in
24 time in any of this did either one of these two
25 people show an ounce of compassion or care or

1 concern for **Child's** life.

2 If they had walked up to her and shot her,
3 she wouldn't have suffered the pain that she
4 suffered in this case.

5 MR. PHILLIPS: Objection.

6 MR. LOY: Objection.

7 THE COURT: The objection is overruled.

8 MR. STONE: Thank you, Your Honor.

9 Five hours and 42 minutes of suffering.

10 You see the blisters on her legs, the burn marks
11 from her coming in contact with other parts of
12 that car that also rose to the level of 118
13 degrees or 135. She was burned externally and
14 internally. What do you call it?

15 If you are sitting around talking to your
16 family members and your friends and you are
17 describing this situation to them, you may not
18 talk in terms of legal anything.

19 I think a good way to describe this is
20 torture. The child was tortured. Before Larry
21 and Rita. After Larry and Rita. Not the Larry
22 and Rita that these other people didn't know.
23 Larry admitted they were high on meth. These
24 bruises and these blisters that Dr. Batalis
25 described is torture. You don't accidentally

torture somebody. You treat them with such a lack of disregard for their human life that they die because of the torture. That is what happened in this case.

In the real world, in talking to family and friends and you are describing all of this, you might use the word torture. But in this courtroom today, we ask that you use the term murder. Thank you.

* *

CLOSING ARGUMENT BY MR. LOY

MR. LOY: Good afternoon. I would like to remind you at the outset that a moment ago when you listen to his remarks, they may have thought that the air-conditioner is on. I will tell you right now when you have heard the judge explain the law in this case and the facts that you have heard here that that sentence alone means that murder goes out the window. We will talk about murder in a minute, but please, if you remember nothing else about that opening remark, remember that the Solicitor has conceded to you that Mr. King may well have thought that the air-conditioner was on.

Ladies and gentlemen, I am here on behalf

1 of Mr. King. My remarks to you are addressed
2 solely as it relates to Mr. King. Ms.
3 Pangalangan has a really good attorney. He is a
4 smart guy. He will address you soon as it
5 relates to her. Again, understand I am not
6 talking about the two of them. I am talking
7 about Mr. King.

8 One of the things the Solicitor pointed out
9 in his remark that I agree with is he said,
10 well, this child was totally dependent on Rita.
11 He said it over and over and it's because it's
12 true. This is a child who was always going to
13 be dependent on her mother. Her mother was
14 responsible for her and her mother had to care
15 for her and her mother may have well tried to do
16 the best she could.

17 I'm not talking about her. I am talking
18 about the child who was completely dependent on
19 her. There is no evidence before you that Mr.
20 King was this child's father, that Mr. King had
21 adopted this child. That Mr. King and Ms. Rita
22 were married and he was some sort of step-
23 parent. He is dating her mom. It doesn't create
24 some sort of legal bond. This child is in the
25 care of her mother.

1 Ladies and gentlemen, when you return to
2 the jury room and the judge has charged you on
3 the law and instructed that you commence or
4 begin your deliberations, it may be that if you
5 all read Mr. King's indictments first, you will
6 simply say looking at the law as the judge gives
7 it to you. Larry is not guilty of murder. He
8 is not guilty of any of these crimes alleged in
9 this indictment. Larry didn't kill anybody. He
10 didn't commit murder.

11 It may be at the outset you say, this never
12 should have happened the way that it did, but
13 Mr. King didn't kill anyone. If that's the
14 case, whoever the foreperson is on the jury, you
15 are fully entitled to write not guilty. Set
16 those indictments aside and move on to other
17 business.

18 But in the event that one or more of you
19 feel like his circumstances merit further
20 discussion room in your deliberations. I need
21 to talk to you about a few more things.

22 First of all, the judge is going to tell
23 you soon that every person charged with a crime
24 is presumed innocent of any wrongdoing. It's an
25 absolutely critical term of art. It means that

1 the defendant has absolutely nothing to prove
2 during trial. You have a right to remain
3 silent, and that right cannot be used against
4 you if you choose to exercise it. It's because
5 of the presumption of innocence. It doesn't
6 mean we will wait and see, maybe, maybe not.

7 For the State to prevail to meet that
8 burden, they have to prove every element of the
9 crimes that are alleged within the indictment.
10 They have to prove them beyond a reasonable
11 doubt.

12 I will submit to you if Mr. King will come
13 in and give his testimony and he is honest
14 enough to give you that, then you can certainly
15 find he is honest enough to give you the rest.
16 If he will tell you the things that are bad for
17 him, you can look at that and consider it.

18 The State has charged Mr. King with murder.
19 It's the worst crime there is. Murder is not
20 hard to define. Murder is the killing of a
21 human being with malice aforethought. First of
22 all, Larry didn't kill anybody.

23 The Solicitor said in his opening that Mr.
24 King came out with the child and the door was
25 open and throws the child in like some baggage

1 that he wants to be rid of. She was just
2 baggage.

3 You didn't see that. What you saw is what
4 is in evidence. Mr. King came out as he
5 described, appropriately gently placed the child
6 in the back seat of the car. That is all Larry
7 did in this case. That is the sum total of what
8 he did. He relinquished this child into the
9 arms of her mother. He stepped away.

10 The Solicitor has to prove malice. First
11 of all, he has to prove he killed her, which of
12 course is nonsense. He made efforts to make
13 sure she was safe and properly positioned in
14 there.

15 He has to show when Larry did that, when he
16 put that child in that car, he did it with
17 malice. He killed her and he did it with
18 malice.

19 What does malice mean? Malice is hate,
20 ill-will or hostility towards another person.
21 It is the intentional doing of a wrongful act
22 without just case or excuse and with an intent
23 to inflict an injury or under circumstance in
24 which the law will infer evil intent. That is
25 what malice is.

1 So before you can even consider whether or
2 not Mr. King should be convicted or murder, you
3 have to consider whether or not there is any
4 evidence whatsoever that makes you believe he
5 put that child in that car with hate and ill-
6 will, hostility with the intention of doing a
7 wrongful act. That is nonsense.

8 You all met Mr. King. You all had a chance
9 to judge his credibility and to determine
10 whether or not he is guilty based on everything
11 that you heard and saw whether or not the State
12 has proven beyond a reasonable doubt in your
13 mind that when he put the child in the car, he
14 did it with hate, ill-will and malice. And the
15 reason is because that's the worst crime you can
16 do.

17 He didn't kill anyone and there is no
18 indication he had any malicious, ill-will, ill-
19 tent to murder this child. That's what the
20 State promised to prove. Ladies and gentlemen,
21 in your jury room you will have the indictments.
22 There are three indictments that Mr. King was
23 called to answer to.

24 Murder, I have addressed that. Inflicting
25 great bodily injury on a child. Conspiracy

1 charge. When you have those indictments in
2 there, you are fully entitled to look at,
3 examine, and see what you think about those
4 documents. You may know that shortly after this
5 child died, Mr. was indicted for murder.

6 As time went on and a trial is here, the
7 rubber will meet the road and you put it to the
8 test, somebody looked at that murder indictment
9 and said he was guilty. Why are y9ou coming
10 around in the back end and trying to get a
11 fallback position? You know why. There is no
12 evidence of malice or conspiracy.

13 Mr. King placed the child in the car, and
14 that point mom could do whatever she wants to
15 do. That is not his child. He is not
16 responsible for this child. He has no
17 obligation from this child. He didn't hurt her.
18 He didn't cause her to be hurt. As a matter of
19 fact, he thought the engine was running, he
20 thought the air-conditioner was running.

21 Her mother was there. There is no
22 conspiracy. There is no evidence whatsoever
23 that Mr. King ever attempted to commit a crime.

24 We would ask you to find Mr. King not
25 guilty.

PROCEEDINGS CONTINUED********FRIDAY, SEPTEMBER 1, 2023****WALTERBORO, SOUTH CAROLINA**

(The following proceedings were held in open court. All parties were present.)

BAILIFF: All rise. Please be seated.

THE COURT: If you'll bring the jury, if they're ready to come.

(Jury enters the courtroom.)

THE COURT: Mr. Phillips?

MR. PHILLIPS: Thank you, Your Honor.

********CLOSING ARGUMENT BY MR. PHILLIPS**

As a parent, this case is hard. I have three little children, and I know it's hard for you. I said it in opening, the raw emotion that you feel I'll put my cards on the table, it's anger. I can't watch the video and not yell, "Please break a window," it's anger, and I know you feel the same, and I told you that in opening.

This case is what it is from the video, but after reviewing what we have is the evidence, and the video itself, this case is a lot of

1 things, but it's not murder. When you separate
2 that, my job is much easier than yours, I'm an
3 advocate, and your job is harder.

4 You've taken a sworn oath before God to
5 separate that, and it's hard. That's not
6 something normal people have to do, but you have
7 to separate emotion. You'll hear from the
8 Judge, he'll instruct you on the law that
9 passion, prejudice, hatred any of that stuff
10 that comes up in this trial, those raw emotions,
11 you've got to set that aside, and you have to
12 base your verdict solely on the evidence as
13 presented on that witness stand, been admitted,
14 everything that we've seen, but when we do that
15 it's not murder.

16 It's a lot of things, but it's not murder.
17 You swore an oath and do not base your decision
18 on emotion.

19 Now, I'll give you every right, because
20 it's natural, it's human nature. In this
21 courtroom right here you can be as angry as you
22 want to be. You can be angry, and you can have
23 those natural feelings, as we all know, it's
24 natural.

25 However, I can't stress this enough, when

1 you cross the threshold of that door and walk in
2 that jury room, you have a sworn oath that you
3 are separating yourself from that. Your job is
4 hard, but you took that oath, and you have an
5 incredible responsibility, that when you cross
6 that threshold, you have to separate that and
7 apply just the law.

8 And, again, I'm not saying it's easy, it's
9 not easy for you, but we've all seen it. And in
10 this case, we've touched on a lot of different
11 things, and we'll touch on that, but I just can
12 stress it enough, I have to say it again, be
13 angry now, have that emotion, but you can't let
14 it cross that threshold to go in that jury room,
15 you swore not to do that.

16 And if somebody in the jury room starts
17 talking about that kind of stuff, or starts
18 talking about TVs, and all this other stuff
19 that's improper, I empower each of you to come
20 tell the Judge, because that is not what's
21 supposed to happen, that is not the law. We're
22 gonna follow the law in this courthouse, and
23 it's not easy, it's not easy, but that is the
24 law and that is your sworn duty.

25 This extreme recklessness regard for human

1 life. The government has said, that's easy.
2 Well, let's walk through that. Today I showed
3 you on this Defense Exhibit 15 that's been
4 admitted, they put an officer on that stand the
5 first day, he was unequivocal that the lights
6 and the flash of that car running. It turns out
7 he was there, and it flashed.

8 He can come up with any explanation he
9 wants, but the facts are the facts, and the
10 video is the video, just like the video shows,
11 and they've got to own this video just like
12 we've got to own that video, they can't run from
13 it.

14 And I want you to -- if you've got any
15 questions about it, watch it for yourself, it's
16 short, and it shows what he says and what was
17 unequivocal, what they would argue if I didn't
18 do that, they would have said there's no way
19 that car was running.

20 And then you hear for the first time today
21 from him, that the car was running when he got
22 there. You didn't hear that from that first
23 witness. You didn't hear that from him, until
24 now when he's backtracking. They want that
25 murder conviction so bad. They've got cameras,

1 this is their spotlight, they're gonna make the
2 news, they're gonna send a message, right?
3 That's not your job, your job is not to get
4 caught in that. You leave that anger in this
5 courtroom, and you decide this case on the law
6 in that room.

7 Now, we see Rita go to the car at -- they
8 said 12:59 -- I think it's 12:29, but, again,
9 you have all the time in the world, and it's
10 your show once you get the case. You can watch
11 the video as many times as you want, you can go
12 through any parts.

13 You're if really not sure what somebody
14 said, Madam Court Reporter can pull it up for
15 you. We're not running from the facts of this
16 case, they are what they are. But Rita goes to
17 that car, and there's only three scenarios, and
18 they intentionally, I think, left this out, and
19 I'll just say it.

20 They said, "Well, she opened the front door."
21 Right before that, again, what does she do? She
22 comes out, she opens the front door, she sits in
23 that car. And we know she sits in the front
24 door for a period of time, but the hammer skips,
25 that means there wasn't motion. So we know she

1 sat in the front seat of the car. There's only
2 three scenarios, she sat in the front seat for a
3 period of time, and the car wasn't running, and
4 she left the back door open.

5 If they both believed that car wasn't
6 running, and the air conditioner wasn't on,
7 they're like no, but the Solicitor conceded that
8 they might have believed that the air
9 conditioner was on, but we also got testimony
10 today the car was running the day before, that's
11 strange.

12 They then tried to flip it that Larry
13 turned it off, or turned the car on right before
14 then, and you heard this extra testimony from
15 Investigator Chapman. We then watch the video,
16 anybody who knows a push button start car,
17 you've got to push in the brake to cut the car
18 engine on. Guess what he doesn't do? He
19 doesn't sit in that car and push it in, he
20 leaned in. Why would they do that?

21 Also says Rita doesn't know they have a
22 surveillance camera. Everything in evidence
23 shows that in his bedroom where they stay for
24 hours is what they contend, there's surveillance
25 camera videos, this is their evidence. This is

1 what they brought, and he's switching it up in
2 closing, and saying she doesn't know anything
3 about it. Also their evidence, the surveillance
4 camera itself sitting right behind the swing.
5 Rita doesn't know there's a surveillance camera.
6 That is the Solicitor's words. He's gonna have
7 to own this. They want this conviction bad.
8 They want you to be angry, that's not what
9 you're gonna do, I know you're not. We chose
10 you all for a reason, and you swore to do that
11 and follow the law.

12 The facts are the facts, they can't run
13 from them. They tried to show that picture of
14 the gun, the gun had nothing to do with this
15 case. They truly believe it was a murder, based
16 on the facts they presented. Why are they
17 trying to show something? It shows the weakness
18 in their case, they're just trying to get you
19 more angry. What's the purpose of the gun?

20 Now, my position is this, they knew they
21 had a problem, and three years later they give
22 the infliction of great bodily injury, because
23 they knew they had a problem with proving
24 murder, why not add that charge? This case is a
25 lot of things, but it's not murder. They knew

1 that, and that's why they added that indictment.

2 Now, you'll hear, again, you'll hear that
3 reasonable doubt is kind of defined in two ways,
4 that you're firmly convinced of something, or
5 it's something that causes you a hesitation to
6 act. That's important because I'd like to
7 describe it.

8 Defense lawyers have a hard time trying to
9 always come up with a way to describe the legal
10 definitions, but this is how I like to describe
11 reasonable doubt. Consider a voting booth,
12 based on what you -- going back to a jury room,
13 you've got to make a decision, you've got two
14 options, not guilty and guilty.

15 Under the law Rita is presumed innocent,
16 that not guilty button is already pushed. Now,
17 the State has to prove beyond a reasonable doubt
18 all the elements, malice, this depraved heart,
19 based on the evidence, that you don't have any
20 hesitation to hit that guilty button. If you
21 have any hesitation, you'll hear the Judge
22 himself tell you, "If you have any hesitation,
23 that's a reasonable doubt under the law." She's
24 not guilty of murder.

25 If you're firmly convinced, no hesitation,

1 you're 100 percent sold, there's no doubt that
2 they thought that car was running and A/C,
3 that's a depraved heart, and we own that.
4 Anybody who would do that, it is -- it's on its
5 face. Now, here it's highly to your own
6 opinion, don't be swayed necessarily by other
7 jurors.

8 You're entitled to your own opinion. The
9 law gives each one of you your own voice. Don't
10 let other jurors bully you into a position that
11 you don't feel comfortable with, stand firm.
12 And I'm not saying one way or the other, but you
13 stand firm in your convicted beliefs, that is
14 what the law requires, and that's what you
15 should do.

16 Again, you're a chosen jury, it's not
17 random. You came here, that was random, but
18 each one of you was chosen. I used ten strikes,
19 I think they used eight strikes, we chose you
20 for a reason. We chose you because we knew you
21 could be fair and impartial, that you'd follow
22 the law. It's an incredible responsibility that
23 you have. It's not random, each one of you were
24 chosen for a reason.

25 We've been sitting over there in the

1 corner, I had to look you in the eye. You heard
2 from her daughter that she's a loving mother.
3 That she was there for her family. And all this
4 other stuff about dirty houses, all this stuff
5 that they tried to say is the murderer in that
6 video, they bring in all this other stuff, bed
7 bugs, dirty house.

8 Her daughter, the one that's here, and one
9 is a teacher, and one that's understanding, all
10 the people here say exactly what we knew, that
11 the lady -- that you saw how she acted, that she
12 didn't pay rent, that she brought her boyfriend
13 and kids in there, and was dirtying up the
14 house, and she got kicked out, she had an axe to
15 grand.

16 Well, why present all that, if this case
17 isn't what it was supposed to be? The murder's
18 on the video is what they're trying to say.
19 They're trying to say it's open and shut, then
20 why are they adding all this other stuff in
21 there? This is real. This is no isolated case.
22 This is no round table discussion. This is this
23 woman's life, this woman's freedom. And I'm not
24 saying that she did everything right, because
25 God knows I already said she didn't. And you

1 can feel it, but you can't do it in there.
2 You've been given, as I said, an incredible
3 responsibility, one that almost nobody has. And
4 you've heard the Judge tell you out of all the
5 United States, and the State of South Carolina,
6 you were chosen.

7 There's only three people I know that can
8 judge another person, that awesome power of
9 judging a person, that you, as jurors, the Judge
10 in the black robe and the man upstairs. You've
11 been given just an opportunity in your life, one
12 that's the most difficult decision in your life.
13 And I understand we've put you in this
14 uncomfortable place, but it is an incredible
15 responsibility.

16 You're sitting in judgment of another
17 person. There are no do overs. When you wake
18 up tomorrow, you have your breakfast or your
19 coffee, and you think did I make the right
20 decision? It's too late, there are no do overs.
21 You can't wake up ten years from now, 30 years
22 from now, 50 years from now, wondering, did I
23 make the right decision? There are no do overs.
24 If you have doubts, you have them now, you have
25 them in that room, you can be confident in your

1 verdict. If you have any hesitation, any
2 hesitation, about hitting the guilty button,
3 that's reasonable doubt, and that is not what
4 you're supposed to do. Any hesitation, firmly
5 convinced, the depraved part that they had no
6 belief that they put **Child** in that car with
7 that intention.

8 If you're firmly convinced, you've got to
9 be sold on that. I'll stand on this, there are
10 no words, there are no excuses, just the law and
11 your sworn oath, find her not guilty of murder.
12 They gave you the answer three years after, tell
13 them what the answer is. Thank you.

14 THE COURT: Mr. Stone?

15 **

16 FINAL CLOSING ARGUMENT BY MR. STONE

17 MR. STONE: The defense wants you to
18 believe that because they didn't get together
19 and say, "Let's kill **Child**," that there's no
20 malice. Unfortunately, that's not the law.
21 That's not what the law is, and that's not what
22 the Judge is gonna tell you. The Judge is gonna
23 tell you that malice can be inferred from
24 conduct so reckless of one, as to indicate a
25 depravity of mind, and a general disregard for

1 human life.

2 MR. PHILLIPS: Objection, Your Honor.

3 MR. STONE: It's not going to --

4 THE COURT: The objection's overruled.

5 MR. STONE: Thank you, Your Honor. It's
6 not going to be the malice that they're trying
7 to say has to exist, that they got together and
8 said, "Let's deal with **Child**"

9 The bottom of this, malice does not require
10 ill-will towards an individual, what does it
11 require? Actions and conduct so reckless as to
12 show a disregard of human life. So the question
13 you have her is, what did they do to show a
14 disregard of human life?

15 And the answer is everything, everything.
16 Do you want to know what's relevant about the
17 loaded gun in the backseat? That's a disregard
18 for human life.

19 As the defense and everybody in South
20 Carolina knows, you put a child in a car that's
21 in direct sunlight in August, and you live them
22 there, they're gonna die, fry, that is a
23 disregard for human life.

24 In fact, it would be even better and easier
25 if you went through and tried to find a time, at

1 which time they actually showed you some regard
2 for that child's human life, but you won't find
3 any, because it's not there, it's not there.

4 Larry's defense attorney came up here and
5 basically said this, well, just like the
6 Solicitor said, he may have thought the air
7 conditioner was on, right? Because it was hot.

8 I don't know what he was thinking. I think
9 if any of us watch this video, the one question
10 that has to pop in your mind over and over and
11 over again, what are you thinking?

12 What are you doing? You put this child in
13 the car. You know it's not on, there's no air
14 conditioning, you're in the middle of summer,
15 you're in South Carolina, everybody knows you're
16 not supposed to -- what are you doing? What are
17 you thinking when you find the child locked in
18 the car at 3 o'clock that afternoon, four hours
19 later.

20 Let's not break the window, let's go find
21 another key. What are you doing on the swings?
22 What are you doing when you're going inside and
23 having sex, and the child is still out in the
24 car cooking? What are you doing? And there's
25 no answer to that. You know? They're high.

1 And what the Judge is also gonna tell you is
2 that voluntary intoxication, the voluntary use
3 of drugs is not an offense in South Carolina to
4 anything, to anything.

5 If they're high and if the air
6 conditioner's on, so what, they're high. And by
7 the way the disregard and safety of others, the
8 disregard for human life to begin with, to go
9 and get your child, and continue to get high.

10 And that while you're high. You can't find
11 a single thing that shows they cared one ounce
12 about that child. Did I say at the very
13 beginning that that child was baggage? The
14 child was baggage on that day. Did the
15 witnesses take the witness stand and say, "She's
16 been a good mother in the past," but no one knew
17 about her meth use.

18 None of them knew how she acted when she
19 was high on meth, none of them did. They didn't
20 lie to you, they just didn't know, and they said
21 they didn't know. Larry says, "Okay, I've got
22 another defense, not my child." Never mind, he
23 put the child in the car himself, he wants a
24 pass because it's not his child, he's not
25 responsible for the child, because he doesn't

1 have any regard for human life, this child or
2 anybody else. Supposedly -- "If I saw something
3 going on with the child, I'd do something about
4 it." Would you?

5 What about 3 o'clock in the afternoon, the
6 child's locked in the car? Break the window.
7 That's Larry. They made a big deal about
8 Brittney Huneycutt. What did Brittney Huneycutt
9 tell you? She said, "Take this child with you.
10 Please take this child with you." "I've got to
11 go to work, I can't take the child with me."
12 "Take her to work, put her in the car, leave her
13 there, that's what I do, I do it all the time."

14 They said, "Well, Brittney Huneycutt didn't
15 like her very much, and she didn't like
16 Brittney." Okay, fine, let's go to Lindsey
17 Lewis, the babysitter, the same babysitter that
18 Rita abandons her child with three days before
19 this takes place. The babysitter who had never
20 taken care of the child before.

21 The babysitter who didn't even know if the
22 child ate solid food, that there was a choking
23 hazard, because Rita never told her. The same
24 babysitter that came in and testified, "There
25 wasn't any food in the house, and she just left.

1 And all Saturday I tried to call her, and she
2 didn't respond."

3 Do you know why she didn't respond?
4 Because she was getting high with Larry. Her
5 focus was on Larry, her focus was on getting
6 high with Larry, not anything to do with this
7 child. She didn't respond then. She didn't
8 respond before. She didn't respond through this
9 entire event, not to that child, all of her
10 concern was Larry.

11 She abandons the child with the babysitter,
12 then she turns around and puts the child in the
13 car, they don't forget, that's what I said in my
14 opening statement, they didn't forget her, they
15 stood around the car until they went inside and
16 had sex.

17 Where was the child? In the car, she
18 abandoned the child again. Yeah, I own the fact
19 that I said baggage, that's exactly how they're
20 treating that child, baggage, in the way,
21 because she needed to be with Larry, and she
22 abandoned the child then. And the child's
23 locked in the car. Did she stay with the child?

24 No, she and Larry go and hug and kiss in
25 the car -- in the truck, and they take off,

1 abandoning the child again. And one more thing
2 and I'll sit down. He said he's a parent, lots
3 of experience. I can't imagine finding my child
4 dead.

5 MR. LOY: Objection, Your Honor.

6 MR. STONE: It was improper, it's not in
7 evidence.

8 THE COURT: The objection is overruled.

9 MR. STONE: Thank you.

10 I can't imagine. Most parents if they find
11 their child dead, they're not gonna be inside
12 the house when the police get there. In fact,
13 the police are gonna have to pry that parent off
14 of that child.

15 And if the police don't have to do it, the
16 Coroner's gonna have to do it. If the Coroner's
17 not gonna do it, the funeral director's gonna
18 have to do it, because the parents are gonna
19 stay with that child. That child was dead. The
20 child is a part of them, they're never gonna
21 leave that child, even if the child is dead.
22 And what did she do?

23 She went inside, she abandoned the child
24 again. Maybe at some point in her life, and
25 maybe other days she wouldn't have done that,

1 but on August the 5th, 2019, two people murdered
2 that child on this day.

3 **

4 JURY CHARGE

5 THE COURT: Madam Forelady --

6 FORELADY: Yes, sir.

7 THE COURT: -- and members of the jury,
8 you've heard the testimony, received the
9 evidence and heard the arguments of the State
10 and the Defendants. I will now explain to you
11 the law that applies to this case. Under the
12 Constitution and laws of the State of South
13 Carolina, you are the finders of the facts.

14 I do not have a right to pass on the facts,
15 or to express any opinion that I might have as
16 to them, because this is a matter solely for
17 you, the jury, to determine. As jurors then, it
18 is your duty to determine the effect, the value,
19 the weight and the weight of the evidence
20 presented during this trial.

21 As the Trial Judge, it is my responsibility
22 to preside over the trial of the case, to rule
23 upon the admissibility of the evidence offered
24 during the trial. You are to consider only the
25 testimony from this witness stand, together with

1 any exhibits which have been made a part of the
2 record. I have the additional duty to charge
3 you the law applicable, and as the Presiding
4 Judge, I am the sole judge of the law.

5 It is your duty as jurors to accept and
6 apply the law as I now state it to you, then
7 deliberate in an effort to reach a verdict. I
8 charge you in that regard that you should not be
9 concerned with what you think the law ought to
10 be, but what I tell you that the law is. Now,
11 you are also the judges, the sole judges of the
12 credibility, that is the believability of the
13 witnesses who have testified, and of the
14 evidence offered during the trial.

15 In considering credibility, you may take
16 into consideration many things, such as the
17 demeanor or manner of testifying, whether the
18 witness had a reason to be biased or prejudiced,
19 and whether the testimony of a witness was
20 contradicted on the one hand or supported and
21 corroborated on the other hand. You may believe
22 a small portion of a witness' testimony, and
23 disregard the larger, or vice versa.

24 These things you will consider, bearing in
25 mind that you should give each Defendant the

1 benefit of any reasonable doubt. It becomes
2 your duty, as jurors, to analyze and to evaluate
3 the evidence, and determine that evidence which
4 convinces you.

5 There are two types of evidence, which are
6 generally presented during a trial, direct
7 evidence and circumstantial evidence. Direct
8 evidence directly proves the existence of a
9 fact, and does not require deduction.
10 Circumstantial evidence is proof of a chain of
11 facts and circumstances, including the existence
12 of a fact.

13 It is evidence which immediately
14 establishes collateral facts from which the main
15 fact may be inferred. Circumstantial evidence
16 is proof of a chain of facts and circumstances,
17 indicating the existence of a fact. Crimes may
18 be proven by direct evidence, or circumstantial
19 evidence.

20 The law makes no distinction between the
21 weight or the value to be given, either direct
22 evidence or circumstantial evidence. However,
23 to the extent the State relies on circumstantial
24 evidence, all of the circumstances must be
25 consistent with each other, and when taken

1 together point conclusively to the guilt of the
2 accused beyond a reasonable doubt.

3 If these circumstances merely portray a
4 defendant's behavior as suspicious, the proof
5 has failed. The State has the burden of proving
6 each defendant guilty beyond a reasonable doubt.
7 This burden rests with the State regardless of
8 whether the State relies on direct evidence,
9 circumstantial evidence, or some combination of
10 the two.

11 Now, rules of evidence normally do not
12 permit witnesses to testify as to opinions or
13 conclusions. An exception to this rule exists
14 for witnesses who are called expert witnesses.
15 An expert witness is a witness, who by education
16 or experience has become an expert in some
17 field, and that witness may state an opinion to
18 relevant and material matter within their
19 expertise, and they may also state the reasons
20 for their opinion.

21 You should consider any expert opinion
22 received in evidence. And like any other
23 evidence, give it the weight that you think it
24 deserves. If you decide that an opinion of an
25 expert is not based on sufficient education and

1 experience, or if you conclude that the reasons
2 given in support of the opinion are not sound,
3 or that the opinion is outweighed by other
4 evidence, you may disregard the opinion
5 entirely.

6 An expert witness' testimony is to be given
7 no greater weight than that of any other witness
8 simply because the witness is an expert.
9 Further, you are not required to accept an
10 expert's opinion, even though it is not
11 contradicted.

12 Now, I instruct you and emphasize that the
13 fact that a defendant did not testify is not a
14 factor to be considered by you in any way in
15 your deliberations, and in your consideration on
16 the question of the guilt or innocence of a
17 defendant.

18 It must not be considered by you in any
19 manner whatsoever. A defendant has the
20 constitutional right to remain silent. And the
21 assertion of this right must not be considered
22 by you in your deliberations. So I repeat,
23 under your oath, you are to draw no conclusions
24 whatsoever from the fact that a defendant did
25 not testify.

1 The fact that a defendant did not testify
2 should not even be discussed in the jury room.
3 The burden of proof as I have stated is on the
4 State. The defendant is not required to prove
5 him or her innocent. The burden remains on the
6 State to prove guilt beyond a reasonable doubt.

7 Now, the fact that the Defendants were
8 arrested, charged and indicted is not evidence,
9 and cannot be considered by you as evidence of
10 guilt, nor does an indictment create any
11 presumption or inference of guilt. The
12 indictments are simply the formal written
13 instruments, which contain the charges made
14 against the Defendants.

15 The indictments are the formal documents by
16 which this case is brought into this Court.
17 Each Defendant has pled not guilty to the
18 charges in the indictments. And those pleas put
19 the burden on the State to prove the Defendant
20 or Defendants guilty. A person charged with
21 committing a criminal offense in the State of
22 South Carolina is never required to prove
23 himself or herself innocent.

24 I charge you that it is an important rule
25 of the law, that a defendant in a criminal

1 trial, no matter what the seriousness of the
2 charge may be, will always be presumed to be
3 innocent of the crime for which the indictment
4 was issued, unless guilt has been proven by
5 evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 This presumption of innocence does not end
8 when you begin your deliberations, but it
9 accompanies each Defendant throughout the trial
10 until you reach a verdict of guilt, satisfying
11 you of that guilt beyond a reasonable doubt.
12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of a
14 defendant, which remains with the defendant
15 until it has been stripped from the defendant by
16 evidence satisfying you of the defendant's guilt
17 beyond a reasonable doubt.

18 The presumption of innocence is not a mere
19 legal theory, it's not just a legal phrase, it
20 is a substantial right to which every defendant
21 is entitled, unless you are satisfied from the
22 evidence of proof beyond a reasonable doubt.
23 The State has the burden of establishing every
24 fact necessary to prove each Defendant guilty
25 beyond a reasonable doubt, because the law

1 presumes every Defendant charged with a crime to
2 be innocent, and the burden of establishing
3 guilt is placed solely on the State.

4 So what is a reasonable doubt in the law?
5 A reasonable doubt is the kind of doubt that
6 would cause a reasonable person to hesitate to
7 act. Proof beyond a reasonable doubt,
8 therefore, is proof that leaves you firmly
9 convinced of the guilt of a defendant.

10 There are very few things in this world
11 that we know without absolute certainty, and in
12 criminal cases the law does not require proof
13 that overcomes every possible doubt.

14 If based on your consideration of the
15 evidence, you are convinced that a Defendant is
16 guilty, then you must find him or her guilty.
17 If on the other hand you think that there is a
18 reasonable possibility, a real possibility that
19 either or both of the Defendants are not guilty,
20 then you must give each of them the benefit of
21 the doubt and find him or her not guilty.

22 The indictments in this case allege three
23 separate offenses against each Defendant. The
24 indictments are murder of **Child**,
25 great bodily injury on a child, and criminal

1 conspiracy. Each indictment charges a separate
2 and distinct offense as to each Defendant. You
3 must decide each indictment separately on the
4 law and the evidence applicable to it,
5 uninfluenced by your decision as to any other
6 indictment.

7 Each Defendant may be convicted or
8 acquitted on any or all of the offenses charged,
9 and you will be asked to write a separate
10 verdict of guilty or not guilty for each
11 indictment.

12 The Defendant, Rita Pangalangan, and
13 Defendant, Larry Eugene King, are the charged
14 with the murder of **Child**. The
15 State must prove beyond a reasonable doubt that
16 the Defendant or Defendants killed **Child**
17 with malice aforethought. Malice is
18 hatred, ill-will, or hostility towards another
19 person. It is the intentional doing of a
20 wrongful act without just cause or excuse, and
21 with an intent to inflict an injury, or under
22 circumstances that the law will infer an evil
23 intent.

24 Malice aforethought does not require that
25 malice exists for any particular time before the

1 act is committed, but malice must exist in the
2 mind of the Defendant or Defendants just before
3 and at the time the act is committed.

4 Therefore, there must be a combination of
5 the previous evil intent and the act. Malice
6 aforethought may be expressed or inferred.
7 These terms, expressed and inferred, do not mean
8 different kinds of malice, but merely the manner
9 in which malice may be shown to exist. That is
10 either by direct evidence or by inference from
11 the facts and circumstances which are proven.
12 Expressed malice is shown when a person speaks
13 words which expresses hatred or ill-will for
14 another, or when the person prepared beforehand
15 to do the act, which was later committed.
16 Malice may be inferred from conduct showing a
17 total disregard for human life.

18 Malice may be inferred from conduct that is
19 so extremely reckless and wanton, as to indicate
20 a depravity of mind and general disregard for
21 human life. In the context of murder, malice
22 does not require ill-will toward the individual
23 injured, but rather it signifies a general
24 malignant extreme recklessness of the lives and
25 safety of others, or a condition of mind that

1 shows a heart, regardless of social duty a fatal
2 event on mischief.

3 As to the charge of great bodily injury on
4 a child, the State must prove beyond a
5 reasonable doubt that the Defendant or
6 Defendants inflicted great bodily injury on a
7 child. Great bodily injury means bodily injury,
8 which creates a substantial risk of death, or
9 which causes serious injury or permanent
10 disfigurement, or protracted loss, or impairment
11 of a bodily function, member, or organ.

12 As to criminal conspiracy, the State must
13 prove beyond a reasonable doubt that the
14 Defendants combined together for the purpose of
15 accomplishing a criminal or a unlawful object,
16 or an object neither criminal nor unlawful, by
17 criminal or unlawful means to establish the
18 existence of a conspiracy, proof of an expressed
19 agreement is not necessary, and direct evidence
20 is not essential, but the conspiracy may be
21 sufficiently shown by circumstantial evidence,
22 and the conduct of the parties.

23 And in order to establish criminal
24 liability, criminal intent is required. For
25 example, the mental state required to be proven

1 by the State for a particular crime might be
2 purpose, intent, knowledge, extreme recklessness
3 or criminal negligence.

4 Criminal intent must be proven by the State
5 beyond a reasonable doubt. And criminal intent
6 is always a matter that must be determined by
7 the jury from the circumstances surrounding the
8 situation. There's no way to prove intent to a
9 mathematical certainty.

10 There's no way medical science can dissect
11 a person's brain and determine what the person
12 had in mind. So the law says criminal intent
13 may be shown from circumstances shown to have
14 existed. This is how you make a determination
15 of whether or not the element requiring intent
16 was present.

17 It is not necessary to establish intent by
18 direct and positive evidence, but intent may be
19 established the same way as any other facts, by
20 taking into consideration the acts of the
21 parties, and all the facts and circumstances of
22 the case. Criminal intent is a mental state, a
23 conscious wrongdoing. It is up to you to
24 determine what the Defendant or Defendants
25 intended to do, based on the circumstances shown

1 to have existed. Criminal intent can arise from
2 action, or failure to act. It may arise from
3 negligence, extreme recklessness or an
4 indifference to duty, or to consequences that is
5 considered by the law to be an equivalent to
6 criminal intent.

7 Voluntary intoxication or use of drugs does
8 not constitute a defense to a crime, but proof
9 of mere presence at the scene of the crime is
10 not sufficient to find someone guilty. However,
11 the law also says that the hand of one is the
12 hand of all.

13 If a crime is committed by two or more
14 persons, who are acting together in the
15 commission of a crime, then the act of one is
16 the act of both. When a person does an act in
17 the presence of and with the assistance of
18 another, the act is done by both. As indicated
19 mere suspicion, however strong, is not
20 sufficient to sustain a conviction. Suspicion
21 implies a belief or opinion as to guilt based on
22 facts and circumstances which do not amount to
23 proof.

24 Now, while the arguments of counsel are a
25 beneficial part of every trial, you should

1 remember that the statements made by counsel are
2 not evidence. In presenting their arguments,
3 counsel often refer to the evidence; however,
4 you should base your verdict on the evidence as
5 you remember it.

6 If there are any conflicts between the
7 recollection of counsel about the evidence and
8 your own recollection, you should rely on your
9 own understanding of the evidence.

10 And Madam Forelady, and members of the
11 jury, I'm required to charge you the law as I've
12 done through giving you these instructions, and
13 that's to help guide you to a just and lawful
14 verdict.

15 Whether some of these instructions apply
16 will depend upon what you find to be the facts.
17 The fact that I've instructed you on various
18 subjects must not be considered as an indicating
19 and opinion that I have, as to what you should
20 find to be the facts, or what your verdict
21 should be.

22 Now, you've been chosen and sworn to give
23 the parties a fair and impartial trial. When
24 you've done so, you will have complied with your
25 oath, and no one will have a right to criticize

1 your verdict. You must not be influenced by
2 opinions or expressions of opinions you may have
3 heard outside of the courtroom, but rather
4 should base your verdict solely on the testimony
5 of the sworn witnesses who took the stand, the
6 exhibits received into evidence and the law
7 which I have stated.

8 You should not be swayed by capris,
9 passion, prejudice or improper sympathy for or
10 against anyone. Remember you have no friends to
11 reward or enemies to punish, and all parties are
12 entitled to a fair and impartial trial. It is
13 your duty, as jurors, to consult with one
14 another, and to deliberate in an effort to reach
15 an agreement.

16 Each of you must decide this case for
17 yourself, but only after an impartial
18 consideration of all of the evidence with your
19 fellow jurors. In the course of your
20 deliberations, do not hesitate to re-examine
21 your own views, and to change your opinion, if
22 you become convinced that it is erroneous.
23 However, do not surrender your honest
24 conviction, as to the weight or effect of the
25 evidence solely because of the opinion of your

1 fellow jurors, or for the mere purpose of
2 returning a verdict.

3 As I stated earlier, you are the judges,
4 judges of the facts. Your verdict must
5 represent the considered judgment of each juror.
6 In other words, your verdict must be unanimous.
7 And, Madam Forelady, it will be your duty to
8 preside over the deliberations of the jury. If
9 during your deliberations you should desire to
10 communicate with me, please reduce your message
11 or question to writing, signed by your
12 Foreperson, and the Foreperson only, and then
13 pass the note to the Bailiff, who will bring it
14 to my attention.

15 I will then respond as promptly as
16 possible, either in writing, or to have you
17 return to the courtroom. However, I caution
18 you, however, with regard to any message or
19 question, that you should never state or specify
20 your numerical division at the time. You've
21 heard the evidence, and now you have heard the
22 law. Whatever your verdict, Madam Forelady, you
23 will indicate the verdict on the verdict form.
24 And we have two verdict forms, one for
25 Pangalangan, and one for King.

1 And as to each charge, the verdict is
2 either not guilty or guilty, you will check the
3 appropriate box, then sign it at the end. Now,
4 remember that although only the Foreperson
5 writes the verdict, it is not hers alone. The
6 verdict has to be unanimous, and, Madam
7 Forelady, you're not authorized to write the
8 verdict until all of you have agreed on the
9 verdict.

10 So, ladies and gentlemen, I'm going to send
11 you to the jury room to start deliberating in a
12 moment, but when you get there don't begin
13 deliberations until you've received the copy of
14 the verdict forms and the exhibits. And once
15 you receive these things, that will be your
16 signal to begin your deliberations.

17 Once you begin your deliberations, you will
18 deliberate until you have reached a verdict, at
19 which time you will knock on the door, advise
20 the Bailiff, and we will bring you out to
21 receive your verdict.

22 Now, we've selected 14 people to serve on
23 jury duty, the first 12, our regular jurors, and
24 then two alternates. Before asking any question
25 about whether you can continue with

1 deliberations, I want to inquire the jury
2 whether anyone has made an effort to contact you
3 about the case, or whether you've viewed any
4 media, articles or otherwise been exposed to any
5 other information about this case, other than
6 what you received in the courtroom?

7 If you've seen or heard anything else
8 outside of the courtroom, or have been contacted
9 by anyone concerning the case, if so, raise your
10 hands. No hands are raised. Now, we have two
11 alternates, very capable alternates over there,
12 if for any reason any of the first 12 of you
13 selected cannot continue with deliberations,
14 please raise your hands. All the first 12
15 jurors are good to go, which means that the two
16 alternates will not be able to participate in
17 the deliberations, and when they go to the jury
18 room, if you'all will hold your position right
19 there.

20 So I'm going to send you to the jury room
21 now, and wait for the verdict form and exhibits,
22 and that will be your signal to begin your
23 deliberations, so please go to the jury room.

24 (Jury exits the courtroom.)

25 THE COURT: Will they close the door? Is

1 the door closed? Are there any additions or
2 exceptions to the charge?

3 MR. STONE: No, sir, not from the State.

4 MR. LOY: NO, Your Honor, thank you.

5 MR. PHILLIPS: None from the charge, Your
6 Honor. Whenever the appropriate time is, I have
7 a matter of law I need to put on the record.

8 THE COURT: All right. So if you'all can
9 then review the exhibits that's going back to
10 the jury, along with pass up the verdict form to
11 them as well?

12 And while they're reviewing these exhibits
13 for submission to the jury room, I'm gonna
14 discharge the alternates now. I don't know if
15 you have to take that down, or if you do.

16 COURT REPROTER: Yes, sir.

17 THE COURT: Oh, okay, start taking it down.

18 COURT REPROTER: I'm sorry, did you say
19 yes?

20 THE COURT: Yes, may as well, yes.

21 COURT REPORTER: Yes, sir.

22 THE COURT: Okay. Let's let the alternates
23 go and then get back to that. To the two
24 alternates, thank you'all very much for your
25 efforts during this trial. Whenever people

1 appear for jury duty, they're quite often
2 hesitant and hopeful that they don't get picked,
3 but almost everyone who gets selected to be on
4 the jury, by the end of the trial and during the
5 course of the trial, they become heavily
6 invested in the trial, and they want to see it
7 through to its conclusion.

8 So I've noticed you'all being very
9 attentive and very good jurors, but the luck of
10 the draw, the first 12 selected are those folks,
11 and you'all were standing in the wings ready to
12 join the jury, if you needed to, so we're gonna
13 release you from jury duty now. I would suggest
14 that you not discuss what you think the verdict
15 should be until you hear from the jury, as to
16 what the verdict is, at which time you can talk
17 to anyone that you might want to about the
18 verdict at that time.

19 MR. STONE: Your Honor, can we just say
20 thank you for their time?

21 THE COURT: And we want to thank you on
22 behalf of all the parties, and your other fellow
23 citizens of Colleton County, and so you're
24 excused. Madam Clerk, any other comments for
25 the jurors? Okay. Do you normally tell them

1 you're gonna send them a check, or --

2 CLERK: Well, we already explained that.

3 They got cards at the beginning of the week --

4 THE COURT: All right, I've got you.

5 CLERK: Okay.

6 THE COURT: All right, you don't explain
7 the checks anymore. Concerning the diagram that
8 was never admitted into evidence, and was used
9 for demonstrative purposes only, has that been
10 removed?

11 MR. STONE: It has not. I apologize, which
12 document is it?

13 THE COURT: Forensic pathologist.

14 MR. STONE: Yeah, the chart?

15 THE COURT: The chart. It was never
16 admitted.

17 MR. PHILLIPS: Your Honor, may I be
18 excused?

19 THE COURT: Yes, sir.

20 MR. STONE: The State is satisfied, Your
21 Honor.

22 THE COURT: All very, very good. Okay,
23 take them back, Mr. Bailiff, and let the jury --
24 they can start deliberating.

25 BAILIFF: Yes, sir.

1 THE COURT: Yes, sir, Mr. Phillips, a
2 matter of law.

3 MR. PHILLIPS: thank you, Your Honor.
4 Based on what was presented in closing, I'd
5 renew the prior motion for a mistrial,
6 specifically, highlighting the Solicitor's
7 comments about shooting her in the head,
8 referring to **Child**, and the previously
9 sustained hearsay objection I had, regarding
10 what Rita said, you had sustained that during
11 the trial inadmissible statement in his closing.

12 There was a photo of the gun that I
13 previously objected to, as well as the testimony
14 from Lindsey Lewis and Brittany Huneycutt, that
15 I would argue was under 401, not relevant,
16 404(b) inadmissible propensity evidence, and
17 403, that any probative value was substantially
18 outweighed by its prejudicial effects.

19 I believe we touched on a mistrial,
20 regarding the -- that's been a depravation of
21 Rita's right to a fair trial. The closing was
22 calculated to arouse the passions and prejudice
23 of the jury. It crossed the threshold and rose
24 to the level of a mistrial. Thank you.

25 THE COURT: All right, a response by the

1 State?

2 MR. STONE: No, sir, I think we've covered
3 all the arguments legally. I don't believe that
4 I referred to anything in front of the jury. I
5 don't believe I did that; otherwise, Your Honor,
6 all the other legal arguments have already been
7 made.

8 THE COURT: Anything further?

9 MR. PHILLIPS: And just to be specific
10 about the statement, I believe that question was
11 asked of Larry about what she said, as far as it
12 would be cheaper not to bust out the window, go
13 get the key fob. I objected to the hearsay, and
14 Your Honor sustained that objection.

15 THE COURT: A statement by the co-
16 Defendant?

17 MR. PHILLIPS: That's correct.

18 THE COURT: As being hearsay?

19 MR. PHILLIPS: Yeah, and you sustained it,
20 and they relied on that inadmissible statement.

21 THE COURT: Yeah, I don't recall sustaining
22 a co-Defendant's statement.

23 MR. PHILLIPS: The co-Defendant was
24 testifying. I wouldn't say a statement that Ms.
25 Pangalangan -- I objected as to hearsay.

1 THE COURT: Statement as stated by the co-
2 Defendant?

3 MR. PHILLIPS: No, by my client.

4 THE COURT: Okay.

5 MR. PHILLIPS: Rita Pangalangan. During
6 Larry King's testimony.

7 THE COURT: All right.

8 MR. PHILLIPS: You sustained it.

9 THE COURT: All right, everything is a
10 matter of record, and the record is preserved,
11 and I overruled the motion that's currently
12 being made and all other motions that I
13 previously overruled or denied. And the jury
14 can keep rolling, and we'll take a break waiting
15 for them.

16 MR. STONE: Thank you.

17 MR. LOY: Thank you, Your Honor.

18 THE COURT: Yeah.

19 (RECESS)

20 BAILIFF: All rise and come to order.

21 THE COURT: Thank you. You'all may be
22 seated while I look over this. Yes, sir.

23 MR. LOY: Before we leave the courtroom
24 again --

25 MR. PHILLIPS: That's it.

1 THE COURT: You certainly can confer with
2 each other.

3 MR. LOY: Thank you, Your Honor.

4 THE COURT: The jury has now sent out two
5 notes. The first one is, "Can I get a copy of
6 the laws and definitions as stated?" I answered
7 that, "No." They've now sent out another note,
8 "Is it possible that we can get a laptop to view
9 video?" Says the State?

10 MR. STONE: I don't have any objection, any
11 way Your Honor wants to do that. We've got a
12 laptop we can send back. Obviously, there needs
13 to be some instructions from Your Honor that
14 says you can't go play on the Internet, or
15 looking -- you've just got to watch the video.
16 If there's a better way? I don't have any
17 objection one way or the other.

18 MR. PHILLIPS: My position is, that I'd
19 like it to be in a controlled environment. They
20 can come in here and we can play the video here.
21 It's a controlled environment.

22 THE COURT: Well, jury deliberations are
23 not a controlled environment.

24 MR. PHILLIPS: Understood, but they can
25 watch the video and then go from there.

1 THE COURT: Yes, sir?

2 MR. LOY: Your Honor, I have been in Court
3 where the Court has a pristine clean --

4 THE COURT: Well, the Court has no pristine
5 anything. My computer has 20 years' worth of
6 work on it.

7 MR. LOY: No, I'm sorry, I wasn't referring
8 to Your Honor, that the Courthouse itself, when
9 they make that available it doesn't have
10 internet access, it doesn't have anything else
11 on it.

12 If the laptop has other stuff on it, I
13 object to it going back. If it has internet
14 access, I object to it going back. If not, if
15 there's one that has nothing, and it's simply a
16 video player, I do not have an objection to them
17 having it to view.

18 THE COURT: Okay, well, this should not be
19 rocket science for any lawyer trying a case in
20 2023, when videos are presented during or body
21 cam, videos of various sorts are used in almost
22 every trial.

23 MR. LOY: Yes, sir.

24 THE COURT: And it's incumbent upon the
25 lawyers to deal with that issue. I do not

1 believe in having jurors deliberate in the
2 presence of an audience, such as Mr. Phillips is
3 suggesting.

4 Though you're shaking your head, if -- once
5 the jury gets the case to deliberate, they
6 should have evidence in the jury room as they
7 were given the videos to take into the jury
8 room. It's incumbent upon the parties to make
9 it such that they can view that evidence in the
10 jury room, as they have requested.

11 MR. LOY: As I could not introduce any
12 video, I don't think it's incumbent upon me --

13 THE COURT: Okay, so you're out of the
14 conversation, it's not incumbent upon you.

15 MR. LOY: Excuse me?

16 THE COURT: You're out of the conversation,
17 if it's not incumbent upon you.

18 MR. LOY: I don't mean to say -- but I'm
19 making the argument that it's not incumbent upon
20 me --

21 THE COURT: Okay.

22 MR. LOY: -- it's incumbent upon them.

23 THE COURT: All right.

24 MR. LOY: If Your Honor wants to instruct
25 them to the law, the specific computer from the

1 Solicitor's Office that God knows what's on it.

2 THE COURT: Oh, I understand that, so,
3 obviously, that won't happen.

4 MR. LOY: thank you, Your Honor.

5 THE COURT: That's like police bodycam of a
6 DUI traffic stop that has 30 DUI stops on it.

7 MR. LOY: thank you, Your Honor.

8 THE COURT: So we don't do that. Yes, sir.

9 MR. PHILLIPS: The burden's always on the
10 State, and we have no burden in here.

11 THE COURT: Not regarding exhibits, the --

12 MR. PHILLIPS: There's no law that requires
13 for them to have a laptop ready for the jury.

14 THE COURT: Well, absolutely, you're
15 correct. It's incumbent upon the lawyers, as
16 far as, if you introduce the video, and you
17 argue to the jury that they can watch the video,
18 but you made no provisions for the jury to watch
19 the video that you introduced, and so -- and it
20 goes both ways.

21 That's why, as I'm stating, it's incumbent
22 upon the lawyers in presenting cases, to make
23 provisions for the jury to view their evidence,
24 if you want the jury to review it.

25 MR. PHILLIPS: And, Your Honor,

1 respectfully, I believe that would be Court
2 Administration through the Clerk of Court's
3 Office, and that would be my position. Thank
4 you.

5 THE COURT: Yeah, well, it's not incumbent
6 upon Court Administration, and it's not
7 incumbent upon the Clerk's Office to make
8 provisions for jurors to review evidence that's
9 introduced by the parties, that's the
10 responsibility of the parties. Mr. Stone?

11 MR. STONE: Again, we'd offer that, and I
12 think even sending a Bailiff back with the
13 computer, but whatever, again, do whatever you
14 want to.

15 THE COURT: Yeah. Mr. Loy's right, I mean
16 you have some pristine computer with nothing on
17 it, for the purpose of having jurors be able to
18 view it, but, you know, apparently, you'all have
19 not done it in this case.

20 MR. PHILLIPS: And I guess, potentially,
21 for the appellate record, I know from other
22 cases, since the State has the burden of
23 proof --

24 THE COURT: Yeah.

25 MR. PHILLIPS: -- they will have a computer

1 with no internet, no access. It's their
2 evidence from which once you cross that bridge
3 of proving beyond a reasonable doubt that my
4 client is guilty, so it is their --

5 THE COURT: Yeah. Jurors request many
6 things that are not in evidence, including a
7 laptop, it's not in evidence. Jurors get the
8 evidence, and they have the evidence, and
9 they're deliberating.

10 If the parties are interested in the
11 parties reviewing the evidence, then it's
12 incumbent upon the parties to work that out to
13 enter into some stipulation, which should be
14 done in advance of making an argument to the
15 jury, saying, "Watch my video," and you've made
16 no provisions for them to watch it.

17 MR. LOY: Thank you, Your Honor.

18 THE COURT: So the question now posed by
19 the jurors, "Is it possible that we can get a
20 laptop to view video?" What says the State?

21 MR. STONE: My answer is yes, we have the
22 video, we have a laptop. Your instruction
23 should be, "Watch the video on the laptop, don't
24 get on the internet." Other than that, yes, is
25 the answer to that.

1 THE COURT: What else is on the video,
2 other than exhibits and this trial?

3 MR. STONE: You mean what else is on the
4 computer?

5 THE COURT: Yes, sorry, yes. What else is
6 on the laptop, other than exhibits in this
7 trial?

8 MR. STONE: Probably a lot like your
9 computer, Your Honor. The internet is cut off.
10 Whether the Bailiff could go with it, I have no
11 objection to that either.

12 THE COURT: Well, the Bailiff's not a part
13 of deliberations.

14 MR. STONE: I know.

15 THE COURT: Yes, sir?

16 MR. LOY: Your Honor, I'm sorry.

17 MR. STONE: Judge, I think we have a way to
18 do this.

19 THE COURT: Okay.

20 MR. STONE: But I have to ask about
21 technology. If I could just have him explain it
22 to you, this is Dylan Hightower, I know you guys
23 introduced him earlier, but --

24 THE COURT: Yes, sir, Mr. Hightower?

25 MR. HIGHTOWER: Yes, sir, Judge, what we

1 can do is, we can create a new profile through
2 my computer, and just put these two files on
3 there, the two camera angles, and then allow
4 them to view it from there on out, and they
5 won't have any access to the Internet.

6 THE COURT: So it will not have any access
7 of any other information?

8 MR. STONE: And so everything else will be
9 passworded, so you wouldn't be able to get to
10 it.

11 THE COURT: All right, Mr. Phillips?

12 MR. PHILLIPS: If after review that is done
13 in the way they described, I have no objection.
14 I would ask that the video that Your Honor
15 referenced --

16 THE COURT: So do you want to prove to Mr.
17 Phillips what you just said?

18 MR. HIGHTOWER: Yes, sir, can I have about
19 five or ten minutes, and I can give a perfect
20 example of how that works.

21 MR. PHILLIPS: Okay.

22 MR. LOY: I want him to explain it to me.

23 THE COURT: All right. Take your time and
24 do that, and then -- and explain it to everyone
25 before they submit it to the jury.

1 MR. HIGHTOWER: Yes, sir.

2 (RECESS)

3 THE COURT: Okay, Mr. Bailiff, if you'll
4 bring the jury.

5 (Jury enters the courtroom.)

6 THE COURT: They're coming in. I read what
7 was submitted and agreed upon by the parties,
8 State's request number three. I kind of
9 hesitated, as I was reading it, two or more
10 persons gathering together for the purpose of
11 accomplishing the criminal or unlawful object,
12 or an object neither criminal nor unlawful by
13 unlawful means. Is that the right word, object,
14 or should it be act?

15 MR. STONE: As I said, I tried to get that
16 directly from the case, okay?

17 THE COURT: Yeah, I gotcha.

18 (Jury enters courtroom.)

19 THE COURT: Okay. All right, welcome back.
20 I received a couple notes here, "Is it possible
21 we can get a laptop to view video?" And the
22 answer is, yes, and that will be submitted back
23 there for you to use. Second question is, "Can
24 we get a clear definition on criminal
25 conspiracy? We cannot decide on a verdict until

1 we have a clear understanding." A criminal
2 conspiracy is defined as a combination between
3 two or more persons for the purpose of
4 accomplishing a criminal or unlawful object, or
5 an object neither criminal nor unlawful by
6 criminal or unlawful means to establish the
7 existence of a conspiracy Proof of an expressed
8 agreement is not necessary, and direct evidence
9 is not essential, but the conspiracy may be
10 sufficiently shown by circumstantial evidence,
11 and the conduct of the parties.

12 And that's what the definition of a
13 criminal conspiracy is. So I ask you all to
14 return to the jury room.

15 (Jury exits the courtroom.)

16 THE COURT: Any additions or corrections to
17 the charge?

18 MR. STONE: No, sir.

19 MR. LOY: No, Your Honor.

20 MR. PHILLIPS: None, Your Honor.

21 MR. STONE: Your Honor, Mr. Hightower has
22 copied the videos over, and they're about 75 to
23 80 percent, and so about 20 more percent, and
24 I'll be able to show defense counsel what we're
25 talking about.

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MR. PHILLIPS: You are going to put it on there?

MR. STONE: Yeah, we'll need to load it on here, which the State has no objection to that. I just need to have it, so I can put it on.

MR. PHILLIPS: Okay.

THE COURT: I'll say for the record that, you know, I've submitted charges that each party has agreed to the standard definition of conspiracy.

There's a lot less confusion, of course, I know the lawyers always believe that something you find is quite often believed that what you find is better than what the standard definition is; but the standard definition in our charge is, "The Defendant I charged with conspiracy. The State must prove beyond a reasonable doubt that the Defendant combined with one or more persons for the purpose of committing an unlawful act, or of committing a lawful act by unlawful means.

There must be a mutual understanding, agreement or common intention and plan. Mere paths of knowledge or consent to the criminal

1 conduct of another is not enough to make a
2 person a conspirator. There must be guilty
3 knowledge and participation.

4 Similarly, the mere act that the Defendant
5 may have associated with another person or met
6 with another person and discussed common aims
7 and interest, does not necessarily establish
8 proof of existence of a conspiracy, or that the
9 Defendant was involved in a conspiracy.

10 On the other hand, it's not necessary that
11 the agreement be a formal one, that it be in
12 writing, that the person hold a meeting and
13 expressly state the terms of the common plan, or
14 that the agreement be stated in words between
15 them. The agreement of a criminal conspiracy
16 may come into being through an implied mutual
17 understanding, the willful intention of knowing,
18 adoption by two or more persons of a common plan
19 is sufficient.

20 No overt acts need to be shown to establish
21 a conspiracy. A conspiracy may be shown by
22 circumstantial evidence and the conduct of the
23 parties. In order to convict the Defendant of
24 conspiracy, the State must prove beyond a
25 reasonable doubt, not only that Defendant knew

1 of the unlawful conduct, that the Defendant
2 agreed to combine with the other person, for the
3 purpose of accomplishing the unlawful conduct.
4 That's a complete charge on conspiracy, and --
5 which is not what was requested and agreed to by
6 the parties.

7 MR. PHILLIPS: Well, Your Honor, for
8 purposes effective assistance of counsel with
9 the request --

10 THE COURT: No, I read their question --
11 I read their question, and then I gave the
12 charge.

13 MR. PHILLIPS: Yes, sir, but you also --
14 before you gave the standard charge, you said
15 this is a more clearer -- this is a clearer
16 definition.

17 THE COURT: All right, well, I don't recall
18 saying those words. I'm not disputing you, but
19 it doesn't sound like, but go ahead.

20 THE COURT: So especially the case that was
21 handed up by Clarendon County. So there's no
22 objection to me bringing them back out, and
23 giving the standard conspiracy charge; is that
24 correct?

25 MR. LOY: I would request it.

1 THE COURT: All right, requested by each
2 defense lawyers, and agreed to by the State.

3 MR. STONE: That's fine, Your Honor.

4 THE COURT: All right. So let's bring the
5 jury back.

6 (Jury enters the courtroom.)

7 THE COURT: Madam Forelady and members of
8 the jury, the Defendants are charged with
9 conspiracy. The State must prove beyond a
10 reasonable doubt that the Defendants combined
11 with one or more person, the Defendant or
12 Defendants combined with one or more persons for
13 the purpose of committing an unlawful act, or of
14 committing a lawful act by unlawful means.
15 There must be a mutual understanding agreement,
16 or common intention and plan.

17 Mere passive knowledge of or consent to the
18 criminal conduct of another is not enough to
19 make a person a conspirator. There must be
20 guilty knowledge and participation. Similarly,
21 the mere fact that a defendant may have
22 associated with another person, or met with
23 another person and discussed common names, and
24 interests does not necessarily establish proof
25 of the existence of a conspiracy, or that a

1 defendant was involved in a conspiracy. On the
2 other hand, it is not necessary that the
3 agreement be a formal one, that it be in
4 writing, that the person hold a meeting and
5 expressly state the terms of the common plan, or
6 that the agreement was stated in words between
7 them.

8 The agreement of a criminal conspiracy may
9 come into being through an implied mutual
10 understanding. The willful, intentional and
11 knowing adoption by two or more persons of a
12 common plan is sufficient. No overt acts need
13 to be shown to establish a conspiracy.

14 A conspiracy may be shown by circumstantial
15 evidence and the conduct of the parties. In
16 order to convict a defendant of conspiracy, the
17 State must prove beyond a reasonable doubt not
18 only that a defendant knew of the unlawful
19 conduct, but that a defendant agreed or combined
20 with the other person or persons for the purpose
21 of accomplishing the unlawful conduct. And that
22 is a criminal conspiracy.

23 If you'all will return to the jury room.

24 (Jury exits the courtroom.)

25 MR. LOY: Thank you, Your Honor.

1 THE COURT: Okay. Any additions or
2 exceptions?

3 MR. STONE: No, sir.

4 MR. PHILLIPS: No, Your Honor.

5 THE COURT: All right, and how are we
6 coming with that project?

7 MR. STONE: We're ready.

8 THE COURT: Good.

9 MR. STONE: Yes, sir.

10 THE COURT: Okay.

11 MR. STONE: Your Honor, I believe that both Mr.
12 Loy and Mr. Phillips are satisfied. Mr.
13 Hightower has created a separate file folder.
14 There's no internet access, but there are file
15 folders in there, just from -- it comes with the
16 basic computer, but I mean they're all empty.

17 The only other thing that's on there is a
18 drone dashboard that has no data in it, and
19 nothing related to this case on it, and it
20 literally just comes up as a picture.

21 THE COURT: And do you have to send back
22 some instructions of some sort?

23 MR. PHILLIPS: Your Honor, we would request
24 that they just be instructed just to click the
25 videos.

1 THE COURT: Just hit play?

2 MR. PHILLIPS: Just to play the videos.

3 THE COURT: And they're up, Judge, in a
4 file folder. They can see the three -- the two
5 raw videos that we introduced, the one that Mr.
6 Phillips introduced.

7 MR. STONE: The only other thing I would
8 send back is for that user is the PIN code,
9 which is [REDACTED].

10 THE COURT: All right.

11 MR. PHILLIPS: And I guess just another
12 general instruction, not to look at anything
13 else.

14 MR. STONE: There's nothing on there for
15 them to look at, so --

16 MR. PHILLIPS: I'm good.

17 MR. LOY: To my understanding, it will be
18 open to the file that supposedly the videos.

19 MR. STONE: Yes.

20 MR. LOY: It goes back in that setting.
21 Your Honor, I'm satisfied.

22 THE COURT: All right, fine. If you'll
23 hand that to the Bailiff to take it to the jury.
24 So to further comment on this, in some Federal
25 Courts they have systems that will do this

1 playing, but not in most State Courts, certainly
2 not here. And it is I think a phenomenon that
3 we're encountering trials, and the lawyers have
4 to be prepared for it.

5 I know that back in the day, I would say,
6 the jurors would come into the courtroom, and
7 view all of videos of crimes and traffic stops
8 and all those things, and, in fact, the lawyers
9 would look at the jurors to see what kind of
10 reaction they're getting, while they're watching
11 this evidence. And the jury is deliberating, so
12 in effect you're asking them to deliberate in
13 open court, which is the reason why -- which I'm
14 again, in fairness to the jurors.

15 Like if they're seeing something and want
16 to comment and say, "See there," I mean that's
17 their prerogative, that's why they deliberate in
18 the jury room and not in open court, so I'm glad
19 we could get that resolved.

20 MR. STONE: Thank you, Your Honor.

21 THE COURT: So we are back at ease, waiting
22 for the jury, and hopefully they won't take six
23 hours.

24 BAILIFF: All rise.

25 (RECESS)

1 BAILIFF: All rise. Please be seated.

2 THE COURT: The jury sent a note, says,
3 "Can we have a restatement on the definition of
4 murder?" Says the State?

5 MR. STONE: They've asked you to recharge
6 murder and malice, you had a whole section in
7 there. I think that's what they're asking.

8 THE COURT: What says defense?

9 MR. PHILLIPS: They asked for a definition
10 of murder specifically. We have no objection to
11 giving them the definition of murder.

12 THE COURT: "Can we have a restatement on
13 the definition of murder."

14 MR. LOY: With Mr. King, Your Honor, I ask
15 for the entire charge.

16 THE COURT: Okay, well, the complete charge
17 of murder is only a page and half.

18 MR. LOY: That's right.

19 THE COURT: I think they -- I'm gonna
20 recharge murder. Bring the jury.

21 (Jury enters the courtroom.)

22 THE COURT: Madam Forelady and members of
23 the jury you've sent out a question, "Can we
24 have a restatement on the definition of murder?"

25 So I'm going to recharge you on the offense

1 of murder. The Defendant, Rita Pangalangan and
2 Defendant, Larry Eugene King, are the
3 charged with the murder of **Child**
4 The State must prove beyond a reasonable doubt
5 that the Defendant or Defendants killed **Child**
6 **██████████** with malice aforethought. Malice is
7 hatred, ill-will, or hostility towards another
8 person. It is the intentional doing of a
9 wrongful act without just cause or excuse, and
10 with an intent to inflict an injury, or under
11 circumstances that the law will infer an evil
12 intent.

13 Malice aforethought does not require that
14 malice exists for any particular time before the
15 act is committed, but malice must exist in the
16 mind of the Defendant or Defendants just before
17 and at the time the act is committed.
18 Therefore, there must be a combination of the
19 previous evil intent and the act.

20 Malice aforethought may be expressed or
21 inferred. These terms, expressed and inferred,
22 do not mean different kinds of malice, but
23 merely the manner in which malice may be shown
24 to exist. That is either by direct evidence or
25 by inference from the facts and circumstances

1 which are proven. Expressed malice is shown
2 when a person speaks words which express hatred
3 or ill-will for another, or when the person
4 prepared beforehand to do the act, which was
5 later committed.

6 Malice may be inferred from conduct showing
7 a total disregard for human life. Malice can be
8 inferred from conduct that is so extremely
9 reckless and wanton, as to indicate a depravity
10 of mind and general disregard for human life.
11 In the context of murder, malice does not
12 require ill-will toward the individual injured,
13 but rather it signifies a general malignant
14 extreme recklessness of the lives and safety of
15 others, or a condition of mind that shows a
16 heart, regardless of social duty a fatal event
17 on mischief.

18 And that is a statement on the definition
19 of murder. If you'll return to the jury room.
20 Thank you.

21 (Jury exits the courtroom.)

22 THE COURT: Any additions or exceptions to
23 the charge?

24 MR. STONE: No, sir, not from the State.

25 MR. PHILLIPS: No, Your Honor.

1 MR. LOY: No, Your Honor, thank you.

2 THE COURT: All right, we're back in
3 waiting.

4 (Recess.)

5 BAILIFF: All rise.

6 THE COURT: Please be seated.

7 I understand there's a verdict, you may
8 bring the jury.

9 (Jury enters the courtroom.)

10 **

11 READING OF THE VERDICT

12 THE COURT: Madam Forelady, if you'll stand
13 for me. Have you reached a verdict?

14 FORELADY: Yes, we have.

15 THE COURT: Is it unanimous?

16 FORELADY: Yes, it is.

17 THE COURT: Okay, if you'll pass it to the
18 Clerk, who will pass it to me, and you may be
19 seated. Okay, if the Defendants will rise, and,
20 Madam Clerk, if you will publish the verdict.

21 THE CLERK: The State of South Carolina v.
22 Rita M. Pangalangan, Indictments Number 2019-GS-
23 15-00781, 2022-GS-15-00710, 2022-GS-15-00814,
24 we, the jury, in the above-captioned on the
25 charge of murder of **Child**

1 find the Defendant guilty.

2 We, the jury, in the above-captioned case
3 on the charge of great bodily injury of a child
4 we find the Defendant guilty. We, the jury, in
5 the above-captioned case on the charge of
6 criminal conspiracy find the Defendant not
7 guilty, and it's signed by the Foreperson --

8 THE COURT: No, you don't need to call out
9 the name of the Foreperson.

10 Signed by the Foreperson, do that.

11 CLERK: Signed by the Foreperson.

12 THE COURT: Yes.

13 CLERK: The State of South Carolina v.
14 Larry Eugene King, Indictments 2019-GS-15-00780,
15 2022-GS-15-00709 and 2022-GS-15-00813, we, the
16 jury, in the above-captioned case on the charge
17 of murder of **Child** find the
18 Defendant guilty.

19 We, the jury, in the above-captioned case
20 on the charge of great bodily injury on a child,
21 find the Defendant guilty.

22 We, the jury, in the above-captioned case
23 on the charge of criminal conspiracy find the
24 Defendant not guilty. This is also signed by
25 the Foreperson.

1 THE COURT: Thank you.

2 Madam Forelady and members of the jury, if
3 that is your verdict, please let me know by
4 raising your right hands. All right, thank you,
5 all hands are raised. The verdict appears to be
6 a unanimous verdict. Any individual polling
7 requested?

8 MR. STONE: Not from the State, Your Honor.

9 MR. LOY: No, Your Honor.

10 MR. PHILLIPS: Yes, Your Honor.

11 THE COURT: Okay, Madam Clerk, if you will
12 poll the jury, as it relates to the verdicts
13 involving Ms. Pangalangan.

14 CLERK: Do you want them to stand or
15 just --

16 THE COURT: Just juror number, stand
17 individually, and pose the questions to them, is
18 this your verdict, is it still your verdict?

19 CLERK: Call them by their numbers?

20 THE COURT: Numbers, yes.

21 CLERK: Madam Foreperson, juror number 3,
22 is this your verdict?

23 JUROR 3: Yes.

24 CLERK: Is it still your verdict?

25 JUROR 3: Yes.

1 CLERK: Juror number 147, is this your
2 verdict?

3 JUROR 147: Yes.

4 CLERK: Is it still your verdict?

5 JUROR 147: Yes.

6 CLERK: Juror number 56, is this your
7 verdict?

8 JUROR 56: Yes.

9 CLERK: Is it still your verdict?

10 JUROR 56: Yes.

11 CLERK: Juror number 5, is this your
12 verdict?

13 JUROR 5: Yes.

14 CLERK: Is it still your verdict?

15 JUROR 5: Yes.

16 CLERK: Juror number 77, is this your
17 verdict?

18 JUROR 77: Yes.

19 CLERK: Is it still your verdict?

20 JUROR 77: Yes.

21 CLERK: Juror number 339, is this your
22 verdict?

23 JUROR 339: Yes.

24 CLERK: Is it still your verdict?

25 JUROR 339: Yes.

1 CLERK: Juror number 58, is this your
2 verdict?

3 JUROR 58: Yes.

4 CLERK: Is it still your verdict?

5 JUROR 58: Yes.

6 CLERK: Juror number 450, is this your
7 verdict?

8 JUROR 450: Yes.

9 CLERK: Is it still your verdict?

10 JUROR 450: Yes.

11 CLERK: Juror number 32, is this your
12 verdict?

13 JUROR 32: Yes.

14 CLERK: Is it still your verdict?

15 JUROR 32: Yes.

16 CLERK: Juror number 12, is this your
17 verdict?

18 JUROR 12: Yes.

19 CLERK: Is it still your verdict?

20 JUROR 12: Yes.

21 CLERK: Juror number 422, is this your
22 verdict?

23 JUROR 422: Yes.

24 CLERK: Is it still your verdict?

25 JUROR 422: Yes.

1 CLERK: And juror number 253, is this your
2 verdict?

3 JUROR 253: Yes.

4 CLERK: Is it still your verdict?

5 JUROR 253: Yes.

6 CLERK: Your Honor, the jury has been
7 polled.

8 THE COURT: The jury has been polled, it's
9 a unanimous verdict. Any post-trial motions?

10 MR. PHILLIPS: Yes, Your Honor, we would
11 renew all prior motions in this trial, and every
12 other motion I've made, as well as the pretrial
13 motions.

14 THE COURT: Yes.

15 MR. PHILLIPS: No objection.

16 THE COURT: All right. Yes, sir?

17 Thank you. Any response by the State?

18 MR. STONE: No, sir.

19 THE COURT: All right, the matters were
20 properly submitted to the jury, for the jury's
21 consideration. They've studied the evidence
22 carefully. The evidence was appropriately
23 placed before them for their consideration.
24 They have reached a verdict that is unanimous,
25 and the Court respectfully denies each motion

1 made by each Defendant.

2 MR. PHILLIPS: And the motion for a new
3 trial.

4 THE COURT: Yes, sir, and the Court
5 likewise denies a motion for new trial, as to
6 each Defendant. Ladies and gentlemen, I want to
7 thank you all.

8 I know you all didn't know what you had in
9 store coming in here Monday, and you might have
10 come in as spectators, but all of a sudden, you
11 got thrown into the mix and realized that it's -
12 - the burden was totally on your shoulders to
13 listen to the evidence and stay focused and go
14 back and deliberate to reach a verdict.

15 Quite obviously, it's a heart-wrenching set
16 of facts and circumstances here a terrible,
17 almost unimaginable, but yet these are the facts
18 of life that we have to deal with in today's
19 environment.

20 Some things occur that are so extreme you
21 just wouldn't believe -- or could hardly believe
22 it to be true. Then you realize in listening to
23 this case that these things happen and happened
24 in this case, and we want to thank you for
25 responding to the call of duty and serving as

1 jurors. You played a very important and
2 critical function.

3 Certainly, if you had to find yourself
4 being involved in a trial one way or the other,
5 you'd love to have 12 jurors who listen, who
6 takes the job seriously, deliberated, and render
7 a verdict, and I want to thank each and every
8 one of you.

9 Now, Mr. Engineer, what type of engineer
10 are you?

11 THE FOREPERSON: Mechanical sir.

12 THE COURT: Mechanical?

13 THE FOREPERSON: Yes, Sir.

14 THE COURT: My daughter's a civil and
15 resides in Aiken County, where there's a whole
16 lot of engineers. And I usually tell the
17 lawyers, don't put any engineers on the jury,
18 because they have a hard time -- they analyze so
19 much that they -- it's being an engineer.

20 You know, of course, I'd never tell her
21 that, but that's the way it is, but depending on
22 your training and profession and your level of
23 expectation on things, I appreciate that. And
24 that's what makes for a fair and impartial jury
25 to have people from all walks of life that can

1 come in and deal with things. And, young man,
2 are you the youngest on the jury? I want to
3 thank you for having confidence in yourself that
4 you can be a juror, and to do something that you
5 probably didn't think you could do, but you did
6 it, so I want to congratulate you, and everyone
7 else on the jury.

8 I know that it wasn't easy for any of you,
9 but that's our system, and our system has
10 worked. The case was investigated, the case was
11 presented to the Grand Jury of this County, and
12 then the case presented to you'all, and you'all
13 have made a decision, and I support your
14 decision 100 percent.

15 Now, when you find someone guilty, then it
16 becomes my responsibility to impose a sentence.
17 And are you all -- do you need time to prepare
18 for sentencing?

19 MR. LOY: No, Your Honor.

20 MR. PHILLIPS: I'm ready, but my client may
21 need a minute.

22 THE COURT: Pardon?

23 MR. PHILLIPS: I'm prepared, but my client
24 may need a minute with me. Then we can enter
25 the sentencing phase.

1 THE COURT: Okay, very good. And you all
2 will --

3 MR. PHILLIPS: Understood.

4 THE COURT: You need to stay in the
5 courtroom at this point, but certainly can
6 confer. Do you want the transport people now?
7 We banned them from the courtroom earlier.

8 If they need to come back --

9 MR. PHILLIPS: She just needs a minute,
10 Your Honor.

11 THE COURT: Okay, sure, absolutely. Take
12 your time.

13 MR. PHILLIPS: Thank you.

14 THE COURT: So ladies and gentlemen, you
15 have no role in the sentencing, that's totally
16 the responsibility of the Judge.

17 I have found that jurors typically like to
18 see what happens all the way through the end of
19 the case.

20 I'm certainly in no rush to impose a
21 sentence, because this is such a tragic
22 situation, and as people in Court, they're not -
23 - and typically, you know, quite often not --
24 they don't appear the same as they appear when
25 they commit the crimes, but you're welcome to

1 stay. And we'll just be at ease for a moment
2 while Mr. Phillips confers with his client.

3 And I'll say that once you are off the
4 jury, then you're free to talk about the case
5 with anyone that you might want to talk to about
6 it, but you're not obligated to talk with
7 anyone. And if anyone should annoy, harass, or
8 bother you in any way, let me know, and I will
9 take care of any interference, or threatening or
10 bothering jurors.

11 It's punishable, it's a serious crime, and
12 we take those things seriously. I don't
13 anticipate that you have anything to worry
14 about, but we keep the identity of the jurors
15 private, except for the Forelady, and -- but
16 you're certainly welcome to talk to anyone that
17 you might want to. So we're gonna take -- are
18 you ready now?

19 MR. PHILLIPS: If Your Honor wants to
20 dismiss the jury, I guess that's appropriate.

21 THE COURT: No, I'm not gonna dismiss them.
22 They're free to go or free to stay. We'll just
23 be at ease for just a moment. I'll step out for
24 just a moment. We'll be at ease for a moment.

25 BAILIFF: All rise.

1 (RECESS)

2 **

3 **SENTENCING HEARING**

4 BAILIFF: All rise. Please be seated.

5 THE COURT: All right, from the State?

6 MR. STONE: Your Honor, I don't believe
7 there is anything I can add that you don't
8 already have.

9 You've seen this case; you've seen all the
10 evidence as the truth. I don't believe there's
11 anything I could add to that, other than just my
12 opinion, which is, it's one of the worst things
13 I've seen in my 30 years as a prosecutor, and I
14 think they tortured this child. I think she
15 died by being tortured to death, and I think the
16 appropriate penalty is life in prison.

17 THE COURT: Any victims want to say -- do
18 you have any victims here who might want to
19 speak, or victim's representatives, yeah.

20 MR. STONE: Yes, sir, we have a few family
21 members, talked with them, and they do not wish
22 to address. I believe I will check one more
23 time.

24 THE COURT: If you want to identify for the
25 record family members?

1 MR. STONE: There's family members here,
2 but they do not wish to address you.

3 THE COURT: All right.

4 MR. STONE: Thank you.

5 THE COURT: Do you want to identify them
6 for the record or no?

7 MR. STONE: I'll ask.

8 THE COURT: All right, very good. For the
9 defense?

10 MR. LOY: Your Honor, I can bring Mr. King
11 forward for sentencing any time.

12 THE COURT: You'd prefer to do what?

13 MR. LOY: To have the individuals be
14 sentenced separately.

15 THE COURT: Yes, sir, that's fine.

16 MR. LOY: Should I bring him now?

17 THE COURT: We'll bring him for sentencing,
18 but you can speak to me now, and I may speak to
19 him as well.

20 MR. LOY: Give me just a moment.

21 Your Honor, he has testified, so you know
22 something of his background. When the Solicitor
23 says there's not much that he can add, because
24 Mr. King does not live a life of crime. To the
25 best of my knowledge, he doesn't have much of a

1 record just a couple, maybe drinking in public,
2 or something like that, but that is the extent
3 of it.

4 Mr. King is also not the type of person who
5 is not going to accept responsibility. I felt
6 like he made a good impression on the Court
7 when he told things that were both bad for him,
8 or as well as good. He put it all out there,
9 and he accepts the judgment of the jurors and
10 Court today.

11 Unlike many folks that I have stood with in
12 the courtroom, when the verdict came in, and it
13 came in for him, he took it on his feet. He
14 didn't say a word, and when we sat down, he
15 turned to me and shook my hand and said, "Thank
16 you, I know you tried the best you could."

17 And he turned to shake my hand and said,
18 "Thank you." He doesn't make excuses, he
19 accepts responsibility. He wants you to know he
20 has been supported in Court by his family. He's
21 not one of those people like you see so many of
22 in Court in General Sessions who have no
23 friends, no family, et cetera. He has
24 maintained connection.

25 I spoke with him on the phone yesterday,

1 talked about this proceeding. He told me don't
2 worry about him; he was having a good day. His
3 grandson was with him, and he got to play with
4 him and hold him. I know how terrible this
5 child died.

6 I also know to a large degree that Mr. King
7 has lived his life up to that point, and how
8 he's lived it since. And although he is
9 convicted of murder, I would submit to the Court
10 that the overall evidence, the total picture
11 that you should have of Mr. King at this point
12 is revealed. As you heard from the witness
13 stand, he did go subsequent to this incident,
14 move into a halfway house or a treatment
15 facility in Spartanburg.

16 He reconnected with his own religion. Says
17 he's been clean for two years and is clean here
18 today. Judge, I understand and he understands
19 what limited latitude the Court really has here
20 today, as far as sentencing goes, that is from a
21 30-year to a light sentence on the verdict.

22 I will submit to you, I think he is worthy
23 of some consideration from the Court, and I
24 believe he should come in on the low end of
25 that, that's a 30-year sentence.

1 I know that Mr. King wants to address you
2 personally. He hasn't reviewed his remarks with
3 me, but he has asked me could he address Your
4 Honor.

5 Is Your Honor prepared to hear from the
6 Defendant?

7 THE COURT: Yes, sir.

8 MR. KING: Your Honor, I just wanted to
9 apologize to the Court, to the family of
10 **Child** I'm sure they are grieving.

11 I want to say to, you know, drugs can ruin
12 your life, you know, and I've learned that. And
13 I've learned too that you've got to stand and
14 stick by the ones that love you, and wants
15 what's best for you, and run from the ones that
16 don't.

17 I'm just grateful to God. Thank you.

18 MR. LOY: Your Honor, I believe that's our
19 presentation.

20 THE COURT: All right. Any reply from the
21 State regarding Mr. King?

22 MR. STONE: No, sir.

23 THE COURT: Mr. Phillips?

24 MR. PHILLIPS: Thank you, Your Honor. I'm
25 gonna show the State I have a list of character

1 witnesses that I'd like to hand up to Your
2 Honor. I know a lot of family and friends. She
3 has an incredible family support system, a
4 friend system, and many of them have provided
5 letters in support of mitigation.

6 And I'll wait and give Your Honor an
7 opportunity to review, there's a lot there,
8 so --

9 THE COURT: Okay, first letter, "I know
10 this wouldn't have happened if she wasn't with
11 Larry King." "She's paid for her mistakes."
12 "She's been working, and recently was married."
13 "Not a criminal." "She's a good person, she's
14 not a criminal." "Please don't let this one
15 stupid mistake define who Rita really is."
16 "Please consider leniency, Judge."

17 So that's one of them, how many? You got a
18 number there.

19 MR. PHILLIPS: We also have family and
20 friends that are here to speak on her behalf at
21 the appropriate time.

22 THE COURT: All right. Next one, "She made
23 a horrible mistake, there isn't a person in the
24 world she doesn't love -- that loved **Child**
25 more than Rita." "Don't feel that Rita deserves

1 to spend the rest of her life in prison, people
2 learn from their mistakes.

3 She made the ultimate mistake that day."
4 "I believe she will take that * and teach people
5 that -- the dangers of leaving a child in a hot
6 car." "That that lapse of judgment could result
7 in the ultimate reality." "She's an awesome mom
8 and grandmom to her family. She wouldn't hurt
9 anyone." "I'm asking the Courts to find her not
10 guilty and let her take care of me and take care
11 of the rest of her family." "Again, I'm asking
12 the Court to find Rita not guilty." "I'm
13 writing this letter for Rita, my mother."

14 So we've heard from her Elizabeth Clyde
15 already.

16 THE COURT: Okay. And you want me to read
17 this letter as well?

18 MR. PHILLIPS: She'll speak.

19 THE COURT: Okay. A letter from a cousin,
20 "Rita always wanted to be a teacher. Nothing's
21 ever come easy for Rita. When she fell in love
22 with a boy from the Philippines named Wally, my
23 uncle went nuts. And after the first grandchild
24 things settled down.

25 Rita and Wally have three girls, the last

1 being **Child** . She supported Wally with his
2 endless years in college, and supported the
3 family until Wally could open his own medical
4 practice as a chiropractor." "Met Rita two
5 years ago. She's a caring Christian person who
6 loves her family and working two jobs to help
7 her husband financially.

8 She cherishes her husband, children and
9 grandchildren." "One of the most caring,
10 supporting persons I know. She's been flawless
11 as a coworker and team player." "And times to
12 date where we would sit and discuss the powerful
13 word of God, Facetime reading our Bible
14 together.

15 She's an amazing woman, influential I her
16 faith and her life." And one from her husband.

17 MR. PHILLIPS: He's here as well, Your
18 Honor.

19 THE COURT: He'll be speaking?

20 MR. PHILLIPS: At the appropriate time he
21 does wish to address the Court.

22 THE WITNESS: "Rita sat him down to explain
23 the incident early in the relationship. I did
24 not -- it did not change the way I feel for her.
25 I fell in love with her from inside out.

1 She's humble, inspired me to pursue my
2 lifelong dreams, cries herself to sleep. I know
3 she misses her daughter. Knowing that she'll be
4 reunited with he daughter one day gives her hope
5 and strength.

6 Rita says Larry would never have put
7 **Child** in that car if it wasn't running with
8 the A/C on. I believe the statement is a
9 testament to her humility. I don't pay
10 attention to the negative misinformed reports on
11 social media.

12 I have faith in our attorney's ability to
13 present the truth. I please for leniency. I
14 want my wife to come home, whether it be
15 probation, or house arrest.

16 She has problematic kidneys and a history
17 of cancer." The next person met her three or
18 four years ago, "My name is Wanda Clyde, I'm her
19 daughter by choice," Rita's daughter.

20 "**Child** died, and shocked to learn the
21 surrounding circumstances. I know she was under
22 tremendous stress being a single parent, taking
23 care of a special needs child.

24 I know this was a horrendous accident and
25 ask for the Court's mercy."

1 MR. PHILLIPS: Respectfully, Your Honor,
2 I've never seen this done before.

3 THE COURT: Yeah, what do you want? Do you
4 want me to review them or no?

5 MR. PHILLIPS: Yes, Your Honor.

6 THE COURT: Every person has their process
7 of doing things.

8 MR. PHILLIPS: Understood.

9 THE COURT: Is there a special way you want
10 me to review your -- what you gave me?

11 MR. PHILLIPS: No, Your Honor.

12 THE COURT: "Always involved with her
13 daughter. She pushed **Child** around the track.
14 Welcomed me into her family." This is from a
15 son-in-law, a character reference. "Known her
16 almost four or five years, we met at IHOP.

17 She's honestly the best coworker I've ever
18 had. I was helpful to her when she was
19 pregnant. She's a spiritual and godly woman,
20 goes to church almost every Sunday, not a
21 murderer.

22 What happened to **Child** was an accident.
23 I've known Rita and I believe that she though
24 the air conditioner was on, and this was an
25 accident. She does not deserve this, when she's

1 been tortured enough herself. She's a good
2 woman, and please give her house arrest." From
3 an elderly retired man that's also disabled,
4 that Rita showed him nothing but kindness.

5 Used the walker to get around. She's paid
6 for his meals.

7 Whatever happened to **Child** that day was
8 not on purpose. She doesn't have an evil or
9 malicious bone in her body."

10 A letter now from the eldest daughter, is
11 she here?

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: And she intends to speak?

14 MR. PHILLIPS: Yes, Your Honor.

15 THE COURT: "Plead for the Judge to show
16 her mercy. Never been in trouble before.
17 Pleading for Rita's freedom. I am begging for
18 leniency and understanding, as well as an
19 unbiased fair trial, house arrest is the ideal
20 discipline. Somebody will try to harm her if
21 she is sent to prison.

22 She's already suffered, punishing her will
23 not bring my sister back. Someone who is -- has
24 help translating her letter because her English
25 is not good. Apparently, runs a restaurant,

1 where the daughters would come to eat, and spend
2 time with their mother. "Had so much love for
3 her child. I know in my heart this was an
4 accident. I've seen Rita cry at work sometimes
5 over **Child** She does not deserve any further
6 punishment." From a tax advisor, witnessed her
7 financial struggle in the face of a difficult
8 divorce.

9 "I'm aware of the charges, and I truly
10 believe it was not intentional, just not
11 thinking clearly at the time. She's highly
12 remorseful." "A loving and caring parent. As a
13 teacher I was blessed to teach her daughters,
14 who are honor roll students." She supported her
15 during her difficult divorce and becoming a
16 single mother.

17 A friend for 25 years." "I supervised her
18 since 2023. She can run circles around
19 associates, who are young enough to be her
20 children and grandchildren. She's known as a
21 workhorse." "Rita has called on me as her
22 spiritual advisor, I pastor a church in Georgia,
23 and she's given her -- access to her personal
24 life.

25 She loves children, and she has a great

1 support group of family, friends, coworkers."
2 Encouraged this person to go to school and
3 finish their education. "She would never commit
4 any of the crime.

5 Felt as if she's been -- feels as if she's
6 been sentenced already." This one knows her
7 through her ex-husband, who's this person's
8 third cousin. "Always quick on her feet. Good
9 moral character." "She's been under pastoral
10 counseling and care. Has frequently shared
11 stories and moments that she and **Child** shared
12 together at church moments."

13 "She grew to love her whole family, and
14 wholeheartedly vouch for her character, her
15 integrity and altruistic nature, her resilience
16 in the face of adversity. Her unwavering love
17 for her family and her readiness to serve those
18 around her.

19 She's an exceptional individual." And
20 finally, "School Principal for eight years," or
21 she was a school Principal for eight years. She
22 was transferred in 1996, thrilled when she was
23 allowed to transfer to her school, continued to
24 work as a first-grade teacher.

25 Good relationship with her students,

1 parents, coworkers. Worked on morning bus duty,
2 would monitor the students. Math coach. Took
3 her job as an educator very seriously.
4 Volunteered for many things. A very loving
5 relationship with her two oldest daughters.
6 **Child** was born later." And she saw what was
7 placed on Facebook.

8 Is she the person who testified, Ms.
9 Carter?

10 MR. PHILLIPS: Yes, sir.

11 THE COURT: So this is similar to her
12 testimony. All right, I reviewed the letters.

13 MR. PHILLIPS: Yes, Your Honor. Her eldest
14 daughter now.

15 THE COURT: And we'll make all of these
16 letters a part of the record.

17 MR. PHILLIPS: Thank you, Your Honor.

18 THE COURT: Yes, ma'am. Tell us your full
19 name.

20 MS. PANGALANGAN: Ashley Pangalangan.

21 THE COURT: Yes, ma'am.

22 MS. PANGALANGAN: I was gonna read my
23 letter.

24 THE COURT: Said that -- tell me what you
25 just said.

1 MS. PANGALANGAN: My mother graveyard one
2 day to see her. It was her birthday a couple
3 years ago, and that she sat in the car and
4 rolled the windows up herself in the heat at the
5 graveyard, because of how terrible, awful she
6 felt about what happened to my sister.

7 I have to hear her cry every night when I
8 stay with her. She's not allowed to visit
9 because of this. She already has suffered so
10 much, to the point that she rolled herself up
11 into the car, just to see what my sister went
12 through, not even aware that I --

13 THE COURT: How long did she stay in the
14 car with the windows rolled up?

15 MS. PANGALANGAN: I never asked, I just
16 thought of it. She's suffering. I know it's
17 awful, but I know in my heart that she never
18 would have intentionally done it. I love her to
19 death. I wouldn't be here today without her.
20 Our love is very strong. She's a good mom.

21 I know, like I said, it sounds cliché at
22 this point, but from the bottom of my heart
23 she's a good mom, she raised me good, she made
24 me responsible, she made me the woman I am
25 today. I am who I am today because of her.

1 THE COURT: When did you leave home? What
2 year?

3 MS. PANGALANGAN: Well, honestly, I've
4 never felt like I left.

5 THE COURT: Oh, you --

6 MS. PANGALANGAN: I mean I have my own
7 house, but I stay with her every other weekend,
8 we're very close.

9 THE COURT: Were you staying with her
10 during this period of time?

11 MS. PANGALANGAN: Yes, sir. I've been with
12 her every day. I mean, you know, she's lost
13 probably 16 pounds in the past two months just
14 because of this. I've been going to church with
15 her. I admit I haven't before recently, but
16 I've been starting to go with her now. She's
17 more spiritual.

18 She's given me faith that I've never had
19 before, and just to watch her in church, and
20 raise her hands up and sing and praise God, it's
21 just *, because to see her have that strong of
22 faith in this situation means that I can have it
23 too. I just felt like it goes without saying,
24 everyone knows this. And who's gonna help her
25 like she's helped me? Thank you, sir.

1 THE COURT: Thank you.

2 MR. PHILLIPS: Hi.

3 MS. PANGALANGAN: My name is Elizabeth
4 Pangalangan, I'd give anything to have **Child**
5 here because my sister and I we were the closest
6 to **Child**, and we're here standing by her
7 side. We refuse to believe any of the media, we
8 refuse to believe what anyone else has said.

9 We know her intentions, and she loved
10 **Child** so much. She made bad mistakes, she
11 hung out with people she shouldn't have hung out
12 with, and she had an addiction at the time that
13 she has to live with for the rest of her life.
14 We've already lost our sister, please don't take
15 our mom away.

16 She has lived with regret every single day.
17 She has worked so hard at the two jobs that
18 she's had. She's made manager in each of the
19 jobs, without even knowing her background. Her
20 character has pulled her through so much, so
21 we're just asking for mercy, understanding and
22 compassion for my mom, please.

23 THE COURT: All right, thank you.

24 THE WITNESS: Good afternoon, Your Honor.

25 THE COURT: Yes, sir.

1 THE WITNESS: My name is Anthony *, I am
2 Rita's husband. Rita has been so remorseful,
3 she really has, I'm sorry, I'm nervous, she
4 really has. And I pray that you allow her to
5 come home.

6 THE COURT: When a person is convicted of
7 murder, there's -- the minimum sentence --

8 THE WITNESS: Will you please allow --

9 THE COURT: The minimum sentence is 30
10 years, that's the minimum sentence.

11 THE WITNESS: Your Honor --

12 THE COURT: The maximum sentence is life in
13 prison.

14 THE WITNESS: Yes, sir. Your Honor, when I
15 watch this video, I believed in my heart the car
16 was running and the air conditioner was on. And
17 we hired an attorney, and I watched the second
18 video, and then all of a sudden, I'd seen the
19 scene that wasn't in the first video. I'd seen
20 her go in her car.

21 THE COURT: Yeah, well, I hope you're not
22 here --

23 THE WITNESS: And I --

24 THE COURT: -- to try to relitigate the
25 case.

1 THE WITNESS: No, sir, I'm not.

2 THE COURT: Because you didn't testify.

3 THE WITNESS: Sir?

4 THE COURT: We don't need your analysis of
5 the facts of the case.

6 THE COURT: Sir, I ask the Court for
7 leniency.

8 THE COURT: Yes, sir.

9 THE WITNESS: Yes, sir, thank you.

10 THE COURT: Thank you. Good afternoon.

11 MR. CLYDE: My name's Taylor Clyde.

12 Elizabeth is my wife. I'm the favorite son-in-
13 law. I don't want to debate or bring any
14 attention to any of the facts, but I do want to
15 testify of the character that I've seen in Rita
16 throughout my time of being in her family. It
17 was always lavish Christmas gifts.

18 It was always even with everybody else.
19 Everyone had to have the same amount, the same
20 ridiculous amount that I never got growing up.
21 I always get solid hugs every time we get
22 together, whether it's at church, whether it's
23 at holidays, there's always food, we'd eat
24 together, and always have a ton to bring home.
25 And after the events of the day in question, we

1 got a chance to move her into the property that
2 kind of is adjacent to my parent's home.

3 And in her bedroom right above the bed, was
4 -- it wasn't a shrine, but it was a beautiful
5 memorial to **Child** The blanket was *, and it
6 had **Child's** name on it with a nice poem for
7 her. Several pictures of her hung on the wall,
8 and I am not a parent, Your Honor.

9 I mean don't have children at this time in
10 life, but I -- so I have no idea what it's like
11 to lose one, but I don't know how she was able
12 to deal with the pain of going to bed every
13 night, and waking up looking at the wall of
14 pictures, and not un, you know, completely
15 against her will reliving the events that
16 happened, and living without her.

17 I don't have children yet, Your Honor, with
18 my wife, but I would very much like to have
19 their grandmother in their life when they come,
20 so I ask for leniency as well, thank you.

21 THE COURT: Yes, sir. Thank you. Good
22 afternoon.

23 MS. TUCKER: My name is Tiawana Tucker, I'm
24 her coworker. I've known her --

25 THE COURT: A coworker where?

1 MS. TUCKER: At Walmart.

2 THE COURT: Walmart?

3 MS. TUCKER: Yes, sir. I trained Rita
4 there, and we became friends, and we break
5 together. Rita moved up very quickly within
6 Walmart. She's had a huge impact on a lot of
7 the young girls, the associates. Got a lot of
8 them. She loves her family. We talk about her
9 family a lot.

10 She shared a lot of videos of her and
11 **Child** with me on breaks. We'd laugh and talk
12 about **Child**, and about the situation at
13 hand, and it's a very sad situation. And I
14 personally don't think her and Larry murdered
15 that baby, it was a bad choice.

16 THE COURT: Well, you --

17 MS. TUCKER: I'd just ask --

18 THE COURT: -- haven't been here listening
19 to the law regarding murder, have you?

20 MS. TUCKER: Sir?

21 THE COURT: You haven't been here listening
22 to the testimony and the law regarding what
23 constitutes murder.

24 MS. TUCKER: I don't know.

25 THE COURT: Have you been here?

1 MS. TUCKER: No, this is my first time.

2 THE COURT: Your first time coming here?

3 MS. TUCKER: Yes, sir. Rita's a good
4 person, hardworking. She works ten to 12 hours.
5 She's a joy, she's a joy, she's a sweetheart.
6 So she's been advocating and talking to the
7 young girls and stuff like that.

8 THE COURT: Yes, ma'am.

9 MR. PHILLIPS: Your Honor, Rita wishes to
10 address the Court in just a second, but in
11 litigation, obviously, we're not trying to
12 provide any excuse as to what happened that day,
13 it's been the common thread with what we
14 presented in this courtroom. It's an absolute
15 tragic situation, one that, unfortunately, has
16 us here today, from one tragedy to another.
17 Minimum sentence, she and I have discussed that
18 at length, as to what the sentencing ranges are.

19 It's my position that the minimum sentence
20 is, essentially, a life sentence, based on the
21 life tables. And given -- my position is that
22 we have compelling litigation, her being a
23 loving mother, being a supportive mother, having
24 no prior criminal history.

25 The testimony of her character, there's a

1 lot of things outside of this one day. We are
2 not defined by the worst thing that's ever done.
3 And being respectful requesting lenience and
4 mercy, we believe that this would be appropriate
5 in this case to receive the minimum sentence in
6 this case.

7 And I understand that's essentially still a
8 life sentence.

9 THE COURT: How old is she now?

10 MR. PHILLIPS: 53.

11 THE COURT: 53?

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: And the minimum sentence for
14 murder is 30 years.

15 MR. PHILLIPS: That's correct.

16 THE COURT: So 53 plus 30.

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: All right, if she gets the
19 minimum sentence.

20 MR. PHILLIPS: Well, as Your Honor heard,
21 she's served this community for 25 years as a
22 teacher, did get Teacher of the Year. Again,
23 it's just a very, very tragic situation. When I
24 was brought onto this case, she was working as a
25 manager at IHOP, and then because of insurance

1 took the job at Walmart.

2 In that eight months she received a
3 promotion and became a manager. And we had one
4 of her other supervisors here, potentially, as a
5 character witness.

6 I know there's no words that we can say,
7 other than we believe it's appropriate in this
8 case, giving the compelling litigation, not to
9 go into the legal part, I think that's the next
10 thing for another matter; but with that, Your
11 Honor, I just feel given what we have, this is
12 the sentence that we appropriate, the minimum
13 sentence would be essentially a life sentence,
14 and given the fact that this whole case is not a
15 sentence that can be imposed, is the lifelong
16 sentence she's given herself for the loss of her
17 child. That can't be overstated.

18 None of that was lip service. None of that
19 was courtroom drama or manufactured. She is
20 tortured at the loss of her child, that is real.
21 She has real remorse. She deserves leniency and
22 mercy and the minimum sentence in this case,
23 Your Honor, specifically.

24 MS. PANGALANGAN: That day was the worst,
25 most tragic day of my life. I was born in

1 Georgia.

2 When I put my baby -- or had Larry put my
3 baby in the back of that car, the air
4 conditioning was on. Well, you know, it was on
5 when I checked her at 12:30. I should have gone
6 back out there to her more. I should have broke
7 out that window when the car was locked.

8 I don't even know why I didn't. I should
9 have busted out that window. I should have got
10 my baby out of that car, but I didn't, and I
11 have to live with that for the rest of my life.

12 Nobody loved **Child** more than I did. I
13 was working four jobs to get a wheelchair for
14 her. I would never hurt my baby. I can't
15 believe that I am convicted for murder, because
16 what happened was not murder, it was negligent,
17 and whether I'm in prison or home, I will regret
18 it for the rest of my life.

19 I can't wait to be with my baby girl again.
20 Thank you, Your Honor. I know that I would
21 never, ever sit outside that car and watch my
22 baby suffer. I loved her. I loved her more
23 than anything in this world. And I'll tell you
24 what, Larry would never have hurt her.

25 We were arguing that day, and I didn't want

1 to do it in front of her. It was not murder; it
2 was not intentional.

3 THE COURT: Well, you know, you didn't
4 write the law, and you weren't thinking about
5 the law on that day, were you?

6 MS. PANGALANGAN: No, sir. And like I said
7 everyone who I talked to; I told them should
8 have made better choices. I should have got in
9 that car, like Larry wanted me to, and I should
10 have taken my baby home. I can't live there
11 without her.

12 THE COURT: Anything else you want to tell
13 me?

14 MS. PANGALANGAN: No, sir. Just please
15 have mercy on us. We loved her so much.

16 THE COURT: All right, response by the
17 State?

18 MS. STONE: No, sir.

19 THE COURT: The conduct of the Defendants
20 in this case has been represented now by the
21 defense that it's not a traditional murder.
22 It's not where you pull a gun and shoot someone
23 in the head, but your conduct had become so
24 extremely reckless, that it constitutes a
25 willful disregard for human life, and

1 constitutes murder.

2 To place the child in a burning car, in
3 effect, and walking away is murder. To leave a
4 child in a car for six hours, under the
5 circumstances that occurred in this case, is
6 murder. It's not one of the situations that we
7 see, and there have been studies most recently,
8 where people forget about the child, believe
9 that they have dropped the child off for
10 daycare, and various things, but that's not this
11 situation, where there is absolute total
12 disregard for the child.

13 Considering that the two of you were there
14 around the car any number of times without doing
15 anything to save this child's life and
16 contributing to the child's death. And all the
17 good things I've heard today, you know, being a
18 teacher, being a concerned person, being a
19 wonderful friend, person of faith, you know,
20 that wasn't a person there on that day when
21 you'all were on this drug binge, at least as
22 described by Mr. King.

23 And, you know, I've said it before, the
24 people we see in court are typically not the
25 people that were out on the streets doing the

1 things that landed them in court, and it doesn't
2 get any worse than this, as it relates to a
3 mother and a child, and a person with the mother
4 dealing with the child.

5 So the offense that you committed was
6 murder, and that's all there is to it. Of
7 course you'd love the opportunity to turn back
8 the hands of time, but you can't do it. Of
9 course you will continue to suffer for what
10 happened to your child, and but for being strung
11 out on meth, and I've seen it time and time
12 again. Was it methamphetamine we're dealing
13 with?

14 MR. PHILLIPS: Yes, sir.

15 THE COURT: Yeah, but for methamphetamine
16 and dealing with it, neither of the two of you
17 would be here, but those were decisions that
18 you'all made; and to the extent your minds were
19 just totally contorted and, you know, I don't
20 know the minds of a person on meth, but I've,
21 you know, paid close attention to the witness
22 who testified convincingly about the effects of
23 methamphetamine on the brain, just as if you
24 didn't have a brain on that day, at that time.
25 And, you know, we're hearing about this mistake

1 and bad judgment, and all the, you know, I see
2 it all the time with children, people we deal
3 with, all the time.

4 I call them children, 18-year-olds, 19-
5 year-olds, 20-year-olds, people who do the same
6 types of things, skilled people, because they're
7 strung out on drugs, high on drugs, and, you
8 know, the life sentence for them is more than
9 the life span that you're talking about, because
10 they're going to prison at ages 20, 21, 22, 23
11 for life.

12 And you don't have the excuse that they
13 might come in here with. Of course, none of it
14 is acceptable, but they will come in, strung out
15 on drugs, parents strung out on drugs, all kinds
16 of things that play into them going wayward,
17 going astray. And for you, a person who had a
18 good reputation in the community to throw it
19 away chasing drugs, and then come in and ask me
20 for leniency?

21 And I'm trying to balance who is more at
22 fault here really, Mr. King or Ms. Pangalangan,
23 it's almost a tossup.

24 Mr. King put the child in the car, and per
25 the video was just -- didn't care anything about

1 the child. Left the child there to die, while
2 they're pursuing each other. It's just so --
3 it's almost unbelievable.

4 How could you'all do such a thing? And you
5 can do such a thing; because you were hooked on
6 drugs, hooked on meth.

7 MS. PANGALANGAN: I have never -- I have
8 always been anti-drug.

9 THE COURT: Pardon?

10 MS. PANGALANGAN: I divorced my first
11 husband because he was an addict. I did not do
12 drugs. I never did drugs. It was just during
13 that weekend, and I told my lawyer that several
14 times, but I don't use drugs, and I wish that I
15 could show you that drug was not a part of my
16 life.

17 THE COURT: Yeah, we --

18 MS. PANGALANGAN: Never have.

19 THE COURT: That makes you having less of
20 an excuse, less justification. Your mind wasn't
21 screwed up, as you're telling us now.

22 MS. PANGALANGAN: Oh it was that weekend.
23 I was not a drug user, never.

24 THE COURT: A mother who is not under the
25 influence would leave their child in a car under

1 those circumstances for five, six hours, who
2 would -- knew the child was in the car, and knew
3 the child had been in the car for that period of
4 time, and drive off and leave the child, how
5 could you?

6 Anything further?

7 MR. PHILLIPS: No, sir.

8 MR. STONE: No, thank you.

9 MR. PHILLIPS: Not as an excuse, but to
10 better clarify her position, her position about
11 the first time she used drugs, is what she's
12 saying. She didn't have a pattern of conduct of
13 abusing drugs, but that was the first weekend
14 she had done it.

15 THE COURT: That's his first time as well?

16 MR. LOY: No, no. He testified to that.

17 THE COURT: Yes, sir.

18 MR. LOY: He testified he was an addict.

19 When I talked to him about the
20 possibilities, he was accepting of his
21 sentence. It was going to be imposed one
22 way or the other, he can do it gracefully,
23 and he has done it gracefully and accepted
24 the verdict of the Court.

25 THE COURT: Then help me clarify in my

1 mind, who is the most culpable out of this
2 situation, or are they equally culpable?

3 Are there -- whose conduct was the most
4 extreme? A mother who abandons her child in
5 that setting, and does nothing to rescue the
6 child, who chooses Mr. King and her own pleasure
7 over the child, or Mr. King, who throws the
8 child -- he didn't throw her, places the child
9 in the back of the car and shows no concern,
10 compassion or anything for the child, and in
11 effect joins with the mother in the treatment of
12 the child.

13 MR. LOY: It wasn't his child.

14 THE COURT: Though it wasn't his child, he
15 initiated his role in it when he placed the
16 child in the back of the car, and when he did
17 nothing to get the child out of the car.

18 MR. LOY: On behalf of Mr. King and in
19 response to Your Honor's --

20 THE COURT: Yes, sir.

21 MR. LOY: -- inquiry --

22 THE COURT: Yes, sir.

23 MR. LOY: -- in all my interviews with him
24 and all my conversations with him, he doesn't
25 want a thing, or in some way to minimize his

1 involvement or his culpability by saying, well,
2 she's worse, he's worse. Your Honor, what he's
3 done, he owns the conduct. He was candid on the
4 stand. He accepted it gracefully.

5 THE COURT: And I appreciate that and
6 you've said that repeatedly, and I accept it,
7 and I appreciate that.

8 MR. LOY: Well, when Your Honor asked who
9 was more culpable --

10 THE COURT: In my mind I'm trying to make
11 that determination, because I'm gonna have to
12 sentence each one of them to a period of years.
13 They might get the same. One might get 30, one
14 might get 40, one might get 50 --

15 MR. LOY: To the extent, Your Honor --

16 THE COURT: -- one might -- they might each
17 get the same.

18 MR. LOY: To the extent, Your Honor, I
19 would point out the reasons she's more culpable,
20 Mr. King is not gonna do that. He owns his
21 conduct.

22 THE COURT: All right, I understand, thank
23 you. And I'm not attempting to pit one against
24 the other, I'm just, you know --

25 MR. LOY: Yes, sir.

1 THE COURT: Mr. Solicitor?

2 MR. STONE: I tried to stay quiet, and I'm
3 sorry.

4 THE COURT: And I don't like for people to
5 stay quiet on me.

6 MR. STONE: I can't. You know, before the
7 case comes to you, it has to go through --
8 they're both here together today because of
9 that. I couldn't make that decision.

10 I could not decide which was worse, because
11 the more I looked at the video, which I have
12 done I assure you more than just about anybody
13 even in this courtroom, I just kept getting
14 madder and madder. And, honestly, I could not
15 make a determination who I was more angry at.

16 The man who is putting the child in the
17 car, and just stands there, or the mother that
18 abandons the child even before we get to that
19 situation. And I've heard the support groups
20 that these people have, Your Honor, like you,
21 I've been in the courtroom for a long time, and
22 we deal with a lot of people who don't have any
23 support whatsoever.

24 And to have it -- I don't think that's
25 mitigation, I think that's aggravation.

1 Sir, I cannot tell you which one is more
2 culpable, and, quite frankly, from my
3 standpoint, I don't feel for either one of them.

4 THE COURT: What is the penalty for great
5 bodily injury?

6 MR. STONE: 20, and that's zero to 20.

7 THE COURT: Yes, sir. And I looked it up
8 before, I just --

9 MR. STONE: Yes, sir.

10 THE COURT: -- wanted to be sure. All
11 right, Mr. King, if you'll come around for
12 sentencing.

13 MR. KING: Yes, sir.

14 THE COURT: Mr. King, the sentence of the
15 Court on the offense of murder, that you be
16 committed to the State Department of Corrections
17 for a period of 32 years.

18 For great bodily injury the sentence is 20
19 years. The sentences will run concurrent with
20 credit for any time that you've already served.

21 MR. LOY: Thank you, Your Honor.

22 MR. KING: Thank you, Your Honor.

23 THE COURT: Thank you'all.

24 Ms. Pangalangan, you know, a lot of folks
25 have said a lot of good things about you, and a

1 lot of positive impacts that you made on their
2 lives. You're not being sentenced to death, you
3 won't be facing a firing squad, or a gas
4 chamber, or electric chair, your life goes on,
5 but it will go on behind bars, and you'll still
6 have that same opportunity to make a positive
7 impact on the lives of other people who you
8 encounter, and I hope you do that.

9 I simply cannot fathom a mother treating a
10 child the way you did, and allowing that to
11 happen to a child, to your child, a child that
12 you birthed.

13 MS. PANGALANGAN: Yes, sir.

14 THE COURT: Yeah. I don't know if the
15 child, at some point, became a burden. I don't
16 know what the circumstances were that would lead
17 you to place the child in that situation, and as
18 if you left and went to Atlanta, Georgia, or
19 maybe we'll say -- not Charleston, to Myrtle
20 Beach, and went there and got on the beach in
21 the water a few hours, and then came back, and
22 then decided that it's a frantic situation.

23 You did it, and you have to live with it.
24 And as bad as the conduct of Mr. King was, yours
25 was worse in my mind. And, you know, you can

1 talk about intent, where you have rational
2 thinking minds, but extreme recklessness brought
3 upon by drugs and alcohol, as we said,
4 intoxication is not a defense and not an excuse,
5 that's what, in effect, you're asking, and it's
6 not.

7 The sentence of the Court is that you be
8 committed to the State Department of Corrections
9 for a period of 37 years on murder, 20 years on
10 great bodily injury.

11 The sentences will run concurrent, and
12 you'll receive credit for time served.

13 Do we have the number of days of credit
14 that they're entitled to?

15 MR. PHILLIPS: 39, Your Honor.

16 THE COURT: Let's see, credit for 39 days.
17 And Mr. King, do we know how many days he gets
18 credit for?

19 MR. PHILLIPS: No, Your Honor.

20 THE COURT: The other guy left, Mr. -- the
21 lawyers? Does anyone know? I'll just have that
22 calculated by the Department of Corrections.

23 MR. PHILLIPS: Under the Green case that I
24 presented earlier for the one homicide and one
25 punishment rule. Based off that there could be

1 only one punishment. I understand it's a
2 concurrent sentence.

3 THE COURT: And you might be right, and
4 that might pertain to a single incident, not a
5 continuous course of conduct over many hours.
6 What says the State?

7 MR. STONE: I think it is. I think that
8 law is clear on that, and they are two separate
9 sentences, Your Honor. I think the law is
10 clear.

11 THE COURT: All right, well, I want to
12 commend everyone for a good and thorough job,
13 and presenting your best case that you could
14 present to the jury, and the jury has spoken,
15 and now the Court has spoken, and I thank
16 everyone for your participation.

17 MR. STONE: Thank you, Your Honor.

18 THE COURT: And Court will be adjourned.

19 At 6:11 p.m. the proceedings were concluded.)

20 * *

21	END OF VOLUME IV

22 (At 6:11 p.m. the trial was concluded.)

23

24

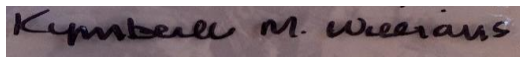
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CERTIFICATE OF REPORTER*******

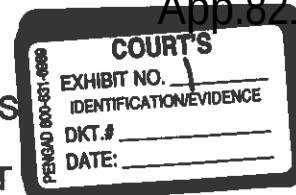
I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 1st Day of September 2023.

I do further certify that I am not related, of counsel, or interest to any party hereto.

This, the 29th day of March 2024.



Kymberlee M. Williams, CSR/RPR



STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)
)
 State of South Carolina,)
)
 v.)
)
 Rita Pangalangan,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOURTEENTH JUDICIAL CIRCUIT

Indictment Nos.: **2019GS1500781;**
2022GS1500710; 2022GS1500814

**DEFENDANT'S MOTION FOR
 ATTORNEY CONDUCTED VOIR DIRE AND
 SUPPLEMENTAL PROPOSED VOIR DIRE**

The Defendant, by and through the undersigned Counsel, respectfully moves for supplemental attorney conducted *voir dire* examination of the venire and inclusion of the proposed *voir dire* questions. Specifically, the Defendant requests *voir dire* examination using the following procedure: (1) Standard *voir dire* conducted by the Court pursuant to the South Carolina Code of Laws, and (2) Limited supplemental attorney conducted *voir dire* by the prosecution and defense. The basis for this motion is not for purposes of delay but in the interest of justice to preserve the Defendant's right to an impartial jury and a fair trial. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; *see also Estelle v. Williams*, 425 U.S. 501 (1976); *Cage v. Louisiana*, 498 U.S. 39 (1990).

BACKGROUND

On August 6, 2020, the Colleton County Grand Jury indicted the Defendant for Murder. The Colleton County Grand Jury also indicted the Defendant for Infliction of Great Bodily Injury on a Child and Criminal Conspiracy on October 6, 2022. The Arrest Warrant for Murder alleged "[t]hat on August 5, 2019 located at [REDACTED], Ruffin, SC in the County of Colleton one [Defendant] along with a co-defendant did commit the offense of Murder with malice and aforethought by leaving a 13 year old disabled child, which is incapable of caring for herself, in a vehicle for several hours

unattended.”

REQUEST FOR SUPPLEMENTAL VOIR DIRE

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure. See *Estelle v. Williams*, 425 U.S. 501 (1976); *Irvin v. Dowd*, 366 U.S. 717 (1961). “[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.” *State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)).

The purpose of supplemental attorney conducted *voir dire* is to expose any known or *unknown* bias or prejudice of the prospective jurors against the Defendant and/or the nature of the criminal charge alleged by the State. See *Mu’Min v. Virginia*, 500 U.S. 415 (1991) (“*Voir dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”); cf. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) (holding a juror’s failure to disclose certain information does not warrant a new trial where the juror was not specifically asked to disclose the information during *voir dire* examination).

According to a joint survey by the National Center for State Courts and the State Justice Institute, less than ten (10) state courts rely on judge only conducted *voir dire*. See Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D.; *The State-of-the-states Survey of Jury Improvement Efforts: a Compendium Report*, National Center for State Courts and State Justice Institute, April 2007. This study

explained that “[e]mpirical research supports the contention that juror responses to attorney questions are generally more candid because jurors are less intimidated and less likely to respond to *voir dire* questions with socially desirable answers. Moreover, attorneys are generally more knowledgeable about the nuances of their cases and thus are better suited to formulate questions on those issues than judges.” *Id.*, page 28 (internal footnote citation omitted). Notably, this study found that “South Carolina consistently reported the shortest average voir dire time (30 minutes) in both felony and civil trials, with Delaware and Virginia closely following (1 hour or less).” *Id.*, p. 29 (emphasis added).

I. Supplemental Voir Dire is Necessary in the Interest of Justice to Obtain an Impartial Jury through the Intelligent Exercise of Peremptory Challenges by Counsel and Informed Consideration by the Court of any Challenges for Cause.

Adequate *voir dire* is critical in protecting a defendant's constitutional right to an impartial jury. See *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (noting “[w]ithout an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.”); see also *Connors v. United States*, 158 U.S. 408, 413 (1895) (finding “Voir Dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate Voir Dire the trial judge's responsibility to remove prospective jurors who will not be able to impartially follow the court's instructions and evaluate the evidence cannot be fulfilled.”).

The Supreme Court of the United States has explained the importance of *voir dire* examination and its role in the process of impaneling an impartial jury:

Voir Dire examination serves to protect that right by exposing

possible biases, both known and unknown, on the part of potential jurors. Demonstrated bias in the responses to questions on Voir Dire may result in a juror being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.

McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 554 (1984) (emphasis added).

In cases of extensive publicity, defense counsel should be accorded more latitude in personally asking or tendering searching questions that might root out indications of bias, both to facilitate intelligent exercise of peremptory challenges and to help uncover factors that would dictate disqualification for cause. Indeed, it may sometimes be necessary to question on voir dire prospective jurors individually or in small groups, both to maximize the likelihood that members of the venire will respond honestly to questions concerning bias, and to avoid contaminating unbiased members of the venire when other members disclose prior knowledge of prejudicial information.

Nebraska Press Assn. v. Stuart, 427 U.S. 539, 602 (1976) (emphasis added).

If the Court has concerns regarding the scope and time needed to conduct supplemental attorney conducted *voir dire*, the Court has the discretion to limit the scope by restricting the number of questions allowed and the amount of time given to question the prospective jurors. Notably, the Defendant agrees to avoid any unnecessary delay by limiting the scope of the examination to three (3) questions not addressed by the Court and by limiting the time of examination to one hour each for the prosecution and defense.

II. Supplemental Voir Dire will Aid the Parties in Complying with the Requirements of *Batson v. Kentucky* and Its Progeny.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court of the United States held that the Equal Protection Clause prohibits challenging potential jurors “solely on

account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant." *Id.*, 476 U.S. at 79. Thus, peremptory challenges must be made in a non-racially discriminatory manner in order to be constitutional. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (holding that the discriminatory exercise of peremptory challenges on the basis of gender is unconstitutional).

The Court ultimately created a procedure for a party to establish a *prima facie* case of discriminatory use of peremptory challenges. See *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) (adopting the *Batson* procedure set forth in *Purkett v. Elem*, 513 U.S.765, 1 (1995)). The opponent of the strike must show that the race-or-gender neutral explanation provided is mere pretext. *Id.* Notably, the burden of persuading the trial court that a *Batson* violation occurred remains on the opponent of the strike. *Id.*

"If conducted properly, *voir dire* can inform litigants about potential jurors, making reliance upon stereotypical and pejorative notions about a particular gender or race both unnecessary and unwise. *Voir dire* provides a means of discovering actual or implied bias and a firmer basis upon which the parties may exercise their peremptory challenges intelligently. See *Stuart*, 427 U.S. at 602 (Brennan, J., concurring in judgment) (*voir dire* "facilitate[s] intelligent exercise of peremptory challenges and [helps] uncover factors that would dictate disqualification for cause").

Adequate *voir dire* is a basic premise of the rationale in *Batson* and its progeny for two reasons. First, adequate *voir dire* eliminates any need to improperly rely on generalizations and stereotypes about prospective jurors. See *J.E.B.*, 511 U.S. 127. Second, the Court has noted, "[n]o doubt the *voir dire* process aids litigants in their ability

to articulate race-neutral explanations for their peremptory challenges.” *Id.* at 144 n. 17. Therefore, the burden set by the Court requires counsel to have sufficient information to adequately argue a *Batson* challenge and supplemental *voir dire* will aid the parties in complying the requirements of *Batson* and its progeny.

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PROPOSED ATTORNEY CONDUCTED *VOIR DIRE* QUESTIONS

- (1) What are your assumptions, opinions, and feelings about a person being arrested for a crime but being presumed innocent under law?
- (2) What are your assumptions, opinions, and feelings about being a juror in a serious felony trial and having to determine whether the State met its burden of proof beyond a reasonable doubt based solely on the evidence presented at trial?
- (3) What are your assumptions, opinions, and feelings about prosecutors and criminal defense lawyers?

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PROPOSED SUPPLEMENTAL JUDGE CONDUCTED VOIR DIRE QUESTIONS

PERSONAL EXPERIENCE: PARTIES, POTENTIAL WITNESSES, & LAWYERS

- (1) Do you, a family member, or a close friend know any of the potential witnesses who are related to this case:
 - a. State's List of Witnesses
 - b. Defendant's List of Potential Witnesses
- (2) Do you, a family member, or a close friend know the **Elected Solicitor Duffie Stone or Prosecutor Sean Thornton**?
- (3) Do you, a family member, or a close friend ever provided a contribution/donated, attended, or supported the **Elected Solicitor Duffie Stone's** election campaign?
- (4) Do you, a family member, or a close friend ever provided a contribution/donated, attended, or supported the **Elected Sheriff Guerry "Buddy" Hill Jr.** election campaign?

PERSONAL EXPERIENCE AND OPINIONS: PAST / PRESENT EMPLOYMENT

- (5) Have you, a family member, or a close friend ever been a caregiver for another person?
- (6) Have you, a family member, or a close friend ever been a caregiver for a person who has a disability?
- (7) Have you, a family member, or a close friend ever been a home health nurse or aid?
- (8) Have you, a family member, or a close friend ever been a mechanic or worked at a business dealing with vehicles?

PERSONAL EXPERIENCE AND OPINIONS: VIOLENT CRIMES

- (9) Have you, a family member, or a close friend ever been a victim of a violent crime or felony criminal offense?
- (10) Have you, a family member, or a close friend ever been a witness to a violent crime or felony criminal offense?

- (11) Have you ever accused someone of a violent crime or felony criminal offense?
- (12) Are you so morally or religiously opposed to violent crimes or criminal offenses that you could not render a fair and impartial decision despite the evidence in a case?
- (13) Would you hesitate to vote "not guilty" simply because a case involves the allegation of a violent crime or criminal offense?

PERSONAL EXPERIENCE AND OPINIONS: CRIME AGAINST A CHILD

- (14) Have you, a family member, or a close friend ever been a victim of child abuse?
- (15) Have you, a family member, or a close friend ever been a witness to a crime against a child?
- (16) Have you ever accused someone of a crime against a child?
- (17) Are you so morally or religiously opposed to a crime against a child that you could not render a fair and impartial decision despite the evidence in a case?
- (18) Would you hesitate to vote "not guilty" simply because a case involves the allegation of a crime against a child?

PERSONAL EXPERIENCE AND OPINIONS: DISABILITY

- (19) Do you, a family member, or a close friend have a disability?
- (20) Are you so morally or religiously opposed to a crime against someone with a disability that you could not render a fair and impartial decision despite the evidence in a case?
- (21) Would you hesitate to vote "not guilty" simply because a case involves the allegation of a crime against a person with a disability?

PERSONAL EXPERIENCE: LAW ENFORCEMENT

- (22) Have you, a family member, or a close friend ever had a discussion regarding criminal activity with anyone from the FBI, SLED, County Sheriff's Departments, Drug Enforcement Administration, SC Attorney General's Office, or County Solicitor's Office?
- (23) Who has served on a neighborhood watch group?

PERSONAL OPINIONS REGARDING CRIMES, ARRESTS, AND POLICE

- (24) Do you have a "Back the Blue" sticker on your car or sign in your yard?
- (25) Do you believe someone is probably guilty simply because they were arrested by the police?
- (26) Do you believe that our criminal laws are too lenient and that there should be stricter punishment?
- (27) Would you believe a police officer's testimony over another witness simply because the person is a police officer?
- (28) Do you believe that someone is probably guilty or hiding something if that person does not testify?
- (29) Do you feel that the Defendant must testify or that you would need to hear the Defendant testify to decide on the issue of whether the Prosecutor proved guilt beyond a reasonable doubt?

PERSONAL OPINIONS ON THE INTERNET & SOCIAL MEDIA

- (30) Have you ever commented on a news article on the internet or social media site (such as Facebook or Twitter) that related to a person's arrest, crime, or criminal trial?
- (31) Have you ever commented on, "liked", or "Follow" a law enforcement agency's social media site? For example, a Sheriff's Department's Facebook page?
- (32) Have you ever commented on, "liked", "Followed" a prosecution agency's social media site? For example, a Solicitor's Office Facebook page?

RELATIONSHIPS AND ASSOCIATIONS: POLICE, PROSECUTORS, ORGANIZATIONS

- (33) Have you, a family member, or a close friend ever been an employee of a federal, state, county, or municipal law enforcement agency or police department? For example, South Carolina Law Enforcement Division (SLED), South Carolina Highway Patrol (State Trooper's), County Sheriff's Department (YCSD), Drug Enforcement Administration, FBI, U.S. Marshall's Office, DSS?
- (34) Have you, a family member, or close friend ever been an employee of a prosecutor's office. For example, the U.S. Attorney's Office, South Carolina

Attorney General's Office, Solicitor's office a/k/a District Attorney's office, or City Attorney's office?

- (35) Have you, any family member or close friend ever applied for a job in law enforcement, county jail, prison, courthouse, or Solicitor's Office?
- (36) Have you, any family member or close friend ever volunteered for any law enforcement agency, prosecutor's office, victim advocacy group such as Sister Care?
- (37) Have you ever been a member or supporter of a law enforcement booster organization, such as South Carolina Troopers Association, DARE, CAVE, MADD?
- (38) Have you ever been a member of any organization, religious or non-secular, that opposes the consumption of alcohol or illegal drugs?
- (39) Have you ever had a ribbon or bumper sticker on your vehicle to show a position against a specific crime or any other crimes? For example, MADD.
- (40) Have you ever been a member or supporter of any group whose primary purpose is the promotion of victim's rights?

PRIOR COURT AND LEGAL EXPERIENCE

- (41) Have you, a family member, or close friend ever served on a jury panel in a criminal case?
- (42) Have you, a family member, or close friend ever appeared as a witness in a criminal trial?
- (43) Have you, a family member, or close friend ever had a bad experience with a criminal defense attorney?
- (44) Have you, a family member, or close friend ever filed a grievance against a lawyer?

[Conclusion and Signature Page to Follow]

CONCLUSION

Based on the public's extreme negative perception and pre-judgment of **accused criminals (specifically, the violent crime of murder and infliction of great bodily injury to a child that has been publicized in the news)**, Defense Counsel respectfully requests that the Court allow supplemental attorney conducted *voir dire* examination and that the Court ask the *venire* the preceding questions to expose any potential juror bias and/or prejudice. *Voir dire* examination is a mutual search between the court and the lawyers involved to determine whether a prospective juror can be fair and impartial. Supplemental *voir dire* examination will help achieve this goal and ensure the integrity of the procedure and the impaneled jury. Therefore, supplemental attorney-conducted *voir dire* and the proposed *voir dire* will ensure that the Defendant receives an impartial jury and a fair trial, as required by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution. See *Estelle v. Williams*, 425 U.S. 501 (1976); see also *Cage v. Louisiana*, 498 U.S. 39 (1990).

IT IS SO MOVED.

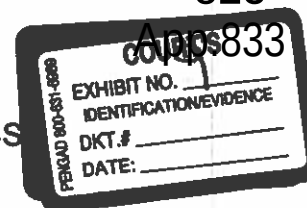
Respectfully Submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.
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ATTORNEY FOR THE DEFENDANT

August 26, 2023



STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
State of South Carolina,)
v.)
Rita Pangalangan,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

Indictment Nos.: **2019GS1500781;**
2022GS1500710; 2022GS1500814

**MOTION FOR THE STATE TO DISCLOSE
RULE 404(B), SCRE, (LYLE) EVIDENCE TO
THE DEFENSE**

The Defendant, by and through the undersigned Counsel, respectfully moves for the State to disclose any propensity evidence it intends to introduce at trial pursuant to Rule 404(b) of the South Carolina Rules of Evidence. See *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923); see also Rule 5(a)(1)(C), SCRCrimP (requiring the State to disclose all documents, tangible objects, and reports of examinations and tests "which are material to the preparation of [the] defense or are intended for use by the prosecution as evidence in chief at the trial."). The Defendant requests that the Court hold an *in-camera* evidentiary hearing on the admissibility of any propensity evidence against the Defendant.

INADMISSIBLE PRIOR BAD ACT EVIDENCE

In the prosecution of one crime, proof of another direct substantive crime is never admissible unless there is some legal connection between the two upon which it can be said that one tends to establish the other or some essential fact in issue. See Rule 404(a) and (b), SCRE; see also *State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993). Evidence of other crimes is admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to

establish the others; or (5) the identity of the person charged with the commission of the crime on trial. *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923). However, the evidence of prior bad acts must be relevant to prove the alleged crime. *State v. Bell*, 302 S.C. 18, 27–28, 393 S.E.2d 364, 369 (1990), *cert. denied*, 498 U.S. 881, 111 S.Ct. 227, 112 L.Ed.2d 182 (1990).

In deciding to apply the *Lyle* exception for the admission of prior crimes, the court must always determine if the probative value of the evidence is substantially outweighed by the danger of its prejudicial effect. See Rule 403, SCORE; see also *Parker*, 315 S.C. 230, 433 S.E.2d 831. The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result will generally turn on the facts of each case." *State v. Brooks*, 341 S.C. 57, 533 S.E.2d 325 (2000).

To be admissible, alleged prior bad acts that are not the subject of conviction must be proved by clear and convincing evidence. *State v. Cutro*, 332 S.C. 100, 504 S.E.2d 324 (1998). The connection between the prior bad acts and the crime must be more than just a general similarity; there must be a close degree of similarity or a connection between the prior bad acts and the crime. *State v. Raffaldt*, 318 S.C. 110, 113, 456 S.E.2d 390, 392 (1995). Notably, when the prior bad acts are similar to the one for which the appellant is being tried, the danger of prejudice is enhanced. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

[Conclusion and Signature Page to Follow]

CONCLUSION

If the State does seek to introduce *Lyle* evidence, the Defendant requests an *in-camera* hearing to determine whether the State can meet its burden of proof regarding the admissibility of this evidence. See Rules 401, 403, 404(b), SCRE. The Defendant objects to the introduction of prejudicial propensity evidence, as it improperly shifts the prosecution's burden of proof in violation of the Defendant's due process right to a fair trial. See U.S. Const. amends. V, VI, XIV; see *also* S.C. Const. art. I, §§ 3 and 14.

IT IS SO MOVED.

Respectfully Submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.
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ATTORNEY FOR THE DEFENDANT

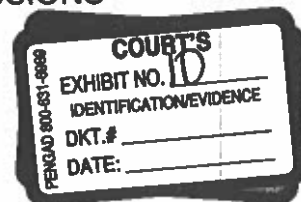
August 25, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
State of South Carolina,)
)
 v.)
)
Rita Pangalangan,)
)
 Defendant.)
)
_____)

IN THE COURT OF GENERAL SESSIONS

FOURTEENTH JUDICIAL CIRCUIT

Indictment Nos.: **2019GS1500781;**
2022GS1500710; 2022GS1500814



**DEFENDANT'S OBJECTION TO THE
STATE'S INTRODUCTION OF
INADMISSIBLE PROPENSITY EVIDENCE**

The Defendant, by and through the undersigned Counsel, objects to the State's introduction of propensity evidence because its admission is unfairly prejudicial and improperly shifts the prosecution's burden of proof. See Rules 404(a) and (b), SCRE; *see also* U.S. Const. amends. V, VI, XIV. Specifically, the admission of prejudicial propensity evidence violates the Defendant's due process right to a fair trial. See S.C. Const. art. I, §§ 3 and 14. Therefore, the Defendant requests an *in-camera* hearing to determine whether the State can meet its burden regarding the admissibility of this evidence.

Generally, evidence of a person's character is not admissible to prove the person acted "in conformity therewith on a particular occasion." Rule 404(a), SCRE. Evidence of a person's "other crimes, wrongs, or acts" is also generally inadmissible to prove a person's general character "in order to show action in conformity therewith." Rule 404(b), SCRE.

Our Supreme Court addressed the proper approach to Rule 404(b) admissibility in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, "i.e., the evidence does something more than prove a person has propensity to commit crimes." *Johnson v. State*,

433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021).

In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: "If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime."

Id. (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923)).

Trial courts are to apply the logical relevancy test with "rigid scrutiny." *Id.* at 556, 803 S.E.2d at 699. If the court concludes the prior bad act evidence serves a purpose other than to show the defendant's proclivity for criminal conduct and the purpose is one listed under Rule 404(b), then such evidence is admissible unless its "probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see *Johnson*, 433 S.C. at 556, 803 S.E.2d at 699. However, if the prior bad act did not result in a prior conviction, the State must prove the prior bad act by clear and convincing evidence. *Johnson*, 433 S.C. at 556, 803 S.E.2d at 699.

In *State v. Fletcher*, our Supreme Court explained that clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established, and such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal. See *Id.*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008) (citation omitted).

In deciding to apply the *Lyle* exception for the admission of prior crimes, the court must always determine if the probative value of the evidence is substantially outweighed by the danger of its prejudicial effect. See Rule 403, SCRE; see also *Parker*, 315 S.C. 230, 433 S.E.2d 831. The determination of the prejudicial effect of prior bad act evidence

must be based on the entire record and the result will generally turn on the facts of each case.” *State v. Brooks*, 341 S.C. 57, 533 S.E.2d 325 (2000). Notably, when the prior bad acts are similar to the one for which the appellant is being tried, the danger of prejudice is enhanced. See *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

CONCLUSION

Based on the foregoing reasons, the Defendant objects to the introduction of any inadmissible propensity evidence. See U.S. Const. amends. V, VI, XIV; see also S.C. Const. art. I, §§ 3 and 14; See Rules 401, 403, 404(b), SCRE.

IT IS SO MOVED.

Respectfully Submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.
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C: 803-807-0234
dayne@pricebenowitz.com

ATTORNEY FOR THE DEFENDANT

August 25, 2023

WITNESSES

DOCKET NO. 2019GS1500781

829
App.839
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Colleton

Defendant

COURT OF GENERAL SESSIONS

August Term 2020

I
hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Rita M Pangalangan

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2019A1510100465

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 8/6/2020

VERDICT

Foreperson of Petit Jury

Date:

INDICT

2020 AUG -6 AM 11:47

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

INDICTMENT

2019GS1500781

At a Court of General Sessions, convened on August 6, 2020, the Grand Jurors of Colleton County present upon their oath:

Murder

That in Colleton County, South Carolina, on or about August 5, 2019, the Defendant, Rita M Pangalangan, did, with malice aforethought and wanton or reckless disregard for human life, kill **Child** and **Child**. **Child** did die as a proximate result of Rita M Pangalangan's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Colleton County Sheriff's Office

J.W. Chapman Jr

DOCKET NO. 2022GS1500710

The State of South Carolina

County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

October Term 2022

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Rita M Pangalangan

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Towne Bell

J.P. Bell
Foreperson of Grand Jury

Date: 10/6/2022

**Indictment For
Great Bodily Injury on Child**

SC Code: 16-3-95(A)

CDR Code: 2766

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

OCT 6 2022 AM 10:14
COLLETON CO GS, REBECCA H. HILL

STATE OF SOUTH CAROLINA

)

INDICTMENT

COUNTY OF COLLETON

)

2022GS1500710

At a Court of General Sessions, convened on October 6, 2022, the Grand Jurors of Colleton County present upon their oath:

Great Bodily Injury on Child

That in Colleton County, South Carolina, on or about August 5, 2019, the Defendant, Rita M Pangalangan, did inflict great bodily injury upon **Child** a child at the time of said great bodily injury, that created a substantial risk of death or which caused serious or permanent disfigurement, or protracted loss or impairment of the function of the child's bodily member or organ, all in violation of Section 16-3-95(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

CCSO Laura Rutland

DOCKET NO. 2022GS1500814

The State of South Carolina

County of Colleton

833
App. 843
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

November Term 2022

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

DIRECT INDICTMENT

THE STATE

vs.

Rita M Pangalangan

ACTION OF GRAND JURY

True Bill

Indictment For

Criminal Conspiracy

SC Code: 16-17-410

CDR Code: 0049

Foreperson of Grand Jury

Date: 11/03/2022

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

NOV 3 2022 AM 11:01
COLLETON CO GS, REBECCA H. HILL

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

)
)
)

INDICTMENT

2022GS1500814

At a Court of General Sessions, convened on November 3, 2022, the Grand Jurors of Colleton County present upon their oath:

Criminal Conspiracy

That in Colleton County, South Carolina, on or about August 5, 2019, the Defendant, Rita M Pangalangan, did combine, conspire, confederate, agree or have tacit understanding with Larry Eugene King for the purpose of accomplishing an unlawful object or lawful object by unlawful means, all in violation of Section 16-17-410, et al. of the Codes of Law of South Carolina.

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 COLLETON

COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

INDICTMENTS: 2019GS1500781;
2022GS1500710; 2022GS1500814

STATE OF SOUTH CAROLINA,

V.

Rita M Pangalangan,

DEFENDANT.

VERDICT FORM

1. We, the jury in the above captioned case, on the charge of MURDER OF
Minor , find the Defendant (foreperson shall check one):

Not Guilty _____

Guilty ✓

2. We, the jury in the above captioned case, on the charge of GREAT BODILY
INJURY ON A CHILD, find the Defendant (foreperson shall check one):

Not Guilty _____

Guilty ✓

3. We, the jury in the above captioned case, on the charge of CRIMINAL
CONSPIRACY, find the Defendant (foreperson shall check one):

Not Guilty ✓

Guilty _____

Certified True Copies of Records
Rebecca H. Hill
Clerk of Court, CP & GS
Colleton County, South Carolina
Date: 9/11/2023



Parula M. Aiken
Foreperson

8/30/2023
Colleton County, South Carolina
Judge Clifton Newman
Court Reporter: Kymberlee Williams

STATE RITA M PANGALANGAN

INDICTMENT/CASE#: 2019GS1500781 App.847

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

STATE

VS.

INDICTMENT/CASE#: 2019GS1500781

RITA M PANGALANGAN

A/W#: 2019A1510100465

AKA: _____

Date of Offense: 08/05/2019

Female

Race: White Sex: e Age: 49

S.C. Code §: 16-3-10

DOB: _____ SS#: _____

CDR Code #: 0116

Address: _____

Colleton County

City, State, Zip: _____

DL#* _____ SID# _____

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: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

11883
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 37 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.

37 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.

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	\$ 100.00
§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	\$ 25.00
§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	\$ 3.75
☐ 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:
Court Reporter:

Rebecca H. Hill
Kymberlee Williams

Presiding Judge:
Judge Code:
Sentence Date:

C. New
2127
September 1, 2019

STATE

RITA M PANGALANGAN

INDICTMENT/CASE#: 2022GS1500710 App. 849

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

STATE

INDICTMENT/CASE#: 2022GS1500710

VS.

RITA M PANGALANGAN

A/W#: DIRECT INDICTMENT

AKA:

Date of Offense: 08/05/2019

Femal

Race: White Sex: e Age: 49

S.C. Code §: 16-3-95(A)

DOB: SS#:

CDR Code #: 2766

Address:

Colleton County

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: Infliction of Great Bodily Injury upon a Child

In violation of § 16-3-95 (a) of the S.C. Code of Laws, bearing CDR Code # 2766

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 11883

Defendant

Attorney for Defendant

SC Bar #

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: _____☒ 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.

39 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.

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	\$ 100 ⁰⁰
§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	\$ 25 ⁰⁰
§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	\$ 3 ⁷⁵
☐ 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: _____
Court Reporter: _____

Bebecca H. Hill
Kymberlee Williams

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

2/12/7
September 1, 2023

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Sep 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Case Nos. 2019GS1500781; 2022GS1500710

The State,

Respondent,

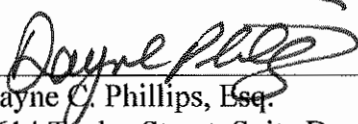
v.

Rita M. Pangalangan,

Appellant.

NOTICE OF APPEAL

Rita M. Pangalangan appeals her convictions and sentence in this case. The sentence was imposed by the Honorable Clifton Newman on September 1, 2023.


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Columbia, SC 29201

ATTORNEY FOR APPELLANT

September 7, 2023

Other Counsel of Record:

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cc:

Rebecca Hill, Colleton County Clerk of Court

RECEIVED

Sep 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Case Nos. 2019GS1500781; 2022GS1500710

The State,

Respondent,

v.

Rita M. Pangalangan,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy in the United States Mail, postage prepaid, on **September 8, 2023**, addressed to the following parties:

Solicitor Duffie Stone, Fourteenth Circuit Solicitor's Office
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Attorney General Alan Wilson, South Carolina Attorney General's Office
Post Office Box 11549, Columbia, SC 29211

The Honorable Rebecca Hill, Colleton County Clerk of Court
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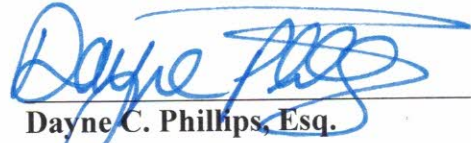


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September 8, 2023

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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March 6, 2025

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Mar 25 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

The State of South Carolina,

Respondent,

v.

Rita M. Pangalangan,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR BY ALLOWING THE STATE TO PRESENT UNFAIRLY PREJUDICIAL PRIOR BAD ACT CHARACTER EVIDENCE WHEN THE PROPENSITY EVIDENCE IS NOT *RES GESTAE*, IS STRIKINGLY SIMILAR TO THE ONE FOR WHICH APPELLANT IS BEING TRIED, IS NOT A RESULT OF A CRIMINAL CONVICTION, AND IS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE?
- II. DID THE TRIAL COURT ERR BY REFUSING TO SUPPRESS UNFAIRLY PREJUDICIAL PHOTOGRAPHS WHEN THE PHOTOS WERE UNNECESSARY TO THE ISSUES AT TRIAL AND WERE CALCULATED TO AROUSE THE SYMPATHIES AND PREJUDICES OF THE JURY, THEREBY INFLUENCING THE JURY'S VERDICT ON AN IMPROPER BASIS?
- III. DID THE TRIAL COURT ERR BY REFUSING TO GRANT A MISTRIAL AFTER ALLOWING THE STATE TO PRESENT UNFAIRLY PREJUDICIAL PRIOR BAD ACT EVIDENCE AND PHOTOGRAPHS, AND WHEN THE PROSECUTOR'S COMMENT DURING CLOSING ARGUMENT WAS CALCULATED TO AROUSE THE PASSIONS AND PREJUDICE OF THE JURORS TO DENY APPELLANT'S DUE PROCESS RIGHT TO A FAIR TRIAL?
- IV. DID THE TRIAL COURT ERR BY REFUSING TO ALLOW ATTORNEY-CONDUCTED *VOIR DIRE* WHEN THE CURRENT PROCEDURE DENIES APPELLANT'S RIGHT TO A FAIR TRIAL BY A PANEL OF IMPARTIAL JURORS WHO WERE SELECTED USING A FUNDAMENTALLY FAIR PROCEDURE?

STATEMENT OF THE CASE

On August 6, 2020, the Colleton County Grand Jury indicted Appellant, Rita Pangalangan, for murder. (R. 829 - 830). The Colleton County Grand Jury also indicted Appellant for great bodily injury on a child (“GBIC”) on October 6, 2022, and Criminal Conspiracy on November 3, 2022. (R. 831 – 834). The Grand Jury also indicted Appellant’s co-defendant, Larry King, for the same offenses.

On August 28, 2023, Appellant and her co-defendant proceeded to a joint trial before the Honorable Clifton Newman and a jury. (R. 1).¹ Dayne Phillips represented Appellant, John Loy and Gil Gatch represented Co-Defendant King, and Solicitors Duffie Stone and Sean Thornton prosecuted the case on behalf of the State.

On September 1, 2023, the jury returned guilty verdicts against Appellant and Co-Defendant King for murder and GBIC, and a not guilty verdict for criminal conspiracy. (R. 761, line 12 – 762, line 25). The Trial Court sentenced Appellant to thirty-seven years imprisonment for the murder conviction and to twenty years imprisonment on the GBIC conviction. (R. 808, line 7-10). The Trial Court ordered concurrent sentences. (R. 808, lines 11-12).

On September 8, 2023, Appellant filed a Notice of Appeal. (R. 841). This appeal follows.

¹ Please note there are a significant number of errors in the transcript (e.g., incorrectly listing the speaking party and providing the wrong word that is similar to the correct word).

STATEMENT OF THE FACTS

Background

On August 5, 2019, Appellant's thirteen-year-old disabled daughter died from hyperthermia² after being inside Appellant's car for over five hours in the front yard of Co-Defendant King's residence. Specifically, Co-Defendant King asked Appellant to leave his residence after a disagreement and put her daughter in the car for them to go home. (R. 564 – 565). Co-Defendant King testified that the car engine was running, and he believed the air-conditioner was on, or he would not have left Appellant's daughter in the car. (R. 567, lines 4-9).

It is undisputed that Appellant and Co-Defendant King left his residence to get another key fob after being unable to open the car doors several hours later, and Co-Defendant King called a local locksmith for help to unlock the car. (R. 608 – 614). Co-Defendant King further testified that Appellant did not want her daughter to die. (R. 602). Notably, Co-Defendant King's home surveillance cameras recorded this incident.

At trial, the State played the surveillance video recordings for the jury and presented evidence from an expert witness regarding the potential temperatures inside the car at different time intervals, a pathologist to explain the cause and manner of her the Child's death, and an expert witness to explain the potential effects of methamphetamine use on cognitive impairment and behavior. The State argued that Appellant and Co-Defendant King were high on methamphetamine at the time of this incident, and that the jurors could infer malice based on their reckless conduct.

² Hyperthermia is an abnormally high body temperature caused by a failure of the heat-regulating mechanisms of the body to deal with the heat coming from the environment. See National Institutes of Health, *Hyperthermia: too hot for your health*, <https://www.nih.gov/news-events/news-releases/hyperthermia-too-hot-your-health-1> (last visited on September 6, 2024).

Motion for Attorney-Conducted Voir Dire

Pre-trial, Appellant moved for supplemental attorney-conducted *voir dire*. (R. 42, line 2 – 45, line 2). Specifically, Appellant argued that attorney-conducted *voir dire* is “necessary in the interest of justice to obtain an impartial jury, with the intelligent exercise of rendering challenges by counsel, informed consideration of the court, [and] . . . challenges for cause.” (R. 43, lines 2-6). The Trial Court admitted Appellant’s written motion for attorney-conducted *voir dire* as Court’s Exhibit Number 1. (R. 44, line 22 – 45, line 2; R. 811).

In response, the State objected and maintained that “the entire procedure we use in South Carolina is best left to the General Assembly, and, of course, the Supreme Court setting out our rules.” (R. 45, lines 12-16). The State also specifically objected to the proposed questions.

The Trial Court ultimately held, “I know about the effort to try to put South Carolina in a category of attorney conducted voir dire, I don’t believe there’s any authority anywhere in this State for that at this point in time in history[.]” (R. 50, lines 1-6).

Motion to Suppress Prior Bad Act Character Evidence

Pre-Trial, Appellant moved for the State to disclose prior bad act evidence and objected to the State presenting inadmissible propensity evidence. (R. 187, lines 1-8). In response, the State indicated its intent to present the testimony of Brittany Honeycutt and Lindsey Lewis under *res gestae*. (R. 188, lines 1-6). The State argued, “This happened on a Monday . . . [Appellant] left her child with this babysitter [Lindsay Lewis on a] Friday, Saturday, and Sunday, and she describes, basically, [Appellant] leaving the child with her and taking off, and she doesn’t see her for the full weekend, didn’t know she was leaving.” (R. 188, lines 15-21). The Prosecutor also maintained that Appellant’s former roommate, Brittany Honeycutt, would testify that Appellant told her, “Just take the child with you to work, and put her in the car, that’s what I always do.” (R. 189, lines 11-13).

In response, Appellant argued:

Thank you, Your Honor. Any evidence of that nature that's not resulting from a conviction must be . . . proved by clear and convincing evidence to be admissible, and pursuant to State v. [Gore], when a prior bad act, or similar to the one, where a person's being tried, the danger of unfair prejudice is enhanced. So not only under 404(b), if an exception applies, we argue that it doesn't, but if an exception applied, you still have the 403 analysis that the probative value of the evidence is substantially outweighed by its prejudicial effect. And here it's not a result of a conviction, and it's highly similar, so the danger of unfair prejudice is enhanced under the case law.

(R. 190, lines 2-17). Appellant's Counsel also submitted a written motions. (R. 193, lines 1-4; R. 234, lines 11-22; R. 823 - 828.

The Trial Court initially stated that he does not rule in advance on "critical issues". (R. 194, line 22 – 195, line 1). However, after Appellant subsequently reiterated this argument to the Trial Court when moving to limit the scope of the State's opening statement, the Trial Court held:

As far as the res gestae it also shows - - could show the state of mind of the Defendants. I find the relevance outweighs any danger of unfair prejudice, due to the State's burden of proof and weighing both things that it's admissible, whether or not the State will establish that by clear and convincing evidence under Rule 403 and 404[(b), SCRE]. . . . I find that those - - that prior conduct is likewise admissible, as part of the res gestae, as it relates to matters that occurred the week before the death of the child. At this time, the motion is denied.

(R. 239, lines 15-22).

At trial, Appellate objected during the State's direct examination of the babysitter, Lindsay Lewis, when the State asked if she saw anything unusual when she put the Appellant's daughter to bed, and Ms. Lewis replied, "I can't remember - - it was bed bugs." Specifically, Appellant objected and cited Rules 401, 403, and 404(b), SCRE, noting "all previously given to Your Honor." (R. 321, lines 22-25). The Trial Court overruled the objection. (R. 322, line 2).

Appellant also objected during the State's direct examination of Appellant's former

roommate, Brittany Honeycutt, when the State asked about whether she had “watch[ed]” Appellant’s daughter: “And, Your Honor, this is subject to our prior objection.” The Trial Court responded, “Yes, proceed.” (R. 328, line 20 – 330, line 6). The State then presented the following testimony from Appellant’s former roommate:

Solicitor: *Did [Appellant] ever just leave the child with you without asking you to take care of her?*

Honeycutt: Yes.

Solicitor: And how did that happen?

Honeycutt: So there was an incident where there was a Sunday night in July, where she had asked me to watch her for just overnight, and I said that was fine. So - - I’m sorry, that was also on Monday.

Solicitor: Okay.

Honeycutt: And she came back the next day, because I had told her I had to work. So she did come back home that morning, and she told me was gonna (sic) be home all day.

And when I was ready to go to work, or sorry, I am so sorry, I got my days mixed up. So when the - - when I first watched her the first night, that was an agreement. The next day it was she wasn’t going anywhere, and then it was she gave her - - I remember her giving her a bath I remember getting ready for bed, and she would close her door, and she did the normal routine.

And then I went to bed with my kids, because I had to work the next day, and the next thing I know, *the next morning I woke up [the Child] was in her room, trying to get out of the bed.*

Solicitor: So she - - when [the Child’s] in the room, is she locked in the room?

Honeycutt: I don’t know if the door was locked, but I know she could not open the door.

Solicitor: Because of the hands?

Honeycutt: Yes.

Solicitor: Did [the Child] - - [Appellant] - - and let me go - - now we're gonna go right up until August when you left.

Honeycutt: Uh-huh.

Solicitor: You ended up leaving the Thursday before this event - -

Honeycutt: Yes.

Solicitor: - - took place; is that correct?

Honeycutt: Yes.

Solicitor: Okay. Leading up close to that time did you have a discussion with [Appellant] about you babysitting [her daughter], and whether or not you were able to do that?

Honeycutt: Yes.

Solicitor: Please tell us about that.

...

Honeycutt: Sorry. [Appellant] came up to me and had asked me if I could watch her. I had let her know I had to go into work for a few hours, and she kept asking me over and over.

And, finally, when the answer didn't change it was no, obviously, she told me to leave [her daughter] in my car with the windows down, because she does it all the time.

Appellant: Same as our objection. Your Honor.

Trial Court: Objection is overruled.

Solicitor: And, I'm sorry, I keep interrupting you, could you - - she - you said you couldn't, because you had to go to work?

Honeycutt: Yes.

Solicitor: Pick it up from there.

Honeycutt: So when I told her the first time, she kept asking me over and over again. *And when she realized that the answer was*

not gonna (sic) change from no, she had told me that I could still take her [daughter], and leave her in my car with the windows down, and - - because she does it all the time, because she does it all the time.

Solicitor: She being?

Honeycutt: Appellant.

(R. 329, line 20 – 333, line 1) (emphasis added).

Motion to Suppress Photographs

Pre-trial, Appellant noted her objection to the admission of any unfairly prejudicial photographs. (R. 195, lines 2-7). The State indicated that they were only going to present photographs of the crime scene. (R. 196, lines 9-13; R. 197, lines 1-2). Appellant moved to suppress these photographs:

Specifically, our position is that we move for suppression of the evidence . . . based - - that the photos have little to no probative value, as to any disputed fact, or to an element of murder. . . . [U]nder our 403 objection another case that was recently decided by our Supreme Court, *State v. Jones*, that was filed on March 29th, . . . ‘It is well settled - - or well established that photographs that are calculated to arouse the sympathies and prejudice of the jury are excluded, if they’re irrelevant and unnecessary with the issues at trial.

And, of course, . . . that the jury would make a decision based on an improper basis, not based on the evidence.

Seeing the photos alone would invoke such a response, that the jury would not base their decision on - - their verdict solely on the evidence, but based on the graphic nature of the photographs, that any probative value of those photographs are substantially outweighed.

(R. 199, line 6 – 200, line 4). Appellant further explained his objection to the proposed photographs, “[O]ur specific issue is just that a pathologist will be able to testify, explain the injuries, that the State will have other means of evidence that they can present through testimony of the pathologist [and] through the people that were present at the scene.” (R. 200, lines 13-21).

At trial, Appellant renewed his prior objection to the admission of these photographs *in camera*. (R. 275, line 15 – 276, line 12). The Trial Court held, State’s “Exhibits Number 2 and 4 are admitted over objection, that depict the scene at the time the officers arrived, and being further described through testimony, and that the pictures are not of such a nature the prejudice exceeds probative value.” (R. 278, line 25 – 279, line 5; State’s Exhibits 2 and 4).

Appellant also provided the following argument as to the exclusion of State’s Exhibit Numbers 1 and 3:

Based on Your Honor’s decision to admit those two [State’s Exhibits 2 and 4], our argument would be, again, that there’s nothing that testimony can’t provide that’s not already contained within those two photographs that would be highlighted by those.

That is not how she was found at the scene. As the Coroner’s tag has a sheet behind her, [the other photograph] is, obviously, an enhanced photograph with the injuries. These photos are nothing more than to inflame the passion and prejudice of the jury, to have them make a decision on an improper basis, not the evidence themselves[.]

And to me those additional two photographs - - I mean the probative value would be substantially outweighed by its prejudicial effect.

(R. 281, lines 5-23; State’s Exhibits 1 and 3) (emphasis added). The Trial Court ultimately held, “These two photographs 1 and 2 [State’s Exhibit Numbers 1 and 3] are admitted, over objection, to show the bruising on the child, and it further shows the condition at the time. They will be admitted over objection.” (R. 283, lines 17-21; R. 284, lines 17-24).

Over Appellant’s objection, the Trial Court also admitted photographs of a gun located in a bag that was found in the car and allowed testimony about the gun being loaded. (R. 299, lines 21-25; R. 301, lines 15-23; R. 302, lines 3-7; State’s Exhibits 10 and 11).

State’s Closing Argument

During the State’s closing argument, Prosecutor Stone argued, “*If they had walked up to her*

and shot her, she wouldn't have suffered the pain that she suffered in this case." The Trial Court overruled Appellant's contemporaneous objection. (R. 690, lines 2-7) (emphasis added).

Motions for Mistrial

During a break, Appellant moved for a mistrial, arguing:

Based on the prior objections, now the testimony from Brittany Honeycutt and Lindsey Lewis, we believe it would be appropriate to move for a mistrial, specifically, under the objections we had under Rule 404(b), as well as Rule 403. I believe at this point the prejudice has manifested a necessity that this has now denied [Appellant] the right to a fair trial.

(R. 351, lines 12-20). The Trial Court denied the motion. (R. 352, lines 12-13).

At the close of the State's case-in-chief, Appellant renewed all prior motions and motion for a mistrial on the same basis. (R. 538, lines 7-21). Appellant again renewed all prior motions and motion for a mistrial after resting her case. (R. 669, lines 6-9). After the Trial Court instructed the jury on the law, Appellant renewed the motion for a mistrial based on the State's closing argument:

[T]hank you, Your Honor. Based on what was presented in closing, I'd renew the prior motion for a mistrial, specifically, highlighting the Solicitor's comments about shooting her in the head, referring the [Appellant's daughter], and the previously sustained hearsay objection I had, regarding what [Appellant] said, you had sustained that during the trial inadmissible statement in his closing.

There was a photo of the gun that I previously objected to, as well as the testimony from Lindsey Lewis and Brittany Honeycutt, that I would argue was under 401, not relevant, 404(b) inadmissible propensity evidence, and [Rule] 403, that any probative value was substantially outweighed by its prejudicial effect.

I believe we touched on a mistrial regarding the – that's been a deprivation of [Appellant's] right to a fair trial. The closing calculated to rose the passions and prejudice of the jury. It crossed the threshold and rose to the level of a mistrial. Thank you.

(R. 737, lines 3-24). The Trial Court replied, "All right, everything is a matter of record, and the

record is preserved, and I overruled the motion that's currently being made and all other motions that I previously overruled or denied." (R. 739, lines 9-15).

ARGUMENTS

- I. THE TRIAL COURT ERRED BY ALLOWING THE STATE TO PRESENT UNFAIRLY PREJUDICIAL PRIOR BAD ACT CHARACTER EVIDENCE WHEN THE PROPENSITY EVIDENCE IS NOT *RES GESTAE*, IS STRIKINGLY SIMILAR TO THE ONE FOR WHICH APPELLANT IS BEING TRIED, IS NOT A RESULT OF A CRIMINAL CONVICTION, AND IS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE.**

Standard of Review

“Decisions regarding the admissibility of evidence . . . are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.” *State v. Sweet*, 374 S.C. 1, 4-5, 647 S.E.2d 202, 204 (2007). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.*, 374 S.C. at 5, 647 S.E.2d at 204-05.

Law

Typically, evidence of a person’s character is not admissible to prove the person acted “in conformity therewith on a particular occasion.” Rule 404(a), SCRE. Evidence of a person’s “other crimes, wrongs, or acts” are generally inadmissible to prove a person’s general character “in order to show action in conformity therewith.” Rule 404(b), SCRE (commonly referred to as prior bad act or *Lyle* evidence). The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, “i.e., the evidence does something more than prove a person has propensity to commit crimes”. *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021). Under Rule 404(b), SCRE, there are only five legitimate purposes for the admission of prior bad act evidence: to prove “motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.”

This Court addressed the proper approach to determining the admissibility of prior bad act evidence in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). In a criminal case, the State must

convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: “If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime.” *Lyle*, 125 S.C. at 417, 118 S.E. at 807.

If, after applying the logical relevancy test with “rigid scrutiny,” the trial court concludes the prior bad act evidence serves some purpose other than to show the defendant’s proclivity for criminal conduct (and that purpose is one of the five listed in Rule 404(b)), then the evidence is admissible unless its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE; *see Perry*, 430 S.C. at 44, 842 S.E.2d at 665.

Notably, if the prior bad act did not result in a criminal conviction, the State also bears the burden of proving the prior bad act by clear and convincing evidence. *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. The danger of unfair prejudice is enhanced when the prior bad act is “strikingly similar” to the one for which the appellant is being tried. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

Prior bad act evidence “is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.” *Michelson v. United States*, 335 U.S. 469, 475–76 (1948) (footnote omitted). The Court of Appeals reiterated the purpose of barring prior bad act evidence to prove character in *Johnson*, deeming it useless to the factfinder:

The law’s disdain of character evidence draws from notions of basic fairness tied together by the “golden thread”—the presumption of

innocence—so one is rightly judged by whether the government has proven what it has charged, regardless of who it has charged. That is, after all, the spirit of the rule of law.

Johnson, 433 S.C. at 556, 860 S.E.2d at 700.

Under the theory of *res gestae*, the State can argue that evidence is necessary for a full presentation of the case without fragmentation. *See generally State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002).

Discussion

In this case, the Trial Court erred in allowing the State to present unfairly prejudicial prior bad act character evidence when the propensity evidence is not *res gestae*, is “strikingly similar” to the one for which Appellant is being tried, is not a result of a criminal conviction, and is not proven by clear and convincing evidence. *See generally Johnson*, 433 S.C. at 556, 860 S.E.2d at 699; *Gore*, 283 S.C. at 121, 322 S.E.2d at 13 (finding the danger of unfair prejudice is enhanced when the prior bad act is “strikingly similar” to the one for which the appellant is being tried).

Specifically, the Trial Court erroneously allowed the State to present the following unfairly prejudicial testimony from Appellant’s former roommate, Brittany Honeycutt, when it was not necessary for the full presentation of the State’s case:

[Appellant] came up to me and had asked me if I could watch her. I had let her know I had to go into work for a few hours, and she kept asking me over and over.

And, finally, when the answer didn’t change it was no, obviously, *she told me to leave [her daughter] in my car with the windows down, because she does it all the time.*

...

So when I told her the first time, she kept asking me over and over again. And when she realized that the answer was not gonna (sic) change from no, *she had told me that I could still take her [daughter], and leave her in my car with the windows down, and - - because she does it all the time, because she does it all the time.*

(R. 329, line 20 – 333, line 1) (emphasis added).

The State failed to present any corroborating evidence to satisfy its burden of proving this prior bad act (that is not the result of a conviction) by clear and convincing evidence. Notably, the former roommate's prior bad act testimony mirrored this allegation, served only as propensity evidence, and enhanced the prejudice to Appellant.

Assuming *arguendo*, even if an exception applied under Rule 404(b), SCRE, the probative value of this evidence is substantially outweighed by the danger of the unfair prejudice to Appellant. *See* Rule 403, SCRE; *Perry*, 430 S.C. at 44, 842 S.E.2d at 665. Therefore, the Trial Court erred in allowing the State to present unfairly prejudicial prior bad act character evidence when the propensity evidence is not *res gestae*, is "strikingly similar" to the one for which Appellant is being tried, is not a result of a criminal conviction, and is not proven by clear and convincing evidence. *See generally Johnson*, 433 S.C. at 556, 860 S.E.2d at 699; *Gore*, 283 S.C. at 121, 322 S.E.2d at 13.

II. THE TRIAL COURT ERRED BY REFUSING TO SUPPRESS UNFAIRLY PREJUDICIAL PHOTOGRAPHS WHEN THE PHOTOS WERE UNNECESSARY TO THE ISSUES AT TRIAL AND WERE CALCULATED TO AROUSE THE SYMPATHIES AND PREJUDICES OF THE JURY, THEREBY INFLUENCING THE JURY'S VERDICT ON AN IMPROPER BASIS.

Standard of Review

“Decisions regarding the admissibility of evidence and whether to grant or deny a mistrial are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.” *State v. Sweet*, 374 S.C. 1, 4-5, 647 S.E.2d 202, 204 (2007). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.*, 374 S.C. at 5, 647 S.E.2d at 204-05.

Law

Under Rule 403, SCRE, relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Moreover, “[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.” *State v. Jones*, 440 S.C. 214, 891 S.E.2d 347 (2023) (quoting *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)).

Photographs are relevant if they “depict the bodies of the murder victims in substantially the same condition in which the defendant left them.” *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986); Rule 401, SCRE. Even if relevant, photographs are unfairly prejudicial if they “create a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991)).

In *State v. Collins*, our Supreme Court acknowledged that the photographs were graphic, but concluded that the photos were “highly probative, corroborative, and material in establishing

the elements of the offenses charged; their probative value outweighed their potential prejudice; and the court of appeals should not have invaded the trial court's discretion in admitting this crucial evidence based on its emotional reaction to the subject matter presented.” 409 S.C. 197, 535, 763 S.E.2d 22, 28 (2014). The *Collins* Court further noted that photographs should not be excluded just because they are gruesome. *Id.* at 535-36, 763 S.E.2d at 28.

Discussion

In this case, the Trial Court erred by refusing to suppress unfairly prejudicial photographs when the photos were unnecessary to the issues at trial and were calculated to arouse the sympathies and prejudices of the jury, thereby influencing the jury’s verdict on an improper basis. *See generally Jones*, 440 S.C. 214, 891 S.E.2d 347; *Collins*, 409 S.C. at 535, 763 S.E.2d at 28. Appellant moved for suppression of the photographs based on the photos having little-to-no probative value as to any disputed fact. *See State v. Nelson*, 440 S.C. 413, 891 S.E.2d 508 (2023).

Specifically, Appellant also argued that the scant evidentiary value the photos may have is negated by the responding officers’ and pathologist’s testimony. *See Middleton*, 288 S.C. at 24, 339 S.E.2d at 693. The average juror could understand the extent of the Child’s injuries from hearing the responding officers’ and pathologist’s testimony that the Child died as a result of being inside a hot car for several hours. Appellant provided the following argument as to the exclusion of State’s Exhibit Numbers 1 and 3:

Based on Your Honor’s decision to admit those two [State’s Exhibits 2 and 4], our argument would be, again, that there’s nothing that testimony can’t provide that’s not already contained within those two photographs that would be highlighted by those.

That is not how she was found at the scene. As the Coroner’s tag has a sheet behind her, [the other photograph] is, obviously, an enhanced photograph with the injuries. These photos are nothing more than to inflame the passion and prejudice of the jury, to have them make a decision on an improper basis, not the evidence themselves[.]

And to me those additional two photographs - - I mean the probative value would be substantially outweighed by its prejudicial effect.

(R. 281, lines 5-23; State's Exhibits 1 and 3) (emphasis added).

Notably, the additional photographs showing the Coroner's tag and highlighting the Child's injuries served no legitimate purpose other than to enhance the unfair prejudice to Appellant. Despite there being absolutely no relevance, the Trial Court erroneously admitted a photograph of a gun that was located in a bag found in the car, and allowing testimony about the gun being loaded. (R. 299, lines 21-25; R. 301, lines 15-23; R. 302, lines 3-7; State's Exhibits 10 and 11). *See* Rules 401 and 403, SCRE. Therefore, the Trial Court erred by refusing to suppress unfairly prejudicial photographs when the photos were unnecessary to the issues at trial and were calculated to arouse the sympathies and prejudices of the jury, thereby influencing the jury's verdict on an improper basis. *See generally Jones*, 440 S.C. 214, 891 S.E.2d 347; *Collins*, 409 S.C. at 535, 763 S.E.2d at 28.

III. THE TRIAL COURT ERRED BY REFUSING TO GRANT A MISTRIAL AFTER ALLOWING THE STATE TO PRESENT UNFAIRLY PREJUDICIAL PRIOR BAD ACT EVIDENCE AND PHOTOGRAPHS, AND WHEN THE PROSECUTOR'S COMMENT DURING CLOSING ARGUMENT WAS CALCULATED TO AROUSE THE PASSIONS AND PREJUDICE OF THE JURORS TO DENY APPELLANT'S DUE PROCESS RIGHT TO A FAIR TRIAL.

Standard of Review

“Decisions regarding the admissibility of evidence and whether to grant or deny a mistrial are within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.” *State v. Sweet*, 374 S.C. 1, 4-5, 647 S.E.2d 202, 204 (2007). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.*, 374 S.C. at 5, 647 S.E.2d at 204-05.

Law

In determining whether to grant a mistrial, our Supreme Court has noted that “[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) “perhaps other matters.” *State v. Craig*, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976). Therefore, although the decision to grant or deny a mistrial is within the trial court’s discretion, such discretion is not unfettered. *See State v. Edwards*, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

“On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the

defendant's guilt.” *State v. Rudd*, 355 S.C. 543, 549, 586 S.E.2d 153, 157 (Ct. App. 2003). “The appropriate determination is whether the solicitor's comment so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Id.*

Our Supreme Court has directly addressed this issue:

While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done. The solicitor's closing argument must, of course, be based on this principle. The argument therefore must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice.

State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)); *Rudd*, 355 S.C. at 549, 586 S.E.2d at 156 (holding a solicitor's “argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it.”) (citation omitted)).

“The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002 (finding “[i]mproper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.”); *See State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997 (“A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.”)).

In *State v. McGill*, 191 S.C. 1, 3 S.E.2d 257, 261 (1939), our Supreme Court held that a Solicitor “is a quasi judicial officer, and . . . that a solicitor must not, because of the high position he holds, say things, or do things, which would have any effect to prevent a citizen, however humble, from obtaining the fair and impartial trial he is entitled to under the law”. *See generally State v. Cannon*, 229 S.C. 614, 93 S.E.2d 889 (1956) (finding a prosecuting attorney has a duty to

treat the defendant in an impartial manner); *State v. Craig*, 267 S.C. 262, 265, 227 S.E.2d 306, 308 (1976) (noting that “[a]s a general rule, conduct of the prosecutor calculated to arouse prejudice against the accused, and to prevent him from having a fair trial will not be tolerated”); *see also State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000) (finding “[p]rosecutors are ministers of justice and not merely advocates . . . A prosecutor has special responsibilities to do justice and is held to the highest standards of professional ethics. . . . We will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice”).

Discussion

In this case, the Trial Court erred by refusing to grant a mistrial after allowing the State to present unfairly prejudicial prior bad act evidence and photographs, and when the Prosecutor’s comment during closing argument was calculated to arouse the passions and prejudice of the jurors to deny Appellant’s due process right to a fair trial. *See generally Prince*, 279 S.C. at 33, 301 S.E.2d at 472; *Rudd*, 355 S.C. at 549, 586 S.E.2d at 156 (holding a solicitor’s “argument must not be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences to it.”) (citation omitted)).

During the State’s closing argument, Prosecutor Stone argued, “*If they had walked up to her and shot her, she wouldn’t have suffered the pain that she suffered in this case.*” The Trial Court overruled Appellant’s contemporaneous objection. (R. 690, lines 2-7) (emphasis added). The Prosecutor deliberately made this improper argument to prejudice Appellant, and the Trial Court erroneously overruled the objection. Appellant renewed the motion for a mistrial again after the Trial Court instructed the jury on the law:

[T]hank you, Your Honor. Based on what was presented in closing, I’d renew the prior motion for a mistrial, specifically, highlighting the Solicitor’s comments about shooting her in the head, referring the [Appellant’s daughter], and the previously sustained hearsay

objection I had, regarding what [Appellant] said, you had sustained that during the trial inadmissible statement in his closing.

There was a photo of the gun that I previously objected to, as well as the testimony from Lindsey Lewis and Brittany Huneycutt, that I would argue was under 401, not relevant, 404(b) inadmissible propensity evidence, and [Rule] 403, that any probative value was substantially outweighed by its prejudicial effect.

I believe we touched on a mistrial regarding the – that's been a deprivation of [Appellant's] right to a fair trial. The closing calculated to rose the passions and prejudice of the jury. It crossed the threshold and rose to the level of a mistrial. Thank you.

(R. 737, lines 3-24).

Manifest necessity dictated that the Trial Court should have granted a mistrial based on the totality of unfair prejudice against Appellant based on the the character of the testimony, the circumstances under which it was offered, and the nature of the case. *See Craig*, 267 S.C. at 269, 227 S.E.2d at 310. Therefore, the Trial Court erred by refusing to grant a mistrial after allowing the State to present unfairly prejudicial prior bad act evidence and photographs, and when the Prosecutor's comment during closing argument was calculated to arouse the passions and prejudice of the jurors to deny Appellant's due process right to a fair trial.

IV. THE TRIAL COURT ERRED BY REFUSING TO ALLOW ATTORNEY-CONDUCTED *VOIR DIRE* WHEN THE CURRENT PROCEDURE DENIES APPELLANT'S RIGHT TO A FAIR TRIAL BY A PANEL OF IMPARTIAL JURORS WHO WERE SELECTED USING A FUNDAMENTALLY FAIR PROCEDURE.

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure. *See Estelle v. Williams*, 425 U.S. 501 (1976); *Irvin v. Dowd*, 366 U.S. 717 (1961). “[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.” *State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)).

The purpose of supplemental attorney conducted *voir dire* is to expose any known or unknown bias or prejudice of the prospective jurors against a defendant and/or the nature of the criminal charge alleged by the State. *See Mu'Min v. Virginia*, 500 U.S. 415 (1991) (“*Voir dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”); *cf. State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) (holding a juror's failure to disclose certain information does not warrant a new trial where the juror was not specifically asked to disclose the information during *voir dire* examination).

Adequate *voir dire* is critical in protecting a defendant's constitutional right to an impartial jury. *See Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (noting “[w]ithout an adequate *voir dire* the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.”); *see also Connors v. United States*, 158 U.S. 408, 413 (1895) (finding “*Voir Dire* plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury

will be honored. Without an adequate *voir dire* the trial judge's responsibility to remove prospective jurors who will not be able to impartially follow the court's instructions and evaluate the evidence cannot be fulfilled.”).

The Supreme Court of the United States has explained the importance of *voir dire* examination and its role in the process of impaneling an impartial jury:

Voir Dire examination serves to protect that right by exposing possible biases, *both known and unknown*, on the part of potential jurors. Demonstrated bias in the responses to questions on Voir Dire may result in a juror being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.

McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 554 (1984) (emphasis added).

In cases of extensive publicity, *defense counsel should be accorded more latitude in personally asking or tendering searching questions that might root out indications of bias, both to facilitate intelligent exercise of peremptory challenges and to help uncover factors that would dictate disqualification for cause.* Indeed, it may sometimes be necessary to question on voir dire prospective jurors individually or in small groups, both to maximize the likelihood that members of the venire will respond honestly to questions concerning bias, and to avoid contaminating unbiased members of the venire when other members disclose prior knowledge of prejudicial information.

Nebraska Press Assn. v. Stuart, 427 U.S. 539, 602 (1976) (emphasis added).

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court of the United States held that the Equal Protection Clause prohibits challenging potential jurors “solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State’s case against a black defendant.” *Id.*, 476 U.S. at 79. Thus, peremptory challenges must be made in a non-racially discriminatory manner in order to be constitutional. *See J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (holding that the discriminatory exercise of peremptory

challenges on the basis of gender is unconstitutional).

The Court ultimately created a procedure for a party to establish a *prima facie* case of discriminatory use of peremptory challenges. *See State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) (adopting the *Batson* procedure set forth in *Purkett v. Elem*, 513 U.S.765, 1 (1995)). The opponent of the strike must show that the race-or-gender neutral explanation provided is mere pretext. *Id.* Notably, the burden of persuading the trial court that a *Batson* violation occurred remains on the opponent of the strike. *Id.*

“If conducted properly, *voir dire* can inform litigants about potential jurors, making reliance upon stereotypical and pejorative notions about a particular gender or race both unnecessary and unwise. *Voir dire* provides a means of discovering actual or implied bias and a firmer basis upon which the parties may exercise their peremptory challenges intelligently.”

The current law on jury selection in South Carolina is found in Chapter7 of Title 14 in the South Carolina Code of Laws. *See* S.C. Code Section 14-7-1020.

Discussion

In this case, the Trial Court erred by refusing to allow attorney-conducted *voir dire* when the current procedure denies Appellant’s right to a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure. *See Estelle v. Williams*, 425 U.S. 501 (1976); *see also Cage v. Louisiana*, 498 U.S. 39 (1990). Attorney-conducted *voir dire* is necessary in the interest of justice to obtain an impartial jury through the intelligent exercise of peremptory challenges by counsel and informed consideration by the court of any challenges for cause. *See Mu’Min v. Virginia*, 500 U.S. 415 (1991) (“*Voir dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”); *Stuart*, 427 U.S. at 602 (Brennan, J., concurring in judgment) (*voir dire* “facilitate[s]

intelligent exercise of peremptory challenges and [helps] uncover factors that would dictate disqualification for cause”).

Attorney-conducted *voir dire* also aids the parties in complying with the requirements of *Batson v. Kentucky* and its progeny. Adequate *voir dire* is a basic premise of the rationale in *Batson* and its progeny for two reasons. First, adequate *voir dire* eliminates any need to improperly rely on generalizations and stereotypes about prospective jurors. See *J.E.B.*, 511 U.S. 127. Second, the Court has noted, “[n]o doubt the voir dire process aids litigants in their ability to articulate race-neutral explanations for their peremptory challenges.” *Id.* at 144 n. 17. Therefore, this burden requires counsel to have sufficient information to adequately argue a *Batson* challenge and attorney-conducted *voir dire* will aid the parties in complying the requirements of *Batson* and its progeny.

Appellant moved for attorney-conducted *voir dire*. (R. 42, line 2 – 45, line 2). Specifically, Appellant argued that attorney-conducted *voir dire* is “necessary in the interest of justice to obtain an impartial jury, with the intelligent exercise of rendering challenges by counsel, informed consideration of the court, [and] . . . challenges for cause.” (R. 43, lines 2-6). The Trial Court admitted Appellant’s written motion for attorney-conducted *voir dire* as Court’s Exhibit #1. (R. 44, line 22 – 45, line 2; R. 811 – 822). The Trial Court ultimately held, “I know about the effort to try to put South Carolina in a category of attorney conducted voir dire, I don’t believe there’s any authority anywhere in this State for that at this point in time in history[.]” (R. 50, lines 1-6).

According to a joint survey by the National Center for State Courts and the State Justice Institute, less than ten (10) state courts rely on judge only conducted *voir dire*. (Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D.; *The State-of-the-states Survey of Jury Improvement Efforts: a Compendium Report*, National Center for State Courts and State

Justice Institute, April 2007). This study explained, “Empirical research supports the contention that juror responses to attorney questions are generally more candid because jurors are less intimidated and less likely to respond to *voir dire* questions with socially desirable answers.

Additionally, the study noted “attorneys are generally more knowledgeable about the nuances of their cases and thus are better suited to formulate questions on those issues than judges.” Notably, this study found that “*South Carolina consistently reported the shortest average voir dire time (30 minutes) in both felony and civil trials, with Delaware and Virginia closely following (1 hour or less).*” (*Id.*, p. 29 (emphasis added)). Therefore, the Trial Court erred by refusing to allow attorney-conducted *voir dire* when the current procedure denies Appellant’s right to a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure.

CONCLUSION

Based on the foregoing reasons, Appellant Rita Pangalangan respectfully requests that this Court reverse her convictions and sentences and remand this case to the Colleton County Court of General Sessions for a new trial.

Respectfully submitted,


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March 25, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

The State of South Carolina,

Respondent,

v.

Rita M. Pangalangan,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Brief of Appellant complies with Rule
211(b), SCACR.


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Appellate Case No. 2023-001446

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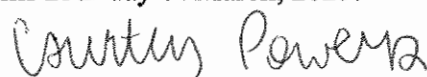
Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Final Brief of Appellant has been served upon **Tommy Evans Jr., Assistant Attorney General**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **March 25, 2025**.


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this 25th day of March, 2025.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

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Mar 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
The Honorable Clifton Newman, Circuit Court Judge
Appellant Case No. 2023-001446

THE STATE,

RESPONDENT

v.

RITA M. PANGALANGAN,

APPELLANT

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APPELLANT’S STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by allowing the state to present unfairly prejudicial prior bad act character evidence when the propensity evidence is not *Res Gestae*, is strikingly similar to the one for which appellant is being tried, is not a result of a criminal conviction, and is not proven by clear and convincing evidence?
2. Did the trial court err by refusing to suppress unfairly prejudicial photographs when the photos were unnecessary to the issues at trial, and were calculated to arouse the sympathies and prejudices of the jury, thereby, influencing the jury’s verdict on an improper basis?
3. Did the trial court err by refusing to grant a mistrial after allowing the State to present unfairly prejudicial prior bad act evidence and photographs, and when the prosecutor’s comment during closing arguments was calculated to arouse the passions and prejudice of the jurors to deny Appellant’s due process right to a fair trial?
4. Did the trial court err by refusing to allow attorney-conducted *Voir Dire* when the current procedure denies Appellant right to a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing a prior non-custodial statement made by the Appellant to two witnesses as *Res Gestae* pursuant to Rule 404(b) of the South Carolina Rules of Evidence?
2. Did the trial court err in allowing relevant photographs of the victim into evidence as she appeared at the crime scene and these photographs corroborated the testimony of the medical examiner and also refuted the defense raised that the vehicle was running and the air conditioner was turned on?
3. Did the trial court err in denying Appellant a mistrial when the Appellant failed to present sufficient reasoning for the granting of a mistrial while the court lawfully allowed into evidence the statement of the Appellant; photographs of the victim as she appeared at the crime scene; and the closing argument of the Solicitor mentioned facts in evidence, thereby, lawful?
4. Did the trial court err in not allowing the request of the Appellant for individual attorney conducted *Voir Dire* when the decision is solely up to the trial court, and the questions asked to the jury panel by the trial judge were sufficient in determining if there was any bias or relationship with any potential jury member to any witness?
5. Would any error that might have occurred change the outcome of the trial? And since none of the possible errors raised by the Appellant would have changed the outcome of the trial, can any error be considered harmless?

STATEMENT OF THE CASE

Rita M. Pangalangan (Appellant), along with her co-defendant Larry King (co-defendant), was arrested on August 5, 2019, charged with the offenses of murder, great bodily injury to a child and criminal conspiracy. On August 6, 2020, a Colleton County Grand Jury indicted the Appellant for murder, and great bodily injury to a child. (R. p. 829, 831, 833). The Appellant was later indicted on October 6, 2022, for the offense of criminal conspiracy. The co-defendant was indicted for these identical offenses.

On August 28, 2023, Appellant appeared before the Honorable Clifton Newman to stand trial for the above referenced offenses. Appellant was tried simultaneously along with her co-defendant. Appearing on behalf of the Appellant was her trial counsel Dayne Phillips, representing the co-defendant was his counsel Jon Loy and Gil Gatch. Representing the State of South Carolina was Solicitor, I. McDuffie Stone, and Assistant Solicitor, Sean Thornton, of the Fourteenth Circuit Solicitor's Office.

After five days of testimony a jury of their peers found both defendants guilty of murder and great bodily injury to a child, but not guilty of criminal conspiracy. (R. p. 761 l. 21 – p. 764 l. 7). After the reciting of the verdict the Appellant appeared before the trial judge for sentencing. The trial court sentenced the Appellant to a thirty-seven-year period of incarceration for the offense of murder; and twenty years for great bodily injury to a child. The trial court ordered that these sentences were to be served concurrently. (R. p. 808 l. 7-12).

While serving her sentence the Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The initial brief of the Respondent follows.

STATEMENT OF THE FACTS

On August 5, 2019, at 11:16 am, Appellant, along with her co-defendant, placed the Appellant's thirteen-year-old daughter [REDACTED] (victim) into the Appellant's vehicle during a hot August South Carolina summer. The victim suffered from cerebral palsy, so she could not walk nor talk. (R. p. 328 l. 10-15). Victim also wore a diaper and could only "gaggle like a baby." (R. p. 316 l. 7-12; p. 315 l. 7-14). The victim also did not have the use of her hands so she was unable to open doors. (R. p. 331 l. 1-3). At the time of the incident Appellant and her co-defendant were in a relationship. (R. p. 558 l. 20-25). The Appellant and her daughter spent the night at the co-defendant's home. (R. p. 562 l. 23-25). After they placed the victim inside the Appellant's vehicle, they closed the door with the windows up in the hot August South Carolina heat. While the victim was in the car Appellant and her co-defendant were having a conversation regarding the fact she was with another man. (R. p. 563 l. 18-19).

During the trial the co-defendant testified and admitted that they used methamphetamine and that they were up all night due to this drug use. (R. p. 563 l. 2-7). During the trial the co-defendant testified that the car was running with the air conditioning on when they placed the child in the car. (R. p. 566 l. 7-10). The surveillance video from the co-defendant's home was placed into evidence. (State Exhibit #40 – on file with Colleton County). This video revealed that when the victim was placed inside the vehicle at 11:16am.

After placing the victim inside the vehicle Appellant and her co-defendant went inside the house. They stayed inside from 11:43am until they came out at 1:45pm. At that time the Appellant and the co-defendant were still talking as the victim sat in an extremely hot car. At 2:03pm Appellant and co-defendant went back into the house. They came back out at 3:00pm and that is when the Appellant realized she locked her keys inside the vehicle. At 3:52pm they left the co-

defendant's house to go to the Appellant's house to get the spare key. They did not return until 4:42pm. At that time they still could not get the car door open. The co-defendant called locksmith Robert Arabis for him to come get the car door open or give any directions in getting the door open. (R. p. 574 l. 14-20). Mr. Arabis explained to the co-defendant that there was a key in the fob that he could use to get the door open. (R. p. 575 l. 20 – p. 576 l. 1). The co-defendant finally got the door open at 4:58pm. At that time they realized that the victim had been in the hot car for over five hours, so the co-defendant dialed 911. (R. p. 576 l. 7-13).

During trial, South Carolina Law Enforcement Division (SLED) agent Halley Godley testified. As one of the first people to respond, she saw the victim lying on the ground. The co-defendant was walking around while the Appellant was inside the residence. (R. p. 272 l. 6-9; p. 287 l. 11-13). Paramedic Charles Jones also arrived at the scene. Mr. Jones testified that when he arrived, he found the victim lying on the ground beside the vehicle and she appeared not to be breathing. (R. p. 292 l. 7-10). Mr. Jones attached a cardiac monitor to the victim. The monitor revealed no registered heartbeat, so he declared the victim deceased. (R. p. 292 l. 19-21; p. 293 l. 12-15).

After the Appellant's arrest, her blood was drawn to test for drugs. (R. p. 335 l. 24 – p. 336 l. 4). The blood was delivered to SLED for testing. The results were that no ethanol was found, (R. p. 359 l. 9-15), however, the blood did test positive for methamphetamine and amphetamine. (R. p. 363 l. 5-6).

During the trial, Dr. Andrew Grundstein also testified. Dr. Grundstein was found qualified as an expert in the field of climatology, specifically on the effect that heat has on people. (R. p. 390 l. 13-16, p. 392 l. 22). Dr. Grundstein testified that he did a re-creation of the car temperature. With the re-creation the temperature was hotter than the incident date, however it was less humid.

(R. p. 402 l. 13-15). His re-creation had the car temperature being at 118° but with the heat index, his determination was that the car inside temperature was actually 135°. (R. p. 406 l. 4-7).

During trial, Forensic Pathologist Dr. Nicolas Batalis testified. Dr. Batalis was found qualified as an expert in the field of forensic pathology. (R. p. 496 l. 15-23). Dr. Batalis performed an autopsy on the victim on August 7, 2019. (R. p. 497 l. 3). Dr. Batalis found the victim to be a thirteen-year-old female who was found unresponsive after being placed in a vehicle for several hours during very high temperatures. (R. p. 497 l. 10-14). The victim's body temperature was measured at 109.9°, which is the maximum amount the thermometer could read. (R. p. 497 l. 18-22). Dr. Batalis testified that the body shuts down at temperatures around 105° to 106°. The victim's body was at 109° to 110° which would indicate that there was evidence of hyperthermia. (R. p. 498 l. 7-12). Dr. Batalis testified that if the brain gets out of its normal temperature, it is not able to function, and it is going to drive the other organs in the body to fail. (R. p. 499 l. 10-17). Dr. Batalis determined that the cause of death was hyperthermia due to neglect, the manner of death was homicide. (R. p. 501 l. 18-20).

During the trial the co-defendant testified that the car was on along with the air conditioning; however, as a rebuttal, witness Capitan Jason Chapman of the Colleton County Sheriff's Office testified. Capitan Chapman testified that when he responded to the crime scene he looked inside the vehicle. He stated that the car was running, and the air conditioning was turned on blowing cold air, but inside the car was still hot. (R. p. 657 l. 24 – 658 l. 5).

ARGUMENTS

- 1. The trial court did not err in allowing a previous statement made by the Appellant to two witnesses into evidence due to the fact it was *Res Gestae*, lawful pursuant to Rule 404(b) of the South Carolina Rules of Evidence.**

Relevant Facts

During the trial two individuals, Brittany Honeycutt and Lindsey Lewis, testified over the Appellant's objection. Ms. Honeycutt testified that she and her two kids moved in with the Appellant and stayed with her from May of 2019, until August of, 2019. (R. p. 327 l. 20-21). During this time Ms. Honeycutt would watch the victim. One time she was asked by the Appellant to watch the victim; Ms. Honeycutt told the Appellant "no" because she had to work. Appellant kept asking and as Ms. Honeycutt kept responding "no," Appellant stated, "just leave her in the car with the windows down because I do it all the time." (R. p. 331 l. 25 – p. 333 l. 7).

Ms. Lewis testified that she was once the Appellant's child development teacher. (R. p. 312 l. 10-11). She was supposed to watch the victim, so she went to Appellant's house on August 2, 2019, three days before the incident date. Ms. Lewis went to the Appellant's house to get the child's routine. (R. p. 312 l. 14-22). Ms. Lewis testified that after they went over the routine the Appellant asked her if she could watch the victim for a while so she could go on a date with the co-defendant. (R. p. 317 l. 2-5). Ms. Lewis testified that Appellant left the victim with her on Friday and she did not see the Appellant again until Sunday afternoon. (R. p. 318 l. 2-16). Ms. Lewis testified that the only time she ever heard from the Appellant was a text around 9:30pm-10:00pm to check on the victim. Appellant told her that she would come back Saturday morning, but Appellant never came. (R. p. 318 l. 20-25). Ms. Lewis also testified that there was no food in the house, only Ensure drinks and Kool-Aid. (R. p. 319 l. 1-5).

Prior to trial Appellant's trial counsel made a motion in limine to not allow the testimony of both Ms. Honeycutt and Ms. Lewis to be presented before the jury. Appellant argued that this testimony is prior bad act evidence which is inadmissible propensity evidence. (R. p. 187 l. 1-8). The State argued that this evidence should be allowed pursuant to *res gestae*. (R. p. 188 l. 1-6). The court allowed the testimony into evidence pursuant to *res gestae*.

Standard of Review

In criminal cases the Appellant court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An Appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* The admission or exclusion of evidence is a matter within the trial court's sound discretion. *State v. Dennis*, 401 S.C. 627, 635, 742 S.E.2d 21,25 (Ct. App. 2013). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant. *State v. Preslar*, 364 S.C. 466, 472-73, 613 S.E.2d 381, 384 (Ct. App. 2005). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Pegan*, 369 S.C. 210, 208, 631 S.E.2d 262, 265 (2006). Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy. *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. *State v. McGee*, 408 S.C. 278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014).

Discussion

The State argued that under *res gestae* theory, the evidence was admissible. Rule 404(b) of the South Carolina Rules of Evidence adopted the criteria the South Carolina Supreme Court

determined for the admission of a prior bad act in the decision of *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Rule 404(b) of the South Carolina Rules of Evidence State:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake of accident or intent.

Rule 404(b), SCRE.

Appellant argues that the court erred in allowing this prior bad act evidence before the jury because this information was prejudicial. This evidence was relevant due to the fact it occurred right before the actual incident. The incident with Ms. Honeycutt occurred in July (R. p. 329 l. 25 – p. 330 l. 1), the one with Ms. Lewis occurred four days before the incident. (R. p. 312 l. 14-22). These bad acts reveal two things that allow a bad act into evidence pursuant to Rule 404(b). It shows a common scheme and also an absence of a mistake of accident. It is obvious that there was neglect of the victim on the part of the Appellant. She left a handicapped child with a person who was not used to taking care of her for three days with no food and only contacted the caregiver once in the three-day period. Appellant also admitted to placing the child alone in the car with the windows rolled down and stated the fact she does it “all the time.” This definitely reveals a pattern of neglect. This constant neglect resulted in a total disregard of the life of the victim when she was left in a car during a South Carolina summer with the windows up for over a five-hour period. The temporal proximity of the prior bad act should be closely related to the charged crime. *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

In *State v. Adams*, the South Carolina Supreme Court quoted the Fourth Circuit United States Court of Appeals decision of *United States v. Masters* in which the Fourth Circuit wrote:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case or is so intimately connected with the explanatory or the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other...’ [and it thus] evidence is admissible to provide this “full presentation” of the offense, “[t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “res gestae.”

State v. Adams, 322 S.C. 114, 112, 470 S.E.2d 366, 370-71 (1996), *quoting*, *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980).

It is clear that according to South Carolina law, these prior bad acts cannot be submitted if they are prejudicial. Even though the evidence is clear and convincing and falls within the *Lyle* exception, the trial judge must exclude it if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.*, 322 S.C. at 118, 470 S.E.2d at 368. The way to reveal that this evidence’s probative value outweighs any unfair prejudice is how it relates to the present case. If the State was only submitting bad acts that the Appellant had committed that were not related to the actions she portrayed during the commission of this crime, then the prejudice would have been too overwhelming. However, these actions closely relate to the actions of the Appellant’s committed criminal actions.

The objections to prior bad acts relate to a statement given by the Appellant that in the past she left the victim in the car. This proves that the action during the commission of this crime was common for Appellant and also was not an accident because it was something Appellant did often. Leaving a child that is handicapped for an entire weekend with a caregiver that is not used to taking care of that child also reveals neglect and that Appellant is quite incapable regarding the caregiving of this child. Both of these actions were reckless, revealing a total disregard for the child, which led to the victim being left in that car for hours causing her ultimate demise.

Appellant also argues that since she was not convicted of any offense, there was insufficient clear and convincing evidence to allow this information into evidence pursuant to the doctrine of *Res Gestae*. There was sufficient evidence presented by two witnesses regarding prior bad acts and admissions made by the Appellant revealing this incident was not a mistake or accident, and there was also a common scheme or plan in leaving the victim in the car for long periods of time. When the Appellant objected to this information coming into evidence, it was allowed by the trial court under the *Res Gestae* doctrine. Therefore, the trial court found that the evidence was clear and convincing. That decision should be held up by this Court. As decided by the South Carolina Supreme Court in the *State v. Wilson*,

Similarly, we do not review a trial judge's ruling on the admissibility of other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence the trial judge's ruling will not be disturbed on appeal.

State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The evidence of the prior bad acts was testimony from two lay witnesses, however, any questions about their credibility is a question of fact that has to be determined by the jury. *See, State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001)(Issue of credibility of defendant's girlfriend was for the jury, and thus, did not preclude admission of the testimony).

Appellant was also charged and convicted of the offense of infliction or allowing infliction of great bodily injury upon a child. S.C. Code Ann. §16-3-95. Pursuant to the South Carolina Code of Laws, it is unlawful to inflict great bodily injury upon a child. "Great bodily injury" is defined as a bodily injury which creates a substantial risk of death, or which causes serious or permanent disfigurement or protracted loss of impairment of the function of any bodily member or organ. S.C. Code Ann. §16-3-95(C). In order to prove this infliction, the State needed to reveal a common scheme or plan and show it was not an accident when the victim was placed inside that hot car.

The Appellant argues that the prior bad act evidence was “strikingly similar” to the one in which the Appellant is being tried. In order for the bad act evidence to be admissible the temporal proximity of the prior bad act should be closely related to the charged crime. *McGee*, 408 S.C. at 288, 758 S.E.2d at 736. In order to reveal any common scheme or plan or any lack of a mistake or accident, the prior bad act must be related to the crime charged. In case of the common scheme or plan exception, a close degree of similarity between the prior bad act and the crime for which the defendant is on trial is necessary. *State v. Hough*, 325 S.C. 88, 95, 480 S.E.2d 77, 80 (1997). Prior bad act evidence is admissible where the evidence is of such a close similarity to the charged offense that the previous act enhances the probative value of the evidence as to outweigh the prejudicial effect. *State v. Raffaldt*, 318 S.C. 110, 114, 456 S.E.390, 392 (1995). State’s evidence revealed that the Appellant herself first left her handicapped child alone for 3 days with a caregiver that had never watched her before, and without any warning. There was also no food in their home for the child, who during autopsy was determined to be smaller than a normal child her age. (R. p. 506 l. 6-9). There was also testimony that the Appellant stated herself that she leaves the victim in the car “all the time.” (R. p. 332 l. 4-7). When a criminal defendant’s prior bad acts are directed toward the same victim and are very similar in nature, those acts are admissible as a common scheme or plan. *State v. Martucci*, 380 S.C. 232, 255, 669 S.E.2d 598, 610 (2008).

These prior bad acts were definitely relevant and although prejudicial the prejudice does not outweigh the probative value this evidence has, revealing a common scheme or a lack of mistake or accident. Where the evidence is of such close similarity to the charged offense that the previous act enhances the probative value of the evidence so as to overrule the prejudicial effect, it is admissible. *Id.* During the opening argument counsel for the Appellant argues that this was not murder because he claimed that this act was accidental. This evidence proves that leaving the

victim in the car was commonplace for the Appellant. So, that this was no accident, but a total disregard of a human life and this evidence was relevant to prove implied malice.

- 2. The trial court did not err in allowing relevant photographs of the victim as she appeared at the scene into evidence because these photographs corroborated the testimony of the medical examiner and also refuted the defense that the car was running while the air conditioner was turned on.**

Relevant Facts

During the trial the Appellant contested the introduction of four photographs of the victim at the crime scene right after she was taken out of the vehicle. The photos depicted the victim as she was at the scene when this crime occurred. She was wearing a diaper; her hair matted due to sweating as a result of being placed in a hot car for over five hours. There also were burn marks and welts on her legs due to the exposure of the heat from the interior of the vehicle and advanced decomposition due to the excessive heat. (R. p. 510 l. 21-25).

During the trial, Appellant argued that these photographs violated rule 403 of the South Carolina Rules of Evidence. Appellant believed that these photos' prejudicial effect outweighed any probative value they may have had.

The trial court ruled that the photos were relevant because they revealed bruising on the victim and they further revealed her condition at the time the crime occurred. (R. p. 283 l. 17-20).

Standard of Review

The materiality, relevance and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal, absent an abuse of discretion. *State v. Rosemond*, 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in

exceptional circumstances. *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22, 28 (2014). The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it. *Id.* A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008)

Discussion

Appellant contends that four photographs each showing either the victim's entire body as it was when it was removed from the vehicle, or a close up of the burn injuries she sustained while being in a vehicle reaching temperatures as high as 135° were prejudicial. (State Exhibits 1-4 -on file with Colleton County). Appellant argues that the introduction of these photographs is prejudicial and outweighs the probative value. The Appellant argues that these photographs were introduced only to arouse the sympathies and prejudices of the jury, and they had no evidentiary value. The Respondent will argue that these photographs definitely have evidentiary value, and the probative value outweighs any prejudice that might have been caused by their introduction. These photographs reveal the condition of the child when she was found. It revealed the matted hair and burns from being placed in a hot car for hours. These photos also revealed the decomposition that occurred, which was testified to by Medical Examiner Dr. Nicolas Batalis.

"To constitute *unfair* prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting*, *State v. Alexander*, 303 S.C. 377, 401 S.E.146, 149 (1991)(emphasis added). The evaluation of probative value cannot be made

in the abstract but should be made in the practical context of the issues at stake in the trial of each case. *State v. Gray*, 408 S.C. 610, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). The photographs presented were used to specifically demonstrate, explain, and corroborate evidence on how the victim died due to the disregard of human life portrayed by the Appellant as well as her co-defendant. In discussing similar evidentiary rulings in their cases, the Pennsylvania courts have often quoted:

A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt. Further, the condition of the victim's body provides evidence of the assailant's intent, and even where the body's condition can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs.

Com. v. Robinson, 864 A.2d 460, 502 (Pa. 2004), *quoting*, *Com. v. Rush*, 646 A.2d 557, 560 (Pa. 1994).

The Georgia courts have concisely rejected an argument on unfair prejudice on the basis of its own paradox, “a defendant cannot complain about photographs that simply ‘portray the havoc wreaked by [his] own hand.’” *McKibbins v. State*, 750 S.E.2d 314, 322 (Ga. 2023), *quoting*, *Null v. State*, 402 S.E.2d 7221 (Ga. 1991). Even in South Carolina the Supreme Court established that photographs revealing the scene as the defendant left it are admissible. Photographs are relevant if they “depict the bodies of the murder victims in substantially the same condition in which the defendant left them.” *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986).

These photographs also corroborate testimony made during trial. During his testimony Dr. Batalis stated that once the victim was found, there was skin slippage which is the breakdown process of the body or what is otherwise called decomposition. (R. p. 507 l. 11-13). Dr. Batalis also testified that when temperatures are high, decomposition is going to occur much quicker than if the temperature is much lower. (R. p. 507 l. 17-19). Dr. Batalis also stated how there were “leathery type of lesions,” this tells us that there was some sort of injury to the body, some sort of actual burn. (R. p. 507 l. 20-23). When reviewing the admitted photographs Dr. Batalis explained how these photographs reveal the condition of the body when it was found. Dr. Batalis used these photographs to corroborate his testimony when he explained:

“So, this photograph here illustrates the kind of two different lesions that we’re talking about. So up on the upper aspect of the left thigh here, you can see that there’s a very thin appearance, kind of a wispy appearance to the skin. That would be more what I’m speaking of the as skin slippage, so part of the breakdown process of the body.” (R. p. 510 l. 7-14)

“But in addition to just that, you can see here on the lower part of the left leg we have this lesion, where the skin was more ulcerated away. You can see some areas on the knee on the leg that appear different than up here, where we don’t have an appearance of it.” (R. p. 510 l. 15-20).

So again, to me that would say these areas were likely in contact with something in the area that caused a direct burn or injury to the skin, and we also have areas that show that decomposition is there now.” (R. p. 510 l. 21-25).

The photographs of the condition of the body were also imperative due to the fact Appellant’s co-defendant testified that the air conditioner was turned on when the victim was placed in the vehicle. The burn marks on the body, as Dr. Batalis testified, were due to her leg being in contact with something that caused a direct burn or injury to the skin. (R. p. 510 l. 21-24). The photographs also revealed her hair was wet and matted, which was due to the sweat she generated from the heat inside that vehicle. These photographs prove that the air conditioning was not turned on during the time the victim was in that vehicle.

Appellant within his brief cites the two recent South Carolina Supreme Court cases, *State v. Nelson*, and *State v. Jones*. In *Nelson*, the South Carolina Supreme Court reversed the decision of the Court of Appeals ruling:

The probative value of gruesome autopsy photographs was substantially outweighed by danger of unfair prejudice in guilt phase of murder trial, where information gained from photographs was not in question, only issue for jury to decide was whether defendant or her husband killed victim, photographs did not corroborate husband's testimony that defendant killed victim, and jury was informed that husband had also been charged in connection with victim's death but only faced a charge of accessory after the fact of murder.

State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (2023).

The present case is not identical to *Nelson*. The photographs were relevant to reveal the cause of death and establish that the air conditioning was not turned on when victim sat in that vehicle. In order to refute the allegation that the air conditioning was turned on, those photographs had to be allowed into evidence, revealing the injuries from burns from the interior of the vehicle and the early decomposition of the body after death due to the heat.

In *Jones* the South Carolina Supreme Court ruled that the autopsy photographs had no probative value, due to the fact they revealed the victim's bodies after the murder occurred in an advance state of decomposition after being left in the woods for days and being eaten by animals. Since this was not the condition in which the Appellant left these bodies, revealing those photos to the jury was prejudicial.¹ In the present case, the photographs were taken the same day as death. These photos revealed the condition of the body caused by the disregard of human life by the Appellant and her co-defendant. The *Jones* decision does not apply.

¹ The Supreme Court determined that this was harmless error. *State v. Jones*, 440 S.C. 214, 264, 891 S.E.2d 347, 373 (2023).

Although the photographs were not pleasant to look at, they corroborated the testimony of Dr. Batalis as to the injuries sustained due to the heat. As the South Carolina Supreme Court stated in the *Collins* decision, “Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder.” *Collins*, 409 S.C. at 534, 763 S.E.2 at 28. So, if a photograph is not pleasing but still goes to prove the commission of the crime that occurred, it cannot be considered prejudicial and is not in violation of Rule 403. These photographs were offered to prove that the Appellant committed these crimes. Their probative value did outweigh any prejudice they might have caused; therefore, are admissible. The trial court committed no error in allowing these photographs into evidence. The decision of the trial court should be upheld.

3. **The Appellant did not raise sufficient evidence for the trial court to grant a mistrial due to the lawful admission of the prior non-custodial statement of the Appellant; lawfully allowing into evidence photos of the victim as she appeared at the crime scene; and, the closing argument of the Solicitor was related to evidence presented during trial.**

Relevant Facts

During the trial Appellant’s counsel moved for a mistrial due to the testimony by Ms. Honeycutt and Ms. Lewis which the Appellant had previously objected to pursuant to Rule 404(b) and 403 of the South Carolina Rules of Evidence. They argued that allowing this testimony prejudiced the Appellant to the point that she is being denied a fair trial, so manifest necessity exists, the trial court should declare a mistrial. (R. p. 351 l. 12-20).

During closing arguments, Solicitor Stone stated, “if they had walked up to her and shot her, she wouldn’t have suffered the pain that she suffered in this case.” (R. p. 690 l. 2-7). After Solicitor Stone made this statement, Appellant objected which was overruled by the trial court. Appellant argued that the statement by the Solicitor during closing arguments was prejudicial due

to the fact a gun was found in the back seat of the car situated by the victim. A photo of said gun was allowed to be placed into evidence. The Appellant once again argued that this statement during closing deprived her of a fair trial. They argued that the closing of the Solicitor arose the passions and prejudices of the jury, so the trial court should declare a mistrial. (R. p. 737 l. 3-24).

In both motions, the trial court found no grounds to declare a mistrial. Both motions were denied by the trial court.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The test to determine whether sound grounds exist for declaring a mistrial after the jury is sworn is “whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.” *Id.*, 355 S.C. at 214, 584 S.E.2d at 422, *quoting*, *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). The appropriateness of a solicitor’s closing argument is a matter left to the trial court’s discretion. *State v. King*, 349 S.C. 142, 160, 561 S.E.2d 640, 649 (Ct. App. 2002). An appellate court will not disturb the trial court’s ruling regarding closing argument unless there is an abuse of discretion. *Id.* An appellant must prove an abuse of discretion and resulting prejudice to warrant reversal. *State v. Navy*, 370 S.C. 398, 412, 635 S.E.2d 549, 556 (Ct. App. 2006).

Discussion

The Appellant argues that she should have been granted a mistrial after the *Res Gestae* evidence was allowed by the trial court. The Appellant seems to think that they were entitled to a mistrial due to the fact they did not agree with the trial court’s rulings. A mistrial should be granted only when absolutely necessary. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). A

trial court judge is not going to grant a mistrial due to evidence he allowed to be presented to the jury. The fact that they did not agree is not grounds for the court to grant a mistrial. Before a defendant may receive a mistrial, he or she must show both error and resulting prejudice. *Id.* Nothing prejudicial existed when the *Res Gestae* evidence was presented before the jury. This evidence revealed a common scheme and a lack of accident, both elements exist in Rule 404(b). Since the trial court was correct in their assessment of the evidence the Appellant was not entitled to a mistrial.

Appellant also argues that the trial court erred in not granting a mistrial after statements made by Solicitor Stone during his closing arguments. On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record. *State v. Rudd*, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003). During his closing argument Solicitor Stone stated the following:

"This case is about implied malice. What is implied malice? Implied malice is that you take your facts and circumstances of the case, what you have seen, what you have heard, what you know about this case" (T. p. 690 l. 6-10).

"That someone is so extremely reckless that they had a wanton disregard for human life. They may not even have had direct, ill feelings toward that one individual, but their attitude, their actions. All of the things that they chose to do. All the way they chose to act all lead back to the conscious disregard for the lives of others. In this case the other person was [REDACTED], a child totally dependent on them for safety." (R. p. 689 l. 11-20).

"The wickedness, the depravity, malicious. We know what malicious is. So, I ask you as you go back and look at all of this, at one point in time in any of this did either one of these two people show an ounce of compassion or care or concern for [REDACTED] life." (R. p. 689 l. 21 – p. 691 l. 1)

"If they had walked up to her and shot her she wouldn't have suffered the pain that she suffered in this case." (R. p. 690 l. 2-4).

The record revealed that the victim was in a car that possibly reached temperatures as high as 135° for five hours and forty-three minutes. (R. p. 406 l. 4-7; p. 440 l. 8-11). According to Dr. Batalis,

the victim's body temperature was 109° which was the maximum amount the thermometer could read. (R. p. 497 l. 18-22). Dr. Batalis also testified that once the car interior reached temperatures as high as 135°, the victim could not have survived longer than an hour. (R. p. 516 l. 17-20). So, the victim's death was slow and agonizing, if she was shot her death would have been more immediate. Solicitor Stone made a reference to things in the record to make that determination. In the South Carolina Supreme Court decision of *State v. Durden*, the Court determined.

So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, ... and may employ any legitimate means of impressing on them their true responsibility in this respect, ... [he] may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of the law.

State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975).

There was nothing stated in Solicitor's closing argument that was not part of the record or could be inferred from testimony during the trial. Just because the Appellant did not agree with what was being said by the Solicitor, it does not make it unlawful. There exists no prejudice in the statement being made by the Solicitor and the Solicitor did not make these statements in order to arouse the emotions or passions of the jury. He made these statements in order to reveal a comparison. The fact that the victim would have suffered less if she was just shot is truthful. And the victim's slow death also reveals a total disregard for human life, something the state must prove in order to reveal implied malice, the element needed to achieve a murder conviction.

Declaring a mistrial is a last resort. A mistrial should only be declared if there was an obvious violation of a right of the defendant that causes him/her not to have a fair trial. A defendant should not be able to get a mistrial due to the fact a ruling was not in their favor, or that the opposing counsel said something that they did not agree with. There exist absolutely no grounds for the trial court to declare a mistrial. The denial of the Appellant's motion for a mistrial was lawful. The trial

court made no error, so this court should affirm the decision of the trial court as it pertains to this matter.

4. **There exists no South Carolina law allowing individual voir dire in non-death penalty cases so it is up to the trial court to allow individual voir dire and the court did not err in not allowing individual voir dire since the jury panel was asked sufficient questions to determine any possible bias or relationship existing with any witness.**

Relevant Facts

Prior to jury selection, trial counsel for the Appellant requested individual voir dire to be conducted by trial counsel. The trial court realized that there is absolutely no precedence within South Carolina law nor have there been any appellate court decisions guaranteeing individual voir dire. During this motion, the Solicitor argued that individual voir dire is best left up to the General Assembly or the South Carolina Supreme Court. (R. p. 45 l. 12-16). The trial court agreed and determined that this might be something that the Legislature might need to explore. (R. p. 50 l. 22-23). The trial court decided that individual voir dire was not needed in this case and decided to deny the Appellant's motion. (R. p. 50 l. 24-25).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court is bound by the trial judge's factual findings unless they are clearly erroneous. *Preslar*, 364 S.C. at 472, 613 S.E.2d at 384. Whether or not counsel is permitted to conduct the *voir dire* examination of the juror where such examination is conducted by the court is within the discretion of the trial judge. *State v. Smart*, 274 S.C. 303, 262 S.E.2d 911 (1980)(emphasis added). Our state and federal constitutions guarantee a party the right to an impartial jury, and *voir dire* can be an essential means of protecting this right. *Warger v. Shauers*, 574 U.S. 40, 50, 135 S.Ct. 521 (2014)(emphasis in original).

Discussion

The Appellant argues that she has been denied her Constitutional rights by being denied individual *voir dire* that would be conducted by trial attorneys as well as the trial court. It is the responsibility of the trial judge to make sure that the defendant receives a fair and impartial jury, which is done through *voir dire*. *Voir Dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges. *Mu'Min v. Virginia*, 500 U.S. 415, 431, 111 S.Ct. 1899, 1908 (1991). *Voir Dire* in South Carolina law allows a party to call to the trial court's attention any juror that may be partial to either party. The South Carolina Code of Laws specifically states:

The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that case and another must be called.

S.C. Code Ann. §14-7-20.

The authority and responsibility of the trial court is to focus the scope of the *voir dire* examination as set forth in S.C. Code Ann. §14-7-1020. *State v. Hill*, 331 S.C. 94, 103, 501 S.E.2d 122, 127 (1998).

The trial court has the solemn duty to ensure that every juror is unbiased, fair and impartial. *State v. Gullede*, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982). This is done by the *voir dire* questions asked by the trial judge to the jury panel. Some of the questions asked by the trial court during *voir dire* include:

1. If the defendant being charged with the death of a child would that affect your ability to be an impartial juror? (R. p. 84 l. 16-18).

2. Is anyone a family member or a close personal friend of any of the witnesses that was recited from the witness list earlier? (R. p. 86 l. 25 – p. 87 l. 3).
3. Is anyone a family member or close personal friend of any attorney involved or Solicitor Duffy Stone? (R. p. 90 l. 12-20).
4. Has any potential juror donated money to Solicitor Stone's campaign? (R. p. 91 l. 5-9).
5. If any potential juror has been or a friend or close family member been a caregiver of a person with a disability? (R. p. 91 l. 14-18).
6. Has anyone been a home healthcare nurse or aid? (R. p. 93 l. 3-5).
7. Has anyone been a mechanic or in a business dealing with vehicles? (R. p. 93 l. 6-8).
8. Has any potential juror or close family member been a victim of a violent crime such as rape, robbery, burglary, murder or serious assault? (R. p. 95 l. 6-10).
9. Is anyone so morally or religiously opposed to violent crime or criminal defense they cannot render a fair and impartial decision in this case? (R. p. 96 l. 4-9).
10. Has anyone or a close family member or friend had discussions with any member of the FBI, SLED, Sheriff's department, DEA, Attorney General or Solicitor's office? (R. p. 98 l. 9-15).
11. Has anyone ever served on a neighborhood watch group? (R. p. 98 l. 14-15).
12. Has any potential juror had a "Back the Blue" sticker on their car? (R. p. 98 l. 15-16).
13. Does anyone think a person is guilty just because they were arrested? (R. p. 98 l. 18-20).
14. Does anyone think that the criminal laws are too lenient and there should be stricter punishment? (R. p. 98 l. 21-23).
15. Is there anyone that believes if a police officer testimony should be believed over anyone else's? (R. p. 98 l. 23-25).
16. Has anyone commented in a news article or on social media about a person being arrested for a crime or a criminal trial? (R. p. 99 l. 2-5).
17. Has anyone commented on a social media page or followed the social media page of the Sheriff's Department or the Solicitor's office? (R. p. 99 l. 6-17).
18. Has any of them or a family member ever been employed by a prosecution agency? (R. p. 101 l. 19 – p. 102 l. 6).

19. Has any of them or a close family member provided support to any law enforcement booster organizations or any that opposes the consumption of alcohol or illegal drugs? (R. p. 105 l. 14-22).
20. Does anyone have a bumper sticker showing a position against any specific crime? (R. p. 105 l. 25 – p. 106 l. 2).
21. Has anyone of them or close friend or family member ever served on a jury in a criminal case or testified in a criminal trial? (R. p. 106 l. 7-10).
22. Has any of them or a personal friend or family member ever had a bad experience with the defendant's attorney or the solicitor's office? (R. p. 107 l. 15-18).
23. Do you know any reason you should not be selected to sit on this jury or have you already formed an opinion regarding guilt or innocence? (R. p. 107 l. 21 – p. 108 l. 2).

As this court can see through the above referenced questions, questions asked by the trial court during *voir dire* covered numerous concerns on both sides. Most of the questions were centered around issues of concern for the defense. There was absolutely no prejudice in the selection of this jury. No law created by the General Assembly makes individual *voir dire* mandatory. How the jury is selected is up to the trial judge. All that is required is that the selection of the jury is fair and allows only impartial individuals to sit on the jury so the defendant can have a fair trial. This is what was given to the Appellant. There exists no prejudice in order for this court to overturn the decision of the trial court. To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof. *Fields v. Regional Medical Center Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005), *overruled on other grounds by*, *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023).

5. **There was plenty of evidence that was presented revealing that Appellant had a total disregard for human life of the victim, so the Appellant was guilty of murder. Any error that might have occurred by the trial court should be considered harmless.**

Relevant Facts

The Appellant raised issues regarding *Res Gestae* evidence presented by the State; the photographs of the victim that were allowed into evidence; the denial of the motion for a mistrial; and the fact the trial court denied Appellant's motion for individual *voir dire*. Although the Respondent does not accept that any error was made by the trial court, if the court finds the trial court made any errors, they should be considered harmless. This is due to the fact the video evidence by itself revealed a total disregard for human life, which is considered implied malice. Other evidence exists revealing the Appellant's guilt beyond a reasonable doubt. Any acknowledgement by this court that any of these issues were in error would not have changed the final result, therefore, any error should be considered harmless.

Standard of Review

Error is harmless when it could not reasonably have affected the result of the trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018).

Discussion

The Respondent is not conceding any of the above-mentioned arguments. The Respondent remains positive that the decisions made by the trial court were correct and lawful. However, if this court finds any errors in the trial court's decisions, the Respondent argues they should be considered harmless.

During the trial the State argued that the Appellant was guilty of murder due to the doctrine of implied malice.² In *State v. Mouzon*, the South Carolina Supreme Court defined malice as an essential element of murder. In *Mouzon* the Supreme Court decided,

Malice is an essential ingredient of murder, and it does not necessarily import ill-will toward the individual injured, “but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.”

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-676 (1957), quoting, *State v. Heyward*, 197 S.C. 371, 15 S.E.2d 669, 671 (1941).

In the present case, home surveillance of the co-defendant was introduced and allowed into evidence without objection from the Appellant. (R. p. 428 l. 2-5). This home surveillance video revealed when the victim was placed in the vehicle by the co-defendant and the agonizing five hour stretch as the Appellant and co-defendant stood right near this vehicle and did nothing as this poor child suffered in 130° heat. There is no doubt that there was a total disregard for human life upon the viewing of this video. The timeline of the video is as follows:

11:16am – Victim is placed in the vehicle.

11:43am – After a discussion on the porch near the vehicle Appellant and co-defendant go into the house.

1:45pm – Appellant and co-defendant come back outside, have another discussion on the porch right near the vehicle.

2:03pm – Appellant and co-defendant go back into the house.

3:00pm – Appellant and co-defendant come back outside.

3:03pm – Appellant notices that she locked her keys inside the vehicle.

3:05pm – Appellant and co-defendant go back into the house.

3:11pm – Appellant and co-defendant come back out of the house to the yard.

² “Murder” is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10.

3:14pm – Appellant and co-defendant attempt to get the door of the vehicle open without any sense of urgency.

3:18pm – Appellant and co-defendant spend time sitting on the porch swing chatting.

3:32pm – Appellant and co-defendant go back into the house.

3:52pm – Appellant and co-defendant leave in the co-defendant's vehicle going to the Appellant's house to get the spare key.

4:42pm – Appellant and co-defendant arrive back at the co-defendant's house with the spare key.

4:56pm – Co-defendant gets on the phone calling Robert Arabis a local locksmith for instructions on how to get the car open. (T. p. 611 l. 12-15).

4:58pm – Co-defendant finally gets the car door open.

4:59pm – Co-defendant calls 911.

(State Exhibit #40 T. p. 428 l. 14 – p. 429 l. 5)

The total amount of time the victim was inside that vehicle with no air conditioning in South Carolina 90 plus degree heat was a total of five hours and forty-three minutes. The video revealed no sense of urgency in getting her out of the car and a total disregard of her being in that car all of those hours as they talked and spent time inside the house as the victim eventually died from heat exhaustion. That evidence alone reveals a total disregard for human life sufficient for a conviction of murder. As the Supreme Court stated in *Mouzon*,

Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

Id.

From watching that video there is absolutely no doubt that the Appellant and her co-defendant had a total disregard for the life of the victim. The jury could definitely apply implied malice to this case and convict the Appellant as well as her co-defendant for murder.

There was also evidence corroborating the video. Deputy Jason Chapman testified that when he arrived at the scene, he got into the car to turn it off, and the air conditioner was blowing but the car was still hot. (R. p. 657 l. 24 – p. 658 l. 5). SLED agent Brooklynn Molina testified. Agent Molina was found qualified as an expert in the field of forensic toxicology. She tested the blood of the Appellant that was drawn the same day of the incident. Agent Molina testified that the Appellant's blood tested positive for methamphetamine and amphetamine. This reveals that the Appellant was intoxicated to the point where she failed to comprehend the fact that her child was in a vehicle that reached temperatures as high as 130°. There was no urgency to get the victim out of that car due to her intoxication. This further proves the total disregard for human life existing in the minds of the Appellant and well as her co-defendant.

It was obvious that implied malice existed in this case; therefore, even without the evidence being in question by the Appellant, a jury would have sufficient evidence to convict for the offense of murder. The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather on the virtually inevitable presence of immaterial error. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S.Ct. 1431 (1986).

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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March 26, 2025

Mar 26 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

RITA M. PANGALANGAN,

Appellant.

Appellate Case No. 2023-001446

PROOF OF SERVICE

I, Tommy Evans, Jr., hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent and Proof of Service have been forwarded to Appellant's counsel, Dayne Phillips, Esq., via email today, March 26, 2025 to dayne@pricebenowitz.com.

I further certify that all parties required by Rule to be served have been served.

This is the 26th day of March 2025.

s/Tommy Evans, Jr.

Tommy Evans, Jr.

S.C. Bar No. 12990

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Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Rita M. Pangalangan, Appellant.

Appellate Case No. 2023-001446

Appeal From Colleton County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2026-UP-018
Submitted November 3, 2025 – Filed January 21, 2026

AFFIRMED

Dayne C. Phillips, of Price Benowitz LLP, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Tommy Evans, Jr., all of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

PER CURIAM: Rita M. Pangalangan appeals her convictions for murder and infliction of great bodily injury upon a child and her aggregate sentence of thirty-seven years' imprisonment for her involvement in the death of her thirteen-year-old child (Victim). On appeal, Pangalangan argues the trial court erred by (1) allowing testimony indicating she previously left Victim in a vehicle unattended and for an extended period of time; (2) failing to suppress photographs of Victim's body taken at the scene; (3) refusing to grant a mistrial based upon cumulative errors, including the State's comment during its closing argument that Victim would have suffered less if she had been shot in the head; and (4) refusing the request for attorney-led voir dire. We affirm pursuant to Rule 220(b), SCACR.

1. We hold the trial court did not abuse its discretion in admitting testimony that Pangalangan previously admitted she left Victim unattended in a vehicle for an extended period of time. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."). The testimony was admissible pursuant to Rule 404(b) of the South Carolina Rules of Evidence because the State used the evidence that Pangalangan intentionally left Victim in the car on prior occasions to counter her arguments that she left Victim in the car due to a mistake or accident, and to show Pangalangan's "common scheme or plan" of using her vehicle as a "babysitter" for Victim. *See* Rule 404(b), SCRE ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."); *State v. Smith*, 391 S.C. 353, 363-64, 705 S.E.2d 491, 496-97 (Ct. App. 2011) (holding evidence the defendant had committed child abuse against the victim prior to her death was admissible to show motive and the absence of mistake or accident in his trial for homicide by child abuse because her injury from the prior incident, a broken femur, supported the State's theory that Smith had given the victim an overdose of pseudoephedrine in an attempt to prevent her from crying about the untreated fracture), *rev'd on other grounds*, 406 S.C. 215, 750 S.E.2d 612 (2013); *State v. Martucci*, 380 S.C. 232, 252-53, 669 S.E.2d 598, 609 (Ct. App. 2008) (ruling the defendant's prior abuse and neglect of victim "was admissible as proof of intent and the absence of accident" in the latter's death; "[b]ecause Martucci disputed the motive and intent to commit homicide by child abuse, evidence of the prior abuse or neglect was highly probative of his guilt" and "was necessary to establish a material fact or element of the crime charged"); *id.* at 256, 669 S.E.2d at 611 (holding evidence the defendant abused the victim "about a month and a half up to a few weeks before" his death "was not remotely disconnected in time from the conduct giving rise to

the homicide by child abuse and was part of the same pattern of abuse showing extreme indifference to human life," and was thus "admissible under the 'common scheme or plan' exception" of Rule 404(b)). Similarly, the testimony was admissible under *res gestae* theory because it aided the jury in understanding the events surrounding Victim's death and the context in which it occurred. *See State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) ("The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact[-]finder in understanding the context in which the [charged] crime occurred."); *State v. McGee*, 408 S.C. 278, 289, 758 S.E.2d 730, 736 (Ct. App. 2014) (holding evidence that was admissible under *res gestae* was "circumstantially intimately connected and explanatory of the crime"). Further, we hold the trial court did not abuse its discretion in finding the witness's testimony constituted clear and convincing evidence of the prior act. *See State v. Wilson*, 345 S.C. 1, 5-7, 545 S.E.2d 827, 829-30 (2001) (holding the court of appeals erred in finding there was not clear and convincing evidence of the defendant's prior bad acts due to questions regarding the testifying witness's credibility, and that such credibility issues are "an issue for the jury's consideration"); *id.* at 6, 545 S.E.2d at 829 ("[W]e do not review a trial judge's ruling on the admissibility of other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence, the trial judge's ruling will not be disturbed on appeal.").

Turning to Pangalangan's argument that the testimony violated Rule 403 of the South Carolina Rules of Evidence, we hold the danger of unfair prejudice in admitting the testimony did not substantially outweigh its probative value. *See Pagan*, 369 S.C. at 208, 631 S.E.2d at 265 ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); Rule 403, SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); S.C. Code Ann. § 16-3-10 (2015) ("'Murder' is the killing of any person with malice aforethought, either express or implied."); *In re Tracy B.*, 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010) ("In the context of murder, malice does not require ill-will toward the individual injured, but rather it signifies 'a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.'" (quoting *State v. Heyward*, 197 S.C. 371, 375, 15 S.E.2d 669, 671 (1941))); S.C. Code Ann. § 16-3-95(A) (2015) ("It is unlawful to inflict great bodily injury upon a child."); S.C. Code Ann.

§ 16-3-95(C) (2015) ("'[G]reat bodily injury' means 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."); *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) (explaining that "[w]hen . . . the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced"). Further, any error was harmless due to the substantial evidence of Pangalangan's guilt. *See State v. Broaddus*, 361 S.C. 534, 542, 605 S.E.2d 579, 583 (Ct. App. 2004) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, this court should not set aside a conviction because of errors not affecting the result.").

2. We hold the trial court did not abuse its discretion by admitting the photographs of Victim because their probative value was not substantially outweighed by the danger of unfair prejudice. Here, even though the photographs showed the body of an underweight thirteen-year-old girl with cerebral palsy, who was lying face down outside while wearing a soiled diaper, the danger of unfair prejudice did not substantially outweigh the photographs' probative value because they aided the State's forensic pathologist in explaining Victim's injuries to the jury and assisted the jury in determining whether Pangalangan acted with malice, which was a disputed issue at trial; thus, they possessed high probative value. *See State v. Martucci*, 380 S.C. 232, 249, 669 S.E.2d 598, 607 (Ct. App. 2008) ("The relevance, materiality, and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion."); *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265 ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 403, SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *Martucci*, 380 S.C. at 250, 669 S.E.2d at 607 ("Admitting photographs which serve to corroborate testimony is not an abuse of discretion."); *State v. Benton*, 443 S.C. 1, 8-9, 901 S.E.2d 701, 704-05 (2024) (explaining the "graphic crime scene photographs" of a victim's burned body were probative because they possessed "unique power to make Benton's accomplices' testimon[ies] more believable" by "g[iving] important context to the testimony and other evidence about who did what at the scene" and they "assisted the jury in their task to understand other key evidence"), *cert. denied*, 145 S. Ct. 443 (2024); *State v. Gleaton*, 444 S.C. 394, 418-19, 906 S.E.2d 630, 642-43 (2024) (finding a trial court did not abuse its discretion in admitting autopsy photographs of the victim's

burned body because the photographs "had significant probative value" by "visually demonstrat[ing] the causes of [the v]ictim's death in a way testimony alone could not, and they aided the [forensic pathologist] in explaining [the v]ictim's injuries to the jury"); *State v. Jones*, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) ("Even if relevant, photographs are unfairly prejudicial if they create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" (quoting *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995))), *cert. denied*, 144 S. Ct. 1012 (2024); *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) ("When [balancing the danger of unfair prejudice] against the probative value, the determination must be based on the entire record and will turn on the facts of each case.").

To the extent Pangalangan argues the trial court erred in admitting photographs of the gun found at the crime scene, we find that issue is not preserved. *See York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review.").

3. We hold the trial court did not abuse its discretion in denying Pangalangan's motion for a mistrial based upon the cumulative errors of the erroneous admission of prior bad act evidence, the improper admission of photographs of a gun, and the State's improper closing argument. *See State v. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) ("The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law."); *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) ("The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial."); *id.* ("An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground."). As discussed above, the trial court did not err in admitting the prior bad act evidence and Pangalangan failed to preserve any error in the admission of the photographs of a gun. Additionally, Pangalangan failed to preserve any error relating to the State's closing argument. *See State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("For an objection to be preserved for appellate review, the objection must be made . . . with sufficient specificity to inform the circuit court judge of the point being urged by the objector." (citation omitted)); *State v. Black*, 319 S.C. 515, 521-22, 462 S.E.2d 311, 315 (Ct. App. 1995) (holding a defendant failed to

contemporaneously object to the State's closing argument because although counsel objected and moved for a mistrial during the argument, he waited until after the court's charge and the jury began deliberations to state the basis for his objection and mistrial motion).

4. We hold the trial court did not err in denying Pangalangan's request for attorney-led voir dire and conducting voir dire itself. *See State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) ("The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion."); S.C. Code Ann. § 14-7-1020 (2017) ("The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror . . ."); *State v. Smart*, 274 S.C. 303, 305, 262 S.E.2d 911, 912 (1980) ("[U]nder this section, whether or not counsel is permitted to conduct the voir dire examination of the juror[s] or such examination is conducted by the court is within the discretion of the trial [court]."); *State v. Britt*, 237 S.C. 293, 311, 117 S.E.2d 379, 388 (1960) ("The trial [court] may, if the circumstances seem to him to demand it, permit counsel . . . to also examine jurors."), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

AFFIRMED.¹

MCDONALD, HEWITT, and TURNER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED**Feb 05 2026****SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

The State of South Carolina,

Respondent,

v.

Rita M. Pangalangan,

Appellant.

PETITION FOR REHEARING

Counsel for Appellant respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in affirming her convictions and sentences. Specifically, Appellant is requesting that this Court rehear the appeal based on the following reasons:

(1) The testimony claiming that Appellant previously admitted to leaving her daughter unattended in a vehicle for an extended period of time was not admissible because of the following reasons:

- a) Appellant did not present evidence regarding the defense of mistake or accident because Appellant did not testify and argument is not evidence.

- b) The common scheme or plan exception does not apply because there is no independent evidence to corroborate the witness testimony that Appellant previously used her vehicle as a “babysitter” for her daughter in violation of the South Carolina Code of Laws. *See generally State v. Lyle*, 125 S.C. 406, 427, 118 S.E. 803, 811 (1923) (explaining the common plan or scheme exception requires “such a visible connection between the extraneous crimes and the crime charged as will make evidence of one logically tend to prove the other”).
- c) That prior bad act testimony is not admissible under the *res gestae* theory because it was not necessary for a full presentation of the case without fragmentation. *See generally State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002).
- d) The State failed to present any sufficient evidence to satisfy its burden of proving the prior bad act (that is not the result of a conviction) by clear and convincing evidence.
- e) The danger of unfair prejudice created by this testimony is enhanced because the prior bad act is “strikingly similar” to the crime charged against Appellant. *See State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984); *see also Michelson v. United States*, 335 U.S. 469, 475–76 (1948) (finding prior bad act evidence “is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.”) (footnote omitted).

- f) The error in admitting that prior bad act testimony was not harmless because there is a reasonable probability that it improperly influenced the jury's verdict based on the evidence presented at trial.

(2) The additional photographs of her daughter's corpse with the white sheet and coroner's tag served no legitimate purpose other than to enhance the unfair prejudice to Appellant. *Cf. State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 185 (1986) (finding photographs are relevant if they "depict the bodies of the murder victims in substantially the same condition in which the defendant left them."); *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (quoting *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) (finding even if relevant, photographs are unfairly prejudicial if they "create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'"))).

(3) Furthermore, the additional photographs were not necessary because the average juror could understand the extent of her daughter's injuries based on the responding officers' testimony and pathologist's testimony proving the child died as a result of being inside a hot car for several hours.

(4) There is absolutely no relevance in admitting the photograph a loaded gun found in the car, and that issue is preserved for appellate review. (R. 299, lines 21-25; R. 301, lines 15-23; R. 302, lines 3-7; State's Exhibits 10 and 11). *See* Rules 401 and 403, SCRE.

(5) Appellant preserved the issue related to the State's improper comments during closing argument that were deliberate to inflame the passion and prejudice of the jury. (R. 690, lines 2-7).

(6) The current procedure for voir dire denies Appellant's right to a fair trial and

attorney-led voir dire would have cured the prejudice to Appellant. S.C. Code Section 14-7-1020; *see generally Estelle v. Williams*, 425 U.S. 501 (1976); *see also Cage v. Louisiana*, 498 U.S. 39 (1990).

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests that this Court grant the Petition for Rehearing.

Respectfully submitted,

s/ Dayne Phillips

Dayne Phillips
S.C. Bar No. 77712

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ATTORNEY FOR APPELLANT

February 5, 2026

RECEIVED**Feb 05 2026****SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-001446

The State of South Carolina,

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v.

Rita M. Pangalangan,

Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon **Tommy Evans Jr., Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **February 5, 2026**.

s/ Dayne C. Phillips

Dayne Phillips
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Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 5th day of February, 2026.

County Powers (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

The South Carolina Court of Appeals

The State, Respondent,

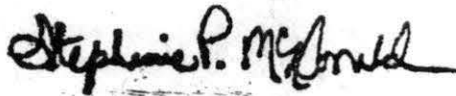
v.

Rita M. Pangalangan, Appellant.

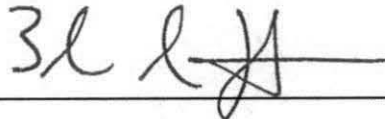
Appellate Case No. 2023-001446

ORDER

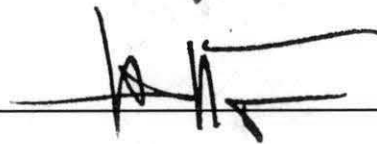
After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Dayne C. Phillips, Esquire

Tommy Evans, Jr., Esquire

Isaac McDuffie Stone, III, Esquire

The Honorable Clifton Newman

FILED
Feb 09 2026